

Cabinet Member Information briefing

Briefing From: Mike Smith, Assistant Director – Procurement

Briefing For: Cabinet Member

Date: February 2024

Title: **New Provider Selection Regime for Health Contracts**

Purpose:

- To update on the introduction of the new Provider Selection Regime for Health Contracts

Background and update

NHS England's 2019 engagement exercise found that the current competition and procurement rules are not well suited for arranging health care services, and:

- create barriers to integrating care,
- disrupt the development of stable collaborations, and
- cause protracted processes with wasteful legal and administration costs.

Current rules on procurement create an expectation that nearly all contracts for healthcare services should be advertised and awarded following a competitive tendering exercise. Where this does not make sense for the service, this can create uncertainty, upheaval and disruption among providers.

NHS England wanted to make it straightforward for the system to continue with existing service provision where the arrangements are working well and there is limited or no value in seeking an alternative provider. In doing so, this will allow commissioners and providers greater certainty and continuity of service provision to improve partnerships between providers and increase integration of services.

Where the system wants or needs to consider making changes to service provision, there needs to be in place a flexible, sensible, transparent and proportionate process for decision-making that allows shared responsibility to flow through it.

For many healthcare services, the choice of service provider will be constrained by the nature of the service and its interdependencies with other services. The Provider Selection Regime explicitly recognises this – and makes it clear that such core services can be arranged without unnecessary process/risk. However, there are circumstances in which competitive tendering can add value and should be used.

The Provider Selection Regime (PSR) has been designed to introduce:

- a flexible and proportionate process for selecting providers of health care services so that all decisions are made in the best interest of people who use the services
- the capability for greater integration and enhanced collaboration across the system, whilst ensuring that all decisions about how health care is arranged are made transparently
- opportunities to reduce bureaucracy and cost associated with the current rules

The PSR came into force on 1 January 2024 and replaced the:

- Public Contracts Regulations 2015, when procuring health care services
- National Health Service (Procurement, Patient Choice and Competition) Regulations 2013

Scope

Organisations, referred to as 'relevant authorities' under the PSR, are required to follow the PSR when arranging health care services, irrespective of whether the providers they are considering are from the NHS, the independent, or the voluntary sector.

Relevant authorities are:

- NHS England
- Integrated Care Boards (ICBs)
- NHS trusts and foundation trusts
- Local authorities or combined authorities.

Relevant authorities must continue to comply with other legal obligations and duties.

The PSR will apply to the arranging of health care services in England. Broadly, services within scope are:

- services that provide treatment, diagnosis or prevention of physical or mental health conditions to individuals or groups of individuals (i.e., patients or service users) such as hospital, community, mental health, primary health care, palliative care, ambulance, and patient transport services for which the provider requires CQC registration
- substance use treatment services, sexual and reproductive health, and health visitors arranged by local authorities.

Examples of procurements not in scope of this Regime include goods (i.e., medicines, medical equipment), social care services, non-health care services or health-adjacent services (i.e., capital works, business consultancy, catering) that do not provide health care to an individual. The PSR does not cover Communications campaigns.

The PSR covers services which have an impact on health – need to consider the service regardless of who the Provider is or how it is funded, also there is no minimum threshold for the application of the Regime.

Impact on BCC contracts

Corporate Procurement are working with Public Health colleagues to establish a pipeline of forthcoming contracts that will fall under the PSR.

Impact on governance

The Council's constitution in respect of Procurement and Contract Governance Rules will need to be amended to cover the new PSR process and the specific content of the Regime. In the interim, all Direct Awards under the PSR regulations will follow the Council's governance applicable to Negotiated Contracts without Competition.

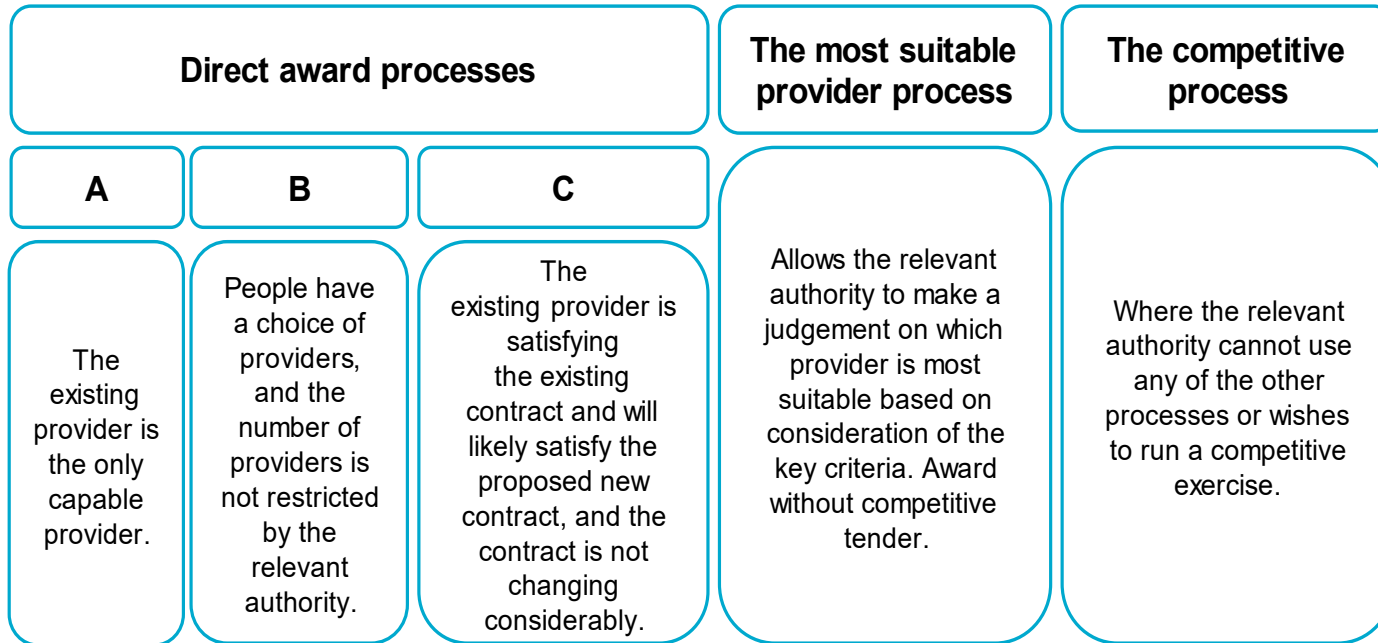
Overview of Processes

There are 5 options available in terms of the process to be followed under the PSR, these are set out in the diagram below.

The intention is that these processes are considered from left-to-right, with Direct Awards being considered as options first, and a competitive process (far right) only being pursued if the other scenarios are not satisfactorily met.

Regulation 6

Overview of the decision-making circumstances



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