



**NHS North Staffordshire CCG**

**HEALTHCARE PROCUREMENT**

**STRATEGY**

**V1.9**

Version No	Amended by	Date reviewed	Date approved	Next Date for Review
1.1	B Thomas	15.06.12		Feb 2013
1.2	B Thomas	29.07.13		Jan 2014
1.3	A Clarke	16.09.13		Jan 2014
1.4	B Thomas	08.01.14		July 2014
1.5	S Hall	14.01.14		July 2014
1.6	S Hall	27.01.14		July 2014
1.7	S Hall	12.02.14		July 2014
1.8	B Thomas	18.02.14		July 2014
1.9	B Thomas	25.03.14	C Usher – 02.05.14 NSCCG Governing Board 02.06.14	December 2014

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## **Introduction**

NHS North Staffordshire CCG will commission healthcare services, aiming for continuous improvement in the quality of services and:

- Manage the provider 'market' and commission services from a variety of providers.
- Ensure strong clinical insight and engagement.
- Use good quality contracts to assure the delivery of services.
- Produce and make available to the public good quality information to support decision making.
- Make the public aware of their right to make choices in relation to their own health.
- Have good quality procurement processes in place.

There is currently no general policy for NHS Clinical Services to be subject to a formal procurement process. However, there are an increasing number of independent, third sector providers and NHS Foundation Trusts (who have greater autonomy, including rights to holding legally binding contracts) who will be able to provide services. The CCG is required to ensure value for money as laid down in the Trusts Standing Orders and Standing Financial Instructions. Consequently the CCG is likely to find ever increasing pressures to follow appropriate Procurement processes when commissioning Services.

EU Principles require that the procurement processes used for procuring services from providers are fair and transparent. The CCG needs to ensure that potential providers are given clear guidance on what services the CCG wish to procure and the selection process that will be used to select the provider.

## **Key Principles when Procuring healthcare services**

In carrying out its Commissioning role, NHS North Staffordshire CCG will need to adopt the following key principles:-

- **Transparency** – we will apply standard criteria for considering whether or not to tender new and existing services and the results of all decisions will be published.
- **Efficiency** – we will standardise our main operating practices for commissioning services from providers and will work with its providers to improve efficiency and effectiveness of services.
- **Continuity** – we will identify partnership providers for Key NHS Services such as Acute Emergency Services, Ambulance Services BUT will continually test these services to ensure that they deliver best value for money.
- **Equality** – we will clearly identify which services we will put out for competition. We will treat all providers (NHS and non NHS) equally.
- **Development** – we will provide support to all providers to encourage continual improvement in the quality of services that are provided.
- **Proportionality** - The actions we take will be proportionate to the risks and benefits to patients and the services provided.
- **Consistency** – we apply national and local principles and rules consistently across the CCG and over time.
- **Engagement** – in line with the CCG’s Communications and Engagement Strategy, we will engage with stakeholders in order to commission services that meet our populations needs

This Procurement Strategy is intended to meet all relevant national and regional guidelines including but not limited to:-

- DH Changes to the National Health Service: Procurement, Patient Choice and Competition Regulations, 2013
- Monitor: Enforcement guidance on Procurement, Patient Choice and Competition Regulations, 20 December, 2013
- Monitor: Substantive Guidance on Procurement, Patient Choice and Competition Regulations, 20 December, 2013
- 

#### NHS Planning Framework 2014/15

- CCG Standing Orders and Standing Financial Instructions
- NHS England Standards of Procurement, June, 2013
- Code of Conduct: Managing conflicts of interest where GP Practices are potential providers of CCG-commissioned services July 2012
- Public Services (Social Value) Act 2012

*Note: Guidance for Commissioners on the procurement of NHS-funded services in England is expected to be published by NHS England in early 2014*

By following these guidelines the CCG will need to demonstrate that: -

- The necessary procurement skills available that will ensure that healthcare services can be provided within robust contracts.
- Will manage the provider market to meet demand for the services and to obtain the required clinical, health and other outcomes.
- A Competition Disputes Resolution Policy agreed by CCG Boards and made available to all potential and current providers (please refer to Appendix 3).

In summary, the CCG must carry out fair, open and proportionate procurement and contracting processes: -

- Identify and assess the needs of patients and wider population;
- Meet patients needs through provider and market management;
- Ensure that contracts that are implemented are robust and viable;
- Manage contracts to ensure compliance and encourage continuous improvement;

- Obtain value for money for our patients and wider community;
- Ensure that processes are clear to patients, the wider community and to current and future providers.
- Ensure that services are commissioned which give the greatest benefit and value for money to patients and the wider community.

This strategy is not designed to define the services which need to be commissioned, this information is contained within other specific documents. The strategy details how NHS North Staffordshire CCG will procure services from a range of providers.

This procurement strategy sets out the principles, rules and methodologies that the CCG shall 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 value for money.

### **Commissioning Procurement Objectives**

- Stimulate the provider market to provide competition to meet demand and secure required clinical, health and well being outcomes.
- Apply procurement skills, expertise, processes and methodologies that ensure robust, viable and value for money contracts.
- Ensure procurement processes are effective, transparent and equitable.
- Continuously reviewing existing contracts, for both clinical and non-clinical services, to ensure that they deliver in accordance with key performance indicators and offer maximum value for money and demonstrate continuous improvement in the quality and range of services on offer
- Working with other CCGs to ensure that buying power and economies of scale are maximised through shared procurement processes
- Conducting service reviews and market analyses and driving the redesign, innovation and delivery of services through new contract where public and other feedback suggests that changes are required



## **Key Procurement Principles**

An expert procurement service shall ensure that:

- The selected procedure is conducted in a manner that is legally compliant and proportionate to the service requirements;
- The right people are involved at the right stages, for example in agreeing specifications, bid evaluation and making the final decisions (this is a key part of the process);
- The specification clearly articulates the requirement. This will mean engaging with the people who have local knowledge and insight to ensure it is accurate.
- Conflict of Interest are managed at each stage to ensure a fair and transparent process.

## **Key Procurement Values**

- Value for Money is a pre-requisite of service Commissioning. Each procurement will include a cost comparison of the new service (where applicable) with the cost of delivering the equivalent service with existing providers. Service specifications will be clear, concise and non discriminatory utilising the NHS England template contained within the NHS Standard Contract.
- The CCG will be open and transparent in the way it conducts commercial relationships with potential providers and existing providers.
- The CCG has set up a Disputes Resolution process to ensure that any complaints can be received, investigated and resolved.

## **National Context**

The new NHS commissioning model will be clinically led, underpinned by clinical insight and a real understanding of the local healthcare needs of patients and the public. Clinical commissioning groups (CCGs) and the NHS England will be uniquely placed to bring a focus on quality and outcomes and realise a step change in the patient services. They will work closely with key partners, especially Local Authorities through their Health and Wellbeing boards and take account of the emerging guidance around joint working for example, the Better Care Fund.

Commissioning support is the assistance which commissioners (both CCGs and NHS England) can draw on – from a range of sources - to help them deliver their functions. Good commissioning support will help CCGs and NHS England to concentrate better on the clinical and locally sensitive aspects of commissioning, and to make the best use of the resources available to the NHS for delivering improvements in healthcare. In many instances, this commissioning support may be secured jointly with their Local Authorities. (*Developing Commissioning Support – Towards Service Excellence*, February 2012).

The CCG is committed to securing the best services for its local population, reducing health inequalities, increasing access to services and improving clinical quality and outcomes. This procurement strategy focuses on providing a robust and meaningful procurement process to allow the greatest benefit in terms of health outcomes and achieving value for money.

### **Procurement Strategy**

- There is no general policy requirement for NHS Clinical Services to be subject to a formal procurement process. The CCG must abide by the NHS Monitor Procurement, Patient Choice and Competition Regulations, (20 December, 2013) and seek procurement advice from the CSU procurement team.

There are a number of procurement options that are available depending on service type, market status, value and risk profile of the service required. The CCG will use a method of formal competitive procurement processes for commissioning all Healthcare Services unless Commissioners can justify reasons for not doing so which must be documented.

The NHS is developing to provide quality services that are patient focused and are provided by the most appropriate provider. Consequently a number of independent and third sector providers are now providing NHS funded services.

The CCG aims are to improve the quality and accessibility of services to patients through a process of service review, robust contracting, key performance indicators (KPIs) and provider development activity. The CCG shall work to develop provider markets as well as working with existing providers to improve service quality.

## **Local Context**

### Partnerships

NHS North Staffordshire CCG shall continue to build partnerships with other CCGs and Local Authorities to manage the local health system.

The NHS North Staffordshire CCG Procurement Strategy will address the following key points: -

- Organisation structure, capacity and training
- Cost modelling
- Market development and management
- Procurement rules and principles
- Procurement options
- Contracting
- Stages in the procurement process
- TUPE
- Contracts Finder (Central Government website)<sup>1</sup>
- Ethical and sustainable procurement

### **Organisational Structure, Capacity and Training**

It is essential to have the appropriate organisational structure, capacity, training and infra-structure in place to complement the procurement strategy. Partnership working in the areas of procurement can give rise to a number of benefits including economies of scale and varied skills in the procurement workforce.

The CCG shall increase the skills and knowledge levels of key commissioning staff members in the areas of:

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<sup>1</sup> Contracts Finder has replaced NHS Supply2health as a method of advertising healthcare opportunities. This has taken effect from 28 March 2014.

- Preparing specifications
- Tender evaluation
- Compliance with EU and NHS Monitor regulations
- Negotiation

NHS Healthcare procurement skills are a limited resource and securing skills throughout the NHS. The CCG obtains appropriate procurement advice on all aspects of the procurement process to assist Commissioners in carrying out the Procurement of Healthcare Services & Social Care Services. This arrangement is through the NHS Staffordshire and Lancashire CSU procurement team which is embedded in CCGs.

### **Cost Modelling**

CCGs develop cost models which can be used to benchmark the costs of existing services and that can also be used in assessing affordability and assessment of bidders' proposals. The production of these cost models will require input from commissioners, procurement and finance personnel, where appropriate.

### **Market Development & Management**

In order to procure services effectively CCGs will need to understand the supply market. Furthermore, CCGs will need to work with existing providers and new providers to help develop the market place by, for example, publishing future commissioning intentions, helping potential bidders to understand procurement processes, developing open output specifications.

A market analysis should be undertaken regarding the markets available for each service required:-

- **Structure of market** – are providers locally, regionally, national or multi national based.

- **Capacity** – is the size of proposed contract attractive to potential Providers? Are all the necessary attributes in place to deliver the service, for example workforce, equipment, facilities, etc
- **Status** – is the market established, new, innovative, are there any restrictions, barriers to entry/exit.
- **Competitive** – is there competition in the market place? Can competition be developed? Is it a buyers or sellers market? Have other CCGs tendered for these services?

Where there are insufficient providers in the market, CCGs will need to consider other methods to developing a provider market. These plans could include:-

- Identifying clear commissioning requirements.
- Identifying the key requirements that providers need to have to enable them to compete for business.
- Hold Bidder Events where interested parties can come and discuss the CCG's requirements, procurement processes can be explained, opportunities for bidder networking and so on.
- Producing specifications that are output based, that can be delivered and encourage innovation. This may also mean that specifications are narrowed to allow SME organisations to deliver services.
- Contract duration is such that the contract will allow providers the opportunity to recover costs and make a reasonable return on investment.
- Where there is a limited concentration of capable alternative providers, the CCG may consider working in partnership with its current provider to develop and improve standards of services offered.

## Procurement Rules and Principles

CCGs shall adopt the Principles and rules set out in:-

- **The EU Procurement Directives (implemented into UK Law by the Public Supply Contracts Regulation 2006)\*** detail the rules that public bodies must follow when tendering **for** goods and services. The full EU Procurement process is outlined at Appendix 1 (EU Procurement Procedures).

The EU Directives distinguishes between two service types: -

- **Part A** Services which include consultancy services, cleaning, catering and security services amongst others. The full EU Directives apply to Part A services as they also do for procuring goods.
- **Part B** Services or residual services which include healthcare services and social care services where only the general principles of equal treatment, transparency, objectivity and non discrimination apply. To meet transparency obligations requires that service contracts must be adequately advertised to ensure all who may wish to compete for the contract may do so.

*\*Note: The EU Parliament voted to approve a new EU Procurement Directive, 2011/0438 on 15<sup>th</sup> January, 2014. This Directive is likely to be implemented in the UK during 2014.*

There are fixed financial thresholds for Part A and Part B services which are applicable for the life of the contract, the thresholds are revised by the EU on a bi-annual basis. The current threshold was revised in January, 2014 and is set at £172,514. It is recommended that if a contract value will breach this threshold, then the option of running a competitive procurement process should be investigated fully by the Commissioner.

- **CCG Standing Orders & Financial Instructions** (which encompass the EU Directives) must be adhered to.

## **Procurement, Patient Choice and Competition Regulations December, 2013<sup>2</sup>**

These are “revised regulations put beyond doubt the Government’s strong commitment that competition in the health service should always be used in the interests of patients.” The changes to the regulations make clear that:

- There is still no legal requirement to put all contracts out to competitive tender
- The CCG is able to offer a contract to a single provider if it is possible to justify that there is only one provider capable of delivering the services
- NHS Monitor cannot enforce commissioners to competitively tender services
- Competition should not trump integration – The CCG is free to use integration where it is in the interest of the patients
- The CCG still need to adhere to the Principles and Rules for Procurement, Patient Choice and Competition Regulations

### Conditions regarding Single Provider selection

“Where there is only one capable provider for a particular bundle of services or the objective of the procurement is to secure services to meet an immediate interim clinical need there will be a case for Single Tender Action (i.e. uncontested procurement)”.

Regulation 5 covers commissioners awarding a contract where there is only one capable provider. This could be based on patient needs, specific locations, improving quality or delivering services in an integrated way. Equally, if commissioners can justify that a service needs to maintain a caseload volume and certain case mix to provide a safe and effective service, this could also be adequate justification for awarding a contract without competition.

Additional examples of one capable provider are:

- Acute hospital services on single sites and accessible 24/7
- Range of integrated services in the community
- Highly specialised care

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<sup>2</sup> <http://www.monitor-nhsft.gov.uk/s75>

- Services in more rural or remote areas

#### Conditions regarding integration of services

Commissioners have the right to decide whether, where and when to stimulate or create a market for services. There are no requirements to:

- Unbundle/fragment service to facilitate competition
- Offer contract terms to enable new providers to enter a market ie return on investment

Regulation 10(1) allows for integration of services and cooperation between providers if it is in the patients' interests.

#### Conditions regarding selection of Providers on cost only

There is no requirement for commissioners to select lower cost providers for an individual service over an integrated service.

Commissioners need to select "best value" ie combination of quality and price. The regulations will not force commissioners to select providers on lowest price alone.

It is for the CCG to decide whether it should competitively tender healthcare services but all Procurement must comply with the NHS North Staffordshire CCG's Standing Orders & Financial Instructions, the EU Procurement Directives and follow guidance issued by the NHS Monitor. The CCG's position is that ALL Healthcare Services that we commission shall be open for competition unless Commissioners can justify reasons for not doing so.

The CCG shall follow the procurement process adhering to Part A Services when tendering for Part B Services including Healthcare Services. This shall minimise any risk to the CCG of a challenge to procurement processes, as we can demonstrate openness, transparency, fairness and good commercial practices:-

- **Transparency** – use of sufficient and adequate advertising; published evaluation processes and ensure that no conflicts of interest exist in the procurement and decision making process. Where decisions are made not to tender or open up services for competition, the reasons must be documented.



- **Equitability** – all providers and sectors will have equal opportunity to compete where the CCG decides to open up services for competition.
  - All contracts will be adequately advertised. All Healthcare Service and Social Care service contracts over £100,000 must be advertised on the Contracts Finder website. Additionally, other media can be used such as websites, publications, etc.
  - Where appropriate, a Contract Notice shall be placed in the Official Journal of the European Union. Where this is done, all other advertisements must be placed AFTER the OJEU advertisement is sent for publication.
  - All evaluation processes and checks, including those for short listing and contract award, will be applied equitably. Pricing and payment mechanisms will be clear and fair.
  
- **Non Discriminatory** – the criteria for the selection of bidders and award of contract will be clearly detailed and published to potential providers. All potential providers will be treated the same.
  
- **Proportionate** – all procurement processes will be as simple as possible and overly bureaucratic processes will be avoided. The processes used will give consideration to the value of the service and complexity of the services being tendered.
  
- **Timescales** – sufficient timescales will be allowed to enable bidders to submit their tender. This will depend again on the value and complexity of the contract and the type of the bidding organisations. As a general rule, where an EU advert notice is placed, the timescales detailed in the EU Procurement procedures should be broadly followed.
  
- **Standstill Procedure** – where an OJEU advert is used, the CCG will follow the EU Directives (Alcatel Agreement) and allow a 10 day standstill period between notification of a contract award and the actual contract award. Whilst this will not eliminate all risks of challenge, it is a way of minimising risk to

the CCG. Whilst in the standstill period, no contract activity is to take place to allow for any challenges/requests for information to be resolved.

- **Contract** – a signed contract and service specification must be in place before services commence. The contract must contain contract monitoring and performance management processes to ensure that contractual obligations are met and quality standards are met & improved. All contracts must follow the NHS standard services contracts.
- **Potential Conflicts of Interest** - Whatever method is used to commission services the CCG will ensure that there are no Potential Conflicts of Interest. All Potential Conflicts of Interest will be declared and managed appropriately in accordance with the NHS North Staffordshire CCG's Conflict of Interest Policy. Where a service is being commissioned that could be delivered by a GP, the procurement must be conducted in line with the Code of Conduct: Managing conflicts of interest where GP Practices are potential providers of CCG-commissioned services July 2012. This requires documentation to be completed by Commissioners prior to any procurement process commencing. The CCG also needs to be aware of the potential for conflict of interest circumstances to occur throughout the procurement process.

### **Procurement options**

There are a number of Procurement options available to the CCG, which one is used, will be dependent on a number of factors including:-

- **Contract value** – the higher the value the greater the case is likely to be for competitive tendering.
- **Provider Market** – the greater the number of providers the stronger the case for open competition. There may also be other CCGs who have recently tendered for equivalent services thus stimulating the market.
- **Single or multiple provider(s)** – would the needs of the population be best served by a single or multiple supplier arrangement? Multiple supplier options

may lend themselves to Framework Agreements or Any Qualified Provider arrangements.

- **Regulations** – These will include the CCG’s Standing Financial Instructions & Standing Orders, EU Procurement Regulations and DH Guidance.
- **Government policy on protected services** – for key services that are a significant and vital part of the NHS, for example Accident & Emergency Services, Intensive Care Services, Emergency Ambulance Services, etc. shall automatically follow a partnership provider route and negotiation would take place directly with that provider.
- **Jointly Funded Projects** - Competition may not be appropriate for jointly funded projects.
- **Patient Choice** – consider results of consultation. This shall include, where appropriate, choice of providers, models of care and location. Further details of how patient consultation is carried out is contained within the CCG’s Communication and Engagement Strategy which can be found on the CCG’s website.
- **Patient Safety** – if there is a genuine risk to patient safety by changing provider then the CCG can negotiate directly with the existing provider of the services.

The following Procurement options should be considered: -

**Any Qualified Provider** – The CCG may use the Any Qualified Provider model, when they consider that they have a sufficient market for meaningful competition and wish to extend choice for patients based on quality. There is no volume commitment and no price negotiation. Contract terms will be set using the NHS standard services Contracts. From September 2012, some services were subject to an Any Qualified Provider arrangements across the country.

In North Staffordshire, these services were:

- Podiatry – All Staffordshire CCGs
- Hearing – All Staffordshire CCGs
- Continence – North Staffordshire and Stoke on Trent

Implementation of these Any Qualified Provider arrangements was mandatory. After September 2012, it is the jurisdiction of the CCG to determine whether an Any Qualified Provider arrangement is suitable for a healthcare service.

Under Any Qualified Provider arrangements competition is generated by Patient choice and NOT price. There are no guarantees regarding either volumes of business or payment under Any Qualified Provider arrangements.

There are two processes that can be used:

**Open Process** - where proposals can be accepted by the CCG at any time if the provider meets minimum standards of clinical care at an NHS tariff price and meets the regulatory standards as set out in the standard questionnaire.

- **Managed Process** – where proposals can be accepted by the CCG at specified times during the contracting period if the provider meets minimum standards of clinical care at an NHS tariff price and meets the regulatory standards as set out in the standard questionnaire. This is the preferred process for Any Qualified Provider processes.

When considering Any Qualified Provider arrangements the CCG must act:-

- **Transparently** – intentions are made known to the market place. Requirements for both managed and open processes are advertised on the Contracts Finder website. Advertising MUST be adequate for the type of service required.
- **Proportionally** – process used are proportionate to the size, complexity and risk of the service being purchased.

- **Equitably** – do not distort competition. i.e. create monopoly situations or reduce choice.

The prevailing NHS Standard Services Contract shall be utilised for all Any Qualified Provider Contracts.

- **Competitive Tendering** – an increasing number of services will be subject to competitive tendering in order to comply with the requirements of transparency, openness, equitability and obtaining (and evidencing) value for money. The types of procedure are described in Summary of frequently used types of procurement procedure.

Competition may be waived in circumstances such as (genuine) urgency, monopolistic rights or where only one provider can provide the service for technical reasons or special exclusive rights. In these circumstances the Single Tender Waiver procedures set out in our Standing Orders & Standing Financial Instructions must be followed.

Where the CCG decides not to competitively tender for new services or where services are significantly changed, CCG Board approval MUST be obtained to proceed.

- **Spot Purchasing** - There will remain the need to spot-purchase for particular individual patient needs or for urgency of placement requirements at various times.

During these times, the usual competitive tender process can be waived. It will be expected however that these contracts will undergo the same best value reviews and potential tendering over time to ensure that the CCG is receiving value out of the contract and the Provider is fit for purpose and signed up to the continuing improvement programme and same commitment in the same manner as other providers.

- **Pilots**

These are normally implemented as part of a major service re-design, prior to a formal competitive procurement process. They may also be referred to as a proof of concept scheme.

All new services or services that are subject to a re-design, will be subject to an appropriate procurement process. The type of process will be in line with the complexity, contract value and the length of the contract. In particular, when we source a pilot provider, this shall be done by advertising on Contracts Finder and requesting and evaluating short service proposals. Therefore, a minimum of 6 weeks needs to be built into the commissioning process to enable the CSU procurement team to carry out this revised process.

The commissioners should try to mitigate against any perceived advantage the pilot supplier may gain in the forthcoming tender by engaging with the provider market early in the formal procurement process, sharing outcomes and data from the pilot and potentially gathering comments from alternate providers as to the viability of the specification.

Prior information notices will only be used for market testing purposes and not to source and engage providers to deliver services.

In exceptional circumstances, the procurement process may be waived but this can only be done through securing agreement from CCG Directors.

The waiver procedure needs to comply with the CCG's Standing Financial Instructions or equivalent. It is expected that this will only be in cases of genuine emergency and the use of this waiver will be reviewed regularly.

It is recommended that procurement advice is sought before taking any such action.

- **Framework Agreements** - The CCG is able to use other public sector organisations Framework Agreements for non healthcare services if a provision has been made in the Framework Agreement to allow this (that is by the holder of the Framework Agreement, such as the Crown Commercial

Service<sup>3</sup>). The EU rules for tendering state that Framework Agreements should be for no longer than four years in duration.

Where allowed for in the Framework Agreements an option for running mini competitions may be available. All Providers on the Framework Agreements who can meet requirements are invited to submit a bid, these are then evaluated using published evaluation criteria and business awarded following the same processes used for "conventional tenders". Any contract awarded can run beyond the Framework Agreement period but the length of the contract extension must be reasonable. There is usually an NHS standard contract for example, NHS Supply of Services available for these services, outside of the NHS Standard Contract.

- **Grants** - Public bodies must follow public procurement policy at all times. In certain circumstances grants are payable to third sector organisations. However, there should be no preferential treatment for third sector organisations.
- **A third sector organisation** describes a variety of organisations that are neither state nor private sector and includes voluntary and community organisations (registered charities, associations, self help groups, social enterprises, cooperatives, etc). They are independent of government, pursuing social, environmental& cultural objectives and reinvest any surplus in pursuit of these objectives rather than in making a profit.

Procurement will be undertaken in line with the principles outlined in the local Compact with the Voluntary and Community Sector Assembly.

Grants come in two forms: -

**Grant** - payments to outside bodies where a department is required, or wishes, to maintain detailed control over the expenditure and where a procurement approach is not suitable.

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<sup>3</sup> Previously known as the Government Procurement Service

**Grant in Aid** - A payment by a government department (the “sponsor department”) to finance all or part of the costs of the body in receipt of the grant in aid. Grant in aid is paid where the government has decided, subject to Parliamentary controls, that the recipient body should operate at arm's length.

Use of grants can be considered where: -

- Funding is provided for development or strategic purposes.
- The provider market is not well developed.
- Innovative or experimental services.
- Where funding is non contestable (i.e. only one provider).

Grants should NOT be used to avoid competition where it is appropriate for a formal procurement to be undertaken.

## **Contracting**

The CCG shall utilise the prevailing Standard NHS Contract for all Healthcare Service Contracts.

## **Stages in the procurement process**

The procurement process used should reflect the market, value and complexity of the service being commissioned so that a proportionate procurement approach is applied.

The process will consist of some or all of the following stages:





- **Planning Stage** – A review of the service need, specification and options available to procure the service will take place. A project team when necessary should be set up and a project plan drawn up.

As part of the planning stage, each project member is required to complete a Potential Conflict of Interest form and a Confidentiality Declaration regarding the specific procurement process.

This is then assessed by the Procurement lead for the project and the project member is deemed to be either eligible to proceed in the evaluation process or is excluded from the process.

Furthermore, once expressions of interest have been received, the names of the bidders are circulated to the project team and all project members are asked to confirm their ability to participate in the evaluation process.

- **Advertisement Stage** – When required an appropriate tender advertisement will be placed commensurate with the value and complexity and extent of the services being procured. Opportunities that are selected for a competitive process must be sufficiently advertised to ensure fair competition. It is recommended that a contract notice is published including a description of the services to be provided and the criteria against which the bids will be evaluated (i.e. Most Economically Advantageous Tender (MEAT) or lowest price). Additional information including place of delivery, approximate value of the contract, duration of the contract and any pre-qualification criteria may be included.
- **Specification stage** – generic terms should be used when specifying the services required avoiding brand names and other references which would have the effect of distorting competition. Specifications should be performance based specifications linked to achieving Key Performance Indicators to trigger payment of a proportion of the contract price.

Contract specifications for Healthcare Services must utilise the NHS standard specification template as in the NHS Standard Contract.

The Invitation to Tender must include agreed evaluation criteria and weightings. Where services are tendered the Evaluation Criteria used MUST

be published in the Invitation to Tender and once published CANNOT be altered.

All appropriate interested parties should be involved in writing the specification and the results of consultation must be also considered. Do not underestimate the time required to prepare the service specification.

- **Bidder Selection stage** - When selecting potential bidders the process used must be open, transparent and fair. No sector of the market should be given an unfair advantage (including the current provider if applicable). For large high value complex contracts a formal Pre-Qualification stage may be used to evaluate potential providers' capabilities, capacity and financial standing. Prior knowledge of any bidder cannot be considered when carrying out a tender evaluation.

All bidders must declare any Potential Conflicts of Interest so that these can be dealt with to ensure a fair and impartial approach to any selection.

- **Offer stage** – This is where the potential Providers offer is made to provide the service including the price for providing those services. Where competition is waived or is not applicable this will be by direct negotiation with the Provider and once agreed a contract will be signed.

Where **competition** is being sought then an Invitation to Tender should be issued. (*The Invitation to Tender (ITT) is a written document describing the Commissioner's requirements against which a bidder submits an offer to deliver these requirements*).

A sufficient number of bidders should be invited to ensure adequate levels of competition taking in to account market conditions, complexity and contract value.

- **Offer Evaluation and Award stage** - the award of contract is on the basis of "the Most Economically Advantageous Tender (MEAT)" to the purchaser.

**The ITT Evaluation** if not carried out correctly can lead to a potential challenge to the Commissioner's decision making process. NHS Staffordshire and Lancashire CSU has developed appropriate and robust evaluation models that will be used when evaluating bidders responses.

#### **Note on Post tender negotiations**

There are restrictions on the use of post tender negotiation under the open and restricted procedures. The European Commission has issued a statement on post tender negotiations in which it **specifically rules out any negotiation on price:**

*"In open and restricted procedures all negotiations with candidates or tenderers on fundamental aspects of contracts, variations in which are likely to distort competition, and in particular on prices, shall be ruled out; however, discussions with candidates or tenderers may be held only for the purpose of clarifying or supplementing the content of their tenders or the requirements of the contracting authorities, and provided this does not involve discrimination".*

Following the evaluation of bids (whether or not as a result competitive or non competitive processes) the recommendations for award of contract must be carried out in accordance with the CCG's Standing Orders & Standing Financial Instructions.

- **Post Award Stage** - Where the CCG has placed an OJEU advert a 10 day standstill (Alcatel) period will apply. Whilst not currently mandatory for Part B Services it will further demonstrate openness and transparency of our processes and help mitigate risk of any potential future legal challenge.
- A **signed contract** will be entered into with the successful provider(s) using the NHS standard contract and the schedules populated with details from the winning bidder(s) Tender response. A contract award notice will then be placed via the etendering system to close the process.
- A **record of the contract award** must be maintained in order to comply with Regulation 3(5) of the Procurement, Patient Choice and Competition

Regulations. A template is included as Appendix 5. This record should contain the following information:

- Reasons for procuring the service
- Details of engagement with patients, community groups, carers and other third parties
- Reasons for specifying the services in a particular way
- Rationale for procuring a number of different services as a bundle
- Analysis of service delivery that shows how it is co-ordinated from a patient's perspective and alongside other services
- Details of due diligence applied to the successful provider
- Rationale for key terms of the contract
- Reasons for the selected procurement route
- Rationale for award criteria and why successful provider was selected
- Details of any analysis carried out of other bidders

### **Use of Information Technology**

Wherever possible the use of technology and e-procurement methods should be used. These will assist in streamlining our procurement processes whilst at the same time providing a robust audit trail.

E-Tendering solutions provide a secure and efficient means for managing tendering activity particularly for large complex procurements. They offer efficiencies to both buyers and sellers by reducing time and costs in completing tenders. An added advantage is the use of electronic documents enables easy transfer of information and helps contribute to the environment by reducing paper. The Bravo Solutions e-tendering system is currently being used for all procurement processes. All projects shall be able to access the AWARD evaluation system for online evaluating of responses. This will be agreed with the procurement lead at the onset of each project.

All responses are sealed until the closing deadline has been exceeded and then the Procurement lead will open the responses and carry out initial compliance checks. The Bravo system is fully auditable and supports a robust procurement process.

## **Contracts Finder**

The EU Procurement Directives, implemented into UK Law by the Public Contracts Regulations 2006, apply to the award of contracts by Public Bodies. The CCG should also comply with Cabinet Office policy and guidance by publishing all of our tender opportunities and contract awards (including the total contract value) over £10,000 on 'Contracts Finder'. All contract award details are completed on the Contracts Finder website. These activities are carried out by the procurement team at the end of a project, typically once the contract has been signed.

## **Transfer of Undertakings & Protection of Employment Regulations (TUPE)**

These regulations arose as a consequence of the 1977 European Union's Acquired Rights Directive and were updated in 2006. They apply when there are transfers of staff from one legal entity to another as a consequence of a change in employer, for example they may apply if an In House service is contracted out to another organisation. This is a complex area of law which is continually evolving as a result of case law. The CCG needs to be aware of these and the need to engage HR support and possibly legal support if there is a possibility that TUPE may apply.

Additionally, NHS Bodies must follow Government guidance contained within the "Cabinet Office Statement of Practice 2000/72 and associated Code of Practice 2004 when transferring staff to the Private Sector".

Adequate time must therefore be allowed in tender timetables for staff consultation where transfer of staff is a possibility.

## **Ethical and Sustainable Procurement**

The CCG can have a significant impact on the local health economy by helping reduce health inequalities and improving the well being of the community we serve. This will be achieved by commissioning services that are appropriate and are sourced 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 current procurement rules and principles<sup>4</sup>.

It is the intention of the CCG 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 best be provided by a local provider.

To assist the development of providers, the CCG may hold Provider Development workshops to inform commissioning intentions and to provide help and guidance on procurement processes. It should be noted that all providers both current and potential shall be invited to Provider Development workshops as all providers must be treated equally.

## **NHS Monitor**

NHS Monitor replaces the former Competition and Co-operation Panel and acts as “an expert health-sector regulator with an overarching statutory duty to protect and promote patients’ interest to enforce the regulations”. It allows for another route for challenge to poor procurement processes without going through the Courts.

### Responsibilities

NHS Monitor is required to ensure that:

- the safety of people who use health services is maintained
- continuous improvement in services is secured
- ensure that commissioners allow people to have access to the services that they need and make best use of resources when doing so
- help providers cooperate with each other in order to improve the quality of services

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<sup>4</sup> <http://www.socialenterprise.org.uk/news/new-guide-the-public-services-social-value-act>

NHS Monitor can open an investigation under the Procurement, Patient Choice and Competition Regulations in two circumstances:

- On its own initiative for investigations into breaches of the prohibition of anti-competitive conduct (regulation 10)
- In response to a complaint that a commissioner has breached a requirement in regulations 2 to 12 of the Procurement, Patient Choice and Competition Regulations or by regulations 39,42 or 43 of the Responsibilities and Standing Rules Regulations where it is considered that the complainant has a sufficient interest

NHS Monitor will prioritise cases and carry out investigations. There is no specific time period within which NHS Monitor must complete an investigation. This will depend on:

- Urgency for the issue to be resolved
- Complexity of the issue
- How much relevant information is available

NHS Monitor may close a case without further action and without providing a reason for doing so.

NHS Monitor can declare that an arrangement for the provision of health care services for the NHS is ineffective where:

- they are satisfied that a commissioner has breached a requirement in regulation 2, 3(1)to(4), 4(2) and (3), 5 to 8 or 10(1) of the Procurement, Patient Choice and Competition Regulations
- the breach is sufficiently serious

This will be done through the issue of a Notice of Intent.

NHS Monitor can also take enforcement measures to deter further breaches by the commissioner. This will be based on:

- whether the breach was known to the commissioner,
- how much the commissioner has gained from the breach (financial and reputational benefits);

- if the commissioner notified Monitor itself, has taken voluntary steps to remedy the breach, co-operated with the investigation
- whether the breach represents part of a pattern of non-compliance
- whether any third parties are taking relevant action in relation to the same conduct

A third party is defined as:

- Providers
- Other commissioners
- Users of health care services (including individual patients)
- Patient groups

#### Out of scope

NHS Monitor cannot direct a commissioner to hold a competitive tender. It shall oversee compliance with the regulations.

NHS Monitor is not able to investigate a complaint where the person bringing the complaint has brought an action under the Public Contracts Regulations 2006.

Further information as to the role of NHS Monitor can be found in the Enforcement guidance on the Procurement, Patient Choice and Competition Regulations, 20 December, 2013 and Substantive guidance on the Procurement, Patient Choice and Competition Regulations, 20 December, 2013.



## **Summary of frequently used types of procurement procedures**

### **Open procedure**

Two stage process – expressions of interest and invitation to tender stages

Used when: limited market activity; time constraints

Timeline: 4 to 6 months

### **Restricted procedure**

Three stage process – expressions of interest, pre-qualification questionnaire and invitation to tender stages

Used when: wider market activity; additional time to complete specification; requirement to short-list

Timeline: 6 to 9 months

### **Any Qualified Provider Model**

Two stage process – expressions of interest and accreditation stage (through pre qualification questionnaire)

Used when: need to expand patient choice and when mandated to implement nationally

Timeline: 3 to 4 months

### **Single Stage Tender**

Two stage process – expressions of interest and invitation to tender stages

Used when: low value (below threshold); active market

Timeline: 2 to 4 months

### **Competitive Dialogue**

Four stage process – expressions of interest, pre qualification questionnaire, dialogue stage and final tender stages

Used when: no clear idea of service specification; no time constraints

Timeline: 12 to 18 months

### **Mini Competition**

One stage process – invitation to quote stage

Used when: Part A services; included on a national Framework Agreement (has already been procured through an OJEU compliant process)



## **Review**

This Procurement Strategy should be reviewed on a regular basis and at least annually to ensure it remains up to date with all current regulations, rules, best practice and guidance.

## **Appendix 1 EU Regulations**



EU regs.pdf

## **Appendix 2 Guide of the Social Value Act (2012)**



Guide to the Social Value Act (2012).pdf

## **Appendix 3 Competition Dispute Resolution Policy and Process**



Competition Dispute Resolution Policy and

## **Appendix 4 Operational Guidance for Clinical Commissioning Groups**



Appendix 4 Operational Procuremen

## **Appendix 5 CCG Contract Award Report**



Appendix 5 CCG Contract Award Repc

## **Appendix 6 Procurement Initiation Document**



Appendix 6 Procurement Initiatio

## Appendix 7 Moderation Process



Appendix 7  
Moderation Process.doc