

Procurement and Contract Management Code

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Document Version History

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1 INTRODUCTION

- 1.1 The Procurement and Contract Management Code (“the Code”) exists to ensure maximum value for money is achieved and that regulatory compliance is maintained in all commercial activity at PHSO and that PHSO resources are used properly in all procurement activity. Value for money is the optimal combination of whole life cost (capital, revenue or a combination) and quality that meets the requirement. The Code forms part of the PHSO governance framework and compliance with the policy, by all staff, is mandatory. The Code is supported by the additional Procurement and Contract Management User Guide which provides further comprehensive guidance for anyone who needs to know how the procurement of goods, works and services is carried out within PHSO.
- 1.2 The Code will be formally reviewed every two years from the date on which the previous version has been approved by the Board. However, authority is delegated to the Chief Executive to make minor amendments to the text of the Code that do not change the underlying intention of the Code.
- 1.3 The Code is designed to:
- Protect PHSO from poor contracting decisions, e.g. decisions which result in non-delivery, low quality and low value for money by deploying maximum competition sourcing strategies which:
 - Ensure contracts are not awarded to predetermined suppliers;
 - Encourage supplier innovation;
 - Encourage optimal use of public sector Framework Agreements and centralised contracts.
 - Protect PHSO’s reputation through adopting good governance culture in all procurement-related activities, including:
 - Adopting and applying recognised good practice;
 - Complying with UK procurement legislation;
 - Public Sector Framework Agreements;
 - Electronic tendering;
 - Removing barriers for Small and Medium Sized Enterprises (SME) and Voluntary, Community and Social Enterprises (VCSE) in bidding for contact opportunities;
 - Standardised evaluation methodology;
 - A standardised approach to contract management.
 - Guide and support PHSO in:
 - Decision-making, including provision of relevant and accurate management information;
 - Ensuring early identification of procurement activity to enable effective planning and appropriate use of resources;

- Early identification of risks and appropriate mitigation strategies.
- Guide and support PHSO in effective decision making and maximizing use of:
 - Standard terms and conditions to maximise contractual protection;
 - The in-house professional procurement team for advice and guidance;
 - Effective contract management, using recognised project management, contract management and relationship management techniques.

1.4 To achieve these, it is essential that the Code, as set out in the following sections, is followed at all times.

2 PRINCIPLES

2.1 Any procurement process conducted by PHSO should comply with the following principles:

- Staff members undertaking procurement activity must maintain the highest professional standards of behaviour and always treat all vendors and potential vendors fairly and equally.
- All procurement activity must be conducted fairly, openly and in a transparent manner.
- All procurement activity must clearly demonstrate and deliver value for money and consider the impact of environmental, economic and social factors in compliance with the Public Services Social Value Act 2019.
- All procurement activity must comply with all legal requirements.
- All procurement related expenditure must be approved prior to being incurred as set out in the Scheme of Financial Delegation.
- All members of staff involved in procurement activity must be vigilant of any attempt by a vendor to evade tax.
- All members of staff must be aware and lookout for signs of unacceptable practices in the supply chain such as fraud, corruption, modern slavery, human trafficking and wider issues such as child labour.
- To ensure these principles are adhered to in practice, the Procurement Team will proactively support the organisation by providing information, advice, guidance and training relating to the latest procurement requirements.

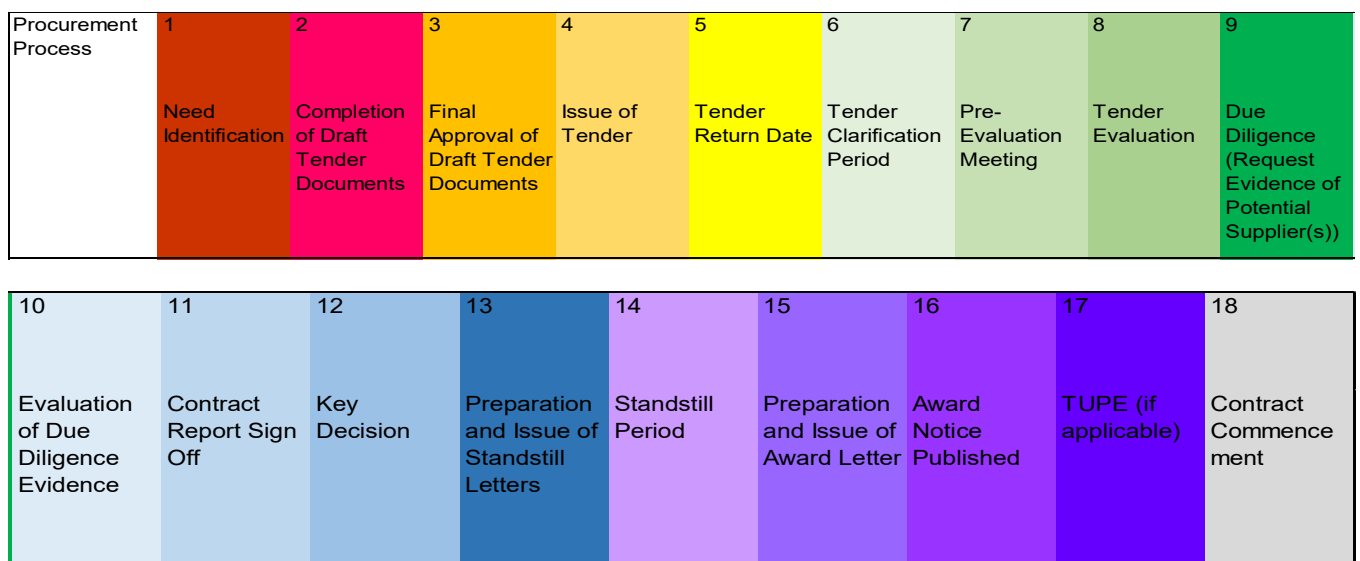
3 CONFLICTS OF INTEREST

- 3.1 All staff members of PHSO involved in any 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.
- 3.2 Any potential conflicts of interest will be recorded by the Procurement Team and referred to the Procurement and Contracts Manager to determine whether the declared relationship or association gives rise to a conflict of interest.
- 3.3 All staff members involved in any procurement activity must complete a Conflict of Interest Declaration form at the start of the procurement process so that any mitigations can be put into place.
- 3.4 In all procurement exercises, potential vendors are also 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.
- 3.5 Further guidance on conflicts of interests can be found in PHSO’s, “Conflicts of Interest in Procurement Policy” document on the Intranet.

4 THE PROCUREMENT PROCESS

- 4.1 The stages of the procurement process are shown in Diagram 1, although not every stage will be required in every procurement it provides a structure with which to work. Further detail is available in the Procurement and Contracts User Guide.

Diagram 1 The Procurement Lifecycle



- 4.2 Procurement practices need to be fit for purpose, efficient, effective and flexible. This is achieved by good planning, accurate specifications (avoiding under or over specifying), and through collaboration between teams as appropriate.
- 4.3 The risk appetite for Procurement is Cautious with a preference for safe delivery options that have a low degree of inherent risk and may only have a limited potential for reward. Risks are to be identified and measures taken that mitigate or remove these risks in particularly those that are unnecessary. These measures can include avoiding activities that cause the distortion of markets, and damage to a supply chain.

5 KEY PERFORMANCE INDICATORS (KPI's)

- 5.1 All procurements over £12,000 which commit PHSO to on-going provision of goods and/or services need to give consideration to KPI's in order to measure contract performance
- 5.2 KPI's are:
- to be proportionate to the value and complexity of the procurement,
 - to be meaningful,
 - to be measurable,
 - not to be onerous towards a vendor (these risk challenge and inflated costs).
- 5.3 KPI's form an important element of vendor performance management, where KPI's are breached remedial action will be required.

6 BUDGET APPROVALS AND BUSINESS CASES

- 6.1 Explicit budget approval by the budget holder should be obtained prior to any procurement processes commencing when the contract value is estimated to be above £20,000. Confirmation by Finance that it is within budget must also be obtained.
- 6.2 For all other expenditure below £20,000, approval must be obtained prior to the expense being incurred in line with the Scheme of Financial Delegation.
- 6.3 An approved business case is also required to support a request for expenditure when:
- Where there is a need to commit expenditure that is not currently budgeted
 - When capital expenditure is required
 - When a new service is planned to be delivered or procured
 - Where significant changes are planned to the way a service is delivered
 - Board approval for expenditure in excess of £500,000 is also required (regardless of whether it is an extension of existing contracts and where budgetary provision exists).

Copies of approved business cases need to be provided to the Procurement Team as part of governance requirements prior to initiating the procurement activity.

- 6.4 For values under £500,000, a business case is not required to renew a contract if the budget provision already exists or to amend services where there little or no change to cost or customer experience.
- 6.5 The level of detail required in a business case should be proportional to the value and complexity of the requirement engagement with the Procurement Team needs to commence at the point of writing.

7 CONTRACT VALUES AND TENDER THRESHOLDS

- 7.1 It is important to properly estimate the total value of a contract prior to commencing any procurement activity on the basis that different rules apply depending on the nature and value of the contract.
- 7.2 The contract value is the total of all the expected costs inclusive of VAT to be paid over the whole period of the contract (including any optional extensions). Awarding of contracts to multiple vendors is allowed, e.g. to encourage more SMEs and VCSEs to bid. Awarding to SMEs and VCSEs, as with all potential providers, is subject to meeting legislative requirements and the specification. The Procurement Team will advise as necessary on this approach.
- 7.3 The value of new requirements is to be based on the allocated budget, for the retendering of existing contracts existing expenditure is to be considered a base line for estimating future costs. Estimated contract values should not be calculated with the deliberate intention of excluding the contract from the scope of the application of the regulations.
- 7.4 Where PHSO makes multiple and repeated purchases of the same goods or services, the value of each purchase will be aggregated to determine the total value across vendors and budget holders. The purpose of aggregation is to protect PHSO from breaching the UK Procurement thresholds and to promote value for money.
- 7.5 The Procurement Team are responsible for monitoring PHSO's aggregated spend on all goods and services. This will be done on an on-going basis to determine whether a suitable contractual agreement is required.

8 SOURCING OPTIONS

- 8.1 There are a number of options available for PHSO in procuring goods and services. Specialist advice from the Procurement Team is available to support budget holders. The procurement thresholds as set out below and in the Procurement and Contract Management User Guide determine the procedural requirements of the sourcing activity. A summary of the thresholds and sourcing options are set out in Table 1: Sourcing Routes below. It is important that advice from the Procurement Team is sought to establish the most appropriate route.

Table 1: Sourcing Routes

<u>Whole Life Contract Value (incl. VAT)</u>	<u>Instructions</u>
Under £5,000	Multiple quotations are recommended. Single Tenders Applications (Waivers) are not required.
£5,000 - £11,999	Stakeholders are to seek written quotations. 2 to 3 quotes are required.
£12,000 - £50,000	Procurement Team issues requests for quotations via Proactis e-tendering portal.
£50,001 - FTS Threshold	Opportunities to be advertised via Proactis e-tendering portal.
Over FTS Threshold	Opportunities to be advertised as per The Public Contracts Regulations.

Framework agreements can be used for procurements of any value, if a framework agreement is utilised competition can not be invited from outside of it.

The Government Transparency Requirements necessitate the publication of notifications for all awards over the value of £12,000 (£10,000 excl. VAT) on Contracts Finder.

Unless a framework agreement is being utilised all contract opportunities over £12,000 must be published on Contracts Finder.

- 8.2 For anticipated spends over £12,000, a pre-procurement template should be completed and returned to the Procurement Team prior to commencement of the procurement exercise.
- 8.3 The information contained within the template will allow the Procurement Team to provide informed advice and to determine an appropriate procurement timetable.
- 8.4 Where appropriate, PHSO will seek to source its requirements via existing framework agreements, the Procurement Team can advise which framework agreements may be suitable to meet the requirements.
- 8.5 When it is not possible to use a framework, PHSO is committed to a transparent approach to sourcing by encouraging, as far as reasonably possible, competitive bidding for requirements of all values.

8.6 There are occasions where it is necessary to undertake market engagement prior to a procurement process, this engagement should take place at the point where it can be used to inform the specification. However, once the tendering process has commenced no further contact should be made between the market and members of PHSO staff as this could jeopardise the integrity of the procurement.

9 SINGLE TENDERS

9.1 It is Government policy that all goods and services in the public sector should ideally always be procured by competition in order to obtain value for money.

9.2 A single tender action will be appropriate only in exceptional circumstances and in each case comprehensive evidence is to be provided to support the case. The circumstances are as follows:

- If there was a competition for the initial work and it becomes necessary for limited follow-up work which could not have been anticipated in the original contract award. This must not start a series of single tenders requests on the same grounds.
- Where there is a compatibility issue, for example with office equipment, IT, or where a proposed business model or other recommendation made by a consultancy is to be implemented.
- Where there is genuinely only one provider who is capable of meeting the requirement.
- Where there is a genuine emergency requirement for goods or services to maintain business continuity. This is not an alternative for failing to commence a procurement process in good time.
- Where there are genuine value for money reasons for contracting directly with a particular vendor without competition.

9.3 Single Tenders will be required for any procurement over £5,000 that have not been subject to a competitive process.

9.4 All single tenders over the value of £12,000 must be authorised by the Chief Operating Officer, or in their absence, the Assistant Director of Finance. The business area must prepare a Single Source Justification Form detailing why the single tender action is viewed as an exceptional circumstance. Single Tenders Applications (Waivers) are to be submitted to The Procurement and Contracts Manager for comment prior to submission to the Chief Operating Officer or Assistant Director of Finance.

9.5 Single tenders applications with a value of under £12,000 must be authorised by the Assistant Director of Finance.

9.6 Single tenders applications will only be authorised in advance of the spend.

- 9.7 All authorised single tender applications will be reported to the Audit and Risk Assurance Committee (ARAC).
- 9.8 All authorised single tenders applications must comply with UK Procurement Law. The Procurement Team will advise if there is any risk of non-compliance.
- 9.9 The following categories in Table 2 are exempt from the requirement for a single supplier tender action but must be documented and authorised as follows.

Table 2 - Single Tender Exemptions

Service Type	Process	Authorisation
Legal Representation in Courts	Single tender award to most suitable firm, which is variable according to the subject matter. Record on a Quotation Summary Form (QSF) and attach to the requisition.	Director of Legal, Quality and Clinical
Professional Body Training / Qualifications	Record on a QSF and attach to the requisition.	Assistant Director of People & Talent
All recruitment advertising	Record on a QSF and attach to the requisition.	Assistant Director of People & Talent
Annual Subscriptions or memberships from approved bodies	Record on a QSF and attach to the requisition.	Assistant Director of People & Talent
Exhibiting at conferences	Sole route to access. Record on a QSF and attach to the requisition.	Assistant Director of appropriate business area
Attendance at conferences	Sole route to access. Record on a QSF and attach to the requisition.	Assistant Director of appropriate business area
Access to Work Scheme	A DWP scheme where expenditure to their stated level is refundable. HR to pass the requirement to ICT/Facilities for processing. Access to Work make recommendations as to who equipment should be sourced from. Record on a QSF and attach to the requisition.	Assistant Director of ICT & Accommodation

QSF's that record a Single Tender Exemption are to be sent to the Procurement inbox at Procurements@ombudsman.org.uk for recording purposes prior to being attached to the requisition.

10 ROLES AND RESPONSIBILITIES

10.1 To protect both individual members of staff and PHSO, no single individual should be responsible for all the key decisions in the procurement process, which are:

- Identification of the need to buy
- Contract award decision
- Commitment of expenditure
- Goods/services receipt confirmation

11 TENDER OPENING, EVALUATION AND RECOMMENDATIONS

11.1 Procurements undertaken by the Procurement Team and run through the Proactis e-tendering portal are subject to an electronic seal which cannot be removed by the 'verifier' until the response deadline has passed, the 'verifier' is to be independent of the process.

11.2 Evaluations are to be carried out on the basis of the criteria set out in the contract specification. An evaluation usually takes account of qualitative factors as well as whole life costs, the award criteria and the evaluation methodology need to be agreed in advance of the procurement process to provide transparency. A record of scores and contract award decisions must be retained, decisions must include reasoning as to why bids have been deemed to be successful and unsuccessful.

11.3 A member of the Procurement Team will sit on evaluations panels to ensure consistency in the scoring process.

11.4 If it is determined by the evaluation panel that all of the submissions have failed to meet the minimum requirements then a collective decision can be made to stop the procurement process. The evaluation of the tender(s) will cease, the decision and the rationale will be recorded in the Procurement Report with all the bidders being notified via the Proactis e-tendering portal.

11.5 At the conclusion of a competitive procurement process the Procurement Officer leading the procurement will complete a Contract Recommendation Report for sign-off by the relevant stakeholder, Procurement and Contracts Manager and relevant Director/Associate Director. This is to provide an audit trail that recommendation to award has been accepted and the information contained can be provided in the event of a legal challenge.

12 INFORMATION SECURITY

- 12.1 Prior to starting any procurement activity the Data, Security & Privacy Team should be consulted to consider whether there are any data security or data protection implications. This will involve the completion of PHSO's data protection screening tool which will inform whether a data protection impact assessment (DPIA) must be completed.
- 12.2 Any completed screening tools and DPIAs, should be e-mailed to PHSO's Data Protection Officer at DPO@ombudsman.org.uk for review and to record the activity.

13 TERMS AND CONDITIONS OF CONTRACT

- 13.1 When not using an approved Framework agreement, PHSO's Standard Terms and Conditions should, where possible, be used. No agreement to a 'vendors' terms and conditions shall be reached without agreement by the Procurement Team and, where applicable, the Information Assurance Team.
- 13.2 Where a framework has been used the framework terms and conditions will apply.
- 13.3 Terms and conditions involving performance incentives to motivate contractors may be used where appropriate and proportionate.
- 13.4 As set out in its standard conditions of contract, PHSO will own all intellectual property that arises out of contracted services (unless this is clearly inappropriate e.g. with "off-the-shelf" software). Staff members should be aware that this is an area on which PHSO is not prepared to negotiate and if a bidder is unwilling to accept this, it may mean that work cannot be procured from them.
- 13.5 Staff members sourcing external services must ensure that vendors accept these provisions and that there is nothing in their bid to contradict them. Where necessary, advice should be sought from the Procurement Team.

14 PURCHASE ORDERS, INVOICING AND CONTRACT SIGN OFF

- 14.1 No commitment of expenditure should be made until the procurement process has been completed and the contractual agreement has been signed. The Purchase Order (PO) will be automatically e-mailed to the supplier once authorised, unless a specific request is made not to.
- 14.2 The authority to sign a contractual agreement (including extending an existing contract that has a valid option to extend) is in line with the Scheme of Financial Delegation.

15 CONTRACT MANAGEMENT AND POST CONTRACT RESPONSIBILITIES

- 15.1 Contract management is fundamental to the success of all contracts and helps to ensure that a suppliers' delivery and performance is maintained or improved throughout the contract period.
- 15.2 The Procurement Team is to be notified by stakeholders should there be any instances of a suppliers' performance not meeting the required level, these instances will be recorded for future contract reviews unless it is serious enough to warrant immediate action.
- 15.3 Further Contract Management Guidance is contained within the Procurement and Contract Management User Guide.
- 15.4 All contracts of £12,000 and above will be recorded on PHSO's contracts register by the Procurement Team.

16 CONTRACT MODIFICATIONS AND EXTENSIONS

- 16.1 Once a contract has commenced, it may only be modified, changed or amended in very limited circumstances. Prior to modifying any contract, whether in terms of value, duration, scope or otherwise, advice must first be sought from the Procurement Team.
- 16.2 All modifications will be undertaken by the Procurement Team using a formal Change Control Process.
- 16.3 Contracts that have valid options to extend may be extended, but only subject to approval of the relevant Director and in line with the Scheme of Financial Delegation. Advice must however be sought from the Procurement Team in advance of the contract end date.

17 NON-COMPLIANCE

- 17.1 Breaches of the Procurement Code will be reported to ARAC.
- 17.2 Repeated breaches of the Procurement Code may lead to disciplinary action against the individuals concerned.

18 FORMS

- 18.1 All version controlled procurement forms are available for download on Ombudsnet. Stakeholders are required to download a fresh copy each time it is required as these form are subject to change, old forms that have been overtyped may be rejected and returned to sender with instruction that the updated form is to be utilised.

19 FURTHER GUIDANCE

- 19.1 A detailed 'How To' guide is available on Ombudsnet to support managers with the detailed end-to-end processes for procurement. The Procurement Team also have a range of standard documents for sourcing and procurement

activity including: Specification Templates, Quotation Summary Forms, Request for Quotation / Proposals Template, Invitation to Tender Templates, Tender Evaluation Forms and Contract Management templates.

===== END =====