



**Castle Point and Rochford
Clinical Commissioning Group**

Procurement Policy

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Glossary

Term	Definition
Accelerated procedure	where the relevant timescales for the particular type of procurement process can be shortened, e.g. in certain circumstances where a procurement is "urgent".
Award criteria	means the list of key criteria that is used to assess a supplier's tender.
Call-off Contract	means an individual contract awarded under a framework agreement for the provision of particular services, goods or works.
CCS	means the Crown Commercial Service and brings together policy, advice and direct buying; providing commercial services to the public sector.
Common Market	a single market within the European market in which the free movement of supplies, services, capital and persons is ensured and in which European citizens are free to live, work, study and do business.
Contract Notice	a notice for any contracting opportunity to facilitate expressions of interest from the market.
Contracting Authority	is a body that is subject to the procurement Regulations. A list of the relevant organisations is defined and included in Regulation 2(1) of the Public Contracts Regulations 2015 as amended from time to time. There are also some "catch all" statements covering public bodies not specifically included in the list.
Cross-border	means movement, activity, relevance or interest across a border between two member states.
EC	means the European Commission.
Framework	means an umbrella agreement which establishes the basis on which subsequent requirements for supplies, services or works can be met by suppliers appointed to the framework.
ITT	means a document which invites contractors and suppliers to bid for the provision of supplies, services or works.

Light Touch Regime Services	the services listed in Schedule 3 of the Public Contracts Regulations 2015. Only some of the EU procurement rules as set out in Public Contracts Regulations 2015 apply – namely, obligations relating to advertisement, technical specifications, post-award information and principles of equality, proportionality, transparency and non-discrimination. Healthcare services that are subject to the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 are subject to the Light Touch Regime.
MEAT	means ‘Most Economically Advantageous Tender.’ MEAT enables tender evaluation on the basis of the quality of the tender offer as well as the price. The quality is scored against a set of award criteria identified for each tender.
Mini-Competition	a mini competition is held with all those suppliers within a framework agreement who are capable of meeting a particular need when the details of the framework agreement are not sufficient to enable an immediate call-off. Where a procuring party wishes to procure under a framework agreement but the framework has insufficient information to allow the procuring party to confirm which supplier would offer the most economically advantageous tender, then a mini-competition is the method used to select a supplier.
OJEU notice	OJEU the European Union's Official Journal.means a standard form notice placed in the European Union's Official Journal confirming that a contracting authority is intending to procure supplies, services or works.
Pre-Qualification Questionnaire (PQQ)	a PQQ enables a contracting authority to evaluate the suitability of potential suppliers in relation to their technical knowledge and experience, capability and financial and economic standing. PQQs are used in the restricted procedure, negotiated procedure and competitive dialogue procedure as a means of selecting the bidder to go forward to the next stage of the procurement process.

Principles	<p>means the general EU principles of</p> <ul style="list-style-type: none"> • Freedom of movement of supplies; • Freedom of establishment; • Freedom to provide services, <p>and the principles deriving from these, such as the principles of:</p> <ul style="list-style-type: none"> • Fairness, Openness. • Equal treatment. • Transparency. • Non-discrimination. • Mutual recognition. • Proportionality. <p>And, in the UK, where there is a spend of public money, the procurement process should comply with the following additional principles:</p> <ul style="list-style-type: none"> • Consider value for money (VFM); • Maximise the efficient use of public money; and • Maintain competitiveness and fairness across the EU.
Prior information notice (PIN)	<p>publication by an authority in the OJEU of details of what they intend to procure in future. Use of a prior information notice can reduce some of the timescales in a procurement. The Public Contract Regulations 2015 also allow some PIN notices to double up as Contract notices.</p>
Procurement Regulations	<p>generally used to refer to the Public Contracts Regulations 2015</p>
Public Contracts Regulations 2015 (PCR2015)	<p>means the Public Contracts Regulations 2015 (As amended from time to time). This is the UK legislation implementing the Public Sector Directive 2014/24/EU setting out procedures for the award of contracts for supplies, services and works.</p>
Selection criteria	<p>means criteria used at the PQQ stage to select the bidders that are to proceed to the next stage. Selection criteria should only relate to technical and professional capability and financial and economic standing and certain grounds for disqualification.</p>
SME	<p>stands for small and medium-sized enterprises – as defined in EU law: EU recommendation 2003/361. The main factors determining whether a company is an SME are: number of employees and either turnover or balance sheet total.</p>

Sub-OJEU	means a contract for supplies, works or services that falls below OJEU thresholds. In some rare cases, a sub-OJEU contract may have cross-border interest, and would then be caught by the Procurement Regulations
TFEU	means the Treaty on the Functioning of the European Union. The TFEU sets out organisational and functional details of the European Union.
Value for Money or VFM	is a term used to assess whether or not an organisation has obtained the maximum benefit from the supplies and services it both acquires and provides, within the resources available to it. Economy - careful use of resources to save expense, time or effort. Efficiency - delivering the same level of service for less cost, time or effort. Effectiveness - delivering a better service or getting a better return for the same amount of expense, time or effort.

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Policy Statement

NHS Castle Point and Rochford CCG procurement will be in proportion to risk and will be used to support the clinical priorities, health and well-being outcomes and wider CCG objectives which are included in the Integrated Plan and NHS Constitution

- Increasing general market capacity to promote patient choice and meet the demand requirements of our population;
- Using appropriate procurement mechanisms to facilitate improvements in choice, quality, efficiency and access and responsiveness; and
- Stimulating innovation.

If the CCG delivers effective commissioning and procurement practice, and engages well with all stakeholders then the service outcomes associated with this policy will be that:

- Patients experience the NHS and associated social care services as a joined-up personalised service in which they can exercise choice, rather than a disconnected set of services which they are required to navigate;
- Patients and service providers are treated fairly with dignity and the respect due to them at all times;
- Clinical decision-making and healthcare delivery is in line with evidence-based best practice and takes account of value for money; and
- The logistics of healthcare delivery, within and across different care settings, are designed to meet patient clinical needs, whether long-term or acute, in the most effective way.

The CCG believes that it will only be able to deliver its vision in collaboration with others. Our success will depend upon close partnership working. We are committed to working in strong partnership with the local community, local authority and healthcare providers.

The CCG will develop collaborative and integrated service delivery with other health and social care economies where it is proven that this adds value.

Joint Procurements

Where a joint procurement is to be pursued by two or more CCGs, then the procurement will be underpinned by a Memorandum of Understanding and a Collaborative Agreement between the parties that will, as a minimum, set out

- the objectives of the procurement,
- identify which CCG will act as the lead,
- the approvals and reporting processes,
- roles and responsibilities within the project,
- how legal costs will be shared,
- how risks and benefits are shared
- dispute resolution arrangements and
- exit arrangements from the procurement.

1.2 PURPOSE AND OBJECTIVES OF THE POLICY

This procurement policy sets out the framework within which the CCG will work to ensure that the development of commissioning strategies and any associated

procurement directly contributes to the CCG's corporate aims and objectives and meets legal requirements.

The Policy objectives are:

1. To set out the principles, rules and methodologies that the CCG will work to and clearly outlines how and when it is appropriate to seek to introduce contestability and competition as a means of achieving the best clinical outcomes and achieve value for money;
2. To set out the approach for facilitating open and fair, robust and enforceable contracts that provide value for money and deliver required quality standards and outcomes, with effective performance measures and contractual levers;
3. To describe the transparent and proportional process by which the CCG will determine whether health and social services are to be commissioned through existing contracts with providers, competitive tenders, via a framework approach or through a non-competitive process;
4. To enable early determination of whether, and how, services are to be opened to the market, to facilitate open and fair discussion with existing and potential providers and thereby to facilitate good working relationships;
5. To set out how the CCG will meet statutory procurement requirements primarily the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013, and the Public Contracts Regulations 2015;
6. To ensure the CCG does not engage in anti-competitive behaviour, and protect and promote the right of patients to make choices about their healthcare; and
7. To enable the CCG to demonstrate compliance with the principles of good procurement practice:
 - Openness
 - Transparency
 - Proportionality
 - Non-discrimination
 - Equality of treatment

1.3 SCOPE OF POLICY

This policy applies to all staff and members of the CCG Board or its sub-committees, and any third party working in association with, or on behalf of, the CCG.

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

It applies to all commissioning processes and procurement activity and decision making related to the delivery of healthcare services:

1. the development and approval of specifications for services

2. determination of which organisations shall provide services
3. determination of whether a service should be decommissioned

This policy should be read in conjunction with:

- The CCG Constitution and Prime Financial Policies
- The CCG Detailed Financial Policies
- The CCG policy of Standards of Business Conduct (Conflict of Interest)
- The CCG policy on Anti-fraud, Bribery and Corruption
- Castle Point & Rochford Health and Wellbeing Plan
- Castle Point & Rochford CCG Integrated Plan
- The Castle Point & Rochford CCG Quality Strategy
- The Castle Point & Rochford CCG Communications and Engagement Strategy
- The Castle Point & Rochford CCG Equality Strategy
- The Castle Point & Rochford CCG Organisational Development Plan

1.4 GUIDING PRINCIPLES THAT UNDERPIN THIS POLICY

There are four over-arching principles of public sector procurement:

Transparency: Making commissioning intent clear to the market place, including the use of sufficient and appropriate advertising of tenders, transparency in making decisions not to tender, and the declaration and separation of conflicts of interest;

Proportionality: Making procurement processes proportionate to the value, complexity and risk of the services contracted, and critically not excluding potential providers through overly bureaucratic or burdensome procedures;

Non-discrimination: Having specifications that do not favour one or more providers. Ensuring consistency of procurement rules, transparency on timescale and criteria for shortlist and award; and

Equality of treatment: Ensuring that all providers and sectors have equal opportunity to compete where appropriate; that financial and due diligence checks apply equally and are proportionate; and that pricing and payment regimes are transparent and fair.

The CCG will demonstrate compliance with these principles in the following ways:

1.4.1 Transparency

- Stating and publishing commissioning strategies and intentions;
- Stating the outcome of service reviews including how service provision will be secured;
- Advertising of Procurement (where applicable) and notification of Contract Award;
- Ensuring transparency of documentation, processes and decisions;

- The CCG will robustly manage potential conflicts of interest and ensure that these do not prejudice fair and transparent procurement processes;
- The CCG will hold GPs to the GMC Good Medical Conduct guidance and report any infringement;
- The CCG will provide feedback to all unsuccessful bidders; and
- Any complaints regarding the procurement process will be handled through an explicit and publicised dispute resolution process.

1.4.2 Proportionality

- The CCG will ensure that procurement processes are proportionate to the value, complexity and risk of the products to be procured, and will be cognisant of bidder capacity; and
- The CCG will define and document procurement routes, including any streamlined processes for low value/local supplies and services, taking into account available guidance.

1.4.3 Non-Discrimination

- The CCG will ensure that tender processes and documents will be non-discriminatory and transparent at all times. This includes our obligations under our equalities and diversity duty;
- The CCG will inform all participants of the applicable rules in advance and ensure that the rules are applied equally to all. Reasonable timescales will be determined and applied across the whole process; and
- The CCG will ensure that shortlist criteria are neither discriminatory nor particularly favour one potential provider.

1.4.4 Equality of Treatment

- The CCG will ensure that no sector of the provider market is given any unfair advantage during a procurement process;
- The CCG will ensure that basic financial and quality assurance checks apply equally to all types of providers;
- The CCG will ensure that all pricing and payment regimes are transparent and fair (according to the DH Principles and Rules Document);
- The CCG will retain an auditable documentation trail regarding all key decisions; and

- The CCG will hold all providers to account, in a proportionate manner, through contractual agreements, for the quality of their services.

- The new NHSE Statutory Guidance for CCGs for Managing Conflicts of Interest (published in June 2016) – see Appendix 2 & 4, states that a ‘Register of Procurement Decisions and Contracts Awarded’ should document key procurement decisions and cover the following key aspects:

- Procurement Description, Existing Contract or New Procurement, Type of Procurement, CCG Clinical Lead, CCG Contract Manager, Decision Making Process, Summary of Conflicts declared & how these conflicts were managed, Contract Award Details, Contract Value

2. SECTION 2

2.1 ACCOUNTABILITIES AND RESPONSIBILITIES

2.1.1 Lead Manager

Overall day to day responsibility for procurement within the CCG rests with the Chief Finance Officer with accountability to the Accountable Officer.

2.1.2 Procurement Support

The CCG will engage the services of a professionally qualified procurement team, who will develop and agree robust operating procedures, compliant with all relevant guidance regulation and legislation, and designed to achieve NHS Procurement Standards.

The CCG will ensure it has access to specialist legal advice for large and complex procurements to facilitate and monitor compliance with these rules and regulations, as well as to demonstrate effective procurement processes

The responsibilities of the Procurement Lead and Commissioning Project Lead will be clearly set out in respect of each project.

The CCG will have systems in place to assure itself that Attain's business processes are robust and enable the CCG to meet its duties in relation to procurement.

2.1.3 Authority

The CCG will be directly responsible for:

- Approving decisions to procure (or not to procure a service) based on submission of a business case;
- Approving procurement route;
- Signing off specifications and evaluation criteria;
- Signing off decisions on which providers to invite to tender;
- Receiving a full procurement report agreed between the project lead and procurement lead in order to make the final decisions on the selection of the provider; and
- Approving any variation to NHS Standard Contract, and specifically any variation to the duration of the contract and extension arrangements.

2.2 GOVERNANCE

<p>Level One Castle Point & Rochford CCG Board (excluding any member who may have a potential Conflict of Interest)</p>	<ul style="list-style-type: none"> • Agree Business Case • Agree the procurement route and contract specification • Endorse the decision on the preferred bidder • Give authority to award the contract
<p>Level Two Procurement Committee</p>	<ul style="list-style-type: none"> • Monitor and assure work of procurement team • Sign off the shortlist of bidders, the evaluation scoring criteria, the recommendation to the Governing Board to appoint a preferred bidder and the award of the Contract • Assure the CCG Board on the process
<p>Level Three Procurement Project Team Castle Point & Rochford CCG Officers, Clinical and other Advisors</p>	<ul style="list-style-type: none"> • Manage the procurement • Develop all tender and contract documents • Propose the evaluation scoring • Evaluate assessment and negotiate the contract • Prepare update and briefing reports for the Finance and Performance Committee and Governing Board.

2.2.1 Standing Orders

The CCG will ensure it has the appropriate Standing Orders (and any other relevant governance documents) of the NHS organisation to ensure the procurement of supplies and services will be in accordance with all the regulations, guidance and local delegated authorities, reducing the risk of any challenge of inappropriate application of the rules regulations or the principles set out therein.

The CCG will ensure it has access to specialist legal advice for large and complex procurements to facilitate and monitor compliance with these rules and regulations, as well as to demonstrate effective procurement processes.

2.2.2 Scheme of Delegation and Sealing & Signing of Contracts

The signing and sealing of contracts is set out in the Constitution, and is reproduced below for completeness. The use of the seal is NOT required for NHS or contracts with government bodies, including Local Authorities. For NHS or government body contracts the Accountable Officer and Chief Finance Officer must sign.

Contract Value	Approving Committee	Approved to Sign	Use of Seal	Other matters specified in Scheme of Delegation
All contracts up to £50,000 (£75,000 for contract exceeding 12 months)	N/A	Tier 4 Managers	Not required	
All contracts from £50,001 to £100,000 (£75,001 to £150,000 for contract exceeding 12 months)		Tier 3	Not required	
All contracts from £100,001 to £500,000 (£150,001 to £750,000 for contract exceeding 12 months)		Tier 2	Not required	Either Operational Executive of Transformation Delivery Group may approve the introduction or discontinuance of any significant activity or operation. An activity or operation shall be regarded as non-significant if it has a gross annual income or expenditure (that is before any set off) less than £500,000.
All contracts from £500,001 to £1,000,000	Operational Executive or Clinical Executive Committee	Tier 1	Not required unless value exceeds	

(£750,001 to £1,500,000 for contracts exceeding 12 months)	Delivery Committee or Clinical Executive Committee		£1,000,000	
All contracts from £1,000,001 to £3,000,000 (£1,500,001 to £4,500,000 for contracts exceeding 12 months)	Operational Executive or Transformation Delivery Committee	AO & CFO to sign	Seal Required	
All contracts from £3,000,001 (£4,500,000 for contracts exceeding 12 months)	CCG Board	AO & CFO to sign	Seal Required	

2.2.3 When is procurement required?

In accordance with the CCG Corporate Governance Manual, the following must apply:

- All new non-clinical contracts for the supply of Goods and Services with an anticipated value of £164,176 over the life of the contract must be subject to a formal procurement.
- All new healthcare services - that are subject to the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 - with an anticipated value of £589,148 over the life of the contract must be subject to a formal procurement. Typically, this will reflect the principles of EU Procurement approach.
- All new Light Touch Regime services with an anticipated value of £589,148 over the life of the contract must be subject to a formal procurement. Typically, this will reflect the principles of EU Procurement approach. ..
- Below the above thresholds, a structured competitive quotation process must be used as follows:

Value (£)	Number of quotations required	Process	Approval
5,001 -50,000	3	based on specifications or terms of reference prepared by, or on behalf of, the Clinical Commissioning Group	Director Level Approval
50,001-164,176	4	For non-Light Touch Regime Services: Competitive Quote procedure with a written specification and a detailed option appraisal. At least 4 written quotes	CFO/CO
50,001-589,148	4	For Light Touch Regime Services including Healthcare Services: Competitive Quote procedure with a written specification and a detailed option appraisal. At least 4 written quotes	To be confirmed by each CCG – CFO/ CO?

- In the event that the financial threshold for procurement is subsequently exceeded within a competitive quotation process, this shall be reported to the Accountable Officer and Chief Finance Officer and be recorded at the CCG Audit Committee.
- The only exceptions where formal tendering need not be applied are:
 - in very exceptional circumstances where the AO 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 CCG record;

- where the requirement is covered by an existing contract and there is an agreed and signed record of a contestability and value for money assessment;
- where a consortium arrangement is in place and a lead organisation has been appointed to carry out tendering activity on behalf of the consortium members;
- where the timescale genuinely precludes competitive tendering (failure to plan the work properly would not be regarded as a justification for a single tender);
- where specialist expertise is required and is available from only one source;
- when the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants 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;
- for the provision of legal advice and services providing that any legal firm or partnership commissioned by the CCG is regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council for England and Wales in relation to the obtaining of Counsel's opinion) and are generally recognised as having sufficient expertise in the area of work for which they are commissioned.

The CFO will ensure that any fees paid are reasonable and within commonly accepted rates for the costing of such work.

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 procedure. 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 CCG record and reported to the Audit Committee at each meeting.

2.2.4 Waivers

Formal tendering procedures may only be waived in accordance with the circumstances set out in the CCG Constitution. A copy of the CCG Waiver form is attached as Appendix 1.

2.2.4.1 Pilots

A pilot can only be used where the CCG is developing an innovative service / different commercial models etc and need to test the service for a short term period (up to 12 months) to ensure that it meets the requirements. Guidance to providers within the pilot specification should include including setting evaluation criteria to evaluate necessary outcomes etc. Pilot contracts should not be a direct award either – a procurement process should be run to appoint a provider to deliver the pilot

The process to run a pilot is as follows:

1. A Pilot needs approval from the Board to meet Standing Financial Instructions (SFI) requirements which could be the waiver that you mention
2. You cannot run a Pilot where the service is already in existence.

Once the Pilot has closed, then the Options are:

- a. Do nothing
- b. Go out to full Procurement

Once the pilot has Board approval the following factors need to be considered:

- Market Engagement activities should be developed to let the market know that you are carrying out the pilot. This should help to minimise challenge as the market is aware that there will be an opportunity in the future
- It is important that before the pilot commences that you identify the rationale for a pilot and the expected outcomes. Pilot contracts should have a clear end date and include a process for evaluating success at intervals during the pilot period.

Pilot contracts should only be extended where the CCG has evaluated that it is successful and want to undertake a procurement process to appoint a provider to deliver the new service in order to ensure continuity of care for patients.

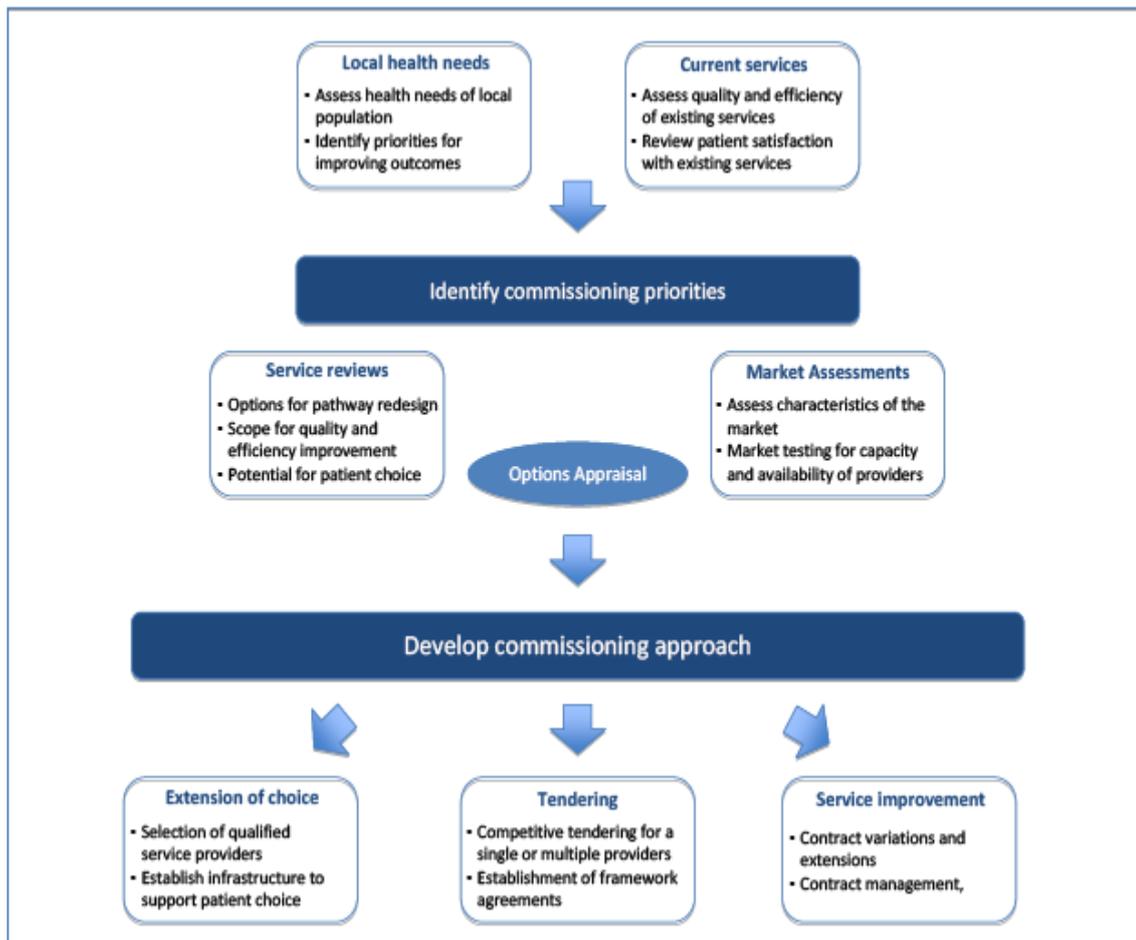
2.2.5 Contracting and Tendering Procedures

The following will be undertaken prior to conducting a formal procurement process:

1. Commissioning Strategy – publish with link provided via Contracts Finder.
2. Commissioning needs assessment – review service requirements against needs assessments.
3. Service Specification – develop requirements, outcomes to be achieved, quality standards, KPI's and other factors.
4. Provider Engagement – to develop and refine the service specification.
5. Procurement option evaluation - demonstrates the rationale for decision for procurement and selection of procurement process plus proposed duration of contract.

The diagram below shows how the commissioning and procurement activities run in parallel to inform the key organisational decisions.

ROBUST DECISION MAKING TO SECURE BEST VALUE



Source – *Securing Best Value for NHS Patients Consultation (DH August 2012)*

The CCG requires all detailed procurement procedures adopted within the CCG and by any third party to be compliant with regulation and best practice, managed in electronic format and to be fully auditable in the event of a request by CCG appointed auditors or in the event of a competition complaint

There should be no variation from agreed procurement procedures by a third party without the express and documented consent of the CCG.

There should be no variation from use of NHS National Standard contracts without the formal agreement of the CCG Board, and NHS England if required.

The archiving of all documentation will be in accordance with the standards set out in the NHS Retention of Non-Clinical Records guidance. The destruction of documentation will be agreed in writing by the CFO.

More detailed guidance on tender procedures can be found in Section 17 of the CCG Constitution and Section 3 to this policy

2.2.6 Specifications

Specifications will be developed and approved by the appropriate procurement lead before submission to the CCG Board for final approval. Subject matter experts will be used to ensure specification validity where specific expertise is required or where this is agreed in order to manage a real or perceived conflict of interest.

2.2.7 Confidentiality and Conflicts

Every tender must require suppliers to give:

- a written undertaking to maintain confidentiality
- not engage in collusive tendering or other restrictive practice
- complete a declaration under Regulation 57 of the Public Contracts Regulations 2015

All those engaged in development and evaluation of a tender should be reminded that all documentation, including emails, may be called upon as part of any investigation of a complaint, and that the use of non-secure email or social media for any communication is not permissible.

Managing potential conflicts of interest appropriately is needed to protect the integrity of the NHS commissioning system and protect clinical commissioning groups (CCGs) and GP practices from any perceptions of wrong-doing. All those participating in the development and evaluation of a tender, including third parties, will be required to sign a specific declaration of interest and a confidentiality agreement in accordance with the CCG policy on Standards of Business Conduct.

A conflict could arise:

- In carrying out a competitive tender: where GP practices or other providers in which CCG members have an interest are amongst those bidding; or
- When procuring clinical services through Any Qualified Provider: where one or more GP practices (or other providers in which CCG members have an interest) are amongst the qualified providers from which patients can choose; or
- A conflict of interest may include but not be restricted to any direct or indirect links to any of the providers and significant shareholdings associated with any of the providers.

In managing conflicts of interest the CCG will:

- comply with its statutory obligations in relation to the management of conflicts of interest;
- have regard to relevant Guidance published by NHS England and Monitor in relation to the discharge of its statutory obligations; and

The Managing of Conflicts of Interest Statutory Guidance for CCGs published in June 2016 highlights the following key changes in policy:

- The strong recommendation for CCGs to have a minimum of three lay members on the Governing Body

- The introduction of a conflicts of interest guardian in CCGs
- The requirement for CCGs to include a robust process for managing any breaches within their conflict of interest policy and for anonymised details of the breach to be published on the CCG's website
- Strengthened provisions around decision-making
- Strengthened provisions around the management of gifts and hospitality
- A requirement for CCGs to include an annual audit of conflicts of interest management within their internal audit plans
- A requirement for all CCG employees, governing body and committee members and practice staff with involvement in CCG business, to complete mandatory online conflicts of interest training

The NHS England a Code of Conduct document which specifically looks at where GP practices are potential providers of CCG-commissioned services. A copy of this template to be used in these circumstances is attached as Appendix 2 – NHS England Code of conduct, managing conflicts of interest where GP practices are potential providers of CCG-commissioned services.

2.2.8 Conflicts of Interest with Attain

Should an instance arise where a CCG customer of Attain wishes 'to contest a service or services currently provided by Attain as set out within the SLA, this would present a clear conflict of interest for the Attain procurement team and the CCG will need to secure procurement advice and or support from a third party to carry out any market testing or procurement activity in relation to this. The same principle may apply to new services that a CCG customer wishes to go to market and procure, should the Attain wish to bid for these services, the CCG should again consider the potential for the Attain procurement team to be in conflict with them and seek advice and or support from a third party.

If any doubt arises in relation to a potential conflict of interest issue this should be managed via the performance management and escalation procedures set out in the SLA to ensure both parties are clear about their respective positions

2.2.9 Complaints and Dispute Resolution

The CCG will have in place a separate Competition Dispute Resolution process to hear any complaints from organisations who consider that the CCG or its procurement support agent has not complied with applicable regulation or legislation, this Policy, or any other relevant or associated Policies. Attain will revert to the relevant CCG Competition Disputes Resolution policy when required to do so.

2.2.10 Premises and Equipment

The CCG will be responsible for liaising with NHS Property Services to ensure that the impact on utilisation of existing premises and/or associated equipment or contracts has been fully reviewed, and incorporated into any proposed procurement arrangements.

Where applicable representatives of NHS Property Services should be included as full project team members from an early stage.

Where GP premises are, or may be, utilised as part of a procurement, then the Commissioning Project Lead will ensure that this information is discussed with primary care leads at the NHS England Local Area Team.

2.3 DECOMMISSIONING SERVICES

The need to decommission contracts can arise through:

- Contract Termination due to performance against the contract not delivering the expected outcomes. This can be mitigated by appropriate contract monitoring and management and by involving the provider in this. The contract terms will allow for remedial action to be taken to resolve any problems. Should this not resolve the issues, then the contract will contain appropriate termination provisions.
- The contract expires.
- Services are no longer required.

Where services are decommissioned, the CCG will ensure where necessary that contingency plans are developed to maintain patient care. Where decommissioning involves Human Resource issues, such as TUPE issues, then providers will be expected to co-operate and be involved in discussions to deal with such issues.

2.4 WIDER STAKEHOLDER CONSULTATION AND ENGAGEMENT

The CCG Commissioning Lead will identify those stakeholders that should be part of consultation and engagement when preparing the Business Case for change, and will work with the Communications Lead to develop an agreed Communication Plan for the Project Team.

Where it is identified that providers and patients should be engaged, then this opportunity will be advertised to ensure absolute transparency. This will include making available details of current service provision.

As part of the process of redesigning services, health commissioners have a 'duty to involve'. This duty is still in place in the Health and Social Care Act 2012. There are two main stages to the 'duty to involve'.

The first is an 'engagement' process, where commissioners will gather views from clinicians, patients, carers and other key partners. This phase is very important to the development and design of services.

The second phase is not always necessary, but will involve a wider consultation process, aimed at the general public, to gather views about the proposals. A proportionate response to each consultation process should be considered. The

results can be used, alongside the engagement work to inform the procurement process.

Effective engagement is a key part of CCG procurement. Not undertaking engagement carefully can provide the greatest threat of challenge to a procurement process. The engagement activities will help inform whether a consultation process is required.

The CCG recognises its duty to involve relevant clinicians, potential providers, patients and the public on:-

- The early stages of planning provision of services;
- The development and consideration of proposals for changes in the way those services are provided; and
- Decisions to be made affecting the operation of those services, recognising that it is essential to enable patients to have a greater involvement in decisions about their care.

The CCG will adhere to the following principles on involvement during a procurement process:-

- Engage widely throughout the process;
- Be clear about what the proposals are, who may be affected, what questions are being asked and the timetable for responses;
- Ensure that the engagement is clear, concise and widely accessible;
- Give feedback regarding the responses received and how the engagement process influenced the procurement; and
- Implement a formal consultation process should there be any variations to the delivery of service.

2.5 HEALTHCARE MARKET ANALYSIS, DEVELOPMENT AND MANAGEMENT

The Commissioning Project Lead will discuss with the Procurement Lead the level of analysis required for each project to establish:-

- Whether there are already examples of analysis in this field available;
- Whether there would be benefit in scoping the market analysis over a wider area; and
- Who will lead the analysis, and the conduct, format and timescale of the exercise.

3. SECTION 3

3.1 PROCUREMENT ARRANGEMENTS

3.1.1 Background

The NHS and the wider public sector procurement are subject to EU rules and regulations and the national policy and specific sector guidance. Specifically the NHS is governed by the requirements of the following:

- NHS (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (where the commissioner is NHS England or a CCG) (PCCR 2013)
- The Public Contracts Regulations 2015 for services
- Operational Guidance to the NHS-Extending Patient Choice of Provider (DOH)
- Everyone counts: Planning for Patients outlines specific requirements that is appropriate to commissioned services
- NHS England Guidelines
- Cabinet Office Guidelines
- Crown Commercial Service Guidance

The purpose of the EU procurement rules is to open up the public procurement market and to ensure the free movement of supplies, services and works within the EU. In most cases they require competition.

EU Procurement Rules apply to all public bodies. A public body in this context means the State, regional, local authorities, associations formed by one or more of such authorities or bodies governed by public law. Body governed by public law means anybody:

- Established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and;
- Having legal personality and;
- If financed, for the most part, by the State, or regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law.

The following policy outlines these specific points, defining the requirements of these points and how the CCG will incorporate and react to these obligations.

3.1.2 Procurement Law in the Public Sector

Public sector procurement is subject to EU rules and regulations and it is therefore critical that all procurement activity is conducted consistently, accurately, and effectively. The legal framework for public procurement is set out in the EU Procurement Directives as incorporated in UK law through the 'Public Contracts Regulations 2015 (the "Regulations")' Where Contracting Authorities (including NHS organisations) wish to purchase Supplies, Services or Works which are over the relevant thresholds (as set out

below) (the "Thresholds") they must also consider the definitions of Supplies, Works and Services that are as follows:-

- **"Supplies"** contracts are essentially those for the supply (including purchasing, leasing and installation where appropriate) or hire of products.
- **"Works"** is the execution and/or design of works, working being defined as "the outcome of building or civil engineering, works taken as a whole that is sufficient of itself to fulfil an economic and technical function".
- **"Services"** includes, for example, services such as maintenance of equipment, transportation, consultancy, technical services, health services etc.

3.1.3 Thresholds

Where public sector bodies are purchasing supplies or services or commissioning works, which are over the relevant Threshold, then the Regulations must be complied with insofar as they apply to the subject of the procurement. The relevant Thresholds for CCGs are (as at 1 January 2016):

- Supplies and Services e.g. IT Services or Patient Transport Services that are not part of the Light touch Regime: £164,176
- Light Touch Regime Services including Healthcare services:£589,148
- Works £4,104,394

Please note that figures are net of VAT and should include all extensions, prizes and renewals and reflect the cumulative annual contract value if the contract is for a period more than one year. **Contracts must not be artificially broken down to avoid the application of the Regulations.**

However, even where NHS organisations make purchases which are below this limit then (where the contract may be of interest to operators in other EU member states) they will still need to ensure that they comply with the general EU Treaty principles of transparency, non-discrimination and proportionality by using those procedures (as set out below) ("the Procedures").

3.1.4 Distinction between "Light Touch" Regime and non-"Light Touch" Regime Services

PCR 2015 splits categories of Services into Schedule 3 (the "Light Touch" Regime) and Non-Schedule 3 (the non- "Light Touch" Regime).

- "Light Touch" Regime Services – only some of the EU procurement rules as set out in PCR 2015 apply. Healthcare Services fall under this category.
- Non-"Light Touch" Regime Services – these are subject to the full rigour of the EU procurement Directives, the PCR 2015 and case law around the procurement rules. IT Services and Patient Transport Services re examples of services that fall under this category.

3.1.5 CPV (Common Procurement Vocabulary) Codes

The link below sets out the “Light Touch” Regime Services covered within Schedule 3 Services by CPV code thus making it easier to confirm compliance with the PCR 2015 Legislation in terms of the procurement methodology used. This also confirms the importance of confirming the accuracy of the CPV code identified in the procurement. For example sometimes a Contracting Authority will use the generic CPV code such as 8500000. This represents all Health and Social Care categories. If this term is used it is suggested that a question should be asked of the Contracting Authority requesting the precise CPV code or codes covered by the service to be purchased. This enables the Supplier to confirm whether or not the service is covered by full PCR 2015 legislation, is partially covered, or not covered at all. It may be possible to challenge the procurement process where a service is incorrectly classified.

http://simap.europa.eu/codes-and-nomenclatures/codes-cpv/codes-cpv_en.htm

3.1.6 The Procedures

They apply when public authorities (including NHS organisations) and utilities seek to acquire supplies, services, or works (e.g. civil engineering or building) the following procedures must be followed before awarding a contract when its value exceeds set thresholds or the contract is of interest to the wider EU community. Below are the most common routes to market all of which the CCG may utilise as and when appropriate.

a) Restricted Procedure

The Restricted Procedure is used where the Contracting Authority wants to restrict the number of bidders who will be issued with the Invitation to Tender. Under the Restricted Procedure, a minimum of five (5) applicants must be invited to go through to the next stage of the procurement process (provided that there are five (5) suitable applicants). If there are less than five (5) suitable applicants then you can proceed with the procurement process, provided that the number of applicants selected is sufficient to ensure genuine competition.

b) Open Procedure

In the Open Procedure all applicants who respond to the Contract Notice will be invited to submit a tender for the contract opportunity. Generally speaking, the Open Procedure will be used for simple and straightforward procurements.

c) Competitive Dialogue

The competitive dialogue procedure allows the contracting authority to enter into dialogue with bidders, following an OJEU notice and a selection process, to develop one or more suitable solutions for its requirements and to determine which chosen bidders will be invited to tender. The competitive dialogue procedure is a flexible procedure, suitable where there is a need for authorities to discuss aspects of the proposed contract with candidates. For example, the procedure would be used where authorities cannot define clearly in advance the technical means capable of satisfying

their needs or objectives, or where there is a range of options for the legal and/or financial structure of a project.

d) Framework Agreement

Can be used with open, restricted, negotiated or competitive dialogue procedures. A Framework Agreement is a general term for agreements with providers that set out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement. In most cases a framework agreement itself is not a contract, but the procurement to establish a framework agreement is subject to the EU procurement rules. In a few circumstances it may be the case that the framework agreement itself is a contract in its own right to which the EU procurement rules apply.

e) Accelerated Procedures

These can be used in a Restricted or Negotiation with a call for competition procedure where urgency makes the normal timescale impractical. It does not alter the processes of the procedure, but it does reduce the timescales: The normal time limits of 30 days (or 25days for electronic) to express an interest can be reduced to 15 days.

f) Negotiated Procedure without Prior Publication (Direct Award)

It is recommended that this procedure is not used without good reason, usually due to the failure of a Restricted Procedure on lack of competition grounds where only a single potential provider has been identified to be able to contract with. A negotiated procedure can then begin identifying the organisation and confirming to the market that negotiation has begun to contract with this supplier.

g) Competitive procedure with negotiation

This is not the same as the existing competitive dialogue procedure. The competitive procedure with negotiation under which a selection is made of those who respond to the advertisement and only they are invited to submit an initial tender for the contract. The contracting authority may then open negotiations with the tenderers to seek improved offers.

Any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by the contracting authority.

In the procurement documents, contracting authorities shall:

- identify the subject-matter of the procurement by providing a description of their needs and the characteristics required of the supplies, works or services to be procured;
- indicate which elements of the description define the minimum requirements to be met by all tenders, and
- specify the contract award criteria.

The information provided must be sufficiently precise to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the procedure.

h) Innovation Partnership Procedure

This is intended to allow scope for the *research and development* of an innovative product, service or works that cannot be supplied by the current market together with the purchase of such product or the commissioning of such services should the contracting authority wish.

This new mechanism allows Contracting Authorities to team up with either a single or multiple partners to research and develop an innovative outcome. Essentially, Innovation Partnerships allow public authorities to launch a call for tender bids without pre-empting the solution, leaving room for suppliers to come up with an innovation in partnership with the authority. The procedure can be structured into successive stages of research and development and delivered without going out to further procurement for each stage of R&D, prior to subsequent purchase.

Similarities can be drawn between Innovation Partnerships and Competitive Dialogue. Competitive Dialogue solutions are developed in dialogue, while Innovation Partnership solutions are developed once a single or multiple partners have been identified. The main advantage of the Innovation Partnerships procedure is that it allows the contracting authority to pursue a staged development process. For example, if initial research showed that the desired solution was unlikely to be achieved, the authority could then stop the Innovation Partnership process rather than making further, potentially fruitless, commitment to it.

i) Any Qualified Provider (AQP) (UK NHS initiative only)

AQP describes a set of system rules (accreditation framework) whereby for a prescribed range of services, any provider that meets the cost and quality criteria laid down by the Commissioner can compete for business within the market, without direct constraint by the commissioner. AQP is a procurement route that encourages competition between providers of routine elective or other services, where activity is driven solely by Service User choice. Use of this AQP route must nevertheless meet PCR2015 rules such as advertisement.

3.1.7 Advertising: The Requirement

a) Contracts Finder

Under the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 it is mandatory for NHS England and Clinical Commissioning Groups (and those acting on their behalf) to advertise all healthcare services contracts covered by those Regulations on the Contracts Finder website where there is an intention to seek offers from providers.

b) Notices and Award Notices (PCR 2015)

- Under the PCR 2015, it is mandatory for Commissioners to advertise all Light Touch Regime services over the EU threshold value of £589,148) in OJEU via a notice or a PIN, as well as advertising it on Contracts Finder.
- A Contract Award Notice in OJEU and Contracts Finder will be a mandatory requirement for all health and social care contracts over £589,148). Light Touch Regime Contract Award notices can, however, be grouped together and published Quarterly (The batching option is not available for non-Light Touch Regime procurements). Also note that Contract Award notices must be published

within 30 days of contract award, or 30 days after the end of the quarter when batched. Contracts Finder Contract Award Notices must be published “within a reasonable time”.

- In both of the above instances, it is imperative to publish the OJEU advert first. And then publish a parallel advertisement in Contracts Finder, usually within 24 hours.

Contract value for CCGs	Advertising requirements for CCGs	Type of process	Contract award notice
£0-24,999	No advertising requirements *	N/A	N/A
£25,000 to EU threshold	Contracts Finder *	At authority's discretion (Using EU Treaty principles as well as NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 where relevant)	Contracts Finder
Above EU threshold: Goods and services: £164,176 Works: £4,104,394	OJEU + Contracts Finder	Open, Restricted, Competitive Dialogue, Competitive Procedure with negotiation, or innovation partnership	OJEU + Contracts Finder
Above EU threshold: - Light Touch Regime Services: £589,148		“light touch” - that complies with transparency and equal treatment (as well as NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 where relevant)	

3.1.8 Tender Evaluation

The evaluation process should seek to identify the most economically advantageous bid(s), both in terms of qualitative and quantitative criteria.

In conducting the evaluation, the evaluators must act in accordance with the key principles of the EU Procurement Directives:

- Fair & Open Competition
- Non-discrimination

- Equal Treatment
- Transparency
- Proportionality

All recorded comments and notes would be subject to being made available under a FOIA request. Confidentiality must be respected and maintained throughout the Evaluation Process. Any potential or actual conflict of interest must be advised in advance of the tender evaluation.

Stakeholder involvement in scoring/evaluating tenders should be part and parcel of any good procurement process, regardless of whether it is NHS or not.

3.1.9 10 day standstill period

A standstill period is a period of at least 10 calendar days between the decision to award a public contract and the signing of the contract and is intended to give unsuccessful tenderers an opportunity to challenge the decision before their rights to obtain relief other than damages are closed off. A Standstill period is mandatory for Non-Light Touch Regime Services. As part of Procurement Best Practice this should be adopted for all Light Touch Regime Services, including Healthcare services.

3.1.10 Contract Award Criteria

Contract Award Notice when procuring Light Touch Regime Services such as Healthcare services

Provided a contract value is above threshold, once a contract has been awarded the awarding body must publish a notice in OJEU within 30 days of contract award. This notice must be on a Standard Form, available from the SIMAP website. Alternatively, Commissioners may choose to use the standard templates with an electronic tendering system.

There is also a new obligation to advertise contract notices as well as contract award notices on the Contracts Finder website for any contracts worth:

- £10,000 or more, net of VAT, for central government departments and agencies.
- £25,000 or more, net of VAT, for sub-central authorities, including CCGs, NHS Trusts and Local Authorities.

3.1.11 De-brief

Once a decision as to contract award has been made, all unsuccessful bidders should be notified by the most rapid means of communication possible.

Information on the evaluation of tenders against the award criteria set out in the ITT, together with specific reasons for the award of these scores has to be provided under the Regulations. As part of Procurement Best Practice, this should be adopted for all aforementioned Healthcare services.

Further debriefs should only be conducted by email and if requested by a bidder. Only in exceptional circumstances should a telephone or face-to-face debrief be held.

3.2 NATIONAL POLICY AND GUIDANCE

3.2.1 Cabinet Office Guidelines

The CCG will have to ensure it complies with Cabinet Office policy and guidance by publishing all tender opportunities and contract awards over £25,000 on Contracts Finder. This obligation only arises if the authority has advertised the contract opportunity elsewhere (e.g. on its website).

Additionally, In line with the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013, If a commissioner decides to publish an intention to seek offers from providers in relation to a new contract for the provision of NHS health care services, it must publish a contract notice on Contracts Finder.

3.2.2 NHS Constitution

The NHS will have to ensure that any of its procurement activities or market interventions take account of the provision of the Constitution and any associated DOH policies and guidance documents

3.2.3 Everyone counts: Planning for Patients

'Everyone counts: Planning for Patients' outlines the incentives and levers that will be used to improve services from April 2013, the first year of the new NHS, where improvement is driven by clinical commissioners.

The guidance is published alongside financial allocations to CCGs and is accompanied by other documents intended to help local clinicians deliver more responsive health services, focused on improving outcomes for patients, addressing local priorities and meeting the rights people have under the NHS Constitution.

3.2.4 The Mandate

The Government through the Department for Health has issued its mandate to NHS England, setting out the ambitions for the health service for the next two years.

3.2.5 Operational Guidance to the NHS-Extending Patient Choice of Provider' (DOH)

Since 2010, the Government has been committed to increased choice and personalisation in NHS -funded services. Choice for patients can be about the way care is provided, or the ability to control budgets and self-manage conditions. The government has specifically committed to extending patient choice of Any Qualified Provider for appropriate services.

3.2.6 The NHS (Procurement, Patient Choice & Competition) (No.2) Regulations 2013

The regulations set out the requirements on CCGs and NHS England and in relation to commissioning of healthcare services including rules for ensuring transparency and non-discrimination in commissioning activities. Thus CCGs and NHS England:

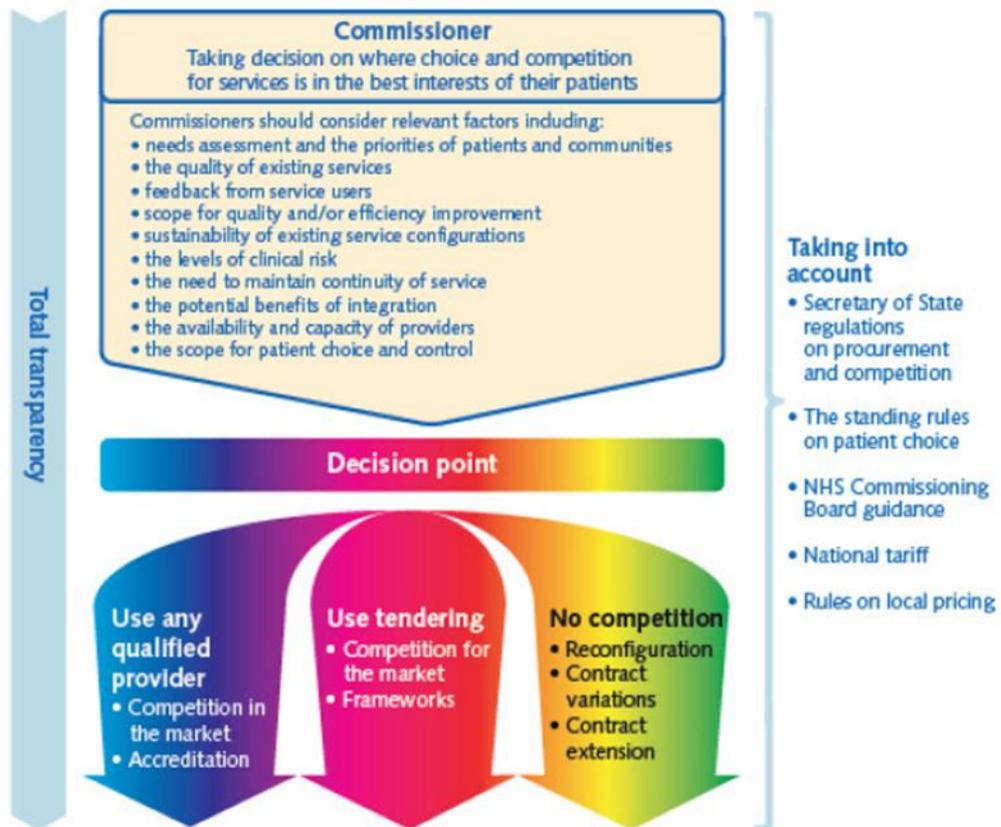
- must act with a view to securing patients' needs and improving the quality and efficiency of the service;
- must act in a transparent and proportionate way and treat bidders equally and in a non-discriminatory way;
- where third parties, assist or support a commissioner in their procurement activity, the commissioner must ensure that they follow the requirements of the Regulations in the same way the commissioner must do itself;
- must maintain and publish a record of each contract awarded for the provision of healthcare services;
- must not engage in anti-competitive behaviour unless in the interests of patients;
- must maintain a record of how any conflicts of interest between commissioners and providers are managed;
- must maintain a record of how, in awarding the contract, the CCG / NHS England complies with certain statutory duties under the NHS Act 2006;
- provide thorough justification if competition not required where services are only capable of being provided by a particular provider;
- must publish contract notices (if applicable) and facilitate expressions of interest;
- consider improving quality and efficiency of services through providing services in an integrated way, enabling providers to compete and allowing patients a choice of provider.

3.2.7 Commissioning Decisions (Competition or Not)

As set out in "Protecting and Promoting Patients" Interests: the Role of Sector Regulation", it is for commissioners to decide where choice and competition for services are in the best interests of patients. Commissioners should decide, taking into account a range of factors:

- whether to use tendering ("competition for the market")
- whether to enable patients to choose from any qualified provider ("competition in the market")
- whether to extend or vary existing contracts, or (where there are no other capable providers) to use a single tender process. (See Figure 2; Source Department of Health).

Figure 2 – Commissioners decide when and how to use competition



3.2.8 CCG obligations in respect of Section 256 Agreements'

The CCG must also meet a number of conditions when making a grant under 256, these are set out in the NHS (Conditions Relating to Grant Payments by NHS Bodies to Local Authorities) Directions 2013:

- The CCG is satisfied that the payment is likely to secure a more effective use of public funds than the deployment of an equivalent amount on the provision of health services;
- Where the grant payment is to meet all or part of the capital costs of a project, the grant amount must be determined before the project begins;
- where the grant payment will be used by the local authority to fund part of a project, the CCG must be satisfied that the local authority intends to meet the remaining costs of the project. The CCG must also be satisfied that this will continue for as long as both the CCG and the local authority consider the project to be necessary or desirable;
- The CCG must ensure, so far as is practicable, that the payment is used by the local authority in such a way as will secure the most efficient and effective use of the amount paid;
- if during the course of the grant period, the local authority reduces the level of service it provides below the level originally agreed then the CCG may reduce accordingly the amount of any further payments so far as is practicable, ensure that the payment is used by local authority in such a way as will secure the most efficient and effective use of the amount paid.

The CCG will react to this requirement by ensuring it has the capacity and specialist resource to enable it to make the most appropriate decision to meet the contingent circumstance through procurement management and best practice processes.

3.2.9 Latest guidance from NHS England

NHS England has published a series of procurement briefings for CCGs.

3.3 PROCUREMENT MANAGEMENT AND BEST PRACTICE

3.3.1 Procurement Planning

Where the CCG has identified a number of potential imminent procurements, robust procurement processes in line with national policies and strategies will support the procurement for each of the projects progressed. Where required, partnership working will be embraced to maximize quality and productivity of all services contracted.

3.3.2 Service Capacity Issues

The provision of a 'Procurement Policy' enables the CCG to facilitate and monitor compliance with all procurement rules and regulations, as well as ensuring the organisation demonstrates effective procurement processes in carrying out both strategic and transactional purchasing activity. Any interim changes in legislation, case law and guidance from the Department of Health which have a potential to impact on process or best practice are also incorporated. The policy addresses a range of areas including development of provider markets as required including:

- Market Management Collaboration & Completion- using appropriate market management levers and strategies, including regional collaboration, to develop provider markets to meet current and future needs that will have a positive impact on outcomes.
- Procurement- ensuring all procurement activity is transparent, fair and equitable, with all decisions being made within a framework that delivers value for money and required outcomes.
- Policy & Governance- policies and processes are efficient, effective and ensure compliance with legislation, regulations and EU directives in selecting market intervention strategies and contract award.
- Choice and Access Development of sustainable provider markets to deliver greater choice and access to healthcare in appropriate settings.

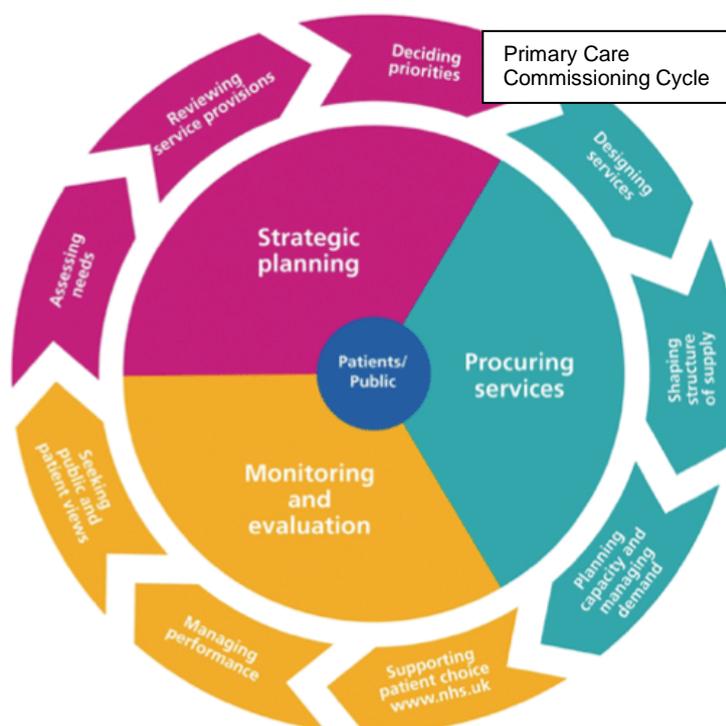
3.3.3 Procurement Management Approach

As part of the specialist support the CCG will ensure that an appropriate procurement approach is followed to allow compliance and reduce the risk of legal challenge and has a system to facilitate efficient and effective communication with the provider market (i.e. e-Tender solutions) an example of which has been provided below.

3.3.4 Best Procurement Practice

The CCG recognise that Procurement provides a transparent mechanism for securing new contracts for services which reflect patient and population needs. Done well, procurement can be a powerful tool for stimulating innovation and enabling improvements in quality and value. Procurement can stimulate or enable providers to develop new service models and/or redesign care pathways to improve quality of care to patients (e.g. greater personalisation) and make better use of the available healthcare resources in responding to the diverse needs of patients and communities.

The Primary Care Commissioning Cycle below shows the key steps in a procurement process and how this aligns to the commissioning cycle, both working together to deliver the most effective outcome for the CCG and its patients.



To put this in terms of the commissioning cycle:

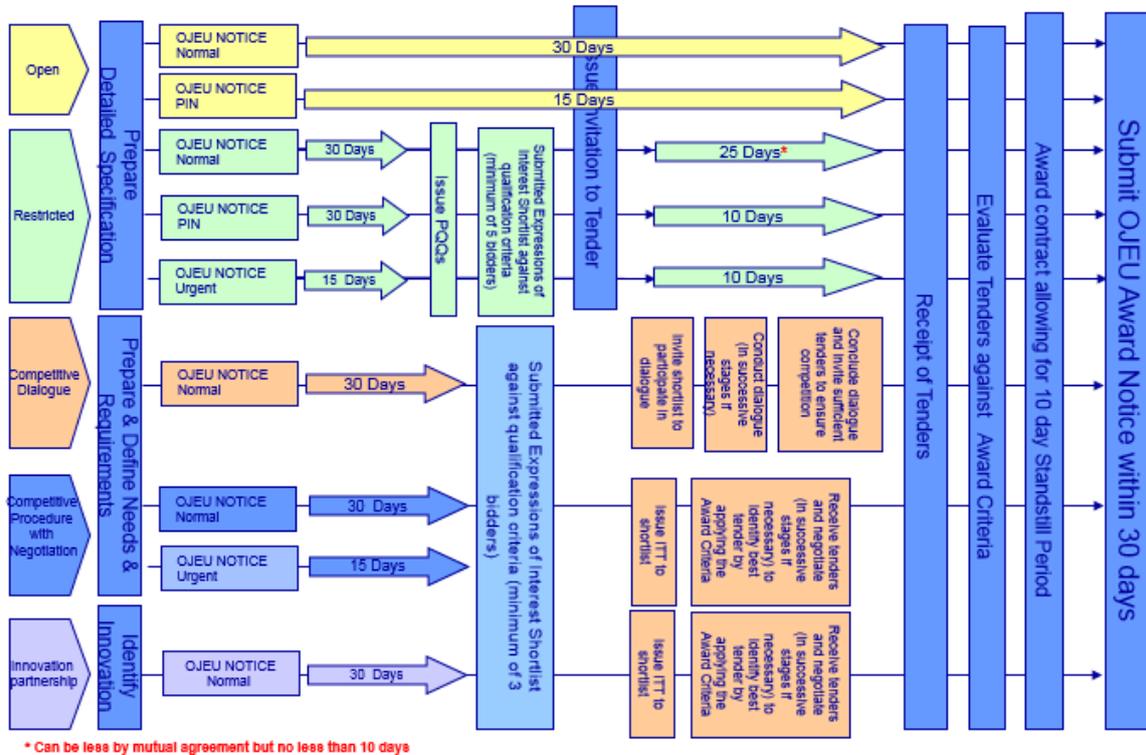
Strategic Planning: takes in the Baseline and Sourcing stage.

Procuring Services: includes the Purchasing and Implementation stage.

Monitoring and Evaluation: covers Contract Management & Continuous Development.

3.3.5 Procurement Timescales by Route

PCR 2015 OJEU Process Chart – Timescales for electronically transmitted tenders (Non-Light Touch Regime Services)



3.3.6 Using the Correct Contract

Commissioners should ensure the correct use of contract to procure services in line with DOH guidance, including use of the NHS standard contract, and NHS standard terms and conditions of contract for the purchase of goods and supply of services. The NHS may wish to obtain legal support with completing schedules within the NHS standard contracts and/or constructing bespoke contracts. The NHS will also need to comply with guidelines of the recently launched NHS e-Contracting system.

3.3.7 Pre-Procurement Activities

The final section of this policy sets out the processes that CCG will use prior to conducting any procurement activity.

It is good practice to regularly review commissioned services to ensure they are appropriate, evidence-based, effective and delivering value for money. Service users, carers and other key stakeholders should be involved in this review.

A review of commissioned services should be timely and undertaken prior to the expiry of a contract to determine whether it is appropriate to continue to commission the service.

3.3.8 Post-Procurement Performance Monitoring

Contract management and post-procurement review are features of the post contract award stage. The CCG will ensure that lessons are learned through the audit of procurements, including reviewing delivery of the business case, operational effectiveness and user satisfaction levels.

Relationship management between the CCG and the provider(s) will hinge on agreed standards for the management interface and management information reporting, performance monitoring, financial reporting and payments, risk

Performance monitoring will require effective monitoring systems to be implemented, to include key performance indicators, standards and targets, variations to contract, timeliness of reporting, variance investigation, complaints, problem resolution and dealing with poor performance and exit strategies.

4. SECTION 4

4.1 TRAINING AND AWARENESS

All CCG staff and others working with the CCG will need to be aware of this policy and its implications. It is not intended that staff generally will develop procurement expertise, but they will need to know when and how to seek further support.

The most urgent requirement is that all commissioning staff throughout the CCG should know enough about procurement to know to seek help when they encounter related issues; they must also be able to give clear and consistent messages to providers and potential providers about the CCG's procurement intentions in relation to individual service developments.

Awareness of procurement issues will be raised through organisational development and training sessions for clinical and non-clinical members of the CCG.

The CCG has access to an expert procurement team and will have direct access to Attain that can provide commissioners and other CCG staff with current up-to-date procurement advice and to ensure appropriate process governance is adhered to. The training shall be coordinated by the Attain procurement team.

4.1.1 Equality Impact Assessment

As part of the CCGs consultation process an equality impact assessment will be undertaken at relevant stages in the procurement process to ensure that the proposed/planned changes are assessed with regard to impact on groups, individuals or communities. The outcomes of such equality impact assessments will be published by the CCG upon request and as part of its equality scheme.

4.1.2 Ethical and Sustainable Procurement

With a budget of in excess of £300m the way we spend this money will have a significant impact on the area we serve. The CCG can have a significant impact on the local health economy by helping reduce health inequalities and improving the wellbeing of the community we serve. This will be achieved by commissioning services that are appropriate and from providers best placed to provide those services.

When making purchasing decisions we need to consider the opportunities for any additional social, economic or environmental benefit that we can bring to the community whilst working within the procurement rules and principles.

The Clinical Commissioning Group will use its best endeavours to develop and utilise local providers wherever possible taking due notice of procurement rules and regulations. The location of services will be considered. For example, a very specific localised service may be best provided by a local provider.

To assist the development of providers the CCG will hold bidder development workshops to describe commissioning intentions and to give help and guidance on procurement processes. In hosting these workshops all providers, both current and potential, should be invited as all providers should be treated equally. The Business Link Contracts Finder website will be used to publicise the events.

4.1.3 Public Services (Social Value) Act 2012

The Act requires authorities to make the following considerations at the pre-procurement stage: how what is proposed to be procured might improve the economic, social and environmental well-being of the “relevant area”; how in conducting a procurement process it might act with a view to securing that improvement whether to undertake a consultation on these matters.

The Act was brought fully into force on 31 January 2013. From that date the operative provisions of the Act will apply and commissioners and procurers must follow the Act and take it into account when considering procurements of certain types of services contracts and framework agreements.

The Act as currently worded, applies to contracts to which the Public Contracts Regulations will apply. This implies that contracts below the relevant financial thresholds will not be covered by the Act. For Best Practice, the fact that “Light Touch” Regime services now have a threshold at £589,148 should not mean that the Social Value Act should not be considered for services under this amount.

The Act does not apply to any formal stages of the procurement process but it does require commissioners to consider social value issues and how they can be applied to the outcomes required. This in turn will inform the development of the specification and the assessment of bids.

4.2 MONITORING AND COMPLIANCE

This policy will be reviewed annually.

In addition it will be kept under informal review in the light of emerging guidance, experience and supporting work. Given the changing environment it is likely that this Policy will need to be updated within a relatively short timescale.

Effectiveness in ensuring that all procurements comply with this Policy will primarily be achieved through “business as usual” review by the relevant Head of Service within the CCG.

REFERENCE MATERIAL

Reference	Website
"The Public Contracts Regulations 2015"	http://www.legislation.gov.uk/ukxi/2015/102/pdfs/ukxi_20150102_en.pdf
NHS (Procurement, Patient Choice & Competition) (No.2) Regulations 2013	http://www.legislation.gov.uk/ukxi/2013/500/contents/made
Cabinet Office guidance on improving accessibility for SMEs ;	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/405020/PPN_reforms_to_make_public_procurement_more_accessible_to_SMEs.pdf
Cabinet Office guidance on selection criteria in PQQs (in promotion of the "Lord Young" SME agenda);	https://www.gov.uk/government/publications/public-contracts-regulations-2015-requirements-on-pre-qualification-questionnaires
Cabinet Office guidance on using forms and notices (e.g. OJEU notices) in the period before SIMAP forms are available for the new regime	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408083/Guidance_on_Completion_of_Forms_and_Notices_Pre_SIMAP.pdf
Procurement, Patient Choice & Competition Regulations: Guidance & Hypothetical Case Scenarios	https://www.gov.uk/government/publications/procurement-patient-choice-and-competition-regulations-guidance
Public Services (Social Value) Act 2012	http://www.legislation.gov.uk/ukpga/2012/3/enacted
Operational Guidance to the NHS-Extending Patient Choice of Provider	http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_128455
The annual Everybody Counts Planning for Patients that outlines and specific requirements that is appropriate to commissioned services.	http://www.england.nhs.uk/everyonecounts/
Cabinet Office's Transparency requirements for publishing on Contracts Finder	https://www.gov.uk/government/publications/transparency-requirements-for-publishing-on-contracts-finder

Thresholds	http://www.ojec.com/threshholds.aspx
CPV CODES	http://simap.europa.eu/codes-and-nomenclatures/codes-cpv/codes-cpv_en.htm
NAO - General Procurement Guide	http://www.nao.org.uk/freedom-of-information/wp-content/uploads/sites/13/2013/03/Procurement_manual.pdf
Protecting and Promoting Patients' Interests: the Role of Sector Regulation	https://www.gov.uk/government/publications/protecting-and-promoting-patients-interests-the-role-of-sector-regulation
NHS England's series of procurement briefings	http://www.commissioningboard.nhs.uk/2012/09/14/procure-ccgs/
Cabinet Office Guidelines	https://www.gov.uk/transposing-eu-procurement-directives
Managing Conflicts of Interest	http://www.england.nhs.uk/wp-content/uploads/2014/12/man-confl-int-guid-1214.pdf
The annual NHS operating Framework that outlines and specific requirements that is appropriate to commissioned services. Everyone Counts: Planning for Patients 2014/15 - 2018/19	http://www.england.nhs.uk/wp-content/uploads/2013/12/5yr-strat-plann-guid-wa.pdf
Choice of procedure decision tool within PCR 2015	http://www.procurementportal.com/files/Uploads/Documents/award_procedure_decision_tool.pdf

APPENDICES

Appendix 1 - Waiver Form



Sub 100k Project
Formv3 A3 (Waiver) :

Appendix 2 – Managing Conflicts of Interest – Statutory Guidance for CCGs

See link below

<https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2016/06/revsd-coi-guidance-june16.pdf>

Appendix 3 – PCR 2015 Timescales for non-Light Touch Regime Services



Appendix 3 -
Timescale Tracker.doc

Appendix 4 – Appendix 4 – Template Register of Procurement Decisions and Contracts Awarded



Template Register of
Procurement Decision