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Date: 8th April 2015

Dear Sir/Madam,

A meeting of the **Cabinet** will be held in the **Sirhowy Room, Penallta House, Tredomen, Ystrad Mynach** on **Wednesday, 15th April, 2015** at **2.00 pm** to consider the matters contained in the following agenda.

Yours faithfully,

A handwritten signature in blue ink that reads 'Chris Burns'.

Chris Burns
INTERIM CHIEF EXECUTIVE

A G E N D A

	Pages
1 To receive apologies for absence.	
2 Declarations of Interest. Councillors and Officers are reminded of their personal responsibility to declare any personal and/or prejudicial interest(s) in respect of any item of business on the agenda in accordance with the Local Government Act 2000, the Council's Constitution and the Code of Conduct for both Councillors and Officers.	
To approve and sign the following minutes: -	
3 Special Cabinet held on 25th March 2015.	1 - 4
4 Cabinet held on 1st April 2015.	5 - 8

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To receive and consider the following report on which an executive decision is required: -

- 5 Proposal to Increase Fixed Penalty Notice Fines for Litter and Dog Control Order Offences and to Set Fixed Penalty Notice Fines for Community Protection Notices and Public Space Protection Orders.

9 - 16

To receive and consider the following report, which requires a recommendation to Council: -

- 6 Amendments to Standing Orders for Contracts and Implementation into UK Law of the New European Union Public Contracts Directives 2014.

17 - 46

Circulation:

Councillors Mrs C. Forehead, D.T. Hardacre, K. James, Mrs B. A. Jones, G. Jones, Mrs R. Passmore, D.V. Poole, K.V. Reynolds, T.J. Williams and R. Woodyatt,

And Appropriate Officers.



CABINET

MINUTES OF THE SPECIAL MEETING HELD AT PENALLTA HOUSE, TREDOMEN ON WEDNESDAY, 25TH MARCH 2015 AT 2.00 P.M.

PRESENT:

Councillor K.V. Reynolds - Chair

Councillors:

Mrs C. Forehead (HR and Governance/Business Manager), G. Jones (Deputy Leader and Cabinet Member for Housing), D.T. Hardacre (Performance and Asset Management), Mrs B.A. Jones (Deputy Leader and Cabinet Member for Corporate Services), K. James (Regeneration, Planning and Sustainable Development), Mrs R. Passmore (Education and Lifelong Learning), D.V. Poole (Community and Leisure Services), T.J. Williams (Highways, Transportation and Engineering), R. Woodyatt (Social Services).

Together with:

C. Burns (Interim Chief Executive), S. Aspinall (Acting Deputy Chief Executive), N. Scammell (Acting Director of Corporate Services and S.151 Officer), D. Street (Corporate Director Social Services).

Also in Attendance:

B. Hopkins (Assistant Director 21st Century Schools), P. Elliott (Head of Regeneration and Planning), P. Hudson (Events and Marketing Manager), C. Campbell (Transport Engineering Manager), S. Pugh (Communications Manager), S.M. Kauczok (Committee Services Officer).

1. APOLOGIES FOR ABSENCE

There were no apologies for absence.

2. DECLARATIONS OF INTEREST

Councillors Mrs B. Jones, D.V. Poole, T.J. Williams and R. Woodyatt declared an interest in agenda item 4 – Education Capital 2015/16, in that they sit on the governing bodies of schools included in the proposed capital schemes 2015/16.

MATTERS ON WHICH EXECUTIVE DECISIONS WERE REQUIRED

3. ABERTYSSWG/PONTLOTTYN PRIMARY – OUTCOME OF THE FORMAL CONSULTATION PROCESS

Mr B. Haile, Chair of Abertysswg Primary School had been granted permission by the Leader to address Cabinet in respect of this item. Local ward members, Councillors Mrs G. Oliver and J. Bevan also addressed Cabinet in respect of this item.

Mr Hopkins, Assistant Director 21st Century Schools, presented the report which updated Members on the formal consultation process and sought Cabinet's views on whether to proceed to Statutory Notice. A formal consultation process, accompanied by a consultation document, took place between 17th November and 31st December 2014. During this period a series of meetings was convened, the details of which are set out in the report. A summary of the main issues arising from the consultation process is outlined in the report together with the accompanying notes of the meetings. The main issues which arose during the formal consultation process are summarised in paragraph 3.17. The financial implications are set out in paragraph 5 of the report.

Following the officer's summary, the Chair invited Mr B. Haile, Chair of Abertysswg Primary School governing body, to the table. Mr Haile thanked the Chair for the opportunity to address Cabinet. During the course of his speech, Mr Haile outlined his concerns in particular in relation to the extra travelling distance to the proposed new school, which will not be on a bus route, together with the condition of the safe route to the school. Mr Haile concluded by requesting that the matter be deferred for a site visit.

Councillor J. Bevan (Moriah Ward) and Councillor Mrs G. Oliver (Pontlottyn Ward) expressed their support for the proposed new schools.

Following consideration and discussion, it was moved and seconded that the recommendation in the report be approved. By a show of hands this was unanimously agreed.

RESOLVED that for the reasons contained in the officer's report, Cabinet considered the outcome of the consultation process, including the updated financial information from Welsh Government and agreed to proceed to Statutory Notice.

4. EDUCATION CAPITAL 2015/2016

Councillors Mrs B. Jones, D.V. Poole, T.J. Williams and R. Woodyatt declared an interest in this item in that they sit on the governing bodies of schools identified in the programme.

The report updated Members on proposals for the 2015/16 Education Capital Programme which had been presented to the Education for Life Scrutiny Committee on 24th February 2015. The views of the Scrutiny Committee were reported to Cabinet.

It is proposed to allocate a sum of £2m towards electrical rewiring works in schools over the three year period 2014/15 – 2016/17. The detailed proposals for 2015/16 are outlined in the report and appendix. In terms of Flying Start capital, Welsh Government has approved three bids for Caerphilly for 2015/16 amounting to £856k, the details of which are set out in paragraph 4.10.

Following consideration and discussion, it was moved and seconded that the recommendation in the report be approved. By a show of hands this was unanimously agreed.

RESOLVED that for the reasons contained in the officer's report, the proposals to utilise the Education capital budget for 2015/16 as outlined in the report, be endorsed.

5. VELOTHON WALES 2015

Councillor G. Johnston, Newbridge Ward, had been granted permission to address Cabinet in respect of this item.

The Interim Chief Executive presented the report which updated Members on the Welsh Government's initiative to attract a mass participation cycling event across South Wales on 14th June 2015. On Monday, 23rd March a drop in session was held at Penallta House for Members to discuss the event with the organisers.

The Major Events Unit (MEU) of Welsh Government (WG) is supporting the Event Organisers, Lagardere Unlimited UK, to establish a new cycling event called “Velothon Wales” as part of a planned global roll out of the UCI Velothon Majors Series. The event will involve establishing three routes for up to 15,000 cyclists to take place as a sportive (mass participation) event followed by a UCI classed race for up to 200 elite cyclists.

In order to cater for the event, roads along the proposed routes will need to be fully closed for up to 8 or more hours to allow the installation of essential Traffic Management arrangements and to permit the safe passage of the participating cyclists. This will rely heavily on the support of the local authorities directly affected.

As a result of the proposed road closure programme there is the potential for significant disruption and inconvenience to the public on the day. The Event Organisers have proposed mitigation to reduce this but concerns remain about the number of stakeholders that may be directly affected. The Event Organisers have engaged consultants to implement a Stakeholder Communications and Engagement Plan with those directly affected by the proposed route and are due to present their Event Safety Plans to a Gwent Safety Advisory Group for scrutiny on 20th April 2015.

In that some businesses may be effectively prevented from trading for the day or longer as a result of the proposed road closures, officers have made it clear to the Event Organisers that the Council is not prepared to accept any liability for any claims arising out of the event and will be seeking to obtain a suitable indemnity. The Council has written to the First Minister seeking direction as to whether Welsh Government wishes local authorities to progress the Road Closures in spite of the concerns around disruption and safety. The response from the Minister Mrs Edwina Hart (attached as an appendix to the report) has reaffirmed the strong support of WG for the event.

Councillor G. Johnston, who had been granted permission to address Cabinet in respect of this matter, outlined his strong concerns in respect of the disruption that would be caused by the proposed road closures in his ward and sought advice on the measures that would be in place for anyone needing to travel to an Accident and Emergency Centre during this period. Officers advised that the Emergency Services will continue to operate as normal during the road closures and further advice would be sought from them in terms of the issue raised by Councillor Johnston.

Following detailed consideration and discussion, during which further concerns were raised in relation to the impact of the proposed road closures, it was moved and seconded that the recommendation in the report be approved. By a show of hands this was unanimously agreed.

RESOLVED that for the reasons contained in the officer’s report, following receipt of the proposed routes and associated Traffic Management Plans, Cabinet agreed to consult on the proposals in co-ordination with the Event Organiser’s engagement plans.

The meeting closed at 3.11 pm.

Approved and signed as a correct record subject to any corrections made at the meeting held on 15th April 2015.

CHAIR

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CABINET

MINUTES OF THE MEETING HELD AT PENALLTA HOUSE, TREDOMEN ON WEDNESDAY, 1ST APRIL 2015 AT 2.00 P.M.

PRESENT:

Councillor K.V. Reynolds - Chair

Councillors:

Mrs C. Forehead (HR and Governance/Business Manager), G. Jones (Deputy Leader and Cabinet Member for Housing), D.T. Hardacre (Performance and Asset Management), Mrs B.A. Jones (Deputy Leader and Cabinet Member for Corporate Services), K. James (Regeneration, Planning and Sustainable Development), Mrs R. Passmore (Education and Lifelong Learning), D.V. Poole (Community and Leisure Services), T.J. Williams (Highways, Transportation and Engineering), R. Woodyatt (Social Services).

Together with:

C. Burns (Interim Chief Executive), S. Aspinall (Acting Deputy Chief Executive), N. Scammell (Acting Director of Corporate Services and S.151 Officer), D. Street (Corporate Director Social Services).

Also in Attendance:

E. Lucas (Head of Procurement), B. Hopkins (Assistant Director 21st Century Schools), S.M. Kauczok (Committee Services Officer).

SANDRA ASPINALL, ACTING DEPUTY CHIEF EXECUTIVE

The Chair advised that this was Sandra Aspinall's last Cabinet meeting. Members paid tribute to the manner in which Mrs Aspinall had carried out her duties during the last 6 years and referred to the high esteem in which she was held by Members and Officers. All those present wished her every success and happiness for the future.

1. APOLOGIES FOR ABSENCE

Having previously tendered his apologies for absence, Councillor K. James was able to attend the meeting during consideration of agenda items 4, 5 and 6.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. CABINET – 18TH MARCH 2015

RESOLVED that the minutes of the meeting held on 18th March 2015 (minute nos. 1-10) be approved and signed as a correct record.

MATTERS ON WHICH EXECUTIVE DECISIONS WERE REQUIRED

4. JOINT SUPPLIES SERVICE – CONSTITUTION AMENDMENT

Mrs E. Lucas, Head of Procurement, presented the report which advised Members of the proposed amendments to the Joint Supplies Services Constitution and made recommendations to Cabinet in respect of the changes proposed.

The service, which was established in 1996, has been subject to change and now requires approval in respect of the next steps of the organisation's development. This includes a detailed 5 year business plan and a change in location as the current building and operational site is no longer fit for purpose. A new legal agreement will be entered into which reflects the changes. Whilst there will technically be a new Joint Committee under this agreement, membership of the committee will remain the same. The main changes to the current constitution are set out in paragraph 4.9 of the report.

Following consideration and discussion, it was moved and seconded that the recommendations in the report be approved. By a show of hands this was unanimously agreed.

RESOLVED that for the reasons contained in the officer's report: -

1. The completion of the revised constitution of the Joint Supplies Service on terms to be approved by the Acting Director of Corporate Services and Head of Procurement in consultation with the Cabinet Member, be authorised.
2. The power to incur capital expenditure of up to £100,000 in any one purchase subject to the funds being available in cash reserves, be remitted to the Joint Committee of the Joint Supplies Service.

5. CONSULTATION – PROPOSED ADMISSION ARRANGEMENTS 2016/2017

The report, which was considered by the Education for Life Scrutiny Committee on 24th February 2015, informed Members of the proposed changes to the schools admission arrangements for the 2016/17 academic year. The Assistant Director 21st Century Schools advised that the only significant changes proposed for 2016/17 related to Secondary Schools Rationalisation Phase 1 – Islwyn West.

Following consideration and discussion, it was moved and seconded that the recommendation in the report be approved. By a show of hands this was unanimously agreed.

RESOLVED that for the reasons contained in the officer's report, the proposed changes to the schools admission arrangements for the academic year 2016/17 be endorsed.

6. CABINET FORWARD WORK PROGRAMME

The report sought approval of the Cabinet Forward Work Programme for the period April to June 2015. The Forward Work Programme is updated on a monthly basis to reflect any changes that are made to it.

Following consideration and discussion, it was moved and seconded that the recommendation in the report be approved. By a show of hands this was unanimously agreed.

RESOLVED that for the reasons contained in the officer's report, the Cabinet Forward Work Programme for the period April to June 2015, be approved.

The meeting closed at 2.12 pm.

Approved and signed as a correct record subject to any corrections made at the meeting held on 15th April 2015.

CHAIR

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CABINET – 15TH APRIL 2015

SUBJECT: PROPOSAL TO INCREASE FIXED PENALTY NOTICE FINES FOR LITTER AND DOG CONTROL ORDER OFFENCES AND TO SET FIXED PENALTY NOTICE FINES FOR COMMUNITY PROTECTION NOTICES AND PUBLIC SPACE PROTECTION ORDERS

REPORT BY: ACTING DIRECTOR OF CORPORATE SERVICES AND SECTION 151 OFFICER

1.1 The attached report was considered by the Health Social Care and Wellbeing Scrutiny Committee on 24th March 2015. The report seeks approval for a proposed increase in the level of fines attached to Fixed Penalty Notices for litter and Dog Control Order offences and for a proposed fine for Fixed Penalty Notices under the Anti-social Behaviour, Crime and Policing Act 2014.

1.2 Following consideration and discussion, Members of the Scrutiny Committee unanimously endorsed the recommendations contained in the report, as set out below.

1.3 Members are asked to consider the following recommendations: -

RECOMMENDED that: -

1. The level of fine for Fixed Penalty Notices issued in relation to littering offences under the Environmental Protection Act 1990 is increased to £100 (or £75 if paid within 7 days of the issue).
2. The level of fine for Fixed Penalty Notices issued for breaches of Dog Control Orders under the Clean Neighbourhoods and Environment Act 2005 is increased to £100 (or £75 if paid within 7 days of the issue).
3. The level of fine for Fixed Penalty Notices issued for Community Protection Notices and Public Space Protection Orders offences under the Anti-social Behaviour Crime and Policing Act 2014 is set at £100 (or £75 if paid within 7 days of the issue).

Author: S.M. Kauczok, Committee Services Officer, Ext. 4243

Appendix: Report to Health Social Care and Wellbeing Scrutiny Committee dated 24th March 2015.

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HEALTH SOCIAL CARE AND WELLBEING SCRUTINY COMMITTEE - 24TH MARCH 2015

SUBJECT: PROPOSAL TO INCREASE FIXED PENALTY NOTICE FINES FOR LITTER AND DOG CONTROL ORDER OFFENCES AND TO SET FIXED PENALTY NOTICE FINES FOR COMMUNITY PROTECTION NOTICES AND PUBLIC SPACE PROTECTION ORDERS

REPORT BY: CORPORATE DIRECTOR SOCIAL SERVICES

1. PURPOSE OF REPORT

- 1.1 This report seeks approval for a proposed increase to the level of fines attached to Fixed Penalty Notices for litter and Dog Control Order offences and for a proposed fine for Fixed Penalty Notices under the Anti-social Behaviour, Crime and Policing Act 2014. The report is seeking the views of Members prior to its presentation to Cabinet.

2. SUMMARY

- 2.1 Fixed Penalty Notices (FPNs) are issued for offences of littering and in relation to Dog Control Orders. The current fine for both offences is £75 (or £50 if the penalty is paid within 7 days of issue). Fines are currently set at the statutory default level. The maximum level permitted by the legislation is £150. Legislation governing the litter and dog control order offences states that Authorities must formally stipulate and approve their fixed penalty fines levels if these are to differ from the statutory default level of £75. It is proposed that the level of fine for both offences be increased to £100 (or £75 if paid within 7 days of the issue).
- 2.2 The Anti-social Behaviour Crime and Policing Act 2014 sets a statutory maximum fixed penalty fine of £100 for certain offences under a Community Protection Notice or a Public Space Protection Order with local discretion as to the amount to be set. It is proposed that the level of fine be set at £100 (or £75 if paid within 7 days of the issue).

3. LINKS TO STRATEGY

- 3.1 The Public Protection Division consists of a wide range of protective and regulatory functions that seek to protect, promote and improve the health, safety and economic wellbeing of our communities.
- 3.2 Enforcement of littering, antisocial behaviour, and Dog Control Order legislation contributes to the Healthier, Greener, and Safer themes of the Single Plan, *Caerphilly Delivers*, and supports the following Corporate Aspiration:

Our communities must be safe, green and clean places to live to improve resident's quality of life.

3.3 This report supports the following Corporate Priority:

Affordability - To deliver a medium term Financial Plan aimed at ultimately providing a period of stability that helps the authority to have a range of services in the future that are sustainable.

4. THE REPORT

4.1 Under Section 88 of The Environmental Protection Act 1990, the Authority has the power to take enforcement action for littering offences. At present, when enforcement officers witness the offence, they issue a Fixed Penalty Notice (FPN). The current fine is £75 (or £50 if the penalty is paid within 7 days of issue). Fines are currently set at the statutory minimum. Most fines are paid within 7 days, at the rate of £50. If a fine is not paid then in most cases the offenders are prosecuted. The details of FPNs served for litter during 2013-14 are detailed below:

	FPNs served for Litter
No of fixed penalties issued 1.4.13 – 31.3.14	239
No of fixed penalties paid	218
No of cases of non-payment taken to court	3
No of cases of non-payment awaiting court action	7
No of cases not paid where no further court action is being taken	11
No of warning letters issued	33
Amount Collected (£)	£11,200

4.2 Under the Clean Neighbourhoods and Environment Act 2005 the Authority has the power to take enforcement action for dog control offences for locations where Dog Control Orders have been made. In March 2013 the Authority made Dog Control Orders to exclude dogs and in respect of dog fouling at 97 enclosed children's play areas and 25 Multi Use Games Areas. The current fine is set at the statutory minimum of £75 reduced to £50 if paid within 7 days. No Fixed Penalty Notices have been issued in respect of Dog Control Orders.

4.3 Under the Anti-Social Behaviour, Crime and Policing Act 2014 offences are created for breach of a Public Space Protection Order (PSPO), to prevent anti-social behaviour of a persistent or continuing nature from happening in a geographical area, the 'Restricted Area'. Public Space Protection Orders will replace the current Designated Public Place Orders, which restrict drinking: the current Gating Orders which restrict access to residents only and Dog Control Orders. All current Orders can however remain in place and will continue to be valid for three years from 20th October 2014, following which they will be converted and treated as Public Space Protection Orders. Councils are able to review the need for current orders during the three year transitional period.

4.4 Public Space Protection Orders may also be brought into being for other anti-social behaviour issues not related to alcohol, dogs or access. The new regime introduces a fixed penalty notice provision that can be used as an alternative to prosecution for breach.

4.5 The Anti-Social Behaviour, Crime and Policing Act 2014 also introduces Community Protection Notices (CPNs) that can be issued against individuals, businesses or organisations responsible for anti-social behaviour affecting a community. Breach of a CPN attracts a fixed penalty notice.

4.6 The legislative provisions governing the levels at which fines can be set for litter and dog control are as follows:

- Environmental Protection Act 1990 – Section 88(6A) – states that the Authority must specify the amount of fixed penalty fine that is to be paid for litter offences. If no amount is specified, then the default fine level is £75.
- Clean Neighbourhoods & Environment Act 2005 – Section 60(1) also states that the Authority must specify the amount of fixed penalty fine that is to be paid for dog control order offences. If no amount is specified, then the default fine level is £75.
- Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008 – Section 2 states that the prescribed ranges for both the litter and dog control order offences must be between a minimum of £75 and a maximum of £150. These regulations also state that the Authority can accept a lesser amount if the fine is paid within a specified period (e.g. 7 days) and that lesser amount cannot be less than £50.

- 4.7 The legislative provisions governing the levels at which fines can be set for breach of Public Space Protection Orders and Community Protection Notices under the Anti-social Behaviour, Crime and Policing Act 2014 are as follows;
- PSPOs Section 68- The amount specified must not be more than £100 or a reduced amount if paid within a specified period of not more than 14 days.
 - CPNs Section 52- The amount specified must not be more than £100 or a reduced amount if paid within a specified period of not more than 14 days.
- 4.8 The Authority therefore has the discretion to set and/or vary the levels of fines. It is proposed that Fixed Penalty Notices issued under The Environmental Protection Act 1990, The Clean Neighbourhoods & Environment Act 2005 and the Anti-social Behaviour, Crime and Policing Act 2014 have fines set at £100 reduced to £75 if paid within 7 days.
- 4.9 In 2013-14, Public Protection staff issued 239 Fixed Penalty Notices for littering of which 218 were paid resulting in a total of £11,200 paid fines. Most, though not all, fines were paid at the reduced rate of £50. Looking forward to 2015-16, assuming 239 Fixed Penalty Notices were to be served and 218 paid at the proposed reduced rate of £75, income from littering fines would total £16,350.
- 4.10 There is a possibility that by increasing the fines, the risk of adverse publicity will also increase as, other than Blaenau Gwent CBC that have set their fine at £125 and Gwent Police Penalty Notices for Disorder set at £90, fines are likely to be amongst the highest in the UK (the statutory maximum in England is £80). Additionally, a potential increase in the non-payment rate will increase the need for court action and this will have some resource implications for both Public Protection and Legal Services. We apply to the court for recovery of legal costs, but fines recovered through the courts are awarded to the Home Office rather than to the local authority.
- 4.11 In order to meet the requirements of the legislation in paragraph 4.6 above, the Authority must formally specify and approve any variation to the fixed penalty fines for littering and dog control offences.
- 4.12 At present offences of dog fouling committed on land within the county borough which has been designated under the Dogs (Fouling of Land) Act 1996 attract a Fixed Penalty Notice fine of £75, which cannot be altered and as such these will remain at £75 discounted to £50 if paid within 7 days. It is possible to replace all such designations with a Public Space Protection Order (see paragraph 4.3), but it is not proposed to do so at this time. In 2013/14 Public Protection staff issued 47 Fixed Penalty Notices for dog fouling under the Dogs Fouling of Land Act 1996.

5. EQUALITIES IMPLICATIONS

- 5.1 Dog Control Order legislation provides exemptions in particular cases for registered blind people, deaf people and for other members of the public with disabilities who make use of trained assistance dogs.
- 5.2 There is no requirement for an Equalities Impact Assessment Questionnaire to be completed for this report.

6. FINANCIAL IMPLICATIONS

- 6.1 In 2013-14, Public Protection staff issued 239 Fixed Penalty Notices for littering, attracting paid fines of £11,200. Looking forward to 2015-16, assuming 239 Fixed Penalty Notices were to be served and 218 paid at the proposed reduced rate of £75, income from fines would total £16,350. As the Anti-social Behaviour Crime and Policing Act 2014 is a new piece of legislation it is difficult to predict how many Fixed Penalty Notices might be issued, but the number is expected to be relatively low. It is therefore estimated that there will be additional annual income of approximately £5,000 as a result of the proposals contained within this report.

7. PERSONNEL IMPLICATIONS

- 7.1 An increase in the non-payment rate will lead to an increase in the need for court action and this may have resource implications for Legal Services that will need to be monitored.

8. CONSULTATIONS

- 8.1 This report has been sent to the Consultees listed below and all comments received are reflected in this report.

9. RECOMMENDATIONS

- 9.1 Prior to presentation of this Report to Cabinet the Committee are asked for their views on the following recommendations to Cabinet:
- (i) That the level of fine for Fixed Penalty Notices issued in relation to littering offences under the Environmental Protection Act 1990 is increased to £100 (or £75 if paid within 7 days of the issue).
 - (ii) That the level of fine for Fixed Penalty Notices issued for breaches of Dog Control Orders under the Clean Neighbourhoods and Environment Act 2005 is increased to £100 (or £75 if paid within 7 days of the issue).
 - (iii) That the level of fine for Fixed Penalty Notices issued for Community Protection Notices and Public Space Protection Orders offences under the Anti-social Behaviour Crime and Policing Act 2014 is set at £100 (or £75 if paid within 7 days of the issue).

10. REASONS FOR THE RECOMMENDATIONS

- 10.1 To act as a deterrent to irresponsible dog owners and to those anti-social persons that drop litter. To prevent anti-social behaviour.

11. STATUTORY POWER

- 11.1 Environmental Protection Act 1990 – Section 88(6A)

Clean Neighbourhoods & Environment Act 2005 – Section 60(1)
Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations
2008 – Section 2
Anti Social Behaviour Crime and Policing Act 2014

Author: Ceri Edwards, Environmental Health Manager
Consultees: Councillor David Poole, Cabinet Member for Community & Leisure Services
Dave Street, Corporate Director, Social Services
Rob Hartshorn, Head of Public Protection
Gail Williams, Interim Head of Legal Services & Monitoring Officer
Lisa Lane, Solicitor
David A. Thomas, Senior Policy Officer (Equalities & Welsh Language)
Mike Eedy, Finance Manager
Sian Phillips, Human Resources Manager

Background Papers: None

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CABINET – 15TH APRIL 2015

SUBJECT: AMENDMENTS TO STANDING ORDERS FOR CONTRACTS & IMPLEMENTATION INTO UK LAW OF THE NEW EUROPEAN UNION PUBLIC CONTRACTS DIRECTIVES 2014

REPORT BY: ACTING DIRECTOR OF CORPORATE SERVICES AND S.151 OFFICER

1. PURPOSE OF REPORT

- 1.1 To advise Members and seek Cabinet approval of the proposed amendments to the Council's Standing Orders for Contracts following the implementation into UK Law of the New European Union ('EU') Public Contracts Directives 2014, prior to referral to Council

2. SUMMARY

- 2.1 As a way of background since 2011 the European Commission, Member States and the European Parliament have negotiated a new set of rules covering public contracts and the procurement discipline. The purpose of the EU procurement rules is to open up the public procurement market and to ensure the free movement of supplies, services and works within the EU. Following extensive consultation throughout the EU including Wales the new rules were agreed by the European Commission and came into force on 17 April 2014. Subsequently Member States including the UK were required to transpose the new rules into national law within twenty four (24) months of the aforementioned date.
- 2.2 On 26 February 2015 the UK formally implemented the New EU Public Contracts Directives 2014 into national law via the UK Public Contract Regulations 2015 ('Regulations'). The implementation of the new Regulations will undoubtedly impact all public sector organisations procurement operation/ function together with any associated rules and procedures.
- 2.3 Standing Orders for Contracts ('SOFC') is an element of the Council's Constitution which details how decisions are made and the procedures which are followed when undertaking the procurement discipline and contracting with third party organisations. The current version of SOFC together with the adoption of the Welsh Government Procurement Policy, Caerphilly County Borough Council Procurement Policy and Strategy was presented and approved by Council on 19 November 2013. The 2013 report also advised Members of the potential changes to the EU Public Contracts Directives.
- 2.4 Due to the implementation of the new Regulations there has been a need for Officers within Legal, Audit and Procurement to review and update the Council's SOFC to ensure legal compliance with the new Regulations.

3. LINKS TO STRATEGY

- 3.1 The Council is under a duty to keep under review its constitution arrangements. SOFC forms part of the Council's Constitution and therefore the recommendations in this report supports that obligation.

4. THE REPORT

- 4.1 The Council's Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that decision making is efficient, transparent and accountable to local people.
- 4.2 In 2010, the Head of Legal Services, Head of Corporate Finance and Head of Procurement completed a review of SOfC, after extensive consultation, the revision was presented and approved by Council on 27 April 2010. Subsequently the current version of SOfC together with the adoption of the Welsh Government Procurement Policy, Caerphilly County Borough Council Procurement Policy and Strategy was presented and approved by Council on 19 November 2013. This approach demonstrates the Council's commitment of continuously reviewing its Constitutional requirements and meeting the aims and objectives of modern day Procurement.
- 4.3 Implementation of the new Regulations supports not only the UK and Welsh Government priorities for Procurement but fundamentally the aims and objectives of this Council. The changes provide a much more modern, flexible and commercial approach with many new features added to streamline and modernise public sector procurement. Simplistically it is envisaged that the new rules will allow contracting authorities to run procurement exercises faster, with less red tape and more focus on getting the right supplier and the best tender. For suppliers the process of bidding for public contracts should be quicker, less costly and less bureaucratic, enabling suppliers to compete more effectively.
- 4.4 The new regulations will help to deliver the Council's aims and objectives for modern day procurement and many of the new rules are inline with the Council's wider policies and strategies namely:
- Community Benefits
 - Open, Accessible Competition
 - Simplified Standard Processes
 - Electronic Procurement & Timescales
 - Supplier Engagement & Innovation
 - Reserving Contracts
 - Temporary Exemption for Public Service Mutuals
 - Improving Quality of Bids
 - New Lighter Regime / New Rules for Social Services
 - New Reporting and Governance Requirements.
- 4.5 The Council's current version of SOfC is generally considered to be effective; however, there are amendments required to ensure compliance with the new procurement Regulations. The proposed amendments are summarised in **Appendix A** together with SOfC as amended. The amendments will ensure compliance with the new Regulations and allow a legally secure operational guide to procuring in an open, fair and transparent manner whilst maintaining all the principals of the new procurement rules.
- 4.6 To support the implementation of the new rules, training and workshop sessions have been provided to relevant Officers across the Council. These sessions, which have been well received by Officers were undertaken by external practitioners covering both the procurement and legal disciplines. Furthermore continued support and training on SOfC will be provided by Officers of the Corporate Procurement Unit together with providing on going advice and guidance on the new Regulations in consultation with the Council's Legal Services. In addition guidance documentation such as the procurement Code of Practice will be updated in due course and will be a further support mechanism.
- 4.7 Unfortunately there was limited notification given by UK central government for the implementation of the new Regulations, therefore extensive consultation across the Council on the practical operation (day-to-day) of SOfC has not been possible. However a consultation exercise will be undertaken over the next few months and any amendments proposed as a result of the consultation exercise will be presented to members for ratification.

5. EQUALITIES IMPLICATIONS

- 5.1 An EqIA screening has been completed in accordance with the Council's Strategic Equality Plan and supplementary guidance and no potential for unlawful discrimination and/or low level or minor negative impact have been identified, therefore a full EqIA has not been carried out.

6. FINANCIAL IMPLICATIONS

- 6.1 There are no financial implications associated with the amendments to Standing Orders for Contracts, or the implementation of the New EU Public Contracts Directives 2014 via the UK Public Contract Regulations 2015.

7. PERSONNEL IMPLICATIONS

- 7.1 There are no personnel implications

8. CONSULTATIONS

- 8.1 Consultations on report and its proposals have taken place, comments and views are reflected within the report.

9. RECOMMENDATIONS

- 9.1 It is recommended that

9.1.1 Cabinet note and approve the proposed amendments to the Council's Standing Orders for Contracts in line with proposals set out within Appendix A and recommend to Council that the Council's Monitoring Officer be authorised to make the necessary amendments to the Council's Constitution to reflect the approved amendments.

9.1.2 Members note the implementation of the New EU Public Contracts Directives 2014 via the UK Public Contract Regulations 2015 and how the new rules support the Council's aims and objectives for modern day procurement.

9.1.3 Members note that due to the limited timeline on the implementation of the new Regulations an extensive consultation across the Council on the practical operation (day-to-day) of Standing Orders for Contracts has not been possible. However a consultation exercise will be undertaken in the next few months and any amendments proposed as a result of the consultation exercise will be presented to members for ratification.

10. REASONS FOR THE RECOMMENDATIONS

- 10.1 To ensure that the Council's rules on the procurement of goods, works and services remain fit for purpose and in compliance with Procurement Regulations.

11. STATUTORY POWER

- 11.1 Local Government Act 1972, The European Union Treaty & Directive made thereunder, Public Contract Regulations 2015.

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Background Papers:

New European Union ('EU') Public Contracts Directives 2014

UK Public Contract Regulations 2015

Caerphilly CBC Standing Orders for Contracts

Appendices:

Appendix A: Proposed Amendments and Standing Orders for Contracts

STANDING ORDERS FOR CONTRACTS

INDEX

Page

1	Introduction	1
2	Form and Certification of Contracts	1
3	Compliance	2
4	Exempt Contracts	2
5	Internal Providers	3
6	Authorised and Delegated Officers	3
7	Preliminary Market Consultation	3
8	Division of Contracts into Lots	4
9	Framework Agreements	4
10	Shared Services	4
11	Collaborative Arrangements	5
12	Estimating the Contract Value	5
13	Low Value Procurement (Quotations) – Below £10,000	5
14	Intermediate Value Procurement (Tenders) – Between £10,000 and £75,000	5
15	Medium Value Procurements (Tenders) – Between £75,000 and £172,514 (for Goods and Services) or less than £4,322,012 (for Works).	5
16	High Value Contracts for Goods & Services (Tenders) – Over £172,514	5
17	Schedule 3 Services (Light Touch Regime) between £75,000 and £625,050	5
18	High Value Contracts for Works (Tenders) – Over £4,322,012	5
19	Late Quotations or Tenders – Reduced number of quotations or tenders	6
20	Tender Evaluation	6
21	Errors in Tenders/Quotations	6
22	Abnormally Low Tenders	7
23	Post Tender Negotiation	7
24	Contract Award Notice	7
25	Contract Terms and Conditions	7/8
26	Security and Performance	8
27	Liquidated and Other Damages	8
28	Termination of contract	8
29	Sub – Contracting	8
30	Consultants	9
31	Record and Document Retention and Control	9
32	Waiver of Standing Orders for Contracts	9
App A	Appendix A: Low Value Procurement (Quotations) below £10,000	10
App B	Appendix B: Intermediate Value Procurement (Tenders) between £10,000 and £75,000	11
App C	Appendix C: Medium Value Procurements (Tenders) - Between £75,000 and £172,514 (for Goods and Services) or less than £4,322,012 (for Works).	12
App D	Appendix D: High Value Contracts for Goods & Services (Tenders) – Over £172,514	13

App E	Appendix E: High Level Schedule 3 Services (Light Touch Regime) between £75,000 and £625,050	14
App F	Appendix F: High Value Contracts for Works (Tenders) – Over £4,322,012	15

1. Introduction

These Standing Orders for Contracts are made under Sections 135 (1) and 135(2) of the Local Government Act 1972. They shall apply to all areas of Council activity, including any type of sub-contracting, apart from contracts for the acquisition and sale of interests in land and the Exempt Contracts described in section 4 below. The funding for all contracts must be in accordance with approved budgets and comply with Financial Regulations.

One of the most significant areas of Council contracting is procurement. Procurement is the process by which the Council manages the acquisition of all its Goods, Services (including but not limited to consultants/consultancy services of any type) and Works of all sorts. It includes the identification of need, consideration of options, the actual procurement process and the subsequent management and review of the contracts. These 'Standing Orders' should be read in conjunction with the Council's Procurement Code of Practice.

Procurement by the Council is governed by detailed European and UK legislation, as are other areas of Council contracting. The law requires **all** Council procurement and contracting to be conducted transparently, fairly and in a non-discriminatory and disproportionate manner. In the event of statutory or other legal requirement exceeding the requirements contained within these Standing Orders for Contracts, then statute shall take precedence over any provision in these Standing Orders.

All references to competitive tenders and quotations within these Standing Orders shall apply (with such changes as are appropriate) equally to circumstances where the contract involves the receipt of income by the Council or the disposal of any asset or undertaking by the Council, as they do to purchases to be made by the Council, unless specifically stated otherwise. However, the disposal of any interest in land and buildings is governed by a separate protocol contained with the Council's Constitution.

Any doubt or uncertainty as to how these Standing Orders are to be interpreted and any inconsistency between these Standing Orders and any other Council document shall be referred to the Head of Legal Services, whose decision shall be final.

2. Form and Certification of Contracts

- 2.1 Every Council Contract shall be in writing in a form and on terms approved by the Head of Legal Services and shall specify: -
- a) The work, materials, services or things to be furnished, had, done or disposed of.
 - b) The price to be paid (or, as appropriate, the sums to be received), with a statement of discounts or other deductions, and where not known, committed estimated price, or the basis upon which the final contract sum is to be calculated.
 - c) The time or times within which the contract is to be performed, together with the termination date of the contract.
- 2.2 The flowcharts in the Appendices set out the prescribed routes for all procurements in the six bands of contract value (A, B, C, D, E and F– see sections 13 to 18 below). These flowcharts show the principal rules and components of the relevant processes only, including the numbers of tenders or quotes to be invited. Detailed guidance of the processes is contained in the Procurement Code of Practice, which should be followed in all cases.
- 2.3 The flowcharts in the Appendices specify who is Delegated to sign a contract on behalf of the Council in each Band. Signatories are the minimum level of responsibility required. More Senior Officers can be substituted in all cases.

2.4 Contracts in Band C,D, E and F can be (as well as those contracts specified by the Head of Legal Services) under seal and attested by the Head of Legal Services or the Chief Executive or such other Officer Delegated in writing by either of them.

3. Compliance

3.1 Every contract entered into by the Council shall be entered into pursuant to or in connection with the Council's functions and shall comply with:

- (a) All relevant statutory provisions;
- (b) The relevant European Procurement Directives (the EU Treaty, the general principles of community law and the European Union's Public Contracts Directive (2014/24/EU) implemented by the Public Contracts Regulations 2015 or such other amendment, variation or replacement Regulations in force from time to time (" Regulations"))
- (c) The Council's Constitution including these Standing Orders for Contracts, the Council's Financial Regulations and Scheme of Delegation.

3.2 The highest standards of probity are required of all Officers and Members involved in the procurement, award and management of Council contracts. Any serious non-compliance could lead to the Council's disciplinary procedures being invoked.

3.3 Officers and Members are reminded of their responsibilities in relation to gifts and hospitality and should ensure that they comply with the obligations set out in the Members' Code of Conduct and Officers' Code of Conduct respectively and any guidance issued in that regard.

3.4 Officers shall take appropriate measures to effectively prevent, identify and remedy Conflicts of Interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all Contractors as set out in the Regulations.

3.5 All contracts must contain a provision allowing the Council to terminate without compensation in the event that there has been actual or attempted fraud or corruption in connection with the procuring, continuation, renewal or performance of the contract. Including appropriate exclusion grounds as set out in the Regulations.

3.6 Any failure to comply with any of the provisions of these Standing Orders for Contracts, the Financial Regulations or UK and European Union legal requirements must be reported by the appropriate Director to the S151 Officer.

4. Exempt Contracts

4.1 The following contracts are exempt from the requirements of these Standing Orders:

- (a) Employment contracts (this exemption does not extend to the recruitment of agency staff or external secondment arrangements).
- (b) Contracts relating **solely** to disposal or acquisition of an interest in land and property, for which there is a separate protocol contained within the Council's constitution.
- (c) In a genuine emergency threatening public health, injury to persons or serious and immediate damage to property the Authorised Officer can take any necessary action to alleviate the threat. This power is limited to the alleviation of the threat and does not extend to any works beyond what is strictly essential.
- (d) In circumstances where a matter, which is not deemed to be an emergency, but nonetheless is considered to be of an urgent nature, arises, prior approval from the appropriate Head of Service must be given in writing. However, should the estimated expenditure exceed £20,000 approval must be sought from 2 of the following Officers:

- S.151 Officer, Head of Legal or Head of Procurement subject to an upper threshold prior to the commencement of the procurement process of £100,000 for goods, works and services.

Where it has been necessary to procure under 4.1 (c) or (d) every such case must be reported to the next available meeting of Corporate Management Team.

- (e) The appointment of Counsel.
- (f) The award of contracts for 'emergency' individual placements will remain at the discretion of the Corporate Directors with responsibility for Education & Lifelong Learning and Social Services in accordance with the Regulations.
- (g) Where the approving (or Delegated) Officer considers that additions, maintenance or repairs can only be carried out by the original contractor or supplier.

Where it has been necessary to procure under 4.1 (e), (f) or (g) the provisions of para. 19.2, 19.3 and 19.4 should be followed.

- (h) Where an external funder makes specific requirements i.e. the terms and conditions of the funding must be followed.

5. Internal Providers

- 5.1 Before commencing the procurement activity and subject to 4(h) above, the Head of Service or Authorised Officer shall ascertain whether an in-house service provider is able to carry out the works or service. If it is confirmed in writing by the in house provider that they do not have the capacity to undertake the works, the relevant Head of Service can proceed to procure in accordance with these Standing Orders. For the purposes of this clause an in-house provider must be able to demonstrate that not more than twenty five percent on the labour element of the value of work for the proposed contract would need to be sub-contracted to the private sector.
- 5.2 Where the in-house provider is able to and has the capacity to undertake the works, the works should automatically be allocated subject to approval of the relevant Head of Service and in accordance with any funding terms and conditions and such decisions shall be recorded in writing. If in such a case the relevant Head of Service does not wish to use the in-house provider then they must seek approval from the Council's Corporate Management Team prior to the commitment of the procurement.
- 5.3 All contracts over £10,000 allocated directly to in-house providers must be entered on the Corporate Contracts Register.

6. Authorised and Delegated Officers

- 6.1 Authorised Officer - This phrase refers to those Officers named in the Central Register held by the Head of Procurement. These Officers are Authorised to lead a given procurement process on behalf of the Council but have no Delegated powers.
- 6.2 Delegated Officer - This phrase refers to those Officers who have powers Delegated to them in writing by either; the Chief Executive, Director, Head of Service or Head of Procurement and can therefore complete actions where explicitly permitted in accordance with the processes and procedures as detailed within these Standing Orders for Contracts.

7. Preliminary Market Consultations

- 7.1 Before commencing a Procurement the Council may conduct market consultations with a

view to preparing the procurement and informing Contractors of the Council's procurement plans and requirements, including seeking or accepting advice from independent experts or Contractors.

- 7.2 Prior to undertaking market consultation, advice and guidance must be sought from the Head of Procurement to ensure that such preliminary consultation does not have the effect of distorting competition and does not result in violation of the principles of non-discrimination, transparency and proportionality.

8. Division of Contracts into Lots

- 8.1 The Council may where it considers appropriate decide to award a contract in a form of separate lots and may determine the size and subject matter of such lots in accordance with the Regulations.
- 8.2 Where the Council has decided not to subdivide a contract into lots it shall provide an indication of the main reasons within the procurement documentation or as provided within the Regulations.

9. Framework Agreements

- 9.1 Before commencing the procurement activity, in consultation with the Head of Procurement (or Delegated Procurement Officer), the Authorised Officer must ascertain whether there is an approved Framework Agreement in place that should be used. Details of all Framework Agreements are held on the Council's Corporate Contracts Register. Details of use of Framework Agreements can be found in the Procurement Code of Practice.
- 9.2 The Framework Agreement may include within its terms a requirement for a mini competition exercise between those Contractors who are parties to the Framework Agreement. These shall be tendered in accordance with the particular Framework Agreement and these Standing Orders for Contracts. Procedure details are available within the Procurement Code of Practice.
- 9.3 Where the Council is able to call off from existing Framework Agreements procured by central Government agencies, purchasing consortia or other local authorities or public bodies, then the Council may benefit from using those contracts without entering into a separate procurement exercise. Where such Framework Agreements contain a number of different Contractors able to provide a particular category of goods or services a mini competition exercise between those Contractors who are parties to the Framework Agreement must be carried out in accordance with the particular Framework Agreement.
- 9.4 However, if such Framework Agreements are used it will be in accordance with the terms of those agreements which may not always be appropriate to the particular procurement in question. Advice should be sought from the Head of Procurement (or Delegated Procurement Officer) prior to commencing procurement through any Framework Agreement.
- 9.5 The setting up of Framework Agreements is governed by detailed EU and UK legislation. Before setting up any framework Agreement, the Procurement Code of Practice must be consulted, and any uncertainties or questions addressed to the Head of Procurement (or Delegated Procurement Officer). Any Framework Agreement set up by a client department must be notified to the Head of Procurement by the Head of Service or Authorised Officer in order that the Procurement department can incorporate the Framework Agreement into the Corporate Contracts Register for use by other departments where applicable.

10. Shared Services

- 10.1 Prior to the Council committing to a shared service arrangement with another public body approval must be sought from Corporate Management Team.

11. Collaborative Arrangements

- 11.1 When a requirement can be fulfilled through an existing arrangement already established by another Public Sector Organisation and the requirements of the Regulations complied with by that Public Sector Organisation, the arrangement will be in compliance with these Standing Orders for Contracts. This includes purchasing through arrangements that have been entered into for example but not limited to the National Procurement Service (NPS), Crown Commercial Services (CCS) and the Welsh Purchasing Consortium (WPC).
- 11.2 Before committing the Council to a contract as set out in 11.1, the Authorised Officer must seek written advice from the Head of Procurement.

12. Estimating the Contract Value

- 12.1 For the sake of consistency, all Contract values should be calculated, strictly in accordance with the Regulations. For the purposes of these Standing Orders the value of any contract shall be taken as the value or consideration for the contract as a whole over the contract period (which is normally a three or four year period). The Council shall make the best use of its purchasing power by aggregating purchases wherever possible. In particular contracts for supplies, services or works shall not be split (disaggregated) in an attempt to avoid the applicability of these Standing Orders for Contracts or the Regulations.
- 12.2 The evaluation of cost shall be carried out on the basis that the Council seeks the most economic packaging of the contract. Deliberate downsizing of contracts in order to avoid any provisions of Standing Orders of Contracts or the Regulations shall not be permitted.
- 12.3 Full details on assessing the value of all contracts can be found in the Procurement Code of Practice.

13 Low Value Procurement (Quotations) – Below £10,000 (Band A)

- 13.1 See Appendix A

14. Intermediate Value Procurement (Tenders) - Between £10,000 and £75,000 (Band B)

- 14.1 See Appendix B

15. Medium Value Procurements (Tenders) - Between £75,000 and £172,514 (for Goods and Services) or less than £4,322,012 (for Works). (Band C)

- 15.1 See Appendix C

16. High Value Contracts for Goods & Services (Tenders) – Over £172,514 (Band D)

- 16.1 See Appendix D

17. Schedule 3 Services (Light Touch Regime) between £75,000 and £625,050 (Band E)

- 17.1 See Appendix E

18. High Value Contracts for Works (Tenders) – Over £4,322,012 (Band F)

- 18.1 See Appendix F

19. Late Quotations or Tenders – Reduced number of Tenders

- 19.1 Any tender, quotation or pre-qualification questionnaire received after the specified closing date and time shall not be formally considered but will be opened for the sole reason of being returned to the person who submitted the document, unless the following provisions apply. The only discretion in the above shall be exercised by the Head of Procurement (even for quotations not returned to him/her) who shall record reasons in writing for allowing a late submission to be considered. Any reasons must include confirmation that the contents of the late quotation or tender have not been considered and that the other quotations or tenders have in the meantime been kept securely sealed so that all are opened at the same time and that no person submitting a quotation or tender is thereby disadvantaged.
- 19.2 For a procurement with a value between £10,000 and less than £75,000 where an Authorised Officer wishes to invite less than four tenderers to bid, he/she must seek the approval of the Head of Procurement.
- 19.3 For a procurement in excess of £75,000, where an Authorised Officer wishes to invite less than five tenderers to bid, he/she must seek the approval of the appropriate Director following consultation with the Head of Procurement.
- 19.4 For all procurements in excess of the EU thresholds where an Authorised Officer wishes to invite less than five tenderers to bid he/she must seek the approval of Corporate Management Team following consultation with the Head of Procurement.
- 19.5 Where, having invited the required number of quotations or tenders as specified in these standing orders there is less than a 50% priced response, then consideration must be given (which must be recorded in writing) to re-running the procurement. If the contract is for a sum less than £75,000 the decision can be taken by the Head of Service. If the contract is for a sum in excess of £75,000 the decision will be taken by the appropriate Director after consultation with the Head of Procurement.

20. Tender Evaluation

- 20.1 In the event of establishing award criteria other than the lowest price (or, in the case of the disposal of an asset, the highest price), the evaluation criteria shall be predetermined and approved by the Head of Procurement (or Delegated Procurement Officer) and listed in the Invitation to Tender documentation in order of importance. Any particular scoring or weighting attributable to any criteria must be clearly stated. In addition, the criteria shall be strictly observed (and remain unchanged) at all times throughout the contract award procedure. Tenders shall only be evaluated in accordance with the evaluation criteria set out in the Invitation to Tender.

21. Errors in Tenders/Quotations and Non-Compliant Tenders/Quotations

- 21.1 Tenders/Quotations which do not comply with the Council's requirements as set out in the invitation to tender/quote or which contain minor errors must be dealt with in accordance with the guiding principles set out within the Regulations and upon compliance with advice received from the Head of Procurement (or Delegated Procurement Officer). An example would be (but not limited to) in the event that a genuine pricing and/or arithmetical error has been made by the contractor which has come to the attention of the Council prior to a contract award being made. In such a case, they may be given an opportunity to correct that error. No correction shall be allowed unless considered proportionate and does not distort competition in accordance with the Regulations. No other adjustment, revision or qualification is permitted. All areas of rectification or clarification must be conducted in writing.
- 21.2 Tender/Quotation documents must state how errors in Tenders/Quotations will be dealt with.

22. Abnormally Low Tenders

22.1 Where as a result of identifying that the overall tendered price or costs raises significant doubts that the Contractor will be able to complete the contract within the contract terms, the Council shall require tenderers to explain the price or costs proposed. This must be undertaken in accordance with the Regulations and in consultation with the Head of Procurement.

23. Post Tender Negotiation

23.1 Where procurement is conducted pursuant to the Regulations, no post-tender negotiations are permitted. The Head of Service may seek clarification from tenderers where appropriate in consultation with the Head of Procurement. Negotiations on price are never permissible except where provided for within the Regulations.

23.2 Where procurements do not need to strictly comply with the Regulations the Head of Procurement may authorise negotiations if considered to be in the best interest of the Council in accordance with guiding principles of the Regulations.

23.3 At all times during the procurement process the Council shall ensure that all tenderers are treated equally and in a non-discriminatory, transparent and proportionate manner.

24. Contract Award Notice

24.1 Where a contract has been tendered pursuant to the Regulations, the Council shall publish a contract award notice in the Official Journal of the European Union no later than 30 days after the date of award of the contract or such other requirements or time limits as are set out in the Regulations. This is the responsibility of the Authorised Officer and undertaken in consultation with the Head of Procurement (or Delegated Procurement Officer).

25. Contract Terms and Conditions

25.1 The relevant Head of Service shall use their best endeavours to ensure that Contracts are entered into on the appropriate set of Council's terms and conditions, which shall be included with each purchase order or invitation to tender. Where this is not possible, variations to the relevant Council terms and conditions and/or the terms and conditions submitted by a contractor must be formally approved in writing by the Head of Legal Services. However, no amendment to the Council's terms and conditions or the terms and conditions submitted by a Contractor shall contravene the requirements set out within the Regulations and in particular but not limited to Regulation 73.

25.2 All Contracts with the provision to extend may be extended before the expiry date of the contract where it is in accordance with its original terms and conditions (which must expressly allow for extension) and proves to deliver Best Value for Money. Approval for such an extension shall be sought from the Head of Procurement or in accordance with the form of contract.

25.3 Where the terms do not expressly provide for extension and prior to the expiry of the contract, if it is felt to be in the Council's interests to extend a contract, then this can only be to the extent that the Regulations allow. For instance, if the Regulations apply to the goods, works or services under the contract and if the value of the proposed extension exceeds the relevant threshold, then this is likely to be regarded as a new contract and should be competitively procured, unless one of the narrow exceptions in the Regulations applies. In cases to which the Regulations do not apply, any extension must be by negotiation in accordance with the guiding principles of the Regulations. In all cases, the extension must follow the rules set out in the Procurement Code of Practice and be approved by the relevant Head of Service and reported to the Head of Procurement for information prior to the extension becoming legally binding on the Council.

- 25.4 All Contract variations must be carried out within the scope of the original Contract. Contract variations that materially affect or change the scope of the original Contract are not allowed.
- 25.5 All significant Contract variations must be in writing and signed by both the Council and the Contractor. It will be for the appropriate Head of Service to determine whether or not a variation is deemed to be significant (significant is deemed to be the higher of £10,000 or 10% of the contract value). The value of each variation must be assessed by the relevant Head of Service and all necessary approvals sought prior to the variation taking place. Any variation that may be of such significance that it could affect service delivery must be reported to the appropriate Director for approval.

26. Security and Performance

- 26.1 Any Authorised Officer shall, before accepting or recommending acceptance of a quotation or tender, consider whether it is appropriate in all the circumstances to require and take sufficient security for the due performance of any contract. Where the Council's approved procedure for selective tendering is being used, the minimum requirements of that scheme must be followed.

27. Liquidated and Other Damages

- 27.1 Where appropriate contracts for the execution of works shall provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed, save where the Head of Legal Services approves another type of remedy.
- 27.2 Every contract for the supply of goods or materials by a particular date or series of dates which falls into Bands C or D shall contain a clause to secure that, should the contractor fail to deliver the goods or materials, or any portion thereof within the time specified in the contract, the Council, without prejudice to any other remedy for breach of contract, shall be at liberty to determine the contract either wholly, or to the extent of such default and to purchase other goods, or materials, as the case may be, of the same or similar description to make good (a) such default, or (b) in the event of the contract being wholly determined the goods or materials remaining to be delivered. The clause shall further secure that the amount by which the cost of such purchasing other goods or materials exceeds the amount by which would have been payable to the contractor in respect of the goods or materials, as the case may be, replaced by such purchase if they had been delivered in accordance with the contract, shall be recoverable from the contractor save where the Head of Legal Services approves otherwise another type of remedy.
- 27.3 The above provisions are without prejudice to the obligation to ensure that the form and terms and conditions of all contracts are as approved by the Head of Legal Services.

28. Termination of Contract

- 28.1 For any Contract exceeding £75,000 in value, early termination must be approved by the Head of Procurement and the Head of Legal Services. Contracts of a lesser value may be terminated early by agreement prior to the expiry date or in accordance with the termination provisions set out in the contract following consultation with the Head of Procurement.

29. Sub-Contracting

- 29.1 Any form of Council sub-contracting must comply fully with these Standing Orders for Contracts and the Regulations.
- 29.2 Where the Council has determined that a particular type of product or provision of service will be stipulated as an essential requirement of a contract then this must be approved by

the Head of Service following consultation with the Head of Procurement.

30. Consultants

- 30.1 The commissioning/engagement of Consultants to work within the Council or to undertake work on behalf of the Council as part of a wider project will be subject to these Standing Orders for Contracts and Section 21 of the Council's Financial Regulations.
- 30.2 Where the Council uses consultants to act on its behalf in relation to any procurement, then the Head of Service shall ensure that the consultants carry out any procurement in accordance with these Standing Orders for Contracts. No consultant shall make any decision on whether to award a Contract or who a Contract should be awarded to. The Head of Service shall ensure that the consultant's performance in relation to procurement is in accordance with these Standing Orders for Contracts and the Regulations.
- 30.3 Where the Council uses consultants to act on its behalf in relation to any procurement the consultant must declare any potential conflict of interest that may arise to the Head of Service prior to the commencement of the procurement process.
- 30.4 Where the Head of Service considers that such a conflict of interest is significant the consultant shall **not** be allowed to participate in the procurement process.

31. Record and Document Retention and Control

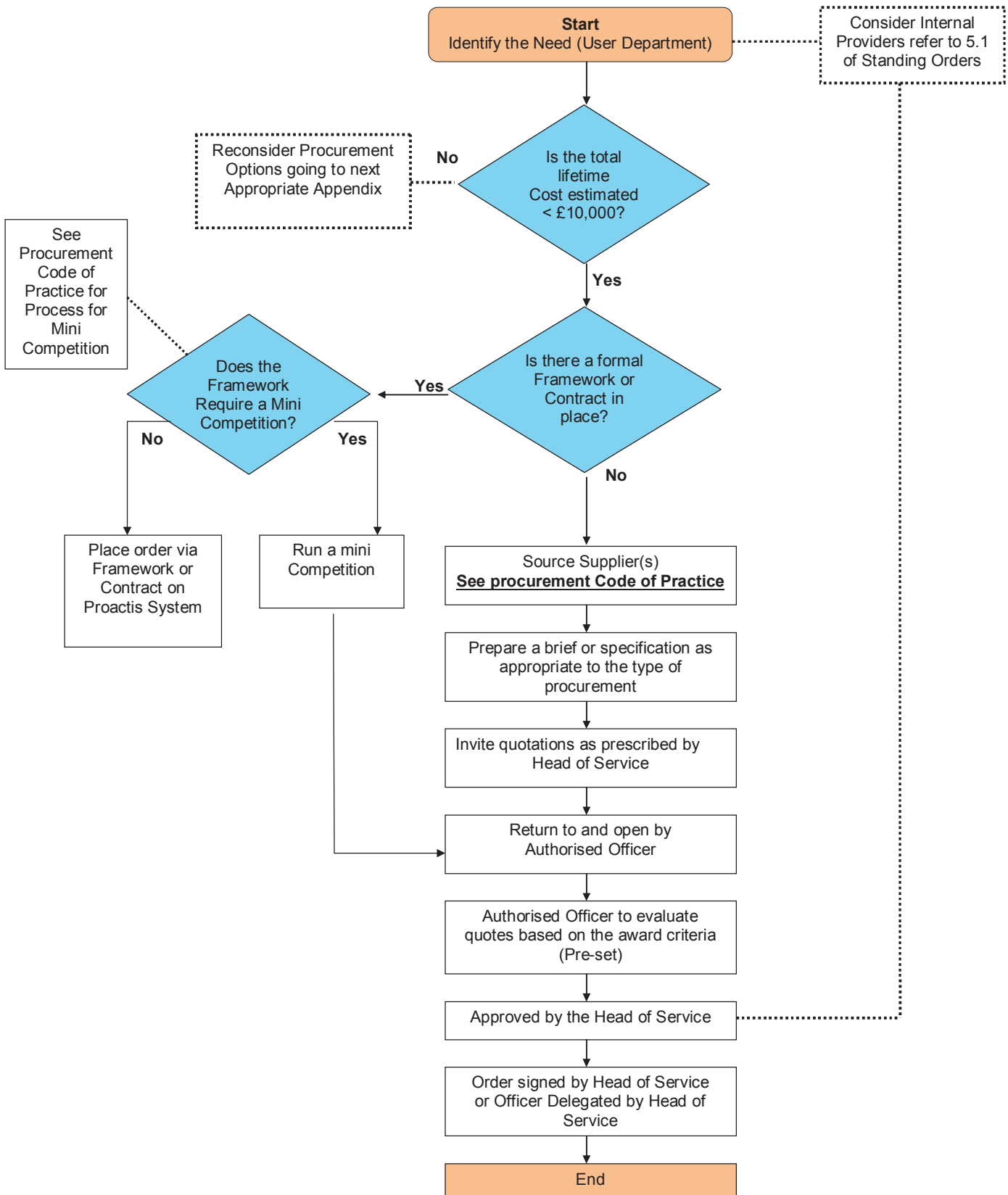
- 31.1 A Corporate Contracts Register of all Contracts over the value of £10,000 shall be administered by the Corporate Procurement Unit and all qualifying contracts must be input by the Authorised Officer.
- 31.2 For every individual Contract above £10,000 a contracts file shall be maintained with appropriate documentation as detailed within the Procurement Code of Practice.

32. Waiver of Standing Orders for Contracts

- 32.1 Approval of waiver of any of these Contract Standing Orders shall only be given in exceptional circumstances and only following a written report to S.151 Officer, following consultation with and the written approval of the Head of Procurement and the Corporate Director with responsibility for Procurement.
- 32.2 When consulting with the Head of Procurement and the Corporate Director with responsibility for Procurement, the originator of the report requesting a waiver of Standing Orders is responsible and accountable for making sure that the contents of the report are factually correct. The originator of the report should ensure that all supporting documentation is retained on an easily accessible file for auditing purposes. Should it be found that incorrect information has been knowingly or negligently submitted or omitted in order to obtain approval for a waiver of these Standing Orders the originator of the report may be subject to the Council's disciplinary procedures.

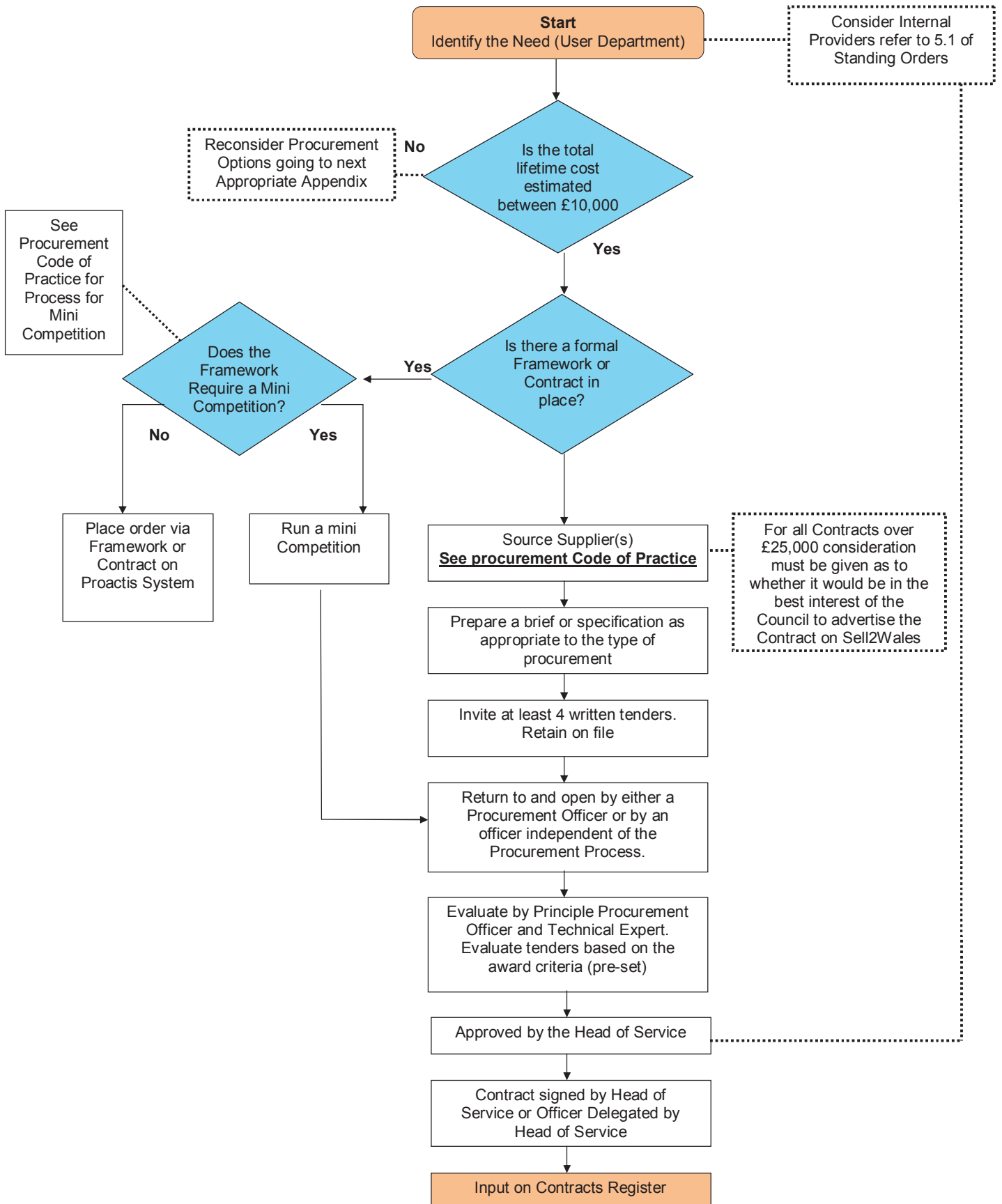
Appendix A: Low Value Procurement (Quotations) below £10,000

Estimating the contract value should always take into account the provisions of para. 12.



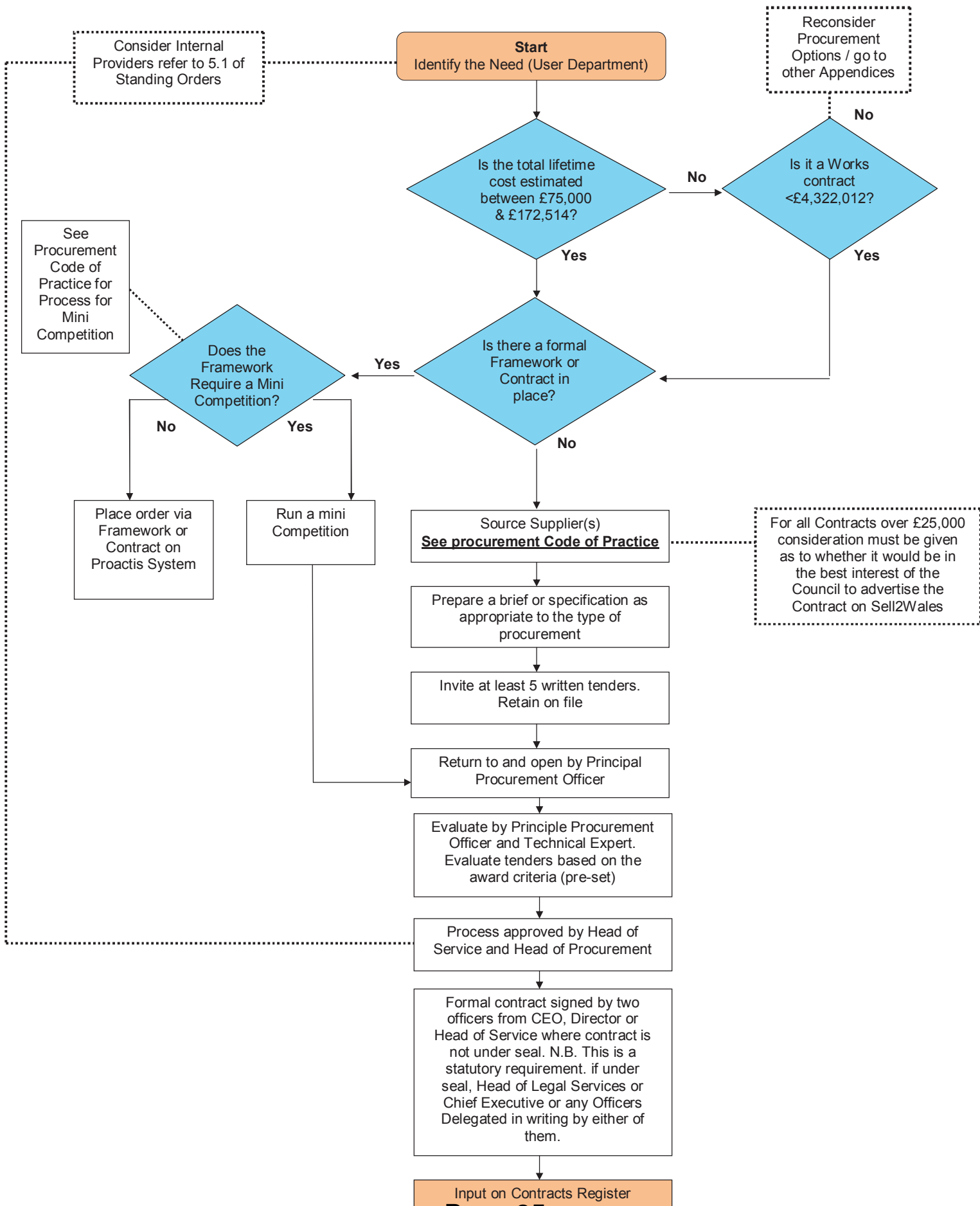
Appendix B: Intermediate Value Procurement (Tenders) between £10,000 and £75,000

Estimating the contract value should always take into account the provisions of para. 12.



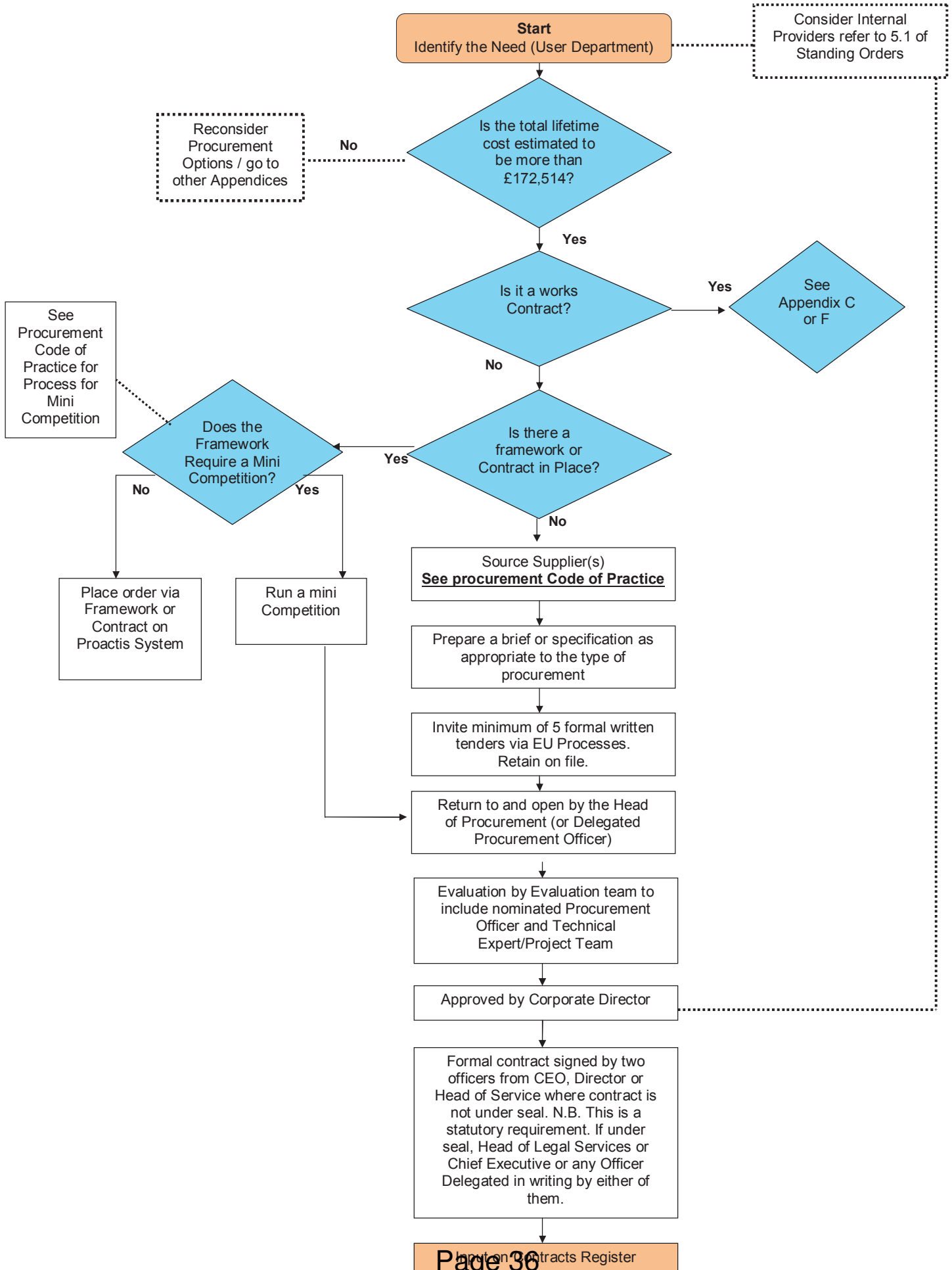
Appendix C: Medium Value Procurements (Tenders) - Between £75,000 and £172,514 (for Goods and Services) or less than £4,322,012 (for Works).

Estimating the contract value should always take into account the provisions of para. 12.



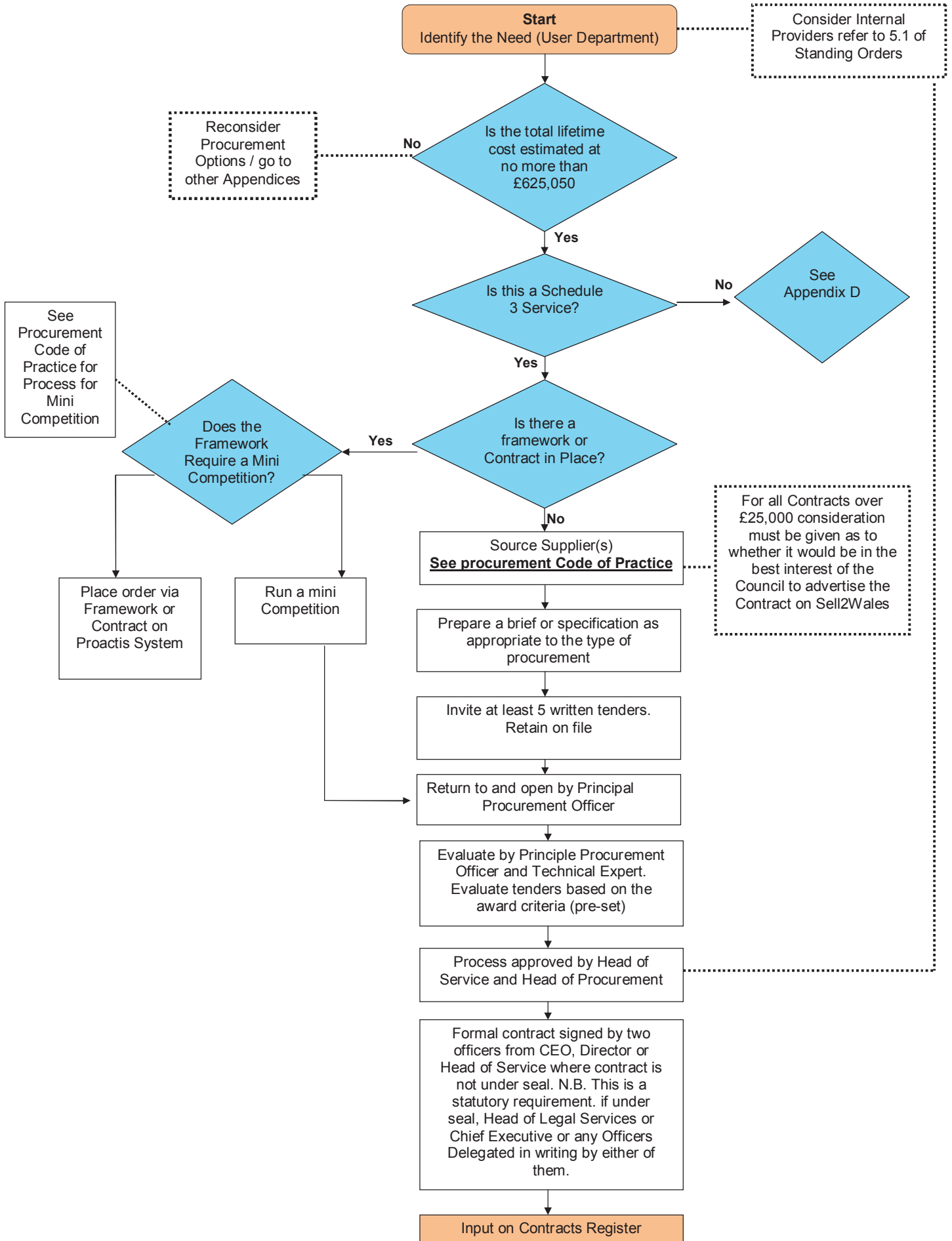
Appendix D: High Value Contracts for Goods & Services (Tenders) – Over £172,514

Estimating the contract value should always take into account the provisions of para. 12.



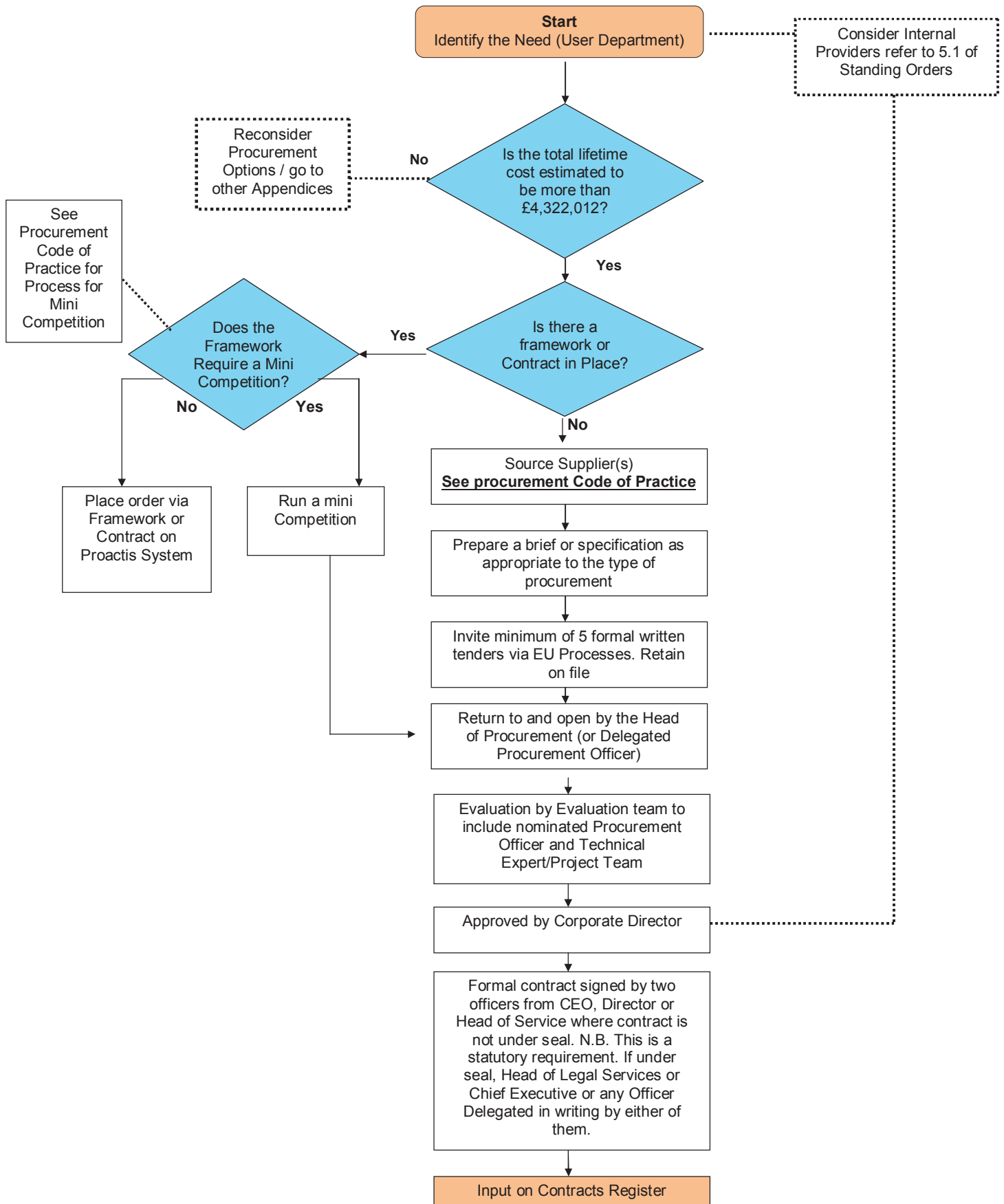
Appendix E: Schedule 3 Services (Light Touch Regime) between £75,000 and £625,050

Estimating the contract value should always take into account the provisions of para. 12



Appendix F: High Value Contracts for Works (Tenders) – Over £4,322,012

Estimating the contract value should always take into account the provisions of para. 12.



Procurement Services – Document Control Sheet

Document Reference: Standing Orders for Contracts 2010 – Log of Changes

Issue	Date	Originator	Authorisation
V0.1	September 2010	Rebecca Francombe	Document came into place
V0.2	January 2011	Rebecca Francombe	Minor changes – See log
V0.3	May 2012	Rebecca Francombe	Minor changes – See log
V0.4	13/09/2013 / 22/11/2013	Rebecca Francombe	Issued following LL producing documents for changes in Standing Orders Document from V0.3 (May 2012) to V0.4 (Nov 2013) – Following Full Council (accepted changes) - Minor Changes made
V0.5	01/01/2014	Rebecca Francombe	Changes made to Value for EU Threshold
V0.6	27/03/2015	Ian Evans	To reflect the changes in the EU Public Contracts Regulations 2015.

The document control process attempts to ensure that in all cases all staff use the latest version of an approved document, where appropriate. No changes in the template format of the live document should be made without the approval of Anne Knibbs who controls the 'Document Control Register'. Any queries, issues, changes required should be referred to Anne Knibbs by email in the first instance.

Standing Orders Document Control Log

<u>Version</u>	<u>Title of Section</u>	<u>Clause Number</u>	<u>Action</u>	<u>Revised Wording</u>
V0.6	Index	7	Add In	Preliminary Market Consultation
		8	Add In	Division of Contracts into Lots
		17	Add In	High Level Schedule 3 Services (Light Touch Regime) between £75,000 and £625,050
		22	Add In	Abnormally Low Tenders
		App E	Add In	Appendix E: High Level Schedule 3 Services (Light Touch Regime) between £75,000 and £625,050
V0.6	Form and Certification of Contracts	2	Amend to	The flowcharts in the Appendices set out the prescribed routes for all procurements in the five bands of contact value (A,B,C, D, E and F – see sections 13 to 18 below).
V0.6			Amend to	Contracts in Band C,D, E and F <i>can be (as well as those contracts specified by the Head of Legal Services) under seal and attested by the Head of Legal Services or the Chief Executive or such other Officer Delegated in writing by either of them</i>
V0.6	Compliance	3 3.1(b)	Amend to	The relevant European Procurement Rules (the EU Treaty, the general principles of community law and the European Union's Public Contracts Directive (2014/24/EU) implemented by the Public Contracts Regulations 2015 or such other amendment, variation or replacement Regulations in force from time to time (" Regulations");
V0.6		3.4	Add in	Officers shall take appropriate measures to effectively prevent, identify and remedy Conflicts of Interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all Contractors as set out in the Regulations.
V0.6		3.5	Amend to	All contracts must contain a provision allowing the Council to terminate without compensation in the event that there has been actual or attempted fraud or corruption in connection with the procuring, continuation, renewal or performance of the contract. Including appropriate exclusion grounds as set out in the Regulations.
	Exempt Contracts	(f)	Amend to	The award of contracts for 'emergency' individual placements will remain at the discretion of the Corporate Directors with responsibility for Education & Lifelong Learning and Social Services in accordance with the Regulations.

V0.6	Internal Providers	5.2	Amend to	Where the in-house provider is able to and has the capacity to undertake the works, the works should automatically be allocated subject to approval of the relevant Head of Service and in accordance with any funding terms and conditions and such decisions shall be recorded in writing. If in such a case the relevant Head of Service does not wish to use the in-house provider then they must seek approval from the Council's Corporate Management Team prior to the commitment of the procurement.
V0.6	Preliminary Market Consultations	7.1	Add In	Before commencing a Procurement the Council may conduct market consultations with a view to preparing the procurement and informing Contractors of the Council's procurement plans and requirements, including seeking or accepting advice from independent experts or Contractors.
V0.6		7.2	Add In	Prior to undertaking market consultation, advice and guidance must be sought from the Head of Procurement to ensure that such preliminary consultation does not have the effect of distorting competition and does not result in violation of the principles of non-discrimination, <i>transparency and proportionality</i> "?;
V0.6	Division of Contracts into Lots	8.1	Add In	The Council may where it considers appropriate decide to award a contract in a form of separate lots and may determine the size and subject matter of such lots in accordance with the Regulations.
V0.6		8.2	Add In	Where the Council has decided not to subdivide a contract into lots it shall provide an indication of the main reasons within the procurement documentation or as provided within the Regulations.
V0.6	Collaborative Arrangements	11.1	Amend to	When a requirement can be fulfilled through an existing arrangement already established by another Public Sector Organisation and the requirements of the Regulations complied with by that Public Sector Organisation, the arrangement will be in compliance with these Standing Orders for Contracts. This includes purchasing through arrangements that have been entered into for example but not limited to National Procurement Service (NPS), Crown Commercial Services (CCS) and the Welsh Purchasing Consortium (WPC).
V0.6	Estimating the Contract Value	12.1	Amend to	For the sake of consistency, all Contract values should be calculated, strictly in accordance with the Regulations. For the purposes of these Standing Orders the value of any contract shall be taken as the value or consideration for the contract as a whole over the contract period (which is normally a three or four year period). The Council shall make the best use of its purchasing power by aggregating purchases wherever possible. In particular contracts for supplies, services or works shall not be split (disaggregated) in an attempt to avoid the applicability of these Standing Orders for Contracts or the Regulations.

V0.6		12.2		The evaluation of cost shall be carried out on the basis that the Council seeks the most economic packaging of the contract. Deliberate downsizing of contracts in order to avoid any provisions of Standing Orders of Contracts or the Regulations shall not be permitted.
V0.6	Schedule 3 Services (Light Touch Regime) between £75,000 and £625,050 (Band E)	17	Add in	See Appendix E
V0.6	High Value Contracts for Works (Tenders) – Over £4,322,012 (Band F)	18	Add in	See Appendix F
V0.6	Errors in Tenders/Quotations and Non-Compliant Tenders/Quotations	21	Amend to	Tenders/Quotations which do not comply with the Council's requirements as set out in the invitation to tender/quote or which contain minor errors must be dealt with in accordance with the guiding principles set out within the Regulations and upon compliance with advice received from the Head of Procurement (or Delegated Procurement Officer). An example would be (but not limited to) in the event that a genuine pricing and/or arithmetical error has been made by the contractor which has come to the attention of the Council prior to a contract award being made. In such a case, they may be given an opportunity to correct that error. No correction shall be allowed unless considered proportionate and does not distort competition in accordance with the Regulations. No other adjustment, revision or qualification is permitted. All areas of rectification or clarification must be conducted in writing
V0.6	Abnormally Low Tenders	22.1	Add in	Where as a result of identifying that the overall tendered price or costs raises significant doubts that the Contractor will be able to complete the contract within the contract terms, the Council shall require tenderers to explain the price or costs proposed. This must be undertaken in accordance with the Regulations and in consultation with the Head of Procurement.
V0.6	Post Tender Negotiation	23.1	Amend to	Where procurement is conducted pursuant to the Regulations, no post-tender negotiations are permitted. The Head of Service may seek clarification from tenderers where appropriate in consultation with the Head of Procurement. Negotiations on price are never permissible except where provided for within the Regulations.
V0.6		23.2		Where procurements do not need to strictly comply with the Regulations the Head of Procurement may authorise negotiations if considered to be in the best interest of the Council in accordance with guiding principles of the Regulations.
V0.6		23.3		At all times during the procurement process the Council shall ensure that all tenderers are treated equally and in a non-discriminatory, transparent and proportionate manner.

V0.6	Contract Award Notice	24	Amend to	Where a contract has been tendered pursuant to the Regulations, the Council shall publish a contract award notice in the Official Journal of the European Union no later than 30 days after the date of award of the contract or such other requirements or time limits as are set out in the Regulations. This will be done by the Head of Procurement (or Delegated Procurement Officer).
V0.6	Contract Terms and Conditions	25.1	Amend to	The relevant Head of Service shall use their best endeavours to ensure that Contracts are entered into on the appropriate set of Council's terms and conditions, which shall be included with each purchase order or invitation to tender. Where this is not possible, variations to the relevant Council terms and conditions and/or the terms and conditions submitted by a contractor must be formally approved in writing by the Head of Legal Services. However, no amendment to the Council's terms and conditions or the terms and conditions submitted by a Contractor shall contravene the requirements set out within the Regulations and in particular but not limited to Regulation 73.
		25.3		Where the terms do not expressly provide for extension and prior to the expiry of the contract, if it is felt to be in the Council's interests to extend a contract, then this can only be to the extent that the Regulations allow. For instance, if the Regulations apply to the goods, works or services under the contract and if the value of the proposed extension exceeds the relevant threshold, then this is likely to be regarded as a new contract and should be competitively procured, unless one of the narrow exceptions in the Regulations applies. In cases to which the Regulations do not apply, any extension must be by negotiation in accordance with the guiding principles of the Regulations. In all cases, the extension must follow the rules set out in the Procurement Code of Practice and be approved by the relevant Head of Service and reported to the Head of Procurement for information prior to the extension becoming legally binding on the Council.
V0.6	Sub-Contracting	29	Amend to	Any form of Council sub-contracting must comply fully with these Standing Orders for Contracts and the Regulations.
V0.6	Consultants	30.2	Amend to	Where the Council uses consultants to act on its behalf in relation to any procurement, then the Head of Service shall ensure that the consultants carry out any procurement in accordance with these Standing Orders for Contracts. No consultant shall make any decision on whether to award a Contract or who a Contract should be awarded to. The Head of Service shall ensure that the consultant's performance in relation to procurement is in accordance with these Standing Orders for Contracts and the Regulations.

V0.6	Waiver of Standing Orders for Contracts	32.1	Amend to	Approval of waiver of any of these Contract Standing Orders shall only be given in exceptional circumstances and only following a written report to S.151 Officer, following consultation with and the written approval of the Head of Procurement and the Corporate Director with responsibility for Procurement.
		32.2		When consulting with the Head of Procurement and the Corporate Director with responsibility for Procurement, the originator of the report requesting a waiver of Standing Orders is responsible and accountable for making sure that the contents of the report are factually correct. The originator of the report should ensure that all supporting documentation is retained on an easily accessible file for auditing purposes. Should it be found that incorrect information has been knowingly or negligently submitted or omitted in order to obtain approval for a waiver of these Standing Orders the originator of the report may be subject to the Council's disciplinary procedures.
V0.6	Appendix A	Information	Amend to	Estimating the contract value should always take into account the provisions of para. 12
		Adjacent to Start	Add In	Consider Internal Providers refer to 5.1 of Standing Orders
V0.6	Appendix B	Information	Amend to	Estimating the contract value should always take into account the provisions of para. 12
		Adjacent to Start	Add In	Consider Internal Providers refer to 5.1 of Standing Orders
		End	Amend to	Input on Contracts Register
V0.6	Appendix C	Information	Amend to	Estimating the contract value should always take into account the provisions of para. 12
		Adjacent to Start	Add In	Consider Internal Providers refer to 5.1 of Standing Orders
		End	Amend to	Input on Contracts Register
V0.6	Appendix D	Information	Amend to	Estimating the contract value should always take into account the provisions of para. 12
		Adjacent to Start	Add In	Consider Internal Providers refer to 5.1 of Standing Orders
		End	Amend to	Input on Contracts Register
V0.6	Appendix E	Information	Amend to	Estimating the contract value should always take into account the provisions of para. 12

		Adjacent to Start	Add In	Consider Internal Providers refer to 5.1 of Standing Orders
		End	Amend to	Input on Contracts Register
V0.6	Appendix F	Information	Amend to	Estimating the contract value should always take into account the provisions of para. 12
		Adjacent to Start	Add In	Consider Internal Providers refer to 5.1 of Standing Orders
		End	Amend to	Input on Contracts Register

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