

NHS Hertfordshire and West Essex Integrated Care Board

Procurement Policy

Brief Description	This procurement policy sets out the framework within which Hertfordshire and West Essex Integrated Board (the 'ICB') will work to ensure that the development of commissioning strategies, and any associated procurement activities, directly contributes to the HWE ICB's corporate aims and objectives and meets legal requirements.
Target Audience	Board Members Committee Members All staff engaged in procurement processes, who are either working for or, on behalf of the ICB and partner organisations.
Action Required	For circulation to all staff, and immediate implementation

Document Information

Version Number	Version 1.24
Accountable Executive	Chief Financial Officer
Responsible Officer	Head of Governance
Approved by	ICB Executive Committee – 07.11.22, 23.10.23
Approval Ratified	Board – ,
Review Date	October 2024
Stakeholders engaged in development / review	Discussed and amended through Committees, with specialist procurement advice
Equality Impact Assessment	Appendix 4

Amendment History

Version	Date	Reviewer Name(s)	Comments
		Sarah Beaumont – Attain, independent advisors	Initial draft – amended following feedback from Exec. team 03.10.22
0.1	07/11/22	Reviewed by ICB Executive	Approved.
1.0	18/11/22	NHS HWE ICB – Board	Ratified
1.1	08/12/22	Simone Surgenor	Appendices added
1.2	02/10/22	Sarah Beaumont – Attain/Simone Surgenor/James Olweny	Amendments: para. 2.2.2, 3.5, Appendix 1 revised waiver.
1.3	06/11/22	Sarah Beaumont – Attain/Simone Surgenor/James Olweny	Amendments to reflect revised PCR 15 thresholds from 01.01.24 - pages 14, 15, 30, 36 and 37.
1.4	15.04.24	Sarah Beaumont / James Olweny	Updated to add the Provider Section Regime requirements and update section 4.3.4 on COI process required under both PSR and PCR.
1.5	05.08.24	James Olweny	Amendments to section 2.2.2 Scheme of Delegation and Sealing and Authorisation of Documents: <ul style="list-style-type: none"> - Replace Commissioning Committee / Finance and Investment Committee with Finance and Commissioning Committee - Amend the approval thresholds for Finance and Commissioning Committee, CEO and CFO

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SECTION 1

1.1 Introduction

This Policy has been updated to reflect the new Provider Selection Regime legislation which became effective on 1st January 2024.

- a) Sections 1 – 3 of this Policy applies to both sets of Regulations (The Public Contracts Regulations and Provider Selection Regime), unless otherwise stated.
- b) Section 4 breaks down the specific requirements of each set of Regulations.
- c) Sections 5 – 7 applies to both sets of Regulations.

The Hertfordshire and West Essex Integrated Care Board (the 'ICB') is responsible for the NHS commissioning functions (plan, purchase and organise) of health services on behalf of patients registered with Hertfordshire and West Essex General Practices. The HWE ICB is also accountable for NHS spend for its local population and performance within the system. It is established by order made by NHS England under powers in the 2006 Act.

The ICB is a statutory body with the general function of arranging for the provision of services for the purposes of the health service for its local population and is an NHS body for the purposes of the 2006 Act. The main powers and duties of the HWE ICB to commission certain health services are set out within Sections 3 and 3A of the 2006 Act. These provisions are supplemented by other statutory powers and duties that apply to ICBs, as well as by regulations and directions (including, but not limited to, those made under the 2006 Act).

Commissioning responsibility of the ICB have been extended to include the delegation of commissioning responsibilities for services historically the responsibility of NHS England. This includes the commissioning and arranging of primary medical services, dentistry (primary, community and secondary services), community pharmacy and specialised commissioning with NHS England retaining an oversight role.

Procurement is central to driving quality and value. It describes a whole life-cycle process of acquisition of supplies, works and services. It starts with identification of need and ends with the award of a contract. However, the procurement process will establish the ongoing contract monitoring arrangements in the contract to assure quality and effectiveness of delivery and its contribution to the commissioning cycle. This lifecycle includes prevention, re-use, recycling, disposal etc. in accordance with the waste hierarchy.

Hertfordshire and West Essex ICB's approach to procurement is to operate within legal and policy frameworks and to use procurement as one of the system management tools available to strengthen commissioning outcomes and increase quality for patients. It can do this through:

- a) Ensuring providers work in an integrated fashion where this is in the best interest of patients and promotes service efficiency;
- b) Increasing general market capacity to promote patient choice and meet the demand requirements of our population;
- c) Using appropriate procurement mechanisms to facilitate improvements in choice, quality, efficiency, access and responsiveness; and
- d) Stimulating innovation

The ICB is a key partner within the Hertfordshire and West Essex Integrated Care System (the ICS') and has been developing the Health and Care Partnerships (HCP's) which bring together health, social care and voluntary sector organisations across local areas within the ICS. Whilst the HCP's are not a statutory body, the HCP's will play a fundamental role in the way health and care is provided for the communities living within Hertfordshire and West Essex. This means leading the detailed design and delivery of joined-up service and transforming services to improve people's health and wellbeing:

- a) Patients experience the NHS and associated social care services as a joined-up personalised service in which they can exercise choice, rather than a disconnected set of services which they are required to navigate.
- b) Patients and service providers are always treated fairly with dignity and the respect due to them.
- c) Clinical decision-making and healthcare delivery is in line with evidence-based best practice and takes account of value for money.
- d) The logistics of healthcare delivery, within and across different care settings, are designed to meet patient clinical needs, whether long-term or acute, in the most effective way.

1.2 Purpose and Objectives of the Policy

This procurement policy sets out the framework within which the ICB will work to ensure that the development of commissioning strategies and any associated procurement directly contributes to the ICBs corporate aims and objectives and meets legal requirements.

The Policy objectives are:

1. To set out the principles, rules and methodologies that the ICB will work to and clearly outlines how and when it is appropriate to seek to introduce contestability and

competition as a means of achieving the best clinical outcomes and achieve value for money.

2. To set out the approach for facilitating open and fair, robust and enforceable contracts that provide value for money and deliver required quality standards and outcomes, with effective performance measures and contractual levers.
3. To describe the transparent and proportional process by which the ICB will determine whether health and social services are to be commissioned through existing contracts with providers, competitive tenders, via a framework approach or through a non-competitive process.
4. To enable early determination of whether, and how, services are to be opened to the market, to facilitate open and fair discussion with existing and potential providers and thereby to facilitate good working relationships.
5. To set out how the ICB will meet statutory procurement requirements primarily the NHS Provider Selection Regime (PSR) where the ICB is arranging 'healthcare' services as defined within the PSR, and The Public Contracts Regulations 2015 (*as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020*) (PCR) where the ICB is arranging non-healthcare services which fall outside of the scope of PSR (the PCR are currently being reformed and will be replaced by the Procurement Act 2023 which is expected to come into force in October 2024 at which point this Policy will be updated to reflect those new Regulations).
6. To ensure the ICB does not engage in anti-competitive behaviour, and protect and promote the right of patients to make choices about their healthcare.
7. To enable the ICB to demonstrate compliance with the principles of good procurement practice.

1.2.1 Scope of the Policy

This policy applies to all ICB spend, including for the provision of healthcare and non-healthcare services that support the delivery of the business of the ICB. It supports the ICBs statutory functions for:

- The development and approval of specifications for services.
- Determination of which organisations shall provide services.
- Determination of whether a service should be decommissioned.

This policy should be read in conjunction with the ICB's:

- Constitution, Standing Orders, Scheme of Delegation and Standing Financial Instructions.
- Code of Business Conduct and the Conflict of Interest Policy.
- Anti-fraud and Bribery Policy.
- Whistle Blowing Policy.

1.3 Guiding Principles that underpin the Policy

The ICB will demonstrate compliance with the four (4) overarching principles of public sector procurement in the following ways:

1.3.1 Transparency

- Stating and publishing commissioning strategies and intentions;
Stating the outcome of service reviews including how service provision will be secured.
- Advertising of Procurement (where applicable) and notification of Contract Award.
- Ensuring transparency of documentation, processes and decisions.
- The ICB will robustly manage potential conflicts of interest and ensure that these do not prejudice fair and transparent procurement processes.
- The ICB will provide feedback to all unsuccessful bidders.
- Any complaints regarding the procurement process will be handled through an explicit and publicised dispute resolution process.

1.3.2 Proportionality

- The ICB will ensure that procurement processes are proportionate to the value, complexity and risk of the products to be procured, and will be cognisant of bidder capacity.
- The ICB will define and document procurement routes, including any streamlined processes for low value / local supplies and services, taking into account available guidance.

1.3.3 Non-Discrimination

- The ICB will ensure that procurement processes and documents will always be non-discriminatory and transparent. This includes our obligations under our equalities and diversity duty.
- The ICB will inform all participants of the applicable rules in advance and ensure that the rules are applied equally to all. Reasonable timescales will be determined and applied across the whole process.

- The ICB will ensure that shortlist criteria are neither discriminatory or particularly favour one potential provider.

1.3.4 Equality of Treatment

- The ICB will ensure that no sector of the provider market is given any unfair advantage during a procurement process.
- The ICB will ensure that basic financial and quality assurance checks apply equally to all types of providers.
- The ICB will ensure that all pricing and payment regimes are transparent and fair (according to the Department of Health & Social Care Principles and Rules).
- The ICB will retain an auditable documentation trail regarding all key decisions.
- The ICB will hold all providers to account, in a proportionate manner, through contractual agreements, for the quality of their services.
- The NHSE Statutory Guidance for CCGs for Managing Conflicts of Interest (in force from June 2017) states that a 'Register of Procurement Decisions and Contracts Awarded' should document key procurement decisions and cover key aspects such as Procurement Description, Existing Contract or New Procurement, Type of Procurement, ICBF Clinical Lead, ICB Contract Manager, Decision Making Process, Summary of Conflicts declared & how these conflicts were managed, Contract Award Details, Contract Value. A Register of Procurement Decisions will therefore be published on the ICB's website. The ICB's contracting team will have ownership of the Register and will liaise with the procurement project leads team to ensure accuracy.

An Example Template Register of Procurement Decisions and Contracts Awarded can be found in Appendix 3.

SECTION 2

2.1 Accountabilities and Responsibilities

2.1.1 Lead Manager

Overall responsibility for procurement within the ICB rests with the Chief Financial Officer with accountability to the Chief Executive. Nevertheless, individual managers will be responsible for recognising when a commissioning decision may have potential procurement implications and for seeking appropriate procurement support. All ICB staff members are responsible for ensuring that they plan their commissioning decisions in sufficient time to carry out the required procurement process.

2.1.2 Procurement Support

The ICB will engage the services of a professionally qualified procurement specialist, who will support with the development of the procurement operating procedures to ensure compliance with all relevant regulations, legislations, and NHS procurement standards.

The ICB will ensure it has access to specialist legal advice for large and complex procurements to facilitate and monitor compliance with these rules and regulations, as well as to demonstrate effective procurement processes. The responsibilities of the Procurement Lead and Commissioning Project Lead will be clearly set out in respect of each project.

The ICB will have systems in place to assure itself that the business processes of its teams that support the procurement process are robust and enable the ICB to meet its duties in relation to procurement.

Conflicts of interest with its procurement support provider

Should an instance arise where there is a conflict of interest with the ICB and its external procurement support provider where it wishes 'to contest a service or services currently provided by the procurement support provider as set out within the SLA, this would present a clear conflict of interest for the procurement advisor and the ICB will need to secure procurement advice and or support from a third party to carry out any market testing or procurement activity in relation to this.

If any doubt arises in relation to a potential conflict of interest issue this should be managed via the performance management and escalation procedures set out in the SLA to ensure both parties are clear about their respective positions.

2.1.3 Authority

The ICB will be directly responsible for:

- Approving decisions to procure (or not to procure a service) based on submission of a business case.
- Approving procurement route.
- Signing off specifications and evaluation criteria.
- Signing off decisions on which providers to invite to tender.
- Receiving a full procurement report agreed between the project lead and procurement lead in order to make the final decisions on the selection of the provider.
- Approving any variation to NHS Standard Contract, and specifically any variation to the duration of the contract and extension arrangements.

2.2 Governance

2.2.1 Standing Orders

The ICB will ensure it has the appropriate Standing Orders (and any other relevant governance documents) of the NHS organisation to ensure the procurement of supplies and services will be in accordance with all the regulations, guidance and local delegated authorities, reducing the risk of any challenge of inappropriate application of the rules regulations or the principles set out therein.

The ICB will ensure it has access to specialist legal advice for large and complex procurements to facilitate and monitor compliance with these rules and regulations, as well as to demonstrate effective procurement processes.

2.2.2 Scheme of Delegation and Sealing and Authorisation of Documents

The signing and sealing of contracts are set out in the Hertfordshire and West Essex Integrated Care Board Corporate Governance Manual and is reproduced below for completeness. The use of the seal is **NOT** required for NHS or contracts with government bodies, including Local Authorities. For NHS or government body contracts, the Accountable officer and the Chief Finance Officer must sign.

The scheme of delegation provides for the following authority levels against the stated contract values:

- This is for the approval of expenditure and business cases whether to vary an existing contract or to conduct a new procurement process.

The decision to approve the award of a contract following the completion of a compliant procurement process does not need to be taken back to the relevant committee or Board for approval, if the committee/Board holding the correct level of delegated authority has approved the supporting business case and for a procurement process to be conducted. This is subject to the committee/Board holding the correct level of delegated authority requesting or supporting its return due to for instance, assurance being sought prior to final award.

Contract Value	Scheme of Delegated Authority
ICB Board / Governing Body	Unlimited
Finance and Commissioning Committee	<p>Approve proposals on individual contracts or services of a capital or revenue nature amounting to, or likely to amount to £7.5m (or up to £15m if contract exceeds 12 months)</p> <p>Recommend to the Board for approval of all proposals on individual contracts or services of a capital or revenue nature amounting to,</p>

	or likely to amount to over £7.5m (or £15m if contract exceeds 12 months)
Remuneration Committee	Up to £100k for Healthcare and Non-Healthcare
Health Care Partnership/Place	<p>Approve –</p> <ul style="list-style-type: none"> • Authority to approve where the source of funds and its use is determined nationally • Proposals on individual contracts or services of a capital or revenue nature amount to, or likely to amount to £1m (or up to £2m if contract exceeds 12 months). <p>Recommend to the Finance and Commissioning Committee for approval all proposals on individual contracts or services of a capital or revenue nature amount to, or likely to amount to £2.5, (or up to £5m if the contract exceeds 12 months)</p>
Chief Executive Officer	Up to £2.5m
Chief Financial Officer	Up to £1m
Deputy Chief Financial Officer	Up to £50k
Other Directors	Up to £100k
Deputy / Assistant / Associate Directors	Up to £50k
Other budget holders	Up to £25k
Senior Finance Manager	Up to £5k

Details for Continuing Healthcare packages are set out within the Scheme of Delegation.

2.2.3 When is procurement required?

- All non-healthcare contracts for the supply of Goods and Services with an anticipated value of more than £213,477 (inclusive of VAT) over the life of the contract must be subject to a formal procurement, in accordance with The Public Contract Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020). Services that fall within the light-touch regime this value is £663,540 (inclusive of VAT and for whole contract value).
- Contracts that are subject to the NHS Provider Selection Regime (PSR) there is no minimum value threshold and therefore all services which fall within the scope of PSR must be arranged in line with the Regime.

The requirements for 'healthcare' contracts subject to the Provider Selection Regime are dealt with in **Section 4.2** and the requirements for 'non-healthcare contracts subject to the Public Contract Regulations are dealt within **Section 4.3**.

SECTION 3 – GENERAL REQUIREMENTS

3.1 Collaboration

The ICB is committed to operating in a sustainable environment where all opportunities for system wide efficiencies and economies of scale are considered and applied where applicable. This includes the sharing of operational resources or commitment to specific joint projects/contracts across the Hertfordshire and West Essex footprint for example, where this serves the best interest of the ICB's population.

Where a joint procurement is to be pursued by two or more ICBs, or other partner organisations (e.g., provider organisations where the ICB is involved in the contract) then the procurement must be underpinned by a Memorandum of Understanding and/or a Collaborative Agreement between all parties.

3.2 Grants

Where third sector organisations provide healthcare services, the ICB may elect to provide funding through a grant agreement. Use of grants can be considered where:

- The ICB is only making a partial contribution to the costs of a service (e.g. where a service is also supported by charitable donations or other funding streams).
- Funding is provided for development or strategic purposes.
- The provider market is not well developed.
- The services are innovative or experimental.
- Where funding is non-contestable (i.e., only one provider).

Grants will not be used to avoid competition where it is appropriate for a formal procurement to be undertaken. Where relevant, the ICB will undertake a mini competition in order to identify the most suitable organisation.

The ICB will follow NHS England and NHS Improvement Grant Agreement Guidance on the use of the draft model Grant Funding Agreement although the model grant agreement is non-mandatory and is for local adaptation as required.

3.4 Specifications

Specifications will be developed by the commissioner / procurement project lead for the service being procured being awarded or awarded under the PSR process before submission to the relevant Committee for approval. Subject matter experts will be used to ensure specification validity where specific expertise is required or where this is agreed in order to manage a real or perceived conflict of interest.

Where a clinical lead or any other third party including ICB 'seconded' are being used as subject matter experts in the development of a specification that will form the basis of a procurement process, the following factors need to be taken into consideration, before the individual carries out any work relating to the specification:

- a) Define the risk by asking the individual to complete a Conflict of Interest Declaration Form.

- b) Assess the level of risk once the conflicts of interest form is returned.
- c) Mitigate the risk – if the individual has raised a conflict that could give a provider a competitive advantage when bidding for the services being procured, that individual should either be removed from the process or their contribution should be managed in line with the ICBs Business Standards and Conflict of Interest Policy to ensure that any level of risk is mitigated, e.g. independent clinicians or individuals free from any conflicted issues should be used to develop specification for the procurement of services if there are high levels of risk associated with conflicts of interest.
- d) Record the Conflict of Interest and its mitigation in the ICBs conflict of interest register.

The specification can be shared prior to publication with the potential marketplace. It is good procurement practice to share the draft specification with interested bidders prior to the publication of procurement documentation to allow feedback from the market to help develop the specification and ensure there is clarity for bidders around the services to be procured.

- All suppliers should have sufficient time to prepare adequately for a tender.

The specification and evaluation model should be based on a study of essential needs and this should be documented. The requirements and evaluation model may be derived from past procurements and historic service use. All decisions should have a rationale and an audit trail reflecting how they are arrived at. Key service stakeholders should be involved in the process.

3.5 Wider Stakeholder Consultation and Engagement

The ICB Commissioning Lead will identify those stakeholders that should be part of consultation and engagement when preparing the Business Case for change and will work with the Communications Lead to develop an agreed Communication Plan for the Project Team.

Where it is identified that providers and patients should be engaged, then this opportunity will be advertised to ensure absolute transparency. This will include making available details of current service provision.

As part of the process of redesigning services, health commissioners have a 'duty to involve'. This duty is still in place in the Health and Social Care Act 2012. There are two main stages to the 'duty to involve'.

The first is an 'engagement' process, where commissioners will gather views from clinicians, patients, carers and other key partners. This phase is very important to the development and design of services.

The second phase is not always necessary, but will involve a wider consultation process, aimed at the general public, to gather views about the proposals. A proportionate response to each consultation process should be considered. The results can be used, alongside the engagement work to inform the procurement process.

Effective engagement is a key part of ICB procurement. Not undertaking engagement carefully can provide the greatest threat of challenge to a procurement process. The engagement activities will help inform whether a consultation process is required.

The ICB recognises its duty to involve relevant clinicians, potential providers, patients and the public on:

- The early stages of planning provision of services.
- The development and consideration of proposals for changes in the way those services are provided.
- Decisions to be made affecting the operation of those services, recognising that it is essential to enable patients to have a greater involvement in decisions about their care.

The ICB will adhere to the following principles on involvement during a procurement process:

- Engage widely throughout the process.
- Be clear about what the proposals are, who may be affected, what questions are being asked and the timetable for responses.
- Ensure that the engagement is clear, concise and widely accessible.
- Give feedback regarding the responses received and how the engagement process influenced the procurement.
- Implement a formal consultation process should there be any variations to the delivery of service.

SECTION 4

4.1 Procurement Arrangements

Background

The NHS is governed by the requirements of the following:

- The Public Contract Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020).
- Operational Guidance to the NHS Extending Patient Choice of Provider (Department of Health and Social Care).
- NHS England and NHS Improvement Guidelines.
- Cabinet Office Guidelines.
- Crown Commercial Services Guidance.
- Health Care Services (Provider Selection Regime) Regulations 2023 (PSR).

For ease of reference, this Policy has been divided into Healthcare Services and Non-Healthcare Services as defined by Health Care Services (Provider Selection Regime) Regulations 2023 (PSR) and The Public Contract Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020).

4.2 Healthcare Services – Provider Selection Regime

The NHS Long Term Plan set out the need to transform health and care services to meet increasing demand, deliver better outcomes and ensure the health and care system is financially sustainable.

To meet these goals, as well as to recover service delivery following the COVID-19 pandemic, the health and care landscape in England is changing. NHS bodies, local authorities and their partner organisations are increasingly working together to plan and deliver more integrated care and improve health outcomes for local people and communities.

The Health and Care Act 2022 (the 2022 Act) amended the National Service Act 2006 (the 2006 Act) to put in place legislative changes that support this, including the creation of Integrated Care Systems (ICSs). The legislation sets an expectation that all those involved in planning, purchasing and delivering health and care services will work together to agree and address shared objectives, and makes it easier for them to do so.

A key component of the changes introduced by the 2022 Act is the new Provider Selection Regime (“the PSR” or “the Regime”), which is set out within the Health Care Services (Provider Selection Regime) Regulations 2023 (the Regulations), to replace existing rules for the NHS when arranging ‘healthcare’ services and for local authority funded health care services.

The PSR replaces the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 (the PPCCR) and alongside its introduction, removes the procurement of healthcare services when procured by the ICB under the PSR from the scope of the Public Contract Regulations 2015 (the PCR).

The PSR has been designed to give the ICB more flexibility in selecting providers for healthcare services. Under the PSR, competitive tendering will be one tool for the ICB to use when it is of benefit, alongside other routes which may be more proportionate and which better enable the development of stable partnerships and the delivery of integrated care. The PSR continues to require the ICB to consider value for money as an important criterion, and to be transparent, fair and proportionate in their decision making.

The regime is established under Section 12ZB of the 2006 Act (as amended) and is set out in the Regulations. The statutory guidance sits alongside the Regulations to support organisations to understand and interpret the PSR.

4.2.1 Introduction of PSR for health care services

In keeping with the intent of the 2022 Act, the PSR has been designed to introduce:

- A flexible and proportionate process for selecting providers of health care services (so that all decisions can be made with a view to securing the needs of the people who use the services, improving the quality of the services and improving the efficiency in the provision of the services).

- The capability for greater integration and 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.

4.2.2 Existing Arrangements

The Regime makes it possible to continue with existing arrangements for service provision where those arrangements are working well and there is no value for people who use the service in seeking an alternative provider. Where there is a need to consider changing arrangements for service provision, it provides a fair, transparent, and proportionate process for decision-making, which includes the option of using competitive tendering.

4.2.3 The scope of the PSR

4.2.3.1 The scope of the PSR is set out in Regulation 3 (1).

4.2.3.2 The ICB are defined in Section 12ZB(7) of the 2006 Act.

4.2.3.3 The health service is defined in Section 275(1) of the 2006 Act.

4.2.3.4 Health care services are defined in Section 150(1) of the Health and Social Care Act 2012. The common procurement vocabulary codes for use under the PSR are defined in Annex A of the Provider Selection Regime Statutory Guidance - [NHSE PSR CPV Codes](#).

4.2.4 Which organisations do these Regulations apply to?

- NHS England
- Integrated Care Boards
- NHS Trusts and Foundation Trusts
- Local Authorities or combined authorities

4.2.5 When do these Regulations apply?

The Regulations specify that these rules apply specifically when the ICB procure health care services for the purposes of the health service in England (subject to provisions on mixed procurements). For the purposes of these Regulations 'health care services' means 'relevant health care services' in scope of the Regulations, and the 'arranging of health care services' refers to when a relevant Authority procures relevant health care services under the PSR.

The 'health service' is defined in Section 275 (1) of the 2006 Act as the health service, continued under Section 1 (1) of the 2006 Act. Section 1(1) refers to:

- ‘Comprehensive health service designed to secure improvement in physical and mental health of the people of England, and in the prevention, diagnosis and treatment of physical and mental illness.’
- This definition encompasses NHS health care services and the comprehensive health service that is provided in the delivery of the public health functions of the Secretary of state for Health and Social Care or local authorities under the 2006 Act.
- Additionally, for the purposes of this regime, ‘health care services’ has the meaning given in Section 150(1) of the Health and Social Care Act 2012 which defines health care as: ‘Health care’ means all forms of ‘health care provided for individuals whether relating to physical or mental health’.

As such, the health care services subject to this regime, only includes those services that provide health care (whether treatment, diagnosis or prevention of physical or mental health conditions) to individuals (i.e. patients or service users) or groups of individuals (e.g. where treatment is delivered to a group such as in the form of group therapy).

The PSR however only covers ‘relevant’ health care services, defined by the CPV codes set out in Schedule 1 to the Regulations (listed in Annex A of the Provider Selection Regime Statutory Guidance).

4.2.6 Summary

A service is in scope when a relevant authority is commissioning or sub-contracting a service that:

- Is provided as part of the health service, whether NHS or public health.
- Consists of the provision of health care to individuals or groups of individuals .
- Falls within one or more of the specified CPV codes.

In scope health care services include services provided by NHS providers, other public bodies, local authorities and providers within the voluntary, community, faith and social enterprise (VCFSE) and independent sectors. In broad terms, these are arranged by the NHS such as hospital, community, mental health, primary health care, palliative care, ambulance, and patient transport services for which the provider requires Care Quality Commission (CQC) Registration, as well as services arranged by local authorities focussed on substance use, sexual and reproductive health and health visits.

This definition purposefully excludes ‘non-healthcare’ or ‘health adjacent’ services from being arranged under the regime. This means, for example, that business consultancy, catering, administrative services, patient transport services that do not require CQC registration, or other services that may support healthcare infrastructure but do not provide health care directly to people must not be arranged under the regime (other than when legitimately part of a mixed procurement).

Health care services in scope of the regime must fall within one or more of the common procurement vocabulary (CPV) codes, which are set out in Schedule 1 of the Regulations and

set out within Annex A of the Provider Selection Regime Statutory Guidance. These list the available CPV codes which correspond to the services covered by this regime and procurement practitioners must use these to support decisions around scope. The ICB must use the most relevant CPV code(s) for the health care service they are procuring. Where a more detailed code is not available, the ICB are expected to use the overarching parent code for 'health services'.

4.2.7 What must not be arranged under this regime

Goods and services that are not health care services in scope of the regime must be arranged under the rules governing wider public procurement unless they fall within the definition of a mixed procurement set out in the regime. Examples of procurements not in scope:

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

4.2.8 Mixed procurement

Mixed procurement is defined in Regulations 3(2), 3(3), 3(4) and 3(5).

Contracts to deliver health care services may contain multiple elements, some of which are health care services clearly within the scope of the PSR, and some of which, if procured alone, would be within scope of the Public Contract Regulations.

When a contract comprises a mixture of in-scope health care services and out of scope services or goods, the ICB may only use the PSR to arrange those services when both of the below requirements are satisfied:

- The main subject matter of the contract is in-scope health care services.
- The ICB is of the view that the other goods or services could not reasonably be supplied under a separate contract.

The main subject matter of the contract is determined by the component that is higher:

- The estimated lifetime value of the health care services; OR
 - The estimated lifetime value of the other goods or service
- The ICB may only determine that other goods or services could not reasonably be supplied under a separate contract where it is of the view that procuring the health care services and other goods or services would, or would be likely to, have a material adverse impact on the ICBs ability to act in accordance with procurement principles.

The ICB must keep an internal record of the rationale for their decision under the transparency requirements.

Where the above tests are met, the PSR applies. Where these are not met, the PSR does not apply and the procurement must be undertaken in line with the PCR.

4.2.9 Procurement Principles

The PSR procurement principles are set out in Regulation 4.

The ICB will make sure when following this regime that it makes decisions in the best interests of people who use the service. To do this, the ICB will act with a view to all of the following:

- Securing the needs of the people who use the services.
- Improving the quality of the services.
- Improving efficiency in the provision of the services.

The ICB will also act transparent, fairly and proportionately when procuring health care services.

The ICB may consider the value of providing services in an integrated way, including with other health care services, health related services, or social care services, when acting in accordance with these principles.

4.2.10 Planning

To apply this regime effectively, the ICB will need to have a clear understanding of the services we want to arrange and the intended outcomes to be delivered.

These are prerequisites to any decision about selecting a provider. The ICB will establish these intentions in good time via the routine planning activity across the system. This will reflect the intentions within the commercial pipeline, and decisions taken under this regime will serve and reflect those intentions.

Any unplanning urgent situations will be dealt with in line with the PSR.

4.2.11 Provider landscape

The ICB will 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.

This knowledge will be extended beyond existing providers and will be a general feature of planning and engagement work, developed as part of the commissioning or sub-contracting process. This will enable the ICB to have sufficient evidence to confirm that the existing

provider is performing to the best quality and value to ensure that opportunities to identify improvements are not missed.

4.2.12 Proportionality

There is no minimum threshold for application of the regime. Therefore, the ICB will take a proportionate approach to ensure that the implementation of the regime does not create disproportionate burden relative to the benefits which will be achieved. It is also important that decisions are defensible and made following relevant considerations.

4.2.13 Due diligence, basic selection criteria and exclusions

When applying this regime, the ICB will undertake reasonable and proportionate due diligence on providers. The ICB will consider whether the organisation it enters into a contract with has the legal and financial capabilities and the technical and professional abilities to deliver the contract.

When implementing a service using Direct Award Process C, the Most Suitable Provider Process or a Competitive process, and when establishing a Framework Agreement, the ICB will assess if providers are considered suitable to provide a service through the application of the Basic Selection Criteria as outlined in Schedule 16. All basic selection requirements must be related and proportionate to the subject-matter of the contract or framework agreement.

The ICB will not award a contract to a provider, and may exclude a provider from any of the PSR processes, if the provider meets the exclusion criteria detailed in Regulation 20. A provider may offer evidence that it has taken measures to demonstrate its reliability despite meeting a criterion for exclusion. If the ICB considers these measures to be sufficient, the provider will not be excluded on this basis. If the ICB does not consider the measures to be sufficient, it will respond to the provider with a statement of the reasons for this decision.

The basic selection criteria may relate to:

- The providers suitability to pursue a particular activity (e.g. where the provider is required to possess a particular authorisation). The ICB may require a provider to provide evidence that they hold such authorisation.
- The providers economic and financial standing (e.g. minimum turnover levels and insurance requirements).
- The providers technical and professional ability (e.g. the necessary human and technical resources and experience to perform the contract to an appropriate quality standard).

4.2.14 Making decisions under the PSR

The PSR decision-making processes are set out in Regulation 6. The first step for the ICB in applying this Regime is to identify which of the following PSR processes are applicable.

4.2.15 Direct Award Process A – must be used when all the following apply:

- There is an existing provider of the health care services to which the proposed contracting arrangements relate.
- The ICB is satisfied that the health care services to which the proposed contracting arrangements relate are capable of being provided only by the existing provider (or group of providers) due to the nature of the health care services.
- Must not be used to conclude a Framework Agreement.

4.2.16 Direct Award Process B – must be used when all the following apply:

- The proposed contracting arrangements relate to health care services in respect of which a patient is offered a choice of provider (including where the ICB is legally required to offer choice to patients).
- The number of providers is not restricted by the ICB.
- The ICB will offer contracts to all providers to whom an award can be made because they meet all the requirements in relation to the provision of the health care services to patients.
- The ICB has arrangements in place to enable providers to express an interest in providing the health care services.
- Must not be used to conclude a framework agreement.

4.2.17 Direct Award Process C – may be used when all of the following apply

- The ICB is not required to follow Direct Award Process A or B.
- The term of an existing contract is due to expire, and the relevant authority proposes a new contract to replace that existing contract at the end of its term.
- The proposed contract is not changing considerably.
- The ICB is of the view that the existing provider (or group of providers) is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard.
- Must not be used to conclude a framework agreement.

Even when all the above criteria are met, the ICB can continue to choose to use the Most Suitable Provider Process or the Competitive Process for example where they want to test the market.

4.2.18 The Most Suitable Provider process – may be used when all of the following apply:

- The ICB is not required to follow direct award processes A or B.
- The ICB cannot, or does not, wish to follow direct award process C.
- The ICB is of the view, taking into account likely providers and all the relevant information available to the ICB at the time, that it is likely to identify the most suitable provider (without running a competitive process).
- Must not be used to conclude a Framework Agreement.

4.2.19 The competitive process – must be used when all of the following apply:

- The ICB is not required to follow direct award processes A or B.
- The ICB cannot or does not wish to follow the direct award process C or the most suitable provider process.
- The competitive process must be used if the ICB wishes to conclude a Framework Agreement.

Once the ICB has identified which of these circumstances applies, and has identified the appropriate PSR process to follow, the ICB will follow the processes set out within the NHSE substantive guidance.

The ICB will identify which PSR process is applicable sufficiently in advance of a contract coming to an end. The fact that a particular decision-making approach was used to select a provider in the past does not mean that the same approach must be used for that service in future.

Modifications are allowable within the terms of a contract to allow to make changes to services or circumstances. The section on contract modifications sets out the conditions and transparency requirements for modifications.

In limited circumstances, the ICB may need to act rapidly, for example to address immediate risks to patient or public safety, within which it would be impractical to follow the steps required within this regime.

4.2.20 Key Criteria

The ICB must consider five key criteria when applying 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.

4.2.21 Application of key criteria

The ICB will consider each of the key criteria in the regime when making decisions under Direct Award Process C, the Most Suitable Provider Process and the Competitive Process. Under these processes, the ICB must be able to justify decisions when following a PSR process and keep a record of this in line with decision-making and transparency requirements.

How the ICB assesses providers against the key criteria, including what evidence is considered, may vary according to the service subject to the process. This may include specific priorities.

4.2.22 Balancing the key criteria

The relative importance of each of the key criteria is not predetermined by the Regulations or the NHSE Guidance with no prescribed hierarchy or weighting for each criterion. The ICB will decide the relative importance of the key criteria for each decision made under this regime, based on the proposed contracting arrangements and what we are seeking to achieve from the services, including scenarios where a particular criterion might be a pass / fail. All criteria must be considered when following a PSR process.

When applying the key criteria, the ICB will be aware of wider requirements or duties when considering these decisions, for example adherence to NHS England's net zero ambitions and its social value commitment along with the need to ensure value for money is achieved when arranging health care services.

When making assessments against the key criteria under Direct Award Process C and the Most Suitable Provider process, the ICB is expected to utilise information and evidence from a range of sources, as well as their knowledge and experience of working with providers. A good understanding of the market, both local and national providers, is an essential element to ensure the processes are robust and defensible.

When using the Competitive Process, the ICB will only use the information contained within the bid to assess the bid.

The ICB will justify and record how the importance of each of the key criterion have been arranged for each service being implemented.

4.2.23 Records of decision-making

Regulation 24 sets out the relevant information requirements for each of the PSR processes set out within the regime.

The ICB must make and keep clear records detailing the decision-making process and their rationales. This must be undertaken for all provider selection processes set out within the PSR. This includes where a provider selection regime process was abandoned or where the ICB decided to return to an earlier step in the process.

This includes contracting for mixed procurements, including how the procurement meets the requirements for mixed procurements under the regime.

The ICB will also keep records of decisions and decision-making processes when modifying a contract, where applicable.

4.2.24 Annual Summary

The annual summary requirements are set out in Regulation 25.

The ICB will publish a summary of the application of the PSR annually online (via the ICBs annual reports or annual governance statement). The first annual summary to relate to contracts awarded using the PSR between 1st January 2024 – 31st March 2025, expected to be published no later than six months following the end of 2024/25 financial year.

Following the first annual summary, all other annual summaries will be published no later than six months following the end of the financial year it relates to.

The information within the annual summary will be in line with the requirements of Regulation 25.

4.2.25 Monitoring requirements

The monitoring requirements are set out in Regulation 26.

The ICB will monitor their compliance with the Regulations. The results of the monitoring will be published online annually (and may be integrated into other annual reporting requirements) and will include processes, decisions made under the PSR, contract modifications and declaration and management of conflicts of interests. The ICB may choose to use internal auditors to fulfil these requirements.

4.2.26 Reviewing decisions during the standstill period

The standstill period requirements, including for the reviewing of decisions, are set out in Regulations 12 and 14(3). Provision for independent expert advice is set out in Regulation 23. This includes how the PSR Review Panel may provide advice during the standstill period.

4.2.27 The standstill period

The standstill period must be observed in line with the PSR for processes awarded using Direct Award Process C, the Most Suitable Provider Process and the Competitive Process, including concluding a framework agreement or awarding a contract based on a framework agreement following a mini competition.

The standstill period must end before the contract can be awarded. This provides time for any provider who is aggrieved by the decision to make a representation and for the ICB to consider those representations and respond as appropriate.

The standstill period starts the day after the publication of an intention to award a contract and will last for a minimum of 8 working days.

The end of the standstill period will be at least five working days after the ICB has communicated its decision to the provider(s). This allows for providers that remain unsatisfied about the response given to seek the involvement of the NHSE PSR review panel.

4.2.28 Modification of contracts and framework agreements during their term

Contracts or framework agreements can be modified during their term where those modifications are in line with the arrangements set out within Regulation 13.

Dependent on the circumstance, permitted modifications can be made without following a new provider selection process, but in some cases will require the publication of transparency notices.

Modifications which make an existing contract or framework agreement materially different in character are not permitted under the regime and will require a new provider selection process to be undertaken.

Modifications are also not permitted where:

- The decision to make the modification is attributable to the relevant authority and it represents (i) a cumulative change of 25% or more in the lifetime of the original contract or framework agreement, and (ii) is £500,000 or more compared to the lifetime value of the original contract or framework agreement (when it was entered into).

In these cases, the ICB must follow the appropriate decision-making process to select a provider (or group of providers) for the substantially changed service).

4.2.29 Contract modifications in urgent situations

Contract modifications may need to be made urgently. In these circumstances, the ICB must still be transparent about their decision making. Details of what needs to be published in these situations and when can be found in the section below (4.2.30).

4.2.30 Urgent awards or contract modifications

The requirements for an urgent award or contract modification are detailed in Regulations 14(1), 14(2) and 14(4).

These set out the limited occasions where the ICB may need to act urgently and award, or modify contracts, to address immediate risks to patient or public safety. These circumstances include where:

- A new service needs to be arranged rapidly in an unforeseen emergency or local, regional or national crisis e.g. to deal with a pandemic.
- Urgent quality / safety concerns that 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, a provider becomes insolvent or experiences a sudden lack of critical workforce) and a new provider needs to be found.

In urgent situations, the ICB may make the following decisions without following the steps required under this regime:

- Re-award contracts held by the existing provider(s).

- Award contract(s) for new services.
- Award contract(s) for considerably changed services.
- Make contract modifications (without limitation).

An urgent award or modification must only be made by a relevant authority when **all the below apply**:

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

The ICB must not use the urgent award or contract modification provisions in this regime if the urgency is attributable to the ICB, not leaving sufficient time to make procurement decisions and run a provider selection process – poor planning is not an acceptable reason to use these provisions.

In these urgent circumstances, the ICB:

- Are expected to limit the contract term or modification term to that which is strictly necessary. This is advised to be long enough to address the urgent situation and to conduct a full application of the PSR for that service at the earliest feasible opportunity. It is anticipated that contracts awarded under Regulation 14 will have a duration of longer than 12 months. If the duration is longer, the ICB must justify and record this decision.
- Must keep records of their decision-making, including a justification for using an urgent award.

Must be transparent about their decision through issuing an urgent award notice. The ICB may also make specific urgent modifications to extend the length of an existing contract during the standstill period if advice is being sought from the PSR review panel, in accordance with Regulation 14(3).

4.2.31 Termination of contracts

The requirements for contract terminations are set out in Regulation 22. The ICB must ensure that each contract awarded contains provisions enabling its termination by the ICB if:

- The contract has been subject to modifications that are not permitted under the regime (see Sections 3.24, 3.25 and 3.26) without following a new provider selection process
- The provider, at the time of the contract award, should have been excluded from the procurement process in line with the exclusion criteria set out in Regulation 20.

4.3 Non-Healthcare Services – The Public Contract Regulations

All non-healthcare service contracts for the supply of Goods and Services with an anticipated value of more than £214,904 (inclusive of VAT) over the life of the contract must be subject to a formal procurement, in accordance with The Public Contracts Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020).

The government have been consulting on the Green Paper on ‘Transforming Public Procurement’ which addresses proposals to reform public sector procurement. This new set of Regulations (The Procurement Act 2023) will be applicable for the purchasing of goods or services which are not considered to be ‘healthcare’ services (likely any services which currently fall under the current non-light touch regime). The ambition is to create a new regulatory framework which delivers the best commercial outcomes with the least burden on providers and commissioners.

The ICB will update this policy when the new legislative reforms are enshrined in law.

For non-healthcare contracts below the above threshold, the decision relating where to advertise and who to invite to bid should be well reasoned and documented. The ICB have the option to choose whether to openly advertise opportunities above the value of £30,000 on the governments Contracts Finder website. Otherwise, a structured competitive quotation process must be used as follows:

Value (£) (inclusive of VAT)	Number of quotations required (minimum)	Process
Up to £24,999k	1 written quote with evidence	The resulting requisition must be accompanied by an appropriately signed record of the quotations received.
£25,000 - £213,466	3 written	For Non-Healthcare Services such as IT Services or professional services: Competitive Quote procedure with a written specification and detailed options appraisal following procurement best practice. Request at least 3 written quotes.

In the event that the financial threshold for procurement is subsequently exceeded within a competitive quotation process, this shall be reported to the Chief Executive and the Chief Financial Officer and be recorded at the ICB Audit Committee.

Where the contract is an integrated contract which has multiple commissioning organisations, the sign off approval is for the total value of the contract and not only for the contribution of the HWE ICB.

4.3.1 Splitting or disaggregation of contracts or waivers

There should be no splitting of procurements or waivers simply to avoid the application of a fuller procurement process.

4.3.2 False quotations and tenders and bid rigging

For procurements under the Public Procurement threshold, the ICB will have the right to use their discretion in deciding which individuals or companies should be invited to bid. In order to minimise fraud:

- Suppliers should be selected from an approved list (where available) according to predetermined and justifiable criteria.
- The use of negotiated or restricted tendering should be justified.
- The time and date for the return of tenders will be specified at the outset.
- Invitations to submit quotes or tenders will be retained. This will include all correspondence with potential suppliers.
- Bids will be received within the required timeframe.
- Exceptional decisions to include bids submitted after the deadline must be justified in writing.
- A record of quotes/tenders should be maintained, including the names of contractors and the amount of tenders submitted by each.
- An e-procurement system may be used.

Bid rigging occurs when bidders agree among themselves to eliminate competition in the procurement process, thereby denying the public a fair price. The ICB will undertake relevant checks to assist in detection of false tenders or quotes.

Any concerns identified during the procurement process relating to fraud or bribery shall be brought to the attention of the Local Counter Fraud Specialist for the ICB or the NHS Counter Fraud Authority either via the NHS Fraud Reporting Line 0800 028 4060 or online <https://cfa.nhs.uk/reportfraud>

4.3.3 Pilots

A pilot can only be used where the ICB is developing an innovative service / different commercial models etc. and there is a clear and documented need to test the service for a short-term period to ensure that it meets the requirements.

There is no guidance on the maximum time that a pilot contract can be in place for, however the contract duration must be justified and should be no more than it should reasonably take to gather sufficient evidence to assess the outcomes. Guidance to providers within the pilot specification should include including setting evaluation criteria to evaluate necessary outcomes etc.

Pilot contracts should not be a direct award either – Pilot projects must comply with UK Procurement regulations. If a pilot contract has been awarded for non-healthcare services via the PCR under a direct award the waiver process must be followed with an appropriate rationale for the direct award provided.

If the pilot contract is for healthcare services and falls within the scope of PSR then an appropriate process should be followed.

Once the pilot has relevant approval, the following factors need to be considered:

- Market Engagement activities should be developed to let the market know that the pilot is being undertaken. This should help to minimise challenge as the market is aware that there will be an opportunity in the future.
- It is important to identify the rationale for the pilot and the expected outcomes. Pilot contracts should have a clear end date and include a process for evaluating success at intervals during the pilot period.

The ICB will be mindful of “contract creep”. Once the Pilot has closed, the Options are:

- a. Do nothing (cease the service)
- b. Run a radically different pilot (due to findings of the first pilot)
- b. Go out to full Procurement

4.3.4 Confidentiality and conflicts of interest

The ICB will take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators in line with Regulation 24 of the Public Contract Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020) and Regulation 21 of The Health Care Services (Provider Selection Regime) Regulations 2023.

All those engaged in development and evaluation of a tender should be reminded that all documentation, including emails, may be called upon as part of any investigation of a complaint, and that the use of non-secure email or social media for any communication is not permissible.

In managing conflicts of interest, the ICB will:

- comply with its statutory obligations in relation to the management of conflicts of interest; and
- have regard to relevant Guidance published by NHS England and NHS Improvement in relation to the discharge of its statutory obligations.

Even when bias does not occur, a lack of transparency in the declaration and management of a conflict of interest can lead to the perception that wrongdoing exists.

Relevant authorities should clearly distinguish between those individuals who are involved in formal decision-making and those whose input informs decisions but who are not involved in decision-making itself (such as through shaping the relevant authority’s understanding of how best to meet patients needs and deliver care for its population.

The below sections reflect this distinction.

4.3.5 Conflicts of Interest - individuals involved in the development of a new service or contract

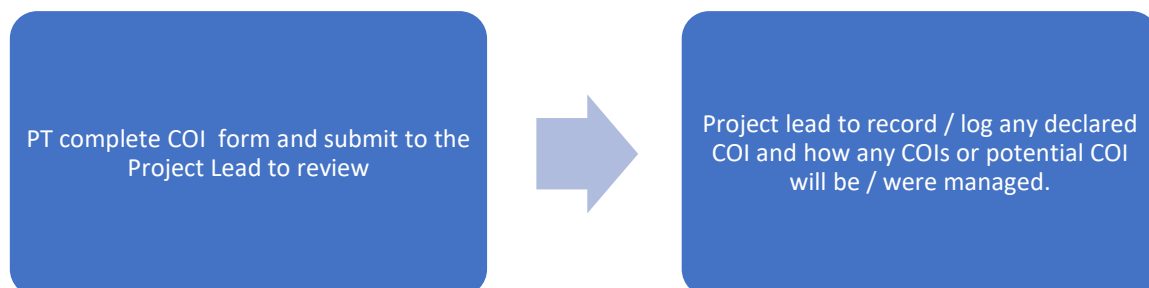
All those participating in the conduct of procurement processes under the Regulations, including third parties, will be required to sign a specific declaration of interest and a confidentiality agreement in accordance with the Managing Conflicts of Interest, Gifts, Hospitality and Sponsorship Policy.

This is applicable to all processes within all relevant sets of Regulations, including non-competitive routes. “All those participating” means anyone involved within the project team, whether that is a formal project team or not. A Project Team (PT) is defined as those individuals involved in detailed discussions and/or participation in relation to the development of the new service or contract. If information is sought from individuals who do not have an involvement within those detailed discussions, for example where a simple fact is required to be confirmed, a conflict of interest (COI) form is not required from those individuals.

The process for collecting, recording and managing conflicts of interest is provided below.

This process is specific for each individual service for which the ICB is awarding a contract. These must be collected and reviewed during the initial Planning Phase with those individuals involved in the project (as defined above) and will be subject to ongoing transparency of any conflict which might arise at any point during the process, including at contract award stage.

The project lead for that specific contract (this is defined as the individual who has the responsibility for the process) has the overarching responsibility for ensuring that conflicts of interest are managed in line with the ICBs regulatory requirements.



4.3.6 Conflicts of Interests – Decision Making Bodies

Decision making bodies within the scope of the Regulations are those groups / committees who have the responsibility for approving the recommendation to award a contract.

Within the NHS England Provider Selection Regime Statutory Guidance, it has been made clear that ICBs have been created with the intention of giving statutory NHS provider, local authority, and primary medical services (general practice) nominees a role in decision making.

These individuals are expected to act in service of the functions and duties rather than furthering their own direct or indirect financial, economic, or other personal, professional, or organisational interests. Whilst the Regulations allow for the fact that the ICB member may also be an employee, director, partner or otherwise holding a position within one of these organisations, the possibility of actual and perceived conflicts of interest arising will remain. In addition, any member who is an employee, director, partner, or otherwise holding a position within a provider taking part in a procurement process must recuse themselves from the decision-making process.

For all PSR decisions, ICBs must carefully consider whether an individual's role in another organisation may result in actual or perceived conflicts of interest and if so whether that outweighs the value of the knowledge they bring to the process.

Actions to mitigate conflicts of interest when making procurement decisions are expected to be proportionate and to seek to preserve the spirit of collective decision-making wherever possible. Mitigating actions are expected to account for a range of factors, including the impact that the perception of an unsound decision might have, and the risks and benefits of having a particular individual involved in making the decision.

Conflicts of interest within each specific decision-making group / committee will be managed in line with the ICBs overarching Standards of Business Conduct and Conflicts of Interest Policy and any Terms of Reference for that group / committee.

Where decisions are being made to award a contract relating to a healthcare service which falls within the Provider Selection Regime, the ICB will follow the transparency requirements in relation to keeping appropriate internal records and the publication of identified conflicts of interest alongside the confirmation of the decision to select a provider.

4.3.5 Complaints and Dispute Resolution

The ICB will have in place a separate Competition Dispute Resolution process to hear any complaints from organisations who consider that the ICB, or its procurement support agent, has not complied with applicable regulation or legislation, this Policy, or any other relevant or associated Policies.

4.3.6 Market analysis, development, and management

The Commissioning Project Lead will discuss with the Procurement Lead the level of analysis required for each project to establish:

- Whether there are already examples of analysis in this field available.
- Whether there would be benefit in scoping the market analysis over a wider area.
- Who will lead the analysis, and the conduct, format and timescale of the exercise.

4.3.7 Procurement Law in the Public Sector

Public sector procurement is subject to national procurement rules and regulations and it is therefore critical that all procurement activity is conducted consistently, accurately, and effectively. The legal framework for public procurement is set out in The Public Contracts Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020) (the "Regulations"). Where Contracting Authorities (including NHS organisations) wish to purchase Supplies, Services or Works which are over the relevant public procurement thresholds (as set out below) (the "Thresholds") they must also consider the definitions of Supplies, Works and Services that are as follows:

- **"Supplies"** contracts are essentially those for the supply (including purchasing, leasing and installation where appropriate) or hire of products.
- **"Works"** is the execution and/or design of works, working being defined as "the outcome of building or civil engineering, works taken as a whole that is sufficient of itself to fulfil an economic and technical function".
- **"Services"** includes, for example, services such as maintenance of equipment, transportation, consultancy, technical services, etc.

4.3.8 Thresholds

Where public sector bodies are purchasing supplies or services or commissioning works, which are over the relevant Public Procurement Threshold, then the Regulations must be complied with insofar as they apply to the subject of the procurement. The Public Procurement Thresholds as at January 2024. They are generally recalculated every 2 years and are communicated via a Procurement Policy Note (PPN) on the www.gov.uk website

- Supplies and Services e.g. IT Services or Patient Transport Services that are not part of the Light Touch Regime: £214,904 (inc. VAT).
- Light Touch Regime Services (excluding 'healthcare' services which fall within the PSR): £663,540.
- Works £5,372,609 (inc. VAT).

Please note that figures are **inclusive of VAT and should include all extensions, prizes and renewals and reflect the cumulative annual contract value** if the contract is for a period more than one year. **Contracts must not be artificially broken down to avoid the application of the Regulations.**

However, even where NHS organisations make purchases which are below this limit then they will still need to ensure that they comply with the general principles of transparency,

non-discrimination, and proportionality by using those procedures (as set out below) (“the Procedures”).

4.3.9 Distinction between ‘Light Touch’ Regime and ‘non-Light Touch’ Regime Services

PCR 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020) splits categories of Services into Schedule 3 (the “Light Touch” Regime) and Non-Schedule 3 (the non - “Light Touch” Regime).

- “Light Touch” Regime Services – only some of the procurement rules as set out in PCR 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020) apply.
- “Non-Light Touch” Regime Services – these are subject to the full rigour of the PCR 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020) and case law around the procurement rules. IT Services and professional services are examples of services that are likely to fall within this Category.

4.3.10 Contract extensions and variations to contracts during the contract term

In accordance with regulation 72 of the PCR 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020), contracts over the Public Procurement Threshold may only be varied in the following circumstances:

1. Where modifications have been provided for in the original procurement documents and/or would not alter the nature of the contract.
2. Where the modification is less than 10% of the value of the contract and does not change the nature of the contract.
3. for additional services or supplies by the original contractor that have become necessary and were not included in the initial procurement and where a change of contractor:
 - cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installation procured under the initial procurement, or
 - would cause significant inconvenience or substantial duplication of costs for the ICB.

In the above circumstances any increase in price must not exceed 50% of the value of the original contract

4. where all of the following conditions are fulfilled:
 - the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;
 - the modification does not alter the overall nature of the contract; and
 - any increase in price does not exceed 50% of the value of the original contract.
5. Where a new contractor replaces the original contractor e.g. in the case of a merger or takeover.

Modifications to contracts over the Public Procurement Threshold may also require completion of the tender waiver process and the publication of a Modification notice in the Find a Tender Service prior to the award. The advice of the Procurement Lead must be sought in these circumstances.

Contracts cannot be extended unless there is provision in the original procurement documents to do so or one of the provisions of Regulation 72 applies. A new procurement procedure is required if the contract variations or extensions would be contrary to the Procurement regulations.

financ4.3.11 The Procedures

They apply when public authorities (including NHS organisations) and utilities seek to acquire supplies, services, or works (e.g. civil engineering or building) the following procedures must be followed before awarding a contract when its value exceeds set thresholds. Below are the most common routes to market all of which the ICB may utilise as and when appropriate.

It is nevertheless essential to note that with regards to Light Touch Regime Services, the Contracting Authority has the right to amend the procedures as necessary.

a) Restricted Procedure

The Restricted Procedure is used where the Contracting Authority wants to restrict the number of bidders who will be issued with the Invitation to Tender. Under the Restricted Procedure, a minimum of five (5) applicants must be invited to go through to the next stage of the procurement process (provided that there are five (5) suitable applicants). If there are less than five (5) suitable applicants then you can proceed with the procurement process, provided that the number of applicants selected is sufficient to ensure genuine competition.

b) Open Procedure

In the Open Procedure all applicants who respond to the Contract Notice will be invited to submit a tender for the contract opportunity. Generally speaking, the Open Procedure will be used for simple and straightforward procurements.

c) Competitive Dialogue

The Competitive Dialogue procedure allows the contracting authority to enter into dialogue with bidders, following a Find a Tender Service notice and a selection process, to develop one or more suitable solutions for its requirements and to determine which chosen bidders will be invited to tender. The Competitive Dialogue procedure is a flexible procedure, suitable where there is a need for authorities to discuss aspects of the proposed contract with candidates. For example, the procedure would be used where authorities cannot define clearly in advance the technical means capable of satisfying their needs or objectives, or where there is a range of options for the legal and/or financial structure of a project.

d) Framework Agreement

Framework agreements are pre-tendered agreements which are established in compliance with the PCR2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020) and which, once established, can be used by the ICB to purchase certain products and/or services without the need to carry out a full procurement process.

A framework can be established:

- By the ICB for its own use
- By another ICB, Contracting Authority or central purchasing body such as the Crown Commercial Service.

Various existing frameworks are available for the ICB to use such as the Crown Commercial Service (CSS) to purchase goods or services without a full local tender. Each framework will have its own ordering process to follow but the timescales and transaction costs are usually far lower than running a full procurement. The terms and conditions applicable to any subsequent call-off contract are defined by the particular framework agreement and may not be compatible with the NHS standard contract and therefore advice must be sought from the framework owner prior to conducting a mini-competition.

e) Accelerated Procedures

These can be used in a Restricted or Negotiation with a call for competition procedure where urgency makes the normal timescale impractical. It does not alter the processes of the procedure, but it does reduce the timescales: The normal time limits of 30 days (or 25 days for electronic) to express an interest can be reduced to 15 days.

f) Negotiated Procedure without Prior Publication (Direct Award)

It is recommended that this procedure is not used without good reason. It is sometimes used when other procedures such as a Restricted Procedure has failed or where only a single potential provider has been identified. A negotiated procedure can then begin identifying the organisation and confirming to the market that negotiation has begun to contract with this supplier.

g) Competitive procedure with negotiation

This is not the same as the existing competitive dialogue procedure. The competitive procedure with negotiation under which a selection is made of those who respond to the advertisement and only they are invited to submit an initial tender for the contract. The contracting authority may then open negotiations with the tenderers to seek improved offers.

Any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by the contracting authority.

In the procurement documents, contracting authorities shall:

- Identify the subject-matter of the procurement by providing a description of their needs and the characteristics required of the supplies, works or services to be procured.

- Indicate which elements of the description define the minimum requirements to be met by all tenders.
- Specify the contract award criteria.

The information provided must be sufficiently precise to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the procedure.

h) Innovation Partnership Procedure

This is intended to allow scope for the **research and development** of an innovative product, service or works that cannot be supplied by the current market together with the purchase of such product or the commissioning of such services should the contracting authority wish.

This new mechanism allows Contracting Authorities to team up with either a single or multiple partners to research and develop an innovative outcome. Essentially, Innovation Partnerships allow public authorities to launch a call for tender bids without pre-empting the solution, leaving room for suppliers to come up with an innovation in partnership with the authority. The procedure can be structured into successive stages of research and development and delivered without going out to further procurement for each stage of R&D, prior to subsequent purchase.

Similarities can be drawn between Innovation Partnerships and Competitive Dialogue. Competitive Dialogue solutions are developed in dialogue, while Innovation Partnership solutions are developed once a single or multiple partners have been identified. The main advantage of the Innovation Partnerships procedure is that it allows the contracting authority to pursue a staged development process. For example, if initial research showed that the desired solution was unlikely to be achieved, the authority could then stop the Innovation Partnership process rather than making further, potentially fruitless, commitment to it.

i) Pseudo Dynamic Purchasing System (PDPS) (for Light Touch Regime services only)

A Pseudo Dynamic Purchasing System (PDPS) provides a shortlist of suppliers from which buyers can conduct an e-competition for tenders. The wording enables Suppliers to apply to join the PDPS at any point during its cycle. A PDPS works in two stages; the first stage sees a contracting authority issue a call for competition in Finder a Tender Service, expressing their intention to establish a PDPS. All suitable applicants, who meet the selection criteria and avoid exclusion, are admitted onto the Pseudo Dynamic Purchasing System. Depending on the size and structure of the PDPS, it may be divided into categories (e.g. of different services to be supplied); in such cases, suppliers are admitted to a relevant category or categories. Second Stage: Once the Pseudo Dynamic Purchasing System has been set up, the authority can use it to award specific contracts. This is done by inviting all suppliers in the relevant category to tender.

4.3.12 Advertising the requirement

Find a Tender Service Contract Notices

Under the PCR 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020), it is mandatory for Commissioners to advertise all Light Touch Regime services over the public procurement threshold values set out in the table below.

PIN – Prior Information Notice - published normally annually to indicate the possible contracts which may be advertised in the coming year.

- Useful if you wish to give the market lots of time to get ready
- Useful if you wish to shorten the turnaround time for the Tender.
- PIN – Prior Information Notice with call for expression of interest – informs the market of your intentions, giving the market a deadline to express an interest.

This is useful to see who/how many providers are interested. This is particularly pertinent for large, highly complex procurement exercises or Alliance Contracts.

4.3.13 Thresholds for contract advertisements

Contract value for ICBs	Advertising requirements for ICBs	Type of process	Contract award notice
Below the thresholds	No advertising requirements	N/A	N/A
Above public procurement threshold: Goods and services: £214,904 (inc.VAT) Works: £5,372,609 (incl. VAT)	Find a Tender Service	Open, Restricted, Competitive Dialogue, Competitive Procedure with negotiation, or innovation partnership	Find a Tender Service
Above public procurement threshold: - Light Touch Regime Services: £663,540 (net of VAT)		“light touch” - that complies with transparency and equal treatment	

For the purposes of advertising, the estimated contract value will continue to be provided exclusive of VAT. Similarly for contract award notices these will continue to be published exclusive of VAT. This applies even where VAT is recoverable.

4.3.14 Tender Evaluation

The evaluation process will be undertaken using e-procurement systems and should seek to identify the most economically advantageous bid(s), both in terms of qualitative and quantitative criteria. The ICB also recognises the regulatory obligations to maintain certain records in connection with the processes associated with the awarding of contracts.

Evaluators will attend a mandatory briefing/training session covering:

- The procurement and evaluation process.
- The service specification.

Evaluators will receive clear written instructions and procedures to enable them to undertake their evaluation function.

In conducting the evaluation, the evaluators must act in accordance with the key principles of The Public Contracts Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020):

- Fair & Open Competition.
- Non-discrimination.
- Equal Treatment.
- Transparency.
- Proportionality.

All recorded comments and notes would be subject to being made available under a FOIA request. Confidentiality must be respected and maintained throughout the Evaluation Process. Any potential or actual conflict of interest must be advised in advance of the tender evaluation. Email and written communications are subject to Freedom of Information Act requests.

Stakeholder involvement in scoring/evaluating tenders should be part and parcel of any good procurement process, regardless of whether it is NHS or not.

4.3.15 10 day standstill period (PSR please refer to section 4.2)

A standstill period is a period of at least 10 calendar days between the decision to award a public contract and the signing of the contract and is intended to give unsuccessful tenderers an opportunity to challenge the decision before their rights to obtain relief other than damages are closed off. A Standstill period is mandatory for Non-Light Touch Regime Services. As part of Procurement Best Practice this should be adopted for all Light Touch Regime Services, including Healthcare services.

Any complaints or queries received will be dealt with in a timely, fair and transparent manner.

4.3.16 Record Keeping

All decisions will be documented, including a clear rationale for the choices made.

4.3.17 Waivers

This process only applies to the procurement of non-healthcare services arranged under the PCR 2015 (set out in Section 4.3). The waiver process is not required where the value falls below £25,000 (including VAT and for the whole life of the proposed contract, including cumulative value if those services have been provided by the same supplier prior to any proposed new contract).

Waivers should not be used for healthcare services arranged under the PSR (Section 4.2).

The ICB is committed to ensuring that services are procured in accordance with legislation. In limited circumstances the need to request quotations or competitive tenders may be waived. Regulation 32 of the PCR 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020):

A copy of the ICB Waiver form is attached as Appendix 1.

The only exceptions where formal tendering need not be applied are:

- in very exceptional circumstances where the Chief Executive decides that formal tendering procedures would not be practicable or the estimated expenditure or income would not warrant formal tendering procedures, and the circumstances are detailed in an appropriate ICB record;
- where the requirement is covered by an existing contract and there is an agreed and signed record of a contestability and value for money assessment;
- where a consortium arrangement is in place and a lead organisation has been appointed to carry out tendering activity on behalf of the consortium members;
- where the timescale genuinely precludes competitive tendering (failure to plan the work properly would not be regarded as a justification for a single tender);
- where specialist expertise is required and is available from only one source and this has been evidenced by market consultation;
- when the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate;
- there is a clear benefit to be gained from maintaining continuity with an earlier project. However, in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering; and
- for the provision of legal advice and services providing that any legal firm or partnership commissioned by the ICB is regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council for England and Wales in relation to the obtaining of Counsel's opinion) and are generally

recognised as having sufficient expertise in the area of work for which they are commissioned.

The Chief Financial Officer will ensure that any fees paid are reasonable and within commonly accepted rates for the costing of such work.

The waiving of competitive tendering procedures should not be used to avoid competition or for administrative convenience.

In any of the circumstances detailed in the above exceptions, a Tender waiver Form must be completed by the procurement project lead and submitted to for approval by the Chief Financial Officer and the Accountable Officer. Copies of the signed waiver forms should then be tabled for noting at the ICB Audit and Risk Committee. The same process will be used to waive the request for quotations.

In addition, tender waivers over the Public Procurement Thresholds usually require the publication of a Voluntary Ex-Ante Transparency (VEAT) notice in the Find a Tender Service platform prior to the award. The advice of the Procurement Lead must be sought in these circumstances. The fact of the waiver and the reasons should be documented and recorded in an appropriate ICB record and reported to the Audit Committee at each meeting.

SECTION 5

National Policy and Guidance

5.1 Cabinet Office Guidelines

The ICB will have to ensure it complies with Cabinet Office policy and guidance by publishing all tender opportunities and contract awards over £30,000 on Contracts Finder. This obligation only arises if the authority has advertised the contract opportunity elsewhere (e.g. on its website).

Additionally, in line with the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013, If a commissioner decides to publish an intention to seek offers from providers in relation to a new contract for the provision of NHS health care services, it must publish a contract notice on Contracts Finder.

5.2 NHS Constitution

The NHS will have to ensure that any of its procurement activities or market interventions take account of the provision of the Constitution and any associated DHSC policies and guidance documents.

5.3 ICB obligations in respect of Section 256 Agreements

The ICB must also meet a number of conditions when making a grant under 256, these are set out in the NHS (Conditions Relating to Grant Payments by NHS Bodies to Local Authorities) Directions 2013:

- The ICB is satisfied that the payment is likely to secure a more effective use of public funds than the deployment of an equivalent amount on the provision of health services.
- Where the grant payment is to meet all or part of the capital costs of a project, the grant amount must be determined before the project begins.
- Where the grant payment will be used by the local authority to fund part of a project, the ICB must be satisfied that the local authority intends to meet the remaining costs of the project. The ICB must also be satisfied that this will continue for as long as both the ICB and the local authority consider the project to be necessary or desirable.
- The ICB must ensure, so far as is practicable, that the payment is used by the local authority in such a way as will secure the most efficient and effective use of the amount paid.
- If during the course of the grant period, the local authority reduces the level of service it provides below the level originally agreed then the ICB may reduce accordingly the amount of any further payments so far as is practicable, ensure that the payment is used by local authority in such a way as will secure the most efficient and effective use of the amount paid.

The ICB will react to this requirement by ensuring it has the capacity and specialist resource to enable it to make the most appropriate decision to meet the contingent circumstance through procurement management and best practice processes.

SECTION 6

Procurement Management and Best Practice

6.1 E Procurement

The ICB will use e-procurement systems so that the various stages of the procurement process, including the decision making process are transparent and auditable.

6.2 Procurement Planning

Where the ICB has identified a number of potential imminent procurements, robust procurement processes in line with national policies and strategies will support the procurement for each of the projects progressed. Where required, partnership working will be embraced to maximise quality and productivity of all services contracted.

Each procurement will have a robust procurement project plan setting out key roles and responsibilities, the outcome of risk assessments and plans to address identified risks.

6.3 Using the Correct Contract

All staff must ensure the correct use of contract to procure services in line with DHSC guidance, NHS England, including the use of the NHS Standard Contract and the NHS Standard Terms and Conditions of contract for the purchase of goods and supply of services.

The ICB may wish to obtain legal support with completing schedules within the NHS standard contracts and/or constructing bespoke contracts. Unless using a recognised framework agreement, any deviation from the NHS Standard Contract or NHS Provision of Goods and Services contract must have ICB Executive Team approval.

6.4 Post-Procurement Monitoring

Contract management and post-procurement review are mandatory features of the post contract award stage and will require effective monitoring systems to be implemented. This is key to managing risk.

SECTION 7

7.1 Training and Awareness

All ICB staff and others working with the ICB will need to be aware of this policy and its implications. It is not intended that staff generally will develop procurement expertise, but they will need to know when and how to seek further support.

The most urgent requirement is that all commissioning staff throughout the ICB should know enough about procurement to know to seek help when they encounter related issues; they must also be able to give clear and consistent messages to providers and potential providers about the ICB's procurement intentions in relation to individual service developments.

Awareness of procurement issues will be raised through organisational development and training sessions for clinical and non-clinical members of the ICB.

The ICB has access to an expert procurement team and will have direct access to Attain that can provide commissioners and other ICB staff with current up-to-date procurement advice and to ensure appropriate process governance is adhered to. The training shall be coordinated by the ICB's professionally qualified procurement team.

Decision makers such as procurement evaluation panel members will have access to appropriate levels of training in regard to procurement matters commensurate with their responsibilities. This will include general awareness of regulatory obligations and how and when to seek further support, advice and guidance.

Training provided to staff and others working for the ICB, will cover guidance on how to report potential fraud and bribery risks, as well as provide guidance on potential fraud and bribery risks in relation to procurement, both pre and post contract risks.

7.2 Equality Impact Assessment

Any procurement conducted by the ICB should consider and adhere to the Equality Act (2010). This Act requires commissioners not to discriminate on any grounds against any

potential provider. Potential providers will be treated in the same respect during stages of agreeing contracts and implementing contracts.

As part of the ICB's consultation process an equality impact assessment will be undertaken at relevant stages in the procurement process to ensure that the proposed/planned changes are assessed with regard to impact on groups, individuals or communities. The outcomes of such equality impact assessments will be published by the ICB upon request and as part of its equality scheme.

7.3 Ethical and Sustainable Procurement

With a significant budget, the way we spend this money will have a significant impact on the area we serve. The ICB can have a significant impact on the local health economy by helping reduce health inequalities and improving the wellbeing of the community we serve. This will be achieved by commissioning services that are appropriate and from providers best placed to provide those services.

When making purchasing decisions we need to consider the opportunities for any additional social, economic or environmental benefit that we can bring to the community whilst working within the procurement rules and principles.

The Integrated Care Board will use its best endeavours to develop and utilise local providers wherever possible taking due notice of procurement rules and regulations. The location of services will be considered. For example, a very specific localised service may be best provided by a local provider.

The ICB is committed to reducing environmental impacts and supporting the Greener NHS delivery of a 'net zero carbon' health service. Our procurement process will include a 'Net Zero carbon' expectation/ask in line with relevant national guidance and strategy.

To assist the development of providers the ICB will hold bidder development workshops to describe commissioning intentions and to give help and guidance on procurement processes. In hosting these workshops all providers, both current and potential, should be invited as all providers should be treated equally. The Contracts Finder website will be used to publicise the events.

7.4 Common breaches of procurement processes identified by the NHS Counter Fraud Authority (NHSCFA)

- No tender process adopted at all.
Inappropriate use of tender waivers.
- Undervaluation of the contract.
- Splitting contracts with no rationale.
- Negotiation with one supplier contrary to the rules of the procurement process being adopted.
- Negotiation of key contract issues post award.
- Failure to keep or publish evaluation criteria.
- Vague specification criteria.
- Failure to receive a sufficient number of bids.

- Failure to declare interests.
- Failure to provide a rationale for the selection of certain bidders chosen to be invited to tender/quote.

Breaches of procurement which occur as a result of suspected fraud and bribery will be reported to the ICB Local Counter Fraud Specialist or the NHS Counter Fraud Authority either via the NHS Fraud Reporting Line 0800 028 4060 or online <https://cfa.nhs.uk/fraud-prevention/reference-guide/cyber-enabled-fraud/reporting>

7.5 Freedom of Information Act 2000

The ICB will comply with requirements set out in the Freedom of Information Act (2000) while conducting procurements. On commencement of the procurement process the ICB will make potential bidders aware of the requirement for the ICB to comply with the Act.

7.6 Monitoring and Compliance

The Audit Committee is the responsible Committee for approving this policy. The policy will be reviewed annually.

In addition, it will be kept under informal review in the light of emerging guidance, experience and supporting work. Given the changing environment it is likely that this Policy will need to be updated within a relatively short timescale.

Effectiveness in ensuring that all procurements comply with this Policy will primarily be achieved through “business as usual” review by the relevant Head of Service within the ICB.

REFERENCE MATERIAL

Reference	Website
The Public Contract Regulations 2015	https://www.legislation.gov.uk/uksi/2015/102/contents/made
NHS Provider Selection Regime 2023	https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/
Public Services (Social Value) Act 2012	Public Services (Social Value) Act 2012 (legislation.gov.uk)
Operational Guidance to the NHS Extending Patient Choice of Provider	Operational Guidance to the NHS : extending patient choice of provider - GOV.UK (www.gov.uk)
The annual Everybody Counts Planning for patients that outlines specific requirements that is appropriate to commissioned services	https://www.england.nhs.uk/everyonecounts/
Cabinet Office's Transparency Requirements for publishing on Contracts Finder	https://www.gov.uk/government/publications/transparency-requirements-for-publishing-on-contracts-finder
Thresholds	Procurement Policy Note 10/21 – Thresholds and Inclusion of VAT - GOV.UK (www.gov.uk)
NAO – General Procurement Guide	http://www.nao.org.uk/freedom-of-information/wp-content/uploads/sites/13/2013/03/Procurement_manual.pdf
Protecting and Promoting Patients Interests: The role of sector regulation	Protecting and promoting patients' interests: the role of Sector Regulation - GOV.UK (www.gov.uk)
Cabinet Office Guidelines	EU procurement directives and the UK regulations - GOV.UK (www.gov.uk)
Managing conflicts of interest	NHS England » Managing conflicts of interest in the NHS
Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)	Microsoft Word - uksi_20060246_en.doc (legislation.gov.uk)
Equality Act 2010	untitled (legislation.gov.uk)
Bribery Act 2010	untitled (legislation.gov.uk)
Pre-contract procurement fraud and corruption	Welcome to the NHS Counter Fraud Authority (NHSCFA) public website NHS Fraud? See it. Stop it. Report it.
Public Service (Social Value) Act 2012	https://www.legislation.gov.uk/ukpga/2012/3/enacted
Health and Care Act 2022	https://www.legislation.gov.uk/ukpga/2022/31/contents/enacted

APPENDICES

Appendix 1 – Waiver form



2. Tender Waiver
Form HWE ICB_v.2 re

Appendix 2 – Managing Conflicts of Interest

HWE ICB Constitution Conflict of Interest Management :

[Herts and West Essex ICB » Arrangements for conflicts of interest management](#)

NHS England Guide to Managing Conflicts of Interest :

[NHS England » Managing conflicts of interest in the NHS](#)

Appendix 3 – Procurement Register



App3 HWE ICB
Procurement Register

Appendix 4 - Provider Selection Regime toolkit products

<https://www.england.nhs.uk/publication/provider-selection-regime-toolkit-products/>

GLOSSARY

Term	Definition
Accelerated procedure	where the relevant timescales for the particular type of procurement process can be shortened, e.g. in certain circumstances where a procurement is "urgent".
Award criteria	means the list of key criteria that is used to assess a Provider's tender.
Bribery (active and passive)	Giving or receiving a financial or other advantage in connection with the improper performance of a position of trust, or a function that is expected to be performed impartially or in good faith. (Active bribery: promising or giving a financial or other advantage. Passive bribery: agreeing to receive or accepting a financial or other advantage).
Call-off Contract	means an individual contract awarded under a framework agreement for the provision of particular services, goods or works.
CCS	Means the Crown Commercial Service and brings together policy, advice and direct buying; providing commercial services to the public sector.
Common Market	a single market within the European market in which the free movement of supplies, services, capital and persons is ensured and in which European citizens are free to live, work, study and do business.
Conflict of Interest	<p>a. A situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties as a public official, an employee, or a professional.</p> <p>b. an organization gaining an unfair advantage due to their ability to become privy to information relating to another</p>
Contract Disaggregation	An alternative term for contract splitting.
Contract Notice	A notice for any contracting opportunity to facilitate expressions of interest from the market.

Contract Splitting	By splitting what should be a single contract into a number of parts having smaller value, it is possible to avoid thresholds that would otherwise ensure a more stringent procurement process is applied. This is not permitted by the procurement regulations.
Contracting Authority	is a body that is subject to the procurement Regulations. A list of the relevant organisations is defined and included in Regulation 2(1) of the Public Contracts Regulations 2015 (<i>as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020</i>). There are also some "catch all" statements covering public bodies not specifically included in the list.
Cross-border interest	means a procurement, regardless of contract value that could be deemed to be of interest to other EU member states.
Finder a Tender Service Contract Notice	Find a Tender has replaced the EU's Tenders Electronic Daily from 1 January 2021 for high value contracts in the UK from OJEU the European Union's Official Journal. Means a standard form notice placed in the European Union's Official Journal Find a Tender Service (the UK's eNotification Tender Service) confirming that a Contracting Authority is intending to procure supplies, services or works.
Framework	means an umbrella agreement which establishes the basis on which subsequent requirements for supplies, services or works can be met by suppliers appointed to the framework.
ICB	Integrated Care Board
ICP	Integrated Care Partnership
ICS	Integrated Care System
ITT	ITT: Invitation to Tender. means a document which invites Contractors and Providers to bid for the provision of supplies, services or works.
Light Touch Regime Services	the services listed in Schedule 3 of the Public Contracts Regulations 2015 (<i>as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020</i>). Only some of the EU procurement rules as set out in Public Contracts Regulations 2015 (<i>as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020</i>) apply – namely, obligations relating to advertisement, technical specifications, post-award information and principles of equality, proportionality, transparency and non-discrimination.

MEAT	means ‘Most Economically Advantageous Tender.’ MEAT enables tender evaluation on the basis of the quality of the tender offer as well as the price. The quality is scored against a set of award criteria identified for each tender.
Mini-Competition	a mini competition is held with all those suppliers within a framework agreement who are capable of meeting a particular need when the details of the framework agreement are not sufficient to enable an immediate call-off. Where a procuring party wishes to procure under a framework agreement but the framework has insufficient information to allow the procuring party to confirm which supplier would offer the most economically advantageous tender, then a mini-competition is the method used to select a supplier.
Non-clinical services	Means any service that relates to the health economy but is not a service which delivers clinical interventions.
Prior information notice (PIN)	A PIN can have three meanings: 1.Publication by an authority in Find a Tender Service of details of what they intend to procure in future. 2.Use of a PIN can reduce some of the timescales in a procurement. 3.The ICB can use as a Call for Competition.
Public Contracts Regulations 2015 (PCR2015) as amended by the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (‘PPAR 2020’)	means the Public Contracts Regulations 2015 (<i>as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020</i>). This is the UK procurement legislation setting out procedures for the award of contracts for supplies, services and works.
Health Care Service Provider Selection Regime 2023	Means the ‘Provider Selection Regime’ or ‘PSR’ or ‘the Regime’. This is the NHS legislation setting out procedures for the award of ‘healthcare’ contracts.
Selection criteria	means criteria used at the Selection Questionnaire stage to select the bidders that are to proceed to the next stage. Selection criteria should only relate to technical and professional capability and financial and economic standing and certain grounds for disqualification.

Selection Questionnaire	a Selection Questionnaire (SQ) enables a contracting authority to evaluate the suitability of potential suppliers in relation to their technical knowledge and experience, capability and financial and economic standing. SQs are used in the restricted procedure, negotiated procedure and competitive dialogue procedure as a means of selecting the bidder to go forward to the next stage of the procurement process.
SLA	Agreement between the ICB and Attain. Attain is an agent of the ICB.
SME	stands for small and medium-sized enterprises – as defined in EU law: EU recommendation 2003/361. The main factors determining whether a company is an SME are: number of employees and either turnover or balance sheet total.
Sub-procurement thresholds	means a contract for supplies, works or services that falls below the public procurement financial thresholds
TFEU	means the Treaty on the Functioning of the European Union. The TFEU sets out organisational and functional details of the European Union.
TUPE	means Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI/2006/246) as amended
Value for Money or VFM	is a term used to assess whether or not an organisation has obtained the maximum benefit from the supplies and services it both acquires and provides, within the resources available to it. Economy - careful use of resources to save expense, time or effort. Efficiency - delivering the same level of service for less cost, time or effort. Effectiveness - delivering a better service or getting a better return for the same amount of expense, time or effort.