

Procurement Update including 2013-14 Procurement Strategy

Governing Body meeting

H

5 September 2013

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Key messages	
<p>This report is intended to provide the Governing Body with the following:</p> <ul style="list-style-type: none"> - an updated CCG procurement strategy for approval (Appendix B) - confirmation of the outcome of the recent Autism procurement (Appendix A) - a recommendation to vary Voluntary Sector contracts to provide extended termination periods. 	
Assurance Framework (AF) and Risk Register	
<p>No specific strategic or principal risks have at this stage been identified for inclusion in the CCG's new Assurance Framework</p> <p>Risk Register Reference Number: Within the new Risk Register developed during June 2013, there are two specific risks listed regarding market stimulation and provider capacity (RR 11) and risk of legal challenge with financial and reputational consequences if inappropriate procurement or public consultation on new services/service change (RR12)</p> <p>How does this paper provide assurance to the Governing Body that the risk is being addressed? Paper highlights how we are revisiting the CCG's Procurement Strategy to ensure compliance with new Regulations and how will use the Commissioning Support Unit specialist procurement team to ensure we have appropriate support in understanding our market for each procurement and that robust procurement process are being applied in line with legal requirements and other national guidance.</p>	
Equality/Diversity Impact	
<p>For each of the identified procurements an Equality Impact Assessment will be completed.</p>	
Recommendations	
<p>The Governing Body is asked to:</p> <ul style="list-style-type: none"> • Approve the updated CCG Procurement Strategy in the context of new legal requirements and Monitor guidance • Note the delegated decision to award Sheffield Health and Social Care NHSFT the contract for Autism diagnostic and post diagnostic support services following the recent competitive procurement. • Agree a contract variation with all Voluntary Sector providers in 2013-14 as part of providing greater stability to third sector providers. 	

Procurement Update including 2013-14 Procurement Strategy

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1) 2013-14 Procurement Strategy

At the July meeting of the Governing Body, approval was given to progress the development of a revised procurement strategy for the CCG. The attached strategy, details how the CCG with support from our local Commissioning Support Unit will ensure that day to day procurement operations are delivered in line with the requirements of the Health and Social Care 2012 Act and the more recent National Health Service (Procurement, Patient Choice and Competition) Regulations 2013. The Governing Body is asked to approve the strategy. The intention will then be to update again in February 2014 as part of the annual planning process, reflecting 2014-15 procurement intentions and any new national policy guidelines.

2) Update regarding procurement of Autism Diagnostic and Post Diagnostic Support service

The formal Official Journal of the European Union (OJEU) procurement of the Autism Diagnostic and Post Diagnostic support service has now concluded. Sheffield Health and Social Care NHS Foundation Trust (SHSCFT) has been identified as the preferred provider and the CCG is currently negotiating contract terms and a proposed start date for the newly commissioned service. Having gone through the formal process SHSC were the only provider to submit a formal bid to deliver the service. After careful consideration, and following due process, agreement was reached to offer SHSCFT the contract on a three year basis. Attached in **Appendix A** is a summary of the process followed.

3) Proposed mechanism for ensuring Voluntary Sector Providers are not put at undue risk due to contracting mechanism adopted by NHS Sheffield CCG.

The CCG has followed national guidance to award 12 month contracts with all our main providers. There is no automatic assumption of renewal in the contract terms and as a result Voluntary Sector organisations in particular experience considerable uncertainty towards the end of each financial year in thinking ahead to the following financial year. Given our required contracting approach some Voluntary Sector organisations have to start redundancy proceedings with their staff if there is no firm offer by 1 January each year. Some providers also have to start thinking about terminating long term therapeutic relationships with clients.

In most cases, this uncertainty does not reflect CCG thinking, but we are unable to give a firm commitment until our financial plan is finalised, usually towards the end of January or February. If we feel it is unlikely that we will decommission Voluntary Sector services, we could offer some additional certainty to providers by committing to giving at least three months' notice of intent not to renew. In effect, this would mean, if we did choose to decommission a service and decided that in, say, February, we would have committed to funding the service beyond the contract end date, until May. Although this represents a

small financial risk to the CCG (just under £250k), if we took the decision to decommission all Voluntary Sector services (highly unlikely), the risk is small compared to the benefit to the organisations, their staff and clients, in eliminating uncertainty. The Governing Body is asked to agree to contract variations being issued on all Voluntary Sector contracts to offer an extended 3 month notice period. It should be noted that recent national guidance suggests that CCG's will be allowed to offer longer term contracts from 14-15 onwards, which would resolve this situation.

Recommendations

The Governing Body is asked to:

- Approve the updated CCG Procurement Strategy in the context of new legal requirements and Monitor guidance
- Note the delegated decision to award Sheffield Health and Social Care NHSFT the contract for Autism diagnostic and post diagnostic support services following the recent competitive procurement.
- Agree a contract variation with all Voluntary Sector providers in 13-14 as part of providing greater stability to third sector providers.

Paper prepared by Ian J Atkinson – Head of Contracting

On behalf of Julia Newton – Director of Finance

August 2013

Delegated Decision

Procurement of Adult Autism and Neurodevelopmental Diagnostic and Post Diagnostic Service

OJEU Contract Reference Number- 2013/S 078-131414

1) Key Information on the Procurement process

Tenders were invited for the delivery of **Adult Autism and Neurodevelopmental Diagnostic and Post Diagnostic Service**.

Due to the value and nature of the services, an OJEU Restricted tender was carried out.

An OJEU advert was published on 18 April 2013. The advert stated a pre-qualification document return date of 31 May 2013. Two completed pre-qualification questionnaires were returned. Following evaluation against published evaluation criteria, it was decided to invite two bidders through to tender.

Each of the bidders was provided with a detailed Specification of NHS Sheffield Clinical Commissioning Group's requirements. Bidders were invited to submit a price for delivery of both an inclusive diagnostic and post diagnostic Autism and Neurodevelopmental service. Bidders were also asked questions relating to quality and service delivery (ie method statement, staff numbers, monitoring, service improvement etc)

The closing date for tender bids was 5 July; one bid was received by the due date this was from Sheffield Health and Social Care Trust (SHSC). This bid was accessed electronically on 5 July and all paper documentation was considered at an initial tender panel on 8 July. Panel members were:

Head of Procurement; West and South Yorkshire and Bassetlaw Commissioning Support Unit.

Senior Commissioning Manager Learning Disability Services; NHS Sheffield CCG.

Senior Commissioning Manager Mental Health; NHS Sheffield CCG

Senior Commissioning Manager Children and Young People's Services; NHS Sheffield CCG.

Head of Contracting; NHS Sheffield CCG

Senior Finance Manager; NHS Sheffield CCG.

The bid was evaluated on a cost and quality basis. For cost, the bidder provided prices for all 3 years of the contract, broken down on an annual basis, the financial envelope available to the CCG for this service was £500K. For Quality the provider had to answer 30 questions in relations to the service they would offer against the detailed specification. The prices in the table below are for the 3 years of the contract duration (please note finance spread over four years due to part year effect in year 1).

<u>Provider</u>	<u>Yr1 (Part Year)</u>	<u>Y2</u>	<u>Y3</u>	<u>Y4 (Part Year)</u>
Sheffield Health and Social Care Trust	£278,232	£497,849	£498,492	£215,316

Following the paper evaluation, it became clear SHSC as the sole provider had achieved the required scoring threshold to move to the next step within the agreed process. The

CCG wrote to SHSC on the 12th July requesting SHSC prepare a range of clarification responses to their initial tender submission and invited them to interview of the 24th July.

The interview took place on 24 July where SHSC provided a brief overview of the service to be delivered and then provided a range of responses against the pre-determined clarifications questions. The panel consisted of:

Senior Commissioning Manager Learning Disability Services; NHS Sheffield CCG.

Mental Health Portfolio Lead – NHS Sheffield CCG

Service User - Expert by Experience

Speech and Language Therapist with a special interest in Autism

Family Carer and local Autistic Society Representative

Medicines Management NHS Sheffield CCG

National Autistic Society

Head of Contracting; NHS Sheffield CCG

Head of Procurement; West and South Yorkshire and Bassetlaw Commissioning Support Unit.

2) Outcome of Interview process

The interview process was constructive, however further clarification questions remained in order to allow the panel to be confident in making a recommendation to appoint SHSC as the preferred provider. The interview panel sought final clarification from SHSC on 26 July, particularly with regard to the proposed skill mix of the team that would deliver the service. SHSC responded formally on 31 July, re-confirming their proposed staffing skill mix on the grounds that in their view the proposed staffing skill mix would meet the core needs of the specified service. Within their response SHSC committed to reviewing staff skill mix on a 6 monthly basis throughout the duration of the contract.

At a meeting of the internal CCG Mental Health Commissioning Team on 1 August 2013, which had representation from four CCG GPs, a discussion took place to consider the procurement. The view of the group (although acknowledging this was not a decision making forum) was that SHSC should be awarded the contract subject to close contract management with regard to the skill mix and delivery of the service. The group expressed no desire to re-tender for the provision given the poor response from providers and a lack of confidence in finding an alternative provider.

3) Recommendation for sign off by CCG Executive

As there was no formal CCG Governing Body meeting held in August 2013, approval had been given to delegate sign off for this formal tender process to the CCG's Accountable Officer or nominated deputy.

Following the process undertaken a recommendation to award the contract to SHSC for the delivery of the new service for a three year period, with the caveat around further review of skill mix over the next 6 months. The recommendation was made by:

Mental Health Portfolio Clinical Lead; NHS Sheffield CCG

Senior Commissioning Manager Learning Disability Services; NHS Sheffield CCG.

Head of Contracting; NHS Sheffield CCG
Senior Commissioning Manager Mental Health; NHS Sheffield CCG

4) Sign off

Having considered the above information regarding the procurement process undertaken by NHS Sheffield CCG for the provision of an Adult Autism and Neurodevelopmental Diagnostic and Post Diagnostic Service, on 11 August 2013 the Chief Operating Officer, with delegated authority from the Accountable Officer in his absence, approved the recommendation to award the contract to Sheffield Health and Social Care NHS Foundation Trust for a period of 3 years.

Sheffield Clinical Commissioning Group

Procurement Strategy

September 2013



West and South Yorkshire and Bassetlaw
Commissioning Support Unit

Contents

P3 - Aims of the procurement strategy

Section 1 Sheffield CCG organisational approach to procurement

P3 – 1.1 Introduction

P4 – 1.2 NHS Sheffield CCG Constitution

P5 – 1.3 Role of the Governing Body in the Procurement Process

P5 – 1.4 Staff, Public and Patient Engagement

P5 – 1.5 Quality

P6 – 1.5.1 QIPP

P6 – 1.5.2 CQUIN

P6 – 1.6 Collaboration

P7 – 1.7 De-commissioning

Section 2 – Ensuring CCG Compliance with Procurement Rules and Regulation

P8 – 2.1 Statutory Framework

P8 – 2.2 Procurement Rules and EU Principles

P8 – 2.2.1 Responsibilities

P8 – 2.2.2 Health and Social Care Act (2012)

P9 – 2.2.3 Integrated Care Choice and Competition

P9 – 2.2.4 Publishing Contract Opportunities

P10 – 2.2.5 Public Services Act 2012

P10 – 2.2.6 Equality Act 2010 (UK)

P10 – 2.2.7 Freedom of information

P10 – 2.3 Monitor's Role

P11 – 2.3.1 Monitor's Testing criteria

P12 – 2.4 Prime Financial Policies

P13 – 2.4.1 For expenditure up to £10K

P13 – 2.4.2 For expenditure between £10K and £50K

P14 – 2.4.3 For expenditure over £50K

P14 – 2.4.4 Tender / No Tender Pro forma

P14 – 2.5 Contract Award

P14 – 2.6 Avoidance of Procurement rules

P15 – 2.7 Document Hierarchy

P16 – 2.8 Most Economically Advantageous Tender (MEAT)

P16 – 2.9 Code of Conduct (GP conflict of Interest)

P17 – 2.10 Framework Agreements

P18 – 2.11 Any Qualified Provider (AQP)

P18 – 2.12 Pilot Projects

P18 – 2.13 Dispute Avoidance

P18 – 2.14 Sustainable Procurement

P19 – 2.15 Third Sector / SME Support

Section 3 - Sheffield CCG Procurement Plan

P19 – 3 Procurement Work plan

P21 – Appendix A – NHS Sheffield CCG Proposed Procurement Plan

Aims of this procurement strategy

The aims of this strategy are three-fold.

1. To provide an overview of how the CCG will operate and the ethos that will be applied to all procurement activity while ensuring compliance with statutory procurement guidelines.
2. To provide advice and guidance for all staff working within the CCG who procure any goods or services by setting out the procurement principles, rules and methods that the CCG will work within.
3. To set out a summary of expected procurement activity to be undertaken by the CCG in the short term and medium term

This strategy reflects existing national guidance, in particular the requirements of the NHS Procurement, Patient Choice and Competition Regulations 2013 (2)¹ and the Procurement Guide for Commissioners of NHS Funded Services².

Section 1 – Sheffield CCG organisational approach to Procurement

1.1 Introduction

NHS Sheffield Clinical Commissioning Group (CCG) comprises of 88 GP practices and is fully authorised as the statutory organisation with responsibility for commissioning (buying) many of the healthcare services for the Sheffield population of approximately 560,000 people. To maximise our ability to commission the highest quality services within the available resource allocation we work jointly with a range of partners which include, NHS England, Sheffield City Council, local health providers and the Voluntary Sector.

As a CCG we are working to deliver an NHS that is fair, personalised, effective, safe and provides effective choices for the population of Sheffield.

To ensure we commission services fairly and transparently NHS Sheffield CCG will comply with regulations governing best practice in procurement, protecting and promoting patient choice, and anti-competitive conduct.

The overarching principles of public procurement within the NHS are as follows:

- **Transparency** – Commissioners requirement to publish procurement strategies and intentions to procure, feedback to unsuccessful bidders, details of awarded contracts, maintaining availability of records which demonstrate how procurement decisions were made.

¹ http://www.legislation.gov.uk/uksi/2013/500/pdfs/ukxi_20130500_en.pdf

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/216280/dh_118219.pdf

Doc	Version	Date	Page
Procurement Policy	1	August 2013	4 of 22

- **Proportionality** – The level of capacity and resource involved in the procurement process both on behalf of the commissioner and the potential providers in relation to the value and complexity of the service being procured.
- **Equality/Non-discriminatory** – The duty to treat all potential providers equally. This could include level of engagement with certain providers on service design. To ensure service spec has not been designed to exclude certain providers without appropriate justification. Ensuring the deadline for submissions have not been set to favour certain providers.

Where appropriate the CCG will work collaboratively across the wider health economy to jointly commission and procure services. The CCG will actively participate with initiatives wherever there are benefits to the Sheffield population, including reduction of procurement costs and increased leverage with providers, by acting regionally. It should be noted that Sheffield CCG purchases all specialist procurement advice from South and West Yorkshire and Bassetlaw CSU.

1.2 NHS Sheffield CCG Constitution

We aim to be an organisation capable of commissioning high quality services in an affordable and sustainable local health system.

The NHS Sheffield CCG constitution³ sets out the arrangements made by the CCG to meet its responsibilities for commissioning care for the people to whom it is accountable. It describes the governing principles, rules and procedures that the CCG will establish to ensure probity and accountability in the day to day running of the clinical commissioning group; to ensure that decisions are taken in an open and transparent way and that the interests of patients and the public remain central to our four priority aims:

1. To improve patient experience and access to care,
2. To improve the quality and equality of healthcare in Sheffield,
3. To work with the City Council to continue to reduce health inequalities in Sheffield,
4. To ensure there is a sustainable, affordable healthcare system in Sheffield,

NHS Sheffield Clinical Commissioning Group commits to:

- All GP practices involved in clinical commissioning through the mandate offered to CCG committee representative and engagement in our strong localities,
- Citywide implementation of effective innovations and opportunities for improvement,
- Placing patients at the heart of all our commissioning decisions and seeking their views,
- Healthcare decisions led by Doctors, nurses and other health professionals,

³ <http://www.sheffield.nhs.uk/ccgboard/070612/PAPERD.pdf>

Doc Procurement Policy	Version 1	Date August 2013	Page 5 of 22
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- Collaborative working across practices, through strong locality arrangements,
- Strengthening relationships and partnership work between organisations and clinicians,
- Improvement that is well managed and benefits all parties,

1.3 Role of the CCG Governing Body in the Procurement Process

The Governing Body has the ultimate responsibility for ensuring that the CCG meets its' statutory requirements as described in the 2012 Health Act when procuring healthcare services. The Governing Body will be transparent when making decisions to procure services and be the authorising body for awarding contract once a formal tender process has been completed. At all times when considering options for procurement the Governing Body will work with the guidelines set out by Monitor as the appointed regulator of healthcare procurement and apply the Monitor Key test's as described with section 2.3 of this document.

1.4 Staff, Public and Patient Engagement

Sheffield CCG is committed to engaging relevant stakeholders in all aspects of procurement. The NHS Constitution⁴ pledges that staff should be engaged in changes that affect them. Staff engagement is principally the responsibility of employers, but as commissioners the CCG recognises the value of effective staff engagement in improving the quality of commissioning and procurement.

The CCG recognises that the engagement of clinicians, patients and public in designing services results in better services. Our business processes require evidence of engagement for business cases to be approved and as a result, any procurement of services will have been informed by engagement at the design stage.

As well as engaging staff and service users within the business case development for a particular service development, the CCG is committed to engaging individuals within the procurement process. The CCG will ensure that the views of the public and service users are taken into account when making any decision to go out to competitive procurement and when developing relevant tender documentation. As a CCG we will also ensure engagement with service users and the public when evaluating any formal tender processes, our expectation is that relevant service users will be represented on tender evaluation panels and be given the opportunity to influence the outcome of procurement decisions.

1.5 Quality

The overall quality of a Healthcare Service will be determined by the successful implementation of the procurement process. Quality will be embedded throughout each process using the following tools:

⁴ <http://www.nhs.uk/choiceintheNHS/Rightsandpledges/NHSConstitution/Pages/Overview.aspx>

1.5.1 Quality, Innovation, Productivity and Prevention (QIPP)

All tender activity undertaken by the CCG will focus on the QIPP agenda and each successfully delivered healthcare tender will contribute to this wider programme:

- **Quality** – The quality of each service will be controlled through the evaluation of the successful bidder's tender submissions and subsequently maintained through KPI (Key Performance Indicators) / CQUIN (Commissioning for Quality and Innovation) measures during contract management, which have been established at the tender stage and laid out within the contract.
- **Innovation** – Emphasis will be placed on innovation to enable suppliers to introduce efficiencies and new working methods into every area of service delivery. This is an important section within each tender process to be conducted.
- **Productivity** – Each tender will be evaluated against a range of measures to ensure that the provider who can deliver the most appropriate service (as identified in the Service Specification) whilst considering the financial implications of each tender submission. Cost is a vital element to ensure that each service maintains the highest level of productivity.
- **Prevention** – This area concerns the prevention of not only over-spend but also the problem of under or over supply. A contract that delivers too much or too little activity is wasteful and will inevitably be an unwelcome expense to the commissioner of the service. There can also be associated risks to the provider which emphasises the need for throughout market analysis and the understanding of the service requirements to the success of the service.

1.5.2 Commissioning for Quality and Innovation (CQUIN)

CQUIN payments enable commissioners to reward suppliers by linking payments to local quality improvements goals. The CSU will offer advice to enable commissioners to embed these payments into the contractual agreement through appropriate KPI and Service Level Agreement (SLA) measures proposed during the tender process.

1.6 Collaboration

There are areas of supply management in which procurement collaboration is likely to bring benefits to Sheffield CCG, whether it is the sharing of operational resources, or commitment to specific joint projects and/or contracts. Economies of scale can be achieved in both operational activity and through leveraging collective spend. Where specific procurement warrant joint procurement activity and it can be evidenced that this would be the best thing for the Sheffield population, NHS Sheffield CCG will enter into collaborative procurement processes.

1.7 Decommissioning

The CCG Governing Body has considered a set of principles to guide our approach to decommissioning services, as set out below. The principles were developed to clarify the circumstances, and by what processes, services will be decommissioned and, if necessary, re-commissioned. The CCG will ensure that the way we approach the decommissioning of services will be fair, open and transparent.

- a. Proposals to decommission a service will meet the Secretary of State's four key tests for service change:
 - i. Support from GP commissioners
 - ii. Strong engagement, including local authorities, public and patients
 - iii. A clear clinical evidence base underpinning proposals
 - iv. The need to develop and support patient choice
- b. There must be clear and objective reasons for the decommissioning of a service. These are likely to be based on one or more of:
 - i. Failure to remedy poor performance
 - ii. evidence that the service is not cost-effective
 - iii. evidence that the service is not clinically effective – i.e. patient outcomes cannot be shown
 - iv. insufficient need for the service
- c. Proposals will be clearly in line with the CCG's business aims and objectives, as set out in our annual commissioning intentions.
- d. Patient and service users' views will be taken into consideration in any decision to decommission a service, with formal public consultation when required.
- e. Proposals will be led by clinicians and will be based upon clear and strong evidence of clinical and cost effectiveness.
- f. There will be no negative impact on the quality of care patients receive or on equality of care provision.
- g. Proposals will be backed by a robust business case that describes the benefits of decommissioning and demonstrates that the benefits will be achieved.
- h. Decommissioning decisions will be consistent with the commitments in the Compact with VCF sector providers and with partnership principles agreed with NHS Foundation Trusts and the Local Authority.
- i. NHS Sheffield CCG will ultimately take the decision with regard to the decommissioning of any service.

Section 2 – Ensuring CCG Compliance with Procurement Rules and Regulation

2.1 Statutory Framework

NHS Sheffield Clinical Commissioning Group (CCG) was established under the Health and Social Care Act (2012)⁵. CCGs are statutory bodies which have the function of commissioning services for the purposes of the health service in England and are treated as NHS bodies for the purposes of the National Health Service Act 2006 (“the 2006 Act”). The duties of clinical commissioning groups to commission certain health services are set out in section 3 of the 2006 Act, as amended by section 13 of the 2012 Act, and the regulations made under that provision.

2.2 Procurement Rules and EU Principles

2.2.1 Responsibilities

All managers and commissioners with budgetary responsibility must make themselves familiar with the CCG Standing Orders (SO) and Prime Financial Policies (PFPs), which form part of the CCG’s constitution, together with relevant detailed financial policies available via the intranet and all relevant procurement procedures described in this document.

- **All procurements will comply with the requirements of the SO and PFP’s**
- **All procurements will comply with the requirements of the European Union (EU) Procurement Directives (as enacted by the UK Procurement Regulations (The Public Contracts Regulations 2006)), where they apply.**

The EU Treaty, and various directives on procurement, require competition as the mechanism by which contracting authorities ensure equality of treatment, transparency and non-discrimination.

Healthcare is currently excluded from the full requirements of the European procurement rules, however case law increasingly supports an approach that all goods and services procurements should comply with European rules and regulations.

Notwithstanding this, it is clear that even for Healthcare (clinical) services (Part B services) there is an overriding imperative to abide by the General Principles of Effective Procurement.

2.2.2 Health and Social Care Act (2012)

The Health and Social Care Act describes the responsibilities of the commissioning organisations with the NHS and wider UK healthcare landscape.

⁵ http://www.legislation.gov.uk/ukpga/2012/7/pdfs/ukpga_20120007_en.pdf

2.2.3 Integrated Care, Choice and Competition

A key feature of the Health and Social Care Act is the emphasis on Integrated Care. Section 75 of the Act entitled “Procurement, Patient Choice and Competition Regulations” requires commissioners to consider how they can procure services in a more integrated fashion to consider other Healthcare services, Healthcare related services and Social services. The Regulations ask commissioners to consider when procuring services the impact on the patient who may have multiple healthcare needs and hence may traditionally have had to –

- Receive treatment from a number of different healthcare teams across a range of disciplines,
- Receive treatment over a number of different sites,
- Receive treatment from a number of different healthcare providers,

No direct solution is given to address the issue other than to ensure that when procuring services they interface in a way which gives the patient a seamless service. Monitor (as described in section 2.3) may test a commissioner’s effectiveness in this by asking providers how they will co-operate in the delivery of a patients care with other providers.

In relation to Choice and Competition, commissioners are required to ensure appropriate choice and competition exists in the market to drive up quality and efficiency. In testing this Monitor will assess how available “Choice” is for patients and whether the number of providers in a particular market impacts on the incentive for providers to improve patient care. Where plurality of providers doesn’t exist there is no requirement to introduce this until the incumbent provider’s contract is up for renewal.

2.2.4 Publishing Contract Opportunities

The Act deals with the requirements for –

- NHS England to maintain a website in which commissioners can publish notices (i.e. Supply 2 Health),
- Arrangements to be put in place to enable providers to express interests in providing services,
- Commissioners to publish a notice where they do intend to publish their intention to seek offers from providers for a new contract,
- The content of published notices,
- The ability of commissioners to avoid posting a notice where they don’t wish to invite interest from providers and which to award the contract with a single provider,

In assessing the decision to not publish a notice Monitor would assess whether there is only one provider capable to deliver the service or whether after a detailed review of local healthcare provision it is concluded there is a particular provider which is

Doc Procurement Policy	Version 1	Date August 2013	Page 10 of 22
---------------------------	--------------	---------------------	------------------

clearly superior in delivering the particular service and where the benefits of competitive tendering are outweighed by the cost of publishing the notice or running a competitive tender exercise.

There are certain benefits in selecting a particular provider and this could be due to location of provision, availability of particular infrastructure or where there is an immediate clinical need for which the selection of a particular provider is necessary on clinical safety grounds.

2.2.5 Public Services (Social Value) Act 2012 (UK)

Commissioners must consider their responsibilities under the Public Services (Social Values) Act (2012)⁶ for all healthcare (clinical) procurements conducted. Consideration should be proportional and equitable whilst ensuring that the economic, social and environmental needs of the local community are met.

The South and West Yorkshire and Bassetlaw Commissioning Support Unit will support the CCG to embed the values of the Act into any tender documentation to ensure adherence to the principles described within.

2.2.6 Equality Act 2010 (UK)

Commissioners must consider their responsibilities under the Equality Act 2010⁷ for all healthcare (clinical) procurements conducted. Potential Providers must not be discriminated against, in compliance with the requirements of the act, during the term of contract or the procurement process itself.

2.2.7 Freedom of Information 2000 (UK)

Commissioners must consider their responsibilities under the Freedom of Information Act 2000 (FOI)⁸ for all healthcare (clinical) procurements conducted. Care must be taken to ensure the rights of individuals and the rights of all organisations associated with the procurement process are protected during all correspondence and associated actions. Potential bidders must be made aware of the commissioner's responsibilities as a public sector organisation under the act during the preliminary stages of any procurement process.

2.3 Monitor's Role

Under the 2012 NHS Act the regulator Monitor has a new role in ensuring relevant procurement guidelines are adhered to across the Health economy. A provider who raises a challenge or dispute in relation to a tender process should be initially managed through a local Dispute Avoidance and Reconciliation process (DARP). Where the bidder is not satisfied by local DARP outcome bidders should be referred

⁶ <http://www.legislation.gov.uk/ukpga/2012/3/enacted>

⁷ <http://www.legislation.gov.uk/ukpga/2010/15/contents/enacted>

⁸ <http://www.legislation.gov.uk/ukpga/2000/36/contents>

to Monitor who host the Co-Operation and Competition Panel (CCP)⁹, a body established to investigate procurement disputes, and to see if there is a case to answer.

The CCP's decision is binding in these instances, as described by the role of Monitor as the independent regulator of competition within the NHS (section 62 of the Health and Social Care Act (2012)). The CCP can award damages up to the full contract value to a provider who is successful with such a challenge.

A provider also has the right to approach the County Court directly without approaching the CCG or the CCP and in such instances the case will be heard through the local judicial system.

2.3.1 Monitor's Testing Criteria

The overarching purpose of the Monitor testing criteria is to ensure that any healthcare procurement achieves the following –

- **Securing the needs of health care service users;**
- **Improving the quality of services; and**
- **Improving the efficiency with which services are provided.**

The following not only applies to let contracts but also when selecting providers for frameworks or shortlisting as potential future providers. The criteria that Monitor will evaluate in assessing whether the aforementioned objectives have been met are as follows –

- Steps taken to establish the levels of public engagement in the local community to establish whether the services being procured meet local health need.
- Establish whether a holistic view of the needs of healthcare users has been undertaken when procuring particular services, including their needs for related services. i.e. services that health care users/patients can access from the same provider on the same site.
- Whether the commissioner has considered the needs of all health care users for which it is responsible when procuring services, including:
- What steps the commissioner has taken to ensure equitable access to services, including by vulnerable and socially excluded members of the population;
- Whether the commissioner has had regard to the different needs of groups of patients, such as the need for some patients to receive a service in a particular setting.

⁹ <http://www.monitor-nhsft.gov.uk/about-monitor/who-we-are/cooperation-and-competition-panel>

- Whether the commissioner has considered the sustainability of services, including the impact that a procurement decision relating to one set of services may have on the ability of providers to deliver other services that health care users require.
- Whether the commissioner has monitored the quality and efficiency of existing service provision and identified any areas where improvements are needed in advance of procuring services.

2.4 CCG's Prime Financial Policies

Section 13 of the CCG's Prime Financial Policy document within the CCG's Constitution sets out the procurement limits for both revenue and capital purchases these are as follows:

In certain circumstances the procurement route specified below might not be appropriate. In such circumstances a procurement Waiver may be requested by the relevant director and authorised by the Accountable Officer or Chief Finance Officer.

Total Contract Value	Type of Procurement Required	Procurement Options	Timescales
Up to £10k	1 quotation required use standard requisition process. For audit purposes and to demonstrate that value for money has been considered, wherever possible staff should ensure that a quotation is attached to the requisition for both single and multiple items if this is not already available via an existing contract.	Adhere to local/national contracts	1 week
Between £10k and £50k	3 quotations required (waiver required if 3 quotes can't be obtained)	Mini competition through framework agreement	1-4 weeks
		SFI tender published on e-tendering website	

Over £50k tender process required	Option £50K to £100K Mini tender required (waiver documentation required if mini tender can not be undertaken)	Mini competition through framework agreement	4-8 weeks
		SFI tender published on e-tendering website	
	Over £100K full tender required. Any decision not to put a service out to tender should be discussed and confirmed at Governing Body.	Any Qualified Provider (AQP)	2-4 months
		Standard OJEU - Open	5-6 months
Standard OJEU - Restricted		5-6 months	
		Complex OJEU - Competitive Dialogue	

2.4.1 For expenditure up to £10k

The procurement can be done locally and should follow the normal requisitioning procedures. All requisitioners will be expected to adhere to those contracts which have been negotiated by Regional or National Procurement teams for all goods/services; this includes items under £10K. Where no contracts have been negotiated, or if they prove unsuitable, purchasers are free to request quotes from the open market.

2.4.2 For expenditure between £10k to £50k

The procurement can be done locally and should follow the normal requisitioning procedures. All requisitioners will be expected to adhere to those contracts which have been negotiated by Regional or National Procurement teams for all goods/services; this includes items under £10k. Where no contracts have been negotiated, or if they prove unsuitable, purchasers are free to request quotes from the open market. If 3 quotes cannot be secured then a waiver form is required.

2.4.3 For expenditure over £50k

Some form of competitive process should take place. This is likely to require input from the Commissioning Support Unit (CSU) Procurement Team and the budget holder should seek appropriate advice.

If a competitive process is not going to be followed then a waiver form must be completed.

A full competitive process is expected to take place for services over £100k unless the Governing Body has determined that the service will not be subject to tender and set out the rationale for its decision.

Where a full OJEU compliant tender is required the procurement work-plan must be updated and CSU team informed to enable capacity planning. Procurement requests should be routed through the CCG's Head of Contracting

2.4.4 Tender / No Tender proforma

A proforma has been developed to help budget holders and commissioners to decide if a contract opportunity should be tendered or not and CCG staff should ensure they have the full understanding of the CCG's Policy for the Management of Competitive Tender & Quotation Exercises (March 2013). All 'no tender' decisions must be documented and should represent the decision of the organisation rather than an individual.

Advice should be sought from the CSU Procurement Team if there is any doubt as to whether a tender should be conducted.

2.5 Awarding of contracts

The Governing Body may choose depending on the nature and value of the procurement to delegate sign off to the Accountable Officer or Chief Finance Officer. If this process is not agreed for an individual procurement the CCG Governing Body should be consulted on the outcome of a process and receive a recommendation for contract award before the CCG make an award of contract.

2.6. Avoidance of procurement rules

The UK courts take a strict line when they perceive that public contracts have been awarded without taking the necessary steps to ensure competition rules have been adhered to. Commissioners should be aware of several forms of avoidance that have been commonplace within the NHS:

- a) Pilot Projects – Awarding a contract through the guise of a 'pilot project' without following the correct procedure (as described below in 15):

Doc	Version	Date	Page
Procurement Policy	1	August 2013	15 of 22

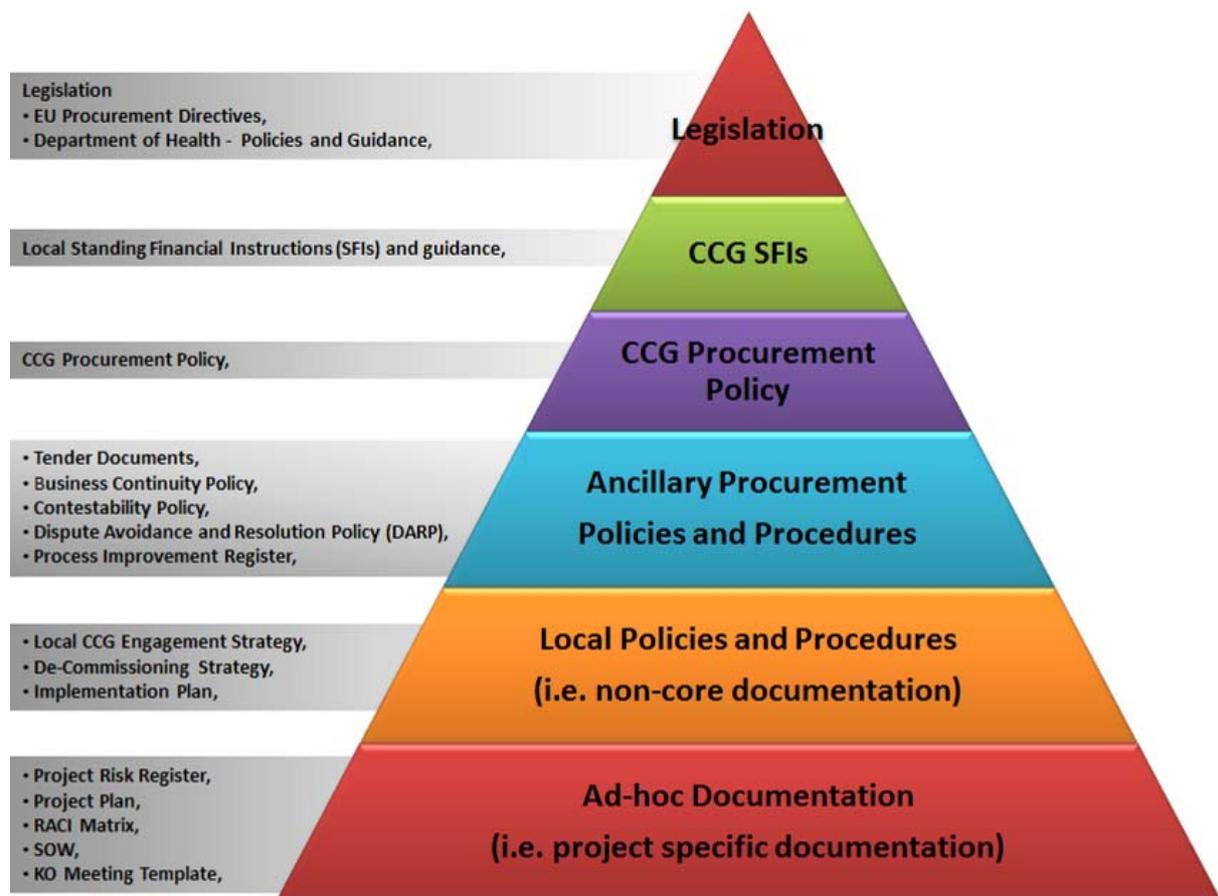
- Pilot Projects have been awarded as a stop-gap measure when the commissioner has no intention to enter into a competitive process in the future. These contracts are often extended without competition,
 - Projects have been labelled as a pilot when the previous contract lapses and a procurement hasn't taken place,
- b) Contract lengths are reduced (i.e. a 3 year contract is awarded as a 1 year contract) to artificially alter the contract value to avoid the compulsory OJEU thresholds¹⁰,
- c) Using negotiation with existing providers as a mechanism to improve services when the contract lapses (for clarification, negotiation is a viable method within the contract term but shouldn't be used to renew/extend a contract),

The UK courts have the authority to award damages to providers who have been unfairly excluded from the market through the use of such tactics.

2.7 Document Hierarchy

The CCG recognises that there is the potential for conflict between local, regional, national and European legislation within the UK healthcare system. The CCG will ensure that the processes it adopts comply with judicial legislation in accordance with the most up to date policies, guidance and procedures.

¹⁰https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62101/10_2011_20Threshold_20Rates_20for_202012_20and_20AR_20Procedure_20Update.pdf



2.8 Most Economically Advantageous Tender (MEAT)

With support from the local CSU the CCG will ensure that every healthcare (clinical) service procurement will evaluate bidder's submissions using the MEAT strategy rather than solely on a lowest cost basis. This approach allows commissioners to consider the whole life cost of bids and takes into account the quality of the deliverable elements. It will be for the commissioner of the service to determine the priorities when setting out the bid evaluation criteria.

2.9 Code of Conduct (GP Conflict of Interest)

When commissioning services for which GP practices/CCGs could be potential providers, or where staff may have a conflict of interest, with support from the CSU the CCG will refer to the advice and guidance published by NHS England¹¹ dealing with potential conflicts of interest. This guidance describes the responsibility of the CCG to demonstrate that those services commissioned:

- clearly meet local health needs and have been planned appropriately;
- go beyond the scope of the GP contract; and

¹¹ <http://www.commissioningboard.nhs.uk/resources/resources-for-ccgs/>

Doc	Version	Date	Page
Procurement Policy	1	August 2013	17 of 22

- the appropriate procurement approach is used.

Sheffield CCGs has a requirement to manage conflicts of interest and has the following processes in place:

- arrangements for declaring interests;
- maintaining a register of interests;
- excluding individuals from decision-making where a conflict arises; and
- engagement with a range of potential providers on service design.

2.10 Framework Agreements

A framework is an umbrella agreement which sets out the terms on which the purchasing organisation and the provider(s) will enter into contracts.

These agreements can be established on both a national or regional level and are constituted by a number of pre-approved providers who supply a similar range of goods from which a purchase can be made relatively quickly and easily.

Various framework agreements are available through:

- Government Procurement Service (GPS)¹²,
- NHS Shared Business Services (SBS)¹³,
- NHS Supplychain¹⁴,
- Connecting4Health¹⁵,
- Department of Health¹⁶,

There are two options available to purchase from a framework agreement:

- i. Apply the terms of the framework agreement:
This option would apply when the terms and conditions of a purchase are set out (e.g. Provider A is cheaper than provider B for the product you are looking for therefore no competition is required).
- i. Hold a mini-competition:
Where the requirements are more complex the specification can be sent to several providers for quotes (e.g. Providers competing for an IT implementation project).

The purchaser can be assured that the providers on a framework are financially stable and that the goods and/or services on offer are of a high quality because the suppliers have already been approved and rigorously assessed. Any purchase made

¹² <http://gps.cabinetoffice.gov.uk/>

¹³ <http://www.sbs.nhs.uk/>

¹⁴ <http://www.supplychain.nhs.uk/>

¹⁵ <http://www.connectingforhealth.nhs.uk/>

¹⁶ <http://www.dh.gov.uk/>

through a framework is also compliant with procurement legislation, provided that the rules to engage providers have been followed.

2.11 Any Qualified Provider (AQP)

The use of AQP should be determined at a local level where increasing the role of competition and patient choice can be proven to improve quality and patient care. Providers must be Care Quality Commission (CQC) registered (or, where CQC registration is not required to deliver the service, an appropriate registration body) or licensed by Monitor to take part in this truncated selection process, and all providers will be required to operate within the same pricing structure.

2.12 Pilot Projects

In order to identify new working practices through the use of pilot projects, the CCG must establish that a project is in fact a pilot via the following definitions:

- There is a specific goal,
- The timetable is clearly laid out with defined periods for:
 - Start date,
 - End date,
 - Period for lessons to be learnt,
- Clear and signed contract with the pilot service provider,
- Robust plan/process for evaluation,
- Right to terminate a pilot must be included if it is found to be unsafe or the outcomes cannot be met.

It is important for commissioners to use pilot projects only in circumstances where the clinical outputs are not known or cannot be accurately predicted. The CCG should contact the CSU for specialist advice before embarking on a pilot project to ensure compliance with EU legislation.

2.13 Dispute Avoidance

Where disputes arise as a result of a competitive procurement process the CCG dispute policy will apply.

2.14 Sustainable Procurement

NHS Sheffield CCG is committed to the principles of sustainable development and demonstrate leadership in sustainable development to support central Government and Department of Health commitments in this area of policy, and the improvement of the nation's health and wellbeing.

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.

Sustainable procurement should consider the environmental, social and economic consequences of:

- Design,
- Non-renewable material use,
- Manufacture and production methods,
- Logistics,
- Service delivery,
- Use / operation / maintenance / reuse / recycling and disposal options,
- Carbon Reduction,

Each supplier's capability to address these consequences should be considered throughout the supply chain and effective procurement processes can support and encourage environmental and socially responsible procurement activity.

2.15 Third Sector/SME Support

The CSU Procurement Team will aim to support and encourage Small & Medium sized Enterprise (SME) suppliers, Third Sector/Voluntary organisations and local enterprises in bidding for contracts. NHS Sheffield CCG will ensure that Healthcare (clinical) Service tender processes promote equality and do not discriminate on the grounds of age, race, gender, culture, religion, sexual orientation or disability.

The CSU Procurement Team will aim to support Government initiatives seeking the optimal involvement of SME's and the Third Sector in public service delivery without acting in contravention of public sector procurement legislation and guidance.

The NHS is keen to encourage innovative approaches that could be offered by new providers – including independent sector, voluntary and third sector providers. NHS Sheffield CCG is committed to the development of local providers that understand the needs of local communities. It is vital to ensure that the Organisation's approach to healthcare procurement is open and transparent and that it does not act as a barrier to new providers.

Section 3 – Sheffield CCG's Annual Procurement Plan

3 Procurement Workplan

A procurement work plan will be prepared and published before the start of each financial year to support the priorities and requirements set out in the CCG's annual commissioning and business plans. The 2013-14 NHS Sheffield CCG procurement plan is identified in **appendix A**.

The function of the procurement work plan is to highlight and proposed procurement priorities and opportunities, clearly defining the CCG's direction of travel for potential and existing providers. By adopting a project management approach to the prioritisation and delivery of all procurement activities, resources can be allocated to ensure effective delivery.

Doc	Version	Date	Page
Procurement Policy	1	August 2013	20 of 22

The work plan is a key tool to improve communication between the CCG and providers. By having transparent and open processes, we will seek to actively encourage provider engagement at an early stage of any procurement, particularly when reviewing existing services with existing providers.

The procurement work plan is a public document and ensures that the CCG is transparent about its procurement decision making processes and rationale. It will be published annually on the CCG internet site, and updated quarterly. This will allow us to communicate short, medium and long term goals to the widest possible audience, and demonstrates a range of potential opportunities within the Sheffield health economy, rather than a series of 'one-off' procurements. This will encourage greater provider interest.

Not all commissioning priorities will have or will result in formal procurement activity. When considering appropriate actions to effect required changes and improvements, competition is only one lever available to NHS Sheffield CCG, and a range of other levers will also be considered (e.g. delivery of service redesign through partnership working).

Appendix A – 2013-14 NHS Sheffield CCG Proposed Procurement Plan

Procurement	Overview	Est. Value of Procurement	Timescale for delivery
Adult Autism Assessment and Diagnostic service	Requirement for the CCG to have in place Autism assessment service as part of the national Autism strategy. As this is a newly established service with new funding there is a requirement to test the market via a competitive procurement.	£500,000	April 2013 – July 2013
Re-Procure Musculoskeletal service (MSK)	The existing MSK provision was awarded through a tender process for an initial period of 3 years to March 2013. PCT/CCG agreed to extend the service for a further 12 month period to March 2014. It is likely that the CCG will need to conduct a new procurement exercise but the timing and nature of this will be linked to decisions on whether to pursue the COBIC model for MSK services. Governing Body to consider options on this in September 2013.	£3.5 million	September 2013 – March 2014
Establishment of AQP frameworks for existing Local Enhanced Services (LES) where responsibility transferred to CCG	The current understanding is that there is a national requirement for all existing LES agreements with primary care contractors to move towards AQP arrangements using the national standard NHS contract. The CCG is exploring the options available.	TBC	July 2013 – December 2013
Re-procure Headache and Migraine Services	The existing provider has served notice on the CCG indicating that they are no longer in a position to deliver	£50,000	April 2013 – June 2013

	the service.		
Care Planning Service	This will be a new service to offer systematic integrated holistic care planning for a cohort of patients with a particular risk stratification score. The contract will be offered to all GP Practices in the city via the standard NHS contract. This is considered to be a service which can only be offered by GP practices related to their registered lists of patients and hence there is no requirement for competitive tendering process	£600,000	From September 2013