



Procurement Policy for Healthcare Services

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

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CONSULTATION SCHEDULE

Name and Title of Individual	Groups consulted	Date Consulted
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RATIFICATION SCHEDULE

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3	Formatting amendments	June 2024	Catherine Hope
4			

Impact Assessments – available on request

	Stage	Complete	Comments
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Quality Impact Assessment	N/A	N/A	Aug 2023: Quality confirmed that procurement policies do not require a QIA. The QIA would be undertaken as part of commissioning cycle, of which procurement options would be an output from.
Privacy Impact Assessment	N/A	N/A	Policy – no data

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1. INTRODUCTION

- 1.1 The purpose of the Healthcare Procurement Policy is to ensure all healthcare procurement activities undertaken on by Staffordshire and Stoke-on-Trent Integrated Care Board:
- a) Provide the best possible value and delivers against the needs of the local population.
 - b) Is undertaken in a transparent and non-discriminatory manner with equality of treatment a core principle.
 - c) Is compliant with all regulatory frameworks and national legislation, and the ICB Standing Financial Instructions and Schemes of Reservation and Delegation.
 - d) Uses best practice as standard.
 - e) Supports the system Joint Forward Plan and Delivery Plan.
 - f) Maximises the opportunities from integrating care delivery.
 - g) Does not engage in anti-competitive.
- 1.2 On 1st January 2024 the Health Care Services (Provider Selection Regime) Regulations 2023 (PSR) came into force. This replaces the Public Contracts Regulations 2015, when procuring health care services and the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013.
- 1.3 Under the new legislation competitive procurement is not seen as the default position. Procurement activities should be seen as a mechanism to secure, healthcare services, which is compliant with in the regulatory and legislative framework.
- 1.4 The principles of procurement undertaken by the ICB is to secure the needs of the people who use the services, including through integrated service delivery; improve the quality of the services, including through integrated service delivery; improve the efficiency of the services and act Transparently, fairly, and proportionately.
- 1.5 Integrated care is about giving people the support they need, joined up across local authorities, the NHS, and other partners.
- 1.6 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.
- 1.7 This policy is for the procurement of healthcare services, as defined as 'in-scope' of this policy.

2.0 Scope of the Procurement Policy

- 2.1 The Healthcare Procurement Policy is to be applied where the ICB is commissioning a service that:
- a) Is provided as part of the health service, whether NHS or public health consists of the provision of health care to individuals or groups of individuals falls within one or more of the specified CPV codes.
 - b) In-scope health care services include services provided by NHS providers, other public bodies, local authorities, and providers within the voluntary, community, and social enterprise (VCSE) and independent sectors. In broad terms, these are services arranged by the NHS such as hospital, community, mental health, primary health care, palliative care, ambulance, and patient transport services for which the provider requires Care Quality Commission (CQC) registration, as well as services arranged by local authorities focused on substance use, sexual and reproductive health, and health visits.
 - c) Also, in-scope are services that contain multiple elements and are known as Mixed Procurement. These comprise a mixture of in-scope health care services and out-of-scope services or goods, where the main subject-matter of the contract is in-scope health care services, or, where the ICB is of the view that the other goods or services could not

reasonably be supplied under a separate contract. The main subject-matter of the contract is determined if the estimated lifetime value of the health care services is higher than the estimated lifetime value of the other goods and services.

2.2 Out of scope procurements of this policy

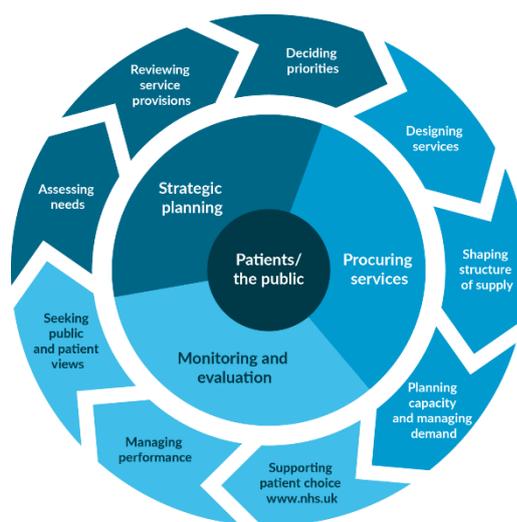
2.2.1 This policy excludes 'non-health care' or 'health-adjacent' services. This means, for example, that business consultancy, catering, administrative services, patient transport services that do not require CQC registration, or other services that may support health care infrastructure, but do not provide health care directly to people, must not be arranged under the regime (other than when legitimately part of a mixed procurement). Procurement of non-healthcare services are covered in the ICB Procurement of goods, and, or non-healthcare service policy. These will be covered under the Procurement Bill 2023.

2.3 Procurement Definition

2.3.1 Procurement can be defined as "means the award, entry into and management of a contract".

2.3.2 Every step of the commissioning cycle (analyse, plan, do, review) plays an integral role in the ICBs decision making. Procurement is one part of the commissioning process. Procurement is an all-encompassing term to describe the life cycle of a process for the acquisition of healthcare services. It starts with identifying the need, through to obtaining the services from the right provider, at the right time, place, price and quality.

2.4 The Procurement cycle



2. Procurement Objectives

3.1 The ICB has a statutory responsibility to secure services which deliver against the needs of their population.

3.2 They are also constitutionally obliged to improve the quality of care and ensure the efficient use of resources.

3.3 To facilitate the ICB responsibilities the Procurement Policy has the following objectives:

- a) Ensure processes undertaken whilst discharging the duties of the ICB are completed within the required external statutory and internal policy requirements.
- b) Ensure processes secure the needs of healthcare service users through transparent, proportionate, non-discriminatory, equitable and fair approaches.
- c) Ensure policy and process works to ensure value for money is secured whilst improving quality and efficiency of provision.

- d) Encourage integration and collaboration to benefit service users wherever appropriate.
- e) Ensure sustainability of services, social value and environmental objectives are clear, practicable and considered at all stages of procurement.
- f) Alignment of procurement to support system working.
- g) Provide clear guidance and processes that follow best practice which are simple to follow and de-mystify procurement.

3. **Integration¹**

- 4.1 Integrated services are services delivered in a seamless and co-ordinated way, viewed from the patient's perspective, regardless of whether they are provided by different professionals within an organisation or different organisations altogether.
- 4.2 Historical legislation applicable to healthcare procurement could at times create barriers to integrating care, as their focus on competition made development of stable collaborations and new models of care harder, and at times resulted in complex procurement processes.
- 4.3 The PSR has been designed to introduce the capability for greater integration and enhanced collaboration across the system, whilst ensuring that all decisions about how health care is arranged are made transparently.
- 4.4 Services may be integrated at different geographical footprints (e.g., neighbourhood, place and/or system level). Integration may:
 - a) Improve the quality of those services (including the outcomes from their provision).
 - b) Reduce inequalities between persons with respect to their ability to access those services.
 - c) Reduce inequalities between persons with respect to the outcomes from the provision of those services.
- 4.5 There are two forms of integration which will be underpinned by 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.
- 4.6 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.

4. **Patient Choice**

- 5.1 The NHS Constitution for England sets out the principles and values of the NHS. In relation to patient choice, it says:

"You have the right to make choices about the services commissioned by NHS bodies and to information, and support to make these choices. The options available to you will develop over time and depend on your individual needs."

- 5.2 The PSR replaces the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 (the PPCCR) and, alongside their introduction, remove procurement of health care services, when procured by the ICB under the PSR, from the scope of the Public Contracts Regulations 2015 (the PCR).
- 5.3 The ICB will not limit choice where patients have a legal right to choose the provider of their first outpatient appointment from any clinically appropriate provider in England that is contracted to work with the NHS as detailed under regulation 39 of the National Health Service

Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012. Different types of choices are available to patients:

- a) Legal right to choice of provider of elective services led by a consultant or mental health care professional.
- b) Choice of provider for other non-consultant led elective services where commissioners have decided to offer choice of provider, e.g., where commissioners have established a list of providers that patients can choose from
- c) Choices about treatment and the personalisation of care.

5.4 The ICB will:

- a) Consider the extent to which a particular decision may expand or reduce the choice of providers available to patients.
- b) Consider that some population cohorts may require additional support to exercise choice.
- c) Offer and provide any additional support, as required, proactively.

5.5 The Handbook to the NHS Constitution describes in more detail the rights in relation to informed patient choice.

5.6 The Department of Health and Social Care NHS Choice Framework sets out some of the nationally determined choices available to patients.

5.7 The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 require commissioners to establish and apply transparent, proportionate and non-discriminatory criteria for the qualification of providers.

5.8 The ICB has defined a qualification criteria and assurance processes needed to enable a provider to demonstrate that they are qualified to deliver a service and can safely meet service requirements. See Appendix 1

5.9 Where services are already commissioned, the same qualification criteria, assurance processes and specification for services will be applied across all providers of those services in the same way.

5.10 The ICB cannot refuse to qualify providers for services where the right to choice applies and the provider meets the commissioners' established criteria for those services

5.11 Where the ICB is required to offer choice to patients under regulation 39 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012, the ICB cannot restrict the number of providers and therefore direct award process B under PSR shall be followed.

5. Procurement legislation and policy influences

6.1 The procurement landscape is constantly evolving, with the introduction of the Provider Selection Regime for in-scope healthcare services and for goods and non-healthcare services the proposed introduction of the Procurement Act 2023.

6.2 Following the changes, the ICB will adhere to two separate procurement regimes –

- a) (1) a specific regime for healthcare services and
- b) (2) a regime for everything else (non-healthcare services).

6.3 When exercising functions to comply with the PSR, the ICB will continue to comply with other legal obligations where applicable, including but not limited to the following:

- a) 2006 Act

- b) Local Government and Public Involvement in Health Act 2007
- c) Equality Act 2010
- d) Modern Slavery Act 2015
- e) Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012
- f) Subsidy Control Act 2022.
- g) This guidance does not specify how to comply with these other legal obligations.

6.4 The ICB will also consider other requirements and duties beyond those outlined in PSR. For example, adhere to NHS England's net zero emissions requirements, the application of net zero and NHS social value, and Carbon Reduction Plan requirements in the procurement of NHS goods and services (this list is not exhaustive).

6. Introduction to Provider Selection Regime (PSR)

7.1 The Provider Selection Regime (PSR) is a new set of rules for procuring health care services in England. It is set out in the Health Care Services (Provider Selection Regime) Regulations 2023 (the regulations). The regulations are accompanied by statutory guidance (the guidance) to which the ICB and other the ICB, must have regard.

7.2 PSR has been designed to introduce:

- a) A flexible and proportionate process for selecting providers of health care services (so that all decisions can be made with a view to securing the needs of the people who use the services, improving the quality of the services, and improving the efficiency in the provision of the services)
- b) The capability for greater integration and collaboration across the system, while ensuring that all decisions about how health care is arranged are made transparently
- c) Opportunities to reduce bureaucracy and cost associated with the current rules.

7.3 The ICB will behave in a transparent, fair, and proportionate way when making their arrangements with providers (across any of the NHS, public, independent, and voluntary sectors). Adopting these behaviours will enable the successful application of the PSR, and in turn deliver the intent of the 2022 Act to integrate service delivery through increased collaboration in the NHS and with local government.

7. The Procedures/Routes to Market

8.1 There are three provider selection processes that ICB can follow to award contracts for health care services. These are the:

8.2 Direct award processes (A, B, and C).

8.2.1 These involve awarding contracts to providers when there is limited or no reason to seek to change from the existing provider; or to assess providers against one another, because:

- a) The existing provider is the only provider that can deliver the health care services (direct award process A)
- b) Patients have a choice of providers, and the number of providers is not restricted by the ICB (direct award process B)
- c) The existing provider is satisfying its existing contract, will likely satisfy the new contract to a sufficient standard, and the proposed contracting arrangements are not changing considerably (direct award process C).

8.3 Most suitable provider process.

8.3.1 This involves awarding a contract to providers without running a competitive process, because the ICB can identify the most suitable provider or providers.

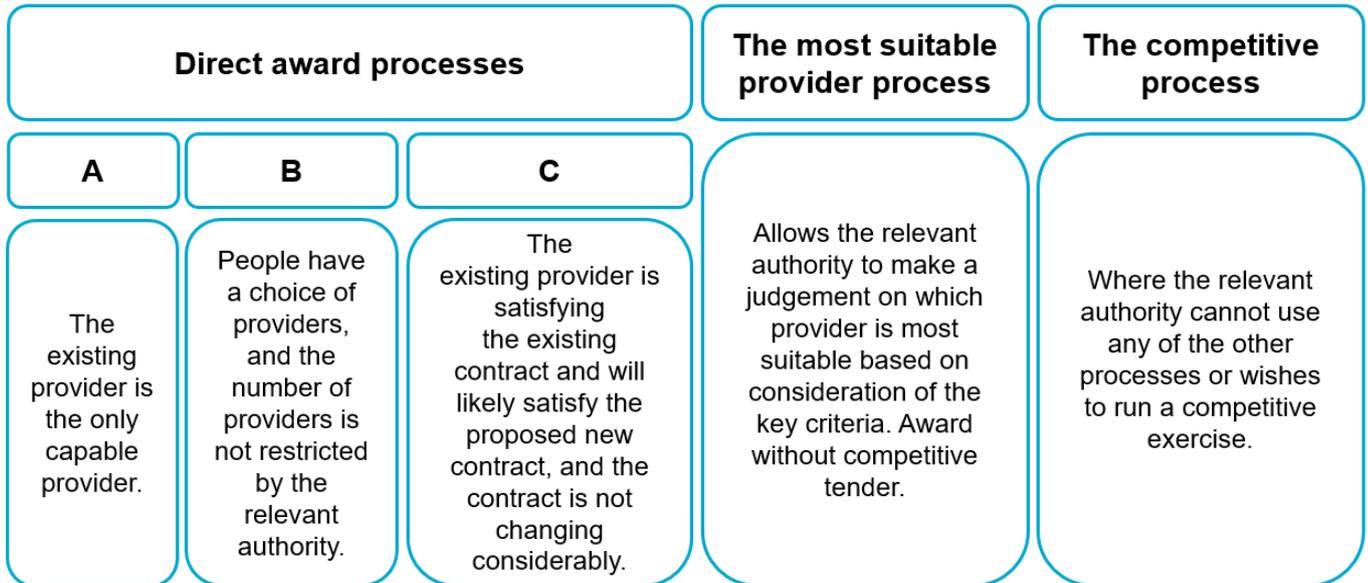
8.4 **Competitive process.**

8.4.1 This involves running a competitive process to award a contract. The ICB will comply with defined processes in each case to evidence their decision-making, including record keeping and the publication of transparency notices.

8.5 **Diagram: Overview of the decision-making circumstances**

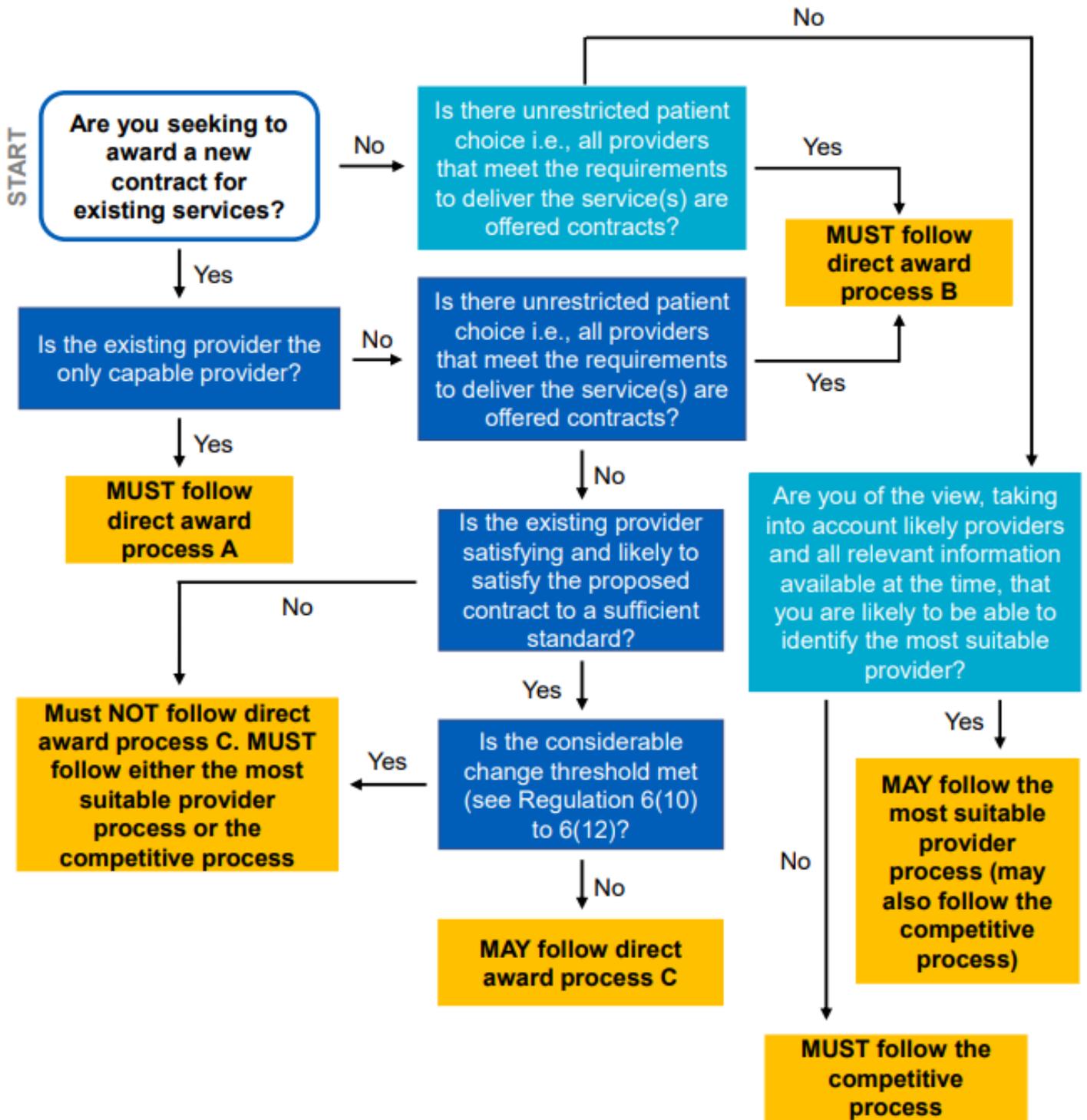


Overview of the decision-making circumstances



8.6 The following diagram provides a process to help navigate the most appropriate route to award for Commissioners.

8.7 Decision Making Flow Diagram



8. Key criteria

9.1 The PSR key criteria are defined in Regulation 5.

9.2 Five key criteria must be considered when making decisions about provider selection under direct award process C, the most suitable provider process, and the competitive process of this regime. Annex D to this guidance provides detail on what each criterion covers. In summary, these criteria are:

9.2.1 Quality and innovation

Is the need to ensure good quality services and the need to support the potential for the development of new or significantly improved services or processes that will improve the delivery of health care or health outcomes.

9.2.2 Economic and financial standing

(i.e., is the provider a stable organisation). **The Regulation states that you would look at:**

- a) Annual turnover, which you could include a minimum turnover (this, must not exceed twice the estimated contract, however, there is a caveat, it can exceed this if you are satisfied that a higher minimum is appropriate and proportionate to the subject-matter of the contract, e.g., if it carries a special risk
- b) You have information on their accounts to assess ratios between assets and liabilities – I'm not a financial accountant, but this ratio would tell you if an organisation is carrying too much debt for example for the income they have
- c) Have the right level of professional risk indemnity insurance.

9.2.3 Value

Offered by a service, in terms of the balance of costs, overall benefits and the financial implications of an arrangement.

9.2.4 Integration, collaboration and service sustainability

Where services must be consistent with local and national NHS plans and the importance of services being provided in an integrated and collaborative way, and in a way that improves health outcomes and in a way that seeks to secure the stability of good quality health care services or service continuity of health care services.

9.2.5 Improving access, reducing health inequalities and facilitating choice,

That is ensuring accessibility to services and treatments for all eligible patients, improving health inequalities and the ensuring that patients have choice in respect of their health care.

9.2.6 Social value,

That is whether what is proposed might improve economic, social and environmental well-being in the geographical area relevant to a proposed contracting arrangement.

9.2.7 Application of key criteria

- a) The ICB will consider each of the key criteria in the regime when making decisions under direct award process C, the most suitable provider process and the competitive process (including when concluding a framework agreement and when awarding a contract based on a framework agreement using the competitive process). Under these processes, the ICB will be able to justify their decisions when following a provider selection process in relation to the key criteria and keep a record of this. Further detail on recording decision-making and transparency can be found in the transparency section.
- b) How relevant authorities assess providers against the key criteria, including what evidence they consider, may vary according to the service they want to procure. A the ICB may wish to address specific priorities; these are expected to be described as part of the key criteria and can be considered when deciding the relative importance of the key criteria.

- c) Due regard in relation to the equalities duties in the Equality Act 2010, including the Public Sector Equality Duty, are relevant to all criteria will be given when considering each criterion.

9.2.8 **Balancing the key criteria**

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

10.0 Direct Awards (A, B, C)

10.1 Direct Award Process A

- a) There is an existing provider for the services and that provider is the only capable provider.
- b) Ensure conflicts of interests (COI) are managed in line with Regulation 21 and with the RA's wider COI policy.

- c) Ensure that the service being arranged is in scope of the PSR i.e. that the services are health care services or can be procured under the PSR as a mixed procurement as set out in Regulation 3.
- d) This process must be used when the type of service means that the services are capable of being provided only by the existing provider due to the nature of those services.
- e) Questions to consider:
 - i) Is there an existing provider or group of providers?
 - ii) Does the nature of the service mean that there is no realistic alternative to the current provider or group of providers?
- f) Direct award process A must not be used:
 - i) To award a (new) contract for a newly established service.
 - ii) To conclude a framework agreement or to award a contract based on a framework agreement. The ICB will make and keep clear records detailing their decision-making process and rationale for direct award process A, as set out in the Regulations.
 - iii) The information that should be recoded in the ICBs decision making record
 - iv) Ensure that a recommendation to award a contract is approved internally through all of the ICB 's governance processes. How this should be done is not set out in the Regulations.
 - v) Award contract to provider or group of providers.
 - vi) The ICB will publish a confirmation of award on the Find a Tender Service (FTS) website within 30 days of the contract being awarded. The information that is required to be published is set out in Schedule 2 of the Regulations.
 - vii) What information needs to be published is set out in the FTS guide.

10.2 Process for Direct Award A

Circumstance description	1. Planning phase				2. Approval to proceed	3. Award contract and communicate final decision	
	Conflict of interest management established	Scope	Is this provider selection process appropriate?	Make a decision and keep records	Review information and seek approval	Award contract	Transparency - Confirmation of Award
<p>Direct award process A</p> <p>Direct award process A</p> <p>There is an existing provider for the services and that provider is the only capable provider.</p>	<p>Ensure conflicts of interests (Col) are managed in line with Regulation 21 and with the RA's wider Col policy.</p>	<p>Ensure that the service being arranged is in scope of the PSR i.e. that the services are health care services or can be procured under the PSR as a mixed procurement as set out in Regulation 3.</p>	<p>This process must be used when the type of service means that the services are capable of being provided only by the existing provider due to the nature of those services.</p> <p>Questions to consider:</p> <ul style="list-style-type: none"> • Is there an existing provider or group of providers? • Does the nature of the service mean that there is no realistic alternative to the current provider or group of providers? <p>Direct award process A must not be used:</p> <ul style="list-style-type: none"> • to award a (new) contract for a newly established service • to conclude a framework agreement or to award a contract based on a 	<p>The ICB will keep clear records detailing their decision-making process and rationale for direct award process A, as set out in the Regulations.</p> <p>The information that should be recoded is outlined in Tab 3.</p>	<p>Ensure that a recommendation to award a contract is approved internally through all of the ICBs governance processes. How this should be done is not set out in the Regulations.</p>	<p>Award contract to provider or group of providers.</p>	<p>The ICB must publish a confirmation of award on the Find a Tender Service (FTS) website within 30 days of the contract being awarded. The information that is required to be published is set out in Schedule 2 of the Regulations.</p> <p>What information needs to be published is set out in the FTS guide.</p>

framework
agreement.

10.3

Direct award process B.

- a) The ICB will follow direct award process B when the proposed contracting arrangements relate to health care services where patients have a choice of providers, the number of providers is not restricted by the ICB, and the ICB will offer contracts to all providers to whom an award can be made.
- b) Ensure conflicts of interests (Col) are managed in line with Regulation 21 and with the RA's wider Col policy.
- c) Ensure that the service being arranged is in scope of the PSR i.e. that the services are health care services or can be procured under the PSR as a mixed procurement as set out in Regulation 3.
- d) This process must be used when patients have a choice of providers and the number of providers is not restricted by the ICB.
- e) Questions to consider:
 - i) Do patients have a choice of providers that is not restricted by the ICB (i.e. no provider selection is taking place)?
 - ii) Are there arrangements in place to enable providers to express an interest in providing the services?
 - iii) Does the provider meet all requirements in relation to the provision of the health care services to patients?
- f) Direct award process B cannot be used:
 - i) To conclude a framework agreement or to award a contract based on a framework agreement
 - ii) To establish a pool of providers where there is a limited number of providers available
- g) The ICB will consider the exclusions in Regulation 20 and apply as appropriate.
- h) The ICB will make and keep clear records detailing their decision-making process and rationale for direct award process B, as set out in the Regulations.
- i) Ensure that a recommendation to award a contract is approved internally through all of the ICB 's governance processes. How this should be done is not set out in the Regulations. Award contract to provider or group of providers.
- j) The ICB will publish a confirmation of award on the Find a Tender Service (FTS) website within 30 days of the contract being awarded. The information that is required to be published is set out in Schedule 2 of the Regulations.

10.4 Process for Direct Award B

Circumstance description	1. Planning phase				2. Approval to proceed	3. Award contract and communicate final decision	
	Conflict of interest management established	Scope	Is this provider selection process appropriate?	Make a decision and keep records	Review information and seek approval	Award contract	Transparency - Confirmation of Award
<p>Direct award process B</p> <p>direct award process B</p> <p>Where patients have a choice of providers and the number of providers is not restricted by the ICB</p>	<p>Ensure conflicts of interests (CoI) are managed in line with Regulation 21 and with the RA's wider Col policy.</p>	<p>Ensure that the service being arranged is in scope of the PSR i.e. that the services are health care services or can be procured under the PSR as a mixed procurement as set out in Regulation 3.</p>	<p>This process must be used when patients have a choice of providers and the number of providers is not restricted by the ICB.</p> <p>Questions to consider:</p> <ul style="list-style-type: none"> • Do patients have a choice of providers that is not restricted by The ICB (i.e. no provider selection is taking place)? • Are there arrangements in place to enable providers to express an interest in providing the services? • Does the provider meet all requirements in relation to the provision of the health care services to patients? <p>Direct award process B cannot be used:</p> <ul style="list-style-type: none"> • to conclude a framework agreement or to award a contract based on a framework agreement • to establish a pool of providers where there is a limited number of providers available <p>The ICB will consider the exclusions in Regulation 20 and apply as appropriate.</p>	<p>The ICB will make and keep clear records detailing their decision making process and rationale for direct award process B, as set out in the Regulations.</p> <p>An example of how to record evidence, and what information to record, is outlined in Tab 3</p>	<p>Ensure that a recommendation to award a contract is approved internally through all of the ICBs governance processes. How this should be done is not set out in the Regulations.</p>	<p>Award contract to provider or group of providers.</p>	<p>The ICB must publish a confirmation of award on the Find a Tender Service (FTS) website within 30 days of the contract being awarded. The information that is required to be published is set out in Schedule 2 of the Regulations.</p>

- 10.5 **Direct award process C.**
- 10.5.1 The ICB can follow direct award process C when the ICB is not required to follow direct award processes A or B, there is an existing provider in place whose contract is coming to an end, the service is not changing considerably, and the ICB is of the view that the existing provider is satisfying the existing contract to a sufficient standard and is likely to be able to satisfy the new contract to a sufficient standard:
- a) Ensure conflicts of interests (CoI) are managed in line with Regulation 21 and with the RA's wider CoI policy.
 - b) Ensure that the services being arranged are in scope of the PSR i.e. that the services are health care services or can be arranged under the PSR as part of a mixed procurement as set out in Regulation
- 10.6 **Direct award process C may be used when:**
- 10.6.1 The ICB is not required to use direct award processes A or B.
- 10.6.2 The term of an existing contract is due to expire and the ICB is proposing a new contract to replace that existing contract at the end of its term .
- 10.6.3 The proposed contracting arrangements are not changing considerably from the existing contract.
- 10.6.4 The ICB is of the view that the existing provider is satisfying the existing contract to a sufficient standard, according to the detail outlined in the contract, and also taking into account the key criteria and applying the basic selection criteria.
- 10.6.5 The ICB is of the view that the existing provider will likely satisfy the proposed contract to a sufficient standard taking into account the key criteria and applying the basic selection criteria.
- 10.7 **Direct award process C cannot be used:**
- 10.7.1 To conclude a framework agreement or to award a contract based on a framework agreement.
- 10.7.2 The threshold for considerable change is met (and therefore direct award process C cannot be followed) if:
- a) It renders the proposed contracting arrangements materially different in character to the existing contract when that existing contract was entered into or:
 - b) It meets all the following:
 - ✓ The change, (to the proposed contracting arrangements as compared with the existing contract), is attributable to a decision made by the ICB.
 - ✓ The lifetime value of the proposed new contract is at least £500,000 higher (i.e., equal to or exceeding £500,000) than the lifetime value of the existing contract when it was entered into.
 - ✓ The lifetime value of the proposed new contract is at least 25% higher (i.e., equal to or exceeding 25%) than the original lifetime value of the existing contract when it was entered into.
 - c) The considerable change threshold is not met (and direct award process C can be followed) where either:
 - i) The material difference in character from the existing contract applies solely as a result of a change in the identity of the provider due to succession into the position of provider following corporate changes (e.g., takeover, merger) and the value elements of the considerable change threshold are not met. Or

- ii) The proposed contracting arrangements are not materially different in character to the existing contract when that existing contract was entered into, and the following three points all apply:
 - ✓ The changes in the relevant health care services to which the proposed contracting arrangements relate (compared with the existing contract) are attributable to a decision of the ICB; however, that decision had to be made due to external factors beyond the control of the ICB or the provider, such as changes in patient or service user volume or changes in prices in accordance with a formula provided for in the contract document.
 - ✓ The lifetime value of the proposed contracting arrangement is £500,000 or higher than the lifetime value of the existing contract when it was entered into the lifetime value of the proposed new contract is 25% or higher (i.e., equal to or exceeding 25%) than the original lifetime value of the existing contract when it was entered into).
 - ✓ The ICB will decide on the relative importance of each of the key criteria based on what they are seeking to achieve from the service. All key criteria must be considered. This can be done, for example, through:
 - ✓ prioritising criteria
 - ✓ balancing criteria
 - ✓ weighting criteria

10.7.3 The ICB has decision making record templates

10.7.4 The ICB will be of the view that the existing provider is satisfying the existing contract to a sufficient standard. The may do this by assessing the performance of the provider against any key performance indicators and by taking into account the key criteria and applying the basic selection criteria.

10.7.5 The ICB will also be of the view that the existing provider will likely satisfy the proposed contract to a sufficient standard taking into account the key criteria and applying the basic selection criteria.

10.7.6 The ICB will document how the provider has been assessed against the key criteria

10.7.7 Based on the assessment and the evidence collected, the ICB will confirm that a contract can be awarded under direct award process C.

10.7.8 Ensure that a recommendation to award a contract is approved internally through all of the ICB 's governance processes. How this should be done is not set out in the Regulations.

10.7.9 The ICB will publish an intention to award notice on the Find a Tender Service (FTS) website. The information that is required to be published is set out in Schedule 3 of the Regulations.

10.7.10 Publication of the intention to award a contract notice triggers the start of the standstill period, which must be observed by the ICB (see next step).

10.7.11 The ICB will use the FTS guide to help them fill in the correct forms on FTS.

10.7.12 The ICBs Decision Making Record templates can be found on the ICBs intranet.

10.7.13 The standstill period starts the day after the Intention to Award a Contract notice is published.

- 10.7.14 If no representations are received before midnight on the eighth working day, then the standstill period can come to an end and the ICB can proceed to award the contract.
- 10.7.15 If a representation is received within the first eight working days, the standstill period continues until the ICB has completed a review of their initial decision, communicated their findings and further decision to the provider, and concluded it is ready to award the contract or that it wishes to return to an earlier step in the process, or abandon the process.
- 10.7.16 If a representation is received, the ICB will communicate the decision described in the step above promptly, in writing, with reasons, and in any event they must give five working days' notice before the end of the standstill period, to:
- a) The provider that made the representation.
 - b) The provider to which the ICB intended at the beginning of the standstill period to award the contract, or all providers with which the ICB intended at the beginning of the standstill period to conclude the framework agreement.
- 10.7.17 Detailed information about how to deal with representations can be found in the statutory guidance. Where:
- a) The ICB have decided to continue with the award of the contract to the selected provider.
 - b) Communicated this decision to the provider that raised representations.
 - c) The provider remained unsatisfied about the response given by a the ICB to their representations.
- 10.7.18 Then that provider may seek the involvement of the PSR review panel.
- 10.7.19 If the provider submits a request for advice from the PSR review panel, the ICB will be notified, and the ICB should (unless in exceptional circumstances):
- a) Keep the standstill period open for the duration of the panel's review.
 - b) Make a further decision once it has considered the independent expert advice of the PSR review panel.
- 10.7.20 The ICB may choose to
- a) Proceed with the contract award to their selected provider, return to an earlier step in the process, or abandon the process.
 - b) Award contract to provider or group of providers (if this was the decision following the standstill period).
- 10.7.21 The ICB will publish a confirmation of award on the Find a Tender Service (FTS) website within 30 days of the contract being awarded. The information that is required to be published is set out in Schedule 4 of the Regulations.
- 10.7.22 What information needs to be published is also set out in Decision Making Template.
- 10.7.23 There are five key criteria that must be considered when assessing providers under direct award process C, the most suitable provider process, or the competitive process (Regulation 5).
- a) Quality and innovation
 - b) Value
 - c) Integration, collaboration, and service sustainability
 - d) Improving access, reducing health inequalities, and facilitating choice
 - e) Social Value

- 10.7.24 When assessing a provider against the key criteria, all five key criteria must be considered, and none should be discounted. However, the relative importance of the criteria is not pre-determined and there is no prescribed hierarchy or weighting for each criterion.
- 10.7.25 The process chart for Direct Award C can be found at [NHS England » Provider Selection Regime toolkit products](#)
- 10.8 **The Most Suitable Provider Option**
- 10.8.1 The process that must be followed when awarding a contract under the most suitable provider process is defined in Regulations 6(6) and 10.
- 10.8.2 The ICB is able to identify the most suitable provider without running a competitive exercise.
- 10.8.3 This provider selection process is designed to allow the ICB to make an assessment on which provider (or group of providers) is most suitable to deliver the proposed contracting arrangements based on consideration of the key criteria and the basic selection criteria, and to award a contract without running a competitive exercise.
- 10.8.4 This provider selection process gives the ICB a mechanism for reasonable and proportionate decision-making without running a competitive exercise. It is suitable for circumstances where a the ICB is of the view, taking into account likely providers and all relevant information available to it at the time (see provider landscape), that it is likely to be able to identify the most suitable provider to deliver the health care services to the relevant population (local/regional/national).
- 10.8.5 The ICB will follow this provider selection approach only when they are confident that they can, acting reasonably, clearly identify all likely providers capable of providing the health care services and passing any key criterion or sub-criterion which has been designated as pass/fail.
- 10.8.6 The most suitable provider process must not be used to conclude a framework agreement or to award a contract based on a framework agreement.
- 10.8.7 This provider selection process may be followed where any of the following apply:
- a) The ICB is not required to follow direct award processes A or B.
 - b) The ICB is changing an existing contracting arrangement considerably (such that it must not be continued under direct award process C).
 - c) A new service is being arranged.
 - d) The existing provider no longer wants to provide the services.
 - e) The ICB wants to consider potential providers (even where the proposed contracting arrangements are not changing considerably or otherwise), as this is in the best interest of people who use the service, but there is no benefit to running a competitive process or it is disproportionate to do so.
- 10.8.8 When following the most suitable provider process, the ICB :
- a) Is advised to take account of any relevant existing contractual provisions relating to termination and contract exit where there is an existing contract with an existing provider in place, whether the existing provider no longer wants to or is no longer able to provide the services.
 - b) Is advised to consider undertaking a pre-market engagement exercise (see provider landscape) to help identify all suitable providers and develop the service specification.
 - c) Must decide the relative importance of each of the key criteria for the service in question (see key criteria); carefully considering the relative importance of the value criterion. It is advised that for provider selection processes with higher

contract values, greater focus is given to value for money and the quality and efficiency of the services to be provided, unless this means the service does not best meet the needs of the population it is serving.

- d) Must be of the view that by considering providers it understands are likely to have the ability to deliver services to the relevant (local/regional/national) population, and all relevant information available at the time (see provider landscape), it is likely able to identify the most suitable provider.
 - e) Must publish a notice setting out its intention to follow the most suitable provider process (see transparency). The ICB will not proceed to the assessment of likely providers until at least 14 days after the day on which the notice of intention is submitted for publication. Where appropriate the ICB will making potential providers aware that they are being considered for the award of the contract.
 - f) Is advised to ask the providers it identified as likely to have the ability to deliver services to the relevant (local/regional/national) population, and any provider(s) that responded to the notice publishing the intention to follow the most suitable provider process, for further information that would help decision-making, as necessary.
 - g) Must identify potential providers that may be the most suitable provider, taking into account the providers it understands are likely to have the ability to deliver services to the relevant (local/regional/national) population and any provider(s) that responded to its notice publishing the intention to follow the most suitable provider process, with reference to the key criteria and the basic selection criteria.
 - h) Must assess the potential providers identified, considering the key criteria and applying the basic selection criteria in a fair way across them (i.e., on the same basis), and choose the most suitable provider(s) to which to make an award.
 - i) Must publish a notice containing its intention to award the contract to the chosen provider (see transparency) and observe the standstill period (see standstill period).
 - j) May enter into a contract with the chosen provider after the standstill period has concluded.
 - k) Must publish a notice confirming the award of the contract within 30 days of the contract being awarded.
- 10.8.9 The ICB will use their established knowledge of potential providers (see provider landscape). The ICB may approach providers and ask for information as necessary but are advised to take a proportionate approach.
- 10.8.10 The ICB will be able to demonstrate that they have understood the alternative providers and reached a reasonable decision when selecting a provider – but this does not need to be via a formal competitive exercise. The ICB will keep robust records of these considerations and follow the relevant transparency requirements (see transparency). They may need to disclose information on the rationale for their decision if a representation is made (see standstill period).
- 10.8.11 If at any point in the most suitable provider process the ICB has insufficient information to make an assessment under the most suitable provider process, for example, because it did not receive sufficient information to help its decision-making, it is advised to use the competitive process. If the ICB fails to identify the most suitable provider (or a group of providers), then it must follow the approach for the competitive process to select a provider or abandon the selection process all together if appropriate.

- 10.8.12 If the ICB decides to switch provider selection approach after it published its intended approach notice, then it must abandon the selection process before switching provider selection approach.
- 10.8.13 The ICB will consider the exclusions in Regulation 20 and apply as appropriate.
- 10.8.14 The ICB will develop and maintain a sufficiently detailed knowledge of relevant providers that have the capability to meet the needs of patients within the relevant geographical footprint, which can be used to identify suitable providers (see provider landscape). The ICB may identify suitable providers through market research, regular engagement with providers, registers of relevant providers or responses to their intention to follow the most suitable provider process notice.
- 10.8.15 The process chart for most suitable provider can be found at [NHS England » Provider Selection Regime toolkit products](#)
- 10.9 **The Competitive Procurement Process**
- 10.9.1 Regulations 6(7) and 11 set out the process that the ICB will follow when awarding a contract under the competitive process.
- 10.9.2 This provider selection process must be followed when the ICB is not required to follow direct award processes A or B, and the ICB cannot or does not wish to follow direct award process C or the most suitable provider process (for example, because it has not been able to identify a most suitable provider or because it wishes to test the market).
- 10.9.3 This provider selection process must be used when concluding a framework agreement and may be used when awarding a contract based on a framework agreement, in accordance with the terms of that framework agreement (see framework agreements).
- 10.9.4 The steps outlined in the Regulations and the transparency requirements must be adhered to. The ICB may determine additional procedures to be applied in selecting a provider using the competitive process, taking into account the specificities of the services in question to design a bespoke procedure.
- 10.9.5 When following the competitive process, the ICB:
- a) Will need to develop a service specification setting out the ICB 's requirements for the service. In doing so, the ICB may consider undertaking a pre-market engagement exercise.
 - b) Must determine the contract or framework award criteria for the service in question, taking into account the key criteria and applying the basic selection criteria (see key criteria and basic selection criteria).
 - c) Must formally advertise the opportunity to bid (see transparency) and ensure providers are given a reasonable timeframe to respond. The advertisement must include information relating to how bids will be assessed, including whether the different award criteria will be assessed in stages.
 - d) Must assess any bids received by following the assessment process – that is, against the award criteria, and the exclusion criteria set out in Regulation 20, in a fair way across all bids (i.e., on the same basis). This may be done in stages, in accordance with step 3 above.
 - e) Must identify the successful provider (or group of providers).
 - f) Must inform in writing the successful provider (or group of providers) of its intention to award a contract or conclude a framework agreement, and must also inform in writing each unsuccessful provider that its bid has been unsuccessful.

- g) Must publish a notice of its intention to award the contract to or conclude a framework agreement with the chosen provider (or group of providers) (see transparency) and observe the standstill period (see standstill period).
 - h) May enter into a contract or conclude a framework agreement with the chosen provider (or group of providers) after the standstill period has concluded.
 - i) Must publish a notice confirming the award of the contract within 30 days of the contract being awarded.
- 10.9.6 The award criteria referred to above consist of the basic selection criteria, the key criteria and any other elements of the contract award. These components can be assessed in stages – for example, a provider that does not meet the basic selection criteria may be discounted without further assessment.
- 10.9.7 The ICB may engage in dialogue or negotiate with all bidders or with shortlisted bidders prior to determining who to award a contract and with a view to improving on initial offers, provided that they do so in a fair and proportionate way and treat all bidders equally.
- 10.9.8 The ICB will keep records of the procedure followed to select a provider (including details of the bespoke procedure), of how each bid performed against the award criteria and the rationale for selecting the successful bidder (see transparency).
- 10.9.9 The ICB will consider the exclusions in Regulation 20 and apply as appropriate.
- 10.10 **Framework agreements**
- 10.10.1 Framework agreements are defined in Regulation 16.
- 10.10.2 The ICB may establish framework agreements under the PSR to arrange health care services in scope of the regime (or that are categorised as mixed procurements within the regime).
- 10.10.3 What is a framework agreement?
- 10.10.4 Framework agreements for the purposes of this regime are agreements in relation to health care services in scope of this regime between one or more the ICB and one or more providers. Framework agreements set out the terms and conditions based on which the provider will enter into one or more contracts with a the ICB , during the period the framework agreement is in place.
- 10.10.5 The ICB may award contracts based on the framework agreement and will be identified in the framework agreement (either by name or by describing the type of the ICB), and contracts awarded based on a framework agreement must only be between the ICB identified in the framework agreement and a provider that is party to the framework agreement.
- 10.10.6 The length of a framework agreement must not exceed four years, other than in exceptional cases where the ICB is satisfied that the subject-matter of the framework agreement justifies a longer term.
- 10.10.7 The terms and conditions of a framework agreement may be modified in line with the requirements for contract modification for this regime (see [contract modifications](#)).
- 10.11 **Concluding a framework agreement.**
- 10.11.1 The process that must be followed when concluding a framework agreement is set out in Regulation 16 of the PSR.

- 10.11.2 The process that must be followed when adding providers to an existing framework agreement is set out in Regulation 17.
- 10.11.3 When concluding a framework agreement, the ICB will use the competitive process to select provider(s) to be party to the framework agreement.
- 10.11.4 During the term of a framework agreement, providers may be added to a framework agreement. The ICB will set out how and when this might be done in the terms and conditions of that framework agreement. The ICB will use the approach for the competitive process to add providers to the framework agreement, and the ICB will use the same award criteria as when setting up the original framework agreement.
- 10.11.5 When concluding a framework agreement, the ICB will set out the duration of the framework agreement and which the ICB can award contracts based on the framework agreement. The ICB will set out the following:
- a) The terms for awarding a contract based on the framework agreement.
 - b) How the framework agreement will operate.
 - c) How the call-off procedures will operate (see below).
 - d) How new providers or the ICB can be added to the framework agreement at a later date (if applicable).
- 10.11.6 The ICB will not conclude a framework agreement with a provider and may exclude a provider from the procurement process if the provider meets the exclusion criteria detailed in Regulation 20. The ICB will set out in the terms and conditions of their framework agreement that they may remove a provider from the framework agreement if that provider meets the exclusion criteria.
- 10.11.7 Awarding contracts based on a framework agreement.
- 10.11.8 The processes that must be followed when awarding a contract based on a framework agreement are defined in Regulation 18.
- 10.11.9 Only the ICB that are identified as being able to award contracts under the framework agreement may award contracts to providers that are party to that same framework agreement. The ICB may decide that the award criteria for awarding contracts under a framework agreement are different from those for concluding the framework.
- 10.11.10 The ICB will award a contract under a framework agreement in accordance with the terms and conditions of that framework agreement.
- 10.11.11 If awarding a contract based on a framework agreement, the ICB may do so in one of the following ways:
- Without competition if the framework agreement only includes one provider (via a 'direct award').
- 10.11.12 If the framework agreement includes more than one provider, choose whether to award the contract:
- Without a further competition (via 'direct award'), or
 - By following the competitive process (via a 'mini-competition').
- 10.11.13 In all these scenarios, the ICB will make decisions in accordance with the framework agreement.
- 10.11.14 If awarding a contract based on a framework agreement without competition (via a 'direct award'), the ICB will:

- Publish a notice confirming the decision notice within 30 days of the contract being awarded (see [transparency section](#) and [Annex B](#)).
- If awarding a contract based on a framework agreement following a competitive process (via a ‘mini-competition’), the ICB will:
 - ✓ Follow the process for the competitive process, substituting step 2 (the step advertising the opportunity to the market’ with ‘invite providers party to the framework to submit an offer’.
 - ✓ Follow the terms and conditions of the framework agreement, including how competitions must run when awarding a contract based on that framework agreement (if this is set out).
 - ✓ Follow the relevant transparency requirements (see [transparency section](#) and [Annex B](#)).
 - ✓ Observe the standstill period as required for the competitive process (see [standstill period](#)).

10.11.15 When awarding a contract from a framework agreement, the term of the contract may exceed the length of the framework agreement.

10.11.16 Contracts awarded from a framework agreement are expected to not exceed the total value of the framework agreement.

11.0 Abandoning a provider selection process

11.1 The process that must be followed when abandoning a provider selection process is set out in Regulation 15.

11.2 The ICB may decide to abandon the process of provider selection at any time before an award is made (and not award a contract or conclude a framework under that provider selection process), provided that this decision is transparent, fair, and proportionate.

11.3 After deciding to abandon a provider selection process, the ICB will notify providers that were aware they were being considered for the award of a contract or framework agreement (e.g., in response to a tender under the competitive process). The ICB will also submit for publication a notice of that decision on the Find a Tender Service (FTS) (see [Annex B](#)). This notice must be submitted within 30 days of the decision to abandon a provider selection process; or if the decision was made during the standstill period, then within 30 days after the end of the standstill period. Where the decision to abandon a provider selection process is made during the standstill period, the ICB will ensure that they follow the necessary steps set out in Regulation 12 (see the standstill period).

11.4 The ICB will also keep a record of their reasoning for abandoning a provider selection process (see record keeping).

9. Repeating a step in a provider selection process

12.1 The process that must be followed when returning to an earlier stage in the provider selection process and repeating steps is set out in Regulation 15.

12.2 When following direct award process C, the most suitable provider process or the competitive process the ICB may choose to return to an earlier step in a decision process to rectify an issue in its application of that process. All providers that have previously been notified that they are being considered for the award of a contract, or to be a party to a framework agreement, must be informed in writing that the ICB is returning to an earlier stage in the provider selection process, including the stage and any changes to timeframes. Where the decision to return to an earlier step in a provider selection process is made during the standstill period, the ICB will ensure that they follow the necessary steps set out in Regulation 12. For the avoidance of

doubt, if the ICB is repeating a step as a response to a representation received during the standstill period, they do not need to communicate this decision twice (see standstill period).

- 12.3 The ICB should not use the option to return to an earlier step in a provider selection process as an opportunity to modify the selection parameters (i.e., to modify the key criteria or change the service specifications). If the ICB need to modify the selection parameters, then they should abandon the provider selection process (in accordance with the Regulations) and start a new one.

10. Transparency

13.1 Transparency requirements

- 13.1.1 The PSR provides for greater flexibility and allows the ICB to award contracts without using a competitive process, where appropriate. This means that other checks and balances need to be in place to ensure that the PSR is complied with and that the flexibilities are used appropriately and in the best interest of service users.
- 13.1.2 The PSR therefore requires that:
- a) Transparency notices are published when contracts are awarded and in some situations before contract awards are made.
 - b) The ICB keep detailed evidence of their decisions and decision-making processes, which they may be required to share with providers (if they receive a representation).
 - c) An annual summary is published, which details how many contracts were awarded using the various provider selection processes.
- 13.1.3 The relevant information keeping requirements are detailed in Regulation 24. The requirements for the transparency notices, including the content of the notices, are detailed in Schedules 2 to 15.
- 13.1.4 The ICB will provide evidence that they have properly exercised the responsibilities and flexibilities conferred on them by the regime, to ensure that there is proper scrutiny and accountability of decisions made about health care services. This section sets out the steps that the ICB will take to be transparent in their decision-making under this regime.
- 13.1.5 There are several elements to the transparency process under this regime – these apply differently according to which decision-making process is being applied. Annex B provides detailed information about the transparency requirements for all processes under the PSR. The ICB will follow the transparency process relevant to the approach being followed.
- 13.1.6 In all circumstances, the ICB will keep internal records of their decision-making processes and must publish notices confirming their decision to award a contract.
- 13.1.7 When following the most suitable provider process the ICB will also make their intentions clear in advance by issuing a notice.
- 13.1.8 When following direct award process C, the most suitable provider process and the competitive process (including when concluding a framework agreement and when awarding a contract based on a framework agreement using the competitive process) the ICB will also communicate their decision to award a contract publicly and observe a standstill period during which representations can be made. The standstill period must end before contracts can be awarded.
- 13.1.9 All transparency notices referred to in this section must be published using the UK e-notification service, the Find a Tender Service (FTS). The information that must

be included in the transparency notices is set out in [Annex B](#) and the ICB should refer to the separate guide to publishing these notices on FTS.

13.1.10 The ICB can publish information on their decision-making in other places as well if they wish, such as [Contracts Finder](#).

13.1.11 In addition to the transparency notices required under the various provider selection processes, the ICB will publish transparency notices when they are abandoning a provider selection process, when making an urgent award or contract modification or when undertaking certain non-urgent contract modifications. [Annex B](#) contains further information about the transparency requirements for each of these scenarios.

13.1.12 The transparency table below summarises the points in the process, where transparency needs to be adhered to, and in what for.

13.2 Table 1: Transparency Points

process	decision-making processes					framework agreements		
	direct award processes			the most suitable provider process	the competitive process	establishing a framework agreement	contracts based on a framework agreement without competition	contracts based on a framework agreement following competition
	A	B	C					
Making intentions clear in advance								
Publishing the intended approach in advance				✓				
Publishing a notice for a competitive tender					✓	✓		
Communication of the decision								
Publishing the intention to award notice			✓	✓	✓	✓		✓
Confirmation of the decision								
Publishing a confirmation of award notice	✓	✓	✓	✓	✓	✓	✓	✓
Contract modification								
Publishing a notice for contract modifications	✓	✓	✓	✓	✓	✓	✓	✓

13.3 Table 2: Transparency Requirements

Overview of PSR transparency requirements

The table below sets out the different PSR processes, the transparency requirements that apply to them, and which FTS notices must be published.

Activity			Provider selection and contract award				
Stage			Making intentions clear in advance		Communication of the decision	Confirmation of the decision	
FTS notice			Prior Information Notice (PIN) - F01	Contract Notice - F02	Contract Award Notice (Intention to Award) - F03	Contract Award Notice (Confirmation) - F03	Corrigendum Notice to Contract Award Notice (Intention to Award) - F14
PSR decision circumstance	direct award process A	Where the nature of the service means the existing provider is only one capable provider.	No	No	No	Yes	No
	direct award process B	Where people have a choice or providers and the number of providers is not restricted by the relevant authority.	No	No	No	Yes	No
	direct award process C	Where the existing provider is satisfying the existing contract and likely to satisfy the proposed contract to a sufficient standard, and where the proposed contracting arrangements are not changing considerably.	No	No	Yes	No	Yes
	most suitable provider process	Identifying the most suitable provider without a competitive tendering exercise.	Yes	No	Yes	No	Yes
	competitive process	Competitive tendering.	Optional	Yes	Yes	No	Yes
	urgent situations	Where there is an award, or a contract modification to address an urgent situation.	No	No	No	Yes	No
PSR decision circumstance	framework agreements	Establishing a framework agreement.	Optional	Yes	Yes	Yes	No
		Awarding a contract based on a framework agreement without competition (i.e. using a direct award process in accordance with the terms of that framework agreement)	No	No	No	Yes	No
		Awarding a contract based on a framework agreement using the Competitive Process (as amended).	No	No (but must invite those party to the framework to submit an offer)	Yes	Yes	No

Modifying an existing contract (where the modification is equal to or over £500,000.
Contract variation
Modification Notice (Intention to Vary) - F20
Yes

For abandoning a PSR process, please use a Corrigendum Notice (F14) to the last notice published.

14.0 Keeping records of decision-making

- 14.1 The relevant information requirements are detailed in Regulation 24.
- 14.2 The ICB will make and keep clear records detailing their decision-making process and rationale. This must be done for all provider selection processes (direct award process A, B and C, the most suitable provider process, and the competitive process), when concluding a framework agreement, when awarding a contract based on a framework agreement without competition, and when awarding a contract based on a framework agreement following the competitive process. This includes where a provider selection process was abandoned or where the ICB decided to return to an earlier step in the process. Records must include:
- a) Name of the provider to which the contract has been awarded or the name of any provider who is a party to a framework agreement and the address of their registered office or principal place of business.
 - b) The decision-making process followed to select a provider(s), including details of the procedure used when the competitive process is followed.
 - c) The reasons for these decisions.
 - d) Details of the individual/individuals making the decision.
 - e) Any declared or potential conflicts of interest for individuals involved in decision-making and how these were managed.
 - f) Where a procurement is abandoned, the date on which it is abandoned.
- 14.3 The ICB requires that records are kept when contracting for mixed procurements, including how the procurement meets the requirements for mixed procurements under this regime.
- 14.4 When following direct award process C or the most suitable provider process, records must also include:
- a) A description of the way in which the key criteria (e.g., weighting, hierarchy, or more informal description of importance) were taken into account, and how the basic selection criteria were assessed when making decisions. We expect that this includes the relative importance of the key criteria that the ICB used to make a decision, the rationale for the relative importance of the key criteria, and the rationale for choosing the provider with reference to the key criteria.
- 14.5 When following the competitive process (including when concluding a framework agreement or when awarding a contract based on a framework agreement following the competitive process), records must also include:
- a) A description of the way in which the key criteria were taken into account, the basic selection criteria were assessed, and contract or framework award criteria were evaluated when making a decision. We expect that this includes the relative importance of the key criteria that the ICB used to make a decision, the rationale for the relative importance of the key criteria, and the rationale for choosing the provider with reference to the key criteria.
- 14.6 When concluding a framework agreement, we expect that records include the terms and conditions that will be laid down by the framework agreement, and include which the ICB are part of the framework agreement. When awarding a contract from a framework agreement, we expect that records include which framework agreement the contract is being awarded from.
- 14.7 The ICB may need to disclose information on the rationale for their decision making under the Regulations if a representation is made (see [standstill period](#)). We expect the ICB to keep their records for a period of time that is in line with the organisation's record keeping policies and any applicable legislation.

- 14.8 The ICB will keep records of their decisions and decision-making processes when modifying a contract.
- 14.9 When awarding or modifying a contract in an urgent circumstance, the ICB will make and keep clear records detailing their decision-making process and rationale. Records must include:
- a) Justification for using the urgent circumstances exemption.
 - b) Name of the provider(s) to which the contract has been awarded and the address of its registered office or principal place of business.
 - c) The approach taken to select a provider and the process followed (i.e., urgent circumstance).
 - d) Details of the individual/individuals making the decision.
 - e) Any declared or potential conflicts of interest of individuals making the decision (not including individual names) and how these were managed.

11. Annual summary

- 15.1 The annual summary requirements are set out in Regulation 25.
- 15.2 The ICB will publish a summary of their application of the PSR annually online (e.g., via the ICB's annual reports or annual governance statement). We expect the first annual summary to relate to contracts awarded using the PSR between 1 January 2024 – 31 March 2025, and we expect this to be published no later than six months following the end of 2024/2025 financial year. Following the first annual summary, all other annual summaries must be published no later than six months following the end of the financial year it relates to.
- 15.3 This must include, in the year to which the summary relates, the:
- a) Number of contracts directly awarded under direct award processes A, B or C.
 - b) Number of contracts awarded under the most suitable provider process.
 - c) Number of contracts awarded under the competitive process.
 - d) Number of framework agreements concluded.
 - e) Number of contracts awarded based on a framework agreement.
 - f) Number of urgent contracts awarded and urgent modifications (in line with the urgent awards or contract modifications section)
 - g) Number of new providers awarded contracts.
 - h) Number of providers who ceased to hold any contracts with the ICB.
 - i) Details of representations received, including:
 - i) The number of representations received in writing and during the standstill period in accordance with Regulation 12(3).
 - ii) Summary of the outcome of all representations received and of the nature and impact of those representations.
 - j) In addition, the ICB will publish:
 - i) Total number of providers the ICB is currently contracted with.
 - k) Details of any PSR review panel reviews:
 - l) Number of requests for consideration received by the PSR review panel.
 - m) Number of requests accepted and rejected by the PSR review panel for consideration.
 - n) Number of times where the PSR review panel advised the ICB to re-run or go back to an earlier step in a provider selection process under the PSR, and the number of times the advice was followed.

12. Monitoring requirements

- 16.1 The monitoring requirements are set out in Regulation 26.
- 16.2 The ICB will monitor their compliance with the Regulations. The results of the monitoring must be published online annually (and may be integrated into other annual reporting requirements) and include processes, decisions made under the PSR, contract modifications, and declaration and management of conflicts of interests. The ICB may use internal auditors to fulfil these requirements.
- 16.3 If a compliance report finds instance(s) of non-compliance, the ICB will put in place actions to address this issue and to improve adherence with the regime.
- 16.4 **Reviewing decisions during the standstill period:**
- 16.4.1 The standstill period requirements, including for the reviewing of decisions, are detailed in Regulations 12 and 14(3). Provision for independent expert advice is set out in Regulation 23 (see the section on the [PSR review panel](#)) – this includes how the PSR Review Panel may provide advice during the standstill period.
- 16.4.2 This section explains how certain decisions made under the regime can be reviewed during the standstill period before they are finalised, and how a contract is awarded under certain procedures.
- 16.5 **What is the standstill period?**
- 16.5.1 The standstill period must be observed once a notice of intention to make an award to a provider under direct award process C, the most suitable provider process, or the competitive process has been published. This includes concluding a framework agreement or awarding a contract based on a framework agreement following a mini-competition.
- 16.5.2 The standstill period follows a decision to select a provider and must end before the contract can be awarded. It gives time for any provider who might otherwise have been a provider of the services to which the contract relates to make representations; and for the ICB to consider those representations and respond as appropriate. See the section below on receiving representations for further details.
- 16.5.3 The standstill period count starts from the day after the day that the relevant notice is published and must last for a minimum period of eight working days, during which time representations can be made. If any representations are received during this period, then the standstill period will remain open until the ICB provides any requested information, considers the representations, and makes a further decision.
- 16.5.4 The ICB shall be aware of, and adhere to the process and timeline for the review of decisions under this regime and are expected to plan the arrangement of services accordingly. The ICB will ensure that the review of the decision-making process can be completed, and a new contract awarded, before the existing contract ends.
- 16.6 **When does the standstill period end?**
- 16.6.1 Representations must be received before midnight on the eighth working day of the standstill period.
- 16.6.2 The standstill period will end at midnight on the eighth working day, if:
- No representations are received by midnight on the eighth working day, or
 - representations do not meet the required conditions (set out below).
 - Where representations meeting the required conditions are received, the standstill period continues until the ICB:
 - Completes its review.

- ii) Communicates its further decision (with reasons) to the provider who submitted the representations and to the provider to whom it intended at the beginning of the standstill period to award the contract to.
 - iii) Concludes it is ready to award the contract, or that it wishes to return to an earlier step in the process or abandon the process.
- 16.6.3 The end of the standstill period must be at least five working days after the ICB has communicated its decision to the provider. The minimum five working days' notice allows for providers that remain unsatisfied about the response given by a the ICB to their representations to seek the involvement of the PSR review panel (see PSR review panel section below).
- 16.6.4 Where the ICB 's decision is to award the contract (rather than return to an earlier step in the process or abandon the process), the standstill period should end when the ICB concludes it is ready to award the contract and there has been at least five working days since the ICB communicated its further decision. Where within five working days of receiving the ICB 's further decision, the provider requests an independent review from the PSR review panel, the standstill period should continue, other than in exceptional circumstances. See the PSR review panel section for further details on its process and how to request a review.
- 16.6.5 In this situation, if the PSR review panel accepts the request, the standstill period should not end until the ICB makes a further decision having considered the advice provided by the PSR review panel. The ICB will again give at least five working days' notice of its further decision before the standstill period can come to an end and the ICB proceeds to take forward its further decision.
- 16.6.6 The standstill period must end before a contract is awarded and a confirmation of the decision is published (or before returning to an earlier step in the process or abandoning a process). The transition of services must only take place after the standstill period has ended and the contract has been awarded.
- 16.7 **Receiving representations**
- 16.7.1 Providers may make a representation to the ICB within the first eight working days of the standstill period (i.e., starting from the day after the intention to award notice has been published). Providers cannot submit a representation after midnight of the eighth working day of the standstill period, even if the standstill period has been extended in response to a representation from another provider.
- 16.7.2 The purpose of making a representation is to seek a review of the decision made, to determine whether a the ICB has applied the regime correctly and made an appropriate provider selection decision.
- 16.7.3 The ICB will only respond to representations that meet all the following conditions:
- a) The representation comes from a provider that might otherwise have been a provider of the services to which the contract relates.
 - b) The provider is aggrieved by the decision of the ICB.
 - c) The provider believes that the ICB has failed to apply the regime correctly and is able to set out reasonable grounds to support its belief.
 - d) The representation is submitted in writing (which includes electronically) to the ICB within eight working days of the start of the standstill period.

16.7.4 When awarding a contract based on a framework agreement, e.g., following a mini-competition, only providers that were party to the framework agreement and i) took part in the mini-competition but were unsuccessful, or ii) were excluded from the mini-competition, may make a representation to the ICB.

16.8 **Considering representations**

16.8.1 The ICB will ensure that appropriate internal governance mechanisms are in place to deal with representations made against provider selection decisions. To this end, the ICB should, where possible, ensure that decisions are reviewed by individuals not involved in the original decision. Where this is not possible, the ICB should ensure that at least one individual not involved in the original decision is included in the review process.

16.8.2 If the ICB is considering representations on the same issue from multiple providers, it may consider these together if appropriate.

16.8.3 Where a representation is received within the eight working days, the ICB :

- a) Must ensure that the provider is afforded an opportunity to explain or clarify its representation(s) if these are not clear.
- b) Is expected to provide an indicative timeframe for when the representation might be considered by, and when the provider might reasonably expect a decision to be made.
- c) Must provide any information requested by the provider that the ICB is required to keep under the regime (see record keeping) as soon as possible, except where this:
 - i) Would prejudice the legitimate commercial interests of any person, including the ICB.
 - ii) Might prejudice fair competition between providers.
 - iii) Would otherwise be contrary to the public interest.
 - iv) Must review the evidence and information used to make the original decision, taking into account the representations made.
 - v) Must consider whether the representation has merit (e.g., it identifies that the process has not been correctly followed or brings to light information that has a bearing on the decision reached).
- d) The provider that made the representations is expected to respond promptly and concisely to questions from the ICB about the points it has made, and if it cannot respond within a reasonable timeframe then it is expected to provide a justification.
- e) The ICB will allow sufficient time and opportunity for the provider that made the representations to respond to questions from the ICB. In the event that the provider fails to respond/communicate, then it is for the ICB to decide whether to complete its assessment of the representations and communicate their decision to the provider.

16.9 **Outcome of representations**

16.9.1 Where the ICB finds that a representation has merit (e.g., it identifies that the process has not been followed correctly or brings to light information that has a bearing on the decision reached), it must further consider whether this impacts on the intention to award a contract to the selected provider. It must then decide whether to:

- a) Enter into a contract or conclude the framework agreement as intended.
- b) Go back to an earlier step in the selection process, either to the start of the process or to where a flaw was identified, rectify this, and repeat that step and subsequent steps (see repeating a step).
- c) Abandon the provider selection process (see abandoning a process).

- 16.9.2 The ICB will communicate the decision described above promptly and in writing, to:
- a) The provider that made the representation.
 - b) The provider to which the ICB intended at the beginning of the standstill period to award the contract, or all providers with which the ICB intended at the beginning of the standstill period to conclude the framework agreement.
- 16.9.3 The standstill period can only end once the ICB has reviewed its decision, shared its conclusion (in writing) with the relevant providers, and concluded that it is ready to award the contract, or that it's going to return to an earlier step in the process, or abandon the process.
- 16.9.4 The ICB will allow at least five working days following the day on which they sent their response to the provider, before the standstill period comes to an end. This time allows the provider to consider the response of the ICB, seek further clarifications, and to consider whether to request a further review by the PSR review panel. This time also allows the ICB to reconsider their decision and make any subsequent decisions if necessary. The ICB will communicate any such further decision in writing to the provider (as outlined above).
- 16.9.5 If a panel review is requested and accepted, then the standstill period would usually continue until after the PSR review panel has given its advice and the ICB has made its further decision in light of that advice.
- 16.10 **The PSR review panel**
- 16.10.1 NHS England has established the PSR review panel to provide independent expert advice to the ICB with respect to the review of PSR decisions during the standstill period.
- 16.10.2 If a provider remains unsatisfied about the response given by a the ICB to their representations, then that provider may seek the involvement of the PSR review panel. The PSR review panel may consider whether the ICB complied with the Regulations and may provide advice to the ICB. The ICB should then make a further decision about how to proceed.
- 16.11 **The Chair and the Panellists**
- 16.11.1 The PSR review panel Chair will preside over the PSR review panel and the Choice Provider Qualification Complaints Panel.
- 16.11.2 Panellists will be independent experts who are made available by, or endorsed by, NHS England or the Secretary of State for Health and Social Care to provide advice relating to the ICB's compliance with these Regulations. Panellists will be selected on the basis of having the relevant expertise, qualifications, or experience relating to the commissioning or procurement of health care services that enables them to carry out a review efficiently and effectively. Panellists must be able to offer an impartial and unbiased opinion, and they must not have any conflicts of interest in the provider selection process in question (see [conflicts of interest section](#)). This means that PSR review panel members must not have, directly or indirectly, a financial, economic, or other personal interest that might be perceived to compromise their impartiality and independence in the context of the provider selection process in question. Panel members must recuse themselves from providing advice on any provider selection processes where they have a conflict of interest or a perceived conflict of interest.
- 16.11.3 Further detail on how the PSR review panel will operate will be set out on the [PSR website](#).

16.12 **The PSR Review Panel Process**

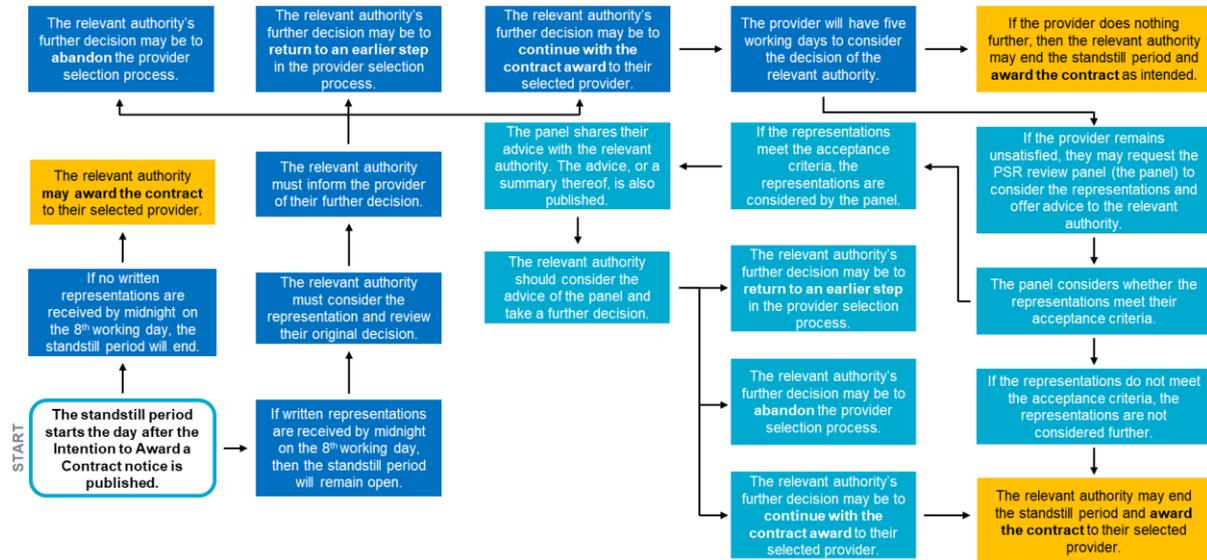
- 16.12.1 If a provider wishes to request the PSR review panel to consider their representation further, then they must submit their request through the [PSR website](#) within five working days of receiving the ICB 's decision following the ICB 's review of their representation. If the provider submits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

16.13 **Urgent contract modifications during the standstill period**

- 16.13.1 Where the ICB is awaiting the advice of the PSR review panel during the standstill period, the ICB may urgently modify the existing contract in accordance with Regulation 14(3), subject to all the below applying:
- a) There is an existing contract for the health care services to which the proposed contracting arrangement relates, and the ICB considers that the term of the existing contract is likely to expire before the end of the standstill period.
 - b) The ICB considers it necessary or expedient to modify the existing contract prior to the new contract taking effect in order to ensure continuity between the existing contract and proposed award of a new contract.
 - c) The ICB considers that it is not possible to satisfy the requirements of Regulations 6 to 13 before the term of the existing contract expires.

- d) The ICB may only extend the length of the existing contract and must not otherwise modify the contract. The ICB is expected to only extend the contract for as long as necessary to ensure continuity between the existing and the new contract.

16.14 Process for - Standstill period



16.15 Process for reviewing decisions during the standstill period

13. Modification of contracts and framework agreements during their term

- 17.1 The requirements for the modification of contracts or framework agreements during their term are detailed in Regulation 13.

17.2 **Overview**

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

17.3 **Permitted modifications**

- 17.3.1 Under this regime, some modifications are permitted and so do not require a new selection process.
- 17.3.2 Modifications to contracts originally awarded under direct award process A or B.
- 17.3.3 Where the original contract was awarded under direct award process A or B and the modification does not materially alter the character of the contract, then the modification is permitted.
- 17.3.4 If that modification is attributable to a decision of the ICB and the cumulative change in the lifetime value of the contract since it was entered into is £500,000 or more, the modification is still permitted, but the ICB will publish a transparency notice.
- 17.3.5 Modifications to contracts originally awarded under direct award process C, the most suitable provider process, or the competitive process
- 17.3.6 Where the original contract was awarded under direct award process C, the most suitable provider process, or the competitive process (including framework agreements), then modifications are permitted in the following instances:
- a) The modification is clearly and unambiguously provided for in the contract or framework agreement documents (i.e., the scope and nature of the potential change has been described in detail in the existing contract).
 - b) The modification is solely a change in the identity of the provider due to succession into the position of provider following corporate changes (e.g., as the result of a corporate takeover, merger, acquisition or insolvency), and where the ICB is satisfied that the provider meets the basic selection criteria.

- 17.3.7 The modification is made in response to external factors beyond the control of the ICB and the provider, including but not limited to changes in:
- a) Patient or service user volume.
 - b) Prices in accordance with a formula provided for in the contract documents (e.g., uplifts in prices published in the NHS Payment Scheme or index linking) which do not render the contract or framework agreement materially different in character.
- 17.3.8 The modification is attributable to a decision of the ICB and does not materially alter the character of the contract or framework agreement, and the cumulative change in the lifetime value of the contract or framework agreement, compared to its value when it was entered into, is under £500,000 or under 25%.
- 17.3.9 If the ICB makes a permitted modification (to a contract that was originally awarded under direct award process C, the most suitable provider process, and the competitive process), it must publish a transparency notice where all the below apply:
- a) That modification is attributable to a decision of the ICB
 - b) The cumulative change in the lifetime value of the contract or framework agreement is £500,000 or more and this represents less than 25% of the lifetime value of the original contract or framework agreement since it was entered into or concluded.
- 17.3.10 To note contracts entered into before the commencement of the PSR must be modified in line with this section.

17.4 **Modifications that are not permitted**

- 17.4.1 Modifications that make the existing contract or framework agreement materially different in character are not permitted under this regime without undertaking a new provider selection process. Modifications are also not permitted where:
- a) the decision to make the modification is attributable to the ICB and it represents (i) a cumulative change of 25% or more in the lifetime value of the original contract or framework agreement and (ii) £500,000 or more compared to the lifetime value of the original contract or framework agreement (when it was entered into).
- 17.4.2 In these cases, the ICB will follow the appropriate decision-making process to select a provider (or group of providers) for the substantially changed service.

17.5 **Contract modifications in urgent situations**

- 17.5.1 Contract modifications may need to be made urgently. In these circumstances the ICB will still be transparent about their decision-making. Details of what needs to be published in these situations and when can be found in the urgent awards or contract modifications sections.

14. **Sector-specific considerations**

18.1 **Primary medical, dental, pharmaceutical and ophthalmic services**

- 18.1.2 Most primary care services are in scope of the regime, including primary medical, primary dental (community dental services commissioned under s3B(1)(a) of the 2006 Act are also included in the scope of the PSR, although not classified as primary care services as defined in the 2006 Act) and eye care services. Community pharmaceutical services provided by arrangements made under the [National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#) are not in scope of the PSR. The way different forms of primary care may be dealt with under the regime will depend on the situation and contracts/agreements involved.

- 18.1.3 Core primary care services are often commissioned on the basis of continuous contracts that run until terminated and do not need to be routinely rearranged by the ICB. When a the ICB is arranging primary care services, it must consider which provider selection process is appropriate (see [making decisions under the PSR](#)). Further detail on how the PSR applies to primary care can be found in [Annex C](#).

15. Mixed procurement

- 19.1 Mixed procurement is defined in Regulations 3(2), 3(3), 3(4), and 3(5).
- 19.1.1 Contracts to deliver health care services may contain multiple elements, some of which are health care services clearly within the scope of the PSR, and some of which, if procured alone, would be within the scope of the wider public procurement regulations (see the PCR).
- 19.1.2 The PSR must not be used for the procurement of goods or non-health care services alone.
- 19.1.3 When a contract comprises a mixture of in-scope health care services and out-of-scope services or goods, the ICB may only use the PSR to arrange those services when both of the below requirements are satisfied:
- a) The main subject-matter of the contract is in-scope health care services
 - b) The ICB is of the view that the other goods or services could not reasonably be supplied under a separate contract.
 - c) The main subject-matter of the contract is determined by the component that is higher:
 - i) The estimated lifetime value of the health care services.
 - or
 - ii) The estimated lifetime value of the other goods or services.
- 19.1.4 The ICB may only determine that other goods or services could not reasonably be supplied under a separate contract where the ICB is of the view that procuring the health care services and the other goods or services separately would, or would be likely to, have a material adverse impact on the ICB 's ability to act in accordance with the procurement principles.
- 19.1.5 The ICB will keep an internal record of the rationale for their decision, as this would be a reason for the decision made (see [transparency](#)).
- 19.1.6 Where the above tests are met, then the regime applies, and a mixed procurement can be undertaken using the PSR. Where these tests are not met, then this regime does not apply and the procurement must be undertaken as per the rules on wider public procurement (see the [PCR](#)).
- 19.1.7 A notable area of the use of mixed procurement may be the arrangement of health care and social care services together in a single contract. This may be done under the regime when the highest estimated value of the contract is attributable to the health care services, and when procuring the health care services and social care services separately would have a material adverse impact on the ICB 's ability to follow the procurement principles, e.g., to improve the quality or the efficiency (which may include value) of the procured services.
- 19.1.8 Other examples of services that can be arranged under the PSR, but that might require some extent of mixed procurement of health care and non-health care services to achieve their core objectives, include but are not limited to:
- a) Health care and social care services under a section 75 partnership arrangement

- b) Patient transport, which includes health care services (for which the provider requires CQC registration) and non-health care services (where no CQC registration is required)
- c) Packages arranged under the Better Care Fund
- d) Discharge to assess services
- e) Mental health aftercare services, such as support services arranged under section 117 of the Mental Health Act 1983
- f) Prison services that include health care services
- g) Asylum seeker services that include health care services
- h) Veteran services that include health care services.

16. Conflicts of interest

18.2 The conflicts of interest requirements are detailed in Regulation 21.

18.3 Overview

20.2.1 The routine declaration and management of conflicts of interest is a key aspect of good governance, and critical both in maintaining public confidence in decision-making and in protecting staff, councillors, and trustees from allegations that they have acted inappropriately.

20.2.2 The ICB will take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising during the application of the PSR. The ICB will ensure that their governance arrangements for making provider selection decisions can manage conflicts that arise. They may wish to give board committees or non-executive directors (or other senior persons independent of the decision-making process) a role in managing and resolving conflicts of interest relating to provider selection decisions.

20.2.3 The way conflicts of interest are managed needs to be sympathetic to the vision of collaboration and joint working set out in the NHS Long Term Plan and to the policy intent of the 2022 Act in relation to bringing NHS organisations and local authorities together to collaborate in making decisions about care provision. Therefore, we expect the ICB to follow and have regard to that vision and policy, when managing conflicts of interest around provider selection decisions.

20.2.4 Conflicts of interest are defined in Regulation 21(2)(a) as:

- a) “The concept of conflicts of interest includes any situation where an individual has, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement process”.
- b) Any such individual is required to recuse themselves from the decision-making process of the procurement process.
- c) We advise this section is read in conjunction with other relevant regulations and statutory guidance, as applicable to the ICB.

18.4 Principles of management

20.3.1 We expect the management of conflicts of interest to be based on the following principles:

20.3.2 All decisions made under this regime must be clearly and objectively directed towards the delivery of a service which the local authority has power to provide. Individuals involved in decisions relating to these functions are expected to act clearly in service of those functions and duties, rather than furthering [their own] direct or indirect financial, economic, or other personal, professional, or organisational interests.

- 20.3.3 ICBs have been created with the intention of giving statutory NHS provider, local authority, and primary medical services (general practice) nominees a role in decision-making. The ICB will act in accordance with the first principle, and while the Regulations allow for the fact that an ICB member may also be an employee, director, partner or otherwise holding a position with one of these organisations, the possibility of actual and perceived conflicts of interest arising will remain. In addition, any member who is an employee, director, partner or otherwise holding a position within a provider taking part in a procurement process must recuse themselves from the decision-making process. For all PSR decisions, ICBs must carefully consider whether an individual's role in another organisation may result in actual or perceived conflicts of interest and if so whether that outweighs the value of the knowledge they bring to the process.
- 20.3.4 The personal and professional interests of all individuals involved in decisions about provider selection need to be declared, recorded, and managed appropriately, following the ICB's established conflicts of interest arrangements. This includes being clear and specific about the nature of any interest and of any conflict that may arise with regard to a particular decision, and how any conflicts are managed for each decision. To fulfil the transparency requirements under this regime, the ICB will keep internal records of individuals' conflicts of interest and how these were managed (see transparency).
- 20.3.5 Any conflicts of interests and how they were managed must be published alongside the confirmation of the decision to select a provider (see transparency). When the decision is made by a committee/group, it is advised that the interests of the committee/group as a whole are declared and not the names of individuals in the committee/group to whom they relate. When the decision is made by an individual, it is advised that conflicts of interest are declared against the individual's job title rather than their name.
- 20.3.6 Actions to mitigate conflicts of interest when making procurement decisions are expected to be proportionate and to seek to preserve the spirit of collective decision-making wherever possible. Mitigating actions are expected to account for a range of factors, including the impact that the perception of an unsound decision might have, and the risks and benefits of having a particular individual involved in making the decision. Mitigations may include:
- a) Excluding a conflicted person from both the discussion and the decision-making
 - b) Excluding the conflicted individual and securing technical or local expertise from an alternative, unconflicted source
 - c) arranging decision-making structures so a range of views and perspectives are represented, rather than potentially conflicted individuals being in the majority
 - d) convening a committee without the conflicted individual present, e.g., when dealing with particularly difficult or complex decisions where members may not be able to agree, or to prevent an unsound decision being taken and/or the appearance of bias.
- 20.3.7 We expect the ICB to clearly distinguish between those individuals who are involved in formal decision-making and those whose input informs decisions but who are not involved in decision-making itself (such as through shaping the ICB's understanding of how best to meet patients' needs and deliver care for its population). The way conflicts of interest are managed is expected to reflect this distinction. For example, where independent providers (including those in the VCSE sector) hold contracts for services, it would be appropriate and reasonable for the ICB to involve them in discussions, such as about pathway design and service delivery, particularly at place level. However, this would be clearly distinct

- from any considerations around contracting and commissioning, from which they would be excluded.
- 20.3.8 Where decisions are being taken under the competitive process, any individual who is associated with an organisation that has a vested interest in the procurement must recuse themselves from decision-making during that provider selection process. This includes ICB members who are also employees, directors, partners, or otherwise holding a position within a provider when that provider is intending to take part in the procurement process.
- 20.3.9 The way conflicts of interest are declared and managed is expected to contribute to a culture of transparency about how decisions are made.

17. Urgent awards or contract modifications

- 21.1 The requirements for an urgent award or contract modification are detailed in Regulations 14(1), 14(2), and 14(4).
- 21.2 There are limited occasions where the ICB may need to act urgently and award or modify contracts to address immediate risks to patient or public safety.
- 21.3 These circumstances include where:
- a) A new service needs to be arranged rapidly in an unforeseen emergency or local, regional or national crisis, e.g., to deal with a pandemic
 - b) Urgent quality/safety concerns pose risks to patients or the public and necessitate rapid changes
 - c) An existing provider is suddenly unable to provide services under an existing contract (for example, a provider becomes insolvent or experiences a sudden lack of critical workforce) and a new provider needs to be found.
- 21.4 In urgent situations, the ICB may make the following decisions without following the steps required under this regime:
- a) Re-award contracts held by the existing provider(s)
 - b) Award contract(s) for new services
 - c) award contract(s) for considerably changed services
 - d) Make contract modifications (without limitation).
- 21.5 An urgent award or modification must only be made by the ICB when all the below apply:
- a) The award or modification must be made urgently
 - b) The reason for the urgency was not foreseeable by and is not attributable to the ICB
 - c) Delaying the award of the contract to conduct a full application of the regime would be likely to pose a risk to patient or public safety.
 - d) The ICB will not use the urgent award or contract modification provisions in this regime if the urgency is attributable to the ICB not leaving sufficient time to make procurement decisions and run a provider selection process— poor planning is not an acceptable reason to use these provisions.
- 21.6 In these urgent circumstances, the ICB:
- a) Are expected to limit the contract term or contract modification term to that which is strictly necessary. This is advised to be long enough to address the urgent situation and to conduct a full application of the PSR for that service at the earliest feasible opportunity. We anticipate that contracts awarded under Regulation 14 will have a duration of no longer than 12 months. If the duration is to be longer, the ICB will justify and record this decision.

- b) Must keep records of their decision-making, including a justification for using an urgent award (see [transparency section](#) and [Annex B](#)).
- c) Must be transparent about their decision through issuing an urgent award notice (see [transparency section](#) and [Annex B](#)).
- d) The ICB may also make specific urgent modifications to extend the length of an existing contract during the standstill period if advice is being sought from the PSR review panel, in accordance with Regulation 14(3).

18. Termination of contracts

- 22.1 The requirements for contract terminations are set out in Regulation 22.
- 22.2 The ICB will ensure that each contract awarded contains provisions enabling its termination by the ICB if:
- a) the contract has been subject to modifications that are not permitted under the regime (see [contract modifications](#)) without following a new provider selection process
 - b) the provider, at the time of the contract award, should have been excluded from the procurement process in line with the exclusion criteria set out in Regulation 20.
- 22.3 The provisions allowing the termination of a contract may address how such terminations would take place, e.g., by setting out a notice for terminations and by addressing any consequential matters that may arise from that termination. If the contract does not contain specific provisions allowing the ICB to terminate on the grounds specified above, there is an implied term of any contract awarded under the PSR that the ICB may do so by giving reasonable notice.

19. Grants

- 23.1 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).
- 23.2 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)
- 23.3 Grants should not be used to fund specified on-going service delivery; this should be delivered via a formal contracting route.
- 23.4 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.
- 23.5 When considering issuing a grant the ICB should consider whether:
- a) The additional investment will give the organisation a competitive advantage.
 - b) The ICB are actually purchasing a service.
 - c) The ICB are funding the entire organisation.
- 23.6 If any of the previous scenarios are apparent the ICB should reconsider whether their contribution to the organisation / project is appropriate through a grant.
- 23.7 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.

20. Social Value

- 24.1 The ICB will seek to ensure that the decisions they make about which providers should provide services are aimed at maximising 'social value' by contributing to improvements in social, economic, and environmental conditions aligned to local priorities.
- 24.2 The ICB will be aware of other requirements and duties, not set out in legislation. For example, NHS England, ICBs, NHS trusts and NHS foundation trusts are expected to adhere to NHS England's net zero emissions requirements, the application of net zero and NHS social value, and Carbon Reduction Plan requirements in the procurement of NHS goods and services.
- 24.3 In assessing social value, Commissioning leads are required to determine how the arrangements with providers under consideration impact on:
- Environmental issues and sustainable development, including addressing climate change, making and meeting commitments around reducing emissions, air pollution and consumption and waste, through promoting circular economy principles as well as enhancing the natural and built environment as applicable.
 - Inclusive and 'good' employment that increases equality of opportunity in the workplace and supports a diverse workforce, designs in equity, provides fair terms and conditions and supports staff wellbeing, physical and mental health, supports opportunities for local people and/or population groups experiencing health or other inequalities and eliminates modern slavery.
 - Local inclusive and sustainable economies that decrease economic inequality and poverty, including through employment as an economic and health intervention and payment of a living wage.
 - Community cohesion and the wider health and wellbeing of the population, including by helping communities to manage and recover from the impact of COVID-19.
 - Social determinants of health (e.g., employment, income, housing, local environment, food, transport, community, safety).
 - The ICB will consider the extent to which providers have acted to increase social value within their own activities, and how social value improvements can lead to other improvements in health outcomes.
- 24.4 The ICB will consider social value in relation to the other criteria in this regime For example:
- A that leads to improved air quality may contribute to improved health outcomes over time and hence projected savings.
- 24.5 The ICB will consider how a provider's policies and practices align with:
- Moving towards net zero and delivering social value in the procurement of goods and services.
 - Increasing the impact of organisations providing health services as anchor institutions and partners in place.
 - Supporting broader social, environmental, and economic development.
 - Eliminating modern slavery in the supply chain and the extent to which providers have conducted due diligence on their own supply chains, identifying any risks of labour standards abuse and putting in place mitigation to reduce these risks.
 - The ICB will ensure that arrangements with providers do not stifle the potential for development and adoption of sustainability within the services or result in a local provider market that may not be able to support the development of new or sustainable services for patients in the future.
- 24.6 Social value, when incorporated effectively, will help reduce health inequalities, drive better environmental performance, and deliver even more value from procured

- products and services. Core20PLUS5 is a national NHS England approach to inform action to reduce healthcare [NHS England » Core20PLUS5 \(adults\) – an approach to reducing healthcare inequalities](#).
- 24.7 Duties and guidance related to social value
- 24.8 [Social Value Model](#)
- 24.9 [Delivering a Net Zero National Health Service Strategy](#)
- 24.10 [NHS Net Zero Supplier Roadmap](#)
- 24.11 NHS England guidance on [Applying net zero and social value in the procurement of NHS goods and services](#)
- 24.12 The Health and Care Act 2022 places a duty on NHS organisations to have regard to the need to contribute to complying with the net zero emission target and adapt to the impacts of climate change.
- 24.13 The ICS currently has a Green Action Plan which will be superseded by the ICS system wide Green Plan.

<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>

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

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

Procurement Policy Note 06/20 – taking account of social value in the award of central government contracts - GOV.UK (www.gov.uk)

21. Ethical Considerations

- 25.1 Any competitive tendering undertaken by the ICB will be conducted so that any provider with the necessary abilities to provide a service has a fair opportunity to secure the tender on offer.
- 25.2 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.
- 25.3 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.
- 25.4 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.
- 25.5 the ICB will encourage providers to conform to the Ethical Trading Initiative Base Code (ETI Base Code), or equivalent.⁵

22. Equality Impact Assessment

- 26.1 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.
- 26.2 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.
- 26.3 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.
- 26.4 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 ICB s EIA requirements.
- 26.5 All Business Cases relating to commissioning investment/disinvestment decisions will include EIAs.

23. Data Protection Impact Assessment

- 27.1 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.

24. Quality Impact Assessment

- 28.1 A requirement under PSR is that the ICB will act with a view to improving the quality of the services.
- 28.2 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.
- 28.3 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.

25. Freedom of Information

- 29.1 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.

- 29.2 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/>

26. Public and Patient Engagement

- 30.1 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.
- 30.2 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.
- 30.3 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.
- 30.4 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.
- 30.5 Each procurement activity should consider the merits of having patient and, or public representative.

27. eProcurement Portal – Atamis

- 31.1 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.
- 31.2 Providers are required to register with the portal, and this captures data which can be used to auto-populate documentation used in procurement processes.
- 31.3 The Atamis portal is used for e-Tendering conducted for the ICB on their behalf by MLCSU

28. Engaging with the Procurement Team

- 18.5 **The procurement team is responsible for:**
- a) Supporting direct award processes and leading procurement processes across the ICS, when spend is directly from the ICB / Alliances.
 - b) Providing advice regarding governance of spend across the ICB, including non-healthcare service spend.
 - c) Supporting on the application of the Basic Selection Criteria and the Key Criteria in relation to the Provider Selection Regime.

- d) Collaborate on the development of policy in relation to procurement, including linking with interrelated programmes and initiatives, such as VCSE development, sustainability, and social value.
 - e) Production of reports for presentation at ICB committees.
 - f) Retaining a register of all spend decisions to retain oversight of governance.
 - g) Preparing and delivering training provision about procurement and governance around spend.
- 32.2 The Procurement Team will:
- a) Take responsibility for procurement once a commissioning need has been identified and the required ICB approval has been secured.
 - b) In partnership with the assigned Commissioning Lead, assist in commissioning actions to ensure the requirements of this policy have been fulfilled.
 - c) Ensure all pre-procurement activity is conducted in a robust manner.
 - d) Ensure appropriate options appraisal is conducted.
 - e) Lead on market engagement.
 - f) Lead on procurement training.
 - g) Lead on the administrative and audit requirements linked to procurement.
- 32.3 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.
- 32.4 To enable the Procurement Team to undertake their role the following information will need to be provided:
- a) Business case / commissioning proposal which supports the service specification.
 - b) Documentation demonstrating the project has gained the appropriate sign-off to proceed.
 - c) A service specification completed in the NHS standard contract template where appropriate.
 - d) Quality requirements and KPIs agreed and specified.
 - e) A draft contract drawn up to be used as the basis for contract award.
 - f) Any activity, financial, estates, IM&T and TUPE information relevant to the service.
 - g) The required financial model.
 - h) Input into financial spreadsheets and associated documentation.
 - i) Details of any previous or existing contracts for the service.
 - j) Assurance that any necessary patient and public consultation has taken place.
 - k) 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.

29. Internal Policy

- 33.1 Financial thresholds no longer apply to procurement decisions under the PSR.
- 33.2 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.

33.3 In exceptional circumstances, open competition—or competition of any kind—may not be feasible, and a waiver or limitation of competition may be applicable. Commissioners considering using a Single Tender Waiver for Healthcare services must consult a Finance Business Partner and Procurement Team for advice prior to pursuing a waiver. A copy of the STW form can be found at <https://c9online.sharepoint.com/sites/IAN/SitePages/Finance-Guidance.aspx>.

30. Standards of Business Conduct and Conflicts of Interest

34.1 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.

34.2 Maintain a Register of procurement decisions and contracts awarded.

34.3 The management of conflicts of interest to be based on the following principles:
a) All decisions made under this regime will be clearly and objectively directed towards meeting the statutory functions and duties of the ICB. Individuals involved in decisions relating to these functions are expected to act clearly in service of those functions and duties, rather than furthering [their own] direct or indirect financial, economic, or other personal, professional, or organisational interests.

34.4 The ICB has been created with the intention of giving statutory NHS provider, local authority, and primary medical services (general practice) nominees a role in decision-making. The ICB will act in accordance with the first principle, and while the Regulations allow for the fact that an ICB member may also be an employee, director, partner or otherwise holding a position with one of these organisations, the possibility of actual and perceived conflicts of interest arising will remain. In addition, any member who is an employee, director, partner or otherwise holding a position within a provider taking part in a procurement process must recuse themselves from the decision-making process. For all PSR decisions, the ICB will carefully consider whether an individual's role in another organisation may result in actual or perceived conflicts of interest and if so whether that outweighs the value of the knowledge they bring to the process.

34.5 The personal and professional interests of all individuals involved in decisions about provider selection need to be declared, recorded, and managed appropriately, following the ICBs established conflicts of interest arrangements. This includes being clear and specific about the nature of any interest and of any conflict that may arise with regard to a particular decision, and how any conflicts are managed for each decision. To fulfil the transparency requirements under this regime, the ICB will keep internal records of individuals' conflicts of interest and how these were managed (see transparency).

34.6 Any conflicts of interests and how they were managed must be published alongside the confirmation of the decision to select a provider (see transparency). When the decision is made by a committee/group, it is advised that the interests of the committee/group as a whole are declared and not the names of individuals in the committee/group to whom they relate. When the decision is made by an individual, it is advised that conflicts of interest are declared against the individual's job title rather than their name.

34.7 Actions to mitigate conflicts of interest when making procurement decisions are expected to be proportionate and to seek to preserve the spirit of collective decision-making wherever possible. Mitigating actions are expected to account for a range of factors, including the impact that the perception of an unsound decision might

- have, and the risks and benefits of having a particular individual involved in making the decision. Mitigations may include:
- a) Excluding a conflicted person from both the discussion and the decision-making.
 - b) Excluding the conflicted individual and securing technical or local expertise from an alternative, unconflicted source.
 - c) Arranging decision-making structures so a range of views and perspectives are represented, rather than potentially conflicted individuals being in the majority.
 - d) Convening a committee without the conflicted individual present, e.g., when dealing with particularly difficult or complex decisions where members may not be able to agree, or to prevent an unsound decision being taken and/or the appearance of bias.
- 34.8 The ICB will clearly distinguish between those individuals who are involved in formal decision-making and those whose input informs decisions but who are not involved in decision-making itself. The way conflicts of interest are managed is expected to reflect this distinction. For example, where independent providers (including those in the VCSE sector) hold contracts for services, it would be appropriate and reasonable for the ICB to involve them in discussions, such as about pathway design and service delivery, particularly at place level. However, this would be clearly distinct from any considerations around contracting and commissioning, from which they would be excluded.
- 34.9 Where decisions are being taken under the competitive process, any individual who is associated with an organisation that has a vested interest in the procurement must recuse themselves from decision-making during that provider selection process. This includes ICB members who are also employees, directors, partners, or otherwise holding a position within a provider when that provider is intending to take part in the procurement process.
- 34.10 The way conflicts of interest are declared and managed is expected to contribute to a culture of transparency about how decisions are made.
- 34.11 Please refer to the ICBs Standards of Business Conduct Policy for more guidance on COI <https://staffsstoke.icb.nhs.uk/your-nhs-integrated-care-board/our-publications/governance-handbook/all-policies/corporate-policies/>
- 31. Financial assurance**
- 35.1 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.
- 35.2 To provide assurance that services and goods are sourced from financially sound organisations entails proportionate economic and financial standing tests to be undertaken.
- 35.3 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.
- 35.4 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.
- 32. Expenditure approval limits**
- 36.1 Signatory levels included within the Standing Financial Instructions for the ICB.

36.2 The ICBs Scheme of Financial Delegation can be found at [Finance Guidance \(sharepoint.com\)](https://sharepoint.com).

33. Documentation and Audit

37.1 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.

37.2 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.nhsx.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	

34. Procurement Operational Group (POG)

38.1 POG has a responsibility to ensure that appropriate operational processes are in place to procure services effectively and within current legislation, oversee the procurement work plan and deliver the ICBs statutory duty to engage.

38.2 The Procurement Operational Group reports to the ICBs Finance & Performance Committee.

38.3 The full terms of reference for the Procurement Committee are available on the ICBs Procurement webpage.

35. Training and Awareness

39.1 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.

39.2 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.

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

39.4 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.

- 39.5 Decision makers such as procurement evaluation panel members will have access to appropriate levels of training regarding 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.
- 39.6 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.
- 39.7 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.
- 39.8 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.

36. Spot purchasing

- 40.1 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).
- 40.2 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.
- 40.3 Sign off of spot purchase agreements should follow the Scheme of Reservation and Delegation as outlined below.
- 40.4 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.

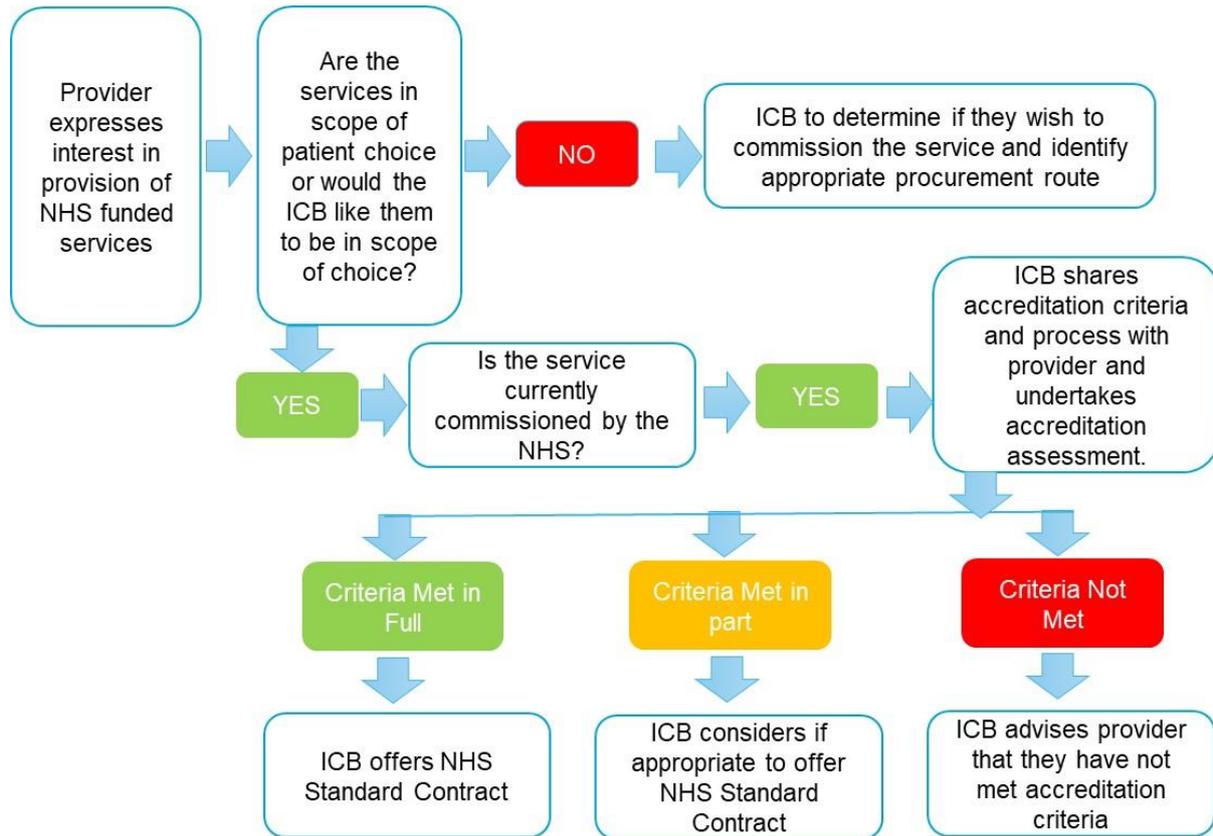
37. Continuing Healthcare approval limits

- 41.1 The ICBs Scheme of Financial Delegation can be found at [Finance Guidance \(sharepoint.com\)](#). This details the ICBs CHC approval limits and Personal Health Budget (PHB) thresholds.

38. Thresholds for contract advertisements

- 42.1 £0

39. Appendix 1- ICB Provider Qualification Flowchart



43.1 Providers should contact: contractingrequests@staffsstoke.icb.nhs.uk to express interest and obtain a copy of the accreditation assessment. This process will now be aligned with the PSR's Direct Award Process B.

40. Appendix 2: Decision Making Record Template
44.1 Record keeping template

[NHS England » Provider Selection Regime toolkit products](#)

41. Appendix 3: SOP POG

[ICB Governance for Procurement Operational Group](#)

42. Appendix 4 – Dispute Resolution Process

18.6 Context and overview

- 46.1.1 If a provider is unhappy with the way a process has been undertaken.
- 46.1.2 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>
- 46.1.3 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>
- 46.1.4 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>.

18.7 Objectives of The ICB Dispute Resolution Process

- 46.2.1 The objectives of the ICB process are:
- a) To ensure parties involved in a procurement can seek resolution to a representation locally.
 - b) 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.
 - c) To resolve competition disputes transparently, fairly, and consistently.
 - d) to provide confidence to parties that the process is fair and transparent, enhancing willingness to participate in the market.
 - e) To mitigate risks and protect the reputation of the NHS.
 - f) to prevent where possible legal challenge / external referral processes.
 - g) To minimise delay to commissioning processes caused by challenge processes.
- 46.2.2 Where cases involve multiple ICBs, the ICB s 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.
- 46.2.3 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.
- ### 18.8 Acceptance Criteria
- 46.3.1 The ICB will only accept representation that, in the opinion of the ICB , fulfil the following criteria:
- a) 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.

- b) From Providers who have applied to be an accredited provider and have completed a Qualification Criteria (Stage 1 All Services) Due Diligence Questionnaire (DDQ), who have an evidenced claim against a process which they believe has been incorrectly undertaken,
- c) There is full and frank disclosure of all relevant and applicable information.
- d) No legal proceedings have commenced or will commence during the ICB's consideration of the dispute.
- e) The representation is not trivial, vexatious or an abuse of the ICB process.
- f) The ICB is the commissioner, or the lead commissioner for the service in question.
- g) 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.

18.9 **Further information**

46.5.1 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

18.10 **Consequences of Policy Breach**

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

Procurement Decision Flowcharts	NHS England » Provider Selection Regime toolkit products
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 mlcsu.procurement@nhs.net
Register of Procurement Decisions	Our publications and policies - Staffordshire and Stoke-on-Trent, Integrated Care Board (icb.nhs.uk)
Equality Impact Assessment template	<i>Please contact</i> MLCSU Equality, Diversity and Inclusion (EDI) Team equality.inclusion@nhs.net
Data Protection Impact Assessment template	<i>Available for ICB staff via the intranet</i> DPIA Form
Quality Impact Assessment template	<i>Available for ICB staff via the intranet</i> 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
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.

LINKS

Reference	Website
Provider Selection regime	NHS England » The Provider Selection Regime: draft statutory guidance
Patient Choice	NHS England » Choice
Transfer of Undertakings (Protection of Employment) Regulations 2006(TUPE)	http://www.legislation.gov.uk/uksi/2006/246/pdfs/uksi_20060246_en.pdf
Equality Act 2010	http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf
Bribery Act 2010	http://www.legislation.gov.uk/ukpga/2010/23/pdfs/ukpga_20100023_en.pdf
Pre-contract procurement fraud and corruption	https://cfa.nhs.uk/resources/downloads/guidance/NHSCFA%20Pre-contract%20procurement%20fraud%20guidance%20-%20v1.0%20July%202018.pdf

43. Annex 1:
18.11 SOP 1 – Procurement Review Panel (Provider Selection Regime)

47.1.1 Context

47.1.1.1 NHS England has now published the draft Provider Selection Regime statutory guidance to support the Health Care Services (Provider Selection Regime) Regulations 2023 (PSR regulations).

47.1.1.2 The PSR will be a new set of rules that, from the 1st January 2024, relevant authorities (NHS England, ICBs, NHS trusts and foundation trusts, and local authorities and combined authorities) must follow when procuring healthcare services in England.

47.1.1.3 The following sets out the process that Staffordshire and Stoke on Trent will follow to oversee and administer any Provider Representations that arise from the ICBs decision to award a contract under the Provider Selection Regime.

47.2 Transparency and Record Keeping

47.2.1 The PSR provides for greater flexibility and allows the ICB to award contracts without using a competitive process, where appropriate. This means that other checks and balances need to be in place to ensure that the PSR is complied with and that the flexibilities are used appropriately and in the best interest of service users.

47.2.2 The Provider Selection Regime requires that the Transparency Notices and record keeping of decisions around the procurement route are maintained by ICBs.

process	decision-making processes				framework agreements			
	direct award processes			the most suitable provider process	the competitive process	establishing a framework agreement	contracts based on a framework agreement without competition	contracts based on a framework agreement following competition
	A	B	C					
Making intentions clear in advance								
Publishing the intended approach in advance				✓				
Publishing a notice for a competitive tender					✓	✓		
Communication of the decision								
Publishing the intention to award notice			✓	✓	✓	✓		✓
Confirmation of the decision								
Publishing a confirmation of award notice	✓	✓	✓	✓	✓	✓	✓	✓
Contract modification								
Publishing a notice for contract modifications	✓	✓	✓	✓	✓	✓	✓	✓

47.2.3 When following direct award process C, the most suitable provider process, and the competitive process – following the publication of the Intention to Award a Contract – the ICB will observe the standstill period of 8 working days. The standstill period allows the ICB to consider any representations received and to respond as appropriate.

47.2.4 The ICB will allow the provider five working days to consider their feedback before closing the standstill period.

47.3 Responding to Provider Representations

47.3.1 Step 1

47.3.1.1 The ICB will only respond to a Representation related to a contract award decision in the following circumstances:-

- The representation comes from a provider who might otherwise have been a provider of the services to which the contract relates.
- The provider is aggrieved by the decision of the ICB.
- The provider believes that the ICB has failed to apply the PSR correctly and they are able to set out reasonable grounds to support their belief.
- The representation is submitted in writing to the ICB.

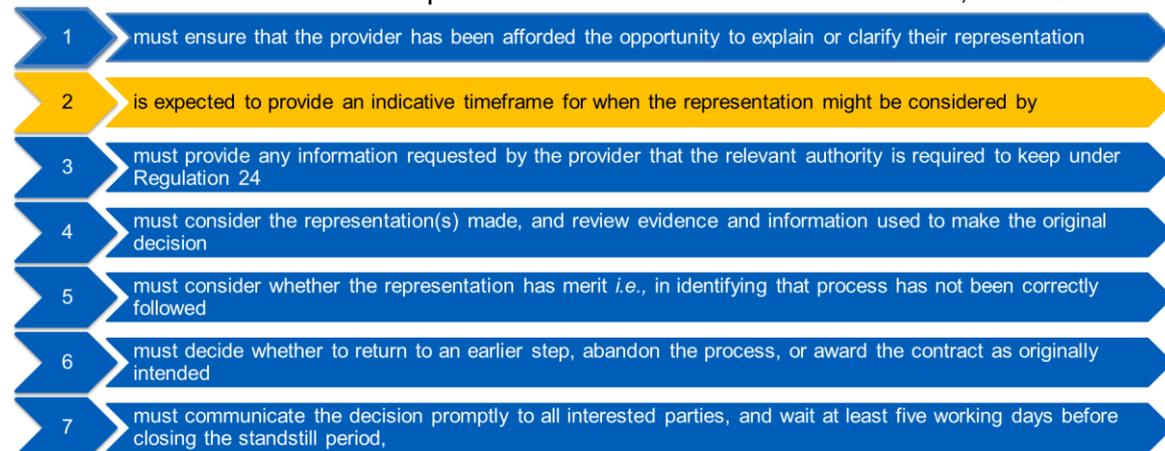
47.3.1.2 Providers wishing to formally request a Representation review by the ICB should do so in writing to governance@staffsstoke.icb.nhs.uk, stating clearly which contract award the request relates, and the grounds for which of the 4 criteria in this step have been met.

47.3.1.3 On receipt of a Representation to the mailbox governance@staffsstoke.icb.nhs.uk an assessment by the team will determine if the Representation will proceed.

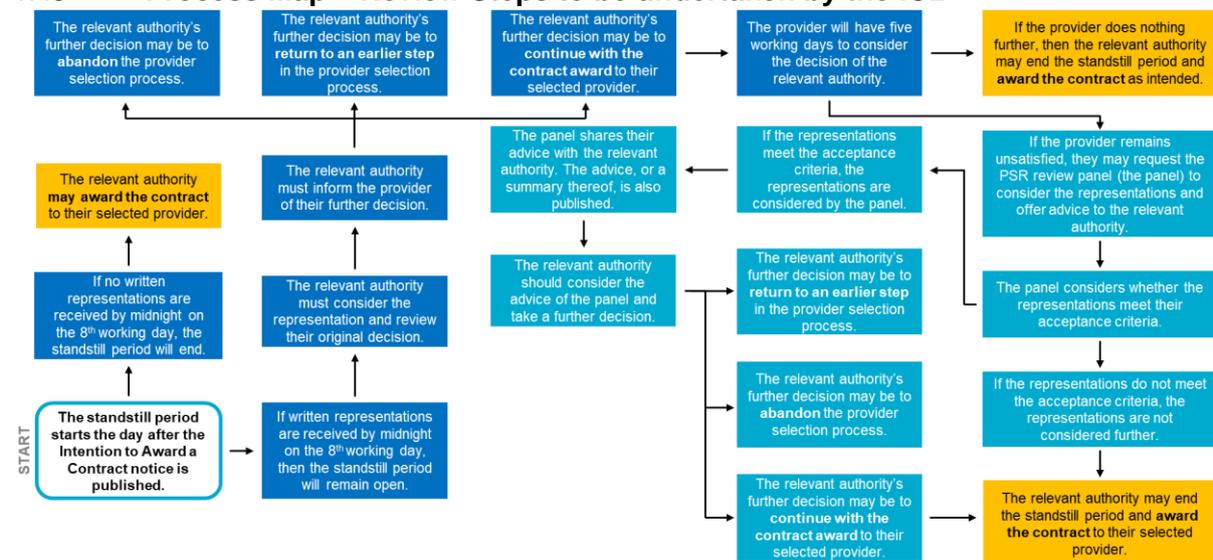
47.3.1.4 If not applicable based on the criteria in Step 1 the provider will be notified.

47.4 Step 2

47.4.1 In the event that a Representation meets the criteria for review, the ICB will



47.5 Process Map – Review Steps to be undertaken by the ICB



47.7

Output – to publish a summary of findings:

- a) If the provider remains unsatisfied with the response of the ICB to its representation and remains of the view that the PSR has not been applied correctly, the provider may submit a representation to the PSR Review Panel.
- b) The panel will be an independent panel, made available by NHS England. It will review representations made by a provider and will share their advice with the ICB about whether they applied the PSR correctly
- c) The standstill period should not be closed (unless in exceptional circumstances), and the contract awarded, until the panel has concluded their review.