

Procurement Policy

Staffordshire and Stoke-on-Trent Integrated Care Board (ICB)

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ABSTRACT

The purpose of the Procurement Policy is to ensure all procurement undertaken on behalf of Staffordshire and Stoke-on-Trent Integrated Care Board:

- o Provides the best possible value
- o Is undertaken in a transparent and non-discriminatory manner with equality of treatment a core requirement
- o Is compliant with all regulatory frameworks including local and national legislation
- o Uses best practice as standard
- o Complies with long and short-term objectives of the Integrated Care Board

PRECISE

Integrated care is about giving people the support they need, joined up across local councils, the NHS, and other partners. Health and care organisations have been working together in different ways for several years and while there have been steps taken towards collaboration already, previous laws have prevented services becoming properly joined-up. The 2022 Health and Care Act aims to change this and make it easier for NHS and social care organisations to work together.

Competitive procurement is not seen as the default position, and procurement should be seen as a mechanism to secure, goods, resources, services and works, with competitive procurement as an option available to the ICB.

It may be the case that following pre-procurement research and/or engagement with the market, it is apparent that there is only one (or specific group of) provider(s) capable of delivering the ICBs requirements. If that was the case, then there would be no requirement for the ICB to carry out a competitive procurement process, and the ICB will seek to secure high quality, integrated care for patients in the most effective manner.

The requirements to act transparently, treat bidders equally and in a non-discriminatory manner require ICBs to be clear in tender documents as to what the process will involve and to follow that process.

This policy is presented in two parts – Part 1 is the policy and Part 2 provides practical processes and guidance to support implementation.

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SECTION 1 - INTRODUCTION AND PURPOSE

1. Introduction

- 1.1. Procurement is the act of obtaining or buying goods or services and covers all spend undertaken within the Integrated Care Board (ICB). Spend within the ICB is wide ranging and may be the purchase of information technology hardware, legal services, healthcare services or human resource, but every element of spend is regulated by the internal Standing Financial Instructions, internal policies and external regulations and guidance.
- 1.2. The principal aim of procurement undertaken by NHS organisations is to deliver essential goods and services that improve patient experience and outcomes, reduce health inequalities while increasing value from every pound spent by the NHS.
- 1.3. Competitive procurement is not seen as the default position, and procurement should be seen as a mechanism to secure, goods, resources, services and works, with competitive procurement as an option available to the ICB.
- 1.4. The purpose of this policy is to outline the procedures to be followed when obtaining goods or services on behalf of the ICB, either by outlining the processes, or by providing links to further information and support.
- 1.5. This Procurement Policy will ensure that all procurement undertaken:
 - 1.5.1. Complies with relevant national legislation, policy and guidance, the ICB Constitution, Standing Orders,
 - 1.5.2. Schemes of Reservation and delegation and Standing Financial Instructions
 - 1.5.3. Acts with a view to deliver against the needs of the local population
 - 1.5.4. Treats providers in a transparent, proportionate and non-discriminatory manner with equality of treatment a core requirement
 - 1.5.5. Provides the best possible value for money
 - 1.5.6. Maintains high standards of public trust and probity in its use of public funds
 - 1.5.7. Uses best practice as standard
 - 1.5.8. Complies with long- and short-term objectives of the ICB
 - 1.5.9. Does not engage in anti-competitive behaviour.

2. Scope of the Procurement Policy

- 2.1. This policy applies to all spend (goods, services, people, clinical and non-clinical) undertaken on behalf of the ICB.
- 2.2. Commissioning responsibility of the ICB will in the future include the transition of commissioning responsibilities for services historically the responsibility of NHS England. In addition to the commissioning and arranging of primary medical services, future services may include dentistry (primary, community and secondary services), community pharmacy and general ophthalmology with NHS England retaining a more limited oversight role.
- 2.3. This policy must be followed by all personnel working for, or on behalf of the ICB including staff on temporary or honorary contracts, pool staff, students, Independent Contractors, Sub-Contractors and representatives from other external bodies.

3. Procurement Definition

- 3.1 Procurement can be defined as:

The act of obtaining or buying goods and services

3.2 Procurement is an all-encompassing term to describe the life cycle of a process for the acquisition of goods, services, people and works. It starts with identifying the need, through to obtaining the right supplies, works and/or services from the right provider, at the right time, place, price and quality, generally via a contract. The process then completes with the end of a contract or end of the useful life of an asset. Procurement can involve competition and / or tendering, but this is not a prerequisite to satisfy the obligations outlined within this document.

4. Procurement Objectives

- 4.1. The ICB has a statutory responsibility to secure services which deliver against the needs of their population.
- 4.2. They are also constitutionally obliged to improve the quality of care and ensure the efficient use of resources.
- 4.3. To facilitate the ICB responsibilities the Procurement Policy has the following objectives:
- 4.4. Ensure processes undertaken whilst discharging the duties of the ICB are completed within the required external statutory and internal policy requirements
- 4.5. Ensure processes secure the needs of healthcare service users through transparent, proportionate, non-discriminatory, equitable and fair approaches
- 4.6. Ensure policy and process works to ensure value for money is secured whilst improving quality and efficiency of provision
- 4.7. Encourage integration and collaboration to benefit service users wherever appropriate
- 4.8. Ensure sustainability of services, social value and environmental objectives are clear, practicable and considered at all stages of procurement
- 4.9. Provide clear guidance and processes that follow best practice which are simple to follow and de-mystify procurement.

5. Goods, services, works and human resource

- 5.1. Regardless of the item (e.g. tracheostomy tubing for a continuing healthcare patient or a £1M computer contract) or service (e.g. healthcare service or a Wide Area Network or advertising a post for the team) that is being sourced, this policy is still relevant as it covers all funds expended by the ICB.

6. Integration¹

- 6.1. The Health and Care Act 2022 received royal ascent and became law in May 2022 and looks to provide the mechanisms to allow a greater level of integration.
- 6.2. There are two forms of integration which will be underpinned by the legislation: integration within the NHS to remove some of the cumbersome boundaries to collaboration and to make working together an organising principle; and greater collaboration between the NHS and local government, as well as wider delivery partners, to deliver improved outcomes to health and wellbeing for local people. The NHS and local authorities will be given a duty to collaborate with each other. Each ICS has an Integrated Care Board (ICB), a statutory organisation bringing the NHS together locally to improve population health and establish shared strategic priorities within the NHS. When ICBs were legally established, clinical commissioning groups (CCGs) were abolished.
- 6.3. To allow the integration there are reforms to remove the barriers that prevent partners from working together enabling them to arrange services and provide joined up care in the interests of service users. This will require changes to both competition law as it was applied to the NHS in the Health and Social Care Act 2012 and the system of procurement applied to the NHS by that legislation. These changes will enable the NHS and local authorities to more easily arrange healthcare services while retaining core duties to ensure quality and value. The expected changes are set out in Appendix 1 within the Provider Selection Regime section.
- 6.4. Ahead of any changes to the legal framework, the Procurement Policy of the ICB will be to ensure that all procurement decisions support the aim of integration. Where there are clear benefits in terms of providing an integrated service to the population, then this key factor will be thoroughly considered when assessing whether to direct award a contract to an existing supplier.

¹ Integration and innovation: working together to improve health and social care for all - Updated 11 February 2021 - <https://www.gov.uk/government/publications/working-together-to-improve-health-and-social-care-for-all/integration-and-innovation-working-together-to-improve-health-and-social-care-for-all-html-version#contents>

7. Procurement legislation and policy influences

- 7.1. The procurement landscape is constantly evolving and is set to continue to evolve with the Provider Selection Regime due in 2023 (more details within Appendix 1) and changes to the Public Contract Regulations expected 2023-24. In the future, the ICB will be required to follow two separate procurement regimes – (1) a specific regime for healthcare services and (2) a regime for everything else (non-healthcare services).
- 7.2. The ICB will update this policy when the new legislative reforms are enshrined in law.
- 7.3. Procurement within the NHS has a number of legislations, policies and guidance documents which are to be considered when executing the ICBs' statutory duties, such as,
- Section 75 of the Health and Social Care Act 2012, and the associated Procurement, Patient Choice and Competition (No. 2) Regulations 2013 (PPCC Regs) place requirements on commissioners to ensure that they adhere to good practice in relation to procurement
 - The Public Contracts Regulations 2015 ('PCR 2015') which are amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 ('PPAR 2020')
 - Public Services (Social Value) Act 2012
 - Health and Care Act 2022
 - Cabinet Office Guidelines and Procurement Policy Notes
 - Crown Commercial Service Guidance
 - NHS Constitution
 - Strategy and Guidance documents from regulatory bodies such as NHS England and the Department of Health and Social Care
 - Commissioning decisions made by the ICB
 - Relevant case law as it develops through the judicial system
 - Managing Conflicts of Interest: Revised Statutory Guidance for CCGs
 - Equality Act 2010
 - Modern Slavery Act 2015
- 7.4. An explanation of the salient points within the above are outlined within this document and in detail within Appendix 2.

8. Public Services (Social Value) Act 2012

- 8.1. The Public Services (Social Value) Act 2012 (the Act) came into force in 2012, and places requirements on commissioners to consider the economic, environmental and social benefits of their approaches to service provision and procurement.
- 8.2. NHS procurement has an essential role to play in the delivery of the NHS commitment to reach net zero by 2045 and as an Anchor Institution the NHS assets and resources can be used to maximise social, economic, and environmental benefits, improve health outcomes and tackle health inequalities.
- 8.3. Social value, when incorporated effectively, will help reduce health inequalities, drive better environmental performance, and deliver even more value from procured products and services.
- 8.4. Commissioners should consider social value during the needs assessment and service design phase before any procurement starts so they can inform the shape of the procurement and the design of the services required. In particular the Act requires commissioners to make the following considerations at

the pre-procurement stage:

- 8.5. how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and;
- 8.6. how, in conducting a procurement process, it might act with a view to securing that improvement, and;
- 8.7. whether to undertake a consultation on these matters.
- 8.8. The 'Procurement Policy Note 06/20 – taking account of social value in the award of central government contracts' was released by the Cabinet Office in September 2020. This launched a new model to deliver social value through commercial activities. A minimum 10% weighting should be attributed to the evaluation criteria. NHS England adopted the Social Value Model³⁴ within their procurement practices and now require all other NHS organisations to also use this model and take account of the additional social benefits that can be achieved in the delivery of its contracts, using policy outcomes aligned with Government priorities. The Social Value Model complements strategic initiatives and policy within the NHS, including the 2019 NHS Long Term Plan, and commitments within the 2020 Delivering a 'Net Zero' National Health Service report.
- 8.9. In collaboration with the procurement and contracting team, commissioners should reference PPN 06/20 to ensure social value is explicitly evaluated in all procurements and appropriately transacted into the successful providers contract⁵.

² <https://www.england.nhs.uk/greenernhs/wp-content/uploads/sites/51/2022/03/B1030-applying-net-zero-and-social-value-in-the-procurement-of-NHS-goods-and-services-march-2022.pdf>

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940826/Social-Value-Model-Edn-1.1-3-Dec-20.pdf

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940827/Guide-to-using-the-Social-Value-Model-Edn-1.1-3-Dec-20.pdf

⁵ [Procurement Policy Note 06/20 – taking account of social value in the award of central government contracts - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policy-notes/procurement-policy-note-06-20-taking-account-of-social-value-in-the-award-of-central-government-contracts)

9. Greener NHS

- 9.1. When considering service redesign and procurement the process should also consider the NHS's commitment to 'Delivering a 'Net Zero' National Health Service' 1st October 2020 and the current green Action Plan is included in Appendix 4.
- 9.2. The ICS currently has a Green Action Plan which will be superseded by the ICS system wide Green Plan. The action plan below places requirements on procurement.

10. Ethical Considerations

- 10.1. Any tender process undertaken by the ICB will be conducted so that any provider with the necessary abilities to provide a service / supply goods / undertake works has a fair opportunity to secure the tender on offer.
- 10.2. The ICB has a responsibility to their providers and wherever possible, when problems arise with a provider's performance or behaviour, will work with the organisation concerned to help them meet the expected requirements.
- 10.3. The ICB will behave ethically and with integrity in all of their activities and will only work with providers and suppliers who behave with the same level of ethics and integrity.
- 10.4. The ICB will seek to only work with providers who ensure the following:
 - a) Employment is freely chosen
 - b) Freedom of association and the right to collective bargaining are respected

- c) Working conditions are safe and hygienic
- d) Child labour shall not be used
- e) Living wages are paid
- f) Working hours are not excessive
- g) No discrimination is practised
- h) Regular employment is provided
- i) No harsh or inhumane treatment is allowed.

10.5. The ICB will encourage providers to conform to the Ethical Trading Initiative Base Code (ETI Base Code), or equivalent.⁵

11. Equality Impact Assessment

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

11.2. As part of the ICB's commissioning process an equality impact assessment will be undertaken at relevant stages to ensure the proposed/planned changes are assessed with regard to impact on groups, individuals or communities.

11.3. All public bodies have statutory duties under the Equality Act 2010. The ICB aims to design and implement services, policies and measures that meet the diverse needs of its service users, population and workforce, ensuring that none are placed at a disadvantage over others. When any change to services is to take place, a full Equality Impact Assessment (EIA) must be carried out prior to the change within the service.

11.3.1. Where a decision is made to procure, The Equality and Human Rights Commission provide information around mainstreaming equality considerations in procurement. This guidance can be found at: [Buying better outcomes: mainstreaming equality considerations in procurement - a guide for public authorities in England | Equality and Human Rights Commission \(equalityhumanrights.com\)](https://www.equalityhumanrights.com/en/procurement-guidance). This guidance is supplementary and not superseding to the ICBs EIA requirements.

11.4. All Business Cases relating to commissioning investment/disinvestment decisions will include EIAs.

12. Data Protection Impact Assessment

12.1. Any procurement conducted by the ICB should consider and adhere to Data Protection legislation and as such should consider the completion of a Data Protection Impact Assessment prior to the commencement of a procurement to ensure that any impact on data protection is considered, understood and planned for during the procurement.

13. Quality Impact Assessment

13.1. A Quality Impact Assessment should form part of any service commissioning process, especially when there is likely to be a change to the way in which a service is delivered or a change in provider. The quality impact assessment should be started prior to any handover to the procurement team, and where necessary completed once the outcome of a procurement is known.

14. Freedom of Information

14.1. The Freedom of Information Act 2000 (FOIA) identified ICBs as 'public authorities' and therefore subject to the provisions and obligations of that Act. This means that, from 1 January 2005, any person who makes a valid request for recorded information held by the ICB will be entitled to receive it. Outputs and

documentation submitted as part of a procurement process may be subject to disclosure under FOIA.

14.2. There are several legal exemptions that may be applicable under the FOIA, which may/may not include documents marked as “Confidential”. The ICB will consider potential commercial sensitivity when applying exemptions in any request relating to procurement matters. An overview of the main provisions of FOIA can be found; <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/>

15. Public and Patient Engagement

15.1. The ICB has a duty to consult patients and members of the public with regards to their healthcare services as laid out within the Health and Care Act 2022 and reflected with the ICB Constitution.

15.2. Further to these duties patient and public representatives should be involved in the entirety of the service development through co-production, which includes being involved in the procurement process.

15.3. Representatives should be sought by working with the Patient and Public Engagement Officer, and individuals who have experience or an interest in the service should be invited to be involved in the evaluation and moderation of the submissions.

15.4. The representatives should be provided with all information required in order to make an informed decision on their involvement with a procurement process due to the potential extent of the task.

15.5. Each tender process should consider having patient and, or public representative

⁶ https://www.ethicaltrade.org/sites/default/files/shared_resources/ETI%20Base%20Code%20%28English%29_0.pdf

16. Market Engagement

- 16.1. It is good practice to engage with the provider market prior to undertaking a procurement process and where possible engagement should start early when considering the need and potential service required.
- 16.2. Provider organisations across the NHS, private sector, voluntary, community and social enterprise sector hold a vast amount of specialist knowledge regarding the individuals they support and the services they deliver, and this knowledge can be invaluable when engaged at the right point when commissioning services.
- 16.3. As a minimum the provider market should be engaged in a Provider event as part of the procurement to allow information regarding the process to be outlined and two-way conversation to take place regarding the service being commissioned.

SECTION 2 – ACCESSING MARKET OPPORTUNITIES, MARKET ROUTES & INTERNAL POLICY

17. eProcurement Portal – Atamis

- 17.1. The ICB uses an eProcurement Portal to undertake all procurement processes. The portal should be used whenever a procurement process is undertaken to ensure audit requirements are met and the process is secure. For clarity all quotations, Framework Agreement mini competitions, market engagement and tenders should be managed through the portal.
- 17.2. Providers are required to register with the portal, and this captures data which can be used to auto-populate documentation used in procurement processes.
- 17.3. The Atamis portal is used for e-Tendering conducted for the ICB on their behalf by MLCSU

18. Engaging with the Procurement Team

- 18.1. The procurement team is responsible for:
 - 18.1.1. Supporting / leading direct award and procurement processes across the ICS, when spend is directly from the ICB / Alliances.
 - 18.1.2. Providing advice regarding governance of spend across the ICB, including non-healthcare service spend.
 - 18.1.3. Leading and supporting on the application of the Key Criteria in relation to the Provider Selection Regime.
 - 18.1.4. Leading on the development of policy in relation to procurement, including linking with interrelated programmes and initiatives, such as VCSE development, sustainability, and social value.
 - 18.1.5. Production of reports for presentation at ICB committees.
 - 18.1.6. Retaining a register of all spend decisions to retain oversight of governance.
 - 18.1.7. Preparing and delivering training provision about procurement and governance around spend.
- 18.2. The Procurement Team will:
 - 18.2.1. Take responsibility for procurement once a commissioning need has been identified and the required ICB approval has been secured.
 - 18.2.2. In partnership with the assigned Commissioning Lead, assist in commissioning actions which are undertaken through a single tender action to ensure the requirements of this policy have been fulfilled.
 - 18.2.3. Ensure all pre-procurement activity is conducted in a robust manner
 - 18.2.4. Ensure appropriate options appraisal is conducted
 - 18.2.5. Lead on market engagement
 - 18.2.6. Lead on procurement training
 - 18.2.7. Lead on the administrative and audit requirements linked to procurement.
- 18.3. In carrying out these responsibilities the Procurement Team will require other teams to provide support by compiling service specifications, undertaking financial analysis, preparing contracts and undertaking any public and patient consultation and engagement as required.
- 18.4. To enable the Procurement Team to undertake their role the following information will need to be provided:
 - 18.4.1. Documentation demonstrating the project has gained the appropriate sign-off to proceed.
 - 18.4.2. A service specification completed in the NHS standard contract template where appropriate

- 18.4.3. Quality requirements and KPIs agreed and specified
- 18.4.4. A draft contract drawn up to be used as the basis for contract award
- 18.4.5. Business case / commissioning proposal which supports the service specification
- 18.4.6. Any activity, financial, estates, IM&T and TUPE information relevant to the service
- 18.4.7. Details of any previous or existing contracts for the service
- 18.4.8. Assurance that any necessary patient and public consultation has taken place
- 18.5. Wherever possible a member of the procurement team should be involved as early as possible in the commissioning process to ensure they have a full understanding of the requirements of the service and to advise on the procurement process and timelines as required.

19. Internal Policy

- 19.1. Internally there are policies which need to be understood and followed, which include the ICB Constitution, Standing Orders, Schemes of Reservation and Delegation and Standing Financial Instructions. Throughout this policy any other policies which should be considered together with the content of this document have been highlighted within the text.
- 19.2. This table provides an overview of the procurement requirements of the Constitution / Standing Financial Instructions and the flowchart provides an alternative method to view this information.

Figures in italics are inclusive of VAT

Value for money requirement	Healthcare Services	Non-healthcare Services
Informal value for money requirement (no formal tendering needed)	Up to £20k	Up to £20k
Two financial Quotations – set against a conformance specification	From £20k to 50k	From £20k to 50k
Three financial Quotations – set against a conformance specification	From £50k to 100k	From £50k to 100k
Competition abiding by ethos of The Public Contract Regulations 2015	£100k to £663,540	£100k to £213,477
Tender following The Public Contract Regulations 2015	Above £663,540	Above £213,477

In exceptional circumstances, open competition—or competition of any kind—may not be feasible, and a waiver or limitation of competition may be applicable. Competition may be waived only if justified under the circumstances outlined in this policy and in accordance with the criteria defined in the Single Tender Waiver form <https://c9online.sharepoint.com/sites/IAN/SitePages/Finance-Guidance.aspx>.

Tender Waiver Approval Required by	Threshold
Chief Finance Officer or Chief Executive	Up to £500k
Finance and Performance Committee	From £500k - £2m
ICB Board	>£2m

20. Standards of Business Conduct and Conflicts of Interest

- 20.1. The ICB needs to be able to recognise and manage any actual or potential conflicts of interest which arise in relation to any procurement undertaken to ensure standards of business conduct remain high and the public can trust decision making processes.
- 20.2. To ensure trust in decision making processes can be retained the 'Arrangements for Conflicts of Interest Management and Standards of Business Conduct' section of the Constitution will be followed by all involved whilst commissioning services, buying goods, or hiring human resource. This includes any contractors and/or bidders involved in a procurement.
- 20.3. The ICB is to keep records that show a clear audit trail of how conflicts of interest have been identified and managed as part of procurement processes. Measures should be taken to identify and manage conflicts of interest at every stage of procurement to ensure and protect the integrity of the process.
- 20.4. The document Managing Conflicts of interest in the NHS – Publications Gateway Reference : 06419 is to be followed, and the following templates are required to be completed and are included at Appendix 5:
- 20.4.1. Declaration of conflict of Interests for bidders / contractors
 - 20.4.2. Declaration of interests for ICB members and employees
 - 20.4.3. Register of procurement decisions and contracts awarded.

21. Financial assurance

- 21.1. As mentioned earlier within this Policy the ICB are constitutionally obliged to improve the quality of care and ensure the efficient use of resources. Ensuring efficient use of resources includes ensuring value for money, sustainability of services and contracting with safe services which are clinically and financially safe.
- 21.2. To provide assurance that services and goods are sourced from financially sound organisations entails proportionate economic and financial standing tests to be undertaken.
- 21.3. In the case of a full tender process this is undertaken through the Selection Questionnaire on a pass /fail basis using a number of financial tests undertaken on accounts provided by the tenderer.
- 21.4. Economic and financial standing at lower levels of spend entails a proportionate assurance process, which is to be determined by the Procurement Team in conjunction with the Finance Team.
- 21.5. It should be understood that the Chief Finance Officer may make or institute any enquiries they deem appropriate concerning the financial standing and financial suitability of contractors, much the same as the Executive Director with lead responsibility for clinical governance will make such enquiries as is felt appropriate to be satisfied as to their technical / medical competence.

22. Expenditure approval limits

22.1. Below is a table of the signatory levels included within the Standing Financial Instructions for the ICB

23. Scheme of Reservation and Delegation

CONTRACT AWARD (INCLUDING GRANT AWARDS)		
Providing all the conditions set out in the Prime Financial Policies relating to procurement have been met, formal approval and awarding of a contract may be undertaken in accordance with the delegated limits specified.	Designated Budget Holder	Up to £100,000 dependent upon Agenda for Change Banding of Budget Holder
(The limits are total contract values)	Executive Director/Managing Director	Up to £500,000
	Chief Finance Officer	Up to £2,000,000
	Chief Executive and Chief Finance Officer acting jointly	Up to £4,000,000
	Finance and Performance Committee	Up to £10,000,000
	ICB Board	Over £10,000,000
CONTRACT SIGNATURE		
Delegated authority to sign contracts on behalf of the ICB, within the ICB's approved revenue budget	Executive Director/Managing Director/Chief Transformation Officer/Chief Delivery Officer	Up to £10,000,000
(The limits are total contract values)	Chief Finance Officer/Chief Executive	Over £10,000,000
Delegated authority to sign primary care medical contracts approved by the Primary Care Committee, within the delegated budget from NHSE and the ICB's approved revenue budget.	Chief Finance Officer/Chief Executive/Executive Director of Primary Care and Medicines Optimisation/Chief Transformation Officer	Unlimited

Please note Continuing Healthcare Spend sits outside of this framework. These figures exc. VAT

24. Waiver of competitive procurement

- 24.1. The ICB is committed to ensuring that services are procured in accordance with legislation. In some circumstances the need to request quotations or competitive tenders may be waived. Regulation 32 of the PCR 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020) and the ICB constitution outline circumstances where contracts may be awarded without a tender or quotation exercise.
- 24.2. A copy of the ICB Waiver form and a flowchart to understand the process is attached within Section 3 (SOPS), including an outline of the limited circumstances where competition can be waived.
- 24.3. The waiving of competitive tendering procedures should not be used to avoid competition or for administrative convenience or to award further work to a consultant or contractor originally appointed through a competitive procedure.
- 24.4. In any of the circumstances detailed in the above exceptions, a Waiver Form must be completed by the Commissioning Manager in conjunction with the Procurement Lead and signed by the appropriate level as indicated within the Scheme of Financial Delegation, before being presented to the Audit Committee for review.
- 24.5. In addition, tender waivers over the Public Procurement Thresholds usually require the publication of a Voluntary Ex-Ante Transparency (VEAT) notice in the Find a Tender Service platform prior to the award. The advice of the Procurement Lead must be sought in these circumstances.

3.4 ⁶ *Virement - the process of transferring items from one financial account to another

25. Documentation and Audit

25.1. To comply with values of transparency and to ensure the ability to accurately respond to audits, reviews, queries and formal complaints regarding procurement it is important that all documentation contains formal version control and is retained in case of future need.

25.2. All evaluations of tenders must be formally documented and stored appropriately as information regarding decision making may be required. Below is an extract from the Records Management Code of Practice 2021.

<https://www.nhs.uk/information-governance/guidance/records-management-code/>

Record Type	Retention start	Retention period	Action at end of retention period
Contracts sealed or unsealed	End of contract	6 years	Review and if no longer needed destroy
Contracts – financial approval files	End of contract	15 years	
Contracts – financial approved suppliers documentation	When supplier finishes work	11 years	
Tenders (successful)	End of contract	6 years	
Tenders (unsuccessful)	Award of tender	6 years	

25.3. A Procurement Report must be completed during the process, as required by Regulation 84 of The Public Contract Regulations 2015 (as amended), (copy included at Appendix 4).

25.4. Once a procurement has completed or has been terminated this should be included in the Procurement Decisions Register which is released on the ICB website quarterly, within the procurement section.

26. The Procurement Committee

26.1. The Procurement Committee has been established by the ICB as a Committee of the Board in accordance with its Constitution.

26.2. The Committee's main purpose is to ensure procurement policy and processes are delivered appropriately to secure quality value for money services through procedures which are transparent, proportionate, fair and non-discriminatory.

26.3. The Procurement Committee is responsible for maintaining oversight of all procurement processes undertaken by the ICB, or partners when the ICB is co-commissioning.

26.4. Waiver review will remain within the oversight remit of the Audit Committee unless a specific concern is raised to The Committee for review. If this is the case the review will be completed in conjunction with The Audit Committee.

26.5. The full terms of reference for the Procurement Committee are available on ICB Procurement webpage.

27. Training and Awareness

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

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

intentions in relation to individual service developments.

- 27.3. Awareness of procurement issues will be raised through organisational development and training sessions for clinical and non-clinical members of the ICB.
- 27.4. The ICB commissions a procurement team (from Midlands and Lancashire CSU) and will ensure commissioners and other ICB staff remain up to date on general procurement matters and the team will provide specific procurement advice to ensure appropriate process governance is adhered to.
- 27.5. Decision makers such as procurement evaluation panel members will have access to appropriate levels of training in regard to procurement matters commensurate with their responsibilities. This will include general awareness of regulatory obligations and how and when to seek further support, advice and guidance.
- 27.6. Each evaluation panel will receive evaluation and moderation training prior to starting the process. If training has not been undertaken the individual will not be involved in the evaluation and moderation process.
- 27.7. Training provided to staff and others working for the ICB, will cover guidance on how to identify and report potential instances of fraud and bribery, as well as provide guidance on potential fraud and bribery risks in relation to procurement, both pre and post contract.
- 27.8. In conjunction with the Procurement Team, the ICB shall provide an ongoing programme of procurement training to all staff, where procurement is deemed relevant directly or indirectly to their role. In addition to general training covering the essentials of legal duties and ICB policies, this will be tailored where appropriate. Although not exhaustive, training will be in the form of an online module, tailored training delivered to teams such as quality, finance and at the commencement of a tendering process. Frequency of training will be based on need.

28. The Procedures

- 28.1. They apply when public authorities (including NHS organisations) and utilities seek to acquire supplies, services, or works (e.g., civil engineering or building) the following procedures must be followed before awarding a contract when its value exceeds set thresholds. Below are the most common routes to market all of which the ICB may utilise as and when appropriate.
- 28.2. It is nevertheless essential to note that with regards to Light Touch Regime Services, the Contracting Authority has the right to amend the procedures as necessary.

28.3. Open Procedure

- 28.3.1. In the Open Procedure all applicants who respond to the Contract Notice will be invited to submit a tender for the contract opportunity.

28.4. Restricted Procedure

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

28.5. Competitive Dialogue

- 28.5.1. The Competitive Dialogue procedure allows the contracting authority to enter into dialogue with

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

29. Framework Agreement

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

29.1.1. A framework can be established:

29.1.2. By the ICB for its own use

29.1.3. By another ICB, Contracting Authority or central purchasing body such as the Crown Commercial Service.

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

30. Accelerated Procedures

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

31. Negotiated Procedure without Prior Publication (Direct Award)

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

32. Competitive procedure with negotiation

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

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

32.3. In the procurement documents, contracting authorities shall:

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

32.3.2. indicate which elements of the description define the minimum requirements to be met by all tenders, and

32.3.3. specify the contract award criteria.

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

33. Innovation Partnership Procedure

- 33.1. This is intended to allow scope for the research and development of an innovative product, service or works that cannot be supplied by the current market together with the purchase of such product or the commissioning of such services should the contracting authority wish.
- 33.2. This new mechanism allows Contracting Authorities to team up with either a single or multiple partners to research and develop an innovative outcome. Essentially, Innovation Partnerships allow public authorities to launch a call for tender bids without pre-empting the solution, leaving room for suppliers to come up with an innovation in partnership with the authority. The procedure can be structured into successive stages of research and development and delivered without going out to further procurement for each stage of R&D, prior to subsequent purchase.
- 33.3. Similarities can be drawn between Innovation Partnerships and Competitive Dialogue. Competitive Dialogue solutions are developed in dialogue, while Innovation Partnership solutions are developed once a single or multiple partners have been identified. The main advantage of the Innovation Partnerships procedure is that it allows the contracting authority to pursue a staged development process. For example, if initial research showed that the desired solution was unlikely to be achieved, the authority could then stop the Innovation Partnership process rather than making further, potentially fruitless, commitment to it.

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

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

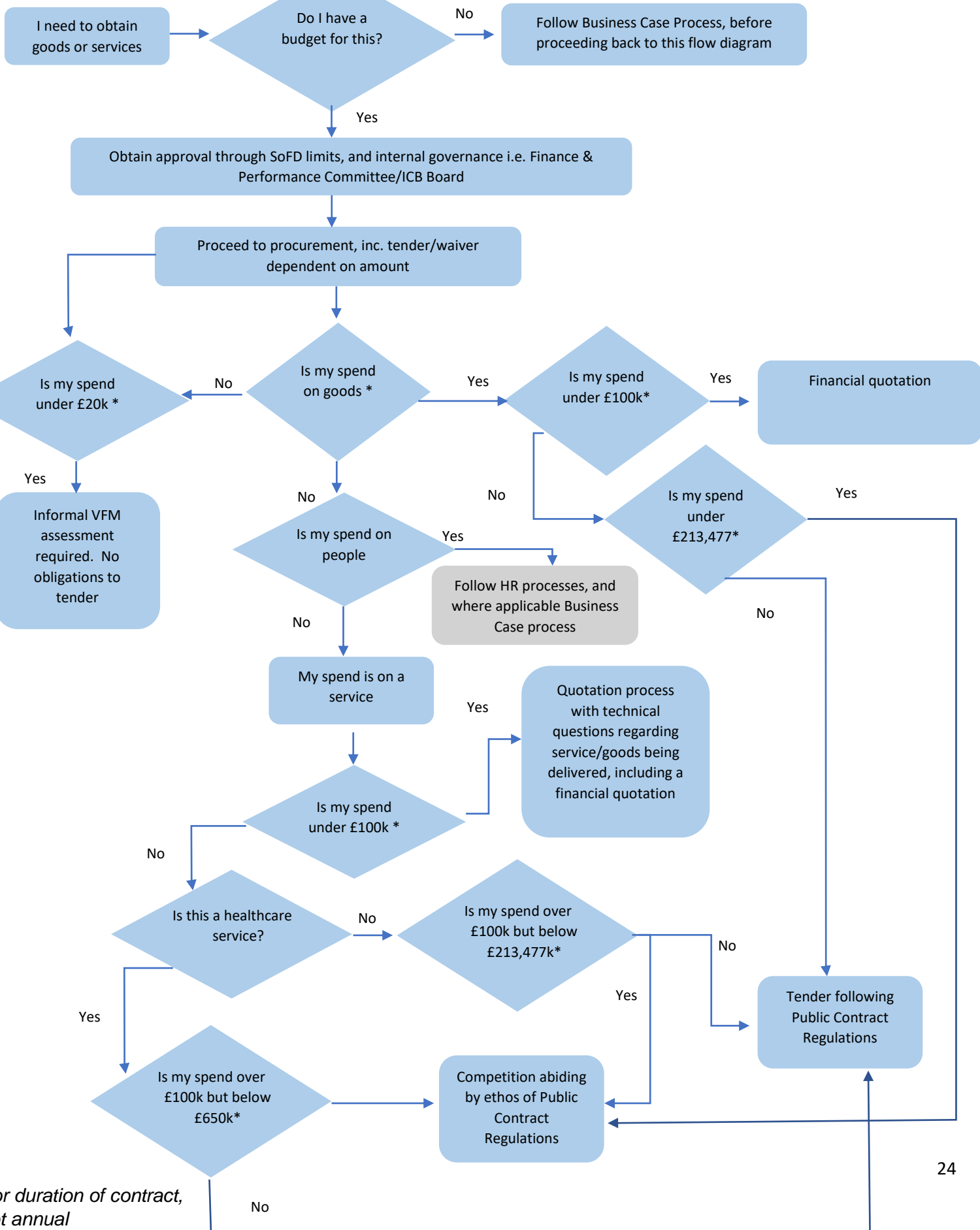
35. Pseudo Dynamic Purchasing System (PDPS) (for Light Touch Regime services only)

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

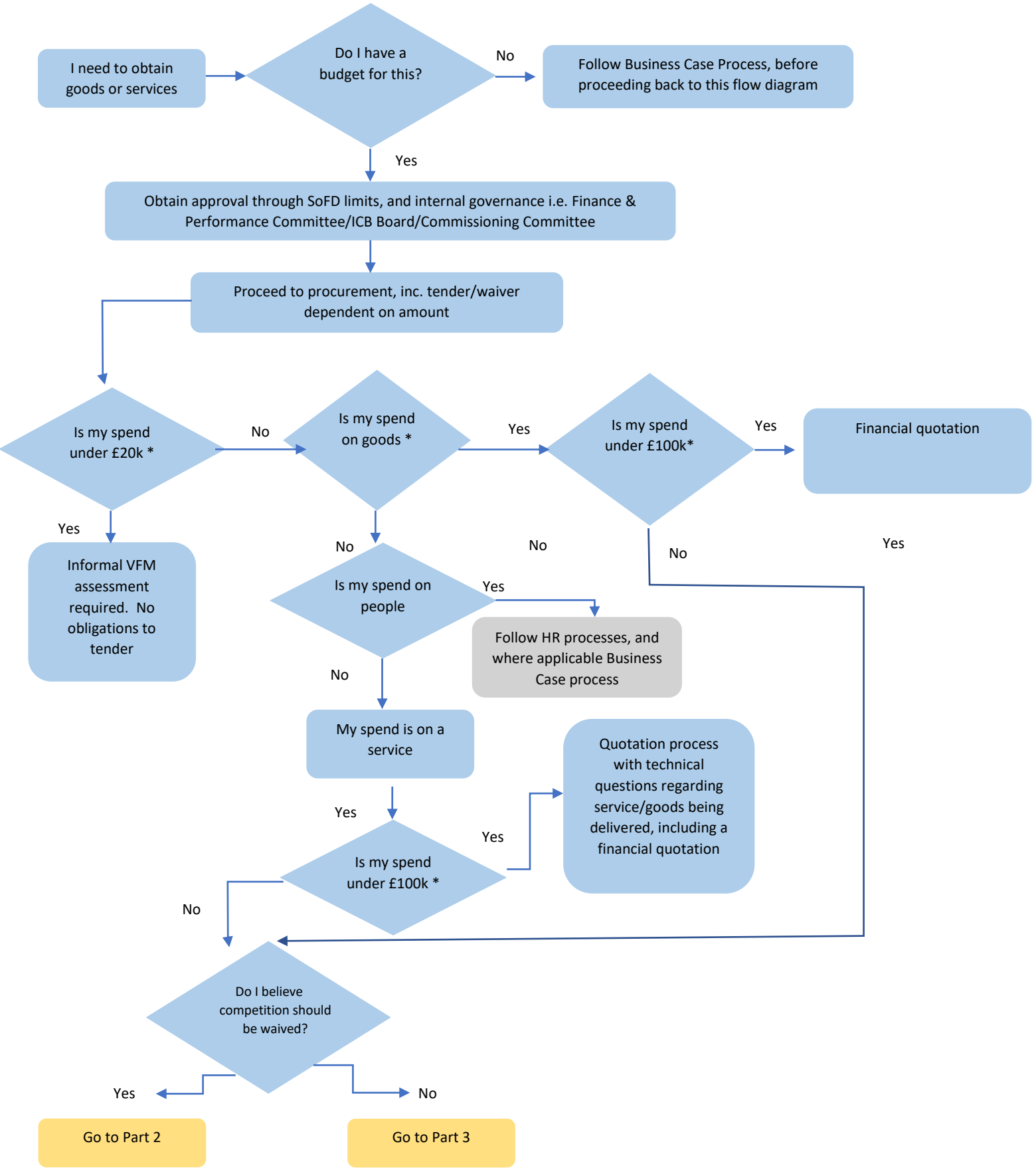
Appendix 5 outlines the three common processes used and detail of when they would be appropriate

SECTION 3 – STANDARD OPERATING PROCEDURES (SOPS)

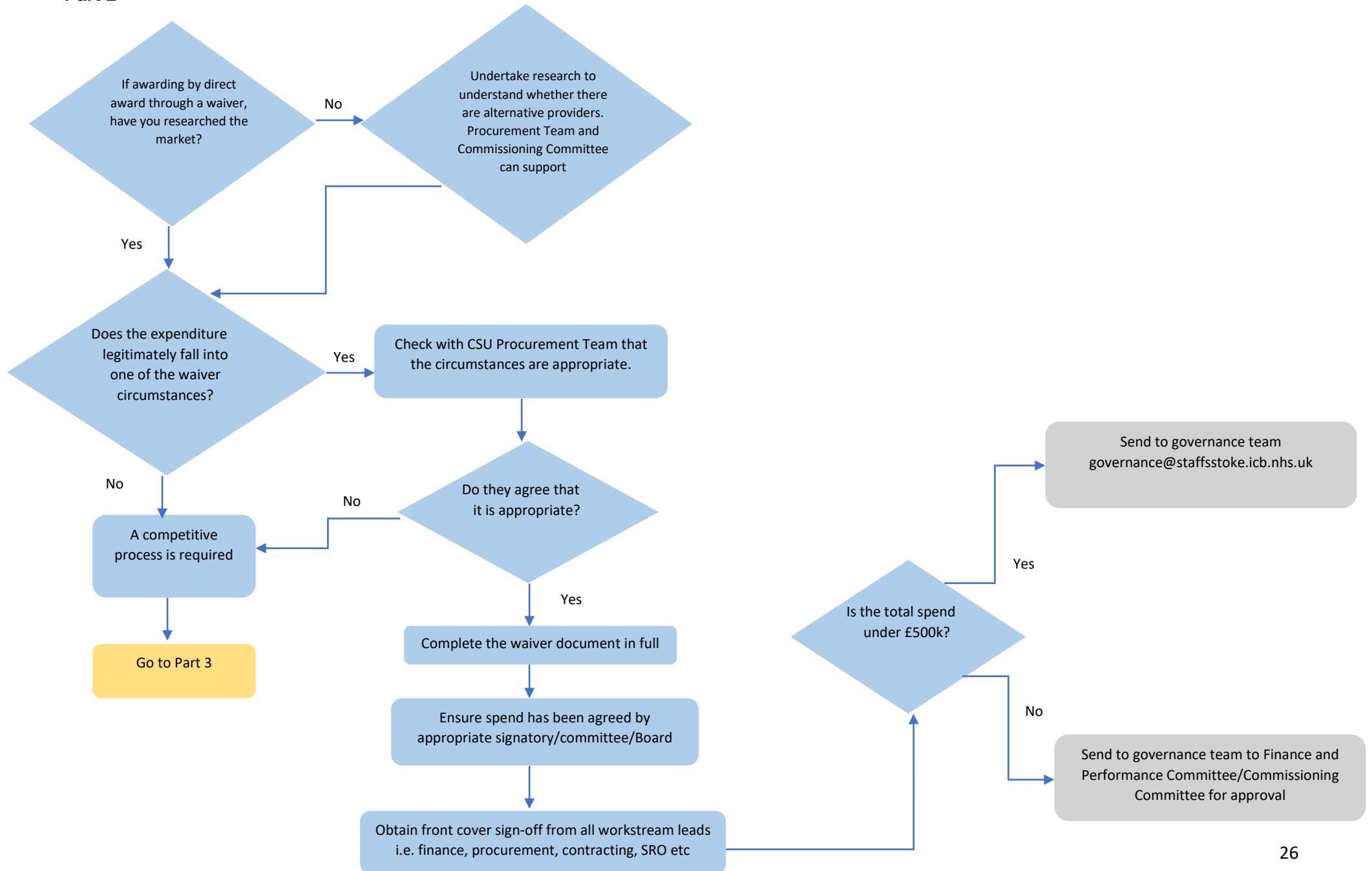
36. Procurement Decision flowchart



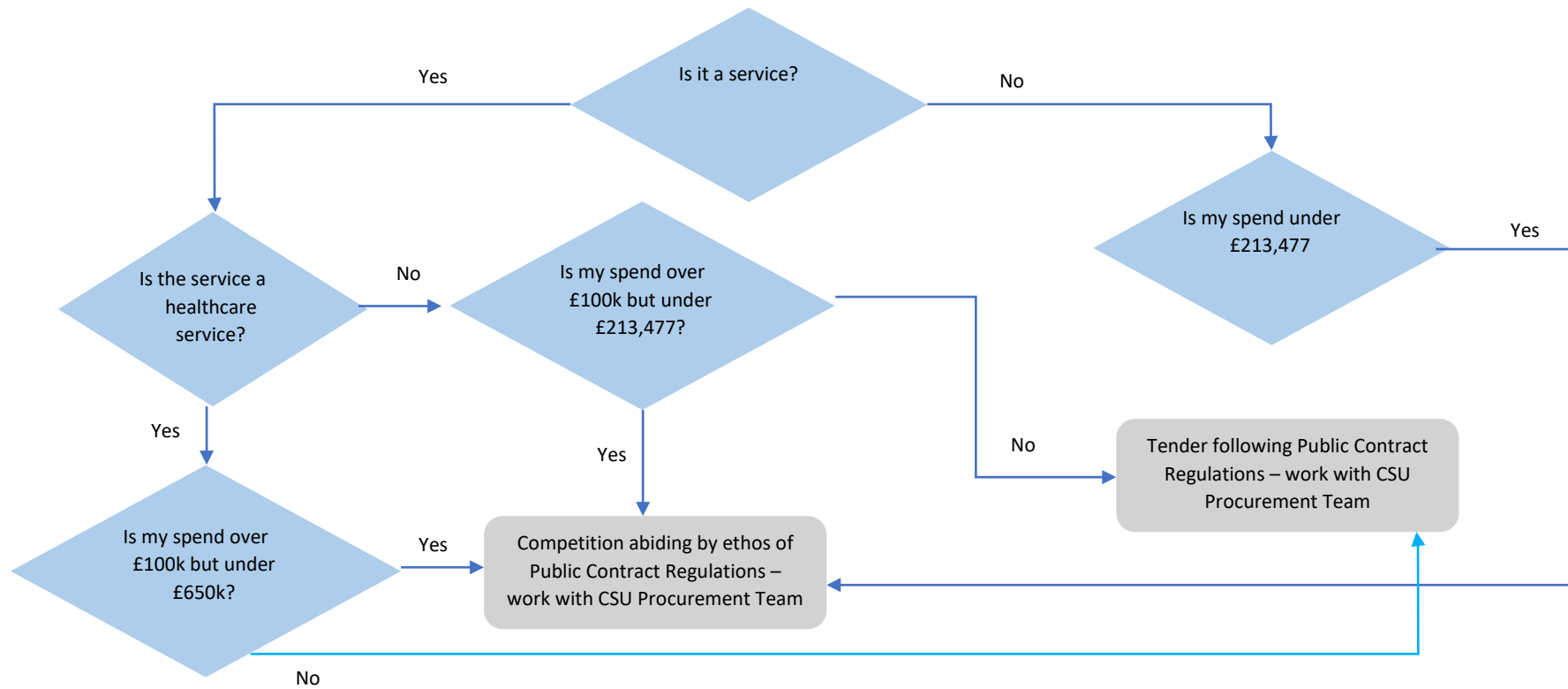
37. Procurement Decision Flowchart – including Waivers



Part 2

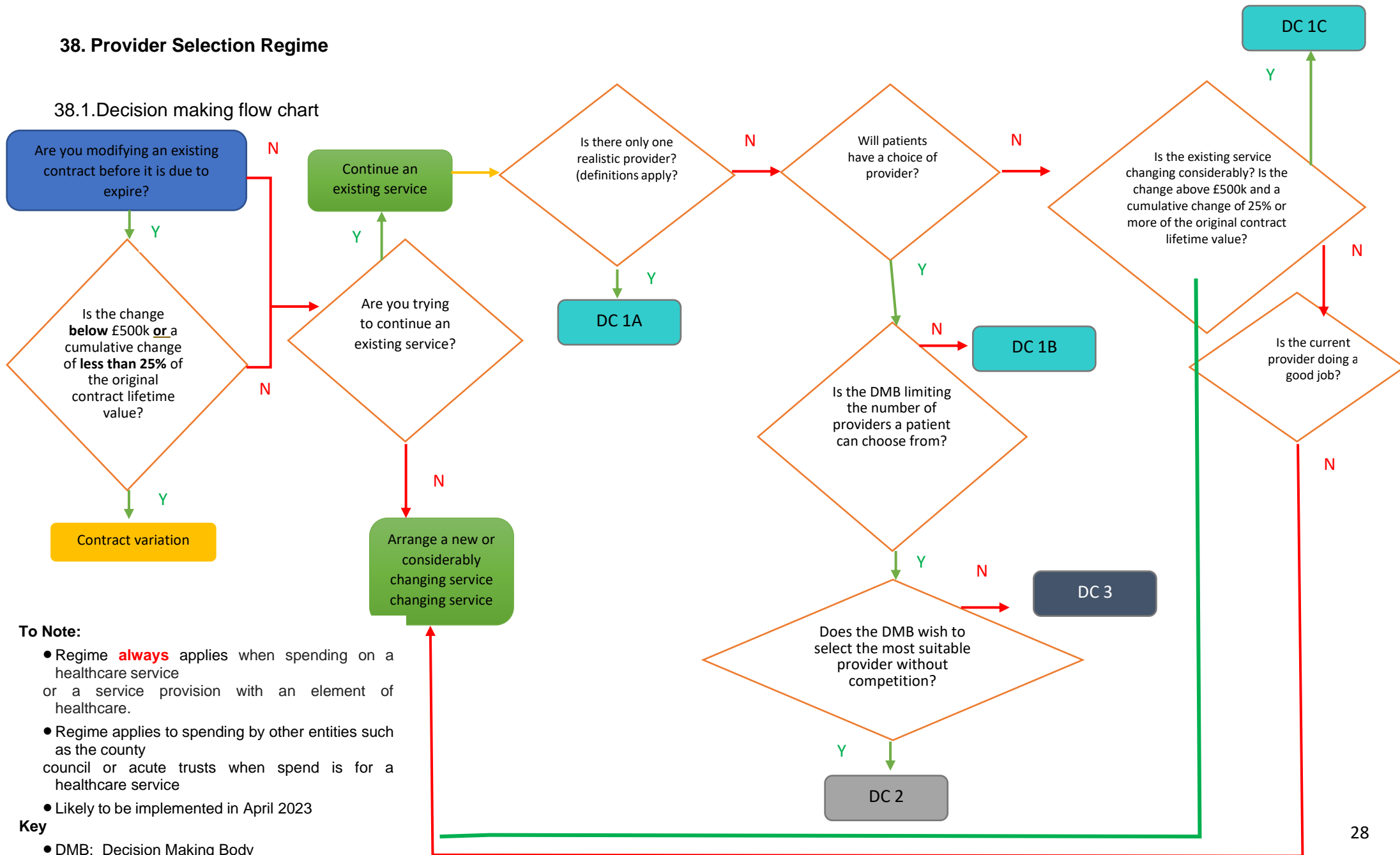


Part 3

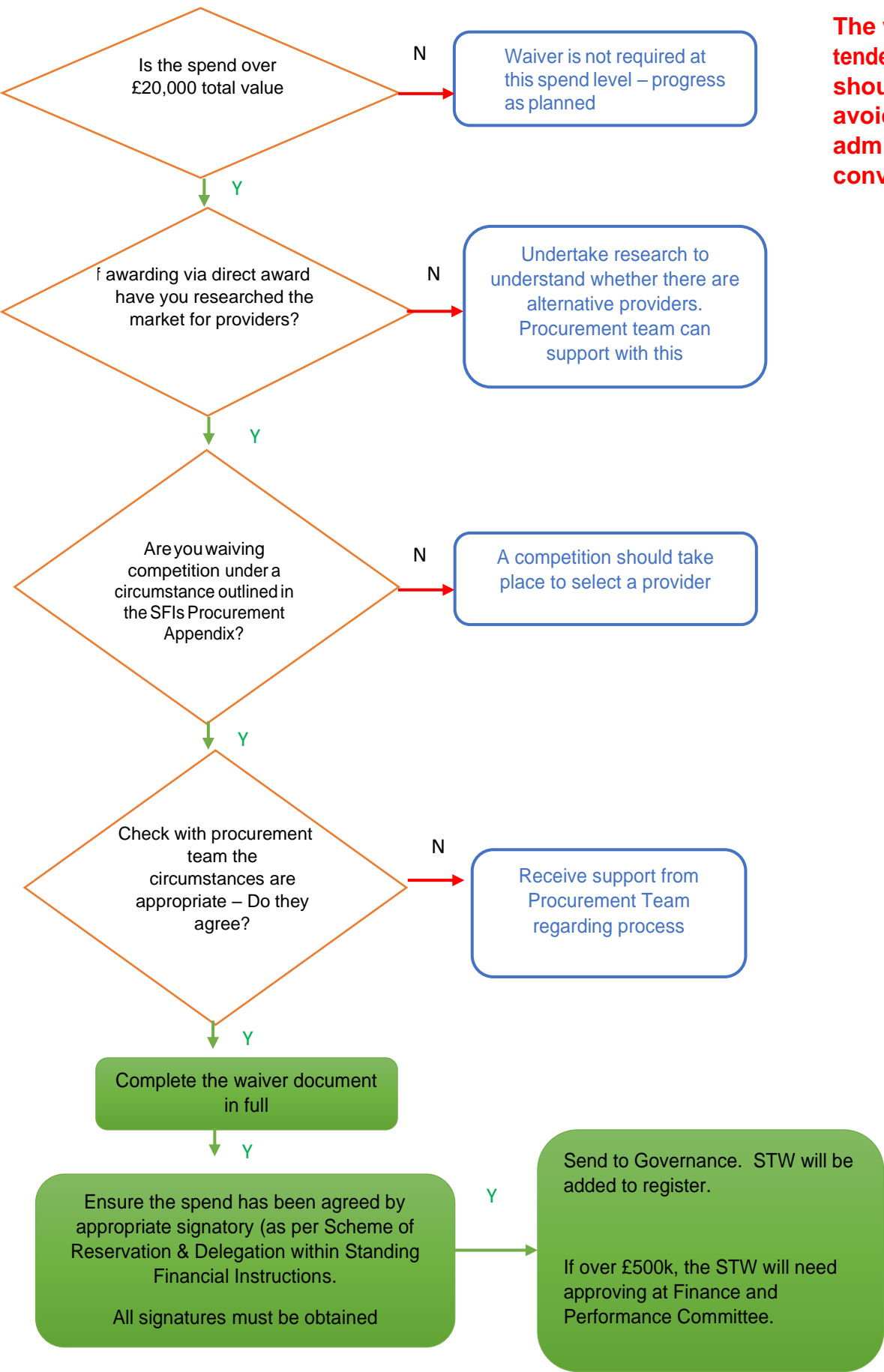


38. Provider Selection Regime

38.1. Decision making flow chart



Is a waiver of competition appropriate?



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

39. APPENDIX 1 – NHS PROVIDER SELECTION REGIME (PSR)⁷

(Please note this appendix is for information only and is based on documentation which has been released by the Department of Health and Social Care)

- 39.1. The PSR will replace the existing procurement rules for healthcare services, and this expected to happen in April 2023. The aim of the Provider Selection Regime is to make it easier to integrate services and enhance collaboration, and to remove the rigidity associated with the current procurement rules, and the related bureaucracy and cost. However, under the Provider Selection Regime, the competitive tendering of health services can continue to have a role where this is in the best interests of patients, taxpayers, and the population.
- 39.2. The PSR will seek to ensure that decisions about who provides healthcare services are:
- 39.2.1. made in the best interest of patients, taxpayers, and the population
 - 39.2.2. robust and defensible, with conflicts of interests appropriately managed
 - 39.2.3. made transparently
- 39.3. The PSR is intended to fit with the integrated, collaborative approach to healthcare commissioning being established in the Health and Care Act by providing a decision-making process that makes space for collaboration to happen and that ensures all decisions about how healthcare is arranged are made in the best interests of patients, taxpayers, and the population.
- 39.4. The PSR is intended to give decision-makers flexibility on how to select providers of healthcare services. The regime is intended to make it straightforward for systems to continue with existing service provision where the arrangements are working well and there is no value for the patients, taxpayers, and population in seeking an alternative provider. And, where there is a need to consider making changes to service provision, it will provide a sensible, transparent, and proportionate process for decision-making that includes the option of competitive tendering as a tool decision-makers can use.

40. Making decisions under the Provider Selection Regime

- 40.1. The intention is that the regime will need to be applied as part of the commissioning process whenever contracts for healthcare services are coming to an end, changing considerably, or being awarded for the first time. The first step decision-makers will need to take when applying the regime is to identify which of the following decision circumstances is applicable. The decision circumstances will be:
- 40.2. Continuation of existing arrangements – for circumstances where the incumbent provider is the only viable provider due to the nature of the service; where alternative providers are already available via patient choice routes, or where the incumbent is doing a good job (in relation to the key decision-making criteria), is likely to continue to do so, and the service is not changing.
- 40.3. Identifying the most suitable provider when the decision-maker wants to use a new provider or for new or substantially changed arrangements – for circumstances where existing arrangements need to change considerably; where the incumbent is no longer able/wants to provide the service; or where the decision-making body wants to use a different provider and the decision-making body considers it can identify a suitable provider without running a competitive procurement process.
- 40.4. Competitive procurement – for situations where the decision-making body cannot identify a single provider or group of providers that is most suitable without running a competitive process; or to test the market (note: the naming and numbering of these circumstances as presented above reflects the terms used in our previous consultations – these may change following the

development of regulations).

40.5. Once the decision-making body has identified which of these circumstances applies, they will then need to follow the decision-making approach relevant to that circumstance, and to adhere to the requirements around transparency and scrutiny for each circumstance.

Decision-making bodies will always be able to use the competitive route if they wish, even if the circumstance is one where the regime would also allow one of the other approaches to be followed.

⁷ Details contained with Appendix 3 extracted from -

<https://www.gov.uk/government/consultations/provider-selection-regime-supplementary-consultation-on-the-detail-of-proposals-for-regulations/preview-of-proposals-for-the-provider-selection-regime>

41. Overview of key criteria

Key Criteria	Description
Quality and innovation	Ensures that decision-making bodies seek to maximise the quality of services and the performance of providers, to innovate and improve services, and to proactively develop services that are fit for the future.
Value	Ensures that decision-making bodies seek to maximise the value offered by a service by selecting the option with the best combination of benefits to individuals in terms of outcomes and to the population in terms of improved health and wellbeing; and brings value to taxpayers by reducing the burden of ill health over the lifetime of the arrangement and the cost.
Integration, collaboration, and service sustainability	Ensures that decision-making bodies seek to maximise the integration of services for patients to improve outcomes, that decision-making bodies give due consideration to how their decisions may affect the stability and sustainability of services over time across providers, and that their decisions are consistent with local and national plans around integrating care and joining up services for patients and service users.
Access, inequalities and disparities, and choice	Ensures that decision-making bodies seek to maximise the choices available to patients, and that services and treatments are offered and accessible to all individuals who need them, with a particular focus on tackling health inequalities and disparities.
Social value	Ensures decision-making bodies seek to maximise the social value created by the arrangements, recognising the role the health service plays in local communities including its leadership role in achieving a net zero carbon footprint. The criteria and metrics for social value will align with guidance on social value published by Cabinet Office and by NHS England.

41.1. The statutory guidance will detail what can be considered under each criterion – this is being developed with expert input from colleagues across the system.

42. Application of the criteria

42.1. The intention is that decision making bodies will need to consider all of the key criteria for the

regime when making decisions under circumstances 1C, 2 and 3.

42.2. In these circumstances, decision-making bodies will need to be able to justify their decisions for arranging services in relation to the key criteria and keep a record of this. Further detail on recording decision making and transparency can be found in the transparency section.

43. APPENDIX 2 – NATIONAL LEGISLATION, POLICY AND GUIDANCE

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

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

43.3. With regards to changes brought about by the EU Exit Regulations, the main difference is that procuring entities are required to publish notices on the new UK e-notification service called Find a Tender Service (FTS) instead of in the OJEU.

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

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

43.5.1. NHS (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (where the commissioner is NHS England and NHS Improvement or a CCG) (PCCR 2013)

43.5.2. The Public Contracts Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 for services

43.5.3. Operational Guidance to the NHS-Extending Patient Choice of Provider (Department of Health & Social Care)

43.5.4. Everyone counts: Planning for Patients outlines specific requirements that is appropriate to commissioned services

43.5.5. NHS England and NHS Improvement Guidelines

43.5.6. Cabinet Office Guidelines

43.5.7. Crown Commercial Service Guidance.

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

44. Procurement Law in the Public Sector

44.1. Public sector procurement is subject to national procurement rules and regulations, and it is therefore critical that all procurement activity is conducted consistently, accurately, and effectively. The legal framework for public procurement is set out in The Public Contracts Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit)

Regulations 2020) (the "Regulations"). Where Contracting Authorities (including NHS organisations) wish to purchase Supplies, Services or Works which are over the relevant public procurement thresholds (as set out below) (the "Thresholds") they must also consider the definitions of Supplies, Works and Services that are as follows: -

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

45. Thresholds

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

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

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

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

46. The Light Touch Regime

46.1. PCR 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020) splits categories

46.1.1. of Services into Schedule 3 (the "Light Touch" Regime) and Non-Schedule 3 (the non - "Light Touch" Regime).

46.1.2. "Light Touch" Regime Services – only some of the procurement rules as set out in PCR 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020) apply. Healthcare Services fall under this category. Services which fall within the Light Touch Regime are categorised within Schedule 3.

46.1.3. Any services which are not within the Light Touch Regime are subject to the full rigour of the PCR 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020) and case law around the procurement rules.

47. Procurement Policy Notes (PPNs) and Case Law

47.1. The text above details the requirements of the regulations which govern procurement practices, but these alone are not all which should be considered when embarking upon a procurement exercise.

47.2. Procurement Policy Notes are published by the Government through the Cabinet Office and detail when there is to be a change in practice and requirements. For example, PPN's which have been released recently cover the following areas:

47.2.1. Thresholds and Inclusion of VAT

47.2.2. Contracts with Suppliers from Russia and Belarus

47.3. Taking account of Carbon reduction Plans in the procurement of major government contracts.

47.4. A round up of recent PPNs is included within Appendix 4 but prior to a procurement should be released the following website should be reviewed for any additional notices which may have been released.

<https://www.gov.uk/government/collections/procurement-policy-notes>

47.5. Case law also impacts on best practice and regulations, and guidance will be released which develops best practice guidance and define specific sections of the procurement law. The procurement team will undertake horizon scanning on a regular basis to understand potential case law which can impact upon current and future procurement processes.

47.6. Any considerations relating to current case law should be reviewed with support of specialist legal advice.

48. Joint Procurements

48.1. Where a joint procurement is to be pursued by two or more ICBs, then the procurement will be underpinned by a Memorandum of Understanding between the parties that will, as a minimum, set out:

- the objectives of the procurement,
- identify which ICB will act as the lead,
- the approvals and reporting processes,
- roles and responsibilities within the project,
- how legal costs will be shared,
- how risks and benefits are shared
- dispute resolution arrangements and
- exit arrangements from the procurement.

49. Contract Extensions and Variations to contracts during the contract term

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

49.1.1. where modifications have been provided for in the original procurement documents and/or would not alter the nature of the contract.

49.1.2. where the modification is less than 10% of the value of the contract and does not change the nature of the contract.

49.1.3. for additional services or supplies by the original contractor that have become necessary and were not included in the initial procurement and where a change of contractor:

- cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installation procured under the initial procurement, or
- would cause significant inconvenience or substantial duplication of costs for the ICB.

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

49.2.1. where all of the following conditions are fulfilled:

- the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;
- the modification does not alter the overall nature of the contract;
- any increase in price does not exceed 50% of the value of the original contract

49.3. Where a new contractor replaces the original contractor e.g., in the case of a merger or takeover.

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

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

49.6. Any additional spend which has not been previously agreed by the appropriate Committee or Board will require the appropriate level of sign off as outlined in the Scheme of Reservation and Delegation and a waiver will need to be completed if the spend has not been competed and is over £20,000.

50. Spot purchasing

50.1. From time to time there will be the need to spot purchase contracts for individual patient needs or for urgent placements. At these times, a competitive process may be waived using the process outlined within this appendix (Waiver process).

50.2. It is expected that these arrangements will undergo best value reviews to ensure that the ICB is getting the best value for money. At the time of placing the spot purchase the value for money should be assessed by the individual with responsibility for approving the spot purchasing agreement or individual service agreement, and then reviewed at appropriate intervals to ensure continued value for money.

50.3. Sign off of spot purchase agreements should follow the Scheme of Reservation and Delegation as outlined below.

50.4. In all cases the ICB should ensure that the provider is fit for purpose to provide the particular service and ensure that an NHS Standard Contract is in place soon after the spot purchase, if not before.

51. Continuing Healthcare approval limits

APPROVAL OF CONTINUING HEALTHCARE PACKAGES PER WEEK		
Delegated authority to approve continuing healthcare packages with third party providers for individual patients.		
Note: 1.the delegated authority can only be actioned following approval by the ICB that the patient is eligible for CHC funding. 2.the limits apply to both care home and domiciliary care and are for weekly values		
8am - 6pm Monday - Friday	Midlands and Lancashire Designated Officer	Up to £3,000
	Deputy Director of Commissioning & Operations/Deputy Director of Commissioning - Partnerships and Integration/Director of Integration	£3,000 - £7,500
	Chief Executive and Chief Finance Officer acting jointly following recommendation from Chief Transformation Officer	Over £7,500
8am - 6pm Saturday - Sunday	Midlands and Lancashire Designated Officer	Up to £3,000
	ICB Gold on Call	£3,000 - £7,500
	Gold on Call after which Chief Transformation Officer will correspond with both the Chief Executive/Chief Finance Officer to seek retrospective approval at the earliest opportunity during the subsequent working week.	Over £7,500
6pm - 8am Weekdays and Weekends	ICB Gold on Call	Up to £7,500
	Gold on Call after which Chief Transformation Officer will correspond with both the Chief Executive/Chief Finance Officer to seek retrospective approval at the earliest opportunity during the subsequent working week.	Over £7,500

The ICB Scheme of Financial Delegation details Personal Health Budget (PHB) thresholds.

52. Pilots

- 52.1. A pilot can only be used where the ICB is developing an innovative service / different commercial models etc. and there is a clear and documented need to test the service for a short-term period to ensure that it meets the requirements.
- 52.2. There is no guidance on the maximum time that a pilot contract can be in place for, however the contract duration must be justified and should be no more than it should reasonably take to gather sufficient evidence to assess the outcomes. Guidance to providers within the pilot specification should include setting criteria to evaluate necessary outcomes.
- 52.3. Pilot contracts should not be a direct award unless they satisfy the requirements of a direct award and then must be supported by a waiver process. The awarding of pilot projects must comply with UK Procurement regulations.
- 52.4. Once the pilot has relevant approval, the following factors need to be considered:
 - 52.4.1. Market Engagement activities should be developed to let the market know that the pilot is being undertaken. This should help to minimise challenge as the market is aware that there will be an opportunity in the future.
 - 52.4.2. It is important to identify the rationale for the pilot and the expected outcomes. Pilot contracts should have a clear end date and include a process for evaluating success at intervals during the pilot period.
 - 52.4.3. The ICB will be mindful of “contract creep”. Once the Pilot has closed, the Options are:
- 52.5. Do nothing
- 52.6. Go out to full Procurement

53. Grants

- 53.1. Where third sector organisations provide healthcare services, the ICB may elect to provide funding through a grant agreement. When considering a grant, the ICB should only be making a partial contribution to the organisation’s costs (e.g. where a service is also supported by charitable donations or other funding streams)
- 53.2. Grants should not be used to fund specified on-going service delivery; this should be delivered via a formal contracting route.
- 53.3. Grant funding should be competitively assigned to organisations if there is more than one capable organisation, (unless the value is below £20,000), through a quotation process or through a more detailed competitive process, depending on the grant value.
- 53.4. When considering issuing a grant the ICB should consider whether;
- 53.5. The additional investment will give the organisation a competitive advantage. The ICB are actually purchasing a service.
- 53.6. The ICB are funding the entire organisation.
- 53.7. If any of the previous scenarios are apparent the ICB should reconsider whether their contribution to the organisation / project is appropriate through a grant.
- 53.8. Grants will not be used to avoid competition where it is appropriate for a formal procurement to be undertaken. Where relevant, the ICB will undertake a competition in order to identify the most suitable organisation.

53.9.The ICB will follow NHS England Grant Agreement Guidance on the use of the draft model Grant Funding Agreement and adapt it as required (which is allowable).

54. Direct Award (Single Tender Action)

- 54.1.Where it is determined through an analysis of the market and proportionate and transparent engagement with potential providers that the services are capable of being provided only by one provider e.g., for technical, economic reasons or an urgent clinical need, commissioners could proceed with a direct award, where a contract is awarded to a single provider – or a limited group of providers – without competition.
- 54.2.The law in this regard is complex and carries a risk of challenge from providers who believe they should have been given the opportunity to compete for the service. Records detailing the rationale behind the decision should be kept. Failure to plan adequately or not leaving enough time to tender will not be accepted as an urgent clinical need. Where a service is put in place for reasons of urgency or safety, commissioners should consider this as an interim step and plan to undertake a competitive process as soon as possible.
- 54.3.It may be possible, in very limited circumstances, to award a contract to one provider to protect exclusive rights (e.g. intellectual property) or because they have a unique position / advantage, but only if another provider could not offer a service or way of providing the service, which would achieve the same outcome or aim.
- 54.4.It is good practice to advertise a single tender opportunity to demonstrate transparency and equality of treatment and to further demonstrate that there is only one capable / suitable provider. Commissioners should ensure you have in place evidence of the review and options appraisal that led to the decision to directly award.
- 54.5.If considering award without competition the ICB should consider undertaking a Most Capable Provider (MCP) process, or assurance / due diligence process. The ICB is required through statute to provide assurance that service providers are the most capable of delivering the service outcomes through efficient and effective process and operational management.
- 54.6.If a direct award is undertaken, then the person responsible for undertaking the direct award must complete a waiver form as per the guidance within this documentation.

55. Waivers

- 55.1.A waiver is to be completed approved for all spend over £20,000 which has not already been agreed as part of a procurement process, for example, contract variations which introduce new spend, a new service awarded directly to an organisation without competition or spend through a framework agreement arranged by the Crown Commercial Service. If in doubt about whether a Waiver is to be completed, please speak with the Procurement Team and Finance Business Partner.
- 55.2.Below is the form required and an overview of the process to be followed including the circumstances in which a waiver can be used.
- 55.3.ICB Waiver Template

<https://c9online.sharepoint.com/sites/IAN/SitePages/Finance-Guidance.aspx>

55.4. Is a waiver or competition appropriate?

55.5. In accordance with the Standing Financial Instructions formal tendering procedures need not be applied where:

- the estimated expenditure or income does not, or is not reasonably expected to, exceed £20,000; or,
- where the supply is proposed under special arrangements negotiated by the Department of Health in which event the said special arrangements must be complied with; or,
- regarding disposals where the total value of disposed assets is <£20k.

55.6. Formal tendering procedures may be waived in the following circumstances:

- 55.6.1. In very exceptional circumstances where the Accountable Officer decides that formal tendering procedures would not be practicable or the estimated expenditure or income would not warrant formal tendering procedures, and the circumstances are detailed in an appropriate ICB record;
- 55.6.2. Where the requirement is covered by an existing contract;
- 55.6.3. Where a Framework Agreement is in place and the Integrated Care Board has legitimate access;
- 55.6.4. Where a consortium arrangement is in place and a lead organisation has been appointed to carry out tendering activity on behalf of the consortium members;
- 55.6.5. Where the timescale genuinely precludes competitive tendering but failure to plan the work properly would not be regarded as a justification for a direct award;
- 55.6.6. Where specialist expertise is required and is available from only one source;
- 55.6.7. When the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate;
- 55.6.8. There is a clear benefit to be gained from maintaining continuity with an earlier project / service. However, in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering;
- 55.6.9. For the provision of legal advice and services providing that any legal firm or partnership commissioned by the ICB is regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council for England and Wales in relation to the obtaining of Counsels opinion) and are generally recognised as having sufficient expertise in the area of work for which they are commissioned.

56. Pre-Procurement Support Tools

- 56.1. Prior to a procurement process being undertaken many actions will need to be completed, not least seeking of approval to assign the budget to the service going out to procurement at the appropriate level of delegation.
- 56.2. Below are tools and templates which will aid the process to procurement start.
- 56.3. The first tool is the Transformation to Project Initiation Document which outlines the various stages and responsibilities of the transformation to procurement process. This document also includes a checklist of actions which should be completed (where applicable) prior to the documentation being handed to the Procurement Team to procure.
- 56.4. The procurement handover and optional appraisal document is available on the ICB procurement intranet page.
- 56.5. The options appraisal tool which highlights different aspects of service design/ redesign and allows the user to assign impact ratings against the different factors, therefore directly comparing the options which could be progressed.
- 56.6. This tool would be completed at the point before seeking approval for one course of action or as a tool to inform decision makers of the options available.

57. Advertising: The Requirements

57.1. Contracts Finder

- 57.1.1. Under the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013, it is mandatory for NHS England and NHS Improvement and Clinical Commissioning Groups (and those acting on their behalf) to advertise all healthcare services contracts covered by those Regulations on the Contracts Finder website where there is an intention to seek offers from providers.

57.1.2. Crown Commercial Services (CCS) Guidance also makes it clear that advertisement is mandatory for all services that are not covered by (Procurement, Patient Choice and Competition) (No.2) Regulations 2013, including under threshold procurements above £25K

57.2. Find a Tender Service Contract Notices

57.2.1. Under the PCR 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020), it is mandatory for Commissioners to advertise all Light Touch Regime services over the public procurement threshold value of £663,540 in Find a Tender Service via a notice or a PIN.

57.2.2. As part of Procurement Best Practice, a Contracts Finder advertisement this should be adopted for all Light Touch Regime Services, including Healthcare services.

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

57.3. PIN – Prior Information Notice

57.3.1. Published on Find a Tender normally annually to indicate the possible contracts which may be advertised in the coming year.

57.3.1.1. Useful if you wish to give the market lots of time to get ready

57.3.1.2. Useful if you wish to shorten the turnaround time for the Tender

57.4. PIN – Prior Information Notice with call for expression of interest

57.4.1. Informs the market of your intentions, giving the market a deadline to express an interest.

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

58. Thresholds for contract advertisements

Contract value	Advertising requirements	Type of process	Contract award notice
£0-24,999	No advertising requirements *	N/A	N/A
£25,000 to public procurement threshold (net of VAT)	Contracts Finder *	At authority's discretion (Using public procurement principles as well as NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 where relevant)	Contracts Finder
Above public procurement threshold: Goods and services: £213,477 (net of VAT) Works: £5,336,937 (net of VAT)	Find a Tender Service + Contracts Finder	Open, Restricted, Competitive Dialogue, Competitive Procedure with negotiation, or innovation partnership	Find a Tender Service + Contracts Finder
Above public procurement threshold: - Light Touch Regime Services: £663,540 (net of VAT)		"light touch" - that complies with transparency and equal treatment (as well as NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 where relevant)	

For the purposes of advertising, the estimated contract value will continue to be provided exclusive of VAT. Similarly for contract award notices, these will continue to be published exclusive of VAT.

59. Transparency Requirements – Potential requirements under Provider Selection Regime

59.1. Moving forward under the Provider Selection Regime for healthcare services there is likely to be a considerable shift in the transparency requirements for commissioning, regardless of whether a service is being procured or waived. Below indicates what type of notice will need to be released for each of the Decision Circumstances (DC) outlined within the draft guidance.

Key:

Notice required



	DC 1A	DC 1B	DC 1C	DC 2	DC 3	Variation
Prior Information Notice (PIN)					Optional	
Contract Notice						
Intention to Award						
Contract Award Notice (CAN)				If new provider		
Standstill and Resolution Period						
Amendment to original CAN				Existing provider		

DC 1A	Continuation of existing arrangements - no realistic alternative arrangement
DC 1B	Continuation of existing arrangements - choice already available to patients
DC 1C	Continuation of existing arrangements - provider is doing a good job and no considerable change
DC 2	Identifying the most suitable provider
DC 3	competitive procurement
Variation	Variation does not considerably change the nature or lifetime value of the contract

60. Evaluation and moderation requirements

- 60.1. The evaluation process will be undertaken using e-procurement systems and should seek to identify the most economically advantageous bid(s), both in terms of qualitative and quantitative criteria. The ICB recognises the regulatory obligations to maintain records in connection with the processes associated with the awarding of contracts.
- 60.2. Evaluators will attend a mandatory briefing / training session covering:
- 60.2.1. the procurement and evaluation process
 - 60.2.2. their role and responsibilities
 - 60.2.3. the service specification
- 60.3. Evaluators will receive clear written instructions and procedures to enable them to undertake their evaluation function.
- 60.4. In conducting the evaluation, the evaluators must act in accordance with the key principles of The Public Contracts Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020):
- 60.4.1. Fair & Open Competition
 - 60.4.2. Non-discrimination
 - 60.4.3. Equal Treatment
 - 60.4.4. Transparency
 - 60.4.5. Proportionality.
- 60.5. All recorded comments and notes could be subject to being made available under a FOIA request.
- 60.6. Confidentiality must be respected and maintained throughout the Evaluation Process. Any potential or actual conflict of interest must be advised in advance of the tender evaluation.
- 60.7. A panel of stakeholders should be convened to evaluate responses. The number of stakeholders involved should be proportionate, but reflective of the wide variety of interested parties who may be affected by the subject of the procurement. The panel could include subject matter experts from the following internal and external teams but should always be led by the evaluation needs of the good or service being procured.
- Contracting
 - Performance and information
 - Clinical Quality
 - Finance
 - Human Resources
 - Information Management and Technology
 - Information Governance
 - Service Transformation/Portfolio Commissioning Leads
 - General Practitioners
 - Staffordshire County Council / Stoke City Council departments
 - Non-conflicted provider representatives, i.e., acute trusts, mental health trusts, voluntary and community, social enterprise representatives, impacted services, referrers or receivers of service users
 - Patient / carer / public representatives
 - Advocacy groups
 - Police Forces
 - NHS England
- 62.1.1 If the event that a contract is suspected, or has been awarded involving fraud or bribery, these instances will be dealt with in accordance with the ICB Anti-Fraud and Anti-Bribery Policy and contact made with the Local Counter Fraud Specialist. This policy is available from:

61. APPENDIX 3 – DISPUTE RESOLUTION PROCESS

61.1. Context and overview⁸

- 62.1.2 If a provider is unhappy with the way a process has been undertaken, including which provider was awarded the contract then they can make a representation to the ICB. The ICB must then consider the representation fairly and impartially, internally to the decision making body. A representation made within a 10 day standstill period must be responded to promptly and resolved within the 30 day resolution period.
- 62.1.3 If a credible representation is received, the decision-making body will:
- Discuss the issue with the provider which raised the representation
 - Provide any information the decision-making body is required to keep (inc. assessment against key criteria and COI management) as soon as possible with full disclosure (unless provisions of the Freedom Of Information Act in relation to commercial interests apply)
 - Give serious consideration to representations made, including, reviewing evidence and information used to make the original decision.
 - Consider whether the representation has merit (has the process been correctly followed, or has additional information with a bearing on the decision reached been identified)
- 62.1.4 Following the above considerations, a decision-making body must either:
- 62.1.4.1 Agree to not proceed as intended, and:
- For re-awards/new contracts – reconsider process and/or decision by restarting the process or rewinding the process
 - For contract variations – accept that the variation was not permitted; and reconsider the variation or start a new process which could be a competitive procurement.
- 62.1.4.2 Conclude that the Regime has been followed correctly and an appropriate, defensible decision has been made, and award / vary the contract as intended responding to the provider informing them of the decision with a full and transparent justification.
- 62.1.5 If the complainant does not believe the case has been satisfactorily resolved, or carried out in line with the DRP process, the complainant has the option to refer the complaint to NHS England, or pursue a complaint under legal provisions governed by English law.
- 62.1.6 If fraud is suspected, this will be dealt with in accordance with ICB Anti-Fraud and Anti-Bribery Policy. This policy is available from <https://staffsstoke.icb.nhs.uk/~documents/publications/governance-handbook/supporting-policies/anti-fraud-and-anti-bribery-policy-july-2022/?layout=default>
- 62.1.7 If it is suspected or proven that processes have not been correctly followed, a referral will be made to the Local Counter Fraud Specialist for further investigation. This may include cases of fraud or bribery or where conflicts of interest have not been declared. Such investigations can result in civil or criminal sanctions, or internal disciplinary action. This will be done in accordance with the ICB Anti-Fraud and Anti-Bribery Policy. This policy is available from <https://staffsstoke.icb.nhs.uk/~documents/publications/governance-handbook/supporting-policies/anti-fraud-and-anti-bribery-policy-july-2022/?layout=default>
- 62.1.8 The Local Counter Fraud Specialist can be contacted via the information held on IAN. The NHS Counter Fraud Authority can be contacted on 0800 028 4060 or via an online reporting form at <https://cfa.nhs.uk/reportfraud>.

62. OBJECTIVES OF THE ICB DISPUTE RESOLUTION PROCESS

- 62.1. The objectives of the ICB process are:
- 62.1.1. to ensure parties involved in a procurement can seek resolution to a representation locally.
- 62.1.2. to ensure providers interested in the commissioning of services can raise questions and objections to

processes which have, or have not taken place, such as a tender or direct award.

62.1.3. to resolve competition disputes transparently, fairly, and consistently.

62.1.4. to provide confidence to parties that the process is fair and transparent, enhancing willingness to participate in the market.

62.1.5. to mitigate risks and protect the reputation of the NHS.

62.1.6. to prevent where possible legal challenge / external referral processes.

62.1.7. To minimise delay to commissioning processes caused by challenge processes.

62.1.8. Where cases involve multiple ICBs, the ICBs in question will agree between them who will take the lead role in managing the dispute process and the dispute will be dealt with by that ICB in accordance with its published Dispute Resolution Process.

⁸ Context and overview section follows draft guidance received regarding the provider selection regime – which has been amended to be relevant to the current procurement landscape.

62.2. ACCEPTANCE CRITERIA

3.6 The ICB will only accept representation that, in the opinion of the ICB, fulfil the following criteria:

- ☐ From Providers who have been involved in a competitive process; or, who have an evidenced claim against a process which they believe has been incorrectly undertaken, such as restricted competition, lack of advertising or neglect of duties under relevant regulations.
- ☐ There is full and frank disclosure of all relevant and applicable information.
- ☐ No legal proceedings have commenced or will commence during the ICB's consideration of the dispute.
- ☐ The representation is not trivial, vexatious or an abuse of the ICB process.
- ☐ The ICB is the commissioner, or the lead commissioner for the service in question.
- ☐ The representation must relate to a matter which has arisen within the last 30 days, or within 30 days from the representer receiving new / additional information, which identifies a reasonable basis of challenge / complaint.

1. UNDERPINNING PRINCIPLES

3.7 This Dispute Resolution Process will be based on and will seek to uphold the following principles:

Transparency

- Remain open to receive challenges and ensure the dispute resolution process and methods to raise representation are easily understood and publicised.
- Communicate the process progress and outcome clearly and openly with the representer
- Engage all relevant stakeholders in the process
- Enforce declarations of interest
- Publish findings within and across the ICB to enable consistency and learning

Objectivity

- Base analysis and the decision on objective information, evidence and criteria
- Maintain an audit trail
- Ensure conflicts of interest and actual or perceived bias is acknowledged and removed from the process

Proportionality

- ☐ The dispute resolution process is to be proportionate to the level of complaint, for example,
 - Time taken to complete the process
 - Level of resource involved

Non discriminatory

- ☐ The ICB will not discriminate against providers and each process will seek to ensure all parties are treated with respect and equality.

Accountability

- The ICB will provide to the Board information relating to the number of disputes considered and outcomes.

Subsidiarity

- Wherever possible the dispute will be managed by the ICB drawing on external support as required.
- If this fails, then the ICB will engage with NHSE and external parties to manage the dispute.

Consistency

- Internal coherence and consistency of approach and proportionality.

2. THE PROCESS

3.8 The process comprises three stages:

Stage 1: The Complaint

- The representation will be made to the Company Secretary and the Procurement Lead via email
- Named individuals at the ICB will investigate the representation against the applicable rules/criteria and may consider escalating the dispute.
- This stage aims to be completed within 2 weeks from the representation being received.
- The representation may be progressed to the Dispute Resolution Panel (Stage 2) or referred back to the complainant (which would require approval – Stage 3).

Stage 2: Proceed to ICB Dispute Resolution Panel (see section 6)

- The Nominated Panel undertake a “desktop” review.
- The Nominated Panel will decide whether or not more information or discussion with the representer is required.
- The Panel to discuss the case at a formal minuted internal meeting.
- This stage of the process aims to be completed within four weeks from the representation being received.
- If further investigation is required, this must be completed within the four weeks and the final decision must be made within 30 days of the representation being received.
- The representation may be upheld (move to Stage 3).
- The representation may be rejected (move to Stage 3).
- If the representation is beyond the scope of the ICB Panel, then the complaint should be escalated to NHSE for support selecting an external mediator.

Stage 3: The Decision

- Under delegated powers from the ICB the Panel will make a decision within the overall four-week timeframe from the point of application.
- The ICB will write to the representer notifying them of its decision and explaining the rationale, and any next steps which are to be undertaken.

3. ICB DISPUTE RESOLUTION PANEL (DRP)

3.1 The DRP will have three core members:

- ICB Non-executive member (Chair)

- Chief Finance Officer
- Plus one other Executive

3.2 Administrative support to the Panel will be provided.

3.3 The Panel Chairman will call on other expert advice as necessary, depending on the nature of the representation. Such advisers will have no decision-making role.

3.4 Executive membership of the DRP will be changed if the nature of the complaint gives rise to any perceivable conflict of interest (e.g., where an executive member has been directly involved in a commissioning or procurement process and decision which is the subject of dispute).

3.5 All results of the process will be presented to the ICB on an annual basis for information. Reports will include summaries of representations and outcomes.

4. FURTHER INFORMATION

4.1 If you have any questions or queries about this process, please contact the Procurement Team by email: mlcsu.procurement@nhs.net or telephone: 01782 872 500

5. CONSEQUENCES OF POLICY BREACH

5.1 Breaches of the policy are reported through an escalation process which can include - the Chief Finance Officer, Audit Committee and Local Counter Fraud Specialist.

63. APPENDIX 4 – GLOSSARY, DOCUMENTS AND LINKS

63.1. DOCUMENTS

Procurement Decision Flowchart – including Waivers	See SOP Section of this Policy
Declaration of interests for ICB members and employees	Our publications and policies - Staffordshire and Stoke-on-Trent, Integrated Care Board (icb.nhs.uk)
Declaration of conflict of Interests for bidders / contractors	Available from MLCSU Procurement Team
Register of Procurement Decisions	Our publications and policies - Staffordshire and Stoke-on-Trent, Integrated Care Board (icb.nhs.uk)
Equality Impact Assessment template	Please contact MLCSU Equality, Diversity and Inclusion (EDI) Team equality.inclusion@nhs.net
Data Protection Impact Assessment template	Available for ICB staff via the intranet DPIA Form
Quality Impact Assessment template	Available for ICB staff via the intranet Quality Impact Assessments (QIAs)
Green Action Plan to be replaced with the link to ICS system wide Green Plan when ratified	Greener NHS- Staffordshire and Stoke-on-Trent ICB

63.2. GLOSSARY

Term	Definition
Accelerated procedure	where the relevant timescales for the particular type of procurement process can be shortened, e.g., in certain circumstances where a procurement is "urgent".
Award criteria	means the list of key criteria that is used to assess a Provider's tender.
Bribery (active and passive)	Giving or receiving a financial or other advantage in connection with the improper performance of a position of trust, or a function that is expected to be performed impartially or in good faith. (Active bribery: promising or giving a financial or other advantage. Passive bribery: agreeing to receive or accepting a financial or other advantage).
Call-off Contract	means an individual contract awarded under a framework agreement for the provision of particular services, goods or works.
CCS	Means the Crown Commercial Service and brings together policy, advice and direct buying; providing commercial services to the public sector.
Common Market	a single market within the European market in which the free movement of supplies, services, capital and persons is ensured and in which European citizens are free to live, work, study and do business.
Conflict of Interest	a. A situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties as a public official, an employee, or a professional. b. an organization gaining an unfair advantage due to their ability to become privy to information relating to another
Contract Disaggregation	An alternative term for contract splitting.
Contract Notice	A notice for any contracting opportunity to facilitate expressions of interest from the market.
Contract Splitting	By splitting what should be a single contract into a number of parts having smaller value, it is possible to avoid thresholds that would otherwise ensure a more stringent procurement process is applied. This is not permitted by the procurement regulations.
Contracting Authority	is a body that is subject to the procurement Regulations. A list of the relevant organisations is defined and included in Regulation 2(1) of the Public Contracts Regulations 2015 (as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020). There are also some "catch all" statements covering public bodies not specifically included in the list.
Finder a Tender Service Contract Notice	Find a Tender has replaced the EU's Tenders Electronic Daily from 1 January 2021 for high value contracts in the UK. OJEU the European Union's Official Journal. Means a standard form notice placed in the European Union's Official Journal Find a Tender Service (the UK's eNotification Tender Service) confirming that a Contracting Authority is intending to procure supplies, services or works.
Framework	means an umbrella agreement which establishes the basis on which subsequent requirements for supplies, services or works can be met by suppliers appointed to the framework.
ICB	Integrated Care Board (formerly Clinical Commissioning Groups)
ICO	Integrated Care Organisation
ICS	Integrated Care System
ITT	ITT: Invitation to Tender. means a document which invites Contractors and Providers to bid for the provision of supplies, services or works.

Light Touch Regime Services	the services listed in Schedule 3 of the Public Contracts Regulations 2015 (<i>as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020</i>). Only some of the EU procurement rules as set out in Public Contracts Regulations 2015 (<i>as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020</i>) apply – namely, obligations relating to advertisement, technical specifications, post-award information and principles of equality, proportionality, transparency and non-discrimination. Healthcare services that are subject to the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 are subject to the Light Touch Regime.
MEAT	means ‘Most Economically Advantageous Tender.’ MEAT enables tender evaluation on the basis of the quality of the tender offer as well as the price. The quality is scored against a set of award criteria identified for each tender.
Mini-Competition	a mini competition is held with all those suppliers within a framework agreement who are capable of meeting a particular need when the details of the framework agreement are not sufficient to enable an immediate call-off. Where a procuring party wishes to procure under a framework agreement, but the framework has insufficient information to allow the procuring party to confirm which supplier would offer the most economically advantageous tender, then a mini-competition is the method used to select a supplier.
Prior information notice (PIN)	A PIN can have three meanings: 1.Publication by an authority in Find a Tender Service of details of what they intend to procure in future. 2.Use of a PIN can reduce some of the timescales in a procurement. 3.The ICB can use as a Call for Competition.
Public Contracts Regulations 2015 (PCR2015) as amended by the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (‘PPAR 2020’)	means the Public Contracts Regulations 2015 (<i>as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020</i>). This is the UK procurement legislation setting out procedures for the award of contracts for supplies, services and works.
Selection criteria	means criteria used at the Selection Questionnaire stage to select the bidders that are to proceed to the next stage. Selection criteria should only relate to technical and professional capability and financial and economic standing and certain grounds for disqualification.
Selection Questionnaire	a Selection Questionnaire (SQ) enables a contracting authority to evaluate the suitability of potential suppliers in relation to their technical knowledge and experience, capability and financial and economic standing. SQs are used in the restricted procedure, negotiated procedure and competitive dialogue procedure as a means of selecting the bidder to go forward to the next stage of the procurement process.
SME	stands for small and medium-sized enterprises – as defined in EU law: EU recommendation 2003/361. The main factors determining whether a company is an SME are: number of employees and either turnover or balance sheet total.
Sub-procurement thresholds	means a contract for supplies, works or services that falls below the public procurement financial thresholds

TFEU	means the Treaty on the Functioning of the European Union. The TFEU sets out organisational and functional details of the European Union.
TUPE	means Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI/2006/246) as amended

Value for Money or VFM	is a term used to assess whether or not an organisation has obtained the maximum benefit from the supplies and services it both acquires and provides, within the resources available to it. Economy - careful use of resources to save expense, time or effort. Efficiency - delivering the same level of service for less cost, time or effort. Effectiveness - delivering a better service or getting a better return for the same amount of expense, time or effort.
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LINKS

Reference	Website
"The Public Contracts Regulations 2015"	http://www.legislation.gov.uk/uksi/2015/102/pdfs/uksi_20150102_en.pdf
The Public Contracts Regulations 2015, as amended by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020	https://www.legislation.gov.uk/uksi/2020/1319/contents/made
SI 2021 No.872 The Public Procurement (Agreement on Government Procurement) (Amendments)(No.2) Regulations 2021	https://www.legislation.gov.uk/uksi/2021/872/contents/made
NHS (Procurement, Patient Choice & Competition) (No.2) Regulations 2013	http://www.legislation.gov.uk/uksi/2013/500/contents/made
Procurement, Patient Choice & Competition Regulations: Guidance & Hypothetical Case Scenarios	https://www.gov.uk/government/publications/procurement-patient-choice-and-competition-regulations-guidance
Public Services (Social Value) Act 2012	http://www.legislation.gov.uk/ukpga/2012/3/enacted
Operational Guidance to the NHS-Extending Patient Choice of Provider	http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_128455
The annual Everybody Counts Planning for Patients that outlines and specific requirements that is appropriate to commissioned services.	http://www.england.nhs.uk/everyonecounts/
Cabinet Office's Transparency requirements for publishing on Contracts Finder	https://www.gov.uk/government/publications/transparency-requirements-for-publishing-on-contracts-finder
Thresholds	https://www.gov.uk/government/publications/procurement-policy-note-0921-thresholds-and-inclusion-of-vat
NAO - General Procurement Guide	http://www.nao.org.uk/freedom-of-information/wp-content/uploads/sites/13/2013/03/Procurement_manual.pdf
Protecting and Promoting Patients' Interests: the Role of Sector Regulation	https://www.gov.uk/government/publications/protecting-and-promoting-patients-interests-the-role-of-sector-regulation
NHS England and NHS Improvement's series of procurement briefings	NHS England » Procurement of healthcare (clinical) services: Briefings for CCGs
Cabinet Office Guidelines	https://www.gov.uk/transposing-eu-procurement-directives

Managing Conflicts of Interest – statutory guidance for CCGs	https://www.england.nhs.uk/ourwork/coi/
The annual NHS operating Framework that outlines and specific requirements that is appropriate to commissioned services. Everyone Counts: Planning for Patients 2014/15 - 2018/19	http://www.england.nhs.uk/wp-content/uploads/2013/12/5yr-strat-plann-guid-wa.pdf
Guidance and eLearning resources for public sector buyers and utilities that have to apply public procurement rules when letting public contracts.	https://www.gov.uk/guidance/transposing-eu-procurement-directives#history
Transfer of Undertakings (Protection of Employment) Regulations 2006(TUPE)	http://www.legislation.gov.uk/ukxi/2006/246/pdfs/uksi_20060246_en.pdf
Equality Act 2010	http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf
Bribery Act 2010	http://www.legislation.gov.uk/ukpga/2010/23/pdfs/ukpga_20100023_en.pdf
Pre-contract procurement fraud and corruption	https://cfa.nhs.uk/resources/downloads/guidance/NHSCFA%20Pre-contract%20procurement%20fraud%20guidance%20-%20v1.0%20July%202018.pdf
Health and Care Act 2022	https://www.legislation.gov.uk/ukpga/2022/31/contents/enacted

64. APPENDIX 5: Process benefit and risks

Below are three common processes used and detail of when they would be appropriate. The type of process used to procure a service or goods should be decided in conjunction with the Procurement Team.

Average length	Process type benefits	Process type risks
Open - One of the procedures for procurement under which all eligible applicants are invited to tender in a one-stage procurement process. -Designed for procurements where the service specification is fully understood and defined.		
4 months plus mobilisation	-Only use if service spec is detailed and fully understood, i.e. service required is already known as no room for negotiation. -Ideal for limited markets when few responses are expected. -No Pre-Qualification Questionnaire restriction phase so can save time.	-Potential for numerous submissions if market is not properly understood. -Doesn't allow restriction and therefore any organisation can bid and we are obliged to evaluate their bid. This will take a lot of time. -Can stifle innovation with restrictive specifications.
Restricted - Suitable when you want to pre-qualify organisations and you are able to state the service requirement in detail as there is no room for negotiation following receipt of the bid.		
6 months plus mobilisation	-Allows restriction of bidders moving through to the Invitation To Tender (service delivery assessment) phase, therefore saving evaluation time at the Invitation To Tender phase. -Allows for engagement on specification a PQQ stage	-Pre-qualification stage times additional time to complete. -Can be seen as burdensome by some bidders.
Competitive Dialogue / Competitive Procedure with Negotiation - Appropriate where the specification is incomplete and will require negotiation, or where the solution is likely to be complex and will need dialogue to conclude the tender.		
9 months plus mobilisation	-Allows a better understanding of the specification and scope through dialogue, which in turn can lead to better outcomes and reduced risk. -Process allows more certainty around the bidder selection as you will have worked with them through dialogue. -Can lead to real innovation of services which are outcome driven. -Allows negotiation around requirements. -Allows restriction of bidders to the negotiation phase.	-Lengthy complicated process -Risk of price escalation when bidder truly understands the cost implications. -Loss of competition once preferred bidder is selected and therefore potential for difficult further negotiations before agreement on contract and price. -Resource intensive for procurement and commissioning