
STATUTORY INSTRUMENTS

2023 No. 1348

The Health Care Services (Provider Selection Regime) Regulations 2023

PART 1

General

Citation, commencement, extent and territorial application

1.—(1) These Regulations may be cited as the Health Care Services (Provider Selection Regime) Regulations 2023 and come into force on 1st January 2024.

(2) These Regulations extend to England and Wales and apply in relation to England only.

Interpretation

2.—(1) In these Regulations—

“basic selection criteria” means the selection criteria determined by the relevant authority⁽¹⁾ in accordance with regulation 19 and Schedule 16;

“Competitive Process” means the process set out in regulation 11 for the award of a contract with a competition;

“contract or framework award criteria” means the criteria on which the award of a contract, or conclusion of a framework agreement, is based;

“CPV” means the Common Procurement Vocabulary, as adopted by Regulation (EC) No. 2195/2002 of the European Parliament and of the Council⁽²⁾;

“Direct Award Process A” means the process set out in regulation 7 for the award of a contract without a competition;

“Direct Award Process B” means the process set out in regulation 8 for the award of a contract without a competition;

“Direct Award Process C” means the process set out in regulation 9 for the award of a contract without a competition;

“existing provider”—

- (a) means a provider with whom a relevant authority has a contract for the provision of relevant health care services which has not expired or otherwise been terminated; and
- (b) in a case where the identity of a provider with whom a relevant authority has such a contract is expected to change due to succession into the position of provider following

(1) “Relevant authority” is defined in section 12ZB(7) of the National Health Service Act 2006. It means a combined authority, an integrated care board, a local authority in England, NHS England, an NHS foundation trust or an NHS trust established under section 25 of that Act.

(2) EUR 2002/2195. The codes have been amended by S.I. 2023/601.

corporate changes including takeover, merger, acquisition or insolvency, includes the provider in its changed identity;

“framework agreement” means an agreement between one or more relevant authorities and one or more providers concluded and operated in accordance with Part 3;

“health-related services” has the same meaning as in section 13N of the National Health Service Act 2006(3);

“key criteria” means the criteria set out in regulation 5;

“Most Suitable Provider Process” means the process set out in regulation 10 for the award of a contract without a competition;

“procurement principles” means the principles in regulation 4;

“provider” means a person who provides, or offers to provide, relevant health care services for the purposes of the health service(4) in England;

“relevant health care services” means health care services(5) which fall within one or more of the CPV codes specified in the table in Schedule 1, to the extent described in that table (and see regulation 3(5));

“social care services” has the same meaning as in section 13N of the National Health Service Act 2006;

“standstill period” has the meaning given by regulation 12;

“UK e-notification service” means a single web-based portal which is provided, for purposes which include the purposes of these Regulations, by or on behalf of the Cabinet Office.

(2) Nothing in these Regulations prevents the award of a contract to more than one provider, either jointly or otherwise.

Application

3.—(1) These Regulations apply where a relevant authority procures relevant health care services for the purposes of the health service in England, whether alone or as part of a mixed procurement.

(2) In this regulation, “mixed procurement” means the procurement of—

- (a) relevant health care services for the purposes of the health service in England, and
- (b) other goods or services that are procured together with those health care services,

where both the criteria in paragraph (3) are met.

(3) The criteria are that—

- (a) the main subject-matter of the procurement is relevant health care services for the purposes of the health service in England; and
- (b) the relevant authority is of the view that the other goods or services could not reasonably be supplied under a separate contract.

(4) For the purposes of the criteria in paragraph (3)—

- (a) the main subject-matter is determined by which of—
 - (i) the estimated lifetime value of the relevant health care services in paragraph (2)(a); or
 - (ii) the estimated lifetime value of the other goods or services in paragraph (2)(b),

(3) Section 13N was inserted by section 23 of the Health and Social Care Act 2012 and relevant amendments made by section 3(6) of the Care Act 2014 (c. 23) and Schedules 1 and 4 to the Health and Care Act 2022.

(4) “The health service” is defined in section 275(1) of the National Health Service Act 2006 as the health service continued under section 1(1) of that Act.

(5) “Health care service” is defined in section 122B(7) of the National Health Service Act 2006 as having the same meaning as in Part 3 of the Health and Social Care Act 2012 (c. 7; see section 150 of that Act).

is the higher;

- (b) a relevant authority may only determine that the other goods or services could not reasonably be supplied under a separate contract where the relevant authority is of the view that procuring the relevant health care services and the other goods and services separately would, or would be likely to, have a material adverse impact on the relevant authority's ability to act in accordance with the procurement principles.

(5) Where a relevant authority procures relevant health care services as part of a mixed procurement, the term "relevant health care services" in these Regulations, except this regulation, includes any goods or services procured together with those relevant health care services.

Procurement principles

4.—(1) When procuring relevant health care services, a relevant authority must act—

- (a) with a view to—
 - (i) securing the needs of the people who use the services,
 - (ii) improving the quality of the services, and
 - (iii) improving efficiency in the provision of the services;
- (b) transparently, fairly and proportionately.

(2) When acting with a view to the matters in paragraph (1)(a), the relevant authority may consider the value of providing services in an integrated way, including with other health care services, health-related services or social care services.

Key criteria

5. The key criteria are—

- (a) quality and innovation, that is the need to ensure good quality services and the need to support the potential for the development and implementation of new or significantly improved services or processes that will improve the delivery of health care or health outcomes,
- (b) value, that is the need to strive to achieve good value in terms of the balance of costs, overall benefits and the financial implications of a proposed contracting arrangement,
- (c) integration, collaboration and service sustainability, that is the extent to which services can be provided in—
 - (i) an integrated way (including with other health care services, health-related services or social care services),
 - (ii) a collaborative way (including with providers and with persons providing health-related services or social care services), and
 - (iii) a sustainable way (which includes the stability of good quality health care services or service continuity of health care services),so as to improve health outcomes,
- (d) improving access, reducing health inequalities and facilitating choice, that is ensuring accessibility to services and treatments for all eligible patients, improving health inequalities and ensuring that patients have choice in respect of their health care, and
- (e) social value, that is whether what is proposed might improve economic, social and environmental well-being in the geographical area relevant to a proposed contracting arrangement.

PART 2

Procurement processes

Overview

6.—(1) A relevant authority wishing to procure relevant health care services to which these Regulations apply must follow the appropriate process determined in accordance with this regulation.

(2) This regulation is subject to regulations 13 (modification of contracts and framework agreements during their term), 15 (abandonment of, or repetition of steps in, a procurement) and 18 (contracts based on a framework agreement).

(3) Where—

- (a) there is an existing provider of the relevant health care services to which the proposed contracting arrangements relate,
- (b) the relevant authority is satisfied that the relevant health care services to which the proposed contracting arrangements relate are capable of being provided only by the existing provider due to the nature of the relevant health care services, and
- (c) the procurement is not to conclude a framework agreement,

the relevant authority must follow Direct Award Process A.

(4) Where—

- (a) the proposed contracting arrangements relate to relevant health care services in respect of which a patient is offered a choice of provider,
- (b) the number of providers is not restricted by the relevant authority,
- (c) the relevant authority will offer contracts to all providers to whom an award can be made because they meet all requirements in relation to the provision of the relevant health care services to patients,
- (d) the relevant authority has arrangements in place to enable providers to express an interest in providing the relevant health care services, and
- (e) the procurement is not to conclude a framework agreement,

the relevant authority must follow Direct Award Process B.

(5) Where—

- (a) the relevant authority is not required to follow Direct Award Process A or Direct Award Process B,
- (b) the term of an existing contract is due to expire and the relevant authority proposes a new contract to replace that existing contract at the end of its term,
- (c) the considerable change threshold is not met (see paragraphs (10) to (12)),
- (d) the relevant authority is of the view that the existing provider is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard, and
- (e) the procurement is not to conclude a framework agreement,

the relevant authority must follow one of Direct Award Process C, the Most Suitable Provider Process or the Competitive Process, such choice being at the discretion of the relevant authority.

(6) Where—

- (a) the relevant authority is not required to follow Direct Award Process A or Direct Award Process B,

- (b) paragraph (5) does not apply,
- (c) the relevant authority is of the view, taking into account likely providers and all relevant information available to the relevant authority at the time, that it is likely to be able to identify the most suitable provider, and
- (d) the procurement is not to conclude a framework agreement,

the relevant authority must follow either the Most Suitable Provider Process or the Competitive Process, such choice being at the discretion of the relevant authority.

(7) Where—

- (a) the relevant authority is not required to follow Direct Award Process A or Direct Award Process B, and
- (b) neither paragraph (5) nor (6) applies,

the relevant authority must follow the Competitive Process.

(8) Where the procurement is to conclude a framework agreement, the relevant authority must follow the Competitive Process.

(9) Where, having taken steps to follow a particular process chosen at its discretion in accordance with paragraph (5) or (6), the relevant authority decides that a different process would be more suitable, the relevant authority may decide to abandon the procurement in accordance with regulation 15 and follow a different process in accordance with paragraph (5) or (6).

(10) Subject to paragraphs (11) and (12), the “considerable change threshold” in paragraph (5) (c) is met—

- (a) where the proposed contracting arrangements are materially different in character to the existing contract when that existing contract was entered into, or
- (b) where—
 - (i) changes in the relevant health care services to which the proposed contracting arrangements relate (compared with the existing contract) are attributable to a decision of the relevant authority,
 - (ii) the lifetime value of the proposed contracting arrangements is at least £500,000 higher than the lifetime value of the existing contract when that existing contract was entered into, and
 - (iii) the lifetime value of the proposed contracting arrangements is at least 25% higher than the lifetime value of the existing contract when that existing contract was entered into.

(11) The considerable change threshold is not met where—

- (a) paragraph (10)(a) applies solely as a result of a change in the identity of the provider due to succession into the position of provider following corporate changes including takeover, merger, acquisition or insolvency and the relevant authority is satisfied that the provider meets the basic selection criteria, and
- (b) paragraph (10)(b) does not apply.

(12) The considerable change threshold is not met where—

- (a) paragraph (10)(a) does not apply, and
- (b) paragraph (10)(b) applies where the change between the existing and proposed contracting arrangements is in response to external factors beyond the control of the relevant authority and provider including, but not limited to, changes in patient or service user volume or changes in prices in accordance with a formula provided for in the contract documents.

Direct Award Process A

7.—(1) Where the relevant authority follows Direct Award Process A, the process is that the relevant authority—

- (a) awards any contract without a competition, and
 - (b) submits for publication on the UK e-notification service a notice of the award.
- (2) The notice referred to in paragraph (1)(b) must—
- (a) include the information set out in Schedule 2, and
 - (b) be submitted for publication within 30 days of the contract being awarded.

Direct Award Process B

8.—(1) Where the relevant authority follows Direct Award Process B, the process is that the relevant authority—

- (a) awards any contract without a competition, and
 - (b) submits for publication on the UK e-notification service a notice of the award.
- (2) The notice referred to in paragraph (1)(b) must—
- (a) include the information set out in Schedule 2, and
 - (b) be submitted for publication within 30 days of the contract being awarded.

Direct Award Process C

9.—(1) Where the relevant authority follows Direct Award Process C, the process is that the relevant authority—

- (a) follows the steps set out in this regulation, and
 - (b) awards any contract without a competition.
- (2) Step 1 is that the relevant authority decides, taking into account the key criteria and applying the basic selection criteria, whether it is content that the existing provider is satisfying the original contract and will likely satisfy the proposed contract to a sufficient standard.
- (3) If the relevant authority is so content, step 2 is that the relevant authority submits for publication on the UK e-notification service a notice of intention to make an award to the existing provider.
- (4) The notice referred to in paragraph (3) must include the information set out in Schedule 3.
- (5) Step 3 is that the standstill period begins the day after the day the notice referred to in paragraph (3) is published.
- (6) Regulation 12 makes further provision relating to the standstill period, including the making of written representations to the relevant authority by providers aggrieved by the decision made in step 1.
- (7) Step 4 is that the relevant authority—
- (a) carries out the requirements specified in regulation 12(4) where written representations are made in accordance with regulation 12(3), and
 - (b) communicates the further decision made under regulation 12(4)(d) and any subsequent further decisions made under regulation 12(7), in accordance with regulation 12(6) and (8).
- (8) Where no written representations are made in accordance with regulation 12(3), the relevant authority moves to step 5 without taking any action under step 4.

(9) Step 5 is that the relevant authority enters into the contract after the standstill period has ended in accordance with regulation 12(9) or (10).

(10) Step 6 is that the relevant authority submits for publication on the UK e-notification service a notice of the award of the contract.

(11) The notice referred to in paragraph (10) must—

- (a) include the information set out in Schedule 4, and
- (b) be submitted for publication within 30 days of the contract being awarded.

The Most Suitable Provider Process

10.—(1) Where the relevant authority follows the Most Suitable Provider Process, the process is that the relevant authority—

- (a) follows the steps set out in this regulation, and
- (b) awards any contract without a competition.

(2) Step 1 is that the relevant authority submits for publication on the UK e-notification service a notice of intention to follow the Most Suitable Provider Process.

(3) The notice referred to in paragraph (2) must include the information set out in Schedule 5.

(4) Step 2 is that the relevant authority identifies potential providers who may be the most suitable provider, with reference to the key criteria and the basic selection criteria.

(5) The relevant authority must not complete step 2 before the day which is 14 days after the day on which the notice of intention to follow the Most Suitable Provider Process is submitted for publication in accordance with step 1.

(6) Step 3 is that the relevant authority assesses the potential providers identified in step 2 and chooses, taking into account the key criteria and applying the basic selection criteria, the most suitable provider to whom to make an award.

(7) Step 4 is that the relevant authority submits for publication on the UK e-notification service a notice of intention to make an award to the chosen provider.

(8) The notice referred to in paragraph (7) must include the information set out in Schedule 6.

(9) Step 5 is that the standstill period begins the day after the day the notice referred to in paragraph (7) is published.

(10) Regulation 12 makes further provision relating to the standstill period, including the making of written representations to the relevant authority by providers aggrieved by the decision made in step 3.

(11) Step 6 is that the relevant authority—

- (a) carries out the requirements specified in regulation 12(4) where written representations are made in accordance with regulation 12(3), and
- (b) communicates the further decision made under regulation 12(4)(d) and any subsequent further decisions made under regulation 12(7), in accordance with regulation 12(6) and (8).

(12) Where no written representations are made in accordance with regulation 12(3), the relevant authority moves to step 7 without taking any action under step 6.

(13) Step 7 is that the relevant authority enters into the contract after the standstill period has ended in accordance with regulation 12(9) or (10).

(14) Step 8 is that the relevant authority submits for publication on the UK e-notification service a notice of the award of the contract.

(15) The notice referred to in paragraph (14) must—

- (a) include the information set out in Schedule 7, and
- (b) be submitted for publication within 30 days of the contract being awarded.

The Competitive Process

11.—(1) Where the relevant authority follows the Competitive Process, the process is that the relevant authority follows the steps set out in this regulation.

(2) Step 1 is that the relevant authority determines the contract or framework award criteria, taking into account the key criteria and applying the basic selection criteria.

(3) Step 2 is that the relevant authority submits a notice for publication on the UK e-notification service inviting offers to provide the relevant health care services in relation to which the contract is to be awarded or framework agreement is to be concluded.

(4) The notice referred to in paragraph (3) must include the information set out in Schedule 8.

(5) Step 3 is that the relevant authority assesses any offers received in accordance with the contract or framework award criteria.

(6) A relevant authority may carry out step 3 in stages.

(7) Step 4 is that the relevant authority makes a decision as to the successful provider.

(8) Step 5 is that the relevant authority promptly informs, in writing—

- (a) the successful provider that their offer has been successful and the relevant authority intends to make an award or conclude the framework agreement;
- (b) each unsuccessful provider that their offer has been unsuccessful, such communications to include the information set out in Schedule 9.

(9) Step 6 is that the relevant authority submits for publication on the UK e-notification service a notice of intention to make an award to the chosen provider or conclude a framework agreement.

(10) The notice referred to in paragraph (9) must include the information set out in Schedule 10.

(11) Step 7 is that the standstill period begins the day after the day the notice referred to in paragraph (9) is published.

(12) Regulation 12 makes further provision relating to the standstill period, including the making of written representations to the relevant authority by providers aggrieved by the decision made in step 4.

(13) Step 8 is that the relevant authority—

- (a) carries out the requirements specified in regulation 12(4) where written representations are made in accordance with regulation 12(3), and
- (b) communicates the further decision made under regulation 12(4)(d) and any subsequent further decisions made under regulation 12(7), in accordance with regulation 12(6) and (8).

(14) Where no written representations are made in accordance with regulation 12(3), the relevant authority moves to step 9 without taking any action under step 8.

(15) Step 9 is that the relevant authority enters into the contract or concludes the framework agreement after the standstill period has ended in accordance with regulation 12(9) or (10).

(16) Step 10 is that the relevant authority submits for publication on the UK e-notification service a notice of the award of the contract or conclusion of the framework agreement.

(17) The notice referred to in paragraph (16) must—

- (a) include the information set out in Schedule 11, and
- (b) be submitted for publication within 30 days of the contract being awarded or framework agreement being concluded.

The standstill period

12.—(1) Where the relevant authority follows Direct Award Process C, the Most Suitable Provider Process or the Competitive Process, the relevant authority must not enter into the contract or conclude the framework agreement before the end of a standstill period.

(2) The standstill period begins on the day after the day a notice of intention to award or conclude is published on the UK e-notification service in accordance with regulation 9(3) (Direct Award Process C), 10(7) (the Most Suitable Provider Process) or 11(9) (the Competitive Process).

(3) Any provider of the services to which the contract or framework agreement relates who—

- (a) is aggrieved by the decision, and
- (b) believes that there has been a failure to comply with these Regulations,

may make written representations to the relevant authority before midnight at the end of the 8th working day after the day the standstill period begins.

(4) Where the relevant authority receives representations in accordance with paragraph (3), it must—

- (a) ensure each provider who made representations is afforded such further opportunity to explain or clarify the representations made as the relevant authority considers appropriate,
- (b) provide promptly any information requested by an aggrieved provider where the relevant authority has a duty to record that information under regulation 24 (information requirements),
- (c) review the decision to award the contract or conclude the framework agreement, taking into account the representations made, and
- (d) make a further decision whether to—
 - (i) enter into the contract or conclude the framework agreement as intended after the standstill period has ended,
 - (ii) go back to an earlier step in the selection process and repeat that step and subsequent steps in accordance with the relevant procedure, or
 - (iii) abandon the procurement in accordance with regulation 15.

(5) Paragraph (4)(b) does not require the provision of information where provision—

- (a) would prejudice the legitimate commercial interests of any person, including those of the relevant authority,
- (b) might prejudice fair competition between providers, or
- (c) would otherwise be contrary to the public interest.

(6) The further decision in paragraph (4)(d) must be communicated promptly, in writing, with reasons to—

- (a) each provider from which the relevant authority received representations in accordance with paragraph (3), and
- (b) each provider to whom the relevant authority intended at the beginning of the standstill period to award the contract or with whom the relevant authority intended at the beginning of the standstill period to conclude the framework agreement, as the case may be.

(7) Following a further decision under paragraph (4)(d), the relevant authority may make any number of subsequent further decisions, each replacing the previous decision, to—

- (a) enter into the contract or conclude the framework agreement as intended after the standstill period has ended,
- (b) go back to an earlier step in the selection process and repeat that step and subsequent steps in accordance with the relevant procedure, or

- (c) abandon the procurement in accordance with regulation 15.
- (8) Each subsequent further decision under paragraph (7) must be communicated promptly in writing, with reasons to—
- (a) each provider from which the relevant authority received representations in accordance with paragraph (3), and
 - (b) each provider to whom the relevant authority intended at the beginning of the standstill period to award the contract or with whom the relevant authority intended at the beginning of the standstill period to conclude the framework agreement, as the case may be.
- (9) Where no written representations are received in accordance with paragraph (3), the standstill period ends at midnight at the end of the 8th working day after the day the standstill period began.
- (10) Where written representations are received in accordance with paragraph (3), the standstill period ends—
- (a) on such day as—
 - (i) the relevant authority has decided that it is ready to enter into the contract or conclude the framework agreement,
 - (ii) the relevant authority has carried out the requirements set out in paragraph (4),
 - (iii) the relevant authority has informed providers of its further decision in accordance with paragraph (6) and any subsequent further decisions in accordance with paragraph (8),
 - (iv) the relevant authority does not intend to make any, or any more, subsequent further decisions in accordance with paragraph (7), and
 - (v) there have been no fewer than 5 working days since the relevant authority informed providers of its last further decision in accordance with paragraph (6) or (8), or
 - (b) on such day as—
 - (i) the relevant authority has decided to abandon the procurement in accordance with regulation 15 or to go back to an earlier step in the selection process and repeat that step and subsequent steps in accordance with the relevant procedure,
 - (ii) the relevant authority has carried out the requirements set out in paragraph (4),
 - (iii) the relevant authority has informed providers of its further decision in accordance with paragraph (6) and any subsequent further decisions in accordance with paragraph (8),
 - (iv) the relevant authority does not intend to make any, or any more, subsequent further decisions in accordance with paragraph (7), and
 - (v) there have been no fewer than 5 working days since the relevant authority informed providers of its last further decision in accordance with paragraph (6) or (8).
- (11) In paragraphs (4)(d)(ii), (7)(b) and (10)(b)(i), a reference to a step in the selection process is to a step referred to in regulation 9 (Direct Award Process C), 10 (the Most Suitable Provider Process) or 11 (the Competitive Process) as the case may be.
- (12) In this regulation—
- “public holiday” means Christmas Day, Good Friday, the first Monday in May or a bank holiday in England under the Banking and Financial Dealings Act 1971(6);
- “working day” means any day which is not Saturday, Sunday or a public holiday.

Modification of contracts and framework agreements during their term

13.—(1) Subject to paragraph (3), a contract or framework agreement for relevant health care services may be modified during its term without following a new procurement process under these Regulations only where—

- (a) the modification is clearly and unambiguously provided for in the contract or framework agreement documents,
- (b) the modification is solely a change in the identity of the provider due to succession into the position of provider following corporate changes including takeover, merger, acquisition or insolvency and the relevant authority is satisfied that the provider meets the basic selection criteria,
- (c) the modification is made in response to external factors beyond the control of the relevant authority and the provider including, but not limited to—
 - (i) changes in patient or service user volume, or
 - (ii) changes in prices in accordance with a formula provided for in the contract documents,

and the modification does not render the contract or framework agreement materially different in character, or

- (d) the modification is attributable to a decision of the relevant authority and both of the criteria in paragraph (2) are met.

(2) The criteria are—

- (a) the modification does not render the contract or framework agreement materially different in character, and
- (b) the cumulative change in the lifetime value of the contract or framework agreement since it was entered into or concluded is—
 - (i) below £500,000; or
 - (ii) less than 25% of the lifetime value of the original contract or framework agreement when it was entered into or concluded.

(3) Where Direct Award Process A or Direct Award Process B was followed for the original award of a contract, the contract may be modified during its term without following a new procurement process under these Regulations where the modification does not render the contract materially different in character.

(4) Where—

- (a) a modification is made to a contract or framework agreement without following a new procurement process, in accordance with paragraph (1) or (3),
- (b) the modification is attributable to a decision of the relevant authority, and
- (c) the cumulative change in the lifetime value of the contract since it was entered into, or framework agreement since it was concluded, is £500,000 or more,

the relevant authority must submit a notice of the modification for publication on the UK e-notification service.

(5) The notice in paragraph (4) must—

- (a) be submitted for publication within 30 days of the modification of the contract or framework agreement, and
- (b) include the information set out in Schedule 12.

Urgent award or modification

14.—(1) Regulations 6 to 13 are subject to this regulation.

(2) Where a relevant authority considers that—

- (a) an award or modification must be made urgently,
- (b) the reason for the urgency was not foreseeable by and not attributable to the relevant authority, and
- (c) delaying the award of the contract or modification to satisfy the requirements of regulations 6 to 13 would be likely to pose a risk to patient or public safety,

the relevant authority may award or modify a contract without satisfying the requirements in regulations 6 to 13.

(3) Where—

- (a) a standstill period has begun in accordance with regulation 12(2),
- (b) the relevant authority has sought independent expert advice in accordance with regulation 23 in the standstill period,
- (c) there is an existing contract for the relevant health care services to which the proposed contracting arrangement relates and the relevant authority considers that the term of that contract is likely to expire before the end of the standstill period,
- (d) the relevant authority considers it necessary or expedient to modify the existing contract prior to the new contract taking effect in order to ensure continuity between the existing contract and proposed award of a new contract, and
- (e) the relevant authority considers that it is not possible to satisfy the requirements of regulations 6 to 13 before the term of the existing contract expires,

the relevant authority may modify the existing contract without satisfying the requirements in regulations 6 to 13.

(4) Where paragraph (2) applies, the relevant authority must submit a notice for publication on the UK e-notification service.

(5) The notice in paragraph (4) must—

- (a) be submitted for publication within 30 days of the award or modification of the contract;
- (b) in the case of an urgent award, include the information set out in Schedule 13;
- (c) in the case of an urgent modification, include the information set out in Schedule 14.

Abandonment of, or repetition of steps in, a procurement

15.—(1) Subject to paragraphs (2) and (3), a relevant authority may—

- (a) abandon a procurement of relevant health care services under these Regulations and not award a contract, or not conclude a framework agreement, or
- (b) go back to an earlier step in the selection process and repeat that step and subsequent steps,

at any time before an award is made or a framework agreement concluded.

(2) In a standstill period, a relevant authority may only make a decision to—

- (a) abandon a procurement, or
- (b) go back to an earlier step in a selection process and repeat that step and subsequent steps,

where that decision is in accordance with the procedure and requirements in regulation 12.

(3) Where a relevant authority makes a decision referred to in paragraph (2), the relevant authority may only abandon the procurement or repeat those steps after the standstill period has ended.

(4) Where, having started a process to procure relevant health care services under these Regulations, a relevant authority decides to abandon a procurement, the relevant authority must submit for publication on the UK e-notification service a notice of that decision.

(5) The notice in paragraph (4) must be submitted for publication—

(a) where the decision is made in a standstill period—

(i) after the standstill period has ended, and

(ii) within 30 days of the end of that standstill period;

(b) in any other case, within 30 days of the decision to abandon the procurement.

(6) Where, having started a process to procure relevant health care services under these Regulations, a relevant authority decides to repeat a step or steps, the relevant authority must inform relevant providers of that decision in writing.

(7) Paragraph (6) is satisfied where a decision to repeat a step or steps has been communicated to a provider in accordance with regulation 12(6) or (8).

(8) In this regulation—

(a) a reference to a step in the selection process is to a step referred to in regulation 9 (Direct Award Process C), 10 (the Most Suitable Provider Process) or 11 (the Competitive Process) as the case may be;

(b) “relevant providers” in paragraph (6) means any provider who has been made aware in the selection process that they are being considered for the award of a contract or to be a party to a framework agreement.

PART 3

Framework agreements

Framework agreements

16.—(1) In these Regulations, a framework agreement is an agreement between one or more relevant authorities and one or more providers—

(a) which establishes the terms based on which the provider will enter into one or more contracts for the provision of relevant health care services with a relevant authority in the period during which the framework agreement applies, and

(b) based on which contracts may be entered into only between a relevant authority (identified in accordance with paragraph (4)) and a provider party to the framework agreement for the duration of the framework agreement.

(2) A relevant authority may conclude a framework agreement.

(3) A relevant authority must follow the Competitive Process to conclude a framework agreement.

(4) A framework agreement must, when concluded, identify the relevant authorities which may award contracts based on the framework agreement.

(5) The term of a framework agreement must not exceed 4 years, other than in exceptional cases where the relevant authority is satisfied that the subject-matter of the framework agreement justifies a longer term.

Additional provider parties of a framework agreement during its term

17.—(1) A relevant authority may, during the term of a framework agreement, select further providers to be party to the framework agreement.

(2) A relevant authority must follow the Competitive Process to select such further providers, and references in Part 2 to concluding a framework agreement are to be treated as references to selecting further providers to be parties to a framework agreement when a relevant authority is following the Competitive Process to select such further providers.

Contracts based on a framework agreement

18.—(1) A contract based on a framework agreement may only be awarded in accordance with this regulation.

(2) Contracts based on a framework agreement must not entail substantial modifications to the terms laid down in that framework agreement.

(3) Where a framework agreement is concluded with a single provider, a relevant authority may award a contract without a competition in accordance with that framework agreement.

(4) Where a framework agreement is concluded with more than one provider, a relevant authority may award a contract either without a competition or by following the Competitive Process, such choice being at the discretion of the relevant authority but must be made in accordance with the framework agreement.

(5) Where a relevant authority awards a contract based on a framework agreement without a competition, the relevant authority must submit for publication on the UK e-notification service a notice of the award.

(6) The notice referred to in paragraph (5) must—

(a) include the information set out in Schedule 2, and

(b) be submitted for publication within 30 days of the contract being awarded.

(7) Where a relevant authority follows the Competitive Process in order to award a contract based on a framework agreement, the relevant authority must omit step 2 of that process and, in place of step 2, invite all providers who are party to the framework agreement to submit an offer.

(8) The invitation referred to in paragraph (7) must include the information set out in Schedule 15.

(9) In paragraph (7), the reference to step 2 is to step 2 referred to in regulation 11(3) (the Competitive Process).

PART 4

Further requirements when procuring relevant health care services

Basic selection criteria

19.—(1) Subject to paragraph (2), a relevant authority must not award a contract to, or conclude a framework agreement with, a provider who does not meet the basic selection criteria.

(2) Paragraph (1) does not apply to a contract—

(a) where the relevant authority follows Direct Award Process A or Direct Award Process B;

(b) which is a contract based on a framework agreement.

(3) The relevant authority must determine the basic selection criteria in accordance with Schedule 16.

Exclusions

20.—(1) Subject to paragraph (5), a relevant authority must not award a contract to a provider, and may exclude a provider from a procurement process under these Regulations, where the relevant authority would be obliged to exclude the provider from participation in a procurement procedure under regulation 57 of the Public Contracts Regulations 2015(7) (exclusion grounds) were the relevant authority the contracting authority and the provider an economic operator under that regulation.

(2) The relevant authority may exclude a provider from a procurement process under these Regulations where the relevant authority would be able, at its discretion, to exclude the provider from participation in a procurement procedure under regulation 57 of the Public Contracts Regulations 2015 were the relevant authority the contracting authority and the provider an economic operator under that regulation.

(3) The period during which the provider is excluded is the period which would apply if the exclusion were an exclusion under regulation 57(8) of the Public Contracts Regulations 2015.

(4) A provider may provide evidence to the effect that measures taken by the provider are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion.

(5) Where a provider provides such evidence and the relevant authority considers such measures to be sufficient, the relevant authority must not exclude the provider from the procurement process.

(6) Where a provider provides such evidence and the relevant authority considers such measures to be insufficient, the relevant authority must give the provider a statement of the reasons for that decision.

(7) This regulation does not apply to a contract based on a framework agreement.

Conflicts of interest

21.—(1) A relevant authority must take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement processes under these Regulations.

(2) For the purposes of paragraph (1)—

(a) the concept of conflicts of interest includes any situation where an individual has, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement process, and

(b) in particular, any such individual is required to recuse themselves from the decision-making process of that procurement process.

(3) Subject to paragraph (4), where the relevant authority is an integrated care board(9), an individual being both—

(a) a member of that integrated care board, and

(b) an employee, director, partner or otherwise holding a position within a provider,

does not in itself create a conflict or potential conflict of interest.

(4) Where the relevant authority is an integrated care board, and is following the Competitive Process to award a contract or conclude a framework agreement, an individual who is both—

(a) a member of that integrated care board, and

(7) S.I. 2015/102. Regulation 57 was amended by S.I. 2015/1472, 2016/275, 2019/624 and 2020/1319.

(8) Regulation 57(11) and (12) determine the duration of exclusion.

(9) “Integrated care board” is defined in section 275(1) of the National Health Service Act 2006 (the definition was inserted by paragraph 132 of Schedule 4 to the Health and Care Act 2022).

- (b) an employee, director, partner or otherwise holding a position within a provider who is taking part in the procurement process,

is required to recuse themselves from the decision-making process.

(5) In this regulation, “member of an integrated care board” means the chair, the chief executive or an ordinary member of an integrated care board as specified in the constitution of the integrated care board as a member of that board.

Termination of contracts

22.—(1) A relevant authority must ensure that every contract it awards contains provisions enabling the relevant authority to terminate the contract where—

- (a) the contract has been subject to a modification which cannot be made under regulation 13 without following a new procurement process;
- (b) the provider, at the time of the contract award, should have been excluded from the procurement process in accordance with regulation 20(1).

(2) The provisions referred to in paragraph (1) may address the basis on which the power is to be exercisable in those circumstances, for example by providing for notice of termination to be given and by addressing consequential matters that may arise from the termination.

(3) To the extent that a contract awarded under these Regulations does not contain provisions enabling the relevant authority to terminate the contract on any of the grounds mentioned in paragraph (1), a power for the relevant authority to do so on giving reasonable notice to the provider is an implied term of that contract.

PART 5

Advice, information and audit

Advice

23.—(1) When making decisions in accordance with these Regulations, a relevant authority may seek or otherwise receive independent expert advice.

- (2) The provision of information by a relevant authority for the purpose of paragraph (1)—
- (a) does not breach any obligation of confidence owed by the relevant authority, but
- (b) is subject to any express restriction on disclosure imposed by any enactment (other than a restriction which allows disclosure if authorised by an enactment).

(3) For the purposes of this regulation, “independent expert advice” means advice relating to the procurement of relevant health care services under these Regulations from a person with relevant expertise, qualifications or experience who is made available by, or endorsed by, NHS England or the Secretary of State for that purpose.

(4) Nothing in this regulation prevents the relevant authority seeking or otherwise receiving advice, including advice relating to the procurement of relevant health care services under these Regulations, at any time.

Information requirements

- 24.** A relevant authority must keep a record of—
- (a) the name of any provider to whom it awards a contract;
- (b) the name of any provider who is a party to a framework agreement;

- (c) the address of the registered office or principal place of business of each provider referred to in paragraph (a) or (b);
- (d) the decision-making process followed, including the identity of individuals making decisions;
- (e) where Direct Award Process C or the Most Suitable Provider Process was followed, a description of the way in which the key criteria were taken into account and the basic selection criteria were assessed when making a decision;
- (f) where the Competitive Process was followed, a description of the way in which the key criteria were taken into account, the basic selection criteria were assessed and contract or framework award criteria were evaluated when making a decision;
- (g) the reasons for decisions made under these Regulations;
- (h) declared conflicts or potential conflicts of interest;
- (i) how any conflicts or potential conflicts of interest were managed for each decision;
- (j) where a procurement is abandoned, the date on which it is abandoned.

Annual summary

25.—(1) A relevant authority must publish online, on a publicly available website accessible free of charge, an annual summary of its contracting activity for the provision of relevant health care services.

(2) The annual summary must include—

- (a) the number of contracts awarded in the year to which the summary relates where Direct Award Process A, Direct Award Process B or Direct Award Process C was followed;
- (b) the number of contracts awarded in the year to which the summary relates where the Most Suitable Provider Process was followed;
- (c) the number of contracts awarded in the year to which the summary relates where the Competitive Process was followed;
- (d) the number of framework agreements concluded in the year to which the summary relates;
- (e) the number of contracts awarded based on a framework agreement in the year to which the summary relates;
- (f) the number of contracts awarded and modifications made in reliance on regulation 14 (urgent award or modification) in the year to which the summary relates;
- (g) the number of new providers to whom a contract was awarded in the year to which the summary relates;
- (h) the number of providers who held a contract in the previous year but no longer hold any contracts in the year to which the summary relates;
- (i) the number of written representations made in accordance with regulation 12(3) and received during standstill periods which ended in the year to which the summary relates and a summary of the nature and impact of those representations.

Monitoring requirements

26. A relevant authority must—

- (a) monitor its compliance with these Regulations, and
- (b) publish online, on a publicly available website accessible free of charge, an annual report of the results of that monitoring including information as to how any non-compliance will be addressed.

PART 6

Consequential and transitional provision

Amendment of the Public Contracts Regulations 2015 consequential on the coming into force of these Regulations

27.—(1) The Public Contracts Regulations 2015 are amended as follows.

(2) After regulation 12, insert—

“Contracts and framework agreements for health care services

12A. This Part does not apply to contracts or framework agreements to which the Health Care Services (Provider Selection Regime) Regulations 2023 apply.”.

(3) After regulation 113(1)(b)(10), insert—

“(c) contracts for relevant health care services for the purposes of the health service in England within the meaning and scope of the Health Care Services (Provider Selection Regime) Regulations 2023.”.

Amendment of the Public Contracts Regulations 2015 consequential on the revocation of the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (S.I. 2013/500)

28. In the Public Contracts Regulations 2015, omit(11)—

- (a) regulation 77(6);
- (b) regulation 105(2)(a);
- (c) regulation 109(2)(d);
- (d) regulation 113(1)(a);
- (e) regulation 120.

Transitional provision

29.—(1) Nothing in these Regulations affects—

- (a) any contract award procedure commenced, but where the award was not made, before 1st January 2024;
- (b) the conclusion of any framework agreement where the procurement process commenced, but where the framework agreement was not concluded, before 1st January 2024; or
- (c) the use of a dynamic purchasing, or similar, system which is not a framework agreement (whether or not the system is operated in accordance with regulation 34 of the Public Contracts Regulations 2015) where the period of validity has not expired and the system has not otherwise been terminated.

(2) These Regulations apply to the modification of any contract for relevant health care services between a relevant authority and a provider whether or not the contract was awarded in accordance with these Regulations or before 1st January 2024.

(3) These Regulations apply to—

(10) Regulation 113 was amended by [S.I. 2016/275](#).

(11) These amendments are consequential on section 80(4) of the Health and Care Act 2022 which revokes the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 ([S.I. 2013/500](#)).

- (a) the modification of; and
 - (b) any contract award procedure commenced on or after 1st January 2024 for the award of a contract to be based on,
any framework agreement for relevant health care services between one or more relevant authorities and one or more providers whether or not the framework agreement was concluded in accordance with these Regulations or before 1st January 2024.
- (4) For the purpose of paragraph (1)—
- (a) a contract award procedure has been commenced before 1st January 2024 if, before that date—
 - (i) a contract notice has been submitted to the UK e-notification service for publication in accordance with regulation 51(1) of the Public Contracts Regulations 2015;
 - (ii) the relevant authority has contacted any provider in order to—
 - (aa) seek expressions of interest or offers in respect of a proposed contract; or
 - (bb) respond to an unsolicited expression of interest or offer received from that provider in relation to a proposed contract;
 - (iii) in the case of a contract to be based on a framework agreement or other technique or instrument for electronic or aggregated procurement concluded in accordance with the Public Contracts Regulations 2015 before 1st January 2024, any steps have been taken with a view to making an award;
 - (b) the procurement process for a framework agreement has been commenced before the 1st January 2024 if, before that date—
 - (i) the relevant authority has published any form of advertisement seeking offers or expressions of interest in a proposed framework agreement; or
 - (ii) the relevant authority has contacted any provider in order to—
 - (aa) seek expressions of interest or offers in respect of a proposed framework agreement; or
 - (bb) respond to an unsolicited expression of interest or offer received from that provider in relation to a proposed framework agreement.
- (5) In this regulation—
- (a) “dynamic purchasing system” includes a dynamic purchasing system within the meaning in the Public Contracts Regulations 2015, and
 - (b) “framework agreement” includes a framework agreement within the meaning in the Public Contracts Regulations 2015.

Signed by authority of the Secretary of State for Health and Social Care

6th December 2023

Andrew Stephenson
Minister of State,
Department of Health and Social Care