

Procurement Strategy

Governing Body meeting

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5 February 2015

Author(s)	Jim Millns, Deputy Head of Contracting
Sponsor	Julia Newton, Director of Finance
Is your report for Approval / Consideration / Noting	
<p>Governing Body is asked to <u>approve</u> the refreshed Procurement Strategy (see <i>Appendix A</i>), which has been updated in line with changes to NHS Procurement advice, case law, and guidance from Monitor (as the sector regulator). The Strategy was originally approved by Governing Body in September 2013.</p>	
Are there any Resource Implications (including Financial, Staffing etc)?	
<p>Despite some changes being made to the strategy, there are no identified resource implications.</p>	
Audit Requirement	
CCG Objectives	
<ol style="list-style-type: none"> 1. To improve the quality and equality of healthcare in Sheffield. 2. To ensure there is a sustainable, affordable healthcare system in Sheffield. 	
Equality impact assessment	
<p><i>Have you carried out an Equality Impact Assessment and is it attached?</i> No. Although the Strategy will have limited direct impact on equality or diversity issues; individual procurement exercises will include an Equality Impact Assessment. This is reinforced in the Strategy via our commitment to ensure full compliance with the Equality Act 2010.</p>	
PPE Activity	
<p>Although the Strategy will have limited direct impact on staff, public and patient engagement activity; individual procurement exercises will include appropriate engagement. This is reinforced in the Strategy, where our commitment is '<i>...to 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.</i></p>	

Recommendations

Governing Body is asked to:

1. Approve the refreshed Procurement Strategy (see *Appendix A*), which has been updated in line with changes to NHS Procurement advice, case law, and guidance from Monitor;
2. Note that the Public Contract Regulations, which become law during 2015, will require the Strategy to be amended and hence a revised version will be presented when further information on the implications for the CCG are available which is expected to be early in the new financial year; and
3. Note that a further amendment will be required when Part B services are affected by the Public Contract Regulations in 2016 and as a result we intend to change the annual cycle of refresh of the Procurement Strategy to early in each financial year.

Procurement Strategy

Governing Body meeting

5 February 2015

1. Overview

The revised Procurement Strategy has been completed in line with changes to NHS Procurement advice, case law, and guidance from Monitor (as the sector regulator) (see section 2 below). It should be noted, however, that the current strategy does not reflect pending changes to the Public Contract Regulations (2006) (PCRs) which are due to be enacted into UK law in early 2015; at which time some additional amendments will be necessary (see section 3 below).

The revision to the PCRs in 2015 will impact on Part A services only; guidance for Part B services (all clinical services) will remain the same until 2016 when a further amendment to the Strategy will be necessary.

2. Changes to the Existing Strategy

The Strategy that has been presented to Governing Body has been revised in line with changes to NHS Procurement advice, case law, and the Procurement, Patient Choice and Competition Regulations issued by Monitor.

These Regulations are intended to provide guidance to commissioners to enable them to secure services in the best interests of patients within the regulatory framework. This includes deciding whether certain services could be improved by providing them in a more integrated way, by giving patients choice (as to which provider to go to), and/or by enabling providers to compete to provide services. Monitor's role is to ensure that commissioners have operated within the legal framework established by the regulations. Generally, Monitor will only take action when they have received a complaint about an alleged breach of the regulations.

The inclusion of these regulations into our strategy will ensure that any procurement activity we undertake will focus on:

- The needs of individual patients;
- The need to improve quality and efficiency of services (which may include providing them in an integrated way);
- The need to act transparently and proportionately, and to treat providers in a non-discriminatory way;
- The requirement to procure services from providers that are most capable of delivering the overall service objective and that provide best value for money; and

- Ways of improving services (for example, by allowing patients to choose their provider).

3. Public Contract Regulations

As noted earlier, the strategy that has been presented to Governing Body does not reflect pending changes to the Public Contract Regulations (2006) (PCRs) which are due to be enacted into UK law early in 2015. This will impact on Part A services only; guidance for Part B services (all clinical services) will remain the same until 2016 when a further amendment to the Strategy will be necessary.

Once the PCRs are enacted into UK law, the main areas (although there are others) for the CCG to consider will be:

- Tender submissions can in future be legitimately rejected based on prior performance (as long as the provider has been given the opportunity to rectify the problems);
- Price can no longer be used as the sole deciding factor for tenders, the 'Most Economically Advantageous Tender' approach must be used; and
- Any decision not to tender should be backed up with an audit trail as to how the decision has been made (which is particularly important when a decision is taken to directly award a contract).

4. Next Steps

Subject to Governing Body approval, the Strategy will be updated again once the PCRs are enacted into UK law. This will be presented to Governing Body early in the new financial year. Given this will, in the first instance, impact on Part A services only, a further update will be brought back to Governing body in early 2016, when guidance on Part B services is available. It will then be refreshed annually from that point onwards, therefore during quarter one of each financial year.

5. Recommendations

Governing Body is asked to:

- a) Approve the refreshed Procurement Strategy (see *Appendix A*), which has been updated in line with changes to NHS Procurement advice, case law, and guidance from Monitor;
- b) Note that the Public Contract Regulations, which become law during 2015, will require the Strategy to be amended and hence a revised version will be presented when further information on the implications for the CCG are available which is expected to be early in the new financial year;
- c) Note that a further amendment will be required when Part B services are affected by the Public Contract Regulations in 2016 and as a result we intend to change the annual cycle of refresh of the Procurement Strategy to early in each financial year.

Paper prepared by Jim Millns, Deputy Head of Contracting

On behalf of Julia Newton, Director of Finance

January 2015

NHS Sheffield Clinical Commissioning Group

Procurement Strategy

February 2015

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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; and
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 (No. 2)¹, the Procurement Guide for Commissioners of NHS Funded Services², and Monitor's Substantive guidance on the Procurement, Patient Choice and Competition Regulations³.

¹ http://www.legislation.gov.uk/uksi/2013/500/pdfs/ukj_20130500_en.pdf

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

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/283505/SubstantiveGuidanceDec2013_0.pdf

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;
- **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; and
- **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 in 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 NHS Yorkshire and Humber Commissioning Support.

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 constitution⁴ 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; and
4. To ensure there is a sustainable, affordable healthcare system in Sheffield.

NHS Sheffield Clinical Commissioning Group commits to:

- Involving all GP practices 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;
- Collaborative working across practices, through strong locality arrangements;
- Strengthening relationships and partnership work between organisations and clinicians; and
- 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 within section 2.3 of this document.

⁴ <http://www.sheffield.nhs.uk/ccgboard/070612/PAPERD.pdf>

1.4 Staff, Public and Patient Engagement

Sheffield CCG is committed to engaging relevant stakeholders in all aspects of procurement. The NHS Constitution⁵ 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:

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

⁵ <http://www.nhs.uk/choiceintheNHS/Rightsandpledges/NHSConstitution/Pages/Overview.aspx>

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 thorough 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 a specific procurement warrants 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:

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- Support from GP commissioners;
 - Strong engagement, including local authorities, public and patients;
 - A clear clinical evidence base underpinning proposals; and
 - 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:
- Failure to remedy poor performance;
 - evidence that the service is not cost-effective;
 - evidence that the service is not clinically effective – i.e. patient outcomes cannot be shown; and/or
 - 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 Contract 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)⁶. 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.
- All clinical service procurements will abide by Monitor's Substantive guidance on the Procurement, Patient Choice and Competition Regulations.

The EU Treaty, and various directives on procurement, requires 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.

⁶ http://www.legislation.gov.uk/ukpga/2012/7/pdfs/ukpga_20120007_en.pdf

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.

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; or
- 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 patient's 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. Contractsfinder⁷);
- 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;

⁷ <https://online.contractsfinder.businesslink.gov.uk>

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- The content of published notices; and
- 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 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)⁸ 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.

Yorkshire and Humber Commissioning Support will enable 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 2010⁹ 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)¹⁰ 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.

⁸ <http://www.legislation.gov.uk/ukpga/2012/3/enacted>

⁹ <http://www.legislation.gov.uk/ukpga/2010/15/contents/enacted>

¹⁰ <http://www.legislation.gov.uk/ukpga/2000/36/contents>

2.3 Monitor's Role

Under the 2012 NHS Act 'Monitor', as the sector regulator, must ensure that 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 to Monitor who will investigate procurement disputes, and to see if there is a case to answer.

Monitor'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)). Monitor may request that the commissioning authority re-tenders an opportunity should any fault be found in the methodology used to select service providers.

A provider also has the right to approach the County Court directly without approaching the CCG or Monitor and in such instances the case may 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:

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- 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;
- 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; or
- 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:

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 sought (waiver required if 3 quotes weren't sought)	Mini competition through framework agreement	2-4 weeks
		SFI tender published on e-tendering website	
Between £50k and 100k	5 quotations sought (waiver required if 5 quotes weren't sought)	Mini competition through framework	2-8 weeks

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		agreement	
		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	
		Complex OJEU - Competitive Dialogue	5-6months +

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.

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. Where no contracts have been negotiated, or if they prove unsuitable, purchasers are free to request quotes from the open market. A minimum of 3 organisations should be approached to provide quotes.

2.4.3 For expenditure over £50k

Some form of competitive process should take place. This is likely to require input from YHCS 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.

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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 YHCS Procurement 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 YHCS 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 can 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:

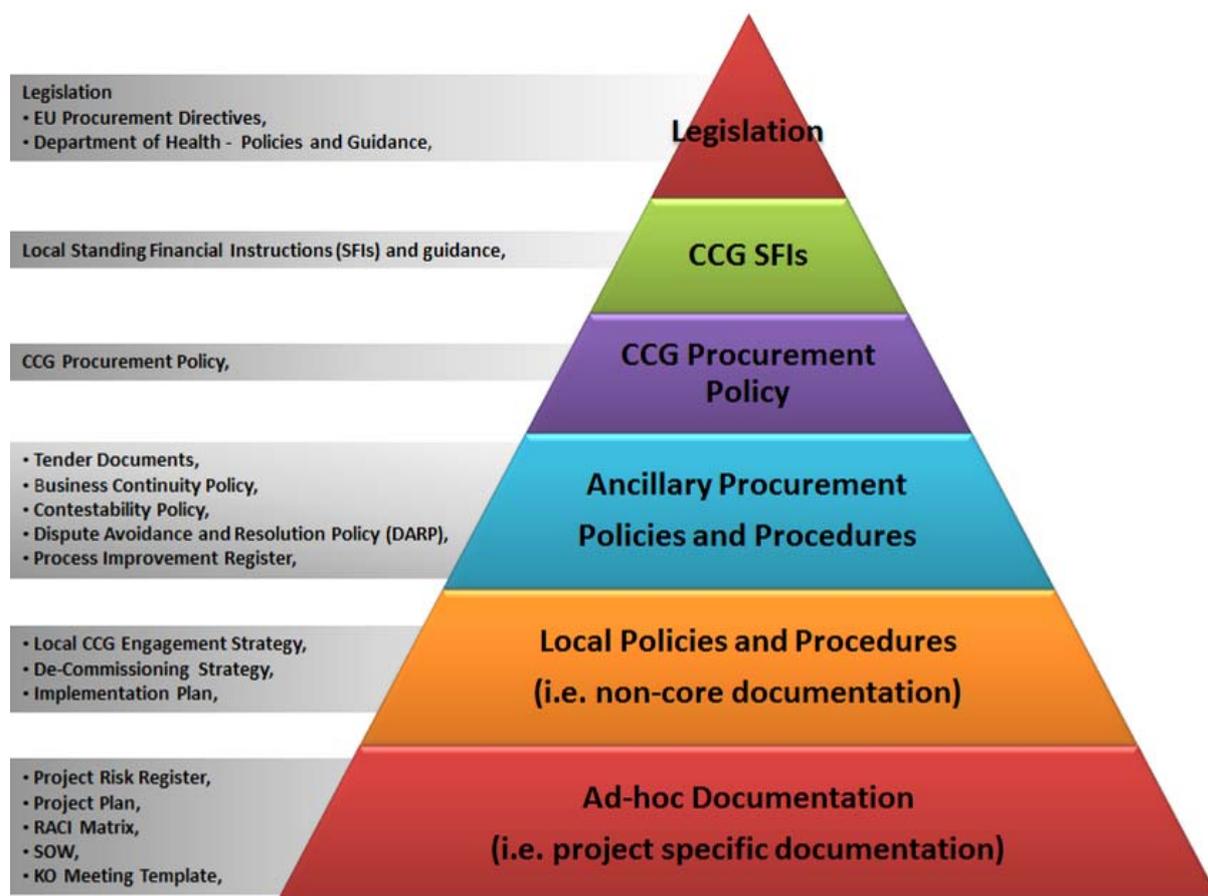
- a) Pilot Projects – Awarding a contract through the guise of a 'pilot project' without following the correct procedure (as described below in Pilot Projects 2.12):
 - Pilot Projects have been awarded as a stop-gap measure when the commissioner has no intention to enter into a competitive process in the future. These contracts are often extended without competition; and
 - Projects have been labelled as a pilot when the previous contract lapses and 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 thresholds¹¹; and
- 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, depending on the circumstances.

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.



¹¹https://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 YHCS 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, the CCG will refer to the advice and guidance published by NHS England¹² 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
- the appropriate procurement approach is used.

Sheffield CCG 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:

- The Crown Commercial Services (CCS)¹³;
- NHS Shared Business Services (SBS)¹⁴;

¹² <http://www.commissioningboard.nhs.uk/resources/resources-for-ccgs/>

¹³ <http://ccs.cabinetoffice.gov.uk/>

¹⁴ <http://www.sbs.nhs.uk/>

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- NHS Supplychain¹⁵; or
- Department of Health¹⁶.

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

- **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).
- **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 through a framework is also compliant with procurement legislation, provided that the rules to engage providers through the terms of the framework 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; and
 - Period for lessons to be learnt.
- Clear and signed contract with the pilot service provider;
- Robust plan/process for evaluation; and/or
- Right to terminate a pilot must be included if it is found to be unsafe or the outcomes cannot be met.

¹⁵ <http://www.supplychain.nhs.uk/>

¹⁶ <http://www.dh.gov.uk/>

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 YHCS Procurement Team 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; and
- 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 YHCS 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.

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The CCG 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

3.1 Procurement Workplan

A procurement work plan will be prepared and published at the beginning of each financial year to support the priorities and requirements set out in the CCG’s annual commissioning and business plans.

The function of the procurement workplan is to highlight the 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.

The workplan 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 workplan 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).