

Contracts and Procurement Policy

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General Optical Council

Contents

1.	Statement.....	3
2.	Introduction	4
3.	Planning	7
4.	Routes to market.....	16
5.	Procurement Process.....	24
6.	Contract Award	29
7.	Contract Management.....	31
8.	Miscellaneous	34

General Optical Council

1. Statement

- 1.1. This is the General Optical Council's (GOC's) policy for contracting for goods, works and services. It governs the way in which the GOC spends money on externally sourced goods, works and services.
- 1.2. The GOC should always strive for continuous improvement in procuring and contracting for the supply of any goods, works and services, and aim to achieve value for money. It should be considered whether this can be best achieved ourselves, with a partner or whether it would be better to rely on an external party in order to get the optimum solution and better value.
- 1.3. The GOC should permit freedom of opportunity to trade with the GOC and to be open and transparent about procurement procedures followed¹.
- 1.4. If appropriate, all staff should consider the use of collaboration through joint procurements (i.e. acquiring the goods, works and services the GOC require, jointly with another body). This will allow the pooling of resources and expertise, and ultimately the possibility of economies of scale and the achievement of better value for money. In instances of uncertainty about joint procurement, advice should be sought from the Head of Governance, the Head of Finance or the Head of Legal.

¹ Regulation 18, Public Contracts Regulations 2015

2. Introduction

A. Key objectives

- 2.1. This policy provides a framework for the procurement, management, and control of the GOC's externally sourced contracts and other procurements.
- 2.2. The objective of this policy is to ensure that all individuals involved in the procurement of goods, works and services have a clear understanding of the process, their role and what is required of them.
- 2.3. This policy has three main purposes:
 - 2.3.1. to comply with our obligations under all Relevant Legislation and good industry practice;
 - 2.3.2. to ensure procurement activities are efficiently managed, to deliver quality goods, works and services through time and cost-effective decision making, whilst managing risk; and
 - 2.3.3. to ensure all procurement is undertaken in a professional and ethical manner, ensuring the highest standards of probity, transparency, fairness, integrity, value for money, equal treatment, non-discrimination and accountability.

B. Context

- 2.4. The UK government has adopted legislation which sets rules which certain public and publicly funded organisations must follow when making purchases over a prescribed value, the Public Contracts Regulations 2015 (the PCRs). The GOC, as a statutory regulator and registered charity, has aligned its procurement approach to these rules in order to promote transparency, equal treatment, fair competition and accountability across all procurement undertaken on behalf of the GOC, and, will take all necessary steps to ensure compliance with the PCRs for above threshold procurements. To that end, all relevant information regarding the procurement process must be available to potential bidders and to the public (subject to confidentiality and security requirements). In order to achieve a 'level playing field' for all bidders, care must be taken at all stages in the pre procurement, procurement and post procurement processes to ensure equality of treatment. This means that all relevant information must be sought from existing contractors before a procurement commences, for example as regards Transfer of Undertaking of Protected Employment Regulations (TUPE), equipment, IT systems and other relevant information to enable all bidders to have a full understanding of relevant matters when deciding to bid and in bidding. Equally, evaluation of bids must most not favour one bidder above others and post contract award variations which would result in a material variation to the contract which was tendered should not be made.

General Optical Council

- 2.5. All contracts and the procurement processes adopted should demonstrate compliance with the principles and guidelines as laid down in this policy, all Relevant Legislation, and the UK government's public procurement policy², including:
 - 2.5.1. The principles of procurement best practice and value for money;
 - 2.5.2. Appropriate and robust risk management and contract monitoring; and
 - 2.5.3. Appropriate and compliant arrangements for procurement.
- 2.6. All procurement processes must follow the GOC's purchase order process, including as set out in:
 - 2.6.1. The Financial Regulations for the General Optical Council; and
 - 2.6.2. The Scheme of Delegation for Financial Management (the Scheme of Delegation).

C. Scope

- 2.7. This policy should be read in conjunction and align with the Linked Policies referenced above.
- 2.8. This policy applies to any contract that results in a payment being made by the GOC as well as the disposal of surplus goods, unless the contract is exempt in accordance with paragraph 4.19.
- 2.9. Even in cases where this policy does not apply, all individuals involved in the procurement of goods, works and services should act in accordance with the core principles of public procurement as set out in this policy.
- 2.10. In instances of uncertainty about whether this policy applies, advice should be sought from the Head of Governance, the Head of Finance or the Head of Legal.
- 2.11. The provisions requiring tenders for the supply of goods, works and services, do **not** apply (but all provisions other than those requiring tenders, do apply) to:
 - 2.11.1. Contracts for the instruction of Counsel or any external legal advice except panel firm appointments;
 - 2.11.2. Contracts for expert witnesses and advisers instructed in connection with legal proceedings;
 - 2.11.3. Recruitment of staff;
 - 2.11.4. The purchase or lease of property;
 - 2.11.5. Translation services for ad hoc requests connected to compliance with the Welsh Language Standards

² Available at <https://www.gov.uk/guidance/public-sector-procurement-policy>.

General Optical Council

- 2.12. These provisions apply to the appointment of consultants and consultancy organisations. A consultant appointed to advise on a procurement or project, to undertake design work or to advise on an evaluation or similar exercise, must not be permitted to bid for any subsequent stage of the work or project with a third party or to assist a third party.

It is possible in some limited circumstances that a consultant involved in a soft market testing exercise is allowed to participate in a bid provided certain safeguards are put in place. To do otherwise could give rise to a conflict of interest or provide a third party with an advantage. Any person or organisation appointed to assist the GOC on a project or potential procurement must agree prior to or on appointment that they will comply with this policy and not disclose any information to third parties and keep all such information confidential.

- 2.13. In some cases consultants may be defined as employees, particularly where they are working in a general capacity on tasks that have previously been undertaken by staff rather than working on a discrete project for the GOC. The Head of People and Culture should be consulted at the outset, to confirm the status of such an individual.
- 2.14. Consultants working as employees should be subject to the same DBS checks as other employees.
- 2.15. Consultants are required to sign a non-disclosure agreement before they commence work.

D. Thresholds

- 2.16. The route to market and the authorisations required are determined by reference to the value of the contract. See paragraph 3.5 for further details.

E. Who can buy goods, works and services on behalf of the GOC?

- 2.17. Designated officers authorised to buy goods, works and services as identified in and in accordance with the thresholds as set out in paragraph 3.5 below, and as further defined / stipulated in the Scheme of Delegation.

General Optical Council

3. Planning

- 3.1. So far as practicable, each budget holder should outline anticipated contract requirements for the forthcoming financial year to assist with the preparation of the budget by the Head of Finance. This should identify services, works and goods requirements for the forthcoming financial year.
- 3.2. Before beginning any procurement process, designated officers should:
 - 3.2.1. Consult with the Head of Governance to agree the appropriate governance approach. Check the GOC's Scheme of Delegation and Financial Regulations to establish the identity of the person with delegated authority to lead/input on the relevant procurement exercise and/or whether other approvals are necessary before commencing any procurement exercise
 - 3.2.2. Consider whether the relevant needs exceed the financial thresholds (see paragraph 3.5 below), and whether there is an existing framework arrangement or contract which can be used to facilitate the purchase.
- 3.3. Designated officers should also review the section of this policy headed Miscellaneous (see section 8 below) before beginning any procurement process.
- 3.4. The following steps must be taken before a procurement exercise is commenced:
 - 3.4.1. Establish whether the value of the relevant requirements exceeds the thresholds set out in paragraph 3.5.
 - 3.4.2. Establish whether there is a suitable framework which may be used and/or whether it is more appropriate to use another procurement route. For further information and the options available, see Section 4 below.
 - 3.4.3. Establish whether there are possibilities for procuring on a joint basis with other organisations.
 - 3.4.4. Clarify the objectives and timescales.
 - 3.4.5. Identify stakeholders and set up dedicated working team/s and consider/establish governance approach.
 - 3.4.6. Develop a project plan.
 - 3.4.7. Make appropriate enquiries of any existing supplier to ensure that full and appropriate information can be provided to all bidders to ensure equality of opportunity for all bidders.
 - 3.4.8. Consider whether any market soundings or 'soft market testing' would be helpful (See Part G below). Such exercises should be carried out only if necessary to assist in understanding the market and products, services and suppliers available. Any information gained or shared should be made known to all bidders at the beginning of the tender process if there

General Optical Council

might otherwise be an advantage for any potential bidders engaged in any such process.

- 3.4.9. Work with the dedicated team to ensure a clear and comprehensive scope of work/specification.
- 3.4.10. Work with the dedicated team and the Head of Legal to identify the key elements that will be required for a contract.
- 3.4.11. Work with the dedicated team to establish tailored evaluation criteria.
- 3.4.12. Work with the dedicated team to create adverts and tender documents.
- 3.4.13. Work with the dedicated team to establish and refine the chosen procurement route for example considering whether, if not using a framework, a shortlisting step would be helpful or whether it is anticipated that negotiation will be necessary. The process should be clearly set out to all bidders.

A. Procurement Options

- 3.5. The route to market will depend on the anticipated contract value. The Director of Corporate Services will determine the route to market as part of the initial authorisation.

Estimated Total Value (inc vat)	Who may Initiate the Order	Advertisement	Procurement route minimum requirements (subject to risk assessment)	Method of acceptance
Up to £5,000	Heads of Department	Budget holder's discretion	Written quotation from one supplier	Written acceptance of contract (and purchase order if over £200)
£5,001 to £30,000	Heads of Department	Budget holder's discretion save that contract opportunities over £30,000 (inc vat) must also be published in the prescribed form on Contracts Finder	Three written competitive quotations	Written acceptance of contract and purchase order

General Optical Council

Estimated Total Value (inc vat)	Who may Initiate the Order	Advertisement	Procurement route minimum requirements (subject to risk assessment)	Method of acceptance
£30,001-£75,000	Director	Budget holder's discretion save that contract opportunities over £30,000 (inc vat) must also be published in the prescribed form on Contracts Finder	Three competitive suppliers invited to tender	Written acceptance of contract and purchase order
£75,001 to public procurement threshold ³	Chief Executive	Details of contract opportunities should be advertised on the GOC website and must also be published in the prescribed form on Contracts Finder ⁴	Three competitive suppliers invited to tender (unless the Director of Corporate Services determines that the requirements of a public sector framework should be followed)	Written acceptance of contract and purchase order
Above public procurement threshold	SMT	Details of contract opportunities must be advertised on the GOC website and must also be published in the prescribed form on Contracts	Either follow the requirements of a public sector framework or undertake a competitive tender exercise compliant with the Public Contracts Regulations 2015	Written acceptance of contract and purchase order

³ The current thresholds are set out in Regulation 5 of the Public Contracts Regulations 2015 (<https://www.legislation.gov.uk/uksi/2015/102/regulation/5#regulation-5-1>).

⁴ Contracts Finder is a service provided by the UK government that hosts information regarding certain public sector contracts worth over the relevant threshold. For sub-central contracting authorities, the relevant threshold to advertise contract opportunities is £30,000 (including vat). www.contractsfinder.service.gov.uk If a relevant contract is advertised anywhere, including on own website, it must also be advertised on Contracts Finder (this requirement does not apply if the authority is satisfied that it is lawful not to advertise an opportunity and chooses not to advertise the opportunity at all). See [Guidance on the Transparency Requirements for Publishing on Contracts Finder - www.gov.uk](http://www.gov.uk)

General Optical Council

Estimated Total Value (inc vat)	Who may Initiate the Order	Advertisement	Procurement route minimum requirements (subject to risk assessment)	Method of acceptance
		Finder and Find a Tender ⁵		

- 3.6. The value of a contract should be calculated by reference to its total value, whether to be supplied or executed at one time or over a specific period. The value of a contract means the estimated total monetary value over its full life, including any extension options, not the annual value. If a contract is indefinite or of a duration of 4 years or more, then the value should be assessed for a 4 year term. All valuations should include vat.⁶
- 3.7. The anticipated value of a contract must not be artificially disaggregated (for example by contracting separately for works, services or goods in phases) or artificially reduced to avoid the above thresholds being exceeded or to enable a preferred choice of procurement route.
- 3.8. In line with the objectives of this policy, and the PCRs⁷ it is a requirement that contract opportunities above £30,000 (including vat) value are advertised on Contracts Finder (if advertised anywhere else) and contract opportunities above the PCRs thresholds must also be advertised on the Find a Tender service. In addition to achieving compliance with Relevant Legislation, using the UK government hosted services provides a low cost mechanism to reach a wider market of potential providers including small and medium sized enterprises and may help ensure competition and achieve value for money outcomes for the GOC. Budget holders should liaise with the Director of Corporate Services to ensure a compliant form of contract notice is published.
- 3.9. The minimum details to be included in a procurement opportunity notice on Contracts Finder are: the time by which any interested supplier must respond if it wishes to be considered; how and to whom an interested supplier is to respond, with appropriate contact details; and any other requirements for participating in the procurement, (e.g. suitability requirements or explanatory information).⁸
- 3.10. Details regarding high value contracts (above the procurement threshold) are hosted by the Find a Tender service. Under the PCRs, all above threshold procurements

⁵ Find a Tender is a service provided by the UK government to advertise high value (above PCR threshold) public contract opportunities.

⁶ Regulation 6, Public Contracts Regulations 2015

⁷ Regulation 109 Public Contracts Regulations 2015

⁸ Regulation 106(2) and Regulation 110(8) Public Contracts Regulations 2015

General Optical Council

public contracts which are not expressly excluded or subject to an exemption must be advertised on Find a Tender.⁹ The required content of the notice is set out in law.¹⁰

- 3.11. It should be noted that there is no link between the Find a Tender service and Contracts Finder, therefore above threshold contract opportunities should be published on Contracts Finder separately. Some third party services allow direct publication on both platforms.

B. Compliance

- 3.12. The Head of Finance must keep a record of all departures from this policy, and must report these to ARC.
- 3.13. The Director of Corporate Services is responsible for agreeing variations to this procedure in any individual instance subject to any necessary agreement with the Chief Executive and/or Chair of Council.

C. Contract / Terms & Conditions – Options / selection

- 3.14. The form of contract should be discussed and agreed with the Head of Legal prior to commencing any procurement exercise. In some circumstances, e.g. contracts for the purchase of goods, the contract will be incorporated in the seller's invoice/receipt rather than a separate document.
- 3.15. The GOC may have regard to any template terms and conditions that may be published by the UK government.
- 3.16. Where the procurement is being conducted under a framework, the form of contract and the extent of any adjustments permissible is likely to be prescribed by the framework.
- 3.17. Any requested adjustments to the proposed form of contract during or after the tender period must be referred to the Head of Legal for approval.
- 3.18. Designated officers should be mindful of the risks of financial distress to any supplier or contractors. Contracts must include a right to terminate upon an insolvency event.
- 3.19. Every contract or order must be in writing, be signed by a duly authorised member of staff, and contain all agreed terms, including:
- 3.19.1. The goods, works or services (including consultancy) to be executed;
 - 3.19.2. The price to be paid;
 - 3.19.3. The period within which the contract is to be performed; and

⁹ www.findatenderservice.co.uk

¹⁰ Part C of Annex 5 to the Public Contracts Directive (2014/24/EU)

General Optical Council

3.19.4. Such other terms and conditions agreed by the parties.

3.20. Every contract for the execution of work or the provision of services, whether to be supplied or executed at any one time during a specified period, must contain a clause prohibiting the contractor from transferring or assigning, directly or indirectly, to any person or persons whatsoever, any portion of the contract without the permission of the GOC, or from sub-letting any portion of the contract other than which may be customary in the trade or profession concerned.

D. Authorisation requirements

3.21. Authorisation should be sought in accordance with the GOC's Scheme of Delegation prior to commencing any specific procurement exercise.

3.22. Any delegation of decision-making authority should be properly recorded and should be in line with the GOC's Scheme of Delegation. The Head of Finance should have access to all relevant records, documents, correspondence and explanations.

E. Identification of specific anticipated contract requirements

3.23. The budget holder should identify the procurement needs and establish the business case for all annual needs including:

3.23.1. Anticipated contract values (see note above);

3.23.2. Proposed routes to market;

3.23.3. Legal support requirements;

3.23.4. Regulatory implications including but not limited to: data protection, Modern Slavery and the Equality Act; and

3.23.5. The GOC's commitment as an accredited Living Wage Employer that our contractors' rates of pay will ensure that their staff receive the real living wage as set by the Living Wage Foundation.

3.24. A business case must be prepared which considers how all components might be procured to enable value for money and efficiencies to be delivered.

3.25. The business case should consider: the capabilities and skillsets needed to deliver the requirements and existing capacity (internal or in the external market); whether flexibility will be needed (e.g. if volumes change); how well the delivery option can meet these needs; and the training and recruitment impact.

F. Due diligence

3.26. The due diligence carried out when dealing with any procurement should include the following.

3.26.1. Consideration of how easy it will be to commence service provision, supply delivery or project commencement. If this is a contract for new services, what challenges will be faced setting up and mobilising the

General Optical Council

service? Consider issues such as recruitment (or TUPE implications), timescales and systems developments.

- 3.26.2. Consideration of any property, equipment, IT, support services, IP rights which might be relevant to the procurement.
 - 3.26.3. Consideration of what other investments may be required and who will provide and own any assets (including intellectual property).
 - 3.26.4. Before and during any procurement exercise, checking for updates in any Relevant Legislation and ensuring compliance with current law throughout the process.
- 3.27. Advice should be sought from relevant parties where a contract is likely to involve changes to staffing or work conditions, redundancy, relocation or transfer of employment or any other aspects relating to TUPE. These issues should be included in evaluation and tender reports.

G. Possible solutions and advance soft market testing / engagement¹¹

- 3.28. Early engagement with the market can help promote forthcoming procurement opportunities and provide a forum to discuss delivery challenges and risks associated with the project. This process may help project leads understand the deliverability of requirements, the feasibility of alternative options and whether there is appetite (within the market) to consider innovative solutions.
- 3.29. Preliminary market engagement should actively seek out suppliers that can help to improve existing service delivery. Early market engagement should also be used to inform the development of the potential procurement, procedure, forms of contract and possible bid evaluation criteria and overall project timetable to ensure that when going to the market, potential suppliers have sufficient time to respond to tenders.
- 3.30. All preliminary market consultation should observe the principles of public procurement and be handled in such a way that no supplier gains an advantage. In practice, this means not setting the technical specification to suit a particular bidder and making sure any information shared is also available during the tender procedure. It is good practice to openly announce any preliminary market consultation by publishing a Prior Information Notice (PIN) and early market engagement notice or future opportunity notice on Contracts Finder.

H. Specification

- 3.31. The required specification for services, goods or works should be developed working with relevant stakeholders and if necessary engaging external third parties to assist with scoping.
- 3.32. Wherever practical, suppliers should be required to comply with the GOC's policies around sustainability, environmental legislation, ethical issues, living wage and

¹¹ Regulation 40, Public Contracts Regulations 2015

General Optical Council

reference to codes of conduct. These will be published on the GOC's website or shared directly with the supplier.

I. Key Performance Indicators (KPIs)

- 3.33. New projects should include performance measures that are relevant to the service objective and proportionate to the size and complexity of the contract.

J. Tender pack / Invitation to Tender

- 3.34. The designated officer (or their nominee) is responsible for drafting the tender pack or Invitation to Tender. Where the procurement is to be undertaken via a government framework, the invitation to tender must comply with the relevant framework.
- 3.35. Contract notices must describe the nature of the proposed contract, relevant dates, return address, deadline and contact details, for above PCR threshold procurements there are legally prescribed requirements¹². The notice or tender documents must state that the GOC is not bound to accept the lowest (or any) tender.
- 3.36. The scoring and weighting mechanisms for shortlisting should be set out clearly. For above threshold procurements to be conducted in compliance with the PCRs there are additional legal requirements to be considered¹³. Bidders should always have full visibility of how questions will be scored and weighted before they submit their responses. Bidders should be provided with any build up of scores for a category to enable bidding on a tailored basis.

K. Evaluation Criteria

- 3.37. For all procurement exercises careful consideration should be given to the evaluation criteria and the scoring methodology to be used prior to the commencement of the procurement. Where a government framework is to be used, the evaluation criteria may be prescribed; however, the person initiating the contract should consider if there are any particular project specific requirements which justify additional or alternative criteria.
- 3.38. Suppliers bidding for any contract where the value exceeds £30,000 (including vat) may be subject to a financial appraisal, including appropriate financial checks and reports and a risk analysis to be carried out and evidenced by the Head of Finance.

L. Timetable

In each case, the GOC will set a reasonable time limit for the receipt of tenders, having regard to factors such as the complexity of the contract, the urgency of the requirement and the time reasonably needed to prepare and submit tenders. See the timescales for the PCR procurement processes below.

¹² Public Contracts Directive (2014/24/EU), Annex 5, Part C

¹³ Public Contracts Directive (2014/24/EU), Annex 5, Part C

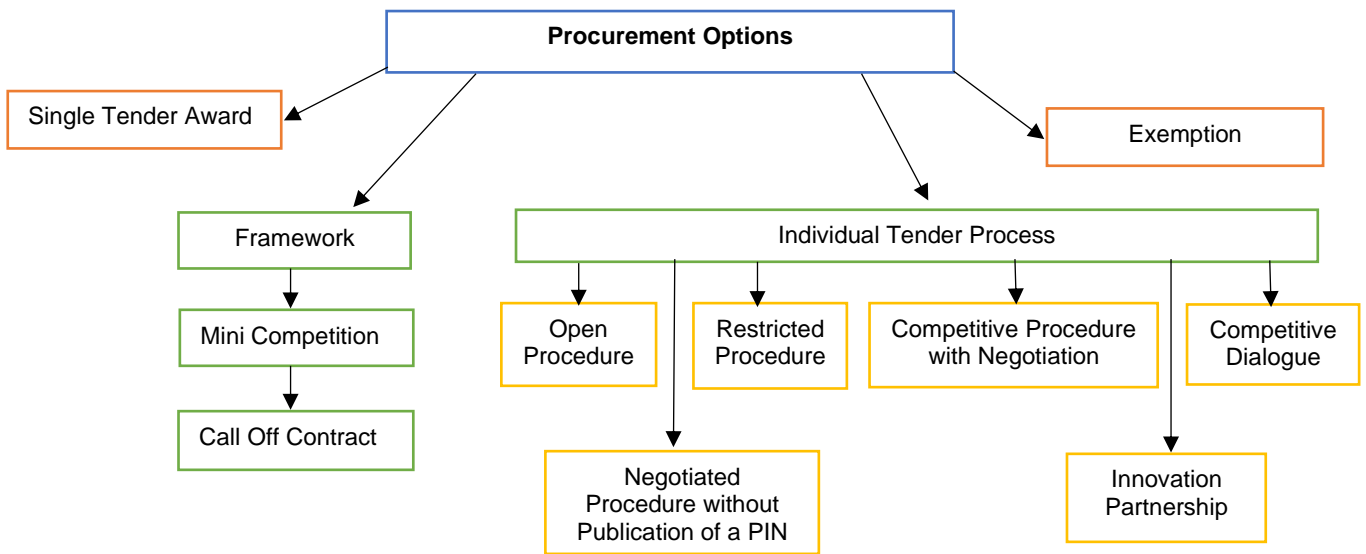
General Optical Council

M. Record Keeping / Audit¹⁴

- 3.39. Full records of all procurement activity, decision making and the tender process must be retained in accordance with the GOC's document retention schedule, which will be published on the GOC website. This includes, but is not limited to:
- 3.39.1. Full records of the decision making process;
 - 3.39.2. All useful communications relating to the contract or tender process;
 - 3.39.3. Soft market testing undertaken;
 - 3.39.4. Due diligence undertaken;
 - 3.39.5. Initial proposals;
 - 3.39.6. Specifications;
 - 3.39.7. Evaluation
 - 3.39.8. Details of successful and unsuccessful tenders, including the names of selected and rejected tenderers and the reasons for selection and rejection;
 - 3.39.9. Details of subcontractors;
 - 3.39.10. Conflicts of interest identified and action taken; and
 - 3.39.11. A full and complete copy of all contract documentation and other tender.

¹⁴ Regulations 83 – 84, Public Contracts Regulations 2015

4. Routes to market



A. Single Tender or Limited Tender Award

4.1. This option shall apply where the budget holder believes, and the Head of Department agrees, either that there is only one possible contractor or supplier suitable for a given contract or that there appears to be a limited number of specialist suppliers capable of delivering a supply or service:

4.1.1. For contracts with an estimated value of up to £30,000 (including vat), a Director may invite and accept tenders from fewer than three bodies. This decision will be reported to SMT.

4.1.2. For contracts with an estimated value of over £30,000 (including vat), additional approval is required, in advance, from the Chief Executive. This decision will be reported to ARC.

B. Tender procedures¹⁵

4.2. There are a number of procedures available for the conduct of legally compliant public procurements in the UK. The procedures are designed to ensure that public contracts are awarded in a fair, transparent and competitive manner.

4.3. To that end, the GOC aims to promote open and competitive procurement processes. Although three suppliers is the minimum requirement for contracts with a value above £5,000 (including vat), invitation to a wider supplier base should be encouraged. Increasing the number and diversity of potential suppliers can foster innovation, ensure fair competition, enhance transparency and improve value for money.

¹⁵ Regulation 26, Public Contracts Regulations 2015

General Optical Council

- 4.4. For tenders in excess of the public procurement thresholds, all steps of the procurement and the procurement documentation must comply with the Public Contracts Regulations 2015 (the PCRs).
- 4.5. The GOC must choose the procedure that is most appropriate for the specific contract. The choice of procedure will depend on a number of factors, including the complexity, value and urgency of the procurement, the nature of the goods, services or works being procured, and the level of competition and innovation expected in the market.
- 4.6. Once selected, the procedure must be applied in accordance with the rules set out in Part 2 of the PCRs, must comply with the process as described in any tender documentation and in any event the GOC must ensure that the procedure is conducted in a fair and transparent manner.
- 4.7. Chapter 2, section 3 of the PCRs sets out the options for procurement procedures, as follows.

4.8. Open Procedure¹⁶

- 4.8.1. This is a one-stage procedure where any interested supplier may submit a tender in response to a contract notice. The open procedure is therefore the most transparent and competitive procurement procedure. Further to the publication of the relevant contract notice(s), all received tenders are evaluated in accordance with the specified evaluation criteria.

Circumstances

- 4.8.2. The open procedure is appropriate for most procurements, usually where there is a large number of potential suppliers and where the services, works or supplies are straightforward and no shortlisting or negotiation or other steps are deemed necessary.
- 4.8.3. The GOC may not negotiate with bidders when using this procedure.

Timescales

- 4.8.4. The minimum time limit for the receipt of tenders differs depending on the circumstances.
- 4.8.5. The ordinary time limit is 35 days from the date of the contract notice.
- 4.8.6. A shortened time limit of not less than 10 days may be available in the following circumstances:
 - 4.8.6.1. In the case of urgency; or

¹⁶ Regulation 27, Public Contracts Regulations 2015

General Optical Council

4.8.6.2. Where a prior information notice (that was not used to call for competition) has been published, and the prior information notice:

4.8.6.2.1. Included all the required information; and

4.8.6.2.2. Was submitted for publication between 35 days and 12 months before the date on which the contract notice was submitted.

4.9. Restricted Procedure¹⁷

4.9.1. This procedure operates so that only selected suppliers following a request for participation may submit tenders in response to the contract notice.

4.9.2. The restricted procedure consists of three stages. The GOC first issues a call for competition by providing the information for qualitative selection.

4.9.3. In the second stage, interested suppliers submit a request to participate. The GOC evaluates these requests to participate and shortlists the qualified suppliers.

4.9.4. In the third stage, the shortlisted suppliers are invited to submit their tenders through an Invitation to Tender (ITT). The GOC can invite suppliers to submit a tender based on factors such as their past performance and financial and technical capacity.

4.9.5. The GOC then evaluates the full tenders in accordance with the evaluation criteria specified in the ITT. Negotiation with bidders is not permitted.

Circumstances

4.9.6. The restricted procedure is used for contracts where there is a smaller number of potential suppliers or where the nature of the procurement is more sophisticated.

Timescales

4.9.7. Receipt of requests to participate

4.9.7.1. The minimum time limit for receipt of requests to participate must be 30 days from the date on which:

4.9.7.1.1. The contract notice is submitted, or

¹⁷ Regulation 28, Public Contracts Regulations 2015

General Optical Council

4.9.7.1.2. Where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent.

4.9.7.2. In cases of urgency the GOC may set the time limit for the receipt of requests to participate, however this must be at least 10 days from the date on which the contract notice is submitted.

4.9.8. Receipt of tenders

4.9.8.1. The minimum time limit for the receipt of tenders differs depending on the circumstances.

4.9.8.2. The ordinary time limit is 30 days from the date on which the invitation to tender is sent. This may be reduced by five days where the GOC accepts that tenders may be submitted by electronic means.

4.9.8.3. A shortened time limit of 10 days is available where a prior information notice (that was not used to call for competition) has been published, and the prior information notice:

4.9.8.3.1. Included all the required information; and

4.9.8.3.2. Was submitted for publication between 35 days and 12 months before the date on which the contract notice was submitted.

4.9.8.4. A different time limit may be mutually agreed between the GOC and all selected candidates, provided that all selected candidates have the same time to prepare and submit their tenders. In the absence of such an agreement, the time limit must be at least 10 days from the date on which the invitation to tender is sent.

4.9.8.5. In cases of urgency the GOC may set the time limit for the receipt of tenders, however this must be at least 10 days from the date on which the invitation to tender is sent.

4.10. Competitive Procedure with Negotiation¹⁸

4.10.1. The competitive procedure with negotiation involves the GOC publishing a contract notice and negotiating the terms of the contract with one or more selected tenderers.

¹⁸ Regulation 29, Public Contracts Regulations 2015

General Optical Council

- 4.10.2. This procedure is a three-stage process. The GOC first issues a call for competition by providing the information for qualitative selection. Shortlisting then takes place.
- 4.10.3. In the second stage, suppliers submit an initial tender in response to the call for competition. The GOC evaluates the initial tenders and may then enter into negotiations with the selected suppliers.
- 4.10.4. In the third stage, the selected suppliers submit final tenders when all negotiations have taken place, and the GOC awards the contract after evaluating these tenders.
- 4.10.5. This procedure allows the GOC to negotiate with potential suppliers who submit the most economically advantageous tenders. This is a flexible procurement procedure, as the GOC can negotiate on all aspects of the contract, including the technical specifications, delivery schedule, and price.

Circumstances

- 4.10.6. The competitive procedure with negotiation is suitable where the GOC would prefer the option to negotiate with potential suppliers to obtain the best possible value for money and outcomes to meet the GOC's stated requirements.
- 4.10.7. The procedure is available in specified circumstances, including the following:
 - 4.10.7.1. The GOC's needs cannot be met without adaptation of readily available solutions;
 - 4.10.7.2. The GOC's needs include design or innovative solutions;
 - 4.10.7.3. The contract cannot be awarded without prior negotiation due to specific circumstances relating to its nature, complexity, or the legal and financial make-up or because of risks attaching to them;
 - 4.10.7.4. The GOC cannot precisely establish the technical specifications with reference to a standard, European Technical Assessment, common technical specification or technical reference;
 - 4.10.7.5. Following an open or a restricted procedure, only irregular or unacceptable tenders were submitted.

Timescales

- 4.10.8. The timescales are the same as for the restricted procedure, stated at paragraph 4.9.7 to 4.9.8 above.

General Optical Council

4.11. Competitive Dialogue¹⁹

- 4.11.1. The competitive dialogue procedure involves of the GOC publishing a contract notice and conducting a dialogue with selected candidates to develop one or more suitable solutions for its requirements and on which chosen candidates will be invited to tender.
- 4.11.2. The GOC first issues a call for competition by providing the information for qualitative selection. Shortlisting then takes place.
- 4.11.3. The GOC enters into a dialogue with qualified suppliers to identify and define possible solutions. Following the dialogue, the selected suppliers submit their tenders, and the GOC evaluates and awards the contract.

Circumstances

- 4.11.4. Essentially, this procedure is suitable where the GOC requires a high degree of involvement and potential innovation from the tenderers, or where the contract is complex and it is difficult to define the technical means to meet the GOC's requirements.
- 4.11.5. This procedure is available in the same circumstances as for the Competitive Procedure with Negotiation, stated at paragraph 4.10.7 above.

Timescales

- 4.11.6. The minimum time limit for receipt of requests to participate must be 30 days from the date on which the contract notice is submitted. The GOC should also set out an indicative timeframe in the contract notice.

4.12. Innovation Partnership²⁰

- 4.12.1. The innovation partnership procedure is used for research and development contracts where innovation is required in order to meet the GOC's requirements.
- 4.12.2. The GOC publishes a contract notice and selects a partner or partners for the development and subsequent purchase of an innovative product, service or works that cannot be met by existing market solutions. The GOC then negotiates and awards separate contracts for research and development stages. The selection will be based on the ability to deliver the desired innovation.

¹⁹ Regulation 30, Public Contracts Regulations 2015

²⁰ Regulation 31, Public Contracts Regulations 2015

General Optical Council

Timescales

- 4.12.3. The minimum time limit for receipt of requests to participate should be 30 days from the date on which the contract notice is submitted.

4.13. Negotiated procedure without publication of a prior information notice²¹

- 4.13.1. Under the negotiated procedure without publication of a prior information notice, the GOC will negotiate with a single tenderer to award the contract, without prior publication of a contract notice.

Circumstances

- 4.13.2. This procedure is used when exceptional circumstances prevent the GOC from using the open procedure, restricted procedure or competitive dialogue. 'Exceptional circumstances' may include where:

- 4.13.2.1. The nature of the contract requires a particular procurement strategy due to complexity or specific circumstances;
- 4.13.2.2. The works, supplies or services can be supplied only by a particular economic operator for certain reasons;
- 4.13.2.3. The use of the open, restricted, or competitive dialogue procedure is unsuitable or has failed.

C. Frameworks²²

- 4.14. A number of frameworks are available which have been established by the UK Government and other bodies.
- 4.15. A framework can be an effective and efficient route to market. The contractors appointed to a framework will have been selected following a PCR compliant procedure which can mean that the GOC can avoid carrying out its own selection stage meaning that tender exercises can be completed more promptly and without the time and resource often needed for the GOC to run its own tender exercise.
- 4.16. A framework usually allows access to a panel of selected contractors who meet minimum requirements and who have offered to supply works, services or goods on pre agreed terms including price. Frameworks have usually been established in compliance with legislative requirements and offer the opportunity to contract direct (a call off) with a particular supplier or to appoint following a mini competition.
- 4.17. Use of a framework usually attracts a fee (typically a percentage of the value of the relevant contract) and this must be checked before using a framework, as should the standard terms of contract to ensure that they reflect the GOC's needs as they may be subject to limitations in respect of permitted tailoring and adjustment.

²¹ Regulation 32, Public Contracts Regulations 2015

²² Regulation 33, Public Contracts Regulations 2015

General Optical Council

4.18. Tenders and quotations which are provided by suppliers on an existing public sector procurement framework can be accepted, evaluated and awarded in accordance with the relevant framework terms and the Scheme of Delegation

D. Exemptions

4.19. Exemptions from this policy must be obtained in advance in accordance with the Scheme of Delegation:

4.19.1. Up to £30,000 (including vat): - SMT approval.

4.19.2. Above £30,000 (including vat): - Chief Executive and Chair of Council.

4.20. This Policy shall not apply in cases of genuine emergency such as unforeseen events likely to cause immediate danger to life, property or breaches in security. In such circumstances, SMT are required to take appropriate action and report such action to ARC at the next opportunity.

5. Procurement Process

A. Issue tender

5.1. Notices

- 5.1.1. For contracts in excess of £30,000 (including vat), notices of the contract opportunity will usually be published on the GOC's website (see the table at paragraph 3.5): [https://optical.org/en/about-the GOC/get-involved/tenders/](https://optical.org/en/about-the-GOC/get-involved/tenders/).
- 5.1.2. For contract opportunities in excess of £30,000 (including vat), notice in the prescribed form must also be published on Contracts Finder²³: <https://www.gov.uk/contracts-finder>.
- 5.1.3. For contract opportunities in excess of the PCR thresholds, notice in the prescribed form must also be published on Find a Tender 24 : <https://www.gov.uk/find-tender> and Contracts Finder.

B. Shortlisting

- 5.2. If the procurement procedure implemented, undertaken or advertised provides for shortlisting, this should be undertaken in accordance with published selection / evaluation criteria and government guidance²⁵.
- 5.3. A selection stage can be used to establish potential suppliers' technical and professional abilities, economic and financial standing and whether any of the exclusion grounds apply for example to check the tax compliance of suppliers and excluding a supplier if they are in breach of any obligations relating to the payment of taxes or social security contributions²⁶.
- 5.4. If the opportunity is above the public procurement threshold, the Standard Selection Questionnaire must be used for shortlisting.
- 5.5. A record must be kept of verification steps and documentation of the grounds on which any suppliers are excluded from participation in the remainder of the procurement procedure.

C. Clarifications²⁷

- 5.6. The tender pack / invitation to tender must set an appropriate time limit within which suppliers must submit, supplement, clarify or complete the relevant information or documentation.

²³ Regulations 106 and 108, Public Contracts Regulations 2015

²⁴ Regulation 51, Public Contracts Regulations 2015

²⁵ Available at <https://www.gov.uk/government/publications/ppn-0323-standard-selection-questionnaire-sq>.

²⁶ Regulations 57 – 58, Public Contracts Regulations 2015

²⁷ Regulation 56(4), Public Contracts Regulations 2015

General Optical Council

5.7. Clarifications issued must:-

- 5.7.1. Be consistent with the procurement documents and must not alter the essential aspects of the tender or the contract;
- 5.7.2. Not involve changes to the basic features of the tender or the call for competition;
- 5.7.3. Be conducted in a fair and transparent manner and must not give any advantage to a particular tenderer; and
- 5.7.4. Be proportionate and necessary for the proper conduct of the procurement procedure.

5.8. A log should be kept of all clarification queries received.

5.9. All non-confidential clarifications must be shared with all bidders in good time before tenders are submitted.

D. Tender returns

5.10. Every response to an invitation to tender should be delivered either:

- 5.10.1. By email, to the email address as stated in the invitation to tender;
or
- 5.10.2. In hard copy form, arriving at the specified premises by the specified time for submission of tenders, as stated in the ITT.

E. Receipt and opening of tenders

- 5.11. The GOC is not obliged to accept the lowest (or any) tender, but will generally seek to award on the basis of the most economically advantageous tender and/or best overall value assessed as the most appropriate against a pre-determined evaluation model²⁸.
- 5.12. Tenders must be opened by (or a person nominated by) a Director or a Head of Department.
- 5.13. The opened tenders must be recorded on a list of tenders invited.
- 5.14. Late tenders will not be considered unless, following a request and proof of exceptional circumstances beyond the control of the tenderer, written approval is provided by the Director of Corporate Services.
- 5.15. Persons tendering will not be allowed to alter their tenders after the date fixed for receipt but arithmetical errors maybe corrected if approved by the Director of Corporate Services.

²⁸ Regulation 56(1), Public Contracts Regulations 2015

General Optical Council

5.16. Tender compliance checks should be undertaken to ensure accuracy and completeness in tenders received. This would involve a check that all required elements of the tender have been completed including, where relevant, all necessary certifications and signed declarations have been provided.

F. Negotiations

5.17. If the procurement process adopted or the relevant framework allows, or for below threshold procurements, certain aspects of the procurement may indicate that negotiations are required, for example where:

5.17.1. The contract is complex and there is a need to discuss various aspects of the procurement with bidders, such as the service requirements, the proposed solution, the performance issues or the risk allocation;

5.17.2. The contract is innovative and there is a need to develop new or alternative solutions that cannot be defined with sufficient precision at the outset;

5.17.3. The contract involves intellectual property rights or other exclusive rights that can only be supplied by a particular supplier;

5.17.4. The contract is subject to unforeseen circumstances that require immediate action and the time limits for other procedures cannot be complied with.

5.18. In such circumstances, negotiation can allow risk and assumptions to be thoroughly tested and the foundations established for ensuring a successful contractual outcome and ongoing relationship for all parties and stakeholders. All bidders must however have equal opportunity and therefore following negotiations there may be a need to create revised documentation and issue to all bidders with an appropriate timescales for return of tenders.

5.19. Negotiation can be conducted for above PCRs threshold procurements under two procurement procedures: the Competitive Dialogue (CD) and Competitive Procedure with Negotiation (CPN).

5.20. Both procedures allow for dialogue and/or negotiations with bidders on various aspects of the procurement, but the rules and stages differ. The choice of procedure should be based on the specific circumstances and objectives of each procurement. Negotiations are not possible with the Open and Restricted procedures.

G. Presentation

5.21. Bidders may be required to give a presentation on their tender as part of the evaluation process, provided that this is specified in the procurement documents.

5.22. Any presentation of tenders:

5.22.1. Must not alter the basic features or essential aspects of the tender, contract or the call for competition;

General Optical Council

- 5.22.2. Must be consistent with the procurement documents;
 - 5.22.3. Must be conducted in a fair and transparent manner and must not give any advantage to a particular tenderer; and
 - 5.22.4. Must be proportionate and necessary for the proper conduct of the procurement procedure.
- 5.23. The presentation of tenders and its outcome must be documented, including any scores or comments given by the Evaluation Panel.

H. References

- 5.24. References may be obtained if requested as part of the invitation to tender issued to all bidders²⁹.
- 5.25. References can be scored if this is provided for in the invitation to tender/evaluation criteria.

I. Evaluation³⁰

- 5.26. All bids and tenders should be evaluated carefully against the published award criteria and weightings set out in the documentation made available to all bidders. Care is needed to comply with the evaluation criteria set by the framework operator.
- 5.27. The evaluation should be completed as appropriate at each stage of the procurement process, e.g. when using the competitive dialogue procedure or competitive procedure with negotiation.
- 5.28. An Evaluation Panel will evaluate bids and keep careful records of the decision-making process and an evaluation matrix will be used to record the score of each bidder against the stated criteria. Documented bid evaluations reduce risks of legal challenge and reputation damage by being demonstrable to the bidders that an effective, transparent and non-discriminatory process was rigorously followed.
- 5.29. To that end, the criteria against which tenders should be evaluated must:
 - 5.29.1. be pre-determined and listed in the invitation to tender documentation;
 - 5.29.2. be strictly observed at all times throughout the tender process;
 - 5.29.3. include price;
 - 5.29.4. consider whole-life costing, particularly in the case of capital equipment where the full cost of maintenance, decommissioning and disposal should be taken into account;
 - 5.29.5. be capable of objective assessment; and

²⁹ Regulation 58(16), Public Contracts Regulations 2015

³⁰ Regulation 67, Public Contracts Regulations 2015

General Optical Council

5.29.6. avoid discrimination or perceived discrimination.

5.30. Where this evaluation methodology is used, any resulting contract must be awarded to the tenderer which submits the tender that achieves the highest score in the objective assessment.

J. Scoring

5.31. Scoring must be undertaken in accordance with the guidance issued to all bidders.

K. Conflicts of Interest³¹

5.32. Evaluation Panels should consist of a minimum of two members. Panel members must have no real or apparent conflicts of interest relating to the quotes / tenders being evaluated including: a financial interest in a company under consideration; or a personal interest, including partner, relative or friend working at a company under consideration. The Management of Interests Policy sets out the actions to be taken in the event of any member of staff having any conflict of interest in relation to a procurement exercise.

5.33. All designated officers involved in procurement must behave in a professional manner with due regard to matters of probity. Any pecuniary interests must be declared and the relevant codes of conduct be complied with at these times.

5.34. After the ITT has been published, no gifts or hospitality should be accepted from any tenderers and there must be compliance with the GOC's Gifts and Hospitality policy.

L. Approvals

5.35. A contract must only be awarded and signed by an individual(s) authorised to do so. Please refer to paragraph 3.5 and the Scheme of Delegation.

5.36. The designated officer must authorise the award before communication with bidders.

³¹ Regulation 24, Public Contracts Regulations 2015

6. Contract Award

A. Communications

- 6.1. Bidders will be notified of contract award in writing. Unsuccessful bidders will be advised in writing about the award decisions and will be provided with an appropriate written debrief indicating the advantages and disadvantages when compared against the winning bid. In respect of contracts above the PCR thresholds, communications must be compliant with the PCRs.³²
- 6.2. Any communication with candidates or tenderers must not distort competition or violate the principles of non-discrimination and transparency.
- 6.3. For contracts above the PCRs threshold, a "standstill period" must be observed³³. This is effectively a pause (at least ten calendar days) in the procurement process following notification of the contract award decision to both successful and unsuccessful bidders. This will give all bidders an opportunity to consider the decision and if necessary challenge the decision.
- 6.4. At the end of the standstill period if there is no legal challenge, the contract may be awarded.
- 6.5. Notices of contract award must be published on Contracts Finder or Find a Tender in the prescribed form if the contract opportunity has been published on either or both of those services.

B. Execution of Documents

Estimated Total Value (inc vat)	Authority to award contract	Authority to sign contract documents
Up to £5,000	Heads of Department	Heads of Department
£5,001 - £30,000	Heads of Department	Heads of Department
£30,001 - £75,000	Director	Director
£75,001 – PCRs threshold	Chief Executive	Two signatures of Director and Chief Executive
Above PCRs threshold	SMT	Chief Executive and Chair of Council

³² Regulation 86, Public Contracts Regulations 2015

³³ Regulation 87, Public Contracts Regulations 2015

General Optical Council

- 6.6. Advice should be sought from Head of Legal in respect of specific contract execution requirements.

C. Contract storage

- 6.7. For all contracts over £5,000 (including vat), the person initiating the contract is responsible for ensuring that an electronic copy of the fully executed final contract is filed on the central register of contracts and that the central contract and supplier list is updated accordingly.

7. Contract Management

7.1. Each contract with a value over £5,000 (including vat) must have a named individual responsible for engaging the supplier and overseeing the delivery of the services, goods or works during the term of the contract. Where several contracts are in place with a single supplier, the same individual should have overall responsibility for the relationship management.

A. Review meetings

7.2. It is the budget holder's responsibility to ensure that services, work and goods are inspected regularly and that regular contract review meetings take place to ensure the delivery of the original requirements including deliverable, timescales, KPIs, are carried out in accordance with the contract. In the event any issues with performance or delivery are identified, the relevant contract terms should be applied which may for instance require that a rectification plan should be agreed with established milestones and checkpoints.

B. Risk Analysis

7.3. Contract managers are expected to assess risk and keep a written record in accordance with the GOC's Risk Management Strategy and Policy.

7.4. Risks should be proactively monitored throughout the lifetime of the contract and any areas of concern reported to the Director of Corporate Resources.

C. Financial standing of suppliers

7.5. The financial standing of suppliers is usually a key check at selection stage, however the project leads / service area leads should be alert to the possibility that financial standing can deteriorate during the term of the contract. In the event of insolvency, it is essential that steps are taken to mitigate risk. Monitoring of financial standing of key suppliers should be undertaken by the budget holder. Alerts can be put in place to monitor company announcements and other published information e.g. via <https://trackercore.rsmuk.com/>.

D. Consequences of supplier insolvency

7.6. A termination in the event of a supplier insolvency may trigger the need for a new procurement exercise. Advice should be sought from the Head of Governance, Head of Finance or Head of Legal at the earliest opportunity.

E. Variations³⁴

7.7. Contracts must adhere to the original terms and conditions. However, in exceptional circumstances, contracts may be lengthened or varied.

³⁴ Regulation 72, Public Contracts Regulations 2015

General Optical Council

- 7.8. Any contract variations must be made in writing, must be approved by a member of staff with authority to award the contract, must be signed and must be stored with the original contract.
- 7.9. For contracts awarded in excess of the PCRs thresholds, the overall contract value, including the extension, must not result in the contract materially exceeding the original threshold.
- 7.10. As a general principle any substantial modification of a contract in excess of the PCR threshold during its term requires a new procurement procedure. However, there are exceptions to this principle, including:
 - 7.10.1. Variations that are provided for in the initial procurement documents in a clear, precise and unequivocal review clause;
 - 7.10.2. Variations to accommodate additional works, services or supplies by the original contractor, which have become necessary but were not included in the initial procurement, where a change of contractor both:
 - 7.10.2.1. Cannot be made for economic or technical reasons; and
 - 7.10.2.2. Would cause significant inconvenience or substantial duplication of costs for the GOC.
 - 7.10.3. Variations that involve replacing a contractor due to corporate restructuring, insolvency or subcontracting;
 - 7.10.4. Variations that are necessary due to unforeseen circumstances, provided that the change does not alter the overall nature of the contract, and each increase in price does not exceed 50% of the value of the original contract or framework agreement;
 - 7.10.5. Variations that are not substantial, i.e. where the variation does not:
 - 7.10.5.1. Render the contract materially different in character;
 - 7.10.5.2. Introduce conditions that would have allowed for different or additional candidates or tenderers;
 - 7.10.5.3. Change the economic balance of the contract in favour of the contractor;
 - 7.10.5.4. Extend the scope of the contract considerably; or
 - 7.10.5.5. Replace a contractor, other than in permitted circumstances.

General Optical Council

F. Expiry and termination³⁵

7.11. As part of annual planning and ongoing contract review exercises budget holders must diarise contract expiry or renewal dates. Planning typically will begin at least 9 months ahead of expiry to allow for procurement, due diligence and other associated steps to be taken. Such information should feed into overall planning and objectives to allow for smooth transition into new or replacement contract arrangements. It may be possible to extend the term of an existing contract, there may be a decision to bring delivery in-house or a re-tender exercise may be required.

7.12. Each contract should include appropriate exit and transition arrangements. Large services contracts must include an exit plan which includes specific obligations on the supplier to provide information and to engage proactively to permit a smooth transition process.

An exit may trigger the need for a new procurement exercise. Advice should be sought from the Head of Governance, Head of Finance or Head of Legal at the earliest opportunity.

7.13. Where contracts contain an option to extend, a decision as to whether it is appropriate to do so must be taken by the appropriate personnel and the appropriate point in time. It is important that the GOC has an opportunity to properly consider all available options and allow sufficient time to plan any necessary procurement exercises.

³⁵ Regulation 73, Public Contracts Regulations 2015

8. Miscellaneous

A. Information Governance

- 8.1 Information security is of key importance to GOC and GOC seeks to comply with UK GDPR and the provisions of the Data Protection Act 2018 and other data protection legislation at all times.
- 8.2 Information security and data sharing must be considered throughout the procurement process. We understand that maintaining technical and organisational security includes maintaining our supply chain security.
- 8.3 A data protection impact assessment must be conducted when the processing or data sharing activity is likely to result in a high risk to the rights and freedoms of individuals; and is particularly relevant when new data processing technologies are being introduced.
- 8.4 All contracts must contain a clause on data protection compliance, information sharing and data security and it must stipulate the end of contract requirements. This wording must be approved by the Head of Governance, the Head of Finance or the Head of Legal. This should include a non-disclosure agreement where applicable.

B. Prevention of Corruption

- 8.5 Steps must be taken to prevent corruption, including the following:
 - 8.5.1 Exclusion of a supplier from participating in a procurement procedure where the supplier has been convicted of certain offences, including conspiracy, corruption, bribery, fraud or money laundering.
 - 8.5.2 Consideration of the exclusion of a supplier where the supplier has committed certain misconducts, including grave professional misconduct, distortion of competition, significant or persistent deficiencies in performance of a prior public contract or violation of environmental, social or labour law.
 - 8.5.3 Taking appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.
 - 8.5.4 Treating suppliers equally and without discrimination and acting in a transparent and proportionate manner.
 - 8.5.5 Ensuring staff involved in the conduct of procurement procedures comply with applicable obligations with regard to confidentiality, including the Anti-financial Crime Policy and the Gifts and Hospitality Policy.

General Optical Council

C. Freedom of Information

- 8.6 All procurement documentation may have to be supplied to anyone making a Freedom of Information (FOI) request under the FOI Act 2000.