

NORTH LINCOLNSHIRE COUNCIL

COUNCIL

PROPOSED CHANGES TO CONTRACT PROCEDURE RULES

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To introduce a series of proposed changes to the mandatory procedural framework for procurement (known as Contract Procedure Rules - CPRs) for approval by Council.
- 1.2 The key points in this report are:
- The mandatory procedures detailing how procurement should be conducted are set out in Contract Procedure Rules (CPRs). CPRs form part of the council's constitution.
 - CPRs were last substantively updated and approved by Full Council in May 2012.
 - A number of changes to the rules are required to ensure that they continue to meet the council's need for modern commercial business processes that comply with professional standards, legislative requirements and latest government procurement policy.

2. BACKGROUND INFORMATION

- 2.1 The mandatory procedures governing how the procurement of supplies, services and works should be carried out by officers and elected members are set out in Contract Procedure Rules (CPRs). CPRs form an integral part of the council's constitution.
- 2.2 CPRs were last substantively updated and approved by Full Council on 15 May 2012 (minute 2096 (4) refers).
- 2.3 Since then a number of notable developments have occurred at national and local levels which require adoption through CPRs, specifically:
- New EU Procurement Directives (2014/23/EU and 2014/24/EU) were published in the Official Journal of the EU on 28 March 2014 and have been adopted by EU institutions. They came into force on 17 April 2014. EU member states have two years to implement them in national legislation. The UK government is aiming to transpose the directives quickly so that public authorities can benefit as soon as possible from the improved flexibilities they offer.

- The government's announcement of its commitment to SMEs - "*Small Business: Great Ambition*" which included a series of public procurement pledges
- Proposed legal provisions requiring further transparency of local authority expenditure and contracting
- The increasing need for responsive and flexible commercial processes reflecting the council's commercial development ambitions, including the adoption of category management as a new procurement strategy together with increasing levels of activity in bidding for external income opportunities
- Recently revised EU thresholds for the award of public contracts
- Evolving public procurement case-law which is driving changes to professional practice across the sector
- Increasing levels of strategic commissioning activity requiring a robust procurement project environment to help manage risk more effectively

3. OPTIONS FOR CONSIDERATION

3.1 In response to the developments outlined above, a number of changes to the CPRs are now proposed. A copy of new CPRs is attached as an appendix to the report.

3.2 The principal changes are summarised below:

A) Compliance & Pre-Procurement Considerations

- i) Further clarification has been added to the application of CPRs to academies, council owned companies and procedures relating to commercial activity driven by the commercial policy. [CPR 1.1 – Page 4]
- ii) The tolerance to permit operational flexibility in procedural route where values of returned bids exceed procedural thresholds has been increased from 5% to 10%. This excludes circumstances where EU thresholds are reached. [CPR 2.1 – page 5]
- iii) New EU thresholds as applicable at 1 January 2014 have been added [CPR 2.2 – page 5]
- iv) Clarification on the application of Key Decision rules to procurement has been added [CPR 3.1 – page 6]
- v) Strengthened provisions relating to conflicts of interest have been added [CPR 4.1 – page 7]
- vi) New provisions relating to commercial trading have been included [CPR 6 – page 7 and Annex 1a – page 38]
- vii) Lead Services for specific key procurement categories have been updated to reflect council re-organisation. [CPR 7.1 – page 8]

- viii) A process for undertaking soft market testing/early market engagement has been added [CPR 9 – page 9 and annex 1b – page 39].
- ix) A series of strengthened provisions and further procedural clarification have been added in respect of:
- Use of Frameworks [CPR 10.4 – page 9]
 - Use of Competitive Dialogue [CPR 11 – page 10]
 - Concession Contracts [CPR 12 – page 10]
 - Security of Data [CPR 14 – page 10]
 - TUPE [CPR 15 – page 11]
 - Financial Appraisals [CPR 16 – page 11]
 - Tender Submission Errors [CPR 17 – page 11/12]
 - Tender Clarification [CPR 18 – page 12]

B) Procedural Thresholds: Below £5,000 [CPR 20 – page 14]

- i) The threshold has been reduced from £10,000 to £5,000. See C below.

C) Procedural Thresholds: £5,000 - £50,000 [CPR 21 – page 16]

- i) The threshold for this procedure has reduced from £10,000 to £5,000.
- ii) Purchases over £5,000 (previously £10,000) must now be managed via the eTendering system, unless administratively burdensome, to improve SME opportunities, audit trail, visibility of spend and to comply with proposed new national transparency requirements.

D) Procedural Thresholds: £50,000 – EU Threshold (Services/Supplies) [CPR 22 – page 19]

- i) The requirement to consider the merits of mini-competition for higher value framework purchases has been strengthened.
- ii) The requirement to undertake Integrated Impact Assessments has been widened to include all supplies/services/works procurements over the EU threshold (currently services contracts only).
- iii) It is proposed that the criteria for the evaluation of tenders/quotes up to EU level is “lowest compliant”. As an alternative option the criteria of “Most Economically Advantageous Tender (MEAT)” may be used. It is intended that this simplified provision will improve the value of offers accepted and reduce the risk of procurement challenges.

E) Procedural Thresholds: Works Contracts below EU Threshold [CPR 23 – page 24]

- i) The requirement to use the new construction framework has been included.
- ii) Procedures relating to the use of Approved Lists of Contractors have been deleted due to the introduction of the new framework model for construction and adoption of Dynamic Purchasing Systems in other relevant categories which have historically used standing approved lists.

iii) See D (iii) above

F) Procedural Thresholds: Above EU Thresholds [CPR 24 – page 29]

i) A rule has been added that a project team should be established at EU level and above. In addition specific gateway checkpoints have been added to formalise the authorisation of key stages in the process for higher value/risk projects. These changes are designed to improve procurement risk management.

4. ANALYSIS OF OPTIONS

4.1 See 3.1 above

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

5.1 Financial

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

5.2 A council-wide communication message will be issued detailing the changes. The corporate procurement training programme will be updated and specific briefing presentations will be given to staff with procurement responsibilities.

5.3 Staffing
None

5.4 Property & IT
None

6. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)

6.1 An Integrated Impact Assessment has been completed with no adverse findings. The assessment indicated that the proposed changes would provide positive opportunities for SMEs and VCOs.

7. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTEREST DECLARED

7.1 Feedback has been sought from the council's Strategic Commissioning & Procurement Group, Legal Services and NELC. Comments have been used to inform the drafting of the proposed changes.

8. RECOMMENDATIONS

8.1 That the proposed changes to CPRs are approved; and

8.2 That the Director of Policy and Resources, in consultation with the Cabinet Member Policy and Resources, is authorised to amend CPRs to reflect changes necessary to comply with EU Directive 2014/23/EU and 2014/24/EU once implemented in UK legislation.

DIRECTOR OF POLICY & RESOURCES

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Background Papers used in the preparation of this report:

Full Council Report: May 2012

Current CPRs (2012)

Draft CPRs 2014



Contract Procedure Rules

May 2014

Contract Procedure Rules

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Contract Procedure Rules

INTRODUCTION [This Introductory page does not form part of Contract Procedure Rules]

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

ALL council employees, or any authorised person undertaking a procurement or disposal exercise on behalf of the council, must use the CPRs in conjunction with the Corporate Procurement Guidance, which provides a source of practical advice and guidance, and the NLC Finance Manual, or the NELC Financial Procedure Rules.

All documents are available for downloading via both councils' intranet sites.

As a public authority, the council has a duty to ensure equality, transparency and fairness of treatment of suppliers it seeks to trade with. 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.

The CPRs have five main purposes:

- to help councils 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 Joint Corporate Procurement Strategy across the council.

POLICY CONTEXT

"Whether the driver is strategic policy delivery or support for ongoing operations, authorities must adhere to government procurement policy, which is to buy the goods and services that it needs to deliver world-class public services, through a fair and open procurement process, guarding against corruption and seeking to secure value for public funds with due regard to propriety and regularity." (Commerce, An Introduction to Public Procurement, 2008)

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

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

PROCUREMENT ALLIANCE NORTH AND NORTH EAST LINCOLNSHIRE

North and North East Lincolnshire Councils established a shared procurement service – *Procurement Alliance North & North East Lincolnshire (PANNEL)*. Its vision is to deliver procurement excellence; service transformation and outstanding value for money across both councils, covering a joint annual non-pay spend of c. £215 million. Where CPRs require consultation etc with, or the approval of PANNEL, the required reference is to the relevant category manager.

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CONTRACT PROCEDURE RULES

1 COMPLIANCE

- 1.1 The procurement of every contract (including contracts awarded via a dynamic purchasing system or framework agreement) entered into by or on behalf of the council or its Maintained Schools, regardless of value or origin of the funding, shall comply with all EU Directives and UK legislation, and with the council's Financial Regulations, Finance Standing Orders, CPRs and the Corporate Procurement Guidance. It is the responsibility of directorate and service heads 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 procurement services to another public body, the procurement law applicable to that body applies. Where a procurement is for a particular public body (as opposed to where another body is joining a council procurement as an additional contracting authority), the contract procedure rules or standing orders of that body will apply.

The Localism Act 2011 provides under the 'community right to challenge', the council to 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.

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:

CPRs APPLY:	CPRs DO NOT APPLY:
<ul style="list-style-type: none">• Where we procure from external organisations (public, private or voluntary);• Where we nominate a sub-contractor or supplier;• Where an external organisation is named in a council procurement and has right to access it;• Where a service or works concession contract is proposed¹;• Development agreements to which the EU procurement rules apply¹;• Maintained Schools;• Where a third party is procuring on the council's behalf and where the Council is the contracting party;	<ul style="list-style-type: none">• Where requirements are sourced and delivered internally;• Academies (unless an academy is participating in a wider council procurement);• Where a council acts for another non-regulated body;• A contract with a council-owned company or a public body which the council's Monitoring Officer advises falls outside the scope of the EU public procurement regime; (unless it is participating in a wider council procurement)• Contracts for the acquisition or disposal of land and buildings¹ and• Contracts of employment.

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<ul style="list-style-type: none"> • The councils' commercial activity where the Council is bidding for others' services and • The modification of an existing contract unless clearly provided for in the original contract terms or with the approval of the council's Monitoring Officer. 	
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Note 1: Where the acquisition or disposal of land and/or property potentially establishes a works concession contract or a development agreement, advice from Legal Services must be sought.

- 1.2 The Public Contract Regulations 2006 distinguish between Part A and Part B Services. Some of the services provided through the council will fall within Part B of the regulations. However, although the regime provided for Part B services under the regulations is less exacting than for Part A, as a matter of good practice the regime pertaining to Part A will be followed unless agreed otherwise by the Director of Policy & Resources (NLC) or the Solicitor to the Council (NELC).
- 1.3 All procurement of services shall comply with the North and North East Lincolnshire COMPACT Code of Good Practice for Funding and Procurement.
- 1.4 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.
- 1.5 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 council either through contract or by the Director of Policy & Resources (NLC) or the Solicitor to the Council (NELC).

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. Tenders valued within 10% of the EU threshold should be concluded using the EU tender process.

Where the value of any quotation or tender received, and recommended for acceptance, exceeds the upper threshold of the original procedure by more than 10%, then the procurement must be aborted and re-started in compliance with the CPRs which apply to the new procedural threshold.

- 2.2 The EU thresholds that apply will be those advised by the Cabinet Office as detailed below. The current thresholds set out below are valid from 01 January 2014 until 31 December 2016:

	Supplies	Services	Works
Public Sector Contracting Authorities (excluding Schedule 1 authorities)	£172,514	£172,514	£4,322,012

- 2.3 In determining which threshold applies, the whole-life costing (excluding VAT) of the proposed contract or framework agreement must be considered. Purchases must not be disaggregated to avoid the requirements of the CPRs. Any option to extend a contract must also take into account whether the EU thresholds would be exceeded with the extension value included, even if the option to extend is not eventually exercised, and must be approved by the relevant officer depending on the value involved. Where the duration of the contract is unknown or uncertain, its total cost over a **four**

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year period should be estimated and the relevant procedure then followed to award the contract or conclude the framework agreement.

- 2.4 Where it is possible to predict a number of similar requirements, we must consider the requirements as a whole and tender accordingly. The procured solution must operate based on the aggregated value of the requirements to ensure compliance and maximise value for money.
- 2.5 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.

	North East Lincolnshire	North Lincolnshire
What is considered a Key Decision?	Significant effect on communities living or working in two or more wards or The whole-life expenditure or savings exceed £350,000.	An executive decision which is likely a) to result in the Authority incurring expenditure which is, or making savings which are, significant having regard to the Authority's budget for the service or function to which the decision relates; or b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the Authority.
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 Directorate lead.	Please contact Democratic Services for Key Decision guidance.
When should the Portfolio Holder (NEL)/ Cabinet Member (NL) be consulted by the relevant director?	Decisions with a whole-life expenditure or savings £50,000 - £350,000.	
Action:	Director to update Portfolio Holder	
When can key decisions be taken by a Director?	When Cabinet has delegated authority to make the decision to the director.	
Action:	An 'officer decision' record should be completed and returned to Democratic Services.	

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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 Head of Service (NELC) or Director (NLC) for the business case and budget, the flow chart [Choice of Procedure](#), will determine the appropriate process to be used. Evidence of the options appraisal/analysis should be retained.

NB Where the level of risk is high for a low value contract, a higher value procedure may be adopted.

4 CONFLICTS OF INTEREST

4.1 No person acting on behalf of the council shall influence a procurement where they have a conflict of interest.

4.2 For the purpose of Rule 4.1, 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. award of the contract; and
- vii. contract management.

4.3 For the purpose of Rule 4.1, 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.

4.4 Direct involvement 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 Rule 4.1.

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.

5.2 No Service Area or Directorate of the council shall submit a tender or quotation to any other Service Area or Directorate of the council to perform work or supply goods or services that they do not have the capacity to deliver without recourse to external suppliers, except where the proposed external element is of a specialist nature.

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 policy and:

- prior written advice should be obtained from the Director of Policy & Resources (NLC) or the Solicitor to the Council (NELC);
- (NLC only) the process as outlined in [Annex 1a](#), must be followed.

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7 LEAD SERVICES

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

Requirement	Lead Service (NELC)	Lead Service (NLC)
Cleaning Services	Facilities Management Cofely	Community Services
Civil Engineering and non-building construction works	Highways Cofely	Community Services
Building works, accommodation and facilities management where a work permit MUST be obtained	Assets Team; Architectural Consultancy Cofely	Planning and Regeneration
Energy, Fuel & Water	Architectural Consultancy Cofely	Community Services
Financial & Leasing Services	Finance	Financial Services
ICT requirements / services	ICT	Business Support
Legal Services	Resources	Legal and Democratic
Leisure	Culture, Leisure and Sport	Customer Services
Printing Services	Print Unit	Legal and Democratic
Commissioning of social or personal care services, and placement activity	People Directorate	People
Training & Development Services	Human Resources; Learning & Development	Human Resources
Transport Services	People – Access Services Highways and Transport Cofely	Community Services
Vehicles	Neighbourhood Services	Community Services
Waste Disposal	Neighbourhood Services	Community Services
Public Health	Public Health Core	Public Health Hub

8 CORPORATE CONTRACTS

8.1 Where a Corporate Contract exists for supplies, services or works, it must be used. Only in the following circumstances will a request for exception be considered:

- 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.

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9 SOFT MARKET TESTING/EARLY MARKET ENGAGEMENT

9.1 Wherever there is:

- an inherent need for consultation;
- a review of economic, social or value for money considerations;
- 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 soft market testing 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 soft market test is set out in Annex 1b. PANNEL should be engaged wherever early market engagement is being considered

9.3 In all pre procurement engagement, full regard should be had to the EU procurement 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 FRAMEWORK AGREEMENTS & DYNAMIC PURCHASING SYSTEMS

10.1 A framework agreement or Dynamic Purchasing System (DPS) must be established or accessed where a Service Area or Directorate 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 established for lower values where considered beneficial. The framework agreement/DPS is to be established in accordance with the requirements of the CPRs with guidance from PANNEL. Framework agreements/DPS are not supplies or services contracts in themselves, although they are legally binding. 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/DPS.

10.2 Service Areas and Directorates 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 between **all** suppliers who are a party to the agreement in accordance with the requirements stated by the framework owner (unless alternative provisions have been agreed.) Wherever possible and advantageous, bundling of largely similar requirements should be undertaken to maximise economies of scale.

10.3 The use of framework agreements established by Central Purchasing Bodies or other contracting authorities (as defined by the Public Contracts Regulations 2006) must be on advice from PANNEL and subject to exception approval under CPR 27.1h.

10.4 All framework agreements must comply with the following:

- Maximum length of 4 years
- The councils are identified as contracting authorities which may access the agreement
- Estimated value must include all potential call-offs by all contracting authorities
- Conclude with either one supplier, or a minimum of **three** suppliers
- 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

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- 10.5 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.
- 10.6 A dynamic purchasing system (DPS) is a completely electronic system which may be established to purchase commonly used goods, works or services. It must be of limited duration not exceeding 4 years. Any DPS is to be established in accordance with the requirements of the CPRs with guidance from PANNEL.
- 10.7 The flowchart at - Annex 1c, sets out the process for establishing a DPS and awarding contracts under it.
- 10.8 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 which can be specified with precision, are subject to competitive marketplaces and where "lowest compliant" evaluation criteria is being proposed to be used or where a separate qualitative evaluation can be undertaken effectively in advance of the e-auction.
- 10.9 The process for undertaking eAuctions is set out at Annex 1f.

11 USE OF THE COMPETITIVE DIALOGUE PROCEDURE

- 11.1 The use of Competitive Dialogue may be appropriate for complex, major procurements. This requires approval by Cabinet on the advice of the Director of Policy & Resources (NLC) or the Solicitor to the Council (NELC).
- 11.2 Where use of Competitive Dialogue has been approved, the application of CPRs to the procurement will be modified as required by the Public Contracts Regulations 2006 and approved by Legal Services.

12 CONCESSION CONTRACTS

- 12.1 A concession contract is 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 PANNEL must be sought before engaging in any procurement relating to a concession contract. Concessions apply to services contracts and works contracts.

13 TECHNICAL STANDARDS & SPECIFICATIONS

- 13.1 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.

14 MANAGEMENT OF DATA

14.1 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 1998 are likely to be invoked, the Project Manager

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should ensure that the Strategy and Information Governance Manager, (NLC), or the Information Management and Business Intelligence Manager, (NELC) are consulted.

14.2 **Open Data**

All Requests for Quotation and tenders must advise the tenderer of the councils' obligation to publish details of purchase invoices £500 or above and our commitment to publishing details of contracts with a whole-life value exceeding £5,000

15 **TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 – (TUPE)**

- 15.1 Careful consideration needs to be given as to whether TUPE shall apply at commencement of the proposed procurement.
- 15.2 Where a proposed procurement may involve the TUPE transfer of council officers, the advice of the Head of HR must be obtained prior to the start of procurement.
- 15.3 Any procurement involving the TUPE transfer of council officers must be approved by *Cabinet* on the advice of the Director of Policy & Resources (NLC) or the Solicitor to the Council (NELC).
- 15.4 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). HR guidance should be sought.

16 **FINANCIAL APPRAISAL AND SECURITY**

- 16.1 Minimum standards of financial standing and financial appraisals are subject to the advice of the Director of Policy & Resources (NLC) or the Chief Finance Officer (NELC). Minimum standards of financial standing should be considered for all contracts where the estimated contract value exceeds the threshold of any relevant EU Directive or UK legislation and/or where other risk is identified, including where there would be a significant effect on the delivery of council services in the event of contractor default or cessation of supply or service
- 16.2 Where minimum financial standards are stipulated, the financial assessment should be undertaken separate from the tender evaluation, and prior to the completion of the tender evaluation.
- 16.3 Where considered appropriate following a financial appraisal of a potential contractor against the council's minimum standards of financial standing, the potential contractor may be required to provide a Parent Company Guarantee or a Performance Bond in a form acceptable to the council for the duration of the contract (including any extension period.) Any such Guarantee 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 Parent Company Guarantee will be required.
- 16.4 The councils' standard insurance requirements are specified in the councils' standard conditions of purchase. Where the estimated contract value exceeds the threshold of any relevant EU Directive or UK legislation or where specific risks are involved the Project Manager should refer to the Insurance Manager and PANNEL.

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17 TENDER AND QUOTATION ERRORS

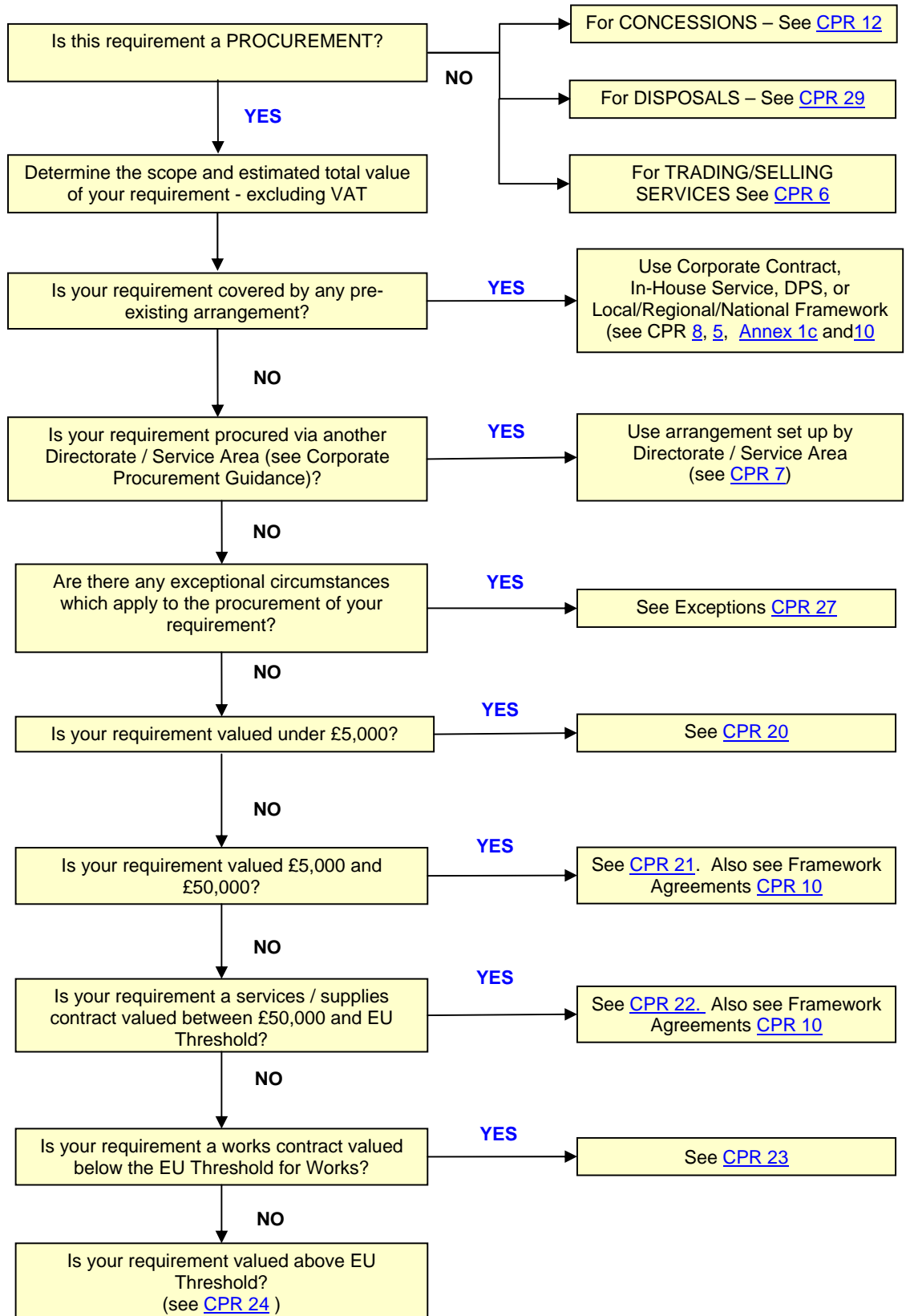
- 17.1 Tender errors (including quotation errors) shall be dealt with in accordance with the following paragraphs of rule 17, which shall be included in all Invitations To Tender and Requests For Quotations.
- 17.2 **Compliance**
Any Tenderer who fails to comply with the tender instructions and submission 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.
- 17.3 **Late Tender**
No late tender, other than system access errors, shall be considered except with the approval of the Director of Policy & Resources (NLC) or the Solicitor to the Council (NELC) on the advice of [PANNEL](#).
- 17.4 **YORtender System Access Errors**
Where a tenderer advises that a tender submission deadline may be or has been missed as a result of YORtender being unavailable, [PANNEL](#) should obtain a system report from Due North prior to the council exercising its discretion as to whether to accept or reject the Tender.
- 17.5 **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 which of the interpretations is correct and confirm the appropriate amendments to the tender. Where there is an omission, ambiguity or inconsistency in pricing, advice from [PANNEL](#) must be sought.

18 CLARIFICATION OF TENDERS AND QUOTATIONS

- 18.1 All clarifications must be raised via YORtender. Guidance from PANNEL is recommended in all circumstances but mandated where the error, omissions or inconsistency is linked to price.

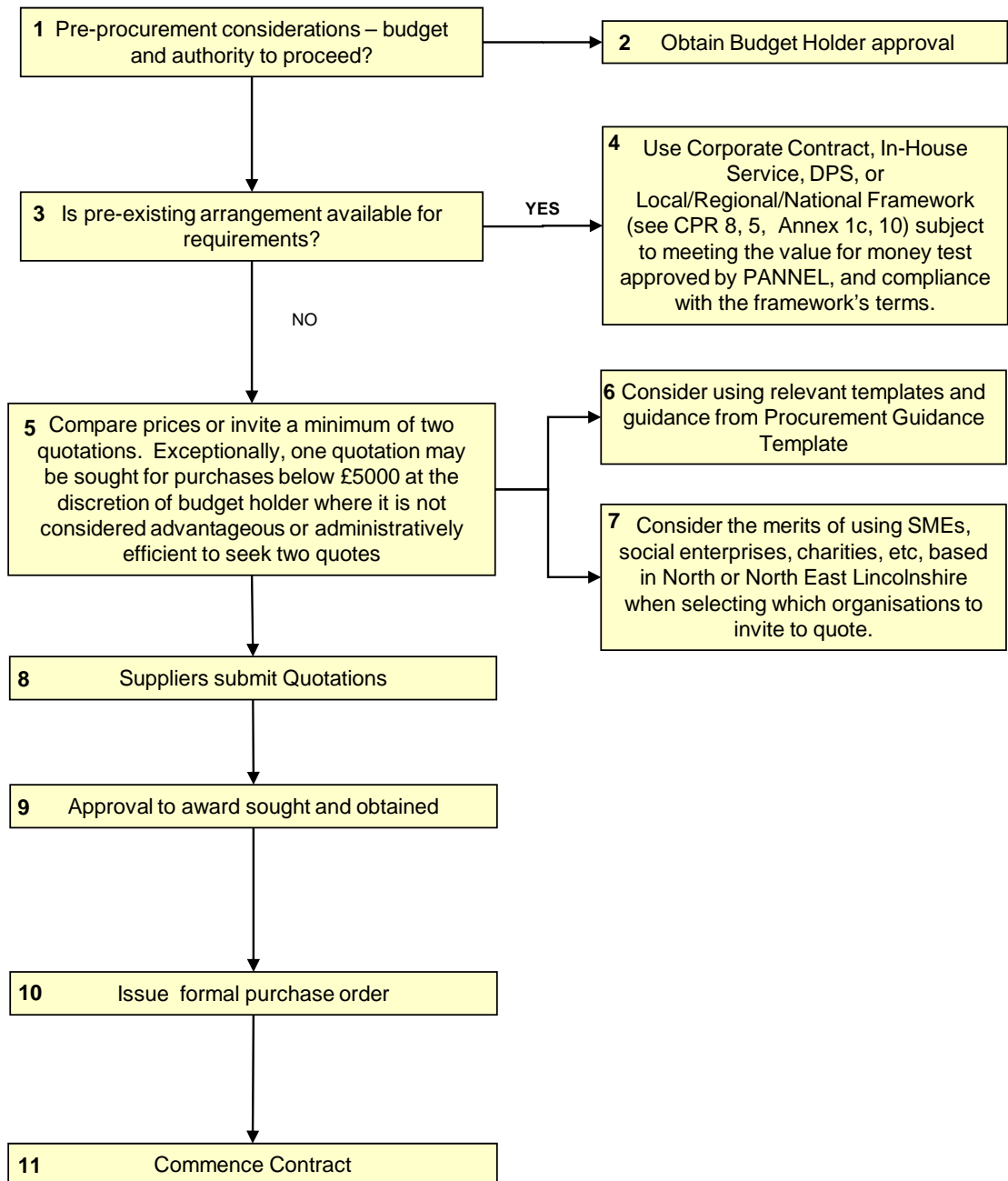
Contract Procedure Rules

19 CHOICE OF PROCEDURE



Contract Procedure Rules

20 Supplies/Services/Works Contracts below £5,000



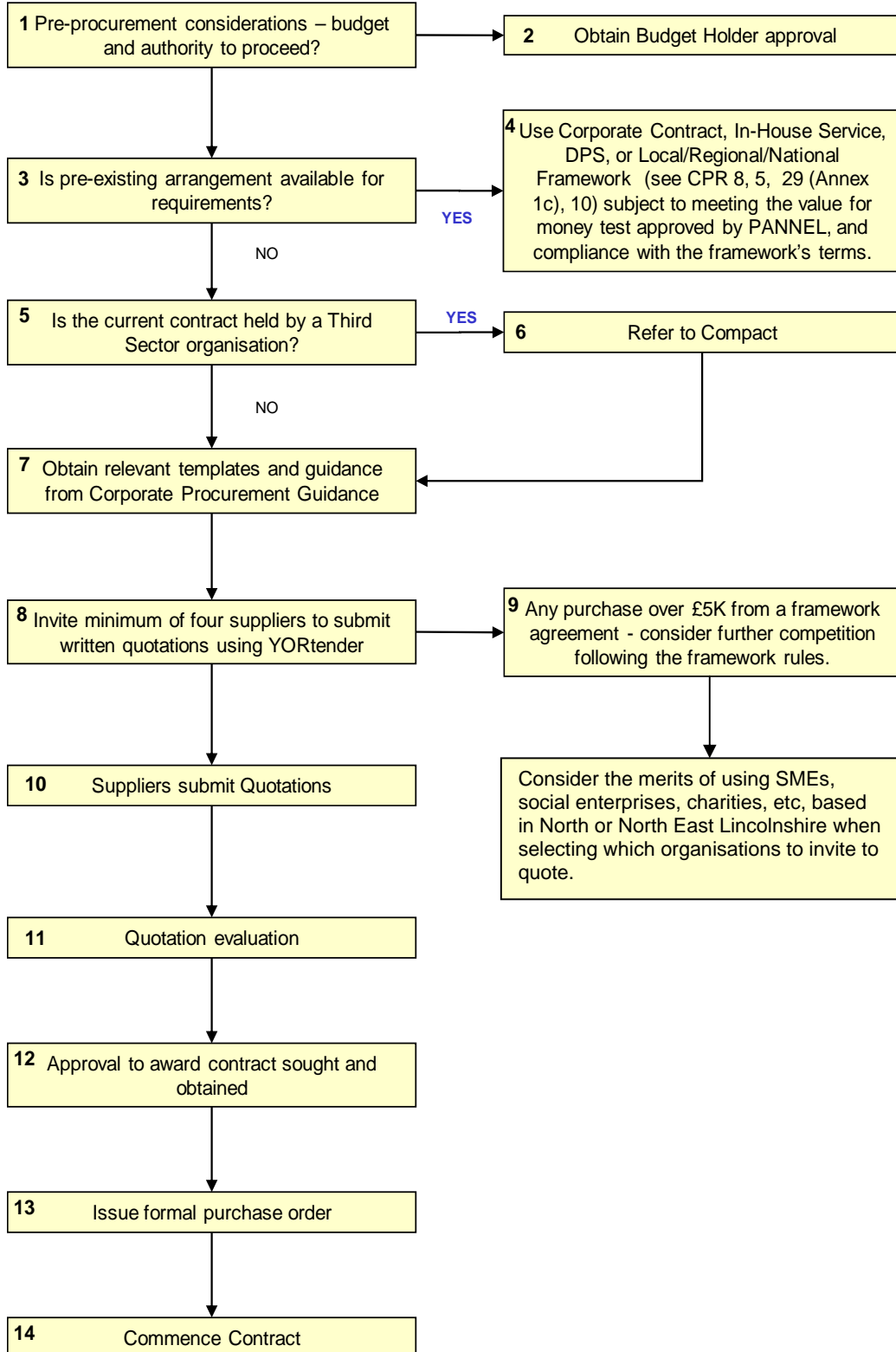
Contract Procedure Rules

20.1 Supplies/Services/Works Contracts below £5,000

NELC	NLC
20.1a Authorisation to Proceed with Procurement	
Verify availability of budget and obtain Budget Holder approval.	
20.1b Competitive Process	
Consider, in consultation with <u>PANNEL</u> , whether the requirement needs to be procured in accordance with the council's <u>Sustainable Procurement Policy</u> .	
Compare prices or seek a minimum of two comparable quotations. Consider the merits of using SMEs, social enterprises, charities, etc, based in North or North East Lincolnshire when selecting which organisations to invite to quote.	
Exceptionally, for purchases below £5,000 where it is not considered advantageous or administratively efficient, one quotation may be sought at the discretion of the budget holder, otherwise seek approval from <u>PANNEL</u> .	
Written formats may include fax, e-mail, catalogue and website pages or copies, advertisements or marketing material, price lists, letters, etc.	
Use of YORtender is optional at this level but is recommended for transparency, audit trail, etc.	
20.1c Advertisement	
No obligation to advertise.	
Optional – YORtender	
Any advertisement shall: specify the nature and purpose of the contract, invite expressions of interest in or quotations for its execution, state the last date and time when expressions of interest or quotations will be accepted and comply in all respects with the requirements of the relevant UK legislation.	
20.1d Receiving & Opening of Quotations	
Within Directorate or Service Area, addressed to the procuring officer or nominee at the address specified by that person for its return. Retain copies of quotations for audit trail.	
20.1e Evaluation	
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. Compliant means the bid should be fully capable of meeting all fitness for purpose requirements in terms of specification, price, quality, delivery, etc.	
20.1f Authorisation to Award	
Obtain Budget Holder approval.	
20.1g Execution	
A formal purchase order shall be issued to 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 <u>terms and conditions of purchase</u> .)	
20.1h Records & Documentation	
The Service Area or Directorate shall retain records of the transaction in accordance with the council's approved record management or document retention policy.	

Contract Procedure Rules

21 Supplies/Services/Works Contracts £5,000 to £50,000



Contract Procedure Rules

21.1 Supplies/Services/Works Contracts £5,000 to £50,000

NELC	NLC
21.1a Authorisation to Proceed with Procurement	
Verify availability of budget and obtain Budget Holder approval.	
21.1b Competitive Process	
<p>Consider, in consultation with <u>PANNEL</u>:</p> <ul style="list-style-type: none"> • whether the requirement needs to be procured in accordance with the council's <u>Sustainable Procurement Policy</u>; • the benefits of undertaking an <u>Integrated Impact Assessment</u> where there is potential for direct impact upon citizens or officers or a requirement for consultation, and • The use of Lots to facilitate greater access to the opportunity for SMEs. <p>Seek a minimum of four written quotations using the basic quotation template where considered helpful. Consider giving priority to SMEs, social enterprises, charities, etc, based in North or North East Lincolnshire when selecting which organisations to invite to quote (only where a closed process is being used.) The council's approved Terms & Conditions must be used and the process must be fully managed using <u>YORtender</u> unless administratively burdensome and with the express permission of <u>PANNEL</u>.</p> <p>Where a framework agreement is being used, any purchase greater than £5,000 should be subject to further competition between all suppliers who are a party to the agreement in accordance with the requirements stated by the framework owner (unless alternative provisions have been agreed). Wherever possible and considered advantageous, bundling of largely similar requirements should be undertaken to maximise economies of scale.</p> <p>Requests to use electronic auctions should be referred to <u>PANNEL</u></p>	
21.1c Advertisement	
<p>Mandatory – Open advertisement on <u>YORtender</u> with indicative contract values published. A closed process with pre-determined bidders may be used with the prior approval of <u>PANNEL</u> if response levels to any advert are likely to be burdensome to manage.</p> <p>Optional – Advertising of open opportunities via web-based media e.g. Twitter, subject to <u>PANNEL</u> advice.</p> <p>Any advertisement shall: specify the nature and purpose of the contract, invite expressions of interest in or quotations for its execution, state the last date and time when expressions of interest or quotations will be accepted and comply in all respects with the requirements of the relevant UK legislation.</p>	
21.1d Receiving & Opening of Quotations	
<p>Within the Service Area or Directorate using the <u>YORtender</u> system by an independent person, i.e. a person not associated with the purchase or project.</p> <p>No late tender shall be considered except with the approval of the Director of Policy & Resources (NLC) or the Solicitor to the Council (NELC) on the advice of <u>PANNEL</u>.</p>	

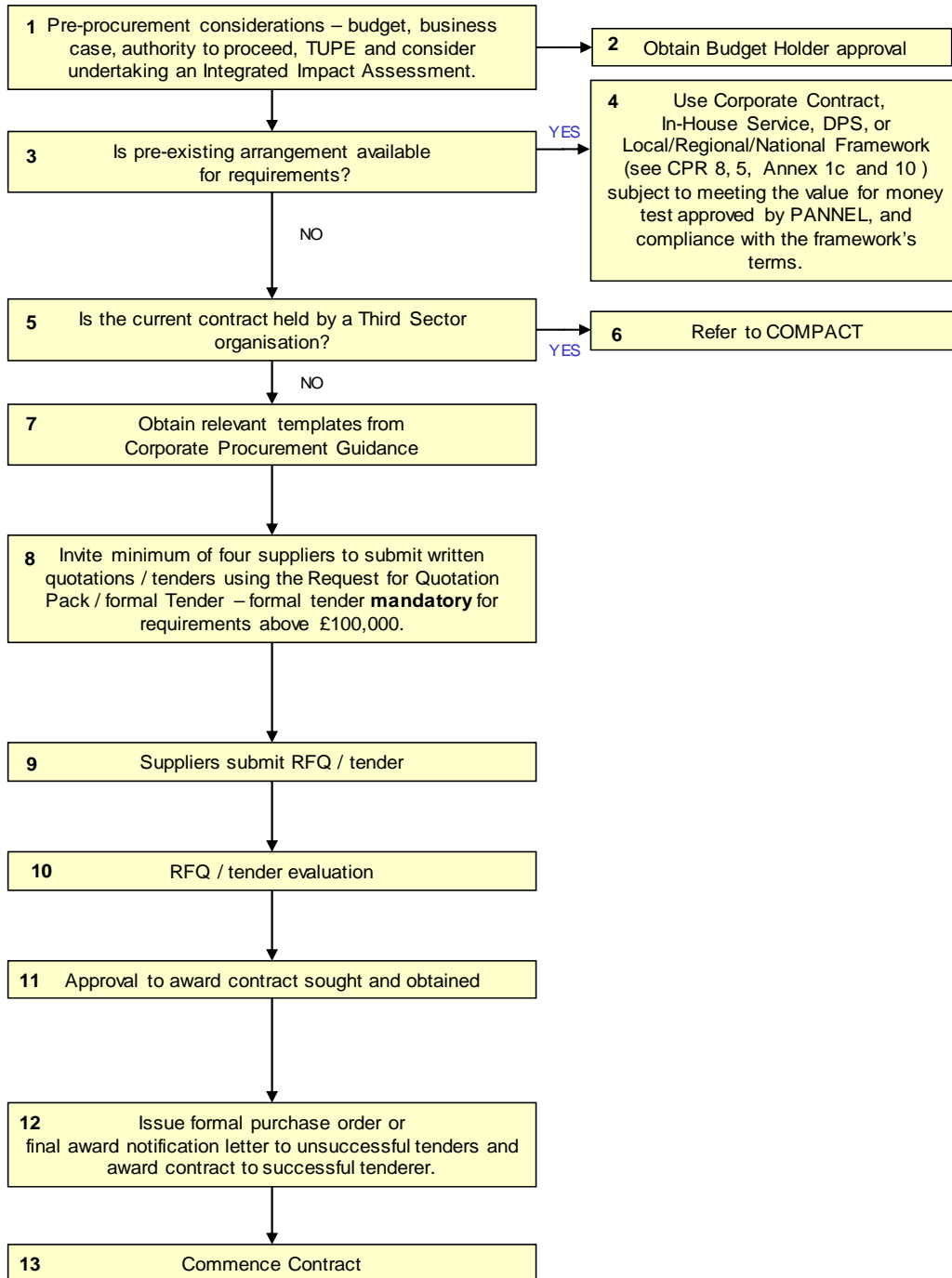
Contract Procedure Rules

21.1 Supplies/Services/Works Contracts £5,000 to £50,000

21.1e Evaluation
<p>Evaluate on the basis of :</p> <ul style="list-style-type: none">• 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. <p>Compliance means the bid should be fully capable of meeting all fitness for purpose requirements in terms of specification, price, quality, delivery, etc.</p> <p>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 <u>CPR 17</u> for guidance on how to manage errors in quotation submissions.</p> <p>The RFQ 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 Director of Policy & Resources (NLC) or the Solicitor to the Council (NELC).</p>
21.1f Negotiation
<p>No negotiation with the existing or potential contractors shall be carried out without the approval and guidance of <u>PANNEL</u>.</p>
21.1g Authorisation to Award
<p>Obtain Budget Holder approval. If only one response is received, the written approval of the Director Policy & Resources (NLC) or Assistant Director Transformation (NELC) must be obtained prior to accepting the quotation. Upload evaluation results and approval authorisation onto <u>YORtender</u> to provide transparency.</p>
21.1h Execution
<p>A formal purchase order shall be issued to 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 <u>terms and conditions of purchase</u>).</p>
21.1i Records & Documentation
<p>The Service Area or Directorate shall retain records of the procurement exercise and the purchase order including the original signed copy of the contract where applicable, in accordance with the council's approved record management or document retention policy.</p> <p>The contract details within YORtender must be promoted to the contracts register.</p>

Contract Procedure Rules

22 Supplies/Services/Works Contracts £50,000 to £172,514.



Contract Procedure Rules

22.1 Supplies/Services/Works Contracts £50,000 to £172,514.

NELC	NLC
22.1a Authorisation to Proceed with Procurement	
<p>It is the Budget Holder's responsibility to ensure the availability of budget and the authority to commit to the expenditure, noting the <u>Key Decisions</u> 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.</p> <p>Verify decision making protocols where:</p> <ul style="list-style-type: none"> • There are possible council workforce and related <u>TUPE</u> implications, advice from Legal Services and HR must be sought; • There are potentially significant economic development / sustainability implications and • There are budget or policy implications. <p>Full council approval may be necessary.</p>	
22.1b Competitive Process	
<p>Adhere to the corporate governance frameworks for <u>project management</u> 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.</p> <p>Consider, in consultation with <u>PANNEL</u>, whether the requirement needs to be procured in accordance with:</p> <ul style="list-style-type: none"> • An <u>Integrated Impact Assessment</u> (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; • <u>COMPACT</u>; • Council Skills Pledge and • <u>Sustainable Procurement Policy</u>. <p>Selection of Tenderers</p> <p>Seek a minimum of four written competitive quotations, openly advertised via <u>YORTender</u> comprising:</p> <ul style="list-style-type: none"> • Clear instructions for the submission and pricing of quotations; • A clear written specification of the request; • Quotation Reply Forms; • A Pricing Schedule and • The approved council Terms & Conditions. Where alternative Terms & Conditions are used, or amendments are made, seek guidance and approval from Legal Services. <p>Alternatively, an open formal tender procedure may be used; a closed process may only be used with the prior approval of <u>PANNEL</u> with tenders being invited from a minimum of four potential contractors advertising via <u>YORTender</u>. Note that a formal tender procedure is mandatory for contract values above £100,000.</p>	

Contract Procedure Rules

22.1 Supplies/Services/Works Contracts £50,000 to £172,514.

Where a framework agreement 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.

A Supplier Questionnaire is not required unless considered essential based on the risk of the requirement.

The project manager should establish a project team. PANNEL 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 PANNEL and then should further seek prior written approval from the Director of Policy & Resources (NLC) or the Assistant Director Transformation (NELC).

The process must be fully managed using YORtender

Requests to use **electronic auctions** should be referred to PANNEL

22.1c Advertisement

Mandatory – YORtender with indicative contract values published

Optional – Advertising of open opportunities via web-based media e.g. Twitter, subject to PANNEL advice.

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 accepted and comply in all respects with the requirements of the relevant UK legislation.

22.1d 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 Director of Policy & Resources (NLC) or the Solicitor to the Council (NELC) on the advice of PANNEL.

22.1e Evaluation

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

Contract Procedure Rules

22.1 Supplies/Services/Works Contracts £50,000 to £172,514.

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 17 for guidance on how to manage errors in tender submissions.

The RFQ/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 Director of Policy & Resources (NLC) or the Solicitor to the Council (NELC).

22.1f **Post Tender Negotiation**

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

22.1g **Authorisation to Award**

Must be obtained from the relevant Strategic Director (NELC) or Director (NLC) where consistent in all respects with council's Policy and Budget Framework.

At least two tender responses must be received. If only one response is received, the written approval of the Director of Policy & Resources (NLC) or the Solicitor to the Council (NELC) must be obtained prior to accepting the quotation/tender.

Upload evaluation results and approval authorisation onto YORtender to provide transparency.

22.1h **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. All unsuccessful tenderers should be given the opportunity to receive a debrief.

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.

Contract Procedure Rules

22.1 Supplies/Services/Works Contracts £50,000 to £172,514.

Signing

All contracts under £100,000 shall be signed by the relevant Strategic Director (NELC) or Director (NLC).

All contracts over £100,000 shall be signed by the Solicitor to the Council (NELC) or the Director of Policy & Resources (NLC), attesting the Common Seal of the council as appropriate.

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

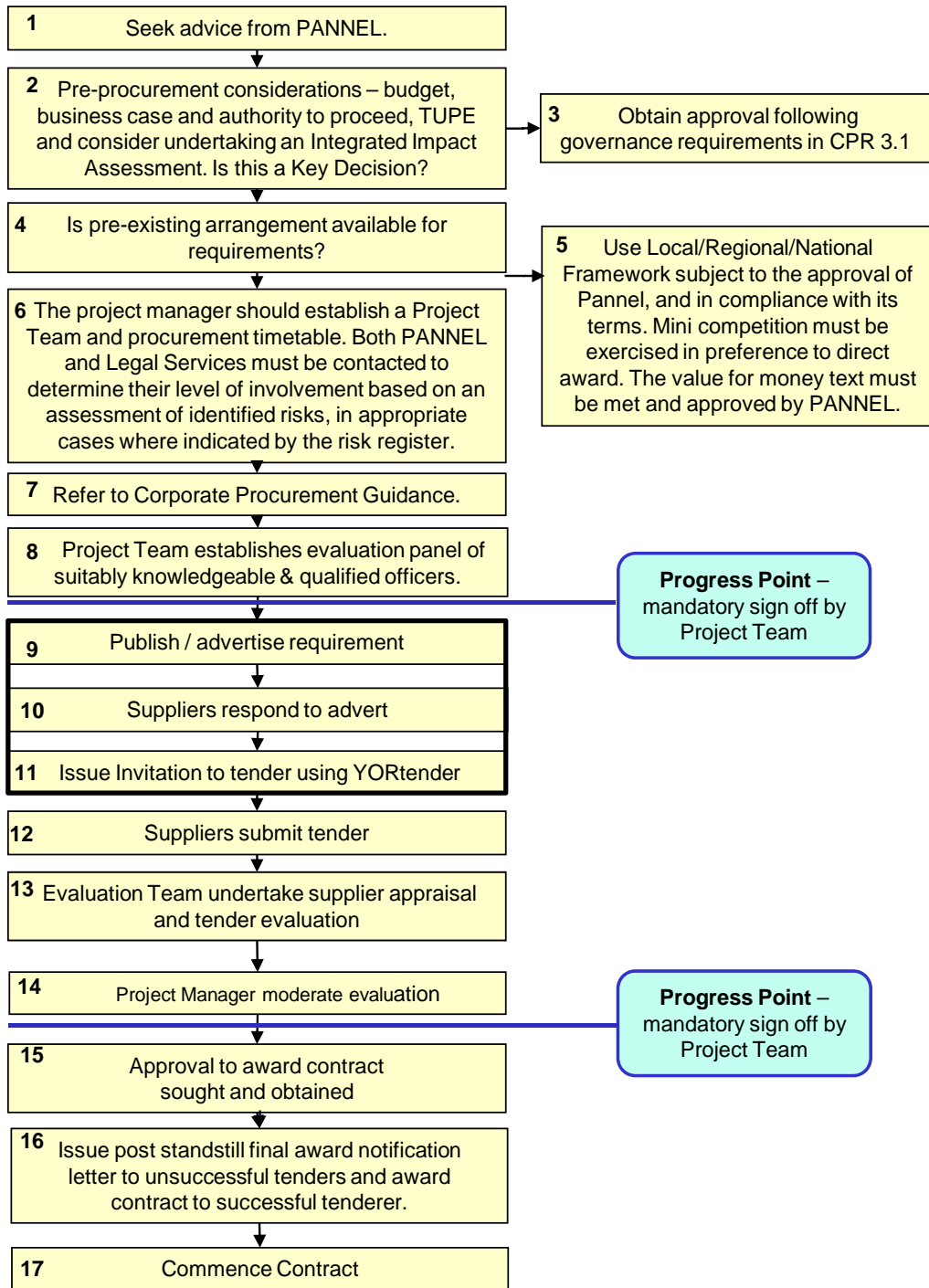
22.1i Records & Documentation

The Service Area or Directorate 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.

Where the contract value is over £100,000, the original signed copy shall be retained by Legal Services.

Contract Procedure Rules

23 Works Contracts (above EU Threshold for Supplies/Services and below EU Threshold for Works)



Contract Procedure Rules

23.1 Works Contracts (above EU Threshold for Supplies/Services and below EU Threshold for Works)

NELC	NLC
23.1a Authorisation to Proceed with Procurement	
<p>Please refer to Lead Services CPR7.</p> <p>It is the Budget Holder's responsibility to ensure the availability of budget and the authority to commit to the expenditure, noting the <u>Key Decisions</u> 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.</p> <p>Verify decision making protocols where:</p> <ul style="list-style-type: none"> • There are potentially significant economic development / sustainability implications; • There are budget or policy implications. <p>Full council approval may be necessary.</p>	
23.1b Competitive Process	
<p>Adhere to the corporate governance frameworks for <u>project management</u> 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.</p> <p>The suite of construction frameworks has been developed to meet the majority of the councils' Works requirements.</p> <p>Determine in consultation with <u>PANNEL</u>, whether the construction frameworks are appropriate or whether a specific procurement is necessary in accordance with:</p> <ul style="list-style-type: none"> • An <u>Integrated Impact Assessment</u> (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 • <u>Sustainable Procurement Policy</u>. <p>Where a specific procurement is necessary, use a formal open tender procedure managed using YORtender. Invitations to Tender to comprise:</p> <ul style="list-style-type: none"> • Clear instructions for the submission and pricing of quotations; • A Supplier Questionnaire; • 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. <p>Alternatively a minimum of four formal tenders may be sought using a closed process, subject to approval by Panel.</p>	

Contract Procedure Rules

23.1 Works Contracts (above EU Threshold for Supplies/Services and below EU Threshold for Works)

The project manager should establish a project team. Both PANNEL 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%, he should refer to PANNEL and then should further seek prior written approval from the Director of Policy & Resources (NLC) or the Assistant Director Transformation (NELC).

Requests to use **electronic auctions** should be referred to PANNEL

23.1c **Advertisement (only applicable if not using the construction frameworks)**

Mandatory – YORtender with indicative contract values published.

Optional –

- advertising of open opportunities via social media e.g. Twitter subject to PANNEL 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 in 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.

23.1d **Receiving & Opening of Bids**

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.

23.1e **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 bid 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 17 for guidance on how to manage errors in tender submissions.

Contract Procedure Rules

23.1 Works Contracts (above EU Threshold for Supplies/Services and below EU Threshold for Works)

The tender must state that no tenders or quotes will be considered unless received by the date and time stipulated in the documentation. No tender or quote delivered in contravention of this rule shall be accepted without the written approval of the Director of Policy & Resources (NLC) or the Solicitor to the Council (NELC).

23.1f **Post Tender Negotiation**

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

23.1g **Authorisation to Award**

Must be obtained from the relevant Strategic Director (NELC) or Director (NLC) where consistent in all respects with council's 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 Director of Policy & Resources (NLC) or the Solicitor to the Council (NELC) must be obtained prior to accepting the tender.

Upload evaluation results and approval authorisation onto YORTender to provide transparency.

23.1h **Award and Execution**

Outcome of Tender Exercise

All tenderers must be advised of the outcome of the tender exercise in writing, and the following information must be included in the notice:

- 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 and
- the scores of the successful tenderer and the organisation receiving the notice.

Unsuccessful tenderers may request further debrief.

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.

Contract Procedure Rules

23.1 Works Contracts (above EU Threshold for Supplies/Services and below EU Threshold for Works)

Signing

All contracts over £100,000 shall be signed by the Solicitor to the Council (NELC) or the Director of Policy & Resources (NLC), attesting the Common Seal of the council as appropriate.

Contracts over £1,000,000 shall be by deed, under the Common Seal of the Council, where the Solicitor to the Council (NELC) or the Director of Policy and Resources (NLC) so advises.

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

23.1i Records & Documentation

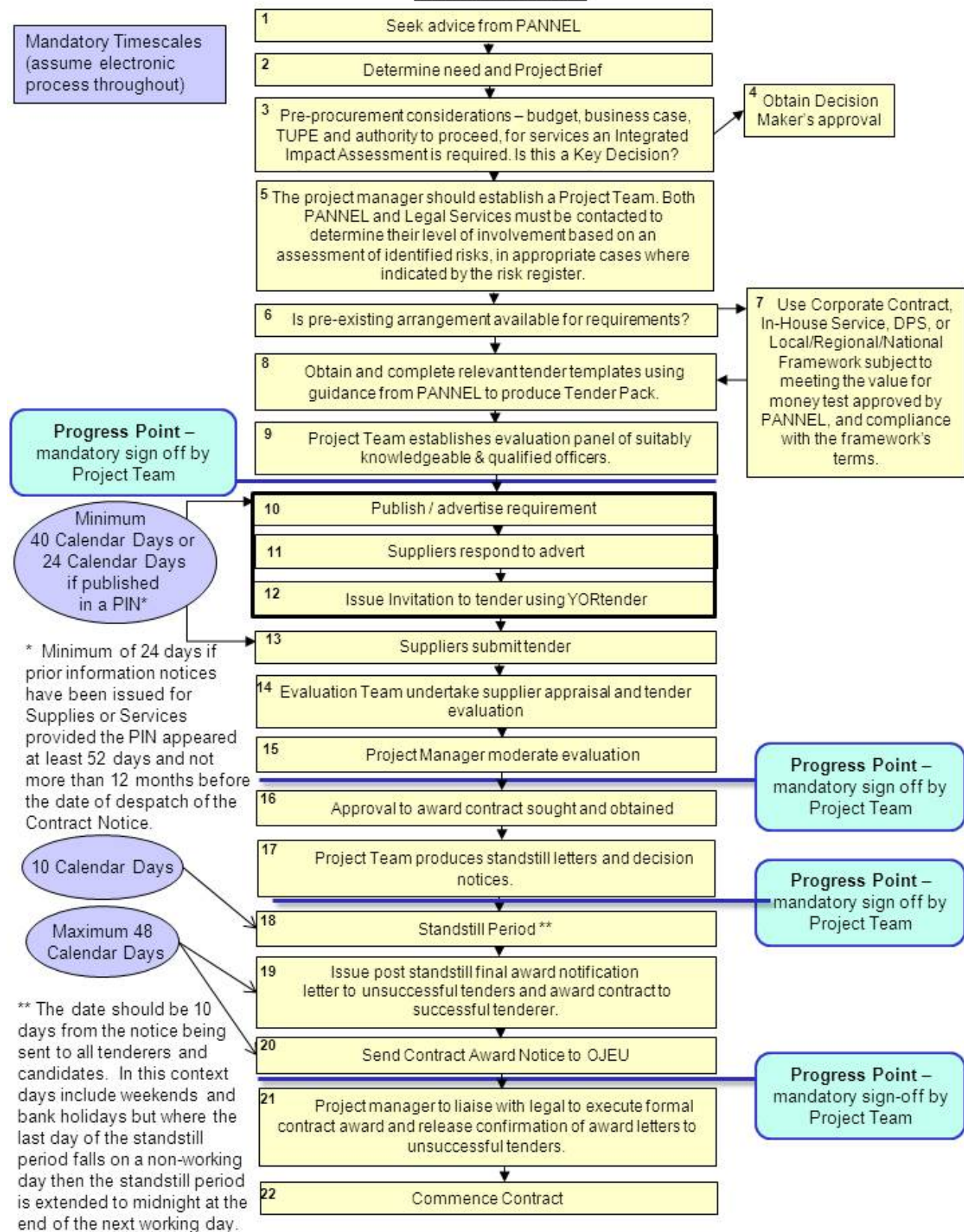
The Service Area or Directorate shall retain records of the procurement exercise, in accordance with the council's approved record management or document retention policy.

The original signed copy of the contract shall be retained by the Solicitor to the Council (NELC), or Director of Policy & Resources (NLC).

Contract Procedure Rules

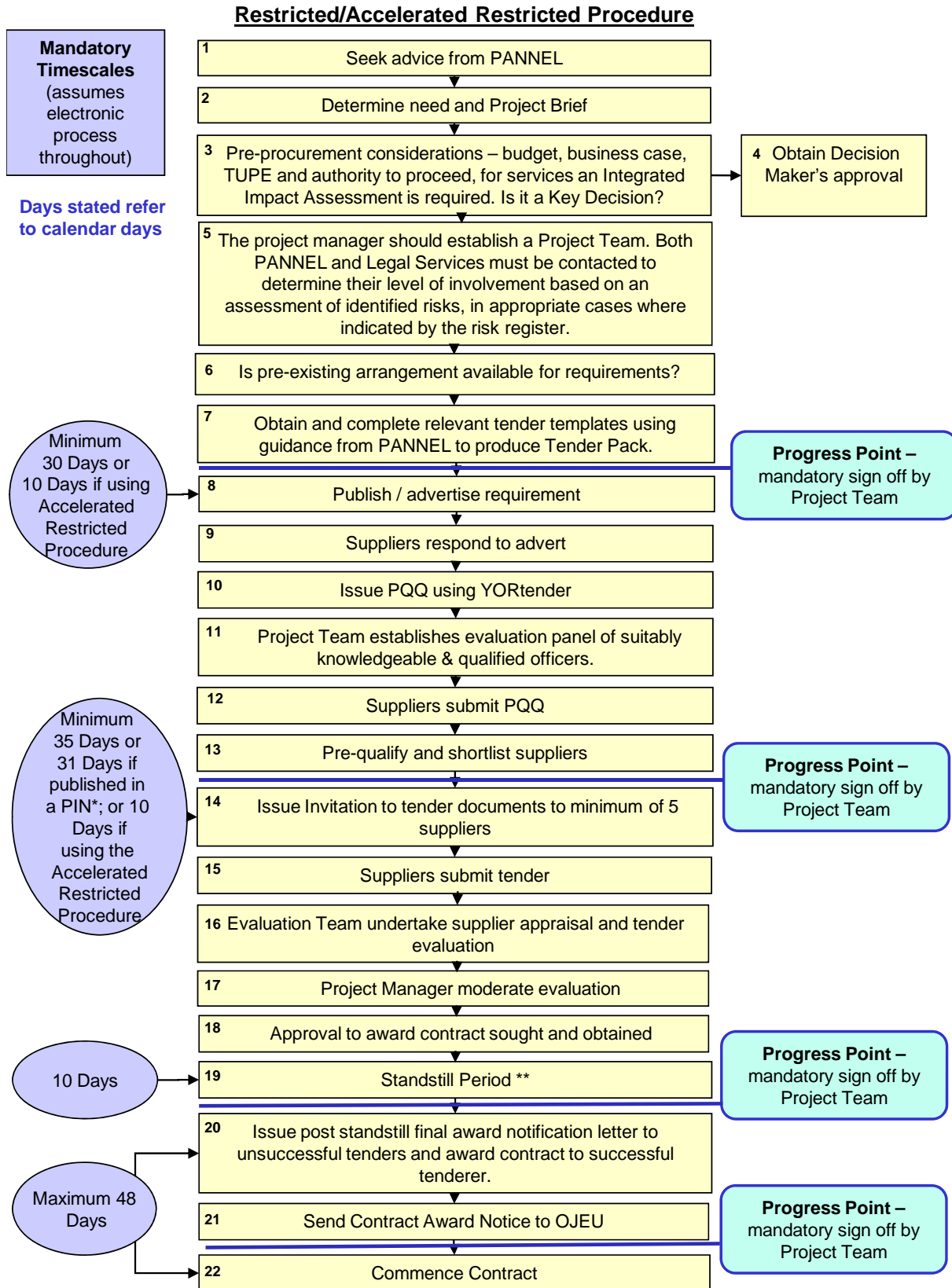
24.a Supplies/Services/Works Contracts above EU Thresholds

Open Procedure



Contract Procedure Rules

24.b Supplies/Services/Works Contracts above EU Thresholds



Contract Procedure Rules

24.1 Supplies/Services/Works Contracts above EU Thresholds

NELC	NLC
24.1a Authorisation to Proceed with Procurement	
<p>It is the Budget Holder's responsibility to ensure the availability of budget and the authority to commit to the expenditure, noting the <u>Key Decisions</u> 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.</p> <p>Verify decision making protocols where:</p> <ul style="list-style-type: none"> • There are possible council workforce and related <u>TUPE</u> implications, advice from Legal Services and HR must be sought; • There are potentially significant economic development / sustainability implications and • There are budget or policy implications. <p>Full council approval may be necessary.</p>	
24.1b Competitive Process	
<p>Adhere to the corporate governance frameworks for <u>project management</u> 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.</p> <p>Consider, in consultation with <u>PANNEL</u>, whether the requirement needs to be procured in accordance with:</p> <ul style="list-style-type: none"> • The use of Lots to facilitate greater access to the opportunity for SMEs; • the SME Concordat; • <u>COMPACT</u>; • Council Skills Pledge; • <u>Sustainable Procurement Policy</u> and • Public Services (Social Value) Act 2012. <p>For all services procurements over EU threshold, an <u>Integrated Impact Assessment</u> 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.</p> <p>EU Procedure</p> <p>Seek advice from <u>PANNEL</u> and determine the EU procedure to be used. The council's standard approach is to use Open Procedure. The following procedures may only be used on the advice of <u>PANNEL</u>:</p> <ul style="list-style-type: none"> • Restricted Procedure; • Creation of a Framework; • Access to a Framework, subject to exception approval under <u>CPR 26.1h</u> • Dynamic Purchasing System and • Reverse Auction. <p>The following procedures may not be used except with approval of Director of Policy & Resources (NLC) or Solicitor to the Council (NELC) in accordance with <u>CPR 11</u>:</p> <ul style="list-style-type: none"> • Accelerated Restricted Procedure; • Negotiated Procedure. 	

Contract Procedure Rules

24.1b Supplies/Services/Works Contracts above EU Thresholds

Competitive Dialogue may only be used in accordance with CPR 11
The OJEU Contract Notice must be approved and released by PANNEL.

The tender may only be released on YORtender once the Contract Notice has been published and cited in the tender pack.

Any supplementary advertisement of the opportunity may only be published once the Contract Notice has been published in the OJEU.

Where a Supplier Questionnaire is required, the council's standard template must be used.

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 bidding organisations and award criteria used to evaluate the strength of the bid 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 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 Director of Policy & Resources (NLC) or the Solicitor to the Council (NELC).

The project manager should establish a project team. Both PANNEL 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%, he should refer to PANNEL and then should further seek prior written approval from the Director of Policy & Resources (NLC) or the Assistant Director Transformation (NELC).

Contract Procedure Rules

24.1b Supplies/Services/Works Contracts above EU Thresholds

24.1e Advertisement
<p>Mandatory Official Journal of the European Union (OJEU) approved and issued via <u>PANNEL</u>. After publication of the OJEU notice followed by release on YORTENDER advising indicative contract values, then:</p> <p>Optional –</p> <ul style="list-style-type: none">▪ Advertising of open opportunities via social media e.g. Twitter subject to <u>PANNEL</u> advice▪ One or more specialist trade or professional newspapers or journals where appropriate.▪ Direct marketing is permissible, after publication of the OJEU notice, to include organisations that may not see the opportunity to ensure local / regional / national competition. <p>Any advertisement shall: specify the nature and purpose of the contract, invite expressions of interest in or tenders for its execution; state the last date and time when expressions of interest or tenders will be acceptable; and comply in all respects with the requirements of the relevant EU Directive or UK legislation. Only information published in the OJEU notice can be included in any subsequent advertisements placed.</p>
24.1f Receiving & Opening of Tenders
Managed using <u>YORtender</u> , kept confidential and opened by an officer who is entirely independent and has no conflict of interest in relation to the project in question.
24.1g 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 <u>CPR 17</u> for guidance on how to manage errors in tender submissions.
24.1h Post Tender Negotiation
No negotiation with the existing or potential contractors shall be carried out.
24.1i Authorisation to Award
Must be obtained from the relevant Strategic Director (NELC) or Director (NLC) where consistent in all respects with council's Policy and Budget Framework and governance requirements for <u>Key Decisions</u> .
At least two tender responses must be received. If only one response is received, the written approval of the Director of Policy & Resources (NLC) or the Solicitor to the Council (NELC) must be obtained prior to accepting the tender.
Upload evaluation results and approval authorisation onto <u>YORTender</u> to provide transparency.

Contract Procedure Rules

24.1b Supplies/Services/Works Contracts above EU Thresholds

24.1j Standstill Period

All tenderers, and any candidates, including those who have already received notification of their rejection (for example, at PQQ 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 letter:

- 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 approved by PANNEL, 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 5 day notice period.

24.1k 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

All contracts over £100,000 shall be signed by the Solicitor to the Council (NELC) or the Director of Policy & Resources (NLC), attesting the Common Seal of the council as appropriate.

Contracts over £1,000,000 shall be by deed, under the Common Seal of the Council, where the Solicitor to the Council (NELC) or the Director of Policy and Resources (NLC) so advises.

Contract Procedure Rules

24.1b Supplies/Services/Works Contracts above EU Thresholds

24.1l OJEU Award Notice
Contract award must be announced by means of a Contract Award Notice in OJEU transmitted no later than 48 calendar days after the date of the post-standstill award letter. This is the responsibility of PANNEL .
24.1m Records & Documentation
The Service Area or Directorate shall retain records of the procurement exercise, in accordance with the council's approved record management or document retention policy. The original signed copy of the contract shall be retained by the Solicitor to the Council (NELC) or the Director of Policy & Resources (NLC).

25 **REPORTING OF TENDERS**

25.1 PANNEL will:

- Publish details of
- all contracts let over £10,000 on a monthly basis to comply with the Transparency code of practice guidelines
- report annually on all contracts let over £10,000 in the previous 12 months
- report quarterly on all consultancy contracts let (NLC only)

26 **PREVENTION OF CORRUPTION & THE BRIBERY ACT 2010**

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

26.2 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.

26.3 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

NELC - <http://www.nelincs.gov.uk/council/the-council-as-an-organisation/anti-fraud-framework/bribery-act-2010/>

NLC - <http://www.northlincs.gov.uk/your-council/about-your-council/policy-and-budgets/fraud/>

Contract Procedure Rules

27 **EXCEPTIONS**

27.1 With the approval of:

- The Director of Policy and Resources (NLC) or the Solicitor to the Council (NELC);
 - The Assistant Director Transformation (NELC) for contracts of value up to £50,000;
- there may, where permitted by the Public Contracts Regulations 2006, 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 goods.
- 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 use of Competitive Dialogue or the Negotiated Procedure is considered appropriate and permitted under the Public Contracts Regulations 2006.
- k. Where there are other exceptional circumstances.

27.2 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 form is optionally available for this purpose.

28 **COMMUNITY RIGHT TO CHALLENGE**

28.1 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.

28.2 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 1d](#).

Contract Procedure Rules

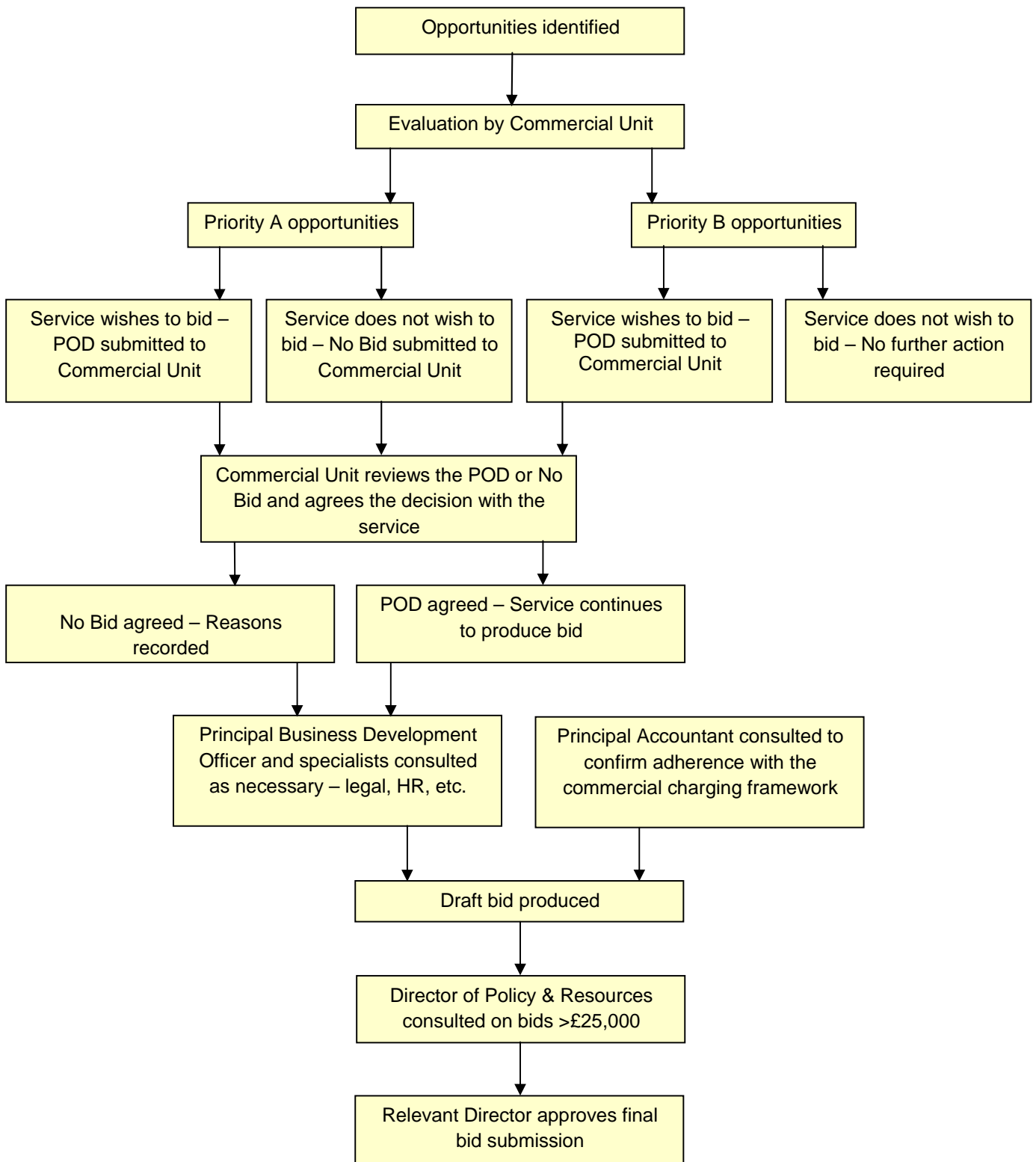
29 DISPOSAL & WRITE-OFF OF ASSETS (EXCLUDING LAND & PROPERTY)

- 29.1 A disposal request form must be completed for disposals under £50,000, approved by authorised officers and forwarded to PANNEL to be actioned based on the information provided. Items over £50,000 will require cabinet member (NLC) / portfolio holder (NELC) consultation.

The process for disposal is detailed in Annex 1e.

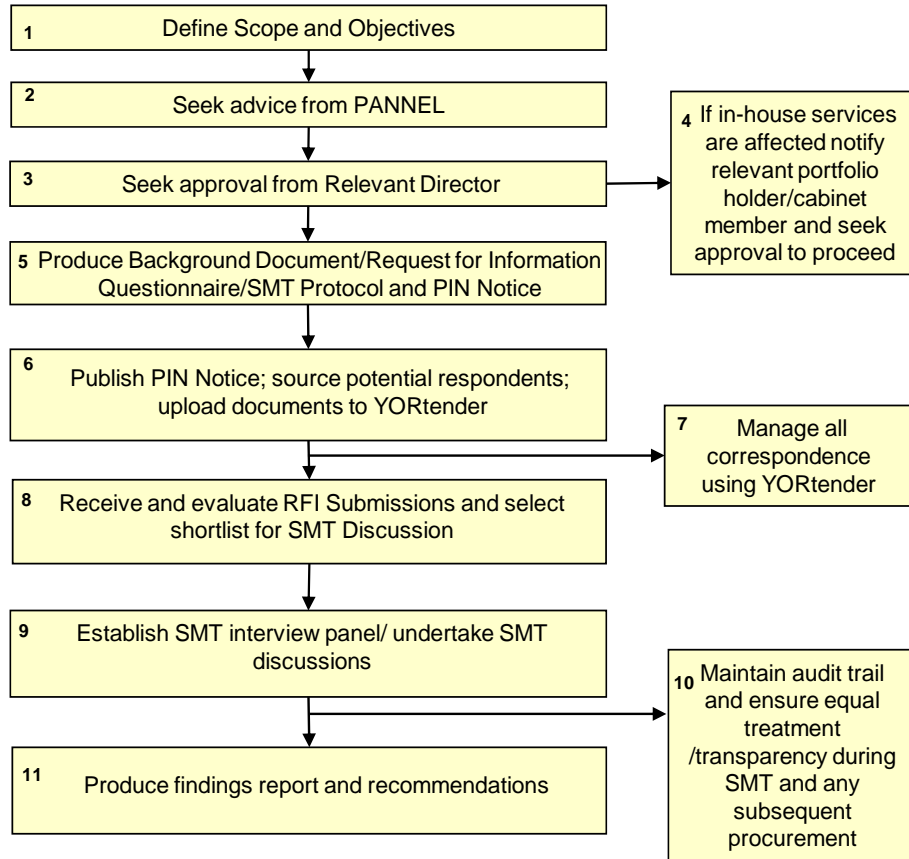
Contract Procedure Rules

ANNEX- 1a - Commercial Process – NORTH LINCOLNSHIRE ONLY



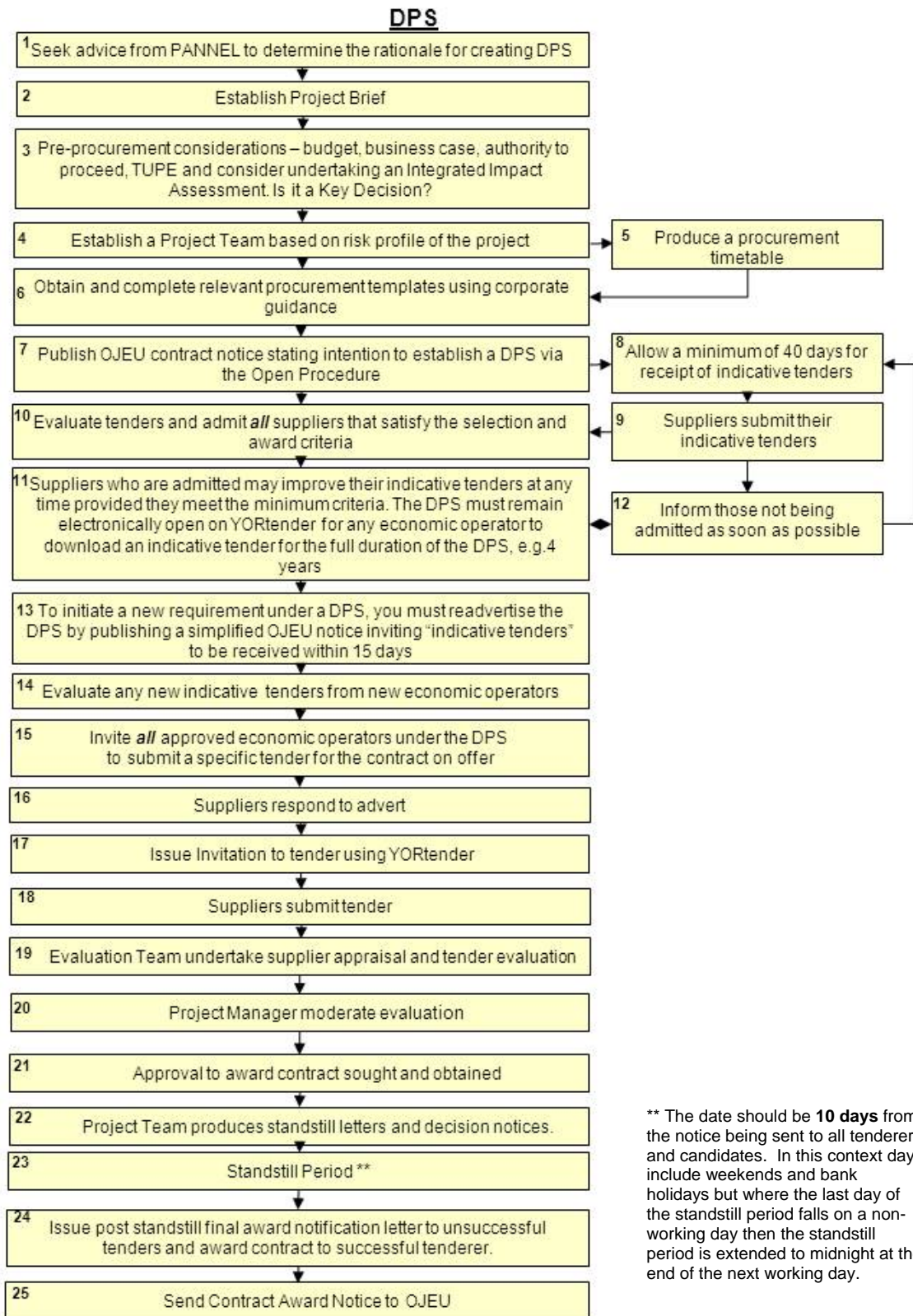
Contract Procedure Rules

ANNEX- 1b - Soft Market Testing



Contract Procedure Rules

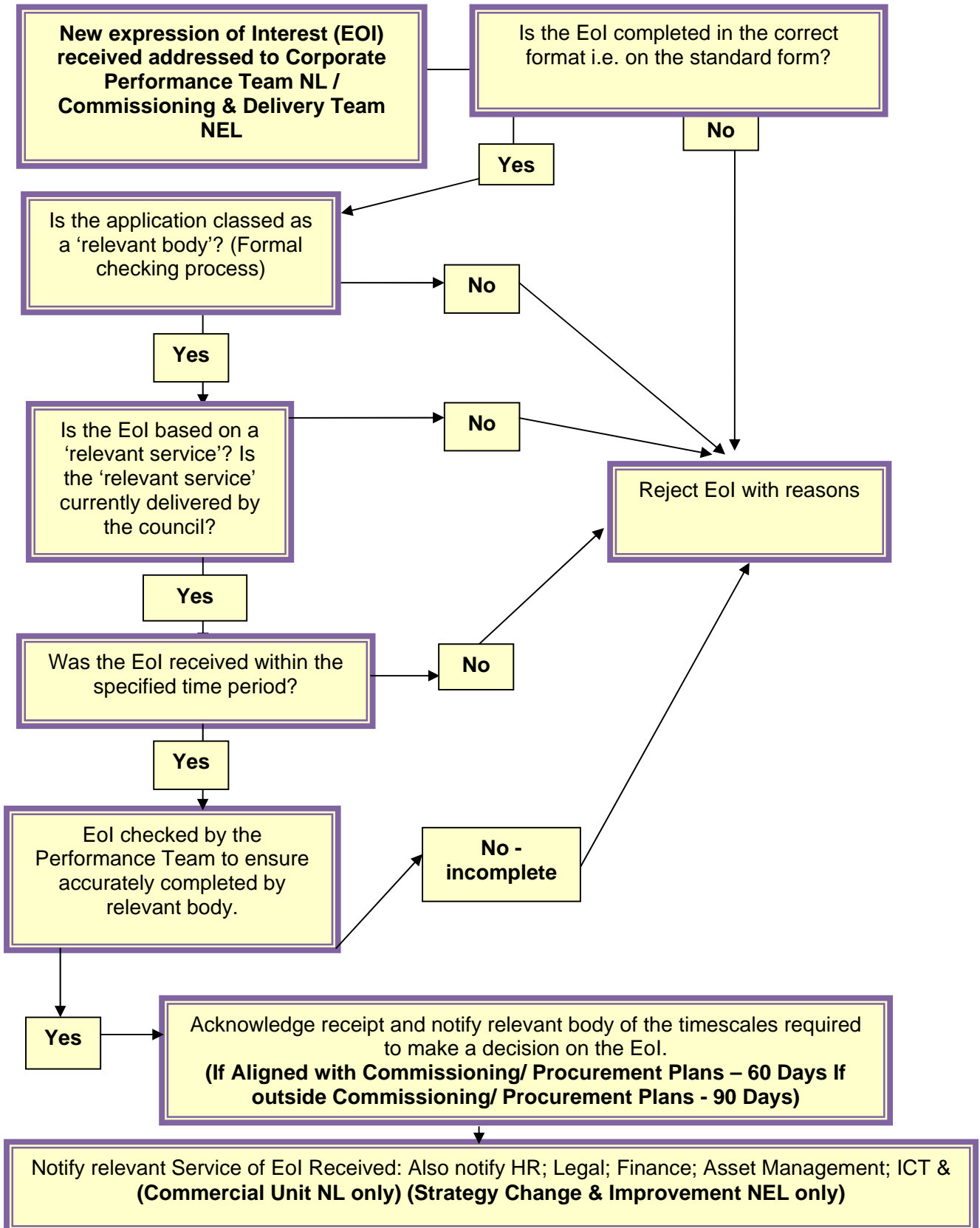
Annex 1c- Dynamic Purchasing Systems



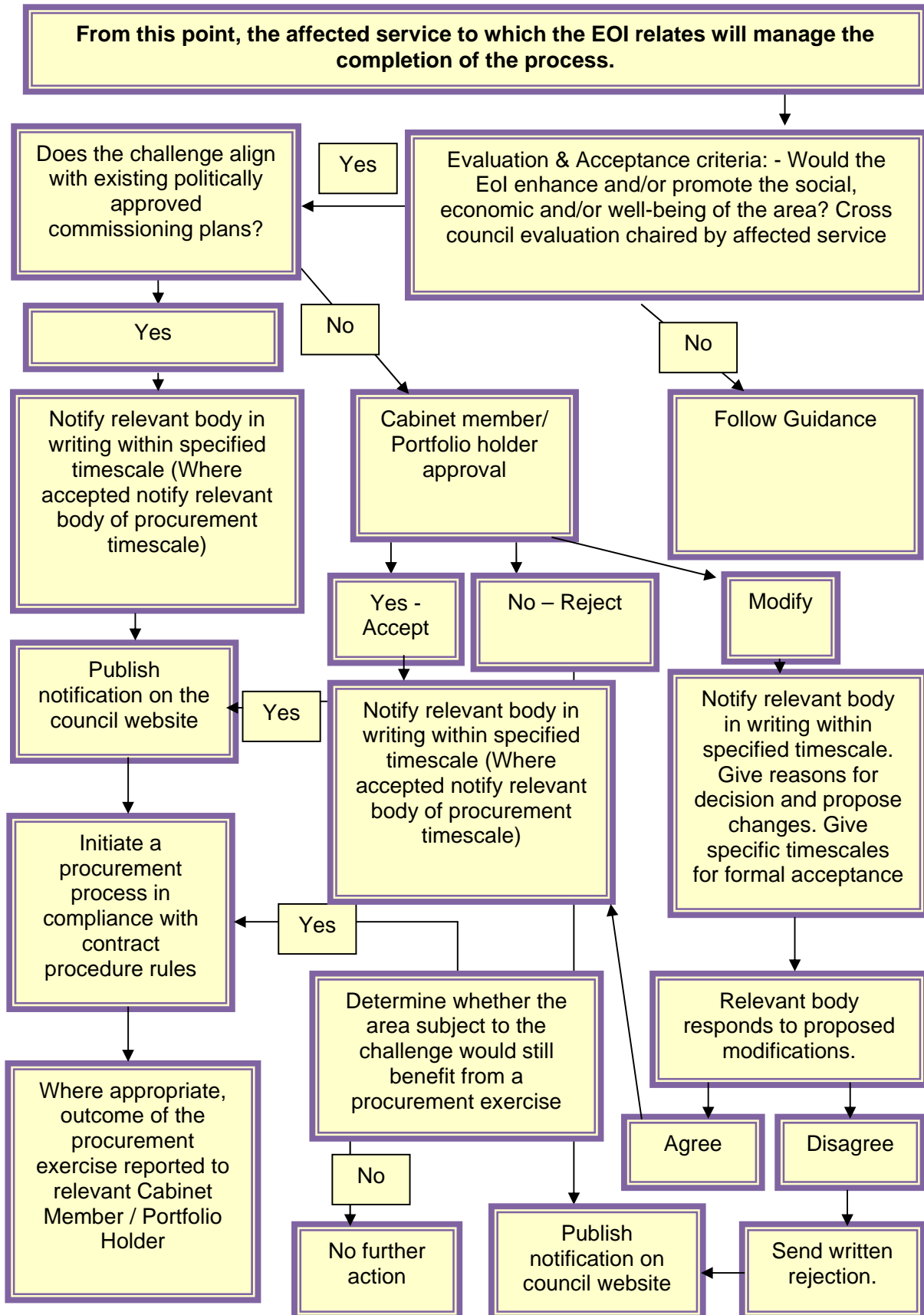
** The date should be **10 days** from the notice being sent to all tenderers and candidates. In this context days include weekends and bank holidays but where the last day of the standstill period falls on a non-working day then the standstill period is extended to midnight at the end of the next working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

Contract Procedure Rules

Annex 1d- Community Right to Challenge Expression of Interest Process Map

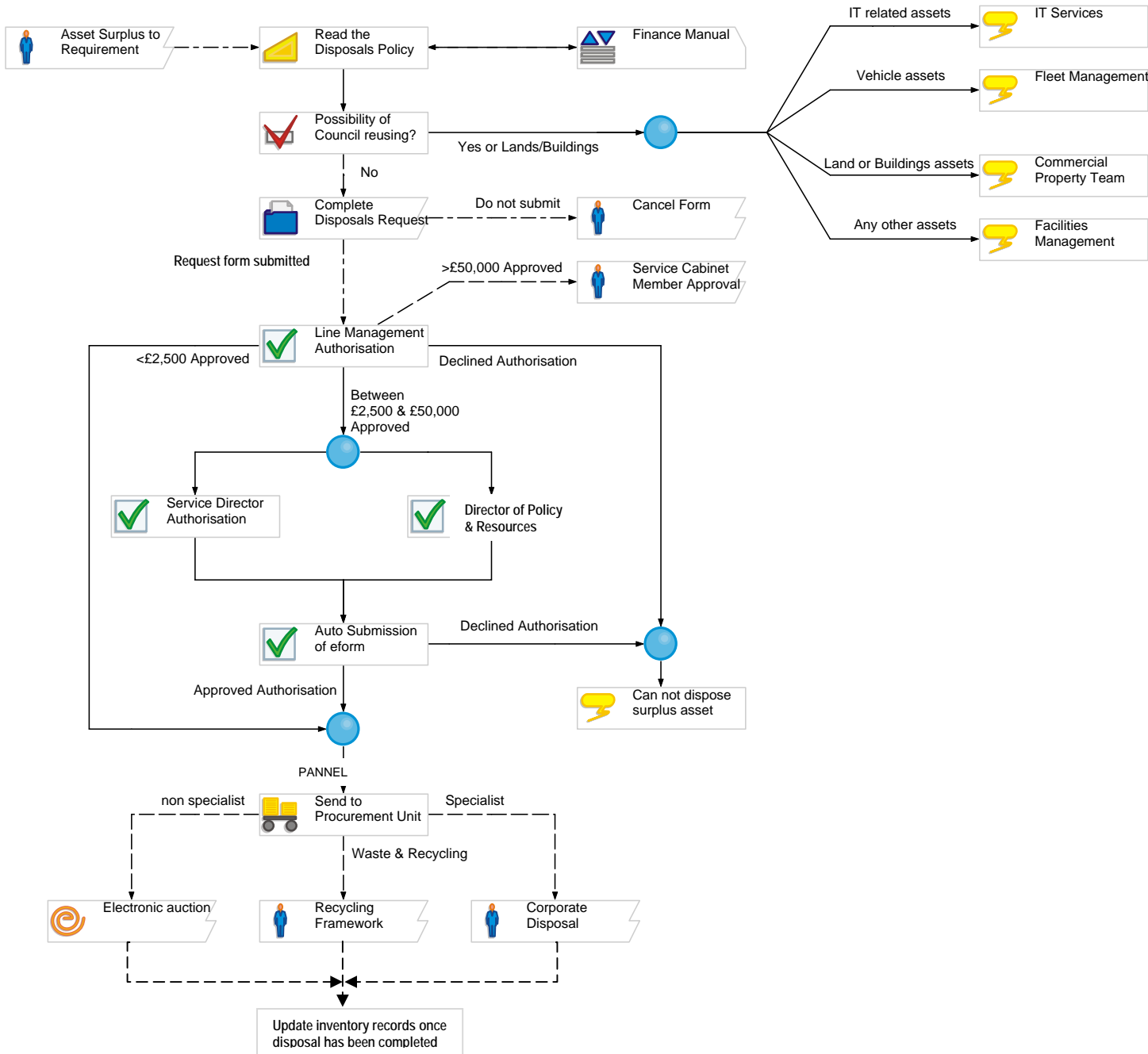


Contract Procedure Rules



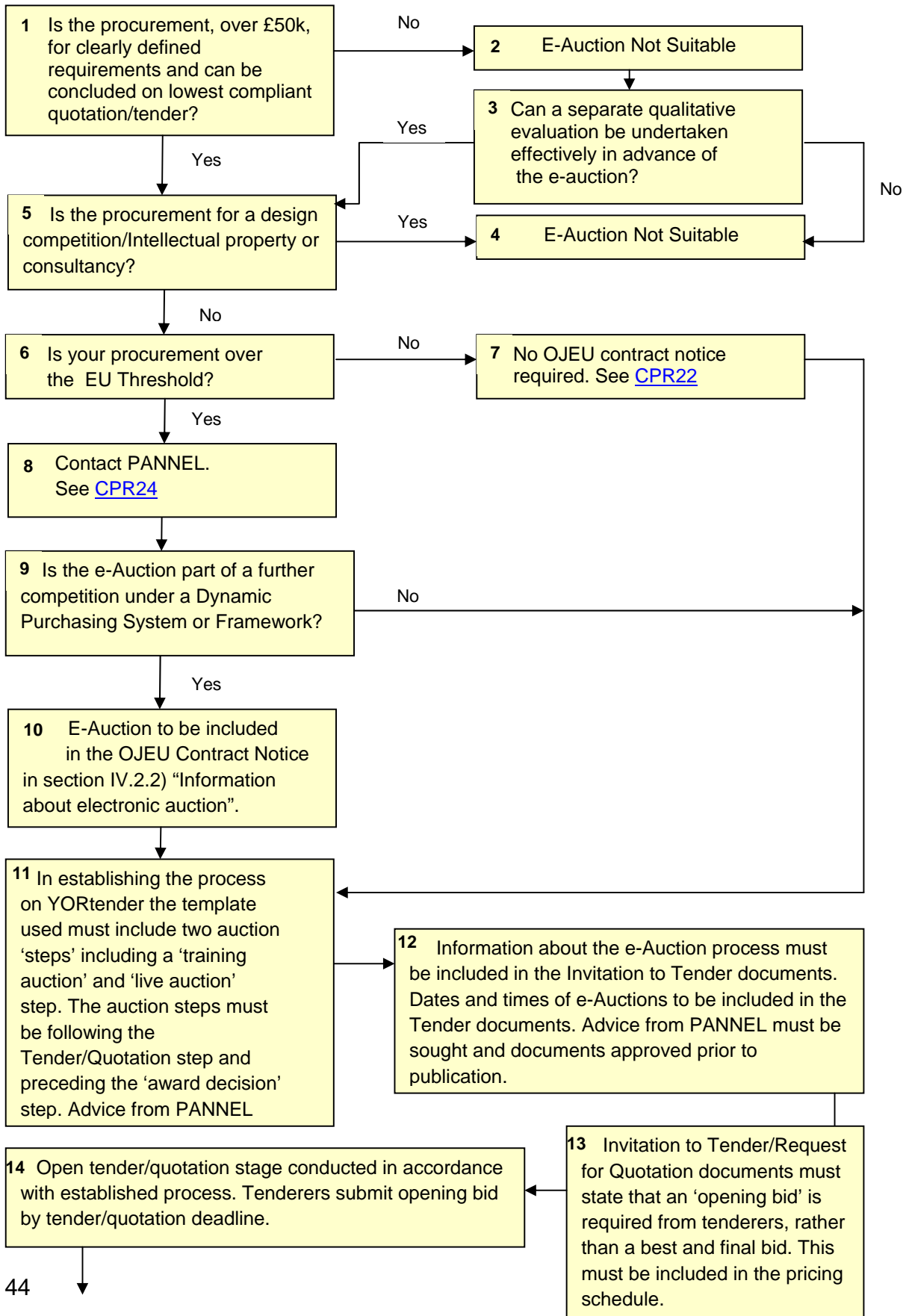
Contract Procedure Rules

Annex 1e- Disposal & Write-Off Of Assets

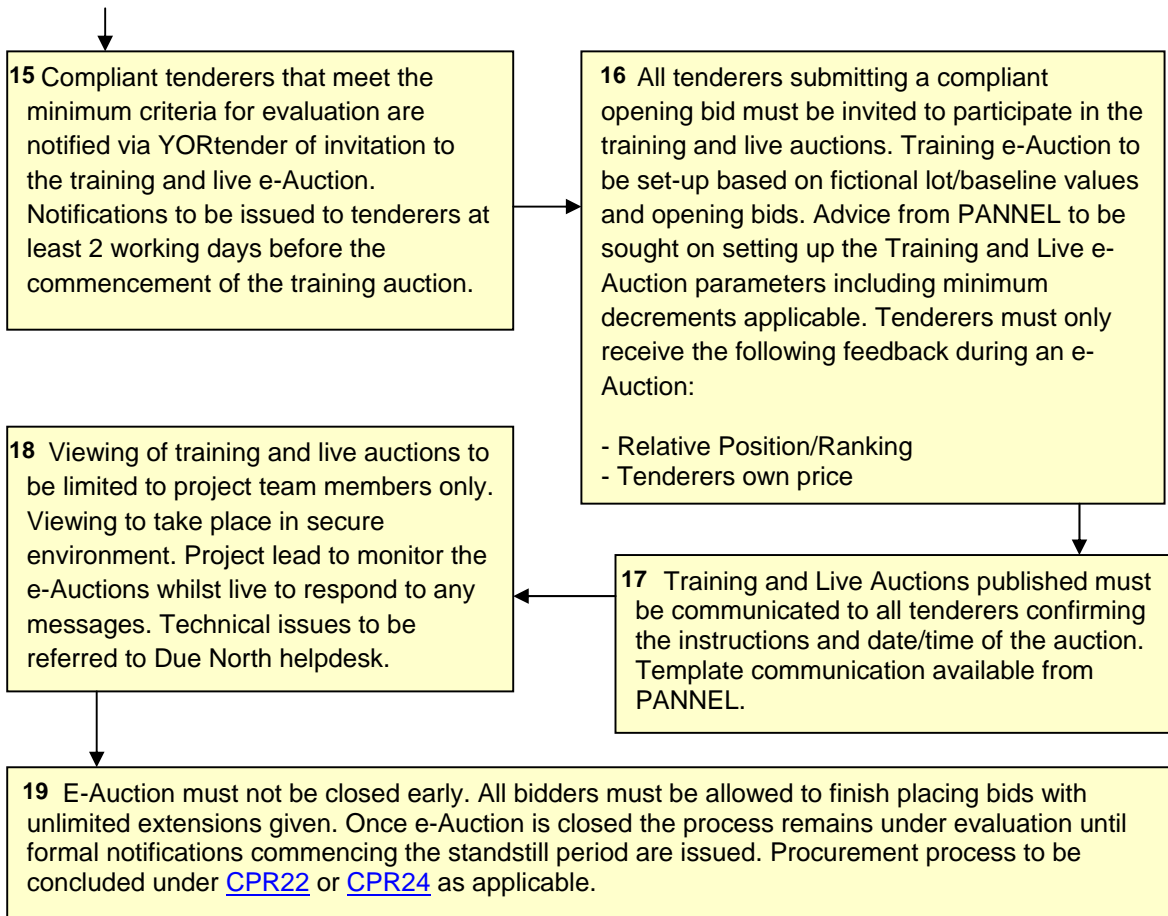


Contract Procedure Rules

Annex 1f- E-Auction Process



Contract Procedure Rules



Contract Procedure Rules

APPENDIX I Definitions & 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
Approved List	A list of suppliers/providers who have already been approved as suppliers to the council
BSF	Building Schools for the Future
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
Central Purchasing Bodies	a contracting authority (as defined by the Public Contracts Regulations 2006) 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.
Cofely	NELC's Regeneration Partner
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.
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
Corporate Plan	The document by which the council sets out its priorities and objectives, and how it will achieve them
Corporate Procurement Guidance	Intralinc (NLC)/Intranet (NELC)-based pack self-service guidance and templates
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

Contract Procedure Rules

Councils	North East Lincolnshire Borough Council and North Lincolnshire Borough Council
CPR	Contract Procedure Rule
Directorate	An area of the council that is responsible for specific service delivery
Disaggregation	The splitting down of requirements into lower value packages
Electronic auction	Price based procurement auction performed online following evaluation against non-price criteria. Usually a reverse auction where bidders repetitively lower their prices.
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 http://www.nelincs.gov.uk/council/policies-and-strategies/governance-and-democracy/constitution/ (section 4(9(b)))
Key Decision (NLC)	Definition available at http://www.northlincs.gov.uk/NR/rdonlyres/5245A9A5-F8C1-482D-A8E4-9E7CDD95E4AB/49138/NLCCConstitution2016.pdf (section B13.03)
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.
Maintained School	Primary and secondary schools funded by central government via the local authority, not charging fees to students.
MEAT	Most Economically Advantageous Tender
Moderated Score	For each criterion or response considered under an evaluation, the evaluation team agrees 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
NLC	North Lincolnshire Council

Contract Procedure Rules

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
PANNEL	Procurement Alliance North & North East Lincolnshire
PIN	Prior Information Notice
PQQ	Pre-Qualification Questionnaire
Priorities	The areas that the council or PANNEL 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, PANNEL officer finance officer, HR officer, legal officer and any other expertise required to deliver the outcome.
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
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
Strategic Director	Officer who is responsible for a Directorate of the council
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
Value for Money	Obtaining the most economical, efficient, and effective solution

Contract Procedure Rules

VAT

Value Added Tax

YORtender

Supplier Contract Management System (or equivalent e-tendering system) web portal by which the council effectively advertises and manages quotations and tenders