**Procurement Journey**

**Guidance on Contract Renewal and Direct Award without Competition**

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**(Care and Support Services only**)

An organisation should analyse the benefits and risks to people who use services, and also to service delivery, of advertising the requirement and awarding the contract or framework agreement by competition. For existing services, this will require consideration, through consultation with people who use services and their carers, of the impact that any change in service provision or provider will have on:

* + people who use services and their carers;
	+ continuity of care;
	+ the quality of the service and the outcomes delivered;
	+ the cost of the service;
	+ the market; and
	+ the workforce.

This analysis may suggest that, where an organisation is satisfied with the quality of a service and that best value is being achieved, the existing supplier / service provider should continue to deliver the service. If an organisation’s contract with the existing supplier / service provider includes an extension option that is within scope, the contract may be extended for the specified period. In the absence of an extension option, any decision by an organisation to renew (or ‘roll forward’) its contract with the existing supplier / service provider must be compliant with public procurement legislation. Legal advice should always be sought in respect of any procurement decisions.

Alternatively, the analysis may suggest that the requirement should not be advertised at the current time and that a staged approach should instead be adopted. If an organisation decides to adopt a different timetable for advertising the requirement, it should describe this in relevant procurement documents and set out how it intends to move towards competition in the future.

**Risk of legal challenge for breach of the procurement rules**

A public body should assess the risk of legal challenge if it decides not to advertise the requirement and proceeds to award the contract or framework agreement without competition. A legal challenge may have serious implications for procurement activity and future service delivery. For example, for a ‘light-touch’ contract with a value of at least €750,000, if a court grants an ineffectiveness order together with damages, legal costs and/or compensation, this may divert monies from service provision and may cause significant disruption and uncertainty to people who use services. Also, standstill rules apply to care and support contracts of that value. The relevant legislation is [part 3 of the Public Contracts (Scotland)](http://www.legislation.gov.uk/ssi/2015/446/part/3/made) [Regulations 2015](http://www.legislation.gov.uk/ssi/2015/446/part/3/made).

**Application of legal remedies to contracts and framework agreements services covered under the ‘light-touch’ regime**

The award of a contract or framework agreement for one of these services may be challenged on the basis that a public body has failed to ensure publication of the contract opportunity on the OJEU and follow a procedure sufficient to ensure observance of the TFEU fundamental principles. In relation to a contract or framework agreement worth at least €750,000 such a challenge would be pursued as a commercial action.

**Contract renewal or direct award without competition**

Where an organisation decides to renew an existing contract, or to award a new contract without competition, it should ensure that:

* + its decision is based on sound and objective business reasons and that this is fully documented;
	+ its decision not to award the contract or framework agreement by competition is permissible (see **threshold diagram below**) and compliant with the public procurement Regulations and the TFEU fundamental principles;
	+ its decision is consistent with local financial regulations and standing orders and local policy and procedures for the procurement for care and support services;
	+ it is able to demonstrate that best value has been achieved; and
	+ the decision is subject to regular review. For example, a decision not to advertise and tender a contract because of its low value will need to be reviewed should the total sum to be paid under that contract increase.

|  |  |
| --- | --- |
| €750,000 | Must be advertised in OJEU and the light touch provisions in |
| and above | [The Public Contracts (Scotland) Regulations 2015](http://www.legislation.gov.uk/ssi/2015/446/contents/made) apply |
|  |  |  |
| £50,000 - | May award without | May choose to seek offers: in |
| €750,000 | seeking offers, but | which case all provisions of the |
|  | should consider the | [Procurement Reform (Scotland) Act](http://www.legislation.gov.uk/asp/2014/12/contents) |
|  | TFEU fundamental | [2014](http://www.legislation.gov.uk/asp/2014/12/contents) apply |
|  | principles where |  |
|  | relevant. For contracts |  |
| Below | Non-regulated procurement |
| over £50,000, a contract |
| £50,000 | award notice must be |  |
|  |  |
|  | published on PCS |  |
|  | and certain other |  |
|  | rules apply |  |
|  | (**see** **paragraph 8.12 of Guidance on the Procurement of Care and Support Services 2016 (Best-Practice**). |  |

**There is no discretion for an organisation to directly award health or social care contracts that are equal to,**

**or greater than, the EU-regulated threshold of €750,000 and which are regulated by The Public Contracts (Scotland)**

**Regulations 2015. See section 6.9.1 for more details about the rules that apply at that level. A contract notice is required**

**in all cases except where the circumstances described in regulation 33 of The Public Contracts (Scotland) Regulations 2015 apply.**