ICB003 Procurement and Contracting Policy

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## Introduction

* 1. The ICB 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 population health and care outcomes and drive-up quality for patients.
  2. The ICB believes that it will only be able to deliver its vision in collaboration with others across the Mid & South Essex system and our success will depend upon close partnership working. We are committed to working in an integrated way as a system with the local community, local authorities, healthcare providers and other key stakeholders.

## Purpose / Policy Statement

* 1. 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 ICB’s corporate aims and objectives and meets legal requirements.
  2. The Policy objectives are:
* To set out the principles, rules, and methodologies that the ICB shall work to and clearly outlines how and when it is appropriate to seek to introduce contestability as a means of achieving the best clinical outcomes and achieve value for money.
* 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 population health outcomes, with effective performance measures and contractual levers as necessary.
* To describe the transparent and proportional process by which the ICB will determine whether products and/or services are to be purchased through existing contracts with providers, competitive tenders, via a framework approach or through a non-competitive process.
* 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 and broader integration.
* To set out how the ICB will meet statutory procurement requirements primarily the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013, and The Public Contracts Regulations (PCR) 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020).
* To ensure the ICB does not engage in anti-competitive behaviour and to protect and promote the right of patients to make choices about their care.
* To enable the ICB to demonstrate compliance with the principles of good procurement practice.

## Scope

* 1. This policy applies to all staff and members of the ICB and any third party working in association with, or on behalf of, the ICB. This policy applies to all ICB procurements (clinical and non-clinical). However, certain sections only relate to procurement of health and social care services.

It applies to all procurement activity and decision making related to the delivery of health and care services including, but not limited to:

1. the development and approval of business cases and specifications for goods and services.

2. the determination of which organisations shall provide services.

3. the determination of whether a service should be decommissioned.

## Definitions

| 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 | 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 | An individual contract awarded under a framework agreement for the provision of particular services, goods or works. |
| CCS | The Crown Commercial Service which 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 | 1. 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. 2. An organization gaining an unfair advantage due to their ability to become privy to information relating to another |
| 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 | 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 *(as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020)*. There are also some "catch all" statements covering public bodies not specifically included in the list. |
| Cross-border interest | A procurement, regardless of contract value, that could be deemed to be of interest to other European Union (EU) member states. |
| Finder a Tender Service Contract Notice | A standard form Notice placed in the [European Union's Official Journal Find a Tender Service (the UKs eNotification Tender Service)](http://www.procurementportal.com/glossary/#European Union's Official Journal) confirming that a Contracting [Authority](http://www.procurementportal.com/glossary/#Authority) is intending to procure supplies, services or works. |
| Framework | 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 |
| ICS | Integrated Care System |
| ITT  Invitation to Tender | 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 *(as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020)*. Only some of the EU procurement rules as set out in Public Contracts Regulations 2015 *(as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020)* apply – namely, obligations relating to advertisement, technical specifications, post-award information and principles of equality, proportionality, transparency and non-discrimination. Healthcare services that are subject to the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 are subject to the Light Touch Regime. |
| MEAT | 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 can meet 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. |
| Prior Information Notice (PIN) | A PIN can have three meanings:   1. Publication by an [authority](http://www.procurementportal.com/glossary/#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](http://www.mrprocurement.co.uk/files/Uploads/Documents/timescale_tracker.pdf) in a procurement. 3. The ICB can use as a Call for Competition. |
| Public Contracts Regulations 2015 (PCR 2015) as amended by the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (‘PPAR 2020’) | The [Public Contracts Regulations 2015 *(as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020)*](http://www.opsi.gov.uk/si/si2006/20060005.htm). This is the UK procurement legislation setting out procedures for the award of contracts for supplies, services and works. |
| Selection criteria | 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](http://www.procurementportal.com/glossary/#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](http://www.procurementportal.com/glossary/#Restricted procedure), [negotiated procedure](http://www.procurementportal.com/glossary/#Negotiated procedure) and [competitive dialogue procedure](http://www.procurementportal.com/glossary/#Competitive dialogue procedure) as a means of selecting the bidder to go forward to the next stage of the procurement process. |
| SLA | Service Level Agreement between the ICB and Attain. Attain is an agent of the ICB. |
| SME | 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 | A contract for supplies, works or services that falls below the public procurement financial thresholds |
| TFEU | Treaty on the Functioning of the European Union. The TFEU sets out organisational and functional details of the European Union. |
| TUPE | Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI/2006/246) as amended |
| Value for Money or VFM | 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. Value for Money is assessed against three factors:   * 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. |

## Roles and Responsibilities

### Integrated Care Board

* + 1. The Board of the ICB is responsible for setting the appropriate governance arrangements for procurement and contracting as well as making procurement decisions in accordance with the scheme of reservation and delegation.

### Audit Committee

* + 1. The Audit Committee is responsible for monitoring compliance with this Policy through regular review of the Register of Procurement Decisions and through regular review of all non-compliant procurement routes used, with support from the ICB Purchase of Healthcare Team.
    2. The Audit Committee must also be notified, in order to review and scrutinise, all waivers that have been approved on behalf of the ICB.

### Finance & Investment Committee

* + 1. The Finance & Investment Committee (F&IC) is responsible for decision making as set out in the Scheme of Reservation and Delegation and for oversight of the ICB finances.
    2. The F&IC also has responsibility for reviewing all requests for non-compliant procurement routes to ensure that they are in line with the criteria as set out within this Policy and that appropriate support from Attain and the Purchase of Healthcare Team has been sought prior to decisions being made.

### Chief Executive

* + 1. The Chief Executive is accountable for implementation of this Policy and shall ensure the ICB is operationally fit for purpose to comply with it.

### Director of Resources

* + 1. The Director of Resources is responsible for monitoring operational compliance with this Policy with support from the Purchase of Healthcare Team and Attain.
    2. The Director of Resources is responsible for sign off (waiver) of all non-compliant procurement routes.

### Policy Authors

* + 1. The Policy Authors are responsible for the accuracy and completeness of information contained within this Policy and for recommendation of amendments to ensure ongoing compliance with national guidance, regulation or local system requirements.

### Purchase of Healthcare Team

* + 1. The Purchase of Healthcare Team, alongside procurement advisors (Attain) are operationally responsible for establishing the framework underpinning well governed procurements made in accordance with ICB Policies, appropriate Legislation and Procurement Regulations.

### Line Managers

* + 1. Line Managers are accountable for recognising when a purchasing decision may have potential procurement implications and for seeking appropriate procurement support.

### All Staff

* + 1. All staff must read and understand this Policy, comply with it and be aware of its implications. It is not intended that staff will develop procurement expertise; however, they will need to know when and how to seek further support.

## Policy Detail

### Guiding principles that underpin the policy

* + 1. The ICB will demonstrate compliance with the four over-arching principles of public sector procurement in the following ways:

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.
* Publishing a register of procurement decisions, in accordance with requirements (as outlined below).
* Robust management of potential conflicts of interest to ensure that these do not prejudice fair and transparent procurement processes.
* Provision of feedback to all unsuccessful bidders; and
* Any complaints regarding a procurement process will be handled through an explicit and publicised dispute resolution process.

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; and
* The ICB will define and document procurement routes, including any streamlined processes for low value/local supplies and services, considering available guidance.

Non-Discrimination

* The ICB will ensure that tender processes and documents will always be non-discriminatory and transparent. This includes our obligations under our Public Sector Equality 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 nor particularly favour one potential provider.

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 for all key decisions.
* The ICB will hold all providers to account, in a proportionate manner, through contractual agreements, for the quality of their services.
  + 1. The NHSE Statutory Guidance for Managing Conflicts of Interest (first published 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, ICB 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 Purchase of Healthcare Team will maintain ownership of the Register to ensure accuracy.

### Governance

* + 1. Standing Orders
* The ICB will comply with the appropriate Standing Orders (and any other relevant governance documents) to ensure the procurement of supplies and services are undertaken 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.
  + 1. Scheme of Reservation and Delegation
* The ICB has approved a Scheme of Reservation and Delegation which includes delegated limits of financial authority for procurement which are set out within this policy for completeness.

### When is procurement required?

* + 1. The following must apply:
* All non-clinical 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 Contracts Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020).
* All healthcare contracts that are subject to the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 with an anticipated value of more than £663,540 (inclusive of VAT) over the life of the contract must be subject to a formal procurement.
* Typically, this will reflect the key principles of a procurement approach under The Public Contracts Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020) (“Light Touch Regime”), however the ICB may choose to design its own appropriate procurement procedures as long as these are in keeping with guiding principles as outlined within this policy.
* Where potential contract values are below defined upper thresholds, the decision relating to where to advertise and who to invite to bid should be well reasoned and documented.
* Where potential contract values are below defined upper thresholds, a structured competitive quotation process must be used as follows:

| Value (£) | No of quotations required | Process |
| --- | --- | --- |
| Up to 5,000 (inclusive of VAT) | 2 verbal | The resulting requisition must be accompanied by an appropriately signed record of the quotations received. |
| 5,001 -50,000 (inclusive of VAT) | 3 written | Based on a written specification or terms of reference prepared by, or on behalf of, the ICB with options. |
| 50,001- 663,540 (inclusive of VAT) | At least  4 written | For Light Touch Regime Services including Healthcare Services: Competitive Quote procedure with a written specification and a detailed option appraisal. |
| 50,000- 213,477 (inclusive of VAT) | At least  4 written | For Non-Light Touch Regime Services such as IT services:  Competitive Quote procedure with a written specification and a detailed option appraisal. |

* If the financial threshold for procurement is subsequently exceeded within a competitive quotation process, this shall be reported to the Director of Resources for approval *before* expenditure is committed and subsequently to the ICB Audit Committee for information.

### Splitting or disaggregation of contracts

* + 1. There shall be no splitting of procurements simply to avoid the application of a fuller procurement process.

### False quotations and tenders, and bid rigging

* + 1. For procurements under the Public Procurement threshold, the ICB will have the right to use its discretion in deciding which individuals or companies should be invited to bid. 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 number of tenders submitted by each.
* An e-procurement system may be used.
  + 1. 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.
    2. Any concerns identified during the procurement process relating to fraud or bribery shall be brought to the attention of the 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/reportfraud>

### Collaboration

* + 1. The ICB is committed to operating in a sustainable environment where all opportunities for efficiencies and economies of scale are considered and applied where applicable. This includes the sharing of operational resources or a commitment to specific joint projects/contracts across the Mid and South Essex footprint for example, where this serves the best interest of the system population. The move towards further integration will necessitate the development of new types of contracts for accountable care and stewardship models and the ICB will follow guidance from NHS England and Improvement on their application.

### Non-Compliant Procurement Route

* + 1. The ICB is committed to ensuring that services are procured in accordance with legislation. A waiver represents a formal declaration that the ICB is not following a competitive procurement process with prior notification to the market.
    2. 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) and the ICB Scheme of Reservation & Delegation outline the following circumstances where contracts may be awarded without a competitive procurement process with prior notification to the market.
    3. The only exceptions where formal tendering need not be applied are:
* in very exceptional circumstances where the ICB Executive Team jointly 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 collaborative or partnership arrangement is in place and a lead organisation has been appointed to carry out tendering activity on behalf of the collaborative members or partners.
* 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 because 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.
* provision of legal advice where 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.
  + 1. The ICB Purchase of Healthcare Team must be approached for advice and guidance where there may be the need to use a non-compliant procurement route and additionally before any formalised intentions are communicated to providers.
    2. The waiving of competitive tendering procedures must not be used to avoid competition or for administrative convenience or to award further work to a consultant or contractor originally appointed through a competitive procedure.
    3. 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 from the ICB Purchase of Healthcare Team must be sought in these circumstances.
    4. All waivers, and the reasons for using a non-compliant procurement route, must be recorded in an appropriate ICB record and reported to the ICB Audit Committee.

### Pilots & Proof of Concept Projects

* + 1. A pilot must only be used where the ICB is developing an innovative service or new commercial models and there is a clear and documented need to test the service for a short-term period to ensure that it meets the requirements.
    2. A pilot can only run for a maximum of 18 months then up to 6 months to evaluate and decide on next steps. The contract duration must be justified and should be sufficient only to gather evidence to assess the outcomes. Guidance to providers within the pilot specification should include evaluation criteria to evaluate necessary outcomes. Pilot projects must comply with UK Procurement regulations.
    3. Once a pilot has relevant approval, the following must be considered:
* Market Engagement activities should be developed to let the market know that the pilot is being undertaken.
* 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.
  + 1. Once the Pilot has closed, the only options are:

1. Do nothing.
2. Run a radically different pilot (due to findings of the first pilot).
3. Go out to full Procurement.

### Grants

* + 1. Where voluntary sector organisations support healthcare related provision, 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 delivering a project (e.g. it is also supported by 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).
  + 1. Grants must 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 to identify the most suitable organisation.
    2. The ICB may procure the services of a third party to run a grant application and award process for specific projects however normal procurement rules shall apply to secure services of the third party.
    3. The ICB shall follow NHS England and Improvement Grant Agreement Guidance on the use of the model Grant Funding Agreement although it is non-mandatory and is for local adaptation as required.

### Spot Purchasing

* + 1. Spot purchasing occurs when there is an immediate, recognised requirement and a decision must be made “on the spot”, reactively and without time to plan. At these times, a competitive process may be waived using the same process described in this policy and the reason for it must be recorded and reported to the ICB Audit Committee.
    2. Spot purchasing must not be used as a ‘business as usual’ process and any resultant agreements must undergo ongoing best value reviews to ensure that the ICB is receiving value for money.
    3. Approval of spot purchase agreements should follow the ICB Scheme of Reservation and Delegation. In all cases the ICB should ensure that the provider is fit for purpose to provide the service and process must follow UK Public Procurement rules.

### Integration

* + 1. The NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013) requires contracting authorities to consider how they can procure services in a more integrated fashion. When procuring services, contracting authorities should consider the impact on the needs of the population who may have multiple health and care needs and hence may traditionally have had to:
* Receive treatment from several different health and care teams across a range of disciplines.
* Receive treatment over several different sites; or
* Receive treatment from several different health and care providers.
  + 1. When procuring services, the ICB must interface with partners in a way which gives its population a seamless experience across system and place level services.
    2. Consideration shall be given by the ICB to identifying and creating opportunities for the integration of services where such integration and/or stewardship can deliver improved benefit to the Mid & South Essex health and care system.
    3. Consideration shall be given as to how the ICB can make best use of resources to support the establishment of provider and partnership solutions. Thus, when reviewing a contract for health and care services, whether for a new or existing service, the ICB will consider the contractual relationship the service will need to have with any existing or Integrated Care System (ICS), or some other Alliance or collaborative arrangement of providers.
    4. The need to comply with regulatory obligations must be considered when establishing Collaborative Arrangements and any contracts that are likely to fall within their scope.

### Integrated Support and Assurance Process (ISAP)

* + 1. Proactive consideration by the relevant Procurement Project Group regarding the applicability of the Integrated Support and Assurance Process (ISAP) to any Procurement should be given via proactive liaison with appropriate NHS England and NHS Improvement colleagues to enable those organisations to reach a decision regarding potential applicability.

[integrated-support-assurance-process-part-a.pdf (england.nhs.uk)](https://www.england.nhs.uk/wp-content/uploads/2017/08/integrated-support-assurance-process-part-a.pdf)

### Contract and Tendering Procedures

* + 1. The ICB requires all detailed procurement procedures adopted within the ICB and by any third party to be compliant with regulation and best practice, managed in electronic format and to be fully auditable in the event of a request by ICB appointed auditors or in the event of a competition complaint.
    2. There shall be no variation from use of NHS National Standard contracts or NHS Supply of Goods and Services Contracts without the formal agreement of the ICB Governing Body, and NHS England and Improvement if required.
    3. The archiving and destruction of documentation shall be in accordance with the NHS Retention of Non-Clinical Records guidance.

### Specifications

* + 1. Specifications shall be developed and approved by the appropriate procurement lead and subject matter experts will be used to ensure specification validity where specific expertise is required or where this is agreed to manage a real or perceived conflict of interest.
    2. 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.

### Confidentiality and Conflicts of Interest

* + 1. The ICB shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures 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)*.
    2. Section 75 of the Health and Social Care Act 2022 places a requirement on commissioners to ensure that they adhere to good practice in relation to procurement such as do not engage in anti-competitive behaviour and promote the right of patients to make choices about their healthcare.
    3. Every tender must require suppliers to:
* provide a written undertaking to maintain confidentiality.
* agree not engage in collusive tendering or other restrictive practice.
* complete a declaration under Regulation 57 of the Public Contracts Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020).
  + 1. 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.
    2. All those participating in the development and evaluation of a tender, including third parties, will be required to sign a specific declaration of interest and a confidentiality agreement in accordance with the Conflicts of Interest, Standards of Business Conduct, Gifts, Hospitality and Commercial Sponsorship Policies.
    3. Any concerns identified regarding fraud or bribery because of conflicts of interest or gifts and hospitality 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>

### Complaints and Dispute Resolution

* + 1. The ICB should have in place a 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 policies.

### Premises and Equipment

* + 1. The ICB will be responsible for liaising with NHS Property Services to ensure that the impact on utilisation of existing premises and/or associated equipment or contracts has been fully reviewed and incorporated into any proposed procurement arrangements.
    2. Where applicable, representatives of NHS Property Services should be included as full project team members from an early stage. Where GP premises are, or may be, utilised as part of a procurement, then the Procurement Project Lead will ensure that this information is discussed with the Director of Primary Care Finance & Strategic Projects.

### Decommissioning Services

* + 1. Where services are decommissioned, the ICB will ensure where necessary that contingency plans are developed to maintain patient care. Where decommissioning involves Human Resource issues, such as TUPE, then providers will be expected to co-operate and be involved in discussions to deal with such issues.

### Wider Stakeholder Consultation and Engagement

* + 1. The ICB shall 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.

## Procurement Arrangements

### Background

* + 1. The NHS is governed by the requirements of the following:
* NHS (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (where the commissioner is NHS England and NHS Improvement or an ICB) (PCCR 2013)
* The Public Contracts Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 for services.
* Operational Guidance to the NHS-Extending Patient Choice of Provider (Department of Health & Social Care)
* NHS England and NHS Improvement Guidelines
* Cabinet Office Guidelines
* Crown Commercial Service Guidance.

The Provider Selection Regime (“PSR”) is a proposed new set of rules that will govern the arrangement of healthcare services in England and will be introduced by regulations made under the Health and Care Bill. **Appendix B** outlines the forthcoming changes.

* + 1. National procurement rules apply to all public bodies. A public body in this context means the State, regional, local authorities, associations formed by one or more of such authorities or bodies governed by public law. Body governed by public law means anybody:
* established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character.
* having legal personality.
* is financed, for the most part, by the State, or regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law.

### Procurement Law in the Public Sector

* + 1. 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 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 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, health services etc.

### Thresholds

* + 1. 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 are current as of January 2022, are generally recalculated every 2 years and are communicated via a Procurement Policy Note (PPN) on the [www.gov.uk](http://www.gov.uk) website.
* Supplies and Services e.g., IT Services or Patient Transport Services that are not part of the Light Touch Regime: £213,477
* Light Touch Regime Services including Healthcare services: £663,540
* Works £5,336,937.
  + 1. 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”).

### “Light Touch” Regime and “non-Light Touch” Regime Services

* + 1. 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 define that 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. Healthcare Services fall under this category.
* **“Non-Light Touch”** Regime Services are those which 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 Patient Transport Services are examples of services that may fall under this category.

### Joint Procurements

* + 1. Where a joint procurement is to be pursued by two or more ICBs, or 2 or more stakeholders within an ICS, then the procurement must be underpinned by a Memorandum of Understanding and a Collaborative Agreement between the parties that will, as a minimum, set out:

1. the objectives of the procurement,
2. identify which ICB will act as the lead,
3. the approvals and reporting processes,
4. roles and responsibilities within the project,
5. how legal costs will be shared,
6. how risks and benefits are shared
7. dispute resolution arrangements and
8. exit arrangements from the procurement.

### Contract Extensions

* + 1. A contract can be extended by mutual agreement between the ICB and a provider, only when there is a valid extension provision available within the existing contract.
    2. If there is no valid extension provision, or all extension provision has been fully utilised already, and has or is expiring, the ICB cannot extend the contract further, unless one of the provisions of Regulation 72 applies (see ‘Modifications (Variation) of contracts during their term’).
    3. Where the ICB wishes to continue a Service with the same provider and there is no extension provision, or Regulation 72 is not met, the ICB must consider the procurement implications of such a decision, in accordance with PCR 2015 and the ICB Procurement Strategy and relevant Policies.
    4. Any decision to single source to a provider for an additional term for delivery of the same service should be considered a direct award and should be accompanied by appropriate governance arrangements and Procurement Notices to the market accordingly.

### Modification (Variation) of contracts during their term

* + 1. 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 without a new procurement procedure in accordance with Regulation 72 (‘Part' 1) in any of the following cases:

1. where modifications (irrespective of their monetary value) have been provided for in the original procurement documents and/or would not alter the nature of the contract.
2. 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:
3. 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
4. would cause significant inconvenience or substantial duplication of costs for the ICB.
5. does not lead to any increase in price which exceeds 50% of the value of the original contract.
6. where all the following conditions are fulfilled:
7. the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen.
8. the modification does not alter the overall nature of the contract.
9. any increase in price does not exceed 50% of the value of the original contract
10. where a new contractor replaces the original contractor e.g., in the case of a merger or takeover.
11. where the variation is not substantial (see list below at (f) defining what substantial means within the PCR 2015), represents less than 10% of the original value of the contract (for supply and service contracts) provided that the variation does not alter the overall nature of the contract.
12. A variation of a contract during its term is considered substantial where one or more of the following conditions is met:

(a) the variation renders the contract materially different in character from the one initially concluded.

(b) the variation introduces conditions which, had they been part of the initial procurement procedure, would have:

1. allowed for the admission of other candidates than those initially selected,
2. allowed for the acceptance of a tender other than that originally accepted, or
3. attracted additional participants in the procurement procedure.

(c) the variation changes the economic balance of the contract in favour of the contractor in a manner which was not provided for in the initial contract.

(d) the variation extends the scope of the contract considerably.

(e) a new contractor replaces the one to which the contracting authority had initially awarded the contract in cases other than those provided for in paragraph 6.4.7 (d).

* + 1. 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 ICB Purchase of Healthcare Team must be sought in these circumstances.

### Record Keeping

* + 1. All decisions shall be documented, including a clear rationale for the choices made.

## National Policy and Guidance

### Cabinet Office Guidelines

* + 1. The ICB must comply with Cabinet Office policy and guidance by publishing all tender opportunities and contract awards over £25,000 on Contracts Finder. This obligation only arises if the authority has advertised the contract opportunity elsewhere (e.g., on its website).
    2. In line with the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013, if the ICB decides to publish an intention to seek offers from providers in relation to a new contract for the provision of NHS healthcare services, it must publish a contract notice on Contracts Finder.

### NHS Constitution

* + 1. 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 Department of Health and Social Care (DHSC) policies and guidance documents.

### The NHS (Procurement, Patient Choice & Competition) (No.2) Regulations 2013

* + 1. The regulations set out requirements for the purchase of healthcare services including rules for ensuring transparency and non-discrimination in procurement activities. The ICB must:
* act with a view to securing patients' needs and improving the quality and efficiency of the service.
* act in a transparent and proportionate way and treat bidders equally and in a non-discriminatory way.
* ensure that where third parties assist or support in a procurement activity, that third party must ensure that they follow the requirements of the Regulations in the same way the ICB must do itself,
* maintain and publish a record of each contract awarded for the provision of healthcare services,
* not engage in anti-competitive behaviour unless in the interests of patients,
* maintain a record of how any conflicts of interest between commissioners and providers are managed,
* maintain a record of how, in awarding the contract, the ICB complies with certain statutory duties under the NHS Act 2006,
* provide thorough justification if competition not required where services are only capable of being provided by a particular provider,
* publish contract notices (if applicable) and facilitate expressions of interest.
* consider improving quality and efficiency of services through providing services in an integrated way, enabling providers to compete, and allowing patients a choice of provider.

### ICB obligations in respect of Section 256 Agreements

* + 1. The ICB must meet several conditions when making a grant under a Section 256, which 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 to 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.

## Procurement Management and Best Practice

### E-procurement

* + 1. The ICB will use e-procurement systems for above threshold public procurements so that the various stages of the procurement process including the decision-making process are transparent and auditable.

### Procurement Planning

* + 1. 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. A review of current service provision should be undertaken at least 6 months prior to the expiry of a contract to determine the appropriate procurement actions required.

### Using the Correct Contract

* + 1. All staff must ensure the correct use of contract to procure services in line with DHSC guidance, NHS England and Improvement including use of the NHS standard contract, and NHS standard terms and conditions of contract for the purchase of goods and supply of services.
    2. 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.

### Post-Procurement Monitoring

* + 1. 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.

## Monitoring Compliance

* 1. The ICB Board shall be responsible for approving this policy which will be reviewed at least annually.
  2. The ICB Director of Resources shall be responsible for monitoring operational compliance with this Policy on a day-to-day basis, through support from the ICB Purchase of Healthcare Team and Attain.
  3. The ICB Audit Committee shall be responsible for monitoring compliance with this Policy through regular review of the Register of Procurement Decisions and through regular review of all non-compliant procurement routes used with support from the ICB Purchase of Healthcare Team.

## Staff Training

8.1 All staff, and others working with the ICB, must read and understand this Policy, comply with it and be aware of its implications. It is not intended that staff will develop procurement expertise; however, they will need to know when and how to seek further support.

8.2 The most urgent requirement is that all 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 ICB procurement intentions in relation to individual service developments.

8.3 The ICB has access to contracting and procurement advice through the ICB Purchase of Healthcare Team and Attain to ensure the law, appropriate regulation, internal governance and process is adhered to.

## Arrangements for Review

* 1. This policy will be reviewed on an annual basis. An earlier review will be carried out in the event of any relevant changes in legislation, national policy or guidance, organisational change or other circumstances which mean the policy needs to be reviewed.
  2. If only minor changes are required, the sponsoring Committee has authority to make these changes without referral to the ICB Governing Body. If more significant or substantial changes are required, the policy will need to be ratified by the relevant committee before final approval by the Integrated Care Board Governing Body.

## Associated Policies, Guidance and Documents

### [Associated Policies](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies)

* MSEICB004 Accounting and Financial Management
* MSEICB012 Records Management and Information Lifecycle Policy
* MSEICB018 Conflicts of Interest, Gifts, Hospitality and Commercial Sponsorship Policy
* MSEICB022 Legal Services Policy
* MSEICB026 Counter-Fraud, Bribery and Corruption Policy
* MSEICB032 Health Inequalities Impact Assessment Policy and Guidance
* MSEICB062 Complaints, Compliments and Concerns Management Policy

### Other Key Guidance

* + 1. Business Case Process – please contact the Purchase of Health Team for advice.

### Equality and Health Inequalities Assessment

* + 1. Any procurement conducted by the ICB must 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.
    2. As part of the ICB’s consultation process an equality and health inequalities assessment must 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.

### Ethical and Sustainable Procurement

* + 1. When making purchasing decisions the ICB must 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.
    2. 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.

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

* + 1. Breaches of procurement which occur because of suspected fraud and bribery must 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 via:

<https://cfa.nhs.uk/fraud-prevention/reference-guide/cyber-enabled-fraud/reporting>.

### Freedom of Information Act 2000

* + 1. 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.

### Public Services (Social Value) Act 2012

* + 1. The Act requires authorities to make the following considerations at the pre-procurement stage: how what is proposed to be procured might improve the economic, social and environmental well-being of the “relevant area”; how in conducting a procurement process it might act with a view to securing that improvement whether to undertake a consultation on these matters.
    2. The Act as currently worded, applies to contracts to which the Public Contracts Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020) will apply. This implies that contracts below the relevant financial thresholds will not be covered by the Act. For Best Practice, the fact that” Light Touch” Regime services now have a threshold at £663,540 should not mean that the Social Value Act should not be considered for services under this amount.
    3. The Act does not apply to any formal stages of the procurement process, but it does require commissioners to consider social value issues and how they can be applied to the outcomes required. This is will in turn:
* inform market engagement discussions,
* inform the development of the specification, where relevant and
* inform the assessment of bids where relevant (i.e., developing the weighting to be applied to contribution to social value criteria in the specification and developing criteria to judge the most advantageous tender).
* inform plans to manage contracts (where relevant) in a way that enables maximum social value to be realised.

### Register of Procurement Decisions and Contracts Awarded.

* + 1. The register is owned by the ICB Purchase of Healthcare Team and, subject to amended national guidance, shall be published on the ICB website no less than four (4) times per year.

## References

* 1. The following list of references and/or documents have informed or contributed to the drafting of this policy.

| Reference | Website |
| --- | --- |
| "The Public Contracts Regulations 2015" | <http://www.legislation.gov.uk/uksi/2015/102/pdfs/uksi_20150102_en.pdf> |
| The Public Contracts Regulations 2015, as amended by [The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020](https://www.legislation.gov.uk/uksi/2020/1319/contents/made) | [The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (legislation.gov.uk)](https://www.legislation.gov.uk/uksi/2020/1319/contents/made) |
| SI 2021 No.872 The Public Procurement (Agreement on Government Procurement) (Amendments)(No.2) Regulations 2021 | [The Public Procurement (Agreement on Government Procurement) (Amendment) (No. 2) Regulations 2021 (legislation.gov.uk)](https://www.legislation.gov.uk/uksi/2021/872/contents/made) |
| NHS (Procurement, Patient Choice & Competition) (No.2) Regulations 2013 | <http://www.legislation.gov.uk/uksi/2013/500/contents/made> |
| Procurement, Patient Choice & Competition Regulations: Guidance & Hypothetical Case Scenarios | <https://www.gov.uk/government/publications/procurement-patient-choice-and-competition-regulations-guidance> |
| Public Services (Social Value) Act 2012 | <http://www.legislation.gov.uk/ukpga/2012/3/enacted> |
| Operational Guidance to the NHS-Extending Patient Choice of Provider | <http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_128455> |
| Cabinet Office’s Transparency requirements for publishing on Contracts Finder | <https://www.gov.uk/government/publications/transparency-requirements-for-publishing-on-contracts-finder> |
| Thresholds | <https://www.gov.uk/government/publications/procurement-policy-note-new-thresholds-2020> |
| [NAO - General Procurement Guide](http://webarchive.nationalarchives.gov.uk/20100503135839/http:/www.ogc.gov.uk/documents/Introduction_to_the_EU_rules.pdf) | <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 | <https://www.gov.uk/government/publications/protecting-and-promoting-patients-interests-the-role-of-sector-regulation> |
| Cabinet Office Guidelines | <https://www.gov.uk/transposing-eu-procurement-directives> |
| Managing Conflicts of Interest – statutory guidance for ICBs | <https://www.england.nhs.uk/ourwork/coi/> |
| Guidance and eLearning resources for public sector buyers and utilities that have to apply public procurement rules when letting public contracts. | <https://www.gov.uk/guidance/transposing-eu-procurement-directives#history> |
| Transfer of Undertakings (Protection of Employment) Regulations 2006(TUPE) | <http://www.legislation.gov.uk/uksi/2006/246/pdfs/uksi_20060246_en.pdf> |
| Equality Act 2010 | <http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf> |
| Bribery Act 2010 | <http://www.legislation.gov.uk/ukpga/2010/23/pdfs/ukpga_20100023_en.pdf> |
| Pre-contract procurement fraud and corruption | https://cfa.nhs.uk/resources/downloads/guidance/NHSCFA%20Pre-contract%20procurement%20fraud%20guidance%20-%20v1.0%20July%202018.pdf |

## Equality Impact Assessment

* 1. The EIA has identified no equality issues with this policy.
  2. The EIA has been included as Appendix A.

## Appendix A - Equality Impact Assessment

**INITIAL INFORMATION**

|  |  |
| --- | --- |
| **Name of policy: MSEICB003 Procurement and Contracting Policy**    **Version number (if relevant):**  V1.0 | **Directorate/Service**:  Resources Directorate |
| **Assessor’s Name and Job Title:**  Andrew Wright, Head of Integrated System Purchase of Healthcare | **Date:** 22/06/2022 |

|  |
| --- |
| **OUTCOMES** |
| *Briefly describe the aim of the policy and state the intended outcomes for staff* |
| **To ensure a consistent, fair and legally compliant approach in the procurement and purchase of all clinical and nonclinical products and services.** |
| **EVIDENCE** |
| *What data / information have you used to assess how this policy might impact on protected groups?* |
| **Equality considerations will be thought through at the different stages of the procurement cycle.**  [buying\_better\_outcomes\_final.pdf (equalityhumanrights.com)](https://stage.equalityhumanrights.com/sites/default/files/buying_better_outcomes_final.pdf) |
| *Who have you consulted with to assess possible impact on protected groups? If you have not consulted other people, please explain why?* |
| Consulted Attain, this is to ensure we are compliant with the procurement regulations. The impact on protected groups will be covered within the service specifications for the individual products and/or services to be purchased. |

**ANALYSIS OF IMPACT ON EQUALITY**

The Public Sector Equality Duty requires us to **eliminate** discrimination, **advance** equality of opportunity and **foster** good relations with protected groups. Consider how this policy / service will achieve these aims.

N.B. In some cases it is legal to treat people differently (objective justification).

* ***Positive outcome*** *– the policy/service eliminates discrimination, advances equality of opportunity and fosters good relations with protected groups*
* ***Negative outcome*** *–**protected group(s) could be disadvantaged or discriminated against*
* ***Neutral outcome*** *–**there is no effect currently on protected groups*

Please tick to show if outcome is likely to be positive, negative, or neutral. Consider direct and indirect discrimination, harassment, and victimisation.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Protected  Group | Positive  outcome | Negative  outcome | Neutral  outcome | Reason(s) for outcome |
| Age |  |  | X |  |
| Disability  (Physical and Mental/Learning) |  |  | X |  |
| Religion or belief |  |  | X |  |
| Sex (Gender) |  |  | X |  |
| Sexual  Orientation |  |  | X |  |
| Transgender / Gender Reassignment |  |  | X |  |
| Race and ethnicity |  |  | X |  |
| Pregnancy and maternity (including breastfeeding mothers) |  |  | X |  |
| Marriage or Civil Partnership |  |  | X |  |

|  |
| --- |
| **MONITORING OUTCOMES** |
| Monitoring is an ongoing process to check outcomes. It is different from a formal review which takes place at pre-agreed intervals. |
| *What methods will you use to monitor outcomes on protected groups?* |
| It is anticipated that any issues in respect of the implementation of the policy will be identified because of staff exercising their right of appeal or via the ICB’s  Grievance Procedure. |

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| **REVIEW** |
| *How often will you review this policy / service?* |
| Every 2 years as a minimum and earlier if there are any significant changes in legislation, policy or good practice. |
| *If a review process is not in place, what plans do you have to establish one?* |
| N/A |

## Appendix B – Proposed Legislative Changes

The UK’s departure from the EU following the end of the transition period provides a unique opportunity to radically change public procurement. For healthcare services, NHS England, and Improvement desire to replace current procurement rules when procuring NHS healthcare services with a set of more flexible arrangements to support NHS ambition for greater integration and collaboration between NHS organisations and their partners, whilst reducing administrative bureaucracy.

The Provider Selection Regime (“PSR”) is a proposed new set of rules that will govern the arrangement of healthcare services in England and will be introduced by regulations made under the Health and Care Bill. There has been engagement and consultation (over the past 3 years) on the proposals and currently the results are being analysed.

This Policy will be reviewed in April 2023, or as required, and updated to reflect the changes in the new regulations and statutory guidance. Once the legislation has been finalised there will be an agreed process to determine whether a service sits under the PSR or not. Anything outside of the PSR remains under the Public Contract Regulations 2015.

For non-healthcare e.g., IT services, consultancy, the Government Green Paper on ‘Transforming Public Procurement’ addresses proposals to reform public sector procurement. The ambition is to create a new regulatory framework that delivers the best commercial outcomes with the least burden on providers and commissioners.