NHS Manchester
Procurement
Operational policy

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Contents **Page No.**

1. Introduction - Procurement 2
2. Legal, Policy, Guidance and Procedures 2
2.1. Legal 2
2.2. Policy and Guidance 3
2.3. PCT Policies and Procedures 4
3. Responsibilities 4
3.1. Legal 4
3.2. PRCC and PCT Procurement Guide 6
3.3. Enforcement 7
3.4. Cooperation and Competition Panel (CCP) 7
3.5. Dispute Avoidance and Resolution Process (DARP) 8
3.6. Service Review 8
3.7. Existing Providers and Service Reviews 8
4. Commissioning Cycle 8
5. Procurement Projects 9
5.1. Stage 1 – Pre Procurement 9
5.2. Stage 2 – Tender Process 12
5.3. Other Procurement Routes 14
5.4. Stage 3 – Contract Management 16
5.5. Decision Support 17
5.6. Contracts 21
6. Other Considerations 21
6.1. Collaboration 21
6.2. Information Governance 21
6.3 Equality and Diversity 21
6.4 Ethics and Propriety 21
6.5 Small and Medium Sized Enterprises 22
6.6. NHS Organisations 22
6.7. Third Sector 22
6.8. Delivering Excellent Procurement 22
7. Summary 23
8. Appendices 24
   - Appendix A Procurement Exemptions Checklist 24
   - Appendix B Model Conflict of Interest Guidance 28
   - Appendix C Core Principles that drive the management of choice and competition 34
   - Appendix D Ten Principles and Rules for Co-operation and competition 35
   - Appendix E Open Procedure OJEU flow chart timeline 36
   - Appendix F Restricted Procedure OJEU flow chart timeline 36
   - Appendix G Competitive Dialogue Procedure OJEU flow chart timeline 37
   - Appendix H Negotiated Procedure OJEU flow chart timeline 37
   - Appendix I Overview of all OJEU Procedures flow chart time lines 38
   - Appendix J Framework flow chart 39

1. Introduction - Procurement

> *Procurement is the process of acquiring goods and services, covering both acquisitions from third parties and from in-house providers. The process spans the whole life cycle from identification of needs, management of the process and through to its expiry*

This document should be read in conjunction with both the PCT's Contestability Guidance and the Procurement Strategy of NHS Manchester. NHS Manchester spends in excess of £950 million each year on goods and services. All PCTs including NHS Manchester must apply the highest professional standards when they spend this money on behalf of taxpayers. To achieve quality and value for money services, effectively managed procurements – properly planned and executed – are essential.

This Operational Policy of the procurement strategy is based on key procurement related policy and guidance documents. It does not seek to reproduce these documents but aims to support the PCT 'make sense' of them, their requirements and where necessary undertake intelligent and efficient procurement within the context of constantly evolving health markets.

The strategy is organised into 6 sections dealing with:

1. Legal, policy, guidance and procedures
2. Responsibilities
3. Commissioning cycle
4. Project
5. Processes
6. Other Considerations

2. Legal, Policy, Guidance and Procedures

PCT procurement activities are influenced by:

2.1. Legal

The European Union (EU) Procurement Directives, and the Public Contracts Regulations that implement them in the UK, set out the law on public procurement. Their purpose is to open up the public procurement market and to ensure the free movement of goods and services within the EU.

The rules apply to purchases by public bodies and certain utilities which are above set monetary thresholds. They cover all EU Member States and, because of international agreements, their benefits extend to a number of other countries worldwide. Where the Regulations apply, contracts must be advertised in the Official Journal of the EU (OJEU) and there are other detailed rules that must be followed.

Further details can be found in the Office of Government Commerce (OGC) EU Procurement Guidance: introduction to the EU procurement rules.

http://www.ogc.gov.uk/documents/Introduction_to_the_EU_rules.pdf

2.2. Policy and Guidance

The UK public sector procurement environment has undergone significant change over the last 30 years. There has been an increasing emphasis on competition, efficiency and value for money through acting in more commercial and entrepreneurial ways. Over the coming years this challenge will be even greater.

NHS reforms over the last 10 years provide a set of levers to meet this challenge including:-

- Plurality in provision
- Improved commissioning
- Greater choice
- More information for patients
- Contestability

These levers and 'systems management tools' are encapsulated within a number of key Department of Health (DH) procurement related policy and guidance documents.

Table 1

Document	Author	Description
Primary Care Trust Procurement Guide for Health Services	Department of Health, 2008	The PCT Procurement Guide for Health Services supports NHS commissioners in deciding whether and how to procure health services through formal tendering and market-testing exercises. The Guide sets out the policy and regulatory context for procurement, and issues to consider when developing a procurement strategy
The NHS in England: The operating framework for 2008/9 Annex D - Principles and rules for co-operation and competition	Department of Health, 2007	The principles and rules for cooperation and competition provide simple, workable guidance for system managers, commissioners, and providers on the expected behaviours and rules governing cooperation and competition, in the provision of NHS services
Framework for Managing Choice, Cooperation and Competition	Department of Health, 2008	The Framework supports SHAs and the PCTs in understanding the roles, responsibilities, values and behaviours required for the effective management of choice and competition within the NHS
Necessity - not nicety: A new commercial operating model for the NHS and Department of Health	Department of Health, 2009	The new Commercial Operating Model will further enhance commercial and procurement skills across the NHS in helping to deliver high quality and personalised care for patients

Transactions Manual for acquisitions, divestments, demergers, joint ventures, franchises and statutory mergers	Department of Health and Monitor, 2009	The Department and Monitor have released the Transactions Manual to support best practice amongst providers of NHS services, commissioners, Strategic Health Authorities (SHAs) and their respective advisers as they develop transactions within the UK health economy. It has been co-produced with NHS stakeholders and is a joint publication by DH and Monitor

In addition, the OGC has produced a Policy and Standards Framework which guides public sector organisations through the principles and processes of commercial activity.

http://www.ogc.gov.uk/procurement/the_bigger_picture_policy_and_standards_framework.asp

2.3. PCT Policies and Procedures

In addition to the EU directives, the PCT sets out local requirements in their own statutory Standing Orders and Standing Financial Instructions. The current requirements are:-

- A minimum of three written quotes for purchases over £10,000 and up to £30,000
- A minimum of three written competitive tenders for purchases over £30,000
- Compliance with the EU procurement directives for purchases over £101,323
- Compliance with the EU procurement directives for works projects over £3,927,260

3. Responsibilities

There is a general duty on all public sector procurers to apply the key principles of public procurement. These require the delivery of value for money (VFM), appropriate quality and service to meet business needs, and appropriate governance (i.e., adherence to HM Treasury rules concerning the use of public money in procurement).

The legal, policy and guidance documents outlined in Section 2 also identify a number of specific responsibilities.

3.1. Legal

The PCT will adhere to the legal framework for public procurement set out in the EU Procurement Directives and implemented into national law in the UK by the Public Contracts Regulations (2006). They apply when the PCT seek to acquire supplies, services, or works.

Services contracts are divided into two categories:

- Part A - to which full EU rules apply
- Part B – where only some of the EU procurement rules apply – namely, obligations relating to technical specifications and post-award information. There is no requirement for a Contract Notice to be published in the OJEU, but there is a requirement to send a Contract Award Notice to the Office of Publication of the OJEU

Clinical and healthcare services are categorised as Part B and are therefore exempt from many of the rules.

The purchase of all goods and services are subject to the EU regulations regardless of whether they are capital or revenue funded, but the regulations differentiate between different types of services, classifying them as either Part A – which require a full EU competitive tender exercise or Part B – where only limited requirements apply (Healthcare services fall into this Part B category). The regulations also specify thresholds over which the full regime must be applied. The thresholds are currently:-

£ 101,323	for supplies and Part A and services
£101,323	for Part B services
£3,927,260	for works / building projects

However, it should be noted that the UK sterling thresholds are revised every two years, in line with fluctuations in exchange rates (next due in January 2012).

Even if the services are Part B and/or below the threshold, the EU treaty principles below apply:

- Non-discrimination – ensuring consistency of procurement rules, transparency on timescale and criteria for shortlist and award
- Equal treatment – ensuring that all providers and sectors have equal opportunity to compete where appropriate; that financial and due diligence checks apply equally and are proportionate; and that pricing and payment regimes are transparent and fair
- Transparency – including the use of sufficient and appropriate advertising of tenders, transparency in making decisions not to tender, and the declaration and separation of conflicts of interest
- Mutual recognition
- Proportionality – making procurement processes proportionate to the value, complexity and risk of services contracted, and critically not excluding potential providers through overly bureaucratic or burdensome procedures

To comply with these principles, the PCT will undertake some degree of advertising, appropriate to the scale of the contract, and to minimise risk, can if they so wish, adopt some of the approaches required for Part A services. This is also in line with the UK objective of achieving value for money in all public procurement, not just those covered by the EU Procurement Directives.

Supply2Health

In addition the PCT will also adhere to the DH and SHA requirement to advertise on the Supply2Health web portal any opportunities to provide competitively tendered Part B clinical services with a lifetime contract value above £100,000. The PCT may advertise lower value contracts to stimulate markets, e.g. third and voluntary sector. To access go to:

http://www.supply2health.nhs.uk/default.aspx

The DH and SHA also stipulate the PCT will comply with the ten principles of the Principles and Rules for Cooperation and Competition (**PRCC** at Appendix D) and the ten principles for Managing Choice and Competition (Appendix C).

Table 2 below is extracted from the DH PCT Procurement Guide and illustrates how the rules between parts A and B apply.

	Part A	Part B
Sufficient degree of advertising to satisfy principles of transparency, non-discrimination on grounds of nationality, and equality of treatment	X	X
Tender advertised in the Official Journal of the European Union	X	
Compliance with specified minimum timescales for providers to respond to adverts, pre-qualification checks and tenders	X	
Competitive dialogue or negotiated procedure allowed only in specified circumstances	X	
Detailed rules on selection and award criteria; contracts awarded either on the basis of the lowest price or the most economically advantageous offer (but note: award criteria must still be fair and non-discriminatory in the case of Part B contracts)	X	
Provision of feedback to unsuccessful providers and standstill requirement after contract award and prior to contract execution (but note: the 'openness' principle may require that this should happen in practice in Part B contracts)	X	
Issue of contract award notice to European Commission within 48 days of award	X	X
Collation of relevant statistical data	X	X

3.2. PRCC and PCT Procurement Guide

As required by the DH Principles and Rules for Cooperation and Competition (Principle 3 of Appendix D), the PCT will follow the guidelines set out in the DH PCT Procurement Guide.

Table 3

2. Principles and rules for Cooperation and Competition NHS

Principle 3 – Commissioning and procurement should be transparent and non-discriminatory		
Rationale	Actions/Behaviours	**Rules**
• To provide the best value for money, encourage innovation, and protect the reputation of the NHS, commissioning and procurement should be transparent and non-discriminatory.	• Commissioners must engage fully and transparently with providers around future procurement requirements and timetables, using where appropriate their PCT Prospectus and provider forum. • PCTs must gain consent of their boards and inform SHAs where they decide not to tender a contract for a new or significantly changed service. • PCT procurement activity must be proportionate to the size and complexity of the service(s) in question, and appropriate to the type of provision. • Commissioners must maintain an auditable documentation trail which will be a tool for SHA performance management and any competition appeals. • PCT tenders must be advertised on the forthcoming PCT procurement portal*. • Commissioners should have regard to the principles and undertakings in the Compact with the third sector's Funding and Procurement Code of Good Practice (FPCGP) , particularly paragraphs 2.9 (programme design) and 3.8-9 (proportionality of procurement)**.	• Commissioners must follow the guidelines set out in the Procurement Guide (to be published). • Commissioners must comply with the PBC accountability framework and tender where a PBC proposal would result in a major services change or the creation of a monopoly.

The PCT recognises that there is no general policy requirement for NHS services to be subject to a formal procurement process but that the PRCC sets a general requirement for commissioning and procurement to be transparent and non-discriminatory (see 3.1 - Legal).

The PCT will use providers who are best placed to deliver the needs of patients and populations.

The PCT, either individually, or where relevant collaboratively, will decide whether formal tendering or market testing is required and which procedure. Section 5 - Processes identifies how the PCT will make these decisions.

The PCT will also:

- Ensure that this strategy is applied by any organisation to whom they delegate commissioning authority, whenever exercising that authority
- Remain up to date with changes in procurement rules
- Ensure that they understand their responsibilities, risks and adhere to Standing Financial Instructions and where in doubt, seek legal advice

3.3. Enforcement

A service provider may challenge a contract award where it believes that:

- There has been a breach of the procurement rules and;
- It has or will suffer as a result

The result might be the:

- Suspension of an incomplete contract award procedure
- Setting aside of a decision in an incomplete contract award procedure
- Award damages where a contract has been entered into
- In some circumstances overturning a contract

The EU has published a Remedies Directive which allows for contracts to be ruled ineffective in certain circumstances. It was implemented in the UK in December 2009. More information can be found at:

http://www.ogc.gov.uk/documents/PPNremedies.pdf

The PCT will ensure that all procurement decisions are documented in a way that can be audited and justified. They will also implement the new Remedies Directive.

3.4. Cooperation and Competition Panel (CCP)

The CCP investigates and advises the DH and Monitor on the potential breaches of the PRCC. It looks at cases in four categories:

- Merger inquiries
- Conduct inquiries
- Procurement dispute appeals
- Advertising and misleading information dispute appeals

The CCP will need to be satisfied that the PCT have complied with the PCT Procurement Guide as the basis for decisions they have made.

More information can be found at:

http://www.ccpanel.org.uk

3.5. Dispute Avoidance and Resolution Process (DARP)

The PCT will ensure that they have in place an agreed DARP for dealing with potential perceived breaches of procurement requirements.

3.6. Service Review

The PCT will undertake a systematic approach to, and plan for, reviews of services currently commissioned. Where a service is:

- New
- Substantially changed in accordance with Appendix D; or
- Where commissioners consider that termination or non-renewal of an existing contract is necessary in accordance with Principle 2 of the PRCC

The PCT will consider whether to tender or not in accordance with this document, the Contestability Guidance, the Prioritisation of Healthcare Resources Framework and in particular the guidance contained in section 5.5 and 5.6 of this operational policy.

3.7. Existing Providers and Service Reviews

The PCT's intention is that all contracts with providers comply with the PRCC under either binding contracts or service level agreements that are underpinned by finance and activity schedules.

All contracts held by the PCT will be reviewed in accordance with the requirements built into each contract at regular intervals. For longer contract durations, contract performance will be reviewed at the start of the final year by commissioning and contracting leads and decisions will be taken about alternatives then available and whether to embark upon a tendering exercise or extend or vary the contract, where provisions to extend or vary the contract are in place.

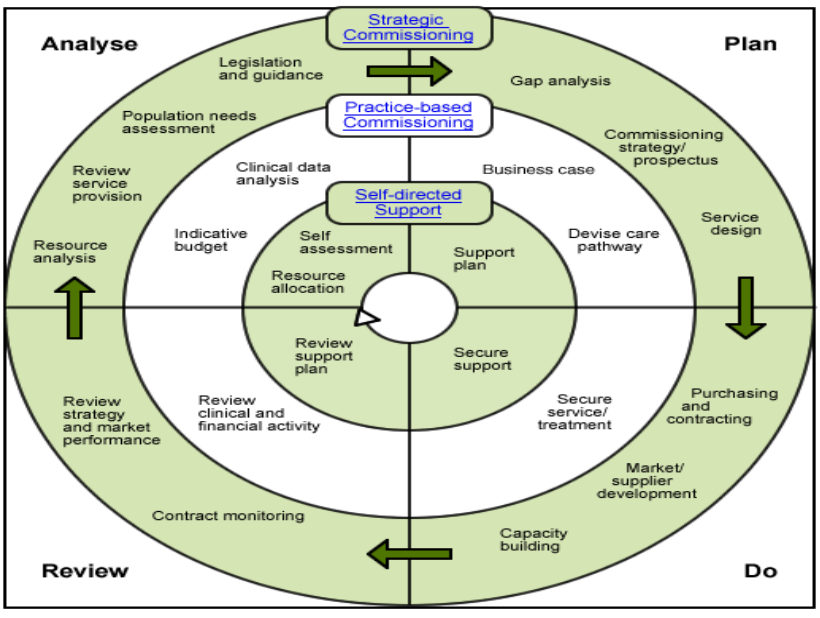
This initial review will consider:

- Principle 1 of the PRCC
- The PCT's Contestability Guidance and the PCTs Prioritisation of Healthcare Resources Framework

4. Commissioning Cycle

There is much debate about whether commissioning is synonymous with procurement or merely includes procurement. What is certain is that for procurement to be effective as a business tool, the PCT need to effectively execute all the elements of the commissioning cycle.

Figure 1: Commissioning Cycle



5. Procurement Projects

The procurement process spans a life cycle from identification of need, through the selection of suppliers and providers, to post-contract award management. A typical procurement process and a brief insight to the key elements of each stage is shown below

Figure 2: Procurement process

5.1. Stage 1 – Pre Procurement

Planning

- Engagement (and consultation where relevant) with stakeholders and partners
- Engagement with the market to understand how the requirement could be met
- Consider whether the service could be jointly procured with other PCTs
- Establishment of effective governance arrangements and resourcing plans
- If necessary buying in support

Developing Specifications

- Provide sufficient detail to allow the market to respond to requirements
- Output or outcome specifications normally used
- Focus on what the PCT want - not how a supplier will provide it
- Challenge suppliers and give them scope to innovate
- Many failed procurements are traced back to poor specifications

Project Management

- Procurements should be run as projects
- Either stand alone or linked to series of interlinked projects contributing to a programme
- Consistent and systematic approach is essential
- Best practice tools and techniques should be applied
- Require as a minimum skills in project management, procurement, law and finance. Plus specialist input in areas such as clinical, public health, community engagement, human resources, risk management, estates, information management and technology
- Again, if these are not available internally they will need to be bought in

For higher risk procurements the PCT may use a gateway type review process to assure the readiness of the project to progress at key stages (or gates) of the life of the project and these can link into the PCTs own guidance of developing a business case, business

planning which identify the type of governance arrangements that are in place and the particular Committee or Board these projects need to be approved by.

A typical example of a gateway process can be found at:

http://www.dh.gov.uk/en/Procurementandproposals/Projectmanagement/DH_4071754

Where appropriate, the PCT will also secure support from the new regional Commercial Support Units such as the GMCBS and the NWCCA.

Business Case

- A business case should justify the procurement activity and expenditure and whether the project is worthwhile in terms of:

  - Value for money
  - Strategic fit (including assessments of the needs of the population, geographical impact and diversity and equality impact)
  - Objectives (outcomes to be achieved)
  - Benefits (clearly defined measures)
  - Deliverability
  - Affordability
  - Options
  - Suitable commercial approaches

- Where the procurement is complex, the business case should be revisited at key points in the procurement lifecycle to ensure that the original objectives and benefits continue to be met.

Factors which may make a project complex or high risk include:-

- Not possible to define upfront the technical means capable of satisfying the objectives or the financial make up of the project
- The specification is highly complex and/or innovative
- The procurement is considered difficult to deliver and carries a high reputational risk
- Competition is extremely restricted to dominant providers and potentially long term
- The procurement will be based upon innovative commercial models such as PFI or PPP
- There are significant integration elements with existing business requirements

Market Engagement

- Involve the market early in the process (including gap analyses and impact assessments where appropriate) to establish requirements and the procurement strategy and approach
- Avoid giving unfair advantage to one or more suppliers and ensure that all exchanges are transparent and compliant with procurement regulations
- Engagement can help develop capacity where none previously existed

Procurement Strategy and Approach

- An analysis of options and recommendations:
    - Procurement process (see Section 5.5 – Decision Support)
    - Number and nature of suppliers required
    - Length and type of contract (see Section 5.6 – Contracts)
    - Supplier and provider management issues
    - Joint working or partnership arrangements

- Consider whether an existing contract can be used
- Consider funding and risk transfer options such as PFI and PPP, LIFT, Community Ventures, ProCure21, grants or other available funding etc
- Consider whether a lead supplier (Prime Contractor) manages sub-contractor(s)
- Long term contracts should include effective change control processes and supplier performance incentives
- Consider employment issues and TUPE
- Consider the exemptions at Appendix A

Stage 1 – Pre-procurement Checklist

The PCT will ensure the following prior to proceeding to tender.

Table 4 – Pre-procurement checklist

Planning	
a) Engagement (and consultation where relevant) has taken place with the relevant stakeholders and partners, e.g. communities, patients, service users, carers, providers and representative bodies such as Overview and Scrutiny Committees (OSCs), Local Involvement Networks (LINks), etc	✓
b) Considered collaborative procurement	✓
c) Established effective project governance arrangements	✓
d) Skilled and experienced internal and external project support identified and secured (needs clearly identified)	✓
e) Clearly identified outcomes	✓
f) Affordability review and budget established	✓
g) Impact assessments completed and agreed	✓
Developing Specifications	
h) Evidence based, e.g. Map of Medicine, best practice, etc	✓
i) Involved relevant professionals	✓
j) Involved patients, service users, carers and their representative bodies, e.g. British Heart Foundation	✓
k) Clearly specified outputs/outcomes to be achieved, e.g. link to Joint Strategic Needs Assessment (JSNA)/Local Area Agreements (LAA), Strategic Plan, etc	✓
l) Agreed by PBC and/or PEC	✓
Project Management	
m) Robust and resourced project plan spanning all three stages of the procurement process, including Gateway Project Review for high risk procurements	✓
Business Case	
n) Agreed and resourced business case	✓
Market Engagement	

o)	Market engagement undertaken and assessed (where necessary), e.g. Request for Information (RFI) or market engagement event	✓
p)	Market assessment includes spare capacity, gap analysis and consideration of the benefits of an Any Willing Provider model	✓
Procurement Strategy and Approach		
q)	Thorough consideration of responsibilities, procurement options and issues (see Section 5.5 – Decision Support)	✓
r)	A procurement plan and timetable agreed	✓
s)	Tender evaluation plan agreed by responsible officer	✓
t)	Appropriate model contract identified (see Section 5.6 – Contracts)	✓
u)	Secure Board agreement for large, novel, contentious or repercussive tenders (where relevant)	✓
v)	Use Gateway Project Review Process where high risk procurement	✓
w)	Follow procedure for informing NHS North West of decision not to tender new or significantly changed services (see Section 5.5 – Decision Support)	✓
Audit		
x)	Ensure all of the above is adequately documented	✓

5.2. Stage 2 – Tender Process – see appendix I for overview of flow chart

Where the PCT decide that a service should be procured through a formal tendering exercise, the EU Procurement Regulations allow the following procurement procedures:

- Open procedure
- Restricted procedure
- Competitive dialogue procedure
- Negotiated procedure
- Any willing provider
- An accelerated procurement route

Open and restricted procedures are normally used for straightforward procurements and the competitive dialogue procedure for complex procurements.

Open Procedure – see appendix E for flow chart

The “open procedure” which is a single stage procedure consisting of an OJEU advertisement requesting full tenders from all organisations which might be interested in this opportunity. All respondents who respond to the advert may bid against the tender documents that are supplied. In such a situation the number of submissions can be many. The benefits of this is typically the high level of competition, the downside Is the number of bids that may need to be evaluated and bid risk (the probability providers apply to their chance of being successful) is high for providers which may restrict the quality of bids (the lower the bid risk the higher the effort typically providers put into submissions).

All interested candidates who respond to an OJEU advertisement must be invited to tender. There is no pre-qualification or pre-selection.

Restricted Procedure – see appendix F for flow chart

The “restricted” procedure consists of invitations to tender on a “take it or leave it” basis from a shortlist of potential organisations that are pre-qualified after responding to an OJEU advertisement. This procedure avoids the multiple bidders and issues detailed above in

respect of the Open procedure and also the issue relating to the volume of evaluations and quality of bids in the case of a high bid risk scenario. When using the Restricted Procedure the PCT should be confident that if used the initial (and only) tender documentation will be sufficient for bidders to be capable of prior overall pricing from the initial tender documents. If the tender cannot be specified robustly in advance with sufficient certainty (the PCT must take reasonable steps to try and attain such a position) to allow a take it or leave it" bid then the Restricted process should not be used.

Interested candidates are invited to respond to an OJEU advert by submitting an expression of interest in which they reply against defined criteria relating to their organisation's technical capability and financial standing. A shortlist of candidates is then drawn up and invited to tender. There is no scope to negotiate with tenderers following the receipt of bids.

This procedure is usually preferred as it enables the number of candidates invited to tender to be restricted, reducing cost and improving manageability. At least 5 candidates must be invited to submit tenders to ensure genuine competition.

Competitive Dialogue Procedure – see appendix G for flow chart

This is a flexible procedure where there is a need to discuss aspects of the proposed contract with candidates. It may only be used for particularly complex contracts where the PCT is not objectively able to;

a) define the technical means capable of satisfying the PCT's needs or objectives
b) specify either the legal or financial makeup of the project, and
c) neither the open or restricted procedure would be appropriate for the award of the contract.

The competitive dialogue procedure came into force from January 2006 when the Regulations implementing the new European Consolidated Procurement Directive are implemented into UK Law. The procedure differs from other procurement procedures described above because it allows the PCT to enter into discussions with organisations to work up the specification by way of a pre-tender dialogue. The aim of the dialogue is develop one or more suitable alternatives capable of meeting the PCT's requirements. The competitive dialogue is a "half-way house" between the relatively unstructured "negotiated" procedure and the rigid "open" and "restricted" procedures. Its advantages are that it allows fewer participants to be shortlisted (three); it allows a phased approach to tendering and for the PCT to eliminate participants on the basis of initial tenders; it allows significant scope for dialogue including discussion of tenders after the award phase commences and raises more scope for post-tender dialogue than the restricted procedure although less than the negotiated procedure.

A similar pre-selection procedure is undertaken to that used for the restricted procedure. Short listed parties are then invited to participate in dialogue, which may have several stages. This helps to refine the requirement through supplier input and gives the opportunity for meaningful negotiations. Once this stage is concluded, suppliers are invited to submit a final tender. There is only then the provision to ask bidders 'to clarify, specify and fine tune' their final bids before a preferred bidder is chosen. At least 3 candidates must be invited to submit tenders to ensure genuine competition.

Competitive Negotiated Procedure (with a call for competition) – see appendix H for flow chart

The “negotiated” procedure with prior publication of an OJEU advertisement is a two stage bid process. To apply this procedure the PCT must justify its application on the basis that the services to be carried out and the risks attaching to the services are such as to not permit prior overall pricing and/or the nature of the services to be provided is such that specifications cannot be established with sufficient precision to permit the award of the contract using the open or restricted procedures. The process consists of short listing organisations which have responded to an advertisement on the basis of assessment of their eligibility, financial and economic standing and technical or professional ability. The PCT may then invite at least two of the three short listed organisations to submit bids which are then evaluated and, if successful negotiated to contractual completion. This procedure is limited to very specific circumstances and should only be used where other procedures will not work. For example, competition is not viable or appropriate, other procedures have not produced an acceptable tender, work is needed for research and development purposes or where prior overall pricing is not possible. At least 2 candidates must be invited to submit tenders to ensure genuine competition.

Tender Evaluation

The PCT will assess the tenders against the criteria set out in the OJEU advertisement or tender documentation (the ‘evaluation plan’).

The PCT will separately assess the financial and qualitative elements of the tenders. They may apply weightings to the criteria to allow price and non-price factors to be scored to reflect their importance to the project and arrive at an overall VFM judgement. The PCT will select the tender which offers best overall VFM.

The PCT will secure subject matter experts from the relevant subject areas to evaluate the tenders, for example:

- Clinical (relevant to the service being procured) and quality
- Financial
- Access/integration/community engagement (The PCT may choose to involve a community or patient representative)
- Contractual and legal
- Human Resources and training
- Estates and equipment
- Information Management and Technology
- Marketing and communications

The PCT will ensure that the subject matter experts have received procurement training and are appropriately skilled and experienced to undertake this role. The PCT will involve subject matter experts in the Pre-procurement stage, in particular the development of the service specification.

5.3. Other Procurement Routes

In addition, there are two variants of the award procedures:

- Framework Agreements
- Any Willing Provider

Framework Agreements – see appendix J for flow charts

Framework Agreements are:

'An agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (in particular the terms as to price and where appropriate quality) under which the economic operator will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies.'

The Framework itself is not a contract but the 'call off' from the Framework is a contract. Frameworks can be used for services, supplies and works and used in conjunction with the open, restricted, competitive dialogues and negotiated procedures.

The maximum duration of a Framework Agreement is 4 years unless longer can be justified. Call offs can extend beyond the life of the Agreement. The Framework can contain one or three or more suppliers provided in the latter case more than three pass the selection criteria (2 is not deemed to have represented sufficient competition).

A call off can be awarded to a single supplier where there is only one in the Agreement. Where there is more than one supplier in the Agreement a min-competition can be held between all suppliers capable of meeting the requirement.

Any Willing Provider

The term 'any willing provider' (AWP) describes where for a prescribed range of services, any provider that meets criteria for entering a market, can compete for business within that market, without constraint by the PCT.

In accordance with PRCC requirements, the PCT will not constrain the opportunity for 'any willing provider' to supply routine elective care services, except under exceptional circumstances and where agreed with NHS North West.

The PCT may choose to create AWP markets for other services and will adopt either open or managed processes:

- Open – the PCT will accept proposals from providers at any time, if the provider meets:
  - Minimum standards of clinical care
  - Price the NHS will pay
  - Regulatory standards
- Managed – the PCT may choose to secure services at discrete moments in time for particular purposes. This process would be run as a simplified procurement and would adhere to the EU Treaty Principles (see Section 3 – Responsibilities).

In accordance with the PCT Procurement Guide, the PCT will do the following when using an AWP process:

Table 5: Any Willing Provider

Any willing provider	
Transparency	• Signal intentions transparently to the market • Advertise open and managed processes in the Procurement Portal
Assurance, objectivity, proportionality	• Carry out the same financial and quality assurance checks • In a managed process, objectively set/assess qualification and evaluation criteria proportional to size, complexity and risk of the services procured
Competition, non-discrimination	• Ensure that their actions do not distort competition in the market • Avoid favouring incumbents or types of providers • Negotiate local quality and risk arrangements fairly
Contracts	• Use the most relevant standard NHS contract, or include standard provisions
Conflicts	• Ensure conflicts are declared and managed appropriately
Local policies	• Seek approval of locally generated AWP policies by PCTs from their SHA

Stage 2 – Tender Process Checklist

The PCT will ensure the following prior to proceeding to contract award and management.

Evaluation Plan	
a) Tender evaluation report agreed by responsible PCT Board, Committee, Group, PBC Group, or individual in accordance with individual PCT SFIs	✓

5.4. Stage 3 – Contract Management

The contractual relationships between the PCT and suppliers and providers play a central and fundamental part in the delivery of services. Failure can be expensive in human, financial and reputational terms.

The PCT recognise that good contract management is key to successful service delivery. This involves the following:

- Service delivery management
  - Ensuring that providers mobilise services in accordance with agreed mobilisation plans. The PCT will expect providers to include mobilisation plans within their tender submissions
  - The PCT will work closely with successful providers to agree mobilisation governance arrangements, including work streams which may involve the PCT subject matter experts
  - Once services are operational, the PCT will monitor delivery against contractual requirements
- Relationship management
  - The PCT will seek to foster open and constructive relationships with providers to identify problems early and resolve tensions
- Contract administration
  - For each contract the PCT will identify a lead officer who is responsible for contract governance and changes to contract documentation

Notably, this stage of the procurement process is typically the most lengthy and therefore regular communication to all stakeholders is essential.

The PCT and providers must dedicate the right level of resources to support mobilisation. The PCT will include within their planning (see Stage 1 – Pre-procurement) the internal and external resource required and secured for all three Stages of the procurement process.

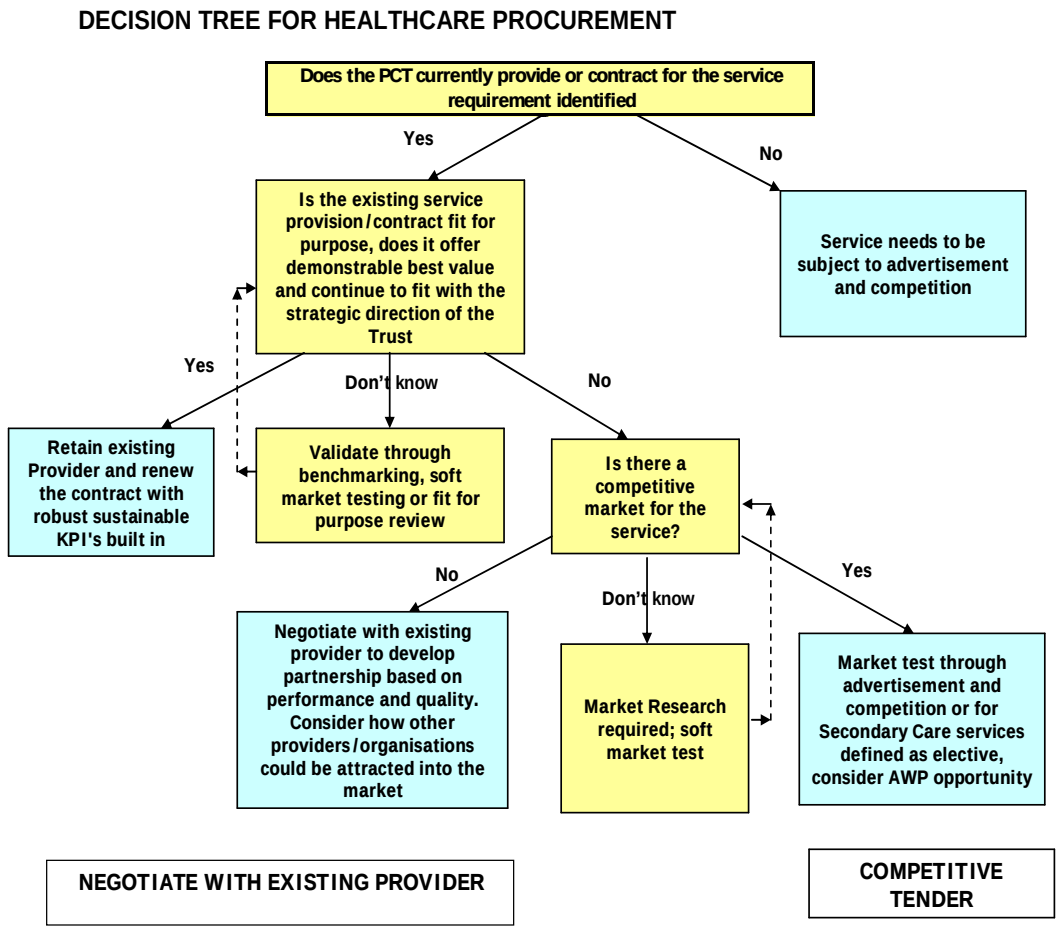
5.5. Decision Support

One of the key challenges for the PCT is deciding whether and how to procure services. They must carefully consider their responsibilities (see Section 3) and consistently, objectively and transparently select the right procurement processes. In addition there is an exemptions checklist from the PCTs SFIs at appendix A.

Whether to procure

The PCT will use the decision support tree below as well as the PCTs Prioritisation of Healthcare Resources Framework and the Contestability Guidance to inform their decision whether to procure through a formal tendering exercise.

Figure 3 – Decision tree for healthcare procurement



This model encapsulates criteria from the following:

- EU Procurement Directives
- DH PCT Procurement Guide
- PCT Standing Financial Instructions
- PCT Contestability Guidance
- PCT Prioritisation of Healthcare Resources Framework

The PCT should not use this tree and proceed directly to the how to procure tree where they have considered market structure and contestability issues that have identified the requirement to formally tender services.

Where the PCT (with the consent of their Board) decide not to tender new or significantly changed services, they will complete a *Decision Not to Tender Notice* and submit to NHS North West, who will provide feedback within 10 working days.

Should a decision be made not to procure, then there is a range of options available to the PCT to secure changes to services, and these are set out in table 6 below.

Table 6: options where the decision is not to tender

Option		Circumstances to use this option
Existing providers	**Commissioning more of the same activity from existing providers**: This option allows the PCT to negotiate an increase in capacity / activity for the same service from a current contracted provider or renew an existing service on the same terms	The PCT wishes to renegotiate the existing contract and is currently receiving a high quality service that the PCT does not believe could be matched. The PCT needs to increase the capacity mid contract
	Utilise existing contracts for delivering a service improvement: This option allows the PCT to negotiate a redesign to an existing service with an existing contracted provider without the need to tender or market test the service.	The PCT wishes to enhance services by widening the hours of operation / the location / days of provision. The PCT wishes to provide access to a service for a cohort of patients not previously contracted for - e.g. Age-related Macular Degeneration (AMD). Provider must be subject to the test of quality as described above.
	Flexing existing contracts: This option allows the PCT to negotiate into a contract a range of services not previously commissioned, by simply negotiating with the service provider and flexing the existing service level agreement/contract	The PCT already has a provider who delivers high quality services over a range of disciplines and wants to add a completely new service to their SLA/contract subject to the provider demonstrating their ability against a clear specification. e.g. the PCT may wish to contract with GP / GPwSI's for an enhanced service under the terms of a PMS or GMS contract
	Free choice network: From 1st April 2008, patients have had access to "free choice" of any accredited provider for elective care. This enables patients to access specific services offered by 'out of area' Trusts and accredited Independent sector providers	This option will be exercised by patients making specific choices of provider, guided by referrers and through direct access to information. The PCT is obliged under PBR to fund eligible providers

	Pilot	Limit up to 24 months. This model lends itself to testing potential new services – to confirm the benefits and value for money of service proposals that then might be implemented into full scale procurements. Pilots would be conducted by Willing Provider(s) but it should not be taken for granted that the pilot provider will have automatic right to any subsequent contract.

How to procure

Where the PCT decide that a service should be procured through a formal tendering exercise, they will use one of the following procedures identified from the decision trees (figures 4 and 5) below to inform their choice of tendering procedure.

Figure 4: Decision tree - procurement route part A or B services

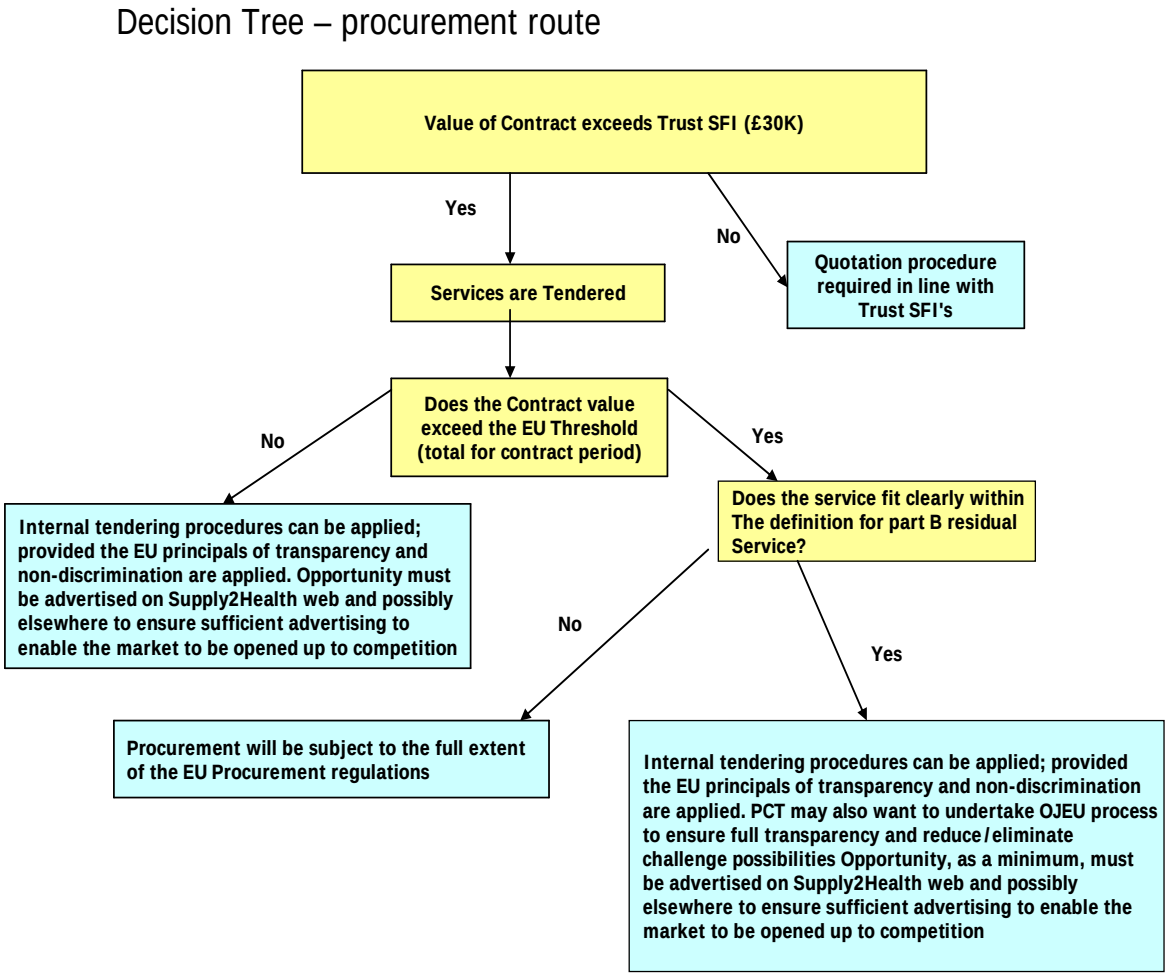
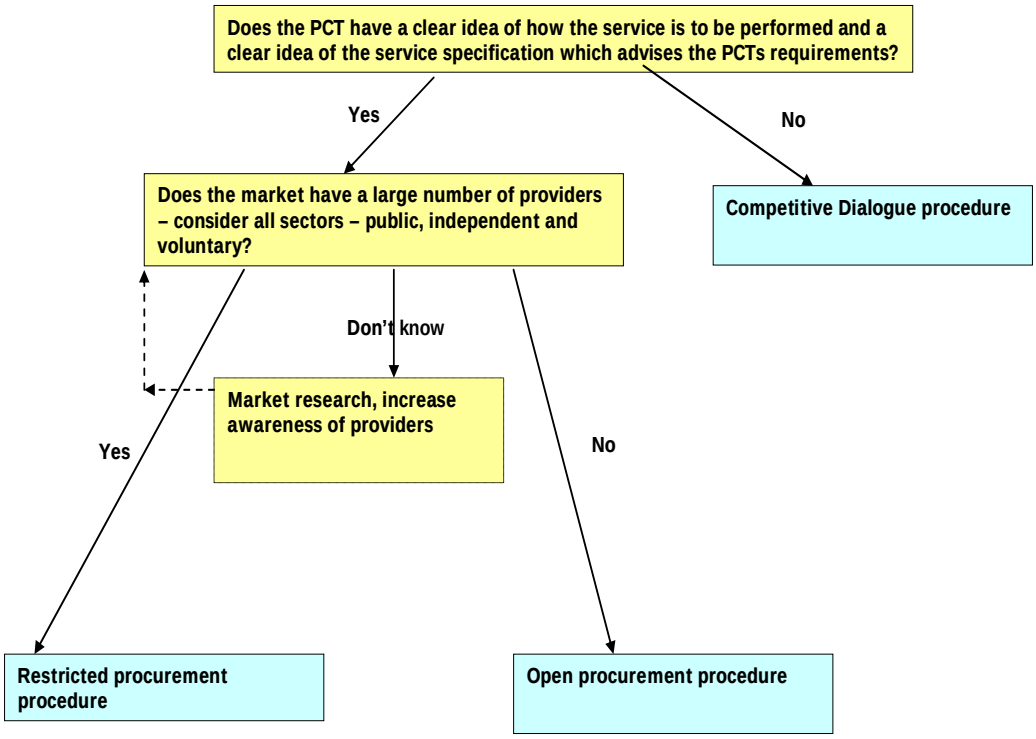


Figure 5 – Decision tree – type of procedure

Decision Tree – type of procedure



The decision trees support the PCT to consider the nature of each procurement and then decide the appropriate procedure.

Sections 5.2 and 5.3 identified the available procedures:

- Open procedure
- Restricted procedure
- Competitive dialogue procedure
- Negotiated procedure
- Any willing provider
- An accelerated procurement route
- Variants
    - Framework Agreements
    - Any Willing Provider

5.6. Contracts

The PCT will use the relevant NHS standard contracts for the delivery of commissioned services.

- Acute hospital
- Mental health
- Community
- Ambulance services
- Dental (GDS and PDS)
- GP (GMS, PMS, PCTMS and APMS)
- PASA NHS standard form contracts
- Other DH bespoke forms of contract (i.e. dental)

More information can be found at the Publications section of the DH website.

Where, following the receipt of legal advice, an NHS standard contract is deemed not appropriate for the services commissioned, the PCT will use their own legally binding flexible commissioning contracts as a basis for the agreement.

6. Other Considerations

6.1. Collaboration

The PCT will routinely explore opportunities to collaboratively procure services both to achieve value for money and develop markets. This includes:

- Joint commissioning with Local Authority partners
- Using established Framework Agreements
- Working closely with the new regional Commercial Support Units and other organisations such as the GMCBS and the NWCCA to both procure services and develop commercial expertise

6.2. Information Governance

Any agreement made by the PCT with a third party provider or support organisations must comply with the PCT's information governance requirements.

6.3. Equality and Diversity

Any decision made by the PCT should ensure that its approach serves to improve (or at worst does not reduce) both health status and access to services and to address inequalities gaps. In addition, the PCT must ensure that services address the diverse needs of its population, using equity audits and equality/ diversity impact assessments in its commissioning processes (including service reviews, investment business cases, specifications, tender evaluations and contract documentation) to ensure compliance with this principle.

6.4. Ethics and Propriety

The PCT will ensure that their staff and representatives are aware of and respond appropriately to conflicts of interest and supplier hospitality. See Appendix B for model conflict of interest guidance. The PCT will adhere to their individual Supplier Hospitality Policies.

They will also ensure that all those involved in procurement activities maintain a complete audit trail.

More information can be found at:

http://www.cips.org/aboutcips/whatwedo/professionalcodeofethics/

6.5. Small and Medium Size Enterprises

The PCT will encourage and support these organisations to compete for contracts where this is consistent with value for money and EU Treaty principles and procurement directives by engaging with these enterprises and building effective relationships with them, and trying to remove some of the barriers they face.

More information can be found at:

http://www.ogc.gov.uk/documents/CP0083_Small_supplier_better_value.pdf

6.6. NHS Organisations

The PCT also recognise that many NHS organisations (including independent providers/practitioners) do not have experience or expertise in responding to procurement processes and will also support these organisations to compete for contracts.

6.7. Third Sector

The PCT will also encourage and support third sector organisations to compete for public sector contracts.

More information can be found at:

http://www.ogc.gov.uk/documents/Third_Sector.pdf

Note: paragraphs 6.3 to 6.7 do not imply that any preferential treatment should be conferred upon certain groups, rather that these other considerations are important to ensure a level playing field and contestability.

6.8. Delivering Excellent Procurement

The PCT are committed to delivering excellent procurement and will adopt the checklist below, which supplements the procurement process checklists in Sections 5.1 and 5.3.

- Apply best procurement PPM techniques and disciplines to the procurement process and ensure individuals involved have the necessary capabilities and skill sets
- Ensure strong leadership and governance arrangements and scrutiny are in place
- Define a procurement strategy/policy with clear options, deliverables, objectives and outcomes to ensure the interests of both the PCT and contractors are aligned
- Engage with the market at the earliest opportunity to stimulate and encourage involvement
- Develop output specifications wherever possible that encourage innovation but try to avoid bespoke solutions
- Allocate risks optimally between the PCT and the provider to ensure risk is carried by the party best placed to manage them
- Use a competitive, fair, transparent process focussing on whole life costs and evaluate both qualitatively and quantitatively
- Agree a fair but flexible contract that can allow for changes in technology, innovation and new ways of working
- Ensure the contract includes real incentives for the provider or supplier to deliver but has strong mechanisms in place to take meaningful action where they do not
- Develop a strong intelligent client function that can handle contract and provider/supplier relationship management issues professionally

7. Summary

This document should be read in conjunction with both the PCT's Contestability Guidance and the Procurement Strategy of NHS Manchester.

8. Appendix

Appendix A – Procurement Exemptions Checklist

Exemptions checklist	PCT (SFIs) formal tendering need not apply where:	PCT (SFIs) formal tendering procedures may be waived where:	Other guidance
Is the service protected?	The supply is proposed under special arrangements negotiated by the DH in which event the said special arrangements must be complied with.		In respect of government policy on protected services, where the contracting authority (PCT) can demonstrate that the service must be provided by a particular provider to protect essential public services, an advertised tender is unlikely to be necessary. (This must not be used to protect providers that are not best placed to deliver the needs of their patients and population.)
Is expertise only available from one source?		Specialist expertise is required and is available from only one source. For the provision of legal advice and services providing that any legal firm or partnership commissioned by the PCT is regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council for England and Wales in relation to the obtaining of Counsel's opinion) and are generally recognised as having sufficient expertise in the area of work for which they are commissioned. [The Director of Finance will ensure that	

		any fees paid are reasonable and within commonly accepted rates for the costing of such work.]	
Has the market been tested?			Consider undertaking a period of market testing and publish findings Assess the market interest in the requirement; Assess scope for competition and contestability; Assess the capacity of the market to deliver the requirement.
Is the requirement covered by an existing contract?		The requirement is covered by an existing contract: • Check that the contract is capable of being varied in respect of the requirement (i.e. the scope of services is the same/similar); • Consider whether the change is "substantial". PASA or other national agreements are in place and have been approved by the Board.	
Is the variation a "substantial change"?			What is deemed as substantial will depend on the particular circumstances of the contract.
Is there a clear benefit from maintaining continuity/urgency considerations?		The task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate. There is a clear benefit to be gained from maintaining continuity with an earlier project.	

		However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering.	
Can an interim service be procured pending formal tendering?			Is it possible to extend an existing contract/ continue an existing service whilst a formal tendering process commences in parallel.
Other exceptional circumstances.	Regarding disposals as set out in Standing Financial Instructions No. 25 Disposals and Condemnations, Losses and Special Payments.	In very exceptional circumstances where the Chief Executive decides that formal tendering procedures would not be practicable or the estimated expenditure or income would not warrant formal tendering procedures, and the circumstances are detailed in an appropriate PCT record. A consortium arrangement is in place and a lead organisation has been appointed to carry out tendering activity on behalf of the consortium members. The timescale genuinely precludes competitive tendering but failure to plan the work properly would not be regarded as a justification for a single tender. Allowed and provided for in the Capital Investment Manual: The waiving of competitive tendering procedures should not be used to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure;	Competition is not appropriate, e.g. where partnership funding is in place. Benefits in terms of choice, quality, efficiency or responsiveness are not apparent.

		Where it is decided that competitive tendering is not applicable and should be waived, the fact of the waiver and the reasons should be documented and recorded in an appropriate PCT record and reported to the Audit Committee at each meeting.	

Appendix B – Model Conflict of Interest Guidance

Conflict of Interest Guidance

Purpose of Guidance

The [insert name] procurement is a public procurement and it is a legal requirement that the procurement process is reasonable, transparent and that all bidders are treated fairly.

This guidance has been prepared by NHS Manchester - 'The PCT' and sets out the responsibilities of The PCT and individuals in relation to their involvement in this procurement. This guidance is based upon previous guidance issued by the DH. The DH has indicated that it intends to issue further guidance in due course.

Definitions

In this guidance, the following words and expressions shall have the following meanings:

"Bidder" means any party or consortium that are bidding or may bid for the Procurement and will include each member of any consortium that is a Bidder; and "**Bid**" shall be construed accordingly;

"DH" means the Department of Health;

"ITT" means the Invitation to Tender in respect of the Procurement [amend where necessary];

"**the Procurement**" means the [insert name] procurement;

"securities" means any shares, loan stock, options, warrants, bonds or other securities which have been admitted to dealings on or have their prices quoted on or under the rules of any regulated market, as defined in section 60 of the Criminal Justice Act 1993;

"PCT" means the Primary Care Trust;

"Representative" means those seconded from other bodies and Practice Based Commissioners;

"unpublished price-sensitive information" means information which:

relates to particular securities or to a particular issuer or to particular issuers of securities and not to securities generally or issuers of securities generally (and, for these purposes, information shall be treated as relating to an issuer of securities which is a company, within the meaning of the Criminal Justice Act 1993, not only where it is about the company but also where it may affect the company's business prospects);

- is specific or precise;
- has not been made public within the meaning of section 58 of the Criminal Justice Act 1993; and
- if it were made public would be likely to have a significant effect on the price or value of any securities.

General Principles

This guidance applies to The PCT at all times during each and every stage of any Procurement in which a PCT is involved.

All Bidders must be treated fairly and given or offered access to an equivalent amount of information, support or services of relevance to the Procurement.

Information relating to the Procurement, which is not in the public domain, must be kept strictly confidential at all times.

Conflicts of interest must be properly managed by The PCT to ensure that the integrity of the Procurement cannot be called into question.

The PCT must take all reasonable steps as are necessary and appropriate to ensure that their directors (both executive and non-executive), managers, employees and representatives comply with this guidance.

Any breach of this guidance by The PCT or any other person will have serious consequences for the Procurement, the PCT and person(s) concerned.

Dealings with Bidders

Where and in so far as The PCT proposes to offer sites (whether in the ITT [amend where necessary] or otherwise) and/or services to Bidders or has other contact with Bidders in relation to the Procurement, it must deal with Bidders on a non-discriminatory, fair and transparent basis.

As a general rule, where The PCT offers or makes available information or data to one or more Bidders, the PCT must equally offer or make available such information or data to all Bidders on the same terms.

Confidentiality

The PCT must ensure that all its directors (whether executive or non-executive), management, employees and representatives involved in the Procurement are aware that they are representing the PCT and that they must not disclose information to or discuss the procurement process with any person (including colleagues outside the PCT), except to the extent necessary to properly carry out their duties to the PCT in relation to the Procurement.

Conflicts of Interest

The PCT must keep a register of all actual and potential material conflicts of interests which the PCT may have in relation to the Procurement.

A material conflict of interest may arise where an employee or a non executive officer of the PCT is or may be offering services in connection with the Procurement to one or more, but not all of the Bidders.

The PCT must take all reasonable steps to ensure that any director (whether executive or non-executive), manager, employee or representative of the PCT who declares a conflict of interest and is involved, in any capacity, in the preparation, consideration or submission of any information or subsequent Bid by a Bidder to the PCT shall be excluded from the PCT's

evaluation of all responses to pre-qualification questionnaires, ITTs [amend where necessary] and decisions to award a contract or otherwise.

Code of Conduct for Individuals

The PCT must take reasonable steps to ensure that all directors (both executive and non-executive), managers, employees and representatives who are involved in the Procurement comply with the following provisions of this section 7.

This paragraph applies in relation to any director (whether executive or non-executive), manager, employee or representative of the PCT who has a personal interest in any matter relating to the Procurement. Any such person shall:

disclose in writing (or record in the minutes of the next meeting that he/she attends) to the Directors of the PCT all relevant details of the relevant matter and the extent of the interest in it, as soon as possible after he/she becomes aware that he/she has such an interest;
at any meeting he/she attends at which the matter is discussed, disclose the existence and nature of his/her interest at the commencement of that discussion, or when it becomes apparent;
in the event that he/she makes any executive decision in respect of the matter, must record in the written statement of that decision, the existence and nature of that interest.

A director (whether executive or non-executive), manager, employee or representative of the PCT will have a material personal interest in a matter if he/she anticipates that a decision upon it might reasonably be regarded as affecting the well-being or financial position of:

- himself, a member of his family or a friend, or
- a body which employs those persons, or for which those persons have any degree of ownership, control or management.

Share Dealings

The PCT must take reasonable steps to ensure that all PCT directors (whether executive or non-executive), management, employees and representatives who are involved in the Procurement comply with the guidelines on share dealings set out in the following paragraphs.

No PCT manager, employee or representative must deal in any securities of any Bidder at any time when he or she is in possession of unpublished price-sensitive information in relation to those securities.

Any manager, employee or representative who does so will be guilty of an offence punishable by a fine and/or imprisonment under the Criminal Justice Act 1993.

Examples of “unpublished price-sensitive information” which PCT directors (both executive and non-executive), managers, employees or representatives might acquire in the course of the Procurement include the following:

- the fact that any company intends to submit a Bid in relation to the Procurement;
- details of any company’s Bid;
- the fact that a Bidder has been successful;

in each case before it has been made public (within the meaning of section 58 of the Criminal Justice Act 1993). It is strongly recommended that all directors (both executive and non-executive), managers, employees and representatives of the PCT be encouraged to regard all unpublished information about a Bid or a Bidder as unpublished price-sensitive information.

Whistle blowing

The PCT should encourage its directors (both executive and non-executive), managers, employees and representatives to inform its Chief Executive immediately if any of them become aware of any breach of these guidelines by the PCT or any other directors, managers, employees or representatives on the basis that, wherever possible, the anonymity of the informant will be preserved.

The Chief Executive of the PCT must notify DH immediately on becoming aware of any material breach of this guidance by the PCT or any of its directors (whether executive or non-executive), managers, employees and representatives.

FORM A

[insert procurement name]

[insert PCT name]

Acceptance of the terms of this Guidance

Acceptance of the terms as set out in the Conflict of Interest Guidance above.

Name _____

Position _____

Date _____

FORM B

[insert procurement name]

[insert PCT name]

Conflict of Interest Declaration

I, the undersigned declare that I have a conflict of interest in relation to the [insert name] procurement and that I shall comply with the terms as set out in this Guidance.

Brief description of interest

Name _____

Position _____

Date _____

Appendix C – CORE PRINCIPLES THAT DRIVE THE MANAGEMENT OF CHOICE AND COMPETITION

Source: Framework for Managing Choice, Cooperation and Competition (DH May 2008)

1. **Purpose.** Decisions made by system managers should contribute to the goals of the whole system, and should have patient interests and the wider public interest at heart.
2. **Transparency.** Where possible, all information should be shared between organisations and individuals within the system – including those relating to conflicts of interest.
3. **Objectivity.** Key decisions must be based wherever possible on objective data, information or criteria, or reasonable assumptions, and kept as public records for audit purposes, requiring increased levels of transparency.
4. **Proportionality.** Actions, in particular with reference to transactions and/or consequences for organisations of not following agreed rules, must be proportional to the size, complexity or risks of the issue at stake; based on objective information or reasonable judgements; and capable of withstanding public scrutiny and reporting.
5. **Non-discrimination.** Commissioners must not discriminate among providers, and providers must not discriminate among patients.
6. **Accountability.** System managers should strive to align their authority and legal powers with their accountability and legal duties. It should be clear, in statute and in practice, who is accountable for what; furthermore it should be clear what authority those accountable have to control their areas of responsibility.
7. **Subsidiarity.** Decisions should be made by the lowest competent authority. Under this principle, commissioning organisations should manage their local system, and escalate appropriately to regional system managers when issues cannot be managed at a local level.
8. **Consistency.** Formulation and implementation of policy must be internally coherent and consistent.
9. **No 'double jeopardy'.** Where possible, providers should not be held to account inconsistently for the same issue by more than one institution (e.g. system manager, regulator, government department).
10. **Interdependency.** When assessing specific issues, commissioners and providers should understand and minimise the potential unintended consequences of any actions.

Appendix D TEN PRINCIPLES AND RULES FOR COOPERATION & COMPETITION

(Source: Operating Framework 2008/9 Annex D. DH, Dec 2007)

1. Commissioners should commission services from the providers who are best placed to deliver the needs of their patients and population.

2. Providers and commissioners must cooperate to ensure that the patient experience is of a seamless health service, regardless of organisational boundaries, and to ensure service continuity and sustainability.
3. Commissioning and procurement should be transparent and non-discriminatory.
4. Commissioners and providers should foster patient choice and ensure that patients have accurate and reliable information to exercise more choice and control over their healthcare.
5. Appropriate promotional activity is encouraged as long as it remains consistent with patients' best interests and the brand and reputation of the NHS.
6. Providers must not discriminate against patients and must promote equality.
7. Payment regimes must be transparent and fair.
8. Financial intervention in the system must be transparent and fair.
9. Mergers, acquisitions, de-mergers and joint ventures are acceptable and permissible when demonstrated to be in patient and taxpayers' best interests and there remains sufficient choice and competition to ensure high quality standards of care and value for money.
10. Vertical integration is permissible when demonstrated to be in patient and taxpayers' best interests and protects the primacy of the GP gatekeeper function; and there remains sufficient choice and competition to ensure high quality standards of care and value for money.

For the avoidance of doubt, please note that:

In respect of acute elective services, we expect there to be competition driven by patient choice. For all other services it is for individual PCTs, as commissioners and public sector contracting authorities, to decide and agree with their respective SHA which services should be subject to direct competition, the extent of such competition, and how this should be secured (having regard to these principles and rules).

It is for the PCT, as commissioners, to decide transparently which services require to be tendered (having regard to these rules and principles). These rules should not be interpreted as meaning that all services should be tendered in all circumstances.

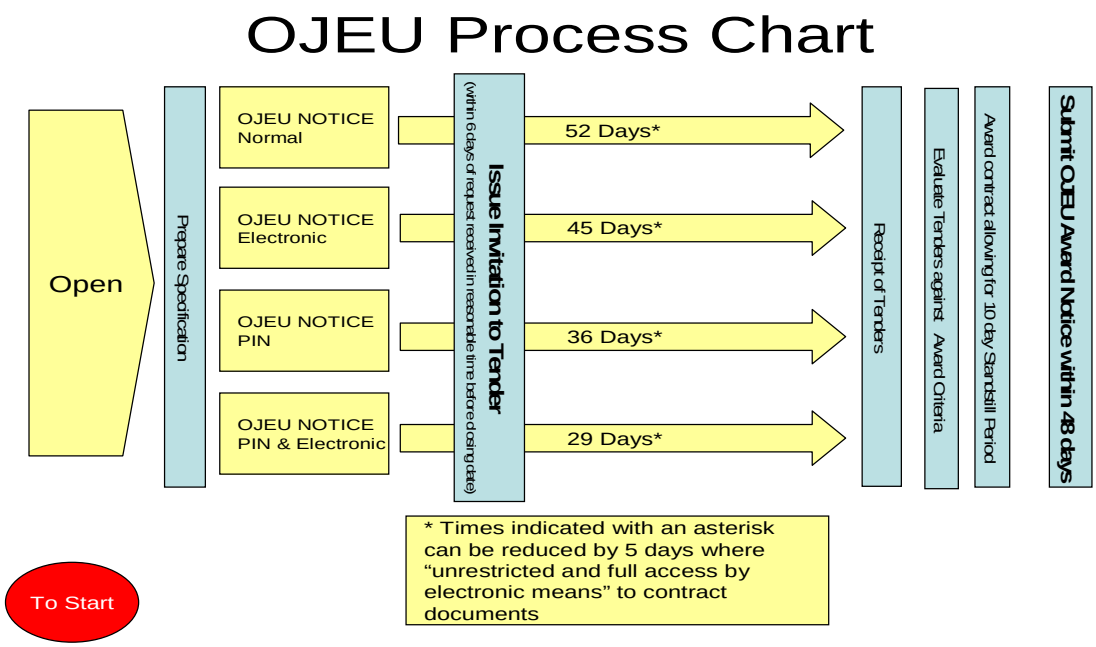
National policy on the direct provision of services by the PCT has not changed. It is for individual PCTs to decide whether to continue to provide services. Whether they continue to provide such services or not, we expect the principles and rules set out in this document to be observed.

Vertical integration is permissible when demonstrated to be in patients' and taxpayers' best interests and protects the primacy of the GP gatekeeper function. The exception is the provision by hospitals of list-based primary care services. Any PCT wishing to contract with hospital providers for the provision of list-based services must agree this with the DH through their SHA.

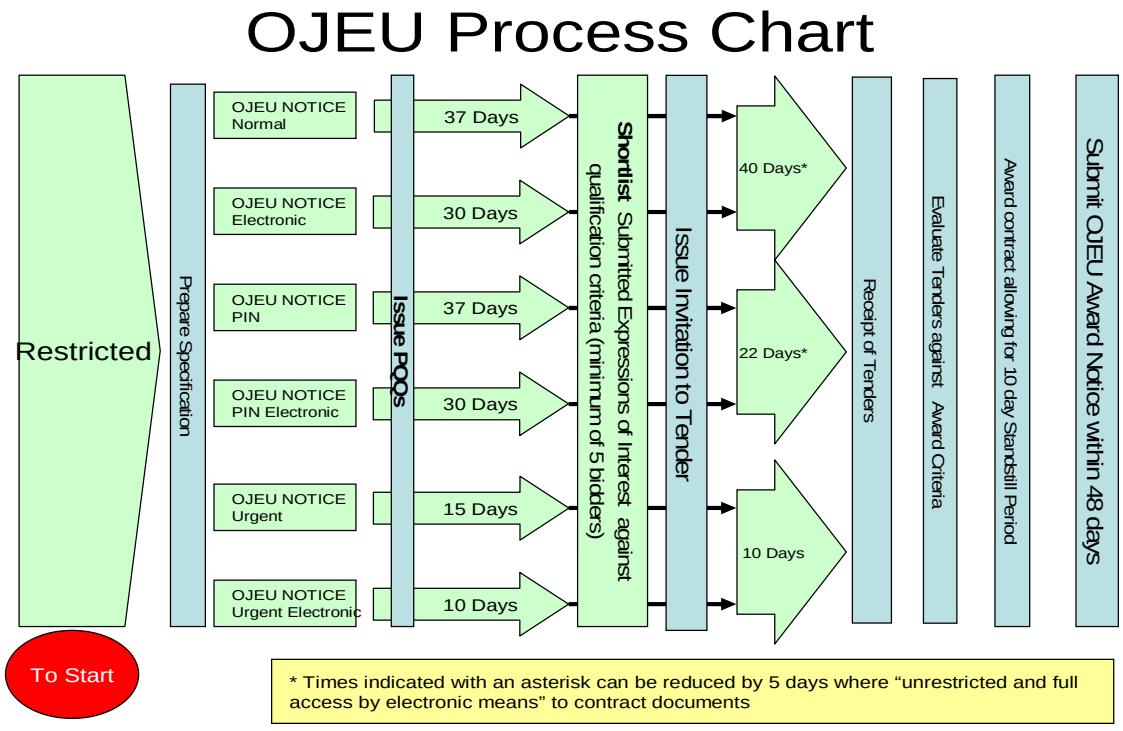
These rules apply equally to PBCs, and NHS contracts with third sector organisations. The rules are consistent with the Compact on Relations between Government and the Voluntary and Community Sector in England (1998) (The Compact) and 'Partnership in Public Services – An action plan for Third Sector involvement' (Cabinet Office 2006) and will be updated in light of subsequent versions. These rules apply equally to, and do not preclude, any grant funding.

The Principles and Rules do not preclude joint commissioning between the PCT and Local Authorities, or pooled budgets.

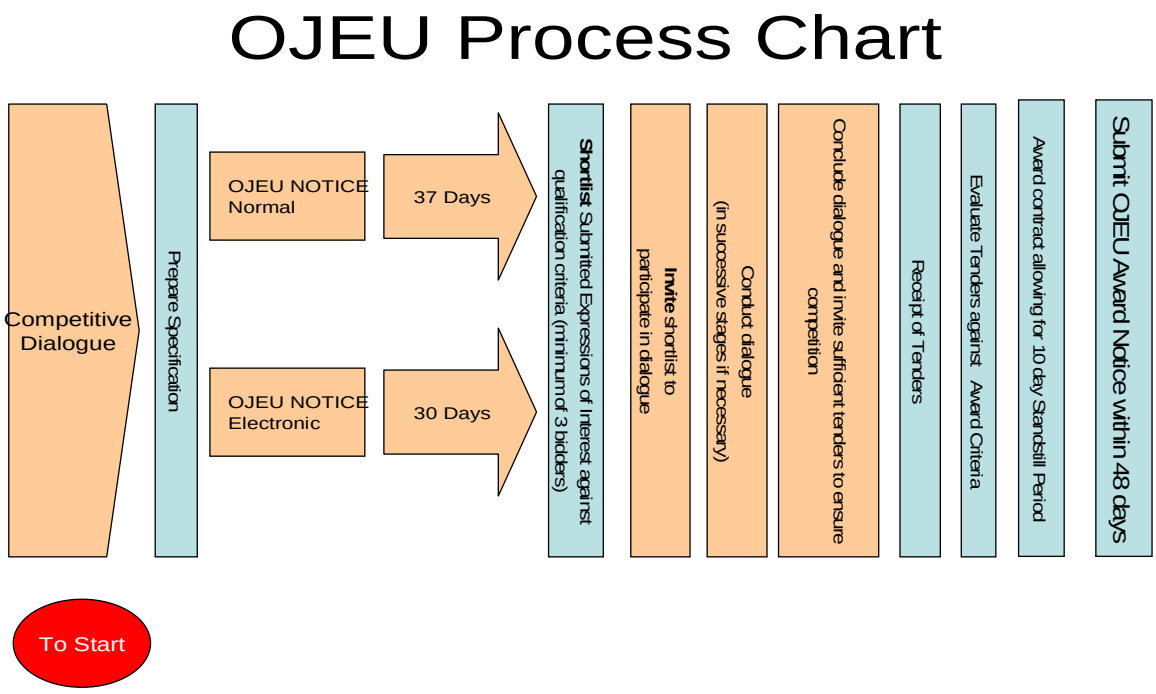
Appendix E – Open Procedure OJEU flow chart timeline



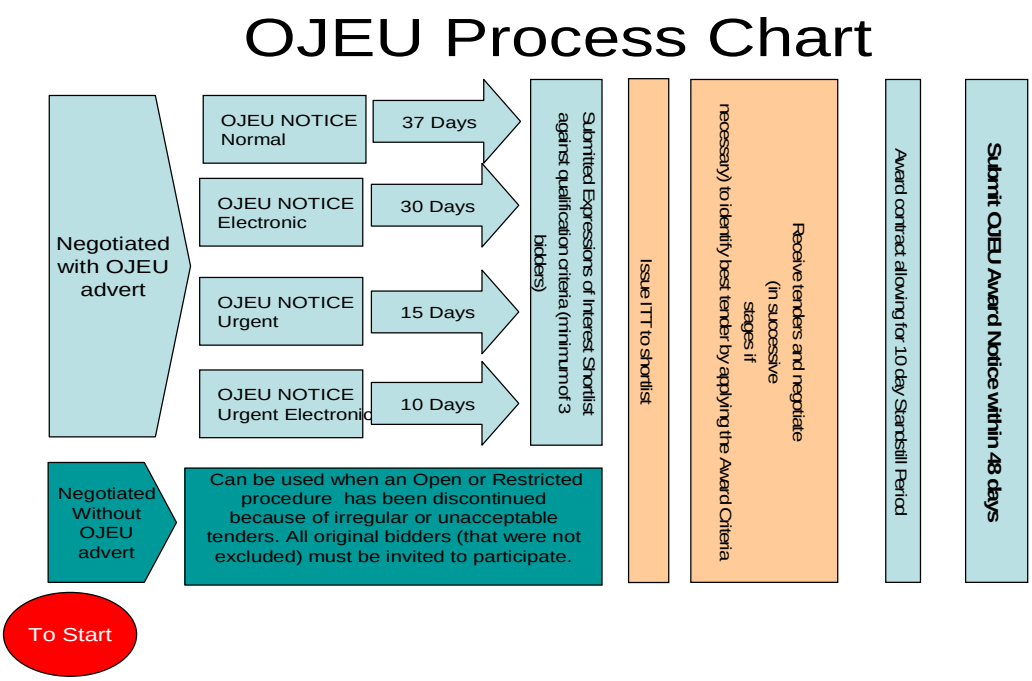
Appendix F – Restricted Procedure OJEU flow chart timeline



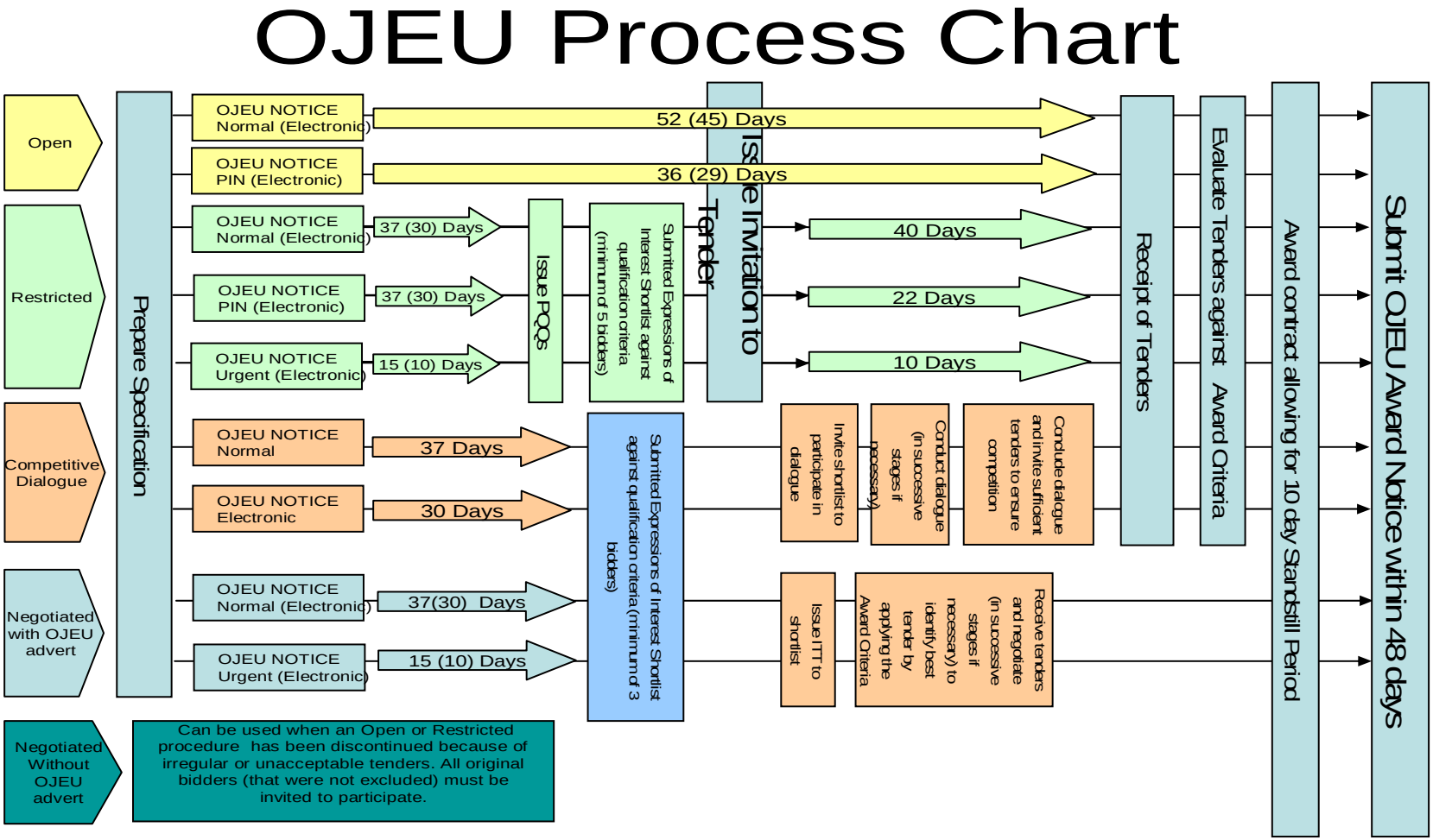
Appendix G – Competitive Dialogue Procedure OJEU flow chart timeline



Appendix H – Negotiated Procedure OJEU flow chart timeline



Appendix I – Overview of all OJEU Procedures flow chart time lines



Appendix J – Framework flow chart