

**Northern, Eastern and Western Devon
Clinical Commissioning Group**

Procurement Policy 2016 -2019 for Clinical Healthcare Services

18 April 2016

DOCUMENT INFORMATION	
Title / Version	Procurement Policy, 2016-19/ v1.2
Purpose	To ensure the Clinical Commissioning Group meets its legal obligations in relation to procurement and to act in the best interests of the organisation, in accordance with the Clinical Commissioning Group's Constitution.
Status	Draft
Accountable Executive	Chief Finance Officer
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Author(s)	Faye Robinson, Director of Procurement, South, Central and West Commissioning Support Unit
Superseded Documents	Procurement Strategy – October 2014
Review	This document will be reviewed on a regular basis to ensure it remains up to date with all regulations, rules, best practice, and guidance and in accordance with the NEW Devon Clinical Commissioning Group Constitution and Strategic Plan. Recommended next review 2019 unless national guidance or local process requires an update beforehand
Equalities	NEW Devon Clinical Commissioning Group is committed to promoting equality of opportunity and avoiding discrimination, as required by the Health and Social Care Act 2012 and the Equality Act 2010. These duties are continuous and ongoing, and will apply to decisions about procurement. All CCG policies can be provided in large print or Braille formats; translations on request; language line interpreter services are available; and website users can use contrast, text sizing and audio tools if required.

VERSION CONTROL			
Version	Date	Author	Amendment History
0.1	18 September 2014	Faye Robinson	First draft
1.0	20 October 2014	Faye Robinson	Final version following review at Executive team and Finance Committee
1.1	31 December 2015	Faye Robinson	Update to take account of new regulations
1.2	14 April 2016	Faye Robinson	Update to take into account comments received

ASSOCIATED DOCUMENTS

NEW Devon Clinical Commissioning Group (CCG) Constitution including:

- NHS NEW Devon CCG Detailed Financial Procedure Policy
- NHS NEW Devon CCG Commissioning Framework
- NHS NEW Devon CCG Contracting Principles
- NHS NEW Devon CCG Standards of Business Conduct and Managing Conflicts of Interest
- NHS NEW Devon CCG Code of Practice on Confidentiality (Data protection)
- NHS NEW Devon CCG Ethical Framework for effective commissioning
- NHS NEW Devon CCG – The Journey to 'I' - An Integration Plan for Health, Wellbeing and Care in Devon
- NHS NEW Devon CCG Equality & Diversity Policy and Strategy
- NHS NEW Devon CCG Putting the Public AND Patient Voice at the centre

Public Contracts Regulations 2015

Public Contracts Regulations 2006 (as amended in 2009 and 2011)

Directive 2014/24/EU on public procurement (26 February 2014)

NHS Act 2006

Health and Social Care Act 2012

Equality Act 2010

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

Public Services (Social Value) Act 2012

Local Government Act 1999 (where co-commissioning with a Local Authority)

The NHS (Clinical Commissioning Group) Regulations 2012

Procurement Guide for commissioners of NHS-funded services, 30 July 2010

Framework for Managing Choice, Cooperation and Competition, May 2008

NHS Procurement: Raising our game, May 2012

Securing best value for NHS Patients, August 2012

NHS Commissioning Board, Towards establishment: Creating responsive and accountable CCGs, February 2012

NHS Standards of Procurement, June 2013

Better Procurement, Better Value, Better Care :A Procurement Development Programme for the NHS August 2013

NHS Commissioning Board, Procurement of healthcare (clinical) services: Briefings for CCGs, September 2012

Monitor Substantive Guidance on the Procurement, Patient Choice and Competition Regulations, December 2013

Monitor Enforcement Guidance on the Procurement, Patient Choice and Competition Regulations, December 2013

NHS Commissioning Board, Transforming Participation in Health and Care, September 2013

Managing Conflicts of Interest: Statutory Guidance for CCG's December 2014

Government Procurement Policy Notes, including in particular:

- 02/13 Supplier Financial Risk Issues Information Note (18th Feb 2013)
- 06/13 Measures to Promote Tax Compliance (25th July 2013)
- 04/15 Taking Account of Suppliers Past Performance

NHS Standard Contract

Crown Commercial Services Guidance on the new Light Touch Regime for Health, Social Education and certain other service contracts October 2015

Crown Commercial Services 'Guidance on amendment to contracts during their term', October 2015

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1 Introduction

- 1.1. Following the Health and Social Care Act 2012, NHS NEW Devon Clinical Commissioning Group (“CCG”) took over the commissioning of healthcare services from Devon PCT. The Act empowers Clinical Commissioning Groups to commission healthcare services for the local population, working in partnership with their Local Authorities, Health and Wellbeing Boards, the voluntary sector, local health providers and NHS England to deliver an improved quality of care in the context of the need to spend resources wisely.
- 1.2. Procurement is central to commissioning that drives quality and value. It describes a whole life-cycle process of acquisition of goods, works and services; it starts with identification of need and finishes with the end of a contract or the end of useful life of an asset, and includes performance management. Procurement encompasses everything from repeat, low-value orders through to complex healthcare service solutions developed through partnership arrangements. This policy is limited to the procurement of clinical health care and includes all forms of health care designed to secure improvement in the physical and mental health of people and in the prevention, diagnosis and treatment of physical and mental illness.
- 1.3. There are a range of procurement approaches available which include working with existing providers, non-competitive and competitive tender processes and multi-provider models such as Any Qualified Provider (AQP). These approaches are explained in this policy document, and in relation to every commissioning decision the CCG will need to consider carefully which approach is appropriate.
- 1.4. The CCG’s approach to procurement is to operate within the relevant legal and policy frameworks and use procurement as one of the system management tools available to it to strengthen commissioning outcomes. It can do this through procurement by:
 - Increasing general market capacity and meeting CCG demand requirements
 - Using competition to facilitate improvements in choice, quality, efficiency, access and responsiveness for patients and people using services
 - Stimulating innovation.
- 1.5. All procurement decisions made by the CCG will be to support the delivery of the CCG Commissioning Framework and made in proportion to risk.
- 1.6. Operating within relevant legal and policy frameworks, decisions of whether to competitively tender will be driven by the legislative requirements that apply to CCGs in the commissioning of health care services as well as need to commission services from providers who are best placed to deliver the needs of our patients and population, to improve the quality of services and to improve efficiency in the provision of services, and who will provide best value for money in doing so.

2 Scope of the Policy

2. As far as it is relevant, this policy applies to all purchasing decisions concerning health care and social care services for the CCG.
- 2.1. All non-clinical supply and services contracts will be governed by a separate policy 'Procurement policy – non clinical supply and service contracts'
- 2.2. This policy must be followed by all the CCG employees and staff on temporary or honorary contracts, representatives acting on behalf of the CCG including staff from member practices, and any external organisations acting on behalf of the CCG including other CCGs and the South, Central and West Commissioning Support Unit (SCW CSU).

3 Guiding principles

3. When procuring health care services, the CCG is 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
 - Acting transparently and proportionately, and treating potential providers equally and in a non-discriminatory way
- 3.1. The CCG is required to and will:
 - Engage with service users about its commissioning proposals and take their responses into account
 - Procure services from the one or more providers that are most capable of delivering commissioners' overall objective and that provide best value for money
 - Consider ways of improving services
 - Have arrangements in place that allow providers to express an interest in a contract
 - Where appropriate, undertake formal engagement and consultation in accordance with the NHS NEW Devon CCG Putting the Public and Patient Voice at the centre 2014-2016
 - Act in a transparent and proportionate way
 - Treat providers equally and in a non-discriminatory way, including by not treating a provider, or type of provider, more favourably than any other provider, in particular on the basis of ownership.
 - Advertise in the Official Journal of the EU (OJEU) and Contracts Finder all contract opportunities with a total value of over £589,148¹, unless limited exemptions apply
- 3.2. The CCG is required and committed to procuring services from one or more providers that are most capable of delivering the needs, quality and efficiency required, and provide the best value in doing so.

¹ Figure correct as at 1 January 2016 – subject to change 31 December 2017

- 3.3. The CCG is required and committed to act with a view to improving quality and efficiency in the provision of services. The means of doing so may include:
- The services being provided in an integrated way (including with other healthcare services, health related services, or social care services)
 - Enabling providers to compete to provide the services
 - Allowing patients a choice of provider of the services
- 3.4. Actual and potential conflicts of interest will be managed appropriately and in accordance with the CCG Standards of Business Conduct and Managing Conflicts of Interest policy to protect the integrity of the CCGs contract award decision making processes and the wider NHS commissioning system. This is covered further in section 9 of this policy.
- 3.5. In relation to each purchasing decision for a major service area concerning health care and social care services, the CCG will
- Consider the extent to which any form of competition is required and consider the most appropriate process and procedure for awarding the relevant contract or contracts, taking account of the CCG's legal obligations.
 - In that regard, give consideration to whether the use of a framework agreement, including the use of approved lists, is the most appropriate means of appointing providers. In the case of approved lists, the CCG will appoint the best provider, offering the best quality services that are affordable regardless of who the provider is as they will have passed the fit and responsible test in the first instance.
 - When there is a joint procurement with Local Authorities, the CCG will ensure that the local authority complies with applicable NHS Guidance.
 - Purchasing decisions will be led by priorities based on population needs and to address inequalities, clinical needs and measurable improvement in outcomes with clear clinical leadership informed by gathering information from the outset to provide evidence based services.
 - Will be open and transparent in its decision making relating to procurement, making arrangements to ensure that individuals to whom the services are being or may be provided are involved in the process and to take their views into account.
 - Will give consideration as to how the service being procured might improve the economic, social and environmental well-being of the local area and how it might act with a view to securing that improvement in order to maximise value for money.
 - Will aim to procure and implement services that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others.
- 3.6. The CCG will, wherever possible and where it is consistent with legal requirements, ensure that contractual provisions, procurement procedures and selection and award criteria are designed to ensure that contractors and providers:
- Are good employers who comply with all relevant employment legislation, including the Public Interest Disclosure Act 1998;

- Maintain acceptable standards of health and safety and comply fully with all legal obligations in this regard;
 - Meet all tax and national insurance obligations;
 - Meet all equal opportunities legislation;
 - Are reputable in their standards of business conduct;
 - Respect the environment and take appropriate steps to ensure they minimise their environmental impact;
 - Can evidence an appropriate record of involving patients in their services and providing high quality services;
 - Can demonstrate an appropriate record of successful partnership working with commissioners and other providers in the best interests of patients and public;
 - Are open and transparent with commissioners on all Patient Safety and Quality issues within their services with accurate information and reporting;
 - Abide by and promote awareness of the NHS Constitution, including the rights and pledges set out in it.
- 3.7 The CCG will take decisions whether or not to exclude a particular provider from a procurement process, based on conviction of offences, fraud, bribery, insolvency/bankruptcy, non-payment of taxes, etc, in a proportionate way, having considered all relevant information.
- 3.8 The CCG will, for every procurement, and consistently within relevant EU and international law, ensure that contractual provisions, procurement procedures and selection and award criteria prohibit or restrict contractors' use of offshore jurisdictions and/or improper tax avoidance schemes or arrangements and /or exclude companies which use such jurisdictions and/or such schemes or arrangements
- 3.9 The CCG will only negotiate contracts on behalf of the CCG, and the CCG may only enter into contracts within the statutory framework set up by the NHS Act 2006, as amended by the Health and Social Care Act 2012 and associated regulations.

4 Associated Policies and Procedures

4. This policy should be read in accordance with the following policies, procedures and guidance:
- NHS NEW Devon Clinical Commissioning Group Constitution
 - NHS NEW Devon CCG Financial Policies
 - NHS NEW Devon CCG Commissioning Framework
 - NHS NEW Devon CCG Contracting Principles
 - NHS NEW Devon CCG Standards of Business Conduct and Managing Conflicts of Interest
 - NHS NEW Devon CCG Code of Practice on Confidentiality (Data protection)
 - NHS NEW Devon CCG Ethical Framework for effective commissioning
 - NHS NEW Devon CCG – The Journey to 'I' - An Integration Plan for Health, Wellbeing and Care in Devon
 - NHS NEW Devon CCG Equality & Diversity Policy and Strategy

- NHS NEW Devon CCG Putting the Public and Patient Voice at the centre, in each case, as amended from time to time.

4.1. Legislation affecting procurement includes:

- Public Contracts Regulations 2015 set out procedural rules that must be followed in the procurement of all contracts for goods and services above the relevant EU threshold.
- Section 14Z2 of the National Health Service Act 2006 provides that commissioners of healthcare services have, in relation to health services for which they are responsible, a legal duty to involve patients and the public in service planning, the development and consideration of services changes and decisions that affect service operation
- The NHS (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 place requirements on commissioners to ensure that they adhere to good practice in relation to procurement, do not engage in anti-competitive behaviour and promote the right of patients to make choices about their healthcare
- Section 149 of the Equality Act 2010 sets out the Public Sector Equality Duty which means that public bodies must in the exercise of their functions have regard to the needs of individuals with protected characteristics.
- The Public Services (Social Value) Act 2012 requires that commissioners must consider how what is proposed might improve the economic, social and environmental well-being of the local area, and how it might act with a view to securing that improvement.
- Where the CCG is co-commissioning with the Local Authority, Section 3(1) of the Local Government Act 1999 sets out a duty of consultation.

4.2. All legislation is in force at the date of this Policy. Further associated guidance is listed at the start of the policy.

5 Aims and Objectives

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

5.1. To describe the transparent and proportionate process by which the CCG will determine whether health and social services are to be commissioned through existing contracts with providers, competitive tenders, via an AQP or framework approach or through a non-competitive process.

5.2. To enable early determination of whether, and how, services are to be opened to the market, to facilitate open and fair discussion with existing and potential providers and thereby to facilitate good working relationships.

5.3. To set out how the CCG will meet statutory procurement requirements primarily the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 and the Public Contracts Regulations 2015.

- 5.4. To set out how the CCG will ensure compliance with section 14Z2 of the NHS Act 2006 in respect of its duties of public and patient involvement in the conduct of a procurement process.
- 5.5. To enable the CCG to demonstrate compliance with the principles of good procurement practice
 - Transparency
 - Proportionality
 - Non-discrimination
 - Equal treatment.

6 Public Procurement Legislation

The Public Contracts Regulations 2006

- 6.1. The Public Contracts Regulations 2006 were superseded by the Public Contracts Regulations 2015 on the 26 February 2015.
- 6.2. Any procurement for Healthcare Services commenced prior to 18 April 2016 and for any other services commenced before 26 February 2015 will remain in scope of the Public Contracts Regulations 2006. These place legal requirements on public bodies procuring goods and services, and set out procedures which must be followed before awarding a contract when the value of the goods or services exceeds set thresholds.
- 6.3. This policy does not provide detailed information on the Public Contracts Regulations 2006. The procurement team will provide advice and guidance as required.

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

- 6.4. These apply to the CCG in the purchase of health care services only (i.e. they do not cover the procurement of non-clinical services). They provide that the CCG must:
 - act with a view to securing patients' needs and improving the quality and efficiency of the service;
 - in doing so, consider appropriate means of making such improvements, including through the services being provided in a more integrated way (including with other health care services, health-related services, or social care services), enabling providers to compete to provide the services, and allowing patients a choice of provider of the services;
 - act in a transparent and proportionate way and treat bidders equally and in a non-discriminatory way;
 - procure the services from one or more providers that are most capable of delivering the objectives of these Regulations and provide best value for money in doing so;
 - determine which providers should qualify for inclusion a tender process or within a list from which a patient is offered a choice of provider applying transparent, proportionate and non-discriminatory criteria;

- maintain a record of each contract for the provision of health care services awarded, including details of how in awarding the contract the CCG complied with its duties as to effectiveness, efficiency, improvement in quality of services and promoting integration
- not engage in anti-competitive behaviour unless to do so is in the interests of people who use health care services, which may include by the services being provided in an integrated way or by co-operation between the persons who provide the services in order to improve their quality;
- maintain a record of how any conflicts of interest between commissioners and providers are managed.

The Public Contracts Regulations 2015 (PCR 2015)

- 6.5 On 26 February 2015, the Public Contracts Regulations 2015 came into force. The new regulations replace the Public Contracts Regulations 2006. The Public Contracts Regulations 2015 govern the procurement of all contracts for goods and services with a value above a published threshold. There are two regimes under the PCR 2015 – the fully regulated regime covers services not covered by this policy (e.g. IT contracts, patient transport) and the 'light touch' regime covers health and social care services.
- 6.6 It is important to note that not all services procured by the CCG are classified within the 'light touch' regime. Some services such as non-emergency patient transport are fully regulated under the Public Contracts Regulations 2015. Those services that are covered by the light touch regime are listed in Schedule 3 of the Public Contracts Regulations 2015 and include a range of health and social care services.
- 6.7 From 1 January 2016 the current threshold for contracts to which the light touch regime applies is £589,148.
- 6.8 Where the light touch regime applies, the CCG is required to advertise the contract opportunity. The CCG will publish in OJEU and Contracts Finder a contract notice or prior information notice (PIN) for all contracts over the threshold.
- 6.9 The light touch regime does not impose any specific procurement procedures and commissioners are free to design any proportionate and appropriate procurement process to meet its needs. However to ensure compliance with Treaty principles of transparency and equal treatment, any procurement established by the CCG will conform with information provided in the OJEU advert (contract notice or PIN) regarding:
- any conditions for participation;
 - time limits for contacting/responding to the CCG;
 - and the award procedure to be applied.
- 6.10 There are no stipulated minimum time periods in the light touch regime and therefore any time limits imposed by the CCG on suppliers, such as for responding to adverts and tenders, will be reasonable and proportionate. The CCG will use its discretion and judgement on a case by case basis.

- 6.11 Where there is only one provider capable of supplying the services required the CCG will articulate the grounds for using the negotiated procedure without a call for competition to record its decision making. The use of this procedure applies in only limited circumstances and the CCG will need to demonstrate a clear audit trail to demonstrate why only one capable provider exists.
- 6.12 Following award of the contract the CCG must publish in the OJEU a contract award notice within 30 days of award. Where appropriate a group award notice will be published on a quarterly basis. In this instance the award notices must be published within 30 days of the end of each quarter.
- 6.13 Below threshold procurements (ie <£589,148) are subject to the PPCCR 2013 and the CCG will need to consider whether cross-border interest applies as part of its decision making process and the requirement to advertise on contracts finder as a result

The Public Services (Social Value) Act 2012

- 6.14 This Act requires commissioners at the pre-procurement stage to consider how what is to be procured may improve the social, environmental, and economic well-being of the relevant area, how they might secure any such improvement and to consider the need to consult.
- 6.15 Although the Act applies only to certain public services contracts to which the Public Contracts Regulations 2015 apply, the CCG intends, as a matter of good practice, to consider how its procurement might improve economic, social and environmental well-being in order to maximise value for money. The considered application of the provisions of this Act will provide the CCG with the means to broaden evaluation criteria to include impact on the local area.

7 Patient, Carer and Public Engagement

- 7.1 CCGs are statutory organisations, responsible for public money and have a duty to demonstrate decisions are being made in partnership with their local population. The CCG will ensure that patients and the public are involved in the planning of commissioning arrangements, the development and consideration for proposals for changes in services and in decisions affecting the operation of commissioning arrangements. Working in partnership with patients, carers and the public is a key factor to the design, procurement and monitoring of services.
- 7.2 The duty to involve patients and the public applies from the very outset of a commissioning decision-making process, before procurement commences. The CCG will, where appropriate, take steps to obtain the views of the public at the earliest possible stage, while proposals are still being developed. The appropriate level of public involvement will depend on the specific circumstances of the service to be commissioned or changed.
- 7.3 In line with the CCG's 'Putting the Public and Patient Voice at the centre' framework, for major commissioning projects a public and patient involvement action plan will be

drawn up to explain how the public and patients can put forward their views and be involved throughout the process.

- 7.4 The CCG is also subject to other legal duties which may require consultation with the public. These include the Public Sector Equality Duty and the obligations under the Public Services (Social Value) Act 2012.
- 7.5 In line with these requirements and the CCG vision, mission and values, the CCG will work in partnership with patients, carers and families, and partner organisations across the public, voluntary and private sectors to develop high quality, safe and cost effective locality based services.
- 7.6 The CCG will hold providers of services to account for the quality, safety and performance of their services. The CCG expects local providers to aspire to be the best in their field and to involve and seek feedback on a regular basis from local patients and carers.
- 7.7 The CCG will determine the most appropriate method of engagement and consultation according to the service being procured (whether by being consulted or provided with information or in other ways).

8 Accountabilities & Responsibilities

- 8 Overall day to day responsibility for clinical procurement rests with the Director of Procurement, South, Central and West Commissioning Support (SCW CSU) accountable to the Chief Finance Officer.
- 8.1 Where it is required and considered appropriate procurement support will be provided by the SCW CSU and in the case of collaborative projects by another CCG. The CCG will have systems in place to assure itself that the SCW CSU's or relevant CCG's business processes are robust and enable the CCG to meet its duties in relation to procurement.
- 8.2 The CCG is the authority directly responsible for:
- Approving the procurement route in line with its internal operational governance
 - Signing off specifications and evaluation criteria
 - Signing off decisions on which providers to invite to tender
 - Making final decisions on the selection of the provider.
- 8.3 Arrangements for delegation of authority to officers are set out in the relevant Detailed Financial Procedures Policy. In the event of any discrepancy between this Procurement Policy and the Detailed Financial Procedures Policy, the Detailed Financial Procedures Policy will take precedence.

9 Conflicts of interest

- 9.1. Managing potential conflicts of interest appropriately is needed to demonstrate the integrity of the wider NHS commissioning system and protect CCGs and GP practices from any perceptions of wrong-doing. The NHS (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 prevent the CCG from awarding a contract for the provision of health care services where conflicts, or potential conflicts, between the interests involved in commissioning such services and the interests involved in providing them affect, or appear to affect, the integrity of that contract. This includes interests of members of the CCG, its governing body, its committee and sub-committees or any CCG employee.
- 9.2. General arrangements for managing conflicts of interest are set out in the CCG Constitution and in the CCG Standards of Business Conduct and Managing Conflicts of Interest Policy. This section describes additional safeguards that the CCG will put in place when commissioning services that could potentially be provided by General Practitioners (GPs) or GP practices. In particular to ensure the following conflicts of interest are managed appropriately by the CCG:
- Direct financial interest
 - Indirect financial interest
 - Non financial or personal interests
 - Professional duties or responsibilities
- 9.3. For all procurements the CCG will take into account and comply with NHS England *Managing conflicts of interest: statutory guidance for CCGs: December 2014*.
- 9.4. When the CCG is seeking to take on delegated or joint commissioning responsibilities, the CCG audit committee chair and accountable officer will be required to provide direct formal attestation to NHS England that the CCG has complied with the guidance as per 9.3. This attestation will form part of an annual certification.
- 9.5. The CCG will consider potential conflicts of interest at project inception and a fully documented audit trail in respect of each contract awarded will be kept to demonstrate the actions taken to mitigate risks.
- 9.6. For all procurement projects and decision making events, all members present will declare any interest or perceived conflict of interest in the topic being discussed. Appendix 1 sets out the documents that must be used for all relevant procurement meetings.

10 Procurement approach for health and social care contracts

- 10.1 Taking all of the above factors into consideration, the CCG will, at the outset of a commissioning decision-making process for contracts for health and social care services, consider the appropriate procurement approach. A flowchart is provided at Appendix 2. In doing so, the CCG will take into account in particular the guidance

published in December 2013 by Monitor: Substantive guidance on the Procurement, Patient Choice and Competition Regulations as well as the Public Contracts Regulations 2015

The CCG will conduct health and social care procurements, as part of market management and development, according to priorities established in its Operating Plan and associated commissioning intentions.

- 10.2 Decisions of whether to competitively tender will be driven by the legislative requirements that apply to CCGs in the commissioning of health care services as well as the need to commission services from providers who are best placed to deliver the needs of our patients and population, to improve the quality of services and to improve efficiency in the provision of services, and who will provide best value for money in doing so.
- 10.3 The decision-making process may vary depending on whether or not the service is an existing one, new or significantly changed.

Existing Services

- 10.4 For an existing service (i.e. one that is not new or significantly changed) that is not at the end of a fixed-term contract that was procured via competitive tender, where the service is fit for purpose, offers best value for money and continues to fit with the strategic direction of the CCG, the existing provider may be retained for as long as it is appropriate to do so in accordance with the contract clauses.
- 10.5 Where the provider of an existing service was selected for a fixed period via a competitive tender exercise and the fixed period (including any options for contract extension) is due to end the CCG is required to advertise and re-tender that service if it is above the relevant EU threshold. The CCG will determine whether the current provider is the only capable provider, considering as a minimum factors such as the integration of the service with other services, the need for co-location due to clinical interdependencies, etc. If the CCG considers the current provider is the only capable provider it will seek advice from the procurement team on whether there are grounds in accordance with Regulation 5 NHS (Procurement, Patient Choice and Competition Regulations) 2013 and Regulation 32 of the Public Contracts Regulations 2015 to avoid a competitive tender exercise.
- 10.6 Where an increased number of providers are required to deliver a service, the CCG may seek to increase the provider base through the use of the AQP model (section 11). The practicability of implementation of the AQP model will take account of:
- Value of improving patient choice and contestability;
 - Level of market interest and capability;
 - Complexity of accreditation requirements and associated cost.

New or significantly changed services

10.7 The CCG will use a procurement decision support matrix to support consistent and thorough decision making. Appendix 4 provides a framework of questions the CCG will need to consider to support its decision making. Use of the template will ensure procurement implications are considered at the earliest stage of any review and take into account all appropriate procurement legislation and guidance.

10.8 In doing so it will:

- Determine whether the service can be accommodated through existing contracts with providers through future variations to those contracts in accordance with Regulation 72 (1-9) of the Public Contracts Regulations 2015 or whether the changes are "material" and therefore not permitted without advertisement (see Appendix 5)
- Determine whether there are demonstrable grounds to identify a most capable provider or group of providers without competition taking into account Monitor's Substantive Guidance and the provisions of Regulation 32 of the Public Contracts Regulations 2015
- Where there is an opportunity or requirement to broaden the choice of provider available to patients, the CCG's approach where applicable and appropriate may be the AQP model, advertised in the OJEU where required by the Public Contracts Regulations 2015. The AQP model will not always be appropriate, for example where:
 - the number of providers needs to be constrained, e.g. where the level of activity can support only one provider or where clinical pathways dictate a restricted number of providers;
 - value for money cannot be demonstrated without formal market testing (to determine the price the CCG will offer for provision of the services);
 - innovation is required from the market and cannot be achieved collaboratively;
 - there is no effective method of selecting from amongst qualified providers for delivery of specific units of activity;
 - overall costs would be increased through multiple provider provision because of unavoidable duplication of resources.

In all other cases, if the service is above the EU threshold, the CCG will advertise the contract opportunity and ensure that it is subject to competitive tender.

10.7 Following a decision to procure, the SCW CSU 'gateway' process will be implemented to provide a robust governance structure. The detail of this process is not covered within the policy but gateway stages include:

- Develop full business case (if not already completed)
- Pre procurement
- Procurement stage 1 – Pre Qualifying Questionnaire
- Procurement stage 2 – Invitation to Tender

- Finalisation of Procurement Stage & Implementation

11 Approach to market

11.1 Once it has been determined that a competitive process should be undertaken, the CCG will consider the most appropriate approach to market.

Any Qualified Provider (AQP)

- 11.2 With the AQP model, for a prescribed range of services, any provider that meets the CCG's criteria can compete for business within that market without constraint by a commissioner organisation, unless specified. Under AQP there are no guarantees of volume or payment.
- 11.3 Where an AQP list operates as a contract for a guaranteed volume of services and its value exceeds the current threshold of £589,148 the opportunity will be advertised OJEU.
- 11.4 The CCG will set transparent, fair and non-discriminatory criteria which are intended to ensure that the choices include the providers best able to meet the needs of the CCG's population. Where appropriate, the CCG may limit the number of providers, other than in relation to services covered at paragraph 11.1.4 below.
- 11.5 The AQP model promotes choice and contestability, and sustained competition on the basis of quality rather than cost. Any service that is contracted through the AQP model is not usually tendered separately, although the opportunity will be advertised using the Contract Finder government procurement portal. Potential service providers will be assessed against the published criteria and if appropriate, 'qualified'.
- 11.6 Where the service concerned is a first consultant outpatient appointment, any provider who meets the CCG's criteria, including holding a licence (if required by law) and CQC registration, will be included on the list.
- 11.7 In all other cases, the CCG may only refuse to admit a provider to its list on the grounds that it has already reached the limit of the number of providers set for that service.
- 11.8 A standard NHS contract will be awarded to all providers that meet:
- A benchmark for standards of clinical care (implying qualification / accreditation requirement);
 - The price the CCG will pay;
 - Relevant regulatory standards.
- 11.9 The CCG will have due regard at all times to the EU Treaty principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality when applying the AQP procedure.

Competitive Tendering

- 11.10 Where there is more than one potential provider for a service and an AQP approach is not suitable, the CCG will seek to utilise a competitive tendering approach. Where the opportunity is above the EU threshold of £589,148 the CCG will advertise in the OJEU. The competitive tendering approach can demonstrate the application of the principles of transparency, openness, equal treatment of providers and obtaining and delivering value for money.
- 11.11 Whilst there is no “checklist” that will definitively determine the appropriate use of competitive tendering, Appendix 3 provides an indication of the aspects to be considered when deciding whether a competitive tender is appropriate and approval will be via the Executive Committee as set out in its terms of reference.

Non-Competitive process

- 11.12 Competition may be waived in limited circumstances such as genuine extreme urgency, or where there is demonstrably only one provider which can provide the service for artistic or technical reasons or reasons to do with the protection of exclusive rights. In these circumstances the procedures set out within the CCG’s Standing Orders and Standing Financial Instructions must be followed.
- 11.13 Where it is decided not to competitively tender for new or significantly changed services, a waiver must be documented and reported to the Finance Committee. Waivers must be approved by the Chief Finance Officer.

Grants

- 11.14 In certain circumstances the CCG may provide a grant payable to third sector organisations. However there should be no preferential treatment for third sector organisations. Use of grants can be considered where:
- Funding is provided for development or strategic purposes
 - The services are innovative or experimental
 - The recipient is the sole provider
- 11.15 Grants should not be used to avoid competition where it is appropriate for a formal procurement to be undertaken and will still be considered in conjunction with general procurement principles (transparency, proportionality, non-discrimination, equal treatment).

12 Decision Making Process

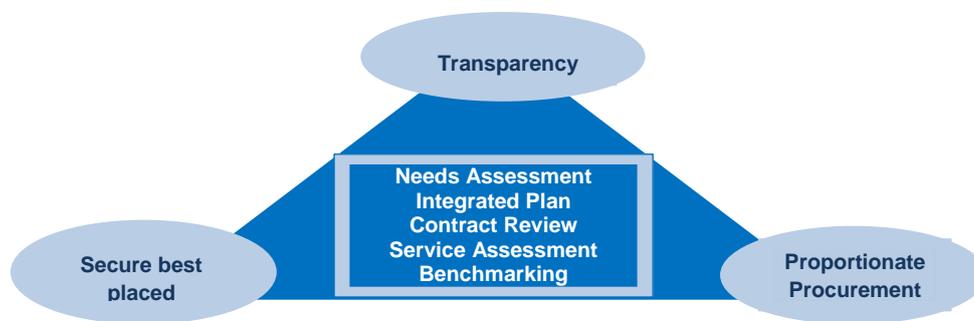
- 12.1 The CCG will use a procurement decision support matrix to support consistent and thorough decision making. Appendix 4 provides a framework of questions the CCG will need to consider to support its decision making. Use of the template will ensure procurement implications are considered at the earliest stage of any review.
- 12.2 Any service that is being considered, either as a new service or as a review of existing service, will be assessed in a consistent manner through the completion of the template.
- 12.3 Completion of the template will be supported through and assessed by the Executive Committee which is responsible for the internal performance management of delivery against the Commissioning framework.
- 12.4 The decision matrix will also be used as a stand-alone document to support consistent decision making when existing services are being considered for procurement due to performance concerns or the contract coming to an end.
- 12.5 Completion of the decision matrix either as part of a service assessment or as a stand-alone procurement tool will be initially considered within the group with recommendations submitted to the Executive Committee for approval / ratification.
- 12.6 If a decision is taken to pursue a competitive tender process, there are a range of further issues that will be taken into account in the design of the process to be followed; these are not considered in detail in this policy but include:
- Market analysis (e.g. structure, competition, capacity, interest)
 - Engagement requirements in accordance with 14Z2 of the NHS Act 2006
 - Tender routes
 - Procurement timescales
 - Affordability and Value for money
 - Impact on service stability
 - Procurement resource, including responsibilities and accountabilities
 - Outcome-based specifications
 - Existing related contractual arrangements
 - Contract management
 - Provider development
 - Social value
 - Public Sector Equality Duty
- 12.8 It is important that a record is kept of the decision making process, demonstrating that those responsible for taking formal decisions are fully briefed in relation to the factors to take into account.

13 Financial and quality assurance checks

13.1 The CCG will require assurance about potential providers. Where this is not achieved through a formal tender process (where this information would be established as part of the tender), the following financial and quality assurance checks of the provider will be expected to be undertaken before entering into a contract:

- Financial viability
- Economic standing
- Corporate social responsibility
- Clinical capacity and capability
- Clinical governance
- Quality / Accreditation

14 Principles of good procurement



The key principles of good procurement are transparency, proportionality, non-discrimination and equal treatment. The CCG will ensure compliance with these principles in the following ways.

Transparency

- The CCG will commission services from the providers which are best placed to deliver the needs of our patients and population.
- The CCG will commission services from suppliers that offer best value for money.
- The CCG will maintain on its website for public view a record of contracts held and information about which services are to be procured and when they will be presented to the market.
- The CCG will determine as early as practicable whether and how services are to be opened to the market and will share this information with existing and potential providers.
- The CCG will retain an auditable documentation trail regarding all key decisions.
- The CCG will use the most appropriate media in which to advertise tenders or opportunities to provide services, including using the Contracts Finder procurement portal established by Government to advertise all appropriate tenders.

- The CCG will manage potential conflicts of interest and ensure these do not prejudice fair and transparent procurement processes.
- The CCG will provide feedback to all unsuccessful bidders.

Proportionality

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

Non-discrimination

- The CCG will ensure that tender documents are written in a non-discriminatory fashion e.g. generic terms will be used rather than trade names for products.
- The CCG will inform all participants of the applicable rules in advance and ensure that the rules are applied equally to all. Reasonable timescales will be determined and applied across the whole process.
- The CCG will ensure that shortlist criteria are neither discriminatory nor particularly favourable to any one potential provider.

Equality of Treatment

- The CCG will ensure that no sector of the provider market is given any unfair advantage during a procurement process.
- The CCG will ensure that basic financial and quality assurance checks apply equally to all types of providers.
- The CCG will ensure that all pricing and payment regimes are transparent and fair
- The CCG will hold all providers to account, in a proportionate manner, through contractual agreements, for the quality of their services.

15 Procurement planning & monitoring

- 15.1 A procurement plan will be maintained that will list all current and future procurements. The procurement plan will be reviewed on a regular basis taking into account local and national priorities, the CCG's commissioning intentions, NHS England guidance and nationally mandated procurements. In addition it will take into account the impact of completed and on-going procurements.
- 15.2 The plan will highlight the priority, timescale, risk and resource requirement for each potential procurement. Not every priority on the procurement plan will result in procurement, but indicates the CCG's intention to review the service or activity.

- 15.3 The plan will be developed as a key element to provide communication between the CCG, its membership and potential providers. Through transparent and open processes the CCG will actively encourage provider communication.
- 15.4 The CCG will maintain a contracts database (“database”) of all clinical service contracts held by providers including new services likely to be commissioned. The database will be continuously updated in accordance with:
- Review of existing contracts
 - Delivery of new services as identified through the Integrated Plan
 - Emerging priorities including nationally mandated procurements
 - Completed, on-going or potential procurements
- 15.5 A summary of the database will be presented regularly at the Finance Committee, a subgroup of the Governing Body, to provide an update on the procurement status for each service. Not every service within the database will result in a competitive procurement being undertaken.
- 15.6 A summary of the contracting database will be published on the CCG website and will contain as a minimum the following information:
- the name of the provider and the address of its registered office or principal place of business
 - a description of the health care services to be provided
 - the total amount to be paid or, where the total amount is not known, the amounts payable to the provider under the contract
 - the dates between which the contract provides for the services to be provided, and
 - a description of the process adopted for selecting the provider.

16 Sustainable Procurement

- 16.1 The NHS is a major employer and economic force both in the NEW Devon and area and within the wider NHS South West region. The CCG recognises the impact of its purchasing and procurement decisions on the regional economy and the positive contribution it can make to economic and social regeneration.
- 16.2 The CCG is committed to the development of innovative local and regional solutions, and will deliver a range of activities as part of its market development plan to support this commitment.
- 16.3 Wherever it is possible, and does not contradict or contravene the CCG’s legal obligations, the CCG will work to develop and support a sustainable local health economy.

17 Use of Information Technology

- 17.1. Wherever possible appropriate information technology systems i.e. e-procurement and e-evaluation methods will be used. These are intended to assist in streamlining procurement processes whilst at the same time providing a clear audit trail.
- 17.2. E-Tendering and e-evaluation solutions provide a secure and efficient means for managing tendering activity particularly for large complex procurements. They offer efficiencies to both purchasers and providers by reducing time and costs in issuing and completing tenders, and particularly to purchasers in respect of evaluating responses to tenders.
- 17.3. Where applicable the CCG will in accordance with PCR 2015 Regulation 53 publish all procurement documentation at the point of publication of the OJEU contract notice.

18 Decommissioning services

- 18.1. The need to decommission contracts can arise through:
 - Termination of the contract due to performance not delivering the expected outcomes. This can be mitigated by appropriate contract monitoring and management and by involving the provider in this. The contract terms will allow for remedial action to be taken to resolve any problems. Should this not resolve the issues, then appropriate dispute resolution and termination provisions within the contract may be used.
 - The contract expires.
 - Services are no longer required as the need no longer exists.
 - Services may be assessed as no longer being a priority or offering value for money.
- 18.2. Where services are decommissioned, the CCG will ensure where necessary that contingency plans are developed to maintain patient care and to ensure that patient data is held safe and transferred to any new provider.
- 18.3. Where decommissioning involves Human Resources issues, such as TUPE, then providers (exiting and incoming) will be expected to cooperate and help all parties to discharge their obligations under current employment law.
- 18.4. Any decommissioning of services will be undertaken in accordance with the CCGs Ethical framework for Effective Commissioning.

19 Transfer of Undertakings and Protection of Employment Regulations

- 19.1. These Regulations arose as a consequence of the 1977 EU Acquired Rights Directive and were updated in 2006. They apply when there are transfers of staff from

one legal entity to another as a consequence of a change in employer. This is a complex area of law which is continually evolving.

- 19.2. Commissioners need to be aware of these and the need to engage HR support, procurement and possibly legal advice if there is likely to be a TUPE issue. Additionally, NHS Bodies must follow Government guidance contained within the Cabinet Office Statement of Practice 2000/72 and associated Code of Practice 2004 when transferring staff to the Private Sector also known as “COSOP”.
- 19.3. The CCG will advise potential bidders of their obligations associated with TUPE and requirements in the preparation of any bids submitted to the CCG.

20 Public Sector Equality Duty

- 20.1. The CCG is subject to a duty under s.149 of the Equality Act 2010 to have due regard in the exercise of its functions to the need to:
 - Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Act;
 - Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it;
 - Foster good relations between persons who share a relevant protected characteristic and those who do not share it.
- 20.2. The CCG will prepare an equality impact assessment, in line with its Equality & Diversity Policy and Strategy, at each key stage of the decision making process which explains the impact of the proposal on people within each group of protected characteristics, which will be considered by the decision makers. Where there is an adverse impact, the document will show how that impact will be mitigated.
- 20.3. The CCG aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others.

21 Contract Form

- 21.1 The CCG will ensure that the NHS Standard Contract or where appropriate a NHS Standard Deed of Variation will be used for all contracts for NHS funded health and social care services commissioned by the CCG. In exceptional circumstances, such as where a joint contracting arrangement is led by local authority, the CCG may agree to be party to a different form of contract.
- 21.2 The CCG will ensure that a standard Grant Agreement document will be used to record the provision of grants to third parties which will contain the provisions upon which the grant is made.

22 Procurement Training

- 22.1 All CCG staff and others working with the CCG will need to be aware of this policy and its implications.
- 22.2 Staff need to know when and how to seek further support. All commissioning staff throughout the CCG should know enough about procurement to know to seek help when they encounter related issues; they must also be able to give clear and consistent messages to providers and potential providers about the CCG's procurement intentions in relation to individual service developments.
- 22.3 Awareness of procurement issues will be raised through organisational development and training sessions for clinical and non-clinical members of CCG.
- 22.4 The CCG is keen to develop an innovative approach to procurement and will review the use of technology to provide regular updates to staff.

23 Monitoring Compliance with this Policy

- 23.1 This policy will be reviewed every three years but may be considered earlier in the light of emerging legislation, guidance and experience.
- 23.2 Effectiveness in ensuring that all procurements comply with this policy will primarily be achieved through "business as usual" and the Finance Committee overseen by the Chief Finance Officer.

24 Complaints and Dispute Procedure

- 24.1 The CCG's approach to contestability means that it may pursue a wide range of competitive procurements to secure new and existing services.
- 24.2 The CCG has developed the processes that will be followed within the CCG that enables any potential dispute relating to a procurement process or outcome from any procurement to be resolved in an open and transparent manner.
- 24.3 The CCG will utilise a dispute resolution process to address and resolve any complaint received from either:
- Bidders/contractors,
 - A member of the public.

Appendix 1

Conflict of Interest Disclosure Document

Declaration of interests for members/employees²

NHS NEW Devon Clinical Commissioning Group

Member / employee/ governing body member / committee or sub-committee member (including committees and sub-committees of the governing body) [*delete as appropriate*] declaration form: financial and other interests

This form is required to be completed in accordance with the CCG's Constitution and section 14O of *The National Health Service Act 2006, the NHS (Procurement, Patient Choice and Competition) regulations 2013 and the Substantive guidance on the Procurement, Patient Choice and Competition Regulations*

Interests that must be declared (whether such interests are those of the individual themselves or of a family member, close friend or other acquaintance of the individual) include:

- roles and responsibilities held within member practices;
- directorships, including non-executive directorships, held in private companies or PLCs;
- ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the CCG and /or with NHS England
- shareholdings (more than 5%) of companies in the field of health and social care;
- a position of authority in an organisation (e.g. charity or voluntary organisation) in the field of health and social care;
- any connection with a voluntary or other organisation (public or private) contracting for NHS services;
- research funding/grants that may be received by the individual or any organisation in which they have an interest or role;
- any other role or relationship which the public could perceive would impair or otherwise influence the individual's judgment or actions in their role within the CCG.

If there is any doubt as to whether or not an interest is relevant, a declaration of the interest must be made. The Clinical Commissioning Groups declaration of interest form can be found [here](#):

<http://www.newdevonccg.nhs.uk/intranet/corporate/governance-includes-information-governance/governance-policies/101633>

² Template taken from NHS England 'Managing Conflicts of Interest: Statutory Guidance for CCG's

Name:		
Position within or relationship with, the CCG or NHS England:		
Interests		
Type of Interest		Personal interest or that of a family member, close friend or other acquaintance?
Roles and responsibilities held within member practices		
Directorships, including non-executive directorships, held in private companies or PLCs		
Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the CCG and/or with NHS England		

Shareholdings (more than 5%) of companies in the field of health and social care		
Positions of authority in an organisation (e.g. charity or voluntary organisation) in the field of health and social care		
Any connection with a voluntary or other organisation contracting for NHS services		
Research funding/grants that may be received by the individual or any organisation they have an interest or role in		
[Other specific interests?]		

<p>Any other role or relationship which the public could perceive would impair or otherwise influence the individual's judgment or actions in their role within the CCG and/or with NHS England.</p>		
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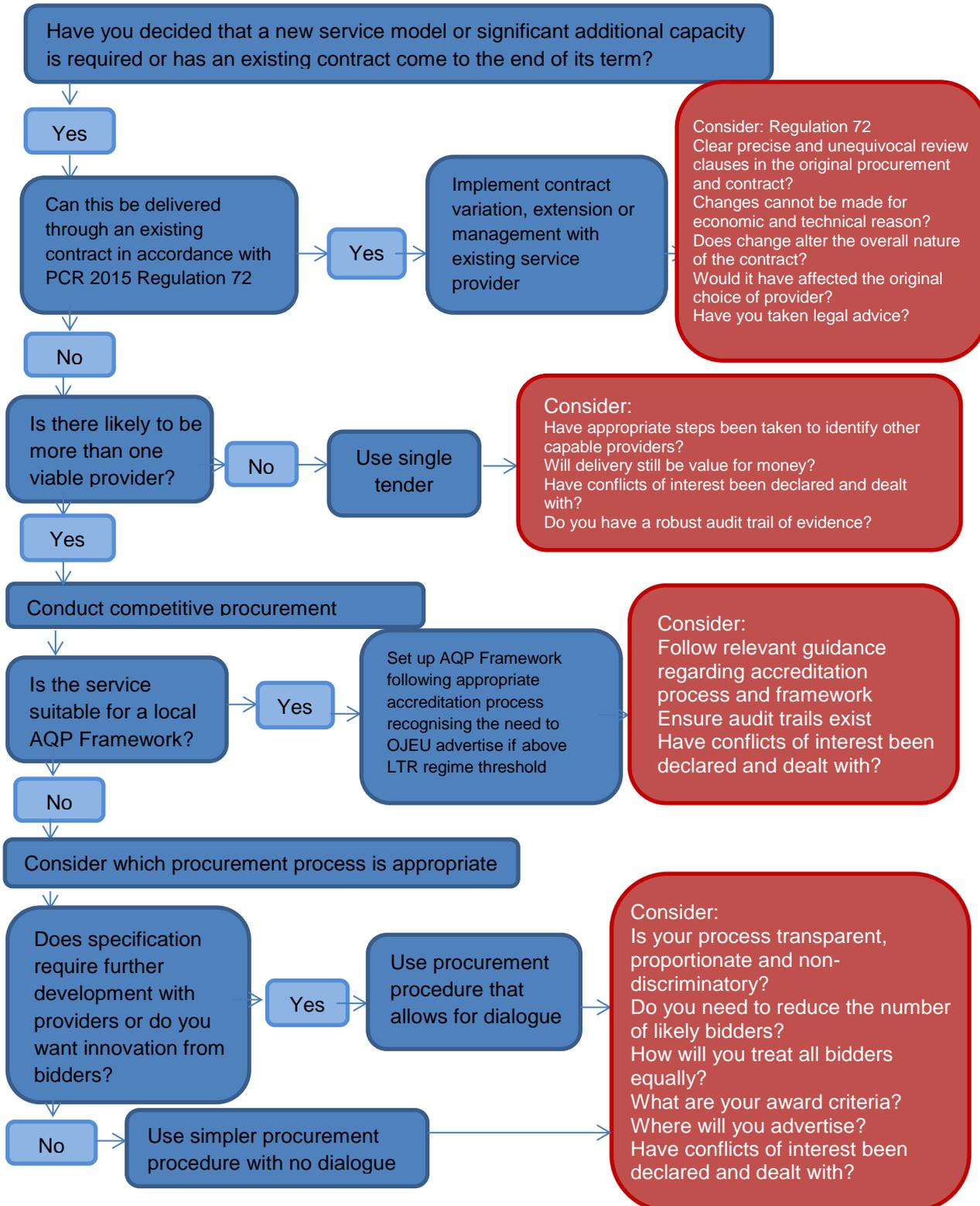
To the best of my knowledge and belief, the above information is complete and correct. I undertake to update as necessary the information provided and to review the accuracy of the information provided regularly and no longer than annually. I give my consent for the information to be used for the purposes described in the CCG's Constitution and published accordingly.

Signed:

Date:

Appendix 2

Procurement route decision making process



Appendix 3

Aspects to be considered when deciding whether competitive tendering is appropriate

These should be considered on a cumulative basis. It should be noted that advertising of healthcare contracts is obligatory with above OJEU Light touch regime threshold procurements ie >£589,148.

Consideration	Importance (H,M,L)	Justification of tendering process		
		Strong	Medium	Weak
Contract Value		>£589k		<£50k
Contract length		>2 years		<=1 year
Level of market interest		>3 organisations (or unknown)		1 Organisation
Market capability (Number of organisations believed to have required expertise)		> 3 organisations (or unknown)		1 Organisation
Likely procurement costs to the CCG		<5% of total Budget		>=1 year contract value
Availability of CCG staff to support procurement process		Resources available at no additional financial cost	Resource available at additional financial cost	Insufficient resource available
Confidence of achieving best provider for population needs without competitive tendering		Low	Medium	High
Confidence in achieving Value for money (VfM) without tendering		Low	Medium	High
Urgency of requirements		>8 months		< 12 weeks
Ability to predict requirement		High	Medium	Low
Potential to improve VfM by tendering		High/unknown	Medium	Low
Potential for innovation		High	Medium	Low
Benefits of continuity with existing provider of same related service		None	Some	Strong

In addition the following, potentially-overriding, consideration should be taken into account;

- Is a specific provider required to protect essential public services (e.g. A&E)
- Are services protected by monopoly rights? (e.g. in accordance with legal or administrative instrument)
- Are there any procurement constraints linked to partnership funding? (e.g. if the CCG is not a joint signatory to a contract).

Appendix 4

Procurement decision support matrix

Example report

Author: ABC person
Date: 30/07/14 15:28
App Version: 0.15
Legislation dated: June 2014

Not Started: 100%
In Progress: 0%
Completed: 0%

Notes

Concerns

No concerns

All Questions

Question		Yes / No	Response	Notes	Status	Concern
1	What is the service being considered?				Not Started	
2	Why is the service being considered?				Not Started	
3	Are there concerns about quality, effectiveness or value for money?				Not Started	
4	What actions have been taken to address these concerns?				Not Started	
5	Will this be a change to an existing service?				Not Started	
6	Is the change material?				Not Started	
7	Is the service a materially significant part of an existing contract?				Not Started	
8	Has the service been previously procured?				Not Started	
9	Will this be a new service?				Not Started	
10	Has there been engagement with stakeholders and the public in the plans for the service?				Not Started	

Question	Yes / No	Response	Notes	Status	Concern	
11	Is this a clinical or non-clinical service?				Not Started	
12	What is the total value of the service (annual service value x length of contract)?				Not Started	
13	Is this an elective service governed by the NHS Constitution?				Not Started	
14	Would extending choice to this service improve outcomes or drive required changes in line with commissioning priorities?				Not Started	
15	Is there a national framework covering this service?				Not Started	
16	What evidence is there of market interest/capability?				Not Started	
Question	Yes / No	Response	Notes	Status	Concern	
17	Is there exceptional urgency?				Not Started	
18	Does the service have a strong interface with an existing service?				Not Started	
19	Is the cost of a contested approach justified in light of the contract service value?				Not Started	
20	Could this be a "reserved contract"?				Not Started	
21	Is there only one provider and can this be evidenced?				Not Started	
22	Are there concerns about destabilisation of existing services?				Not Started	
23	What are the consequences of making an unlawful decision?				Not Started	

Question	Yes / No	Response	Notes	Status	Concern	
24	Evidence of how the procurement process might improve the social, economic or environmental well being of the geographical area.				Not Started	
25	Evidence that the Public Sector Equality Duty has been met in the procurement planning.				Not Started	
26	Evidence that the duty to consult has been met.				Not Started	
27	Evidence that the product of consultation been taken into account.				Not Started	
28	Evidence that any conflicts of interest have been managed.				Not Started	

At this point sufficient evidence should have been gathered to make an initial decision about whether you need to take a competitive procurement approach.

Reflecting on the answers to the questions so far, tap the button below to generate a report summarising your current evidence. This will depend upon the governance structure within your organisation and the meetings established to assess the service being considered for example, programme board arrangements should be in place for large complex services or 'task and finish' arrangement for smaller simpler services. You may wish to discuss the information report more widely within your organisation.

Question	Yes / No	Response	Notes	Status	Concern	
29	What procurement process could be used?				Not Started	
30	Is the nature of this service complex?				Not Started	
31	How diverse is the supply market?				Not Started	
32	What is the pricing model?				Not Started	
33	What are the critical success factors required for this service?				Not Started	
34	As part of the development of the service specification define the NHS outcomes.				Not Started	

Appendix 5

Modification of contracts during their term Public Contracts Regulations 2015 Regulation 72

72. (1) Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part in any of the following cases:-

(a) where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses or options, provided that such clauses-

(i) state the scope and nature of possible modifications or options as well as the conditions under which they may be used, and

(ii) do not provide for modifications or options that would alter the overall nature of the contract or the framework agreement;

(b) for additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor-

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, or

(ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority, provided that any increase in price does not exceed 50% of the value of the original contract;

(c) where all of the following conditions are fulfilled:-

(i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;

(ii) the modification does not alter the overall nature of the contract;

(iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement.

(d) where a new contractor replaces the one to which the contracting authority had initially awarded the contract as a consequence of-

(i) an unequivocal review clause or option in conformity with sub-paragraph(a), or

(ii) universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Part;

(e) where the modifications, irrespective of their value, are not substantial within the meaning of paragraph (8); or

(f) where paragraph (5) applies.

(2) Where several successive modifications are made-

(a) the limitations imposed by the proviso at the end of paragraph (1)(b) and by paragraph(c)(iii) shall apply to the value of each modification; and

(b) such successive modifications shall not be aimed at circumventing this Part.

(3) Contracting authorities which have modified a contract in either of the cases described in paragraph (1)(b) and (c) shall send a notice to that effect, in accordance with regulation 51, for publication.

(4) Such a notice shall contain the information set out in part G of Annex 5 to the Public Contracts Directive.

(5) This paragraph applies where the value of the modification is below both of the following values:-

(a) the relevant threshold mentioned in regulation 5, and

(b) 10% of the initial contract value for service and supply contracts and 15% of the initial contract value for works contracts, provided that the modification does not alter the overall nature of the contract or framework agreement.

(6) For the purposes of paragraph (5), where several successive modifications are made, the value shall be the net cumulative value of the successive modifications.

(7) For the purpose of the calculation of-

(a) the price mentioned in paragraph (1)(b) and (c), and

(b) the values mentioned in paragraph (5)(b), the updated figure shall be the reference figure when the contract includes an indexation clause.

(8) A modification of a contract or a framework agreement during its term shall be considered substantial for the purposes of paragraph (1)(e) where one or more of the following conditions is met-

(a) the modification renders the contract or the framework agreement materially different in character from the one initially concluded;

(b) the modification introduces conditions which, had they been part of the initial procurement procedure, would have-

(i) allowed for the admission of other candidates than those initially selected,

(ii) allowed for the acceptance of a tender other than that originally accepted, or

(iii) attracted additional participants in the procurement procedure;

(c) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;

(d) the modification extends the scope of the contract or framework agreement considerably;

(e) a new contractor replaces the one to which the contracting authority had initially awarded the contract in cases other than those provided for in paragraph (1)(d).

(9) A new procurement procedure in accordance with this Part shall be required for modifications of the provisions of a public contract or a framework agreement during its term other than those provided for in this regulation.