NHS
East Staffordshire
Clinical Commissioning Group

PROCUREMENT STRATEGY

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Clinical Lead:	n/a		

Revision History

Author	Version	Revision Date	Previous Revision	Summary of Changes	Changes Marked
P Winter	1.0	18.01.13	n/a	First draft	-
P Winter	1.1	26.02.13	18.01.13	Minor Internal Audit suggestions added	-
P Winter	1.2	01.05.13	26.02.13	Post-publication of Statutory Instrument 500 (clarification of NHS Regulations 2013, approved for post-agreement amendment by CCG Governing Body)	-
P Winter	1.3	27.08.13	01.05.13	Post-CSU Procurement Team Review (final proof-read of strategy contents)	-
P Winter	2.0	22.06.14	27.08.13	Rewrite of document to merge with Staffs & Lancs CSU Procurement Strategy (May-14)	-
P Winter	3.0	12.02.16	22.06.14	CSU Procurement Team review & update to reflect new procurement legislation	Blue text

Approvals

This document requires the following approvals:

Lead	Name	Signature	Title	Date of Issue	Version
CFO	W Kerr		CCG CFO	25.06.14	2.0
COO	S Laing		CCG COO	25.06.14	2.0
Chair	C Pidsley		CCG Chair	25.06.14	2.0
QF&P Committee	D Harding		QF&P Chair	25.06.14	2.0
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Distribution

This document has been distributed to:

Name	Title	Date of Issue	Version
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Governing Body = March 2016

Date of Next Review: This Strategy should be reviewed on a regular basis and at least annually to ensure it remains up to date with all current regulations, rules, best practice and guidance.

Note: This document is only valid on the day it was printed

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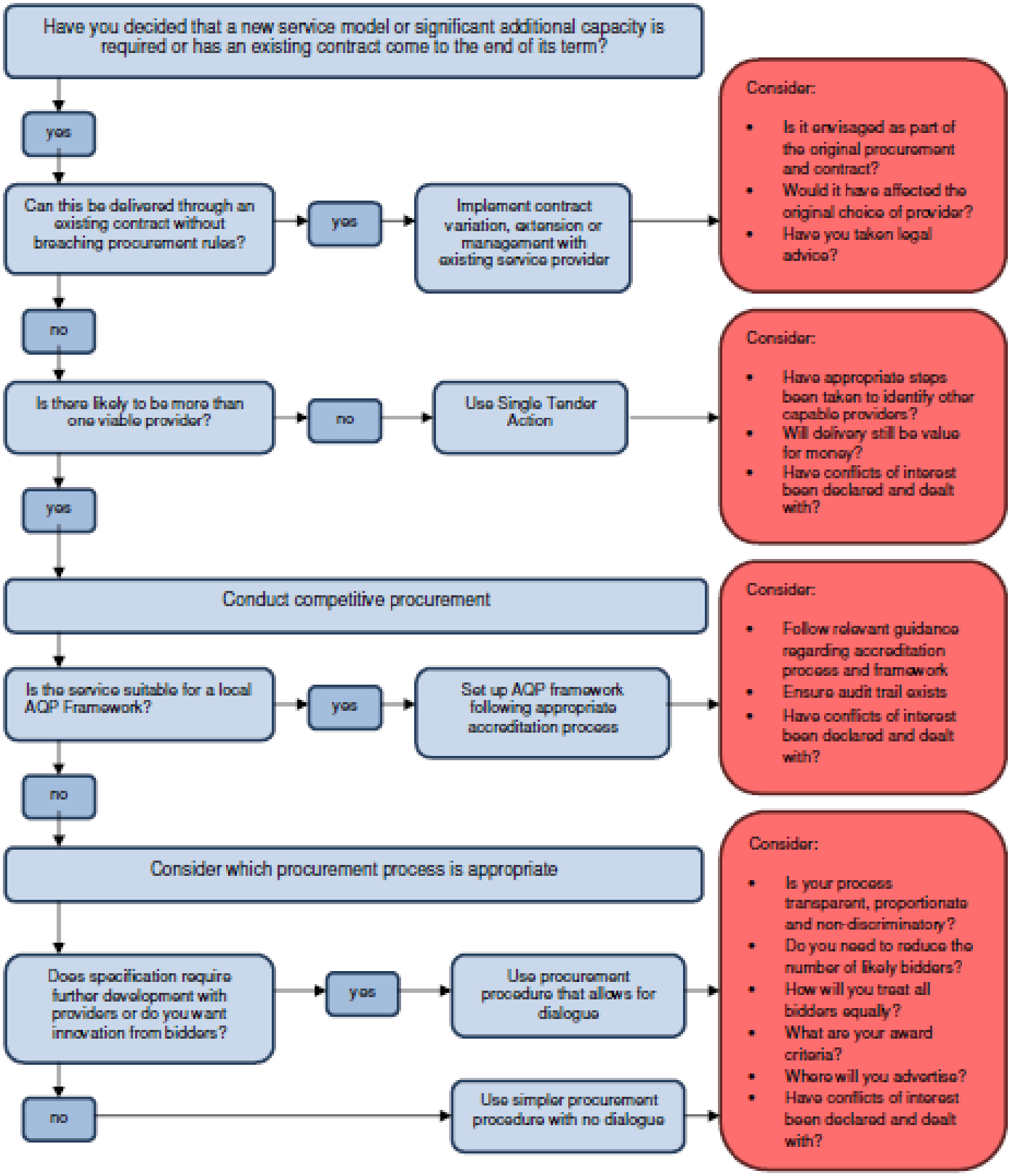
Executive Summary – the ESCCG Procurements Checklist and Decision Tool

Outline Checklist Process	CCG Lead	Done?
Preliminary Activities (continuous Commissioning Cycle)		
Development of CCG Commissioning Strategy: 12-36 month cycle		
Development of annual CCG Commissioning Intentions		
Public / Community / Stakeholder Engagement and Involvement		
Check alignment with JSNA + JHWS		
Publication of 12-36 month intentions: CCG and external websites		
Commissioning & Decommissioning		
Definition of Service Design / Redesign opportunities (future)		
Public / Community / Stakeholder Engagement and Involvement		
Provider Benchmarking Analyses		
Local Health Economy Market Analyses		
Development of CCG Clinical Service Specifications		
Identification of robust clinical quality outcome measures		
Identification of Core Funding Model (indicative costs & tariffs)		
Identification of contractual CQUIN schemes		
Publication of CCG Specifications on CCG website		
Preparing for Procurement		
Public / Community / Stakeholder Engagement and Involvement		
Design Consultative Approaches (initial and throughout Procurement)		
Advertising of Service Design / Redesign opportunities		
Publish 'Pipeline Notice' (PIN) as appropriate		
Advertise Procurement: CCG and external websites (e.g. OJEU)		
Issue formal 'Invitation To Tender' - ITT		
Ascertain Conflicts / Potential Conflicts of Interest (of all those involved)		
Establish Procurement Panel		
Formulate Procurement Evaluation Criteria (vs. Full Business Case)		
Establish quality / KPI evaluation criteria		
Establish financial evaluation criteria		
Develop Scoring Methodology (vs. standardised CCG template)		
Implementation of CCG Contracting & Tendering Procedure		
Identify Tendering Panel		
Post-Procurement		
Advertising of Contract Awards: external and CCG websites		
Implementation of CCG Commissioning Cycle (review, monitoring)		

Procurement Model Decision Tool



Introduction

Commissioning puts in place healthcare services to effectively meet population needs.

Procurement is the process of securing, or purchasing, those services.

Effective procurement is an essential component of commissioning improved services and outcomes for local patients / communities and ensuring value for money.

The role of East Staffordshire Clinical Commissioning Group (ESCCG, or "the CCG") as an NHS Commissioner is to secure services to meet the health needs of its local population, which deliver the best possible combination of continuous improvement in quality to patients and value for taxpayers, working within Statutory Frameworks to do so.

As a Public Body, the CCG will adhere to legislation that governs the award of contracts and will satisfy the obligations of transparency, equal treatment and non-discrimination from these.

This Strategy is therefore intended to meet all relevant national and regional guidelines including, but not limited to:

- ✓ *Dept of Health Changes to the National Health Service: Procurement, Patient Choice & Competition Regulations, 2013*
- ✓ *Monitor: Enforcement guidance on Procurement, Patient Choice & Competition Regulations, December 2013*
- ✓ *Monitor: Substantive Guidance on Procurement, Patient Choice & Competition Regulations, December 2013*
- ✓ *NHS Planning Frameworks (2014-15 and future annual planning guidance)*
- ✓ *CCG Standing Orders and Standing Financial Instructions*
- ✓ *NHS England Standards of Procurement, June 2013 **
- ✓ *Code of Conduct: managing conflicts of interest where GP Practices are potential Providers of CCG-commissioned services, July 2012*
- ✓ *Public Services (Social Value) Act, 2012*
- ✓ *Public Contracts Regulations 2015*

* Note: guidance for Commissioners on the procurement of NHS-funded services in England is expected to be published by NHS England in 2014

The CCG will also comply with regulations under Section 75 of the Health & Social Care Act, which will place requirements on Clinical Commissioners to ensure that they adhere to good practice in relation to procurement, do not engage in anti-competitive behaviour, and protect and promote the right of patients to make choices about their healthcare.

Our procurements will secure healthcare services through transparent engagement with our stakeholders, communities and Providers, which will normally culminate in the award of new contract/s, including culminating in the award of a new contract to an existing Provider.

There is currently no general policy for NHS Clinical Services to be subject to a formal procurement process.

However, there are an increasing number of Independent, Third Sector Providers and NHS Foundation Trusts (who have greater autonomy, including rights to holding legally binding contracts) who will be able to provide services.

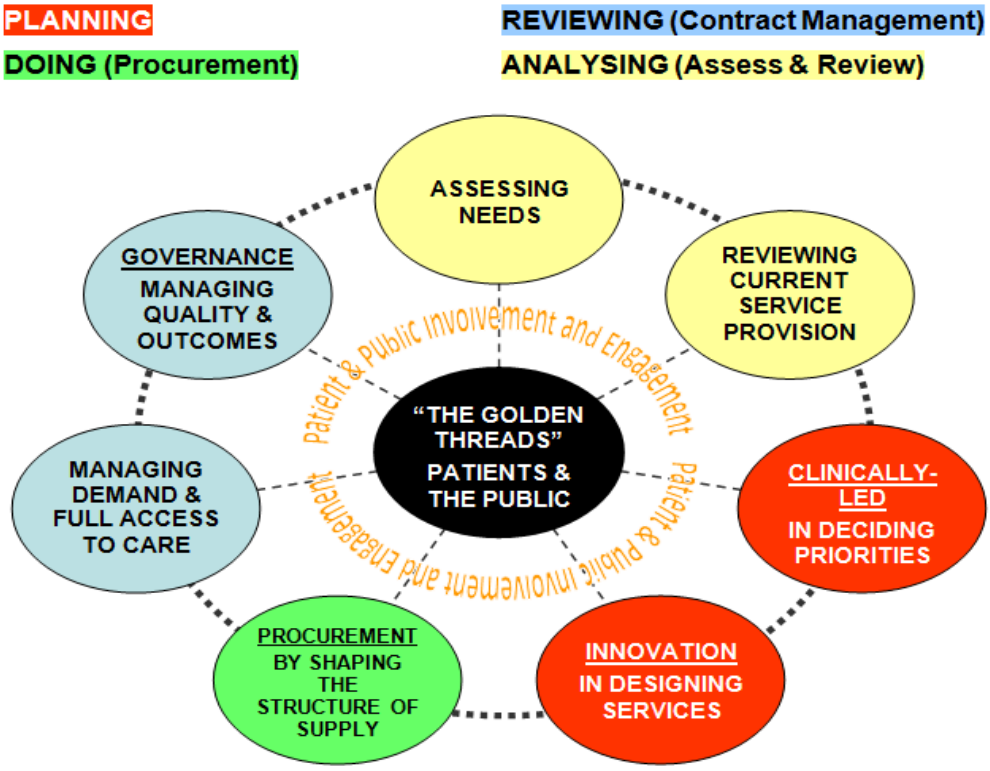
Furthermore, the CCG must abide by the NHS Monitor *Procurement, Patient Choice and Competition Regulations* (December, 2013); and will seek procurement advice from the Midlands and Lancashire Commissioning Support Unit's Procurement Team.

There are a number of procurement options that are available depending on service type, market status, value and risk profile of the service required. The CCG will use a method of formal competitive procurement processes for commissioning all Healthcare Services unless Commissioners can justify reasons for not doing so which must be documented.

CCGs are required to ensure value for money as laid down in the Standing Orders and Standing Financial Instructions. Consequently CCGs are likely to find ever increasing pressures to follow appropriate procurement processes when commissioning services.

EU Principles require that the procurement processes used for procuring services from providers are fair and transparent. CCGs need to ensure that potential Providers are given clear guidance on what services the CCG wish to procure and the selection process that will be used to select the Provider.

Procurement is an integral part of the ESCCG 'Compassionate Commissioning Cycle':



The "Golden Threads" are cross-cutting, common elements of all parts of the Cycle:

- ✓ **Integrated Ways of Working**
- ✓ **High Quality Compassionate Care**
- ✓ **Improved Care Pathways**
- ✓ **Focus on Prevention**
- ✓ **Improved Health & Wellbeing**
- ✓ **Evidence-Based Clinical Decision Making**
- ✓ **Improved Communication & Engagement**
- ✓ **Sustainable Local Providers of Choice**

Purpose

This Strategy is not designed to define the services which need to be commissioned, as this information is contained within other specific CCG documents. The Strategy details how the CCG will procure services from a range of Providers.

This Strategy sets out the principles, rules and methodologies that the CCG shall work to and clearly outlines how and when it is appropriate to seek to introduce contestability and competition as a means of achieving the best clinical outcomes and value for money.

The purpose of this Strategy is to enable the CCG to:

- ✓ Decide when to use procurement for a new healthcare service;
- ✓ Determine what the optimum procurement approach to use is when running a procurement (lean and efficient, but safe and sound decision-making);
- ✓ Outline the key aspects of procurement.

Ensure strong clinical insight and engagement

Its aim is to support ESCCG, our Member Practices, our delegated commissioning support authorities and Health / Social Care Providers (where applicable) in making clinically-appropriate and effective decisions about procurement, and ensuring consistency with the over-arching principles for Public Services procurements.

Manage the Provider 'Market' and commission services from a variety of Providers

Procurement will afford opportunities to encourage and facilitate partnership working in our area, e.g. by inviting joint bids. Clinical Service Specifications and procurement bid evaluation criteria will be produced with the aim of encouraging partnership working.

Use good quality contracts to assure the delivery of services

Long-term contracts, CCG innovation funding and risk-sharing mechanisms will be utilised where practicable, in order to help to support sustainable strategic partnerships between the CCG and its Stakeholders.

The CCG will increasingly specify requirements and clinical outcomes to improve the quality of services and outcomes delivered for particular subsets of patients / population groups in the area we serve. Where permissible under NHS tariff and pricing structures (national, regional or local), we shall specify prices that encourage the shared use of facilities or overheads.

Produce and make available to the public good quality information to support decision making

According to the NHS Procurement, Patient Choice & Competition Regulations 2013, the CCG must procure in a way that secures the needs of the people who use the services, improves the quality of the services and improves efficiency in the provision of those services.

Make the public aware of their right to make choices in relation to their own health

Have good quality procurement processes in place

This Strategy provides a local framework for lean and efficient CCG decision-making processes regarding procurement, assuring the guiding principles of Transparency, Proportionality, Non-Discrimination and Equality of Treatment.

Key Principles when Procuring Healthcare Services

In carrying out its commissioning role, East Staffordshire CCG will need to adopt the following key principles:

(1) ***Transparency*** – we will apply standard criteria for considering whether or not to tender new and existing services and the results of all decisions will be published.

(2) ***Efficiency*** – we will standardise our main operating practices for commissioning services from Providers and will work with our Providers to improve efficiency and effectiveness of services.

(3) ***Continuity*** – we will identify Partnership Providers for key NHS services such as Acute, Emergency, Ambulance, but will continually test these to ensure they deliver best value.

(4) ***Equality*** – we will clearly identify which services we will put out for competition and we will treat all Providers (NHS and non-NHS) equally.

(5) ***Development*** – we will provide support to all Providers to encourage continual improvement in the quality of services that are provided.

(6) ***Proportionality*** – the actions we take will be proportionate to the risks and benefits to patients and the services provided.

(7) ***Consistency*** – we apply national and local principles and rules consistently across the CCG and over time. We will award contracts by selecting the *'Most Economically Advantageous Tender'* (MEAT), but rather than simply accept the lowest price, we will take into account overall value for money by considering quality and business risk too.

(8) ***Engagement*** – in line with our Communications & Engagement Strategy, we will continuously engage with our patient, public and stakeholders to commission and procure services that meet our populations' needs. We will uphold our Public Sector Equality Duty requirements at all times. Also, we will engage proactively and effectively with all contracted and potential Providers.

By following these guidelines, we will need to demonstrate that:

- The necessary procurement skills are available internally and from Commissioning Support organisations that will ensure that healthcare services can be provided within robust contracts.
- The Provider 'Market' will be managed to meet demand for the services and to obtain the required clinical, health and other outcomes.
- A Competition Disputes Resolution Policy agreed by the CCG Governing Body and made available to all potential and current providers (refer to Appendix 3).

In summary, we must carry out fair, open and proportionate procurement and contracting:

- ✓ To identify and assess the needs of our patients and the wider population;
- ✓ To meet patients' needs through Provider and Market management
- ✓ To ensure that contracts that are implemented are robust and viable
- ✓ To manage contracts to ensure compliance and encourage continuous improvement
- ✓ To obtain value for money for our patients and wider community
- ✓ To ensure that processes are clear to patients, communities and current / future Providers
- ✓ To ensure that services are commissioned which give the greatest benefit and value for money to patients and the wider community

Commissioning Procurement Objectives

These shall be to:

(a) State our Commissioning Strategies and Intentions through the publication of short to medium-term intentions, with routine review and update, on the CCG's website and other external websites as necessary or relevant.

(b) Stimulate the Provider Market to provide competition to meet demand and secure required clinical, health and well-being outcomes.

(c) Apply procurement skills, expertise, processes and methodologies that ensure robust, viable and value for money contracts.

(d) Ensure procurement processes are effective, transparent and equitable, and offer early engagement with our stakeholders and Providers.

(e) Continuously review existing contracts, for both clinical and non-clinical services, to ensure that they deliver in accordance with defined outcomes and Key Performance Indicators (KPIs), offer maximum value for money and demonstrate continuous improvement in the quality and range of services on offer.

(f) Work with other CCGs to ensure that buying power and economies of scale are maximised through shared procurement processes.

(g) Conduct Service Reviews and Market Analyses to drive the redesign, innovation and delivery of services through new contracts where public and other feedback suggests that changes are required or where these are required as part of the ongoing Quality, Innovation, Prevention and Partnerships (QIPP) agenda for the NHS.

(h) State the outcome of these Reviews so that we clearly outline how we intend to secure a service after any such formal review has been undertaken.

(i) Openly and appropriately advertise and notify any procurement or contract awards (as per the later sections on 'Contracts Finder' / OJEU and the use of IT).

(j) Ensure that all procurement documentation supporting the CCG's processes and decisions are transparent (e.g. transparent and auditable documentation trails).

Key Procurement Principles and Values

An expert procurement process shall ensure that:

- ☑ The selected procedure is conducted in a manner that is legally compliant and proportionate to the service requirements;

- ☑ The right people are involved at the right stages: e.g. not only in agreeing specifications, bid evaluation and making the final decisions (as key parts of the process), but in agreeing the scope and content of procurements under our Statutory Duty to consult;

- ☑ Specifications clearly articulate the requirement: this will mean engaging with the people, patients and communities who have local knowledge and insight to ensure it is accurate.

- ☑ Conflicts or Potential Conflicts of Interest are managed at each stage to ensure a fair and transparent process[1]. All procurement processes shall be subject to the agreed CCG Policy on Managing Conflicts (available on the CCG website).

Note One: Consultation and Engagement

We must make arrangements to secure that people to whom services are being or may be provided are involved and consulted with; whether by formal Cabinet-style consultation, or provided with the necessary information in other approved ways.

[1] *The 2013 Regulations state that CCGs must not award a contract for the provision of health care services for the purposes of the NHS where conflicts, or potential conflicts, between the interests involved in commissioning such services and the interests involved in providing them affect, or appear to affect, the integrity of the award of that contract. Please refer to this Strategy's section on the 2013 Procurement, Choice and Competition Regulations.*

The Statutory Duty for Public Involvement (Section 14Z2 of the 2012 Health & Social Care Act) includes involvement in:

- *The planning of the commissioning arrangements by the CCG;*

- *The development and consideration of proposals for changes in commissioning arrangements where implementation of the proposals would have an impact on the manner in which services are delivered to individuals, or the range of health services available to them;*

- *Decisions of the CCG affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact;*

This by definition also includes all aspects of procurement; and so each procurement process will therefore ensure that there is full, effective and meaningful engagement and inclusion in the preparation, planning and implementation stages.

The CCG's Communications & Engagement Strategy (as available on our website) sets out the detailed mechanisms through which we will continuously engage with, involve and consult our patients, the public and communities in our work. This ensures that:

- *We will always identify the key Stakeholder Groups and embark on earlier meaningful engagement with them, in preference to merely conducting more formal, written consultations.*

- *We retain more formal consultations for 'contentious' changes (formerly known as 'substantial'); especially where longer, more-detailed consultation is needed or where smaller, vulnerable organisations (small charities) are affected. Consultations will range from 2-12 weeks in accordance with Cabinet Office guidance.*

- *We undertake more informal ways of engagement too (e.g. our Patient Board, other forums, public meetings, working / focus groups, surveys etc); this may mean that in some cases there will be less requirement for formal consultation as we will have engaged and involved interested groups in the policy making process.*

Note Two: Conflicts of Interest

Managing Conflicts of Interest will protect the integrity of the CCG and GP Practices from any perceptions of wrong-doing. Our policy is based upon the CCG's Constitution and NHS England 'Code of Conduct' for commissioning services where GP Practices could be potential Providers.

If an individual has a conflict of interest, they must not be involved in procuring, tendering, managing or monitoring a contract in which they have an interest.

So the default position will be that whenever or wherever a conflict does arise, we will expect that individuals withdraw from participating any further in the procurement process where the conflict in question has arisen. This will be very clear and will apply to the vast majority of cases.

Only a very limited set of exceptional circumstances will apply to this not being the norm.

Beyond these, the following values shall also underpin all aspects of this Strategy:

- ☑ Value for Money is a pre-requisite of Commissioning. Each procurement will include a cost comparison of the new service (where applicable) with the cost of delivering the equivalent service with existing Providers. Clinical Service Specifications will be clear, concise and non-discriminatory, utilising the NHS England standard template contained within the NHS Standard Contract.

- ☑ The CCG will be open and transparent in the way it conducts commercial relationships with potential and existing Providers.

- ☑ The CCG has set up a Disputes Resolution process to ensure that any complaints can be received, investigated and resolved.

National and Local Contexts

The new NHS Commissioning Model is clinically led, underpinned by clinical insight and a real understanding of the local healthcare needs of patients and the public.

CCGs are uniquely placed to focus on quality and outcomes, and realise step changes in services. We will work closely with partners, especially Local Authorities via the Health and Wellbeing Board, and take account of guidance around joint working: e.g. *"Better Care Fund"*.

Commissioning Support is the assistance that CCGs can draw on from a range of sources to help them deliver their functions. Good support will help us to concentrate better on the clinical and locally sensitive aspects of Commissioning, and to make the best use of the resources available to the NHS for delivering improvements in healthcare.

NHS procurement skills are a limited resource. The CCG will obtain appropriate specialist advice to assist us in carrying out our procurements. This is currently secured through the NHS Midlands and Lancashire Commissioning Support Unit (CSU) Procurement Team.

It is also essential to have the appropriate CCG organisational structure, capacity, training and infrastructure in place to complement this Strategy.

Procurement partnerships can give rise to a number of benefits, including economies of scale and mitigating varied skills in the procurement workforce. Locally, the CCG will continue to build partnerships with neighbouring CCGs and Local Authorities to help manage the local system.

ESCCG Staff Roles and Responsibilities

The CCG shall increase the skills and knowledge levels of its key staff in the areas of:

- Preparing Clinical Service Specifications
- Tender evaluation
- Compliance with EU and NHS Monitor regulations
- Negotiation

Our CCG Commissioning Managers and Clinical Leads will need to determine the most appropriate procurement route as part of any CCG Business Case documentation.

Our Commissioning Cycle and Project Management methodology include the following decision-making stages that will support our procurements:

ACTIVITY	PROCESS	CCG LEAD/S
PLANNING **Deciding Our Priorities and Outcomes** **(c/o Steering Group)**	Planning Engagement + Involvement	Commissioning Team + CSU Comms Lead
	Commissioning Plan / Intentions	COO / GP Lead / Head of Commissioning
	Decommissioning Plan / Intentions	COO / GP Lead / Head of Commissioning
	Identifying Outcomes	Clinical Lead / Commissioning Manager
	Identifying clinical / ethical requirements	Clinical Lead / Commissioning Manager
	Gap Analysis : what need & what have	Commissioning Team
	Outline / Full Business Case *	Commissioning Team
	Active Engagement + Involvement	Commissioning Team + CSU Comms Lead
	Design meets needs + Equality factors	Commissioning Manager + Clinical Lead
	Clinical Effectiveness / VFM analyses	Steering Group + Commissioning Team
	Develop Clinical Service Specifications	Steering Group + Commissioning Team
DOING **Procurement & Shaping Supply**	Market / Supplier analysis (all Sectors)	CSU + Head of Performance & Governance
	Ensuring patient choice	Commissioning Team
	Capacity planning / analysis	Commissioning Team
	Provider relationships & partnering	CSU + Head of Performance & Governance

* All ESCCG Outline Business Cases shall be iterative documents, and must include:

- ✓ *The principal objectives and Project brief / rationale*
- ✓ *Contribution to CCG objectives: e.g. JSNA / Commissioning Outcomes Framework*
- ✓ *Funding and procurement options*
- ✓ *QIPP references*

All Project Initiation Documents must include:

- ✓ *A Project brief (updated with more detail)*
- ✓ *A Full Business Case (FBC): including business options, financial model, key risks*
- ✓ *Investment (options) appraisal: including versus Project benefits and outcomes*
- ✓ *A coherent Project Plan: including relevant IM&T, workforce, medicines management*
- ✓ *A Market Management Plan and outline of the procurement process (Tendering Plan)*

All Projects will be conducted and implemented using the CCG's project management methodology, controlling all stage/s of the commissioning and procurement process.

The number of stages will be outlined in the Project Plan and are defined as the key milestones at which point the Project requires approval to continue. They will vary depending on Project scale and associated finances, but may include the following 'Project Products':

- ✓ *Current provision: can the local market provide it; are they already; if so, are they good?*
- ✓ *Service design / redesign, including full Clinical Service Specification*
- ✓ *Setting contract value / agreeing new contract (or Contract Variation if current provider)*
- ✓ *"Invite to Tender" Document*
- ✓ *CCG Tendering Panel Selection Criteria: developed from Full Business Case*
- ✓ *CCG Tendering Panel meets and decides on successful bidder (feedback to bidders)*

If following this process, it appears that the Clinical Service Specification does not or cannot deliver the benefits required then it may be necessary for the CCG to revisit and refine the Service Specification, or end the procurement process altogether.

Regardless of the approach, all procurement decisions must be made in accordance with procurement law and from assessments made following engagement with Providers.

Furthermore, our requirements will always be informed by, and decided upon, by working with our Member Practices, other appropriate staff and patient / community groups, to review Care Pathways and develop Clinical Service Specifications with CCG Commissioning Managers.

All quality standards, outcomes and KPIs will be drawn from clinical decision-making processes.

CCG Governing Body Roles and Responsibilities

Regardless of the procurement route, the CCG and its Governing Body must act transparently and non-discriminatorily, and be able to demonstrate the rationale for our decisions on whether or not to competitively procure services.

In particular, where the CCG decides to procure through 'Single Tender Actions', our rationale must clearly demonstrate that there is only one capable Provider to deliver the services and, therefore, that could provide better value for money.

The Governing Body will need to be assured that local decision-making processes have clearly been conducted in accordance with this; and that a clear audit trail exists to support the internal, pre-Governing Body decision-making process.

The Governing Body will have the overall responsibility for ensuring that the procurement process is transparent, proportionate, and non-discriminatory. As outlined on the previous page, the CCG's Steering Group will provide the clinical mandate and ownership of the process.

The key considerations that will guide the Group's decisions will include:

- ✓ CCG assessments of patient and population need: e.g. outputs from the JSNA;
- ✓ CCG Commissioning Priorities: e.g. improved outcomes for particular patient or population groups and/or increased productivity;
- ✓ Service Reviews (in relation to current contracts, to commence 9 months before expiry);
- ✓ Historical performance and user satisfaction data, including benchmarking;
- ✓ Quality standards and best practice advice: e.g. NICE guidance and guidelines;
- ✓ Analysis of the healthcare market: i.e. current and potential provision;
- ✓ Public, Patient and Staff engagement.

The ESCCG Procurement Strategy

This section will address the following key points:

- Cost Modelling, Pricing and Risk
- Market Development and Management
- Procurement Rules and Principles
- Procurement Options
- Contracting
- Stages of the Procurement Process
- TUPE
- 'Contracts Finder' (Central Government website)[2]
- Ethical and Sustainable Procurement

(a) Cost Modelling, Pricing and Risk

The CCG has developed cost models which can be used to benchmark the costs of existing services that can also be used in assessing the affordability of Bidders' proposals. Their application will require input from CCG / CSU procurement and finance staff, where appropriate.

Clinical Service Specifications will describe what we are asking Bidders to provide (but not necessarily how to provide it), and this will have implications for the appropriate funding model.

The CCG will consider the use of all available and appropriate funding models, including Grant Award funding to strengthen partnership working with the Voluntary or Community Sectors.

Our Specifications will be determined by our patients' and population's needs and the key clinical outcomes we are seeking. CCG funding models and pricing structures will reflect what we are commissioning and will seek to maximise the alignment of clinical / financial incentives.

However, there is always a risk that outcomes-based payments might:

- Increase the cost of provision (e.g. Providers paid for the delivery of outcomes want greater reimbursement to offset the risk they might not be paid due to circumstances beyond their immediate control);
- Make contracts hard to measure, especially when outcomes are only measureable in the long term: we may have to use proxy inputs and outputs measures to assess performance;
- Require complex contracts to balance encouraging innovation and commissioning for what works, paying for both outcomes and outputs.

[2] *This has replaced NHS Supply2Health as a method of advertising healthcare opportunities, taking effect from 28 March 2014.*

We will usually communicate information on the core funding model and any supplementary elements (e.g. performance and/or quality incentives such as CQUIN) alongside the Clinical Service Specification.

Depending on the procurement options being considered, there may also be scope to develop the funding model and negotiate with Providers during the procurement process as to variable funding models and pricing structures.

Pricing

Pricing will be determined by internal decisions on how each commissioned service will be funded and considering best value factors.

For these, the CCG will always bear in mind our strategic objectives that determine our Commissioning Intentions, and whether we are seeking competition on price or on service delivery aspects. However neither will ever compromise our minimum quality standards.

The application of prices will also consider alternatives such as:

- ✓ *Non-'Payment by Results' local Tariff Prices:* the eventual price paid in these instances will be a product of the costs of the services adjusted to reflect the relative balance of risk and/or to incentivise particular behaviours or results.

- ✓ *Fixed Prices:* we may elect to fix prices prior to the end stage of the procurement process, e.g. to stimulate competition on quality considerations or optimising patient choice under AQP procurements.

- ✓ *Negotiated Prices:* may be negotiated with potential Providers during the procurement process (e.g. where costs are not known at pre-procurement stages, or where we are seeking to use price competition to drive efficiency).

- ✓ *A hybrid approach:* especially where we do not know the costs in advance and use the preliminary stages of procurement to identify these, and then set prices to encourage competition on quality and/or facilitate choice (e.g. AQP for choice outside of Elective Care where prospective prices may be determined through market testing).

Price signals are important for potential Providers in determining whether they can make a viable bid against any CCG *'Invite to Tender'* or *'Prior Information Notices'*. Clear signals can help to reduce transaction costs associated with failed Provider bids or abortive procurements.

There may be occasions where we opt to set out the proposed funding envelope alongside the Clinical Service Specification and avoid commencing procurement without any indication of prices and funding model.

Alternatively, we may wish to provide indicative information on expected price and funding model (e.g. price ceilings) and allow for differences in price to be taken into account when evaluating submitted bids at the Tender Panel stages of procurement.

Where we are unable to determine indicative costs and prices prior to procurement, this is an indication to the market that further work is needed to engage with potential Providers and to further develop the Clinical Service Specification.

These will usually be where the CCG is considering a *'Competitive Dialogue'* approach, and where justified by the scale or relative importance of the procurement in question.

Risk

It is incumbent upon the CCG to act responsibly in allocating risk where it can be effectively managed and controlled. An inappropriate transfer of risk could result in detrimental impacts.

Any adjustments to the CCG-selected funding model and associated prices will reflect the appropriate balancing of risk, and will be determined by the extent to which potential Provider revenues are determined by performance in delivering the services being commissioned or demand for the services being commissioned.

Risk-Share Agreements are available to the CCG as NHS Standard Contract mechanisms.

Furthermore, we could instead choose to adopt to take a "Gain-Sharing" approach within our procurements when considering fostering longer-term strategic partnerships and to test out innovative service solutions that may be otherwise unaffordable.

(b) Market Development and Management

In order to procure services effectively, the CCG will need to understand the supply market. We will need to work with both our existing Providers and new Providers to help develop the market by publishing future Commissioning Intentions, helping potential bidders to understand procurement processes and developing open output specifications.

A Market Analysis should be undertaken for each service required:

- ✓ *Structure of the market:* are Providers locally, regionally, national or multi-national?
- ✓ *Capacity:* is the size of proposed contract attractive to potential Providers; are all the necessary attributes in place to deliver the service: e.g. workforce, equipment, facilities, etc?
- ✓ *Status:* is the market established, new or innovative; are there restrictions or barriers to entry / exit?
- ✓ *Competitive:* is there competition in the market place; can competition be developed; is it a buyer's or seller's market; have other CCGs tendered for these services?

Where there are insufficient Providers in the market, the CCG will need to consider other methods to developing a Provider market; which could include:

- Identifying our clear commissioning requirements; and the key requirements that Providers need to have to enable them to compete for business
- *'Bidder Events'* where interested parties can come and discuss our requirements, procurement processes can be explained and opportunities provided for networking etc
- Producing Clinical Service Specifications that are output based, can be delivered and encourage innovation (this may also mean that specifications are narrowed to allow SME organisations to deliver services)
- Contract duration is such that the contract will allow Providers the opportunity to recover costs and make a reasonable return on investment (up to 7 years duration is possible)
- Where there is a limited concentration of capable alternate Providers, the CCG may consider working in partnership with its current Provider to develop and improve the standards of services offered

(c) Procurement Rules and Principles

The CCG will adopt the rules and principles set out in:

The EU Procurement Directives as implemented into UK law by the Public Contract Regulations 2015 (PCR 15) and detailing the rules which public bodies must follow when tendering for goods and services. Note – these directives are not in force for health and social care services until 18 April 2016.

The distinction between Part A services and Part B services has been abolished. There is a new rules regime for certain health, social and other services. The list is contained in Schedule 2 PCR 15 (and is appended to this document).

This is now referred to as "Light Touch Regime". All other services will fall within the full force of the PCR 15 Regulations.

The threshold for services under the Light Touch Regime is £589,148 for the life of the contract. For these services, there are a number of mandatory requirements:

- OJEU advertising

- Publication of a Contract Notice, advertising the opportunity
- Publication of a Contract Award Notice, confirming the award

- Compliance with the Treaty principles of transparency and equal treatment

- Conduct the procurement in conformance with the information provided in the Contract Notice

- Time limits must be reasonable and proportionate

There is significant flexibility under the Light Touch Regime. The CCG's intention will be to mirror standard EU procurement procedures but will tailor these procedures where necessary.

This flexibility may be through the following aspects of the process:

- Timescales – shortened or lengthened as appropriate
- Use of Pre-Qualification Questionnaire
- Award Criteria i.e. empowerment of service users or innovation

We will be clear in the Contract Notice and any subsequent documentation as to the form of the procurement route and how responses will be evaluated. All procurement processes will continue to adhere to the principles of transparency, equitable access and proportionality. Information regarding those services which are not under the Light Touch Regime will be contained in a different section in this document.

✓ **CCG Standing Orders & Financial Instructions** which encompass the EU Directives and must be adhered to

✓ **NHS Monitor's Procurement, Patient Choice & Competition Regulations December 2013**

These are *"revised regulations put beyond doubt the Government's strong commitment that competition in the health service should always be used in the interests of patients."*

The changes to the Regulations make clear that:

- There is still no legal requirement to put all contracts out to competitive tender

- CCGs are able to offer a contract to a single Provider if it is possible to justify that there is only one Provider capable of delivering the services

- NHS Monitor cannot enforce Commissioners to competitively tender services

- Competition should not trump integration: CCGs are free to use integration where it is in the interest of patients

- CCGs still need to adhere to the Principles and Rules for Procurement, Patient Choice and Competition Regulations

Conditions regarding Single Provider Selection

"Where there is only one capable Provider for a particular bundle of services or the objective of the procurement is to secure services to meet an immediate interim clinical need there will be a case for Single Tender Action (i.e. uncontested procurement)"

Regulation 5 covers Commissioners awarding a contract where there is only one capable Provider. This definition could be based on patient needs, specific locations, improving quality or delivering services in an integrated way.

In order to determine whether there is one capable provider, we will undertake a desktop review and conduct a proportionate process to ascertain the viability of the most capable provider. This may entail obtaining expressions of intent from existing providers and conducting an evaluation of provider proposals, before selecting the most capable provider. It will only be carried out in specific circumstances as detailed in the Procurement, Patient Choice and Competition Regulations.

Equally, if Commissioners can justify that a service needs to maintain a case-load volume and certain case-mix to provide a safe and effective service; this could also be adequate justification for awarding a contract without competition.

Additional examples of one capable Provider are:

- Acute Hospital services on single sites and accessible 24/7
- Range of integrated services in the community
- Highly specialised care
- Services in more rural or remote areas

Conditions regarding Integration of Services

Commissioners have the right to decide whether, where and when to stimulate or create a market for services. There are no requirements to:

- Unbundle / fragment service to facilitate competition
- Offer contract terms to enable new Providers to enter a market i.e. return on investment

Regulation 10(1) allows for integration of services and co-operation between Providers if it is in patients' interests.

Conditions regarding Selection of Providers on Cost only

There is no requirement for Commissioners to select lower-cost Providers for an individual service over an integrated service.

Commissioners need to select "best value" i.e. combination of quality and price. The Regulations will not force Commissioners to select providers on lowest price alone.

Summary of Our Rules and Principles

(1) It is for the CCG to decide whether it should competitively tender Healthcare Services, but all procurement must comply with our Standing Orders & Financial Instructions, the EU Procurement Directives and follow guidance issued by NHS Monitor.

(2) The CCG's position is that all Healthcare Services we commission shall be open for competition unless we can justify very good reasons for not doing so.

(3) The CCG shall follow the procurement process adhering to 'Part A' Services when tendering for 'Part B' Services including Healthcare Services.

These shall minimise any risk to the CCG of a challenge to procurement processes, as we can demonstrate openness, transparency, fairness and good commercial practices:

Transparency: through the use of sufficient and adequate advertising, published CCG evaluation processes and ensuring that no Conflicts of Interest exist in the procurement and decision making process. Where decisions are made not to tender or open up services for competition, the reasons must be documented.

Equitability: all Providers / Sectors will have equal opportunity to compete where we decide to open up services for competition. All contracts will be adequately advertised, and all contracts **over £10,000** must be advertised on the 'Contracts Finder' website. Additionally, other media can be used such as the CCG website or other publications. Where appropriate, a Contract Notice shall be placed in the Official Journal of the European Union (OJEU). Where this is done, all other advertisements must be placed after the OJEU advertisement is sent for publication. All evaluation processes and checks, including for shortlisting and contract award, will be applied equitably. Pricing and payment mechanisms will be clear and fair.

Non-Discriminatory: the criteria for the selection of Bidders and award of contract will be clearly detailed and published to potential Providers. All Providers will be treated the same.

Proportionate: all procurement processes will be as simple as possible, and overly-bureaucratic processes will be avoided. The processes used will give consideration to the value of the service and complexity of the services being tendered.

Timescales: sufficient timescales will be allowed to enable Bidders to submit their Tender. This will depend again on the value and complexity of the contract and the type of the bidding organisations. As a general rule, where an EU advert notice is placed, the timescales detailed in the EU Procurement procedures should be broadly followed.

Stand-Still Procedure: where an OJEU advert is used, the CCG will follow the EU Directives (Alcatel Agreement) and allow a 10 day stand-still period between notification of a contract award and the actual contract award. Whilst this will not eliminate all risks of challenge, it is a way of minimising risk to the CCG. Whilst in the standstill period, no contract activity is to take place to allow for any challenges / requests for information to be resolved.

Contract: a signed contract and service specification must be in place before services commence. The contract must contain contract monitoring and performance management processes to ensure that contractual obligations are met and quality standards are met and improved. All contracts must follow the NHS Standard Contract.

Potential Conflicts of Interest: whatever method is used to commission, the CCG will ensure that there are no conflicts. These will all be declared and managed in accordance with our policy. Where a service is being commissioned that could be delivered by a GP, the procurement must be conducted in line with the *Code of Conduct: managing conflicts of interest where GP Practices are potential providers of CCG-commissioned services, July 2012*. This requires documentation to be completed prior to any procurement commencing. The CCG also defines that the potential for conflict of interests can occur throughout the procurement process.

(d) Procurement Options

There are a number of Procurement options available to the CCG. Which one is used, will be dependent on a number of factors including:

Contract Value: the higher the value, the greater the case is for competitive tendering.

Provider Market: the greater the number of Providers, the stronger the case for open competition. There may also be other CCGs who have recently tendered for equivalent services thus stimulating the market.

Single or Multiple Provider/s: dependent upon whether the needs of the population are best served by a single or multiple supplier arrangement. Multiple supplier options may lend themselves to Framework Agreements or Any Qualified Provider (AQP) arrangements.

Regulations: these include the CCG's Standing Financial Instructions & Standing Orders, EU Procurement Regulations and DH Guidance.

Government Policy on Protected Services: for key services that are significant and vital to the NHS – e.g. A&E, Intensive Care, Emergency Ambulance etc – these will automatically follow a Partnership Provider route and negotiation would take place directly with that Provider.

Jointly Funded Projects: competition may not be appropriate for jointly funded projects.

Patient Choice: which need to consider the results of patient consultation; and shall include where appropriate choice of Providers, models of care and location. Further details of how such consultation is carried out are contained within our Communication and Engagement Strategy that can be found on the CCG's website.

Patient Safety: if there is a genuine risk to patient safety by changing Provider, then the CCG can negotiate directly with the existing Provider of the services.

For any of the above factors, the following procurement options should be considered:

(i) Any Qualified Provider (AQP)

The CCG may use the AQP model when it considers that it has a sufficient market for meaningful competition and wishes to extend patient choice based on quality.
There is no volume commitment and no price negotiation. Contract terms will be set using the NHS Standard Contract.

From September 2012, some services were subject to mandatory AQP arrangements across the country. In East Staffordshire, these services were selected to be:

- Podiatry
- Adult Hearing
- Diagnostics Services

After September 2012, it is the jurisdiction of the CCG to determine whether an AQP arrangement is suitable for a healthcare service.

Under AQP, competition is generated by patient choice and not price. There are no guarantees regarding either volumes of business or payment under AQP arrangements. There are two processes that can be used:

Open Process: where proposals at an NHS Tariff price can be accepted by the CCG at any time if the Provider meets minimum standards of clinical care, and meets the regulatory standards as set out in the standard questionnaire.

Managed Process: where proposals at an NHS Tariff price can be accepted by the CCG at specified times during the contracting period; and again if the Provider meets minimum standards of clinical care and regulatory standards. This is the preferred process for AQP.
When considering AQP arrangements the CCG must act:

- Transparently – intentions are made known to the market place; both managed and open processes are advertised on the 'Contracts Finder' website; and advertising must be adequate for the type of service required.

- Proportionally – processes used are proportionate to the size, complexity and risk of the service being purchased.

- Equitably – do not distort competition: i.e. create monopoly situations or reduce choice.

(ii) Competitive Tendering

An increasing number of services will be subject to this in order to comply with the requirements of transparency, openness, equitability and obtaining / evidencing value for money. The types of procedure are described in the summary of the frequently used types of procurement section.

We can choose the following variations / approaches:

- Open Procedure
- Restricted Procedure
- Competitive Dialogue

Competition may be waived in limited circumstances such as (genuine) urgency, monopolistic rights or where only one Provider can provide the service for technical reasons or special exclusive rights.

In these circumstances the 'Single Tender Waiver' procedures set out in our Standing Orders & Standing Financial Instructions must be followed.

Where the CCG decides not to competitively tender for new services or where services are significantly changed, CCG Governing Body approval must be obtained to proceed.

(iii) Spot Purchasing (Pilots)

There will remain the need to spot-purchase for particular individual patient needs or for urgency of placement requirements at various times.

During these times, the usual competitive tender process can be waived.

It will be expected however that these contracts will undergo the same best value reviews and potential tendering over time to ensure that the CCG is receiving value out of the contract and the Provider is fit for purpose and signed up to the continuing improvement programme and same commitment in the same manner as other Providers.

This may also be referred to as a pilot *'Proof of Concept'* scheme for a major service re-design, prior to a formal competitive procurement process.

The CCG should agree the selected Pilot Provider and seek to mitigate any perceived advantage that this supplier may gain in the forthcoming tender by engaging with the Provider market early in the process, sharing outcomes and data from the pilot and potentially gathering comments from alternate Providers as to the viability of the Clinical Service Specification.

All new services or services that are subject to a redesign will be subject to an appropriate procurement process.

The type of process will be in line with the complexity, contract value and the length of the contract. In particular, when sourcing a Pilot Provider, this shall be done by advertising on 'Contracts Finder' and requesting and evaluating short service proposals.

Therefore, a minimum of six weeks needs to be built into the commissioning process to enable the CSU Procurement Team to carry out this revised process.

'Prior Information Notices' (PINs) will only be used for market testing purposes and not to source and engage Providers to deliver services.

In exceptional circumstances, the procurement process may be waived but this can only be done through securing agreement from CCG Directors. It is expected that this will only be in cases of genuine emergency and the use of this waiver will be reviewed regularly.

It is recommended that specialist procurement advice is sought before taking any such action.

(iv) Framework Agreements

The CCG is able to use other Public Sector organisations' Framework Agreements for non-healthcare services if a provision has been made in the Framework Agreement to allow this (that is by the holder of the Framework Agreement, such as the Crown Commercial Service[3]).

The EU rules for tendering state that Framework Agreements should be for no longer than four years in duration. Any contract awarded can run beyond the Framework Agreement period but the length of the contract extension must be reasonable.

Where allowed for in the Framework Agreements, an option for running mini-competitions may be available.

All Providers on the Framework Agreements who can meet requirements are invited to submit a bid. These are then evaluated using published evaluation criteria and business awarded following the same processes used for "conventional tenders".

(v) Grants

Public bodies must follow public procurement policy at all times. In certain circumstances, grants are payable to Third Sector organisations. However, there should be no preferential treatment for Third Sector organisations.

A Third Sector organisation describes a variety of organisations that are neither state nor private sector and includes voluntary and community organisations (e.g. registered charities, associations, self -help groups, social enterprises, co-operatives etc).

They are independent of Government, pursuing social, environmental and cultural objectives, and reinvest any surplus in pursuit of these objectives rather than in making a profit. Procurement will be undertaken in line with the principles outlined in the local Compact with the Voluntary and Community Sector Assembly.

Grants come in two forms:

Grant: payments to outside bodies where a department is required, or wishes, to maintain detailed control over the expenditure and where a procurement approach is not suitable.

Grant in Aid: a payment by a Government department (the "sponsor department") to finance all or part of the costs of the body in receipt of the grant in aid. Grant in aid is paid where the Government has decided, subject to Parliamentary controls, that the recipient body should operate at arm's length.

Use of grants can be considered where:

- Funding is provided for development or strategic purposes
- The Provider market is not well developed
- Innovative or experimental services
- Where funding is non-contestable (i.e. only one Provider)

Grants should not be used to avoid competition where it is appropriate for a formal procurement to be undertaken.

(vi) Prime Provider / Prime Contractor

This approach has advantages for Commissioners and potential Providers alike, due to the:

- Streamlined commissioning process it gives rise to;
- Direct alignment of contract requirements and performance measures;
- Clarity and simplicity of measuring and monitoring performance; and

[3] *Previously known as the Government Procurement Service*

- Ability to shape performance directly through KPIs and associated payment structures.

Funding Secondary Care through “Payment by Results” (PBR) for each activity of episodic care has often created, across an entire pathway, perverse incentives for individual Providers.

The development of the “Prime Provider” model provides both the Commissioner and Provider/s with an opportunity to develop different financial incentives across an entire patient pathway.

Prime Provider models can offer a budgeting system for procurement activities that is based on health gain (outcomes) rather than activity-driven determinants. This can offer benefits of delivering enhanced care for populations within a determined budget.

This has natural links to the ‘Programme Budgeting’ approach in the NHS. The difference being that the focus on commissioning changes from measuring activity or process (e.g. the delivery of a certain number of surgical procedures) to measuring health gain or outcomes of those.

The model requires the establishment of a clear and robust governance structure that defines the roles / responsibilities of the Prime and sub-contracted Providers in ensuring that the system of service provision is open and transparent. The Prime Provider is nominally accountable for:

- Delivering defined outcomes through monthly reporting;
- Regular evaluation of quality;
- Identification of variation across the entire pathway;
- Ensuring that choice is offered at all appropriate points in the pathway.

It therefore has a clear separation from the normal duties of the CCG as Commissioner, but is robustly responsible for the development of an approach with internal incentives that will fully meet the needs of Commissioners.

However this model is still subject to procurement requirements as outlined in the previous section.

(vii) Directed and Local Enhanced Services (DES / LES)

NHS England is responsible for the commissioning of Primary Care enhanced services commissioned via Directed Enhanced Services (DES). They have delegated to CCGs the authority to commission services as Local Enhanced Services (LESs), as part of their statutory responsibility for assisting the improvement of the quality of Primary Care.

Services will be commissioned using the NHS Standard Contract, updated annually in order to reflect the requirements of NHS planning (operating) frameworks.

However the procurement process is expected to remain the same as currently applies to other arrangements. That is, the CCG will need to provide justification for the tendering process; whether that is competitive procurement, AQP or Single Tender. Competition law will apply to contracts with a lifetime value of over £625,000 (from 18th April 2016).

For some services, GP Practices may be the most appropriate Provider. The CCG may make the decision to undertake a ‘Single Tender Action’ and offer the contract only to GP Practices, particularly where the contract is of limited value or where access to Practice databases prevents potential Providers from being able to provide the service without access.

The CCG will need to be able to justify the case that services can only be delivered by GP Practices, or may risk contravening procurement and competition rules by restricting competition.

(e) Contracting

CCGs shall utilise the prevailing Standard NHS Contract for all Healthcare Service Contracts.

(f) Stages in the Procurement Process

The procurement process used should reflect the market, value and complexity of the service being commissioned so that a proportionate procurement approach is applied.

The process will consist of some or all of the following stages:

Planning Stage: a review of the service need, specification and options available to procure the service will take place. When necessary, a Project Team will be set up and a Project Plan drawn up.

As part of the planning stage, each Project Member is required to complete a Potential Conflict of Interest form and a Confidentiality Declaration regarding the specific procurement process.

This is then assessed by the project's Procurement Lead and the Project Member is deemed to be either eligible to proceed in the evaluation process or is excluded from the process.

Furthermore, once expressions of interest have been received, the names of the Bidders are circulated to the Project Team and all project members are asked to confirm their ability to participate in the evaluation process.

Advertisement Stage: when required, an appropriate tender advertisement will be placed commensurate with the value and complexity and extent of the services being procured.

Opportunities that are selected for a competitive process must be sufficiently advertised to ensure fair competition. A contract notice must be published for all services above the threshold of £625,000 including a description of the services to be provided and the criteria against which the bids will be evaluated (i.e. Most Economically Advantageous Tender – MEAT, or lowest price).

Additional information including place of delivery, approximate value of the contract, duration of the contract and any pre-qualification criteria may be included.

Specification Stage: generic terms should be used when specifying the services required, avoiding brand names and other references which would have the effect of distorting competition. Specifications should be performance-based specifications linked to achieving KPIs to trigger payment of a proportion of the contract price.

Contract specifications for Healthcare Services must utilise the standard specification template as in the NHS Standard Contract.

The 'Invitation to Tender' (or ITT, which is a written document describing the CCG's requirements against which a Bidder submits an offer to deliver these) must include agreed evaluation criteria and weightings.

Where services are tendered, the Evaluation Criteria used must be published, and once published cannot be altered.

All appropriate interested parties should be involved in writing the specification and the results of consultation must be also considered. Do not underestimate the time required to prepare the service specification.

Bidder Selection Stage: when selecting potential bidders the process used must be open, transparent and fair. No sector of the market should be given an unfair advantage (including the current Provider if applicable).

For large high value complex contracts, a formal pre-qualification stage may be used to evaluate potential Providers' capabilities, capacity and financial standing. Prior knowledge of any Bidder cannot be considered when carrying out a tender evaluation.

All Bidders must declare any Potential Conflicts of Interest so that these can be dealt with to ensure a fair and impartial approach to any selection.

Offer Stage: this is where the potential Providers offer is made to provide the service including the price for providing those services. Where competition is waived or is not applicable this will be by direct negotiation with the Provider and once agreed a contract will be signed.

Where competition is being sought then an ITT should be issued. A sufficient number of Bidders should be invited to ensure adequate levels of competition taking in to account market conditions, complexity and contract value.

Offer Evaluation and Award Stage: the award of contract is on the basis of the Most Economically Advantageous Tender (MEAT) to the CCG as purchaser.

If not carried out correctly, the ITT evaluation can lead to a potential challenge to the CCG's decision making process. NHS Staffordshire and Lancashire CSU have developed appropriate and robust evaluation models that will be used when evaluating Bidder's responses.

Following the evaluation of bids (whether or not as a result competitive or non-competitive processes), the recommendations for award of contract must be carried out in accordance with the CCG's Standing Orders & Standing Financial Instructions.

Post-Award Stage: where the CCG has placed an OJEU advert, a 10 day stand-still (Alcatel) period will apply. Whilst not currently mandatory for 'Part B' Services, it will further demonstrate openness and transparency of our processes and help mitigate risk of any potential future legal challenge.

A signed contract will be entered into with the successful Provider/s using the NHS Standard Contract, and the Schedules populated with details from the winning bidder/s' ITT response. A 'Contract Award Notice' will then be placed via the e-tendering system to close the process.

A record of the contract award must be maintained in order to comply with Regulation 3(5) of the Procurement, Patient Choice & Competition Regulations. A template is included as Appendix 5. This record should contain the following information:

- *Reasons for procuring the service*
- *Details of engagement with patients, community groups, carers and other third parties*
- *Reasons for specifying the services in a particular way*
- *Rationale for procuring a number of different services as a bundle*
- *Analysis of service delivery that shows how it is co-ordinated from a patient's perspective and alongside other services*
- *Details of due diligence applied to the successful provider*
- *Rationale for key terms of the contract*
- *Reasons for the selected procurement route*
- *Rationale for award criteria and why successful provider was selected*
- *Details of any analysis carried out of other bidders*

Post-Contract Award Period: all awards are published following contract signature. A contract award notice will be created and will either be published immediately after contract signature, or in some circumstances these will be published on a quarterly basis. These notices are then available to the public on tenders electronic daily –

http://ted.europa.eu/TED/main/HomePage.do.

Prior to the contract award notice being published, the CCG will not be able to answer specific Freedom of Information requests relating to the award of the contract.

(g) Use of Information Technology

The use of technology and eProcurement will be used for all processes. This will ensure that we are fully compliant with the need to use eProcurement systems ahead of the implementation deadline of 18th October 2018 for all Public Sector bodies.

E–Tendering solutions provide a secure and efficient means for managing tendering activity, particularly for large complex procurements. They offer efficiencies to both buyers and sellers by reducing time and costs. An added advantage is the use of electronic documents enables easy transfer of information and helps contribute to the environment by reducing paper.

The “Bravo Solutions” e-tendering system is currently being used for all procurements. All projects shall be able to access the “AWARD” evaluation system for online evaluating of responses. This will be agreed with the Procurement Lead at the onset of each project.

All responses are sealed until the closing deadline has been exceeded and then the Procurement lead will open the responses and carry out initial compliance checks. The Bravo system is fully auditable and supports a robust procurement process.

(h) ‘Contracts Finder’

The EU Procurement Directives, implemented into UK Law by the Public Contracts Regulations 2006, apply to the award of contracts by Public Bodies.

The CCG should also comply with Cabinet Office policy and guidance by publishing all of our tender opportunities and contract awards (including the total contract value) over £10,000 on ‘Contracts Finder’.

All contract award details are completed on the Contracts Finder website. These activities are carried out by the CSU Procurement Team at the end of a project, typically once the contract has been signed.

(i) Transfer of Undertakings & Protection of Employment Regulations (TUPE)

These Regulations arose as a consequence of the 1977 EU Acquired Rights Directive and were updated in 2006. They apply when there are transfers of staff from one legal entity to another as a consequence of a change in employer: e.g. they may apply if an in-house service is contracted out to another organisation.

This is a complex area of law which is continually evolving as a result of case law. The CCG needs to be aware of these and the need to engage HR support (possibly legal support) if there is a possibility that TUPE may apply.

Additionally, NHS Bodies must follow Government guidance contained within the *“Cabinet Office Statement of Practice 2000/72 and associated Code of Practice 2004 when transferring staff to the Private Sector”*.

Adequate time must therefore be allowed in tender timetables for staff consultation where transfer of staff is a possibility.

(j) Ethical and Sustainable Procurement

The CCG and our Governing Body is accountable for all actions and decisions in carrying out our statutory functions.

We are responsible for securing services to meet the needs of our population and delivering value for money. We are also responsible for ensuring compliance with procurement law and for satisfying the obligations of transparency and non-discrimination.

Appropriate governance arrangements set out in this Strategy will enable the CCG and Governing Body to discharge our responsibilities and ensure that all procurement decisions are made with due authority, including where necessary, with approval of NHS England.

Our wider Governance arrangements are set out in the CCG's Constitution (in the Standing Orders, Standing Financial Instructions, Schemes of Delegation and reporting structures).

Ethical Procurement

The CCG can have a significant impact on the Local Health Economy by helping reduce health inequalities and improving the well-being of the community we serve. This will be achieved by commissioning services that are appropriate and are sourced from Providers best placed to provide those services.

When making purchasing decisions, we need to consider the opportunities for any additional social, economic or environmental benefit that we can bring to the community whilst working within the current procurement rules and principles[4].

It is the intention of the CCG to develop and utilise local Providers wherever possible, taking due notice of procurement rules and regulations. The location of services will be considered. For example, a very specific localised service may best provided by a local Provider.

To assist the development of Providers we may hold Provider Development workshops to inform them about our Commissioning Intentions, and to provide help and guidance on our procurement processes. It should be noted that all Providers, both current and potential, shall be invited to these, as all Providers must be treated equally.

Sustainable Procurement

"The 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"
[UK Government Sustainable Procurement Action Plan, March 2007]

Sustainable development matters will apply to CCG procurements. The four key domains are:

- ✓ ***Responsibility:*** procuring from legal and sustainable sources; minimising pollution and adverse impacts on the environment, individuals or communities; promoting transparency; and limiting the scope for unethical conduct.
- ✓ ***Opportunity:*** promoting standards and rights; not restricting opportunity as a result of procurement processes or practices; promoting equitable working relationships through the supply chain; and engaging with a diverse supply base.
- ✓ ***Innovation:*** stimulating innovative and sustainable solutions within evidence-based practice.
- ✓ ***Efficiency:*** developing business cases that consider alternative solutions to deliver required outcomes; driving efficiency through the supply chain; and upholding minimum contracting arrangements.

Our Sustainable Development and Management Plan (SDMP) recommends that routine procurement evaluation criteria in competitive tendering processes consider the application – on a proportionate basis, in line with earlier principles – of the "Good Corporate Citizen Assessment Model" (GGACM).

This will be used to ensure that Providers embrace sustainable development, tackle health inequalities and reference low carbon operations through their day-to-day activities.

[4] *http://www.socialenterprise.org.uk/news/new-guide-the-public-services-social-value-act*

As part of other, agreed SDMP requirements for sustainable procurement, it will also be necessary to include in-built sustainability criteria within our Clinical Service Specifications. These will consider 'whole-life' elements of procurement considerations, such as supplies costs, in order to minimise wastage.

There will also be the routine application by the CCG of associated contractual levers relating to sustainable development and procurement.

This will ensure that all Providers who have been awarded a contract through our procurement processes adhere to their own sustainable development obligations, especially in key areas such as energy, waste, water and transport.

NHS Monitor

NHS Monitor replaces the former Competition & Co-operation Panel, and acts as *"an expert health-sector regulator with an overarching statutory duty to protect and promote patients' interest to enforce the regulations"*.

It allows for another route for challenge to poor procurement processes without going through the Courts. NHS Monitor is also required to ensure that:

- The safety of people who use health services is maintained
- Continuous improvement in services is secured
- Providers co-operate with each other in order to improve the quality of services
- Ensuring that Commissioners allow people to have access to the services that they need and make best use of resources when doing so

NHS Monitor can open an investigation under the Procurement, Patient Choice & Competition Regulations in two circumstances:

- ✓ On its own imitative for investigations into breaches of the prohibition of anti-competitive conduct (Regulation 10)

- ✓ In response to a complaint that a Commissioner has breached a requirement in Regulations 2 to 12, or by Regulations 39,42 or 43 of the Responsibilities & Standing Rules Regulations where it is considered that the complainant has a sufficient interest

NHS Monitor will prioritise cases and carry out investigations. There is no specific time period within which NHS Monitor must complete an investigation. This will depend on:

- Urgency for the issue to be resolved
- Complexity of the issue
- How much relevant information is available

NHS Monitor may close a case without further action, and without providing a reason for doing so. NHS Monitor can also declare through the issue of a 'Notice of Intent' that an arrangement for the provision of healthcare services for the NHS is ineffective where:

- They are satisfied that a Commissioner has breached a requirement in Regulation 2, 3(1) to (4), 4(2) and (3), 5 to 8 or 10(1) of the Procurement, Patient Choice & Competition Regulations

- The breach is sufficiently serious

NHS Monitor can also take enforcement measures to deter further breaches by the Commissioner. This will be based on:

- Whether the breach was known to the Commissioner
- How much the Commissioner has gained from the breach (financial & reputational benefits);
- If the Commissioner notified Monitor itself, has taken voluntary steps to remedy the breach, co-operated with the investigation
- Whether the breach represents part of a pattern of non-compliance

- Whether any third parties are taking relevant action in relation to the same conduct

A third party is defined as:

- ✓ Providers
- ✓ Other Commissioners
- ✓ Users of healthcare services (including individual patients)
- ✓ Patient groups

NHS Monitor cannot direct a Commissioner to hold a Competitive Tender. It shall oversee compliance with the Regulations only. NHS Monitor is also not able to investigate a complaint where the person bringing the complaint has brought an action under the Public Contracts Regulations 2015.

Further information as to the role of NHS Monitor can be found in the Enforcement guidance on the Procurement, Patient Choice & Competition Regulations, December 2013; and Substantive guidance on the Procurement, Patient Choice & Competition Regulations, December 2013.

Summary of Frequently Used Types of Procurement Procedures

Open Procedure

2-stage process: expressions of interest & invitation to tender stages
Used when = limited market activity; time constraints
Timeline = 4 to 6 months

Restricted Procedure

3-stage process: expressions of interest, pre-qualification questionnaire & invitation to tender stages
Used when = wider market activity; additional time to complete specification; requirement to short-list
Timeline = 6 to 9 months

AQP Model

2-stage process: expressions of interest & accreditation stage (through pre-qualification questionnaire)
Used when = need to expand patient choice / when mandated to implement nationally
Timeline = 3 to 4 months

Single Stage Tender

2-stage process: expressions of interest & invitation to tender stages
Used when = low value (below threshold); active market
Timeline = 2 to 4 months

Competitive Dialogue

4-stage process: expressions of interest, pre-qualification questionnaire, dialogue stage & final tender
Used when = no clear idea of service specification; no time constraints
Timeline = 12 to 18 months

Mini-Competition

1-stage process: invitation to quote stage
Used when = 'Part A' services; included on a national Framework Agreement (has already been procured through an OJEU compliant process)

Appendices

Appendix 1: EU Procurement Regulations (2006)

EU Procurement Regulations.pdf

Appendix 2: Guide to the Public Services Social Value Act (2012)

Public Services Social Value Act 2012 Summ

Appendix 3: Local Competition Dispute Policy and Process

ESCCG Local Competition Dispute F

Appendix 4: Midlands & Lancs CSU Operational Procurement Guide for CCGs

S&LCSU Operational Procurement Guide.d

Appendix 5: Midlands & Lancs CSU Contract Award Report template for CCGs

CCG Contract Award Report (blank).docx

Appendix 6: Midlands & Lancs CSU / CCG Procurement Initiation Document (PID)

CSU Procurement Project Initiation Docu

Appendix 7: Midlands & Lancs CSU / CCG Procurement Moderation Process

CSU Procurement Moderation Process f

Appendix 8: List of Services covered by the Light Touch Regime

SCHEDULE 3 of the Public Contracts Regulations 2015

Regulations 5(1) (d) and 74

SOCIAL AND OTHER SPECIFIC SERVICES CPV Code	Description
75200000-8; 75231200-6; 75231240-8; 79611000-0; 79622000-0 (Supply services of domestic help personnel); 79624000-4 (Supply services of nursing personnel) and 79625000-1 (Supply services of medical personnel) from 85000000-9 to 85323000-9; 98133100-5, 98133000-4; 98200000-5; 98500000-8 (Private households with employed persons) and 98513000-2 to 98514000-9 (Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services)	Health, social and related services
85321000-5 and 85322000-2, 75000000-6	Administrative social, educational, healthcare
(Administration, defence and social security	and cultural services
services), 75121000-0, 75122000-7, 75124000	
1; from 79995000-5 to 79995200-7; from	
80000000-4 Education and training services to	
80660000-8; from 92000000-1 to 92700000-8;	
79950000-8 (Exhibition, fair and congress	
organisation services), 79951000-5 (Seminar	
organisation services), 79952000-2 (Event	
services), 79952100-3 (Cultural event	
organisation services), 79953000-9 (Festival	
organisation services), 79954000-6 (Party	
organisation services), 79955000-3 (Fashion	
shows organisation services), 79956000-0 (Fair	
and exhibition organisation services)	
75300000-9	Compulsory social security services
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services
98000000-3; 98120000-0; 98132000-7;	Other community, social and personal services
98133110-8 and 98130000-3	including services furnished by trade unions, political organisations, youth associations and other membership organisation services
98131000-0	Religious services
55100000-1 to 55410000-7; 55521000-8 to 55521200-0 (55521000-8 Catering services for private households, 55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service) 55520000-1 Catering services, 55522000-5 Catering services for transport enterprises, 55523000-2 Catering services for other enterprises or other institutions, 55524000-9 School catering services 55510000-8 Canteen services, 55511000-5 Canteen and other restricted-clientele cafeteria services, 55512000-2 Canteen management services, 55523100-3 School-meal services	Hotel and restaurant services
79100000-5 to 79140000-7; 75231100-5;	Legal services, to the extent not excluded by regulation 10(1)(d)
75100000-7 to 75120000-3; 75123000-4; 75125000-8 to 75131000-3	Other administrative services and government services
75200000-8 to 75231000-4	Provision of services to the community
75231210-9 to75231230-5; 75240000-0 to75252000-7; 794300000-7; 98113100-9	Prison related services, public security and rescue services to the extent not excluded by regulation 10(1)(h)
79700000-1 to 79721000-4 (Investigation and security services, Security services, Alarm-monitoring services, Guard services, Surveillance services, Tracing system services, Absconder-tracing services, Patrol services, Identification badge release services, Investigation services and Detective agency services) 79722000-1(Graphology services), 79723000-8 (Waste analysis services)	Investigation and security services
98900000-2 (Services provided by extraterritorial organisations and bodies) and 98910000-5 (Services specific to international organisations and bodies)	International services

64000000-6 (Postal and telecommunications services), 64100000-7 (Post and courier services), 64110000-0 (Postal services), 64111000-7 (Postal services related to newspapers and periodicals), 64112000-4 (Postal services related to letters), 64113000-1 (Postal services related to parcels), 64114000-8 (Post office counter services), 64115000-5 (Mailbox rental), 64116000-2 (Post-restante services), 64122000-7 (Internal office mail and messenger services)	Postal services
50116510-9 (Tyre-remoulding services), 71550000-8 (Blacksmith services)	Miscellaneous services

Appendix 9: ESCCG Tendering and Contracting Procedure

The following principles have been extracted from the CCG's Constitution (the appendix covering our 'Prime Financial Policies').

POLICY – the CCG:

- will ensure proper competition that is legally compliant within all purchasing to ensure we incur only budgeted, approved and necessary spending;
- will seek value for money for all goods and services;
- shall ensure that competitive tenders are invited for:
  - the supply of goods, materials and manufactured articles;
  - the rendering of services including all forms of management consultancy services (other than specialised services sought from or provided by the Department of Health); and
  - for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens) for disposals

1.1. The CCG shall ensure that the firms / individuals invited to tender (and where appropriate, quote) are among those on approved lists or where necessary a framework agreement. Where in the opinion of the Chief Finance Officer (CFO) it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing.

1.2. The Governing Body may only negotiate contracts on behalf of the CCG, and the CCG may only enter into contracts within the statutory framework set up by the 2006 Act, as amended by the 2012 Act. Such contracts shall comply with:

a) The CCG's Standing Orders;

b) The Public Contracts Regulation 2006, any successor legislation and any other applicable law; and

c) Take into account as appropriate any applicable NHSCB or the Independent Regulator of NHS Foundation Trusts (Monitor) guidance that does not conflict with (b) above.

1.3. In all contracts entered into, the CCG shall endeavour to obtain best value for money. The Accountable Officer (AO) shall nominate an individual who shall oversee and manage each contract on behalf of the CCG.

1.4. Quotations: Competitive and Non-Competitive

General Position on Quotations

Quotations are required where formal tendering procedures are not adopted and where the intended expenditure or income exceeds, or is reasonably expected to exceed £10000 (this figure will be reviewed periodically).

Competitive Quotations

a) Where quotations are required under CCG Prime Financial Policies, and the intended expenditure or income does not exceed, or is reasonably expected not to exceed £24999, they should be obtained from at least two firms / individuals based on specifications or terms of reference prepared by, or on behalf of, the CCG. Where the intended expenditure or income exceeds this threshold, or is reasonably expected to exceed it, at least 3 quotations should be obtained, subject to the threshold for formal tendering in CCG Prime Financial Policies.

b) Quotations should be in writing unless it is impractical to do so in which case they may be obtained by telephone or electronically. Confirmation of these quotations should be obtained in writing without delay, and the reasons why the non-written quotation was obtained should be set out in a permanent record.

c) All quotations should be treated as confidential and should be retained for inspection.

d) Quotations should be evaluated and the one selected should provide the best value for money. If this is not the lowest quotation, then the choice made and the reasons why should be recorded in a permanent record, and pre-approved by the CFO.

Non-Competitive Quotations

Non-competitive quotations in writing (i.e. from a limited range of Providers) may be obtained in the following circumstances:

a) The supply of proprietary or other goods of a special character and the rendering of services of a special character, for which it is not possible or desirable to obtain competitive quotations;

b) The supply of goods or manufactured articles of any kind which are required quickly and are not obtainable under existing contracts;

c) Where the goods or services are for building / engineering maintenance, the responsible works manager must certify that the conditions of CCG Standing Financial Instructions apply.

Quotations to be within Financial Limits

No quotation shall be accepted which will commit expenditure in excess of that which has been allocated by the CCG and which is not in accordance with Prime Financial Policies except with the authorisation of the CFO.

1.5. Formal Competitive Tendering

General applicability - the CCG shall ensure that competitive tenders are invited for:

- The supply of goods, materials and manufactured articles;
- The rendering of services including all forms of Management Consultancy services (other than specialised services sought from or provided by the Dept of Health); for special arrangements governing the engagement of Management Consultants
- For the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens);

Healthcare Services

Where the CCG elects to invite tenders for the supply of healthcare services, these Prime Financial Policies shall apply as far as they are applicable to the tendering procedure, and need to be read in conjunction with the Prime Financial Policies covering commissioning.

Exceptions and instances where formal tendering procedures **need not be applied** where:

a) The value does not exceed the non-Light Touch Regime threshold of £164,176 (as a sub-central Contracting Authority). For those procurements where the CCG does not use an approved framework, and the contract value is over this threshold, the CCG will conduct a full procurement process in line with the Public Contracts Regulations 2015

b) Where the supply is proposed under special arrangements negotiated by the Dept of Health, in which event the said special arrangements must be complied with.

Formal tendering procedures **may be waived** in the following circumstances:

a) In exceptional circumstances where the AO decides that formal tendering procedures would not be practicable or the estimated expenditure / income would not warrant formal tendering procedures, and the circumstances are detailed in an appropriate CCG record:

- Where the requirement is covered by an existing contract;
- Where National Framework Agreements exist – a mini competition may be required;
- Where a consortium arrangement is in place, and a lead organisation has been appointed to carry out tendering activity on behalf of the consortium members; and where the timescale

genuinely precludes competitive tendering, but failure to plan the work properly would not be regarded as a justification for a Single Tender Action;

- Where specialist expertise is required and is available from only one source;

- When the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate;

- There is a clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of continuity must outweigh any potential financial advantage to be gained by competitive tendering;

- For the provision of legal advice and services providing that any legal firm or partnership commissioned by the Trust is regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council or England and Wales in relation to the obtaining of Counsel's opinion) and is generally recognised as having sufficient expertise in the area of work for which they are commissioned. The CFO shall ensure that any fees paid are reasonable and within commonly accepted rates for the costing of such work;

- In respect of any procurement undertaken by a collaborative procurement hub (or similar) on behalf of the CCG – a single tender limit of £90000 applies for the life of the contract.

The waiving of competitive quotations or tendering procedures must not be used to avoid competition nor for administrative convenience, nor simply to award further work to a consultant originally appointed through a competitive procedure.

Where it is decided that competitive quotations or tendering is not applicable and may be waived, the fact of the waiver / the reasons should be documented and recorded in an appropriate CCG record (Single Tender Action) which must receive prior authorisation from the AO or CFO. All Single Tender Actions shall be reported to the Audit Committee.

It is recommended that Procurement guidance is sought from the CSU prior to agreeing this.

1.6. Fair and Adequate Competition

Where the exceptions set out above apply, the CCG shall ensure that Invitations to Tender (ITTs) are sent to sufficient number of firms / individuals to provide fair and adequate competition as appropriate, having regard to their capacity to supply the goods or materials or to undertake the services or works required, and in no case shall be less than two.

List of Approved Firms

The CCG will generally utilise Prior Information Notices (PINs) to test the market, rather than use Approved Lists, as procurement best practice would urge that this form of market engagement is used instead to uphold the requirements of competition law.

1.7. Tendering and Contracting Procedure

Where the function of contracting on behalf of the CCG is delegated or subcontracted to any other person, body, or organisation, then such a delegate or subcontractor shall observe the CCG's tendering procedure.

The CCG will routinely use CSU support to carry out any of its tendering requirements, regardless of thresholds involved where these relate to health care services. For non-health services, there are other arrangements in place via the CSU.

Invitation to Tender (ITT)

a) All ITTs shall state the date and time as being the latest time for the receipt of tenders;

b) All ITTs (small or large) shall be put through the "Bravo" portal, by the CSU acting on the CCG's behalf;

c) Every tender for goods, materials, services or disposals shall embody such of the NHS Standard Contract Conditions as are applicable. Every Tenderer must give a written undertaking not to engage in collusive tendering or other restrictive practice.

d) Formal competitive tenders shall be addressed to the AO or the CSU as nominated manager. The CSU will be responsible for the receipt, endorsement and safe custody of tenders received until the time appointed for their opening. The date and time of receipt of each tender shall be endorsed.

Register of Tenders

a) As soon as practicable after the date and time stated as being the latest time for the receipt of tenders, they shall be opened by the CSU and not from the originating department:

b) The 'originating department' will be taken to mean the department sponsoring or commissioning the tender;

c) A register shall be maintained by the CSU to show for each set of competitive tender invitations despatched:

- names of all firms / individuals invited and from which tenders have been received
- date and time the tenders were opened
- persons present at the opening
- price shown on each tender

The register shall be signed by those present at the opening. A note shall be made where price alterations have been made on the tender. Every price alteration appearing on a tender and the record should be initialled by those present. A note shall be made in the register if any one tender price has had so many alterations that it cannot be readily read or understood.

d) *'Qualified Tenders'*, i.e. where a contractor proposes conditions which differ from those specified by the CCG; or *'Incomplete Tenders'*, i.e. those from which information necessary for the adjudication of the tender is missing; and *'Amended Tenders'*, i.e. those amended by the Tenderer upon their own initiative either orally or in writing after the due time for receipt, but prior to the opening of other tenders, should be dealt with in the same way as late tenders.

Admissibility

a) If for any reason the designated officers are of the opinion that the tenders received are not strictly competitive (e.g. because their numbers are insufficient or any are amended, incomplete or qualified) no contract shall be awarded without the approval of the AO;

b) Where only one tender is sought and/or received, the CFO shall be advised and, as far practicable, shall ensure that the price to be paid is fair and reasonable and will ensure value for money for the CCG;

c) Where examination of tenders reveals errors which would affect the tender price, the tenderer is to be given details of the errors and afforded the opportunity of confirming or withdrawing the offer.

Late Tenders

a) Tenders received after the due time and date, but prior to the opening of the other tenders, may be considered only if the AO decides that there are clear exceptional circumstances: i.e. despatched in good time, but delayed through no fault of the Tenderer;

b) Only in the most exceptional circumstances will a tender be considered which is received after the opening of the other tenders, and only then if the tenders that have been duly opened have not left the custody of the AO or their nominated officer or if the process of evaluation and adjudication has not started;

c) Such tenders may be considered only if the AO or their nominated officer decides that there are exceptional circumstances, e.g. where significant financial, technical or delivery advantages would accrue, and is satisfied that there is no reason to doubt the bona fides of the tender concerned. The AO or nominated officer shall decide whether such tenders are admissible or whether re-tendering is desirable. Re-tendering may be limited to those tenders reasonably in the field of consideration in the original competition;

d) While decisions as to the admissibility of late, incomplete or amended tenders are under consideration and while re-tenders are being obtained, the tender documents shall be kept strictly confidential, recorded, and held in safe custody by the AO or nominated officer.

Acceptance of Formal Tenders

a) Any discussions with a Tenderer which are deemed necessary to clarify technical aspects of their tender before the award of a contract will not disqualify the tender. Information provided by a Tenderer under these circumstances shall not be acted upon by the CCG until it has been confirmed in writing by the Tenderer;

b) Most Economically Advantageous Tender (MEAT) shall be the criteria for award. The CCG will normally set evaluation criteria, which would be published to all bidders. It is accepted that for professional services such as Management Consultancy, the lowest price does not always represent the best value for money. Other factors affecting the success of a project include:

- Experience and qualifications of team members
- Understanding of client's needs
- Feasibility and credibility of proposed approach
- Ability to complete the project on time

Where other factors are taken into account in selecting a Tenderer, these must be clearly recorded, and the reason(s) for not accepting the lowest tender clearly stated. Acceptance under such circumstances for contracts of any value will require AO or CFO endorsement.

c) No tender shall be accepted which will commit expenditure in excess of that which has been allocated by the CCG and which is not in accordance with the CCG Prime Financial Policies, except with the authorisation of the AO;

d) The use of these procedures must demonstrate that the award of the contract:

- Was not in excess of the going market rate / price current at the time of award
- Achieved the best value for money
- All tenders shall be treated as confidential and shall be retained for inspection.

Tender Reports to the Governing Body

Reports to the Governing Body will be made in exceptional circumstances only.

Financial Standing and Technical Competence of Contractors

The CFO may make or institute any enquiries they deem appropriate concerning the financial standing and financial suitability of approved contractors.

Authorisation of Tenders and Competitive Quotations

Providing all the conditions and circumstances set out in CCG Prime Financial Policies have been fully complied with, and the intended expenditures or income falls within the relevant budget, formal authorisation and awarding of a contract may be decided by the following officers or staff to the gross value (including VAT only if not recoverable).

Budget Holder	**Expenditure (up to)**
Designated budget holders	£25000
Locality General Managers	£50000
Governing Body Execs + Chair / Deputy	£75000
Accountable Officer	£250000
Governing Body	(above) £250000

These levels of authorisation will be reviewed periodically, and may be varied by the Governing Body at any time.

They need to be read in conjunction with the CCG's Scheme of Delegation and Authorised Signatory List. Signing and, where appropriate, sealing of contracts and other documents shall be in accordance with the section in the CCG's Standing Orders.

Instances where Formal Competitive Tendering and Competitive Quotation is not required

Where competitive tendering or a competitive quotation is not required, the CCG shall use National Frameworks (such as the Government Procurement Service) for the procurement of all goods and services unless the AO or CFO deems it inappropriate – in which case the CFO shall determine an alternative procurement process. The decision to use alternative sources must be documented and reported to the Audit Committee.

Compliance Requirements for All Contracts

The Governing Body may only enter into contracts on behalf of the CCG within the statutory powers delegated to it by the Secretary of State and shall comply with:

a) East Staffordshire CCG's Constitution and Prime Financial Policies;

b) All relevant EU Directives and other statutory provisions;

c) Any relevant directions including the Capital Investment Manual, specific DH guidance and guidance on the Procurement and Management of Consultants;

d) Such of the NHS Standard Contract Conditions as are applicable;

e) Contracts with Foundation Trusts must be in a form compliant with appropriate NHS guidance;

f) Where appropriate contracts shall be in or embody the same terms and conditions as was the basis on which tenders or quotations were invited;

g) In all contracts made by the CCG, the Governing Body shall endeavour to obtain best value for money by use of all systems in place. The Accountable Officer shall nominate an officer who shall oversee and manage each contract on behalf of the CCG.

Adoption of the Tendering Process Conducted by another Organisation

The CCG may, on the express approval of the AO or the CFO, adopt the tendering process of another organisation, provided that organisation is either an:

a) SHA, Special HA, CCG, FT or other NHS Trust, CSU; or

b) LIFT company;

c) A partner organisation where the basis of partnership is a Section 75 agreement and provided specifically that:

d) Such process has not proceeded to contract stage; and

e) The process would satisfy the CCG's own Constitution and Prime Financial Policies with regard to procedure and competition; and

f) CCG authorisation limits (acceptance of tenders / letting of contracts) are observed

In all such instances, the Governing Body shall be informed by formal report at its next scheduled meeting.

Personnel and Interim, Agency and Temporary Staff Contracts

The AO shall nominate officers with delegated authority to enter into contracts of employment, regarding staff, interim, agency staff or temporary staff service contracts.

Appendix 10: References

- ***Procurement Guide for Commissioners of NHS-Funded Services***, Dept of Health – System Management & New Enterprise Division, July 2010, Gateway Ref 14611

- ***Testing New Commissioning Models: a guide to help policy makers learn about publicly-funded markets***, Institute for Government (Blatchford & Cash), 2012

- ***Procurement of Healthcare (Clinical) Services: introduction - why do CCGs need to understand procurement***, NHS Commissioning Board Commissioning Development Directorate, September 2012

- ***Procurement of Healthcare (Clinical) Services: briefing 1 - how does procurement fit with the different stages of commissioning***, NHS Commissioning Board Commissioning Development Directorate, September 2012

- ***Procurement of Healthcare (Clinical) Services: briefing 2 – what are the procurement options***, NHS Commissioning Board Commissioning Development Directorate, September 2012

- ***Procurement of Healthcare (Clinical) Services: briefing 3 – which rules apply to a procurement process***, NHS Commissioning Board Commissioning Development Directorate, September 2012

- ***Procurement of Healthcare (Clinical) Services: briefing 4 - how should a procurement process be conducted***, NHS Commissioning Board Commissioning Development Directorate, September 2012

- ***Procurement of Healthcare (Clinical) Services: briefing 5 – summary of the decision making process***, NHS Commissioning Board Commissioning Development Directorate, September 2012

- ***Procurement Matters: a best practice procurement diagnostic***, NHS Confederation Foundation Trust Network, 2011, Gateway Ref 15564

- ***Sustainable Procurement Policy: a best practice procurement diagnostic***, Dept of Health Procurement Centre of Expertise, May 2010

- ***Procurement Law and Policy: the basics for GPs***, BMA GPC guidance, August 2012

- ***The NHS Procurement, Patient Choice and Competition Regulations 2013***, Statutory Instruments No. 257 & 500 and NHS Monitor guidance

- ***East Staffs CCG Procurement Policy (original version approved August 2013)***

- ***Midlands & Lancashire CSU Procurement Policy (version approved May 2014)***

- ***Crown Commercial Service The Public Contracts Regulations 2015 – guidance on the new light touch regime for health, social, education and certain other service contracts***

Appendix 11: Equality Impact Assessment

Piece of work assessed:	East Staffs CCG Procurement Strategy		
Aims of this piece of work:	To document the essential components of the CCG's legal and policy requirements regarding procurements		
Name of lead person:	Paul Winter	Other partners / stakeholders involved:	Member Practices; CSU
Date of assessment:	23.06.2014		
Who is intended to benefit from this piece of work?	The Members & Staff of the CCG, its Stakeholders and the whole local population		

Single Equality Scheme Strands	Baseline data and research on the population that this piece of work will affect: what is available; what does it show; are there any gaps? Use both quantitative & qualitative research, user data & consultation with users if available	Is there likely to be a differential impact? Yes or No
Gender Reassignment Race, Religion or Belief Disability Sex and Sexual Orientation Age Marriage & Civil Partnership Pregnancy & Maternity	The principles and associated policies or procedures set out in the Strategy will meet the CCG's Public Sector Equality Duty, as guided by the core requirements of the Equality Act 2010 and the NHS Constitution. All legal or policy requirements contained are statutory requirements, and by definition aim to cover all Protected Characteristic Groups. They are therefore not expected to have any negative impact on the promotion of equality as a consequence of designing and implementing these processes. This includes the subsequent implementation of any practices, operational activities of the CCG or any clinical / managerial interventions (on defined issues), as set out by the main body text of the document. These determine the need to recognise that any service procurements may result in some groups being disproportionately affected. However this is dependent on whether users potential users of the service in question fall within specified protected characteristics.	NO
Human Rights	Will this piece of work impact on anyone's human rights?	NO

Equality Analysis Action Plan

Strand	Issue	Action required	How will you measure the impact / outcome?	Timescale	Lead
n/a	n/a	n/a	n/a	n/a	n/a