

Draft Regulations laid before Senedd Cymru under section 203(6A) of the National Health Service (Wales) Act 2006 and section 122(10)(na) of the Procurement Act 2023, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2024 No. (W.)

HEALTH SERVICES, WALES

**PUBLIC PROCUREMENT,
WALES**

The Health Services (Provider
Selection Regime) (Wales)
Regulations 2024

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the procurement of relevant health services for the health service in Wales by relevant authorities. Provision is also made for the procurement of goods or other services that are connected to the health services (mixed procurement). These Regulations are made using powers under sections 10A(1), (2) and (3), 203(9) and (10), and 205(a) and (b) of the National Health Service (Wales) Act 2006.

These Regulations disapply the provisions of the Procurement Act 2023 (“the 2023 Act”) in relation to regulated health service procurement in Wales using powers under section 120A(1) of the 2023 Act (regulation 30).

Relevant authorities are county councils or county borough councils in Wales, local health boards, National Health Service trusts, and special authorities. Relevant health services are health services which fall within one or more of the common procurement vocabulary (“CPV”) codes set out in Schedule 1. CPV codes are those adopted by Regulation (EC) No. 2195/2002 of the European Parliament and of the Council of 5 November 2002.

Part 1 contains introductory provisions, including those which set out when the Regulations apply.

Regulations 5 and 6 of Part 1 set out procurement principles and key criteria for decision-making when procuring services under these Regulations.

Part 2 sets out the procurement processes, the circumstances in which they are used and the procedure for each. There are four processes: the Direct Award Process 1, the Direct Award Process 2, the Most Suitable Provider Process, and the Competitive Process. Part 2 also provides that where a relevant authority decides to conclude a framework agreement, they must follow the Competitive Process (regulation 7(2)).

If conditions are met, the relevant authority has discretion to select a procurement process. Where a relevant authority has a discretion to choose which procurement process it follows, but decides that a different process would be more suitable, it may follow a different process (regulation 7(8)).

Part 2 sets out further provisions for certain procurement processes. This includes provision for a standstill period; the procedure a relevant authority must follow if an aggrieved provider makes a representation; provision for the modification of contracts and framework agreements during their term without following a new procurement process if conditions are met; provision for a special process for certain urgent awards or modifications; and provision for procurement processes to be abandoned or for steps in a procurement process to be repeated, if conditions are met.

Part 3 makes provision about framework agreements including: how they are defined; how they may be concluded; the maximum term duration; when the Competitive Process must be commenced to allow additional providers to be selected to be party to a framework agreement during its term; and the processes to be followed when awarding contracts under a framework agreement.

Part 4 makes further provision about the procurement of relevant health services. This includes: the basic selection criteria; the process for submitting a notice for publication; the circumstances when a provider can be excluded; how conflicts of interest or potential conflicts of interest must be managed; and requirements to allow for contract termination.

Part 5 sets out administrative provisions and requirements for relevant authorities. This includes provisions for retention of records; annual summaries to be published; and monitoring requirements. Part 5 also makes provision for relevant authorities to seek advice from independent experts.

Part 6 makes transitional provision.

Part 7 makes provision for the disapplication of the 2023 Act to regulated health service procurement in Wales.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations has been prepared. A copy can be obtained from Welsh Government, Commercial Directorate, Cathays Park, Cardiff, CF10 3NQ and is published on www.gov.wales.

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2024 No. (W.)

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The Health Services (Provider
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Made

Coming into force

28 October 2024

CONTENTS

PART 1

General

1. Title, commencement and application
2. Interpretation
3. Application to procurement of health services
4. Methods for calculating estimated lifetime value
5. Procurement principles
6. Key criteria

PART 2

Procurement processes

7. Determination of the appropriate procurement process
8. Direct Award Process 1
9. Direct Award Process 2
10. Most Suitable Provider Process

11. Competitive Process
12. The standstill period
13. Modification of contracts and framework agreements during their term
14. Urgent award or modification of a contract
15. Abandonment of, or repetition of steps in, a procurement

PART 3

Framework agreements

16. Framework agreements
17. Adding additional providers to a framework agreement
18. Contracts based on a framework agreement

PART 4

Further requirements when procuring relevant health services

19. Basic selection criteria
20. Publication of notices
21. Exclusions
22. Exclusions: sub-contractors
23. Conflicts of interest
24. Termination of contracts

PART 5

Advice, information and audit

25. Advice
26. Information requirements
27. Annual summary
28. Monitoring requirements

PART 6

Transitional provisions

29. Transitional provision

PART 7

30. Disapplication of the Procurement Act 2023

SCHEDULES

- SCHEDULE 1 — Relevant health services: CPV codes
- SCHEDULE 2 — Content of notice to award to an existing provider under the Direct Award Process 1 or based on a framework agreement without following the Competitive Process
- SCHEDULE 3 — Content of notice of intention to award to a provider under the Direct Award Process 2
- SCHEDULE 4 — Content of notice to award to a provider under the Direct Award Process 2
- SCHEDULE 5 — Content of notice of intention to follow the Most Suitable Provider Process
- SCHEDULE 6 — Content of notice of intention to award to a provider under the Most Suitable Provider Process
- SCHEDULE 7 — Content of notice to award to a provider under the Most Suitable Provider Process
- SCHEDULE 8 — Content of notice inviting offers under the Competitive Process
- SCHEDULE 9 — Content of notice to unsuccessful provider under the Competitive Process
- SCHEDULE 10 — Content of notice of intention to award to a provider, or conclude a framework agreement, under the Competitive Process

- SCHEDULE 11 — Content of notice to award a contract to or conclude a framework agreement with a provider under the Competitive Process
- SCHEDULE 12 — Notice of modification to contract or framework agreement where regulation 13(6) applies
- SCHEDULE 13 — Notice of urgent award of contract where regulation 14(1) applies
- SCHEDULE 14 — Notice of urgent modification to contract where regulation 14(1) applies
- SCHEDULE 15 — Invitation to providers who are party to the framework agreement to submit an offer
- SCHEDULE 16 — Notice of abandonment of procurement process
- SCHEDULE 17 — Basic selection criteria

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 10A(1), (2) and (3), 203(9) and (10), and 205(a) and (b) of the National Health Service (Wales) Act 2006⁽¹⁾ and section 120A(1) of the Procurement Act 2023⁽²⁾.

The Welsh Ministers have carried out an appropriate consultation and have published a summary of the responses received in accordance with section 10A(4) of the National Health Service (Wales) Act 2006.

(1) 2006 c. 42. Section 10A was inserted by section 3 of the Health Service Procurement (Wales) Act 2024 (asc 1) (“the 2024 Act”).

(2) 2023 c. 54. Section 120A was inserted by section 2(2) of the 2024 Act.

In accordance with section 203(6A) of the National Health Service (Wales) Act 2006⁽¹⁾ and section 122(10)(na) of the Procurement Act 2023⁽²⁾, a draft of these Regulations has been laid before, and approved by a resolution of, Senedd Cymru⁽³⁾.

In accordance with section 10A(5) of the National Health Service (Wales) Act 2006, explanatory material accompanying these Regulations sets out how the regulations make provision for the purposes of section 10A(3).

PART 1

General

Title, commencement and application

1.—(1) The title of these Regulations is the Health Services (Provider Selection Regime) (Wales) Regulations 2024.

(2) These Regulations come into force on 28 October 2024.

(3) These Regulations apply in relation to regulated health service procurement in Wales.

Interpretation

2.—(1) In these Regulations—

“basic selection criteria” (*“meini prawf dethol sylfaenol”*) means the selection criteria determined by the relevant authority under regulation 19 and Schedule 17;

“central digital platform” (*“plattform digidol canolog”*) means the online system established by the Minister for the Cabinet Office⁽⁴⁾;

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

“contract or framework award criteria” (*“meini prawf dyfarnu contract neu fframwaith”*) means

(1) As inserted by section 111(2) of the Public Health (Wales) Act 2017 (anaw 2) and amended by section 1(2) of the Nurse Staffing Levels (Wales) Act 2016 (anaw 5) and section 3(3) of the 2024 Act.

(2) As inserted by section 2(3) of the 2024 Act. See also section 40 of the Legislation (Wales) Act 2019 (anaw 4) for provision about the procedure that applies to this instrument.

(3) The reference in section 203(6A) of the National Health Service (Wales) Act 2006 to the National Assembly for Wales now has effect as a reference to Senedd Cymru by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

(4) The central digital platform which may be accessed at <http://www.gov.uk/find-tender>.

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

“CPV” (“GGG”) means the Common Procurement Vocabulary, as adopted by Article 1 and Annex I to Regulation (EC) No. 2195/2002 of the European Parliament and of the Council of 5 November 2002⁽¹⁾;

“Direct Award Process 1” (“*Proses Dyfarniad Uniongyrchol 1*”) means the process set out in regulation 8 for the award of a contract without a competition;

“Direct Award Process 2” (“*Proses Dyfarniad Uniongyrchol 2*”) means the process set out in regulation 9 for the award of a contract without a competition;

“estimated lifetime value” (“*gwerth oes amcangyfrifedig*”) means the value of a contract or framework agreement for the time being estimated by the relevant authority under regulation 4;

“excludable provider” (“*darparwr gwaharddadwy*”) means a provider or sub-contractor that would be an excludable supplier in accordance with sections 57 (meaning of excluded and excludable supplier) and 58 (considering whether a supplier is excluded or excludable) of the 2023 Act, were the relevant authority the contracting authority and the provider a supplier under those sections, and any references to an associated person in those sections were omitted;

“excluded provider” (“*darparwr gwaharddedig*”) means a provider or sub-contractor that would be an excluded supplier in accordance with sections 57 and 58 of the 2023 Act, were the relevant authority the contracting authority and the provider a supplier under those sections, and any references to an associated person in those section were omitted;

“existing provider” (“*darparwr presennol*”)—

- (a) means a provider with whom a relevant authority has a contract for the provision of relevant health services which has not expired or otherwise been terminated, and
- (b) includes such a provider in its changed identity in a case where the identity of such a provider is expected to change due to, for example, succession into the position of such a provider following corporate changes including takeover, merger, acquisition or insolvency;

(1) EUR 2002/2195. Annex 1 to the EUR 2002/2195 was amended by regulation 2 of the Common Procurement Vocabulary (Amendment) Regulations 2023 (S.I. 2023/601).

“framework agreement” (“*cytundeb fframwaith*”) means an agreement between one or more relevant authorities and one or more providers concluded and operated under Part 3;

“health services” (“*gwasanaethau iechyd*”) has the meaning given by section 10A(1)(a) of the National Health Service (Wales) Act 2006;

“key criteria” (“*meini prawf allweddol*”) means the criteria set out in regulation 6;

“Most Suitable Provider Process” (“*Proses Darparwr Mwyaf Addas*”) means the process set out in regulation 10 for the award of a contract without a competition;

“procurement” (“*caffaeliad*”) means the award, entry into and management of a contract, and any reference to a procurement includes a reference to—

- (a) any step taken for the purpose of awarding, entering into or managing the contract;
- (b) a part of the procurement;
- (c) termination of the procurement before award;

“procurement principles” (“*egwyddorion caffael*”) means the principles in regulation 5;

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

“relevant authority” (“*awdurdod perthnasol*”) has the meaning given by section 10A(9) of the National Health Service (Wales) Act 2006;

“relevant health services” (“*gwasanaethau iechyd perthnasol*”) means health services which fall within one or more of the CPV codes specified in Schedule 1, to the extent described in that table;

“standstill period” (“*cyfnod segur*”) has the meaning given by regulation 12;

“sub-contractor” (“*is-gontractwr*”) means a person who a provider intends to sub-contract with or sub-contracts with for all or part of a contract for relevant health services for the purposes of the health service in Wales;

“the health service” (“*y gwasanaeth iechyd*”) has the meaning given by section 206(1) of the National Health Service (Wales) Act 2006(1);

“the 2023 Act” (“*Deddf 2023*”) means the Procurement Act 2023(2);

(1) 2006 c. 42. There are amendments to section 206(1) which are not relevant to these Regulations.

(2) c. 54.

“Welsh digital platform” (*“plattfform digidol Cymreig”*) means the online system provided by the Welsh Government for use by relevant authorities to whom these Regulations apply.

Application to procurement of health services

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

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

- (a) relevant health services for the purposes of the health service in Wales, and
- (b) goods or other services that are connected to those health 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 services for the purposes of the health service in Wales, and
- (b) the relevant authority determines that the goods or other services could not reasonably be supplied under a separate contract.

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

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

(5) For the purposes of the criteria in paragraph (3)(b), the relevant authority determines that procuring the goods or other services could not reasonably be supplied under a separate contract where procuring the relevant health services and the goods and other 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.

(6) A relevant authority must calculate the estimated lifetime value in accordance with regulation 4.

(7) Where a procurement by a relevant authority for relevant health services is part of a mixed procurement, the term “relevant health services” in these Regulations, except this regulation, includes any goods or services connected to those relevant health services.

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

Methods for calculating estimated lifetime value

4.—(1) The estimated lifetime value is to be calculated—

- (a) in the case of a fixed term contract, as the maximum amount the relevant authority could expect to pay under the contract including, where applicable, amounts already paid;
- (b) in the case of contracts without a fixed term, as the maximum amount the relevant authority could expect to pay under the contract in any one-month period, multiplied by 48;
- (c) in the case of a framework agreement, the sum of the estimated lifetime value of all contracts that have or may be awarded under that framework.

(2) In paragraph (1), the amount a relevant authority could expect to pay includes the following—

- (a) the value of any services provided by the provider under the contract other than for payment;
- (b) amounts that would be payable if an option in the contract for the provider to supply additional services were exercised;
- (c) amounts that would be payable if an option in the contract to extend or renew the term of the contract were exercised;
- (d) amounts representing premiums, fees, commissions or interest that could be payable under the contract;
- (e) amounts representing prizes or payments that could be payable to providers participating in the procurement.

(3) In estimating the value of a contract, a relevant authority must take into account all of the facts which are material to the estimate and available to the authority at the time it makes the estimate.

Procurement principles

5. When procuring relevant health 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;
- (c) having regard to—
 - (i) the Wales procurement policy statement published under section 14 of the 2023 Act;
 - (ii) any other policy statement made by the Welsh Ministers relevant to the health services being procured.

Key criteria

6. The key criteria are—
- (a) quality, that is the need to ensure good quality services,
 - (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) collaboration and service sustainability, that is the extent to which services can be provided in—
 - (i) a collaborative way, and
 - (ii) a sustainable way,so as to improve health outcomes, which includes the stability of good quality health services or service continuity of health services,
 - (d) improving access and reducing health inequalities, that is ensuring accessibility to services and treatments for all eligible patients, and
 - (e) social responsibility, that is whether what is proposed might improve economic, social, environmental, and cultural well-being in the geographical area relevant to a proposed contracting arrangement.

PART 2

Procurement processes

Determination of the appropriate procurement process

7.—(1) Where the relevant authority proposes to award a contract for relevant health services, the relevant authority must follow the process determined under paragraphs (4) to (7).

(2) Where the relevant authority proposes to conclude a framework agreement, the relevant authority must follow the Competitive Process.

(3) 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).

(4) The relevant authority must follow the Direct Award Process 1 to award a contract where the following requirements are met.

Requirement 1

There is an existing provider of the relevant health services to which the proposed contracting arrangements relate.

Requirement 2

The relevant authority is satisfied that due to the nature of the relevant health services to which the proposed contracting arrangements relate, the proposed contracting arrangement is capable of being provided only by the existing provider.

(5) The relevant authority must follow one of the Direct Award Process 2, the Most Suitable Provider Process or the Competitive Process, such choice being at the discretion of the relevant authority, to award a contract where the following requirements are met.

Requirement 1

The relevant authority is not required to follow the Direct Award Process 1 in accordance with paragraph (4).

Requirement 2

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.

Requirement 3

The proposed contracting arrangements are not a considerable change (see paragraphs (9) to (12)).

Requirement 4

The relevant authority considers that the existing provider is satisfying the existing contract and will likely satisfy the proposed contracting arrangements to a sufficient standard.

(6) 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, to award a contract where the following requirements are met.

Requirement 1

The relevant authority is not required to follow Direct Award Process 1 in accordance with paragraph (4).

Requirement 2

Paragraph (5) does not apply.

Requirement 3

The relevant authority considers, taking into account the 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.

(7) The relevant authority must follow the Competitive Process to award a contract where the following requirements are met.

Requirement 1

The relevant authority is not required to follow the Direct Award Process 1 in accordance with paragraph (4).

Requirement 2

Neither paragraph (5) nor (6) applies.

(8) Where, having taken steps to follow a particular procurement process under either of paragraphs (5) or (6), the relevant authority decides that a different procurement process would be more suitable, the relevant authority may—

- (a) decide to abandon the procurement under regulation 15, and
- (b) select a different procurement process in accordance with these Regulations.

(9) The proposed contracting arrangements are a “considerable change” for the purposes of subparagraph (5) where either—

Scenario 1

The proposed contracting arrangements are materially different in character to the existing contract when that existing contract was entered into, or

Scenario 2

The considerable change threshold in paragraph (10) is met.

(10) The considerable change threshold for the purposes of paragraph (9) is met where all the following requirements apply—

Requirement 1

The changes in the relevant health services to which the proposed contracting arrangements relate (compared with the existing contract) are attributable to a decision of the relevant authority.

Requirement 2

The estimated lifetime value of the proposed contracting arrangements is £500,000 or higher, than the estimated lifetime value of

the existing contract as calculated when that existing contract was entered into.

Requirement 3

The estimated lifetime value of the proposed contracting arrangements is 25% or higher, than the estimated lifetime value of the existing contract as calculated when that existing contract was entered into.

(11) The proposed contracting arrangements are not a considerable change for the purposes of subparagraph (5) where—

- (a) the proposed contracting arrangements are materially different in character to the existing contract when that existing contract was entered into, but that is 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) the considerable change threshold in paragraph (10) is not met.

(12) The proposed contracting arrangements are not a considerable change for the purposes of subparagraph (5) where—

- (a) the proposed contracting arrangements are not materially different in character to the existing contract when that existing contract was entered into, and
- (b) the considerable change threshold in paragraph (10) is met, but 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 1

8.—(1) This regulation applies where the relevant authority must follow the Direct Award Process 1 in accordance with regulation 7(4).

(2) The relevant authority must—

- (a) award any contract without a competition, and
- (b) submit for publication a notice of the award of the contract within 30 days of the contract being awarded.

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

Direct Award Process 2

9.—(1) This regulation applies where the relevant authority has decided to follow the Direct Award Process 2 in accordance with regulation 7(5).

(2) The relevant authority must—

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

Step 1

(3) The relevant authority must decide whether the existing provider is satisfying the existing contract and will likely satisfy the proposed contracting arrangements to a sufficient standard.

(4) In reaching a decision at step 1, the relevant authority must take into account the key criteria and apply the basic selection criteria.

Step 2

(5) If the relevant authority decides the existing provider is satisfying the existing contract and will likely satisfy the proposed contracting arrangements to a sufficient standard, the relevant authority must submit for publication a notice of intention to make an award to the existing provider.

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

(7) Following the publication of the notice in paragraph (5), the standstill period begins in accordance with regulation 12(2).

Step 3

(8) Where written representations are made in accordance with regulation 12(3), the relevant authority must—

- (a) comply with the requirements specified in regulation 12(5) and (7), and
- (b) communicate the further decision made under regulation 12(8) and any subsequent further decisions made under regulation 12(10), in accordance with regulation 12(9) and (11).

(9) Where no written representations are made in accordance with regulation 12(3), the relevant authority may move from step 2 to step 4.

Step 4

(10) The relevant authority may enter into the contract after the standstill period has ended in accordance with regulation 12(12) or (13).

Step 5

(11) If the relevant authority awards a contract under step 4, the relevant authority must submit for publication a notice of the award of the contract within 30 days of the contract being awarded.

(12) The notice referred to in paragraph (11) must include the information set out in Schedule 4.

Most Suitable Provider Process

10.—(1) This regulation applies where the relevant authority has decided to follow the Most Suitable Provider Process in accordance with regulation 7(5) or (6).

(2) The relevant authority must—

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

Step 1

(3) The relevant authority must submit for publication a notice of intention to follow the Most Suitable Provider Process.

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

Step 2

(5) The relevant authority must identify potential providers who may be the most suitable provider.

(6) In identifying any potential providers in paragraph (5), the relevant authority must take into account the key criteria and apply the basic selection criteria.

(7) The relevant authority must not conclude 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.

Step 3

(8) The relevant authority must assess the potential providers identified in step 2 and choose the most suitable provider to whom to make an award.

(9) In assessing potential providers and choosing the most suitable provider, the relevant authority must take into account the key criteria and apply the basic selection criteria.

Step 4

(10) The relevant authority must submit for publication a notice of intention to make an award to the provider chosen as the most suitable provider.

(11) The notice referred to in paragraph (10) must include the information set out in Schedule 6.

(12) Following the publication of the notice in paragraph (10), the standstill period begins in accordance with regulation 12(2).

Step 5

(13) Where written representations are made in accordance with regulation 12(3), the relevant authority must—

- (a) comply with the requirements specified in regulation 12(5) and (7), and
- (b) communicate the further decision made under regulation 12(8) and any subsequent further decisions made under regulation 12(10), in accordance with regulation 12(9) and (11).

(14) Where no written representations are made in accordance with regulation 12(3), the relevant authority may move from step 4 to step 6.

Step 6

(15) The relevant authority may enter into the contract after the standstill period has ended in accordance with regulation 12(12) or (13).

Step 7

(16) Where the relevant authority enters into a contract under step 6, the relevant authority must submit for publication a notice of the award of the contract within 30 days of the contract being awarded.

(17) The notice referred to in paragraph (16) must include the information set out in Schedule 7.

Competitive Process

11.—(1) This regulation applies where—

- (a) the relevant authority must follow the Competitive Process under regulation 7(2) or (7), or
- (b) the relevant authority decides to follow the Competitive Process in accordance with regulation 7(5) or (6).

(2) The relevant authority must follow the steps set out in this regulation.

Step 1

(3) The relevant authority must determine the contract or framework award criteria.

(4) In determining the contract or framework award criteria, the relevant authority must take into account the key criteria and apply the basic selection criteria.

Step 2

(5) The relevant authority must submit for publication a notice inviting offers to provide the relevant health services in relation to which the contract is to be awarded or the framework agreement is to be concluded.

(6) The notice referred to in paragraph (5) must include the information set out in Schedule 8.

Step 3

(7) The relevant authority must assess any offers received in accordance with the contract or framework award criteria.

(8) A relevant authority may assess offers received under step 3 in stages.

Step 4

(9) The relevant authority must make a decision as to the chosen provider.

Step 5

(10) The relevant authority must promptly notify, in writing—

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

Step 6

(11) The relevant authority must submit for publication a notice of intention to make an award to the chosen provider or conclude a framework agreement.

(12) The notice referred to in paragraph (11) must include the information set out in Schedule 10.

(13) Following the publication of the notice in paragraph (11), the standstill period begins in accordance with regulation 12(2).

Step 7

(14) Where written representations are made in accordance with regulation 12(3), the relevant authority must—

- (a) comply with the requirements specified in regulation 12(5) and (7), and
- (b) notify potential providers of the further decision made under regulation 12(8) and any subsequent further decisions made under regulation 12(10), in accordance with regulation 12(9) and (11).

(15) Where no written representations are made in accordance with regulation 12(3), the relevant authority may move from step 6 to step 8.

Step 8

(16) The relevant authority may enter into the contract or conclude the framework agreement after the standstill period has ended in accordance with regulation 12(12) or (13).

Step 9

(17) Where the relevant authority enters into a contract or concludes a framework agreement under step 8, the relevant authority must submit for publication a notice of the award of the contract or conclusion of the framework agreement within 30 days

of the contract being awarded or the framework agreement being concluded.

(18) The notice referred to in paragraph (17) must include the information set out in Schedule 11.

The standstill period

12.—(1) Where the relevant authority follows the Direct Award Process 2, 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 the standstill period.

(2) The standstill period begins on the day the relevant authority submits for publication a notice of intention to award a contract or conclude a framework agreement in accordance with regulation 9(5) (the Direct Award Process 2), 10(10) (the Most Suitable Provider Process) or 11(11) (the Competitive Process).

(3) A provider may make written representations to the relevant authority where the provider—

- (a) is aggrieved by the decision of a relevant authority to award a contract or conclude a framework agreement with another provider as set out in the notice published under paragraph (2), and
- (b) believes that there has been a failure to comply with these Regulations.

(4) Written representations in paragraph (3) must be made to the relevant authority before midnight at the end of the eighth working day⁽¹⁾ after the day the standstill period begins.

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

- (a) allow the provider such further opportunity to explain or clarify the representations made as the relevant authority considers appropriate, and
- (b) provide promptly any information requested by the aggrieved provider where the relevant authority has a duty to record that information under regulation 26 (information requirements).

(6) Sub-paragraph (5)(b) does not require the provision of information where it—

- (a) would prejudice the legitimate commercial interests of any person, including those of the relevant authority,

(1) “working day” is defined in Schedule 1 of the Legislation (Wales) Act 2019 anaw 4.

- (b) might prejudice fair competition between providers, or
- (c) would otherwise be contrary to the public interest.

(7) Where required, after the relevant authority has complied with the requirements in paragraph (5), the relevant authority must review the decision to award the contract or conclude the framework agreement, taking into account the representations made.

(8) Following the review at paragraph (7), the relevant authority must make a further decision whether 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 regulation 15, or
- (c) abandon the procurement in accordance with regulation 15.

(9) The further decision in paragraph (8) must be communicated promptly in writing, with reasons to—

- (a) each provider who made written 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.

(10) Following a further decision under paragraph (8), 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 regulation 15, or
- (c) abandon the procurement in accordance with regulation 15.

(11) Each subsequent further decision under paragraph (10) must be communicated promptly in writing, with reasons to—

- (a) each provider who made written 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.

(12) Where no written representations are received in accordance with paragraph (3), the standstill period ends at midnight at the end of the eighth working day after the day the standstill period began.

(13) 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 paragraphs (5), (7) and (8),
 - (iii) the relevant authority has informed providers of its further decision in accordance with paragraph (9) and any subsequent further decisions in accordance with paragraph (11),
 - (iv) the relevant authority does not intend to make any, or any more, subsequent further decisions in accordance with paragraph (10), 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 (9) or (11), or
- (b) on such day as—
 - (i) the relevant authority has decided to abandon the procurement in accordance with regulation 15,
 - (ii) the relevant authority has carried out the requirements set out in paragraphs (5), (7) and (8),
 - (iii) the relevant authority has informed providers of its further decision in accordance with paragraph (9) and any subsequent further decisions in accordance with paragraph (11),
 - (iv) the relevant authority does not intend to make any, or any more, subsequent further decisions in accordance with paragraph (10), 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 (9) or (11), or

- (c) on such day as—
 - (i) the relevant authority has decided 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 paragraphs (5), (7) and (8),
 - (iii) the relevant authority has informed providers of its further decision in accordance with paragraph (9) and any subsequent further decisions in accordance with paragraph (11),
 - (iv) the relevant authority does not intend to make any, or any more, subsequent further decisions in accordance with paragraph (10), 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 (9) or (11).

(14) In paragraphs (8)(b), (10)(b) and (13)(c)(i), a reference to a step in the selection process is to a step referred to in regulation 9 (Direct Award Process 2), 10 (Most Suitable Provider Process) or 11 (Competitive Process).

Modification of contracts and framework agreements during their term

13.—(1) This paragraph applies where the Direct Award Process 1 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.

(2) Paragraph (3) applies where the Direct Award Process 2, the Most Suitable Provider Process or the Competitive Process was followed for the original award of a contract or conclusion of a framework agreement.

(3) The contract or framework agreement for relevant health services may be modified during its term without following a new procurement process under these Regulations only where one or more of the conditions in paragraph (4) apply.

- (4) The conditions are—
 - (a) the modification is clearly and unambiguously provided for in the contract or framework agreement,

- (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, for example, takeover, merger, acquisition or insolvency and the relevant authority is satisfied that the provider meets the basic selection criteria,
 - (c) the modification does not render the contract or framework agreement materially different in character and 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, or
 - (d) the modification is attributable to a decision of the relevant authority and both of the criteria in paragraph (5) are met.
- (5) 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 estimated 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 estimated lifetime value of the existing contract or framework agreement when it was entered into or concluded.
- (6) The relevant authority must submit for publication a notice of the modification where—
- (a) a modification is made to a contract or framework agreement 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 estimated lifetime value of the contract since it was entered into, or framework agreement since it was concluded, is £500,000 or more.
- (7) The notice in paragraph (6) must—
- (a) include the information set out in Schedule 12, and
 - (b) be submitted for publication within 30 days of the modification of the contract or framework agreement.

Urgent award or modification of a contract

14.—(1) The relevant authority may award or modify a contract without satisfying the requirements in regulations 7 to 13 where the conditions in paragraph (2) are met.

(2) The conditions are where a relevant authority considers that—

- (a) an award or modification of a contract must be made urgently,
- (b) the relevant authority did not foresee the reason for the urgency and the reason for the urgency was not attributable to the relevant authority, and
- (c) delaying the award of the contract or modification to satisfy the requirements of regulations 7 to 13 would be likely to pose a risk to patient or public safety.

(3) The relevant authority may modify an existing contract without satisfying the requirements in regulations 7 to 13 where the conditions in paragraph (4) are met.

(4) The conditions are—

- (a) a relevant authority commenced a procurement process under these Regulations to award a contract,
- (b) a standstill period has begun in accordance with regulation 12(2),
- (c) the relevant authority has sought independent expert advice in accordance with regulation 25 in the standstill period,
- (d) there is an existing contract for the relevant health 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,
- (e) 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
- (f) the relevant authority considers that it is not possible to satisfy the requirements of regulations 7 to 13 before the term of the existing contract expires.

(5) Where paragraph (2) applies, the relevant authority must submit a notice of the award or modification of the contract for publication.

(6) The notice in paragraph (5) must—

- (a) be submitted for publication within 30 days of the urgent 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) At any time before a contract award is made or a framework agreement concluded, a relevant authority may—

- (a) abandon a procurement of relevant health services under these Regulations, or
- (b) go back to an earlier step in the selection process and repeat that step and subsequent steps.

(2) A relevant authority may only decide to abandon a procurement under paragraph (1)(a) or go back to an earlier step under paragraph (1)(b) during the standstill period 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 a relevant authority abandons a procurement under paragraph (1)(a), it must submit for publication a notice of that decision.

(5) The notice in paragraph (4) must—

- (a) where the decision is made in a standstill period, be submitted for publication—
 - (i) after the standstill period has ended, and
 - (ii) within 30 days of the end of that standstill period;
- (b) in any other case, be submitted for publication within 30 days of the decision to abandon the procurement;
- (c) include the information set out in Schedule 16.

(6) Where a relevant authority decides to repeat a step under paragraph (1)(b), the relevant authority must notify relevant providers of that decision in writing.

(7) Paragraph (6) is satisfied where either—

- (a) a decision to repeat a step or steps has been taken in accordance with regulation 12(8)(b) and communicated to a provider in accordance with regulation 12(9), or

- (b) a decision to repeat a step or steps has been taken in accordance with regulation 12(10)(b) and communicated to a provider in accordance with regulation 12(11).

(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 2), 10 (Most Suitable Provider Process) or 11 (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 which provides for the future award of one or more contracts for the provision of relevant health services during the term of the framework agreement.

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

(3) A framework agreement must identify the relevant authorities which may award contracts based on the framework agreement.

(4) The term of a framework agreement must not exceed 8 years, other than in exceptional cases where the relevant authority is satisfied that the subject-matter of the framework agreement justifies a longer term.

(5) References in Part 2 to concluding a framework agreement are to be treated as including references to selecting further providers to be parties to a framework agreement.

Adding additional providers to a framework agreement

17.—(1) A relevant authority must, during the term of a framework agreement, follow the Competitive Process to allow additional providers to be selected to be party to the framework agreement.

(2) The Competitive Process referred to in paragraph (1) must be commenced—

- (a) at least once during the period of 4 years beginning on the day the framework agreement was concluded, and
- (b) at least once during the period of 4 years beginning the day after the Competitive Process to select additional providers to be party to the framework agreement under paragraph (2)(a) has concluded.

Contracts based on a framework agreement

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

(2) A relevant authority may award a contract based on a framework agreement.

(3) Contracts between a relevant authority and provider based on a framework agreement must not entail substantial modifications to the terms laid down in that framework agreement.

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

(5) Where a framework agreement is concluded with more than one provider, a relevant authority may award a contract either without following the Competitive Process or by following the Competitive Process.

(6) The decision under paragraph (5) is at the discretion of the relevant authority but must be made in accordance with the framework agreement.

(7) Where a relevant authority awards a contract based on a framework agreement without following the Competitive Process, the relevant authority must submit for publication a notice of the award.

(8) The notice referred to in paragraph (7) must—

- (a) include the information set out in Schedule 2, and
- (b) be submitted for publication within 30 days of the contract being awarded.

(9) Where a relevant authority follows the Competitive Process in order to award a contract based on a framework agreement under paragraph (5), the relevant authority must omit step 2 of that process. In place of step 2, the relevant authority must invite all providers who are party to the framework agreement to submit an offer to provide the relevant health services.

(10) The invitation referred to in paragraph (9) must include the information set out in Schedule 15.

(11) In paragraph (9), the reference to step 2 is to step 2 referred to in regulation 11(5).

PART 4

Further requirements when procuring relevant health services

Basic selection criteria

19.—(1) A relevant authority must not award a contract for relevant health services 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 the Direct Award Process 1;
- (b) which is a contract based on a framework agreement in accordance with regulation 18(2).

(3) The relevant authority must determine the requirements of the basic selection criteria in accordance with Schedule 17.

Publication of notices

20.—(1) Any requirement under a regulation specified at paragraph (13) for a relevant authority to submit a notice for publication is met by the relevant authority publishing it on the central digital platform.

(2) The requirement in paragraph (1) is met where the relevant authority has first submitted the notice to the Welsh digital platform and—

- (a) the Minister for the Cabinet Office has informed the relevant authority that the notice has successfully been submitted for publication to the central digital platform, or
- (b) the notice is capable of being accessed by providers and members of the public on the central digital platform.

Welsh digital platform unavailable

(3) Paragraph (4) applies if a relevant authority has attempted to comply with paragraph (2), but the Welsh digital platform is unavailable so that the requirement in paragraph (2) cannot be met.

(4) A relevant authority may publish a notice—

- (a) on the central digital platform, or
- (b) on the central digital platform by using an alternative online system.

(5) Where paragraph (4) applies the requirement in paragraph (1) will be met where—

- (a) the Minister for the Cabinet Office has informed the relevant authority that the notice or information has successfully been submitted for publication to the central digital platform, or

- (b) the notice or information is capable of being accessed by providers and members of the public on the central digital platform.

Central digital platform unavailable

(6) Paragraph (7) applies where a relevant authority has attempted to comply with paragraph (2) but—

- (a) the relevant authority has not received confirmation from the Minister for the Cabinet Office that the notice has successfully been published on the central digital platform, and
- (b) the notice is not capable of being accessed by providers and members of the public on the central digital platform.

(7) The relevant authority may submit a notice for publication on the Welsh digital platform only or, if unavailable, on an alternative online system—

- (a) in the case of a notice of the award of a contract or notice of the modification of a contract under regulation 14 (urgent award or modification of a contract), after 4 hours have passed since the notice was submitted for publication to the central digital platform, or
- (b) in the case of any other notice, after 48 hours have passed since the notice was submitted for publication to the central digital platform.

(8) Where paragraph (7) applies the relevant authority is to be treated as meeting for the time being the requirement in paragraph (1).

(9) The relevant authority is no longer to be treated as meeting for the time being the requirement in paragraph (1) if the Minister for the Cabinet Office informs the relevant authority that the submission of the notice to the central digital platform has been rejected.

(10) A relevant authority which uses the Welsh digital platform or an alternative online system under paragraph (7) must cooperate with the Minister for the Cabinet Office to ensure that the notice is subsequently—

- (a) published on the central digital platform, and
- (b) capable of being accessed by providers and members of the public on that system.

(11) An “alternative online system” is an online system for publishing procurement information which is—

- (a) free of charge and readily accessible to providers and members of the public,
- (b) accessible to disabled people, and—
- (c) not the central digital platform or the Welsh digital platform.

(12) Nothing in this regulation prevents a relevant authority from publishing the notice somewhere other than on the central digital platform, the Welsh digital platform or an alternative online system, but the relevant authority must not do so before complying with the requirements of paragraph (1).

(13) The regulations specified at paragraph (1) are—

- (a) regulation 8(2)(b) (notice of award of contract under the Direct Award Process 1),
- (b) regulation 9(5) (notice of intention to make an award under the Direct Award Process 2),
- (c) regulation 9(11) (notice of the award of the contract under the Direct Award Process 2),
- (d) regulation 10(3) (notice of intention to follow the Most Suitable Provider Process),
- (e) regulation 10(10) (notice of intention to make an award to the chosen provider under the Most Suitable Provider Process),
- (f) regulation 10(16) (notice of the award of the contract under the Most Suitable Provider Process),
- (g) regulation 11(5) (notice inviting offers to provide relevant health services for a contract or framework agreement using the Competitive Process),
- (h) regulation 11(11) (notice of intention to make an award to the chosen provider or conclude a framework agreement using the Competitive Process),
- (i) regulation 11(17) (notice of the award of the contract or conclusion of framework agreement following the Competitive Process),
- (j) regulation 13(6) (notice of a modification),
- (k) regulation 14(5) (notice of urgent award or modification),
- (l) regulation 15(4) (notice of decision to abandon a procurement), and
- (m) regulation 18(7) (notice of contract award based on a framework agreement).

(14) In this regulation, “unavailable” means that the Welsh digital platform has not been operational for not less than 4 hours.

Exclusions

21.—(1) A relevant authority must not award a contract to or conclude a framework agreement with an excluded provider and must exclude an excluded provider from a procurement process under these Regulations.

(2) Paragraph (1) does not apply where the relevant authority considers awarding a contract to or concluding a framework agreement with an excluded provider is necessary to protect public health.

(3) The relevant authority may exclude an excludable provider from a procurement process under these Regulations.

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

Exclusions: sub-contractors

22.—(1) As part of a procurement process, a relevant authority must—

- (a) request information about whether a provider intends to sub-contract the performance of all or part of the contract, and
- (b) seek to determine whether any intended sub-contractor is on the debarment list.

(2) A relevant authority may, as part of a procurement process, request information for the purpose of determining whether any intended sub-contractor is an excluded or excludable provider.

(3) If, after requesting information under paragraph (1) or (2), a relevant authority considers that a provider intends to sub-contract to a sub-contractor that is an excluded provider, the relevant authority must exclude the provider from the procurement process.

(4) If, after requesting information under paragraph (1) or (2), a relevant authority considers that a provider intends to sub-contract to a sub-contractor that is an excludable provider, the relevant authority may exclude the provider from the procurement process.

(5) Before excluding a provider under paragraph (3) or (4), a relevant authority must—

- (a) notify the provider of its intention, and
- (b) give the provider reasonable opportunity to find an alternative sub-contractor with which to sub-contract.

(6) In this regulation “debarment list” means the list kept under section 62 (debarment list) of the 2023 Act.

Conflicts of interest

23.—(1) This regulation applies where a relevant authority conducts a procurement process under these Regulations.

(2) 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.

(3) For the purposes of paragraph (2), a conflict 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.

(4) Where an individual has a conflict of interest in the conduct of a procurement process, such individual is required to recuse themselves from that procurement process.

(5) If either or both conditions in paragraph (6) apply—

- (a) the individual is not required to recuse themselves, under paragraph (4), from the procurement process, and
- (b) a relevant authority must take all reasonable steps to ensure that the conflict of interest does not put a provider at an unfair advantage or disadvantage in the procurement process.

(6) The conditions are—

- (a) the individual is the only person with expertise in an area that requires assessing under the contract or framework award criteria;
- (b) the individual is the only person with the appropriate qualifications or knowledge available to act in a procurement process.

(7) Reasonable steps may include requiring a provider to take reasonable steps to ensure that any conflict of interest identified does not put the provider at an unfair advantage or disadvantage in the procurement process.

(8) Paragraph (9) applies if a relevant authority considers that—

- (a) a conflict of interest puts a provider at an unfair advantage in a procurement process, and
- (b) the provider will not take reasonable steps that the relevant authority considers are necessary to ensure a provider is not put at an unfair advantage.

(9) The relevant authority must —

- (a) treat the provider as an excluded provider in the procurement process for the purpose of—
 - (i) awarding a contract under regulation 8 (Direct Award Process 1) or regulation 9 (Direct Award Process 2),
 - (ii) assessing any potential providers identified under regulation 10 (Most Suitable Provider Process), or

- (iii) assessing any offers received under regulation 11 (Competitive Process);
 - (b) exclude the provider from the procurement process.
- (10) Before excluding a provider under paragraph (9), a relevant authority must—
- (a) notify the provider of its intention, and
 - (b) give the provider reasonable opportunity to take the reasonable steps the relevant authority considers are necessary to ensure a provider is not put at an unfair advantage.

Termination of contracts

24.—(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 requires modification which cannot be made under regulation 14 without 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 21(1) or 22(3).

(2) The provisions referred to in paragraph (1) may—

- (a) state how the power is to be exercised;
- (b) address consequential matters that may arise from the termination.

(3) If a contract awarded under these Regulations does not contain the provisions referred to 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

25.—(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 to an independent expert 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 services under these Regulations from a person with relevant expertise, qualifications or experience who is made available by, or endorsed by, the Welsh Ministers 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 services under these Regulations, at any time.

Information requirements

26.—(1) 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) either the address of the registered office or the principal place of business of each provider referred to in paragraph (a) or (b);
- (d) the procurement process followed;
- (e) the identity of individuals involved in the procurement process;
- (f) where the Direct Award Process 2 or the Most Suitable Provider Process was followed—
 - (i) a description of the way in which the key criteria were taken into account;
 - (ii) the basic selection criteria which were assessed when making a decision;
- (g) where the Competitive Process was followed—
 - (i) a description of the way in which the key criteria were taken into account;
 - (ii) the basic selection criteria which were assessed;
 - (iii) the contract or framework award criteria that were evaluated under the procurement process;
- (h) the reasons for decisions made under these Regulations;
- (i) particulars of any excluded or excludable providers;
- (j) where a relevant authority awarded a contract to or concluded a framework agreement with an excluded provider because it was considered necessary to protect public health, the reasons for such a decision;

- (k) the reasons for an excludable provider being excluded or not from a procurement process;
 - (l) particulars of any declared or identified conflicts of interest, actual or potential;
 - (m) how any conflicts or potential conflicts of interest were managed for each decision or will be managed;
 - (n) where a procurement is abandoned under regulation 15, the date on which it was abandoned.
- (2) Information under this regulation must be kept—
- (a) where a contract is awarded or a framework agreement concluded, until the end of the period of three years beginning with the day on which the contract is awarded or the framework agreement is concluded, or
 - (b) where a contract is not awarded or a framework agreement is not concluded, until the end of the period of three years beginning with the day on which the relevant authority submits the notice for publication under regulation 15(4).

Annual summary

27.—(1) A relevant authority must publish an annual statement of contracts awarded and framework agreements concluded for the provision of relevant health services. The relevant authority must publish this online, on a publicly available website accessible free of charge.

(2) For the year to which the summary relates, the annual summary must include—

- (a) the number of contracts awarded where the Direct Award Process 1 was followed under regulation 7(4);
- (b) the number of contracts awarded where the Direct Award Process 2 was followed under regulation 7(5);
- (c) the number of contracts awarded where the Most Suitable Provider Process was followed under regulation 7(5) or (6);
- (d) the number of contracts awarded where the Competitive Process was followed under regulation 7(5), (6), or (7);
- (e) the number of framework agreements concluded under regulation 16(2);
- (f) the number of contracts awarded based on a framework agreement, under regulation 18(2);
- (g) the number of framework agreements where the Competitive Process was followed to allow further providers to be selected to be

- party to the framework agreement, under regulation 17(1);
- (h) the number of additional providers, if any, that were selected to be party to the framework agreement;
- (i) the number of contracts awarded and modifications made in reliance on regulation 14 (urgent award or modification of a contract);
- (j) the number of providers to whom a contract was awarded who have not previously been awarded a contract by a relevant authority in a previous reporting year;
- (k) the number of providers who were a party to a contract in the year to which the previous annual summary related but are no longer party to any contracts;
- (l) the number of written representations made under regulation 12(3) and received during standstill periods, and a summary of the nature and the outcome of those representations;
- (m) the number of providers that were excluded from a procurement process under regulation 21(1) or 22(3);
- (n) the number of providers that were excludable from a procurement process and of those providers, the number that were excluded under regulation 21(3) or 22(4).

Monitoring requirements

28.—(1) A relevant authority must monitor its compliance and identify any non-compliance with these Regulations.

(2) A relevant authority must publish an annual report of the results of that monitoring, including information as to how non-compliance will be addressed.

(3) The relevant authority must publish the annual report online, on a publicly available website accessible free of charge.

PART 6

Transitional provision

Transitional provision

29.—(1) These Regulations do not apply to—

- (a) any contract award procedure where the procurement process commenced, but where

the award was not made, before 28 October 2024;

- (b) the conclusion of any framework agreement where the procurement process commenced, but where the framework agreement was not concluded, before 28 October 2024;
- (c) the use of a dynamic purchasing, or similar, system which is not a framework agreement (whether or not the system is operated under regulation 34 of the Public Contracts Regulations 2015(1)) where the period of validity has not expired, and the system has not otherwise been terminated.

(2) These Regulations apply to the modification of a contract for relevant health services between a relevant authority and a provider made on or after 28 October 2024 whether or not the contract was awarded under these Regulations or before 28 October 2024.

(3) These Regulations apply to the modification of any framework agreement for relevant health services between one or more relevant authorities and one or more providers whether or not the framework agreement was concluded under these Regulations or before 28 October 2024.

(4) These Regulations apply to any contract award procedure commenced on or after 28 October 2024 for the award of a contract based on a framework agreement for relevant health services between one or more relevant authorities and one or more providers whether or not the framework agreement was concluded under these Regulations or before 28 October 2024.

(5) The provisions of paragraphs (6) to (8) apply for the purposes of paragraph (1).

(6) A contract award procedure has been commenced before 28 October 2024 if, before that date—

- (a) a contract notice under regulation 49 of the Public Contracts Regulations 2015(2) has been submitted for publication in accordance with regulation 51(1) of the Public Contracts Regulations 2015(3);
- (b) the relevant authority has contacted any provider to—

(1) 2015 No. 102. There are amendments to regulation 34 which are not relevant to these Regulations.

(2) S.I. 2015/102 as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regulations 1(2), 6(32) (with Sch. paras. 3-5).

(3) S.I. 2015/102 as amended by The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 (S.I. 2016/275), reg. 1(1), Sch. 2 para. 12 (with reg. 5), and the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), 6(34)(b) (with Sch. Paras. 3-5).

- (i) seek expressions of interest or offers in respect of a proposed contracting arrangement, or
- (ii) respond to an unsolicited expression of interest or offer received from that provider about a proposed contracting arrangement.

(7) The procurement process for a proposed contract based on a framework agreement or other technique or instrument for electronic or aggregated procurement concluded under the Public Contracts Regulations 2015 before 28 October 2024, has been commenced before 28 October 2024 if, before that date, any step has been taken with a view to making an award.

(8) The procurement process for a framework agreement has been commenced before 28 October 2024 if, before that date—

- (a) the relevant authority has published any form of advertisement seeking offers or expressions of interest in a proposed framework agreement, or
- (b) the relevant authority has contacted any provider to—
 - (i) seek expressions of interest or offers in respect of a proposed framework agreement, or
 - (ii) respond to an unsolicited expression of interest or offer received from that provider about a proposed framework agreement.

(9) In this regulation—

- (a) “dynamic purchasing system” includes a dynamic purchasing system within the meaning of regulation 34 of the Public Contracts Regulations 2015⁽¹⁾;
- (b) “framework agreement” includes—
 - (i) a framework agreement within the meaning of regulation 33(2) of the Public Contracts Regulations 2015;
 - (ii) a framework agreement to which a relevant authority is a party but which was not concluded under these Regulations.

(1) S.I. 2015/102.

PART 7

Disapplication of the Procurement Act 2023

Disapplication of the Procurement Act 2023

30.—(1) The 2023 Act does not apply to regulated health service procurement in Wales.

(2) In this regulation “regulated health service procurement in Wales” has the meaning given by section 120A(2)(a) of the 2023 Act.

Name

Cabinet Secretary for Health and Social Care, one of
the Welsh Ministers

Date

SCHEDULES

SCHEDULE 1 Regulation 2(1)

Relevant health services: CPV codes

<i>CPV Code</i>	<i>Description</i>
85100000-0	Health services
85110000-3	Hospital and related services
85111000-0	Hospital services
85111100-1	Surgical hospital services
85111200-2	Medical hospital services
85111300-3	Gynaecological hospital services
85111310-6	In vitro fertilisation services
85111320-9	Obstetrical hospital services
85111400-4	Rehabilitation hospital services
85111500-5	Psychiatric hospital services
85111600-6	Orthotic services
85111700-7	Oxygen-therapy services
85111800-8	Pathology services
85111810-1	Blood analysis services
85111820-4	Bacteriological analysis services
85111900-9	Hospital dialysis services
85112200-9	Outpatient care services
85120000-6	Medical practice and related services
85121000-3	Medical practice services
85121100-4	General-practitioner services
85121200-5	Medical specialist services
85121210-8	Gynaecologic or obstetric services
85121220-1	Nephrology or nervous system specialist services
85121230-4	Cardiology services or pulmonary specialist services
85121231-1	Cardiology services

85121232-8	Pulmonary specialists services
85121240-7	ENT or audiologist services
85121250-0	Gastroenterologist and geriatric services
85121251-7	Gastroenterologist services
85121252-4	Geriatric services
85121270-6	Psychiatrist or psychologist services
85121271-3	Home for the psychologically disturbed services
85121280-9	Ophthalmologist, dermatology, or orthopaedics services
85121281-6	Ophthalmologist services
85121282-3	Dermatology services
85121283-0	Orthopaedic services
85121290-2	Paediatric or urologist services
85121291-9	Paediatric services
85121292-6	Urologist services
85121300-6	Surgical specialist services
85130000-9	Dental practice and related services
85131000-6	Dental-practice services
85131100-7	Orthodontic services
85131110-0	Orthodontic-surgery services
85140000-2	Miscellaneous health services
85141000-9	Services provided by medical personnel
85141100-0	Services provided by midwives
85141200-1	Services provided by nurses
85141210-4	Home medical treatment services
85141211-1	Dialysis home medical treatment services
85141220-7	Advisory services provided by nurses
85142000-6	Paramedical services
85142100-7	Physiotherapy services
85143000-3	Ambulance services
85144000-0	Residential health facilities services
85144100-1	Residential nursing care services

85145000-7	Services provided by medical laboratories
85146000-4	Services provided by blood banks
85146100-5	Services provided by sperm banks
85146200-6	Services provided by transplant organ banks
85148000-8	Medical analysis services
85149000-5	Pharmacy services, but not including community pharmacy services that are arranged under The National Health Service (Pharmaceutical Services) (Wales) Regulations 2020 (1)
85150000-5	Medical imaging services
85160000-8	Optician services
85323000-9	Community health services, but only in respect of community health services which are delivered to individuals
85312330-1	Family-planning services, but only insofar as such services are provided to individuals to support sexual and reproductive health
85312500-4	Rehabilitation services, but only insofar as such services are provided to individuals to tackle substance misuse or for the rehabilitation of the mental or physical health of individuals

SCHEDULE 2 Regulations 8(3)
and 18(8)(a)

Content of notice to award to an existing provider under the Direct Award Process 1 or based on a framework agreement without following the Competitive Process

1. If the award follows the Direct Award Process 1, a statement that an award has been made following the Direct Award Process 1. If the award is based on a

(1) S.I. 2020/1073.

framework agreement and is made without a competition, a statement to that effect.

2. The contract title and reference.

3. The name and address (either the registered office or the principal place of business) of the provider to whom the contract has been awarded.

4. A description of the relevant health services to which the contract relates, and one or more of the CPV codes most relevant to the contract.

5. The estimated lifetime value of the contract.

6. The dates between which the contract provides for the relevant health services to be provided and the duration of the contract including potential extensions beyond the initial term.

7. Details of the award decision-makers.

8. Where Direct Award Process 1 was used and a relevant authority awarded the contract to an excluded provider because it was considered necessary to protect public health, the reasons for such a decision.

9. Particulars of any declared conflicts or potential conflicts of interest.

10. Information as to how any conflicts or potential conflicts of interest were managed or are to be managed.

SCHEDULE 3 Regulation 9(6)

Content of notice of intention to award to a provider under the Direct Award Process 2

1. A statement that the relevant authority is intending to award a contract to an existing provider following the Direct Award Process 2.

2. The contract title and reference.

3. The name and address (either of the registered office or the principal place of business) of the provider to whom an award is to be made.

4. A description of the relevant health services to which the contract relates, and one or more of the CPV codes relevant to the contract.

5. The estimated lifetime value of the contract.

6. The estimated lifetime value of the existing contract at the time the existing contract was entered into.

7. Details of the award decision-makers.

8. A statement explaining the award decision-makers' reasons for selecting the chosen provider, with reference to the key criteria and basic selection criteria.

9. A statement as to whether any providers were excluded from the procurement process.

10. Where a relevant authority awarded the contract to an excluded provider because it was considered necessary to protect public health, the reasons for such a decision.

11. Particulars of any declared conflicts or potential conflicts of interest.

12. Information as to how any conflicts or potential conflicts of interest were managed or are to be managed.

SCHEDULE 4 Regulation 9(12)

Content of notice to award to a provider under the Direct Award Process 2

1. A statement that an award has been made following the Direct Award Process 2.

2. The contract title and reference.

3. The name and address (either the registered office or the principal place of business) of the provider to whom the contract has been awarded.

4. A description of the relevant health services to which the contract relates, and one or more of the CPV codes most relevant to the contract.

5. The estimated lifetime value of the contract.

6. The dates between which the contract provides for the relevant health services to be provided and the duration of the contract including potential extensions beyond the initial term.

7. Details of the award decision-makers.

8. A statement as to whether any providers were excluded from the procurement process.

9. Where a relevant authority awarded the contract to an excluded provider because it was considered necessary to protect public health, the reasons for such a decision.

10. Particulars of any declared conflicts or potential conflicts of interest.

11. Information as to how any conflicts or potential conflicts of interest were managed or are to be managed.

SCHEDULE 5 Regulation 10(4)

Content of notice of intention to follow the Most Suitable Provider Process

1. A statement that the relevant authority intends to follow the Most Suitable Provider Process to award a contract.
2. The contract title and reference.
3. A description of the relevant health services to which the contract relates, and one or more of the CPV codes most relevant to the contract.
4. Details of the award decision-makers.

SCHEDULE 6 Regulation 10(11)

Content of notice of intention to award to a provider under the Most Suitable Provider Process

1. A statement that the relevant authority intends to award a contract to a provider following the Most Suitable Provider Process.
2. The contract title and reference.
3. The name and address (either the registered office or the principal place of business) of the provider to whom an award is to be made.
4. A description of the relevant health services to which the contract relates, and one or more of the CPV codes most relevant to the contract.
5. The estimated lifetime value of the contract.
6. Details of the award decision-makers.
7. A statement explaining the award decision-makers' reasons for selecting the chosen provider, with reference to the key criteria.
8. A statement as to whether any providers were excluded from the procurement process.
9. Where a relevant authority awarded the contract to an excluded provider because it was considered necessary to protect public health, the reasons for such a decision.
10. Particulars of any declared conflicts or potential conflicts of interest.
11. Information as to how any conflicts or potential conflicts of interest were managed or are to be managed.

SCHEDULE 7 Regulation 10(17)

Content of notice to award to a provider under the Most Suitable Provider Process

1. A statement that an award has been made following the Most Suitable Provider Process.
2. The contract title and reference.
3. The name and address (either the registered office or the principal place of business) of the provider to whom the contract has been awarded.
4. A description of the relevant health services to which the contract relates, and one or more of the CPV code most relevant to the contract.
5. The estimated lifetime value of the contract.
6. The dates between which the contract provides for the relevant health services to be provided and the duration of the contract including potential extensions beyond the initial term.
7. Details of the award decision-makers.
8. A statement as to whether any providers were excluded from the procurement process.
9. Where a relevant authority awarded the contract to an excluded provider because it was considered necessary to protect public health, the reasons for such a decision.
10. Particulars of any declared conflicts or potential conflicts of interest.
11. Information as to how any conflicts or potential conflicts of interest were managed or are to be managed.

SCHEDULE 8 Regulation 11(6)

Content of notice inviting offers under the Competitive Process

1. The contract or framework agreement title and reference.
2. A description of the relevant health services to which the contract or framework agreement will relate, and one or more of the CPV codes most relevant to the contract or framework agreement.
3. The intended or estimated dates—
 - (a) between which the services are to be provided and the duration of the contract including potential extensions beyond the initial term, or

(b) of the term of the framework agreement.

4. The estimated lifetime value of the contract or framework agreement.

5. The contract or framework award criteria.

6. Where the notice relates to a proposed framework agreement, the relevant authorities which will be able to use the framework agreement.

7. An explanation of how offers must be made, which must be by electronic means.

8. An explanation of how offers will be assessed, including a concise explanation of the assessment procedure and any stages of the assessment, if applicable.

SCHEDULE 9 Regulation 11(10)(b)

Content of notice to unsuccessful provider under the Competitive Process

1. The contract or framework agreement title and reference.

2. The contract or framework award criteria.

3. The reasons the successful provider was successful.

4. The reasons the unsuccessful provider was unsuccessful.

5. The dates of the beginning and end of the period in which written representations may be made in accordance with regulation 12(4).

SCHEDULE 10 Regulation 11(12)

Content of notice of intention to award to a provider, or conclude a framework agreement, under the Competitive Process

1. A statement that the relevant authority intends to award a contract to a provider or conclude a framework agreement under the Competitive Process.

2. The contract or framework agreement title and reference.

3. The name and address (either the registered office or the principal place of business) of the provider to whom a contract is to be awarded or with whom a framework agreement is to be concluded.

4. A description of the relevant health services to which the contract or framework agreement relates, and one or more of the CPV codes most relevant to the contract or framework agreement.

5. Where the notice relates to the conclusion of a framework agreement, the duration of the agreement and the relevant authorities which will be able to use the framework agreement.

6. The estimated lifetime value of the contract or framework agreement.

7. Details of the award decision-makers.

8. A statement explaining the decision-makers' reasons for selecting the provider, with reference to the key criteria and basic selection criteria.

9. Where the notice relates to the award of a contract or the conclusion of a framework agreement, a statement as to whether any providers were excluded from the procurement process.

10. Where the notice relates to the award of a contract or the conclusion of a framework agreement and a relevant authority awarded the contract to an excluded provider or included an excluded provider on a framework agreement because it was considered necessary to protect public health, the reasons for such a decision.

11. Particulars of any declared conflicts or potential conflicts of interest.

12. Information as to how any conflicts or potential conflicts of interest were managed or are to be managed.

13. Where appropriate, a statement that the relevant authority is awarding the contract under a framework agreement.

SCHEDULE 11 Regulation 11(18)

Content of notice to award to a contract to or conclude a framework agreement with a provider under the Competitive Process

1. A statement that the award follows a competition under the Competitive Process.

2. The contract or framework agreement title and reference.

3. The name and address (either the registered office or the principal place of business) of the provider to

whom the contract has been awarded or with whom a framework agreement has been concluded.

4. A description of the relevant health services to which the contract or framework agreement relates, and one or more of the CPV codes most relevant to the contract or framework agreement.

5. The estimated lifetime value of the contract or framework agreement.

6. Where the notice relates to the award of a contract, the dates between which the contract provides for the relevant health services to be provided including any options to extend the period during which the services are to be provided.

7. Where the notice relates to the conclusion of a framework agreement, the duration of the framework agreement.

8. Where the notice relates to the conclusion of a framework agreement, the relevant authorities which will be able to use the framework agreement.

9. Details of the award decision-makers.

10. Where the notice relates to the award of a contract or the conclusion of a framework agreement, a statement as to whether any providers were excluded from the procurement process.

11. Where the notice relates to the award of a contract or the conclusion of a framework agreement and a relevant authority awarded the contract to an excluded provider or included an excluded provider on a framework agreement because it was considered necessary to protect public health, the reasons for such a decision.

12. Particulars of any declared conflicts or potential conflicts of interest.

13. Information as to how any conflicts or potential conflicts of interest were managed or are to be managed.

SCHEDULE 12 Regulation 13(7)(a)

Notice of modification to contract or framework agreement where regulation 13(6) applies

1. The contract or framework agreement title and reference.

2. A description of the relevant health services to which the contract or framework agreement relates,

and one or more of the CPV codes most relevant to the contract or framework agreement.

3. The date from which the modification has effect.

4. A brief description of the modification.

5. The estimated lifetime value of the modification to the contract or framework agreement.

6. The estimated lifetime value of the contract or framework agreement when that contract was entered into or when that framework agreement was concluded.

7. The cumulative estimated lifetime value of all modifications made to the contract or framework agreement since it was entered into or concluded.

8. Any change in the duration of the contract or framework agreement.

9. Details of the award decision-makers.

10. Particulars of any declared conflicts or potential conflicts of interest.

11. Information as to how any conflicts or potential conflicts of interest were managed or are to be managed.

SCHEDULE 13 Regulation 14(6)(b)

Notice of urgent award of contract where regulation 14(1) applies

1. A statement that in the view of the relevant authority the award was urgent.

2. The contract title and reference.

3. The name and address (either the registered office or the principal place of business) of the provider to whom the contract has been awarded.

4. A description of the relevant health services to which the contract relates, and one or more of the CPV codes most relevant to the contract.

5. The estimated lifetime value of the contract.

6. The dates between which the contract provides for the relevant health services to be provided and the duration of the contract including potential extensions beyond the initial term.

7. The reasons for the dates referred to in paragraph 6, if that period is greater than 12 months.

8. Details of the award decision-makers.

9. Particulars of any declared conflicts or potential conflicts of interest.

10. Information as to how any conflicts or potential conflicts of interest were managed or are to be managed.

11. The reasons regulation 14 applied.

SCHEDULE 14 Regulation 14(6)(c)

Notice of urgent modification to contract where regulation 14(1) applies

1. A statement that in the view of the relevant authority the modification was urgent.

2. The contract title and reference.

3. A description of the relevant health services to which the contract relates, and one or more of the CPV codes most relevant to the contract.

4. The date from which the modification has effect.

5. The nature of the modification, including any change in the duration of contract.

6. The estimated lifetime value of the contract when that contract was entered into.

7. The estimated lifetime value of the urgent modification.

8. Details of the award decision-makers.

9. Particulars of any declared conflicts or potential conflicts of interest.

10. Information as to how any conflicts or potential conflicts of interest were managed or are to be managed.

11. The reasons the relevant authority consider regulation 14 applied.

SCHEDULE 15 Regulation 18(10)

Invitation to providers who are party to the framework agreement to submit an offer

1. A description of the relevant health services to which the contract relates, and one or more of the CPV codes most relevant to the contract.

2. The contract award criteria.

3. The intended or estimated dates between which the relevant health services must be provided and the duration of the contract including potential extensions beyond the initial term.

4. The estimated lifetime value of the contract.

SCHEDULE 16 Regulation 15(4)

Notice of abandonment of procurement process

1. The contract or framework agreement title and reference.

2. A description of the relevant health services to which the contract or framework agreement relates, and one or more of the CPV codes most relevant to the contract or framework agreement.

3. A statement setting out which procurement process was being followed.

4. A statement that the procurement process has been abandoned.

5. An explanation of the reasons for the procurement process being abandoned.

SCHEDULE 17 Regulation 19(3)

Basic selection criteria

Interpretation

1. In this Schedule, references to “contracts” include contracts based on the framework agreement.

Basic selection criteria: general principles

2.—(1) The basic selection criteria determined in accordance with regulation 19(3) may relate to—

- (a) suitability to pursue a particular activity;
- (b) economic and financial standing;
- (c) technical and professional ability.

(2) A relevant authority must limit the basic selection criteria to those that are appropriate to ensure that a provider can perform the relevant health services for which a contract is to be awarded or framework agreement is to be concluded.

(3) In determining the most appropriate basic selection criteria, the relevant authority must have regard to the legal and financial capacities of the provider and the technical and professional abilities of the provider.

(4) All basic selection criteria must relate to, and be proportionate to, the relevant health services that are the subject-matter of the contract or framework agreement.

Authorisations or memberships

3. Paragraph (4) applies where a relevant authority determines that providers must possess a particular authorisation or be members of a particular organisation to perform the relevant health services.

4. A relevant authority may require that a provider prove that they hold such authorisation or membership.

Economic and financial standing

5.—(1) A relevant authority may impose requirements that a provider prove they possess the necessary economic and financial capacity to perform the contract.

(2) In particular, a relevant authority may require that a provider—

- (a) has a certain minimum annual turnover, including a certain minimum turnover in the relevant health services covered by the contract,
- (b) provides information on its annual accounts showing the ratios, for example, between assets and liabilities, and
- (c) has an appropriate level of professional risk indemnity insurance.

(3) The minimum annual turnover that a relevant authority can require a provider to prove must not exceed twice the estimated lifetime value of the contract or framework agreement, except in duly justified cases as determined by the relevant authority.

Technical and professional ability

6.—(1) A relevant authority may impose requirements that a provider prove they can perform the contract to an appropriate standard.

(2) The requirements in sub-paragraph (1) include requirements to show that the provider possesses the necessary technical and professional resources and experience.

(3) A relevant authority may require that a provider has an appropriate level of experience demonstrated by suitable references from contracts performed in the past.

(4) A relevant authority may assume that a provider does not possess the required professional abilities if the condition set out in sub-paragraph (5) is met.

(5) The condition is that the relevant authority has established that the provider has conflicting interests which may negatively affect the performance of the contract.