

## **Interim Strategy for the Procurement of Health Care Services**

### **Incorporating: Market Management Strategy and Representations (Disputes) Resolution Policy**

**1 April 2024 to 31 March 2025**

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### **Executive Summary:**

This document incorporates reference to legislative changes resulting from the introduction of the Health and Care Act 2022. These came into force on 1 January 2024 for the provision healthcare services only.

Further changes to procurement legislation resulting from the introduction of the Procurement Act 2023 are anticipated to be enacted from October 2024 and this strategy document will be reviewed in December 2024 to incorporate these additional changes which will apply to the purchase of goods and generic services. A comprehensive Procurement Policy document covering both the procurement of healthcare services and the procurement of goods and generic services will then supersede this document.

This strategy takes account of the latest Conflicts of Interest (COI) guidance, issued by NHS England, as a result of the introduction of the Provider Selection Regime and provides advice on the requirement to ensure that organisations bidding for GICB contract opportunities (including the commissioning of services from GP practices in which GPs have a financial interest) declare COIs as part of the market testing processes.

## **Section 1: Procurement Strategy – Healthcare Services**

### **1. Introduction:**

- 1.1 NHS Gloucestershire Integrated Care Board (GICB) is responsible for the commissioning of high quality, value for money healthcare services to the patients of Gloucestershire. GICBs procurement strategy sets out its approach to achieving its delivery objectives through the application of good procurement practice.
- 1.2 The objective of this policy is to provide a framework to ensure that all procurement activity is transparent; evidence based and delivers key business objectives. Clinical services procured should be innovative, affordable, viable, clinically safe, and effective. Clinical service specification documents should set stretched targets to improve health outcomes and the quality of patient experience.
- 1.3 This procurement strategy does not offer detailed advice for specific healthcare groups or activity but sets out guidance for GICB on how to decide on the appropriate activity to be undertaken whilst ensuring compliance with current procurement regulation and Department of Health procurement best practice guidance.
- 1.4 GICB aims to provide patients with greater choice and focusses on the quality of clinical outcomes, rather than targets and seeks to empower clinicians and other healthcare professionals to use their judgement to innovate. To achieve these aims, GICB will:
  - 1.4.1 Continuously review current healthcare services provision arrangements from a broad clinical and contractual perspective.
  - 1.4.2 Obtain quality information data to inform transparent and fair decision-making processes.
  - 1.4.3 Ascertain whether it is mandatory, desirable, or appropriate to invite competition in accordance / compliance with The Provider Selection Regime 2024.
  - 1.4.4 Actively manage the provider market, creating greater patient choice whilst maintaining quality outcomes
  - 1.4.5 Engage and work closely with the local community and a range of health care providers to deliver collaborative and integrated services.
  - 1.4.6 Apply robust, fair, and proportionate procurement processes that follow all mandated and 'good practice' requirements.
  - 1.4.7 Apply award criteria that takes account of quality & innovation, value, social value, Improving access, reducing health inequalities, and facilitating choice, Integration, collaboration, and service sustainability (Most Advantageous Tender)
  - 1.4.8 Put in place robust contractual arrangements to ensure service delivery.

**2. Procurement Legislative and Guidance Documents:**

- 2.1 GICB procurement staff will work in accordance with UK legislation and local organisational guidelines which will include, but not be limited to, the following legislative / guidance documents:

<b>Legislative / Guidance Documents:</b>
Cabinet Office Guidelines and Procurement Policy Notes
Crown Commercial Service Guidance
GICB Equality Strategy
GICB Gloucestershire Joint Health & Wellbeing Strategy

GICB Integrated Annual Operating Plan
GICB Constitution
GICB Public and Patient Engagement Strategy
GICB Quality Strategy
GICB Prime Financial Policies
GICB Strategic Commissioning Intentions
Legislation: Equality Act 2010
Legislation: Health and Social Care Act 2012
Legislation: Health and Care Act 2022
Legislation: NHS Procurement Act 2023
Legislation: Public Services (Social Value) Act 2012
NHS England: Operating Framework (Annual)
NHS England: Patient Choice Guidance (2023)

**3. Overarching Procurement Principles:**

3.1 GICB will work to secure the needs of patients who use services and to improve the quality and efficiency of those services, including through providing them in an integrated way. It will act transparently and proportionately and treat providers in a non-discriminatory manner.

Healthcare services required will be procured from providers that are most capable of delivering the overall objective and that provide best value for money. GICB will continually consider ways of improving services (including through services being provided in a more integrated way, enabling providers to compete, and allowing patients to choose their provider).

3.2 GICB will adhere to the principles of public procurement whilst undertaking all procurement activity as follows:

<b>Principle:</b>	<b>GICB Undertaking:</b>
<b>Transparency:</b>	State Commissioning Strategies and Intentions:
	Publish short / medium procurement intentions on the GICB external web site and through its Atamis procurement pipeline as appropriate.
	State outcomes of service reviews and whether a competitive tender, Direct Contract Award or other procurement process permitted by the Provider Selection Regime is to be used.
	Pricing tariffs and other payment regimes will be fair and transparent.
	Advertise suitable procurement opportunities and contract awards via Find a Tender and / or Contracts Finder and the GICB external website as applicable.

	Maintain an auditable competitive tender documentation trail (including any decisions not to tender such as the application of the Direct Award Processes A, B, C, and the Most Suitable Provider), providing clear accountability.
	Publish details of all contracts awarded on its external website, including contractor names, addresses, contract type, value, duration, and procurement process used.
<b>Proportionality:</b>	Commissioner resources to be proportionate to the value, complexity and risk of the service being procured.
	Contract duration to be proportionate to service type being commissioned.
	Whilst maintaining quality standards / patient safety, additional award criteria (including financials) to be proportionate to the value, complexity and risk of the service being procured and will not discriminate against smaller organisations such as voluntary sector / social enterprises etc.
	GICB will seek to minimise bidder tender costs by avoiding timetable delays and significant changes to scope
<b>Non-Discrimination:</b>	GICB will ensure that the entire procurement process and associated documentation will not contain bias towards any particular bidder
	All evaluations criteria and associated weightings will be fully disclosed
	All relevant information will be disclosed equally and in good time to all prospective bidders
<b>Equality of Treatment:</b>	GICB will not favour a particular market sector i.e., public over private. Award decisions will always be taken based on a bidders ability to deliver the service rather than on the organisational type.
	Finance and quality assurance checks will be applied equally to all bidders

**4. Procurement intentions:**

4.1 Procurement schemes undertaken are determined by GICB and are dependent on its annual Commissioning Intentions.

**5. Triggers for Competitively Tendering or to undertake a Direct Contract Award for Healthcare Services:**

5.1 New service requirement: Where GICB commissions a new service contract (a service not previously provided).

5.2 Contract expiration: Where an existing contract is coming to the end of its agreed term or can reasonably be considered to be likely to end for other reasons (for example a provider notifying commissioners that it is considering withdrawing service provision).

- 5.3 Failure to achieve quality standards: Where an existing provider is failing to achieve (or make sufficient progress on achieving) local or national quality standards or targets or is not meeting the reasonable expectations of service users.
- 5.4 Value for money: Where an existing service offers poor value for money when compared to other relevant local or national benchmarking data.
- 5.5 Service redesign: Where a new type of service differs significantly from that currently in place (in terms of service model, volumes or types of activity, or financial value) such that a new range of service providers or partnerships might offer advantages in terms of patient care or cost compared to that currently in place.

## **6. Decision to Competitively Tender or undertake a Direct Contract Award for the Provision of Healthcare Services:**

- 6.1 GICB, in reaching a decision will consider the anticipated benefit versus risk assessment which will cover, as a minimum, information in response to the following risk assessment checklist:
  - 6.1.1 Has the Commissioner considered the whole life costs of the proposed contract?
  - 6.1.2 Has the Commissioner clearly identified and documented the reason(s) for subjecting the healthcare service to a competitive tender or direct contract award process (see triggers for contesting a service, paragraph 5 above)?
  - 6.1.3 Is the Commissioner clear on the service specification and quality standards that are required for the healthcare service?
  - 6.1.4 Has the Commissioner identified any linked services which are highly likely to become clinically, operationally, or financially unviable for Gloucestershire residents and which may impact on the decision to competitively tender or direct award a new contract?
  - 6.1.5 Is there evidence of a sufficient market of providers, or potential providers, to minimise the risk of significant gaps in the service(s) concerned and to ensure that patient choice is maintained or expanded?
  - 6.1.6 Have current service costs been benchmarked, and an assessment of current and future demand and capacity been undertaken, such that the risk of increased costs is minimised and there is explicit information on affordability as part of the decision?
  - 6.1.7 Has the proposer ensured that other key co-commissioners have been informed of GICB's proposals, and that explicit agreement is being secured where a service is jointly commissioned for Gloucestershire residents?
- 6.2 Where a decision is taken by GICB to undertake a competitive tendering process or a direct contract award, GICB will adhere to the Provider Selection Regime.

## **7. Provider Selection Regime:**

- 7.1 The Provider Selection Regime Regulations (PSR) came into force on 1 January 2024.



The PSR is a set of rules for procuring health care services in England by organisations termed relevant authorities. Relevant authorities are:

- NHS England
- Integrated care boards (ICBs)
- NHS trusts and NHS foundation trusts
- Local authorities and combined authorities.

The PSR does **not** apply to the procurement of goods or non-health care services (unless as part of a mixed procurement), irrespective of whether these are procured by relevant authorities).

The PSR was introduced by regulations made under the Health and Care Act 2022. In keeping with the intent of the Act, the PSR has been designed to:

- Introduce a flexible and proportionate process for deciding who should provide health care services.
- Provide a framework that allows collaboration to flourish across systems.
- Ensure that all decisions are made in the best interest of patients and service users.

## 7.2 PSR introduces the following processes:

Direct Award Process A: May be used where there is no realistic alternative to the current provider.

Direct Award Process B: Where people have a choice of providers, and the number of providers is not restricted by GICB.

Direct Award Process C: Where the existing provider is satisfying the original contract and will likely satisfy the proposed new contract and the services are not changing considerably.

Most Suitable Provider: Allow GICB to make a judgement on which provider is most suitable based on consider of the key criteria. A transparency notice must be published. A standstill period of 8 days will apply.

The Competitive Process: Where the ICB wishes to run a competitive tender process.

## 7.3 There are five Key Criteria that must be considered when assessing providers under Direct Award Process C, the Most Suitable Provider Process, or the Competitive Process. These are:

- Quality and innovation
- Value
- Social value
- Improving access, reducing health inequalities, and facilitating choice
- Integration, collaboration, and service sustainability

## 7.4 GICB will follow the PSR regulations for all clinical healthcare procurement related activity. We will utilise the NHS England PSR toolkit available at: [NHS England » Provider Selection Regime toolkit products](#) this includes end-to-end process maps and decision flowcharts.

## 7.5 The PSR requires that:

- Transparency notices are published when a contract is awarded and in some situations before contract awards are made.
- The ICB will keep detailed evidence of its decision- and decision-making processes which it may be required to share with providers.
- An annual summary will be published which details how many contracts were awarded using the various provider selection processes as shown in 7.2 above.

7.6 Transparency notices that require publication under PSR:

	Direct Award A	Direct Award B	Direct Award C	Most Suitable Supplier	Competitive Process
<b>Clear Intentions:</b> Publish the intended approach in advance.				Yes	
<b>Clear Intentions:</b> Publish a notice for a competitive tender.					Yes
<b>Communicating Decisions:</b> Publish the intention to award notice			Yes	Yes	Yes
<b>Confirming Decisions:</b> Publish a confirmation of the award notice	Yes	Yes	Yes	Yes	Yes
<b>Contract Modification:</b> Publish a notice for contract modifications	Yes	Yes	Yes	Yes	Yes

7.7 The standstill period starts after the intention to award a contract notice is published. During this time representations can be made by providers and responded to. The standstill period only applies to the Direct Award Process C, Most Suitable Provider and Competitive Process.

- Representations must be made within the first eight working days of the standstill period. If a representation is received, then the standstill period must be extended.
- If no representations are received during the first eight working days, then the standstill period can come to a close and the contract can be awarded.
- The standstill period must close before a contract can be awarded. Therefore, if a representation is received then it must be considered and dealt with before the contract can be awarded.

7.8 Modifications are not permitted under the PSR if the modification is attributable to a decision made by the ICB and:

- The changes render the contract materially different in character or.
- The changes are over £500,000 (cumulative value per annum) and represent over 25% of the original contract value.

## **8. Procurement Processes:**

- 8.1 The procurement process starts from identification of need, the decision to market test through to the conclusion of a healthcare services contract and its on-going management. The development and management of provider markets to ensure capacity and capability is essential.
- 8.2 Once a decision has been made to procure, there are two procurement procedures available to GICB: The Open and Competitive Flexible procedures.
- 8.3 Advice should be sought from GICB procurement staff on the most appropriate route for each healthcare service tender.

## **9. Market Analysis:**

- 9.1 GICB procurement and contracts staff will use service specification detail to benchmark comparable contracts to determine a range of fair and appropriate service costs. This activity will be conducted routinely for all high value healthcare services and prior to determining whether formal procurement is undertaken.
- 9.2 Market analysis is conducted to determine if commercial sources exist and to establish whether a preferred contract option will result in fair and reasonable service costs. GICB should seek to determine:
- Likely (whole service) costs.
  - The types of organisations in the market place capable of delivering the required services.
  - Whether existing or new organisations have sufficient capacity to deliver the services solutions sought.
  - The most appropriate / proportionate procurement route.
- 9.3 Market analysis should allow GICB to recognise local SME's and voluntary sector organisations operating in the area and help GICB to develop a capacity building plan for these organisations where required. This is useful when making service commissioning and procurement decisions by identifying market trends, market stability and performance profile of key prospective bidders.
- 9.4 Capacity building is an opportunity to identify areas of strength in supplying organisations to GICB and setting out opportunities for their development. To achieve this, GICB staff should work with potential service providers, as requested, to offer support, advice, training appertaining to the competitive tender process. This should enable SME's to compete more fairly with larger organisations.

## **10. Provider Engagement:**

- 10.1 Engagement with potential providers of healthcare services is an essential element of effective commissioning. It is essential that both incumbent providers (where applicable) and prospective providers are included equally in the engagement process.

- 10.2 GICB Commissioners may, and in accordance with Department of Health and Social Care guidelines, use provider engagement to:
- Consider provider willingness / capability to deliver a service.
  - Establish / understand current provider landscape.
  - Lessons learnt from previous procurement schemes.
  - Assessing barriers to entry
  - Development and testing of service specifications.
  - Determine most appropriate procurement routes.
  - Establish provider approaches to cost, risk, innovation, capacity, service locations and staffing requirements.
- 10.3 Resulting specifications will focus on service outcomes and not specific bidder technologies to ensure that any procurement process is without prejudice.
- 10.4 GICB may instigate pre-procurement market engagement via the following means:
- Placement of a Contracts Finder advertisement (and relevant specific journal advertisements as applicable)
  - Public reference groups
  - External website notifications

## **11. Public and Patient Engagement:**

- 11.1 Integrated Care Boards are required to involve and consult patients and the public:
- In their planning of commissioning arrangements.
  - In the development and consideration of proposals for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which services are delivered to the individuals or the range of health services available to them.
  - In decisions affecting the operation of commissioning arrangements where the implementation of the decisions would (if made) have such an impact.
- 11.2 GICBs patient and public engagement will be conducted in accordance with its engagement strategy. The strategy will use The Engagement Cycle to inform its engagement activities.

GICB will actively engage and support patients and other members of the public in procurement processes to ensure:

- Their views inform the development of service specifications.
- Identification of service providers who better meet the needs of patients.
- Innovative approaches to service development are considered.
- Potential service providers are identified and able to bid for contract opportunities.
- Active participation in decision making panels including clarity about patient representation on panels, their role, terms of reference, support, and training.

The benefits of this approach include increasing public confidence and better relationships with providers of services. It also paves the way to improved monitoring and performance management, particularly if patients are also part of those monitoring processes.

- 11.3 GICB will keep the wider public informed, hold briefing events so that the public find out what is going on and about proposals being developed and ensure that Healthwatch Gloucestershire and locally elected representatives such as local MPs

and HCOSC members receive early briefings regarding planned procurement activities.

## **12. Procurement of Goods and Generic Services:**

- 12.1 Procurement for the supply of all goods and generic services is the responsibility of the South, Central & West Commissioning Support Unit (SCWCSU). GICB Operational Planning and Performance Directorate shall be responsible for monitoring the quality of the service provided by the SCWCSU.
- 12.2 The service level agreement between GICB and SCWCSU will contain key performance indicators to assist with the monitoring of the procurement service provided.

## **13. Waivers of standing orders**

- 13.1 GICB is committed to ensuring that healthcare services are procured in accordance with legislation. In some circumstances the need to request quotations or competitive tenders may be waived.
- 13.2 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 or contractor originally appointed through a competitive tender procedure.

## **14. e-Tendering:**

- 14.1 GICB procurement staff will conduct procurement processes via an e-tendering information technology system wherever possible. An automated system provides a secure and clear management audit trail.
- 14.2 From December 2023, GICB has elected to use the Atamis e-procurement and e-pipeline system for all procurement related activity.

## **15. Collaborative Procurement:**

- 15.1 GICB Procurement staff will design procurement work plans in accordance with year-on-year GICB commissioning intentions and any ad hoc in-year requirements as may arise from time-to-time. While it is envisaged that most procurement will be conducted in-house, GICB procurement staff will actively engage with South Central & West Commissioning Support Unit (SCWCSU) staff, other NHS procurement staff or nationally designated procurement teams to deliver complex / cross-boundary procurements where required.

The SCWCSU will provide transactional and generic services procurement to GICB in-line with its service level agreement.

- 15.2 GICB procurement staff will work collaboratively with its Integrated Care System partners on joint procurement initiatives where it is in the interests of all partners to deliver cost effective and integrated service solutions.

## **16. Contract Durations:**

- 16.1 The NHS Standard Contract will be applied for the majority of healthcare services procurements undertaken. GICB will take account of the following factors before finally determining contract duration (and prior to procurement advertisement):
- Overall contract value
  - Confirmation of re-current funding allocations
  - Complexity of the procurement process (i.e., nature of healthcare service to be commissioned and its interaction with other services and service providers)
  - Number of potential providers in the market place.

## **17. Social Value Legislation:**

- 17.1 The Public Service (Social Value) Act 2012 came into force in January 2013. Under this legislation, public sector organisations are required to consider how the services that they commission and procure might improve the economic, social, and environmental well-being of the area that they serve.
- 17.2 Social value is a broad term and can be interpreted in a number of ways but could mean; a local person for a local job, an NHS Trust commissioning local patient groups (at cost) to run consultation events or a public body contracting with a private firm who employs local / long-term unemployed to service its contract requirements.
- 17.3 GICB will consider the social value implications of all prospective procurement processes and incorporate its responsibilities under the Act in key procurement documentation. GICB will ensure that positive health, social and environmental outcomes are captured and assessed during the commissioning process at ITT stage and ensure that these added benefits are measured and linked to the performance of the contact.

## **18. Conflicts of Interest:**

- 18.1 The routine declaration and management of conflicts of interest is a key aspect of good governance, and critical both in maintaining public confidence in decision-making and in protecting staff, councillors, and trustees from allegations that they have acted inappropriately.

GICB must respond appropriately to effectively prevent, identify, and remedy conflicts of interest arising during the application of the PSR. GICB must ensure that its governance arrangements for making provider selection decisions can manage conflicts that arise. It may wish to give board committees or non-executive directors (or other senior persons independent of the decision-making process) a role in managing and resolving conflicts of interest relating to provider selection decisions.

The way conflicts of interest are managed needs to be sympathetic to the vision of collaboration and joint working set out in the NHS Long Term Plan and to the policy intent of the 2022 Health and Care Act in relation to bringing NHS organisations and local authorities together to collaborate in making decisions about care provision.

GICB is expected to follow and have regard to that vision and policy, when managing conflicts of interest around provider selection decisions.

18.2 GICB should manage conflicts of interests based on the following principles:

- A. All decisions made under the PSR must be clearly and objectively directed towards meeting the statutory functions and duties of GICB. Individuals involved in decisions relating to these functions are expected to act clearly in service of those functions and duties, rather than furthering their own direct or indirect financial, economic, or other personal, professional, or organisational interests.
- B. ICBs have been created with the intention of giving statutory NHS provider, local authority, and primary medical services (general practice) nominees a role in decision-making. These individuals will be expected to act in accordance with the first principle, and while the Regulations allow for the fact that an ICB member may also be an employee, director, partner or otherwise holding a position with one of these organisations, the possibility of actual and perceived conflicts of interest arising will remain. In addition, any member who is an employee, director, partner or otherwise holding a position within a provider taking part in a procurement process must recuse themselves from the decision-making process. For all PSR decisions, GICB must carefully consider whether an individual's role in another organisation may result in actual or perceived conflicts of interest and if so whether that outweighs the value of the knowledge they bring to the process.
- C. The personal and professional interests of all individuals involved in decisions about provider selection need to be declared, recorded, and managed appropriately, following GICBs established conflicts of interest arrangements. This includes being clear and specific about the nature of any interest and of any conflict that may arise with regard to a particular decision, and how any conflicts are managed for each decision. To fulfil the transparency requirements under the Provider Selection Regime, GICB must keep internal records of individuals' conflicts of interest and how these were managed.
- D. Any conflicts of interests and how they were managed must be published alongside the confirmation of the decision to select a provider. When the decision is made by a committee/group, it is advised that the interests of the committee/group as a whole are declared and not the names of individuals in the committee/group to whom they relate. When an individual makes the decision, it is advised that conflicts of interest are declared against the individual's job title rather than their name.
- E. Actions to mitigate conflicts of interest when making procurement decisions are expected to be proportionate and to seek to preserve the spirit of collective decision-making wherever possible. Mitigating actions are expected to account for a range of factors, including the impact that the perception of an unsound decision might have, and the risks and benefits of having a particular individual involved in making the decision. Mitigations may include:
  - Excluding a conflicted person from both the discussion and the decision-making
  - Excluding the conflicted individual and securing technical or local expertise from an alternative, unconflicted source
  - Arranging decision-making structures so a range of views and perspectives are represented, rather than potentially conflicted individuals being in the majority.
  - Convening a committee without the conflicted individual present, e.g., when dealing with particularly difficult or complex decisions where members may not

be able to agree, or to prevent an unsound decision being taken and/or the appearance of bias.

F. GICB must clearly distinguish between those individuals who are involved in formal decision-making and those whose input informs decisions but who are not involved in decision-making itself (such as through shaping GICBs understanding of how best to meet patients' needs and deliver care for its population). The way conflicts of interest are managed is expected to reflect this distinction. For example, where independent providers (including those in the VCSE sector) hold contracts for services, it would be appropriate and reasonable for GICB to involve them in discussions, such as about pathway design and service delivery, particularly at place level. However, this would be clearly distinct from any considerations around contracting and commissioning, from which they would be excluded.

G. Where decisions are being taken under the competitive process, any individual who is associated with an organisation that has a vested interest in the procurement must recuse themselves from decision-making during that provider selection process. This includes ICB members who are also employees, directors, partners, or otherwise holding a position within a provider when that provider is intending to take part in the procurement process.

H. The way conflicts of interest are declared and managed is expected to contribute to a culture of transparency about how decisions are made.

18.3 GICB has commissioned a bespoke COI training programme which is implemented at the start of each new procurement process. All staff involved in a procurement process, including external advisors, are mandated to participate in this programme.

## **19 Quality and Sustainability Impact Assessments:**

19.1 It is essential that services delivered improve quality and enhance patient experience. GICB has developed a Quality and Sustainability Impact Assessment which is used when there is any change to the way services are commissioned and delivered. The Impact Assessment includes:

- Duty of quality
- Patient experience
- Patient safety
- Clinical effectiveness
- Prevention
- Productivity and innovation

## **20. Net Zero Commitment and Carbon Reduction Plan for the Procurement of NHS Goods, Services and Works.**

20.1 Procurement Policy Note (PPN) 06/21, initially published in June 2021, set out how to take account of suppliers' Net Zero Carbon Reduction Plans in the procurement of major Government contracts. The NHS has committed to reaching net zero by 2040 for the emissions we control directly, and by 2045 for the emissions we can influence, through the procurement of goods, services and works. To achieve this goal, we will require the support of all our suppliers. To that end, the NHS has published the NHS Net Zero Supplier Roadmap, a series of milestones to help suppliers align with our net zero ambitions.



The 2024 CRP and Net Zero Commitment (NZC) policy sets out how, from 1 April 2024, the NHS will proportionately extend the CRP requirements to cover all procurements. It introduces a two-tiered approach, where a CRP requirement will be extended to a wider set of procurements, and a NZC (which includes selected key CRP requirements) will be required for lower value procurements. This one policy, two-tiered approach helps support suppliers of all sizes and at various stages of their sustainability journeys to align with the NHS's net zero ambition.

The requirements apply to the commissioning and purchasing of goods, works and services, (including pharmaceuticals and healthcare services) by in-scope organisations. In-scope organisations are defined as NHS organisations as well as organisations acting on their behalf.

20.2 From April 2024 Carbon Reduction Plan (CRP) requirements applicable to the commissioning and purchasing of goods, services and works for in-scope organisations are as follow:

- A full CRP will be required for procurements of high value (£5m per annum exc. VAT and above) and new frameworks operated by in-scope organisations, irrespective of the value of the contract, where relevant and proportionate to the framework. If suppliers already have a CRP in place, they meet all requirements of the Net Zero commitments.
- A Net Zero Commitment will be required for procurements of lower value (below £5m per annum exc. VAT and above the relevant Public Contracts Regulations (PCR) threshold). From April 2026, a Net Zero Commitment will also be required for procurements below the relevant Public Contracts Regulations threshold.

## **Section 2: Market Management Strategy**

### **1. Introduction:**

1.1 This strategy sets out the way in which NHS Gloucestershire ICB (GICB) will work to develop a healthcare market which supports delivery of its strategic commissioning plan. The strategy will identify the principles by which the organisation will enable the development of an appropriate provider market to meet local needs and improve patient experience. This strategy should be read in conjunction with GICBs Procurement Strategy (Section 1).

1.2 Our understanding of what constitutes an effective market management strategy in the NHS continually evolves. However, the dual functions of market analysis (understanding the current and potential market) and market development (supporting the development of innovation, quality, and a diverse health care market) are central to developing a competitive provider environment and informed decision making about procurement routes.

1.3 This strategy will support the commissioning organisation to understand the steps to good market management that enables the delivery of the strategic commissioning

plan and helps describe the market development needs at each stage in the commissioning cycle.

- 1.4 GICB is keen to ensure that the benefits of a competitive environment and new providers are harnessed. The ultimate aim in applying any system or market management techniques is to ensure that it results in an improvement in patient experience, outcomes, and value for money.

**2 Market Management in the NHS:**

- 2.1 As leaders of the local health system GICB has a responsibility to lead and manage the local NHS system. Market Management is a pivotal element of effective system management.

Step:	Description:
Ensuring Local Strategic Coherence	<ul style="list-style-type: none"> <li>▪ Engaging with the population around the strategy for the system (including formal consultation).</li> <li>▪ Ensuring that all system tools and techniques including market management result in a cohesive local system.</li> </ul>
Building and Working the Market	<ul style="list-style-type: none"> <li>▪ Design of local incentives and local choice offer.</li> <li>▪ Market development.</li> <li>▪ Procurement.</li> <li>▪ Contracting.</li> </ul>
Maintaining Market Effectiveness	<ul style="list-style-type: none"> <li>▪ Information for, and communication to the Patients, Public and the Market.</li> <li>▪ Managing service change through the market</li> <li>▪ Managing the market by:               <ul style="list-style-type: none"> <li>- Managing service / provider failure.</li> <li>- Managing disputes.</li> <li>- Driving quality in provision.</li> </ul> </li> <li>▪ Managing local political interface on market decisions.</li> </ul>

- 2.2 The ultimate aim in applying any system or market management techniques is to ensure that it results in an improvement in patient experience, outcomes, and value for money.

One of the best ways we can achieve this is to construct excellent provider relationships based on a mutual understanding of the service requirements through clear specifications for services based on good care pathways and models of care; effective contract performance monitoring and management systems, and to build up strong relationships with providers over time.

In some cases, it is necessary and appropriate to have competition for services in order to secure improved outcomes, maintain complex service integration and patient

experience. In other cases, it is possible and desirable to maintain existing suppliers, whilst continuing to drive quality improvements.

### **3 NHS Gloucestershire ICBs approach to Market Management:**

3.1 GICBs approach to market management will focus on three clear activities; contract management; market analysis (including robust procurement processes) and market development. Market analysis and market development activities need to be undertaken in a planned and prioritised way in order to maximise the benefits to be derived through any procurements offered to the market.

3.2 The vision for the future provider landscape for GICB is to provide greater diversity where this is appropriate underpinned by two key principles:

- Increasing choice for users of services.
- Provider development or contestability to drive up the quality of services and reduce costs.

This will be achieved through a considered use of competition to improve quality.

3.3 It is not always possible or appropriate to increase the number of providers in the market; there are other levers which need to be used to improve and shape the market and drive-up quality. These include using contract performance levers, patient user participation in service reviews and analysis of data in respect of quality of services.

3.4 Contract management:

The first stage of Market Management will be to consider the appropriateness of competitive tendering as a system lever. In some cases, as described in paragraph 5, below, robust contract management and effective supplier management, i.e., collaborating with our current providers of patient care will improve outcomes; patient experience; quality and reduce failings. There are some circumstances where it is immediately apparent that competitively tendering the service is not feasible or beneficial to improving outcomes and value for money:

- The service is a specialised service where provider designation has already taken place at a national or regional level.
- Where the service to be procured has such strong service alliances with an existing service that an extension to an existing agreement is appropriate (complex service integration).
- Where the cost of undertaking a competitive approach cannot be justified in light of the contract value (proportionality)
- Where GICB wishes to encourage provision from within a sector that might otherwise not prevail through a competitive approach
- Where failing to award a contract to a preferred provider would put other core services at risk i.e., recognising the need to safeguard against unintended consequences relating to service viability and tipping points.

3.5 GICB will also ensure it demonstrates how as many of the possible benefits associated with a competitive tender approach are realised through strong commissioning and specification of services.

### 3.6 Market analysis:

GICB will adopt an eight-step approach to market analysis as shown in the table below.

Delivering outputs for each of these steps will require joint working across organisation. GICBs contracts and procurement staff will support lead commissioners in understanding the tasks required to undertake market analysis.

Step:	Description:
<b>Agree Scope:</b>	Identify and clarify market segment area to be addressed: <ul style="list-style-type: none"> <li>▪ Geography.</li> <li>▪ Specific pathway.</li> <li>▪ Providers.</li> <li>▪ Competition and choice for patients.</li> </ul> Agree which part of the overall system for that market segment will be reviewed: <ul style="list-style-type: none"> <li>▪ Prevention.</li> <li>▪ Assessment.</li> <li>▪ Diagnostics.</li> <li>▪ Intervention.</li> <li>▪ Post-acute.</li> </ul>
<b>Assess Market Needs &amp; Demand:</b>	<ul style="list-style-type: none"> <li>▪ What services are required.</li> <li>▪ How can these be delivered.</li> <li>▪ Where are services required.</li> <li>▪ How will needs/demands change or grow.</li> </ul>
<b>Assess Current Market Performance:</b>	<ul style="list-style-type: none"> <li>▪ Comparative analysis of existing providers.</li> <li>▪ Articulate performance issues.</li> </ul>
<b>Provider Analysis:</b>	<ul style="list-style-type: none"> <li>▪ Map providers:               <ul style="list-style-type: none"> <li>▪ What capacity sits where.</li> <li>▪ What is the balance of spend/activity.</li> <li>▪ What access is there for the patient group.</li> </ul> </li> <li>▪ Provider performance:               <ul style="list-style-type: none"> <li>▪ Do they meet GICB requirements.</li> <li>▪ Do they meet patient needs.</li> <li>▪ Why over or under performing.</li> <li>▪ What plans to improve.</li> </ul> </li> </ul>
<b>Competitive Environment:</b>	<ul style="list-style-type: none"> <li>▪ Is there competition in the market.</li> <li>▪ What is the basis for competition.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Review barriers to entry or exit.</li> <li>▪ Who are the potential providers who could enter the market.</li> <li>▪ Are there examples of good practice elsewhere.</li> </ul>
<b>Map out a Preferred Future Landscape:</b>	<ul style="list-style-type: none"> <li>▪ What provision does the GICB want to see and where.</li> <li>▪ What will the basis for performance measurement be.</li> <li>▪ Should it be subject to competitive tendering.</li> <li>▪ Should integration be encouraged at certain points of the system.</li> </ul>
<b>Assessment of Market Intervention Levers:</b>	<ul style="list-style-type: none"> <li>▪ What can GICB do to change the provider landscape: <ul style="list-style-type: none"> <li>▪ Competitive tendering.</li> <li>▪ Direct award contracting.</li> <li>▪ Talking to service providers.</li> <li>▪ Incentives.</li> <li>▪ Penalties.</li> </ul> </li> </ul>
<b>Implementation Plan:</b>	<ul style="list-style-type: none"> <li>▪ What levers should be used and when.</li> <li>▪ How does GICB want to monitor market performance.</li> <li>▪ What information does GICB need to do this better in the future.</li> </ul>

### 3.7 Market Development:

The aim of market development activity is to encourage a range of providers, willing and capable of responding to GICB contracting opportunities and hence facilitating the commissioning of services of a high quality and which demonstrate effective use of NHS resources.

As services are reviewed and potentially redesigned and as commissioners gain a greater understanding of the needs of their patients, the provider(s) best placed to deliver the needs of the patient may well be different from the current service provider(s), this will only be possible if there are effective and willing providers in the market capable of responding to GICB contracting opportunities.

GICB procurement and contracting staff will undertake a number of activities to support the development of existing and potential providers.

- Develop and manage its relationship with existing and potential providers, including NHS, Private and Voluntary / Third Sector organisations.
- Advertise for new and potential providers using appropriate procurement processes.
- Provide advice to potential providers on the qualification and assurance process required to become a local provider of NHS Services
- Proactively shape the market through dialogue and procurement

- Qualify providers who are interested in providing services to support GICBs commissioning intentions. This will include an assessment of the providers capacity and capability to meet the minimum standards required to deliver NHS care under its Supplier Accreditation Process.
- Ensure that appropriate support is available to providers to facilitate their involvement in the procurement process.

#### **4. Developing Provider Competence and Capability:**

Where provider options are limited, and the preferred procurement approach requires the development of providers to ensure that appropriate services can be secured; GICB will identify and support the development of providers to enable market entry.

Support may take the form of advice, signposting to education, training, and business development opportunities. Any offer of support in this way must be transparent, proportionate, and non-discriminatory.

#### **5. Market Management Support to the Commissioning Cycle:**

##### **5.1 Assess needs / Review of provision:**

- Produce an updated map of current service providers relevant to the commissioning programme.
- Identify providers that could be involved in helping define the needs assessment.
- Provide market intelligence on the current provider market and any future trends.
- Identify provider market gaps and any failing providers.
- Are the current services delivering key national and local targets?
- Do current providers offer services that are consistent with best practice and local and national strategy?
- Determine the impact on the current and future provider market (will the introduction of new providers have a detrimental impact on the provision of services to patients)
- Where required begin a search for alternative providers.

##### **5.2 Decide Priorities and Investment:**

- Identify and qualify potential providers.
- Gain decision whether to invest in developing providers.
- Engage potential providers in the commissioning process.
- Is the effort of developing the supply market justified by the benefits for patients?

##### **5.3 Define the Service:**

- Ensure clear service specifications are developed.
- Identify the implications on the provider market of the proposed service.
- Support providers in bidding for services

##### **5.4 Shape Structure of Supply:**

- Provide assurance on the selection process of providers.
- Ensure provider requirement documents are robust.
- Oversee the commissioner selection process.

##### **5.5 Formalise and Communicate :**

- Clear awards process with feedback to unsuccessful providers which may help them develop for the future.
- Clear implementation plan for delivery of new services

## **6. Contract and Performance Management Frameworks:**

Market management is underpinned by effective contract, performance management (including quality) and procurement frameworks.

### **6.1 Contract Management:**

- Regular discussions with all key providers. Formal Contract Management Boards and appropriate subgroups in place for all major contracts
- Clear issue resolution / escalation processes
- Consistent and rigorous negotiation processes
- Use of the Standard NHS Contract (unless bespoke contract documentation is appropriate)

### **6.2 Performance Management:**

- Predictive modelling, analysis, and performance management
- Clear Key Performance Indicators (KPIs) and defined performance improvement targets.
- Regular and timely performance data analysed by efficiency, quality, outcomes, comparative benchmarks, and patient experience.
- Achievement of national targets and local KPIs.

### **6.3 Service Quality:**

Understanding the quality of services provided is a key element of market management. The following indicators will all be considered as part of a provider review i.e.

- Mortality rates.
- Readmission rates.
- Length of stay.
- First to follow up ratio's - outpatients.
- Conversion rates.
- DNA rates.

## **7. Measurement of Success:**

- Clear articulation of current and future provider market
- Robust contracts negotiated with clear outcome measures.
- Robust contract/performance management processes in place
- Capability is improved within the organisation.

## **8. Conclusion:**

This strategy sets out GICBs approach to market management and, together with the GICB procurement strategy, forms an integral part of GICBs approach to system management. It explains the way in which the dual functions of market analysis and market development will support delivery of GICBs commissioning intentions.

Market management is an evolving concept for the NHS and this strategy will require regular review to ensure that it is consistent with patient experience, national policy, and local requirements.



## Section 3: Representations (Disputes) Resolution Policy:

### 1. Introduction:

1.1 If a provider is unhappy about the way in which a procurement process has been undertaken, including which provider was awarded the contract, then they can make a representation to GICB. GICB must then consider the representation fairly and impartially.

### 1.2 Receiving Representations:

Providers may make a representation to GICB within the first eight working days following the start of the standstill period (i.e., eight working days starting with the first working day following the day after the intention to award notice has been published). Providers cannot submit a representation after that period, even if the standstill period has been extended in response to a representation from another provider.

The purpose of making a representation is to seek a review of the decision made, to determine whether GICB has applied the regime correctly and made an appropriate provider selection decision.

GICB is only obliged to respond to representations that meet all the following conditions:

- The representation comes from a provider that might otherwise have been a provider of the services to which the contract relates.
- The provider is aggrieved by the decision of GICB.
- The provider believes that the GICB has failed to apply the regime correctly and is able to set out reasonable grounds to support its belief.
- The representation is submitted in writing (which includes electronically) to GICB within eight working days of the start of the standstill period.

When awarding a contract based on a framework agreement, e.g., following a mini-competition, only providers that were party to the framework agreement and i) took part in the mini-competition but were unsuccessful, or ii) were excluded from the mini-competition, may make a representation to GICB.

GICB may also respond to representations that do not meet the conditions above.

GICB must follow the relevant transparency requirements for the approach they take and must keep internal records of their decision-making.

### 1.3 Considering Representations:

GICB should ensure that appropriate internal governance mechanisms are in place to deal with representations made against provider selection regime decisions. To this end, GICB should, where possible, ensure that decisions are reviewed by individuals not involved in the original decision. Where this is not possible, GICB should ensure that at least one individual not involved in the original decision is included in the review process.

If GICB is considering representations on the same issue from multiple providers, it may consider these together if appropriate.

Where a representation is received within the eight working days, GICB:

- A. Must ensure that the provider is afforded an opportunity to explain or clarify its representation(s) if these are not clear.
- B. Is expected to provide an indicative timeframe for when the representation might be considered by, and when the provider might reasonably expect a decision to be made.
- C. Must provide any information requested by the provider that GICB is required to keep under the regime as soon as possible, except where this:
  - Would prejudice the legitimate commercial interests of any person, including GICB.
  - Might prejudice fair competition between providers.
  - Would otherwise be contrary to the public interest.
- D. Must review the evidence and information used to make the original decision, taking into account the representations made.
- E. Must consider whether the representation has merit (e.g., it identifies that the process has not been correctly followed or brings to light information that has a bearing on the decision reached).

The provider that made the representations is expected to respond promptly and concisely to questions from GICB about the points it has made, and if it cannot respond within a reasonable timeframe then it is expected to provide a justification.

GICB is expected to allow sufficient time and opportunity for the provider that made the representations to respond to questions from GICB. In the event that the provider fails to respond / communicate, then it is for GICB to decide whether to complete its assessment of the representations and communicate their decision to the provider.

#### 1.4 Outcome of Representations:

Where GICB finds that a representation has merit (e.g., it identifies that the process has not been followed correctly or brings to light information that has a bearing on the decision reached), it must further consider whether this impacts on the intention to award a contract to the selected provider. It must then decide whether to:

- Enter into a contract or conclude the framework agreement as intended.
- Go back to an earlier step in the selection process, either to the start of the process or to where a flaw was identified, rectify this, and repeat that step and subsequent steps.
- Abandon the provider selection process.

GICB must communicate the decision described above promptly and in writing, to:

- The provider that made the representation
- The provider to which GICB intended at the beginning of the standstill period to award the contract, or all providers with which GICB intended at the beginning of the standstill period to conclude the framework agreement.

The standstill period can only end once GICB has reviewed its decision, shared its conclusion (in writing) with the relevant providers, and concluded that it is ready to award the contract, or that it is going to return to an earlier step in the process, or abandon the process.

GICB must allow at least five working days following the day on which they sent their response to the provider, before the standstill period ends. This time allows the provider to consider GICB's response, seek further clarifications, and to consider whether to request a further review by the Independent Patient Choice and

Procurement Panel. This time also allows GICB to reconsider their decision and make any subsequent decisions if necessary. GICB must communicate any such further decision in writing to the provider (as outlined above).

If a panel review is requested and accepted, then the standstill period would usually continue until after the Independent Patient Choice and Procurement Panel has given its advice and GICB has made its further decision in light of that advice.

1.5 Independent Patient Choice and Procurement Panel:

NHS England has established the Independent Patient Choice and Procurement Panel to provide independent expert advice to relevant authorities, including GICB, with respect to the review of PSR decisions during the standstill period, and separately to support reviewing decisions with respect to the application of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (as amended).

If a provider remains unsatisfied about the response given by GICB to their representations, then that provider may seek the involvement of the panel. The panel may consider whether GICB complied with the Regulations and may provide advice to GICB. GICB should then make a further decision about how to proceed.

1.6 The Chair and the Panellists:

The panel Chair presides over the Independent Patient Choice and Procurement Panel. While there is a single Chair for the panel, the panel members reviewing representations in relation to the PSR are different to those reviewing patient choice complaints.

Panel members for the PSR element of the panel are independent experts who are made available by, or endorsed by, NHS England or the Secretary of State for Health and Social Care to provide advice relating to GICBs compliance with these Regulations.

Panel members must be able to offer an impartial and unbiased opinion, and they must not have any conflicts of interest in the provider selection process in question. This means that panel members must not have, directly or indirectly, a financial, economic, or other personal interest that might be perceived to compromise their impartiality and independence in the context of the provider selection process in question. Panel members must recuse themselves from providing advice on any provider selection processes where they have a conflict of interest or a perceived conflict of interest.

1.7 The PSR Review Panel Process of the Independent Patient Choice and Procurement Panel:

If a provider wishes to request the panel to consider their representation further, then they must submit their request through the panel's website within five working days of receiving GICBs decision following GICBs review of their representation.

If the provider submits a request for advice from the panel, GICB will be notified, and GICB should:

- Keep the standstill period open for the duration of the panel's review.
- Make a further decision once it has considered the independent expert advice.

In exceptional circumstances, GICB may conclude that it is necessary to enter into a new contract before the panel can complete its review and share its advice. In those

circumstances, GICB is expected to note the advice of the panel for the next time they use the PSR to arrange health care services.

Where multiple providers seek the involvement of the panel, in relation to the same provider selection process, the panel may choose to address the points raised by each provider individually or consider all of the points together. The standstill period should continue until the last advice is provided (unless in exceptional circumstances).

If the provider does not submit their request to the panel within the five working day period, or the panel does not accept the request for advice, then at any point after the end of that period, GICB can bring the standstill period to an end and proceed to award the contract to their chosen provider.

The panel will set out acceptance criteria to assess whether a request should be reviewed, and prioritisation criteria to determine the priority/urgency of a particular case. The acceptance and prioritisation criteria will be published.

Information requested by the panel from GICB for the purposes of offering advice, and provided by GICB, does not breach any obligation of confidence owed by GICB. However, it may be subject to restrictions on disclosure imposed by other pieces of legislation.

Where the panel accepts a representation for review, it will endeavour to consider it and share advice, or a summary of its advice, with the provider and GICB within 25 working days. However, this timeframe is indicative and contingent on the engagement and timely responses of the provider and GICB throughout the review process.

The panel will also publish its advice, or a summary of its advice.