Merton and Wandsworth LDU
Procurement Policy

Version 1.02

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Lead Director: Josh Potter / Neil McDowell

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| **Equality Analysis** | **EQUALITY ANALYSIS**  
This Policy is applicable to the Governing Body, every member of staff within the CCGs and those who work on behalf of the CCGs. This document has been assessed for equality impact on the protected groups, as set out in the Equality Act 2010.  
This document demonstrates NHS Merton and Wandsworth CCG’s commitment to create a positive culture of respect for all individuals, including staff, patients, their families and carers as well as community partners.  
The intention is, as required by the Equality Act 2010, to identify, remove or minimise discriminatory practice in the nine named protected characteristics of age, disability, sex, gender reassignment, pregnancy and maternity, race, sexual orientation, religion or belief, and marriage and civil partnership. It is also intended to use the Human Rights Act 1998 and to promote positive practice and value the diversity of all individuals and communities. |
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1. Introduction

The south west London (SWL) CCGs Committees in Common approved in 2016/17, the development of a new operating model across South West London to strengthen collaborative commissioning arrangements and to consolidate leadership and accountability responsibilities.

The Alliance aimed to bring the work of the CCGs and the wider system together to address the significant challenges set out within the Sustainability and Transformation Plan (STP) for South West London. The Alliance senior management team is made up of managing directors for the three new Local Delivery Units (LDUs) – Kingston and Richmond, Merton and Wandsworth and Sutton (from 2018).

Merton CCG and Wandsworth CCG formed a Local Delivery Unit (MWLDU) on April 1st, 2017 and is committed to ensuring it meets the regulatory requirements and statutory guidance relating to procurements. These include the application of the Public Contracts Regulations 2015 since 18th April 2016 in relation to the procurement of NHS commissioned health care services, and the revised Managing Conflicts of Interest: Statutory Guidance for CCGs, published by NHS England in June 2016 and as amended June 2017.

Recent audits of the procurement and purchasing procedures and practices across CCGs have identified a need to have in place a policy on procurement which takes account of current regulatory requirements.

This document seeks to provide a procurement policy for the LDU that addresses all areas of CCG spend, including contracts for healthcare services and also for the procurement of goods and non-healthcare services.

The policy seeks to:
- Set out a clear purpose and scope for the policy;
- Reference the relevant regulatory frameworks;
- Outline key principles and considerations to be taken into account;
- Confirm responsibilities and how capability will be assured;
- Ensure use of robust and consistent contractual terms and conditions;
- Outline the basis of decision making and the processes associated with the awarding contracts;
- Outline the responsibilities and terms of reference for the LDU Contract and Procurement Monitoring Group (CMPG) that ensure this policy is being followed;
- Detail how the policy will be reviewed; and
- Reference other relevant and interlinking policies of the LDU.

Each CCG within the Local Delivery Unit is still a single statutory body and where applicable, decisions will need to be made by each CCG governing body.
2. Purpose

This policy recognises and seeks to support the key objectives of the LDU including to commission a sustainable, affordable, and high quality NHS. When procuring health care services, CCGs are required to act with a view to:

- meeting the needs of the people who use the services;
- improving the quality of the services; and
- improving efficiency in the provision of the services.

This policy outlines how decisions to award contracts will be approached, reflecting current regulatory obligations, national policy and statutory guidance.

The Procurement Policy is not intended to be comprehensively prescriptive, but recognises the necessity for situational discretion when appropriate and, as such, this policy outlines key principles and considerations that will inform decision making.

This policy aims to support:

- delivery of the statutory objectives of each CCG as an NHS body;
- the provision of high quality NHS services;
- assurance of value for money;
- compliance with regulatory obligations;
- exercise of due diligence; and the
- assurance of public sector probity.

The Procurement Policy will be relevant to any situation where:

- a new contract needs to be established or;
- an existing contract reaches the end of its lawful duration or;
- an existing contract needs to be reviewed for the provision of any goods or services, including healthcare services being established for the benefit of NHS patients.

3. Regulatory & Policy Framework

When considering awarding contracts for goods and services, specific regard should be given to the following (as may be amended):

- Public Contracts Regulations 2015 – which prescribes how public bodies need to act when deciding how to award public contracts;
- NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013, including Monitor’s substantive guidance on the same – setting out the responsibilities of NHS commissioning bodies and their obligations when awarding contracts for healthcare services;
- Health & Social Care Act 2012;
- Public Services (Social Value Act) 2012 – requiring that consideration be given as to how improvements might be made in regard to economic, social and environmental well-being of the local area;
- Managing Conflicts of Interest: Revised Statutory Guidance for CCGs (NHS England, June 2016);
- Transfer of Undertakings and Protection of Employment Regulations (TUPE) 2006;
- Equality Act 2010 – Section 149 sets out the Public Sector Equality Duty;

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1 NHS (Procurement, Patient Choice and Competition)(No.2) Regulations 2013
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4. Definition

Procurement is central to driving quality and value. It describes a whole life-cycle process of the acquisition of goods, works and services; it starts with identification of need and ends with the end of a contract or the end of useful life of an asset, including performance management. Procurement encompasses everything from repeat, low-value orders through to complex healthcare service solutions developed through partnership arrangements.

The process of procurement will result in third party suppliers/providers/contractors delivering services, supplies or works under legally binding contractual terms where all the conditions necessary to form a legally binding contract have been met.

This Policy is designed to set out all of the requirements for LDU staff and its advisors to comply with when awarding contracts for the CCGs. The requirements are based upon the current legal framework and national NHS guidance and will be updated in line with any future changes.

Specific procurement activity will be captured in the LDU Procurement Plan detailing how the requirements set out in this Policy have been considered and complied with.

The internal LDU process of starting and completing a procurement is covered under Annex J – High Level Flow Chart on the LDU Procurement Decision Process.
5. Aims and Objectives of this Policy

To set out the approach for facilitating open and fair, robust and enforceable contracts that provide value for money and deliver improved quality standards and outcomes, with effective performance measures and contractual levers.

To describe the transparent and proportionate process by which the LDU will determine how health and social services are to be commissioned. Options include:
- Direct award, either via a contractual or PO arrangement
- Variation to an existing agreement
- A competitive process
- An Any Qualified Provider (AQP) accreditation process
- Establishing a new, or accessing an existing framework

The above options will need to be considered and assessed to identify which route is:
- Compliant with all the legislative framework
- Provides the best outcomes based on the CCG objectives for each service

To set out how we will meet the statutory procurement requirements primarily the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013 (The 2013 Regulations)

6. Scope of the Policy

This policy applies to all Merton and Wandsworth LDU clinical and non-clinical procurements
This Policy must be followed by all LDU employees and staff on temporary contracts and representatives acting on behalf of the LDU. This also includes any procurements hosted by any of the CCGs including those done by the South West London Health and Care Partnership (SWL HCP).
7. Key principles & considerations

The following key principles and considerations will support and guide each CCG when considering how to achieve their statutory obligations and in delivering their commissioning plans when making decisions as to how public funds will be invested through contracts for the procurement of goods and services, including health care services to be accessed by NHS patients.

7.1 Quality and value for money: Assessments, processes and decision making will seek to identify the most capable provider(s) to support delivery of the statutory obligations and commissioning intentions of the LDU (as outlined above). Decisions regarding contract award will be informed by assessments of value for money, this being an appropriate balance between quality and price. Contract award decisions will not be based solely on price.

7.2 EU Treaty derived principles: As a public body and a Contracting Authority, as defined in statute, it is recognised that decisions regarding the awarding of contracts and how processes should be designed to award contracts are expected to comply with principles that have been derived from European Treaties and which underpin both EU and UK national procurement regulations and public procurement policy and guidance, including:

- **Transparency** – including in regard to decision making and contract opportunities;

- **Equality of treatment and non-discrimination** – including ensuring that no providers or types of providers are treated more or less favourably;

- **Proportionality** – ensuring that assessments, requirements and decisions are reasonable given the relevant factors, circumstances, total value and risks associated with the relevant contract.

To ensure that the CCGs comply with the above and wider obligations in regard to transparency, the CCGs will ensure that details of all relevant contracts entered into are published in accordance with regulatory requirements and NHS policy.

*See Annex E – Regulatory requirements to publish Contract Notices, including Table AE1*

7.3 Competition: The role of competition will be carefully considered and, where appropriate, assessed to understand how it may best support the delivery of the statutory obligations and the commissioning intentions of each CCG.

Recognition is given to the underpinning assumptions behind EU and UK procurement regulations, of the benefit of competition to drive best value for money, innovation and improved patient experience.

Recognition is also given to the statutory obligations of each CCG to decide to the extent to which, and how competition might be used to meet the commissioning intentions.

Where the CCG makes a decision regarding awarding a contract which presents a risk of appearing to be anti-competitive, the reasons for such a decision will be recorded by the CCG. Such reasoning should be supported, where appropriate, by an assessment as to the benefits for patients and the NHS that is being considered to

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2 Health and Social Care Act 2012; and NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013

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outweigh the potential benefits that could reasonably be expected through competition.

Whilst the CCG may use competition to select the most appropriate and best value provider(s) to be awarded a contract, recognition is also given to the role that patient choice can play in allowing providers to compete to offer for example, the most accessible services, or to deliver the best patient experience.

**7.4 Patient choice:** When reviewing how services should be configured and contracts awarded for the provision of NHS services, a key consideration will be the choices that can be offered to patients.

Recognition is given to both regulatory and national policy obligations to secure and safeguard patient choice for certain NHS services, and also the role that patient choice can play in driving quality and innovation, particularly in regard to patient focused care.

Where assessed as a viable and sustainable service delivery model, consideration will be given to the establishment of provider frameworks, offering contracts to more than one provider where each is able to offer NHS services to patients – including use of the Any Qualified Provider (AQP) model where a standard tariff can be established by the CCG.

Recognition is given to regulatory obligations to ensure patients are able to choose between any providers of secondary care consultant led services.

**7.5 Integration:** Consideration will be given by the CCGs to identify and create opportunities for the integration of services where such integration can deliver improved benefit to patients and/or the NHS. It is recognised that integration may take the form of providers of different services collaborating to offer joined up health and social care services for service users, or may involve services being provided by a single or lead provider. There will also be a priority to integrate services for both CCGs as part of the LDU arrangement.

**7.6 Integrated Care Partnerships:** The potential benefits of Integrated Care Partnerships (ICPs) are recognised and how the bringing together of healthcare contracts through such arrangements can offer an increased ability to support the delivery of key objectives of the CCG, including the assurance of delivering quality healthcare services and value for money. Consideration will be given as to how the CCG can make best use of resources to support the establishment of provider partnership solutions, including how contracts can be established and structured in ways to support the greater benefits possible through ICPs.

**7.7 Specifying requirements:** When seeking to award any contract for goods or services, a clear definition of requirements will be specified to inform the decision making.

Where appropriate, the development of service specifications will seek to focus on the outcomes to be delivered by the service, enabling providers of services increased ability to develop and offer innovative solutions to deliver increased benefit to patients and the NHS.

The development of service specifications will seek, where appropriate, to involve relevant stakeholders, including existing providers, potential providers, other commissioning bodies and relevant patient representatives, including for the purpose of validating in regard to accuracy, reasonableness and appropriateness.

Where requirements are being specified for the provision of health care services, the templates mandated within the NHS Standard Contract will be used. Specifications will
ensure that clear measures of effectiveness and/or successful delivery of outcomes are clearly articulated to enable effective ongoing management of the contract (e.g. Key Performance Indicators (KPIs) including a requirement to adhere the standard LDU’s quality KPIs required for all healthcare contracts).

7.8 Patient and public engagement: Where appropriate or required by statute, proportionate consultation and/or engagement with patients and the public will be undertaken to inform the review, development and commissioning of NHS services.

Particular regard will be paid to patients most likely to be directly affected by any service change. Account will be taken of the views and responses obtained from service users. Consideration will be given to the potential benefits of service user representative roles during procurement processes to award contracts for health care services.

7.9 Market engagement: Recognition is given to the benefits of timely engagement with both existing and potential providers to inform the review and development of requirements for future contracts, particularly for healthcare services.

Where assessed as appropriate, proportionate market engagement will take place prior to any procurement process to: validate commissioning intentions and planning assumptions (including demand and activity modelling and financial factors); identify new service delivery solutions (including best practice); refine service requirements; explore innovative solutions; gauge and stimulate market interest and competition; identify any potential barriers and/or issues; and to inform selection and design of an appropriate process to award a contract – including potential evidence of a single or most capable provider.

Where a contract is to be ‘called off’ a framework, time permitting, engagement with framework providers will take place before any ‘mini-competition’ in order to assure their interest and ability to respond to an invitation to propose a competitive solution.

It is recognised that market engagement can be used to satisfy the obligation for the CCG³ to make arrangements for potential providers to express an interest in providing services.

Market engagement will ensure equal treatment and non-discrimination between providers and types of providers. Notices inviting engagement from the market will be published via Contracts Finder⁴ and where applicable OJEU⁵.

7.10 Collaborative working: Opportunities will be explored to identify the potential benefits of collaborative approaches with other commissioning bodies; both NHS and local government, where common purchasing and commissioning requirements exist with the objectives to achieve shared efficiencies and improved leverage with the health and social care market, including for example forming a Local Delivery Unit (LDU) with other local CCG(s).

7.11 Authorised decision making: Decision making for each stage of a process to award a contract will comply at all times with the Scheme of Delegation and Standing Financial Instructions of the CCG.

³ NHS (Procurement, Patient Choice and Competition)(No.2) Regulations 2013
⁴ Contracts Finder is the UK’s official website for publishing details of public sector contract opportunities and contract award decisions.
⁵ OJEU – the Official Journal of the European Union. The official website for publishing details of public contracts with regard to the Public Contract Regulations 2015.
7.12 Managing potential Conflicts of Interest: The LDU recognises the statutory obligations to identify and manage any potential or actual conflicts of interests in regard to any decision making regarding the awarding of contracts. Each CCG will, at all times, ensure compliance with both regulatory and statutory guidance in this regard, including the assurance of full probity and transparency of decision making.

8. Responsibilities, capability and resourcing

8.1 Decision making and accountability: The CCGs will ensure that all purchasing and procurement decisions, including contract awards, comply at all times with each CCG Constitution and, specifically, the Scheme of Reservation and Delegation and Standing Financial Instructions.

Whilst external agencies and commissioning support functions will be used to provide procurement services (including the provision of advice, guidance, processing of purchase requisitions, raising of purchase orders and undertaking competitive tendering), as well as contract management support, the CCG will, at all times, remain directly responsible for approving:

- business cases intending to commit resources of the CCG to invest through any contract;
- selection of processes to award a contract, including decisions to competitively tender;
- final specifications, evaluation criteria and bidder questions;
- selection of potential bidders to invite to tender (where a pre-qualifying and short-listing stage is part of a procurement process);
- approval of feedback to be provided to unsuccessful bidders;
- final decisions regarding the awarding of a contract;
- decisions to terminate a contract which involves investment of resources of the CCG;
- contract signature.

The CCG will ensure that records are maintained about decisions made in regard to the awarding of contracts which comply with the requirements of:

- Regulation 84 of the Public Contracts Regulations 2015; and
- Regulation 9(1) of the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013.

See Annex B – Regulatory Requirements to Maintain Records regarding Contract Award Decisions

8.2 Planning: The LDU will maintain a contracts database that supports regular review and identification of the status of each contract by CCG, including timelines for expiry which will be used by the LDU contracts team to inform timely service review and likely procurement planning (including market engagement). The Contracts Database will be maintained by the contracts team and updated by the responsible commissioning lead to confirm plans to use formal tendering processes to renew contracts.

The responsible commissioning lead for each contract will ensure that details of all contracts established are recorded within the LDU’s central Contracts Database.
The LDU will identify prioritised procurement requirements which will take account of existing contracts, new service developments arising from LDU commissioning intentions, as well as local and national priorities.

When planning a formal tendering process, the responsible commissioning lead for the contract to be procured will liaise with the contracts team to identify a Contract Lead. They will provide the support throughout the process and to prepare, populate and arrange for signing of contracts following conclusion of the procurement process.

8.3 **Qualified advice and guidance**: Recognising the often complex and continually developing regulatory regime that impacts on decisions to award contracts, appropriately qualified and experienced advice and guidance will be sought to inform decision making regarding the awarding of contracts and associated processes. Arrangements will exist for decision makers to have access to appropriately experienced procurement professionals and where appropriate, specialist procurement legal services.

*See Annex C – Procurement Services supporting the CCG*

8.4 **Use of information technology**: Procurement processes will, where possible, be conducted electronically using appropriate systems that deliver benefit to the LDU in terms of speed of communication with providers, robust audit trails and security of commercial confidentiality. Recognition is given to procurement regulations which include obligations to provide procurement information to potential bidders electronically, free of charge.

8.5 **Procurement training**: The LDU will ensure that decision makers, including procurement evaluation panel members, have access to appropriate levels of training in regard to procurement matters commensurate with their responsibilities which will include general awareness of regulatory obligations and how and when to seek further support, advice and guidance. Training will include a focus on the safeguarding of information including personal and commercial to avoid breaches of regulatory and contractual obligations. Training will also ensure that there is awareness of the LDU Anti-Fraud and Anti-Bribery Policy, including how concerns can be raised through the Local Counter Fraud Specialists and NHS Protect.

*See Annex C – Procurement Services supporting the CCG*

9. **Contract and Procurement Management Group**

The Contract and Procurement Management Group (CPMG) is responsible for operational management of procurement activity within the CCG. The Group will oversee the implementation of the CCG Procurement Plan and ensure that the CCG can demonstrate compliance with the principles of good procurement practice in line with NHS (Procurement, Patient Choice and Competition No. 2) Regulations 2013 and the Public Contracts Regulations 2015. CPMG will coordinate the work of the NELCSU and its sub-contractors.

Terms of Reference for CPMG have been enclosed as **Appendix I**.
10. Terms and conditions of purchase

10.1 Regulatory compliance of providers

As appropriate and lawful, the LDU will ensure that contractual terms and conditions, and procurement processes are designed and used to ensure that providers recognise, commit to and evidence their ability in regard to:

- Complying with all relevant employment legislation;
- Maintaining acceptable standards of health and safety and comply fully with all legal obligations in this regard;
- Meeting all tax and national insurance obligations;
- Meeting all equal opportunities legislation;
- Being reputable in their standards of business conduct;
- Respecting the environment and taking appropriate steps to ensure they minimise their environmental impact;
- Evidencing an appropriate record of involving patients in their services and providing high quality services;
- Demonstrating an appropriate record of successful partnership working with commissioners and other providers in the best interests of patients and public;
- Ensuring openness and transparency with commissioners on all Patient Safety and Quality issues within their services with accurate information and reporting;
- Abiding by and promoting awareness of the NHS Constitution, including the rights and pledges set out in it;
- Information governance assurance framework requirements;
- Maintaining appropriate regulatory registration (e.g. with the Care Quality Commission).

10.2 Purchase Orders

Official Purchase Orders will be raised with all purchases of goods and services ensuring compliance with the LDU’s Standing Financial Instructions. Purchase Orders forwarded to suppliers of goods and [non-healthcare] services will ensure clear reference to the nationally developed NHS terms and conditions of goods and services. There will be a financial limit of £200k when considering the use of POs.

See Annex D – Contract Terms and Conditions (for details of NHS terms and conditions for goods and services)

10.3 Written Contracts

All contracts for the provision of healthcare services will be in writing and incorporate nationally developed and mandated terms and conditions as relevant to the type of service. Further details on the development of contracts is contained within the LDU’s contracting policy.

See Annex D – Contract Terms and Conditions (for mandated forms of contracts for healthcare services)
10.4 Contracts ‘called off’ Frameworks

Where contracts are entered into under a Framework Agreement, the ‘call-off’ contract template prescribed by the Framework including the terms and conditions of the Framework will be used as the commercial basis of agreement between the parties.

10.5 Grants

Where the LDU agrees the award of a grant, the terms of the grant will be agreed with the third party recipient and recorded using a Grant Agreement having reference to such model agreements published by NHS England.

See Annex D – Contract Terms and Conditions (for model Grant Agreement)
See 12 – Processes to award a Grant Agreement

11. Processes to award a contract

11.1 Choosing a process to award contracts

Recognition is given to the variety of processes that may be available to the LDU to award a contract for the provision of goods and services and the importance of ensuring that decisions on this are appropriate at the time and are robust. Appropriately qualified and experienced advice and guidance will be sought to inform an understanding of the options available, including any potential risks and how these might best be mitigated.

As appropriate, consideration will be given to the following approaches and issues:

**Modification** – Consideration will be given to whether it is possible to vary or modify an existing contract, whether this will be to vary the scope of service and/or the overall contract value. Recognition is given to regulatory limitations as to when and to what extent an existing contract may be lawfully modified (varied) without triggering the need to re-procure a new contract. Recognising that modifying a contract does require negotiation with the incumbent provider in line with the process set out in the terms of the contract, the LDU will also need to consider alternative approaches, including establishing a new contract. The leverage of the LDU should be considered and whether there is a continuing assurance of value for money, or whether it will be in the best interests of the LDU and patients to explore wider competition.

**Use of Frameworks** – It will be appropriate that where a framework agreement is being established, or an existing framework is to be re-opened to new applicant providers, including the Any Qualified Provider (AQP) for healthcare services, the process to award a place on the framework will be one of assurance rather than competition between providers.

Where appropriate, the CCG will seek to award a contract as a ‘call off’ an existing framework, where:

- The framework is able to meet the LDU’s requirements; and
- The call-off process is considered proportionate and able to avoid a more resource intensive and longer procurement process.

Where a contract is to be ‘called off’ a framework, time permitting, engagement with framework providers will take place before any ‘mini-competition’ in order to assure their interest and ability to respond to an invitation to propose a competitive and robust solution.
Where it is lawful to directly award a contract as a ‘call off’ from an existing framework without a ‘mini-competition’, the LDU will consider the relevant costs and benefits of this option.

**Competition** – will be considered for both the awarding of single contract or multiple contracts (including where a service requirement may be split into smaller ‘lots’). Where a contract is to be ‘called off’ a framework, there is usually a requirement to select the most economically advantageous provider through a ‘mini-competition’ process.

**Negotiation / direct award** – the LDU will consider whether it is appropriate and compliant to directly award a contract without any competitive process, involving a directly negotiated solution with a single provider, where specific lawful circumstances exist including there being either:

- A framework that lawfully allows the direct awarding of call-off contracts without any further competition;
- Evidence such as that available through market engagement, of a single capable provider;
- An urgent requirement presenting insufficient time to run a competition, where such circumstances could not have reasonably been foreseen.

**CCG financial procedures** - In all cases, reference will be made to each CCGs Scheme of Delegation and Standing Financial Instructions to determine the financial value thresholds as to: when competitive proposals are expected to be sought for low value contracts; and when a formal procurement process is required.

The LDU’s financial procedures will be followed to document and authorise any decision to award a contract without a competition, including use of the Single Tender Waiver.

**Regulatory financial thresholds** - Where regulatory thresholds indicate the need for a formal competitive procurement process, the LDU will consider which of the procedures prescribed by the regulations will be appropriate and proportionate, having reference to the nature of the service, its total value, the level of competitive interest from the market and the ability of the LDU to sufficiently specify the LDU’s requirements. The selection and design of any competitive procurement process will be informed by a review of the market (e.g. market engagement) and the extent to which there is a competitive market for the goods or services being procured.

### 11.2 Deciding which process is appropriate – health care services

The LDU recognises the specific responsibilities and obligations it has when commissioning health care services for the local population, as well as the important flexibilities available to NHS commissioners when designing procurement processes for healthcare services contracts⁷, whilst ensuring compliance with EU Treaty derived principles.

Given the need to achieve its commissioning objectives, the LDU will select the most appropriate and proportionate process to award contracts that also maintain a focus to ensure best use of available commissioning, procurement and contract management resources. In regard to contracts for health care services, the following considerations will be taken in addition to those within the preceding section:

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⁷ Healthcare contracts commissioned by NHS commissioners fall within scope of Schedule 3 of the Public Contracts Regulations 2015 offering considerable flexibility in how procurement processes are designed and run.

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**Integrated Care Partnerships** - When reviewing a contract for health care services, whether for a new or existing service, the LDU will consider the contractual relationship the service will need to have with any existing or soon to be commissioned Integrated Care Partnership (ICP) or some other collaborative arrangement of providers, the LDU will give consideration to:

- Whether an existing contract should be extended, or an interim short-term contract be established during a transitional period whilst an ICP is established – where the service is to be subsumed within the scope of the ICP; or
- Whether a new contract to be established will need to include a clear provision to lawfully transfer (e.g. novate) from the CCG to the future ICP during the lifetime of the new contract; or
- Whether an existing service should be de-commissioned in light of the emergence of a new ICP contract.

The role of competition and the need to comply with associated regulatory obligations will be considered when establishing ICPs and any contracts that are likely to fall within their scope.

**Assessing market competitiveness** – The LDU recognises the regulatory requirements to make arrangements for potential providers to express their interest to provide services through advertisements on the appropriate websites.

- As appropriate to the expected financial value of the service, market engagement will be undertaken to:
  - Notify potential providers of the LDU's commissioning intentions;
  - Invite expressions of interest to provide the services;
  - Where appropriate and proportionate:
    - Invite further engagement to become involved in developing and/or reviewing draft service specifications, identifying new service delivery models and innovation, proposing and reviewing financial payment models and performance indicators, validating demand and activity modelling assumptions, etc.
    - Facilitate provider networking to enable collaborative provider solutions to meet LDU requirements;
    - Understand any specific issues or challenges within the relevant health and social care sector that might impact timely and effective development, implementation and sustainable delivery of the services to be commissioned by the LDU.
    - Provide information on issues and indicative timescales for any potential procurement processes and/or mobilisation.

- Expressions of interest received through market engagement will inform the LDU as to the appropriate design of a proportionate process to award a contract:
  - Where there are many potential bidders, consideration will be given to the inclusion of a prequalifying or shortlisting stage;
  - Where responses to an invitation for expressions of interest from potential providers is intended to evidence whether a competitive
process is appropriate, this will be made clear within the invitation/advertisement;

- Where responses do confirm a single (interested) capable provider, this may be used to evidence the appropriateness to directly negotiate with the single provider, or may inform consideration of wider market engagement to stimulate the level of competition considered appropriate by the LDU, or to develop the market to meet the needs of the LDU.

**Competition** - Where a contract falls outside the scope of ICPs, or which cannot be lawfully modified, the role of competition will be considered.

Given the status of health care service contracts within the procurement regulations, the LDU recognises and will use, as may be appropriate, the flexibility to design and run a procurement process that best meets the needs of the LDU whilst ensuring that any such process remains compliant with the EU Treaty derived principles of transparency, equal treatment, non-discrimination and proportionality.

**Regulatory thresholds** – The LDU will ensure that notices will be published in compliance with regulatory requirements in regard to: invitations for market engagement; invitations for expressions of interest; and calls for competition (to invite tenders). The LDU also recognises their obligations to publish details of all contracts awarded, whether as a result of a competition or a direct award.

See Annex E – *Regulatory requirements to publish Contract Notices*

**Contract award decision tree** – Annex F – ‘Decision Guide: selecting an approach to award a contract (healthcare services)’ provides a summary of the key considerations and process for identifying the most appropriate route to awarding a contract which incorporates the issues discussed above.

### 11.3 Evaluation approach & contract award criteria

**Any Qualified Provider (AQP) Frameworks** - Processes to appoint providers to an AQP Framework will be designed to validate applicant providers’ ability to meet the LDU’s requirements (as detailed in the service specification) and accept the terms and conditions of the framework and the prices as may be set by the LDU.

**First Outpatient Appointment Providers** - In the case of providers expressing an interest to offer first outpatient appointments with a consultant or a member of a consultant’s team, the LDU recognises its obligations to allow any suitably qualified providers to be awarded a contract for the benefit of patient choice. Processes to appoint interested providers will be designed to validate their ability to meet the LDU’s requirements, involving a proportionate assurance process.

**Value for money** - Where a competitive process is to be used to award a contract, the LDU will ensure that the evaluation methodology is able to identify the provider offering the best value for money, also referred to as the ‘most economically advantageous tender’ (MEAT).

‘Value for money’ will be specifically defined within each procurement process to ensure that there is the right balance between quality and price and that the evaluation process will be transparent to all potential bidders.

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8 NHS (Procurement, Patient Choice and Competition)(No.2) Regulations 2013
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**Proportionality** – When designing an evaluation methodology, the LDU will consider the total value of the contract and the level of potential risk associated with the service so that the approach to the procurement can be planned to be proportionate.

- For example: *Low value, low risk contracts* – consideration will be given to the use of fewer, less in-depth questions, shorter bid submission timeline, fewer evaluation panel members, and reduced due diligence.
- For example: *High value, high risk contracts* – consideration will be given to the inclusion of more involved pre-procurement market engagement, an increased range and depth of bidder questions, longer bid timeline where the service solution is complex, wider range of evaluation panel membership, increased due diligence, followed by a resourced mobilisation phase.

In line with the procurement regulations, potential bidders will not be required to pass a pre-qualifying stage for low value contracts for goods and non-clinical services having a contract value beneath the ‘OJEU threshold’.

**See Annex G – Regulatory procurement thresholds**

**Procurement evaluation stages** – Depending on the value, risk and complexity of the service being procured, the LDU will give consideration to the incorporation of the following procurement stages and elements:

**Qualification of bidders** – where a formal procurement process is to be used to award a contract, the LDU will ensure that potential bidders are appropriately qualified, capable and experienced:

- To ensure appropriateness and financial stability of potential bidder;
- To ensure compliance with regulatory requirements and fitness to hold a public contract\(^9\);
- To reserve the right of the LDU to exclude bidders presenting unacceptable levels of risk that cannot in the assessment of the LDU be sufficiently mitigated;
- Where the potential number of bidders is likely to be high, this preliminary stage will be designed to ‘pre-qualify’ and to short-list the most qualified and experienced potential bidders to then be invited to develop and submit a bid or tender;
- The LDU recognises the UK Government policy\(^10\) that public bodies must use the nationally mandated ‘Selection Questionnaire’ (SQ) documentation where needing to pre-qualify potential bidders during a procurement for a contract falling within scope of the procurement regulations. The LDU will have due regard to the scope and standards benchmarked by the national SQ when designing procurement processes for contracts falling outside the scope of the procurement regulations.

**Written bid response** – either in the form of a bid response questionnaire or inviting the bidder to submit a written proposal, ensuring that the questions are appropriately focused on the specified requirements of the LDU;

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\(^9\) Including compliance with the mandatory and discretionary exclusion criteria outlined within the Public Contracts Regulations 2015 (Regulation 57)
Bid price – which may be a competitive price within thresholds determined by the LDU, or confirmation of a tariff or service price proposed by the LDU. The LDU will ensure that bidders provide sufficient detail to justify bid prices being tendered to enable proportionate due diligence and scrutiny on the part of the LDU;

Employment protection – the LDU will have regard to relevant employment protection legislation\(^{11}\) and ensure that where relevant, there is an assurance that bidders understand, assess and take full account of their responsibilities in this regard;

Bidder presentation and interview – including the role of setting scenarios for bidders to respond to;

Site visits – consideration will be given as to how site visits to a bidder’s premises may be used as either a scored element of the procurement evaluation, or forming part of the LDU’s due diligence before finalising any contract award decision;

Dialogue and negotiation – where considered beneficial to the LDU and following expert procurement advice, the LDU may include some form of dialogue or negotiation stages with bidders as part of a formal procurement process.

**Contract award criteria** – The LDU will ensure that the criteria to be used to award a contract are carefully considered and relevant to each contract and its critical success factors, ensuring an absolute relevance to the LDU’s requirements, including how these are expressed through the developed service specification. In developing contract award criteria, the LDU will consider:

- **Proposed solution** – including for example the bidder’s service delivery model, workforce and management approach, systems, accessibility, etc.;

- **Assurance of quality** – how the bidder will assure that the required standards and levels of quality will be achieved and improved upon (including ensuring safeguarding);

- **Governance** – how the contract will be effectively overseen and reported on;

- **Social Value** – each CCG under the LDU recognises its obligations\(^{12}\) as a public body, to consider how contract award criteria can address how a bidder’s solution might offer ways to bring about additional added value in the form of improvements in regard to the social, economic and environmental well-being of the local area;

- **Mobilisation** – the confidence to be had in how the bidder is able to plan, resource and prepare for implementation of service delivery in a timely, compliant and safe manner;

- **Prices** – the LDU will consider what role prices will play in the evaluation.

Where prices are being determined and set by the LDU, evaluation will ensure bidders accept the LDU’s prices whilst demonstrating the ability to provide a sustainable service.

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\(^{11}\) Including the Transfer of Undertakings and Protection of Employment Regulations (TUPE) 2006

\(^{12}\) Public Services (Social Value Act) 2012
Where bidders are to be invited to tender competitive prices, the LDU will consider setting clear and robust\(^\text{13}\) upper and lower affordability thresholds within which bid prices must comply.

Evaluation of bid prices will ensure that bidders understand:

- how bid prices will translate into contract prices and how these will be paid by the LDU (including the frequency and nature of the payment);
- the extent to which bid prices are required to be comprehensive, for example to include all set-up, mobilisation, TUPE transfer, equipment and systems costs;
- the potential requirement for block pricing, caps and / or marginal pricing;
- how any performance, incentive, penalty or risk/gain share payments will be calculated and applied to the contract.

In line with regulatory obligations\(^\text{14}\), the LDU will ensure that bid prices are not abnormally low and where this appears to be the case, the LDU will require the bidder to explain their bid price, including evidencing that this is sustainable. The LDU will ensure that their rights are reserved during procurement process, to reject any bid where the price is abnormally low, and the bidder cannot provide a reasonable, robust explanation assessed to be acceptable to the LDU.

**Value for money** – the LDU will ensure that the contract award criteria are appropriate to support a contract award decision on the basis of overall value for money.

**Evaluation panel** – where appropriate the LDU will resource and appoint work-stream and subject matter experts (for example HR) to participate within a panel to evaluate bids received during a competitive procurement process. Where appropriate to the procurement of healthcare services, the role of patient representatives will be considered. At all times, the LDU will have regard to the LDU’s Policy on the Management of Conflict of Interests. Evaluation panel members will be required to declare any potential conflicts of interest which the LDU can then review and manage appropriately. Such declarations will be sought as the evaluation panel is formed, and declarations reviewed immediately following bidders being identified and prior to bids being shared with evaluation panel members.

**Moderation of evaluation panel scoring** – where an evaluation panel has been established to evaluate bids, the LDU will ensure inclusion of a moderation phase to agree consensus evaluation scoring on behalf of the LDU which will inform the evaluation panel’s identification and recommendation of preferred bidder(s) to be awarded a contract(s).

**TUPE information** – when sharing TUPE assessment information with Bidders, the LDU will ensure that such information is appropriately safeguarded to protect personal data in compliance with regulatory obligations. Any data protection breaches will be logged and reported in line with the LDU’s policy and procedures.

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\(^{13}\) For example, having been tested and validated through market engagement and/or cost modelling

\(^{14}\) Public Contracts Regulations 2015

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11.4 Due diligence

The LDU will ensure that proportionate due diligence is undertaken during and following procurement process to provide necessary assurance on the preferred bidder’s ability to deliver what they have offered to the LDU. The LDU will consider what evidence and assurances will be appropriate to obtain from the Recommended Bidder in regard to its ability to comply with contractual terms and conditions and its lawful responsibilities.

During the procurement process it will be the LDU’s discretion to undertake due diligence as it considers appropriate at any point throughout and/or after the ITQ process to seek the necessary reassurances in regard to the Bidder’s bid response and overall ability to deliver the requirements of the Contracting Authority. This may require additional documents or information from the Bidders (in a timely manner) as part of a due diligence process prior to deciding upon the Recommended Bidder and/or contract signature

This will include the option to fully assess and consider the information provided by the Bidder to determine the extent to which a Bidder presents any risks which the LDU may deem to be unacceptable, in its sole discretion, to the delivery of the Services.

Where such risk is identified, the LDU may invite the Bidder to agree how the risk can be mitigated to an extent considered by the LDU to be sufficient, or re-run the procurement, or consider the award to an alternative bidder when mitigation cannot be agreed to the satisfaction of the LDU.

In addition, the LDU may wish to take findings from the due diligence undertaken to identify the need for specific Conditions Precedents to the Contract.

11.5 Contract award decision

The LDU will ensure that all contract award decisions are made and recorded in compliance with the LDU’s Policy on the Management of Conflicts of Interest.

The LDU will ensure that contract award decisions are communicated to successful and unsuccessful bidders as soon as possible and will ensure:

- The provision of detailed written feedback to show the reasons for the decision; and
- That the relative merits and advantages of the winning bid are identified; and
- Bidders are able to learn from any potential weaknesses in their submitted procurement response to improve the quality of future procurement responses to the LDU.

Each CCG will ensure that Contract Award Notices are published in compliance with regulatory requirements in terms of where and when notices are to be published and the level of detail to be published, including details of the contract and the appointed provider.

Where contracts are awarded without a competition, the LDU will consider the benefits of publishing Contract Award Notices ahead of, rather than after, entering into the contract to allow timely transparency where there is the potential for external challenge to the contract award decision.

See Annex E – Regulatory requirements to publish Contract Notices
11.6 Mobilisation:

To ensure that there is a seamless transition of service provision between incumbent and newly appointed service providers, the LDU will ensure that the awarding of a new contract will ensure a focus on how mobilisation will be planned, resourced and overseen.

The LDU will assess the appropriateness to resource a governance role during the mobilisation phase, having regard to the relative risks, value and significance of service.

11.7 Contract signature:

Contracts will be signed with providers at the earliest opportunity following satisfactory necessary due diligence and following completion of a standstill period of at least 10 calendar days following notification to bidders of the contract award decision, where appropriate to the nature of the service, its value and regulatory requirements.

The internal process for arranging contract signatures is contained within the LDU contracting policy.

A pre-requisite to contract signature for healthcare service contracts will be the development by the provider of a comprehensive mobilisation plan considered sufficient by the LDU.

Where the LDU identifies any potential gaps or weakness during a procurement or assurance process leading up to the award of a contract, the areas of weakness will be addressed prior to entering into a contract.

The LDU will ensure that all relevant documentation received from a provider during procurement, or assurance process will be incorporated within the contract along with the LDU’s service specification, as key ‘documents to be relied upon’ as the basis of understanding of the services to be provided.

11.8 Purchase Orders and Contracts Database:

When contracts are signed, the responsible contracting lead will ensure that:

- a Purchase Order (PO) is formally raised, including specific references to the contract entered into, to support linked information systems between contracts, accounting ledgers and payment processes; and

- the LDU central Contracts Database is updated.
12. Processes to award a Grant Agreement

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

Before exploring the use of a grant agreement, the following needs to be confirmed:

- Has the organisation made or intends to make a formal application for grant funding?
- Is the organisation a voluntary sector organisation with charitable status?
- Is the service being provided not part of the services that the CCG is statutory required to commission?
- Is the service being provided either complements or similar to the services that the CCG is statutory required to commission?
- Is the CCG requiring the delivery of a service and not contributing towards funding for the activities of a voluntary organisation?
- Is the grant funding an economic and effective use of resources?

If any of the above questions are no, then this would require the use of an NHS Standard Contract and such will need to go through the usual tendering process.
The approval process to award a Grant Agreement is set out below:

1. Organisation discusses the need for additional funding with the CCG commissioner.
2. Commissioner to explore options and process at CMPG. CMPG to advise whether Grant will be applicable.
3. Organisation submits a formal application for grant funding.
4. Grant application goes to Strategy and Planning for scrutiny, application needs to evidence value for money.
5. If accepted at strategy and planning, application to go to Audit and Governance Committee for sign-off. Application also to go to Finance committee for information only.
6. Application goes to EMT for final approval, depending on value may also be subject to Governing Body approval or chair action.
7. Organisation receives written confirmation of application.
8. CCG contracts team submit NHS Grant Agreement for signature, which incorporates the approved application.

If rejected:
13. **Procurement Readiness Checklist and Timeline Templates**

These templates are created by NHS SBS to develop a checklist and timeline to be used when preparing for and running a procurement process to ensure there is clarity in regard to the stages, and typical roles to ensure responsibility in delivery and to support compliance.

The templates are not prescriptive and does not intend to outline the procurement process, or the precise order and timing for the various pre-requisites outlined, but does assume a *typical* procurement process to identify the common issues to be considered. The checklist can be modified for application to a specific procurement project as required. The final column can be used for local notation and/or to identify responsible leads for each element.

These are for indicative information only and should always be reviewed with the Procurement Manager to ensure they are up to date and bespoke and proportionate for each specific procurement process.
## Procurement Readiness Checklist

<table>
<thead>
<tr>
<th></th>
<th>Commissioning requirements defined - Commissioning requirements to be identified, developed, documented, tested, communicated, consulted, financed, and approved.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>1.1</strong> Existing services reviewed (where applicable)</td>
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<tr>
<td></td>
<td>▪ Review of existing service(s), model of care, contracting model &amp; contract expiry dates, any mandated premises, funding, quality, delivery of strategic commissioning objectives, contribution to health and wellbeing strategic aims.</td>
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<tr>
<td></td>
<td>▪ Stakeholder mapping/analysis and an engagement plan developed to inform subsequent processes.</td>
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<td></td>
<td>▪ Research re evidence base for future services.</td>
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<td></td>
<td>▪ Consideration of value for money, including benchmarking.</td>
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<td></td>
<td>▪ Case for change developed internally.</td>
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<td>▪ Service re-design work where appropriate.</td>
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<td></td>
<td><strong>1.2</strong> Communications and engagement strategy</td>
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<tr>
<td></td>
<td>▪ Stakeholder analysis and management issues considered (including defining potential roles &amp; responsibilities for the procurement project/process and communicating these early on to ensure buy-in)</td>
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<tr>
<td></td>
<td>▪ Communications and engagement strategy developed to support effective process.</td>
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<tr>
<td></td>
<td>▪ Risk profile used to inform approach to communications and engagement planning.</td>
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<td></td>
<td><strong>1.3</strong> Incumbent provider engagement</td>
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<tr>
<td></td>
<td>▪ Engagement with any incumbent provider(s) to review the current service and to help inform commissioning intentions and thinking.</td>
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<td></td>
<td>▪ Request &amp; collate any contract performance and cost information (if this hasn’t already been done as part of ongoing contract management).</td>
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<tr>
<td></td>
<td>▪ Reviewing the current service will help to validate the CCG’s assumptions around:</td>
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<tr>
<td></td>
<td>▪ Current and future service activity levels</td>
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<td></td>
<td>▪ The affordability of the service.</td>
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<tr>
<td></td>
<td>▪ Challenges in the delivery of the proposed service model</td>
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<tr>
<td></td>
<td>▪ Identification of any issues that may need to be considered and addressed, as well as seeking input/feedback from the incumbent about the service to help inform the CCG.</td>
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<tr>
<td></td>
<td>▪ Consider the timing of serving contractual notice and whether any TUPE implications (SBS have TUPE templates that can be provided to assist in capturing the required TUPE information for the tender).</td>
</tr>
</tbody>
</table>
| 1.4 | Patient & Public engagement (PPE) | - Relevant PPE informs commissioning requirements e.g. accessibility, quality, patient choice, KPIs, patient experience, models of care  
- Ensure that patients and public are well aware when the CCG are engaging in a procurement process. This can possibly be aided by asking the provider to send out communications on the CCGs behalf. The CCG need to be able to evidence who attended engagement sessions, when and where. |
| 1.5 | Draft service specification (SS) developed | - Reviewed in light of PPE outcomes.  
  o Compared with other SS e.g. research SS developed by other commissioners, best practice examples.  
  o Consulted and discussed with relevant internal commissioning leads responsible for key work-streams, including  
    ▪ E.g. Safeguarding lead; governance leads; infection control; IM&T; workforce  
  ▪ Review of any applicable national guidance e.g. NHS England |
| 1.6 | Social Value Act (SVA) considered | - Consider appropriateness of specified service(s) to deliver added social value. If applicable, questions can be included within the Bidder Response Questionnaire.  
- NB. Avoid specifying requirements which might be unlawful, e.g. breaching EU Treaty of Rome principles |
| 1.7 | Equality Impact Assessment (EIA) completed | - EIA of draft Service Specification to ensure appropriateness and compliance through engagement with the relevant stakeholders |
| 1.8 | Contracting model proposed | - Understand how the intended service(s) will relate to / integrate within relevant health and social care economy, ensuring compliance with any relevant regulations.  
- Consideration given to how contract relationships will enable effective governance.  
  o e.g. direct contract with CCG, lead /prime provider model, alliance contracting arrangement, Any Qualified Provider (AQP), bespoke framework agreement |
| 1.9 | Activity levels modelled | - Data collation undertaken to help with modelling and analysis  
- Assumed activity levels identified.  
- Underlying demand and implications for the service(s) and other services modelled and challenges/questioned.  
- Demand management approach and assumptions described. |
1. **Commissioning requirements defined - Commissioning requirements to be identified, developed, documented, tested, communicated, consulted, financed, and approved.**

1.10 **Financial implications understood**
- Existing budgets and spend understood. Is there any separate funding available e.g. for set-up costs, TUPE etc? Financial expectations / efficiency targets / investment funds identified.
- Factors influencing the expected financial implications of the intended service(s) identified.
- Financial implications modelled.
- Affordability thresholds considered.

1.11 **Tariff approach & payment mechanisms described**
- For example, cost and volume / block, Payment by Results (PbR), locally developed tariff, tariffs per patient contact vs whole pathway tariff.
- Consider appropriateness of incentive schemes (including e.g. CQUIN), risk sharing and reward arrangements.
- Consider the appropriateness of breaking the contract down into lots (and the affordability thresholds for each of these)

1.12 **Contract duration**
- Appropriate contract duration to be carefully considered and implications understood.
  - i.e. scale of any capital investment required by service provider(s) and reasonable payback / depreciation timescales, reasonable duration for provider(s) to deliver transition and change management, scarcity of workforce, expected value of contract, confidence in available investment and commissioning requirements.
  - Consider the option to extend the contract towards the end of its term, e.g. initial 3 year contract with option to extend for further 2 years. NB: Only one contract extension is allowed under the current NHS Contract.

1.13 **Form of contract confirmed**
- Consideration and review of forms of contract available, and advice taken where necessary to confirm appropriateness and any NHS England mandated requirements
  - e.g. NHS Standard Contract, Alternative Primary Medical Services (APMS), NHS Terms and Conditions for Goods and Services.
- Whether use of Local Authority contract appropriate (ensuring compliance with NHSE guidance re legally delegated powers).
- Consideration should also be given to how many contracts there are likely to be e.g. especially if there are multiple lots and/or more than one CCG is involved.
<table>
<thead>
<tr>
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<th>Commissioning requirements defined - Commissioning requirements to be identified, developed, documented, tested, communicated, consulted, financed, and approved.</th>
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<tbody>
<tr>
<td>1.14</td>
<td>Market engagement strategy developed</td>
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<tr>
<td></td>
<td>▪ Appropriateness of, and intended outcomes of [pre-procurement] market engagement considered.</td>
</tr>
<tr>
<td></td>
<td>▪ Market engagement strategy developed: route to engagement, scope, purpose, timing, forms (e.g. an event, questionnaire, expression of interest) etc.</td>
</tr>
<tr>
<td></td>
<td>▪ e.g. to merely inform of commissioning intentions (to warm up the market) and future procurement; invite expressions of interest; seek feedback re market dynamic, supply/demand issues, pressures, supply chain scarcity, barriers to market, etc; invite review of commissioning intentions, draft SS (including activity levels), proposed contracting and financial models, etc.</td>
</tr>
<tr>
<td></td>
<td>▪ Develop contact list of current &amp; known potential providers – avoiding discriminating against any types of providers.</td>
</tr>
<tr>
<td>MEG1</td>
<td>MARKET ENGAGEMENT GATEWAY APPROVAL: READINESS FOR PROCUREMENT “GO LIVE”</td>
</tr>
<tr>
<td></td>
<td>▪ NHS SBS internal quality assurance review and approval of the developed market engagement strategy and all ME documents prior to publication.</td>
</tr>
<tr>
<td></td>
<td>▪ CCG commissioning lead confirmation that there is internal authorisation for market engagement to take place and agreement to the market engagement strategy developed. CCG commissioning lead to review and approve the approach to market engagement and the final documents.</td>
</tr>
<tr>
<td>1.15</td>
<td>Market engagement undertaken</td>
</tr>
<tr>
<td></td>
<td>▪ Ensuring appropriate advertising via Contracts Finder, supplemented by direct [email] contact with known potential providers.</td>
</tr>
<tr>
<td></td>
<td>▪ Outcomes of engagement documented, and consideration given to how outcomes should inform commissioning intentions, route to market, SS, lot structure, contracting model, tariff and payment mechanism, etc.</td>
</tr>
<tr>
<td>1.16</td>
<td>Service specification finalised &amp; commercial considerations clarified</td>
</tr>
<tr>
<td></td>
<td>▪ Finalisation of service specification, being informed by preceding activities (market engagement, patient consultation, EIA, activity modelling, etc).</td>
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<td></td>
<td>▪ Patient Access: Ensure explicate detail on location(s) that it is expected the service should be delivered from and ability to develop / amend location of service across the contract period.</td>
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<td></td>
<td>▪ Commercial considerations clarified including: tariff approach, payment mechanism, budgetary /affordability thresholds, any incentive schemes and/or risk sharing, assumed activity levels, investments / savings anticipated, lot structure.</td>
</tr>
<tr>
<td></td>
<td>▪ Contracting model and approach clearly defined: form of contract, number of lots/contracts to be offered, degree of integrated and/or collaborative commissioning arrangements.</td>
</tr>
<tr>
<td></td>
<td>Commissioning requirements defined - Commissioning requirements to be identified, developed, documented, tested, communicated, consulted, financed, and approved.</td>
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<tr>
<td>1.17</td>
<td>Approach to contract performance management defined</td>
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<td></td>
<td>▪ Define KPIs</td>
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<td>▪ Define reporting requirements</td>
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<td></td>
<td>▪ Approach to incentivisation and gain-share defined</td>
</tr>
<tr>
<td>1.18</td>
<td>Route to market proposed</td>
</tr>
<tr>
<td></td>
<td>▪ Recognition of Monitor’s substantive guidance re NHS (Procurement, Patient Choice &amp; Competition) Regulations 2013 (No.2) in arriving at a decision whether to use competitive tendering to award a contract(s) vs awarding contract(s) without competition – decision is rational, defensible with evidence and best placed to achieve the commissioning intentions in regard to quality of services, value for money, patient choice, etc. Decision is documented and compliant with regulations and guidance.</td>
</tr>
<tr>
<td></td>
<td>▪ CCG pays particular regard to potential conflicts of interest and actively identifies, manages and records these.</td>
</tr>
<tr>
<td>1.19</td>
<td>Procurement strategy developed (if this has been the agreed route to market).</td>
</tr>
<tr>
<td></td>
<td>▪ Recognition of applicable procurement regulations.</td>
</tr>
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<td>▪ e.g. Public Contracts Regulations 2006 vs PCR 2015, EU Treaty of Rome principles.</td>
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<tr>
<td></td>
<td>▪ Consider number of Lots having regard to outcome from market engagement, local provider landscape, NHS (PPCC) Regs, commissioning intentions, etc.</td>
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<td></td>
<td>▪ Consideration given to which CCGs will be involved and, if this is greater than one, who will take the lead. As part of this, the number of contracts will need to be thought through.</td>
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<tr>
<td></td>
<td>▪ Selection of appropriate procurement procedure (e.g. Open, Restricted, AQP, etc) or development of bespoke procurement process (where lawful for certain public sector services).</td>
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<td></td>
<td>▪ Principles of evaluation approach and methodology considered and agreed ensuring robustness and proportionality, including any roles to be played by bidder site visits and/or bidder interviews.</td>
</tr>
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<td>▪ High level procurement plan including key milestones with indicative timelines.</td>
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<td>1</td>
<td>Commissioning requirements defined - Commissioning requirements to be identified, developed, documented, tested, communicated, consulted, financed, and approved.</td>
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<tr>
<td><strong>1.20</strong></td>
<td>Business case approved</td>
</tr>
<tr>
<td></td>
<td>▪ Business case developed to make the case for change, propose the recommended route to market and outline of procurement strategy (if developed).</td>
</tr>
<tr>
<td></td>
<td>▪ Identification of a commissioning lead to act as the single point of contact, along with other necessary resource requirements to deliver the procurement. Consideration also given to the resourcing of the mobilisation phase, post-procurement.</td>
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<tr>
<td></td>
<td>▪ NB. Business case may precede the development of a procurement strategy.</td>
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<td></td>
<td>▪ The appropriate Governance Body approves the commissioning intentions, route to market, affordability and funding thresholds, the commissioning lead and resourcing (including input from necessary work-stream leads), duration of contract and timescales.</td>
</tr>
<tr>
<td></td>
<td>▪ Governance arrangements confirmed to oversee delivery and approvals at key milestones. Specific comms/engagement strategy may be appropriate to be considered / agreed (including regard to specific stakeholders).</td>
</tr>
<tr>
<td><strong>1.21</strong></td>
<td>Contract notice served to incumbent provider</td>
</tr>
<tr>
<td></td>
<td>▪ As appropriate, formal notice served on incumbent provider and request for TUPE information made.</td>
</tr>
<tr>
<td><strong>BCG1</strong></td>
<td>BUSINESS CASE GATEWAY APPROVAL: READINESS FOR PROCUREMENT “GO LIVE”</td>
</tr>
<tr>
<td></td>
<td>▪ CCG commissioning lead confirmation that there has been appropriate governance approval for the procurement to take place, with approved funding to award a contract(s) for the services to be commissioned.</td>
</tr>
<tr>
<td>2</td>
<td>Procurement process designed and prepared - Design of actual procurement delivery plan, evaluation methodology, resources identified to lead and deliver</td>
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<tr>
<td>2.1</td>
<td>Lead commissioner and CCG Resource</td>
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<td>2.2</td>
<td>Procurement lead identified</td>
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<tr>
<td>2.3</td>
<td>Governance arrangements in place</td>
</tr>
<tr>
<td>2.4</td>
<td>Communications and engagement</td>
</tr>
<tr>
<td>2.5</td>
<td>Procurement evaluation panel identified</td>
</tr>
<tr>
<td>2.6</td>
<td>Conflicts of Interest (COI) managed</td>
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<tr>
<td>2.7</td>
<td>Procurement plan developed</td>
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<tr>
<td></td>
<td>Procurement process designed and prepared - Design of actual procurement delivery plan, evaluation methodology, resources identified to lead and deliver</td>
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<tr>
<td>2.8</td>
<td>Evaluation approach and methodology developed</td>
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<td></td>
<td>▪ Development of evaluation approach in order to identify the most capable provider(s). Consideration of key evaluation criteria against the CCGs specified requirements and known issues.</td>
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<td></td>
<td>▪ Development of appropriate questions to include in both the Bidder Questionnaire and the PQQ/Due Diligence questionnaire to ensure that all the necessary information about the bidder and the potential services that they were to provide if successful, is captured in sufficient detail.</td>
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<td></td>
<td>▪ Agree any specific thresholds/minimum performance scores, including financial.</td>
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<td>▪ Apportioning of scoring and weightings to the agreed questions. Proportionate approach to any pre-qualifying criteria (where used) vs due diligence questionnaire.</td>
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<td></td>
<td>▪ Considered if bidder interviews would be appropriate/add value (NB: these are not recommended except in limited circumstances).</td>
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<td>2.9</td>
<td>Financial model template (FMT) developed</td>
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<td></td>
<td>▪ Creation of an appropriate FMT suitable for the services and circumstances (including any TUPE related costs if applicable). Granularity of FMT to be proportionate to value, complexity and risk of contracted service being procured. As part of this, the assessment/evaluation of the FMT will need to be agreed i.e. how exactly will the FMT be scored/points awarded.</td>
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<td></td>
<td>▪ It is recommended that the CCG/Finance lead develops a checklist this should include key areas to considered to support in developing a robust financial model (especially with regard to any activity levels being provided in the FMT and setting the affordability limits).</td>
</tr>
<tr>
<td></td>
<td>▪ The CCG’s finance lead will need to formally sign-off any financial related information before this is published, especially in relation to the FMT and affordability limits to minimise any risks of incorrect details being shared with bidders.</td>
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<tr>
<td>2.10</td>
<td>Financial Assessment Template developed along with the financial due diligence questions around financial stability &amp; capability</td>
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<tr>
<td></td>
<td>▪ Development of the Financial Assessment Template to ensure that this is proportionate to the value, risk and complexity of the services being procured.</td>
</tr>
<tr>
<td></td>
<td>▪ Development/review of the financial due diligence questions within the ITT documents to make sure that these are proportionate and relate to the services being procured.</td>
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<td></td>
<td>▪ Agree whether credit rating reports will be used and, if so, agree how these will form part of the CCG’s overall financial assessment/due diligence checks (NB: The credit reports will not be scored).To be agreed with CCG’s finance lead.</td>
</tr>
<tr>
<td>2</td>
<td>Procurement process designed and prepared - Design of actual procurement delivery plan, evaluation methodology, resources identified to lead and deliver</td>
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<tr>
<td>2.11 Specification of service requirements and commercial framework finalised</td>
<td>▪ CCG finalises (with all necessary approvals) all documents required to be published to potential bidders including: service specification; terms and conditions of contract; memorandum of information; details of mandated premises; incumbent provider’s TUPE information; the FMT and Financial Assessment Template etc.</td>
</tr>
<tr>
<td>2.12 Procurement process documents developed</td>
<td>▪ Development of all procurement documentation including: Contract Notices for Contracts Finder (&amp; OJEU where applicable); Bidder Instructions including evaluation methodology; Pre-qualification questionnaire or Due Diligence Questionnaire (as appropriate), including Financial Assessment template; ITT response documents and questionnaires etc; ▪ Preparation of e-procurement portal, set up to manage the publication of procurement documents to potential bidders, registration of bidders expressing an interest, communication with bidders, receipt of bids.</td>
</tr>
<tr>
<td>2.13 Electronic procurement portal prepared</td>
<td>▪ Development of all procurement documentation including: Contract Notices for Contracts Finder (&amp; OJEU where applicable); Bidder Instructions including evaluation methodology; Pre-qualification questionnaire or Due Diligence Questionnaire (as appropriate), including Financial Assessment template; ITT response documents and questionnaires etc; ▪ Preparation of e-procurement portal, set up to manage the publication of procurement documents to potential bidders, registration of bidders expressing an interest, communication with bidders, receipt of bids.</td>
</tr>
<tr>
<td>2.14 Bidder briefing event planned</td>
<td>▪ Arranges a bidder briefing event (to take place 1 – 2 weeks following publishing of procurement advert), included the planned date, time, venue. ▪ Bidder briefing agenda / programme/presentation agreed and drafted. ▪ Attendees confirmed and invites sent out.</td>
</tr>
<tr>
<td>2.15 Contract documentation</td>
<td>▪ Contract terms and conditions confirmed ▪ Contract documentation developed sufficiently to ensure transparency of all relevant requirements and commercial terms, including all relevant schedules (except those which can only be populated following procurement process)</td>
</tr>
<tr>
<td>2.16 Contract management lead identified</td>
<td>▪ Individual identified who will lead on the population and preparation for signature of the contract ▪ All due diligence leading to contract signature identified and agreed ▪ Ongoing contract management responsibility identified and agreed</td>
</tr>
<tr>
<td>2.17 Mobilisation resourcing agreed</td>
<td>▪ Individual to lead mobilisation management on behalf of CCG identified ▪ Mobilisation project work stream leads identified ▪ Mobilisation phase governance arrangements agreed ▪ Assumed mobilisation timelines assumed along with contingency – which align with termination and notice periods of any existing contracted services</td>
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</tr>
</tbody>
</table>
| **PG1** | PROCUREMENT GATEWAY APPROVAL: READINESS FOR PROCUREMENT “GO LIVE” | ▪ NHS SBS internal quality assurance review and approval of all procurement documents prior to publication.  
▪ CCG commissioning lead to review and approve final documents (including for the Finance lead to review/approve the FMT and affordability limits to check accuracy). |
### 3. Procurement process delivered to identify most capable and value for money provider(s) - Procurement opportunity advertised, and process followed to invite and evaluate bidder tenders, resulting in a recommendation regarding contract award.

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>3.1</strong></td>
<td>Publish all procurement documents on electronic procurement portal</td>
</tr>
<tr>
<td></td>
<td>▪ All procurement documents uploaded onto EU-Supply (the electronic procurement portal) and tested to ensure accessibility by potential bidders</td>
</tr>
<tr>
<td><strong>3.2</strong></td>
<td>Advertise procurement opportunity to the market (via mandated portals)</td>
</tr>
<tr>
<td></td>
<td>▪ Publishing of Contract Notice on Contracts Finder (and OJEU where appropriate) inviting expressions of interest, including instructions to electronically access procurement documents from EU-Supply.</td>
</tr>
<tr>
<td></td>
<td>▪ Publishing of all procurement documents (bidder instructions, PQQ, ITT), contract T&amp;Cs, service specification, supplementary information (e.g. MOI, TUPE, mandated premises details, etc.) via electronic procurement portal.</td>
</tr>
<tr>
<td><strong>3.3</strong></td>
<td>Advertise procurement opportunity to the market (via direct contact with known/potential providers)</td>
</tr>
<tr>
<td></td>
<td>▪ Notify and share details of formal Contract Notice to all known/potential providers (CCG’s development and use of a comprehensive contractor/service provider contacts list is beneficial). i.e. Not sufficient to simply rely upon Contracts Finder.</td>
</tr>
<tr>
<td><strong>3.4</strong></td>
<td>Management of bidder clarification questions</td>
</tr>
<tr>
<td></td>
<td>▪ Receive bidder clarification questions via EU-Supply Portal, sharing anonymised responses with all bidders. Ensure responses are provided within the timelines advised to bidders within Bidder Instructions (usually 3 working days)</td>
</tr>
<tr>
<td><strong>3.5</strong></td>
<td>Bidder briefing event held</td>
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<tr>
<td></td>
<td>▪ Host bidder briefing event to ensure a comprehensive understanding by Bidders about the Service and the procurement process.</td>
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<td></td>
<td>▪ Typically: presentations shared by commissioning lead re service requirements, background, commissioning intentions, etc. Procurement lead explains procurement process, timelines, evaluation methodology, etc.</td>
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<td></td>
<td>▪ NB: it may also be appropriate/beneficial for other key stakeholders to be at the event to cover their specialist areas e.g. Finance</td>
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<td></td>
<td>▪ Electronic copy of presentations uploaded to EU-Supply to ensure bidder access.</td>
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</table>
## 3. Procurement process delivered to identify most capable and value for money provider(s) - Procurement opportunity advertised, and process followed to invite and evaluate bidder tenders, resulting in a recommendation regarding contract award.

### 3.6 Evaluation panel training & confirm Moderation meeting arrangements
- Arrange training for evaluation panel: explain service requirements, procurement approach, evaluation methodology and system of scoring and award criteria, the procurement timetable including key dates that their involvement is required.
- Highlight the need to identify and declare potential Conflicts of Interest and maintaining commercial confidentiality.
- Confirm moderation meeting arrangements and approach (e.g. if there will be a chair present to make a final call when there is difficulty in reaching an agreed consensus score).

### 3.7 Confidentiality statements
- Arrange for signed Declarations of Confidentiality from Evaluation Panel.

### 3.8 Bid submission deadline
- Receive submitted bids. Undertaken preliminary compliance checks involving a thorough review of bid documents received. Issue clarification questions to bidders as appropriate.
- Preparation of bids for issue to Evaluation Panel members along with Evaluation Scoring templates and instructions.

### 3.9 Conflicts of interests’ declarations
- Arrange for signed Conflicts of Interest declarations from Evaluation Panel.
- NB. COI declarations to be made in light of the Bidder identities

### 3.10 Forward bids to Evaluation Panel members
- Forward the bid material to relevant Evaluation Panel members, along with evaluation scoring documents and supporting instructions, including confirmation of agreed deadline for return of completed evaluation scores.

### 3.11 Evaluation and grading of bids
- Collation of detailed comments being initially recorded by each evaluation panel ahead of the Evaluation Grading meeting.
- Evaluation Grading meeting held to reach consensus grades by the CCG and creation of formal record of the rationale for each score agreed.
- Where necessary, clarification questions issued to bidders and follow up discussions within the CCG to finalise moderated evaluation for each bid.
- NB. Where included as part of the process, completion of bidder interviews and/or site visits to play their role prior to final moderation of evaluated bids.

### 3.12 Record of Evaluation Grading meeting
- Ensure there is a formal record (or minutes) of the evaluation grading meeting – which will be the document reviewed by legal advisors of any challenger! And on which the CCG will need to rely on to defend that its contract award decision making was appropriate.
- CCG to approve final version of the record.
3. Procurement process delivered to identify most capable and value for money provider(s) - Procurement opportunity advertised, and process followed to invite and evaluate bidder tenders, resulting in a recommendation regarding contract award.

<table>
<thead>
<tr>
<th>3.13</th>
<th>Post-procurement evaluation report: recommendation of contract award</th>
<th>▪ Preparation of a post-procurement outcomes report detailing the whole of the procurement and evaluation approach, how conflicts of interest were managed, the results of the evaluation and any recommendations regarding award of contract.</th>
</tr>
</thead>
</table>
| PG2 | PROCUREMENT GATEWAY APPROVAL: POST-PROCUREMENT RECOMMENDATION REPORT | ▪ NHS SBS internal quality assurance review and approval of post-procurement outcomes report.  
▪ CCG commissioning lead to review and approve same. |
| 3.14 | CCG approval of contract award recommendation | ▪ CCG internal governance to consider the post-procurement recommendation report with recommendations regarding awarding of contract(s). Approval of contract award. |
| 3.15 | Prepare notification letters re contract award decision for bidders | ▪ Preparation of letters for bidders to notify the CCG’s decision regarding contract award.  
▪ Letter to successful bidder to include reference to contract signature being subject to outcome of standstill period and any specific prerequisite requirements leading up to contract signature.  
NB. Important to include within the letter any specific requirements the CCG needs to insist are addressed prior to contract signature  
▪ Letters to unsuccessful bidders providing detailed feedback including comparative evaluation and scoring against winning bidder, with standstill period confirmed. |
| PG3 | PROCUREMENT GATEWAY APPROVAL: NOTIFICATION LETTERS TO BIDDERS RE CONTRACT AWARD DECISION | ▪ NHS SBS internal quality assurance review and approval of notification letters to bidders re contract award notification.  
▪ CCG commissioning lead to review and approve same. |
| 3.16 | Notify bidders of contract award decision | ▪ Forwarding of notification letters to bidders. |
| 3.17 | Preparation for contract signature | ▪ CCG to engage with Recommended Bidder to progress toward contract signature.  
*NB. This activity is a reasonable use of time to make progress during standstill period, but contract MUST NOT be signed until conclusion of standstill (in case there is any challenge)* |
### 3.18 Review any challenges received during standstill period

**Applicable only where a standstill period is being observed, i.e. may not apply to below OJEU threshold procurements, and mini-competitions to call-off a framework contract**

- NHS SBS to monitor whether any communications received from any unsuccessful bidders via EU-Supply messaging system, email, post, etc. regarding any challenge.
- CCG to review whether any challenge received directly via email or post to lead commissioner or corporate office regarding any challenge.

### 3.19 Confirm “End of Standstill”

- Written notification to bidders that the standstill period has concluded and, where appropriate, no challenges have been received.
<table>
<thead>
<tr>
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<th>Post-procurement activities - Preparations for contract signature, mobilisation planning &amp; delivery, publication of contracts awarded &amp; review of process</th>
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</table>
| 4.1 | **Due diligence**  

- Ensure all necessary due diligence undertaken to ensure that recommended bidder is able to evidence all the necessary capability and eligibility to enter into a contract with the CCG.  
- Closer scrutiny of recommended bidder’s responses at PQQ stage, with CCG requesting further information as may be appropriate.  
- Engagement with recommended bidder to address any outstanding issues which the CCG regards as unacceptable risk (e.g. requiring Parent Company Guarantee) |
| 4.2 | **Contract signature**  

- CCG to engage with recommended bidder to progress toward contract signature.  
- Ensure incorporation within contract of all relevant bid response material (ITT response, responses to clarification questions, etc.)  
- Prerequisite requirements to be made explicit (including e.g. development of comprehensive mobilisation plan) for inclusion within contract before signature.  
- All necessary Conditions Precedents to be agreed and documented, including any specific Derogations.  
- Contract signatures to be concluded before any services can commence. |
| 4.3 | **Raising requisitions and POs**  

- Notify the Procurement Service which raised Purchase Orders (POs) on behalf of the CCG, of the Recommended Bidder, so that they can ensure appropriate “supplier set-up” for the purchase of POs  
- CCG to raise a requisition in line with the CCG’s internal processes (This will assist with managing invoices when they arrive from the supplier).  
- Ensure requisitions reference the procurement process, the unique EU Supply Reference number for the procurement process, the terms and conditions agreed, and the tender documents received.  
- Where appropriate, the requisition should clarify a payment schedule, which of course will need to be the same as those within the Contract. |
| 4.4 | **Mobilisation project management**  

- Ensuring a robust project management approach is taken to preparations being made by the new provider to make ready for service commencement.  
- Individuals clear about their roles and responsibilities  
- Governance arrangements for mobilisation phase established |
| 4.5 | **Ensuring Transparency of Contract Award**  

- CCG to comply with transparency requirements, including as appropriate, publishing details of contract award on the CCG’s website.  
- Timing agreed to publish a Contract Award Notice on Contracts Finder and OJEU – as appropriate |
<table>
<thead>
<tr>
<th></th>
<th>Post-procurement activities - Preparations for contract signature, mobilisation planning &amp; delivery, publication of contracts awarded &amp; review of process</th>
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<tr>
<td>4.6</td>
<td>Lesson learnt Review</td>
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<td>▪ Lessons learnt review session between colleagues involved along the procurement process to identify and emphasise what worked well and would be good to do again, whilst identifying opportunities to make improvements to future procurement processes.</td>
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<td></td>
<td>▪ Procurement service user satisfaction feedback provided by the CCG to NHS SBS Head of Procurement</td>
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## Generic Healthcare Procurement Timeline – Template

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Key Activities</th>
<th>Target Date</th>
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<tbody>
<tr>
<td>Market Engagement</td>
<td>• Define Key Engagement objectives [CCG] [SBS]</td>
<td>Recommend extensive market engagement – but can be done quickly (better quickly, than no engagement at all)</td>
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<tr>
<td></td>
<td>• Develop Market Engagement Questionnaire [SBS]</td>
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<td>• Draft advert [SBS]</td>
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<td>• Develop Memorandum of Information including details and objectives of all services in scope, activity levels and budgets [CCG]</td>
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<td>• Publication of Market Engagement advert [SBS]</td>
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<td></td>
<td>• Hold Bidder Event/One on One discussions with providers [CCG] [SBS]</td>
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<tr>
<td>Procurement Planning</td>
<td>• Agreed procurement strategy – how may lots, contract award criteria, evaluation approach, how many stages, etc. [CCG] [SBS]</td>
<td>1 month</td>
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<td>• Agreement of budget, pricing, payment and any incentive approach [CCG] [SBS]</td>
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<td></td>
<td>• Develop Financial Model Template [SBS]</td>
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<td></td>
<td>• Refining of service specification and KPIs [CCG]</td>
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<td>• Finalised activity and demand projections modelled and agreed [CCG]</td>
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<td>• TUPE information obtained [CCG]</td>
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<td>• Estates information clearly defined, with any mandated premises secured [CCG]</td>
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<td>• Draft ITT Documentation including Bidder Instructions, Qualification Questionnaire, Bid Response Questionnaire etc. [SBS]</td>
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<td>• Draft Adverts [SBS]</td>
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<tr>
<td>Milestone</td>
<td>Key Activities</td>
<td>Target Date</td>
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<tr>
<td>CCG finalises its requirements and approval for procurement</td>
<td>• Formal approval for procurement to progress from all participating CCG. [CCG]</td>
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</tbody>
</table>
| Issue advert & ITT documentation | • Publish Notices on OJEU Contracts Finder \[SBS\]  
• Publish procurement documents – including bidder instructions, specification, qualification questionnaire, bid response questionnaire, etc. \[SBS\]  
• Confirm bidder briefing event details (optional) \[SBS\] | Recommend 4 - 6 weeks bidding period minimum (but may be shorter or longer in circumstances) |
| Evaluation Panel | • Evaluation panel identified and allocated areas of specialism \[CCG\]  
• COI and Confidentiality Declarations Completed \[CCG\] \[SBS\]  
• Evaluation Panel Training \[SBS\] |  |
| ITT Submission DEADLINE | Deadline by when Bidders must have fully completed and submitted their Bids |  |
| ITT Bid evaluation stage | • Bids checked for compliance \[SBS\]  
• Bespoke evaluation templates produced and shared with panel members \[SBS\]  
• Evaluation panel individually review and score bids \[CCG\] | 1 – 2 weeks depending on complexity and volume |
| Moderation | • Moderation meeting to agree consensus evaluation grading of bid responses \[CCG\] \[SBS\] | 2 days |
| Bidder interviews / presentations | • Bidders invited to interview / presentations as a scored element of their tender response. \[CCG\] \[SBS\]  
• Final moderation incorporating scores achieved at Bidder Interview \[CCG\] \[SBS\] | 1 week |
<table>
<thead>
<tr>
<th>Milestone</th>
<th>Key Activities</th>
<th>Target Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selection of preferred bidder(s)</td>
<td>• Procurement outcomes report prepared [SBS]</td>
<td>Subject to applicable internal approval dates</td>
</tr>
<tr>
<td></td>
<td>• CCG considers and approves recommended awarding of contracts [CCG]</td>
<td></td>
</tr>
<tr>
<td>Bidder initial notification regarding</td>
<td>• Bidders will be notified of the outcome of the evaluation and the provision</td>
<td>Allow a few days to prepare</td>
</tr>
<tr>
<td>Confirmation of a Preferred Bidder(s)</td>
<td>of detailed feedback and comparison of scores against the winning bidder. [SBS]</td>
<td></td>
</tr>
<tr>
<td>Standstill Period</td>
<td>• 10 calendar days from Bidder notification</td>
<td>10 days</td>
</tr>
<tr>
<td>Contract signature</td>
<td>• Signing of the Contracts between the CCGs and the successful Provider. [CCG]</td>
<td>1 – 8 weeks (dependent on due diligence required)</td>
</tr>
<tr>
<td>Mobilisation</td>
<td>Period when the Preferred Bidder plans and delivers mobilisation activities to</td>
<td>3 – 5 months (dependent on service)</td>
</tr>
<tr>
<td></td>
<td>prepare for service commencement. [CCG] [SBS]</td>
<td></td>
</tr>
<tr>
<td>Full service commencement</td>
<td>Date that commencement of the new Service is expected.</td>
<td></td>
</tr>
</tbody>
</table>
14. **Policy monitoring and review**

This Procurement Policy will be reviewed annually to ensure that account can be taken of any changes to regulations, policy and guidance, including nationally reviewed procurement thresholds relevant to the application of the Public Contracts Regulations.

Each CCG will at least bi-annually commission an appropriately qualified third party provider to audit compliance with this policy and that robust processes and decision making in regard to the procurement of goods and services will be audited on a regular basis by an appropriately qualified third party provider.

The LDU will arrange from time to time, independent checks to be carried out on random procurements to ensure compliance with the Procurement Policy, compliance with regulatory requirements and to deter and detect wrongdoing.

The LDU will consider all appropriate actions that will offer a proportionate response to findings where there have been breaches of compliance with this Procurement Policy including possible disciplinary action in accordance with the LDU’s Disciplinary Policy and where any actions identified have the capacity to result in a criminal offence, a criminal investigation may be carried out.

Breaches of this Procurement Policy and/or concerns in regard to wrongdoing should be reported to the LDU Director of Finance, the Local Counter Fraud Specialist and the Audit and Governance Committee as appropriate, having regard also to the LDU’s Anti-Fraud and Anti-Bribery Policy.

15. **Executive Management Team (EMT) Principles**

Each month a report shall go to EMT detailing contracts due to expire in 12 months and in 6 months. This will provide an additional layer of oversight so that EMT are sighted on the priorities and potential need for commissioning decisions.
## Implementation and Training Plan

<table>
<thead>
<tr>
<th>Target Group</th>
<th>Implementation or Training objective</th>
<th>Training Method</th>
<th>Individual/Team responsible for training</th>
<th>Target date for commencement</th>
<th>Target date for completion</th>
<th>Resources Required</th>
<th>Method of Updating awareness during life of policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contracting Team</td>
<td>Input, review and confirmation of accountabilities</td>
<td>One to one Team Meeting</td>
<td>Head of Contracting</td>
<td>31st January 2018</td>
<td>31st January 2018</td>
<td>None</td>
<td>In regular meetings</td>
</tr>
<tr>
<td>Commissioning Team</td>
<td>Input, review and confirmation of accountabilities</td>
<td>Team Meeting</td>
<td>Head of Contracting</td>
<td>28th February 2018</td>
<td>28th February 2018</td>
<td>None</td>
<td>In regular meetings</td>
</tr>
<tr>
<td>Executive Management Team</td>
<td>General awareness and sign-off</td>
<td>Presentation</td>
<td>Head of Contracting</td>
<td>11th July 2018</td>
<td>11th July 2018</td>
<td>None</td>
<td>In regular meetings</td>
</tr>
<tr>
<td>Audit and Governance Committee</td>
<td>General awareness and sign-off</td>
<td>Presentation</td>
<td>Head of Contracting</td>
<td>11th July 2018</td>
<td>31st July 2018</td>
<td>None</td>
<td>In regular meetings</td>
</tr>
<tr>
<td>Principal Associate Corporate Affairs (NELCSU)</td>
<td>Development of register and subsidiary procedures</td>
<td>N/A</td>
<td>Head of Contracting</td>
<td>11th July 2018</td>
<td>31st July 2018</td>
<td>None</td>
<td>Principal Associate Corporate Affairs (NELCSU)</td>
</tr>
<tr>
<td>All staff</td>
<td>General awareness</td>
<td>Email notification and individual reading</td>
<td>CO and Executive Directors to notify availability. Managers to ensure all staff in their team have read and understood Policy.</td>
<td>11th July 2018</td>
<td>31st July 2018</td>
<td>None</td>
<td>In regular email updates</td>
</tr>
<tr>
<td>Commissioning Directorate</td>
<td>Procurement Training and Policy Workshops</td>
<td>Training Session/Workshops</td>
<td>SBS Shared Services LDU Contracting Team</td>
<td>11th July 2018</td>
<td>30th September 2018</td>
<td>None</td>
<td>In regular meetings</td>
</tr>
<tr>
<td>Policy Owners</td>
<td>Understanding of Equality Act</td>
<td>Training session as part of OD plan</td>
<td>Transformation Director</td>
<td>31st July 2018</td>
<td>30th September 2018</td>
<td>None</td>
<td>In regular meetings</td>
</tr>
<tr>
<td>Governing Body</td>
<td>General awareness</td>
<td>Presentation</td>
<td>CO</td>
<td>31st July 2018</td>
<td>30th September 2018</td>
<td>None</td>
<td>In regular meetings</td>
</tr>
<tr>
<td>Target Group</td>
<td>Implementation or Training objective</td>
<td>Training Method</td>
<td>Individual/Team responsible for training</td>
<td>Target date for commencement</td>
<td>Target date for completion</td>
<td>Resources Required</td>
<td>Method of Updating awareness during life of policy</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------------------------------</td>
<td>-----------------</td>
<td>------------------------------------------</td>
<td>-------------------------------</td>
<td>---------------------------</td>
<td>-------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>All staff</td>
<td>General awareness and policy update</td>
<td>Email notification and workshop led by head of contracting.</td>
<td>CO and Executive Directors to notify availability. Managers to ensure all staff in their team have read and understood Policy.</td>
<td>31st March 2019</td>
<td>30th June 2019</td>
<td>None</td>
<td>In regular email updates</td>
</tr>
</tbody>
</table>
### Audit Plan for Policy Development Policy – Monitoring Statement

<table>
<thead>
<tr>
<th>Aspect of the policy to be monitored</th>
<th>Monitoring Method</th>
<th>Individual/Team responsible for the monitoring</th>
<th>Frequency</th>
<th>Group/committee that will receive the findings/monitoring report</th>
<th>Actions taken by the Group/committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Completion of reviews for all transferring policies</td>
<td>Review of Policy Register</td>
<td>Principal Associate Corporate Affairs (NELCSU)</td>
<td>Monthly</td>
<td>Audit Committee and, as necessary, Governing Body</td>
<td></td>
</tr>
<tr>
<td>Completion of Equality Act training by all policy owners</td>
<td>Review of training records</td>
<td>Line managers</td>
<td>Quarterly</td>
<td>Audit Committee and, as necessary, Governing Body</td>
<td></td>
</tr>
<tr>
<td>Agreement of standard policies for inclusion in procurements</td>
<td>Review of Governing Body minutes</td>
<td>CO</td>
<td>N/A</td>
<td>Audit Committee and, as necessary, Governing Body</td>
<td></td>
</tr>
</tbody>
</table>
Annex A – Regulatory Framework: Reference Sources

The following provides a list of reference sources for the Regulations and Acts of Parliament referred to within Section 2 of this policy that will be taken into account when the LDU considers awarding contracts.

Public Contracts Regulations 2015

NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013

Monitor’s substantive guidance on the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013

Health & Social Care Act 2012
http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted

Public Services (Social Value Act) 2012
http://www.legislation.gov.uk/ukpga/2012/3/enacted

Managing Conflicts of Interest: Revised Statutory Guidance for CCGs (NHS England, June 2016)
https://www.england.nhs.uk/commissioning/pc-co-comms/coi/

Transfer of Undertakings and Protection of Employment Regulations (TUPE) 2006

Equality Act 2010

Bribery Act 2010
Annex B – Regulatory Requirements to Maintain Records regarding Contract Award Decisions

Section 4.1 of this Policy (Decision Making and Accountability) recognises the regulatory obligations to maintain certain records in regard to processes associated with the awarding of contracts. These are more fully set out below:

**Regulation 84 Documentation**

Regulation 84 of the Public Contracts Regulations 2015 sets out specific requirements for Contracting Authorities:

For every contract or framework agreement, falling in scope of the PCR2015, the LDU must draw up a written report to include:

- Name and address of CCG;
- Subject matter;
- Value of contract or framework agreement;
- Names of bidders and reasons for their selection;
- Names of rejected bidders and reasons for their rejection;
- Reasons for any tenders being rejected for their price being abnormally low;
- Name of successful bidder and the reasons for tender being successful;
- Names of any main sub-contractors and the share of the contract intended that they will deliver;
- Where either a Competitive Procedure with Negotiation or a Competitive Dialogue procedure used, the circumstances justifying the use of such procedures;
- Where a Negotiated Procedure without inviting expressions of interest or a competition, the circumstances justifying the use of this procedure;
- Where applicable, the reasons the LDU has decided not to award a contract;
- Where applicable, the reasons by electronic communications were not used for the submission of tenders;
- Details of conflicts of interests detected and subsequent measures taken to manage the conflicts.

*The LDU’s use of a Post-Procurement Outcomes Report, recommending an award of a contract decision, will be designed to meet the above requirements.

*The above report is not required for contracts called off an existing framework agreement.

The LDU shall ensure documented progress of all procurement procedures. The LDU shall keep sufficient documentation to justify decision taken in all stages of procurement procedures including:

- Communications with interested providers and bidders;
- Preparation of the procurement documents;
- Where relevant, dialogue or negotiation within any bidder;
- Selection and award of the contract.

Documentation required by Regulation 84 shall be kept for at least 3 years from the date of the award of the contract.

**NHS 2013 Regulations Documentation**

Additionally, Regulation 9(1) of the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 sets out requirements for CCGs to:
Publish details of each contract awarded for the provision of health care services for the purposes of the NHS to include:

- Name and registered address of the provider;
- Description of the health care services to be provided;
- Contract value or payments to be paid;
- Contract start and end dates;
- Description of the process adopted for selecting the provider.
Annex C – Procurement Services supporting the LDU

Sections 4.3 and 4.5 of this policy recognise the importance of the LDU seeking appropriately experienced and qualified advice and guidance in regard to procurement matters.

The LDU has access to a Procurement Service provided by NHS Shared Business Services via NEL CSU for general and strategic procurement advice and guidance and the design and delivery of procurement processes to award contracts.

<table>
<thead>
<tr>
<th>Services provided</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Procurement advice and guidance</strong> – including:</td>
</tr>
<tr>
<td>- legal advice regarding compliance with regulatory framework (includes access to qualified expert procurement legal services)</td>
</tr>
<tr>
<td>- development of procurement policy</td>
</tr>
<tr>
<td>- procedures and strategy</td>
</tr>
<tr>
<td>- regulatory risk assessments</td>
</tr>
<tr>
<td>- development of contract award options</td>
</tr>
<tr>
<td>- provision of procurement awareness training and workshops</td>
</tr>
<tr>
<td><strong>Clinical Procurement Service</strong> (LDU commissioned health care services) - including:</td>
</tr>
<tr>
<td>- market engagement</td>
</tr>
<tr>
<td>- improvement of service specifications</td>
</tr>
<tr>
<td>- design and delivery of competitive procurement processes</td>
</tr>
<tr>
<td>- development of evaluation methodologies</td>
</tr>
<tr>
<td>- development of non-competitive assurance and due diligence processes</td>
</tr>
<tr>
<td>- development of most capable provider assessments</td>
</tr>
<tr>
<td>- mobilisation planning and project management</td>
</tr>
<tr>
<td><strong>Non-clinical Procurement Service</strong> (for goods and non-healthcare services) – including:</td>
</tr>
<tr>
<td>- market engagement, analysis and development</td>
</tr>
<tr>
<td>- spend analysis and development of strategies to improve LDU spend</td>
</tr>
<tr>
<td>- competitive tendering</td>
</tr>
<tr>
<td>- support to obtain competitive quotations</td>
</tr>
<tr>
<td>- calling off contracts from framework agreements</td>
</tr>
<tr>
<td>- development of framework agreements</td>
</tr>
</tbody>
</table>

**Contact to discuss requirements:**
David Brownlow, Head of Procurement Services (South)
david_brownlow@nhs.net
0161 212 3950 / 07795 667 283

**Escalation of concerns, issues or complaints:**
David Brownlow, Head of Procurement Services (South)
david_brownlow@nhs.net
0161 212 3950 / 07795 667 283

Alison Kerfoot, Director of Strategic Procurement and Commissioning Support
Alison_kerfoot@nhs.net
0161 212 3734 / 07770 982 174
Annex D – Contract Terms and Conditions

Section 5 of this policy sets out that the LDU will ensure that when procuring goods or services, clear terms and conditions of purchase and supply are agreed and that these are to be determined by the LDU in line with national policy and guidance as issued by the Department of Health and NHS England.

The following sets out the reference sources for the terms and conditions to be used by the LDU.

<table>
<thead>
<tr>
<th>Type of provision being procured</th>
<th>Contract terms to be used and reference source</th>
</tr>
</thead>
</table>
| Goods and/or [non-healthcare] services | NHS Terms and conditions for the supply of goods: contract version  
NHS Terms and conditions for the supply of goods: purchase order version  
NHS Terms and conditions for the supply of services: contract version  
NHS Terms and conditions for the supply of services: purchase order version  
NHS Framework Agreement for the provision of services  
NHS Terms and conditions for the provision of managed services [link]  |
| Healthcare services | NHS Standard Contract, as mandated by NHS England [link]  
For use across all patient accessed health care services including:  
- Ambulance Services  
- Community Services  
- Acute Hospital Services  
- Mental Health Services  
- Community Services  
- Care Homes Services  |
| Sub-contracts for healthcare services | NHS Standard Sub-contract for the provision of Clinical Services [link]  |
| GP services | General Medical Services (GMS) Contracts  
Personal Medical Services (PMS) Contracts  
Alternative Provider Medical Services (APMS) Contracts [link]  |
| Grants being provided to voluntary organisations | Grant Agreement – a model agreement published by NHS England, being non-mandatory and able to be locally adapted [link]  |
Annex E – Regulatory requirements to publish Contract Notices

There are two sets of regulations which govern the transparency of public contracts, including those awarded by CCGs. These are set out below in regard to both the procurement of healthcare contracts, and also the separate requirements relating to contracts for goods and [non-healthcare] services.

Transparency is expected where a contract is to be established, and also following the award of a contract.

There are different requirements depending on whether the contract financial values exceed the procurement thresholds or are ‘below threshold’ – see Annex G to this policy (Regulatory Procurement Thresholds).

~ Healthcare Contracts Only ~

NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013

Regulation 4 of the NHS (Procurement, Patient Choice and Competition)(No.2) Regulations 2013 sets out that where the CCG intends to invite offers from providers in relation to a healthcare contract, that Contracts Finder is to be used to publish details of the contract opportunity and shall include:

▪ a description of the services to be provided; and
▪ the criteria against which any bids for the contract will be evaluated.

Regulation 4 also sets out that the LDU must make arrangements to enable providers to express an interest in providing any healthcare service for the purposes of the NHS.

Public Contracts Regulations 2015

Notifying the market of a contract opportunity: Regulation 75 requires that where a Contracting Authority intends to award a contract for healthcare services, being ‘above threshold’, that this intention is published through OJEU (the Official Journal of the European Union) by means of either a:

▪ Contract Notice, to include:
  o Identification of which CCG is the Contracting Authority;
  o Brief description of the contract including CPV codes;
  o Conditions for participation in the process of selection;
  o Time limits for contacting the LDU in view of participation;
  o Brief description of the main features of the award procedure to be applied.

▪ Prior Information Notice (PIN), which shall:
  o Contain the following information:
    ▪ Identification of each CCG;
    ▪ Brief description of the contract including CPV codes;
    ▪ Timeframe and duration of the contract;
    ▪ Conditions for participation in the process of selection;
    ▪ Brief description of the main features of the award procedure to be applied.
  o Confirm the types of services for which the contract is to be awarded;
Confirm that the contract will be awarded without further publication and invite interested providers to express their interest in writing.

**Ensuring transparency of contracts awarded:** Regulation 75 also requires transparency of ‘above threshold’ healthcare contracts awarded by CCGs, regardless of the process of awarding such contracts (i.e. whether as a result of a competition or through a direct, or negotiated procedure).

*Note* – see Annex G to this policy (Regulatory Procurement Thresholds) for details of the financial value of contracts considered to be ‘above threshold’.

The transparency required is the publication of a Contract Award Notice through OJEU (the Official Journal of the European Union) which must include:

- Identification of which CCG is the Contracting Authority;
- Brief description of the contract, including CPV codes;
- Number of tenders received;
- Price or range of prices to be paid;
- Name and address of the successful bidder being awarded the contract;
- Any other relevant information.

Contract Award Notices are to be published within 30 days following a contract being awarded, or may be published in bulk within 30 days at the end of each quarter.

Whilst the Public Contracts Regulations 2015 include a specific exemption for CCGs from publishing details of ‘below threshold’ healthcare service contracts through Contracts Finder, the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 provide a counter to this, obliging CCGs to ensure that Contracts Finder is used to ensure transparency of ALL healthcare contracts awarded (regardless of the contract value).

~ Contracts for goods and [non-healthcare] services ~

**Public Contracts Regulations 2015**

**Notifying the market of a contract opportunity:** Regulations 48 and 49 require that where a Contracting Authority intends to award a contract for goods or [non-healthcare] services, being ‘above threshold’, that this intention is published through OJEU (the Official Journal of the European Union) by means of either a:

- Prior Information Notice (PIN), which shall:
  - Contain information including:
    - Identification of the CCG;
    - How the procurement documents can be accessed electronically;
    - Brief description of the contract including CPV codes;
    - Timeframe and duration of the contract;
    - Timeframe for the contract delivery and duration;
    - Time limits for expressions of interest;
    - Brief description of the main features of the award procedure to be applied.
  - Confirm the types of services for which the contract is to be awarded;
  - Confirm that the contract will be awarded without further publication and invite interested providers to express their interest in writing.
Contract Notice, to include:
- Identification of the CCG;
- How the procurement documents can be accessed electronically;
- Brief description of the contract including CPV codes;
- Conditions for participation in the process of selection;
- Type of award procedure and any reasons for use of an accelerated procedure;
- Explanation as to how any lots may or may not be limited, or reasons why the contract has not been divided into lots;
- Contract award criteria;
- Time limits for each stage of the procedure;
- Brief description of the main features of the award procedure to be applied.

Ensuring transparency of contracts awarded: Regulation 50 also requires transparency of ‘above threshold’ contracts awarded for goods or [non-healthcare] services.

Note – see Annex G to this policy (Regulatory Procurement Thresholds) for details of the financial value of contracts considered to be ‘above threshold’.

The transparency required is the publication of a Contract Award Notice through OJEU (the Official Journal of the European Union) which must include:
- Identification of the CCG;
- Brief description of the contract, including CPV codes;
- Description of the procurement;
- Contract award criteria;
- Number of tenders received;
- Price or range of prices to be paid;
- Name and address of the successful bidder being awarded the contract;
- Details of main subcontractors and proportion of the contract.

Contract Award Notices are to be published within 30 days following a contract being awarded.
~ Transparency through the CCGs’ websites ~

NHS England Statutory Guidance on the Managing of Conflicts of Interest

Statutory Guidance issued by NHS England requires CCGs to ensure that there is transparency in regard to contracts awarded, including how conflicts of interest have been managed and the details of those involved in the decision making (key individuals and decision making forums). The Guidance specifically requires CCGs to publish such details on the website of the CCG.

The following table summarises the routes to publishing transparent information about contracts awarded by CCGs, whether these have been directly awarded, ‘rolled over’ or awarded following a formal procurement process.

Table AE1

<table>
<thead>
<tr>
<th>Type of contract</th>
<th>Total potential life value</th>
<th>OJEU</th>
<th>Contracts Finder</th>
<th>CCG Website</th>
</tr>
</thead>
<tbody>
<tr>
<td>Healthcare services</td>
<td>£615,278 or more</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Healthcare services</td>
<td>Less than £615,278</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Other Schedule 3 services</td>
<td>£615,278 or more</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Other Schedule 3 services</td>
<td>£25,000 to £615,278</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Other Schedule 3 services</td>
<td>Less than £25,000</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Non-healthcare goods and services</td>
<td>£181,302 or more</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Non-healthcare goods and services</td>
<td>£25,000 to £181,302</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Non-healthcare goods and services</td>
<td>Less than £25,000</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Works</td>
<td>£4,551,413 or more</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Works</td>
<td>£25,000 to £4,551,413</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Works</td>
<td>Less than £25,000</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>
**Annex F – ‘Decision Guide’: selecting an approach to award a contract (healthcare services)**

Section 6.2 of this policy outlines considerations when selecting the most appropriate route to awarding a contract. The following guidance is set out to assist with the application of the considerations outlined.

**Q1. Is the service contract within the scope of an existing or soon to be established, Integrated Care Partnership (ICP) or similar collaborative provider arrangement?**

- If ‘Yes’ – consider how the service contract should either be replaced by or transferred into the ICP arrangement and the timing of this – see Notes below.
- If ‘No’ – go to Question 2.

**Notes:** Consideration to be given as to how, in contract form, the service is to be incorporated within scope of the ICP in line with the NHSE ICP contract template:


Should an existing service contract be decommissioned as a replacement service arrangement is to be established through an ICP? Can provision be made to novate/transfer an existing contract into the ICP contract? If the ICP has yet to be established, is it appropriate to extend an existing service contract for an interim period until the ICP is to be established? If an interim arrangement is required on a standalone basis see steps below. Will the arrangement continue to deliver quality services and value for money?

**Q2. Can the services required be lawfully procured through an established framework?**

- If ‘Yes’ – progress a process to award a contract under the framework agreement.
- If ‘No’ – go to Question 3.

**Notes:** An increasing range of frameworks are being established nationally by commissioning bodies and procurement organisations which can enable the LDU to avoid a full procurement process and instead, either directly award a contract to a framework provider, or undertake a ‘mini competition’ as may be appropriate under the terms of the framework. Caution should be exercised when considering using a framework from another commissioner (whether a CCG or a local authority), that the framework lawfully permits the CCG to contract through the framework, this having been transparently communicated to the market when the framework was established. Also, the service required is within the value range permissible within the framework. Advice regarding access to frameworks should be sought from the procurement service.
Q3. Is there a need to pilot a new service model for a limited time before investing in a substantive service contract?
If ‘Yes’ – consider whether it is justifiable and proportionate to award a contract without any competition for the duration of the pilot. This requires the use and approval of a tender waiver, of which process is set out under Annex L.
If ‘No’ – go to Question 4.

Notes: A ‘pilot’ service is not necessarily a reason to avoid a process to decide which provider is most capable of delivering a value for money service. Where a pilot is intended to run for 6 – 18 months, it may be reasonable and proportionate to directly award a contract, however regard should be given to the level of risk involved (including financial, clinical, reputational, etc.) to ensure that the selection of the provider is appropriate including all necessary due diligence being undertaken. Consideration should be given to whether a speedy, proportionate process can be undertaken to invite interest from the market and select a provider. Also, Commissioners should record/document the rationale behind not competing the opportunity if this option is chosen.

Q4. Is there an urgency to award a contract that precludes any reasonable timescale to run any competitive process?
If ‘Yes’ – commence direct negotiation to award the contract without any competition. This requires the use and approval of a tender waiver, of which process is set out under Annex L.
If ‘No’ – go to Question 5.

Notes: Procurement regulations do provide for circumstances where a contracting authority could not have reasonably foreseen the requirement, e.g. an unanticipated need to contract for a complex package of care that has arisen and requires an urgent solution. Caution to be exercised in that a lack of commissioner planning and a reasonable anticipation of requirements are unlikely to be considered reasonable justification to avoid a competitive or other process. Internal ‘Tender Waiver’ documentation must record the reasons and the decision taken.

Q5. Can the services be concurrently provided through one or more providers offering a choice (whether mandatory by statute or desirable based on the commissioning intentions) to patients?
If ‘Yes’ – consider the benefits of establishing a framework of providers. Go to Question 6.
If ‘No’ – go to Question 7.

Notes: Engagement with the market is essential to understand the viability and appropriateness of a framework. Presumptions should not be made regarding the potential interest of providers to willingly share in the provision of healthcare capacity. Consideration should also be given to the overall costs and benefits to the LDU as well as patients when offering choice through multiple contracts. Issues to be explored may include service sustainability, economies of scale and minimum clinical activity levels to sustain clinical competence and patient safety.
Q6. Can a fixed tariff be determined by the LDU which will apply to all providers offering a choice of service to patients?
If ‘Yes’ – consider establishing an Any Qualified Provider (AQP) framework.
If ‘No’ – consider establishing a bespoke framework involving competitive or differentiated prices.

Notes: An AQP is an NHS framework where any provider interested in providing a patient service can apply to be awarded a contract, with the requirement that they are appropriately qualified, registered and agree to standard NHS contract terms and the fixed tariff set by the LDU. AQPs support the offering of choice to patients in where they can receive healthcare. Engagement with potential providers should explore, test and validate interest from providers and the factors affecting their level of interest. Tariff setting should have regard to the commercial factors of relevance to the type of service provision and the feedback from potential providers. There may be occasion where competitive pricing may be appropriate, e.g. where the services offered across the provider landscape is variable and differentiated – such as care homes with nursing, where a common tariff may not be reasonable or feasible. Advice and support

Q7. Is there only one single provider capable of and/or interested in providing the service?
If ‘Yes’ – commence direct negotiation to award the contract without any competition. This requires the use and approval of a tender waiver, of which process is set out under Annex L.
If ‘No’ – go to Question 8.

Notes: A single capable provider could arise for various reasons including: sole infrastructural or technical knowledge / ability; having specialist capability; clinical interdependency; etc. Justification for there being a single capable provider should be evidenced through market engagement, or there is a risk of subsequent legal challenge where the CCG has failed to identify alternative capable providers. i.e. publishing via Contracts Finder / OJEU to invite expressions of interest.

Q8. Is there more than one interested and capable potential provider?
If ‘Yes’ – consider a proportionate competitive process.
If ‘No’ – consider market stimulation and development to meet commissioning requirements.

Notes: Market engagement is critical to understand the level of potential provider interest. The designing of an appropriate and proportionate competitive procurement process should be informed as to the likely number of potential bidders. A pre-qualifying procurement stage, where intended to shortlist potential bidders to be invited to tender, should only be used following an assessment that there is likely to be a high and unmanageable number of bidders. Whilst the Public Contracts Regulations 2015 prescribe a choice of procurement procedures (i.e. Open, Restricted, etc.), CCGs have considerable flexibility to design a procurement process as long as it remains compliant with the EU Treaty derived principles of transparency, equal treatment, non-discrimination and proportionality. Where market engagement fails to identify interested providers, a review should take place to understand possible reasons, particularly where this could be due to unreasonable specifications of commissioning requirements including payment model. Ways should be identified to further engage with the market to develop the capacity being required to meet commissioning requirements.
Annex G - Regulatory procurement thresholds

NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013

The NHS (Procurement, Patient Choice and Competition)(No.2) Regulations 2013 require that where a competition is to be used to award a contract for the provision of health care services for the provision of the NHS (amongst other social and educational services), regardless of financial value (i.e. no financial threshold is stipulated), arrangements are to be made to advertise such a competition, through the publication of an appropriate Notice through Contracts Finder (the UK’s national web portal for ensuring transparency of all public sector contract opportunities and contract award decisions, available at https://www.contractsfinder.service.gov.uk).

Public Contracts Regulations 2015

The Public Contracts Regulations 2015 set out financial thresholds when regulatory obligations will apply to process for awarding a contract and the transparency in relation to contracts awarded.

These thresholds are reviewed and published by the Cabinet Office at least every two years. Thresholds relate to the total potential life value of a contract, including any potential extensions.

  e.g. A contract with an annual value of £200,000 being awarded for 2 initial years with the option to be extended for a further year will have a total potential life value of £600,000.

Thresholds as at 1st January 2017:

Contracts requiring transparency through OJEU (the Official Journal of the European Union):

- Goods and non-‘Schedule 3’ services* £181,302 or more
- Works £4,551,413 or more
- ‘Schedule 3’ services (including Healthcare) £615,278 or more

Contracts requiring transparency through Contracts Finder (referred to as ‘below threshold’ contracts):

- Goods and non-healthcare services From £25,000 and being less than £181,302
- Works From £25,000 and being less than £4,551,413

*Note: ‘Schedule 3’ refers to Schedule 3 within the Public Contracts Regulations 2015 which lists specific types of public services which are not bound by all of the regulatory requirements and have a higher contract value threshold before transparency through OJEU is required - contracts for health care services fall within scope of Schedule 3.
Annex H - Prime Financial Policies and Scheme of Reservation and Delegation

The CCG’s Prime Financial Policies and Scheme of Reservation and Delegation will guide financial decisions relating to procurement undertaken by either CCG.

<table>
<thead>
<tr>
<th>Goods and Non-Schedule 3 services</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Goods or services up to £10,000 (Minimum of 1 quote required)</td>
<td>Budget Holder or LDU Commissioning Managers or LDU Executive Directors</td>
</tr>
<tr>
<td>Goods or services from £5,000 - £25,000 (Minimum of 2 written competitive quotations required)</td>
<td>LDU Commissioning Managers or LDU Executive Directors</td>
</tr>
<tr>
<td>Goods or services from £25,000 - £164,176 (Invite written competitive proposals with quotations from either (i) suppliers on a lawfully established Framework Agreement, or (ii) via advertising on Contracts Finder)</td>
<td>Accountable Officer or Managing Director and CCG Executive Directors</td>
</tr>
<tr>
<td></td>
<td>Approval via Executive Management Team (EMT) and Finance Committee (FC).</td>
</tr>
<tr>
<td>Goods or services over £164,176 - £200,000 (Invite written competitive proposals with quotations from either (i) suppliers on a lawfully established Framework Agreement, or (ii) via advertising BOTH Contracts Finder and OJEU)</td>
<td>Accountable Officer or Managing Director and Lay Member under Seal</td>
</tr>
<tr>
<td></td>
<td>Approval via Executive Management Team (EMT) and Finance Committee (FC).</td>
</tr>
<tr>
<td></td>
<td>Approval also via Governing Body (GB) when value is greater than £200,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Health and/or Social Care Services, or other services falling within scope of Schedule 3 of the Public Contracts Regulations 2015</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Goods or services up to £25,000 (Minimum of 1 quote required)</td>
<td>Accountable Officer or Managing Director and CCG Executive Directors or Deputy Directors</td>
</tr>
<tr>
<td>Goods or services from £25,000 - £589,148 (Invite written competitive proposals with quotations from either (i) suppliers on a lawfully established Framework Agreement, or (ii) via advertising on Contracts Finder)</td>
<td>Accountable Officer or Managing Director</td>
</tr>
<tr>
<td></td>
<td>Approval via Executive Management Team (EMT) and Finance Committee (FC).</td>
</tr>
<tr>
<td></td>
<td>Approval also via Governing Body (GB) when value is greater than £200,000</td>
</tr>
<tr>
<td>Goods or services over £589,148 (Invite written competitive proposals with quotations from either (i) suppliers on a lawfully established Framework Agreement, or (ii) via advertising BOTH Contracts Finder and OJEU)</td>
<td>Accountable Officer or Managing Director and Lay Member under Seal</td>
</tr>
<tr>
<td></td>
<td>Approval via Executive Management Team (EMT), Finance Committee (FC) and Governing Body (GB) when value is greater than £200,000</td>
</tr>
</tbody>
</table>
### Opening Tenders and Quotations

<table>
<thead>
<tr>
<th>Estimated value up to £99,999</th>
<th>Two senior officers/managers designated by the Chief Officer and not from the originating department</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated value over £99,999</td>
<td>Two senior officers/managers designated by the Accountable Officer or Managing Director and not from the originating department, including a member of the Board</td>
</tr>
</tbody>
</table>

### Waiving of quotations and tenders subject to Prime Financial Policies

<table>
<thead>
<tr>
<th>Tender Waiver Template:</th>
<th>Tender waiver’s below £100,000 to be approved by the Accountable Officer/Managing Director and Chief Finance Officer/Director of Finance and reported to the Audit and Governance Committee.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Tender waiver’s above £100,000 to be approved by the Finance Committee and reported to the Audit and Governance Committee.</td>
</tr>
</tbody>
</table>
Annex I - Terms of Reference for Contract and Procurement Management Group

CPMG ToR v2.2
120618 - Final.docx
Annex J - High Level Flow Chart on the LDU Procurement Decision Process

High level Procurement flow chart

- **Change in Commissioning arrangement**
  - i.e Contract expiry/termination, mandated national programme, service redesign, Commissioning Intentions
  - Is a Procurement required?

- **Procurement Options paper**
  - Programme Board

- **Is investment required?**
  - If sc business case to Benefits and Realisation then Strategy & Planning

  - **Strategy & Planning**
    - For approval of investment

  - **Review and recommendation validated through CPMG**

  - **FMT**
    - Report to FMT for approval to proceed
    - Chairs action reported to Board in Exec Report

  - **Not approved**
    - Review at Programme Board

  - **Approved – proceed to Procurement**

  - **CPMG**
    - Oversight of Procurement

  - **Advertise Contract Finder/CCG website**

  - **Contract Award – stand still**

  - **Assurance Report to Board**

  - **CCG Board Approval & sign off**

  - **Contract Mobilisation**

**KEY**
- Approval route
- Formal Approval (milestone)
Annex K – Equality Impact Assessment
Annex L – Tender Waiving Process

Service
Health or Non-Health

Non-Health
Value less than 5k
Seek at least 1 quote - No waiver required

Value between 5k – 25k
Seek at least 2 written quotes

Value over 25k
Seek competitive quotes

Health
Value less than 25k
Seek at least 1 quote - No waiver required

Value between 25k - 70k
Seek at least 3 written quotes

Value over 70k
Seek competitive quotes

Unable to get required quotes or tender waiver needed

Complete Tender Waiver and send to CPMG for review

Value up to 99k
Tender waiver to be signed by Commissioner and then signed and approved by Managing Director and Finance Director and reported to the Audit and Governance Committee. Signed Tender waiver goes to Contracts Team for storage.

Value over 99k
Tender waiver to be signed by Commissioner and then approved by Finance Committee reported to the Audit and Governance Committee. Signed Tender waiver goes to Contracts Team for storage.
Annex M – Post-Brexit Implications

Guidance as per Cabinet Office (updated 22nd March 2019)

After a No Deal Brexit
If the UK leaves the EU without a deal, the public procurement regulations will remain broadly unchanged after EU exit.

Post Brexit After Deal

What will change for contracting authorities and entities
The current regulations will be amended to ensure they remain operable and functional on exit. The majority of the procurement regulations and in particular the different procedures available to contracting authorities and entities, will remain exactly the same. The key difference for contracting authorities would be the need to send notices to a new UK e-notification service instead of the EU Publications Office.

Contracting authorities have a legal obligation to publish public procurement information. In a no deal scenario, contracting authorities may no longer have access to the EU Publications Office and the online supplement to the Official Journal of the EU dedicated to European public procurement (Tenders Electronic Daily). Therefore, the government will be amending current legislation to instead require UK contracting authorities to publish public procurement notices to a new UK e-notification service. The new UK e-notification service will be ready for use by exit day.

Requirements for Contracting Authorities

- The requirement to advertise on Contracts Finder will remain unchanged.
- Organisations that publish direct to OJEU/TED will need to register with the new UK e-notification service.
- Contracting authorities that need to publish directly to the new UK e-notification service will need a Contracts Finder Supplier Registration Service account. This will be facilitated by NHS SBS.
- Existing Contracts Finder users will be enabled to publish to the new UK e-notification service automatically and need take no action.
Requirements for Providers

- Suppliers wishing to access UK contract opportunities from the UK public sector will need to access the new UK e-notification service instead of Tenders Electronic Daily (TED).

- Suppliers can continue to access the relevant domestic portals, such as Contracts Finder.

- Suppliers who wish to access contract opportunities from the EU may continue to do so via OJEU/TED. Additional information on this has been published by the EU.

Procurements in Progress on Exit Day

Some organisations will have a regulated procurement in progress as the UK leaves the EU. Further guidance has been published in procurement policy notice (PPN) 02/19.

For procurements that have commenced before the UK leaves the EU (for example, they have been advertised in the OJEU already), contracting authorities will need to comply with the new regulations from that point, for example by posting subsequent contract award notices on the new UK eNotification service instead of OJEU TED. However, the effect of the former rules will be preserved in some circumstances to maintain fairness throughout the procurement.

Contracting authorities which commence their procurements after the UK leaves the EU will need to follow the amended regulations.