

South Gloucestershire Council

Provider Selection Regime (PSR) Regulations

Contents

Contents.....	2
Provider Selection Regime (PSR).....	3
1. Introduction	3
1.1 Background	3
1.2 In Scope Public Health Services for PSR.....	3
1.3 Out of Scope Public Health Services for PSR	4
1.4 Mixed Procurements	4
2. Process	4
2.1 Processes under Provider Selection Regime	4
2.2 Decision making under Provider Selection Regime.....	5
3. Key and Basic Selection Criteria	5
3.1 Key Criteria under the Provider Selection Regime	5
3.2 Basic Selection Criteria.....	6
3.3 Evaluation of Key Criteria	7
4. Transparency Requirements	7
4.1 Transparency notices.....	7
4.2 Record Keeping	8
4.3 Annual Summary	8
5. Standstill and Representations.....	8
5.1 Standstill Period.....	8
5.2 Representations.....	9
6. Modifications of Contracts during their term	100
7. Urgent Award	10
8. Appendix 1.....	12
9. Appendix 2	13

Provider Selection Regime (PSR)

1. Introduction

1.1 Background

As of 1st January 2024, all relevant authorities must follow the new [Provider Selection Regime \(PSR\)](#) for the commissioning of public health services in England. This replaces the Public Contracts Regulations 2015 (PCR 2015) for Public Health and Health Care Services.

Relevant authorities include:

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

The PSR does not apply to the procurement of goods or non-health care services, unless as part of a mixed procurement (see section 1.4), regardless of whether these are commissioned by relevant authorities.

The [Health and Care Act 2022](#) (2022 Act) moves towards more integrated working across the care system, so all decisions taken by commissioners are in the best interest of patients.

The PSR was introduced by regulations made under the 2022 Act and has been designed to:

- introduce a flexible and proportionate process to decide who should provide health care services
- ensure all decisions are made in the best interest of patients
- apply to all commissioning decisions as there is no minimum financial threshold
- provide collaboration across systems (if applicable)

Under the PSR, relevant authorities are required to:

- act transparently, fairly, and proportionately to:
 - secure patient needs who will use the services
 - improve the quality and efficiency of services
 - provide integrated service delivery

NHS England has published support tools to help Authorities implement PSR as well as associated [statutory guidance](#).

1.2 In Scope Public Health Services for PSR

All forms of health care services designed to secure improvement in the physical and mental health of the people in England and the prevention, diagnosis and treatment of physical and mental illness are in scope of the PSR.

However, the service must be provided to an individual. So services directed at an individual, like drug and alcohol or stop smoking services are in scope

but mass communication campaigns to raise awareness are not.

PSR covers health care services that fall within one or more of the Common Procurement Vocabulary (CPV) codes as set out in the regulations.

Council Understanding

Taking into consideration the CPV codes and guidance from NHS England, South Gloucestershire Councils' understanding of 'Health Care Services' under PSR is that this relates to commissioning activity where there is a clinical treatment aspect.

As it stands, based on our current understanding, South Gloucestershire Council does not believe that wellbeing services or social care services are included other than as part of a mixed procurement (see section 1.4).

1.3 Out of Scope Public Health Services for PSR

If the commissioned activity does not fit under one or more of the listed codes, the Council will follow wider Public procurement rules such as PCR 2015 (to be replaced with the Procurement Act 2023 from October 2024) where applicable or internal Contracting Rules if under the current financial threshold.

Examples of procurements / commissioning activity not in scope of the PSR are:

- Goods (e.g medicine, medical equipment)
- Social care services
- Essential and advanced pharmaceutical services arranged under the terms of the Community Pharmacy Contract Framework
- Non-health care services or health-adjacent services (e.g, capital works, business consultancy, catering or public health marketing campaigns) that do not provide health care to an individual.
- Well-being services

1.4 Mixed Procurements

As stated above, the PSR must not be used for the procurement or commissioning of goods or non-health care services alone. However, when a contract comprises a mixture of in-scope and out of scope services or goods then South Gloucestershire Council may use the PSR to arrange those services under a mixed procurement when both of the below requirements are satisfied:

- The main subject matter of the contract is in-scope health care services (50% or more of the service requirement)
- South Gloucestershire Council is of the view that the other goods or services could not reasonably be supplied under a separate contract

2. Process

2.1 Processes under Provider Selection Regime

Under the PSR South Gloucestershire Council can follow different provider selection processes to award contracts for health care services. These are detailed below:

Table 1 – PSR Processes

PSR Selection Processes	Selection Considerations
Direct Award Process A	Must be used when there is an existing service provider and only that provider is capable
Direct Award Process B	Must be used where patients have a choice of providers, and the number is not restricted
Direct Award Process C	Can be used where an existing provider is performing well and will likely continue for the proposed new contract where services are not changing considerably (using key criteria, see section 3)
Most Suitable Provider Process	South Gloucestershire Council can identify the most suitable provider without running a competitive process (using key criteria, see section 3)
Competitive Process	South Gloucestershire Council wants to run a competitive exercise or conclude a framework agreement to improve the quality of healthcare services and strengthen the partnership between providers and authorities

2.2 Decision making under Provider Selection Regime

The PSR will be applied as part of the commissioning process for contracts of health care services, for both new requirements and when a current contract is coming to an end. PSR is also applicable for contract extensions or variations as detailed in section 6 – Modifications to contracts. A decision flow chart and overview is available to support commissioners with the decision making approach and understanding the process (Appendix 1).

Commissioners will need to comply with the above processes in each of the provider selection routes detailed in Table 1. Commissioners will need to evidence their decision-making including record keeping and publication of transparency notices.

3. Key and Basic Selection Criteria

3.1 Key Criteria under the Provider Selection Regime

There are five key criteria that **must** be considered when assessing providers under direct award process C, the most suitable provider process or the competitive process and will be considered for Direct Award Process A and B. These are detailed in table 2 below.

In order for our stakeholders and partners to understand what we at South Gloucestershire Council will be looking for under each of the five criteria we have set out some guidance within the table below. The consideration of each of these will be contract specific but there are some basic principles that will apply to all.

Table 2 – Key Criteria and Guidance

5 Key Criteria	Guidance
Quality and innovation	South Gloucestershire Council will seek the highest possible quality for our services, including well trained staff, adherence to national and local guidance and standards,

	ability to be flexible and adapt to changes in the service environment and be committed to continuous improvement, including the views of people using the service to improve and adapt the service provision.
Value for money	South Gloucestershire Council will seek the best possible value for money, this does not mean the cheapest option, rather the best quality service that can be provided within the funding envelope available. South Gloucestershire Council requires all providers to be looking for efficiencies and savings throughout the lifetime of the contract.
Integration, collaboration, and service sustainability	South Gloucestershire Council are committed to working as part of a system, for example the Locality Partnership and the Integrated Care System. It is expected our providers will work alongside us and the wider system to ensure better outcomes for our residents and to actively engage with other partners in the system.
Improving access, reducing health inequalities, and facilitating choice	These would be contract specific, however, as a general principle the Council would be looking for evidence that providers are aware of the inequalities that exist based on access and outcomes to the service and how they will work with us as commissioners to reduce and eliminate these. Also ensuring that patients using the service contribute to its development and have choices in the services they receive.
Social Value	That providers will deliver value that is above and beyond the business as usual where the provider will contribute to the Council's social value aims .

All of the above mentioned key criteria must be considered, although the relative importance and weighting of each criterion is not pre-determined with the exception of Social Value which will have a minimum of 10% weighting in line with Council policy for all activity over £75,000.

The total percentage of the key criteria should equal 100%.

3.2 Basic Selection Criteria

South Gloucestershire Council must also assess providers against the basic selection criteria and is unlikely to be able to award a contract to a provider that does not meet the minimum criteria.

The basic selection criteria includes:

- The providers ability to pursue a particular activity where applicable (such as membership of professional organisation)
- Economic and financial standing (minimum turnover, insurances in place)
- Technical and professional ability (level of experience to meet basic

requirements).

3.3 Evaluation of Key Criteria

South Gloucestershire Council will evaluate against the key criteria using the below scoring mechanism (Table 3) and weighted according to the weighting assigned based on the specific requirements and relative importance of each criteria to the services to be commissioned.

Table 3 – Scoring Methodology

Score	Classification	Award Criteria
5	Excellent	A response that inspires confidence; specification is fully met and is robustly and clearly demonstrated and evidenced. Full evidence as to how the contract will be fulfilled either by demonstrating past experience or through a clear process of implementation.
4	Good	A response supported by good evidence/examples of the provider's relevant ability and/or gives the Council a good level of confidence in the provider's ability. All requirements are met and evidence is provided to support the answers demonstrating sufficiency, compliance and either actual experience or a process of implementation.
3	Satisfactory	A response that is acceptable and meets the minimum requirement but remains limited and could have been expanded upon.
2	Weak	A response only partially satisfying the requirement with deficiencies apparent. Not supported by sufficient breadth or sufficient quality of evidence/examples and provides the Council a limited level of confidence in the provider's ability to deliver the specification.
1	Inadequate	A response that has material omissions not supported by sufficient breadth and sufficient quality of evidence/examples. Overall the response provides the Council with a very low level of confidence in the provider's ability to deliver the specification.
0	Unsatisfactory	No response or response does not provide any relevant information and does not answer the question.

The basic selection criteria is likely to be scored on a pass / basis unless otherwise stated in advance.

4. Transparency Requirements

4.1 Transparency notices

Under the PSR, South Gloucestershire Council will need to be transparent in their decision making and will ensure proper scrutiny and accountability of decision made in relation to health care services.

In all processes, internal records of the decision-making must be kept and a transparency notice must be published confirming the decision to award a contract. Other transparency notices are required dependent on the process selected and Appendix 2 details the transparency steps required for each of the provider selection processes.

Notices will be published using the UK e-notification service, [Find a Tender Service \(FTS\)](#). South Gloucestershire Council will complete the notices through the Council e-tendering portal, this is currently [Supplying the Southwest](#).

4.2 Record Keeping

South Gloucestershire Council must keep detailed evidence of the decision-making process and rationale under each of the provider selection processes. Records must include:

- the decisions and decision-making processes to share with providers
- Details of the individual(s) making the decision
- Any conflicts of interest and, where applicable, how these were managed
- The relative importance of each key criteria and the rationale and how the basic selection criteria were assessed
- Name and address of provider to which the contract has been awarded
- For mixed procurements, how the procurement meets the requirements for mixed procurements
- Where a procurement is abandoned, the date on which it is abandoned

4.3 Annual Summary

South Gloucestershire Council will publish online an annual summary, detailing how many contracts were awarded under PSR. These are expected to be published no later than 6 months following the end of the financial year it relates to.

In line with the current guidance for the Provider Selection Regime, it is proposed the annual summary will include:

- Number of contracts directly awarded under direct award processes A, B or C
- Number of contracts awarded under the most suitable provider process
- Number of contracts awarded under the competitive process
- Number of framework agreements concluded
- Number of contracts awarded based on a framework agreement
- Number of urgent contracts awarded and urgent modifications
- Number of new providers awarded contracts
- Number of providers who ceased to hold any contracts with the South Gloucestershire Council
- Details of representations received, including:
 - The number of representations received in writing and during the standstill period in accordance with Regulation 12(3)
 - Summary of the outcome of all representations received and of the nature and impact of those representations

5. *Standstill and Representations*

5.1 Standstill Period

South Gloucestershire Council must observe a standstill period once a notice of intention to make an award to a provider under direct award process C, the most suitable provider process, or the competitive process has been published. This includes concluding a framework agreement or awarding a contract based on a framework agreement following a mini-competition.

The standstill period follows a decision to select a provider and must end before the contract can be awarded. The standstill period must last for a minimum of eight (8) working days, this will begin the day after the notice of

intention to award is published and, unless a written challenge (now referred to as a representation under PSR) is made, ends at midnight of the eighth working day after the day the standstill period begins.

Provider representations must be made within the standstill period. Where a representation is made that meets the required conditions, the standstill period remains open while South Gloucestershire Council considers the representation, provides any requested information and makes a further decision.

The end of the standstill period must be at least five (5) working days after South Gloucestershire Council has communicated its decision to the provider. The period allows for providers to consider the response provided and if they remain unsatisfied to seek the involvement of a PSR review panel.

5.2 Representations

Providers may make a representation to South Gloucestershire Council within the first eight (8) working days following the start of the standstill period. Providers cannot submit a representation after that period, even if the standstill period has been extended in response to a representation from another provider.

Provider representations are to seek a review of the decision made, to determine whether South Gloucestershire Council has applied the regime correctly and made an appropriate provider selection decision. South Gloucestershire Council are only obliged to respond to representations that meet all the following conditions:

- The representation comes from a provider that might otherwise have been a provider of the services to which the contract relates
- The provider is aggrieved by the decision of the relevant authority
- The provider believes that the relevant authority has failed to apply the regime correctly and is able to set out reasonable grounds to support its belief
- The representation is submitted in writing (which includes electronically) to South Gloucestershire Council within eight (8) working days of the start of the standstill period.

South Gloucestershire Council will ensure that appropriate internal governance mechanisms are in place if a representation is made against provider selection decisions. Where possible, decisions will be reviewed by individuals not involved in the original decision, where this is not possible, South Gloucestershire Council will ensure that at least one individual not involved in the original decision is included in the review process.

South Gloucestershire Council will review the evidence and information used to make the original decision, taking into account the representations made, and will consider whether the representation has merit.

Once the review has been conducted, South Gloucestershire Council will communicate its decision to the provider who made the representation. The standstill period will remain open for a minimum five (5) working days following the decision being communicated. This period allows for providers to consider the response provided and if they remain unsatisfied to seek the involvement of a PSR review panel.

Where the PSR review panel accepts a representation for review, it will endeavour to consider it and share advice, or a summary of its advice, with

the provider and South Gloucestershire Council within 25 working days. However, this timeframe is indicative and contingent on the engagement and timely responses of the provider and South Gloucestershire Council throughout the review process.

The PSR review panel may consider whether South Gloucestershire Council complied with the Regulations and may provide advice. Following consideration of advice, South Gloucestershire Council will make an informed decision about how to proceed. The decision outcome may include:

- Entering into a contract or concluding the framework agreement as intended
- Going back to an earlier step in the selection process
- Abandoning the provider selection process, and
- Starting a new process.

6. *Modifications of Contracts during their term*

There will be situations where contracts, or framework agreements, need to be modified to reflect changes to services or circumstances during their term. Depending on the circumstance, permitted modifications can be made without following a new provider selection process, and in some cases will require the publication of transparency notices.

Where the original contract was awarded under direct award process C, the most suitable provider process, the competitive process, or where the contract was originally awarded under the Public Contracts Regulations 2015, then modifications are permitted in the following circumstances:

- Scope was clearly and unambiguously provided for in the original contract
- Solely a change in the identity of the provider and where South Gloucestershire Council are happy the provider meets the basic selection criteria.
- Made in response to external factors beyond the control of South Gloucestershire Council and the provider, such as changes in patient or service user volume in indexing but does not render the contract materially different in character
- Attributable to a decision made by South Gloucestershire Council and does not materially change the character of the contract or framework agreement, and the change in lifetime value of the contract compared to the original value is under £500,000 or represents less than 25% of the original contract value.

7. **Urgent Awards**

Urgent awards are only permitted under limited circumstances under the PSR, such as to address immediate risk to a patient or public safety and can only be used where there is an unforeseen emergency or national crisis.

Permitted circumstances include:

- A new service needs to be arranged rapidly in an unforeseen emergency or local, regional or national crisis
- Urgent quality or safety concern pose risks to patients or the public and necessitate rapid changes
- An existing provider is suddenly unable to provide services under an

existing contract (for example, it becomes insolvent or suddenly lacks critical workforce) and a new provider needs to be found

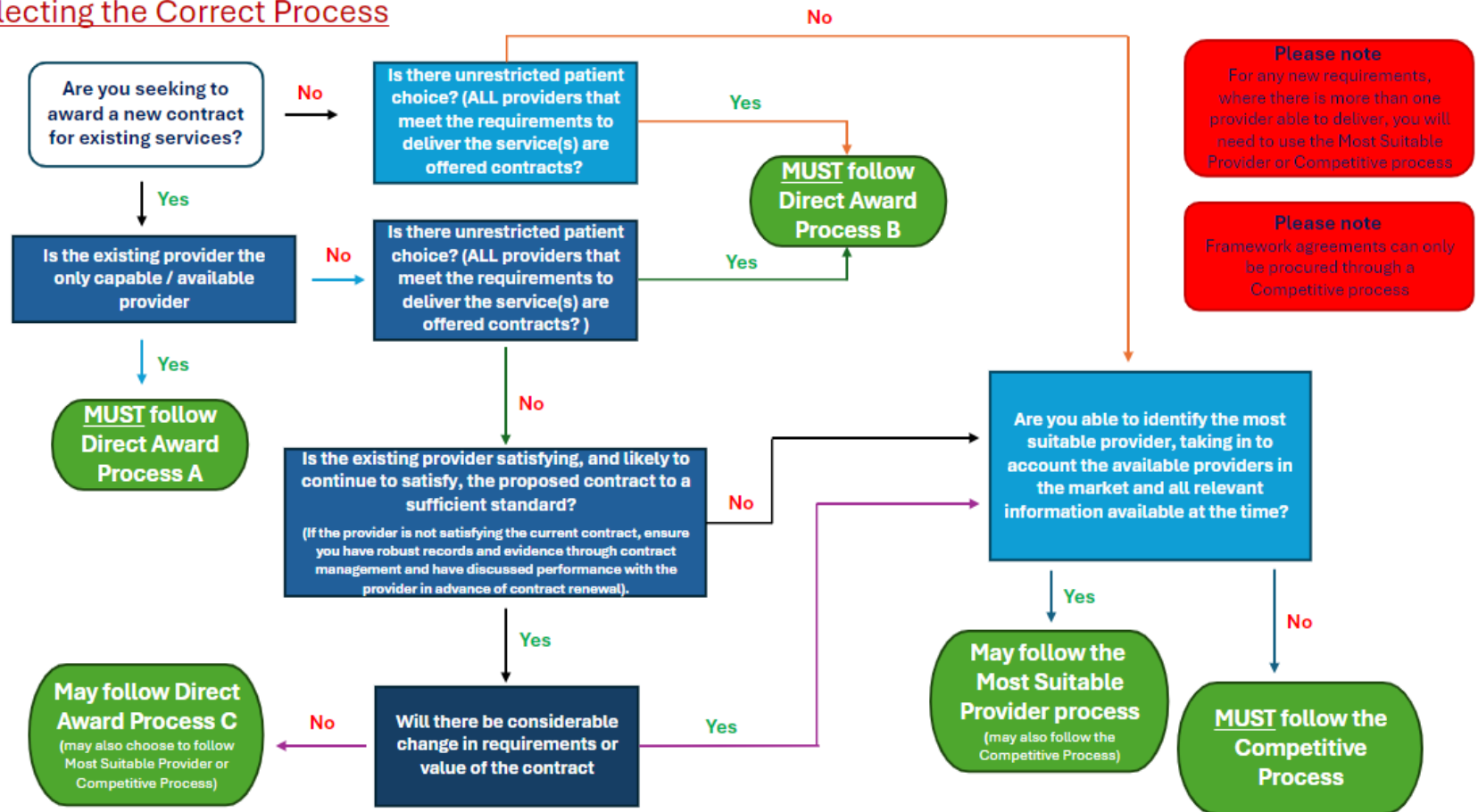
An Urgent Award must only be made when all of the below apply:

- The award must be made urgently
- The reason for the emergency was not foreseeable by and not attributable to the Council
- Delaying the award of the contract to conduct a full application of the regime would likely pose a risk to patient or public safety.

Where an Urgent Award is required the Council are expected to limit the contract term to that which is strictly necessary and to be no longer than 12 months. Where is anticipated to be a longer timeframe the Council is required to record and provide justification for this decision.

8. Appendix 1 – Selecting a Process under the Provider Selection Regime

Selecting the Correct Process



9. Appendix 2 – Transparency Notices

	Direct Award Process A	Direct Award Process B	Direct Award Process C	Most suitable provider process	Competitive process
Clear intentions: Publish the intended approach in advance				Yes	
Timeframe:				1 working day	
Observe: a 14 day period before commissioning can start:				14 calendar days	
Clear intentions: Publish a notice for a competitive tender					Yes
Timeframe:					Not defined
Communicating decisions: Publish the intention to award notice			Yes	Yes	Yes
Timeframe:			1 working day	1 working day	1 working day
Timeframe: standstill to begin the day after the intention to award			8 working days	8 working days	8 working days
Confirming decisions: Publish a confirmation of award notice within 30 days of award after observing the 8 working day standstill period	Yes	Yes	Yes	Yes	Yes
Timeframe: to publish award notice	Within 30 days	Within 30 days	Within 30 days	Within 30 days	Within 30 days
Contract modification: Publish a notice for contract modifications if over £500k	Yes	Yes	Yes	Yes	Yes