**ProCure22 Framework**

**P21+ Transition Guidance Note for NHS Clients and Principal Supply Chain Partners (PSCPs)**

**1.0 Introduction**

As the end of the current ProCure21+ (P21+) Framework and the beginning of the ProCure22 (P22) Framework approaches, NHS Clients and supply chains require advice about how their Schemes and Projects may be affected by the transition from the current to the new framework.

***Guidance Notes are offered in good faith but are not to be used in lieu of independent legal advice, which should be sought by NHS Clients on a case by case basis if they have any concerns about the application of this guidance. This guidance can only cover the general position: the legal analysis in any individual case would need to take account of the specific circumstances.***

The application of the guidance offered in the Guidance Notes must always be interpreted to comply with the:

* The provisions of the Public Contracts Regulations 2006 (as amended) (“PCR 2006”) and/or the Public Contracts Regulations 2015 (as amended) (“PCR 2015”), as the case may be.
* The current P21+ National Framework Agreement
* The proposed ProCure22 Framework Agreement

**2.0 Transition between P21+ and P22**

The P21+ Framework will end at 23:59h on the 30th September 2016. Up until this date the Framework will operate as normal. i.e. NHS Clients may continue to select and appoint PSCPs to undertake work under the provisions of the current P21+ Framework. However, NHS Clients will need to take this guidance into account in planning their forthcoming projects over the coming months.

Provided the NHS Client has made a valid call-off from the P21+ Framework and a scheme Letter of Appointment (“LOA”) has been issued by the NHS client to the PSCP and has been accepted by the PSCP – i.e. the Client and PSCP have entered into a binding scheme level contract with each other – before 23:59h on 30 September 2016, then the relationship between the NHS client and the PSCP may continue on the terms of the appointment until the end of the scheme.

Any appointment properly made under the existing P21+ National Framework Agreement (process as identified in P21+ National Framework Appendix 5 – “PSCP Selection Process for NHS Clients – Rev 11”) will continue to have effect, and will be governed by the provisions of the P21+ Framework until completion of the scheme or until such time as the parties agree to discontinue their relationship.

After the 30 September 2016, new P21+ schemes cannot be registered, Letters of Appointment cannot be issued and scheme contracts cannot be entered into. Therefore where a client wants to make a call-off from the P21+ Framework, it is imperative that a binding scheme level contract between client and PSCP has been entered into not later than 30th September 2016.

**3.0 Selecting and Appointing a P21+ PSCP for work that will not have completed prior to the P21+ Framework end date, including where work on site will commence after the P21+ Framework end date**

When NHS Clients are selecting and appointing PSCPs for any Scheme that will not be completed prior to the P21+ Framework end date, including where work on site will commence after the P21+ Framework end date,the following actions need to be addressed.

1. NHS Clients must ensure that they act at all times in accordance with the requirements of public procurement law. The P21+ framework was let under the PCR 2006. These regulations have recently been replaced by the PCR 2015. DH P21+ team’s view is that it will be necessary to ensure that LOAs are more precise than was the case in the transition between the P21 and P21+ frameworks, if an appointment under P21+ is to prove effective.
2. NHS Clients and PSCPs[[1]](#footnote-1) must ensure that ALL the actions identified in the following paragraphs are implemented before the end of the current P21+ National Framework. Failure to do so is at NHS Clients’ risk.

* A LOA for the scheme, signed by both the NHS client and the PSCP, must exist by the end of the P21+ National Framework (23.59h- 30 September 2016);
* The LOA must identify the work to be undertaken under the terms of the appointment, and the terms on which that work will be carried out, with sufficient precision to constitute a binding contract.

It is perfectly permissible, in principle, to include more than one element of work in a scheme LOA, as long as each element is identified with sufficient precision. NHS Clients and PSCPs should note that aggregation of schemes under a selection process under the P21+ Framework (for example, to avoid the risk of the effect of a PSCP not being successful in its bid for the new P22 National Framework), may be interpreted as contravening the PCR 2015, leaving the client open to the risk of challenge. This is likely, for example, where the terms of the LOA do not clearly identify each element with enough detail to create a call-off contract under the P21+ framework.

[NHS clients and their PSCPs should aim to progress the development of a scheme diligently and without delay after the LOA has been agreed by both sides. DH P21+ team recognises that there have been in the past, and may in future be cases where it is not possible to begin work on site until sometime after the expiry of the framework. Such delays may not necessarily invalidate the P21+ appointment, but in the case of a significant delay this may compromise the validity of the appointment and call-off contract. Independent legal advice should be sought. DH P21+ would not necessarily expect to continue to devote resources to supporting a scheme where construction commences at a later date.]

**Registration of Schemes with P21+ *-***all schemes to be undertaken under the existing P21+ Framework must be registered via the P21+ website as this enables the PSCP selection process and subsequently, issue of LOA. DH P21+ team strongly advise that this is done well in advance of the 30 September 2016, to avoid any suggestion that the appointment has not been made in time.

**Selection and Appointment of a PSCP by NHS Clients -** the selection process as identified in P21+ National Framework Appendix 5 – “PSCP Selection Process for NHS Clients – Rev 11” must have been completed, a PSCP selected and a “Letter of Appointment” issued and signed by both parties prior to the end of the current P21+ National Framework.

If the LOA has not been signed by both parties prior to the end of the current framework, then PSCP selection cannot be made. The scheme will have to be re-registered under the P22 Framework and the NHS Client will have to re-select using the P22 Framework.

**4.0 Question and Answers**

**4.1 What if I want to select a P21+ PSCP after 30th September 2016?**

This would not be possible because the framework will have expired by then. Attempting to make a new appointment under the P21+ framework would therefore contravene the PCR 2015. Once the P22 Framework is in place and operational, a PSCP can only be selected from those appointed to the P22 Framework.

**4.2 What if my incumbent PSCP does not get onto the P22 Framework?**

You may continue with your incumbent PSCP to complete any Scheme(s) and Projects associated with those Schemes that you have previously selected and appointed a P21+ PSCP to undertake, under the rules of the existing P21+ Framework (see Section 3.0 above).

DH will continue to provide support for any such Scheme(s)/Project(s) for a reasonable time after 1 October 2016. If subsequent Scheme(s)/Project(s) arise that you want to undertake using the P22 Framework, you will be supported in selecting a PSCP from the P22 Framework.

**4.3** **If I want my incumbent PSCP (that does not get onto the P22 Framework) to work on new Schemes following the start of the P22 Framework, can I amend my existing contract?**

If the effect of the amendment is to add new work that was not clearly within the scope of the original P21+ LOA, this action is likely to contravene the PCR 2015. Existing P21+ contracts with PSCPs should reflect the works for which they were originally selected and appointed by an NHS Client. Any amendments to existing contracts should comply with the PCR 2015 (regulation 72 in particular). Independent legal advice should be sought on proposed amendments on a case by case basis

**4.4 What if I want to change my P21+ PSCP after the current framework has finished?**

Before considering this you must inform your DH P21+ Implementation Advisor for advice in addition to the points set out below.

The NHS Client may only terminate a contract in accordance with termination provisions of the relevant contract.

1. NHS Clients are responsible for registering their first scheme with P21+. Repeat business thereafter should be registered by the PSCP. Production of the Letter of Appointment is always a responsibility of the NHS Client. [↑](#footnote-ref-1)