
Bath & North East Somerset Council

Improving People's Lives

The Changing Face of Public Sector Procurement –
The Procurement Bill and The Health & Care Act
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The “Old” Procurement Regime

- Public Contracts Regulations 2015
 - Based on the EU Procurement Directives
 - Covers all public sector organisations
 - “Light Touch” regime covers Health, Social Care and some other services
- Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (PPR 2020)
 - Removes all references to the EU. For example, financial thresholds are no longer given in Euros. Removes the requirement to publish OJEU notices. Instead, contracting authorities publish procurement notices on the Government’s “Find a Tender” platform



Procurement Thresholds – 1/1/22 – 31/12/23

	Threshold inclusive of VAT	Threshold exclusive of VAT
Supplies and/or (most) Services (for Local Government)	£213,477	£177,898
Works Contracts and Concession Contracts	£5,336,937	£4,447,448
Social and other specific Services (Light Touch Regime applies)	£663,540	£552,950

National Procurement Policy Statement

- All contracting authorities should consider the following national priority outcomes alongside any additional local priorities in their procurement activities:
 - creating new businesses, new jobs and new skills;
 - tackling climate change and reducing waste, and
 - improving supplier diversity, innovation and resilience.
- These have been incorporated in the Council's Procurement Strategy

National Procurement Policy Statement

- Publication of procurement pipelines
- Market health and capability assessments
- Project validation review
- Delivery model assessments (also known as Make versus Buy). Contracting authorities should conduct a proportionate delivery model assessment before deciding whether to outsource, insource or re-procure a service through evidenced based analysis.
- Should cost model
- Pilots
- Key performance indicators
- Risk allocation
- Pricing and payment mechanism
- Assessing the economic and financial standing of suppliers
- Resolution planning

Transforming Public Procurement – Green Paper & Beyond



- Published in December 2020
- Sets the agenda for Public Sector procurement reform
- Significant delays bringing The Procurement Bill forward due to the pandemic and other issues
- Currently going through the House of Lords but significant drafting issues
- Act unlikely to go live until October 2023 (more likely early 2024) with a 6 month implementation period

Proposed Key Practical Changes

- Increased transparency – additional notices regarding contract extensions, variations to contracts for example
- Introduction of new Competitive Flexible process – introducing more flexibility around the process
- New tools – introduction of an Open Framework and Dynamic Market (replaces DPS)
- Evaluation – MAT rather than MEAT
- Increased transparency at award of contract

Competitive Flexible Procedure



- Minimal detailed rules
- Comply with principles re transparency, fair treatment & non-discrimination
- Flexibility to design processes suitable for the market
- Must advertise process, with the tender notice containing full details
- Run process in accordance with the published notice
- Reasonable and proportionate timescales
- Opportunity to build in negotiation and market involvement
- Combination of existing process or entirely new

Open Frameworks and Dynamic Markets

- Open frameworks – add new providers throughout the term
- Max duration 8 years
- Must open to new entrants at least once during term, can be more often

- Dynamic markets – unlike DPS, not just for commonly used purchases

Most Advantageous Tender

- MAT rather than MEAT
- Reinforcing and adding clarity, rather than significant change
- Encourages consideration of environmental and social considerations
- Award criteria linked to subject matter of the contract and proportionate
- Value for money



Health & Care Act 2022 – Why are we talking about it?

- The Council purchases a range of goods, services and works – including some which would be classed as Healthcare
- The Provider Selection Regime replaces Light Touch procurement arrangements for Healthcare contracts
- It will be implemented under the Health & Care Act 2022 via regulation
- Implementation has been delayed but further guidance is expected in October/November



The PSR will be replacing the existing rules for procuring healthcare services

Existing procurement system for healthcare services



The new Provider Selection Regime

✗ Too rigid

✗ Creates barriers to integrating care

✗ Disrupt the development of stable collaborations

✓ More flexible arrangements

✓ Better incentives

✓ Integrated care

? Loss of benefits from competition

? Lack of clarity about cost and performance

RISKS



Who does it apply to?

- Integrated Care Boards (ICBs) when commissioning healthcare services for the purposes of the health service (whether NHS or public health)
- NHS England when commissioning healthcare for the purposes of the health service (whether NHS or public health)
- **Local authorities** and combined authorities when arranging healthcare services as part of their **public health** functions
- **Local authorities** and combined authorities when arranging **NHS healthcare services** as part of section 75 **partnership** arrangements with the NHS
- NHS trusts and foundation trusts when arranging the provision of healthcare services by other providers

Scope of the PSR

In scope

Public health contracts

Mixed health and social care contracts where health predominates

Out of scope

Social care contracts in general

Consultancy services about healthcare

PPE

Decision Circumstances under the PSR

DC 1A, 1B, 1C

Continuing existing arrangements without a competitive procurement process

DC 2

Identify a suitable provider without running a competitive procurement process

DC 3

Competitive procurement process

Relevant Considerations

- Performance of incumbent – against key criteria
- Extent to which the contract requirements are changing
- Desire for incumbent to continue delivering
- Existence of a market
- Ability to identify most suitable provider without running competitive process

- Publication of decision notices and implementation of standstill periods

Until then.....

- The Public Contracts Regulations continue to apply – above the relevant thresholds
- Await confirmation regarding timing and implementation
- Existing contracts/frameworks run until their expiry – new rules apply at point of renewal

