



**Nottingham and  
Nottinghamshire**  
Integrated Care Board

# **Procurement Policy**

**July 2022 - July 2023**

<b>CONTROL RECORD</b>			
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			<b>Team</b> Procurement and Commercial Development
<b>Title</b>	Procurement Policy		
<b>Amendments</b>	N/A		
<b>Purpose</b>	To ensure ICB compliance with procurement legislation and that there is a process in place to manage decision-making and the procurement process.		
<b>Superseded Documents</b>	N/A		
<b>Audience</b>	All employees of the Nottingham and Nottinghamshire ICB (including those working within the organisation in a temporary capacity).		
<b>Consulted with</b>	Strategic Planning and Integration Committee		
<b>Equality Impact Assessment</b>	Complete (see Appendix A)		
<b>Approving Body</b>	ICB Board	<b>Date approved</b>	1 July 2022
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## **1. Introduction**

- 1.1. This policy applies to the NHS Nottingham and Nottinghamshire Integrated Care Board, hereafter referred to as 'the ICB'.
- 1.2. 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.
- 1.3. As a commissioner of healthcare services, the 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.
- 1.4. The ICB is committed to reducing health inequalities, delivering measureable population health benefits, improved patient experience and ease of access.
- 1.5. The creation of the ICB and the development of the Integrated Care System allow for a more collaborative and partnership approach to commissioning of healthcare services. Statutory guidance will be introduced to replace existing procurement regulation to allow a more collaborative approach. Until the guidance is in place, the ICB will work within the flexibilities of the current regulations and transition process.
- 1.6. There are limits on the resources available, and the ICB has to be able to demonstrate it is achieving value for money. Service development proposals will include an evidence based approach to identifying and delivering commissioning priorities.
- 1.7. Services will be continually reviewed to identify opportunities to improve efficiency, extend choice and access, and improve the quality of outcomes and patient experience.
- 1.8. The ICB will ensure that it manages the procurement of its own management and operational needs to facilitate the delivery of effective health services to the local population for which it is responsible.
- 1.9. When undertaking procurement activities the ICB is required to comply with legal requirements, ICB's established governance structure and professional and ethical standards in order to achieve efficient and productive procurement processes.
- 1.10. This Procurement Policy outlines key principles and considerations that will inform decision-making; it is not intended to be comprehensively prescriptive and recognises the necessity for situational discretion when appropriate.
- 1.11. Recognising the often complex and continually developing regulatory regime that impacts on procurement and contract award decisions, appropriately qualified and experienced advice and guidance should be sought to inform decision-making regarding the awarding of contracts and associated processes.

- 1.12. This policy takes into account current competition and procurement rules and the proposed changes being introduced through amendments to the Health and Social Care Act.
- 1.13. This Procurement Policy is designed to ensure:
- Compliance with laws, regulations and guidance;
  - Probity in spending public funds;
  - Professional and ethical conduct;
  - Best value for money;
  - Efficiency, effectiveness and environmental and socio-economic sustainability.
- 1.14. This Procurement Policy describes:
- Scope, application, key principles, policy ownership and responsibilities;
  - Procurement rules and requirements;
  - Thresholds, approvals and procurement routes.
- 1.15. This Procurement Policy aims to:
- Make real and positive contributions to the strategic direction of the ICB;
  - Support the delivery of the NHS Long Term Plan;
  - Support the efficiency agenda;
  - Support the development of integrated care systems;
  - Streamline procurement processes;
  - Make a direct contribution to improved patient care;
  - Support collaborative commissioning;
  - Support joint commissioning;
  - Support the effective use of resources.
- 1.16. A number of guidance documents and templates will be developed to compliment this policy.
- 1.17. The ICB will comply with all procurement and competition legislation and guidance.

## **2. Scope**

- 2.1 This policy applies to all staff who procure goods, services or works on behalf of the ICB, including staff on temporary or honorary contracts, appointed representatives acting on behalf of the ICB, staff from member practices and any external organisations (eg. Commissioning Support Unit).

- 2.2 All expenditure by the ICB for its own operational and management needs are subject to this policy, including:
- Revenue expenditure and capital expenditure;
  - Corporate/Indirect spend (supplies procurements);
  - Spend 'hosted' on behalf of other bodies;
  - Commissioned Healthcare Services.
- 2.3 Where the ICB is seeking to directly award a contract to GP practices, safeguards must be in place to ensure transparency of decision and management of conflict of interest.
- 2.4 Arrangements under which the 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 clear and effective guidance to all the ICB's officers when undertaking procurement activities. Therefore, this policy:
- Sets out the laws, rules, regulations and policies applicable to procurement;
  - Incorporates key procurement principles, standards and best practices;
  - Delivers a mechanism to drive procurement compliance and efficiency throughout the ICB;
  - Provides procurement procedures, templates and tools to support the ICB's officers involved in procurement of goods and services.
- 3.2 The policy within this arena is particularly complex as it sits within a wider framework of healthcare policy and legislation. The ICB's approach to procurement is to operate within legal and national policy frameworks and to use procurement as one of the system management tools available to strengthen commissioning outcomes through:
- Managing market capacity to meet the ICB's need and the demand for clinical services in the local health economy;
  - Using competitive tension to facilitate improvements in choice, quality, efficiency, access and responsiveness; and
  - Being open to new and innovation approaches to procurement and commissioning of services and new contracting models.

- 3.3 NHS and the wider public sector procurement is subject to national rules, principles, regulations and guidance. In procuring services and goods, the ICB will comply with the legislation that governs the award of contracts by public bodies. This includes adherence to:
- Public Contracts Regulations 2015 (PCR 2015);
  - Concessions Contracts Regulations 2016 (CCR 2016);
  - The NHS Act 2006 (as amended);
  - The Public Services (Social Value) Act 2012;
  - The Equality Act 2010;
  - Modern Slavery Act 2015;
  - HM Treasury 'Managing Public Money'.
- 3.4 The application of this policy will align with the requirements of the Nottingham and Nottinghamshire Integrated Care System (ICS) in its role as Strategic Commissioner to develop the desired population health and care outcomes for the system via a 'best value' approach.
- 3.5 The 'best value' approach will include a benchmarking and best value assessment to decide whether a procurement process is the optimal approach to deliver the desired population health outcome. This assessment and the legislative requirement will inform the procurement process.
- 3.6 Service specifications will include best practice principles related to economic, social and environmental factors.

## **4. Application of this Policy**

- 4.1 This policy sets out in all instances the actions of any of the ICB's officers involved in and/or considering entering into a contract or committing the ICB to any expenditure: they must do so in accordance with this policy and any of the ICB's applicable policies.
- 4.2 This policy sets out:
- How the ICB will meet statutory procurement requirements, primarily the Public Contracts Regulations 2015 and the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013.
  - The ICB's approach for facilitating open and fair, robust and enforceable contracts that provide value for money and that deliver required quality standards and outcomes, with effective performance measures and contractual lever.
  - How to determine the most appropriate procurement route to procure goods and services to meet the ICB's operational and management needs: taking account of its own internal financial policies and procurement regulations. To reduce the cost of procuring goods and services, ICB officers should make

best use of national or other frameworks where they are able to demonstrate value for money. The ICB should also consider collaborative opportunities with ICS partner organisations.

- The transparent and proportionate process by which the ICB will determine whether health and social services are to be commissioned through existing contracts with providers, competitive tenders, via a framework approach or through alternatives provided for in procurement regulations.
- How to enable early determination of whether, and how, services are to be opened to the market, to facilitate open and fair discussion with existing and potential suppliers and providers, thereby to facilitate good working relationships.
- How to enable the ICB to demonstrate compliance with the general principles of good procurement practice.

4.3 Those general principles are:

- **Transparency:** Making purchasing and commissioning intent clear to the market place, including the use of sufficient and appropriate advertising of tenders, transparency in making decisions not to tender, and the declaration and appropriate management of conflicts of interest.
- **Proportionality:** Making procurement processes proportionate to the value, complexity and risk of the services contracted, and critically not excluding potential providers through overly bureaucratic or burdensome procedures.
- **Non-discrimination:** Having specifications that do not favour one or more providers. Ensuring consistency of procurement rules, transparency on timescale and criteria for shortlist and award.
- **Equality of Treatment:** Ensuring that all providers and sectors have equal opportunity to compete where appropriate; that financial and due diligence checks apply equally and are proportionate; and that pricing and payment regimes are transparent and fair.

4.4 Users of this policy should refer to the procedures and templates relating to this policy which provide further guidance and clarification on the application of this policy in practice.

## 5. Roles and Responsibilities

Roles	Responsibilities
<b>Integrated Care Board</b>	The Integrated Care Board and all Committees of the Board, 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.



Roles	Responsibilities
<b>Chief Executive</b>	The Chief Executive has overall accountability for the ICB's procurement processes.
<b>Director of Integration</b>	The Director of Integration has overall responsibility for the ICB's procurement decisions and procurement processes.
<b>Strategic Planning and Integration Committee</b>	The Strategic Planning and Integration Committee is responsible for ensuring procurement decisions are supported by relevant business cases and that risks associated with direct awards are identified and managed.
<b>Audit and Risk Committee</b>	The Audit and Risk Committee is responsible for ensuring compliance with competition waiver processes.
<b>Procurement Lead</b>	<p>This policy is owned by the Associate Director of Procurement and Commercial Development, who is responsible for:</p> <ul style="list-style-type: none"> <li>• Ensuring that the principles of good procurement practice are embedded within the ICB;</li> <li>• Monitoring legislation and incorporating any significant policy or procedural developments, or as required by statutory or mandatory requirements;</li> <li>• Reviewing and updating the policy as a minimum on an annual basis following an approved change control process;</li> <li>• Identification of risks associated with direct award of contracts without competition;</li> <li>• The review and sign-off for procurement exemptions in line with Standing Financial Instructions, prior to scrutiny by the Audit and Risk Committee.</li> </ul>
<b>ICB Staff</b>	<p>All of the ICB's officers are responsible for complying with this procurement policy and associated procedures. All ICB staff shall:</p> <ul style="list-style-type: none"> <li>• Only procure goods, services and works on behalf of the ICB;</li> <li>• Only procure goods, services and works in accordance with the ICB's Scheme of Financial Delegation.</li> </ul> <p>In instances where staff are unsure about a course of action, then they should seek advice and guidance from the Associate Director of Procurement and Commercial Development.</p>

5.1 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 operation 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;
- 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.

5.2 In the event of any discrepancy between this policy and the 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.

## **6. Investment and Disinvestment Process**

6.1 All requests for investments must be supported by a business case. The authorisation of the investment recommendation is subject to the following approval route in accordance with the ICB's Scheme of Reservation and Delegation and Standing Orders.

6.2 All requests for disinvestments must be subject to the ICB's Service Benefit Review Policy and authorisation of the recommendation is subject to the following approval route in accordance with the ICB's Scheme of Reservation and Delegation.

## **7. Procurement Approach**

7.1 For the ICB's own operation and management needs and to assure the delivery of goods and services, the ICB shall adopt a procurement approach in compliance with its obligations under procurement legislation and the other applicable legislation referred to above.

7.2 The ICB's main objective via a procurement process for health services is to provide patients with services that are high quality, responsive and appropriate to their need, whilst ensuring that the ICB complies with its legal obligations. The ICB will strive to ensure that its service providers and suppliers can anticipate and

respond to changes in the ICB's need and will value the need to provide quality and value for patients. When procuring health care services, the ICB is required to act with a view to:

- Improving the quality of the services;
- Improving efficiency in the provision of the services;
- Meeting the needs of the local population;
- Keeping within approved budgets/cost limitations;
- Meeting probity and propriety requirements;
- Demonstrating value added to the local community.

7.3 When conducting competitive tender processes for its own operational and management needs and any type of health care services contract, the ICB will, whilst ensuring that it complies with its legal obligations, seek to:

- Select the method of procurement which is most proportionate, most effective and ensures best value for the service(s) in question;
- Award contracts based on the most economically advantageous tender criteria with particular focus being given to those services that are most likely to deliver continuous improvement in terms of quality, efficiency and effectiveness;
- Work with providers fairly and transparently at all times;
- Recognise that certain specialties/services may have a monopoly on expertise and where appropriate strive to seek out new and innovative relationships in order to widen the healthcare market;
- Continuously explore ways of encouraging new providers into the market;
- Monitor existing contracts and service arrangements via the tender process to ensure delivery of best value in line with the competitive market;
- Stimulate diversity and innovation, enhance choice for service users, and create the conditions in which new suppliers might take root and be able to enter the market;
- Design and deliver services to meet the differing needs of the community by consulting with prospective providers, other local NHS organisations and all sections of the local community.

7.4 The ICB will follow the principled-based approach set out in procurement regulations with a view to improving the quality and efficiency in the provision of NHS healthcare services and with a view to:

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

## 8. Procurement Route

- 8.1 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 (ie. 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.
- 8.2 In order to comply with the procurement regulations, and to ensure equity to all sectors, the ICB will ensure full compliance with the following procurement thresholds:

<b>Contract Value (over the full term of the contract)</b>	<b>Goods/Services/Works</b>
<50,000	Executive Director responsibility - No formal process is required although best value for money should be sought at all times and purchases should be from a reputable source. Advice to be sought from the Associate Director of Procurement and Commercial Development as required.
£50,001 and above, but below the Public Contract Regulation Threshold (see below)	Formal tendering process. Use of existing contract or framework must be considered and advice sought from the Associate Director of Procurement and Commercial Development (as required).
Equal to or above the Public Contract Regulation Threshold applicable at the time. <i>(As at 1 January 2022 Supplies/Services Value = £1313,477 (inc VAT) Works =£5,336,937 (inc VAT))</i>	Compliance with the Public Contract Regulations 2015. Advice to be sought from the Associate Director of Procurement and Commercial Development.

<b>Contract Value</b>	<b>Commissioned Healthcare Services</b>
<£100,000	Executive Director responsibility - No formal process is required although best value for money should be sought at all times and the provisions of the 2015 Regulations must be observed. Advice to be sought from the Associate Director of Procurement and Commercial Development as required.

<p>£100,001 and above but below the Public Contract Threshold applicable at the time. <i>(As at 1 January 2022 = £663,540)</i></p>	<p>Subject to competitive tendering process in order to demonstrate the application of the principles of transparency, openness, equal treatment, proportionality and the delivery of value of money to secure the needs of health care service users. The provisions of the 2015 Regulations must be observed. Advice to be sought from the Associate Director of Procurement and Commercial Development as required.</p>
<p>Equal to or above the Public Contract Regulation Light Touch Regime Threshold applicable at the time. <i>(As at 1 January 2020 = £663,540)</i></p>	<p>Compliance with the Public Contract Regulations 2015. Advice to be sought from the Associate Director of Procurement and Commercial Development.</p>

- 8.3 Wherever possible the 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.
- 8.4 The ICB must adhere to NHS England Policy and Guidance for procurement of Management Consultancy Services and Agency Staff.
- 8.5 All procurement processes must have the relevant governance process sign off before commencement and the contract award must be authorised in accordance with the ICB’s Scheme of Reservation and Delegation.

## 9. Competition Waivers

- 9.1 Competition waivers 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.
- 9.2 The waiving of competitive tendering procedures should 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 the Associate Director of Procurement and Commercial Development before committing the ICB to enter into a contract arrangement or to commit the ICB to expenditure.

- 9.3 Where an ICB officer wishes to apply for an exemption, they shall do so in accordance with the ICB's Standing Financial Instructions or Prime Financial Policies and follow the Competition Waiver Action Procedure.
- 9.4 Approval of request for Competition Waiver shall be in accordance with the ICB's Scheme of Reservation and Delegation.
- 9.5 All decisions arising from an approved Competition Waiver will be reported to the ICB's Audit and Risk Committee. 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.
  - Specialist expertise/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. 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.
  - 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 timescale 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 single tender.**
- 9.6 Where a request for Competition Waiver 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 exit plan if service does not continue.
- 9.7 The ICB will require assurance about potential providers and is 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.

## 10. Forms of Contracts

- 10.1 All ICB officers need to understand the terms and conditions that apply to a particular contract prior to award.
- 10.2 **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 pre-approved by the Associate Director of Procurement and Commercial Development.
- 10.3 **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, 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.
- 10.4 **Primary Care Contracts:** The ICB officers shall ensure they use standard contracts for primary care services including:
- PMS (Personal Medical Services) Contract;
  - APMS (Alternative Provider Medical Services) Contract;
  - GMS (General Medical Services) Contract;
  - Pharmacy – LPS (Local Pharmaceutical Service) Contract;
  - Dentistry – GDS (General Dental Service) Contract, PDS (Primary Dental Services) Contract.
- 10.5 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. The ICB must have robust contract management processes in place for all contracts.

## **11. Modification of Existing Contracts**

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

## **12. Recording of Decision-Making**

- 12.1 The ICB needs to 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 must include:

- The details of the decision;
- Who was involved in making the decision including the name of the clinical lead, the contract manager, the name of the decision-making committee and the name of any other individuals with decision making responsibility;
- A summary of any conflicts of interest in relation to the decision and how this was managed;
- The award decision taken.

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

## **13. Sustainable Procurement**

- 13.1 The NHS is a major employer and economic force across the ICB's region. The ICB recognises 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.

- 13.2 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.

## **14. Collaborative Procurement**

- 14.1 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.

- 14.2 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.



- 14.3 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), 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.
- 14.4 The ICB should consider the range of collaborative procurement support services available from Commissioning Support Units where they offer potential financial and process benefits to the ICB.

## **15. Use of Information Technology**

- 15.1 Wherever possible, appropriate information technology systems i.e. E-procurement and E-evaluation methods will be used, which will provide a robust audit trail. E-Tendering and E-evaluation solutions provide a secure and efficient means for managing tendering activity particularly for large complex procurements. They offer efficiencies to both the ICB and providers by reducing time and costs in issuing and completing tenders, and particularly to the ICB in respect of evaluating responses to tenders.

## **16. Equality and Quality Impact Assessment**

- 16.1 All public bodies have statutory duties under the Equality Act 2010. The ICB aims to design and implement services, policies and measures that meet the diverse needs of its service users, population and workforce, ensuring that none are placed at a disadvantage over others. When any change to services is to take place, a full Equality and Quality Impact Assessment (EQIA) must be carried out prior to the change within the service.
- 16.2 All Business Cases relating to commissioning investment/disinvestment decisions will include EQIAs.

## **17. Stakeholder Engagement**

- 17.1 The ICB recognises that effective engagement with stakeholders is an essential requirement for all NHS organisations and will offer benefits to the generation of outcome-based service specifications. The 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 ICB's Conflict of Interest policy.
- 17.2 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.

## **18. Conflicts of Interest**

- 18.1 Managing conflicts of interest is needed to protect the integrity of the wider NHS commissioning system and to protect the ICB from any perceptions of wrongdoing. General arrangements for managing conflicts of interests are set out in the ICB's Constitution and Standards of Business Conduct Policy.
- 18.2 A conflict of interest arises where an individual's ability to exercise judgement or act in one role is or could be impaired or otherwise influenced by that individual's involvement in another role. For the purposes of the procurement regulations, a conflict will arise where an individual's ability to exercise judgement or act in their role in the commissioning of services is impaired or otherwise influenced by their interests (or potential interests) in the provision of those services.
- 18.3 Where any person has an interest in a procurement decision, that person/those persons will be excluded from the decision-making process (but not necessarily from the discussion about the proposed decision). This includes where all practice representatives have a material interest in the decision, for example where the ICB is considering commissioning services on a single tender basis from all GP practices in the area.
- 18.4 Where it is not practicable to manage a conflict by simply excluding the individual concerned from participating in relevant decisions or activities, the ICB will need to consider alternative ways of managing the conflict such as, for example, involving third parties on the Board of the ICB who are not conflicted or inviting third parties to review decisions to provide additional scrutiny.
- 18.5 The ICB will, through its Conflicts of Interests Register, maintain a record of how they manage any conflict that arises between the interests in commissioning the services and the interests involved in providing them. This Register will need to include:
- Details of the individual who was conflicted and their role/position within the ICB;
  - The nature of their interest in the provision of services;
  - When the individual's interest in the provision of the services being commissioned was declared and how;
  - Details of the steps taken to manage the conflict;
  - The individual's involvement in the procurement process.

## **19. Freedom of Information**

- 19.1 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.
- 19.2 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 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.

## **20. Policy Non-Compliance**

- 20.1 The ICB officers must comply with this policy and the associated ICB's policy and procedures at all times. Failure to comply may result in disciplinary action in accordance with the ICB's Disciplinary Policy.
- 20.2 In the event of non-compliance, full details of the non-compliance, any justification for non-compliance and the circumstances around the non-compliance must be reported to the ICB's Audit and Risk Committee's next formal meeting for action or ratification.
- 20.3 The ICB officers are encouraged to be proactive in relation to the policy compliance and to raise compliance issues in early stages of the procurement process to prevent policy and legal non-compliance.
- 20.4 The ICB officers must comply at all times with the Standards of Business Conduct Policy, the ICB's Fraud, Bribery and Corruption Policy and any other corporate procedures and governance policies.

## **21. Equality and Diversity Statement**

- 21.1 NHS Nottingham and Nottinghamshire ICB pays due regard to the requirements of the Public Sector Equality Duty (PSED) of the Equality Act 2010 in policy development and implementation as a commissioner and provider of services, as well as an employer.

- 21.2 The ICB is committed to ensuring that the way we provide services to the public and the experiences of our staff does not discriminate against any individuals or groups on the basis of their age, disability, gender identity (trans, non-binary), marriage or civil partnership status, pregnancy or maternity, race, religion or belief, gender or sexual orientation.
- 21.3 We are committed to ensuring that our 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.
- 21.4 As an employer, we are committed to promoting equality of opportunity in recruitment, training and career progression and to valuing and increasing diversity within our workforce.
- 21.5 To help ensure that these commitments are embedded in our day-to-day working practices, an Equality Impact Assessment has been completed for, and is attached to, this policy.

## **22. Communication, Monitoring and Review (including Staff Training)**

- 22.1 The ICB will establish 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.
- 22.2 The ICB will establish formal training and updates for all staff. Mandatory training will be provided to all staff who undertake a commissioning or contracting role.
- 22.3 The implementation of this policy, and the effectiveness of the arrangements detailed within it, will be monitored by the ICB's Strategic Planning and Integration Committee as well as the Audit and Risk Committee.
- 22.4 This policy will be reviewed by the ICB's policy author every three years, or unless legislative changes occur within that time, and recommendations to amend will be submitted to the Strategic Planning and Integration Committee for endorsement and the Board for approval.

## **23. Interaction with other Policies**

- 23.1 This policy and any procedures derived from it should be read alongside and in conjunction with the following:
- The ICB's Constitution, which includes Standing Orders, Standing Financial Instructions, Schemes of Reservation and Delegation and Prime Financial Policies;
  - Raising Concerns (Whistleblowing) Policy;

- Freedom of Information (FOI) and Environmental Information Regulations (EIR) Policy;
- Risk Management Policy;
- Standards of Business Conduct Policy;
- Service Benefit Review Policy; and
- Fraud, Bribery and Corruption Policy.

## Appendix A: Equality Impact Assessment for Procurement Policy

<b>Date of assessment:</b>	May 2022			
<b>For the policy, and its implementation, please answer the questions against each of the protected characteristic and inclusion health groups:</b>	Has the risk of any potential adverse impact on people in this protected characteristic group been identified, such as barriers to access or inequality of opportunity?	If yes, are there any mechanisms already in place to mitigate the adverse impacts identified?	Are there any remaining adverse impacts that need to be addressed? If so, please state any mitigating actions planned.	Are there any positive impacts identified for people within this protected characteristic group? If yes, please briefly describe.
<b>Age<sup>1</sup></b>	No	N/A	N/A	This policy provides guidance, accountability and clarity on how an organisation operates. It will support consistent and transparent decision-making for all members of the ICB's workforce.
<b>Disability<sup>2</sup></b>	Yes	Mechanisms are in place to enable the policy to be received in alternative formats.	No	
<b>Gender identity (trans, non-binary)<sup>3</sup></b>	No	N/A	N/A	
<b>Marriage or civil partnership status<sup>4</sup></b>	No	N/A	N/A	
<b>Pregnancy or maternity<sup>5</sup></b>	No	N/A	N/A	
<b>Race<sup>6</sup></b>	No	N/A	N/A	
<b>Religion or belief<sup>7</sup></b>	No	N/A	N/A	
<b>Gender<sup>8</sup></b>	No	N/A	N/A	
<b>Sexual orientation<sup>9</sup></b>	No	N/A	N/A	
<b>Carers<sup>10</sup></b>	No	N/A	N/A	

<sup>1</sup> A person belonging to a particular age (for example 32 year olds) or range of ages (for example 18 to 30 year olds).

<sup>2</sup> A person has a disability if she or he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.

<sup>3</sup> The process of transitioning from one gender to another.

<sup>4</sup> Marriage is a union between a man and a woman or between a same-sex couple.

Same-sex couples can also have their relationships legally recognised as 'civil partnerships'.

<sup>5</sup> Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.

<sup>6</sup> Refers to the protected characteristic of race. It refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins.

<sup>7</sup> Religion refers to any religion, including a lack of religion. Belief refers to any religious or philosophical belief and includes a lack of belief. Generally, a belief should affect your life choices or the way you live for it to be included in the definition.

<sup>8</sup> A man or a woman.

<sup>9</sup> Whether a person's sexual attraction is towards their own sex, the opposite sex, to both sexes or none. <https://www.equalityhumanrights.com/en/equality-act/protected-characteristics>

<sup>10</sup> Individuals within the ICB which may have carer responsibilities.