

Provider Selection Regime

To:	Assets and Procurement
Meeting Date:	28 th November 2023
From:	Executive Director of Finance and Resources
Electoral division(s):	All
Key decision:	No
Forward Plan ref:	N/A
Outcome:	Committee is asked to consider the contents of this report.
Recommendation:	Committee is asked to agree the approach to implementing the Provider Selection Regime as set out in this report.

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1. Background

- 1.1 The Provider Selection Regime (PSR) is a new set of rules to be followed by Cambridgeshire County Council (the “Council”) when procuring health care services. It was created under the Health and Care Act 2022 (the “Act”) as part of wider measures to promote greater integration of health and care services.
- 1.2 The Act received Royal Assent on the 28th and it is intended that the PSR will go live on 1st January 2024 and at that point the procurement of health care services will be removed from the scope of the Public Contract Regulations 2015.
- 1.3 There is no threshold for application of the PSR.

2. Main Issues

- 2.1 Services in scope of the PSR are health care services arranged by the NHS and public health services arranged by local authorities. Out of scope are goods (e.g. medicines), social care services and non-health care services or health adjacent services, e.g. capital works or consultancy. Mixed procurements, where health care services form the largest proportion of the services being commissioned, are also in scope.
- 2.2 There are five processes provided for in the PSR, these are summarised below:
 - Direct award process A: where there is an existing provider for the services and that provider is the only capable provider. For example, A&E services. It is unlikely that this process will be available to the Council because of the nature of the services the Council commissions.
 - Direct award process B: where people have a choice of providers, and the number of providers is not restricted by the Council.
 - Direct award process C: where there is an existing provider for the services and that existing provider is satisfying the original contract and will likely satisfy the proposed new contract and the services are not changing considerably.
 - Most suitable provider process: where the Council is able to identify the most suitable provider without running a competitive process and awarding a contract.
 - Competitive process: where the Council wishes to run a competitive exercise to award a contract, or if they wish to set up a framework agreement.
 - The Council will need to comply with defined processes in each case to evidence their decision making, including record keeping and the publication of transparency notices.
- 2.3 There are five key criteria that must be considered when using direct award process C, the most suitable provider process or the competitive process. These are:
 - Quality and innovation.
 - Value.
 - Integration, collaboration and service sustainability
 - Improving access, reducing health inequalities and facilitating choice.
 - Social value.
- 2.4 There are specific requirements about applying standstill periods and record keeping. A supplier who does not agree with a PSR decision may refer the matter to the PSR Review Panel for consideration although the decisions of the review panel are not binding.

- 2.5 Existing health care contracts will have to be managed in accordance with the requirements of the PSR, rather than the PCR requirements they were established under. We are seeking legal advice as to whether any contract amendments are required.
- 2.6 The Procurement and Commercial Team has been working with colleagues from public health and social care to develop an action plan and a risk register, both are being regularly updated as colleagues undergo training and as further guidance and legal advice becomes available.
- 2.7 The PSR represents a significant change in the way health care contracts will be procured. Whilst there are still significant transparency and record keeping requirements, the emphasis has moved away from competitive procurement in all cases. Commissioners are now able to make decisions based on their knowledge of the markets and allowing for the other aims of the health care system such as greater integration and collaboration.
- 2.8 The immediate risks associated with the implementation of the PSR are the tight timetable to get both the governance environment right and the guidance to commissioners and contract managers. An assessment of forthcoming relevant procurements is being undertaken now so that we can minimise the risks in relation to those procurements. In the future the risks are likely to be connected to the proper use of the right decision-making circumstance and ensuring that thorough records are kept in all cases. These ongoing risks will be managed as the PSR is implemented and as new risks emerge they will be added to the PSR risk register.
- 2.9 The key actions that will be undertaken in the next month are:
- An update to the Contract Procedure Rules to ensure compliance. The changes won't be available until mid-December and the Monitoring Officer will be able to make the amendments under her delegated responsibility. An update on the changes will be brought to the January meeting of this Committee.
 - Production of a PSR Guidance document with associated decision-making templates. This document won't be available until mid-December, a link to the guidance document will be provided for January's meeting.
 - Identification of relevant procurements planned for the next 12 months to ensure that those procurements will be compliant with PSR.
 - Identification of current contracts in order to liaise with their contract managers to ensure compliance.

3. Alignment with ambitions

- 3.1 Net zero carbon emissions for Cambridgeshire by 2045, and our communities and natural environment are supported to adapt and thrive as the climate changes

One of the key criteria is social value, so the Council will continue to use environment related criteria for those decision making processes.

- 3.2 Travel across the county is safer and more environmentally sustainable

There are no significant implications.

3.3 Health inequalities are reduced

Health care commissioning will continue to be rigorously managed to ensure a contribution to this ambition.

3.4 People enjoy healthy, safe, and independent lives through timely support that is most suited to their needs

There are no significant implications.

3.5 Helping people out of poverty and income inequality

There are no significant implications.

3.6 Places and communities prosper because they have a resilient and inclusive economy, access to good quality public services and social justice is prioritised

There are no significant implications.

3.7 Children and young people have opportunities to thrive

There are no significant implications.

4. Significant Implications

4.1 Resource Implications

Value continues to be one of the key criteria used to assess direct process C, most suitable provider and competitive process.

4.2 Procurement/Contractual/Council Contract Procedure Rules Implications

See section 2.

4.3 Statutory, Legal and Risk Implications

See section 2.

4.4 Equality and Diversity Implications

No implications identified.

4.5 Engagement and Communications Implications

No implications identified.

4.6 Localism and Local Member Involvement

No implications identified.

4.7 Public Health Implications

See section 2.

4.8 Climate Change and Environment Implications on Priority Areas:

4.8.1 Implication 1: Energy efficient, low carbon buildings.

Positive/neutral/negative Status:
Explanation:

4.8.2 Implication 2: Low carbon transport.
Neutral

4.8.3 Implication 3: Green spaces, peatland, afforestation, habitats and land management.
Neutral

4.8.4 Implication 4: Waste Management and Tackling Plastic Pollution.
Neutral

4.8.5 Implication 5: Water use, availability and management:
Neutral

4.8.6 Implication 6: Air Pollution.
Neutral

4.8.7 Implication 7: Resilience of our services and infrastructure, and supporting vulnerable people to cope with climate change.
Neutral

Have the resource implications been cleared by Finance? Yes
Name of Financial Officer: Tom Kelly

Have the procurement/contractual/ Council Contract Procedure Rules implications been cleared by the Head of Procurement and Commercial? N/A

Has the impact on statutory, legal and risk implications been cleared by the Council's Monitoring Officer or Pathfinder Legal? Yes Name of Legal Officer: Gurdeep Singh Sembhi

Have the equality and diversity implications been cleared by your EqIA Super User?
Yes Name of Officer: Faye McCarthy

Have any engagement and communication implications been cleared by Communications?
Yes Name of Officer: Kathryn Rogerson

Have any localism and Local Member involvement issues been cleared by your Service Contact? N/a

Have any Public Health implications been cleared by Public Health? Yes
Name of Officer: Kate Parker

If a Key decision, have any Climate Change and Environment implications been cleared by the Climate Change Officer? Yes Name of Officer: Emily Bolton