

**NORTH LINCOLNSHIRE COUNCIL**

**COUNCIL**

**PROPOSED CHANGES TO CONTRACT PROCEDURE RULES**

**1. OBJECT AND KEY POINTS IN THIS REPORT**

- 1.1 To introduce a series of proposed changes to Contract Procedure Rules for consideration and approval by Council.
- 1.2 The key points in this report are:
- The mandatory procedures detailing how procurement should be conducted are set out in Contract Procedure Rules (CPRs). CPRs form part of the council's constitution.
  - Changes to CPRs are required to ensure that the council's processes continue to comply with public procurement policy and law and enable the achievement of its goals, priorities and outcomes.

**2. BACKGROUND INFORMATION**

- 2.1 The mandatory procedures governing how the procurement of supplies, services and works should be carried out by officers and elected members are set out in Contract Procedure Rules (CPRs). CPRs form an integral part of the council's constitution.
- 2.2 CPRs were last substantively updated and approved by Full Council on 18 May 2017 (minute 2508 (2) refers).
- 2.3 CPRs are reviewed every two years to align key procedural thresholds with the bi-annual change to the process values specified under the EU procurement regime. The review provides an opportunity to ensure that the framework remains contemporary with local and national policy requirements.
- 2.4 The update to CPRs for 2019 is generally presented as "light touch" given minimal changes to Public Contract Regulations. However, a number of key changes to CPRs are proposed to ensure that they continue to reflect best practice and enable the achievement of the council's goals, priorities and outcomes, notably:
- a) For procurements under £100k, budget holders may adopt a more flexible and commercial approach, ensuring that key procurement principles are complied with, rather than adherence to prescribed processes. [CPR 23; 30]
  - b) In line with the above provision and principle, the instances where "central approval" is required on specific decision points e.g. award criteria (price/quality split); single tender receipt etc have been reduced, with

responsibility transferred to the budget holder (on advice from the procurement team) [CPR 23; 24; 25; 26; 27]

c) Other presentational and technical changes have been made to reflect changes to NLBC Shared Services together with latest legal, practice and policy guidance and terminology, including:

- replacing the Data Protection Act 1998 with latest GDPR requirements [CPR 16]
- increased flexibility to use “light touch regime” process provisions for health, social care and education related services as permitted in regulation [CPR 10; 26]
- inclusion of the requirement to comply with the new UK steel charter [CPR 1; 24; 25; 27].
- clarification on responsibility for the retention of contracts [CPR 23; 24; 25; 27]

2.5 A copy of the proposed new set of CPRs is attached at appendix 1.

### **3. OPTIONS FOR CONSIDERATION**

3.1 Option 1: Approve new CPRs

3.2 Option 2: Do not approve new CPRs

### **4. ANALYSIS OF OPTIONS**

4.1 The proposed changes will assist the council in continuing to comply with public procurement policy and legislation. They reflect advice received from relevant legal, professional and technical advisors together with the feedback from key users.

### **5. FINANCIAL AND OTHER RESOURCE IMPLICATIONS (e.g. LEGAL, HR, PROPERTY, IT, COMMUNICATIONS etc.)**

5.1 Financial

The proposed changes will continue to help the council obtain value for money from the £120m it spends every year on supplies, services and works.

5.2 Staffing

None

5.3 Property & IT

None

### **6. OTHER RELEVANT IMPLICATIONS (e.g. CRIME AND DISORDER, EQUALITIES, COUNCIL PLAN, ENVIRONMENTAL, RISK etc.)**

6.1 None

### **7. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)**

7.1 An Integrated Impact Assessment has been completed with no adverse findings identified.

## **8. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTEREST DECLARED**

8.1 Feedback and advice has been sought from relevant internal advisors and key users of CPRs.

## **9. RECOMMENDATIONS**

9.1 That the proposed changes to Contract Procedure Rules are approved.

### **DIRECTOR OF GOVERNANCE & PARTNERSHIPS**

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#### **Background Papers used in the preparation of this report:**

Full Council Report: May 2017  
CPRs (current)

**North  
Lincolnshire  
Council**

**Contract  
Procedure  
Rules**

**September 2019**

# Contract Procedure Rules

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## **INTRODUCTION**

Contract Procedure Rules (CPRs) are the framework of mandatory procurement procedures that must be followed by officers and elected members when the Council spends money on the supplies, services and works it needs to deliver services to local people. They form an integral part of the Council's Constitution.

ALL Council employees, or any authorised person undertaking a procurement, a concession or disposal exercise on behalf of the Council, must use the CPRs in conjunction with supporting guidance and the Council's Finance Manual and procedure rules.

The following are key principles of procurement under the European public procurement regime:

1. Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.
2. No procurement shall be designed with the intention of excluding it from the scope of the regime or of artificially narrowing competition. Competition is artificially narrowed where a procurement is designed with the intention of unduly favouring or disadvantaging certain economic operators.

If the Council fails in this duty, a potential supplier may have justifiable cause for complaint. The Council may be required to pay compensation if such a complaint were upheld; in addition, a contract or framework agreement may be rendered ineffective, either in whole or in part, and civil financial penalties may be imposed on the Council. Officers and elected members also have a personal responsibility to comply with these CPRs. Procurement practices are scrutinised by bidders and government (The Public Procurement Review Service).

CPRs have five main purposes:

- to help the Council obtain value for money so that, in turn, value for money services may be provided to the public;
- to comply with the law governing spending of public money and the policy on transparency regarding Council expenditure;
- to provide a legal and auditable framework for the Council's procurement activities;
- to protect Council staff and members from undue criticism or allegation of wrong doing and
- to support the delivery of the [Procurement Strategy](#)

## **POLICY CONTEXT**

"Under the Duty of Best Value, therefore, authorities should consider overall value, including economic, environmental and social value, when reviewing service provision. Authorities also have a statutory duty to consider social value for services above specified procurement thresholds at the pre-procurement stage. Authorities can however apply the concept of social value more widely than this and this guidance recommends that authorities consider social value for other contracts (for example below the threshold or for goods and works) where it is relevant to the subject matter of the contract and deemed to be beneficial to do so." (Best Value Statutory Guidance, 2015, Department for Communities and Local Government)

The EU Directives reflect and reinforce the value for money (vfm) focus of the Government's procurement policy. This requires that all public procurement must be based on achieving vfm, defined as "the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought, which should be achieved through competition, unless there are compelling reasons to the contrary".

**1 COMPLIANCE**

1.1 The procurement of every contract (including contracts awarded via a dynamic purchasing system or framework agreement) entered into by or on behalf of the Council or its Maintained Schools, regardless of value or origin of the funding, shall comply with all EU Directives, UK legislation, the Council's Financial Regulations, Finance Standing Orders, CPRs and the procurement supporting guidance. It is the responsibility of the service area, service leads and budget holders to ensure compliance with these requirements.

Academies are responsible for their own governance and scheme of finance and as such are not subject to by the Council's constitution, nor therefore its Contract Procedure Rules, unless an academy is participating in a wider Council procurement.

Where a Council is providing commercial procurement services exclusively to another public body, the procurement law and procedure rules applicable to that body will apply.

The Localism Act 2011 provides that under the '[community right to challenge](#)', the Council must consider an expression of interest (EOI) submitted by a 'relevant body' in relation to providing or assisting in providing a service provided by or on behalf of the Council. When the Council has decided to run a procurement exercise following acceptance of an EOI, the CPRs must be followed in awarding the contract.

Where a procurement is above the relevant EU threshold, the Social Value Act 2012 requires contracting authorities to consider how to improve the economic, social and environmental well-being of the area served by them through the procurement of services. Social value considerations must always be proportionate to the scale and nature of the contract including any consultation measures.

An audit trail for all procurements should be maintained and at EU level specific decisions and verifications must be recorded and be available throughout the procurement and after the contract has been awarded in line with EU Regulation 84 requirements.

The Council has a duty to run an efficient and timely procurement under the Small Business, Enterprise and Employment Act 2015 to enable a small or medium-sized enterprise (SMEs) to access public sector contract opportunities.

The CPRs apply to all the supplies, services and works (including service concessions and works concessions contracts) procured on the Council's behalf as detailed below:

<b>CPRs APPLY:</b>	<b>CPRs DO NOT APPLY:</b>
<ul style="list-style-type: none"> <li>• Where we procure from external organisations (public, private or voluntary);</li> <li>• Where we nominate a sub-contractor or supplier;</li> <li>• Where an external organisation is named in a Council procurement and has right to access it;</li> <li>• Where a service or works concession contract is proposed<sup>1</sup>;</li> </ul>	<ul style="list-style-type: none"> <li>• Where requirements are sourced and delivered internally;</li> <li>• Academies (unless the Council is leading a procurement which an academy is participating in);</li> <li>• Where a Council acts for another non-regulated body;</li> <li>• A contract with a Council-owned company which the Council's Monitoring Officer advises falls outside the scope of the EU public procurement regime;</li> </ul>

## Contract Procedure Rules

<ul style="list-style-type: none"><li>• Development agreements to which the EU procurement rules apply<sup>1</sup>;</li><li>• Maintained Schools;</li><li>• Where a third party is procuring on the Council's behalf and where the Council is the contracting party;</li><li>• The Council's commercial activity where the Council is bidding for others' services and</li><li>• The substantial modification of an existing contract unless clearly provided for in the original contract terms or with the approval of the Council's Monitoring Officer.</li></ul>	<ul style="list-style-type: none"><li>• Contracts for the acquisition or disposal of land and buildings<sup>1</sup></li><li>• Contracts of employment.</li><li>• Grants where the council awards a grant to an external organisation.</li></ul>
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Note 1: Where the acquisition or disposal of land and/or property potentially establishes a works concession contract or a development agreement, timely advice from Legal Services must be sought. This also applies where a procured contract includes lease/licence for a Council building

- 1.2 All procurement of services shall comply with the principles of North Lincolnshire [COMPACT](#) Code of Good Practice for Funding and Procurement (or any successor agreement). All procurements involving construction and works which have a significant steel component must comply with the commitments the council has given as a signatory to the UK Steel Charter.
- 1.3 No member of the Council or officer acting without proper authority shall enter, either orally or in writing, into any contract in the Council's name.
- 1.4 Where a partner organisation acts on behalf of the Council and needs to purchase or assign goods or services, any such assignment must be undertaken in line with the Contract Procedure Rules unless otherwise exempted in writing by the Head of Legal & Democracy (Monitoring Officer).
- 1.5 Where the council is procuring together with another council/body, this must be done under the terms of the Joint Procurement Agreement and a Joint Project Initiation Document.
- 1.6 Where the Council is procuring with any other body (such as any other Council or a Clinical Commissioning Group or other health body), so that a successful procurement is dependent on the actions or financial contributions of the body, then a legally binding agreement must be entered into with that body to secure those actions or contributions, in terms approved by the Head of Legal & Democracy (Monitoring Officer).

## **2 PROCEDURAL THRESHOLDS**

- 2.1 It is important to ensure that the correct procedure is adopted and where there is a risk of a requirement falling above a threshold, the process for the higher threshold should be applied. Requirements valued to within 10% under the relevant EU threshold should consider following the EU tender process.
- 2.2 The EU thresholds that apply will be those advised by the Cabinet Office as detailed below. The current thresholds set out below are valid from 1 January 2018:

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	Supplies	Services	LTR	Concessions	Works
Public Sector Contracting Authorities (excluding Schedule 1 authorities)	£181,302	£181,302	£615,278	£4,551,413	£4,551,413

- 2.3 In determining which threshold applies, the whole-life costing (excluding VAT) of the proposed contract or framework agreement must be considered. Purchases must not be disaggregated to avoid the requirements of the CPRs. Any option to extend a contract must also take into account whether the EU thresholds would be exceeded with the extension value included, even if the option to extend is not eventually exercised. Where the duration of the contract is unknown or uncertain, its total cost over a four year period should be estimated and the relevant procedure then followed to award the contract, DPS or conclude the framework agreement. Where requirements include a mix of supplies, services and/ or works elements, advice should be sought from The Procurement Team as to which threshold is applicable.
- 2.4 The whole lifecycle of a procurement should be considered in determining its whole-life cost, including the cost of maintenance, spares, upgrades, decommissioning and disposal.
- 2.5 Where it is possible to predict a number of similar requirements, we must consider the requirements as a whole and procure accordingly. The procured solution must operate based on the aggregated value of the requirements to ensure compliance and maximise value for money.
- 2.6 All monetary thresholds referred to in this document exclude VAT but include all other applicable taxes and charges.

### 3 **PROCEDURE**

#### 3.1 Key Decisions and governance requirements

The law and the Council's Constitution require Key Decisions to be transparent. "Key Decision" is defined, and the rules relating to Key Decisions set out, in the Constitution. For ease of reference, both are summarised in the table below.

What is considered a Key Decision?	A key decision means an executive decision which is likely  (i) to result in the Council incurring expenditure or the making of savings (including the receipt or loss of income) over £350,000 in any one financial year  (ii) to be significant in terms of its effects on communities living or working in an area comprising two or more wards
Action:	Notice of the decision should be published 28 days prior to the formal decision to initiate the procurement. Note a 2 day call-in period also applies after the decision has been taken.
When should the Cabinet Member be consulted by the relevant director?	Procurements over £1m whole life cost which are not subject to a pre-existing council-wide arrangement or framework.
Action:	Procurement plans for contracts with a whole life value over £1m should be approved by the relevant cabinet member.

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	An information report on the outcome of the procurement should be submitted to the relevant cabinet member following the successful award of contract. The Key Decision process must also be complied with.
When can decisions be taken by an officer with delegated authority?	Directors should authorise all procurements over £100k prior to commencement (except those over £1m - see above) and approve the award of all contracts over £100k
Action:	'Officer Decision Records' should be signed and published on the council's website on a timely basis at Pre procurement and Post Award stages*

*\*save those contracts relating to placements for individuals care and support or such other categories of contract that are exempted by the Head of Legal & Democracy (Monitoring Officer)*

### 3.2 Options Appraisal

The options for satisfying the defined requirement must be fully assessed by conducting an "options appraisal". This analysis will apply equally to supplies, services or works. Where an option to proceed with a competitive procurement exercise has been chosen, having obtained approval from the budget holder and, where applicable, relevant Director for the business case and budget, the flow chart 'Choice of Procedure' (CPR 21), will determine the appropriate process to be used. Evidence of the options appraisal/analysis/budget holder approval must be retained.

Where the level of risk is high for a low value contract, a higher value procedure should be considered.

## 4 **CONFIDENTIALITY AND CONFLICTS OF INTEREST**

- 4.1 No one shall disclose information which has been forwarded to the Council by economic operators and designated as confidential. This is subject to the Council's obligations to comply with legislation, codes of practice, regulations and local policy requirements.
- 4.2 The Council shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of a procurement procedure so as to avoid any distortion of competition and ensure equal treatment of economic operators.
- 4.3 For the purpose of CPR 4.2, a procurement includes:
- i. preliminary market consultations;
  - ii. developing procurement documentation;
  - iii. deciding on the scope or structure of the procurement;
  - iv. choice of award procedure;
  - v. selection of tenderers;
  - vi. mini competitions through frameworks and DPS'
  - vi. award of the contract; and
  - vii. contract management.
- 4.4 For the purpose of CPR 4.2, there is a conflict of interest where an officer or other person acting on behalf of the Council has a direct or indirect financial, economic or other personal interest which might be perceived to compromise their impartiality and independence.
- 4.5 Potential involvement either directly or indirectly through a related party in an in-house or other bid, where this will be made in competition with the market, is a conflict of interest for the purpose of CPR 4.2.

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- 4.6 Conflicts of interest must be proactively monitored throughout the procurement process, documented, risk assessed and where a conflict is identified, notified to the Head of Legal & Democracy (Monitoring Officer). Records must be available on request and will form part of the Regulation 84 report for EU level contracts.

### **5 IN-HOUSE PROVIDERS**

- 5.1 Where a decision to procure has been made, any in-house provider should be considered as potential providers of the required supplies, services or works, and should be invited to submit bids as part of the competitive process and subject to the same procedures.

### **6 TRADING AND SELLING SERVICES**

- 6.1 In all cases where the Council proposes to supply services to, or carry out work for external bodies with or without charging, this must be done in line with the Council's commercial/ financial policies as appropriate and the process as outlined in Annex 1a.
- 6.2 Where a service area requires a sub-contractor or partner to support its in-house delivery, their appointment must be undertaken in line with CPRs.

### **7 CATEGORY MANAGEMENT**

- 7.1 Services Areas planning on undertaking the procurement of the following categories of supplies, services or works should note that these are managed on a council-wide basis and accordingly seek advice from the procurement team in the first instance:

<b>Category</b>
Building Works, Accommodation & Facilities Management
Civil Engineering & Non-Building Construction Works
Cleaning Services
Energy, Fuel & Water
Financial & Leasing Services
ICT Supplies & Services
Legal Services
Leisure
Printing Services
Public Health
Social or Personal Care services & Placement Activity
Training & Development Services
Transport Services
Vehicles & Fleet
Waste Disposal & Recycling

### **8 COUNCIL-WIDE CONTRACTS**

- 8.1 Where a Council-Wide Contract exists for supplies, services or works, it must be used. Only in the following circumstances should a departure from the use of council contracts be considered. Advice from the procurement team should be sought prior to seeking alternative solutions.

- Availability - The requirement cannot be obtained through a council-wide contract;
- Timescale - The requirement cannot be obtained in the required timescale through a council-wide contract; or

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- Specification - The requirement cannot be obtained with the required specification through a council-wide contract.

8.2 For higher value purchases through a council-wide contract (£5k+) the value for money benefit of wider competition should be considered.

### **9 PRELIMINARY MARKET CONSULTATION**

9.1 Wherever there is:

- an inherent need for consultation;
- a review of economic, social or value for money considerations;
- consideration of social value outcomes
- a new, developing or evolving need to be met or
- a desire for a new approach to service delivery;

The project team should consider the benefits of undertaking preliminary market consultation to engage the local, third sector and commercial market in the development of scope, objectives, specification, evaluation criteria and conditions of contract.

9.2 A flowchart of steps to be undertaken during a preliminary market consultation is set out in [Annex 1b](#). The Procurement Team should be engaged wherever a preliminary market consultation is being considered

9.3 In all preliminary market consultations, full regard should be had to the EU procurement and Treaty principles of equal treatment, transparency, proportionality and non-discrimination in order to ensure an effective competition can take place once the procurement has commenced.

### **10 LIGHT TOUCH REGIME**

10.1 The Public Contracts Regulations 2015 set out a new light-touch regime (LTR) which is a specific set of rules for certain service contracts that tend to be of lower interest to potential tenderers in other European countries. Those service contracts mainly centre around social, health and education services.

10.2 The LTR route for over threshold contracts includes the advertisement of the contract in the Official Journal of the European Union (OJEU), the publication of a contract award notice and ensuring compliance with the Treaty on the Functioning of the European Union principles of transparency and equal treatment. Time limits must be reasonable and proportionate and the procurement is to be conducted in conformance with the information provided in the OJEU advertisement. To meet these obligations, the EU open or restricted procedures can be used.

10.3 LTR does not require a formal procedure to be followed, but the principles of the Treaty must be applied and evidenced throughout the process.

10.4 For all LTR contracts valued below the threshold, use the defined processes in sections [CPR 23](#) and [CPR 24](#)

10.5 The use of LTR for over threshold contracts must be undertaken on the advice of The Procurement Team.

### **11 RESERVED CONTRACTS**

- 11.1 Certain contracts can be reserved such that the competition is not available to the wider market. The list of 'qualifying organisations' which can be subject to reserved contracts is prescribed and is predominately made up of health, social care or education services. Advice must be sought from The Procurement Team where there is an intent to reserve a contract.

## **12 FRAMEWORK AGREEMENTS, DYNAMIC PURCHASING SYSTEMS & E-AUCTIONS**

- 12.1 The use of framework agreements/dynamic purchasing systems (DPS) established by Central Purchasing Bodies or other contracting authorities (as defined by the Public Contracts Regulations 2015) must be on advice from The Procurement Team and subject to exception approval under CPR 30. The framework terms and conditions must also be approved by legal services prior to accessing the framework.
- 12.2 A dynamic purchasing system (DPS) is a completely electronic system which may be established to purchase commonly used supplies, services or works. It must operate for a defined duration. Any DPS must be established in accordance with the requirements of the CPRs with guidance from The Procurement Team.
- 12.3 In determining the relative advantages and disadvantages of establishing a DPS, framework or traditional contract model, the benefits of keeping requirements open to competition over the life of the arrangement must be evaluated.
- 12.4 A framework agreement or DPS must be considered or accessed where a Service Area has an on-going requirement for supplies, services or works of a similar type which, when aggregated, exceed £50,000 a year, but may be considered for lower values where considered beneficial. The framework agreement or DPS is to be established in accordance with the requirements of the CPRs with guidance from The Procurement Team. Framework agreements or DPS does not guarantee any services to the suppliers who are admitted to the framework agreement or DPS although they are legally binding contracts. A contract and/or purchase order should be raised separately in order to engage the relevant supplier/s when calling off requirements under a framework agreement or DPS.
- 12.5 Service Areas must not disaggregate purchases in order to avoid the CPR requirements. Where advantageous, any purchase of greater than £5,000 should be subject to further competition. All suppliers who are a party to the framework agreement/DPS should be invited to take part in a mini-competition in accordance with the requirements stated by the framework/DPS owner (unless alternative provisions have been agreed). Wherever possible and advantageous, bundling of largely similar requirements should be undertaken to maximise economies of scale.
- 12.6 A framework is a closed list of providers who have been ranked following a tender exercise. The framework providers are approved for a maximum 4 year period and can be awarded contracts in line with the framework terms. No contractual commitment attaches from the creation of the framework itself.
- 12.7 All framework agreements must comply with the following:
- Maximum length of 4 years (unless exceptional and approved)
  - Contracting authorities that access the agreement must be identified as a party to it. Estimated value must include all potential call-offs by all contracting authorities
  - Contracts based on the framework must not entail substantial modifications to the terms laid down in the framework
  - Contracts are formed when requirements are called-off under purchase order or a call-off contract.
  - Access, terms, award criteria and procedure for call-off are as per the terms of the framework agreement and must be followed.
  - A Regulation 84 report must be produced and maintained

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- 12.8 The flowchart at [Annex 1c](#), sets out the process for establishing a DPS and awarding contracts under it.
- 12.9 An Electronic Auction (eAuction) is a commercial tool designed to secure the best and final offer from bidders in a competitive process. Use of eAuctions is not mandatory but the benefits should be considered for procurements of requirements over £50,000.
- 12.10 The process for undertaking eAuctions is set out at [Annex 1f](#).
- 12.11 All award notices for contracts awarded under a Framework/DPS/eAuction valued over £25k must be advertised using Contracts Finder and added to the contracts register (this requirement excludes schools and academies).

### **13 USE OF THE COMPETITIVE DIALOGUE PROCEDURE, THE NEGOTIATED PROCEDURES AND INNOVATION PARTNERSHIPS**

- 13.1 The use of Competitive Dialogue is only applicable for contracts of very significant scale and where the preferred delivery option cannot be determined from preliminary market consultation.
- 13.2 Negotiated Procedures can only be used in limited circumstances, principally where it is not clear at the outset that the Council cannot adequately specify its requirements as they need to be developed with bidders. The advice of the Procurement Team should be sought.
- 13.3 The use of Innovation Partnerships is only applicable for inherently innovative development such as core research or new technical advancement.
- 13.4 The use of these procedures requires approval of the Director Governance & Partnerships; the application of CPRs to the procurement will be modified as required by the Public Contracts Regulations 2015 and approved by Legal Services.

### **14 CONCESSION CONTRACTS**

- 14.1 Concession contracts are governed by the Concession Contracts Regulations 2016. They are used where the Council engages a third party to provide a service or works, with or without a fee payable by the Council. Consideration for the service is in the form of the concessionaire being given a right to charge for the services being provided. Advice from The Procurement Team must be sought before engaging in any procurement relating to a concession contract.

### **15 TECHNICAL STANDARDS & SPECIFICATIONS**

- 15.1 Where an appropriate International, European or British Standard Specification or British Standard Code of Practice is in force at the date of the procurement, every specification and contract shall state that all goods and materials used or supplied and all the workmanship shall be at least of the standard required by such Standard or Code of Practice or its equivalent.

### **16 MANAGEMENT OF DATA**

#### **16.1 Data Protection**

In situations where personal data or confidential information needs to be shared with the market and the requirements of the Data Protection Act 2018 and the General Data Protection Regulation are likely to be invoked, the Service Area shall ensure that the Council's Data Protection Officer is consulted.

### 16.2 **Open Data**

All requests for quotation/invitation to tender must indicate the Council's obligation to publish commercial and other data provided by suppliers in accordance with Freedom of Information Regulations and the Local Government Transparency Code 2015 as amended.

### **17 TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 AS AMENDED 2014 (TUPE)**

17.1 Careful consideration needs to be given as to whether TUPE shall apply at commencement of the proposed procurement.

17.2 Where a proposed procurement may involve the TUPE transfer of Council officers, the advice of the Strategic HR Lead and Legal Services must be obtained prior to the start of procurement.

17.3 Any procurement involving the TUPE transfer of Council staff must be approved by the Relevant Director on the advice of the Director Governance & Partnerships.

17.4 The application of TUPE should also be considered in respect of staff employed by existing contractor(s) when the Council is looking to re-procure the service currently provided by such contractor(s). Guidance should be sought from the Head of Legal & Democracy.

17.5 An anonymised table of TUPE information and, where relevant, pension information, must be available for release with the tender documentation, using the TUPE matrix template. Further information can be shared with interested parties on the successful completion of the appropriate non-disclosure agreement.

### **18 EXCLUSION CRITERIA AND FINANCIAL APPRAISAL**

18.1 Minimum standards of financial standing and financial appraisals are subject to the advice of the Head of Financial Services but the requirements must not exceed a turnover of twice the contract value except in duly authorised cases. Minimum standards of financial standing at the award stage should be considered for all contracts where the estimated contract value exceeds the threshold of any relevant EU Directive or UK legislation and/or where other risk is identified, including where there would be a significant effect on the delivery of Council services in the event of contractor default or cessation of supply or service.

18.2 Where considered appropriate following a financial appraisal of a potential provider against the Council's minimum standards of financial standing, the potential contractor may be required to provide a Parent Company Guarantee (PCG) or a Performance Bond (Bond) in a form acceptable to the Council for the duration of the contract (including any extension period). All financial requirements should be published up front, including the possibility of a Bond or PCG. Any such PCG or Bond shall only be required where it is deemed that there is a specific ascertainable risk. Where group company financial information is assessed, a PCG will be required.

18.3 Where the estimated contract value exceeds the threshold of any relevant EU Directive or UK legislation or where specific risks are involved including consideration of any non-standard insurance requirements e.g clinical insurance required for public health contracts, you should refer to the Limits of Indemnity Contractors and Third Parties guidance or advice from the Insurance Manager

18.4 The national Standard Supplier Questionnaire (SSQ) template must be utilised for supplier suitability assessments. Supplier suitability can be tested using limited suitability questions. You must refer to The Procurement Team should you consider excluding a potential tenderer.

18.5 The Council must accept submissions of the information requested in the SSQ made via the European Single Procurement Documentation (ESPD), and accept e-certis as a means of proof when certification is requested. It is mandatory for a potential supplier to complete Part 1 and Part 2 of the SSQ, or the ESPD template, for all procurements above EU thresholds.

### **19 TENDER AND QUOTATION ERRORS**

19.1 Tender errors (including quotation errors) shall be dealt with in accordance with the following paragraphs of CPR 19, which shall be included in all Invitations to Tender and Requests for Quotations.

#### **19.2 Compliance**

Any Tenderer who fails to comply with the tender instructions and submission requirements set out in the Invitation to Tender may be deemed to be non-compliant and, subject to the discretion of the Council, acting reasonably, may have their tender rejected.

#### **19.3 Late Tender**

No late tender, other than system access errors, shall be considered except with the approval of the Head of Legal & Democracy on the advice of The Procurement Team.

#### **19.4 YORtender or e-Sourcing Suite Access Errors**

Where a tenderer advises that a tender submission deadline may be or has been missed as a result of [YORtender](#) being unavailable, The Procurement Team should obtain a system report from Proactis prior to the Council exercising its discretion as to whether to accept or reject the Tender.

When accessing the Crown Commercial Services e-Sourcing Suite a system report should be sought from the Crown Commercial Service.

#### **19.5 Omissions, Ambiguities and Inconsistencies**

Where there is an omission, ambiguity or inconsistency in a tender (including an arithmetical error), the Council reserves the right to contact the tenderer in writing via [YORtender](#), setting out the ambiguous or inconsistent part and the alternative interpretations of it. The tenderer will be required to identify within an appropriate time limit, via [YORtender](#), which of the interpretations are correct and confirm the appropriate amendments to the tender, provided that such requests are made in compliance with the principles of equal treatment and transparency. Where there is an omission, ambiguity or inconsistency in pricing, advice from The Procurement Team must be sought.

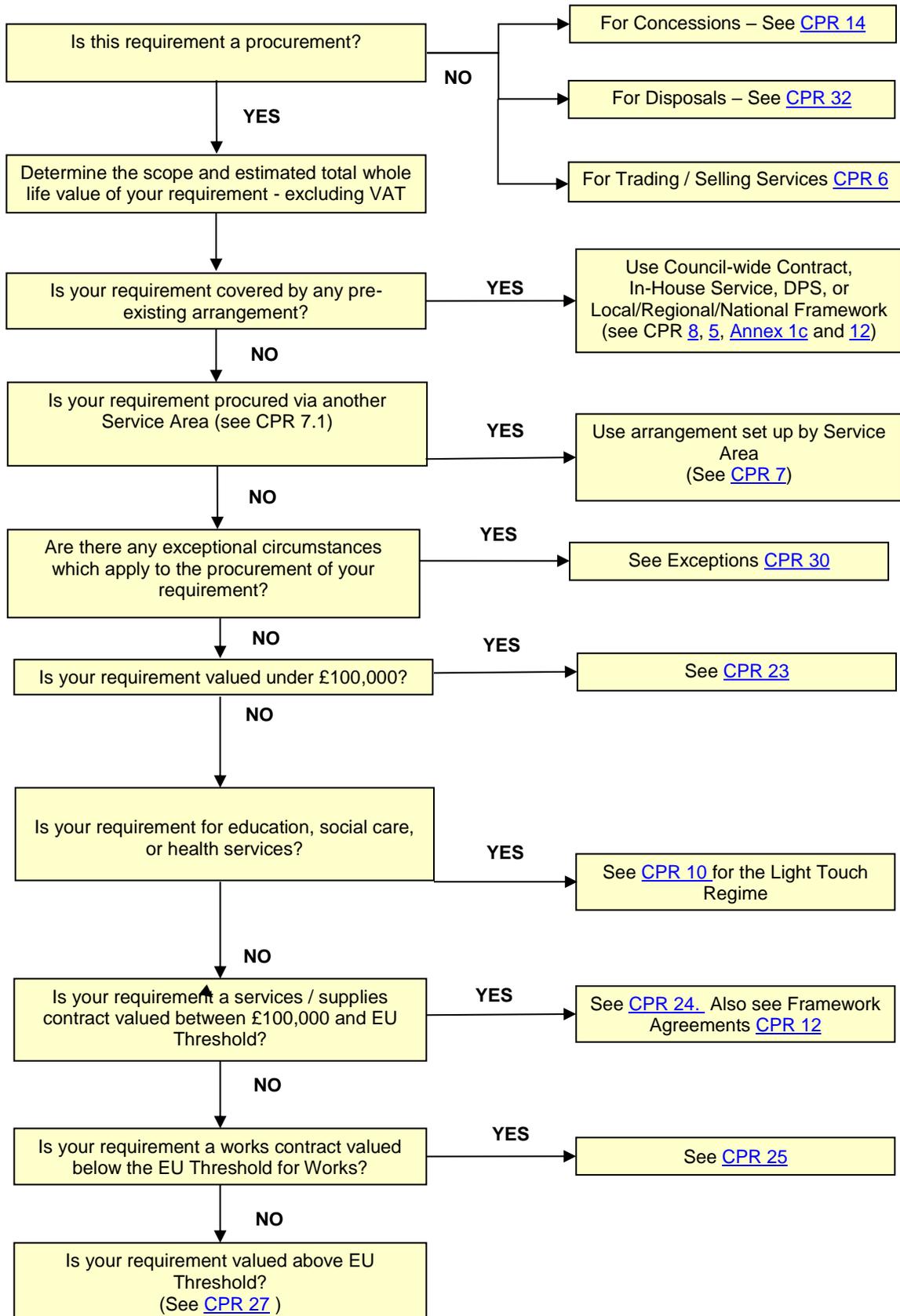
#### **19.6 Abnormally low tenders**

Explanations from bidders must be sought for exceptionally low tenders and the council may reject the tender where the explanation does not satisfy the concern/s.

### **20 PRE AND POST TENDER/REQUEST FOR QUOTATION CLARIFICATION**

20.1 All clarifications by the Council or tenderers must be raised via YORtender. Guidance from The Procurement Team is recommended in all circumstances but mandated where the issue, error, omissions or inconsistency is linked to price or potentially creates a material change.

21 **CHOICE OF PROCEDURE**



- 22 Not Allocated  
 23 SUPPLIES/SERVICES/WORKS CONTRACTS £1 - £100,000

**23.1a Authorisation to Proceed with Procurement**

Verify availability of budget and obtain Budget Holder approval.

Check for Conflicts of Interest – Proactively monitor and record, seeking advice where appropriate.

**23.1b Process**

Follow The Procurement Team’s self-service guidance on TopDesk.

Procurement processes under £100k recognise the need for agile and efficient business processes – **direction is provided below in line with key procurement policy principles and this may be interpreted flexibly dependent on circumstances with the exception of the mandatory principles and requirements indicated in bold below. Records of decisions made should be recorded for the audit trail particularly where there is variation from the normal process or key principles outlined below.**

**Open, Transparent & Proportionate Process**

- Unless you are using an existing council-wide contract (CPR 8), ordinarily you will be expected to undertake a competitive process to secure and demonstrate value for money
- If you directly award a contract to a supplier without competition, your decision may be challenged by the external market and expose the council to reputational risk; note all of the council’s expenditure over £500 is published externally and open to audit and public scrutiny
- Over £5k you should ordinarily consider using YorTender to help you comply with these requirements
- Over £25k you should ordinarily consider using YorTender.
- **Over £25k it is a government requirement to publish the requirement to the national Contracts Finder portal (requirement excludes schools and academies)**
- Procurement templates exist to enable efficient and effective process and to help secure contracts on the terms which protect the council. If you choose not to use this documentation, be aware of the risk that your contract may be entered into on the supplier’s terms and conditions, written protect their interest
- Your requests of bidders should be proportionate to the value and complexity of your requirement

**Equal Treatment**

- Treating all potential suppliers equally and fairly is crucial for securing a successful outcome and minimising the risk of a challenge
- This is achieved by:
  - o Setting the same timescales for all bidders
  - o Sharing the same information with all bidders
  - o Notifying all bidders of any changes to your requirements and providing them with the same timescale

**Value for Money**

- Competitive process is ordinarily used to secure best value for money. It can assist in leveraging the best price and quality from the market and open up opportunities for alternative solutions and innovation as well as supporting small and medium sized businesses and voluntary and community organisations.
- Typically, securing 3 – 5 written quotations is an effective way of demonstrating competition and value for money

## Contract Procedure Rules

- The primary means of undertaking a competitive process is set out above
- Your evaluation of bids should be based on objective and transparent criteria and fully disclosed to bidders in advance of them submitting their bids
- The criteria should be either:
  - Lowest “compliant” price; compliant meaning ability to meet the specification in full; or (oft used where requirements are well defined); or
  - Most Economically Advantageous (MEAT) – a mix of price and quality, setting out the % weighting allocated to price/quality and any sub criteria used

### 23.c Authorisation to Award

Obtain Budget Holder approval for the contract award.

### 23.1d Execution

A formal purchase order shall be issued and its acceptance acknowledged by the supplier specifying the supplies, services or works and setting out prices and terms of payment (which should be the Council's [terms and conditions of purchase](#)). The acceptance of the council's official purchase order will form the basis of the contract between the council and supplier.

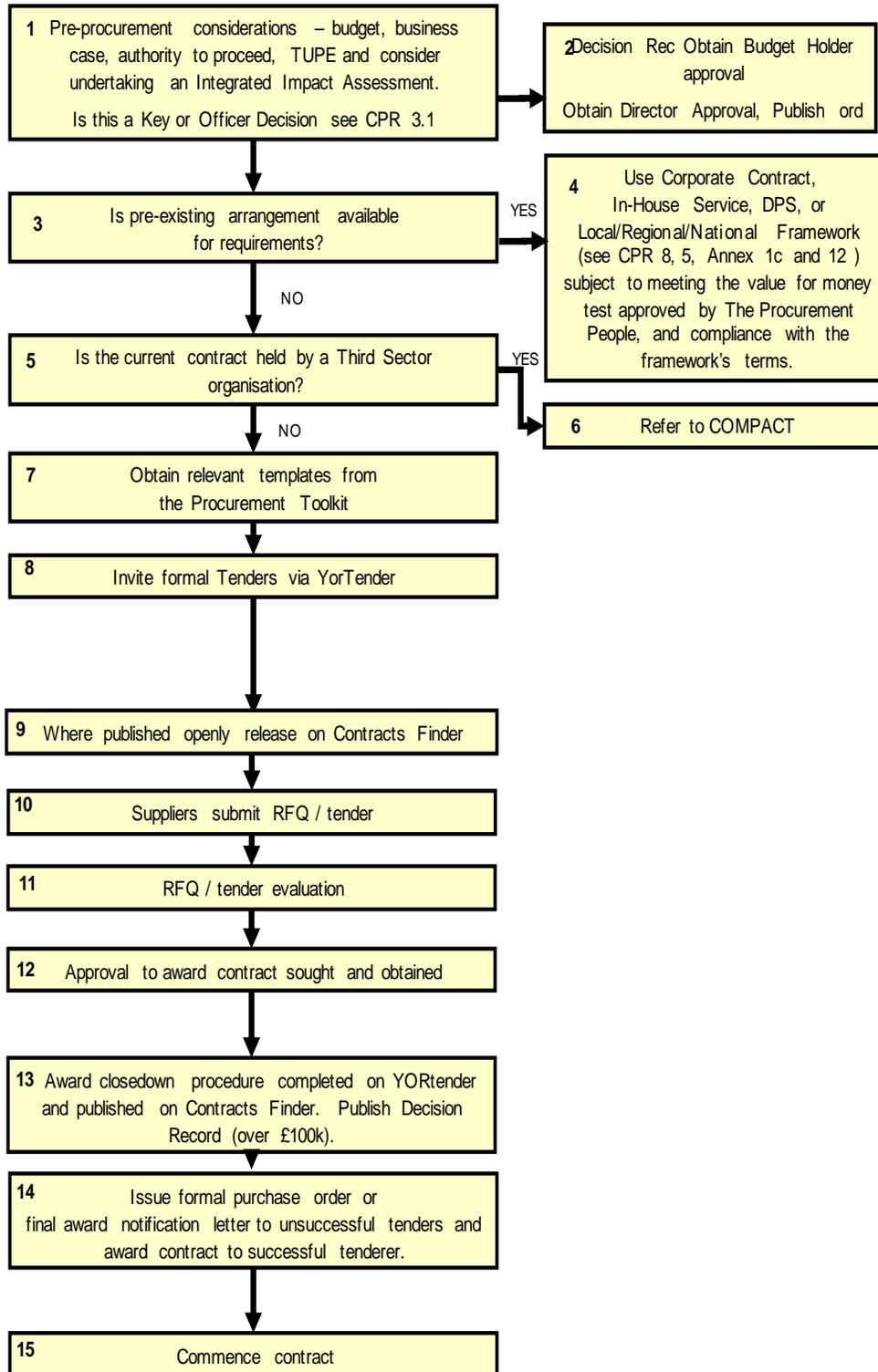
**The award of all contracts over £25k must be advertised on Contracts Finder (excludes schools and academies).**

### 23.1e Records & Documentation

The Service Area shall retain records of the transaction in accordance with the Council's approved record management or document retention policy.

If advertised on [YORtender](#) ensure that the contract is awarded on [YORtender](#) using the button on the contracts detail page.

24 SUPPLIES/SERVICES/WORKS CONTRACTS £100,000 - £181,302



**24.1 SUPPLIES/SERVICES/WORKS CONTRACTS £100,000 - £181,302**

**24.1a Authorisation to Proceed with Procurement**

It is the Budget Holder's responsibility to ensure the availability of budget and the authority to commit to the expenditure, noting the [Key Decisions](#) and governance requirements. It is essential for the whole-life commitment to be considered (assuming all available extensions are exercised) not the annual value of the commitment when securing authority to proceed.

Verify decision making protocols where:

- There are possible Council workforce and related [TUPE](#) implications, advice from Legal Services and HR must be sought;
- There are potentially significant economic development / sustainability implications and
- There are budget or policy implications.

Full Council approval may be necessary.

Check for Conflicts of Interest – Proactively monitor and record, seeking advice where appropriate.

**24.1b Competitive Process**

Adhere to the council governance frameworks for [project management](#) and produce a procurement timetable. Project managers should ensure that any procurement is undertaken in line with the Council's agreed project management framework, where appropriate.

Consider, in consultation with The Procurement Team, whether the requirement needs to be procured in accordance with:

- an [Integrated / Impact Assessment](#) (where there is potential for direct impact upon citizens / officers.);
- relevant consultation requirements;
- the use of Lots to facilitate greater access to the opportunity for SMEs;
- the SME Concordat;
- Steel Charter;
- the principles of [COMPACT](#) (or any successor agreement). ;
- Council Skills Pledge and
- [Sustainable/ethical Procurement Policy](#).

An **open** formal tender procedure may be used; with tenders being invited from a minimum of four potential contractors advertising via [YORtender](#). Note that a formal tender procedure is **mandatory** for contract values above £100,000.

The use of a pre-qualification stage is prohibited below the EU threshold for supplies. A suitability assessment question may be used where essential.

**24.1 SUPPLIES/SERVICES/WORKS CONTRACTS £100,000 - £181,302**

Where a framework agreement or DPS is being used, any purchase should be subject to further competition following the framework rules. The evaluation criteria and the [terms and conditions](#) specified by the framework owner must be used. Wherever possible and advantageous, bundling of largely similar requirements should be undertaken to maximise economies of scale.

The project manager should establish a project team. The Procurement Team must be contacted to determine the level of involvement required based on an assessment of identified risks.

Where “lowest compliant” is not being applied, the project manager in consultation with the project team must agree a percentage split in the award criteria based on the scope and importance of quality, risk and cost on a project by project basis. However, where the contract is being accessed via a framework, the award criteria set out in the agreement must be followed.

Where the project manager wishes to pursue a cost element of less than 60%, they should refer to [The Procurement Team](#) for advice.

The process must be fully managed using [YORtender](#)

Requests to use **electronic auctions** should be referred to [The Procurement Team](#)

**24.1c Advertisement**

**Mandatory** – [YORtender](#) with indicative contract values published tenders which are advertised as an open advert on [YORtender](#) must also be advertised on contracts finder. Tenders must be advertised for a minimum of 10 **working** days, but proportionately increased to its complexity.

**Optional** – Advertising of open opportunities via web-based media e.g. Twitter, and other health and voluntary sector sites subject to The Procurement Team advice. Any advertisement shall: specify the nature and purpose of the contract, outline how to submit a compliant tender, state the last date and time when tenders will be accepted and comply in all respects with the requirements of the relevant UK legislation.

**24.1d Receiving & Opening of Tenders**

Managed using [YORtender](#), kept confidential and opened by an officer of appropriate seniority, who is entirely independent and non-conflicted by the project in question.

No late tender shall be considered except with the approval of the Head of Legal & Democracy on the advice of The Procurement Team.

**24.1 SUPPLIES/SERVICES/WORKS CONTRACTS £100,000 - £181,302**

**24.1e Evaluation**

Compliance means the tender should be fully capable of meeting all fitness for purpose requirements in terms of specification, price, quality, delivery, etc.

Evaluate using The **Most Economically Advantageous Tender (MEAT)**, and ensure MEAT criteria, sub-criteria, weighting, and scoring guidance are disclosed to tenderers. The final evaluation score given to each tenderer must be the Moderated Score. Refer to [CPR 19](#) for guidance on how to manage errors in tender submissions. For procurements over £100,000, MEAT criteria should be used.

Tender must state that no tenders or quotes will be considered unless received by the date and time stipulated in the documentation. No tender or quote delivered in contravention of this rule shall be accepted without the written approval of the Head of Legal & Democracy.

**24.1f Post Tender Negotiation**

No negotiation with the existing or potential contractors shall be carried out.

**24.1g Authorisation to Award**

Must be obtained from the relevant Director where required by the Council's Scheme of Delegation and Policy and Budget Framework, which must always be applied.

At least two tender responses must be received. If only one response is received, advice from the Procurement Team should be sought. The written approval of the Budget Holder must be obtained prior to accepting the quotation/tender.

Without publishing, upload evaluation results and approval authorisation onto [YORtender](#) to maintain the decision making audit trail.

**24.1h Award and Execution**

**Outcome of Tender Exercise**

The acceptance of the successful tender is concluded by advising of the outcome of the tender followed by the issuing of a purchase order or formal contract.

All tenderers should be advised in writing of the outcome of the tender exercise. A debrief should only be provided to unsuccessful tenderers in exceptional circumstances and with The Procurement Team's guidance.

**Contract details**

Every purchase order / contract as a minimum shall be in writing and specify:

- the supplies or services to be provided and/or the work(s) to be executed;
- the price to be paid or the manner in which the price is to be determined together with details of the amount of any discounts or other deductions;
- the time within which the contract is to be performed;
- the Council's requirements on indemnity and insurance;
- for services, an exit strategy for when the contract terminates and
- other conditions and terms as set out in the RFQ / invitation to tender.

**24.1 SUPPLIES/SERVICES/WORKS CONTRACTS £100,000 - £181,302**

**Signing**

Directors are authorised to sign contracts that do not exceed £100,000 where the Head of Legal & Democracy has approved the form of contract as appropriate for the type of contract concerned.

The Head of Legal & Democracy (Monitoring Officer) is authorised to sign contracts that exceed £100, 000 and unless they determine otherwise, such contracts shall be executed by way of deed, under the Common Seal of the Council.

The Head of Legal and Democracy (Monitoring Officer) is authorised to affix the Common Seal of the Council to such contracts.

Contracts entered into orally, due to extreme urgency, must be confirmed in writing as above as soon as possible.

The relevant Officer Decision Record should be completed by the Service Area and published on the council's website as appropriate.

**Mandatory-** Without publishing, upload evaluation results and approval authorisation onto [YORtender](#) to maintain the decision making audit trail. A notification of award must be advertised on Contracts Finder, and the contracts register via [YORtender](#) for all contracts

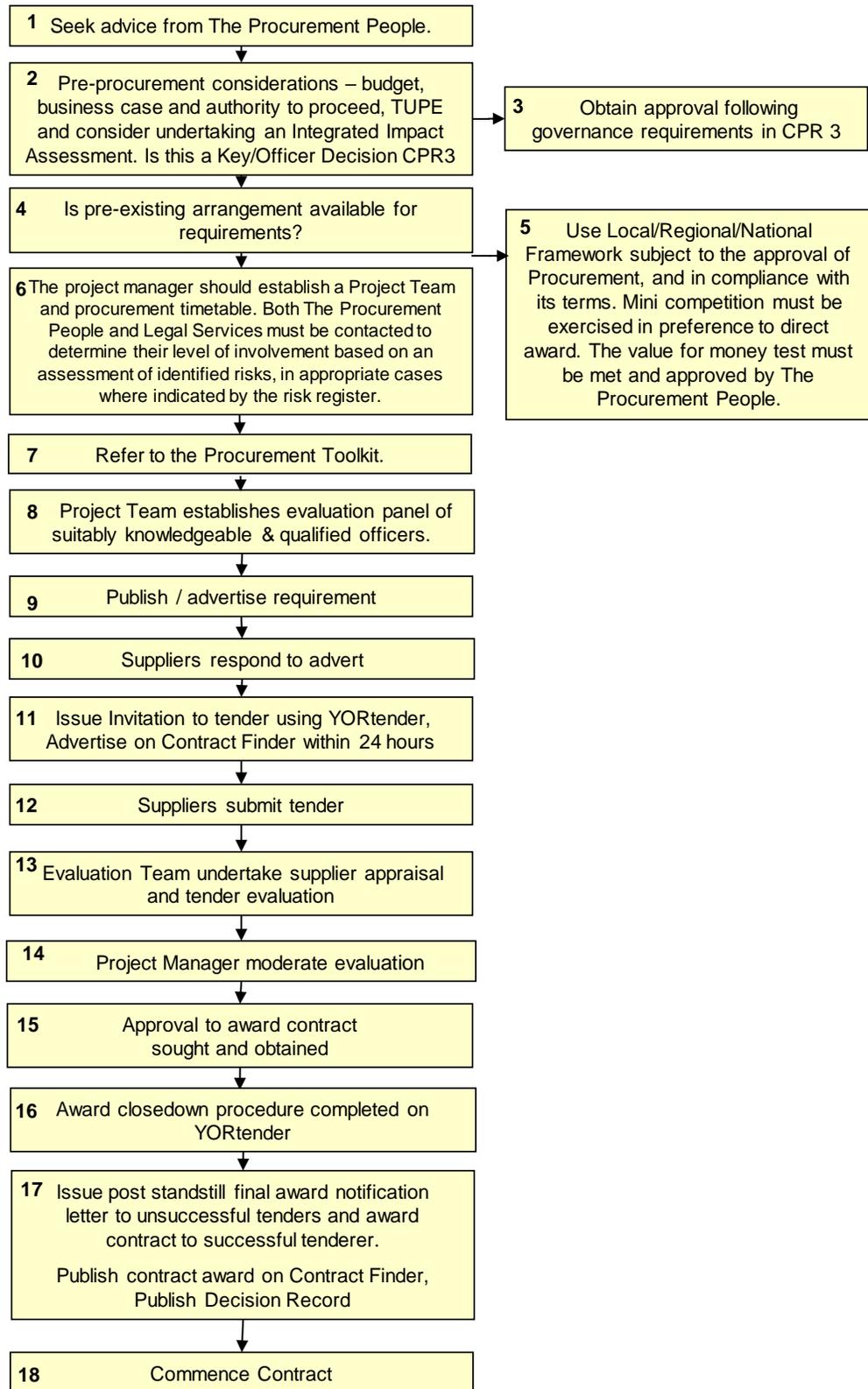
**24.1i Records & Documentation**

The Service Area shall retain records of the procurement exercise, including the original signed copy of the contract if the value is below £100,000, in accordance with the Council's approved record management or document retention policy.

Only contracts signed under the Common Seal shall be retained by the Head of Legal and Democracy (Monitoring Officer). All other contracts shall be retained by the service area.

The contract must be awarded using the options available in the contract details module on [YORtender](#), care must be taken to ensure that the contract details are up to date.

25 **WORKS CONTRACTS (ABOVE EU THRESHOLD FOR SUPPLIERS/SERVICES AND BELOW EU THRESHOLD FOR WORKS)**



**25.1 WORKS CONTRACTS (ABOVE EU THRESHOLD FOR SUPPLIERS/SERVICES AND BELOW EU THRESHOLD FOR WORKS)**

**25.1a Authorisation to Proceed with Procurement**

Please refer to Category Management [CPR 7](#).

It is the Budget Holder's responsibility to ensure the availability of budget and the authority to commit to the expenditure, noting the [Key/Officer Decisions CPR 3](#) and governance requirements. It is essential for the whole-life commitment to be considered not the annual value of the commitment when securing authority to proceed.

Verify decision making protocols where:

- There are potentially significant economic development / sustainability implications;
- There are budget or policy implications.

Full Council approval may be necessary.

Check for Conflicts of Interest – Proactively monitor and record seeking advice where appropriate

**25.1b Competitive Process**

Adhere to the council governance frameworks for [project management](#) and produce a procurement timetable. Project managers should ensure that any procurement is undertaken in line with the Council's agreed project management framework, where appropriate.

The suite of construction frameworks has been developed to meet the majority of the Council's Works requirements.

Determine in consultation with The Procurement Team, whether the construction frameworks are appropriate or whether a specific procurement is necessary in accordance with:

- An [Integrated / Impact Assessment](#) (where there is potential for direct impact upon citizens / officers.);
- relevant consultation requirements;
- the use of Lots to facilitate greater access to the opportunity for SMEs;
- Steel Charter
- SME Concordat;
- Council Skills Pledge and
- [Sustainable/ethical Procurement Policy](#).

Where a specific procurement is necessary, use a formal open tender procedure managed using [YORtender](#). Invitations to tender to comprise:

- Clear instructions for the submission and pricing of quotations;
- The Supplier Questionnaire PAS 91;
- A clear written specification;
- A Form of Tender including anti-collusion certificate;
- A Freedom of Information Declaration;
- A Pricing Schedule and
- The approved Council Terms & Conditions/a standard form of agreement e.g. NEC3 or JCT suite of conditions or where alternative Terms & Conditions are used, or amendments are made, seek guidance and approval from Legal Services.

Alternatively a minimum of four formal tenders may be sought using a closed process, subject to approval by The Procurement Team.

**25.1 WORKS CONTRACTS (ABOVE EU THRESHOLD FOR SUPPLIERS/SERVICES AND BELOW EU THRESHOLD FOR WORKS)**

The project manager should establish a project team. Both The Procurement Team and Legal Services must be contacted for them to determine the level of their involvement required based on an assessment of identified risks.

Where “lowest compliant” is not being applied, the project manager in consultation with the project team must agree a percentage split in the award criteria based on the scope and importance of quality, risk and cost on a project by project basis. However, where the contract is being accessed via a framework, the award criteria set out in the agreement must be followed.

Where the project manager wishes to pursue a cost element of less than 60%, they should refer to The Procurement Team for advice.

Requests to use **electronic auctions** should be referred to The Procurement Team.

**25.1c Advertisement (only applicable if not using the construction frameworks)**

**Mandatory** – [YORtender](#) with indicative contract values published tenders which are advertised as an open advert on [YORtender](#) must also be advertised on contracts finder.

Tenders must be advertised for a minimum of 10 **working** days, but proportionately increased to its complexity.

**Optional** –

- advertising of open opportunities via social media e.g. Twitter subject to The Procurement Team advice
- one or more specialist trade or professional newspapers or journals where appropriate.

Direct marketing of the existence of the opportunity is permissible in order to include organisations that may not ordinarily see the opportunity and to ensure local / regional / national competition.

Any advertisement shall: specify the nature and purpose of the contract, invite expressions of interest or tenders for its execution; state the last date and time when expressions of interest or tenders will be accepted; and comply in all respects with the requirements of the relevant UK legislation.

**25.1d Receiving & Opening of Tenders**

Managed using [YORtender](#), kept confidential and opened by an officer who is entirely independent and has no conflict of interest in relation to the project in question.

**25.1e Evaluating Tenders (only applicable if not using the construction frameworks)**

Evaluate on the basis of:

The lowest **compliant** quotation where payment is made **by** the Council; or

The highest **compliant** quotation where payment is made **to** the Council, e.g. a concession contract.

Compliance means the tender should be fully capable of meeting all fitness for purpose requirements in terms of specification, price, quality, delivery, etc.

**25.1 WORKS CONTRACTS (ABOVE EU THRESHOLD FOR SUPPLIERS/SERVICES AND BELOW EU THRESHOLD FOR WORKS)**

**Optionally** evaluate using The **Most Economically Advantageous Tender (MEAT)**, and ensure MEAT criteria, sub-criteria, weighting, and scoring guidance are disclosed to tenderers. The final evaluation score given to each tenderer must be the Moderated Score. Refer to [CPR 19](#) for guidance on how to manage errors in tender submissions. The tender must state that no tenders or quotes will be considered unless received by the date and time stipulated in the documentation. No tender or quote delivered in contravention of this rule shall be accepted without the written approval of the Head of Legal & Democracy.

**25.1f Post Tender Negotiation**

No negotiation with the existing or potential contractors shall be carried out.

**25.1g Authorisation to Award**

Must be obtained from the relevant Director where consistent in all respects with Council's Scheme of Delegation, Policy and Budget Framework and governance requirements for [Key Decisions](#).

At least two tender responses must be received. If only one response is received, advice from the Procurement Team should be sought. The written approval of the Budget Holder must be obtained prior to accepting the quotation/tender.

Upload evaluation results and approval authorisation onto [YORtender](#) to provide transparency.

**25.1h Award and Execution**

**Contract details**

Every contract as a minimum shall be in writing and specify:

- the supplies or services to be provided and/or the work(s) to be executed;
- the price to be paid or the manner in which the price is to be determined together with details of the amount of any discounts or other deductions;
- the time within which the contract is to be performed;
- liability, indemnity and insurance and
- other conditions and terms as set out in the invitation to tender.

**Mandatory-** Contract award to be published on Contracts Finder and the contracts register via YorTender.

**25.1 WORKS CONTRACTS (ABOVE EU THRESHOLD FOR SUPPLIERS/SERVICES AND BELOW EU THRESHOLD FOR WORKS)**

**Signing**

The Head of Legal & Democracy (Monitoring Officer) is authorised to sign contracts that exceed £100, 000 and unless they determine otherwise, such contracts shall be executed by way of deed, under the Common Seal of the Council.

The Head of Legal and Democracy (Monitoring Officer) is authorised to affix the Common Seal of the Council to such contracts.

Contracts entered into orally, due to extreme urgency, must be confirmed in writing as above as soon as possible.

The relevant Officer Decision Record should be completed by the Service Area and published on the council's website as appropriate

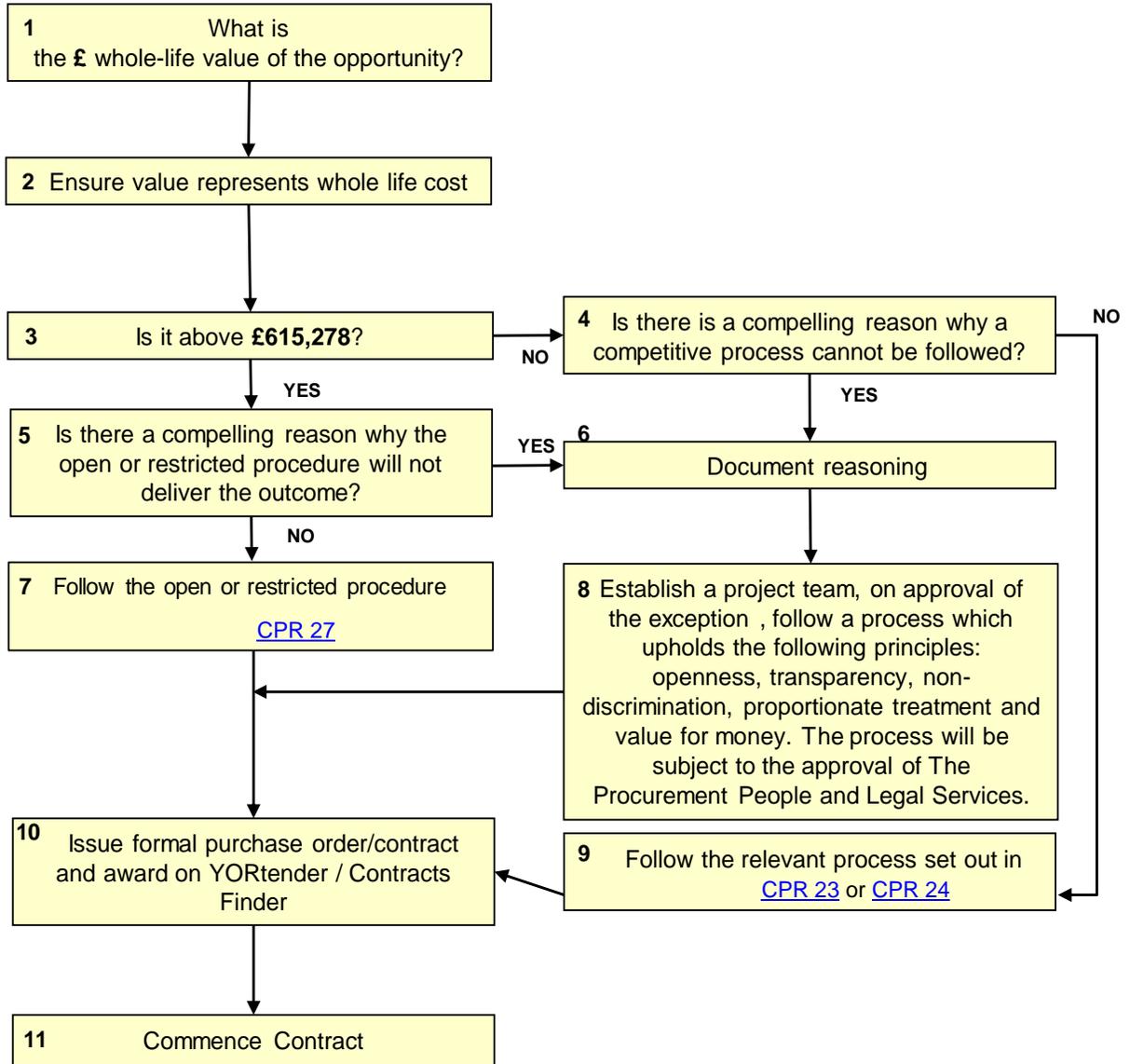
**25.1i Records & Documentation**

The Service Area shall retain records of the procurement exercise, in accordance with the Council's approved record management or document retention policy.

Only contracts signed under the Common Seal shall be retained by the Head of Legal and Democracy (Monitoring Officer). All other contracts shall be retained by the service area.

The contract must be awarded using the options available in the contract details module on [YORtender](#), care must be taken to ensure that the contract details are up to date.

**LIGHT TOUCH REGIME**



# Contract Procedure Rules

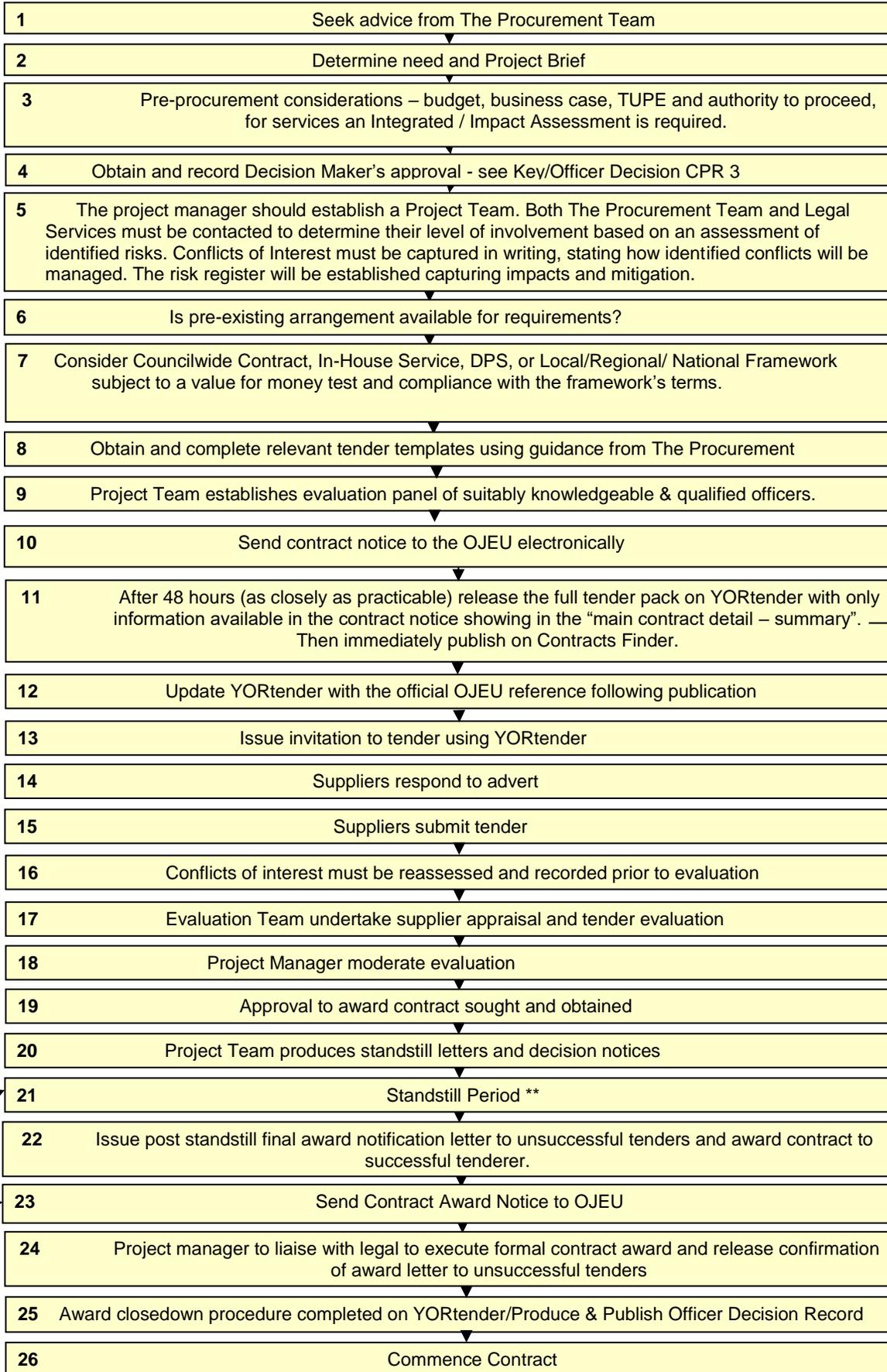
## 27a SUPPLIES/SERVICES/WORKS CONTRACTS ABOVE EU THRESHOLDS - OPEN

\* Minimum of 15 days if prior information notices have been issued for Supplies or Services provided the PIN appeared at least 52 days and not more than 12 months before the date of despatch of the Contract Notice.

\*\* The date should be 10 days from the notice being sent to all tenderers and candidates. In this context days include weekends and bank holidays but where the last day of the standstill period falls on a non-working day then the standstill period is extended to midnight at the end of the next working day.

Days stated refer to calendar days

**Mandatory Timescales**  
(assumes electronic process throughout)

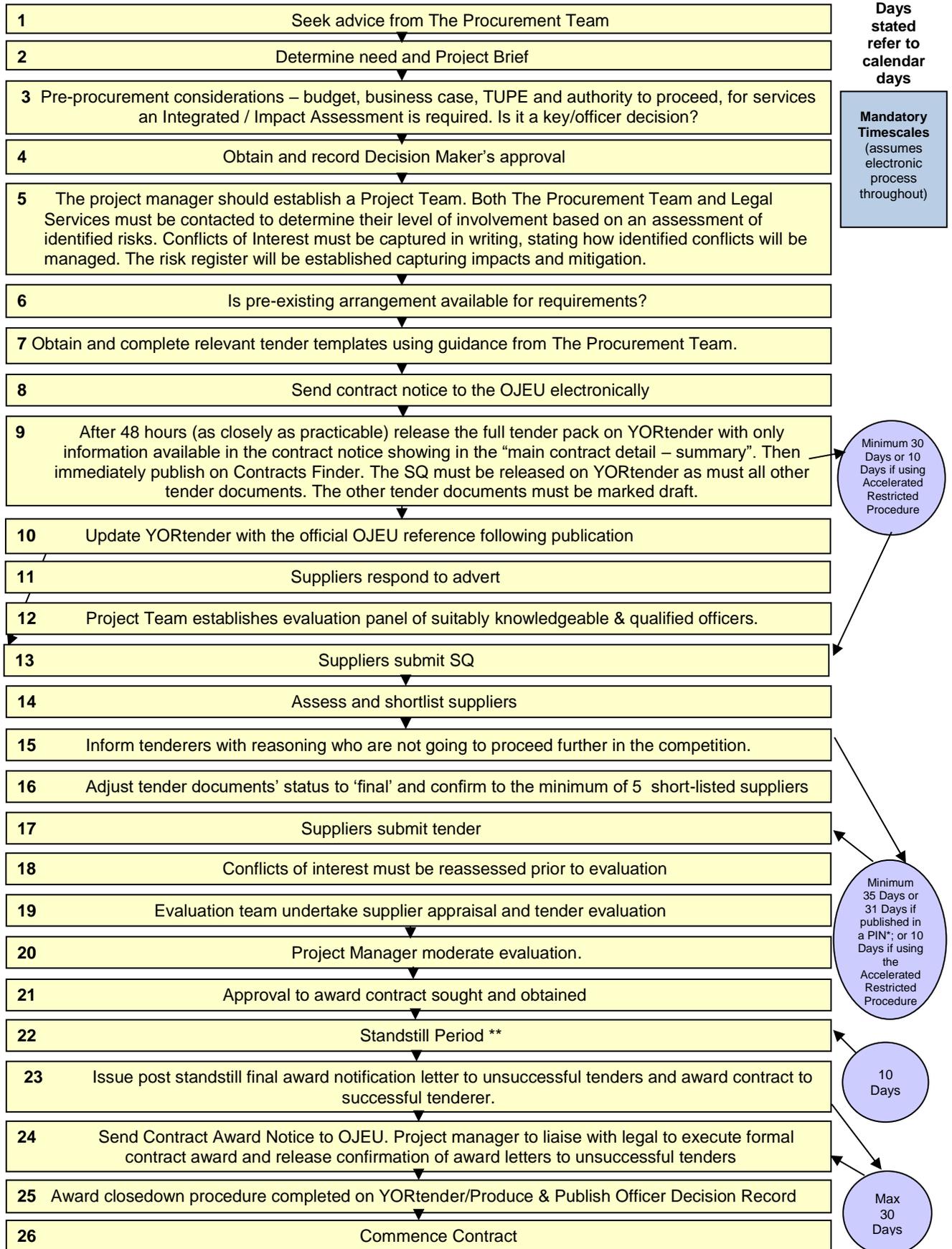


Minimum 30 Days or 15 Days if published in a PIN\*

10 Days

Maximum 30 Days

**SUPPLIES/SERVICES/WORKS CONTRACTS ABOVE EU THRESHOLDS - RESTRICTED**



27.1 **SUPPLIES/SERVICES/WORKS CONTRACTS ABOVE EU THRESHOLDS**

**27.1a Authorisation to Proceed with Procurement**

It is the Budget Holder's responsibility to ensure the availability of budget and the authority to commit to the expenditure, noting the [Key Decisions](#) and governance requirements. It is essential for the whole-life commitment to be considered not the annual value of the commitment when securing authority to proceed.

Verify decision making protocols where:

- There are possible Council workforce and related [TUPE](#) implications, advice from Legal Services and HR must be sought;
- There are potentially significant economic development / sustainability implications and
- There are budget or policy implications.

Full Council approval may be necessary.

Written evidence of authority to proceed will be required.

Risk assessments and conflict of interest assessments with recorded corrective actions are required at this stage.

**27.1b Competitive Process**

Adhere to the council governance frameworks for [project management](#) and produce a procurement timetable. Project managers should ensure that any procurement is undertaken in line with the Council's agreed project management framework, where appropriate.

Consider, in consultation with The Procurement Team, whether the requirement needs to be procured in accordance with:

- The use of Lots to facilitate greater access to the opportunity for SMEs (justification must be cited in the tender documentation in instances where lots have not been used);
- the SME Concordat;
- the principles of the [COMPACT](#) (or any successor agreement). ;
- Council Skills Pledge;
- Steel Charter;
- [Sustainable/ethical Procurement Policy](#) and
- Public Services (Social Value) Act 2012.

For all services procurements over EU threshold, an [Integrated / Impact Assessment](#) must be completed to comply with the Public Services (Social Value) Act 2012 and relevant consultation requirements, prior to commencement to inform the specification and evaluation criteria.

**EU Procedure**

Seek advice from The Procurement Team and determine the EU procedure to be used.

The Council's standard approach is to use Open Procedure. The following procedures may only be used on the advice of The Procurement Team:

- Restricted Procedure;
- Creation of a Framework;
- Access to a Framework, subject to exception approval under [CPR 30](#)
- Dynamic Purchasing System and
- E-Auction.

The following procedures may not be used except with approval of Director Governance & Partnerships in accordance with [CPR 13](#)

### 27.1 SUPPLIES/SERVICES/WORKS CONTRACTS ABOVE EU THRESHOLDS

- Competitive Procedure with Negotiation.
- Competitive Dialogue Procedure
- Innovation Partnership Procedure
- An accelerated procedure due to substantiated urgency

All OJEU Notices, (PINs, Contract Notices and Award Notices), must be approved and released by The Procurement Team.

Prior Information Notices (PIN) may be used to enable preliminary market consultation; a Contract Notice must be used as the call for competition.

Where a Supplier Questionnaire is required, the national standard Supplier Questionnaire template must be used. Assessment must follow national guidance.

Use a formal tender procedure, and manage the process fully using [YORtender](#).

The invitation to tender must comprise:

- clear instructions for the submission and pricing of tenders;
- background information;
- a clear written specification;
- reply forms:
  - supplier questionnaire;
  - form of tender and non-collusion certificate;
  - freedom of information declaration;
  - pricing schedule;
  - method statements;
- [Terms & Conditions](#) provided by Legal Services.

Where a restricted procedure is used, tenders must be invited from a minimum of five potential contractors. The distinction between selection criteria used to assess tendering organisations and award criteria used to evaluate the strength of the tender proposal must be entirely separate and remain so throughout the process.

The invitation to tender must state that no tender will be considered unless it is received via YorTender and by the date and time stipulated in the tender documentation. No tender delivered in contravention of this rule shall be accepted without the written approval of the Head of Legal & Democracy.

The project manager should establish a project team. Both The Procurement Team and Legal Services must be contacted for them to determine the level of their involvement required based on an assessment of identified risks.

The project manager in consultation with the project team must agree a percentage split in the award criteria based on the scope and importance of quality, risk and cost on a project by project basis. However, where the contract is being accessed via a framework, the award criteria set out in the agreement must be followed.

Where the project manager wishes to pursue a cost element of less than 60%, they should refer to The Procurement Team for advice.

27.1 **SUPPLIES/SERVICES/WORKS CONTRACTS ABOVE EU THRESHOLDS**

<b>27.1e Advertisement</b>
<p><b>Mandatory</b> OJEU contract notice approved and issued via <a href="#">The Procurement Team</a>.  <b>After</b> publication of the OJEU notice, this information is then released on <a href="#">YORtender</a> advising indicative contract values, followed by its publication on Contracts Finder.</p> <p><b>Optional</b> –</p> <ul style="list-style-type: none"> <li>▪ Advertising of open opportunities via social media e.g. Twitter, facebook, linkedin and other health and voluntary sector sites subject to The Procurement Team advice</li> <li>▪ One or more specialist trade or professional newspapers or journals where appropriate.</li> <li>▪ Direct marketing is permissible, after publication of the OJEU notice, to include organisations that may not see the opportunity to ensure local / regional / national competition.</li> </ul> <p>The contract notice should be sent to the OJEU. Within 48 hours, the tender should be released on YORtender, unless OJEU release it earlier, with all tender documents being made available and only information available on the contract notice showing in the “main contract details – summary” on YORtender. Having published on YORtender immediately publish on Contracts Finder, remaining consistent with the contract notice text.</p> <p>Once the OJEU has published the contract notice, update YORtender with the official reference number.</p> <p>Any supplementary advertisement, (e.g. trade press) of the opportunity may only be published once the Contract Notice has been published in the OJEU and must not include additional information than is available in the Contract Notice or PIN.</p> <p>Any advertisement shall: specify the nature and purpose of the contract, invite expressions of interest in or tenders for its execution; state the last date and time when expressions of interest or tenders will be acceptable; and comply in all respects with the requirements of the relevant EU Directive or UK legislation.</p>
<b>27.1f Receiving &amp; Opening of Tenders</b>
<p>Managed using <a href="#">YORtender</a>, kept confidential and opened by an officer who is entirely independent and has no conflict of interest in relation to the project in question.</p>
<b>27.1g Evaluating Tenders</b>
<p>Evaluate tenders using The <b>Most Economically Advantageous Tender (MEAT)</b>, and ensure MEAT criteria, sub-criteria, weighting, and scoring guidance are disclosed to tenderers. The final evaluation score given to each tenderer must be the Moderated Score. Refer to <a href="#">CPR 19</a> for guidance on how to manage errors in tender submissions.</p> <p>Conflict of interest assessments of the evaluation team are required at this stage.</p> <p>Where a tenderer has been excluded from the competition at any stage mid-evaluation, the tenderer must be informed at standstill. Equally any requests for clarification from such tenders must be responded to within 15 days of the request: such letters to be approved following the standstill mechanism.</p>
<b>27.1h Post Tender Negotiation</b>
<p>No negotiation with the existing or potential contractors shall be carried out.</p>

27.1 **SUPPLIES/SERVICES/WORKS CONTRACTS ABOVE EU THRESHOLDS**

**27.1i Authorisation to Award**

Must be obtained from the relevant Director where consistent in all respects with Council's Scheme of Delegation, Policy and Budget Framework and governance requirements for [Key Decisions](#).

At least two tender responses must be received. If only one response is received, advice from the Procurement Team should be sought. The written approval of the Budget Holder must be obtained prior to accepting the quotation/tender.

Without publishing, upload evaluation results and approval authorisation onto [YORtender](#) to maintain the decision making audit trail.

**27.1j Standstill Period**

All tenderers, and any candidates, including those who have already received notification of their rejection (for example, at selection stage), must be advised of the preferred tenderer status in writing, using [YORtender](#). The following information must be included in the notice or pre-standstill award and decline letters:

- the name of the successful tenderer;
- the award criteria and any sub-weightings used;
- the reasons for the decision, including the characteristics and relative advantages of the successful tender;
- the reasons why the recipient did not meet the technical specification, if applicable;
- the scores of the successful tenderer and the organisation receiving the notice and
- the length of the standstill period, and anticipated end time and date.

Standstill letters must give sufficient, clear reasons, making any debrief unnecessary.

**All standstill letters must be produced in conjunction with the Procurement Team and signed by Legal Services.**

Following this notification, a mandatory minimum 10 calendar day standstill period must be observed prior to final award. The period commences on the day following electronic issue of the pre-standstill award letters and must end on a working day. If a legal challenge is received do not award the contract and seek legal advice.

If the award is a [Key Decision](#), then

- Notice of the Key Decision should not precede issue of the standstill letters;
- It may not be implemented by final contract award until after the 2 day notice period.

27.1 **SUPPLIES/SERVICES/WORKS CONTRACTS ABOVE EU THRESHOLDS**

**27.1k Execution**

**Contract details**

Every contract as a minimum shall be in writing and specify:

- the supplies or services to be provided and/or the work(s) to be executed;
- the price to be paid or the manner in which the price is to be determined together with details of the amount of any discounts or other deductions;
- the time within which the contract is to be performed;
- the Council's requirements on indemnity and insurance;
- for services, an exit strategy for when the contract terminates and
- other conditions and terms as set out in the RFQ / invitation to tender.

**Signing**

The Head of Legal & Democracy (Monitoring Officer) is authorised to sign contracts that exceed £100, 000 and unless they determine otherwise, such contracts shall be executed by way of deed, under the Common Seal of the Council.

The Head of Legal and Democracy (Monitoring Officer) is authorised to affix the Common Seal of the Council to such contracts.

Contracts entered into orally, due to extreme urgency, must be confirmed in writing as above as soon as possible.

The relevant Officer Decision Record should be completed by the Service Area and published on the council's website as appropriate

**27.1l OJEU Award Notice**

Contract award must be announced by means of a Contract Award Notice in OJEU transmitted no later than 30 calendar days after the date of the post-standstill award letter. This is the responsibility of The Procurement Team. An award notice must also be placed on Contracts Finder.

**27.1m Records & Documentation**

The Service Area shall retain records of the procurement exercise by maintaining the Regulation 84 report, in accordance with the Council's approved record management or document retention policy. The project manager will ensure this decision record is uploaded, but not published, on [YORtender](#).

Only contracts signed under the Common Seal shall be retained by the Head of Legal and Democracy (Monitoring Officer). All other contracts shall be retained by the service area.

The contract must be awarded using the options available in the contract details module on [YORtender](#), care must be taken to ensure that the contract details are up to date.

The award recommendation award approval and Regulation 84 report must be retained.

Officer Decision Record must be produced/published as appropriate.

### 28 REPORTING OF TENDERS

28.1 The Procurement Team will:

- Publish details of all contracts let over £5,000 via YorTender on the Council's live Contracts Register (e-tendering system)
- report annually to the relevant cabinet member for procurement on all contracts let over £5,000 (via YorTender) in the previous 12 months.

### 29 PREVENTION OF CORRUPTION & THE BRIBERY ACT 2010

29.1 Requests for quotations and invitation to tenders must inform prospective tenderers of the Council's whistle blowing policy

29.2 All contracts must contain a clause to the effect that the Council will be entitled to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if:

- the contractor, his employees or agents, shall have offered or given or agreed to give to any persons any gift or consideration of any kind as an inducement or reward in any way relating to the contract or any other contract with the Council; or
- in relation to any contract with the Council, the contractor, his employees or agents, shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, Section 117 of the Local Government Act 1972 and the Bribery Act 2010.

29.3 The Bribery Act 2010 has created the following new offences that can have particular relevance for the award of public contracts:

- bribing a person to induce or reward them to perform a relevant function improperly;
- requesting, accepting or receiving a bribe as a reward for performing a relevant function improperly;
- failing to prevent bribery

### 30 EXCEPTIONS

30.1 With the approval of:

Under £100,000 relevant Budget Holder

Over £100,000 The Director of Governance & Partnerships

They may, where permitted by the Public Contracts Regulations 2015, be exceptions to the requirements of the CPRs in the following circumstances:

- a. Where important urgent repairs are required to maintain and ensure efficient and continuous service delivery due to the breakdown, or other failure, of buildings, plant, appliances, machinery or ICT equipment or software. Where the urgent repair relates to a repairs & **maintenance item, and where the value exceeds £5,000, a retrospective request for exception is acceptable.**
- b. Where renewals, repairs and upgrades to buildings, plant, appliances, machinery, vehicles or ICT equipment or software can only be efficiently carried out and most economically supplied with regards to time, cost and speed of delivery by the original contractor or supplier (or their successors or other sole specialists).
- c. Where urgent alternative arrangements are required to maintain the delivery of critical services due to the failure of an existing service provider or supplier.
- d. Where an emergency situation exists as defined in the Council's Emergency Plan.

## Contract Procedure Rules

- e. When the Council is properly required to adopt other procedures by a Government body or the Council is procuring subsidised public transport services.
- f. Works orders placed with utility companies (e.g. for re-routing cables or pipework).
- g. Where there is only one potential supplier of the required supplies, services or works due to market factors and/or service exigency.
- h. Where the use of a recognised regional or national framework arrangement will provide the most cost effective procurement solution.
- i. Where contracts are extended beyond their specified term.
- j. Where exceptionally it is not expedient to undertake an open process below £100k.
- k. Where there are other exceptional circumstances.

30.2 In all instances a written request for exception, clearly documenting the reasons, must be notified in advance to the approving officer before the exception can be actioned.

### **31 COMMUNITY RIGHT TO CHALLENGE**

31.1 The Localism Act provides relevant bodies with the right to challenge the running of local authority services where they believe they could do this differently or better.

31.2 Council guidance has been produced on the management of challenges received under the Act. An overview of the process for managing challenges is under [Annex 1d](#).

### **32 DISPOSAL & WRITE-OFF OF ASSETS (EXCLUDING LAND & PROPERTY)**

32.1 Disposals under £50,000 must approved by authorised officers. Items over £50,000 will require cabinet member consultation.

32.2 The process for disposal is detailed in [Annex 1e](#).

### **33 CONTRACT SIGNING & MODIFICATION**

33.1 Directors are authorised to sign contracts that do not exceed £100,000 where the Head of Legal & Democracy (Monitoring Officer) has approved the form of contract as appropriate for the type of contract concerned.

33.2 The Head of Legal & Democracy (Monitoring Officer) is authorised to sign contracts that exceed £100, 000 and unless they determine otherwise, such contracts shall be executed by way of deed, under the Common Seal of the Council.

33.3 The Head of Legal and Democracy (Monitoring Officer) is authorised to affix the Common Seal of the Council to such contracts

33.4 Under limited circumstances, the Public Contract Regulations permit contract modifications during their term. Advice should be sought from The Procurement Team in the first instance.

33.5 Changes to contracts and/or terms and conditions must be authorised by the relevant Director and substantial (i.e. material) changes to contracts and/or terms and conditions must be authorised by the relevant Director following consultation with the Head of Legal & Democracy (Monitoring Officer).

## **Contract Procedure Rules**

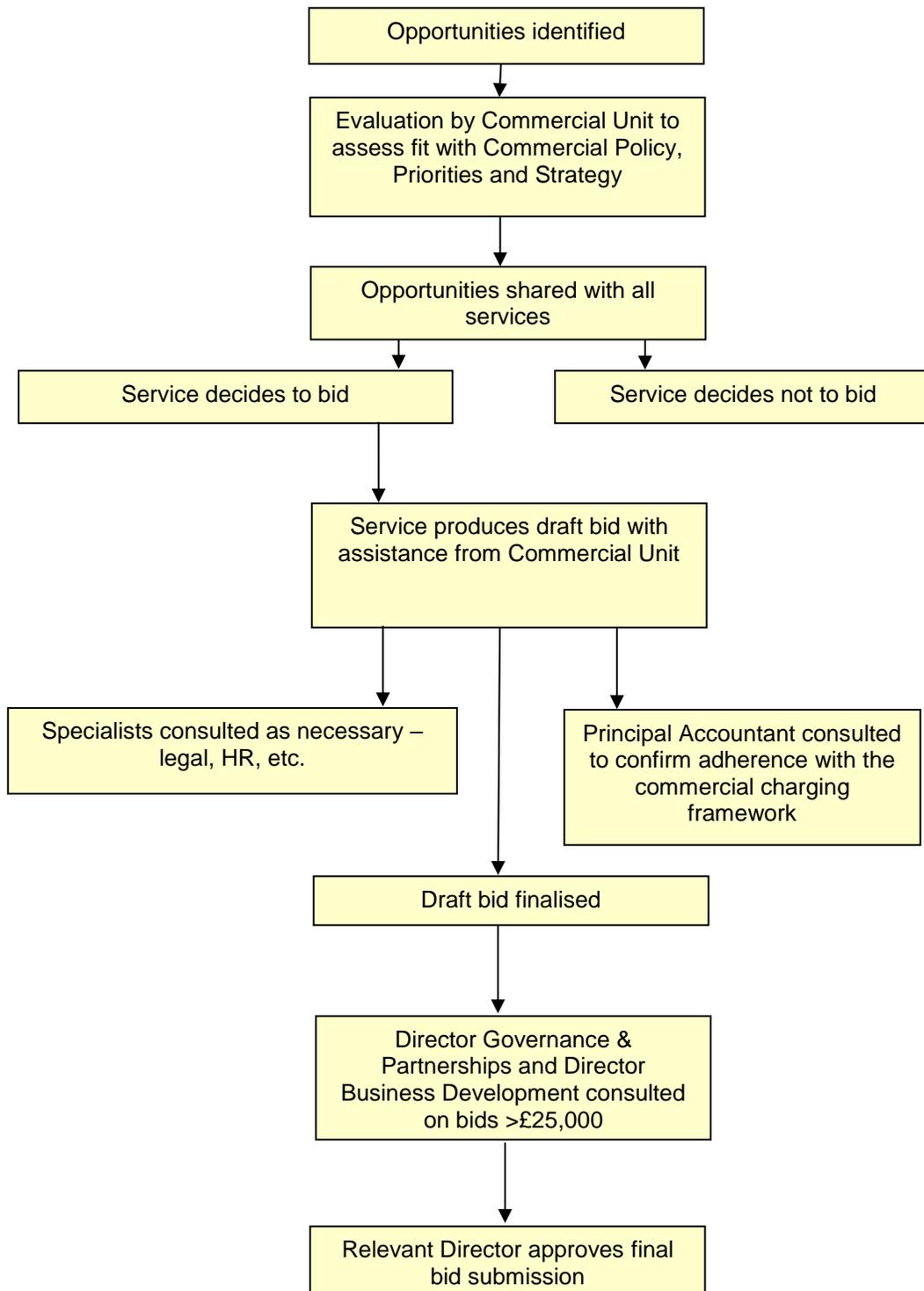
33.6 In all instances the council's standard terms and conditions must be used unless an alternative form of contract has been authorised for use by the Head of Legal & Democracy.

### **34 CONTRACT MANAGEMENT**

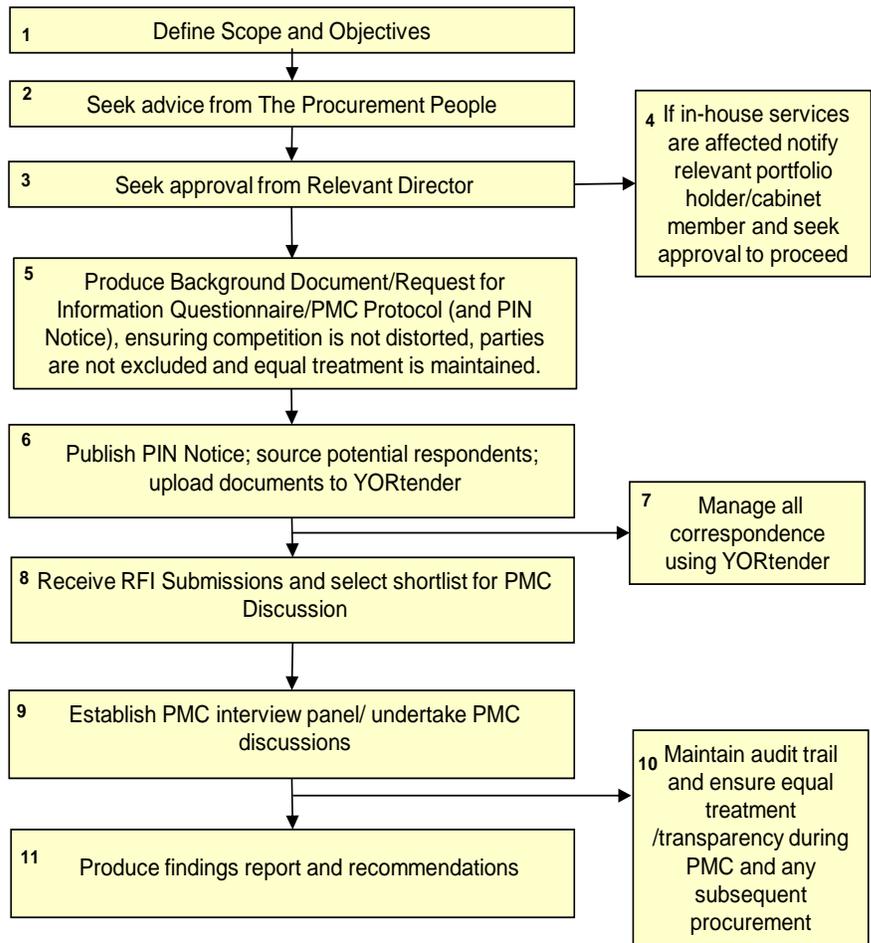
34.1 All contracts must be managed in compliance with the council contract management toolkit.

# Contract Procedure Rules

## Annex- 1a – COMMERCIAL PROCESS

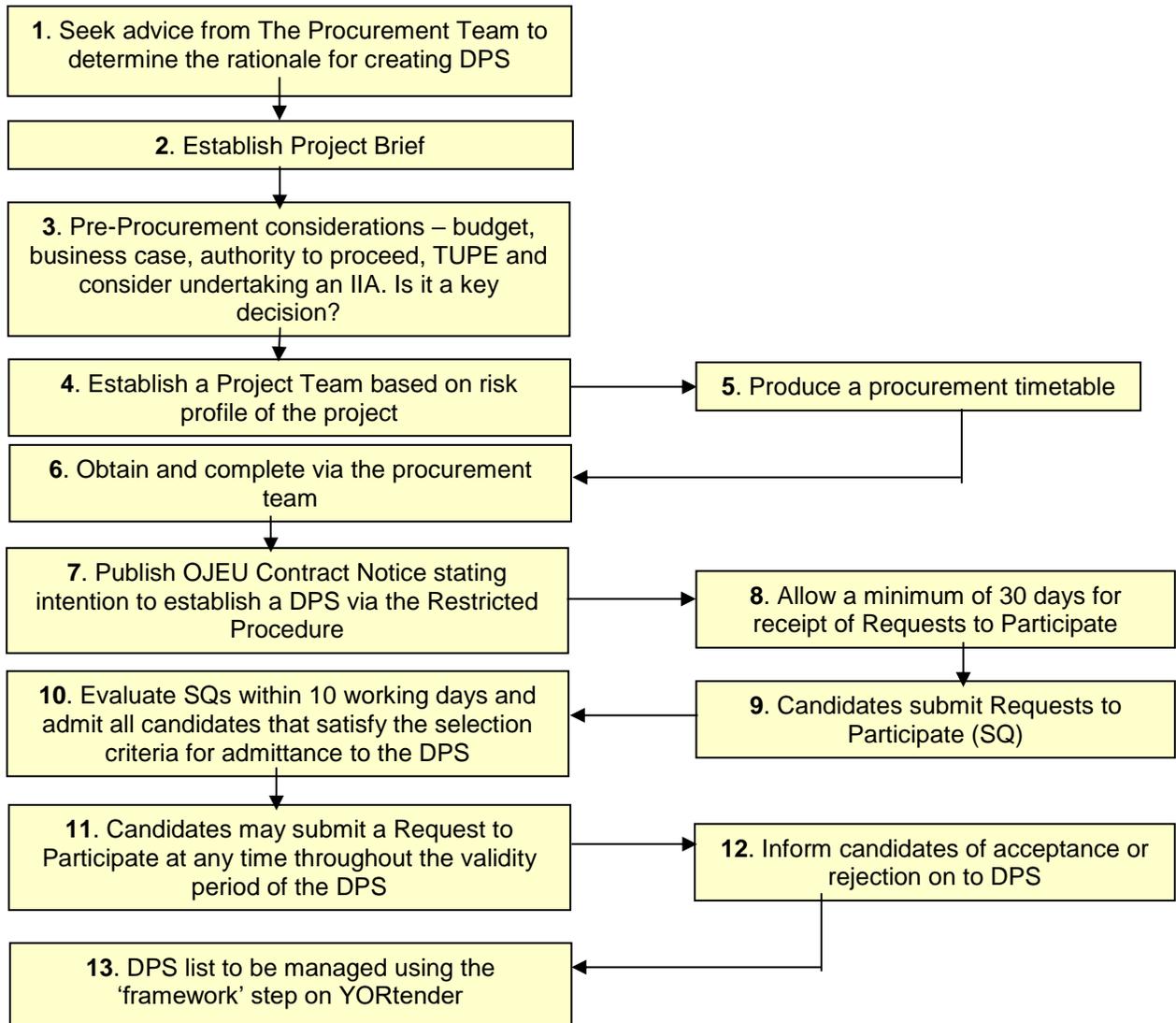


Annex - 1b – PRELIMINARY MARKET CONSULTATION

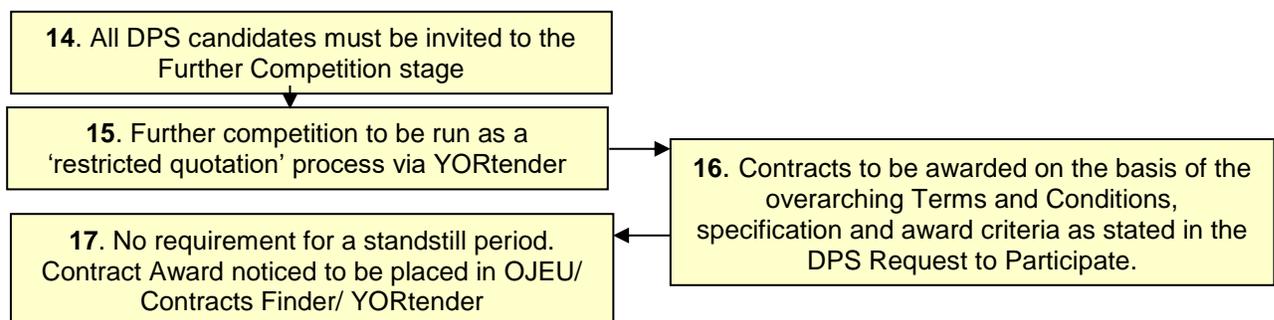


**Annex 1c - DYNAMIC PURCHASING SYSTEMS**

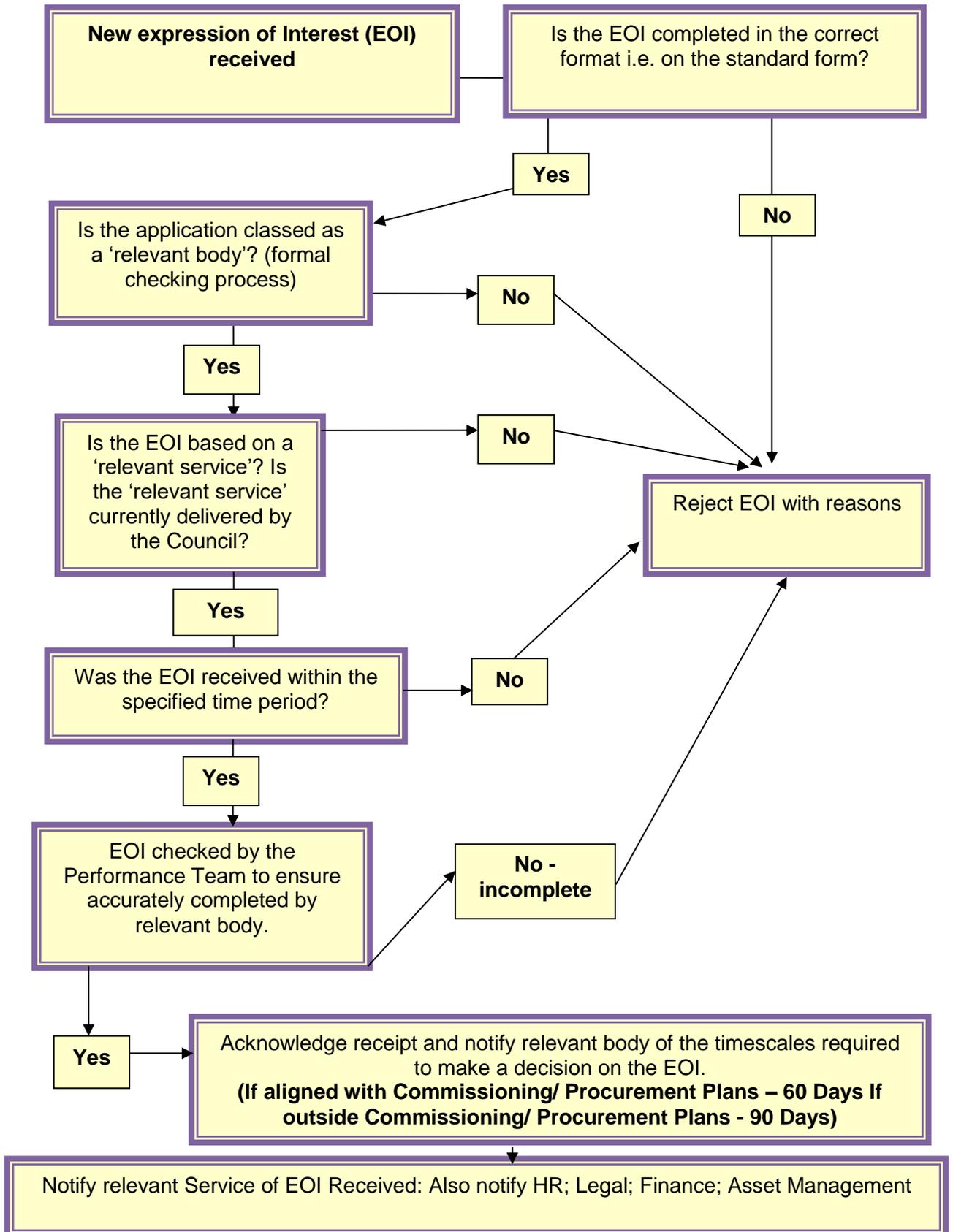
**Stage 1 - Establishment of DPS**



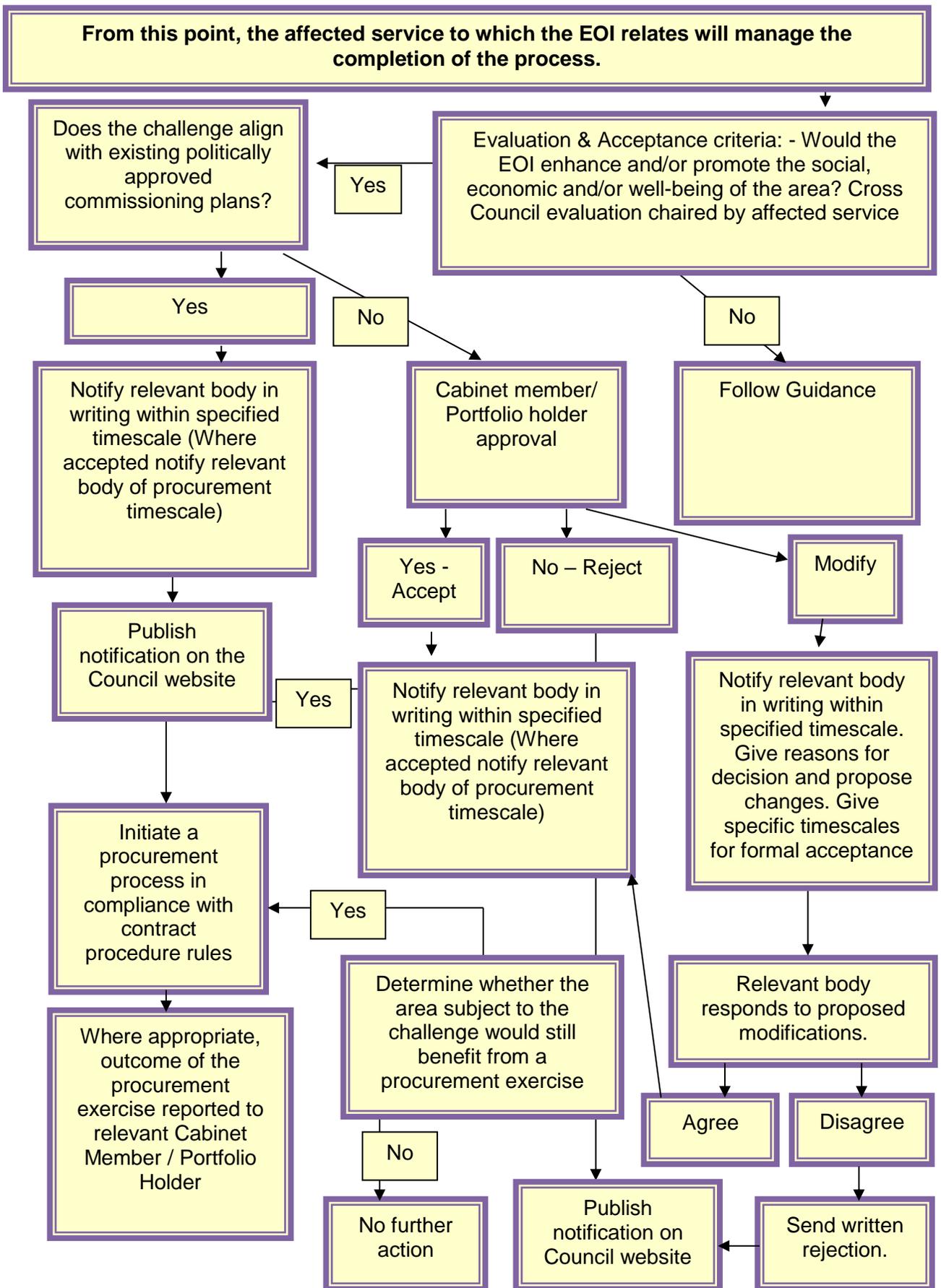
**Stage 2 – Further Competition**



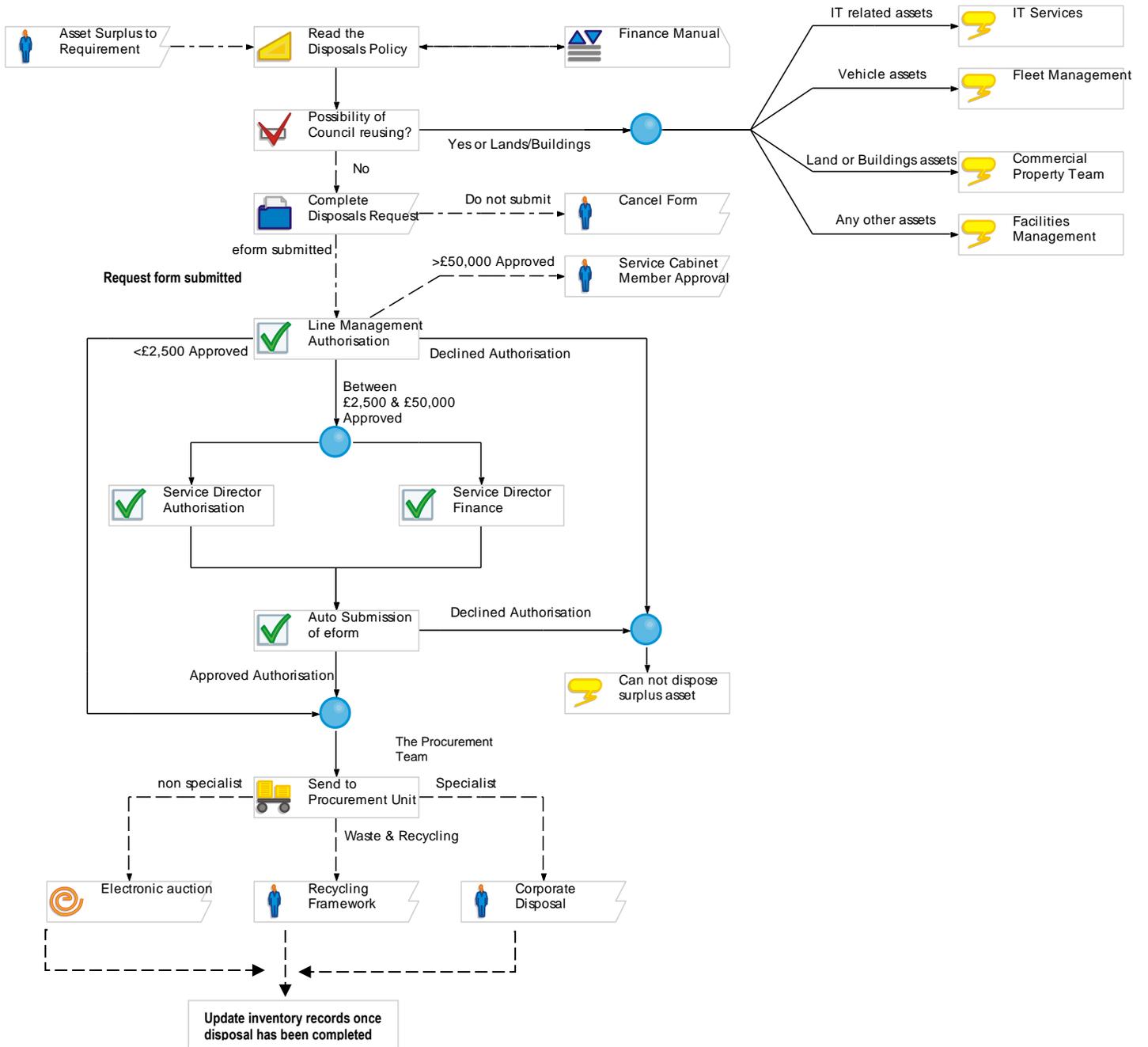
**Annex 1d - COMMUNITY RIGHT TO CHALLENGE EXPRESSION OF INTEREST PROCESS MAP**



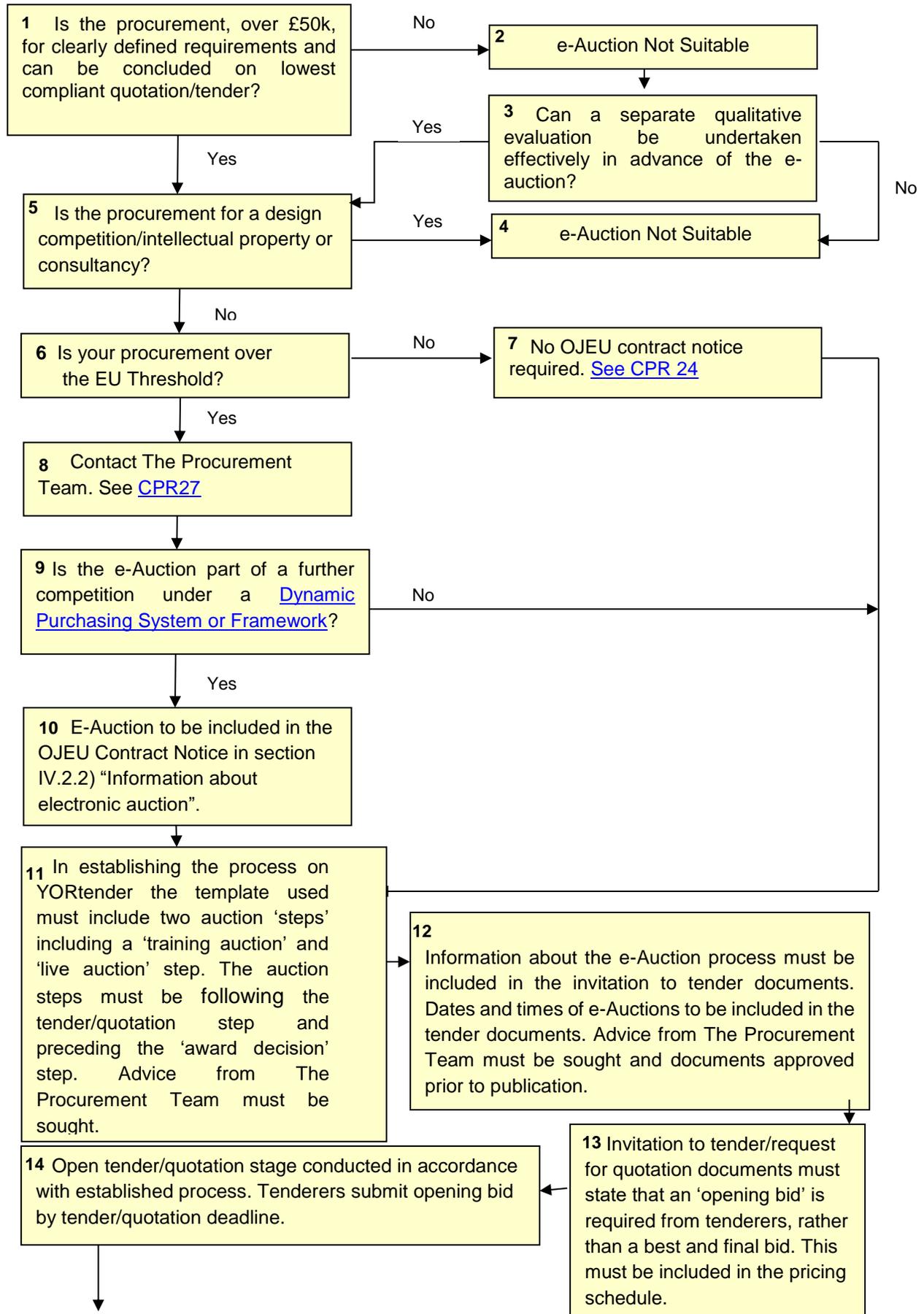
## Contract Procedure Rules



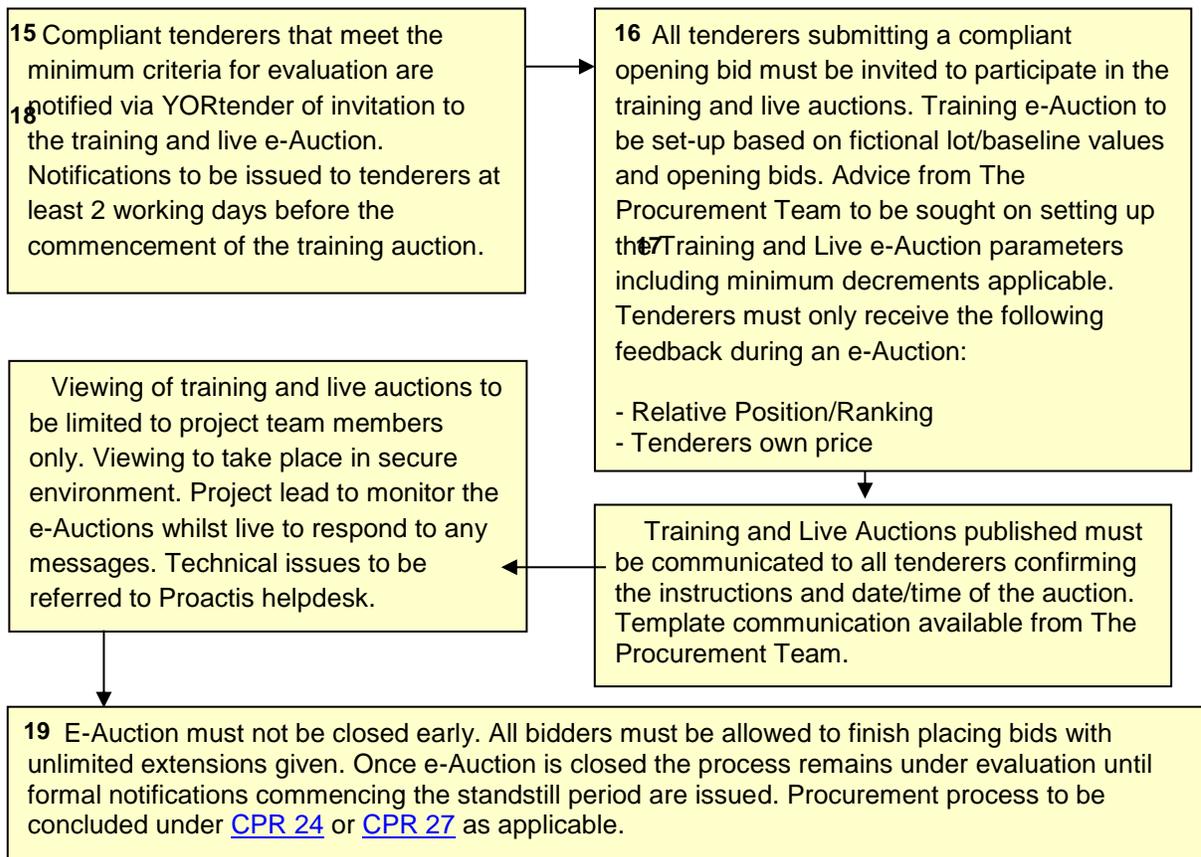
**Annex 1e- DISPOSAL AND WRITE OFF OF ASSETS**



**Annex 1f - E-AUCTION PROCESS**



## Contract Procedure Rules



## Contract Procedure Rules

### Annex 1g - DEFINITIONS AND GLOSSARY

Academy	A school that is directly funded by central government and independent of local authority control
Aggregation	The identification of similar purchases made and combined aggregated requirements over a specified period of time
Appropriate Officer	Member of staff who has delegated authority to conduct procurement exercises
Regulation 84	Is Regulation 84 of the Public Contracts Regulations 2015 which sets out the decisions made throughout the procurement process which must be recorded and retained
Budget Holder	The manager with responsibility for the budget concerned and with delegated authority to award the contract
Cabinet Member	Elected member of the Council who is responsible for the Cabinet Portfolio under which the service area sits
Category Manager	Officer responsible for the development of a category plan and to oversee procurement activity within the category
Central Purchasing Bodies	A contracting authority (as defined by the Public Contracts Regulations 2015) providing centralised purchasing activities and ancillary activities
Closed Tender Process	A number of providers are selected by the Council to be invited to participate in the tender opportunity as opposed to being "open" where anyone can submit an offer.
Commissioning	The process of specifying, securing and monitoring services to meet people's needs at a strategic level. An ongoing process, it deals with whole groups of people, which distinguishes it from the process of buying individual services.
Concessions	A Concession Contract is where the Council grants a Service Provider the right to provide a service and rather than pay the Service Provider for providing the service. The Council transfers the opportunity of the market to the Service Provider, along with the demand risk in relation to the level of the market. Revenue from fees paid by service users is kept by the Service Provider and used to meet the costs incurred in delivering the service and potentially to make a profit
Constitution	The set of legal, administrative and legislative principles by which the Council is governed, especially in relation to the rights of the people it governs.
Contract	Document setting out various particulars for the provision of supplies, services and works

## Contract Procedure Rules

Contracts Finder	A online database which enables suppliers to search for contract opportunities valued over £10,000, across the nation and sectors.
Council Plan	The document by which the Council sets out its priorities and objectives, and how it will achieve them
Council Procurement Strategy	The document by which the Council's Strategic Procurement Unit sets out its priorities and objectives, and how it will achieve them
Council	Refers to North Lincolnshire Borough Council unless otherwise specified
CPR	Contract Procedure Rule
Director	Officer who is responsible for a Service Area or grouping of services of the Council
Disaggregation	The splitting down of requirements into lower value packages
e-Certis	e-Certis is a guide to the different documents & certificates required from companies tendering for public contracts in any EU country
Electronic auction	Price based procurement auction performed online following evaluation against non-price criteria. Usually a reverse auction where tenderers repetitively lower their prices.
ESPD	European Single Procurement Document consists of a self-declaration as preliminary evidence of certification
EU	European Union
Framework Agreement	An overarching agreement with a supplier where prices, specifications and terms are pre-agreed, but where there is no obligation to purchase. Requirements are "called off" as and when required over a specified timeframe.
ITT	Invitation to Tender
Key Decision	Definition available at <a href="http://democracy.northlincs.gov.uk/meetings/key-decisions/">http://democracy.northlincs.gov.uk/meetings/key-decisions/</a>
Lowest Compliant	Of all offers, compliant with the essential criteria of the specification, this is the lowest priced offer: specification-compliance being the first factor to determine.
LTR	Light Touch Regime

## Contract Procedure Rules

Maintained School	Primary and secondary schools funded by central government via the local authority, not charging fees to students.
Mandatory & Discretionary Exclusion	Grounds to exclude tenderers from participating
MEAT	Most Economically Advantageous Tender
Moderated Score	For each criterion or response considered under an evaluation, the evaluation team <b>agrees</b> one score for the said criterion (not an average or an aggregated score across the evaluation team members)
Monitoring Officer	The Monitoring Officer ensures the lawfulness and fairness of Council decision making and serves as the guardian of the Council's Constitution and the decision-making process. Responsibilities include advising the Council on the legality of its decisions, providing guidance to councillors and officers on the Council's Constitution and its powers and assisting the Standards Committee in its role of promoting and maintaining high standards of conduct and probity within the Council.
OJEU	Official Journal of the European Union
Option Appraisal	The assessment of options in order to establish the most viable or feasible course of action
PIN	Prior Information Notice
Priorities	The areas that the Council or The Procurement Team believes are important in order to deliver services to citizens
Procurement	The process of acquiring supplies, services and goods from third parties
Project Team	A project team should include somebody technically proficient in the subject matter and usually includes: project manager, The Procurement Team officer, finance officer, HR officer, legal officer and any other expertise required to deliver the outcome.
Procurement Toolkit	TopDesk based pack - self-service guidance and templates
Purchasing Consortia	A group of organisations joining together for the shared purpose of purchasing supplies, services or works
Relevant Bodies	A group of organisations defined in the Localism Act 2011, specifically voluntary and community organisations, charitable organisations, a group of two or more Council employees, parish and town Councils.
RFQ	Request for Quotation

## Contract Procedure Rules

Risk Management	The identification of potential risks and the arrangement of contingency plans to manage or minimise those risks
Service Area	An area of the Council that is responsible for specific service delivery
SME	Small and Medium sized Enterprises
SME Concordat	A nationally recognised procurement agreement to encourage a mixed range of suppliers to help develop and stimulate a varied and competitive marketplace
Social Value	It involves looking beyond the price of each individual contract and looking at what the collective benefit to a community is when a public body chooses to award a contract
Supplier Questionnaire	To gather information on and make assessments of the prospective bidders' credentials, before considering tenders
Threshold Level	Sets out the amount of money (or contract value) by which different procurement procedures are followed
TSO	Third Sector Organisation. A non-governmental organisation which principally reinvests its surpluses to further social, environmental or cultural objectives
TUPE	The Transfer of Undertaking (Protection of Employment) Regulations 2006 (SI No.2006/246) as amended or re-enacted from time to time
Treaty Principles	The EU procurement regime, based on the Treaty principles of transparency, non-discrimination, equal treatment and proportionality.
Value for Money	Obtaining the most economical, efficient, and effective solution
VAT	Value Added Tax
Whole Life Cost	The calculation of the estimated value of a procurement based on the total amount payable, net of VAT, as estimated by the contracting authority, including any form of option and any renewals
YORtender	Supplier Contract Management System (or equivalent e-tendering system) web portal by which the Council effectively advertises and manages quotations and tenders