



Buckinghamshire
Clinical Commissioning Group

NHS BUCKINGHAMSHIRE CLINICAL COMMISSIONING GROUP

Procurement Policy

Version: 0.6 – August 2019

PREFACE

This policy sets out the framework as to how NHS Buckinghamshire Clinical Commissioning Group (CCG) procurement decisions should be undertaken.

All managers and staff (at all levels) are responsible for ensuring that they are viewing and working to the current version of this procedural document. If this document is printed in hard copy or saved to another location, it must be checked that the version number in use matches with that of the live version on the CCG server.

All CCG procedural documents are published on the CCG server and communication is circulated to all staff when new procedural documents or changes to existing procedural documents are released. Managers are encouraged to use team briefings to aid staff awareness of new and updated procedural documents.

All staff are responsible for implementing procedural documents as part of their normal responsibilities, and are responsible for ensuring they maintain an up to date awareness of procedural documents.

A	SUMMARY POINTS
	<ul style="list-style-type: none"> This document outlines how the CCG will make decisions regarding selection and procurement of the services it commissions.
	<ul style="list-style-type: none"> Procurement seeks to positively influence and support the CCG's Strategy and transition plans utilising the principles in this policy.
	<ul style="list-style-type: none"> The objective of this document is to ensure CCG acts with a view to: <ul style="list-style-type: none"> Securing the needs of the people who use the services Improve the quality of the services Improve efficiency of the services <p>Whilst complying with the law, regulations and published guidance and its own standing orders.</p>

B	ASSOCIATED DOCUMENTS
	<ul style="list-style-type: none"> NHS Buckinghamshire CCG Constitution

C	DOCUMENT DETAILS	
Procedural Document Number	Procurement001	
Author	Chris Fuller / John Gibbs	
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V0.6		August 2019		Russell Carpenter, Head of Governance/Board Secretary/Data Protection Officer, NHS Buckinghamshire CCG		Insertion of paragraph in relation to primary care procurement	

E						VERSION CONTROL					
Date of issue		Version No		Date of next review		Nature of change		Approval date		Approval committee /group	
August 2018		v0.1 - draft		N/A		Draft of revised procurement policy in line with SCW Procurement best practice and legislation and regulatory		N/A		Draft for recommendation only	

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October 2018	V0.4	N/A	Head of Governance review – amendment to procurement flowchart	28/11/18	Submitted to Audit Committee and approved
March 2019	V0.5	N/A	Head of Governance review – amendment to procurement flowchart	28/03/19	Not applicable
August 2019	V0.6	N/A	Insertion of paragraph in relation to primary care procurement	25/09/19	Submitted to Audit Committee and approved

F	SUPPORTING DOCUMENTS/EVIDENCE BASED REFERENCES		
Evidence	Hyperlink (if available)	Date	
Public Contracts Regulation 2015 (PCR2015)	http://www.legislation.gov.uk/uksi/2015/102/contents/made	2015	
Health & Social Care Act 2012 – Section 75, 76, 77 and 304(9) & (10)	http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted	2012	
Statutory instrument 2013 No. 500 – The NHS (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 (P,PC&C2013)	http://www.legislation.gov.uk/uksi/2013/500/pdfs/uksi_20130500_en.pdf	2013	
NHS Constitution	https://www.gov.uk/government/publications/the-nhs-constitution-for-england/the-nhs-constitution-for-england	2015	

Monitor – Substantive guidance on the Procurement, Patient Choice and Competition Regulations	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/283505/SubstantiveGuidanceDec2013_0.pdf	2013
Audit Reform: The impact on the role and responsibilities of audit committees	https://home.kpmg.com/content/dam/kpmg/pdf/2016/07/aci-audit-reform-international-lr-2.pdf	2016

G			
DISTRIBUTION LIST			
Internal CCG server	CCG Website	Communications Bulletin	External stakeholders
✓	✓		

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NHS BUCKINGHAMSHIRE CLINICAL COMMISSIONING GROUP PROCUREMENT POLICY

1.0 RELEVANT TO

- 1.1 This policy, associated framework and guidance applies to all staff within the CCG and specifically to the decision making bodies who make commissioning decisions regarding new, alternative or renewal of contracts for services.

2.0 INTRODUCTION

- 2.1 This procurement policy informs how procurement decisions will be undertaken by the CCG and where to seek guidance as to the selection procedure to be applied for new, alternative or renewal of contracts for healthcare services.
- 2.2 This policy sets out existing legal framework for procurement by public bodies in the UK and will be updated in line with any changes to UK and EU legislation.
- 2.3 A range of procurement options are available which include working with existing providers, contract variations and service development, competitive tendering, utilising existing framework contracts or bespoke “light touch” selection processes in line with the EU Public Contracts Regulations 2015.
- 2.4 Procurement will form an important part of the commissioning cycle. A robust and appropriate procurement function will need to inform any decision making process with regard to how gaps or developments in provision are met, taken into consideration wider organisational priorities.
- 2.5 In all cases, procurement decisions must be taken within the parameters and limitations of the existing legal framework.

3.0 SCOPE

- 3.1 This policy covers all healthcare services as well as procurements for the goods and services the CCG requires to support its functions.

4.0 PURPOSE

- 4.1 The purpose of this document is to set out the process, governance arrangements, strategy and policy framework, guidance and procedures for procurement within the CCG.

5.0 DEFINITIONS

- 5.1 This document is a policy.
- 5.2 Any abbreviations used in the document will be written in full in the first instance.

6.0 ROLES AND RESPONSIBILITIES

- 6.1 The Chief Finance Officer is the responsible officer for this policy and the procurement function.
- 6.2 The Audit Committee is responsible for the adherence and monitoring compliance with this policy under delegated authority from the Governing Body.
- 6.3 All CCG staff are responsible to consult with the procurement function in matters contained within this policy.

7.0 PROCUREMENT GUIDING PRINCIPLES

- 7.1 The CCG will pursue and manage the delivery of choice, cooperation and competition in the context of the following principles:

Transparency: Procurement activities should be fair and open and where appropriate include a sufficient level of advertising;

Objectivity: Key decisions must be based on documented objective data and criteria as part of the procurement process;

Proportionality: The procurement process should be proportionate to the value and complexity of the services to be procured;

Equality and Non-discrimination: The Procurement Team and commissioners must not discriminate among providers, and ensure that in the delivery of services, providers do not discriminate among patients or patient groups;

Accountability: CCG managers should strive to align their authority and legal powers with their accountability and legal duties. It should be clear, from legislation and practice, who is accountable;

Subsidiary: Decisions should be made by the lowest competent authority and not escalated to Board level on a consistent basis. This may be achieved by the establishment of Board Sub-Committees with appropriate delegated responsibility and membership;

Consistency: Formulation and implementation of policy must be internally coherent and consistent;

Interdependency: When assessing specific issues, commissioners and providers should understand and minimise the potential unintended consequences of any actions;

Integrity: There should be no corruption or collusion with suppliers and others;

Efficiency: Procurement processes should be carried out as cost effectively as possible.

7.2 All procurement activity will be undertaken in accordance with Standards of business conduct including conflicts of interest.

8.0 PUBLIC PROCUREMENT OBLIGATIONS

8.1 There are 2 key pieces of legislation which govern procurement in NHS organisations. These are:

- The National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013
- The Public Contracts Regulations 2015

8.2 NATIONAL HEALTH SERVICE (PROCUREMENT, PATIENT CHOICE AND COMPETITION) (NO 2) REGULATIONS 2013

8.2.1 The NHS (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (the 2013 Regulations) contain a number of requirements that CCGs must comply with to ensure that they:

- adhere to good practice in relation to the procurement of health care services funded by the NHS
- protect the rights of patients to make choices with respect to treatment or other health care services funded by the NHS; and
- do not engage in anti-competitive behaviour unless this is in the interests of NHS health care service users

8.2.2 The 2013 Regulations particularly govern the procurement of healthcare services, and operate alongside the Public Contracts Regulations 2015.

8.2.3 The 2013 Regulations require that, when procuring NHS healthcare services, in all cases CCGs **MUST** act to:

- secure the needs of healthcare service users;
- improve the quality of services; and
- improve the efficiency with which services are provided

This includes situations where the CCG are seeking to secure the delivery of healthcare services through integration including with other healthcare and social services.

8.2.4 The Regulations do not impose a “one-size-fits-all” approach; rather they attempt to allow the CCG flexibility within the framework of rules. It is recognised that healthcare need will differ in accordance with local conditions.

8.2.5 When procuring NHS healthcare services, in all cases the CCG **MUST**

- act in a transparent and proportionate way;
- treat providers equally and in a non-discriminatory way (showing no favouritism, particularly on basis of ownership)

This requires the CCG to conduct all procurement activity openly and in a manner which enables behaviour to be scrutinised. Procurement decisions must be proportionate to the value, complexity and clinical risk associated with

the provision of the services in question; and commissioners must treat all providers equally, not favouring one provider (or type of provider) over another – differential treatment between providers will require objective justification.

8.2.6 The CCG is required to procure services from one or more providers that:

- are most capable of delivering the needs, quality and efficiency required
- provide the best value for money in doing so

8.2.7 When considering how best to procure healthcare services which improve quality and efficiency, and which meet the health needs of the population, the CCG must:

- consider how the services can be provided in an integrated way (including with other healthcare services or social care services)
- how to enable service providers to compete to provide the services
- how to allow patients a choice of provider for the services

8.2.8 In order to be able to demonstrate compliance with the 2013 Regulations, the CCG is required to maintain a record of the decision making process in relation to the award of any contract for healthcare services, regardless of whether the award of such contract was as a result of a competitive tendering process.

8.2.9 While the 2013 Regulations do not impose a requirement on CCGs to undertake competitive tendering in all circumstances, where a CCG awards a healthcare contract without conducting a competitive process, it must again ensure that it is able to evidence, via a robust audit trail, that the decision not to tender followed a detailed review of the provision of local services and which identified the most capable provider of the services; that there was only one provider capable of providing the services; or that the benefits of tendering would be outweighed by the cost.

8.2.10 There is also an obligation on the CCG not to award contracts in a manner which can be considered anti-competitive, unless the CCG is able to evidence that this is in the best interests of service users.

8.2.11 The 2013 Regulations place additional specific requirements on CCGs to maintain records of all awarded contracts which demonstrate how the decision to award that contract complied with the CCG's obligations under the NHS Act 2006, and to maintain a record of all conflicts of interest arising as a result of a decision to award a contract, and how the effect of those conflicts were mitigated.

8.2.12 The 2013 Regulations make clear that they do not expressly require CCGs to competitively tender for new contracts in all circumstances. The decision whether or not to publish a contract opportunity is not an isolated decision and will need to be taken in the context of commissioners' decisions about what services to procure and how to go about procuring them more generally.

8.2.13 When deciding whether or not to publish a contract notice, the CCG will need to ensure that this decision is consistent with the requirements of the 2013 Regulations and the Public Contracts Regulations 2015. NHS Improvement guidance advises that a CCG will be justified in a decision not to competitively tender a service where:

- there is only one provider that is capable of providing the services in question
- where a commissioner carries out a detailed review of the provision of particular services in its local area in order to understand how those services can be improved and, as part of that review, identifies the most capable provider or providers of those services;
- where the benefits of competitively tendering would be outweighed by the costs of publishing a contract notice and/or running a competitive tender process.

8.2.14 Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 sets out specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC Text with EEA relevance. This is described further in Appendix 2.

8.3 ROLE OF NHS IMPROVEMENT (FORMERLY MONITOR)

8.3.1 Under the P, PC&C2013 Regulations, NHS Improvement has been granted certain enforcement powers in relation to the healthcare procurement activities of CCGs, including:

- Investigatory power
- Declarations of ineffectiveness
- Directions
- Accepting Undertakings

8.3.2 NHS Improvement's investigation powers are triggered by the receipt of a complaint from a 3rd party alleging a failure to comply with the requirements of the P,PC&C2013 Regulations.

8.4 PUBLIC CONTRACTS REGULATIONS 2015

8.4.1 The Public Contracts Regulations 2015 (the 2015 Regulations) transpose European Directives on the required process for conducting public procurement into UK law. The 2015 Regulations require that certain procedures must be followed by relevant public bodies when awarding contracts above specified financial thresholds.

8.4.2 The EU treaty principles of non-discrimination, equal treatment, transparency, and proportionality apply to all procurements. The CCG's approach to fulfilling these requirements is described below.

8.4.3 The 2015 Regulations came into force on the 26th February 2015, and replace the 2006 Regulations in relation to the procurement of public services.

8.4.4 The 2015 Regulations introduce a range of significant changes which will affect the way in which public bodies are required to undertake their procurement activities.

8.4.5 Providers raising a complaint against the 2015 Regulations will do so through the courts.

8.5 THE LIGHT-TOUCH REGIME

8.5.1 The light-touch regime (LTR) is a specific set of rules for certain service contracts that tend to be of lower interest to cross-border competition. Those service contracts include certain social, health and education services, as defined in the 2015 Regulations.

8.5.2 This simplified regime will have a higher threshold of €750,000 (£615,278¹) and the only obligations, apart from general EU principles, which apply to services with a contract value above this threshold; are the rules in relation to transparency and publicity i.e. that all relevant contracts in excess of this threshold are advertised in the OJEU.

8.5.3 Below the LTR threshold, contracts do not normally need to be advertised in the Official Journal of the European Union (OJEU), unless there are concrete indications of cross-border interest.

8.5.4 In terms of procurement requirements for above-threshold services; the main mandatory requirements are:

- **OJEU Advertising:**

The publication of a contract notice (CN) or prior information notice (PIN). Except where the grounds for using the negotiated procedure without a call for competition could be used, for example where there is only one provider capable of supplying the services required.

- **Contract Award Notice**

The publication of a contract award notice (CAN) following each individual procurement, or if preferred, group such notices on a quarterly basis.

- **Compliance with Treaty principles** of transparency and equal treatment.

- **Conduct the procurement in conformance with the information provided in the OJEU advert**

(CN or PIN) regarding: any conditions for participation; time limits for contacting/responding to the authority; and the award procedure to be applied.

- **Time limits imposed by authorities on suppliers, responding to adverts and tenders, must be reasonable and proportionate.**

There are no stipulated minimum time periods in the LTR rules, so contracting authorities should use their discretion and judgement on a case by case basis.

¹ Correct as of January 2018 thresholds (<https://www.ojeu.eu/thresholds.aspx>) – threshold subject to review

8.5.5 The CCG has the flexibility to use any process or procedure they choose to run the procurement, as long as it respects the other obligations above. There is no requirement to use the standard EU procurement procedures (open, restricted and so on) that are available for other (non-LTR) contracts. The CCG can use those procedures if helpful, or tailor those procedures according to needs, or design a bespoke procedure.

9.0 PROCUREMENT APPROACH / DECISION TO TENDER

9.1 CCG Constitution and applicable financial thresholds

Where the CCG wishes to award a contract for services, it must consider which of the relevant pieces of legislation is applicable, and whether any financial thresholds should be applied. Attention should also be given to the CCG's Constitution. The table below summarises the potential routes to market in accordance with the potential value of the contract and the requirements of the 2015 Regulations, for both healthcare and non-healthcare contracts. In certain circumstances the procurement route specified below might not be appropriate. In such circumstances written approval must be sought from the Chief Finance Officer. Potential routes to market are also described in Appendix 1 as a reference guide, as well as key points from elsewhere within this policy.

Total Contract Value	Minimum Type of Procurement Required	Applicable Governance/legislation
Up to £5k whole life Non-healthcare contract Whole life	No formal requirement for external procurement process	CCG Constitution: which describes the authority for approval of single tender waivers
Between £5k and £50k whole life Non-healthcare contract Whole life	Quotations should be sought from at least 3 firms/individuals (Single Tender Waiver should only be used in exceptional circumstances and must be reported to Audit Committee)	
Between £50k and £118k ^[1] (EU threshold) Non-healthcare contract Whole life	Competitive tender required (Single Tender Waiver should only be used in exceptional circumstances and must be reported to Audit Committee) The CCG can consider an open (advertised) or closed (framework or local approved supplier list) approach to market. Must include conflicts of interest declarations.	Procurement Policy: where describes the use of single tender waivers
Above £118k (EU OJEU threshold)	Full open (advertised) or closed (framework) tender required. Advice	Public Contracts Regulations 2015

^[1] Correct as of January 2018 thresholds (<https://www.ojeu.eu/thresholds.aspx>) – threshold subject to review

Total Contract Value	Minimum Type of Procurement Required	Applicable Governance/legislation
Non-healthcare contract	and guidance from SCW Procurement Team if full tender cannot be undertaken	
Below £615k Healthcare contract Whole life	Publication in Contracts Finder generally required. Route to market to be determined on a case by case basis in consultation with the SCW Procurement Team	NHS (P,PC &C) (No2) Regulations 2013, Section 14Z2 of the National Health Service Act 2006 on legal duty to involve patients and the public.
Above £615k (EU OJEU threshold) Healthcare Contract Whole life	Publication in OJEU and Contracts Finder generally required. Route to market to be determined on a case by case basis in consultation with the SCW Procurement Team Must publish an advert in OJEU for all services above £615k (“light touch”)	NHS (P,PC &C) (No2) Regulations 2013, Public Contracts Regulations 2015 (light touch regime), Section 14Z2 of the National Health Service Act 2006 on legal duty to involve patients and the public.

9.2 Decision whether to competitively tender

9.2.1 Decisions as to whether a contract opportunity should be put out to competitive tender should be taken in light of the PCR2015 and P,PC&C2013 Regulations, and the requirement for transparency, proportionality, fairness and equal treatment.

9.2.2 In relation to healthcare contracts, there is no “one size fits all” approach, and regard will have to be given in each instance to how the CCG can best meet the needs of the population, ensuring that the quality of services and the efficiency with which they are provided is improved. This will need to be routinely considered as part of the commissioning process and the rationale behind any decision whether or not to competitively tender a contract should be fully documented. Such decisions should be transparent and must be signed-off by the relevant CCG committee(s). In all instances, advice should be sought from the Procurement Team in relation to decisions as to whether or not to competitively tender a contract.

9.2.3 Particular regard should be given to the requirements of the P,PC&C2013 Regulations that a CCG will be justified in a decision not to competitively tender a service where:

- There is only one provider that is capable of providing the services in question;
- where a commissioner carries out a detailed review of the provision of particular services in its local area in order to understand how those services can be improved and, as part of that review, identifies the most capable provider or providers of those services;

- where the benefits of competitively tendering would be outweighed by the costs of publishing a contract notice and/or running a competitive tender process

9.2.4 In instances of particular urgency where it is necessary to award a contract without competitive tendering, and there is not time to follow the standard governance and approval process, it will be necessary to seek approval from the appropriate officer within the CCG in accordance with the relevant scheme of delegation, in the form of a signed waiver document.

9.2.5 Under the light touch regime the CCG is required to publish an advert in OJEU for all services over £615k². The outcome of the responses to the advert will indicate the market interest and will support the CCG in its decision as to how it should secure the services and choose its route to market.

9.2.6 The CCG approval of the procurement strategy and readiness to proceed shall be managed through the CCG PMO processes and shall include preparedness, contract value and contract length plus any extensions.

10. ROUTE TO MARKET

10.1 A variety of procurement and tendering options are available by which the CCG can secure the required service. The advice of the CCG Procurement Team should be sought to ensure that the appropriate route is selected in each circumstance, in compliance with all relevant legal and regulatory requirements.

- Contract Variation Process
- Single Tender Action award to a Single Capable Provider
- Any Qualified Provider
- Framework Agreement
- Competitive Tender

10.2 Contract Variation Process

10.2.1 It may be possible to use this option to secure incremental change to the service provided. When procuring a service the CCG should consider potential modifications it may wish to make during the term of the contract and state this in the initial procurement and contract documents. Variations are permitted where the change does not materially alter the nature of the contract as originally procured, and always in line with regulation 72 of the PCR2015 Regulations.

10.2.2 The following circumstances are likely to be regarded non-permitted variations and as such will require a new contract:

- the contract is materially different from the one initially concluded;
- other providers would have been interested in bidding for the contract if the change had originally been part of the specification when the service was originally procured;

² Correct as of January 2018 thresholds (<https://www.ojeu.eu/thresholds.aspx>) – threshold subject to review

- the contract would have been awarded to a different provider if the change had originally been included in the original service specification;
- the change involves genuinely new services not originally within the scope of the specification covered by the contract;
- there is a significant change in the value of the contract;
- the modification changes the economic balance of the contract in the favour of the contractor considerably; or
- a new contractor replaces the one to which the CCG had initially awarded the contract, save for where that replacement occurs due to a universal or partial succession of the initial contractor including through a takeover, merger, acquisition or insolvency and does not modify the overall nature of the contract.

10.2.3 The Public Contracts Regulations 2015 stipulate criteria relating to the modification of contracts mid-term and the CCG will comply with the requirements set out in section 72 of these regulations.

10.2.4 The CCG may be subject to challenge if it uses a contract variation inappropriately. Therefore it should always take appropriate procurement advice before following this route.

10.3 Award of Contract without Competition

10.3.1 Where the CCG determines through analysis of the market and proportionate and transparent engagement with potential providers that the service is capable of being provided by one particular provider, or there is an urgent clinical need, it may consider proceeding with an award of contract without competition. This is where a contract is awarded to a single provider or a limited group of providers or where the CCG determines the most capable provider delivers the best value for money through a soft market engagement event, without competition.

10.3.2 It is important that, if the CCG decides to take this route, it clearly records the rationale for the decision. Failure to plan adequately is unlikely to be accepted as an urgent clinical need. Where a service is put in place for reasons of urgency or safety, the CCG should consider this as an interim step and plan to undertake a competitive process as soon as possible.

10.3.3 The CCG should ensure that it considers what steps it should take and what evidence it should rely on to satisfy itself that there is only one capable provider. The CCG should retain an audit trail of its decision making process.

10.4 Any Qualified Provider (AQP)

10.4.1 AQP is a key procurement option when wishing to extend patient choice. Under AQP, any provider assessed as meeting rigorous quality requirements who can deliver services to NHS prices and under the NHS Standard Contract

is able to deliver the service. Providers have no volume guarantees and patients will decide which providers to be referred.

10.4.2 Assessment of the AQP option should include consideration of the characteristics of the service, the local healthcare system, whether the service lends itself to patient choice, an analysis of the current market, how much competition and choice there is now and how much is required and any barriers to market entry.

10.4.3 Once an AQP procurement is advertised, providers are assessed using a consistent qualification process and will qualify if they can:

- meet the quality requirements;
- meet the Terms and Conditions of the NHS Standard Contract;
- accept the NHS price for the service; and
- Provide assurance that they are capable of delivering the service requirements that have been set.

10.5 Framework Agreement

10.5.1 The CCG may wish to consider whether it can use a framework agreement which has been tendered in accordance with the EU procurement rules. A framework agreement can save procurement costs and time. A framework agreement could be established by the CCG and the CCG may use other framework agreements established by other contracting authorities.

If the CCG were minded to use a framework agreement it should ensure that:

- it is entitled to use the framework agreement and it follows the correct processes to appoint a provider;
- its requirements fall within the scope of the pre-established framework agreement;
- The term of the contract has not expired.

10.6 Competitive Tender

10.6.1 This is the most common and wide-ranging route for procurement. Where there is more than one potential provider for a service and an AQP approach is not considered suitable, the CCG should consider running a competitive tender process to award a contract. There are several types of competitive tender processes available to the CCG:

- **Open process**
If there are a small number of providers who are likely to express an interest, and all are expected to be technically competent and financially robust, this process should be considered.
- **Restricted process**
A qualification requirement, sometimes in the form of a pre-qualification questionnaire (PQQ) allows the CCG to assess the suitability of bidders either during or prior to issuing tenders. This can make the process more manageable and reduces costs both for the CCG and for the bidders.

- **Competitive dialogue procedure**
This process should only be used in limited circumstances when the CCG's needs cannot be met without adaptation of readily available solutions. It includes design or innovative solutions and where there is a need for negotiation due to the complexity, evolving specification, legal or financial profile of the services required. If such circumstances exist the CCG will consider using a process that allows for a dialogue with bidders (post advertisement), rather than asking for bids in response to a defined specification.
- **Competitive Procedure with negotiation**
This allows the CCG to award a contract on the basis of an initial tender but also enables the CCG to negotiate with bidders who submitted an initial tender, and any subsequent tenders, until it decides to conclude those negotiations. The CCG cannot negotiate following final offers.
- **Innovation Partnership**
This is a procedure designed to allow contracting authorities to establish a long-term partnership for the development and subsequent purchase of a new, innovative product, service or works. The CCG should note that the scope on relying on this procedure is limited and may only apply if the CCG is seeking innovative ideas where solutions are not already available on the market.

For requirements under the Light Touch Regime the CCG has the flexibility to use any process or procedure they choose to run the procurement, as long as it respects the other obligations section 8.6. There is no requirement to use the standard EU procurement procedures (open, restricted and so on) that are available for other (non-LTR) contracts. The CCG can use those procedures if helpful, or tailor those procedures according to needs, or design a bespoke procedure.

10.7 Form of Contract

10.7.1 The CCG will ensure that the appropriate standard form national contract is used for all contracts for NHS funded health and social care services that the CCG is party to. Where non-healthcare contracts are awarded then the standard appropriate version of the NHS Terms and Conditions for the Supply of Goods and/or Services should be used, with the exception of procedures through an existing framework contract.

10.8 Award of Contract

10.8.1 The CCG will approve the award of contracts in accordance with the CCGs scheme of delegation as set out in the CCG Constitution (Appendix F).

10.8.2 The contract award recommendation will include the contract term plus any extension period to be approved by the Governing Body. The extension of the contract shall not require the Governing Body's approval of the extension period but will require the Directors Meeting to assess the satisfactory

performance of the contract prior to formally extending the agreement.

10.8.3 For all Fully Regulated procurement procedures under Public Contracts Regulations 2015 the CCG will operate a 10 day standstill period for all tenders. For standard EU procurements this is a mandatory requirement and recommended best practice for contracts awarded under the light touch regime. Where a framework contract is used as a route for Procurement the CCG will follow best practice and guidance for the relevant framework.

10.9 Complaints and Dispute Procedure

10.9.1 The CCG's approach to contestability means that it may pursue a wide range of competitive procurements to secure new and existing services.

10.9.2 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.

10.9.2 The CCG will utilise a dispute resolution process (Appendix 3) to address and resolve any complaint in relation to competition and procurement received from either:

- Bidders/contractors,
- A member of the public.

This will at first require writing to the CCG Accountable Officer, as described in the dispute resolution process.

11. ADDITIONAL CONSIDERATIONS

11.1 Data Privacy Impact Assessment

Where any new service is required it will be necessary for a data privacy impact assessment (DPIA) to be completed. The project lead should liaise with the SCW information governance lead and/or CCG Data Protection Officer to complete a DPIA prior to selection of provider which should be updated once the provider is identified.

11.2 Equality Impact Assessment

As with the DPIA above, a similar process should be completed for an equality impact assessment. The project lead should liaise with the engagement and diversity officer.

11.3 Quality Impact Assessment

As with both tools above, a similar process should be completed for a quality impact assessment. The project lead should liaise with the CCG Quality Team.

11.4 Sustainable procurement

The CCG is committed to the principles of sustainable development. Sustainable procurement is defined as a process whereby organisations meet

their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment.

11.5 Public Services (Social Value) Act 2012

Social value is a way of thinking about how scarce resources are allocated and used. It involves looking beyond the price of each individual contract and looking at what the collective benefit to a community is when a public body chooses to award a contract. The CCG should consider social value when evaluating proposals from providers.

11.6 Code of Conduct (GP Conflict of Interest)

When commissioning services for which GP practices could be potential providers, the Procurement Team will refer to the advice and guidance published by NHS England. Conflicts could arise where the CCG commissions healthcare services, including GP services, in which a member of the CCG has a financial or other interest. It will need to be considered in respect of any commissioning issue where GPs are current or potential providers.

11.7 Voluntary and community sector/Small and Medium Enterprises Support

The CCG will aim to support and encourage voluntary and community sector and small and medium enterprise suppliers in bidding for contracts. The Procurement Team will work with service commissioners to ensure that competitive tender processes promote equality and do not discriminate on the grounds of age, race, gender, culture, religion, sexual orientation or disability.

11.8 Integrated Support and Assurance Process (ISAP)

The CCG must consider this process for all novel and complex contracts and work with NHS England and NHS Improvement to run a rigorous assurance process alongside procurements which fall under the ISAP jurisdiction.

11.9 Primary Care procurement (i.e. member practices)

Where there is an identified need to undertake procurement in relation to primary care, to which this policy equally applies, the NHS Primary Medical Care Policy and Guidance (PGM) will be used in conjunction with this policy to support it. This guidance explores procurement responsibilities in considerable detail, especially paragraphs 7.11.32 to 7.11.38. Therefore this detail is not duplicated here.

<https://www.england.nhs.uk/publication/primary-medical-care-policy-and-guidance-manual-pgm/>

12.0 TRAINING

12.1 No mandatory training is required to comply with this policy but the procurement team will provide ongoing organisational awareness.

13.0 CONSULTATION

13.1 This policy was completed following consultation with the Chief Finance Officer, Head of Governance, internal audit and the Audit Committee.

14.0 RECOMMENDATION AND APPROVAL PROCESS

14.1 This policy is to be approved by the CCG Audit Committee.

15.0 COMMUNICATION/DISSEMINATION

15.1 Following approval CCG staff will be made aware of the policy through the CCG server.

16.0 IMPLEMENTATION

16.1 In addition to access through the CCG's central server, appendix 1 is the main implementation element of the policy through team brief and email circulation.

17.0 MONITORING COMPLIANCE AND EFFECTIVENESS OF THE DOCUMENT

17.1 The Audit Committee will oversee compliance with aspects of this policy through its review of the award of contract without competition requests and annual review of the tender register.

17.2 Audits of the procurement function will periodically be commissioned as appropriate as to ensure compliance with this policy.

17.3 Any areas of concern or non-compliance identified in any review must result in the production of an action plan. This will be reviewed by the appropriate committee/group. Actions will be recorded in the committee/group minutes.

18.0 DOCUMENT REVIEW FREQUENCY AND VERSION CONTROL

18.1 This policy will be reviewed every two years or earlier if appropriate, to take into account any changes to legislation or guidance that may occur.

18.2 Necessary changes throughout the year will be issued as amendments to the policy. Such amendments will be clearly identifiable to the section to which they refer and the date issued. These will be clearly communicated via the CCG newsletter.

APPENDIX 1 - Procurement route decision making process – Health Care and Non-healthcare Services

Is the requirement Healthcare or Non-Healthcare?

Healthcare: defined as direct or indirect patient care, services or products

Non-Healthcare: defined as not related to direct or indirect patient care or services. VAT is also not reclaimable on non-health contracts (unless special conditions apply)

Below £615k whole life

Above £615k whole life (EU OJEU threshold)

- Publication in Contracts Finder generally required.
 - Route to market to be determined on a case by case basis in consultation with the **SCW Procurement Team**
 - Must publish an advert in OJEU for all services above £615k ("light touch")
 - This flowchart supports discharge of previously agreed Procurement Framework for collaborative commissioning.
 - **£50k threshold for purposes of Single Tender Waiver application in exceptional circumstances and must be reported to Audit Committee. No STW option above OJEU threshold unless in exceptional circumstances.**
 - Refer to <https://www.buckinghamshireccg.nhs.uk/public/about-us/how-we-make-decisions/business-conduct/procurement-policy/>
- Legislation:**
- The National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013
 - Public Contracts Regulations 2015

Up to £5k whole life

Between £5k and £50k whole life

Between £50k and £118k (EU OJEU threshold)

Above £118k (EU OJEU threshold)

No formal requirement for external procurement process

Quotations should be sought (i.e. requested) from at least **3** firms/individuals. Single Tender Waiver should only be used in exceptional circumstances. Single Tender Waiver form to be completed, or otherwise written email confirmation to **SCWCSU Procurement Team** that tender has been waved with authority of Deputy Chief Finance Officer and Chief Finance Officer.

- Competitive tender required (Single Tender Waiver should only be used in exceptional circumstances and must be reported to Audit Committee)
- The CCG can consider an open (advertised) or closed (framework or local approved supplier list) approach to market.
- Must include conflicts of interest

- Full open (advertised) or closed (framework) tender required. Advice and guidance from SCW Procurement Team if full tender cannot be undertaken
- **Legislation:** Public Contracts Regulations 2015

Healthcare and Non-Healthcare CAUTIONS:

- All procurement is facilitated by SCWCSU Procurement Team
- Not all circumstances require tender, (e.g. where only one provider) so advice should be sought from SCWCSU Procurement Team (**0117 900 2386**). Failure to plan is not acceptable.
- All procurement should be accompanied by a Purchase Order. If uncertain as to procurement type, consult SCW Procurement Team
- Must maintain records, especially conflicts of interest (Which may affect committee undertaking award and be referenced in **ALL** decision papers). This may also be affected by a standstill period for all award decisions.
- Contracts must be reviewed by the contracts team prior to issue
- Decisions to award to be accompanied by assessments – **EQUALITY, QUALITY** and **PRIVACY**
- Contract Form – there are several types of contract forms (e.g. Healthcare there is NHS Standard Contract Full-length and short form, APMS, GMS and PMS. For non-healthcare there are frameworks and types for specific areas, e.g. IM&T and digital). Advice should be sought on most appropriate.

GLOSSARY:
 APMS – Alternative Provider Medical Services
 GMS – General Medical Services
 OJEU – Official Journal of the European Union
 PMS – Personal Medical Services
 SCWCSU – South Central and West Commissioning Support Unit

Exceptions to EU legislation procurement requirements:

1. Where the CCG purchases from an agreed framework (e.g. though NHS England) and therefore does not need to instigate a separate procurement process.
2. Use of transformation funds for specific purposes through specific named organisations such as Buckinghamshire Healthcare NHS Trust to assist with, for example, demand and capacity modelling. Again, a separate procurement process would not be required.

APPENDIX 2

Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC Text with EEA relevance

An evidence requirement of external auditors relates to whether the CCG Audit Committee has issued guidelines with regard to the services allowed by way of derogation under Regulation 537/2014, Article 5 (3), paragraph 3, provided certain requirements are complied with.

Regulation 537/2014, Article 5 (3), paragraph 3 reads as:

By way of derogation from the second subparagraph of paragraph 1, Member States may allow the provision of the services referred to in points

(a) (i) (i.e. preparation of tax forms);

(a) (iv) to (a) (vii)

(iv) i.e. Identification of public subsidies and tax incentives unless support from the statutory auditor or the audit firm

(v) i.e. Support regarding tax inspections by tax authorities unless support from the statutory auditor or the audit firm in respect of such inspections is required by law;

(vi) i.e. Calculation of direct and indirect tax and deferred tax;

(vii) i.e. Provision of tax advice;

And (f), (valuation services, including valuations performed in connection with actuarial services or litigation support services);

Provided that the following requirements are complied with:

(c) (Aka paragraph 3) “the principles of independence laid down in Directive 2006/43/EC are complied with by the statutory auditor or the audit firm”.

This paragraph duly provides this guidance in stating that:

(a) None of the above listed services are provided to the CCG by its external auditor, and hence it retains its independence as required by (c) (Aka paragraph 3) above.

(b) Any need for the above services would likely arise through formal procurement, for which South Central and West Commissioning Support Unit (SCWCSU) as its procurement advisor would discharge.

APPENDIX 3 - Competition Dispute Resolution Process

1. Introduction

1.1 NHS Buckinghamshire Clinical Commissioning Group localises a Competition Dispute Resolution Process, with a commitment to develop the market for healthcare services in order to commission services that will improve the health of the local population and reduce inequalities.

1.2 The CCG approach to dispute resolution is based on the principle that disputes should be resolved at the most local level possible:

- The first port of call for the provider is the CCG who have clear processes in place for resolving the dispute locally (refer to Grievance Policy).
- In relation to competition and procurement, if the complaint is not successfully resolved at this level, it may be referred to NHS Improvement.

2. Disputes specifically relating to competition and procurement

2.1 When dealing with disputes in relation to procurement and competition, the CCG will uphold the national principles for system management when dealing with disputes of this type. These are as follows:

Transparency	<ul style="list-style-type: none">• Communicate the process and decision making criteria widely and in advance• Engage all relevant stakeholders in the development of this process• Enforce declarations of interest
Objectivity	<ul style="list-style-type: none">• Base analysis and the decision on objective information and criteria• Maintain an audit trail
Proportionality	<ul style="list-style-type: none">• Only begin the formal dispute process on matters of material importance• Resources used must be proportionate to the significance of the dispute
Non discriminatory	<ul style="list-style-type: none">• The panel must not favour one part of the system over another
Accountability	<ul style="list-style-type: none">• The CCG will provide its Governing Body, NHS England (through assurance meetings), and NHS Improvement (if applicable) information relating to the dispute/s considered and outcome
Subsidiarity	<ul style="list-style-type: none">• Wherever possible the dispute should be managed by the CCG
Consistency	<ul style="list-style-type: none">• Internal coherence and consistency in dealing with disputes• Consistency across CCG

2.2 Acceptance criteria for complaints in relation to competition and procurement.

The CCG will only accept complaints that meet the following criteria:

- The content of the dispute is covered by the principles and rules for co-operation and competition.
- There is a full and frank disclosure of all relevant and applicable information.
- The panel is best placed to resolve the issue i.e. over the other regulators including the Office for Fair Trade (OFT), and the Advertising Standards Agency (ASA), NHS Improvement or NHS England.
- The issue is not a 'reserved matter' under the Principles and Rules for Co-operation and Competition, as defined in the National Panel's Rules of Procedure (to be published on the National Panel's website).
- If legal proceedings are already underway, the panel will take a view on a case by case basis as to whether it will hear the case through the CCG Competition Dispute Resolution Procedure.
- The dispute is not trivial, inappropriate, vexatious or an abuse of the panel's procedures.
- There is adequate time for the panel to review the complaint appropriately, for example, if there are time-critical issues.
- Buckinghamshire CCG is the commissioner, or the lead commissioner for the service in question.

2.3 Stage 1 – Informal Dispute Resolution Process

The CCG's informal dispute resolution process in relation to the procurement of health services comprises the following stages:

- Service Providers' concerns should be raised in writing to the Accountable Officer, clearly stating the basis of the dispute, including where applicable the concerns and the rationale behind the dispute.
- The Accountable Officer will identify a Senior Manager within the CCG to be the investigating officer who should endeavour to find an informal resolution to the problem through discussion and mediation, involving others (for example, the commissioning lead) as necessary. The investigating officer will review concerns/evidence relative to the dispute and will try to find a resolution within 14 days.
- The Service Provider may submit evidence in support of the dispute or the CCG may request further evidence/clarification from them. If no resolution is achieved within 14 days, an appeal may be made. At this stage the formal dispute resolution process will commence.

2.4 Stage 2 – Formal Dispute Resolution Process

The CCGs formal dispute resolution process in relation to the procurement of health services comprises the following stages:

2.5 Stage 2a - Making the appeal

Any appeal must be submitted to the Accountable Officer within 30 days, and must clearly state the reason(s). By submitting an appeal the appealing party is confirming their consent for the appeal to be managed in the first instance, by the CCG Competition Dispute Resolution Process. The appealing party will be acknowledged by the within five working days, and it will be the Accountable Officer's responsibility to monitor this.

2.6 Stage 2b – Triage

Following the receipt of the appeal, the CCG will make an assessment of the following factors:

- Whether the appeal is valid, the CCG may get in contact with the person making the appeal at this stage and request clarification or further information. If the appeal is not deemed to meet the acceptance criteria, then the appealing party is notified that the appeal will not progress, and advised what further information is required.
- Whether the appeal should be fast tracked to another organisation, including the Advertising Standards Authority, Office of Fair Trading, NHS England or NHS Improvement. If so, the appealing party is informed of the course of action and the process the appeal should follow by the CCG's Procurement Lead (i.e. South, Central and West Commissioning Support Unit as provider of procurement support).
- Where the appeal is in scope and not subject to fast tracking, it will proceed to the next stage. In most cases it is envisaged that the triage process will be carried out within five working days of receipt of the appeal.

2.7 Stage 2c – Lead Director Review

The Lead Director for this process is the CCG Director of Commissioning and Delivery. Following the triage, the Lead Director will review the appeal to determine whether a swift resolution can be achieved without the need to convene a panel. The Lead Director may call a meeting of the parties concerned to discuss the matter informally and without prejudice.

2.8 Stage 2d - The Panel

If the appeal cannot be resolved by the Lead Director, and has not been fast tracked to another organisation, then a panel will be convened to formally review the appeal. In most cases this will be based on a consideration of documentary evidence, although the CCG may invite representations in person if they deem this to be necessary. This part of the process is expected to take place within 15 working days, depending on panel dates.

2.9 Stage 2e - Membership of the CCG Panel

The membership of the CCG Panel will consist of three Governing Body members, to include the Accountable Officer and a lay member. One member will be nominated to Chair the Panel.

It is required that where practicably possible, all members of the Panel should have had no previous involvement in the decision that is being reviewed. The Chair of the panel will also be able to call on other experts to provide advice depending on the nature of the case, although these advisors will have no decision making role.

2.11 Stage 2f - The Decision

Once the Panel has made its decision, it will write to the person making the appeal notifying them of the decision, explaining the rationale, and where necessary, the course of action. It will also notify NHS Improvement and NHS England of the appeal and the outcome.

While the timescales set out for each stage above are illustrative, the process as a whole should take no longer than three months from the date of the receipt of the appeal. It is recognised that some CCGs may wish to alter timings within the process or alter the panel members, both minor amendments which are acceptable.

2.12 Stage 2g - Right of Second Stage Appeal

It is the CCG's expectation that most appeals will be successfully resolved. However, if the appealing party is not satisfied by the results of this process, they can refer their appeal to NHS Improvement.

3. Contractual Dispute Resolution

It is important to differentiate between the approach for dealing with appeals relating to the CCG's procurement obligations and the arrangements for resolving NHS contractual disputes. Where a dispute arises between NHS partners regarding contractual arrangements the CCG will continue to use arrangements as contained within the terms and conditions of the prevailing NHS Standard Contract.

4. Business Continuity

Whilst any dispute is in process it cannot prevent or disrupt the CCG from providing any clinical services pending the final outcome or resolution of the dispute.