Procurement Policy for all ICB Expenditure

NHS Devon

Version	5
Policy Sponsor	Chief Delivery Officer
Policy Lead	Deputy Director: Contracting
Approved by	Chief Finance Officer and Chief Corporate Affairs and Communications Officer
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Document change history

Date	Change	Comments
15/12/2023	Policy Amendment	Significant re-write of current ICB policy to incorporate Provider Selection Regime (PSR). Updated policy will go live on 1st January 2024 in line with PSR. This version has also amended the values for Request for Quote process as well as the Public Contracts Regulations legal thresholds. It also includes updated SAW and CDR templates/processes. Please contact the Contracting Team for all previous versions of this policy.
31/12/2024	Policy Amendment	Policy updated throughout to incorporate legislative changes brought about by the Procurement Act 2023 which comes into effect 24/02/2025
30/06/2025	Policy Amendment	Updates made to processes and thresholds for RFQ/ Direct Award under the procurement Act 2023 and to the CDR template associated with these processes.

Equality, diversity and inclusion statement

NHS Devon is committed to the promotion of equal opportunities, addressing health inequalities and fostering of good relations between people protected under the terms of the Equality Act 2010, the Health and Social Care Act 2012 and Human Rights legislation. We are equally committed to the elimination of unlawful discrimination, harassment and victimisation. To demonstrate this commitment, we develop, promote and maintain policies, strategies and operating procedures. Every effort is made to ensure that patients, employees, contractors or visitors do not experience discrimination; either directly or indirectly, because of their vulnerability; disadvantage; age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex (gender) or sexual orientation.

All staff must comply with this policy. Compliance must reflect our organisational commitment to and policy on, equality, diversity and inclusion. In addition, each manager and member of staff involved in implementing this policy must give due regard to the needs of those protected under law.

If you, or any other groups, believe you are discriminated against under the terms of the Equality Act, the Health and Social Care Act 2012 or Human Rights legislation by anything contained in this document; or you need this document in an alternative format, for example, large print, Braille, Easy read or other languages; please contact our Patient Advice and Complaints Team (PACT):

Tel: 0300 123 1672
Email: pals.devon@nhs.net

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1. Executive Summary

Procurement is governed by complex sets of legal requirements. Appendix C Procurement Decision Tool contains a useful initial flowchart which will help ascertain the most suitable procurement approach. The Contracting Team are here to support and take you through this guidance so please do contact them in the first instance.

For all procurements it is essential to engage at the earliest stage with the ICB Contracting Team for guidance and assistance, to ensure compliance with regulations. The Contract Team are required to hold all relevant information on behalf of the ICB and are required to provide evidence as required for audit and other purposes. It is imperative that they are always involved when anyone wishes to procure goods or services on behalf of the ICB. The Contract Team will liaise with CSU and HR as appropriate.

Most healthcare services will be covered by the Provider Selection Regime (PSR). Most other procurements will be covered by the Procurement Act 2023. Please speak to the Contracting Team or CSU (if it is a non-clinical procurement you are enquiring about) to ensure the correct regulations are followed.

This policy provides further information about key elements of legislation and sets out the processes all ICB staff are required to follow when considering spending ICB funds. The legislative requirements covering public sector spends are constantly changing. The contract team will be abreast of new requirements and will be able to provide up to date advice and support. Please do not rely upon previous policies or procedures as these may no longer be valid.

Proper management (including documentation) of Conflicts of Interests for both employees and Suppliers / Providers is required in all instances where public funds are being committed.

2. Introduction

Procurement is essential to the ICB's mandate to plan, commission and develop healthcare services for the population of Devon. This Policy describes the approach the ICB takes to procurement in line with legal requirements that surround this area of public sector expenditure as well as all non-clinical spend.

For all procurements it is essential to engage at the earliest stage with the ICB Contracting Team for guidance and assistance, to ensure compliance with regulations. The team are able to offer advice, guidance and training to teams or individuals for both procurement and contracting - please contact d-icb.contracting@nhs.net in the first instance or as soon as possible during the procurement process.

Procurement is a whole life-cycle process involving acquisition of goods, works and services. It starts with identification of need and includes development of procurement strategy, tender documentation, evaluation of providers, contract award and ongoing performance management. Procurement encompasses everything from low-value orders or bookings through to complex healthcare service solutions developed through partnership arrangements.

Effective procurement delivers value for money and helps the ICB commission the right services to improve the lives of those who live in Devon.
Transparent decision making, robust record keeping and adherence to principles of non-discrimination, equality and social value are crucial.

NHS Devon ICB must adhere to legal regulations including:

- Provider Selection Regime (provided for through Health and Care Act 2022)
- The Procurement Act 2023
- The Public Services (Social Value) Act 2012
- Transfer of Undertakings and Protection of Employment Regulations (TUPE) 2006

In undertaking procurement activity, the ICB must also:

- Undertake formal engagement and consultation where appropriate in line with NHS Devon ICB's Communication and Engagement Strategy
- Consider impacts through the Quality Equality Impact Assessment process
- Act in accordance with the priorities set out in the National Procurement Policy Statement

This policy must be read and understood alongside the below NHS Devon ICB documents and policies (see NHS Devon ICB website for copies):

- Constitution
- Prime Financial Policies (including the Scheme of Reservation and Delegation)
- The Standards of Business Conduct
- Counter Fraud, Bribery and Corruption Policy
- Purchasing Card Guidance issued to all purchasing card holders
- NHS Devon Green Plan and Joint Forward Local Plan (see Appendix G for more information)

3. Purpose and objectives

2.1 The aim of this policy is to ensure NHS Devon conducts all procurement activity in line with statutory regulations and ICB processes.

2.2 This policy will:

- Summarise the most frequently applicable current regulations and their implications for procurement practice in NHS Devon
- Implement a clear set of processes to be followed to ensure all procurement activity in scope of this policy is compliant with regulations
- Provide clarity as to the roles of different members of the ICB in relation to applying these processes, including escalation routes and sources of advice and training
- Reference template documents which are available from the Contracting Team and which must be used to ensure consistent application of key steps within procurement activity

4. Scope

4.1 **Goods and Services covered by this policy**

This policy should be used in the procurement of all goods and services required by the ICB.

There are key differences between the ICB's legal obligations in procurement of healthcare services as distinct from the procurement of healthcare goods and from non-healthcare goods and services. This policy provides an overview of these differences, but for all procurement it is imperative to engage early on with the ICB Contracting Team or the Commissioning Support Unit (CSU) who will be able to provide further assistance in this respect. Further information on regulations is

available from the ICB Contracting Team and as such is not included in this policy.

NB: there are separate requirements and tariff levels for works and utilities – please contact the CSU direct if your procurement relates to these. This policy does not detail these.

4.2 Who this policy applies to

This policy applies to all ICB and Commissioning Support Unit (CSU) staff and others working with the ICB and CSU. It applies to all staff on temporary or honorary contracts and also to representatives of external organisations who are working with the ICB or CSU. In addition, any self-employed consultants or other individuals working for the ICB under a contract for services should make a declaration of interest in accordance with the statutory guidance, as if they were ICB employees. The policy will be made available on the ICB's intranet. It is the responsibility of all budget holders to familiarise themselves with this policy. It is vital that all members of staff are aware of and adhere to this policy.

Staff (including the individuals described above) who may be part of a procurement project team and/or responsible for procurement of all goods and services for the ICB (in any directorate) must familiarise themselves with this Policy and be aware that the ICB has an obligation to ensure robust governance processes are in place and that auditable records of key decisions and records of conflicts of interest (including nil declarations) are produced and retained.

5. Definitions

Please see Appendix A for glossary of terms.

6. Statutory Requirements & Regulations

6.1 Healthcare Services

As of 1st January 2024, the Provider Selection Regime, introduced by regulations made under the Health and Care Act 2022, became the primary legislation for procurement of healthcare services.

The details of PSR are set out in Health Care Services (Provider Selection Regime) Regulations 2023 (the Regulations). It removes the expectation that competitive tendering is used to award contracts for healthcare services, instead including this as one of a number of possible processes. These other processes may be more proportionate and allow better development of stable partnerships and delivery of integrated care.

Relevant authorities can follow three different provider selection processes to award contracts for health care services under the PSR:

1. direct award processes (direct award A - only capable provider, direct award B - multiple providers without restriction on numbers, and direct award C - to incumbent where doing a good job and the contract is not changing considerably)
2. most suitable provider process
3. competitive process

Further details on these processes and when/ how they apply are included in section 8 and should be referenced before proceeding with a procurement for healthcare services. The Contracting Team will be able to provide further information and support in understanding the regime as required.

Those healthcare services included under PSR are determined by CPV (Common Procurement Vocabulary) Code. A full list of the applicable CPV Codes is available from the Contracting Team.

6.2 Non-Clinical and Clinical Support Services

For all goods and for non-healthcare services/ those not included in the list of CPV codes under PSR, as of 24/02/2025, these will fall under The Procurement Act 2023.

The Procurement Act 2023 replaces The Public Contract Regulations 2015 and other associated procurement legislation. A fundamental reliance on competitive tendering remains however with a continuing requirement that procurement is undertaken on the basis of competitive tendering conducted in a fair and transparent manner (some specific exemptions may apply and the Contracting Team can advise where these apply or not). Further details on how these are applied in practice are set out in section 8.

6.3 Other applicable regulations

There are other regulations that apply across all procurements and should be adhered to. The Contracting Team can advise where required relating to these specific issues.

- The Public Services (Social Value) Act 2012
- Transfer of Undertakings and Protection of Employment (TUPE) Regulations 2006

NB: Social value is a key component with a mandatory evaluation weighting requirement that must be adhered to.

6.4 Consultation

The NHS Constitution mandates the involvement of patients and the public in the decision-making process, prioritising patient-centeredness in both clinical and non-clinical services.

Under Section 14Z2 of the NHS Act 2006 (amended in the Health Care Act 2022), NHS Devon ICB has a duty to involve individuals receiving or potentially receiving services. This involvement includes consultation, providing information, or employing other suitable methods in the following areas:

a. Planning of commissioning arrangements.
b. Development and consideration of proposals for changes in commissioning arrangements that could impact service delivery or the range of available health services.
c. Decisions of the group that affect the operation of commissioning arrangements and could have a significant impact.

NHS Devon ICB's preferred approach is to engage service users from an early stage and maintain ongoing involvement. If formal consultation is necessary, this aligns with relevant NHS practice guidance.

Please contact the ICB's Communication and Engagement team for more information on all these points, support and advice on engagement and consultation requirements prior to commencing any procurement process.

6.5 Conflicts of Interest

There is statutory guidance issued by NHS England for ICBs regarding managing conflicts of interest. This guidance must be followed at all times. It is the responsibility of staff to familiarise themselves with the ICB Standards of Business Conduct Policy which describes this guidance.

The ICB is required to keep a record of all procurements and awarded contracts (this includes all contract awards, use of extensions and modifications to existing contracts as well as all Single Action Waivers). The ICB is also required to record and publish conflicts of interest (including potential conflicts of interest). All actual and potential conflicts of interest must be managed, and a record made of the

decision-making process. This is an ongoing requirement and must be considered in all procurement and contract award activity, including under PSR.

For Procurements falling under the Procurement Act 2023 there is a further requirement to maintain and keep under review a Conflicts Assessment document for all procurements and to confirm this is in place when publishing procurement notices. A template for this document is available from the contracting team.

Appendix B contains a Conflicts of Interest form which all individuals involved in the procurement must complete. This should include any declarations held on the ICB master register relevant to this procurement, any additional declarations of interest made during the procurement process must be notified to the ICB Governance team at d-ICB.governance@nhs.net

All those involved in the Procurement Project Group decision making process and evaluation of bids must complete a conflict-of-interest form for each procurement and / or contract award that they are involved in.
Providers and bidders are required to declare any conflicts of interest and the appropriate form should be sent to each for them to complete.

The ICB's Conflict of Interest Guardian can advise if there are any queries regarding this. Please contact the ICB Governance Team at d-ICB.governance@nhs.net

7. Pre-Procurement Preparation

The ICB will conduct health and social care (and all supporting goods and services) procurements according to priorities established in its Operating Plan and associated commissioning intentions and strategies. In support of this, the following steps apply to all procurements, prior to proceeding to full procurement activities as outlined in section 8.

1) Contact the ICB Contracting Team via: D-ICB.contracting@nhs.net
   Notify them of the intention to proceed to a procurement, the goods or services this relates to and the timeframe by when contract needs to have been awarded.

   The contracting team will provide support and advice on progressing the procurement to the next stage.

2) Ensure the procurement has approval through all required routes in line with NHS Devon ICB Scheme of Reservation and Delegation (SORD).

3) Ensure finance approval is in place for the specific allocated spend for the project (under NOF4 additional processes are expected to be in place).

4) Identify participants for the procurement project group (if required) – this will usually include a designated contract manager, finance lead, quality lead as well as the lead commissioner (who will usually be the project lead).

5) Ensure Conflict of Interest forms are in place for all parties involved in the procurement for the ICB (review and update if others become involved at future points)

7.1 Joint Procurements

Where there is a joint procurement between two or more organisations, consideration should be given to the use of a memorandum of understanding and a collaborative agreement (or Section 75 agreement if jointly procuring with a Local Authority) between the parties which sets out the below:

- The objectives of the procurement
- Governance arrangements (such as which organisation will lead and the approvals and reporting processes)
- The contractual vehicle to be used
- Roles and responsibilities within the project
- How risks, benefits and costs will be shared
- How shared EQIA Assessments will be undertaken.
- Exit arrangements from the procurement
- Dispute resolution processes

The Contracting Team must be engaged as early in the process as possible. The team will advise and support in development of arrangements and will ensure appropriate records are kept.

8. Procurement Processes

As stated above, as of 24th February 2025 there are two main sets of legal requirements in terms of the required procurement processes to be followed:

1) Provider Selection Regime (PSR) (healthcare services)
2) Procurement Act 2023 (all goods and other services)

There will be other factors for consideration within these, including the value and complexity of the procurement, and whether it is a mixed procurement of healthcare

services and other goods/ services, but identifying whether a procurement falls under 1 or 2 above will be essential in the first instance.

Early communication with the contracting team will address areas of uncertainty.

In the sections below, and referenced Appendix documents, the steps to be taken under each approach are detailed.

8.1 PSR Applies

Overview:
NHS Devon ICB have introduced two key processes to support the compliant application of the PSR. The first is identification and authorisation of the appropriate procurement route using a Procurement Approach Record (PAR) and the second is completion of a PSR Decision Record Form (DRF) – evidencing that appropriate work has been completed in line with the approved procurement route, prior to an award being recommended.

For all higher value/ complex procurements, these DRF forms will be reviewed by a Procurement Oversight group prior to being approved to ensure sufficient, multi-disciplinary oversight of application of PSR and agreement of award decision. These forms include full process maps and links to key documents. They also include reference, where relevant, to key criteria which needs to be used in several of the processes.

Clear records will be kept on the relevant procurement file held by the Contracting Team at all stages of the PSR process.

Detail:
Details as to how to apply PSR within an NHS Devon ICB procurement are set out in the following documents:
1. Top Level flow chart
2. A detailed process map for the full PSR procurement process
3. PSR Procurement Approach Record (PAR)
4. PSR Decision Record Form

These are not appended but are available from the Contracting Team.

In most cases, all information required to proceed through a PSR procurement are covered in these documents. This includes the membership and arrangements for the Procurement Oversight Group.

Where the need for a competitive process is agreed, following the submission of the PAR, the ICB has some flexibility as to how this process is designed as long as

providers are evaluated against the 5 key criteria set out under PSR. In general terms however the section below relating to non-PSR procurements should be used as guidance as to how to run a competitive procurement that is open and fair, meeting the procurement aims of the ICB. This includes the potential use of Frameworks.

Direct award B - multiple providers without restriction – Further Context on Specific Processes

Choice

Under PSR the ICB will continue to be required to award a contract to all eligible providers for the provision of certain services where eligibility criteria are met.

Part 8 of the NHS Standing Rules The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (legislation.gov.uk) places obligations on commissioners in relation to patient choice, including enabling the legal rights to choice of provider and team.

The ICB is required to ensure patients right to choose, and Providers rights to be accredited, are addressed in a timely manner.

NHS Devon ICB has developed a standardised accreditation process to review any applications from a provider to deliver services under Right to Choose regulations. This includes requests to the provider for all relevant documentary evidence of their eligibility and an oversight group to review all applications. Further detail can be obtained from the Contracting Team.

Other Direct Award B (Previously Any Qualified Provider (AQP))

Where services do not fall under Choice regulations, but the ICB still believes there is benefit in contracting with all qualifying providers (without seeking to limit the total number of Providers who will be awarded contracts through this route), then it can still choose to take a similar approach to the above. This now falls under Direct Award Process B within PSR but has previously been referred to as AQP.

The ICB will establish key qualifying criteria and then qualify providers against these. (If the total number of providers who may qualify is to be restricted a competitive process would need to be used instead).

As a minimum, providers will need to meet:

- A benchmark for standards of clinical care (qualification / accreditation requirement)
- The price the ICB will pay
- Relevant regulatory standards
- NHS standard contract terms
- The ICB's specification for the service

8.2 Procurement Act 2023 Applies

For procurements not falling under PSR a competitive tender approach will need to be taken in almost all instances. As of 24th February 2025 regulations relating to such procurements have been updated and consolidated under the Procurement Act 2023.

The possible exceptions noted in the Procurement Act may include some specific criteria being met in exceptional circumstances, for use of Direct Award (see section 9).

The nature of the competitive procurement process will be determined by the value and complexity of the procurement. (There may be slightly different considerations/ thresholds where a procurement is a mix of goods, services and/ or works as set out by Section 5 of the Procurement Act. CSU will be able to advise further if this is likely to be a consideration).

Value:

This relates to the anticipated full contract value on award, **including VAT and any extension periods**:

1. Total value up to £75,000 (all goods and non-healthcare services) = Below threshold compliant Direct Award process
2. Total value £75k to £139,688 (all goods and non-healthcare services) = Below threshold/ Request For Quote approach
3. Non-healthcare services listed under Light Touch provisions total value £663,540 or less = Light Touch approach/ Request For Quote
   (the list of Light Touch services is available from the Contracting team and includes a number of areas including: Social Work services/ Guidance and counselling services/ medical education services/ training services/ legal advisory & Information services)
4. All procurements exceeding these thresholds = Open or Competitive Flexible procurement in line with Procurement Act Regulations

8.3 Below Threshold/ Request for Quote (RFQ) (non PSR only)

This approach can be used for goods and non-healthcare services where the total value is less than the published thresholds (currently £139,688 total contract value including VAT or £663,540 if a service is listed under Light Touch provisions). It is an efficient way of ensuring a competitive, proportionate and transparent approach within a minimal timeframe.

The CSU can support in carrying out a full RFQ process. This will require the Procurement lead to have:

- a clear specification for the goods or services required
- information on the financial arrangements
- identified providers to approach who are realistically likely to be interested in the opportunity and in position to consider bidding
- established key evaluation questions/ weighting of evaluation criteria

The principles of procurement apply to all below threshold procedures. All providers must be given the same information at the same time, including key information about the service(s) or goods to be supplied and a transparent explanation as to the basis on which contract will be awarded. This will include the weighting given to responses to the request for quote covering price, quality and delivery times etc.

The table below sets out the process which should be followed according to the value of the contract opportunity:

Tier	Total Contract Value (Including VAT)	Process Approach	Advertising Requirements	Minimum Quotes	Award Method
1	£0-£75k	Direct Award or Informal Quotes	None, but justification to be recorded and approved via a CDR	1	Value for Money/ Justified
2	£75,001 - £139,688 or to £200k if LT applies	RFQ to minimum 3 suppliers	Optional – usually direct approach to identified providers by email	3	Most Advantageous tender – Value based on price & quality/ sustainability
3	£200,001 - £663,540 LT only	Formal RFQ with Publication of notice	Below Threshold Tender Notice	3+	Most Advantageous tender – Value based on more detailed evaluation of price, quality and social value

In line with the National Procurement Policy Statement, consideration at all tiers should be given to prioritising opportunities for SMEs/ VCSE. It may also be appropriate to restrict approaches based on the locality of the providers.

The service specification and evaluation criteria for RFQ procurements should be proportionate to the value and complexity of the need. Those falling in tier 2 will generally be shorter and more simplified where at tier 3 will require full detailed specifications and more comprehensive evaluation criteria.

Following the RFQ process, a CDR (see 9.4 below) confirming the preferred provider should be completed and submitted to the Deputy Director: Contracting for review and sign off.
If it is not possible to obtain the requisite number of quotes, or if less than the number of required quotes is received, this should be made clear in the (CDR). This ensures a transparent and auditable record of the process is kept.
Conflicts of interest and applicable exclusion criteria must be checked and recorded for all RFQ and Direct Award processes.

For lower spend (under £75k) where the budget has been approved in line with the ICBs Scheme of Reservation and Delegation (SORD) and the cost of obtaining quotes is likely to exceed any savings achieved a Direct Award approach may be used. This should be based on a review of the available options by the commissioning lead, and potentially informal requests for quote, to ensure value for money is being achieved. Again a CDR will be required confirming budget holder authorisation and conflicts of interest and exclusion criteria checks should be noted and forwarded to the contracting team with this document.

A full RFQ guide is available from the Contracting team

8.4 Full Competitive Process

The Procurement Act 2023 allows for two different approaches to an above-threshold competitive procurement, the decision as to which to apply rests with the ICB but should be determined by the level of complexity of the procurement project.

For both approaches there is an emphasis on the advantages of pre-market engagement in achieving procurement aims. While pre-market engagement is not made mandatory, if it is not used the ICB is required to confirm why it has not been undertaken when publishing a tender notice. Also, where any form of engagement either has been undertaken or is planned a preliminary market engagement notice must be published. If any such engagement occurs please contact the CSU / Contracting Team to ensure the mandatory notices are published.

Pre-market engagement can include questionnaires, supplier days, site visits, product demonstrations, workshops, presentations, one-to-one meetings.
Equally it can be engagement with existing suppliers/ a select number of known suppliers for initial discussions.

It must not put any suppliers at an unfair advantage or distort competition and must evidence appropriate steps taken in relation to any conflicts of interest.

Open Procedure

The Open Procedure is a straightforward procurement approach where:

- All interested suppliers can submit tenders without a pre-qualification stage.
- It is well-suited for straightforward procurements where the requirements are clearly defined and the market is well understood.
- Evaluation is conducted on all submitted tenders simultaneously, making it time-efficient (although potentially burdensome for the ICB to assess a large number of bids).
- It is legally prescribed as a default under the Procurement Act 2023, ensuring transparency and fairness.

This procedure must only be run in a single stage with no pre-qualification or exclusion activity.

A flow chart for this process is available from the contracting team.

Competitive Flexible Procedure

This is a customisable procurement process designed to provide the flexibility needed to meet complex or specialised requirements. This procedure allows the ICB to tailor the procurement process to fit the specific needs of a project while adhering to the core principles of transparency, fairness, and non-discrimination. It is also the approach that must be used if the ICB wishes to limit the number of suppliers before inviting tenders.

Key Features:

1. **Customisable Stages**: The procedure can include pre-qualification, negotiation, presentations, product demonstrations, site visits, and/ or iterative rounds of bidding among various options. It can vary from 2 to multiple stages as long as the number of stages and requirements are set out in the tender notice.
2. **Supplier Engagement**: Encourages dialogue between the buyer and suppliers, fostering innovation and tailored solutions.
3. **Market Engagement**: Buyers can test the market before formal tendering, ensuring clarity and alignment on requirements.
4. **Suitability for Complex Projects**: Ideal for procurements involving new technologies, innovation, or where detailed specifications need refinement during the process.

The approach is better suited to procurements with diverse or evolving requirements and helps ensure the ICB can procure services in a way that aligns closely with organisational and patient needs while maximising public benefit and innovation.

A Competitive Flexible procedure template for the information to be issued to providers is available from the contracting team.

A high-level flow chart of the steps required of a full competitive process is also available from the Contracting Team. The process must be started at least 8 months prior to anticipated contract start date to allow for all required steps to be undertaken appropriately. For more complex projects, a longer lead-in is likely to be required as mobilisation can take significant time.

The competitive tendering approach must demonstrate the application of the principles of transparency, openness, equal treatment of providers and obtaining and delivering value for money.

The Procurement Act 2023 has also shifted onus on the ICB from identifying the 'most economically advantageous tender' to identifying the 'most advantageous tender'. This is intended to recognise that overall value is not necessarily achieved simply through the lower cost tenders but needs to be considered holistically.

During the course of a competitive tendering procedure, it may be necessary to make amendments or clarifications to information in the tender notice or associated tender documents to deal with circumstances that were not anticipated. Modifications during a procedure may be necessary for a number of reasons. Any modifications must be made in accordance with section 31 of the Procurement Act and CSU or the Contracting team can advise further.

The Procurement Act places greater emphasis on publication of transparency notices - both as part of the procurement activity and relating to ongoing contract governance to ensure the services procured are delivering as intended. An overview of the required transparency notices is provided in Appendix D but those that apply to a specific procurement project should be established with the contracting team at the earliest possible stage. Many of the notices require advanced publication/ standstill periods that will impact on overall project timelines.

In addition to the notices required for individual procurements, the Procurement Act also places a requirement on the ICB to publish a Pipeline Notice within 54 days of the start of each financial year, identifying any known planned procurements for contracts with a value of £2 million + to be conducted in the next 18 months.

8.5 Key Roles within the competitive process:

Project Lead and Procurement Project Group

The lead for a procurement may be from any directorate across the ICB, dependent on where the responsibility or need for those goods or services sits i.e. with the relevant budget holder.

The lead will ensure the required contact is made with the Contracting Team / CSU and will set up the Procurement Project Group with appropriate representation from key ICB departments including contracting, finance team, quality and any others relevant to the project.

The lead will consider the varying needs and experience of the Project Group members and liaise with the Contracting Team or any identified training needs. The lead will ensure that the Key Steps to a Successful Procurement are followed by the Project Group.

The Procurement Project Group is responsible for:

- Drawing up all documentation required for the opportunity to be advertised.
- Agreeing the evaluation criteria and weightings
- Identifying appropriate respondents for clarification questions from providers
- Undertaking the scoring and engaging in moderation sessions as required (these will be facilitated by CSU/ The Contracting Team or other appropriate persons)

The Contracting Team have draft Terms of Reference which can be used if required.

CSU/ Contracting Team

The CSU will support any non-clinical procurement, whether for goods or services, while the Contracting Team will support procurements for clinical services. As per the information on PSR earlier in this policy, procurement of clinical services will now mainly fall under that PSR, however a competitive process may still be appropriate and as such the processes set out for this will continue to apply. The CSU may also support with more complex clinical procurements under the competitive approach where requested.

These parties will help with the following:

- General advice on compliance with legislation/ regulations
- Market assessment/ engagement and formulation of strategy based on Market Dynamics
- Collation of all documents required to advertise the tender opportunity
- Publishing required adverts and notices
- Disseminating clarification questions to the designated recipients and forwarding responses
- Collating final submissions

- Sharing submissions with allocated evaluators
- Facilitating moderation sessions
- Support in drafting Contract Recommendation Reports and outcome letters
- Management of any representations received from providers during the standstill period
- Publication of Contract Award and other required notices

Quality Lead

Each Procurement Project Group for healthcare services must have a Quality representative (one of: Associate Directors of Nursing; the Heads of Quality; the Patient Safety and Quality Leads or the Patient Safety and Quality Support Officers). Their role will include:

- ensuring that procurement evaluation questions are supplied to the Procurement Project Group and that as part of the evaluation and moderation processes any Quality and Safety related issue will be raised for consideration.
- ensuring that quality, (safety, effectiveness & experience) is considered throughout the process and at specific stages provide input (in respect to the completion of the Equality Quality Impact Assessment, (EQIA). The EQIA team can advise on when a EQIA should be undertaken.
- providing support and guidance in respect to the drafting and final agreement of contract particulars relating to Quality and Reporting (e.g. for the NHS Standard Contract these are Schedule 4 (Quality Requirements) and Schedule 6 (Contract Management, Reporting and Information Requirements)), and will support in the review of the mobilisation process.

Finance Lead

All procurement projects will require a finance lead. Among other things they will help to ensure:

- necessary approvals for spend are in place prior to tender
- a finance schedule is in place setting out pricing/ payment arrangements for inclusion with the tender documents
- accurate scoring of bids against any finance questions included in the assessment criteria

8.6 Framework Call Offs

The option to award a contract from an existing Framework of qualified providers is in place for PSR and Procurement Act procurements and is also considered a

competitive approach. This is because establishing the Framework will have involved competitive assessment against key criteria in order for providers to qualify for inclusion.

A framework is an overarching set of terms and conditions which establish the arrangements under which subsequent contracts can be awarded during a given period (these subsequent contracts are known as “call-off contracts”).

The framework will usually be for specific goods or services (and are available for both clinical and non-clinical goods and services). They often establish price and aspects of delivery. Contracts can then often be awarded from the framework within short timeframes with less resource requirement.

There are increasing numbers of frameworks established, including those set up by the UK government and NHS Supply Chain. Before calling off a Framework the ICB will need to confirm, with reference to the Terms and Conditions, that they are eligible to do so and the steps required – including whether a Direct Award or mini-competition (between providers on the framework) is appropriate in awarding the call-off contract. For Procurements falling under PSR, the Framework being used must also have been established under PSR regulations or be compliant with them.

9. Urgent/ Direct Awards

Provision exists for both PSR and Procurement Act contracts to be awarded directly, outside of normal procurement processes, but only in specific, exceptional circumstances as set out below. Direct awards are exceptions to the general principle of open and competitive procurement and must be justified under the law. The ICB will be exposed to risk if direct awards are made outside of legislative requirements and all direct awards must be reviewed and approved in advance prior to any commitment being made. There is no guarantee that any direct award will be supported by the ICB.

Where a contract is being directly awarded either a Single Action Waiver (SAW), Contract Decision Record (CDR) or Procurement Approach Record (PAR) will need to be submitted, documenting the rationale for this and requiring sign off at an appropriate level prior to contract award – see sections 9.3 and 9.4.

9.1 Direct Awards under PSR

Contracts can be awarded or modified under PSR on grounds of unforeseeable urgency where there is a risk to patient and/ or public safety. The Contracting Team must be engaged in advance in order to advise on process.

The urgency must have been genuinely unforeseeable and not just a result of the ICB failing to build enough time into its processes to complete an anticipated procurement within required timescales. This includes allowing enough time for any representations against a procurement process/ outcome to be dealt with and procurements re-started at an earlier point if required.

9.2 Direct Awards – Procurement Act 2023

The Contracting Team or CSU must be contacted in advance of any decision being taken to direct award a contract, to ascertain whether qualifying exceptional circumstances apply in accordance with regulations.

The following are the legal grounds for Direct Award provided for:

- **No Suitable Competition Exists**: There is only one provider capable of delivering the required services, goods, or works. This could be due to technical, or exclusive rights reasons.
- **Switching to Direct Award after attempted competitive procurement**: Competitive procedures have been attempted but no suitable bids were received.
- **Unforeseen Events**: Urgency arises from circumstances beyond the ICB's control (e.g., a public health crisis like a pandemic).
- **Immediate Need**: The delay caused by competitive procurement would lead to significant risk to health services, public health, or safety.
  It is important to note that poor planning or administrative delays do not justify extreme urgency.
- **Within Framework Agreements**: If a framework includes specific provisions for direct awards, such as when a supplier uniquely meets predefined criteria.
- **Under Dynamic Purchasing Systems**: If the system allows for simplified selection of suppliers for specific needs.

A below threshold procurement under the Procurement Act (with a value of less than £75k) may also be completed via a Direct Award – see section 8.3 above for more details.

In healthcare contexts, certain specialised services may require direct awards if:

- Providers must meet highly specific clinical or technical requirements.
- The service is tied to patient choice (e.g., continuity of care with an existing provider).

Where the above criteria under 9.1 and 9.2 are met the ICB will:

- Set the length of contract to be only as long as strictly necessary to address the urgent situation and conduct a full award process.
- Keep records of decision making/ justification for urgent award, including a CDR

- Be transparent about approach – a Contract Award notice with 8 day standstill must be published following a direct award or, for PSR procurements, the relevant notice must be published on Find A Tender within 30 days.

9.3 Single Action Waiver (exceptional use only)

The Single Action Waiver (SAW) form is the means by which any procurement decisions that are not fully complaint with relevant legislation are authorised and recorded. The form can be requested from the Contracting Team.

A SAW must be completed in full and submitted for approval for any direct awards that are not compliant with sections 9.1 and 9.2 above.

NB. Although not a new contract award, there may be times when the decision to activate a contract extension (that is already allowed for in the existing contract) requires completion of a new SAW. This will apply where there has been any significant change or clarification of the financial arrangements/ anticipated spend since the original contract was signed.

The SAW form should be completed by the commissioning lead for the procurement with support from finance and contracting colleagues as appropriate.

It should clearly set out the reason why a direct award is considered appropriate, details of the anticipated contract award and confirmation that checks have been undertaken on the viability of the identified supplier. The SAW template includes all information required.

The procurement recommendation and risk analysis must then be completed by a member of the Contracting Team or CSU and signed off by either the Deputy Director: Contracting or Senior Contracting Lead with procurement responsibility. The SAW will then be submitted via the Atamis system for review and sign off by the Chief Finance Officer and subsequently noted at the Audit and Risk Committee (Contracting Team will take all SAWs to this Committee).

A more detailed guide to the completion of SAWs is set out at the end of Appendix E below but key areas to be mindful of include:

Conflict of Interest and Publication of Notices

Conflict of Interest declarations must be completed for all involved prior to submitting either a SAW or CDR, including by potential providers.

Details of all contracts awarded, including those awarded following a non-competitive process, will be published in accordance with regulations and details will

therefore be in the public domain. The CSU should be contacted to ensure this happens within 30 days of the award of contract.

Timeframe

Sufficient time should be allowed within the procurement process to ensure a SAW can be fully complete, submitted and signed off prior to a contract being awarded. SAWs must not be submitted retrospective to a contract award and the date of submission of the SAW, sign off and contract start must all be recorded on the form.

As such in all but emergency cases SAW should be submitted to the Deputy Director: Contracting/ Senior Contracting Lead with procurement responsibility at least, and no later than, one month prior to the anticipated contract start date and in most cases it is anticipated submission would be earlier than this. Please note there is no guarantee that any SAW will be approved.

Supplier Suitability

Confirmation must be included that the identified supplier is able to provide the services as is required. A Dun and Bradstreet report must be requested and checked to establish if there are any known financial risks associated with the supplier.

Market Checks

Where a SAW is being submitted to approve direct award based on there being a single capable provider (non-PSR procurements only), this must be supported by clear evidence to support this case. Assumptions must not be made and adequate research undertaken to establish that there are no other viable options. The CSU may be able to assist with market engagement/ research in support of this.

Risk Analysis

A risk analysis will be undertaken as part of the review process and will be flagged to the signatories to the SAW form. Factors that will increase risk include:

- The SAW has been submitted retrospectively
- The contract is not for a short duration
- There has been a history of prior direct awards for this service without a competitive process having been attempted
- A previous direct award was authorised on the basis that a procurement or further work was required within a given timeframe, but this has not been achieved.

9.4 Contract Decision Record (CDR) – Non-PSR Procurements only

In specific circumstances listed below, the shorter Contract Decision Record (**Appendix F)** should be used in place of a full SAW. This only applies for non-PSR procurements where a procurement policy compliant process has been used, but a direct award is still required. It ensures a written record of the decision-making process.

The circumstances where the Contract Decision Record must be used are:

- Where a below threshold Direct Award or RFQ process has been applied as set out in the table at 8.3
- Where a Full competitive process has been run but only one bid received
- Where a contract is being awarded as a result of a compliant call off from a Framework (see Section 8.5)
- Where the procurement is covered by an exemption under the Procurement Act

The Contracting Team can give further advice on when a CDR is appropriate to use. This is a shorter form and should be submitted direct to the Deputy Director: Contracting for review and signature.

Conflict of Interest declarations must be completed for all involved prior to submitting a CDR, including by potential providers.
Details of all contracts awarded, including those awarded following a non-competitive process, will be published in accordance with regulations and details will therefore be in the public domain. As above, under the Procurement Act any direct award authorised via a CDR will require publication of a contract award notice with 8-day standstill (unless it is below threshold).

10. Modification or Use of Existing Contracts

The ICB has multiple contracts for goods and services, and it may be that a need can be met under an existing contract rather than a new procurement process being undertaken. This is a complex area of law and it will be necessary for the Contracting Team to consider whether existing contracts can be varied or not in accordance with the relevant legislation.

Variations will only be possible where they do not materially change the scope or value of the existing contract. If there is material change and the ICB decides to undertake the variation, a SAW form must be used.

Under PSR a variation cannot be applied and further procurement will be required where:

- contracting arrangements are materially different in character to the existing contract when that existing contract was entered into

- the change in value amounts to £500,000 or more AND 25% or more of the contract's total lifetime value (unless this change is not attributable to any decision made by the ICB, e.g. Inflation/ patient volumes)

Under the Procurement Act 2023 permitted modification grounds are:

- urgency and the protection of life;
- materialisation of a known risk
- where the modification is provided for in the contract (this should have been made clear and unambiguously allowed for in the original procurement and contracting process)
- where the modification has arisen due to unforeseeable circumstances,
- where the modification is for additional goods, services or works provided for in the contract
- where the modification is to enable the transfer of the contract on corporate restructuring.

Non-Substantial modifications are those which do not:
- increase or decrease the term of the contract by more than 10% of the maximum term provided for on award (including any extension);
Or
- materially change the scope of the contract;
or
- materially change the economic balance of the contract in favour of the supplier

Below threshold modifications can be made where:
- does not increase or decrease the estimated value of a goods or services contract by more than 10%, or a works contract by more than 15%;
and
- does not materially change the scope of the contract.

A full summary of permitted modification grounds is available from the contracting team.

Before modifying a contract under the Procurement Act, contracting authorities must publish a contract change notice. If the contract has a value over £5 million a copy of the modification or the contract as modified must also be published.

11. Exclusion Grounds

Under both PSR and the Procurement Act there is a requirement to establish as part of the procurement that providers being considered are not subject to any mandatory or discretionary exclusion grounds.

The contracting team can provide a questionnaire for providers to complete to confirm if any such grounds are in existence.

The Procurement Act has tightened up checks in this area and will establish a central debarment list for ease of checking a provider's status.

Where mandatory exclusion grounds (the most serious/ high risk) exist a provider will be an excluded supplier in relation to procurement and not able to proceed. Where discretionary exclusion grounds exist (lower risk but still serious) – the supplier will be considered excludable and the ICB may choose to exclude them from the procurement.

Discretionary exclusion grounds now include where providers have not performed a relevant contract to a contracting authority's satisfaction, were given the opportunity to improve performance and failed to do so and where a contracting authority has published information about a breach or poor performance in respect of the supplier.

Providers must also be excluded if it is not possible to avoid that provider being placed at an unfair advantage over other providers, due to conflicts of interest that cannot be managed or other circumstances of the procurement.

Providers should be allowed the opportunity to make representations in relation to their exclusion/ any evidence of 'self-cleansing' that has addressed the originating issue.

A Step-by-Step guide to exclusions is available from the contracting team.

12. Legal Challenge, Representations or Complaint

12.1 PSR Procurements

A full process map is available from the Contracting Team setting out the ICB's approach to dealing with representations received in relation to any procurement conducted under PSR. Where initial screening indicates the representations meet basic eligibility criteria, this process will include review by appropriate person(s), who are independent of the original procurement.

12.2 Non-PSR Procurements

For any complaints and disputes or legal challenge received by the ICB the recipient of any such communication must notify the Contracting Team immediately and inform the relevant Project Executive Lead. They must not respond directly unless requested by the Executive lead in consultation with the Contracting Team. The ICB has developed a processes that will be followed that enables any potential dispute relating to a procurement process or outcome from procurement to be dealt with appropriately.

The ICB will utilise a dispute resolution process to address and resolve any complaint received from either bidders/contractors or a member of the public.

13. Governance and Monitoring

13.1 Record of Decisions

Every procurement and contract award decision at every stage of the procurement process must be recorded and those records kept within a contract file. Key progress points will also be updated on the Atamis system used by the Contracting Team. Original notes should be retained and not destroyed.

13.2 Project Documentation

Many of the ICB documents required to conduct a procurement in line with this policy are included within the Appendices. Where they are not included, the Contracting Team will be able to supply them (including template risk register, timeline, project group Terms of Reference, governance process log). The use of these ICB template documents ensures consistency of approach and ensures key documentation is maintained and available as required. The Procurement Project Group must make themselves familiar with this Policy and the Scheme of Delegation in order to ensure the correct approvals are obtained.

Notes and key actions from meetings should be recorded and filed with the procurement project work with copies of key documents recording decisions made and governance processes passed to the Contracting Team to facilitate the publication of statutory information.

13.3 Audit Trail and Transparency

To ensure transparency and accountability, key governance documents should be collected and stored in a contract file. These include the Contract Award Recommendation Report (CARR)/ PSR Decision Record Forms, tender or quote documentation, Single Action Waiver or CDR where used, and all declaration of Interest paperwork.
Additionally, it is necessary to keep records of evaluation and moderation processes and meetings. All notes generated during any evaluation and moderation should be retained and a copy should be sent to the Contracting Team.

Confidentiality forms must also be completed to ensure the security of commercially sensitive information (i.e., potential evaluation questions are not shared).

13.4 Procurement Principles

All potential providers must be treated equally and fairly without discrimination in line with the statutory framework. Where a competitive process is run, reasonable timescales will be used. No sector of the market will be given any unfair advantage. The Procurement Project Group will ensure that there is a full suite of relevant documents available to enable prospective bidders to understand the ICB's requirements and to give them an equal opportunity to respond to procurement opportunities. This should include, where appropriate, a service specification, key performance indicators and / or outcomes, data and quality requirements, draft contract documentation, award criteria and evaluation questions (NB: the Request for Quote (RFQ process) might not require all of these elements depending on value. See RFQ section for further detail).

13.5 Advertising

The CSU must be engaged with to ensure the necessary advertisements are placed as and when required for all non PSR procurements. The Contracting Team must be engaged with to ensure the same for all PSR procurements.

13.6 CARR Report

The Procurement Project Group will ensure that a contract award recommendation report (CARR) has been approved by the ICB in line with governance processes ahead of any commitment to award a contract. The recommendation report should be presented as part of the sign off process to the relevant individual or committee as per the ICB Scheme of Delegation.

13.7 Executive Oversight

The Chief Finance Officer is ultimately accountable for all ICB procurement.

Effectiveness in ensuring that all procurements comply with this policy will primarily be achieved through "business as usual" and the Audit and Risk Committee (or as superseded).

14. Accountabilities, Duties and Responsibilities

This section is to clarify the specific duties associated with the policy and where the responsibilities lie.

Chief Executive Officer	The Chief Executive Officer has ultimate accountability for the strategic direction and operational management of NHS Devon, including compliance with all legal, statutory and policy requirements.
Policy Sponsor	The Policy Sponsor is responsible for: • ensuring that policy is appropriate for consideration for approval; • endorsing this policy ahead of submission for approval; • with the Policy Lead, maintaining and updating procedures/protocols and other supporting documents for this policy;
Policy Lead / Author	It is the responsibility of the Policy Lead / author to: • ensure as far as possible that the policy is in line with Department of Health and Social Care guidance, legal requirements and advice from clinical bodies; • to complete a QEIA and Implementation Plan where required • undertake a fair and proportionate consultation period with the relevant stakeholders as part of the document's development • to ensure that the policy is in alignment with NHS Devon's strategy and values • ensure that the policy is developed, approved, disseminated and monitored as set out in the document; with Policy Sponsors, maintaining and updating procedures / protocols and other supporting documents for this policy.
Title of any other relevant Officer	Not applicable
Titles of any Committee	Audit and Risk Committee – receiving copies of the updated policy once approved by the Chief Finance Officer and receiving updates on its effectiveness and compliance.
Line Managers	Line managers have a responsibility to ensure their staff comply with NHS Devon policies and standards within their areas of responsibility.
All Staff	Employed or engaged staff have a duty to comply with NHS Devon policies and standards as outlined in their contracts of employment and codes of conduct.

15. Implementation

15.1 All staff will be informed of the approval of the updated Policy via the Staff Bulletin which will provide a link to the document on the NHS Devon Intranet.

15.2 NHS Devon Senior Managers, or their designated representatives, will implement this policy by:

- Notifying all staff of its existence. New staff will be informed of this policy as part of their induction.
- Destroying all superseded paper-based versions of the policy and electronic versions retained in their area.
- Having adequate knowledge of, and / or access to, all relevant legislation in order to ensure that compliance with such legislation is maintained.
- Discussing with staff as part of their regular one-to-ones how they seek to achieve their individual objectives around policy review and maintenance.

15.3 Advice and access to training is available from the Contracting Team. The Contracting Team will lead on providing specific training and engagement activities including providing information in the staff bulletin and at staff briefings. The Contracting Team may also deliver training as required to budget holders and groups of staff i.e. in staff team meetings.

16. Approval and Review

16.1 The approval of this policy is by the Chief Finance Officer. The ICB Audit and Risk Committee will receive the approved policy in the next Committee after approval has been given.

16.2 This policy will be reviewed annually, or sooner if required, in order to ensure that it is current, relevant and reflects the strategic aims, objectives, organisational structures and responsibilities of NHS Devon.

17. Monitoring compliance and effectiveness

17.1 The Contracting Team will monitor initial compliance and effectiveness of this version of the policy and will review and undertake a QEIA process and engage with Internal Audit for a review and amendment process as required. All SAWs are presented at Audit and Risk Committee.

18. Equality & Quality Impact Assessment (EQIA)

An EQIA has been undertaken for this policy relating to implementation of the Procurement Act 2023 and is available separately. The EQIA recognises some additional resource burden for affected teams, primarily in relation to training/ familiarisation with new processes and compliance with transparency requirements.

19. References

19.1 Other related policy documents

- Constitution
- Prime Financial Policies (including the Scheme of Reservation and Delegation)
- The Standards of Business Conduct Policy
- Counter Fraud, Bribery and Corruption Policy
- NHS Devon Green Plan and Joint Forward Local Plan
- Communication and Engagement Strategy
- QEIA Policy

19.2 Legislation and statutory requirements

- The Procurement Act 2023: Procurement Act 2023
- Health Care Services (Provider Selection Regime) Regulations 2023 (the Regulations): The Health Care Services (Provider Selection Regime) Regulations 2023 (legislation.gov.uk)
- The Public Services (Social Value) Act 2012 http://www.legislation.gov.uk/ukpga/2012/3/enacted
- Transfer of Undertakings and Protection of Employment (TUPE) Regulations 2006 http://www.legislation.gov.uk/uksi/2006/246/contents/made
- Statutory Guidance on Conflicts of Interest https://www.england.nhs.uk/long-read/managing-conflicts-of-interest-in-the-nhs/
- Patient Choice Standing Rules The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (legislation.gov.uk)

19.3 Best practice recommendations and other key guidance

- Purchasing Card Guidance issued to all purchasing card holders
- Budget holder Guidance issued to all budget holders

APPENDIX A – Glossary of terms

Terms	Definition
CDR	Contract Decision Record – record of decision making in non-complex, complaint procurements conducted under PCR – see Section 9.4
CSU	NHS South, Central and West Commissioning Support Unit
DRF	Decision Record Form – Record for use in all PSR procurements to capture assessment of providers/ decision making and sign off
Framework	An agreement with suppliers to establish terms governing contracts that may be awarded during the lifetime of the agreement. Suppliers will have had to prove themselves eligible for inclusion on the framework.
PAR	Procurement Approach Record – Form setting out the grounds for following a specific approach to procurement under PSR and obtaining sign off for this.
PCR	Public Contracts Regulations 2015 – Previously the main legislation covering procurements not included in PSR (non-clinical services and all goods). Now replaced by the Procurement Act 2023.
PSR	Provider Selection Regime – Regulations relating to procurement of clinical services introduced by the Health and Care Act 2022.
QEIA/EQIA	Quality and Equality Impact Assessment – document used to assess the impact of proposed service changes on clinical quality, equality and other services. (Name change to EQIA taking place during completion of this policy)
RFQ	Request for Quote – A procurement approach suitable for lower value procurements not falling under PSR
SAW	Single Action Waiver – Form for capturing the rational and securing appropriate authorisation for the direct award of contracts in certain exceptional circumstances.
SORD	Scheme of Reservation and Delegation – document setting out those decisions that are reserved to the ICB Board and those decisions that have been delegated to ICB Committees, individuals, joint committees and other statutory organisations

APPENDIX B – Conflict of Interest Forms

Conflict of Interest Forms – for all procurements – clinical and non-clinical supplies and services

Type of Interest	Description
Financial Interests	This is where an individual may get direct financial benefits from the consequences of a commissioning decision. This could include being: • A director, including a non-executive director, or senior employee in a private company or public limited company or other organisation which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations; • A shareholder (of more than 5% of the issued shares), partner or owner of a private or not for profit company, business or consultancy which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations. • A consultant for a provider; • In secondary employment; • In receipt of a grant from a provider; • In receipt of research funding, including grants that may be received by the individual or any organisation in which they have an interest or role; and Having a pension that is funded
Non-Financial Professional Interests	This is where an individual may obtain a non-financial professional benefit from the consequences of a commissioning decision, such as increasing their professional reputation or status or promoting their professional career. This may include situations where the individual is: • An advocate for a particular group of patients; • A GP with special interests e.g., in dermatology, acupuncture etc. • A member of a particular specialist professional body (although routine GP membership of the RCGP, BMA or a medical defence organisation would not usually by itself amount to an interest which needed to be declared);

Non-Financial **Personal Interests**	This is where an individual may benefit personally in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit. This could include, for example, where the individual is: • A voluntary sector champion for a provider; • A volunteer for a provider; • A member of a voluntary sector board or has any other position of authority in or connection with a voluntary sector organisation; • A member of a political party; • Suffering from a particular condition requiring individually funded treatment; • A financial advisor.
Indirect **Interests**	This is where an individual has a close association with an individual who has a financial interest, a non-financial professional interest or a non-financial personal interest in a commissioning decision (as those categories are described above). This should include: • Spouse / partner; • Close relative e.g., parent, [grandparent], child, [grandchild] or sibling; • Close friend; • Business partner.
General Interest	This could be any position held in another public body organisation, NHS, Local Authority or a community group which may have potential to give rise to influence decisions made by the NHS Devon ICB. Similarly, if you have made a declaration that you are a member of the ICB or attend any of its committees/working groups to another organisation, this information MUST be reciprocated back to the ICB to ensure consistency across organisations and vice versa

A: Declaration of interests for NHS Devon ICB members/employees (for all involved in Procurement Project including evaluation and decision-making process) This will include any self-employed consultants or other individuals working for the ICB under a contract for services should make a declaration of interest in accordance with the statutory guidance, as if they were ICB employees

Member / employee/ governing body member / committee or sub-committee member (including committees and sub-committees of the governing body) [declaration form: financial and other interests

This form is required to be completed in accordance with the ICB's Constitution and section 14O of *The National Health Service Act 2006, the NHS (Procurement, Patient Choice and Competition) regulations 2013 and the Substantive guidance on the Procurement, Patient Choice and Competition Regulations*

The information submitted will be held by the ICB for personnel or other reasons specified on this form and to comply with the organisation's policies. This information may be held in both manual and electronic form in accordance with the Data Protection Act 2018. Information may be disclosed to third parties in accordance with the Freedom of Information Act 2000 and published in registers that the ICB holds.
Interests that must be declared (whether such interests are those of the individual themselves or of a family member, close friend or other acquaintance of the individual) include:

- roles and responsibilities held within member practices;
- directorships, including non-executive directorships, held in private companies or PLCs;
- ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the ICB and /or with NHS England
- shareholdings (more than 5%) of companies in the field of health and social care;
- a position of authority in an organisation (e.g. charity or voluntary organisation) in the field of health and social care;
- any connection with a voluntary or other organisation (public or private) contracting for NHS services;
- research funding/grants that may be received by the individual or any organisation in which they have an interest or role;
- any other role or relationship which the public could perceive would impair or otherwise influence the individual's judgment or actions in their role within the ICB.

Other types of interest can be found below.

If there is any doubt as to whether or not an interest is relevant, a declaration of the interest must be made.

Name:		
Position within or relationship with the ICB or NHS England:		
ICB meetings attended		
Interests:		
Type of Interest		**Personal Interest or that of a family member, close friend or other acquaintance?**
Roles and responsibilities held within member practices		
Directorships, including non-executive directorships, held in private companies or PLCs		
Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the ICB and/or with NHS England		
Shareholdings (more than 5%) of companies in the field of health and social care.		
Positions of authority in an organisation (e.g. charity or voluntary organisation) in the field of health and social care		
Any connection with a voluntary or other organisation contracting for NHS services		
Research funding/grants that may be received by the individual or any organisation they have an interest or role in		
Other specific interests?		
Any other role or relationship which the public could perceive would impair or otherwise influence the individual's judgement or actions in their role within the ICB and/or with NHS England.		

To the best of my knowledge and belief, the above information is complete and correct. I give my consent for the information to be used for the purposes described in the ICB's Constitution and published accordingly.

I acknowledge that any changes in these declarations must be notified to the procurement manager, the Governance Team of the ICB and Line Manager as soon as is practicable and no later than 28 days after the interest arises. I am aware that if I do not make full, accurate and timely declarations then civil, criminal, or internal disciplinary action may result.

Signed: …… Date……

Conflict of Interest Form - for all potential providers to complete (to be used for all procurement i.e. clinical and non-clinical)

Name of Organisation:		
Details of interests held:		
Type of Interest	**Details**	
Provision of services or other work for the ICB or NHS England		
Provision of services or other work for any other potential bidder in respect of this project or procurement process		
Any other connection with the ICB or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the ICB's or any of its members' or employees' judgements, decisions or actions		
Name of Relevant Person	[Complete for all relevant persons]	
Details of interests held:		
Type of Interest	**Details**	**Personal interest or that of a family member, close friend or other acquaintance?**
Provision of services or other work for the ICB or NHS England		
Provision of services or other work for any other potential bidder in respect of this		

project or procurement process		
Any other connection with the ICB or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the ICB's or any of its members' or employees' judgments, decision or actions		

To the best of my knowledge and belief, the above information is complete and correct. I undertake to update as necessary the information.

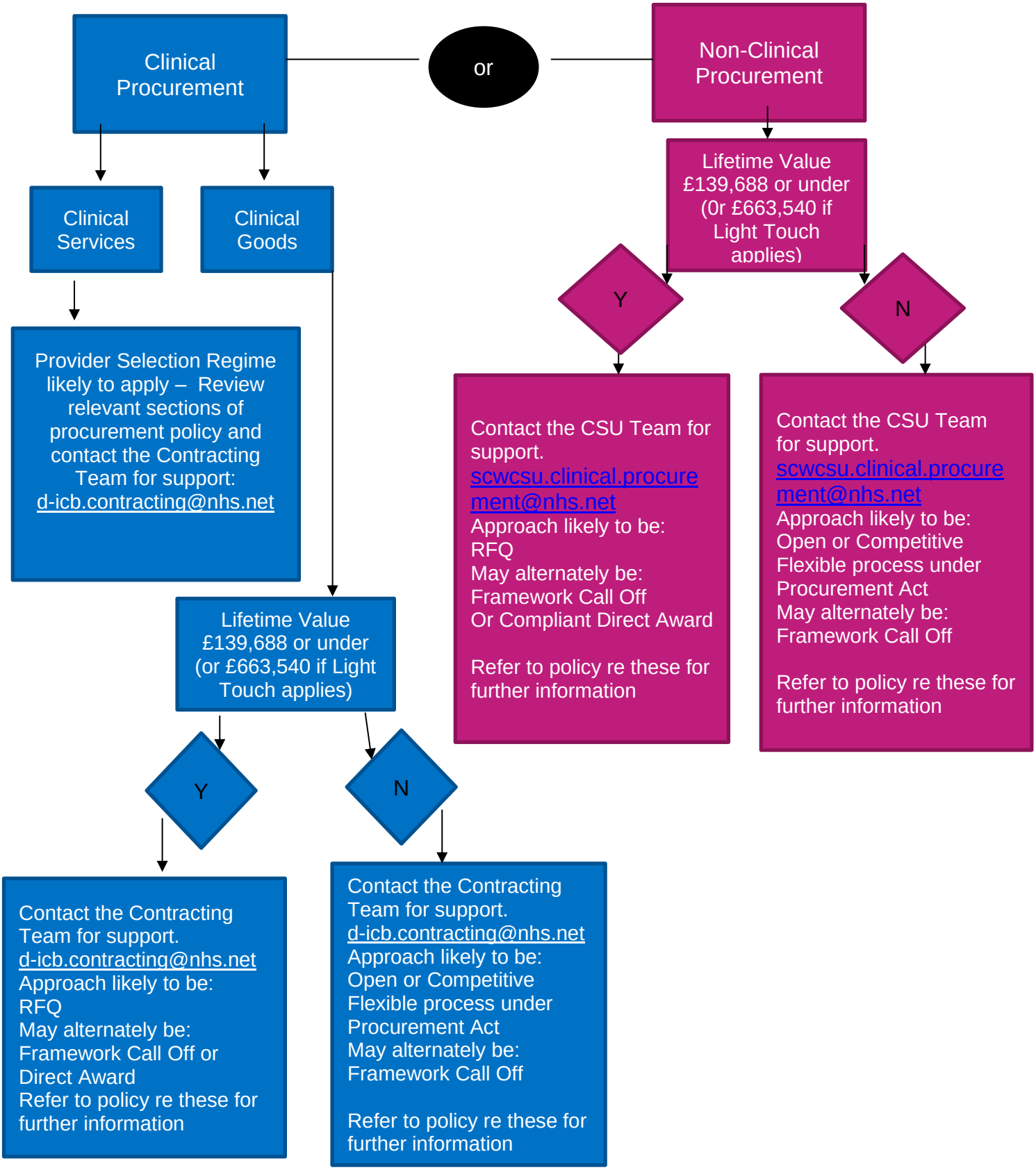
Signed:

On behalf of: (name of company)

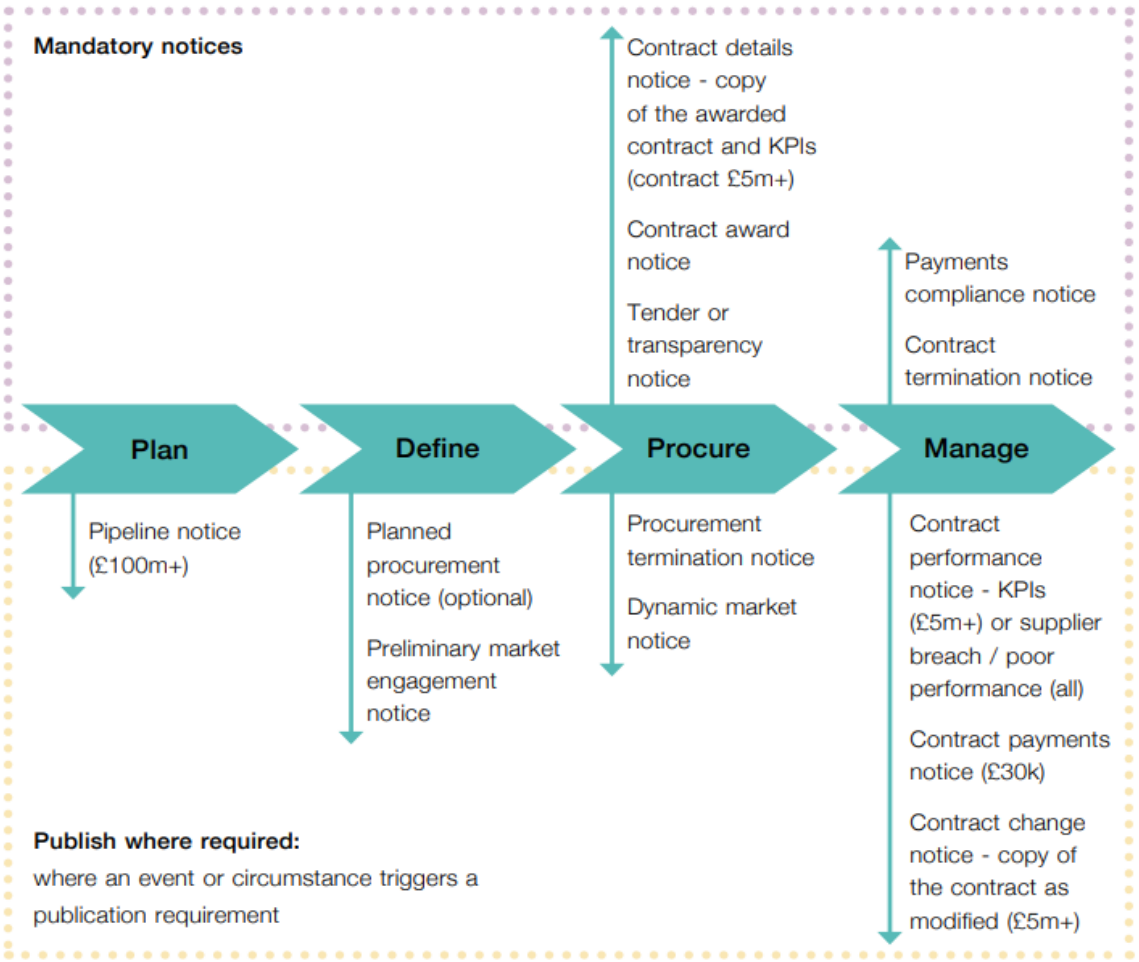
Date:

APPENDIX C – Procurement Decision Tool

Procurement Decision Tool – Flow Chart



APPENDIX D – Procurement Act 2023 Required Transparency Notices



Notice Name / Reference	Publication Requirement
Pipeline notice (UK1)	Mandatory (for organisations where spend is £100m+ PA) 12-month forward-look at planned procurements £2m+ value
Preliminary market engagement notice (UK2)	Mandatory where pre-market engagement is anticipated or has taken place (or, explain in the tender notice reason for not publishing)
Planned procurement notice (UK3)	Optional and best practice advises the market of an upcoming procurement. A qualifying planned

	procurement notice can reduce tender timescales to 10 days
Tender Notice (UK4)	Mandatory when undertaking an open or competitive flexible procedure (including to establish a framework and award a contract under an existing dynamic market) or a regulated below-threshold procedure
Transparency Notice (UK5)	Mandatory when undertaking a direct award (publish prior to award)
Contract Award Notice (UK6)	Mandatory communicates the outcome of the procurement and (commences standstill prior to awarding a contract open or competitive flexible procedure)
Contract Details Notice (UK7)	Mandatory details of the awarded contract (including the redacted contract, for public contracts £5m+ and KPI information)
Contract Payment Notice (UK8)	Mandatory details of payments over £30,000 made under a public contract (quarterly)
Contract Performance Notice (UK9)	Mandatory to report: a. annual KPI scores for public contracts valued £5m+ b. poor supplier performance / breach of contract (within 30 days of event)
Contract Change Notice (UK10)	Mandatory prior to a qualifying modification taking place (copy of modified contract for public contracts over £5m)
Procurement Termination Notice (UK12)	Mandatory where, after publishing a tender or transparency notice, the process is terminated without awarding a contract
Dynamic Market Notice (UK13 TO16)	Mandatory when advertising, establishing, changing or terminating a dynamic market
Payments Compliance Notice (UK17)	Mandatory details of contracting authority performance against 30-day payment terms (twice annually)
Contract Termination Notice (UK11)	Mandatory when a public contract ends

Additional Notes:

Pipeline Notice – covers any known planned procurements of value £2m +. To be published within 54 days of the start of the financial year and cover the following 18 months (can be updated in year)

Market engagement notice – must be published where any market engagement is planned, or retrospectively if any form of engagement has occurred in the build up to the procurement.

Standard Tender Notice – (unless relying on a Planned Procurement notice as above) this must be open for a minimum of 25 days before the closing date (30 days if not all tender documents are published at the start)

Contract Award notice – has a standstill requirement of a minimum of 8 working days beginning with the day on which a contract award notice is published in respect of the contract.

Contract Details notice – must be published within 30 days of entering the contract (120 days for light touch procurements)

Contract Payment notice – applies to all contracts (including those pre-dating the Procurement Act 2023) where one or more payment of £30k or more is made under the contract (published quarterly)

KPI notice – for contracts with a value over £5m

APPENDIX E – Single Action Waiver

Single Action Waivers (SAWs)

to be used for both clinical and non-clinical procurements in exceptional circumstances only

Refer to ICB's detailed financial procedures, including the scheme of reservation and delegation and procurement policy before requesting this waiver. This form must be approved prior to any commitment being made.

Requisitioner To Complete:

General Information	
Requestor: **Email**: **Telephone:**	
Finance Lead:	
Brief Description of Goods or Services Required:	
How does the proposed service deliver ICB priority (inc how is this mandated if applicable)	
DIG Approval (please provide details of approval)	
Budget Holder (Executive) to sign to approve expenditure in line with ICB policies (including Budget Holders Manual):	
Is this SAW Retrospective? Yes/ No **If Yes, state reason:**	
Provider Details	
Company Name:	**Registered Address:**

Also Known As:	
Companies House Number:	
D-U-N-S Number:	
Other Contracts Currently Held by NHS Devon with Supplier: *N.B. contact Contracting Team/ d-icb.contracting@nhs.net if help needed with this section*	
Compliance with Regulations & Policy	
Reason for not following a competitive process or the ICB's standing financial instruction (see the ICB's Procurement Policy before completing this form):	
Main Reason for NOT following Procurement policy:	
Details and evidence:	
Please confirm that declarations of interest have been sought from ALL individuals involved in the decision-making process and from the identified provider; and any declared interest has been recorded and any mitigating actions taken. Include names of those who have supplied a form and any declared interests below: ***Where any declaration has been made please include the conflict of interest form as an appendix to this document.***	
Finance	
Quotations sought: **Please attach quote as an appendix to this document.**	**Quotation date:**

Net Cost: £	**VAT: £**	**Total Cost: £**

Key Dates (To be updated at all relevant stages)			
Date Submitted to Contracting Team:			
Proposed Contract Start Date:		**Proposed Contract End Date:**	

Once the above sections are complete the form should be submitted to the contracting team

Please send word document to D-ICB.contracting@nhs.net, copying in named contract lead

Contract Team to Complete for clinical service contracts, CSU to complete for non-clinical services

Key Dates (To be updated at all relevant stages)		
Date submitted to Deputy Director: Contracting/ Snr Contract Lead:		
Date Submitted to CFO:		
Version Control		
Version No	**Date**	
V1		
SAW Reference Number (not required if CSU managed procurement):		
Procurement History		
Number of Direct Awards for this service since last competitive procurement:		
Date last competitively procured:		
Procurement Analysis		
Procurement Risk Analysis: *NB. A direct award cannot be low risk where: The SAW has been submitted retrospectively* *The contract has a total value of £500,000+* *There is a history of prior direct awards for this service without a competitive process*	Risk Assessment: Reasons for Risk Score and Proposed Mitigations	

A previous direct award was authorised on the basis of further work required within a given timeframe, but this has not been achieved.	
Recommendation:	

Procurement Sign Off from ICB Deputy Director: Contracting / Senior Contracting Lead (with Procurement responsibility) only

By signing this Single Action Waiver I confirm that I have no conflict of interest to declare in respect of this decision

(*Where there is a conflict which needs to be noted please do not sign this version of the form and contact the contract lead)*

Signed by **XXNAMEXX XXJOB TITLEXXX**

Chief Finance Officer Approval (or nominated deputy)

By signing this Single Action Waiver I confirm that I have no conflict of interest to declare in respect of this decision.

(*Where there is a conflict which needs to be noted please do not sign this version of the form and contact the contract lead*)

Signed by **XXNAMEXX XXJOB TITLEXXX**

Approval Limit: *[Contracting Team pre-populate]*

Single Action Waiver (SAW) – Process Guide

The circumstances in which a SAW may be submitted for approval of a direct award are set out in this policy at section 9.3.

Before following the guidance set out below checks must have been made with the Contracting Team, or CSU, that there are sufficient grounds for proceeding with a direct award request.

Who

The procurement project lead and/or lead commissioner for the service should complete the main body of the SAW as far as possible.

The Finance lead for the project will need to confirm the costs and that they have been fully approved. Also – for contract valued at over £50,000 – the finance lead will need to confirm they have had sight of a Dun and Bradstreet report on the identified provider and that there are no concerns arising as to their suitability as a result of this.

CSU are able to draw off Dun and Bradstreet reports once a company's DUNS number is confirmed so can assist with this part of the process. The Contracting Team can act as liaison to support obtaining this.

The Contracting Team will provide support/ advice during the process, receive SAWs once the first part is complete, fill in the recommendation and risk analysis and provide feedback where any concerns. The Deputy Director: Contracting/ Senior Contracting Lead will then review and feedback or sign off for submission to CFO.

The CFO (Or Deputy in their absence) will review the final, complete SAW and make the final decision on authorisation.

When

A completed SAW is the mechanism through which formal approval is given for a direct award of contract to go ahead. As such it should be obtained in good time before the intended contract start date.

SAWs should not be submitted retrospectively.

If this does prove unavoidable then it must be made clear on the form that it is a retrospective SAW and the reason for this.

The only justification for a retrospective SAW is likely to be extreme and unavoidable urgency in exceptional circumstances that could not be foreseen.

For most procurements there should be a sufficient period of planning prior to a decision having been made to direct award to ensure that a SAW can be completed and submitted with enough time to respond if there are problems with the information included,

How

The SAW form must be completed in full leaving no blank fields.

All dates required by the form must be included ensuring there is a clear record of the decision-making process relative to the start date of the contract being awarded.

(If the actual contract start date is not yet known at the time of submission please include and estimated date (annotating to make it clear this is the case)

A company's D-U-N-S number – needed for financial background checks - may be accessible online, or can be obtained directly from them. Once obtained it should be submitted to CSU with request for them to obtain a Dun and Bradstreet report on the company.

This is usually a very quick process and the report generated should then be forwarded to the finance lead for the project to confirm whether it creates any cause for concern as to the suitability of the company.

Again the Contracting Team can help with the liaison with CSU to progress this.

The 'Reason for not following a competitive process' box must be filled out with sufficient detail that it can be understood by members of the ICB with no prior knowledge of the circumstances of the award.

It must be completed with reference to the Procurement Policy and the specific 'exceptional circumstance(s)' that exist in this instance.

Where the award is on the basis of there being only one capable provider, this must be supported with reference to efforts undertaken to confirm it is the case.

The Contracting Team will be able to check information on other contracts held with the supplier if this is not known so please refer to them for this information.

The cost information included should be the total cost of the contract – including any extension period allowed for – not the annual cost.

Declaration of Interest forms must be obtained from all those involved in the decision to seek direct award of the given contract. If any declarations are made appropriate mitigation must be put in place to ensure no undue influence is possible in favour of an identified provider.

The Deputy Director: Contracting/ Senior Contracting Lead and the CFO or deputy will confirm whether they have any interests to declare as part of the SAW sign off process so their forms do not need to be obtained in advance.

Submission and Signature

Once complete as far as entering the costs, the form should be submitted to the Contracting Team d-icb.contracting@nhs.net with the date of submission added to the form.

An appropriate member of the Contracting Team will review the submission and draw on the information provided in the body of the form to complete the recommendation and risk assessment sections, also dating when this is complete.

The Deputy Director: Contracting or Senior Contracting Lead for Procurement will then review the form, respond if any further detail is required or if there are concerns about the approach and potentially update the risk analysis if they do not agree with the initial assessment.

In most cases the form will then be processed through Atamis/ Docusign for signature by the Deputy Director: Contracting/ Senior Contracting Lead and then on to the CFO (Or Deputy in their absence) for review.

The CFO must assess whether to approve the contract award or not. **Until this final signature is obtained, the procurement has not been approved.**

APPENDIX F – Contract Decision Record

Contract Decision Record (CDR)

This form should be used when a procurement policy compliant process has been used (under the Procurement Act 2023) to provide a written record of the decision-making process. It should NOT be used for any procurements conducted under the Provider Selection Regime or for any full competitive processes under PA 2023. Refer to ICB's detailed financial procedures and the scheme of delegation and procurement policy before completing this form. This form must be approved prior to any commitment being made.

You MUST have this form signed off prior to committing to any contract award with the identified provider.

Requisitioner To Complete

Requestor:		**Department:**	
Email:		**Telephone:**	
Finance Lead:			
Executive Lead:			
Description of Goods or Services Required:			
Proposed Contract Start Date:		**Proposed Contract End Date:**	
Date CDR Submitted:			
Supplier: **Registered Address:** **Companies House Number:**			

Reason for award (please identify procurement process used and provide required supplementary information in support of the award**):**

☐ **RFQ process compliant with policy**

Which of the following applies?
Value £75k - £139,688 (minimum 3 quotes sought) ☐
Light Touch Service Value up to £200k (minimum 3 quotes sought) ☐
Light Touch Service Value £200k - £663,540 (below threshold tender notice published) ☐

Confirm:
Number of quotes sought:
Number obtained:
Link to below threshold tender notice (if value over £200k):

☐ **ITT process where only one compliant bid was received** (include link to Tender Notice)

☐ **Compliant call off from framework** (include a link to the relevant framework webpage)

☐ **Procurement Act compliant Direct Award – confirm justification on additional sheet (once complete do not embed but return with the CDR)**

DA additional CDR sheet.docx

Please confirm that declarations of interest have been sought from ALL individuals involved in the decision-making process and from the identified provider; and any declared interest has been recorded and any mitigating actions taken. Include names of those who have supplied a form and any declared interests below:

Where any declaration has been made please include the conflict of interest form as an appendix to this document.

Please confirm the mandatory exclusions questionnaire has been completed by the identified supplier and no exclusion grounds have been identified:
Y/ N

Quotations sought: Please attach quote as an appendix to this document.	**Quotation date:**

Net Cost: £	**VAT: £**	**Total Cost: £**

Once the above sections are complete the form should be submitted to the contracting team

Contract Team to Complete
CDR Reference Number: XXX ADD ATAMIS WORKPLAN RECORD NUMBERXXX (e.g W311287)XXX

Procurement Sign Off from Head of Contracting (or nominated deputy)
By signing this Contract Decision Record I confirm that I have no conflict of interest to declare in respect of this decision. **(*Where there is a conflict which needs to be noted please do not sign this version of the form*)** Signed by **XXNAMEXX XXJOB TITLEXXX**

APPROVED FORM TO BE SIGNED AND SUBMITTED THROUGH ATAMIS .

APPENDIX G – The NHS Devon ICB Green Plan and Joint Forward Plan

The NHS Devon ICB Green Plan and the Joint Forward Plan sets out broad ambitions, where possible for creating a greener, fairer and more environmentally sustainable health and care system in Devon that adapts and mitigates climate change and promotes actions to create healthier and more resilient communities. This includes aims such as increasing the number of products and services bought locally.

The Joint Forward Plan describes a vision of enhancing every patient experience through delivering maximum value and best quality service through collective procurement and supply chain excellence.

The Joint Forward Plan is available here:
https://onedevon.org.uk/wp-content/uploads/2024/07/Joint-Forward-Plan-refresh-2024.pdf