

## **COUNCIL**

<b>DATE</b>	27 <sup>th</sup> May 2021
<b>REPORT OF</b>	The Monitoring Officer
<b>SUBJECT</b>	Annual Review of the Constitution
<b>STATUS</b>	Open
<b>FORWARD PLAN REF NO.</b>	Not applicable

### **CONTRIBUTION TO OUR AIMS**

Good governance arrangements contribute directly to the achievement of the Council's strategic aims.

### **EXECUTIVE SUMMARY**

A report setting out amendments and modifications to the Council's constitutional and governance arrangements for the Municipal Year 2021/22.

### **RECOMMENDATIONS**

1. That the Scheme of Delegation, as currently set out in the Constitution and incorporating the proposed changes as set out in Appendix 1, be approved for the Municipal Year 2021/22 subject to any changes required by (i) operation of law or (ii) owing to the direct effect of Cabinet or Committee decisions, in which case authority is delegated to the Monitoring Officer to make such changes, in consultation with the Leader of the Council (in respect of executive arrangements) and the Chair of any relevant Committee or Panel (non-executive arrangements) as the case may be.
2. That the updated Contract Procedure Rules, as detailed at Appendix 2 of this report, be approved.
3. That Standing Order 10B be amended as set out in Appendix 3 of the report now submitted, effective from the next ordinary meeting of Council in July, 2021.

4. That Standing Order 13.12 be amended to read as follows:

A member may raise a point of order at any time. The Mayor will hear them immediately. A point of order may only relate to an alleged breach of these Standing Orders or the law. The Member must indicate the way in which he/she considers it has been broken. The ruling of the Mayor on the matter will be final.

5. That the protocol on Scrutiny Panel/Cabinet Member Relations be approved for inclusion as an appendix to the Overview and Scrutiny Procedure Rules.
6. That Section 8 (Agenda Items) of the Overview and Scrutiny Procedure Rules be amended to make specific reference to the requirement for papers and presentation slides to be circulated at least four calendar days prior to the

scrutiny panel meeting (save in exceptional circumstances and supported by the Chair of the scrutiny panel), otherwise they would not be accepted for consideration at that meeting.

7. That the minutes of the Executive and Scrutiny Liaison Board be circulated to all Elected Members once agreed.
8. That authority be delegated to the Monitoring Officer, in consultation with the Group Leaders, to make any amendments of a minor nature to the Constitution from time to time.

## **REASONS FOR DECISION**

To ensure that the Council's governance arrangements are fit for purpose.

Specifically, the recommended changes to the Contract Procedure Rules will ensure compliance to key legislation, most especially the public contract regulations.

### **1. BACKGROUND AND ISSUES**

- 1.1 The annual review of the Constitution is intended to ensure that the Council's governance arrangements are fit for purpose and meet the needs of the prevailing political arrangements.

### **2. SCHEME OF DELEGATION**

- 2.1 Appendix 1 sets out proposed changes to the scheme of delegation. The scheme of delegation, in so far as it relates to the discharge of executive responsibilities, is approved by the Leader. Nonetheless, Council is asked to approve the scheme of delegation, as amended, in full and subject to the Monitoring Officer being given delegated authority to make such consequential in-year changes required by operation of law or to give effect to Cabinet and/or Committee decisions, in consultation with the Leader (executive arrangements) and the relevant Committee Chair (non-executive arrangements) as the case may be. The proposed changes relate to the Scheme of Delegation to Officers arising from decisions of the Appointments Committee regarding senior management arrangements for the Council.

### **3. CONTRACT PROCEDURE RULES**

- 3.1 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 the Contract Procedure Rules (CPRs) and form an integral part of the Council's Constitution.
- 3.2 The CPRs have been updated to reflect the United Kingdom's withdrawal from the European Union and also to meet accessibility requirements.

#### **4. GROUP LEADERS FORUM**

- 4.1 The Group Leaders Forum was established as an informal mutual meeting of group leaders and their deputies to consider and bring forward recommendations around the standing orders of the Council set out in the Constitution and any other areas of governance worthy of consideration, with a view to informing this annual review of the Constitution.
- 4.2 The forum considered the following matters at its meetings held in March and April, 2021:

##### **4.2.1 Standing Orders**

##### Questions on the Minutes

A report advising of a proposed amendment to the Council's Standing Orders regarding questions on the minutes of Cabinet and Committee meetings was submitted to Council in September and December, 2020. The report was deferred for consideration by the Standards and Adjudication Committee on both occasions. At its meeting on 13<sup>th</sup> April, 2021, the Standards and Adjudication Committee further considered the report which proposed that questions on the minutes be required to be submitted on notice. The Committee raised concerns about losing the opportunity to hold portfolio holders to account but acknowledged that the prior submission of questions would grant the questioner the benefit of an immediate, clear, and comprehensive response. It was further noted that a questioner would also have the opportunity to ask a follow up question without giving notice. On that basis, the committee recommended to Council that Standing Order 10B be amended as set out in the report, effective from the next ordinary meeting of Council. The report and the minutes of the Standards and Adjudication Committee are attached at Appendix 3 to this report.

Prior to the Standards and Adjudication Committee meeting, the Group Leaders Forum also had the opportunity to comment on the proposal but were unable to reach agreement on a way forward.

The report and the Standards and Adjudication Committee's recommendation is now referred to Council for resolution.

##### Point of Order

The forum considered Standing Order 13.12 regarding Points of Order and it was suggested that this be changed to remove the requirement to quote the specific standing order or law considered to have been broken.

*Recommendation: That Standing Order 13.12 be amended to read as follows:*

*A member may raise a point of order at any time. The Mayor will hear them immediately. A point of order may only relate to an alleged breach of these*

*Standing Orders or the law. The Member must indicate the way in which he/she considers it has been broken. The ruling of the Mayor on the matter will be final.*

#### 4.2.2 The operation of scrutiny

The forum considered various matters relating to the operation of scrutiny and felt that there should be a relaxed approach to the rules of debate in terms of allowing members to speak and have their say with the panel Chairs having the responsibility to ensure that this was done in a fair but structured way. The forum considered a draft protocol on Scrutiny Panel/Cabinet Member Relations, aimed at providing clarity over expectations of how scrutiny and Cabinet members should interact at panel meetings. It also clarified the role of officers at meetings. The protocol is attached at Appendix 4.

*Recommendation – That the protocol on Scrutiny Panel/Cabinet Member Relations be approved for inclusion as an appendix to the Overview and Scrutiny Procedure Rules.*

Concerns were raised about late circulation of papers and presentation slides at panel meetings. The forum felt that this needed to be done at least four calendar days prior to the meeting otherwise they would not be accepted for consideration at that meeting.

*Recommendation - That Section 8 (Agenda Items) of the Overview and Scrutiny Procedure Rules be amended to make specific reference to the requirement for papers and presentation slides to be circulated at least four calendar days prior to the scrutiny panel meeting, (save in exceptional circumstances and supported by the Chair of the scrutiny panel) otherwise they would not be accepted for consideration at that meeting.*

The forum considered accessibility of the Executive and Scrutiny Liaison Board to all Elected Members.

*Recommendation – That the minutes of the Executive and Scrutiny Liaison Board be circulated to all Elected Members once agreed.*

#### 4.2.3 Any other constitutional issues identified by the forum.

The forum requested that clarity be provided to Members on their rights of access to information, including on the obligation of officers to provide and the timescales for doing so.

#### 4.2.4 The Group Leaders Forum is of a continuing nature and further items of discussion and recommendation will be brought to it in time.

### 5. AMENDMENTS OF A MINOR NATURE

From time to time, amendments to the Constitution of a minor nature are required. These can be to provide clarity over a particular matter without changing its meaning or intention as well as to confirm minor changes arising

from decisions taken by individual panels/committees of the Council. Examples of matters dealt with under these delegated powers during the previous year include incorporation of the revised Code of Corporate Governance following its consideration by the Audit and Governance Committee and a minor change to the terms of reference of the Union Board to clarify representation from the North East Lincolnshire Clinical Commissioning Group. It is proposed that authority continue to be delegated to the Monitoring Officer, in consultation with the Leaders of the political groups, to make such changes.

## **6. RISKS AND OPPORTUNITIES**

The annual review of the Constitution acts as a mechanism to test and refresh the Council's governance arrangements.

## **7. OTHER OPTIONS CONSIDERED**

The recommendations in this report are intended to reflect the need to modify the Council's governance arrangements to support elected members in the discharge of their various roles and responsibilities and ensure that the Constitution is accessible to the public.

## **8. REPUTATION AND COMMUNICATIONS CONSIDERATIONS**

These matters are reported to the Council as required by the Constitution and to support the continued good governance of the Council.

## **9. FINANCIAL CONSIDERATIONS**

There are no financial considerations to be taken into account as a result of the recommendations within this report.

## **10. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

There are no climate change or environmental implications arising from the recommendations within this report.

## **11. CONSULTATION WITH SCRUTINY**

Not applicable.

## **12. FINANCIAL IMPLICATIONS**

As stated above, there are no financial implications arising directly from the recommendations in this report.

## **13. LEGAL IMPLICATIONS**

As set out in the main body of the report.

## **14. HUMAN RESOURCES IMPLICATIONS**

There are no direct human resources implications arising from the recommendations in this report.

**15. WARD IMPLICATIONS**

The Council's governance arrangements impact on all wards.

**16. BACKGROUND PAPERS**

The Council's Constitution.

**17. CONTACT OFFICER(S)**

Paul Windley  
Democratic and Scrutiny Team Manager  
Email: paul.windley@nelincs.gov.uk

**SIMON JONES**  
**MONITORING OFFICER**

## **SECTION 5 - SCHEME OF DELEGATION TO OFFICERS**

### **1. General Principles**

- 1.1. These arrangements delegate a wide range of management and operational functions to officers and will operate so that decisions are taken at the lowest appropriate level, at the nearest point to local provision of services to the customer and in a way that clearly identifies accountabilities.
- 1.2. This Scheme does not delegate to Officers:
  - 1.2.1. Any matter reserved to Full Council;
  - 1.2.2. Any matter which by law may not be delegated to an Officer;
  - 1.2.3. Key decisions which must be determined by members, save key decisions that have been delegated to officers by the Cabinet;
  - 1.2.4. Any regulatory functions which are specifically reserved to the relevant Committee.
- 1.3. Directors are responsible for retaining a record of Delegated Decisions which they (or their officers) take and the reasons for such decisions sufficient for audit and evidential purposes (against the eventuality of evidence being required for Judicial Review, Employment Tribunal, Ombudsman, Audit Commission, OFSTED or other proceedings or investigation), and for ensuring that all those who need to know are informed promptly of the decision, such records being subject to audit by the Monitoring Officer at any time.
- 1.4. Officers are accountable to the Council for any decision which they make, and may be required to report to, and to attend and answer questions from, Overview and Scrutiny and/or the Audit and Governance Committee, in respect of any decision which they make.
- 1.5. This Scheme of Delegation operates subject to the "cascade" principle. These arrangements include the power for officers to further delegate in writing all or any of the delegated powers to other officers (described by name or post) either fully, in part or under the general supervision and control of the delegating officer. The named officers will keep the Monitoring Officer, informed of all arrangements (other than arrangements which are made for a specified period of less than six months) which they make to authorise other officers to act on their behalf.
- 1.6. Where under this Scheme of Delegation, delegated powers are to be exercised by the holders of various posts the appropriate Director must ensure the same are exercised in accordance with relevant Council policies and procedures and:
  - 1.6.1. put appropriate systems and arrangements in place (if they do not already exist) for the proper management, discharge, control and effective monitoring and review of the exercise of such delegated powers (including, for example, maintaining an up-to-date list of all officers, with job titles, who are authorised to act under this Scheme of Delegation to Officers);
  - 1.6.2. as part of the production of the Annual Governance Statement, undertake a review of such systems and arrangements to ensure appropriateness and fitness for purpose and, where necessary, implement changes to such systems and arrangements to ensure they comply with any Internal Audit recommendations or best practice requirements and the Council's Assurance Framework.

- 1.7. Before making a decision under delegated powers officers will satisfy themselves that the decision is:
  - 1.7.1. authorised by law and, if in doubt, will consult with the Monitoring Officer or his nominee;
  - 1.7.2. within the financial provision in the revenue and capital budget for their service and, if in doubt, will consult with the Section 151 Officer or his nominee;
  - 1.7.3. in accordance with any relevant requirements set out in the Contract Procedure Rules and the Finance Procedure Rules.
- 1.8. Any exercise of delegated powers by officers shall be subject to:
  - 1.8.1. any statutory restrictions;
  - 1.8.2. the Council's Constitution;
  - 1.8.3. the Council's policies approved from time to time including particularly those relating to employment, equality and diversity.
- 1.9. For the avoidance of doubt, any reference to a specific post or named officer will be interpreted as including other officers of the Council who that specific postholder or named officer authorises to exercise delegated powers on his or her behalf.
- 1.10. When exercising delegated powers in relation to any matter which may be regarded as sensitive or contentious, officers will have regard to the need to inform and to liaise with the relevant Cabinet Member(s) and members representing the area that will be affected by the decision in accordance with any protocols which may be approved from time to time.
- 1.11. Prior to exercising delegated powers officers shall undertake a risk assessment in respect of the proposed decision and, in any event, shall take account of, where relevant, the implications arising from the decisions in respect of:
  - Data Protection and Freedom of Information
  - Human Rights
  - Equality and Diversity
  - Crime and Disorder
  - Sustainability
  - The social, economic and environmental well-being of the Borough
- 1.12. Notwithstanding the approval of this Scheme of Delegation, the Cabinet and any Committee exercising delegated powers may, through the course of any Municipal Year:
  - 1.12.1. approve further delegations to Officers, subject to appropriate advice from the Monitoring Officer;
  - 1.12.2. amend, substitute or remove specific delegations from this Scheme, subject to appropriate advice from the Monitoring Officer.
- 1.13. In exercising any delegated powers conferred under this Scheme, Officers must have regard to and comply with the Financial Procedure Rules.
- 1.14. In exercising any delegated powers conferred under this Scheme, insofar as the exercise of such powers involves the procurement of goods, works or services, Officers must have regard to and comply with the Contract Procedure Rules and the prevailing EU and/or domestic procurement rules.
- 1.15. This Scheme of Delegation is an integral part of Good Governance, Risk Management and the Assurance Framework, and the Leader/Cabinet model of executive arrangements. Compliance with the Scheme is, therefore, essential for the Council in order to ensure proper accountability, responsibility, openness, transparency, fairness, propriety and probity of its arrangements.
- 1.16. For the avoidance of doubt, in the event of there being:



1.16.1. a vacancy of a Director; or

1.16.2. the Director is unable to act, for any reason, for a long term (e.g., due to sickness or secondment to another organisation);

then any 'Acting' or "Interim" Director shall have the same authority as the Director for the duration of the vacancy or the long term absence, subject to the approval of the Chief Executive.

- 1.17. The Council has transferred a range of regeneration, property and technical services to Engie, for a period of 10 years from 1st July 2010 subject to any contractual extension. Any references in this Scheme of Delegation to the "Regeneration Partner" should be construed accordingly.
- 1.18. The Council has transferred a range of adult social care services to the North East Lincolnshire Clinical Commissioning Group. Any references in this Scheme of Delegation to the "CCG" shall be construed accordingly.
- 1.19. Any reference to any primary legislation will be deemed to include all amendments and secondary legislation in force from time to time.

## **2. General delegation of powers**

- 2.1. Subject to compliance with legislation and the Constitution: The Chief Executive, Executive Directors and all Directors shall have power to:

- 2.1.1. determine and exercise, having regard to prevailing Council policy, the operational requirements of their functions and to manage the human and material resources available for their functions, within any limitations specified in this Constitution and subject to appropriate consultation with the Monitoring Officer;

- 2.1.2. determine the following miscellaneous staffing related matters, in compliance with Council policies and procedures in force from time to time:

- 2.1.2.1. to approve special leave of absence, with or without pay;

- 2.1.2.2. to authorise leave of absence for attendance at vocational conferences and courses;

- 2.1.2.3. to approve essential and casual user car allowances.

- 2.1.3. to decide the eligibility of employees to receive payment:

- 2.1.3.1. of telephone charges;

- 2.1.3.2. for temporarily undertaking additional duties and responsibilities where provided for in the conditions of service (in consultation with the Executive Director for Environment, Economy and Resources (Section 151 Officer/Chief Finance Officer));

- 2.1.4. in accordance with any Relocation Scheme (in consultation with the Executive Director for Environment, Economy and Resources (Section 151 Officer/Chief Finance Officer)):

- 2.1.4.1. to extend sick pay, subject to appropriate medical advice;

- 2.1.4.2. to take action, including dismissal against an employee in accordance with the Council's Disciplinary Procedures;

- 2.1.4.3. to determine the award of facilities to employees to undertake post-entry training;

- 2.1.4.4. to authorise overtime or additional hours within approved staffing budgets;

- 2.1.4.5. to approve the carry over of annual leave from one year to the next of up to 5 days or such other limit as may be authorised by appropriate policy;
- 2.1.4.6. to authorise the issue of protective/safety clothing and equipment.
- 2.1.5. to authorise instruct the Monitoring Officer to issue legal proceedings in respect of their specific areas of responsibility.
- 2.1.6. procure goods, works and services subject to compliance with the Contract Procedure Rules.
- 2.1.7. manage their budgets subject to compliance with the Financial Procedure Rules.

### **3. Powers delegated to the Chief Executive.**

#### **3.1. Subject to compliance with legislation and the Constitution:**

- 3.1.1. to act as Head of Paid Service in accordance with the relevant provisions of the Local Government and Housing Act 1989 and to have all necessary powers to fulfil that statutory function;
- 3.1.2. to have overall responsibility for the strategic direction, management and performance of the Council;
- 3.1.3. to have overall control of the manner in which various functions of the Council are discharged;
- 3.1.4. to be responsible for the organisation and management of the Council's staff and resources;
- 3.1.5. in consultation with the Leader, Cabinet members and officers, to determine matters of dispute between Committees and/or Directorates within the Council;
- 3.1.6. to represent the views of the Council in responding to consultations with the Council by any outside body on corporate strategic issues after consultation with the Leader and Deputy Leader;
- 3.1.7. to exercise all Council responsibilities in respect of civil contingencies and emergency planning subject to prevailing legislation, such responsibilities to be delegated to such officer(s) as the Chief Executive considers appropriate, from time to time;
- 3.1.8. to determine or delegate the determination of applications for the allocation of ward funds subject to the prevailing criteria;
- 3.1.9. to exercise all functions relating to elections and referenda including Parliamentary, Local Government and European Parliamentary elections, and to exercise all functions in relation to electoral registration;
- 3.1.10. to have oversight of the Council's financial services functions, subject to the specific statutory responsibilities and delegations conferred on the Executive Director for Environment, Economy and Resources (Section 151 Officer/Chief Finance Officer) under this Scheme;
- 3.1.11. to approve applications for Discretionary Rate Relief scored in accordance with the standard criteria;
- 3.1.12. to appoint external individuals from outside the authority as 'Proper Officers' to fulfil regulatory roles, specifically Proper Officers under the Public Health (Control of Disease) Act 1984 (as amended)), 'Port Medical Officers' (in relation to the Public Health (Ships) Regulations 1979 (as amended)), 'Official Veterinarian' (in relation to EC Directive 97/78) and 'Public Analyst' (in relation

to the Food Safety Act 1990).

- 3.2. To have oversight of functions and responsibilities delegated to:
  - 3.2.1. Deputy Chief Executive and Executive Director for People, Health and Care;
  - 3.2.2. Executive Director for Environment, Economy and Resources (Section 151 Officer);
  - 3.2.3. Chief Operating Officer (CCG);
  - 3.2.4. Assistant Chief Executive.

#### **4. Powers delegated to the Deputy Chief Executive and Executive Director for People, Health and Care**

- 4.1 Subject to compliance with legislation and the Constitution:
  - 4.1.1. in the absence of the Chief Executive, to exercise all powers delegated to the Chief Executive, as set out above;
  - 4.1.2. to exercise all powers in connection with the European Communities Act 1972 and any subsequent legislation arising from any withdrawal of the United Kingdom from the European Community or any part thereof;
  - 4.1.3. to a date to be confirmed in writing by the Chief Executive to act as designated Director for Children's Services and to exercise all functions and responsibilities of that office as set out in this Scheme of Delegation;
  - 4.1.4. to authorise officers to exercise powers of entry in relation to the Deputy Chief Executive and Executive Director for People, Health and Care delegated functions and responsibilities;
  - 4.1.5. to authorise the issue of statutory notices, licenses and permissions in relation to the Deputy Chief Executive and Executive Director for People, Health and Care delegated functions and responsibilities and subject to any limitations set out in the Constitution, acting in consultation with the Monitoring Officer as appropriate;
  - 4.1.6. to authorise the withdrawal, review and cessation of any licenses, permissions or agreements in relation to the Deputy Chief Executive and Executive Director for People, Health and Care delegated functions and responsibilities and subject to any limitations set out in the Constitution, acting in consultation with the Monitoring Officer as appropriate.
- 4.2. To have oversight of functions and responsibilities delegated to:
  - 4.2.1. The Director of Children's Services;
  - 4.2.2. Director of Adult Social Service;
  - 4.2.3. Director of Public Health.

#### **5. Powers delegated to the Assistant Chief Executive**

- 5.1. Subject to compliance with legislation and the Constitution:
  - 5.1.1. to act as the Council's designated Scrutiny Officer for the purposes of Section 31 of the Local Democracy, Economic Development and consultation with the

Section 151 Officer;

- 5.1.2. to ensure the Council discharges its responsibilities in connection with the Civil Contingencies Act and business continuity;
- 5.1.3. to exercise all functions in respect of civic and mayoral services; elections and electoral registration, and Registration and Celebratory Services;
- 5.1.4. to act as the Proper Officer for civil registration matters;
- 5.1.5. to act and lead at the direction of the Chief Executive on specific strategic or corporate projects and initiatives from time to time;
- 5.1.6. to be the lead Council officer for co-ordination and engagement with the voluntary and community sector, including but not limited to infrastructure development, community resilience and financial inclusion;
- 5.1.7. to be the lead Council officer in respect of the equality and diversity agenda;
- 5.1.8. to authorise the issue of statutory notices, licenses and permissions in relation to the Assistant Chief Executive delegated functions and responsibilities and subject to any limitations set out in the Constitution, acting in consultation with the Monitoring Officer as appropriate;
- 5.1.9. to authorise the withdrawal, review and cessation of any licenses, permissions or agreements in relation to the Assistant Chief Executive delegated functions and responsibilities and subject to any limitations set out in the Constitution, acting in consultation with the Monitoring Officer as appropriate.

**6. Powers delegated to the Executive Director Environment, Economy and Resources (Section 151 Officer/Chief Finance Officer)**

6.1. Subject to compliance with legislation and the Constitution:

- 6.1.1. to exercise the proper administration of the Council's financial affairs under Section 151 of the Local Government Act, 1972 and Section 114 of the Local Government Finance Act 1988, the CIPFA guidance on the role of the Section 151 Officer and [Article 12](#) of this Constitution and to report as appropriate to Cabinet and the Audit and Governance Committee on the discharge of such responsibilities;
- 6.1.2. to determine and issue general guidelines to Members and Officers in relation to financial matters;
- 6.1.3. to determine arrangements for Treasury Management in accordance with the Treasury Policy Strategy and any other arrangements approved by the Cabinet or Full Council;
- 6.1.4. to determine and issue general guidelines to Officers on management of financial resources, insurance, debt recovery and writing-off of debts to approve applications for financial assistance, authorise any grant claims and approve the receipt of specific grant payments from third parties in all cases where the third party specifies that Director of Finance (Chief Finance Officer) (howsoever named) approval and/or certification is a condition of the receipt of any grant;
- 6.1.5. to manage the Council's loan debt and to approve borrowings and investments by the Council in accordance with the statutory borrowing limits determined by the Council and the Council's Treasury Management Strategy as approved from time to time;
- 6.1.6. to administer and collect Council Tax and Non-Domestic Rates (including setting Non-Domestic rates);
- 6.1.7. to administer the Council Tax and Housing Benefit systems;

- 6.1.8. to authorise the write off of debts in accordance with Financial Procedure Rules;
- 6.1.9. to approve the National Non-Domestic Rates 1 return that determines the business rate base;
- 6.1.10. to make arrangements for the internal audit of the Council;
- 6.1.11. in respect of Assets and Estate Management:
  - 6.1.11.1. to negotiate the disposal and/or acquisition of land and property on behalf of the Council, provided that any proposed acquisition or disposal that qualifies as a Key Decision must be referred to Cabinet;
  - 6.1.11.2. to refer any proposed disposal at an undervalue to Cabinet in accordance with the Protocol on disposal of land at less than best price;
  - 6.1.11.3. to maintain a register of all undervalue disposals;
  - 6.1.11.4. in the case of any proposed acquisition or disposal, including those not qualifying as a Key Decision:
    - 6.1.11.4.1. to consult with the relevant Portfolio Holder(s) prior to proceeding;
    - 6.1.11.4.2. to notify the members for the relevant ward of the proposed acquisition or disposal, subject to any restrictions regarding the disclosure of "exempt" or confidential information;
  - 6.1.11.5. to recommend the exercise of the Council's powers of compulsory acquisition to Cabinet and/or Full Council, as appropriate;
  - 6.1.11.6. to determine all matters in respect of the Council's portfolio of offices, operational and commercial property, save where any related decisions qualify as Key Decisions which must be referred to Cabinet;
  - 6.1.11.7. to determine all property related compensation claims, blight claims, licences, way leaves or any other dealings (excluding tenanted housing management property), save where any related decisions qualify as a Key Decision which must be referred to Cabinet.
- 6.1.12. to exercise all the functions in relation to Customer Services, Information and Communication Technology; Procurement, Corporate Risk Management; Printing and Reprographic services, performance management, service improvements, business planning, the sustainable community strategy, Local Strategic Partnership, media and communications, corporate strategy and policy development, research and information, organisational change, learning and development, member development, human resources and organisational development, corporate health and safety, and equalities;
- 6.1.13. to have oversight of legal services, including Coroner's Service and democratic services;
- 6.1.14. to exercise all functions of the Council in respect of:
  - 6.1.14.1. Environmental health, Bereavement Services, including cemeteries and crematoria, trading standards, port health, consumer protection and neighbourhood services;
  - 6.1.14.2. Health and Safety at Work (excluding those matters delegated to the Monitoring Officer regarding the Council's responsibilities as an employer);
  - 6.1.14.3. Licensing Authority functions and responsibilities;
  - 6.1.14.4. Waste Management (including collection and disposal);

- 6.1.15. to set fees, in consultation with the Chair of the Licensing and Community Protection Committee, in relation to the Scrap Metal Dealers Act 2013;
- 6.1.16. to act as the Officer designated Chief Inspector of Weights and Measures;
- 6.1.17. to interpret and determine conditions of services (including pay and other aspects of remuneration) for Council employees and to enter into agreements as appropriate with Trade Unions relating to personnel and training matters;
- 6.1.18. to compile, monitor and review Council employment policies and procedures and issue instructions, guidelines, handbooks etc, as appropriate;
- 6.1.19. support Directors in seeking compulsory redundancy and to issue instructions regarding the redeployment of employees who are at risk of redundancy;
- 6.1.20. to exercise all functions in relation to tourism, museums libraries, archives, sport, leisure, theatres and cultural services;
- 6.1.21. to have oversight and lead responsibility for managing the contractual relationship with the Regeneration Partner, subject to the prevailing partnership governance arrangements;
- 6.1.22. to exercise all functions of the Council in relation to regeneration, inward investment, economic development, strategic housing, highways, the highway network, traffic regulation, car park management, civil parking enforcement, local transport, planning, safety at sports grounds, building control, architectural and technical services, save and except any powers and functions that have been delegated to the Regeneration Partner, in accordance with any Order made pursuant to Section 70 of the Deregulation and Contracting out Act 1994 and/or any specific provision of the contract entered into between the Council and the Regeneration Partner, giving effect to the Regeneration Partnership;
- 6.1.23. to authorise the Regeneration Partner, in writing, to act as the Council's agent in respect of any functions and responsibilities within the scope of the Regeneration Partnership, subject to consultation with the Monitoring Officer and the relevant Portfolio Holder(s);
- 6.1.24. to issue or instruct the issue of any notices, including in respect of the determination of rents, licence fees and service charges, save where such a decision qualifies as a Key Decision which must be referred to Cabinet;
- 6.1.25. in respect of the Council's strategic housing services:
  - 6.1.25.1. the provision of services regarding housing allocation and homelessness;
  - 6.1.25.2. the provision of all housing services that have not been transferred via Large Scale Voluntary Transfer;
  - 6.1.25.3. the exercise of all Council functions regarding the condition and management of private sector housing.
- 6.1.26. to authorise officers to exercise powers of entry in relation to the Executive Director for Environment, Economy and Resources (Section 151 Officer) delegated functions and responsibilities;
- 6.1.27. to issue statutory notices, licenses and permissions in relation to the Executive Director for Environment, Economy and Resources (Section 151 Officer) delegated functions and responsibilities and subject to any limitations set out in the Constitution, acting in consultation with Monitoring Officer as appropriate;
- 6.1.28. to authorise the withdrawal, review and cessation of any licenses, permissions

or agreements in relation to the Executive Director for Environment, Economy and Resources (Section 151 Officer) delegated functions and responsibilities and subject to any limitations set out in the Constitution, acting in consultation with the Monitoring Officer as appropriate;

6.1.29. to authorise officers, in writing, to issue fixed penalty notices and other relevant administrative penalties under the legislation within the scope of the Director's areas of responsibility, save and except where authority to issue such notices has been lawfully delegated to the Regeneration Partner;

6.1.30. In respect of planning and development control:

6.1.30.1. to determine all "Other" categories of planning applications, with the following exceptions:

6.1.30.1.1. Where there is a material planning objection from a Town or Parish Council and there is an officer recommendation to approve;

6.1.30.1.2. Where an elected Member of NELC has made a written request for an application to go to Planning Committee within the allocated time period and based on material planning reasons;

6.1.30.1.3. This includes:

- Changes of use
- Advertisements
- Householder development
- Listed Building Consents
- Conservation Area Consents

6.1.30.2. to determine\* all "Major" and "Minor" categories of planning applications with the following exceptions:

6.1.30.2.1. where more than three material planning objections \*\* have been submitted in writing within the Statutory Consultation period from separate households / businesses etc (excluding Statutory Consultees, which are considered in 6.1.30.2.5 below) and there is an officer recommendation to approve;

6.1.30.2.2. where an application seeks a proposal that is contrary to adopted and emerging development plan policy and there is an officer recommendation to approve;

6.1.30.2.3. where an application would require formal referral to the Government Office;

6.1.30.2.4. where applications are submitted by an elected member of NELC, officers of the Planning Service, and senior officers of the Council, or where officers consider that there may be perceived issues of probity; \*\*\*

6.1.30.2.5. where a material planning objection has been submitted by a Statutory Consultee within the Statutory Consultation period and there is an officer recommendation to approve;

6.1.30.2.6. where an elected Member of NELC has made a written request for an application to go to planning committee within the allocated time period and based on material planning reasons, because the Member does not agree with the officer recommendation or anticipated officer recommendation;

6.1.31. To exercise all functions of the Council in respect of the Flood and

## Water Management Act 2010.

NOTE: "determine" includes approval and refusal.

\*\* "Material planning objection" will be broadly interpreted. However, objections will not be regarded as "material" where they: are not relevant to land use planning; not relevant to the application or other matters under consideration; are based on grounds of local competition; or are anonymous.

\*\*\* "Perceived issues of probity" includes the following: employees who are related to Members or Senior Officers; employees who have connections with outside bodies, groups and businesses that engage in the planning process; employees who are Parish Councillors; and organisations where Members have a leading position.

### **7. Powers delegated to the Director of Children's Services**

#### **7.1. Subject to compliance with legislation and the Constitution:**

- 7.1.1. to act as the Designated Director of Children's Services for the purposes of the Children Act 2004;
- 7.1.2. to discharge the functions conferred on or exercisable by the Council in its capacity as local education authority and children services authority;
- 7.1.3. to discharge any function exercisable by the Council under Section 75 of the National Health Service Act 2006 on behalf of an NHS body, so far as those functions relate to children and young people and subject to the CCG arrangements;
- 7.1.4. to exercise all functions and responsibilities in so far as they relate to: Skills, Adult and Community Learning;
- 7.1.5. to discharge the functions conferred on or exercisable by the authority which are Social Services functions (within the meaning of the Local Authority Social Services Act 1970), so far as those functions relate to children;
- 7.1.6. to discharge the functions conferred on the authority under Sections 23 to 24D of the Children Act 1989;
- 7.1.7. to discharge the functions conferred on the authority under Sections 10 to 12 and 17 of the Children Act 2004;
- 7.1.8. to exercise all relevant children social services functions as conferred by the Children Act 1989, the Adoption and Children Act 2002, the Local Authority Social Services Act 1970, the Children (Leaving Care) Act 2000 and the Safeguarding Vulnerable Groups Act 2006 in the interests of safeguarding and promoting the welfare of children and young people;
- 7.1.9. to have responsibility for Youth services;
- 7.1.10. to exercise all functions and responsibilities in so far as they relate to: School Improvement and Education;
- 7.1.11. to exercise all functions of the Council in respect of Community Safety and Anti-Social Behaviour, the sustainable community strategy and Local Strategic Partnership;
- 7.1.12. to authorise officers to exercise powers of entry in relation to the Director of Children's Services delegated functions and responsibilities;
- 7.1.13. to authorise the issue of statutory notices, licenses and permissions in relation to the Director of Children's Services delegated functions and responsibilities and subject to any limitations set out in the Constitution, acting in consultation with the Monitoring Officer as appropriate;
- 7.1.14. to authorise the withdrawal, review and cessation of any licenses, permissions or agreements in relation to the Director of Children's Services delegated functions and responsibilities and subject to any limitations set out in the Constitution, acting in consultation with the Monitoring Officer as appropriate.



## **8. Powers delegated to the Director of Adult Social Services**

### **8.1 Subject to compliance with legislation and the Constitution:**

- 8.1.1. to act as the Designated Director of Adult Social Services (DASS), for the purposes of the Local Authority Social Services Act 1970, such responsibilities exercised pursuant to
  - 8.1.1.1. any statutory guidance issued, from time to time, by the Secretary of State for Health; and
  - 8.1.1.2. the partnership arrangements established with the CCG.
- 8.1.2. to exercise all functions of the Council in respect of Adult Safeguarding;
- 8.1.3. These responsibilities include:
  - 8.1.3.1. Accountability for assessing local needs and ensuring availability and delivery of a full range of adult social services;
  - 8.1.3.2. Professional leadership, including workforce planning;
  - 8.1.3.3. Leading the implementation of standards;
  - 8.1.3.4. Managing cultural change;
  - 8.1.3.5. Promoting local access and ownership and driving partnership working;
  - 8.1.3.6. Delivering an integrated whole systems approach to supporting communities; and
  - 8.1.3.7. Promoting social inclusion and wellbeing.
- 8.1.4. to authorise officers to exercise powers of entry in relation to the Director of Adult Services delegated functions and responsibilities;
- 8.1.5. to authorise the issue of statutory notices, licenses and permissions in relation to the Director of Adult Services delegated functions and responsibilities and subject to any limitations set out in the Constitution, acting in consultation with the Monitoring Officer as appropriate;
- 8.1.6. to authorise the withdrawal, review and cessation of any licenses, permissions or agreements in relation to the Director of Adult Services delegated functions and responsibilities and subject to any limitations set out in the Constitution, acting in consultation with the Monitoring Officer as appropriate.

## **9. Powers delegated to the Director for Public Health**

- 9.1. The Director of Public Health is a multi-faceted role between the Council, the North East Lincolnshire Clinical Commissioning Group (CCG) and (whilst formal arrangements remain extant) to act as Director for Public Health to North Lincolnshire Council.

### **9.2. Subject to compliance with legislation and the Constitution:**

- 9.2.1. to undertake overall responsibility for all of the Council's duties to take steps to improve public health and to provide officers and elected members with appropriate advice and guidance;
- 9.2.2. to undertake any of the Secretary of State's public health protection or health improvement functions delegated to local authorities, either by arrangement or under regulations, – including services mandated by regulations made under section 6C of the National Health Service Act 2006;

- 9.2.3. to plan for, and respond to, emergencies that present a risk to public health, in consultation with the council's emergency planning officer where appropriate;
- 9.2.4. to undertake the Council's role in co-operating with the police, the probation service and the prison service to assess the risks posed by violent or sexual offenders;
- 9.2.5. to be responsible for the Council's public health response as a responsible authority under the Licensing Act 2003, including making representations about licensing applications under sections 5(3), 13(4), 69(4) and 172B(4) of the Licensing Act, as amended by Schedule 5 of the Health and Social Care 2012;
- 9.2.6. to produce and update as necessary the Joint Strategic Needs Assessment in consultation with the Clinical Commissioning Group;
- 9.2.7. to lead on and co-ordinate the development, production, publication and updating of the Joint Health and Wellbeing Strategy in consultation with the Clinical Commissioning Group;
- 9.2.8. to develop and implement a system for collecting and analysis data to deliver the Public Health Outcomes Framework;
- 9.2.9. to produce the Director of Health and Well Being's annual report;
- 9.2.10. to provide public health advice to NHS commissioners to help secure:
  - 9.2.10.1. commissioning strategies that meet the needs of vulnerable groups;
  - 9.2.10.2. the development of evidence-based care pathways and service specifications;
  - 9.2.10.3. evidence-based prioritisation policies;
  - 9.2.10.4. health needs audits and health equity audits and health impact assessments.
- 9.2.11. to ensure delivery of the National Child Measurement Programme;
- 9.2.12. to secure the delivery of the NHS Health Check assessment;
- 9.2.13. to ensure appropriate access to sexual health services;
- 9.2.14. to ensure appropriate clinical governance arrangements are in place in respect of any clinical services commissioned, including sexual health and drug and alcohol services;
- 9.2.15. to maintain a particular focus on ensuring vulnerable and disadvantaged groups receive the attention they need, with the aim of reducing health inequalities, operating in consultation with the Deputy Chief Executive and Executive Director for People, Health and Executive Director Environment, Economy and Resources Director for Economy and Growth;
- 9.2.16. to provide appropriate support to the Health and Well Being Board or its equivalent;
- 9.2.17. to authorise officers to exercise powers of entry in relation to the Director of Public Health delegated functions and responsibilities;

9.2.18. to authorise the issue of statutory notices, licenses and permissions in relation to the Director of Public Health delegated functions and responsibilities and subject to any limitations set out in the Constitution, acting in consultation with the Monitoring Officer as appropriate;

9.2.19. to authorise the withdrawal, review and cessation of any licenses, permissions or agreements in relation to the Director of Public Health delegated functions and responsibilities and subject to any limitations set out in the Constitution, acting in consultation with the Monitoring Officer as appropriate.

## **10. Powers delegated to the Monitoring Officer (Assistant Director Law, Governance and Assets)**

10.1. Subject to compliance with legislation and the Constitution:

10.1.1. to act as Solicitor to the Council and designated Monitoring Officer in accordance with the relevant provisions of the Local Government and Housing Act 1989 and [Article 12](#) of this Constitution;

10.1.2. To act as the Proper Officer for the purposes of the arrangements for the discharge of standards responsibilities, including maintaining the Register of Members' Interests and administering the complaints process for Member misconduct;

10.1.3. to authorise the institution, defence, withdrawal or compromise of any claims or legal proceedings whether civil or criminal and to authorise officers of the Council to appear before the Courts;

10.1.4. to attest the Common Seal of the Council on any legal documentation required to be executed under Seal, unless delegated by the Chief Executive to another named Officer(s);

10.1.5. to determine and issue general guidelines to members and officers on legal, procedural and probity issues and to liaise between Standards and Adjudication Committee, the Audit and Governance Committee and such other bodies as necessary and to hold all records and registers relating to conduct and probity issues;

10.1.6. to issue any statutory notice (unless another officer is exclusively empowered by law) which may be deemed necessary in the interests of the Council and to negotiate the terms of and to sign any document, lease, contract, licence or otherwise on behalf of the Council, unless delegated to another named officer or postholder;

10.1.7. to exercise all functions relating to legal services, democratic services and HM Coroner for North and North East Lincolnshire;

10.1.8. to have responsibility for partnership governance.

## **11. Authority to authorise directed surveillance.**

11.1. Only the Monitoring Officer and the Chief Executive (in consultation with the Monitoring Officer) shall be "Authorising Officers" for the purposes of authorising applications for directed surveillance.

11.2. Only the Monitoring Officer may delegate the authority to authorise directed surveillance to a named officer of at least "service manager level" where the monitoring officer is satisfied that the officer has completed the appropriate training.

# Contract Procedure Rules (CPRs)



**May 2021**

## Contents

INTRODUCTION .....	4
POLICY CONTEXT.....	4
COMPLIANCE .....	5
2 PROCEDURAL THRESHOLDS .....	6
3 PROCEDURE.....	7
4 CONFIDENTIALITY AND CONFLICTS OF INTEREST .....	8
5 IN-HOUSE PROVIDERS .....	9
6 TRADING AND SELLING SERVICES .....	9
7 LEAD SERVICES.....	9
8 CORPORATE CONTRACTS.....	10
9 PRELIMINARY MARKET CONSULTATION .....	10
10 LIGHT TOUCH REGIME .....	10
11 RESERVED CONTRACTS.....	11
12 FRAMEWORK AGREEMENTS, DYNAMIC PURCHASING SYSTEMS & E-AUCTIONS .....	11
13 USE OF THE COMPETITIVE DIALOGUE PROCEDURE, THE NEGOTIATED PROCEDURES AND INNOVATION PARTNERSHIPS.....	12
14 CONCESSION CONTRACTS .....	12
15 TECHNICAL STANDARDS & SPECIFICATIONS .....	12
16 MANAGEMENT OF DATA .....	13
17 TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 AS AMENDED 2014 (TUPE).....	13
18 EXCLUSION CRITERIA AND FINANCIAL APPRAISAL .....	13
19 TENDER AND QUOTATION ERRORS.....	14
20 PRE AND POST TENDER/REQUEST FOR QUOTATION CLARIFICATION .....	14
21 Not Allocated .....	16
22 Not Allocated .....	16
23 SUPPLIES/SERVICES/WORKS CONTRACTS £1 - £100,000 .....	16
24 SUPPLIES/SERVICES/WORKS CONTRACTS £100,000 - £189,330 .....	18
25 WORKS CONTRACTS (ABOVE PCR THRESHOLD FOR SUPPLIERS/SERVICES AND BELOW PCRTRESHOLD FOR WORKS).....	23
26 LIGHT TOUCH REGIME .....	28
27 SUPPLIES/SERVICES/WORKS CONTRACTS ABOVE PCR THRESHOLDS – OPEN.....	29
28 REPORTING OF TENDERS .....	36
29 PREVENTION OF CORRUPTION & THE BRIBERY ACT 2010 .....	36

## Contract Procedure Rules

30	EXCEPTIONS .....	36
31	COMMUNITY RIGHT TO CHALLENGE.....	37
32	DISPOSAL & WRITE-OFF OF ASSETS (EXCLUDING LAND & PROPERTY).....	37
33	CONTRACT SIGNING & MODIFICATION .....	37
34	CONTRACT MANAGEMENT .....	38
	ANNEX – 1A – PRELIMINARY MARKET CONSULTATION .....	39
	ANNEX 1B - DYNAMIC PURCHASING SYSTEMS.....	40
	ANNEX 1C - COMMUNITY RIGHT TO CHALLENGE EXPRESSION OF INTEREST PROCESS MAP.....	41
	ANNEX 1D- DISPOSAL AND WRITE OFF OF ASSETS.....	43
	ANNEX 1E- E-AUCTION PROCESS .....	45
	ANNEX 1F - DEFINITIONS AND GLOSSARY .....	47

## **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, or the [NELC Financial Regulations and Procedure](#) Rules as appropriate.

The following are key principles of Procurement under the 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. Our practices are scrutinised by bidders and government (The Public Procurement Review Service).

The 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 Councils' 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 Public Contracts Regulations 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".

## **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 the Public Contracts Regulations (PCR), all, UK legislation, the Council's Financial Regulations, Finance Standing Orders, CPRs and the procurement supporting guidance. It is the responsibility of the service area and service leads 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 Councils' 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 Public Contract Regulations CR 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 Public Contracts Regulations level specific decisions and verifications must be recorded and be available throughout the procurement and after the contract has been awarded in line with Regulation 84 of the Public Contracts Regulations.

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> <li>• Development agreements to which the Public Contracts Regulations apply<sup>1</sup>;</li> <li>• Maintained Schools;</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 Public Contracts Regulations</li> <li>• Contracts for the acquisition or disposal of land and buildings<sup>1</sup> and</li> </ul>



## Contract Procedure Rules

<ul style="list-style-type: none"> <li>Where a third party is procuring on the Council's behalf and where the Council is the contracting party;</li> <li>The Councils' 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 Assistant Director Law, Governance &amp; Assets (Monitoring Officer).</li> </ul>	<ul style="list-style-type: none"> <li>Contracts of employment.</li> <li>Grants where the council awards a grant to an external organisation.</li> </ul>
--	--

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 the revised Best Value Statutory Guidance (March 2015) to be responsive to the benefits and needs of the voluntary and community sector organisations of all sizes.
- 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 Assistant Director Law, Governance & Assets, (Monitoring Officer).
- 1.5 Where the Council is procuring together with another council or public body, this must be done under the terms of the Joint Procurement Agreement and a Joint Project Initiation Document agreed.
- 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 Assistant Director Law, Governance & Assets (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 within 10% of the Public Contract Regulations thresholds should consider following a Public Contract Regulations tender process.
- 2.2 The Public Contracts Regulations that apply will be those advised by the Cabinet Office as detailed below. The current thresholds set out below are valid from 1 January 2020:

	<b>Supplies</b>	<b>Services</b>	<b>LTR</b>	<b>Concessions</b>	<b>Works</b>
Public Sector Contracting Authority (excluding Schedule 1 authorities)	£189,330	£189,330	£663,540	£4,733,252	£4,733,252

- 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 Public Contracts Regulations 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

## Contract Procedure Rules

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?	Significant effect on communities of two or more wards or resulting in significant public interest or incurring social, economic or environmental risk where the whole-life expenditure or savings exceed £350,000 or 20% of the project cost
Action:	Notice of the proposed decision should be published by the Council 28 days clear before a Key Decision is made and a report for decision produced by the Service Area lead. Note a 5 day call-in period also applies after the decision has been taken.
When should the Portfolio Holder be consulted by the relevant director?	Decisions with a whole-life expenditure or savings £100,000 - £350,000.
Action:	Director to update Portfolio Holder
When can decisions be taken by an officer with delegated authority?	<p>When Cabinet has delegated authority to make the decision to the officer (subject to adherence to any calling In period (5 days))</p> <p>Decisions involving expenditure or savings between £100k and £350k (but not having a significant impact on 2 or more wards) have a requirement to publish an Officer Decision Record at the award stage.</p>

## Contract Procedure Rules

Action:	An 'Officer Decision Record' should be completed and returned to Democratic Services on a timely basis at the Post Award stage

### 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 Councils 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'
  - VII. award of the contract; and
  - VIII. 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.
- 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 Assistant Director Law, Governance and Assets (Monitoring Officer)

accordingly. Records must be available on request and will form part of the Regulation 84 report for Public Contracts Regulations 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 Councils' commercial/ financial policies as appropriate and prior written advice should be obtained from the Assistant Director Law, Governance and Assets (Monitoring Officer).
- 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 LEAD SERVICES**

- 7.1 Services Areas undertaking procurement of the following supplies, services or works must be guided by the lead service indicated:

Requirement	Lead Service
Cleaning Services	Facilities Management Engie
Civil Engineering and non-building construction works	Highways Engie
Building works, accommodation and facilities management where a work permit <b>MUST</b> be obtained	Assets Team; Architectural Consultancy Engie
Energy, Fuel & Water	Property Services Engie
Financial & Leasing Services	Finance
ICT requirements / services	ICT
Legal Services	Legal Services
Leisure	Lincs Inspire Ltd
Printing Services	Print Unit
Commissioning of social or personal care services, and placement activity	Children's – Children's Services Adults – CCG
Training & Development Services	Human Resources; Learning & Development
Transport Services	Access Services Highways and Transport Engie

## Contract Procedure Rules

Vehicles	Neighbourhood Services
Waste Disposal	Neighbourhood Services
Public Health	Public Health

### **8 CORPORATE CONTRACTS**

8.1 Where a [Corporate Contract](#) exists for supplies, services or works, it must be used. Only in the following circumstances should a departure from the corporate contracts be considered. Advice from the procurement team should be sought prior to seeking alternative solutions.

- Availability - The requirement cannot be obtained through a corporate contract;
- Timescale - The requirement cannot be obtained in the required timescale through a corporate contract; or
- Specification - The requirement cannot be obtained with the required specification through a corporate contract.

8.2 For higher value purchases through a corporate 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 1a](#). 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 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 above threshold contracts includes the advertisement of the contract and publication of a contract award notice on the Find a Tender Service (FTS) and ensuring compliance with the procurement principles of transparency and equal treatment. Time limits are to be reasonable and proportionate and the procurement is to be

conducted in conformance with the information provided in the FTS advertisement. To meet these obligations, the Public Contracts Regulations open or restricted procedures can be used.

- 10.3 LTR does not require a formal procedure to be followed, but the procurement principles of the 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)

## Contract Procedure Rules

- 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

12.8 The flowchart at [Annex 1b](#), 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 1e](#).

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 Assistant Director Law, Governance and Assets, (Monitoring Officer); 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 Head of Information Governance and Complaints 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 People and Culture 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 Assistant Director Law, Governance and Assets (Monitoring Officer).
- 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 Assistant Director Law, Governance and Assets (Monitoring Officer).
- 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 Finance Group Manager 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 thresholds of the Public Contracts Regulations or any relevant 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 the Public Contracts Regulations or any relevant 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 Public Contracts Regulations thresholds.

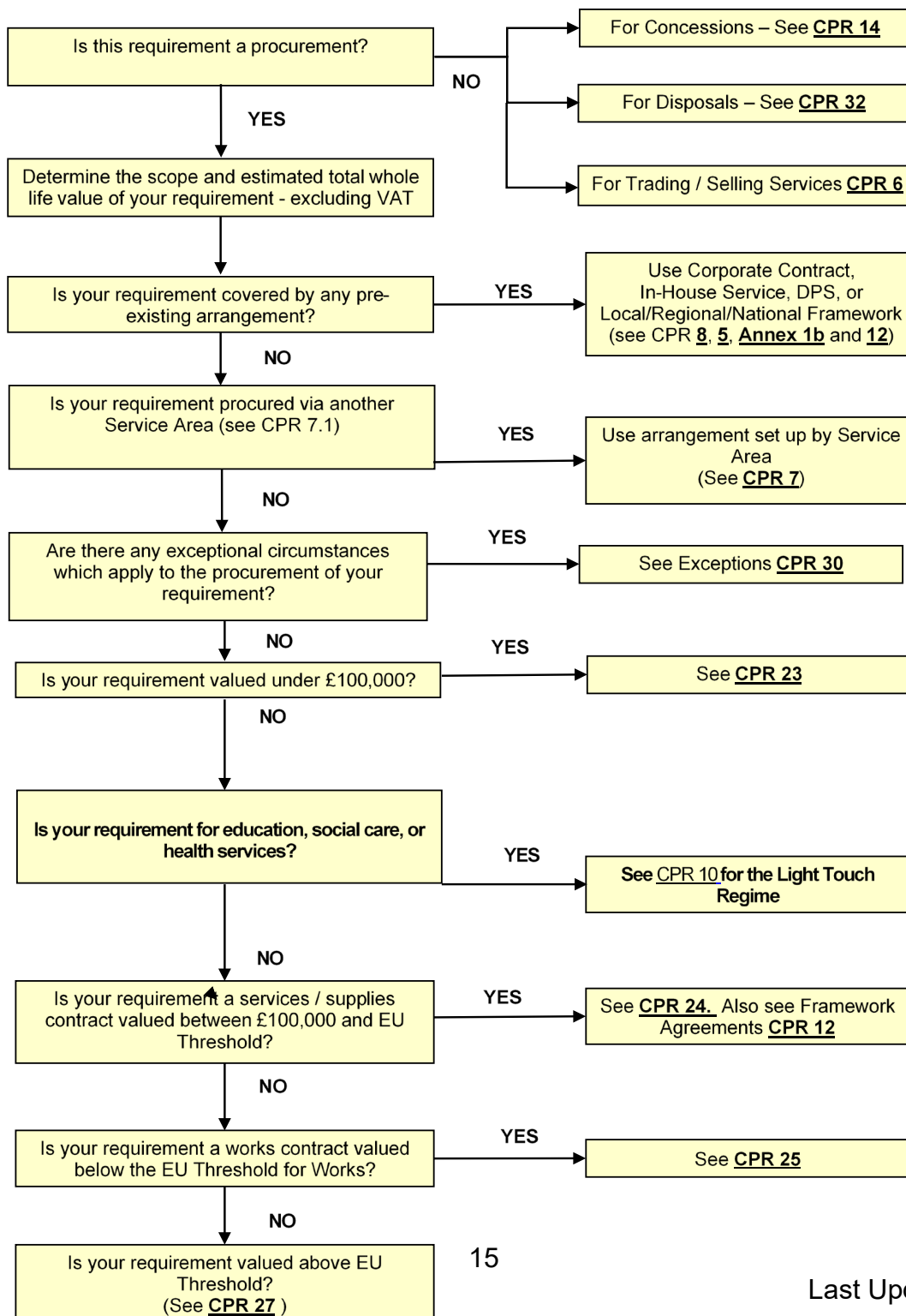
## **19 TENDER AND QUOTATION ERRORS**

- 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 Assistant Director Law, Governance and Assets, (Monitoring Officer) 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**  
The Council is required to seek an explanation for exceptionally low tenders and may reject the tender where the explanation does not satisfy the concerns.

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

## Contract Procedure Rules

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 Not Allocated

### 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 the intranet.

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 corporate or lead service contract ([CPR 7](#) & [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 to 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**

## Contract Procedure Rules

- 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
- 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 (often 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.

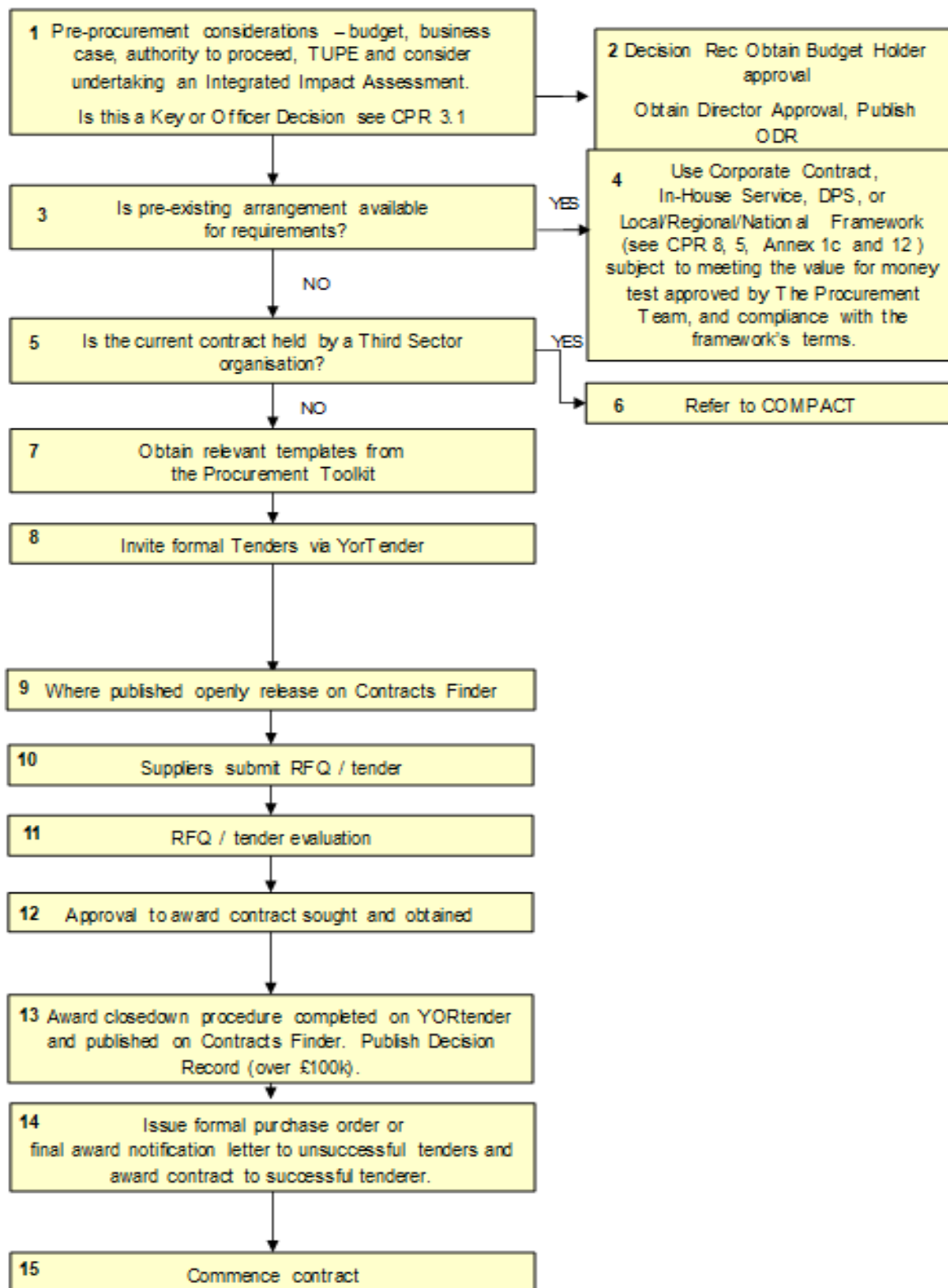
**The award of all contracts over £25k must be advertised on Contracts Finder (excludes schools and academies).**

### 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 - £189,330**



### 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 People and Culture 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 and proactively monitor and record, seeking advice where appropriate.

### 24.1b Competitive Process

Adhere to the corporate 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;
- the Revised Best Value Statutory Guidance (2015)
- Council Skills Pledge
- Sustainable/ethical Procurement Policy.
- [Social Value 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 Public Contract Regulations thresholds for supplies. A suitability assessment question may be used where essential.

## Contract Procedure Rules

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’s 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 Assistant Director Law, Governance and Assets (Monitoring Officer) on the advice of The Procurement Team.

### 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 Assistant Director Law, Governance and Assets (Monitoring Officer).

### 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 and the written approval of the Assistant Director Law, Governance and Assets, (Monitoring Officer) 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.



### Signing

Directors are authorised to sign contracts that do not exceed £100,000 where the Assistant Director Law, Governance and Assets, (Monitoring Officer) has approved the form of contract as appropriate for the type of contract concerned.

The Assistant Director Law, Governance and Assets, (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 Assistant Director Law, Governance and Assets (Monitoring Officer) is authorised to affix the Common Seal of their respective 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

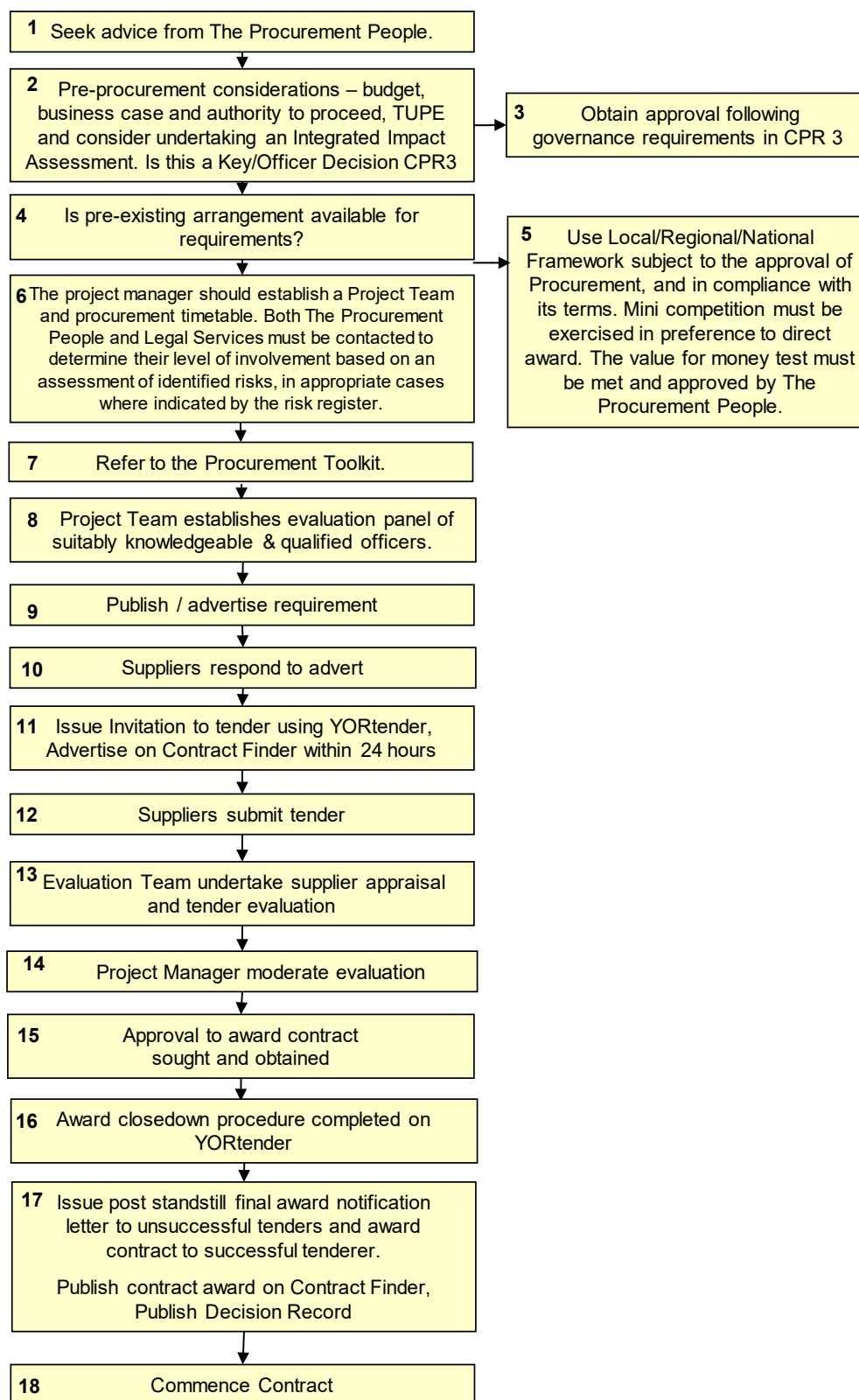
#### 24.1i Records & Documentation

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 the Assistant Director Law, Governance and Assets (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 (PUBLIC CONTRACTS REGULATIONS (PCR) THRESHOLDS FOR SUPPLIERS/SERVICES AND (PCR) THRESHOLD FOR WORKS)



### 25.1a Authorisation to Proceed with Procurement

Please refer to Lead Services [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 and proactively monitor and record seeking advice where appropriate

### 25.1b Competitive Process

Adhere to the corporate 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;
- 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.

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's 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.

**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 or the Assistant Director Law, Governance and Assets, (Monitoring Officer).

#### 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, the written approval of the Assistant Director Law, Governance and Assets, (Monitoring Officer) must be obtained prior to accepting the 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.

## **Signing**

The Assistant Director Law, Governance and Assets, (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 Assistant Director Law, Governance and Assets (Monitoring Officer) is authorised to affix the Common Seal of their respective Council to such contracts.

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

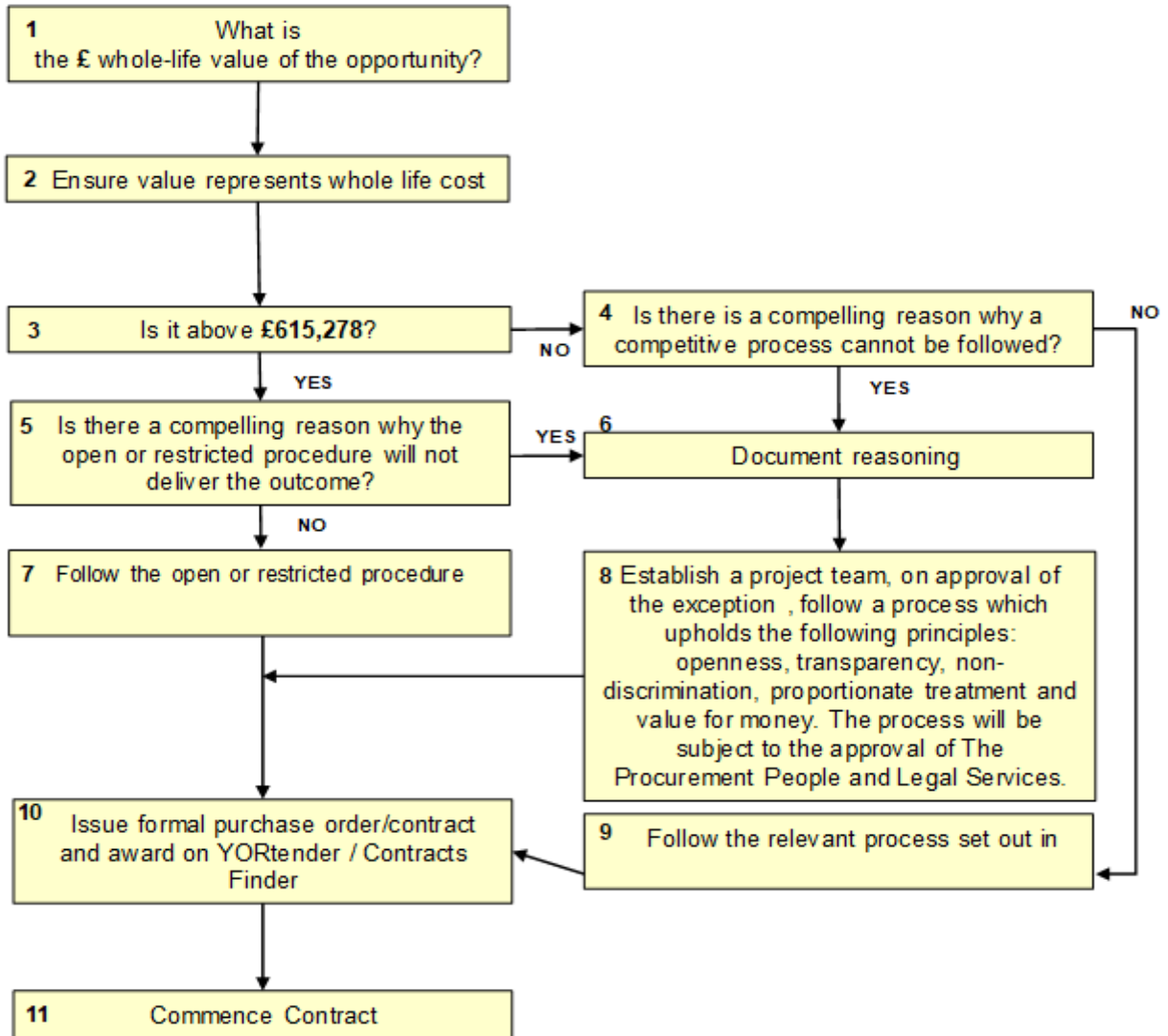
The relevant Officer Decision Record should be completed by the Service Area and published on the council's website as appropriate

### **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 the Assistant Director Law, Governance and Assets (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.

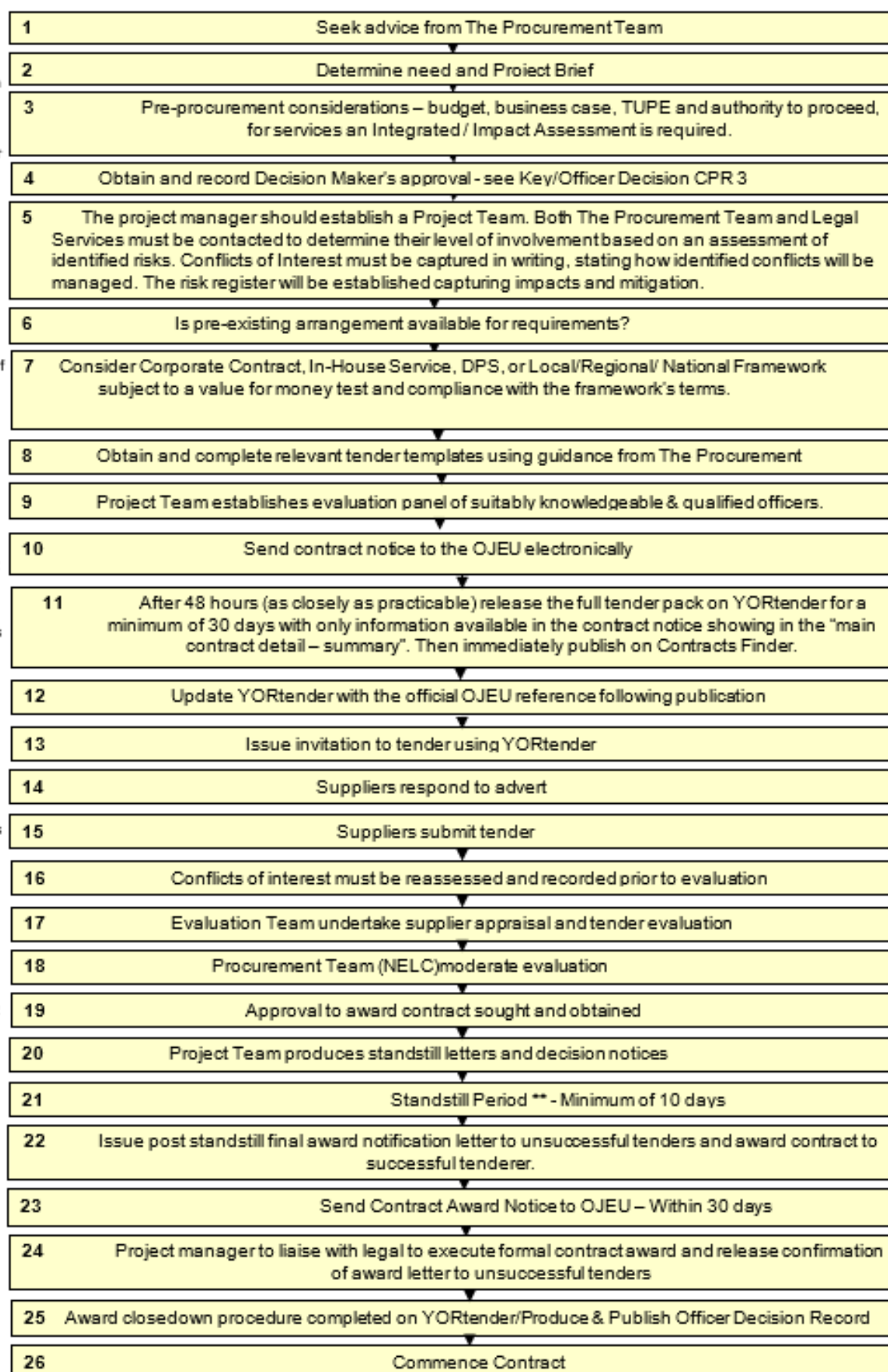


## 27 SUPPLIES/SERVICES/WORKS CONTRACTS ABOVE PCR THRESHOLDS – OPEN

\* 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.

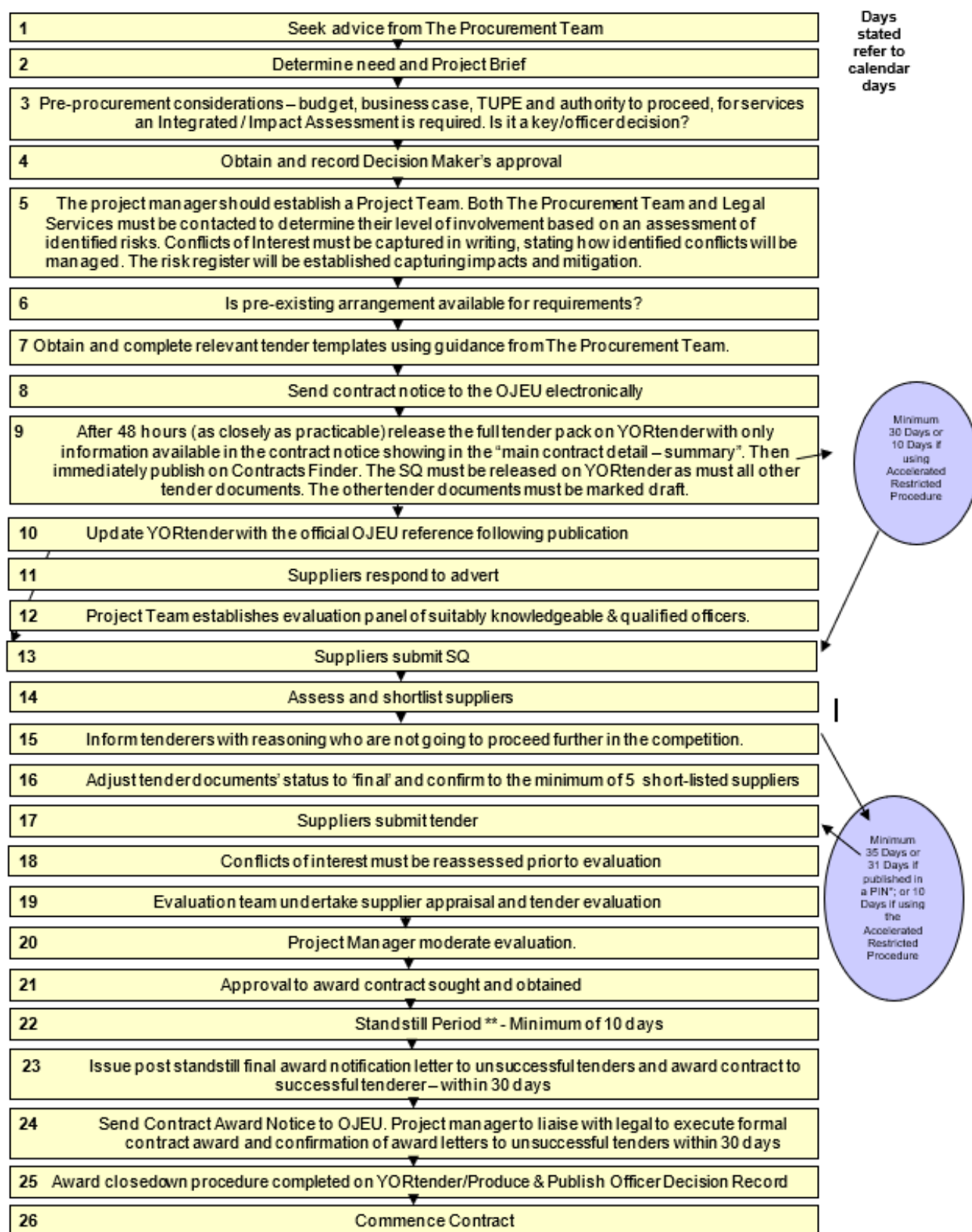
\*\* The date should be 10 days from the notice being sent to all tenderers and candidates. In this context days include weekends and bank holidays but where the last day of the standstill period falls on a non-working day then the standstill period is extended to midnight at the end of the next working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

Days stated refer to calendar days





## **SUPPLIES/SERVICES/WORKS CONTRACTS ABOVE PCR THRESHOLDS – RESTRICTED**



### 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 People and Culture 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 corporate 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 Revised Best Value Statutory Guidance (2015)
- Council Skills Pledge;
- Sustainable/ethical Procurement Policy and
- [Social Value Policy](#)

For all service procurements over Public Contracts Regulations thresholds, 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.

#### Public Contracts Regulations Procedure

Seek advice from The Procurement Team and determine the Public Contracts Regulations procedure to be used.

The Council's standard approach is to use the 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 Assistant Director Law, Governance and Assets, (Monitoring Officer) in accordance with [CPR 13](#)

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

All Find a Tender Service 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 Assistant Director Law, Governance and Assets, (Monitoring Officer).

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.

### 27.1e Advertisement

**Mandatory** Find a Tender Service contract notice approved and issued via the Procurement Team.

After publication of the Find a Tender Service notice, this information is then released on [YORtender](#) advising indicative contract values, followed by its publication on Contracts Finder.

**Optional** –

- Advertising of open opportunities via social media e.g. Twitter, facebook, linkedin and other health and voluntary sector sites subject to The Procurement Team's advice
- One or more specialist trade or professional newspapers or journals where appropriate.
- Direct marketing is permissible, after publication of the Find a Tender Service notice, to include organisations that may not see the opportunity to ensure local / regional / national competition.

The contract notice should be sent to the Find a Tender Service and within 48 hours, the tender should be released on YORtender, unless Find a Tender Service 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.

Once the Find a Tender Service has published the contract notice, update YORtender with the official reference number.

Any supplementary advertisement, (e.g. trade press) of the opportunity may only be published once the Contract Notice has been published on the Find a Tender Service and must not include additional information than is available in the Contract Notice or PIN.

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 Public Contract Regulations and relevant UK legislation.

### 27.1f 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.

### 27.1g Evaluating Tenders

Evaluate tenders 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.

Conflict of interest assessments of the evaluation team are required at this stage.

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.

### 27.1h Post Tender Negotiation

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

#### 27.1i Authorisation to Award

Must be obtained from the relevant Director where consistent in all respects with the 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, the written approval of the Assistant Director Law, Governance and Assets, (Monitoring Officer) must be obtained prior to accepting the 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.

#### 27.1k 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 Assistant Director Law, Governance and Assets, (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 Assistant Director Law, Governance and Assets (Monitoring Officer) is authorised to affix the Common Seal of their respective 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 Award Notice**

Contract award must be announced by means of a Contract Award Notice on the Find a Tender Service 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 the Assistant Director Law, Governance and Assets (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 and 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)

## **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

<https://www.nelincs.gov.uk/council-information-partnerships/fraud-and-corruption/>

## **30 EXCEPTIONS**

30.1 With the approval of:

Under £100,000 Budget Holder

Over £100,000 The Assistant Director Law, Governance and Assets, (Monitoring Officer) there 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.
  - 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. A standard exception form that can be found on the intranet should be completed.

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

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

- 32.1 Disposals under £50,000 must be approved by authorised officers. Items over £50,000 will require portfolio holder consultation.
- 32.2 The process for disposal is detailed in [Annex 1d](#).

## **33 CONTRACT SIGNING & MODIFICATION**

- 33.1 Directors are authorised to sign contracts that do not exceed £100,000 where the Assistant Director Law, Governance and Assets, (Monitoring Officer) has approved the form of contract as appropriate for the type of contract concerned.

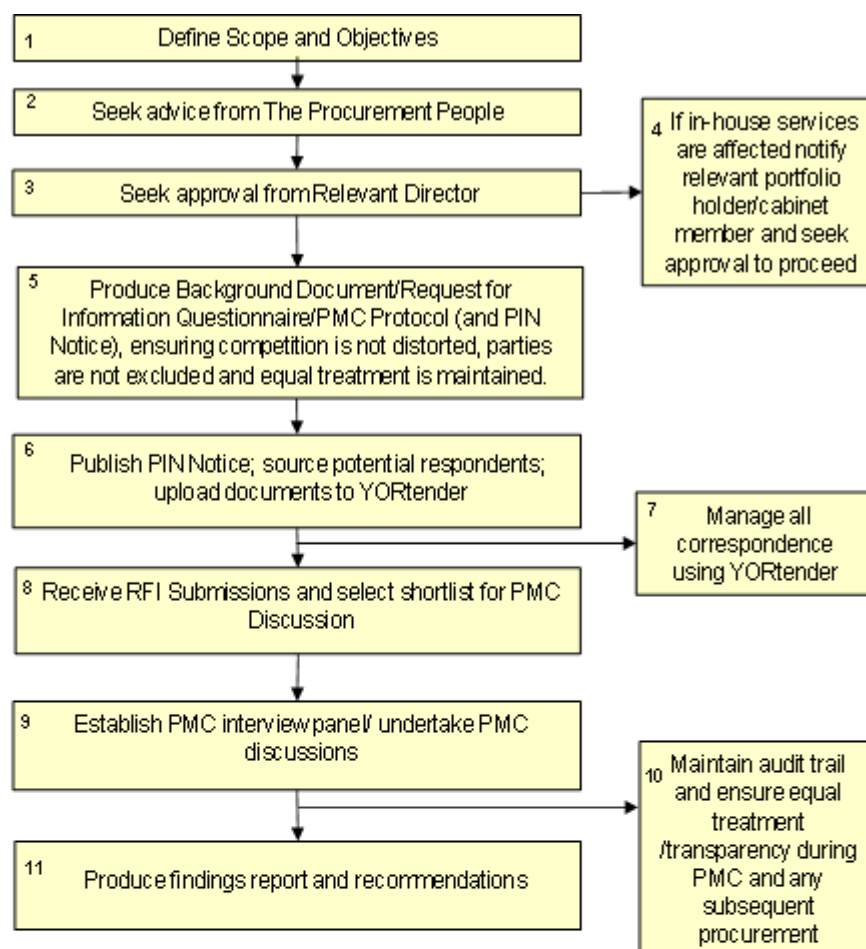


- 33.2 The Assistant Director Law, Governance and Assets (Monitoring Officer) (NELC) is authorised to sign contracts that exceed £100,000 and unless they determine otherwise, such contracts shall be executed by way of deed, under the Common Seal of the Council.
- 33.3 The Assistant Director Law, Governance and Assets (Monitoring Officer) is authorised to affix the Common Seal of their respective 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 Assistant Director Law, Governance and (Monitoring Officer).
- 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 Assistant Director Law, Governance and Assets (Monitoring Officer).

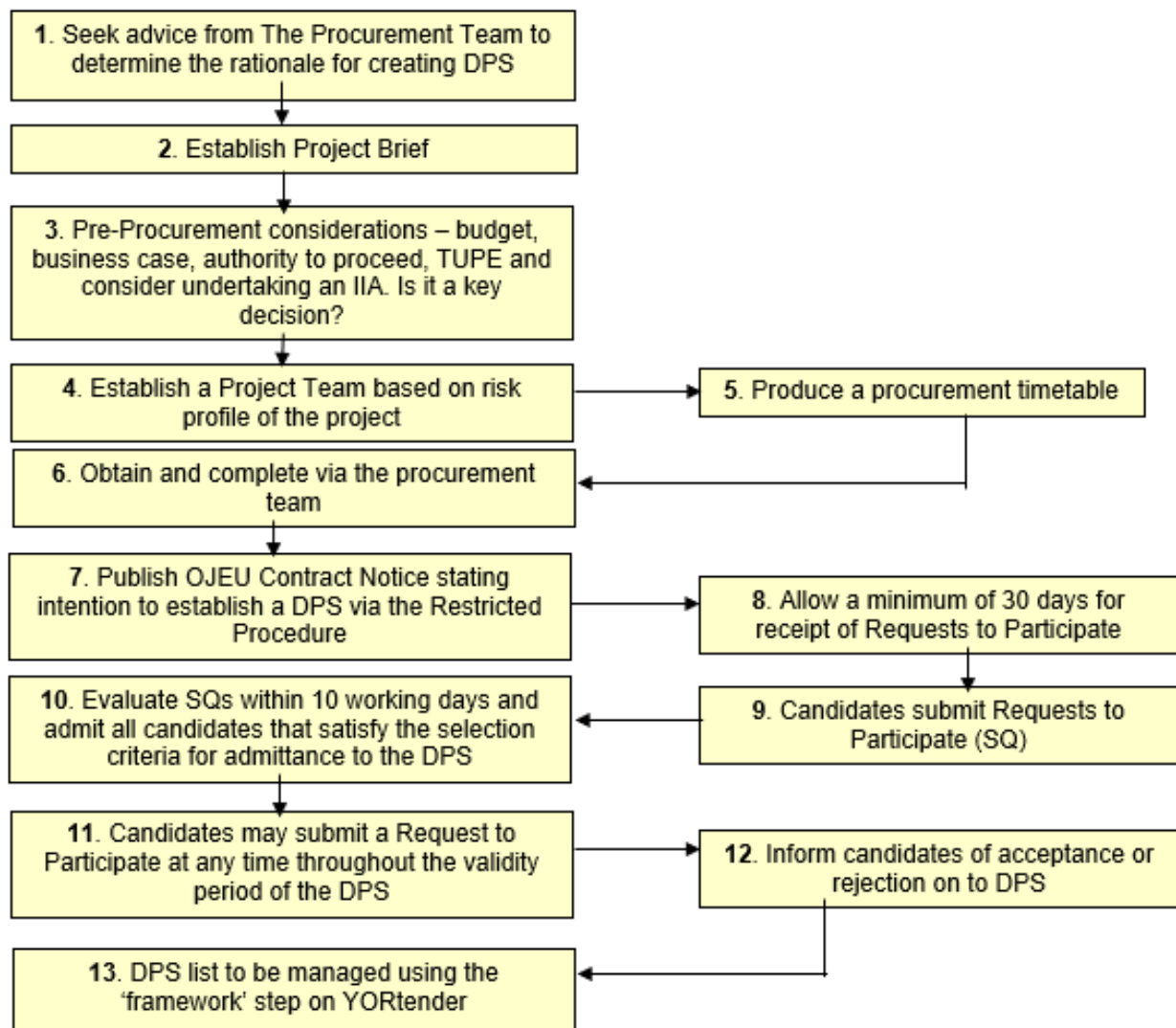
## **34 CONTRACT MANAGEMENT**

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

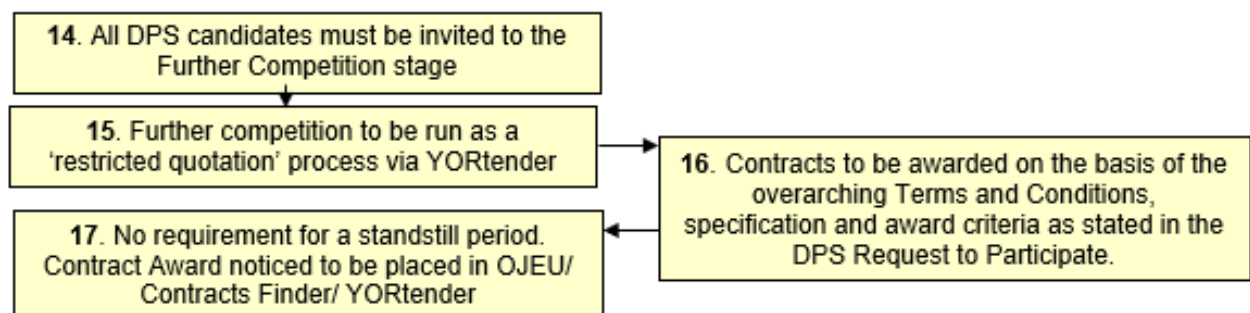
## **ANNEX – 1A – PRELIMINARY MARKET CONSULTATION**



### Stage 1 - Establishment of DPS

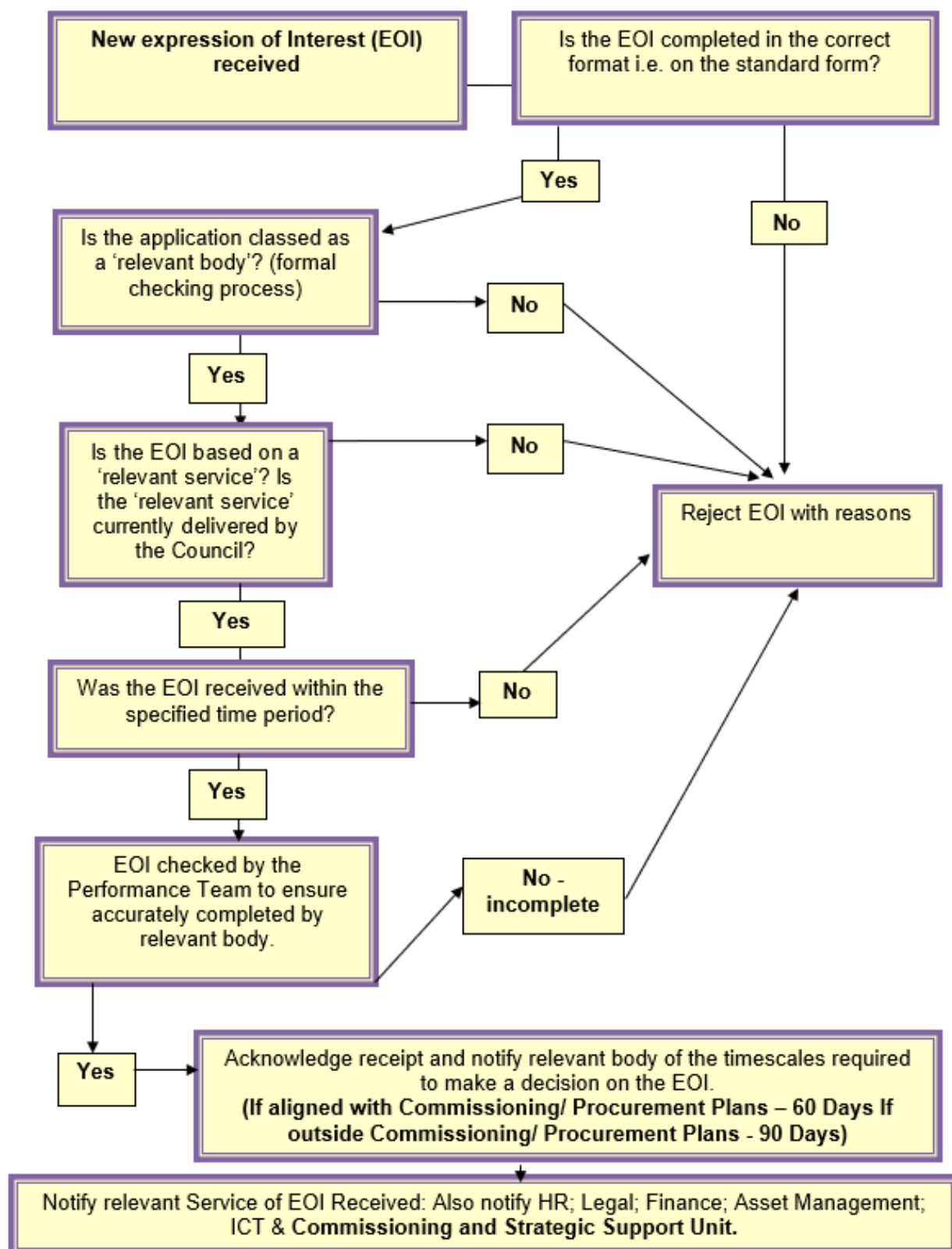


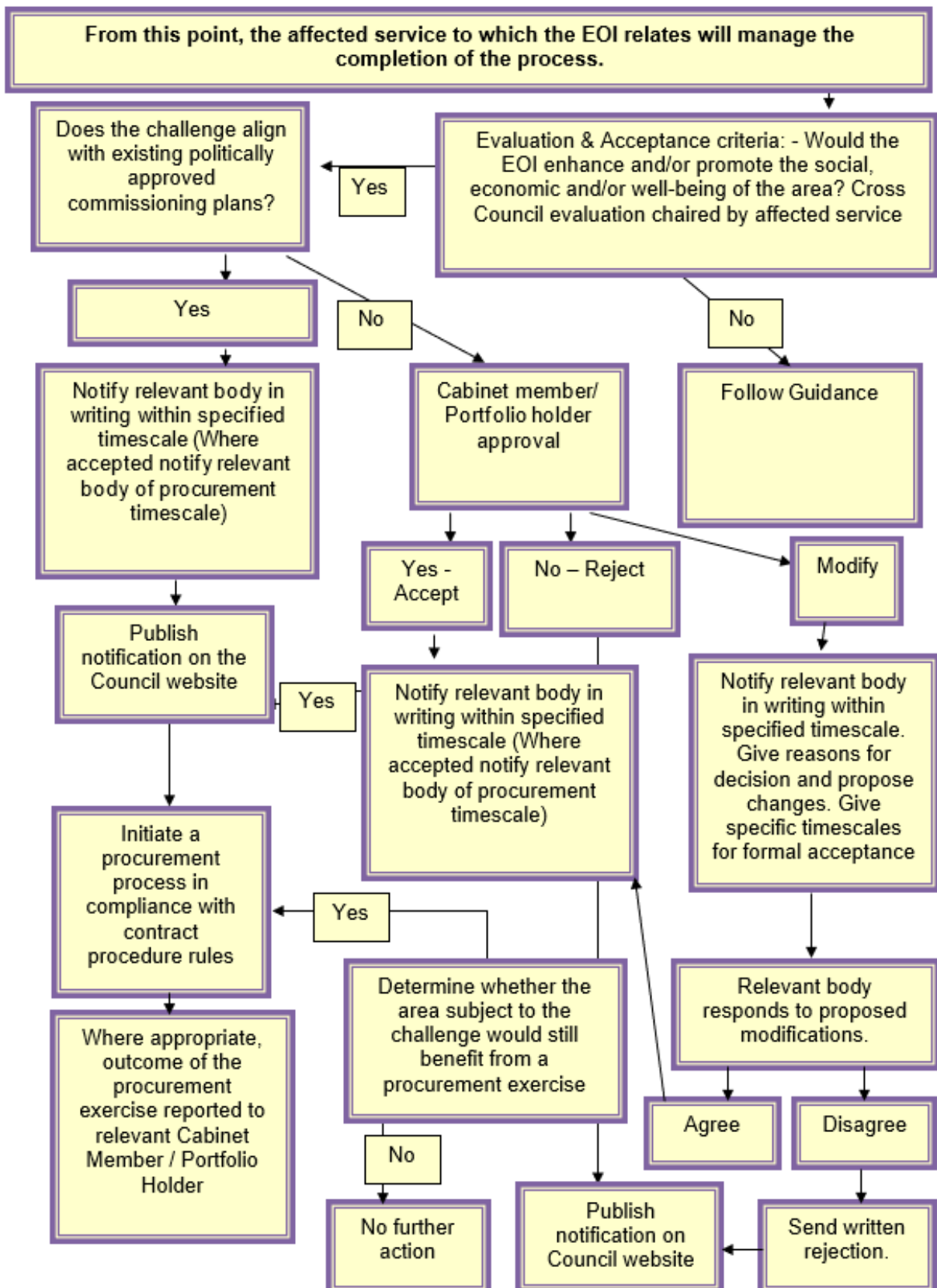
### Stage 2 – Further Competition



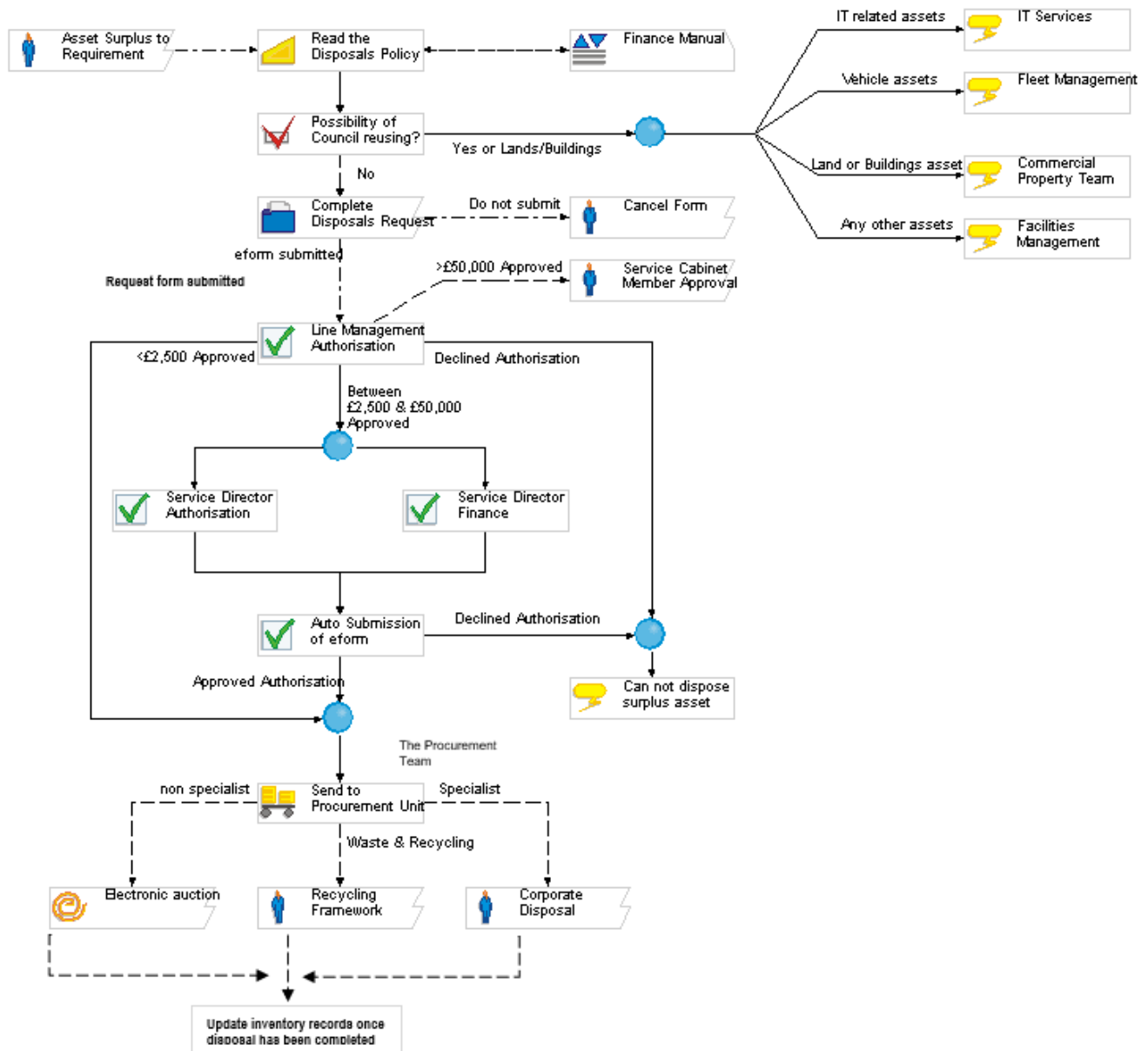
## **ANNEX 1B - DYNAMIC PURCHASING SYSTEMS**

## **ANNEX 1C - COMMUNITY RIGHT TO CHALLENGE EXPRESSION OF INTEREST PROCESS**



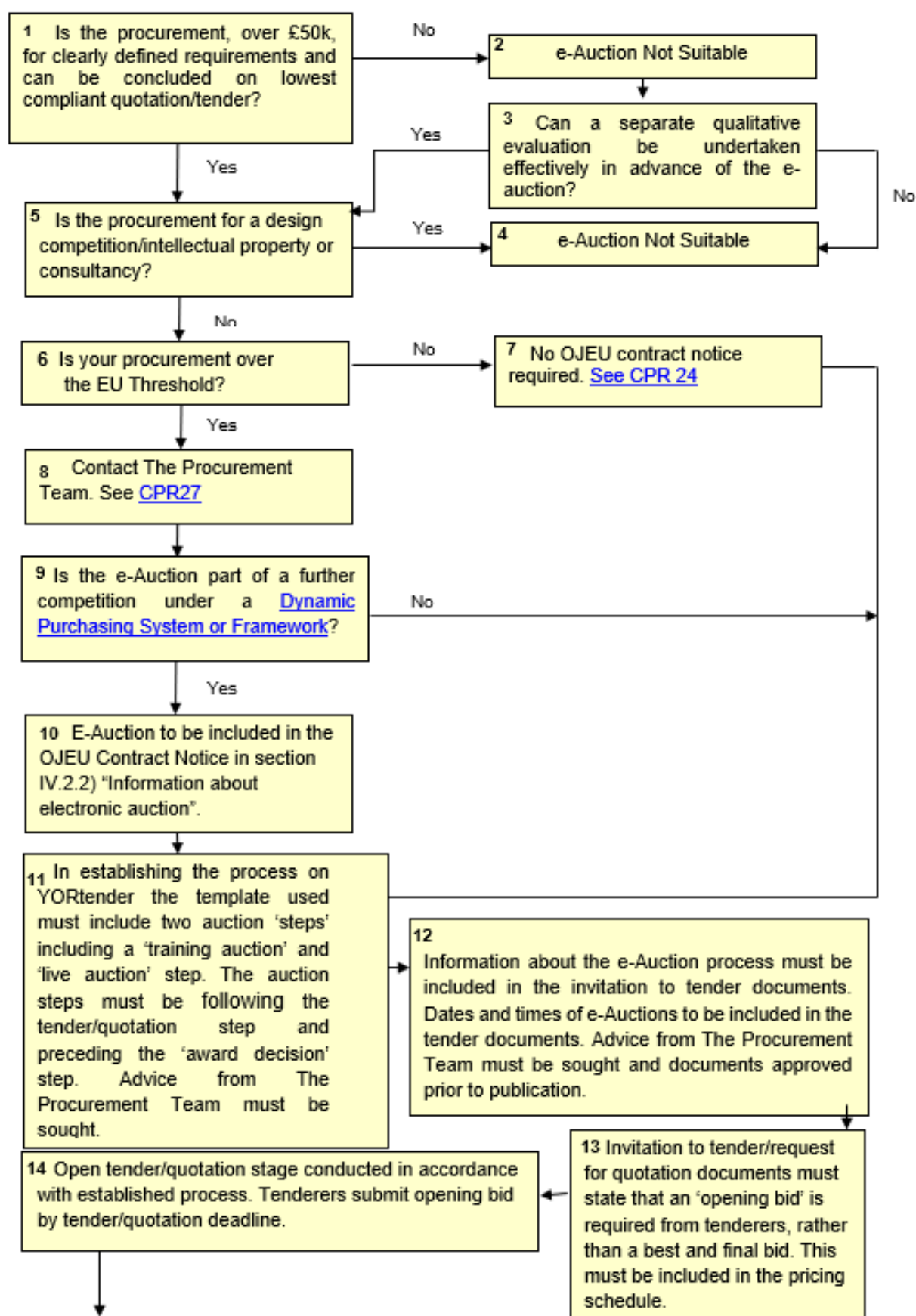


## ANNEX 1D- DISPOSAL AND WRITE OFF OF ASSETS

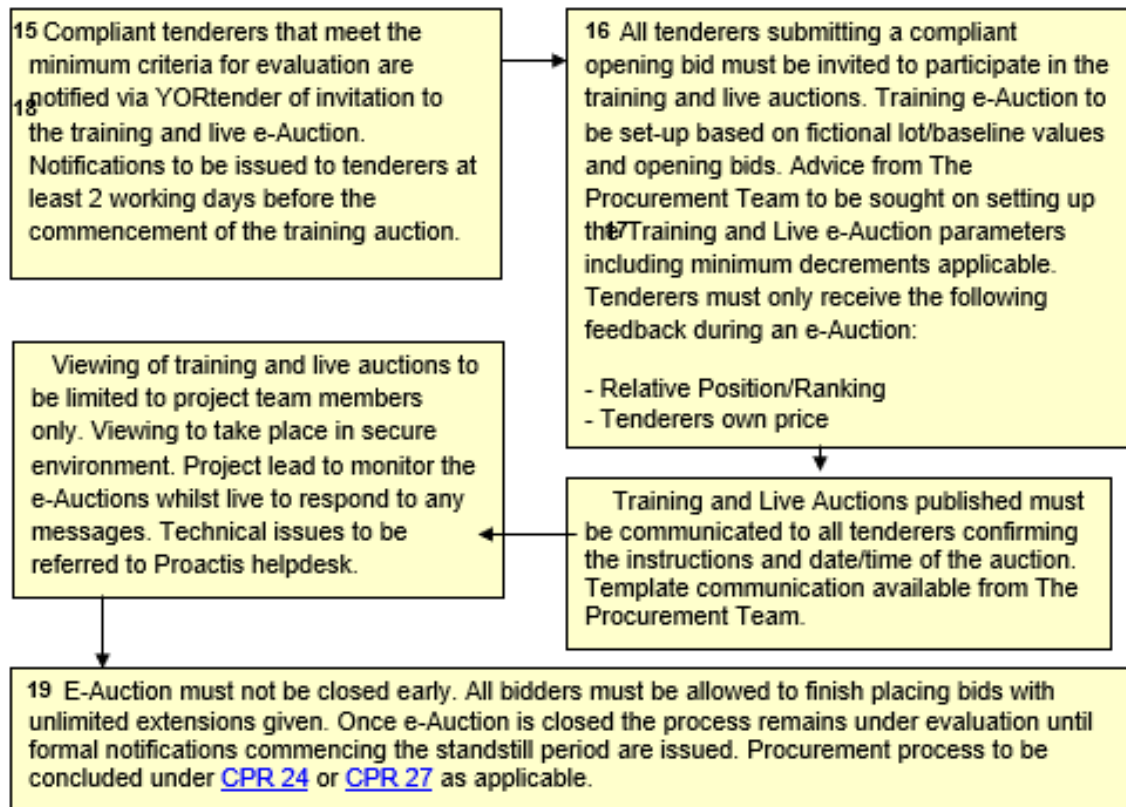




## ANNEX 1E- E-AUCTION PROCESS







## **ANNEX 1F - 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
Contracts Finder	A online database which enables suppliers to search for contract opportunities valued over £10,000, across the nation and sectors.
Corporate Plan	The document by which the Council sets out its priorities and objectives, and how it will achieve them
Corporate 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 East Lincolnshire Borough Council
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.
Engie	Engie, NELC's Regeneration Partner
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 (NELC)	Definition available at - <a href="https://www.nelincs.gov.uk/councillors-and-democracy/decision-making/how-decisions-are-made/">https://www.nelincs.gov.uk/councillors-and-democracy/decision-making/how-decisions-are-made/</a>
	Section 4 (Cabinet Functions) of Article 4 (Decision Making).
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
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.
NELC	North East Lincolnshire 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, People and Culture officer, legal officer and any other expertise required to deliver the outcome.
Procurement Toolkit	Intranet (NELC) 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
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

**COUNCIL**

<b>DATE</b>	17 <sup>th</sup> September 2020
<b>REPORT OF</b>	The Monitoring Officer
<b>SUBJECT</b>	Amendment to Council Standing Orders
<b>STATUS</b>	Open
<b>FORWARD PLAN REF NO.</b>	Not applicable

**CONTRIBUTION TO OUR AIMS**

Good governance arrangements contribute directly to the achievement of the Council's strategic aims.

**EXECUTIVE SUMMARY**

A report advising of a proposed amendment to the Council's Standing Orders regarding questions on the minutes of Cabinet and Committee meetings.

**RECOMMENDATIONS**

That Standing Order 10B be amended as set out in paragraph 1.2 of the report now submitted, effective from the next ordinary meeting of Council in December, 2020.

**REASONS FOR DECISION**

The Standing Orders form part of the Council's Constitution and any changes to the Constitution have to be notified to full Council for formal approval.

**1. BACKGROUND AND ISSUES**

- 1.1 In order to facilitate the effective management of Council meetings, it is proposed that the procedure for submission of Cabinet and Committee Minutes to Council be amended to require that questions on the minutes be submitted in advance of the Council meeting.
- 1.2 As such, it is proposed that Standing Order 10B be amended to read as follows:

**10B      Cabinet & Committee Minutes – Procedure for Submission to Council**

- 10B.1 At each of the scheduled Ordinary meetings of the Council, the Minutes of the Cabinet, Scrutiny and Committees (otherwise referred to as the "Minute Book") shall be moved en bloc (normally) by the Leader of the Council and seconded (normally) by the Deputy Leader of the Council prior to being put to the vote.
- 10B.2 The Mayor shall only invite questions on the minutes of Cabinet, Scrutiny Panels and Committees (otherwise referred to as the

“Minute Book”), where such questions have been received on Notice.

- 10B.3 Questions on Notice must be submitted to the Chief Executive and / or the Monitoring Officer by no later than 11.59pm on the second day before the date of the Council meeting (for example, by 11.59pm on the Tuesday if the meeting is on a Thursday). Questions will be referred to the appropriate Member referred to in 10.B.7. The Member shall provide a response at the Council meeting.
- 10B.4 A schedule of questions received in accordance with this Standing Order shall be made available at the meeting. At the relevant point, the Mayor will invite the questioner to read out their question. One minute shall be permitted for the question to be read out as submitted (without introductory preamble or comment). A supplementary question of one minute in duration (and without introductory preamble or comment) is permitted provided that it arises from the answer to the first question. The Member questioned shall use reasonable endeavours to appropriately respond to the supplementary question. Where a specific data set is requested a written response shall be deemed reasonable.
- 10B.5 No motion shall be permitted in respect of such Minutes except as to accuracy.
- 10B.6 In the case of any Minutes that have been referred to Council for a decision (i.e. a recommendation to Council) the report to the Cabinet or the non-executive committee or Scrutiny meeting which resulted in such a recommendation shall be set out in the agenda for members' information.
- 10.B.7 In the case of questions relating to Cabinet or individual Portfolio Holder business, the Cabinet member whose Portfolio covers the area concerned shall reply. In the case of questions relating to Minutes of a Scrutiny meeting and questions relating to Minutes of any other committee, the relevant Chairman shall reply provided that, in respect of any Scrutiny matter if a question concerns a matter of Council policy, the relevant Portfolio Holder shall also have the right of reply.

## **2. RISKS AND OPPORTUNITIES**

The proposed amendment to Standing Orders is suggested as an improvement to the way full Council meetings are managed while still retaining the opportunity for all Elected Members to question the business of Cabinet and the Committees of the Council.

## **3. OTHER OPTIONS CONSIDERED**

Not applicable.



**4. REPUTATION AND COMMUNICATIONS CONSIDERATIONS**

These matters are reported to the Council as required by the Constitution and to support the continued good governance of the Council.

**5. FINANCIAL CONSIDERATIONS**

There are no financial considerations to be taken into account as a result of the recommendations within this report.

**6. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

There are no climate change or environmental implications arising from the recommendations within this report.

**7. CONSULTATION WITH SCRUTINY**

Not applicable.

**8. FINANCIAL IMPLICATIONS**

There are no direct financial implications arising from the recommendations in this report.

**9. LEGAL IMPLICATIONS**

As set out in the main body of the report.

**10. HUMAN RESOURCES IMPLICATIONS**

There are no direct human resources implications arising from the recommendations in this report.

**11. WARD IMPLICATIONS**

All wards are potentially affected.

**12. BACKGROUND PAPERS**

None.

**13. CONTACT OFFICER(S)**

Paul Windley  
Democratic and Scrutiny Team Manager  
Email: paul.windley@nelincs.gov.uk

**SIMON JONES**  
**MONITORING OFFICER**



To be submitted to the Council at its meeting on 29<sup>th</sup> July 2021

## **STANDARDS AND ADJUDICATION COMMITTEE**

**13<sup>th</sup> April 2021  
9:30 a.m.**

### **Present:**

Councillor K. Swinburn (in the Chair)  
Councillors Bramley, Brookes, Cairns, Callison, Rodwell (substitute for Rogers) and Watson

### **Officers in attendance:**

- Rob Close (Scrutiny and Committee Support Officer)
- Simon Jones (Assistant Director Law, Governance and Assets) (Monitoring Officer)
- Paul Windley (Democratic and Scrutiny Team Manager)

### **SA.7 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillor Rogers.

### **SA.8 DECLARATIONS OF INTEREST**

There were no declarations of interest received in respect of any item on the agenda for this meeting.

### **SA.9 AMENDMENT TO COUNCIL STANDING ORDERS**

The committee considered a report proposing an amendment to the Council's Standing Orders regarding questions on the minutes of Cabinet and Committee meetings. The committee noted that the report was initially considered at the special meeting of the Standards and Adjudication Committee on 18th November 2020, but at the subsequent meeting of full Council on 17th December 2020, the report was referred back to this committee for further consideration.

Mr Windley gave a summary of the report, before the committee were offered the opportunity to ask questions and seek clarification on any matters.

The committee sought reassurance that the appropriate Chair or Portfolio Holder would still be expected to answer questions personally. Mr Windley confirmed that questions would be sent direct to the relevant member and officers would not be expected to draft responses to questions on minutes.

The Chair thanked Mr Windley for his advice and opened the matter up to the committee for debate.

The committee raised concerns that this amendment would reduce the opportunity for members to scrutinise Portfolio Holders' knowledge of policy by allowing them the chance to prepare. Particular apprehensions were raised because of the Special Responsibility Allowance paid to Portfolio Holders.

However, the committee acknowledged that the prior submission of questions would grant the questioner the benefit of an immediate, clear, and comprehensive response. In addition, a questioner would also have the opportunity to ask a follow up question without giving notice.

RECOMMENDED TO COUNCIL - That Standing Order 10B be amended as set out in the report, effective from the next ordinary meeting of Council.

There being no further business, the Chair declared the meeting closed at 9.51 a.m.

## **Protocol on Scrutiny Panel / Cabinet Member Relations**

### **1. Introduction**

- 1.1 This Protocol applies to all members of scrutiny panels, any member who may sit on a scrutiny panel and all members of the Executive (comprising the Leader and the various Cabinet Members). It provides guidance on the way in which both types of members interact to enable the authority to carry out the overview and scrutiny function. The Protocol also outlines the framework and procedures underpinning the operation of scrutiny and provides guidance on role of officers who support this process.

### **2. Objectives**

- 2.1 To enable scrutiny members, officers and Cabinet Members to fully understand their powers, roles and responsibilities in relation to the overview and scrutiny function, so as to maximise their personal effectiveness.
- 2.2 To establish a positive framework and the necessary procedures to enable scrutiny to work effectively.
- 2.3 To promote an ethos of mutual respect, trust and courtesy in the interrelationships between scrutiny members and Cabinet Members and to foster a climate of openness leading to constructive debate, with a view to ensuring service improvements.
- 2.4 To maintain a culture of holding the Executive to account on behalf of the electorate, by monitoring the effectiveness of the Council's policies and through the regular review of its performance in relation to service delivery.
- 2.5 To define and clarify the role of the Executive as an integral component of the scrutiny process.

### **3. Holding the Executive to account**

- 3.1 One of the underpinning principles of overview and scrutiny is the ability of non-executive members to hold the Executive to account. A key method of ensuring accountability is through critically and routinely considering the performance and decisions taken by the Executive.
- 3.2 To facilitate this approach, a scrutiny panel may challenge the Executive about decisions, which it has taken either collectively, or by way of portfolio holder (Cabinet member) decisions. A scrutiny panel may also consider any relevant performance information in respect of the delivery of services. In addition, the panel may query or make recommendations in relation to decisions which the Executive is proposing to take, as set out in the Forward Plan.

- 3.3 The Executive will be required to consider any recommendations or views expressed by a scrutiny panel and to take such action it sees fit. Where any decision taken by the Executive is not in accordance with advice provided by the panel, the relevant Cabinet Member should be prepared to provide an explanation of the reasons for that decision to the panel concerned.

## **4. Powers of the scrutiny panels**

- 4.1 Article 8 of Part 2 of the Council's Constitution, sets out the relevant powers of the scrutiny panels, which include, inter alia:
- review and scrutinise the key decisions made by and performance of the Cabinet, individual portfolio holders and council officers both in relation to individual decisions and over time;
  - assist the Council and the Cabinet in the development of its budget and policy framework by in-depth analysis of policy issues;
  - question members of the Cabinet and chief officers about their decisions and performance, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects;
  - make recommendations to the Cabinet and/or appropriate Panels and/or Council arising from the outcome of the scrutiny process.

## **5. Overview and Scrutiny Panel agendas**

- 5.1 The agenda for ordinary meetings of scrutiny panels will contain an item on the Forward Plan. The purpose of this item is to provide an opportunity for members to ask questions or seek clarification about the nature of any key decisions due to be taken within the next four months and to raise with the Cabinet Member any fundamental issues concerning those proposals to ensure that all relevant views are taken into account.
- 5.2 The agenda for scrutiny panel meetings may include items referred to the panel for pre-decision scrutiny. These may be items either requested by the panel from the Forward Plan or scrutiny may have been included as a consultee on the Forward Plan. In addition, there is a requirement that scrutiny is consulted on budget and policy framework matters prior to consideration by Cabinet and full Council.
- 5.3 The agenda for ordinary meetings of scrutiny panels will also contain an item allowing panel members the opportunity to ask questions of the relevant Cabinet Member on any matter within their portfolio remit.

- 5.4 The agenda of each scrutiny panel meeting will be guided by that panel's work programme. The work programme is generally set at the beginning of each Municipal Year but is subject to amendment throughout the year as matters arise. The relevant Cabinet Member may be invited to comment on the panel's proposed priorities within its work programme, to inform the selection process and to undertake a co-ordinating role by providing advice to the panel about any potential conflict between proposed scrutiny topics and areas of planned policy development. The Cabinet Member may also advise the panel about instances where it may be requested by the Executive to assist in policy development.
- 5.5 The agendas of scrutiny panel will normally include, at such regular intervals as the panels may determine, any relevant performance management information available. The purpose of this item is to assist members to monitor the recent performance of services within its remit against key targets and to make recommendations or to implement a more detailed scrutiny review in relation to those areas of identified weakness.

## **6. Attendance by Executive Members at scrutiny panel meetings (including 'Call-In' meetings)**

- 6.1 Cabinet Members will normally be expected to attend meetings of scrutiny panels within their portfolio remit, for the purposes of being held to account in relation to decisions taken and to answer questions in relation to proposed decisions that have been included within the Forward Plan.
- 6.2 While matters are under debate at scrutiny meetings, Cabinet members in attendance will respond to questions and provide advice on matters under discussion upon request but otherwise not to take part in any debate.
- 6.3 Cabinet Members are encouraged to avail themselves of every opportunity to gauge the views of non-Executive members on any issues falling within their remit. A close working relationship and an open exchange of views will be of particular importance to the Cabinet Member and scrutiny members, where consideration is being given to the development of the Council's budget or policy framework.
- 6.4 Cabinet Members will normally be expected to attend any meetings of scrutiny panels at which it is intended to consider a Call-In request in relation to his/her area of responsibility.
- 6.5 At meetings where call-ins are being considered, the purpose of the Cabinet Member's attendance is to explain the decision taken by Cabinet and answer questions of fact. Cabinet Members need to be careful not to be drawn into the debate, so as to avoid any possible allegations of becoming involved in the scrutiny of their own decisions which may bring them into conflict with the Code of Conduct. It is therefore important to draw the distinction between answering questions of fact and becoming involved in the panel debate into the issue in question.

- 6.6 Unless there are extenuating circumstances, the decision maker should always attend a Call-In meeting. It is accepted however that officers are often better placed to present greater detailed information that led up to the decision and this is deemed to be acceptable although it should always be the decision maker that is held to account.
- 6.7 The following procedure should take place where call-ins are being considered:
- (i) The Member(s) who called in the decision should speak first.
  - (ii) The Chairman would then invite the Cabinet Member (decision maker) to respond.
  - (iii) The Panel can then ask questions of the decision maker who may ask a relevant officer to supply further information if necessary.
  - (iv) The Panel debates the issue and votes on the outcome.
- 6.8 In the event of a situation where the decision maker cannot attend a Call-In meeting, the Leader of the Council or Deputy Leader should attend in their absence. In the event of both the Leader and Deputy Leader being unavailable, they should nominate another Cabinet Member to attend and be accountable for the decision.

## **7. Ethos of the meeting**

- 7.1 All members should promote an atmosphere of openness at scrutiny panel meetings and should strive to ensure that questioning and debate takes place within a climate of mutual respect and trust between the scrutiny panel members, the Cabinet Member and other participants.
- 7.2 Scrutiny panel members should be prepared to ask searching questions of Cabinet Members, who in turn should be willing to respond to any question put. It should however be stated that scrutiny panel members should be aware of and show an understanding of the fact that Cabinet Members may not be in a position to answer every question immediately or in detail
- 7.3 Cabinet Members should, in so far as possible, anticipate and be prepared to answer questions on decisions taken, or proposed to be taken, which fall within their remit. Cabinet Members should also value the contribution of scrutiny panel members who raise questions under these headings and respond in an appropriate and professional manner.
- 7.4 Cabinet Members should normally be authorised by a panel to speak upon any item on the agenda and may at any time offer to assist the scrutiny panel by the provision of factual information or advice in relation to the matters under discussion.
- 7.5 The Chairman of the meeting shall at all times ensure that the conduct of the meeting shall be fair and that all participants are treated courteously.
- 7.6 The Chairman, supported by the officers, should provide leadership and guidance to the panel on all scrutiny matters and should promote the panel's role to improve services and monitor the effectiveness of Council policies.

## **8. Select Committees and Working Groups**

- 8.1 Scrutiny may be tasked with assisting the Executive on policy development matters or it may choose to investigate matters within its work programmes in a more focussed way outside of the usual panel setting. This kind of work is usually undertaken via a select committee or working group. These are essentially task and finish groups, who will have spent time considering background information, witness evidence, and formulating their recommendations.
- 8.2 The Chairman or Vice-Chairman of the task and finish group will be invited to present the final report at a Cabinet meeting. The Cabinet can expect a report that:
- Has clear, concise recommendations;
  - Identifies potential areas for improvement; and
  - Highlights implications including financial, legal, equality, policy, of the recommendations and where possible identify solutions as appropriate.
- 8.3 The relevant Portfolio Holder(s) can assist the review in a number of ways including:
- At the outset of the review, when the task and finish group is considering the scope, methodology and witnesses to give evidence;
  - During the review when the Portfolio Holder can be invited to give evidence;
  - At the end of the review after the task and finish group has produced the first draft of the report.
- 8.4 During the review period the Chairman of the task and finish group is recommended to meet with the Portfolio Holder and Officers:
- To discuss the proposed scope, methodology and sources of evidence for the review and ascertain if the Portfolio Holder has any suggestions to make;
  - To highlight and examine areas of potential agreement or disagreement in relation to the report's findings and recommendations to ascertain if any areas of disagreement can be resolved at the draft report stage, or identify if any further work needs to be done by the task and finish group.
- 8.5 Although this dialogue is encouraged, it is recognised that scrutiny and its task and finish groups are independent of the Cabinet and as such agreement may not be possible on all the findings and conclusions in a draft report.
- 8.6 It is recognised that senior officers have a valuable role to play in the scrutiny process in terms of the provision of factual evidence for a review. At the commencement of an internal review, the Chairman of the task and finish group will notify the relevant Assistant Director, who will then contribute to the review in terms of supplying information and helping to identify suitable witnesses.



- 8.7 The Assistant Director will be given the opportunity to comment and/or make recommendations on a completed draft report in terms of any factual errors. The decision as to whether to incorporate any suggested amendments will remain with the task and finish group.
- 8.8 The responsibility for the implementation of scrutiny recommendations that have been approved by Cabinet will rest with the relevant Assistant Director, who will also be responsible for providing regular updates on progress to the appropriate scrutiny panel.
- 8.9 A completed scrutiny report, together with any comments provided by Officers will be forwarded to Cabinet who will consider whether or not to implement the recommendations contained within the report.
- 8.10 If the content of a report, including any recommendations, is likely to impact on any external organisation, Cabinet will have the opportunity to pass comment, including whether or not it endorses the recommendations, before the report is passed to the external body.

## **9. Attendance by officers at scrutiny meetings**

- 9.1 Meetings of the Scrutiny Panels will be attended by the appropriate Assistant Director and Service Managers with responsibility for any agenda item under discussion. The role of the lead officer will be to assist the Committee through the provision of professional advice and to ensure access to relevant information and personnel.
- 9.2 The attendance of other relevant officers at either Scrutiny Panels, Select Committees or Working Group meetings, will be at the request of the Chairman, who will have regard to the appropriate level of seniority of attendees. In general the relevant officer should not be below the level of Service Manager.
- 9.3 An officer in receipt of a request to attend a Scrutiny meeting should make reasonable efforts to do so. Where an officer is unable to attend on a particular date, he/she should notify the Chairman or lead officer as soon as possible, in order to agree the most appropriate course of action, which may include the attendance of an alternative representative.
- 9.4 Officers in attendance at Scrutiny Panel meetings should be prepared to assist the Cabinet Member in the provision of information to the panel in response to any question raised.
- 9.5 Relevant Officers will normally be expected to attend any meeting of the Scrutiny Panel at which it is intended to consider a Call-In request in relation to his/her service area