



Cyngor Bwrdeistref Sirol
MERTHYR TUDFUL
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County Borough Council

Contract Procedure Rules 2017

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Contract Procedure Rules

Key Messages

- Any Officers delegated with responsibility for the procurement of goods, services (including contracts for consultancy) or works for or on behalf of the Council (in accordance with the Scheme of Delegation) are affected by these Rules.
- The funding for all contracts must be in accordance with approved budgets and comply with Financial Regulations.
- One of the most significant areas of Council contracting is procurement. Procurement is the process by which the Council manages the acquisition of all its Goods, Services (including but not limited to consultants/consultancy services of any type) and Works of all sorts. It includes the identification of need, consideration of options, the actual procurement process and the subsequent management and review of the contracts. These 'Contract Procedure Rules' should be read in conjunction with the Council's Procurement Toolkit.
- Procurement by the Council is governed by detailed European and UK legislation, as are other areas of Council contracting. The Law requires all Council procurement and contracting to be conducted transparently, fairly and in a non-discriminatory manner. In the event of statutory or other legal requirement exceeding the requirements contained within these Contract Procedure Rules, then statute shall take precedence over any provision in these Rules.
- Before undertaking any competitive tendering process or before placing any Official Orders on behalf of the Council, Officers **must** make full use of Corporate Contracts and the Procurement Department for other contracts (including National Procurement Service Frameworks / established Framework Agreements / other legally available arrangement).
- Details of all Contracts available for use can be obtained from the Council's Procurement Intranet Site or the Council's Purchase to Pay (P2P) system. If unsure, please contact the Procurement Department on procurement@merthyr.gov.uk.

Aims

These Contract Procedure Rules:

- Aim to support the achievement of value for money for the Council in the market by ensuring provision for securing competition at appropriate levels of expenditure whilst avoiding disproportionate or bureaucratic costs where levels of expenditure are less significant.
- Aim to achieve fullest accountability at all levels whilst ensuring an adequate audit trail.
- Aim to ensure that Officers follow proper and fair procedures for the involvement and selection of Contractors.
- Aim to ensure compliance with EU Procurement Directives.
- Aim to ensure that proper Specification is made by Officers which reflect the appropriate and realistic quality requirements for any defined need, and that offers may be judged by objective criteria.
- Aim to ensure that levels of monitoring and training exist to ensure proper compliance and that these rules are regularly reviewed to take account of new circumstances.

Status

These Contract Procedure Rules:

- Are made under Section 135 of the Local Government Act 1972 and all other powers enabling the Council.
- Are applicable to all parts of the Council's activities, including any type of sub-contracting, apart from contracts for the acquisition and sale of interests in land and the Exempt Contracts described in section 1 below.
- Are applicable where the Council is acting as agent for another body unless the principal directs otherwise.
- Must be adopted by any external contractors empowered to form Contracts on behalf of the Council and by any person who is not an Officer of the Council engaged to manage a Contract on behalf of the Council.
- Shall apply to the selection of nominated suppliers and nominated Sub-contractors for products covered by prime costs and provisional sums in a main contract.
- Shall be interpreted so far as possible to ensure the Aims set out in these rules are achieved.
- Are not applicable to expenditure between Service Areas, Groups or the use of the Council's trading organisations.

Who is affected by these Procedure Rules?

Any Officers delegated with responsibility for the procurement of goods, services (including contracts for consultancy) or works for or on behalf of the Council in accordance with the Scheme of Delegation.

Definitions and Interpretations

In these Rules the following definitions apply:

Authorised Officer	means the holder for the time being of any post named in the Scheme of Delegations as having delegated powers and duties in respect of the procurement concerned.
Chief Officer	means any officer in the following categories of officer, Chief Executive, Corporate Director, Chief Officer and/or, Head of Service.
Contract	means any form of agreement (including, without limitation, official purchase orders) for the supply of Goods, provision of Services or carrying out of Works.
Contract Manager	means an officer responsible for the delivery of a Contract.
Contracting Authority	means Merthyr Tydfil County Borough Council or another public body responsible for the procurement of a Contract or Framework.
Contractor	means any Contractor, supplier or provider with whom the Council enters into a Contract for the carrying out of Works, provision of Services or the supply of Goods.
Framework Agreement	an agreement with one or more Contractors, the purpose of which is to establish the terms (in particular with regard to price and quantity) governing a Contract or Contracts to be awarded during the period for which the framework agreement applies.
Goods	Covers all Goods, supplies, substances and materials that the Council purchases, hires or otherwise obtains.
OJEU Thresholds	means the financial values at which the European Public Contracts Regulations 2015 require tenders to be advertised in the Supplement to the Official Journal of the European Union ("OJEU"). These thresholds vary from time to time and can be checked on the OJEC website at www.OJEC.com/thresholds
Nominated Officer	means any officer delegated responsibility by the Procurement Manager for carrying out procurement process(es) detailed in these rules
Procurement	means the process by which the Council manages the acquisition of all its Goods, Services and Works. It includes the identification of need, consideration of options, the actual procurement process and the subsequent management and review of the Contracts.
Procurement Board	means the board that is responsible for all procurement activity across the Council
Procurement Toolkit	Means the procurement guidance for Nominated Officers contained on the Procurement Intranet Pages. This

	includes, Procurement toolkit, Procurement guide & Contract management framework
Procurement Manager	means the Manager or any officers under that persons supervision or management who are given delegated authority to carry out any of the obligations, duties or activities required to be performed by that person under these Rules or to act in that person’s absence.
Procurement Process	means the procurement process that spans the whole life cycle, from identification of needs, options appraisal, supplier selection, award, and Contract management through to the end of a Contract or the end of the useful life of the asset, or disposal of the asset.
Rules	means these Contract Procedure Rules/standing orders.
Services	includes all services, which the Council purchases or otherwise obtains including advice, specialist consultancy work, agency staff etc.
Tenderer/ Tenderers	individual, individuals, partnerships, companies or other bodies invited to submit quotes/tenders/prices for providing the Council with Services, supplying Goods or carrying out Works.
Variation & Variations	means any alteration to a Contract, including additions, omissions, substitutions, alterations, or changes of any other nature.
Works	includes all works of new construction and repairs in respect of physical assets (buildings, roads, etc.) including all those activities constituting Works for the purposes of the Public Contracts Regulations 2015.

- All values referred to in these Rules are exclusive of VAT.
- Any dispute regarding interpretation of these Rules shall be referred to the Head of Legal and Governance and Procurement Manager for resolution.
- These Rules are not intended as detailed guidance for implementation and they should be read in conjunction with the Council’s Constitution as a whole and in particular, in respect of Contract payments, the Council’s Financial Procedure Rules, which must be complied with. Guidance is contained within the Council’s Procurement Toolkit which is available on the Intranet.
- The Procurement Manager shall undertake a formal review of these Rules at least every three years.

1. Exempt Contracts

The following Contracts are exempt from the requirements of these Contract Procedure Rules:

- 1.1 Employment Contracts (this exemption does not extend to the recruitment of agency staff or external secondment arrangements).
- 1.2 Contracts relating **solely** to disposal or acquisition of an interest in land and property, for which there is separate protocol contained within the Council's constitution.
- 1.3 In a genuine emergency threatening public health, injury to persons or serious and immediate damage to property, an Authorised Officer can take any necessary action to alleviate the threat. This power is limited to the alleviation of the threat and does not extend to any works beyond what is strictly essential.
- 1.4 In circumstances where a matter, which is not deemed to be an emergency, but nonetheless is considered to be of an urgent nature arises, approval from the appropriate Head of Service must be given in writing. However, should the estimated expenditure exceed £25,000, approval in writing must be sought from the following officers:
 - The appropriate Director and the Section 151 Officer subject to an upper threshold prior to the commencement of the procurement process of OJEU Thresholds for goods or services or £1M for works.
- 1.5 Where it has been necessary to procure under 1.3 or 1.4 stated above, every case must be reported to the next available meeting of the Corporate Management Team.
- 1.6 The award of Contracts for individual placements (for Children and Adult Services) will remain at the discretion of the respective Statutory Director.

2. Exemption Process

- 2.1 Approval of exemption of any of these Contract Procedure Rules shall only be given in exceptional circumstances and, in most cases, following a written report to, consultation with and the written approval of the Procurement Manager and the relevant Director (see Appendix L).
- 2.2 When consulting with the Procurement Manager and relevant Director, the originator of the report requesting the exemption is responsible and accountable for ensuring that the contents of the report are factually correct. The originator of the report should ensure that all supporting documentation is retained on an easily accessible file for auditing purposes. Should it be found that incorrect information has been knowingly or negligently submitted or omitted in order to obtain approval for an exemption to these Contract Procedure Rules, the originator of the report may be subject to the Council's disciplinary procedure.
- 2.3 An exemption may be sought for 'single tender action' where a single firm or Contractor or a proprietary item or service of a special character is required

and justified. However, where the value of the procurement is equal to or exceeds the relevant OJEU Thresholds, councils must also have regard to regulation 10 and regulation 32 (Use of the competitive procedure with negotiation without prior publication of a Contract notice) of the Public Contracts Regulations 2015 which set out limited circumstances in which a competitive tender need not be used.

- 2.4 An exemption form does not need to be completed for any of the reasons stated in section 1 above.

3. Procurement Planning

- 3.1 At the end of each calendar year, Directors shall submit to the Procurement Manager a completed Procurement Forward Plan Notice (see Appendix P) detailing the additional planned procurement activities over £75,000 (new purchasing requirements associated with budget planning for the forthcoming financial year). The Corporate Procurement Unit will use this information for procurement planning, identification of a forward work plan for procurement board, to identify collaborative opportunities, to allocate appropriate resources and to ensure all relevant legislative requirements are observed.

4. Procurement Board

- 4.1 The Procurement board is the governing body for procurement activity across the council. Nominated and/or Authorised Officers across the Council will be required to report to the board for specific projects. No applicable procurement process shall proceed unless approved by the board. Reporting requirements are contained within the board's terms of reference. These thresholds are £75,000 for goods and services and £1million for works. The principles of calculating contract values are the same as those identified in section 8.
- 4.2 The gateway process follows these broad activities
Gateway 1 – Setting the strategy, analysis of options
Gateway 2 – Confirmation of strategy and documentation
Gateway 3 – Post award review
- 4.3 The procurement board reserves the right to call in any officer of the Council that has not followed the procurement processes laid out in these rules.

5. Tendering / Ordering / Advertising

- 5.1 Before undertaking any competitive tendering process or before placing any Official Orders on behalf of the Council, Officers shall make full use of Corporate Contracts and the Corporate Procurement Unit for other Contracts (including National Procurement Service Contracts / established Framework Agreements / other legally available arrangements).

- 5.2 A pre-tender form for works up to £1million must be completed and signed by the Procurement Unit before any tendering activity commences.
- 5.3 Quotations and Tenders up to OJEU Thresholds may be completed by a Nominated Officer, however, any tenders valued above the OJEU Thresholds must be led by the Corporate Procurement Unit.
- 5.4 To comply with the Welsh Procurement Policy Statement, requirements above £25,000 should be advertised to maximise competition and stimulate economic development.
- 5.5 Aligned to the Council's continued modernisation agenda, the Corporate Procurement Unit has implemented a number of Electronic Procurement Systems that should be utilised as corporate solutions to support the cost efficient procurement of goods and services (streamlining the transaction process and reducing unnecessary administration overheads where possible). Please refer to the Council's Procurement intranet site for further information regarding the use of these systems or contact the Corporate Procurement section on procurement@merthyr.gov.uk.

6. Thresholds for Procurement

Thresholds for procurement do not apply within existing framework agreements endorsed for use by the council. See rule 7 below.

- 6.1 All goods & services except works
(please refer to Appendices A to F for process flows and chart):
- Up to £5,000 it is necessary only to demonstrate and record that value for money is being achieved.
 - From £5,000 to £75,000, all requirements to be openly advertised on www.sell2wales.gov.uk with exceptions allowed by agreement from the Procurement Manager. At least 3 quotations must be invited. (See Appendix B).
 - For Requirements above £25,000 the Welsh Government Sustainability Risk Assessment should be completed.
 - All awards related to quotations should be notified to procurement to ensure the corporate contract register is updated.
 - From £75,000 to EU thresholds, the gateway process must be followed. If approved by the board, tenders should be advertised on the national procurement website www.sell2wales.gov.uk. If a restricted procedure is used, a minimum of three tenders must be invited. Above the OJEU Thresholds, the gateway process must be followed. If approved, requirements above this value must be tendered by the Corporate Procurement Unit and advertised in the Official Journal of the European Union (OJEU) via the national procurement website (www.sell2wales.gov.uk). Where a restricted procedure is adopted, a minimum of five tenders must be invited (See Appendix F).

6.2 Works

(please refer to Appendices A to F for process flows and chart):

For any Building Works requirements, departments must consult with Property Services prior to commencing the Procurement process.

Please see and follow guidance on Constructionline at Appendix I for Works related procurement where Constructionline is to be used to pre-qualify.

- Up to £5,000, it is necessary only to demonstrate and record that value for money is being achieved.
- From £5,000 to £75,000, quotations to be requested from firms registered on Constructionline (see appendix I) and the requirement advertised to these firms on www.sell2wales.gov.uk. At least three quotations must be invited (See Appendix B).
- For Requirements above £25,000 the Welsh Government Sustainability Risk Assessment should be completed.
- From £75,000 to £1m, a pre-tender report must firstly be completed and approved (available at Appendix J and on the intranet). If approved, tenders are to be requested from firms registered on Constructionline (see appendix I). Where a restricted procedure is adopted a minimum of three tenders must be invited (see Appendix D).
- From £1m to OJEU Thresholds, the gateway process must be followed. If approved by the procurement board, tenders are to be requested from firms registered on Constructionline (see appendix I) unless a compliant framework is used. Where a restricted procedure is adopted, a minimum of three tenders must be invited (See Appendix E).
- Above the OJEU Thresholds, the gateway process must be followed. If approved by the procurement board, requirements above this value must be tendered by the Corporate Procurement Unit and advertised in the Official Journal of the European Union (OJEU) via the national procurement website (www.sell2wales.gov.uk) unless a compliant framework is used. Where a restricted procedure is adopted, a minimum of five tenders must be invited (See Appendix F).

7. Form of Tender

For all tender processes (above the value of £75,000), a Form of Tender must be completed by all tenderers. This form is a declaration by tenderers of their overall tender price, that they undertake to execute and complete the Goods, Services and/or Works in accordance with the Contract Documents, certification that no canvassing or soliciting of any member, officer or employee of the council has taken place, and that it is a bona fide tender intended to be competitive and not collusive in any way. The form must be signed by the tenderer. The Form of Tender template is available at Appendix K.

8. Estimating the Contract value

- 8.1 The value of a Contract means the estimated total monetary value over its full duration (not the annual value), including any extensions or other options. Where the duration of a Contract is indeterminate, this should be taken to be the estimated value of the Contract over a period of four years. No procurement may be artificially split to avoid compliance with these Contract procedure rules and European Union Procurement Directives.
- 8.2 If it is known that the Contract duration will be longer than four years, then the Contract value will be the total value over the full term of the Contract.
- 8.3 Where the value is, or may be, equal to or greater than the relevant OJEU threshold, councils should also have regard to the valuation rules in regulation 6 of the Public Contracts Regulations 2015.

9. Framework agreements

- 9.1 Established framework and consortia arrangements endorsed by the Procurement Manager for use by the council shall be mandatory. On occasion, it may be deemed that the framework agreement would not provide best value – this will need to be proven and approved by the Procurement Manager.
- 9.2 The Nominated Officer must ascertain whether there is a Framework Agreement approved by the Procurement Manager for use by the council. Where currently valid frameworks are available, the framework must be used in accordance with the guidance provided by the Corporate Procurement Unit.
- 9.3 The Framework Agreement may include within its terms a requirement for a mini competition exercise between those Contractors who are parties to the Framework Agreement. These shall be tendered in accordance with these Contract Procedure Rules and/or the terms of the Framework Agreement itself.
- 9.4 Where the Council is able to call off from existing Framework Agreements procured by central Government agencies, purchasing consortia or other local authorities or public bodies, then the Council may benefit from using those frameworks without entering into a separate procurement exercise. Where such Framework Agreements contain a number of different Contractors able to provide a particular category of goods or services, a mini competition exercise between those Contractors who are parties to the Framework Agreement may have to be carried out.
- 9.5 However, if such Framework Agreements are used it will be in accordance with the terms of those agreements which may not be appropriate to the particular procurement in question. Under no circumstances should nominated officers direct award from a framework which does not provide that method of appointment. Advice and approval must be sought from the Corporate Procurement Unit prior to commencing the procurement.
- 9.6 The use of all frameworks must be approved by the Corporate Procurement Unit. It is not possible to use a framework unless Merthyr Tydfil County Borough Council has been named on the Contract Notice of said framework.

- 9.7 Any Framework Agreement set up or identified by a client department shall be notified to the Corporate Procurement Unit by the Nominated Officer and must be approved by the Procurement Manager. Upon approval, the Corporate Procurement Unit can incorporate the Framework Agreement onto the Contract Management system to make it available to other departments where applicable.
- 9.8 Any joint procurement arrangements with other local authorities and/or public sector bodies including membership or use of any consortia must be approved by the Procurement Manager.

10. Community Benefits

The inclusion of Community Benefits is mandatory for all tenders valued above £1million. Justification to Welsh Government will be required for Contracts above this level that do not contain Community Benefits. For tenders valued below £1million, Community Benefits can still be included at the Corporate Procurement Unit's or Service Area's discretion. Further information on Community Benefits can be found in the Procurement Toolkit.

11. Supplier Selection

- 11.1 It must be demonstrated that the appropriately experienced, technically competent, and financially competent contractors or suppliers have been shortlisted.
- 11.2 Care must be taken to differentiate supplier selection criteria for short-listing and entry to tender process from tender award criteria.
- 11.3 This demonstration may include, but need not be limited to:
- Eligibility
 - Financial standing, including provisions for insurance and liability
 - Technical or professional capacity and capability
 - Health and Safety
 - Quality Standards including certification by official quality control institutes or agencies of recognised competence and or attesting conformity to quality assurance standards and/or measures
 - Sustainability, including environmental management measures
 - Evidence as to whether they are unsuitable on grounds, e.g., of bankruptcy, criminal conviction or failure to pay taxes.
- 11.4 The Welsh public sector standard supplier selection template is called the Supplier Qualification Information Database (SQuID). This is the template that Merthyr Tydfil County Borough Council will use as standard and Nominated Officers in user departments will need to complete this template with the assistance of the Corporate Procurement Unit.
- 11.5 For all Contracts, it is essential for proof of insurance requirements to be provided. The Contractor's public liability indemnity must be a minimum of £10m. If the form of Contract used contains a clause for a higher indemnity limit then this limit will be required. It is the responsibility of the Director in

all cases to ensure that all Insurances which the Contractor is required to effect are examined by the Insurance Officer prior to work commencement. Any deviation from the minimum indemnity requirements in these rules must be recorded as an exemption.

- 11.6 If relevant, evidence of registration under the Construction Industry Tax Scheme must be provided to the Payments Supervisor prior to the Contract being awarded.

12. Tender Evaluation

- 12.1 The Nominated Officer shall examine tenders in accordance with the predetermined evaluation criteria for the tender and identify tenders that best meet the criteria including value for money.
- 12.2 In respect of all tenders where the tender criterion is the most economically advantageous tender, the evaluation criteria or sub-criteria shall as a minimum be listed in the Invitation to Tender documentation in order of importance. Any particular scoring or weighting attributable to any criteria or sub-criteria must be clearly stated. In addition, the criteria shall be strictly observed (and remain unchanged) at all times throughout the evaluation and Contract award procedure.
- 12.3 Please see the Procurement Toolkit for further information on award criteria and weightings.

13. Bonds and Securities

- 13.1 For any requirement valued above £1million, the Legal department, Head of Finance and the Audit Manager shall be consulted and/or undertake a risk assessment to determine whether a performance bond or performance guarantee is required.

14. Parent Company Guarantees

- 14.1 The responsible officer shall seek a Parent Company Guarantee when a candidate is a subsidiary of a parent company and/or:
- The total value is £1million or more;
 - The award is based on evaluation of the parent company;
 - There is some concern over the stability of the candidate.

15. Procurement of Consultants

- 15.1 For the avoidance of doubt, the appointment of consultants shall be made in accordance with the requirements of these Contract Procedure Rules.

16. Electronic Tendering

- 16.1 The tender process including invitation and receipt of tenders will ordinarily be conducted electronically by the Corporate Procurement Unit and/or personnel that have been trained to use the approved e-Sourcing system. The provisions of Rule 17 below will therefore be modified in accordance with the secure electronic tendering system which is to be approved by the Head of Finance.
- 16.2 The Public Contracts Regulations 2015 state that all Tendering activity subject to the Regulations shall be conducted electronically. All Tender processes subject to the Regulations will be managed by Procurement.
- 16.3 All Tendering activity related to a Dynamic Purchasing System (DPS) will be conducted electronically. Opening rules as described in rule 18.7 shall apply to all competitions in a DPS.
- 16.4 All communications related to a tender conducted electronically shall be directed through the e-sourcing system, no communication outside of the system will be allowed unless approved by the Procurement Manager. 'All communications' shall be described as but not limited to – General Enquiries, Clarifications, Addendums, Award and Rejection Notifications.

17. Electronic Tenders and Electronic Auctions

- 17.1 The requirements of 18 below shall be deemed to have been satisfied if the Council's approved Electronic Tendering and or Electronic Auction elements of the Council's e-sourcing system have been used in accordance with appropriate guidance, user documentation and procedures for using the systems. Further information regarding the use of the Council's e-sourcing System may be obtained via Corporate Procurement.
- 17.2 Where an externally hosted e-Sourcing system is to be used to support the tendering process, other than the Council's approved system, prior approval of the Procurement Manager and Head of Finance must be obtained.

18. Sending, Receipt, Custody and Opening of Manual Tenders (above £75,000)

- 18.1 Reminder: Please ensure you have informed and received approval from the Procurement Board for your tender via the gateway process, or the procurement unit (whichever applies).
- 18.2 Manual tendering should only occur where the e-sourcing system is incapable of managing the process
- 18.3 Tenders should be sent to tenderers within 3 working days of a request to participate.
- 18.4 All tenders that are sent to potential Contractors must be recorded on the Tender Register which is found on the procurement intranet. Ensure that all sent tenders contain a Tender Label to comply with receipting rules. Tender labels can be obtained from Corporate Procurement.

18.5 Any pre-qualification questionnaires that are sent under a two stage process (selection then tender stages) shall be subject to receipt deadlines.

18.6 Receipt

18.6.1 The Nominated Officer must ensure:

- All tenders are returned to the Procurement Department located in Unit 5, Triangle Business Park, Pentrebach, Merthyr Tydfil, CF48 4TQ using the pre-populated Tender Label . Tenders shall be date stamped and kept unopened in safe custody until the time appointed for opening. Envelopes or packages that do not comply with this Regulation shall be opened as part of the formal opening procedures and recorded as non-compliant.
- The envelope or package is securely sealed and bear the words “Tender for.....” followed by the Product, Work or Service(s) to which it relates, using the Tender label available through the Procurement section on the Intranet.
- Returned Tenders are contained in a plain envelope or package with no identifying markings other than the Tender Label (available on the Procurement pages of the Intranet) which it must possess. The only exception to this is if a courier company has placed an identifiable marking on the envelope or package.

18.7 Opening

18.7.1 All received tenders shall be opened by a member of the Procurement Team that has the relevant system profile to open received tenders and an independent officer (usually from Central Services).

18.7.2 Bona fide tenders opened shall be recorded in the Tender Register and should include the name of all contractors or suppliers submitted. The Tender Register eForm must be completed at time of opening.

18.7.3 The Form of Tender must be signed and dated by all Tender opening officers, except where commercial information (price) is required to be withheld to avoid any bias of quality evaluations.

18.7.4 No Tender received after the other Tenders have been opened shall be considered.

18.7.5 A Tender received after the time fixed for receipt but before the other Tenders have been opened may be considered, provided there is evidence that it was posted or dispatched early enough to be received in due time by the normal course of post or dispatch. Where this happens, approval must be obtained from the relevant director.

19 Amendment to Tenders, Errors and Omissions

- 19.7 As a general rule, no adjustment or qualification to any tender(s) is permitted. Errors found during the examination of tenders shall be dealt with as follows:
- Whether the error contained in an offer appears to be a genuine mistake by typing, printing or arithmetic, or appears to be an eTenderwales technical issue, the tenderer shall be given details of the error(s) and shall be given the option to either agree to the tender being corrected or withdrawing the tender. This rule also applies where the genuine mistake may have been made by the Local Authority.
 - The tenderer will be given up to 3 working days to respond.
 - If confirmation from the tenderer is not received within 3 working days, the tender will be withdrawn.
 - Invitation to Tender documents must state how errors in Tenders will be dealt with.
 - All correspondence must be in writing.
- 19.8 No request to amend a Tender after the time fixed for receipt shall be accepted.

20 Post Tender Negotiation and Clarification

- 20.7 A Nominated Officer may seek clarification of the information provided (or not provided) by a Tenderer only where this is necessary to aid understanding. The types of clarification will generally be:
- Where a Tenderer has missed a question and not answered it;
 - Where a Tenderer has made an accidental omission such as not including a relevant certificate;
 - Where *ALL* Tenderers responding have misinterpreted a question.
- 20.8 The Contracting Authority will not seek clarifications from individual Tenderers where a question has been misinterpreted and/or poorly answered (this will include where a Tenderer has not followed the format of the Invitation To Tender and/or submitted standard text in place of a fully informed written answer) and other submissions received, fully interpreted and answered in full the same question. A clarification of this nature would not be permissible due to the Tenderer having a second chance at providing information which would alter the evaluation, and be unfair to other Tenderers.
- 20.9 If, for any reason, it is necessary to amend the Specification after Tenders have been received, the Tender procedure shall be repeated unless the Nominated Officer receives written advice from Legal Services which certifies that this is not possible and records the reasons why.
- 20.10 Where procurement is conducted pursuant to the Public Contracts Regulations 2015 through either the open, restricted procedures, no post-tender negotiations are permitted. The authorised officer may seek clarification from tenderers where appropriate in consultation with the Procurement Department.

- 20.11 Where procurements do not exceed the Public Contracts Regulations 2015 thresholds, the Procurement Manager may authorise negotiations if it is in the Council's interest to do so. The Procurement Manager will also establish the timescales for said negotiation procedure. Such actions must not distort competition.
- 20.12 At all times during the procurement process the council shall ensure that all tenderers are treated in accordance with the principles of the Treaty (European Treaty)

21 Reduced Number of Quotations or Tenders

- 21.7 For a procurement with a value between £5,000 and less than £75,000 where a Nominated Officer wishes to invite less than 3 organisations to bid, he/she must seek the approval of the Procurement Manager.
- 21.8 For a procurement in excess of £75,000, where a Nominated Officer wishes to invite less than 3 tenderers to bid, the Nominated Officer must seek the approval of the appropriate Director after consultation with the Procurement Manager. This should be justified in Procurement Gateway 2.
- 21.9 Where the minimum number of tenders stated in these Contract Procedure Rules have not been received, then consideration must be given (which must be recorded in writing) to re-running the procurement. If the Contract is for a sum less than £75,000, the decision can be taken by the relevant Head of Service. If the Contract is for a sum in excess of £75,000, the decision will be taken by the appropriate Director after consultation with the Procurement Manager.

22 Reports on Tenders

- 22.1 Reports must be prepared for all tenders and submitted to the appropriate Officer(s) or Cabinet for decision (see appendices A to F for approval requirements).
- 22.2 The Tender Report template is available at Appendix M and is available on the intranet as an e-form.
- 22.3 The Tender Report can also be used as an approved audit trail for requirements less than £75,000.

23 Contract Award

- 23.1 Every Council Contract shall be in writing in a form and on terms approved by the Head of Legal & Governance and shall specify:
- The work, materials, services or things to be furnished, had, done or disposed of.
 - The price to be paid (or, as appropriate, the sums to be received), with a statement of discounts or other deductions, and where not known,

- committed estimated price, or the basis upon which the final Contract sum is to be calculated.
- The time or times within which the Contract is to be performed, together with the termination date of the Contract.
- 23.2 For Works Contracts, it is essential for proof of insurance requirements to be provided.
- 23.3 The Contractor's Public Liability indemnity must be a minimum of £10m. If the form of Contract used contains a clause for a higher indemnity limit, then this limit will be required. At the award stage the Nominated Officer must request current valid insurance evidence.
- 23.4 Evidence of registration under the Construction Industry Tax Scheme must be provided to the Payments Supervisor prior to the Contract being awarded.
- 23.5 The contract formation process shall follow the flowcharts identified in Appendices G (over £75,000) and H (less than £75,000)
- 23.6 You must not allow the successful tenderer to start work until the above processes have been completed by the Legal department.
- 23.7 Where a Contract has been tendered and advertised on the Sell2Wales website, the council shall publish a Contract Award Notice on the Sell2Wales website as soon as possible after the decision to award the Contract has been taken. For above OJEU threshold tenders, the Contract Award Notice must be published within 25 days after the date of award of the Contract.

24 Debriefing

- 24.1 Should the Council receive a request from any supplier who was unsuccessful (at either the selection or tender stage), the Nominated officer shall inform that supplier of the reasons for being unsuccessful and, if the supplier was unsuccessful at the tender stage, the responsible officer shall inform him of the characteristics and relative advantages of the successful tender as well as the name of the business awarded the Contract.
- 24.2 The Council has, in any case, a statutory duty under section 20 of the Local Government Act 1988 and section 55 of the Public Contracts Regulations 2015 to inform unsuccessful tenderers promptly.

25 Contract Management

- 25.1 In addition to the processes by which Contracts are established, there is a need to ensure that Contracts are properly managed during their life. These Contract Procedure Rules therefore cover aspects of Contract Management, which relate to ongoing Contract variation & price control at any time during the Contract period.
- 25.2 If contract terms are to be negotiated, the negotiation plan/strategy should be referred to Legal & Procurement prior to commencing any negotiation.
- 25.3 The Procurement Toolkit contains a Contract Management Framework. This should be followed to ensure that Contracts are adequately managed from a delivery and commercial perspective.

26 Variations to Contract Value

- 26.1 Variation or aggregate value of all variations made to the Contract shall be subject to the thresholds and approval requirements as outlined in Appendices L and M. Contractor claims (unforeseen works for example) are not classed as variations but should be approved in the same manner as any Council requested variation to Contract.
- 26.2 A variation cannot be higher than the original Contract value and must be limited to 50% where the Contract is subject to OJEU rules.
- 26.3 For the avoidance of doubt, no variation may be made to a Contract if the proposed variation would mean the works, services or goods to be added to the original Contract are substantially different in scope or type to those contemplated by the original procurement exercise or would serve to take the Contract outside the budget.
- 26.4 Whether or not it is a requirement of the Contract, every variation (whether having a financial implication or not) will be authorised in writing by the appropriate officer(s). The Nominated officer will keep detailed records (Appendix O must be completed) of any such variation which shall be open to inspection by the Head of Finance even if approval is not required. The authorisation will be issued before the variation is placed.
- 26.5 As soon as it becomes known or apparent (whichever is the earlier) that the total cost of a scheme including variations will or is likely to exceed the Contract sum by more than **5% or £5000**, whichever is the greater, the Head of Finance must be informed for financial monitoring purposes and may inform the Nominated officer of any further financial requirements to be complied with.
- 26.6 All variations must be forwarded to procurement to ensure that the contract register is updated.

27 Extensions

- 27.1 Where the terms of the Contract and/or original procurement exercise do not expressly provide for extension, then such Contract may only be extended by exceptional circumstances, where legislation permits and value for money issues have been addressed. Such decision shall be made by the relevant authorised officer in consultation with the Procurement Manager and Monitoring Officer. Appendix O must be completed, reported and maintained or dependent upon value and risk, a report to cabinet should be completed for approval.

28 Procurement by consultants

- 28.1 Where the council uses consultants to act on its behalf in relation to any procurement, then the head of service shall ensure that the consultants carry out any procurement in accordance with these Contract procedure rules.

- 28.2 All decisions must be made in accordance with the council's scheme of delegations.
- 28.3 No consultant shall make any decision on whether to award a Contract or who a Contract should be awarded to. The head of service shall ensure that the consultant's performance in relation to procurement is in accordance with these Contract procedure rules and all statutory procurement obligations.
- 28.4 Where the council uses consultants to act on its behalf in relation to any procurement, the consultant must declare any potential conflict of interest that may arise to the head of service prior to the commencement of the procurement process or at such time that the Contractor becomes aware of such a potential conflict of interest.
- 28.5 Where the head of service considers that such a conflict of interest is significant, the consultant shall not be allowed to participate in the procurement process.
- 28.6 Note that it is the council, as the Contracting Authority, which is responsible for all actions and decisions of consultants in relation to the conduct of procurements, therefore there need to be proper governance procedures in place to manage and monitor consultants appropriately.

29 Internal providers

- 29.1 These Contract Procedure Rules are the Council's procedure rules for buying goods and services for the Council. They do not apply to internal purchases or service provision, but to external suppliers and providers.

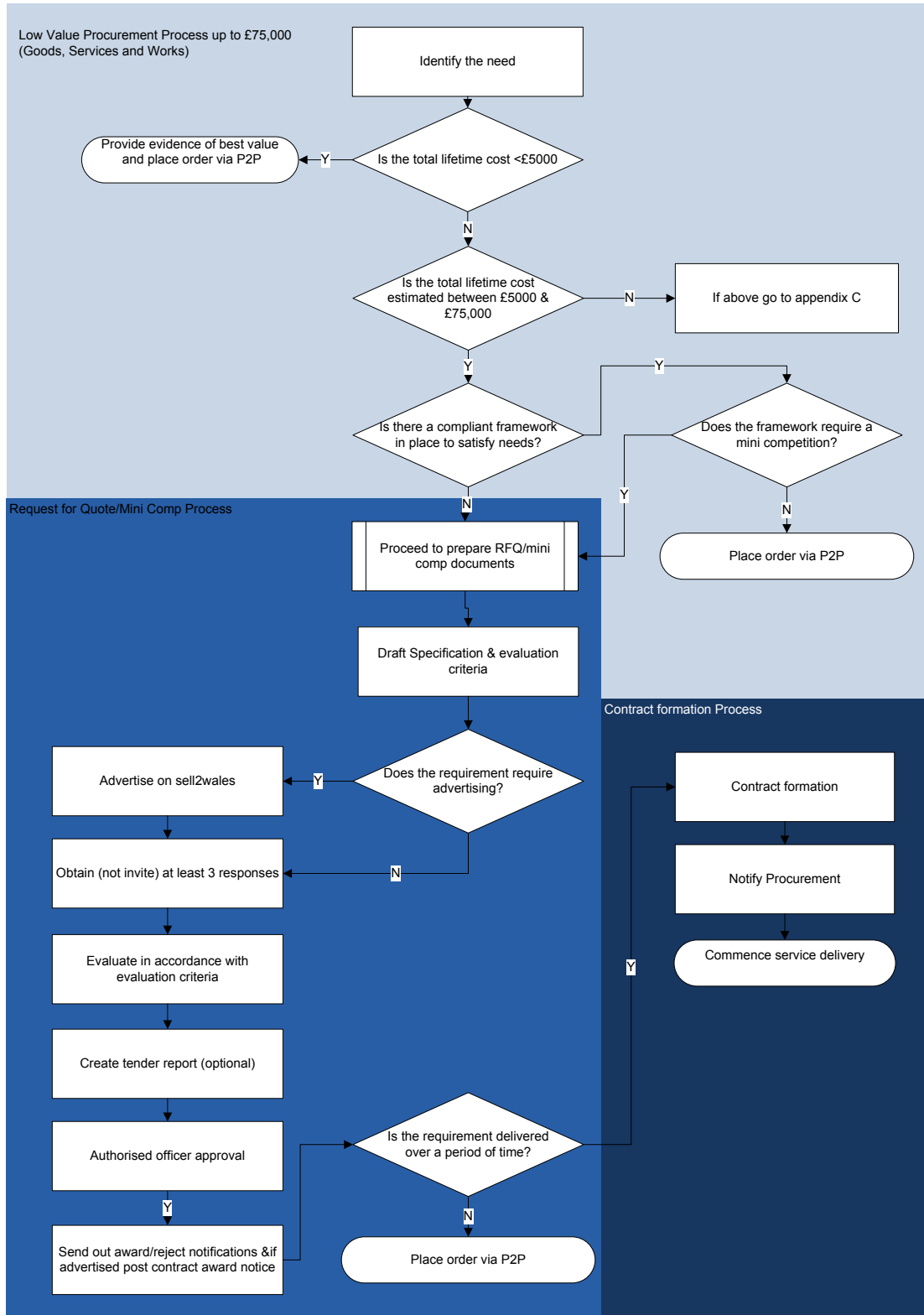
APPENDIX A - PROCEDURES FOR PURCHASING OF GOODS, SERVICES & WORKS

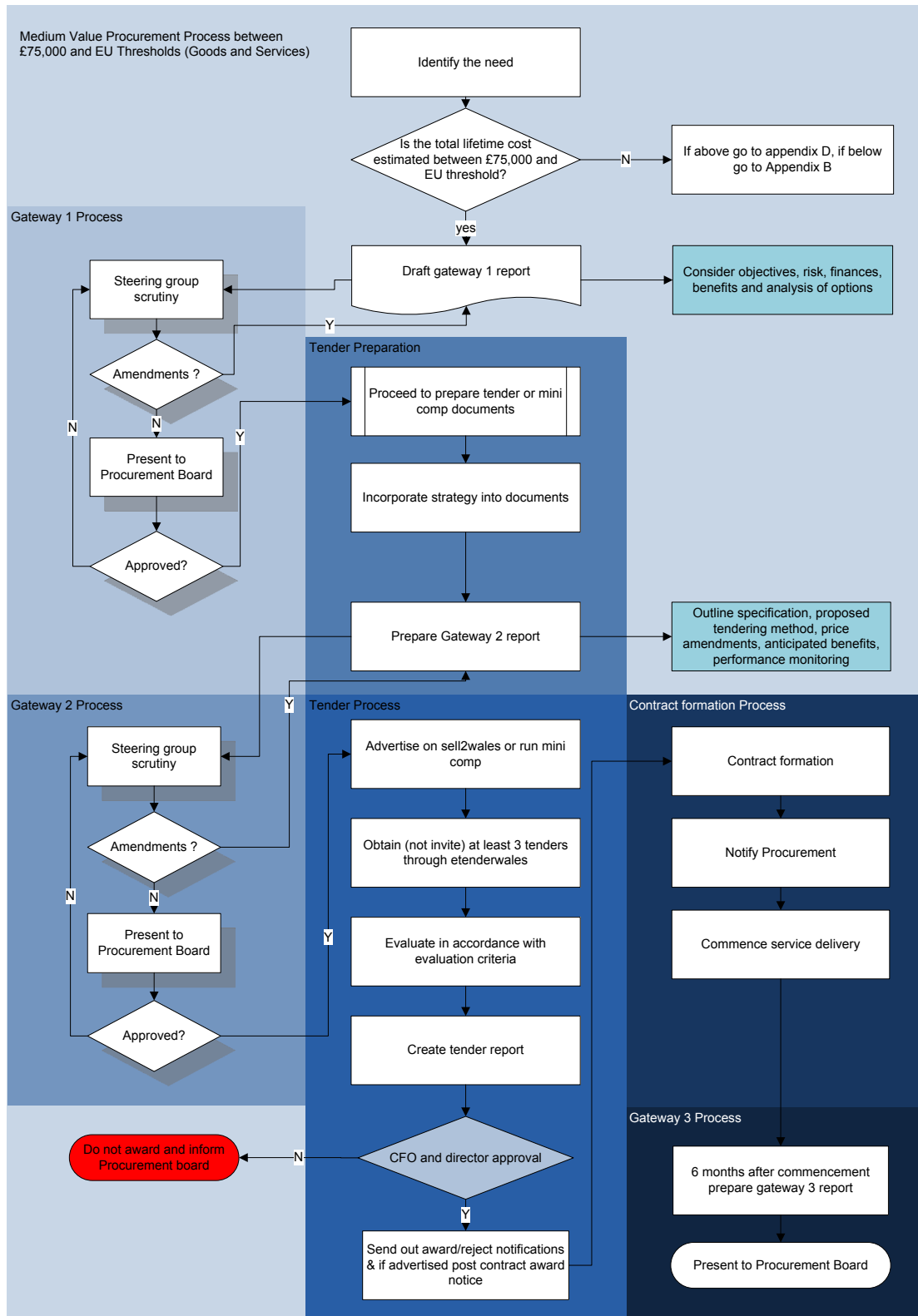
Value	Below £75,000 (Goods, Services & Works)	£75,000 – EU Thresholds (Goods & Services)	£75,000 - £1,000,000 (Works only)	£1,000,000 – EU Threshold (Works Only)	Above EU Thresholds (Goods, Services & Works)
Method	Quotations	Formal Tenders	Formal Tenders	Formal Tenders	Formal EU Tenders
Gateway Report	No	Yes	No – pre tender report only	Yes	Yes
Selection Method & Number for Goods, Services and Works	<p>Goods & Services Prepare specification and scoring criteria, Invite at least 3 Suppliers</p> <p>Works Prepare specification and scoring criteria, Invite at least 3 contractors</p>	Prepare a specification and scoring criteria Advertise on sell2wales Obtain at least 3 tenders using the Councils Electronic Tendering System (where possible)	Prepare a specification and scoring criteria Obtain at least 3 tenders using the Councils Electronic Tendering System (where possible)	Prepare a specification and scoring criteria Obtain at least 3 tenders using the Councils Electronic Tendering System (where possible)	Prepare a specification and scoring criteria Advertise on sell2wales Obtain at least 5 tenders using the Councils Electronic Tendering System (where possible)
Opened by	Nominated Officer	Procurement, Nominated Officer and Central Services	Procurement, Nominated Officer and Central Services	Procurement, Nominated Officer and Central Services	Procurement, Nominated Officer and Central Services
Records to be completed	Quote details kept on file, award & reject letters – notification to procurement of outcome	Gateway 1,2,3, Tender Report, award & reject letters	Gateway 1,2,3, Tender Report, award & reject letters - notification to procurement of outcome	Gateway 1,2,3, Cabinet Report**, award & reject letters	Gateway 1,2,3, Cabinet Report, award & reject letters
Contracts Payment Register for Works	Kept by Individual Departments	Kept by Head of Finance	Kept by Head of Finance	Kept by Head of Finance	Kept by Head of Finance
Contractors Insurances for Services / Works	Confirmed by Insurance Officer prior to Award	Confirmed by Insurance Officer prior to Award	Confirmed by Insurance Officer prior to Award	Confirmed by Insurance Officer prior to Award	Confirmed by Insurance Officer prior to Award
Sub Contractors Tax Registration for Works	Required to be with Payments Division prior to Award	Required to be with Payments Division prior to Award	Required to be with Payments Division prior to Award	Required to be with Payments Division prior to Award	Required to be with Payments Division prior to Award
Variations and Extensions	See Appendix N	See Appendix N	See Appendix N	See Appendix N	See Appendix N
Awarded by	Authorised Officer	Chief Officer and Head of Finance**	Chief Officer and Head of Finance**	Director and Head of Finance**	Cabinet with 10 day standstill
Method of Awarding	Letter of Award	Legal Contract	Legal Contract	Legal Contract	Legal Contract
Report to Cabinet	No	Yes - Information Only*	Yes - Information Only (only Contracts over £250,000)*	Yes – information only	Yes

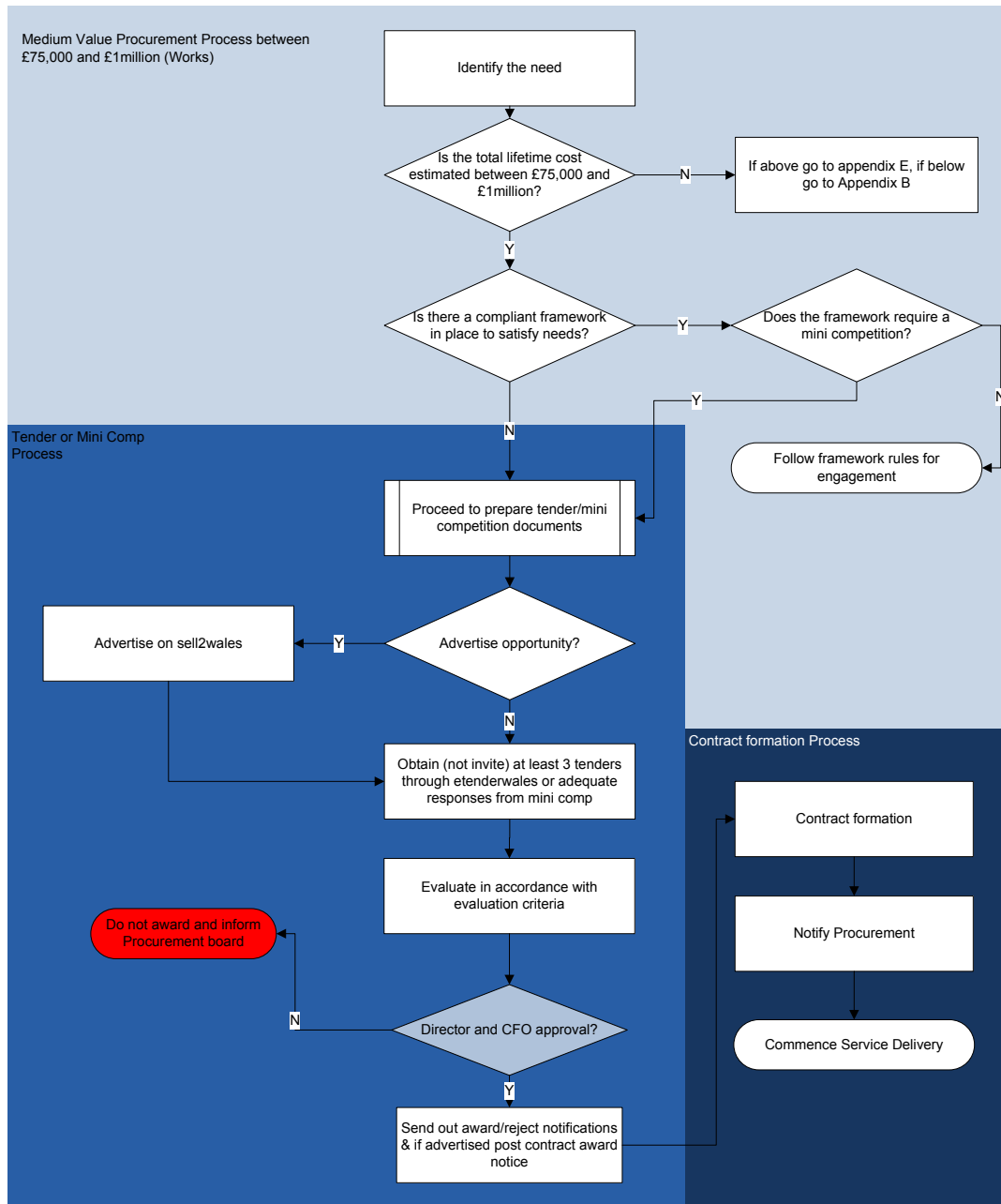
*Information Reports can be completed quarterly

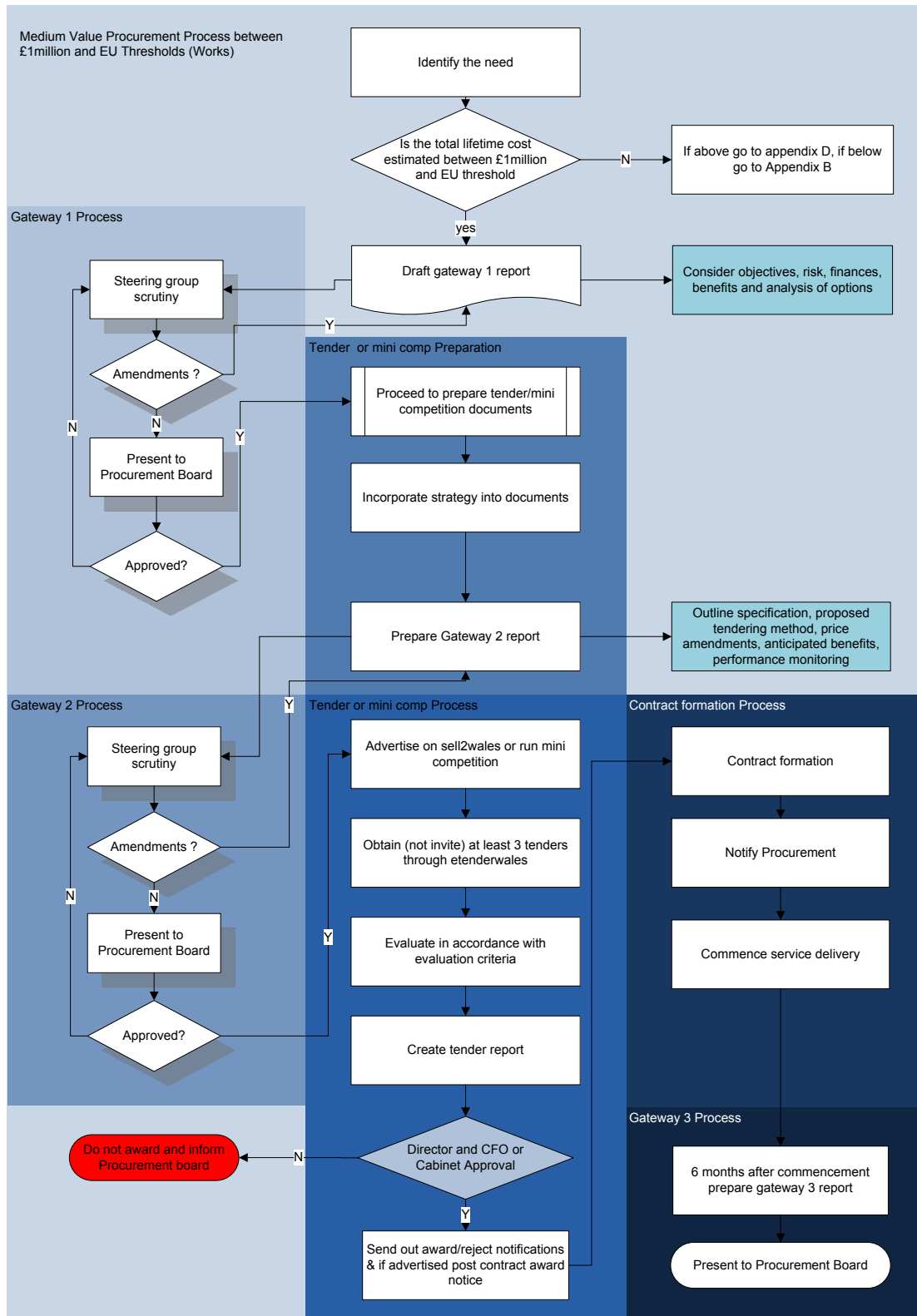
*** Where a report may have political interest, or to maintain probity, advice must be sought from Chief Officer, Deputy Chief Executive and Head of Finance with regards to a full cabinet report for decision*

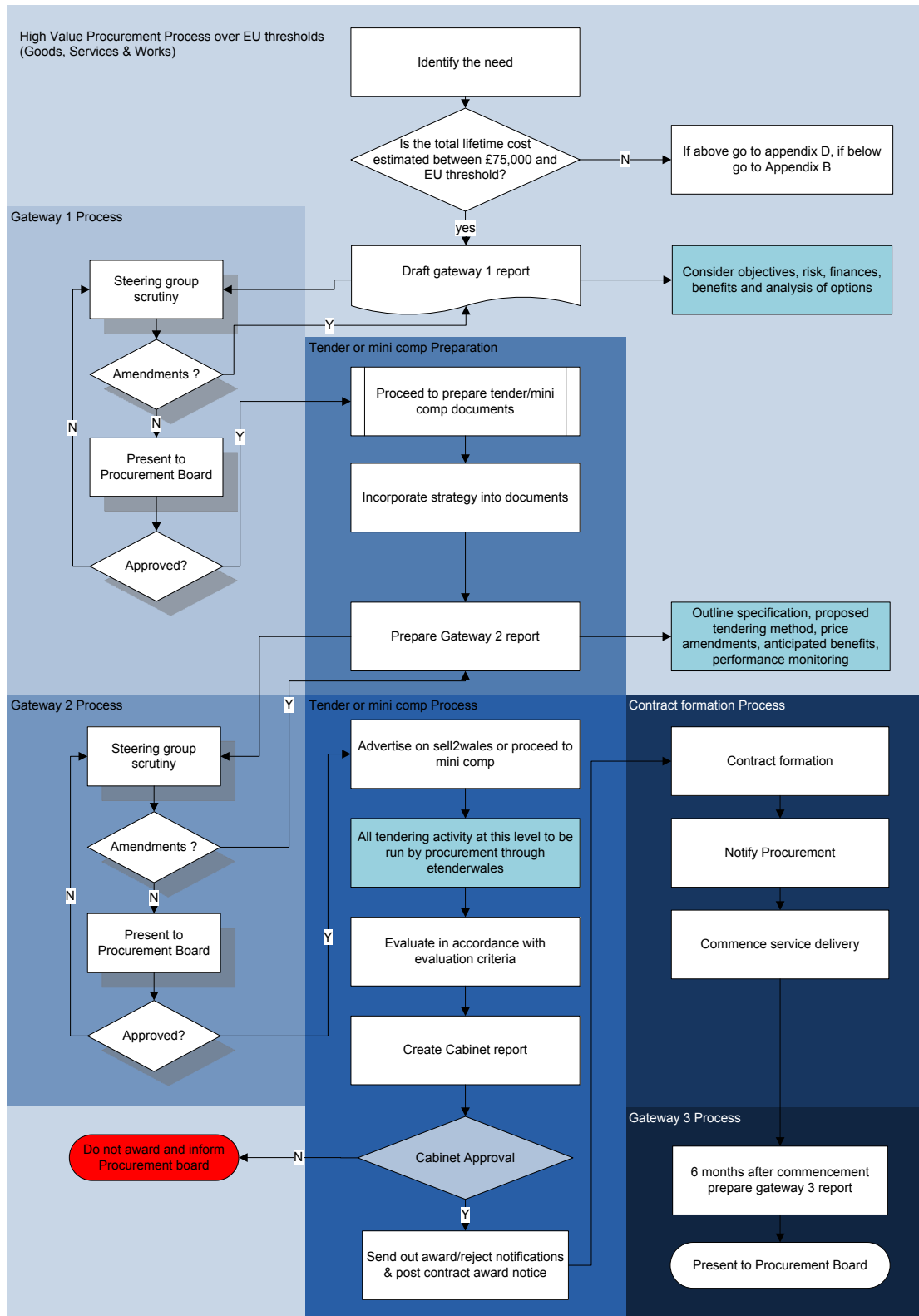
APPENDIX B



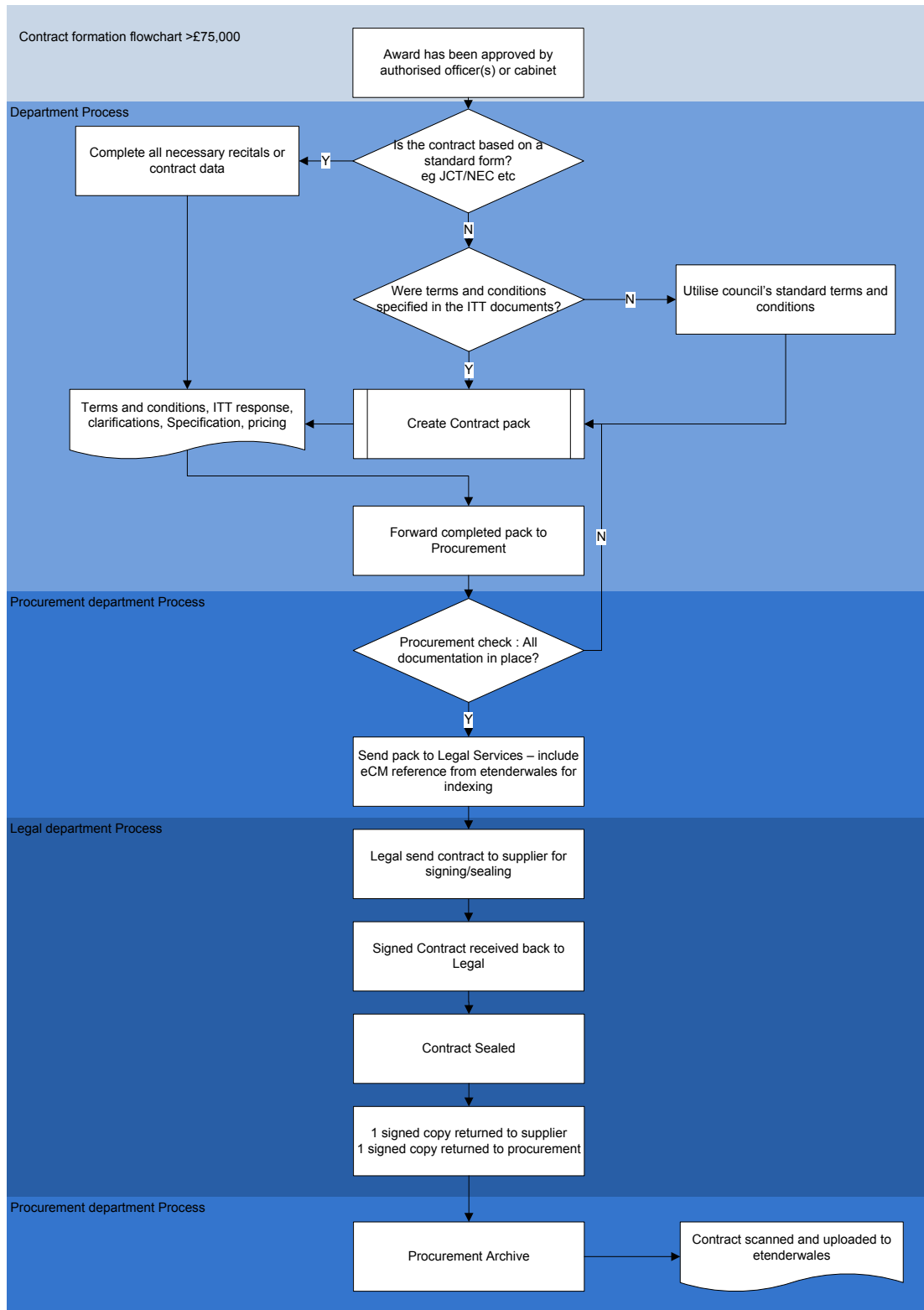




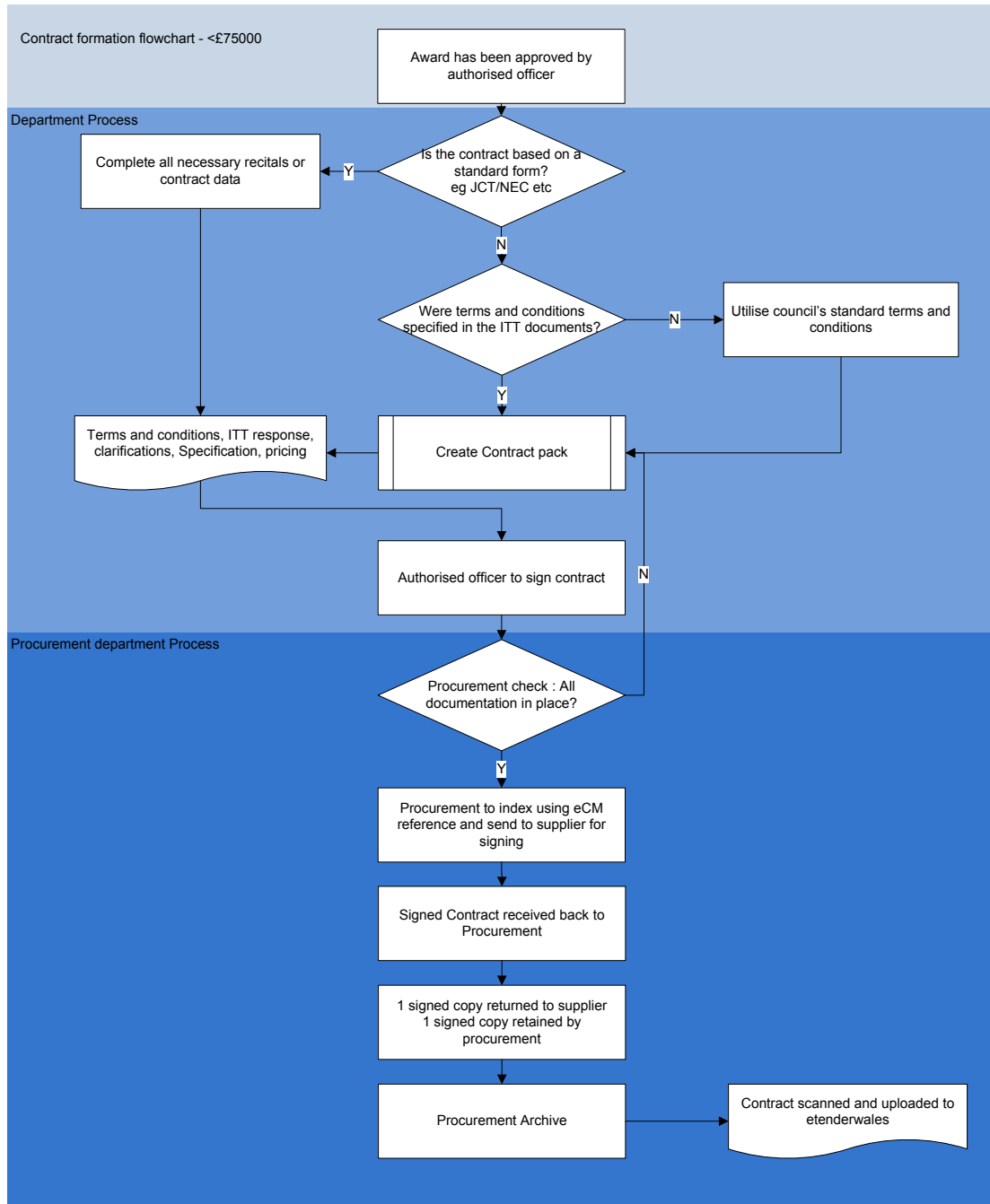




APPENDIX G



APPENDIX H



APPENDIX I – CONSTRUCTIONLINE

The purpose of utilising Constructionline is as a pre-qualification (PQQ) tool for Works tenders or quotations which fall below the OJEU Thresholds for Works (currently £4.3M). This forms only part of the PQQ information required – health and safety information needs to be obtained separately (please contact Property Services for further information).

Constructionline provides information on Contractors' financial standing and insurance levels. Constructionline undertakes regular reviews of Contractors' performance in these areas to ensure all details are kept up-to-date.

Constructionline must be used to select Contractors for inviting to tender/quote below the OJEU Thresholds in one of the following ways:

1. Develop a long list of Contractors (at least 10) you will potentially utilise for the type of tendering/request for quotes you frequently do, ensuring the Contractors meet all of the criteria required for the level (value and/or risk) of tender/quotation. In order to ensure an adequate level of competition is achieved, it is essential that you rotate the Contractors invited to tender/quote on this long list. Invite at least 3 tenders/quotations via Sell2Wales.
2. Choose 3 'preferred' Contractors and then 3 to be randomly selected by Constructionline (to ensure that there is rotation of selection and therefore that a variety of Contractors are given the opportunity to compete for work). Invite these 6 Contractors to tender/quote via Sell2Wales.

If the Works to be conducted are considered 'specialist' and therefore insufficient Contractors are registered on Constructionline, approval in writing must be sought from Corporate Procurement to invite Contractors not registered on Constructionline to quote/tender.

If tendering above the [OJEU Thresholds](#), support must be sought from Corporate Procurement for running the tender who will decide if Constructionline should be utilised.

APPENDIX J – PRE-TENDER REPORT

Procurement of Works over £75,000 but below £1million - Officer Report and Decision Form

Please note that this report should only be used for decisions which are not specifically reserved for Full Council, a Committee of the Council, the Executive or a Statutory Officer.

The decisions made in this report are compliant with the protocol for Executive Decision making.

CONTRACT DETAILS – to be completed by Contract Manager	
Name of Contract Manager:	
Service Area:	
Contract / Project Title:	
Brief Description of Goods / Works / Services:	
Contract Number (provided by Procurement):	
Estimated Spend:	£
Estimated Contract Period:	
Timescales - Contract Start Date:	

Specific companies you wish to ITT (Invite to Tender)	
Name of Company	Address

I have been consulted and grant authorisation to the Contract Manager as the

Nominated Officer on the proposed List of Tenderers and I hereby grant approval to invite tenders (including less than the required numbers of Tenderers), in accordance with the Councils' Scheme of Delegations.

Designation	Signature	Date
Procurement Manager		

For all Framework Agreements please refer to the procurement section on the Intranet or contact the Procurement Department.

APPENDIX K – FORM OF TENDER

Merthyr Tydfil County Borough Council

[Insert Department Name]

TENDER for [Insert Contract Title]

Amount of Tender £ _____

FORM OF TENDER

I/We having read the Tender Documents and Standard Conditions of Contract, do hereby tender and undertake to execute and complete the Goods, Services and/or Works in accordance with the Contract Documents for the sum as set out in the pricing schedule.

- Agree that the insertion of any conditions qualifying this tender or any unauthorised alteration to any of the tender documents shall not affect the Standard Conditions of Contract and that such action may cause the tender to be rejected.
- Agree that this tender shall remain open to be accepted or not by the Council for a period of six months from the closing date for the receipt of tenders stated in the Instructions to Tenderers.
- Unless and until a formal agreement is prepared and executed to which I/We undertake to execute, this tender together with your acceptance thereof in writing, shall constitute a binding Contract between us.
- Understand that you are not bound to accept the lowest or any tender you may receive.
- Certify that this is a bona fide tender.

CANVASSING STATEMENT

I/We certify that no canvassing or soliciting of any member, officer or employee of the council and/or any other companies in the group of which the council forms part, in connection with the award of the tender or any other tender or proposed award of the Tender for the services, goods and/or works and that to the best of our knowledge and belief no person employed by me/us or acting on my/our behalf has done such an act.

Further hereby undertake that no in the future canvassing or soliciting of any member officer or employee of the council in connection with this Tender or any other Tender or proposed Tender for the services, goods and/or works and that no person employed or acting on my behalf will do any such act.

COLLUSIVE TENDERING STATEMENT

In recognition of the principle that the essence of selective tendering is that the council shall receive bona fide competitive tenders from all those tendering. The tender submitted herewith is a bona fide tender intended to be competitive. We have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangement with any other person. We have not done, and we undertake that we will not do at any time, any of the following acts: -

- Communicate to any person other than the council (as part of formal tender document) the amount or approximate amount of the proposed tender (except where the disclosure, in confidence, of the approximate amount of the tenders was essential to obtain insurance premium quotations required for the preparation of the tender)
- Enter into any agreement with any other person/organisation that may take part in the tendering process
- Offer, pay, give or agree to give any sum of money or valuable consideration to any member, officer or employee of the council or any person/organisation that may take part in the tendering process

DECLARATION

I/We

Of

Hereby confirm that I/We have read and understood the content of this Schedule, that is

1. Form of Tender
2. Canvassing Statement
3. Collusive Tendering Statement

and agree to be bound by the terms herein. I/We hereby submit an offer in respect of this Tender, and offer to perform, fulfil and keep all the obligations of the Contractor in accordance with the Conditions and Specification, all for the sums properly due under the Contract as calculated in accordance with the prices submitted. I/We confirm that I/We are fully conversant with all Tender Documents, and that this tender is submitted strictly in accordance with such Documents and the Instructions to Tenderers and is without any conditions or qualifications whatsoever. I/We certify that the information supplied by myself/us is accurate to the best of my knowledge.

Signature.....

Date

APPENDIX L – REGISTER OF EXEMPTIONS

Department _____	
Directorate _____	
Contract _____	
Description of work/service _____	
Value of work _____	
Date exemption requested _____	
Reason for exemption _____	
*Delete as appropriate	
**Create information report for next Cabinet meeting	
Exemption requested by: _____	Date _____
Director / Manager / Nominated Officer / Headteacher*	
Exemptions for Contracts valued up to £75,000	
Decision _____	Exemption agreed – Exemption not agreed*
Authorised by _____	Date _____
Head of Service	
Exemptions for Goods and Services Contracts valued between £75,000 and OJEU Thresholds	

Decision: Exemption agreed – Exemption not agreed*
Authorised by _____ Date _____ Director**
Authorised by _____ Date _____ Corporate Procurement
Exemptions for Works Contracts valued between £75,000 and £1,000,000
Decision: Exemption agreed – Exemption not agreed*
Authorised by _____ Date _____ Director**
Authorised by _____ Date _____ Corporate Procurement
Exemptions for works Contracts valued between £1m and OJEU Thresholds
Decision: Exemption agreed – Exemption not agreed*
Authorised by _____ Date _____ Cabinet
Exemptions for Contracts valued above OJEU Thresholds
Decision: Exemption agreed – Exemption not agreed*
Authorised by _____ Date _____ Cabinet
INSURANCES MUST BE CONFIRMED BY INSURANCE OFFICER PRIOR TO ORDER AND COMMENCEMENT OF CONTRACT.
Insurance Company _____
Date Insurance expires _____
Date for completion of Contract _____
Is the required public liability indemnity limit => £10million? Yes/No <i>(If no, the limit must be signed off by the Insurance officer and Chief Finance Officer)</i>
Indemnity complies with requirements of the Contract: Yes/No
Authorised by: _____ Risk and insurance officer
Authorised by: _____ Chief Finance officer
Date: _____
Additional Notes: _____ _____

**SUB CONTRACTORS TAX CERTIFICATES MUST BE PASSED TO THE PAYMENTS OFFICER
PRIOR TO ORDER AND COMMENCEMENT OF CONTRACT**

Sub Contractors tax certificate no. _____

Expiry date: _____

Received by: _____

Payments officer

APPENDIX M –TENDER REPORT

Department _____

Directorate _____

Contract _____

Description of work/service _____

Finance for the Scheme from _____

TENDERING

Number invited to Tender _____

Number of Tenders Returned _____

Closing Date and Time _____

Tenders received:

TENDERER	TENDER AMOUNT	AMOUNT AFTER CHECKING
1) _____	£ _____	£ _____
2) _____	£ _____	£ _____
3) _____	£ _____	£ _____
4) _____	£ _____	£ _____
5) _____	£ _____	£ _____
6) _____	£ _____	£ _____

Evaluation Criteria

Tenders not returned from:

Reason for non-return:

All tenders received have been checked in detail. Summary of findings:

Summary of communications regarding queries arising from examination of tenders

Recommendation to award Contract to:

Contractor: _____

Address: _____

For the sum of £ _____

Reasons for award if not the lowest tender:

Report completed by: _____ Date _____

Contract approved by: _____ Date _____
Director/Chief Officer / Head teacher*

Contract approved by: _____ Date _____
Head of Finance

**delete which does not apply*

APPENDIX N – VARIATIONS AND EXTENSIONS

Goods & Services Contracts

Contract Value	First/Cumulative value of variation up to 10% of original Contract value	First/Cumulative value of variation up to 10% to 20% of original Contract value	First/Cumulative value of variation over 20% of original Contract value
Up to £75,000	Authorised Officer	Authorised Officer	Head of Service
£75,001 to OJEU Thresholds	Head of Service	Head of Service and Head of Finance	Head of Service and Head of Finance
Above OJEU Thresholds	Director, Head of Finance and Legal	Director, Head of Finance and Legal	Cabinet

Works Contracts

Contract Value	First/Cumulative value of variation up to 10% of original Contract value	First/Cumulative value of variation up to 10% to 20% of original Contract value	First/Cumulative value of variation over 20% of original Contract value
Up to £75,000	Authorised Officer	Authorised Officer	Head of Service
£75,001 to £1M	Head of Service and Head of Finance	Head of Service and Head of Finance	Head of Service and Head of Finance
£1M to OJEU Thresholds	Director, Head of Finance and Legal	Director, Head of Finance and Legal	Director, Head of Finance and Legal
Above OJEU Thresholds	Director, Head of Finance and Legal	Director, Head of Finance and Legal	Cabinet

For Schools, where it states Authorised Officer or Head of Service, Headteacher is the equivalent. Where it says Director or Cabinet, Governing Body is the equivalent.

APPENDIX O – REGISTER OF VARIATIONS AND EXTENSIONS TO CONTRACTS

**Variations must be requested prior to stage payments being made
(This applies to both MTCBC staff and Consultants)**

**Please use the Variations & Extensions table at appendix N to ascertain approval
requirements.**

Department:		Directorate:	
Contractor:			
Description of Contract:			
Variation Number:			

Variation to Contract Terms & Conditions

Brief description of changes to Contract terms:
(include attachments if necessary, e.g. of additional or changed clauses)

Variation to Contract Value

Previous Cumulative Value of Variations/Extensions:	A
Value of this Variation/Extension:	B
Total Value of Variation/Extension: (A+B)	C
Original Contract Value:	D
Revised Value of Contract: (C+D)	
Percentage Increase on Original Contract Price: (C/D)*100	
Reason for this Variation/Extension:	
How will the variation/extension be funded:	

Variation/Extension Requested By:		Date:	
	Nominated Officer / Head of Service /Head teacher		
Variation/Extension Authorised By:		Date:	
	Authorised Officer/Head teacher		
Variation/Extension Authorised By:		Date:	
	Head of Service/Head teacher		
Variation/Extension Authorised By:		Date:	
	Director/Governing Body minute		
Variation/Extension Authorised By:		Date:	
	Head of Finance		
Variation/Extension Authorised By:		Date:	
	Legal		
Variation/Extension Authorised By Cabinet:	Minute Number:	Date:	

