

How to use the Health Systems Support Framework

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Introduction

This document provides advice on using the Health Systems Support Framework. An overview of the Framework is provided, the process for using it is outlined and details are provided on modifying the contract for your needs.

The guide is particularly aimed at meeting the needs of organisations considering using the Framework and their advisors and/or sponsors.

Overview of the Framework

To embrace intelligence-led approaches to designing proactive and anticipatory care and make existing and immediate and reactive care more effective and efficient, ICS and STPs will need to make progress at pace to build and strengthen key capabilities, particularly in population health management (PHM) and transformation, and establish robust enabling infrastructure, particularly in integrated care records, advanced analytics and digital transformation.

The Health Systems Support Framework provides a quick and easy route to access support services from innovative third party suppliers at the leading edge of health and care system reform, including advanced analytics, population health management, digital and service transformation. It can be used by any NHS organisation, including Digital Exemplars, national Arm's-Length Bodies, local authorities and a wide range of public sector bodies where they are supporting Integrated Care Systems (ICSs), Sustainability and Transformation Partnerships (STPs), or health and social care in general.

The Framework focuses particularly on services that can support the move to integrated models of care based on intelligence-led population health management. This includes new digital and technological advances that help clinicians and managers understand a population's health and how it can best be managed.

The Framework has been structured around three areas:

- **Infrastructure:** encompassing Electronic Patient Records and place-based digitalisation; local health and care records across different care settings; and primary care IT support and cyber security;
- **Intelligence:** targeted population health analytics and digital tools for system modelling, actuarial assessment, planning, research, risk stratification and impactability modelling, and clinical decision support tools;
- **Impact and Intervention:** transformation and change support; patient empowerment and activation (including self-care support, personalisation, assistive technologies and remote consultations); demand management and capacity planning support solutions; system assurance and provider modernisation; and medicines management support.

The scope and lot structure are outlined in figure 1, while figure 4 provides more detail. The current list of suppliers, as well as a summary of the services they offer, is contained in the Framework prospectus; please contact us if you would like a copy.

Benefits of using the Health Systems Support Framework

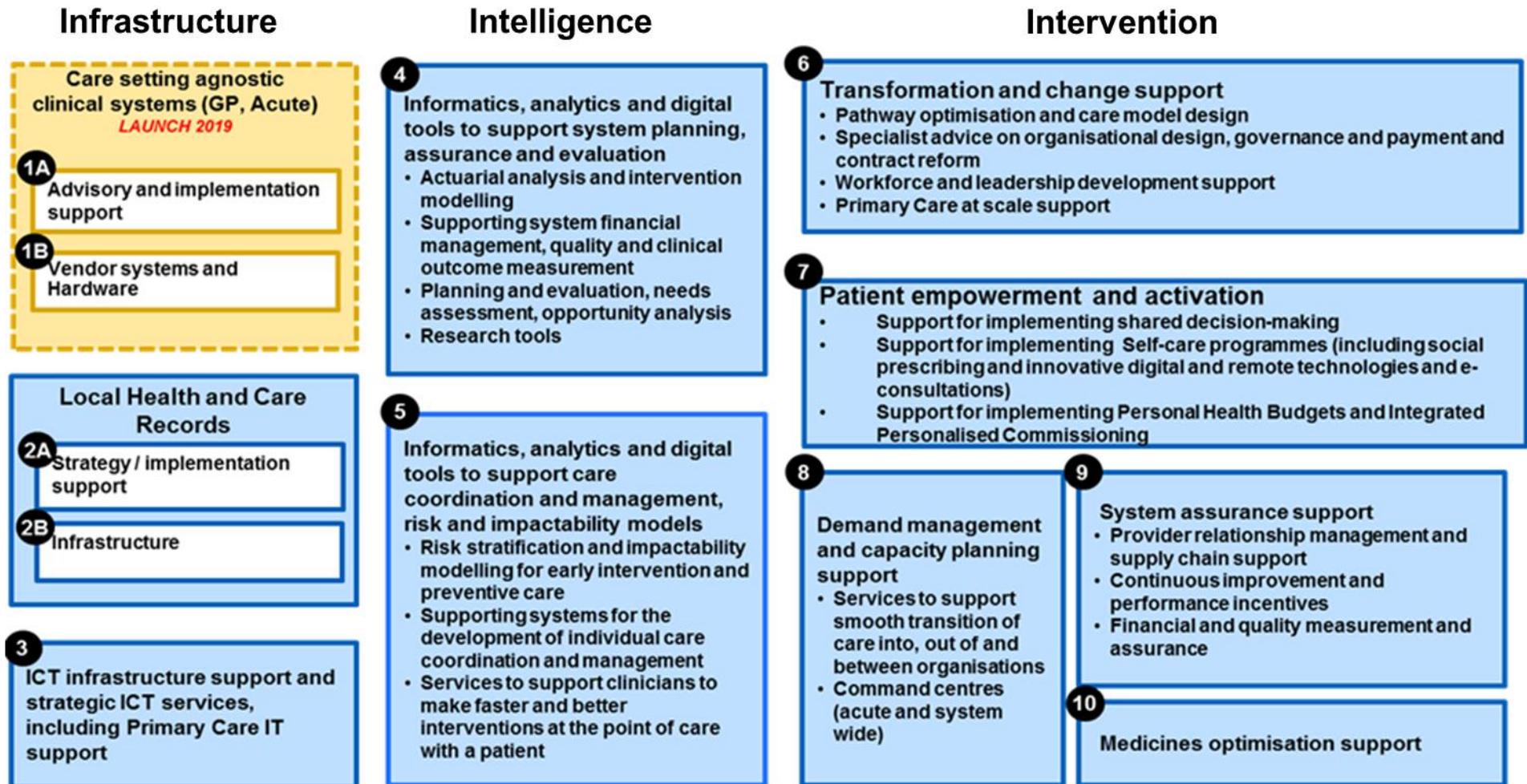
Using the Health Systems Support Framework provides reassurance on quality. The suppliers on the Framework have passed rigorous selection criteria to ensure their products are of a high quality, their prices fair and their financial position stable. The Framework is being refreshed regularly to ensure it stays current and includes the latest innovative products, services and suppliers.

As well as ensuring high quality suppliers, this selection process allows for faster and easier procurements as you do not need to sift and assess the full market, but only those that have passed the Framework criteria. For OJEU procurements the typical timescales from release of procurement documents to contract award is around 9 to 12 months. Using the Framework we would expect to save around 6 months.

Compared with other frameworks the Health Systems Support Framework offers two main advantages. Firstly the Health Systems Support Framework has been designed specifically with the needs of systems aiming to grow their PHM capability and ability to integrate care in mind. This affects the products and suppliers on the Framework, and will also inform the conversations you will have with suppliers, encouraging them to consider your needs in the context of the broader transformational change taking place across the health and care system.

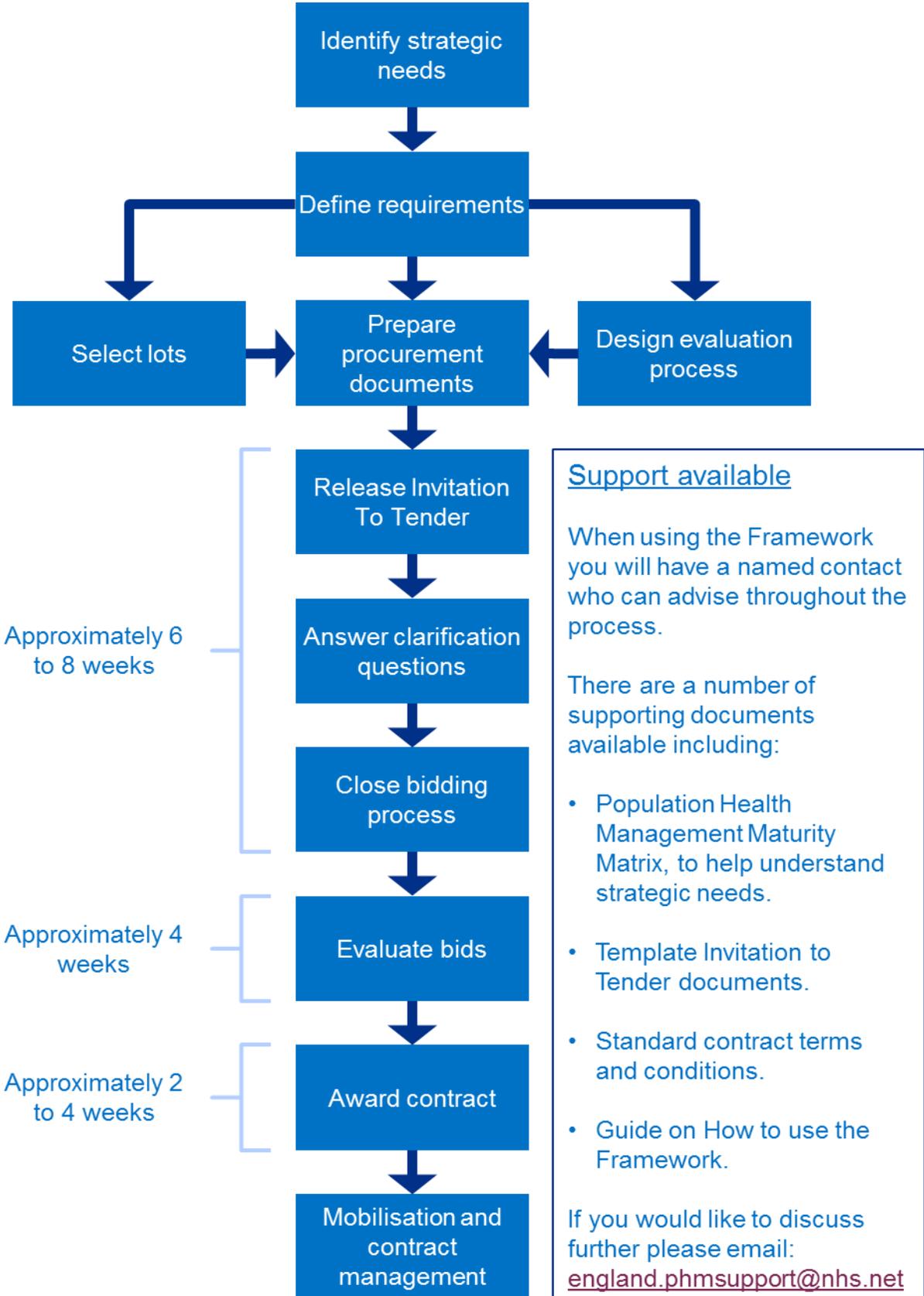
Secondly, using the Framework allows you to access support from a team of advisors who can guide you through the procurement process and, where appropriate, broker expertise from subject matter experts on areas such as interoperability, PHM analytics, IG support tools, finance, procurement and legal issues.

Figure 1: Framework Scope and Lot Structure



● Lot number

Figure 2: Overview of using the Framework



Using the Framework

Overview of using the Framework

There are four broad stages to using the Framework:

1. **Identify strategic needs** – Understanding Population Health Management capabilities and the benefits that are sought
2. **Define requirements** – understanding innovative tools and approaches possible and defining requirements.
3. **Formal procurement process** – developing procurement documents, seeking bids from suppliers, assessing bids and awarding contracts.
4. **Mobilisation and contract management** – starting the contract and managing the successful supplier.

The sections below provide more detail on the process. Figure 2 summarises the process in a diagram.

Identifying strategic needs

The first stage of using the Framework is developing an understanding of your strategic needs and the new skills, capacity and capability you are hoping to build.

The Framework offers a wide range of services that can meet a wide range of strategic aims, though the main focus of the Framework is providing support to move to integrated models of care based on Population Health Management. When using the Framework to access this type of support, the strategic needs stage is particularly important. The aim of this stage is to identify new skills, capacity and capability that can support the development of the integrated system you are moving towards.

The Population Health Management (PHM) Maturity Matrix is a tool specifically designed for assessing a developing system's PHM capabilities and is where we recommend starting in the majority of cases. If you are one of the 14 official integrated care systems you will have already been contacted by your PHM Sponsor about the maturity matrix and we would encourage you to use the results as the beginning of your strategic assessment. If you are not one of the 14 official ICSs, please contact us and we can discuss the maturity matrix with you.

Depending on how progressed you are towards an integrated system, this stage could be a significant piece of work in itself. The Framework includes organisations that can help you through this first stage, coaching you to develop an understanding of what has worked elsewhere, an operating model that is right for your health system and identifying the key areas to grow capacity and capability.

As well as being used to support a move to integrated systems, the Framework can also be used to source particular solutions to deliver specific needs. For instance you may want to procure improved cyber security support, or a local analytical tool. In this situation, where you are looking to supplement, rather than redesign, the existing model it may not be necessary to assess your full system wide needs. It is still

important however to understand the outcomes you wish to achieve with your procurement and how the solution will fit within the broader system.

Figure 3 summarises some possible approaches to using the Framework.

Figure 3: Possible uses of the Framework

There are a number of situations in which you may want to use the Framework	
Short term product	A specific need has been identified that can be effectively plugged by a one off purchase. For example you may want a one-off piece of analytical work to identify under and over utilisation of services and unwarranted variation, quantify savings and productivity wins.
Digital transformation	Support to develop and embed new digital approaches, such as shared care records and tools that allow clinicians, patients and managers to make use of the increased intelligence generated.
Transformation partner	A long term transformation and delivery partner is sought who can bring knowledge of international best practice, provide leadership support whilst sharing risk and bringing investment.
Iterative use of the Framework	Given the current pace of change in the system, it may not always be clear at the outset the exact long-term scope. In this case the Framework can be used iteratively, for instance procuring first advice on opportunities for transformation, before seeking a partner to meet the needs identified.

Defining requirements

Once a broad understanding of strategic needs has been developed, you can start to define your requirements. One of the challenges of this stage is understanding the range of innovative tools and services available at the forefront of current technology. Pre-market engagement with Framework suppliers early in your thinking, and before the formal procurement begins, can help identify options you may not be aware of otherwise.

As you get closer to choosing an approach, a specification should be produced that details the requirements needed from any tools or services procured. There are two broad ways of writing specifications – outcomes-based and input-based. Where the strategic needs stage identifies the functions needed and how they will transform the system, an input-based specification details how a solution will deliver the function. An outcome-based specification is less prescriptive on the exact solution needed and instead expands on the benefits required.

An input-based specification is appropriate where you are confident you understand the product you want to procure in detail; this is often the case when re-procuring existing services, or where a frequently procured “off-the-shelf” solution is sought.

Outcomes-based specifications are suitable for situations where you are clear on the outcomes you want, but are open on the exact approach used to achieve them. This approach makes it easier for an organisation to bid with a new, innovative approach that could offer high value.

In reality these two approaches are part of a continuum and most specifications are a mix of outcomes and inputs. A specification could contain areas which are defined as outcomes and particular areas where a tighter definition is given. For instance a specification may be very exacting on the requirements for data warehousing, but could be broader and outcomes-based for the analytics performed on the data.

In general, where a broad strategic transformation partner or new innovative tools are sought, a specification that is more outcomes based is probably the correct approach. Where you want to procure well-understood products and want to prioritise ease of management of the contract, a more input based specification focusing on process may be better.

The formal procurement process

Once a detailed specification exists a procurement process can be carried out. A procurement process carried out under a Framework is referred to as a “call-off”. When procuring you must:

- Be transparent
- Be fair and unbiased
- Act in accordance with the Public Contracts Regulations 2015

There is some flexibility on the details of how a procurement process is conducted under the Framework, though there are some key stages that all procurements should go through:

- Selecting lots
- Preparing procurement documents
- Designing the evaluation process
- Releasing the Invitation to Tender
- Answering clarification questions
- *Early sift stage (optional)*
- Closing the bidding period
- Evaluating bids
- Awarding the contract

Below each of these stages is explained.

With any public procurement there is a risk of legal challenge if a bidder feels they have been unfairly treated. This risk can be minimised by ensuring you are transparent, fair and unbiased and follow the process you set out in the call-off ITT.

Selecting lots

The Framework is made up of a number of “lots” that break down the services available into broad groups; the lot structure is shown in figure 1 and the lots described in more detail in figure 4. Suppliers on the Framework do not necessarily appear on every lot. This will depend on the services they offer and whether they have been successfully accredited. As part of developing the specification, you should consider which lots the services you are procuring fall into, as it is the suppliers on these lots who you will invite to bid. Annex 1, outlines some common reasons for seeking support services and suggests the products and lots which should be considered.

The services you wish to procure may appear wholly within one lot, or may span several lots. For example, you may wish to procure analytical services that can be used for strategic planning, as well as supporting clinical decision making and being used as part of a system to improve transition between care settings. Depending on the details of the requirements, this could involve procuring from lots 4, 5 and 8.

When conducting a cross-lot call-off there are four options:

1. Seek “best-in-breed”
2. Single solution from single supplier
3. Single solution allowing co-bids
4. Responses from all of the above approaches, in a single competition.

Figure 5 describes these approaches and their advantages and disadvantages.

Preparing procurement documents

Once a decision has been taken on the services being procured, detailed tender documents can be produced, these documents are together referred to as the “Invitation to Tender”. The key documents that are needed are:

1. **The bidder information pack** sets out the instructions to bidders including the timetable for applications, the evaluation methodology to be used and the questions bidders are required to answer. There is a template information pack available on request that contains detailed guidance on completing the document.
2. **The call-off order form** sets out the services you require and details any specific requirements and any variant contractual terms. Figure 8 in annex 2 summarises the standard contractual clauses. The rest of annex 2 outlines key contractual clauses to consider amending. The order form is part of the draft contract and is available as a standalone document on request.

Figure 4: Description of the lots

Lot	Description
Lots 1a and 1b: Digitising care and operational services	Lots 1a and 1b will cover electronic patient records that enable the digitisation of health systems. The lot is not currently active and will become part of the Framework at the refresh.
Lots 2a and 2b: Local Health and Care Records	Lots 2a and 2b include products and services that support the development of local health and care records. Lot 2a focusses on support for the planning, design and implementation of shared care records, while lot 2b focuses on suppliers who can design and deploy these records and their underpinning infrastructure. These lots will initially be particularly useful for LHCRE sites.
Lot 3: ICT infrastructure and strategic ICT services	Lot 3 contains organisations that can provide a wide range of IT support services, infrastructure and tools. Services ranging from IT helpdesk support through to development and implementation of digital strategies can be procured through this lot.
Lot 4: Informatics, analytics and digital tools to support system planning, assurance, evaluation and research	Lots 4 and 5 both contain suppliers who can help you make use of the data you have available with high quality analysis. Lot 4 focusses particularly on tools that support analysis for understanding aggregate populations and managing population health at system level.
Lot 5: Informatics, analytics and digital tools to support care coordination and management, risk and impactability models	Lots 4 and 5 both contain suppliers who can help you make use of the data you have available with high quality analysis. Lot 5 focusses particularly on tools that support analysis for understanding populations at a more granular level and providing individual level data for clinical decision making and care coordination.
Lot 6: Transformation and change support	Lot 6 contains organisations that provide expert advice to design and support the development of the organisational structures and capability for an integrated system to function effectively. This includes governance expertise, leadership and workforce development, change management and care model design.
Lot 7: Patient empowerment and activation	Lot 7 contains organisations that provide advice and tools that support a health system to help people manage their own care, live with greater independence, confidence and safety, and in many cases reduce the need for unplanned care.
Lot 8: Demand management	Lot 8 contains organisations that can support capacity planning, patient pathway optimisation and care transitions. These include cross organisational communication tools, inter and intra care setting optimisation tools and allow real-time management of patient flows.
Lot 9: System assurance support	Lot 9 contains organisations that can help you with oversight functions and services to measure, benchmark, and support the system to manage quality, cost and clinical outcomes. It includes the services to support the ongoing operation and management of a health system.
Lot 10: Medicines optimisation support	Lot 10 contains organisations that can advise on and provide expert medicines management to deliver improved outcomes from medicines, minimise waste and drive efficiency.

Figure 5: Options for cross-lot call-offs

Approach	Description	Advantages	Disadvantages	Who to invite to tender
Best-in-breed	Run a separate competition for each lot and award specific deliverables to the winner of each.	Allows the best supplier in each lot to be chosen.	Provides a less joined-up solution. The customer is likely to need to coordinate the overall solution and suppliers do not share overall liability.	All suppliers on each relevant lot for that lot's services
Single solution from single supplier	Seek a single solution from a supplier who is accredited on all the relevant lots.	Allows a more joined-up solution and means the customer can expect the supplier to coordinate the overall solution.	Insisting on a single supplier, rather than allowing co-bids will reduce the pool of potential bidders and could mean a strong offer is excluded.	Suppliers on all relevant lots
Single solution allowing co-bids*	Seek a single solution and allow applications from co-bids of suppliers who between them are accredited on all relevant lots, as well as from single suppliers.	Allows a joined-up solution and means the customer can expect the supplier(s) to coordinate the overall solution and hold them jointly accountable. It is less restrictive than insisting on a single supplier and may attract bids that bring some of the benefits of a best-in-breed approach with the coordination of a single solution.	Co-bid responses may be less coherent than those from a single established Framework supplier. Accountability can be more complex in practice. Time may be needed to allow suppliers time for co-bid conversations.	All suppliers on at least one relevant lot*
Any of the above	Responses from all of the above approaches.	Greater flexibility	Requires careful design of the call-off evaluation criteria to ensure a fair comparison between different types of bid. The number of bids received may be very large. In general we would recommend making the decision on whether to use a best in breed model or single solution before releasing the ITT.	All suppliers on at least one relevant lot*

*Using the Framework Lot

Designing the evaluation process

One of the key parts of the bidder information pack sets out the process that will be used to evaluate bids. In order for your procurement to be legally compliant, this process must be designed in line with the rules set out in schedule 7 of the Framework Agreement. This schedule sets out broad criteria for the evaluation and ranges within which the criteria must be weighted. Within these criteria, you are free to set your own evaluation questions and define sub-criteria.

Within each evaluation there must be an assessment made of both quality and price. You can choose for quality to be weighted between 50 and 85%, depending on the relative importance you wish to place on quality. The remaining weighting should then be allocated to price. Using quality weightings outside this range risks having your procurement challenged.

The Framework Agreement sets quality criteria categories and weightings ranges that must be used; these are set out in figure 6. Your choices of quality criteria weights must add up to 100%.

Figure 6: Quality criteria described in schedule 7 of the Framework Agreement

Quality Criteria	Description and possible sub-criteria	Quality weighting range – your choices for quality must sum to 100%
Organisational capability to perform the deliverables	Sub-criteria may (but need not) include and are not limited to: <ol style="list-style-type: none"> 1. Relevant strengths of the organisations bidding, including but not limited to their ability to accept the complexity and risk associated with performance of the Deliverables; 2. Key personnel to be used in the performance of the Deliverables; and/or 3. Governance structure for the performance of the Deliverables. 	5 - 40%
Mobilisation, implementation and transition	Sub criteria may (but need not) include and are not limited to: <ol style="list-style-type: none"> 1. Suppliers' plans to effectively mobilise should they win the Competition; and/or 2. Ability to work effectively with other organisations and to adapt to the evolving needs of customers; and/or 3. Plans for delivering to customer timescales. 	5 - 30%
Service delivery	Sub criteria may (but need not) include and are not limited to the Suppliers':	40 - 80%

	<ol style="list-style-type: none"> 1. Approach to delivering the Statement of Requirements; 2. Approach to effectively working with the customer and other relevant stakeholders; and/or 3. Approach to embedding the required solution in the customer's organisation. For instance training of customer staff on the use of the supplied solution. 	
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Releasing the invitation to tender

Once your documentation is complete, you are ready to invite bids from suppliers. To do this you start by sharing the call-off order form and bidder information pack, together called the call-off Invitation to Tender (call-off ITT) with relevant suppliers. Where you are procuring from a single lot, you should invite all suppliers from that lot to tender. Who to invite to tender for a cross-lot call-off depends on the type of solution you are seeking – figure 5 states which suppliers you should invite depending upon your chosen approach.

It is important that all potential bidders are treated fairly and equally and that you are transparent on the process. All suppliers must be invited at the same time and have the same documents shared with them. You can communicate with suppliers through a procurement portal, or via email as long as the same route is used for all suppliers.

If you wish, we can notify suppliers for you to make them aware of your call-off ITT.

Answering clarification questions

Once the ITT has been released suppliers are likely to have questions for you. These should be dealt with fairly and transparently. Any information shared with one supplier, must be shared with all.

You should ask suppliers to submit all clarification questions in writing either via email or through an e-tendering portal. Responses to the questions should be published through the same route as they are received and shared with all suppliers at the same time. It may be necessary to adapt the questions received so that they are generic, don't identify a bidder and so all questions follow a consistent format. If you receive the same question from several suppliers, it is not necessary to answer each question individually, a single response can be provided.

You should offer bidders a reasonable and proportionate length of time to ask questions about the tender documentation provided. It is good practice to close the clarification period at least 1 week before the submission deadline to provide stability leading up to the deadline.

Early sift stage (optional)

The Framework offers both a breadth and depth of potential suppliers, allowing a wide range of potential solutions to meet the different needs of health and care systems undergoing transformation in the way that makes sense locally.

However, if you are procuring certain relatively generic products that many suppliers can offer, you may potentially receive more bids than you would like. We can advise based on our understanding of the market offering and your requirements, how likely this is to happen. If you are concerned that the resources to assess the bids will be disproportionate an early sift stage can be added as part of the evaluation process.

There are also ways of setting up the assessment questions in such a way as to quickly identify bids that fail to meet your requirements. We can advise on potential approaches.

Whether an early sift stage is useful will depend on the resources available for assessment and type of solution being procured. For a piece of advice on strategy that will only last a year and can be delivered by a wide range of suppliers, an early sift process may be useful. On the other hand for a 10 year long contract with a transformation partner, it may be worth reading several full bids.

Closing the bidding period

Once the closing date identified in the bidder information pack is reached, the bidding period can be closed.

You must not open any of the received bids until after the submission deadline and all the bids should be opened at the same time. It is vitally important to the integrity of your procurement that you only open the bids you receive AFTER the call-off ITT submission deadline. If you open any bids before this time, or don't follow the evaluation process set out at the start of the call-off process, then you greatly increase the risk of a challenge to your procurement process.

Evaluating bids

The bids must be assessed fairly and in line with the evaluation criteria set out in the bidder information pack. It is important to keep records of all decisions made during the evaluation process (i.e. all final scores and the justification for providing the final score to each supplier based on the scoring requirements). These decisions and justifications will be important in the production of Intent to Award letters.

Awarding the contract

Once the evaluation process is complete you should notify the successful supplier in writing of your intention to award the contract and also notify the unsuccessful suppliers that they were not successful and provide feedback.

Within the letters to unsuccessful bidders you are advised to provide feedback based on the evaluation criteria. You should describe the reasons for the score given and how the unsuccessful bid compared to the successful bid and why the successful bid

scored better. You should not disclose any sensitive information with regard to the successful bid.

The letters must be delivered to the suppliers in the same way in which they submitted their bid (i.e. via the same email address or e-tendering portal). All letters must be issued at the same time.

It is good practice to conduct a “Standstill” period of 10 days following release of the letters, during which bidders have the opportunity to review the outcome of the process before contracts are signed.

The call-off order form can be updated with the information from the winning bid and contracts can be signed after the end of the standstill period. Legal advice should be taken if any challenge to the contract award is received before contract signature (whether within the standstill period or not).

Finally, following award, you should publish the award details on Contracts Finder <https://www.contractsfinder.service.gov.uk> in accordance with the requirements of Regulation 110 of the PCR 2015.

Mobilisation and contract management

Mobilisation

At the start of any contract, there will be a process of mobilisation that will involve the supplier beginning operations and, potentially, existing services being closed down or transferred to the control of the new supplier. Once you have notified the successful supplier, mobilisation planning can start, though you should avoid making financial commitments before signing contracts.

If a new supplier is appointed as a result of the call-off tender process, existing staff and services may need to migrate to the new supplier and the supplier will need to prepare to deliver the contract. This is likely to take a number of months (for a complex procurement up to six months could be necessary) while the new supplier(s) work through such potentially complex issues as staff and asset transfer, data migration, management of stranded services, Intellectual Property and transfer of subcontracts. You are therefore advised not to initiate termination proceedings on any existing contracts in advance of the contract award unless the mobilisation period is likely to be short.

Performance management

Once a contract has been awarded the contract manager, as identified in the call-off order form, should ensure that performance is actively managed. Where issues are identified they should be escalated and addressed as detailed within the call-off order form.

A key part of being able to effectively manage a contract is having effective key performance indicators in place, with appropriate remedies set in the contract. These

should be set out in the order form and careful thought should be given to them while specifying the solution required and drafting the call-off ITT.

Indicative timescales

How long the procurement will take from identifying strategic needs to mobilisation will vary depending on the size of the procurement, the resources you have available to run the procurement and the time you have available. Most of the variability is in the first two stages on identifying strategic needs and defining requirements where there is considerable scope to be flexible depending on the amount of planning and pre-market engagement you wish to do.

Once you release the procurement documents and formally invite offers from the market timescales tend to vary less. You will need to give suppliers a reasonable time to prepare and submit their bids. We would recommend a period of 6 to 8 weeks.

Evaluating the returned bids should also be timetabled. You will need time for your evaluators to properly consider the bids, make their assessments and for formal result letters to be sent to suppliers. This usually takes around 4 weeks.

Once the result has been announced it usually takes around 2 to 4 weeks to finalise the details of the contract and arrange for signature from customers and suppliers.

Further advice on using the Health Systems Support Framework

There is expert procurement, legal and policy advice available to help you when you use the Framework. Throughout the process you will have a named contact that can provide guidance and support, bringing in further expertise as necessary.

Your advisor will be able to sign-post you to other central support offers that may be of use, as well as advise you on pre-market engagement to help you understand the solutions available on the market and support you through the formal procurement process.

We have a developing suite of documents to guide you throughout the process including template procurement documents and a prospectus that lists the organisations on the Framework and summarises their services.

If you would like further information on the framework, or to arrange a discussion with one of the team please contact england.phmsupport@nhs.net

Annex 1: The Lots

Figure 7: When the question you're asking is...

When the question you're asking is...	Type of products	Suggested lot
How do I create smooth flows of comparable data flows for operational and planning purposes across a local patch?	Interoperability solutions, APIs, data lakes.	Lot 2: Local health and care records. Lot 2a includes organisations that can help you plan and implement a system, lot 2b covers suppliers of the infrastructure itself.
How do I make better use of the data I have when planning care for my local population?	Actuarial analysis, intervention modelling, needs assessment.	Lot 4: Informatics, analytics and digital tools to support system planning, assurance, evaluation and research
How do I make better use of the data I have to support clinicians to make decisions and tailor patient care?	Risk stratification, impactability modelling, data visualisation tools, machine learning.	Lot 5: Informatics, analytics and digital tools to support care coordination and management, risk and impactability models
How do I improve real-time communication across my local delivery system to better make use of resources and manage patient flows?	Command centres, communication tools and real-time patient flow management.	Lot 8: Demand management and capacity planning support.
What digital tools can I use to empower and engage the patients and people in my local patch?	Apps, online tools, telehealth.	Lot 7: Patient empowerment and activation.
I want to become an ICS – where do I start?	Advice, strategy and opportunity identification. We have further advice for developing a specification for this type of work.	Lot 6: Transformation and change support. Depending on your needs, this can also be combined with other lots to ensure the supplier has suitable expertise.
I want a partner to develop with me and to take a role in managing the system	Complex, cross system products that support the creation of an ICS.	Multiple lots depending on your needs.

Annex 2: Amending the contract for your needs

The standard contract for the Framework has been pre-negotiated with suppliers on the Framework to provide a fair position for the market and robust protections for the public sector. Figure 8 outlines the key points of the standard contract terms.

This section of the guide outlines particular areas of the contract to consider amending to fit your particular needs. Required changes should be detailed as part of completing the call-off order form. The amendments are made in the relevant section of the order form, with some requiring wording to be included in the “extra key provisions” section at Annex 2 of the Order Form.

At the stage of contract finalisation, following contract award, there may also be a further opportunity to refine and/or fine-tune the standard contract provisions to reflect the bid accepted from the winning bidder.

Length of contract

One key decision to make is the length of the contract, which should be recorded in the “Term of the Contract” section of the order form. The Framework allows contract lengths to be chosen to fit the needs of the procurement. Where using a contract length of over four years, there should be a clear justification of the contract length selected to avoid challenge. Appropriate justifications include services are delivering long-term transformation that will take some time to implement, or where there is an outcomes based payment approach that needs time to see outcomes change, or where there is upfront investment that needs a longer contract length for that capital investment to be viable commercially.

By default, the contract can be extended for a maximum of 18 months though this can be amended in the order form.

Unilateral termination

The contract provides the customer with a right to unilaterally terminate before the end contract end date. If this is done the customer must pay a “termination sum” to compensate the supplier.

A minimum notice period should be set in the call-off order form in the “Unilateral Authority right of termination notice period” section. This must be at least 6 months. Our advice for most contracts is to set the notice period at 6 months.

It is possible in the Order Form to specify caps on the Termination Sum payable, or to cap particular elements of the Termination Sum calculation. Applying such caps may lead to more expensive bids as bidders cost in the risk of being exposed on such a unilateral termination. Where such mechanisms are not utilised write “N/A” in the three sections of the order form “Maximum Payments following Unilateral Authority right to terminate”, “Maximum Permitted Profit Margin” and “Variation to Termination Sum calculation” and delete the table in annex 3 or the order form.

Figure 8: Summary of the call-off Contract

The call-off Contract

- Defines the relationship between a supplier and a customer for a particular procurement.
- Signed following a successful bid for a call-off.
- Two main components:
 - The standard Terms and Conditions (T&Cs), set nationally in the Framework Agreement. Define basic standards for the “boiler plate” terms that should be used.
 - The order form, set as part of each individual procurement. Describes the specific services to be delivered.

Intellectual Property

- By default the customer will own IP created exclusively for the customer. This can be changed in in the order form.

Reasons for termination include

- Supplier ceases or threatening to cease carrying out services, stops paying bills, or enters financial difficulty.
- Supplier undergoes a change of control that the customer reasonably believes is material. Includes reputational issues.
- Supplier seeks to transfer the contract without customer approval.
- IG breaches of sensitive or confidential information.
- Poor performance or not meeting contractual obligations.
- Supplier not paying, or not acting in good faith to subcontractors.
- The customer can unilaterally terminate. If this is done the customer must pay a “termination sum” to compensate the supplier for lost profits and demobilisation costs. Notice period of at least 6 months is defined at call-off.

Step in rights

- A customer may step-in and take action to ensure the continued performance of the deliverables, including being able to re-procure the deliverables where:
 - A contract or portion of a contract can be terminated.
 - The customer reasonably considers there to be an emergency.
 - There is a serious risk to the health or safety of patients, property or the environment.
 - A customer is required to do so to discharge a statutory duty.
 - The customer is advised to by a regulatory body.

Length of contract

- Is flexible in the standard T&Cs to allow deep, transformational, partnerships to be created lasting 10 years or longer if appropriate.
- The standard T&Cs limit contract extensions to 18 months,

Price and payment

- A range of payment approaches are allowed by the standard T&Cs, including pain/gain share and outcomes based payments.
- Specific details will be finalised in the order form.

Information governance, interoperability and regulatory standards

- Suppliers to the Framework will need to follow and keep up to date with information governance, interoperability and other regulatory standards and guidance. For example:
 - Includes the new General Data Protection Regulation.
 - NHS England and NHS Digital are developing a set of interoperability standards to ensure data can be effectively shared across the system. Suppliers will need to ensure their products stay up to date with these as they evolve.

TUPE

Rules around transfer of staff follow relevant regulations.

Contract limitation of liability and insurance

- Limit of liability is proportional to contract size. For example a £20m contract will have liability limited to £23m.
- Limitation does not apply to death, personal injury, fraud, instances where the law does not allow limitations, management fee, supplier’s use of NHSE’s logo, or misuse of personal data.
- Minimum insurance level is £5m per claim.
- Insurance will continue for 6 years except where otherwise agreed, or set by wider guidance and regulations. Where there is patient risk insurance arrangements must last for 21 years.
- Where a third-party guarantee was used to gain a place on the framework a customer can request one when awarding a call-off.

For complex contracts that span multiple services, use outcome based, or risk/gain share payment models, or bring capital investment, there may be a need to amend the termination sum calculation. Please contact us if you are in this situation and we can advise.

Priority deliverables

If a deliverable is listed as a “Priority Deliverable” in the Order Form, you have a right to step-in if there is a material breach in the supply of the deliverable. This means that, where there is a failure to deliver you have the power to step-in and take actions you deem necessary to ensure continued delivery of the services. This includes being able to re-procure the services.

You should consider which services are particularly important to the local health system. For example if a system for moving clinical notes around the local health system were to stop working, it could have a serious impact on patient care. If the procurement involves such a system, it may be worth setting this as a Priority Deliverable.

Intellectual property rights and standard licence terms

Ownership and use of IP

As a default position the customer owns any new intellectual property created specifically as part of the contract (“foreground IP”). The ownership of intellectual property that exists prior to the contract, or which is developed outside the contract (“background IP”) does not change hands.

There may be some situations where you would prefer that the foreground IP in some, or all, of the deliverables of the contract is owned by the supplier. An example of this may be where the supplier is developing new software that is dependent on its existing software and so could not be usefully exploited by the customer as a standalone package. If it is agreed that the supplier will own the foreground IP in certain deliverables, the intellectual property section of the order form should state the relevant deliverables in as much detail as possible, including details of the foreground IP to be owned by the supplier. A decision for the supplier to own any of the foreground IP should be taken in the commercial context of the expected use of the foreground IP, both during and after the contract, the supplier’s business model and the price charged for the contract relative to the other bidder’s solutions. Consideration should also be given to whether the anticipated foreground IP will align with the identified deliverables. While some IP rights, such as copyright, are closely linked to tangible products, such as software or written materials, other IP rights, such as patents, are not as closely linked to an identifiable tangible output. So care must be taken not to assign an ownership position based on deliverables, without consideration of whether this is feasible for the anticipated associated foreground IP.

As an example, if you plan to market a tool created under the contract to other parts of the health and care system after the contract, you may want to keep ownership of the foreground IP. However, if you do not plan to do this, it may be a better option to allow

the supplier to further market the product to facilitate the spread of innovation. In the second situation you would expect to pay less for the contract than in the first.

Some suppliers' business models (particularly in the IT sector) are based on the assumption that foreground IP can be further marketed after the contract, so allowing suppliers to own the foreground IP may increase the range of bidders.

In either case, the contract provides the customer with a permanent licence to use the foreground IP and any of its relevant background IP after the contract ends, so you can continue to use any tools created after the end of the contract.

It is possible to leave ownership of foreground IP open and allow bids from suppliers offering either model. The decision can then be made when bids are assessed. This allows you to understand the cost of owning the IP and invite bids from suppliers with different business models.

Before finalising the contract you should confirm that if any foreground IP is to be owned by the supplier it is described in the "Supplier Owned Foreground IPR" section of the order form.

Customer indemnity

To support the customer's freedom to use the deliverables and the foreground IP, the supplier indemnifies the customer against claims of IP infringement arising from its use of the deliverables (unless this infringement arises from items not provided or recommended by the supplier).

As a default, the customer does not similarly indemnify the supplier against IP infringement from its use of the customer's background IP. This is because, in most cases, the customer will not be bringing background IP to the contract. If there is significant background IP owned by the customer that will be used by the supplier in the contract, you should consider including an indemnity in the "Intellectual Property" section of the call-off order form if the absence of this protection for the supplier risks unreasonably reducing the pool of potential bidders.

Standard licence terms

In some cases, particularly for commercially available off the shelf (COTS) software and software as a service products (SaaS), suppliers may usually offer their products on standard licence terms. It may be difficult or disproportionately expensive to procure these products on the basis of the licence terms in the call-off contract.

Therefore, by default the contract applies the supplier's standard licence terms for COTS software, unless otherwise stated, or further modified by extra key provisions. This is on the basis of the assumption that the supplier's licence terms for its commercially available products will be generally reasonable. For non-COTS software the default is that supplier's standard licence terms are not used.

The above position can be changed by describing the position you would like to take in the "Standard Licence Terms" section of the order form, which should be completed

following discussion and agreement with the chosen supplier. This flexibility is allowed for to help prevent the range of bidders being unduly restricted.

Even where supplier's standard licence terms are used, the call-off terms and conditions take precedence in particular areas set out in the definition of "Standard Licence Terms" unless explicitly stated in extra key provisions. These areas include:

- The price payable by the customer;
- the duration of the licence;
- that the supplier will always licence foreground IP during and after the contract term;
- the warranties and liabilities set out in the call-off terms;
- the right to sub-licence use of the software to third parties;
- the ownership of specially written software sits with the customer

If any of the deliverables are to be provided under supplier defined standard licence terms, this should be set out in the "Standard Licence Terms" section of the call-off order form. If you are happy to allow the supplier's standard licence terms to override the default terms set in the contract, even for the areas specified above, this can be set out in the extra key provisions and should be referenced in the "Standard Licence Terms" section of the call-off order form. However, the commercial effect of this should be carefully considered, as the supplier's standard licence terms may not provide an appropriate position concerning the supplier's liability or may contain terms which increase the cost of the deliverable to the customer over the duration of the contract.

Acceptance testing

Where the Deliverables commissioned under the call-off contract include software or hardware, the tests against which the performance of the software/hardware should be tested should be included in Schedule 16.

Where acceptance testing is required for any other Deliverable (other than software/hardware) then Extra Key Provisions would be required.

It is usually the case that the supplier conducts the acceptance testing, where you do this yourself, you should include an Extra Key Provision.

You should also consider whether you would prefer a more robust acceptance testing mechanism with a right to reject or require modification. If so, you should include details in the Extra Key Provisions.

Guarantees

To ensure financial stability of the suppliers on the Framework a financial assessment was made as part of the application to the Framework. In some cases suppliers provided the financial information of a parent company, or other guarantor in order to pass the assessment. If the successful bid includes a supplier who needed to use a guarantor to get onto the Framework, you should obtain one for the call-off as well, by requesting the supplier's guarantor signs schedule 11 of the call-off terms and conditions.

Principal suppliers, co-bids and liability

Depending upon how call-offs are conducted, Suppliers may be permitted to bid for call-offs jointly with other suppliers on the Framework, this is particularly likely for cross-lot call-offs where you choose to accept bids of this form. When call-offs are awarded to co-bids how liability is shared between co-bidders must be considered.

When a co-bid wins a call-off competition all members of the co-bid must sign the call-off contract. In general all other members of a co-bid are jointly and severally liable. However:

- Members of a co-bid can choose one or more of the suppliers to act as “principal” supplier. The customer must enforce liabilities against the principal supplier in the first instance. Only when all reasonable endeavours have been exhausted can the customer seek damages from the non-principal members of the co-bid. If you receive and accept a bid of this type, you should include the name of the principal supplier(s) in the “Principal Suppliers” section of the order form.
- In exceptional circumstances, and with the agreement of NHS England, non-principal suppliers can take liability only for their specific deliverables rather than sharing joint and several liability with the other members of the co-bid. This may be desired if a small provider of specific services is part of a co-bid with large organisations providing much wider services. The small organisation may not be able to take on joint and several liability for the whole contract, but you may not want to exclude the bid if the small organisation offers strong niche services. If you wish to allow bids that permit suppliers to take liability only for their own deliverables, please contact us and we can advise.

Suppliers were also able to bid to the Framework as co-bids. For these groups, the organisations listed in the “Principle Supplier(s) section of the order form will be jointly and severally liable.

Key performance indicators and service credits

Annex 1, Parts 2-6 of the Order Form cover key performance indicators (KPIs) and the consequences of not meeting them. KPIs define how the success of delivery will be judged and should be chosen carefully. They will be different depending on the services being procured, with a data warehousing procurement needing very different KPIs to a simple piece of advice for example.

It should be possible to quantify KPIs and a target level should be set for each one. KPI failure levels should also be set, to allow the contract manager to judge when performance is below target to an extent that intervention is needed.

For KPI failure a number of “KPI failure points” should be assigned depending on the seriousness of the failure. A value in pounds sterling should also be assigned for a KPI failure point to create service credits. The level of KPI failure points should be carefully calibrated so as to incentivise good performance without imposing a level of compensation that is a “penalty”.

Where KPIs are missed, service credits and KPI failure points accrue. The value of the service credits is deducted from future payment for the contract and so functions as a

mechanism for reducing the contract price for poor performance and to incentivise good performance

If the number of KPI failure points reaches a level higher than you set in annex 1, part 5 of the order form, you have the right to terminate the contract.