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24th August 2023

BY EMAIL



Our Ref: FOI 2013

Dear 

Your request for information was received on 27th July 2023 and was dealt with under the terms of the Freedom of Information Act 2000. Please be advised that the Business Services Organisation (BSO) has now completed its search for the information you requested in relation to FFP3 respirators supplied by PJD Safety Supplies Ltd between June 2020 and June 2021.

I should advise you that this information is in the public domain and can be accessed via the link below:.

[External financial guidance 2022 | Department of Health \(health-ni.gov.uk\)
doh-hscf-13-2022.pdf \(health-ni.gov.uk\)](https://www.health-ni.gov.uk/doh-hscf-13-2022.pdf)

I hope that the information provided assists you. If you are dissatisfied in any way with the handling of your request, you have the right to request a review. You should do this as soon as possible or in any case within two months of the date of issue of this letter, as the BSO, along with all other public authorities are not obliged to accept internal review requests after this period has lapsed.

In the event that you require a review to be undertaken, you can do so by writing to

Information Governance Manager,
2 Franklin Street,
Belfast,
BT2 8DQ

If, following an internal review, carried out by an independent decision-making panel, you remain dissatisfied in any way with the handling of the request, you



may make a complaint under Section 50 of the Freedom of Information Act, to the Information Commissioner's Office and ask that they investigate whether the BSO has complied with the terms of the Freedom of Information Act.

You can contact Information Commissioner at:

Website: www.ico.org.uk
Phone: 0303 123 1113
Email: casework@ico.org.uk
Post: Information Commissioner's Office
3rd Floor, 14 Cromac Place
Belfast
BT7 2JB

In most circumstances the Information Commissioner will not investigate a complaint unless an internal review procedure has been carried out. However, the Commissioner has the option to investigate the matter at his discretion.

Yours Sincerely,

A handwritten signature in cursive script that reads "Karen Bailey".

Karen Bailey
Chief Executive

<p>Subject: Guidance on Direct Award Contracts - amended</p>	<p>Circular Ref: HSC(F) 13/2022 DoH Ref: HE1/22/185788 Issued: 12 April 2022</p>
<p>For Action to: Chief Executive and Finance Director of each HSC Body and NIFRS</p>	<p>Superseded Documents: HSC (F) 55/2011, Perm Sec Letter of 27.6.11 Ref AMCC 2991, HSC(F) 05/2012, HSC (F) 67/2012 & HSC (F) 67/2016, PGN 02/16, HSC(F) 58/2016</p>
<p>Summary of Contents: This circular updates the guidance in HSC (F) 13-2022 issued on 25 March 2022. The guidance at the second scenario at Annex 4, page 33, has been amended to correct a transcription error. All other information remains unchanged.</p>	<p>Related Documents: HSC (F) 52/2016, CPD PGN 03/11 , HSC(F) 58/2016 issuing PGN 03/11 & PPN 02/21</p>
<p>Enquiries: Any enquiries about the contents of this Circular should be addressed to: Gerry Anderson Procurement Policy Room D3 Castle Buildings Stormont BT4 3SQ T: 028 90765631 E: gerry.anderson@health-ni.gov.uk</p>	<p>Expiry Date: N/A Status of Contents: For information and action as appropriate</p>

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GUIDANCE ON DIRECT AWARD CONTRACT APPROVAL REQUESTS BY DEPARTMENT OF HEALTH ARMS LENGTH BODIES

1. Background

- 1.1. In order for a Direct Award Contract (DAC) to be legally compliant it must fall within the set of circumstances defined in Regulation 32 of the Public Contracts Regulation, see **Annex 1**, however there may be circumstances where it would be in the public interest to award a contract without competition.
- 1.2. DACs involve risks, whether in respect of compliance with legislation or ensuring Value for Money (VFM). Arm's Length Bodies (ALBs) should therefore seek advice from Procurement and Logistics Service (PaLS) and where necessary Directorate of Legal Services (DLS) to assist in balancing these risks.
- 1.3. Operational guidance on preparing, submitting and processing a Goods and Services (G&S) DAC is at **Annex 2**. The request form is appended at **Annex 3**.

2. Procurement Control Limits

- 2.1. The Procurement Control Limit (PCL) is £10,000 for procurements carried out, or influenced, by BSO PaLS as the Centre of Procurement Expertise (CoPE) for HSC Bodies, this includes:
 - where the purchase order is raised by PaLS;
 - where the goods/services become PaLS' catalogue items;
 - where the goods/services fall into a specific category which does not require CoPE approval, per **Annex 4**.
- 2.2. A DAC is required for all procurements over £5,000 where a Health and Social Care (HSC) body has retained responsibility for its own tendering and quotation process and/or raising of orders.

3. Procurement of Goods

Approval Delegation for Goods

3.1. ALB Accounting Officers (AOs) must approve all over threshold DACs and forward to the Departmental Accounting Officer (DAO) for approval if these are RAG-rated Red or Amber by PaLS, per **Annex 2**. In some instances ALB AOs have delegated authority to approve DACs without referral to the DAO and may have discretion to further delegate authority for approval to Directors in the ALB, per **Annex 2**.

Derogation from PGN 03/11¹, “Direct Award Contracts”

3.2. In addition to the derogations in paragraph 3 of PGN 03/11, in contracts involving patent-protected drugs or drugs needed for continuity of care, the DAO has confirmed that the approval of a DAC is not required. However a Contract Award Notice (CAN) shall be published in the Find a Tender Service (FTS). In these contracts the period of the contract:

- In cases of patent protection, shall not exceed the period of patent protection.
- In cases of single UK Market Authorisation, shall take in to consideration the likelihood of additional UK Market Authorisations being granted. In any case, the period of contract should not exceed three years unless by exceptional circumstances to encourage regular review.

3.3. The ALB is still required to record and report such contracts to the DoH and notify BSO PaLS of contracts over £30,000 for publication.

3.4. As stated in PGN 03/11 Para 3.2.2, advice and assistance should be sought from PaLS **before** modifying a contract or negotiating the price or terms with a supplier. However, responsibility resides with the ALB entering into the DAC for the following:

¹ PGN 03/11 will be replaced by Department of Finance with a Dear Accounting Officer letter as policy relates to awarding contracts without a procurement process and is an accountability matter.

- determining VFM;
- conducting cost benchmarking;
- documenting the agreed price and requirements with the supplier engaged under a DAC, and
- managing the Contract.

3.5. An assessment of the risk associated with a DAC is made on the basis of a Red/Amber/Green/Green (Conditional) (RAG) status in accordance with **Annex 2**.

3.6. For DACs that are, or are likely to be, Red or Amber rated and over threshold, the ALB must engage with their local PaLS site **before** completing a DAC form, to establish if a compliant procurement route is available.

4. Procurement of Services

4.1. A range of health and social care services will be of less interest to cross border competition and therefore follow a specific set of rules as outlined in PPN 02/21 “Procurement of Social and Other Specific Services”.

4.2. These include core health and social care services typically delivered only in the public sector by HSC bodies and for the purpose of this guidance extends to Agency medical and nursing staff recruited to provide core health and social care services. Core health and social care services can be characterised as follows:

- typically delivered only in the public sector by HSC bodies;
- directly related to the care of a patient/person; and
- involve delivery of health and social care services to a service user.

4.3. A contract for agency workers for the delivery of core health and social care services and negotiated with an Off-contract Recruitment Agency, which will or is likely to exceed the threshold, must be a last resort. Off-contract suppliers must only be used by exception to secure an urgent and immediate placement and only when all other avenues have been exhausted. DoH understands that

each HSC Body uses reasonable endeavours to ensure compliance with the following steps before deciding to use Off-contract provision;

- a. Source permanent staff;
- b. Use Bank staff;
- c. Use an Agency contractor; and, only by exception,
- d. Use an Off-contract Recruitment Agency.

4.4. LTR services are listed at **Annex 5** and those relevant to core health and social care are highlighted. If you are in doubt over the description of an LTR service, contact PaLS for advice.

Approval delegations for Services

4.5. A DAC is required for over threshold LTR core health and social care services where, from the outset, it is known, or reasonably ought to be known, that the value will breach the LTR threshold.

4.6. Approval for DACs directly related to services that are over threshold is delegated to the ALB AO with submission to the DAO not required. Currently the AOs of the HSCB, Trusts and PHA may delegate further, though only to Organisational Board level. Other ALBs may not delegate further in this way.

4.7. Approval for LTR DACs not directly related to core health and social care services that are over threshold and Green-rated is delegated to the ALB AO with submission to the DAO not required. However over threshold DACs that are rated Red or Amber require AO and DAO approval.

4.8. Approval for non LTR services DACs is in accordance with **Annex 2**.

Derogation from PGN 03/11, “Direct Award Contracts”

4.9. In addition to the derogations in paragraph 3 of PGN 03/11, there is an additional derogation described in PPN 02/21 “Procurement of Social and Other Specific Services”, paragraph 5. Therefore contracts for core health and social care services below the relevant threshold and negotiated with a single

provider, do not require completion of a DAC form. This includes medical and nursing agency staff who are providing core health and social care services. If there is no competition there should be convincing reasons recorded as to why. Paragraph A.4.4.9 of Managing Public Money Northern Ireland (MPMNI) provides that goods and services should be acquired through competition unless there are convincing reasons to the contrary.

4.10. The ALB must regularly monitor its spend on these services given the potential for aggregation.

4.11. LTR contracts which are **not** core health and social care services, whether over or under threshold, should follow the operational guidance at **Annex 2**.

5. Departmental Audit and Risk Assurance Committee (DARAC) Reporting

5.1 As required under PGN 03/11, ALBs must ensure that arrangements are in place to collect and monitor all Goods & Services DACs, under or over threshold. The Department will issue monitoring requests biannually and report to DARAC in line with **Annex 6**.

6. Legal Challenge

6.1 Where a contract award decision is subject to legal challenge and, as a result, an interim contract is required, separate DAO approval is not required for the DAC awarded to the incumbent supplier. The DAO will need to be formally notified, at the time of award and as part of the bi-annual reporting, by the ALB AO of contracts awarded under these circumstances.

7. Training Resources

7.1 There is material to support implementation of this guidance. BSO will advise ALBs on access.

8. Implementation

- 8.1 The Department will facilitate ALB's a six week period from the date of issue for full implementation of this guidance.

9. Action by ALBs

- 9.1 Please ensure this circular and annexes are brought to the attention of the appropriate staff within your organisation and any relevant action points are noted.

Annexes:

- 1. Regulation 32 of the Public Contracts Regulations 2015**
- 2. Operational Guidance**
- 3. DAC Request Form**
- 4. DAC Approval Matrix**
- 5. List of Services covered by the Light-Touch Regime**
- 6. DARAC Reporting**
- 7. Direct Award Contracts Requiring Publication**
- 8. List of Key Acronyms**

Regulation 32 of the Public Contracts Regulations 2015 - Use of the negotiated procedure without prior publication

Reg 32 (1) In the specific cases and circumstances laid down in this regulation, contracting authorities may award public contracts by a negotiated procedure without prior publication.

General grounds

(2) The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases:-

(a) where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission where it so requests;

(b) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:-

(i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance,

(ii) competition is absent for technical reasons,

(iii) the protection of exclusive rights, including intellectual property rights, but only, in the case of paragraphs (ii) and (iii), where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

(c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with.

(3) For the purposes of paragraph (2)(a) -

(a) a tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting authority's needs and requirements as specified in the procurement documents;

(b) a request to participate shall be considered not to be suitable where the economic operator concerned -

(i) is to be or may be excluded under regulation 57, or

(ii) does not meet the selection criteria.

(4) For the purposes of paragraph (2)(c), the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority.

Additional grounds relevant to public supply contracts

(5) The negotiated procedure without prior publication may be used for public supply contracts —

(a) where the products involved are manufactured purely for the purpose of research, experimentation, study or development, but contracts awarded in reliance on this subparagraph shall not include quantity production to establish commercial viability or to recover research and development costs;

(b) for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;

(c) for supplies quoted and purchased on a commodity market;

(d) for the purchase of supplies or services on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors, or a similar procedure under national laws or regulations.

(6) In the case of paragraph (5)(b), the duration of the contract, as well as that of recurrent contracts, shall not, save in exceptional circumstances, exceed 3 years.

Additional grounds relevant to public service contracts that follow a design contest

(7) The negotiated procedure without prior publication may be used for public service contracts where the contract concerned—

- (a) follows a design contest organised in accordance with this Part, and
- (b) is to be awarded, under the rules provided for in the design contest, to—
 - (i) the winner of the design contest, or
 - (ii) one of the winners of the design contest.

(8) Where paragraph (7) (b) (ii) applies, all winners must be invited to participate in the negotiation.

Additional ground relevant to new works or services which repeat similar ones

(9) The negotiated procedure without prior publication may be used for new works and services consisting of the repetition of similar works or services entrusted to the economic operator to which the same contracting authority awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded following a procedure in accordance with regulation 26(1) and (2).

(10) The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded.

(11) As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authority when it applies regulation 5.

(12) This procedure may be used only during the three years following the conclusion of the original contract.

OPERATIONAL GUIDANCE**1. Scope of Guidance**

- 1.1 This provides instruction on DAC requests and approvals and should be read in conjunction with Circular HSC (F) 13/2022. This guidance is applicable to DoH ALBs' procurement of goods and services.

2. Background

- 2.1 Procurement action which excludes competition is a matter which touches on the role and responsibilities of the AO. A DAC is broadly defined as procurement for which no competition is sought or where competition is not available in the marketplace, PGN 03/11. This definition applies to all orders (including aggregation) over the PCL in line with PPN 04/2021. The Public Contracts Regulations 2015 makes specific provision for DACs in certain circumstances. Northern Ireland Public Procurement Policy requires that, except in specifically sanctioned categories, as outlined in Section 3 of PGN 03/11, all proposals for a DAC must be approved by the AO of the procuring organisation or by a formally designated deputy, where permitted.
- 2.2 With the exception of those categories identified in the **Annex 4** matrix, all proposals for a DAC must be referred to a CoPE for procurement advice before they are approved by the AO of the procuring ALB. So far as PaLS is concerned, this requirement extends to all procurements within its field of expertise, regardless of whether the actual tendering or operational procurement purchasing is conducted by PaLS.
- 2.3 It is important that HSC Bodies are able to produce clear, documented evidence for approval of and accountability for, DAC procurements where those are deemed appropriate.

3. External Consultancy

3.1 All DACs in respect of Consultancy, regardless of value, require prior DAO approval if they are to proceed. For further advice consult HSC (F) 36-2021 “Use of professional services including external consultants-revised guidance”. For further information contact DoH Financial Policy & Accountability Unit to discuss the procurement of external consultants by emailing, fpau@health-ni.gov.uk.

4. DAC Categories

4.1 DACs by HSC Bodies usually fall into one of three categories:

- Sole Supplier – where only one source is capable of supply and no competition is available, this is compliant with procurement legislation e.g. a pharmaceutical therapy obtainable only under patent from the manufacturer and which the clinician judges essential to patient care;
- Specific Supplier - where multiple sources may be available but there are sufficiently compelling technical reasons for a particular one to be selected and consequently competition is not used. An example would be where there are five generally suitable infusion pumps on the market but where, for compatibility or standardisation reasons, one supplier is identified; and
- Contract Extension – either an addition to the contract’s scope or extension to its duration or value, which is outside the options originally specified in the contract.

5. When a DAC may be Appropriate

5.1 The following indicators may help in considering if a DAC is appropriate:

- the goods or services are follow-up work where a provider has already undertaken initial work in the same area and where the initial work was awarded from open competition;
- there is a significant compatibility issue which needs to be met or compliance with a warranty cover clause;

- it can be demonstrated there is genuinely only one provider of the goods or services or,
- there is a need to retain a particular contractor for significant business continuity issues and not just a preference.

5.2 The following indicators may help in determining if a DAC is not appropriate.

- the market is competitive;
- there are no factors suggesting a DAC would secure VFM;
- the proposal for a DAC is driven primarily by foreseeable time pressures;
- there are ongoing DACs with specific suppliers;
- the total contract value exceeds [Procurement Thresholds](#)

6. Value for Money

6.1 Negotiations should take place with the supplier to ensure VFM, with price benchmarking taking place where possible.

6.2 VFM should be proportionately appraised, following the Department of Finance (DoF) guidance on appraisal [Northern Ireland Guide to Expenditure, Appraisal and Evaluation](#) .

6.3 A DAC application must consider VFM and identify the case for awarding a DAC by explaining clearly why other strategies are not feasible and by evidencing price and quality differentials.

6.4 The justification must identify the case for the purchase and support the request for approval of the DAC by setting out the clear VFM implications, taking into account whole life costs. These whole life costs include, for example, consumable costs, service/maintenance costs, and licence costs for the anticipated life of the equipment or service.

7. The DAC Approval Request

7.1 Approval requirements for DACs are in **addition** to any other approvals that may be required, e.g. approvals for capital purchases and consultancy services.

7.2 The DAC Approval Request form at **Annex 3** documents the justification for a DAC. In completing the form, refer to the matrix at **Annex 4** which provides examples of the Regulation 32 categories.

7.3 Once completed and approved by the HSC body, at Section 6, the DAC request must be forwarded to PaLS via locally agreed protocols. PaLS will review the request and provide advice through a RAG rating which will present the ALB AO with an expert view on the compliance risks of the procurement proceeding as a DAC. Based on this, the ALB AO completes Section 8 of the form. The RAG ratings and approval procedures are summarised in the following table:

R-A-G RATING SUMMARY

R-A-G RATING SUMMARY						
G&S DACs	Over Threshold			Under Threshold		
	Red	Amber	Green or Green (Conditional)	Red	Amber	Green
PaLS advice required	Y	Y	Y	n/a	Y	Y
ALB AO approval required	Y	Y	Y	n/a	Y	Y
DAO approval required	Y	Y	N	n/a	N	N
Drugs DACs (Patent protected Drugs or continuity of care cases)	Over Threshold			Under Threshold		
	Red	Amber	Green	Red	Amber	Green
PaLS advice required	N	N	N	n/a	N	N
ALB Head of Pharmacy approval *	Y	Y	Y	n/a	Y	Y
ALB AO approval	N	N	N	n/a	N	N
DAO approval	N	N	N	n/a	N	N
LTR DACs (Core health and social care services)	Over Threshold			Under Threshold		
	Red	Amber	Green	Red	Amber	Green
PaLS advice required	Y	Y	Y	n/a	N	N
ALB AO approval	Y	Y	Y	n/a	N	N
DAO approval	N	N	N	n/a	N	N

LTR DACs (Non-core health and social care services)	Over Threshold			Under Threshold		
	Red	Amber	Green	Red	Amber	Green
PaLS advice required	Y	Y	Y	n/a	Y	Y
ALB AO approval	Y	Y	Y	n/a	Y	Y
DAO approval	Y	Y	N	n/a	N	N
Definitions						
<p>Red - where a breach of Public Contracts Regulations will clearly occur.</p> <p>Amber - where there is a risk of a breach in Public Contracts Regulations occurring and heightened risk of challenge due to availability of contractual goods/services.</p> <p>Green - where there is no breach of the Public Contracts Regulations.</p> <p>Green (Conditional) — where action is required by the ALB to ensure compliance with Regulations 50 and 84 of the Public Contracts Regulations.</p>						
*Approval is required from Trust Head of Pharmacy Services and DAC form is not required.						

7.4 It is the responsibility of the ALB to ensure that the DAC is submitted on a timely basis to allow for advice from PaLS and approval by AO (and DAO where necessary) in advance of the DAC start date. The DoH consider DAC applications from the month of receipt. A RAG rating and specific advice on DACs submitted to PaLS after the contract award date is of little value. Such DACs will be categorised as Retrospective and no RAG rating provided.

7.5 Where it is not possible to provide a properly authorised DAC in advance of the issue of an urgent purchase order, an emailed instruction to proceed or a telephone call to the local PaLS Senior Procurement Manager, confirmed by email, shall be provided by the delegated Accounting Officer. The approved DAC form must follow without delay and note the prior written instruction.

7.6 In circumstances where a DAC expires based on either duration or value and the product/service is still required a further DAC must be submitted for approval in advance of the expiry.

7.7 Where it is necessary for an ALB to increase the duration and/or value of a DAC prior to PaLS advice being provided, the DAC form must be reapproved at Section 6.

7.8 Where circumstances dictate a change of supplier during the anticipated lifespan of a contract a further DAC must be submitted. Where the value exceeds the Threshold DAO approval will be required in line with **Annex 2**.

8. Note on Legal Obligations under Public Procurement Regulations

8.1 If a DAC is to be considered legally compliant it must fall within the set of circumstances defined in Regulation 32 of the Public Contracts Regulations, **Annex 1**.

8.2 All procurements justified under Regulation 32 require the Contracting Authority to publish a Contract Award Notice (CAN) on Find a Tender Service (FTS), not later than 30 days from the date of the award of the contract, in line with Regulation 50.

8.3 Where a CAN is required under Regulation 50 the responsibility for publication in FTS resides with the ALB making the award. PaLS will RAG such DACs as Green (Conditional). This rating is subject to all the necessary requirements of the Regulations being adhered to. Failure to comply will change the status of the DAC to Red. The AO should therefore ensure the ALB has appropriate monitoring of adherence in place. Any DAC which becomes non-complaint will require retrospective consideration by the DAO. AO records and associated reports shall be updated to reflect this change of rating.

8.4 It is best practice for a Contracting Authority to publish a Voluntary Ex-Ante Transparency Notice (VEAT) on FTS, where a contract is intended to be awarded without prior publication of a contract notice, in accordance with the Public Contracts Regulations 2015. This gives the market the opportunity to challenge the decision to directly award a contract within 10 days of the VEAT being published and mitigates the risk of a challenge and strengthens the AOs defence against a claim of ineffectiveness.

Section 7 - Services including Social and other specific services

8.5 The “Social and other specific services” provisions (Section 7 of the Public Contract Regulations 2015) include many social and healthcare services. Light touch procedures described in PPN 04/21 and PPN 02/21 cover contracting for these services.

8.6 For DACs that relate to core health and social care, excluding the supply of services of medical and nursing personnel, which are dealt with in paragraph 4.3 of the Circular, the DAC approval process shall be followed on direct awards that are likely to, or will, exceed the LTR threshold in the following cases:

- The services have previously been procured competitively; or
- They are currently in a competitive procurement process; or
- are new services; or

- Have increased significantly by way of scope or value. Significance will be assessed in light of the circumstances at the time and may typically relate to a modification that changes the overall nature of the contract or renders the contract materially different in character. Cases may be test drilled.

8.7 Approval for this category of DAC is delegated to the ALB AO in accordance with the R-A-G rating summary table at page 17. The ability to delegate further is being limited by DoH at this time. Trusts, HSCB and PHA AOs may make further delegations but no lower than ALB Board level. Other ALB AOs may not delegate.

9. Publication of over £30k DACs

9.1 By the tenth working day of the month following award, details of all DACs over £30,000 shall be forwarded to PaLS by the ALB for publication on the CoPE website. The format of this request will be a subset of the reporting information held by the ALB in its AO Records. The template for completion is at **Annex 7**. The extracted data for G&S only must be forwarded to PaLS Compliance Unit (procurement.compliance@hscni.net).

Requisition No	
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Reference	DAC
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ANNEX 3

Health & Social Care

Request for Approval of Direct Award Contract (DAC)

This form to be completed by the requesting officer; authorised by the appropriate Assistant Director / Co-Director; and sent to BSO Procurement and Logistics Service (PaLS) in advance of the purchase.

For above Threshold DACs I confirm I have engaged with BSO PaLS in advance of completing this DAC (see Para. 3.6 of Circular)	Name of PaLS' Officer

Section 1. Contact Details	
Name of Requesting Officer	
Job Title	
Department	
HSC Organisation	
Address	
E-mail address	
Office Telephone Number	
Mobile Telephone Number	

Section 2.1. DAC Details				
Title of DAC				
Supplier Name				
Supplier Address				
Is this a one off or Period DAC? (please tick)	One Off		Period	

If period DAC what is the potential duration? (including all extensions)		Years		Months
Anticipated Start Date (DD/MM/YYYY)				
Anticipated end date (excluding extensions) (DD/MM/YYYY)				
Anticipated final end date (including extensions) (DD/MM/YYYY)				
Duration of individual extensions e.g. annual, monthly				

Section 2.2 DAC Value

This section to be completed, detailing the life cycle costs of the goods or services

Purchase Price of goods or services (exc VAT)			
Consumable costs (including all provisions to extend) (exc VAT)		If available under a compliant contract provide contract details and do not include value in the Total Estimated value*	
Maintenance/servicing/licencing costs (including all provisions to extend) (exc VAT)		If available under a compliant contract provide contract details and do not include value in the Total Estimated value*	
Other costs associated with the product/service (exc VAT)			
TOTAL* estimated Value (including all provisions to extend)	Excluding VAT	VAT Rate (%)	Including VAT

Section 2.3 Purchase History

Have these goods or services or related goods and services been purchased previously?	Yes		No	
<p>If 'Yes' please provide details on how these purchases were made. (e.g. via a compliant contract; below DAC threshold requisition; a DAC).</p> <p>If this DAC relates to consumables, maintenance, licences etc. please provide details of the original equipment, system, software or service purchase.</p>				
If previous purchases have been made via a DAC provide details:				
DAC Reference and Title	Start Date	End Date	Approved Value (£)	Actual Expenditure (£)

Section 3. DAC justification: Sole Source

Are these goods or services only available from one source? YES/NO

If YES complete section 3 and proceed to Section 6; if NO proceed to section 4

This section to be completed where goods or services can be procured from only one source and no competition is available as provided for under Reg 32

Artistic Reasons (32(2)(b)(i); Technical Reasons (32(2)(b)(ii) and 32(5)(b) & 32(6) or Exclusive Rights (32(2)(b)(iii)

Description of goods/services required	
Why are these goods or services required?	
Why are these goods and services required from this specific supplier?	
How will prices, volumes and duration of the DAC be minimised?	
How will VFM be obtained?	

What is the procurement plan beyond this DAC?	
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Section 4. DAC justification: Specific Product/Service/Supplier

This section to be completed where goods or services can be procured from multiple sources or where alternative products/services exist, but where for specific reasons only one supplier is to be used.

Description of goods/services required	
Why are these particular goods or services required?	
Why are these goods or services required from this specific supplier?	
Have other suppliers/products been considered? Please provide details	

How will prices, volumes and duration of the DAC be minimised?	
How will VFM be obtained?	
What is the procurement plan beyond this DAC?	

Section 5. Direct Award Contract - Contract Extension of Term or Extension of Scope

This section to be completed where extension of the scope or duration of an existing contract is being requested and an extension under Reg 72 is not an option. Check with PaLS if an extension under Reg 72 is applicable. Then proceed to section 6. If no contract currently exists, ensure that you have completed either section 3 or section 4.

Description of good/services required	
Current Contract Title	
Current Supplier	
Current Contract Start Date	
Current Contract End Date	
Initial Contract Value	
Actual spend to date	

If applicable, when was OJEU/FTS (as appropriate) notice published?		OJEU/FTS Notice Reference	
Why is Regulation 72 not applicable?			
Proposed Extension Start Date			
Proposed Extension End Date			
Extension of scope Please detail			
Why are these particular goods or services required?			
Why are these goods or services required from this specific supplier?			
Have other suppliers been considered? Please provide details			
How will prices, volumes and duration of the DAC be minimised?			
How will VFM be obtained?			

What is the procurement plan beyond this DAC?	

Section 6: Requesting Officer and Recommending Officer Approvals		
<p><u>Requester</u></p> <p>I hereby seek approval for a Direct Award Contract as detailed above. In doing so, I declare that I do not have an external personal or monetary interest in the company to which this DAC will be awarded.</p>		
Print Name	Signature	Date
<p><u>Recommended by Assistant / Co-Director</u></p> <p>I hereby confirm that the details provided in respect of this Direct Award Contract are correct, and I declare that I do not have an external personal or monetary interest in the company to which this DAC will be awarded.</p>		
Print Name	Signature	Date

Section 7: BSO PaLS ADVICE – For PaLS Use Only

Supplier reference:

Category		Category	
A. Sole Source Technical		F. Specific Supplier User Identified	
B. Sole Source Exclusive Rights		G. Specific Supplier Other	
C. Sole Source Artistic		H. Contract Extension Term	
D. Sole Source Other		I. Contract Extension Scope	
E. Specific Supplier pending tender / quotation		J. Contract Extension Other	

DAC status:	Prospective/Retrospective
RAG Risk Status:	RED / AMBER / GREEN / GREEN (CONDITIONAL)
Signed:	
Print Name:	
Band (Senior Procurement Manager and above only):	
Date:	

Section 8 Accounting Officer Approvals

Section 8.1 : ALB Accounting Officer Approval

I authorise the following action:

- a) progress this DAC on behalf of the Contracting Authority as detailed above
- b) do NOT progress this DAC – take no further action
- c) do NOT progress this DAC – procure these goods or services in accordance with normal HSC procurement procedures.

(delete as applicable)

If DAC value > £30k, notification of this award requires publication on the CoPE website. Accordingly, confirm the reason for the DAC:

In the public interest	<input type="checkbox"/>
OR	
In compliance with Reg 32	<input type="checkbox"/>

I hereby declare that **I do not have an external personal or monetary interest in the company to which this DAC will be awarded** (applicable only in respect of option (a) above). I have read CPD Policy Guidance Note 03/11, related DOH Guidance HSC (F) 13/2022 and the advice above provided by PaLS.

Name:

Title:

Date:

Signature:

Section 8.2 Publication of Contract Award Notice

Awards made under the Public Contracts Regulations require publication of a Contract Award Notice in Find a Tender Service

Contract Award Notice Reference

Date Contract Award Notice Published

Section 8.3 Departmental Accounting Officer Approval (where required)		
Name:	Title:	Date:
Signature:		

DAC Approval Matrix in Respect of All Expenditure > £5k/£10k

Basis of Approval and reference to Public Contracts Regulations 2015	Examples: reasons for approval	Additional Action Required	CoPE Advice Required	ALB AO Approval	DAO Approval
Regulation 6 (16) &/or (17). All DAC procurements below thresholds (for a single order or multiple orders over a 48-month period).	N/A	CoPE must provide advice on the procurement along with a RAG status.	Y	AO or delegated officer to approve.	DAO Approval not required.
Over threshold Core health and social care services included in Schedule 3 'Social and other Specific Services'.	Provision of Domiciliary Care or purchased healthcare services and supply of medical and nursing agency staff.	CoPE must provide advice on the procurement along with a RAG status.	Y	AO or delegated officer to approve.	DAO Approval not required.
Regulation 32(2) (a) Absence of Suitable Tenders.	No tender responses received to advert.	Where expenditure will exceed thresholds a Contract Award Notice must be	N	AO approval not required.	DAO approval not required.

Basis of Approval and reference to Public Contracts Regulations 2015	Examples: reasons for approval	Additional Action Required	CoPE Advice Required	ALB AO Approval	DAO Approval
		published in FTS. It is best practice to also publish a VEAT notice.			
Regulation 32(2).b).iii – for the protection of exclusive rights, including intellectual property rights, but only....where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement.	Purchase of <u>patent protected</u> drugs where no reasonable alternative or substitute exists when tested against the legislation (this route is not available for medical devices).	Where expenditure will exceed thresholds a Contract Award Notice must be published in FTS. It is best practice to also publish a VEAT notice.	N	While a DAC form is not required, Head of Pharmaceutical Services to approve over or under threshold.	DAO approval not required.
	Purchase of goods where a copyright, patent or intellectual property right exists restricting supply to a	Where expenditure will exceed thresholds a Contract Award Notice must be	Y	AO to approve over threshold.	DAO to approve if rated Amber or Red.

Basis of Approval and reference to Public Contracts Regulations 2015	Examples: reasons for approval	Additional Action Required	CoPE Advice Required	ALB AO Approval	DAO Approval
	single supplier (generally the manufacturer). An example might be proprietary software.	published in FTS. It is best practice to also publish a VEAT notice.			
32(2) (b) (ii) Competition is absent for technical reasons but only....where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement.		Where expenditure will exceed thresholds a Contract Award Notice must be published in FTS. It is best practice to also publish a VEAT notice.	Y	AO to approve.	DAO to approve if rated Amber or Red.
Section 32(2)(c)– “Extreme urgency” (c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting	Purchase of drugs without competition where there is an <u>urgent and</u>	Where expenditure will exceed thresholds a Contract Award	N	Head of Pharmaceutical Services to approve under threshold.	DAO to approve over threshold.

Basis of Approval and reference to Public Contracts Regulations 2015	Examples: reasons for approval	Additional Action Required	CoPE Advice Required	ALB AO Approval	DAO Approval
authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with.	<u>unforeseeable demand.</u>	Notice must be published in FTS.		AO to approve over threshold.	
Reg 32.4 – For the purposes of para 32.2(c), “...the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority”.	Purchase of goods or services where <u>life or property is under imminent threat.</u>	Where expenditure will exceed thresholds a Contract Award Notice must be published in FTS.	N	Where relevant to Estates, Head of Estates to approve under threshold. AO to approve over threshold.	DAO to approve over threshold.
Regulation 32(5)(a) – Research, Experiment, Study or Development where the products involved are manufactured purely for the purpose of research, experimentation, study or development, but	Purchase of goods that are to be used solely to carry out research, experiment, study or development.	Where expenditure will exceed thresholds a Contract Award Notice must be	Y	AO to approve over threshold.	DAO to approve rated Amber or Red.

Basis of Approval and reference to Public Contracts Regulations 2015	Examples: reasons for approval	Additional Action Required	CoPE Advice Required	ALB AO Approval	DAO Approval
contracts awarded in reliance on this subparagraph shall not include quantity production to establish commercial viability or to recover research and development costs.	In such instances the Trust is having these goods made solely to meet the purposes of a specific study.	published in FTS. It is best practice to also publish a VEAT notice.			
Section 32(5)(b) for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance.	Purchase of drugs required for <u>continuity of care of patient</u> where not the contracted drug when tested against the provision in the legislation (this route is not available for medical devices).	Where expenditure will exceed thresholds a Contract Award Notice must be published in FTS. It is best practice to also publish a VEAT notice.	N	While a DAC form is not required, Head of Pharmaceutical Services to approve over or under threshold.	DAO approval not required.

Basis of Approval and reference to Public Contracts Regulations 2015	Examples: reasons for approval	Additional Action Required	CoPE Advice Required	ALB AO Approval	DAO Approval
	Purchase of equipment or consumables where they are required to come from a particular source or brand for purposes of technical compatibility.	Where expenditure will exceed thresholds a Contract Award Notice must be published in FTS. It is best practice to also publish a VEAT notice.	Y	AO to approve over threshold.	DAO to approve if rated Amber or Red.
Section 32(5)(c) – Purchases on a Commodity Market.	This is not generally applicable to HSC ALBs.				DAO to approve if rated Amber or Red.
Section 32(5)(d) – Closing Down Sale “ for the purchase of supplies or services on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with	Purchase of goods where the supplier is declared bankrupt and the goods being offered are below normal costs and are	Where expenditure will exceed thresholds a Contract Award Notice must be published in FTS.	Y	AO to approve over threshold.	DAO to approve if rated Amber or Red.

Basis of Approval and reference to Public Contracts Regulations 2015	Examples: reasons for approval	Additional Action Required	CoPE Advice Required	ALB AO Approval	DAO Approval
creditors, or a similar procedure under national laws or regulations.”	required to ensure continued HSC operation.	It is best practice to also publish a VEAT notice.			
Section 32(9) but see also (10), (11) and (12) - The negotiated procedure without prior publication may be used for new works and services consisting of the repetition of similar works or services entrusted to the economic operator to which the same contracting authority awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded following a procedure in accordance with regulation 26(1) and (2).	Purchases of additional works or services that are a repetition of a previous contract for those services and are linked to the original contract i.e. are connected with the purpose of the original contract, for example extension of a contract for cleaning to take in a new facility.	Where expenditure will exceed thresholds a Contract Award Notice must be published in FTS.It is best practice to also publish a VEAT notice.	Y	AO to approve over threshold.	DAO to approve if rated Amber or Red.

Basis of Approval and reference to Public Contracts Regulations 2015	Examples: reasons for approval	Additional Action Required	CoPE Advice Required	ALB AO Approval	DAO Approval
A range of variations to existing contracts during their life are possible within the contract or within Regulation 72 of the PCRs. These will not be DACs and are described in PGN 03/11, para 3. PaLS will give the advice and support on such contract variations as described in the PGN.					

PGN 02/16; List of Services covered by the Light-Touch Regime

SCHEDULE 3 of the Public Contracts Regulations 2015 - Regulations 5(1)(d) and 74

SOCIAL AND OTHER SPECIFIC SERVICES

CPV Code	Description
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
85321000-5 and 85322000-2, 75000000-6 (Administration, defence and social security services), 75121000-0, 75122000-7, 75124000-1; from 80000000-4 from 79995000-5 to 79995200-7; Education and training services to 80660000-8; from 92000000-1 to 92700000-8; 79950000-8 (Exhibition, fair and congress organisation	Administrative social, educational, healthcare and cultural services

services), 79951000-5 (Seminar organisation services), 79952000-2 (Event services), 79952100-3 (Cultural event organisation services), 79953000-9 (Festival organisation services), 79954000-6 (Party organisation services), 79955000-3 (Fashion shows organisation services), 79956000-0 (Fair and exhibition organisation services)	
75300000-9	Compulsory social security services
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services
98000000-3; 98120000-0; 98132000-7; 98133110-8 and 98130000-3	Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services
98131000-0	Religious services
55100000-1 to 55410000-7; 55521000-8 to 55521200-0 (55521000-8 Catering services for private households, 55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service) 55520000-1 Catering services, 55522000-5 Catering services for transport enterprises, 55523000-2 Catering services for other enterprises or other institutions, 55524000-9 School catering services 55510000-8 Canteen services, 55511000-5 Canteen and other restricted-clientele cafeteria services, 55512000-2 Canteen	Hotel and restaurant services

management services, 55523100-3 School-meal services	
79100000-5 to 79140000-7; 75231100-5;	Legal services, to the extent not excluded by regulation 10(1)(d)
75100000-7 to 75120000-3; 75123000-4; 75125000-8 to 75131000-3	Other administrative services and government services
75200000-8 to 75231000-4	Provision of services to the community
75231210-9 to 75231230-5; 75240000-0 to 75252000-7; 794300000-7; 98113100-9	Prison related services, public security and rescue services to the extent not excluded by regulation 10(1)(h)
79700000-1 to 79721000-4 (Investigation and security services, Security services, Alarm-monitoring services, Guard services, Surveillance services, Tracing system services, Absconder-tracing services, Patrol services, Identification badge release services, Investigation services and Detective agency services) 79722000-1 (Graphology services), 79723000-8 (Waste analysis services)	Investigation and security services
98900000-2 (Services provided by extra-territorial organisations and bodies) and 98910000-5 (Services specific to international organisations and bodies)	International services
64000000-6 (Postal and telecommunications services), 64100000-7 (Post and courier services), 64110000-0 (Postal services), 64111000-7 (Postal services related to newspapers and periodicals), 64112000-4 (Postal services related to letters), 64113000-1 (Postal services related to parcels), 64114000-8 (Post office counter services), 64115000-5	Postal services

(Mailbox rental), 64116000-2 (Postrestante services), 64122000-7 (Internal office mail and messenger services)	
50116510-9 (Tyre-remoulding services), 71550000-8 (Blacksmith services)	Miscellaneous services

The following refers to CCR 2016 only

98900000-2 (services provided by extra-territorial organisations and bodies) 98910000-5 (services specific to international organisations and bodies)	
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DARAC REPORTING

DAC information will be requested from ALBs for Departmental Board and Audit Committees on a biannual basis in the following format:

Name of ALB	Department e.g. Pharmacy, Estates, etc.	DAC Reference No.	DAC Title or Description	Supplier	RA G Status	Actual Value (Excl. VAT)	DAC Start Date	DAC End Date	Sub-category (A-J)*	Approved by (and their designation)	Date Approved	Date Contract Awarded	CoPE advice sought? (enter Y or N)	Regulation 32 or Public Interest? (enter R32 or P)
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***Sub-categories (A-J):**

Ref	Category Description
A	Sole Source - Technical
B	Sole Source - Exclusive Rights
C	Sole Source – Artistic
D	Sole Source - Other

DAC Main Categories:

CATEGORY 1 – DACs not normally advised[§] by PaLS

CATEGORY 2 – DACs normally advised by PaLS

CATEGORY 3 – DACs normally advised by CPD HP

§ Those DACs which do not go to PaLS for approval, e.g. patent-protected drugs - see Annex 4 for further info.

E	Specific Supplier - Pending Tender/Quotation Exercise
F	Specific Supplier - User Identified
G	Specific Supplier - Other
H	Contract Extension - Term
I	Contract Extension - Scope
J	Contract Extension - Other

Direct Award Contracts Requiring Publication**ANNEX 7****(MONTH AWARDED)**

HSC Organisation	DAC Ref	Supplier	DAC Title	Value (Excl. VAT) (£)

List of Key Acronyms

ALB	Arm's Length Body
AO	Accounting Officer
BSO	Business Services Organisation
CAN	Contract Award Notice
CoPE	Centre of Procurement Expertise
CPD	Construction and Procurement Delivery
DAC	Direct Award Contract
DAO	Departmental Accounting Officer
DARAC	Departmental Audit and Risk Assurance Committee
DLS	Directorate of Legal Services
DoF	Department of Finance
DoH	Department of Health
EU	European Union
FTS	Find a Tender Service
G&S	Goods and Services
HSC	Health and Social Care
HSCB	Health and Social Care Board. The HSCB ceases on 31 March 2022 and responsibility for its functions will transfer to The Strategic Planning and Performance Group (SPPG) of DoH.
LTR	Light Touch Regime
MPMNI	Managing Public Money Northern Ireland
NIFRS	Northern Ireland Fire and Rescue Service
OJEU	Official Journal of the European Union
PaLS	Procurement and Logistics Service
PCL	Procurement Control Limit
PGN	Procurement Guidance Note
PHA	Public Health Agency
PPN	Procurement Policy Note

RAG	Red/Amber/Green
VEAT	Voluntary Ex Ante Transparency
VFM	Value for Money