

ICB Primary Care Commissioning Committee Part 1

Date of meeting	14 March 2024
Title of paper	Withnell Health Centre – Preferred Procurement Option
Presented by	Peter Tinson, Director Primary Care (Donna Roberts, Associate Director Primary Care)
Author	Greg Reide, Procurement Assurance Manager, Integrated Health Solutions, NHS Shared Business Services (NHS SBS)
Agenda item	6a
Confidential	No

Executive summary	
<p>The Primary Care Commissioning Committee received a paper in January 2024 outlining:</p> <ul style="list-style-type: none"> • the results of the patient engagement • the results of the request for information exercises undertaken • An analysis of the five procurement routes available within the newly published Public Sector Regime <p>The Committee decided to postpone making a decision in regard to the most appropriate procurement route to be followed to enable further legal advice to be sought.</p> <p>Further legal advice has been sought which confirms the ICB assessment that Direct Award C is not available as a route. It has also provided some further clarity in regard to the Most Suitable Provider route and the actions required.</p>	
Advise, Assure or Alert	
<p>Assure the committee:</p> <ul style="list-style-type: none"> - That a Request for Information exercise has been completed. <p>Advise the committee:</p> <ul style="list-style-type: none"> - That two providers completed the Request for Information Questionnaire in response to the advert. 	
Recommendations	
<p>It is recommended that, based on consideration of procurement routes and associated published guidance, the committee approve a competitive procedure under the Provider Selection Regime (PSR) in accordance with the timeline previously agreed.</p>	
Which Strategic Objective/s does the report contribute to	Tick

1	Improve quality, including safety, clinical outcomes, and patient experience	X
2	To equalise opportunities and clinical outcomes across the area	X
3	Make working in Lancashire and South Cumbria an attractive and desirable option for existing and potential employees	X
4	Meet financial targets and deliver improved productivity	
5	Meet national and locally determined performance standards and targets	
6	To develop and implement ambitious, deliverable strategies	

Implications

	Yes	No	N/A	Comments
Associated risks			x	
Are associated risks detailed on the ICB Risk Register?			x	
Financial Implications			x	

Where paper has been discussed (list other committees/forums that have discussed this paper)

Meeting	Date	Outcomes

Conflicts of interest associated with this report

None identified.

Impact assessments

	Yes	No	N/A	Comments
Quality impact assessment completed			x	
Equality impact assessment completed			x	
Data privacy impact assessment completed			x	

Report authorised by:

Craig Harris, Chief Operating Officer

ICB Primary Care Commissioning Committee

14 March 2024

Withnell Request for Information Outcome

1 Purpose

- 1.1 This report is to remind the committee of the paper previously received and to provide confirmation of:
- The legal advice received regarding Direct Award Process C
 - An expanded description of the Most Suitable Provider (MSP) route
 - A comparison of the MSP and Competitive routes
 - A benefit and risk analysis of both the above routes

2 Background

- 2.1 The existing contract for providing services at the Withnell Health Centre is due to expire on 30 September 2024.
- 2.2 The ICB in preparation to award a new contract for those services needs to decide on the most appropriate procurement route to secure those services.
- 2.3 To support this decision-making process, in August 2023 the Primary Care Commissioning Committee (PCCC) approved a recommendation to carry out market engagement in the form of publication of a Request for Information (RFI).

3 The market engagement process

- 3.1 The aim and purpose of the market engagement was to make potential providers aware of an upcoming procurement and to give them the opportunity to express an interest in the opportunity and provide any feedback they may have on the opportunity. This in turn allows the ICB to understand the level of interest in the opportunity and thus the optimal procurement route.
- 3.2 The market engagement commenced with the publication of a Prior Information Notice (PIN) which advertised the future opportunity on 20 November 2023 on the Find a Tender and Contracts Finder portals, inviting interested providers to view the market engagement material which was published on the SAP Ariba portal.

4 Market engagement material

4.1 The following market engagement material was published:

- Request for Information Instructions and Questionnaire
- The Service Specification
- The draft APMS agreement

4.2 Potential providers were given a deadline of 11 December 2023 to complete and submit a Request for Information Questionnaire (RFIQ).

5 Summary of market engagement responses

5.1 The total number of organisations who viewed the published material was five of which two completed and submitted a RFIQ. The advert published on Contracts Finder had 476 views at the time of writing but only five of those reviewed the published material.

5.2 The RFIQ submitted by both organisations confirmed a high level of interest in bidding for the opportunity.

5.3 Both organisations showed understanding of and a willingness to provide Modern General Practice.

5.4 Neither provider indicated that there were any unsurmountable barriers to them being able to provide the service.

6 Procurement options

6.1 Since the commencement of the market engagement process, the legislation governing the award of contracts for healthcare services has changed, with the coming into force of the Provider Selection Regime (PSR) via The Health Care Services (Provider Selection Regime) Regulations 2023.

6.2 The PSR governs the award of contracts for specific healthcare services on or after 1 January 2024.

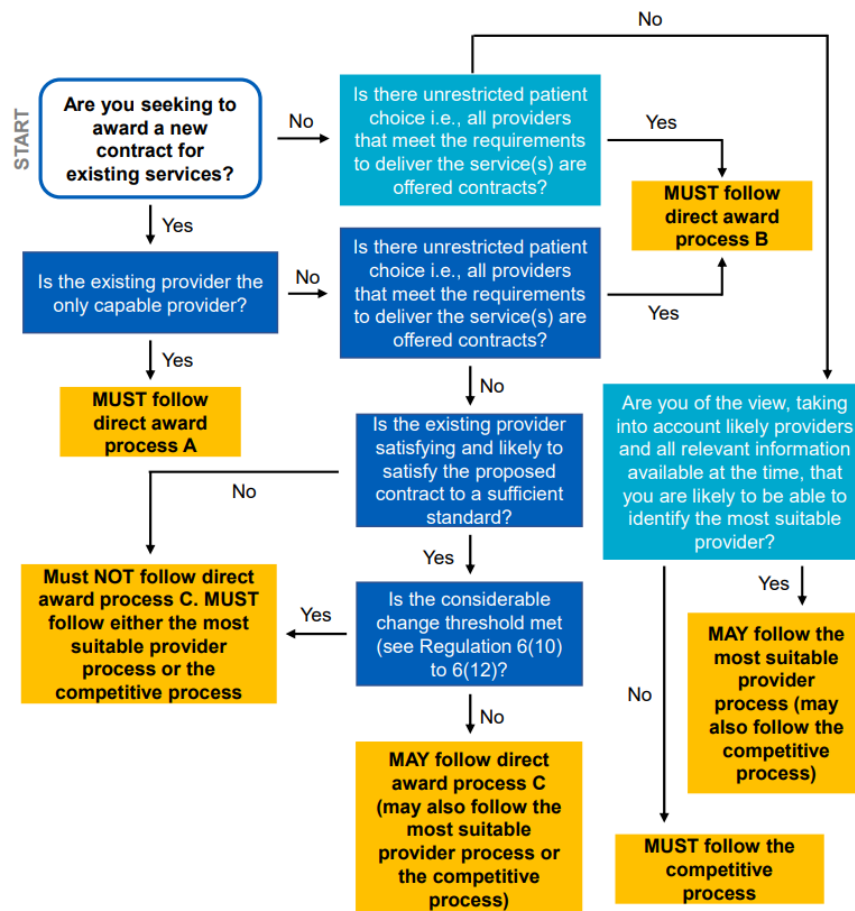
6.3 The PSR contains some transitional provisions for procurements that commenced prior to 1 January 2024, which disapply the Provider Selection Regime.

6.4 For procurements that commenced prior to 1 January 2024 the Public Contracts Regulations 2015 and the NHS Procurement, Patient Choice and Competition Regulations 2013 apply.

- 6.5 For a procurement to have commenced, the ICB would need to have published a Contract Notice in the Find a Tender Service and / or contacted any provider to seek an expression of interest in relation to the services.
- 6.6 The ICB published a RFI but did not publish a Contract Notice, which is a formal notification of a contract opportunity.
- 6.7 The ICB did not directly contact any provider to seek expressions of interest or offers in respect of a proposed contract.
- 6.8 As the ICB did not publish a Contract Notice or contact any provider to seek an expression of interest in relation to the services, the PSR will apply to the procurement.

7 Procurement under the provider selection regime

- 7.1 The PSR provides for five procurement routes for awarding a contract for these services. The flow chart below and supporting end to end process maps are used to decide which one is the most suitable.



7.3 Each of the routes is considered below, commencing with the direct award routes:

Route	Consideration
<p>Direct Award Process A</p> <p><i>Where there is an existing provider for the services and that provider is the only capable provider.</i></p> <p><i>Appendix 1</i></p>	<p>There are realistic alternative providers due to the nature of the services being provided.</p>
<p>Direct Award Process B</p> <p><i>Where people have a choice of providers, and the number of providers is not restricted by the relevant authority.</i></p> <p><i>Appendix 2</i></p>	<p>The nature of the services being provided and national contracting approach for the services is not compatible with this process.</p>
<p>Direct Award Process C</p> <p>Where there is an existing provider for the services and that existing provider is satisfying the original contract, will likely satisfy the proposed new contract and the services are not changing considerably from the existing contract.</p> <p><i>Appendix 3</i></p>	<p>The proposed contract value breaches the threshold for considerable change, therefore the ICB is unable to select this process.</p> <ul style="list-style-type: none"> • The lifetime value of the proposed new contract is at least £500,000 higher (i.e., equal to or exceeding £500,000) than the lifetime value of the existing contract when it was entered into, and • The lifetime value of the proposed new contract is at least 25% higher (i.e., equal to or exceeding 25%) than the original lifetime value of the existing contract when it was entered into.

7.2 Direct Award processes A and B are not suitable due to the nature of the services being commissioned and additionally for process B the compatibility with the national contracting approach for the services.

7.3 Direct award process C is also not suitable as it breaches the threshold for considerable change based on the comparison of the existing contract value to the proposed contract value.

7.4 Further to discussion at the last Committee the ICB has received formal legal advice from two independent experts who have both confirmed that Direct Award Process C cannot be used in this case as financially it meets the threshold values for a considerable change. They also confirmed that the ICB must consider the MSP and competitive routes explained below.

7.5 The NHS England national policy team has also confirmed that the ICB has considered the PSR in a structured way and that the lifetime value of the contract has been assessed in line with the statutory guidance.

7.6 The remaining routes are considered below:

Route	Consideration
<p>Most Suitable Provider</p> <p>Where the relevant authority is able to identify the most suitable provider without running a competitive process.</p> <p><i>Appendix 4</i></p>	<p>ICBs are advised to follow this approach only if they are confident they can, acting reasonably, identify <u>all</u> likely providers capable of providing the services.</p> <p>This involves pre-market engagement, agreeing selection criteria, contacting all likely providers to understand their interest, publishing a notice setting out the intention to follow this process, responding to requests from any other providers to be considered, assessing all providers being considered against the criteria (including seeking any additional information required to do so) and then choosing the most suitable provider. The relevant notices must then be published (identical to other processes here).</p>
<p>Competitive Procedure</p> <p>Where the relevant authority wishes to run a competitive exercise, or if they wish to establish a framework agreement.</p> <p><i>Appendix 5</i></p>	<p>The ICB can use the competitive procedure for any contract award under PSR where:</p> <ul style="list-style-type: none"> • It is not required to follow Direct Award Process A or B; • It cannot or has decided not to follow Direct Award Process C; • It cannot or has decided not to follow the Most Suitable Provider process.

7.7 Further to discussion at the last Committee, the ICB has also received further detailed legal advice regarding the application of the MSP route which is described in Appendix 6. It also shows the actions that are common to both the MSP and competitive routes and those that apply to MSP only.

7.8 The table below provides a simplified summary with the addition of approximate timelines. The steps are based on and therefore consistent with NHSE end to end process maps.

	Step	Most Suitable Provider	Competitive Process	Approx. Timescale
1	Undertake pre-market engagement			4 weeks
2	Consider which providers may be capable of providing the service	MSP process start point		4 weeks
3	Decide the relative importance of the key criteria for the service			6 weeks
	Sign off of key criteria			2 weeks
4	Decide to follow the MSP process			2 weeks
5	Notify the providers being considered			1 week
6	Publish a notice of the intended approach on Find a Tender			3 weeks
7	Identify likely providers understood to have the ability to deliver and any providers that have responded to the above notice			1 week
8	Approach providers for further information to help with considerations		Competitive start point	6 weeks
9	Assess the providers identified considering the key criteria to choose the most suitable provider			4 weeks
10	Based on assessment of the evidence confirm that a contract can be awarded under the process			1 week
11	Ensure that a recommendation to award a contract is approved internally through the relevant governance process			4 weeks
12	Publish an intention to award a contract notice			1 week
13	Observe standstill period			2 weeks
14	If any providers are dissatisfied potential review by the Independent Patient Choice Panel			Unknown
15	Award contract			1 weeks
16	Publish notice of award			1 day

Total length of process	42 weeks	30 weeks	
Length of process remaining if chosen as preferred option	38 weeks (plus any appeal)	18 weeks	
Contract start date	23 December 2024	1 October 2024	

7.9 The start points outlined in the table consider work already undertaken by the ICB in support of any future APMS procurements and include the core PES previously agreed by the Committee.

7.10 The table below outlines the risks and benefits of using each of the two routes.

Route	Benefits	Risks
Competitive procedure	Established and understood procurement route	Comparative benefits of route not understood by stakeholders
	Provides a robust process to identify the preferred provider	
	Opportunity to involve patients in the evaluation process	
	Shorter timeframe provides earlier certainty for patients and staff	
	Existing contract does not need to be extended further	
	Less risk of challenge due to transparency of selection process, including patient involvement	There however remains a risk of challenge
Most Suitable Provider	Enables the identification of <u>all</u> potentially suitable and interested providers	New and untested procurement route
	Enables the identification of the most suitable provider	Longer timeframe and uncertainty for patients and staff
	Opportunity to involve patients in the evaluation process	Existing contract would need to be extended for 3 months and possibly longer subject to any appeal. Risk that current provider does not wish to extend contract
		Due to the size and makeup of the general practice market the number of potentially suitable providers is likely to be considerable
		If at step 10 it is determined that a single suitable provider cannot be identified, the process would be terminated and a competitive route commenced

		There is considerable national provider interest in this new route which may both generate engagement in the process and increase the risk of challenge
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8 Recommendations

- 8.1 The above continues to conclude that two routes remain suitable, specifically the Most Suitable Provider or Competitive Procedure.
- 8.2 The receipt and consideration of legal advice regarding the MSP process has reaffirmed the assessment outlined in the previous paper that:
- The MSP route involves the significantly wider identification (and where relevant assessment) of all suitable providers.
 - In many other aspects it is similar to the competitive procedure (it requires an assessment of providers against criteria and based on information received).
 - In recognition of the recent market engagement exercise it is considered that the competitive procedure provides a more proportionate, timely and similarly robust process to choose a provider.
- 8.3 This paper also identifies that there are greater risks associated with the MSP route for patient, provider and commissioner.
- 8.4 It therefore continues to be recommended a competitive procedure is immediately progressed in accordance with the timeline previously agreed by the Committee.
- 8.5 This process would be based on the new ICB Procurement Evaluation Strategy (PES) agreed by the Committee at its October 2023 meeting and significantly informed by patient feedback. This would include patient involvement in evaluation.

*Greg Reide,
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NHS Shared Business Services*

Appendices

[NHS England » Provider Selection Regime toolkit products](#)

Appendix 6

Most Suitable Provider Process

	NHSE toolkit step	Advice
1	Undertake pre-market engagement to all suitable providers	<p><u>Action 1</u> All those involved in the process to declare any conflicts so these can be assessed and managed.</p>
2	Consider which providers may be capable of providing the services	<p><u>Action 3</u> Review market research and the provider landscape, look at who responded last time and consider whether there are other providers who may be considered as most suitable. It is advisable to carry out further market research.</p> <p>The statutory guidance requires the ICB to know the market well.</p> <p><i>“Relevant authorities are expected to develop and maintain sufficiently detailed knowledge of relevant providers, including an understanding of their ability to deliver services to the relevant (local/regional/national) population, varying actual/potential approaches to delivering services, and capabilities, limitations, and connections with other parts of the system. Relevant authorities may wish to consider undertaking pre-market engagement to update or maintain their provider landscape knowledge.</i></p> <p><i>We expect this knowledge to go beyond knowledge of existing providers and to be a general feature of planning and engagement work, developed as part of the commissioning or subcontracting process rather than only at the point of contracting. Without this understanding, relevant authorities may not have enough evidence to confirm the existing provider is performing to the best quality and value, miss opportunities to improve services and identify valuable innovations, and ultimately lead providers to make representations”.</i></p> <p>The ICB does not have to identify only one provider at this point. There may be more than one provider that the ICB wishes to consider.</p>
3	Decide the relevant importance of the key criteria for the service	<p><u>Action 2</u> Define the specification, key criteria and basic selection criteria. Statutory guidance suggests this be on a pass/fail basis, otherwise its difficult to determine how it differs from a competitive process.</p>

Appendix 6

Most Suitable Provider Process

		The toolkit suggests this be done after the identification of all potential providers. Legal advice suggests this be done before Action 3 above to minimise risk of challenge due to perceived bias of known providers.
4	Decide to follow the MSP process being of the view that <i>“considering providers they understand are likely to have the ability to deliver services to the relevant population, and all relevant information available at the time it is likely able to identify the most suitable provider”</i> .	<u>Action 4</u> Considering the providers understood to likely to have the ability to deliver the services and all information available at this time; the ICB must be able to conclude it is able to identify the most suitable provider.
5	Notify the providers being considered	All providers identified must be notified at this stage that the ICB intends to follow an MSP process.
6	Publish a notice of the intended approach in Find a Tender	<u>Action 5</u> Once the notice has been published further providers may come forward and would need to be added to the list of suitable providers to be assessed. Notice must be published for 14 days to ensure any providers wishing to be considered can come forward. At this point those providers notified directly of the ICBs intention to use the MSP process do not need to respond to the notice but they may confirm they do not wish to be considered.
7	Identify likely providers understood to have the ability to deliver and any providers that have responded to the above notice	<u>Action 6</u> A full list of providers needs to be compiled to ensure all those originally identified and those that have come forward in response to the notice can be considered.
8	Approach providers for further information to help with considerations	All providers that are to be considered can be asked to provide additional information to enable the assessment against key criteria to be undertaken.
9	Assess the providers identified considering key criteria to choose the most suitable provider	<u>Action 7</u> ICB assesses the potential providers by applying the key criteria and basic selection criteria. The ICB is required to act transparently and fairly in their assessment and the result should be the identification of the most suitable bidder. <i>“Relevant authorities must be able to demonstrate that they have understood the alternative providers and reached a reasonable decision when selecting a provider – but this does not need to be via a competitive exercise.”</i>

Appendix 6

Most Suitable Provider Process

		The toolkit states that if the ICB is unable to determine the most suitable provider it must use the competitive process. If this is the case the MSP process would need to be abandoned before starting the competitive process.
10	Based on assessment of the evidence confirm that a contract can be awarded under the process	
11	Ensure that a recommendation to award a contract is approved internally through the relevant governance process	
12	Publish an intention to award a contract notice	<u>Action 8</u> Publish a notice of intention to award on Find a Tender. Observe an 8 day period before moving to contract award.
13	Observe standstill period	
14	If any providers are dissatisfied potential review by the Independent Patient Choice Panel	
15	Award contract	
16	Publish notice of award	<u>Action 9</u> Publish a contract award notice on Find a Tender within 30 days of entering into the contract.

*Grey actions common to both MSP and competitive routes. Blue apply to MSP only.

Appendix 6

Most Suitable Provider Process



Key criteria



Basic selection criteria



When assessing a provider against the Key Criteria, all five Key Criteria must be considered, and none can be discounted. However, the relative importance of the criteria is not pre-determined and there is no prescribed hierarchy or weighting for each criterion.

Example 1: Equal weighting

Social value	20%
Improving access, reducing health inequalities, and facilitating choice	20%
Value	20%
Integration, collaboration, and service sustainability	20%
Quality and innovation	20%

Example 2: Unequal weighting

Social value	15%
Improving access, reducing health inequalities, and facilitating choice	15%
Value	25%
Integration, collaboration, and service sustainability	20%
Quality and innovation	25%

Example 3: Pass/Fail

Social value	10%
Improving access, reducing health inequalities, and facilitating choice	50%
Value	Must meet minimum standard
Integration, collaboration, and service sustainability	40%
Quality and innovation	Must meet minimum standard

The relevant authority must also assess providers against the **basic selection criteria** and is expected not to award a contract to a provider that does not meet these. These may relate to:

- a provider's ability to pursue a particular activity, e.g., a requirement to hold a specific authorisation or membership of a professional organisation
- necessary economic and financial standing, e.g., a minimum annual turnover, holding indemnity insurance
- necessary technical and professional ability, e.g., a certain level of experience, not having conflicting interests

Furthermore, the relevant authority **should not** award a contract to a provider that meets the exclusion criteria.