

**Ashingdon Road – “Most Suitable Provider Process”**

**Procurement implications**

* 1. To understand which of the UK Procurement Regulations apply to this Requirement, relevant common procurement vocabulary (CPV) codes have been identified and considered in **Appendix A**.
  2. In order for this procurement to be in scope of the [Health Care Services (Provider Selection Regime) Regulations 2023](https://www.legislation.gov.uk/uksi/2023/1348/contents/made) (“the PSR”) it must fall under one of the relevant CPV Codes within Schedule 1, Annex A of the PSR.
  3. The PSR Guidance states that contracts to deliver health care services may contain multiple elements, some of which are health care services clearly within the scope of the PSR, and some of which, if procured alone, would be within the scope of the wider public procurement regulations (see the [PCR](https://www.legislation.gov.uk/uksi/2015/102/contents/made)). It is very clear that “the PSR must not be used for the procurement of goods or non-health care services alone.”
  4. Therefore, the Authority needed to assess whether this contract opportunity comprises a mixture of in-scope health care services and out-of-scope services or goods. If so, it may only use the PSR to arrange those services when both of the below requirements are satisfied:
* **Requirement 1:** The main subject-matter of the contract is in-scope health care services (determined by the component that is higher: the estimated lifetime value of the health care services; or the estimated lifetime value of the other goods or services)
* **Requirement 2:** The relevant authority is of the view that the other goods or services could not reasonably be supplied under a separate contract.
  1. The Authority may only determine that other goods or services could not reasonably be supplied under a separate contract where the Authority is of the view that procuring the health care services and the other goods or services separately would, or would be likely to, have a material adverse impact on the Authority’s ability to act in accordance with the procurement principles.
  2. Where the above tests are met, then the regime applies, and a mixed procurement can be undertaken using the PSR. Where these tests are not met, then this regime does not apply, and the procurement must be undertaken as per the rules under PCR 15.
  3. Please see **Table 2** for details of the application of these requirements.

**Table 2 – Applying the mixed procurement tests**

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|  | **General Medical Services** | **Land option and capital works** | **Authority’s assessment** |
| **Mixed procurement?** | The primary medical care services delivered by the identified GP Practice under their existing GMS/PMS Contract fall within scope of PSR. The relevant CPV codes include ‘General-practitioner services,’ ‘medical practise services’, ‘Services provided by medical personnel’ and ultimately ‘health services’ | The Land Option (i.e. an agreement to secure the *right* to purchase the land at a future date) falls within the scope of the Public Contract Regulations 2015, (which are due to be superseded by the Procurement Act 2023 in February 2025) under the CPV codes: ‘Land sale or purchase services’ and ‘Buying and selling of real estate.’ | The opportunity is deemed to comprise a mixture of in-scope health care services and out-of-scope non-healthcare services. |
| **Requirement 1:**  **Subject** **matter** | The estimated value of the Land Option / capital works element is between £3.75m and £5.25m based on an NHS compliant build costing in the region of £5,000-7,000 per square metre. The planning permission shows the land could accommodate a healthcare building of 750m2 plus on-site parking. | The estimated lifetime value of the health care services being delivered under the Practices existing GMS/PMS contracts are:   |  |  |  | | --- | --- | --- | | **Practice Name** | **Global Sum Annual Payment Value** | **Estimated lifetime value** | | Practice A | £2,188,060.27 | £98.5m | | Practice B | £673,587.20 | £30.3m | | Practice C | £1,537,548.99 | £69.2m | | Practice D | £591,508.14 | £26.6m |   *Under GMS/PMS terms the contract runs in perpetuity unless and until terminated in accordance with its terms. As such, these values have been estimated by multiplying the Global Sum Annual Payment Value by an estimated 45 years (a duration chosen based on the average primary medical care career assuming qualification achieved in mid-twenties and retirement at seventy years old)* | The main subject-matter of the contract is deemed an in-scope health care service because the estimated lifetime value of the health care services being delivered under the Practices existing GMS/PMS contract is higher than the value of the one-off sum associated with the Land Option and associated capital works (non-healthcare services). |
| **Requirement 2:**  **PSR**  **Procurement principles** | **Reg 4.—(1) When procuring relevant health care services, a relevant authority must act—**  **(a) with a view to—**  **(i) securing the needs of the people who use the services**  **(ii) improving the quality of the services**  **(iii) improving efficiency in the provision of the services**  **(b) transparently, fairly, and proportionately**  **The authority may consider the value of providing services in an integrated way, including with other health care services, health-related services, or social care services.**  If the selection of an appropriate GP Practice to purchase the Land Option is separated out from the selection of a GP Practice to deliver general medical services from the surgery developed there, it may create the following risks and issues:   * It will mean the Authority must undertake two separate procurement processes under different regulations. Both processes would attempt to attract Bidders from the same market (primary care) and would have to be run simultaneously. This would create disproportionate effort and burden on the primary care market. * Running separate processes under different regulations would cause significant inconvenience and substantial duplication of costs for the Authority as well as an opportunity cost associated with what the time and resources could be applied to, in improving quality and efficiency in the system. * The Authority deems that competition is deemed absent for technical reasons, because the two elements must be delivered by a GP Practice and such Practice must be currently operating within the two Primary Care Networks (PCN), Rayleigh & District, and Rochford. No reasonable alternative or substitute (to a primary care practice that already holds a GMS/PMS contract as the provider, nor to the location of such provider) is deemed to exist (however providers have the opportunity to enquire should they disagree, off the back of the Prior Information Notice, by the stipulated deadline). * The market engagement highlighted the offer transparently to the market and the outcome was that out of all practices invited to the information event, only four expressed an interest. Running two separate processes will not achieve any benefits that outweigh the costs of such activity for both the Authority and the Practices. * Two processes create a risk of different providers being selected. A separate provider delivering each of the two elements is not a suitable solution for economic and technical reasons and will likely contravene the Section 106. The Practice will develop a surgery on the land that is suited to delivery of their desired service and workforce model and based on their existing contractual obligations and the required patient list for the new surgery. * There is no incentive for a Practice to purchase the land and fund / develop a surgery if they cannot thereafter recoup their costs (and make a profit commercially) through ongoing delivery from said surgery. Without such incentive, there will be less interest in the opportunity, and this creates a risk to delivery of (i) securing the needs of the people who use the services, (ii) improving the quality of the services, (iii) improving efficiency in the provision of the services. * A separate provider delivering each of the two elements creates fragmentation instead of facilitating an integrated approach. | | The Authority is of the view that separating out the process around selecting an appropriate GP Practice to offer the Land Option to, from the selection of a GP Practice to deliver general medical services from the healthcare premises developed on the land would have a materially adverse impact on the Authority’s ability to act in accordance with the procurement principles. |

**Route to market**

* 1. It has been recommended the Authority undertake a mixed procurement under the Most Suitable Provider Process with an element of dialogue.

**Appendix A - CPV codes explored in determining mixed procurement grounds:**

**Green = used**

**Red = dismissed**

**Healthcare Services (PSR)**

* 85000000 - Health and social work services
* 85100000 - Health services
* 85121000 - Medical practice services
* 85121100 - General-practitioner services
* 85120000 - Medical practice and related services
* 85141000-9 - Services provided by medical personnel

**Non-Healthcare Services (PCR 15)**

* 45215130 - Clinic construction work
* 45215000 - Construction work for buildings relating to health and social services
* 45215100 - Construction work for buildings relating to health
* 45215140 - Hospital facilities construction work
* 70000000 - Real estate services
* 70100000 - Real estate services with own property
* 70120000 - Buying and selling of real estate
* 70122000 - Land sale or purchase services
* [70300000 : Real estate agency services on a fee or contract basis](https://www.bipsolutions.com/news-and-resources/cpv-codes/)
* [70310000 : Building rental or sale services](https://www.bipsolutions.com/news-and-resources/cpv-codes/)
* [70320000 : Land rental or sale services](https://www.bipsolutions.com/news-and-resources/cpv-codes/)
* [70330000 : Property management services of real estate on a fee or contract basis](https://www.bipsolutions.com/news-and-resources/cpv-codes/)

**Appendix B - The Most Suitable Provider Process**

* 1. Pursuant to The Health Care Services (Provider Selection Regime) Regulations 2023 (“the Regulations”), the Contracting Authority, NHS Mid and South Essex Integrated Care Board (“the Authority”) is using the Most Suitable Provider Process (“the Process”) as defined by Regulations 6(6) and 10) to award a Land Option (“the Contract”) for development and delivery of General Practitioner Medical Surgery and associated facilities and services (“the Requirement”).
  2. The Authority is responsible for running the Process as the legal entity responsible for commissioning Primary Medical Services in Mid and South Essex.

**Contract model**

* 1. For avoidance of doubt, this Process will not result in the Authority and any Preferred Practice entering into a new contract. The Authority and existing Practices that have expressed an initial interest are already within contractual arrangements via each Practice’s existing GMS/PMS. Instead, the Process intends to identify and award the opportunity to enter a Land Option with Bloor Homes and Rochford District Council. The Authority is expecting the council/developer to transfer the land directly to the Preferred Practice following this exercise. The Preferred Practice will be responsible for working with the council/develop the site for use under their existing GMS/PMS contract. Further work will be needed as the site develops to amend the Practice’s existing contract to reflect their proposed plans (for example, whether it is an additional branch site or a relocation).

**Estimated lifetime value of the requirement**

* 1. The estimated lifetime value of the Land Option is between £3.75m and £5.25m, and the estimated lifetime value of the existing GMS/PMS contract could be between £26m and £99m depending on which Practice is selected (because it is based on the global annual sum of their existing contract and a 45-year contract duration).
  2. The development has made a financial contribution of £262,300 available to the Preferred Practice that purchases the land, to support the improvement of healthcare services in Rochford. The Preferred Practice will be required to source the necessary capital to implement the requirement through solutions such as partnering with a specialist healthcare facility developer or some form of borrowings. No further capital resource is available through the NHS to support build costs.

**Market engagement and market knowledge**

* 1. The Authority held a Practice Information Session on 4th September 2024 that was limited to practices that are local to the two Primary Care Networks (PCN), Rayleigh & District, and Rochford in order to update its knowledge of relevant providers including understanding their ability to deliver the Requirement, and connections with other parts of the Mid and South Essex Integrated Care System (“MSE ICS”). This session was followed by a letter asking Practices to express an interest in the opportunity, to which four responses were received. As a result of this market engagement, the Authority was of the view, considering the likely providers and all relevant information available to it at this time, that it is likely to be able to identify the most suitable provider without running a Competitive Process under the Regulations.

**Authorities position on Competition**

* 1. The Authority is undertaking the Process, to identify which of the four Practices that expressed an interest in the Land Option, is suitably qualified and experienced and technically and professionally capable (“the Most Suitable Provider (MSP)”). Only four Practices have expressed an interest from within the Rayleigh & District, and Rochford Primary Care Networks. There will be a qualification stage based on basic selection criteria that short-lists the four Practices (and any other Providers that respond to the Prior Information Notice) down to a single Practice to be invited to Phase 2 of the Process. Competition is deemed absent because a single Practice will be identified at Phase 1 (based on the highest scoring Practice with regards to key criteria scored questions that also meets all basic selection criteria) and dialogue will only continue with such Practice.

**Basic selection criteria**

* 1. Potential providers must evidence that they satisfy the basic selection criteria to be considered for participation in Phase 1 – Qualification including but not limited to the following:
     1. The Provider holds a current GMS/PMS contract for general medical services with an active patient list
     2. Is CQC registered and is complying with all requirements of such CQC registration
     3. There are no current ongoing investigations, and no enforcement notices have been served from the Care Quality Commission or NHS Improvement on any establishment run by the organisation in the last three years.
     4. Has CQC rating of at least ‘Good’ or ‘Outstanding’ for establishments run by the organisation in the last three years.
     5. Does not meet any of the Exclusions as per Regulation 20 of PSR
     6. Has the appetite for, knowledge of and political acuity required in relation to undertaking an NHS property development and accepts full accountability and liability for the relevant risks associated with such undertaking (such as District Valuer renumeration for new builds). Funding will be awarded in line with National Health Service (General Medical Services – Premises Costs) Directions 2024 [The National Health Service (General Medical Services - Premises Costs) Directions 2024](https://assets.publishing.service.gov.uk/media/663cd8d2bd01f5ed32793867/nhs_general-medical-services-premises-costs_directions-2024.pdf)
     7. Has access to appropriate internal and external resources to support NHS property development (including ensuring adherence to the ‘Treasurers Green Book’ and the current Health Technical Memorandum (HTM) guidance.  Relevant guidance documents are available here: - [**NHS England » Health building notes**](https://www.england.nhs.uk/estates/health-building-notes/)), such as project management capacity, communications expertise for effective stakeholder management and engagement etc)
     8. Meets the Authority’s economic and financial standing tests, and can evidence it has or can access sufficient capital / appropriate funding routes within timescales available
     9. Is capable and willing to take on the level of financial risk associated with being awarded the land option, and accepts all costs associated with the development of the build are to be born solely by the Provider. Costs will also include but are not limited to on-site security, running costs, maintenance etc.
     10. Has completed the NHS Data Security and Protection 'Self-Assessment' Toolkit and can evidence that the organisation has achieved compliance with mandated assertions.
     11. Has up to date policies and procedures as required by UK law for the purposes of carrying out general medical services in the UK (such as Health and Safety, Equality and Diversity, Safeguarding Adults and Children etc).
     12. Has no outstanding partnership disputes
     13. Has no disputes relating to premises (in relation to its landlord(s) / unsigned leases etc.
     14. Has no performance issues relating to its current GMS/PMS contracts, particularly relating to the quality of services being provided and extent of engagement with ICB inspections (Infection Prevention and Control (IPC), Quality Assurance Visit (QAV), Support Level Framework (SLF).
  2. The Authority will also use any other intelligence available to it, as part of this assessment, to determine the MSP, including but not limited to whether:
     1. The Practice has recently undertaken any communications or media to secure funding for premises works such as extensions
     2. The Practice has completed its annual electronic contractual declaration (eDec)
     3. There is evidence that the Practice does not undertake regular maintenance on their existing establishments
     4. There is no existing building work to be undertaken first before this new project can be commenced (will compete for time and resources)
     5. Has in place appropriate succession plans for the practice (as discussed within the SLF)

**The MSP Process – further detail**

**Phase 1 - Qualification**

* 1. To satisfy the Regulations, the Authority will undertake appropriate due diligence within this Process to assess the Practices in accordance with Regulation 19 (Basic Selection Criteria) and Regulation 20 (Exclusions) and with reference to the Key Criteria (Regulation 5), to assess if they have the legal and financial capacities and the technical and professional abilities to deliver the Proposed Contract over the term.
  2. In accordance with the Regulations, the Authority will assess all providers that respond to the ‘Intended Approach Notice to follow the Most Suitable Provider Process.’ The Authority may ask interested providers including any that respond to the notice, for further information that would help decision making, as necessary. All providers who may be interested in tendering will be given equal chance to participate.

**Phase 2 – Invitation to Submit Initial Tender**

* 1. On completion of Phase 1 ‘Qualification’, all Practices that meet all basic selection criteria and are not subject to any exclusion grounds, will be ranked on the basis of their quality score associated with the basic selection criteria set, and the highest scoring Practice will be deemed the Most Suitable Provider (MSP) to be Invited to Submit an Initial Tender (ISIT). This will be a written response to the Authority’s key criteria. The Authority will assess the response and score it in accordance with a standard scoring methodology and a minimum pass threshold must be achieved for the Practice to be invited to Phase 3.

**Phase 3 – Invitation to Participate in Dialogue**

* 1. The Invitation to Participate in Dialogue (the ITPD) will be issued to the MSP if it has exceeded the minimum quality threshold. During this phase, the Authority will facilitate a series of dialogue meetings to cover set topics/themes with the MSP with regard to its initial tender, in order for both parties to clarify anything ambiguous and so that the MSP can refine its offer to more closely meet the Authority’s requirements. On completion of all necessary dialogue topics to the satisfaction of both parties, the Authority will then formally close the dialogue phase and invite the final tender.

**Phase 4 – Invitation to Submit Final Tender**

* 1. The Invitation to Submit Final Tender (the ISFT) will be issued to the MSP with a clear deadline for their final, fully costed tender to be submitted, that has taken on board all feedback/advice and input from the Authority during the dialogue sessions. This will be evaluated by the Authority and a final score will be concluded which will again need to meet a minimum quality threshold to pass. If the MSP meets or exceeds the minimum quality threshold the Authority will progress with the award of the Land Option to the MSP.