

# Understanding NHS procurement processes

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Understanding how  
procurement is governed

Whitepaper

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**Restore are privileged to support 81% of NHS Trusts with various document management solutions. This has created vast experience across the group of the NHS procurement process, and how a Trust can successfully tender for a large digitisation project.**

Money is available, whether through the Digital Exemplar programme, as a Fast Follower or the NHS Digital Funding scheme. However, that budget is still limited and being confident on ROI is essential.

Commencing a procurement process needs to guarantee you receive the information you need to make the right decision. Plus, it elicits accurate and realistic pricing.

This whitepaper is designed to provide simple advice when approaching digital transformation procurement in the NHS.

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# Understanding how procurement is governed

Procurement within NHS Trusts is governed by a set of UK and EU principles. These seek to ensure a 'level playing field' for procurement teams and suppliers. The principles are legally binding within certain thresholds. Many NHS Trusts apply them throughout their procurement strategy. These principles are:

## EU principles of procurement

### Transparency

Procurement activity shall be advertised appropriately to ensure market visibility and provide clear information on the process, contractual requirements, performance and the method(s) of evaluation being used in the determination of a successful bid.

### Proportionality

The approach taken in any given procurement activity will be proportionate to the level of complexity, impact, risk and value of the activity as to not prevent or discourage bidders.



## Equality

Ensuring that all providers and sectors have equal opportunity to compete where appropriate, that financial and due diligence checks apply equally and are proportionate, and that pricing and payment regimes are transparent and fair.

## Non-discriminatory

The consistent application of the Regulations and Trust rules to all procurement activity to ensure that no member state supplier is prevented from participating in an EU tender on the grounds of nationality, or subject matter of the contract.

## Mutual recognition

Member states will recognise equivalent measures of qualifications, standards etc.



## **UK principles of procurement**

### **Favour competition**

Procurement activity should be undertaken in a competitive environment to aid in demonstrating the EU and UK principles as well as VFM.

### **Robust**

Procurement activity should be legally robust to ensure compliance and account of decisions made and/or actions taken. The specification of the services and the terms and conditions shall ensure the Trust and its patients are safeguarded appropriately.

### **Accountability**

All procurement activity will have an accountable office of the Trust to sign off on the compliance of the procurement process(es) used.

### **Value for money**

All procurement activity will seek and demonstrate the balance between quality and cost reflecting in a value-for-money (VFM) decision.

### **Quality**

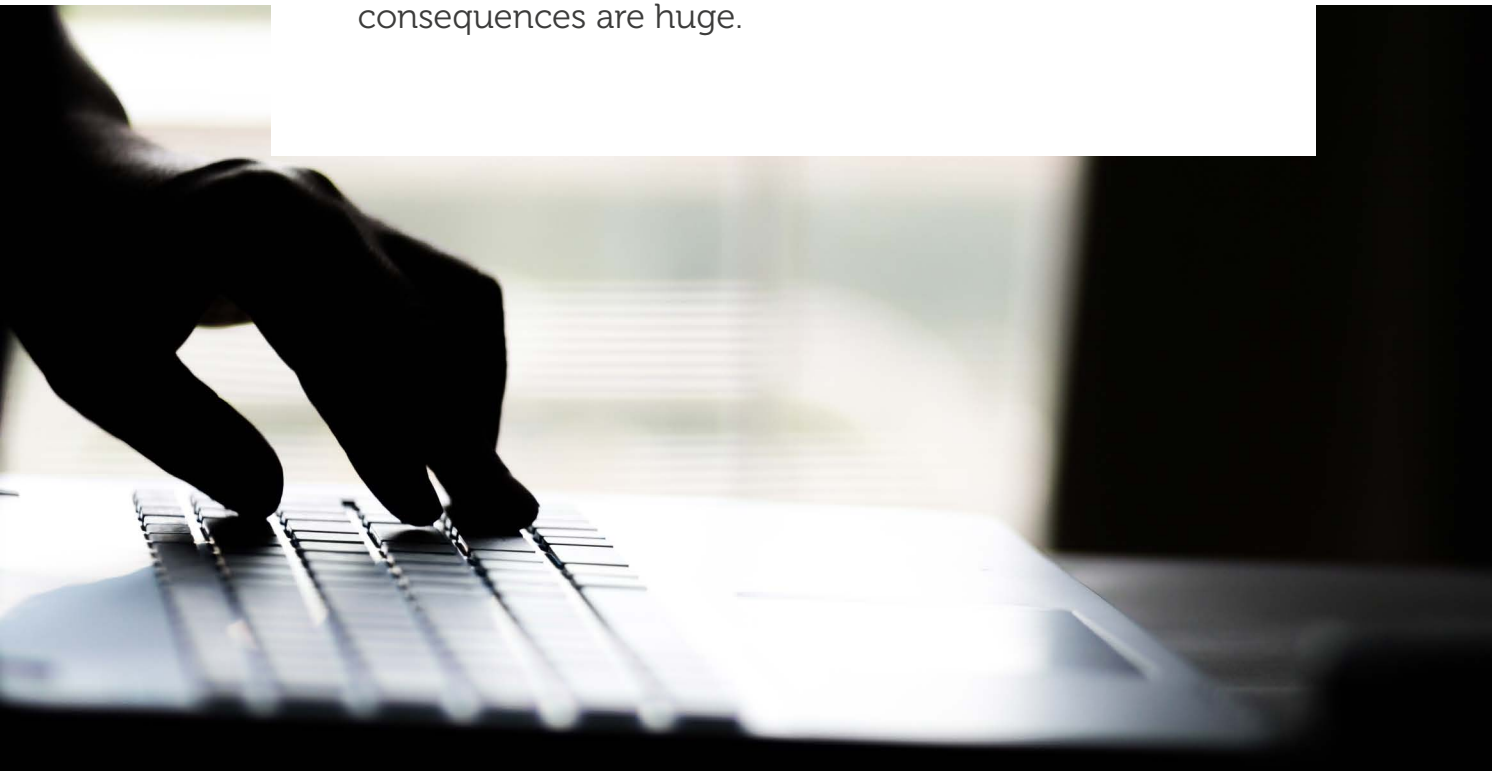
Procurement activity will set out the minimum quality of goods, works or services/outcomes to be achieved by though the specification of the contract.

# Fraud prevention

**According to the latest estimate by the NHS Counter Fraud Authority, fraud costs the NHS £1.29 billion a year.**

This covers a whole range of economic crimes, some but not all relating to the tender process.

Those committing fraud are a minority, but their consequences are huge.



## Types of fraud can include:



### False Claims

Patients claiming free treatment they are not entitled too. Or, NHS professionals claiming money for services they've not provided.



### Payment diversion

Fraudsters trick an NHS organisation to pay money to them. For example, pretending to be one of your regular suppliers.



### Procurement fraud

Bid rigging. When bidders agree between themselves to end competition. Denying the organisation a fair price or delivery of poor-quality goods or services.



### Timesheet fraud

Staff falsifying timesheets.

There must be a separation of duties within the Trust to protect against fraud and errors. This is usually achieved by dividing the process between two or more people. So that no one person handles the entire purchasing process.

The three areas of authority to divide are:



The person with authority over the budget



Authority to seek quotations/tenders, negotiate and commit



Authority to accept an invoice and pay.

You support this by creating a tender process with control points throughout. Often used controlled points by NHS Trusts include:

### **Specification/requisition process**

Duly authorised representative to approve the specification or raise a requisition.

### **Selection process**

Terms of Reference of evaluation panels, the use of consensus and moderating scoring.



### **Contract award**

Scheme of reservation to SFI's three mandates who or which Board are duly authorised to approve/ratify the recommendation to award a contract.

### **Goods received**

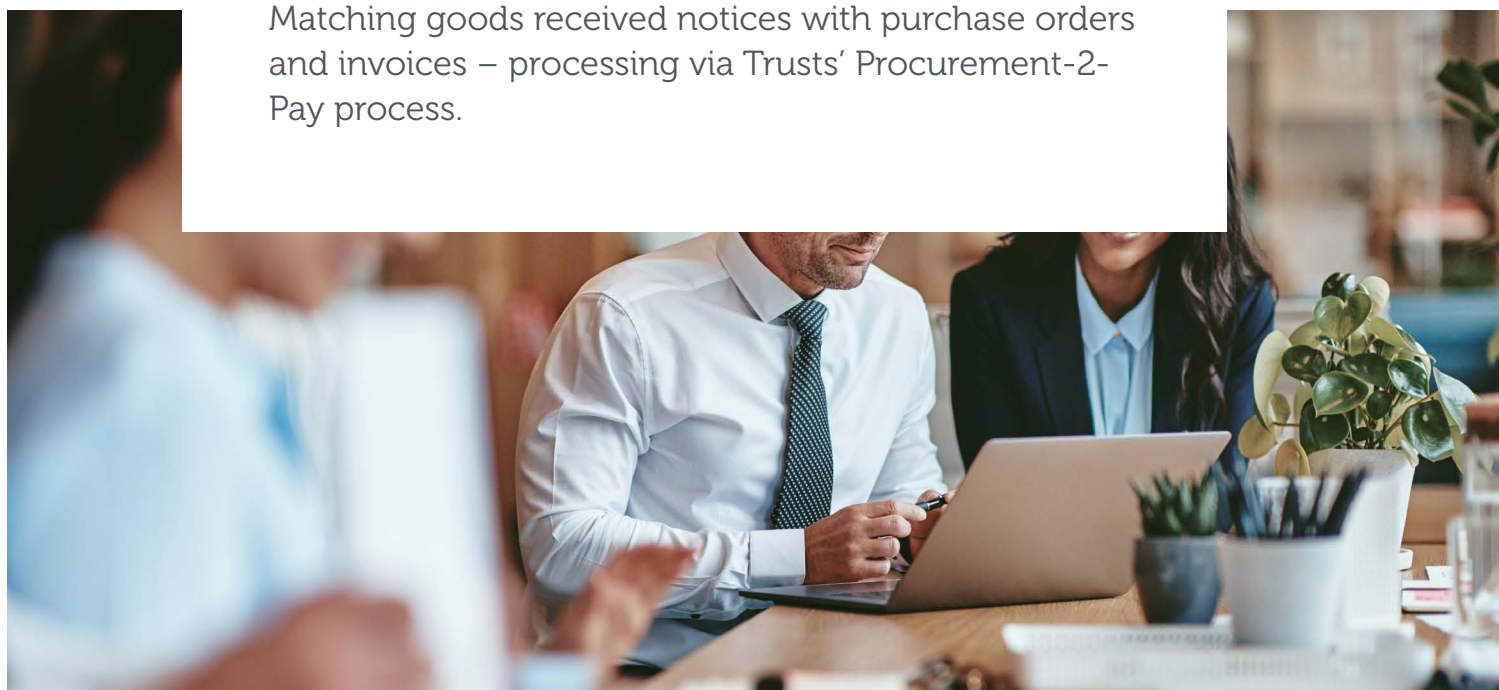
The requisitioner is responsible for ensuring goods, services and/or works received match those orders in all aspects.

### **Services performed**

The named Contract Manager is responsible for ensuring the performance of the services to the specified/agreed standards.

### **Payment process**

Matching goods received notices with purchase orders and invoices – processing via Trusts' Procurement-2-Pay process.



# The procurement process

The process is governed by the UK Public Contract Regulations of 2015 and there are different ways to approach a procurement process.

## **Conditions relating to the GPA and other international agreements (PRC Regulation 25)**

In so far as they are covered by Annexes 1, 2 and 4 to 7 and the General Notes to the EU's Appendix 1 to the GPA and by the other international agreements by which the EU is bound, contracting authorities shall accord to the works, supplies, services and economic operators of the signatories to those agreements treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the EU.

## **Open procurement (PRC Regulation 27)**

Where a notice is placed in the Official Journal inviting tenders from those that meet declared minimum capacity levels, all of those who submit their tender by the data specified in the notice must be considered.

### **Restricted procurement (PRC Regulation 28)**

When a contract notice is placed in the Official Journal of the European Union (OJEU) inviting expressions of interest along with proof of capacity. Only suppliers that meet the minimum requirements and are shortlisted using the rules for further selection will be invited to the tender.

### **Competitive with negotiation (PRC Regulation 29)**

Where a notice is placed in the OJEU and from those who respond participants are chosen following the same process as the restricted procedure, above. Competitive with Negotiation allows greater flexibility when the needs of the contract cannot be met without adapting readily available solutions, where it involves design or innovative solutions, where the subject requires complex negotiations or where a specification cannot be defined with adequate precision.

This procedure is only available where a Trust is looking to award a particularly complex contract (as defined in the relevant Regulation) and where the Trust feels the open and restricted procedures will not allow the award of that contract.

### **Competitive dialogue (PRC Regulation 30)**

Where a notice is placed in the OJEU and from those who respond participants are chosen following the same process as the restricted procedure, above. A dialogue is then begun with the selected participants with the aim of establishing how the Trust's needs can be best satisfied.

Throughout the process, the Trust must take care to ensure the principles of equal treatment and transparency are adhered to and that a genuine competition has taken place.

This procedure is only available where the Trust is looking to award a particularly complex contract (as defined in the relevant Regulation) and where the Trust feels the open and restricted procedures will not allow the award of that contract.

### **Innovation partnership (PRC regulation 31)**

Innovation partnerships are a new concept in EU procurement law. They are intended to be long term partnerships which allow for both the development and subsequent purchase of new and innovative products, services or works.

The term "partnerships" is not used in a technical sense to mean legal partnerships as defined under UK law. The term is used to indicate the partnering type approach to working together.

The process is similar to the restricted procedure. Advice must be taken prior to selecting this process.

### **Negotiated procedure (PRC Regulation 32)**

Where a contract notice is placed in the OJEU inviting expressions of interest along with proof of capacity. Only suppliers that meet the minimum capacity requirements, and are shortlisted using the rules for further selection, will be invited to negotiate the contract (usually using a tendering round). This procedure is only available in very limited circumstances (principally relating to uncertainty of the requirement) which are like those permitting the use of the competitive dialogue procedure. In certain very limited instances, the negotiated procedure is available without publishing a call for competition. Trusts who use these procedures must be able, if challenged, to justify their decision and show that the grounds set out in the regulations have been met. It is important that there is an audit trail including, where relevant, why the open and restricted procedures were not considered appropriate.

### **Accelerated procedure**

The accelerated procedure is to be used exceptionally, and the Trust must indicate its reasons in the notice to the Official Journal. Generally, the reasons for urgency should be external, i.e. not resulting from delay by the purchaser. Also, it is important to regard the 10/15-day periods as minimum periods: the contracting authority should allow the maximum time practicable.



### **Frameworks and mini competitions**

Where existing, EU compliant contractual Framework exists which the Trust can access, the requirements set out in the Framework will be adhered to in undertaking any further competition. Options available under a Framework are typically, a) Direct Award, undertaken without further competition of the business or b) a mini-competition amongst the suppliers on the Framework / Lot of the Framework. Where mini competitions are undertaken, the Trust shall fulfil the requirements of the Framework and ensure all other, over-arching compliance requirement are met.

### **Dynamic purchasing systems**

Where an EU compliant Dynamic Purchasing System (DPS) is available for the Trust to use, the requirements as set out in the DPS will be adhered to. Where further competition is undertaken (i.e. a mini competition), the Trust shall fulfil the requirements of the DPS and ensure all other, over-arching compliance requirement are met.

### **Electronic auctions**

Where a reverse auction style platform is established with bidders able to place bids of reducing amounts in order to secure the opportunity. These events require specialist input from the Procurement Department and third-party auction provider.

### **Formal quotes**

Where the value of the purchase including VAT is between £25k and £50k, formal quotes must be sought in accordance with the requirements of the Government Contracts Finder.

### **Quick quotes**

Where the value of the purchase including VAT is between £10k and £25k where the Trust must comply with the SFi's and the requirement to demonstrate Value for Money.

### **Prior Information Notices (PIN)**

A Prior Information Notice (PIN) when used in accordance with the UK Public Contract Regulations 2015 can be used to reduce the timescales applicable to tenders above the EU threshold. In such instances, the PIN must be published at least 35 calendar days prior to the publication of the Contract Notice but not greater than 365 calendar days.

## **Invitation for bids/proposals**

### **Prior Information Notices (PIN)**

A Prior Information Notice (PIN) can be used to prepare the market for upcoming opportunities within the next 12 months. Publishing a PIN in the Official Journal of the European Union (OJEU) allows for some reductions in the minimum timescales required during certain procurement processes. For a PIN to be valid, it must be issued at least 35 calendar days prior to the contract notice and be less than 12 months old.

### **Contract Notices (call to competition)**

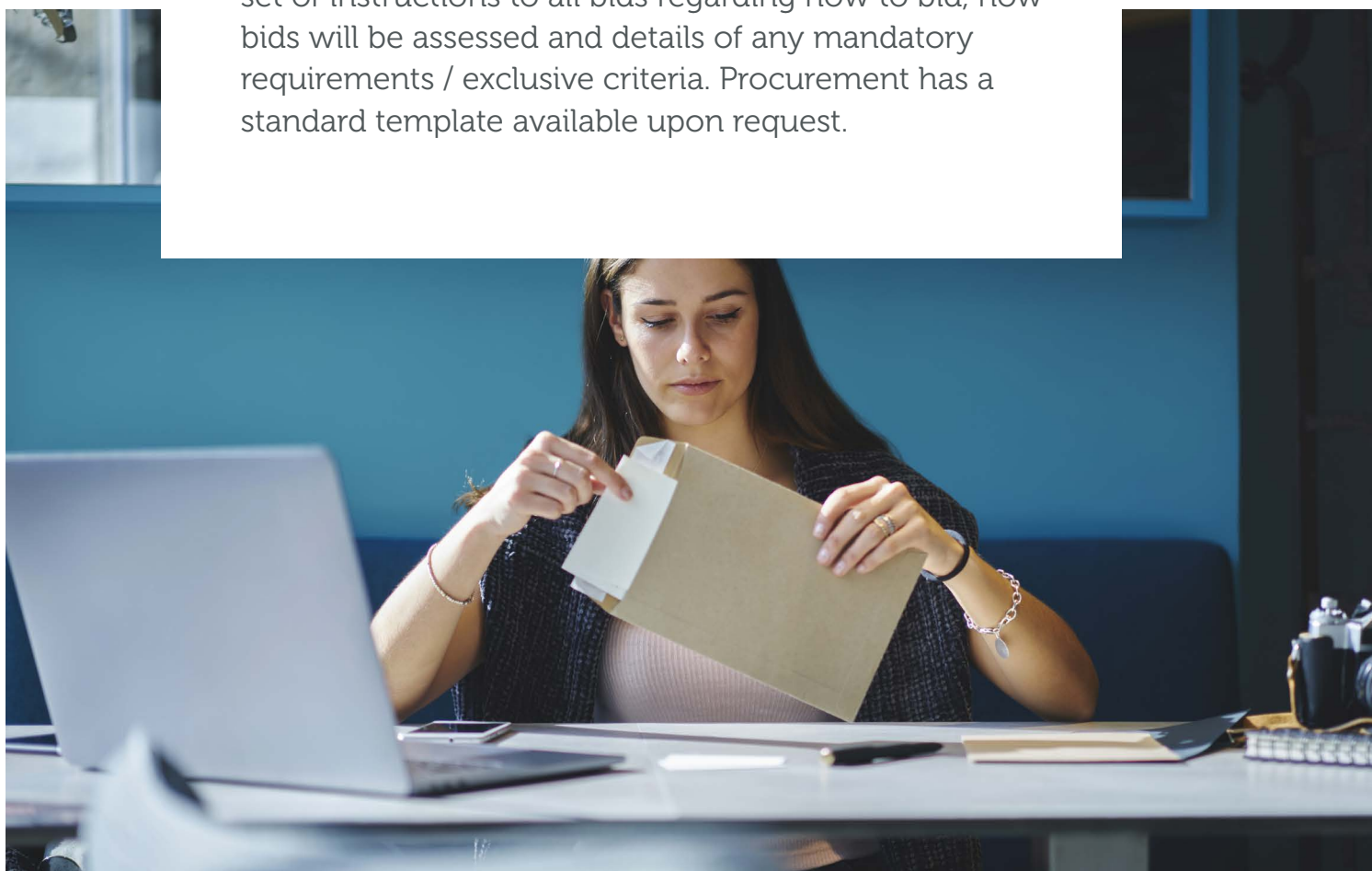
The Contract Notice acts as a call for competition for a specific contract and should be published via the Official Journal of the European Union (OJEU) as soon as possible after the intention to tender has been formed. It provides specific details of the contract as well as criteria for applicants to be selected for invitation to tender in the restricted and competitive procedures. Publication is mandatory other than for contracts covered under the Light Touch regime (Regulation 74 of PCR 2015).

## Letter of Invitation

A covering letter must be included in all Invitation to Tender (ITT) opportunities. The Letter should provide a summary of the key points regarding the opportunity and the contact details for the lead procurement officer. Procurement has a standard template available upon request.

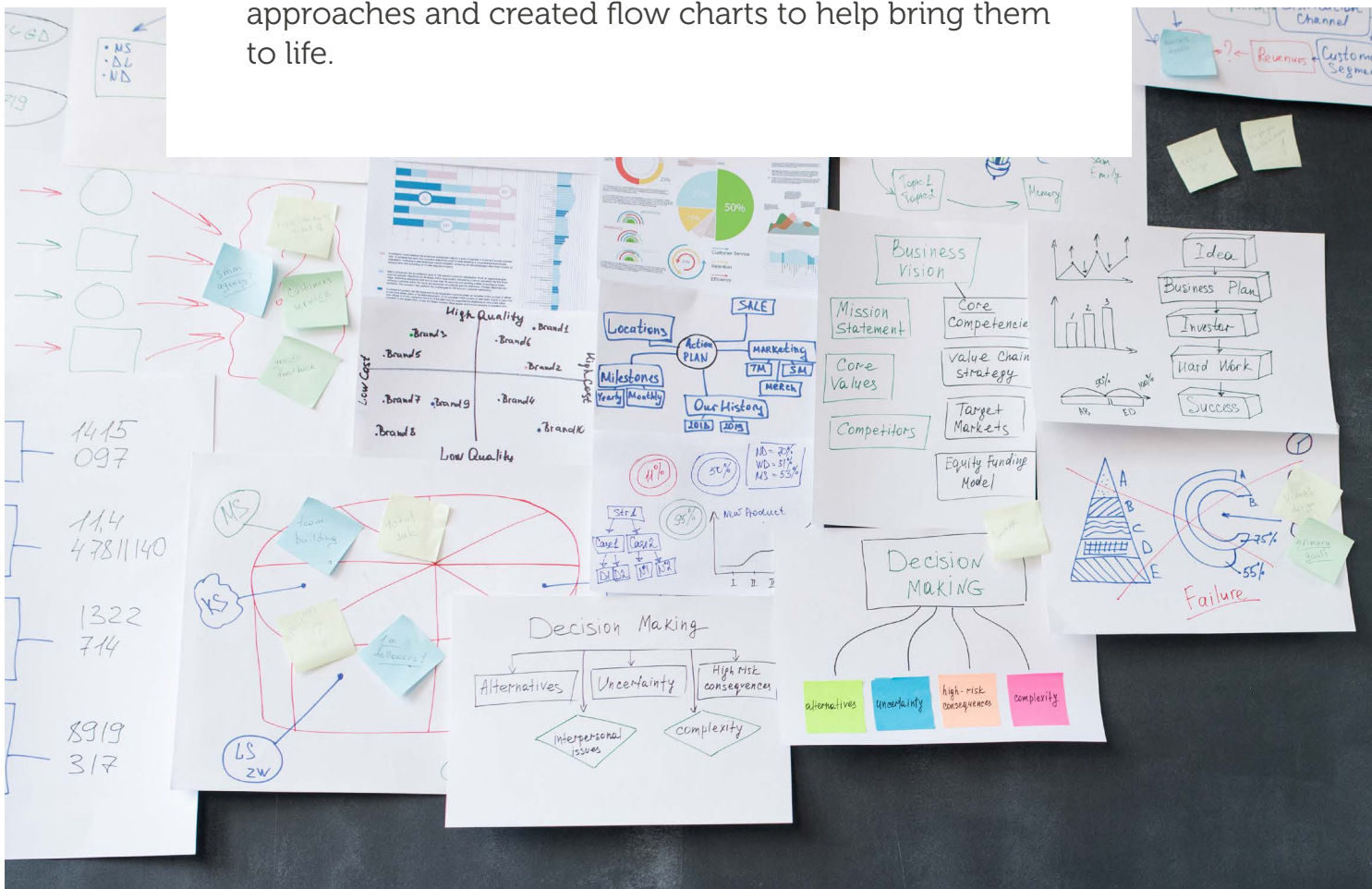
## Instructions to Bidders

The ITT documents must include a clear and explicit set of instructions to all bids regarding how to bid, how bids will be assessed and details of any mandatory requirements / exclusive criteria. Procurement has a standard template available upon request.



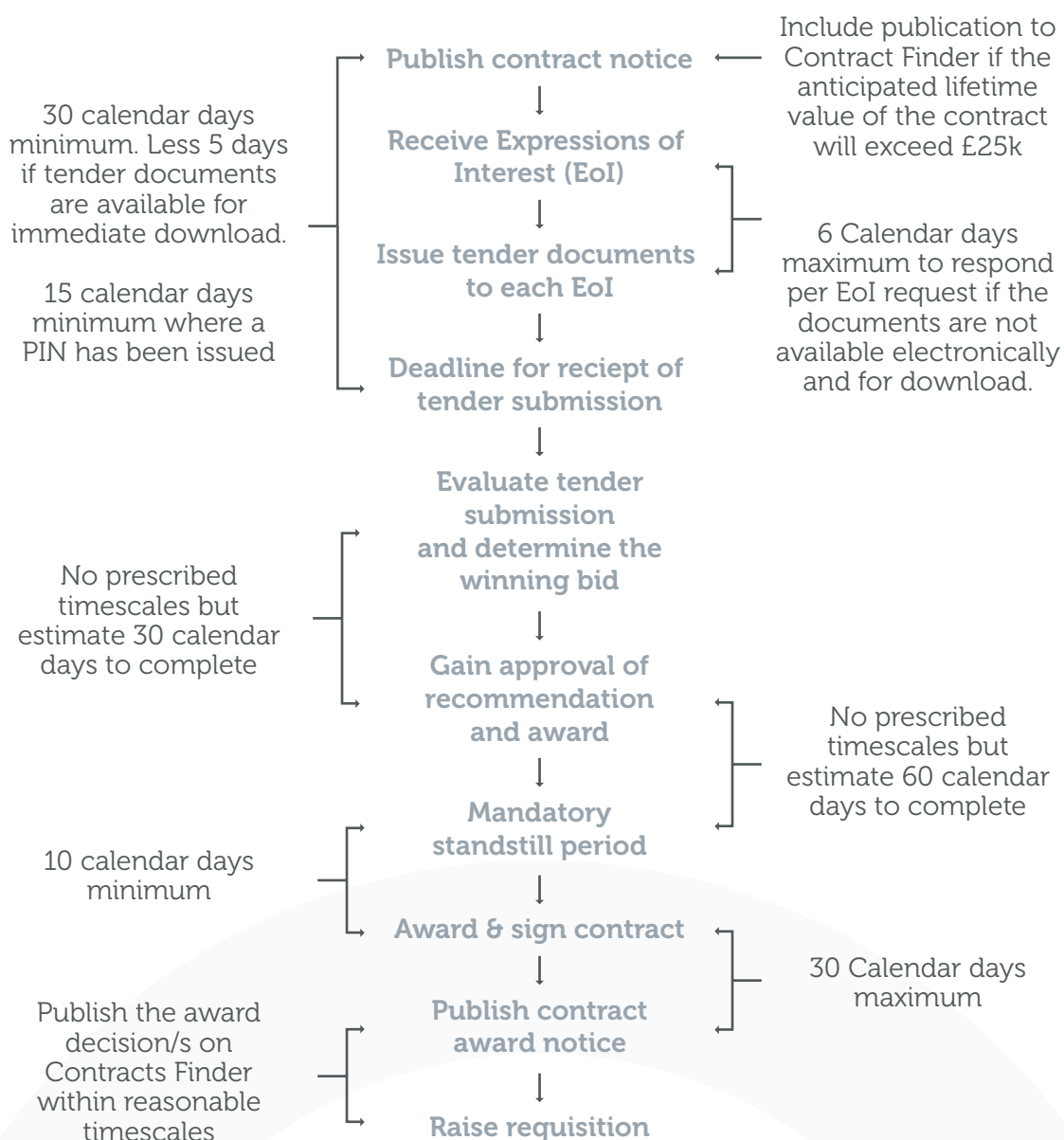
# Flow charts depicting some of the procurement process options

We've picked out a few of these procurement approaches and created flow charts to help bring them to life.

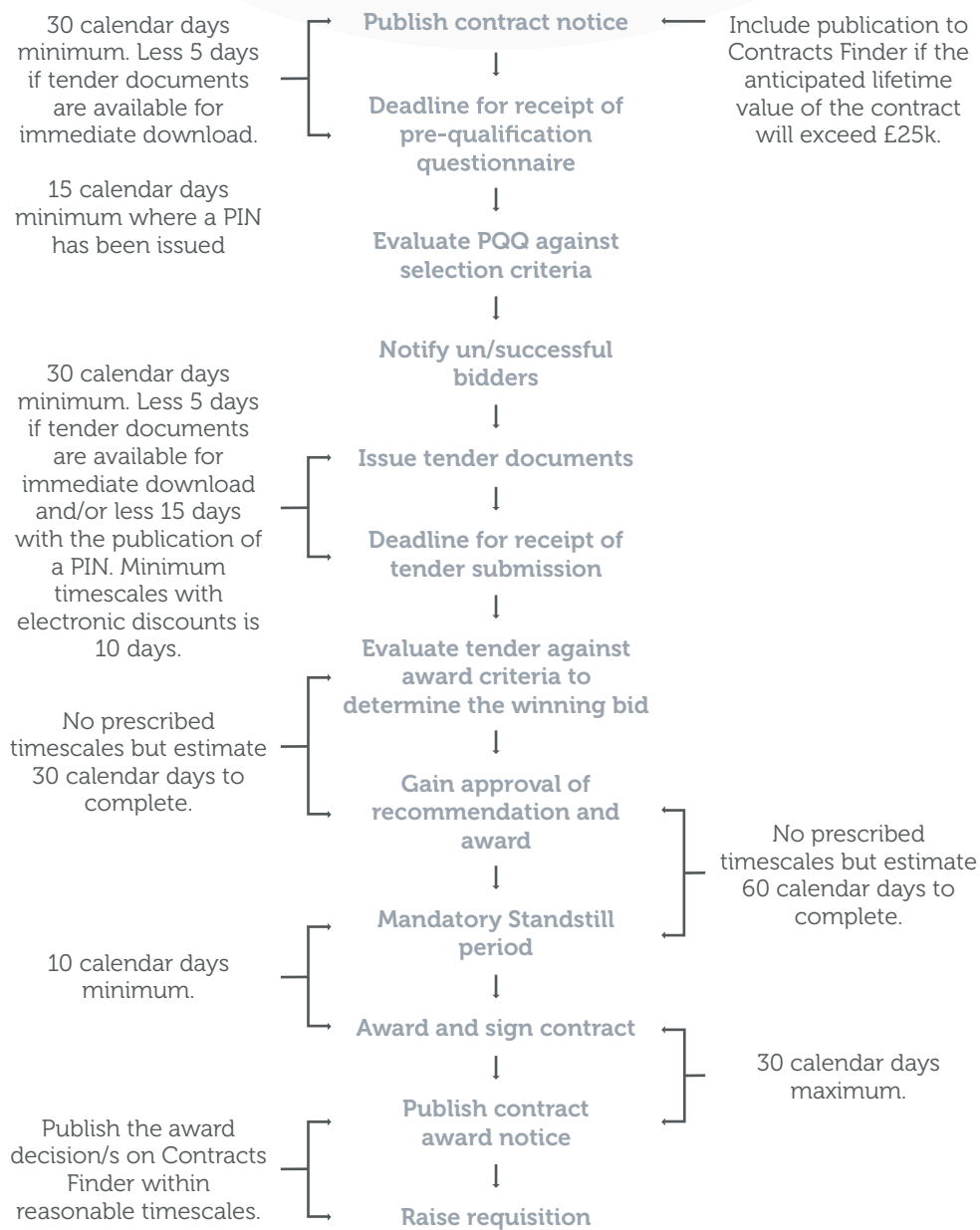




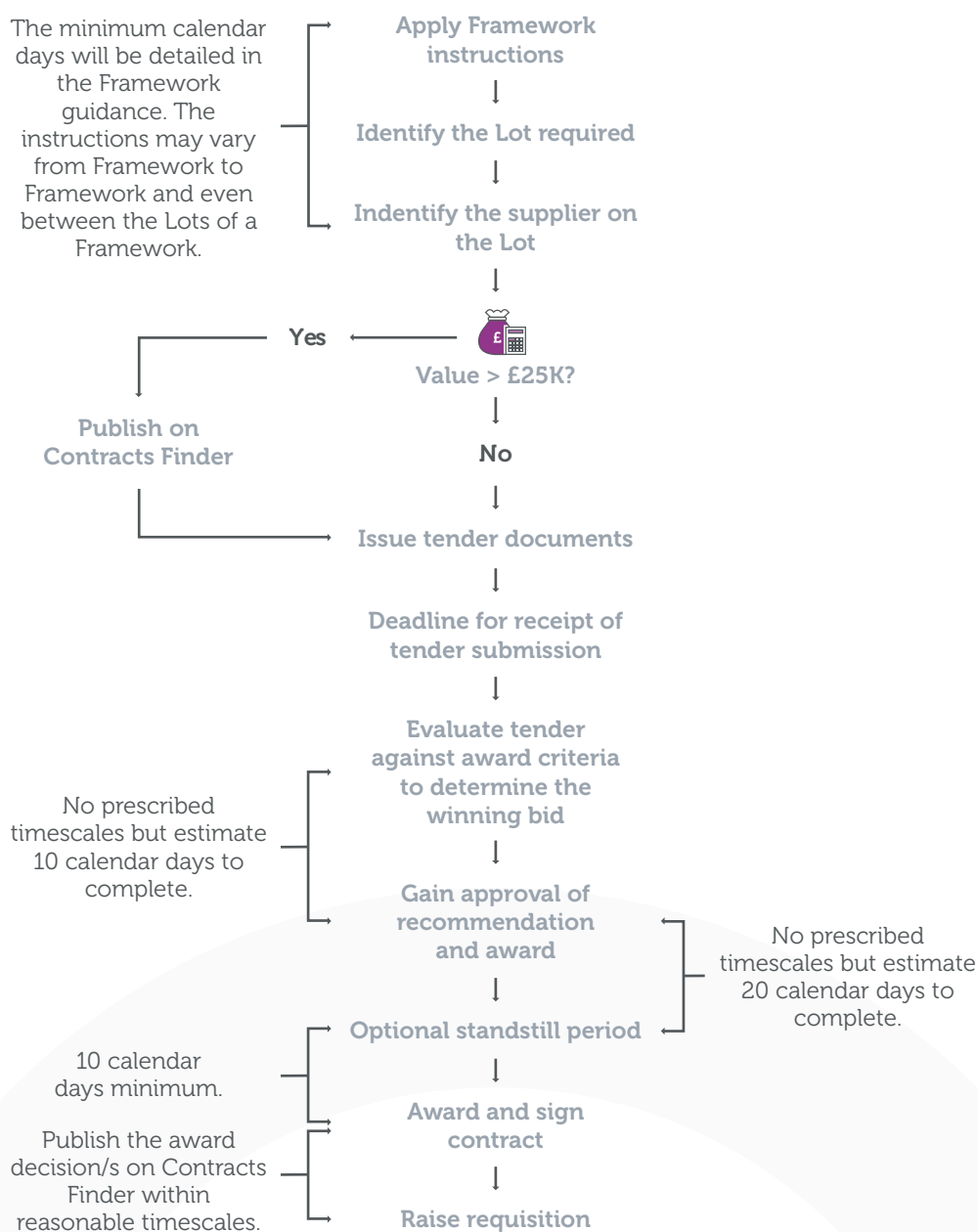
## Open procedure within the public sector



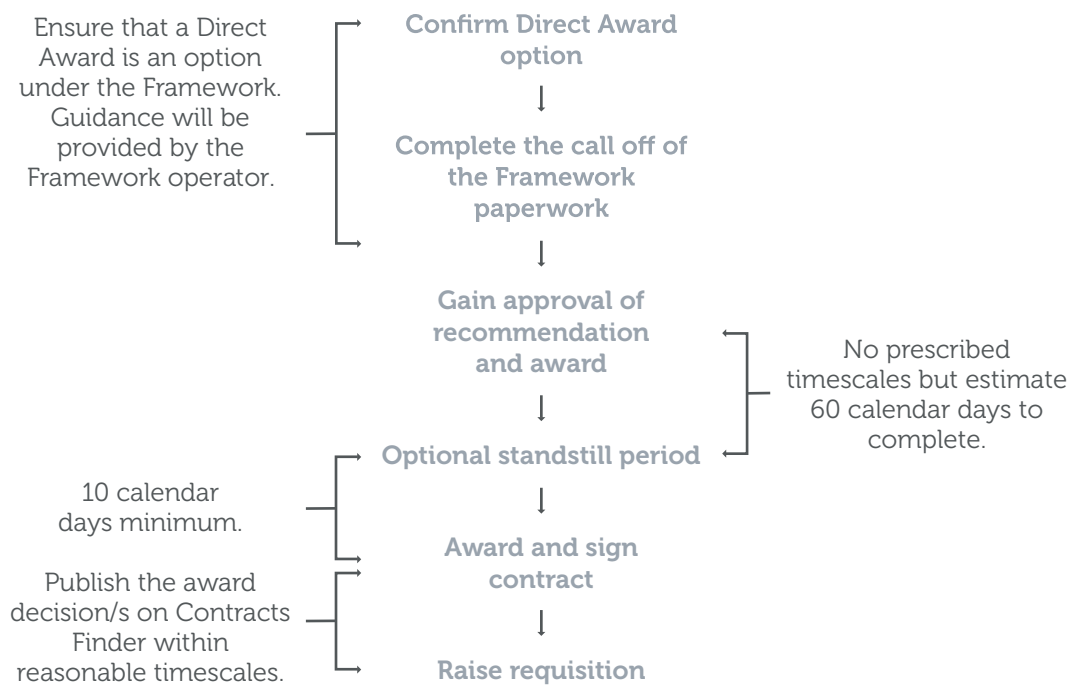
## Restricted procedure within the public sector



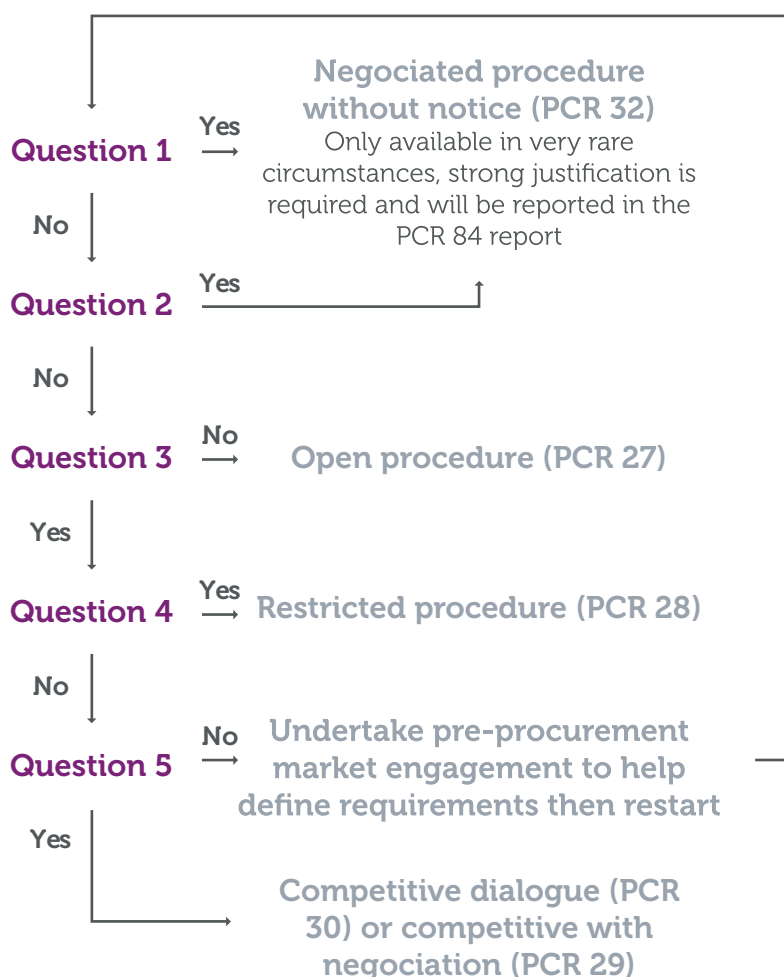
## Frameworks - Mini Competitions



## Direct award under a Framework



## EU Tender - Choice of procedure



**Q1.** Can you evidence that there is only one supplier capable of meeting the requirements?

**Q2.** Is the requirement extremely urgent and genuinely unforeseeable?

**Q3.** Do you need to "pre-qualify" suppliers?

**Q4.** Can you completely define the requirement now?

**Q5.** Are you in one of the situations listed in PCR 25?



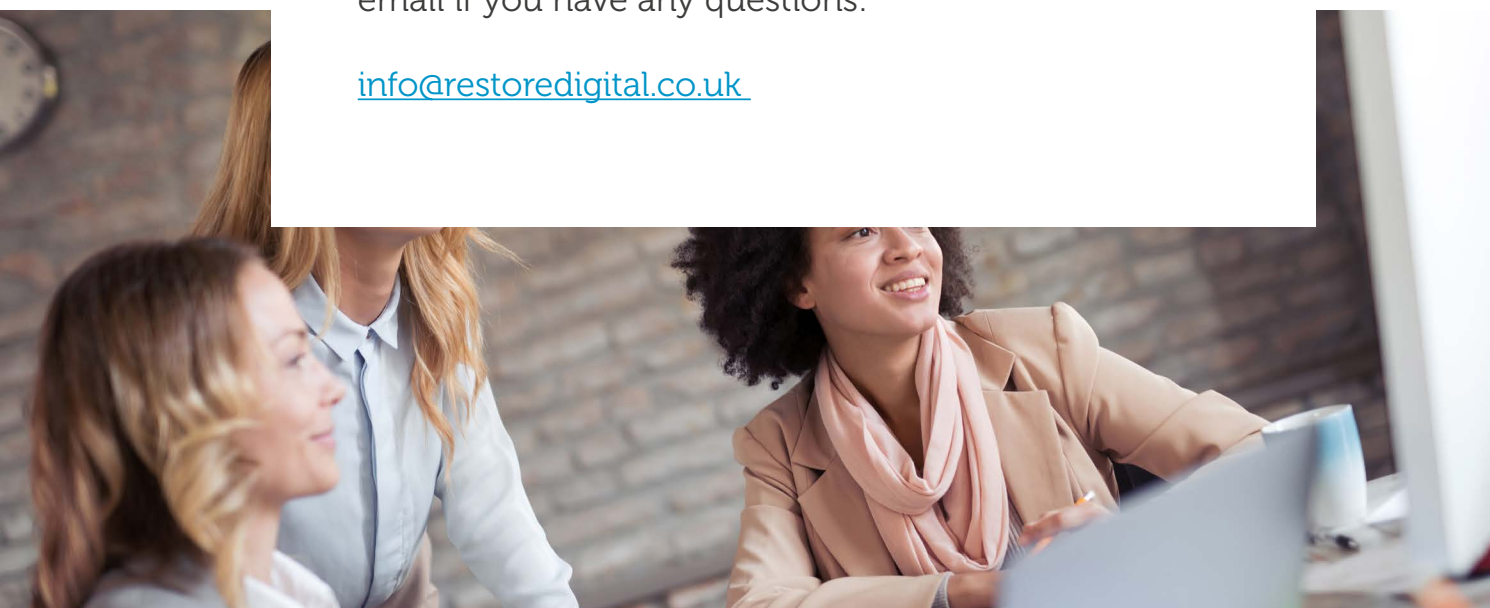
# Choosing the right tender Framework

Once you know what type of procurement process, you need to find the right tender framework. Some NHS Trusts have already made the decision. Whereas some allow the decision to be made by each project's procurement team.

A summary of some of the frameworks are below. However if you have flexibility, we recommend you meet with each, interview them and find the right portal for your project.

Our NHS consultant can run you through the portals and your options in more detail. Why not pop us an email if you have any questions:

[info@restoredigital.co.uk](mailto:info@restoredigital.co.uk)



## **NHS Supply Chain**

The framework now covers digital solutions for: image management, departmental information systems, clinical information systems, vendor neutral archiving, document management, specialist apps, e-prescribing and genomics.

## **Crown Commercial Service (CCS)**

The CCS is an executive agency, sponsored by the Cabinet office. It brings together policy, advice and direct buying, providing commercial services to the public sector and saving money for the taxpayer.

## **Health Trust Europe**

For NHS and private healthcare organisations, HTE provide an integrated contracting process to ensure the highest quality products are obtained at the best price for its members.

## **NHS Shared Business Services**

Our extensive portfolio of framework agreements is designed to ensure ease of access and offer a compliant route to market for NHS and public sector organisations. The NHS Shared Business Services (NHS SBS) framework contracts cover health and corporate services including IT, Legal, Estates & Facilities and Business Services.

## **NHS South of England Procurement Services**

Portsmouth Hospitals NHS Trust ("the Trust") has established this framework to provide a range of NHS back office services, including financial, procurement, employment and data warehousing services, for itself and for the benefit of other public bodies. The Trust considers that the framework agreement will enable the wider public sector to benefit from a streamlined services delivery approach.

## **The NHS Collaborative Procurement Partnership**

The NHS CPP are a group of four NHS procurement hubs set up to develop supply chain collaboration in the NHS and cut duplication by identifying procurement opportunities for each hub and sharing the information.

Together they represent about 60% of NHS trusts and control between £6bn to £7.5bn of non-pay spends.

The four hubs, NHS Commercial Solutions (CS), East of England NHS Collaborative Procurement Hub (EOE), NHS North of England Commercial Procurement Collaborative (NOE CPC) and NHS London Procurement Partnership (LPP) support more than 160 NHS organisations as members.

## **ESPO**

With many years of working experience in the fields of social care, NHS and in public procurement, this category offers the expertise needed to establish frameworks across the whole of the social care and health sector.

# Essential questions NHS Trusts should ask in archive scanning tenders



A clear list of any standards or certification you want, and whether you want evidence by certification, or assurance they are adhered to.



Reassurance on the organisation's business continuity and disaster recovery. Specify all the parts of the process you want the answer to cover, so you don't get a vague, high level answer. For example:

- Logistics
- Collections
- Storage
- Scanning
- Post scanning, hosting of images
- Destruction



Understand the collection process, the booking in process, preparation and scanning. Are there specific requirements you want? DPI, colour, additional prep as the documents are fragile?



Understanding of the quality control and assurance process so you are confident when and how this occurs.



Understanding of the full audit trail. How can you be confident every file can be located when if needed urgently?



#### Security and confidentiality

- Site security
- Electronic data
- Access to records
- File storage



An overview of the destruction process, if needed, and how you can be confident in the process. Think about providing direction on areas such as:

- Retention periods
- Whether in-house or outsourced
- Governance arrangements
- Audit process
- Certification



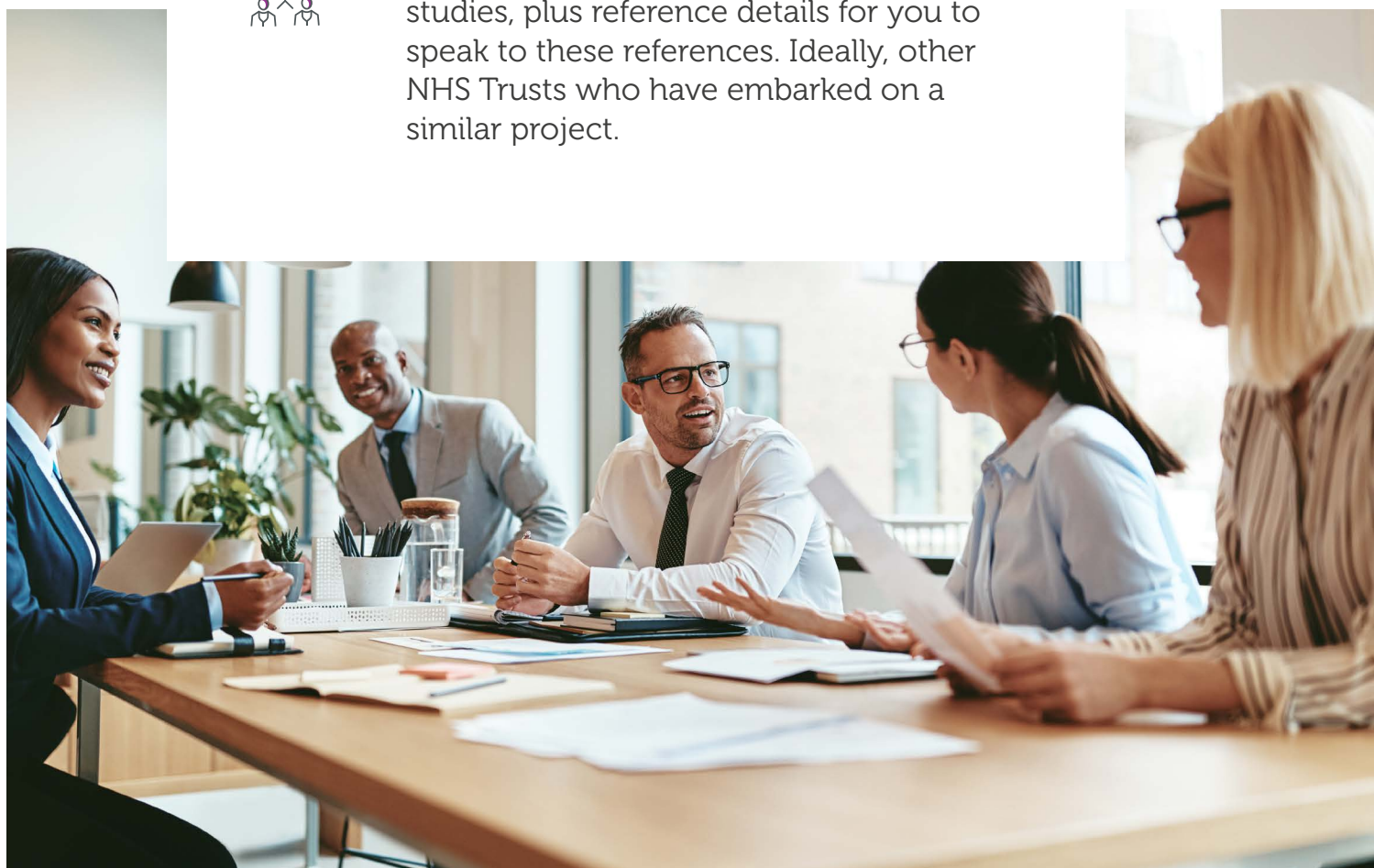
Understanding of the project management process, and the proposed project plan and timescales based on the information you provide in the ITT. How are you kept informed on the project on a regular basis?



Understanding of the options for returning the electronic files post scanning. Do you have a system it needs to be uploaded into? Or, do you want a variety of options?



References: ask for three relevant cases studies, plus reference details for you to speak to these references. Ideally, other NHS Trusts who have embarked on a similar project.



# A draft pricing template for an NHS archive scanning project

Creating a pricing schedule that works for your project can be difficult. If you know the scanning fixed quantity, then it can be a little easier. For example, I have X boxes of patient records stored in one site near the hospital. We want to clear this location in one go, and scan all files, as we want to sell or use the property for something else.

Others have a huge archive of patient records in multiple locations. They may want to start a day-forward scanning project. Quantities are harder to predict. In this situation you may want to band the quantities to see where your equilibrium point may be. Below is an example template for archive or day forward scanning.



You may not need all field. You may well want to band the responses along the top into for example:

- up to 1,000 images;
- 1,000-2,000 images p.a.,
- 2,000 – 3,000 images p.a. etc.

Have a look, but feel free to pick up the phone. We can talk you through the pricing template and help create one that works for your project.

Scanning (per Image)
Black & White (Single-sided, up to 200 DPI)
Black & White (Duplex, up to 200 DPI)
Colour (Single-sided, up to 200 DPI)
Colour (Duplex, up to 200 DPI)
X-ray
Microfilm
Book
% Increase for additional 100 DPI
Scan on Demand Black & White (Single-sided, up to 200 DPI)
Scan on Demand Black & White (Duplex, up to 200 DPI)
Scan on Demand Colour (Single-sided, up to 200 DPI)
Scan on Demand Colour (Duplex, up to 200 DPI)
Scan on Demand % Increase for additional 100 DPI

<b>Storage per month (for Scan on Demand items)</b>
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File (based on 1.5 cu. ft. Box, 10 Files per Box)
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<b>Digital Retrieval (per File, based on annual average)</b>
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Urgent (2-hour)
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Next Working Day (before 9am)
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Next Working Day (before 12pm)
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Next Working Day (before 5pm)
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<b>Retrieval (excl. Trip Charge, based on one location, may be multiple sites)</b>
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Urgent Retrieval (4-hour)
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Next Working Day (before 9am)
-------------------------------

Next Working Day (before 12pm)
--------------------------------

Next Working Day (before 5pm)
-------------------------------

<b>Recall (in case the item is required prior to scanning, based on annual average)</b>
Urgent (4-hour)
Next Working Day (before 12pm)
Next Working Day (before 5pm)
Five Working Days

<b>Collection/Delivery and Putaway (per File, per day, per site, based on annual average)</b>
Urgent (4-hour, excl. mileage)
Next Working Day (before 9am, excl. mileage)
Next Working Day (before 12pm, excl. mileage)
Next Working Day (before 5pm, excl. mileage)
Five Working Days (excl. mileage)

# Ask for help

Having as much information as possible ahead of a formal procurement process is key. NHS Trusts and your procurement teams should reach out to suppliers. They can help inform the tender process and ensure you have all the information you need to write the ITT.

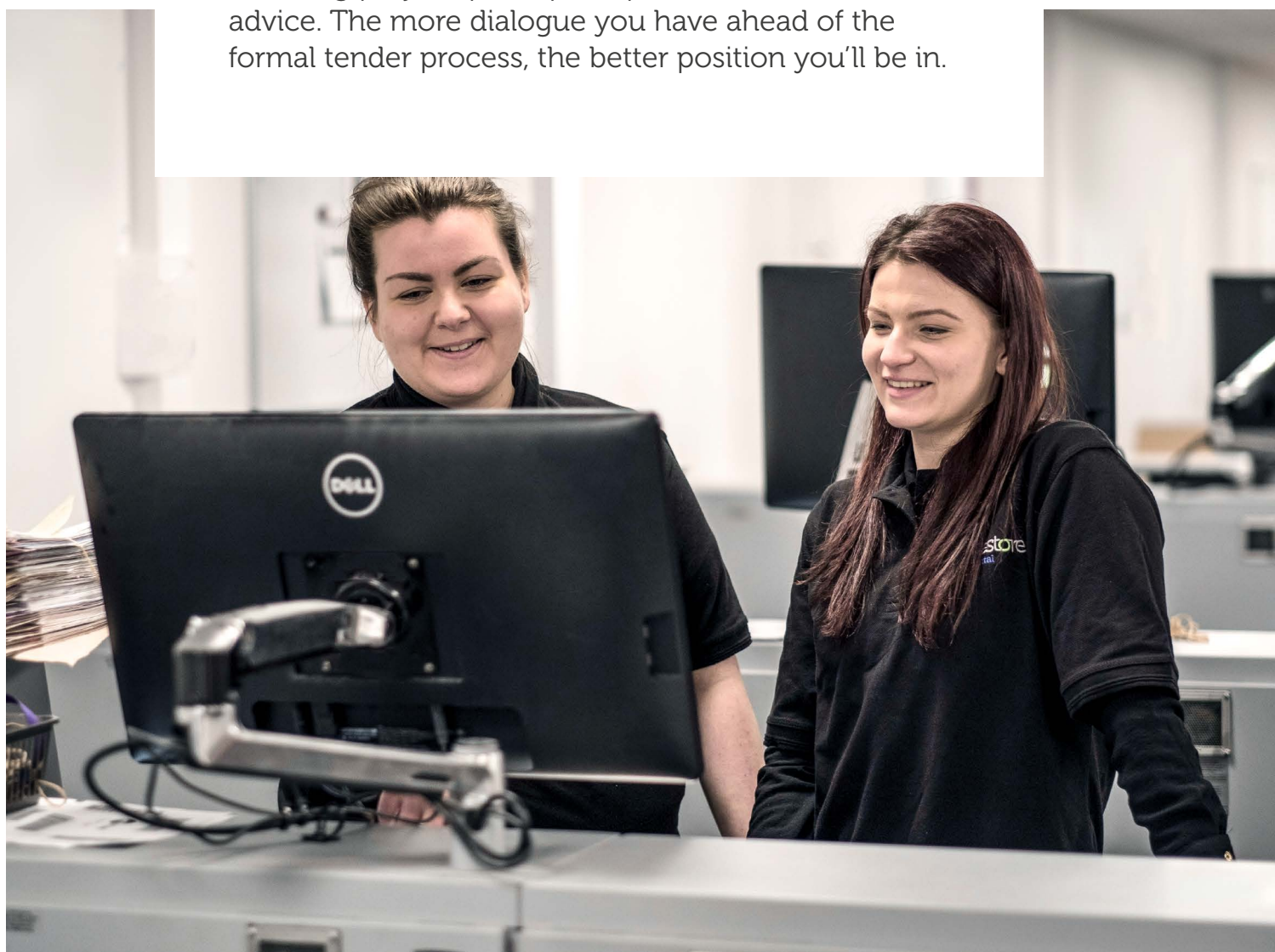
Suppliers will be more than willing to meet with you. Meeting ahead of a tender process does not mean those suppliers are in a better position than a supplier who responds to an ITT that you haven't met.

See scanning centres in action. Understand the process. Ask questions about the delivery of your project. This will make it easier to understand who will deliver the quality you are after.

Let suppliers see the patient records you want to scan. Understand if your files are straight forward or whether they'll need extra preparation. Your aim is to get the most accurate price as possible. The more information you provide, the less assumptions the suppliers can make. Hence the more accurate the pricing. Any assumptions will always default to the lowest cost option. Even if it's the less likely option, the supplier will want to look like the most effective option.

When suppliers come see the records, ask them questions. Don't let them dictate the dialogue. Do these visits ahead of releasing the formal ITT, do it as part of a pre-market engagement. Then add all the information to the tender document, and limit pricing assumptions.

If you are thinking of going out to tender for a scanning project, pick up the phone and ask us for advice. The more dialogue you have ahead of the formal tender process, the better position you'll be in.



# Contract management post award

It is not unfair to demand that suppliers assign a Project Manager to large archive scanning projects. This provides the project with direction and oversight. That service and performance meet the pre-agreed scanning specification.

But you should also think about your own project team. Who will ensure the project is successful from within your Trust? This may be one person, or a collective who manage different aspects. The supplier's project manager needs to know who their day to day contacts are.

Make sure regular meeting and reporting is in place. This needs to covers the KPIs and subjects you need to be aware of to have confidence in the project.

The below diagram is a good way for you to manage the contract post award. Ask the appointed supplier to report on these elements.

Follow these 12 elements of Contract Managemnet to help ensure you have the right resources, skills and knowledge to ge tthe best out of a contract.



## 1. Planning and Governance

Schedule regular meetings and control processes to support the contract

## 2. People

Resource the task appropriately and determine roles, functions, who and how they will interact with each other from both buyer and supplier sides.



### **3. Administration**

Agree the content, frequency, format etc. of information and who will be the administrator for both the buyer and the supplier and keep an audit trail.

### **4. Relationships**

Understand the type of relationship you have, i.e. are they a critical supplier, are we their biggest customer, and build a good reputation.

### **5. Performance**

Monitor the performance of the supplier using KPI's and T&Cs to ensure acceptable levels of performance.

### **6. Payment**

Verify and validate payment against the contracted values, then benchmark.

### **7. Risk**

Understand the risks within the contract and proactively mitigate them through meetings, systems and controls.

### **8. Contract Development**

Refine the contract as it progresses to increase its value and performance.

## **9. Supplier development**

Work with the supplier to develop their performance and business.

## **10. Supplier relationship management**

Craft a solid and professional relationship with the supplier to further enhance the contract delivery.

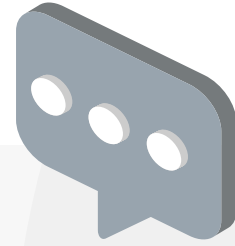
## **11. Market Management**

Engage with the market to understand the forces in play including new suppliers.

## **12. Be proactive**

Take control of the process and find the information you need to bridge any gaps in knowledge you have. Utilise the resources around you and in the industry to achieve this.

The Restore team are a resource you can utilise for advice and information gathering. Get in touch if you have any questions. We're happy to help.



If you have any questions, or would like to discuss anything further either give us a ring or pop us an email:

0333 043 5498

[info@restoredigital.co.uk](mailto:info@restoredigital.co.uk)

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