

Procurement Policy



Please complete the table below: <i>To be added by corporate team once policy approved and before placing on website</i>	
Policy ref no:	
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Date Approved:	
Approved by:	
Date of next review:	

Policy Review Checklist

	Yes / No / N/A	Supporting information
Has an Equality Impact Assessment Screening been completed?	Yes	A screening has been conducted. Individual procurements may include the need for further consideration of equality impacts
Has the review taken account of latest Guidance/Legislation?	Yes	Public procurement obligations are defined in Section 9
Has legal advice been sought?	Yes	External advice sought pre-adoption
Has HR been consulted?	No	The Policy does not address HR issues
Have training issues been addressed?	Yes	To be provided by procurement team and guides for managers / Standard Operating Procedure developed.
Are there other HR related issues that need to be considered?	No	Not required for this Policy
Are there financial issues and have they been addressed?	No	Although this Policy is concerned with ICB expenditure, it does not raise any specific financial issues
What engagement has there been with patients/members of the public in preparing this policy?	N/A	Not required for this Policy
Are there linked policies and procedures?	Yes	ICB Constitution (Standing Financial Instructions), ICB Detailed Financial Policies and ICB Patient and Public Involvement Strategy and Policy
Has the lead Executive Director approved the policy?	Yes	
Which Committees have assured the policy?	Yes	

ICB Procurement Policy

	Yes / No / N/A	Supporting information
Has an implementation plan been provided?	Yes	
How will the policy be shared with <ul style="list-style-type: none"> • Staff? • Patients? • Public? 		<p>Staff – through integration with the ICB’s overall training plan, and bespoke training as provided through the SCW procurement team.</p> <p>Patients and public – through ICB website publication</p>
Will an audit trail demonstrating receipt of policy by staff be required; how will this be done?	No	Not required for this Policy

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Procurement Policy

1 Preface

This policy sets out the framework as to how NHS Somerset Integrated Care Board (“the ICB”) procurement decisions should be undertaken.

All managers and staff (at all levels) are responsible for ensuring that they are viewing and working to the current version of this procedural document. If this document is printed in hard copy or saved to another location, it must be checked that the version number in use matches with that of the live version on the ICB website.

All ICB procedural documents are published on the ICB website and communication is circulated to all staff when new procedural documents or changes to existing procedural documents are released. Managers are encouraged to use team briefings to aid staff awareness of new and updated procedural documents.

All staff are responsible for implementing procedural documents as part of their normal responsibilities and are responsible for ensuring they maintain an up to date awareness of procedural documents.

1.1 Summary Points

This document outlines how the ICB will make decisions regarding the procurement of the goods and services it commissions.

Procurement seeks to positively influence and support the ICB’s Strategy and Transition plans utilising the principles in this policy.

The objective of this document is to ensure that in relation to the procurement of healthcare services the ICB acts with a view to:

- Securing the needs of the people who use the services
- Improving the quality of the services
- Improving efficiency of the services

And in relation to the procurement of all goods and services that the ICB complies with the law, regulations and published guidance and its own standing orders.

2 Relevant to

This policy, associated framework and guidance applies to all staff within the ICB and specifically to the decision-making bodies who make commissioning decisions regarding new, alternative or renewal of contracts for services or goods.

3 Introduction

This procurement policy informs how procurement decisions will be undertaken by the ICB and where to seek guidance as to the procurement procedure to be applied for new, alternative or renewed contracts.

This policy sets out existing legal framework for procurement by public bodies in the UK and will be updated in line with any changes to UK legislation.

A range of procurement options are available which include working with existing providers, contract variations and service development, competitive tendering, utilising existing framework contracts or bespoke “light touch” selection processes in line with the Public Contracts Regulations 2015, depending on the nature and value of the contract.

Procurement will form an important part of the commissioning cycle. A robust and appropriate procurement function will need to inform any decision-making process with regard to how gaps or developments in provision are met, taken into consideration wider organisational priorities.

In all cases, procurement decisions will be taken within the parameters and limitations of the existing legal framework. Alongside this, the ICB also recognises the general progression toward greater integration of services in the context of integrated models of care and will ensure that any such developments as they relate to procurement will be considered any integrated into ICB procurement practices as necessary.

4 Scope

This policy covers all healthcare services as well as procurements for the goods and services the ICB requires to support its functions.

5 Purpose

The purpose of this document is to set out the process, governance arrangements, strategy and policy framework, guidance and procedures for procurement within the ICB.

6 Definitions

This document is a policy.

Any abbreviations used in the document will be written in full in the first instance.

7 Roles and responsibilities

The Chief Finance Officer and Director of Performance is the responsible officer for this policy and the procurement function.

The Audit Committee is responsible for the adherence and monitoring compliance with this policy under delegated authority from the ICB Board.

All ICB staff are responsible to consult with the procurement function in matters contained within this policy.

8 Ethical Framework principles for decision making

Each of the principles will be considered equally and each of the principles will be given fair consideration:

Principle 1 – Rational: Decision-making is rational and based upon a process of reasoning

Principle 2 – Inclusive: Decisions should be arrived at through a fair and non-discriminatory process

Principle 3 – Take account of the value we will get: Decisions will take account of the outcomes we will achieve (for example population health, quality of health, survival rate, extent of recovery, people's experience, safety) for the resources that we use (for example the amount we pay for a service, salaries, investment in equipment and buildings). This is what we call "value".

Principle 4 – Transparent and open to scrutiny: Decisions and the way they are made should be transparent and easily understood. The information provided to decision makers should be fully documented together with the process followed and the degree of consensus reached.

Principle 5 - Promote health for both individuals and the community: Decisions about things that promote health and avoid people becoming ill will be considered alongside things that will cure illness and other interventions. There may be times when it is appropriate to target specific demographic groups or health issues in order to reduce inequalities in health outcomes

9 Public Procurement Legislation

There are 4 key pieces of legislation which govern procurement in NHS organisations. These are:

- National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 (which relate to the procurement of healthcare services)
- Public Contracts Regulations 2015 (which covers the procurement of all

- goods and services above certain financial thresholds)
- Health and Social Care Act 2012 (in relation to patient and public involvement)
- Equality Act 2010. Throughout the production of this policy, due regard has been given to eliminate discrimination, harassment, and victimisation to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic and those who do not share it.

It is noted that at time of adoption of this Policy (April 2021) there are significant changes proposed to the procurement legislative environment. The ICB is aware of these proposals, however they do not at the time of adoption have any impact on the ICB's procurement procedures of policies.

9.1 National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 (“the 2013 Regulations”)

The 2013 Regulations contain a number of requirements that ICBs must comply with to ensure that they:

- adhere to good practice in relation to the procurement of healthcare services funded by the NHS;
- protect the rights of patients to make choices with respect to treatment or other healthcare services funded by the NHS; and
- do not engage in anti-competitive behaviour unless this is in the interests of NHS healthcare service users.

The 2013 Regulations govern the procurement of healthcare services and operate alongside the Public Contracts Regulations 2015.

The 2013 Regulations require that, when procuring NHS healthcare services, in all cases ICBs **MUST** act to:

- secure the needs of healthcare service users;
- improve the quality of services; and
- improve the efficiency with which services are provided

This includes situations where the ICB is seeking to secure the delivery of healthcare services through integration including with other healthcare and social services.

The 2013 Regulations do not impose a “one-size-fits-all” approach; rather they attempt to allow the ICB flexibility within the framework of rules. It is recognised that healthcare needs will differ in accordance with local conditions.

When procuring NHS healthcare services, in all cases the ICB **MUST**

- act in a transparent and proportionate way; and
- treat providers equally and in a non-discriminatory way (showing no favouritism, particularly on the basis of ownership)

This requires the ICB to conduct all procurement activity openly and in a manner which enables behaviour to be scrutinised. Procurement decisions must be proportionate to the value, complexity and clinical risk associated with the provision of the services in question; and commissioners must treat all providers equally, not favouring one provider (or type of provider) over another – differential treatment between providers will require objective justification.

The ICB is required to procure services from one or more providers that:

- are most capable of delivering the needs, quality and efficiency required; and
- provide the best value for money in doing so

When considering how best to procure healthcare services which improve quality and efficiency, and which meet the health needs of the population, the ICB must consider:

- how the services can be provided in an integrated way (including with other healthcare services or social care services)
- how to enable service providers to compete to provide the services
- how to allow patients a choice of provider for the services

In order to be able to demonstrate compliance with the 2013 Regulations, the ICB is required to maintain a record of the decision making process in relation to the award of any contract for healthcare services, regardless of whether the award of such contract was as a result of a competitive tendering process.

While the 2013 Regulations do not impose a requirement on ICBs to undertake competitive tendering in all circumstances (subject always to the requirements of the 2015 Regulations), where an ICB awards a healthcare contract without conducting a competitive process, it must again ensure that it is able to evidence, via a robust audit trail, that the decision not to tender followed a detailed review of the provision of local services and which identified the most capable provider of the services; that there was only one provider capable of providing the services; or that the benefits of tendering would be outweighed by the cost.

There is also an obligation on the ICB not to award contracts in a manner which can be considered anti-competitive, unless the ICB is able to evidence that this is in the best interests of service users.

The 2013 Regulations place additional specific requirements on ICBs to maintain records of all awarded contracts which demonstrate how the decision to award that contract complied with the ICB's obligations under the NHS Act 2006, and to maintain a record of all conflicts of interest arising as a result of a decision to award a contract, and how the effect of those conflicts were mitigated.

When deciding whether or not to publish a contract notice, the ICB will need to

ensure that this decision is consistent with the requirements of the 2013 Regulations and the 2015 Regulations. NHS England guidance advises that an ICB may be justified in a decision not to competitively tender a service where:

- there is only one provider that is capable of providing the services in question
- where a commissioner carries out a detailed review of the provision of particular services in its local area in order to understand how those services can be improved and, as part of that review, identifies the most capable provider or providers of those services
- where the benefits of competitively tendering would be outweighed by the costs of publishing a contract notice and/or running a competitive tender process

9.2 Role of NHS England

Under the 2013 Regulations, NHS England has been granted certain enforcement powers in relation to the healthcare procurement activities of ICBs, including:

- Investigatory powers
- Declarations of ineffectiveness
- Directions
- Accepting Undertakings

NHS England's investigation powers are triggered by the receipt of a complaint from a 3rd party alleging a failure to comply with the requirements of the 2013 Regulations.

9.3 Public Contracts Regulations 2015

The Public Contracts Regulations 2015 (the 2015 Regulations) detail the required processes for conducting public procurement into UK law. The 2015 Regulations require that certain procedures must be followed by relevant public bodies when awarding contracts above specified financial thresholds.

Providers raising a complaint against the 2015 Regulations will do so through the courts.

The light-touch regime (LTR) is a specific set of rules within the 2015 Regulations for certain service contracts. Those service contracts include certain social, health and education services, as defined in the 2015 Regulations. Importantly, the majority of healthcare services commissioned by the ICB will fall to be defined as LTR services.

This simplified regime has a higher threshold of £663k than for fully regulated goods or services, and the only obligations which apply to services with a contract value above this threshold are the rules in relation to transparency and publicity i.e. that all relevant contracts in excess of this threshold are advertised in the Find a Tender Service.

Below the LTR threshold, contracts do not normally need to be advertised in the Find a Tender Service, although may still require to be advertised through

Contracts Finder.

In terms of procurement requirements for above-threshold LTR services; the main mandatory requirements are:

- **Find a Tender Service Advertising:**
The publication of a contract notice (CN) or prior information notice (PIN). The only exception is where the negotiated procedure without a call for competition could be used, for example where there are technical reasons or exclusive rights that mean that only one provider can deliver the service, or where there is a situation of extreme urgency brought about by unforeseeable events, on grounds that are very narrowly interpreted.
- **Contract Award Notice**
The publication of a contract award notice (CAN) following each individual procurement, or if preferred, grouped on a quarterly basis.
- **Conduct the procurement in conformance with the information provided in the advert**
(CN or PIN) regarding: any conditions for participation; time limits for contacting/responding to the authority; and the award procedure to be applied.
- **Time limits imposed by authorities on suppliers, responding to adverts and tenders, must be reasonable and proportionate.**
There are no stipulated minimum time periods in the LTR rules, so contracting authorities should use their discretion and judgement on a case by case basis.

Under the LTR, the ICB has the flexibility to use any process or procedure it chooses to run the procurement, as long as it respects the other obligations above. There is no requirement to use the standard procurement procedures (open, restricted and so on as described further in 11.5) that are available for other (non-LTR) contracts. The ICB can use those procedures if helpful, or tailor those procedures according to needs, or design a bespoke procedure.

9.4 The Health and Social Care Act 2012

The Health and Social Care Act 2012 introduced significant amendments to the NHS Act 2006, including some referring to patient and public involvement that relate to procurement.

The ICB will ensure Patient and Public involvement duties (including as described in Section 14Z2 of the Act) are met. These duties relate to the development and consideration of proposals for changes in commissioning arrangements where these would impact on the way in which services are delivered or the range of services available; and in decisions that would have a significant impact on the same.

9.5 Equality Act 2010

The main Public Sector Equality Duty (PSED) is comprised of three limbs (more commonly referred to as areas/ sections), set out in section 149(1) of the Equality Act 2010 (“the Act”):

The ICB will, in the exercise of its procurement functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

‘Due regard’ itself is broadly defined in the following ways:

- decision-makers must be made aware of their duty to have due regard to the identified needs;
- the Duty must be fulfilled both before and during consideration of a particular policy, and involves a “conscious approach and state of mind”;
- it is not a question of ticking boxes, the Duty must be approached in substance, with rigour and with an open mind, and a failure to refer expressly to the Duty whilst exercising a public function will not be determinative of whether due regard has been had;
- the Duty is non-delegable;
- the Duty is continuing;
- it is good practice for an authority to keep a record showing that it has considered the identified needs.

10 Procurement Approach / Decision to Tender

10.1 ICB Constitution and applicable financial thresholds

Where the ICB wishes to award a contract for services, it must consider which of the relevant pieces of legislation is applicable and the value of that contract opportunity in order to determine the appropriate procurement approach. Attention should also be given to the ICB’s Constitution.

All procurement activity will be undertaken in accordance with Standards of Business Conduct including conflicts of interest.

The table below summarises the potential routes to market in accordance with the potential value of the contract (calculated over the full term of the contract) and the requirements of the 2015 Regulations and other relevant legislation, for both healthcare and non-healthcare contracts. In certain circumstances the procurement route specified below might not be appropriate. In such circumstances written approval must be sought from the Chief Finance Officer. Potential routes to market are also described in Appendix 1 as a reference guide.

Total Contract Value	Minimum Type of Procurement Required	Applicable Governance/legislation
Up to £5k Non-healthcare contract	No formal requirement for external procurement process	ICB Constitution: which describes the authority for approval of single tender waivers Procurement Policy: which describes the use of single tender waivers Managing conflicts of interest: revised statutory guidance for ICBs 2017
Between £5k and £50k Non-healthcare contract	Quotations should be obtained from at least 3 firms/individuals (Single Tender Waiver should only be used in exceptional circumstances and must be reported to Audit Committee)	
Between £50k and £138k ^[1] (threshold) Non-healthcare contract	Competitive tender required (Single Tender Waiver should only be used in exceptional circumstances and must be reported to Audit Committee) The ICB can consider an open (advertised) or closed (framework or local approved supplier list) approach to market.	
Above £ 138k (threshold) Non-healthcare contract	Full open (advertised) or closed (framework) tender required. Advice and guidance from SCW Procurement Team if full tender cannot be undertaken	Public Contracts Regulations 2015 Managing conflicts of interest: revised statutory guidance for ICBs 2017
Below £663k ^[1] Healthcare contract	Publication in Contracts Finder generally required. Route to market to be determined on a case by case basis in consultation with the SCW Procurement Team	The 2013 Regulations, Section 14Z2 of the National Health Service Act 2006 on legal duty to involve patients and the public. Managing conflicts of interest: revised statutory guidance for ICBs 2017

^[1] including VAT

^[1] including VAT

Total Contract Value	Minimum Type of Procurement Required	Applicable Governance/legislation
Above £663k ^[1] (threshold) Healthcare Contract	<p>Must publish an advert for all health and social care services above £663k (“light touch”) and in Contracts Finder, unless the provisions of Regulation 32 of the 2015 Regulations apply.</p> <p>Route to market to be determined on a case by case basis in consultation with the SCW Procurement Team</p>	<p>The 2013 Regulations, Public Contracts Regulations 2015 (light touch regime), Section 14Z2 of the National Health Service Act 2006 on legal duty to involve patients and the public.</p> <p>Managing conflicts of interest: revised statutory guidance for ICBs 2017</p>

10.2 Decision whether to competitively tender

The table above and the additional guidance at Appendix 1 should be applied in the first instance in order to indicate the correct approach to procurement in any event.

In relation to healthcare contracts, there is no “one size fits all” approach, and regard will have to be given in each instance to how the ICB can best meet the needs of the population, ensuring that the quality of services and the efficiency with which they are provided is improved (for example in terms of whether a new contract that would attract procurement law obligations needs to be awarded, or whether the ICB’s requirements can be met in other ways – as to which see section 11 below). This will need to be routinely considered as part of the commissioning process and the rationale behind any decision whether or not to competitively tender a contract should be fully documented, having obtained advice in all such instances from the Procurement Team. Such decisions should be transparent and must be signed-off by the relevant ICB committee(s).

In instances of particular urgency where it is necessary to award a contract without competitive tendering, and there is not time to follow the standard governance and approval process, it will be necessary to seek approval from the appropriate officer within the ICB and to ensure that advice is obtained from the procurement and/or legal teams in accordance with the relevant scheme of delegation, in the form of a signed waiver document.

The ICB approval of the procurement strategy and readiness to proceed shall be managed through the ICB PMO processes and shall include preparedness, contract value and contract length plus any extensions.

^[1] including VAT

10.3 Integrated Working

The ICB is a member of the Somerset Integrated Care System (ICS).

Although the ICB remains accountable in law for its own public procurement decision making, there are times where an integrated approach to procurement with other ICS members will be appropriate. This could be with the ICB as either a lead or associate Contracting Authority. Where the ICB is an associate to other ICS members' procurement activity, it will remain incumbent on the ICB to ensure that its procurement obligations are fulfilled.

11 Route to Market

A variety of procurement and tendering options are available by which the ICB can secure the required service. The advice of the ICB Procurement Team should be sought to ensure that the appropriate route is selected in each circumstance, in compliance with all relevant legal and regulatory requirements. The potential options are:

- Contract Variation Process
- Single Tender Action award to a Single Capable Provider
- Any Qualified Provider
- Framework Agreement
- Competitive Tender

11.1 Contract Variation Process

It may be possible to use this option to secure incremental change to the service provided. When procuring a service the ICB should consider potential modifications it may wish to make during the term of the contract and state this in the initial procurement and contract documents.

Even where the ability to make changes is not set out in a contract, certain variations are permitted where they fall within the scope of Regulation 72 of the 2015 Regulations.

The following circumstances are likely to be regarded non-permitted variations and as such will require a new contract:

- the contract is materially different from the one initially concluded;
- the scope of the contract is extended considerably;
- other providers would have been interested in bidding for the contract if the change had originally been part of the specification when the service was originally procured;
- the contract would have been awarded to a different provider if the change had originally been included in the original service specification;
- the change involves genuinely new services not originally within the scope of the specification covered by the contract;
- there is a significant change in the value of the contract;
- the modification changes the economic balance of the contract in the favour of the contractor; or

- a new contractor replaces the one to which the ICB had initially awarded the contract, save for where that replacement occurs due to a universal or partial succession of the initial contractor including through a takeover, merger, acquisition or insolvency and does not modify the overall nature of the contract.

The ICB may be subject to challenge if it uses a contract variation inappropriately. Therefore it should always take appropriate procurement advice before following this route.

11.2 Award of Contract without Competition

Where the ICB determines through analysis of the market and proportionate and transparent engagement with potential providers that the service is only capable of being provided by one particular provider, or there is an urgent clinical need, it may consider proceeding with an award of contract without competition. This is where a contract is awarded to a single provider or a limited group of providers.

It is important that, if the ICB decides to take this route, it clearly records the rationale for the decision. This is because exemptions from the requirement to advertise LTR contracts are narrowly interpreted, and failure to plan adequately is unlikely to be accepted as an urgent clinical need. Advice from the Procurement Team should be obtained in every event. Where a service is put in place for reasons of urgency or safety, the ICB should consider this as an interim step and plan to undertake a competitive process as soon as possible.

The ICB should ensure that it considers what steps it should take and what evidence it should rely on to satisfy itself that there is only one capable provider. The ICB should retain an audit trail of its decision making process.

11.3 Any Qualified Provider (AQP)

AQP is a procurement option when wishing to extend patient choice. Under AQP, any provider assessed as meeting rigorous quality requirements who can deliver services to NHS prices and under the NHS Standard Contract is able to deliver the service. Providers have no volume guarantees and patients will decide which providers to be referred.

Assessment of the AQP option should include consideration of the characteristics of the service, the local healthcare system, whether the service lends itself to patient choice, an analysis of the current market, how much competition and choice there is now and how much is required and any barriers to market entry.

Once an AQP procurement is advertised, providers are assessed using a consistent qualification process and will qualify if they can:

- meet the quality requirements;
- meet the Terms and Conditions of the NHS Standard Contract;
- accept the NHS price for the service; and

- Provide assurance that they are capable of delivering the service requirements that have been set.

11.4 Framework Agreement

The ICB may wish to consider whether it can use an established framework agreement which has been tendered in accordance with the procurement rules. Purchasing from a framework agreement can save procurement costs and time. The ICB may use other framework agreements established by other contracting authorities provided they were set up on the basis that the ICB would be able to purchase from it.

If the ICB were minded to use a framework agreement it should ensure that:

- it is entitled to use the framework agreement and it follows the correct processes to appoint a provider;
- its requirements fall within the scope of the pre-established framework agreement;
- The term of the framework agreement has not expired.

Alternatively, the ICB could consider setting up its own framework agreement for its requirements going forward. This could be a framework of multiple providers or a single provider, and would need to be advertised in accordance with the 2015 Regulations.

11.5 Competitive Tender under the 2015 Regulations

This is the most common and wide-ranging route for the procurement of above-threshold contracts for goods and services, and involves advertising the opportunity, following a published procurement procedure and awarding a contract to the bidder submitting the most economically advantageous tender. The table at section [10] [above] indicates when an advertised competitive process is required to be used.

There are several types of procurement procedures available to the ICB under the 2015 Regulations:

- **Open procedure**

If there are a small number of providers who are likely to express an interest, and all are expected to be technically competent and financially robust, this process should be considered. It means that bidders do not have to pre-qualify for inclusion in the procurement, but that they submit information in terms of financial standing and technical expertise at the same time as submitting their bid.

- **Restricted procedure**

A qualification requirement, usually in the form of a selection questionnaire (SQ) allows the ICB to assess the suitability of bidders prior to the bidders submitting a bid. This can make the process more manageable and cost-effective by reducing the number of bidders able to submit tenders.

- **Competitive dialogue procedure (CD)**

This process should only be used in limited circumstances when the ICB's

needs cannot be met without adaptation of readily available solutions. This might be where the tender process would include the development of design or innovative solutions and/or where there is a need for negotiation due to the complexity, evolving specification, legal or financial profile of the services required. If such circumstances exist the ICB will consider using a process that allows for a dialogue with bidders (post advertisement), rather than asking for bids in response to a defined specification.

- **Competitive Procedure with negotiation (CPN)**

This allows the ICB to award a contract on the basis of an initial tender but also enables the ICB to negotiate with bidders who submitted an initial tender, and any subsequent tenders, until it decides to conclude those negotiations. The ICB cannot negotiate following final offers.

- **Innovation Partnership**

This is a procedure designed to allow contracting authorities to establish a long-term partnership for the development and subsequent purchase of a new, innovative product, service or works. The ICB should note that its ability to use this procedure is limited and may only apply if the ICB is seeking innovative ideas where solutions are not already available on the market.

For requirements under the Light Touch Regime the ICB has the flexibility to use any process or procedure they choose to run the procurement, as long as it respects the other obligations set out in section 9.3. There is no requirement to use the standard procurement procedures (open, restricted and so on) that are available for other (non-LTR) contracts. The ICB can use those procedures if helpful, or tailor those procedures according to needs, or design a bespoke procedure.

12 Form of Contract

The ICB will ensure that the appropriate standard form national contract is used for all contracts for NHS funded health and social care services that the ICB is party to. Where non-healthcare contracts are awarded then the standard appropriate version of the NHS Terms and Conditions for the Supply of Goods and/or Services should be used, with the exception of procedures through an existing framework contract.

13 Award of Contract

The ICB will approve the award of contracts in accordance with the ICB's scheme of delegation as set out in the ICB Constitution (Appendix D) and the ICB Detailed Financial Policies.

The contract award recommendation will include the contract term plus any extension period to be approved by the Governing Body. The extension of the contract shall not require the Governing Body's approval of the extension period but will require the Directors Meeting to assess the satisfactory

performance of the contract prior to formally extending the agreement.

For all procurement procedures conducted under the Regulations 2015 the ICB will operate a 10-day standstill period between announcing the contract award decision and entering into the contract. For standard procurements this is a mandatory requirement and is also recommended best practice for contracts awarded under the light touch regime. Where a framework contract is used as a route for procurement the ICB will follow best practice and guidance for the relevant framework.

14 Complaints and Dispute Procedure

The ICB's approach to contestability means that it may pursue a wide range of routes to secure new and existing services.

The ICB has developed the processes that will be followed within the ICB that enable any potential dispute relating to a procurement process or outcome from any procurement to be resolved in an open and transparent manner.

The ICB will utilise a dispute resolution process to address and resolve any complaint in relation to competition and procurement received from either:

- Bidders/contractors
- A member of the public

This will at first require writing to the ICB Accountable Officer, as described in the dispute resolution process.

15 Fraud and Bribery

Procurement is a particularly high risk area in terms of fraud and bribery. It is important that all ICB staff are aware of the risks, and are able to recognise and report fraudulent activity. All staff should also be aware that the ICB has a zero tolerance approach to Fraud and Bribery as highlighted within the Fraud and Bribery policy and at Corporate Induction.

15.1 Fraud

The Fraud Act 2006 created a criminal offence of Fraud and defines three ways of committing it:

- Fraud by false representation (*e.g. an external fraudster purporting to be a genuine supplier to arrange payment to a bank account*);
- Fraud by failing to disclose information (*e.g. a company director failing to disclose criminal convictions*); and
- Fraud by abuse of position (*e.g. an employee creating fictitious suppliers with payments to their own bank accounts*)

in these cases an offender's conduct must be dishonest and their intention must be to make a gain or cause a loss (or the risk of a loss) to another.

15.2 Bribery

The Bribery Act 2010 defines bribery as the giving or taking of a reward in return for acting dishonestly and/or in breach of the law. There are four main classifications of bribery:

- Bribing another person;
- Being bribed;
- Bribing a foreign public official; and
- Failure to prevent bribery (Corporate offence).

Any offering, promising, giving, requesting, agreeing to, receiving or accepting of any bribe is strictly forbidden by any employee when conducting business on behalf of the ICB or when representing the ICB in any capacity and is contrary to the Bribery Act 2010.

Any suspicions or concerns of acts of fraud or bribery can be reported confidentially to the Local Counter Fraud Specialist online via <https://www.reportnhsfraud.nhs.uk> or via the NHS Fraud and Corruption Reporting Line on 0800 0284060. All calls are dealt with by experienced trained staff and any caller who wishes to remain anonymous may do so.

16 Additional Considerations

16.1 Data Privacy Impact Assessment

Where any new service is required it will be necessary for a data privacy impact assessment (DPIA) to be completed. The project lead should liaise with the SCW information governance lead and/or ICB Data Protection Officer to complete a DPIA prior to selection of provider which should be updated once the provider is identified.

16.2 Equality Impact Assessment

With any new service, compliance with the Public Sector Equality Duties 2011 will be demonstrated through a robust Equality Impact Assessment process, ensuring that due regard is given to eliminate discrimination, harassment and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic (as cited in under the Equality Act 2010) and those who do not share it.

16.3 Quality Impact Assessment

As with both tools above, a similar process should be completed for a quality impact assessment. The project lead should liaise with the ICB Quality Team.

16.4 Sustainable procurement

The ICB is committed to the principles of sustainable development. Sustainable procurement is defined as a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage

to the environment.

16.5 Public Services (Social Value) Act 2012

Social value is a way of thinking about how scarce resources are allocated and used. It involves looking beyond the price of each individual contract and looking at what the collective benefit to a community is when a public body chooses to award a contract. The Act provides that at the pre-procurement stage ICBs must consider how what is to be procured might improve the economic, environmental and social well-being of their areas and how, in conducting the procurement process, the ICB might act with a view to securing that improvement. In exercising this duty, the ICB must consider whether to consult on those issues.

16.6 Code of Conduct (GP Conflict of Interest)

When commissioning services for which GP practices could be potential providers, SCW Procurement will refer to the advice and guidance published by NHS England. Conflicts could arise where the ICB commissions healthcare services, including GP services, in which a member of the ICB has a financial or other interest. It will need to be considered in respect of any commissioning issue where GPs are current or potential providers.

16.7 Voluntary and community sector/Small and Medium Enterprises Support

The ICB will aim to support and encourage voluntary and community sector and small and medium enterprise suppliers in bidding for contracts. The Procurement Team will work with service commissioners to ensure that competitive tender processes promote equality and do not discriminate on the grounds of age, race, gender, culture, religion, sexual orientation or disability.

16.8 Integrated Support and Assurance Process (ISAP)

The ICB must consider this process for all novel and complex contracts and work with NHS England to run a rigorous assurance process alongside procurements which fall under the ISAP jurisdiction.

16.9 ICB Ethical Framework

The ICB has developed a formal Ethical Framework for Decision-Making to describe the principles that will underpin how commissioning decisions are made.

The purpose of the Ethical Framework for Decision-Making is to describe the principles that will guide how the ICB:

- Makes commissioning decisions on behalf of and with its population
- Is consistent across all levels of commissioning from strategic planning through to deciding on individual funding requests and meeting the requirements of the NHS Constitution
- Makes it clear to the public that we have a framework within which we make decisions

The ICB will consider the application of the Ethical Framework in its procurement decision-making processes.

16.10 IR35 and Employment Assessment

The ICB has a responsibility to ensure appropriate procedures are in place to meet with HMRC requirements regarding, amongst other things, appropriate payment of tax. This is particularly relevant to procurement when the ICB engages with self-employed individuals, individuals via their own limited company (known as a Personal Services Company) or a partner in a partnership.

Characteristics that may result in being inside IR35 legislation include the following:

- Having to work under direct supervision or control of the end client
- Having to work at a set location or to set hours
- Having to formally request leave or seek permission for absence
- Having an hourly, daily or weekly rate of pay
- Being paid for overtime, or to correct unsatisfactory work
- Is unable to provide a substitute ie the work has to be carried out by the contractor
- Is able to be moved from task to task or to another location without arranging a new contract

Characteristics that may result in being outside IR35 legislation include the following:

- Not having to work under direct supervision or control of the end client
- Having control over how / where / when to complete the work
- Has no access to holiday pay or sickness benefits
- A fixed fee is agreed by the employer for the work, regardless of how long it actually takes to complete
- Financial risk eg. having to correct errors in their own time and at their own expense
- Being able to propose a substitute agent or person to complete the work

17 Training

No mandatory training is required to comply with this policy but the procurement team will provide ongoing organisational awareness and bespoke training, as necessary.

18 Consultation

This policy was completed following consultation with the relevant internal stakeholders, including the Strategic Finance Committee.

19 Recommendation and Approval Process

This policy is to be approved by the ICB Board.

20 Communication/Dissemination

Following approval ICB staff will be made aware of the policy through the ICB website.

21 Implementation

This policy is a revision of an existing policy and as such requires no specific implementation over and above the communication and dissemination highlighted in paragraph 16.

22 Monitoring Compliance and Effectiveness of the Document

The Audit Governance and Risk Committee will oversee compliance with aspects of this policy through its review of the award of contract without competition requests and annual review of the Procurement Decision register.

Audits of the procurement function will periodically be commissioned as appropriate as to ensure compliance with this policy.

Any areas of concern or non-compliance identified in any review must result in the production of an action plan. This will be reviewed by the appropriate committee/group. Actions will be recorded in the committee/group minutes.

23 Document Review Frequency and Version Control

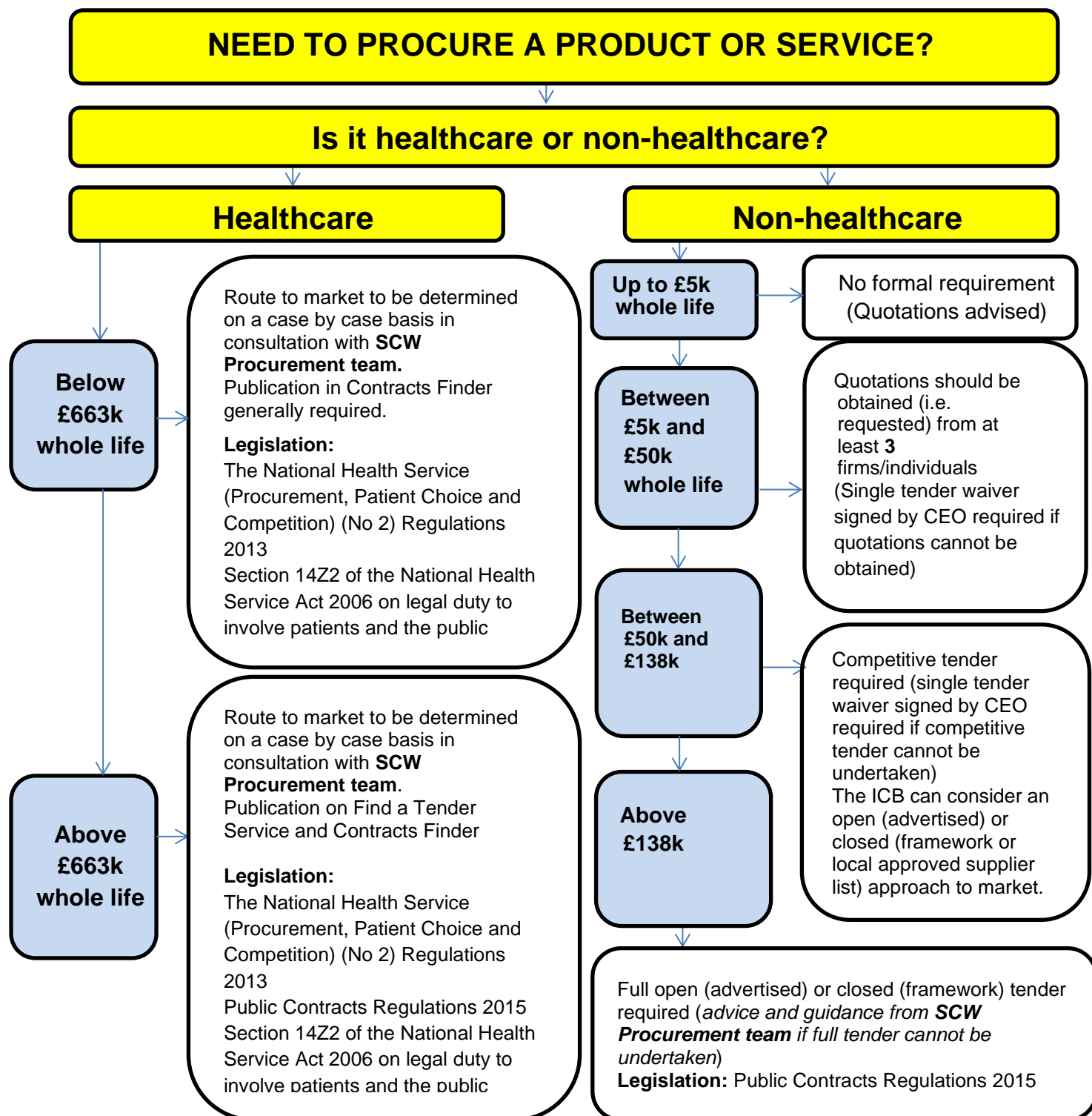
This policy will be reviewed every two years or earlier if appropriate, to take into account any changes to legislation or guidance that may occur.

Necessary changes throughout the year will be issued as amendments to the policy. Such amendments will be clearly identifiable to the section to which they refer and the date issued. These will be clearly communicated via the ICB newsletter.

24 Appendices

Appendix 1 - Procurement route decision making process – Health Care and Non-healthcare Services

Appendix 1 - Procurement route decision making process – Healthcare and Non-healthcare Services



Healthcare and non-healthcare notes:

- Not all circumstances require tender, (e.g. where only one provider) advice should be sought from **SCW Procurement team**. Failure to plan is not acceptable
- Must maintain records, especially conflicts of interest (Which may affect committee undertaking award and be referenced in **ALL** decision papers)
- This may also be affected by a standstill period for all award decisions
- Decisions to award to be accompanied by assessments – **EQUALITY, QUALITY** and **PRIVACY**