

Part 4.6:

Contract Procedure Rules

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Contents

1	Basic Principles	3
2	Roles and responsibilities.....	3
3	Exemptions.....	5
4	Procurements valued under £10,000	5
5	Procurements valued between £10,000 and £49,999	6
6	Procurements valued between £50,000 and the Current Goods and Services OJEU threshold.....	7
7	Procurements for works contracts valued between the Goods and Services OJEU threshold and the Works OJEU threshold	8
8	Procurements valued over the relevant OJEU threshold	9
9	Procuring via a framework agreement or Dynamic Purchasing System (DPS).....	
10	Other matters to consider	10
11	Contract management	11
	APPENDIX A: Glossary.....	13
	APPENDIX B: Variable Information	15
	APPENDIX C: Exemption Request form	16
	APPENDIX D: Quick Reference Guide	17
	APPENDIX E: Authorisation Levels.....	188

1 Basic Principles

- 1.1 These Contract Procedure Rules set out the rules governing all East Northamptonshire council's procurements activity. Where template documents are referred to please refer to Appendix 5 for the location of these documents
- 1.2 The purpose of these Contract Procedure Rules is to set out the principles, roles and processes involved in procurement at the Council. All procurements must comply with these rules, the Council's Financial Regulations, English law and European law in force in England.
- 1.3 All procurements must realise value for money through the optimum combination of whole life costs (price as well as other costs that may be borne by the Council and Supplier across the period of the contract) and quality of the outcome being proposed.
- 1.4 These rules seek to protect the Council's reputation by minimising the risk of allegations of corruption, dishonesty and failure to meet legal obligations; as such they must be followed in all procurement activity.
- 1.5 These rules are supported by detailed, practical guidance available in the Procurement Toolkit.
- 1.6 These rules do not apply in the following circumstances:
 - a) The purchase or lease of property, land acquisition, interest in land, transaction in land or disposal. (Procurement rules do cover any service, supplies or works contracts that may be required to make the land, existing buildings or immoveable property ready for acquisition, disposal or leasing.)
 - b) Direct employment of permanent or fixed term employees, for the avoidance of doubt these rules do apply to consultancy and employment agency contracts.
 - c) Instructing barristers or solicitors and those costs do not exceed the relevant EU Threshold.
 - d) The lending or borrowing of money by the Council.

2 Roles and responsibilities

2.1 Officers

- a) The officer responsible for the procurement must comply with these Contract Procedure Rules and the Financial Regulations. The officer is also responsible for ensuring that any agents acting on behalf of the Council do so in compliance with these rules and should seek written confirmation of their agreement.
- b) The officer must have regard to the guidance contained in the Procurement Toolkit.

- c) The officer must check whether a suitable corporate contract or other publicly available contract exists before seeking to let another contract. Where such a contract does exist, its use should be considered.
- d) The officer must keep the records detailed in these rules.
- e) Where an EU procedure is required, the officer must contact Welland Procurement before embarking on the procurement.
- f) Officers should take all necessary legal, financial and other professional advice.
- g) Where any employee of the Council or of a Supplier (which could include where employees may be transferring during a service transition) may be affected by any transfer arrangement the procuring officer must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE), issues are considered and obtain relevant HR advice from the ENC HR Team .
- h) Officers must ensure that the contracts for which they are responsible are effectively managed and monitored to ensure they deliver the requirement as intended.
- i) Where an officer has a potential conflict of interest (see the relevant Code of the Conduct) within a procurement, the officer must declare this immediately to the relevant Head of Service and Monitoring Officer. The officer may be required to withdraw from the procurement process. Any officer who fails to declare such a conflict of interest may be subject to disciplinary proceedings and sanctions and risks being prosecuted under the Bribery Act 2010.

2.2 Corporate Management Team (CMT)

- a) The CMT must ensure that they and their officers comply with these rules at all times.
- b) The CMT must ensure that value for money is achieved in all procurements.
- c) The CMT must ensure that they have in place a scheme of delegation that records in writing what action officers are authorised to take under these rules.
- d) In the interests of forward planning, the CMT should prepare, maintain and review a rolling schedule in respect of procurement activities valued over £50,000.
- e) The CMT is responsible for ensuring that the Council's Contracts Register is updated as required following procurement activity.
- f) Where a member of CMT has a potential conflict of interest within a procurement, the officer must declare this immediately to the relevant Head of Service and Monitoring Officer. The officer may be required to withdraw from the procurement process. Any officer who fails to declare such a conflict of interest may be subject to disciplinary proceedings and sanctions and risks being prosecuted under the Bribery Act 2010.

3 Exemptions

- 3.1 The exemptions listed in this section do not apply to procurements valued above the relevant EU Threshold.
- 3.2 Exemptions must be approved by the Chief Finance Officer upon completion of the form at Appendix 3 subject to one or more of the following criteria being fulfilled.
- a) No genuine competition: proprietary or patented goods or services; requirement of such a specialist nature that it can genuinely only be fulfilled by one person or organisation; compatibility with existing goods or services is required and where those existing goods or services can only be sourced from the same supplier.
 - b) Genuine emergencies: critical preventative or remedial work where there is a real and imminent risk to the safety of people or property arising from hitherto unforeseen 'catastrophic' events or incidents, for example fire, bombing, landslide etc.
 - c) Urgent situations not of the Council's own making: the urgency must have been reasonably unforeseeable (e.g. existing supplier going into liquidation) and genuinely be a case of time is of the essence. Urgency arising from the Council's own making (e.g. lack of planning) shall not justify an exemption. Where this exemption is used, a compliant procurement must be implemented as soon as possible.
 - d) Collaborative/joint procurement: where another authority/public body is acting as the 'lead buyer' and provided that the officer can demonstrate those arrangements comply with relevant regulations and best practice.
 - e) Grants which the Council may receive or make: except where the grant is the form of payment for a contract for services where the Council specifies the output or outcomes to be delivered. The awarding of grants by the Council or on behalf of the Council must be carried out under the principles of openness, fairness, non-discrimination and value for money. Officers cannot choose to treat procurement as a grant in order to avoid conducting a competitive process. For example, if payment is being made so that a third party can deliver services on behalf of the Council and performance levels etc are defined; it is likely that arrangement constitutes a contract rather than a grant.
 - f) Contracts for the execution of either mandatory works or provision of goods or services which must be provided by a statutory provider other than the Council. This includes but is not limited to public utility companies and other legal authorities.

4 Procurements valued under £10,000

- 4.1 Where the contract is valued below £10,000, officers are required to seek at least one written quotation. Value for money remains a primary objective and so officers may decide to seek more than one quotation to ensure that objective is achieved.

- 4.2 Quotations can be submitted via email but should be PDF documents to prevent tampering or accusations thereof.
- 4.3 The quotation must be received before any order is processed and must include the following information:
 - a) A description of the goods, services or works to be supplied;
 - b) When and where they will be supplied;
 - c) The value of the requirement and
 - d) Payment terms.
- 4.4 The contract award must be authorised by a member of CMT
- 4.5 The contract or terms and conditions must be signed by a member of CMT
- 4.6 Where the value of the contract is more than £5,000, the resultant contract must be added to the Contract Register to ensure compliance with Transparency Regulations.

5 Procurements valued between £10,000 and £49,999

- 5.1 Where the contract is valued between £10,000 and £49,999, at least three written quotations must be obtained. Those quotations must be invited from identified suppliers as no procurement advertising can take place.
- 5.2 It is recommended that the Request for Quotation template document is used. In any case, the criteria for selecting the most advantageous quotation must be established before the quotations are invited and be made clear in the procurement documentation.
- 5.3 Where possible, at least one of the suppliers invited to submit a quotation should be local, where local means in the sub-region or region.
- 5.4 Where fewer than three potential suppliers can be identified, the officer must keep a written record of the reason and all potential suppliers should be invited to quote. It is accepted that the officer may receive fewer than 3 quotations even where 3 or more suppliers have been invited to quote.
- 5.5 Quotations can be submitted via secure email but should be PDF documents to prevent tampering or accusations thereof.
- 5.6 The officer must keep copies of the Council's procurement documentation as well as copies of all quotations received and any communication between the Council and the successful bidder.
- 5.7 Evaluation of the quotations received must be carried out using the evaluation criteria identified in the procurement documentation. Clarification questions may be asked where responses would not result in a material change of the bid received.
- 5.8 The contract award must be authorised by a member of CMT. The successful and unsuccessful suppliers must be notified simultaneously of the decision.
- 5.9 The contract or terms and conditions must be signed by a member of CMT.

- 5.10 The resultant contract must be added to the Council's Contract Register to ensure compliance with Transparency Regulations.
- 5.11 If the contract is valued over £25,000, an award notice on Contracts Finder is required. Welland Procurement is responsible for such award notices.

6 Procurements valued between £50,000 and the Current Goods and Services OJEU threshold

- 6.1 For contracts valued between £50,000 and the current goods and services OJEU Threshold a single stage/open tender process must be completed. This means that all interested suppliers are eligible to submit a tender.
- 6.2 The procurement must be advertised on Contracts Finder, Welland Procurement is responsible for managing this advertising once informed.
- 6.3 The procurement will be managed using an electronic tendering system. The officer must therefore contact Welland Procurement to access that system.
- 6.4 It is recommended that the Open Tender template documents are used, in any case the officer must ensure that the required Standard Suitability Questions are used. The officer must ensure that all relevant procurement documents are finalised before the procurement is advertised, these will include at least the specification, terms and conditions of contract and weighting evaluation criteria.
- 6.5 Tenders will be received via the electronic tendering system. The officer, a representative of Welland Procurement and a duly appointed independent Council officer will be responsible for opening and logging the tenders to meet Internal Audit requirements. For significant contracts, an appropriate Councillor will also be present.
- 6.6 Tenders must be evaluated in accordance with the advertised weighted evaluation criteria, clarification questions may be asked as long as the response would not have the affect of materially changing the tender received.
- 6.7 The bidder with the highest evaluation score will be awarded the contract. If this is not the case, the advice of Welland Procurement must be sought prior to award.
- 6.8 Contract award must be approved in writing by a member of the CMT.
- 6.9 All bidders must be notified of the award decision simultaneously in writing (via email) by the Officer, whether or not their bid was successful.
- 6.10 The contract must be signed by a member of the CMT. In certain circumstances the contract may require sealing, please see Section 10.6 below.
- 6.11 The resultant contract must be added to the Council's Contract Register to ensure compliance with transparency regulations. The officer is responsible for the subsequent storage and safe keeping of the signed contract. A scanned copy must also be saved in a central file, the link is provided on the Hub procurement page.

6.12 The officer must keep the following records:

- a) The method of obtaining tenders;
- b) Tender documents produced by the Council;
- c) Tenders received from bidders. The successful tender should be retained for at least the life of the contract. Unsuccessful tenders should be retained for the first 12 months of the contract;
- d) A written record of the evaluation;
- e) A record of the award approval;
- f) A signed copy of the contract which should be retained for the life of the contract and in normal circumstances for 6 years thereafter and
- g) Communications to and from bidders during the procurement process should also be retained for the same time period as set out in f above. .

6.13 An award notice is required on Contracts Finder; Welland Procurement is responsible for such award notices.

7 Procurements for works contracts valued between the Goods and Services OJEU threshold and the Works OJEU threshold

7.1 For works contracts valued between the Goods and Services OJEU Threshold and the Works OJEU Threshold (refer to Appendix 2 or contact Welland Procurement for more information), the officer can choose either a single stage/open tender or two stage/restricted process.

7.2 The procurement must be advertised on Contracts Finder; Welland Procurement is responsible for managing this advertising once informed.

7.3 The procurement will be managed using an electronic tendering system, the officer must therefore contact Welland Procurement to access that system.

7.4 It is recommended that the Open Tender template or Restricted Tender template is used. In any case, the officer must ensure that all relevant procurement documents are available at the time the procurement is advertised, these will include at least the specification, terms and conditions of contract and weighting evaluation criteria.

7.5 Tenders will be received via the e-tendering system. The officer, a representative of Welland Procurement and a duly appointed independent Council officer will be responsible for opening and logging the tenders to meet Internal Audit requirements.

7.6 Tenders must be evaluated in accordance with the advertised weighted evaluation criteria, clarification questions may be asked as long as the response would not have the affect of materially changing the tender received.

7.7 The bidder with the highest evaluation score will be awarded the contract. If this is not the case, the advice of Welland Procurement must be sought prior to award.

7.8 Contract award must be approved by a member of the CMT.

- 7.9 All bidders must be notified of the award decision simultaneously in writing (via email) by the officer, whether or not their bid was successful.
- 7.10 The contract must be signed by a member of the CMT. In certain circumstances, the contract may require sealing, please see Section 10.6 below.
- 7.11 The details of the resultant contract must be added to the Council's Contract Register to ensure compliance with Transparency Regulations. The officer is responsible for the subsequent storage and safe keeping of the signed contract.
- 7.12 The officer must keep the following records:
- a) The method of obtaining tenders;
 - b) Tender documents produced by the Council;
 - c) Tenders received from bidders. The successful tender should be retained for at least the life of the contract. Unsuccessful tenders should be retained for the first 12 months of the contract;
 - d) A written record of the evaluation;
 - e) A record of the award approval;
 - f) A signed copy of the Contract which should be retained for the life of the contract and in normal circumstances for 6 years thereafter and
 - g) Communications to and from bidders during the procurement process
- 7.13 An award notice is required on Contracts Finder, Welland Procurement is responsible for such award notices.

8 Procurements valued over the relevant OJEU threshold

- 8.1 Where the anticipated value of the contract exceeds the relevant OJEU threshold (see Appendix 2: Variable Information), the formal advice of Welland Procurement must be sought as early as possible and in any case before any procurement activity takes place.

9 Procuring via a framework agreement or Dynamic Purchasing System (DPS)

- 9.1 A contract of any value can be procured via a framework agreement or DPS. Compliance with these rules and relevant national and EU law is achieved through compliance with the framework agreement/DPS terms and conditions.
- 9.2 For the avoidance of doubt, a framework agreement or DPS is considered a compliant procurement route where:
- a) It has been entered into by the Council in compliance with these rules; or
 - b) Another contracting authority, purchasing consortium or Central Government has tendered the framework agreement or DPS in compliance with national and EU procurement law and the Council is named as a potential user of the arrangement.
- 9.3 Contract award must be approved by a member of CMT

- 94 The contract must be signed by a member of CMT.
- 95 The resultant contract must be added to the Council's Contract Register to ensure compliance with Transparency Regulations. The officer is responsible for the subsequent storage and safe keeping of the signed contract as set out in section 6.11.
- 96 Where the contract is valued over £25,000, an award notice is required on Contracts Finder, Welland Procurement is responsible for such award notices.

10 Other matters to consider

10.1 Conflict of interest

- a) Clause 2.9 and 2.15 define when a conflict of interest (see Code of Conduct) must be declared.
- b) All officers, Members and other stakeholders involved in procuring for the Council must sign a Declaration of Interest form at the start of the procurement process. This form is available from www.wellandprocurement.org.uk
- c) This form must be kept on file during the procurement itself and the contract term.

10.2 Abnormally low bids

- a) Under the Public Contract Regulations 2015, the Council is required to request an explanation of the price or costs proposed in a tender where that price or those costs appear to be abnormally low in relation to the requirement. Evidence of this request and response should be filed and retained with all other documents from the procurement exercise.
- b) Advice should be sought from Welland Procurement during this investigation process to ensure that the requirements of the Public Contract Regulations 2015 are adequately complied with.

10.3 General Data Protection Regulations (GDPR) requirements

- a) The GDPR impose greater obligations on the Council to protect an individual's information.
- b) Officers conducting a procurement should ensure that the GDPR screening questions, available from Welland Procurement, are completed as early as possible in the planning stages of that procurement.
- c) Should any of the GDPR screening questions be answered 'yes', further advice must be sought from Welland Procurement and the Council's Data Protection Officer before any further action is taken.

10.4 Impact of organised crime (including Money Laundering)

- a) In 2016, a pilot study was undertaken which found links between organised crime and specific categories of public sector procurement.
- b) Areas particularly at risk of involvement with organised crime are taxis/transport, waste and areas of low level spend, for example property maintenance.
- c) If an officer is seeking to procure in one of these higher risk categories, further advice should be sought from Welland Procurement.

105 Financial sanctions legislation

- a) Financial sanctions are imposed by Government and may apply to individuals and entities in the UK and abroad. In most cases, it is illegal to contract with individuals and entities subject to financial sanctions.
- b) Any officer concerned about whether the individual or entity they wish to enter into a contract with may be subject to financial sanctions should visit <http://hmt-sanctions.s3.amazonaws.com/sanctionsconlist.htm>, and/or speak to Welland Procurement and the Monitoring Officer.

106 Modern Slavery

- a) Officers should ensure that advertised tenders contain the Standard Selection Questionnaire questions regarding Modern Slavery Act requirements.

107 Health and Safety

Officers shall ensure that the contracts include adequate provision for the monitoring of health and safety arrangements within the contract and appropriate reporting of incidents to this council.

108 Sealing a contract

- a) A contract must be sealed where:
 - The Council wishes to enforce the contract for more than twelve years following its expiry (e.g. for land or construction works); or
 - The price paid or received under the contract is a nominal price and does not reflect the value of the goods, services or works; or
 - There is any doubt about the authority of the person signing for the other contracting party; or
 - Required by the parties to the agreement; or
 - A Bond (a bond issued by a bank or other financial institution, guaranteeing the fulfilment of a particular contract) is established on behalf of the Supplier(s) or their guarantors; or
 - Any contract with a value over £200,000.

109 Where contracts are completed by each side adding their common seal, the affixing must be attested by or on behalf of a relevant Head of Service. The relevant Head of Service is responsible for the process of sealing contract. Please see Article 13.05 of the Constitution.

11 Contract management

11.1 Contract management

- a) The named contract manager should be noted in the Contract Register. All contracts must have a named contract manager for the entirety of the contract and that contract manager is responsible for the application of these Rules.
- b) For all contracts valued over £50,000, the contract manager must identify the risks by maintaining a suitable risk register and ensure that suitable contingency measures are in place.

- c) During the life of the contract, the contract manager must monitor the overall performance of the contract closely in order to ensure any issues of under performance are addressed as soon as possible and any areas of added value are identified as soon as possible.

112 Variation

- a) In any case where a variation means that the value of a contract would exceed the relevant EU Threshold, or where there is any material change to the contract, the contract must be treated as a new procurement under these rules.
- b) A material change is one which:
- Would have allowed the admission of other bidders or the acceptance or another tender; or
 - Extends the scope of the contract considerably to goods, services or works not initially covered by the specification; or
 - Changes the economic balance in favour of the contractor in a manner not provided for in the procurement documents.
- c) For clarity, a change will be deemed immaterial if the value of the modification is both below the relevant EU Threshold and below 10 % of the original contract value (15% for works contracts). Please seek advice from Welland Procurement.

113 Extension

- a) A contract should not be extended beyond its initial term unless the contract documents allow.
- b) A framework agreement shall only be extended if the contract documents allow and the original term and extension together should not exceed four years except in exceptional circumstances.
- c) Where a business need has been identified which means that a contract is required to be extended beyond the term permissible in the original contract documents, advice must be sought from Council's Procurement Service in the first instance and authority sought from the Monitoring Officer or the S151 Officer if such an extension is proposed.
- d) The officer must be satisfied that such an extension would achieve value for money and be reasonable in all circumstances. The officer must record the reasons for these conclusions in writing. This should be retained with all other documents associated with the procurement exercise.

APPENDIX A: Glossary

Award Notice	A notice published on OJEU and/or Contracts Finder which provides details of the winning bidder and the final value of the contract. Award notices are required for all procurements valued over £25,000
Bidder	An individual or organisation who submits a tender or quotation in a competitive procurement process
Contracting authority	Has the definition contained within the Public Contract Regulations 2015. It means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law, and includes central government authorities, but does not include Her Majesty in her private capacity
Contract management	Is the process of managing contract creation, execution and analysis to maximize operational and financial performance at an organization, all while reducing financial risk
Contract term	Is the length of the contract including the initial term and any extension periods proposed
Corporate contract	A contract that has already been let by the Council
Dynamic Purchasing System (DPS)	Is similar to an electronic framework agreement, with two exceptions, new suppliers can join at any time and it is to be run as a completely electronic process.
EU procedure	A procurement process over the relevant EU Threshold and so governed by EU procurement regulations as defined within the Public Contract Regulations 2015
EU threshold	The threshold established by the EU above which an EU procedure must be carried out. There are thresholds for goods/services, works and concessions. The current threshold is contained within Appendix 2.
Evaluation	The process of assessing received tenders or quotations against the published criteria to identify the winning bidder, i.e. the bidder with the highest evaluation score.
Extension (contract)	An additional period identified within the contract, beyond the initial term which may be used to lengthen the contract term.
Framework agreement	A framework is an agreement with suppliers to establish terms governing contracts that may be awarded during the life of the agreement. It is a general term for agreements that set out terms and conditions for making specific purchases (call-offs).
Goods	Tangible products that satisfy a need
Initial term	The initial period of a contract which may be subsequently extended
Officer	An officer of the Council, who is the officer responsible for undertaking a purchase and for the administration of the completed contract to include ensuring compliance with its terms and conditions and implementation of any required variation.
OJEU	The Official Journal of the European Union
Procurement	Procurement is the process of finding, agreeing terms and

	acquiring goods, services or works from an external source, often via a tendering or competitive bidding process.
Publicly available contract	A contract that has been let by another Contracting Authority and which is available for use by the Council. The Council must have been named specifically or generally within the procurement documentation in order to enable access.
Quotation	A formal statement setting out the estimated cost for a particular job or service.
Services	A valuable action, deed, or effort performed to satisfy a need or to fulfil a demand.
Specification	An exact statement of the particular needs to be satisfied, or essential characteristics that a customer requires (in a good, material, method, process, service, system, or work) and which a bidder must deliver.
Standard Suitability Questions/Question naire	The set of standard suitability or selection questions referred to in PPN 08/16 which must be used in all advertised procurements.
Tender	A written invitation sent to potential suppliers of a good or service to inform them about the information required for the buyer to choose between them.
Terms and conditions	General and special arrangements, provisions, requirements, rules, specifications, and standards that form an integral part of an agreement or contract.
TUPE	Stands for the Transfer of Undertakings (Protection of Employment) Regulations. This is relevant to any redundancy decisions where a business or part of it is transferred from one owner to another
Value for money	It is not necessarily the lowest price, it combines goods or services that fully meet the needs with the level of quality required, delivered at the time needed and at an appropriate price.
Variation	Is an alteration to the scope, term or any other part of a Contract. The limitations of the Public Contract Regulations 2015 should be borne in mind when varying a contract.
Welland Procurement	Welland Procurement is the Welland Partnership procurement service shared by the Council and other Councils. The Welland Procurement unit issues guidance and offers assistance on procurement matters to all participating councils.
Whole life costs	The total cost of ownership over the whole length of the contract and sometimes beyond.
Works	As defined by the Public Contract Regulations 2015. Means public contracts which have as their object any of the following:— (a) the execution, or both the design and execution, of works related to one of the activities listed in Schedule 2; (b) the execution, or both the design and execution, of a work; (c) the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work

APPENDIX B: Variable Information

The following information is subject to change during the currency of these contract procedure rules and may be updated as changes occur by the relevant Chief Officer.

EU thresholds

From 1st January 2020 to 31st December 2021, the EU thresholds are:

Goods and services: £189,330

Works: £4,733,252

Concessions: £4,551,412

Light Touch Regime: £663,540

APPENDIX C: Exemption Request form

Name of Officer seeking

Exemption: Service Area:

Contract Title:

Description of Contract (attach supporting documentation if applicable)

Estimated Total Value of Contract:

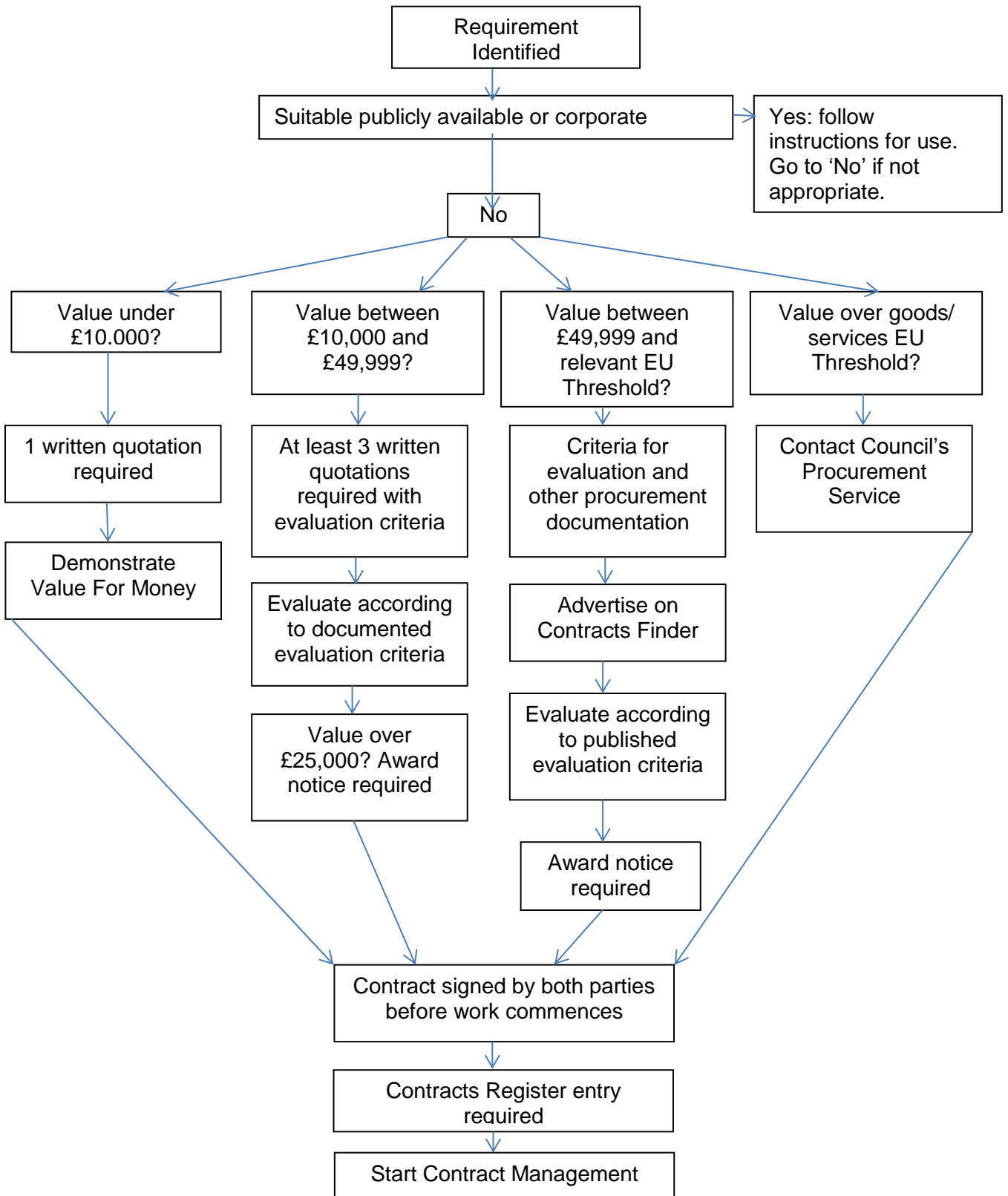
Target Contract Start Date:

Date	Justification for Exemption Request	Authorised by Head of Service
		Signed: Name:

This Form should be kept on file as evidence of compliance with Procurement Procedure Rules and a copy sent to the Finance Manager for authorisation

CHIEF FINANCE OFFICER ACTION	
Authorised: Yes/No Legal Advice required/sought Yes/No Outcome Refer to Policy Committee: Yes/No Reason for rejection (if applicable):	
Signature:	Print Name:
Date:	

APPENDIX D: Quick Reference Guide



APPENDIX E: Authorisation Levels

Agreements must be completed as follows:

TOTAL VALUE	METHOD OF COMPLETION	BY
Up to £10,000	Signature Use of Purchase Order, or Written Contract for complex requirements	Officer with appropriate authority to enter into a contract.
Over £10,000 and up to £50,000	Signature Use of Purchase Order with specification attached or Written Contract for complex requirements	Head of Service Head of Resources (as Deputy CFO)
Over £50,000 and up to £250,000	Signature on Written Contract	Head of Service Head of Resources (as Deputy CFO)
Over £250,000 and up to £1,000,000	Signature on Written Contract	Chief Executive, Executive Director and Chief Finance Officer
Over £1,000,000	Signature on Written	Chief Executive, Executive Director, and Chief Finance Officer, in consultation with Chairman of Policy & Resources

Amended by Council – 15 October 2018 minute 241; Amended by Council – 22 July 2019 minute 111; email 17.12.19
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