Lancashire and South Cumbria Integrated Care Board

Procurement and Contracting Policy

Ref:	LSCICB_Fin11
Version:	1.1
Purpose	This policy sets out the circumstances when procurement decisions are required and the rules that should be followed by all ICB staff when commissioning services and purchasing goods on behalf of the ICB, to ensure correct decisions are made in compliance with relevant legislation and guidance. The policy also provides guidance in relation to contract management and the steps required for the ongoing monitoring and management of a service that the ICB has commissioned.
Supersedes:	N/A
Author (inc Job Title):	Joanne Sherborne, Head of Procurement and Contracting
Ratified by: (Name of responsible Committee)	Finance & Performance Committee
Cross reference to other Policies/Guidance	ICB Governance Handbook (includes Scheme of Reservation and Delegation and Standing Financial Instructions) ICB's Managing Conflicts of Interest Policy and Procedures ICB's Legal Services and Claims Management Policy ICB's No Purchase Order (PO) No Payment Policy (in development)
Date Ratified:	9/12/24
Date Published and where (Intranet or Website):	Website
Review date:	December 2026 or earlier if there are changes to legislation or guidance.
Target audience:	All Board, Committee and Sub Committee members and any working groups formed to undertake work on behalf of the ICB and all ICB employees.

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Document control:		
Date:	**Version Number:**	**Section and Description of Change**
14/11/2024	0.1	Initial draft to share with identified stakeholders for comments/input
27/11/2024	1.0	Final draft incorporating comments from stakeholders
09/12/2024	1.1	Further amendments as agreed when ratified by Finance and Performance Committee on the 09/12/2024

Contents

1. Introduction and Background

1.1 The role of NHS Lancashire and South Cumbria Integrated Care Board (ICB) is to join up health and care services, improve people's health and wellbeing, and make sure everyone has the same access to services and gets the same outcomes from treatment. The ICB must ensure that services that are commissioned meet the health needs of the local population by working jointly with partners on prevention and by working with all organisations within the NHS family to transform the way healthcare services are provided.

1.2 The ICB has the responsibility to oversee how money is spent and to make sure health services are working well and are of high quality. As such, it is important that commissioning decisions are robust, defensible, based on quality and Value for Money (VfM). The challenge is for the ICB to commission quality services that meet the needs of its population which are also affordable and sustainable.

1.3 It is therefore important for the ICB to have an innovative and sustainable approach to procurement and contracting that supports the ICB's commissioning priorities to ensure quality healthcare services are delivered by both NHS providers and the Independent Sector. The ICB must have robust procurement and contracting processes to ensure decisions are made in compliance with relevant legislation and services are continuously monitored and managed.

1.4 All commissioning decisions that the ICB makes should be in compliance with relevant legislation and NHS England policy guidance. The key legislation relating to this policy is;

Key Legislation

- NHS Act 2006 (as amended)
- Health & Social Care Act 2012
- The Health and Care Act 2022
- The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012
- The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2023
- Health Care Services (Provider Selection Regime) Regulations 2023
- Public Contracts Regulations 2015 (as amended)- due to be replaced by the new Procurement Act 2023 on 24th February 2025
- The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020

Key National Guidance

- Department for Health and Social Care's (DHSC) guide '*The functions of clinical commissioning groups'*.
- NHS Standard Contract Technical Guidance
- NHS Payment Scheme
- NHS Provider Selection Regime (PSR) Statutory Guidance and PSR Toolkit
- NHS Patient Choice Guidance
- NHS England's net zero emissions requirements, the application of net zero and NHS social value, and Carbon Reduction Plan
- Managing conflicts of interest in the NHS: guidance for staff and organisations

1.5 There is also other legislation to be taken into consideration in relation to public sector procurement and contracting;

- Sustainability and the Public Services (Social Value) Act 2012
- The Modern Slavery Act 2015
- Freedom of Information Act 2000
- Data Protection Act 2018
- The Equality Act 2010
- The Fraud Act 2006
- The Bribery Act 2010
- Transfer of Undertakings and Protection of Employment Regulations (TUPE) 2006

1.6 In addition to the legislation set out above, the ICB will also adhere to all relevant Government Procurement Policy Notes (PPN). Where new procurement policy notes are published the ICB will implement these in accordance with the timescales set out within the PPN.

1.7 The Procurement Act 2023 will replace the Public Contracts Regulations 2015 and is expected to come fully into force in February 2025, with an implementation timeframe of at least six months. This will impact on the commissioning of non-healthcare services and goods and therefore the processes detailed in this policy will need to be updated in accordance with the new legislation.

2. Purpose/Aims and Objectives

2.1 This policy sets out the circumstances when procurement decisions are required and the rules that should be followed by all ICB staff when commissioning services and purchasing goods on behalf of the ICB, to ensure correct decisions are made in compliance with relevant legislation and guidance. The policy also provides guidance in

relation to contract management and the steps required for the ongoing monitoring and management of a service that the ICB has commissioned.

2.2 This procurement and contracting policy is a corporate policy and applies to all staff and members of the ICB.

2.3 This policy outlines how the ICB will make decisions regarding the procurement of the goods and services it commissions ensuring that any actions are carried out in compliance with relevant legislation, published guidance and the ICB's Scheme of Reservation and Delegation (SoRD), Standing Financial Instructions (which can be found using the following link; www.lancashireandsouthcumbria.icb.nhs.uk/about-us/how-we-work/corporate-governance-handbook) and the ICB's Procurement Rules (detailed at 3.4.2 and 3.4.3).

2.4 The processes that are detailed in this policy are aligned with the principles that are set out in the Lancashire and South Cumbria (LSC) Provider Collaborative Board (PCB) Procurement Strategy which forms a strong foundation for how the ICB alongside it's LSC system partners within the Integrated Care System (ICS) can move forward to jointly deliver an ambitious agenda. The vision set out in the LSC PCB Procurement Strategy is known as the 'quadruple aim' and it is about ensuring:

- The best health and wellbeing for our populations
- High-quality services
- A happy and resilient workforce
- Financial Sustainability

This vision is underpinned by the principles of transparency and openness, learning together, innovation, aspirational and inclusiveness driven by a high performance culture, strategic alignment, purposeful partnerships and reliance, efficiency and effectiveness.

3. Scope of the Policy and Definitions

3.1 The Procurement and Contracting Function

3.1.1 Within the ICB the procurement and contracting function is overseen by the ICB's Head of Procurement and Contracting who is responsible for the strategic oversight of the function which sits within the ICB's Operational Finance Team. The function is supported by external partners with Midlands and Lancashire Commissioning Support Unit (CSU) as the ICB's main commissioning support partner, who provide procurement and contracting support, assisting the organisation to meet its statutory obligations under public procurement law and national guidance relating to the procurement and contracting of healthcare and non-healthcare services. External procurement support

can also be sourced from other external partners including NECS (who support primary care procurements), the Lancashire Procurement Cluster and SBS.

3.1.2 Contracting support is provided by a mix of teams across the organisation;

- The main ICB procurement and contracting function sits within the ICB Operational Finance Team comprising of both a small ICB team and contracted services from MLCSU to provide a matrix style system wide support function.
- A separate contracting function within the ICB primary care team that hold the responsibility for most primary care contracting and the management of the General Medical Services (GMS) contracts, Personal Medical Services (PMS) contracts and Alternative Provider Medical Services (APMS) contracts.
- A separate contracting function in the All Age Continuing Care (AACC) team that manage the AACC contracts and individual care packages.
- A North West Regional Ambulance & NHS 111 Commissioning Team within the ICB commissioning directorate that manages the 111/999/non emergency patient transport services contracts.
- The ongoing management of non-healthcare contracts is carried out within individual directorates, however the main ICB procurement and contracting function offers advice and support when required.

3.1.3 It is not intended that ICB staff will develop procurement or contracting expertise; however, they will need to know when and how to seek further support when involved in procurement and contracting decisions and processes.

3.1.4 Any ICB staff requiring clarification relating to this policy and are uncertain who to contact within procurement and contracting, advice and guidance should be sought from the ICB Head of Procurement and Contracting in the first instance. Please direct initial enquiries to lscicb.procurement@nhs.net.

3.2 Policy Target Audience

3.2.1 This policy applies to:

- All Board, Committee and Sub Committee members and any working groups formed to undertake work on behalf of the ICB;
- ICB employees

3.2.2 Support, advice and guidance can be sought from colleagues within the procurement and contracting function when following the processes detailed in this policy.

3.2.3 This policy applies to all ICB spend (healthcare and non-healthcare) and applies to all commissioning decisions that result in procurement and contracting activity carried out within the ICB.

3.3 ICB Commissioning Duties

3.3.1 The ICB must fulfil their statutory duties that are set out in the Department for Health and Social Care's (DHSC) guide '*The functions of clinical commissioning groups'*. These functions were transferred to ICBs under the Health and Care Act 2022.

3.3.2 One of these duties is the 'planning, agreeing and monitoring of services'. ICBs are responsible for;

- agreeing the care needed by patients registered with GP practices in the area covered by the ICB; and
- negotiating contracts with healthcare providers and monitoring their implementation.

3.3.3 The NHS Standard Contract is published by NHS England and is mandated for use by ICBs and NHS England for all their clinical services contracts, with the exception of those for primary care services (further information regarding relevant contract forms can be found in section 6.1 of this policy).

3.3.4 The NHS Standard Contract documentation provides the necessary governance to enable the ICB to transact and hold providers to account for delivery through Contract Particulars, Contract Service Conditions and Contract General Conditions schedules.

3.3.5 For non-healthcare services or goods, it is recommended to use the NHS terms and conditions for the supply of goods and for the provision of non-clinical services published by NHS England.

3.4 Procurement Rules

3.4.1 The core procurement processes and rules that need to be followed for the commissioning of healthcare and non-healthcare services and goods prior to putting a contract in place are set out in 3.4.2 and 3.4.3. Further details in relation to these rules can be found in this policy.

3.4.2 Healthcare Services: Provider Selection Regime Procurement Rules

Procurement Route (Healthcare Services) From the 1st January 2024 the ICB must comply with the Health Care Services (Provider Selection Regime) Regulations 2023 when commissioning healthcare services (of any value). Below sets out the rules that the ICB must follow to ensure full compliance with the legislation. Please seek advice and guidance from contracting and procurement colleagues to select the most suitable PSR route when selecting a provider to deliver healthcare services. The relevant PSR paperwork that requires completing (including a decision making record) will be available via contracting and procurement colleagues. Please also use the process maps provided within the NHSE PSR toolkit (available online) to ensure all requirements are met when awarding a contract.	
PSR Route	**Required Steps**
Direct award process A (where there is an existing provider for the services and that provider is the only capable provider).	1. If the existing provider's contract is coming to an end: the ICB is to establish that there is only one realistic provider for the service. A decision making record should be completed and the appropriate approval for the contract award is sought in line with ICB's Scheme of Reservation and Delegation.
	2. Award the contract to the provider.
	3. Publish the contract award on the Find a Tender Service website.
Direct award process B (where people have a choice of providers, and the number of providers is not restricted by the ICB)	1. If the ICB wishes to provide, or currently provides an 'unrestricted patient choice' service: The ICB to ensure that any new providers that express an interest in a service covered by patient choice are evaluated against an agreed qualifying criteria (please use the ICB's accreditation process for patient choice services (where patient's have a legal right to choose); see section 4.8). A decision making record should be completed and the appropriate approval for the contract award is sought in line with ICB's Scheme of Reservation and Delegation. For existing contracts that come under patient choice where providers have already demonstrated required standards to deliver the service, and the ICB is satisfied that the provider will continue to meet the required standards, contract arrangements can be extended under direct award process B. A decision making record should be completed and the appropriate approval for the contract award is sought in line with ICB's Scheme of Reservation and Delegation.
	2. Award the contract to the provider.
	3. Publish the contract award on the Find a Tender Service website.
Direct award process C (where there is an existing provider for the services and that existing provider is satisfying the original contract and will likely satisfy the proposed new contract, and the services are not changing considerably)	1. If the existing provider's contract is coming to an end: the ICB is to review whether the existing provider is doing a sufficiently good job (by taking into account the PSR's key criteria and applying the basic selection criteria by completing a service and provider assessment) and likely to continue to do so and the ICB confirms that the new contract is not changing considerably. A decision making record (including a service and provider assessment) should be completed and the appropriate approval for the contract award is sought in line with ICB's Scheme of Reservation and Delegation.
	2. Publish an Intention to Award a Contract notice on the Find a Tender Service website.
	3. Observe the standstill period.
	4. Award the contract to the provider.
	5. Publish the contract award on the Find a Tender Service website.
Most suitable provider	1. If the existing provider's contract is coming to an end (and a

process (where the ICB is able to identify the most suitable provider without running a competitive process)	direct award is not suitable or not the preferred route), or a new service needs to be established: The ICB should undertake a pre-market engagement exercise to understand the provider market for this service to support the decision to undertake the most suitable provider route. The ICB should be able to demonstrate that they know about any likely providers, based on their knowledge of the provider landscape and be able to form the view, based on this knowledge, that they are likely to be able to identify the most suitable provider through using the MSP process.
	2. To consider the key criteria and decide their importance for the service (by carrying out a service assessment). The ICB must consider that it can identify the most suitable provider without a competitive process. Prior to officially launching this route, appropriate approval is required in line with the ICB's Scheme of Reservation and Delegation.
	3. To contact all providers that are being considered.
	4. Publish a notice of intention to follow the Most Suitable Provider Process on the Find a Tender Service website. Requests for additional information from providers can be made, if necessary.
	5. To assess the providers identified against the key criteria and the basic selection criteria by carrying out a provider assessment and choose the most suitable provider. A decision making record should be completed and the appropriate approval for the contract award is sought in line with ICB's Scheme of Reservation and Delegation.
	6. Publish an Intention to Award a Contract notice on the Find a Tender Service website.
	7.Observe the standstill period.
	8. Award the contract to the provider.
	9. Publish the contract award on the Find a Tender Service website.
Competitive process (where the ICB wishes to run a competitive exercise, or if they wish to establish a new framework agreement)	1. If the existing provider's contract is coming to an end, or a new service needs to be established and a direct award is not suitable or not the preferred route and the ICB does not wish to use the Most Suitable Provider Process: Prior to launching this route, appropriate approval is required in line with the ICB's Scheme of Reservation and Delegation. The ICB should then develop a service specification and undertake a pre-market engagement exercise.
	2.To prepare all the tender documentation including finalising the specification and deciding on the contract award criteria for the new (or altered) service against the key criteria and basic selection criteria (by carrying out a service assessment).
	3. Publish a notice for a Competitive Procurement Process on the Find a Tender Service website, advertising the opportunity.
	4. The ICB to assess the bids (by carrying out a provider assessment) received and select the successful provider to award the contract to. A decision making record should be completed and the appropriate approval for the contract award is sought in line with ICB's Scheme of Reservation and Delegation.
	5. Inform the successful bidder(s) and unsuccessful bidder(s).
	6. Publish an Intention to Award a Contract notice on the Find a Tender Service website.
	7. Observe the standstill period.

	8. Award the contract to the provider.
	9. Publish the contract award on the Find a Tender Service website.

- Conflicts of Interest should be managed and recorded for all PSR routes.
- The ICB must adhere to the NHS England PSR Statutory Guidance and utilise the NHS England PSR toolkit.
- For all PSR routes the relevant governance process sign off must be sought in accordance with the ICB's Scheme of Reservation and Delegation.
- For Framework agreements under the PSR, if the ICB is looking to award contracts based on existing framework agreements (pre 1 January 2024) and Dynamic Purchasing Systems (DPS) then they must use the PSR. The awarding of contracts from a framework agreement or DPS must be in compliance with the PSR, as well as the terms and conditions of the framework/DPS agreement. For the establishment of new frameworks, the competitive process must be used.
- Urgent awards and urgent contract modifications can be made (rather than conducting a full award process described in the five PSR routes above) when all the following are true; 1. The award or modification must be made urgently, 2. The reason for the urgency was not foreseeable by and is not attributable to the ICB, 3. Delaying the award of the contract to conduct a full application of the PSR would be likely to pose a risk to patient or public safety. In the event that ICB officers have a requirement to consider an urgent award or urgent contract modification they should seek advice and guidance from the ICB Head of Procurement and Contracting.

Please see appendix a for a decision making record template to use for direct award decisions or urgent awards.

3.4.3 Non-Healthcare Services and Goods Procurement Rules

<table>
<tr><td colspan="2">Procurement Route (Non-Healthcare Services and Goods)
The quote/tender requirement for each contract shall be determined by the total contract value. The contract value of each contracting opportunity must be a genuine pre-estimate of the total contract value, inclusive of VAT (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.

To comply with the procurement regulations relating to non-healthcare services and goods, and to ensure equity to all sectors, the ICB will ensure full compliance with the following thresholds:</td></tr>
<tr><td>Contract Value (over the full term of the contract)</td><td>Quote/tender requirement</td></tr>
<tr><td rowspan="3">Less than £20,000</td><td>1 written quote.</td></tr>
<tr><td>No formal process is required, although best value for money should be sought at all times and purchases should be from a reputable source.</td></tr>
<tr><td>Confirmation of budget in line with the ICB’s Scheme of Reservation and Delegation and advice sought from ICB Head of Procurement and Contracting, or contract leads if required.</td></tr>
<tr><td rowspan="3">Between £20,000 and £75,000</td><td>A minimum of three quotations must be sought.</td></tr>
<tr><td>Quotations should be in writing but not subject to formal receipt process and can be emailed.</td></tr>
<tr><td>Prior approval must be sought in line with the ICB’s Scheme of Reservation and Delegation and advice sought from ICB Head of Procurement and Contracting, or contract leads if required.</td></tr>
<tr><td rowspan="4">Between £75,000 and the Public Contracts Regulations threshold, applicable at the time.</td><td>A minimum of three tenders must be sought.</td></tr>
<tr><td>All opportunities must be advertised on the Contracts Finder Procurement Portal.</td></tr>
<tr><td>Tender process to be conducted using an e-tendering platform.</td></tr>
<tr><td>Prior approval must be sought in line with the ICB’s Scheme of Reservation and Delegation.</td></tr>
<tr><td rowspan="2">Equal to or above the Public Contracts Regulations threshold, applicable at the time (set out below).</td><td>Compliance with the Public Contract Regulations 2015 (as amended). This includes Competitive tendering process via Find a Tender Service and Contracts Finder.</td></tr>
<tr><td>Prior approval must be sought in line with the ICB’s Scheme of Reservation and Delegation.</td></tr>
<tr><td>Any contract value where a relevant and appropriate Framework Agreement or Dynamic Purchasing System exists</td><td>Direct award or further competition according to the terms of each Framework Agreement or Dynamic Purchasing System.</td></tr>
<tr><td colspan="2">• There should be consultation with the Finance team to confirm the applicability of VAT when calculating the expected value of a contract and with the procurement function to validate assumptions as to which threshold applies.

• Wherever possible the ICB should procure supplies and services through NHS and public sector framework agreements. Such frameworks can offer a compliant procurement route to direct award or a pre-qualified supply base through which further competition may be conducted, in accordance with the framework terms of use.
• The ICB must adhere to NHS England Policy and Guidance for procurement of Management Consultancy Services and Agency Staff.</td></tr>
</table>

- All procurements must follow the current ICBs financial control requirements.
- All procurement processes must have the relevant governance process sign off in line with the ICB's Scheme of Reservation and Delegation before commencement and the contract award must be authorised in accordance with the ICB's Scheme of Reservation and Delegation.
- Single Tender Waivers (STW) could be applied to the purchase of goods, the direct award of contract for a new non-healthcare service and the extension of an existing non-healthcare contract where there is no provision for extension. STWs should be considered by exception and in the event that ICB officers have a requirement to consider a direct award they should seek advice and guidance from the ICB Head of Procurement and Contracting and refer to the full Scheme of Reservation and Delegation.
- Evidence of the correct procurement route being followed is required when raising requisitions for Purchase Orders. POs will be required for the award of all new contracts in line with the ICB introducing a No Purchase Order (PO) No Payment Policy.

Public Contracts Regulations 2015: Threshold from 1 January 2024 (inclusive of VAT)	
Public works contracts	£5,372,609
Public supply and services contracts	£214,904
Light Touch Regime for Services	£663,540

3.5 Guiding Principles that underpin this Policy

3.5.1 By following this policy the ICB will demonstrate compliance with the over-arching principles of public sector procurement:

- **Value for money and maximising public benefit;** all decisions are made in the best interest of people who use the services and to meet the needs of the ICB's population whilst ensuring services are also affordable and sustainable.

- **Transparency and fairness;** in line with the PSR legislation, the ICB are to seek opportunities for integration and enhanced collaboration across the system, whilst ensuring that decisions are made transparently and to ensure there is fair and equitable treatment to providers.

- **Proportionality;** the ICB will ensure that procurement and contracting processes are proportionate to the value, complexity, and risk associated with the services and goods being commissioned.

- **Acting with Integrity;** accountability and integrity are important principles in public procurement and the ICB should ensure all decisions are made with integrity and in compliance with the law, delivering transparent and trustworthy processes that are defensible. Conflicts of interest are managed in accordance with relevant legislation and the ICB's Managing Conflicts of Interest Policy and

Procedures and all processes are robust and transparent to remove any potential for bribery or corruption.

3.6 Definitions, Terms and Abbreviations

3.6.1 Please see below a table of all the definitions, terms and abbreviations used in this policy;

AACC	All Age Continuing Care
API	Aligned Payment and Incentives (API) contracts
APMS	Alternative Provider Medical Services
CFO	Chief Finance Officer
CHC	Continuing Health Care
COI	Conflict Of Interest
Commissioner Requested Services	Essential services which must continue to be provided locally should the current provider fail.
CPV	Common Procurement Vocabulary
CRG	Commissioning Resource Group
MLCSU	Midlands and Lancashire Commissioning Support Unit
DPIA	Data Protection Impact Assessment
Direct Award	The process of awarding a contract without competition
DHSC	Department of Health and Social Care
DPS	Dynamic Purchasing System
EHIIRAs	Equality and Health Inequalities Impact and Risk Assessment
EU	European Union
Existing contract	The contract already in place with an incumbent that is already delivering the services or goods
FNC	Funded Nursing Care
FTS	Find a Tender Service website
GMS	General Medical Services
GP	General Practice
IAG	The ICB Improvement and Assurance Group
ICB	Integrated Care Board
ICS	Integrated Care System
Individual Placement Agreement	When the ICB has an overarching contract with a provider (e.g. an AACC provider), an IPA is used to agree a patient's individual placement.
Judicial Review	Where a judge reviews the lawfulness of a decision or action made by a public body.
KPIs	Key Performance Indicators

Lancashire Procurement Cluster	Shared procurement and supply chain service for the Acute Trusts in Lancashire.
LSC	Lancashire and South Cumbria
LES/LIS	Local Enhanced Service & Local Improvement Scheme
Contract Modification	A contractual change in value or service delivery
NECS	North of England Care System Support
NHS	National Health Service
NHS LSC ICB	NHS Lancashire and South Cumbria Integrated Care Board
NHSE	NHS England
PCB	Provider Collaborative Board
PCCC	Primary Care Commissioning Committee
PCR 2015	The Public Contract Regulations 2015 (as amended)
PMS	Personal Medical Services
PPN	Procurement Policy Note
Provider	The contractual provider delivering the services or goods
PSR	Health Care Services (Provider Selection Regime) Regulations 2023
QIAs	Quality Impact Assessment
Relevant Authority	The relevant authorities required to follow the Provider Selection Regime are ▪ NHS England ▪ Integrated Care Boards (ICBs) ▪ NHS trusts and NHS foundation trusts ▪ Local authorities or combined authorities
SBS	NHS Shared Business Services
SDF	Strategic Development Funding
SoRD	ICB's Scheme of Reservation and Delegation
SIAs	Sustainability Impact Assessment
Standstill Period	The pause in a procurement procedure to allow for potential providers to make a challenge against a decision that has been made.
Threshold	The relevant stipulated limit at which certain rules will apply
TOR	Terms of Reference
UEC	Urgent and Emergency Care

4. Commissioning Healthcare Services

4.1 When is a Procurement Decision Required?

4.1.1 Since the establishment of the ICB, within Lancashire and South Cumbria relationships have been built with NHS, Local Government, voluntary sector and other partner organisations working towards a deeper understanding of the challenges impacting on our system's performance. To support this the ICB are developing a clear commissioning delivery plan for 2024-27 to set out how the ICB plan to deliver their system vision and clinical strategy within the financial framework.

4.1.2 Procurement as a legislative requirement is a key function in this commissioning process; therefore the involvement of procurement colleagues is required at the early stages of the commissioning cycle.

4.1.3 The Health Care Services (Provider Selection Regime) Regulations 2023 came into force on the 1st of January 2024. This is a new procurement regime for selecting providers of healthcare services in England that replaced current procurement legislation specifically when commissioning healthcare services. Therefore, from the 1st of January 2024 the ICB is required to comply with this regime when commissioning all healthcare services (of any value).

4.1.4 For more detailed information regarding the PSR, please use the link below

https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/

4.1.5 There are several triggers within the ICB's commissioning process that should flag the potential need to select a healthcare provider in compliance with the PSR (either a new provider or to extend existing arrangements with an incumbent provider);

- Commissioning a new service/recommissioning an existing service or a service redesign to support the ICB's commissioning intentions. This may be influenced by;
    - the requirement for a new service configuration/model,
    - a needs assessment of service users and wider health economy that identifies significant increase in demand/additional capacity required or an NHS national scheme/policy.
- A contract breakpoint (a contract that is due for renewal or due to expire or early termination). This could be due to;
    - contract expiry; either at the end of the full contract term or at the breakpoint with the option to extend/renew,

- Poor performance of an incumbent provider that could not be resolved through Contract Management,
- The end of a pilot scheme,
- A service review has led to a market testing exercise and new entrants/improved market conditions have been identified and/or the opportunity for a service redesign.

4.1.6 Once it has been identified that there is the potential need to select a provider to deliver a healthcare service, ICB staff must involve procurement and contracting colleagues at the early stages (as part of the ICB's annual planning) to determine the most appropriate route to select a provider and to ensure either the early inclusion of the project on the ICB's procurement pipeline (if a competitive process or most suitable provider process is required) and an indicative timeline agreed or to allow the required timescales to extend existing contract arrangements via a PSR direct award route.

4.2 In Scope of the PSR

4.2.1 At this initial stage, ICB staff (with support from procurement and contracting colleagues) need to determine whether a service is in scope within the Provider Selection Regime and whether the PSR applies. For all healthcare services (that are defined within the regulations) of any value, the PSR applies.

4.2.2 For further details ICB staff should refer to the PSR Regulations and Statutory Guidance found on the NHS England website in terms of the definition of healthcare services and reference to the Common Procurement Vocabulary (CPV) codes.

4.2.3 Examples of contracts out of scope of the PSR are goods (e.g., medicines, medical equipment), social care services and non-health care services or health-adjacent services (e.g., capital works, business consultancy, marketing campaigns) that do not provide healthcare to an individual. If there is a mixed procurement (for example when a contract comprises a mixture of in-scope healthcare services and out-of-scope services or goods) then the PSR will only apply if the main subject matter of the contract is in-scope healthcare services. If a service is not within scope of the PSR, then ICB staff should follow the correct processes for the commissioning of non-healthcare services and goods detailed in this policy.

4.2.4 The main subject-matter of the contract is determined by the component that is higher:

- the estimated lifetime value of the healthcare services

or

- the estimated lifetime value of the other goods or services.

4.2.5 For the commissioning of non-healthcare services and goods, ICB staff should refer to the core procurement processes detailed at 3.4.3 and in section 5 of this policy.

4.3 Governance

4.3.1 Before proceeding, ICB staff must ensure that any decisions in relation to committing resources for the commissioning of healthcare services receive the required approval in line with the ICB's Scheme of Reservation and Delegation (SoRD) and in compliance with ICB current financial controls.

4.3.2 For the commitment of resources for healthcare and non-healthcare services through launching a procurement exercise, the approval limits (as agreed by the ICB Board as at November 2024) are set out below (for healthcare services, a procurement exercise will include conducting a competitive process or most suitable provider process in line with the PSR). If the expected financial threshold for the procurement is within the approved planned budget, this is considered to be business as usual. However, if the threshold exceeds planned budget or is in relation to development funding received outside of planned budget this is considered to be a new investment.

Committee Name or Post holder	Business as Usual expenditure within plan Financial Limits	New Investment outside of planned budget Financial Limits
L&SC ICB Board	Greater than £50m	Greater than £10m
ICB Executive Team	£500,000 and up to £50m	£500,000 and up to £10m
Primary Care Commissioning Committee	£500,000 and up to £50m	£500,000 and up to £10m
ICB Executive Director and Chief Finance Officer and Chief Executive (All three signatures required)	Up to £500,000	Up to £500,000
Chief Executive	Up to £500,000	Up to £500,000
Chief Finance Officer	Up to £500,000	Up to £500,000
ICB Executive Director or a Director of Health & Care Integration (Only for responsible budget areas assigned)	Up to £100,000	Up to £100,000

- Where the investment increases the total annual contract value to greater than £10m, approval needs to be obtained from L&SC ICB Board.

- The same financial limits apply to any non-recurrent funding received during the financial year, i.e. Strategic Development Funding (SDF) based on total investment proposed.

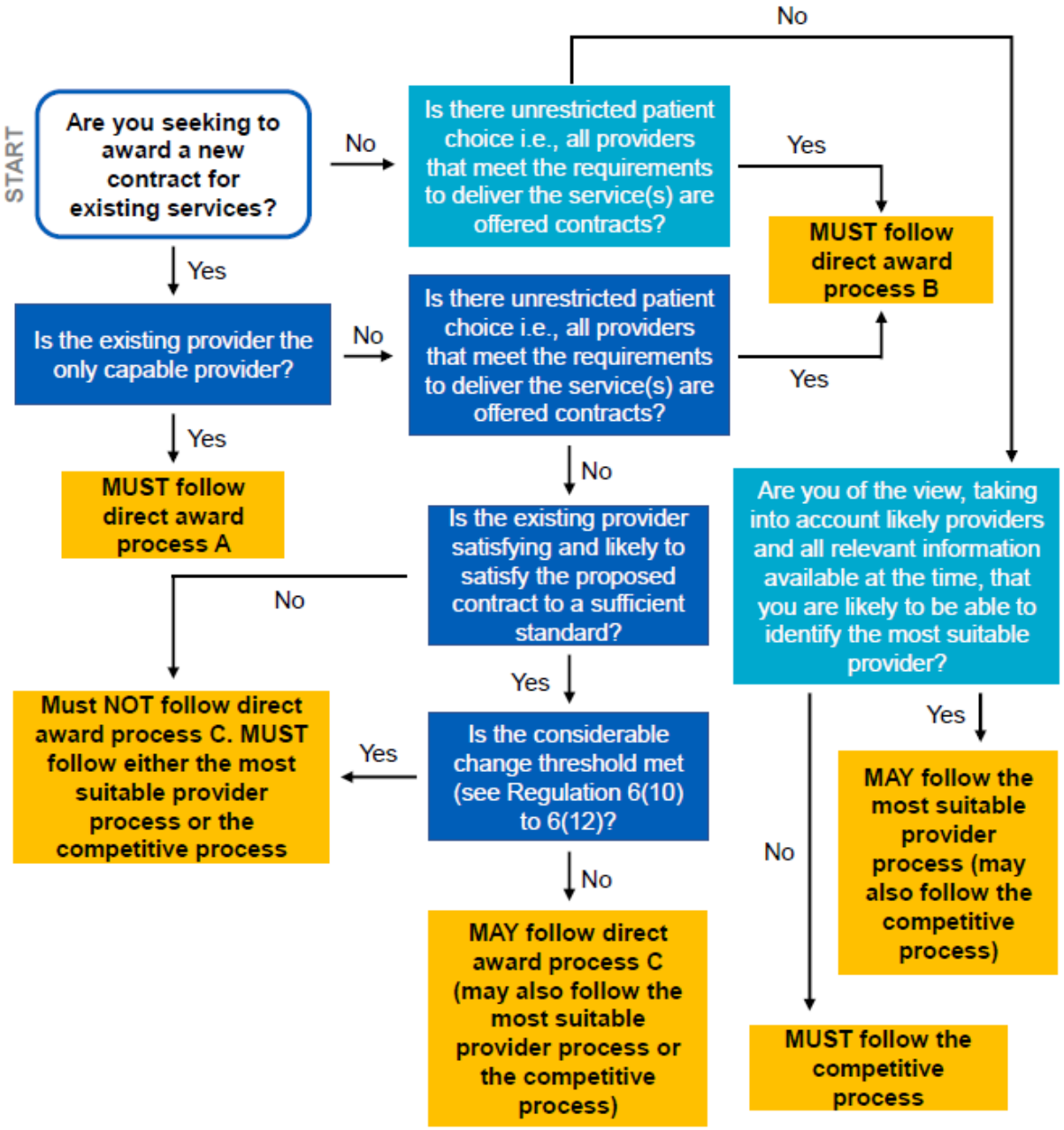
4.3.3 To award a contract the approval limits (as agreed by the ICB Board as at November 2024) are set out below;

Committee Name or Post holder	Award of contract under PSR direct award A, B or C Financial Limits	Award following formal procurement Financial Limits
ICB Executive Team	All PSR direct awards	All procurements
Primary Care Commissioning Committee (PCCC)	All Primary Care PSR direct awards	All Primary Care procurements

4.4 The Appropriate PSR Route

4.4.1 Once ICB staff have determined whether a service is in scope of healthcare services the flowchart below provided by NHS England can help with getting to the right decision and choosing the appropriate route when commissioning healthcare services. Once the appropriate route has been chosen the relevant approval must be sought before the route can be followed.

4.4.2 Flow Chart: Getting to the Right Decision



4.4.3 Direct Award Options

PSR Route	Description
Direct award process A	Where there is an existing provider for the services and there is no realistic alternative to the provider due to the nature of the services e.g. A&E services, 999 emergency ambulance services; NHS urgent mental health crisis services; commissioner requested services (CRS); and services designated as 'essential services' within an NHS Provider contract, and a service that is interdependent with, and cannot realistically be provided separately from, another service which only that provider can realistically provide.
Direct award process B	Where people have a choice of providers, and where the number of providers is not restricted by the relevant authority or cannot be restricted (due to the legal right to choose requirements).
Direct award process C	Where there is an existing provider for the services and that existing provider is satisfying the original contract, will likely satisfy the proposed new contract and the services are not changing considerably.

Direct award process C can only be considered if direct award process A or B does not apply.

4.4.4 The table below sets out contracts that have been grouped in terms of contracts/services that the ICB have determined will come under direct award A or direct award B.

NHS Acute Trust Contracts- including Urgent and Emergency Care (UEC) services, elective consultant led services and for some Acute Trusts this also includes Mental Health and community services.	Direct award A
Mental Health /Learning Disability and Autism Trust Contracts	Direct award A
Community Trust Contracts	Direct award A
Contracts designated as commissioner requested services (CRS)	Direct award A
GP Practice Primary Care Local Enhanced Schemes & Local Improvement Schemes (LES/LIS)	Direct award A

Pharmacy Services Primary Care Local Enhanced Schemes & Local Improvement Schemes (LES/LIS)	Direct award B
Primary Care Optometry General Ophthalmic Services (GOS)	Direct award B
Hospices/End of Life	Direct award A
All Age Continuing Care (AACC) contracts- to commission with providers for individual care packages- including supported living, domiciliary care and residential/nursing placements	The ICB are currently able to issue new contracts to our AACC providers via an existing DPS in accordance with the terms and conditions of the DPS which allows the ICB to direct award contracts. If contracts are issued outside of the DPS then contracts should be awarded via direct award B.
Mental Health and Learning Disability individual care placements	If outside of existing DPS- direct award B.
Termination of Pregnancy Services	Direct award B
Independent Sector Providers – providing elective services led by a consultant or mental health care professional for either existing providers or new providers via the accreditation process	Direct award B

4.4.5 Within primary care services, for General Medical Services (GMS) contracts with GP practices, as these contracts are often open-ended contracts with no fixed end date, they will continue to run on an ongoing basis and will not come to an end unless there is a legitimate reason for the contract to be terminated. Therefore, in line with PSR regulations, no routine 'provider selection' is taking place and therefore do not routinely require a PSR route to be conducted.

4.4.6 Once the appropriate PSR route has been chosen ICB staff (with support from procurement and contracting colleagues) should refer to the core procurement processes that need to be followed for the commissioning of healthcare services detailed at 3.4.2. ICB staff should in addition refer to the process maps and step by step guides provided within the NHS England PSR toolkit (www.england.nhs.uk/publication/provider-selection-regime-toolkit-products/) to ensure all requirements are met when awarding a contract.

4.4.7 Key criteria and basic selection criteria are set out in the PSR and must be considered when assessing providers under direct award process C, the most suitable provider process, or the competitive process. Further details are set out in the NHS England PSR toolkit and the PSR Statutory Guidance.

4.4.8 The key criteria are;

- Quality and Innovation,
- Value,
- Integration, Collaboration, and Service Sustainability,
- Improving Access, Reducing Health Inequalities, and Facilitating Choice, and
- Social Value

4.5 Market and Stakeholder Engagement

4.5.1 The PSR expects relevant authorities to develop and maintain sufficiently detailed knowledge of the provider landscape, including an understanding of their ability to deliver services to the relevant (local/regional/national) population, varying actual/potential approaches to delivering services, and capabilities, limitations, and connections with other parts of the system. Pre-market engagement is advised if the most suitable provider process is chosen as a suitable route to select a provider to ensure there is sufficient information to justify the decision. Pre-market engagement may also be beneficial prior to commencing a competitive process to gauge the potential interest from providers or gain insights to from the wider market to support the development of the specification and the design of the procurement.

4.5.2 Effective engagement with stakeholders is essential when developing new specifications and re-designing pathways/services. ICB staff should engage with stakeholders at appropriate times during the commissioning and procurement process. Stakeholder engagement with new and existing providers, members of the public and patients and clinicians will occur at key points during the commissioning and procurement process. Any potential conflict of interest issues that arise during the engagement process need to be managed in accordance with the ICB's Conflict of Interest Policy and the PSR.

4.6 Impact Assessments

4.6.1 If a service is being redesigned with the potential to go back out to market via the most suitable provider route or the competitive route, then the relevant ICB Impact Assessments should be completed during the planning stages;

- Equality and Health Inequalities Impact and Risk Assessment; EHIIRAs are to support inclusive decision-making to ensure decisions that are made are fair and do not present barriers to protected groups.
- Quality Impact Assessment; QIAs are a key component of the ICBs continuous process of ensuring that its commissioning decisions are assessed for the potential consequences on quality, with any necessary mitigating actions being outlined and described within the QIA.

- Data Protection Impact Assessment; DPIA's are to identify any changes to the processing of data relating to a commissioned service and the associated risks.
- Sustainability Impact Assessment; SIA's support ICB staff to assess the impact of the commissioning activity/decision against a series of criteria covering environmental sustainability and social value issues relevant to the ICB Green Plan.

4.7 Social Value and Net Zero

4.7.1 Social value is one of the key criteria set out in the PSR that providers are evaluated against to ensure what is proposed might improve economic, social and environmental well-being in the geographical area relevant to the proposed contracting arrangement. Therefore, ICB staff should note the following when commissioning services/selecting a provider;

- The ICB is expected to adhere to NHS England's net zero emissions requirements and the application of net zero and NHS social value (Greener NHS » Delivering a net zero NHS (england.nhs.uk)) and Carbon Reduction Plan requirements in the procurement of NHS goods and services.
- If ICB staff are evaluating a provider against the key criteria set out in the PSR, a minimum weighting of 10% must be assigned to net zero and social value.
- When assessing social value, ICB staff are expected to think about how the contracting arrangements with a potential provider impact on;
  - environmental issues and sustainable development, including addressing climate change, making and meeting commitments around reducing emissions, air pollution and consumption and waste, through promoting circular economy principles as well as enhancing the natural and built environment as applicable
  - inclusive and 'good' employment that increases equality of opportunity in the workplace and supports a diverse workforce, designs in equity, provides fair terms and conditions and supports staff wellbeing, physical and mental health, supports opportunities for local people and/or population groups experiencing health or other inequalities and eliminates modern slavery
  - local inclusive and sustainable economies that decrease economic inequality and poverty, including through employment as an economic and health intervention and payment of a living wage
  - community cohesion and the wider health and wellbeing of the population
  - social determinants of health (e.g., employment, income, housing, local environment, food, transport, community, safety).

4.8 ICB's Accreditation Process (for patient choice services)

4.8.1 The ICB recognise that some providers may be considering offering healthcare services to patients within Lancashire and South Cumbria (where patients have a legal right to choose) that currently may not deliver these services within LSC. All eligible providers can seek accreditation via the ICB's accreditation process that has been

developed to evaluate potential providers against an agreed qualifying criteria and if they qualify will be offered a contract under the PSR direct award B route. For further information regarding the ICB's Accreditation Process, use the following link; LSC Integrated Care Board :: Patient choice within Lancashire and South Cumbria Integrated Care Board (icb.nhs.uk)

4.8.2 All provider enquiries regarding the ICB's accreditation process are to be directed to lscicb.procurement@nhs.net. Interested providers will then be asked to complete a gateway proforma. At this stage the relevant commissioning/service lead will be contacted to consider the request from the provider. If the information completed by the provider confirms that the provider is eligible to be assessed the MLCSU procurement team will support the ICB and take the provider through the accreditation process.

4.8.3 If a provider qualifies, the award of contract will require approval from the ICB Executive Team or Primary Care Commissioning Committee (if a primary care service) in line with the ICB's SoRD.

4.9 Urgent Awards or Urgent Modifications

4.9.1 Urgent awards and urgent contract modifications can be made (rather than conducting a full award process described in the five PSR routes or a standard contract modification permitted under the PSR, described in the ICB Contracting and Monitoring Processes section) when all the following are true;

1. The award or modification must be made urgently,
2. The reason for the urgency was not foreseeable by and is not attributable to the ICB,
3. Delaying the award of the contract to conduct a full application of the PSR would be likely to pose a risk to patient or public safety.

In the event that ICB staff have a requirement to consider an urgent award or urgent contract modification, advice and guidance should be sought from the ICB Head of Procurement and Contracting in the first instance. All urgent awards or urgent contract modifications must be approved by either the ICB's Chief Officer or Chief Finance Officer in line with the SoRD.

4.10 Transparency in respect of PSR Processes

4.10.1 The key principles of the PSR are acting transparently, fairly, and proportionately with a strong focus on the following:

- Record keeping is essential: the ICB must keep records of their considerations throughout the award process to justify the route that has been chosen. These records may be requested as part of a review during the standstill period. All relevant PSR documentation (available from procurement and contracting colleagues) must be completed and shared with the contract lead to be saved in the relevant contract folder.

- Transparency is paramount;
    - An 8 working day standstill period will be required for all contracts awarded either via the direct award process C, the most suitable provider process or the competitive process. The standstill will commence following the publication of an intention to award a contract notice is made within Find a Tender Service website. The PSR statutory guidance provides details on how to calculate the minimum length of the standstill period.
    - A contract award notice should be also be published for all contracts awarded via all five routes.
    - There are also additional transparency notice requirements for direct award process C, the most suitable provider process or the competitive process.
    - The ICB must make publicly available an annual summary of its contracting activity for the provision of relevant healthcare services.

4.10.2 The table below sets out the requirements for publishing a notice for each PSR route;

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

4.10.3 Contracting and procurement colleagues will be responsible for publishing the relevant notices on the Find a Tender Service (FTS) website.

4.11 Standstill period and Representation process

4.11.1 A Standstill period of eight working days must be applied when using direct award C, the most suitable provider or the competitive process to allow for providers to seek a review of the decision made, to determine whether the ICB has applied the PSR regime correctly and made an appropriate provider selection decision.

4.11.2 An intention to award a contract notice must be published which triggers the start of the standstill period. A provider can then make a representation (challenge) to the ICB if they believe that the ICB has failed to apply the PSR correctly and are able to set out reasonable grounds to support their belief. The ICB then must consider these representations and respond as appropriate.

4.11.3 ICBs must ensure that they have in place appropriate internal governance mechanisms to deal with representations made against provider selection decisions. Therefore, the ICB has formed the LSC ICB Provider Selection Regime Group to manage any received representations. Please see appendix c for the Terms of Reference of this group. ICBs should ensure that at least one individual not involved in the original decisions is included in the review process.

4.11.4 Once the group has made a decision, the ICB must leave five working days for the provider to consider their decision before the standstill period can close and the contract can be awarded.

4.11.5 Providers will be able to make representations to the NHS England Independent Patient Choice and Procurement Panel if they are not satisfied with the outcome from the ICB. If a provider continues to remain unsatisfied, they can take their concerns to a Judicial Review.

4.12 Conflicts of Interest

4.12.1 Conflicts of Interest (COI) should be managed in accordance with relevant legislation, NHSE's guidance on managing conflicts of interest in the NHS, the Provider Selection Regime Regulation 21 (for healthcare services), and the ICB's Managing Conflicts of Interest Policy.

4.12.2 The Principles for the Management of Conflicts of Interests in relation to Procurement as stated in the statutory guidance will be followed so that they are managed in an open and transparent manner and to ensure there is no discrimination against or in favour of any provider. Procurement processes should be conducted in a manner that does not constitute anti-competitive behaviour - which is against the interest of patients and the public.

4.12.3 To ensure COIs are managed appropriately, the following should be carried out;

- For a procurement exercise, both conflict of interest forms and confidentiality forms (which should be provided by procurement colleagues) to be completed in a timely manner by all participating staff (including staff external to the ICB) involved in the development and evaluation process. A record should be kept of all conflicts, how they

are managed and any agreed mitigating actions.

- Decision Making Records that should be completed for all PSR routes, should include a record of any COIs (relating to all decision makers) and any agreed mitigating actions.
- Where decisions are being taken as part of a formal competitive procurement of services, any individual (including ICB Board Members) who is associated with an organisation that has a vested interest in the procurement should recuse themselves from the decision making process.
- If there are any concerns in relation to any COIs that could impact on a procurement process or required decision, then these should be raised with the ICB's COI Guardian.
- For the competitive tender route, providers will also be asked to complete a confidentiality and declaration of interest form.
- Any COIs and how they are managed must be published in the contract award notice.

4.12.4 The PSR states that 'actions to mitigate Conflicts of Interest when making procurement decisions are expected to be proportionate and to seek to preserve the spirit of collective decision-making wherever possible'. The ICB must distinguish between those individuals who are involved in formal decision-making and those whose input informs decisions. The way COI are managed is expected to reflect this distinction. For example, where incumbent providers hold contracts for services, it would be appropriate and reasonable for the ICB to involve them in discussions relating to pathway redesign and service delivery. However, this would be clearly distinct from any considerations around procurement and contracting, from which they would be excluded.

4.12.5 Those involved in procurement exercises for and on behalf of the organisation should keep records that show a clear audit trail of how COI have been identified and managed as part of procurement processes. All records must be shared with the ICB Head of Procurement and Contracting to ensure a central record is kept by the ICB.

4.12.6 The ICB must be particularly vigilant when there is a proposed direct award to a private business, which would result in a personal gain for an ICB Board or sub-/committee member, employee, or their associates. In those circumstances, the ICB should ensure that the individual is recused from the decision-making process, and that record-keeping is especially clear and thorough. In these circumstances where the PSR permits discretion as to which procurement process to follow, ICBs would be advised to consider the use of a competitive process where appropriate.

4.13 Annual Summary

4.13.1 All PSR decisions must be shared with the ICB Head of Procurement and Contracting who will hold a central record of all PSR decisions. A regular summary of all decisions are presented to the Audit Committee at each committee meeting.

4.13.2 In addition the ICB must publish a summary of their application of the PSR annually online (on a publicly available website) in line with Regulation 25 of the PSR regulations; this must include, in the year to which the summary relates;

- the number of contracts awarded in the year to which the summary relates where Direct Award Process A, Direct Award Process B or Direct Award Process C was followed;
- the number of contracts awarded in the year to which the summary relates where the Most Suitable Provider Process was followed;
- the number of contracts awarded in the year to which the summary relates where the Competitive Process was followed;
- the number of framework agreements concluded in the year to which the summary relates;
- the number of contracts awarded based on a framework agreement in the year to which the summary relates;
- the number of contracts awarded and modifications made in reliance on regulation 14 (urgent award or modification) in the year to which the summary relates;
- the number of new providers to whom a contract was awarded in the year to which the summary relates;
- the number of providers who held a contract in the previous year but no longer hold any contracts in the year to which the summary relates;
- the number of written representations made in accordance with regulation 12(3) and received during standstill periods which ended in the year to which the summary relates and a summary of the nature and impact of those representations.

4.13.3 In addition in line with the PSR statutory guidance, the ICB are expected to also publish;

- total number of providers the ICB is currently contracted with
- details of any reviews by the Independent Patient Choice and Procurement Panel:
- number of requests for consideration received by the Independent Patient Choice and Procurement Panel
- number of requests accepted and rejected by the Independent Patient Choice and Procurement Panel for consideration
- number of times where the Independent Patient Choice and Procurement Panel advised the ICB to re-run or go back to an earlier step in a provider

selection process under the PSR, and the number of times the advice was followed.

4.14 Commissioning Individualised Care Packages

4.14.1 When commissioning individualised care packages, placements are limited to those providers where the ICB has an established contract, compliant with the PSR regulations. The ICB are currently contracting with All Age Continuing Care (AACC) providers via an existing Dynamic Purchasing System (DPS) in accordance with the terms and conditions of the DPS which allows the ICB to direct award an over-arching NHS Standard Contract with AACC providers in compliance with the PSR. Detailed requirements for an individual patient can be set out in a specific Individual Placement Agreement, which sits within the over-arching contract with a provider.

4.14.2 If contracts for supported living, domiciliary care and residential/nursing placements (including mental health and learning disability placements) are issued outside of a framework or DPS, then contracts should be awarded via PSR direct award B.

4.14.3 The approval limits for ICB colleagues that are able to approve individualised care packages are set out in the ICB's SoRD.

4.15 Grant Agreements

4.15.1 Where voluntary sector organisations provide healthcare services, or other services in support of the healthcare needs of the local community, the ICB may choose to provide funding support for those services through grant agreements, rather than using the NHS Standard Contract (for healthcare services).

4.15.2 Use of the NHS Standard Contract is, however, necessary where it is clear that the ICB is commissioning (as distinct from providing funding support for) a specific healthcare service from a voluntary sector organisation.

4.15.3 Grants must not be used to avoid competition where it is appropriate for a formal procurement to be undertaken. The ICB may procure the services of a third party organisation to run a grant application and award process for specific projects however normal procurement rules shall apply to secure services of the third party organisation.

4.15.4 ICB staff are advised to use the model grant agreement published by NHSE which has been designed to provide an appropriate level of assurance about the quality of care to be provided by the voluntary organisation. The agreement is non-mandatory and can be locally adapted if required, however if the NHSE model grant agreement is chosen not to be used, any locally drafted grant agreements must be suitably robust.

5. Commissioning Non-Healthcare Services and Goods

5.1 Non-Healthcare Procurement Processes

5.1.1 Although, predominantly services commissioned by the ICB are healthcare services, there are also instances when ICB staff will commission non-healthcare services or goods, that are outside the scope of the PSR. Non-Healthcare services and goods should be commissioned in compliance with the Public Contracts Regulations 2015 (which is to be replaced by the Procurement Act 2023). For the commissioning of non-healthcare services and goods, ICB staff should refer to the core procurement processes and rules detailed at 3.4.3.

5.1.2 For spend up to £20,000 (inclusive of VAT) for non-healthcare services and goods, only one written quote from a provider is required. No formal contract is required, although best value for money should be sought at all times and purchases should be from a reputable source.

5.1.3 For spend between £20,000 and £75,000, a minimum of three quotations must be sought from selected providers. For advice and examples of three quotation process templates ICB staff should contact the ICB Head of Procurement and Contracting (initial enquiries to lscicb.procurement@nhs.net).

5.1.4 The ICB's procurement rules state that any non-healthcare spend over £75,000 should trigger a competitive process unless wherever possible the ICB are able to procure non-healthcare services and goods through NHS and public sector framework agreements or Dynamic Purchasing Systems. Such frameworks or DPS's can offer a compliant procurement route to direct award or conduct further competition with a pre-qualified supply base in accordance with the framework terms of use. When considering a competitive process or the use of a framework ICB staff should contact the ICB Head of Procurement and Contracting for advice (initial enquiries to lscicb.procurement@nhs.net).

5.2 Single Tender Waivers

5.2.1 In some circumstances (outlined below) the procurement routes specified in the core procurement processes and rules detailed at 3.4.3 may not be appropriate. In these circumstances a Single Tender Waiver (STW) may be requested and authorised by the Chief Executive or Chief Finance Officer under the ICB's SoRD;

- In very exceptional circumstances where the Chief Executive or Chief Finance Officer decides that formal tendering procedures would not be practicable, and the circumstances are detailed in an appropriate ICB Committee record.

- Specialist expertise or a product is required and is available from only one source.
- The task is essential to complete the project and arises as a consequence of a recently completed assignment and engaging a different provider for the new task would be inappropriate.
- There is a clear benefit to be gained from maintaining continuity with an earlier project/service. However, in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering.
- 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.
- The timescales genuinely precludes competitive tendering. It is important to note that failure to plan the work properly would not be regarded as a justification for a waiver.
- For a proof of concept or pilot project. Where a request for a STW is made relating to a proof of concept or pilot project, the waiver request must include details of the process and timeline for the proof-of-concept evaluation including an exit plan if the service does not continue.
- A detailed review of the provision of local services has identified one capable provider of the service/s.
- Competition is not appropriate, e.g., where partnership funding is in place.
- There may be justifiable grounds for the request that are not listed above; in this event, after seeking procurement advice, ICB staff must fully describe the circumstances for the request in the STW report.

5.2.2 The waiving of competitive tendering procedures should not be used to:

- Avoid competition,
- Or for administrative convenience.

5.2.3 STWs should be considered by exception and in the event that ICB staff have a requirement to consider a direct award they should seek advice and guidance from the ICB Head of Procurement and Contracting. Please see appendix b for the STW template to use for all STW requests.

5.3 Governance and Transparency in respect of Non-Healthcare Decisions

5.3.1 Before proceeding, ICB staff must ensure that any decisions in relation to committing resources for the commissioning of non-healthcare services and goods receive the required approval in line with the ICB's SoRD. For all non-healthcare contracts with a value over £1 million (and by exception for all spend over £200k per year if there is a clear opportunity for a collaborative approach with LSC NHS Trusts), in addition to the ICB's internal governance requirements, any procurements should also be considered at a system level and further advice should be sought from the Head of Procurement and Contracting.

5.3.2 A regular summary of all procurement decisions relating to non-healthcare services and good spend above £20,000 and all single tender waiver decisions are presented to the Audit Committee at each committee meeting.

5.3.3 The requirements relating to the publication of contract award notices for non-healthcare services or goods is set out in the Public Contracts Regulations 2015.

5.3.4 Conflicts of Interest should be managed appropriately, ICB staff should refer to 4.12 of this policy for more information.

5.3.5 If a challenge is received in relation to the award of a non-healthcare contract, in the first instance contact the Head of Procurement and Contracting. If a challenge has been received during a standstill period of a procurement exercise, the relevant external procurement partner will provide support with responding to the challenge. If a provider makes a legal challenge, the ICB will need to seek their own legal representation and ICB staff should refer to the ICB's Legal Services and Claims Management Policy for further information.

6. ICB Contracting and Monitoring Processes

6.1 Contract Forms

6.1.1 Once an appropriate procurement route has been followed to award a contract, all ICB staff must understand the terms and conditions that apply to a particular contract prior to award and should seek support from contracting colleagues to develop the contract in accordance with any relevant technical guidance. Predominantly services commissioned by the ICB are healthcare services and the NHS Standard Contract technical guidance (for healthcare contracts) offers advice about general contracting issues, about how key sections of the contract should be completed, and how the main contract management processes should be used in practice.

6.1.2 **Contracts for Healthcare Services:** The NHS Standard Contract is mandated by NHS England for the use by ICBs for all contracts for healthcare services other than primary care. ICB staff must ensure that:

- In all instances the use of the NHS Standard Contract 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.

6.1.3 **Primary Care Contracts:** As a general rule, for primary care services the relevant primary care contract must be used (e.g. GMS contract for general medical services), not the NHS Standard Contract. However, the NHS Standard Contract can be used in some circumstances for example for Local Enhanced Services. Specific details can be found in the NHS Standard Contract technical guidance.

6.1.4 **Grant Agreements:** Where voluntary sector organisations provide healthcare services, or other services in support of the healthcare needs of the local community, the ICB may choose to provide funding support for those services through grant agreements. Please refer to the specific section in this policy relating to Grant Agreements for more details.

6.1.5 **Contracts for NHS Continuing Health Care and Funded Nursing Care:** The NHS Standard Contract (typically the shorter-form version) must be used where the ICB is funding an individual's NHS Continuing Health Care (CHC) placement in a care home or package of home care. However the use of the NHS Standard Contract in respect of NHS Funded Nursing Care (FNC) is not mandated (where, following assessment, the NHS makes a nationally set contribution to the costs of a nursing home resident's nursing care). If commissioners and providers agree locally that use of the NHS Standard Contract offers an effective route through which NHS FNC payments can be administered, they may do so.

6.1.6 **Contracts for Non-Healthcare Services and Goods:** For non-healthcare services or goods, it is recommended to use the NHS terms and conditions for the supply of goods and for the provision of non-clinical services published by NHS England.

6.1.7 **Contracts via a Framework:** For contract awards following a call off from a suitable NHS or public sector framework agreement or DPS, the contract provisions set out within the framework can be used.

6.1.8 **Section 75 and 76/256 Agreements:** These agreements can be used in relation to commissioning arrangements between the ICB and other Public Bodies (usually local authorities). 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. Section 76 allows a local authority to make payments to the ICB

towards costs incurred by the ICB in connection with the performance by the ICB or prescribed functions. These arrangements must be supported with a relevant section 75/76/256 agreement.

6.2 Sub-Contracting Arrangements

6.2.1 Appropriate arrangements should be in place between the ICB and a provider for the governance and oversight of sub-contracting arrangements; for healthcare services this is set out within the NHS Standard Contract, General Condition 12. A provider must not sub-contract any of its rights or obligations or duties under their contract without the prior written approval of the ICB.

6.2.2 It is required that providers can demonstrate that they have sufficient governance in place to manage their sub-contracts and appropriate due diligence has been undertaken for any sub-contractors.

6.3 Contract Mobilisation

6.3.1 Following the award of a contract, a mobilisation stage is usually required if there is the implementation of a new service with a new provider or the decommissioning and safe transfer of an existing service from one provider to another.

6.3.2 The emphasis is on the provider to ensure the mobilisation stage runs smoothly however the ICB will support this process where applicable to ensure key activities are completed (this list is not exhaustive);

- Finalising contract schedules (e.g. activity, Key Performance Indicators (KPIs), reporting, finance etc)
- Signing the agreed contact form (and ensuring third party sub-contracting arrangements are in place if relevant)
- Exit planning and decommissioning of existing services
- Transfer of staff where applicable
- Installation of IT systems and data protocol agreements
- Transfer of patient records where applicable
- Communication plan with key stakeholders
- Finalising referral processes and pathways
- Assurance around securing appropriate premises and conducting site visits
- Prescribing arrangements if applicable
- General due diligence on staffing structures, clinical governance/polices and protocols, Information Governance relevant professional registrations, insurance etc
- Arrangements for invoicing and payment

6.4 Contract Signatures

6.4.1 Where the appropriate governance has been undertaken to award the contract, the signature on contractual documents must be carried out in line with ICB's SoRD. Either the ICB's Chief Executive, ICB's Chief Finance Officer or a designated officer as nominated in writing by the ICB Chief Finance Officer have the delegated authority to sign a contract on behalf of the ICB.

6.4.2 There may be instances where the ICB and providers have not signed a new contract by the time at which the current contract expires however the services being provided must continue to be delivered. If there is a delay in a contract being signed for a service that needs to continue, assuming services continue to be provided and paid for, a contract will be implied between the parties. Further advice with regards to an implied contract can be found in the NHS Standard Contract technical guidance.

6.5 Contract Value

6.5.1 The contract value (annual value x by the total number of years of the contract) will be determined at the award of contract stage. For healthcare services, prices payable under an NHS Standard Contract must always be agreed in accordance with the rules set out in the NHS Payment Scheme. Further guidance regarding payments is within the NHS Standard Contract technical guidance.

6.6 Contract Monitoring and Contract Review Meetings

6.6.1 Robust contract management and monitoring is required post contract award stage to ensure quality services are delivered by providers the ICB commissions with. The ICB must ensure that services continuously monitored and managed to ensure value for money and quality outcomes for patients.

6.6.2 Key Performance Indicators (KPIs) and quality requirements should be clearly set out within the contract to monitor against for the duration of the contract term.

6.6.3 Contract review meetings are a way of assuring the ICB in an auditable way that providers are delivering their services in a financially responsible manner that maximises outcomes for patients.

6.6.4 Contract review meetings require efficient two-way flows of information and escalation between both parties to promote innovation, securing service improvement and capturing and celebrating successes.

6.6.5 A standard agenda for contract review meetings will be used and a standard terms of reference document (TOR) will describe the purpose of the meeting, escalation routes for issues, membership, routes of governance and approach to decision making.

6.6.6 Contract leads will support the administration of contract review meetings and as a minimum for each meeting there will be a production of an issues and action log. The preference is to have an appropriate representation from the different multidisciplinary ICB stakeholders at the meeting (e.g. commissioning leads, quality and performance, business intelligence, finance). However, on occasion, if colleagues are unable to attend a written submission to the meeting would be acceptable.

6.6.7 For each contract, the frequency of contract review meetings should be proportionate to the risk profile of each service and this needs to be agreed between contract leads and commissioning leads. Once this frequency is agreed it is expected that providers agree to attend the scheduled meetings. The following table is a suggested frequency for contract review meetings but is flexible and open to change.

Contract Type	Monthly	Quarterly	Twice Yearly	Annual
Acute and Community NHS Providers	X			
MH & LD NHS Providers		X		
Independent Sector Hospital Providers		X		
Other Independent Sector Provision (Inc. MH, Community, VCFSE)			X	
Grants				X

6.7 NHS Trust Meetings

6.7.1 As part of the ICB's commissioning re-set and strategic delivery plan for 2024/25, a new integrated meeting structure has been established for each of LSC's main NHS Trust providers with the overall aim of creating a single strategic partnership forum. This provides a joined up way of working where effective, whole pathway discussion can take place, reducing the need for multiple conversations across different stakeholder groups.

6.7.2 The integrated NHS Trust provider meetings will routinely incorporate all operational and contractual business across all service lines (i.e. Community Services, Mental Health etc.) and across all ICB functions including commissioning, quality, performance, place and finance. It is proposed that the safeguarding function is included within scope with matters tabled as required.

6.7.3 The ICB Improvement and Assurance Group (IAG), will have executive oversight and will receive escalations.

6.7.4 Meetings will take place with each Trust on a quarterly basis and there will be an opportunity for deeper discussion on specific items to take place outside of the quarterly schedule on an ad hoc basis.

6.7.5 Monthly Contract Technical Group meetings will also be held with the four Acute Trusts which will focus on matters relating to Aligned Payment and Incentives (API) contracts including agreement of activity plans, financial reconciliation (including Elective Recovery Fund), and the management of Best Practice Tariff schemes for example.

6.7.6 Contracting updates are taken to the ICB's Finance and Performance Committee as a standing item, including any escalations from the integrated Trust meetings and the Contract Technical Group meetings with the Trusts.

6.8 Contract Modifications

6.8.1 For contracts relating to non-healthcare services and goods, if ICB staff are considering making a variation to an existing contract, advice should be sought from the ICB Head of Procurement and Contracting to determine whether a proposed variation is compliant with the relevant regulations.

6.8.2 All contract modifications require the appropriate level of approval in line with the ICB's SoRD.

6.8.3 For healthcare contracts, contract modifications should be made in compliance with the PSR regulations including contracts entered into before the commencement of the PSR.

6.8.4 **Modifications to contracts originally awarded under direct award process A or B;** Where the original contract was awarded under direct award process A or B and the modification does not materially alter the character of the contract, then the modification is permitted. If the decision is attributable to a decision made by the ICB and the cumulative change in the lifetime value of the contract since it was entered into is £500,000 or more, the modification is still permitted, but the ICB must publish a transparency notice.

6.8.5 **Modifications to contracts originally awarded under direct award process C, the most suitable provider process, or the competitive process or to contracts that were originally awarded under the Public Contracts Regulations 2015;** Where the original contract was awarded under direct award process C, the most suitable provider process, or the competitive process (including framework agreements), or where the contract was originally awarded under the Public Contracts Regulations 2015, then modifications are permitted in the following instances:

- The modification is clearly and unambiguously provided for in the contract or framework agreement documents (i.e., the scope and nature of the potential change has been described in detail in the existing contract). This includes enacting an extension to a contract where the ICB have originally awarded a contract with the possibility of an extension, for example, a five-year contract term with the potential for an extension of a further two years.
- The modification is solely a change in the identity of the provider due to succession into the position of provider following corporate changes (e.g., as the result of a corporate takeover, merger, acquisition or insolvency), and where the ICB is satisfied that the provider meets the basic selection criteria.
- The modification is made in response to external factors beyond the control of the ICB and the provider, including but not limited to changes in:
    - patient or service user volume
    - prices in accordance with a formula provided for in the contract documents (e.g., uplifts in prices published in the NHS Payment Scheme or index linking) which do not render the contract or framework agreement materially different in character.
- The modification is attributable to a decision made by the ICB and does not materially alter the character of the contract or framework agreement, and the cumulative change in the lifetime value of the contract or framework agreement, compared to its value when it was entered into, is under £500,000 or under 25%.

6.8.6 If the ICB makes a permitted modification (to a contract that was originally awarded under direct award process C, the most suitable provider process, and the competitive process or where the contract was originally awarded under the Public Contracts Regulations 2015), it must publish a transparency notice where all the below apply:

- that modification is attributable to a decision of the ICB
- the cumulative change in the lifetime value of the contract or framework agreement is £500,000 or more

6.9 Contract Exit

6.9.1 If the ICB wish to terminate a contract, ICB staff should follow the process to terminate or expire a contract in line the applicable terms in the contract. ICB staff

should endeavor to review contracts within appropriate timescales to avoid the rollover of contracts without clear justified reasons for a contract to continue.

6.9.2 If the ICB are intending to decommission a service (including ending a pilot), a decommissioning plan should be agreed and implemented. An Equality and Health Inequalities Impact and Risk Assessment and Quality Impact Assessment will need to be completed as part of the decommissioning plan and any decisions will need to be approved in line with the ICB's SoRD.

7. Roles and Responsibilities

7.1 **The ICB:** Must ensure that procurement and contracting activity is carried out in accordance with procurement legislation and associated statutory requirements whilst securing value for money and sustainability.

7.2 **Chief Financial Officer (CFO):** Leads on behalf of the ICB to ensure that there are appropriate and effective financial, procurement, contracting, monitoring and performance arrangements in place to ensure the delivery of effective health services.

7.3 **Head of Procurement and Contracting:** Responsible for this policy remaining up to date and in line with current procurement policy and legislation, to maintain a strategic oversight of ICB procurement and contracting activity and the coordination of, and guidance relating to procurement and contracting advice.

7.4 **All Staff:** ICB Staff and other individuals covered by the scope of this policy are responsible for making themselves aware of the policy, seeking advice and acting in accordance with the policy. ICB staff should engage with procurement and contracting colleagues during the commissioning process and when seeking to identify a suitable provider or make a change to a contract.

7.5 **ICB Board:** The ICB Board, and relevant Committees of the Board, are responsible for setting the approach for facilitating open, transparent, and fair, proportionate procurement and contracting processes and ensuring procurement decisions and procurement processes are in accordance with this policy. The ICB Board are also responsible for the approval of high value procurement and contracting decisions in line with the thresholds set out in the ICB SoRD.

7.6 **ICB Finance and Performance Committee:** Responsible in overseeing procurement and contracting activity of the ICB, providing assurance to the Board that these activities have been conducted in a manner that meets the legal, statutory, and other obligations of the ICB whilst also delivering best value for patients and taxpayers.

7.7 **Audit Committee:** Responsible to review the adequacy and effectiveness of the system of integrated governance, risk management and internal control. This includes ensuring compliance with the ICB's single tender waiver process and PSR urgent decision making process and an oversight of all procurement decisions.

7.8 **Commissioning Resource Group and ICB Executive Team:** Recommendations relating to procurement and contracting decisions are made by the CRG, with final approval from the ICB Executive Team in line with the thresholds set out in the ICB SoRD.

7.9 **The Primary Care Commissioning Committee:** Responsible for approving primary care procurement and contracting decisions in line with the thresholds set out in the ICB SoRD.

8. Equality and Health Inequalities Impact Risk Assessment (EHIIRA)

8.1 An equality health Inequalities impact and risk assessment has been completed and held on file. This policy formalises the rules that govern existing procurement and contracting processes and procedures that support the ICB when commissioning services and purchasing goods. By supporting commissioning decisions and with robust management of contracts, this should support the ICB's overall objective to ensure health services are working well with the focus on improving people's health and wellbeing, and to make sure everyone has the same access to services and gets the same outcomes from treatment. However, this policy is not expected to make a significant change to any specific Protected Groups and other Inclusion Health Groups.

9. Implementation and Dissemination

9.1 The ICB's corporate team will arrange for this policy to be available electronically on the ICB website and Staff Intranet and ICB staff will be notified through the ICB's internal email communication system. It is the responsibility of individual staff to comply with the policy.

10. Training Requirements

10.1 There are no specific training requirements as part of this policy. The ICB Head of Procurement and Contracting will provide advice on any aspect of this policy if required.

11. Monitoring and Review Arrangements

11.1 The policy will be monitored annually for accuracy and against any new legislation and guidance as it is published; otherwise, formal review and update of the policy will take place every 2 years.

12. Consultation

12.1 A list all staff and stakeholders who have been consulted during the policy development can be found at 13.1.

13. List of Stakeholders Consulted

13.1

Date	Name of Individual or Group	Designation	Were comments received, considered and incorporated Yes/no	If not incorporated record reason why
	Katherine Disley	Director of Operational Finance, ICB	No comments were received	
	Andrew Harrison	Director of Finance for Place and Programme, ICB	No comments were received	
	Emma McGrath	Associate Director Financial Management, ICB	Yes	
	Beverley Thomas	Head of Procurement & Corporate Services, MLCSU	Yes	
	ICB and MLCSU Contract Leads		Yes	No amendments were required in relation to the comments received
	Claire Moore	Head of Risk Assurance and Delivery, ICB	Yes	
	Craig Harris	Chief Operating Officer, ICB	Yes	No amendments were required in relation to the comments received
	Allison Sathiyanathan	ICB Net Zero Project Manager	Yes	
	Sarah O'Brien	Chief Nursing Officer, ICB	No comments were received	

14. References and Bibliography

14.1 Any relevant legislation and guidance relating to this policy has been referenced throughout the policy document. Below is a further list of sources that were used to support the development of this policy;

- LSC ICB's Policy for the Development and Management of Policy and Procedural Documents

- NHS Greater Manchester Procurement Policy
- NHS Mid and South Essex Procurement and Contracting Policy

15. Associated Documents

15.1 Please see below a list of local and national policies or procedures that would be beneficial to refer to in conjunction with this document;

ICB Policies and Procedures

- ICB Governance Handbook (includes Scheme of Reservation and Delegation and Standing Financial Instructions)
- ICB's Managing Conflicts of Interest Policy and Procedures
- ICB's Legal Services and Claims Management Policy
- ICB's No Purchase Order (PO) No Payment Policy (in development)

National Policies and Procedures

- NHS Standard Contract Technical Guidance
- NHS Payment Scheme
- NHS Provider Selection Regime Statutory Guidance and PSR Toolkit
- NHS Patient Choice Guidance
- NHS England's net zero emissions requirements, the application of net zero and NHS social value, and Carbon Reduction Plan
- Managing conflicts of interest in the NHS: guidance for staff and organisations

16. Appendices

16.1 Please see below a list of appendices in relation to this policy;

- Appendix a - LSC PSR Decision Record Making Template Direct Awards & Urgent Awards
- Appendix b - Single Tender Waiver Template (non-healthcare services and goods)
- Appendix c - LSC ICB Provider Selection Regime Group Terms of Reference