NHS Airedale, Wharfedale and Craven Clinical Commissioning Group

NHS Bradford City Clinical Commissioning Group

NHS Bradford Districts Clinical Commissioning Group

NHS Airedale, Wharfedale and Craven CCG

NHS Bradford City CCG

NHS Bradford District CCG

Procurement Policy 2017

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Contents

1. Introduction

This policy has been created to cover the procurement requirements for three Clinical Commissioning Groups, namely NHS Airedale, Wharfedale and Craven CCG, NHS Bradford City CCG and NHS Bradford Districts CCG (collectively referred to throughout this document as the Authority). Each CCG remains a statutory body, and independent Contracting Authorities, for the purposes of UK/EU procurement law.

Procurement is central to driving quality and value. It describes a whole life-cycle process of acquisition of goods, works and services; it starts with identification of needs and ends with the end of a contract or the end of useful life of an asset, including performance management. Procurement encompasses everything from repeat, low-value orders, through to complex healthcare service solutions developed through partnership arrangements.

There are a range of procurement approaches available which include working with existing providers, low-value Requests For Quotations (RFQ), Framework Agreement Mini-competitions and a variety of competitive tender options. These procurement approaches can result in contracts such as multi-provider models (e.g. Any Qualified Provider (AQP) and Framework Agreements) Alliance Contracting, Prime/Lead Provider and Partnership Arrangements.

The Authority's approach to procurement is to operate within legal, national guidance/policy frameworks, and to actively use procurement as one of the system management tools available to strengthen commissioning outcomes. The Authority is committed in ensuring its approach to procurement is compliant with prevailing procurement regulations and guidance and abides by the EU treaty principles:

- equality of treatment,
- transparency,
- mutual recognition,
- proportionality,

Procurement will be used to support clinical priorities, health and well-being outcomes and wider Authority objectives.

It will do this through:

- Ensuring providers work in an integrated approach where this is in the best interests of the patients,
- Increasing general market capacity in order to meet the Authority's demand requirements when required,
- Using procurement as a lever to facilitate improvement in choice, quality, efficiency, access and responsiveness,
- Stimulating innovation,

2. Associated Policies and Procedures

This policy and any procedures derived from it should be read in accordance with the following policies, procedures, plans and guidance for each Authority:

- Bradford District and Craven Sustainability and Transformation Plan,
- Each Authority's Constitutions,
- Each Authority's Code of Business Conducts,
- Each Authority's Standing Orders,
- Each Authority's Prime Financial Policies,
- Each Authority's Procurement Strategy,
- Each Authority's Conflict of Interest Policy,
- Bradford District and North Yorkshire Health and Wellbeing Strategies,
- Joint Strategic Needs Assessments for Bradford and North Yorkshire

3. Relevant Legislation and Guidance

Procurement is governed by, and evolves through, EU and UK legislation, policies and principles:

- National Health Service Act (2006)[1],
- The NHS (Clinical Commissioning Group) Regulation 2012 no. 1631, June 2012[2],
- Securing best value for NHS patients, August (2012)[3],
- Procurement briefings for Clinical Commissioning Groups, September 2012[4],
- Procurement Guide for commissioners of NHS-funded services, July 2012[5],
- Health and Social Care Act (2012)[6],
- The National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations (2013)[7],
- Monitor's Substantive guidance on the Procurement, Patient Choice and Competition Regulations (2014)[8],
- The Public Contracts Regulations (2015)[9],
- Managing Conflicts of Interest: Statutory Guidance for CCGs (2014), updated June 2016[10],

Procurement best practice is also governed by case law as derived through both the UK and EU courts from time to time. The Crown Commercial Services also provide updates to UK procurement policy through Procurement Policy Notes (PPN) from time to time[11].

Other relevant legislation and guidance affecting the procurement of health care services include:

[1] http://www.legislation.gov.uk/ukpga/2006/41/pdfs/ukpga_20060041_en.pdf
[2] http://www.legislation.gov.uk/uksi/2012/1631/contents/made
[3] https://www.gov.uk/government/consultations/securing-best-value-for-nhs-patients
[4] https://www.england.nhs.uk/2012/09/procure-ccgs/
[5] https://www.gov.uk/government/publications/procurement-guide-for-commissioners-of-nhs-funded-services
[6] http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted
[7] http://www.legislation.gov.uk/uksi/2013/500/pdfs/uksi_20130500_en.pdf
[8] https://www.gov.uk/government/publications/procurement-patient-choice-and-competition-regulations-guidance
[9] http://www.legislation.gov.uk/uksi/2015/102/pdfs/uksi_20150102_en.pdf
[10] https://www.england.nhs.uk/publication/managing-conflicts-of-interest-revised-statutory-guidance-for-ccgs-2017/
[11] https://www.gov.uk/government/collections/procurement-policy-notes

- Section 242 of the National Health Service Act, 2006 provides that commissioners of healthcare services have, in relation to health services for which they are responsible, a legal duty to consult patients and the public – directly or through representatives – on service planning, the development and consideration of services changes and decision that affect service operation.

- The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (the "2013 Regulations") made under Section 75 of the Health and Social Care Act which place requirements on commissioners to ensure that they adhere to good practice in relation to the procurement of health care services, do not engage in anti-competitive behaviour and protect the right of patients to make choices about their healthcare.

- NHS Improvement (formally Monitor) has published *Substantive Guidance on the Procurement, Patient Choice and Competition Regulations, Enforcement Guidance on the Procurement, Patient Choice and Competition Regulations*, and *Hypothetical Case Scenarios* about how to comply with The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 and the general approach that NHS Improvement proposes to take to using its enforcement powers under these regulations.

4. Aims and Objectives

To set out the approach for facilitating open and fair, robust and enforceable contracts that provide Value for Money (VfM) and deliver required quality standards and outcomes, with effective performance measures and contractual levers.

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

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

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

To enable the Authority to demonstrate compliance with the principles of good procurement practice.

5. Scope of Policy

As far as it is relevant, this Procurement Policy applies to each Authority's procurements (clinical and non-clinical). However, it is particularly relevant to the procurement of goods and services that

support the delivery of healthcare (clinical) services and certain sections relate only to procurement of health and social services.

This policy must be followed by all permanent employees from each Authority and also by staff on temporary or honorary contracts, representatives acting on behalf of each Authority (including staff from member practices) and, where appropriate, any external organisations acting on behalf of the Authority (including other CCGs, any Commissioning Support Unit (CSU) and eMBED Health Consortium).

6. Accountabilities & Responsibilities

6.1 Lead Manager

Overall day to day responsibility for procurement rests with the Deputy Director of Contracting, with accountability to the Chief Financial Officer.

6.2 Procurement Support

Procurement support will be provided by eMBED Health Consortium. Each Authority will have systems in place to assure itself that the business processes used by eMBED are robust and enable the Authority to meet their duties and statutory responsibilities in relation to procurement.

6.3 Responsibility

Each Authority will remain directly responsible for:

- Approving a procurement route,
- Signing off service specifications,
- Signing off evaluation criteria and other relevant procurement documentation
- Signing off decisions on which providers will be invited to tender (for low value RFQs and mini-competitions, depending on the circumstances),
- Making final decisions on the selection of the provider(s),
- Drafting the final contract(s),
- Management of Providers and all subsequent contractual relationships,

Arrangements for delegation of authority to officers are set out in the relevant Standing Financial Instructions (SFIs). In the event of any discrepancy between this Procurement Policy and the Standing Orders (SOs)/SFIs, the SOs/SFIs will take precedence.

7. Guiding Principles

(Regulations 2 and 3 of The National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations (2013).

When procuring healthcare (clinical) services, the Authority is required to act with a view to:

- Securing the needs of the people who use the services
- Improving the quality of the services

- Improving efficiency in the provision of the services.

The Authority is required and committed to:

- Act in a transparent and proportionate way
- Treat providers equally and in a non-discriminatory way, including by not treating a provider, or type of provider more favourably than any other provider, in particular on the basis of ownership.

The Authority is required and committed to procuring services from the providers that:

- Are most capable of delivering the needs, quality and efficiency required,
- In doing so provide the best value for money.

The Authority is required and committed to act with a view to improving quality and efficiency in the provision of services; the means of doing so will include:

- The services being provided in an integrated way (including with other health care services, health related services, or social care services),
- Enabling providers to compete to provide the services,

Potential conflicts of interest will be managed appropriately to protect the integrity of both the CCG's contract award decision making processes and the wider NHS commissioning system.

8. Public Procurement Obligations

The Public Contracts Regulations (2015) place legal requirement and procedures for awarding contracts where the contract value exceeds certain financial thresholds (unless specific exemptions/exclusions apply).

'Health and Social Services' are categorised as 'Light-touch' services under Schedule 3 of the Public Contracts Regulations (2015). 'Health and Social Services' refer to a range of services which are in broad terms services delivered by healthcare professionals (see Appendix A).

The thresholds for the application of the EU Regulations are reviewed periodically and they are currently (from 1st January 2016):

	Supply, Services and Design Contracts	**Works Contracts**	**Social and other specific services**
Central Government	£106,047 €135,000	£4,104,394 €5,225,000	£589,148 €750,000
Other contracting authorities	£164,176 €209,000	£4,104,394 €5,225,000	£589,148 €750,000
Small Lots	£62,842 €84,000	£785,530 €1,000,000	n/a

N.B. For the purposes of these regulations, CCGs are considered central government bodies.

Thresholds are net of VAT. The EU Treaty principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality, apply to all procurements, regardless of any other categorisation.

9. EU Treaty Principles

The key principles of good procurement are:

Transparency:	Making commissioning intent clear to the market place. This includes the use of sufficient and appropriate advertising of tenders, transparency in making decisions not to tender and the declaration and separation of conflicts of interests.
Proportionality:	Making procurement processes proportionate to the value, complexity and risk of the services contracted and critically, not excluding potential providers through overly bureaucratic or burdensome procedures.
Non-discrimination	Specifications, and procurement processes, that do not favour one or more provider and that ensure consistency of procurement rules, transparency on timescales and criteria for shortlist and award.
Equality of Treatment:	Ensuring that all providers and sectors have equal opportunity to compete where appropriate; that financial and due diligence checks apply equally and are proportionate; that pricing and payment regimes are transparent and fair.

The Authority will ensure compliance with these principles in the following ways:

10. Transparency

There is a requirement to place adverts for any contract over £10,000 on ContractsFinder[12], (although this is not the only place an advert could be placed) and issue an Official Journal of the European Union (OJEU) notice[13] where the contract value is above the applicable threshold. The following set of statements conveys how the Authority can achieve transparency:

- The Authority will maintain on its website, for public view, a record of contracts held and information about what services are to be procured and when they will be presented to the market,
- The Authority will determine as early as practicable whether and how services are to be opened to the market and, where appropriate, will share this information with existing and potential providers,

[12] https://www.contractsfinder.service.gov.uk/Search

[13] http://simap.ted.europa.eu/

- The Authority will use the most appropriate media in which to advertise tenders or opportunities to provide services, including using the ContractsFinder,
- The Authority will robustly manage potential conflicts of interest and ensure that these do not prejudice fair and transparent procurement processes,
- The Authority will require that all referring clinicians tell their patients and the commissioner about any financial or commercial interest in an organisation to which they plan to refer a patient for treatment or investigation,
- The Authority will provide feedback to all unsuccessful bidders,

1.1 Proportionality

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

1.2 Non-discrimination

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

1.3 Equality of Treatment

- The Authority will ensure that no sector of the provider market is given any unfair advantage during a procurement process.
- The Authority will ensure that basic financial and quality assurance checks apply equally to all types of providers.
- The Authority will ensure that all pricing and payment regimes are transparent and fair.
- The Authority will retain an auditable documentation trail regarding all key decisions

11. Light-Touch Services

Healthcare (Clinical) Service procurements fall within the 'Light-Touch' regime of the Regulations. As the name suggests, the rules for these services are less rigorous than for other services and there is flexibility for the Authority to design procurement procedures more suitable for these services, provided they still comply with the EU Treaty Principles. There is flexibility in the way that procedures can be designed, the timescales for receipt of tender submissions and certain flexibility in other areas which would usually result in non-compliance.

12. Conflicts of Interest

Managing potential conflicts of interest appropriately protects the integrity of the wider NHS commissioning system and protects CCGs and GP practices from any perception of wrong doing.

All employees to whom this procurement policy applies should familiarise themselves with the Managing Conflicts of Interest: Statutory Guidance for CCGs (June 2017)[14]. Any employee, or any other subject matter expert from an associate organisation, who is invited to participate in a procurement process will be expected to complete a Conflict of Interest declaration in line with Regulation 24 of the Public Contracts Regulations (2015).

General arrangements for managing conflicts of interest are set out in each Authority's Conflicts of Interest Policy. This section describes additional safeguards the Authority will put in place when commissioning services that could potentially be provided by GP practices.

The template included at Appendix B will be completed as part of the planning process for all services that may potentially be provided by GP practices (either as a successful bidder in a competitive procurement process, as one of several qualified providers through an AQP approach, or via a non-competitive process). The completed templates will be used to provide assurance to the Authority's Audit and Governance Committee and the Governing Body that the proposed services meet local needs and priorities, that robust processes have been followed in selecting the appropriate procurement route and in addressing potential conflicts. It is intended that completed templates will be made publicly available via the Authority's websites.

Where any practice representative, on a decision-making body, has a material interest in a procurement decision, such practice representative will be excluded from the decision-making process. This includes where all practice representatives have a material interest, for example where the CCG is considering commissioning services, on a single tender basis, from all GP practices in the area. Rules relating to quoracy in these and other circumstances are set out in the CCGs' Conflicts of Interest Policy

However the Authority is also mindful that other providers are increasingly involved in developing strategies for the future that ultimately result in a procurement of a service. It remains an essential component of the CCG's stakeholder engagement arrangements to involve all providers (current and potential) in the development of strategies and plans, where appropriate, which will then be secured through an appropriate procurement route.

Should these arrangements prove unworkable, to such an extent that the management of conflicts precludes appropriate clinical involvement, then all potential providers must be given an equal opportunity to comment and influence the writing of the service specification.

In line with the NHSE COI framework, a Register of Procurement decisions will be maintained for the procurement of a new service or any extension or material variation of a current contract. This will be published on the Authority's websites.

13. Procurement Planning

A procurement plan will be maintained that will list all current and future procurements. The procurement plan will be reviewed on a regular basis taking into account local and national

[14] https://www.england.nhs.uk/publication/managing-conflicts-of-interest-revised-statutory-guidance-for-ccgs-2017/

priorities, the Authority's commissioning intentions and nationally mandated requirements. In addition it will take into account the impact of completed and on-going procurements.

The plan for potential procurements will highlight the priority, timescale, risk and resource requirement. Not every priority on the plan will result in procurement, but indicates the Authority's intention to review the service or activity which may result in procurement.

The plan will be developed as a key element, to provide communication between the Authority, its GP membership and potential providers. Through transparent and open processes the Authority will actively encourage provider engagement.

14. Procurement approach for all contracts

The Authority and/or their agents will follow public procurement rules and Authority Standing Orders/Standard Financial Instructions, as appropriate.

15. Procurement approach for Healthcare and Social Service Contracts

The current guidance provides a set of rules that govern system management within the NHS. The role of NHS Improvement (formally Monitor) will be limited to ensuring that commissioners have operated within the legal framework established by both the Procurement, Patient Choice and competition Regulations (2013), and the Public Contracts Regulations (2015).

The UK healthcare commissioning system is no longer a system based on tight controls of the means of provision, but largely an open system with a defined purchaser/provider split, which commissioners need actively to manage.

The Authority will conduct Health and Social Service procurements as one part of market management and development according to priorities established in their strategic plans. Decisions of whether to tender will be driven by the need to commission services from the providers who are best placed to deliver the needs of our patients and population. The decision-making process will vary depending on whether or not the service is an existing, new or significantly changed one.

16. Existing Services

Where the provider of an existing service was selected for a fixed period via a competitive tender exercise and the fixed period (including any options for contract extension) is due to end, a new competitive tender exercise will normally be conducted to select the future provider of the service.

17. New or Significantly changed Services

The Authority's approach to secure services will, in overall terms, be the following:

- Determine whether the service can be accommodated through existing contracts with providers through future variations to those contracts (assuming that this is possible without contravening procurement rules and guidance) and that quality, patient safety and value for money can be demonstrated.

- Determine whether there may be grounds for the Authority to justify the selection of a specific provider (PCR Regulation 32):

Use of the negotiated procedure without prior publication

(1) In the specific cases and circumstances laid down in this regulation, contracting authorities may award public contracts by a negotiated procedure without prior publication.

General grounds
(2) The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases:—

(a) where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission where it so requests;

(b)where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:—

(i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance,
(ii) competition is absent for technical reasons,
(iii) the protection of exclusive rights, including intellectual property rights, but only, in the case of paragraphs (ii) and (iii), where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

(c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with.

18. Patient Choice (AQP Model)

Where the Authority chooses to broaden the choice of providers available to patients an Any Qualified Provider (AQP) model could be adopted. The AQP model will **not** always be appropriate, for example where:

- The number of providers needs to be constrained, e.g.
  - Where the level of activity can only support one provider;
  - Where clinical pathways dictate a restricted number of providers;

- Value for money cannot be demonstrated without formal market testing (e.g. to determine the price the CCG will offer for provision of the services);
- There is no effective method of selecting from amongst qualified providers for delivery of specific unit of activity;
- Overall costs would be increased through multiple provider provision because of unavoidable duplication of resources.

Under AQP, a standard NHS contract will be awarded to all providers that meet:

- The minimum quality threshold,
- Demonstrable standards of clinical care (implying qualification/accreditation requirement),
- The price the Authority will pay,
- Relevant regulatory standards,

19. Approach to Market

19.1 Competitive Tendering

It is anticipated that a number of services will be subject to competitive tendering in order to demonstrate the application of the principles of transparency, openness, equitability and obtaining and delivering value for money.

19.2 Non-Competitive Process

There are a limited range of circumstances where competition may be waived (e.g. when there is only one provider). In these circumstances the procedures set out within the Authority's prime financial policies, Standing Orders and Standing Financial Instructions must be followed.

Where it is decided not to competitively tender for new services or where services are significantly changed, the CCG's Governing Body's approval must be obtained following any recommendation to follow this approach and then reported to the Audit Committee (as described in the Authority's Standard Financial Instructions).

19.3 Partnership and Alliance Arrangements

Where collaboration and co-ordination is considered essential, (for example in developing new integrated pathways, enabling sustainability of services, ensuring smooth patient handover, co-ordination, etc.) the Authority may wish to continue with existing 'partnership' arrangements.

These 'Partnership' arrangements must be formalised using the appropriate contract and must provide:

- Transparency, particularly with provision of information sharing of good and bad practice;
- A contribution to service re-design;
- Timely provision of information and performance reporting;
- Evidence of improved patient experience year on year;

- Evidence of value for money.

Partnership status must not be used as a reason to avoid competition and should only be used appropriately and be regularly monitored.

19.4 Spot Purchasing

There will be the need to spot purchase Goods and Services for particular individual patient needs or for urgency of placements requirements at various times. Where it is determined that a competitive process may be waived, it will be expected that these contracts will undergo best value reviews, to ensure the Authority is getting value from the contract. In all cases the Authority should ensure that the provider is fit for purpose to provide the particular Good or Service. It may be appropriate to run mini-competitions using Framework Agreement through which Goods and Services may be called off at short notice and in compliance with the PCR 2015.

19.5 Framework Agreements

The Authority is able to use other public sector Framework Agreements if a provision has been made in the agreement to allow this (that is by the holder of the framework agreement, such as the Crown Commercial Services).

Where it is allowed for in the Framework Agreement there may be an option for running mini-competitions. Here, providers on the framework, who can meet requirements, are invited to submit a bid. These are then evaluated and a contract awarded following similar processes as for tenders. Any contract awarded under a framework can run beyond the framework agreement period, but the length of the contract must be reasonable.

20. Grants

In certain circumstances the Authority may elect to provide a grant payable to third sector organisations. Use of grants can be considered where:

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

Grants should not be used to avoid competition and where it is appropriate for a formal procurement to be undertaken. A grant can only be awarded if there are no conditions placed on the provider of the services and where KPIs are not imposed.

21. Tendering Process

If a decision is taken to pursue a competitive tender process, there are a range of further issues that will be taken into account in the design of the procurement process. These are not considered in detail in this Procurement Policy but they include:

- Market analysis (e.g. structure, competition, capacity, interest);
- Tender routes;
- Procurement timescales;
- Affordability;
- Impact on service stability;
- Procurement resource (including responsibilities and accountabilities);
- Consultation and engagement requirements;
- Outcome-based specifications;
- Existing related contractual arrangements;
- Contract management;
- Provider development;
- Value for money.

22. Financial and Quality Assurance Checks

The Authority will require assurance about all potential providers' suitability to hold the contract. Where this is not achieved through a formal tender process, the following financial and quality assurance checks of the provider will be expected to be undertaken before issuing tenders to shortlisted providers, or in the case of a single tender, before entering into a contract:

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

23. Contract Form

The Authority will ensure that the NHS Standard Contract, or where appropriate a National or Local Variation, will be used for all contracts for NHS funded health and social care services commissioned by the Authority. In exceptional circumstances, such as where a joint contracting agreement is led by local authority, the Authority may agree to be party to a different form of contract.

The Authority will ensure that a standard Grant Agreement document will be used to record the provision of grants to third parties which will contain the provisions upon which the grant is made.

24. Sustainable Procurement

The NHS Carbon Reduction strategy (2010) has been developed in response to the need to take action on climate change and in consultation with the NHS and other organisations. Widespread support from NHS organisations and staff gives the NHS a mandate to implement this strategy

across every aspect of the organisation in England, as described in the document 'Saving Carbon Improving Health'[15].

The Authority recognises the impact in ensuring they work in partnership with suppliers to lower the carbon impact of all aspects of procurement, make decisions based on whole life cycle costs and to minimise waste. In support of the national strategy, the Authority aims and objectives are to:

- Minimise the environmental impact and deliver community benefits through better selection and improved usage of products and services,
- Foster innovation in providers to increase the availability and effectiveness of sustainable solutions that meet the patients' requirements,
- Encourage providers to adopt practices that minimise environmental impact and deliver community benefits in relation to their own operations and throughout the markets in which they operate,
- Work in partnership with suppliers to achieve common goals and continually improve performance over time,
- Support the NHS Strategic Direction and relevant sustainability policies,

25. Public Services (Social Value) Act 201216

This Act requires commissioners at the pre-procurement stage, to consider how any procurement may improve the social, environmental and economic well-being of the relevant area. It involves looking beyond the price of each individual contract and looking at what the collective benefit to a community is when a public body chooses to award a contract.

Although the Act only applies to certain public services, contracts and framework agreements to which the EU Regulations apply, the Authority intends, as a matter of good practice, to demonstrate how any procurement might improve economic, social and environmental well-being. The considered application of the provisions of this Act will provide the Authority with the means to broaden evaluation criteria to include impacts on the local economy. The Authority may choose to include social, economic or environmental requirements in the advertisement and tender documents for any competitive procurement.

Wherever it is possible and does not contradict or contravene the Authority's procurement principles, or the provisions allowable under the Public Service (Social Value Act 2012), the Authority will work to develop and support a sustainable local health economy. Delivery of local services are an input into community social values and will be explored further with prospective providers as part of the invitation to tender.

26. Use of Information Technology

[15] http://www.sduhealth.org.uk/documents/publications/1264693931_kxQz_update_-_nhs_carbon_reduction_strategy.pdf

[16] https://www.gov.uk/government/publications/social-value-act-information-and-resources/social-value-act-information-and-resources

Wherever possible, appropriate information technology systems, i.e. eProcurement and eEvaluation methods will be used. These are intended to assist in streamlining procurement processes whilst at the same time providing a robust audit trail. eTendering and eEvaluation solutions provide a secure and efficient means for managing tendering activity, particularly for large complex procurements. They offer efficiencies to both purchasers and providers by reducing time and costs in issuing and completing tenders, and particularly to purchasers in respect of evaluation responses to tenders.

27. Decommissioning Services

The need to decommission contracts can arise through:

- Termination of the contract due to performance against the contract with the provider(s) not delivering the expected outcomes. This can be mitigated by appropriate contract monitoring and management and by involving the provider in this process. The contract terms will allow for remedial action to be taken to resolve any problems. Should this not resolve the issues, then the contract will contain appropriate termination provisions,
- The contract expires,
- Services are no longer required,

Where services are decommissioned, the Authority will ensure, where necessary, that contingency plans are developed to maintain patient care. Where decommissioning involves Human Resource issues, such as TUPE issues, then providers will be expected to co-operate and be involved in discussions to deal with such issues.

28. Transfer of Undertakings and Protection of Employment (TUPE)

The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE Regulations") Implement the EC Acquired Rights Directive (as revised and consolidated in Council Directive 2001/23/EC)[17].

The TUPE Regulations apply when there are transfers of staff from one legal entity to another as a consequence of a change in employer. This is a complex area of law which is continually evolving.

Commissioners need to be aware of these and the need to engage HR support and possible legal advice if there is likely to be a TUPE issue. Additionally, NHS Bodies must follow Government guidance contained within the 'Cabinet Office Statement of Practice 2000/72' and associated 'Code of Practice 2004' when transferring staff to the Private Sector, also known as COSOP.

It is the position of the Authority to advise potential providers that whilst not categorically stating TUPE will apply, it is recommended that they assume that TUPE will apply when preparing their bids and ensure that adequate time is built into the procurement timelines, where it is anticipated that TUPE may apply.

[17] http://www.legislation.gov.uk/uksi/2006/246/pdfs/uksi_20060246_en.pdf

The Authority will include a caveat within each tender which states that:

- *"Potential Providers will need to carry out their own due diligence with regards to any TUPE issues as the Authority will not be offering any indemnity protection for pre-commencement employment liabilities or any other factors relating to compliance with TUPE."*

When procuring services to which TUPE may apply, the Authority will, where appropriate, include provisions in the contract to manage possible TUPE transfers and related staff matters when the contract terminates.

29. Equality Impact Assessment

All public bodies have statutory duties under the Equality Act 2010[18]. The Authority's aim is to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others.

In order to support these requirements, a single equality impact assessment is used to assess all the Authority's business including policies and practices.

30. Training Needs Analysis

All Authority staff and others working with the Authority will need to be aware of this policy and its implications. It is not intended that staff generally will develop procurement expertise, but they will need to know when and how to seek further support. The most urgent requirement is that all commissioning staff throughout the Authority should know enough about procurement to know to seek help when they encounter related issues. They must also be able to give clear and consistent messages to providers and potential providers about the Authority's procurement intentions in relation to individual service developments. Awareness of procurement issues is being raised through organisation development and training sessions for clinical and non-clinical members of the Authority.

31. Monitoring Compliance with this Strategy / Policy

This Procurement Policy will be formally reviewed at least every three years.

In addition it will be kept under informal review in the light of emerging guidance, experience and supporting work and proposed changes to EU procurement rules. Given the changing environment, it is likely that this Procurement Policy will need to be updated within a relatively short timescale.

[18] http://www.legislation.gov.uk/ukpga/2010/15/contents?

32. NHS Policies

NHS Procurement. Raising Our Game; May 2012; DH (Gateway Ref: 17646) http://www.sci-ware.com/documents//NHS%20Procurement%20raising%20our%20game.pdf

Towards Establishment: Creating responsive and Accountable CCGs; February 2012; NHS Commissioning Board. http://www.england.nhs.uk/wp-content/uploads/2012/09/towards-establishment.pdf

Appendix A. Light-Touch Services

List of 'Light Touch' regime Health and Social Care Services[19]

This table is a comprehensive list of all services that fall within the 'Light Touch' regime. A service which has elements of different services (e.g. Patient Transport Services contain elements of patient care and non-healthcare in the form of bookings, management and transportation etc.) would only come under this regime if more than 50% of the overall service value can be attributed to, and delivered by, a professional with formal clinical training.

Health and social work services.	Geriatric services.	Services provided by sperm banks
Health services.	Psychiatrist or psychologist services.	Services provided by transplant organ banks
Hospital and related services.	Home for the psychologically disturbed services.	Company health services
Hospital services.	Ophthalmologist, dermatology or orthopaedics services.	Medical analysis services
Surgical hospital services.	Ophthalmologist services.	Pharmacy services
Medical hospital services.	Dermatology services.	Medical imaging services
Gynaecological hospital services.	Orthopaedic services.	Optician services
In-vitro fertilisation services.	Paediatric or urologist services.	Acupuncture and chiropractor services
Obstetrical hospital services.	Paediatric services.	Acupuncture services
Rehabilitation hospital services.	Urologist services.	Chiropractor services
Psychiatric hospital services.	Surgical specialist services.	Veterinary services
Orthotic services.	Dental practice and related services.	Domestic animal nurseries
Oxygen-therapy services.	Dental-practice services.	Social work and related services
Pathology services.	Orthodontic services.	Social work services
Blood analysis services.	Orthodontic-surgery services.	Welfare services for the elderly
Bacteriological analysis services.	Miscellaneous health services.	Welfare services for the handicapped
Hospital dialysis services.	Services provided by medical personnel	Welfare services for children and young people
Hospital support services.	Services provided by midwives	Social work services without accommodation
Hospital-bedding services.	Services provided by nurses	Day-care services
Outpatient care services.	Home medical treatment services	Child day-care services
Medical practice and related services.	Dialysis home medical treatment services	Day-care services for handicapped children and young people

[19] http://www.legislation.gov.uk/uksi/2015/102/pdfs/uksi_20150102_en.pdf (Schedule 3)

Medical practice services.	Advisory services provided by nurses	Home delivery of provisions
General-practitioner services.	Paramedical services	Guidance and counselling services
Medical specialist services.	Physiotherapy services	Guidance services
Gynaecologic or obstetric services.	Homeopathic services Hygiene services	Counselling services
Nephrology or nervous system specialist services.	Home delivery of incontinence products	Family-planning services
Cardiology services or pulmonary specialist services.	Ambulance services	Welfare services not delivered through residential institutions
Cardiology services.	Residential health facilities services	Rehabilitation services
Pulmonary specialist services.	Residential nursing care services	Vocational rehabilitation services
ENT or audiologist services.	Services provided by medical laboratories	Social services
Gastroenterologist and geriatric services.	Services provided by blood banks	Community health services
Gastroenterologist services.		

Appendix B: Procurement Checklist

Service:	
Question	**Comment/ Evidence**
1. How does the proposal deliver good or improved outcomes and value for money – what are the estimated costs and the estimated benefits? How does it reflect the CCG's proposed commissioning priorities? How does it comply with the CCG's commissioning obligations?	
2. How have you involved the public in the decision to commission this service?	
3. What range of health professionals have been involved in designing the proposed service?	
4. What range of potential providers have been involved in considering the proposals?	
5. How have you involved your Health and Wellbeing Board(s)? How does the proposal support the priorities in the relevant joint health and wellbeing strategy (or strategies)?	
6. What are the proposals for monitoring the quality of the service?	
7. What systems will there be to monitor and publish data on referral patterns?	
8. Have all conflicts and potential conflicts of interests been appropriately declared and entered in registers?	
9. In respect of every conflict or potential conflict, you must record how you have managed that conflict or potential conflict. Has the management of all conflicts been recorded with a brief explanation of how they have been managed?	
10. Why have you chosen this procurement route e.g., single action tender?[27]	

[27] Taking into account all relevant regulations (e.g. the NHS (Procurement, patient choice and competition) (No 2) Regulations 2013 and guidance (e.g. that of Monitor).

11. What additional external involvement will there be in scrutinising the proposed decisions?	
12. How will the CCG make its final commissioning decision in ways that preserve the integrity of the decision-making process and award of any contract?	
Additional question when qualifying a provider on a list or framework or pre selection for tender (including but not limited to any qualified provider) or direct award (for services where national tariffs do not apply)	
13. How have you determined a fair price for the service?	
Additional questions when qualifying a provider on a list or framework or pre selection for tender (including but not limited to any qualified provider) where GP practices are likely to be qualified providers	
14. How will you ensure that patients are aware of the full range of qualified providers from whom they can choose?	
Additional questions for proposed direct awards to GP providers	
15. What steps have been taken to demonstrate that the services to which the contract relates are capable of being provided by only one provider?	
16. In what ways does the proposed service go above and beyond what GP practices should be expected to provide under the GP contract?	
17. What assurances will there be that a GP practice is providing high-quality services under the GP contract before it has the opportunity to provide any new services?	