



Parliamentary  
and Health Service  
Ombudsman

**THE PARLIAMENTARY AND HEALTH SERVICE OMBUDSMAN**

**PROCUREMENT CODE**



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# PHSO PROCUREMENT CODE

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## 1 INTRODUCTION

### 1.1 Purpose of the guide

The aim of this document is to provide comprehensive guidance for anyone who needs to know how procurement of goods, works and services is carried out within PHSO.

The guide includes guidance on governance, compliance and authorisation procedures and is primarily aimed at those involved in or who manage the procurement process.

Additional audiences for the guide include internal and external auditors, as appropriate, and anyone requiring introductory training or guidance in the area of procurement.

#### 1.1.1 What is procurement?

Procurement is the process of selecting a supplier and the negotiation and placement of a contract to supply goods, works or services; the ‘through life’ contract management of the service to completion and/or delivery of the goods/services and includes the following:

- Allocation of funding by the Executive Team and production of business case where required
- selecting the most appropriate procurement route
- specifying the requirement in a format that enables suppliers to bid for the contract equitably
- evaluation and selection of a preferred bid against objective evaluation criteria
- negotiating the terms and conditions of the contract
- managing the Commercial relationship with the supplier during the life of the contract

#### 1.1.2 Why this is important

A correctly applied procurement process will ensure:



- value for money - the PHSO is under a duty to secure value for money in all of its transactions
- compliance with legislation - a wide variety of UK and European Union statutes and regulations apply to procurement
- avoidance of fraud and corruption - procurement must be visible and tightly controlled to limit potential fraud and avoid any suggestion of corruption
- delivery of our vision and ambitions - procurement contributes directly to the delivery of the PHSO's vision and long-term ambitions

## 1.2 PHSO's Policy

All Procurement by PHSO shall comply with UK and European Union (EU) legal requirements for fair and open competition in public sector procurement and relevant contract law;

All Procurement by PHSO shall be justified in advance by a business case, except for:

- procurements under £20,000 (excluding consultancy and single tender award contracts)
- any procurement for which a contract is already in place against which orders can be placed (i.e. a framework or call-off contract)

All procurement shall be carried out in an appropriate manner which ensures value for money (VFM), propriety and regularity as required by Government Accounting, having due regard to the administrative cost of the procurement activity;

PHSO staff shall at all times maintain the highest standards of legal and ethical behaviours in all procurement activity;

Appropriate internal governance over procurement activities shall be maintained and complied with at all times (including authorisations, documentation, contract management etc.).

No work is to commence in relation to any procurement prior to formal signature of Contract Documents (by both parties), or a Purchase Order is raised for low value procurements. There are no exceptions to this policy without the prior approval by the Managing Director (MD), with such cases to be formally submitted through the CPT.

### 1.2.1 Principles underpinning the policy

The principles which underpin the policy, to which PHSO expects to adhere, are as follows:

- High level decisions on the allocation of funding from the resources approved by Parliament are made through the business planning process.
- Business cases must be in place for all procurements over £50,000 before the procurement can commence.
- The CPT shall maintain the necessary level of specialist and professional expertise required to maintain PHSO's procurement function, and to provide guidance and support to procurement activity generally.
- Wherever possible and justified, PHSO shall utilise frameworks and put in place call-off contracts with suppliers for regularly required goods and services to simplify procurement processes.
- Suppliers shall be required to confirm that they adhere to UK statutory requirements including health and safety, data protection, freedom of information and equality and diversity.
- PHSO security clearance policy must be adhered to in respect of all suppliers' staff who, in order to meet the requirements of a contract, need access to our premises and/or ICT systems.
- Suppliers and their sub-contractors are required to ensure that they or their staff abide by the same policies and guidance as applies to PHSO staff.
- On-going contracts shall be actively managed and regularly reviewed during the Suppliers period of operation to ensure they remain relevant and appropriate to PHSO's needs and are achieving the goals of the performance measures.

### 1.2.2 Ownership of the Procurement Process

The Directorate requiring the goods or services shall be responsible for the following.

- specifying what they need, with clear deliverables and outputs
- undertaking appraisal of the options available for meeting those needs and recommending that option which most effectively delivers benefits for strategic Aims of PHSO and delivers value for money

- making the case for funding and ensuring this is available from within budget allocations or securing approval for additional resources if required
- gaining approval of business cases (subject to delegated authority) and/or securing approval from appropriate senior management
- evaluating and selecting the supplier from a short-list
- documenting the reasons for the supplier selection
- completing the resulting Purchase Orders/contracts necessary to actually secure the goods, works or services from the chosen supplier (subject to delegated authority)
- issuing requisitions for goods and service to the Service Desk complete with tender/evaluation pack
- ensuring that the goods and services are received as specified
- first line contract management
- maintaining the on-going operational relationship with the supplier;

### **1.2.3 Third Party Management of Contracts**

Only the PHSO can conduct tender exercises for its supplies, services and works. Third parties cannot place adverts for tenders and must not be solely responsible for assessing any tenders. Where consultants are used in assessing tenders the PHSO must be assured that any decision over award of a contract is made by the PHSO. All tenders must be returned to the PHSO.

## **1.3 The PHSO's Procurement Team**

The PHSO's Central Procurement Team (CPT) is based in the HR, People & Talent Directorate. The CPT can provide advice and support on any procurement matter and assist in the management of major procurement activities.

### **1.3.1 The CPT is responsible for**

- The procurement strategy
- Procurement procedures, process and guidance
- Preparing the annual procurement plan
- Monitoring of procurements to ensure propriety and regularity
- Maintaining and monitoring central records of all contracts, authorisations and procurement documentation

- Dealing with all contractual matters including contractual amendments and disputes
- Providing advice on procurement generally
- Providing resources to directly support higher-value procurements above the OJEU threshold and provide resources to support tender competitions below the OJEU threshold but deemed high risk (e.g. providing procurement expertise, project management resources, assurance roles and project support as appropriate)
- Quality assuring & counter-signing business cases
- Maintaining all procurement and contractual documentation
- Providing advice and guidance in relation to on-going contract management arrangements with suppliers

### **1.3.2 Records Management Service for procurements over £3,000**

Procurement practice is an area that is included within the remit of internal and external auditors. PHSO needs to be able to participate fully and comply speedily with any requests for information. Hence it is important that CPT maintains accurate and up-to-date records of documentary evidence of procurement practices. Evidence that is made available for auditors includes the following documents for each procurement (as applicable):

- business case
- specification
- statutory advertisements such as in OJEU and/or Contracts Finder
- invitation to tender
- supplier tenders/quotes
- evaluation methodology
- supplier selection panel assessment and evaluation report
- signed contract
- purchase order

### **1.3.3 Procurement Forward Plan**

Each year the CPT produces a Procurement Forward Plan detailing all procurement activities for the coming three years. Directorates must inform the CPT of their procurement intentions to enable a co-ordinated approach to

procurement across the PHSO, to ensure that activities are not duplicated and that the PHSO complies with all legislation relating to aggregation.

#### **1.3.4 Central Contracts Register**

It is a requirement for all directorates to complete the central contracts register, detailing all contracts the directorate holds.

## **2 PROCUREMENT AND THE LAW**

Virtually all aspects of procurement are influenced by law.

### **2.1 Conflicts of Interest**

All staff involved in procurement (including in the identification of potential suppliers, the evaluation of quotations or tenders received and/or the recommendation to award a contract) have a duty to declare at the outset any actual or potential conflict of interest.

No Procurement of any sort (including GPC card) shall commence without a declaration which has been signed and kept on file. Any changes in the circumstances shall be notified immediately to CPT.

This section acts should be read in conjunction with the PHSO Conflict of Interest Policy and associated Conflict of Interest Guidance, both of which are available on Ombudsnet.

#### **2.1.1.1 Conflict of interest**

This refers to a situation when someone has, or is perceived to have, competing professional or personal obligations, or personal or financial interests, that would make it difficult to fulfil their duties fairly or effectively, or which could influence, or may be perceived to influence, PHSO's judgements or actions.

There are four primary types of activity that might lead to a conflict of interest: secondary employment, business interests, personal interests/relationships and previous employment. Definitions of these can be found within the PHSO Conflict of Interest Policy.

#### **2.1.1.2 Relationships and Associations**

This refers to relationships and associations that a member of PHSO may have outside of PHSO. For the purposes of this guidance relationships and

associations encompasses individuals, groups and organisations with which a member of PHSO may have had a previous, current or planned involvement.

A relationship or association may or may not give rise to a conflict of interest.

Previous relationships do not automatically result in an actual conflict of interest - separate consideration and a judgement is called for in each instance.

#### **2.1.1.3 'Actual', 'perceived' and 'potential'**

For the purposes of this guidance:

- **'actual'** is taken to mean a real conflict of interest that has substance and impacts the ability of a member of PHSO to make an impartial decision;
- **'perceived'** is taken to mean a relationship or association that whilst not an actual conflict of interest for a member of PHSO could be seen as such by a third party; and
- **'potential'** is taken to mean a relationship or association that if not actively managed or mitigated could give rise to a future conflict of interest for a member of PHSO.

A poorly managed 'perceived' conflict of interest can be just as damaging as a poorly managed 'actual' conflict of interest.

#### **2.1.2 Examples of relationships and associations**

The table below sets out a number of possible relationships and associations that may need to be considered in respect of what may be considered to be a conflict of interest.

It is important to understand that the table is illustrative and not exhaustive. The variations of associations and relationships affecting individual members of PHSO are clearly myriad and diverse, and cannot be comprehensively documented.

It is the responsibility of every member of PHSO to consider their relationships and associations against the circumstances and exercise their own judgement in determining whether any of these represent actual, potential or perceived conflicts of interest and then act accordingly.

It shall be for management to determine whether there is a conflict to be managed and advice should be sought from the CPT.

### Types of Actual Conflict of Interests in Procurement

Relationship or Association	Actual Conflict of Interest	Consideration given to actual, perceived or potential conflict
A partner, relative, or close friend is part of bid to supply services to PHSO	✓	
A recent work colleague is part of a bid to supply services to PHSO		✓
A previous business associate is part of a bid to supply services to PHSO		✓
A previous or secondary employer is part of a bid to supply services to PHSO	✓	

#### 2.1.3 When interests conflict

Conflicts of interest are not wrong in themselves, but they should be properly identified and effectively and transparently managed. When a conflict of interest has been ignored, improperly acted on or influenced actions or decision-making, the conduct (not the conflict itself) can be seen as misconduct, abuse of office or even corruption.

The effect of a conflict of interest can also be positive or negative in that an individual or organisation may receive an advantage or a disadvantage as a result.

While conflicts of interest should be avoided wherever possible, they can happen innocently. In the context of procurement activity, a conflict of interest that is not properly declared and managed could seriously undermine its integrity and lead to complaints, challenges and, in some cases, a procurement decision (i.e. a choice to award work to a supplier) being overturned.

#### **2.1.4 Who needs to declare relationships in relation to procurement activity?**

It is essential that all members of PHSO involved in a procurement activity are required to formally consider and declare any relationship or association that may create an actual, perceived or potential conflict of interest in respect of the procurement activity they are undertaking. This includes:

- All members of the CPT
- All members of the evaluation panel(s)
- Any consultant asked to advise the team
- Anyone advising on which suppliers should be approached and invited to tender
- Anyone involved in making a recommendation to appoint a supplier
- Anyone involved in approving a recommendation or making an important decision
- Anyone making a financial approval for the procurement

#### **2.1.5 The Procedure for Declaring a Conflict of Interest in a Procurement**

The procedure for declaring an actual, perceived or potential conflict of interest is:

##### **1a Purchases below £20,000**

All individuals involved in procurement activity are required to sign an annual declaration that they are aware of and have abided by PHSO conflict of interest policy and have brought to the attention of managers all instances of potential conflict of interest in procurements and purchases for which they were responsible



1b Purchases between £20,000 and £50,000

At the beginning of the process, the business owner shall request that all those involved in the procurement (including any consultants working for PHSO) sign a 'conflict of interest' statement at the beginning of the process

1c Purchases above £50,000

Procurement route is likely to be formal tender managed by the business owner with the guidance of CPT. At the beginning of the procurement, CPT shall establish via the business owner the names of staff likely to be involved, together with any consultants working for PHSO, and shall write to them to remind them of PHSO's conflict of interest policy, asking that they sign a declaration of any potential conflicts of interest of which they are currently aware at the beginning of the process

2. Individuals consider in relation to potential supplier(s) and named personnel (when known), using guidance (and, if they want further clarification with advice from the CPT) whether there are any relationships or associations to declare. The advice is always 'if in doubt, declare' a relationship or association. The consequences of failing to do so may be extremely serious for PHSO's reputation, and for the individual concerned under PHSO's disciplinary policy. Where individuals state they have no relationships or associations to declare these are also recorded as a 'nil return' and maintained in the procurement record.
3. Where a relationship(s) or association(s) is declared the table for reporting potential conflicts below shall be used to identify a suitable member of PHSO to determine whether the declared relationship or association gives rise to a conflict of interest.

Staff Member	Reported to
Staff	Director
Director	Executive Director
Executive Director	Managing Director
Managing Director	Chair of Audit Committee
Chair and Ombudsman	Chair of Audit Committee

4. When considering whether there is a conflict of interest to be managed the decision maker shall need to take into account:
  - The risk to PHSO
  - The nature of the personal relationship
  - The timeframe of the relationship
5. The options for managing a conflict of interest include:
  - **Restricting:** imposing restrictions on a person's further involvement in the matter
  - **Recruiting:** engaging an independent third party to oversee all or part of the process and verify its integrity

- **Removing:** where the person chooses or is asked to be removed completely from the matter
  - **Relinquishing:** where the person relinquishes the private interest that created the conflict
6. Where conflicts of interest are identified the senior manager making that decision shall determine, with advice from CPT, how these shall be managed to achieve all PHSO's procurement objectives - propriety and regularity, deliver business objectives and achieve value for money. This might include, for example, consideration of who has the expertise to specify the work required, brief bidders, select preferred bidder and approve recommendation.
  7. Forward to CPT the signed 'conflict of interest' statements, notes on the outcome of any agreed action in respect of perceived, potential, actual conflicts, including arrangements for the management of the conflict.

#### 2.1.6 Monitoring of Conflicts of Interest

From time to time CPT shall conduct on-line searches by means of recognised search engines to identify any relationships or associations that may be shown between tenderers, suppliers, their named personnel, and members of PHSO involved in the procurement activity. Any positive results from this exercise shall be referred to the relevant Executive Director.

#### 2.1.7 Contractors and conflicts of interest

In all formal tender exercises, potential contractors are required to sign a declaration that they are not aware of any conflict of interest or any circumstances that could give rise to a conflict of interest in the performance of the proposed contract.

In the event a contractor has a conflict of interest which was not declared but becomes subsequently known, or where a conflict of interest arises with a contractor during the performance of a contract, the matter shall be raised by CPT for consideration at MD level, when appropriate actions shall be agreed on a case-by-case basis. Appropriate actions may include but not be limited to: termination of the contract, or removal of a PHSO member of staff whose relationship with the contractor causes a conflict of interest from any aspect of management of the contract, including approval of invoices and agreeing contract extensions.

## 2.2 OJEU

Within the public sector, procurement is regulated and governed by the European Union (EU) public procurement Directives and Regulations and competition law. Services over a defined value must comply with very specific processes including formal tender processes and advertising via the European Journal to ensure fair and equitable competition to all EU countries.

All tender opportunities above thresholds set by the EU should comply with EU tendering processes and be advertised in the Supplement of the Official Journal of the European Union (O.J.E.U.), which is published throughout the European Community. See Annexe A for values.

Where the PHSO decides to advertise a tender opportunity above £10,000 then it must also be advertised on Contracts Finder

The regulations impose stringent measures for breaching procurement rules.

## 2.3 Health and Safety Law

The [Health and Safety at Work Act](#) and associated legislation places criminal law duties upon all parties involved across all aspects of procurement and commissioning in commercial and public services.

The nature and extent of responsibilities under the legislation will depend on the formal arrangements in place between the parties. All parties need to be sure of their health and safety responsibilities including those to others not in their employ such as service users and other workers.

Effective health and safety management should be a significant criterion for the selection of contractors, however throughout the process risk controls must be proportionate and not unduly fetter effective service delivery or beneficial community activities. Significant risks must be controlled but it is not a legal requirement, nor is it necessary desirable to remove all risks at the expense of the benefits accrued.

Responsibility for health and safety will depend on a number of factors, which need to be carefully considered by all the parties. Such factors include the extent of their input into:

- Specifying the terms of the contract and outcomes to be delivered
- Selecting and appointing contractors and workers
- Managing the day-to-day delivery of the service, etc.

All parties need to consider their relationship with others in the supply chain and ensure adequate communication, co-operation and coordination to identify and control the risks.

## 2.4 Equality and Diversity

It is a requirement that the PHSO must ensure that its suppliers are complying with the public sector Equality Duty and in particular the aim of "advancing equality of opportunity". As a public sector organisation, the PHSO must have due regard to the need to:

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b) advance equality of opportunity between people who share a relevant protected characteristic and persons who do not share it;
- c) foster good relations between people who share a relevant protected characteristic and people who do not share it.

As part of this, our procurement process must include consideration of the E&D policies and practices of potential contractors. Subsequent contract management shall require that we monitor contractors' performance in this area as well.

Ongoing monitoring must ensure that the suppliers do not discriminate on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex discrimination in relation to decisions to recruit, train or promote employees.

## 2.5 TUPE

Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and Procurement

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) and the European Acquired Rights Directives protect employee's rights in circumstances where the business in which they work transfers by transferring their employment on the same terms and conditions with continuity of service. In addition, dismissals for a reason connected with a transfer will generally be unfair.

When conducting any procurement exercise where TUPE transfer of local public sector employees or employees that may have been originally employed by a public sector body, contact the Procurement Team for advice on latest developments in TUPE legislation.

### 2.5.1 What is a transfer?

TUPE applies in “relevant transfers” which may occur in a range of situations. Broadly they fall into the categories of business transfers or service provisions transfers.

Service Provisions transfers are the main area which impacts on the PHSO’s procurement. These generally happen in one of three ways:

- a) where services are carried out by the PHSO and then outsourced to an outside contractor; or
- b) where services are carried out by an outside contractor and are then reassigned to another outside contractor; or
- c) where services are carried out by an outside contractor and are then brought in-house and carried out by the PHSO

TUPE does not apply where the contract is mainly for the supply of supplies or the activities carried out are in connection with a single specific event or task of short-term duration.

### 2.5.2 TUPE and PHSO Tenders/contracts

In preparing any tender/contract for services consideration should be given to any TUPE implications that may arise.

TUPE transfers of staff will exist between the existing contractor or contractors providing the service and the incoming contractor or contractors who will subsequently be providing the service. Whilst the transfers will be the responsibility of the contractors concerned, the PHSO will need to make any potential transfer known in any tender documents in order that tenderers can submit accurate prices and can make themselves fully aware of their obligations.

Any tender documents must include a contact point at the current incumbent from which TUPE transfer information can be sought and/or details of staff for whom TUPE will apply. Under TUPE the current incumbent is required to provide certain employee information to the incoming employer/contractor.

The PHSO should also give consideration to the incumbent contractor in allowing them sufficient time to notify their staff of a potential TUPE transfer in good time for any tender or other re-provision of the service. Any employer/contractor transferring staff under TUPE does have a duty to provide specific information and conduct adequate consultation with its staff prior to any transfer taking place.

The CPT should be contacted for advice prior to any tender in which TUPE may apply.

## 2.6 The Bribery Act

The Bribery Act 2010 (the **Act**) was passed in April 2010 and came into force on 1 July 2011. The three key principle points to note in relation to offences under the Act are:

1. The Act extends the crime of bribery to cover all private and public sector transactions (previously bribery offences were confined to transactions involving public officials and agents). These offences cover all legal persons (which includes companies and individuals).
2. The Act creates a new offence of failing to prevent bribery which applies to commercial organisations. A commercial organisation is stated as being a company, corporate body or partnership but not a sole trader. Section 7 provides that a relevant commercial organisation, ('C'), commits an offence if a person, ('A'), associated with it, bribes another person intending either to obtain or retain business for C or an advantage in the conduct of business for C. An offence is committed if the conduct complained of would constitute the commission by A of an offence contrary to two other sections of the Act (which cover the general offence of bribery and the more specific offence of bribing a foreign public official). The Act defines A as a person who performs services for or on behalf of C. A may therefore be a service provider, subsidiary, contractor, agent or employee and they may be based in or outside of England and Wales. An organisation will only have a defence to this offence if it can show it had 'adequate procedures' in place to prevent bribery.
3. The offences contained in the Act carry criminal penalties for individuals and organisations. For individuals, a maximum prison sentence of ten years and/or an unlimited fine can be imposed; for companies, an unlimited fine can be imposed.

The PHSO, its employees and contractors/bidders are covered by the Act.

### 3 PHSO PROCUREMENT PROCESS

#### 3.1 Low Value Procurement under £3,000

##### 3.1.1 Raise a Requisition (Requisitioner)

1. Check list of corporate contractors to see whether goods or services required are available from an existing contract or not
2. Obtain quotes. Where possible three written quotes or catalogue prices are required, along with specific instructions to the supplier. Minimum of one quotation is required and this must be approved by the CPT.
3. Select preferred supplier and prepare the [Quotation Summary Form](#) . Selection in most circumstances will be based on best value or lowest cost. There may exceptionally be a quotation preferred which is **not** the least expensive. There may be valid reasons for this selection such as demonstrable best value. A selection not based on lowest cost **must** be justified and documented in **every** case on the Quotation Summary Form
4. Save Quotation Summary Form in Directorate folder on Meridio as a record
5. If new supplier then '[new supplier form](#)' will need to be completed and sent to Finance before requisition is raised
6. Raise requisition on iPOS system, this will automatically send an email to the Budget Holder to review.

##### 3.1.2 Approve Requisition (Authoriser)

7. Review purchase requisition details on iPOS
8. Examine Quotation Summary Form
9. Check available budget
10. Authorise requisition by selecting approve on iPOS or decline requisition by selecting return.
11. Once approved PO automatically generated and emailed to supplier.

##### 3.1.3 Receipt Goods or Services (Requisitioner)

12. Once goods or services received receipt on iPOS

**IMPORTANT invoice cannot be processed until this stage is complete**



#### 3.1.4 Invoice Matching (Finance)

13. Invoice received from supplier (either via invoice inbox or external post)
14. Invoice matched on iPOS
15. If goods or services are not receipted Finance will ask requisitioner to do this.
16. If invoice does not match the Requisition/Purchase Order cannot be processed. Finance will be in touch with Requisitioner/Budget Holder to discuss further

#### 3.1.5 Minimum requirements:

Procurement threshold and route	Business case	Specification	Selection criteria	Minimum no. of quotes	Project Management / Board
Route 1 Below £3,000 (quotes)	Not required	Simple instruction	Not required	1	Not required

Consideration should be given to the most cost-efficient method of making the purchase: either by means of a Purchase Order with payment against an invoice, or by an order with payment by Government Purchasing Card (GPC).

### 3.2 The Gateway Process over £20,000

#### 3.2.1 Overview of the Gateway Process

The gateway process is a mechanism to review procurement projects at critical points in their development, before key decisions are made enabling them to progress through their various stages.

The purpose of the process is to introduce a series of 'health checks' into the project timetable, which are designed to ensure that the project is soundly based, well planned, involves all appropriate stakeholders, and achieves its objectives. It also helps ensure a consistency of approach across projects.

Not all gateways will apply to every procurement.

Evidence is submitted to demonstrate that the gateway has been adequately addressed, before the project is allowed to progress to its next stage.

### **3.2.2 The Process**

The formal gateway process applies to all procurement activity above £20,000 in value. The number of gateways will depend upon the value, complexity, strategic importance or risk profile. An assessment of this will be made with the CPT before embarking on each procurement project through the completion of an Initial Contact Form (ICF).

A record of the gateway process shall be kept in the project files and in the central gateway register.

### **3.2.3 The Gateways**

- Stage 0: Strategic Plan
- Stage 1: Requirement / Needs Analysis
- Stage 2: Business Case / Funding Approval
- Stage 3: Project Procurement Plan
- Stage 4: Tender
- Stage 5: Selection and Award
- Stage 6: Benefits Realisation and Contract management
- Stage 7: Review

Each stage comprises one or more distinct activities. For some types of procurement there are commercial and legal constraints that need to be taken into account. This means that some of the activities within each stage are only carried out in certain circumstances.

#### **3.2.3.1 Stage 0: Strategic Plan (Pre-CPT Involvement)**

At the budget setting stage for each financial year, the PHSO shall decide on the funding to be allocated to Divisions and Directorates for the procurement of goods and services. This will be based on the PHSO strategic plan and the Budget Holder's annual business plan. Allocations may relate to a previously prepared business case or general financial provision to deliver an agreed priority, the costs of which would need to be clarified at a later point. At this stage the PHSO may also decide to allocate reserve funding for as yet unspecified projects, or where costs are unclear and the PHSO's review is

desirable before a final decision to proceed is taken. In-year decisions to allocate this funding to specific projects, or amendments to previously agreed funding, in the light of changed circumstance, shall also be made by the PHSO Executive Leadership Team as necessary. This may include situations where costs are higher or lower than the allocated budget and further consideration by the PHSO is required.

#### **3.2.3.2 Stage 1: Requirement / Needs analysis**

- Identify and fully define the need in relation to the activity.

This must align with the PHSO's Strategic Plan. Poor identification of needs may lead to assets being procured that do not fully meet the need of the PHSO, potentially incurring wasted time, effort and cost or inefficiencies and sub-optimal assets being procured. It is essential to undertake internal consultation (engagement) to identify the needs and agree business needs and procurement objectives that shall be met.

- Undertake external consultation, where appropriate
- Consider existing Category Management Plan
- Consider previous/current arrangement/s (supplier performance, contract management issues)

#### **3.2.3.3 Stage 2: Business Case / Funding approval**

- Define project scope and objectives

A clear definition of the project is developed, including a concise statement of its purpose, scope and objectives, the proposed timeframes and resource requirements

- Develop preliminary procurement strategy

The preliminary procurement strategy is developed as part of the business case/investment justification. The strategy identifies the best method of achieving the project objectives. It takes into account risks and constraints, and market and agency capabilities. It includes project timelines, options for engaging the market (approaches for tendering and contracting).

- Develop preliminary risk, stakeholder and change management plans

Consideration should be given to developing a risk management plan for projects over £50,000. The plan identifies risks to the project including the wider government and community context. It will assess the

likelihood and consequences of risks eventuating, propose measures to deal with them and allocate associated responsibilities.

Stakeholder and change management plans are developed to manage stakeholder expectations and maintain support, helping to avoid time and cost overruns.

These plans are updated and used for monitoring and management through the life of the project.

- Develop business case and funding request (See Section 4.7)

The purpose of a business case is to

- Enable the Budget Holder or Manager to ensure that:
  - procuring of goods and services has been justified (this may well be a simple reference to an earlier formal decision making process;
  - appropriate options for providing the goods or services to be procured have been considered;
  - all the resources required to deliver a service have been identified (including support from other Directorates, implementation and maintenance costs and any future funding requirements);
  - appropriate signatures have been provided to ensure that the procurement of goods and services have been mandated by the appropriate member of staff, as defined within this guide.
- Ensure that PHSO has all the information required in one place in order:
  - to provide assurance (ultimately to the Ombudsman) on effective governance and internal control;
  - to ensure propriety, regularity and accountability;
  - to assist CPT in procuring the required goods and services in a timely manner;
  - that procurements are made in accordance with PHSO policy;
  - that procurements are legal and made in accordance with appropriate guidelines;

- that CPT can ensure that the correct documentation is raised to procure the goods and services and that invoices are paid efficiently within the timescales mandated by the Ombudsman.
  - Have funding approved
- The business case must then be submitted for approval. Production and approval of business cases is the responsibility of the Directorate requiring the goods or services.

Section 4.7 provides further guidance on Business Cases.

#### **3.2.3.4 Stage 3: Project procurement plan (Mandatory on Projects Over £100,000)**

- Identify and apply requirements of relevant category management plan
- Prepare procurement strategy
- Ensure authority to conduct the procurement
- Consider special requirements for particular types of procurement
- Consider and apply policy requirements
- Consider special requirements for particular categories of goods and services
- Have the procurement plan approved

The project procurement plan describes the stages of the project and how it will be managed. It should be consistent with the business case developed in stage 2. Procurement Plan approval should be obtained prior to proceeding, confirming available funding and resources for managing the procurement. Deviations, if any, from the original business case should also be defined.

A procurement plan outlines the procurement strategy and market approach, the project brief and tender method. It builds on the business case/investment justification previously developed and includes a governance framework for the tender process and contract management.

It proposes how tenderers will be selected, how the tender process will be managed and who will be responsible. It includes the basis for tender evaluation, and a direct negotiations plan (if direct negotiations are involved). The procurement plan will also include key performance indicators for the proposed contract.

A Gateway Review can be undertaken at the completion of this stage to confirm that the procurement strategy is appropriate to deliver the project within its budget and time constraints and that the project is ready to proceed.

#### **3.2.3.5 Stage 4: Tender**

Section 4.3 contains further guidance and process.

#### **3.2.3.6 Stage 5: Selection and Award**

Evaluation of responses

- This step in the process is to rank each of the suppliers according to the key criteria that have been developed earlier in the process and the evaluation plan (if developed). Suppliers may also be invited to hold presentations as appropriate. It is during this process that any necessary due diligence on potential new suppliers, risk assessments and reference checks shall be undertaken.
- It is critical that throughout the evaluation process all documentation is retained and provides an acceptable audit trail to provide supporting evidence in the case of probity or litigation concerns. The level of documentation required shall vary depending on the complexity and risk of the sourcing event.
- The result of the evaluation process shall be a ranked list of suppliers, which shall lead to the creation of a shortlist of suppliers to be taken through to negotiation and contract award.

Section 4.44.4 contains further guidance and process.

#### **3.2.3.7 Stage 6: Benefits Realisation and Contract Management**

See Section 4.14 for further guidance.

- Ensure that the PHSO gets the intended benefits originally planned from the procurement
- Ensure that benefits are realised
- Disclose contract information
- Ensure supplier(s) deliver the goods or services in accordance with contractual obligations
- Manage supplier performance
- Manage contract administration (including price and product variations)

- Manage transition and exit

#### **3.2.3.8 Stage 7: Review**

- Review of Service to determine if retender required.

## **4 PHSO Procurement Requirements**

### **4.1 Value for Money**

Obtaining value for money from goods and services is the primary aim of every procurement exercise. Better value for money can be obtained by reducing the time, cost and administrative effort of the procurement process and/or by obtaining better prices and quality from the PHSO's providers.

Goods and services should be acquired by competition unless there are justifiable and convincing reasons to the contrary. The form of competition should be appropriate to the value and complexity of the procurement and barriers to the participation of suppliers should be removed.

Improvements in value for money fall into:

- those aimed at reducing the cost of purchasing and the time it takes for example, the administrative effort in processing an order, seeking and evaluating tenders, and taking delivery of the goods ordered. This is the procurement overhead and can typically add between 10 to 50 per cent to the cost of buying goods and services
- those aimed at getting more value from money by negotiating improved deals with suppliers (reduced cost and/or better quality), or aggregating demand to get greater leverage on suppliers
- those aimed at improving project, contract and asset management

In order to get better value for money from procurement the following should be considered:

- avoiding unnecessary purchases
- collaborating with other departments to obtain the best prices and secure better discounts from bulk buying
- ensuring that user needs are met but not exceeded
- aggregating transactions to obtain volume discounts

- specifying the purchasing requirement in output terms so that suppliers can recommend cost-effective and innovative solutions to meet that need
- acting as intelligent customers by discussing with suppliers all the elements of the contract price including level of service, timescale of the assignment, skill mix of the supplier's team and how costs are to be remunerated
- optimising the cost of delivering a service or goods over the full life of the contract rather than minimising the initial price
- introducing incentives into the contract to ensure continuous cost and quality improvements throughout its duration
- getting an increased level or quality of service at the same cost
- sharpening the approach to negotiations to ensure departments get a good deal from suppliers
- developing a more effective working relationship with key suppliers to allow both departments and suppliers to get maximum value from the assignment by identifying opportunities to reduce costs and adopt innovative approaches.
- reducing the cost of buying goods or services by streamlining procurement and finance processes
- Reducing the level of stocks held

#### **4.1.1 Collaboration**

Acting collaboratively is a key driver for delivering VFM in public sector procurement, and is particularly relevant in areas of common spend such as commodity goods and services.

Government policy requires central Government departments and their agencies to commit to a cross-government collaborative approach to the procurement of common goods and services. Departments are required to take up centrally-negotiated deals where these exist in order to use the Government's collective buying power to get better VFM on a whole-life costing basis, agreeing any alternative only where justified.

The PHSO supports this policy and must therefore participate in collaborative deals wherever possible.

## **4.2 PROCUREMENT ROUTE**

This shall largely be determined by the cost of the goods and services required (taking into account EU and other legal requirements); and by whether these are one-off procurements, or part of a continuing supply (e.g. under a



previously agreed call-off or framework contract). The level of cost thresholds shall be appropriate to the Office's business requirements and will be kept under review by CPT.

The current cost thresholds (based on cost of procuring one-off items, or the expected life-cycle cost of a contract for continuing or cumulative supplies) are:

Procurement threshold and route	Business case	Specification	Selection criteria	Minimum no. of quotes	Project Management / Board
Route 2 £3,000 - £20,000 Quotes	Not required	Outline	Outline	3	Not required
Route 3 Consultancy over £20,000 Tender	Full	Detailed	Detailed	3	Not required
Route 4 £20,000 - £50,000 Quote/Tender	Simple	Detailed	Detailed	3	Consider
Route 5 Above £50,000 Tender	Full	Detailed	Detailed	3-5	Consider
Route 6 Above £100,000 Tender / OJEU tender as advised by CPT	Full	Detailed	Detailed	5	Yes

Note: As there is often a 'fallout rate' it is advisable to ask more than the minimum to tender/quote where possible. The requirement for five proposals to be received may include up to two 'no bids' where the market for certain goods/services is limited.

Any procurements made under an existing and previously authorised PHSO framework or call-off contract shall require a specification for the specific goods or services required, and one quote from the supplier (or from all suppliers where there are appropriate alternatives under a framework contract or category within the framework) based on agreed terms and conditions. Regardless of the value, once a call-off contract has been established, call-off orders do not require a (further) business case to be produced. Procurements against a framework contract do require a business case for each commitment of funds.

## **4.3 TENDERS / QUOTATIONS / PROPOSALS**

### **4.3.1 Obtaining Quotations /Tenders**

Depending on value of the procurement, quotes can be:

- sourced from a priced catalogue, or similar published data;
- requested in writing based on a specification of business requirement, or;
- for large procurements, be obtained through a formal tendering exercise.

Value for money and legislative considerations usually mean that quotes should be obtained on a competitive basis from a number of suppliers, except where there is clearly only one supplier who can provide the goods or service to the quality required in the time available.

Quotes or prices shall normally be obtained by the Directorate requiring the goods or services, with advice from CPT on sources of supply and requirements for competitive tendering as appropriate. The Directorate shall also carry out the analysis of the quote or tender with advice from CPT as necessary on the methods for doing so; and agreement of the price. The review of contractual arrangements including terms and conditions (normally those of PHSO) for the supply contract are carried out by the CPT. Only exceptionally would it be appropriate to contract under supplier terms and conditions, with the CPT's advice being obtained prior to contract award, e.g. the procurement of software and subscription type services.

The CPT can if necessary undertake any negotiations on price and other contractual terms and conditions; and arrange for contracts to be produced in an appropriate form.

The CPT must be consulted in advance where a Directorate, having obtained quotations, wishes to appoint a supplier for the third time running and/or it is possible that the combined value of more than one contract could reach £100,000.

#### 4.3.2 Tender Thresholds

The decision to obtain quotations or tenders is determined by the estimated contract value involved, these are summarised in 4.2 above. It is appreciated that there may be circumstances in which it may be appropriate to seek approval to deviate from the recommended route. In such circumstances approval must be sought and granted from the Head of Estates & Procurement.

#### 4.3.3 Estimating Values

The estimated value of a contract is the value of the total consideration, **including VAT**, which the PHSO expects to pay. In calculating the total consideration payable account must be taken, where appropriate, of:

- any form of option
- any renewal of the contract
- any prize or payment awarded by the contracting authority to the economic operator
- the premium payable and other forms of remuneration payable for banking and other financial services, and
- fees, commission or other forms or remuneration payable for design services.

For Framework agreements and Dynamic Purchasing System (DPS) the estimated value of the framework agreement or DPS is the total value of all requirements which would be purchased under it.

If the contract is for the **hire of supplies** the estimated value will be the total value of the consideration except where the term of the contract is uncertain at the time of entering into the contract and in such case the estimated value shall be 48 times the monthly consideration.

Where the duration of a **services** contract is not known prior to commencement the estimated value must be 48 times the monthly consideration

#### 4.3.4 Notices

Advertising is important to let potential contractors know about the supplies or services we are looking to procure. Irrespective of whether a tender meets the financial limits for European Tendering or whether it is a “light touch” service, consideration should be given as to whether there may be interest from other countries.

Where it is decided to advertise, advertisements may be placed:

- if over £10,000 on Contract Finder
- in national official journals
- where the total value of the contract is above the EU threshold, in the Official Journal of the European Union (O.J.E.U.)/Tenders Electronic Daily (TED)

#### 4.3.5 Selection of Suppliers and the Public Sector Equality Duty (PSED)

When determining which supplier(s) to approach for quotations/tenders, consideration should be given to PHSO’s PSED as set out in the Equality Act 2010. Although previous successful performance may be a good indicator of the quality to be expected from a specific contractor for a new piece of work, limiting the consideration of suppliers to ‘tried and tested’ organisations also limits the opportunities PHSO can take to positively advance equality of opportunity and foster good relations by seeking a wider supplier base - and may indeed be seen as anti-competitive. Suppliers invited to quote or tender should therefore be selected from as wide a base as possible; where practicable, consideration should be given to advertising the requirement externally in order to attract the widest possible range of new suppliers.

#### 4.3.6 Single Tender Actions

The use of Single Tender Actions (STA)s, should only be by exception.

A business cases shall be required for STAs, above £20,000, and shall be signed by the relevant Executive Director AND the Executive Director of Finance and Governance.

Below £20,000 STAs are to be recorded on the Quotation Summary Form and require approval by the relevant Executive Director AND the Executive Director of Finance and Governance.

The STA Business Case or QSF should include the following information:

- Description of works, goods or services;
- Name of organisation you wish to use;
- Length of contract;
- Estimated contract value;
- Justification for seeking a waiver;
- Confirmation of budget provision;
- Analysis of any risks (e.g. risk of challenge by other organisations who could provide the services/goods/works).

The presumption shall be that STAs shall not generally be allowed.

All STAs are reported to the Audit Committee on a retrospective basis.

#### 4.3.7 Exceptions to the Single Tender Actions Process

All purchases should be subject to competition through the appropriate procurement route. It is acknowledged however that the nature of some types of services make effective competition not possible or practical. The following categories of service are exempt from the single tender actions route described above at para 4.3.6 and follow the route and level of authorisation shown below:

Service Type	Process	Authorisation
Specialist Legal Services (e.g. solicitor fees, specialist barrister fees)	Benchmark rates against current framework providers (if applicable)  Single tender award to most suitable firm, which is variable according to the subject matter.  Recorded on QSF.	Director of Legal
Professional Body Training/Qualifications (e.g. CIPS, CIPD...etc)	Follows Bursary Scheme Application process/Learning Agreement form.  Recorded on QSF	Head of Learning and Development
Recruitment Advertising Fees where a specific	Set up call off contract if possible/practical.	Executive Director of HR, People and Talent.

specialist publication is required (e.g. BMJ for Clinical Advisers)	Business case in place to cover annual spend. Recorded on QSF	
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#### 4.3.8 The steps of the competition are:

- if the competition is to be advertised and is over £10,000 in value, the CPT shall arrange
- tender evaluation criteria (including possible scorings) should be drawn up prior to issuing an invitation to tender as all tenderers must be aware of how a contract will be awarded.
- an invitation to tender (ITT), request for proposal (RFP) or request for quotation (RFQ) shall be prepared and issued to a minimum of three potential suppliers as per the table in 4.2 ; if circumstances make this inappropriate, a lower number of quotes must be specifically authorised by the CPT
- for all suppliers invited the pack comprises the instructions to tenderers, specification and proposed Contract Documents (tenders) including terms and conditions, pricing schedules and administration instructions.
- for higher-value procurements the pack may include a request for company information where this is relevant to the purchase.
- in respect of all procurements that follow a formal tendering process, and where tenders are invited and received electronically, a specific tender return email inbox shall be set up (via the ICT Helpdesk), access to which is not granted until after the specified Tender return date/time.
- Tenders, quotations and proposals must not be opened until the allotted date and time. For tenders and proposals a Tender Opening Form must be completed and signed by a representative of the Directorate/CPT and an Executive Director not involved in the procurement (a minimum of two) who are present at the Tender opening to confirm that the correct process has been followed. Where it is impractical for an Executive Director to witness the opening of tenders, due to absence for example, an alternative senior, independent member of staff should sign the tender opening form. For quotations the Quotation Summary Form must be completed.
- as part of the tendering/quotation process, any questions received from individual tenderers together with answers given shall, where judged to

affect PHSO's requirement and / or responses, be circulated to all tenderers. The source of the original question shall not be disclosed. It is advisable that these are recorded on the Tender and Quotation Queries / Clarification Record.

#### 4.3.9 Competitive Tendering

Competitive tendering should be the main driver of any procurement policy. Its correct use is essential as it not only helps gain value-for-money, but it also provides the fairest means of access for companies to do business with the PHSO.

Contracts can be awarded through tender in one of the following ways:

- the lowest price; or
- the most economically advantageous tender (MEAT) i.e. it provides the best overall value-for-money

Lowest Price is self-explanatory and is only likely to be useful in minor procurement activities where there is no or insignificant difference in quality. Only for very basic commodities should price be the key factor, but in all other instances must be a major element of assessment.

It is therefore recommended that the PHSO use the MEAT tendering criteria and that the CPT should be consulted on the weightings between price and quality.

“price” should be assessed including whole life costings applicable to all supplies/works/services being procured.

“quality” should include all criteria which will be used to assess the quality of the procurement activity.

MEAT assesses both price and quality and is more useful in deciding which tender to accept where quality is a major factor in the procurement process.

The criteria that can be used include:

- price
- technical merit
- aesthetic and functional characteristics
- environmental characteristics
- running costs
- cost effectiveness
- after sales service

- technical assistance
- delivery date and delivery period
- period of completion

This is not an exhaustive list and other objective and non-discriminatory criteria linked to the subject matter of the contract can be used to determine which offer is most economically advantageous.

The evaluation criteria to be used (or the essential elements of it) and weightings should be disclosed as part of the tender.

#### **4.3.10 EU Directives that apply to the PHSO**

All tender opportunities above thresholds set by the EU should comply with EU tendering processes and be advertised in the Supplement of the Official Journal of the European Union (O.J.E.U.), which is published throughout the European Community.

The CPT will advise.

## **4.4 SELECTION AND AWARD**

### **4.4.1 Financial Vetting**

As part of the tendering process the PHSO must undertake a financial vetting process. Where a contract is under £50,000, officers must ensure that they are satisfied with the financial standing of tenderers. Between £50,000 and £100,000 a Business Risk Assessment should be undertaken such as a Dun & Bradstreet Report. Where a contract is over the £100,000 limit a full financial assessment must be entered into. Copies of the companies' last 3 years accounts must be obtained and will be vetted by the PHSO's Head of Finance, copies of independent reports on financial standing will be sought through the CPT. Potential suppliers drawn from GPS must also be financially vetted.

### **4.4.2 Evaluation of Proposals.**

A tender evaluation methodology shall be developed and an evaluation panel convened to assess the supplier proposals, and supplier presentations, as required. Usually the panel is formed from the requesting Directorate, plus at least one member of staff from a different Directorate. Normally, the evaluation is conducted in two parts: firstly to compare suppliers' written proposals; this evaluation then informs the questions the panel would put to suppliers at a presentation of their proposal. After suppliers' presentations, the



panel would then normally conclude the evaluation and select the preferred supplier. The panel have the following responsibilities:

- To evaluate responses against the selection criteria and provide written assessment notes; the CPT facilitate the panel to compare suppliers and choose a preferred supplier
- To recommend the preferred supplier to the requesting Directorate/Project Steering Group, and obtain authority for the CPT to proceed to contract agreement
- If a decision cannot be made by the panel then the CPT may seek any further clarification from the bidders as may be necessary. Alternatively the panel may recommend terminating the procurement
- The CPT shall produce an evaluation report (for endorsement by the panel) and provide feedback to suppliers, as appropriate

#### 4.4.3 Qualitative Evaluation

Panel members will evaluate each tender individually and without reference to other panel members. Points to consider include:

- Adherence to the specification: has the tenderer proposed a viable solution that meets the requirement?
- Credibility of response: has the tenderer proposed this solution based on its areas of expertise and is the solution technically sound?
- Has the tenderer indicated an innovative proposal that may provide greater value for money?
- Risk: are there any apparent risks associated with this solution and can they be mitigated?
- ‘Gold plating’: to achieve value for money, proposals that *exceed* the minimum requirement /standards specified in the ITT should not achieve a correspondingly higher score than those that do not.

Scores and comments for each tender should be recorded on the score sheet.

Tenderers are asked to respond within a specified word-count to a number of questions designed to draw out how effectively their proposals will meet the requirements. In the event an answer exceeds the maximum number of words, panel members should consider how best to address what might be perceived as an otherwise unfair advantage: either to assess the full response and allocate a lower score than would otherwise have been achieved, or to consider

and score the response up to the maximum word-count only. The approach taken should be noted on the score sheet.

Comments noted on the score sheets will be used when giving feedback to unsuccessful tenderers. Panel members should ensure that their comments are specific and clear and include sufficient detail to be meaningful.

#### 4.4.4 Commercial and contractual evaluation

For Procurements below £50,000 commercial and contractual evaluation will generally be undertaken by the requisitioning department.

For high risk procurements and those over £50,000 CPT will undertake the evaluation of commercial and contractual considerations.

The decision on responsibility and extent of CPT involvement will be recorded on the Gateway Review Checklist.

CPT will not score any technical aspects of the tenders.

Where it is identified that the cost of a tender exceeds the budget, the budget holder will be asked if the evaluation of the tender(s) should continue. Where it is determined that the evaluation **should** continue, the evaluation will be conducted in accordance with this document. If it is determined that the evaluation **should not** continue, the evaluation of the tender(s) will cease and the decision recorded as such in the Procurement file.

#### 4.4.5 Guidance for Evaluation

The following will provide guidelines that can be used for many tender evaluation processes:

- eliminate any tenders that do not meet the essential minimum criteria, including the minimum financial criteria
- eliminate any submissions not received by the published deadline
- eliminate any submission that has significant omissions, which will hinder the ability to conduct a full evaluation
- the arithmetic in compliant tenders must be checked. If arithmetical errors are found they should be corrected and should be notified to the tenderer, who should be requested to confirm or withdraw their Tender

Alternatively, if the rates in the tender, rather than the overall price, were stated within the tender invitation as being dominant, an amended Tender price may be requested to accord with the rates given by the Tenderer

- do not try to “read into” what may be meant, if part of the tender is not clear it is appropriate to seek clarification
- prepare a simple matrix to evaluate the selected quality criteria using pre-determined weightings for each element. Criteria must be advertised in the tender in descending order of priority
- devise a matrix with the criteria that also shows how the scoring will be judged
- devise a scoring system that awards marks dependent on how well the criteria are addressed
- sufficient people should be involved in quality assessment to ensure that no single person influences the assessment. Assessments should be carried out in isolation to ensure that collusion does not take place. The various assessments can then be drawn together to provide an overall scoring

#### 4.4.6 Moderation meeting

The evaluation panel will hold a moderation meeting to compare their individual scoring and comments on the tenders.

Below £50,000 CPT will not, generally, be involved in moderation meetings unless the procurement is classed as high risk on the Procurement Strategy Model.

Where the value is above £50,000 CPT will facilitate the moderation meeting discussions and help ensure procurement rules are followed.

The decision on responsibility and extent of CPT involvement will be recorded on the Gateway Review Checklist.

At the moderation meeting all attendees will be asked to confirm that they have no personal interest (actual or perceived) in the outcome of the competition. Attendees’ responses will be recorded as part of the formal record of the procurement, and made available as necessary to third parties.

The panel’s discussions are likely to focus on major points of difference and, while a consensus may not always be possible or appropriate, members should endeavour to minimise the differences in their scoring.

During these discussions, if any individual score is adjusted, the panel member must initial and date the adjusted score. Once all scores of individual panel members have been discussed, scores will be entered into the evaluation spreadsheet to provide an overall consolidated final score.

The panel will also, if required, agree a set of questions to be explored further at future clarification meetings with shortlisted tenderers.

Consideration of costs will take place after the moderation discussion, unless using a GPS framework where price weighting is mandatory. This will enable the panel to agree a final ranking based on the most economically advantageous tenders taking into consideration price, quality and commercial arrangements.

Up to three tenders will be shortlisted for further consideration, so long as they are evaluated as meeting minimum requirements. In the event that unanimous agreement on the final ranking is not reached, the evaluation panel Chair's decision will be final.

The evaluation panel Chair will nominate a member of PHSO staff who is familiar with the goods/services required to obtain telephone references from shortlisted tenderers, if required.

#### **4.4.7 Clarification and presentations/meetings with shortlisted tenderers**

Any questions identified by the panel as requiring clarification will be sent to the shortlisted tenderers in writing. The tenderer will be asked either to respond in writing or to address the matter in a subsequent clarification meeting.

If required, the evaluation panel will meet with the shortlisted tenderer(s) for a defined period of time (recommended maximum of 45 minutes) for the purpose of obtaining any further clarification required, including, if required, a presentation on a specific topic. Unless otherwise agreed, the shortlisted tenderer(s) will be notified that any clarification questions are to be answered after the presentation and should not therefore be addressed within it.

Panel members will use the Clarification Meeting / Presentation Evaluation Sheet to keep notes of the meeting(s). After each meeting, agreement should be reached on whether the tenderer meets the required standards for each section, with this noted as the final tender assessment with a mark of green, amber or red, as appropriate.

After clarification has been obtained either in writing or through supplier meetings, the evaluation panel will agree the preferred supplier. In the event the panel agrees that a contract should be awarded which would exceed the agreed budget, an amendment to the business case will be required to authorise the increased expenditure. In the event the panel does not reach unanimous agreement, the Chair will take the final decision and record the reasons for that decision.

Where it is decided that the interview will form part of the award criteria careful consideration should be given to how interviews will be scored and what areas are to be addressed as well as who will be represented on the interview panel, panel members should individually score the interview and then scores are aggregated to give a weighted mark. Where it is intended to hold an interview a clear indication of what percentage of marks will be awarded through the interview process must be given in the tender documents and prior to the interview the marks available for the different headings to be assessed at the interviews must be communicated with the tenderer.

The interview should be only for the purposes of allowing a presentation of the tender proposals, in full or part, and for clarification of the proposals. Interview questions should be consistent to ensure that all tenderers are treated fairly, except for questions for clarification of the individual tender. Interviews should focus solely on quality and should not address any financial submission.

#### 4.4.8 Evaluation report

A consolidated evaluation report is produced, for agreement and signature by all members of the evaluation panel.

When the report has been signed, the tenderers are notified of the outcome of the evaluation. Telephone feedback is offered to unsuccessful tenderers.

In the event that not all panel members are available to sign the report immediately, and at the request of the Chair and/or budget holder, the tenderers are notified of the *expected* outcome of the competition.

#### 4.4.9 Price Assessment

Assessments of price are usually based on the lowest price being awarded 100 marks then subsequent tenders being awarded marks dependent on how much above the lowest tender they are.

Financial Assessment will be based on the sums submitted. The prices submitted will be assessed using the CIPFA pricing score method based on the maximum points x (100% - % above lowest price)

Price	% above lowest price (price - lowest price) / lowest price x 100	100% - % above lowest price	Points calculation Maximum points x (100%	Points
-------	--	--------------------------------	--	--------

			- % above lowest price)	
£500	$0/500 \times 100 = 0$	$100\% - 0\% = 100\%$	$100 \times 100\%$	100
£600	$(600-500)/500 \times 100 = 20\%$	$100\% - 20\% = 80\%$	$100 \times 80\%$	80
£700	$(700-500)/500 \times 100 = 40\%$	$100\% - 40\% = 60\%$	$100 \times 60\%$	60
£800	$(800-500)/500 \times 100 = 60\%$	$100\% - 60\% = 40\%$	$100 \times 60\%$	40

#### 4.4.10 Tenders above £100,000

All tenders exceeding £100,000 can only be accepted by the CPT. A report must be submitted to the Executive Board including:

- the names of the various tenderers
- the amount of the tender figures
- the amount of the corrected tender figure (if any)
- a summary of the scorings reached during the assessment and a rationale for the choice of reaching a recommendation

It should be noted that in the report it should not be possible to identify the tendered amounts that each company has submitted except for the tender that is recommended for acceptance.

Once accepted by the Executive Board, and at expiration of the alcatel period for OJEU tenders, the contract may be formed by the relevant Executive Director

##### 4.4.10.1 Agents and consultants

Agents and consultants cannot award contracts on behalf of the PHSO.

#### 4.4.11 Agreeing the Contract

The CPT can carry out discussions with the preferred supplier to finalise agreement of the terms and conditions of the contract and shall then arrange

for the agreed contract to be signed by both PHSO and the supplier. All PHSO contracts are signed in accordance with the appropriate delegated authority.

No work is to commence in relation to any procurement prior to formal signature of Contract Documents (by both parties), or a Purchase Order is raised for low value procurements. There are no exceptions to this policy without the prior approval by the Managing Director (MD), with such cases to be formally submitted through the CPT.

#### **4.4.12 Contract Management**

On-going contract management arrangements as described in Section 4.14 should be put in place, with on-going operational responsibilities for the contracted goods or services being with the requesting Directorate.

#### **4.4.13 Compliance Check of all Orders over £3,000.**

The CPT shall check that purchase orders are supported by the required audit trail:

- authorisation
- completed Summary Quotation Form (over £3,000), or
- completed Evaluation Report
- completed Business Case (over £20,000)
- completed Gateway Review Checklist signed off by CPT
- that thresholds for continuing or cumulative procurements are being maintained

Once approved PO automatically generated and emailed to supplier.

The above does not apply to agency recruitment services, which are authorised through normal recruitment processes or the services mentioned in para 4.3.7.

#### **4.4.14 Authorisation limits for purchase orders**

Following the approval of a procurement (through a business case when needed), Budget Holders or Managers can appoint Authorised Signatories to sign requisitions on their behalf, up to specified expenditure amounts. The maximum authorised limit shall normally be dependent on their Pay Band except where specifically stated in delegation mandates.

#### **4.4.15 Confirmation of receipt of goods, or service to required quality, and checking invoices**

Contractors are required to annotate invoices with either a PO number or a contract number, as applicable. When the goods or services have been received, CPT shall forward the invoice(s) received to the Directorate receiving the goods or service, who shall sign it to certify that the work has been satisfactorily completed, and return it to CPT.

The reason for three different people to be involved in the ordering of and payment for goods and services is to minimise the risk of fraud, either by an individual or in collusion with another person. Clearly, invoices should only be authorised for payment where the goods or services have been supplied as required: where an original Authorising Officer is the person best placed to verify satisfactory receipt, Directorates may wish to make local arrangements for that person to co-sign the invoice.

To ensure that payments of invoices are made on a timely basis it is important that certification is carried out as soon as the goods or services have been received. Any disputes must be reported to CPT.

#### **4.4.16 Payment**

All invoices must be sent to directly to the Directorate who requested the goods. These shall be checked against the original authorised purchase order or contract before being recorded in PHSO's finance system for payment. PHSO advises all suppliers that payments shall not be made against invoices unless referenced against a purchase order or contract reference number. Invoices received where there is no corresponding purchase order may be returned to the sender. PHSO has a target of paying all undisputed invoices within 30 days (in line with published Government targets for the public sector). Our performance against this target is published in our Resource Accounts and is therefore an important one to meet. The CPT shall monitor performance monthly and report on this in PHSOs quarterly performance report.

### **4.5 METHODS OF PROCUREMENT**

There are three main methods of procurement from an external source:

- purchase
- lease
- rental



Making the decision on which method is the most suitable must include adherence to the following factors:

- PHSO policy
- financial resources for purchase, rental or lease
- risk
- urgency
- technological change
- characteristics of the need
- availability of the product within the market
- price volatility

The decision should be based on how best to minimise the total acquisition cost, including the cost of procurement.

#### **4.5.1 Purchase**

Purchase takes place by quotation, by tender or by framework contract. The PHSO may purchase supplies or services in a number of different ways.

#### **4.5.2 Ad hoc purchases**

These are one off purchases usually of supplies where it is unlikely that supplies of a similar nature or subsequent business will be done with the same organisation.

#### **4.5.3 Purchase to Pay Process (P2P)**

When contracts or frameworks have been put in place there may be a need to order the supplies and services (sometimes works) on a repetitive basis. In such cases requisitions must be authorised, orders placed, delivery checked and invoices paid. This is commonly referred to as the purchase to pay (P2P) process and it can be automated using electronic means. P2P systems create savings in administration time and costs over conventional manual requisition systems.

P2P solutions can be characterised as

- buy-side; or
- sell-side; or
- marketplace

Buy-side applications are usually enhancements to the purchaser's finance system and use workflow technology to streamline the requisition and approval process and enable ordering from electronic catalogues that are loaded on the system or via "punch-out" to suppliers websites. In practice orders may be transmitted to suppliers by a variety of means.

Larger suppliers may offer a sell-side solution accessible from their own website which may include customised electronic catalogues

Electronic Marketplaces (eMarketplaces) are usually hosted by a third party and provide a link between the purchaser and a range of suppliers, they may also provide a P2P solution integrated with the purchaser's finance system.

#### **4.5.4 Collaborative Procurement within PHSO**

There is a wide range of specialist knowledge and experience across the PHSO. Sharing this expertise will:

- avoid duplication of effort and wasted resources
- help to develop better specifications
- help to secure the best solutions to problems
- help obtain the best price through more efficient packaging of requirements
- increase the knowledgeable customer base
- promote team working

#### **4.5.5 Cross Directorate Collaboration/Consolidation of Need**

Some items purchased by the PHSO are common to a number of directorates.

It may be possible for the PHSO to make savings by using its consolidated buying power and ensuring that directorates are able to effectively procure supplies and services.

The CPT has already entered into centralised contracts and will be expanding the number of these available. Having centralised contracts for common supplies and services reduces duplication of effort in sourcing items and ensures that the PHSO uses its purchasing power to best effect.

A list of centralised contracts is included in Annexe B.

#### **4.5.6 Collaboration with Other Ombudsman / Public Bodies**

Consideration should be given to entering into contracts with other Ombudsman and/or public bodies.

#### 4.5.7 Open Framework Agreements

Many framework agreements awarded by central government departments and other public bodies are enabled for use by the PHSO. These cover a range of supplies and services. The Government Procurement Service (GPS) (formerly OGC Buying Solutions) specialises in providing a range of framework contracts open to the public sector that have already been tendered through the European tendering procedures and can be used without a further requirement for European tendering.

#### 4.5.8 Approved Lists

The PHSO currently maintains an Approved List for Clinical Advisors.

#### 4.5.9 Central Purchasing Bodies

It is permissible for PHSO to make procurements through Central Purchasing Bodies (CPB). CPBs must be a public authority who are permitted to purchase on behalf of other authorities or it can be a consortia arrangement or joint procurement. However CPBs cannot supply other authorities through their own resources.

#### 4.5.10 Lease

The usual approvals process applies for approving the arrangements for entering into hire purchase, finance lease or operating lease agreements.

With this method ownership of the asset lies with another party and regular payments are made for its use. There are two categories:

##### Finance Lease

With this lease the lessee has no commercial interest other than in the supply of finance. The rental paid covers the cost of the asset plus overheads, interest and profit. The purpose of a finance lease is to release capital.

##### Operating Lease

This lease is commonly used by a manufacturer to market and supply its own equipment. During the lease period the rental paid may not cover the full capital cost of the asset. The supplier therefore incorporates the residual value into its pricing. Unlike a finance lease the supplier is responsible for servicing, maintaining and updating the equipment, thus reducing the risk to the lessee.

##### *4.5.10.1 Benefits of leasing include:*

- the certainty of known hire charges which are fixed for the duration of the contract

- the ability to assess the suitability of the equipment without ownership
- having a hedge against obsolescence

Careful financial appraisal is required before electing leasing as the chosen option as it requires an ongoing commitment and may not lead to the lowest total acquisition cost.

#### **4.5.11 Rental**

Renting gives no ownership so that the associated risks such as maintenance or obsolescence are very low. It can, however, prove costly if used over a long period of time.

Situations in which renting is an appropriate option include:

- where the need is short term and likely to disappear;
- where the need is unpredictable and changes rapidly;
- where the demand is urgent and it is necessary to avoid a long purchase lead time

At the end of the rental agreement it is often possible to take out a new agreement for the equipment at a low rental or to purchase the equipment.

A major consideration in rental should be that the rented item suits the requirements of the PHSO for the duration of any rental agreement.

#### **4.5.12 Authority to enter into Agreements**

The scheme of delegation in the PHSO Accounting Manual gives authorised officers the delegation to sign orders or enter into contracts. Arrangements involving finance leases, operating leases and rental shall only be entered into in accordance with arrangements approved by the Director of Finance.

##### **4.5.12.1 Delegation**

The PHSO's scheme of delegation in the PHSO Accounting Manual details the financial limits for officers. The Scheme of delegation must be complied with in all procurement activities.

## **4.6 PROJECT MANAGEMENT**

The assessment of which projects require project management shall be made jointly by the CPT and the requesting Directorate.

It is recommended that for procurement projects over £100,000 or for complex procurement projects the PHSO's Project Approval and Management Method is used. Details can be found on the PHSO's Intranet. Request access from CPT

Project boards should be established to lead the procurement process, the boards should comprise officers with operational responsibility, officers with specialist knowledge to assess the tender (IT, legal, etc) and a member of the central procurement team.

There must be sufficient people involved in a tender assessment to ensure that a single person is not responsible for making a decision on an award. It is likely that the more complex the procurement activity (and the more expensive) the larger the Project Management Team will be. The Project Management Team should consist of a core of members involved from conception through to delivery, other members being drafted in to deliver specialisms as needed.

## **4.7 BUSINESS CASE**

### **4.7.1 Under £20,000**

Summary Quotation Form must be used for all procurements under £20,000. A business case is not required.

### **4.7.2 Over £20,000**

Business cases are required for all procurements over £20,000 or where the cumulative value of substantially similar procurements is likely to be over £20,000 (accumulated over a financial year) - except for the services of external professional advisors and associate caseworkers, these services being routinely part of the operational business of the Office.

For projects valued at £20,000 or above a Business Case must be in place before **order** is placed

### **4.7.3 Over £50,000**

For projects over £50,000 a Business case must be in place before **procurement activity** can commence.

### **4.7.4 Capital**

For all capital procurements, which includes office machinery, equipment etc., budgets are normally held by the Head of Estates & Procurement who shall need to confirm that the procurement is consistent with Office system, policies etc. and represents best value for money. Business case requests for capital

items will need to be authorised by the Head of Estates & Procurement as well as by the Business Owner.

#### 4.7.5 Consultancy Services

All business cases for consultancy requirements above a total value of £20,000 must be authorised by an ED before a contract is awarded.

Business cases for consultancy services need to be subjected to close scrutiny and regularly reviewed: at outset, to ensure there is a real need for the services which cannot be met from internal resources and, once the contract is underway, to ensure that the work is on track to meet the required objectives.

Consultancy services are defined as the provision to management of objective advice relating to strategy, structure, management or operations of an organisation in pursuit of its purposes and objectives. Such advice is generally provided outside the 'business-as-usual' environment, when in-house skills are not available, and shall be time-limited. Consultancy can be further broken down into specialisms, such as Strategy, Finance, IT, Organisation and Change Management, Property and Construction, Procurement, Legal Services, Marketing and Communications, HR and Training, Programme and Project Management, and Technical.

Business cases for consultancy assignments need to address specific questions to establish that a contract is strictly necessary and shall provide value for money. In particular, an explanation which covers the following points should be included:

- That the assignment is of operational necessity;
- That the assignment cannot be undertaken by in-house staff;
- That the assignment is time-bound and shall be subject to three-monthly reviews.

#### 4.7.6 Amended Business Cases

Sign-off and scrutiny of amended business cases is made on the total revised value, and process is followed as if it were the original value.

#### 4.7.7 Assurance & Authorisation of Business Cases

For all business cases, assurance is required by PHSO in accordance with the table below.

	Single Tender	Above	Consultancy	£50,000 - £100,000	Above £100,000
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	below £20,000	above £20,000	£20,000	£20,000 or more		
Document	QSF	Single Tender BC	Simple BC	Full Business Case		
Business Owner	✓	✓	✓	✓	✓	✓
Head of Finance			✓	✓	✓	✓
Budget Manager	✓	✓	✓	✓	✓	✓
CPT Team		✓				✓
Executive Director		✓		✓		
Board						✓

Authorisation by the Executive Director of Finance and Governance is required for any single tender procurement proposal, above £3,000

Where the Director is also the Business Owner it is best practice that the relevant Executive Director should authorise the case.

In giving that assurance it is expected that the following criteria are considered:

- have all sections of the business case been completed, has the appropriate authorisation been obtained, and is the rationale for the business case clear and appropriate?

- is the proposal consistent with PHSO policies and procedures?
- are EU thresholds for open competition applicable; shall the procurement be repeated? (If so EU thresholds shall apply to the likely total value).
- are there exemption, mitigation or limitation conditions that mean a particular procurement route is preferred?
- does the procurement represent a continuing supply or cumulative procurement; if so, are the correct thresholds being applied?
- which procurement route is most likely to provide best overall value for money, having regard to price, quality and timeliness, as well as the administrative costs of procurement?
- is sufficient information available to make it likely the procurement shall be a success?
- has reasonable care been taken to obtain quotes (lower value only)?
- is the specification of requirements sufficient to meet the needs of the requestor and the suppliers who shall bid for the work; are the requirements complete?
- are the features that are unique to this procurement clear, and is the evidence required from supplier appropriate?
- has appropriate technical approval has been given?

#### **4.8 RISK ASSESSMENT AND MANAGEMENT**

Consideration should be given to formal risk assessment and management for all contracts with a value of over £100,000, Officers must :

- maintain a risk register during the contract period
- undertake appropriate risk assessments and, for identified risks, ensure contingency measures are in place

Risk is the possibility of more than one outcome occurring.

Risk cannot be eradicated completely, but it can be managed.

Managing risk is therefore a vital element of any contract strategy and controlling the changing risks which arise throughout the life of a contract is a necessary part of contract management. The business case therefore needs to consider the type and scale of any possible risk and how this should be managed.



Risks associated with PHSO procurement include the potential failure:

- to jeopardise the provision of services to our customers
- to accomplish objectives
- to utilise resources effectively
- to ensure propriety and regularity
- to ensure integrity of data and information

Appropriate arrangements must therefore be put in place:

- to identify the risks to which the PHSO may be exposed
- to quantify the magnitude of exposure and the probability of risk occurring
- to assess the practicality and economic advantages in allocating and managing the various risks between the PHSO and the supplier
- to identify possible options for controlling retained risks
- to produce a management plan for handling and minimising risk
- to understand the costs involved so that they can be placed where they are lowest and easier to manage

Risk may be reduced further by employing various techniques, such as:

- carrying out pilot exercise/projects;
- researching for probability;
- seeking references/evaluate outputs of similar jobs/projects;
- market intelligence e.g. contract management of similar requirements
- using the appropriate specification to enable suppliers to provide standard products and services, and/or be flexible in the way they meet needs
- transferring the risk e.g. by requirement for bonds or guarantees.

NOTE: Health & Safety risk assessment is a separate issue for which every manager is responsible. Advice should be sought from the Head of Estates & Procurement.

Prior to awarding a contract the risk matrix should be reviewed, brief contingency plans should be drafted to deal with likely risks, for instance what would happen if the supplies/services are unable to be delivered, where could

alternatives be sourced and how would they be procured. This will be influenced by how essential the provision of the supplies/services are to the provision of the PHSO's services.

#### 4.9 WHOLE LIFE CYCLE COSTING

Consideration should be given to the application of Whole Life Costing (WLC) where a purchase exceeds £100,000.

WLC is a technique to establish the total cost of ownership. It is a structured approach to providing a spend profile of the product/service over its anticipated life-span.

The results of an WLC analysis can be used to assist in the decision making process particularly where there is a choice of product. The accuracy of WLC analysis diminishes as it projects further into the future. It is most valuable as a comparative tool when long term assumptions apply to all the options and have the same impact.

Undertaking the WLC analysis can be expensive and take considerable manpower resources. It should be carried out in conjunction with the Head of Finance and the Head of Estates & Procurement.

The following will assist in an appreciation of the general principles and application of WLC :

- The visible costs of any purchase represent only a small proportion of the total cost of ownership
- The "Iceberg Analogy" is often used to highlight the dangers of poor financial management when only the transparent costs are considered. Car fleet operators have for many years evaluated total cost of ownership when considering car purchases because running and maintenance costs have a large impact on profitability and therefore have to be budgeted into their total operation.
- The responsibility for acquisition cost and subsequent support funding e.g. maintenance, are sometimes held by different areas and consequently there is little or no incentive to apply the principals of WLC to procurement policy. Therefore the WLC does have a management implication because purchasing units are unlikely to apply the rigours of WLC analysis unless they see the benefit resulting from their efforts.
- It is important that the specification of requirements is written in performance terms rather than design detail. It should be sufficiently

tight so that the product or service fits the user's needs but not so explicit that it prevents negotiation and discourages the supplier from using expertise to propose innovation.

In defining the cost of an item account must be taken of the following:

- purchase price
- implementation costs
- staff costs and overheads
- training
- training aids
- support equipment - special tools, documentation etc.
- transportation and handling
- operating requirements
- consumables
- maintenance
- withdrawal from service and disposal costs.

All of these costs can be broken down into either "one-off" or "recurring" costs.

It is important to appreciate the difference between these cost groupings because one-off costs are sunk once the acquisition is made, whereas recurring costs are time dependent and continue to be incurred throughout the life of the product. Recurring costs can increase with time if the equipment is liable to wear incurring subsequent increased maintenance costs.

#### **4.9.1 Benefits of Whole Life Cost Analysis**

There are four major benefits of WLC analysis

- evaluation of competing options in purchasing
- improved awareness of total costs
- more accurate forecasting of cost profiles
- performance trade-offs against cost

#### **4.9.2 Option Evaluation**

Option evaluations are based on through-life costs and are relevant to most equipment purchasing decisions from the simple to the complex. Not only does the analysis allow for the assessment of competing purchase options but also leasing. Equally it can be used in market testing/best value procedures.

#### **4.9.3 Improved Awareness**

Application of the technique provides management with an improved awareness of the factors that drive cost and the resources required by the purchase. It is important that the cost drivers are identified so that most management effort is applied to the most effective area of the purchase.

Awareness of the cost drivers will also highlight areas in existing items which would benefit from management involvement.

#### **4.9.4 Improved Forecasting**

Improved forecasting allows the full cost of purchase to be estimated more accurately. It leads to improved decision making at all levels, e.g. major investment decisions or the establishment of cost-effective support policies; more accurate forecasting of future expenditure to be applied to long-term assessments.

#### **4.9.5 Performance Trade-off against Cost**

In many purchase decisions cost is not the only factor to be considered when assessing the options. For example the purchase of a photocopier will be influenced by manufacturer's claims for reliability. It is of no value having a 24 hour maintenance call-out contract if the equipment fails every day.

#### **Conclusion**

The acquisition cost is easy to establish. It is accurate maintenance costs and reliability that are more difficult to measure. The use of references from third parties and independent data are therefore important in the overall assessment.

### **4.10 CONSIDERATIONS FOR SOFTWARE-RELATED PROCUREMENTS**

For all proposed software-related procurements, ICT should be consulted in the first instance to help identify the available options. Options may include assessing the exploitation potential of existing software as well as the extent to which ICT shall be able to help support and maintain any new potential software solutions. Careful consideration should also be given to whether the

resources available (in addition to ICT) are sufficient to identify all the options and advise PHSO which products in the market best meet PHSO's needs.

Information and Records Management (IRM) should also be consulted to ensure that the data or information stored in the software or system can be properly managed in line with our internal policies and procedures, and legal requirements.

A full articulation of costs must be included in the business case. This shall include all associated costs such as the software itself, any associated hardware, user licenses, training, manuals and any additional staff costs such as interim/consultancy support. Guidance from suppliers should be sought in order to set out a price range for the software itself. Where costs are likely to fall to separate budgets, e.g. training or computer hardware, the authority of each relevant budget manager must be obtained.

All those involved in software-related procurements should ensure that, wherever possible, specifications detail the required performance of the required system (thus allowing potential suppliers to innovate) and avoid detailing prescriptive requirements.

Where an off-the-shelf IT solution meets PHSO's requirements, it shall very likely be more cost effective than procuring a bespoke solution. The Directorate should therefore establish exactly what features are available from off-the-shelf solutions and ensure that the specification is not worded so preclude such solutions. Careful consideration should also be given to whether PHSO needs could be met by a modified specification which, in turn, would facilitate an off-the-shelf solution.

#### **4.11 ENVIRONMENTAL PROCUREMENT**

Green (environmentally friendly) products are not necessarily more expensive. The initially cheaper products may cost more in the long term when whole-life costs are taken into account. These whole-life costs (e.g. burden on air-conditioning plant of less energy efficient IT equipment) along with administrative costs (e.g. health and safety requirements for hazardous substances), disposal costs and any likely changes in legislation must be taken into consideration. Purchases that do not take into account positive environmental factors or those that avoid the consequences of adverse environmental factors must be challenged.

There is a need to scrutinise the following rigorously:

- the precise operational and performance specifications of every procurement proposal;

- the potential for minimising waste
- the commercial recycling opportunities to be gained by actively managing the operational processes and product use
- the cost-effectiveness of housekeeping measures that can contribute to careful asset use and the reduction of waste products.

#### **4.11.1 Specification of Environmentally-Friendly Supplies**

A certain amount of freedom is allowed under EU Procurement Directives in specifying green requirements, for example that a product should be made of recyclable materials or that particular materials such as ozone depleting substances should not be used. The manner in which the requirements are specified must not discriminate against providers or against products from other EU member states.

#### **4.11.2 Selection and Rejection of Providers**

The EU Regulations set out detailed criteria for selecting or rejecting tenderers based upon their evidence of their personal “green” position, their economic and financial standing, their technical capacity and their ability to deliver the required service. These criteria must be observed at all times. Any supplier who has been convicted of a criminal offence, or who has committed an act of grave misconduct in the course of their business may be rejected where this is considered to be justified, e.g. where there have been court judgements made against the supplier for persistent non-compliance with environmental regulations.

#### **4.11.3 Contract Conditions**

Environmental conditions to the award of contract may be attached provided they can be met by potential providers from other EU states.

### **4.12 CONTRACTS**

#### **4.12.1 Introduction to Contracts**

To be legally binding, the purchasing process must result in a contract.

A contract is a process whereby two or more parties exchange a set of promises which give rise to obligations that are enforced or recognised by law.

One party makes an offer to another party which is accepted, thus resulting in a contract. Both the offer and the acceptance can be in writing, by spoken word, or by personal conduct.

PHSO contracts with external companies must always be in writing. Written contracts provide the framework in which the supplies/services/works are to be provided and the sanctions for non-compliance as well as detailing the duration of an agreement, the sums to be paid, the methods of settling disputes and the basic requirements of provision.

It should be remembered that a contract is an agreement by parties and therefore all parties to a contract must have agreed the terms, this is done by signing of the contract.

#### **4.12.2 Supplies Contracts**

It should be the PHSO's intention in all instances to set the terms and conditions and specification used within contracts and the PHSO should not sign up to suppliers terms and conditions. However, there are instances where it is not possible to set the contract terms, e.g. where a supplier with strong market domination will only allow software to be used under their terms and conditions. In such instances particular care should be taken regarding what is being agreed. It is recommended that such contracts are checked by an appropriately qualified/experienced person before entering into any agreement.

#### **4.12.3 Works Contracts**

Contracts for works will usually be made using standardised national contract terms and conditions such as those developed by the Joint Contracts Tribunal.

#### **4.12.4 Penalties and Liquidated Damages**

##### **4.12.4.1 Penalties**

Penalty clauses are invalid and not enforceable. It has been ruled that a clause is a penalty clause if it provides for "a payment of money stipulated as *in terrorem* of the offending party" (i.e. a payment of a sum of money intended to frighten or intimidate).

##### **4.12.4.2 Liquidated Damages**

However, it is possible to claim damages or withhold payment where damages can be identified on the occurrence of certain events.

Liquidated damages are costs that are incurred due to the non-performance of a party and must be quantifiable.

Parties incorporate liquidated damages clauses into contracts for a number of reasons:

- the main reason is often certainty. At the time of contracting it is generally difficult to predict the amount of damages arising from a breach. It is therefore attractive to parties to know at the outset exactly what money they will have to pay or will receive upon breach of a specific term;
- the non-defaulting party benefits from making recovery of damages without the difficulty and expense of proving actual damage. Legal costs are reduced and compensation made more efficient. Difficult legal disputes as to whether particular losses are recoverable are often avoided, reducing the risk of not being compensated for a breach of contract.
- a liquidated damages clause reinforces contractual obligations and provides added deterrent to breach

A court will uphold a liquidated damages clause if satisfied that the predetermined sum was a reasonable estimate of the probable loss following breach. The courts will generally look to uphold liquidated damages clauses in commercial contracts, given the clear benefits that they provide to both parties.

A “liquidated damages clause” is likely to be unenforceable as a penalty if:

- the pre-determined sum is considered to be an unreasonable estimate of the probable loss: or
- it has been used by one party to impose pressure or oppression on the other (which could be said to be another way of expressing the unreasonable nature of the predetermined sum).

#### 4.12.5 Planning the Contract

Planning the contract and contract strategy are essential parts of the procurement process. It must address not only the method of acquisition and type and length of contract, but also the risks involved in agreeing a particular procurement and how these risks can be managed. It must be made very clear from the start what jobs need to be performed and/or what services need to be supplied. Strong links between purchasers and end- users are therefore essential.



A badly drawn-up contract is difficult if not impossible to manage successfully. Actions taken in a pre-award phase are therefore critical to the contract's subsequent success.

Special conditions of contract apply to each individual contract. These specific conditions must, therefore, be drawn up with care.

The price method specified in the contract will vary according to the particular requirement. Tenderers are generally asked to quote for any of the following:

- the fixed price
- the time charges
- a price based on tendered percentage of the total job cost

Some complex contracts may be a mix of two or all of these methods.

Contracts must clearly define the respective responsibilities of both parties but must also be flexible enough to cope with inescapable changes. The Contract should regulate the provision of the procurement activity, it provides the key to monitoring the effectiveness of the provision and establishes the methods to resolve any conflict between the parties. The contract should be seen as a living document and may be amended, by the agreement of both parties, throughout its duration to reflect or to improve the provision of the procurement activity.

One of the objectives of good service contracts is to promote continuing improvement in the performance of both parties, providing for the sharing of mutual benefits arising from this improvement. Where possible pricing arrangements should also serve this objective.

#### 4.12.6 Types of Contract

A number of different types of contract exist. The decision on what type is most suitable and how long it should be depends upon each individual procurement arrangement. In order to minimise total cost the decision should represent a balance between the following:

- the cost of the item or service;
- the date on which it is required to start;
- the length of time it will continue to be needed;
- whether a fixed price is appropriate;
- the cost and time of the procurement process;

- the degree of control needed;
- the various risks associated with each element of the contract.

Further advice on contractual matters can be obtained from the CPT.

Copies of example contracts for Services and Supplies are held by the CPT.

#### *4.12.6.1 One-Off Purchase or Spot Purchase*

This is normally used where a single requirement is needed, often for a low value purchase. Each requirement must be backed by relevant documentation, for supplies usually a purchase order, and must be authorised. Any decision made on whether this is the best method of purchase needs to consider the following:

- are there alternatives to ownership that will reduce costs?
- are there alternative methods of purchase that will reduce the need for unnecessary future purchases?
- will the service to users be improved?
- is demand constant and predictable?
- are there similar items for which requirement is also infrequent but where rationalisation could result in frequent orders.

Owing to the one-off nature of these orders and the disproportionate effort they require this is often an expensive method of obtaining materials and services. If the use of an order or agreement can be increased or rationalised then it is possible to reduce costs and use time more productively.

#### *4.12.6.2 Fixed Price (Block) Contracts*

These contracts are used for more complex needs and where sufficient information can be given to tenderers, a formal invitation to tender should be issued. With such contracts a single total price covers the whole of the required work.

These contracts result in:

- less requirement for supervision of the contractor as there will be no schedule of rates to be monitored;
- the contractor having more incentive to work efficiently;
- the specification having to be developed completely and precisely;

However

- variations may be difficult and costly to agree;
- the price will frequently contain contingency allowances;
- tenderers may incur significant expense in tendering;

It is advisable that, where possible, and reasonable, to break the pricing and payments into clearly defined blocks and milestones of work.

#### *4.12.6.3 Cost and Volume Contracts*

These contracts are similar to fixed price contracts but have price breaks in them to allow for fluctuation in demand, they have a fixed price element and then a series of further prices that reflect growth in demand.

This type of contract allows contractors to cover their fixed costs in the fixed price element and then to use marginal costing for further demand. This type of contract can be used in instances where a certain amount of work can be guaranteed, but it is anticipated that further demand will be made.

#### *4.12.6.4 Schedule of Rates or Measured Contracts*

If the information given to tenderers is insufficient to allow for a fixed price contract then a schedule of rates may be appropriate. This can be used in various circumstances, for example where different grades of staff can be tendered. The total price is determined by measuring the amount of work undertaken by the various levels of staff and materials supplied and multiplying this by the agreed price for each.

This approach:

- does not require a full specification for tendering against and variations can normally be dealt with by existing terms
- results in an easier tendering process for bidders
- only allows the final cost to be calculated when approaching completion

The major problem with this type of contract is the possibility of lack of control over the time inputs by contractors. This however can be countered by agreeing specific blocks of work at agreed inputs before the work is ordered. It requires precise assessment of tenders to ensure that the level of service that is required can be afforded.

#### *4.12.6.5 Framework Agreements*

A framework agreement is defined within the directive as “an agreement between one or more contracting authorities and one or more economic

operators the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate the quantity envisaged.”

Framework Agreements set out the terms and conditions under which subsequent specific purchases (call-offs) may be made throughout the term of the agreement. Framework Agreements place no obligation on the procurers to buy anything.

Contracts based on framework agreements may be awarded by either:

- applying the terms laid down in the framework agreement (where such terms are sufficiently precise to cover the particular call-off)
- where the terms laid down in the framework agreement are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure:
- inviting the organisations within the framework agreement that are capable of executing the subject of the contract to submit written tenders
- fixing a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract
- awarding each contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

The benefits of framework agreements are that the PHSO is not tied to the agreement they are free to use the framework when they provide value for money but free to go elsewhere if they do not. Whilst the framework is only classed as an agreement, each subsequent call off is legally a contract.

Where the value of a framework contract exceeds the threshold of the Public Contracts Regulations 2006, these break down the letting of framework agreements into two categories:

- those agreements where all the terms under which contracts may be placed are clearly identified
- those agreements where there is a need for a second stage competition before contracts may be issued. The regulations lay down rules for the establishment of agreements and for dealing with second stage tenders.

The maximum period for a Framework Agreement must not exceed four years except in exceptional circumstances which must be justified. Clear award criteria must be established at the time of tender and must be used throughout the process including second stage tenders. Agreements must be awarded to one or three or more suppliers and the agreement may only be used by purchasing entities who were originally party to the framework agreement.

When a second stage tender is required purchasers must invite all framework suppliers capable of undertaking the contract to bid, allow sufficient time for tendering, and request bids in writing it ensure confidentiality in the bidding process.

Framework arrangements:

- reduce the purchasing effort by involving only one tendering exercise for the duration of the agreement;
- produce more competitive prices than would result from individual purchases;
- give the opportunity to devolve to the users a call-off ordering facility, thus reducing delay and paperwork;
- improve availability from suppliers
- produce more competitive prices than would result from individual purchases;
- give the opportunity to improve commitment to, and relationships with, suppliers;
- produce more competitive prices than would result from individual purchases;
- require a mechanism to control enabling invoice payment and cost allocations.

Where it is intended to use a framework agreement awarded under these regulations by another public body which has more than one contractor operating under the framework, it may be necessary to run a mini-competition between contractors capable of performing the contract. Such mini-competition must not substantively change the terms and conditions of the framework.

#### ***4.12.6.6 Call-off Contracts***

Some activities, for example cleaning services, have set frequency of need that is predictable. Call-off agreements are therefore often appropriate as they

identify a fixed volume of material or service and the actual need and frequency against an agreed set of prices.

#### **4.12.6.7 Sequential Contracts**

If the project is considered to be too complex to allow for a fully planned contract to be let for the whole of the requirement, then a set of successive contracts can be arranged as an alternative. This requires the overall project is broken down into a series of smaller projects. This will enable each fully planned contract to be tendered for at a future point.

This approach:

- can allow the project to retain flexibility. It defers defining the complete specification which enables later technological change to be incorporated;
- can result in earlier completion due to the simultaneous letting of contracts and their planning.

But can also:

- restrict knowledge of the overall cost to a series of pre-tender estimates until the last contract is let.

the main problem with this approach is that the tenderer who wins the first contract often becomes the front runner when competing with subsequent tenderers due to the level of knowledge built up. It might not be easy to define break points clearly once the project is underway.

#### **4.12.6.8 Management Contracts**

In this approach a specialist contractor is awarded a contract to manage a particularly complex project through the competitive process. This may include splitting the project into suitable smaller packages, tendering those packages by way of sub-contracting and possibly managing the subsequent work.

This type of contract:

- can offer tighter control of cost and better project management;
- is suitable for large schemes where the complexity requires good programming and management;
- offers expertise and capacity that may not be available within the PHSO.

#### **4.12.6.9 Incentive Contracts**

An incentive contract can be awarded on the basis of a target cost. Once the work is completed the actual cost is determined and any savings or overrun is shared between the client and the contractor on a pre-set scale. The contractor is therefore motivated to achieve the target cost if allowed to keep proportionately more of the saving than it can claim for contract overrun.

Multiple incentive contracts extend this principal by attaching monetary values to other targets such as delivery or quality. There is a need, however, to ensure that the contractor's motivation to achieve the financial incentives does not comprise the overall value-for-money of the contract. There should be no need to pay extra for what should have been achieved from the original contract.

Other potential difficulties are:

- The target price will frequently contain contingencies unable to be met;
- agreeing variations can be difficult as this will require changes being made to the target cost.

#### **4.12.6.10 Dynamic Purchasing System (DPS)**

A DPS is a completely electronic process for making commonly used purchases. A DPS must be open throughout its duration to any economic operator which satisfies the contracting authority's selection criteria and submits an indicative tender which complies with the specification. An indicative tender is a tender prepared by the economic operator and sets out the terms on which the economic operator would be prepared to enter into a contract with the contracting authority should the contracting authority award a contract under the DPS.

Establishing a DPS

The main procedure for establishing a DPS is

- the contracting authority advertises the establishment of the DPS using the rules of the open procedure.
- the contracting authority must offer unrestricted, direct and full access to the specification and to any additional documents by the electronic means from the date of publication of the contract notice to the expiry of the DPS.

- any economic operator interested in joining the DPS , and which meets the selection criteria, can submit an indicative tender setting out the terms for supplying the requirements
- the contracting authority must evaluate the tender, usually within 15 days of the date of submission.
- It must admit to the DPS any economic operator if the indicative tender complies with the specification and any additional documents produced by the contracting authority.

Once admitted to the DPS any economic operator can improve on an indicative tender at any time.

Procuring contracts under a DPS:

When a contracting authority wishes to order supplies, works or services through a DPS it must first advertise its intention using a simplified contract notice for a DPS inviting anyone interested and not yet admitted to the DPS to submit an indicative tender.

The Contracting Authority must evaluate the indicative tenders it receives and admit to the DPS any new economic operator if the indicative tender meets the contracting authority's specification.

The contracting authority may then issue invitations to submit tenders for a particular order or contract within a time limit specified by the authority to everyone admitted to the DPS.

The Contracting Authority awards the contracts to the economic operator which submits the tender which best meets the award criteria specified. If the authority thinks it appropriate it may first formulate the award criteria more precisely in the invitation to submit tenders.

A DPS cannot last more than 4 years except in exceptional circumstances.

#### **4.12.6.11 Partnerships**

A Partnership can be defined as “a relationship between two or more independent parties, designed to secure some shared objectives”. A partnership is a working relationship where partners are independent bodies, agree to co-operate for a common goal, create an organisational structure or process and share information, risks and rewards.

Partners can be defined as being either an organisation (private or public), undertaking, part funding or participating as a beneficiary in a project, or a body whose nature or status give it a right or obligation to support the project.



Partnerships can improve the services provided and use resources more effectively. They should help all parties achieve their objectives/targets.

The main reasons for entering into a partnership are the ability to access new resources, to provide new and better ways of delivering services, to forge new relationships and the desire to find new ways of sharing risk.

The overriding principle of partnership working is that it should deliver better results that could be achieved in isolation.

Only a decision by Executive Board can result in any intention to create a partnership and the statutory roles of relevant strategic directors must be taken into consideration in any structure created.

#### **4.12.6.12 Partnering**

Partnering is a relationship between two or more independent parties whereby they agree to co-operate for a common objective, create an organisational structure or process and share information, risks and rewards. The main reasons for entering into a partnering arrangement are the ability to access new resources, to provide better ways of delivering services, to forge new relationships and find new ways of sharing risks.

Only a decision by Executive Board can result in any intention to create a partnership and the statutory roles of relevant strategic directors must be taken into consideration in any structure created.

#### **4.12.7 Length of Contract**

The length of the contract will depend upon:

- market conditions; if prices are at an historic low then a longer term contract may be favoured;
- technological change; for rapidly evolving products short-term contracts may be favoured;
- supplier capital investment: if this is required to meet the contract, the contract must be long enough to enable the supplier to recoup a reasonable proportion of their costs;
- acceptability of price variation formulae; risk can be reduced and more competitive pricing offered in the tender;
- amount of work to be done; if the amounts are small and spasmodic a long term contract may reduce administrative costs to a more reasonable proportion of contract value;

- cost of tendering; the costs to the PHSO and to tenderers can be significant, particularly for major service contracts.

It is usual within the PHSO to offer service contracts for a period of three years with options for additional years to a maximum of 5 years. Framework contracts can only be for a maximum of 4 years. Good practice dictates that contracts should not exceed 5 years without a further tender process taking place.

#### **4.12.8 Contract Termination**

All contracts used by the PHSO, as well as having an end date must have clauses allowing either party to terminate a contract if the other party is in breach of the contract. Such clauses usually have an escalation policy that must be followed with several stages that will be followed prior to termination. In addition contract for ongoing supply of supplies and services should contain a clause allowing both parties to terminate the contract for whatever reason, with a sufficient notice period for alternative arrangements to be put in place (usually over 6 months). Such clause protects the interests of the PHSO and the contractor by allowing them to be released from a contract should there be a business need during its duration that does not require future provision.

#### **4.12.9 Contract Variations and Extensions**

##### **4.12.9.1 Contract Variations**

It is essential to maintain a close check on any alterations made to a contract even if no additional cost is involved. Any alterations must be in writing and copies must be kept with the contract.

##### **4.12.9.2 Contract Extensions**

These may be required:

- if more time is required to complete the contract at no additional cost
- when additional work or supplies are required which exceed the original objective of the contract.

Contractual extensions should only be considered in exceptional circumstances. Care must therefore be taken at the outset of a contract to ensure that a full and comprehensive specification is produced. This should avoid the need for any variations to the contract.

Contract extensions can only be considered if the original contract conditions remain valid. If not, a new contract must be negotiated on the assumption that it will be subject to a competitive bid process.

#### **4.12.9.3 Value of Amendments / Extensions**

Amendments and/or extensions to existing contracts (which have not been subject to an OJEU competition) should not exceed 50% of either the original contract duration or value.

#### **4.12.9.4 Business Case**

Where a proposed amendment or extension to a contract increases the value above that approved in the original business case, an amendment to the business case shall need to be approved at the new total value.

#### **4.12.10 Letters of Intent**

A letter of intent:

- expresses an intention to award a contract before the contract is formally issued;
- constitutes an agreement to meet the supplier's costs in preparing to fulfil the obligations of a contract before award.

It is important to remember that a letter of intent may commit the PHSO to expenditure without it having the protection of an agreed contract. It is therefore preferable not to send out a letter of intent as the contractual risk is great. If circumstances arise in which a letter of intent must be issued, they should be cleared with the Head of Estates & procurement.

Whilst letters of intent are widely used in the construction industry and are considered the norm, a letter of intent may not be used as a substitute for a formal award of contract.

#### **4.12.11 Security Clearance of Contractors Staff**

PHSO security clearance policy requires all contractors' staff that needs unescorted access to our premises and/or ICT systems to satisfy the same security clearance standards as are required for PHSO staff. It is the responsibility of individual managers to ensure that building passes are allocated to and retained by suppliers' staff (including sole traders) in accordance with PHSO's security policies. The Security Officer should be consulted as necessary.

#### **4.12.12 Contracts with 'Sole Traders'**

Occasionally, contracts are awarded to suppliers who are effectively 'sole traders' and who are not in a position to meet the standard contractual requirements for security clearance. Where it is agreed between the Directorate and PHSO's Security Officer that such an individual needs unescorted access to PHSO premises and/or ICT systems in order to perform their duties, CPT shall liaise with Human Resources (HR) to ensure that the required checks are completed. HR are responsible for confirming the clearance of all individuals and it should be noted that no building pass/access to IT shall be granted until HR confirm that background checks have been satisfactorily completed.

Security checks can take up to two weeks or more, and time should be factored into procurement timetables accordingly.

Further information is given in PHSO's Security Policy.

#### **4.12.13 Contract workers awareness of PHSO staff policies**

PHSO requires that, where applicable, contract workers are aware of and adhere to PHSO policies as apply to PHSO employees, such policies including: Code of Conduct; Conflict of Interest; Equality and Diversity Policy; Dignity at Work Policy; Whistle-blowing Policy; Health and Safety Policy; ICT Acceptable Usage Policy; Security Policy and Guidance; Security Notes and Procedures; Clear Desk Policy; and Records Management Policy.

The procuring department shall liaise with the Contractor (1) to provide access to such policies, and (2) to obtain confirmation that the Contractor shall comply with the policies.

#### **4.12.14 Contract Completion**

All contracts are completed "under hand". All contracts below £100, 000 can be completed by signature in accordance with the scheme of delegation

#### **4.12.15 Contract storage**

All contracts must be kept by the CPT in appropriate fireproof cabinets or safes and must be recorded in the Central Contract register.

Contracts can be archived after their expiration date but must be kept with any associated documentation for 6 years after the terms of the contract have expired.

## **4.13 SPECIFICATION WRITING**

### **4.13.1 What is a Specification?**

A specification can be defined as “a statement of needs to be satisfied by the procurement of external resources”. It is also known as an operational requirement, statement of requirement, statement of service requirement and output-based specification.

The specification is a key part of the tender document and a key part of the contract and describes, as far as possible, the supplies, services or works that the PHSO requires. In some cases it will be a highly prescriptive specification (for example where a specific type of equipment is required) in other cases the specification may be outcomes focuses, where the PHSO describes expected standards and results, but is not necessarily prescriptive about how these are achieved.

Preparing a specification requires in-depth research to be carried out and a great deal of accuracy. A poor description of the PHSO’s requirements may mean that the product or service is not delivered to the standards required and late changes to a specification may result in additional or abortive costs.

### **4.13.2 The Equality Act 2010**

In drafting specifications, attention must also be given to PHSO’s duties under the Equality Act 2010 which relate specifically to procurement, namely to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation;
- advance equality of opportunity between people who share a protected characteristic and those who do not, and
- foster good relations between people who share a protected characteristic and those who do not.

### **4.13.3 Non-Discrimination in Specifications**

Contracting authorities failing to comply with the following rules are at serious risk of incurring domestic legal proceedings and/or EU infraction proceedings:

Contracting authorities must specify requirements in generic technical or performance terms. Brand-specific terms or terms which refer to materials or supplies of specific origin, or to a particular process or means of production, may only be used exceptionally and with the words “or equal and approved”. This is only allowed if justified by the subject of the contract, or if the subject

of the contract cannot otherwise be described to all providers in sufficiently precise and intelligible terms.

Furthermore where standards are used

- Contracting authorities must specify by reference to national standards implementing European standards or other European specifications. If these do not exist contracting authorities should specify by reference to national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the products. Each of these references must be accompanied by the words “or equal and approved”.
- Contracting authorities must consider offers which claim to satisfy the requirements in an equivalent manner even though they do not conform to the standard in question. Tenders must be examined to establish whether they satisfy the contracting authority’s requirements in an equivalent manner and under no circumstances may contracting authorities reject offers solely on the grounds that they are not based on a specified standard or technology. The burden of proving technical equivalence will fall on the tenderer in the absence of certification of conformity to the standard.
- **NB** It is possible to include in specifications references to national standards or mandatory technical rules which go beyond the relevant EU standard, provided these are non-discriminatory, without prejudice to relevant European standards or specifications and otherwise compatible with EU community law.

#### *4.13.3.1 Specific Rules when purchasing computer hardware*

A number of recent EU infraction cases have focused on the procurement of computers. Some UK procurements have also been examined requiring specific advice:

Where specifying microprocessors for desktops, laptops, servers or workstations, contracting authorities must describe the technology required using common specifications, for example using the generic term “x86 processor”. The requirements for microprocessors must exclude any reference to brands (e.g. Intel, AMD), manufacturer-specific processor architectures, trademarks, technology-types or other potentially discriminatory descriptors.

IT hardware specifications should additionally exclude any reference to minimum processor clock-speeds since this points to particular products and because performance of a microprocessor should take into account both clock-

rate (MHz) and the number of executable instructions per clock (IPC). Likewise specifying for example a minimum Front Side Bus speed in MHz or a minimum cache memory in MB is prohibited as such specifications do not directly relate to performance

Contracting authorities may refer to a minimum score on an independent benchmark test measuring microprocessor performance as one way of specifying microprocessor performance in a non-discriminatory manner (typically, for a procurement of desktop PCs in an office environment, contracting authorities would use an application-based benchmark test). Contracting authorities should however ensure non-discriminatory scores are set on these tests.

#### **4.13.4 Writing the Specification for services/supplies**

##### **4.13.4.1 Pre-specification tasks**

- ensure that there is a clear understanding of what is required. If producing a specification for another party, identify and agree the customer or user's requirements and again ensure that they are fully understood;
- for works, analyse any existing provisions to determine the impact of the new proposals and the relationship of new to existing;
- research the market by talking to suppliers, other purchasers, industry associations etc. to identify possible solutions, indicative costs and delivery timescales;
- identify the possible risks associated with the procurement process so that ways of controlling the risks can be built into the specification
- identify the scope of the contract and what the range of supplies and services are which the supplier will be asked to deliver;
- identify the evaluation criteria so that the specification will reflect the importance of each criteria.
- determine how you will monitor performance of the contract.

##### **4.13.4.2 Structure of the specification**

Specifications will vary in length and complexity depending on the nature of the service/supplies being procured. However the following are common areas in most specifications and should be included unless there is a valid reason otherwise:

**Title Page** - describe the project and identity of the PHSO and the main contact person

**Table of Contents** - ensure the document is well set out and easy to read, using plain language.

**Definitions** - in addition to the definitions in the contract part of the tender, it is important that there is a list of definitions, or a glossary of terms, to ensure that technical words and phrases in the specification are mutually understood. Failure to define key words and phrases may lead to misunderstandings and inappropriate solutions.

**Introduction** - the introduction should briefly explain the requirement and the context of that requirement.

**Scope** - the scope will address areas such as anticipated demand or volumes, whether the supplier is to supply only, supply and install, provide training, provide support documentation etc. and where appropriate, should identify specifically what is not to be included.

**Background** - the more relevant information tenderers have the better able they are able to respond to the tender. Background information may cover, where appropriate, the reason the PHSO is tendering, its expectations, the implications for the PHSO implementing the solutions, and the other options which have been considered by the PHSO (and if dismissed, why). It may also explain how the solutions may link into other requirements and applications whether already implemented or planned for the future.

**Service Conditions & Environmental Factors** - explain any factors which may have a bearing on the operation of the supplies or services. For example, if the physical environment may impact on the output design or performance, the specification must highlight these conditions. Examples are:

- operating and storage conditions
- the need for inter-changeability or compatibility with existing services and equipment
- personnel and health and safety aspects
- existing facilities to be maintained throughout a contract period and what has to be done to ensure this

The specification must also cover any particular sustainability requirements, for example energy usage and the recycling capability of supplies.



**Statement of Requirements** - the statement of requirement must contain a description of the outputs for services or functionality and performance requirements for supplies. Details of the performance indicators and benchmarks that will be monitored during the contract period must also be included.

The statement of requirements will vary significantly in scale and complexity depending on the size and nature of the contract, but may contain some or all of the following:

Services:

- Required outputs and/or outcomes
- Performance measures
- Targets
- Management of the contract
- Transfer of assets and personnel
- The hand-over process
- Transition between service providers
- Best Value

Supplies:

- Design and performance criteria
- Functional characteristics
- Performance characteristics
- Technical characteristics
- Reporting requirements
- Standards
- Compatibility and standardisation
- Acceptance testing
- Trade-ins

Works:

- List drawings and other guidance provided
- Details of access, ground conditions and preparation work

- Performance criteria including contractors' designs
- Relationships with subcontractors and suppliers
- Employer's contractual and legal requirements
- Insurances of works and indemnities
- Works management including completion and defects
- Control of time and cost
- Quality control, standards and checks required
- Health and Safety
- Temporary facilities

**Technology, systems and management techniques** - the specification may need to state where the PHSO expects improvement in the use of systems and other management techniques. This will help ensure that the supplier continues to adopt best practice throughout the course of the contract.

**Quality requirements** - the specification should address the quality processes and standards expected of the supplier. For supply of contracts, the quality of the supplies required must be clearly defined.

**Whole of life support** - this section should state what maintenance is required and any modifications or upgrades that may be required in the future plus and warranties required.

**Security** - if security is an issue then this section should state the requirements for handling personal and commercial information. It may also address security issues such as encryption and theft-reduction measures.

**Training** - any training which is required for the product or service in question should be clearly identified.

**Implementation criteria** - the implementation timetable should be detailed.

#### 4.13.5 Constructing a Specification

When writing a specification the following should be addressed:

##### 4.13.5.1 Outcomes

What is it the contract is fundamentally trying to achieve? Why is the PHSO making the procurement? Outcomes should be the objectives of the end users. Usually the end users are members of the public. Outcomes should not be concerned with details of service level, availability, delivery or quality.

#### **4.13.5.2 Outputs**

Outputs focus on the measurables of a contract, such as service availability, speed, delivery, quality. Outputs specify the arrangements planned to meet outcomes, they should be quantifiable and easy to measure

#### **4.13.5.3 Throughputs (also known as processes)**

Throughputs are the concrete actions needed to operate the contract, how tasks will be performed to fulfil the requirements,

#### **4.13.5.4 Inputs**

Inputs are the resources necessary to carry out the requirements of the contract, such as staff, training, finance, IT, management.

#### **4.13.6 Writing the Specification**

In writing a specification a balance needs to be struck between how prescriptive the specification should be and how much freedom contractors should be allowed use their own initiative to fulfil the contracts. Using contracts that are too prescriptive and too focussed on throughputs may not provide the PHSO with best value as it takes away the contractors ability to make internal economies to deliver the desired outcomes economically. Focussing on outcomes ensures that the PHSO is clear in its requirements. Outputs should be closely related to the fulfilment of outcomes and provide the indicators against which the contract performance can be measured.

It seems obvious to state that the specification should reflect in its detail the financial commitment and risk to service performance that the contract presents. A specification for a service that is fundamental to the well being of service users or to the performance of essential services or has a high cost should be more detailed than a small value contract that presents little operational risk to the PHSO.

##### **4.13.6.1 Setting Outputs**

Outputs should be measurable. Where targets are set they should be either definite e.g. “delivery shall be not later than 3 months from the date of an order”, or should have minimum and maximum levels that define the performance e.g. “the service shall be provided to between 30 and 40 people per month”. This enables monitoring to take place and action for any under-performance, or remedial action for over-performance.

#### **4.13.6.2 Defining requirements**

Under EU legislation it is illegal to specify brand names or specify too closely technical requirements as this can be anti-competitive. Contacts must be open to tenderers to suggest how they can meet the needs of the contract.

Therefore stating that new IT systems must be compatible with existing IT systems and must deliver X, Y and Z is acceptable.

#### **4.13.6.3 Language**

The language used in specifications must be the same language used in the contract to ensure continuity in the documentation. Specifications should be written in an easily understood and unambiguous way that ensures there is no possibility of contractors not understanding the contract. A simple guide to writing specifications is that if you were a new manager of the contractor would you be able to understand what is required.

It is often easier and clearer to include diagrams and plans within a specification rather than trying to write a description.

#### **4.13.6.4 Structure**

The most difficult part of writing a specification is to start with a blank page. Therefore approach other purchasers to see if they have a specification or look to see if there are any specifications within the PHSO for similar requirements or if there is an old specification. These may however not necessarily fulfil the requirements.

The simplest way to structure a specification is to look at the process chronologically, starting with the desired outcomes and working through the requirements. This should identify the outputs and the throughputs, it will then be necessary to identify the inputs needed to deliver the contract. In addition it may be necessary to identify any special requirements that facilitate the delivery of the contract, such as disposal or environmental considerations.

#### **4.13.7 Checklist**

Below is a simple checklist that can be used for the preparation of a specification:

- Is a similar or related specification available? (why re-invent the wheel?)
- Are the requirements stated simply, leaving little or no room for ambiguity?

- Do the requirements meet the needs of all the people who are expected to use the goods or services?
- What supplementary/background information can be provided to give prospective contractors the fullest possible understanding of what they would need to do?
- Is the specification written in output terms?
- Has due regard been given to the needs of the people who might be providing the goods or services?
- Does the specification conform to legal standards and obligations, and shall it ensure an open and fair competition?
- What is the required timetable for delivery?

#### **4.14 BENEFITS REALISATION**

##### **4.14.1 What is benefits realisation**

After the award of a contract, all of the benefits are potential benefits until realised during the agreement. As part of post-award contract management, for projects over £50,000, the business owner must implement a plan to ensure that the proposed benefits in the business case are realised.

##### **4.14.2 Overview**

A Benefits Realisation Plan is a tool to make sure you actually get the intended benefits (outcomes, changed processes) originally planned for your project. A Benefits Realisation Plan should be a fundamental part of any improvement project, running from the project's beginning to its end, and beyond. By focusing on benefits realisation planning, you can track whether intended benefits have been realised and sustained after the end of the project. Furthermore, it helps to ensure a clear signposting of who is responsible for the delivery of those benefits.

Having a sound benefits realisation plan will increase the delivery of intended benefits from a project. This ensures that any resources allocated to the project are being fully utilised. Having a benefits realisation plan for improvement projects will also help when discussing how an individual project is contributing to the overall improvement of service delivery.

##### **4.14.3 Where do I start?**

The first step is to ensure all the foundations for benefits realisation are in place. These are:

- Identify and make a record of the desired benefits. You may want to discuss this with stakeholders.
- Identify the stakeholders that will be affected by each identified benefit.
- Identify the outcomes and enablers required for each benefit realisation.
- Determine how you will recognise whether a particular benefit has been realised. This may require collection of numeric data or it may require qualitative assessment. If the former, try taking a baseline measure before the project starts, and use this as a benchmark to determine realisation of the anticipated benefit. However do not wait to start until you have accumulated months of baseline data.
- Allocate responsibility for delivery of these benefits.
- Prioritise the benefits so that the most important always has the most focus. This ensures that the project makes the greatest impact.
- Identify dates for expected delivery of the benefits.

#### **4.14.4 Reviewing the Benefits**

Having created the Benefits Realisation Plan, you should aim to revisit the plan at agreed review points. This can help you decide whether the changes made as a result of the project are still delivering the original desired benefits. If this is not the case, you need to consider corrective action. At the end of the project the Benefits Realisation Review form is completed and submitted to the CPT.

### **4.15 CONTRACT MANAGEMENT AND CONTRACT MONITORING**

#### **4.15.1 What is contract management?**

Contract management is the process that enables both parties to a contract (PHSO and the contractor) to meet their obligations in order to deliver the objectives required from the contract. It also involves the building of a good working relationship between customer and contractor.

#### **4.15.2 Aims and objectives of contract management**

Effective contract management supports PHSO's strategic aims and objectives by helping to ensure our people are equipped with the skills, knowledge, systems and resources they need to work effectively.

Contract management continues throughout the life of a contract and involves managing proactively to anticipate future needs as well as reacting to situations that arise. The central aim of contract management is to obtain the goods or services as agreed in the contract and ensure value for money is achieved. This means optimising the efficiency, effectiveness and economy of the goods or services covered by the contract, balancing costs against risks and actively managing the contractual relationship. Contract management may also involve aiming for continuous improvement in performance over the life of the contract.

#### **4.15.3 Why have contract management and monitoring?**

Effective contract management and monitoring allows PHSO to verify that a contract remains on track, and may identify where adjustments are necessary to ensure that the objectives of the contract are achieved.

Contract management and monitoring can produce benefits such as:

- Improved quality of service
- a reduction in the level of delivery/outcome problems; reduced crisis management
- a reduction in risk to PHSO and the contractor
- highlighting where improvements can be made, potentially leading to an enhanced service

Ultimately, contract management provides the monitoring and review processes that ensure that these aims are met and that the eventual outcomes are in line with the stated objectives. Regular and effective monitoring, which should be proportionate to the nature of the contract, shall assist the early identification of issues for resolution.

A key factor in contract management is the relationship between PHSO and the contractor, which is vital to making a success of the arrangement. Contract management therefore provides both parties with an opportunity to discuss minor issues before they can escalate, which should prevent deterioration in the contractual relationship and the potential for a complete breakdown of the contract.

#### **4.15.4 The application of contract management**

Contract management during the course of a contract falls into two main activities:

- Contract monitoring and review - the procedures for checking on the contractor's performance and confirming whether or not it is in accordance with the contract, and
- Contract control - the procedures for ensuring that the performance meets the specified standards and for dealing with any lapses or any extensions or variations

The contract management process should be applied to all contracts awarded by PHSO, with the approach taken being proportionate to the strategic importance, complexity and value of the contract.

#### 4.15.5 Categories of contract

To facilitate effective contract management, all contracts shall be 'owned' by a specific Directorate of team. In agreement with CPT, the contract owner shall categorise each contract for which they are responsible according to the guidelines set out below:

Category A	Category B
<ul style="list-style-type: none"> <li>• Key strategic requirement</li> <li>• High complexity</li> <li>• Long lead time to change provider</li> <li>• High value (above £100K p.a.)</li> <li>• High levels of risk</li> </ul>	<ul style="list-style-type: none"> <li>• Non-strategic requirement</li> <li>• Low complexity</li> <li>• Short lead time to change provider</li> <li>• Medium to low value (below £100K p.a.)</li> <li>• Low levels of risk</li> </ul>

These categorisation guidelines are not intended to be prescriptive and contract managers should use their judgement, in consultation with CPT as required, to determine which are appropriate to the contract in question.

Category A contracts shall be subject to the full range of 'first line' contract management activities and CPT activities.

Category B contracts shall be subject to a proportionate range of 'first line' contract management activities and CPT activities which should be determined at the time of contract award.



#### 4.15.6 Categorising contracts: examples

The following examples are provided to assist the categorisation of a contract. It should be noted that contract value alone is unlikely to determine the appropriate contract management strategy.

A contract to provide <b>ICT infrastructure support</b> shall be highly complex, of key strategic importance and high value	Category A
A non-strategic <b>catering contract</b> of medium value but of high complexity and a long lead time to change provider	Category A
A non-strategic <b>cleaning contract</b> of medium value but with health and safety implications and a long lead time to change contractor	Category A
A high-value, non-strategic, non-complex <b>contract for courier services</b> with a short lead time to change supplier	Category B

#### 4.15.7 Who is responsible for contract management?

This section sets out the roles and responsibilities for contract management within PHSO.

##### **First line' contract management activities and responsibilities**

'First line' is the term used to describe the immediate and face-to-face management relationship between the contractor and the contract owner. When conducting a procurement exercise (either competitive or single source), the Directorate or team which owns the contract on behalf of PHSO should identify a nominated member of staff who shall fulfil the following first line contract management role(s) in relation to the following areas:

- measuring the total performance of the contractor against the requirements of the contract, including the deliverables and any KPIs, and contract variations, and any enhancements or added value proposed by the contractor in their tender;
- arranging regular contract monitoring/management meetings as required;
- dealing with performance issues quickly and ensuring that corrective action is taken to prevent similar problems from arising in future;
- ensuring that established lines of communication with the contractor are made;
- ensuring that costs are monitored and kept in line with contract price and approved budgets;
- verifying that all invoices received are accurate and in accordance with the contract, and obtaining authorisation for payment.

Where possible the role of first line contract management should be undertaken by the individual(s) involved in the letting of the contract to ensure continuity from specification, through procurement and into the management of the contract.

#### **CPT activities and responsibilities**

CPT are responsible for providing PHSO with contract management support for contracts which includes:

- maintaining PHSO's Contracts Register;
- attending formal contract monitoring meetings and/or annual review meetings when required with the contract manager;
- providing advice and guidance and direct support on any commercial or contractual issues arising during the life of the contract; including issues relating to non-performance, dispute, contract terms and conditions, price and the application of contractual remedies.

#### **4.15.8 Contract monitoring and review**

The procedures for monitoring and reviewing the contractor's performance shall depend on the nature of the goods or services procured. In all cases, however, ultimate responsibility for day to day monitoring shall rest with the Directorate. CPT is the first port of call to help decide on the level of contract management required, or to provide specific advice and support as required.

Not every contract shall require the same level of monitoring. Contracts with higher risks require more monitoring and more regular reviews than those with low risk. Where monitoring results demonstrate consistent satisfactory performance, the frequency and extent of monitoring may be adjusted accordingly. Conversely, unsatisfactory performance shall require a higher level of monitoring.

CPT shall assist first line contract managers in establishing what within the contract should be monitored and agree a procedure within the contract for providing and receiving regular information and reports on contract performance as required.

#### 4.15.9 How regularly should contracts be reviewed?

Performance under all contracts should be monitored on an on-going basis. The nature and duration of the contract and the level of risk shall determine the frequency of informal and formal review. This should be considered when preparing the specification and modified as the contractual relationship develops. As a general rule CPT recommends the following review points:

Contract Category	Frequency of review	Consolidated annual performance review
Category A	Quarterly/monthly	Yes
Category B	On delivery, bi-annually or annually (unless under-performing)	Optional

#### 4.15.10 Monitoring Processes

Each contract should be considered on its own merits but the following examples show how various aspects of a service may be monitored:

##### **Contracts for Services**

The contractor may be required to submit regular Management Information (MI) relating to performance under the contract which the contract manager, in turn, may validate as appropriate;

Establish a system for checking that the appropriate number and grades of staff are working at the specified times;

Visual inspection of interim reports/completed work, including random checks on quality of performance;

Register feedback from staff that makes use of the contract. Effective arrangements should be set up to facilitate the making of feedback, both good and bad, e.g. a well-publicised contact point or a comment book provided for staff to record their experiences of a service received. Complaints must be investigated swiftly and the results of the action taken fed back to the complainant. (In the first instance, the Directorate should attempt to remedy any complaint as part of the day to day operational management of the contract. In the first instance, the Directorate should attempt to remedy any complaint as part of the day to day operational management of the contract. If this proves to be ineffective the contract manager should consult CPT about appropriate further action (e.g. CPT may raise the complaint with the contractor at a higher level of management in order to obtain remedial action or compensation). Complaints from anyone outside PHSO about the service provided should be forwarded to the Review Team and the 'complaints about us' procedures should be followed.

Hold regular 'House Committee' meetings where staff representatives can raise and discuss service issues provided under a particular contract, and then take forward with the contractor as necessary;

Where appropriate, inspection of any materials and equipment provided by the contractor. Identifying the use of below-standard materials and equipment may provide indirect evidence of unsatisfactory service which in turn may breach the contract in respect of terms, conditions and the specification.

### **Contracts for consultancy services**

In addition to appropriate examples above, consultancy contracts should be reviewed every three months to ensure that they remain of operational necessity and are on course to deliver the originally-stated benefits.

### **Contracts for Goods**

Continuing appraisal of compliance with the specification is necessary both with regard to the goods themselves and matters such as delivery;

- Records should be maintained of the quality of the goods, service intervals and length of life, which shall be relevant if and when future procurements are being considered;
- Inspection of any materials and equipment provided by the contractor. Identifying the use of below-standard materials and equipment, for instance, by asking the contractor to provide evidence that the goods are of the required quality, provides indirect evidence of possible unsatisfactory service which, in turn, may breach the contract in respect of terms, conditions and the specification.

#### 4.15.11 Key Performance Indicators

The specification (the written description of PHSO's requirements) is an important part of the contract. The specification should include clear and measurable deliverables in the form of Key Performance Indicators (KPIs) or performance indicators (PIs) as appropriate.

Performance indicators can be defined as a set of quantifiable targets that help define and measure progress towards achieving the objectives of a particular contract. KPIs / PIs should focus on a range of areas and be Specific, Measurable, Achievable, Realistic and Time bound (S-M-A-R-T).

The deliverables should be identified in the specification. They shall provide the framework for the implementation of successful contract management to ensure that contracts continue to meet PHSO's business requirements and expectations.

The Key Performance Indicators would themselves be weighted on their importance to PHSO through the allocation of severity levels to each Key Performance Indicator. This would allow PHSO to allocate higher severity levels to the Key Performance Indicators that are of high importance.

Service failures shall occur throughout the contract life and therefore it is essential that any failure should contain a remedial plan which not only addresses the failure but also ensures that the root cause of the failure is mitigated. By taking this action PHSO can demonstrate an improvement in service over time as you address the root cause of the failures.

This would also remove the instances of repeat failures for the same key performance indicator.

Where the supplier has failed to achieve the required Performance Standard for a KPI, a Performance Deduction (Service Failure Abatement) shall be applied.

However, as well as these ‘hard’ indicators, it is also advisable to be aware of ‘soft’ issues frequently encountered in other contexts. These include considerations like ethical issues, professional relationships, cultural fit and attitudes to corporate social responsibility. Although objective measurement and assessment of such issues is unlikely to be practicable, such aspects may be usefully considered when tendering for future contracts.

The measures, objectives and targets used to monitor the contractor’s performance must reflect those that were agreed when the contract was let, or as subsequently mutually agreed, and shall continue to apply in the event of contract novation (Novation is the transfer by a contractor to another company of its full obligations and rights under the contract with PHSO’s standard terms and conditions of contract. All requests for novation should be referred to CPT for advice and appropriate action).

#### **4.15.12 Providing information for future planning**

Information gained through contract monitoring can be used to inform decisions on how to enhance the contract now or in the future, if the contract does not allow for the immediate implementation of an identified improvement.

If a service falls short of the expectations set for it but achieves the appropriate contractual performance targets, then we should consider setting targets at a more stringent level in future contracts.

#### **4.15.13 Allowing for continuous improvement**

Public bodies are under constant pressure to improve and contribute to efficiency savings. In contract monitoring, this translates into seeking continuous improvement in contract performance and enhancing value for money.

The requirement for improvement may be embodied in the terms of the contract, particularly so for services in a quickly-changing environment, such as IT. Continuous improvement can be at a number of levels, from simple price or turnaround time improvements to encouraging innovation in the way particular services are delivered.

When drawing up the specification for contracts, consideration should be given to including terms of the contract to encourage the contractor to seek improvements in areas that benefit both PHSO and contractor.

#### 4.15.14 Contract control

- The ideal is to prevent problems arising with contracts in the first instance. It is clearly important to establish a good working relationship with the contractor and individual employees.
- The contractor should always be aware that performance is being closely monitored and that action shall be taken in the event of any lapses. Equally, good performance should be recognised and acknowledged in feedback to the contractor
- When performance does fall short of requirements, the handling of the situation shall depend upon the seriousness of the failures and their frequency.
- It is a matter for discretion as to the level at which complaints are made to the contractor. If regular liaison meetings are held, points of concern can be raised informally before the situation has deteriorated too far. Action points of such meetings should always be recorded and retained by the Directorate and taken forward with the contractor until the actions are completed satisfactorily.
- Where performance does not improve or the same failure occurs or is not resolved within the timescales agreed with the contractor, the contract manager shall need to arrange a formal meeting to discuss and agree Performance Improvement measures with the contractor. The purpose of the meeting is to discuss the issues with the contractor and make them aware of their responsibilities in delivering the contract as agreed.
- The contractor may then be requested to implement a formal performance improvement plan to address any aspects of non-compliance. The plan should include details of the failure, what action shall be taken to resolve the issues, who is responsible and the date by when resolution is required.
- The plan should be compiled by the Contractor in accordance with a pre-agreed format. It should be forwarded to the contract manager by an agreed date and be reviewed and updated on a regular basis to monitor progress is being achieved. Updates to show progress to date and any further actions or issues identified by either party should be documented by the contractor.
- Although contract managers should adopt partnership working principles with contractors, they must be cautious of taking on the risk of delivery

on behalf of PHSO by providing the contractor with ideas or solutions when discussing performance improvement measures.

- Where performance improvement measures are not capable of being resolved or a serious complaint arises, the Directorate should immediately inform CPT which shall provide support and advice on the action to be taken. Ultimately it may be necessary for PHSO to enforce the specific terms and conditions of the contract or discuss contractual/financial remedies.

#### **4.15.15 Contract records to be maintained**

- Written records of performance should be maintained throughout the term of the contract. It is important that any deficiencies are recorded with the date and the name of the person to whom any complaints were made.
- Any significant complaints should be made in writing or followed up in writing. Any such letters would be written by CPT and be dependent on the circumstances and context of the performance of the contractor. Copies of such letters must be retained.
- Records of a contractor's performance shall be particularly important if it proves necessary to take formal action to terminate the contract.
- Action points should be taken of any meeting with the contractor and retained. Such action points should be taken forward with the contractor until they have been completed satisfactorily. A record should be kept of telephone conversations when any changes to the contract are agreed; such changes should be subsequently formalised by means of a signed contract variation.
- A comprehensive account of performance is also valuable when the question of re-letting the contract arises or if another Directorate or a Government Department seeks references on a particular contractor.
- In the case of call-off contracts (e.g. stationery supplies) where variable quantities of goods may be ordered, a central record of all items ordered should be retained. Not only are such records essential for the verification of invoices, they are also useful for use as historical information to inform bidders for a follow-on contract.

#### **4.15.16 Termination**

Termination of a contract can arise by/through:



- **default** - failure to deliver the goods/services in accordance with the contract terms;
- **financial failure** - normally financial instability of the contractor, leading to bankruptcy or liquidation;
- **exercise of Break** - where PHSO for its own reasons wishes to terminate the contract, e.g. through a change in policy;
- **breaches** - a breach of any essential condition of contract shall allow the party not in breach to terminate the contract.

#### **4.15.16.1**      *Default*

If a contractor fails to carry out their contractual obligations then PHSO's terms and conditions reserve the right to terminate the contract and make good the default.

If a default is made good by a third party, (that is, if another contractor is appointed to take over the contract and put things right) the additional cost to PHSO may be claimed from the original contractor. To avoid prejudicing PHSO's position, it is essential that such cases are referred to CPT for the necessary contractual authority to determine the contract. All cases must be dealt with on an immediate basis and precise procedures must be followed to ensure that all actions are supportable in law.

#### **4.15.16.2**      *Financial failure - Liquidation and Receivership*

Once it becomes known a contractor has gone into liquidation or been taken into receivership, the Directorate responsible for managing the contract should liaise with CPT on the appropriate action to take.

#### **4.15.16.3**      *Exercise of Break*

Once it becomes known that PHSO may wish to terminate the contract e.g. through a change of policy, then the matter must be referred to CPT prior to any action being taken. Break of contract is likely to have financial consequences and shall need to be considered carefully.

#### **4.15.16.4**      *Breach*

Either party can cause a breach of contract which would allow the other party to terminate the contract and seek potentially seek damages. A breach caused by a contractor may, for example, relate to a significant failure to provide goods or services to the quality required, or to a breach of PHSO's security

procedures. A breach by PHSO would include an unreasonable failure to pay the agreed contract price within the timeframe specified in the contract.

#### **4.15.17      Reporting of Contract Monitoring**

Authorised Officers are required to report annually on performance of contracts over £50,000 per year using the following assessments:

- Green status - no performance issues and outputs/outcomes are consistently being delivered;
- Amber status - some performance issues have been identified and are being managed;
- Red status - major performance issues and more intensive monitoring arrangements are required. These contracts may be subject to formal contract review measures.