## Wandsworth Clinical Commissioning Group

### Procurement Policy 2016/17

#### Document Control and Amendment Record

<table>
<thead>
<tr>
<th>Version</th>
<th>Date</th>
<th>Details of reason for review or update</th>
<th>Author/Reviewer</th>
<th>Approving Committee</th>
<th>Date of Approval</th>
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<tbody>
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<td>Lola Triumph, Interim Contract Manager</td>
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<td>Amendment – Legislative framework</td>
<td>Alison Kerfoot, Head of Procurement Service Delivery, NHS SBS</td>
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<td>Lola Triumph</td>
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<td>Lola Triumph</td>
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<td>Final Review</td>
<td>Lucie Waters, Director of Commissioning</td>
<td>For CCG Board</td>
<td>8 July 2015</td>
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<td>DAJR Update</td>
<td>Alison Kerfoot, Procurement Director NHS SBS</td>
<td>For CPMG</td>
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<tr>
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<td>08.07.16</td>
<td>Revision in light of new procurement regulations &amp; insertion of references to the Social Value Act</td>
<td>David Brownlow, Head of Procurement, NHS SBS</td>
<td>For CPMG</td>
<td>11 July 2016</td>
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<tr>
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<td>07.09.16</td>
<td>Review following new NHSE statutory guidance on Conflicts of Interest. Final review for CPMG</td>
<td>Ravinder Pathania, Contracts Manager</td>
<td>For CPMG</td>
<td>19 Sept 2016</td>
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1. INTRODUCTION

Wandsworth Clinical Commissioning Group (CCG) has a commissioning budget of around £465m in 2016/17. The services we commission have to be affordable within the limits of the available resources, with emphasis on the quality of outcome, rather than the quantity of provision.

The NHS (Procurement, Patient Choice and Competition No. 2) Regulations 2013 (the “NHS 2013 Regulations”) provides the key legal framework and makes it clear that it is for Clinical Commissioning Groups (CCGs) to determine the best way to secure services and in doing so they must meet the obligations set out in Regulation 2:

- **Secure the needs** of healthcare service users
- **Improve the quality** of services; and
- **Improve the efficiency** with which services are provided

With the emergence of new models of care and the focus provided by the Five Year Forward View regarding better integration and patient focused services, options to achieve the above have included the direct award of contracts to a single or most capable provider where these scenarios can be justified and evidenced, as well as a range of competitive procurement options. Whilst this is still an option for the CCG, since the application of new procurement regulations to CCG’s since 18th April 2016, such justification and evidence will take account of new regulatory obligations within the Public Contracts Regulations 2015 (the “PCR 2015”).

Wandsworth CCG has an obligation to improve quality and demonstrate best value and it is for the CCG to assess all required factors set out in the NHS 2013 Regulations and justify the decisions regarding the awarding of contracts.

In deciding which providers are most capable to provide services, the CCG has a duty to comply with the full obligations set out in the NHS 2013 Regulations and the PCR 2015.

The CCG procurement function and processes should deliver:

- the commissioning goals and priorities of the CCG
- value for money through the identification of best value service delivered by the most capable providers as a result of effective provider development and market engagement
- compliance with UK and EU procurement law and regulations
- improved services that will meet the health needs of its local population, delivering the best possible health outcomes through high quality services, within the resources available.

This Procurement Policy sets out the framework within which the CCG will work to ensure that procurement directly contributes to the CCG’s corporate aims and objectives as well as meeting its legal obligations. The policy sets out the principles, rules and methodologies that the CCG will work to and outlines how and when it is appropriate to seek to introduce contestability and competition as a means of achieving the best clinical outcomes and achieve value for money.

This Policy should be read in conjunction with the CCG Forward Procurement Plan which details the specific procurement and contracting activities scheduled for 2016/17. The Plan also sets out how each scheduled project has been planned in conjunction with the requirements of this policy.

2. ASSOCIATED POLICIES AND PROCEDURES

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

- Prime Financial Policies and Scheme of Reservation and Delegation
- Wandsworth CCG Managing Conflicts of Interest Policy
- Wandsworth Forward Procurement Plan 2016/17
- Wandsworth Choice Policy including the principles of procuring integrated pathways

3. LEGISLATIVE CONTEXT

The primary purpose and responsibility of the Clinical Commissioning Group (CCG) is to commission (plan, purchase and review) services on behalf of the registered patients of the member practices. It does this in partnership and collaboration with other commissioners for health and social care services covering the same population, as well as with patients and the public.

The policy has been drawn up in response to the following legislation and national policy and statutory guidance documentation:

- Social Value Act 2012³
- NHS (Procurement, Patient Choice and Competition) (No. 2)⁴ Regulations 2013
- Public Contracts Regulations 2015⁵
- Managing Conflicts of Interest Revised Statutory Guidance, NHS England, 28 June 2016⁶

4. DEFINITION

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

The process of procurement will result in third party suppliers/providers/contractors delivering services, supplies or works under legally binding contractual terms where all the conditions necessary to form a legally binding contract have been met.

This Policy is designed to set out all of the requirements for CCG staff and its advisors to comply with when awarding contracts for Wandsworth CCG. The requirements are based upon the current legal framework and national NHS guidance and will be updated in line with any future changes.

Specific procurement activity will be captured in the Wandsworth CCG Procurement Plan detailing how the requirements set out in this Policy have been considered and complied with.

5. AIMS AND OBJECTIVES OF THIS POLICY

To set out the approach for facilitating open and fair, robust and enforceable contracts that provide value for money and deliver improved quality standards and outcomes, with effective performance measures and contractual levers.

³ http://www.legislation.gov.uk/ukpga/2012/3/enacted
⁴ http://www.legislation.gov.uk/uksi/2013/500/contents/made
⁵ http://www.legislation.gov.uk/uksi/2015/102/contents/made
To describe the transparent and proportionate process by which the CCG will determine how health and social services are to be commissioned. Options include:

- Direct award
- Variation to an existing agreement
- A competitive process
- An Any Qualified Provider (AQP) accreditation process
- Establishing a new, or accessing an existing framework

The above options will need to be considered and assessed to identify which route is:

- Compliant with all the legislative framework
- Provides the best outcomes based on the CCG objectives for each service

To set out how we will meet the statutory procurement requirements primarily the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013 (The 2013 Regulations)

6. SCOPE OF THE POLICY

This policy applies to all Wandsworth CCG clinical and non-clinical procurements

This Policy must be followed by all Wandsworth CCG employees and staff on temporary contracts and representatives acting on behalf of Wandsworth CCG.

7. ACCOUNTABILITY AND RESPONSIBILITIES

7.1. Wandsworth CCG Board

Wandsworth CCG Board is responsible for all procurement decisions. Committees such as Audit Committee and Finance Resource Committee have responsibility for identifying principal risks and providing assurance to the Board.

Wandsworth CCG is also open to scrutiny by members of the community. The patients and the public are able to raise questions to the Board formally at the beginning and end of each meeting with questions to queries and/or concerns relating to procurement

The Primary Care Committee will provide oversight of CCG commissioning resources pertaining to GP practices in Wandsworth, including the objective review of business cases, investment and efficiency proposals. The Committee has been formed to minimise the risk of conflicts of interest between the CCG as a statutory NHS commissioning body and the GP practices that comprise the membership of the CCG.

7.2. Prime Financial Policies and Scheme of Reservation and Delegation

The CCG’s Prime Financial Policies and Scheme of Reservation and Delegation will guide financial decisions relating to procurement undertaken by the CCG.

| Goods or services up to £20,000 (Minimum of 2 verbal quotes required) | CCG Commissioning Managers or CCG Executive Directors (minimum of 2 verbal quotes) |

7 Including South East Commissioning Support Unit (SECSU) and its partners providing procurement services: NHS Shared Business Services (health care services procurements); Essentia (goods and non-health care services procurements)
<table>
<thead>
<tr>
<th>Goods or services up to £20,000 - £75,000 (Minimum of 3 written quotations required)</th>
<th>Chief Finance Officer or CCG Executive Directors (minimum of 3 written quotations)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goods or services from £75,000 - £100,000 (Minimum of 3 competitive tenders)</td>
<td>Chief Officer and CCG Executive Directors (minimum of 3 competitive tenders)</td>
</tr>
<tr>
<td>Goods or services over £100,000 (Minimum of 3 competitive tenders required) subject to financial thresholds required through the prevailing procurement regulations and as advised by the Cabinet Office</td>
<td>Chief Officer and Lay Member under Seal</td>
</tr>
<tr>
<td>Waiving of quotations and tenders subject to Prime Financial Policies</td>
<td>Chief Officer or Chief Finance Officer. The Chief Finance Officer must also ensure the Finance Committee approves instances and these are also reported to the Audit and Governance Committee.</td>
</tr>
</tbody>
</table>

**Opening Tenders and Quotations**

<table>
<thead>
<tr>
<th>Estimated value up to £50,000</th>
<th>Two senior officers/managers designated by the Chief Officer and not from the originating department</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated value over £50,000</td>
<td>Two senior officers/managers designated by the Chief Officer and not from the originating department, including a member of the Board</td>
</tr>
</tbody>
</table>

### 7.3. Contract and Procurement Management Group

The Contract and Procurement Management Group (CPMG) is responsible for operational management of procurement activity within the CCG. The Group will oversee the implementation of the CCG Procurement Plan and ensure that the CCG can demonstrate compliance with the principles of good procurement practice in line with NHS (Procurement, Patient Choice and Competition No. 2) Regulations 2013 and the Public Contracts Regulations 2015.

CPMG will coordinate the work of the SECSU and its sub-contractors.

Terms of Reference for CPMG have been enclosed as **Appendix A**.

### 7.4. Wandsworth CCG Commissioner or Project Manager

The commissioner and/or project manager must undertake the following:

- Work with (acting on the advice of, and supported by SECSU) NHS Shared Business Services for clinical and Essentia for non-clinical procurement support to ensure that potential route and recommendations are compliant with regulations
- Confirm contract value or submit investment bid to the CCG’s Business Intelligence Group.
- Ensure approval of contract value and if relevant savings projections by the Wandsworth CCG Finance Team.
- With support of the Clinical Reference Group or Project Group, submit a draft CCG
procurement proposal for review by the CPMG.

- Incorporate recommendation or comments from CPMG into final report to the Wandsworth CCG Management Team.

8. THE REGULATIONS

8.1. THE 2013 NHS REGULATIONS (THE KEY GUIDING PRINCIPLES)

The current national guidance (The 2013 Regulations) does not introduce any prescribed policy requirement that all NHS services should be subject to competitive tendering. Rather, the current policy is to create an NHS that is much more responsive to patients and achieves better quality outcomes, with local determination of the optimal routes for achieving a step change in improvements for patients. Formal open procurement is one tool that a CCG may choose to use subject to market conditions for individual services.

The fundamental objectives of the CCG are set out in Regulation 2:

- Secure the needs of healthcare service users
- Improve the quality of services; and
- Improve the efficiency with which services are provided

The 2013 Regulations also require CCGs to consider the principles and factors outlined in Regulation 3 when awarding contracts, which include:

- To act in a transparent, proportionate and non-discriminatory way
- To procure services from the providers most capable of achieving the objective in Regulation 2 that provides the best value for money; and
- To 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.

Regulations 2 and 3 are summarised in Table 1 below:

<table>
<thead>
<tr>
<th>Objectives</th>
<th>What commissioners should secure</th>
<th>Secure needs of health users (Reg 2(a))</th>
<th>Improve quality of service (Reg 2(b))</th>
<th>Improve efficiency of service (Reg 2(c))</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principles</td>
<td>How commissioner should act</td>
<td>Transparency (Reg 3 (2))</td>
<td>Proportionality (Reg 3 (2))</td>
<td>Equal treatment (Reg 3 (2))</td>
</tr>
<tr>
<td>Factors</td>
<td>Considerations in decision making</td>
<td>Patient Choice (Reg 3 (4)(‘c))</td>
<td>Competition (Reg 3 (4)(b))</td>
<td>Integration (Reg 3(4)(a))</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Value for money (Reg 3(3)(b))</td>
</tr>
</tbody>
</table>

The principles to be followed when awarding contracts are in line with the Public Contracts Regulations 2015. These should be adhered to at all times by CCG’s.

The factors to be considered when meeting the objectives of commissioning services are set out below in more detail below:
Patient Choice - Patient choice must be considered in the award of any new contract or variation to an existing agreement. The requirements for patient choice are set out in the Wandsworth Patient Choice Policy (in development). Sometimes patient choice may be difficult to provide at the same time as ensuring the sustainability of the provider base. National choice policy must be adhered to, therefore, and when the level of choice is discretionary for the CCG, an assessment has to be made against the ability and benefits of choice versus the overall costs and impact of choice (financial and non-financial).

Competition - In deciding how to award contracts to the best placed provider, the CCG must consider how competition can help to secure this objective. Where competition is not used to demonstrate that the most capable provider has been selected in terms of quality and value for money, there must be clear evidence documented by other means. A Direct Award Justification Report (DAJHR) must be completed and submitted for approval through the appropriate governance process. The CCG will ensure compliance with Regulation 10 which prohibits anti-competitive behaviour, except where permissible in the interest of patients.

Integration - The benefit of integration must be considered when awarding contracts. For example can integration with other services including social care services bring improvement to patient experience and outcomes? If so, how is this best achieved? Can competition facilitate integration or would it prevent integration? The contract award strategy must be designed to secure the optimum integration, where it is deemed beneficial. It may also be necessary to consider joint procurements with the Local Authority or include existing providers in the planning and evaluation stage, whilst managing any potential conflicts of interest, to secure the best outcome.

Value for Money - Value for money is demonstrated most easily by formal competition where price can be assessed against quality for the same specified requirements. However, it is also possible to demonstrate value for money via benchmarking with other local and national comparable services. Where services are provided against national Payment by Results tariff, value for money is then measured by the quality of outcomes and patient experience provided for that tariff. The CCG must ensure that it can demonstrate best value when awarding any contract.

8.2. PUBLIC CONTRACTS REGULATIONS 2015

The Public Contracts Regulations 2015 apply to CCG procurement activity as follows:

The procurement of goods, works and non-healthcare services are subject to the full scope of the Public Contracts Regulations 2015 and are required to be advertised across the European Union whenever contract values exceed thresholds published from year to year. See below common areas relevant to the CCG noting that this is not an exhaustive list:

- Telecommunications services
- Financial services: (a) Insurance services (b) Banking and investment services other than financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments and central bank services
- Computer related services
- Research and development services where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs and the services are to be wholly paid for by the contracting authority
- Accounting, auditing and book-keeping services
- Market research and public opinion polling services
- Management consultancy services and related services, but not arbitration and conciliation services
- Advertising services

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8 As published by the Crown Commercial Service on behalf of the Cabinet Office of the UK Government
• Publishing and printing services on a fee or contract basis

Health and social care services fall within scope of Schedule 3 of the Public Contracts Regulations 2015, which provide that the full requirements of the 2015 regulations do not apply. Principally, there is no obligation to not follow the prescribed procurement processes (e.g. Open, Restricted, Competition with Dialogue, etc.), allowing flexibilities for the CCG to design procurement processes that can more appropriately meet the commissioning objectives of the CCG. When designing a bespoke procurement process, the CCG must ensure compliance with the principles:

• To treat all bidders equally
• To act in a transparent, proportionate and non-discriminatory manner
• To not discriminate, especially on the grounds of ownership

The Public Contracts Regulations 2015 apply to contracts which have a whole life value exceeding prescribed financial thresholds agreed between EU member states and being published every couple of years, having regard to prevailing rates of currency conversion.

Details of the thresholds, applying from 1st January 2016 to 31 December 2017 are given below as relevant to a CCG9. Thresholds are net of VAT.

<table>
<thead>
<tr>
<th>Classification</th>
<th>To whom it applies</th>
<th>Spend Threshold</th>
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<tbody>
<tr>
<td>Goods and Services</td>
<td>All other bodies</td>
<td>£164,176</td>
</tr>
<tr>
<td>Health &amp; social care services</td>
<td>All bodies</td>
<td>£589,148</td>
</tr>
<tr>
<td>Works</td>
<td>All bodies</td>
<td>£4,104,394</td>
</tr>
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</table>

The relevant procurement advisor should be engaged to understand the requirements of each proposed new contract and advise on the relevant procurement process to best meet the CCG objectives, whilst remaining compliant with all legal requirements.

9. CONFLICTS OF INTEREST

Wandsworth CCG has put in place arrangements to manage conflict and potential conflict of interests so that decisions will be taken, and seen to be taken, without any influence by external or private interest.

The CCG will identify a Conflicts of Interest Guardian, and will in collaboration with the CCG’s governance lead:

• Act as a conduit for GP practice staff, members of the public and healthcare professionals who have any concerns with regards to conflicts of interests
• Be a safe point of contact for employees or workers of the CCG to raise any concerns
• Support the rigorous application of conflict of interest principles and policies
• Provide independent advice and judgment where there is doubt about how to apply conflicts of interest policies and principles in an individual situation
• Provide advice on minimising the risks of conflicts of interest

Executive members of the CCG’s governing body have an on-going responsibility for ensuring the robust management of conflicts of interest.

Wandsworth CCG will maintain Registers of Interests for:

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9 CCGs being classified within the Public Contracts Regulations 2015 as a Sub-Central Government Contracting Authority
• the Membership of the Wandsworth CCG;
• members of the Wandsworth CCG Board;
  members of committees or sub-committees of the Board
• members of staff.

The Registers will be reviewed and updated on a six monthly basis, to be reviewed by the Board. A copy of the Registers will be available in the following ways:

• a summary of Board Members’ interests will be included with the papers for Board meetings to be held in public;
• upon application (either by post or email);
• a copy of the Registers will be published as part of the CCG’s Annual Report and Annual Governance Statement. A weblink to the CCG’s registers will be available.

Wandsworth CCG recognises the importance in making decisions about the services it procures in a way that does not call into question the motives behind the decision. The CCG will procure services in a manner that is open, transparent, non-discriminatory and fair to all potential providers, ensuring that:

• conflicts and potential conflicts of interests are managed when awarding a contract by prohibiting the award of a contract where the integrity of the award has been or appears to have been affected by a conflict, and
• appropriate records are kept of how any conflicts in individual cases have been managed.

Potential conflicts of interests in a GP membership organisation will vary to some degree depending on the way in which a service is commissioned:

Routes to contract award – Where a CCG is considering renewing or awarding a new contract, a conflict could arise where GP practices are represented within the CCG forum making a decision as to whether a contract should be competed or awarded, where such a contract could be provided in whole or in part by GP practices.

Competitive Tender – Where a CCG is commissioning a service through competitive tender (i.e. seeking to identify the best provider or set of providers for a service), a conflict could arise where GP practices or other providers in which CCG members have an interest are amongst those bidding. The CCG will ensure that all conflicts are managed in particular where tender evaluation methodologies are designed, evaluations of tenders are taking place and decisions around the awarding of contracts are being made.

Any Qualified Provider – Where a CCG wants patients to be able to choose from a range of possible providers and is therefore commissioning a service through Any Qualified Provider, a conflict could arise where one or more GP practices (or other providers in which CCG members have an interest) are amongst the qualified providers from which patients can choose. In these circumstances (and more generally), there are a number of options for demonstrating that GP practices have offered fully informed choice at the point of referral and for auditing and publishing referral patterns. These will build on well-established procedures for declaring interests when GPs or other clinicians make a referral.

Commissioning services from GP practices on a single tender basis – Where a CCG is commissioning a service from GP practices where there are no other capable providers and the proposed service goes beyond the scope of the services provided by GP practices under their GP contract.

The CCG is aware that it is good practice to engage relevant providers, especially clinicians, in confirming the design of service specifications. Such engagement, done transparently, fairly and with a range of providers, is entirely legal and not contrary to competition law. However, the potential for perceived or actual conflicts of interest can occur if a commissioner engages selectively
with only certain providers in developing a service specification for a contract for which they may later bid.

Engagement with potential providers when designing service specifications will follow the main principles below:

- Use engagement to help shape the requirement but take care not to gear the requirement in favour of any particular provider(s).
- Ensure at all stages that potential providers are aware of how the service will be commissioned, e.g. through competitive procurement or through the ‘Any Qualified Provider’ route.
- Work with participants on an equal basis, e.g. ensure openness of access to staff and information.
- Be transparent about procedures.
- Maintain commercial confidentiality of information received from providers.

10. DECLARATION OF CONFLICT OF INTEREST

All Contract and Procurement Management Group members should declare any potential conflict of interest regarding individual procurements. Where a member has a material interest, they should either be excluded from relevant parts of the meeting, or join in the discussion but not participate in the decision-making itself.

An area in which conflicts could arise is where the CCG commissions healthcare services, including GP services, in which a member of the CCG has a financial or other interest. In this scenario a procurement template (obtainable from the Managing Conflicts of Interest Policy) should be populated which will help address the factors requiring consideration when commissioning general practice services.

As part of a procurement process, it is good practice to ask bidders to declare any conflicts of interest. This allows commissioners to ensure that they comply with the principles of equal treatment and transparency. When a bidder declares a conflict, the commissioners must decide how best to deal with it to ensure that no bidder is treated differently to any other.

11. PROCUREMENT WORK PROGRAMME

The CCG will publish its annual procurement work programme on the website and listing of priority areas for further investigation and/or procurement.

The decision to tender or not to tender for new services and underlying rationale will be made available to patients, public and stakeholders.

12. PROCUREMENT PLANNING

A procurement plan will be maintained that will list all current and future procurements. The procurement plan will be reviewed on a regular basis taking into account local and national priorities; the CCG’s commissioning intentions; requirements of the Forward View, the NHS Planning Guidance for 2016/17-2020/21; and nationally mandated procurements. In addition it will take into account the impact of completed and on-going procurements.

The plan will highlight the priority, timescale, and issues related to potential procurements. Not every priority on the procurement plan will result in procurement, but the plan indicates the CCG’s intention to review the service or activity which may result in procurement.

The plan will be developed as a key element to provide communication between the CCG, its membership and potential providers. Through transparent and open processes the CCG will actively encourage provider engagement to inform the development of optimum contracting strategies and relevant service specifications.
Formal procurement will be considered when any of the following responses are required:

- a contract expires or is terminated or where a variation cannot be lawfully made to an existing contract
- the CCG is mandated to deliver a new or revised National Programme e.g. Any Qualified Provider (AQP)
- a clinically led service review or service re-design is initiated
- the CCG Commissioning Intentions identify the need for additional capacity or additional services within the local healthcare system
- where a healthcare market analysis demonstrates that there are quality and/or best value shortfalls in a clinical service

Competition may not be appropriate in cases where the market is infant or unproven or where there is an urgent, specialist or need for integration which cannot be achieved easily via competition.

Wandsworth Clinical Commissioning Group will consider procuring services competitively where commissioners find that there is a mature proven market or there is shortage of capacity or where competition will develop the delivery of services.

Market development is one of the key principles by which the NHS reform programmes aims to ensure that patients are at the heart of commissioning decisions. The NHS Constitution aims to ensure that patients have the right to make choices about the services commissioned by NHS bodies and to have appropriate information to support these choices. The expectation is that the options available to patients will develop over time with the local healthcare market.

The CCG’s approach to market management will focus on market analysis and market development in specific sectors where a lack of alternative providers such as Continuing Healthcare, Learning Disabilities providers, Individual Placements for People with Mental Health and Learning Disability result in:

- A lack of access for patients (only one access point for service in the borough)
- A lack of choice (even with multiple access points, patients may want an option of an alternative provider)
- Poor patient outcomes and poor quality of service
- High cost of delivery, low productivity and inefficiencies
- Poor compliance against clinical requirements in the NHS Standard Contract

Advice should be sought from SECSU and NHS Shared Business Services for clinical and Essentia for non-clinical SCSU on the options available and where appropriate, most appropriate route for each service tender.

Recommendations on whether to procure or decision about the most appropriate procurement route should be taken on an individual service-by-service basis, as all services have different factors affecting the appropriateness of open competition.

The process for determining whether to procure is outlined in the following flow chart for decision making related to the CCG Procurement Process.
13. **APPROACH TO PROCUREMENT**

13.1. **Competitive Tendering**

Whilst there is no blanket requirement to competitively tender all services, services must be assessed and considered for competitive tendering in order to comply with the requirements of transparency, openness, equitability and obtaining value for money which are set out in both the Public Contracts Regulations 2015 and also the NHS (Procurement, Patient Choice and Competition)(No.2) Regulations 2013.

Depending on the actual service and the existence of alternative providers, this will affect whether and how to best compete services. Other factors include the current price, where national tariff does not exist e.g. for non-elective services, and how this compares with what the market could offer. Likewise the current quality aspects should be assessed and how these compare with national benchmarks and what can be achieved with better designed and organised services.

Figure 2 below provides a framework to assess which services should be prioritised for competition so that the CCG and Wandsworth population benefit from where competition can deliver improvement whilst making the procurement work plan manageable in terms of clinical and patient and public engagement:

<table>
<thead>
<tr>
<th>Could patient outcomes be better?</th>
<th>Do alternative providers exist?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prioritise Competition</td>
<td></td>
</tr>
<tr>
<td>Could the service be improved with new technology or innovative solutions?</td>
<td>Are there potential financial savings for investment elsewhere?</td>
</tr>
</tbody>
</table>

To consider the most appropriate approaches to establishing contracts for patient services including how these might be competitively tendered, the CCG will need to be informed by a reasonable body of knowledge and awareness of the market in terms of level of interest, capability and degree of development, capacity and commercial factors affecting price and sustainability.

Market engagement with both incumbent and potential providers will be considered, appropriately planned and undertaken to inform the CCG as to the most appropriate processes to awarding contracts.

13.2. **Procurement Options**

Appendix C outlines the procurement options that will be considered by the CCG when deciding how contracts should be established for the provision of health care services.
14. CLINICAL ENGAGEMENT

The Clinical Reference Groups (CRGs) bring together a multi-disciplinary group of professionals and patient representatives, to consider ways in which improvements to patient pathways can deliver improved outcomes and a better experience for patients. Each Clinical Reference Group has an annual work programme approved at the CCG Board and each has an appointed GP lead as the Clinical Reference Group Chair.

It is anticipated that Clinical Reference Groups will be a key source of information and drive for procurement by:

- Notifying the Contract and Procurement Management Group (CPMG) that a clinical contract is due to expire or needs to be terminated
- Responding on behalf of the CCG when mandated to deliver a new or revised National Programme (e.g. Any Qualified Provider – AQP)
- Initiating a clinically led service review or service re-design.
- Identifying the need for additional capacity within the local healthcare system
- Identifying where a healthcare market analysis demonstrates that there are quality and/or best value issues in a clinical service

It is anticipated that CRGs will – where possible – identify potential areas for procurement as part of their annual work plans.

15. PATIENT AND PUBLIC ENGAGEMENT

Wandsworth CCG is committed to engaging patients in procurement of clinical services and where possible, have significant levels of patient engagement in the development, testing and sign off of new service proposals.

Where possible, patients/carers/service users will be asked to be members of the Evaluation Panels that recommend award of contracts.

The CCG will use the following engagement structures to involve patients:

- Healthwatch Wandsworth
- Wandsworth CCG PPI Reference Group
- Thinking Partners Group
- Service users
- Carers with the support of Carers’ Support Group

To ensure, where appropriate, that patients are involved in evaluating the performance of new services (through Clinical Reference Groups or other forums).

16. SOCIAL VALUE

Recognising the obligations of the Social Value Act 2012\(^\text{10}\), when establishing new contracts, the CCG will consider how Social Value can provide local benefit in addition to the scope of services being commissioned and contracted by the CCG.

The CCG will consider with stakeholders how Social Value can be addressed through procurement process and evaluation of tenders and appropriately included within contracts entered into.

17. PROCUREMENT PROCESS/TENDERING

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; see appendix B, these are not considered in detail in this Policy but which include:

- Market analysis (e.g. structure, competition, capacity, interest);
- Tender routes;
- Procurement timescales;
- Affordability (SBS Financial Management Template can be used to assess most suitable evaluation methodology);
- Impact on service stability;
- Procurement resource, including responsibilities and accountabilities;
- Consultation and Engagement requirements;
- Outcome-based specifications;
- Existing related contractual arrangements;
- Contract management;
- Provider development;
- Value for money

18. PUBLISHING PROCUREMENT INFORMATION

The CCG has a commitment to ensuring transparency in decision making in relation to procurement, including compliance with specific transparency obligations detailed within both the NHS 2013 Regulations and the PCR 2015.

18.1. Advertisements and expressions of interest

The CCG will publish Contract Notices to invite Expressions of Interest on Contracts Finder and where required by the PCR 2015, the Official Journal of the European Union (OJEU). Contract notices will comply with regulatory requirements and include:

- a description of the services required to be provided
- maximum anticipated contract values (including potential extensions), and
- the criteria against which any bids for the contract will be evaluated

Where appropriate, the CCG will use Contract Notices and responses made to these, to inform the CCG regarding the market’s interest and how an appropriate process should be designed to award contracts.

18.2. Procurement Records

The CCG will maintain record of each contract it awards for the provision of health care services and a clear record of all procurement decisions undertaken. The record will include in relation to each contract awarded:

- the name of the provider and the address of its registered office or principal place of business,
- a description of the health care services to be provided
- the total amount to be paid or, where the total amount is not known, the amounts payable to the provider under the contract,
- the dates between which the contract provides for the services to be provided, and
- a description of the process adopted for selecting the provider.
It is important to note that the formal decision to take a service to a formal external procurement process will be retained by the WCCG Board. Decisions to proceed to procurement, decisions not to progress to procurement and the results of procurement processes will all be reported to the WCCG Board.

18.3. Service Specification and Form of Contract

When developing Service Specifications for health care services, the CCG will, as may be appropriate, utilise the templates as mandated for CCG use by NHS England, including those incorporated within the NHS Standard Contract – as published from year to year11.

The CCG will ensure that Service Specifications are written in a manner to maximise benefit to patients and the CCG and to avoid distorting competition or discriminating against any provider or type of provider.

Service Specifications will ensure that the requirements of the CCG are clearly articulated to providers in regard to:
- Activity
- Price, including any risk and reward mechanisms
- Standards, performance requirements and deliverables
- How performance will be measured

The CCG will establish contracts using contract terms and conditions mandated for CCG use by NHS England and/or the Department of Health.

18.4. Advertisement and Prequalification Questionnaire (PQQ)

When required, an appropriate advert will be placed commensurate with the value and complexity and extent of the services being procured. Opportunities that are selected for a competitive process must be sufficiently advertised to ensure fair competition. All opportunities must be advertised on the national Contracts Finder website.

When selecting potential bidders the process used must be open, transparent and fair. No sector of the market should be given an unfair advantage. For large high value complex contracts a formal Qualification stage will be used to evaluate potential providers’ capabilities, capacity and financial standing. The Qualification process should reflect the overall requirements of the service. This can be achieved by a pre-qualification stage in a two-stage procurement process or a qualification gateway in a single-stage process to save time where a high volume of capable providers are known not to exist.

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

18.5. Invitation to Tender Evaluation

The Invitation to Tender (ITT) is a written document describing the CCG’s requirements against which a bidder submits an offer to deliver these requirements. A sufficient number of tenders should be invited to ensure adequate levels of competition taking into account market conditions, complexity and contract value.

Where competition is waived or is not applicable this will be by direct negotiation with the Provider and once agreed a contract will be signed.

The selection of a recommended bidder for the award of a contract is on the basis of “the most economically advantageous tender (MEAT)” to the purchaser.

A fair and transparent evaluation of tenders will ensure that challenges are kept to a minimum and able to be defended robustly and promptly where they are received and will generate confidence in the CCG’s decision making process.

Working in conjunction with our procurement advisors, NHS Shared Business Services and Essentia, we will develop appropriate and robust evaluation models for specific procurements that we will use when evaluating bidders responses.

18.6. CCG Clinical Services Tender Evaluation Strategy

The practice of the CCG has been to apply a 70% (quality) and 30% (price) evaluation methodology to the procurement of health care contracts. The CCG will continue to review its approach to each procurement to ensure that its development of a tender evaluation approach is at all times appropriate and proportionate.

The CCG is committed to working closely with Wandsworth Borough Council and where joint procurements are undertaken, the CCG will ensure that agreement is reached how to award contracts to those providers offering the most economical advantageous tenders, offering the best overall value for money. As Wandsworth CCG and Wandsworth Borough Council look to commission more joint and integrated services, it is likely that a shared approach will be developed.

In all procurements, the CCG (acting on the advice of, and supported by SECSU and NHS Shared Business Services for clinical and Essentia for non-clinical) will ensure transparency by publishing within the tender documents an evaluation strategy that sets out the evaluation process, including the criteria, sub-criteria and weightings to be applied to the various elements of the evaluation e.g. quality, financial, legal and relevant scoring mechanisms.

The CCG will not award contracts to bidders with the lowest priced tender, rather it will be the most economically advantageous tenderer which delivers overall best value for money, as defined for each individual procurement.

Where services are tendered, the evaluation criteria used must be published transparently in either the advert or within the Invitation to Tender and once published should not be altered unless all potential bidders are notified with a suitable extension to enable bidders to respond effectively and a clear justification is provided for doing so.

All appropriate interested parties within the commissioning body, and partners, should be involved in writing the specification and the results of consultation must be also considered. Sufficient time must be allocated to ensure the delivery of a robust specification.

18.7. Contract Award

Following the evaluation of bids (whether or not as a result of competitive and non-competitive processes) the recommendations for award of contract must be carried out in accordance with the CCG’s Prime Financial Policies (Standing Financial Instructions) and approved through the relevant governance structure. This would normally be the Commissioning Sub Committee and the Governing Body.

Contract awards will be published through both the Official Journal of the European Union (OJEU) and Contracts Finder (as may be appropriate to the type of goods/service and value of contract) and on the Wandsworth CCG website.

A record of all awarded contracts will be accessible to patients and the public via the Wandsworth CCG website.
The CCG will maintain a record of its decisions and process to award contracts in compliance with Regulation 84 of the Public Contracts Regulations.  

19. USEFUL RESOURCES

National Health Service (Procurement, Patient Choice and Competition) Regulations 2013  

The former Monitor (now part of NHS Improvement) published substantive guidance on the NHS (Procurement, Patient Choice and Competition)(No.2) Regulations 2013 which provide a comprehensive source of reference for CCGs:  

The coalition Government’s White Paper ‘Equity and Excellence: Liberating the NHS’ outline the commitment to create an environment that increases choice for patients.  

Principles and rules of Competition and Cooperation describes the ten principles for cooperation and competition that commissioners must consider during the procurement process  

Procurement Guide for NHS Funded Services sets out expectations of commissioners on the use of procurement to improve services for patients  

The NHS Mandate between Government and NHS Commissioning Board describes around five domains where the Government expects the NHS Commissioning Board, through delivery by CCGs, to make improvements for patients.  

Contracts Finder is the mandated portal to ensure transparency for all public sector contracts across the UK, including Local Authority contracts and contracts awarded by NHS bodies including CCGs, Trusts and NHS England.  
https://www.gov.uk/contracts-finder

12 http://www.legislation.gov.uk/uksi/2015/102/regulation/84/made
Appendix A: Terms of Reference for Contract and Procurement Management Group

The Contract and Procurement Management Group will undertake the following:

| Contract Management | • Ensure high standards of corporate governance e.g. management of conflicts of interest in the advising, decision making and management of contracts on behalf of Wandsworth CCG  
|                     | • Ensure that the contract documentation used by Wandsworth CCG is reviewed and updated on an annual basis and complies with a checklist of required content (e.g. safeguarding, information governance)  
|                     | • Ensure that the storage policy for contract documentation is development and implemented; and reviewed on an annual basis.  
| Procurement (planning) | • Implement investment commissioning or decommissioning decisions which has been approved by the Business Intelligence Group (BIG) and Wandsworth Management Team ensuring compliance with CCG Standing Orders and Standing Financial Instructions and legal obligations in respect of tendering and contract procedures  
|                     | • Develop the CCG annual procurement work programme and monitor on an on-going basis reshaping and/or refocusing as required to take account of emerging and changing factors  
|                     | • Develop new skills within the CCG around the functions and processes of procurement, including the CCG procurement training programme, procurement guide and lessons learnt review documentation.  
|                     | • Maintain effective relations with key stakeholders and ensure effective communication within and outside the CCG, taking steps as necessary to ensure widespread engagement and understanding of the Contract and Procurement Management Group programme.  
|                     | • Ensure all relevant inputs have been prepared by the lead commissioning or service redesign manager to enable a robust recommendation/decision making process on whether, and how, to procure any specific service.  
|                     | • Ensure that appropriate engagement with providers has taken place to inform the CCG in regard to its review of services and development of new services, including validating the CCG’s assumptions regarding future provision of services (demand, commercial arrangements, service models, etc.)  
| Procurement (Process) | • Review and oversee the progress of all Wandsworth CCG procurements, ensuring compliance with the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 and the Public Procurement Regulations 2015.  
|                     | • Recommend the procurement route to be used for individual procurements e.g. Single Tender Action, Formal Competitive Tender or Any Qualified Provider (AQP) ensuring that there is sufficient evidence to support the decision and that advice has been sought from the expert procurement team (clinical procurements: NHS Shared Business Services; non-clinical procurements: Essentia).  
|                     | • Ensure appropriate procurement advice and support is available to support project leads in developing and approving:  
|                     | • Engagement with the market  
|                     | • the advertising of procurements  
|                     | • the issue of tender documentation  
|                     | • the evaluation strategies to be used by procurement project teams  
|                     | • Advise on conflict of interests between commissioners and providers and ensure that any conflicts identified are appropriately addressed |
### Procurement (Publishing)
- Ensure all CCG procurement contract adverts, expressions of interest and contract awards are published on Contract Finder and on the CCG website and where appropriate, the Official Journal of the European Union (OJEU).
- Maintain a record of all CCG awarded contracts and will ensure that this is accessible to patients and the public via the CCG website.
- Write an annual report, which will be considered and approved by the Contract and Procurement Management Group at its first meeting in each financial year, covering the preceding financial year and will be presented to the CCG Board following approval by the Contract and Procurement Management Group. The report will be available to patients and the public on the CCG website.
- Maintain a CCG webpage specifically on procurement that provides patients and the public with transparent and timely information on the CCG’s procurement process and activities.
- Publish details of all contracts awarded, whether following a competition or directly awarded on both Contracts Finder and OJEU as mandated by the regulations (both the 2013 and the 2015 regulations) having regard to contract values.

### Procurement (Decision)
- Decisions affecting GP Member practices will be passed to the Primary Care Committee (PCC) for comment and scrutiny. In this regard the role of the CPMG will be to advise PCC of appropriate procurement and contracting routes.
- The PCC may then seek further guidance from CPMG as necessary; but will make recommendations to the CCG Governing Body.
- CPMG will ensure that requests for Single Tender Waivers are approved by CCG’s Finance Resource Committee (FRC) and that final decision-making relating to procurements is undertaken by WCCG Management Team and CCG Board.
- CPMG will make procurement recommendations to Management Team within the context of the CCG's Prime Financial Policies and procurement thresholds.
- All decisions on procurement route are reserved for the Wandsworth CCG Board.

### Managing Conflict of Interest
- In line with the NHS England Managing Conflicts of Interest: Statutory Guidance for Clinical Commissioning Groups, the Contract and Procurement Management Group will do the following:
  - Ensure that all attendees declare interest that has in any agenda item before it is discussed or as soon as it becomes apparent. Even if an interest is declared in the register of interests, it should be declared in meetings where matters relating to that interest are discussed. Declarations of interest should be recorded in minutes of meetings.
  - Ensure that all Procurement Evaluators complete a Conflict of Interest Declaration.
  - Maintain a register of interests.
  - Ensure that the CCG does not award a contract for the provision of NHS health care services where conflicts or potential conflict between the interest involved in commissioning such services and the interests involved in providing them affect or appear to affect, the integrity of the award of that contract.
  - Ensure that there is a record of how the CCG has managed conflict in relation to NHS commissioning contracts it enters into.
  - CPMG will refer conflict of interest affecting GPs to the PCC for comment and scrutiny. In this regard the role of the CPMG is to support PCC as required.
  - Address conflict of interest when commissioning services from GP Practices, including provider consortia or organisations in which GPs have a financial interest.

### Maintaining Register of
- CPMG will maintain a register of procurement decisions which will include the following:
  - The details of the decision.
## Procurement Decisions

- Who was involved in making the decision (i.e. governing body or committee members and others with decision making responsibility); and
- A summary of any conflict of interest in relation to the decision and how this was managed by the CCG

CPMG will ensure that the register is updated whenever a procurement decision is taken.

## Designing of service and/or contract requirements

CPMG will ensure that relevant providers (be they incumbent or potential new providers) especially clinicians have been involved in development of service specifications. Such engagement should be done transparently and fairly.

CPMG should ensure that as far as possible service requirements specify outcomes that the CCG wish to see delivered through a new service rather than the process by which these outcomes are to be achieved.

CPMG will ensure that the same information is given to all providers in the following ways:

- Advertise the fact the a service design/redesign exercise is taking place widely and invite comments from any potential providers and other interested parties
- On-going engagement of a wide range of providers to seek comments on the proposed design e.g. via Wandsworth CCG website or via workshop

## Membership

The core membership shall include:

- Deputy Director of Commissioning and Planning (Chair)
- CCG Contracts Manager
- Contract Support Officer (notes and servicing of the group)
- Senior Finance Manager
- Specialist Procurement Support - South East Commissioning Support Unit
- Specialist Contract Support - South East Commissioning Support Unit
- Director of Primary Care Development
- CCG Lay Representative
Appendix B: Stakeholder Engagement and Key Consideration for Procurement
<table>
<thead>
<tr>
<th>Area of Assessment</th>
<th>Guidance</th>
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<tbody>
<tr>
<td><strong>Market Testing</strong></td>
<td>The following will form the basis of the analysis:</td>
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<tr>
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<td>• Structure of market – are providers locally, regionally, national or multinational based?</td>
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<td>• Capacity – is the size of contract attractive? How can it be made more attractive to secure best value? Are all the necessary attributes in place to deliver the service, for example workforce, equipment, facilities etc.?</td>
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<td>• Status – is the market established, new, innovative, are there any restrictions for example types of organisation that can provide services, e.g. emergency ambulance services.</td>
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<td>• Competitive – is there competition in the market place? Can competition be developed? Where there are insufficient providers in the market, the CCG may need to put in place plans to address this with proactive market development and management. These plans could include:</td>
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<td>• Identifying clear commissioning requirements through sharing these intentions publically and actively signalling to the market;</td>
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<td>• Identifying the key requirements that providers need to have to enable them to compete for business through clear service specifications;</td>
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<td>• Hold Provider Events where interested parties can come and discuss the CCG’s requirements, tender processes can be explained;</td>
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<td>• Producing specifications that are output based, that can be delivered and encourage innovation;</td>
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<td>• Contract duration is such that the contract will allow providers the opportunity to recover costs and make a reasonable return on investment; Ensure contracts are clear and are open and fair with agreed performance measures and adequate dispute resolution processes included;</td>
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<td>• Understand the capabilities of providers;</td>
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<td>• Ensure that adequate time is allowed for bidders to respond to tenders bearing in mind some providers may not have commercial departments to deal with tender responses.</td>
</tr>
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<td><strong>Clinical Engagement</strong></td>
<td>Clinical Reference Groups (CRGs) bring together a multi-disciplinary group of professionals and patient representatives, to consider ways in which improvements to patient pathways can deliver improved outcomes and a better experience for patients.</td>
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<td>To ensure service specifications, where possible, have significant levels of patient engagement in the development, testing and sign off of new service proposals</td>
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- To ensure, where possible, that patients/carers/service users are asked to be members of the Evaluation Panels that recommend award of contracts
- To ensure, where appropriate, that patients are involved in evaluating the performance of new services (through Clinical Reference Groups or other forums)

<table>
<thead>
<tr>
<th><strong>Contract Value</strong></th>
<th>The higher the value, the greater the case is likely to be for competitive tendering</th>
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<tbody>
<tr>
<td><strong>Geography</strong></td>
<td>Best location for the service, for example, an additional service in a health centre, there may be a case for awarding the contract to the existing provider.</td>
</tr>
<tr>
<td><strong>Single or multiple provider(s)</strong></td>
<td>Would the needs of the population be best served by a single or multiple supplier arrangement? Multiple supplier options may lend themselves to framework agreements or Any Qualified Provider arrangements.</td>
</tr>
<tr>
<td><strong>Regulations</strong></td>
<td>These will include the CCG’s Prime Financial Policies and Scheme of Reservation and Delegation, Public Contracts Regulations 2015, The NHS (Procurement, Patient Choice and Competition No. 2) Regulations 2013 and prevailing Monitor and DH Guidance.</td>
</tr>
<tr>
<td><strong>Government policy on protected services</strong></td>
<td>A significant and vital part of the NHS, for example Accident &amp; Emergency Services, Intensive Care Services, Emergency Ambulance Services, etc. will automatically follow a single provider direct award route and negotiation would take place directly with that provider informed by national guidance including national tariff and contract forms.</td>
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<tr>
<td><strong>Jointly Funded Projects</strong></td>
<td>Competition may not be appropriate for jointly funded projects or may be managed by a separate organisation e.g. the Local Authority on behalf of the CCG</td>
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<tr>
<td><strong>Patient Choice</strong></td>
<td>Consider results of consultation. This will include, where appropriate, choice of providers, models of care and location and be factored into the service specifications and procurement strategies.</td>
</tr>
<tr>
<td><strong>Patient Safety</strong></td>
<td>If there is a demonstrable risk to patient safety by changing provider, which cannot be mitigated by careful service transition, then the CCG can negotiate directly with the existing provider of the services.</td>
</tr>
<tr>
<td><strong>Social Value</strong></td>
<td>The CCG is to consider how the contract could deliver added social value and should engage with potential providers as to how this could be achieved and consider how this can be addressed through procurement process and evaluation.</td>
</tr>
<tr>
<td><strong>Finance/ Budget</strong></td>
<td>Financial consideration (e.g. value for money of the service, cost effectiveness of undertaking a procurement in relation to the transactional costs of procurement)</td>
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</table>
| **Service Review** | The decision to procure new services will be underpinned by robust, clinically-led service review which will detail procurement options, risk and benefits. As a minimum, service reviews will include the following:  
  - Population based needs assessment  
  - Reflection of national policy, evidence base and good practice  
  - Consideration of strategic fit with the CCG vision, corporate goals and 15/16 objectives  
  - Consultation with the relevant Clinical Reference Group(s)  
  - Consultation with representative group of patients, service users and the public  
  - Value for money including financial viability of current and proposed model of care  
  - Market analysis  
  - Benchmarking information |
| **Conflicts of Interest** | In respect of every conflict or potential conflict, it must be recorded how the conflict or potential conflict has been managed. The conflicts or potential conflicts must be entered into registers. |
## Appendix C: Procurement Options

<table>
<thead>
<tr>
<th>Procurement Options</th>
<th>Guidance</th>
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<tbody>
<tr>
<td><strong>C1. Formally prescribed Procurement Processes:</strong> Where there is a requirement under the Public Contracts Regulations to competitively tender a contract, the following prescribed processes are outlined <em>(these not being mandated for the procurement of health and social care contracts falling within scope of Schedule 3 of the regulations).</em> Following these processes require adherence to strict regulations, including minimum timescales for the different stages of the procurement.</td>
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<tr>
<td>C1.1 Open procedure</td>
<td>The open procedure is suitable where the requirement is straightforward and the CCG is requiring a competitive submission of tenders. As there is no &quot;pre-qualification&quot; of bidders, any provider can submit a tender and it is possible that a large number of suppliers will bid.</td>
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<tr>
<td>C1.2 Restricted procedure</td>
<td>Should only be used where there is a need to reduce the number of expected interest down to a manageable number of tenderers. A pre-qualifying stage is introduced to short-list providers assessed as sufficiently competent, experienced and qualified to bid. Short-listed providers are then invited to tender.</td>
</tr>
<tr>
<td>C1.3 Competitive procedure with negotiation</td>
<td>Following a tendering stage, negotiations are permitted in order for the CCG to reach a final decision to award a contract. The scope of and basis on which negotiation can take place, must be clearly articulated within the procurement information published to tenderers.</td>
</tr>
</tbody>
</table>
| C1.4 Competitive Dialogue           | Only to be used where it is not possible to feasibly fully specify the requirements for the service to be provided. Tenders are invited on the basis of an initial outline specification, then bidders are shortlisted against a published criteria. Re-iterative individual dialogue with each bidder then ensues to enable each bidder to refine their bid whilst the Contracting Authority refines and formalises its final service specification before final tenders are invited and evaluated. The 2015 Regulations set out the circumstances which must be met to use this procedure:  
- the needs of the CCG cannot be met without adaptation of readily available solutions; or  
- the requirements include design or innovative solutions; or  
- the contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of risks attaching to them; or  
- the technical specifications cannot be established with sufficient precision by the CCG with reference to a standard, European Technical Assessment, common technical specification or technical reference; or  
- or unacceptable tenders have been submitted.  
  
an open/restricted procedure procurement has been run but only irregular. Note: The Cabinet Office has published a presumption against the use of Competitive Dialogue for the procurement of public sector contracts including health care. |

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Pre-procurement market engagement is recommended as a more appropriate means to develop NHS health care service specifications instead of using complex procedure.

### C1.5 Innovation partnership

Typically used where no solution is in place in the market and a Contracting Authority wishes to enter into a partnership with an appropriate supplier which will commit to work to develop the solution required. Can be used where investment is required to research and innovate in new technology and medicines for example.

### C1.6 Negotiated procedure (without prior notification)

Competition may be waived in circumstances such as (genuine) urgency or there is a single capable provider for reasons such as: monopolistic rights or where only one provider can provide the service for technical reasons or special exclusive rights. In these circumstances the Single Tender Waiver procedures set out in Wandsworth Clinical Commissioning Group’s Standing Orders & Standing Financial Instructions must be followed.

The Negotiated Procedure allows the CCG to select one or more potential bidders with whom to negotiate the terms of the contract. There are two types of Negotiated procedure either with or without prior advert. Bidders need to be invited to negotiate the terms of the advertised contract. Under the procedure without prior advert, the CCG could negotiate directly with its supplier of choice – this is usually due to the protection of exclusive rights where the contract can only be carried out by a particular bidder. The procedure should only be used in limited circumstances detailed in the Regulations.

### C2. Bespoke procurement processes:

These can be designed and run by the CCG, where the contract(s) to be awarded are for services which fall within scope of Schedule 3 of the Public Contracts Regulations 2015. It is possible to be flexible in the timescales for each stage of the procurement, however, the principles of transparency, equal treatment, non-discrimination and proportionality must be complied with. Example processes include:

#### C2.1 Single stage

Similar to the Open Procedure, however following CCG determined timelines and criteria which may be more relaxed than those prescribed for an Open Procedure.  
E.g. Invite Bids, allowing 4 weeks, then evaluate with optional interview/presentation stage as part of score evaluation

#### C2.2 Two stage

Similar to the Restricted Procedure, but again, ensure a more bespoke fit to the CCG’s requirements.  
E.g. Interested providers invited within a 3 week window, and shortlisted to tender. Tenderers given 3 – 8 weeks to submit bid (dependent on complexity of the service and thoroughness of the evaluation approach)

#### C2.3 Qualifying tender & interview/presentation

Comprehensive proposals are evaluated to be of sufficient quality, and being affordable. Scored bids are then shortlisted to attend interview and bidder presentation. The award criteria is based solely on the final interview/presentation stage

### C3. Frameworks:

CCGs can access or establish their own bespoke frameworks which offer a range of providers suitably qualified to deliver the services required. CCGs can also establish an NHS designed framework created to maximise market capacity and patient choice – the “Any Qualified Provider” framework
| **C3.1 Any Qualified Provider** | This model was designed nationally to enable the CCG to increase choice to patients by allowing providers to qualify and register to provide services via an assurance process that tests providers fitness to offer the particular NHS-funded service. The CCG sets local pathways and referral protocols which providers must accept. Referring clinicians offer patients a choice of qualified provider for the service being referred to. Competition is based on quality not price and providers are paid a fixed price determined by a national or local tariff.

Similar for elective care where there is a national tariff and CCG must not restrict choice of provider, these types of contracting models are a form of NHS accreditation where patients choose a provider, typically based on provider reputation, accessibility and known quality indicators.

Note: it is not possible to restrict the number of providers with this model therefore careful consideration is required regarding contract management effort and potential challenges on the sustainability of the existing providers. |
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| **C3.2 Bespoke framework (local)** | The CCG may establish its own bespoke framework of providers and might consider doing so in isolation or in collaboration with other NHS and/or Local Authority partners so that a single procurement process can bring shared benefit across the wider public sector, bringing efficiency of future contracting and procurement activity.

Such frameworks can assist to introduce a common set of quality and contractual standards and expectations across a shared provider market. Unlike the AQP approach where the CCG determines the same price to be paid to all providers, it is possible for a bespoke framework to include a variety of prices, which can be determined competitively by providers on the framework.

Frameworks can be designed to allow direct access to any provider, or use of speedy mini-competitions to determine which provider is most capable of meeting the need at that time (including in terms of quality and value for money) |
| **C3.3 National Frameworks** | The CCG is able to use other public sector organisations framework agreements if a provision has been made in the framework agreement to allow this (that is by the holder of the framework agreement, such as the Crown Commercial Services or NHS Shared Business Services).

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 business awarded following the same processes used for “conventional tenders”. Any contract awarded can run beyond the framework agreement period but the length of the contract extension must be reasonable. |
| **C4 Alternative options: the following options may be considered by the CCG, ensuring that at all times regulatory requirements are taken account.** | **C4. 1 Partnerships** | Where collaboration and co–ordination is essential, for example in developing new pathways, enabling sustainability of services, ensuring smooth patient handover, coordination etc. the CCG may wish not to procure formally but to continue with existing “partnership” arrangements. |
These “partnership” arrangements must be formalised using the appropriate standard contracts and must provide:
- Transparency particularly with provision of information sharing
- A contribution to systems re-design.
- Timely provision of information and performance reporting.
- Evidence of improved patient experience year on year.
- Evidence of value for money.

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

For partnership services the CCG may choose to commission the service from a partner but may also choose to tender for provision of the service, for example where the partner cannot meet the service model requirements or costs cannot be agreed.

The Public Contracts Regulations 2015 do permit avoidance of competitive processes for example where the contract is for the provision of a public service through a cooperation between Contracting Authorities to achieve common objectives and which are in the public interest.

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<th>C4.2 Direct award of contract</th>
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There will remain the need to directly award a contract without any competition (often referred to as a “spot-purchase”) for particular individual patient needs or for urgency of placement requirements at various times, for example critically important clinical equipment.

Competition may be waived-in circumstances such as (genuine) urgency or there is a **single capable provider** for reasons such as: monopolistic rights or where only one provider can provide the service for technical reasons or special exclusive rights. The Public Contracts Regulations 2015 do permit direct contract awards in circumstances where the need to do so could not have reasonably foreseen by the CCG (**see above the Negotiated Procedure without prior notification**). In these circumstances the Single Tender Waiver procedures set out in Wandsworth Clinical Commissioning Group’s Standing Orders & Standing Financial Instructions must be followed.

Where there may not be a single capable provider, it may also be possible to demonstrate a **most capable provider**. Advice should always be sought from the relevant procurement advisor and a Direct Award Justification Report must be produced for the approval of the CCG Governing Body prior to contract award. Such a decision should have regard to the obligations of transparency, including inviting expressions of interest from the market.

Where it is decided not to competitively tender for new services or where services are significantly changed, CCG Governing Body approval MUST be obtained in order to proceed. There is an increased risk of legitimate legal or challenge through a complaint to NHS Improvement (previously “Monitor”) if robust evidence is not produced.

Where collaboration and co-ordination is important, for example in developing new pathways, enabling sustainability of services, ensuring smooth patient handover and/or coordination the CCG may be able to demonstrate that there is only one most capable provider and therefore a direct award with negotiation may be the most appropriate route to secure
the right services from the most capable provider. These arrangements must be formalised using the appropriate standard contracts and must be able to evidence the following in a Direct Award Justification Report:

- Transparency particularly with provision of information sharing
- A contribution to systems re-design.
- Timely provision of information and performance reporting.
- Evidence of improved patient experience year on year.
- Evidence of value for money.

Integration in itself must not be used as a reason to avoid competition and should only be used where it can be justified that only a direct award to the single or most capable provider can secure the required features of integration.

For such services requiring extensive integration, the CCG may choose to commission the service from a single or most capable provider or alternatively could perhaps secure more effectively via a competitive process.

Recent, specific guidance has been detailed in the Five Year Forward View, with the following statement that commissioners:

...should be looking afresh at their medium-term strategies and choosing to take actions in 15/16 that create the conditions for rapid the early adoption [of integrated models of care]. For example rather than proceed with stand-alone procurement community services one option CCGs may want to consider is how best to integrate these with a new MCP model.

This statement does not obviate the need for clinical commissioning groups to undertake formal assessment of procurement options against the relevant legislative and regulatory frameworks but does provide national direction of support for integration models delivered through appropriate procurement vehicles.

Risks can arise when establishing a contract at haste and the Wandsworth Clinical Commissioning Group should ensure the provider is fit for purpose and signed up to the continuing improvement programme with the same commitment as all other CCG providers.

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<th>Grants</th>
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<td>Public bodies must follow public procurement policy at all times. In certain circumstances grants are payable to third sector organisations. However, there should be no preferential treatment for third sector organisations. Use of grants can be considered where: Funding is provided for development or strategic purposes. The provider market is not well developed. Innovative or experimental services. Where funding is non-contestable (i.e. only one provider). Grants should not be used to avoid competition where it is appropriate for a formal procurement to be undertaken.</td>
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