



# PROCUREMENT POLICY

**GS June.2022/REF: P39**



0141 551 8131



0141 550 2060



admin@milnbank.org.uk



www.milnbank.org.uk

A registered Scottish Charity No.SC039891 Registered: Scottish Housing Regulator.  
Registration No. HCB 161 SC Registered: Financial Conduct Authority - 1818 R(S).  
Registered under the Co-operative and Community Benefit Societies Act 2014.



## CONTENTS

<b><u>SECTION</u></b>	<b><u>PAGE</u></b>
1: Introduction	3
2: Objectives of Policy	3
3: Related MHA Policies and Procedures	4
4: Overview of Procurement Procedures	4
5: Regulated Procurements under the Public Contracts (Scotland) Regulations 2015	5
6: Regulated Procurements under Procurement Reform (Scotland) Act 2014	13
7: Unregulated Procurements – Contracts which are not subject to either the Regulations or the Act due to anticipated contract values	16
8: Regulated Procurements under the Light Touch Regime under the Public Contracts (Scotland) Regulations 2015	18
9: Framework Agreements	19
10: Exceptions to the Requirement to Publicly Procure Contracts	21
11: Renewals, Extensions, and Changes to Existing Contracts	21
Appendices	23
1: Flowchart – Statutory Requirements	
2: Procurement Timescale	
3: List of Services covered by the new Light-Touch Regime	

## **1: INTRODUCTION**

This Procurement Policy sets out the procedures which Milnbank Housing Association Limited (MHA) will follow when procuring contracts for the supply of services, the supply of goods and materials and/or the execution of works.

All procurements undertaken by MHA must have regard to the terms of the Procurement Strategy which accompanies this Policy and the values, objectives, and Key Performance Indicators (KPIs) set out in the Procurement Strategy, which must be read in conjunction with this Policy.

This Policy must be interpreted in accordance with fundamental general principles of equal treatment, non-discrimination, transparency, and proportionality.

This Policy reflects the exit of the United Kingdom from the European Union (EU), given that it is no longer subject to any over-riding provisions of the EU or guidance from the EU Commission on public procurement. As regards public procurement, both the UK and Scottish Governments have published legislation amending current regulations, given that public procurement is a devolved matter.

This policy may only be suspended either in whole or in part by a decision of the Management Committee in respect of the proposed award of any contract upon the joint recommendation of the Senior Officer and the Chairperson, provided there are special circumstances justifying the suspension and subject to any suspension remaining compliant with legal requirements.

Any query regarding the application or interpretation of this Policy should be made in the first instance to the Head of Property.

## **2: OBJECTIVES OF POLICY**

The objectives of this Policy are to:

- Ensure that MHA maximises VFM when procuring contracts.
- Ensure that MHA complies with all legal and regulatory requirements governing procurement and related best procurement practice when procuring contracts.
- Ensure that procurement accords with the requirements of MHA's policy in respect of payments and benefits.
- Maximise opportunities to jointly procure services on a collaborative basis with colleagues in other local registered social landlords and related organisations where this would be in the interests of MHA and where timescales permit.
- Ensure that expectations of tenants, staff, colleagues, and other key stakeholders are met and continually improved; and

- Ensure that MHA makes best use of the commissioning process and that there is sufficient flexibility to ensure expenditure can be increased and decreased as necessary within the financial year.

### **3: RELATED MHA POLICIES & PROCEDURES**

This policy should be read in conjunction with the following key MHA strategies, policies, and procedures:

1. Procurement Strategy
2. Financial Policy
3. Financial Procedures
4. Treasury Management Policy

and any other related linkage policies.

In the event of any conflict or inconsistency between the terms of this Policy and any provisions in any of the above policies relating to public procurement of contracts, this Policy shall take precedence.

### **4: OVERVIEW OF PROCUREMENT PROCEDURES**

When procuring contracts for goods, services or works, MHA must comply with the Public Contracts (Scotland) Regulations 2015 ('the Regulations') and the Procurement Reform (Scotland) Act 2014 ('the Act') and Procurement (Scotland) Regulations 2016; the legislation that gives effect to the Act.

MHA is subject to a two-tier procurement regime, in terms of which the Regulations will apply to contracts with a value which meets or exceeds the relevant thresholds (£213,477 for supplies or services and £5,336,937 for works), each inclusive of VAT where VAT applies and the Act will apply to contracts with a value below such thresholds but with a value which is equal to or greater than the thresholds set out in the Act (£50,000 for supplies or services and £2,000,000 for works) exclusive of VAT.

As procurement is a devolved matter, Scottish Ministers will continue to be responsible for reviewing and revaluing thresholds every two years. The thresholds highlighted above were implemented on 1 January 2022. Regardless of the UK's exit from the European Union, threshold values must continue to mirror those documented in the World Trade Organisation's Government Procurement Agreement (GPA).

The procedure for the award of any contract depends upon the estimated value of that contract and if VAT applies, and the applicable rate of VAT. The relevant threshold values and the associated procurement procedure that must be applied are detailed in Table 1 below.

All values subject to the 2015 Regulations are now inclusive of VAT (where applicable) and relate to the full life of the contract (including any potential extensions or renewals).

**Table 1:** Public Procurement (Agreement on Government Procurement) (Thresholds etc) (Amendment) (Scotland) Regulations 2021/378 approved by Scottish Ministers on 29 October 2021, confirms the new thresholds as of 1 January 2022, to remain in force until 31 December 2023 unless altered before then by Scottish Ministers are as follows:

<b>Contract Type</b>	<b>Contract Value</b>	<b>Procurement Procedure</b>
Works	£5,336,937 inclusive of VAT and above	2015 Regulations – Refer to Section 5
Supplies/Services	£213,477 inclusive of VAT and above	2015 Regulations – Refer to Section 5
Social and other specific services	£663,540 inclusive of VAT and above	2015 Regulations – Refer to Section 8
Works	£2,000,000 to £5,336,937 exclusive of VAT	2014 Act, taking account of the 2016 Regulations - Refer to Section 6
Supplies/Services	£50,000 to £213,477 exclusive of VAT	2014 Act, taking account of the 2016 Regulations – Refer to Section 6
Supplies/Services	Up to £50,000 exclusive of VAT	Unregulated procurement – Refer to Section 7
Works	Up to £2,000,000 exclusive of VAT	Unregulated procurement – Refer to Section 7

The prescribed threshold values set out in the table above will be automatically revised in accordance with any subsequent amendment to the threshold values set by the Scottish Government for supply, services, or works contracts.

All other financial limits specified in this Policy shall be subject to review from time to time, including in the event of changes to thresholds or procedures introduced by either the UK or Scottish Government. MHA employees will be notified promptly of any change to the relevant values.

**5: REGULATED PROCUREMENT UNDER THE PUBLIC CONTRACTS (Scotland) REGULATIONS 2015**

**a) Overview of the Regulations**

The Regulations apply to the following contracts:

- Contracts for goods or services with an estimated of £213,477 inclusive of VAT or more.
- Contracts for works with an estimated value of £5,336,937 inclusive of VAT or more.

- Contracts for certain health, social and other services with an estimated value of £663,540 inclusive of VAT or more. See Section 8 of this Policy for further detail on procurement of these contracts.

The above contracts must be advertised in Public Contracts Scotland (PCS) to create and publish contract notices. PCS will then transfer notices to the UK Find a Tender Service (FTS) for public contracts (above threshold). The FTS has replaced the role of Tenders Electronic Daily, previously OJEU in the procurement process.

Certain categories of services are exempt from the full terms of the Regulations. In addition, certain contracting arrangements are exempt from the terms of the Regulations and such arrangements do not need to be publicly procured. See section 10 of this Policy for further detail on procurement of these contracts.

Any procurement which is subject to the terms of the Regulations must comply also with the 2014 Act, including:

- Transparency – contract procedures must be transparent and contract opportunities should generally be publicised.
- Equal treatment and non-discrimination – potential suppliers must be treated equally.
- Proportionality – procurement procedures and decision must be proportionate; and

Contracts under the Regulations must be awarded based on the 'Most Economically Advantageous Tender' (MEAT). The 'MEAT' means the tender offer that is most economically advantageous from MHA's point of view, having regard to the subject matter of the contract and including matters such as:

- Quality.
- Price.
- Technical Merit.
- Aesthetic and functional characteristics.
- Environmental characteristics.
- Running costs.
- Cost effectiveness.
- After-sales service.
- Technical assistance.
- Delivery date; and
- Delivery period or period of completion

(All as may be considered appropriate in relation to any particular contract).

Contracts which are subject to the Regulations cannot be awarded based on lowest price only and must be awarded on a mix of price and quality.

Requirements under the Regulations cannot be artificially split to avoid the application of the Regulations and/or the Act (e.g., a single requirement for services with a value of £50,000 cannot be the subject of two separate contracts of £25,000 each).

Where a proposed contract is “mixed” e.g., if it contains both works and services/supplies or services and supplies, it should be classified according to the main subject of the contract and the largest subject value.

### **b) Procurement of Contracts Subject to the Regulations**

An overview of each of the most relevant procedures under the Regulations is set out in this section of the Policy.

Each of these procedures is subject to certain minimum timescales. A guidance note has been included at Appendix 2 to this Policy to assist MHA staff in determining the minimum timescales which apply to a procurement procedure.

*In relation to all procedures under the Regulations:*

If the mixed contract comprises both services and supplies, or services covered by both the main regime and services covered by the Light Touch Regime (see section 8 of this Policy), the main subject of the contract is determined by reference to which part of the contract has the greater value.

A flowchart and guidance note have been included at Appendix 1 to this Policy to assist MHA staff in determining which statutory requirements apply to a particular procurement.

A specific tender notice must be placed in the supplement to the FTS, via Public Contracts Scotland.

Two officers, one of which will be part of the Management Team, will be present during the opening of all electronically submitted tenders via the PCS Post box. The priced tenders will thereafter be noted in the Tender Register by the most senior officer responsible for opening the Post box, including recording the subsequent action to be taken.

Following the contract award decision, MHA must notify the successful and unsuccessful bidders of the contract award decision. Unsuccessful bidders must be given information on the scores they obtained, the reasons why they obtained those scores and the “characteristics and relative advantages” of the successful bidder’s tender submission compared to their own tender submission. Unsuccessful bidders will have the right to request further details for a period of up to 15 days following issue of the unsuccessful letter for procurements subject to the Regulations.

- A mandatory “standstill” period must be observed between the date of the notices informing tenderers of the outcome of the procedure and awarding the contract.
- If contract award notices are issued electronically, (which the Association will endeavour to adhere to) then the standstill period starts on the day after the date of issue of the contract award notices and ends at midnight on the tenth day from that day.

- If contract award notices are issued by post, then the standstill period starts on the day after the date of issue of the contract award notices and ends at midnight on the fifteenth day from that day.
- If the last day of the standstill period is not a working day, then the standstill period must be extended to include the next working day. For example, if the ten or fifteen-day standstill period ends on a Saturday, then the period must be extended until the next Monday.
- Once the applicable standstill period has expired, MHA may enter a contract with the successful tenderer.
- Following completion of the tender procedure, MHA must publish a contract award notice in FTS, via the Public Contracts Scotland website; and
- Any complaint about, or challenge to an MHA contract award procedure, or any situation which could be reasonably expected to lead to such a complaint or challenge, must be notified to the most senior member of staff responsible for overseeing the procurement exercise. If a challenge is raised within the standstill period relative to a particular contract, all correspondence in relation to the challenge must immediately be passed to the Director and/or the Head of Property taking account of the department within the Association responsible for the procurement exercise and will be referred to the Association's solicitor for guidance and advice as deemed necessary.

### **c) Procurement Procedures under the Regulations**

**Open Procedure** - Is a single stage procedure in terms of which all interested parties may submit a tender in response to the contract advertisement. There is no separate pre-qualification stage in the open procedure, although tenderers will be required to complete a document known as a Single-Procurement Document ("SPD") as part of their tender submission.

**Use of the SPD under the Open Procedure** - Is a standard-form document, which will include a range of mandatory and discretionary grounds for exclusion. Bidders will need to confirm in their completed SPD that none of the mandatory and discretionary grounds for exclusion applies to them and/or their organisation.

The SPD may also include several "Pass/Fail" questions or questions in relation to which a minimum score must be achieved, and bidders will be required to achieve a "Pass" or the minimum score in relation to these questions for their tender to be fully evaluated by MHA.

The SPD has replaced the requirement for suppliers to provide up-front evidence or certificates by allowing them to self-declare that they meet certain selection and exclusion criteria.



By law, a contracting authority must ask a winning bidder to submit all the required certificates and documentation before they are awarded a contract. MHA can ask bidders to submit their evidence at any point in the procurement process to ensure that the process is carried out properly. Normally, MHA will request bidders to provide this evidence as part of the SPD return for practical reasons.

In the event of the necessary evidence not being provided at SPD stage, and if following review of supporting evidence submitted by a successful bidder, a bidder is found to have misrepresented itself, then MHA will need to consider the following:

- If MHA identifies that a bidder is in one of the situations which constitutes a mandatory ground for exclusion, or if it does not meet one of the minimum selection criteria, then MHA **must** exclude that bidder from the competition. Depending on the nature and stage of the competition, that may mean either that it proceeds without that bidder, or that competition should be re-evaluated without that bidder's tender.
- If MHA identifies that a bidder is in one of the situations which constitutes a discretionary ground for exclusion, then MHA will need to consider whether to exclude that bidder. The decision to exclude must be made in line with the general principles of transparency, proportionality, equality of treatment and non-discrimination; and
- If the issue is more administrative in nature (e.g., mistakes in providing the documentation), then MHA will have the option of inviting the bidder to supplement or clarify the documentation provided.

**Clarification of Tenders upon the Open Procedure** - Under the open procedure, MHA can ask tenderers to clarify aspects of their tender's following submission. This will adopt the principles and procedures that apply to the Code of Procedure for Single Stage Selective Tendering, whether MHA has opted to appoint a Quantity Surveyor or not, to appraise the priced tender documents. All bidders will also be advised that they should not qualify their tender in any regard, failing which, could lead to disqualification from the procurement process.

**When to Use the Open Procedure** - Is suitable where tenders will be easy to evaluate and/or when there are only likely to be a limited and manageable number of tenders to evaluate.

As all interested parties may submit a tender, the open procedure is unlikely to be appropriate where there is any complexity in the evaluation process for practical reasons, or where MHA anticipates a significant volume of responses and wishes to limit the number of tenderers invited to the tender stage of the process.

#### **d) Restricted Procedure**

- The restricted procedure is a two-stage procedure in terms of which all interested parties may submit an expression of interest in response to the contract advertisement.

- All bidders wishing to be considered for the contract will be requested to complete the most up-to-date version of the SPD. Only those bidders who meet MHA's selection criteria (as set out in the SPD) will be short-listed and invited to the second stage of the process. SPDs will be appraised and scored by officers of the Association and will not require the input of the Management Committee at this stage.
- The minimum number of bidders expected to proceed to Invitation to Tender (ITT) stage will be outlined within the Stage 1 documents prepared by MHA. It is anticipated that the minimum number of bidders will be invited to tender in accordance with the Regulations (unless fewer suitable candidates have met the selection criteria, and there are sufficient numbers to ensure genuine competition).

**Use of the SPD under the Restricted Procedure** - Is a standard-form document, which will include a range of mandatory and discretionary grounds for exclusion. Bidders will need to confirm in their completed SPD that none of the mandatory and discretionary grounds for exclusion applies to them and/or their organisation.

The SPD may also include several "Pass/Fail" questions or questions in relation to which a minimum score must be achieved, and bidders will be required to achieve a "Pass" or the minimum score in relation to these questions for their tender to be fully evaluated by MHA.

The SPD has replaced the requirement for suppliers to provide up-front evidence or certification by allowing them to self-declare that they meet certain selection and exclusion criteria. As highlighted at 5.3.1, normally bidders will be asked to provide this evidence as part of the SPD return for practical reasons.

In the event of the necessary evidence not being provided at SPD stage, and following review of supporting evidence submitted by a successful bidder, a bidder is found to have misrepresented itself, then MHA will need to consider the following:

- If MHA identifies that a bidder is in one of the situations which constitutes a mandatory ground for exclusion, or if it does not meet one of the minimum selection criteria, then MHA **must** exclude that bidder from the competition. Depending on the nature and stage of the competition, that may mean either that it proceeds without that bidder, or that the competition should be re-evaluated without that bidder's tender.
- If MHA identifies that a bidder is in one of the situations which constitutes a discretionary ground for exclusion, then MHA will need to consider whether to exclude that bidder. The decision to exclude must be made in line with the general principles of transparency, proportionality, equality of treatment and non-discrimination; and
- If the issue is more administrative in nature (e.g., mistakes in providing the documentation), then MHA will have the option of inviting the bidder to supplement or clarify the documentation provided.

**Clarification of Tenders under the Restricted Procedure** - As is the case under the Open Procedure, MHA can ask tenderers to clarify aspects of their tenders following submission, all in accordance with the Code of Procedure for Single Stage Selective Tendering. As with the Open Procedure, all bidders will be advised that they should not qualify their tender in any regard, failing which, could lead to disqualification from the procurement process.

**When to Use the Restricted Procedure** - As there is a short-listing phase, the Restricted Procedure is likely to be more appropriate than the Open Procedure for procurements where there is likely to be significant bidder interests and a large volume of expressions of interest, or where MHA needs to limit the short-list of tenderers to those with specific expertise and experience in a particular area or sector.

For more complex procurements, MHA should either: consider using one of the more complex procurement procedures described below or undertake a suitable market testing exercise to identify what solutions may be appropriate prior to issuing a contract notice.

#### **e) Competitive Dialogue Procedure**

The competitive dialogue procedure is suitable for more complex and high value procurements. Interested parties can submit an expression of interest in response to the contract notice. MHA may then carry out a short-listing exercise (using an SPD) and only those meeting MHA's selection criteria will be invited to dialogue.

A minimum of three suppliers must be invited to dialogue (unless fewer candidates have met the selection criteria and these are sufficient to ensure genuine competition, that is, at least two).

MHA then enters a dialogue with bidders to develop one or more suitable solutions to meet its needs. There is no set format that the dialogue must follow. It will usually consist of a series of meetings with each tenderer with each meeting focusing on different aspects of the procurement, for example: financial, technical, and legal.

However, whichever format is used, MHA should be careful to ensure that all tenderers are treated equally and are given the same opportunities to access relevant information.

During the dialogue, MHA can reduce the number of bidders, provided that it confirms it intends to do so in the contract notice or invitation to participate in dialogue. If MHA does choose to down select, it should ensure that at least two tenderers remain in the dialogue until it concludes.

When an appropriate solution(s) has been identified, MHA will conclude the dialogue phase and invite final tenders. MHA may require all final tenders to be based on one solution identified during the dialogue or allow each tenderer to submit a bespoke final tender.

Following receipt of final tenders, MHA evaluates the tenders and selects the best tender based on pre-specified award criteria.

Under the Regulations, contracting authorities may carry out further negotiations with the highest-scoring bidder, following an evaluation of the final tenders "to confirm financial commitments or other terms contained in the tender, in order to finalise the terms of the contract" as long as this does not materially change the essential aspects of the procurement, or risk distorting competition or causing discrimination.

**When to use the Competitive Dialogue Procedure** - The competitive dialogue procedure will be suitable where:

- The needs of MHA cannot be met without adaptation of readily available solutions.
- The contract includes design or innovative solutions.
- The contract cannot be awarded without prior dialogue and negotiation because of the specific circumstances related to the nature, complexity, or the legal and financial makeup of a requirement or because of the risks attaching to them.
- The technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard or common technical specification or technical reference; and/or
- Only irregular/unacceptable tenders have been submitted in response to a previous procurement run using the Open or Restricted Procedure and MHA needs to have the option to dialogue and negotiate with tenderers.

**f) Competitive with Negotiation Procedure**

The competitive with negotiation procedure is suitable for more complex and/or high value procurements. This procedure is a "hybrid" procedure because, as with the restricted procedure, it allows MHA to award a contract based on an initial tender.

However, like the competitive dialogue procedure, it also enables MHA to negotiate with tenderers who submitted an initial tender, and any subsequent tenders, until it decides to conclude those negotiations. There is no limit to the number of negotiation and tender stages.

Once MHA is satisfied that it has completed its negotiation exercise with each bidder, it must formally close the negotiation phase and invite final tender submissions.

Final tenders are then submitted and evaluated, and the contract is awarded.

Unlike for the competitive dialogue procedure, the Regulations do not provide for any clarification or negotiation of the final tenders or the winning tender.

**When to use the Competitive with Negotiation Procedure** - The competitive with negotiation procedure will be suitable where:

- The needs of MHA cannot be met without adaptation of readily available solutions.
- The contract includes design or innovative solutions.
- The contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity, or the legal and financial makeup of a requirement or because of the risks attaching to them.
- The technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard or common technical specification or technical reference; and/or
- Only irregular/unacceptable tenders have been submitted in response to a previous procurement run using the Open or Restricted procedure and MHA needs to have the option to use competitive dialogue and negotiate with tenderers.

MHA will only opt for the procedures set out above following a detailed report being submitted, discussed, and agreed by the MC, clearly outlining the reasons for this procurement procedure. The procedure to be adopted for all contracts, subject to the Regulations and/or the Act, will be discussed and agreed by the MC prior to the procurement process commencing.

## **6: REGULATED PROCUREMENT UNDER THE PROCUREMENT REFORM (Scotland) ACT 2014**

### **a) Overview of the Act**

The Act applies to the following types of contracts:

- Contracts for goods or services with an estimated value of £50,000 (excluding VAT) or more; and
- Contracts for works with an estimated value of £2,000,000 (excluding VAT) or more.

Such contracts must be advertised on the Public Contracts Scotland website and publicly procured in accordance with the terms of the Act and the Procurement (Scotland) Regulations 2016 which imposes general obligations on contracting authorities to treat economic operators equally and without discrimination and to act in a transparent and proportionate manner. Any procurement which is subject to the terms of the Act must comply with the general principles of:

- Transparency – contract procedures must be transparent and contract opportunities publicised.
- Equal treatment and non-discrimination – potential suppliers must be treated equally; and

- Proportionality – procurement procedures and decisions must be proportionate.

Requirements under the Act can be artificially split to avoid the application of the Act (e.g., a single requirement for services with a value of £50,000 cannot be the subject of two separate contracts of £25,000 each).

Where a proposed contract is “mixed”, e.g., if it contains both works and services/supplies or services and supplies, it should be classified according to the main subject of the contract.

A flowchart and guidance note have been included at Appendix 1 to this Policy to assist MHA staff in determining which statutory requirements apply to a particular procurement.

### **Specific statutory duties under the Act and 2016 Regulations -**

There are several specific statutory duties under the Act which will apply to the procurement of any contracts which are subject to the terms of the Act and the 2016 Regulations. The principal statutory duties under the Act are as follows:

**The Sustainable Procurement Duty** - MHA must consider, before starting a procurement competition, how, by the way in which it conducts the procurement process, it might improve the economic, social, and environmental well-being of the authority’s area, how it might facilitate the involvement of small and medium enterprises, third sector bodies and supported businesses, and to consider how it can promote innovation.

Having considered and identified how these aims might be achieved, the Act requires MHA to conduct its procurements in a way designed to secure the improvements identified.

**Annual Procurement Strategy** - The Act and 2016 Regulations require MHA to prepare and publish an Annual Procurement Strategy for each year in which it considers its total expenditure on regulated procurements will exceed £5,000,000. The Strategy will be advertised on the Association’s website. If obliged to prepare an annual Procurement Strategy; MHA must also prepare an annual Procurement Report.

**Contracts Register** - MHA must keep and maintain a Contracts Register which must include details of all contracts entered following a regulated procurement under the Act. In relation to each contract, the Contracts Register must contain the following information:

- The date of award.
- The name of the successful bidder.
- The subject matter of the contract.
- The estimated value of the contract.
- The start date of the contract
- The end date provided for in the contract (disregarding any option to extend the contract) or, where there is no date specified, a description of the circumstances in which the contract will end.

- The duration of any period for which the contract can be extended.

MHA may delete and entries in its Contracts Register only after the contract to which it relates has expired or been terminated.

MHA must make the information contained in its Contracts Register publicly available on the Association's website and by such other means as it considers appropriate. MHA may withhold an entry or part of an entry in the Contracts Register if it considers that making it publicly available would:

- Impede law enforcement or otherwise be contrary to the public interest.
- Prejudice the commercial interests of any person; or
- Prejudice fair competition between economic operators.

The Contracts Register will be monitored by the Finance Manager and updated regularly by the Asset Manager due to most procurement exercises being undertaken by the Asset Management Team.

**Community Benefit Requirements** - The Act requires that, for any regulated procurement with an estimated value equal to or greater than £4,000,000 (excluding VAT), MHA must consider whether to impose community benefit requirements as part of the contract delivery before carrying out the procurement and which are appropriate to the value of the contract.

MHA must include in the contract notice relative to the procurement, a summary of the community benefit requirements it intends to impose, or if it is not going to include any community benefit requirements, the reasons for not including any such requirements.

#### **b) Procurement Procedures subject to the Act**

There are no specific prescribed procurement procedures or timescales under the Act, but MHA will utilise one of the procurement procedures under the Regulations described in Section 5 of this Policy, including either Open or Restricted Procedure for procuring contracts which are subject to the terms of the Act. Regulated procurements subject to the Act and the 2016 Regulations will generally adhere to the same or similar timescales set as part of the 2015 Regulations, including completion of an SPD to maintain a consistent approach.

In relation to advertising of contract opportunities which are subject to the terms of the Act, the Contract Notice, tender documentation, and contract documentation must be published on the Public Contracts Scotland website. Tenderers should be advised to submit any clarification through the Public Contracts Scotland website and these clarifications and answers will be available to all bidders to ensure transparency and anonymity.

Tenderers will be advised to only submit their tender submissions through the Public Contracts Scotland website.

The procurement route and associated procedures to be adopted for all contracts, subject to the Act, will be discussed and agreed by the MC prior to the procurement process commencing.

Bidders will not be expected to have a turnover that is more than twice the value of the contract.

All unsuccessful bidders will be notified of the outcome of the procurement exercise with details of the criteria and scoring. Bidders can request further information within 30 days of the unsuccessful letter being issued. Any complaint or challenge will follow the same procedure as that outlined under Section 5.

Where appropriate, MHA will split contracts into smaller Lots to create opportunities for SMEs and where appropriate supported businesses.

**7: UNREGULATED PROCUREMENTS – CONTRACTS WHICH ARE NOT SUBJECT TO EITHER THE REGULATIONS OR THE ACT DUE TO ANTICIPATED THRESHOLD**

Contracts with an estimated value below the thresholds set out in the Regulations and the Act do not require to be procured in accordance with the terms of the Regulations or the Act but must be procured in accordance with the requirements of Section 7 of this Policy.

Contracts with an estimated value below the prescribed thresholds do not need to be advertised in FTS or PCS or publicly procured in terms of the Regulations or Act. MHA’s policy for works and/or services and supplies expected to be in excess of £20,000 and below £50,000 will be to advertise as a Quick Quote via PCS or award via a central Framework Agreement.

The procurement procedure to be adopted for such non-regulated contracts, anticipated to fall within these cost limits will be presented to the Services Committee for information prior to the procurement process commencing, unless timescales prohibit this. If so, the Services Committee will be updated on the procurement exercise at the first available opportunity. It is expected that the 3 bidders will be expected to quote for these works, and that the bidder submitting the lowest quote or tender will be the successful bidder i.e., quality/price will not be a fundamental pre-requisite of this procurement procedure. The procurement routes/options are highlighted in more detail in the table below.

Regarding procurement of goods, services or supplies below £20,000, the table below also highlights the procedures to be followed and are in line with the approved Financial Regulations Policy (FRP):

Estimated value of contract	Procedure to be followed
Below £5,000 works and services*	Goods, services and works to be procured in line with the authorisation limits highlighted and approved as part of the Financial Regulations Policy. One quotation will suffice; however, there must be a clear audit trail demonstrating the scope of the goods, services or works, including nature of the works and receipt of a bona fide quotation* The award can be a direct



	award via a negotiation, QQ or Framework Agreement.
Between £5,000 and £20,000 works and services*	Written specification and a minimum of 2 quotes requested for works under £10,000 and 3 quotes for works over £10,000 and less than £20,000 via a QQ or a central Procurement Framework. * All quotes to be returned electronically and approved by the Asset Manager prior to award (as most works contracts will be in relation to Asset Management related issues) or the Head of Property in the Asset Managers absence taking account of the authorisation levels within the Financial Regulations Policy. The same process will apply for the supply of goods or services, subject to preparation of a brief or return of a detailed specification. (The Manager/Officer overseeing the procurement must provide a detailed report to enable the Asset Manager or Head of Property to approve the award). Direct awards (no need to obtain more than one quote) in line with the authorisation levels, contained within the Financial Regulations Policy can be made where either the Asset Manager or Head of Property deem this to be an appropriate course of action and in the best interests of MHA e.g., health and safety reasons, requiring urgent action. Any such award must include a total price, start date and completion date for the works/services/supplies and recorded within the Contracts Register, ultimately being presented to the MC.
Between £20,000 and £50,000 for works and goods/services*	Procurement Route 1 via PCS Quick Quote (QQ). Based on 100% price (unless a quality score is required) or via a central Procurement Framework). All quotes must be returned electronically via the PCS Post box and opened in the presence of 2 staff members (inc.one member of the Management Team). Thereafter, Tender Register and Contracts Register to be updated. Tender Report to be submitted to the Services Committee for approval prior to award of any contract.
Between £50,000 and £2m for works only	Generally, procurement Route 2 via PCS or award via a central Procurement Framework. Process to be adopted to follow same procedure as Regulated Procurement Route for contracts being advertised via PCS i.e., MEAT identified following Quality/Price exercise. If awarded via Framework, the framework's terms and conditions will be observed. Procurement route

	to be discussed and agreed by the Services Committee prior to procurement process being commenced. No contracts will be entered into until a Tender Report has been presented and approved by the Services Committee.
--	---

\* Excluding any works relating to an existing Measured Term Contract (MTC) if the works are “call-offs” and already priced as part of the MTC/Contractor’s Framework.

**8: REGULATED PROCUREMENTS UNDER THE LIGHT TOUCH REGIME UNDER THE PUBLIC CONTRACTS (Scotland) REGULATIONS 2015**

**a) Overview of the Light Touch Regime**

The “Light Touch Regime” is a specific statutory regime under the Regulations which applies to certain types of services contracts for social, health, healthcare, and certain other services, which are listed in Schedule 3 to the Regulations. Schedule 3 is appended to this Policy for information and reference. Due to the types of services and contracts highlighted within Schedule 3, the “Light Touch Regime” is not likely to apply in many instances to MHA.

**b) Procurement of Contracts under the Light Touch Regime**

Different procurement procedures apply to procurement of the relevant types of contracts covered by the Light Touch Regime, depending on their value.

**Light Touch Regime contracts values at or above the threshold per the 2015 Regulations:** Where a relevant service contract is valued at or above the threshold of £663,540 inclusive of VAT, MHA must:

- Publish a Contract Notice or Prior Information Notice (PIN) if used as a call for competition on Public Contracts Scotland for onward transmission to the FTS.
- Publish a Contract Award Notice (these can be grouped quarterly)
- Apply reasonable and proportionate time limits to any stages of the procurement; and
- Assess successful bidder(s) to identify any instances where mandatory exclusion grounds may apply.

There is no set procedure laid down for the conduct of procurement processes under the Light Touch Regime other than the requirements above general requirements and MHA has a degree of discretion to use the tools, techniques, and procedures of their choice when following the Light Touch Regime.

Accordingly, the approach to procurement of contracts under this may be determined on a case-by-case basis, provided that, in each instance, the procedure adopted is proportionate and appropriate to the scale and type of procurement process being conducted. As a minimum requirement, the procedure adopted should cover essential information such as timescales,

evaluation methodology and any scope for change/change management procedures.

It must be developed in line with any internal governance requirements and in accordance with the principles of transparency and equal treatment. Any award of a contract under the Light Touch Regime must be made based on the “most economically advantageous tender” and not based on price alone.

**Light Touch Regime contracts valued below the 2015 Regulations threshold** - Where a relevant service contract is valued below the threshold of £663,540, MHA has discretion to directly award a contract without undertaking any form of public procurement exercise.

If MHA chooses to undertake some form of public procurement exercise, then this exercise should be undertaken in accordance with the terms of the Act. MHA must publicise the award of any Light Touch Regime contracts valued below the threshold on Public Contracts Scotland and must include these contracts in its Contracts Register.

## **9: FRAMEWORK AGREEMENTS**

Rather than conducting a stand-alone procurement procedure in respect of a particular requirement, MHA may consider procurement through a Framework Agreement.

**What is a Framework Agreement?** - An ‘umbrella agreement’ that sets out the terms (particularly relating to price, quality, and quantity) under which individual contracts (“call-offs”) can be made throughout the period of the Agreement (which will be a maximum of 4 years).

Framework Agreements can be set up for one contracting authority to use or can be set up for several contracting authorities to use. MHA is in the process of setting up a Contractor’s Framework, in conjunction with another local Housing Association covering a broad range of maintenance contracts for works and supplies.

MHA may also determine that it would be in the best interests of the tenants and the Association to access existing frameworks, such as, the Scottish Procurement Alliance (SPA), PFH, Buying Solutions, Hub West, Wheatley Group, Link Group, and other Framework Agreements set up by other RSLs.

Framework Agreements are either concluded with a single supplier or with multiple suppliers. Often, Framework Agreements are split into lots as is the case with MHA’s Contractors Framework.

**Do Framework Agreements need to be advertised in FTS?** - If the value of all the potential call-offs under the Framework Agreement is estimated to exceed the thresholds, then it should be advertised in the FTS. However, the individual call-offs do not then need to be re-advertised. It is understood under the Act, Contract Award notices do require to be published on Public Contracts Scotland

in respect of call-off contracts with a value of more than £50,000 for goods or services and £2 million for works.

**How are call-offs awarded under a Framework Agreement?** - If the Framework Agreement is awarded to one provider, then MHA can simply call-off the requirement from the successful supplier as and when it is needed. Where the Framework is awarded to several suppliers, there are two ways in which call-offs might be made:

- Where the terms laid out in the Framework Agreement are detailed enough for the purchasing authority to be able to identify the best supplier for that requirement, then the authority can award the contract without re-opening competition; or
- If the terms laid out in the Framework Agreement are not specific enough for the purchasing authority to be able to identify which supplier could offer them best value for money for that requirement, a further mini-competition would be held between all the suppliers on the Framework Agreement who can meet the need.

**Advantages of Framework Agreements** - If the Framework Agreement has been properly concluded to ensure full compliance with the Regulations and Act, it is understood that MHA does not require following the full FTS procedure in respect of each requirement which is the subject of a call-off, thus reducing costs and timescales. There are also potential benefits of economies of scale.

**Potential Disadvantages of Framework Agreements** - Framework Agreements may be relatively unresponsive to change – there may be new suppliers and/or new solutions within the market that were not included when the Framework Agreement was initially set up. Framework Agreements tend to apply a “one size fits all” approach, which may make it difficult for MHA to satisfy their own procurement objectives through use of a Framework Agreement which has been procured by a third party and may not have been tailored to MHA’s particular requirements.

**Use of Frameworks by MHA** - MHA will only utilise an existing Framework following a report being prepared, discussed, and agreed by the Services Committee. This may include only Frameworks being considered (for high value contracts more than £20,000). MHA will ensure that the procurement process thereafter followed, will 1) comply fully with the Framework supplier’s procedure and terms conditions and 2) ensure that MHA’s procurement objectives are fully met. Utilising an existing framework will generally be considered where timescales are prohibitive in terms of utilising either the Open or Restricted Procedure and where a strong Business Case outlines the advantages of utilising an existing framework.

## **10: EXCEPTIONS TO THE REQUIREMENT TO PUBLICLY PROCURE CONTRACTS**

There are certain exceptional circumstances in which tenders are not required for the procurement of contracts for supplies, services, or works which are the above the applicable threshold value under the Regulations or the Act, including:

- Where the tender may only be awarded to a particular supplier for technical or artistic reasons or where a particular supplier has exclusive rights, including, but not limited to, intellectual property rights, which mean they are the only supplier capable of meeting MHA's requirements.
- Where a direct award is made when no suitable tenders were received following an open or restricted procurement exercise.
- Where MHA has already entered a contract with a supplier and requires additional services or works to be supplied which were not included in the original contract but which, through unforeseen circumstances e.g., health and safety reasons, additional works that could not have been anticipated prior to the contract commencing, such as structural works, have become necessary.
- Where MHA wants a supplier with which it already has a contract to provide new works or services which are a repetition of works or services carried out under the original contract and such new works or services were provided for in the original contract notice; or
- Where (but only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by MHA, the time limits for one of the standard procurement procedures cannot be complied with.

The above exceptions may only be relied upon in limited circumstances and are subject to a range of specific conditions, including, where necessary, obtaining legal advice before relying on any such exemption.

## **11: RENEWALS, EXTENSIONS, AND CHANGES TO EXISTING CONTRACTS**

A proposed extension, renewal or amendment to an existing contract may be considered equivalent to the award of a new contract if it constitutes a material change.

If a change to an existing contract has the effect of creating a new contract, MHA may need to undertake a new competitive tender process in accordance with the Regulations or the Act.

Material changes to a contract are those which demonstrate the intention of the parties to renegotiate the essential terms of the original contract. Amendments to a contract may be regarded as "material" where they:

Introduce conditions which, had they been part of the initial award procedure, would have allowed for the admission of tenders other than those initially admitted or would have allowed for the acceptance of a tender other than the one initially accepted – in other words, the new conditions would have potentially changed the participants in and/or the outcome of the original procurement process – examples include extensions or price increases.

- Extend the scope of the contract considerably to encompass services not initially covered; and/or

- Change the “economic balance” in favour of the contractor in a manner not provided for in the terms of the original contract – in other words, they make changes which improve the contractor’s position or alter the balance of risk under the contract in favour of the contractor – examples include extensions or price increases or agreeing to renegotiate a contract in a way which relieves a contractor of an obligation.

The Regulations restrict MHA’s ability to modify publicly procured contracts. If any member of MHA staff is considering modifying in any terms of a publicly procured contract, then they must first consult with and obtain the written approval of the MC and, if considered necessary, obtain appropriate legal advice.

## APPENDIX 1: FLOWCHART – STATUTORY REQUIREMENTS

### **Choice of Procurement Procedure Guidance on Procurement Flowchart**

The attached flowchart has been designed for MHA staff members to determine what statutory requirements apply to procurements.

The relevant legislation is as follows:

- Procurement Reform (Scotland) Act 2014 – the “Act”; and
- Public Contracts (Scotland) Regulations 2015 – the “Regulations”
- Procurement (Scotland) Regulations 2016

Even where a procurement does not fall under the requirements of either the Act or the Regulations, staff must ensure that bidders are treated equally and non-discriminatorily and that MHA acts in a transparent and proportionate manner (the “Principles”).

#### **Type of Contract:**

- Goods or services
- Works

#### **Goods or Services:**

MHA staff must consider the estimated total value of a contract before commencing any procurement exercise. The following must be considered:

- Any amounts payable as part of an option or renewal.
- The estimated value upon commencement of the procurement; and
- The total estimated value of any lots.

Estimated total value of contract is < £50,000 exclusive of VAT – neither the Act nor the Regulations apply. Procurement of goods or services and supplies will be in accordance with procedures set out in Section 7 of the Procurement Policy.

Estimated total value of contract > £50,000 but <£213,477 inclusive of VAT– the Act applies. Procurement of goods and services will be carried out in accordance with Section 6 of the Procurement Policy.

Estimated total value of contract > £213,477 inclusive of VAT - the Regulations apply. Procurement of goods and services will be carried out in accordance with Section 5 of the Procurement Policy.

Estimated total value of contract > £4m – Community Benefit clauses require being incorporated within the procurement process.

If the services to be procured are health or social care services, procurement of such goods and services will be carried out in accordance with Section 8 of the Procurement Policy.

**Works:**

MHA must consider the estimated total value of a contract before commencing any procurement exercise. The following must be considered:

- Any amounts payable as part of an option or renewal.
- The estimated value upon commencement of the procurement.
- The total estimated value or any suppliers and services necessary for executing the works; and
- The total estimated value of any lots.

Estimated total value of contract < £2m exclusive of VAT– neither the Act nor the Regulations apply, Procurement of works will adhere to the procedures outlined in Section 7 of the Procurement Policy.

Estimated total value of contract > £2m exclusive of VAT but <£5,336,937 inclusive of VAT – the Act applies. Procurement of works will adhere to the procedures outlined in Section 6 of the Procurement Policy.

Estimated total value of contract > £4m but < £5,336,937 inclusive of VAT – the Act (Community Benefits) apply in accordance with Section 6 of the Procurement Policy.

Estimated total value of contract > £5,336,937 inclusive of VAT – the Regulations apply, and the Act (Community Benefits) apply as outlined in Sections 5 and 8 of the Procurement Policy.

**Procurement of goods, services or works subject to the Act (“Regulated procurements”)**

The Sustainable Procurement Duty means it is the duty of MHA as a contracting authority to consider how the procurement can: (i) improve social, economic, and environmental wellbeing of MHA's area; (ii) facilitate the involvement of SMEs, third sector bodies and supported business in the procurement process; and (iii) promote innovation; and that the procurement process will be carried out with a view to securing such improvements.

Publication of a contract notice (excluding call-offs under framework agreements unless the call-off is above the thresholds) will be subject to a Contract Award notice on PCS.

Where MHA decides to exclude a supplier from participating in a procurement process before a tender has been submitted, it must notify that supplier of the decision and include: (i) the names of the excluded suppliers; (ii) the exclusion criteria used; and (iii) MHA's scoring (if any) used against the criteria.

Upon deciding to award a contract, MHA must notify all unsuccessful tenderers of the name of the successful tenderer, the award criteria used, and MHA's scoring against those criteria, of the unsuccessful tenderer(s) and the successful



tenderer. Requirement for technical specifications to be set out in the tender documents.

### **Procurement of works subject to the Act (Community Benefits)**

The requirements set out in section 4 above and the principles apply.

Before undertaking the procurement, MHA must consider whether to impose Community Benefit requirements as part of the procurement exercise. Community Benefit requirements relate to training and recruitment, availability of sub-contracts, or improvements to the economic, social, or environmental wellbeing of MHA's area.

The contract notice must contain:

- a summary of the community benefit requirements intended to be included in the contract; or
- a statement of reasons for not including any community benefit requirements.

Where requirements are included in a contract, the Contract Award notice must state the benefits which MHA considers to be derived from the requirements and should always be proportionate in terms of the type, scale, and value of the procurement exercise.

### **Procurement of goods or services subject to the Regulations**

The principles apply.

The tender requires to be published in the FTS and one of the defined procedures set out in the Regulations must be followed:

- Open or restricted procedure.
- Negotiated procedure without prior publication.
- Innovation partnership.
- Competitive procedure with negotiation; or
- Competitive dialogue.

Specific requirements include:

- technical specifications to be set out in the tender documents.
- tender documents must be available electronically and free of charge from the date of publication of the contract notice.
- mandatory and discretionary grounds for excluding tenderers – maximum turnover requirement of two times the value of the contract.
- selection and award criteria; and
- self-declaration for tenderers under the Single Procurement Document.
- 

### **Procurement of goods, services or works under the Regulations and the Act (Community Benefits)**

The requirements in sections 5 and 6 above apply.

## **Framework Agreements**

If a Framework Agreement is required, the procedures set down in the Regulations apply. The term of a framework agreement must not exceed four years, including any extensions.

Single supplier Framework Agreement – a contract based on that agreement must be awarded in accordance with the Framework Agreement and MHA may write to the supplier to supplement its tender as necessary for the award of such a contract.

Multi-supplier Framework Agreement – there are specific provisions within the Regulations in terms of awarding contracts under the Framework Agreement, either without or by reopening competition.

## **Dynamic purchasing systems**

This type of procurement is completely electronic and is governed by the Regulations.

## **Health or social care services**

If the total estimated value of the contract is < £663,540 inclusive of VAT, then MHA may award a contract for health or social care services without seeking offers. However, if the total estimated value of the contract exceeds £663,540 then the procurement is subject to the light touch regime under the Regulations, which set out certain principles for procurement contracts of this nature.

## **Procurement Strategy**

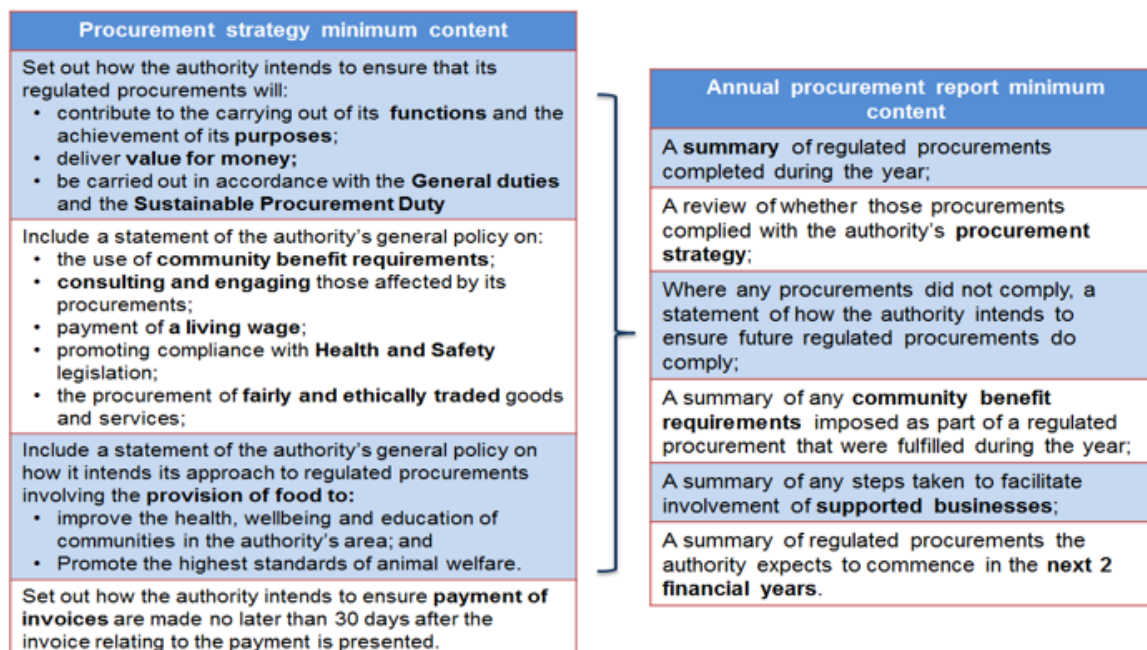
Where MHA's total value of regulated procurements is £5m or more within a financial year, a Procurement Strategy must be prepared and published online before the start of that financial year in accordance with the Act. If MHA's total value of regulated procurements is less than £5m but it becomes apparent during the financial year that this threshold will be exceeded, MHA must prepare and publish online, a Procurement Strategy for that financial year. MHA will produce an annual Procurement Strategy regardless of the amount of Regulated Procurement, within that financial year which should be read in conjunction with this Policy.

## **Annual Sustainable Procurement Report**

If MHA has prepared (or revised) a Procurement Strategy for a financial year and has reached the £5M regulated procurement threshold for that financial year, an annual Sustainable Procurement Report on regulated procurements will be prepared, published online, and include the following minimum content.

[Section 18 of the Procurement Reform \(Scotland\) Act 2014](#) sets out the minimum content that an annual procurement report must include. The image below illustrates the minimum content that an organisation must provide in its procurement strategy and annual procurement.

## Minimum Content



Reference: L&G-3-A

26/05/17

As part of the Annual Procurement Strategy, MHA will monitor its Procurement Objectives by reporting to Services Committee on the following Key Performance Indicators (KPIs):

Procurement Strategy KPI 1: Target 100% compliance with all statutory duties under "the Regulations" and "the Act" for all regulated procurement activities.

Procurement Strategy KPI 2: Target 100% of regulated and unregulated procurement contracts (where appropriate) have considered the Sustainable Procurement Duty. (e.g., improving the social/economic, environmental wellbeing of the wider Milnbank community, facilitation/involvement of SMEs, 3<sup>rd</sup> sector bodies and supported businesses and the promotion of innovation etc).

Procurement Strategy KPI 3: Target 100% of all contracts procured are included on a Contracts Register and anticipated procurement activity is also included for the current financial year. All Regulated Procurement information will be available online.

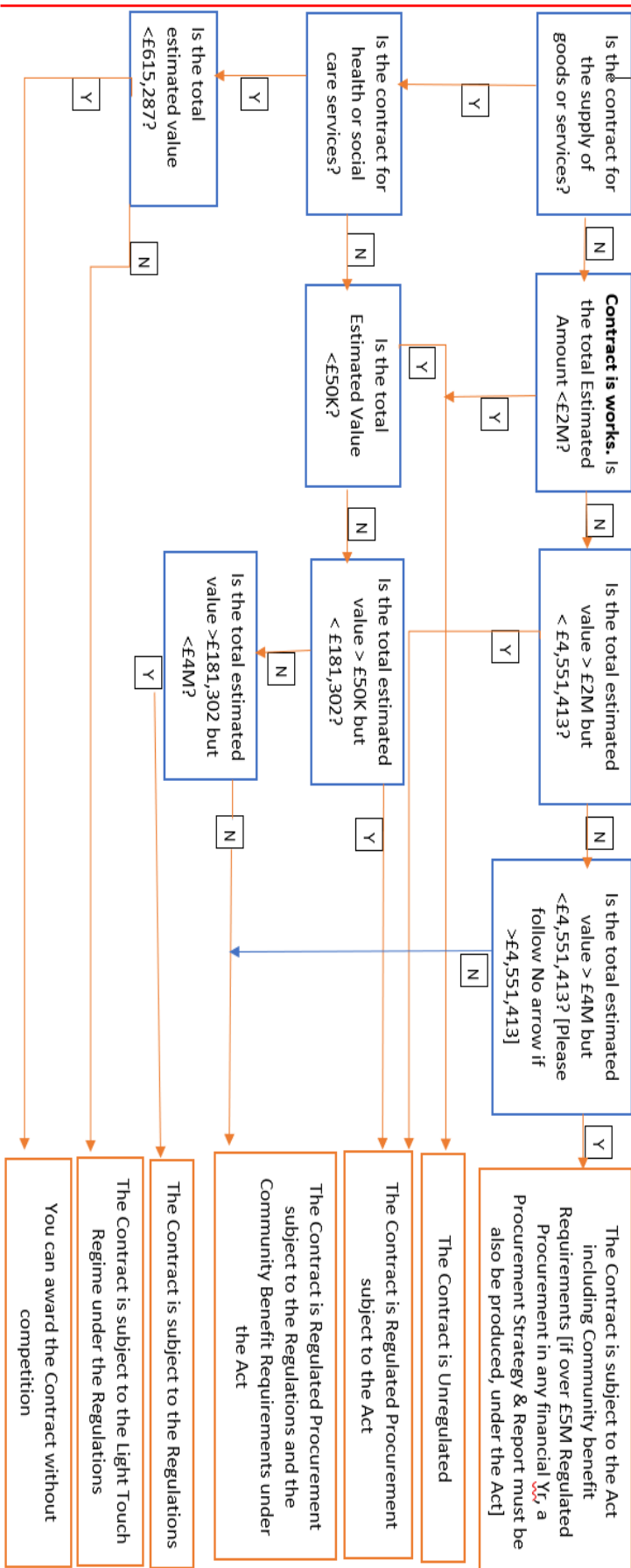
### Flowchart

The following flowchart has been designed for MHA staff members to determine what statutory requirements apply to procurements. The relevant legislation is as follows:

- Procurement Reform (Scotland) Act 2014 – the "Act"; and
- Public Contracts (Scotland) Regulations 2015 – the "Regulations"; and
- Procurement (Scotland) Regulations 2016

Even where procurement does not fall under the requirements of either the Act or the Regulations, MHA staff must ensure that bidders are treated equally and

non-discriminatorily and that MHA acts in a transparent and proportionate manner (the "Principles").



## **APPENDIX 2: PROCUREMENT TIMESCALE**

**Timescales per the Regulations and generally adhered to for procurements subject to the Act**

<b>Type of procedure</b>	<b>Standard timescales</b>	<b>Options for MHA to reduce timescales</b>	<b>Tenders submitted electronically</b>	<b>Requirement urgent, longer time limit is impractical</b>	<b>PIN published no more than 12 months &amp; no less than 35 days from despatch of contract notice</b>
<b>Open</b>	Despatch of contract notice to receipt of responses – 35 days Standstill period – 10 days if notice issued electronically / 15 days if by other means	5-day reduction	Period reduced to 15 days		.
<b>Restricted</b>	Despatch of contract notice to receipt of responses – 30 days ITT to receipt of tenders – 30 days Standstill period – 10 days if notice issued electronically / 15 days if by other means	May agree time-limit with tenderers – in absence of agreement minimum period is 10 days	5-day reduction	Period reduced to 15 days  Period reduced to 10 days	Period reduced to 10 days
<b>Competitive dialogue</b>	Despatch of contract notice to expressions of interest – 30 days Standstill period – 10 days if notice issued electronically / 15 days if by other means				
<b>Competitive with negotiation</b>	Despatch of contract notice to expressions of interest – 30 days ITN to receipt of tenders – 30 days Standstill period – 10 days if notice issued electronically / 15 days if by other means	May agree time-limit with tenderers – in absence of agreement minimum period is 10 days	5-day reduction	Period reduced to 10 days	Period reduced to 10 days

**APPENDIX 3: LIST OF SERVICES COVERED BY THE NEW LIGHT-TOUCH REGIME**

SCHEDULE 3 of the Public Contracts Regulations 2015

Regulations 5(1)(d) and 74

SOCIAL AND OTHER SPECIFIC SERVICES

<b>CPV Code</b>	<b>Description</b>
75200000-8; 75231200-6; 75231240-8. 79611000-0; 79622000-0 (Supply services of domestic help personnel); 79624000-4 (Supply services of nursing personnel) and 79625000-1 (Supply services of medical personnel) from 85000000-9 to 85323000-9; 98133100-5, 98133000-4; 98200000-5; 98500000-8 (Private households with employed persons) and 98513000-2 to 98514000-9 (Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services)	Health, social and related services