

# National Framework Agreement for Nitric Oxide Therapy

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## User guide



## Version Control

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## Table of Contents

<b>1. Introduction</b>	<b>5</b>
1.1. Key Information	5
1.2. Background	5
1.3. Overview	6
1.4. Expected benefits	6
1.5. Awarding a Contract	7
<b>2. Management of the framework agreement</b>	<b>7</b>
2.1. Framework Agreement	7
2.2. Activity Based Income (ABI)	7
2.3. Management Information	7
2.4. Contract Management Information	7
2.5. Framework Agreement (Contract) Manager	8
<b>3. Using the Framework Agreement</b>	<b>8</b>
3.1. Framework Access	8
3.2. Benefits of Accessing a Framework Agreement	8
3.3. Framework Agreement Access Charge	8
3.4. Framework Access Agreement	8
<b>4. Running a Further-Competition</b>	<b>9</b>
4.1. Establishing a Project Team	9
4.2. Key Decisions and Actions	9
4.3. Undertaking a Further Competition	10
4.4. Evaluation Criteria	10
<b>5. Direct Award</b>	<b>11</b>



<b>5.1. Transition, Planning and Support</b> .....	11
<b>5.2. Managing the Contract</b> .....	11
<b>5.3. Key Performance Indicators</b> .....	11
<b>6. Frequently Asked Questions</b> .....	12
<b>6.1. What is a Framework Agreement</b> .....	12
<b>6.2. If a Supplier is not on the Framework can they still taken part?</b> .....	12
<b>6.3. Do I need to invite all Suppliers to a further competition?</b> .....	12
<b>6.4. How long does a further competition need to run for?</b> .....	12
<b>6.5. Do I have to apply a Standstill period to a further competition?</b> .....	12
<b>6.6. Using Proactis for your further competition</b> .....	12
<b>7. Supplier List</b> .....	13
<b>ANNEX A – Framework Access overview</b> .....	14



# 1. Introduction

This user guide is intended to provide information about the National Framework Agreement for Nitric Oxide Therapy and to provide practical support to Participating Authorities who wish to access the Framework Agreement to award contracts.

Please note that the guidance provided within this document only applies to this Framework Agreement and Participating Authorities should ensure they refer to the guidance document which is relevant to the Framework Agreement they wish to access to ensure that the right processes are being followed.

Pharmacy and Procurement teams should be involved in the decision to access the Framework Agreement to ensure that the decision fits with local procurement policies and Participating Authorities' standing financial instructions.

## 1.1. Key Information

Framework Title	National Framework for Nitric Oxide Therapy
OJEU Reference Number	2020/S 029-068821
LPP Reference Number	LPP/2020/001
Framework Period	6 May 2020 to 5 May 2022 with further option for a 12 months plus 12 months extension (4 years in total)

## 1.2. Background

NHS LPP contracts as Guy's and St Thomas' NHS Foundation Trust who are the host for the NHS LPP ("**Host Trust**"). All references in this Framework Guide will be as to the NHS LPP. NHS LPP is the overarching programme structure that supports procurement across London and outside of London on behalf of member trusts (as may change from time to time). NHS LPP facilitates and supports procurement and contract management of London wide contracts. NHS LPP will be mentioned in this document where appropriate.

NHS LPP has set up a Framework Agreement for England, for Nitric Oxide Therapy which includes the supply of gas, rental of cylinders and delivery equipment, maintenance and consumables. This is a multi-Supplier unranked Framework Agreement.

The aim of the Framework Agreement is to enable Participating Authorities across England to enjoy a choice of Nitric Oxide Therapy at affordable pricing. The Framework Agreement will operate for an initial term of twenty four (24) months with the option to extend for twelve (12) months and an additional extension of up to another twelve (12) months. The total framework term including two extensions will be up to four (4) years.

Estimated value of the Framework Agreement: £15,000,000.00 broken down by lots as follows:  
a) Lot 1 estimated value: £13,000,000.00



b) Lot 2 estimated value: £2,000,000.00

This framework is open for use by current and future NHS LPP clients including non-LPP members across England without limitation:

- Central government departments and their executive agencies (a list of such departments and executive agencies can be found at <http://www.cabinetoffice.gov.uk/government-business/government-ministers-responsibilities.aspx>)
- National Health Service (NHS) bodies (all acute – secondary and tertiary, as well as mental health trusts, including Clinical Commissioning Groups, NHS trusts, NHS Foundation trusts, a Special Health Authority and a Local Health Board in England— lists of all of such NHS bodies can be found at:
  - <http://www.nhs.uk/ServiceDirectories/pages/nhstrustlisting.aspx>
  - <http://www.hscni.net/index.php?link=hospitals>
- all local authorities from England, a list of such authorities being available at: [http://www.direct.gov.uk/en/DI1/Directories/LocalCouncils/AToZOfLocalCouncils/DG\\_A-Z\\_LG](http://www.direct.gov.uk/en/DI1/Directories/LocalCouncils/AToZOfLocalCouncils/DG_A-Z_LG)

### 1.3. Overview

The products and services included in this framework agreement are described as Nitric Oxide therapy and this includes the gas, Nitric Oxide, which is supplied in cylinders, delivery devices, maintenance and some disposables and calibration gases. This framework agreement uses the same structure as devised in the previous CMU Nitric Oxide specification.

The framework has been split into 2 lots, however contract was awarded for Lot 1 only:

**Lot 1** a complete system to deliver Nitric Oxide Therapy that includes nitric oxide in cylinders, delivery and monitoring devices and all ancillary equipment, maintenance and consumables.

**Lot 2** was for the monitoring and delivery devices for use in aircraft and ambulances, however no bid was submitted for this particular lot.

### 1.4. Expected benefits

The NHS and public sector as a whole continues to strive for better value for money, improved quality, and increased performance in terms of time and productivity, to deliver tangible savings and efficiencies. This framework will provide a flexible procurement solution for public sector organisations when procuring Nitric Oxide Therapy.

Specific Benefits include:

- Direct award option.
- Standardised Forms of Contract.
- Simplify the procurement process for public sector organisations to procure Nitric Oxide Therapy.
- Discounted prices under certain conditions.
- Streamlined Contract Management process for the overarching framework.



## 1.5. Awarding a Contract

To award a contract under this framework the Participating Authorities have the option to access the products and/or services via either direct award or through a further competition (also known as a mini-competition). To establish a legally binding contract under this Framework Agreement, the customer must complete the Call-off Order Form which must be signed by the Participating Authority, NHS LPP and the Supplier. NHS LPP will provide a Unique Reference Number (URN) which will be unique to each individual call off contract. The Supplier and Participating Authority should reference the URN on all purchase orders and invoices to establish a clear audit trail linking the transactions to the specific call off contract and overarching framework agreement.

For the avoidance of doubt, the Participating Authority will only form a valid contract with the supplier upon the completion and signature of all parties of the **Annex A to Schedule 7 - Call Off Order Form** (this form will be provided with the procurement documents).

## 2. Management of the framework agreement

### 2.1. Framework Agreement

All Suppliers who have been awarded a position on this Framework have signed an agreement with NHS LPP. NHS LPP is responsible for the management of the Framework Agreement and will seek feedback from Participating Authorities to ensure maximum value is derived from the Framework.

### 2.2. Activity Based Income (ABI)

This framework has been established with an Activity Based Income (ABI) charge of 0.5% of the total amount invoices excluding VAT. Each Supplier will pay NHS LPP the ABI charge for all contracts awarded under the framework. Any pricing provided by Suppliers will be inclusive of this charge, there are no charges levied against the Participating Authority by NHS LPP. ABI is used to offset the costs of setting up and maintaining the framework.

The Authority reserves the right to request copies of all PO's from the customer and/or invoices from the Supplier relating to a specific URN/s in order to ensure that they are accurately invoicing a given Framework Supplier for the correct amount of ABI owed.

### 2.3. Management Information

NHS LPP will collect management information on a monthly basis from each Supplier for each contract they have been awarded under the Framework. The management information will allow the category manager to have an overview of the Supplier performance on specific contracts and to calculate the ABI charge.

### 2.4. Contract Management Information



NHS LPP will collect contract management information from each Supplier who is awarded business under this framework.

## 2.5. Framework Agreement (Contract) Manager

Participating Authorities who have any questions regarding the framework should contact the contract managers in the first instance. These are the persons identified on page 2 of this document.

## 3. Using the Framework Agreement

### 3.1. Framework Access

This framework is open to all Participating Authorities listed in 1.2 above.

### 3.2. Benefits of Accessing a Framework Agreement

There are a number of benefits of awarding contracts under a Framework, these include:

- It is faster and less onerous than a full OJEU tender process.
- There is no need to assess framework Suppliers against criteria such as financial standing or business probity as these have been assessed during the Supplier selection stage of the framework's establishment although you may wish to do so.
- By using the Framework there is no need for you to separately advertise your requirement.
- The terms and conditions of the framework agreement and call off contracts have already been agreed with all framework Suppliers therefore no further legal dialogue is required.
- By following these guidelines you can ensure that you are adhering to EU procurement legislation.

### 3.3. Framework Agreement Access Charge

NHS LPP is not charging an access charge to Participating Authorities who wish to use this Framework Agreement.

### 3.4. Framework Access Agreement

Participating Authorities wishing to access this framework should contact the Contract Managers detailed on page 2. The process for accessing the Framework documents is as follows;

1. If the Participating Authority is an existing NHS LPP member then the organisation will be provided access to the Framework documents and prices upon request.
2. For non-LPP members, an Access Agreement will be issued and once returned to the Contract Manager, the Participating Authorities will be provided with access to Supplier's pricing, products related documentation and further competition documents.



All NHS organisations, across England, are required to use the Call-off Order Form to form a legally binding contract. Non-LPP members will also need to submit an Access Agreement prior to receiving the Framework documentation. These documents are important elements of a robust audit trail in terms of compliance and ABI management.

Suppliers on the framework will not enter contracts under this framework with any Participating Authority until the Contract Manager has confirmed a signed Access Agreement for non LPP members and the Unique Reference Number (URN) or any call-off under this Framework Agreement (LPP members and non LPP members). Please refer to Annex A for an overview of above mentioned steps.

Should a Participating Authority wish for NHS LPP to provide additional support, over and above what is shown in this document in awarding a contract, then NHS LPP reserves the right to charge for these additional services. This will be discussed and agreed with each Participating Authority on a case-by-case basis.

## 4. Running a Further-Competition

### 4.1. Establishing a Project Team

If selected route to market will envisage a further competition process, Participating Authorities will need to establish a project team, which is responsible for supporting the award of the new contract. This project team should include key stakeholders from across the organisation who can input into the specification and evaluate the quality of responses from Suppliers under the framework. This must include a pharmacy representative as nitric oxide is a licensed medicine.

The project team should be supported by a project lead who is responsible for ensuring the project is supported by the Participating Authority's board and managing the implementation of the new contract.

If the Participating Authority does not have the resource to undertake this internally then NHS LPP can provide support but this may come at an additional cost. If this is required then you should contact the Contract Manager to discuss further.

### 4.2. Key Decisions and Actions

By deciding to award a contract under the Framework much of the hard work has already been completed which should save the Participating Authority time and money.

Please note that Suppliers awarded on to the Framework provided Financial and Insurance information at the time of Framework award. It is therefore fundamental that Participating Authorities requests evidence to satisfy themselves that the Supplier is financially robust and holds the required insurances requested under this contract.

It is the Participating Authority's responsibility to validate the data being sent out as part of the further competition, check the evaluation of all bids and award the contract under the framework.



### 4.3. Undertaking a Further Competition

Once the Participating Authority has requested access to the Framework (see paragraph 3.4), access to the Nitric Oxide procurement documents including documentation for running a further competition will be provided through the MyLPP website to registered users.

NHS LPP provide template documents which can be used for the further competition and can be amended accordingly. These documents are intended as a guide to help clients outline their project requirements. You may wish to engage your legal team should you make changes to the NHS standard template contract, as appropriate for your project. The NHS LPP team can answer queries regarding the template documents and provide advice, however the specification design and any queries regarding this needs to be completed externally.

The main stages of running a further competition are:

- Define requirements and the invitation to tender (ITT)
- Invite all suppliers awarded on the Framework to bid by issuing the ITT, requirements document and draft contract
- Evaluate suppliers responses
- Award a contract to the successful supplier and notify the unsuccessful supplier/s
- 10 day standstill period (optional)
- Complete the **Annex A to Schedule 7 - Call Off Order Form** and obtain signatures from all three parties

### Available Support from NHS LPP

Under certain conditions and depending on the NHS LPP membership status, the NHS LPP can issue your further competition for you through our e-tendering portal and work with you to structure responses to your Standing Financial Instructions. We will act as first contact for all queries regarding the further competition and forward any which require your input. These should be answered within 48 hours of receipt.

Further competition responses will be sent to our e-tendering portal. We will share these responses with you along with an evaluation template. The NHS LPP team will undertake the commercial evaluation while you score the responses to the questions asked. NHS LPP can complete all required documents and help to ensure compliance with procurement legislation requirements. Once the contract is signed you will enter the mobilisation period. Timescales for this will depend on the works, programme, and award decision. Following mobilisation your contract will go live. Throughout this process the Trust's ratification process should be followed before a contract can be awarded.

If a Participating Authority wishes to request further support from LPP with running a further competition then please contact the Contract Managers listed on page 2 for further details.

### 4.4. Evaluation Criteria

The following evaluation criteria were set out within the framework agreement.



Criteria	Weighting
Quality	55%
Contract Management	5%
Pricing	40%

The headings stated should be used as part of any further competition within the framework; however the Participating Authority can include sub-criteria as long as these are clearly stated to all Suppliers at the start of the further competition process. The weightings can be changed to meet the Participating Authority's requirements.

## 5. Direct Award

The Framework has the provision to perform a direct award to a Framework supplier where the terms governing the provision of goods and/or services are fully set out in the overarching Framework agreement and where the most suitable supplier can be identified based on the objective conditions set out in the procurement documents without the need to re-open competition.

It is vital that transparency and objectivity are central to the process of making a direct award. Participating Authorities should always seek best value for money and assess their own requirements. The ultimate decision with which Supplier to go for the Nitric Oxide Therapy will be down to the Trusts after careful analysis of Suppliers' pricing model and based on their local needs. For the avoidance of doubt, it is not permissible under EU treaty principles to order directly from a preferred supplier if the terms of the Framework need to be redefined and/or it cannot be immediately identified which product or service provides best value for money.

### 5.1. Transition, Planning and Support

As part of the further competition or call off process the successful Supplier should provide you with a transition plan which clearly explains what tasks need to be undertaken and who is responsible for ensuring they are completed. This plan should set out the level of resource which is required from the Participating Authority during the transition process. The expected timescales for each stage of the transition and the mobilisation as a whole should be shown. The Participating Authority should review the Supplier's performance against the plan on a regular basis throughout the transition.

### 5.2. Managing the Contract

The Participating Authority should hold regular meetings with the supplier to review performance against agreed key performance indicators. Should the supplier fail to meet the agreed key performance indicators then the Participating Authority should look to take corrective action as outlined within the contract document.

### 5.3. Key Performance Indicators



NHS LPP encourages the use of key performance indicators within contracts as a way of monitoring and managing supplier performance. Key performance indicators should not be used to punish a supplier but should be built in to encourage and reward high quality performance of the contract. As such NHS LPP suggests that key performance indicators are established which are achievable and agreed by both parties. The LPP would like to work with both parties to develop standard KPIs that can be used across England.

## 6. Frequently Asked Questions

### 6.1. What is a Framework Agreement

A framework is a general term for an agreement with a provider(s) which sets out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement. Frameworks are established for bodies to buy goods or services via a pre-approved list of suppliers.

### 6.2. If a Supplier is not on the Framework can they still taken part?

No. The framework has been awarded via an OJEU process. Suppliers at the time of advert had the opportunity to register their interest in being awarded a position on the framework. The tender process for the framework has now closed and all lots awarded.

### 6.3. Do I need to invite all Suppliers to a further competition?

Yes, you will need to invite all Suppliers on the framework to bid on further competition exercises

### 6.4. How long does a further competition need to run for?

On average NH LPP would suggest suppliers are given four weeks to respond to the further competition. For specific advice please contact the Contract Manager.

### 6.5. Do I have to apply a Standstill period to a further competition?

NHS LPP encourages the application of standstill periods for all further competitions under the framework, especially where the value of the contract exceeds the OJEU thresholds. This ensures transparency to all suppliers involved in the process and minimises the risk of challenge once a contract is awarded.

### 6.6. Using Proactis for your further competition

Further competitions can be carried out using the NHS LPP Proactis Portal if so desired. Should you chose to use this option all the Supplier details will already be in the Portal which will assist with the process. Participating Authorities can also use their own e-tendering portal to run a further competition.



## 7. Supplier List

Supplier	Email address
BOC Ltd	<a href="mailto:ukcsc@inotherapy.co.uk">ukcsc@inotherapy.co.uk</a>
BTG Gases	<a href="mailto:a.everard@solworld.com">a.everard@solworld.com</a>



## ANNEX A – Framework Access overview

<p><b>NHS LPP member</b></p>	<ul style="list-style-type: none"> <li>• Participating Authority to contact Contract Managers detailed in page 2 of the Framework Agreement user guide.</li> <li>• Participating Authority requirement will be discussed with NHS LPP. If support required for further competition, certain conditions may apply.</li> <li>• Participating Authority gains access to the framework pricing and related documentation.</li> <li>• Participating Authority either direct awards or runs a further competition to identify appropriate supplier.</li> <li>• NHS LPP will provide the Customer with the Unique Reference Number (URN) following receipt of the completed Call-off Order Form. Once validated by LPP, the Participating Authority enters into a legally binding contract with the supplier for Nitric Oxide services.</li> </ul>
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<p><b>non-NHS LPP member</b></p>	<ul style="list-style-type: none"> <li>• The Participating Authority to contact Contract Managers detailed in page 2 of the Framework Agreement user guide.</li> <li>• NHS LPP will provide a copy of the Framework Access Agreement.</li> <li>• Participating Authority completes and returns signed Framework Access Agreement.</li> <li>• Participating Authority requirement will be discussed with the NHS LPP. If support required for further competition, certain conditions may apply.</li> <li>• Participating Authority gains access to the framework pricing and related documentation.</li> <li>• Participating Authority either direct awards or runs a further competition to identify appropriate supplier.</li> <li>• NHS LPP will provide the Customer with the Unique Reference Number (URN) following receipt of the completed Call-off Order Form. Once validated by LPP, the Participating Authority enters into a legally binding contract with the supplier for Nitric Oxide services.</li> </ul>
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