

PROVIDER SELECTION REGIME: IMPACT ON HEALTH AND SOCIAL CARE PROVIDERS

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YOUR TEAM TODAY



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THE AGENDA

- 1) A reminder of the law before 1 January 2024
- 2) Which services are in scope?
- 3) Overview of the five different selection processes
- 4) Contract modifications
- 5) Bidding strategy

LAW BEFORE 1 JANUARY

Public Contracts Regulations 2015

NHS Procurement, Patient Choice and Competition
Regulations 2013

Health care, social care and related services → 'light touch regime'

Previously = expectation that competitive tendering is used to award contracts.

Now, a flexible and proportionate process for deciding who should provide health care services?

FROM JANUARY 2024

Procurement Act 2023
Health and Care Act 2022
The Health Care Services (Provider Selection Regime)
Regulations 2023

Aims and objectives →

Maintain flexibility, reduce administrative burden, collaborate across systems and integrate services.

WHICH SERVICES ARE IN SCOPE?

In scope are:

- ✓ **health care services** arranged by the NHS e.g., hospital, community, mental health, primary health care services
- ✓ **public health services** arranged by local authorities e.g., substance use, sexual and reproductive health, and health visitors



Out of scope are:

- **goods** e.g., medicines, medical equipment
- **social care** services
- **non-health care services** or health-adjacent services e.g., capital works, business consultancy





WHICH SERVICES ARE IN SCOPE?

MIXED PROCUREMENTS



Total £ Contracted Services

- Other
- Health



See the list of Common Procurement Vocabulary (CPV) codes under **Schedule I of PSR**
<https://www.legislation.gov.uk/ukdsi/2023/9780348252613/schedule/1>



WHICH SERVICES ARE IN SCOPE?

MIXED PROCUREMENTS

- ✓ the health care service element must be **more than 50%** of the value of the contract.
- ✓ the other goods or services **could not reasonably be supplied under a separate contract.**





WHICH SERVICES ARE IN SCOPE?

MIXED PROCUREMENTS



Are special educational needs and disability (SEND) services for children and young people in scope of the Provider Selection Regime (PSR)?

SEND health care services are in scope of the PSR. But education and social care services are not in scope of the PSR, so if these are arranged alone the PSR must not be used.

If the services being arranged involve health care services and other goods or services, it may be considered a 'mixed procurement' if it meets the requirements for mixed procurement.



NEW SELECTION PROCESSES

Direct award processes

A

The existing provider is the **only capable provider**.

B

People have a choice of providers, and **the number of providers is not restricted** by the relevant authority.

C

The existing provider is satisfying the **existing contract** and will likely satisfy the proposed new contract, and **the contract is not changing considerably**.

The most suitable provider process

Allows the relevant authority to **make a judgement on which provider is most suitable** based on consideration of the key criteria. Award without competitive tender.

The competitive process

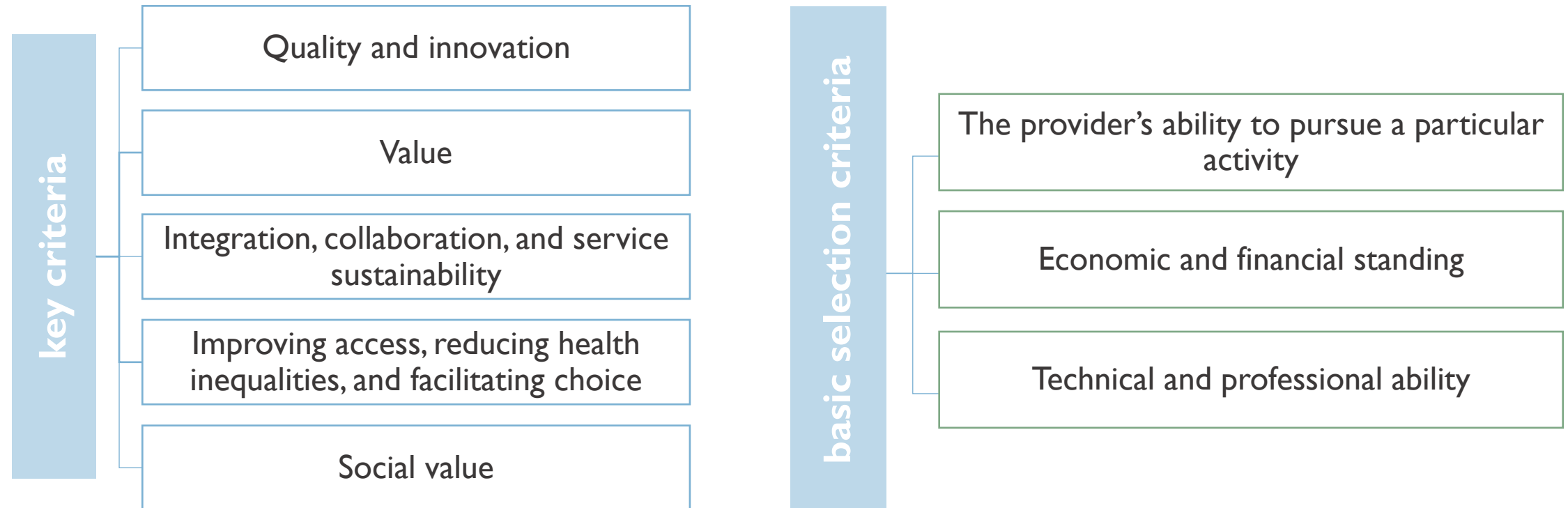
Where the relevant authority cannot use any of the other processes or wishes to **run a competitive exercise**.

NEW SELECTION PROCESSES

Regulation 5, Regulation 19 & Schedule 16



When following Direct Award process C, the Most Suitable Provider process, or the Competitive Process, the relevant authority must take into account the **key criteria** and the **basic selection criteria**.



NEW SELECTION PROCESSES



MUST observe the standstill process (8 working days)

Direct award process

C

The existing provider is satisfying the **existing contract** and will likely satisfy the proposed new contract, and **the contract is not changing considerably.**

The most suitable provider process

Allows the relevant authority to **make a judgement on which provider is most suitable** based on consideration of the key criteria. Award without competitive tender.

The competitive process

Where the relevant authority cannot use any of the other processes or wishes to **run a competitive exercise.**



CONTRACT MODIFICATIONS

Modifications are permitted under the Regime, if the modification is:

- ✓ Clearly and unambiguously provided for in the original contract.
- ✓ Solely a change in the identity of the provider (corporate restructuring)
- ✓ Made to a contract that was originally awarded under **direct award process A** or **direct award process B** and the modification does not render the contract materially different in character.
- ✓ Made due to external factors beyond the control of the relevant authority and the provider (e.g. changes in service user volume or indexing;) but does not render the contract materially different in character.



CONTRACT MODIFICATIONS

Modifications are also permitted under the Regime, if the modification is attributable to a decision of the relevant authority, the modification **does not render the contract materially different in character;**

AND

Either the cumulative change in the lifetime value of the contract is

- ✓ **below £500,000; or**
- ✓ **less than 25% of the original contract value.**

A modification notice must be published within 30 days of modification where any of the modification grounds above are relied upon **and** the cumulative change in the lifetime value of the contract is £500,000 or more.



FRAMEWORK AGREEMENTS

A competitive process must be used to set up a framework agreement.

Maximum term of **4 years** (may be longer in exceptional circumstances).

All relevant authorities eligible to use the framework agreement must be identified in the framework agreement.

May use “competitive process” to add further providers to the framework agreement during its term.

Framework agreement

Establishes the terms on which the relevant authority provider contracts with a **provider party to the framework agreement.**

Contracts may be awarded by ‘direct award’ or ‘mini competition’ (as per framework terms).



FRAMEWORK AGREEMENTS

Relevant authorities must consider each of the key criteria in the regime when awarding a contract using the ‘mini competition’ process under a framework.

See earlier slide re: quality, innovation, integration, improving access and social value.

Provisions on contract modifications apply to framework agreements (even those entered into before 1 Jan 2024).

Check NHS England policies on ‘accredited framework’ and expected “commercial adherence” to using particular frameworks.

Framework agreement

Establishes the terms on which the relevant authority provider contracts with a **provider party to the framework agreement.**

Contracts may be awarded by ‘direct award’ or ‘mini competition’ (as per framework terms).

BIDDING STRATEGY



Do the Common Procurement Vocabulary (CPV) codes accurately reflect the service?

Are the CPV codes listed in Schedule I of the PSR?

No realistic provider? (Direct Award Process A)

Cannot be used to award a contract for a newly established service. A provider must already be in place for the service in question.

Key Performance Indicators / Complaints? (Most suitable provider)

BIDDING STRATEGY



Freedom of Information Requests:

- ‘Please confirm what steps the commissioner has taken to clearly identify all providers capable of providing the services.’
- ‘Please confirm whether any alternative providers were identified and if so, were why there were not considered to be realistic alternatives for the relevant authority’s specific requirements.’
- ‘Please confirm how the commissioner has concluded that the existing provider is satisfying the existing contract to a sufficient standard and will likely satisfy the proposed contract, according to the detail outlined in the contract, and also taking into account the key criteria and applying the basic selection criteria.’

BIDDING STRATEGY

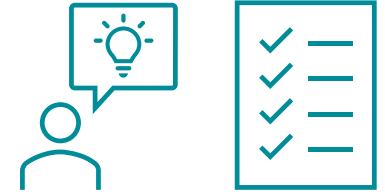


Freedom of Information Requests:

- ‘Please confirm:
 - (a) what steps the commissioner has taken to conduct an assessment of the sustainability of their local care market (ensuring it is attractive to new market entrants and able to manage and offset the impact of future market changes);
 - (b) what mitigating actions it has taken to reduce the reasonably foreseeable risks undermining the local market; and
 - (c) how it has concluded that the proposed changes are attributable external factors beyond its control.’

BIDDING STRATEGY

Diarising wins, contract end dates / renewals and missed opportunities.



Identify 'accredited frameworks' and those in the pipeline

Mergers and Acquisitions

Business units focussed on key contracting relationships.

Geographic targets.

Smooth integration / short implementation period.

Niche skills and expertise or exclusive third-party relationships = USP
Service user choice.



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QUESTIONS?

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