

Procurement Policy

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Procurement Policy

1. Purpose

NHS Improvement (NHSI) as an arm's length body (ALB) to the Department of Health is responsible for public funds. NHSI has a statutory responsibility to ensure that those funds are spent properly, and that our procurement decisions are fully justified and supported by clear audit trails and we must have regard to HM Treasury's *Managing Public Money*¹. NHSI's Accounting Officer also has specific personal duties as set out in the Accounting Officer Letter.

The objectives of this policy are to:

- ensure that NHSI procures the goods and services needed to carry out its role efficiently, economically and effectively;
- ensure a consistent, best practice approach, to procurement across NHSI;
- ensure all staff have a clear understanding of NHSI's procurement policy and what is required of them when considering engaging third parties to provide services and goods;
- deliver customer satisfaction from the NHSI teams who require externally purchased goods and services;*and*
- protect NHSI, and the individuals involved, from the considerable risks associated with procuring services and goods improperly.

This policy has been drafted before the full structure of NHS Improvement is in place. There are references within the document to committees and roles which have been generalised, in particular:

Finance Director refers to the post with responsibility for internal finance below Executive Director level.

2. Applies to

NHS Improvement is comprised of two separate legal bodies, Monitor and the NHS Trust Development Authority (NHS TDA). This policy applies to staff of both organisations.

It should be noted that while the policy refers generally to NHSI, any contracts will be with either Monitor or NHS TDA as the underlying legal entities.

This policy applies to all procurement including:

¹ <https://www.gov.uk/government/publications/managing-public-money>

- services (including information technology, accountancy, financial and consultancy services, , travel, printing services, telecommunications);
- the supply (including hire, rental or lease) of goods including ICT hardware, utilities, furniture and other facilities management products.

This policy also applies where NHSI is acting as the contracting organisation in a collaborative arrangement with other public bodies.

This policy does not apply to:

- contracts of employment;
- secondments or other similar arrangements which are for the purposes of filling a resourcing gap within NHSI and are not procurements of consultancy services.
- contracts relating to land; and
- contracts for goods, services or construction works procured in an emergency situation (e.g. natural disasters such as flooding or fires) involving immediate risk to persons, property or serious disruption to NHSI's business. (All such expenditure in excess of £30,000 excluding VAT is to be reported to the Finance Director as soon as reasonably practicable. Any emergency contract entered into must not be for a term of more than six months)

NHSI is also a procurement regulator in relation to NHS funded clinical services. This activity is wholly separate from the internal procurement activity covered by this policy. It does mean that as a procurement regulator as well as a public body, NHSI needs to be careful not to be seen to condone non-compliance with this regulatory and legal framework.

3. What responsibilities do line managers and employees have?

This policy applies to all staff including full-time and part time employees on a substantive or fixed-term contract and associated persons such as agency staff, contractors and secondees.

Compliance with and application of this policy is not the sole responsibility of the procurement team. The role of the procurement team is described in Section 6.

All staff involved in the procurement of goods and services have a responsibility to familiarise themselves with this policy and ensure compliance.

Managers are responsible for ensuring that all purchasing activities within their areas are undertaken in accordance with this policy and NHSI's Procurement Manual.

Any questions regarding the policy and/or its application should be raised promptly with a member of the procurement team in the first instance.

4. General principles

We spend a significant proportion of our overall budget on goods and services that we require to help us deliver our strategic objectives.

Our categories of spend include corporate services, ICT systems and products, professional services, and HR related services.

To achieve *value for money* on our external expenditure it is important that our procurements are properly planned and executed and that we:

- procure the right services or goods, of the right quality and at the right price to best meet a particular need; and
- comply with the rules and regulations that apply to Monitor which includes the Public Contract Regulations 2015² (the “**PCR 2015**”), public law principles and other legal requirements as well as relevant government mandates and guidance.

As part of this and to follow good practice we will:

- compete our requirements wherever possible to promote economy, efficiency and effectiveness in our expenditure;
- deal with suppliers in a professional manner with the highest standards of honesty, integrity, impartiality and objectivity;
- ensure our procurement practices are fair, equitable and that decisions around any contract award are transparent and stand up to scrutiny;
- apply the procurement procedure (using the relevant templates) that is most relevant and appropriate for what we are purchasing;
- minimise the transactional cost of our procurements for both us and our suppliers; and
- seek to ensure that our procurement processes promote wider policies and duties such as those relating to equality and sustainability.

5. Regulatory and legal framework

We must comply with the regulatory and legal framework for public procurement.

The framework consists of:

- this policy and the Procurement Manual, as revised from time to time;

² http://www.legislation.gov.uk/uksi/2015/102/pdfs/ukxi_20150102_en.pdf

- NHSI's Rules of Procedure and the Budgetary Management Policy;
- EU Procurement Directives and national rules as set out by the PCR 2015;
- national and European case law;
- the general EU Treaty principles which require transparency, equal treatment, proportionality, and appropriate and fair competition across all public procurements;
- relevant public law principles; and
- national guidance.

The national guidance referred to above includes:

- HM Treasury's Managing Public Money particularly Annex 4.43; and
- best practice guidance on procurement issued by the Cabinet Office and the Crown Commercial Service⁴

We must permit, and be seen to permit, appropriate freedom of opportunity to trade with NHSI. The most important principles supporting this are transparency, openness and fair competition. If NHSI fails in this duty, a supplier or contractor may have cause for complaint or even legal action.

As a public body, and as a procurement regulator, NHSI has no appetite for non-compliance, or the appearance of non-compliance with this regulatory and legal framework.

6. Role of the procurement and legal teams

The role of the procurement team is to set NHSI's internal procurement framework and advise staff on its interpretation and use.

All procurement exercises should involve engaging with a member of the procurement team during the planning phase. The procurement team will advise on the extent of its role in any given procurement and will be responsible for liaising with the legal team to ensure legal advice is sought as needed.

Other staff should not engage with the legal team on procurement issues without the involvement of the procurement team where there is a live procurement.

Consideration should be given for the need for legal advice at each key stage from the start of the project when decisions are being made about the sourcing strategy.

³ <https://www.gov.uk/government/publications/managing-public-money>

⁴ <https://www.gov.uk/government/collections/procurement-policy-notes>

For procurements with an estimated contract value of over £50,000 a member of the procurement team must lead the procurement and market engagement.

The following sections set out the key issues around procurement that must be considered by staff. Further guidance is available in the Procurement Manual which can be found on the intranet.

7. Advertising of requirements

Advertising our requirements via a suitable portal is important in generating maximum interest and competition.

Under EU Treaty principles and in accordance with Cabinet Office guidance there is a need to ensure an appropriate degree of advertising.

The form and extent of the advertising should be based on the individual circumstances of each procurement. Engaging a breadth of suppliers to best meet our requirements is in Monitor's interests.

Requirements with an estimated total value in excess of £25,000 should be advertised in Contracts Finder⁵.

Requirements with an estimated total value in excess of the EU procurement threshold, and where a valid framework is not being used, must be advertised in the Official Journal of the European Union as per the PCR 2015 and the appropriate procurement route must be followed thereafter.

8. Transparency on external spend

NHSI shall publish relevant procurement and contract documentation (redacted as necessary as approved by the Head of Procurement) to Contracts Finder in accordance with UK public procurement rules and regulations and any mandated central government policies on transparency.

In addition, NHSI also publishes details of all expenditure above £25,000 on a monthly basis on its website.

⁵ <https://www.gov.uk/contracts-finder>

9. Maximum contract term

No contract shall be for a period of longer than five years (including any possible extensions) without the express written approval of the Finance Director.

10. Use of frameworks

We have access to 'frameworks' of approved suppliers for the provision of particular types of goods and services which have been established following a competitive process.

Where available and appropriate (and in accordance with the call-off arrangements) we will make maximum use of framework agreements to fulfill our requirements for common goods and services. Using a framework will still involve an element of competition; typically a mini-competition between framework suppliers.

If the call-off arrangements allow a direct award may be possible and guidance should be sought from the procurement team.

If a framework agreement is not available or appropriate then the relevant competitive process as set out below should be followed.

11. Competitive process

Competition between suppliers promotes efficiency, effectiveness and value for money in public expenditure.

Subject to the regulatory and legal framework the form of competition should be appropriate to the estimated value and complexity of the goods or services being acquired.

The requisite procurement procedure that must be followed to select a supplier is dependent upon the total estimated contract value.

To determine the estimated total value of a contract, the whole of the potential and anticipated expenditure over the lifetime of the engagement, must be ascertained and included. For example, if it is proposed that the contract should allow for NHSI to either purchase additional goods or services under the contract or to extend the contract period beyond its initial term, the cost to NHSI of exercising these rights must be included in the estimate of the total contract value.

On no account must a contract be artificially split into smaller separate lots to avoid the application of this policy.

The competition process that must be followed is set out below.

a. Below £10,000

For expenditure below £10,000 (excluding VAT), staff need not obtain written quotes or tenders but must be able to demonstrate VFM. For further guidance on what needs to be done, in particular with regards to Monitor's purchase order requisition procedure, please refer to the Procurement Manual.

b. £10,000 to £50,000

For expenditure in excess of £10,000 but below £50,000 (excluding VAT), staff must seek at least three written quotes from potential suppliers. For further guidance on what needs to be done, please refer to the Procurement Manual.

c. £50,000 to the EU Threshold

For expenditure in excess of £50,000 but below the EU Threshold, staff must carry out a formal tender process and must seek at least four written tenders from potential suppliers. The Procurement Manual describes the formal tender process further and includes templates of invitation to tender documents (including instructions to tenderers, specification etc.).

For procurements with an estimated contract value of over £50,000 a member of the procurement team must lead the procurement and market engagement.

d. Over the EU Threshold

For expenditure over the EU Threshold, staff must comply with the PCR 2015.

The current EU threshold which will apply to most of NHSI's procurements is approximately £164,000⁶. However specific advice should be sought from the procurement team as the threshold varies in certain circumstances and is also updated periodically.

There are a range of procurement routes under the PCR 2015. The procedure to be followed in each case will largely depend on the type of goods or services being procured and the complexity of the procurement. Staff should also bear in

⁶ As at March 2016

mind that the regulations set out stringent timescales which differ depending on the route being followed.

Staff must seek the advice of the Head of Procurement and the legal team who will advise on the appropriate procedure to be followed in each case. Failure to comply with the procedures set out in the PCR 2015 can lead to a legal challenge from an unsuccessful bidder.

12. Exemption to requirement for competition

a. Availability of Exemption

The majority of goods and services should be procured on the above competitive basis.

In certain exceptional circumstances, staff may request an exemption from the requirements of this policy (a '**Request for Exemption**').

However no exemption can be granted for over the EU Threshold procurements. Any Requests for Exemption which would otherwise contravene English or European law will also be rejected.

Staff do not need to Request an Exemption where the goods or services are to be procured as a direct award from an existing Framework Agreement in strict accordance with the rules of that Framework. When considering the use of a direct award staff should seek the guidance of the procurement team.

For the avoidance of doubt a direct award does not remove the requirement to formally engage with a supplier including the preparation and issuing of a robust scope and receipt of a formal proposal.

Approval for an exemption is required in the following circumstances:

- Single tender action⁷ where a contract is proposed to be awarded to a supplier without competition; or
- Extension to an existing contract to materially change the scope or length of an existing contract without further competition.

⁷ An award of a contract without the requisite competition where market engagement is limited to just one supplier

b. Request for Exemption Form

All single tender action exemptions must be applied for using the Request for Exemption form at Appendix 2 to this policy and must be countersigned by the relevant authorised signatory.

Where a Request for Exemption form is being used, staff will be required to submit a written business case for the exemption in the space provided in the Form.

Exemptions may be granted on the following grounds:

- the goods or services can only be supplied by one supplier i.e. there is no market for the goods or services;
- disproportionate technical difficulties;
- significant and unacceptable disruption to the carrying on of Monitor's business; or
- other circumstances which are genuinely exceptional.

Failure to properly prepare and plan for a tendering exercise prior to the expiry of an existing contract will not generally be viewed favourably as the basis for an acceptable business case for exemption.

c. Exemption Decision

Requests for Exemption will be considered, in the first instance, by the Finance Director (with advice from the Procurement and the Legal teams as appropriate) who will recommend approval or rejection of the exemption.

Exemptions may only be approved by the Executive Director of Resources/Deputy CEO (the Executive Director of Regulation/Deputy CEO will be the approver for exemptions to procurements relating to the Resources directorate).

Requests for Exemption will either be approved or rejected and the decision will be recorded on the Request for Exemption form.

The approval of a Request for Exemption does not excuse a proper engagement with the supplier to agree the scope and seek a formal proposal as to how the requirements will be met.

All approvals will be time limited and specific to the procurement in respect of which the exemption is sought. Any exemptions granted for more than one year must be reviewed annually.

13. 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 against the pre-determined 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.

a. Evaluation criteria

At the highest level proposals will be assessed against quality and cost and consideration should be given, in advance, to the relative weightings of the two and that these accurately reflect the requirements.

Quality should be split into sub-criterion which allows the selection of the most suitable supplier to fulfil the requirements.

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.

b. Evaluation panel

The evaluation panel is at the core of the selection process and, therefore, it is important that the members of the evaluation panel should comply with this policy and to adhere to the principles underlying probity and act in a manner consistent with the Nolan Principles of Public Life⁸.

In all procurements an evaluation panel will be established to review suppliers' proposals. The size, make up and experience of the panel should reflect the scale and complexity of the procurement including the need for cross-organisational or specialist input.

Evaluation panel members must fully record their rationale for their evaluation and the scores awarded.

The evaluation must be free of actual or perceived bias. Any conflicts of interest must be disclosed as set out at section 20. below.

⁸ <https://www.gov.uk/government/publications/the-7-principles-of-public-life>

The Procurement Manual sets out more information about criteria, scoring etc

14. Debriefing of unsuccessful suppliers

Suppliers who are unsuccessful with their proposal will be offered a de-brief to provide clarity on the outcome of the procurement and why they were not successful.

The de-brief shall be led by the procurement lead with feedback being provided by the members of the evaluation panel.

Debriefs are very important in mitigating the risk of challenge to a contract award as an unsuccessful supplier who understands the rationale for our decision is less likely to object.

15. Contract

Generally, the contract terms to be used will be either NHSI's own contract or the framework call off terms. By exception, a bespoke contract or a supplier's contract may be used following advance consultation with procurement and legal teams before engaging with the supplier in this way and where it is considered to be in NHSI's interests.

On no account must existing contracts be extended or rolled over to avoid the application of this policy. Advice should be sought from procurement and legal teams if an extension is being considered.

Staff must not give assurances to potential suppliers, verbally or otherwise, that a contract will be awarded to that supplier.

16. Post contract review

All contract awards greater than £50,000 in value shall be subject to a post contract review to consider whether value for money has been achieved from the contract and to identify any lessons learnt.

17. Modification of procurement approach for niche services/suppliers

A modification of the procurement approach may be appropriate when engaging with niche services/suppliers for example research related services and counsel.

A client brief setting out the requirements should be issued as part of this approach.

18. Approval to award a contract

Upon satisfactory conclusion of the procurement (where the contract value exceeds £50,000) a ratification document (please refer to the template at Annexe 1) should be drafted by the procurement lead which sets out a summary of the competition exercise, appropriate details of the proposals received and a recommendation for the award of a contract to the winning supplier.

Formal confirmation of contract award cannot be given until the ratification document has been approved by the relevant Monitor authorised signatory as set out in the [Budgetary Responsibility Policy](#).

For contracts below £50,000 a full ratification document is not required but an e-mail summarising the procurement process, the suppliers who were asked to bid, the range of bids and the rationale for selection of the winning bidder should be sent to the Executive Director.

19. Corporate and social responsibility

We recognise that we need to take account of the economic, social, environmental and the equality impact of our procurement activity and wherever possible maximise the positive impact that we can make.

a. Equality and diversity

We have a legal requirement to promote equality and tackle discrimination through our procurement activity.

We will seek to do this through all stages of our procurement process as appropriate.

b. Environmental considerations

Where applicable our procurement decisions will take into account environmental and sustainability factors.

20. Code of conduct

a. Ethics

We have a commitment to observe the highest standards of probity and integrity in our business transactions. Any member of staff that is responsible for or involved in a procurement exercise must:

- be fair, and courteous in our dealings with suppliers;

- maintain the highest possible standards of integrity in our business relationships;
- apply appropriate professional standards in our management of contracts;
- comply with the law and central Government guidance on procurement;
- declare any personal interests (see paragraph b below); and
- respect the confidentiality of the information that they receive in the course of their involvement.

b. Disclosure of interest

When participating in any aspect of a procurement staff 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 Head of Procurement.

At the commencement of every procurement all staff who are involved in the evaluation of suppliers' proposals must complete, sign and return a statement of declaration (as set out at Annexe 4) to the procurement lead. The procurement team shall file these declarations with the procurement documentation.

This is in addition to the requirements of NHSI's conflicts of interest policies which continues to be applicable.

c. Gifts and hospitality from suppliers

Staff must not invite or accept any rewards in connection with any part of the procurement process. See NHSI's gifts and hospitality policy for further details of applicable requirements.

We are required to ensure compliance with the Bribery Act 2010.

This policy came into operation in April 2016.

Please note MS Word editing must be enabled to access these embedded documents.

Annexe 1: Ratification document template



Annexe 1 to
Procurement Policy_R

Annexe 2: Exemption request form



Annexe 2 to
Procurement Policy_E

Annexe 3: Post Contract Review Form



Annexe 3 to
Procurement Policy_P

Annexe 4: Statement of Conflicts Declaration



Annexe 4 to
Procurement Policy_S