**NHS Derby and Derbyshire Integrated Care Board**

**Procurement Policy**

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| **KEY MESSAGES** |
| 1. Provides an overview of how the ICB will operate and the ethos that will be applied to all procurement processes to ensure compliance with the statutory procurement guidelines.
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| 1. The ICB is required to publish procurement strategies and intentions to procure; provide feedback to unsuccessful bidders; publish details of awarded contracts and maintain records which demonstrate how procurement decisions have been made.
 |
| 1. The ICB must ensure it commissions services fairly and transparently and complies with all procurement and competition law.
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**VERSION CONTROL**

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| --- | --- |
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| **Target Audience** | ICB approved policies apply to all employees, contractors, volunteers, and others working with the ICB in any capacity. Compliance with ICB policy is a formal contractual requirement. Compliance with ICB policy is a formal contractual requirement and failure to comply with the policy, including any arrangements which are put in place under it, will be investigated and may lead to disciplinary action being taken. |

Section 1 – NHS Derby and Derbyshire ICB’s approach to procurement

1. Introduction
	1. NHS Derby and Derbyshire Integrated Care Board (the "ICB") is responsible for commissioning healthcare services for the Derbyshire population of approximately 1,118,447 people. The ICB aims to ensure that it delivers an NHS that is fair, personalised, effective and safe, providing effective choices for the population of Derbyshire.
	2. To ensure the ICB procures goods and services fairly and transparently and complies with all procurement and competition law. The overarching principles of the Public Procurement within the NHS are as follows:
		1. Transparency

The ICB is required to publish procurement strategies and intentions to procure; provide feedback to unsuccessful bidders; publish details of awarded contracts and maintain records which demonstrate how procurement decisions have been made.

* + 1. Proportionality

The level of capacity and resource involved in the procurement process both on behalf of the ICB and the potential providers in relation to the value and complexity of the service being procured must be proportionate.

* + 1. Equality/Non-discriminatory

The duty to treat all potential providers equally. This could include engagement with providers on service design to ensure service specifications have not been designed to exclude certain providers and the deadline for tender submissions has not been set to favour certain providers.

* 1. The ICB works jointly with a range of partners, including NHS England, Local Authorities, other local health providers and the voluntary sector, to maximise its ability to commission the highest quality services within the available resource allocation.
	2. Where appropriate, the ICB works collaboratively across the wider health economy to jointly commission and procure services. The ICB actively participates in projects/programmes where there are benefits to the Derbyshire population, including the reduction of procurement costs and increased leverage with providers, by acting regionally.
1. Purpose
	1. The purpose of this policy is to:
		1. set out the aims and objectives of the procurement policy, providing an overview of how the ICB will operate and the ethos that will be applied to all procurement processes to ensure compliance with the statutory procurement guidelines; and
		2. provide guidance and advice for all staff working in the ICB, when undertaking any procurement activity or decision making regarding the procurement of goods and services by defining the procurement principles, rules and methods that the ICB will work within. This policy reflects existing national guidance, in particular the requirements of the , The Public Contracts Regulations (2015), the Health Care Services (Provider Selection Regime) Regulations 2023 and the Provider Selection Regime (PSR) Statutory Guidance.
	2. The full legal and regulatory framework that the ICB will abide by is made up of:
		* Public Services (Social Value) Act 2012
		* Health and Social Care Act 2012
		* Health and Care Act 2022
		* The Public Contracts Regulations 2015
		* The Health Care Services (Provider Selection Regime) Regulations 2023
		* NHS Derby and Derbyshire ICB Standards of Business Conduct Policy
		* NHS Derby and Derbyshire ICB Managing Conflicts of Interest Policy
	3. The ICB will view instances where this policy is not followed as serious and may take disciplinary action against individuals, which may result in removal from office in accordance with the provisions of the ICB’s constitution and/or dismissal. A referral may also be made to the ICB’s Counter Fraud Specialist for investigation and may lead to a criminal investigation as per the ICB’s Fraud, Bribery and Corruption Policy. The following ICB policies (as amended) will apply to breaches of this policy where appropriate:
		1. Raising Concerns at Work (Whistleblowing) Policy;
		2. Standards of Business Conduct Policy;
		3. Managing Conflicts of Interest Policy;
		4. Disciplinary Policy; and
		5. Fraud, Bribery and Corruption Policy.
2. Definitions

“Bidder”

refers to the organisation responding to an invitation to tender;

“Procurement”

means the process of finding and agreeing to terms, and acquiring goods, services, or works from an external source, often via a tendering or competitive bidding process; and

“Tender”

means the request from the ICB to invite suppliers to formally bid on a contract or service.

1. ICB Constitution
	1. The ICB aims to be an organisation capable of commissioning high quality services in an affordable and sustainable local health system.
	2. The ICB’s Constitution sets out the arrangements made by the ICB to meet its responsibilities for commissioning care for the people to whom they are accountable. It describes the governing principles, rules and procedures that the ICB will establish to ensure probity and accountability in its day to day running, to ensure that decisions are taken in an open and transparent way and that the interests of patients and the public remain central to its decision. The ICB commits to:
		1. provide leadership to the NHS, and work with everybody who can contribute to its aims;
		2. being open and accountable to patients and communities; ensuring they are at the heart of everything the ICB does;
		3. understanding its population and addressing inequalities so that services are in place to meet needs, and plan services that best meet those needs now and in the future;
		4. secure the best quality, best value health and social care services it can afford; and
		5. use resources fairly and effectively.
2. Role of the ICB Board in the Procurement Process
	1. The ICB Board has the ultimate responsibility for ensuring that the ICB meets its statutory requirements when procuring goods and clinical and non-clinical services.
	2. The ICB Board is the authorising body for awarding a contract once a formal procurement/Provider Selection Process has been completed, however this may be delegated to the Population Health and Strategic Commissioning Committee or other appropriate committee or senior officer in accordance with the Financial Scheme of Delegation: Decisions, Authorities and Duties Delegated to Officers of the ICB Board.
3. Staff, Public and Patient Engagement
	1. The ICB is committed to engaging relevant stakeholders in all aspects of procurement. The NHS Constitution pledges that staff should be engaged in changes that affect them. Staff engagement is principally the responsibility of employers, but the ICB recognises the value of effective staff engagement in improving the quality of commissioning and procurement.
	2. The ICB also recognises that the engagement of clinicians, patients and public in designing services results in better services. The ICB’s business processes require evidence of engagement for business cases to be approved and as a result, any procurement of services is to be informed by engagement at the design stage.
	3. As well as engaging staff and service users at the project initiation stage, the ICB is committed to involving individuals in the procurement process. The ICB ensures that the views of the public and service users are taken into account when making any decision to go out to competitive procurement and when developing relevant tender documentation. The ICB will also ensure engagement with service users and the public when evaluating tender submissions; its expectation is that relevant service users will be represented on tender evaluation panels and be given the opportunity to influence the outcome of procurement decisions.
4. Quality

The overall quality of a service will be determined by the successful implementation of the procurement process. Quality will be embedded throughout each process using the following tools:

* 1. Commissioning for Quality and Innovation (CQUIN)

CQUIN payments enable commissioners to reward suppliers by linking payments to local quality improvements goals. The Contracts Department will offer advice to enable commissioners to embed these payments into the contractual agreement through an appropriate performance management framework as part of the tender process.

* 1. UK Government’s Approach to Quality

Regulation 67 of the Public Contracts Regulations 2015 (the ‘PCR 2015’) states that Contracting authorities shall base the award of public contracts on the ‘Most Economically Advantageous Tender’ (MEAT) using a cost effectiveness approach such as life-cycle costing to assess this; this may include best ‘price-quality ratio’ as assessed on the basis of the award criteria.

1. Collaborative Procurement

There are areas of supply management in which procurement collaboration is likely to bring benefits to the ICB, whether it is the sharing of operational resources, or commitment to specific joint projects and/or contracts. Economies of scale can be achieved in both operational activity and through leveraging collective spend. Where a specific procurement warrants joint procurement activity and it can be evidenced that this would be the best thing for the Derbyshire population, the ICB will enter into collaborative procurement processes.

1. Decommissioning Services
	1. The ICB Board has considered a set of principles to guide its approach to decommissioning services, as set out below. The principles were developed to clarify the circumstances, and by what processes, services will be decommissioned and, if necessary, re-commissioned. The ICB will ensure that its approach to the decommissioning of services is fair, open and transparent.
	2. Proposals to decommission a service will meet the Secretary of State’s four key tests for service change:
		1. strong engagement, including local authorities, public and patients;
		2. a clear clinical evidence base underpinning proposals; and
		3. the need to develop and support patient choice.
	3. There must be clear and objective reasons for the decommissioning of a service. These are likely to be based on one or more of:
		1. failure to remedy poor performance;
		2. evidence that the service is not cost-effective;
		3. evidence that the service is not clinically effective – i.e. patient outcomes cannot be shown; and/or
		4. insufficient need for the service;
		5. the redesign of a pathway or full service.
	4. Proposals will be clearly in line with the ICB’s business aims and objectives, as set out in our annual commissioning intentions.
	5. Patient and service users’ views will be taken into consideration in any decision to decommission a service, with formal public consultation when required.
	6. Proposals will be led by clinicians and will be based upon clear and strong evidence of clinical and cost effectiveness.
	7. There will be no negative impact on the quality of care patients receive or on equality of care provision.
	8. Proposals will be backed by a robust business case that describes the benefits of decommissioning and demonstrates that the benefits will be achieved.
	9. Decommissioning decisions will be consistent with the commitments in the contract with Voluntary, Community and Faith (VCF) sector providers and with partnership principles agreed with NHS Foundation Trusts and the Local Authority.
	10. The ICB will ultimately take the decision with regard to the decommissioning of any service.
2. Equality Impact Statement
	1. The ICB aims to design and implement policy documents that meet the diverse needs of its services, population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account current UK legislative requirements, including the Equality Act 2010 and the Human Rights Act 1998, and promotes equal opportunities for all. This document has been designed to ensure that no-one receives less favourable treatment due to their protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity. Appropriate consideration has also been given to gender identity, socio-economic status, immigration status and the principles of the Human Rights Act.
	2. In carrying out its function, the ICB must have due regard to the Public Sector Equality Duty (PSED). This applies to all activities for which the ICB is responsible, including policy development, review and implementation.
3. Due Regard
	1. In carrying out its function, the ICB must have due regard to the Public Sector Equality Duty. This applies to all activities for which the ICB is responsible, including policy development, review and implementation.
	2. This policy has been reviewed in relation to having due regard to the Public Sector Equality Duty of the Equality Act 2010 to: eliminate discrimination, harassment and victimisation; to advance equality of opportunity; and foster good relations between the protected groups.

Section 2 – Ensuring ICB Compliance with Procurement Rules and Regulation

1. Statutory Framework

The ICB was established under the Health and Care Act 2022 (‘the 2022 Act’). ICBs are statutory bodies which have the function of commissioning services for the purposes of the health service in England and are treated as NHS bodies for the purposes of the National Health Service Act 2006 (‘the 2006 Act’). The duties of ICBs to commission certain health services are set out in section 3 of the 2006 Act, as amended by section 13 of the 2022 Act, and the regulations made under that provision.

1. Procurement Rules
	1. Responsibilities
		1. All Managers and Commissioners with budgetary responsibility must make themselves familiar with the ICB’s Financial Scheme of Delegation: Decisions, Authorities and Duties Delegated to Officers of the ICB Board, which forms part of the ICB’s Constitution, together with relevant detailed financial policies available via the intranet and all relevant procurement procedures described in this document.
		2. All procurements will comply with the requirements of the Financial Scheme of Delegation: Decisions, Authorities and Duties Delegated to Officers of the ICB Board.
		3. Where applicable, all non-clinical healthcare procurements will comply with the requirements of UK law as per the PSR 2015. Managers and Commissioners should seek advice from their Procurement Lead/CSU to confirm when and if these Regulations apply.
		4. The PCR 2015 requires competition as the mechanism by which contracting authorities ensure equality of treatment, transparency and non-discrimination of providers.
		5. It is mandatory to advertise procurements via Find a Tender Service (FTS) and Contracts Finder for goods and services over the PCR 2015 threshold. For below threshold procurements with a value exceeding £30k (including VAT), the ICB must advertise on the Contracts Finder portal where the ICB decides to advertise the opportunity (see Regulation 110 of PCR 2015).
		6. All clinical healthcare service procurements will need to adhere to the Health Care Services (Provider Selection Regime) Regulations 2023 (PSR 2023).
	2. The Health Care Service (Provider Selection Regime) Regulations 2023 (PSR 2023)

The PSR 2023 came into force on the 1st January 2024 and replaces the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 (the PPCCR) and, alongside their introduction, remove procurement of clinical health care services, when procured by relevant authorities under the PSR, from the scope of the Public Contracts Regulations 2015. Under the new regime, relevant authorities are expected to:

* + 1. act with a view to securing the needs of the people who use the services, improving the quality of the services, and improving the efficiency of in the provision of the services;
		2. ensure decisions about which organisations provide health care services are robust and defensible, with conflicts of interest appropriately managed; and
		3. adopt a transparent, fair, and proportionate process when following the PSR.

The procedure for responding to provider representations can be found at Appendix 1.

* 1. Public Services (Social Value) Act 2012 (UK)
		1. Commissioners must consider their responsibilities under the Public Services (Social Values) Act (2012) for all healthcare (clinical) procurements conducted. Consideration should be proportional and equitable whilst ensuring that the economic, social and environmental needs of the local community are met.
		2. There is specific provision in UK legislation to enable commissioners to include evaluation criteria which supports economic, social and environmental well-being within an area. Criteria could include financial investment, employment opportunities, carbon reduction and wider supply chain impacts amongst others.
	2. Equality Act 2010 (UK)

Commissioners must consider their responsibilities under the Equality Act 2010 for all healthcare (clinical) procurements conducted. Potential Providers must not be discriminated against, in compliance with the requirements of the act, during the term of contract or the procurement process itself.

* 1. Freedom of Information 2000 (UK)

Commissioners must consider their responsibilities under the Freedom of Information Act 2000 for all healthcare (clinical) procurements conducted. Care must be taken to ensure the rights of individuals and the rights of all organisations associated with the procurement process are protected during all correspondence and associated actions. Potential bidders must be made aware of the commissioner’s responsibilities as a public sector organisation under the act during the preliminary stages of any procurement process.

* 1. Prevention of Fraud, Corruption and Bribery
		1. Fraud
			1. The Fraud Act 2006 came into force on the 15 January 2007 and introduced the general offence of fraud. This is broken into three key sections:
				1. fraud by false representation;
				2. fraud by failing to disclose information;
				3. fraud by abuse of position.
			2. The Fraud Act 2006 also created new offences of:
				1. possession and making or supplying articles for use in fraud;
				2. fraudulent trading (sole traders);
				3. obtaining services dishonestly.
		2. Bribery/Corruption
			1. The Bribery Act 2010 replaced the previous Prevention of Corruption Acts 1889–1916 and created two general offences of bribery:
				1. offering or giving a bribe to induce someone to behave, or to reward someone for behaving, improperly; and
				2. requesting or accepting a bribe either in exchange for acting improperly, or where the request or acceptance is itself improper.
			2. A new corporate offence was also introduced – negligent failing by a company or limited liability partnership to prevent bribery being given or offered by an employee or agent on behalf of that organisation.
			3. All individuals are required to be aware of the Bribery Act 2010 and should also refer to the ICB’s Fraud, Corruption and Bribery Policy for further details.
		3. Reporting Suspicions
			1. All cases of suspected fraud, corruption or bribery must be investigated by an accredited NHS Counter Fraud Specialist appointed by the ICB. Any concerns or suspicions relating to fraud, corruption or bribery must therefore be reported to the ICB’s appointed Counter Fraud Specialist; Matt Treharne-Clarke (matt.treharne-clarke@nhs.net or 07990 084824).
			2. Any suspicions or concerns of acts of fraud or bribery can also be reported online via <https://cfa.nhs.uk/reportfraud> or via the NHS Fraud and Corruption Reporting Line on 0800 028 4060. This provides an easily accessible and confidential route for the reporting of genuine suspicions of fraud within or affecting the NHS. All calls are dealt with by experienced trained staff and any caller who wishes to remain anonymous may do so.
1. NHS Derby and Derbyshire ICB’s Detailed Scheme of Financial and Other Delegations

It should be noted that this section does not apply to clinical healthcare services, in scope of PSR 2023. Clinical health care services must be commissioned/procured in compliance with the PSR 2023 Regulations, regardless of contract value.

For all other goods and services (i.e. those in scope of PCR 2015), the ICB’s Financial Scheme of Delegation: Decisions, Authorities and Duties Delegated to Officers of the ICB Board, within the Standing Financial Instructions, sets out the procurement limits for both revenue and capital purchases are as follows:

|  | **Responsibility** | **Delegation Arrangements** | **Further Information** |
| --- | --- | --- | --- |
| **3.** | **Procurement** |  |  |
| 3.1 | Financial appraisal of potential suppliers | Executive Director of Finance | May be delegated to members of the Finance Directorate. |
| 3.2 | Authorisation of less than the requisite number of tenders/quotes: |  | The requisite number of tenders / quotes:(a) Above £10,000 to £20,000, at least 3 written competitive quotations for goods/services obtained.(b) Above £20,000 to £50,000, at least 5 written competitive quotations for goods / services obtained. All procurement with a value exceeding £30,000 (including VAT) must be advertised on Contract Finder where the ICB decides to advertise the opportunity.(c) Above £50,000, a full tender is to be carried out. (If the contract value is above the relevant PCR 2015 threshold, a procurement in line with the PCR 2015 Regulations must be conducted). |
|  | (a) For all contracts of £250,000 and above | (a) Chief Executive Officer |
|  | (b) For all contracts less than £250,000  | (b) Executive Director of Finance |
| 3.3 | Single tender/single quote/direct award: A single tender waiver form must be completed and approved. | Executive Director of Finance | Review of single tender waivers before approval is delegated to the Finance Lead for Financial Control via ddicb.financialservices@nhs.net Where a single tender/single quote is received, the ICB shall as far as practical, determine that the price to be paid is fair and reasonable and that details of the investigation carried out are recorded. |
| 3.4 | Monitoring of the use of single tender/single quote action. | Audit and Governance Committee on behalf of ICB Board | Single tender/single quote will be reported quarterly for information only, at Audit and Governance Committee. All such contracts must be included on the Register of Procurement Decisions, delegated to the Finance Lead responsible for Financial Control. |
| 3.5 | Advertising of contracts/publishing of contract awards over £30,000 (including VAT) | Chief Executive Officer | Managed by the ICB Procurement Lead.Such advertising and publishing must be made available on Find a Tender and/or Contract Finder in line with relevant guidance/ legislation. |
| 3.6 | Opening of tenders | Executive Director (Budget Holder) | Where using a secure e-Tendering solution platform, this requirement does not apply and opening of tenders can be delegated to the relevant procurement officer supporting the process. |
| 3.7 | Permission to consider late tenders  | Chief Executive Officer | With advice from the ICB's Procurement Lead |
| 3.8 | Sealing of documents | As per the Standing Orders, Appendix 1 of ICB Constitution |  |

In certain circumstances the procurement route specified below might not be appropriate. In such circumstances a procurement Waiver may be requested by the relevant Director and authorised by the Chief Executive Officer or Executive Director of Finance.

* 1. For expenditure up to £5,000

The procurement can be done through the normal electronic requisitioning procedures via the Oracle system. All requisitions will be expected to adhere to those contracts which have been negotiated by Regional or National Procurement teams for all goods/services. Where no contracts have been negotiated, or if they prove unsuitable, purchasers are free to request quotes from the open market. All expenditure must be approved by the budget holder.

* 1. For expenditure between £5,000 to £20,000

The procurement can be done by listed officers and should either follow the normal requisitioning procedures or a three written quotation process. All requisitioners will be expected to adhere to those contracts which have been negotiated by Regional or National Procurement teams for all goods/services. Where no contracts have been negotiated, or if they prove unsuitable, purchasers are free to request quotes from other providers. A minimum of three organisations should be approached to provide written quotes. The quotes will be evaluated on best value for money basis.

* 1. For expenditure over £20,000 and up to £50,000

For this level of expenditure a competitive process should take place, in the form of five written quotes that are evaluated using the same rationale (MEAT) as the competitive tender process. This may require input from the Procurement Lead/ Commissioning Support Unit and the budget holder should seek appropriate advice.

* 1. For expenditure over £50,000
		1. For expenditure over £50,000 and up to the PCR 2015 Thresholds a competitive process should take place, and must ensure that the competition is fair, open and transparent to the market and evaluated using the same rationale (MEAT) as a formal competitive tender process. This will require input from the Procurement Lead/ Commissioning Support Unit and the budget holder should seek appropriate advice.
		2. For expenditure exceeding the PCR 2015 thresholds, a fully regulated competitive process is to take place for goods and/or services unless the ICB Board or appropriate committee or authorised authority has determined that the service will not be subject to tender (due to lack of competition based on technical requirements or where there is a niche market) and has set out the rationale for its decision.
		3. If a competitive process is not going to be followed then a waiver form must be completed.
		4. Where a fully regulated/compliant tender is required the procurement work-plan must be updated and the Procurement lead informed to enable capacity planning. It is advised that the Procurement lead contacted at an early stage of any proposed procurement/reprocurement process, so they can advise accordingly.
	2. Procurement Options
		1. A Project Initiation Document is completed for all new projects, this should include the relevant procurement strategy.
		2. Advice should be sought, where required, from the Procurement Lead/Commissioning Support Unit in relation to the most appropriate procurement route to be followed.
		3. Where it is decided that competitive tendering is not applicable and should be waived, the fact of the waiver and the reasons should be documented and recorded in an appropriate ICB record (see the ICB’s Standing Financial Instructions, Appendix 1 – Single Tender Waiver Form) and reported to the Audit and Governance Committee for information at each meeting.
1. Awarding of contracts
	1. The Operational Scheme of Delegation illustrates the values and delegated sign off process for procurement. Where appropriate the ICB Board should be consulted on the outcome of a process and receive a procurement recommendation report for contract award before the ICB can make an award of contract.
	2. Once a contract has been awarded and signed, the ICB’s Procurement Decisions and Contracts Awarded Form (Appendix 2) and Procurement Register (Appendix 3) must be updated, in line with the ICB’s Managing Conflicts of Interest Policy.
	3. All contract award notices are to be published on the ICB’s website, Contracts Finder and FTS (as appropriate under PCR 2015 and PSR 2023).
2. Avoidance of procurement rules
	1. The UK courts take a strict line when they perceive that public contracts have been awarded without taking the necessary steps to ensure competition rules have been adhered to. Commissioners should be aware of several forms of avoidance that have been commonplace within the NHS:
		1. Pilot Projects/Proof of Concepts – Awarding a contract through the guise of a ‘pilot project’ without following the correct procedure (as described below in Section 2, paragraph 19):
			1. Pilot Projects have been awarded as a stop-gap measure when the commissioner has no intention to undertake a competitive process in the future. These contracts are often extended without competition; and
			2. projects have been labelled as a pilot when the previous contract lapses and procurement has not taken place;
		2. contract lengths are reduced (i.e. a three-year contract is awarded as a one-year contract) to artificially alter the contract value to avoid the compulsory PCR 2015 thresholds[[1]](#footnote-1); and
		3. using negotiation with existing providers as a mechanism to improve services when the contract lapses (for clarification, negotiation is a viable method within the contract term but should not be used to renew or extend a contract).
	2. The UK courts have the authority to award damages to providers who have been unfairly excluded from the market through the use of such tactics, depending on the circumstances.
3. Document Hierarchy

The ICB recognises that there is the potential for conflict between Local, Regional, and National legislation within the UK healthcare system. The ICB will ensure that the processes it adopts comply with judicial legislation in accordance with the most up to date policies, guidance and procedures.

1. Most Economically Advantageous Tender (MEAT)

With support from the Procurement Lead/Commissioning Support Unit the ICB will ensure that every healthcare (clinical and non-clinical) service procurement will evaluate bidders’ submissions using the MEAT strategy rather than solely on a lowest price basis. This approach allows commissioners to consider the whole life cost of bids and takes into account the quality of the deliverable elements. It will be for the commissioner of the service to determine the priorities when setting out the bid evaluation criteria.

1. Managing Conflicts of Interest Through the Commissioning Cycle
	1. Principles

The ICB will manage conflicts of interest by applying a number of principles, processes and safeguards through:

* + 1. statutory requirements;
		2. doing business appropriately – ensuring commissioning decisions are in line with the ICB’s constitution, standards of business and commissioning strategy;
		3. being proactive not reactive by:
			1. considering potential conflicts of interests (e.g. when appointing individuals to decision-making roles);
			2. ensuring all ICB staff, in particularly decision-making staff and members of contract meetings are aware of their obligations to declare conflicts of interests;
			3. maintaining a register of interests; and
			4. agreeing in advance how to deal with scenarios where a conflict of interest occurs;
		4. assuming individuals will act ethically and professionally, but may not always appreciate the potential for conflicts of interest or relevant rules and procedures;
		5. being balanced and proportionate – ensuring rules are clear and robust but not overly prescriptive or restrictive so as to hinder the decision-making process;
		6. being open and ensuring early engagement with patients, the public, clinicians and other stakeholders, including local Healthwatch and Health and Wellbeing Boards in relation to proposed commissioning plans;
		7. responsiveness and best practice – ensuring that commissioning intentions are based on local health needs and reflect evidence of best practice;
		8. transparency – ensuring that the approach taken is clearly evidenced by an audit trail;
		9. securing expert advice – ensuring that commissioning plans take into account advice from appropriate health and social care professionals and experts;
		10. engaging with providers – ensuring early engagement with both incumbent and potential new providers over potential changes to commissioned services for the local population;
		11. creating clear and transparent commissioning specifications;
		12. following proper procurement processes and legal arrangements;
		13. ensuring sound record-keeping;
		14. having in place a clear, recognised and easily enacted system for dispute resolution.
	1. When commissioning services, the ICB shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures. A Procurement Checklist (Appendix 4) sets out factors that the ICB should address when devising plans to commission services so as to avoid any distortion of competition and to ensure equal treatment of all providers.
	2. As part of the procurement or single tender waiver process, all staff are asked to declare any conflicts of interest. The state of which is reviewed at various stages of the process including ‘Project Initiation’ and ‘Evaluation’. It is good practice to ask bidders to declare any conflicts of interest, which is requested as part of their bid submission. This allows the ICB to ensure that they comply with the principles of equal treatment and transparency. When a bidder declares a conflict, the ICB must decide how best to deal with it or ensure that no bidder is treated differently to any other. A Declaration of Interests Form for Bidders/Contractors must be completed (Appendix 5). Any conflicts of interest are recorded and reported as required.
	3. It will not usually be appropriate to declare such a conflict on the register of procurement decisions, as it may compromise the anonymity of bidders during the procurement process. The ICB will therefore retain an internal audit trail of how the conflict or perceived conflict was dealt with to allow them to provide information at a later date if required. The ICB is required under regulation 84 of the PCR 2022 to make and retain records of contract award decisions and key decisions that are made during the procurement process, but are not expected to publish them. Such records must include ‘communications with economic operators and internal deliberations’ which should include decisions made in relation to actual or perceived conflicts of interest declared by bidders. These records should be retained for a period of at least three years from the date of award of the contract.
	4. Requirements relating to managing conflicts of interest in relation to the commissioning of clinical healthcare services are included within Regulation 21 of the PSR 2023.
	5. The ICB will refer to any advice and guidance published by NHS England dealing with potential conflicts of interest.
	6. Designing Service Requirements

The way in which services are designed can either increase or decrease the extent of perceived or actual conflicts of interest. Particular attention is to be given to public and patient involvement in the ICB’s service development. Public involvement supports transparent and credible commissioning decisions. It should happen at every stage of the commissioning cycle from needs assessment, planning and prioritisation to service design, procurement and monitoring. The ICB has a legal duty under the Health and Care Act 2022 to properly involve patients and the public in their respective commissioning processes and decisions.

* + 1. Provider engagement
			1. The ICB aims to engage relevant providers, especially clinicians, in confirming that the design of service specifications will meet patient needs. This may include providers from the acute, primary, community, and mental health sectors, and may include NHS, third sector and private sector providers. However, conflicts of interest, as well as challenges to the fairness of the procurement process, can arise if the ICB engages selectively with only certain providers (be they incumbent or potential new providers) in developing a service specification for a contract for which they may later bid. This should also be considered when engaging with existing/ potential providers in relation to the development of new care models.
			2. Provider engagement should follow the three main principles of procurement law, namely equal treatment, non-discrimination and transparency. This includes ensuring that the same information is given to all at the same time and procedures are transparent.
			3. As the service design develops, it is good practice to engage with a range of providers on an ongoing basis to seek comments on the proposed design.
			4. Engagement should help to shape the requirement to meet patient need, but it is important not to gear the requirement in favour of any particular provider(s). If appropriate, the advice of an independent clinical adviser on the design of the service should be secured.
			5. Any decisions in regards to obligations under the PSR 2023 and the PCR 2015 shall be documented.
		2. Specifications
			1. The ICB will seek, as far as reasonably possible, to specify the outcomes that they wish to see delivered through a new service, rather than the process by which these outcomes are to be achieved. As well as supporting innovation, this helps prevent bias towards particular providers in the specification of services. However, careful consideration should be given to the appropriate degree of financial risk transfer in any new contractual model.
			2. Specifications should be clear and transparent, reflecting the depth of engagement, and set out the basis on which any contract will be awarded.
	1. Transparency in Procurement
		1. The ICB will make the evidence of their management of conflicts publicly available. Complete transparency around procurement will provide:
			1. evidence that the ICB is seeking and encouraging scrutiny of its decision‑making process;
			2. a record of the public involvement throughout the commissioning of the service;
			3. a record of how the proposed service meets local needs and priorities for partners such as the Health and Wellbeing Boards, local Healthwatch and local communities;
			4. evidence to the Audit and Governance Committee, and internal and external auditors that a robust process has been followed in deciding to commission the service, in selecting the appropriate procurement route, and in addressing potential conflicts.
		2. Commissioning Support Units (CSU), are also expected to declare any conflicts of interest they may have in relation to the work commissioned by the ICB.
	2. Register of procurement decisions
		1. The ICB will maintain a register of procurement decisions taken, either for the procurement of a new service, any extension or material variation of a current contract, or single tender waiver. This must include:
			1. the details of the decision;
			2. who was involved in making the decision (including the name of the ICB clinical lead, the ICB contract manager, the name of the decision-making committee and the name of any other individuals with decision-making responsibility);
			3. a summary of any conflicts of interest in relation to the decision and how this was managed by the ICB (see paragraph 9.3 in relation to retaining the anonymity of bidders); and
			4. the award decision taken.
		2. The register of procurement decisions must be updated whenever a procurement decision is taken. The Procurement, Patient Choice and Competition Regulations 9(1) place a requirement on commissioners to maintain and publish on their website a record of each contract it awards. The register of procurement decisions is therefore publicly available and easily accessible to patients and the public on the ICB’s website and upon request for inspection at the ICB’s headquarters:

[https://www.derbyandderbyshireICB.nhs.uk/about-us/conflict-of-interest/](https://www.derbyandderbyshireccg.nhs.uk/about-us/conflict-of-interest/)

A template procurement register can be found at Appendix 3.

* 1. Single Tender Waivers

The decision to use a single tender waiver should still be classed as a procurement decision. If it results in the ICB entering into a new contract, extending a contract, or materially altering the term of an existing contract, then it is a decision and should be recorded on the ICB’s procurement register and website. Therefore, the same process in this paragraph 9 should be followed for all single tender waivers.

* 1. Contract Monitoring
		1. The management of conflicts of interest applies to all aspects of the commissioning cycle, including contract management, extensions and variations.
		2. Any contract monitoring meeting needs to consider conflicts of interest as part of the process i.e. the Chair of a contract management meeting should:
			1. invite declarations of interests;
			2. record any declared interests in the minutes of the meeting; and
			3. manage any conflicts appropriately and in line with this policy.

This equally applies where a contract is held jointly with another organisation such as the Local Authority or with other ICBs under lead commissioner arrangements.

* + 1. The individuals involved in the monitoring of a contract should not have any direct or indirect financial, professional or personal interest in the incumbent provider or in any other provider that could prevent them, or be perceived to prevent them, from carrying out their role in an impartial, fair and transparent manner.
		2. All individuals should guard against providing information on the operations of the ICB which might provide a commercial advantage to any organisation (private or NHS) in a position to supply goods or services to the ICB. For particularly sensitive procurement or contracts, individuals may be asked to sign a non-disclosure agreement.
	1. Contracts Database
		1. For clinical healthcare services (in scope of PSR 2023) the ICB will publish online, on a publicly available website accessible free of charge, an annual summary of its contracting activity for the provision of the relevant healthcare services. This annual summary must include:
			1. the number of contracts awarded in the year to which the summary relates where Direct Award Process A, Direct Award Process B or Direct Award Process C was followed;
			2. the number of contracts awarded in the year to which the summary relates where the Most Suitable Provider Process was followed;
			3. the number of contracts awarded in the year to which the summary relates where the Competitive Process was followed;
			4. the number of framework agreements concluded in the year to which the summary relates;
			5. the number of contracts awarded based on a framework agreement in the year to which the summary relates;
			6. the number of contracts awarded and modifications made in reliance on regulation 14 (urgent award or modification) in the year to which the summary relates;
			7. the number of new providers to whom a contract was awarded in the year to which the summary relates;
			8. the number of providers who held a contract in the previous year but no longer hold any contracts in the year to which the summary relates;
			9. the number of written representations made in accordance with PSR 2023 regulation 12(3) and received during standstill periods which ended in the year to which the summary relates and a summary of the nature and impact of those representations.
		2. The ICB must monitor its compliance with PSR 2023 and publish online, on a publicly available website accessible free of charge, an annual report of the results of that monitoring including information as to how any non-compliance will be addressed.
1. Pre-Procurement Engagement
	1. The PCR 2015 encourages consultation of the market, pre-procurement, provided this is within the parameters of Regulations 40 and 41, to which the ICB abides, provided that this is not anti-competitive or a breach of transparency and non‑discrimination principles. The PSR Statutory Guidance also references that engagement with the market may be undertaken to support Provider Selection Processes.
	2. Where a supplier has had prior involvement in the preparation of the procurement, the ICB will ensure that the relevant information is disseminated amongst all bidders to ensure a level playing field and that sensible bid deadlines are set.
	3. There is a presumption that the bidder, with prior involvement, will only be excluded if there is no other way to ensure equality of treatment amongst bidders.
2. Thresholds
	1. Commissioners should note that varying thresholds apply for non-clinical expenditure for Central Government Bodies (£139,688 including VAT) and Sub‑Central Bodies (£214,904 including VAT). These thresholds apply to spends such as IT, Consultancy and other non-clinical goods and services. The list of what is considered a Central Government Body can be found [here](https://www.legislation.gov.uk/uksi/2015/102/schedule/1/made)[[2]](#footnote-2). Integrated Care Boards have not been specifically cited on the list and may therefore be considered as a Sub-Central Authority acting on the higher threshold of £214,904 (including VAT), therefore when considering the application of procurement legislation for non-clinical expenditure for a project solely on behalf of the ICB, the higher threshold could be applied. However, if the requirement were to include any of the wider system partners such as NHS Trusts, then due to them featuring on Schedule 1 of the PCR 2015, the lower threshold of £139,688 (including VAT) should be applied.
	2. The PCR 2015 will only apply where the contract being awarded is within the scope of the PCR 2015 and exceeds a value threshold (which is set out in Article 4(a) to (d) of the Directive). Regulation 6 of the PCR 2015 sets out the rules on how to calculate the value of a contract for the purposes of assessing whether the threshold is exceeded.
	3. Current published thresholds are applicable from the 1st January 2024. Commissioners should consult their Procurement Lead/Commissioning Support Unit for advice on current thresholds and their application to ensure the correct procurement route is adopted.
3. Advertising Opportunities
	1. The PCR 2015 requires all contracting authorities to offer full and unrestricted access to all the procurement documents from the date that a contract (FTS) notice (or invitation to confirm interest following a Prior Information Notice) is published via FTS. ‘Procurement documents’ is a defined term in the PCR 2015 and will include, in addition to the call for competition itself, and non-exhaustively, technical specifications, descriptive documents, pre-qualification questionnaires (where applicable), invitations to tender, and the terms and conditions of the contract.
	2. Where the contract relates to a clinical healthcare service, transparency notices must be published in FTS in line with PSR 2023 requirements and in-line with the Provider Selection Process being undertaken.
4. Service Contracts
	1. A services contract will fall within the scope of the Light Touch regime if it is for the certain types of services listed at Schedule 3 of the PCR 2015. For these Light Touch regime contracts, a higher threshold than that for ordinary service contracts will apply, before the Light Touch regime is applicable. This threshold is set to £663,540 (including VAT).
	2. Note that if a service is not listed at Schedule 3 of the PCR 2015 it will be subject to the full regime rather than only the Light Touch regime. Alternatively, if the service is a clinical healthcare service (within scope of Schedule 1 of PSR 2023), the PSR 2023 will apply.
5. Exemptions for In-House Contracts and Joint Co-Operation
	1. The ICB will adhere to and follow the PCR 2015 regulations as applicable, when commissioning services and awarding a contract that may be regarded as an exempt in-house contract. These apply where:
		1. the contracting authority exercises over the contractor concerned a control which is similar to that which it exercises over its own departments (“similar control” in this context means the contracting authority exercising “a decisive influence over both strategic objectives and significant decisions” of the contractor. It includes where this control is exercised by another body, provided that other body is itself controlled by the contracting authority);
		2. more than 80% of the activities of the contractor are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other bodies that are themselves controlled by that contracting authority; and
		3. there is no private sector ownership of the contractor, with certain exceptions.
	2. An exemption for joint co-operation between contracting authorities may apply where the:
		1. contract establishes joint co-operation in the performance of public services with a view to achieving mutual objectives;
		2. implementation of the co-operation is governed only by the public interest; and
		3. participating authorities perform “on the open market” less than 20% of activities concerned by the co-operation.
6. Choice of Procedure
	1. Procedures Available
		1. Under the PCR 2015 the standard procurement procedures available are as follows:
			1. Open (Regulation 27);
			2. Restricted (Regulation 28);
			3. Competitive with negotiation (Regulation 29);
			4. Competitive dialogue (Regulation 30); and
			5. Innovation partnership (Regulation 31).
		2. Other processes also include negotiated procedure without prior publication (Regulation 32), Frameworks (Regulation 33), Dynamic Purchasing Systems (Regulation 34) and Electronic Auctions and Catalogues (Regulations 35 and 36).
	2. Greater freedom to use competitive with negotiation and competitive dialogue procedures
		1. Under the PCR 2015 these procedures can now be used when:
			1. needs cannot be met without adapting readily available solutions; or
			2. requirements involve design or innovative solutions; or
			3. the contract cannot be awarded without negotiation due to nature, complexity, legal or financial make up or risks attached; or
			4. the specifications cannot be established with sufficient precision; or
			5. following an open/restricted procedure, where only irregular or unacceptable tenders were submitted.
		2. Should the ICB consider this choice of procedure, it is advised that specialist legal advice is sought with support from the Procurement Lead/Commissioning Support Unit.
	3. PSR 2023 Provider Selection Processes

Under PSR 2023, the following Provider Selection Processes are available:

| **Process** | **Procedure** |
| --- | --- |
| **Direct Award Process A****(Regulation 7)** | Must be used when all of the following apply:* there is an existing provider of the health care services to which the proposed contracting arrangements relate; and
* the relevant authority is satisfied that the health care services to which the proposed contracting arrangements relate are capable of being provided only by the existing provider (or group of providers) due to the nature of the health care services.

**Direct award process A must not be used to conclude a framework agreement.** |
| **Direct Award Process B** **(Regulation 8)** | Must be used when all of the following apply:* the proposed contracting arrangements relate to health care services in respect of which a patient is offered a choice of provider;
* the number of providers is not restricted by the relevant authority;
* the relevant authority will offer contracts to all providers to whom an award can be made because they meet all requirements in relation to the provision of the health care services to patients; and
* the relevant authority has arrangements in place to enable providers to express an interest in providing the health care services.

Where relevant authorities are required to offer choice to patients under regulation 39 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012, they cannot restrict the number of providers and therefore direct award process B must be followed. |
| **Direct Award Process C****(Regulation 9)** | May be used when all of the following apply:* the relevant authority is not required to follow direct award processes A or B;
* the term of an existing contract is due to expire and the relevant authority proposes a new contract to replace that existing contract at the end of its term;
* the proposed contracting arrangements are not changing considerably; and
* the relevant authority is of the view that the existing provider (or group of providers) is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard.

**Direct award process C must not be used to conclude a framework agreement.** |
| **The Most Suitable Provider Process** **(Regulation 10)** | May be used when all of the following apply:* the relevant authority is not required to follow direct award processes A or B;
* the relevant authority cannot or does not wish to follow direct award process C; and
* the relevant authority is of the view, taking into account likely providers and all relevant information available to the relevant authority at the time, that it is likely to be able to identify the most suitable provider (without running a competitive process).

**The most suitable provider process must not be used to conclude a framework agreement.** |
| **The Competitive Process** **(Regulation 11)** | Must be used when all of the following apply:* the relevant authority is not required to follow direct award processes A or B; and
* the relevant authority cannot or does not wish to follow direct award process C, and cannot or does not wish to follow the most suitable provider process.

The competitive process must be used if the relevant authority wishes to conclude a framework agreement. |

Please see the flowchart at Appendix 6 for more information on identifying the right PSR provider selection process.

1. PSR 2024Timescales

The ICB will refer to the Procurement Lead/Commissioning Support Unit for advice on procurement timescales.

1. Abnormally Low Tenders

Where a tender appears to be abnormally low, the ICB shall require the bidder/s to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services.

1. Regulation 84 Reports
	1. Where the procurement is within scope of the PCR 2015, the Procurement Lead/ICB, as required, will complete the Regulation 84 report in relation to each contract or framework that is awarded and ensure that it includes all the information set out at Regulation 84(1)[[3]](#footnote-3).
	2. As well as the general details of the winning bid, the suppliers involved, the value and subject matter of the contract, the Regulation 84 report on a particular contract must also include:
		1. where the competitive with negotiation, competitive dialogue, or negotiated without notice procedure was used, the justifications for this choice;
		2. where a procurement procedure is abandoned, the reasons why the contracting authority decided not to proceed;
		3. details of any conflicts of interest identified and how these were resolved; and
		4. if any bids were found to be abnormally low, reasons for the rejection of these.
2. Framework Agreements
	1. A framework is an umbrella agreement which sets out the terms on which the purchasing organisation and the provider(s) will enter into contracts.
	2. These agreements can be established on both a national or regional level and are constituted by a number of pre-approved providers who supply a similar range of goods from which a purchase can be made relatively quickly and easily.
	3. Various framework agreements are available through:
		1. The Crown Commercial Services (CCS);
		2. NHS Shared Business Services (SBS);
		3. NHS Supplychain;
		4. Department of Health; or
		5. Health Systems Support Framework.
	4. Each framework agreement will define their purchasing terms. These may include:
		1. Apply the terms of the framework agreement

This option would apply when the terms and conditions of a purchase are set out (e.g. Provider A is cheaper than Provider B for the product you are looking for therefore no competition is required).

* + 1. Hold a mini-competition
			1. Where the requirements are more complex the ICB will hold a mini‑competition or ‘call for further competition’[[4]](#footnote-4).
			2. The purchaser can be assured that the providers on a framework are financially stable and that the goods and/or services on offer are of a high quality because the suppliers have already been approved and rigorously assessed. Any purchase made through a framework is also compliant with procurement legislation, provided that the rules to engage providers through the terms of the framework have been followed.
			3. The Procurement Lead/Commissioning Support Unit can advise commissioners on either the use of existing framework agreements or the procurement of a new framework agreement.
1. Pilot Projects/ Proof of concepts
	1. In order to identify new working practices through the use of pilot projects, the ICB must establish that a project is in fact a pilot via the following definitions:
		1. there is a specific goal;
		2. the timetable is clearly laid out with defined periods for:
			1. start date;
			2. end date; and
			3. period for lessons to be learnt;
		3. clear and signed contract with the pilot service provider;
		4. robust plan/process for evaluation;
		5. right to terminate a pilot must be included if it is found to be unsafe or the outcomes cannot be met; and/or
		6. determine as part of the pilot if procurement would be applicable, and include the process into the timescales.
	2. It is important for the ICB to use pilot projects only in circumstances where the clinical outputs are not known or cannot be accurately predicted. Pilot contracts are not recognised as a formal route under the PCR 2015 and therefore the award of pilot contracts must still be compliant with relevant legislation (i.e. PCR 2015 or PSR 2023).
	3. The ICB should contact the Procurement Lead/Commissioning Support Unit for specialist advice before embarking on a pilot project to ensure compliance with procurement and competition law.
2. Dispute Avoidance

Where disputes arise as a result of a PCR 2015 procurement process or a PSR 2023 Provider Selection process then the relevant Regulatory dispute resolution processes will apply. For procurements that are outside of scope of PSR 2023 and below the relevant PCR 2015 threshold the ICB’s Complaints Handling Policy will apply.

1. Sustainable Procurement
	1. The ICB is committed to the principles of sustainable development and demonstrates leadership in sustainable development to support central Government and Department of Health commitments in this area of policy, and the improvement of the nation’s health and wellbeing.
	2. Sustainable procurement has been defined by the ICB as a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment.
	3. Sustainable procurement should consider the environmental, social and economic consequences of:
		1. design;
		2. non-renewable material use;
		3. manufacture and production methods;
		4. logistics;
		5. service delivery;
		6. use/operation/maintenance/reuse/recycling/disposal options; and
		7. carbon reduction.
	4. Each supplier’s capability to address these consequences should be considered throughout the supply chain and effective procurement processes can support and encourage environmental and socially responsible procurement activity.
	5. In line with Government guidance (PPN 06/20) all procurements must have a minimum weighting of 10% for Social Value. Evaluation criteria should include elements of the 5 key themes (where appropriate) as stated by the national guidance including “Fighting Climate Change”, “Wellbeing”, “Equal Opportunity”, “Tackling Economic Inequality” and “Covid-19 Recovery”. ICBs should also incorporate NHSE's guidance on '[Applying net zero and social value in the procurement of NHS goods and services](https://www.england.nhs.uk/greenernhs/wp-content/uploads/sites/51/2022/03/B1030-applying-net-zero-and-social-value-nhs-goods-and-services.pdf)' which states that ‘the NHS, the Social Value Model theme of ‘Fighting Climate Change’ should be included in all NHS procurement either in the technical specification, through the social value criteria or a combination of these.
	6. In line with Government guidance (PPN 06/21) and subsequent NHS guidance, from the 1st April 2023, for all NHS contracts above £5 million per annum (excluding VAT), providers must be able to demonstrate that they have a Carbon Reduction Plan that complies with the requirements outlined within PPN 06/21. They must also confirm their commitment to achieve net zero by 2050 in the UK. In addition, from April 2024 a Net Zero Commitment is required for procurements of lower value (below £5m per annum (excluding VAT) and above £10k (excluding VAT)).
2. Third Sector/Small Medium sized enterprise Support
	1. Where appropriate the ICB will support and encourage Small & Medium sized Enterprise (SME) suppliers, Third Sector/Voluntary organisations and local enterprises in bidding for contracts. The ICB will ensure that healthcare (clinical) service tender processes promote equality and do not discriminate on the grounds of age, race, gender, culture, religion, sexual orientation or disability.
	2. The ICB will aim to support Government guidelines seeking the optimal involvement of SMEs and the Third Sector in public service delivery without acting in contravention of public sector procurement legislation and guidance.
	3. The NHS is keen to encourage innovative approaches that could be offered by new providers – including independent sector, voluntary and third sector providers. The ICB is committed to the development of local providers that understand the needs of local communities. It is vital to ensure that the Organisation’s approach to healthcare procurement is open and transparent and that it does not act as a barrier to new providers.

Section 3 – Derby and Derbyshire ICB’s Annual Procurement Plan

A procurement work plan will be prepared at the beginning of each financial year to support the priorities and requirements set out in the ICB’s annual commissioning and business plans.

The function of the procurement work plan is to highlight the proposed procurement priorities and opportunities, clearly defining the ICB’s direction of travel for potential and existing providers. By adopting a project management approach to the prioritisation and delivery of all procurement activities, resources can be allocated to ensure effective delivery.

The procurement work plan is a key tool to improve communication between the ICB and providers. By having transparent and open processes, we will seek to actively encourage provider engagement at an early stage of any procurement, particularly when reviewing existing services with existing providers.

The Procurement Register is a public document and ensures that the ICB is transparent about its procurement decision making processes and rationale. It will be published annually on the ICB’s internet site, and updated quarterly. This will allow the ICB to communicate short, medium and long term goals to the widest possible audience, and demonstrates a range of potential opportunities within the Derbyshire health economy, rather than a series of ‘one-off’ procurements. This will encourage greater provider interest.

Not all commissioning priorities will have or will result in formal procurement activity. When considering appropriate actions to effect required changes and improvements, competition is only one lever available to the ICB, and a range of other levers will also be considered (e.g. delivery of service redesign through partnership working).

Appendix 1 – Procedure for responding to provider representations

1. Background
	1. The Health and Care Services (Provider Selection Regime) Regulations 2023 (‘the PSR’), together with supporting statutory guidance (The Provider Selection Regime: statutory guidance) provides a set of rules for procuring health care services in England by organisations termed relevant authorities. Relevant authorities are:
		* NHS England;
		* Integrated Care Boards (ICBs);
		* NHS Trusts and NHS Foundation Trusts; and
		* Local Authorities and combined authorities.
	2. The PSR has been designed to:
		1. introduce a flexible and proportionate process for deciding who should provide health care services;
		2. provide a framework that allows collaboration to flourish across systems;
		3. ensure that all decisions are made in the best interest of patients and service users;
	3. The ICB as a relevant authority is required to be transparent about its decision-making under the PSR. This is to enable proper scrutiny of, and accountability for, decisions made.
	4. Transparency notices are required to be published following PSR decisions being made under the direct award process C, the most suitable provider process, or the competitive process, which set out the ICB’s intension to follow the most suitable provider or competitive process, or its intention to award a contract. Transparency notices as required under the various provider selection processes should be published using the UK e-notification service Find a Tender Service (FTS). A table summarising the transparency requirements is provided at Appendix A.
	5. A standstill period of eight working days must be observed once a notice of intention to award a contract under direct award process C, the most suitable provider process, or the competitive process has been published. During this standstill period, any provider who might otherwise have been a provider of the services to which the contract relates is able to make a representation to the ICB to seek a review of the decision made (i.e., to determine whether the ICB has applied the regime correctly and made an appropriate provider selection decision).
	6. The standstill period will end at midnight on the eighth working day if no representations have been received, or representations received do not meet the required conditions (see paragraph 12 below).
	7. If any representations are received during this period, then the standstill period will remain open until the ICB provides any requested information, considers the representations, and makes a further decision.
	8. Providers cannot submit a representation after the initial eight-day period, even if the standstill period has been extended in response to a representation from another provider.
	9. The standstill period must end before the contract can be awarded.
	10. The full Standstill and Representation Timeline is provided at Appendix B.
	11. NHS England has established an Independent Patient Choice and Procurement Panel to provide independent expert advice to relevant authorities with respect to the review of PSR decisions during the standstill period. If a provider remains unsatisfied about the response given by a relevant authority to their representations, then that provider may seek the involvement of the Independent Patient Choice and Procurement Panel.
	12. The purpose of this procedure, which should be read in conjunction with the ICB’s Procurement Policy, is to set out the ICB’s arrangements for responding to any provider representations received during standstill periods.
2. Receiving and assessing provider representations
	1. The ICB is only obliged to respond to representations that meet all the following conditions:
		1. the representation comes from a provider that might otherwise have been a provider of the services to which the contract relates;
		2. the provider is aggrieved by the decision of the ICB;
		3. the provider believes that the ICB has failed to apply the regime correctly and is able to set out reasonable grounds to support its belief; and
		4. the representation is submitted in writing (which includes electronically) within eight working days of the start of the standstill period.
	2. Upon receipt of a representation, the request will be logged and assessed to ensure it meets all the conditions outlined above. If the representation is not clear, then the provider will be afforded an opportunity to explain or clarify its representation.
	3. If the representation does not meet all the required conditions, then a letter will be sent to the provider stating that the representation will not be progressed, outlining the reasons for this.
	4. If the representation does meet all the required conditions, then an acknowledgment letter will be sent to the provider, outlining the next steps in the process, including an indicative timeframe for consideration of the representation and when the provider might reasonably expect a decision to be made. The relevant commissioning/contracting lead will also ensure appropriate communication with the intended provider(s) so they understand the process that will need to be followed.
	5. Should the representation include a request for information that the ICB is required to keep under the regime, then this will be provided as soon as possible, except where this:
		1. would prejudice the legitimate commercial interests of any person, including the ICB;
		2. might prejudice fair competition between providers;
		3. would otherwise be contrary to the public interest.
3. Responding to provider representations that meet the required conditions
	1. A meeting of the ICB’s Provider Representation Panel will be convened in line with its agreed terms of reference (see Appendix C).
	2. Every effort will be made to convene the meeting of the Panel at the earliest opportunity.
	3. The Panel will:
		1. review the evidence and information used to make the original decision, considering the representations made;
		2. consider whether the representation has merit (e.g., whether it identifies that the process has not been correctly followed or brings to light information that has a bearing on the decision reached);
		3. the Panel will present its findings back to the original decision maker, in terms of whether it has concluded that the representation does or does not have merit. If the Panel considers the representation does have merit, then it will request the original decision maker to further consider whether this impacts on the intention to award a contract to the selected provider.
	4. The original decision maker will then decide whether to:
		1. enter the contract (or conclude the framework agreement) as intended;
		2. go back to an earlier step in the selection process, either to the start of the process or to where a flaw was identified, rectify this, and repeat that step and subsequent steps;
		3. abandon the provider selection process.
	5. The outcome of the representation will be communicated in writing to:
		1. the provider that made the representation;
		2. the provider to which the ICB intended at the beginning of the standstill period to award the contract (or all providers with which the ICB intended at the beginning of the standstill period to conclude the framework agreement).
	6. The ICB will allow five working days following the day on which a response has been sent to the provider(s) making the representation before the standstill period will come to an end. This allows time for the provider(s) to consider the ICB’s response, seek further clarifications and to consider whether to request a review by NHS England’s Independent Choice and Procurement Panel.
	7. If an Independent Patient Choice and Procurement Panel review is requested and accepted, then the standstill period will normally continue until after the Independent Patient Choice and Procurement Panel has given its advice and the ICB has made its further decision considering that advice (see paragraph 29 below for exceptions to this).
	8. Once received, the advice of the Independent Patient Choice and Procurement Panel will be considered by the original decision maker, who will then make a further decision, to be its final decision, replacing the previous one, to either:
		1. enter the contract (or conclude the framework agreement) as intended;
		2. go back to an earlier step in the selection process, either to the start of the process or to where a flaw was identified, rectify this, and repeat that step and subsequent steps;
		3. abandon the provider selection process.
	9. The ICB will share this further decision promptly, in writing, and with reasons, with the provider(s) who made the representation and the provider(s) to which the ICB intended, at the beginning of the standstill period, to award the contract. The ICB will set out the outcome and a full and transparent justification for its decision, including whether the original decision was changed as a result of the advice of the Independent Patient Choice and Procurement Panel.
	10. The ICB will wait at least five working days before concluding it is ready to award the contract and bring the standstill period to an end, or before it returns to an earlier step in the process, or before it abandons a process.
	11. In exceptional circumstances, the ICB may conclude that it is necessary to enter a new contract before the Independent Patient Choice and Procurement Panel can complete its review and share its advice. In such circumstances, the ICB may urgently modify the existing contract in accordance with Regulation 14(3), subject to all the below applying:
		1. there is an existing contract for the health care services to which the proposed contracting arrangement relates, and the ICB considers that the term of the existing contract is likely to expire before the end of the standstill period;
		2. the ICB considers it necessary or expedient to modify the existing contract prior to the new contract taking effect to ensure continuity between the existing contract and proposed award of a new contract;
		3. the ICB considers that it is not possible to satisfy the requirements of Regulations 6 to 13 before the term of the existing contract expires;
		4. the ICB may only extend the length of the existing contract and must not otherwise modify the contract. The ICB is expected to only extend the contract for as long as necessary to ensure continuity between the existing and the new contract.
	12. In situations where paragraph 29 above applies, the ICB will note the advice of the Independent Patient Choice and Procurement Panel for the next time they use the PSR to arrange health care services.

**Appendix A – Transparency Requirements**



**Appendix B – Standstill and Representation Timeline**



**Appendix C – Provider Representation Panel Terms of Reference**

|  |  |
| --- | --- |
| 1. **Purpose**
 |  The purpose of the Provider Representation Panel (‘the Panel’) is to consider representations by providers against procurement decisions made by NHS Derby and Derbyshire Integrated Care Board (‘the ICB’) in line with the Health Care Services (Provider Selection Regime) Regulations 2023 (‘the PSR’). Only those representations that meet all required conditions set out within the PSR will be considered by the Panel.The role of the Panel is not to consider the merits of the procurement decision taken under PSR but whether proper process has been followed in the PSR decision-making process. |
| 1. **Status**
 | The Panel has been established in accordance with the ICB’s Procurement and Provider Selection Policy and acts as an advisory body to the ICB’s Board, committee, sub-groups and/or individual(s) that made the original decision (‘the Original Decision Maker’) that is being challenged by a provider representation.The Panel is authorised to:1. Investigate any activity within its terms of reference.
2. Seek any information it requires from any employee and all employees are directed to co-operate with any request made by the Panel.
3. Obtain outside legal or other independent advice and to secure the attendance of individuals with relevant experience and expertise if it considers this necessary.
 |
| 1. **Duties**
 | The Panel will:1. Consider provider representations against decisions taken by the ICB under Direct Award Process C, the Most Suitable Provider Process and/or the Competitive Process of the Provider Selection Regime.

*Note: representations on the same issue from multiple providers may be considered together, as appropriate.*1. Review the evidence and information used to make the original decision, taking into account the representations made.
2. Consider whether the representations have merit, whether information is brought to light that has a bearing on the decision reached and/or identify whether the Original Decision Maker has done any of the following:
* Acted beyond their delegated powers.
* Reached a decision that no other reasonable ICB could have reached.
* Acted unfairly.
* Failed to follow proper procedures.
* Failed to follow the Procurement and Provider Selection Policy.
* Placed undue weight on irrelevant matters and this made a material difference to the decision being challenged.
* Breached the Equality Act 2010.

The Panel will present its findings back to the Original Decision Maker, in terms of whether it has concluded that the representation does or does not have merit. If the Panel considers the representation does have merit, then it will ask the Original Decision Maker to further consider whether this impacts on the intention to award a contract to the selected provider.The Panel cannot override the Original Decision Maker but can identify where there are defects in the process or where decisions were not made on a rational basis and make recommendations to fix any errors.  |
| 1. **Membership**
 | The Panel’s membership will be comprised of an Executive Director of the ICB that was not involved in the original decision, a representative of the ICB’s Procurement Team and a representative of the ICB’s Governance Team.*Attendees*Senior Managers may be invited to attend meetings of the Panel to support the Panel in discharging its responsibilities.  |
| 1. **Chair and deputy**
 | The Panel will be chaired by an Executive Director of the ICB that was not involved in the original decision.  |
| 1. **Quorum**
 | The Panel will be quorate with a minimum of two members present, to include an Executive Director of the ICB that was not involved in the original decision.If any Panel member has been disqualified from participating in the discussion and/or decision-making for an item on the agenda, by reason of a declaration of a conflict of interest, then that individual shall no longer count towards the quorum.If the quorum has not been reached, then the meeting may proceed if those attending agree, but no decisions may be taken. |
| 1. **Decision-making arrangements**
 | Panel members will seek to reach decisions by consensus where possible. Should this not be possible, then a vote of the Panel members will be required, the process for which will be, as follows:1. All members of the Panel who are present at the meeting will be eligible to cast one vote each. In no circumstances may an absent member vote by proxy. Absence is defined as being absent at the time of the vote.
2. A decision will be passed if more votes are cast for it than against it.
3. Casting vote – If an equal number of votes are cast for and against a resolution, then the Chair of the Panel will have a casting vote.

Should a vote be taken, the outcome of the vote, and any dissenting views, will be recorded in the minutes of the meeting. |
| 1. **Meeting arrangements**
 | Meetings of the Panel will be scheduled as and when required. The Panel may meet virtually using telephone, video, and other electronic means when necessary. Where a virtual meeting is convened, the usual process for meetings of the Panel will apply, including those relating to the quorum (as set out in section 5 of these terms of reference).There is no requirement for meetings of the Panel to be open to the public.Appropriate secretariat support will be provided to the Panel.  |
| 1. **Minutes of meetings**
 | Minutes will be taken at all meetings and presented according to the corporate style. The minutes will be ratified by agreement of the Panel (this may be performed virtually due to the timings between meetings). |
| 1. **Conflicts of interest management**
 | In advance of any meeting of the Panel, consideration will be given as to whether conflicts of interest are likely to arise in relation to any agenda item and how they should be managed. This may include steps to be taken prior to the meeting, such as ensuring that supporting papers for a particular agenda item are not sent to conflicted individuals.At the beginning of each Panel meeting, members and attendees will be required to declare any interests that relate specifically to a particular issue under consideration. If the existence of an interest becomes apparent during a meeting, then this must be declared at the point at which it arises. Any such declarations will be formally recorded in the minutes for the meeting. The Chair of the Panel will determine how declared interests should be managed, which is likely to involve one the following actions: 1. Requiring the conflicted individual to withdraw from the meeting for that part of the discussion if the conflict could be seen as detrimental to the Panel’s decision-making arrangements.
2. Allowing the conflicted individual to participate in the discussion, but not the decision-making process.
3. Allowing full participation in discussion and the decision-making process, as the potential conflict is not perceived to be material or detrimental to the Panel’s decision-making arrangements and where there is a clear benefit to the conflicted individual being included in both.
4. Excluding the conflicted individual and securing technical or local expertise from an alternative, unconflicted source.
 |
| 1. **Reporting responsibilities**
 | The work of the Panel will be reported to the Audit and Governance Committee in line with its responsibilities to review all instances where provider representations have been received in relation to procurement and contract award decisions for healthcare services.The work of the Panel will also contribute to the ICB’s published annual summary of its application of the PSR, which will be incorporated within the ICB’s Annual Report.*Note: The first annual summary will relate to contracts awarded using the PSR between 1 January 2024 and 31 March 2025 (to be published no later than six months following the end of 2024/25 financial year). Following the first annual summary, all other annual summaries must be published no later than six months following the end of the financial year it relates to.* |
| 1. **Review of terms of reference**
 | These terms of reference will be formally reviewed on an annual basis but may be amended at any time to adapt to any national guidance as and when issued.Amendments to these terms of reference will be submitted to the Audit & Governance Committee. |

Appendix 2 – Procurement Decisions and Contracts Awarded Form

|  |  |
| --- | --- |
| **Ref No** |  |
| **Contract/Service Title** |  |
| **Reason for Procurement/Investment Description** |  |
| **Existing contract or new procurement (if existing include details)** |  |
| **Procurement type (e.g. ICB procurement, collaborative procurement with partners, competitive, restricted, AQP, contract extension)** |  |
| **Collaborative Partners (e.g. none, other ICBs, local authority)** |  |
| **ICB clinical lead (Name)** |  |
| **ICB contract manager (Name)** |  |
| **Decision making process, name of decision making committee, and date decision made** |  |
| **Summary of conflicts of interest noted** |  |
| **Actions to mitigate conflicts of interest**  |  |
| **Justification for actions to mitigate conflicts of interest** |  |
| **Contract awarded (supplier name & registered address)** |  |
| **Contract value (£) (Total) and value to ICB** |  |
| **Contract Date** |  |
| **Status of the process** |  |
| **Comments to note** |  |

To the best of my knowledge and belief, the above information is complete and correct. I undertake to update as necessary the information.

**Signed: Date:**

**On behalf of:**

Please return to Frances Palmer, Corporate Governance Manager. Email: frances.palmer1@nhs.net

NHS Derby and Derbyshire ICB, Scarsdale, Nightingale Close, Chesterfield S41 7PF

If you require assistance in completing this form please contact Frances Palmer, Corporate Governance Manager. Email: frances.palmer1@nhs.net

Appendix 3 – Template Procurement Register

|  |
| --- |
| **NHS DERBY AND DERBYSHIRE ICB PROCUREMENT REGISTER** |
| **Ref. No** | **Service to be Procured** | **Reason for procurement** | **Reporting Governance***Which sub-committees received the procurement updates?* | **Final decision taken and by whom at the ICB?** | **Comments** | **ICB Lead** | **ICB Clinical Lead** | **Summary of Conflicts of Interest****Where was this identified?** | **If Yes -****what actions were taken to****manage the conflicts?** | **Successful Bidder** | **Value (£) excl VAT** | **Contract dates** | **Procurement Process****i.e Competitive, Restricted Procedure, AQP** | **Collaborative Partners****i.e None or other ICBs** |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |

Appendix 4 – Procurement Checklist

| Service: |
| --- |

| **Question** | **Comment/Evidence** |
| --- | --- |
| 1. How does the proposal deliver good or improved outcomes and value for money – what are the estimated costs and the estimated benefits? How does it reflect the ICB’s proposed commissioning priorities? How does it comply with the ICB’s commissioning obligations? |  |
| 2. How have you involved the public in the decision to commission this service?  |  |
| 3. What range of health professionals have been involved in designing the proposed service?  |  |
| 4. What range of potential providers have been involved in considering the proposals?  |  |
| 5. How have you involved your Health and Wellbeing Board(s)? How does the proposal support the priorities in the relevant joint health and wellbeing strategy (or strategies)?  |  |
| 6. What are the proposals for monitoring the quality of the service?  |  |
| 7. What systems will there be to monitor and publish data on referral patterns?  |  |
| 8. Have all conflicts and potential conflicts of interests been appropriately declared and entered in registers?  |  |
| 9. In respect of every conflict or potential conflict, you must record how you have managed that conflict or potential conflict. Has the management of all conflicts been recorded with a brief explanation of how they have been managed?  |  |
| 10. Why have you chosen this procurement route e.g., single action tender? |  |
| 11. What additional external involvement will there be in scrutinising the proposed decisions? |  |
| 12. How will the ICB make its final commissioning decision in ways that preserve the integrity of the decision-making process and award of any contract?  |  |
| Additional question when qualifying a provider on a list or framework or pre selection for tender (including but not limited to any qualified provider) or direct award (for services where national tariffs do not apply)  |
| 13. How have you determined a fair price for the service?  |  |
| Additional questions when qualifying a provider on a list or framework or pre selection for tender (including but not limited to any qualified provider) where GP practices are likely to be qualified providers  |
| 14. How will you ensure that patients are aware of the full range of qualified providers from whom they can choose?  |  |
| Additional questions for proposed direct awards to GP providers  |
| 15. What steps have been taken to demonstrate that the services to which the contract relates are capable of being provided by only one provider?  |  |
| 16. In what ways does the proposed service go above and beyond what GP practices should be expected to provide under the GP contract?  |  |
| 17. What assurances will there be that a GP practice is providing high-quality services under the GP contract before it has the opportunity to provide any new services?  |  |

Please return to Frances Palmer, Corporate Governance Manager. Email: frances.palmer1@nhs.net

NHS Derby and Derbyshire ICB, Scarsdale, Nightingale Close, Chesterfield S41 7PF

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Appendix 5 – Template Declaration of Conflicts of Interests for Bidders/Contractors

| **Name of Organisation:** |  |
| --- | --- |
| Details of interests held: |
| **Type of Interest** | **Details** |
| Provision of services or other work for the ICB or NHS England  |  |
| Provision of services or other work for any other potential bidder in respect of this project or procurement process |  |
| Any other connection with the ICB or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the ICB’s or any of its members’ or employees’ judgements, decisions or actions |  |

|  |  |
| --- | --- |
| **Name of Relevant Person(s)** |  |
| Details of interests held: |
| **Type of Interest** | **Details** | **Personal interest or that of a family member, close friend of other acquaintance?** |
| Provision of services or other work for the ICB or NHS England  |  |  |
| Provision of services or other work for any other potential bidder in respect of this project or procurement process |  |  |
| Any other connection with the ICB or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the ICB’s or any of its members’ or employees’ judgements, decisions or actions |  |  |

To the best of my knowledge and belief, the above information is complete and correct. I undertake to update as necessary the information.

Signed:

On behalf of:

Date:

Please return to Frances Palmer, Corporate Governance Manager. Email: frances.palmer1@nhs.net

NHS Derby and Derbyshire ICB, Scarsdale, Nightingale Close, Chesterfield S41 7PF

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Appendix 6 – PSR Provider Selection Process



1. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041964/Procurement_Policy_Note_10_21_-_New_Thresholds_Values_and_Inclusion_of_VAT_in_Contract_Estimates.pdf> [↑](#footnote-ref-1)
2. <https://www.legislation.gov.uk/uksi/2015/102/schedule/1/made> [↑](#footnote-ref-2)
3. Note, the Cabinet Office has the right to request a copy of the report. [↑](#footnote-ref-3)
4. The ICB cannot just pick suppliers off the list and should approach all suppliers appointed to the framework in relation to a proposed call-off. In practice, frameworks with a large number of suppliers can, for this reason, be just as time consuming as embarking on a new procurement exercise. [↑](#footnote-ref-4)