

NHS Greater Manchester (NHS GM)

Procurement Policy v1.9

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POLICY VALIDITY STATEMENT:

This policy is due for review on the latest date shown above. After this date the policy, EIA and process documents may become invalid.

Policy users should ensure that they are consulting the currently valid version of the documentation.

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1. Definitions, Terms and Abbreviations

AQP	Any Qualified Provider
AO	Accountable Officer
BI	Business Intelligence
CE	Chief Executive
CFO	Chief Finance Officer
COI	Conflict Of Interest
Contract start date	The date when the contract is signed by all parties
Contracting Authority	GM ICB
CPV	Common procurement vocabulary
CSU	Clinical Support Unit
Direct Award	The process of awarding a contract without competition
DoHSC	Department of Health and Social Care
EIA	Equality Impact Assessment
EQIA	Equality and Quality Impact Assessment
EU	European Union
Existing contract	The contract already in place with an incumbent that is already delivering the services or goods
FOI	Freedom of Information
FTS	Find a Tender Service
GC17	General Condition 17
GM	Greater Manchester
GP	General Practice
HCP	Health and Care Partnership
ICB	Integrated Care Board
ICS	Integrated Care System
ITT	Invitation to Tender
Modification	A contractual change in value or service delivery requiring legal assessment
MOU	Memorandum of Understanding
N/A	Not Applicable
NAC	Non-Acute Contracts
NHS	National Health Service
NHS GM	National Health Service Greater Manchester
NHS GM ICB	NHS Greater Manchester Integrated Care Board
NHSE	NHS England
OJEU	Official Journal of the European Union
PA23	Procurement Act 2023
PCC	Primary Care Committee
PCR2015	The Public Contract Regulations 2015 (as amended)
Primary Care Commissioning Committees	Healthcare Services Commissioning Group with approval power

Locality Primary Care Commissioning Committees	Reporting to Locality Boards and GM Primary Care Commissioning Committee.
Procurement Principles	Principles such as Transparency and Non-Discrimination required to be considered when delivering public sector procurement
Provider	The contractual supplier delivering the services or goods
PSR	Healthcare services (Provider Selection Regime) Regulations 2023
Relevant Authority Name	The Contracting Authority name
Sustainability and Transformation Plan (STP)	The ICB plan addressing national Sustainability and Transformation requirements
Threshold	The relevant legally stipulated limit at which something begins to take effect

2. Introduction

The NHS in Greater Manchester is working on a long-term plan to transform local health services for both emergency and planned hospital care, primary and community services, cancer, and mental health.

The Greater Manchester Integrated Care System has an ambitious agenda for improving health services and is implementing one of the largest sustainability and transformation programmes in the NHS, which includes a significant reconfiguration of services across multiple organisations.

The vision for health in Greater Manchester (GM), as described in the Sustainability and Transformation Plan (STP) is:

‘People live longer, healthier lives. They are supported by looking after themselves and those they care for. They have access to high quality, joined up health and care services when they need them that deliver better health outcomes and at a lower cost of provision to the system.’

To support this vision, NHS Greater Manchester Integrated Care Board (NHS GM) has been formed to commission high quality, effective and joined up health care for the population of the 10 Greater Manchester boroughs (Bolton, Bury, Oldham, Rochdale, Stockport, Tameside, Trafford, Wigan, Salford, and Manchester).

NHS GM will retain a strong local presence and focus within each of the boroughs, whilst working together in key areas across GM to deliver transformed and sustainable services.

NHS GM has a clear responsibility to ensure procurement and commissioning decisions meet the needs of its population. Services must be affordable, sustainable and within the limits of the available resources. As such NHS GM has a responsibility to ensure that they have a consistent, transparent, and effective approach to procurement.

3. Status, Purpose & Scope of Policy

The Procurement and Market Management function within NHS GM is responsible for the strategic and operational management of the Procurement and Market Management service offered by NHS Shared Business Services, supporting the organisation to meet its statutory obligations under public procurement law and national guidance relating to the procurement of healthcare and non-healthcare services and providing support, advice and guidance to all staff.

This procurement policy is a corporate policy and applies to all staff and members of NHS GM and its subcommittees, as well as any third party working in association with, or on behalf of NHS GM. This includes staff on temporary or honorary contracts, appointed representatives acting on behalf of NHS GM, staff from member practices and abide by NHS GM Policies.

This policy applies to all NHS GM expenditure (clinical and non-clinical). However, it is particularly relevant to the procurement of supplies and services that support the delivery of healthcare and certain sections only relate to procurement of health and social care services.

It applies to all commissioning processes and procurement activity and decision making related to the delivery of healthcare services, including but not limited to:

- Development and approval of specifications for services
- Determination of which organisations should provide services
- Determination of whether a service should be decommissioned

Procurement decisions relating to core services provided by GP practices shall be reviewed by Locality Primary Care Commissioning Committees and submitted to the Primary Care Commissioning Committees for approval. Where NHS GM are seeking to directly award a contract to GP practices, safeguards must be in place to ensure transparency of decision making and management of conflict of interest, in accordance with the NHS GM Conflicts of Interest Policy.

Arrangements under which NHS GM collaborates with other public bodies, for example under non legally binding memoranda of understanding (MOU), will not ordinarily constitute public contracts for the purposes of procurement law, but will be subject to the

internal approval processes for non-competed expenditure set out in the Standing Financial Instructions and this policy.

The core processes that need to be followed for healthcare and non-healthcare services are as follows:

Healthcare Services: Provider Selection Regime

The following processes apply to procurement of any value of healthcare services for the purpose of the NHS, as defined in Schedule 1 of the Healthcare Services (Provider Selection Regime) Regulations 2023.

PSR Processes	Summary
Direct Award A	Direct award process A must be used when all of the following apply: • there is an existing provider of the health care services to which the proposed contracting arrangements relate. • the relevant authority is satisfied that the health care services to which the proposed contracting arrangements relate can only be provided by the existing provider (or group of providers) due to the nature of the health care services.
Direct Award B	Direct award process B must be used when all of the following apply: • the proposed contracting arrangements relate to health care services where patients are offered a choice of provider. • the number of providers is not restricted by the relevant authority. • the relevant authority will offer contracts to all providers to whom an award can be made because they meet all requirements in relation to the provision of the health care services to patients. • the relevant authority has arrangements in place to enable providers to express an interest in providing the health care services.

Direct Award C	Direct award process C may be used when all of the following apply: • the relevant authority is not required to follow direct award processes A or B. • the term of an existing contract is due to expire, and the relevant authority proposes a new contract to replace the existing contract at the end of its term. • the proposed contracting arrangements are not changing considerably. • the relevant authority is of the view that the existing provider (or group of providers) is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard.
The Most Suitable Provider Process	This involves awarding a contract to providers without running a competitive process, because the relevant authority can identify the most suitable provider. This provider selection process may be used when all of the following apply: • the relevant authority is not required to follow direct award processes A or B. • the relevant authority cannot or does not wish to follow direct award process C. • the relevant authority is of the view, taking into account likely providers and all relevant information available to the relevant authority at the time, that it is likely to be able to identify the most suitable provider (without running a competitive process).

The Competitive Process	This involves running a competitive process to award a contract. This provider selection process must be used when all of the following apply: • the relevant authority is not required to follow direct award processes A or B. • the relevant authority cannot or does not wish to follow direct award process C, and cannot or does not wish to follow the most suitable provider process. The competitive process must be used if the relevant authority wishes to conclude a framework agreement.
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Table 1 Healthcare Services PSR Processes

Further detail on each process is contained in [The Provider Selection Regime: Statutory Guidance](#) with accompanying [Provider Selection Regime Toolkit](#). The toolkit contains non-mandatory templates and process maps produced by NHS England, and may be used to provide additional support alongside the [PSR Regulations](#) and [PSR Statutory Guidance](#).

Non-Healthcare Services: NHS GM Standing Financial Instructions/ Procurement Act 2023 Thresholds.

Contract Value (over the full term of the contract)	Quote/tender requirement
Less than £20,000	• 2 verbal quotes (should be followed up by written confirmation to those supplying quotes) • No formal process is required, although best value for money should be sought at all times and purchases should be from a reputable source. • NHS GM to have oversight with advice sought from the Procurement Team & confirmation of budget from the relevant financial leads in line with the Scheme of Delegation (SoD).
Between £20,000 and £75,000	• A minimum of three quotations must be sought. • Quotations should be in writing but not subject to formal receipt process and can be posted or emailed. • NHS GM to have oversight with advice sought from the Procurement Team & confirmation of budget from the relevant financial leads in line with the SoD.
Between £75,000 and the PA23 threshold, applicable at the time.	• Opportunities must be advertised using the Central Digital Platform Find a Tender Procurement Portal. • Tender process to be conducted using an e-tendering platform. • Prior approval must be sought in line with the SoD
Equal to or above the PA23 threshold, applicable at the time.	• Compliance with the PA23. This includes Competitive tendering process via Find a Tender Service • Prior approval must be sought in line with the SoD beforehand.
Any contract value where a relevant and appropriate Framework Agreement / Framework or Dynamic System / Dynamic Market exists	• Direct award or further competition according to the terms of each Framework Agreement / Framework • Further competition according to the terms of a Dynamic Purchasing System established under PCR2015 • Further competition in accordance with the Competitive Flexible Procedure where using a Dynamic Market established under PA23 • Prior approval must be sought in line with the SoD beforehand

Table 2 Non-Healthcare Services - NHS SFIs / Procurement Act 2023 Thresholds

4. Policy Statement

The purpose of this policy is to provide overarching contracting and procurement principles that support the development of NHS GM, whilst still addressing all areas of NHS GM spend, development and management of contracts for healthcare services and for the procurement of goods and non-healthcare services.

The policy also provides guidance on the process for entering, documenting, reviewing, and exiting contractual arrangements.

The policy seeks to:

- Set out a clear purpose and scope.
- Outline key principles and considerations to be considered throughout both the procurement/commissioning and contract cycles.
- Confirm responsibilities and how capability will be assured.
- Ensure use of robust and consistent contractual terms and conditions.
- Outline the basis of decision making and the processes associated with the awarding of contracts.
- Outline the operating model for the NHS GM acute and non-acute; contracting team to support principal implementation and adherence to the policy.
- Outline the responsibilities and terms of reference for the NHS GM that ensure this policy is being followed.
- Provides contracting and procurement procedures, templates, and tools to support the NHS GM officers.
- Details on how the policy will be reviewed; and
- Reference other relevant and interlinking policies of NHS GM.

The NHS and wider public sector procurement are subject to rules, principles, regulations, and guidance. In procuring services and goods, NHS GM will comply with the legislation that governs the award of contracts by public bodies. This includes adherence to:

- Procurement Act 2023
- Public Contracts Regulations 2015 (as amended)
- Healthcare Services (Provider Selection Regime Regulations) 2023

- Health & Social Care Act 2012
- Accessible Information Standard
- Principles of socio-economic Duty
- The Public Services (Social Value Act) 2012
- The NHS Act 2006 (as amended)
- Managing Conflicts of Interest: Revised Statutory Guidance for CCGs (NHS England, June 2017)
- Transfer of Undertakings and Protection of Employment Regulations (TUPE) 2006
- The Equality Act 2010
- The Fraud Act 2006
- The Bribery Act 2010
- Cabinet Office Public-sector procurement guidance from 1 January 2021 (in relation to Brexit)
- Freedom of Information Act 2000
- Insurance Act 2015

In addition to the legislation set out above, where defined as an 'in-scope' organisation within a Procurement Policy Note (PPN) issued by the Cabinet Office, NHS GM will adhere to any relevant PPN when undertaking procurement. Where new PPNs are published NHS GM will implement these where required in accordance with the timescales set out within the PPN.

The Procurement Act 2023 replaced the Public Contracts Regulations 2015 (as amended) and came into force on 24 February 2025 and applies to contracts other than healthcare services within the scope of the PSR. The Procurement Act 2023 applies to contracts that were procured on or after 24 February 2025.

The Public Contracts Regulations 2015 still apply to contracts that were either awarded before that date or where the procurement of the contract commenced before that date. This includes call off agreements made under a Framework Agreement that was established under PCR2015, or call off agreements awarded under a Dynamic Purchasing System established under PCR2015.

The table below outlines the relevant procurement legislation for different contracts:

Type of Call-Off	Not call offs from a Framework Agreement or DPS	Not call offs from a Framework Agreement or DPS	Call offs from a Framework Agreement or DPS	Call offs from a Framework Agreement or DPS
Type of Contract	Existing contract awarded or procurement commenced before Go-Live date:	New contract awarded where procurement commenced after Go-Live date:	Framework agreement where procurement commenced or was awarded before Go-Live date	Framework agreement procured under PA23, i.e. Framework procurement commenced after Go-Live date
Healthcare services in the scope of PSR	PSR	PSR	PSR	PSR
Goods, works and services outside of the scope of PSR	PCR2015	PA23	PCR2015	PA23

Table 3 Procurement Legislation for Different Contracts

The Sourcing Playbook [The Sourcing Playbook – May 2021 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) is the Government guidance on Service delivery, including outsourcing, insourcing, mixed economy and contracting aimed at commercial, finance, project delivery, policy, and any professionals across the public sector who are responsible for the planning and delivery on insourcing and outsourcing services. It sets out how we make insourcing and outsourcing decisions and deliver services in partnership with the private and third sectors.

The Playbook sets out 11 key polices.

- Market health and capability assessments
- Project Validation Review (PVR)
- Requirement for pilots

- Key Performance Indicators (KPIs)
- Risk allocation
- Delivery model assessment
- Cost Modelling
- Pricing and payment mechanisms
- Assessing the economic and financial standing of suppliers
- Resolution planning.

In addition to this policy NHS GM will follow and comply with the guidance set out in the Sourcing and Consultancy Playbooks and PPN 03/21 [Procurement Policy Note 03 21-The Sourcing and Consultancy Playbooks.pdf](#) and seek to embed the key policies and best practice guidance for both insourcing and outsourcing projects. The application of this policy will align with the requirements of GM NHS in its role as Strategic Commissioner to develop the desired health and care outcomes for the system.

NHS GM will oversee the strategic priorities across the Greater Manchester system, including an approach to “best value”, whilst respecting the requirements of NHS GM to comply with procurement legislation.

This policy recognises and seeks to support the key objectives of NHS GM including commissioning a sustainable, affordable, and high-quality NHS. When procuring health care services, NHS GM will be required to act with a view to:

- Securing the needs of the people who use the services
- Addressing Health inequalities
- Improving the quality of the services
- Improving efficiency in the provision of the services

This will be supported by:

Ensuring that service specifications will include best practice principles related to economic, social, equality and environmental factors.

- Working with all partners in the system collaboratively to improve health and care for all patients in line with the principles underpinning Integrated care systems.

This policy will outline how decisions to award contracts will be approached, reflecting current regulatory obligations, national policy, and statutory guidance. Furthermore, the principles for contract management will be driven by a policy that adopts good practice, collaboration, maximises financial and operational performance and reduces unwarranted variation whilst minimising risk.

This policy operates alongside and should be read in accordance with the following:

- NHS GM Constitution, which includes Standing Orders, Standing Financial Instructions, Schemes of Reservation and Delegation and Prime Financial Policies;
- NHS GM Policy on the Management of Conflicts of Interest.
- NHS GM Anti-Fraud and Anti-Bribery Policy.
- NHS North West Black Asian and Minority Ethnic Assembly Anti Racist Framework
- NHS GM Raising Concerns (Whistle Blowing) Policy.
- NHS GM Communication and Engagement Strategy.
- NHS GM Equality Objectives
- NHS GM Fairer Health for All Framework
- NHS GM People and Communities - Participation Strategy
- NHS GM Modern Slavery and Human Trafficking Statement
- NHS GM Disciplinary Policy.
- NHS GM Gifts, Hospitality & Sponsorship Policy.
- NHS England Standing Financial Instructions in so far as they impact on the procurement of primary care services, including GP, Community Pharmacy, Dental and Optometric services, under full delegation of the co-commissioning provisions.
- HM Government the Sourcing Playbook

5. Application of this Policy

This policy sets out the guiding principles that all staff will follow where they are selecting a supplier to deliver a service, where they are involved in and/or entering into a contract, where they are committing NHS GM to any expenditure or where they are monitoring the

contract following its award; they must do so in accordance with this policy and any of NHS GM's applicable policies.

The principles below are also considered in the context of NHS GM's strategic priorities and evolving national guidance, in that NHS GM will develop and implement arrangements to enable the contestability and procurement of services:

Principle 1: In making its commissioning decisions it will determine how it will comply with its obligations under the relevant procurement legislation in the given factual circumstances.

Principle 2: Where procurement or failure to award a contract to a preferred provider would place other core services at significant risk by impacting on their viability and long-term sustainability, an alternative route to procurement will be sought.

Principle 3: Any decision not to undertake a competitive process in respect of a service award should be supported by clear and transparent evidence to demonstrate which of the "qualifying conditions" have been met in an individual case.

Principle 4: NHS GM recognises its leadership role in the development of the local provider market and will work towards supporting the development of a more integrated provider delivery model while preserving local access and patient choice to a sustainable and expanding range of services appropriate to meet the needs of the local population.

Principle 5: NHS GM will develop approaches that promote and support personalisation and choice for patients. NHS GM will collaborate with other agencies to specify and procure services that address health inequalities in delivering joint health and care needs where appropriate. NHS GM will utilise patient experience feedback to influence the ongoing performance management of service providers and procurement decisions.

Principle 6: NHS GM recognises the model of Patient Choice as offering potential benefit for patients and NHS GM. NHS GM will consider the appropriateness of the most suitable provider process or Direct Award B under the PSR, assessing the relative benefits to both patients and NHS GM in line with PSR regulations, in comparison with other contracting models to determine which may deliver optimum benefit.

Principle 7: NHS GM will recognise its contractual obligations and ensure all expenditure is supported with the appropriate contractual documentation put in place. Once a contractual agreement is in place, NHS GM will continually monitor and work with the provider or supplier to ensure high quality, equality and value for money is being achieved and that the arrangements for service delivery continue to be satisfactory to both parties, ensuring this can be evidenced if requested.

Principle 8: As a strategic commissioner, NHS GM will ensure supply chain diversity and inclusive procurement practices in line with the Equality Act 2010, the Public Sector Equality Duty, and its voluntary consideration of the Socio-Economic Duty. This includes fair opportunities for SMEs, the VCFSE sector, and diverse or underrepresented suppliers. By widening participation and reflecting the diversity of the communities it serves, NHS GM will strengthen market resilience, drive innovation, and maintain a sustainable and equitable supply chain

i) Integrated Care System (ICS) Principles

In conjunction with the above, NHS GM will follow the ICS principles and work towards achieving the system maturity matrix in order to build a strong health and care system across GM:

System leadership, partnerships and change capability: When it comes to contracting and procurement activities, this will be done with strong collaboration of all partners across the system in a proactive and transparent manner.

System architecture and strong financial management and planning: Ensuring there is value for money and appropriate incentives to support commissioning and health objectives across the system.

Integrated care models: Integration of services and teams will be considered for service models and transformation projects.

Track record of delivery: Robust contract management and engagement to ensure services are being delivered as needed and are demonstrating positive impact on population health outcomes.

Coherent and Target population: Developing services that address health inequalities whilst respecting patient flows across GM as a system and promoting patient choice and standard availability.

Review Of Principles

As the NHS GM landscape develops, the principles set out under this policy will be reviewed every 12 months and amended, as necessary. These will go to the Audit Committee to obtain assurance and to the Executive meeting, policy governance group.

6. Duties and Responsibilities

NHS GM	NHS GM has a responsibility for setting the strategic context in which organisational process documents are developed, and for establishing a scheme of governance for the formal review and approval of such documents.
NHS GM Chief Executive Officer	The NHS GM Chief Executive Officer has overall responsibility for strategic direction and operational management, including ensuring that NHS GM process documents comply with all legal, statutory and good practice guidance requirements.
Head of Market Management	The Head of Market Management has the responsibility to ensure this policy remains up to date and in line with current Procurement policy and legislation.
All Employees	All employees of NHS GM, including temporary and agency employees are responsible for: • Compliance with relevant process documents. Failure to comply may result in disciplinary action being taken. • Cooperating with the development and implementation of policies and procedures and as part of their normal duties and responsibilities. • Identifying the need for a change in policy or procedure as a result of becoming aware of changes in practice, changes to statutory requirements, revised professional or clinical standards and local / national directives, and advising their line manager accordingly. • Engaging with the procurement team during the commissioning process and when seeking to identify a suitable supplier. • Identifying training needs in respect of policies and procedures and bringing them to the attention of their line manager. • Attending training / awareness sessions when provided.

Table 4: Duties & Responsibilities

i) NHS GM Board

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

ii) Primary Care Commissioning Committee

The Primary Care Commissioning Committee is responsible for recommending procurement decisions where GP practices are providers and for both Pharmacy, Dentistry & Ophthalmology in line with the Financial Scheme of Delegation for financial decision making.

iii) Audit Committee

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

iv) Finance Committee

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

v) Head of Market Management

The procurement lead is responsible for:

- Ensuring that the principles of good procurement practice are embedded within NHS GM.
- Monitoring legislation and incorporating any significant policy or procedural developments, or as required by statutory or mandatory requirements.
- Reviewing and updating the policy as a minimum on an annual basis following an approved change control process.
- Identification of risks associated with direct award of contracts without competition.

vi) NHS GM Staff

All NHS GM officers are responsible for complying with this procurement policy and associated procedures. All NHS GM staff shall:

- Only procure goods, services, and works on behalf of NHS GM.
- Only procure goods, services, and works in accordance with NHS GM's Scheme of Financial Delegation and Standing Financial Instructions. In instances where staff are unsure about a course of action, then they should seek advice and guidance from The Head of Market Management.

vii) Authority

NHS GM is accountable for the purchase of goods and services in relation to any commissioned health services and non-healthcare for which it is responsible and its own operation and management needs; specifically:

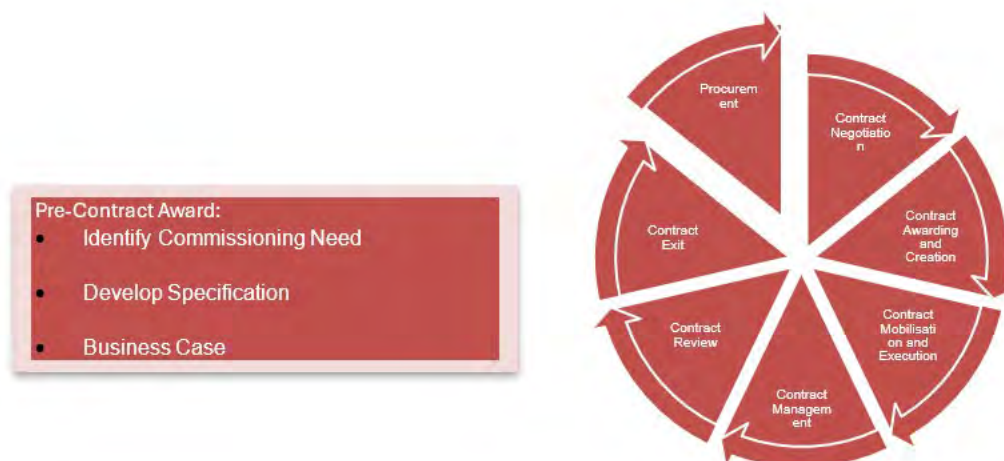
- Any proposed market intervention and any associated procurement route.
- The approval of any specifications or service models directly affecting its respective requirements or that of the local population.
- The evaluation criteria used for the procurement of goods or services.
- Signing off decisions on which providers are invited to tender; and.
- Making final decisions on the selection of the provider.
- Arrangements for delegation of authority to officers are set out in the relevant Scheme of Reservation and Delegation, Financial Scheme of Delegation, and Prime Financial Policies / Detailed Financial Policies.

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

7. Practical Implementation and Process for Procurements

The commissioning cycle and contract life cycle management is the strategic roadmap that needs to be followed to support the delivery of an on-going programme of procurement and contract management activity.

As demonstrated below, NHS GM will follow several processes and undertake a range of measures to enable practical implementation.



i) Service Review, Design, and Identification of Need

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

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

It is good practice to engage relevant providers, especially clinicians, in confirming that the design of service specifications will meet patient needs. However, conflicts of interest can occur if a commissioner engages selectively with only certain providers (be they incumbent or potential new providers) in developing a service specification for a contract for which they may later bid.

Commissioners should seek, as far as possible, to specify the outcomes that they wish to see delivered through a new service, rather than the process by which these outcomes are to be achieved. As well as supporting innovation, this helps prevent bias towards providers in the specification of services.

Such engagement should follow the main principles of procurement law, namely the public good, value for money, transparency, integrity, fair treatment of suppliers and non-discrimination, ensuring that the same information is given to all.

Other steps include:

- Advertising via an appropriate sourcing platform is the fact that a service design/re-design exercise is taking place widely and inviting comments

from potential providers and other interested parties (ensuring a record is kept of all interactions).

- As the service design develops, we engage with a wide range of providers on an ongoing basis to seek comments on the proposed design, e.g., via the commissioner's website or via workshops with interested parties.
- Use engagement to help shape the requirement to meet patient needs but take care not to gear the requirement in favour of any particular provider(s).
- If appropriate, engage the advice of an independent clinical adviser on the design of the service.
- Being transparent about procedures.
- Ensuring at all stages that potential providers are aware of how the service will be commissioned.
- Assessing the deliverability of the specification in relation to the proposed contract value.
- Seek to obtain the level of likely interest in interested providers taking part in a procurement competition.
- Ensure that timescales for mobilisation and implementation are deliverable; and
- Maintain commercial confidentiality of information received from providers.

When engaging providers on service design, NHS GM have ultimate responsibility for service design and the selection of appropriate provider(s). NHS England has issued guidance on the use of provider boards in service design.

NHS GM must ensure that systems are in place for managing conflicts of interest on an ongoing basis, throughout the contract lifecycle.

ii) Pilot Projects

The HM Government Sourcing Playbook

[The Sourcing Playbook – May 2021 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/91242/sourcing-playbook-may-2021.pdf) offers guidance on pilot projects. A key policy within the Playbook describes when to test and pilot and the options for consideration. In addition, the Government Commercial Function (GCF) have published a guidance Note, Testing and Piloting Services [Testing and Piloting Services \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/91242/testing-and-piloting-services-guidance-note.pdf). When considering a pilot project, NHS GM will review the available guidance and ensure that any procurement complies with the relevant procurement rules.

iii) Investment Review and Sign-Off

All requests for investment must be supported by a business case. The authorisation of the investment recommendation is subject to the following approval route in accordance with NHS GMs' Financial Scheme of Delegation and Standing Financial Instructions

iv) Procurement Approach

For all operation and management needs and to ensure the delivery of goods and services, NHS GM shall adopt a procurement approach in compliance with their obligations under relevant procurement legislation and any other applicable legislation.

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

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

NHS GM must consider their right to reject bids or disqualify a Bidder and/or its Bidder Members where a bid is submitted late, is completed incorrectly, is materially incomplete or fails to meet the submission requirements, including adherence to response maximum word limits.

v) Market Assessment

In order to support on-going procurement and contestability activities, NHS GM will hold a comprehensive knowledge of the current configuration, capacity, and competence of the existing provider market such information will be kept on file if previous market engagement sessions have been held, areas where change is required, either because of an absence of service provision, poor performance or limited choice for patients, will be identified and proactively addressed.

vi) Stakeholder Engagement

NHS GM recognises that effective engagement with stakeholders is an essential requirement for all NHS organisations and will offer benefits to the generation of

outcome-based service specifications. NHS GM will engage with stakeholders at appropriate times during the commissioning and procurement process. This includes working with communities to identify local needs and gaps in services, and co-producing service specifications where appropriate. Stakeholder engagement with new and existing providers, members of the public, clinicians and other service users will occur at key points in the service review and procurement process. Any potential conflict of interest issues that arise during the engagement process need to be managed in accordance with NHS GM's Conflict of Interest policy.

Where stakeholder involvement is required, consideration will be given as to what is fair and proportionate in relation to the circumstances of the procurement. For the benefits of this policy and in line with NHS GM's guidance, the terms 'involve', and 'involvement' are used interchangeably with 'engagement', 'participation', 'consultation' and 'patient and public voice'. It is recognised that there are many ways to involve patients and different approaches will be assessed as appropriate depending on the nature of the procurement activity. Engagement will actively seek to capture the perspectives of local communities to ensure that procurement decisions are responsive, equitable, and reflective of the needs of those the services are intended to serve.

vii) Transparency

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

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

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

viii) Communications

Where undertaking a procurement for services that are not in the scope of the communications

NHS GM will develop and implement a communications plan to explain any new arrangements, such as changes to legislation and structures that could impact service delivery to the health market as well as local public forums and organisations.

ix) The Health Care Services (Provider Selection Regime) Regulations 2023

To apply the PSR regime NHS GM must assess if the Services to be contracted are in scope of the PSR as per [Schedule 1](#) of The Health Care Services (Provider Selection Regime) Regulations 2023 and NHS GM must decide the specific process to be followed during procurement. Prior to conducting a service assessment the authority should familiarise itself with the Provider Selection Regime toolkit available

[Provider Selection Regime Toolkit](#). NHS GM must also complete the Decision Making Record (DMR) document that can be located at Appendix B for any process within PSR to ensure that all requirements/evidence is recorded and evidenced as appropriate.

x) Overview of PSR Available Processes (PSR Regulation 6):

Direct Award Process A (Regulation 6 and 7) must be followed where:

- Type 1 and 2 urgent and emergency services and associated emergency inpatient services are being commissioned,
- 999 emergency ambulance services are being commissioned,
- NHS urgent mental health crisis services are being commissioned,
- there is an existing provider of the relevant health care services to which the proposed contracting arrangements relate,
- NHS GM is satisfied that the relevant health care services to which the proposed contracting arrangements relate are capable of being provided only by the existing provider due to the nature of the relevant health care services, and
- the procurement is not to conclude a framework agreement.

Direct Award Process B (Regulation 6 and 8) must be followed where:

- The proposed contracting arrangements relate to relevant health care services in respect of which a patient is offered a choice of provider,
- The number of providers is not restricted by NHS GM,
- NHS GM will offer contracts to all providers to whom an award can be made because they meet all requirements in relation to the provision of the relevant health care services to patients,
- NHS GM has arrangements in place to enable providers to express an interest in providing the relevant health care services, and the procurement is not to conclude a framework agreement.

Direct Award Process C (Regulation 6 and 9) must be followed where:

- NHS GM is not required to follow direct award processes A or B
- The term of an existing contract is due to expire, and NHS GM proposes a new contract to replace the existing contract at the end of its term
- The proposed contracting arrangements are not changing considerably
- NHS GM is of the view that the existing provider (or group of providers) is satisfied with the existing contract and will likely satisfy the proposed contract to a sufficient standard using the required Basic and Key Criteria.
- Direct award process C must not be used to conclude a framework agreement.

The Most Suitable Provider Process (Regulation 6 and 10) may be used when all of the following applications are applied:

- NHS GM is not required to follow direct award processes A or B
- NHS GM cannot or does not wish to follow direct award process C
- A new service is being arranged
- NHS GM is of the point of view, considering likely providers and all relevant information available to the NHS GM at the time, that it is likely to be able to identify the most suitable provider (without running a competitive process).
- The relevant authority is changing an existing contracting arrangement considerably (such that it must not be continued under direct award process C)
- The most suitable provider process must not be used to conclude a framework agreement

Five Key Criteria must be used to consider when applying the most suitable provider route. The criteria are as follows and all must be used, however relative importance must be determined on a project-by-project basis.

- Quality and innovation, value, integration, collaboration and service sustainability, improving access, reducing health inequalities and facilitating choice & social value

The Competitive Process (Regulation 6 and 11) may be used when all of the following apply:

- NHS GM is not required to follow direct award processes A or B

- NHS GM cannot or does not wish to follow direct award process C and cannot or does not wish to follow the most suitable provider process.
- NHS GM is required to use the required Basic and Key Criteria
- Quality and innovation, value, integration, collaboration and service sustainability, improving access, reducing health inequalities and facilitating choice & social value
- The competitive process must be used if the NHS GM wishes to conclude a framework agreement

Standstill Period

A Standstill period of eight working days must be applied when using Direct Award C, Most Suitable Provider or Competitive Process to allow providers to seek a review of the decision made, to determine whether NHS GM has applied the PSR regime correctly and made an appropriate provider selection decision. Including if using a Competitive Process to either conclude a framework or award a contract based on a framework.

Transparency in respect of PSR Processes

NHS GM are required to evidence that they have properly exercised the responsibilities and flexibilities conferred on them by the PSR, to ensure that there is proper scrutiny and accountability of decisions made about health care services.

There are several elements to the transparency process under PSR – these apply differently according to which decision-making process is being applied. In all circumstances, NHS GM must keep internal records of their decision-making processes and must publish notices confirming their decision to award a contract.

All transparency notices must be published using the UK e-notification service, the Find a Tender Service (FTS). NHS GM can publish information on their decision-making in other places as well if they wish, such as Contracts Finder.

In addition to the transparency notices required under the various provider selection processes, NHS GM must publish transparency notices when they are abandoning a provider selection process, when making an urgent award or contract modification or when undertaking certain non-urgent contract modifications.

Annual Summary and Monitoring

NHS GM must publish a summary of their application of the PSR annually online (e.g., via NHS GM's annual reports or annual governance statement). This must include, in the year to which the summary relates, the:

- Number of contracts directly awarded under direct award processes A, B or C
- Number of contracts awarded under the most suitable provider process
- Number of contracts awarded under the competitive process
- Number of framework agreements concluded
- Number of contracts awarded based on a framework agreement
- Number of urgent contracts awarded and urgent modifications (in line with the urgent awards or contract modifications section)
- Number of new providers awarded contracts
- Number of providers who ceased to hold any contracts with NHS GM
- Details of representations received, including:
 - o the number of representations received in writing and during the standstill period.
 - o summary of the outcome of all representations received and of the nature and impact of those representations.

In addition, NHS GM are expected to publish:

- The total number of providers NHS GM is currently contracted with
- Details of any PSR review panel reviews:
- Number of requests for consideration received by the PSR review panel
- Number of requests accepted and rejected by the PSR review panel for consideration
- Number of times where the PSR review panel advised NHS GM to re-run or go back to an earlier step in a provider selection process under the PSR, and the number of times the advice was followed.

NHS GM must monitor their compliance with PSR. The results of the monitoring must be published online annually (and may be integrated into other annual reporting

requirements) and include processes, decisions made under the PSR, contract modifications, and declaration and management of conflicts of interests.

For full and detailed information relating to the PSR Governance and Approval requirements alongside the process for NHS GM PSR Representations please refer to Appendix C.

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

The Public Services (Social Value) Act 2012 (the “Social Value Act”) applies to all procurements for public service contracts and where practical, considering clinical need and urgency, NHS GM must consider the following questions prior to procurement:

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

xii) Social Value and Sustainability Model

Social Value is underpinned by the Public Services (Social Value) Act 2012, which imposes an obligation on all public sector bodies to consider Social Value in the procurement of goods, services and works.

NHS GM aims to provide sustainable and impactful Social Value through all of our procurement contracts by practicing the Procurement Policy Note (PPN) 06/20 from the 1st April 2022, taking account of Social Value in the award of central government contracts to the commissioning and purchase of goods and services. This PPN intended originally for central government has been adapted by NHS England on behalf of the NHS.

Scope/Commitments

The scope of this policy is to incorporate the UK Public Services (social Value) Act 2012 Public Procurement Note (PPN) 06/20 with a minimum weighted value of 10% from the 1st April 2022.

This Social Value Policy sets out key commitments to fulfil the following objectives

Integrating Sustainability & Social Value into Procurement by:

- Incorporating Social Value questions into all procurement which is in alignment to the 5 set out themes (COVID-19 recovery, tackling economic inequality, Fighting Climate Change, Equal opportunity and wellbeing)
- Ensuring a Fighting Climate Change question is incorporated in all NHS contracts
- Ensuring additional social value is achieved- apart from the standard service being delivered
- It is aligned to the social value theme selected and the contract being delivered.
- Social Value commitments will include key data measurables such as inputs, outputs and expected impact with a project timeline.
- Integrating Social Value reports and KPI's into contract management for regular reporting on social value commitments and progress.

Social Value Principles:

The principle of Social Value focuses on what underpins an account of social value, and on the questions that need to be addressed so the information can be used to better inform decisions. Social value should include qualitative, quantitative and comparative information, including environmental changes in relation to how they will affect people's lives.

Involve Stakeholders

Stakeholders refer to the people or the organisation that will experience change because of the activity. By involving stakeholders, you can identify the true changes that need to take place, based on the need, and set key measurables in place.

Articulate and understand what changes

This step will ensure you are evaluating what change will take place by this activity and understand if there is different types of change taking place, both positive and negative. The information about what changes will come from your stakeholders. Focus on the changes because of the activity undertaken by the contribution of the stakeholders. These changes need to be measured.

Only claim what is relevant to the activity taking place by contract.

Ensure key data measurables are included in responses such as baselines to measure accurate reporting.

Value the outcome

Set clear evaluation metrics in place to evaluate fairly. The outcome articulated should form part of your KPI contract management.

Only include what is material

Be clear on what outcome you are looking to achieve. There will be many possible outcomes as a result of an activity but focus on the main desired outcome.

Be transparent

Ensure clear reporting will take place, which includes monitoring and evaluations of impact.

Verify the Result

Ensure the project is taking place with the reported outcomes stated. This should form part of contract management, where regular site visits or independent audits are taking place.

Sustainability

NHS GM is committed to fulfilling its sustainability objectives by incorporating

NHS England has also, on behalf of the NHS, adopted the requirements of PPN 06/21. NHS GM will apply PPN 06/21 proportionately when procuring goods and/or services and/or works with any value.

NHS GM will therefore require all in scope organisations to provide a Carbon Reduction Plan using the Cabinet Office Template confirming the supplier's commitment to achieving Net Zero by 2050 in the UK, and setting out the environmental management measures that they have in place and which will be in effect and utilised during the performance of the contract.

NHS GM requires the Carbon Reduction Plan to include the following:

- Confirm the bidding supplier's commitment to achieving Net Zero by 2050 for their UK operations
- Provide the suppliers current emissions for the sources included in Scope 1 and 2 of the GHG Protocol, and a defined subset of Scope 3 emissions

- Provide emissions reporting in CO₂e for the six greenhouse gases covered by the Kyoto Protocol
- Setting out the environmental management measures in effect, including certification schemes or specific carbon reduction measures you have adopted, and that you will be able to apply when performing the contract and that support achieving Net Zero by 2050
- Publication on the CRP on the supplier's website

The Science Based Targets Initiative or Race to Net Zero will not be considered a replacement for a carbon reduction plan, although detailing membership of schemes such as these are a suitable example of the environmental management measures the supplier has in place.

NHS GM will incorporate appropriate additional sustainability measures in the Specification of procurements and may increase sustainability requirements for contracts that have a higher environmental impact such as waste management, construction and transport just to name a few.

Modern Slavery

The government is expected to bring forward legislation in 2024 to provide some statutory duties for the NHS to tackle modern slavery. Until the legislation is live, NHS GM will apply PPN 03/23 'Tackling Modern Slavery in Government Supply Chains'.

The PPN expects that NHS GM:

- Makes an assessment of the Modern Slavery Risks relevant to the Procurement'
- Takes appropriate steps to mitigate those risks
- Manages modern slavery risks in existing contracts

xiii) Counter Fraud and Bribery

On 1st July 2011 the Bribery Act 2010 came into force and applies to all commercial and NHS organisations, providing a new consolidated scheme for bribery offences.

All staff should be aware of the 'Bribery Act 2010', its definition of corruption, and the conduct expected from those involved in the purchasing process.

NHS GM is against any form of bribery and is committed to the terms and obligations imposed by the Bribery Act. Any concerns related to Fraud, bribery or corruption in respect of NHS GM procurement activity will be reported to the NHS GM's Anti-Fraud Team for further consideration and, where appropriate, investigation.

xiv) Procurement Route

The quote/tender requirement for each contract shall be determined by the total contract value. The contract value of each contracting opportunity must be a genuine pre-estimate of the total contract value, inclusive of VAT (i.e., three-year contract of £50,000 per year = total contract value of £150,000). Contract values should include any optional extension period. Contract values must not be deliberately split/disaggregated to avoid the need to consider competition. If this is done intentionally this could constitute a disciplinary offence and possibly criminal charges.

To comply with the procurement regulations, and to ensure equity to all sectors, NHS GM will ensure full compliance with NHS GM Financial Scheme of Delegation and Standing Financial Instructions

Procurement Act 2023 thresholds from 24 February 2025 (INCLUSIVE OF VAT)

Type of contact	Threshold inclusive of VAT
Service Contracts Supply of Goods Contracts	£214,904
Works (including subsidised works contracts)	£5,372,609
Light touch Regime	£663,540
Concession contracts	£5,372,609
Provider Selection Regime (Healthcare Services)	No Threshold

There should be consultation with the Finance team to confirm the applicability of VAT when calculating the expected value of a contract and with the procurement team to validate assumptions as to which threshold applies.

Wherever possible NHS GM should procure supplies and services through NHS and public sector framework agreements. Such frameworks can offer a compliant procurement route to direct award or a pre-qualified supply base through which further competition may be conducted, in accordance with the framework terms of use.

NHS GM must adhere to NHS England Policy and Guidance for procurement of Management Consultancy Services and Agency Staff. All procurement processes must have the relevant governance process sign off before commencement and the contract award must be authorised in accordance with NHS GM's Financial Scheme of Delegation.

The below table does not apply to the commissioning of healthcare services as there is no threshold value and NHS GM must assess if the Services to be contracted are in scope of the PSR and the authority must decide the specific PSR process to be followed during procurement.

xv) Financial Systems & Processes - Scheme of Delegation and Standing Financial Instructions

NHS GM has an approved Scheme of Delegation (which can be viewed as a separate document) which includes delegated limits of financial authority for procurement, the SFIs are included below for completeness.

Contract Value (over the full term of the contract)	Quote/tender requirement
Less than £20,000	• 2 verbal quotes (should be followed up by written confirmation to those supplying quotes) • No formal process is required, although best value for money should be sought at all times and purchases should be from a reputable source. • NHS GM to have oversight with advice sought from the Procurement Team & confirmation of budget from the relevant financial leads in line with the Scheme of Delegation (SoD).
Between £20,000 and £75,000	• A minimum of three quotations must be sought. • Quotations should be in writing but not subject to formal receipt process and can be posted or emailed. • NHS GM to have oversight with advice sought from the Procurement Team & confirmation of budget from the relevant financial leads in line with the SoD.
Between £75,000 and the PA23 threshold, applicable at the time.	• Opportunities must be advertised using the Central Digital Platform Find a Tender Procurement Portal. • Tender process to be conducted using an e-tendering platform. • Prior approval must be sought in line with the SoD
Equal to or above the PA23 threshold, applicable at the time.	• Compliance with the PA23. This includes Competitive tendering process via Find a Tender Service • Prior approval must be sought in line with the SoD beforehand.
Any contract value where a relevant and appropriate Framework Agreement	• Direct award or further competition according to the terms of each Framework Agreement / Framework • Further competition according to the terms of a Dynamic Purchasing System established under PCR2015

Contract Value (over the full term of the contract)	Quote/tender requirement
/ Framework or Dynamic System / Dynamic Market exists	Further competition in accordance with the Competitive Flexible Procedure where using a Dynamic Market established under PA23 Prior approval must be sought in line with the SoD beforehand.

Table 5: NHS GM Scheme of Delegation

xvi) Waivers

Waivers could be applied to the purchase of goods, the direct award of a contract for a new service and the extension of an existing contract where there is no provision for extension. Rules for approval of waivers on NHS GM contracts must follow financial regulations.

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

Where an NHS GM officer wishes to apply for an exemption, they shall do so in accordance with NHS GM's Financial Scheme of Delegation and Standing Financial Instructions.

All decisions arising from an approved Competition Waiver will be approved by the NHS GM Procurement team.

In some circumstances (outlined below) the procurement route specified in NHS GM's procurement policy might not be appropriate. In these circumstances a procurement waiver may be requested and authorised by the appropriate committee, Chief Executive or Chief Finance Officer under the NHS GM Financial Scheme of Delegation:

- In very exceptional circumstances where the Chief Executive or Chief Finance Officer decides that formal tendering procedures would not be practicable or the estimated expenditure or income would not warrant formal tendering procedures, and the circumstances are detailed in an appropriate record.
- Specialist expertise/product is required and is available from only one source.

- The task is essential to complete the project and arises because of a recently completed assignment and engaging a different provider for the new task would be inappropriate.
- There is a clear benefit to be gained from maintaining continuity with an earlier project. However, in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering.
- The provision of legal advice and services providing that any legal firm or partnership commissioned by NHS GM is regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council for England and Wales in relation to the obtaining of Counsel's opinion) and are generally recognised as having sufficient expertise in the area of work for which they are commissioned.
- A consortium arrangement is in place and a lead organisation has been appointed to carry out tendering activity on behalf of the consortium members.
- The timescale genuinely precludes competitive tendering but failure to plan the work properly would not be regarded as justification for a single tender.
- Allowed and provided for in the Capital Investment Manual.
- A detailed review of the provision of local services has identified one capable provider of the service/s.
- Competition is not appropriate, e.g., where partnership funding is in place.
- Benefits in terms of choice, quality, efficiency, or responsiveness are not apparent.
- Where it is decided that competitive tendering is not applicable and should be waived, the fact of the waiver and the reasons should be documented and recorded in an appropriate record and reported to the Audit Committee at each meeting.

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

- Avoid competition or;
- For administrative convenience or;
- To award further work to a consultant originally appointed through a competitive procedure.

Where a request for a waiver is made relating to a proof of concept or pilot project, the waiver request must include details of the process and timeline for the proof-of-concept evaluation including exit plan if service does not continue.

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

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

It is a condition of approval for waiver forms to be read in conjunction with the Procurement Policy and the Financial Scheme of Delegation.

For further details please refer to the Standard Operating Procedure (SOP) for the Waiver Process.

xvii) Collaborative Procurement

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

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

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

xviii) Grant Agreements

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

An ICB may make payments:

- (a) by way of a grant to any of its partner NHS Trusts or FTs;
- (b) by way of grant or loan to a voluntary organisation ((this means a non-profit-making body but does not include any public or local authority) which provides or arranges for the provision of services which are like the services in respect of which the ICB has functions (Section 14Z48 of the NHS Act 2006)

An NHS Trust or FT will be a partner if it:

provides services for the purposes of the health service within the ICB's area; and

- (a) has the function under the ICB's Constitution of participating in the nomination of members because of falling within a prescribed description.

Usually, grants will have the following features:

- The grant funds organisations for a particular project or supports an area of an organisation's work/activity.
- The grant may be given as a contribution to the cost of a project or activity or to fund the project or activity in its entirety.
- The grant agreement will specify the objectives to be achieved from the expenditure of the grant rather than stipulating how the objectives are to be achieved.
- The objectives may be proposed by the recipient of the grant rather than the ICB.
- The project/ activity will be managed by the grant recipient, which will report back to the ICB as required. The ICB will be able to monitor/ influence the project/ activity but will not have the control that is inherent in a contract.
- The grant agreement should not impose an obligation to provide any services, but it can provide a requirement on the recipient to use the funds towards a particular project or service and set out other terms on which the grant is made.

- Sometimes, grant agreements may require the recipient to pay back the grant, or part of it, in some circumstances – for example, if the funding is not used for the purposes for which it was given, or the project is completed at a lower cost.
- If the ICB wishes to support the activities of an organisation because they complement the services that the ICB commissions then this would be considered grant funding, as the ICB is supporting the activities of that organisation as opposed to commissioning services from the organisation.
- Where the ICB is giving a grant to a voluntary organisation, it may wish to use the NHS model grant agreement. It will need to use the NHS Standard Contract for commissioning clinical services or another appropriate contract for commissioning other services.

If the ICB purported to give grant funding to an organisation when in fact it should have awarded a contract for services in compliance with its obligations under the PSR or PCR (as appropriate), then there may be the following implications –

- VAT is not usually charged on grants. VAT is usually payable for a contract of goods, services or works.
- Breaching procurement obligations/ obligations under the PSR, with the resulting risk of challenge.

NHS GM will only enter into a Grant Arrangement if the following conditions are met:

- The organisation is a voluntary sector organisation with charitable status
- The organisation is a voluntary sector organisation without charitable status but is being awarded a grant up to a maximum £5000 limit.
- The organisation has made or intends to make a formal application for grant funding.
- The service being provided is not part of the services that NHS GM is statutorily required to commission.
- The service being provided either complements or is similar to the services that NHS GM is statutorily required to commission.
- NHS GM does not require the delivery of a service and is only contributing towards funding for the activities of a voluntary organisation.
- The grant funding is an economic and effective use of resources.

Grant arrangements will not be used as a mechanism to avoid competitive tendering or providing justification for a single tender and will be approved in accordance with NHS GM's Financial Scheme of Delegation.

xix) Grant Applications

Grant agreements should include an appropriate application by the voluntary organisation which covers the following:

- The benefits on patients and/or staff
- A clear plan to make it happen
- Originality, innovation, and inventiveness
- Plans and commitment to making the project sustainable beyond Grant funding and/or lead to a lasting change
- Plans to monitor and evaluate the impact and share findings and outcomes (both locally and in the wider healthcare sector, if appropriate)
- Why the project should be supported by grant funding
- How the idea aligns with NHS GM plans.

xx)Procurement Support

NHS GM should consider the range of collaborative procurement support services available where they offer potential financial and efficiency benefits to NHS GM.

xxi) Sustainable Procurement

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

NHS GM is committed to the development of innovative and diverse local and regional solutions and will deliver a range of activities to support this commitment.

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

xxii) Equality and Quality Impact Assessment

All public bodies have statutory duties under the Equality Act 2010. NHS GM aims to design and implement services, policies and measures that meet the diverse needs of their service users, population, and workforce, ensuring that none are placed at a disadvantage over others. When any change to services is to take place a full Equality and Quality Impact Assessment (EQIA) must be carried out prior to the change within the service.

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

xxiii) Conflicts of Interest

Throughout the procurement process, NHS GM will ensure that potential conflicts of interest are effectively managed as part of procurement activity in accordance with NHS GM's Conflict of Interest Policy.

Specifically (but not limited), around:

- Legal, Statutory, Mandatory, and Best Practice Requirements
- Managing Conflicts of Interest with contractors
- Transparency in Procuring Services
- Conflicts or potential conflicts of interest that may arise in relation to procurement
- When commissioning services from all providers participating including provider consortia or organisations in which primary care providers, including GPs, have a financial interest
- Decision-making when a conflict of interest arises in relation to primary medical care services

NHS GM notes the publication by NHSE on 16 June 2017 (updated 15 August 2018) of updated Statutory Guidance on Managing Conflicts of Interest for ICBs as well as the Procurement Policy Note 04/21 Applying Exclusions in Public Procurement, Managing Conflicts of Interest and Whistleblowing. NHS GM will both implement and adhere to this guidance and any updates to said guidance.

8. Practical Implementation and Process for Contracts and Monitoring

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

i) Contract Negotiation

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

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

ii) Contract Forms

All NHS GM officers must understand the terms and conditions that apply to a particular contract prior to award. In all instances NHS GM officers involved in procurement or market intervention must develop the contract in accordance with any technical guidance relevant to the contract. Additionally for contract awards under Framework Agreements where there are often optional contract provisions, NHS GM officers involved should clearly state the applicable optional contract provision to prospective bidders prior to the launch of any competition under that Framework Agreement to avoid the risk of any potential renegotiations post tender.

Contracts for Supply and Services and Purchase of Goods: All commitments (with exception of Framework agreements) must be on NHS standard terms and conditions for the purchase of goods/services, or any other standard format defined by Crown Commercial Services or other similar organisations, as applicable. Any deviation must be reviewed and recommended by NHS GM prior to executive approval. For the services awarded from an approved Framework provider, the relevant call-off order is to be used that references the agreed Framework terms and conditions.

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

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

Primary Care Contracts: NHS GM officers shall ensure they use standard contracts derived from the national primary care regulations for primary care services.

Section 75 and 76/256 Agreements: Section 75 of the NHS Act 2006 allows NHS Bodies and Public Bodies to establish joint agreements for the provision of healthcare-

related services. Section 256 of the NHS Act 2006 allows Public Bodies to commission healthcare-related services on behalf of the NHS.

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

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

iii) Modification of Existing Contracts

Contracts outside the scope of PSR

For Contracts that fall outside PSR regarding making variations to existing contracts, advice must be sought from NHS GM Procurement Team to determine whether a proposed variation constitutes a material change which may require the contract to be subject to competition regulations.

Healthcare contracts under the scope of PSR

For Contracts that fall within PSR, some modifications are permitted.

Modifications to contracts originally awarded under direct award process A or B

Where the original contract was awarded under direct award process A or B and the modification does not materially alter the character of the contract, then the modification is permitted.

If that modification is attributable to a decision of the NHS GM and the cumulative change in the lifetime value of the contract since it was entered into is £500,000 or more, the modification is still permitted, but the NHS GM must publish a transparency notice.

Modifications to contracts originally awarded under direct award process C, the most suitable provider process, or the competitive process

Where the original contract was awarded under direct award process C, the most suitable provider process, or the competitive process (including framework agreements), then modifications are permitted in the following instances:

- The modification is clearly and unambiguously provided for in the contract or framework agreement documents (i.e., the scope and nature of the potential change has been described in detail in the existing contract).

- The modification is solely a change in the identity of the provider due to succession into the position of provider following corporate changes (e.g., as the result of a corporate takeover, merger, acquisition or insolvency), and where the NHS GM is satisfied that the provider meets the basic selection criteria.
- The modification is made in response to external factors beyond the control of the NHS GM and the provider, including but not limited to changes in:
 - o patient or service user volume
 - o prices in accordance with a formula provided for in the contract documents (e.g., uplifts in prices published in the NHS Payment Scheme or index linking) which do not render the contract or framework agreement materially different in character.
- The modification is attributable to a decision of the NHS GM and does not materially alter the character of the contract or framework agreement, and the cumulative change in the lifetime value of the contract or framework agreement, compared to its value when it was entered into, is under £500,000 or under 25%.

If the NHS GM makes a permitted modification (to a contract that was originally awarded under direct award process C, the most suitable provider process, and the competitive process), it must publish a transparency notice where all the below apply:

- That modification is attributable to a decision of the NHS GM
- The cumulative change in the lifetime value of the contract or framework agreement is £500,000 or more and this represents less than 25% of the lifetime value of the original contract or framework agreement since it was entered into or concluded.
- To note contracts entered into before the commencement of the PSR must be modified in line with this section.

There will be situations where contracts or framework agreements need to be modified to reflect/account for changes to services/circumstances during their term. Depending on circumstance, permitted modifications can be made without following a new provider selection process, but in some cases will require the publication of transparency notices.

Modifications, which make an existing contract or framework agreement materially different in character are not permitted under the PSR regime and require a new provider selection process to be undertaken. NHS GM are expected to consider modifications in conjunction with the modifications (variations) provisions of the relevant contract or sub-contract (for example, the General Conditions of the NHS Standard Contract).

Modifications that are not permitted under PSR

Modifications that make the existing contract or framework agreement materially different in character are not permitted under PSR without undertaking a new provider selection process. Modifications are also not permitted where:

- the decision to make the modification is attributable to NHS GM and it represents (i) a cumulative change of 25% or more in the lifetime value of the original contract or framework agreement and (ii) £500,000 or more compared to the lifetime value of the original contract or framework agreement (when it was entered into).

In these cases, NHS GM must follow the appropriate decision-making process to select a provider (or group of providers) for the substantially changed service.

Contract modifications in urgent situations under PSR

Contract modifications may need to be made urgently. In these circumstances NHS GM must still be transparent about their decision-making. Where NHS GM may need to act urgently and award or modify contracts to address immediate risks to patient or public safety.

These circumstances include where:

- A new service needs to be arranged rapidly in an unforeseen emergency or local, regional or national crisis, e.g., to deal with a pandemic
- Urgent quality/equity/safety concerns pose risks to patients or the public and necessitate rapid changes
- An existing provider is suddenly unable to provide services under an existing contract (for example, a provider becomes insolvent or experiences a sudden lack of critical workforce) and a new provider needs to be found.

In urgent situations, NHS GM may make the following decisions:

- Re-award contracts held by the existing provider(s)
- Award contract(s) for new services
- Award contract(s) for considerably changed services
- Make contract modifications (without limitation).

An urgent award or modification must only be made by NHS GM when all the below apply:

- The award or modification must be made urgently
- The reason for the urgency was not foreseeable by and is not attributable to NHS GM, poor planning is not an acceptable reason
- Delaying the award of the contract to conduct a full application of the PSR would be likely to pose a risk to patient or public safety.

NHS GM must not use the urgent award or contract modification provisions in PSR if the urgency is attributable to NHS GM not leaving sufficient time to make procurement decisions and run a provider selection process. In these urgent circumstances, NHS GM:

- Are expected to limit the contract term or contract modification term to that which is strictly necessary. This is advised to be long enough to address the urgent situation and to conduct a full application of the PSR for that service at the earliest feasible opportunity. It is anticipated that contracts awarded under Regulation 14 will have a duration of no longer than 12 months. If the duration is to be longer, NHS GM must justify and record this decision.
- Must keep records of their decision-making, including a justification for using an urgent award
- Must be transparent about their decision through issuing an urgent award notice and publish the relevant Transparency notice detailing the below:-
- Justification for using the urgent circumstances exemption
- Name of the provider(s) to which the contract has been awarded and the address of its registered office or principal place of business
- The approach taken to select a provider and the process followed (i.e., urgent circumstance)
- Details of the individual/individuals making the decision
- Any declared or potential conflicts of interest of individuals making the decision (not including individual names) and how these were managed.

NHS GM may also make specific urgent modifications to extend the length of an existing contract during the standstill period if advice is being sought from the PSR review panel.

iv) Recording of Decision Making

NHS GM will maintain a register of procurement decisions taken, either for the procurement of a new service or any extension or material variation of a current contract, including:

- The details of the decision.
- Who was involved in making the decision (i.e. Approval Boards or committee members and others with decision-making responsibility); and
- A summary of any conflicts of interest in relation to the decision and how this was managed by NHS GM.

In the interests of transparency, the register of interests and the register of decisions will be publicly available and easily accessible to patients and the public, including by:

- Ensuring that both registers are available in a prominent place on NHS GM's website;
- NHS GM making both registers available upon request for inspection at their headquarters; and
- Ensuring contract awards are published in accordance with the relevant procurement legislation NHS GM will also consider any access needs that their stakeholders have. For example, individuals without internet access could be directed to the local library or invited to view the register(s) at NHS GM's headquarters.

The Audit of Conflict of interest is a key part of the annual governance statement in the Annual Report and Accounts and as such receives scrutiny from Auditors. Public procurement ethics must be observed to avoid accusations of impropriety, and it is, therefore, essential to maintain a complete audit trail. The basic test is “could I defend this action in public?”

v) Signature of Contracts

The signature of contracts must be done in line with NHS GM's Financial Scheme of Delegation and the Standing Financial Instructions, by those granted authority to do so on behalf of NHS GM.

vi) Recording of Contracts

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

NHS GM will also maintain a register of Transparency Notices.

vii) Contract Exit

NHS GM will follow the process to terminate or expire a contract in line with the Contract as per the applicable terms in the contract.

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

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

9. Finance Committee

The NHS GM Finance Committee is established to provide operational management of procurement activity within NHS GM in line with this policy.

The Finance Committee shall be provided regular review and monitoring report of NHS GM's Procurement Workplan to ensure that appropriate and timely procurement plans are developed in advance of contracts reaching their respective termination / expiry dates. The Market Management Team are working closely with CoG Subgroup to develop capacity plans that align with CIPs. This plan will be reported accordingly.

The Finance Committee will provide oversight to ensure appropriate processes have been followed and VFM achieved.

10. Freedom of Information

Section 1 of the Freedom of Information (FOI) Act 2000 gives a general right of access from 1 January 2005 to recorded information held by NHS GM, subject to certain conditions and exemptions. This information may be held in both manual and electronic form in accordance with the Data Protection Act 2018 and may be disclosed to third parties in accordance with the Act.

When preparing to enter into contracts, NHS GM must carefully consider their obligations under FOI and ensure any bidders/contractors are aware these will contain terms relating to the disclosure of information by them. NHS GM may be asked to accept confidentiality clauses, for example to the effect that information relating to the terms of the contract, its value and performance will not be disclosed.

FOI recognises that there will be circumstances and respects in which the preservation of confidentiality between public authority and contractor is appropriate, and must be

maintained, in the public interest. However, it is important that NHS GM makes the contractor aware of the limits placed by FOI on the enforceability of such confidentiality clauses relating to the disclosure of information.

11. Communication, Monitoring and Review (Including Staff Training)

NHS GM has established effective arrangements for communicating the requirements of this policy. This will include all new starters to the organisation being briefed on the requirements of this policy as part of their induction to NHS GM.

NHS GM will establish formal training and updates for all staff. Mandatory training will be provided to all staff who undertake a commissioning, procurement or contracting role.

The implementation of this policy, and the effectiveness of the arrangements detailed within it, will be monitored by NHS GM Audit Committee

NHS GM will agree to a method for monitoring the dissemination and implementation of this policy. Monitoring information will be recorded in the policy database.

NHS GM will ensure that this policy document is reviewed in accordance with the timescale specified at the time of approval. No policy or procedure will remain operational for a period exceeding three years without a review taking place

12. Equality and Diversity Statement

NHS GM commits to integrate equality and inclusion considerations into all stages of the procurement process. The NHS procurement policy aligns with the Equality Act 2010 and actively identifies and addresses any inequalities in procurement practices and outcomes. This includes ensuring that specifications, selection criteria, contract conditions, products services procured are accessible and inclusive not unfairly disadvantage any group.

Equality Act 2010

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

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

Due regard' in the context of procurement means consciously considering the relevance of the three aims of the duty to the individual procurement and ensuring that where equality issues are incorporated into the procurement process, it is done in a proportionate way (i.e. the actions taken are proportionate to the degree of relevance of the equality issue to the individual procurement). It is important that the issues approached in substance and with rigour substantively and with an open mind, it is not enough to just note that there will be no negative impact, as there are parts of the duty which look at whether positive improvements can be made.

In doing so, due consideration will be given to other disadvantaged groups such as people experiencing economic and social deprivation, carers, refugees and asylum seekers, people who are homeless, workers in stigmatised occupations, people may be geographically isolated, for example gypsy, Roma, and traveller communities.

The Relevance of Equality to Particular Contracts

At the beginning of any procurement exercise there are three key equality issues to consider.

Relevance

- o Equality is more relevant to some contracts than others
- o Equality is particularly relevant where there is interaction between providers and members of the public or NHS employees.

Proportionality

- o The more relevant equalities issues are, the more they need to be considered at each stage of the procurement process.
- o Look at the nature and purpose of each contract and the effect it could have on different groups of the community.
- o The size, value and length of the contract are also key considerations.
- o It may be appropriate to consider simpler procedures and requirements for some small, low value, one-off or short-term contracts.

Core Requirements

- o A "core requirement" is an essential part of the contract.
- o It is most likely when procuring services which are provided directly to the public or where there is direct contact between the providers staff and NHS employees.
- o Equality is more likely to be relevant to contracts for services but may also be a core requirement for contracts for goods or works.

This duty cannot be transferred to external suppliers, but NHS GM will consider its responsibilities and where appropriate it seek to include relevant contractual provisions into contracts with suppliers. We will seek to do this through all stages of our procurement process as appropriate.

Appendices A, B & C – can all be found on the Procurement SharePoint page and are subject to regular reviews and updates according with changes in legislation and policy.

- The Documents mentioned below can also be found on the Procurement Team SharePoint page: [Procurement Team Page](#) or for further information you can contact the Procurement Team via nhsgm.procurement@nhs.net Provider Selection Regime – Decision Making Record
- Key Criteria Examples
- NHS GM Commissioning Checklist
- Procurement Review Group Template
- Transparency Requirements