

Cabinet

30 July 2024

Application of the Provider Selection Regime (PSR)

Portfolio Holder: Councillor Vince Maple, Leader of the Council

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Summary

The Provider Selection Regime (PSR) came into force on 1 January 2024. This regime provides alternative procurement routes for health-based services that do not necessitate competitive procurement processes in all circumstances. This report sets out the background to PSR and proposes how PSR should be applied at Medway.

1. Recommendations

1.1. The Cabinet is requested to:

- 1.1.1. Agree that a threshold of £663,540 for health-based services is applied as a procurement threshold for Gateway 1 and 3 reporting (the same level for other Gateway reporting).
- 1.1.2. Agree that anything under this threshold is initiated solely by the Category Management Engagement Form.
- 1.1.3. Agree that a competitive process (current processes) should apply for all health-based services unless the Cabinet approve an alternative approach presented in a GW1 report (business case) or there are other compelling reasons identified within the Category Management Engagement Form.

2. Suggested reasons for decision(s)

- 2.1 This decision supports the Council's delivery of the FIT plan, enhances transparent decision making and embeds best values across all procurement activity.

3. Background

- 3.1 The Health and Care Act 2022 introduced a new procurement regime for selecting providers of health-based services, Provider Selection Regime (PSR) which came into force on 1 January 2024 and replaced:

- 3.1.1 Public Contracts Regulations 2015 for defined health care services

- 3.1.2 National Health Service (Procurement, Patient Choice and Competition) Regulations 2013.
- 3.2 The PSR defines the Council as a Relevant Authority (RA) and it is required to apply the PSR for the purposes of procuring healthcare services. In certain circumstances the PSR allows local authorities to directly award health-based service contracts. Health based services are a statutory defined term under the regulations and these are detailed in **Appendix 1**, (most of those services are not provided by the local authority).
- 3.3 The Cabinet recently approved the Councils Financial Improvement and Transformation Plan (30 April), which recognised that the Council has a journey of improvement to undertake in relation to its approach to procurement.
- 3.4 The plan also identified a number of work streams sitting within health-based services where the Council is seeking to improve its effectiveness and efficiency, either in direct provision or working with partners. Additionally, the Council faces a challenging financial outlook over the medium term and securing best value across all its functions is a priority. Securing best value but also being to demonstrate the same to key stakeholders is also vital.
- 3.5 Unlike the previous regime under the Public Contracts Regulations 2015, the PSR regime has no minimum financial threshold for its application, and it mandates the Council follows one of the following processes:
- 3.5.1 Direct Award Process A – Existing services with no realistic alternative due to the nature of health services i.e. Emergency Ambulance Services. If this applies, then the Council **MUST** use this process.
 - 3.5.2 Direct Award Process B - When patients have the freedom to choose their provider and there are no restrictions on the number of providers, but it cannot be used to establish frameworks. If this applies, then the Council **MUST** use this process.
 - 3.5.3 Direct Award Process C – otherwise known as the ‘incumbent extension’, this is where a contract is coming to an end and there is a belief that the current contractor has delivered against the existing contract and will continue to do so against an extended contract. If this applies, then the Council **MAY** use this process.
 - 3.5.4 Most Suitable Provider Process – when the Council believe that whilst considering all likely providers and all relevant information available, that they can identify the most suitable provider. If this applies, then the Council **MAY** use this process.
 - 3.5.5 Competitive Process - this is a conventional competitive procurement activity conducted on all of Medway’s requirements pre PSR.
- 3.6 If the Council does not have to follow A or B and chooses not to follow C or the most suitable provider, then it **MUST** use the competitive process.

4. Options

- 4.1. The Council is obligated to apply the PSR when procuring health-based services, however the application and decision making can be established at a local level.
- 4.2. Option 1 – apply the PSR, as enacted, universally to all our health-based services and have no supplementary internal processes. In light of the council’s journey to develop a mature procurement approach and financial challenges, this option is not recommended.
- 4.3. Option 2 – apply the PSR in a measured manner, allowing for corporate oversight and enhanced governance through procurement board, where if appropriate, alternative procurement routes permitted by PSR are consider on a case-by-case basis. An enhanced GW1 report in the form of a template business case will need to justify the use of a non-competitive process. (refer to **Appendix 2**).

5. Advice and analysis

- 5.1. To ensure robust collaborative decision making, minimise risk and maintain decision making transparency it is proposed that the Council adopts Option 2. In doing so, officers can continue to emphasise pre-market engagement where the needs and delivery design can be discussed with the market to leverage their expertise and generate greater efficiencies.

6. Risk management

- 6.1. Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community. Using the following table this section should therefore consider any significant risks arising from your report.

| Risk | Description | Action to avoid or mitigate risk | Risk rating |
|--|---|--|-------------|
| An increased risk of challenges raised against Council procurement activity. | By failing to consistently apply the PSR in a transparent manner, the Council may be subject to an increased volume of challenges on future tenders – regardless of regime. | Agree on a consistent application of the provisions and processes contained within the PSR | BIII |
| Market stagnation and increase in costs due a lack of innovation | An over reliance and/or under scrutinised approach to the use of Direct Award Process C or the Most Suitable Provider process may result in market stagnation (a reduction in competition) and incumbent complacency ultimately | To constructively challenge officers proposing to use Direct Award Process C and/or the Most Suitable Provider processes. Although there is a perceived increase in | BIII |

| Risk | Description | Action to avoid or mitigate risk | Risk rating |
|---|---|---|-------------|
| | leading to a lack of improvement. | project length when approaching the open market, it generates wider benefits than just the current project. | |
| Overall reduction in supplier participation/trust | Whilst this report pertains to the application of the PSR, getting it wrong will not only impact health procurements but all procurement activity conducted by the Council. | Ensure there is a standard application of the regime to prevent/defend any application of wrongdoing. | CII |

For risk rating, please refer to the following table:

| Likelihood | Impact: |
|---|--|
| A Very likely B Likely C Unlikely D Rare | I Catastrophic II Major III Moderate IV Minor |

7. Consultation

- 7.1. The implementation of the PSR and associated training, was delivered by NHSE, has been discussed and shared via the Commissioning Review group chaired by the Director of Public Health. A report in substantially the same form was shared with the procurement board (16 July 2024) who approved the approach proposed * (subject to decision making).

8. Climate change implications

- 8.1. There are no climate change implications arising from the recommendations within this report.

9. Financial implications

- 9.1. There are no direct financial implications arising from the recommendations within this report. However, should the organisation fail to act, and no standard means of applying the PSR embedded, with time there could be a substantial number of suppliers ceasing to trade due to stifling competition, which could monopolise the market and lead to an increase in cost.

10. Legal implications

- 10.1. These are contained within the body of the report.

Lead officer contact

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Appendices

Appendix 1 - Heath Based Services

Appendix 2 – Enhanced Gateway 1 report template

Appendix 3 - Category Management Engagement Form – Health Services

Background papers

None