

Provider Selection Regime EoE Conference

<https://www.legislation.gov.uk/ukdsi/2023/9780348252613/contents>

<https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/>

Richard Russell, richard@rsrconsultants.com



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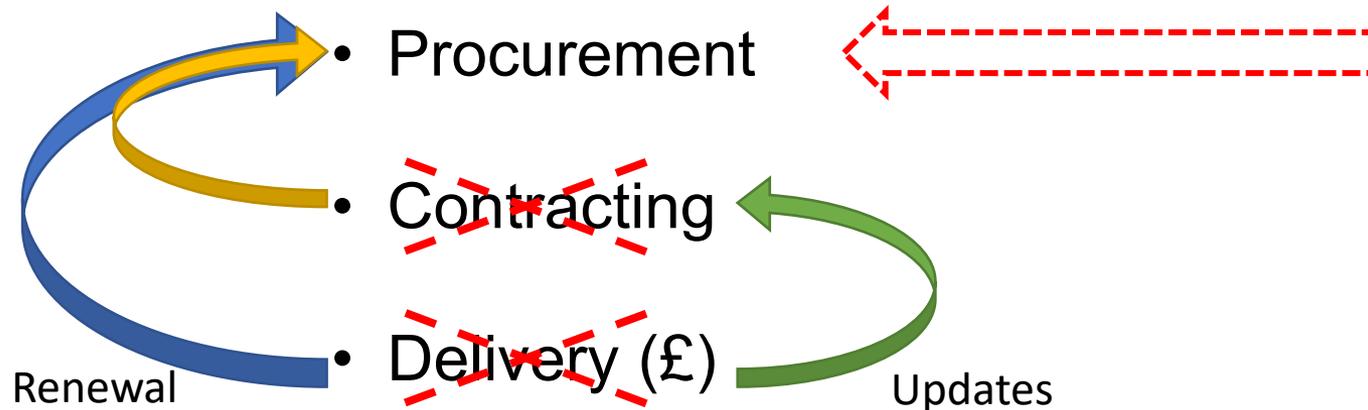
How do we pay a provider

- Come up with what we want (e.g. business case etc.)
- Maybe test the market to see if there is interest/capability



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How does it work – Scope of services

- There are a suite of procurement codes called Common Procurement Vocabulary of CPV and these are used to define the scope of services
- Some are quite specific (used in the first instance):
 - 85150000-5 Medical imaging services
 - 85131100-7 Orthodontic services
- Some are high level (just in case catch all):
 - 85323000-9 community health services
 - 85111000-0 Hospital services
- This is the “main subject matter”, can include other aspects as well e.g. IT, non healthcare services



How does it work – Scope of organisations (1)

- Integrated Care Boards
- NHS England
- Local Authorities
- NHS Trusts and Foundation Trusts (when arranging the provision of healthcare services by other providers)

- Remember the scope of services – so this is only in relation to healthcare (incl public health) services

- Excludes DHSC, MoD, Dept for Work and Pensions, Community Pharmacy, Social care (unless mixed procurement – lifetime contract value 50/50 rule)

- GP open unending contract approach...



What has changed? **(see bold)**

- A: No tender process for “single provider” core services (like waiver process) [have to do this if it is suitable]
- B: No tender process for “patient choice” services (although there is an accreditation process) [have to do this if A not suitable and B is]
- **C: When incumbent doing a good job (and the jobs staying the same) then don't need to re-tender (“continuation”)** [may do this if A and B not suitable]
- **When you know who you want to provide a new/changed service then use them (“most suitable provider”)**
- Or can still do the full tender process, use frameworks etc. (“competitive process”)



Continuation (A & B)

- I.e. you think the incumbent is the only provider able to deliver a service (A) or where alternative providers already available via patient choice routes (B).
- Document decision-making process and rationale
- Publish Contract award notice
- Annual summary report includes number of continuation procurement approaches
- Qu: what happens if “decision-making process and rationale” is flawed... so what if the incumbent is not the only provider and you didn’t properly check...



Continuation (1C)

- I.e. you think the incumbent is doing a good job and service isn't changing (change is less than [25% OR £0.5m] of contract lifetime value and is not a material alteration e.g. a different service)
- This “doing a good job” must be assessed against:
 - Quality (safety, effectiveness, experience) and Innovation
 - Value
 - Integration, collaboration and service sustainability
 - Access, inequalities and choice
 - Social Value
- Publish intent to award, “stand still”, award contract and publish decision to award



Provider to provider “sub contracts”

- NHS providers help out other NHS providers a lot.
- When I was in a hospital we has 1 finance manage who almost supported only these kind of arrangements.
- Have to follow the full process in each case but probably will be doing direct award C “doing a good job” when renew the contract (might be an email trail historically)
- Recommend having an internal template that can give to service manager (or the equivalent/most suitable) with requirements tailored to contact lifetime value for them to complete...



Publish Decision to Award Notice

- <https://www.england.nhs.uk/long-read/the-provider-selection-regime-statutory-guidance/#annex-b-transparency>
- Procurement process followed, contract title/reference, awarded provider name/address, description of services incl CPV code, lifetime value of the contract, dates, details of individual/committee making the decision, any declared potential conflicts of interest, new vs existing service/provider
- An example <https://www.find-tender.service.gov.uk/Notice/054037-2025>



Chrome PDF
Document



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Continuation (Variations)

- Cumulative contract variations (rather than contract ending and being re-awarded under continuation 1A/B/C) which are:
 - prescribed for under the originally procured contract, or
 - solely due to change in identity, or
 - due to external causes (e.g. growth in patient volumes, changes in national prices), or
 - less than [25% OR £0.5m] of contract lifetime value
- are permitted variations and do not require a new procurement process to be followed



Most suitable provider (1)

- i.e. you know who you want to provide a new/changed service
- Hmm... what constitutes “considerable change”?
 - Not a change allowed for in original contract
 - Not a change due to change in provider identity (e.g. merger)
 - Not a change due to external causes beyond decision making body control (e.g. change in referrals, change in tariff, change in NICE guidance)
 - Cumulative lifetime value of the change over £0.5m AND 25%
- How do you know who is the most suitable though? Test the market? Might as well do competitive procurement.



Competitive Procurement (1)

- If want to test the market or there is more than one suitable provider etc. or if want to utilise a framework approach (conclude a framework agreement or award a contract based on a framework agreement).
- Essentially as per now
 - Publish notice for competitive tender
 - Record internal decision-making process and rationale
 - Respond to unsuccessful bidders (and successful one)
 - Publish notice of intent to award contract / conclude framework agreement
 - Standstill
 - Publish award notice (and for frameworks, when award a contact under the framework also publish that this has happened)



Competitive Procurement (2)

- Frameworks are alive and kicking...
- Not available for Patient Choice as “Must” follow process B for patient choice
- One recent scenario – provider delivers just one or two units of activity a year for an ICB but no contract anywhere – how get paid.
- Set up a low volume activity framework – first time it happens utilise regulation 14 (see 4 slides time) and then get the framework manager to work with them to either refuse referrals or go through procurement onto the framework



Avoiding Judicial Review etc.

- “Independently” chaired DHSC/NHSE panel (well 2 panels acting as 1) advising on patient choice and provider selection regime regulations.
- So if a potential service provider feels unfairly excluded from offering services then there is always the option for judicial review but accessing this panel could be a cheaper and faster alternative.
- As with tribunals, it could eventually become the case that you need to appeal to this panel first before being able to access judicial review
- <https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/independent-patient-choice-and-procurement-panel/>

Panel Outcomes

- <https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/independent-patient-choice-and-procurement-panel/panel-reports/>
- Fairness



Over to you

- Final Q&A
- richard@rsrconsultants.com

