

STANDING ORDERS FOR CONTRACTS

Version 0.10 (January 2020)

Mae'r ddogfen hon ar gael yn Gymraeg, ac mewn ieithoedd a fformatau eraill ar gais.
This document is available in Welsh, and in other languages and formats on request.

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1. Introduction

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

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

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

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

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

2. Form and Certification of Contracts

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

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

3. Compliance

- 3.1 Every contract entered into by the Council shall be entered into pursuant to or in connection with the Council's functions and shall comply with:
- (a) All relevant statutory provisions;
 - (b) The relevant European Procurement Directives (the EU Treaty, the general principles of community law and the European Union's Public Contracts Directive (2014/24/EU) implemented by the Public Contracts Regulations 2015 or such other amendment, variation or replacement Regulations in force from time to time (" Regulations")
 - (c) The Council's Constitution including these Standing Orders for Contracts, the Council's Financial Regulations and Scheme of Delegation.
- 3.2 The highest standards of probity are required of all Officers and Members involved in the procurement, award and management of Council contracts. Any serious non-compliance could lead to the Council's disciplinary procedures being invoked.
- 3.3 Officers and Members are reminded of their responsibilities in relation to gifts and hospitality and should ensure that they comply with the obligations set out in the Members' Code of Conduct and Officers' Code of Conduct respectively and any guidance issued in that regard.
- 3.4 Officers shall take appropriate measures to effectively prevent, identify and remedy Conflicts of Interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all Contractors as set out in the Regulations.
- 3.5 All contracts must contain a provision allowing the Council to terminate without compensation in the event that there has been actual or attempted fraud or corruption in connection with the procuring, continuation, renewal or performance of the contract. Including appropriate exclusion grounds as set out in the Regulations.
- 3.6 Any failure to comply with any of the provisions of these Standing Orders for Contracts, the Financial Regulations or UK and European Union legal requirements must be reported by the appropriate Director to the S151 Officer.

4. Exempt Contracts

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

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

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

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

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

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

5. Internal Providers

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

6. Authorised and Delegated Officers

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

7. Preliminary Market Consultations

- 7.1 Before commencing a Procurement the Council may conduct market consultations with a view to preparing the procurement and informing Contractors of the Council's procurement plans and requirements, including seeking or accepting advice from independent experts or Contractors.
- 7.2 Prior to undertaking market consultation, advice and guidance must be sought from the Head of Procurement to ensure that such preliminary consultation does not have the effect of distorting competition and does not result in violation of the principles of non-discrimination, transparency and proportionality.

8. Division of Contracts into Lots

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

9. Framework Agreements

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

10. Shared Services

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

11. Collaborative Arrangements

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

12. Estimating the Contract Value

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

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

- 13.1 See Appendix A

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

- 14.1 See Appendix B

15. Medium Value Procurements (Tenders) - Between £75,000 and £189,330 (for Goods and Services) or less than £4,733,252 (for Works). (Band C)

- 15.1 See Appendix C

16. High Value Contracts for Goods & Services (Tenders) – Over £189,330 and £663,540 Schedule 3 Services (Light Touch Regime). (Band D)

- 16.1 See Appendix D

17. Schedule 3 Services (Light Touch Regime) between £189,330 and £663,540 (Band E)

- 17.1 See Appendix E

18. High Value Contracts for Works (Tenders) – Over £4,733,252 (Band F)

- 18.1 See Appendix F

19. Late Quotations or Tenders – Reduced number of Tenders

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

20. Tender Evaluation

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

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

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

22. Abnormally Low Tenders

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

23. Post Tender Negotiation

- 23.1 Where procurement is conducted pursuant to the Regulations, no post-tender negotiations are permitted. The Head of Service may seek clarification from tenderers where appropriate in consultation with the Head of Procurement. Negotiations on price are never permissible except where provided for within the Regulations.
- 23.2 Where procurements do not need to strictly comply with the Regulations the Head of Procurement may authorise negotiations if considered to be in the best interest of the Council in accordance with guiding principles of the Regulations.
- 23.3 At all times during the procurement process the Council shall ensure that all tenderers are treated equally and in a non-discriminatory, transparent and proportionate manner.

24. Contract Award Notice

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

25. Contract Terms and Conditions

- 25.1 The relevant Head of Service shall use their best endeavours to ensure that Contracts are entered into on the appropriate set of Council's terms and conditions, which shall be included with each purchase order or invitation to tender. Where this is not possible, variations to the relevant Council terms and conditions and/or the terms and conditions submitted by a contractor must be formally approved in writing by the Head of Legal Services. However, no amendment to the Council's terms and conditions or the terms and conditions submitted by a Contractor shall contravene the requirements set out within the Regulations and in particular but not limited to Regulation 73.
- 25.2 All Contracts with the provision to extend may be extended before the expiry date of the contract where it is in accordance with its original terms and conditions (which must expressly allow for extension) and proves to deliver Best Value for Money. Approval for such an extension shall be sought from the Head of Procurement or in accordance with the form of contract.
- 25.3 Where the terms do not expressly provide for extension and prior to the expiry of the contract, if it is felt to be in the Council's interests to extend a contract, then this can only be to the extent that the Regulations allow. For instance, if the Regulations apply to the goods, works or services under the contract and if the value of the proposed extension exceeds the relevant threshold, then this is likely to be regarded as a new contract and should be competitively procured, unless one of the narrow exceptions in the Regulations applies. In cases to which the Regulations do not apply, any extension must be by negotiation in accordance with the guiding principles of the Regulations. In all cases, the extension must follow the rules set out in the Procurement Code of Practice and be approved by the relevant Head of Service and reported to the Head of Procurement for information prior to the extension becoming legally binding on the Council.

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

26. Security and Performance

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

27. Liquidated and Other Damages

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

28. Termination of Contract

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

29. Sub-Contracting

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

30. Consultants

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

31. Record and Document Retention and Control

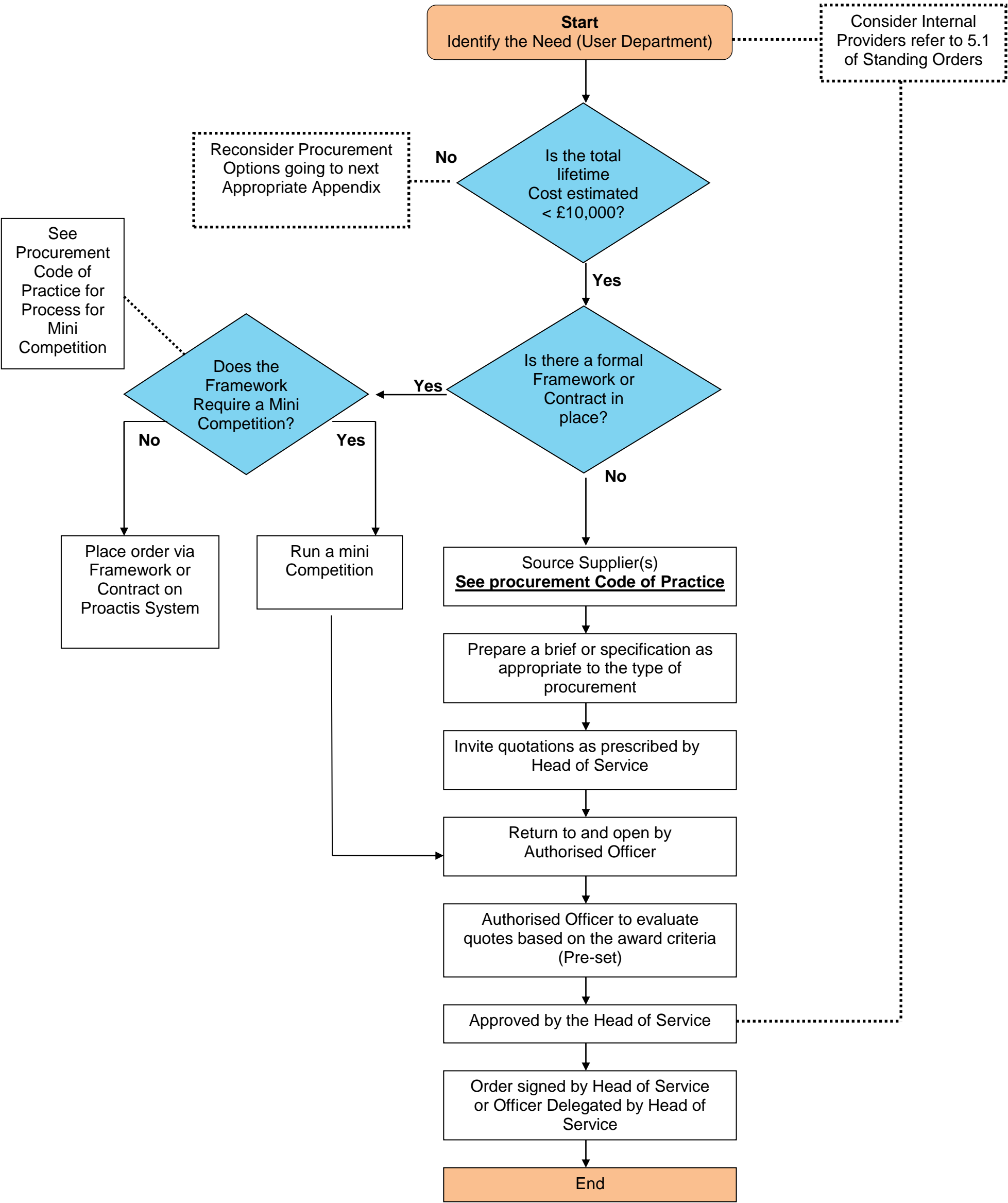
- 31.1 A Corporate Contracts Register of all Contracts over the value of £10,000 shall be administered by the Corporate Procurement Unit and all qualifying contracts must be input by the Authorised Officer.
- 31.2 For every individual Contract above £10,000 a contracts file shall be maintained with appropriate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

32. Waiver of Standing Orders for Contracts

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

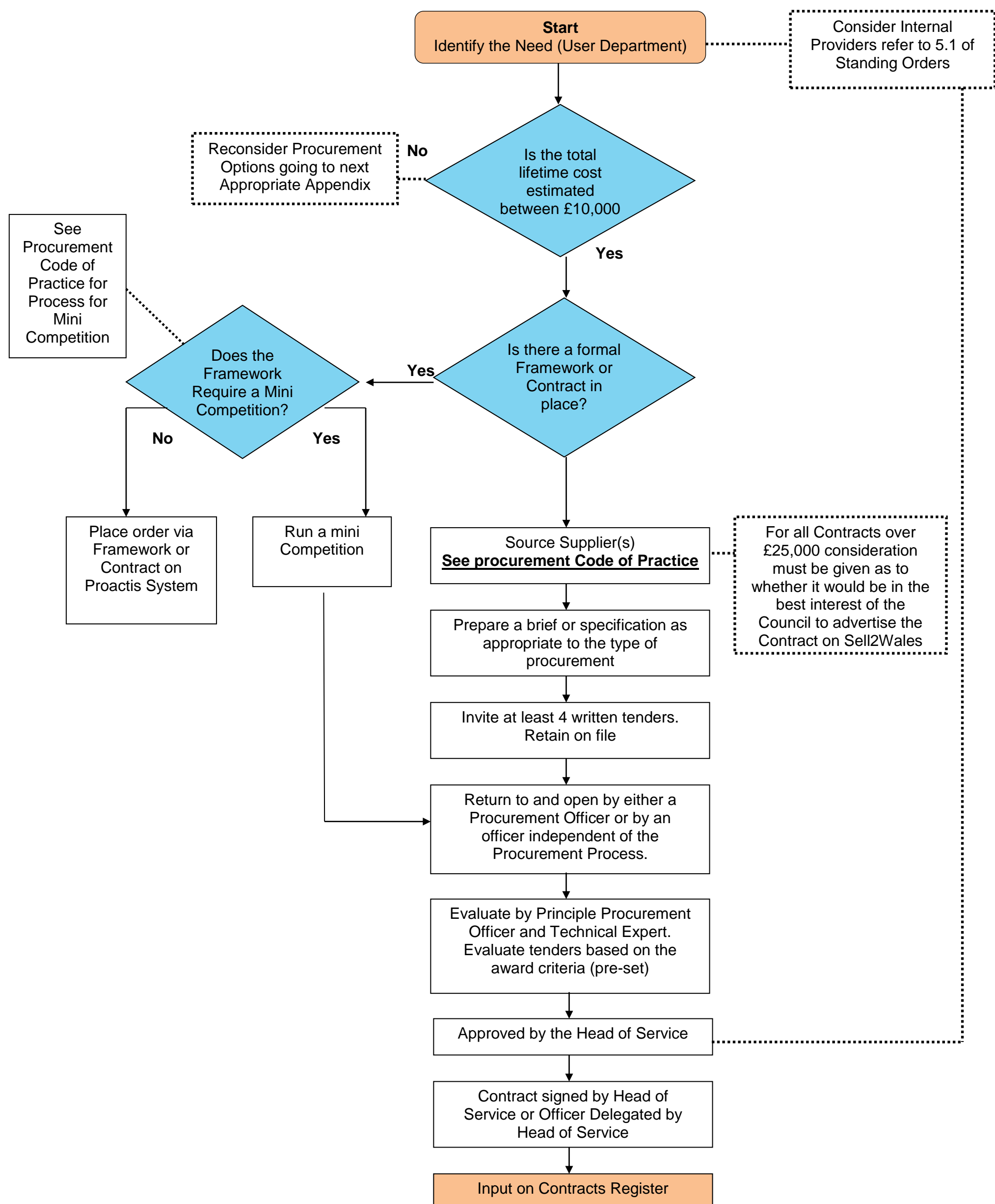
Appendix A: Low Value Procurement (Quotations) below £10,000

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



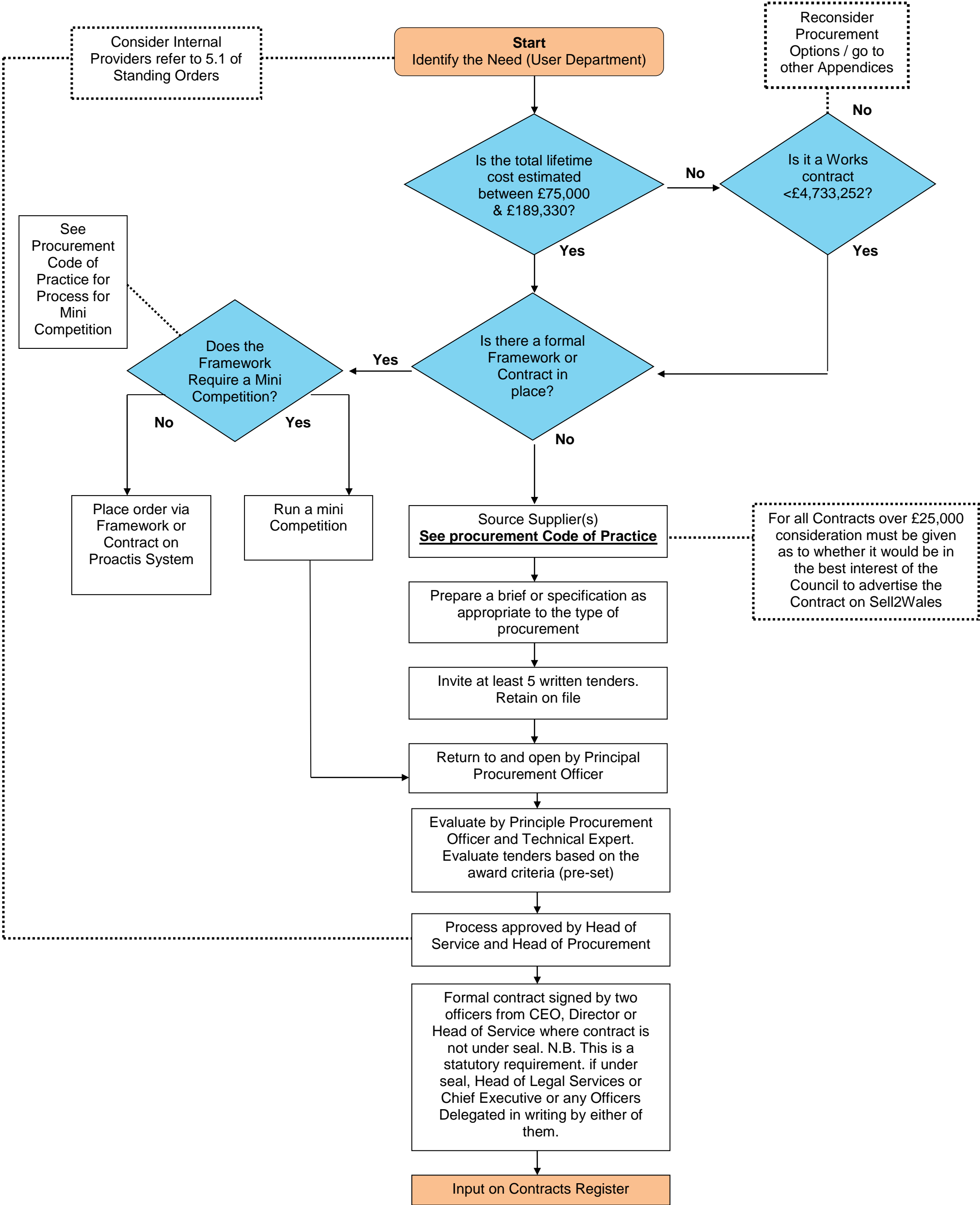
Appendix B: Intermediate Value Procurement (Tenders) between £10,000 and £75,000

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



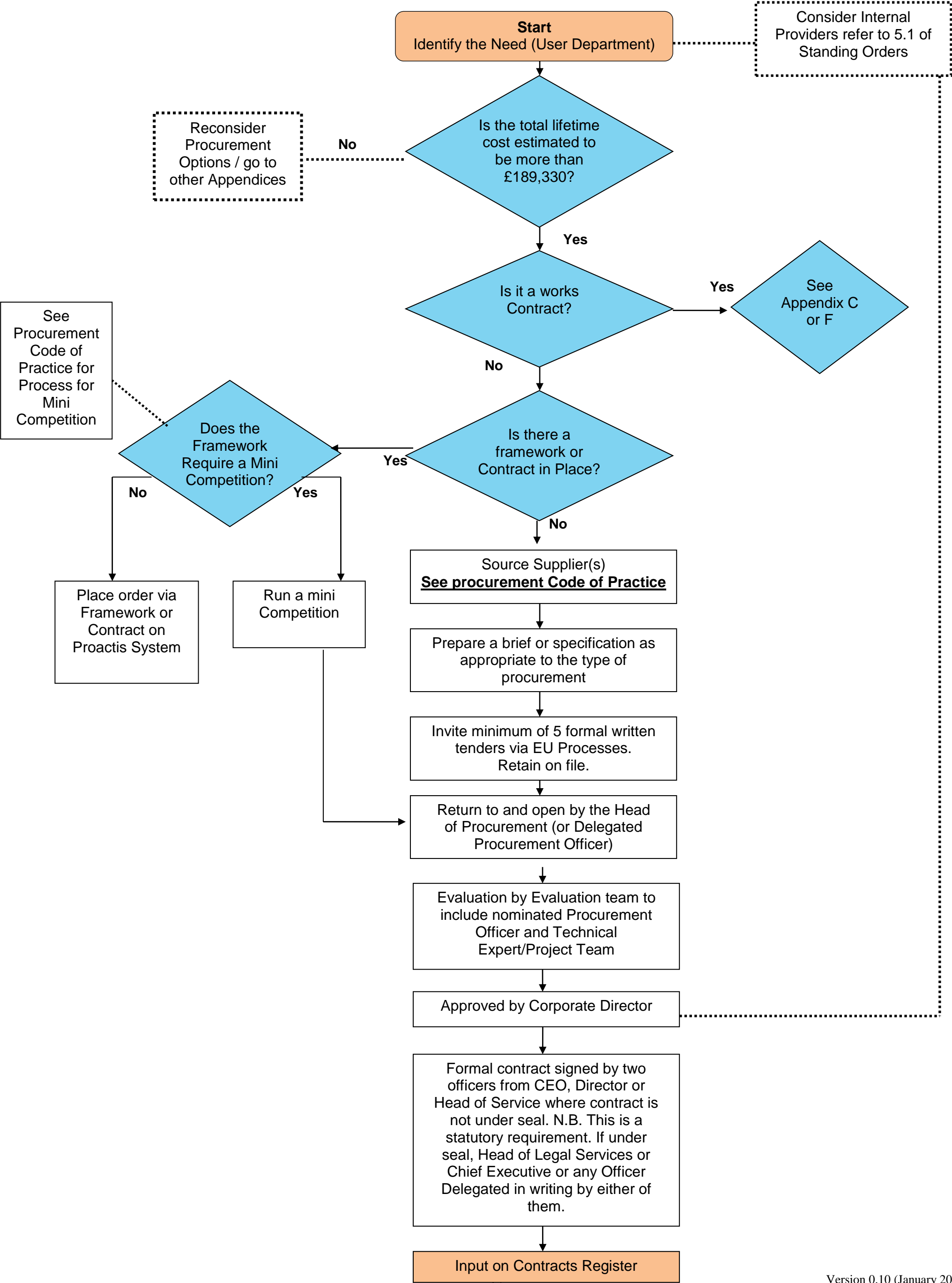
Appendix C: Medium Value Procurements (Tenders) - Between £75,000 and £189,330 (for Goods and Services) or less than £4,733,252 (for Works).

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



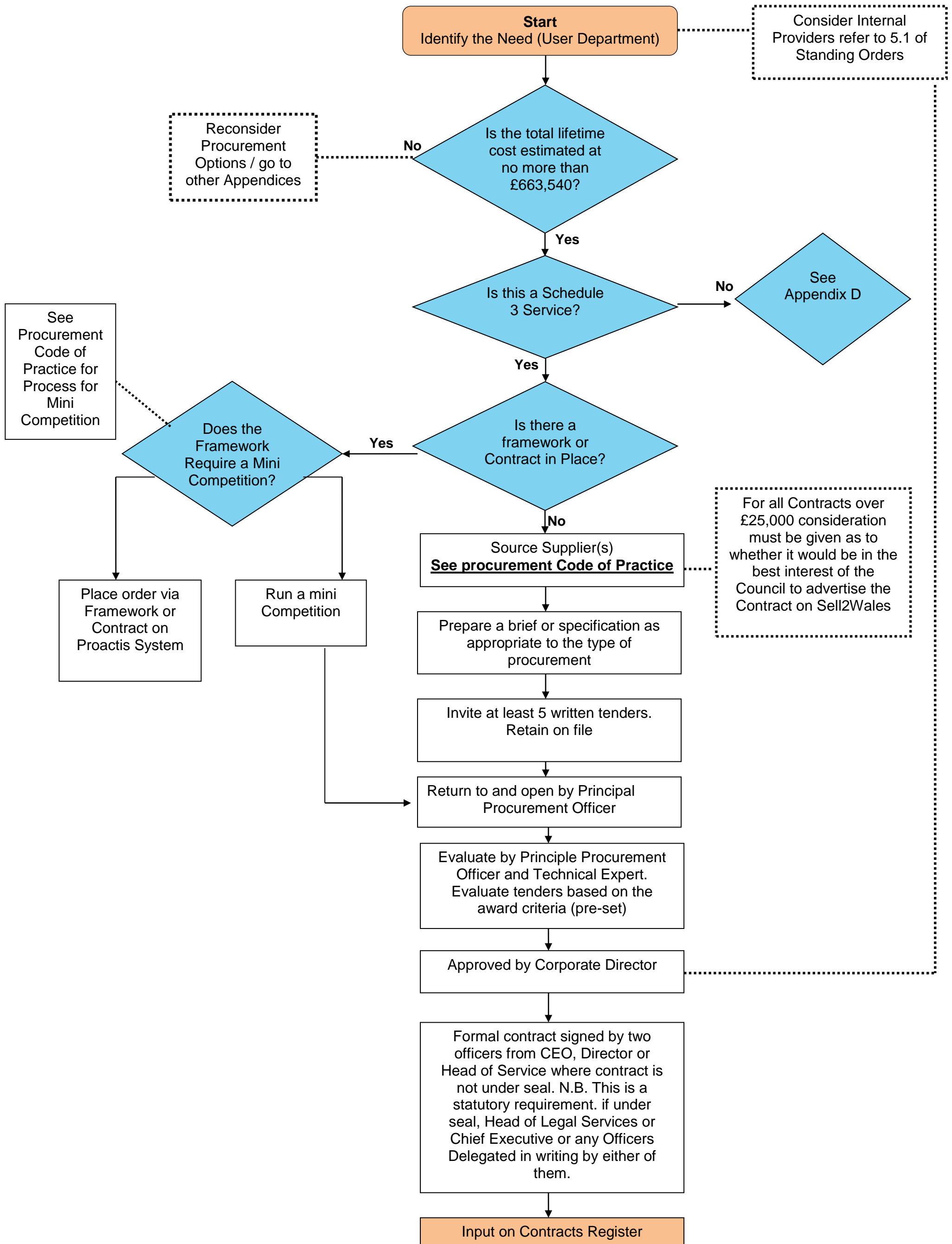
Appendix D: High Value Contracts for Goods & Services (Tenders) – Over £189,330 and Over £663,540 for Schedule 3 Services (Light Touch Regime)

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



Appendix E: Schedule 3 Services (Light Touch Regime) between £189,330 and £663,540

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



Appendix F: High Value Contracts for Works (Tenders) – Over £4,733,252

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

