

| | | | |
|--|---|-----------------------|------------|
| Document title: | Contract and Procurement Policy | | |
| Type of document: | Policy | | |
| Policy number | NWL/POL/FPC/004 | | |
| Approval: | NHS NW London Integrated Care Board | Date approved: | |
| Delegated body for approval or any future revisions to the document | Audit and Risk Committee | | |
| Date effective from: | July 2022 | Review date: | March 2024 |
| Target audience/policy relevant to: | All NHS NW London staff, contractors, non-executive members, suppliers & anyone with a business relationship | | |
| Related documents: | | | |
| Author/further information: | Associate Director of Contracts | | |
| Lead director/officer: | Chief Finance Officer | | |
| Equality Analysis | <p>This Policy is applicable to the Board, every member of staff within the ICBs and those who work on behalf of the ICB. This document has been assessed for equality impact on the protected groups, as set out in the Equality Act 2010.</p> <p>This document demonstrates NWL ICB's commitment to create a positive culture of respect for all individuals, including staff, patients, their families and carers as well as community partners. The intention is, as required by the Equality Act 2010, to identify, remove or minimise discriminatory practice in the nine named protected characteristics of age, disability, sex, gender reassignment, pregnancy and maternity, race, sexual</p> | | |

North West London

| | |
|--|--|
| | orientation, religion or belief, and marriage and civil partnership. It is also intended to use the Human Rights Act 1998 and to promote positive practice and value the diversity of all individuals and communities. |
|--|--|

NOTE: This is a CONTROLLED document. Any documents appearing in paper form are not controlled and should be checked against the server file version prior to use.

Document Control

| Version | Date | Details of reason for review or update | Author/Reviewer | Approving Committee | Date of Approval |
|---------|------------|--|--------------------|---------------------|------------------|
| V1 | 03/12/2021 | Draft | EcoVate | | |
| V2 | 09/12/2021 | Draft | EcoVate | | |
| V3 | 26/04/2022 | Draft | Alex Stiles | | |
| V4 | 02/05/2022 | Review draft | Jenny Greenshields | | |
| V5 | 03/05/2022 | Updated for V4 changes | Alex Stiles | | |
| V6 | 12/05/2022 | Updated for changes to waiver form | Alex Stiles | | |

Contents

| | | |
|----|--|----|
| 1 | Introduction | 4 |
| 2 | Scope of Policy | 5 |
| 3 | Policy Statement | 6 |
| 4 | Associated Policies and Procedures | 9 |
| 5 | Application of this Policy | 9 |
| 6 | Accountabilities and Responsibilities | 12 |
| 7 | Practical Implementation and Process for Procurements | 14 |
| 8 | Practical Implementation and Process for Contracts and Monitoring | 22 |
| 9 | Contract and Procurement Oversight Group (CPOG) | 25 |
| 10 | Freedom of Information | 25 |
| 11 | Communication, Monitoring and Review (including Staff Training) | 25 |
| 12 | Equality and Diversity Statement | 26 |
| 13 | Glossary | 27 |
| 14 | Equality Impact Assessment | 29 |
| 15 | Appendix A – Contract Signature Process | 36 |
| 16 | Appendix B – Breach / Tender Waiver Procedure | 36 |
| 17 | Appendix C – CPOG Terms of Reference | 36 |

1 Introduction

- 1.1 The NHS NW London ICB has a clear responsibility to ensure procurement and commissioning decisions meet the needs of its population. Services have to be affordable, sustainable and within the limits of the available resources. As such the ICB has a responsibility to ensure that it has a consistent, transparent, and effective approach to the procurement, commissioning and contract management of goods, services and works.
- 1.2 The NHS NW London ICB must ensure that procurement activity is in accordance with the Public Contracts Regulations 2015 (PCR) and associated statutory requirements whilst securing value for money and sustainability.

DRAFT

2 Scope of Policy

- 2.1 This policy applies to all staff and members of the NHS NW London ICB Board or its subcommittees, and any third party working in association with, or on behalf of, the NHS NW London ICB. This includes staff on temporary or honorary contracts, appointed representatives acting on behalf of the ICB, staff from member practices and any external organisations (e.g. Commissioning Support Units).
- 2.2 This policy applies to all NHS NW London ICB procurements and contracts (clinical and non-clinical). However, it is particularly relevant to procurement of supplies and services that support the delivery of healthcare and certain sections only relate to procurement of health and social care services.
- 2.3 It applies to all commissioning processes and procurement activity and decision making related to the delivery of healthcare services:
- the development and approval of specifications for services
 - determination of which organisations shall provide services
 - determination of whether a service should be decommissioned
- 2.4 Contract management processes, focusing on the NHS NW London ICB's approach to:
- The operating plan and model of the contract teams
 - Identification and clarification of responsibility between contract and commissioning/budget leads.
 - Contract development and appropriate contract forms
 - Contract duration
 - Contract storage and database (electronic and paper)
 - Contract register
 - Contract management including contract review and the contract compliance audit programme
 - Contract signing
 - Reviewing contract outcomes to form the basis of ongoing transformation delivery
- 2.5 Arrangements under which the NHS NW London ICB collaborates with other public bodies (for example under non legally binding memoranda of understanding (MOU) will not ordinarily constitute public contracts for the purposes of procurement law but will be subject to the internal approval processes for non-competed expenditure set out in the Standing Financial Instructions and this policy.

3 Policy Statement

- 3.1 The purpose of this policy is to provide contracting and procurement principles that supports the NHS NW London ICB, whilst still addressing all areas of NHS NW London ICB spend, development and management of contracts for healthcare services and also for the procurement of goods and non-healthcare services. The policy also provides guidance on the process for entering, documenting, reviewing, and exiting contractual arrangements.

The policy seeks to:

- Set out a clear purpose and scope for the policy
- Outline key principles and considerations to be taken into account throughout both the procurement/commissioning and contract cycles
- Confirm responsibilities and how capability will be assured
- Ensure use of robust and consistent contractual terms and conditions
- Outline the basis of decision making and the processes associated with the awarding contracts
- Outline the operating model for the ICB management team to support principle implementation and adherence to the policy
- Outline the responsibilities and terms of reference for the ICB Contract and Procurement Oversight Group (CPOG) that ensure this policy is being followed
- Provides contracting and procurement procedures, templates, and tools to support the ICB officers
 - involved in procurement of goods and services
 - Detail how the policy will be reviewed; and
 - Reference other relevant and interlinking policies of the ICB.

- 3.2 The NHS and the wider public sector procurements are subject to rules, principles, regulations, and guidance. Procurement is governed by and evolves through UK legislation, policies and principles:

1. [National Health Service Act \(2006\)](#)
2. [The NHS \(Clinical Commissioning Group\) Regulation 2012 no. 1631, June 2012](#)
3. [Securing best value for NHS patients, August \(2012\)](#)
4. [Procurement briefings for Clinical Commissioning Groups, September 2012](#)
5. [Procurement Guide for commissioners of NHS-funded services, July 2010](#)
6. [Health and Social Care Act \(2012\)](#)
7. [The National Health Service \(Procurement, Patient Choice and Competition\) \(No 2\) Regulations \(2013\)](#)
8. [Substantive guidance on the Procurement, Patient Choice and Competition Regulations \(2013\)](#)
9. [The Public Contracts Regulations \(2015\)](#)
10. [Procurement Policy Notes to the Public Contract Regulations \(2015\)](#)
11. [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020](#)
12. [Procurement Transparency \(March 2017\)](#)

North West London

13. <https://www.england.nhs.uk/greenernhs/wp-content/uploads/sites/51/2020/10/delivering-a-net-zero-national-health-service.pdf>
14. <https://www.legislation.gov.uk/ukpga/2012/3/enacted>
15. <https://www.england.nhs.uk/publication/we-are-the-nhs-people-plan-for-2020-21-action-for-us-all/>

DRAFT

- 3.3 This policy recognises and seeks to support the key objectives of the ICB including to commission a sustainable, affordable, and high-quality NHS. When procuring health care services, the ICB will be required to act with a view to:
- **Securing** the needs of the people who use the services
 - **Improving** the quality of the services
 - **Deliver** efficiency in the provision of the services and this will be supported by:
 - Ensuring that service specifications will include best practice principles related to economic, social, and environmental factors.
 - Working with all partners in the system collaboratively to improve health and care for patients in line with the principles underpinning Integrated care systems.
- 3.4 This policy will outline how decisions to award contracts will be approached, reflecting current regulatory obligations, national policy, and statutory guidance. Furthermore, the principles for contract management will be driven by a policy that adopts good practice, collaboration, maximises financial and operational performance whilst minimising risk.

4 Associated Policies and Procedures

- 4.1 This policy operates alongside and should be read in accordance with the following:
- Constitution, which include Standing Financial Instructions, Schemes of Reservation and Delegation and Prime Financial Policies;
 - Policy on the Management of Conflicts of Interest;
 - Anti-Fraud and Anti-Bribery Policy;
 - Raising Concerns (Whistle Blowing) Policy;
 - Communication and Engagement Strategy;
 - Disciplinary Policy;
 - Gifts, Hospitality & Sponsorship Policy; and
 - NHS England Standing Financial Instructions in so far as they impact on the procurement of GP services under full delegation of the co-commissioning provisions.

5 Application of this Policy

- 5.1 This policy sets out the guiding principles that all staff will follow where they are involved and/or entering into a contract or committing the ICB to any expenditure or monitoring the contract following agreement; they must do so in accordance with this policy and any of the ICB's applicable policies.
- 5.2 The principles below are also considered in the context of the ICB's strategic priorities and evolving national guidance, in that the ICB will develop and implement arrangements to enable the contestability and procurement of clinical services:
- 5.3 **Principle 1:** In making its commissioning decisions it will determine how it will comply with its obligations under PPCC and PCR 2015 in the given factual circumstances.
- 5.4 **Principle 2:** Where procurement or failure to award a contract to a preferred provider would place other core services at significant risk by impacting on their viability and long-term sustainability, an alternative route to procurement will be sought.
- 5.5 **Principle 3:** Any decision not to undertake a competitive process in respect of a service award should be supported by clear and transparent evidence to demonstrate which of the "qualifying conditions" have been met in an individual case.
- 5.6 **Principle 4:** The ICB recognises its leadership role in the development of the local provider market and will work towards supporting the development of a more integrated provider delivery model while preserving local access and patient choice to a sustainable and expanding range of services appropriate to meet the needs of the local population.
- 5.7 **Principle 5:** The ICB will develop approaches that promote and support personalisation and choice for patients. The ICB will collaborate with other agencies to specify and procure services that address joint health and care needs where appropriate. The ICB will utilise patient experience feedback to influence the ongoing performance management of service providers and procurement decisions.

North West London

- 5.8 **Principle 6:** The ICB recognises the model of “any qualified provider” (AQP) as offering potential benefit for patients and the ICB. The NHS NW London ICB will consider the appropriateness of an AQP model, assessing the relative benefits to both patients and the ICB in line with regulations, in comparison with other contracting models to determine which may deliver optimum benefit.
- 5.9 **Principle 7:** The ICB will recognise its contractual obligations and ensure all forms of expenditure are supported with the appropriate contractual documentation. Once an agreement has been sought the ICB will continually monitor and work with the provider or supplier to ensure high quality and value for money is being achieved and that the arrangements for service delivery continue to be satisfactory to both parties.
- 5.10 **Principle 8:** The contract management approach will be done in a collaborative manner in line with the ICB’s principles, which aims to share accountability, integration, risk, and support for the benefit of the wider health system. The frequency of monitoring meetings will be done according to the Contract Management Framework in this policy.

DRAFT

Integrated Care Systems (ICSs) Principles

- 5.11 In conjunction with the above, the ICB will follow the ICS principles and work towards achieving the system maturity matrix in order to build a strong health and care system across NWL.
- 5.12 **System leadership, partnerships and change capability:** When it comes to contracting and procurement activities, this will be done with strong collaboration of all partners across the system in a proactive and transparent manner.
- 5.13 **System architecture and strong financial management and planning:** Ensuring there is value for money and appropriate incentives to support commissioning and health objectives across the system.
- 5.14 **Integrated care models:** Integration of services and teams will be considered for service models and transformation projects.
- 5.15 **Track record of delivery:** Robust contract management and engagement to ensure services are being delivered as needed and are demonstrating positive impact on population health outcomes.
- 5.16 **Coherent and define population:** Developing services that respect patient flows across NWL as a system whilst promoting patient choice and standard availability.

Review of Principles

- 5.17 As the ICS landscape in NWL develops, the principles set out under this policy will be reviewed every 12 months and amended, as necessary. These will go to the Audit Committee for sign-off and the Finance Committee will have oversight and provide recommendations as and when needed.

6 Accountabilities and Responsibilities

Individual responsibilities are described within the ICB's Constitution. Committees, and those in particular to procurement and contracting are below:

6.1 The ICB Board

The Board, and all Committees of the ICB, are responsible for setting the approach for facilitating open, transparent, and fair, proportionate procurement processes and ensuring procurement decisions and procurement processes are in accordance with this policy.

6.2 Borough Committees

The Committee is formally constituted by and is accountable to the Governing Body to make decisions according to the Scheme of Reservation and Delegation. Under its delegated powers it must make commissioning decisions on behalf of the ICB, which are safe, timely, personalised, recovery focused and sustainable, which meet the needs for and on behalf of the local population within the available resource.

6.3 Audit Committee

The Audit Committee is responsible for integrated governance, audits, risk management and internal control. This includes ensuring compliance with competition waiver processes.

6.4 Finance Committee

The Finance Committee oversees the arrangements in place for the allocation of resources and the scrutiny of all expenditure.

6.5 Procurement Lead

This policy is maintained and owned by the Contracts and Procurement Oversight Group (CPOG), who is responsible for:

- Ensuring that the principles of good procurement practice are embedded within the ICB;
- Monitoring legislation and incorporating any significant policy or procedural developments, or as required by statutory or mandatory requirements;
- Reviewing and updating the policy as a minimum on an annual basis following an approved change control process;
- Identification of risks associated with direct award of contracts without competition; and
- The review of tender waivers for submission to the Chief Finance Officer / Chief Executive in line with Standing Financial Instructions, prior to scrutiny by the Audit and Governance Committees.

6.6 **NHS NW London ICB Staff**

All of the ICB officers are responsible for complying with this procurement policy and associated procedures. All ICB staff shall:

- Only procure goods, services, and works on behalf of the ICB
- Only procure goods, services, and works in accordance with the ICB's Scheme of Financial Delegation. In instances where staff are unsure about a course of action, then they should seek advice and guidance from CPOG.

6.7 **Authority**

The ICB is accountable for the purchase of goods and services in relation to any commissioned health services for which it is responsible and its own operational and management needs; specifically:

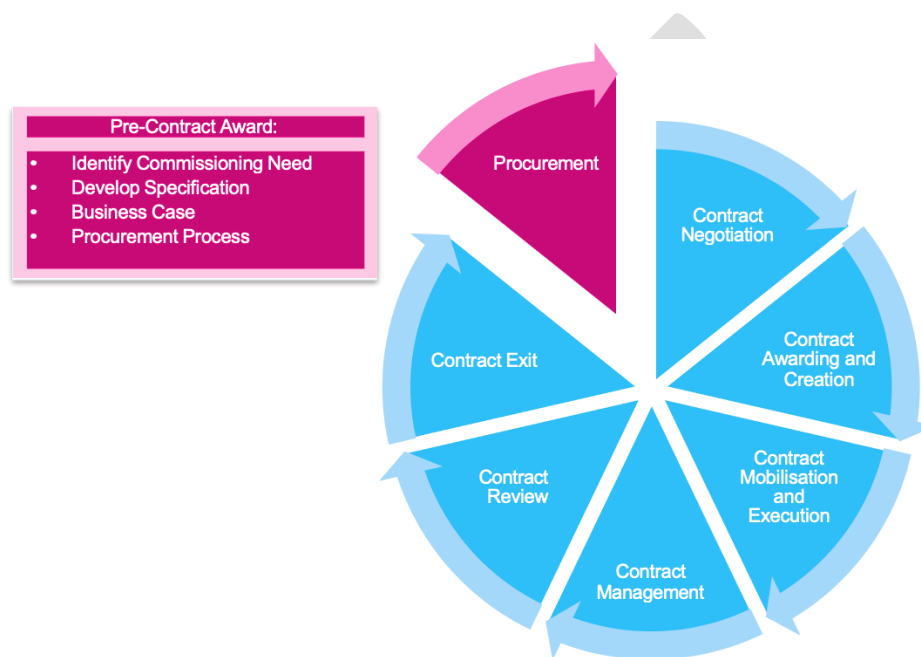
- Any proposed market intervention and any associated procurement route
- The approval of any specifications or service models directly affecting its respective requirements or that of the local population
- The evaluation criteria used for the procurement of goods or services
- Signing off decisions on which providers to invite to tender; and
- Making final decisions on the selection of the provider.

Arrangements for delegation of authority to officers are set out in the relevant Scheme of Reservation and Delegation, and Prime Financial Policies / Detailed Financial Policies.

- 6.8 In the event of any discrepancy between this policy and the relevant Scheme of Reservation and Delegation, and Prime Financial Policies / Detailed Financial Policies, the Scheme of Reservation and Delegation, and Prime Financial Policies / Detailed Financial Policies will take precedence.

7 Practical Implementation and Process for Procurements

7.1 The commissioning cycle and contract life cycle management is the strategic roadmap that needs to be followed to support the delivery of an on-going programme of procurement and contract management activity. As demonstrated below, the ICB will follow a number of processes and undertake a range of measures to enable practical implementation.



7.2 Service Review and Identification of Need

There will be an ongoing programme of service review and development to ensure the commissioned services meets the health needs of the population. This will be done in line with the NHS Long-Term Plan which sets out the ambition for regions to work as integrated care system.

Therefore, when developing service requirements, the principle will be that the ICB will work with the relevant organisations in the North West London health and care system to join forces, so they are better able to improve the health of their populations and offer well-coordinated efficient services to those who need them.

Any engagement will be done transparently and in a non-discriminatory manner, so that it is entirely lawful and consistent with procurement regulations. Potential procurement issues and / or conflict of interests will be prevented by ensuring that transformation leads do not engage selectively with only certain providers or types of providers (be they incumbent or potential new providers) in developing a service specification for a contract for which they may later bid.

7.3 Investment Review and Sign-Off

Business Cases must be prepared for changes to services/pathway redesign, the procurement of new services or the re-procurement of existing services. This covers both capital and revenue investments. The source of funding must be identified before the business case is submitted. Business cases seeking external funding must be approved by the relevant ICB officer/committee prior to making the external request for funds. Following approval of Business Case / Proposal the appropriate Quotation and Tendering or Waiver process below must be followed.

The authorisation of the investment recommendation is subject to the following approval route in accordance with the ICBs' Schemes of Reservation and Delegation and Standing Orders.

| Delegated Matter | Authority Delegated To |
|--|--|
| Estimated annual value up to £1,000,000 | Deputy Chief Finance Officer |
| Estimated annual value up to £5,000,000 | Chief Finance Officer or Chief Executive |
| Estimated annual value up to £10,000,000 | Finance Committee |
| Above £10,000,000 | Board |

7.4 Procurement Approach

For all of the ICBs' own operation and management needs and to assure the delivery of goods and services, the ICB shall adopt a procurement approach in compliance with their obligations under procurement legislation and the other applicable legislation.

This will be facilitated by the Contract and Procurement Oversight Group (CPOG) who will assist to consider, risk assess and recommend the most appropriate route of procurement and processes. This will have regard the principled-based approach set out in procurement regulations with a view to improving the quality and efficiency in the provision of NHS health care services and with a view to:

- Where appropriate, providing services in an integrated way
- Enabling providers to compete to provide the services
- Allowing the patients a choice of provider of the services
- Encouraging innovation and development
- Promoting quality and best value

Market Assessment

In order to support on-going procurement and contestability activities, the ICB will hold a comprehensive knowledge of the current configuration, capacity, and competence of the existing provider market. Areas where change is required, either because of an absence of service provision, poor performance or limited choice for patients, will be identified and proactively addressed.

Stakeholder Engagement

The ICB recognises that effective engagement with stakeholders is an essential requirement

North West London

for all NHS organisations and will offer benefits to the generation of outcome-based service specifications. The NHS NW London ICB will engage with stakeholders at appropriate times during the commissioning and procurement process. Stakeholder engagement with new and existing providers, members of the public, clinicians and other service users will occur at key points in the service review and procurement process. Any potential conflict of interest issues that arise during the engagement process need to be managed in accordance with the NHS NW London ICB's Conflict of Interest policy.

Where stakeholder involvement is required, consideration will be given as to what is fair and proportionate in relation to the circumstances of the procurement. For the benefits of this policy and in line with the ICB's guidance, the terms 'involve', and 'involvement' are used interchangeably with 'engagement', 'participation', 'consultation' and 'patient and public voice'. It is recognised that there are many different ways to involve patients and different approaches will be assessed as appropriate depending on the nature of the procurement activity.

Transparency

The ICB shall ensure that its commissioning intentions are based on local health needs and reflect evidence of best practice – securing 'buy in' from local stakeholders to the clinical case for change.

Its documentation shall support transparency by detailing the approach to be taken at every stage in the commissioning cycle so that a clear audit trail is evident.

The ICB will secure expert advice and engage with providers when necessary, by facilitating early engagement with both incumbent and potential new providers over potential changes to the services commissioned for a local population. The ICB will invite engagement using the lawfully mandated national online portal, Contracts Finder, and where the PCR 2015 require, the Find a Tender Service (FTS).

When testing the market for potential providers of services and when initiating a procurement process to invite expressions of interest, tenders, or applications to an Any Qualified Provider framework, the ICB will ensure compliant notices are published on Contracts Finder and where required by the PCR 2015, on FTS.

The ICB will create clear and transparent commissioning specifications that reflect the depth of engagement and set out the basis on which any contract will be awarded.

Communications

The ICB will develop and implement a communications plan to explain any new arrangements to the health market as well as local public forums and organisations.

Brexit

The European Union (Withdrawal) Bill seeks to replicate the substance of existing EU law into domestic law. As such the applicability of procurement regulations and as such this policy will remain post Brexit.

The only practicable change is that UK public procurement notices will no longer be required to be published via the Official Journal of the European Union, from 1st January 2021 public

procurement notices are to be published through Find a Tender.

The Public Services (Social Value) Act 2012 (the “Social Value Act”)

The Public Services (Social Value) Act 2012 (the “Social Value Act”) applies to the ICB when carrying out procurements for public service contracts. In accordance with obligations under the Social Value Act the ICB will, where practical considering clinical need and urgency, consider the following questions in advance of procurement:

how the services to be procured may improve the social, environmental, and economic wellbeing of its area; and how in conducting a procurement process the ICB might act with a view to securing that improvement, including whether to undertake a consultation on these matters.

<http://www.legislation.gov.uk/ukpga/2012/3/enacted>

7.5 Procurement Route

The procurement route to be used in relation to each contract shall be determined by the contract value. The contract value of each contracting opportunity must be a genuine pre-estimate of the total contract value (i.e. three-year contract of £50,000 per year = total contract value of £150,000). Contract values must not be deliberately split/disaggregated to avoid the need to consider competition.

In order to comply with the procurement regulations, and to ensure equity to all sectors, the ICBs will ensure full compliance with the following procurement thresholds:

| Contract Value (over the full term of the contract) | Commissioned Healthcare Services |
|---|---|
| Less than £4,999 | Single email or written quotation required |
| £5,000 to £19,999 | <p>Minimum of two (2) emailed or written quotes required. No formal process is required although best value for money should be sought at all times and purchases should be from a reputable source.</p> <p>CPOG to have oversight with advice sought from local contract leads or CPOG directly if required.</p> |
| £20,000 to £99,999 | <p>Minimum of three (3) emailed or written quotes required. No formal process is required although best value for money should be sought at all times and purchases should be from a reputable source.</p> <p>CPOG to have oversight with advice sought from local contract leads or CPOG directly if required.</p> |

North West London

| | |
|--|---|
| <p>Between £100,000 and the Public Contract Regulation Threshold applicable at the time.</p> <p><i>(As at 1st January 2022, Supplies/ Services Value = £213,477 (Sub Central Authorities) Works =£5,336,937)</i></p> | <p>A minimum of three tenders must be sought. All opportunities must be advertised on the ContractsFinder Procurement Portal.</p> <p>Tender process to be conducted using an e-tendering platform.</p> <p>Sign-off must be sought from CPOG beforehand.</p> |
| <p>Equal to or above the Public Contract Regulation Threshold applicable at the time.</p> <p><i>(As at 1 April 2020 = £663,540)</i></p> | <p>Compliance with the Light Touch Regime of the 2015 Regulations and the 2013 Regulations.</p> <p>Sign-off must be sought from CPOG beforehand.</p> |

DRAFT

Wherever possible the NHS NW London ICB should procure supplies and services through NHS and Public Sector Contracts and Framework Agreements. Such contracts provide the ICB with a compliant procurement route through direct award or through mini competition provided under the framework conditions.

The NHS NW London ICB must adhere to NHS England Policy and Guidance for procurement of Management Consultancy Services and Agency Staff.

All procurement processes must have the relevant governance process sign off before commencement and the contract award must be authorised in accordance with the ICBs' Scheme of Reservation and Delegation.

7.6 Single Tender Waivers

Single Tender Waivers (STW) could be applied to the purchase of goods, the direct award of contract for a new service and the extension of an existing contract where there is no provision for extension.

Retrospective approvals are NOT permitted. Where retrospective approval is sought this will be recorded as a breach of tender and procurement procedures.

Where the appropriate procurement and tendering process has not been followed this will be recorded as a breach of tender and procurement procedures.

The waiving of competitive tendering procedures should be done in a timely manner and not be used to deliberately avoid competition, or for administrative convenience, or to award further work to a provider originally appointed through a competitive procedure where this would breach the procurement regulations. In the event that ICB officers have a requirement to consider a direct award they should seek advice and guidance from CPOG before committing the ICB to enter into a contract arrangement or to commit a ICB to expenditure.

Where a ICB's officer wishes to apply for an exemption, they shall do so in accordance with the ICB's Standing Financial Instructions or Prime Financial Policies:

| Delegated Matter | Delegated To | |
|--|-----------------------|---|
| | Chief Finance Officer | Chief Executive & Chief Finance Officer |
| Tender Waiver or Breach of Tender / Procurement Procedures | | |
| Tender waivers can only be used in exceptional circumstances. Before completing the Breach / Waiver of Tender Form, you should discuss this in the first instance with your Finance lead. The Form will need to be submitted to the Contracts and Procurement Oversight Group (CPOG) in the first instance before being submitted for approval. All waivers and breaches of tender / procurement procedures must be reported to the Audit Committee. | | |
| Waiver up to £5m | X | |
| Waiver over £5m | | X |

Waivers can be requested in the following circumstances:

- Very exceptional circumstances where the Chief Executive decides that formal tendering procedures would not be practicable, and the circumstances are detailed in an appropriate

- ICB Committee record.
- Where Department of Health national agreements are in place and have been approved by the Board.
- Where there is an urgent clinical need. Where a service is put in place for reasons of urgency or safety, you should consider this as an interim step and plan to undertake a competitive process as soon as possible.
- The provision of legal advice and services providing that any legal firm or partnership commissioned by the ICB is regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council for England and Wales in relation to the obtaining of Counsel's opinion) and are generally recognised as having sufficient expertise in the area of work for which they are commissioned.
- A consortium arrangement is in place and a lead organisation has been appointed to carry out tendering activity on behalf of the consortium members.

The ICB will require assurance about potential providers and are required to undertake a due diligence process proportionate to the nature and value of the contract. Where this applies to a direct award or material contract variation, financial and quality assurance checks of suppliers and providers will be expected to be undertaken before entering into a contract which will assess the suitability of the provider using the following criteria:

- Financial viability
- Economic standing
- Corporate social responsibility
- Clinical capacity and capability (where applicable)
- Clinical governance (where applicable)
- Quality/accreditation
- Compliance with the Public Sector Equality Duty

The process and required template are included in [Appendix B – Breach / Waiver of Tender Procedures](#)

7.7 Collaborative Procurement

Where there is clinical, quality, financial or process benefits to be obtained, the ICB should consider the option of joint commissioning with other health or local authority commissioners.

Where procurement is the subject of joint commissioning between several commissioners, or with local authority partners, decision-making must be consistent with the contents of this policy.

When a procurement process is the subject of joint commissioning with the Local Authority, Local Authorities are subject to the same legislative frameworks (Public Contract Regulations and European Union Procurement Directives), but may not be required to comply with NHS specific guidance and regulations: this will be considered and any issues arising from any differences will be clearly articulated in any joint procurement decision.

7.8 Grant Agreements

Grants can be used to provide financial support to a voluntary organisation which provides or arranges for the provision of services which are similar to those in respect of which the ICB has statutory functions.

The ICB will only enter into a Grant Arrangement if the following conditions are met.

- The organisation is a voluntary sector organisation with charitable status
- The organisation has made or intends to make a formal application for grant funding
- The service being provided not part of the services that the ICB is statutorily required to commission
- The service being provided either complements or similar to the services that the ICB is statutorily required to commission
- The ICB is not requiring the delivery of a service and is only contributing towards funding for the activities of a voluntary organisation
- The grant funding an economic and effective use of resources

Grant arrangements will not be used as the mechanism to avoid competitive tendering or providing justification for a single tender and will be approved in accordance with the ICB's Standing Financial Instructions or Prime Financial Policies

7.9 **Expert Procurement Support**

The ICB will receive expert support from the NWL Procurement Shared Service function, as required and in support of their respective workplans.

7.10 **Sustainable Procurement**

The NHS is a major employer and economic force across the region. The ICB recognise the impact of its purchasing and procurement decisions on the regional economy and the positive contribution it can make to economic and social regeneration.

The ICB is committed to the development of innovative local and regional solutions, and will deliver a range of activities as part of its market development plan to support this commitment.

Wherever it is possible and does not contradict or contravene the ICB's legal obligations, the ICB will work to develop and support a sustainable local health economy.

7.11 **Equality and Quality Impact Assessment**

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 their 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 and Quality Impact Assessment (EQIA) must be carried out prior to the change within the service.

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

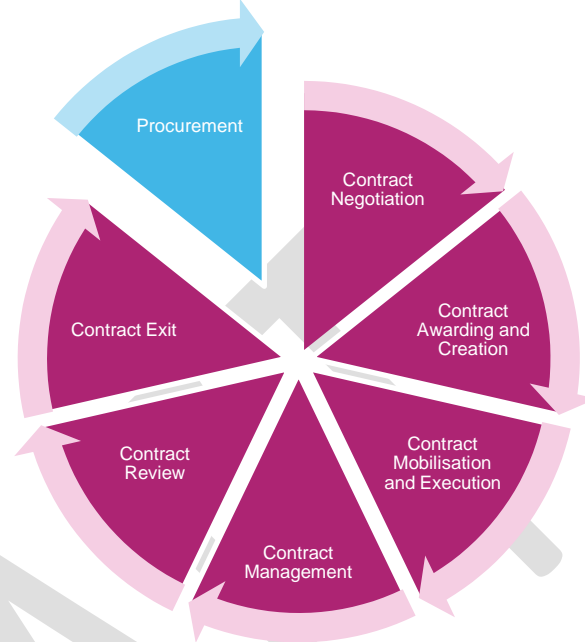
7.12 **Conflicts of Interest**

Throughout the procurement process, the ICB will ensure that potential conflicts of interests are effectively managed as part of procurement activity in accordance with the Conflict of Interest Policy.

The ICB notes the publication by NHSE on 16th June 2017 (updated 15th August 2018) of updated Statutory Guidance on Managing Conflicts of Interest for ICBs. The ICB will both implement and adhere to this guidance and any updates to said guidance.

8 Practical Implementation and Process for Contracts and Monitoring

Upon completion of any procurement activity, the ICB will follow the contract life cycle management process and principles as set out below:



8.1 Contract Negotiation

The ICB will enter into negotiations with other potential suppliers or partner organisations in a collaborative and transparent manner regardless of the procurement route taken. This will be done pre and/or post contract award, depending on the procurement route taken.

Where a formal procurement route is undertaken, all discussions will be consistent and equitable in line with PCR 2015 and processes set out in the invitation to tender (ITT).

8.2 Contract Forms

All ICB officers need to understand the terms and conditions that apply to a particular contract prior to award. In all instances the ICB officers involved in procurement or market intervention must develop the contract in accordance with any technical guidance relevant to the contract.

Contracts for Supply and Services and Purchase of Goods: All commitments (with exception of framework agreements) must be on NHS standard terms and conditions for the purchase of goods/services or any other standard format defined by Crown Commercial Services, as applicable. Any deviation must be reviewed and recommended by the CPOG prior to executive approval.

Contracts for Supply and Services and Purchase of Goods: For the services awarded from an approved framework provider, the relevant call-off order is to be used that references the agreed framework terms and conditions.

Contracts for Healthcare Services: The NHS Standard Contract is mandated by NHS England for use by commissioners for all contracts for healthcare services other than primary care. In this context, the ICB officers must ensure that:

- In all instances the use of the NHS Standard Contract in any procurement or market intervention should be in accordance with the NHS Standard Contract Technical Guidance relevant in the year of use.
- Consideration is given to the use of the NHS England shorter form version of the Standard Contract, for use in defined circumstances.

Primary Care Contracts: The ICB officers shall ensure they use standard contracts for primary care services.

Section 75 and 76/256 Agreements: Section 75 of the NHS Act 2006 allows NHS Bodies and Public Bodies to establish joint agreements for the provision of healthcare related services. Section 256 of the NHS Act 2006 allows Public Bodies to commission healthcare related services on behalf of the NHS.

These arrangements must be supported by the relevant section 75/256 agreement and where possible, the NHS Standard Contract must be used by the lead Public Body hosting the contract.

Other Contracts: Other forms of contracts, such as verbal, implied, agreements via email, supplier led SLA agreements etc. are not recommended and not supported by this policy.

8.3 **Modification of Existing Contracts**

With regard to making variations to existing contracts, advice will be sought from CPOG to determine whether a proposed variation constitutes a material change which may require the contract to be subject to competition regulations.

8.4 **Recording of Decision Making**

The ICB will maintain a register of procurement decisions taken, either for the procurement of a new service or any extension or material variation of a current contract.

This will include:

- The details of the decision
- Who was involved in making the decision and the name of the decision-making committee
- A summary of any conflicts of interest in relation to the decision and how this was managed
- The award decision taken

All contract awards should be published in accordance with PCR 2015 and where applicable Contracts Finder.

8.5 **Signature of Contracts**

The signature of contracts will be done in line with the ICB's Prime Financial Policies and the Detailed Scheme of Delegation. The ICB process is covered under [Appendix A – Contract Signature Process](#).

8.6 **Recording of Contracts**

The ICB will maintain a register of all contracts in date and those expired in accordance with the NHS Records Retention Schedule

8.7 **Contract Management Framework**

The ICB will ensure that mobilisation and ongoing management and monitoring of contracts will be underpinned by an agreed Contract Management Framework.

This will be to ensure that there is regular communication and engagement between partners to ensure that arrangements for service delivery continue to be satisfactory to both parties.

Contract and/or quality review meetings are a mandatory requirement for all NHS contracts and will be the mechanism used to review commissioned services. This is not intended to be a one-way discussion but rather done in a collaborative manner in line with the ICS principles, which aims to share accountability, integration, risk, and support.

8.8 **Contract Exit**

The NHS NW London ICB will follow the process to terminate or expire a contract in line with the NHS Standard Contract General Conditions (GC17 Review) or as per the application terms in the contract.

The ICB will ensure the service is reviewed at the appropriate time before the end of the existing contract and not seek to roll over contracts or let them continue indefinitely.

When evaluating options upon termination or expiry of an existing contract, the decision-making process, and key factors to be considered will be broadly similar to scenarios where the ICB is seeking to secure new service models or significant additional capacity

DRAFT

9 Contract and Procurement Oversight Group (CPOG)

- 9.1 A Contract and Procurement Oversight Group (CPOG) will be established to provide operational management of procurement activity within the ICB and in line with this policy.
- 9.2 The Group will report into the NW London Finance and Audit Committees and shall be responsible for the regular review and monitoring of the ICB's Contract and Procurement Registers to ensure that appropriate and timely procurement plans are developed in advance of contracts reaching their respective termination / expiry dates.
- 9.3 The Group will assist to consider, risk assess and recommend the most appropriate forms of contractual arrangements and processes to put contracts into place, having regard to the ICB's commissioning objectives and its legal procurement obligations.
- 9.4 Terms of reference for this meeting is available under:
[Appendix C – CPOG Terms of Reference](#)

10 Freedom of Information

- 10.1 Section 1 of the Freedom of Information (FOI) Act 2000 gives a general right of access from 1 January 2005 to recorded information held by the ICB, subject to certain conditions and exemptions. This information may be held in both manual and electronic form in accordance with the Data Protection Act 1998 and may be disclosed to third parties in accordance with the Act.
- 10.2 When preparing to enter into contracts, the ICB must carefully consider their obligations under FOI and ensure any bidders/contractors are aware these will contain terms relating to the disclosure of information by them. The ICB may be asked to accept confidentiality clauses, for example to the effect that information relating to the terms of the contract, its value and performance will not be disclosed. FOI recognises that there will be circumstances and respects in which the preservation of confidentiality between public authority and contractor is appropriate, and must be maintained, in the public interest. However, it is important that the ICB makes the contractor aware of the limits placed by FOI on the enforceability of such confidentiality clauses relating to the disclosure of information.

11 Communication, Monitoring and Review (including Staff Training)

- 11.1 The ICB has established effective arrangements for communicating the requirements of this policy. This will include all new starters to the organisation being briefed on the requirements of this policy as part of their induction to the ICB.
- 11.2 The ICB will establish formal training and updates for all staff. Training will be provided to all staff who undertakes a commissioning or contracting role.

- 11.3 The implementation of this policy, and the effectiveness of the arrangements detailed within it, will be monitored by the ICB Audit Committee.
- 11.4 This policy will be reviewed by the ICB policy author and recommendations to amend will be submitted to the NWL ICB Governing Body for approval.

12 Equality and Diversity Statement

- 12.1 The ICB pays due regard to the requirements of the Public Sector Equality Duty (PSED) of the Equality Act 2010 in policy development and implementation, both as commissioners and as employers.
- 12.2 As a commissioning organisation, we are committed to ensuring our activities do not unlawfully discriminate on the grounds of any of the protected characteristics defined by the Equality Act, which are age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 12.3 We are committed to ensuring that our commissioning activities also consider the disadvantages that some people in our diverse population experience when accessing health services. Such disadvantaged groups include people experiencing economic and social deprivation, carers, refugees and asylum seekers, people who are homeless, workers in stigmatised occupations, people who are geographically isolated, gypsies, Roma, and travellers.
- 12.4 As employers, we are committed to promoting equality of opportunity in recruitment, training, and career progression and to valuing and increasing diversity within our workforce.
- 12.5 To help ensure that these commitments are embedded in our day-to-day working practices, an Equality Analysis has been completed, and is attached to this policy.

13 Glossary

| | |
|--------------|---|
| AQP | Any Qualified Provider |
| BI | Business Intelligence |
| CFO | Chief Finance Officer |
| CPOG | Contracts and Procurement Oversight Group |
| CSU | Clinical Support Unit |
| DoHSC | Department of Health and Social Care |
| EIA | Equality Impact Assessment |
| EQIA | Equality and Quality Impact Assessment |
| EU | European Union |
| FOI | Freedom of Information |
| GC17 | General Condition 17 |
| GP | General Practice |
| HCP | Health and Care Partnership |
| ICB | Integrated Care Board |
| ICS | Integrated Care System |
| ITT | Invitation to Tender |
| MOU | Memorandum of Understanding |
| NAC | Non-Acute Contracts |
| NHS | National Health Service |
| NHSE | NHS England |
| OJEU | Official Journal of the European Union |
| PASA | NHS Purchasing and Supply Agency |
| PCC | Primary Care Committee |
| PCR | The Public Contract Regulations 2015 |
| PPCC | NHS (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 |
| PSED | Public Sector Equality Duty |
| SFI | Standing Financial Instructions |
| SLA | Service Level Agreement |
| SMT | Senior Management Team |
| SOP | Standard Operating Procedure |

| | |
|-------------|---|
| STW | Single Tender Waiver |
| NWL | North West London |
| TUPE | Transfer of Undertakings (Protection of Employment) |

DRAFT

14 Equality Analysis

Equality Analysis Checklist

An equality analysis is a review of a policy, function or service which establishes whether there is a negative effect or impact on particular social groups. In turn this enables the organisation to demonstrate it does not discriminate and, where possible, it promotes equality.

This check list is a way to help staff think carefully about the likely impact of their work on equality groups and take action to improve services and projects for local people where it has a positive or negative impact.

| | |
|---|--|
| Name of the policy / function / service development being assessed | |
| Briefly describe its aims and objectives: | The ICB's aim is to deliver high quality care, in all settings and at all times. Equity of access, regardless of diagnosis, age, ethnicity, social status is key. The changes required to achieve transformational change are: |
| Directorate lead | |
| Is the Equality statement situated in the first three sections of the document? | |

If you are conducting an EA on a procedural document please identify evidence sources and references, who has been involved in the development of the document, process or strategy, and identify positive or negative impacts. It is the discussion regarding the equality impact of the document that is important.

Equality Analysis Checklist

Go through each protected characteristic below and consider whether the policy / function / service could have any impact on groups from the identified protected characteristic, involve service users where possible and get their opinion, use demographic / census data (available from public health and other sources), surveys (past or maybe carry one out), talk to staff in PALS and Complaints.

Please ensure any remedial actions are Specific, Measurable, Achievable, Realistic, and Timely (SMART)

| Equality Group | What evidence has been used for this assessment? | What engagement and consultation has been used | Identify positive and negative impacts | How are you going to address issues identified? | Lead and Timeframe |
|--|--|--|--|---|--------------------|
| <p>Age Think about different age groups and think about the policy / function / service and the way the user would access, is it user friendly for that age?</p> | | | | | |
| <p>Disability Think outside the box, you may not be able to see the disability. It could be physical (hearing, seeing) or a learning disability (Autism).</p> <ul style="list-style-type: none"> • Accessibility – venue, location, signage, furniture, getting around • Disability awareness training for staff • Actively involve the service user and talk it through with them | | | | | |
| <p>Gender Reassignment Think about creating an environment within the service / policy or function</p> | | | | | |

| Equality Group | What evidence has been used for this assessment? | What engagement and consultation has been used | Identify positive and negative impacts | How are you going to address issues identified? | Lead and Timeframe |
|---|--|--|--|---|--------------------|
| <p>that is user friendly and non-judgemental.</p> <p>If the policy / function / service are specifically targeting this protected characteristic, think carefully about training, confidentiality and communication skills.</p> | | | | | |
| <p>Marriage and Civil Partnership</p> <p>Think about access and confidentiality, the partner may not be aware of involvement or access to the service.</p> <p>Staff training.</p> | | | | | |
| <p>Pregnancy and maternity</p> <p>The policy / function / service must be accessible for all for example opening hours.</p> <p>Are the chairs appropriate for breast feeding is there a private area? Are there</p> | | | | | |

| Equality Group | What evidence has been used for this assessment? | What engagement and consultation has been used | Identify positive and negative impacts | How are you going to address issues identified? | Lead and Timeframe |
|---|--|--|--|---|--------------------|
| baby changing facilities and is there space for buggies? | | | | | |
| <p>Race You need to think carefully about the local demographics of the population who will be accessing the policy / function / service. Talk to public health.</p> <p>Think about:</p> <ul style="list-style-type: none"> • Cultural issues (gender, clothing etc.) • Languages • Support to access • Staff training on cultural awareness, interpreting | | | | | |
| <p>Religion or Belief As above think about local population and what religion or belief they may have.</p> <p>Think about:</p> <ul style="list-style-type: none"> • Staff training on respecting | | | | | |

| Equality Group | What evidence has been used for this assessment? | What engagement and consultation has been used | Identify positive and negative impacts | How are you going to address issues identified? | Lead and Timeframe |
|---|--|--|--|---|--------------------|
| <p>differences, religious beliefs</p> <ul style="list-style-type: none"> • Are you trying to implement during a time of religious holidays e.g. Ramadan • Is there are area for prayer times | | | | | |
| <p>Sex This is simply the impact on males / females. For example, same sex accommodation, are their areas for privacy?</p> <p>Is it accessible for both taking into account working service users / is it accessible would it be a venue they would go to?</p> | | | | | |
| <p>Sexual Orientation Don't make assumptions and this protected characteristic may not be visibly obvious.</p> <p>Providing an environment</p> | | | | | |

| Equality Group | What evidence has been used for this assessment? | What engagement and consultation has been used | Identify positive and negative impacts | How are you going to address issues identified? | Lead and Timeframe |
|---|--|--|--|---|--------------------|
| <p>that is welcoming for example visual aids, posters, leaflets.</p> <p>Using language that respects LGB&T people.</p> <p>Staff training on how to ask LGB&T people to disclose their sexual orientation without fear or prejudice.</p> | | | | | |
| <p>Carers</p> <p>Does your policy / function / service impact on carers? Ask them.</p> <p>Do you need to think about venue, timing?</p> <p>What support will you be offering?</p> | | | | | |

For all negative impacts, please provide a SMART action plan to identify how you will address these.

Please send to the Equality/Governance Lead for publication on website (this is a legal requirement).

| Screening completed by (please include everyone's name) | Organisation | Date |
|---|--------------|------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

15 Appendix A – Contract Signature Process



NWL ICB Request
for Contract Signatu

16 Appendix B – Breach / Waiver of Tender Procedures



ICB Breach or
Waiver of Tender Fo

17 Appendix C – CPOG Terms of Reference



ICB CPOG Terms of
Reference.docx