

Procurement Policy

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Brief Description	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 activities, directly contributes to the HWE ICB's corporate aims and objectives and meets legal requirements.
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SECTION 1

1.1 Introduction

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

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

The Hertfordshire and West Essex Integrated Care Board acts as a key partner within the Hertfordshire and West Essex Integrated Care System.

Commissioning responsibility of the HWE ICB may in future include the transition of commissioning responsibilities for services historically the responsibility of NHS England. This could include the commissioning and arranging of primary medical services, dentistry (primary, community and secondary services), community pharmacy and general ophthalmology in future with NHS England retaining a more limited oversight role.

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

There are several procurement routes available within the healthcare environment in England which includes Any Qualified Provider (AQP), competitive tender, multi-provider models and working with selected providers. These routes are detailed in Section 3.3.

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

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



d) Stimulating innovation

If the HWE ICB delivers effective commissioning and procurement practice, and engages well with all stakeholders then the service outcomes associated with this policy will be that:

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

The ICB believes that it will only be able to deliver its vision in collaboration with others. Our success will depend upon close partnership working. We are committed to working in strong partnership with the local community, local authority and healthcare providers.

The ICB will develop collaborative and integrated service delivery with other health and social care economies where it is proven that this adds value.

1.1.1 Procurement regulatory reforms

The UK's departure from the EU following the end of the transition period provides a unique opportunity to radically change public procurement.

For healthcare services, NHS England and NHS Improvement have a desire to replace current procurement rules when procuring NHS healthcare services with a set of more flexible arrangements to support the NHS ambition for greater integration and collaboration between NHS organisations and their partners, whilst reducing administrative bureaucracy.

The NHS Provider Selection Regime (PSR) will replace the Public Contract Regulations 2015 (EU Exit amendment etc. 2020) and the NHS (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013

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

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



1.2 Purpose and Objectives of the Policy

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

The Policy objectives are:

1. To set out the principles, rules and methodologies that the ICB will work to and clearly outlines how and when it is appropriate to seek to introduce contestability and competition as a means of achieving the best clinical outcomes and achieve value for money;
2. To set out the approach for facilitating open and fair, robust and enforceable contracts that provide value for money and deliver required quality standards and outcomes, with effective performance measures and contractual levers;
3. To describe the transparent and proportional process by which the ICB will determine whether health and social services are to be commissioned through existing contracts with providers, competitive tenders, via a framework approach or through a non-competitive process;
4. To enable early determination of whether, and how, services are to be opened to the market, to facilitate open and fair discussion with existing and potential providers and thereby to facilitate good working relationships;
5. To set out how the ICB will meet statutory procurement requirements primarily the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013, and The Public Contracts Regulations 2015 (*as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020*);
6. To ensure the ICB does not engage in anti-competitive behaviour, and protect and promote the right of patients to make choices about their healthcare; and
7. To enable the ICB to demonstrate compliance with the principles of good procurement practice:

1.2.1 Scope of the Policy

This policy applies to all staff and members of the ICB Governing Body or its sub-committees, 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, it is particularly relevant to procurement of supplies and services that support the delivery of healthcare and certain sections only relate to procurement of health and social care services.

It applies to all commissioning processes and procurement activity and decision making related to the delivery of healthcare services:

1. the development and approval of specifications for services
2. determination of which organisations shall provide services
3. determination of whether a service should be decommissioned.



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

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

1.3 Guiding Principles that underpin the Policy

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

1.3.1 Transparency

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

1.3.2 Proportionality

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

1.3.3 Non-Discrimination

- The ICB will ensure that procurement processes and documents will always be non-discriminatory and transparent. This includes our obligations under our



equalities and diversity duty;

- The ICB will inform all participants of the applicable rules in advance and ensure that the rules are applied equally to all. Reasonable timescales will be determined and applied across the whole process; and
- The ICB will ensure that shortlist criteria are neither discriminatory or particularly favour one potential provider

1.3.4 Equality of Treatment

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

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



SECTION 2

2.1 Accountabilities and Responsibilities

2.1.1 Lead Manager

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

2.1.2 Procurement Support

The ICB will engage the services of a professionally qualified procurement team, who will develop and agree robust operating procedures, compliant with all relevant guidance regulation and legislation, and designed to achieve NHS procurement standards.

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

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

2.1.3 Authority

The ICB will be directly responsible for:

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



2.2 Governance

2.2.1 Standing Orders

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

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

2.2.2 Scheme of Delegation and Sealing and Authorisation of Documents

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

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

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

Contract Value	Scheme of Delegated Authority
ICB Board / Governing Body	Unlimited
Commissioning Committee / Finance and Investment Committee	Approve proposals on individual contracts or services of a capital or revenue nature amounting to, or likely to amount to £2.5m (or up to £5m if contract exceeds 12 months). Recommend to the Board for approval of all proposals on individual contracts or services of a capital or revenue nature amounting to,



	or likely to amount to over £2.5m (or £5m if contract exceeds 12 months)
Remuneration Committee	Up to £100k for clinical and non clinical
Chief Executive Officer	Up to £1000k
Chief Financial Officer	Up to £500k
Deputy Chief Financial Officer	Up to £50k
Other Directors	Up to £100k
Deputy / Assistant / Associate Directors	Up to £50k
Other budget holders	Up to £25k
Senior Finance Manager	Up to £5k

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

2.2.3 When is procurement required?

- For all non-clinical contracts for the supply of Goods and Services with an anticipated value of more than £213,477 (inclusive of VAT) over the life of the contract must be subject to a formal procurement, in accordance with The Public Contract Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020).
- All healthcare contracts that are subject to the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 with an anticipated value of more than £663,540 (inclusive of VAT) over the life of the contract must be subject to a formal procurement. Typically, this will reflect the key principles of a procurement approach under The Public Contracts Regulations 2015 (*as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020*) (“Light Touch Regime”), however the ICB may choose to design their own “appropriate” procurement procedures as long as these are in keeping with principles such as transparency and equal treatment of providers and contracts must be awarded in conformity with the information contained in the advertisement i.e. conditions for participation, time limits and the award procedure to be adopted.
- Below the above thresholds, the decision relating where to advertise and who to invite to bid should be well reasoned and documented. The ICB have the option to choose whether to openly advertise opportunities above the value of £25,000 on the governments Contracts Finder website. Otherwise, a structured competitive quotation process must be used as follows:

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



		following procurement best practice. Request at least 3 written quotes.
£25,000 - £299,999	3 written	For Light Touch Regime Services, including Healthcare Services: Competitive Quote procedure with a written specification and a detailed options appraisal following procurement best practice. Request at least 3 written quotes.
£300,000 - £663,539	4 written	For Light Touch Regime Services, including Healthcare Services: Competitive Quote procedure with a written specification and a detailed options appraisal following procurement best practice. Request at least 4 written quotes.

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

Below is a table of procurement approvals required to proceed with procurement related decisions within the ICB.

Procurement Process	Procurement Value (£) (Inclusive of VAT)	Documentation Seeking Approval	Approval Point
Invitation to Quote	Up to £24,999k	Authorisation to proceed	Budget Holder
Invitation to Quote (Non-Light Touch)	£25,000 - £213,466	Authorisation to proceed with evaluation findings	Budget Holder / Relevant Board or Committee – dependent on value
Invitation to Quote (Light Touch)	£25,000 - £663,539	Authorisation to proceed with evaluation findings	Budget Holder / Relevant Board or Committee – dependent on value
Selection Questionnaire approvals (for competitive processes where this is a separate stage)	Over £213,467 (non light touch)	Authorisation to proceed to competitive procurement	Relevant Board or Committee / ICB Governing Body – dependent on value
	Over £663,540 (light touch)	Authorisation to proceed with evaluation findings	
Invitation to Tender – Preferred bidders	Over £213,467 (Non light touch)	Authorisation to proceed to competitive procurement	Relevant Board or Committee / ICB Governing Body – dependent on value
	Over £663,540 (light touch)	Authorisation to proceed with evaluation findings	

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

2.2.4 Splitting or disaggregation of contracts or waivers

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



Where a contract is split, and its splitting would prevent it from reaching a higher procurement process threshold (e.g. one triggering the full application of The Public Contracts Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020)), the rationale for this should be recorded and brought to the attention of the appropriate governance group.

2.2.5 False quotations and tenders, and bid rigging

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

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

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

Any concerns identified during the procurement process relating to fraud or bribery shall be brought to the attention of the Local Counter Fraud Specialist for the ICB or the NHS Counter Fraud Authority either via the NHS Fraud Reporting Line 0800 028 4060 or online **Error! Hyperlink reference not valid.**<https://cfa.nhs.uk/reportfraud>

2.2.6 Collaboration

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 commitment to specific joint projects/contracts across the Hertfordshire and West Essex footprint for example, where this serves the best interest of the ICB's population. The move towards further integration will necessitate the development of new types of contracts for accountable care models and the ICB will follow guidance from NHS England and NHS Improvement on their application.

2.2.7 Waivers

The ICB is committed to ensuring that services are procured in accordance with legislation. In limited circumstances the need to request quotations or competitive tenders may be waived. Regulation 32 of the PCR 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020) and the ICB constitution outline the following circumstances where contracts may be awarded without a full tender exercise:



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

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

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

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

The waiving of competitive tendering procedures should not be used to avoid competition or for administrative convenience or to award further work to a consultant or contractor originally appointed through a competitive procedure.

In any of the circumstances detailed in the above exceptions, a Tender waiver Form must be completed by the Commissioning Manager and signed by the Procurement Lead, the Chief Financial Officer and the Accountable Officer. Signed forms should then be tabled for noting at the ICB Audit Committee. The same process will be used to waive the request for quotations.

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



2.3 Modification of contracts during their term

Regulation 72 of the Public Contract Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020) makes specific reference to when a service may or may not be modified, without a new procurement procedure being undertaken.

The ICB will seek procurement advice before modifying any contract to seek assurance that the modification is allowable within the confines of Regulation 72.

Such changes to the commissioning of a service will be logged as an agenda item at the relevant Board or Committee as appropriate to the value of the modification and the impact on the total contract value for comment or further direction. A waiver approved through the governance routes noted above where the market is not being approached; and an entry made in the ICBs Procurement Register (referenced at Appendix 3) identifying whether the market has been approached or a waiver approved for noting at audit committee.

2.4 Pilots

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

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

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

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

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

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

- a. Do nothing (cease the service)
- b. Go out to full Procurement



2.5 Grants

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

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

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

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

2.6 Spot Purchasing

From time to time there will be the need to spot purchase contracts for particular individual patient needs or for urgency of placements requirements at various times. At these times, a competitive process may be waived using the waiver process set out in this policy.

It will be expected that these contracts will undergo best value reviews to ensure that the ICB is getting value from the contract. Value for money should be assessed by the manager with responsibility for signing off the spot purchasing agreement or individual service agreement, and then reviewed annually.

Sign off of spot purchase agreements should follow the Detailed Scheme of Delegation. In all cases the ICB should ensure that the provider is fit for purpose to provide the particular service. The process will follow UK Public Procurement rules and the ICB's Financial Policies and Scheme of Delegation as appropriate.

2.7 Integration

The NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013) require commissioners to consider how they can procure services in a more integrated fashion.

When procuring services, commissioners should, therefore, consider the impact on the patient who may have multiple healthcare needs and hence may traditionally have had to:

- Receive treatment from a number of different healthcare teams across a range of disciplines;
- Receive treatment over a number of different sites; or
- Receive treatment from a number of different healthcare providers.

No direct solution is given to address the issue other than to ensure that when procuring services they interface in a way which gives the patient a seamless service.



Consideration will be given by the ICB to identifying and creating opportunities for the integration of services where such integration can deliver improved benefit to patients and/or the NHS.

It is recognised that integration may take the form of providers of different services collaborating to offer joined up health and social care services for service users or may involve services being provided by a single or lead provider.

Consideration will be given as to how the ICB can make best use of resources to support the establishment of provider partnership solutions. Thus, when reviewing a contract for health care services, whether for a new or existing service, the ICB will consider the contractual relationship the service will need to have with any existing or Integrated Care System (ICS), or some other Alliance or collaborative arrangement of providers, including any Integrated Care Partnerships (ICP's) within the Hertfordshire and West Essex area.

The ICB should give consideration to the following matters:

- Whether an existing contract could be extended, or an interim short-term contract be established during a transitional period whilst the Collaborative Arrangement is established – where the service is to be subsumed within the scope of the Collaborative Arrangement; or
- Whether a new contract to be established will need to include a clear provision to lawfully transfer (e.g. novate) from the ICB and the existing provider to the future Collaborative Arrangement during the lifetime of the new contract; or
- Whether an existing service should be de-commissioned in light of the emergence of a new ICS contract and the implications of doing this.

The role of competition and the need to comply with associated regulatory obligations should be considered when establishing Collaborative Arrangement and any contracts that are likely to fall within their scope.

2.8 Integrated Support and Assurance Process (ISAP)

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

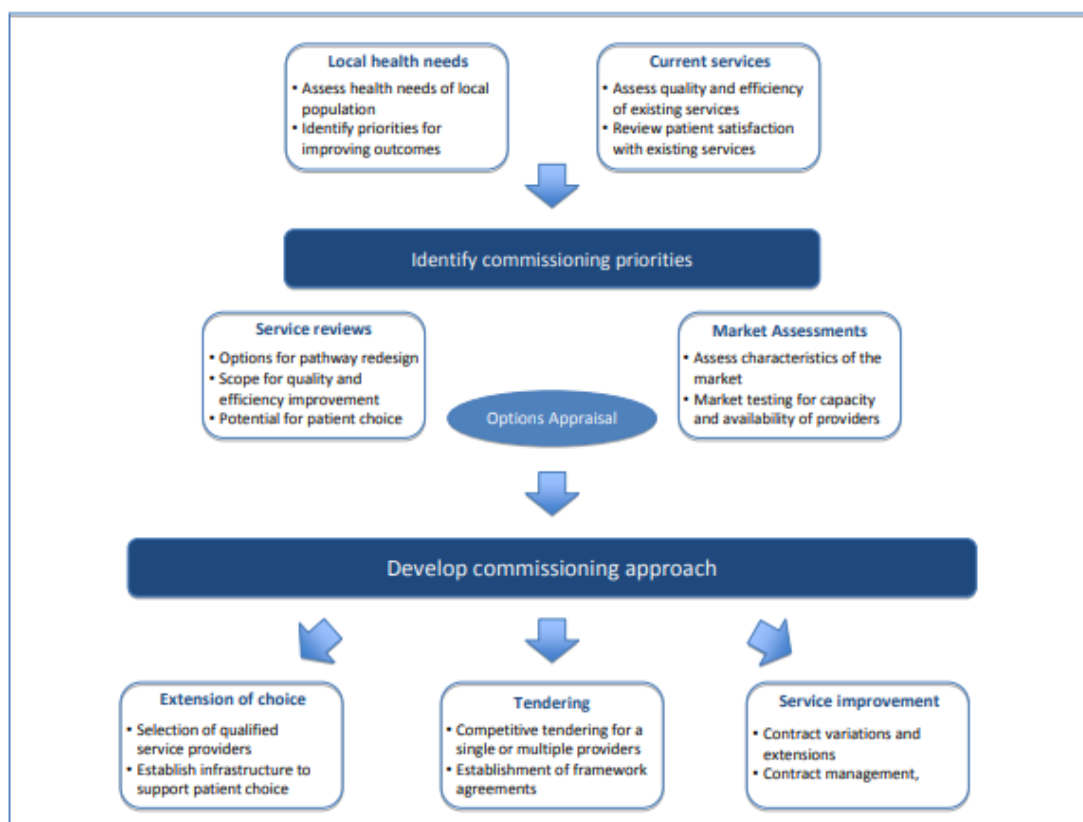
2.9 Contracting and Tendering Procedures

The following will be undertaken prior to conducting a formal procurement process:

- 1. Commissioning Strategy**
- 2. Commissioning needs assessment** – review service requirements against needs assessments.
- 3. Service Specification** – develop requirements, outcomes to be achieved, quality standards, KPI's and other factors.
- 4. Provider Engagement** – to develop and refine the service specification.



5. **Procurement option evaluation** - demonstrates the rationale for decision for procurement and selection of procurement process plus proposed duration of contract.



The ICB requires all detailed procurement procedures adopted within the ICB and by any third party to be compliant with regulation and best practice, managed in electronic format and to be fully auditable in the event of a request by ICB appointed auditors or in the event of a competition complaint.

There should be no variation from agreed procurement procedures by a third party without the express and documented consent of the ICB.

There should be no variation from use of NHS National Standard contracts without the formal agreement of the ICB Governing Body, and NHS England and NHS Improvement if required.

The archiving of all documentation will be in accordance with the standards set out in the NHS Retention of Non-Clinical Records guidance. The destruction of documentation will be agreed in writing by the Chief Financial Officer.

2.10 Public Services (Social Value) Act 2012

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.

Commissioners and procurers must follow the Act and take it into account when considering procurements of certain types of services contracts and framework agreements.

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.

The Act requires 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.

The governments Procurement Policy Note (PPN) 06/20 introduced a new model to deliver social value, which applies to procurements covered by the Public Contract Regulations 2015 and requires a minimum of 10% weighting for social value questions. This builds on the requirement to consider Social Value in pre procurement planning and procurement processes within the Social Value Act 2012.

In March 2022, NHS England published guidance to extend these principles within the PPN 06/20 to ensure the consistent approach of all in-scope organisations to apply net zero and social value to the commissioning and purchase of goods and services by NHS organisations.

The NHS England guidance sets out a clear approach to apply and implement such principles within PPN 06/20. The guidance sets out details on:

- Selecting the social value themes
- Determining net zero and social value weighting at or above 10%
- Adding net zero and social value questions into a tender
- Evaluating tender responses
- Effective contract management

HWE ICB are committed to contributing to the NHS England Net Zero and Social Value goals and will take such guidance into account when commissioning and purchasing goods and services.

Any social, economic or environmental requirements (even if only in broad terms) are mentioned in the advertisement for any competitive procurement exercise that is undertaken.



2.11 Specifications

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

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

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

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

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

2.12 Confidentiality and conflicts of interest

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

Section 75 of the Health and Social Care Act 2012 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.



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).

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

Managing potential conflicts of interest appropriately is needed to protect the integrity of the NHS commissioning system and protect Integrated Care Boards and Member practices from any perceptions of wrongdoing. All those participating in the development and evaluation of a tender, including third parties, will be required to sign a specific declaration of interest and a confidentiality agreement in accordance with the Managing Conflicts of Interest, Gifts, Hospitality and Sponsorship Policy.

A conflict could arise:

- In carrying out a competitive tender: where GP practices or other providers in which ICB members have an interest are amongst those bidding; or
- When procuring clinical services where one or more GP practices (or other providers in which ICB members have an interest) are amongst the qualified providers from which patients can choose; or

A conflict of interest may include but not be restricted to any direct or indirect links to any of the providers and significant shareholdings associated with any of the providers.

- Within alliances/ICS models of care where a provider may become privy to information relating to other alliance members, thus giving that provider an unfair advantage.

In managing conflicts of interest, the ICB will:

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

A conflict of interest can lead to bias and corruption in the bid evaluation and contract award approval processes. Bias can be said to have occurred when a fair-minded observer, having considered the facts, would conclude that there was a real possibility of it occurring. A person who dishonestly abuses a position that they occupy and is expected to safeguard the organisation's interests may also be guilty of the offence of fraud by abuse of position according to section 4 of the Fraud Act 2006. Even when bias does not occur, a lack of transparency in the declaration and management of a conflict of interest can lead to the perception that wrongdoing exists.



NHS England has issued guidance which specifically looks at where GP practices are potential providers of ICB commissioned services, where GP practices are potential providers of ICB commissioned services. If there are any concerns relating to the possible breach of the Standards of Business Conduct Policy (incorporating COI) advice should be sought from the Governance Team.

2.13 Conflicts of interest with its procurement support provider

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

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

2.14 Complaints and Dispute Resolution

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

2.15 Premises and Equipment

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. In all instances the ICB estates team should be engaged with for full advice and guidance.

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 Commissioning Project Lead will ensure that this information is discussed with primary care leads in the ICB Estates Team.

2.16 Decommissioning Services

The need to decommission contracts can arise through:

- Contract Termination due to performance against the contract not delivering the expected outcomes. This can be mitigated by appropriate contract monitoring and management and by involving the provider in this. The contract terms will allow for remedial action to be taken to resolve any problems. Should this not resolve the issues, then the contract will contain appropriate termination provisions.
- The contract expires.



- Services are no longer required.

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 issues, then providers will be expected to co-operate and be involved in discussions to deal with such issues.

2.17 Wider Stakeholder Consultation and Engagement

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

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

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

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

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

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

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

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

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

- Engage widely throughout the process;



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

2.18 Healthcare market analysis, development and management

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

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



SECTION 3

3.1 Procurement Arrangements

3.1.1 Background

The NHS and the wider public sector procurement are subject to UK procurement rules and regulations and national policy and specific sector guidance.

The UK's departure from the EU following the end of the transition period provides a unique opportunity to radically change public procurement.

For healthcare services, NHS England and NHS Improvement have a desire to replace current procurement rules when procuring NHS healthcare services with a set of more flexible arrangements to support the NHS ambition for greater integration and collaboration between NHS organisations and their partners, whilst reducing administrative bureaucracy.

The NHS Provider Selection Regime (PSR) will replace the Public Contract Regulations 2015 (EU Exit amendment etc. 2020) and the NHS (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013

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

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

The public procurement regime was amended in the UK following the expiry of the Brexit transition period. The Brexit IP completion day was 11.00 pm on 31 December 2020, following the withdrawal of the UK from the EU. EU Directives remain part of UK law in the form of the Public Contracts Regulations 2015 ('PCR 2015') which are amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 ('PPAR 2020'), in order to create a UK based procurement regime.

With regards to changes brought about by the EU Exit Regulations, the main difference is that procuring entities are required to publish notices on the new UK e-notification service called Find a Tender Service (FTS) instead of in the OJEU. The EU Exit Regulations also amend specific EU references within the legislation such as;

- replacing the "ESPD", for European single procurement document, with "SPD";
- transferring certain supervisory powers from the European Commission to Cabinet Office;
- omitting provisions on joint cross border procurement with EU member states; and
- deleting the exclusion ground which specifically relates to fraud affecting the EU's financial interests.



- public procurement thresholds being set out in pound Sterling
- a new requirement at Regulation 32(2)(a) – around use of the negotiated procedure without a notice in circumstances where an open or restricted procedure has been run and no suitable tenders have been received; there is now an obligation to send a report to the Cabinet Office (if it so requests).

The reforms will also ensure that the UK remain committed to the World Trade Organisation (WTO) Agreement on Government Procurement, which the UK joined as an independent member on 1 January 2021. This requires most major UK public contracts (most of whom are covered by the Directives), to be open to the EU and other major trading partners, with transparent award procedures and remedies.

Specifically, the NHS is governed by the requirements of the following:

- NHS (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (where the commissioner is NHS England and NHS Improvement or a ICB) (PCCR 2013)
- The Public Contracts Regulations 2015 (*as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020* for services
- Operational Guidance to the NHS-Extending Patient Choice of Provider (Department of Health & Social Care)
- Everyone counts: Planning for Patients outlines specific requirements that is appropriate to commissioned services
- NHS England and NHS Improvement Guidelines
- Cabinet Office Guidelines
- Crown Commercial Service Guidance.

The UK has secured independent membership of the GPA, which came into force on 1st January 2021. The GPA aims to mutually open government procurement markets among its parties, and seeks to address trade barriers, such as preferential treatment of domestic goods and services, in the government procurement sector. The GPA applies to procurement opportunities undertaken by certain types of authorities for certain types of contracts with a value above certain thresholds.

The UK's public procurement regulations comply with the GPA and the GPA remains implemented into domestic procurement law. Therefore contracting authorities will comply with GPA requirements by fully complying with domestic procurement law.

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, and;
- Having legal personality and;
- If 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.

The following policy outlines these specific points, defining the requirements of these points and how the ICB will incorporate and react to these obligations.



3.2 Procurement Law in the Public Sector

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

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

3.2.1 Thresholds

Where public sector bodies are purchasing supplies or services or commissioning works, which are over the relevant Public Procurement Threshold, then the Regulations must be complied with insofar as they apply to the subject of the procurement. The Public Procurement Thresholds as at January 2022. They are generally recalculated every 2 years and are communicated via a Procurement Policy Note (PPN) on the www.gov.uk website

- Supplies and Services e.g. IT Services or Patient Transport Services that are not part of the Light Touch Regime: £213,477
- Light Touch Regime Services including Healthcare services: £663,540
- Works £5,336,937.

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

However, even where NHS organisations make purchases which are below this limit then they will still need to ensure that they comply with the general principles of transparency, non-discrimination, and proportionality by using those procedures (as set out below) ("the Procedures").



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

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

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

3.2.3 Joint Procurements

Where a joint procurement is to be pursued by two or more organisations, then the procurement will 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 organisation 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.

3.2.4 Contract extensions and variations to contracts during the contract term

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

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



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

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

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

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

3.3 The Procedures

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

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

a) Restricted Procedure

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

b) Open Procedure

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

c) Competitive Dialogue

The Competitive Dialogue procedure allows the contracting authority to enter into dialogue with bidders, following a Find a Tender Service notice and a selection process, to develop



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

d) Framework Agreement

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

A framework can be established:

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

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

e) Accelerated Procedures

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

f) Negotiated Procedure without Prior Publication (Direct Award)

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

g) Competitive procedure with negotiation

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

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



In the procurement documents, contracting authorities shall:

- identify the subject-matter of the procurement by providing a description of their needs and the characteristics required of the supplies, works or services to be procured;
- indicate which elements of the description define the minimum requirements to be met by all tenders, and
- specify the contract award criteria.

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

h) Innovation Partnership Procedure

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

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

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

i) Any Qualified Provider (AQP) (UK NHS initiative only) (for Light Touch Regime services only)

AQP describes a set of system rules (accreditation framework) whereby for a prescribed range of services, any provider that meets the cost and quality criteria laid down by the Commissioner can compete for business within the market, without direct constraint by the commissioner. AQP is a procurement route that encourages competition between providers of routine elective or other services, where activity is driven solely by Service User choice. Use of this AQP route must nevertheless meet PCR2015 as amended by the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 ('PPAR 2020') rules such as advertisement.

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

A Pseudo Dynamic Purchasing System (PDPS) provides a shortlist of suppliers from which buyers can conduct an e-competition for tenders. The wording enables Suppliers to apply to join the PDPS at any point during its cycle. A PDPS works in two stages; the first stage sees a contracting authority issue a call for competition in Finder a Tender Service, expressing



their intention to establish a PDPS. All suitable applicants, who meet the selection criteria and avoid exclusion, are admitted onto the Pseudo Dynamic Purchasing System. Depending on the size and structure of the PDPS, it may be divided into categories (e.g. of different services to be supplied); in such cases, suppliers are admitted to a relevant category or categories. Second Stage: Once the Pseudo Dynamic Purchasing System has been set up, the authority can use it to award specific contracts. This is done by inviting all suppliers in the relevant category to tender.

3.4 Advertising the requirement

a) Contracts Finder

- Under the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013, it is mandatory for NHS England and NHS Improvement and Integrated Care Boards (and those acting on their behalf) to advertise all healthcare services contracts covered by those Regulations on the Contracts Finder website where there is an intention to seek offers from providers.
- Crown Commercial Services (CCS) Guidance also makes it clear that advertisement is mandatory for all services that are not covered by (Procurement, Patient Choice and Competition) (No.2) Regulations 2013, including under threshold procurements above £25K

b) Find a Tender Service Contract Notices

- Under the PCR 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020), it is mandatory for Commissioners to advertise all Light Touch Regime services over the public procurement threshold value of £663,540 (inclusive of VAT) in Find a Tender Service via a notice or a PIN.
- As part of Procurement Best Practice, a Contracts Finder advertisement this should be adopted for all Light Touch Regime Services, including Healthcare services.

In both of the above instances, it is imperative to publish the Find a Tender Service advert first. And then publish a parallel advertisement in Contracts Finder, usually within 24 hours.

- PIN – Prior Information Notice - published normally annually to indicate the possible contracts which may be advertised in the coming year.
 - Useful if you wish to give the market lots of time to get ready
 - Useful if you wish to shorten the turnaround time for the Tender
- PIN – Prior Information Notice with call for expression of interest – informs the market of your intentions, giving the market a deadline to express an interest.

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



3.5 Thresholds for contract advertisements

Contract value for ICBs	Advertising requirements for ICBs	Type of process	Contract award notice
£0-29,999	No advertising requirements *	N/A	N/A
£30,000 to public procurement threshold (net of VAT)	Contracts Finder *	At authority's discretion (Using public procurement principles as well as NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 where relevant)	Contracts Finder
Above public procurement threshold: Goods and services: £213,477 (net of VAT) Works: £5,336,937 (net of VAT)	Find a Tender Service + Contracts Finder	Open, Restricted, Competitive Dialogue, Competitive Procedure with negotiation, or innovation partnership	Find a Tender Service + Contracts Finder
Above public procurement threshold: - Light Touch Regime Services: £663,540 (net of VAT)		"light touch" - that complies with transparency and equal treatment (as well as NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 where relevant)	

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

3.6 Tender Evaluation

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



Evaluators will attend a mandatory briefing/training session covering:

- the procurement and evaluation process
- the service specification.

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

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

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

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

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

3.7 10 day standstill period

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

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

3.8 Contract Award Criteria

Contract Award Notice when procuring Light Touch Regime Services such as Healthcare services

Provided a contract value is above threshold, once a contract has been awarded, the awarding body must publish a Contract Award Notice in Find a Tender Service.

There is also an obligation to advertise contract notices as well as contract award notices on the Contracts Finder website for any contracts worth:



- £10,000 or more, net of VAT, for central government departments, including NHS Foundation Trusts and agencies.
- £25,000 or more, net of VAT, for sub-central authorities, including ICBs, NHS Trusts and Local Authorities.
- Light Touch Regime Contract Award notices can, however, be grouped together and published Quarterly (The batching option is not available for non-Light Touch Regime procurements).
- Find a Tender Service Contract Award notices must be published within 30 days of contract award, or 30 days after the end of the quarter when batched. Contracts Finder Contract Award Notices must be published “within a reasonable time”.

3.8.1 Recording

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

3.8.2 De-Brief

Once a decision as to who the contract award has been made, all unsuccessful bidders should be notified by the most rapid means of communication possible.

Information on the evaluation of tenders against the award criteria set out in the ITT, together with specific reasons for the award of these scores has to be provided under the Regulations. As part of Procurement Best Practice, this should be adopted for all aforementioned Healthcare services.

Further debriefs should only be conducted by email or via the e-procurement portal and if requested by a bidder. Only in exceptional circumstances should a telephone or face-to-face debrief be held.

3.9 National Policy and Guidance

3.9.1 Cabinet Office Guidelines

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

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



3.9.2 NHS Constitution

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

3.9.3 Everyone counts: Planning for patients

'Everyone counts: Planning for Patients' outlines the incentives and levers that will be used to improve services from April 2013, the first year of the new NHS, where improvement is driven by clinical commissioners.

The guidance is published alongside financial allocations to ICBs and is accompanied by other documents intended to help local clinicians deliver more responsive health services, focused on improving outcomes for patients, addressing local priorities and meeting the rights people have under the NHS Constitution.

3.9.4 The Mandate

The Government, through the Department for Health and Social Care, has issued its mandate to NHS England, setting out the ambitions and budgets for the health service.

3.9.5 Operational Guidance to the NHS Extending Patient Choice of Provider (DHSC)

Since 2010, the Government has been committed to increased choice and personalisation in NHS funded services. Choice for patients can be about the way care is provided, or the ability to control budgets and self-manage conditions. The government has specifically committed to extending patient choice of Any Qualified Provider for appropriate services.

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

The regulations set out the requirements on ICBs and NHS England and NHS Improvement and in relation to commissioning of healthcare services including rules for ensuring transparency and non-discrimination in commissioning activities. Thus ICBs and NHS England and NHS Improvement:

- must act with a view to securing patients' needs and improving the quality and efficiency of the service;
- must act in a transparent and proportionate way and treat bidders equally and in a non-discriminatory way;
- where third parties, assist or support a commissioner in their procurement activity, the commissioner must ensure that they follow the requirements of the Regulations in the same way the commissioner must do itself;
- must maintain and publish a record of each contract awarded for the provision of healthcare services;



- must not engage in anti-competitive behaviour unless in the interests of patients;
- must maintain a record of how any conflicts of interest between commissioners and providers are managed;
- must maintain a record of how, in awarding the contract, the ICB / NHS England and NHS Improvement complies with certain statutory duties under the NHS Act 2006;
- provide thorough justification if competition not required where services are only capable of being provided by a particular provider;
- must publish contract notices (if applicable) and facilitate expressions of interest;
consider improving quality and efficiency of services through providing services in an integrated way, enabling providers to compete and allowing patients a choice of provider

3.9.7 ICB obligations in respect of Section 256 Agreements

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

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

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



3.10 Procurement Management and Best Practice

3.10.1 E Procurement

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

3.10.2 Procurement Planning

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

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

3.10.3 Service Capacity Issues

The provision of a 'Procurement Policy' enables the ICB to facilitate and monitor compliance with all procurement rules and regulations, as well as ensuring the organisation demonstrates effective procurement processes in carrying out both strategic and transactional purchasing activity. Any interim changes in legislation, case law and guidance from the Government, the Department of Health and Social Care, NHS England and NHS Improvement which have a potential to impact on process or best practice are also incorporated. The policy addresses a range of areas including development of provider markets as required including:

- Market Management Collaboration & Completion- using appropriate market management levers and strategies, including regional collaboration, to develop provider markets to meet current and future needs that will have a positive impact on outcomes.
- Procurement- ensuring all procurement activity is transparent, fair and equitable, with all decisions being made within a framework that delivers value for money and required outcomes.
- Policy & Governance- policies and processes are efficient, effective and ensure compliance with legislation, regulations in selecting market intervention strategies and contract award.
- Choice and Access Development of sustainable provider markets to deliver greater choice and access to healthcare in appropriate settings.

3.10.4 Procurement management approach

As part of the specialist support, the ICB will ensure that an appropriate procurement approach is followed to allow compliance and reduce risk of legal challenge and has a system to facilitate efficient and effective communication with the provider market (i.e. e-procurement solutions).



3.10.5 Best procurement practice

The ICB recognise that Procurement provides a transparent mechanism for securing new contracts for services which reflect patient and population needs. Done well, procurement can be a powerful tool for stimulating innovation and enabling improvements in quality and value. Procurement can stimulate or enable providers to develop new service models and/or redesign care pathways to improve quality of care to patients (e.g. greater personalisation) and make better use of the available healthcare resources in responding to the diverse needs of patients and communities.

The Commissioning Cycle below shows the key steps in a procurement process and how this aligns to the commissioning cycle, both working together to deliver the most effective outcome for the ICB and its patients.

The Commissioning Cycle



Strategic Planning: This is the baseline and sourcing stage

Procuring Services: Includes the purchasing and implementation stage

Monitoring and Evaluation: Covers contract management and continuous development

3.10.6 Procurement timescales by route

If Electronic Tendering is used as part of the Procurement Process	Where PIN is published (Sent for publication between 35 days and 12 months before Contact Notice is Sent)
Open Procedure – Minimum time limit for receipt of tenders in 30 days	Open Procedure - Minimum time limit for receipt of tenders is 15 days
Restricted Procedure – Minimum time limit for Request to participate 30 days	Restricted Procedure – Minimum time limit for Request to participate 30 days
Restricted Procedure – Minimum time limit for receipt of tenders 25 days	Restricted Procedure – Minimum time limit for receipt of tenders 10 days
Competitive Procedure with Negotiation and Innovation Partnerships - Minimum time limit for request to participate 30 days	Competitive Procedure with Negotiation and Innovation Partnerships - Minimum time limit for request to participate 30 days
Competitive Procedure with Negotiation and Innovation Partnerships - Minimum time limit for receipt of initial tenders 25 days	Competitive Procedure with Negotiation and Innovation Partnerships - Minimum time limit for receipt of initial tenders 10 days
Competitive Dialogue – Minimum time limit for requests to participate 30 days	–

3.10.7 Using the correct contract

Commissioners should ensure the correct use of contract to procure services in line with DHSC guidance, NHS England and NHS 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. The NHS may wish to obtain legal support with completing schedules within the NHS standard contracts and/or constructing bespoke contracts. The NHS will also need to comply with guidelines of the NHS e-Contracting system.

3.10.8 Pre-Procurement Activities

The final section of this policy sets out the processes that ICB will use prior to conducting any procurement activity.



It is good practice to regularly review commissioned services to ensure they are appropriate, evidence-based, effective and delivering value for money. Service users, carers and other key stakeholders should be involved in this review.

A review of commissioned services should be timely and undertaken prior to the expiry of a contract to determine whether it is appropriate to continue to commission the service.

3.10.9 Post-procurement performance monitoring

Contract management and post-procurement review are features of the post contract award stage. The ICB will ensure that lessons are learned through the audit of procurements, including reviewing delivery of the business case, operational effectiveness and user satisfaction levels.

Relationship management between the ICB and the provider(s) will hinge on agreed standards for the management interface and management information reporting, performance monitoring, financial reporting and payments, risk

Performance monitoring will require effective monitoring systems to be implemented, to include key performance indicators, standards and targets, variations to contract, timeliness of reporting, variance investigation, complaints, problem resolution and dealing with poor performance and exit strategies.



SECTION 4

4.2 Training and Awareness

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

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

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

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

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

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

4.1.1 Equality Impact Assessment

Any procurement conducted by the ICB should consider and adhere to the Equality Act (2010). This Act requires commissioners not to discriminate on any grounds against any potential provider. Potential providers will be treated in the same respect during stages of agreeing contracts and implementing contracts.

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

4.1.2 Ethical and Sustainable Procurement

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



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

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

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

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

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

- no tender process adopted at all
- inappropriate use of tender waivers
- undervaluation of the contract
- splitting contracts with no rationale
- negotiation with one supplier contrary to the rules of the procurement process being adopted
- negotiation of key contract issues post award
- failure to keep or publish evaluation criteria
- vague specification criteria
- failure to receive a sufficient number of bids
- failure to declare interests
- failure to provide a rationale for the selection of certain bidders chosen to be invited to tender/quote

Breaches of procurement which occur as a result of suspected fraud and bribery will be reported to the ICB Local Counter Fraud Specialist or the NHS Counter Fraud Authority either via the NHS Fraud Reporting Line 0800 028 4060 or online **Error! Hyperlink reference not valid.** <https://cfa.nhs.uk/fraud-prevention/reference-guide/cyber-enabled-fraud/reporting>

4.1.4 Freedom of Information Act 2000

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

4.2 Monitoring and Compliance

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



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

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



REFERENCE MATERIAL

Reference	Website
The Public Contract Regulations 2015	https://www.legislation.gov.uk/uksi/2015/102/contents/made
NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013	The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (legislation.gov.uk)
Procurement, Patient Choice and Competition Regulations: Guidance and hypothetical case scenarios	https://www.gov.uk/government/publications/procurement-patient-choice-and-competition-regulations-guidance
Public Services (Social Value) Act 2012	Public Services (Social Value) Act 2012 (legislation.gov.uk)
Operational Guidance to the NHS Extending Patient Choice of Provider	Operational Guidance to the NHS : extending patient choice of provider - GOV.UK (www.gov.uk)
The annual Everybody Counts Planning for patients that outlines specific requirements that is appropriate to commissioned services	https://www.england.nhs.uk/everyonecounts/
Cabinet Office's Transparency Requirements for publishing on Contracts Finder	https://www.gov.uk/government/publications/transparency-requirements-for-publishing-on-contracts-finder
Thresholds	Procurement Policy Note 10/21 – Thresholds and Inclusion of VAT - GOV.UK (www.gov.uk)
NAO – General Procurement Guide	http://www.nao.org.uk/freedom-of-information/wp-content/uploads/sites/13/2013/03/Procurement_manual.pdf
Protecting and Promoting Patients Interests: The role of sector regulation	Protecting and promoting patients' interests: the role of Sector Regulation - GOV.UK (www.gov.uk)
Cabinet Office Guidelines	EU procurement directives and the UK regulations - GOV.UK (www.gov.uk)
Managing conflicts of interest	NHS England » Managing conflicts of interest in the NHS
Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)	Microsoft Word - ukxi_20060246_en.doc (legislation.gov.uk)
Equality Act 2010	untitled (legislation.gov.uk)
Bribery Act 2010	untitled (legislation.gov.uk)
Pre-contract procurement fraud and corruption	Welcome to the NHS Counter Fraud Authority (NHSCFA) public website NHS Fraud? See it. Stop it. Report it.
Public Service (Social Value) Act 2012	https://www.legislation.gov.uk/ukpga/2012/3/enacted
Health and Care Act 2022	https://www.legislation.gov.uk/ukpga/2022/31/contents/enacted

APPENDICES

Appendix 1 – Waiver form



App1 Tender Waiver
Form HWE ICB_v.3 rev

Appendix 2 – Managing Conflicts of Interest

HWE ICB Constitution Conflict of Interest Management :

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

NHS England Guide to Managing Conflicts of Interest :

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

Appendix 3 – Procurement Register



App3 HWE ICB
Procurement Register

Appendix 4 – Equality Impact Assessment



App4 EqIA
Procurement Policy.dc



Appendix 5

Glossary

Term	Definition
Accelerated procedure	where the relevant timescales for the particular type of procurement process can be shortened, e.g. in certain circumstances where a procurement is "urgent".
Award criteria	means the list of key criteria that is used to assess a Provider's tender.
Bribery (active and passive)	Giving or receiving a financial or other advantage in connection with the improper performance of a position of trust, or a function that is expected to be performed impartially or in good faith. (Active bribery: promising or giving a financial or other advantage. Passive bribery: agreeing to receive or accepting a financial or other advantage).
Call-off Contract	means an individual contract awarded under a framework agreement for the provision of particular services, goods or works.
CCS	Means the Crown Commercial Service and brings together policy, advice and direct buying; providing commercial services to the public sector.
Common Market	a single market within the European market in which the free movement of supplies, services, capital and persons is ensured and in which European citizens are free to live, work, study and do business.
Conflict of Interest	<p>a. A situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties as a public official, an employee, or a professional.</p> <p>b. an organization gaining an unfair advantage due to their ability to become privy to information relating to another</p>
Contract Disaggregation	An alternative term for contract splitting.
Contract Notice	A notice for any contracting opportunity to facilitate expressions of interest from the market.
Contract Splitting	By splitting what should be a single contract into a number of parts having smaller value, it is possible to avoid thresholds that would otherwise ensure a more stringent procurement process is applied. This is not permitted by the procurement regulations.
Contracting Authority	is a body that is subject to the procurement Regulations. A list of the relevant organisations is defined and included in Regulation 2(1) of the Public Contracts Regulations 2015 (<i>as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020</i>). There are also some "catch all" statements covering public bodies not specifically included in the list.
Cross-border interest	means a procurement, regardless of contract value that could be deemed to be of interest to other EU member states.



Finder a Tender Service Contract Notice	Find a Tender has replaced the EU's Tenders Electronic Daily from 1 January 2021 for high value contracts in the UK from OJEU the European Union's Official Journal. Means a standard form notice placed in the European Union's Official Journal Find a Tender Service (the UK's eNotification Tender Service) confirming that a Contracting Authority is intending to procure supplies, services or works.
Framework	means an umbrella agreement which establishes the basis on which subsequent requirements for supplies, services or works can be met by suppliers appointed to the framework.
ICB	Integrated Care Board
ICP	Integrated Care Partnership
ICS	Integrated Care System
ITT	ITT: Invitation to Tender. means a document which invites Contractors and Providers to bid for the provision of supplies, services or works.
Light Touch Regime Services	the services listed in Schedule 3 of the Public Contracts Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020). Only some of the EU procurement rules as set out in Public Contracts Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020) apply – namely, obligations relating to advertisement, technical specifications, post-award information and principles of equality, proportionality, transparency and non-discrimination. Healthcare services that are subject to the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 are subject to the Light Touch Regime.
MEAT	means 'Most Economically Advantageous Tender.' MEAT enables tender evaluation on the basis of the quality of the tender offer as well as the price. The quality is scored against a set of award criteria identified for each tender.
Mini-Competition	a mini competition is held with all those suppliers within a framework agreement who are capable of meeting a particular need when the details of the framework agreement are not sufficient to enable an immediate call-off. Where a procuring party wishes to procure under a framework agreement but the framework has insufficient information to allow the procuring party to confirm which supplier would offer the most economically advantageous tender, then a mini-competition is the method used to select a supplier.
Non-clinical services	Means any service that relates to the health economy but is not a service which delivers clinical interventions.
Prior information notice (PIN)	A PIN can have three meanings: 1.Publication by an authority in Find a Tender Service of details of what they intend to procure in future. 2.Use of a PIN can reduce some of the timescales in a procurement. 3.The ICB can use as a Call for Competition.



Public Contracts Regulations 2015 (PCR2015) as amended by the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 ('PPAR 2020')	means the Public Contracts Regulations 2015 <i>(as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020)</i> . This is the UK procurement legislation setting out procedures for the award of contracts for supplies, services and works.
Selection criteria	means criteria used at the Selection Questionnaire stage to select the bidders that are to proceed to the next stage. Selection criteria should only relate to technical and professional capability and financial and economic standing and certain grounds for disqualification.
Selection Questionnaire	a Selection Questionnaire (SQ) enables a contracting authority to evaluate the suitability of potential suppliers in relation to their technical knowledge and experience, capability and financial and economic standing. SQs are used in the restricted procedure, negotiated procedure and competitive dialogue procedure as a means of selecting the bidder to go forward to the next stage of the procurement process.
SLA	Agreement between the ICB and Attain. Attain is an agent of the ICB.
SME	stands for small and medium-sized enterprises – as defined in EU law: EU recommendation 2003/361. The main factors determining whether a company is an SME are: number of employees and either turnover or balance sheet total.
Sub-procurement thresholds	means a contract for supplies, works or services that falls below the public procurement financial thresholds
TFEU	means the Treaty on the Functioning of the European Union. The TFEU sets out organisational and functional details of the European Union.
TUPE	means Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI/2006/246) as amended
Value for Money or VFM	is a term used to assess whether or not an organisation has obtained the maximum benefit from the supplies and services it both acquires and provides, within the resources available to it. Economy - careful use of resources to save expense, time or effort. Efficiency - delivering the same level of service for less cost, time or effort. Effectiveness - delivering a better service or getting a better return for the same amount of expense, time or effort.

