

Procurement Policy and Procedure

CG21

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Applies to:	All NHS Resolution employees and non-executive directors. Contractors and agency staff
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1. Procurement policy

Introduction

NHS Resolution as an arm's length body (ALB) to the Department of Health & Social Care (DHSC) is responsible for public funds.

The purpose of this procurement policy and procedure is to support a procurement process that will ensure our organisation and staff are kept safe and that we are demonstrating value for money in what we buy.

This document sets out the NHS Resolution policy, procedure and advice to employees in relation to non-staff procurement.

Scope

This Policy and Procedure applies to all NHS Resolution staff and personnel engaged by NHS Resolution to undertake procurement activities on its behalf.

This Policy and Procedure relates to all procurement activities associated with the acquisition of all Goods, Services or Works of any value.

Procurement of all Goods, Services or Works must be carried out in line with this Policy and Procedure to ensure compliance with all necessary regulations, safety of all staff and protect NHS Resolution's reputation

This document does not apply to contracts of employment, secondments or other similar arrangements which are for the purposes of filling a resourcing gap

This document does not apply to use of Purchasing Cards which is set out in the NHS Resolution Purchasing Card Policy and Procedure, however, where possible purchasing cards should not be used not to circumnavigate the procurement process.

Aims

The aim of this policy and procedure is to provide a supportive framework within which NHS Resolution can conduct procurement activity whilst ensuring:

- adherence to The Public Contracts Regulations (2015) (as amended) ("PCRs")
- the safety of staff from the purchase of unreliable, untrustworthy or dubious goods, services or works.
- adherence to the NHS Resolution Standing Financial Instructions (SFI'S)
- goods, services and works are procured efficiently, economically and effectively

Principles for the policy and procedure

Fraud, bribery and corruption

Careful control over the procurement process is necessary to ensure best use of public funds and to protect NHS Resolution and individual employees against opportunity for error or fraud.

The NHS Resolution Senior Management Team have responsibility for ensuring that appropriate procedures and controls are designed, managed and monitored in order to protect the interests of NHS Resolution.

The Fraud Act 2006 states that; “any person who dishonestly makes a false representation to make a gain for themselves or another, or who dishonestly fails to disclose to another person information which he is under a legal duty to disclose, or commits fraud by abuse of position, commits an offence”.

The Bribery Act 2010 states that; “giving or receiving a financial or other advantage in connection with the “improper performance” of a position of trust, or a function that is expected to be performed impartially or in good faith, is an offence”.

Where the organisation is engaged in commercial activity it could be considered guilty of a corporate bribery offence if an employee, agent, subsidiary or any other person acting on its behalf bribes another person, intending to obtain or retain business or an advantage in the conduct of business for the organisation and it cannot demonstrate that it has adequate procedures in place to prevent such.

Any concerns relating to potential fraud, bribery or corruption in the procurement process must be immediately reported to the Local Counter Fraud Specialist, the Director of Finance and Corporate Planning or the NHS Counter Fraud Authority. Your concerns will be treated in confidence and you can remain anonymous.

The Local Counter Fraud Specialist, Gemma Higginson, can be contacted on 07800 617 680

gemma.higginson@rsmuk.com

gemma.higginson1@nhs.net

Referrals can be made to the NHS Counter Fraud Authority using the National Fraud and Corruption Reporting Line 0800 028 40 60 or online at www.cfa.nhs.uk/reportfraud.

Declarations of interest

When participating in any aspect of procurement staff members are required to declare any personal interest which may affect or be seen by others to unduly influence or affect their impartiality in a matter relevant to their duties.

In the first instance this declaration should be to the Corporate Governance Team (CGT)

At the commencement of a procurement all staff who are involved in the evaluation of suppliers' proposals will be given and must complete, sign and return a statement of declaration to the CGT procurement lead. These declarations will be filed with the procurement documentation, held by the CGT.

This is in addition to the requirements of NHS Resolution's conflicts of interest policy which continues to be applicable.

Data Protection 2018 including GDPR

To ensure compliance with DPA 2018 it must be made clear what data will be processed or controlled through the duration of the contract.

Any tender documents and contracts should, as a minimum contain:

- The subject matter and duration of the processing of the data
- The nature and purpose of the processing,
- The type of personal data and categories of data subject, and the obligations and rights of the controller.

2. Procurement procedure

Procurement is concerned with achieving best value during the acquisition of goods, services and works from the point when a potential requirement is identified until the conclusion of a service contract or asset disposal. However, procurement is not solely focused on costs as it can also support NHS Resolution's wider policies and objectives, for example, by incorporating Corporate Social Responsibility (CSR) into the range of criteria.

2.1. Pre-Procurement

Initiation

Procurement activity can be initiated by either:-

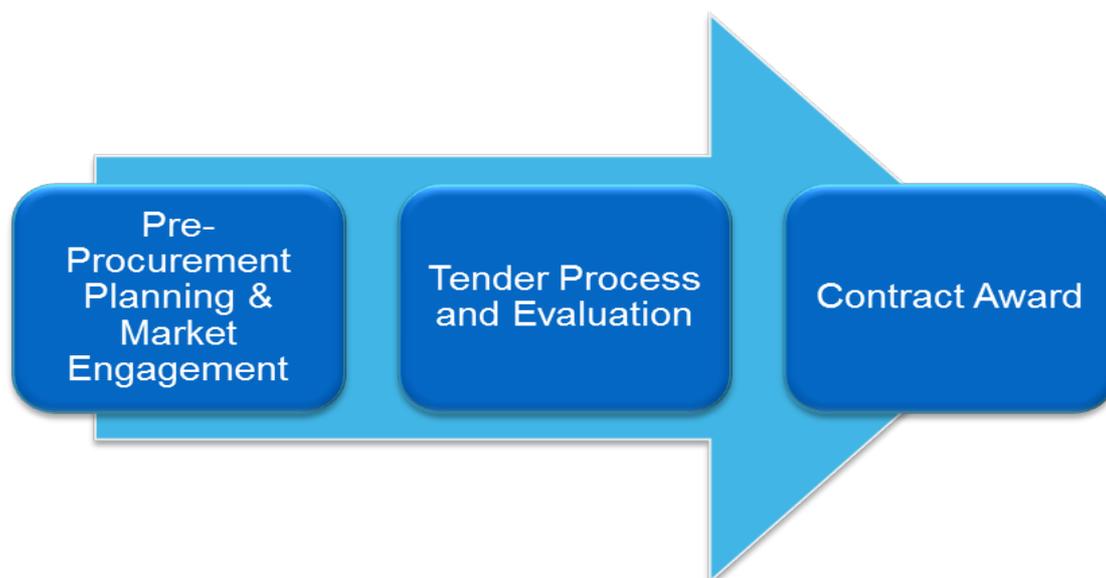
- New business needs which have arisen in response to projects/programmes (including DSHSC directives) and/or new ways of working; or
- Recurring/existing business needs which are already being met by a third party supplier and for which the business has a continued requirement

2.2. The Procurement Process:

Where it is established there is a requirement to procure goods or services it is important to plan appropriately

The Corporate Governance team (CGT) can support the process by establishing:

- Whether there is a current contract in place which can meet your needs.
- If there is a plan already to procure similar goods or services which could also meet your business needs.
- If there is a requirement to seek approval from the DHSC
- The procurement route which will need to be followed



Stage 1: Pre-Procurement planning and market engagement

2.3. Pre- Procurement Planning

Effective planning will ensure a successful tender exercise Appendix A sets out some of the key steps and indicative timings within the procurement process:

It is good practice to consult with key stakeholders to ensure the needs of all interested parties are considered.

2.4. Market Engagement

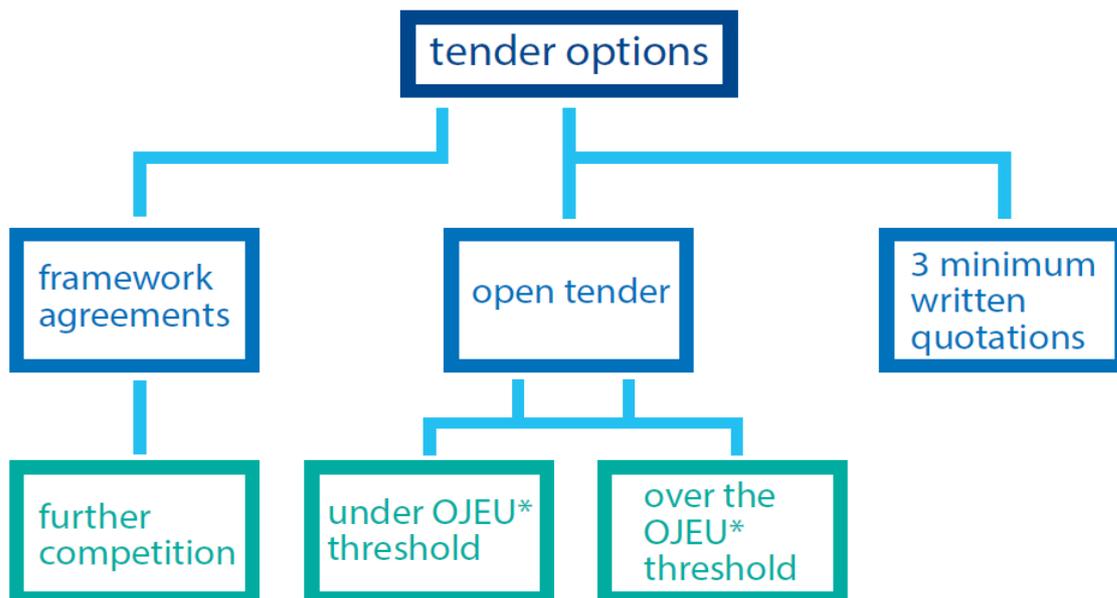
Early market engagement can provide benefits to procurement, as it brings supplier perspectives to procurements at an early stage, offering potential benefits in terms of making the subsequent procurement process more focused and efficient.

The CGT can advise and support the best routes for market engagement.

Stage 2: The Tender process and evaluation

Procurement pathways:

These are the three procurement routes. The Corporate Governance Team will provide guidance on which procurement pathway to use;



*Official Journal of the European Union

Framework agreements

- 2.5. NHS Resolution has access to 'frameworks' of approved suppliers for the provision of particular types of goods and services which have been established following a competitive process.
- 2.6. Where available and appropriate (and in accordance with the call-off arrangements) the organisation will make maximum use of framework agreements to fulfil any requirements for common goods and services. Using a framework will still involve an element of competition; typically a mini-competition between framework suppliers.
- 2.7. If the call-off arrangements allow a direct award may be possible and guidance should be sought from the Corporate Governance Team.
- 2.8. If a framework agreement is not available or appropriate then the relevant competitive process as set out below should be followed

The Competitive process

The Procurement process must be fair and open; therefore, NHS Resolution ensures transparency by advertising tender opportunities through the government's current contract opportunities portal.

Please check with the CGT as consideration will also need to be given to the Cabinet Office control framework on spend

2.9. £0-10k

For expenditure below £10,000 (excluding VAT), written quotes or tenders are required to demonstrate Value for Money (VFM). The CGT can advise on the requirements which will achieve the best outcome.

2.10. 10k to EU Thresholds

For expenditure over £10,000 but below the EU Threshold a tender process should be followed. The CGT will support the preparation of the tender documents required, advertise and administer the required documentation.

2.11. Over EU Thresholds

For expenditure over the EU Threshold, NHS Resolution must comply with the Public Procurement Contracts Regulation (PCR) 2015.

The current EU threshold which may apply to NHS Resolution's procurements is approximately £164,000.

There are some exemptions depending on the type of goods or services to be procured, the CGT will provide advice so as to ensure there is no breach for PCR 2015 which could result in legal challenge to NHS Resolution.

There is a requirement to advertise the opportunity through the Official Journal of the European Union (OJEU)

The Corporate Governance will support the preparation of the tender documents required, advertise and administer the tender process. The CGT will manage all the tender requirements through a procurement portal and act as first point of contact.

The Tender Documents

Invitation to tender/request for quote documents (ITT/RFQ) will be drafted with the support of the CGT, they will include, as a minimum:

- The requirements of the goods and services being tendered for
- The contract terms and conditions
- Consideration of GDPR and the requirements of the supplier as a data processor or controller
- Technical questions to be considered with evaluation criteria

Tender evaluation

Evaluation is an essential part of the procurement process. It is the means by which competing proposals are compared with each other and must be marked against the pre-determined evaluation criteria set out in the procurement documentation.

The decision to award a contract must be solely based on the evidence as provided in the supplier's proposal. The decision must not be made on external considerations, for example, reputation, hearsay, anecdotal or unsubstantiated views.

Evaluation criteria

The bids received will be assessed against quality, technical and cost and consideration should be given and in line with the criteria and evaluation weighting as set out in the ITT/RFQ.

Evaluation scores must be made on the basis of the material included in the supplier's proposal, together with information obtained through presentations and clarifications.

Evaluation panel

The evaluation panel is at the core of the selection process and, therefore, it is recommended the panel is made up of those who have a technical understating of the goods or services being tendered for.

Each of panel will independently evaluate the bids received and must fully record their rationale for their evaluation and the scores awarded

A consensus meeting will be convened with the evaluators and overseen by a member of the Corporate Governance Team. The group will discuss and agree the final scores for each for the bids received.

From this agreement to:

Invite shortlisted bidders to a validation meeting. This may include a presentation from the bidder with a question and answer session. These meeting will enable the panel to have the further validation they require to agree who to award the contract to.

Stage 3: Completion of the Procurement Process:

Once the successful bidder has been identified the following will occur

- A letter informing the successful bidder/s they have been awarded the contract
- A letter to the unsuccessful bidder/s with broken down feedback on the evaluation of their bids, the name of the bidder who was successful and their overall evaluation score.
- Signing the contract by the successful company and NHS Resolution
- Contracts must be held centrally with the CGT

Single tender action

A Single Tender Action (STA) or 'Waiver' is a document which must be completed where a purchaser intends to make a purchase without a competitive process being completed

An STA may be appropriate in the following situations:

- Follow-up work where the provider has already carried out initial work in the same area assuming there was competition for the initial work, and that this single tender action does not start a series of several 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 or will be interested in doing so;
- There is a requirement to directly award a current supplier as a tender process has not been successful
- There is a requirement to directly award a current supplier as there is a genuine requirement to delay a tender
- Where there is sufficient evidence that competition will not result in a better price;

The STA must be reviewed by the CGT and approved by NHS Resolution Director of Finance and/or the Chief Executive.

STAs may be subject to review by the audit committee and must be available for production upon request by NHS Resolution auditors; therefore once countersigned they should be sent to the CGT for filing.

STAs for high value contracts and professional services may require DHSC approval (this is in addition to business case approval and professional services spend approval).

Contract extensions

Existing contracts can only be extended where there is a specific clause in the contract to do so.

Contracts should not be rolled over or extended to avoid a procurement process.

Advice should be sought from the CGT if an extension is being considered.

3. Document control

Date	Author	Version	Reason for Change
05.01.18	Catherine O'Sullivan	Draft V1.0	First draft of revised policy and procedure to pull two documents into one.
10.01.18	Zenobia Christie	Draft V1.1	Redraft of the procedure to simplify the steps involved
25.01.18	Zenobia Christie	Draft V2.0	Amends to the procedure to include framework processes
30.01.18	Catherine O'Sullivan	Draft V3.0	Duplication between policy and procedure section removed
12.02.18	Zenobia Christie	Draft V4.0	Amend reference to NHS LA to NHS Resolution
22.02.18	Catherine O'Sullivan	Draft V5.0	Minor amends to procedure
22.02.18	Catherine O'Sullivan	Draft V. 5.1	Redraft to remove reference to DHSC sign off as this is being reviewed as a wider DHSC policy
25.04.18	SMT	Draft V 5.1	Minor amends and typo corrections received. Document Approved
10.08.18	ARC	Draft V 5.2 Endorsed	
27.4.2021	SMT	V 5.2	SMT agreed review date extension until October 2021

Procurement milestone guidance

Action	Indicative Timings
Business Area identifies need for procurement	
Liaise with CGT to ascertain if a DHSC business case and or ministerial sign off is required	4 weeks for DHSC sign off 8 weeks where Ministerial sign off is required
CGT work with business area to draft Invitation to Tender and contract documents	£10k to below OJEU- 6 weeks Over OJEU- 8 weeks
Business area confirms the evaluation panel for the tender	
Procurement timetable to be finalised with all evaluators	
Relevant dates to be put in the diary of all evaluators i.e. when to evaluate, consensus meetings, validation meetings etc.	
Procurement documents checked by CGT	
Contract Owner/Project Manager to check tender package after CGT review	
High value and OJEU ITT to be signed off by CEO	
OJEU - Notice drafted and agreed with business area.	
OJEU - Notice and ITT documents sent to OJEU office for review	
OJEU - Notice and ITT documents advertised	
Non OJEU- Release of ITT	
CGT to draft evaluation templates for quality and price	
Clarification period (evaluators to be available to answer)	

Tender receipt deadline	10k to below OJEU- 3-6 weeks Over OJEU- 8- 12 weeks
Evaluators to complete Non-Disclosure Agreements and Confidentiality Agreements once bidder identities are known	
Downloading of tenders and preliminary compliance review	1 week
Tender evaluators to individually evaluate tenders for the first time, and CGT to evaluate pricing	Up to 2 weeks
Initial technical consensus meeting moderated by CGT	1 week
Suppliers to be ranked using both initial, moderated technical and pricing components	
Validation meetings with suppliers if required	2 weeks
Final review of scores (technical scores can be pushed up) including final moderation by CGT	1 week
CGT to draft award recommendation report	1 week
Contract award recommendation report to be reviewed and signed by evaluating panellists	3 days
OJEU - Standstill letters sent out -	10 Calendar days
Standstill Period starts 10 calendar days after the award date	
Standstill Period ends	
OJEU -Award letters issued	
Non OJEU -Contract award letters to be sent out (successful and unsuccessful)	

Procurement definitions

The following may be used through the procurement of goods or services and acts as a reference:

Advertise: To make a public announcement of the intention to purchase goods or services. This is usually within a legal remit in order to create a transparent process.

Best Value for Money: This is defined as the most advantageous combination of cost, quality and sustainability, of the life of the contract.

Bribery: Giving (or offering), or receiving (or requesting) a financial or other advantage, in connection with the improper performance of a position of trust or a function that is expected to be performed impartially, or in good faith.

Catalogue: Some purchases of goods may be made from defined lists on pre-tendered electronic catalogues such as those available on the Crown Commercial Service (CCS) website.

Category Management: Continual monitoring of spend and supplier performance within specific buying categories i.e. IT, with the intent of driving ongoing cost and supplier performance improvements.

Contract or Agreement: Detailed Terms and Conditions that are specific to the purchase being made and management of the same.

Contact award/ Award of contract: Once the procurement process has finished the contract is awarded to the successful bidder.

Contract Schedules: The attachments on the contract or agreement which may contain such things as specification, service levels, timescales and deliverables and price information.

Contract Value: The total value of the contract must include all costs associated with the Specification of Requirement for which NHS Resolution are seeking quotes/tenders over the period for which the contract is being let including any possible extensions.

Contract management: The expected business benefits for the required business area are being achieved. The contract owner is responsible for ensuring the supplier is co-operative and responsive in relation to expected KPI's. Contract concerns should be reported to IG where necessary.

Crown Commercial Service (CCS): The CCS is an executive agency of the cabinet office whose function is to provide procurement savings for the UK public sector as a whole and specifically to deliver centralised procurement for central government departments.

Data Controller: a natural or legal person or organisation which determines the purposes and means of processing personal data.

Data Processor: a natural or legal person or organisation which processes personal data on behalf of a Controller

Evaluation: Technical evaluation focuses on the tenderer's compliance with the requirements of the specification within the ITT. When acquiring complex goods or services, the evaluation usual separate technical dimensions of the bid from the commercial (pricing) elements of the bid.

Framework Agreement: An overarching agreement between one or more contracting authorities (purchasers) and one or more suppliers, the purpose of which is to establish the terms and conditions governing any contract call-offs to be awarded by those purchasers or any other specified body entitled to utilise the framework during a specified period.

Invitation To Tender (ITT): An invitation to tender (ITT) is a formal document asking suppliers for a sealed bid to be sent by a specific date. The ITT asks suppliers to offer their price, and say how they will deliver the item and so on, to carry out work to NHS Resolution specification and conditions.

Lean procurement: This is the application of lean principles to the sourcing process in order to make the procurement process more efficient and cost effective (for both supplier and buyer). Lean involves ensuring proper planning by the purchaser including pre-procurement market engagement and streamlining dealings with suppliers.

MEAT: Most Economically Advantageous Tender

Mini Competition: A competition that is run under a call off framework agreement.

OJEU: The Official Journal of the European Union, all procurements with a contract value over and above the relevant EU threshold must be advertised.

Procurement Fraud: Dishonestly making a false representation, failing to disclose information, or abuse of a position of organisation; with the intention to make a personal gain, or gain for another; and with the intention to cause a loss, or risk of loss to another.

Procurement Risks: Assessing the potential impact of acquiring the goods or services required.

Purchasing Card: A type of credit card in the name of NHS Resolution used for limited types of purchases of low value in line with the NHS Resolution Purchasing Card Policy and Procedure.

Purchase Order: A document created through the Purchase Order Module used to record and approve purchases and to confirm with suppliers specific quantities and costs. Purchase orders must be used for all procurement.

Purchaser: The NHS Resolution member of staff who determines the need for a product or service and who will be responsible for determining the Specification of Requirement and, in most cases, will finance the cost of the purchase from within their departmental budget.

Purchasing Channels: The NHS Resolution approved methods of confirming and making payment for a purchase from an external organisation/individual.

Request for Quote (RFQ), is a document that is initially sent to suppliers that invites them to submit a quote to provide goods or services. Companies that are on specific frameworks can be approached to provide a RFQ.

Single Tender Action: A regulatory requirement for a signed waiver document for use when a purchase is made without competition. This can only be approved in exceptional circumstances.

Specification of Requirement (SOR): The detailed specification developed and approved by the purchaser for the purpose of seeking and securing an appropriate supplier for the specified goods or services.

Transactions: The process of purchasing goods and services through the use of an approved purchasing channel.

Validation Meetings: Member of panel who will be making companies based on the commercial as well as their technical elements of the

Value for Money: See best value for money.

Variance: Difference between an expected value or terms and conditions of contract and the actual value