NHS
Nottingham North and East
Clinical Commissioning Group

NHS
Nottingham West
Clinical Commissioning Group

NHS
Rushcliffe
Clinical Commissioning Group

Procurement Policy

January 2018 – 2021

CONTROL RECORD				
Reference Number	**Version** 1.1	**Status** Draft	**Author** Head of Commissioning	
			Sponsor Chief Officer	
Amendments				
Purpose	To set out the approach for facilitating open and fair, robust and enforceable contracts that provide value for money and deliver required quality standards and outcomes, with effective performance measures and contractual levers.			
Audience	All employees and appointees of NHS Nottingham North and East, Nottingham West and Rushcliffe Clinical Commissioning Groups and individuals working within the organisation in a temporary capacity			
Approving Body	Governing Body		**Date approved**	TBC
Date of issue	TBC			
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Contents

Executive Summary

NHS Nottingham North and East, NHS Nottingham West and NHS Rushcliffe Clinical Commissioning Groups (together the 'CCGs') have a responsibility to ensure that they have a consistent, transparent and effective approach to the procurement, commissioning and contract management of goods, services and works.

When undertaking procurement activities the CCGs are required to comply with legal requirements, internal governance rules and professional and ethical standards in order to achieve efficient and productive procurement processes.

New procurement legislative requirements for healthcare were introduced for CCGs in 2016. This procurement policy has been updated to reflect this and to clearly distinguish between the procurement approaches for directly commissioned healthcare services and corporate/indirect spend. The sections on conflicts of interest, sustainability, controls, approvals and contractual arrangements have also been reviewed and strengthened to ensure legal compliance and alignment with the CCGs' own policies and Standing Financial Instructions. This procurement policy is designed to ensure:

- Compliance with laws, regulations and guidance;
- Probity in spending public funds;
- Professional and ethical conduct;
- Best value for money;
- Efficiency, effectiveness and environmental and socio-economic sustainability.

This procurement policy describes:

- Scope, application, key principles, policy ownership and responsibilities;
- Procurement rules and requirements;
- Sustainability and growth agenda;
- Thresholds, approvals and procurement routes;
- Forms of contracts, purchase orders and invoices.

A number of annexes have been provided as practical guidance for commissioners.

If you have any suggestions as to how the policy document could be improved or require further guidance or advice please e-mail the Contracting and Procurement Team: noweccg.nottssouthcontracts@nhs.net.

1. Introduction

1.1 As commissioners of healthcare services, the CCGs have a clear responsibility to ensure we make decisions and commission services that meet the needs of our population. Services have to be affordable, within the limits of the available resources, with emphasis on the quality of outcome, rather than the quality of provision.

1.2 The CCGs' are committed to reducing health inequalities, delivering measureable population health benefits, improved patient experience and ease of access. Provision of health services within the CCGs should be convenient, timely, consistent and delivered in a way that is sustainable in the longer term.

1.3 A 'business as usual' approach to the commissioning and procurement of healthcare services will fail to secure better outcomes and value for money. Changes in the roles of hospitals and a shift to primary care leading and delivering more services in a community based setting, will require the CCGs to work closely with all providers, including new providers, and to develop innovative procurement and contracting solutions.

1.4 There are limits on the resources available, and we have to be able to demonstrate we are achieving value for money for our investments. Through service development proposals and Quality Innovation Productivity and Prevenetion (QIPP) schemes an evidence based approach to identifying and delivering commissioning priorities will continue to develop.

1.5 We will review the services we need to commission and identify opportunities to improve efficiency, extend choice and access, and improve the quality of outcomes and patient experience.

1.6 The CCGs will ensure that they manage the procurement of their own management and operational needs to facilitate the delivery of effective health services to the local population for which they are responsible.

2. Policy Statement

2.1 This policy sets out the context in which procurement is agreed and seeks to ensure that the CCGs are legally and procedurally compliant. Appendix A provides an overview of the public procurement regulations. The purpose of this policy is to provide clear and effective guidance to all the CCGs' officers when undertaking procurement activities; therefore, this Policy:

- Sets out the laws, rules regulations and policies applicable to procurement;
- Incorporates key procurement principles, standards and best practices;
- Delivers a mechanism to drive procurement compliance and efficiency throughout the CCGs;
- Lays out the process from business need to contract management, known collectively as the Procurement Timescales as illustrated in **Annex G**;
- Provides procurement procedures, templates and tools to support the CCGs' officers involved in procurement of goods and services.

2.2 The CCGs acknowledge that policy within this arena is particularly complex as it sits within a wider framework of healthcare services and EU legislation. The CCGs approach to procurement is to operate within legal and national policy frameworks and to actively use procurement as one of the system management tools available to strengthen commissioning outcomes through:

- Increasing general market capacity to meet the CCGs' need and the demand for clinical services in the local health economy;
- Using competitive tension to facilitate improvements in choice, quality, efficiency, access and responsiveness; and
- Being open to new and innovation approaches to delivering services.

2.3 NHS and the wider public sector procurement is subject to international and national rules, principles, regulations and guidance. In procuring services and goods, the CCGs' will comply with the legislation that governs the award of contracts by public bodies. This includes adherence to:

- Public Contracts Regulations 2015 (PCR 2015);
- Concessions Contracts Regulations 2016 (CCR 2016);
- National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (PPCCR 2013);
- The NHS Act 2006 (as amended);
- The Public Services (Social Value) Act 2012;
- The Equality Act 2010;
- Modern Slavery Act 2015;
- HM Treasury 'Managing Public Money'.

3. Associated Policies and Procedures

3.1 This policy and any procedures derived from it should be read alongside and in conjunction with the following:

- The CCGs' Constitutions, which include Standing Orders, Standing Financial Instructions, Schemes of Delegation and Prime Financial Policies;
- Detailed Financial Policies;
- Conflicts of Interests, Standards of Business Conduct Policy, Risk Management Policy;
- Fraud Corruption and Bribery Policy;
- NHS England Standing Finanical Instructions in so far as they impact on the procurement of GP services under full delegation of the Co-Commissioning provisions.

3.2 For the purposes of complying with this policy when reference is made to the CCGs' policies it shall have the meaning of each of individual CCG policies within NHS Greater Nottingham. In so far as any CCG officer is procuring goods and services for operational management and/or health services for their respective CCG, they shall comply with the policies of that CCG.

4. Scope

4.1 This policy applies to all officers who procure goods, services or works on behalf of the CCGs, including staff on temporary or honorary contracts, appointed representatives acting on behalf of the CCGs, staff from member practices and any external organisations (e.g. other Clinical Commissioning Groups, Commissioning Support Units etc.).

4.2 All expenditure by CCGs for their own operational and management needs are subject to this policy, including:

- Revenue expenditure and capital expenditure;
- Other Corporate/Indirect spend (supplies procurements);
- Commissioned Healthcare Services; and
- Any fully delegated responsibilities under Co-commissioning arrangements.

4.3 In the event of full delegation, CCGs, under Primary Care co-commissioning, are generally free to make procurement decisions subject to the terms of: their delegation agreement with NHS England; statutory guidance; applicable law; the relevant CCG's Constitution; and good practice, with the following exception:

- Under their delegation agreements, CCGs are required to comply with NHS England's Standing Financial Instructions (SFIs) in the following circumstances:
    - **Settlement of a claim:** the value of the settlement exceeds £100,000;
    - **Scheme**: any matter under the Delegated Functions which is novel, contentious or repercussive; and
    - **Contracts**; in relation to contracts for Alternative Primary Medical Services Contracts (APMS), which has or is capable of having a term which exceeds 5 years.

4.4 Arrangements under which the CCGs collaborate with other public bodies (for example under non legally binding memoranda of understanding (MOU)) will not ordinarily constitute public contracts for the purposes of procurement law, but will be subject to the internal approval processes for non-competed expenditure set out in the SFIs and this policy.

5. Application of this Policy

5.1 This policy sets out in all instances the actions of any CCG officers involved in and/or considering entering in to a contract or committing the CCGs to any expenditure: they must do so in accordance with this policy and any of the CCGs' applicable policies.

5.2 This policy sets out:

a) how the CCGs will meet statutory procurement requirements primarily the Public Contracts Regulations 2015 and the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013.

b) the CCGs' approach for facilitating open and fair, robust and enforceable contracts that provide value for money and that deliver required quality standards and outcomes, with effective performance measures and contractual levers.

c) how to determine the most appropriate procurement route to procure goods and services to meet each of the CCG's operational and management needs: taking account of its own internal financial policies and procurement regulations. To reduce the cost of procuring goods and services CCGs' officers should make best use of national or other frameworks where they are able to demonstrate value for money.

d) the transparent and proportionate process by which the CCGs will determine whether health and social services are to be commissioned through existing contracts with providers, competitive tenders, via a framework approach or through alternatives provided for in procurement regulations.

e) how 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 suppliers and providers, thereby to facilitate good working relationships.

f) how to enable the CCGs to demonstrate compliance with the general principles of good procurement practice. Those general principles are:

- **Transparency**: Making their purchasing and commissioning intent clear to the market place, including the use of sufficient and appropriate advertising of tenders, transparency in making decisions not to tender, and the declaration and appropriate management of conflicts of interest;
- **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**: Having specifications that do not favour one or more providers. Ensuring consistency of procurement rules, transparency on timescale 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; and that pricing and payment regimes are transparent and fair.

5.3 Users of this policy should refer to the appendices to this policy which provide further guidance and clarification on the application of this policy in practice.

6. Accountabilities and Responsibilities

6.1 CCGs' Procurement Lead

This Policy is owned by the Director of Contracting and Deputy Chief Officer NHS Nottingham West, on behalf of the 3 CCGs, acting as strategic lead for procurement and who is responsible for:

- Ensuring that the principles of good procurement practice are embedded within the CCGs' organisations, monitoring legislation and incorporating any significant policy or procedural developments, or as required by statutory or mandatory requirements;
- Reviewing and updating the policy on an annual basis following an approved change control process;
- The review and sign-off for procurement exemptions in line with SFIs, prior to scrutiny by the Audit Committee;
- Managing the procurement appeals process in line with the agreed framework.

6.2 CCG Staff

All of CCGs' officers are responsible for complying with this procurement policy and associated appendices. All CCG officers shall:

- Only purchase goods and services on behalf of the CCGs;
- only purchase goods and services in accordance with the CCGs' scheme of financial delegation;
- Ensure compliance with the requirements set out in the CCGs'
    - Standards of Business Conduct;
    - Managing Conflicts of Interest Policy; and
    - Fraud, Corruption and Bribery Policy
- Ensure that all procurement activities are carried out taking account of the requirements set out in the:
    - Records Management Policy; and
    - Information Lifecycle Management Policy
- Ensure that all purchases of goods and services they make on behalf of the CCGs are in accordance with the requirements set out in **Appendix A.**

In instances where staff are unsure about a course of action, then they should seek advice and guidance from either their line manager or the CCGs' Procurement Lead.

6.3 Procurement Support

Where the CCGs have outsourced or have contracted their procurement support the service provider is responsible for:

- The development and application of the CCGs' procurement procedures so that goods and services are acquired legally, responsibly, fairly, in keeping with the CCGs' values and with the CCGs securing value for money, consistency and quality;
- Supporting the CCGs:
    - In their procurement activities;
    - By identifying, evaluating and where appropriate mitigating the risk associated with procuring goods and services; and
    - By assessing contracting options and making recommendations.

6.4 Procurement Project Leads

In all instances those CCG officers identified to lead a procurement project, who make a contracting decision or who agree for the CCGs to incur expenditure, must ensure that

there is governance and oversight to approve the relevant action. Where required the project lead will seek delegated authority to take any such action. In the event there is no governance framework or an officer is unsure, they should refer the decision to the Director of Contracting and Deputy Chief Officer.

6.5 Authority

Each of the individual CCGs will remain accountable for the purchase of goods and services in relation to its own operation and management needs or any commissioned health services for which it is responsible; specifically each of the CCGs is responsible for:

- Any proposed market intervention and any associated procurement route;
- The approval of any specifications or service models directly affecting its respective requirements or that of the local population;
- The evaluation criteria used for the procurement of goods or services;
- Signing off decisions on which providers to invite to tender; and
- Making final decisions on the selection of the provider.

Arrangements for delegation of authority to officers are set out in the relevant Scheme of Delegation and Prime Financial Policies / Detailed Financial Policies.
In the event of any discrepancy between this policy and the relevant Scheme of Delegation and Prime Financial Policies / Detailed Financial Policies, the Scheme of Delegation and Prime Financial Policies / Detailed Financial Policies will take precedence.

7. Procurement Approach for CCG Goods and Services and Commissioned Health Contracts

7.1 For all of the CCGs' own operation and management needs and to assure the delivery of health services, the CCGs shall adopt a procurement approach in compliance with their obligations under procurement legislation and the other applicable legislation referred to above.

7.2 When procuring goods and services for the CCGs' own operational and management needs the CCGs' will also ensure compliance with its own policies.

7.3 The CCGs' main objective via a procurement process for health services is to provide patients with services that are high quality, responsive and appropriate to their need, whilst ensuring that the CCGs comply with their legal obligations. The CCGs will strive to ensure that its service providers and suppliers can anticipate and respond to changes in the CCGs' needs and will value the need to provide quality and value for patients. When procuring health care services, the CCGs are required to act with a view to:

- Improving the quality of the services;
- Improving efficiency in the provision of the services;
- Meeting the needs of the local population (as set out within the Joint Strategic Needs Assessment);
- Keeping within approved budgets/cost limitations;
- Meeting probity and propriety requirements; and
- Demonstrating value added to the local community.

7.4 When conducting competitive tender processes for its own operational and management needs and any type of health care services contract, each of the CCGs will, whilst ensuring that it complies with its legal obligations, seek to:

- Select the method of procurement which is most proportionate, most effectively ensures best value for the service(s) in question and provides fair and open competition. This will be agreed in conjunction with the Commissioning Support Unit (CSU);
- Award contracts based on the most economically advantageous tender criteria with particular focus being given to those services that are most likely to deliver continuous improvement in terms of quality, efficiency and effectiveness;
- Work with providers fairly and transparently at all times;
- Recognise that certain specialities/services may have a monopoly on expertise and strive to seek out new and innovative relationships in order to widen the healthcare market;
- Continuously explore ways of encouraging new providers into the market;
- Monitor existing contracts and service arrangements via the tender process to ensure that they deliver best value in line with the competitive market;
- Stimulate diversity and innovation, enhance choice for service users, and create the conditions in which new suppliers might take root and be able to enter the market; and
- Design and deliver services to meet the differing needs of the community by consulting with prospective providers, other local NHS organisations and all sections of the local community.

7.5 The CCGs will follow the principled-based approach set out in procurement regulations with a view to improving the quality and efficiency in the provision of NHS health care services and with a view to:

- Where appropriate, providing services in an integrated way;
- Enabling providers to compete to provide the services;
- Allowing patients a choice of provider of the services; and
- Encouraging innovation and development.

7.6 Potential conflicts of interest will be managed appropriately in compliance with the procurement regulations and so as to protect the integrity of the CCGs' contract award decision making processes and the wider NHS commissioning system.

7.7 With regard to patient choice and elective care, the CCGs shall, subject to complying with their legal obligations, follow the elective care protocol set out at **Appendix C**.

7.8 The waiving of competitive tendering procedures will not be used to deliberately avoid competition or for administrative convenience or to award further work to a provider originally appointed through a competitive procedure where this would breach the procurement regulations. In the event that CCG officers have a requirement to consider a direct award they should seek advice and guidance form the procurement lead or the Director of Contracting and Deputy Chief Officer, before committing the CCGs' to enter into a contract arrangement or to commit a CCG to expenditure.

8. Forms of Contracts

All CCG officers need to understand the terms and conditions that apply to a particular contract before the commencement of the procurement.

8.1 **Contracts for supply and services** - All commitments (with exception of framework agreements) must be on NHS standard terms and conditions for the purchase of goods and supplies or any other standard for defined by Crown Commercial Services, as applicable. Any deviation must be pre-approved by Director of Contracting & Procurement.

8.2 **Contracts for healthcare services** - The NHS Standard Contract is mandated by NHS England for use by commissioners for all contracts for healthcare services other than primary care. In this context, the CCGs' officers must ensure that:

- In all instances the use of the NHS Standard Contract in any procurement or market intervention should be in accordance with the NHS Standard Contract Technical Guidance relevant in the year of use.
- Consideration is given to the use of the NHS England shorter-form version of the Standard Contract, for use in defined circumstances. This will complement the full-length version of the Standard Contract, which will continue to be used (and indeed will remain mandatory) in many situations.

- When available make use of any other NHS England standard forms of contract namely:
    - Multi-Specialty Community Provider (MCP);and
    - Primary and Acute Service (PACS) models which [will be mandated - tbc] for commissioners

8.3 Primary Care Contracts – The CCGs' officers shall make ensure they use standard for contracts for primary care services including:

- PMS (Personal Medical Services) Contract
- APMS (Alternative Provider Medical Services) Contract
- GMS (General Medical Services) Contract
- NHS Standard Contract (Community-based service)
- Pharmacy – LPS (Local Pharmacutical Service) Contract
- Dentistry – GDS (General Dental Service) Contract, PDS (Primary Dental Services Contract)

8.4 In all instances the CCGs' officers involved in procurement or market intervention must develop the contract in accordance with any technical guidance relevant to the contract.

8.5 Guidance and examples of good assurance processes for novel and complex contracts is provided in "The Integrated Support and Assurance Process (ISAP): and introduction to assuring novel and complex contracts".

9. In-House Arrangements

9.1 The Public Contracts Regulations 2015 (PCR) regulation 12(1)) provides that contracts awarded to a contractor/supplier considered to be "in-house" will fall outside of the public procurement rules. Regulation 12 of the PCR provides that for a contractor/supplier to be considered "in-house" the following conditions must all be met:

1. The CCG must exercise a control over the contractor concerned that is similar to control that it exercises over its own departments:
2. More than 80% of the activities of the contractor are carried out for the CCG or for other legal persons controlled by the CCG; and
3. There is no direct private capital participation in the contractor.

9.2 In the event that CCG officers considers that a contract may be an in-house arrangement then they must contact the procurement lead or the Director of Contracting and Chief Deputy Officer, for advice, before proceeding to award a contract without a competitive tender process or committing the CCGs' to any expenditure. Where required additional legal advice will be sought.

10. Exemptions

10.1 Where a CCG officer wishes to apply for an exemption they shall do so in accordance with Standing Financial Instructions or Prime Financial Policy and follow the process as outlined below:

- Exemption Request Form (**Appendix D**) must be submitted to the Director of Contracting and Deputy Chief Officer, who will review the exemption form ensuring that the reasons for the exemption are clearly stated and meet the necessary criteria;
- Director of Contracting and Deputy Chief Officer, will support or oppose the exemption application based on the submitted information;
- If the proposed exemption relates to a Single Action Tender where GP practices are proposed as the only capable provider, then the commissioner is responsible for completing **Appendix E** and presenting to the relevant CCG governing body or duly authorised officer for approval in accordance with clause 11 of this policy;
- An outcome will be returned to the relevant commissioning lead documenting the decision within 7 working days of the outcome being decided;
- All decisions arising from the Exemption Request Forms will be submitted for scrutiny by the Audit Committee.

10.2 In each case, the CCG will check that it is still complying with the procurement regulations.

11. Single Tender Action - Waiver

11.1 Any Single Tender Action (STA) waiver shall be raised in accordance with the CCGs' Standing Financial Instructions or Prime Finance Policy. This is the confirmation by the CCG that a contract can be awarded without a competitive process. A STA waiver should only be granted in exceptional circumstances.

11.2 The CCG Officer has identified the following scenarios as to when a contract may be awarded without a competitive tender process:

- Requirement can be delivered by an existing contract. The procurement lead must ensure that Public Contracts Regulation (PCR) and the 2013 Regulations allow such waiver;
- Reasons of extreme urgency. The award should be no longer than is necessary to allow a competitive process to take place to procure these services;
- Where specialist expertise is required and is only available from one source;
- A negotiated procedure without prior publication may be used for new services which are a repetition of similar services, already procured;
- A tender process has been conducted and failed to produce an outcome.

10.3 The STA waiver shall be presented to the relevant CCG governing body or duly authorised officer for approval.

12. Deciding the procurement route

12.1 In order to comply with the procurement regulations and to ensure equity to all sectors, the CCGs will ensure full compliance with the following when advertising contracts for the CCGs' own operational or management needs and health care services:

<£25k (full life of contract)	No formal process is to be followed although best value for money should be sought at all times. If unsure the commissioner is advised to contact a procurement lead or their manager for more help/advice.
£25k - £100k (full life of contract)	For contracts estimated to cost between £25k-£100k A minimum of three quotations must be sought. Quotations should be in writing but not subject to formal receipt process and can be faxed, posted or emailed. • Bids may be invited from informal/formal supply networks, via recommendations or sourcing trade magazines etc. • Contracts can be advertised on Contracts Finder if you are unsure of supply base, but you will need to determine the procurement procedure you are going to follow in advance of such advertisement • The CCG responsible for the tender/procurement will then choose the best specification and record the outcome

£101k - £164,175k (full life of contract)	• The Commissioning lead will produce a brief on the service required • The CCGs have confirmed that, to ensure compliance with the procurement regulations, all contracts above £101k will be advertised on Contracts Finder • The Commissioning lead should ensure that potential providers have sufficient time to submit offers, as specified under the EU Rules and or when using the Light Touch Regime provisions • The recommended minimum numbers of shortlisted bidders is five, but this is subject to market interest and if there are not five bidders of sufficient quality, fewer may be invited subject to compliance with the procurement regulations • Bids are to be submitted on the on-line procurement portal • The successful provider is identified on the basis of an evaluation with the rationale for the choice being recorded • An award notice must be placed on Contracts Finder
£164,176 £589,147	A procurement process as identified in **Appendix F**
£589,147k plus (full life of contract)	• For healthcare services the Light Touch Regine must be followed • The approval for tender will be as per the Scheme of Delegation

12.2 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 process to be followed, some of these are contained within the following appendices:

- Tender/Procurement routes (**Appendix F**)
- Procurement timescales (**Appendix G**)
- Procurement Checklist (**Appendix H**)
- Procurement Decision and Contract Award (**Appendix I**)
- Specifications (**Appendix J**)

12.3 The CCGs will require assurance about potential providers. Where this is not achieved through a formal tender process, financial and quality assurance checks of suppliers and providers will be expected to be undertaken before entering into a contract which will assess the suitability of the provider using the following criteria:

- Financial viability
- Economic standing
- Corporate social responsibility
- Clinical capacity and capability (where applicable)
- Clinical governance (where applicable)
- Quality/Accreditation
- Compliance with the Public Sector Equality Duty

13. Modification of Existing Contracts

13.1 With regard to making variations to existing contracts, legal advice will be sought to determine whether a proposed variation constitutes a material change requiring the contract to be put out to re-tender. Regulation 72 of the Public Contracts Regulations (PCR) sets outs the factors to consider.

14. Recording of Decision Making

14.1 All commissioning decisions must have a completed Procurement Checklist **(Appendix H)**, which must be signed off by the Director of Contracting and Deputy Chief Officer NHS Nottingham West

14.2 All procurement decisions must be logged on the Register of procurement decisions and contracts awarded **(Appendix I)**

14.3 All contracts awards should be published in accordance with PCR 2015 and where applicable Contracts Finder.

15. Sustainable Procurement

15.1 The NHS is a major employer and economic force acroos the CCGs' regions. The CCGs' recognise the impact of its purchasing and procurement decisions on the regional economy and the positive contribution it can make to economic and social regeneration. The CCGs are committed to the development of innovative local and regional solutions, and will deliver a range of activities as part of its market development plan to support this commitment.

15.2 Wherever it is possible and does not contradict or contravene the CCGs' legal obligations, the CCG will work to develop and support a sustainable local health economy.

16. Collaborative Procurement

16.1 Where there is clinical, quality, financial or process benefits to be obtained, the CCGs' should consider the option of joint commissioning with other health or local authority commissioners.

16.2 Where procurement is the subject of joint commissioning between several commissioners or with local authority partners, decision-making must be consistent with the contents of this policy.

16.3 When a procurement process is the subject of joint commissioning with the Local Authority, Local Authorities are subject to the same legislative frameworks(Public Contract Regulations and European Union Procurement Directives), but may not be required to comply with NHS specific guidance and regulations: this will be considered and any issues arising from any differences will be clearly articulated in any joint procurement decision.

16.4 The CCGs should consider the range of collaborative procurement support services available from Commissioning Support Units where they offer potential financial and process benefits to the CCGs.

17. Use of Information Technology

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

18. Decommissioning/Disinvestment in Services

18.1 The decommissioning of services will be in accordance with the Policy of Service review and Decommissioning Decisions.

19. Equality and Quality Impact Assessment

All public bodies have statutory duties under the Equality Act 2010. The CCGs aim to design and implement services, policies and measures that meet the diverse needs of their service users, population and workforce, ensuring that none are placed at a disadvantage over others. When any change to services is to take place a full Equality and Quality Impact Assessment must be carried out prior to the change within the service.

There is a joint (Greater Notts) EQIA process and panel. The EQIA Panel will oversee the development and quality assurance of EQIAs.

20. Stakeholder Engagement

20.1 The CCGs recognise that effective engagement with stakeholders is an essential requirement for all NHS organisations and will offer benefits to the generation of outcome-based service specifications. The CCGs will engage with stakeholders at appropriate times during the commissioning and procurement process. Stakeholder engagement with new and existing providers, members of the public, clinicians and other service users will occur at key points in the service review and procurement process. Any potential conflict of interest issues that arise during the engagement process need to be managed in accordance with the CCGs' Conflict of Interest policy(ies).

20.2 The CCGs will assess each procurement activity against the benefits and legal duty to involve patients and public. Where involvement is required, consideration will be given as to what is fair and proportionate in relation to the circumstances of the procurement. For the benefits of this policy and in line with the CCGs' guidance, the terms 'involve' and 'involvement' are used interchangeably with 'engagement', 'participation', 'consultation' and 'patient and public voice'. It is recognised that there are many different ways to involve patients and different approaches will be assessed as appropriate depending on the nature of the procurement activity. The assessment will be documented as per the template in **Appendix H**. Examples where the legal duty may apply in relation to procurement include the consideration or development of proposed models, configurations or specifications for a service and/or in the commencement of a procurement.

21. Conflicts of Interest

21.1 Managing conflicts of interest is needed to protect the integrity of the wider NHS commissioning system and to protect the CCGs' from any perceptions of wrong-doing. General arrangements for managing conflicts of interests are set out in the CCGs' Constitution and Conflicts of Interests Policy(ies).

21.2 A conflict of interest arises where an individual's ability to exercise judgment or act in one role is or could be impaired or otherwise influenced by that individual's involvement in another role. For the purposes of the procurement regulations, a conflict will arise where an individual's ability to exercise judgment or act in their role in the commissioning of services is impaired or otherwise influenced by their interests (or potential interests) in the provision of those services. NHS Guidance on conflicts of interest makes it clear that an interest includes an interest of:

a) A member of the CCG
b) A member of the CCG's Governing Body
c) A member of committees or sub-committees of the CCG's Governing Body
d) An employee

21.3 Where any of the above mentioned persons has an interest in a procurement decision, that person/those persons will be excluded from the decision-making process (but not necessarily from the discussion about the proposed decision). This includes where all practice representatives have a material interest in the decision, for example where the CCGs are considering commissioning services on a single tender basis from all GP practices in the area.

21.4 Where it is not practicable to manage a conflict by simply excluding the individual concerned from participating in relevant decisions or activities, the CCGs will need to consider alternative ways of managing the conflict such as, for example, involving third parties on the Governing Body of the CCGs who are not conflicted or inviting third parties to review decisions to provide additional scrutiny.

21.5 The CCGs will through their conflicts of interests register maintain a record of how they manage any conflict that arises between the interests in commissioning the services and the interests involved in providing them. This register will need to include:

a) Details of the individual who was conflicted and their role/position within the CCG
b) The nature of their interest in the provision of services
c) When the individual's interest in the provision of the services being commissioned was declared and how
d) Details of the steps taken to manage the conflict
e) The individual's involvement in the procurement process

22. GP Practices as Potential Providers

22.1 The template included at **Appendix E** 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 Any Qualified Provider approach, or via a non-competitive process from GP practices). The completed templates will be used to provide assurance to the respective CCG Governing Body that the proposed services meet local needs and priorities and that robust processes

have been followed in selecting the appropriate procurement route and in addressing potential conflicts.

22.2 Details of all contracts, including the value of the contracts, will be published on the CCG website shortly after contracts are signed.

23. Freedom of Information

23.1 Section 1 of the Freedom of Information Act (FOI) (2000) gives a general right of access from 1 January 2005 to recorded information held by the CCGs, subject to certain conditions and exemptions. This information may be held in both manual and electronic form in accordance with the Data Protection Act 1998 and may be disclosed to third parties in accordance with the Act.

23.2 When preparing to enter into contracts, the CCGs must carefully consider their obligations under FOI and ensure any bidders/contractors are aware these will contain terms relating to the disclosure of information by them. The CCGs may be asked to accept confidentiality clauses, for example to the effect that information relating to the terms of the contract, its value and performance will not be disclosed. FOI recognises that there will be circumstances and respects in which the preservation of confidentiality between public authority and contractor is appropriate, and must be maintained, in the public interest. However, it is important that the CCGs make the contractor aware of the limits placed by FOI on the enforceability of such confidentiality clauses relating to the disclosure of information.

23.3 The joint FOI policy can be found in the publication scheme on each CCG's website.

24. Communication, Monitoring and Review

24.1 The CCGs will establish effective arrangements for communicating the requirements of this policy. This will include all new starters to the organisation being briefed on the requirements of this policy as part of their induction to the CCGs

24.2 The implementation of this policy, and the effectiveness of the arrangements detailed within it, will be monitored by the CCGs' Governing Bodies, and Audit Committees.

24.3 This policy will be reviewed by the CCGs' Governing Bodies every three years or in light of any recommendation made by the Director of Contracting & Procurement.

25. Equality and Diversity Statement

25.1 The CCGs are committed to commissioning services which embrace diversity and that promote equality of opportunity including the aims of the public sector equality duty. All procurement processes will take account of this provision.

25.2 As an employer, the CCGs are committed to equality of opportunity and to valuing diversity within their workforce. The CCGs goal is to ensure that these commitments are embedded in their day-to-day working practices with their population, colleagues and partners.

25.3 The CCGs will provide equality of opportunity and will not tolerate unlawful discrimination on grounds of age, disability, gender identity, marriage or civil partnership, pregnancy or

maternity, race, religion or belief, sex, sexual orientation, or as a result of being any of the following: people with carer responsibilities', people experiencing economic and social deprivation, vulnerable migrants, homeless people, sex workers or gypsies and travellers.

26. Policy Non-Compliance

26.1 The CCGs' officers must comply with this policy and the associated CCG policy and procedures at all times. Failure to comply may result in disciplinary action in accordance with the relevant CCG's disciplinary procedure.

26.2 In the event of non-compliance, full details of the non-compliance, any justification for non-compliance and the circumstances around the non-compliance must be reported to the CCG's Audit Committee and the must report the non-compliance to the next formal meeting for action or ratification.

26.3 The CCGs' officers are encouraged to be proactive in relation to the policy compliance and to raise compliance issues in early stages of the procurement process to prevent policy and legal non-compliance.

26.4 The CCGs' officers must comply at all times with the Standard of Business Conduct Policy, the CCG's Fraud, Bribery and Corruption Policy and any other corporate procedures and governance policies.

Appendix A - Overview of the Public Procurement Regime

Before deciding whether a contract is going to be awarded following a competitive process, using Any Qualified Provider (AQP), a framework agreement, following a Single Tender Action or other direct award without competition, it is essential that commissioners are aware of the rules and regulations that apply. (Refer to section B)

National Health Service (Procurement, Patient, Choice and Competition) Regulations (No 2) 2013

1.1 The CCG must ensure that it complies with other national legislation that applies to its procurement activities. On 1 April 2013, the National Health Service (Procurement, Patient, Choice and Competition) Regulations (No 2) 2013 came into force, herafter referred to the "Regulations".

1.2 The Regulations apply to all health care services contracts entered into by CCGs for the purpose of the NHS (excluding pharmaceutical services) and contain a number of requirements that CCGs must comply with to ensure that they:

a) Adhere to good practice in relation to the procurement of health services funded by the NHS
b) Protect the rights of patients to make choices with respect to treatment or other health care services funded by the NHS
c) Do not engage in anti-competitive behaviour unless this is in the interests of NHS health care service users

1.3 The Regulations set out the following core three-fold objective that commissioners must pursue when procuring NHS health care services:

a) Securing the needs of health care service users
b) Improving the quality of services
c) Improving the efficiency with which services are provided, including through the services being provided in an integrated way

1.4 The CCGs must also pursue this objective when taking decisions that do not in themselves result in the award of a services contract, such as deciding which providers to enter into a framework agreement with and selecting providers to bid for potential future contracts.

1.5 In deciding whether a CCG has acted in accordance with this objective, NHS Improvement is likely to consider:

a) The extent to which the CCG has engaged with the local community to identify their health care needs including related needs
b) Whether the CCG has considered the needs of all health care users for which it is responsible
c) Whether it has identified areas for improvement in advance of procuring services
d) Whether the CCG has considered how the health care needs of the population can be best secured
e) How the quality and efficiency of services might be improved

1.6 The Regulations set out some general and particular requirements that commissioners must comply with to achieve this core objective. They adopt a principles-based approach that is intended to give commissioners flexibility.

1.7 More generally, the CCG must:

a) Act in a transparent, proportionate and non-discriminatory way
b) Procure services from the providers most capable of achieving the three-fold objective set out above
c) Consider appropriate ways of improving services including through services being provided in a more integrated way, enabling providers to compete to provide services and allowing patients a choice of provider

1.8 More specifically, the Regulations contain specific requirements that the CCG must comply with when deciding whether and how to publish contract opportunities for NHS health care services. These require the CCG to:

a) Secure that arrangements exist for enabling providers to express an interest in providing any NHS health care services
b) Publish a contract notice (which must contain certain information) on the website maintained by NHS England where it decides to publish an intention to seek offers from providers in relation to a new contract for the provision of NHS health care services

1.9 The Regulations provide that the CCG can award a new contract to a single provider without publishing an intention to seek offers from providers where it is satisfied that the services are capable of being provided only by that provider.

1.10 In addition, the Regulations set out requirements relating to the CCGs' procurement activity that cover:

a) Establishing and applying qualification criteria
b) Record-keeping
c) Obtaining assistance and support when commissioning services
d) Managing conflicts of interest
e) Anti-competitive behaviour
f) Patient choice

1.11 NHS Improvement has been given the role of ensuring that commissioners have acted within the legal framework established by the Regulations. It has issued guidance on the substantive provisions of the Regulations and separately, some guidance on its enforcement priorities in relation to the Regulations. The CCGs must refer to these guidance documents to ensure that they are complying with their legal obligations under the Regulations.

Public Services (Social Value) Act 2012

1.12 The Public Services (Social Value) Act 2012 ("Act") came into force on 31 January 2013. Essentially, the Act requires contracting authorities (which includes the CCGs) to consider, before commencing the formal procurement process for awarding a services contract (including health care services):

a) How what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area
b) How, in conducting the process of procurement, it might act with a view to securing that improvement

1.13 In considering the second bullet point above, the CCGs must consider only matters that are relevant to what is being procured and the extent to which it is proportionate to take those matters into account in the circumstances. They must also consider whether to undertake any consultation in fulfilling their duty under the Act. The CCGs must comply with this duty except where an urgent need to arrange the procurement in question makes it impractical to do so (such urgency must not be attributable to undue delay brought about by the relevant CCG).

1.14 The CCGs should refer to the Cabinet Office's Procurement Policy Note[1] which gives advice to commissioners on complying with the duties under the Act.

Other Relevant Legislation and Guidance

1.15 Other legislation and guidance affecting procurement include but is not limited to:

a) Section 242 of the National Health Service Act, 2006 which 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 decisions that affect service operation
b) NHS Standards of Procurement which was revised and republished in June 2013
c) Equality Act 2010 and the Public Sector Equality Duty aims supported by the guidance supplied by the Equality & Human Rights Commission in 2014 titled 'Buying Better Outcomes'.

1.16 The CCGs are aware of the need to keep this Policy up to date and to monitor any changes in legislation. The CCGs must take note of any additional guidance, standards, policies and other forms of 'soft' law that might impact on this Policy and the CCGs' approach to procurement

2 Transfer of Undertakings and Protection of Employment Regulations 2006 (TUPE)

2.1 The TUPE regulations enact the EU Acquired Rights Directive (Directive 2001/23). They 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.

2.2 Commissioners need to be aware of these and the need to engage HR support and possibly 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, (COSOP) as amended or replaced from time to time and associated Code of Practice 2004 as amended or replaced from time to time when transferring staff to the Private Sector" also known as "COSOP".

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[1] https://www.gov.uk/government/publications/procurement-policy-note-10-12-the-public-services-social-value-act-2012

2.3 The CCGs shall seek to provide bidders participating in a procurement with sufficient information for the bidders to be able to determine whether TUPE will apply to the procurement. It will ensure that adequate time is built into procurement timelines where it is anticipated that TUPE may apply.

Appendix B – Light Touch Regime

1. The new light-touch regime (LTR) is a specific set of rules for certain service contracts that tend to be of lower interest to cross-border competition. Those service contracts include certain social, health and education services, defined by Common Procurement Vocabulary (CPV) codes. The list of services to which the Light-Touch Regime applies is set out in Schedule 3 of the Public Contracts Regulations 2015.

2. The main mandatory requirements under the Light Touch Regime are:

   i) Official Journal of the European Union (OJEU) Advertising: The publication of a contract notice (CN) or prior information notice (PIN) except where the grounds for using the negotiated procedure without a call for competition could have been used, for example where there is only one provider capable of supplying the services required.
   ii) The publication of a contract award notice (CAN) following each individual procurement, or if preferred, group such notices on a quarterly basis.
   iii) Compliance with Treaty principles of transparency and equal treatment.
   iv) Conduct the procurement in conformance with the information provided in the OJEU advert (CN or PIN) regarding: any conditions for participation; time limits for contacting/responding to the authority; and the award procedure to be applied.
   v) Time limits imposed by authorities on suppliers, such as for responding to adverts and tenders, must be reasonable and proportionate. There are no stipulated minimum time periods in the LTR rules, so contracting authorities should use their discretion and judgement on a case by case basis.

Appendix C – Patient Choice and Elective Care

Elective care – first outpatient appointment

Patients of the CCGs have the right to choose the organisation that provides their treatment when they are referred for a first outpatient appointment for a service led by a consultant (subject to certain exceptions).

Where a patient requires an elective referral, for a first outpatient appointment with a consultant or a member of a consultant's team, the CCGs will ensure that patients are offered the choice of:

- Any clinically appropriate provider that has a contract with a commissioner; and
- Any clinically appropriate named consultant-led team employed or engaged by that provider;

and where a patient requires an elective referral for mental health services, for a first outpatient appointment with a health care professional or member of a health care professional's team, the choice of any clinically appropriate named health care professional-led team that is employed or engaged by the provider to which the patient is referred.

These requirements do not apply to certain categories of services or to certain categories of patients:

- **Excluded services**: the obligation to offer choice does not apply to cancer services subject to a two week maximum waiting time, maternity services or any service where it is necessary to provide urgent care.

- **Excluded patients**: the obligation to offer choice does not apply to any person detained under the Mental Health Act 1983, detained or on temporary release from prison or serving as a member of the armed forces.

Elective care – maximum waiting times

Patients have the right to access services within maximum waiting times and for the NHS to take all reasonable steps to offer a range of suitable alternative providers if this is not possible. This applies where a patient has been referred for elective care but has not commenced treatment within 18 weeks of a referral being received by the provider to whom the patient is referred.

In these circumstances (i.e. failure to receive treatment within 18 weeks of referral being received by the provider), the CCGs will take all reasonable steps to ensure that the patient is offered an appointment with a clinically appropriate alternative provider with whom a commissioner has a contract to commence treatment earlier. If there is more than one suitable alternative provider for these purposes, the CCGs will take all reasonable steps to ensure that the patient is offered a choice of appointment with more than one provider. The requirement to offer choice under this directive is exempt where:

- The patient did not attend their appointment with the provider in circumstances where the date for the appointment was reasonable, the patient was aware of the consequences of missing the appointment and the patient had not sought to rearrange the appointment.

- The patient did not attend a rearranged appointment with the provider in circumstances where the patient had rearranged the appointment, the original date for the appointment was reasonable and the patient was aware of the consequences of missing the appointment.
- The patient has chosen to delay starting treatment until after the maximum 18 week waiting period has expired in circumstances where the patient was offered a reasonable appointment date within the 18 week period and decided that they did not want an appointment within that period.
- The patient has decided not to start treatment.
- The patient is not able to start treatment for reasons unrelated to the provider or the commissioner and in circumstances where the patient was offered a reasonable appointment date within the maximum 18 week waiting period and was unable to make any appointment dates within that period.
- A consultant, a member of a consultant's team or a person providing interface services has determined that it is in the best clinical interests of the patient not to start treatment within the maximum 18 week waiting period, that the patient does not need treatment, or that the patient should be referred back to a primary care provider before any treatment is started.
- A consultant, a member of a consultant's team or a person providing interface services has determined that the patient requires a period of monitoring.
- The patient is placed on the national transplant waiting list.

Appendix D – Exemption Form

Name of Service	
Commissioner Name	
Preferred Supplier	
Value of Contract	

Reason for Exemption (please indicate appropriate exemption reason)
☐ The Chief Officer has agreed that formal tendering procedures would not be practicable for the estimated expenditure ☐ The requirement is covered by the scope of an existing contract ☐ A local or national agreement is in place ☐ The timescale genuinely precludes competitive tendering (failure to plan the work properly would not be regarded as a justification for a single tender) ☐ Specialist expertise is required and is available from only one source (evidence of investigation must be provided) ☐ The task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate ☐ A clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering ☐ Provision of legal advice and services providing that any legal firm or partnership commissioned by CCGs are regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council for England and Wales in relation to the obtaining of Counsel's opinion) and are generally recognised as having sufficient expertise in the area of work for which they are commissioned ☐ Where allowed and provided for in the Capital Investment Manual

Details of Exemption	
Description of Service/Consultancy required	

Reasons for Purchase	

Approval	
Exemption application	Approved/Rejected Details
Authorisation	Name Date

Quotation/Tender Exemption Application

- No commitment should be made to the supplier prior to authorisation
- The document should be signed by the CCG's Procurement Lead
- In all cases this document should be filed within the contracts database in case of future challenge

Appendix E - Approach to Mitigate Conflicts when Procuring GP Services

1. Service description

1. **Name of service**
2. **Description of current service under 'LES' agreement (please include no more than 500 words)**
3. **Total cost of the service (based on a 3 year contract)**
4. **Is the service covered by the Light Touch Regime? (i.e. healthcare service, not a product)**
5. **How is this service aligned to the Health and Wellbeing Board/CCG strategy? (please explain)**
6. **What range of health professionals have been involved in designing the proposed service?**
7. **Does this service require access to a practice register?**
    a. YES - Tick Single Action Tender in section 6 and continue to section 3
    b. NO - Enter No below and move to section 2

2. Market management

8. **Are there other providers within the market able to deliver this service by April [2013] (please note the geographic market is defined as the EU?)**
    a. YES - Enter Yes below and go to question 9
    b. NO - Tick SAT in section 6, Enter No below and move to section 3
9. **Will fragmentation of service provision increase risk to the patients?**
    a. YES - Tick SAT in section 6, describe risk in section 4 and go to Section 3
    b. NO - Enter No below and go to Question 10
10. **How have patients been engaged to develop the pathway and will they be aware of the full range of providers from whom they can choose?**

3. Quality assessment

11. **How does this service propose to deliver improved outcomes for patients?**
12. **What impact will a new/changed service provision have on the current pathway?**
13. **How will quality be monitored?**

4. Risk

14. Have all conflicts been registered on the CCG's conflicts of interest log?

5. Additional information

A

B

C

6. Recommendation

□ **Single Action Tender (GP)**

A **Please provide in additional information box A**
(How this proposed service is above and beyond what GP practices should be expected to provide under the GP contract)

B **Please detail in summary in additional information box B**
(Steps taken to demonstrate that there are no other providers within the market able to deliver this service)

C **(Please detail in additional information box C)**,
(Why provision is exclusive to GP only)

□ **Competitive Tender**

□ **Any Qualified Provider**

Completed templates will be submitted to the Resource Allocation and Prioritisation Panel for approval with the outcome communicated to commissioners.

Please return your completed template to susanne.croll@nottinghamcity.nhs.uk.

Appendix F – Tender / Procurement Routes

Approach to market
It is anticipated that an increasing number of services will be subject to competitive tendering in order to demonstrate the application of the principles of transparency, openness, equal treatment, delivering value for money and compliance with the Public Contracts Regulations 2015.

There are a number of procurement routes available to the CCG:

a) The open procedure (including Any Qualified Provider)
b) The restricted procedure
c) Competitive dialogue;
d) Competitive Procedure with Negotiation
e) Innovative Partnership Agreements
f) Spot Purchase
g) Grants
h) Framework Agreements

Open Procedure
The open procedure requires that the tender documentation is sent to all interested companies upon request and bidder selection (shortlisting) does not apply. There is no control over the number of tenders submitted for evaluation; therefore it is imperative that a market analysis has been carried out. This procedure is generally used when there are relatively few known suppliers and the service/supply is relatively simple. The contract is advertised (by way of a notice, if the full EU Rules apply) and any responders are sent full tender documentation. The option to use Any Qualified Provider is also within the open process.

Any Qualified Provider (AQP)
Any provider that meets the stated criteria for entering a market can compete for business within that market without constraint by a commissioner organisation. Under Any Qualified Provider there are no guarantees of volume or payment, and competition is encouraged within a range of services rather than for sole provision of them. The Any Qualified Provider model promotes choice and contestability, and sustained competition on the basis of quality rather than cost. Any service that is contracted through the Any Qualified Provider model does not need to be tendered, although it will be advertised if appropriate (using Contracts Finder) and potential service providers will need to be qualified.

Restricted Procedure
Potential providers are required to complete a Selection Questionnaire (the “SQ”) to enable assessment of their suitability to tender for the contract. If successful in being shortlisted, they will be sent full tender documentation. The Selection Questionnaire typically requests the following information:

a) Company Information (Name, address and company registration number etc.)
b) Financial details
c) Equal opportunities policy
d) Environmental policy
e) Health and Safety compliance
f) Contract Performance
g) Relevant experience
h) Capability / Technical Competence / capacity

Once bidders have been selected to tender for the contract those bidders are sent an Invitation to Tender which includes the requirement for the bidders to respond, to award criteria, including pricing which will then be evaluated.

Competitive Dialogue

This procedure is available for the award of "particularly complex contracts". This is the case where the CCG finds it impossible to define a technical solution to meet its needs or to identify the best legal/financial make-up for the project. The procedure allows the CCG to engage in a dialogue with at least three bidders to define the best technical solution for the project. When it has been found, those bidders will be asked to submit their final tenders on the basis of the solution or solutions presented during the dialogue which are evaluated against pre-determined criteria.

Competitive Procedure with Negotiation (CPN)

As with Competitive Dialogue, this procedure is available for complex contracts. Under this route negotiation with bidders is permitted. Under previous public procurement regulations the scope for using the negotiated was limited. Since 2015, the grounds for using CPN have been broadened and as a result it is likely to be used more frequently. Note that various safeguards concerning the conduct of the procedure have been added to ensure equal treatment and transparency. These safeguards include: (i) setting minimum requirements at the beginning and not changing them during the negotiations; (ii) having stable award criteria and weighting throughout the process; (iii) informing tenderers in writing of any changes to the technical specifications; (iv) not revealing confidential information from a candidate or tenderer to other participants without its specific consent; (v) documenting all stages of the process; and (vi) the submission of all tenders in writing. In terms of the process itself, negotiations may take place: (a) on all aspects, other than the minimum requirements, such as quality, quantities, commercial clauses, social, environmental and innovative aspects; (b) in stages with successive elimination by applying the award criteria; and (c) on all tenders but the final one.

Innovation Partnerships

This new procedure is aimed at encouraging the development of innovative products, services or works, which are not already available on the market. A problem for companies which want to provide such new approaches, is the cost of investing in the development of innovative products or services, without any likelihood that these could be taken through to final production or delivery unless there were further procurement processes after an initial R&D services contract. This procurement process largely follows the competitive procedure with negotiation (see above). Following a contract notice, the CCGs will receive expressions of interest and negotiates with the potential partner(s) it has selected. The partnership agreement is then awarded to one or more partners on the basis of the best price quality ratio. Following the award, the structure of the process covers two parts, firstly the development of the innovative product, service or works and then the purchase of the resulting supplies, services or works. It is not yet clear how much use will be made of this procedure.

Spot Purchasing
There will be the need to spot purchase contracts for particular individual patient needs or for urgency of placements requirements at various times. At these times, a competitive process may be waived. However where applicable the exemption process will apply and the commissioner will need to consider future provision such as setting up a framework agreement. It will be expected that these contracts will undergo best value reviews to ensure the CCG is getting value from the contract. In all cases the CCG should ensure that the provider is fit for purpose to provide the particular service.

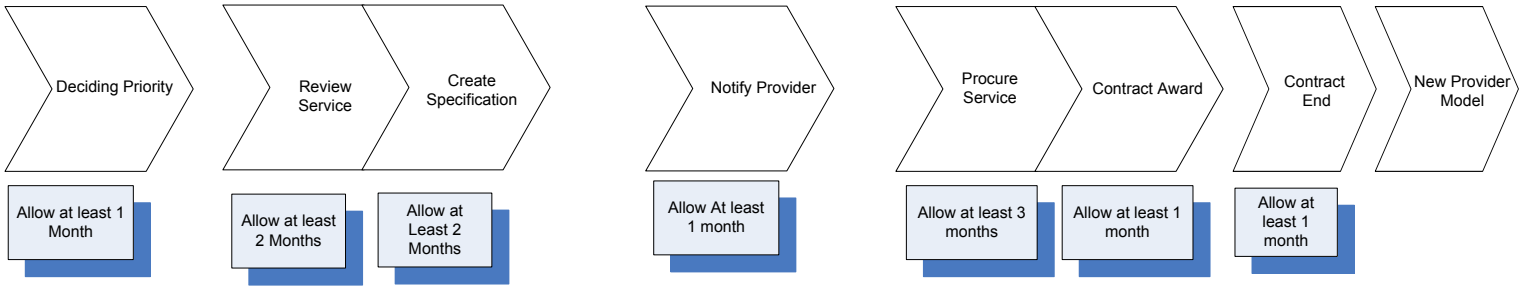
Framework Agreements
The CCGs are able to use other public sector organisations' framework agreements if a provision has been made in the framework agreement to allow this (that is the by the holder of the framework agreement, such as the Crown Commercial Services). The EU rules state that framework agreements should be for no longer than four years in duration except in exceptional circumstances. Where it is allowed for in the framework agreements there may be an option for running mini competitions. Here all providers on the framework who can meet requirements are invited to submit a bid, these are then evaluated and a contract awarded following the same processes as for tenders. Any contract awarded can run beyond the framework agreement period.

Grants
In certain circumstances the relevant CCG may elect to provide a grant payable to third sector organisations. However there should be no preferential treatment for third sector organisations. Use of grants can be considered where:

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

Grants should not be used to avoid competition where it is appropriate for a formal procurement to be undertaken and the CCG should be satisfied that such grants would not constitute illegal state aid.

Appendix G – Procurement Timescales



- Identifying key priorities from patient experiences, current service provision, local needs and preferences, risk assessments, national priorities and other guidance, such as National Institute for Health and Clinical Excellence (NICE) guidelines and joint strategic needs assessment.
- Carry out risk assessment to ensure procurement is in proportion to risk and in line with the clinical priorities and wider health and well-being outcomes described in the commissioning strategy
- Understand the potential of local community and third sector providers to deliver innovative services and increase capacity.
- Notify Provider in writing when the contract is coming to an end informing them of the process that will take place
- Liaise with performance monitoring team to understand when contracts are coming to an end in order to plan for redesign to take place prior to re-commissioning.
- Develops short-, medium- and long-term commissioning strategies enabling local service design, innovation and development

- Carry out process Maps with a view of understanding the strengths and weaknesses of current service
- Analyse local and wider clinical and provider quality and capacity to innovate and improve
- Communicate with clinicians and providers to challenge established practice and drive services that are both convenient and effective
- Translate research and knowledge into specific clinical and service reconfiguration, improving access, quality and outcomes
- Gather information and present findings with proposed business case model to Practice based commissioning advisory group.
- Invite patients and the public to respond to and comment on all angles of the pathway redesign process and outcomes.
- Complete comprehensive equality impact assessment report on the new/existing service model to ensure all parties where applicable have equitable access.
- Reflects NHS values through clear and accurate service specifications

- Notify Provider in writing of when contract ends, and the process involved. i.e decision to continue or go out to the market

- Carry out open and fair Procurement in line with NHSNC Procurement Protocol.
- Ensure that contracts are over reasonable time periods, maximising the investment of the provider and the PCT
- Works with commissioning partners to ensure that its procurement plans are consistent with wider local commissioning priorities
- Agree KPI's

Appendix H: 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?[2]	
11. What additional external involvement will there be in scrutinising the proposed decisions?	

[2]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).

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?	

Appendix I: Procurement decisions and contracts awarded

Ref No	Contract / Service title	Procurement description	Existing contract or new procurement (if existing include details)	Procurement type – CCG procurement, collaborative procurement with partners	CCG clinical lead (Name)	CCG contract manger (Name)	Decision making process and name of decision making committee	Summary of conflicts of interest noted	Actions to mitigate conflicts of interest	Justification for actions to mitigate conflicts of interest	Contract awarded (supplier name & registered address)	Contract value (£) (Total) and value to CCG	Comments to note

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:

Please return to **<insert name/contact details for team or individual in CCG nominated for procurement management and administrative processes>**

Appendix J – Specification

The Cabinet Office defines a specification as "a statement of needs to be satisfied by the procurement of external resources". It can also be known as a statement of service requirement and output-based specification. The purpose of a specification is to present to providers a clear, accurate description of the local NHS's need, enabling the provider to propose a solution that will meet the need identified.

The NHS Standard Contract service specification should be used for all applicable services to ensure a consistent approach across the CCGs. For those goods and services where the use of the NHS Standard Contract is not applicable (e.g. for consultancy), a local specification template is available. All commissioners are responsible for ensuring that any new services are migrated to the appropriate template.

When considering provider input, Commissioners must be aware of any information that, if adopted, could directly or indirectly favour a particular provider, or a particular provider/third party solution or technology. The specification template includes sections where the commission will input background material to help potential suppliers understand the requirement in context and provide supporting material. In large outsourcing projects the volume of background material can be considerable and the practicalities of copying it and issuing it to all prospective suppliers are difficult. If the material is available in electronic form, a CD can be used as a convenient mechanism for distributing it. If the majority of it is on paper, some projects have set up a project library, and allowed suppliers to book time to review it.

A good specification should:

a) Define the requirement specification completely, clearly, concisely, logically and unambiguously
b) Focus on outputs not on how they are to be met
c) Contain enough information for potential providers to decide and cost the goods or services they will offer, or in the case of negotiated route arrive at realistic budgetary costs
d) Provide equal opportunity for all potential providers and comply with any legal obligations e.g. under UK law, the EEC Treaty, and EC Directive

A good specification should not:
a) Over-specify requirements
b) Contain features that directly or indirectly discriminate in favour of, or against, any provider, product, process or source

Key Performance Indicators (KPIs)

Key Performance Indicators (KPIs) provide the means for measuring and assessing provider performance using a mutually agreed set of robust criteria. Key Performance Indicators provide the key for effective management of the specific objectives of the contract and can highlight at an early stage variances to goals and expectations.

Key Performance Indicators help the Commissioner to understand how well the provider is performing against an agreed target. They enable the identification of improvement plans where performance is sub-optimal (see performance challenges) and also a means of comparing and contrasting performance of different areas. Key Performance Indicators can be a very effective way of communicating the priorities for the contract or relationship with a provider. They highlight without ambiguity those aspects that the customer has clearly set targets against and implemented appropriate mechanisms to assess progress and measures effectiveness.

The objective of Key Performance Indicators is to provide quantifiable metrics to assess performance. This information should be compatible with existing data collection formats. The timescales for collecting this data must be clearly defined in the contract under a separate Key Performance Indicator – failure to provide this information will also need escalating under the breech protocol.

The following areas should be considered when developing Key Performance Indicators:

a) Key Performance Indicators should be SMART (specific, measurable, actionable, realistic, timely) and created in consultation with the provider
b) Performance Indicators should be specific, robust and unambiguous
c) Organisational Key Performance Indicators should be linked with the CCG's organisational objectives (i.e. 18 weeks, care closer to home)
d) Not all Key Performance Indicators should be listed for every aspect of the contract, choose those Key Performance Indicators which will make the difference between success and failure

Appendix K – Advertising Tenders

All contracts/tenders are to be advertised via Contracts Finder and. Where required under the Public Contracts Regulations 2015, via OJEU. Note that tenders run under the Light Touch Regime (see Appendix B) will need to be advertised.

Opt out clause

All contracts adverts/tenders are to contain the following "Opt out Clause"

"Any expenditure, work or effort undertaken by you prior to the award of a contract is a matter solely for your own commercial judgment. The CCG reserves the right to withdraw this tender invitation at any time or to re-invite tenders on the same or any alternative basis. In such circumstances, and in any event, the CCG and/or its advisers shall not be liable for any costs or loss of expenses whatsoever incurred by the bidder or any company, agent, subsidiary or organisation who may have contributed to the proposals submitted by the bidder in response to this tender invitation."

The commissioner responsible for the procurement will allow adequate time when advertising the tender to enable potential providers sufficient time to apply with adequate notification in line with the EU Rules where applicable (see 'Time Limitations' section below).

Time Limitations

Prescribed time limits for preparation and submission of tenders shall be adequate for all bidders to prepare and submit tenders. When setting the deadline for the return of applications the CCGs must "take account of all the circumstances, in particular, the complexity of the contract and the time required for drawing up tenders". Where the contract is fully governed by the EU Rules, the CCG should refer to the time limits that apply for each procedure (open, restricted, competitive dialogue or competitive procedure with negotiation).

For large or complex works or items of equipment, the CCG should consider whether the minimum periods set out in the EU Rules should be extended.

The CCG does have the option to issue a Prior Information Notice (PIN). This gives prior information on contracts to be awarded and is thus confined to a brief statement of the main features of such contracts. The benefit of this is to alert the market to upcoming contracts and may also be used to shorten the timescale for receipt of tenders covered by the EU Rules to 26 days in certain circumstances.

Additionally, timescales for receipt of Selection Questionnaires under the restricted procedure may be reduced by 7 days where notices are drawn up and transmitted electronically and timescales for receipt of tender responses may be reduced by 5 days where the contracting authority offers unrestricted and full direct access by electronic means to the contract documents.

Appendix L – Opening and Evaluating Tenders

Confidentiality – The commercial confidentiality of tenders is to be protected and all tenders need to be treated in the strictest confidence throughout the tender process. No information relating to any tender is to be disclosed with the exception of the name of the bidder. Confidentiality of tenders needs to be maintained particularly during the debriefing process as the risk of questions being asked about a particular tender is higher unless required by law.

Evaluation of Tenders

Once all tenders have been received and the submission date has passed, the process of evaluation can begin. The criteria for the evaluation process will have been pre-set in the Invitation to Tender documentation and must be adhered to.

The evaluation will take account of all of the criteria set out in the Invitation to Tender documentation to determine the most economically advantageous tender. The process needs to be a systematic, fair and open one. The extent and detail of that process and the makeup of the evaluation team should reflect the size, value and risk associated with the procurement.

Bidders must know prior to submitting a tender the quality / price balance to be used. This should be detailed in the Invitation to Tender documents. Each Tender/Procurement Lead must ensure that the following is written within the Invitation to Tender documents:

a) A statement of the agreed balance between quality and price to be used in the final decision about contract award. This information must be given in the Tender Document.
b) A statement of the evaluation criteria (including any sub-criteria) to be used in evaluation.
c) The relative weightings of all criteria (and any sub-criteria) must be detailed in the Tender Documents (either an exact number or a meaningful range), used in tender evaluation, and subsequently included in the contract award report.
d) A description of the methods which will be used to assess tenders.

Evaluation Scoring

The basic objective of tender selection/shortlisting is to ensure that only bidders who can best demonstrate their suitable relevant experience, technical competence and sound financial standing can go on to compete for work. Bidders compete for the contract by submitting a detailed tender to the CCG which will be assessed using the Tender Evaluation Scoring Sheet below.

The process of bidder evaluation must be transparent and auditable at all times. The tender advert or selection questionnaire should give full details of any weighting that will be applied when analysing bidders' responses. It must be consistent between all applicants for each contract. Where there are differences between the approaches taken for different contracts, then these differences should be dealt with in a consistent manner. The process of bidder selection scoring involves:

a) Deciding on appropriate criteria
b) Deciding on an evaluation system

c) Administering the selection process

The evaluation system must set out, against each criterion:

a) Whether an applicant needs to 'pass' rather than 'fail'
b) If they have to meet (or exceed) a benchmark
c) Or if they will be scored (for example 0-5) on their answers

The approach to selection must be consistent throughout and equally applied to all bidders. To draw up scoring matrices the panel must determine which of its criteria are mandatory and which are desirable. Following that, consideration should be given as to whether there is any difference in the importance of the pricing or the quality of the tender. If there is, appropriate weighting should be given to these two different aspects of the tender.

The principles of transparency, equality and consistency must be adhered to when considering and evaluating all tender submissions. Adherence to these principles will allow the panel to undertake an assessment which will be auditable and defendable.

In order to achieve this panel members must ensure that they:

a) Declare any instances of bias or where they may have a pre-existing relationship/knowledge of a bidder to the other members of the panel before the evaluation is undertaken
b) Understand the contents of each bidder's offer
c) Understand the scoring criteria to be applied
d) Understand the process to be used to rank the offers
e) Consider all relevant information supplied by bidders (as required by the Invitation to Tender) and their responses to any questions/clarification requests
f) Do not consider irrelevant information supplied by the bidder i.e. information outside the scope of that requested in the Invitation to Tender
g) Carry out the scoring in accordance with the scoring system set out in the Invitation to Tender
h) Record fully the scores for each strand of the criteria awarded to each bidder
i) Do not discuss the deliberations of the panel and/or the scoring of the tender with any colleagues outside of the panel
j) At all times during the tender evaluation procedure consider whether a bidder would consider their behaviour to be fair and that there was a 'level playing field' for all bidders

If you have any concerns you should have a further think about what it is you are doing before progressing further and if you are still concerned that the fairness of the procedure could be called into question or a bidder prejudiced you should seek advice from the Chairperson of the panel or your legal adviser.

Full records of the scoring of each and every tender must be kept. All score sheets should:
a) Have the name of the bidder on it
b) Have the name of the evaluator(s) on it
c) Contain all scores
d) Be signed by the evaluator(s) and dated
e) Be kept with the original tenders

Risk Assessment (for due diligence/confirmation purposes)
The information needed for the risk assessment should have already been collected as part of the bidder selection and tender evaluation processes. However, it may be necessary for Tender Lead/Procurement Lead along with a member from the Tender Selection Panel to visit the bidder's premises to examine support processes in operation and to visit their reference sites. This will be to satisfy members of the team that the quality of service offered can meet the CCG's requirements.

The risk assessment should be applied to the tender with the highest score and additional tenders if the evaluation panel feels that their scores are sufficiently close to the highest score. Subject to a satisfactory risk assessment, the bidder offering the highest scoring tender in terms of quality and price should be recommended for acceptance.

Appendix M – Rejection / Contract Award

Automatic Rejection

During evaluation it may become clear that some bids are either non-compliant or scoring too low to be acceptable if a minimum threshold has been set. The Tender Selection Panel can consider these as 'not credible' or 'non-compliant' bids where mandatory thresholds have not been met and discontinue the evaluation. This process must clearly document the rationale and reasons for suspending the evaluation of that particular tender. Where a tender is non-compliant because it does not achieve a minimum score that has been communicated to bidders in advance the tender should be rejected. The following checklists must be used to confirm non-compliant tenders:

a) Has the bidder complied with contract conditions and specifications?
b) Is the figure within the price range stipulated? (If applicable)
c) Are there arithmetical errors? Do the tenders add up? If the bidder after submitting the tender informs the CCG that there is an error in any of the prices or rates contained in their bid, the CCG will afford the bidder an opportunity to confirm or withdraw its tender. However, the tender amount will be adjusted to correct arithmetic errors evident within the tender document e.g. where individual prices do not add up correctly to the total price tendered etc.
d) Have all schedules been completed?
e) Have they answered all of the questions? Tenders submitted without all of the information required for the evaluation criteria will be considered incomplete and may therefore be rejected. (Bidders will need to be informed of this within the tender application pack).

Tender/Procurement Leads must ensure that full governance has been adhered to. Full details of the bidders' non compliance must be logged formally in order to be included within the rejection letter.

Standstill Period

All procurements subject to the EU procurement regime must be subject to a mandatory standstill period of at least 10 calendar days (longer where standstill notices are not sent out by electronic means) between notifying unsuccessful tenders and the actual award of contract. This standstill period is to allow unsuccessful bidders the opportunity to challenge an award decision. Successful objections made during the standstill period could ultimately lead to award decisions being overturned.

The CCGs' policy is that any tender award must allow a mandatory minimum standstill period of at least 10 calendar days between electronic notification of bidders of the contract award (which shall include required standstill information) and entering a contractually binding agreement with the winning bidder. See below for further details – under "Rejecting Bids".
The commissioning lead must ensure that no appeals have been raised in that period or those appeals that have been raised have ended in a mutual agreed outcome "Appeals Process" (**Appendix N**). No steps to sign the contract with the winning bidder must be taken during the standstill period.

Rejection Process
Unsuccessful bidders are notified individually in writing confirming:

a) The award criteria
b) The unsuccessful bidders score against those criteria
c) The winning score against those criteria
d) The name of the successful bidder
e) The characteristics and relative advantages of the winning bid
f) A precise statement of when the standstill period is going to end

The 10 calendar day standstill period begins from the day after the electronic notification is issued. It is recommended letters are always emailed or else a longer standstill period may need to be run. If the last day of the standstill period falls on a non-working day (i.e. a weekend or bank holiday) the period must be extended to the next working day.

Bidders may request an additional debrief, and requests may be made either orally or in writing. **Please note commercially sensitive details e.g. pricing must NOT be divulged during debriefing.**

A letter to the successful bidder can also be sent at the same time as letters are sent to unsuccessful bidders. The letter must be prepared in consultation with legal services and cannot indicate to the contractor that you will enter into a contract with them. If no legal challenge has been launched by the end of the standstill period, the contract award letter may be issued to the successful bidder.

Should all of the tenders received be unacceptable due to low quality scores, underpricing or exceeding the available budget, a re-tender exercise may be necessary. However, before this takes place suitable market consultation should be effected to establish the reasons for the failure of the initial process. It may be that the specification needs to be rewritten in order to attract compliant bids. Where a formal process is carried out in accordance with the EU Rules, it may be possible (depending on circumstances) to utilise a different procedure such as a negotiation without prior publication whilst still remaining compliant with the EU Rules.

Contract Award
The Contract may only be awarded once the Tender/Procurement Lead has presented their finding with their line manager and both parties are confident that:

a) The contract is to be awarded following a process that was fair, open and transparent and in accordance with the CCG's legal obligations
b) Chosen by competitive bidding
c) Awarded to the most economical advantageous tender
d) Complaints or disputes involving bidding or award of the contract are resolved (see "Appeals Process")
e) The contract improves the quality for patients

Appendix N – Process for Disinvestment (Due to Contract Non-compliance)
This next stage describes the formal stages for disinvestment but does not detail the discussions and other stages you would go through before reaching this point. It is strongly advised that this section is read in conjunction with the de-commissioning principles jointly created across Nottingham City and County CCGs. The process for disinvestment comprises a number of stages:

a) Identifying the possible need to disinvest
b) Validating the case for disinvestment
c) Notifying the organisation that disinvestment is being considered
d) Reviewing the response from the organisation
e) Formalising the decision to disinvest
f) Notifying the organisation of the decision to disinvest and the date that funding will end
g) Agreeing a programme for the disinvestment and how the long-term implications for the organisation are to be managed

These stages provide a clear process to ensure that the decision to disinvest (due to contract non-compliance) is correct and that the CCG can defend such a decision against any challenge. All stages need to be clearly documented and the documents held on the file/contract database for the regularly funded organisation.

Identifying the possible need for disinvestment
The possible need for disinvestment would normally be identified during a discussion between a Commissioning Manager and Executive Director. The Commissioning Lead should have already escalated their concerns via contract meetings with the provider with an outcome unresolved.

Validating the case for disinvestment
Before reaching the stage of considering disinvestment the Commissioning Manager should normally have discussed the organisational weaknesses with the organisation at previous contract review meetings. Once it has been agreed that disinvestment is the only route forward the Commissioning Manager will need to ensure the reasons for disinvestment are sound and backed up by credible evidence. It is important to concentrate on key issues, as it is easier to substantiate one or two significant issues than a number of smaller issues. When a possible case for disinvestment has been identified, the Lead Commissioning Manager will be responsible for gathering evidence to support the perceived need for disinvestment. Evidence should include:

a) Minutes of previous reviews
b) Current or previous surveys
c) Correspondence; minutes of meetings
d) Notes of telephone conversations
e) Patient Numbers and outcomes
f) Information generated by a third party: auditor's reports; independent assessments

All this evidence should support the Commissioning Managers decision that the provider is not providing the goods or services in a manner which enables it to meet the standards required by the CCG.

Notifying the organisation that disinvestment is being considered

Once the case for disinvestment has been established the Commissioning Manager must notify the organisation via the contract management group, confirming the reasons this is being considered and allowing the organisation an opportunity to comment and feed into the final decision. In most cases this can take place through discussions with the organisation either face to face or on the telephone. Where the organisation is informed verbally a note of the discussion must be made and any comments recorded. These notes must be placed on the organisations file.

In all circumstances the Commissioning Manager should write to confirm the CCG's proposal to disinvest providing full details of the case that will be considered, attaching with it full documentation that will be submitted to inform the decision. Within the letter the CCG should offer the organisation an opportunity to respond within four weeks if they have comments that might affect the final decision; this letter marks the point at which formal disinvestment commences. All letters should include:

a) Details of the reasons for considering disinvestment
b) The basis for on which any response should be made: accuracy; any mitigating circumstances; any relevant information that they feel has not been taken into consideration

Reviewing the response from the organisation
The response from the organisation may highlight inaccuracies in the reasons that have been given for disinvestment or bring to the Commissioning Manager factors that had not been taken into consideration. The CCG must review the proposal to disinvest in the context of any response. If no response is made or the response does not materially change the case, the Commissioning Manager on behalf of the CCG should continue with the recommendation to disinvest.

Formalising the decision to disinvest
Once a case has been made and the organisation has been offered an opportunity to respond, a recommendation must be made to the Executive Management Team whether disinvestment should take place or not. This recommendation must provide details of:

a) The original case
b) The response of the organisation,
c) Any actions they have already taken to address these concerns,
d) Any plans the organisation has developed to rectify these concerns
e) Lead officer assessment
f) Responses of consultation with directors and networking groups and external partners

There should be nothing contained within the case for disinvestment that the organisation has not been made aware of or allowed to comment on. For organisations that have been offered the opportunity to actively address the problems the lead Commissioning Manger should review formally and report on progress at three monthly intervals (via the contract meeting) including if there has been any significant change in the position of the organisation, either positive or negative. On the basis of these reports the commissioning organisation would need to agree the next steps:

a) Disinvestment
b) To continue monitoring progress
c) To formally remove the organisation from notice of potential disinvestment

Notifying the organisation of the decision to disinvest and the date that funding will end

After the decision to disinvest has been made the Commissioning Manager should formally notify the organisation in writing. The letter should confirm that the CCG is ceasing on-going funding and when from.

The CCG should cease funding at the end of the current funding agreement or, if there is less than six months to run, an additional period can be offered to allow the organisation to manage the process. For the vast majority of organisations six months will be adequate notice of the cessation of funding.

For some organisations the Commissioning Manager can consider extending the period of funding beyond six months if they feel this is required either to ensure the long-term future of the organisation or to manage the closure of the organisation in an effective manner. The CCG would not fund any organisation for more than eighteen months after the formal notification of disinvestment.

Agreeing a disinvestment timetable and the implications for the organisation and other CCGs

Once the decision to disinvest has been confirmed the organisation must consider the implications and how this contract will impact on staff. TUPE principles will apply. We would recommend that wherever appropriate the organisation take professional advice on how to manage this process.

The organisation should submit a programme of activity for final period of funding including proposed costs. The CCG will fund the organisation's on-going running costs to the end of the funding term up to the value of the remaining contract. The organisation must submit a schedule of costs for this period. The CCG will not fund any historic debt that the organisation has accrued nor will it fund any costs for activities that fall outside the agreed period of funding. If the organisation is to wind up the final period of funding should be used to support staff affected by the closure and dispose of assets. If there is more than six months left of the existing funding the CCG may seek agreement with the organisation to shorten the period of funding if this is felt to be appropriate.