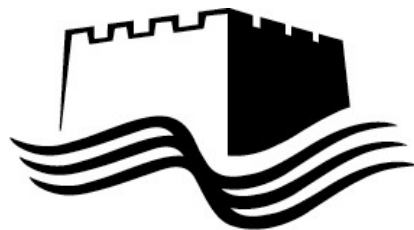


APPENDIX ONE

Contract Specification and Management: Ensuring maximum value for money and securing community benefits

Scrutiny Challenge Session Report



TOWER HAMLETS

**London Borough of Tower Hamlets
March 2015**

Chair's Foreword

Councillor Abjol Miah

Local authorities play a critical role in running most of the day-to-day services that keep local communities ticking. It is estimated that £45 billion is spent nationally each year by councils in securing goods and services from contractors. Following the 2010 Spending Review, local government bodies across the country have been faced with significant reductions in funding, encouraging local authorities to rethink existing approaches to service delivery.

Effective contract specification and management plays an important role in supporting the Council to deliver public services that provide value for money. Supported by the provisions of the Social Value Act 2012, local authorities are also empowered to secure wider benefits for the local community through procurement.

In February 2014, the Communities and Local Government Select Committee concluded that local authorities could achieve a national saving of approximately £1.8 billion each year and recognised the need to invest in developing commissioning, procurement and contract management skills. In 2013/14 Tower Hamlets Council spent £355.5 million, approximately 32% of its total budget, through procurement activity.

Given the need to find financial savings, maintain effective services and seek significant community benefits from procurement, I felt now was a good time to consider further the Council's approach and future plans.

RECOMMENDATIONS

RECOMMENDATION 1:

Publish the quarterly Contracts Forward Plan on the Council's website and use the Members Bulletin to alert Councillors when it is updated.

RECOMMENDATION 2:

Officers periodically review the Council's approach to securing Community Benefits to ensure that:

- Community benefits are maximised whilst securing value for money
- Community benefits good practice is shared across Council services and category management areas

RECOMMENDATION 3:

Communicate to residents the community benefits that are being achieved by the Council through major procurement activity and current contracts.

RECOMMENDATION 4:

Consider accredited learning for those involved in supporting high risk or high spend procurement and contract management activities.

RECOMMENDATION 5:

Publicise further Find it, Fix it, Love it (FIFILI) to increase its use including a focus on utilising the support of 37% of staff members who live in Tower Hamlets.

RECOMMENDATION 6:

Explore wider use of mobile app technology in Council services informed by the experience of FiFiLi.

1. Introduction

- 1.1 The 2010 Spending Review heralded in significant cuts to public spending. Within the new financial climate, procurement in the public sector is often seen as a significant area of public spending capable of delivering substantial savings as well as acting as a lever for stimulating growth and other community benefits.
- 1.2 Each year the public sector, as a whole, spends in the region of £230 billion on the procurement of goods and services – amounting to almost 40% of GDP. In 2013/14, local government contributed to almost 20% of the total public sector procurement bill, a total of £45 billion a year.
- 1.3 As public sector bodies, councils are bound by EU treaty principles and directives as well as UK legislation requiring them to ensure free and fair access to all prospective service providers. Councils are also obliged to ensure contracts represent value for money under Best Value obligations and have regard for the improvement to the economic, environmental and social well-being of the local area under the Public Services (Social Value) Act 2012.
- 1.4 In 2013/14 the Council spent £355.5 million on procuring goods and services. Tower Hamlets Council, like other local authorities, has been presented with significant reductions in its spending powers. By 2016/17 the Council expects to have delivered a cumulative saving of £146.113 million since the spending review of 2010.
- 1.5 In addition to the pressure to deliver effective services within a constrained financial environment, there is also an expectation to achieve community benefits from procurement.
- 1.6 As part of its Best Value Inspection of the Council, PricewaterhouseCoopers (PwC) considered procurement in Tower Hamlets. The final report did not judge the Council to have failed to achieve its Best Value obligations in this respect. Nevertheless, the report highlights areas some areas for improvement.
- 1.7 The aim of the Challenge Session was not to review the PwC report nor duplicate its focus. Rather, the meeting sought to consider other aspects of the Council's procurement approach.
- 1.8 A London Councils report in 2013 noted waste management as being a large area of procurement spend – typically the third largest area for local authorities in London after education and social care. Given this and the Council's current work on the re-procurement of waste management, this area was chosen as a case study for the purposes of this enquiry.
- 1.9 The session was chaired by Councillor Abjol Miah. It took place on Thursday 22nd January 2015.

1.10 The session was attended by:

Cllr Abjol Miah	Chair, Scrutiny Lead for Resources
Jamie Blake	Service Head, Public Realm
Simon Baxter	Head of Clean & Green
Barry Scarr	Interim Service Head, Finance and Procurement
Zamil Ahmed	Head of Procurement
Kevin Kewin	Service Manager, Strategy and Performance
Gulam Hussain	Strategy, Policy and Performance Officer

1.11 The Scrutiny Challenge Session took the format of an evening meeting which was held at the Town Hall in Mulberry Place.

1.12 The agenda for the session included an introduction to the key issues under review by Councillor Abjol Miah followed by presentations and discussions on a range of issues. These included the Council's procurement policy and its implementation, management of the Council's waste contract and the approach to developing contract specifications within the Council.

1.13 The session was underpinned by three core questions;

- a) How do value for money and quality of service provision inform contract specification and management?
- b) What options are available for improving value for money and quality of service provision from contracts?
- c) What are the challenges faced by the Council in securing its requirements (including financial and community benefits) within the existing framework?

1. Statutory and Policy Context

EU Procurement Framework

- 1.1 Government bodies across the European Union are bound by a set of treaty obligations and directives governing the procurements process. These obligations aim to open up the public procurement market, ensure free movement of goods of services within the EU and ensure procurement is based on achieving 'value for money' through a competitive process. A full list of EU treaties and directives governing procurement activity is available in Appendix 1.
- 1.2 Under the terms of the EU framework, contracting authorities are bound by procurement rules subject to the type of goods or services being sourced and the value meeting or exceeding the specified thresholds. The most recent rules effective as of 1st January 2014 under the Public Contracts Regulations 2006 are set as follows;

	SUPPLIES	SERVICES	WORKS
Other public sector contracting authorities	£172,514	£172,514	£4,322,012

- 1.3 The EU framework allows contracting authorities to choose from a range of approaches in progressing the procurement process. Each procedure sets its own limitations on the contracting authority which must be considered when choosing the tendering approach. Details of each process can be seen in Appendix 2.
- 1.4 All contracting authorities are required to publish details of contracts in the Official Journal of the European Union (OJEU). Thereafter details of contracts may be advertised in other sources, however the details may not include any additional information not included in the OJEU.

UK Legislation and Policy

- 1.5 Since April 2000, all English Local Authorities in the UK have been governed by the Best Value Statutory Guidance issued by the Department for Communities and Local Government (DCLG) and introduced as part of the Local Government Act 1999.
- 1.6 Best Value authorities are under a general duty to "make arrangements to secure continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness."¹
- 1.7 Under the duty of delivering 'Best Value' local authorities are required to consider the overall value including economic, environmental and social value, when reviewing service provision. The revised Best Value guidance issued by the DCLG in September 2011 defines social value as;

¹ Section 3 of the Local Government Act 1999 (as amended by s137 of the Local Government & Public Involvement in Health Act 2007)

*'... seeking to maximise the additional benefit that can be created by procuring or commissioning goods and services, above and beyond the benefit of merely the goods and services themselves.'*²

- 1.8 The obligation of local authorities to pay regard to the wider impact of procuring goods and services is further defined by the Public Services (Social Value) Act 2012. This requires local authorities and other commissioners of public services to consider how their services can benefit people living in the local community.

Waste Management

- 1.9 Since the abolition of the Greater London Council in 1986, waste collection and disposal responsibilities amongst the London Boroughs have split between joint statutory partnerships and independent waste authorities.
- 1.10 At present, there are four statutory partnerships encompassing 21 London Boroughs. The boroughs of Croydon, Kingston, Merton and Sutton form a fifth voluntary partnership known as the South London Waste Partnership.

Figure 1.1: Waste Collection Authorities in London

WASTE AUTHORITY	PARTICIPATING BOROUGHES
East London	Newham, Barking and Dagenham, Redbridge, Havering
North London	Barnet, Camden, Enfield, Islington, Hackney, Haringey, Waltham Forest
West London	Brent, Ealing, Harrow, Hillingdon, Hounslow, Richmond
Western Riverside	Hammersmith and Fulham, Kensington and Chelsea, Lambeth, Wandsworth
South London Waste Partnership*	Croydon, Kingston, Merton, Sutton
Independent Authorities	City of Westminster, City of London, Bexley, Bromley, Greenwich, Lewisham, Southwark, Tower Hamlets

*Voluntary partnership

- 1.11 The London Borough of Tower Hamlets is one of 8 authorities which continues to independently manage their waste collection and disposal obligations. At present, its waste management obligations are delivered through Veolia UK covering cleansing, waste and recycling collection, waste disposal and treatment of refuse and recycling.
- 1.12 The local authority is currently preparing to undertake a renewed procurement exercise to secure waste management services beyond the expiry of its existing contracts in 2017.

² Best Value Statutory Guidance, DCLG, September 2011

Local Context

Tower Hamlets Procurement Policy Imperatives

- 1.13 The role of public sector procurement is increasingly prominent, in part driven by the squeeze on resources faced by public bodies. In its sixth session, the Communities and Local Government Select Committee undertook an enquiry into the impact of policies on improving procurement practices across local government.
- 1.14 The committee's report entitled 'Local government procurement' was published in March 2014 and recognised the scale of the challenge faced by local authorities. The report concluded that, despite positive developments, opportunities for collaborative working and more effective contract management were being missed. The report states that savings in the region of £1.8 billion could be achieved each year by conservative estimates.
- 1.15 Parallel to the report of the Communities and Local Government Select Committee, the Local Government Association (LGA) published its 'National Procurement Strategy for Local Government in England' setting out a vision for local government procurement. The strategy emphasises four key delivery outcomes in the areas of delivering savings, supporting local economies, demonstrating leadership and modernising procurement practices.
- 1.16 The London Borough of Tower Hamlets, like all local authorities, relies on the ability to procure goods and commission services in order to meet the needs of the local population. In 2013/14 the authority spent £355.5 million and used 6,000 suppliers on procuring these goods and services.
- 1.17 The Council's Procurement Policy Imperatives (PPI) 2012-15 governs the procurement process used by the authority. It brings together statutory obligations, the Council's medium term financial plan objectives and the vision of the executive.
- 1.18 The PPI identifies targets to be achieved through the procurement process. These include the delivery of 300 new jobs for residents of the borough by 2015, increased local spend from 22% to 40% by the financial year 2014-15 and the promotion of the London Living Wage and environmental sustainability in all procurement activities.
- 1.19 Since April 2013, a 'Community Benefits Schedule' has been incorporated into the Council's procurement policy with 5% of contract award criteria relating to securing community benefits. The policy recognises the need to support the development of a strong local enterprise sector capable of engaging with the Council and commits the authority to supporting this through training and development delivered by itself and its contractors as part of their community benefit obligations.
- 1.20 The Corporate Procurement Service provides the corporate leadership, policy and support to the Council in its commissioning and procurement activities, including oversight of the Council's engagement with its external supply base.

2. Key Findings and Recommendations

Procurement and Governance

- 2.1 The session began with an overview of the Council's procurement service and the governance frameworks affecting its work. Setting out the approach of the service as 'centre led but not centralised' and defined by a category management approach³, the presentation highlighted new developments in the sector such as the launch of the 'National Procurement Strategy' by the Local Government Association, new directives from the European Union and the launch of the Local Government Transparency Code 2014.
- 2.2 The presentation outlined the internal governance structures aimed at ensuring procurement activity was aligned to the objectives of the Council. Through the Competition Board and Competition Planning Forum, the Council has arrangements in place for the review of top spend categories and key strategic contracts, the development of policies governing procurement and to help ensure that the Council's strategic objectives are delivered through the procurement process.
- 2.3 Within the Council's procurement arrangements, the introduction of a new stage – Tollgate 3 review – now allows for greater post award scrutiny. This stage aims to ensure the presence of effective contract management arrangements and the realisation of community, financial and efficiency benefits. The session was also advised that changes had also been initiated within the Council in January 2014 to reduce the threshold at which contracting was supported by the Procurement Service. Previously set at EU levels (paragraph 2.2) the reduction of the corporate threshold to £25,000 has allowed for the service to play a role across a wider range of procurement activity. At present 80% of contracts have the London Living Wage embedded as a requirement.
- 2.4 As part of its Best Value Inspection of the Council, PricewaterhouseCoopers (PwC) considered procurement in Tower Hamlets. The final report did not judge the council to have failed to achieve its Best Value obligations in this respect. Nevertheless, the report highlights areas for improvement, which are being developed and managed through a Best Value Improvement Plan. The Procurement Service also highlighted the need to revise its existing strategy and adopt a revised ethical governance framework.
- 2.5 Officers were asked to set out the approach used by the Council to develop specifications and contract measures. Cllr Miah was advised that whilst specification development was ultimately the responsibility of the service seeking to award a contract, the Council's governance process – including Tollgate 1 stage – ensured that contract provisions reflect the wider council context, such as community benefits and arrangements to identify and manage risks.

³ Category Management as defined by the Chartered Institute of Procurement and Supply is 'a strategic approach which organises procurement resources to focus on specific areas of spends. This enables category managers to focus their time and conduct in depth market analysis to fully leverage their procurement decisions on behalf of the whole organisation. The results can be significantly greater than traditional transactional based purchasing methods.'

- 2.6 Given the significant contribution of procurement activity in relation to Council spend and performance, there is legitimate role for all elected Members to ask questions and scrutinise forthcoming contracting decisions. It was noted that the Contracts Forward Plan is considered by Cabinet on a quarterly basis. Information provided on the Forward Plan includes a description of what will be procured, the estimated value, funding source and timetable.
- 2.7 In order to improve transparency, it is recommended that the Contracts Forward Plan is published in a clear way on the Council's website (i.e. not just within the papers for the relevant Cabinet meeting) with all councillors being advised of its update through the Members Bulletin. This will provide all Members – and members of the public – with basic information about significant service(s) being procured and the opportunity to ask for further information.

RECOMMENDATION 1:

Publish the quarterly Contracts Forward Plan on the Council's website and use the Members Bulletin to alert Councillors when it is updated.

Value for Money and Community Benefits

- 2.8 It was explained that the relative weighting given to different elements when procuring – such as cost and service quality – were not consistent across all services. This is a deliberate policy in order to ensure that the approach best fits the service being procured. However, it was stated that the Council typically now allocates a 5% weighting to community benefits, whilst also seeking to ensure that the contractor pay the London Living Wage. These requirements are not universal across other London local authorities.
- 2.9 There was a discussion as to whether the Council's requirements in terms of community benefits were likely to increase the costs of contracts. It was stated that there is currently no evidence of a detrimental impact. Nevertheless, it was acknowledged that community benefits are of a growing importance. As such, it was felt important that the Council should periodically review its approach to community benefits – both to ensure that these benefits are maximised whilst securing value for money but also to ensure that good practice in this areas is shared across the Council.

RECOMMENDATION 2:

Officers periodically review the Council's approach to securing Community Benefits to ensure that:

- Community benefits are maximised whilst securing value for money
- Community benefits good practice is shared across Council services and category management areas

- 2.10 Community benefits from existing large contracts were considered. For example, benefits of the current Veolia waste contract includes:
- independently led waste campaigns in schools and the local community;
 - sponsorship for community events;
 - a successful apprenticeship scheme; and

- a Tower Hamlets workforce where 58% of staff are also residents of the borough

It was felt that such benefits from contractual arrangements are often not communicated to local residents – as such there is a limited understanding of the community benefits that are being achieved by the Council through major procurement activity.

RECOMMENDATION 3:

Communicate to residents the community benefits that are being achieved by the Council through major procurement activity and current contracts.

Commercial Skills and Training

- 2.11 The session considered the findings of a Communities and Local Government Select Committee report in 2014 which suggested that the lack of commercial acumen amongst contract managers in the public sector contributed to poor value for money. Cllr Miah was advised of the internal training and development opportunities for contract managers and the possibility of industry standard accredited learning was being investigated.
- 2.12 The Head of Procurement Service highlighted that there was a national debate across the public sector about the appropriate skills and experience needed to support effective procurement and contract management. He stated that the Procurement Service had, since 2013, delivered a number of workshops to develop procurement knowledge and skills across the organisation. The Best Value Procurement Improvement Action Plan had also embedded organisational development in procurement and commercial skills training as a key theme.

RECOMMENDATION 4:

Consider accredited learning for those involved in supporting high risk or high spend procurement and contract management activities.

Waste Management in Tower Hamlets – Case Study

- 2.13 The session was presented with an overview of the Council's waste management arrangements by the Head of Clean and Green services. This includes refuse and recycling collection, processing and street cleansing. It was explained that the contracts were awarded in 2005 to Cleanaway UK and subsequently transferred to Veolia UK after its acquisition of the former in 2006. The contracts are currently due to expire in 2017.
- 2.14 The presentation provided details on the performance of the contract. In 2013/14 the contract delivered:
- a 99.88% waste collection rate
 - a reduction of waste sent to landfill from over 80% to less than 9% (thus complying with the European Landfill Directive)
 - 98.10% of streets meeting the national street cleanliness performance target

- 3.14 The presentation also stated that whilst the recycling rate in the borough of 27.99% appeared to be comparatively low for London, when compared to other authorities sharing similar attributes – e.g. high population density with significant numbers of flats – the Council's performance compared more favourably. Of the 13 inner London Boroughs Tower Hamlets has the second best dry recycling rate, the first being the City of London
- 2.15 The session considered details of the relationship between the Council and Veolia in terms of contract management, including the balance between weekly operational and bi-monthly strategic meetings.
- 2.16 The Head of Clean and Green estimated that the Council saved in the region of £250,000 per annum through using community volunteers and effort to support waste management and street cleanliness. This includes both the use of Tower Hamlets Community Champions, Community Payback and private sector volunteer programmes supported by Veolia.
- 2.17 The importance of using technology to further harness residents' knowledge and energy was discussed further. For example, the use of QR codes supported the Council to recognise the need to increase collection frequencies for bins near docking stations following the introduction of the Cycle Hire Scheme in the borough. Similarly, the Council's mobile app, Find it, Fix it, Love it (FIFILI) has reduced the administrative process for raising public realm issues by allowing residents to report issues straight to the contractor with supporting photographs. This both saves money and reduces response times.
- 2.18 Responding to a query on how well the application was advertised and used, the Head of Clean and Green set out that with an initial development cost of £3,000 the application now had a base of 1,200-1,500 regular users. It was estimated that the app had resulted in a saving in the region of £120,000 since 2013. The application has seen limited advertisement to date – in part to allow the Council to learn and refine the app. Cllr Miah felt that now was a good time for publicising the service more widely, including to the 37% or almost 2,000 Council employees who are residents of the borough.
- 2.19 The wider applications of mobile technology, to harness residents' knowledge and energy, were considered. For example, it was noted that potential planning infringements had been highlighted to the Council using FiFiLi – despite the fact that this was not an initially intended use.

RECOMMENDATION 5:

Publicise further Find it, Fix it, Love it (FIFILI) to increase its use including a focus on utilising the support of 37% of staff members who live in Tower Hamlets.

RECOMMENDATION 6:

Explore wider use of mobile app technology in Council services informed by the experience of FiFiLi.

Waste Management Service Requests and Complaints

- 2.20 Councillor Miah highlighted the levels of concern in relation to waste management amongst residents in estates managed by Registered Social Landlords (RSLs). The Head of Clean and Green noted that this was a recognised issue but that RSLs were responsible for waste arrangements within their estates. In the case of bulk waste, the Head of Clean and Green stated that the transfer of waste by the RSL to Tower Hamlets Council as the recognised Waste Disposal Authority could not take place legally under the Environmental Protection Act 1990 without the Council charging for this service. Although the Council has worked with RSLs to promote its own bulk collection service, in many instances RSLs have preferred to retain independent operations.
- 2.21 More generally, the issues of residents raising service requests and complaints were considered. In response, the Service Head for Public Realm clarified that an initial call from a resident highlighting a missed collection was seen as a service request – and not a corporate complaint. It is understood that this practice is in line with that used by other local authorities, and the historic calculation of what was until recently known as BVPI 88.
- 2.22 The Head of Clean and Green further clarified that service requests had an independent escalation process which ultimately resulted in the contractor being fined for every failed collection that they were responsible for. The session was advised that some missed collections were outside of the contracted provider's control. For example, as a small densely populated borough, with narrow streets in many areas, road works and scaffolding can often impede access.
- 2.23 Where a resident specifically requests to report an issue, such as a missed collection, as a complaint this is handled through the corporate complaints procedure. In 2013/14 885 complaints were recorded representing a 19% decrease over the previous year. This figure should be seen in the context of 235,348 collections. It was noted that the Council's website does provide a monthly update on missed collections on its website.⁴

Renewing Waste Management Services

- 2.24 In 2011 Tower Hamlets Council participated in a roundtable event organised by London Councils exploring the future of waste management services. The subsequent report entitled 'Cutting Waste, Not Services' recognised the strain on Council finances and the need to find innovative solutions to continue delivering waste management services. The report concluded that authorities needed to manage expectations, share cost and review existing contracts. Councillor Miah asked officers how this report had influenced the approach adopted by the Council in deciding to pursue the renewal of its waste management services in 2017.
- 2.25 Officers highlighted that although the Council had considered a joint procurement exercise, entering in to such an arrangement with boroughs currently part of the East London Waste Authority (Figure 1.1) required changes in legislation. In addition, the example of North London showed joint arrangements can be problematic. The Council has also explored a potential

⁴ http://www.towerhamlets.gov.uk/ignl/environment_and_planning/recycling_and_waste.aspx

joint exercise with Westminster and the City of London but this is not being actively pursued. However, Tower Hamlets does at present have a joint hazardous waste contract in place and is exploring a joint clinical waste agreement. It was stated that the current arrangements, where Tower Hamlets is not part of a general larger sub-regional alliance, has worked to the advantage of the Council, including by providing the authority with flexibility in its approach.

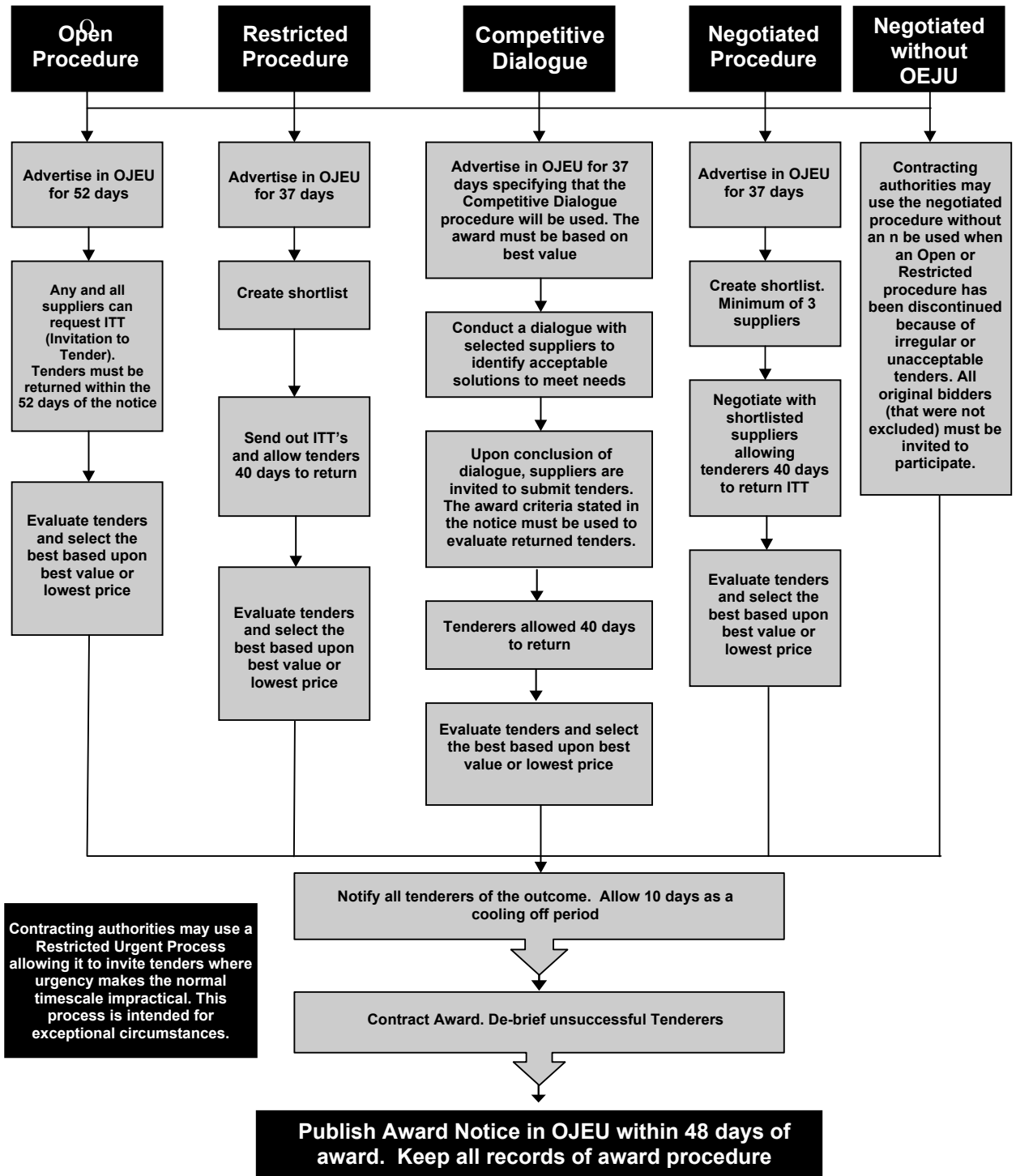
- 2.26 Given the ongoing work to renew Council's waste management contracts in 2017, information was sought on the approach taken to date, including market testing. It was confirmed that a soft market testing exercise had been undertaken in 2014 and that the Council expected to use a competitive dialogue process. This would allow the market to set out what could be provided rather than the Council overly prescribe the service in advance. The importance of recent technological developments within the waste management market was highlighted.
- 2.27 The session considered the current status of the Council's approach, including whether an in-borough asset (e.g. Council depot) would be part of the planned arrangements. It was confirmed that this issue was being explored with potential advantages to an in-borough site – including in terms of cost and potentially local employment – whilst also recognising the competing priorities on scarce public land (such as housing and other social infrastructure). It was noted that a more detailed report would be forthcoming prior to the formal commencement of the waste management procurement process.

Appendix 1: Legislation and Statutory Frameworks governing procurement

EU DIRECTIVE	UK LEGISLATION/STATUTORY GUIDANCE	OFFICE OF GOVERNMENT COMMERCE (OGC) GUIDANCE
The Public Contracts Directive 2004	The Public Contracts Regulations 2006	Framework agreements
The Remedies Amending Directive 2007	The Public Contracts (Amendment) Regulations 2009	Competitive dialogue procedure
Standard Forms Regulation	Best Value Statutory Guidance 2000	Environmental Issues and procurement
Threshold amendments Regulation	The Public Procurement (Miscellaneous Amendments) Regulations 2011	Social Issues and procurement
Public Contracts Directive 2014	Public Services (Social Value) Act 2012	Introduction to EC rules
	Local government transparency code 2014	Mandatory exclusion of economic operators
	Public Contracts Regulations 2015 (draft)	Mandatory standstill period
		Time limits for challenges under the public procurement regulations
		Use of the Accelerated Restricted Procedure in 2011

Appendix 2: EU Procurements Process

The following chart provides a simplified overview and quotes the maximum time frame for each process. Contracting authorities may operate at a reduced time frame through electronic publication in the OJEU or the publication of a Prior Information Notice (PIN) notifying tenderers of an intention to purchase.



Adapted from Cherwell District Council

Appendix 3: Tower Hamlets Procurements Cycle

