ARAWAK WALTON HOUSING ASSOCIATION

PROCUREMENT POLICY

Approved by	Board
Date of Approval	November 2025
Date issued to staff	November 2025
E&D impact Assessed	No
Date of Next Review	November 2028
Policy Ownership	Finance Director
Strategic Values	We are keen financial managers We are open and accountable

1. Introduction

This policy outlines the procurement procedures for the Association to ensure compliance with the Procurement Act 2023. It also reflects our commitment to achieving value for money, transparency, and sustainability in all procurement activities.

The Procurement Act 2023, aka PA23, as supported by the Procurement Regulations 2024, governs all procurement from 24th February 2025. As a 'contracting authority', the Association is obliged to comply with PA23 when procuring. This policy therefore applies to all procurement activities commenced on or after 24th February 2025, regardless of the size of the procurement.

Procurement activities pre-24th February are governed by the Public Contracts Regulations 2015. This means that the pre-existing rules will continue to apply the contracts, frameworks, dynamic purchasing systems and other procurement activities started under the current regime before 24th February 2025.

Failure to comply with the Procurement Act 2023, aka PA23, will open up the Association to **significant risk**. Failure could lead to a challenge in the courts and see the Association having to pay significant damages and contracts and projects having to be set aside (cancelled and abandoned) until we can properly re-procure them – which could be costly.

2. Aim of this Policy

This policy outlines the regulatory framework that the Association works within, and the rules, objectives and procurement procedures that the Association must follow. It also sets out the internal framework of fundamental rules, behaviours and standards applicable to procurement activity throughout the Association, recognising that procurement decisions are amongst the most important decisions officers will make. Not only is it imperative that best value is achieved, but that the Association's reputation also is equally important and should be safeguarded from any accusation of failure to comply with public procurement law, dishonesty, fraud or corruption.

For these reasons it may be a disciplinary offence to fail to comply with this policy and not only is compliance a requirement of employees there is also a duty to report any alleged or potential or actual breaches to their relevant Director.

3. Definitions

The following definitions apply to this policy.

"Procurement" any steps taken towards the award of, entry into and management of a contract. This covers the whole life cycle of a procurement, including the procurement procedure itself, as well as any pre-market engagement, management or termination of the contract.

"Central Digital Platform" an upgraded version of the UK Government's find a tender system which acts as the publishing site for official notifications for procurement and as a supplier registration system. This replaces the previous version of Find a Tender and replaces Contracts Finder.

"Excluded Supplier"/"Excludable Supplier" – suppliers who fail the mandatory or discretionary exclusion criteria, see section 8.10.

"Exempt" contracts exempted from the application of PA23 by Schedule 2 of PA23, e.g. in-house contracts, simple purchases of land and completed buildings (that don't include works) employment contracts, certain legal and financial services and similar. If wishing to use an exemption, seek legal advice.

"Financial Threshold" the value of a contract above which the majority of the requirements of PA23 apply. The thresholds update every two years and the current thresholds are set out in section 5.2.

"PA23" means the Procurement Act 2023 and linked legislation.

"Regulated Contract" a contract that is above the relevant Financial Threshold and must be procured in full compliance with PA23 (except if it is a light touch contract). PA23 refers to these as 'public contracts'.

“Regulated Procurement” procurement activities that involve contracts above the relevant Financial Threshold and are not Exempt.

“services” any services that are not ‘works’.

“SME” means small or medium enterprises.

“works” a works contract is carrying out of construction (and related) works under the contract (whether or not resulting in a complete building) or to facilitate the carrying out of works otherwise than under the contract, where those works are intended to result in a complete work that complies with specifications set out in, or determined under, the contract (e.g. development agreements, master land agreements).

4. Control of Procurement

4.1 Responsibility

Procurement is generally the responsibility of the Board, and this is administered through delegated authority to the Senior Management Team who have authority to procure the goods, services, appointments etc in activities associated with their area of work. All sub-Committees operate under an approved remit.

Any deviation from this Policy will only be permissible with prior approval from the Senior Management Team and this must be reported to Board for ratification.

4.2 Joint Procurement

It is recognised, however that where joint procurement is undertaken the control of appointments etc. will be shared with partner organisations. See section 16 below.

Although some of the administration may be the responsibility of another organisation, it is the Association’s preference to have the ultimate decision making in terms of final approval of proposals that the Association commits to, to be approved by the Association.

4.3 Reporting

There is a general obligation on the Association to keep (and retain) records explaining any material decisions relating to the award of contracts over the Financial Threshold. We must be able to keep records to justify decisions made, especially if we are challenged. Keeping an adequate record of material decisions is a **key requirement** of any procurement process to manage risk to the Association.

Reports to the Board / Sub-Committees will require to be adequately planned to ensure that unnecessary delays do not occur.

4.4 Non - compliance

Officers will alert the Board to any non-compliance with this Policy and related procedures as soon as they are identified. The notification will include the reason for non-compliance and any action that can or should be taken to prevent recurrence of non-compliance.

4.5 Delegated Authority

Delegated authority is operated by officers in accordance with the Association's Standing Orders, Financial Regulations and procurement procedures which are an Appendices to this Policy as specifically agreed by the Board.

4.6 Operational Control

Operational control and management of the purchase of all goods, services and appointments over £30k is maintained with the use of:

- Project Briefs which set out the procurement process and is issued to all relevant parties.
- Signed Contracts which establish price and scope of works.
- Minutes of meetings which formally advise of any changes to procurement.
- Tender Procedures (see appendix 3);
- Reports to the appropriate sub-committee which recommends procurement options and recommends acceptance of submissions, where relevant.
- Undertaking regular internal audits of the procurement process.

4.7 Value for Money

Value for money is a key objective during the procurement process with the aim of achieving the best value for the Association and its tenants. Best value will be achieved by procuring the most advantageous tender. This may be the lowest price, but this must be balanced against high standards of quality, performance or reliability, and wider social, economic and environmental benefits.

The lowest priced tender does NOT always offer best value.

4.8 Contract Register

The Association will record and monitor all its contracts through a "Contracts Register". Annually officers shall identify any future procurements which could be classified as a regulated procurement and the way they will be procured.

This process will be used to ensure compliance with PA23 and its need for issuing notices regarding upcoming procurements and also in respect of performance in live contracts, ensure that the most appropriate procurement process is adopted and that the amount of staff time spent on procurement remains proportionate to the size and scale of the contract being procured.

This register will help determine which procurement route is to be selected for future procurements, and why, and in the case of regulated procurement help inform the shape of competitive flexible procurements. it will also ensure amongst other things that our procurement processes and the administrative cost thereof are cost effective.

4.9 Contract Extensions or alterations

It may also be appropriate from time to time to extend the period of an existing contract and where circumstances exist where this is deemed appropriate relevant Board approval will be required.

It must be noted that extensions and changes to below-threshold contracts may 'convert' them into regulated contracts (see section 6.7) and any changes to a regulated contract are tightly regulated (see section 11.6). Any extension options for regulated contracts should be considered and included in the original procurement as much as possible.

5. Procurement Options and Values

5.1 General

In establishing which procurement option should be applied, and whether it is subject to the main rules of the PA23, the decision will be based primarily on contract value.

All contracts (except frameworks). The contract value is the maximum amount the Association could expect to pay under the contract, inclusive of VAT, the value of any goods, service or works provided other than for payment. You must take into account all options to renew, interest and fees.

Frameworks. Sum of all contracts that may (or have been, in the case of open frameworks,) be awarded. (Note that the relevant financial threshold to apply to a framework depends on the type of contract to be awarded under the framework. For example, the works threshold would apply if the framework was for works contracts.)

5.2 Applicable Thresholds

Thresholds and Requirements under PA23 until December 2025.

Contract Value (Inc. VAT)	Type of Contract	Procedure Required	Internal Approval Level
Up to £30,000	All	Procurement as per levels in the Financial Regulations and in section 6 below. No requirement to publish / advertise.	As per approval levels in the Financial Regulations.

Contract Value (Inc. VAT)	Type of Contract	Procedure Required	Internal Approval Level
£30,001 - £214,904	All	Procurement as per levels in the Financial Regulations and section 6 below. All contracts over £30k must be published on the central digital platform – see section 6.5. Can choose to "advertise" - if do so must publish a below-threshold tender notice on the central digital platform.	As per approval levels in the Financial Regulations.
Above **£214,904** (Financial Threshold for goods and services)	Goods/Services	Advertise, full competitive tender process	SMT
Above **£5,372,609** (Financial Threshold works)	Works	Advertise, full competitive tender process	SMT
£214,904 - £663,540	Light touch contracts	See section 6 below Relates to healthcare, education	Not applicable
Above **£663,540** (Financial Threshold for light touch contracts)	Light touch contracts	Advertise, full competitive tender process (but exceptions available, where flagged, for light touch contracts)	Not applicable.

The Association must not artificially subdivide contracts so as to fall below the Financial Threshold. Where supplies under two or more contracts could reasonably be supplied under a single contract, you must aggregate the value of those contracts for the purposes of the valuation, absent good reasons not to do so. For example, where quotes

for blocks of maintenance work of the same type are to be obtained, separate quotes should **not** be sought for individual addresses. Any employee found to be operating this policy in such a deliberate, unauthorised and unethical way may be subject to disciplinary action.

Government guidance on estimating value states that a good reason for not aggregating may include where not aggregating would lead to better outcomes or where a business unit has a delegated budget and procures only for the purpose of that business unit.

5.3 Mixed procurement

Works contracts have a higher Financial Threshold than Goods and Services. Where a contract comprises different works, goods or services to which different thresholds apply, it can be difficult to work out how to value the contract.

A mixed contract of works and goods/services above the Financial Threshold for works must be treated as above Financial Threshold contract (see section 5.2).

A mixed contract of works and goods/services must be treated as above Financial Threshold if both:

- Some of the goods, services or works to be supplied under the contract could reasonably be supplied under a separate contract or a contract not awarded in accordance with the framework.
- That contract would have an estimated value of the same or more than the threshold amount for goods/services contract.

5.4 Light touch contracts

Light touch contracts are contracts or frameworks wholly or mainly for the supply of certain health and social services, benefit services, administrative social, educational and cultural services and other services to the community. These are specified in Schedule 1 of the Procurement Regulations 2024 here for example health services, social work services, home-help/domestic services.

There is no separate regime for light touch contracts but they benefit from certain special rules, which are noted here and, where relevant, elsewhere in this policy.

Award criteria for light touch contracts includes the views and needs of services users, including the importance of proximity.

Rules governing direct awards under frameworks, maximum term of frameworks and competitive selection process for frameworks do not apply to light touch frameworks.

There is no requirement to hold a mandatory standstill period for light touch contracts.

There are no minimum participation and tendering time periods for light touch procurements, meaning that light touch services may be procured more quickly, if it is reasonable to do so.

Certain transparency obligations don't apply, such as the requirement to set and publish KPIs for high value contracts, contract change notices and publication of other information on contract performance.

Light touch contracts continue to benefit from a higher Financial Threshold (see section 5.2). However, the rules regulating below-threshold contracts will apply to light touch contracts (see section 6).

Additionally, contracts for 'reservable light touch services' that are for a duration of no more than five years may be reserved to qualifying public service mutuals. This means that suppliers that are not public service mutuals may be excluded from any procurement procedure. To benefit from this provision, contracts must be awarded using a competitive flexible procedure. Reservable light touch services are noted in Schedule 1 to the Procurement Regulations 2024 with a 'R'. We must specify in the tender notice whether the contract is being reserved to public service mutuals.

5.5 Internal Approvals

As part of any procurement the Association's financial regulations must be adhered to in addition to the requirements of this policy.

5.6 Advertising the tender

We are free to advertise where we like, e.g. on our website. In some cases, particularly where the purchase or commission relates to specialist corporate or administration issues, advertising in the online news publications or via specialist housing publications may be the most appropriate method of procurement.

Where, however, PA23 requires us to advertise by way of a notice in the central digital platform, this must be done first before advertising elsewhere. This is so, even for those procurements that are below the Financial Threshold but which must be advertised (see section 6.3).

6. Below Threshold Procurement

6.1 General

This applies to procurements below the relevant Financial Threshold for the type of contract:

PA 23 is less concerned about contracts below the Financial Threshold. Nonetheless, it still outlines a separate regime for the award of certain below-threshold contracts which the Association must follow. These are all below-threshold contracts that are not Exempt.

These requirements are set out at sections 6.2 – 6.6 of this policy, below. Save as set out below, the Association only needs to consider its own internal policies.

6.2 Below-threshold tendering procedures

This gives the Association more flexibility to determine how it wishes to procure below-threshold contracts. The Association therefore has determined to use the following regime:

Value (inc VAT)	*Contract Type*	*Procurement Type*
£0 - £2,499	All	No formal procurement required. Officers should use their own judgement (eg internet comparisons) to ensure that they are getting VFM. For small repeat purchases (eg stationery) price checks to be carried out at least once annually to prove value for money with a preferred supplier.
£2,500 - £7,499	Works	At least one formal written quote must be obtained by the procuring officer.
£2,500 - £11,999	Goods/services	At least one formal written quote must be obtained by the procuring officer.
£7,500- £29,999	Works	Minimum three formal written quotes must be obtained by the procuring officer. See Appendix 3
£12,000 - £29,999	Goods/services	Minimum three formal written quotes must be obtained by the procuring officer. See Appendix 3
£30,000 & above (up to thresholds as shown above in 5.2)	All	Formal tender, in accordance with the process set out in Appendix 3, or use of a procurement framework agree **AND** all contracts entered into must be published on the government's central digital platform – see section 6.5 below.

The Association may negotiate a price with contractors, suppliers or consultants on projects which are below approved list thresholds, or which are specialist, emergency or relate to insurance works, for exceptions see Appendix 3.

6.3 Advertising Below-threshold Contracts

For procurement below-thresholds, the Association can opt to "advertise" a contract.

Should the Association opt to advertise, it must publish the contract on the central digital platform if it is valued above £30,000 (including VAT).

Advertising means we go out wider than asking a small group (e.g. three or four) of suppliers for quotes. It means we have done something like ask a wider or more open group of suppliers or have advertised the contract on our website or local or specialist press.

The Association intends to advertise all contracts above £30,000 including VAT. Therefore before advertising the contract you must publish a ***below-threshold tender notice*** on the central digital platform. **Make sure you select the correct notice type.**

6.4 Running the tender

No pre-qualification stage

When competitively tendered a regulated below-threshold contract the PA23 says that the Association is **not** permitted to have a separate suitability stage which reduces the number of bidders invited to tender. You can still request suitability information from suppliers before awarding a contract to a supplier without competition or as part of a one-stage tender process, you just can't use it to pre-qualify bidders.

This does not apply to works contracts that are over the Financial Threshold for goods/services contracts and below the Financial Threshold for works (see section 5.2 above). This is to acknowledge the higher threshold for works.

Consider SMEs

Before competitively tendering regulated below-threshold contracts, you must also consider any barriers that SMEs may face (including BME contractors), and how they might be reduced or removed. You need to document this to demonstrate that the Association has complied with its obligation in PA23 to undertake such consideration. This obligation does not apply to awards under frameworks.

6.5 Award of a below-threshold contract

The Association **must publish a contract details notice** as soon as reasonably practical after entering a below-threshold contract of over £30,000 (inc VAT), **regardless of whether or not a below-threshold tender notice was previously issued**.

The notice must be issued on the central digital platform. NB Contracts Finder is not longer to be used.

Please use the correct notice. There are two similar notices: contract award and contract details. Here you must issue a contract details notice.

6.6 Resultant Contract

Implied payment

Prompt payment terms are implied into all regulated below-threshold contracts and related subcontracts.

The Association is required to pay all valid and undisputed invoices within 30 days (beginning with the day the invoice is received or becomes due, if later). If we dispute an invoice, or consider it to be invalid, we must notify the payee without undue delay.

We cannot restrict or override these terms, although we can pay within less than 30 days.

Any contract must reflect these requirements.

Amendments to below threshold contracts

The rules governing variations to existing contracts in the PA23 (see section 11.6) does not apply to below-threshold contracts, therefore low value contracts can generally be varied without restriction. However, note that if a below-threshold contract is amended and the amendment causes the contract to tip over the Financial Threshold for that contract, the amendment will be governed by the PA23's rules on variations. After this, the contract should be treated as a being fully regulated rather than a below threshold contract.

6.7 Convertible contract

This is a below-threshold contract that will become a regulated contracts as a result of a proposed variation. If the variation increases the value of the contract so as to exceed the relevant Financial Threshold, it will be governed as if it was always a regulated contract. That means reporting requirements, future variations and termination must all comply with PA23 (see sections 11.2 – 11.7).

7. Regulated Procurement – objectives and routes.

7.1 Objectives

The PA23 has a number of objectives that we must follow when carrying out a procurement over the Financial Threshold. These are:

- Delivering value for money.
- Maximising public benefit.

- Sharing information for the purpose of allowing suppliers to understand our procurement policies and decisions.
- Acting, and being seen to act, with integrity.
- We must treat suppliers the same unless a difference between the suppliers justifies different treatment (and reasonable steps are taken not to put a supplier at an unfair advantage or disadvantage)

Under the PA23 procurement captures the whole procurement lifecycle (i.e. pre-procurement, procurement and the resulting contract). This means that we **must** have regard to these objectives when making any decisions about regulated contracts including whether to terminate them. Failure to do so could in principle be challenged in the courts and leave the Association open to risk.

There is also a requirement for the Association to "have regard" to barriers to SME participation and consider whether such barriers can be removed or reduced. For example, we must consider whether short deadlines and/or very detailed specifications or process requirements may limit SME participation. Also, we need to avoid our procedures being are unnecessarily burdensome or complicated. They should be proportionate for the contract we are trying to let.

A final objective is to “have regard" to any published national procurement policy statement (NPPS) setting out the UK Government's strategic priorities in relation to procurement. While this is not actionable, it is good practice and it may be that a lot of the requirements of the NPPS align with our values (see section 10).

7.2 Choice of procedures

Where a contract is above Financial Threshold, the Association may seek to use frameworks or dynamic markets to satisfy its needs. It may also be possible to award the contract direct to a supplier (direct award – see section 12).

Otherwise a competitive tender process is required to award the contract. This must take one of two forms:

- **Open procedure**. A single stage procedure without restriction on who can submit tenders.

- **Competitive flexible procedure**. An intentionally flexible procedure which can be designed as appropriate to suit the procurement.

Whichever form is chosen, the procedure must be proportionate having regard to the nature, complexity and cost of the contract.

7.3 Open procedure

The open procedure is a single stage procedure under which any interested party can submit a tender. the Association must base the decision to award the contract solely on the single tender submitted by the supplier.

This is very similar to the open procedure that has traditionally been used in regulated procurement.

7.4 Competitive flexible procedure

Previously there were lots of procedures, each with a set of rules regarding how that procedure had to be operated. This is no longer the case.

The competitive flexible procedure is flexible and can be designed to suit the specific requirements of the contract being tendered. The competitive flexible can have as many stages as is required, although we are likely to include at least two stages (otherwise the open procedure can be used).

Some actions we could take in a competitive flexible procedure include:

- Limiting the number of participating suppliers (generally or at different tendering rounds).
- Refining the award criteria (see Refining award criteria during the process).
- Limiting the number of lots which suppliers can tender for.
- Excluding suppliers by reference to the conditions of participation or an intermediate assessment of tenders against the award criteria and assessment methodology;
- Excluding suppliers that are not UK or treaty state suppliers (or who intend to subcontract all or part of the contract to such entities)

Therefore, for example, we could have a first stage inviting tenders followed by a price negotiation stage for those successful at the first stage. Or, we may choose to pre-qualify suppliers by reference to experience and financial standing and only accept tenders from those meeting minimum conditions.

We can adopt approaches similar in practice to the old procedures: restricted procedures, competitive dialogues or competitive procedures with negotiation, where it is appropriate.

the Association must **not** allow suppliers to participate in a competitive flexible procedure where they did not submit a tender in the first round of tendering or were knocked out in an earlier round.

8. Regulated Procurement – Process

All regulated procurement is classed as a ‘covered procurement’, which means that the PA23 governs the lifecycle of the contract, from pre-procurement through to the procurement phase and the life of the resulting contract.

All regulated procurement must comply with the objectives – see section 7.1.

8.1 Central Digital Platform

Key to the process is the central digital platform. This is an enhanced version of the Find a Tender service, and also replaces Contracts Finder. The central digital platform contains all the new procurement notice templates and a new supplier information service. The Association has a unique identifier we must use when using the central digital platform. The Finance Director holds our identifier and other central digital platform log in details.

Each supplier has had to register with the platform, and they have an identifier too. Suppliers are required to keep key information about themselves up to date on the platform, making it easier and more standardised for us to check their financial data etc.

Each procurement will also have an identifier, so all notices relating to a procurement will be linked on the platform. When we issue the first notice for a new procurement, the identifier will be assigned. We **must** use that identifier for all subsequent notices as well as the Association's identifier. Notices for awards made under frameworks must include the procurement identifier for the framework.

Pre-procurement stage

8.2 Duty to consider lots

Before publishing a tender notice for a regulated contract, we must consider whether large contracts could reasonably be divided into smaller contracts and, if so could they appropriately be awarded as lots. Where lots are considered appropriate, we must arrange for award by lots or provide our reasons for not doing so in the tender notice.

8.3 Preliminary market engagement

We can undertake preliminary market engagement, i.e. soft market testing, with suppliers and other persons (such as trade associations or consultants) to help develop our requirements and approach, identify likely contractual terms, prepare a tender notice and associated documents or design a procurement procedure. In doing so, we must take steps to prevent any distortion of competition and ensure that suppliers participating in the market engagement are not put at an unfair advantage. Where suppliers gain an unavoidable advantage from the engagement, they must be treated as an excluded supplier.

If we do preliminary market engagement, we must either publish a preliminary market engagement notice in the central digital platform, or give reasons for not publishing one in the tender notice.

8.4 Planned procurement notices

This is an optional notice intended to alert the market to upcoming competitive procurements (for which we plan to publish a tender notice). We can use this to warm up the market and gauge interest in a procurement. This replaces the previously familiar 'PIN notice'.

It is **not** to be used when establishing a dynamic market, awarding a framework call off contract or making a direct award.

If published within prescribed timescales (between 40 days and 12 months before a tender notice), and so long as the contract and procurement process isn't different to what we said in the notice we can reduce the minimum tendering period to a period of ten days or more, although a minimum timescale may not result in many or useful tenders. Also we have to be mindful of the procurement objectives, see section 7.1 above.

If ultimately it is decided not to commence the procurement described in the notice, we should publish a procurement termination notice.

8.5 Large contracts

If we anticipate spending more than £100 million on public contracts (including above Financial Threshold, below-threshold and contracts awarded under frameworks) in the coming financial year, we must issue a pipeline notice. The notice sets out specified information about any public contract exceeding £2 million for which the we expect to publish a tender or transparency notice during the reporting period. The notice must be published within 56 days of the beginning of the financial year (1 April).

The notice can be updated during the year if we wish.

8.6 Conflicts of interest

For regulated contracts, the Association is under an express duty to take reasonable steps to identify, and keep under review, any actual or potential conflicts of interest relating to the contract. We must also mitigate the effect of a conflict of interest by taking reasonable steps to avoid putting a supplier at an unfair advantage or disadvantage.

Where a conflict of interest puts a supplier at an unfair advantage in relation to the award of the contract, and either this cannot be avoided or the supplier refuses to take steps necessary to avoid the advantage, the contracting authority must treat the supplier as an excluded supplier (see section 8.10 below)

A conflict of interest exists if either a person acting for or on behalf of the Association acting in relation to a procurement has a conflict of interest. An interest may be a personal, professional or financial interest and may be direct or indirect.

Before publishing a tender notice or transparency notice (or establishing a dynamic market), **we must prepare a conflicts assessment**. This must include details of conflicts or potential conflicts of interest identified and any steps we have taken or will take to mitigate such conflicts.

The duty to keep this under review means that the conflicts assessment does not fulfil our duty. We must keep the issue of conflicts of interest under review at every stage of a procurement.

8.7 Starting a procedure

To start a procedure, we must publish a tender notice on the central digital platform. This advertises the tender.

The tender notice will either require tenders to be submitted (a one-stage process) or allow for suppliers to request to participate. Such requests will likely involve having to meet conditions of participation and confirming the supplier is not excluded or excludable (see sections 8.9 and 8.10).

We should also be providing any associated tender documents in accordance with the tender notice (or make it clear how to get them). Associated tender documents means documents such as a specification, terms and conditions of contract and the award criteria and how we will assess the tender submissions received.

Unlike the previous procurement regime, there is no obligation to provide associated tender documents electronically when the notice is published, but it does lower the minimum timescales. We **must not** invite suppliers to submit tenders until we are satisfied that the tender notice and associated tender documents provide sufficient information to allow preparation of a tender and, in particular, provide details of the goods, works or services to be supplied. If they don't, we cannot set a deadline and the tendering period cannot commence. To avoid delays and disputes, the Association shall continue to provide sufficient information at the outset of the procedure to enable tenderers to bid. Unless there is a reason not to, they shall be provided free of charge and electronically.

8.8 Time limits and submission deadlines

Time limits must not be less than the minimum time periods set out in the PA23. Each supplier must be given the same amount of time.

There are minimum time periods for the participation stage (if there is one) and for the tendering stage (i.e. the pre-selection/PQQ stage and the award stage).

A participation stage only applies if we are using the competitive flexible procedure and include a pre-qualification/selection stage which requires suppliers to meet certain conditions of participation before being allowed to tender (see section 8.9). There is no participation stage for open procedure tenders (or contracts awarded under dynamic markets)

PARTICPATION STAGE	Minimum Time Period
Contract with participation stage under competitive flexible procedure	25 days

Light touch contract with participation stage under competitive flexible procedure	No minimum period

The time period runs from the issue of the tender notice, with day 1 being the day after publication on the central digital platform.

The tendering time period minimum requirements apply to both the open procedure and competitive flexible procedure. Various circumstances affect the minimum time period.

TENDERNG STAGE Circumstance / Requirements	Minimum Time Period
A qualifying planned procurement notice has been issued (see section 8.4)	10 days
Tenders are to be submitted electronically, and the tender notice and associated tender documents are provided at the same time	25 days
Tenders are submitted electronically, but the tender notice and associated tender documents are not provided at the same time	30 days
Tenders are not submitted electronically, but the tender notice and associated tender documents are provided at the same time	30 days
Tenders are not submitted electronically, and the tender notice and associated tender documents are provided at the same time	35 days
Light touch contracts	No minimum period

For open procedure and single stage competitive flexible procedures, the time period runs from the issue of the tender notice, with day 1 being the day after publication on the central digital platform. For competitive flexible procedures with two or more stages, the time period begins from the issue of the invitation to pre-selected bidders to commence the next stage.

If a competitive flexible procedure has multiple tendering rounds, it is expected that the minimum tendering period will apply to each tendering round, unless those further tenders are simply updates to previously submitted tenders (e.g. as an outcome of negotiations), in which case a reasonable time limit is should be set, which is the same for all suppliers, having regard to the factors in the next paragraph below.

In setting a time limit, we must have regard to the nature and complexity of the contract. the Association wants to receive a high quality tender in order to receive a robust contract. Therefore, even with time pressures it is preferable to require a suitable period for tendering, which is likely to be longer than the minimum period in PA23.

8.9 Conditions of participation

The PA23 allows us to set conditions of participation (previously known as selection criteria or pre-qualification criteria) in a competitive tendering procedure. Conditions of participation must be included in the tender notice (either in the notice or by reference).

Conditions of participation are conditions that a supplier must satisfy if it is to be awarded the contract. We can either apply them as part of the overall tender (open procedure/single-stage competitive flexible procedure) or as part of a 'participation stage' that preselects bidders who will be invited to a separate tender stage (two+ stage competitive flexible procedure).

We can only set conditions to the extent they are considered a proportionate means of ensuring suppliers have either the legal and financial (previously economic and financial) capacity to perform the contract and the technical ability to perform the contract. As long as the conditions are proportionate, PA23 does not prescribe how suppliers should demonstrate how they satisfy conditions of participation. Unlike in the past where we had to use set forms of PQQ or SQ documents, we are generally free to set conditions of participation as we see fit, except we cannot:

- Require suppliers to have been awarded a contract by a particular contracting authority.
- Break the rules on technical specifications.
- Require particular qualifications without allowing for their equivalents.
- Require submission of audited accounts (unless required to have their accounts audited under the Companies Act 2006).
- Require insurance relating to performance of the contract to be in place prior to award.

Suppliers can rely on a supplier that is associated with it for the purposes of satisfying the conditions. A supplier is associated with another supplier if the suppliers are submitting a tender together, or the suppliers will enter into a legally binding sub-contracting or performance guarantee arrangement.

While there is no longer a requirement to use a standardised selection questionnaire (the SQ or PQQ), the UK Government has a standard Procurement Specific Questionnaire (PSQ) template that can be used. The PSQ is designed with the supplier information element to the central digital platform in mind. Rather than requiring suppliers to fill out multiple questionnaires with the same answers, standard information on the central digital platform can be send to us by using a share code, or they download it to a PDF. This gives us the information in a standardised way. The same can be done for associated suppliers.

8.10 Excluding suppliers

As with the previous regime, suppliers have to confirm whether they meet certain mandatory or discretionary exclusion grounds. If a mandatory exclusion applies, the supplier is "excluded". If a discretionary exclusion applies, they are "excludable".

Suppliers can be excluded if their associated persons (persons whom they are relying on to satisfy conditions of participation, except guarantors) or intended subcontractors are excluded or excludable suppliers.

We are required to prevent an excluded supplier (and are allowed in our discretion to prevent an excludable supplier) from participating in or being awarded a regulated contract. We must (excluded suppliers) or may (excludable suppliers) disregard tenders from excluded or excludable suppliers and (in a competitive flexible procedure) prevent them from participating or progressing in the procedure. Additionally, excluded and excludable suppliers:

- Must or may be removed from dynamic markets.
- Must not be awarded direct awards without an overriding public interest (excluded suppliers only).
- Must or may not be awarded contracts under frameworks.
- May have their regulated contracts terminated by virtue of implied terms

If a supplier is excluded or is excludable, we must send a notification to the Procurement Review Unit for investigation to see the supplier should be put on the central debarment list. The central debarment list is a central list of suppliers who cannot compete in any regulated procurement in the UK. We **must check the debarment list** as a first action in assessing tenders received, or requests to participate in a tender process.

Unless the supplier (or associated person) is on the debarment list, if we consider they are excluded suppliers or excludable suppliers, they must be given a reasonable opportunity to make representations and provide evidence as to the likelihood of the ground for exclusion continuing or reoccurring. These self-cleaning measures can include paying compensation, chasing personnel involved, new processes or training, time elapsed since the issue or other appropriate evidence.

Mandatory exclusions include offences such as:

- Corporate manslaughter or homicide offences.
- Terrorism offences.
- Theft, fraud and bribery offences.
- Labour market, slavery and human trafficking offences.

- Organised crime offences.
- Tax evasion offences.
- Cartel offence.

Discretionary exclusion grounds are generally broader and cover more scenarios. Notable conduct or situations include:

- Labour market misconduct.
- Environmental misconduct.
- Insolvency and bankruptcy,
- Potential competition law infringements.
- Professional misconduct which questions the supplier's integrity
- Breach of contract and poor performance (see below)
- Acting improperly in any procurement resulting in an improper advantage in relation to the contract award. Acting improperly may include failing to provide or providing inaccurate or misleading information, or unduly influencing the contracting authority's decision-making.
- Posing a threat to national security. the Association cannot use this ground unless we have notified a Minister of the Crown and the Minister agrees with the decision.

The breach of contract exclusion ground is a new aspect to PA23 which is very helpful to the Association. Any supplier who has undertaken a regulated contract and has had breaches of contract resulting in termination, damages or a settlement agreement, or has failed to improve poor performance following an opportunity to do so must inform us. This means suppliers who do well at tenders but are not good at performing the contract have to get better, or we can exclude them from future procurements. Also, it is a required for contracting authorities such as the Association to report on such breaches or poor performance to the central digital platform (see section 11.3), meaning we get the benefit of other people's experience with those suppliers.

8.11 Disregarding tenders

We must disregard any tender that does not satisfy the conditions of participation.

We must disregard tenders from excluded suppliers (see section 8.10 above). We may disregard tenders from excludable suppliers.

We may disregard tenders from a supplier who are not UK suppliers or treaty state suppliers, or from a supplier that intends to subcontract the performance of all or part of the contract to a supplier that is not a UK supplier or a treaty state supplier;

We may disregard a tender which breaches a procedural requirement set out in the tender notice or associated documents. This might cover late submission or being over the prescribed word count.

We may disregard a tender which offers an abnormally low price if the supplier cannot demonstrate that it will be able to perform the contract at that price (although care should be taken in doing so).

8.12 Modifying procurement procedures

The preference of the Association is to carefully plan the procurement procedure to avoid having to make changes to it once it goes live. This helps retain market confidence that we 'know what we are doing'.

We can, where necessary , modify the terms of a procurement before certain key deadlines have passed:

For an open procedure, before the deadline for submitting tenders.

For a competitive flexible procedure:

- before the deadline for requests to participate, if applicable, or the deadline for submitting the first or only tender;

- before the deadline for the final tender, if the modification is not substantial or relates to a light touch contact.

Terms of a procurement means anything set out in a tender notice or associated tender documents including award criteria or conditions of participation. If we make a chance we must modify and republish any tender notice and associated tender documents affected by the change, except where the change is a non-substantial modification made to a competitive flexible procedure. A substantial modification is broadly one which would affect the composition of the remaining participating suppliers, e.g., if the change had been communicated to suppliers that have already been knocked out the line-up be different.

We must notify each participating supplier (that has not yet been excluded) of the non-substantial change being made although there is no requirement to republish the tender notice or associated tender documents for these sorts of modification.

If a change is made, deadlines and timelines will likely have to be altered too.

9. Regulated Procurement – Award

9.1 Most advantageous tender

At the tender stage, regulated contracts must only be awarded to the most advantageous tender.

The most advantageous tender is the tender that the Association considers best meets our requirements. This can be demonstrated by the tender satisfying the award criteria by reference to the assessment methodology and relevant weightings.

The most advantageous tender may be lowest price, where price is the sole criterion, or to a supplier submitting a tender that scores best across a range of price, quality and social value criteria

9.2 Award criteria

Award criteria must relate to the subject matter of the contract and:

- Be sufficiently clear, measurable and specific.
- Not break the rules on technical specifications.
- Be a proportionate means of assessing tenders when considered in relation to the price, complexity and nature of the contract.

The subject matter of the contract can include the price and how or when the goods, services or works are to be supplied. For light touch contracts, the subject matter of the contract expressly includes the views of service recipients (or their carers) benefitting from the services, including who should supply the services and how or when they should be supplied and the importance of proximity.

Award criteria must, as now, describe how tenders are to be assessed by reference to them and whether failure to meet one would disqualify the tender (assessment methodology). Where there is more than one criterion, we must also disclose the relative importance, ranking or weightings.

Where awards are being made by reference to lots, the award criteria can limit the number of lots that one supplier can obtain, but there must be an objective mechanism for supplier selection where a supplier would otherwise be awarded more than the limit.

the Association will follow guidelines for balancing quality and price in all its procurement decisions (unless there is a specific reason not to do so). The starting point for the split of the quality / price ratio will most likely be 60:40 or 70:30 quality / price, but this must recognise the nature and requirements of the contract and guidance, and may change from procurement to procurement.

9.3 Refining award criteria during the process

In certain competitive flexible tendering procedures, we now have an express right to refine award criteria (and their associated weightings). This is only if the tender notice or associated tender documents provide for the refinement of the criterion and suppliers have not yet been invited to submit (final) tenders, and the refinement would not, had it been made earlier, have resulted in one or more suppliers making it through an earlier round.

It is the preference of the Association to carefully plan the procurement procedure to avoid having to make changes to it once it goes live. This helps retain market confidence that we 'know what we are doing'. This includes the consideration of suitable award criteria and sub-criteria, and their weightings, in advance. We consider this ability should be used sparingly, only for more complex procurements and only with suitable advice and guidance.

9.4 Works, Materials and Suppliers

Where possible, materials / supplier requirements will be set out in a performance specification. Where this is not possible, a materials / supplier may be specified together with an 'or equivalent' option.

The Association notes that some works or appointments are specialist; in such situations it may be necessary to name companies, contractors, materials and suppliers and it may not be possible to obtain competitive tenders or quotations. In such circumstances the procuring officer must inform the Finance Director with the details formally recorded in the Contracts Register.

9.5 Assessment

The process to be adopted to determine the successful tenderer in any competitive tender process via a quality and price approach will be that at least 2 representatives of the Association will score quality returns along with one independent party e.g. the external consultant assisting the Association with the procurement process. Score will then be subject to a moderation session to agree scores for each question.

Where a competitive tender process is undertaken internally without assistance from a consultant the quality assessment will be undertaken by a minimum of 2 members of staff, both of which must be at least at Director level.

In certain circumstances it may be permissible that the external consultant / independent party only will undertake the evaluation – these will be considered and set prior to procurement.

Both above will provide a level of independent evaluation of the process to provide assurance that the process has been undertaken openly, objectively and without favour.

9.6 Award

Before entering into a competitively awarded regulated contract, we must debrief suppliers by providing an assessment summary to each supplier that submitted an assessed tender. These are to be issued directly and privately and are not published on the central digital platform.

Assessment summaries are **not required** for call off contracts under frameworks, although government guidance suggests that it is best practice to do so.

An assessment summary must contain information about the Association's assessment of the tender. For suppliers that did not win the contract an assessment summary must state among other things:

- The award criteria.

- How the successful tenderer scored (total and sub-total) against that award criteria including an explanation of each score by reference to information in the tender and how the tender was assessed by reference to any sub-criteria.
- How the supplier scored (total and sub-total) against the award criteria to the extent that the tender was assessed against that criteria.

- Any other explanation of why the contract is not being awarded to the supplier including for example disqualification for failure to meet one or more criteria.

Unlike the previous regime, the assessment summary does not start the standstill period. We must issue a contract award notice into the central digital platform.

There is also no requirement to give a direct comparison between the successful and unsuccessful suppliers' bids. Instead, the assessment summary given to unsuccessful suppliers should contain a copy of the information provided to the successful supplier (redacted for confidentiality, where required). A supplier reading this and information about its own scores should be able to ascertain the relative advantages of the relative advantages of the successful tenderer's scores.

We can make use of information generated during the assessment process to meet the requirements of the assessment summary.

9.7 Contract award notice and standstill period

After giving the assessment summaries but before entering into a public contract, we must publish a contract award notice stating that the Association intends to enter into the contract and containing any other information required in the notice. NB this is not the same thing as a 'contract award notice' under the previous regime – that has been replaced by the contract details notice (see section 9.8).

Contract award notices must now be published when awarding call off contracts under frameworks or dynamic markets (assuming that these contracts are above Financial Threshold).

Publishing a contract award notice triggers the start of a mandatory eight working day standstill period. We **must not** enter into (i.e. sign) the contract until the mandatory standstill period is over.

Light touch contracts, awards under frameworks or by reference to dynamic markets or direct awards for urgency or protection of life do not need to provide a mandatory standstill period.

9.8 Contract details notice and publication of contracts

Save for directly awarded user choice contracts, once we have entered into a regulated contract we must publish a contract details notice confirming that the Association has entered into a contract.

This includes when entering into an above Financial Threshold call off contract under a framework or dynamic market.

The contract details notice must be published within 30 days of the day the contract was entered into. For light touch contracts, this is extended to 120 days of the date the contract was entered into.

For contracts over £5 million, we must also publish a copy of the contract. This requirement can be met by attaching the contract to the contract details notice. The copy of the contract must be published within 180 days of entry into the contract (for light touch contracts) or 90 days (for all other contracts).

9.9 High Value Contracts - KPIs

Where the regulated contract is for over £5 million (inc VAT), the Association must set at least three key performance indicators (KPIs) before entering into the contract. These must be stated in the contract details notice.

More can be set at our discretion, but all must be published. Issuing a copy of the contract with the contract details notice will satisfy this requirement.

The obligation to set KPIs does not apply if we consider that KPIs are not appropriate to assess supplier performance (for example, one-off delivery or off-the-shelf goods contracts). Again a record should be taken justifying such decision. If KPIs aren't set, the contract details notice must explain why.

This does not apply to frameworks, light touch contracts or direct user choice contracts.

10. Our Values and Procurement

Whilst the PA23 and the controls in this Policy determine the hard boundaries for procurement activity at the Association, within those constraints our culture sets the tone for all procurement activity and allow us to leverage our spend for social and environmental good.

The most advantageous tender basis for awarding contracts allows us to consider whether the money spend can also be put to better use for our tenants, our community and the wider environment.

10.1 Employment

Delivering sustainable employment outcomes for our customers is a key priority for the Association and it is therefore fundamental to ensure that when procuring works, goods and services bidders are required to demonstrate how they will contribute.

10.2 Benefiting Our Communities

Wherever permitted and practical, the Association can leverage its spend to increase local economic impact. While we cannot favour local suppliers over others (see objectives in section 7.1) above we will use compliant evaluation mechanisms to give preference to SME's in general (in line with the objectives in PA23) and to suppliers based in the communities where we have homes in particular.

10.3 Ethical Standards

The Association will only do business with suppliers who conduct themselves in an ethical manner. Where permitted under the terms of the contract, ethical standards will be stipulated.

10.4 Tenant Involvement

Where relevant, the Association will involve tenants in service design prior to procurements. If practical a tenant representative should also be involved in the evaluation process, however this will typically focus on quality responses and exclude pricing information

11. Regulated Procurement Supplier Management

11.1 General Management

Our internal controls and public law place a series of responsibilities on the Association to ensure that all suppliers we do business with can evidence their compliance with:

- Our due diligence criteria (credit checks / case studies)
- Our policies and procedure.
- Professional accreditations relevant to the services delivered.
- The Modern Slavery Act 2015
- The UK Corporate Governance Code 2018
- The Companies Act 2006
- The Health & Safety at Work Act 1974.
- The Data Protection Act 2018.

Proof of compliance for each of the above criteria will be held against the Supplier Record within our Contract Register. To mitigate risk of noncompliant suppliers, quarterly finance system spend analysis will be compared against the Contract Register to identify

spend which risks breaching a Financial Threshold due to aggregation or delivers a critical service below threshold.

11.2 Implied terms

All regulated contracts have terms implied into them by PA23. These are as set out below.

An obligation to accept and process for payment any undisputed electronic invoice which complies with the BSI standard as it stood at the date the contract was entered into (or, if agreed by both parties, the date the invoice was issued). This does not prevent a us from requiring use of a particular system for electronic invoices.

An obligation on the Association to pay sums due within 30 days of issue of a valid undisputed invoice or, if later, the due date. We must notify suppliers if we consider the invoice is invalid or disputed without undue delay. Payments can be made by a third party, if the supplier agrees.

In both cases, any attempt to remove or restrict the implied terms has no effect in law, though we can make them better for suppliers. Contracts and contract management should be aware of this as we have to report on payment compliance (see section 11.5 below).

11.3 PA23 Mandatory Performance Information.

We must publish performance information in respect of regulated contracts awarded under PA23.

We must publish a contract performance notice containing information about a supplier's non-performance or breach within 30 days of a supplier's breach of contract (where it results in termination, award of damages or a settlement agreement) OR a supplier’s failure to perform a contract despite being given proper opportunity to do so by the Association.

Breach of contract and poor performance here relate to the entire contract, and not just KPIs that may have been included in the contract details or recent contract performance notice.

This requirement does not apply to light touch contracts.

Publication of breach or failure to perform information provides a public record on the central digital platform against which suppliers may be assessed for discretionary exclusion grounds in future procurements. Dedicated reporting will mean other providers benefit from our experience and in turn the Association benefits from advance knowledge of poor performing suppliers early in future procurements, and can use this information to classify a supplier as "excludable" from the process.

Although some of the information about performance could be considered sensitive commercial information which could be withheld as it would be in freedom of information

matters, there must still be an overriding public interest to withhold it and there is a high bar for meeting this public interest threshold for performance information.

11.4 KPI reporting

Where we have a high value contract which has set and published KPIs as required under PA23 (see section 9.9) we must publish an assessment of the supplier's performance against those KPIs annually during the lifetime of the contract. The form of notice required is a contract performance notice.

The notice must indicate how the contracting authority has performed against a prescribed rating scale:

Rating	*Description*
Good	Performance is meeting or exceeding the key performance indicators
Approaching target	Performance is close to meeting the key performance indicators
Requires improvement	Performance is below the key performance indicators
Inadequate	Performance is significantly below the key performance indicators

The notice needs to only contain information about the three KPIs considered most material at the time the contract performance notice is published, these could be different to the KPIs published in the contract details notice. We do not need to report on all KPIs if there are more than three.

11.5 Reporting on payments compliance

We must pay valid, undisputed invoices received in respect of regulated contracts within 30 days Every six months we have to report on how well we have complied with the obligation to pay valid, undisputed invoices within 30 days. Each six months is a 'reporting period'

The Association must issue a payments compliance notice on the central digital platform within 30 days of 31 March and 30 September each year reporting on the previous reporting period. These must be signed by, and identify, the Finance Director. The notice must set out the percentage of payments due in the reporting period that were paid:

- Within 30 days
- Between 31 and 60 days.

- After 61 days.

- Were payable but not paid.

It is therefore imperative that we pay promptly and record why not if there is an issue. It is also why we must query invoices quickly if there is an issue, to stop the clock.

11.6 Varying regulated contracts

We can only vary a regulated contract if the variation falls into one or more of the 'safe harbours' permitted by PA23. If the variation doesn't fall into a safe harbour. We are required to re-tender.

A modification (as it is called by PA23) is only allowed if it is a 'permitted modification', is **not** a "substantial modification", is a "below-threshold modification" or the contract is a light touch contract. We cannot separate out required modifications to take advantage of the safe harbours, even if they are made later in time.

Permitted modifications, in summary, include: (1) urgency and protection of life, (2) materialisation of a known risk, (3) are provided for in the contract in a very clear clause, (4) unforeseeable circumstances, (5) additional goods/services/works, and (6) transfer on corporate restructuring. Permitted modifications are complex with various limits and requirements and legal advice and guidance from the Senior Management Team should be sought.

A substantial modification is one which may:

- Increase or decrease the term of the contract by more than 10%.
- Materially change the contract scope (that is, provide for services, works or goods not already provided for under the contract).
- Materially change the economic balance of the contract in favour of the supplier.

A below-threshold modification permits certain low value variations. Changes are permitted where they satisfy all of the following:

- Do not increase or decrease the value of the contract by more than 10% (for goods or services) or 15% (for works).
- Do not meet the criteria for a permitted modification or non-substantial modification.
- Do not materially alter the scope of the contract (that is, provide for goods, works or services not originally provided for).

The aggregated value of below-threshold modifications is below the relevant Financial Threshold for the type of contract. The value of any below-threshold modifications to a contract must be considered **cumulatively throughout the term**, to ensure that their total value falls below the relevant Financial Threshold.

All variations to a regulated contract will require publication of a contract change notice on the central digital platform **BEFORE** the variation is made. The contract change notice is not required in the following circumstances:

- The contract is a light touch contract,
- Where the proposed change increases or decreases the contract value by less than 10% (goods or services) or 15% (works),
- Where the proposed change increases or decreases the term by 10% of less than the maximum provided for on award.

Contracts worth (before or after the variation) more than £5 million must also have a copy of the modified contract or the modification itself published within 90 days of the date the variation is made.

Contract change notices may specify a voluntary standstill period, which must not be less than eight working days from the date the notice is published. This helps to reduce overall risk to the Association and we will follow it as a default. Contracts must not be varied during any voluntary standstill period and could lead to a claim in damages or a set aside order, each of which brings significant risk to the Association.

11.7 Terminating regulated contracts

PA 23 requires the publication of contract termination notices on the central digital platform within 30 days whenever a contract is terminated (including expiry, set aside by court order, or where rescinded or terminated by the supplier or other contracting party). Directly awarded user choice contracts are exempt from this requirement.

PA23 also implies certain termination rights into all regulated contracts. These include where:

- We consider that the contract was awarded or modified in material breach (defined as a breach that would reasonably result in a successful legal challenge) of PA23 or regulations made under it.
- A supplier has become an excluded or excludable supplier since award of the contract.
- A subcontractor to which the supplier is subcontracting all or part of the contract is an excluded or excludable supplier, and the Association either did not know about the subcontracting or did not know the subcontractor was an excluded or excludable supplier, despite asking about it.

Before exercising an implied right to terminate, we must notify the supplier of the intention to terminate together with its reasons and give the supplier a reasonable opportunity to make representations. Where terminating by reference to the subcontractor, we must give the supplier reasonable opportunity to cease subcontracting or to find an alternative subcontractor.

We can terms ancillary to termination but any term attempting to restrict or override the implied term will have no effect.

12. Direct Award

12.1 General

Direct award of a regulated contract is only permitted by PA23 in specific circumstances.

Direct award means awarding a regulated contract directly to a supplier(s) without running a competitive tendering procedure.

The Association can only do this if a '**direct award justification**' applies.

12.2 Internal Control

If you consider a direct award justification applies, then please notify the Senior Management Team.

12.3 Process for direct award

BEFORE making a direct award, the following steps must be taken and documented:

- Determine that a direct award justification applies **OR** conclude that there are no suitable tenders following a competitive tendering procedure.
- **Publish a transparency notice** on the central digital platform stating the Association's intention to make a direct award

WE CANNOT DIRECTLY AWARD AN ABOVE THRESHOLD CONTRACT WITHOUT PUBLISHING A TRANSPARENCY NOTICE.

12.4 Excluded Suppliers

A direct award cannot be made to a supplier that would otherwise be excluded due to a mandatory exclusion criteria contained in Schedule 6 of PA23. There is an exemption to this rule, if there is an overriding public interest in awarding the contract to that supplier. Any such decision must be taken by the Chief Executive or Chair of the Board. The grounds for the public interest in doing so must be recorded somewhere secure and accessible in case the Association is ever challenged on this.

Suppliers excluded in a procurement process before switching to direct award likewise cannot receive a direct award unless there is a public interest in doing so. The decision making process and recording of grounds for the decision must be also made in the same manner as set out above.

Before making a direct award (or switching to a direct award), we must also consider whether a discretionary ground for exclusion (i.e. those listed in Schedule 7 of PA23) applies to the supplier concerned. Again, any decision to waive the discretionary ground

for exclusion must be made by the Chief Executive or Chair of the Board and the grounds for doing so suitably recorded and stored.

12.5 Direct award justifications

The direct award justifications are set out in PA23.

Relevant justifications include:

- Only one supplier can supply the goods, works or services because of intellectual property or other exclusive rights and there are no reasonable alternatives. Examples include: a software contract for software developed by a particular supplier; because they own the intellectual property rights, only they can provide security updates etc. A supplier is the only supplier because of exclusive distribution rights. Exclusive rights due to ownership of land; land owners may be able to determine which supplier can deliver works on that land (relevant for package deals). NB be careful – **is it exclusive** and **are there no reasonable alternatives**? Legal advice may be required.

- Where deemed necessary by regulations to protect life, health or public safety.

- Where the contract is for the supply of user choice services, as designated by regulations and supplied for the benefit of the individual. To apply, the individual to receive the services must have expressed a preference of supplier or there must be only one supplier capable, and the Association must consider that it is not in the best interests of the individual to competitively award the contract.

- The supply of prototypes or the testing, viability research or development of other novel (that is, developed at the Association's request) services, e.g. a solution to enable secure data sharing with another registered provider of social housing.

- The creation or acquisition of a unique work of art or artistic performance.

- Only one supplier can supply the goods, works or services due to the absence of competition for technical reasons and there are no reasonable alternatives, e.g. bespoke equipment or software may mean the original supplier is the only one who can maintain/alter/expand it.

- The extension or partial replacement of existing goods, services or works by the existing supplier where a change in supplier would result in receiving different or incompatible goods or services, resulting in disproportionate technical difficulties in operation or maintenance.

- The supply of similar goods, services or works by an existing supplier where the existing contract was awarded competitively to the existing supplier in the last five

years and the original tender notice for the award specifically mentioned the Association's intention to use this direct award justification.

- The goods, services or works are strictly necessary because of extreme and unavoidable urgency and cannot be awarded in a competitive tendering procedure. NB unavoidable means that the urgency must not be attributable to the Association, e.g. due to missing deadlines. The permitted minimum timescales under PA23 (even those shortened for urgency) must be insufficient and the procurement must be no wider than necessary to deal with the urgent requirement

12.6 Switching to direct award

If the Association:

- Has invited suppliers to submit tenders as part of, or requests to participate in, a competitive tendering procedure.
- Has not received any suitable tenders or requests in response (which includes evidence of collusion or materially breaching a procedural requirement of the tender notice or documents).
- Considers that a competitive award is not possible in the circumstances.

Then the Association can switch to a direct award.

Such decisions must be made carefully and with appropriate justification. The following internal process must be taken: Senior Management Team must first approve the decision and it should be thereafter reported to the Board for ratification.

A selection process may be after switching to direct award, for the purposes of awarding a contract. This allows for some informal competition or selection process. However, before awarding the contract, consideration must be taken of whether the proposed supplier is an excludable supplier or had submitted an unsuitable tender in response to the initial competitive tendering procedure.

13. Frameworks

13.1 General

Frameworks set up a closed panel of providers for up to 4 years. There are some exceptions to this time limit, but they are tightly limited and we would need legal advice to help us justify longer frameworks. See also open frameworks at section 13.3 below.

The framework is an agreement under which we can 'call-off' individual contracts. It avoids having to comply with the PA23 every time we have a need, we can simply call off the requirement from the framework. Frameworks can be with one sole supplier or with a panel of many suppliers, they can even have different services in different lots. Depending on the framework's terms, we can directly award a call-off contract to a

supplier, or they can undertake a mini-competition where the requirement is less clear cut or we want to maximise price savings. Each call-off contract becomes a contract in its own right.

We can set up our own frameworks or, depending on how they were set up, use frameworks set up by others. A good example is the Crown Commercial Services, who have set up frameworks for all manner of services (see Joint Procurement, section 16.2)

13.2 Establishment

Frameworks are regulated contracts and must be awarded in the same way as other regulated contracts (see earlier in this Policy).

13.3 Open Frameworks

Open frameworks are new under PA23.

An open framework is defined as "*a scheme of frameworks that provides for the award of successive frameworks on substantially the same terms*". So, it is effectively a framework that rolls over successively and is reopened to new suppliers at set times. An open framework is a hybrid of a dynamic market (which is permanently open to new suppliers) and a conventional framework (which is not open to new suppliers post award).

An open framework must as a minimum be re-opened at least once during the first three years, and at least every five years following that. There is therefore scope to re-open more frequently, such as on an annual basis, if desired. But the maximum term of any open framework must be eight years (unless there is only one supplier, in which case it is four years).

Suppliers can be readmitted to the open framework (when a successive framework is awarded) in various ways. If there is no limit on the number of suppliers that can be on the framework, contracting authorities can readmit by reference to their previous award, or assess an earlier or new tender. If there is a limit on suppliers, they cannot be readmitted automatically and must be assessed by reference to a new or earlier tender.

While this seems like a good option, it means re-running a framework tender process at least twice in 8 years, which is no better than going out twice for two normal frameworks. These may be most useful in markets where there is a lot of change of suppliers and there is a need to establish frameworks regularly, and a dynamic market won't work.

13.4 Mandatory requirements

As noted above, generally frameworks must not last longer than 4 years, except light touch contract frameworks or open frameworks. NB open frameworks have their own restrictions (as per section 13.3 above).

Frameworks must include certain minimum information. This includes how the Association is entitled to use it, whether the framework is an open framework, the scope of the framework and the nature of the framework. This should include its term,

estimated value, how contracts will be awarded under it and a description of the service, goods or works covered. This does not apply to light touch contracts.

We cannot award call off contracts under a framework to an excluded supplier (see section 8.10).

If we set up a framework that third parties can use, noting in the framework agreement can prevent other users of the framework from requesting additional information before awarding a contract under it.

Direct awards under frameworks are only permitted if (i) there is only one supplier OR (ii) (if there is a panel of suppliers) where the core terms of the eventual call-off contract are already set int he framework agreement and there is an objective mechanism for selecting the supplier to directly award to. Core terms include key terms such as deliverables and pricing mechanism as well as basic terms such as termination, dispute, confidentiality, variation and so on. This does not apply to light touch contracts).

Framework agreements also contain an implied term that the framework operator (i.e. the Association if we have set it up, or a third party who set one up that we can use) may exclude the following from participating in any direct award or mini-competition process under the framework: a supplier that is an excluded supplier OR has, since the award of the framework, become an excludable supplier.

13.5 Optional Fees

If we set up a framework, we have the express right under PA23 to charge the supplier a fee when they are awarded a contract under the framework. Those fees must be set as a fixed percentage of the value of the contract awarded.

14. Dynamic Markets

A dynamic market effectively acts as a qualification tool creating a panel of suppliers who meet the conditions of participation set by the Association or a third party. Regulated contracts can then be awarded by reference to suppliers' membership of the market.

This replaces dynamic purchasing systems (DPS). Unlike dynamic purchasing systems under the previous procurement regime, dynamic markets are not limited to only common commodity contracts.

14.1 Establishing and closing a dynamic market

Before establishing a dynamic market, a dynamic market notice must be published stating the Association’s intention to do so. Once established, a further notice is required as soon as reasonably practicable confirming that the dynamic market is established.

Conditions of membership for a dynamic market (or part of it) can be set, where considered a proportionate means of ensuring members have the legal and financial capacity and technical ability to perform any contracts awarded to them. The rules relating to conditions are broadly similar to those regulating competitive tendering

procedures (see section above). **Conditions of membership** cannot be modified during the period of the dynamic market. These **must be clear and appropriate** from the outset.

Fees can be charged to suppliers for membership of the dynamic market. The documents which establish the dynamic market can provide that suppliers must pay fees when they are awarded a contract by reference to their market membership; this must be a fixed percentage of the contract value.

Dynamic market notices must also be published whenever a dynamic market is modified or ceases to operate.

Where a dynamic market is set up by a third party, it may be that it is available to the Association. Before setting up a dynamic market, it may be appropriate to consider if a suitable one is already available to use.

14.2 Membership and management of the dynamic market.

Once a dynamic market has been set up, the Association must:

- Accept applications for membership of a dynamic market (or part of it) at any time during the life of the market and consider those applications within a reasonable period. The number of members cannot be limited.
- Admit all suppliers (unless excluded or excludable) satisfying the conditions for membership to the market as soon as reasonably practicable.
- Inform suppliers of the outcome of their application (and reasons for their decisions) as soon as reasonably practicable.
- Remove a supplier from the market if the supplier is entered onto the debarment list for a mandatory exclusion ground (and inform the supplier of its decision to do so).

Suppliers can be removed from a dynamic market at the Association's discretion if the supplier:

- is an excluded supplier but is not present on the debarment list;
- no longer satisfies the conditions for membership; or
- the supplier has become an excludable supplier since it joined the dynamic market.

Before removal, the supplier must be informed of the decision and the reason for it.

14.3 Awards through a dynamic market

The award of contracts through a dynamic market must be done via a competitive flexible procedure. A tender notice must be issued on the central digital platform and the

procedure followed (see sections 7 – 9 above). Unlike a general competitive flexible procedure. only tenders received from members of the dynamic market need to be reviewed (although see next paragraph).

Before excluding or disregarding tenders from suppliers who are not already members of the dynamic market, any applications for membership of the dynamic market made by such suppliers must be considered. The one exception to this rule is where due to exceptional circumstances arising from the complexity of the procurement, the application cannot be considered before the deadline.

The basis for award, assessment summary and notice procedures must be followed as per any competitive flexible process.

A minimum tender period of 10 days is required between issuing the tender notice for the contract and the deadline for tenders.

15. Summary of Notifications Required under PA23

Notifications required under the Procurement Act 2023 may include the following. Some of these may be more or less relevant to the Association:

- Pipeline Notice – this is required if procurements over £100m are due in a year. If so, it must be published no later than approximately 26th May (being 56 days of the beginning of the financial year (1 April)) in each year, setting out the 18 month procurement pipeline, with details of contracts worth over £2m.

- Preliminary Market Engagement Notice -to advertise market engagement exercise in respect of regulated contract (i.e. over the Financial Threshold).

- Planned Procurement Notice – can be issued before initiating procurement to warm up market and reduce minimum timescales.

- Tender Notice – this advertises contract opportunities for regulated contracts (i.e. over the Financial Threshold) and commences the procurement (inc. for contracts tendered pursuant to a dynamic market).

- Below-threshold Tender Notice – as above for below-threshold contracts valued over £30,000 (inc VAT).

- Procurement Termination Notice – to announce and explain the procurement has been cancelled/terminated/abandoned.

- Contract Award Notices – announcing intention to award a contract. Starts the Standstill Period.

- Contract Details Notice – announcing award of a contract, required for regulated contracts and below-threshold contracts over £30,000 (inc VAT), inc. contracts awarded via a dynamic market.

- Transparency Notice – required in order to direct award.

- Dynamic market notice – required to establish a dynamic market, and to alter or end it.

- Contract Performance Notice – to be published annually when the contract is £5m+ and KPIs have been set. The notice reports on performance against KPIs. Also for when supplier breach has led to termination/damages/settlement agreement, or continued supplier failure occurs despite given a chance to resolve performance issues.

- Payments Compliance Notice – published twice yearly to demonstrate how well the Association has complied with the requirement to pay valid undisputed invoices within 30 days.

- Contract Change Notice – published before a variation can be made to a regulated contract.

- Contract Termination Notice – published within 30 days of expiry or termination of a regulated contract.

See the Appendix for flow diagrams showing when the notices should be issued in a below-threshold procurement and a regulated procurement.

16. Joint Procurement

Joint procurement can apply in one of two ways.

16.1 Joint procurement with one or more "partner" organisations

In situations where it is agreed that procurement is to be undertaken with another 'contracting authority', i.e. another registered provider of social housing, a local authority, Integrated Care Board or similar on a joint basis the following principles and procedures will apply.

A specific point of contact for the Association will be determined and it will be the responsibility of that individual to administer the appropriate stages of the process and keep the Board advised of progress and refer appropriate aspects for consideration and approval as necessary.

It is essential under such a joint procurement option that the Association's requirements are fulfilled, although it is recognised that this form of procurement will involve a degree

of flexibility and negotiation with the joint procurement partner(s). Where the lead is being undertaken by one of the Association's "partner" organisations, the Association's requirements will be communicated effectively by the designate member of staff.

The Board will be kept up to date with progress via reports to the relevant sub-Committee. Approval in terms of the procurement route and final approval of proposals will remain with Board unless delegated otherwise.

At all times it must be remembered that we are legally responsible for ensuring a robust and compliant procurement. This policy should be adhered to, to the greatest extent possible given the need for flexibility. Where the "partner" is taking the lead, we must insist on all necessary due diligence to ensure we are satisfied the procurement is compliant with PA23. Where the Association is taking the lead, this policy should be communicated and adhered to. We need to be able to justify to our partners and suppliers that we are compliant and that the procurement is robust.

Consideration should be given to formalising any arrangements for both the procurement and contract stages of the partnering arrangement. Take legal advice if necessary.

16.2 Centralised procurement authorities

In order to secure value for money, the Association may enter into a procurement arrangement with a "centralised procurement authority" means a contracting authority that is in the business of carrying out procurement for or on behalf of, or for the purpose of the supply of goods, services or works to, other contracting authorities). The terms and conditions of the CPA must be fully complied with, including any requirement to undertake competition between providers. This includes complying with the terms of any framework or dynamic market established by the CPA, and undertaking necessary due diligence to ensure that the CPA set up the procurement arrangement in a compliant manner.

17. Emergency/Urgent situations

Certain situations may arise where the overriding priority is to instruct work.

Where possible, we should procure in line with this Policy:

Below-threshold procurement has no minimum timescales beyond that which is suitable to get useful and informative tenders returned.

Regulated contracts have minimum timescales. Some of these can be reduced, e.g. is planned procurement notices have been issued or where all documents are provided electronically up front. Choice of procedure may help too. Also, the minimum timescales can be heavily reduced in times of genuine urgency where no other applicable minimum time period is practical, as follows:

- Open procedure – 10 days.

- Competitive Flexible – 10 days (or, where a participation/pre-selection phase is required, 10 days for the participation phase and 10 days for the tender phase).

Light touch contracts have no minimum period, whether or not the open or competitive flexible procedure is used.

Direct award may be available for genuine emergencies (see section 12).

Where none of the above will help with the situation, the Chief Executive or Director available at the point of the emergency situation will have discretion in line with the Financial Regulations to grant an exemption from the procurement options set out in this Policy. All requests for an exemption must include details as to why the exemption is needed. All exemptions granted for above-threshold procurements must be reported to the Board immediately as practicable after the emergency and within no more than 24 hours of the event happening)]. **THERE IS A RISK IN GRANTING EXEMPTIONS UNDER THE POLICY AND WE MUST USE ALL EFFORTS TO PROCURE IN LINE WITH IT.**

18. Authorisation scheme for Procurement

Acceptance of tenders/quotations can be made under delegated authority where the relevant authorised procurement levels have been adhered to subject to the work or project having already been approved by Board in the annual budget.

Should this not be the case (including where the procurement process takes place ahead of any budgetary allocation) any acceptance must await the necessary Board approval.

Acceptance of any expenditure over the above noted amounts requires approval of the Board / sub-Committee which has the appropriate delegated authority for such decisions.

All tender acceptances following a competitive tender process require the approval of at least two members of the Senior Management Team.

19. Risk Management

19.1 Corporate Strategy / Register

The Association has a risk management strategy and strategic risk register, which covers the considerable risks associated with procurement. All Committee reports include a standard item covering risk management.

All staff will be made aware of these documents and receive regular training in relation to their operation.

19.2 Operational Risk Management *(Who we do Business With)*

One key aspect associated with procurement is to ensure that all companies with whom we procure goods or services, particularly those of a particularly high value have the track record to ensure that any risk associated with the “business transaction” are minimised.

As a result, the Association will only enter a contract over £30,000 with contractors, consultants, and suppliers etc. who can demonstrate the following:

- At least 2 years of operation in the business capacity in question.

- Be able to provide at least 2 positive references from previous clients who procured similar works / services, unless they are already an approved contractor

- Be able to provide the essential insurance cover required for the work / service to be provided,

So long as these are proportionate measures for regulated contracts.

19.3 Other Risk Mitigating Actions Required

Other risk mitigating actions to be applied, where appropriate and proportionate, include the following:

- Financial Checks
  For major contracts the Finance Director may check Companies House and VAT registrations are valid.

- Independent Financial / Risk Assessment
  It may be relevant to obtain a financial / risk assessment check through a credit agency with the judgement as to whether this is appropriate being delegated to the Finance Director.

- Performance Bonds
  The Association will require development contractors appointed to undertake contracts exceeding £50,000 to provide a Performance Bond (or equivalent) to the value of 10% of the contract sum. Due to the nature of reactive or planned maintenance works there will be no requirement for such “insurance”.

- Insurance
  The Association will hold current copies of professional indemnity insurance on all consultants who are actively working on projects or on projects which reached practical completion less than 6 years previously and have a contract value over £30,000.

Contract administrators will ensure that appropriate insurance is taken out by the contractor for new build and property maintenance works contracts.

The Association will hold copies of public liability insurance on all contractors who are actively working for the Association.

20. Compliance and Review

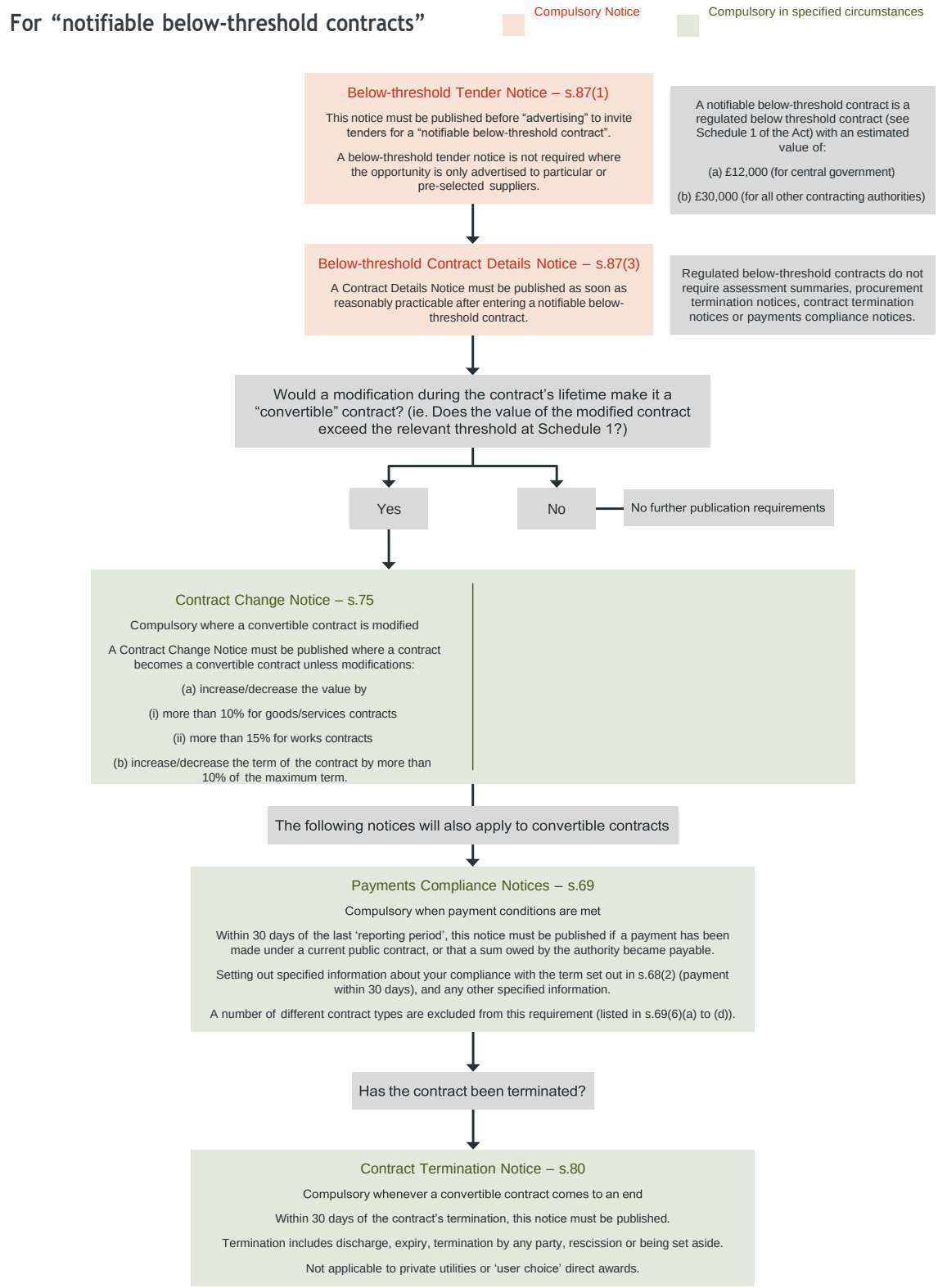
Ensure all procurement activities comply with the Procurement Act 2023.

Regularly review and update this policy to reflect changes in legislation and best practices.

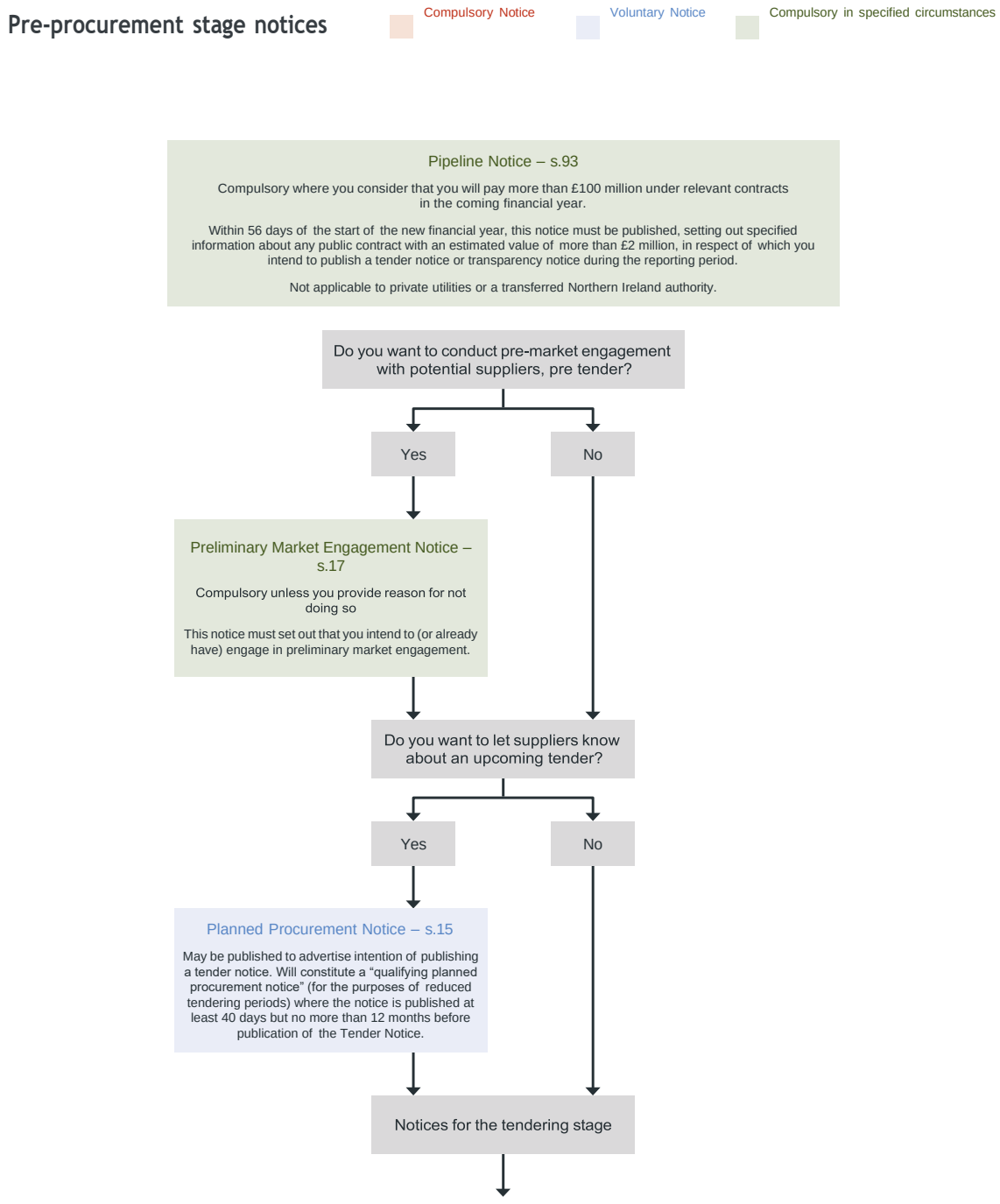
The next review shall be: in 2028

Appendix 1

Procurement Process: Below Threshold Notices



Appendix 2 Procurement Process: Above Financial Threshold Notices

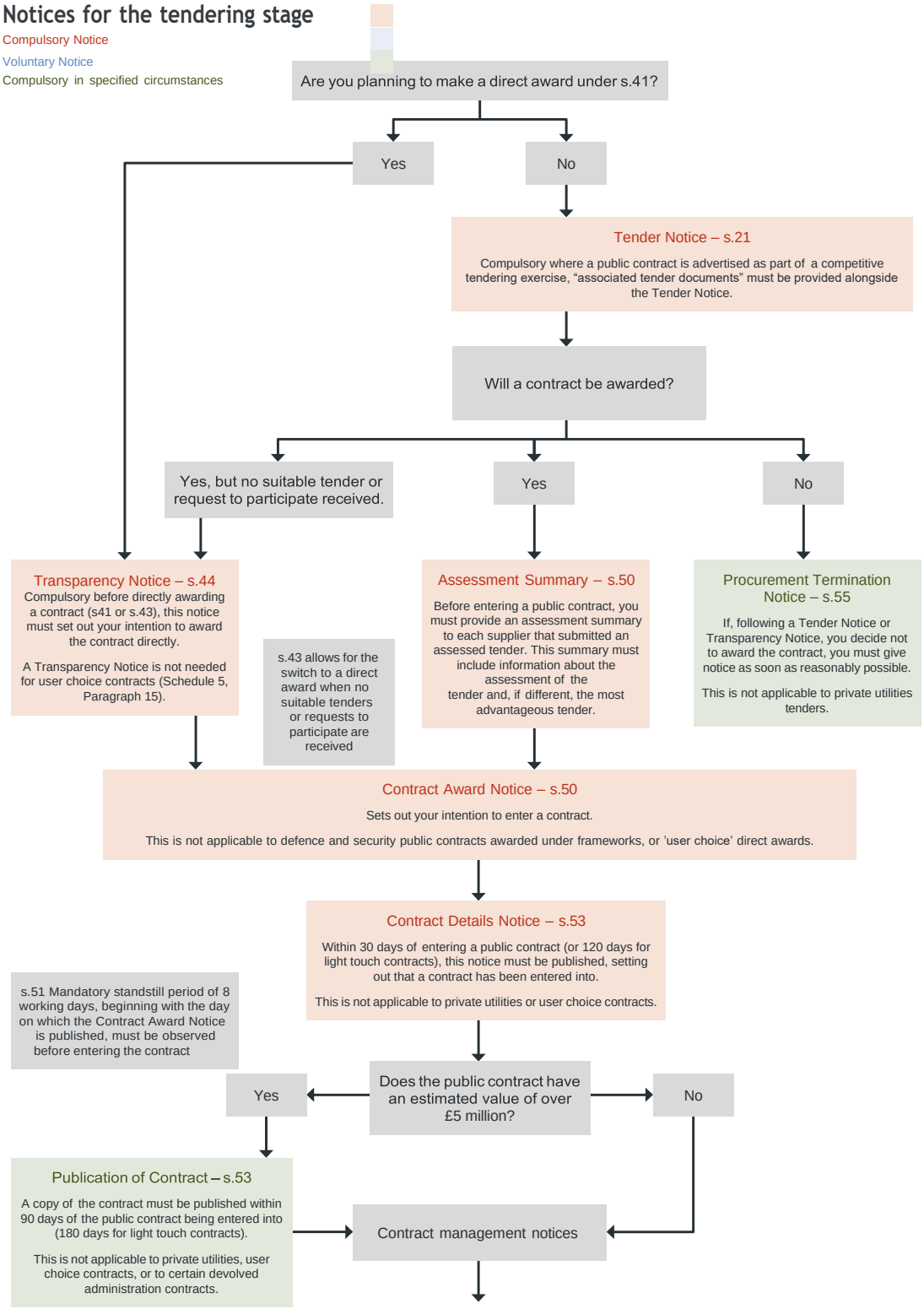


Notices for the tendering stage

Compulsory Notice

Voluntary Notice

Compulsory in specified circumstances

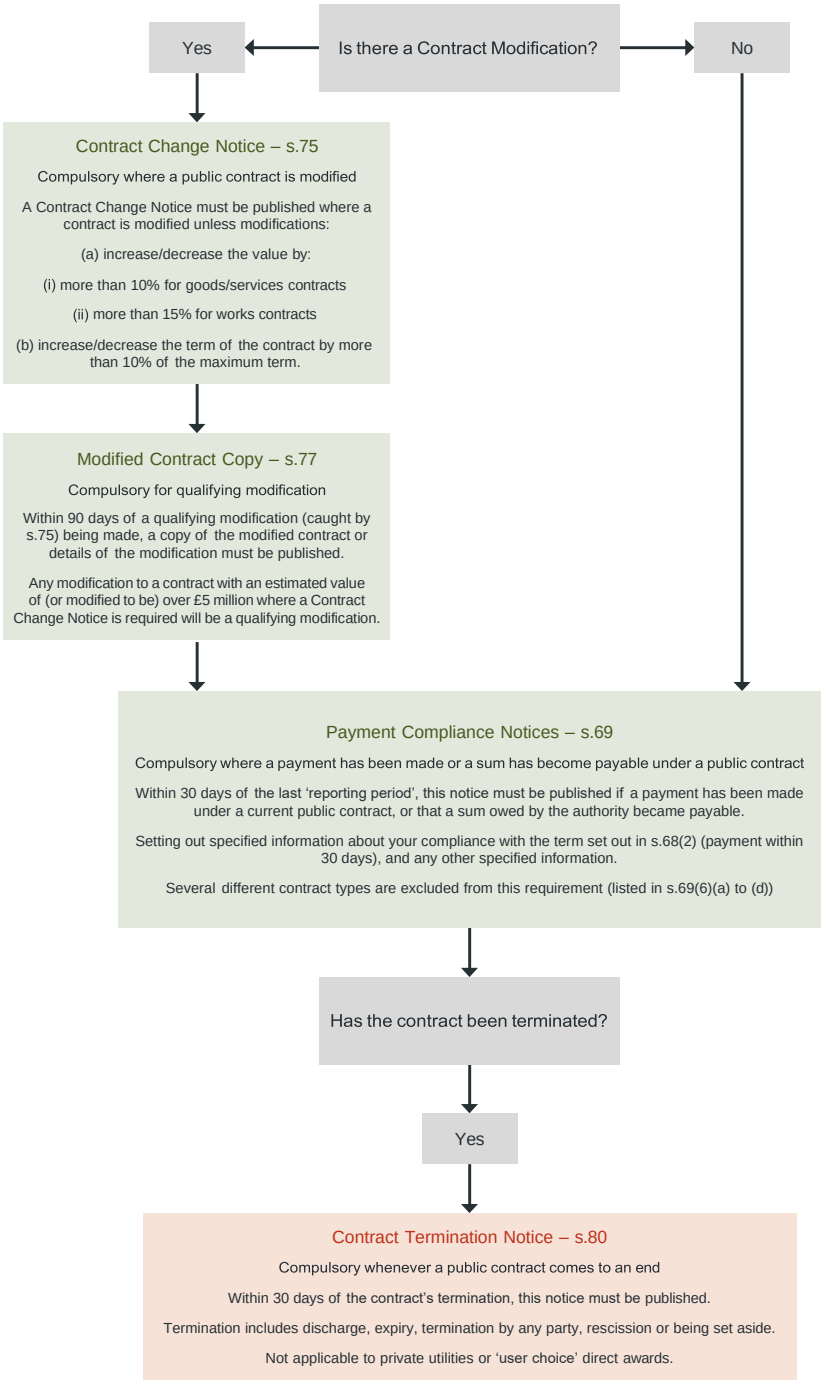


Contract management notices

Compulsory Notice

Voluntary Notice

Compulsory in specified circumstances



Appendix 3

Under-threshold Procurement - Supplementary Requirements & Exceptions (incl procedures)

These supplementary requirements (incl procedures) should be read in conjunction with the Procurement Policy and the Financial Regulations.

1 Quotations

1.1 The lowest priced quotation should be accepted.

1.2 Where quotations are placed under other criteria other than price (ie a price/quality matrix), the price/quality matrix must be approved in advance by 2 Directors.

1.3 For maintenance/development work only contractors from the approved contractors list must be invited to quote/tender.

1.4 All quotations received should be uploaded onto the Association's document management system and attached to the payment(s). The Finance Team shall carry out regular spot checks to ensure that records of quotations are maintained.

1.5 For exceptions to these requirements please refer to section 3 below.

2 Tenders

2.1 Suppliers/Contractors shall be required to tender using an approved standard form of pricing, where possible;

2.2 All tenders must be returned to the Association by email to a secure inbox with restricted access or other secure digital method determined by SMT;

2.3 Tenders shall not be accepted after the due date. Any tenders received late should remain unopened.

2.4 Tenders shall be opened by a member of the Senior Management Team, within 2 working days of the tender deadline, in the presence of a member of the Senior Management Team who is not the commissioning director for the procurement, or a nominated deputy.

2.5 All tenders shall be recorded in a tender book as they are opened. The following details shall be recorded:

- The date and time of opening and project name
- The staff and SMT member present
- The name of the contractor/supplier
- The amount tendered
- The basis of the tender
- Contract period
- Any relevant remarks.

When all tenders are opened the tender selected shall be recorded with any relevant remarks. The staff member and SMT member shall sign the tender book and rule off under the entry.

2.6 The lowest tender must usually be accepted. If it is not, 2 members of SMT must approve this and it shall be reported to the Board for ratification.

2.7 The Finance Director is responsible for controlling the tender book.

2.8 The tender book shall be available for scrutiny by any member of the Board.

2.9 Subject to the proper procedures being followed, the proposed works being with the Association's approved programme of works and the appropriate project approvals being received (if applicable), the Association is empowered to enter into contracts. All such contracts entered into shall be reported to Board on an annual basis.

2.10 All contracts over £30,000 shall be signed and sealed (if appropriate) by the Company Secretary and a member of SMT.

2.11 The use of the seal shall be reported to the next Board meeting.

2.12 Tenders which exceed the budget by more than 10% (unless under £15,000) will be reported to the next meeting of Board by the relevant Director.

2.13 Annually, all contracts awarded for maintenance and component replacements shall be reported to Board.

3. Negotiated Contracts

3.1 Contracts of £12,000 or over may only be negotiated with the approval of the Chief Executive or Chair of Audit Committee. Negotiated contracts of £30,000 or over shall be reported to the Board for ratification.

3.2 Where contracts are negotiated, the following details shall be included in the tender book:

- The date and time of the contract award
  project name
- the reason for the contract being negotiated rather than tendered
- The name of the contractor
- The value of the contact
- Contract period
- Any relevant remarks.

The signature of the Chief Executive and the Finance Director.

3.8 Procurement Exceptions

3.8.1 The following table sets out the instances when an exception to the procurement requirements is allowable subject to relevant approval:

Exceptions	Action required	Approval
Emergency (health & safety risk)	Procuring officer to provide written statement to a SMT member	One SMT member. Procurement over £7,500 to be reported to Board.
Urgent (where action is needed quickly to avoid delays which would impact on service delivery)	Procuring officer to provide written statement to a SMT member	Two SMT members. Procurement over £7,500 to be reported to Board.
There is only one supplier or where one supplier is preferred due to service continuity or other reason (where goods/services equals/exceeds £7,500).	The procuring officer must demonstrate this in a written statement to SMT for their approval as an agreed waiver.	Goods/services £7,500-£29,999 – Approval by One SMT member. Goods/services £30,000 & over – Approval by 2 members of SMT & reported to Board
For maintenance/development work – a contractor not on the approved contractor list is asked to quote/tender	If officers wish to go out to quote/tender with a contractor not on the approved contractor list this must first be approved.	Works £2,500-£29,999 – Approval by Operations Director Works £30,000 & over – Approval by 2 members of SMT
The lowest priced quote is not recommended to be accepted.	Procuring officer to provide written explanation to SMT with justification of why the lowest quote should not be accepted.	SMT (2 members)

Exceptions	Action required	Approval
The lowest priced tender not is recommended to be accepted.	Procuring officer to provide written explanation to SMT with justification of why the lowest quote should not be accepted.	SMT (2 members) & subsequent ratification by Board
Repeat procurements: Component replacements	Each component type needs only be put out to tender once per year, provided that subsequent contracts can be let at either the same unit replacement price, or less, with the works awarded through delegated authority through SMT.	SMT to approve works awarded.