

## Procurement Policy (F-014)

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*Policies should be accessed via the Trust intranet to ensure the current version is used*

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## 1. INTRODUCTION

This Procurement Policy is designed to ensure that the purchase of all goods, works and services required by Humber Teaching NHS Foundation Trust (the "Trust") is handled in a transparent, timely, cost efficient and effective manner with due regard to purchasing best practise, the Trust's Corporate Strategy, Procurement Strategy and individual User Department's Plans. It includes all stages in the process, from identifying need, considering options, obtaining the required solution, contract monitoring, through to final disposal or cessation.

## 2. SCOPE

This policy applies to all procurement activities (clinical and non-clinical) within the Trust. This policy applies to all full-time and part-time personnel within Humber Teaching NHS Foundation Trust including staff on temporary or honorary contracts as well as bank staff and students

The Trust will ensure that the application of all or part of this policy does not have the effect of discriminating, directly or indirectly against staff or potential service providers on grounds of race, colour, age, nationality, ethnicity, gender, sexual orientation, marital status, religious belief or disability.

## 3. POLICY STATEMENT

This policy aims to ensure that the Trust obtains the necessary goods, services and works to the required level at the most economically advantageous price, taking account of whole life costs. To fulfil this obligation the Procurement department will provide the following services.

- Develop, promote and support a corporate framework to enable all staff to obtain services and supplies to the required quality in the most efficient manner.
- Monitoring of the Trust's spend on supplies, works and services to identify where corporate or other arrangements can be developed to improve quality and/or reduce costs.
- Lead on all procurement related tasks in respect of high value/high risk procurements.
- Monitor procurement related risk across the Trust.
- Develop and sustain mechanisms to improve supplier performance and promote continuous improvement.
- Co-ordination of procurement activity including the development and delivery of training for procurement staff and other relevant staff.
- Provide advice and support to service procurement activities across the Trust.
- Ensure the Trust adheres to the requirements of the Public Contracts Regulations, Provider Selection Regime and the Trust's internal Standing Orders, Scheme of Delegation and Standing Financial Instructions.
- Promote and support the adoption of e-Procurement tools.

### 3.1. Best Value

This policy works to the principles of procuring goods and services in a Best Value manner. It is the responsibility of all staff to work towards securing best value for the Trust and Best Value is not simply limited to procurement activity. All staff should be aware of the need to achieve Best Value and in a procurement process it is one of the key outcomes that we can demonstrate the Trusts has achieved the Best Value provision available.

Best Value can be defined as:

*To make arrangements to secure continuous improvement in performance whilst maintaining an appropriate balance between quality and cost; and, in making those arrangements and securing that balance.*

*To have regard to economy, efficiency, effectiveness, the equal opportunities requirements and to contribute to the achievement of sustainable development.*

### **3.2. Zero Inflation Pledge**

The Trust is committed to combating inflationary increases from its supply chain in line with the guidance from the Department of Health and to ensure the Trust is working towards its own efficiency targets. We do not expect to receive a price increase from any supplier that is either based on a general annual price increase or a price increase that cannot be substantiated without evidence of why the increase is needed.

To help enable suppliers to meet this pledge we will work with suppliers and staff to identify opportunities to identify cost reduction initiatives such as reducing the number of deliveries, standardising on products, early payment discounts, switching to alternative items.

## **4. DUTIES AND RESPONSIBILITIES**

### **Chief Executive**

To assure the Board that this policy is acted on through delegation to the appropriate committee.

### **Trust Board**

To ensure that this policy is acted on through delegation of responsibility for the development and implementation of the policy to the appropriate committees and directors.

To ensure the policy complies with Public Contracts Regulations, Provider Selection Regime and UK law requirements.

To ensure the policy is monitored and reviewed formally through the appropriate committees e.g. Finance committee.

### **Directors and Deputy Directors**

The directors and deputy directors will ensure this policy is acted on through a process of policy dissemination and implementation in collaboration with Trust senior managers.

### **Senior Managers, Managers and Clinicians**

Ensure all staff within their area of responsibility are informed about the contents of this and other associated policies and procedures.

### **Procurement**

The Procurement Department will provide appropriate advice and support.

### **Employees**

It is the employee's responsibility to comply with this and any other associated policies.

## **5. PROCUREMENT PROCEDURES – PREPARATORY WORK**

This policy details specific procedures relating to both the procurement of goods and non-health care services (Paragraph 6) and to the procurement of relevant health care services (Paragraph 7). A list of services categorised as relevant health care services is included at Appendix 15. These procedures are further detailed in the Trust's Standing Orders, Scheme of Delegation and Standing Financial Instructions.

Regardless of which procedure applies, there are key areas of preparatory work that should be completed when procuring good and/or services on behalf of the Trust.

This information is for guidance and information and if there is anything at all you are unsure of, the procurement team will help manage the requirements with you to ensure a best value solution is procured.

### **5.1. Identifying the Need**

In some cases, there may not be a need to undertake a formal procurement process. For example:

- If goods are required, it may be that there is existing surplus elsewhere in the organisation.
- There may be existing corporate contracts already in place. Contact the contracting or procurement teams for advice.
- There may be other solutions / formats such as electronic processes which can be implemented that will deliver better value.

If it is necessary to undertake a procurement process, it should be planned and undertaken in accordance with the procedures outlined below.

### **5.2. Preparation and Development of Requirements**

In the majority of cases, the procurement team will be able to provide support and assistance to most of the areas identified below on your behalf with some support, from you, in terms of understanding your requirement.

All major procurements should be adequately planned and consideration given to the resources required to achieve completion within the desired timescale.

The areas below are not a comprehensive list and not all will be required for each procurement but they should be considered at the outset.

- Research including an analysis of the market, linkages with other projects/systems, financial implications; any potential staff transfer issues and an option appraisal as a minimum;
- Specify what it is you want and why the need has arisen. A service specification is a pre-requisite for any procurement process and is a key requirement when forming contracts. The scope and detail of the specification will depend on nature and complexity of the good or service being procured. Ideally, the specification should describe the desired outputs or outcomes and not focus on inputs.
- The Trust's Information Governance team need to be consulted at the earliest stage to ensure data protection issues are fully considered. In some circumstances, Information Sharing Agreements and/or Data Protection Impact Assessments may need to be developed particularly if the service involved patient level data. Information Governance will also advise on appropriate terms and clauses in tender documentation to reflect mandatory requirements.
- Ensure that you have established a budget and agreed this with the Finance team. If the contract is for more than one year, ensure recurrent funding is available.
- Identify who will lead the process from your service area, who is responsible for making decisions?
- Establish effective lines of communication and appropriate consultation at the outset, and maintain these throughout the process between all relevant parties.
- Identify the most appropriate procurement "route" – which process is most appropriate and likely to deliver the best value outcomes?
- Do not underestimate the time needed to undertake the procurement process.
- Establish in writing the evaluation criteria – how will you evaluate the responses? In a tender exercise, it is a legal requirement, good practice and it helps organisations provide a better response if you clearly explain the evaluation criteria and process in the tender documents. Your evaluation criteria should be weighted to reflect the relative importance of the criteria. The evaluation criteria must be comprehensive and objective and must ensure that the subsequent contract award is based on the published criteria to avoid any legal challenge.

- Consider what controls there should be for managing and monitoring supplier performance. Do a set of Key Performance Indicators need to be developed? What process for continuous improvement and supplier suggestions for improving quality have been included for? What price increase/reduction mechanisms are included?
- Consideration should be given to the pricing mechanism; is the contract fixed price or variable. What method is to be applied for variable priced contracts (RPI/CPI Index/Other Pricing indices)?
- Will there be options to extend the contract? If so, by how long?

### 5.3. Social Value Act

The Trust is under a legal obligation to consider the requirements of the Public Services (Social Value) Act 2012. This requires the Trust to have regard to economic, social and environmental wellbeing in connection with public services contracts. The Act is a legal requirement to be considered as part of the pre procurement process for any potential contract which will be caught by the Public Contracts Regulations but as best practice should also be considered for contracts below this value if relevant. The Act may require us to include specific evaluation criteria around Social Value as part of the assessment criteria or include specific elements within the specification which may detail how we secure an improvement to the economic, social and environmental wellbeing.

### 5.4. Aggregation

When defining the requirement a further consideration will be the contract value. The value of the contract will be a factor in determining which of the procurement processes identified below will be followed.

We must ensure that when deciding what is to be included in the contract that we do not separate out elements of the requirement simply to avoid having to undertake one the processes identified below.

Adequate consideration should be given to the aggregation of our requirements to offer the market the total of our requirement. It is also important to understand that we may be able to secure a better value deal if we make ourselves more attractive to the market by increasing the potential contract value.

### 5.5. Sustainable Procurement

The Trust procurement policy aims to consider the environmental impact of all goods and services procured. This can involve criteria such as eco-friendly materials, energy efficiency, and reduced carbon footprint in the supply chain. This approach aligns with broader efforts to promote environmental responsibility and mitigate climate change within healthcare systems.

#### 1. Definition of Sustainable Procurement:

- Sustainable procurement is a process where organizations meet their needs for goods, services, works, and utilities in a way that achieves value for money on a whole-life basis.
- It aims to generate benefits not only for the organization but also for society and the economy while minimizing damage to the environment.
- The definition is based on three pillars of sustainability: environmental, social, and economic.

#### 2. Three Pillars of Sustainability:

- **Environmental:** Minimizing negative environmental impacts across the entire life cycle of goods and services, from raw material extraction to end-of-life.
- **Social:** Ensuring fair contract prices, ethical standards, human rights, and employment standards in supply chains.
- **Economic:** Obtaining value for money from contracts while supporting local businesses, especially Small and Medium-sized Enterprises (SMEs).

#### 3. Vision for Sustainable Procurement:

- Continuous improvement in sustainability outcomes for both new and ongoing contracts across the organization.
- Alignment with the UK Government's sustainability objectives, including UN Sustainable Development Goals.

#### 4. **Aims of the Policy:**

- Support broad sustainability aims, such as promoting sustainable public procurement practices, ending modern slavery, and reducing waste.
- Consider all three sustainability pillars (environmental, social, and economic) to achieve sustainable outcomes.

Over 60% of NHS carbon emissions occur in the supply chain. Effective incorporation of environmental and social value can help reduce health inequalities, improve environmental performance, and enhance value from procured products and services the Trust procures.

## 6. **PROCUREMENT PROCEDURE – GOODS AND NON-HEALTH CARE SERVICES**

### 6.1. **Market Engagement**

Market engagement could range from a simple direct contact with a relevant supplier for small value purchases to a full Public Contract Regulations compliant procurement exercise. Things to consider at this stage include:

- It is essential that the Trust's Standing Financial Instructions, Scheme of Delegation and EU Procurement Regulations (where applicable) are complied with.
- All contract opportunities over £10,000 if advertised must be placed on the Government's Contracts Finder website or Find a Tender Websites.
- The Public Contracts Regulations include provisions to reduce timescales if certain criteria are met. These criteria include the publication of a Prior Information Notice (PIN), giving bidders electronic access to the tender documentation and placing the Tender notices electronically. Procurement will advise on all the relevant elements of market engagement under these circumstances.
- The Public Contracts Regulations thresholds apply to the Trust's aggregated value of spend in respect of specific goods, non health care services and works. For example, if a service requires goods or services totalling £40,000, it may appear that a tendering process is not required. However, if the contract length was for five years then this would mean the total contract value is £200,000 and is then above the threshold.

### 6.2. **Type of Procurement Process**

Dependant on the likely expenditure to be involved the type of process to be undertaken will vary in complexity and time requirements. Below are the three main types of process which will be used and relate to the financial thresholds as detailed in the Trust's Standing Orders, Scheme of Delegation and Standing Financial Instructions.

Before any of these options are considered, the Procurement team should be contacted to identify if there is already an existing contract in place which would meet the requirement.

### 6.3. **Quotation**

This process (Appendix 8) will account for any procurement which will exceed the financial threshold identified in the Trust's Scheme of Delegation (currently £10,000) and must be undertaken in line with the requirements of the Trust's Standing Financial Instructions.

Procurement will also be responsible for the advertising of the requirement if needed along with administering the quotation process **if required**.

If the Procurement team are not administering the process on behalf of the Trust then the following principles must be applied.



- All quotations must be received in writing.
- If price is not the only consideration then this must be recorded and should ideally be informed to the suppliers quoting.

#### 6.4. Tender below Public Contracts Regulations Threshold

This process will account for any procurement which will exceed the financial threshold identified in the Trust's Standing Orders, Scheme of Delegation and Standing Financial Instructions (currently £50,000), **unless procured against a compliant framework** (Appendix 6 or 7) and must be undertaken in line with the requirements of the Trust's Standing Orders, Scheme of Delegation and Standing Financial Instructions.

The Procurement team must be involved in all stages of the procurement process and will administer the tender process on behalf of the Trust.

All tenders when advertised must be placed on Contracts Finder Portal <https://www.gov.uk/contracts-finder> unless a valid reason not to advertise can be demonstrated.

All tenders will be sent out electronically via the Trust's preferred e-tendering portal.

The evaluation criteria must be identified and sent out as part of the tender documents.

No communication should be undertaken with potential suppliers unless required (i.e. an incumbent supplier is bidding for a contract) and then the tender process should not be discussed.

Before a contract is awarded the Trust will enter a voluntary standstill period, where practical, to allow for feedback and potential challenges to be heard. This standstill period will be for 10 days.

#### 6.5. Tender above Public Contracts Regulations Threshold

This process will account for any procurement which will exceed the Public Contracts Regulations threshold for the advertising of contracts for goods and services which currently stands at £139,688 including or £5,372,609 including Vat for works contracts.

Due to the likely complex nature of the process, the Procurement team must be involved at the earliest outset to advise of the processes to be followed. Identified below is information to help staff understand some of the requirements that need to be undertaken.

All potential requirements at this level must be advertised on the Find a tender portal <https://www.gov.uk/find-tender> unless a valid reason not to advertise can be demonstrated and **unless procured against a compliant framework**, in accordance with the Public Contracts Regulations legislation and both the contents of the advertisement and the processes to be adopted, including all timescales, are set by the legislation.

There are four distinct processes that can be undertaken and Procurement will help decide which the best one to adopt is. The four processes are:

**Open** (Appendix 1) – Where any potential bidder who asks for information will be sent a tender document and may bid against it).

**Restricted** (Appendix 2) – Where only potential bidders who pass a Pre-Qualification stage will be asked to bid for the contract.

**Negotiated** (Appendix 4 or 5) – Where one of the processes above has not identified a supplier or where the requirements cannot be fully defined and a degree of communication is needed. It should be noted that this option has very stringent guidelines and methods of undertaking.

**Competitive Dialogue** (Appendix 3) – Where the requirements cannot be defined or are not known and potential bidders would be best placed to develop their bid based on formal dialogue with the Trust which will ultimately result in them responding with a formal bid document. It should be noted that this is a complex method which would only be considered after discounting all of the other processes.

The timescales that have to be adhered to are dependent on which of the above process is adopted but as a general rule it will take a minimum of four months to instigate a process from start to finish and may well take between six and nine months depending on the availability of key individuals within the Trust.

Before any contract award can take place, there must be a pause in the process to allow a “standstill period” to be undertaken. In this time we must advise of all the unsuccessful bidders of why we have not chosen their bid against the successful and detail the scores of the winning bid against the scores we have given the unsuccessful bidder. We must also advise of the relevant characteristics of the winning bid and why this was better. If during this standstill period or any period up to this point, a supplier “challenges” our methods then we are unable to award the contract unless to do so would not be in the best interest of the public, e.g. patient safety may be put at risk. We are not allowed to award the contract until such time as the “challenge” has been revoked or withdrawn.

## 6.6. Tender Evaluation

Tenders should be evaluated against pre-determined criteria, and the process documented. Be aware that all judgements and notes must be objective and capable of being evidenced should the documents be disclosed under the Freedom of Information Act or in the case of a legal challenge to the process undertaken.

The evaluation criteria will be different for each contract and should reflect the requirements needed. As a guide below is a table which identifies a general guide to a cost quality split and under what type of circumstances they should be used. There is also for reference an example of some scoring rationale. Procurement will work with all staff to ensure that the evaluation criteria used are fair to all potential bidders and are relevant to the requirements of the contract.

Tenders will be scored against the criteria identified as part of the process and must be fully documented. Procurement has developed an evaluation template, shown below, to help assist and this can be tailored to each contract requirement. The evaluation process will be scored and a justification for the score should be given where possible. Evaluations can be undertaken by individuals or groups, but it should be noted that where a group undertake an evaluation you cannot use average scores (e.g. 2.5 or 3.6) unless these scores have been included in the initial criteria given to all bidders. Evaluations may also include presentations or interviews but these should only be used for clarification of the original bid, they can also include references or site visits as long as they are relevant to the requirements needed.

Evaluations must be completed for all bidders who submit proposals and prior to any contract award all suppliers must be notified of the outcome of the procurement exercise, this notification should provide details of where their bid ranked overall as well as feedback on individual elements of their proposal. Due to the potential for challenge of the decision all communication with the suppliers must be conducted through Procurement.

### Sample evaluation criteria and ratios

Commodity Type	Description	Suggested Price/Quality Ratio
<b>Routine</b>	<ul style="list-style-type: none"> <li>• Low Value/High Volume</li> <li>• Many Sources of Supply</li> <li>• Many Existing Alternatives</li> </ul>	90:10 to 80:20

Commodity Type	Description	Suggested Price/Quality Ratio
<b>Leverage</b>	<ul style="list-style-type: none"> <li>• High spend area</li> <li>• Many Sources of Supply</li> <li>• Commercial involvement can influence price.</li> </ul>	70:30 to 60:40
<b>Strategic</b>	<ul style="list-style-type: none"> <li>• Strategic to Operations</li> <li>• Few Sources of Supply</li> <li>• Large Spend Area</li> <li>• Specification may be complex</li> </ul>	60:40 to 50:50 to 40:60
<b>Bottleneck</b>	<ul style="list-style-type: none"> <li>• Few Sources of Supply and alternatives available</li> <li>• Complex specifications</li> <li>• If supply fails, impact on organisation could be significant.</li> </ul>	40:60 to 10:90

### Scoring Methodology for Price

All tenders are evaluated by the evaluation panel. The tenderer with the lowest proposed total contract value will be allocated the maximum score of 100. All other submitted prices will be evaluated pro rata against this maximum scoring price.

e.g.:

Bid A £10,000.00 this bid would be allocated 100 as the maximum available mark

Bid B £12,000.00 this would be allocated 83.33 marks on a pro rata basis

Bid C £17,000.00 this would be allocated 58.82 marks on a pro rata basis

Bid B and Bid C would be calculated as follows:-

$100 \times (\text{lowest price} \div \text{Bid B price}) = \text{Total Mark}$  or  $100 \times (\pounds 10,000 \div \pounds 12,000) = 83.33$  marks

$100 \times (\text{lowest price} \div \text{Bid C price}) = \text{Total Mark}$  or  $100 \times (\pounds 10,000 \div \pounds 17,000) = 58.82$  marks

### Scoring Methodology for Meeting the Trust Requirements

The meeting the trust requirements award criteria will be evaluated using the following statements to apportion a score to each of the non price areas identified.

Statement of Performance	Score to be given
<i>Nil or inadequate response. Fails to demonstrate an ability to meet the requirement.</i>	0 Unacceptable
<i>Response is partially relevant but generally poor. The response addresses some elements of the requirement but contains insufficient/limited detail or explanation to demonstrate how the requirement will be fulfilled.</i>	1 Poor
<i>Response is relevant and acceptable. The response addresses a broad understanding of the requirement but lacks detail on how the requirement will be fulfilled in certain areas.</i>	2 Acceptable
<i>Response is relevant and good. The response is sufficiently detailed to demonstrate a good understanding and provides details on how the requirements will be fulfilled.</i>	3 Good
<i>Response is completely relevant and excellent overall. The response is comprehensive, unambiguous and demonstrates a thorough understanding of the requirement and provides details of how the requirement will be met in full and/or the information provided</i>	4 Excellent

<i>demonstrates the organisation is able to provide this element to a best in class level.</i>	
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## 7. PROCUREMENT PROCEDURE – RELEVANT HEALTH CARE SERVICES

### 7.1. The Provider Selection Regime (PSR)

#### 7.1.1. How does the PSR work?

The PSR applied to the arrangement of health care and public health services arranged by relevant authorities and irrespective of who the provider is (i.e., whether the service is provided by NHS providers, other public sector bodies, local authorities, or providers within the voluntary, community, social enterprise (VCSE) and independent sectors). The PSR will not apply to goods and non-health care services (such as medicines, medical equipment, cleaning, catering, business consultancy services and social care), unless arranged as part of mixed procurement.

The Trust can follow three different provider selection processes to award contracts for health care services under the PSR:

- a. direct award processes (direct award process A, direct award process B and direct award process C)
- b. most suitable provider process
- c. competitive process.

#### 7.1.2. Making decisions under the PSR

This regime must be applied whenever the Trust is making decisions about awarding contracts for health care services. The first step is to identify which of the following provider selection processes are applicable.

##### **Direct award process A must be used when all of the following apply:**

- there is an existing provider of the health care services to which the proposed contracting arrangements relate
- the Trust is satisfied that the health care services to which the proposed contracting arrangements relate are capable of being provided only by the existing provider (or group of providers) due to the nature of the health care services.

Direct award process A must not be used to conclude a framework agreement.

##### **Direct award process B must be used when all of the following apply:**

- the proposed contracting arrangements relate to health care services in respect of which a patient is offered a choice of provider
- the number of providers is not restricted by the Trust
- the Trust will offer contracts to all providers to whom an award can be made because they meet all requirements in relation to the provision of the health care services to patients
- the Trust has arrangements in place to enable providers to express an interest in providing the health care services.

Where the Trust is required to offer choice to patients under regulation 39 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012, it cannot restrict the number of providers and therefore direct award process B must be followed.

Direct award process B must not be used to conclude a framework agreement.

##### **Direct award process C may be used when all of the following apply:**

- the Trust is not required to follow direct award processes A or B
- the term of an existing contract is due to expire and the Trust proposes a new contract to replace that existing contract at the end of its term
- the proposed contracting arrangements are not changing considerably
- the Trust is of the view that the existing provider (or group of providers) is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard.

Direct award process C must not be used to conclude a framework agreement.

**The most suitable provider process may be used when all of the following apply:**

- the Trust is not required to follow direct award processes A or B
- the Trust cannot or does not wish to follow direct award process C
- the Trust is of the view, taking into account likely providers and all relevant information available to the Trust at the time, that it is likely to be able to identify the most suitable provider (without running a competitive process).

The most suitable provider process must not be used to conclude a framework agreement.

**The competitive process must be used when all of the following apply:**

- the Trust is not required to follow direct award processes A or B
- the Trust cannot or does not wish to follow direct award process C, and cannot or does not wish to follow the most suitable provider process.

The competitive process must be used if the Trust wishes to conclude a framework agreement.

Once the Trust has identified which of these circumstances applies and has identified the appropriate provider selection process to follow, it will then need to follow that provider selection process as set out in detail in the sections below.

The Trust is expected to identify which provider selection process is applicable sufficiently in advance of a contract coming to an end. The fact that a particular decision-making approach was used to select a provider in the past does not mean the same approach must be used for that service in future.

### **7.1.3. Direct award process A**

The type of service means there is no realistic alternative to the current provider. This process must not be used to award contracts when establishing a new service.

Direct award process A must be used to award contracts to the existing provider (or group of providers) when the nature of the service means there is no realistic alternative to the existing provider (or group of providers). Even when there are alternative providers in the market, as long as these are not considered to be realistic alternatives for the relevant authority's specific requirements, direct award process A must be used to award a contract.

Such services may include, but are not limited to:

- Type 1 and 2 urgent and emergency services and associated emergency inpatient services
- 999 emergency ambulance services
- NHS urgent mental health crisis services
- services established as a commissioner requested services (CRS)\*
- services provided by NHS trusts designated as 'essential services' in their NHS Standard Contract
- a service that is interdependent with, and cannot realistically be provided separately from, another service which only that provider can realistically provide (e.g., because of a need for cross-specialty or cross-service working).

\*A service is established as a commissioner requested services (CRS) by following the processes set out in the provider licence (for foundation trusts or independent sector providers) or designated an 'essential service' under an NHS contract (for trusts). Relevant authorities are expected to periodically review CRS designations, in line with the [Guidance for commissioners on ensuring the continuity of health care services](#), as markets and alternative provision may evolve. Providers that have been designated to provide CRS can still be replaced if the relevant authority considers this to be appropriate.

Direct award process A must not be used to conclude a framework agreement or to award a contract based on a framework agreement.

#### **7.1.4. Direct award process B**

The process that must be followed when awarding a contract under direct award process B is set out in Regulations 6(4) and 8.

#### **People have a choice of providers, and the number of providers is not restricted by the relevant authority.**

Direct award process B must be used to award contracts to providers where people are offered a choice between providers and where the number of providers is not restricted by the relevant authority through provider selection. Services arranged using direct award process B may include, but are not limited to:

- elective services led by a consultant or mental health care professional where patients have a legal right to Choice (as set out in Part 8 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012)
- other elective services where patients do not have a legal right to Choice, but for which relevant authorities voluntarily offer patients a choice of providers and where the number of providers is not restricted by the relevant authority through provider selection (e.g., mandatory eye health services, audiology, podiatry services, NHS continuing health care services, public health services such as over-forty health checks).

For some services where the number of providers is not restricted or cannot be restricted, the qualification criteria, which providers must meet, will apply, before a provider can be offered a contract. These criteria (which only apply to ICBs and NHS England) sit outside the PSR decision-making processes and are set out in the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (as amended) and are explained in NHS England's Choice guidance.

When awarding a contract using direct award process B, relevant authorities must ensure that:

- arrangements are in place to enable providers to express an interest in providing the required services
- all providers that meet the requirements in relation to the provision of the health care services are offered contracts.

The Trust must consider the exclusions in Regulation 20 of PSR and apply as appropriate.

Direct award process B must not be used to conclude a framework agreement or to award a contract based on a framework agreement.

The relevant transparency steps (see [transparency section](#) and [Annex B](#)) must be followed before contracts are awarded under this approach.



If the Trust is seeking to voluntarily establish other pools of providers from which patients can choose (i.e., for services where there is no legal right to choice) and intends to select a limited number of providers to be available, it must use the most suitable provider process or the competitive process to make this selection.

#### **7.1.5. Direct award process C**

The process that must be followed when awarding a contract under the direct award process C is set out in Regulations 6(5) and 9 of PSR.

**The existing provider is satisfying the existing contract and likely to satisfy the new contract, and the proposed contracting arrangements are not changing considerably from the existing contract.**

Direct award process C may be used to award a new contract to the existing provider (or group of providers), to replace an existing contract that is coming to an end, when all the tests below are met:

- the Trust is not required to follow direct award processes A or B
- the term of an existing contract is due to expire, and the Trust is proposing a new contract to replace that existing contract at the end of its term
- the proposed contracting arrangements are not changing considerably from the existing contract (see [establishing that a proposed contracting arrangement is not changing considerably](#))
- the Trust is of the view that the existing provider is satisfying the existing contract to a sufficient standard, according to the detail outlined in the contract, and also taking into account the key criteria and applying the basic selection criteria
- the Trust is of the view that the existing provider will likely satisfy the proposed contract to a sufficient standard taking into account the key criteria and applying the basic selection criteria
- the procurement is not to conclude a framework agreement or to award a contract based on a framework agreement.

Once the Trust has ascertained that it can use direct award process C, it must follow the below steps:

1. Publish a notice containing its intention to award the contract to the chosen provider (see [transparency](#)) and observe the standstill period (see [standstill period](#)).
2. Enter into a contract with the chosen provider after the standstill period has concluded.
3. Publish a notice confirming the award of the contract within 30 days of the contract being awarded.

Even where the proposed contracting arrangements are not changing considerably from the existing contract and the provider is satisfying the existing contract and will likely be able to satisfy the new contract, the Trust does not have to use direct award process C. The Trust may still choose to follow the most suitable provider process or the [competitive process](#), for example because they wish to test the market.

The Trust must consider the exclusions in Regulation 20 of PSR and apply them as appropriate.

**Establishing that the proposed contracting arrangements are not changing considerably from the existing contract**

The considerable change threshold is set out in Regulation 6(10) of PSR. Circumstances where a change does not meet the considerable change threshold are set out in Regulations 6(11) and 6(12).

To use direct award process C, the Trust must be satisfied that the requirements for the provision of health care services are not changing considerably, i.e., they don't meet the considerable change threshold as set out in Regulation 6(10).

Under this regime, the threshold for considerable change is met where the change:

a. renders the proposed contracting arrangements materially different in character to the existing contract when that existing contract was entered into

or:

b. meets all the following:

- the change, (to the proposed contracting arrangements as compared with the existing contract), is attributable to a decision made by the Trust
- the lifetime value of the proposed new contract is at least £500,000 higher (i.e., equal to or exceeding £500,000) than the lifetime value of the existing contract when it was entered into
- the lifetime value of the proposed new contract is at least 25% higher (i.e., equal to or exceeding 25%) than the original lifetime value of the existing contract when it was entered into.

The considerable change threshold is not met, where either:

- The material difference in character from the existing contract (when that existing contract was entered into) applies solely as a result of a change in the identity of the provider due to succession into the position of provider following corporate changes including takeover, merger, acquisition or insolvency and the Trust is satisfied that the provider meets the basic selection. Additionally, all of the following three conditions do not apply:
  - attributable to a decision of the relevant authority
  - the lifetime value of the proposed contracting is at least £500,000 or higher than the lifetime value of the existing contract when it was entered into
  - the lifetime value of the proposed new contract is at least 25% or higher than the original lifetime value of the existing contract when it was entered into.
- The proposed contracting arrangements are not materially different in character to the existing contract when that existing contract was entered into, and the following three points all apply:
  - the changes in the relevant health care services to which the proposed contracting arrangements relate (compared with the existing contract) are attributable to a decision of the relevant authority; however, that decision had to be made due to external factors beyond the control of the relevant authority or the provider, such as changes in patient or service user volume or changes in prices in accordance with a formula provided for in the contract document
  - the lifetime value of the proposed contracting arrangement is £500,000 or higher than the lifetime value of the existing contract when it was entered into
  - the lifetime value of the proposed new contract is 25% or higher (i.e., equal to or exceeding 25%) than the original lifetime value of the existing contract when it was entered into).

Lifetime value of a contract means the total value of the contract over the full length of the contract. If there is an option to extend stated explicitly in the contract, then the value of the extension should also be considered in the lifetime value. For example, a contract may be worth £1 million per year and is for a duration of three years; the lifetime value of that contract when it was entered into would be £3 million. If there was an option to extend for an additional 2 years, worth £1 million per year, then the lifetime value of the contract when it was entered into would be £5 million. Unplanned modifications made to the contract during its term are not to be included in this calculation.



### **Establishing that the existing provider is satisfying the existing contract, and is likely able to satisfy the new contract to a sufficient standard**

Once the Trust has established that the proposed contracting arrangements are not changing considerably, it must assess whether the existing provider is both:

- satisfying the existing contract to a sufficient standard, according to the detail outlined in the existing contract, and taking into account the key criteria and applying the basic selection criteria
- will likely be able to satisfy the new contract to a sufficient standard, according to the detail outlined in the new contract, taking into account key criteria and applying the basic selection criteria.

To do this, the Trust must decide the relative importance of the key criteria for the service in question, before assessing the existing provider in relation to each of the key criteria.

The Trust must be of the opinion, based on its assessments, that the existing provider is satisfying the existing contract and will likely be able to satisfy the new contract to a sufficient standard. The Trust must also assess whether the existing provider is continuing to meet the basic selection criteria.

If direct award process C is not applicable because the proposed contracting arrangements are changing considerably from the existing contract, or the existing provider is not satisfying the existing contract or is not likely to be able to satisfy the new contract, then the Trust must follow the most suitable provider process or the competitive process.

The Trust must keep records of these considerations (see [transparency](#)) and the resultant decisions, as they may need to disclose information on the rationale for their decision if a representation is made (see [standstill period](#)).

#### **7.1.6. The most suitable provider process**

The process that must be followed when awarding a contract under the most suitable provider process is defined in Regulations 6(6) and 10 of PSR.

#### **The Trust is able to identify the most suitable provider without running a competitive exercise.**

This provider selection process is designed to allow relevant authorities to make an assessment on which provider (or group of providers) is most suitable to deliver the proposed contracting arrangements based on consideration of the key criteria and the basic selection criteria, and to award a contract without running a competitive exercise.

This provider selection process gives relevant authorities a mechanism for reasonable and proportionate decision-making without running a competitive exercise. It is suitable for circumstances where a relevant authority is of the view, taking into account likely providers and all relevant information available to it at the time (see [provider landscape](#)), that it is likely to be able to identify the most suitable provider to deliver the health care services to the relevant population (local/regional/national). Relevant authorities are advised to follow this provider selection approach only when they are confident that they can, acting reasonably, clearly identify all likely providers capable of providing the health care services and passing any key criterion or sub-criterion which has been designated as pass/fail.

The most suitable provider process must not be used to conclude a framework agreement or to award a contract based on a framework agreement.

#### **Following this provider selection process**

This provider selection process may be followed where any of the following apply:

- the Trust is not required to follow direct award processes A or B

- the Trust is changing an existing contracting arrangement considerably (such that it must not be continued under direct award process C)
- a new service is being arranged
- the existing provider no longer wants to provide the services
- the Trust wants to consider potential providers (even where the proposed contracting arrangements are not changing considerably or otherwise), as this is in the best interest of people who use the service, but there is no benefit to running a competitive process or it is disproportionate to do so.

When following the most suitable provider process, the Trust:

1. Is advised to take account of any relevant existing contractual provisions relating to termination and contract exit where there is an existing contract with an existing provider in place, whether the existing provider no longer wants to or is no longer able to provide the services,
2. Is advised to consider undertaking a pre-market engagement exercise (see [provider landscape](#)) to help identify all suitable providers and develop the service specification.
3. Must decide the relative importance of each of the key criteria for the service in question (see [key criteria](#)); carefully considering the relative importance of the value criterion. It is advised that for provider selection processes with higher contract values, greater focus is given to value for money and the quality and efficiency of the services to be provided, unless this means the service does not best meet the needs of the population it is serving.
4. Must be of the view that by considering providers it understands are likely to have the ability to deliver services to the relevant (local/regional/national) population, and all relevant information available at the time (see [provider landscape](#)), it is likely able to identify the most suitable provider.
5. Must publish a notice setting out its intention to follow the most suitable provider process (see [transparency](#)). The Trust must not proceed to the assessment of likely providers until at least 14 days after the day on which the notice of intention is submitted for publication. The Trust is also advised to make potential providers aware that they are being considered for the award of the contract.
6. Is advised to ask the providers it identified as likely to have the ability to deliver services to the relevant (local/regional/national) population, and any provider(s) that responded to the notice publishing the intention to follow the most suitable provider process, for further information that would help decision-making, as necessary.
7. Must identify potential providers that may be the most suitable provider, taking into account the providers it understands are likely to have the ability to deliver services to the relevant (local/regional/national) population and any provider(s) that responded to its notice publishing the intention to follow the most suitable provider process, with reference to the key criteria and the basic selection criteria.
8. Must assess the potential providers identified, considering the key criteria and applying the basic selection criteria in a fair way across them (i.e., on the same basis), and choose the most suitable provider(s) to which to make an award.
9. Must publish a notice containing its intention to award the contract to the chosen provider (see [transparency](#)) and observe the standstill period (see [standstill period](#)).
10. May enter into a contract with the chosen provider after the standstill period has concluded.
11. Must publish a notice confirming the award of the contract within 30 days of the contract being awarded.

The Trust is expected to use its established knowledge of potential providers (see [provider landscape](#)). The Trust may approach providers and ask for information as necessary but are advised to take a proportionate approach.

The Trust must be able to demonstrate that they have understood the alternative providers and reached a reasonable decision when selecting a provider – but this does not need to be via a

formal competitive exercise. The Trust must keep robust records of these considerations and follow the relevant transparency requirements (see [transparency](#)). They may need to disclose information on the rationale for their decision if a representation is made (see [standstill period](#)).

If at any point in the most suitable provider process the Trust has insufficient information to make an assessment under the most suitable provider process, for example, because it did not receive sufficient information to help its decision-making, it is advised to use the [competitive process](#). If the Trust fails to identify the most suitable provider (or a group of providers), then it must follow the approach for the competitive process to select a provider or abandon the selection process all together if appropriate.

If the Trust decides to switch provider selection approach after it published its intended approach notice, then it must abandon the selection process before switching provider selection approach.

The Trust must consider the exclusions in Regulation 20 of PSR and apply as appropriate.

### **Further information**

The Trust is expected to develop and maintain a sufficiently detailed knowledge of relevant providers that have the capability to meet the needs of patients within the relevant geographical footprint, which can be used to identify suitable providers (see [provider landscape](#)). The Trust may identify suitable providers through market research, regular engagement with providers, registers of relevant providers or responses to its intention to follow the most suitable provider process notice.

### **7.1.7. The competitive process**

Regulations 6(7) and 11 of PSR set out the process that the Trust must follow when awarding a contract under the competitive process.

#### **Conducting a competitive procurement exercise**

This provider selection process must be followed when the Trust is not required to follow direct award processes A or B, and the Trust cannot or does not wish to follow direct award process C or the most suitable provider process (for example, because it has not been able to identify a most suitable provider or because it wishes to test the market).

This provider selection process must be used when concluding a framework agreement and may be used when awarding a contract based on a framework agreement, in accordance with the terms of that framework agreement (see [framework agreements](#)).

#### **Following this provider selection process**

The steps outlined in the PSR and the transparency requirements must be adhered to. The Trust may determine additional procedures to be applied in selecting a provider using the competitive process, taking into account the specificities of the services in question to design a bespoke procedure.

When following the competitive process, the Trust:

1. Will need to develop a service specification setting out the Trust's requirements for the service. In doing so, relevant authorities may consider undertaking a pre-market engagement exercise.
2. Must determine the contract or framework award criteria for the service in question, taking into account the key criteria and applying the basic selection criteria (see [key criteria](#) and basic selection criteria).
3. Must formally advertise the opportunity to bid (see [transparency](#)) and ensure providers are given a reasonable timeframe to respond. The advertisement must include information relating to how bids will be assessed, including whether the different award criteria will be assessed in stages.
4. Must assess any bids received by following the assessment process – that is, against the award criteria, and the exclusion criteria set out in Regulation 20 of PSR, in a fair

way across all bids (i.e., on the same basis). This may be done in stages, in accordance with step 3 above.

5. Must identify the successful provider (or group of providers).
6. Must inform in writing the successful provider (or group of providers) of its intention to award a contract or conclude a framework agreement, and must also inform in writing each unsuccessful provider that its bid has been unsuccessful.
7. Must publish a notice of its intention to award the contract to or conclude a framework agreement with the chosen provider (or group of providers) (see [transparency](#)) and observe the standstill period (see [standstill period](#)).
8. May enter into a contract or conclude a framework agreement with the chosen provider (or group of providers) after the standstill period has concluded.
9. Must publish a notice confirming the award of the contract within 30 days of the contract being awarded.

The award criteria referred to above consist of the basic selection criteria, the key criteria and any other elements of the contract award. These components can be assessed in stages – for example, a provider that does not meet the basic selection criteria may be discounted without further assessment.

The Trust may engage in dialogue or negotiate with all bidders or with shortlisted bidders prior to determining who to award a contract and with a view to improving on initial offers, provided that they do so in a fair and proportionate way and treat all bidders equally.

The Trust must keep records of the procedure followed to select a provider (including details of the bespoke procedure), of how each bid performed against the award criteria and the rationale for selecting the successful bidder (see [transparency](#)).

The Trust must consider the exclusions in Regulation 20 of PSR and apply as appropriate.

The Trust should follow the tendering procedure described in SFI 16.71 to 16.7.7 when implementing the PSR Competitive Process.

### 7.1.8. Key criteria

#### Overview

The PSR key criteria are defined in Regulation 5 of PSR.

Five key criteria must be considered when making decisions about provider selection under direct award process C, the most suitable provider process, and the competitive process of this regime. [Annex D](#) to this guidance provides detail on what each criterion covers. In summary, these criteria are:

- **Quality and innovation**, that is the need to ensure good quality services and the need to support the potential for the development of new or significantly improved services or processes that will improve the delivery of health care or health outcomes.
- **Improving access, reducing health inequalities and facilitating choice**, that is ensuring accessibility to services and treatments for all eligible patients, improving health inequalities and the ensuring that patients have choice in respect of their health care.
- **Social value**, that is whether what is proposed might improve economic, social and environmental well-being in the geographical area relevant to a proposed contracting arrangement.

#### Application of key criteria

Relevant authorities must consider each of the key criteria in the regime when making decisions under direct award process C, the most suitable provider process and the competitive process (including when concluding a framework agreement and when awarding a contract based on a framework agreement using the competitive process). Under these processes, relevant authorities must be able to justify their decisions when following a provider selection process in relation to the

key criteria and keep a record of this. Further detail on recording decision-making and transparency can be found in the transparency section.

How relevant authorities assess providers against the key criteria, including what evidence they consider, may vary according to the service they want to procure. A relevant authority may wish to address specific priorities; these are expected to be described as part of the key criteria and can be considered when deciding the relative importance of the key criteria.

Relevant authorities must be aware that equalities duties in the [Equality Act 2010](#), including the [Public Sector Equality Duty](#), are relevant to all criteria and due regard to these requirements must be given when considering each criterion.

### **Balancing the key criteria**

The relative importance of the key criteria is not predetermined by the Regulations or this guidance and there is no prescribed hierarchy or weighting for each criterion. Relevant authorities must decide the relative importance of the key criteria for each decision they make under this regime, based on the proposed contracting arrangements and what they are seeking to achieve from them/the services, including scenarios where a particular criterion is 'pass/fail', or where certain key criteria are of equal importance. All criteria must be considered, and none is expected to be discounted when following a provider selection process.

The regime does not specify how relevant authorities must balance the key criteria; however, relevant authorities are expected to be aware of wider requirements or duties when considering procurement decisions. For example, NHS England, ICBs, NHS trusts and NHS foundation trusts are expected to adhere to NHS England's net zero ambitions and its social value commitment, and the need to ensure value for money when arranging health care services (this list is not exhaustive). The flexibilities offered by the regime do not mean that relevant authorities are exempt from complying with their other obligations.

Relevant authorities are advised to consider particularly carefully the relative importance of the value criterion when making assessments under the most suitable provider process.

It is advised that for provider selection processes with higher contract values, greater focus is given to value for money and the quality and efficiency of the services to be provided, unless this means the service does not best meet the needs of the population it is serving.

When making assessments against the key criteria under direct award process C and the most suitable provider process, relevant authorities are expected to use information and evidence from a range of sources, as well as their knowledge and experience of working with providers. They can ask providers for further information to assist with this assessment if they wish. The explanation of each criterion in [Annex D](#) includes examples of relevant sources where appropriate.

When following the competitive process relevant authorities must only use the information contained in the bid to assess the bid. Relevant authorities may set out in their tender documents that wilful misrepresentation of a bid by a provider will result in exclusion from the provider selection process.

Relevant authorities must justify and record how they have given relative importance to each of the key criteria for the service they are arranging. Further detail on recording decision-making can be found in the transparency section.

Relevant authorities must ensure they meet other relevant statutory duties when deciding the relative importance of each of the criteria, including normal public law decision-making principles around reasonableness of decisions. Relevant authorities are also expected to consider other national and local policies and non-statutory guidance when deciding the relative importance of each of the criteria.



## **8. CONTRACT AWARD AND CONTRACT MANAGEMENT**

### **8.1. Contract Award**

For a contract to be awarded there must have been an offer and acceptance of this offer. The offer or the acceptance do not have to be in writing and can be given verbally or by the actions of either party to the contract. In principle the responses to the quotation or tender are offers and the Trust's evaluation of them will lead to a formal acceptance of one or more of them.

All staff must be aware that they could potentially enter a contract without formally accepting an offer and should be careful when communicating with suppliers by any means. If you are in any doubt then please contact Procurement who will be able to advise further.

All contract awards must be undertaken by the Procurement and Contracting Team who can ensure that they are entered into legally and that certain tracking and statistical information is captured for use by the Trust.

Authorisation of a contract award must only take place by those authorised in the Trust to do so. This authorisation is detailed in the Scheme of Delegation (see link at section 11 and Appendix 11). It should be noted that although the Scheme of Delegation identifies who is able to enter into a contract, in the eyes of the law any member of staff could enter into a contractual obligation, which would be binding on the Trust. Any resultant contract could result in a financial penalty incurred by the Trust as well as disciplinary proceedings being brought against an individual member of staff.

Be prepared for requests for debriefing unsuccessful bidders and the post completion reviews. Any debriefs must be co-ordinated and attended by Procurement staff. In the main non procurement staff will need to give a written account of the scoring they have given in the evaluation phase but may on occasion be required to be present with face to face debriefs with suppliers.

Any contract award process must be fully documented, be transparent, be undertaken to the highest standards of probity, and open to scrutiny.

### **8.2. Contract Management**

The key to maintaining a successful contract and contractual relationship is in contract management. The level and type of contract management will vary depending on the nature of the contract, but can range from regular meetings with the supplier through to more formal contract monitoring against targets and performance indicators.

Contract monitoring procedures should provide sufficient review of performance and the feedback should be used to inform other subsequent procurement exercises. Such reviews will highlight the lessons to be learned and assist in continuous improvement in future contracts. It is therefore essential that appropriate reporting is established and utilised for this purpose.

Within any procurement process, performance and quality needs to be addressed in respect of the goods, services or works being procured. For example, all relevant performance indicators, targets, monitoring and reporting procedures should be incorporated into the specification and evaluation processes. The Best Value requirement of delivering continuous improvement should also be addressed. It is also important to plan ahead to develop a process for dealing with the expiry or re-tendering of the contract.

## **9. OTHER CONSIDERATIONS**

When considering the options highlighted above it may also be relevant to think about other general considerations in relation to the procurement process. These may include:-

All procurement processes must be carried out with integrity, to the highest ethical standards, and be well documented to provide an "auditable trail". The documentation should include a record of

decisions, who made them and the rationale for the decisions. The process and documentation must be robust and be able to withstand scrutiny. The Freedom of Information Act enables any person to access a wide range of documents. Always produce documents on the assumption that companies and the public can view them unless they are excluded from publication by a specific exemption.

The procurement process undertaken must be based on a clear evaluation of the options, and the agreed process followed throughout unless there are genuine grounds for revising the process. If this case arises then Procurement will advise on the appropriate course of action.

Consultation with interested parties should be an intrinsic part of major processes to ensure that the required services or goods are specified and procured. Consultation should be undertaken at all levels including service recipients and potential providers.

Good practice, depending on the nature of the procurement process, will also include, researching existing or potential markets, identifying and addressing the legal and corporate requirements associated with the process, considering whether there may be Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) implications and risk analysis and risk management.

The Trust Information Governance needs to be consulted at the earliest stage were relevant to ensure data protection issues are fully considered and where appropriate a supplier Data Protection Impact Assessments undertaken by them. This is especially important when the handling of patient data is part of any proposed procurement/contract.

Ownership of intellectual property rights – identify who should own the intellectual property rights to software, documentation, trademarks, designs and other copyright material.

Support for the Trust's emergency planning and business continuity processes – ensure that contracts include the requirement to provide support in all related activity where appropriate.

Support for the Trust's standard payment terms, which are 30 days from the date of invoicing, and how the method of payment can affect the price that we pay.

Consider how assets are to be treated – if transferred, on what terms, and ensure that any assets transferred can be transferred back to the Trust with minimum financial impact should the contract be terminated or expire.

It is important to identify any possible accommodation issues at an early stage. Advice must be sought on the terms on which Trust owned accommodation can be made available to any successful bidder. This will include an assessment of the cost of provision and the risk to be retained and transferred.

Ensure that all third parties who can impact on, or influence, the contracting process are identified at an early stage. For example, if the Trust leases assets from a third party their consent will be required to assign those leases. An action plan for engaging and securing agreement with such parties must be included in the initial considerations.

If the contract includes a possible staff transfer build in compliance with all legislative, national and Trust requirements for staff transfers and address potential future transfer issues.

Consider all aspects of the contract in advance. Examples would include:

- maintenance or running costs
- the cost and availability of consumables
- initial and on-going training requirements
- licensing requirements

- the use, disposal or transfer of assets and the end of the contract, etc.

There is a legal requirement to carry out adequate vetting of contractors' personnel (including police checks in specified service areas) when staff will be accessing potentially sensitive or vulnerable service users, information or premises.

## 10. ORDERING

All goods and services should be ordered by the Trust wherever possible should be accompanied with an official purchase order, unless an alternative system is put in place via procurement and the users (Appendix 10). Orders should not be given to suppliers verbally or via any other means but users should order via the electronic procurement systems used by the Trust or complete a requisition which is then sent to procurement that will raise the order on behalf of the Trust. The procurement department will ensure any requisition received, either electronically or in paper form will be checked to ensure the goods/services are sourced from the most appropriate supplier at the most cost effective price. This will include obtaining quotes from our approved suppliers as well as the wider market place to ensure best value is achieved.

Procurement will also offer advice on any requirement and can assist the end user in identifying the price, source and ordering method of any given product/service before an order is placed.

## 11. MODERN SLAVERY

The Trust's position in relation to the Modern Slavery Act 2015 is to:

- Work towards full compliance with the relevant legislation and regulatory requirements.
- Work to promote the requirements of the legislation, making our approach known to our suppliers and service providers.
- Build on our existing workforce awareness of human trafficking and modern slavery, through our safeguarding policies/protocols and commercial learning.
- Consider human trafficking and modern slavery issues when making procurement decisions.

## 12. SME AND LOCAL PROVIDERS

- We frequently break large requirements down, including small lots, which help small / local businesses to compete effectively for work.
- Open Procedure is the default procedure for procurement of goods and services to minimise requirements for pre-qualification questionnaires.
- Prompt payment is important for suppliers and we endeavour to pay all suppliers within 30 days
- We encourage early market engagement to gain information of availability of complex solutions and also create market awareness of potential opportunities.
- We also meet with other local public sector bodies such as the council and education sector to explore potential opportunities for joint collaboration in this area.

## 13. EQUALITY AND DIVERSITY

The Trust aims to ensure that all of its policies are equitable with regard to age, disability, gender, race, religion and belief or sexual orientation.



An Equality Impact Assessment has been carried out by the author which confirms that this policy does not impact on any equality group (Appendix 14).

#### **14. IMPLEMENTATION AND MONITORING**

This policy will be disseminated by the method described in the Document Control Sheet (Appendix 13).

The implementation of this policy requires no additional financial resource.

#### **15. MONITORING AND AUDIT**

Compliance with this policy will be monitored by internal Audit and will form part of the audit regime of contracts. The setting of timescales will be agreed as part of the annual audit plan and full internal audit should be carried out at least once every three years. The results of these audits will be controlled and reported by the internal auditors to the audit committee as part of the general audit reporting. Any required review or action will be determined by the audit committee.

Procurement will also undertake its own audit of compliance using historic spend data and contract management information controlled by Procurement. This monitoring will be undertaken quarterly against all of the Trusts expenditure and any non-compliant expenditure will initially be reported to the business area for investigations and understanding.

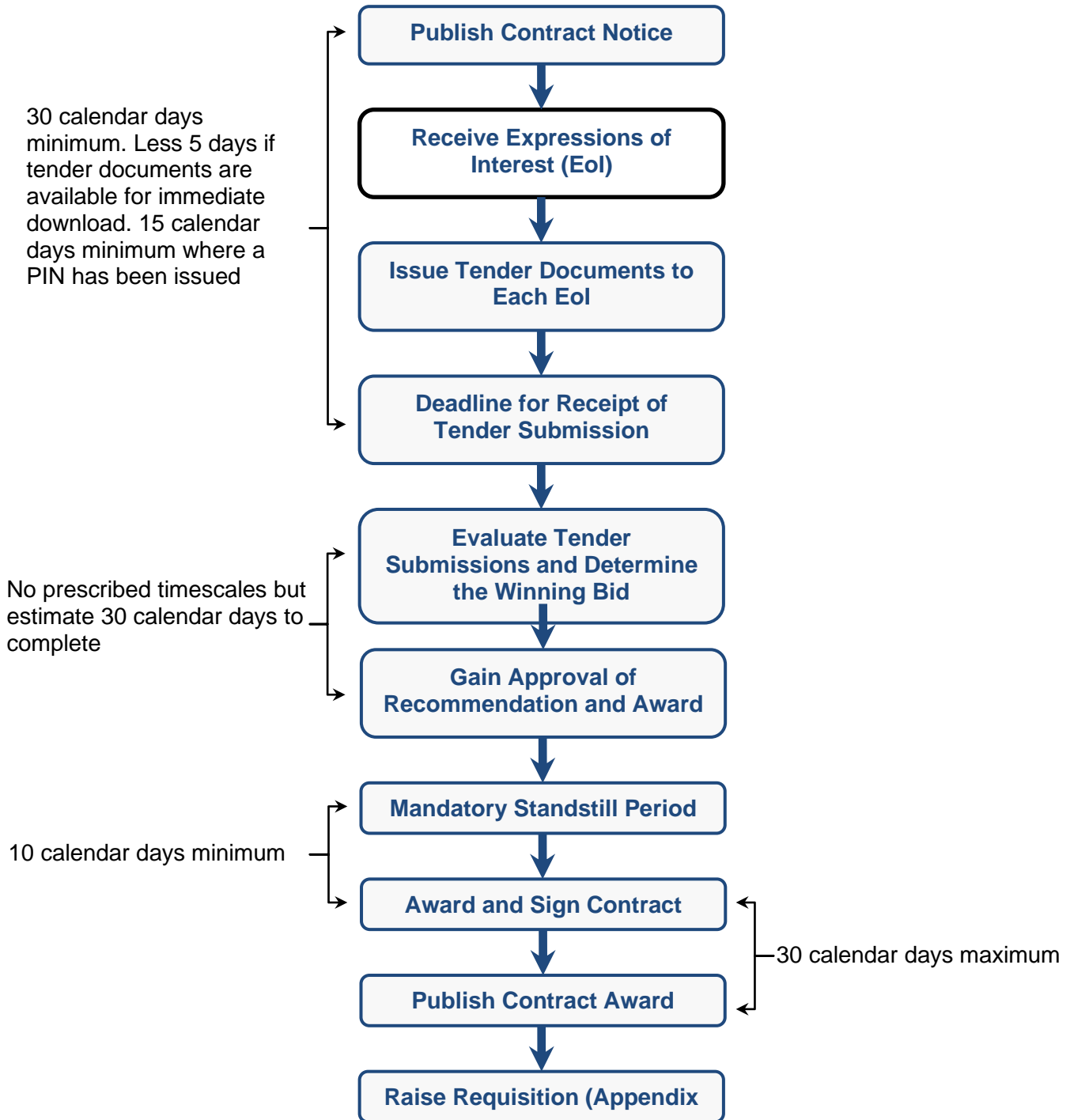
#### **16. RELEVANCE TO ANY SUPPORTING DOCUMENTS**

Standing Orders, Scheme of Delegation and Standing Financial Instructions

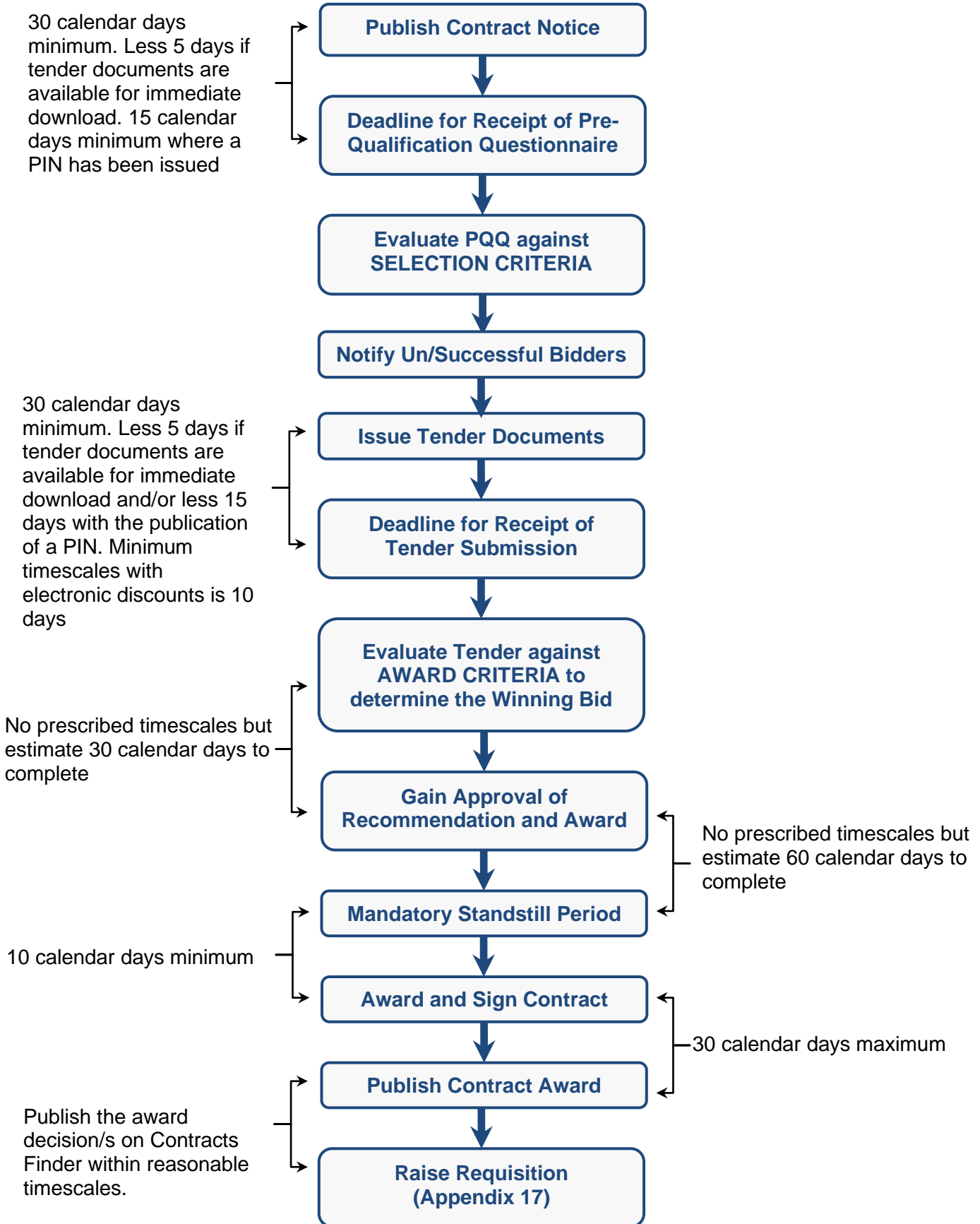
#### **17. MONITORING AND COMPLIANCE**

See Appendix 13.

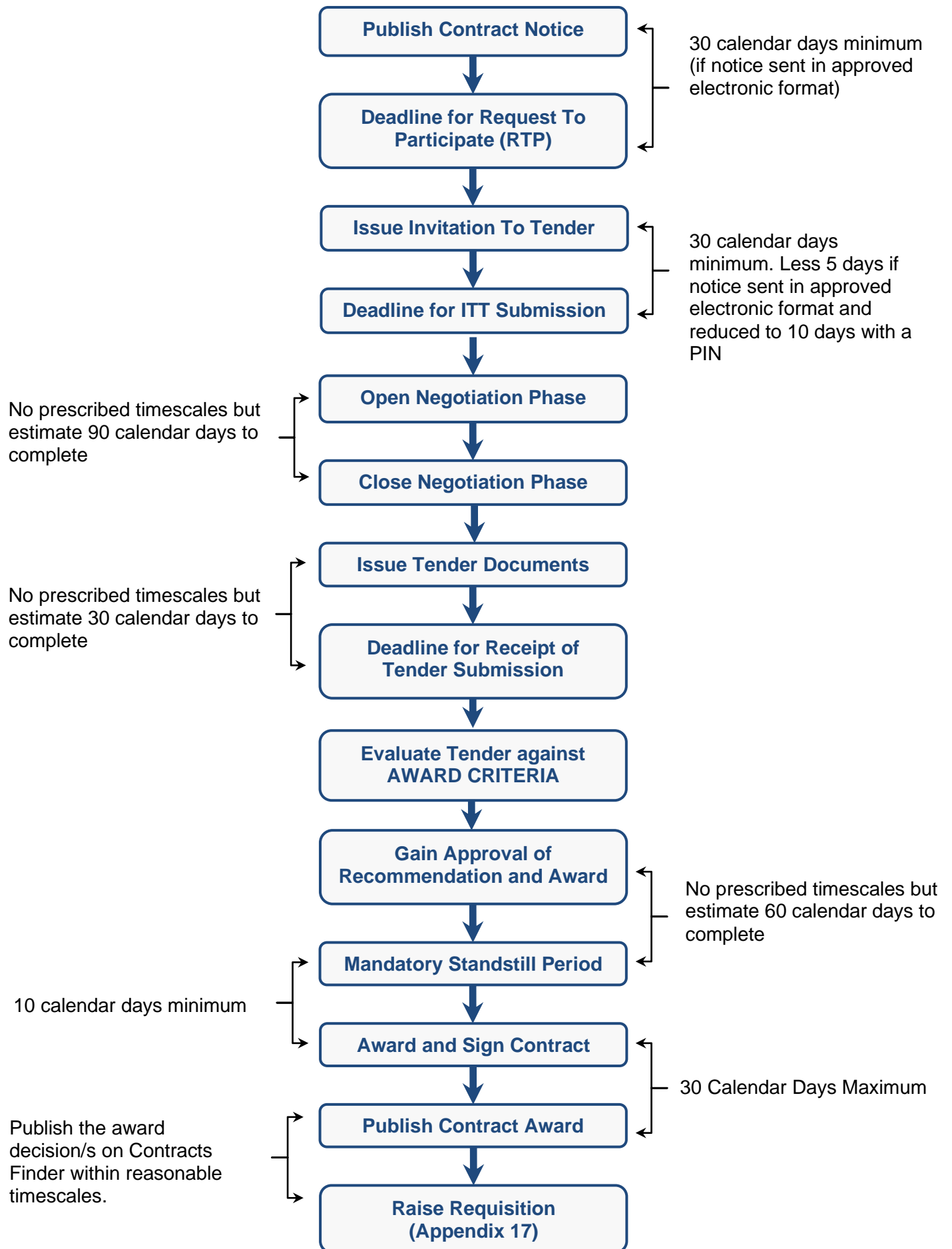
## APPENDIX 1: Open Procedure



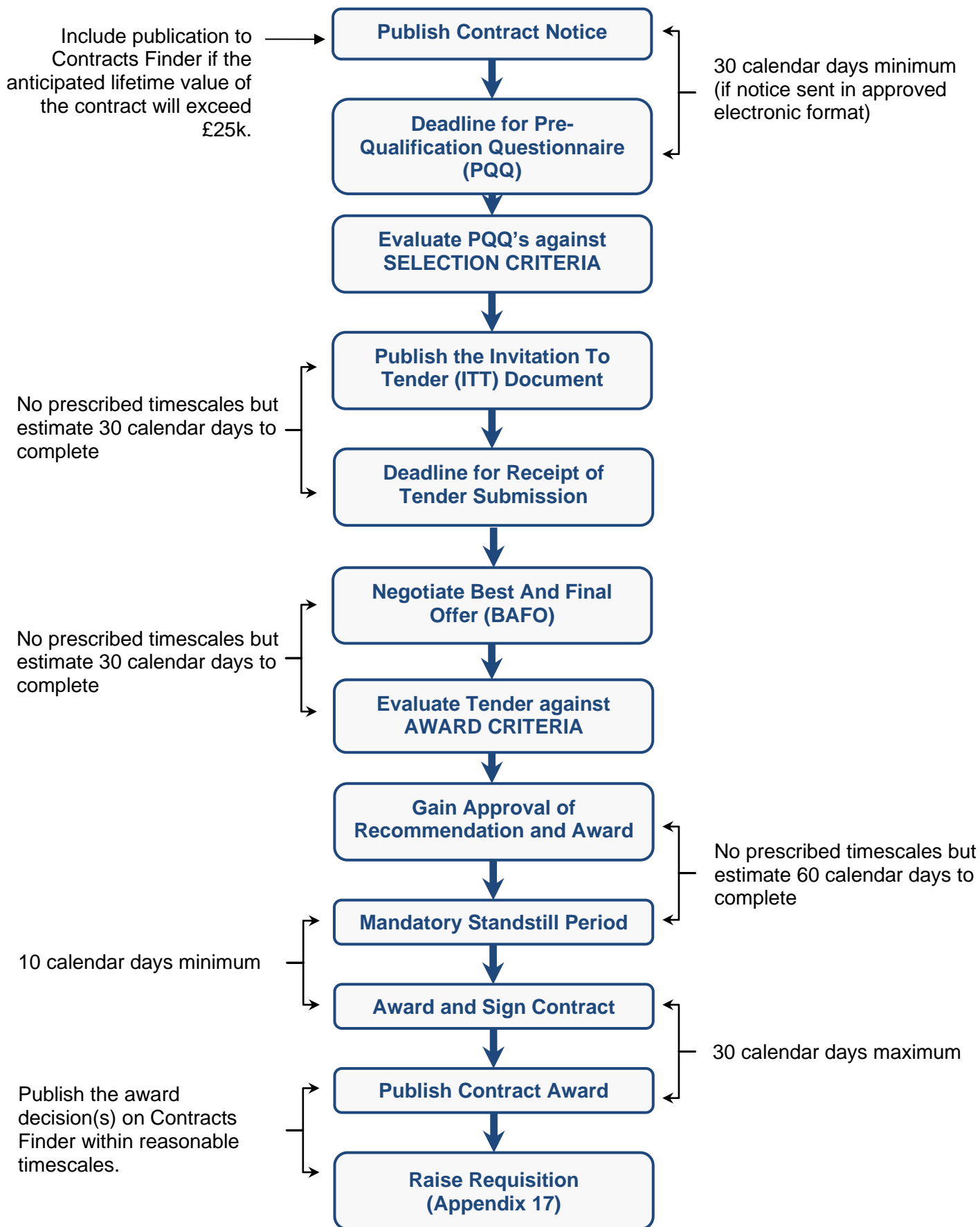
## APPENDIX 2: Restricted Procedure



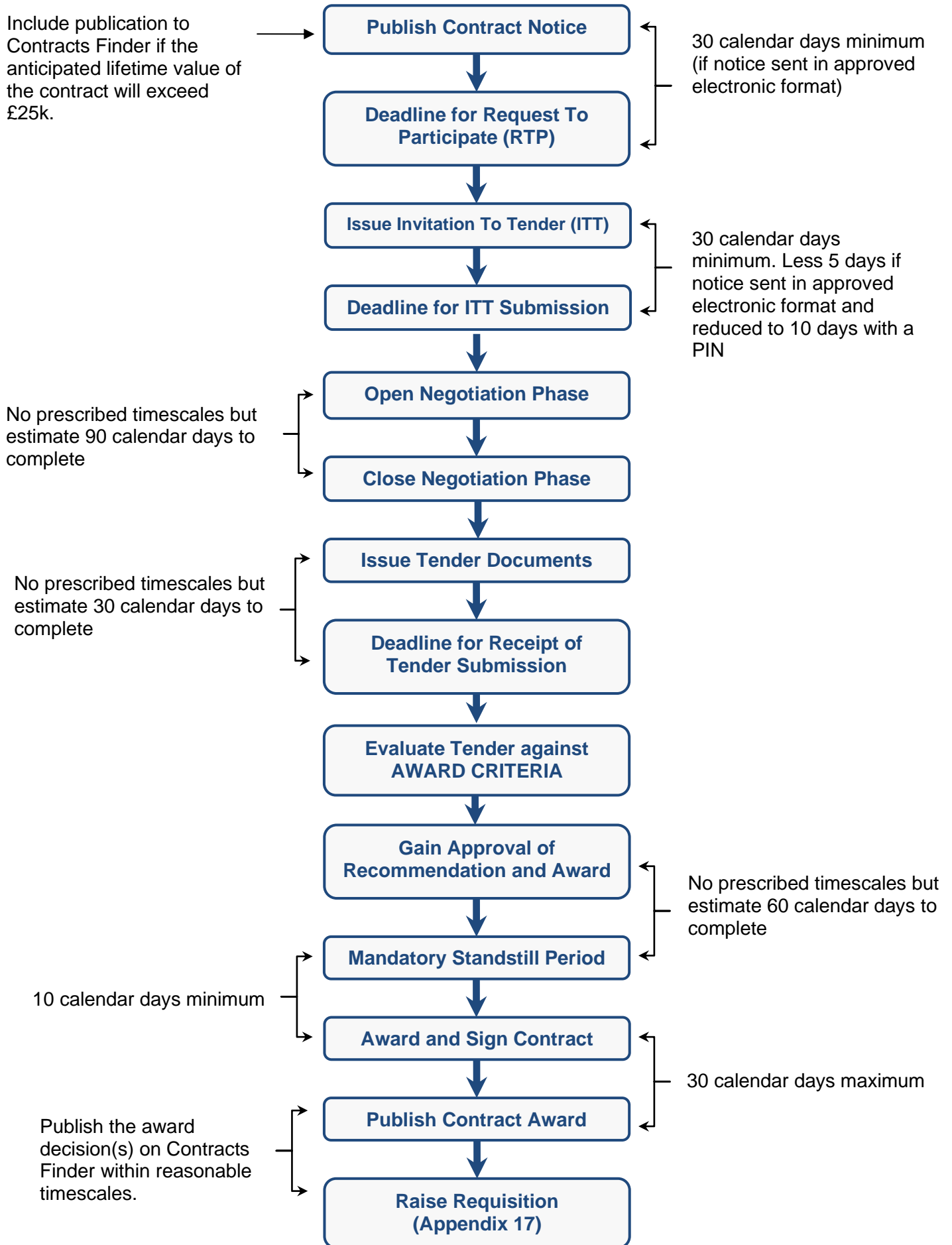
## APPENDIX 3: Competitive Dialogue



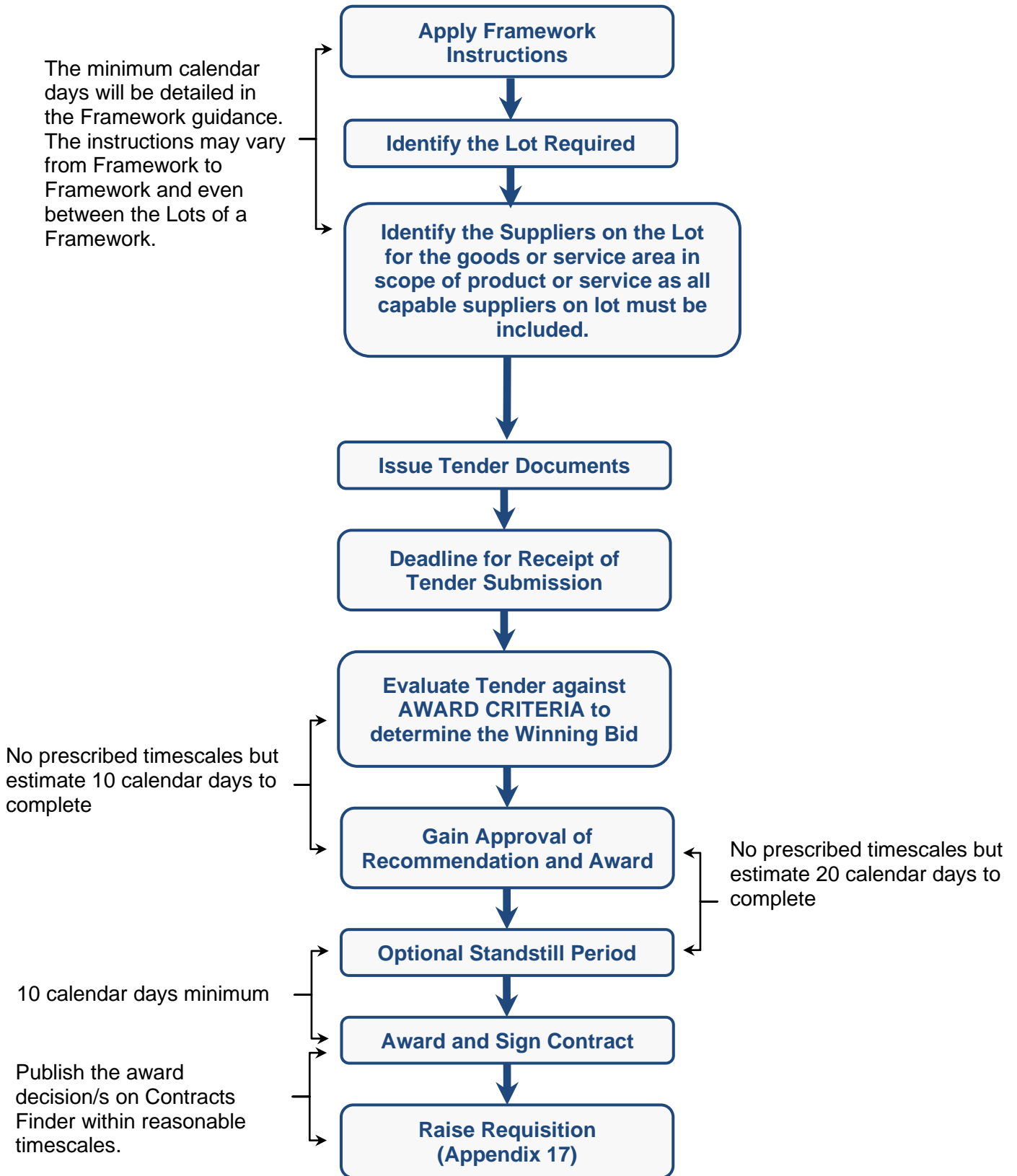
## APPENDIX 4: Negotiated Procedure



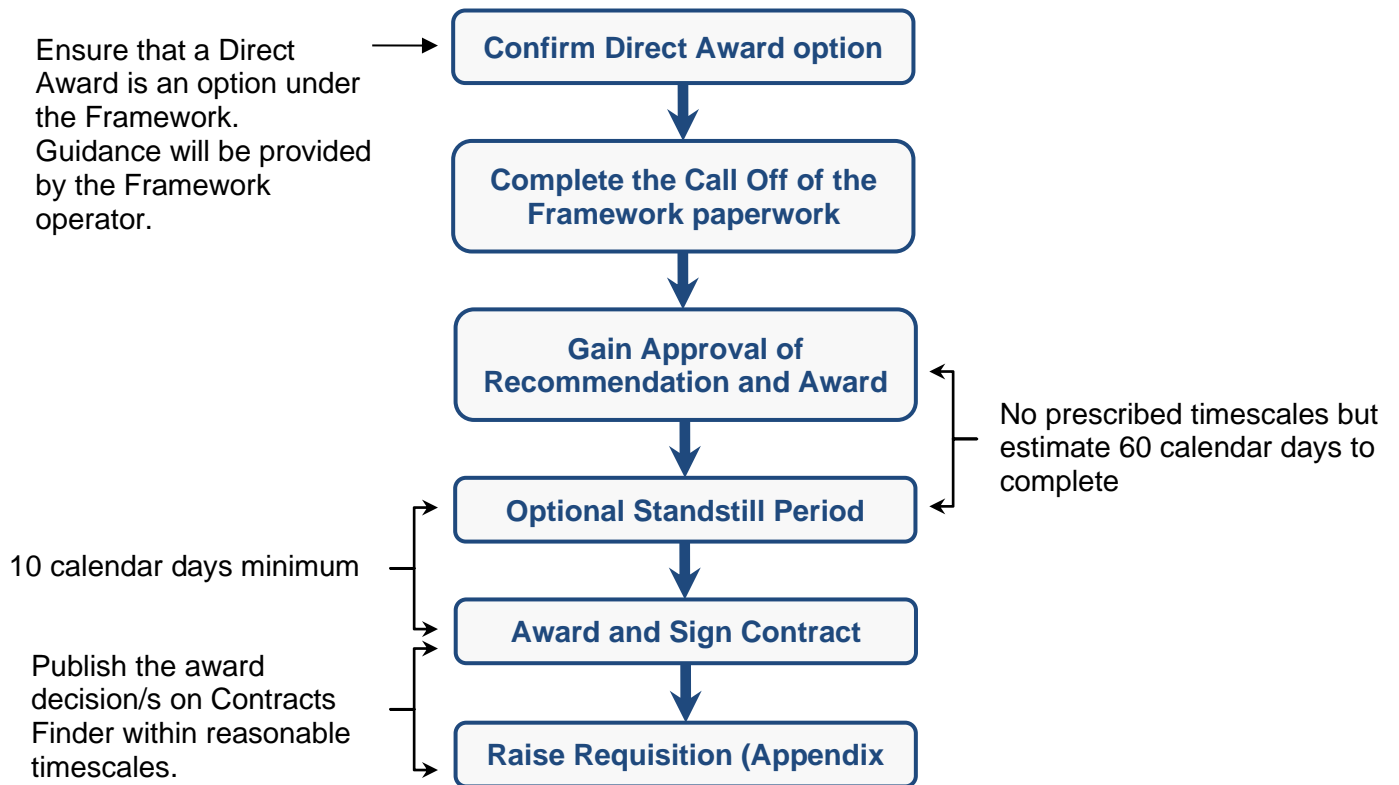
## APPENDIX 5: Competitive with Negotiation



## APPENDIX 6: Frameworks - Mini Competitions

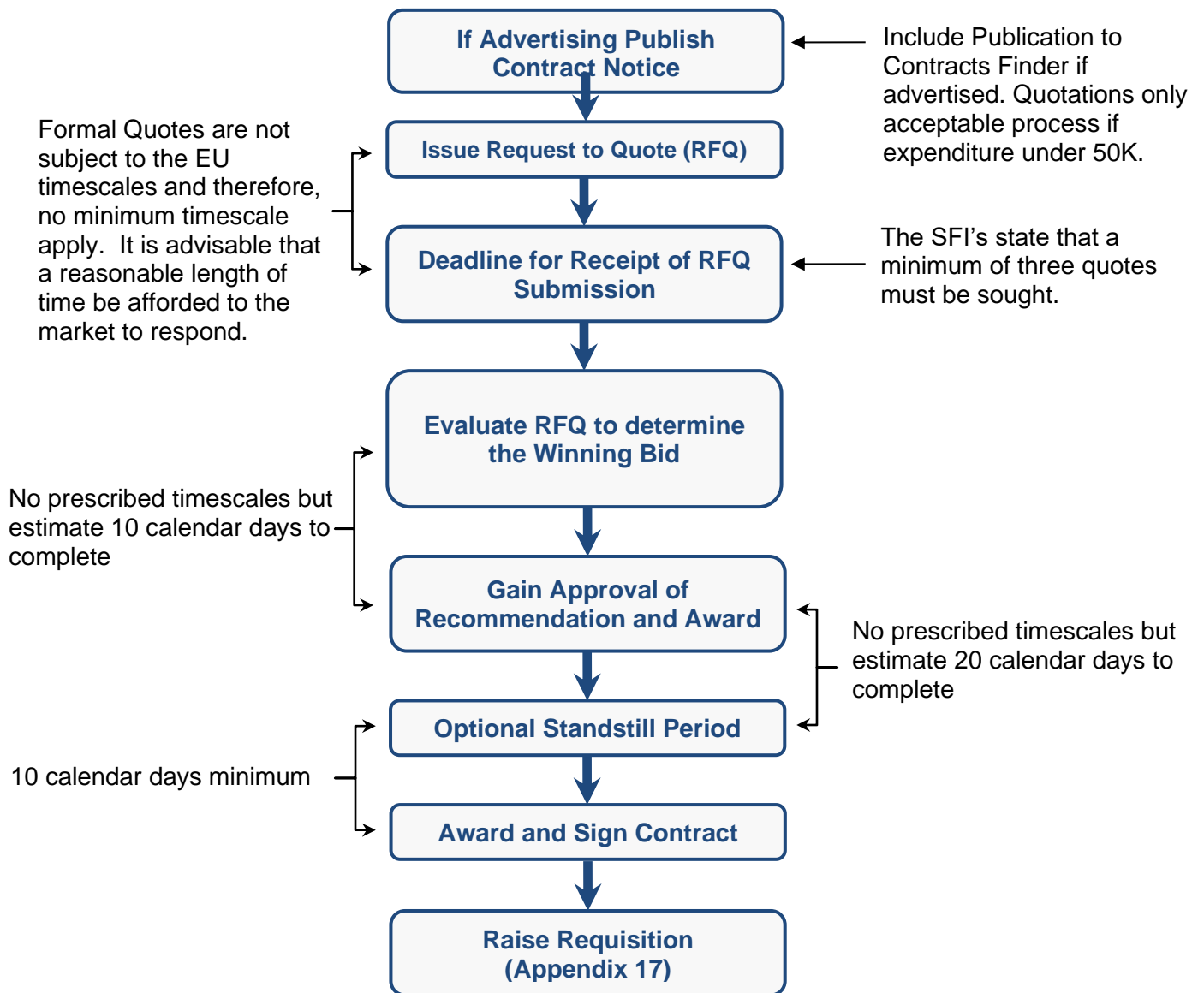


## APPENDIX 7: Direct Award under a Framework



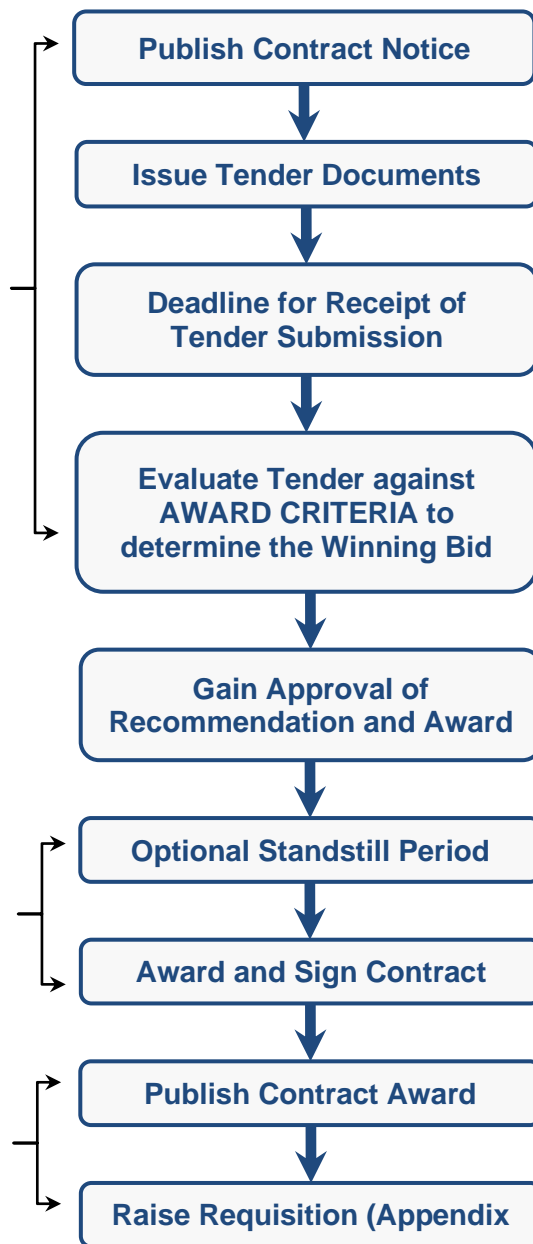


## APPENDIX 8: Quotes



## APPENDIX 9: Light Touch Procurement (Section 74 PCR 2015)

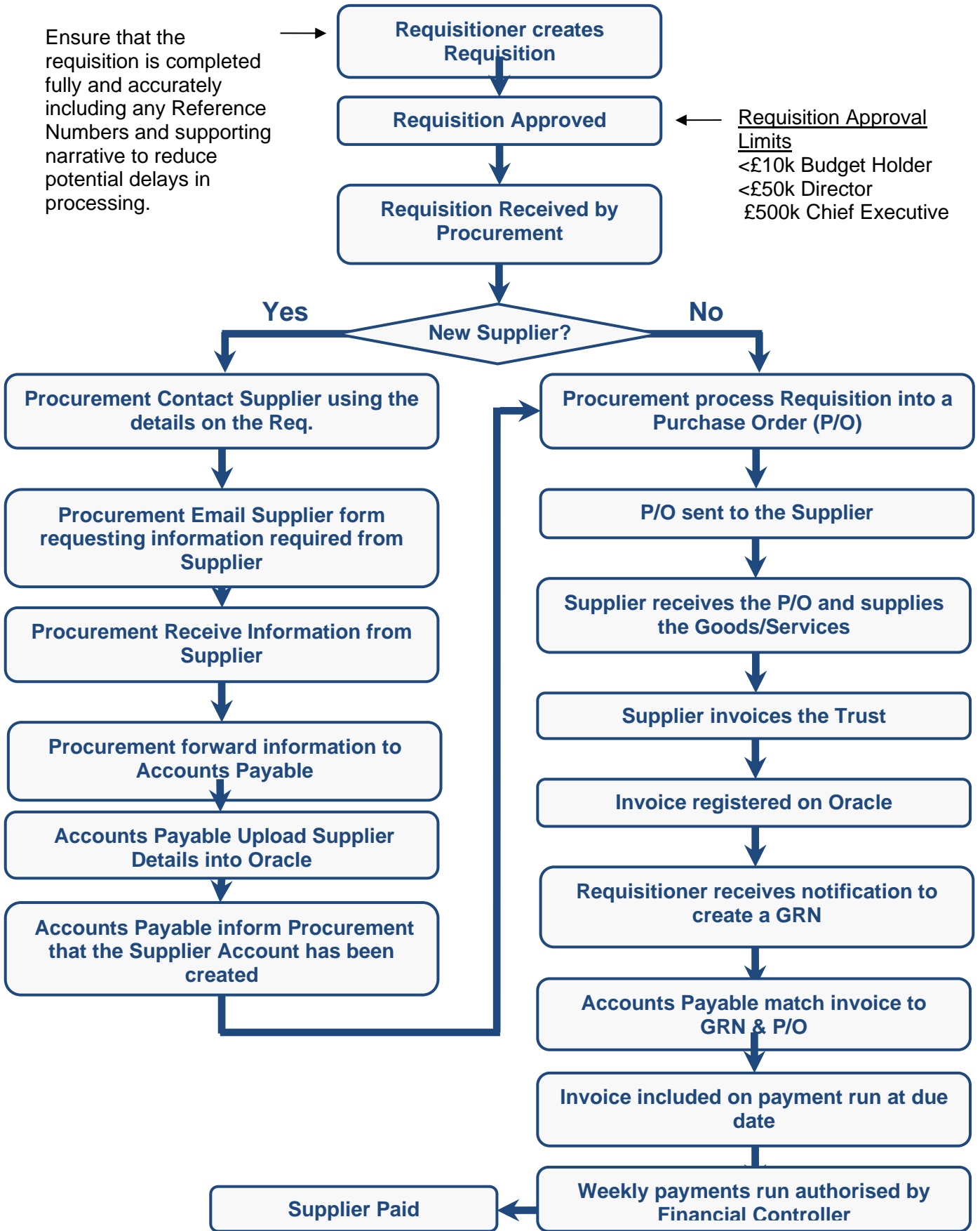
The Light Touch regime is governed under Section 74 of the Public Contract Regulations 2015 – Statutory Instrument 102 (as amended). The process shown here is reflective of an indicative best practice approach only. Section 74 relates specifically to a small set of contractual categories and may not be available in all circumstances.). Advice must be sought from Procurement prior to undertaking use process.



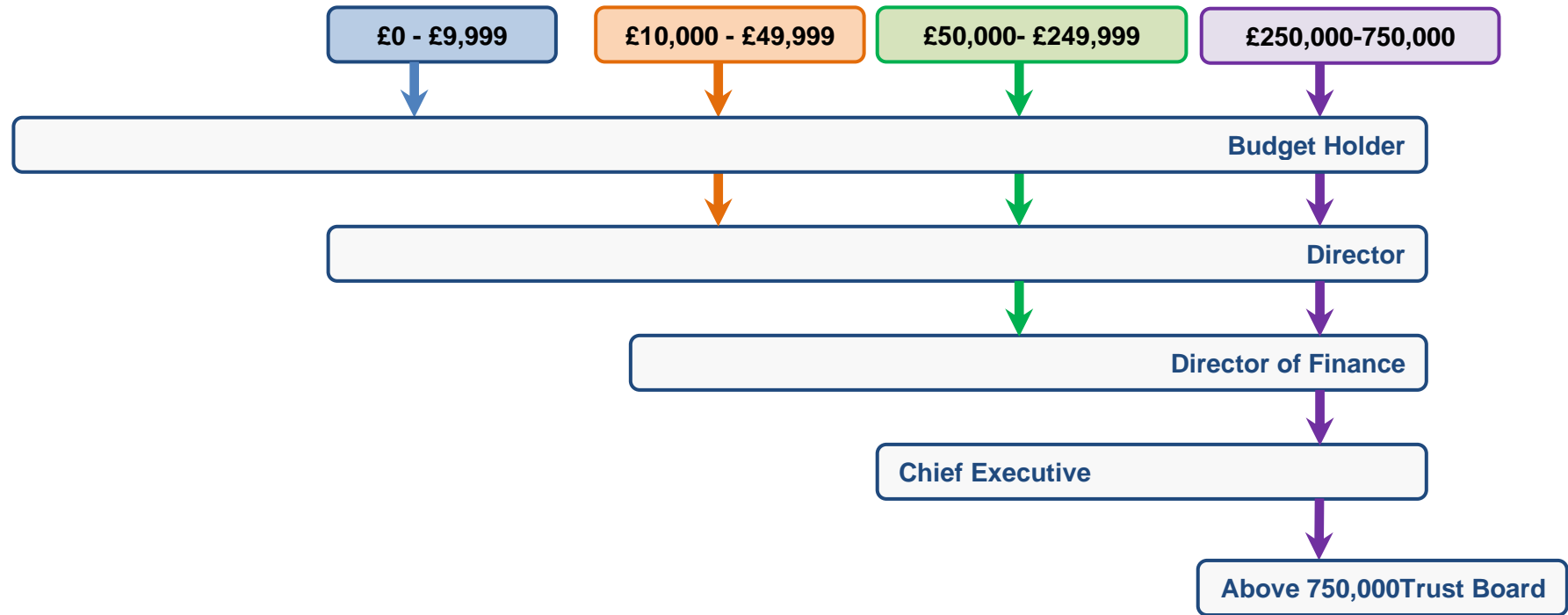
10 calendar days minimum

Publish the award decision/s on Contracts Finder within reasonable timescales.

# APPENDIX 10: Procurement To Pay (P2P) Process



**APPENDIX 11: Trust Scheme of Delegation - Procurement Approval Process (values are per annum)**



## APPENDIX 12: Tender Waiver Process



**RECORD OF WAIVING OF STANDING FINANCIAL INSTRUCTIONS RELATING TO THE TENDERING AND CONTRACT PROCEDURE**

In accordance with Standing Financial Instruction 16.6.3 (extract overleaf), approval is sought to waive formal tendering procedures for the following item:-

=====

Contract Start & End Date ----- Cost per annum ----- Total Cost-----  
--

The waiver is requested under the following paragraphs:

Paragraph

Request made by -----  
00/00/2024

Date

Procurement Officer ----- Signature -----

**Paragraph 16.6.3 waivers only**

In accordance with Standing Financial Instruction 16.6.3 , the above waiver has been referred to, and approved/not approved, by me.

Chief Executive.....

Date.....

- (a) the estimated expenditure or income does not, or is not reasonably expected to, exceed the threshold for tendering as set out in the Scheme of Delegation;
- (b) where the supply is proposed under special arrangements negotiated by the DH in which event the said special arrangements must be complied with;
- (c) regarding disposals as set out in SFI 24; Formal tendering procedures **may be waived** in the following circumstances:
- (d) in very exceptional circumstances where the Chief Executive decides that formal tendering procedures would not be practicable or the estimated expenditure or income would not warrant formal tendering procedures, and the circumstances are detailed in an appropriate Trust record;
- (e) where the requirement is covered by an existing contract;
- (f) where Public Sector Framework agreements are in place and have been approved in accordance with the Scheme of Delegation;
- (g) where a consortium arrangement is in place and a lead organisation has been appointed to carry out tendering activity on behalf of the consortium members;
- (h) where the timescale genuinely precludes competitive tendering but failure to plan the work properly would not be regarded as a justification for a single tender;
- (i) where specialist expertise is required and is available from only one source;
- (j) when the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate; when the goods required by the Trust are a partial replacement for, or in addition to, existing goods and to obtain the goods from a supplier other than the supplier who supplied the existing goods would oblige the Trust to acquire goods with different technical characteristics and this would result in:
  - incompatibility with the existing goods; or
  - disproportionate technical difficulty in the operation and maintenance of the existing goods; but no such contract may be entered in for a duration of more than three years;
- (k) there is a clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering; when works or services required by the Trust are additional to works or services already contracted for but for unforeseen circumstances such additional works or services have become necessary and that such additional works or services:
  - cannot for technical or economic reasons be carried out separately from the works or services under the original contract without major inconvenience to the Trust; or
  - can be carried out or provided separately from the works or services under the original contract but are strictly necessary to the latest stages of performance of the original contract; provided that the value of such additional works or services does not exceed 50% of the value of the original contract.
- (l) for the provision of legal advice and services providing that any legal firm or partnership commissioned by the Trust is regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council for England and Wales in relation to the obtaining of Counsel's opinion) and are generally recognised as having sufficient expertise in the area of work for which they are commissioned. The Director of Finance & Corporate Assurance will ensure that any fees paid are reasonable and within commonly accepted rates for the costing of such work. (m) where allowed and provided for in the Capital Investment Manual. The waiving of competitive tendering procedures should not be used to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure. Where it is decided that competitive tendering is not applicable and should be waived, the fact of the waiver and the reasons should be documented and recorded in an appropriate Trust record and reported to the Audit Committee at each meeting.

## APPENDIX 13: Document Control Sheet

This document control sheet must be completed in full to provide assurance to the approving committee.

Document Type	Procurement Policy		
Document Purpose	This is a review only document was approved in 2017 as below		
Consultation/Peer Review:	Date:	Group/Individual	
List in right hand columns consultation groups and dates	December 2023	Peter Beckwith	
		Phillip Simmons	
Approving Committee:	EMT	Date of Approval:	24 January 2024 (v2.0)
Ratified at:	Board	Date of Ratification:	31 January 2024 (v2.0)
Training Needs Analysis: (please indicate training required and the timescale for providing assurance to the approving committee that this has been delivered)	NA	Financial Resource Impact	NA
Equality Impact Assessment undertaken?	Yes [ <input checked="" type="checkbox"/> ]	No [ <input type="checkbox"/> ]	N/A [ <input type="checkbox"/> ] Rationale:
Publication and Dissemination	Intranet [ <input checked="" type="checkbox"/> ]	Internet [ <input type="checkbox"/> ]	Staff Email [ <input type="checkbox"/> ]
Master version held by:	Author [ <input type="checkbox"/> ]	HealthAssure [ <input checked="" type="checkbox"/> ]	
Implementation:	Describe implementation plans below - to be delivered by the Author:		
	Already in place, just needs updated policy to be uploaded to Intranet		
Monitoring and Compliance:	<p>Compliance with this policy will be monitored by internal audit and will form part of the audit regime of contracts. The setting of timescales will be agreed as part of the annual audit plan and full internal audit should be carried out at least once every three years. The results of these audits will be controlled and reported by the internal auditors to the audit committee as part of the general audit reporting. Any required review or action will be determined by the audit committee.</p> <p>Procurement will also undertake its own audit of compliance using historic spend data and contract management information controlled by Procurement. This monitoring will be undertaken quarterly against all of the Trusts expenditure and any non-compliant expenditure will initially be reported to the business area for investigations and understanding.</p>		

### Document Change History: (please copy from the current version of the document and update with the changes from your latest version)

Version number/name of procedural document this supersedes	Type of change, e.g. review/legislation	Date	Details of change and approving group or executive lead (if done outside of the formal revision process)
1.0	New Policy	01/05/2013	Added comments from JW expanding Best Value information
1.1	Review	02/07/2013	Added additional information on feedback from Governance Committee: 6.7 process for evaluation and 11 where the audits go for review and action.
1.2	Review	09/07/2014	Added information regarding the zero inflation pledge
1.3	Review	25/04/2017	Reviewed and updated new appendices with template diagrams added
1.4	Review	20/06/2017	Minor suggested changes following IAGC review; addition of modern slavery position 5.12, SME/Local providers 5.13 and StIC reference in Appendix 11 approval process
1.5	Review	19/06/2019	Updated OJEU Procurement thresholds 5.6.3 and link to new Trust Standing Orders, Scheme of Delegation and Standing Financial Instructions. 12/09/23 – Review date extended by Director sign-off (Peter Beckwith). Document confirmed as currently fit for purpose. Full review to proceed once new legislative details published (expected end of 2023).
2.0	Review	24/01/2024	Fully Reviewed and updated in line with new legislation. Approved at EMT (24 January 2024) and then ratified at Board (31 January 2024).
2.1	Review – Minor Amends	15/05/2024	Reviewed with minor amends made - added section 5.5 (Sustainable Procurement) because of an audit report recommendation. Approved by director sign-off (Peter Beckwith, Director of Finance - 15 May 2024).



## APPENDIX 14: Equality Impact Assessment

For strategies, policies, procedures, processes, guidelines, protocols, tenders, services

1. **Document or Process or Service Name:** Procurement Policy
2. **EIA Reviewer (name, job title, base and contact details):** Mark Turner, Senior Procurement Manager, Willerby Hill [mturner10@nhs.net](mailto:mturner10@nhs.net)
3. **Is it a Policy, Strategy, Procedure, Process, Tender, Service or Other?** Policy

<p><b>Main Aims of the Document, Process or Service</b>          The Procurement Policy provides guidance to all Trust Staff to ensure effective, complaint and best value procurement is undertaken on behalf of the Trust.</p>
<p>Please indicate in the table that follows whether the document or process has the potential to impact adversely, intentionally or unwittingly on the equality target groups contained in the pro forma</p>

Equality Target Group Age Disability Sex Marriage/Civil Partnership Pregnancy/Maternity Race Religion/Belief Sexual Orientation Gender reassignment	Is the document or process likely to have a potential or actual differential impact with regards to the equality target groups listed?  Equality Impact Score Low = Little or No evidence or concern (Green) Medium = some evidence or concern (Amber) High = significant evidence or concern (Red)	How have you arrived at the equality impact score? who have you consulted with what have they said what information or data have you used where are the gaps in your analysis how will your document/process or service promote equality and diversity good practice
--	--	--

Equality Target Group	Definitions	Equality Impact Score	Evidence to support Equality Impact Score
<b>Age</b>	Including specific ages and age groups:  Older people Young people Children Early years	Low	Please see below
<b>Disability</b>	Where the impairment has a substantial and long term adverse effect on the ability of the person to carry out their day to day activities:  Sensory Physical Learning Mental health  (including cancer, HIV, multiple sclerosis)	Low	Please see below
<b>Sex</b>	Men/Male Women/Female	Low	Please see below
<b>Marriage/Civil Partnership</b>		Low	Please see below
<b>Pregnancy/Maternity</b>		Low	Please see below
<b>Race</b>	Colour Nationality Ethnic/national origins	Low	Please see below
<b>Religion or Belief</b>	All religions  Including lack of religion or belief and where belief includes any religious or philosophical belief	Low	Please see below

<b>Sexual Orientation</b>	Lesbian Gay men Bisexual	Low	Please see below
<b>Gender reassignment</b>	Where people are proposing to undergo, or have undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attribute of sex	Low	Please see below

## Summary

<p><b>Please describe the main points/actions arising from your assessment that supports your decision above:</b></p> <p>The NHS terms and conditions of supply of goods and services upon which the Trust contracts require that :-</p> <p>26 Equality and human rights</p> <p>26.1 The Supplier shall:</p> <p>26.1.1 ensure that (a) it does not, whether as employer or as provider of the Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;</p> <p>26.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with the Authority in light of the Authority's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and</p> <p>26.1.3 the Supplier shall impose on all its subcontractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 2.</p> <p>26.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 26 of this Schedule 2.</p> <p>The Procurement Team also ensures that all tenders and quotations also comply with the EU general principles of non-discrimination, equal treatment and transparency and include the terms above.</p> <p>In significant contracts the process of contract management would also help ensure that these terms and conditions are being fulfilled and any inconsistencies or concerns would be dealt with and managed via this process.</p> <p>This document contains a new section with flowcharts to help make this information easier to understand for all staff in the Trust particular those who have no previous experience in this area.</p>	
EIA Reviewer: Mark Turner	
Date completed: January 2024	Signature: M Turner

## APPENDIX 15: RELEVANT HEALTH CARE SERVICES

The common procurement vocabulary (CPV) codes are listed in Schedule 1. The CPV codes adopted by the PSR were defined by [Regulation \(EC\) No 2195/2002 of the European Parliament and of the Council](#), as amended from time to time.

Health care services in scope of the regime must fall within one or more of the adopted CPV codes.

The list below of CPV codes corresponds to services covered by the regime. This list must be used by relevant authorities to support decisions around scope. Relevant authorities must use the most specific CPV code they can, rather than an overarching one. For example, where relevant authorities are commissioning cycles for in vitro fertilisation, relevant authorities must use the CPV code for 'in vitro fertilisation' rather than one for 'gynaecologic or obstetric services'. However, as the list of CPV codes does not cover all types of health care services, relevant authorities may in some situations use the overarching parent code for 'health services' when a more detailed CPV code is not available. If a more detailed CPV code is available, but not included in the list below, then the service is out of scope.

CPV code	Description
85100000-0	Health services
85110000-3	Hospital and related services
85111000-0	Hospital services
85111100-1	Surgical hospital services
85111200-2	Medical hospital services
85111300-3	Gynaecological hospital services
85111310-6	In vitro fertilisation services
85111320-9	Obstetrical hospital services
85111400-4	Rehabilitation hospital services

<b>CPV code</b>	<b>Description</b>
85111500-5	Psychiatric hospital services
85111600-6	Orthotic services
85111700-7	Oxygen-therapy services
85111800-8	Pathology services
85111810-1	Blood analysis services
85111820-4	Bacteriological analysis services
85111900-9	Hospital dialysis services
85112200-9	Outpatient care services
85120000-6	Medical practice and related services
85121000-3	Medical practice services
85121100-4	General-practitioner services
85121200-5	Medical specialist services
85121210-8	Gynaecologic or obstetric services
85121220-1	Nephrology or nervous system specialist services
85121230-4	Cardiology services or pulmonary specialist services
85121231-1	Cardiology services
85121232-8	Pulmonary specialist services
85121240-7	ENT or audiologist services

<b>CPV code</b>	<b>Description</b>
85121250-0	Gastroenterologist and geriatric services
85121251-7	Gastroenterologist services
85121252-4	Geriatric services
85121270-6	Psychiatrist or psychologist services
85121271-3	Home for the psychologically disturbed services
85121280-9	Ophthalmologist, dermatology or orthopaedics services
85121281-6	Ophthalmologist services
85121282-3	Dermatology services
85121283-0	Orthopaedic services
85121290-2	Paediatric or urologist services
85121291-9	Paediatric services
85121292-6	Urologist services
85121300-6	Surgical specialist services
85130000-9	Dental practice and related services
85131000-6	Dental-practice services
85131100-7	Orthodontic services
85131110-0	Orthodontic-surgery services
85140000-2	Miscellaneous health services

<b>CPV code</b>	<b>Description</b>
85141000-9	Services provided by medical personnel
85141100-0	Services provided by midwives
85141200-1	Services provided by nurses
85141210-4	Home medical treatment services
85141211-1	Dialysis home medical treatment services
85141220-7	Advisory services provided by nurses
85142000-6	Paramedical services
85142100-7	Physiotherapy services
85143000-3	Ambulance services
85144000-0	Residential health facilities services
85144100-1	Residential nursing care services
85145000-7	Services provided by medical laboratories
85146000-4	Services provided by blood banks
85146100-5	Services provided by sperm banks
85146200-6	Services provided by transplant organ banks
85148000-8	Medical analysis services
85149000-5	Pharmacy services, but not including community pharmacy services that are arranged under the <a href="#">National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013</a>
85150000-5	Medical imaging services

<b>CPV code</b>	<b>Description</b>
85160000-8	Optician services
85323000-9	Community health services, but only in respect of community health services which are delivered to individuals
85312330-1	Family-planning services, but only insofar as such services are provided to individuals to support sexual and reproductive health
85312500-4	Rehabilitation services, but only insofar as such services are provided to individuals to tackle substance misuse or for the rehabilitation of the mental or physical health of individuals