NHS
Enfield
Clinical Commissioning Group

CLINICAL PROCUREMENT CORPORATE GOVERNANCE AND STRATEGIC FRAMEWORK 2015

1	**SUMMARY**	This strategic framework set out the policy context that Enfield CCG will follow when procuring clinical services.			
2	**RESPONSIBLE PERSON:**	Robert Whiteford, Chief Finance Officer			
3	**ACCOUNTABLE DIRECTOR:**	Robert Whiteford, Chief Finance Officer			
4	**APPLIES TO:**	All CCG staff.			
5	**GROUPS/ INDIVIDUALS WHO HAVE OVERSEEN THE DEVELOPMENT OF THIS POLICY:**	Robert Whiteford, Chief Finance Officer Robert Hudson, Deputy Chief Finance Officer			
6	**GROUPS WHICH WERE CONSULTED AND HAVE GIVEN APPROVAL:**	Enfield CCG Procurement Committee.			
7	**EQUALITY IMPACT ANALYSIS COMPLETED:**	**Policy Screened**		**Template completed**	
8	**RATIFYING COMMITTEE(S) & DATE OF FINAL APPROVAL:**	Enfield CCG Governing Body			
9	**VERSION:**	1.1			
10	**AVAILABLE ON:**	**Intranet** Yes		**Website** Yes	
11	**RELATED DOCUMENTS:**	Enfield CCG Scheme of Delegation Enfield CCG Constitution Anti-Fraud and Anti-Bribery Policy Conflicts of Interest Policy Gifts and Hospitality Policy			

12	**DISSEMINATED TO:**	All staff in Enfield CCG.
13	**DATE OF IMPLEMENTATION:**	
14	**DATE OF NEXT FORMAL REVIEW:**	

1. INTRODUCTION

1.1. Enfield CCG is committed to providing high quality clinical services that meet the needs of local communities as set out in its Operating Plan agreed by the Governing Body; within the framework of national procurement regulations it will look at all appropriate options to secure the best services for the local population.

1.2. The national policy context is new and developing and there will be further regulatory changes over the next year to eighteen months, this framework is therefore interim and will be revisited as case law emerges and to reflect changes to the policy context. This document sets out the technical advice and expertise available to Enfield CCG from the CSU to support the procurement of clinical services, as well as the respective responsibilities of the CCG and CSU in the process.

1.3. This strategic framework sets out the policy context that Enfield CCG will follow when procuring clinical services. Where Enfield Clinical Commissioning Group proposes to award public contracts, the CCG will ensure that the procurement is conducted within the legislative framework within which Public Sector procurement operates. The CCG has a duty to meet these legislative responsibilities whilst ensuring the health needs of its population are being met. . This is supported by the Public Sector procurement regulations and NHS Specific regulations and guidance issued by the Department of Health, (DH), Monitor and NHS England.

These include but are not limited to (and is subject to change):

- The Public Contracts Regulations 2006;
- The Public Contracts (Amendment) Regulations 2009 (also known as the
- Remedies Directive);
- Procurement Guide for commissioners of NHS-funded services (DH, 30 July 2010)
- The Principles and Rules for Cooperation and Competition (PRCC, July 2010)
- Framework for Managing Choice, Co–Operation and Competition (May 2008)
- The Equality Act 2010 (section 149)
- The Public Services (Social Value) Act 2012
- Procurement of healthcare (clinical) services, briefings 1-4 (NHS Commissioning Board, September 2012).
- The NHS (Procurement, Patient Choice and Competition) Regulations 2013 which support interpretation of section 75 of the Health and Social Care Act 2013 (11.03.13)
- Managing conflicts of interests: Guidance for clinical commissioning groups (NHS England, March 2013)
- A fair playing field for the benefit of NHS patients: Monitor's independent review for the Secretary of State for Health (March 2013)

Note: 2015 sees the introduction into English Law of revised EU Procurement Directives Public Contract Regulations 2015 (SI: 2015/12) (the "PCR 2015"), which came into force on 26 February 2015. The PCR 2015 replaces the 2006 Regulations and the 2009 Amendment. This will affect the procurement of general goods and services, and healthcare services.

For the CCG, the area of particular relevance will be the abolition of the Part B services classification. Healthcare procurement will be subject to a new 'light touch' regime. Under the new regime, it will be mandatory to advertise contracts for health services in OJEU if their value exceeds €750,000 (approx. £550,000).

However, although the revised procurement regulations will come into effect in 2015, the new light touch regime will not apply to the procurement of contracts for NHS healthcare services falling within the scope of the PPCCR until the later date of 18 April 2016.

Therefore, CCGs will continue to follow the existing Part B Services regime and the PPCCR until 18 April 2016. Thereafter, the light touch regime for health and social services under the new directive will replace the Part B Services regime and will apply in addition to the expected continued application of the PPCCR.

The remaining details of the light touch regime are to be decided nationally, with guidance to be published in due course.

1.4. Under EU Procurement rules, goods and services to be procured are divided into Part A and Part B services. Part A services above certain financial values are subject to the full OJEU procurement regime including advertisement across Europe. However, health and social care services are classified as Part B services, and are therefore subject only to compliance with the general principles of equal treatment, transparency, objectivity and non-discrimination.

1.5. Financial Controls:

Enfield CCG's Prime Financial Policies set out the following financial limits that will dictate the procurement requirements for any Part B tender:

Up to £4,999	One written quotation
£5000 and £19,999	Two written quotations
£20,000 - £99,999	Three Written quotations
£100,000 - OJEU Threshold*	Three Competitive Tenders (sealed)
Over the OJEU Threshold	Full procurement process needs to be undertaken

* OJEU Threshold for Part B public sector services at 1.1.14: £172,514 (€207,000)

1.6. Enfield CCG will ensure that the services it procures will not be split into multiple requirements or contracts to avoid exceeding the financial limits set out above and thus circumvent following the relevant procurement process to award through competition.

1.7. Where it is agreed that a competitive tender should be undertaken, it is imperative that the process followed is subject to appropriate governance procedures. This is to ensure that due process is carried out from the perspective of Enfield CCG, in order to minimise the risk of legal challenge to the process by unsuccessful bidders, and associated costs and service mobilisation delays. This document therefore sets out the responsibilities of Enfield CCG (and also NELCSU in terms of the support it provides to the CCG) in undertaking clinical procurements. Where Enfield CCG decides to procure a clinical service collaboratively with another CCG or CCGs, a lead CCG will need to be identified under whose governance arrangements the process will be managed.

1.8. The CCG recognises that particular care must be exercised when procuring services, including the commissioning of services GP practices. For that reason, this policy incorporates in Appendix E the Procurement Template developed by NHS England which must be completed in each case where GP practices,

consortia, or organisations in which GPs have a financial interest are, or may be, a tenderer.

1.9. The CCG will maintain a register of procurement decisions which will include details of any decisions made; who was involved in the decision-making process (i.e. Governing Body or Committee members and others with decision-making responsibility) and a summary of any conflicts of interest in relation to the decision and how this was managed.

1.10. The Register will be updated whenever a procurement decision is made.

1.11. The Register will form part of the CCG's annual accounts and will therefore be reviewed by external auditors.

2. Non-Clinical supply and service contracts procurement policy

2.1. Enfield CCG will ensure that all procurement for non-clinical supply and service contracts follow current EU public procurement rules and Standing Orders/Standing Financial instructions as appropriate. In addition, Enfield CCG will ensure that they will publish new contract opportunity advertisements above certain thresholds and contract award information on the new Contracts Finder portal. Please refer to Appendix D for the current thresholds that should be applied.

3. CLINICAL PROCUREMENT POLICY

3.1. CORE CLINICAL PROCUREMENT PRINCIPLES

Enfield CCG recognises the importance in making decisions about the services it procures in a way that does not call into question the motives behind the procurement decision that has been made. The CCG will procure services in a manner that is open, transparent, non-discriminatory and fair to all potential providers. All clinical procurements will therefore be conducted in accordance with the following principles:

3.1.1. **Fairness & Transparency:** In accordance with Section 8.6 of its Constitution[1], Enfield CCG will be clear and transparent in all communications with providers about the CCG's commissioning intentions, decisions (or not) to tender, advertising of opportunities, procurement evaluation criteria, publication of decisions and mechanisms for feedback.

3.1.2. **Efficiency:** Enfield CCG will ensure that the procurement process is as efficient and time effective as possible for both commissioners and providers; as an outcome, all procurements will aim to improve productivity, efficiency and effectiveness of services whilst maintaining and seeking to improve clinical quality.

3.1.3. **Quality:** Enfield CCG commissioners will procure services to meet patient needs which are of the highest possible quality standard, and use appropriate measurable performance indicators to monitor provider performance. Enfield CCG will ensure that the contract awarded as the result of a procurement process, as well as the procurement process itself, encourages all providers to deliver continual improvement in the quality of services that they are commissioned to provide.

3.1.4. **Continuity:** Enfield CCG commissioners will continue to work in partnership with key providers of NHS services but will be supported by the NELCSU Clinical Procurement Team where required to continually test these services to ensure that the current providers deliver best value for money.

3.1.5. **Equality of treatment and non-discrimination:** Enfield CCG will be supported by the NELCSU Clinical Procurement Team to clearly identify those services which will be put out to competitive tender, and to ensure that all sectors and providers (NHS and non NHS) will be treated equitably in terms procurement rules, access to information, timescales, financial and quality assurance checks, and pricing and payment regimes.

3.1.6. **Proportionality:** by means of advice, guidance and support obtained, Enfield CCG commissioners will use procurement processes that are proportionate to the value, complexity and risk/benefit to patients of services procured; different procurement routes for different types of services will enable this. Potential costs to bidders will also be considered when assessing which procurement routes to follow.

3.1.7. **Consistency:** Enfield CCG commissioners will apply national and local principles and rules consistently to all clinical procurements that they undertake.

3.1.8. **Professional Conduct:** Enfield CCG will ensure that all procurement personnel who support them to undertake procurements will be subject to the Professional Code of Conduct as published by the Chartered Institute of Purchasing and Supply (CIPS).

3.2. PROVIDER ENGAGEMENT/MARKET MANAGEMENT

3.2.1. On-going provider engagement is part of the Commissioning Cycle. Particular engagement activities (such as Information Events) will be undertaken that relate to individual procurement exercises. However, Enfield CCG is committed to maintaining an on-going dialogue with providers in order to involve them in shaping the CCG's commissioning intentions, and for providers to be clear about the shape and quality of service provision those commissioning intentions require.

3.2.2. In addition to on-going engagement with providers, Enfield CCG commissioners will engage with providers in terms of financial, estates and workforce implications of potential procurements.

3.3. EQUALITY & NON-DISCRIMINATION

3.3.1. Enfield CCG has a responsibility not to discriminate, promote equality of opportunity and pay particular attention to those groups or sections of society with poorer health and life expectancy. The CCG is therefore committed to undertaking Equality Impact Assessments for any proposed tender in order to ensure that no groups are adversely affected by the process or potential result. This information will be made readily available.

3.4. PUBLIC & PATIENT ENGAGEMENT

3.4.1. Enfield CCG has a duty, and is committed to active and effective engagement with local patients and populations to assist in identifying areas where health needs are not being adequately met, and where there is scope

for improvement of services. This will include commissioners undertaking public and patient consultations before a procurement process begins, and engaging patient and public representatives where possible in procurement evaluation panels. Service users should also inform the shape of planned changes to provision as well as development of service specifications. Engagement will therefore be on-going through established CCG mechanisms and dedicated stakeholder events.

3.5. SERVICE SPECIFICATIONS

3.5.1. Enfield CCG commissioners are committed to developing clear, outcome-focussed service specifications in partnership with clinicians for use in tender exercises in order to provide bidders with sufficient information to understand what commissioners want to buy while allowing for innovation where this is required.

3.5.2. The degree to which the service specification has or can be developed will also inform the procurement model followed, for example, for AQP procurements, the service specification and funding model must be fully developed prior to procurement.

3.5.3. **Governance:** service specifications will, as a matter of course, address the governance arrangements required of any service being procured in order to assure Enfield CCG commissioners that a clear and robust governance structure is in place both across the service specified and within the organisation or organisations which wins/win the tender.

3.5.4. **Clinical engagement:** Enfield CCG commissioners will engage with a range of clinicians both within their CCG and externally to develop service specifications that are driven by clinical quality and have been agreed by relevant clinicians.

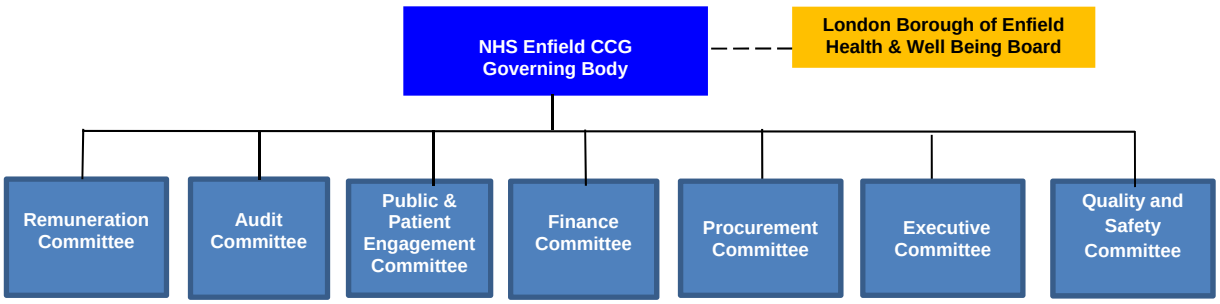
3.6. SUSTAINABLE PROCUREMENT

3.6.1. Enfield CCG recognises the responsibility and role it plays in reducing the impact it has as an organisation on the environment, and wishes to encourage health providers to do the same through reducing use of natural resources and in particular carbon emissions. Noting the context of the Public Services (Social Value) Act 2012.

3.6.2. The CCG intends to utilise e-procurement methods as far as possible, and include tender questions and performance measures relating to environmental considerations in the contracts tendered. The CCG will encourage providers (and potential providers) to be innovative in reducing their environmental impact whilst maintaining excellent clinical quality standards and improved outcomes.

4. CLINICAL PROCUREMENT GOVERNANCE

4.1. The diagram below sets out the Enfield CCG's governance structure:



4.2. Conflicts of Interest:

4.2.1. Enfield CCG recognises that conflicts of interest may arise in relation to clinical procurement. Where a proposed competitive tender is likely to attract bids from organisations in which a member of a decision-making body – such as the Finance Committee – has a financial or material interest, this interest must be declared, and the group member will be excluded from relevant parts of these meetings.

4.2.2. To ensure active management of this issue, Enfield CCG will maintain registers of interest, require all procurement assessment panel members to sign a Declarations of Interest form, and keep records as to how Conflicts of Interest have been managed. Bidders/contractors are also required to complete a Declarations of Interests form, which is attached as Appendix F.

4.2.3. On July 1, 2011, the Bribery Act 2010 came into force. Pursuant to this, a commercial organisation may be criminally liable for corrupt acts carried out on its behalf by third parties, and subject to potentially unlimited fines. In order to comply with the Bribery Act 2010 legislation, the CCG has put into place mechanisms to establish and maintain 'adequate procedures' that prevent bribery.

4.2.4. To further comply with the Act a proper, thorough assessment of risk is essential during the procurement process. Where a proposed competitive tender is likely the CCG *(or procurement assessment panel)* shall assess the level of risk and conduct a proportionate level of due diligence in order to take all necessary precautions to ensure that the CCG only forms business relationships with reputable and qualified partners and representatives.

4.2.5. The Chief Finance Officer is responsible for ensuring that the CCG is compliant with the requirements of the Bribery Act 2010. Any incident or suspicion of improper behaviour must be immediately passed to the Chief Finance officer or the CCG's LCFS. Further information may also be gained from the CCG's Anti-Fraud and Anti-Bribery Policy, Gifts and Hospitality Policy and Conflicts of Interest Policy.

- If staff have a suspicion of fraud, or need fraud-related advice, they should report their concerns directly to the CCG's Local Counter Fraud Specialist, Chief Finance Officer, or via the NHS Protect Fraud and Corruption Reporting Line or online reporting form. For further information please refer to the CCG's Anti-Fraud and Anti-Bribery Policy.

4.2.6. All staff that fail to comply with the document may result in consideration by the CCG to undertake disciplinary or criminal investigation should there be a perceived conflict of interest

4.3. Pre-Clinical Procurement Initiation:

4.3.1. When considering whether or not a service should be competitively tendered, Enfield CCG will ensure that any decision taken complies with the Regulations and Guidance set out in 1.2 above, the financial control limits (see 1.4 above) as well as other Standing Financial Instructions adopted and agreed by the relevant CCG(s), taking into account the scale of the procurement, the degree to which the service specification and funding model have been developed, and the number of potential providers for the service.

4.3.2. In particular the NHS (Procurement, Patient Choice & Competition) Regulations 2013 place a specific duty on Enfield CCG to procure services from providers:

- Most capable of securing the needs of patients, improving the quality and efficiency of services
- Provide best value for money

However, these Regulations also make clear that:

- Where it can be robustly demonstrated that only one provider is capable of providing a particular service, there is no requirement to put a contract out to competitive tender.
- Monitor has no power to force the competitive tendering of services. Decisions about how and when to introduce competition to improve services are solely up to doctors and nurses in CCGs. However, a court continues to retain the power to force a competitive tendering process to be undertaken by issuing an injunction if it determines that a CCG has acted unlawfully.
- Competition should not trump integration: commissioners are free to use integration where it is in the interests of patients. However, competition and integration should be seen as complementary rather than mutually exclusive. A well-designed competitive process can be used to achieve integration.
- The over-arching legally binding objectives of procurement are to secure the needs of patients and improve quality and efficiency.

These regulations are new and thus untested. Legal advice on the interpretation of these regulations recognises this and therefore each situation is unique and requires due and careful consideration of all the circumstances. It is recommended that:

- It can be inferred from the 2013 Regulations that there is an obligation to advertise (or competitively tender) where the services to which the contract relates are not capable of being provided by only one provider (Regulation 5).

- The “single provider” test is a hard evidential burden to satisfy. The circumstances under which the test may be met include for example: i) that the provider is the only provider with the skills or capability to deliver the services ii) that provider is for reasons of patient safety, the only provider capable of delivering that service or iii) following a reconfiguration services are required to be provided in a certain location by a particular provider. Where Commissioners wish to test whether there is only a single provider able to deliver a particular clinical service, they should seek further advice and support from the CSU Clinical Procurement Team, as each case will need to be looked at individually. Undertaking a market test to identify the potential level of interest in a proposed tender by placing an advert using appropriate media such as on the new national Contracts Finder portal to gauge market interest is straightforward and can be published at any time. A full options appraisal would be needed to support the use of the single provider test.
- The Clinical Procurement Team will also help commissioners to design a competitive procurement process including appropriate award criteria that meets the requirements of the Regulations and wider legal requirements and recommendations (e.g. Monitor’s “Fair Playing Field” report).
- Commissioners should also routinely assess the potential impact of the outcome of a tender process on the integration of service delivery for affected patients prior to initiating procurement. This may include an obligation to consult where a significant change of service is proposed.
- There needs to be adherence to procurement law and agreed CCG financial limits.

4.4. Pre-advertisement: As the Contractor and Budget Holder, and where it intends to undertake a clinical procurement, Enfield CCG will ensure that the correct procedures have been undertaken in accordance with the adopted Prime Financial Policies/Standing Financial Instructions – taking into account expected contract value for the life of the contract - in order to authorise the proposed tender to proceed to advert. This could include:

- Development of the Business Case
- Consideration and agreement of the Business Case, which should include the proposed procurement route (see Appendix A)
- Consideration and agreement of any waiver requirements: this could include, for example, circumstances where an existing contract may need to be extended to accommodate a tender timetable

4.5. During the Tender process, Enfield CCG will:

- Have tender opening procedures in place for manual return of ITT submissions or alternatively – where an e-procurement process is used - accept the Due North/Pro-Contracts electronic audit trail for the opening of tender submissions via this portal
- Provide leadership for the tender process and for the decisions made, and to identify the members of the evaluation panel
- With NELCSU support, be responsible for developing and giving final approval for the service-specific documentation, in particular the service specification and the questions to be asked of bidders that relate to the specification
- Provide a Lead to work with NELCSU Finance to develop the financial template, and to consider and assess the financial submissions received as part of a bid

- (Where a manual tender process is undertaken) To identify a receiving address for the return of all completed tenders (usually the CCG AO), and to have appropriate procedures in place for the care of unopened tenders, and for the opening of them by independent, nominated officers in line with the CCG's Prime Financial Policies/Standing Financial Instructions.

4.6. Completion of the tender process:

- With NELCSU support, to develop and finalise the Contract Award report
- For the Contract Award report to be considered and agreed by the CCG Board as required under the SFI's, and with appropriate consideration given to potential conflicts of interest in the Board membership
- With NELCSU support, to lead service mobilisation planning and implementation with the successful bidder(s)
- To raise a Requisition/Purchase Order for the contract for the successful bidder

4.6.2. Exceptionality Waiver Process:

- As the Contractor and Budget Holder, Enfield CCG has in place a waiver process to ensure an appropriate audit trail for decisions around contract extensions/variations, or where a single action tender has been awarded.

4.7. North & East London Commissioning Support Unit: will work pro-actively with CCGs/commissioners to ensure all procurement processes run smoothly and to the agreed timetable. This will include regular meetings, support and the prompt provision advice as required in order to assure CCGs that due process is followed, and that issues and potential risks are articulated, discussed and clear decisions made.

4.7.1. **Pre-advertisement:** NELCSU's Clinical Procurement Team will:

- Provide advice and guidance to Enfield CCG commissioners where required when developing business cases, particularly where a procurement route needs to be recommended.
- Require confirmation that the relevant Enfield CCG Committee has approved the Business Case and the procurement route before the advert can go live

4.7.2. **During the Tender process:** NELCSU's Clinical Procurement Team will:

- Provide Enfield CCG Lead Commissioners and panel members with advice, support and guidance through all stages of the procurement process
- Provide Enfield CCG lead commissioners with documentation templates, including Pre-Qualification Questionnaires (PQQs) and Invitation To Tender (ITT) documents (Clinical Procurement Team), and the Financial Model Template that reflects the required billing format and cost code (NELCSU Finance Team)
- Co-ordination of the tender process as a whole
- Advertising new procurement opportunities (where appropriate) on the new national Contracts Finder portal.
- All liaison with bidders during the tender process
- Responsibility for uploading all finalised tender documents to the Due North e-Procurement system where an e-procurement process is undertaken

- To be present at the formal opening of received tenders and responsibility for distribution of the completed tender documents received to panel members, where a manual tender process is undertaken.

4.7.3. **Completion of the tender process:** NELCSU's Clinical Procurement Team will:

- To contribute to the content of the Contract Award report as required
- To follow the Contract Award report with the issue of standstill/alcatel period letters for the required 10-day period, and for this period to expire before the successful bidder is made known in the public domain.
- To develop, populate and issue the NHS Standard e-contract based on the specification, agreed KPIs, and the successful bidder(s)' tender documentation, and ensure contract is signed (NELCSU Contracts Team)
- To support the lead Commissioner with mobilisation planning and implementation (NELCSU Contracts Team)
- To raise a Requisition/Purchase Order for the contract for the successful bidder

4.7.4. **Waiver Process:** NELCSU's Clinical Procurement Team will:

- Where requested, to provide advice and guidance on waiver procedures and to add comments to waiver requests (where required.)

5. POTENTIAL PROCUREMENT ROUTES:

5.1. As part of the procurement process, all potential procurement routes should be considered to ensure that the route chosen is the most appropriate for the scale of the service being procured and the outcomes the procurement is intending to deliver. Appendix A sets out the routes that can be considered.

5.2.

5.3. A standard procurement process will be followed in all cases. The procurement process to be followed, which sets out the responsibilities of commissioners and the procurement team, is set out in appendix B.

5.4.

5.5. **It** should be noted that the procurement of contracts funded jointly between a CCG and a Local Authority across the sector for health and social care services will be subject to locally agreed procedures and the Standing Financial Instructions of the organisation leading the tender.

6. REVIEW:

5.1 The content and effectiveness of the Framework will be reviewed by December 2015.

APPENDIX A: PROCUREMENT ROUTES:

There are a number of procurement options available to Enfield CCG commissioners. The NELCSU Clinical Procurement Team will provide technical advice on the most appropriate choice; this will depend on a number of factors, including contract value, the status of the provider market, geography, the needs of patients and patient choice. The following describes the procurement routes that could be used, with some of the advantages and disadvantages of each.

Please note that the table below sets out the maximum timescales that should be allowed for large scale clinical procurements. For small value contracts these timescales can, in consultation with the CCG commissioning lead, be considerably contracted to be proportionate with the value of the contract to be awarded. Expectations about timescales will need to be discussed on a case-by-case basis and agreed up-front at the start of the process.

Procurement Routes

Potential Procurement Route	When it may be considered	Advantages	Disadvantages	Estimated Maximum Timescale (can be flexed down for smaller procurements)
Open tender (Combined Response Document)	• Limited competition anticipated (i.e. few suppliers in the market) • Niche requirement • Patient/population need identified • Specification, outcomes and KPI's determined pre-procurement	• Open to all suppliers • Doesn't restrict small / medium enterprises • Contract currency determined pre-procurement	• Volume of responses may be high and all will require evaluation	• 6 months maximum (does not require PQQ stage; may require TUPE period before contract start)
Restricted tender	• Large market available for competition • Patient/population need identified • Specification, outcomes and KPI's generally determined pre-procurement but can be refined during preliminary stages	• Two-stage process that can minimise impact of resources by restricting the number competitors • Contract currency determined pre-procurement	• Could limit the number of suitable bidders	• 6-9 months maximum (may require TUPE consultation period before contract start)

Potential Procurement Route	When it may be considered	Advantages	Disadvantages	Estimated Maximum Timescale (can be flexed down for smaller procurements)
Competitive Dialogue	• Insufficient suitable suppliers available • Requires market development	• Flexible approach to complicated procurements • Increases competition and encourages innovation • Specification and funding model are only developed during the process	• Resource intensive to carry out dialogue phase • Innovative approaches may vary making it difficult to evaluate bids on a like for like basis	• 12 months
Negotiated Procedure	• No valid or suitable response received under Open or Restricted procedures • When only one supplier may provide the service for technical, artistic or intellectual property right reasons • Requirement is for research, experiment, study or development	• Contract terms are negotiated upfront from a selection of potential suppliers • Assists in clearly defining the requirement and a selected number of bidders	• Resources intensive to carry out negotiations	• 6 months maximum – but often follows an Open or Restricted process which has not identified a suitable provider
Framework Agreement Call-off	• Where an existing framework has been implemented, that satisfies all service requirements	• Reduces timescales – key terms have been agreed with suppliers appointed under the framework	• Specification is fixed and cannot be varied once framework is implemented	• 9-12 months maximum to establish the framework, but once implemented, call-offs can take 1-3 months
AQP (Any Qualified Provider)	• Community based activities where local tariff has been agreed • Where facilitating patient choice is a key local priority • Where payment for actual activity is preferred over block arrangements	• Designed to be a quicker process • Pre-qualifies potential providers, providing a 'pool' of potential supply • Supports Patient Choice as patients decide which qualified provider to use	• Initial accreditation may involve processing a large volume of applications • Stage 1 accredited providers may never qualify to supply • May not generate large/ sufficient interest, as no volume guarantees are given • Does not encourage new providers as there is no guarantee of return on investment	• 6-9 months maximum

ALTERNATIVES TO PROCUREMENT:

Contract Variation	• When the value of a service development, re-design or expansion is within 10% of the existing contract value (or service line/s in an acute contract)	• A relatively quick process where continuity is beneficial when a service or pathway would benefit from being delivered in a different way	• Does not test the market for innovation or cost	• Needs to be negotiated with the current provider to ensure it is acceptable to them
Contract Management	• As set out in the DH "Procurement guide for Commissioners of NHS-funded services" (July 2010, clause 2.3), contract management can be used where an existing contract is in place in order to secure incremental improvements/changes to existing services, or to address under-performance, as an alternative to procurement	• As above	• As above	• As above
Waivers	• When contract end dates need to be harmonised prior to a tender involving several services • When a service or contract would benefit from extension and the circumstances set out in the SFI's are met	• Enables developing or remodelled services further time to become established • Continuity of service provider	• Where a market is developing or developed, may be regarded by potential providers as anti-competitive • Does not test the market or demonstrate that VFM is being achieved	• Waiver process needs to be followed, with senior management authorisation obtained. Timescale depends on robustness of supporting evidence.
Single Tender Action (NHS Procurement, Patient Choice & Competition) Regulations 2013)	• Where it can be robustly demonstrated that only one provider is capable of providing a particular service, there is no requirement to put a contract out for competitive tender • Consideration of impact of procurement on pathway integration	• A quick process that saves resources and time involved in running a tender	• Does not test the market for innovation or cost	• Contract will need to be negotiated with identified single provider

APPENDIX B

NORTH & EAST LONDON CCGs/CSU INDICATIVE CLINICAL PROCUREMENT PROCESS

The following table sets out the sequential stages in a clinical procurement process using a "restricted" (i.e. 2-stage) procurement route, establishing what needs to be done, in what order and by whom. The "restricted" route has historically been the route selected most commonly by commissioners as it allows the number of bidders put through to the ITT stage to be reduced on the basis of the quality of their PQQ submissions. This example should be taken as a template which can be applied to the circumstances of each particular tender, where a "restricted" route is chosen. The CSU Clinical Procurement Team will work with commissioners to develop an agreed timeline for each project. The timeline set out here is discretionary but reflects cumulative experience of running tenders that have achieved the best outcomes with the minimum of delays and challenges, and that takes into account competing time demands on both bidders and commissioners/evaluation panel members. Whilst this timeline can be reduced, there are associated risks which the CSU Clinical Procurement Team will set out and discuss with commissioners where a shorter timeframe is preferred.

Steps in Clinical Procurement process	**Timeline (working days and as a minimum – actual timeline would need to factor in panel commitments/annual leave/unavoidable delays and unforeseen events etc.)**	**Responsibilities of Lead Commissioner/CCG representatives**	**Responsibilities of CSU Clinical Procurement**	**Responsibilities of the CSU Contracts & Finance Teams**
1. Stage 1: Planning/pre-Advertisement				
Business Case approved by Clinical Commissioning Group/authorisation to proceed to advert given in accordance with SFIs	CCG Governing Body/Board process & decision	Lead Commissioner/CCG to gain approval/authorisation ensuring those making decisions have no conflicts of interest		
Development of tender-specific documentation: • **Specification (inc. KPIs)** • **Advert text** • **MOI (Memorandum of**	• Specification (inc. KPIs): finalised by time of ITT issue • Advert text: for upload to the national Contracts Finder Portal	• Lead Commissioner/CCG for Specification, MOI, EqIA and questions for the PQQ and ITT	• Clinical Procurement Team will provide templates for procurement documents and previous examples of	• CSU Contracts Team will provide support to lead CCG commissioners with development of the Specification (inc. KPIs),

Information) • **PQQ (Pre-Qualification Questionnaire)** • **ITT (Invitation To Tender)** • **Equalities Impact Assessment (EqIA)** • **Financial Model Template**	• MOI (Memorandum of Information): to provide bidders at EOI stage with general information about the service/CCG area • PQQ: for PQQ issue • ITT: for ITT issue • Equalities Impact Assessment: as part of Business Case • Financial Model Template: finalised by time of ITT issue	• Finance lead for the confirmation of the Financial Model Template	documents used; will be responsible for uploading documents to e-Procurement system and/or issuing all documents to bidders	the questions to be asked of bidders and any other documents as required • Finance lead to develop the Financial Model Template
Establish Evaluation Panel/Project Group: identify people willing to take part, including commissioners, clinicians, GPs, independent and national representation, user/patient representation, local Finance lead, HR/IT & Quality Assurance reps etc.	Needs to be finalised by deadline for PQQ submissions	Lead Commissioner/CCG to establish	Clinical Procurement will require all assessment panel members to sign Declaration of Interest form before taking part in any assessment process. The team will also provide assessment panel members with training on procurement and use of any e-Procurement systems	
Notice given to current provider(s) if required	6 months minimum required	Lead CCG Commissioner to authorise issue of notice letter(s)		CSU Contracts Team to issue notice letter(s) in the name of the relevant CCG(s)
2. Stage 2: Pre-Qualification (PQQ)/Invitation to Tender (ITT)				
Finalise Advert text		Lead Commissioner	Clinical Procurement provides template and coordination support	
Advert sent to Communications (for clearance)	Day 1		Clinical Procurement	
Advert Placed on the new Contracts Finder portal website & Pro-Contracts	Day 2		Clinical Procurement	

e-Procurement system				
Finalise EOI form and MOI	By Day 2	Lead Commissioner	Clinical Procurement provides templates and coordination support	
Period for receipt of Expressions of Interest (EOI)	Day 3-17 (minimum 15 working days to ensure seen by widest audience and taking potential bidder leave into account)		Clinical Procurement issues and logs EOI requests	
Finalise PQQ	By Day 18	Lead Commissioner	Clinical Procurement provides template and coordination support	
PQQ issued to organisations submitting EOI's	Day 18		Clinical Procurement issues PQQs	
PQQ Bidders Day – clarify PQQ questions	Day 19-23 (to be agreed if required; best practice within first week of receiving PQQ)	Lead Commissioner to present service specific information	Clinical Procurement provides event coordination support	
Deadline for receipt for PQQ submissions	Day 37 (4 weeks as best practice)		Clinical Procurement oversees submissions by deadline and issues them to assessment panel/releases access to on-line submissions to Evaluation Panel	
Completion of evaluation for PQQ's	Day 46 (10 working days for Panel to assess and score; Panel must commit to completing task by deadline)	Evaluation Panel & Local Finance lead complete by deadline		**CSU Finance Team to support CCG Finance lead with evaluation of Financial element of submission**
Collation of PQQ scores and preparation for moderation session	Day 47		Clinical Procurement collate scores and prepare materials for moderation session	
PQQ Moderation Meeting	Day 48	Evaluation Panel & Local Finance must be present to discuss scores	Clinical Procurement leads moderation session	
Finalise ITT and Financial Model Template	By Day 49	Lead Commissioner & local Finance Lead	Clinical Procurement provides templates and coordination support	

Invitation to Tender issued to successful bidders	Day 49		Clinical Procurement issues ITT	
ITT Bidders day – clarify ITT questions	Day 50-54 (to be agreed if required; best practice within first week of receiving ITT)	Lead Commissioner/lead clinicians to present service specific information	Clinical Procurement provides event coordination support	
Deadline for receipt of ITT bids (4 weeks)	Day 68		Clinical Procurement oversees submissions by deadline and issues them to assessment panel/releases access to on-line submissions to Evaluation Panel	
Evaluation of ITT's completed by	Day 77 (10 working days for Panel to assess and score; Panel must commit to completing task by deadline)	Evaluation Panel & Local Finance complete by deadline		CSU Finance Team to support CCG Finance lead with evaluation of Financial element of submission
Collation of ITT scores and preparation for moderation session	Day 78		Clinical Procurement collate scores and prepare materials for moderation session	
Moderation Meeting for ITT's and preparation for interviews	Day 79	Evaluation Panel & Local Finance must be present to discuss scores and agree presentation topic and clarification questions to be asked	Clinical Procurement leads moderation session	
Presentation/interview day for bidders, with final evaluation by Panel	Day 84 (to allow bidders a week from moderation meeting to prepare)	Project Team, with Local Finance representative if necessary	Clinical procurement present to ensure due process undertaken	
3. Stage 3: Approval/Contract Award				
Contract award route: dependent on CCG SFIs, but needs sign-off by CCG Governing Body (and take into account need to ensure no Conflicts of Interest in the membership of the Governing Body making that decision.)	Day 85-94 (estimate: all within 10 working days) CCG Governing Body/Board process: Contract award paper to be prepared, presented and agreed	Lead Commissioner finalises Contract Award report and arranges for its consideration by CCG Governing Body with support and input from Clinical Procurement	Clinical Procurement provide procurement process detail input to Contract Award report	CSU Contracts Team will populate the NHS Standard e-contract based on the specification, agreed KPIs and the successful bidder(s)' tender documentation

Contract award date and letters sent to successful/unsuccessful bidders	Day 95		Clinical Procurement coordinates issue of letters	
10 day Alcatel/standstill period expires	Day 96-105 (10 calendar days but not ending on a weekend day)		Clinical Procurement oversees this and any extensions to the standstill period	
Feedback provided to successful/unsuccessful bidders	Day 96-105 (best practice to provide feedback within the standstill period, both written and face-to-face)	Lead Commissioner and other Evaluation Panel reps to provide feedback comments and be present at any feedback meetings	Clinical Procurement coordinates written feedback and any face-to-face meetings	
Contract signing/mobilisation	Day 106 onwards (assuming no use of Judicial Review or Remedies Directive by unsuccessful bidders)	Lead Commissioner to discuss (NOT negotiate) with successful bidder		CSU Contracts Team can issue contract to successful bidder(s) for discussion & signing, and support lead Commissioner with mobilisation planning and implementation
Possible TUPE process	Day 106-126 (1 month assumed: depends on size of staff group affected: 3 months if over 100 people)	Successful Bidder		
Service Commencement Date	Day 127	Successful Bidder		
New Contract end date logged on Clinical Procurement Forward Plan for re-tender	Day 128	Lead Commissioner to confirm service/contract start date	Clinical Procurement to log re-procurement date on Clinical Procurement Forward Plan	CSU Contracts Team update own records for future contracting round information

NHS Enfield Clinical Commissioning Group

APPENDIX C

Procurement Process Flow Chart

service / procurement need identified through expiring contract, service gap or decision to market test
referred to relevant programme board
programme board scopes issue including rough service outline, desired outcomes, financial / budgeting issues
Outline proposal including procurement advice note referred to relevant local committee/group
Business case developed
Business case approved
Programme Board works up service spec and procurement documentation
Advert placed
expressions of interest received
PQQ (or similar relevant docs) sent out and received
Panel evaluation
Moderation review
ITT sent out and received (if appropriate to bid type)
Evaluation + Moderation
Evaluation panel drafts shortlist / preferred / reserve bidder recommendations to go to relevant local committee/group and then Governing Body (Part II) formally for approval
bidders notified
ALCATEL 10 day If no challenge proceed to contract close, signature
Service mobilisation

APPENDIX D

Non-Clinical Supply thresholds

Non-Clinical Goods and Services procurement must be carried out in accordance with legislation and in accordance with the CCG Standing Financial Instructions (SFIs). The table below summarises the CCG SFIs, and corresponding procurement options based on expected value of the procurement:

Total Contract Value	Type of Procurement	Procurement Options
Up to £4,999	Transactional	One written Quotation - Supplier via approved requisition
£5000 and £19,999	Formal quotation	Two written quotes – Supplier via approved requisition
£20,000 - £99,999	Competitive Quotes	Use available framework (e.g. Crown Commercial Service, ESPO, NHS Supply Chain, SBS, etc) If no framework exists, obtain three quotations.
£100,000 - OJEU Threshold*	Competitive tender	Use available framework (e.g. Crown Commercial Service, ESPO, NHS Supply Chain, SBS, etc) If no framework exists, competitive tender.
Over the OJEU Threshold* £111,676	Full competitive tender	Use available framework (e.g. Crown Commercial Service, ESPO, NHS Supply Chain, SBS, etc) Seek specialist procurement advice from the CSU

*OJEU threshold as of 1/1/2014.
** In all cases, specialist advice is available from the NEL CSU procurement team.
When goods and services are required, the NEL CSU Procurement Team will act on requests to order upon receiving an approved requisition. The responsibility to raise a requisition lies with the individual and/or department requiring the goods or services. Enfield CCG SFIs must be taken into account when the requisitioner is planning to raise a requisition

Publishing contract opportunity advertisements and contract award information on the new Contracts Finder portal

Contracting authorities must ensure that when they advertise a new procurement opportunity above certain thresholds, that the advert is placed on the new national Contracts Finder portal. https://www.gov.uk/contracts-finder
This website must be used in addition to, or instead of any local or regional portals currently being used. Authorities must subsequently ensure that contract award information is placed on Contracts Finder once the contract is awarded.

The thresholds are as follows:

- Central Contracting Authorities: £10,000
- Sub Central Contracting Authorities and NHS Trusts*: £25,000

*Note: where existing standing orders in local government are in place that have a higher value for advertising opportunities, the higher value applies rather than £25,000.

Exemptions

The main exemptions from these regulations are:

- Contracting authorities carrying out devolved or mainly devolved functions in Scotland, Wales and Northern Ireland.
- Procurement of health care services for the purposes of the NHS within the meaning and scope of the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013.
- Maintained Schools and Academies are exempt from Contracts Finder obligations and the Prompt Payment obligations.

Note: This is not an exhaustive list and contracting authorities should refer to the Public Contracts Regulations 2015 for further information.

Appendix E

Procurement Decision Register

*To be used when commissioning services from GP practices, including provider consortia, or organisations in which GPs have a financial interest

Service	
Question	**Comment / Evidence**
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?	
How have you involved the public in the decision to commission this service?	
What range of health professionals have been involved in designing the proposed service?	
What range of potential providers have been involved in considering the proposals?	
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)?	
What are the proposals for monitoring the quality of the service?	
What systems will there be to monitor and publish data on referral patterns?	
Have all conflicts and potential conflicts of interests been appropriately declared and entered in registers which are publicly available? Have you recorded how you have managed any conflict or potential conflict?	
Why have you chosen this procurement route?	

What additional external involvement will there be in scrutinising the proposed decisions?	
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)	
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	
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	
What steps have been taken to demonstrate that the services to which the contract relates are capable of being provided by only one provider?	
In what ways does the proposed service go above and beyond what GP practices should be expected to provide under the GP contract?	
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?	

Appendix F

Declaration of Interests for Bidders / Contractors

This form is required to be completed in accordance with the NHS Act 2006 (as amended by the Health and Social Care Act 2012) and the NHS (Procurement, Patient Choice and Competition) (No2) Regulations 2013 and related guidance

Notes:
All potential bidders/contractors/service providers, including sub-contractors, members of a consortium, advisers or other associated parties (Relevant Organisation) are required to identify any potential conflicts of interest that could arise if the Relevant Organisation were to take part in any procurement process and/or provide services under, or otherwise enter into any contract with, the CCG, or with NHS England in circumstances where the CCG is jointly commissioning the service with, or acting under a delegation from, NHS England. If any assistance is required in order to complete this form, then the Relevant Organisation should contact

- The completed form should be sent to the Head of Integrated Governance.
- Any changes to interests declared either during the procurement process or during the term of any contract subsequently entered into by the Relevant Organisation and the CCG must notified to the CCG by completing a new declaration form and submitting it to the Head of Integrated Governance.
- Relevant Organisations completing this declaration form must provide sufficient detail of each interest so that the CCG, NHS England and also a member of the public would be able to understand clearly the sort of financial or other interest the person concerned has and the circumstances in which a conflict of interest with the business or running of the CCG or NHS England (including the award of a contract) might arise.

  If in doubt as to whether a conflict of interests could arise, a declaration of the interest should be made.
- Interests that must be declared (whether such interests are those of the Relevant Person themselves or of a family member, close friend or other acquaintance of the Relevant Person), include the following:
- the Relevant Organisation or any person employed or engaged by or otherwise connected with a Relevant Organisation (Relevant Person) has provided or is providing services or other work for the CCG or NHS England;

- a Relevant Organisation or Relevant Person is providing services or other work for any other potential bidder in respect of this project or procurement process;
- the Relevant Organisation or any Relevant Person has any other connection with the CCG or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the CCG's or any of its members' or employees' judgements, decisions or actions.

Declarations:

Name of relevant Organisations		
Interests		
Type of Interest	**Details**	
Provision of services or other work for the CCG or NHS England		
Provision of services or other work for any other potential bidder in respect of this project or procurement process		
Any other connection with the CCG or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the CCG's or any of its members' or employees' judgements, decisions or actions		
Name of Relevant Person		
Interests		
Type of Interest	**Details**	**Personal interest or that of a family member, close friend or other acquaintance?**
Provision of services or other work for the CCG or NHS England		
Provision of services or other work for any other potential bidder in respect of this project or procurement process		

Any other connection with the CCG or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the CCG's or any of its members' or employees' judgements, decisions or actions		

To the best of my knowledge and belief, the above information is complete and correct. I undertake to update as necessary the information.

Signed:

On behalf of:

Date: