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) and the Health Care Services (Provider Selection Regime) Regulations 2023.
* 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. |
| 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 [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 or has concluded or modified a contract |
| 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 |
| 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 ICB Procurement Advisors (Attain) who 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 |
| 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 ICB Procurement Advisors.
    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 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 ICB Procurement Advisors has been sought prior to decisions being made.
    3. The ICB PSR Review Group is a sub-group of the F&IC.

### PSR Review Group

* + 1. The PSR Review Group is responsible for independent review of certain PSR contract awards where representations have been made by Providers.

### 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.

### Executive Chief Finance Officer (CFO)

* + 1. The CFO is responsible for monitoring operational compliance with this Policy with support from the Contracting Team and ICB Procurement Advisors.
    2. The CFO 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.

### Contracting Team

* + 1. The Contracting Team (Healthcare Services), 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

## Contracting Principles

### 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 Procurement Advisors 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.

### 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) for non-healthcare service provision
* Complete a declaration under Regulation 21 of the Health Care Services (Provider Selection Regime) Regulations 2023 (PSR) for healthcare service provision.
  + 1. All those engaged in development and evaluation of a tender or procurement process 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 or procurement process, 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.
    2. The ICB Decision Making Policy sets out the process to be followed if and when decommissioning a service.

### 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:
* 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.
* Health Care Services (Provider Selection Regime) Regulations 2023 (PSR)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.
  + 1. For ease of reference the 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 Contracts Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020).

## Healthcare Services

* 1. **Provider Selection Regime**
     1. The NHS Long Term Plan set out the need to transform health and care services to meet increasing demand, deliver better care and outcomes and ensure the health and care system is financially sustainable.
     2. To meet these goals, as well as 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.
     3. The Health and Care Act 2022 (the 2022 Act) amended the National Health Service Act 2006 (the 2006 Act) to put in place legislative changes that support this, including the creation of integrated care systems. The legislation sets an expectation that all those involved in planning, purchasing, and delivering health and care services work together to agree and address shared objectives, and makes it easier for them to do so.
     4. A key component of the changes introduced by the 2022 Act – and strongly supported by stakeholders across the NHS and local government – is the new Provider Selection Regime (the PSR, or the regime), which is set out in the Health Care Services (Provider Selection Regime) Regulations 2023 (the Regulations), to replace the existing procurement rules for NHS and local authority funded health care services.
     5. 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 health care services, when procured by The ICB under the PSR, from the scope of the Public Contracts Regulations 2015 (the PCR). The PCR and the PPCCR had set the expectation that competitive tendering is used to award contracts for health care services. The PSR has been designed to give the ICB to which it applies more flexibility in selecting providers for health care services. Under the regime, competitive tendering will be one tool for organisations to use when it is of benefit, alongside other routes that may be more proportionate, and which better enable the development of stable partnerships and the delivery of integrated care. The regime still requires The ICB to consider value for money as an important criterion, and to be transparent, fair, and proportionate in their decision-making.
     6. The regime is established under section 12ZB of the 2006 Act (as amended) and is set out in the Regulations. This statutory guidance sits alongside the Regulations to support organisations to understand and interpret the PSR.

### Introduction of PSR for health care services

* + 1. 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, while ensuring that all decisions about how health care is arranged are made transparently.
* opportunities to reduce bureaucracy and cost associated with the current rules.

### Existing Arrangements

* + 1. 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.

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

* + 1. The ICB are defined in section 12ZB(7) of the 2006 Act.
    2. The health service is defined in section 275(1) of the 2006 Act.
    3. 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 Schedule 1.

### Organisations PSR applies to

* + 1. This guidance applies to the following:
* The ICB, which, under section 12ZB of the 2006 Act, are required to comply with the Regulations:
* NHS England
* NHS trusts and foundation trusts
* Local authorities or combined authorities

### When PSR rules apply

* + 1. 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](https://www.england.nhs.uk/long-read/the-provider-selection-regime-statutory-guidance/#mixed-procurement)). For the purposes of this guidance ‘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.
    2. 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 the 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 as 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”, with a reference [in the Regulations] to “health care services” being read accordingly.
  + 1. 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 forms of group therapy).
    2. 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](https://www.england.nhs.uk/long-read/the-provider-selection-regime-statutory-guidance/#annex-a-common-procurement-vocabulary-cpv-codes)).
    3. In summary, a service is in scope when a relevant authority is commissioning or subcontracting a service that:

1. is provided as part of the health service, whether NHS or public health
2. consists of the provision of health care to individuals or groups of individuals
3. falls within one or more of the specified CPV codes.
   * 1. In-scope health care services include services provided by NHS providers, other public bodies, local authorities, and providers within the voluntary, community, and social enterprise (VCSE) and independent sectors. In broad terms, these are services 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 focused on substance use, sexual and reproductive health, and health visits.
     2. This definition purposefully excludes ‘non-health care’ 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 health care 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](https://www.england.nhs.uk/long-read/the-provider-selection-regime-statutory-guidance/#mixed-procurement).
     3. 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. [Annex A](https://www.england.nhs.uk/long-read/the-provider-selection-regime-statutory-guidance/#annex-a-common-procurement-vocabulary-cpv-codes) lists the available CPV codes that 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.

### Organisations that must not use the regime

* + 1. Only organisations defined as relevant authorities in section 12ZB(7) of the 2006 Act can use this regime. As such, the Secretary of State for Health and Social Care or executive agencies of DHSC, such as the UK Health Security Agency (UKHSA), must not use it to arrange health care services directly. Other ministerial departments must not use it to arrange health care services directly.
    2. It is possible that these organisations (i.e., DHSC or UKHSA) may commission health care services from The ICB (i.e., NHS England, ICBs, local authorities, NHS trusts or NHS foundation trusts). In such cases, if that relevant authority is then further subcontracting these in-scope services, that relevant authority must follow the PSR when sub-contracting.
  1. **Procurements that must not be arranged under the regime**
     1. 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.
     2. Examples of procurements not in scope of this regime are:
* 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-health care 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.

### Mixed procurement

* + 1. Mixed procurement is defined in Regulations 3(2), 3(3), 3(4), and 3(5).
    2. 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 the scope of the wider public procurement regulations (see the [PCR](https://www.legislation.gov.uk/uksi/2015/102/contents/made)).
    3. The PSR must not be used for the procurement of goods or non-health care services alone.
    4. 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:
    5. The main subject-matter of the contract is in-scope health care services.
    6. The relevant authority is of the view that the other goods or services could not reasonably be supplied under a separate contract.
    7. 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 services.
  + 1. A relevant authority may only determine that other goods or services could not reasonably be supplied under a separate contract where the relevant authority is of the view that procuring the health care services and the other goods or services separately would, or would be likely to, have a material adverse impact on the relevant authority’s ability to act in accordance with the procurement principles.
    2. The ICB must keep an internal record of the rationale for their decision, as this would be a reason for the decision made (see [transparency](https://www.england.nhs.uk/long-read/the-provider-selection-regime-statutory-guidance/#transparency)).
    3. Where the above tests are met, then the regime applies, and a mixed procurement can be undertaken using the PSR. Where these tests are not met, then this regime does not apply and the procurement must be undertaken as per the rules on wider public procurement (see the [PCR](https://www.legislation.gov.uk/uksi/2015/102/contents/made)).
    4. A notable area of the use of mixed procurement may be the arrangement of health care and social care services together in a single contract. This may be done under the regime when the highest estimated value of the contract is attributable to the health care services, and when procuring the health care services and social care services separately would have a material adverse impact on the relevant authority’s ability to follow the procurement principles, e.g., to improve the quality or the efficiency (which may include value) of the procured services.
    5. Other examples of services that can be arranged under the PSR, but that might require some extent of mixed procurement of health care and non-health care services to achieve their core objectives, include but are not limited to:
* health care and social care services under a section 75 partnership arrangement
* patient transport, which includes health care services (for which the provider requires CQC registration) and non-health care services (where no CQC registration is required)
* packages arranged under the Better Care Fund
* discharge to assess services.
* mental health aftercare services, such as support services arranged under section 117 of the Mental Health Act 1983
* prison services that include health care services
* asylum seeker services that include health care services
* veteran services that include health care services

### PSR Procurement principles

* + 1. The PSR procurement principles are set out in Regulation 4.
    2. The ICB is expected to ensure that when following this regime, they make decisions in the best interests of people who use the service. To do this, they must 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.
  + 1. The ICB must also act transparently, fairly, and proportionately when procuring health care services.
    2. 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 the procurement principles.

### Governance

* + 1. The ICB are expected to establish how best to follow this regime within their wider structural and governance arrangements. This regime does not require The ICB to structure their decision-making arrangements in any specific way or require provider selection decisions to be taken by particular committees or at a particular level within an organisation or system. The ICB are expected to ensure that their internal governance supports the effective application of this regime.

### Planning

* + 1. To apply this regime effectively, The ICB are expected to have a clear understanding of the services they want to arrange and the outcomes they intend the services to deliver.
    2. These are prerequisites to any decision about selecting a provider. We expect these intentions to be clearly established in good time via the routine planning activity that takes place across a system. The ICB are expected to reflect these intentions in their commercial pipeline, and decisions taken under this regime are also expected to serve and reflect these intentions.
    3. The regime also sets out how to deal with unplanned urgent situations (see urgent award or contract modifications).
  1. **Provider landscape**
     1. The ICB are expected to develop and maintain sufficiently detailed knowledge of relevant providers, including an understanding of their ability to deliver services to the relevant (local/regional/national) population, varying actual/potential approaches to delivering services, and capabilities, limitations, and connections with other parts of the system. The ICB may wish to consider undertaking pre-market engagement to update or maintain their provider landscape knowledge.
     2. We expect this knowledge to go beyond knowledge of existing providers and to be a general feature of planning and engagement work, developed as part of the commissioning or subcontracting process rather than only at the point of contracting. Without this understanding, The ICB may not have enough evidence to confirm the existing provider is performing to the best quality and value, miss opportunities to improve services and identify valuable innovations, and ultimately lead providers to make representations (see standstill period).
     3. We expect The ICB not to treat providers from VCSE and independent sectors differently from NHS trusts and foundation trusts or local authorities solely based on that status.

### Taking a proportionate approach

* + 1. The regime applies to the arranging of all health care services; there is no minimum threshold for application of the regime. Therefore, when applying this regime, The ICB are expected to take a proportionate approach. They are expected to ensure that their approach to implementing this regime does not create disproportionate burden relative to the benefits that will be achieved.
    2. It is also important that decisions are defensible and made following relevant considerations.

### Due diligence, basic selection criteria and exclusions

* + 1. The basic selection criteria are set out in Regulation 19 and in Schedule 16. Exclusions are set out in Regulation 20.
    2. When applying this regime, The ICB are expected to undertake reasonable and proportionate due diligence on providers. The ICB are expected to consider whether the organisation they enter into a contract with has the legal and financial capacities and the technical and professional abilities to deliver the contract.
    3. For direct award process C, the most suitable provider process, and the competitive process, and when establishing a framework agreement, The ICB must assess if providers are considered suitable to provide a service by applying the basic selection criteria as outlined in Schedule 16. All basic selection criteria requirements must be related and proportionate to the subject-matter of the contract or framework agreement.
    4. The ICB are not required to apply the basic selection criteria when following direct award processes, A or B, or when awarding a contract based on a framework agreement.
    5. The ICB must 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 relevant authority considers these measures to be sufficient, they must not exclude the provider. If the relevant authority does not consider the measures to be sufficient, they must respond to the provider with a statement of the reasons for this decision.
    6. The basic selection criteria may relate to:
* The provider’s suitability to pursue a particular activity. Where the provider is required to possess a particular authorisation or be a member of a particular organisation in order to be able to perform the required services, the relevant authority may require a provider to prove that they hold such authorisation or membership.
* The provider’s economic and financial standing. The relevant authority may impose requirements ensuring that the provider possesses the necessary economic and financial capacity to perform the contract.
* The provider’s technical and professional ability. The relevant authority may impose requirements ensuring that a provider possesses the necessary human and technical resources and experience to perform the contract to an appropriate quality standard.

### Decision making under PSR

* + 1. The PSR decision-making processes are set out in Regulation 6.
    2. This regime must be applied whenever The ICB are making decisions about awarding contracts for health care services.
    3. The first step for The ICB applying this regime is to identify which of the following provider selection processes are applicable.

### Direct award process A

* + 1. Direct award process A must be used when all of the following apply:
* there is an existing provider of the health care services to which the proposed contracting arrangements relate.
* the relevant authority 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.
* Direct award process A must not be used to conclude a framework agreement.

### Direct award process B

* + 1. Direct award process B must be used when all of the following apply:
* the proposed contracting arrangements relate to health care services in respect of which a patient is offered a choice of provider.
* the number of providers is not restricted by the relevant authority.
* the relevant authority will offer contracts to all providers to whom an award can be made because they meet all requirements in relation to the provision of the health care services to patients.
* the relevant authority has arrangements in place to enable providers to express an interest in providing the health care services.
* Where The ICB are required to offer choice to patients under regulation 39 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012, they cannot restrict the number of providers and therefore direct award process B must be followed.
* Direct award process B must not be used to conclude a framework agreement.

### Direct award process C

* + 1. Direct award process C may be used when all of the following apply:
* the relevant authority is not required to follow direct award processes 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 contracting arrangements are not changing considerably.
* the relevant authority 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.
* Direct award process C must not be used to conclude a framework agreement.

### Most suitable provider

* + 1. The most suitable provider process may be used when all of the following apply:
* the relevant authority is not required to follow direct award processes A or B
* the relevant authority cannot or does not wish to follow direct award process C.
* the relevant authority is of the view, taking into account likely providers and all relevant information available to the relevant authority at the time, that it is likely to be able to identify the most suitable provider (without running a competitive process).
* The most suitable provider process must not be used to conclude a framework agreement.

### Competitive Process

* The competitive process must be used when all of the following apply:
* the relevant authority is not required to follow direct award processes A or B
* the relevant authority cannot or does not wish to follow direct award process C and cannot or does not wish to follow the most suitable provider process.
* the competitive process must be used if the relevant authority wishes to conclude a framework agreement.
  + 1. Once the relevant authority has identified which of these circumstances applies and has identified the appropriate provider selection process to follow, it will then need to follow that provider selection process as set out in detail in the sections below.
    2. The ICB are expected to identify which provider selection 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 the same approach must be used for that service in future.
    3. It is permitted to make certain modifications during the term of a contract to allow for changes to services or circumstances. The section on contract modifications sets out the conditions and transparency requirements for these modifications.
    4. 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 under this regime. The section on urgent awards or contract modifications sets out these circumstances and how The ICB must act if they arise.

### Key criteria

* + 1. 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.

### Application of key criteria

* + 1. The ICB must 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 (including when concluding a framework agreement and when awarding a contract based on a framework agreement using the competitive process). Under these processes, The ICB must be able to justify their decisions when following a provider selection process in relation to the key criteria and keep a record of this. Further detail on recording decision-making and transparency can be found in the transparency section.
    2. How The ICB assess providers against the key criteria, including what evidence they consider, may vary according to the service they want to procure. A relevant authority may wish to address specific priorities; these are expected to be described as part of the key criteria and can be considered when deciding the relative importance of the key criteria.
    3. The ICB must be aware that equalities duties in the Equality Act 2010, including the Public Sector Equality Duty, are relevant to all criteria and due regard to these requirements must be given when considering each criterion.

### Balancing the key criteria

* + 1. The relative importance of the key criteria is not predetermined by the Regulations or this guidance and there is no prescribed hierarchy or weighting for each criterion. The ICB must decide the relative importance of the key criteria for each decision they make under this regime, based on the proposed contracting arrangements and what they are seeking to achieve from them/the services, including scenarios where a particular criterion is ‘pass/fail’, or where certain key criteria are of equal importance. All criteria must be considered, and none is expected to be discounted when following a provider selection process.
    2. The regime does not specify how The ICB must balance the key criteria; however, The ICB are expected be aware of wider requirements or duties when considering procurement decisions. For example, NHS England, ICBs, NHS trusts and NHS foundation trusts are expected to adhere to NHS England’s net zero ambitions and its social value commitment, and the need to ensure value for money when arranging health care services (this list is not exhaustive). The flexibilities offered by the regime do not mean that The ICB are exempt from complying with their other obligations.
    3. The ICB are advised to consider particularly carefully the relative importance of the value criterion when making assessments under the most suitable provider process.
    4. It is advised that for provider selection processes with higher contract values, greater focus is given to value for money and the quality and efficiency of the services to be provided, unless this means the service does not best meet the needs of the population it is serving.
    5. When making assessments against the key criteria under direct award process C and the most suitable provider process, The ICB are expected to use information and evidence from a range of sources, as well as their knowledge and experience of working with providers. They can ask providers for further information to assist with this assessment if they wish. The explanation of each criterion in Annex D includes examples of relevant sources where appropriate.
    6. When following the competitive process The ICB must only use the information contained in the bid to assess the bid. The ICB may set out in their tender documents that wilful misrepresentation of a bid by a provider will result in exclusion from the provider selection process.
    7. The ICB must justify and record how they have given relative importance to each of the key criteria for the service they are arranging. Further detail on recording decision-making can be found in the transparency section.
    8. The ICB must ensure they meet other relevant statutory duties when deciding the relative importance of each of the criteria, including normal public law decision-making principles around reasonableness of decisions. The ICB are also expected to consider other national and local policies and non-statutory guidance when deciding the relative importance of each of the criteria.

### Keeping records of decision-making

* + 1. The relevant information requirements are detailed in Regulation 24.
    2. The ICB must make and keep clear records detailing their decision-making process and rationale. This must be done for all provider selection processes (direct award process A, B and C, the most suitable provider process, and the competitive process), when concluding a framework agreement, when awarding a contract based on a framework agreement without competition, and when awarding a contract based on a framework agreement following the competitive process. This includes where a provider selection process was abandoned or where the relevant authority decided to return to an earlier step in the process. Records must include:
* name of the provider to which the contract has been awarded or the name of any provider who is a party to a framework agreement and the address of their registered office or principal place of business.
* the decision-making process followed to select a provider(s), including details of the procedure used when the competitive process is followed.
* the reasons for these decisions
* details of the individual/individuals making the decision
* any declared or potential conflicts of interest for individuals involved in decision-making and how these were managed.
* where a procurement is abandoned, the date on which it is abandoned.
  + 1. We expect that records are kept when contracting for mixed procurements, including how the procurement meets the requirements for mixed procurements under this regime.

### Direct Award Process C

* + 1. When following direct award process C or the most suitable provider process, records must also include:
    2. a description of the way in which the key criteria (e.g., weighting, hierarchy, or more informal description of importance) were taken into account, and how the basic selection criteria were assessed when making decisions. We expect that this includes the relative importance of the key criteria that the relevant authority used to make a decision, the rationale for the relative importance of the key criteria, and the rationale for choosing the provider with reference to the key criteria.

### Competitive Process

* + 1. When following the competitive process (including when concluding a framework agreement or when awarding a contract based on a framework agreement following the competitive process), records must also include:
    2. a description of the way in which the key criteria were taken into account, the basic selection criteria were assessed, and contract or framework award criteria were evaluated when making a decision. We expect that this includes the relative importance of the key criteria that the relevant authority used to make a decision, the rationale for the relative importance of the key criteria, and the rationale for choosing the provider with reference to the key criteria.

### Concluding a Framework Agreement

* + 1. When concluding a framework agreement, we expect that records include the terms and conditions that will be laid down by the framework agreement and include which The ICB are part of the framework agreement. When awarding a contract from a framework agreement, we expect that records include which framework agreement the contract is being awarded from.
    2. The ICB must be aware that they may need to disclose information on the rationale for their decision making under the Regulations if a representation is made (see standstill period). We expect The ICB to keep their records for a period of time that is in line with their organisation’s record keeping policies and any applicable legislation.
    3. The ICB are also expected to keep records of their decisions and decision-making processes when modifying a contract.

### Urgent Circumstances

* + 1. Keeping records of decision-making in urgent circumstances
    2. When awarding or modifying a contract in an urgent circumstance, The ICB must make and keep clear records detailing their decision-making process and rationale. Records must include:
* justification for using the urgent circumstances exemption.
* name of the provider(s) to which the contract has been awarded and the address of its registered office or principal place of business.
* the approach taken to select a provider and the process followed (i.e., urgent circumstance)
* details of the individual/individuals making the decision
* any declared or potential conflicts of interest of individuals making the decision (not including individual names) and how these were managed.
  + 1. We expect that records are kept when contracting for mixed procurements, including how the procurement meets the requirements for mixed procurements under this regime.

### Annual summary

* + 1. The annual summary requirements are set out in Regulation 25.
    2. The ICB must publish a summary of their application of the PSR annually online (e.g., via the relevant authority’s annual reports or annual governance statement). We expect the first annual summary to relate to contracts awarded using the PSR between 1 January 2024 – 31 March 2025, and we expect this to be published no later than six months following the end of 2024/2025 financial year.
    3. Following the first annual summary, all other annual summaries must be published no later than six months following the end of the financial year it relates to.
    4. This must include, in the year to which the summary relates, the:
* number of contracts directly awarded under direct award processes A, B or C
* number of contracts awarded under the most suitable provider process.
* number of contracts awarded under the competitive process.
* number of framework agreements concluded.
* number of contracts awarded based on a framework agreement.
* number of urgent contracts awarded and urgent modifications (in line with the [urgent awards or contract modifications section](https://www.england.nhs.uk/long-read/the-provider-selection-regime-statutory-guidance/#urgent-awards-or-contract-modifications))
* number of new providers awarded contracts.
* number of providers who ceased to hold any contracts with the relevant authority.
* details of representations received, including:
* the number of representations received in writing and during the standstill period in accordance with Regulation 12(3)
* summary of the outcome of all representations received and of the nature and impact of those representations.
  + 1. In addition, the ICB are expected to publish:
* total number of providers the relevant authority is currently contracted with.
* details of any PSR review panel reviews:
* number of requests for consideration received by the PSR review panel.
* number of requests accepted and rejected by the PSR review panel for consideration.
* number of times where the PSR review panel advised the relevant authority to re-run or go back to an earlier step in a provider selection process under the PSR, and the number of times the advice was followed.

### Monitoring requirements

* + 1. The monitoring requirements are set out in Regulation 26.
    2. The ICB must monitor their compliance with the Regulations. The results of the monitoring must be published online annually (and may be integrated into other annual reporting requirements) and include processes, decisions made under the PSR, contract modifications, and declaration and management of conflicts of interests. The ICB may use internal auditors to fulfil these requirements.
    3. If a compliance report finds instance(s) of non-compliance, The ICB must put in place actions to address this issue and to improve adherence with the regime.

### Reviewing decisions during the standstill period

* + 1. The standstill period requirements, including for the reviewing of decisions, are detailed in Regulations 12 and 14(3). Provision for independent expert advice is set out in Regulation 23 (see the section on the PSR review panel) – this includes how the PSR Review Panel may provide advice during the standstill period.
    2. This section explains how certain decisions made under the regime can be reviewed during the standstill period before they are finalised, and how a contract is awarded under certain procedures.

### What is the standstill period?

* + 1. The standstill period must be observed once a notice of intention to make an award to a provider under direct award process C, the most suitable provider process, or the competitive process has been published. This includes concluding a framework agreement or awarding a contract based on a framework agreement following a mini competition.
    2. The standstill period follows a decision to select a provider and must end before the contract can be awarded. It gives time for any provider who might otherwise have been a provider of the services to which the contract relates to make representations; and for The ICB to consider those representations and respond as appropriate. See the section below on receiving representations for further details.
    3. The standstill period must last for a minimum period of eight working days, during which time representations can be made. If any representations are received during this period, then the standstill period will remain open until the relevant authority provides any requested information, considers the representations, and makes a further decision.
    4. The ICB are expected to be aware of the process and timeline for the review of decisions under this regime and are expected to plan the arrangement of services accordingly. They are expected to ensure that the review of the decision-making process can be completed, and a new contract awarded, before the existing contract ends.

### When does the standstill period end?

* + 1. The standstill period starts the day after the publication of an intention to award a contract. Representations must be received before midnight on the eighth working day of the standstill period.
    2. The standstill period will end at midnight on the eighth working day, if:
* no representations are received by midnight on the eighth working day, or
* representations do not meet the required conditions (set out below).
  + 1. Where representations meeting the required conditions are received, the standstill period continues until the relevant authority:
* completes its review.
* communicates its further decision (with reasons) to the provider who submitted the representations and to the provider to whom it intended at the beginning of the standstill period to award the contract to
* concludes it is ready to award the contract, or that it wishes to return to an earlier step in the process or abandon the process.
  + 1. The end of the standstill period must be at least five working days after the relevant authority has communicated its decision to the provider. The minimum five working days’ notice allows for providers that remain unsatisfied about the response given by a relevant authority to their representations to seek the involvement of the PSR review panel (see PSR review panel section below).
    2. Where the relevant authority’s decision is to award the contract (rather than return to an earlier step in the process or abandon the process), the standstill period should end when the relevant authority concludes it is ready to award the contract and there has been at least five working days since the relevant authority communicated its further decision. Where within five working days of receiving the relevant authority’s further decision, the provider requests an independent review from the PSR review panel, the standstill period should continue, other than in exceptional circumstances. See the PSR review panel section for further details on its process and how to request a review.
    3. In this situation, if the PSR review panel accepts the request, the standstill period should not end until the relevant authority makes a further decision having considered the advice provided by the PSR review panel. The relevant authority must again give at least five working days’ notice of its further decision before the standstill period can come to an end and the relevant authority proceeds to take forward its further decision.
    4. The standstill period must end before a contract is awarded, and a confirmation of the decision is published (or before returning to an earlier step in the process or abandoning a process). The transition of services must only take place after the standstill period has ended and the contract has been awarded.

### Receiving representations

* + 1. Providers may make a representation to the relevant authority within the first eight working days of the standstill period (i.e., starting from the day after the intention to award notice has been published). Providers cannot submit a representation after midnight of the eighth working day of the standstill period, even if the standstill period has been extended in response to a representation from another provider.
    2. The purpose of making a representation is to seek a review of the decision made, to determine whether a relevant authority has applied the regime correctly and made an appropriate provider selection decision.
    3. The ICB are only obliged to respond to representations that meet all the following conditions:
* the representation comes from a provider that might otherwise have been a provider of the services to which the contract relates.
* the provider is aggrieved by the decision of the relevant authority.
* the provider believes that the relevant authority has failed to apply the regime correctly and is able to set out reasonable grounds to support its belief.
* the representation is submitted in writing (which includes electronically) to the relevant authority within eight working days of the start of the standstill period.
  + 1. When awarding a contract based on a framework agreement, e.g., following a mini-competition, only providers that were party to the framework agreement and i) took part in the mini-competition but were unsuccessful, or ii) were excluded from the mini-competition, may make a representation to the relevant authority.
    2. If they wish, The ICB may also respond to representations that do not meet the conditions above.
    3. The ICB must follow the relevant transparency requirements for the approach they take and must keep internal records of their decision-making Considering representations.
    4. The ICB should ensure that appropriate internal governance mechanisms are in place to deal with representations made against provider selection decisions. To this end, The ICB should, where possible, ensure that decisions are reviewed by individuals not involved in the original decision. Where this is not possible, The ICB should ensure that at least one individual not involved in the original decision is included in the review process.
    5. If the relevant authority is considering representations on the same issue from multiple providers, it may consider these together if appropriate.
    6. Where a representation is received within the eight working days, the relevant authority:
* Must ensure that the provider is afforded an opportunity to explain or clarify its representation(s) if these are not clear.
* Is expected to provide an indicative timeframe for when the representation might be considered by, and when the provider might reasonably expect a decision to be made.
* Must provide any information requested by the provider that the relevant authority is required to keep under the regime (see record keeping) as soon as possible, except where this:
* would prejudice the legitimate commercial interests of any person, including the relevant authority.
* might prejudice fair competition between providers.
* would otherwise be contrary to the public interest.
* Must review the evidence and information used to make the original decision, taking into account the representations made.
* Must consider whether the representation has merit (e.g., it identifies that the process has not been correctly followed or brings to light information that has a bearing on the decision reached).
  + 1. The provider that made the representations is expected to respond promptly and concisely to questions from the relevant authority about the points it has made, and if it cannot respond within a reasonable timeframe then it is expected to provide a justification.
    2. We expect the relevant authority to allow sufficient time and opportunity for the provider that made the representations to respond to questions from the relevant authority. In the event that the provider fails to respond/communicate, then it is for the relevant authority to decide whether to complete its assessment of the representations and communicate their decision to the provider.
    3. The ICB has established an internal PSR Review Group to independently review representations made by Providers under the relevant circumstances for PSR procurements.

### Outcome of representations

* + 1. Where the relevant authority finds that a representation has merit (e.g., it identifies that the process has not been followed correctly or brings to light information that has a bearing on the decision reached), it must further consider whether this impacts on the intention to award a contract to the selected provider. It must then decide whether to:
* enter into a contract or conclude the framework agreement as intended.
* go back to an earlier step in the selection process, either to the start of the process or to where a flaw was identified, rectify this, and repeat that step and subsequent steps.
* abandon the provider selection process.
  + 1. The relevant authority must communicate the decision described above promptly and in writing, to:
* the provider that made the representation
* the provider to which the relevant authority intended at the beginning of the standstill period to award the contract, or all providers with which the relevant authority intended at the beginning of the standstill period to conclude the framework agreement.
  + 1. The standstill period can only end once the relevant authority has reviewed its decision, shared its conclusion (in writing) with the relevant providers, and concluded that it is ready to award the contract, or that it’s going to return to an earlier step in the process, or abandon the process.
    2. The relevant authority must allow at least five working days following the day on which they sent their response to the provider, before the standstill period comes to an end. This time allows the provider to consider the response of the relevant authority, seek further clarifications, and to consider whether to request a further review by the PSR review panel. This time also allows the relevant authority to reconsider their decision and make any subsequent decisions if necessary. The relevant authority must communicate any such further decision in writing to the provider (as outlined above).
    3. If a panel review is requested and accepted, then the standstill period would usually continue until after the PSR review panel has given its advice and relevant authority has made its further decision in light of that advice.

### The PSR Review Panel

* + 1. NHS England has established the PSR review panel to provide independent expert advice to The ICB with respect to the review of PSR decisions during the standstill period.
    2. If a provider remains unsatisfied about the response given by a relevant authority to their representations, then that provider may seek the involvement of the PSR review panel. The PSR review panel may consider whether the relevant authority complied with the Regulations and may provide advice to the relevant authority. The relevant authority should then make a further decision about how to proceed.

### The Chair and the Panellists

* + 1. The PSR review panel Chair will preside over the PSR review panel and the Choice Provider Qualification Complaints Panel.
    2. Panellists will be independent experts who are made available by, or endorsed by, NHS England or the Secretary of State for Health and Social Care to provide advice relating to the relevant authority’s compliance with these Regulations. Panellists will be selected on the basis of having the relevant expertise, qualifications, or experience relating to the commissioning or procurement of health care services that enables them to carry out a review efficiently and effectively. Panellists must be able to offer an impartial and unbiased opinion, and they must not have any conflicts of interest in the provider selection process in question. This means that PSR review panel members must not have, directly or indirectly, a financial, economic, or other personal interest that might be perceived to compromise their impartiality and independence in the context of the provider selection process in question. Panel members must recuse themselves from providing advice on any provider selection processes where they have a conflict of interest or a perceived conflict of interest.
    3. Further detail on how the PSR review panel will operate will be set out on the [PSR website](https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/).

### The PSR Review Panel Process

* + 1. If a provider wishes to request the PSR review panel to consider their representation further, then they must submit their request through the [PSR website](https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/) within five working days of receiving the relevant authority’s decision following the relevant authority’s review of their representation. If the provider submits a request for advice from the PSR review panel, the relevant authority will be notified, and the relevant authority should:
  + keep the standstill period open for the duration of the panel’s review.
  + make a further decision once it has considered the independent expert advice.
    1. In exceptional circumstances, the relevant authority may conclude that it is necessary to enter into a new contract before the panel can complete its review and share its advice. In those circumstances, the relevant authority is expected to note the advice of the panel for the next time they use the PSR to arrange health care services.
    2. Where multiple providers seek the involvement of the PSR review panel, in relation to the same provider selection process, the PSR review panel may choose to address the points raised by each provider individually or consider all of the points together. The standstill period should continue until the last advice is provided (unless in exceptional circumstances).
    3. If the provider does not submit their request to the PSR review panel within the five working day period, or the PSR review panel does not accept the request for advice, then at any point after the end of that period, the relevant authority can bring the standstill period to an end and proceed to award the contract to their chosen provider.
    4. The PSR review panel will set out acceptance criteria to assess whether a request should be reviewed, and prioritisation criteria to determine the priority/urgency of a particular case. The acceptance and prioritisation criteria will be published on the [PSR website](https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/).
    5. Information requested by the PSR review panel from the relevant authority for the purposes of offering advice, and provided by the relevant authority, does not breach any obligation of confidence owed by the relevant authority. However, it may be subject to restrictions on disclosure imposed by other pieces of legislation.
    6. Where the PSR review panel accepts a representation for review, it will endeavour to consider it and share advice, or a summary of its advice, with the provider and the relevant authority within 25 working days. However, this timeframe is indicative and contingent on the engagement and timely responses of the provider and the relevant authority throughout the review process.
    7. The PSR review panel will also publish its advice, or a summary of its advice.

### Outcome of PSR panel review

* + 1. Once the relevant authority has considered the advice of the PSR review panel, it may make a further decision, to be its final decision, replacing the previous one, to either:
* enter into a contract or conclude the framework agreement as intended.
* go back to the start of the selection process or to the step where a flaw was identified, and repeat that step and subsequent steps (see repeating a step in a provider selection process), or
* abandon the procurement (see abandoning a provider selection process).
  + 1. The relevant authority must share this further decision promptly, in writing, and with reasons, with the provider who made a representation and the provider to which the relevant authority intended, at the beginning of the standstill period, to award the contract. The relevant authority must set out the outcome and a full and transparent justification for their decision, and it is expected that this will include whether they changed their original decision as a result of the advice of the PSR review panel. The relevant authority must wait at least five working days before concluding it is ready to award the contract and bring the standstill period to an end, or before it returns to an earlier step in the process, or before it abandons a process.

### Modification of contracts and framework agreements during their term

* + 1. The requirements for the modification of contracts or framework agreements during their term are detailed in Regulation 13.

### Overview

* + 1. There will be situations where contracts or framework agreements need to be modified to reflect/account for changes to services/circumstances during their term.
    2. One aim of the regime is to avoid processes that only bring limited value to people who use the services. Therefore, this regime allows for certain modifications to be made to contracts or framework agreements during their term without reassessment of the existing provider.
    3. Depending on circumstance, permitted modifications can be made without following a new provider selection process, but in some cases will require the publication of transparency notices.
    4. Modifications, which make an existing contract or framework agreement materially different in character are not permitted under the regime and require a new provider selection process to be undertaken. Further information on permitted and not permitted modifications is given below.
    5. The ICB are expected to consider this section in conjunction with the modifications (variations) provisions of the relevant contract or sub-contract (for example, the General Conditions of the NHS Standard Contract).
    6. The provisions in this section must only be used for modification of contracts during their term and not to circumvent the regulations when a contract ends and a new one needs to be awarded.

### Permitted modifications.

* + 1. Under this regime, some modifications are permitted and so do not require a new selection process.
* Modifications to contracts originally awarded under direct award process A or B
* Where the original contract was awarded under direct award process A or B and the modification does not materially alter the character of the contract, then the modification is permitted.
* If that modification is attributable to a decision of the relevant authority and the cumulative change in the lifetime value of the contract since it was entered into is £500,000 or more, the modification is still permitted, but the relevant authority must publish a transparency notice.
* Modifications to contracts originally awarded under direct award process C, the most suitable provider process, or the competitive process.
* Where the original contract was awarded under direct award process C, the most suitable provider process, or the competitive process (including framework agreements), then modifications are permitted in the following instances:
* The modification is clearly and unambiguously provided for in the contract or framework agreement documents (i.e., the scope and nature of the potential change has been described in detail in the existing contract).
* The modification is solely a change in the identity of the provider due to succession into the position of provider following corporate changes (e.g., as the result of a corporate takeover, merger, acquisition or insolvency), and where the relevant authority is satisfied that the provider meets the basic selection criteria.
* The modification is made in response to external factors beyond the control of the relevant authority and the provider, including but not limited to changes in:
  + patient or service user volume
  + prices in accordance with a formula provided for in the contract documents (e.g., uplifts in prices published in the NHS Payment Scheme or index linking) which do not render the contract or framework agreement materially different in character.
    1. If the relevant authority makes a permitted modification (to a contract that was originally awarded under direct award process C, the most suitable provider process, and the competitive process), it must publish a transparency notice where all the below apply:
* that modification is attributable to a decision of the relevant authority.
* the cumulative change in the lifetime value of the contract or framework agreement is £500,000 or more and this represents less than 25% of the lifetime value of the original contract or framework agreement since it was entered into or concluded.
  + 1. To note contracts entered into before the commencement of the PSR must be modified in line with this section.

### Modifications that are not permitted

* + 1. Modifications that make the existing contract or framework agreement materially different in character are not permitted under this regime without undertaking a new provider selection process. 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 value of the original contract or framework agreement and (ii) £500,000 or more compared to the lifetime value of the original contract or framework agreement (when it was entered into).
  + 1. In these cases, the relevant authority must follow the appropriate decision-making process to select a provider (or group of providers) for the substantially changed service.

### Contract modifications in urgent situations

* + 1. 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 urgent awards or contract modifications sections.

### Urgent awards or contract modifications

* + 1. The requirements for an urgent award or contract modification are detailed in Regulations 14(1), 14(2), and 14(4).
    2. There are limited occasions where The ICB may need to act urgently and award or modify contracts to address immediate risks to patient or public safety.
    3. 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 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.
  + 1. 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).
  + 1. 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 relevant authority.
* delaying the award of the contract to conduct a full application of the regime would be likely to pose a risk to patient or public safety.
  + 1. The ICB must not use the urgent award or contract modification provisions in this regime if the urgency is attributable to the relevant authority 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.
    2. In these urgent circumstances, The ICB:
* Are expected to limit the contract term or contract 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. We anticipate that contracts awarded under Regulation 14 will have a duration of no longer than 12 months. If the duration is to be longer, The ICB must justify and record this decision.
* Must keep records of their decision-making, including a justification for using an urgent award.
  + 1. 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).

### Termination of contracts

* + 1. The requirements for contract terminations are set out in Regulation 22.
    2. The ICB must ensure that each contract awarded contains provisions enabling its termination by the relevant authority if:
* the contract has been subject to modifications that are not permitted under the regime (see [contract modifications](https://www.england.nhs.uk/long-read/the-provider-selection-regime-statutory-guidance/#modification-of-contracts-and-framework-agreements-during-their-term)) 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.
  + 1. The provisions allowing the termination of a contract may address how such terminations would take place, e.g., by setting out a notice for terminations and by addressing any consequential matters that may arise from that termination. If the contract does not contain specific provisions allowing the relevant authority to terminate on the grounds specified above, there is an implied term of any contract awarded under the PSR that the relevant authority may do so by giving reasonable notice.

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## Non-Healthcare Service

### Non-Healthcare Service Procurements

* + 1. Where the procurement is for non-healthcare services, the following must apply:
* All non-healthcare services 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).
* All healthcare services contracts that are subject to the Health Care Services (Provider Selection Regime) Regulations 2023 (PSR) must be subject to a process designated within the PSR.
* For non-healthcare services 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.
* For non-healthcare services 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 non-healthcare services procurement is subsequently exceeded within a competitive quotation process, this shall be reported to the CFO 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 Procurement Advisors 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. Advice from ICB Procurement Advisors 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.

### Procurement Law in the Public Sector (For non-healthcare services)

* + 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: £214,904 inclusive of vat.
* Works £5,372,609 inclusive of vat.
  + 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”).

### 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 ICB Procurement Advisors 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).

### 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.

### 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 CFO shall be responsible for monitoring operational compliance with this Policy on a day-to-day basis, through support from the ICB Contracting Team and ICB Procurement Advisors.
  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 ICB Procurement Advisors.

## 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 Contracting Team and ICB Procurement Advisors to ensure the law, appropriate regulation, internal governance and process is adhered to.

## Arrangements for Review

* 1. This policy will be reviewed no less frequently than every two years. 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)

* 004 Accounting and Financial Management
* 012 Records Management and Information Lifecycle Policy
* 018 Conflicts of Interest, Gifts, Hospitality and Commercial Sponsorship Policy
* 022 Legal Services Policy
* 026 Counter-Fraud, Bribery and Corruption Policy
* 032 Health Inequalities Impact Assessment Policy and Guidance
* 062 Complaints, Compliments and Concerns Management Policy
* 088 Decision Making Policy

### Other Key Guidance

**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 ICB Procurement Advisors 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) |
| 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):**  V1.1 | **Directorate/Service**:  Resources Directorate |
| **Assessor’s Name and Job Title:**  Nicola Adams, Associate Director of Corporate Services | **Date:** 07/02/2024 |

|  |
| --- |
| **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 ICB Procurement Advisors, 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. |

|  |
| --- |
| **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 |