

Procurement Policy

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Introduction

1. Until now, there have been different policies addressing the issue of procurement which have focused on considerations and decision making in regard to managing service changes and contract expiry. These policies provided a relevant guide for CCGs when they were established in 2013 and outlined the considerations that had been published within Monitor's Substantive Guidance on the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013.
2. Since the policies were developed, there have been important changes to regulatory requirements and statutory guidance. These include the application of the Public Contracts Regulations 2015 since 18th April 2016 in relation to the procurement of NHS commissioned health care services, and the revised Managing Conflicts of Interest: Statutory Guidance for CCGs, published by NHS England in June 2016.
3. This document seeks to outline a procurement policy for the NHS Wigan Borough Clinical Commissioning Group ("the CCG") that addresses all areas of CCG spend, including contracts for healthcare services and also for the procurement of goods and non-healthcare services.
4. The policy seeks to:
 - Set out a clear purpose and scope for the policy;
 - Reference the relevant regulatory frameworks;
 - Outline key principles and considerations to be taken into account;
 - Confirm responsibilities and how capability will be assured;
 - Ensure use of robust and consistent contractual terms and conditions;
 - Outline the basis of decision making and the processes associated with the awarding contracts;
 - Detail how the policy will be reviewed; and
 - Reference other relevant and interlinking policies of the CCG.

Purpose

5. This policy recognises and seeks to support the key objectives of the CCG including to commission a sustainable, affordable, and high quality NHS. When procuring health care services, CCGs are required to act with a view to:
 - meeting the needs of the people who use the services;
 - improving the quality of the services; and
 - improving efficiency in the provision of the services.
6. This policy outlines how decisions to award contracts will be approached, reflecting current regulatory obligations, national policy and statutory guidance.
7. This policy provides a consistency of approach in regard to the procurement of healthcare services, as well as all other goods and non-healthcare services.
8. The Procurement Policy is not intended to be comprehensively prescriptive, but recognises the necessity for situational discretion when appropriate and, as such, this policy outlines key principles and considerations that will inform decision making.
9. This policy aims to support:
 - delivery of the statutory objectives of the CCG as an NHS body;
 - the provision of high quality NHS services;
 - assurance of value for money;
 - compliance with regulatory obligations;
 - exercise of due diligence; and the
 - assurance of public sector probity.
10. The Procurement Policy will be relevant to any situation where:
 - a new contract needs to be established or;
 - an existing contract reaches the end of its lawful duration or;
 - an existing contract needs to be reviewed for the provision of any goods or services, including healthcare services being established for the benefit of NHS patients.
11. With the emergent responsibilities for co-commissioning, the CCG recognise the principles and statutory obligations associated with the management of potential conflicts of interest, as outlined within this Procurement Policy. The CCG will ensure that governance processes associated with the awarding of contracts impacted by co-commissioning are kept under review to ensure continued assurance of probity.

Regulatory & Policy Framework

12. When considering awarding contracts for goods and services, specific regard should be given to the following (as may be amended):
 - Public Contracts Regulations 2015 – which prescribes how public bodies need to act when deciding how to award public contracts;
 - NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013, including Monitor’s substantive guidance on the same – setting out the responsibilities of NHS commissioning bodies and their obligations when awarding contracts for healthcare services;
 - Health & Social Care Act 2012;
 - Public Services (Social Value Act) 2012 – requiring that consideration be given as to how improvements might be made in regard to economic, social and environmental well-being of the local area;
 - Managing Conflicts of Interest: Revised Statutory Guidance for CCGs (NHS England, June 2016);
 - Transfer of Undertakings and Protection of Employment Regulations (TUPE) 2006;
 - Equality Act 2010 – Section 149 sets out the Public Sector Equality Duty;
 - Bribery Act 2010.
13. See **Annex A** – Regulatory Framework: Reference Sources for further detail in relation to the areas mentioned above.
14. Regard will also be given to applicable guidance as may be published from time to time by: The Cabinet Office; Department of Health; NHS England; and NHS Improvement.
15. This policy operates alongside and should be read in accordance with the CCG’s:
 - Constitution;
 - Annual Commissioning / Operating Plan;
 - Financial Policies and Scheme of Reservation and Delegation;
 - Policy on the Management of Conflicts of Interest;
 - Communication and Engagement Strategy; and
 - Freedom of Information Policy.

Key Principles & Considerations

16. The following key principles and considerations will support and guide the CCG when considering how to achieve their statutory obligations and in delivering their commissioning plans when making decisions as to how public funds will be invested through contracts for the procurement of goods and services, including health care services to be accessed by NHS patients.

Quality and value for money

Assessments, processes and decision making will seek to identify the most capable provider(s) to support delivery of the statutory obligations and commissioning intentions of the CCG (as outlined above). Decisions regarding contract award will be informed by assessments of value for money, this being an appropriate balance between quality and price. Contract award decisions will not be based solely on price.

EU Treaty derived principles

As a public body and a Contracting Authority, as defined in statute, it is recognised that decisions regarding the awarding of contracts and how processes should be designed to award contracts are expected to comply with principles that have been derived from European Treaties and which underpin both EU and UK national procurement regulations and public procurement policy and guidance, including:

- Transparency – including in regard to decision making and contract opportunities;
- Equality of treatment and non-discrimination – including ensuring that no providers or types of providers are treated more or less favourably;
- Proportionality – ensuring that assessments, requirements and decisions are reasonable given the relevant factors, circumstances, total value and risks associated with the relevant contract.

Competition

17. The role of competition will be carefully considered and, where appropriate, assessed to understand how it may best support the delivery of the statutory obligations and the commissioning intentions of the CCG.
18. Recognition is given to the underpinning assumptions behind EU and UK procurement regulations, of the benefit of competition to drive best value for money, innovation and improved patient experience.
19. Recognition is also given to the statutory obligations of the CCG to decide to the extent to which, and how competition might be used to meet the commissioning intentions of the CCG.

20. Where a CCG makes a decision regarding awarding a contract which presents a risk of appearing to be anti-competitive, the reasons for such a decision will be recorded by the CCG. Such reasoning should be supported, where appropriate, by an assessment as to the benefits for patients and the NHS that is being considered to outweigh the potential benefits that could reasonably be expected through competition.
21. Whilst the CCG may use competition to select the most appropriate and best value provider(s) to be awarded a contract, recognition is also given to the role that patient choice can play in allowing providers to compete to offer for example, the most accessible services, or to deliver the best patient experience.

Patient choice

22. When reviewing how services should be configured and contracts awarded for the provision of NHS services, a key consideration will be the choices that can be offered to patients.
23. Recognition is given to both regulatory and national policy obligations to secure and safeguard patient choice for certain NHS services, and also the role that patient choice can play in driving quality and innovation, particularly in regard to patient focused care.
24. Where assessed as a viable and sustainable service delivery model, consideration will be given to the establishment of provider frameworks, offering contracts to more than one provider where each is able to offer NHS services to patients – including use of the Any Qualified Provider (AQP) model where a standard tariff can be established by the CCG.
25. Recognition is given to regulatory obligations to ensure patients are able to choose between any providers of secondary care consultant led services.

Integration

26. Consideration will be given by the CCG to identifying and creating opportunities for the integration of services where such integration can deliver improved benefit to patients and/or the NHS. It is recognised that integration may take the form of providers of different services collaborating to offer joined up health and social care services for service users, or may involve services being provided by a single or lead provider.

Accountable Care Partnerships

27. The potential benefits of Accountable Care Partnerships (ACPs) are recognised and how the bringing together of healthcare contracts through such arrangements can offer an increased ability to support the delivery of key objectives of the CCG. Consideration will be given as to how the CCG can make best use of resources to support the establishment of provider partnership solutions, including how contracts can be established and structured in ways to support the greater benefits possible through ACPs.

Specifying requirements

28. When seeking to award any contract for goods or services, a clear definition of requirements will be specified to inform the decision making.
29. Where appropriate, the development of service specifications will seek to focus on the outcomes to be delivered by the service, enabling providers of services increased ability to develop and offer innovative solutions to deliver increased benefit to patients and the NHS.
30. The development of service specifications will seek, where appropriate, to involve relevant stakeholders, including existing providers, potential providers, other commissioning bodies and relevant patient representatives, including for the purpose of validating in regard to accuracy, reasonableness and appropriateness.
31. Where requirements are being specified for the provision of health care services, the templates mandated within the NHS Standard Contract will be used. Specifications will ensure that clear measures of effectiveness and/or successful delivery of outcomes are clearly articulated to enable effective on-going management of the contract (e.g. Key Performance Indicators (KPIs)).

Patient and public engagement

32. Where appropriate or required by statute, proportionate consultation and/or engagement with patients and the public will be undertaken to inform the review, development and commissioning of NHS services.
33. Particular regard will be paid to patients most likely to be directly affected by any service change. Account will be taken of the views and responses obtained from service users. Consideration will be given to the potential benefits of service user representative roles during procurement processes to award contracts for health care services.

Market engagement

34. Recognition is given to the benefits of timely engagement with both existing and potential providers to inform the review and development of requirements for future contracts, particularly for healthcare services.
35. Where assessed as appropriate, proportionate market engagement will take place prior to any procurement process to: validate commissioning intentions and planning assumptions (including demand and activity modelling and financial factors); identify new service delivery solutions (including best practice); refine service requirements; explore innovative solutions; gauge and stimulate market interest and competition; identify any potential barriers and/or issues; and to inform selection and design of an appropriate process to award a contract – including potential evidence of a single or most capable provider.

36. Where a contract is to be 'called off' a framework, time permitting, engagement with framework providers will take place before any 'mini-competition' in order to assure their interest and ability to respond to an invitation to propose a competitive solution.
37. It is recognised that market engagement can be used to satisfy the obligation for CCGs to make arrangements for potential providers to express an interest in providing services.
38. Market engagement will ensure equal treatment and non-discrimination between providers and types of providers. Notices inviting engagement from the market will be published via Contracts Finder and where applicable OJEU.

Collaborative working

39. Opportunities will be explored to identify the potential benefits of collaborative approaches with other commissioning bodies; both NHS and local government, where common purchasing and commissioning requirements exist with the objectives to achieve shared efficiencies and improved leverage with the health and social care market.

Authorised decision making

40. Decision making for each stage of a process to award a contract will comply at all times with the Scheme of Delegation and Standing Financial Instructions of the CCG.

Managing potential Conflicts of Interest

41. The CCG recognises the statutory obligations to identify and manage any potential or actual conflicts of interests in regard to any decision making regarding the awarding of contracts. The CCG will, at all times, ensure compliance with both regulatory and statutory guidance in this regard, including the assurance of full probity and transparency of decision making.

Responsibilities, Capability and Resourcing

Decision making and accountability

42. The CCG will ensure that all purchasing and procurement decisions, including contract awards, comply at all times with the CCG Constitution and, specifically, the Scheme of Reservation and Delegation and Standing Financial Instructions.
43. Whilst external agencies and commissioning support functions will be used to provide procurement services (including the provision of advice, guidance, processing of purchase requisitions, raising of purchase orders and undertaking competitive tendering), as well as contract management support, the CCG will, at all times, remain directly responsible for approving:
- business cases intending to commit resources of the CCG to invest through any contract;
 - selection of processes to award a contract, including decisions to competitively tender;
 - final specifications, evaluation criteria and bidder questions;
 - selection of potential bidders to invite to tender (where a pre-qualifying and short-listing stage is part of a procurement process);
 - approval of feedback to be provided to unsuccessful bidders;
 - final decisions regarding the awarding of a contract;
 - decisions to terminate a contract which involves investment of resources of the CCG;
 - contract signature.
44. The CCG will ensure that records are maintained about decisions made in regard to the awarding of contracts which comply with the requirements of:
- Regulation 84 of the Public Contracts Regulations 2015; and
 - Regulation 9(1) of the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013.
45. See **Annex B** – Regulatory Requirements to Maintain Records regarding Contract Award Decisions

Planning

46. The CCG will maintain a contracts database that supports regular review and identification of the status of each contract, including timelines for expiry which will be used by the CCG to inform timely service review and likely procurement planning (including market engagement).

47. A relevant procurement plan will be produced and updated as required that will identify prioritised procurement requirements which will take account of existing contracts, new service developments arising from the CCGs commissioning intentions, as well as local and national priorities.

Qualified advice and guidance

48. Recognising the often complex and continually developing regulatory regime that impacts on decisions to award contracts, appropriately qualified and experienced advice and guidance will be sought to inform decision making regarding the awarding of contracts and associated processes. Arrangements will exist for decision makers to have access to appropriately experienced procurement professionals and where appropriate, specialist procurement legal services.
49. See **Annex C** – Procurement Services supporting the CCG

Use of information technology

50. Procurement processes will, where possible, be conducted electronically using appropriate systems that deliver benefit to the CCG in terms of speed of communication with providers, robust audit trails and security of commercial confidentiality. Recognition is given to procurement regulations which include obligations to provide procurement information to potential bidders electronically.

Procurement training

51. The CCG will ensure that decision makers, including procurement evaluation panel members, have access to appropriate levels of training in regard to procurement matters commensurate with their responsibilities which will include general awareness of regulatory obligations and how and when to seek further support, advice and guidance.
52. See **Annex C** – Procurement Services supporting the CCG

Terms and conditions of purchase

53. Regulatory compliance of providers

54. As appropriate and lawful, the CCG will ensure that contractual terms and conditions, and procurement processes are designed and used to ensure that providers recognise, commit to and evidence their ability in regard to:

- Complying with all relevant employment legislation;
- Maintaining acceptable standards of health and safety and comply fully with all legal obligations in this regard;
- Meeting all tax and national insurance obligations;
- Meeting all equal opportunities legislation;
- Being reputable in their standards of business conduct;
- Respecting the environment and taking appropriate steps to ensure they minimise their environmental impact;
- Evidencing an appropriate record of involving patients in their services and providing high quality services;
- Demonstrating an appropriate record of successful partnership working with commissioners and other providers in the best interests of patients and public;
- Ensuring openness and transparency with commissioners on all Patient Safety and Quality issues within their services with accurate information and reporting;
- Abiding by and promoting awareness of the NHS Constitution, including the rights and pledges set out in it;
- Information governance assurance framework requirements; and
- Maintaining appropriate regulatory registration (e.g. with the Care Quality Commission).

Purchase Orders

55. Official Purchase Orders will be raised with all purchases of goods and services ensuring compliance with the CCGs' Standing Financial Instructions. Purchase Orders forwarded to suppliers of goods and non-healthcare services will ensure clear reference to the nationally developed NHS terms and conditions of goods and services.

56. See **Annex D** – Contract Terms and Conditions (for details of NHS terms and conditions for goods and services)

Written Contracts

57. All contracts for the provision of healthcare services will be in writing and incorporate nationally developed and mandated terms and conditions as relevant to the type of service.
58. See **Annex D** – Contract Terms and Conditions (for mandated forms of contracts for healthcare services)

Contracts ‘called off’ Frameworks

59. Where contracts are entered into under a Framework Agreement, the ‘call-off’ contract template prescribed by the Framework including the terms and conditions of the Framework will be used as the commercial basis of agreement between the parties.

Grants

60. Where the CCG agrees the award of a grant, the terms of the grant will be agreed with the third party recipient and recorded using a Grant Agreement having reference to such model agreements published by NHS England.
61. See **Annex D** – Contract Terms and Conditions (for model Grant Agreement)

Processes to Award a Contract

Choosing a process to award contracts

62. Recognition is given to the variety of processes that may be available to the CCG to award a contract for the provision of goods and services and the importance of ensuring that decisions on this are appropriate at the time and are robust. Appropriately qualified and experienced advice and guidance will be sought to inform an understanding of the options available, including any potential risks and how these might best be mitigated.
63. As appropriate, consideration will be given to the following approaches and issues:

Modification

64. Consideration will be given to whether it is possible to vary or modify an existing contract, whether this will be to vary the scope of service and/or the overall contract value. Recognition is given to regulatory limitations as to when and to what extent an existing contract may be lawfully modified (varied) without triggering the need to re-procure a new contract. Recognising that modifying a contract does require negotiation with the incumbent provider in line with the process set out in the terms of the contract, the CCG will also need to consider alternative approaches, including establishing a new contract. The leverage of the CCG should be considered and whether there is a continuing assurance of value for money, or whether it will be in the best interests of the CCG and patients to explore wider competition.

Use of Frameworks

65. It will be appropriate that where a framework agreement is being established, or an existing framework is to be re-opened to new applicant providers, including the Any Qualified Provider (AQP) for healthcare services, the process to award a place on the framework will be one of assurance rather than competition between providers.
66. Where appropriate, the CCG will seek to award a contract as a 'call off' an existing framework, where:
 - The framework is able to meet the CCG's requirements; and
 - The call-off process is considered proportionate and able to avoid a more resource intensive and longer procurement process.
67. Where a contract is to be 'called off' a framework, time permitting, engagement with framework providers will take place before any 'mini-competition' in order to assure their interest and ability to respond to an invitation to propose a competitive and robust solution.
68. Where it is lawful to directly award a contract as a 'call off' from an existing framework without a 'mini-competition', the CCG will consider the relevant costs and benefits of this option.

Competition

69. Will be considered for both the awarding of single contract or multiple contracts (including where a service requirement may be split into smaller 'lots'). Where a contract is to be 'called off' a framework, there is usually a requirement to select the most economically advantageous provider through a 'mini-competition' process.

Negotiation / direct award

70. The CCG will consider whether it is appropriate and compliant to directly award a contract without any competitive process, involving a directly negotiated solution with a single provider, where specific lawful circumstances exist including there being either:

71. A framework that lawfully allows the direct awarding of call-off contracts without any further competition;

- Evidence such as that available through market engagement, of a single capable provider;
- An urgent requirement presenting insufficient time to run a competition, where such circumstances could not have reasonably been foreseen.

CCG financial procedures

72. In all cases, reference will be made to the CCG's Scheme of Delegation and Standing Financial Instructions to determine the financial value thresholds as to: when competitive proposals are expected to be sought for low value contracts; and when a formal procurement process is required.

73. The CCGs' financial procedures will be followed to document and authorise any decision to award a contract without a competition, including use of the Single Tender Waiver.

Regulatory financial thresholds

74. Where regulatory thresholds indicate the need for a formal competitive procurement process, the CCG will consider which of the procedures prescribed by the regulations will be appropriate and proportionate, having reference to the nature of the service, its total value, the level of competitive interest from the market and the ability of the CCG to sufficiently specify the CCGs' requirements. The selection and design of any competitive procurement process will be informed by a review of the market (e.g. market engagement) and the extent to which there is a competitive market for the goods or services being procured.

Deciding which process is appropriate – health care services

75. The CCG recognise the specific responsibilities and obligations they have when commissioning health care services for the local population, as well as the important

flexibilities available to NHS commissioners when designing procurement processes for healthcare services contracts, whilst ensuring compliance with EU Treaty derived principles.

76. Given the need to achieve their commissioning objectives, the CCG will select the most appropriate and proportionate process to award contracts that also maintain a focus to ensure best use of available commissioning, procurement and contract management resources. In regard to contracts for health care services, the following considerations will be taken in addition to those within the preceding section:

Accountable Care Partnerships

77. When reviewing a contract for health care services, whether for a new or existing service, the CCG will consider the contractual relationship the service will need to have with any existing or soon to be commissioned Accountable Care Partnership (ACP), Multi-speciality Community Provider (MCP) or some other collaborative arrangement of providers, the CCG will give consideration to:

- Whether an existing contract should be extended, or an interim short-term contract be established during a transitional period whilst an ACP is established – where the service is to be subsumed within the scope of the ACP; or
- Whether a new contract to be established will need to include a clear provision to lawfully transfer (e.g. novate) from the CCG to the future ACP during the lifetime of the new contract; or
- Whether an existing service should be de-commissioned in light of the emergence of a new ACP contract.

Assessing market competitiveness

78. The CCG recognise the regulatory requirements to make arrangements for potential providers to express their interest to provide services through advertisements on the appropriate websites.

- As appropriate to the expected financial value of the service, market engagement will be undertaken to:
 - a. Notify potential providers of the CCG's commissioning intentions;
 - b. Invite expressions of interest to provide the services;
 - c. Where appropriate and proportionate:
 - i. Invite further engagement to become involved in developing and/or reviewing draft service specifications, identifying new service delivery models and innovation, proposing and reviewing financial payment models and performance indicators, validating demand and activity modelling assumptions, etc.

- ii. Facilitate provider networking to enable collaborative provider solutions to meet CCG requirements;
 - iii. Understand any specific issues or challenges within the relevant health and social care sector that might impact timely and effective development, implementation and sustainable delivery of the services to be commissioned by the CCG.
 - iv. Provide information on issues and indicative timescales for any potential procurement processes and/or mobilisation.
- Expressions of interest received through market engagement will inform the CCG as to the appropriate design of a proportionate process to award a contract:-
 - a. Where there are many potential bidders, consideration will be given to the inclusion of a prequalifying or shortlisting stage;
 - b. Where responses to an invitation for expressions of interest from potential providers is intended to evidence whether a competitive process is appropriate, this will be made clear within the invitation/advertisement;
 - c. Where responses do confirm a single (interested) capable provider, this may be used to evidence the appropriateness to directly negotiate with the single provider, or may inform consideration of wider market engagement to stimulate the level of competition considered appropriate by the CCG, or to develop the market to meet the needs of the CCG.

Competition

- 79. Where a contract falls outside the scope of ACPs, or which cannot be lawfully modified, the role of competition will be considered.
- 80. Given the status of health care service contracts within the procurement regulations⁷ the CCG recognise and will use, as may be appropriate, the flexibility to design and run a procurement process that best meets the needs of the CCG whilst ensuring that any such process remains compliant with the EU Treaty derived principles of transparency, equal treatment, non-discrimination and proportionality.

Regulatory thresholds

- 81. The CCG will ensure that notices will be published in compliance with regulatory requirements in regard to: invitations for market engagement; invitations for expressions of interest; and calls for competition (to invite tenders). The CCG also recognise their obligations to publish details of all contracts awarded, whether as a result of a competition or a direct award.

82. See **Annex E** – Regulatory requirements to publish Contract Notices

Contract award decision tree – Annex F

83. ‘Decision Guide’: selecting an approach to award a contract (healthcare services) provides a summary of the key considerations and process for identifying the most appropriate route to awarding a contract which incorporates the issues discussed above.

Evaluation approach & contract award criteria

Any Qualified Provider (AQP) Frameworks

84. Processes to appoint providers to an AQP Framework will be designed to validate applicant providers’ ability to meet the CCGs’ requirements (as detailed in the service specification) and accept the terms and conditions of the framework and the prices as may be set by the CCG.

Value for money

85. Where a competitive process is to be used to award a contract, the CCG will ensure that the evaluation methodology is able to identify the provider offering the best value for money, also referred to as the ‘most economically advantageous tender’ (MEAT).

86. ‘Value for money’ will be specifically defined within each procurement process to ensure that there is the right balance between quality and price and that the evaluation process will be transparent to all potential bidders.

Proportionality

87. When designing an evaluation methodology, the CCG will consider the total value of the contract and the level of potential risk associated with the service so that the approach to the procurement can be planned to be proportionate.

- For example: Low value, low risk contracts – consideration will be given to the use of fewer, less in-depth questions, shorter bid submission timeline, fewer evaluation panel members, and reduced due diligence.
- For example: High value, high risk contracts – consideration will be given to the inclusion of more involved pre-procurement market engagement, an increased range and depth of bidder questions, longer bid timeline where the service solution is complex, wider range of evaluation panel membership, increased due diligence, followed by a resourced mobilisation phase.

88. In line with the procurement regulations, potential bidders will not be required to pass a pre-qualifying stage for low value contracts for goods and non-clinical services having a contract value beneath the ‘OJEU threshold’.

89. See **Annex G** – Regulatory procurement thresholds

Procurement evaluation stages

90. Depending on the value, risk and complexity of the service being procured, the CCG will give consideration to the incorporation of the following procurement stages and elements:

Qualification of bidders

91. Where a formal procurement process is to be used to award a contract, the CCG will ensure that potential bidders are appropriately qualified, capable and experienced:

- To ensure appropriateness and financial stability of potential bidder;
- To ensure compliance with regulatory requirements and fitness to hold a public contract;
- To reserve the right of the CCG to exclude bidders presenting unacceptable levels of risk that cannot in the assessment of the CCG be sufficiently mitigated;
- Where the potential number of bidders is likely to be high, this preliminary stage will be designed to 'pre-qualify' and to short-list the most qualified and experienced potential bidders to then be invited to develop and submit a bid or tender;
- The CCG recognises the UK Government policy that public bodies must use the nationally mandated 'Selection Questionnaire' (SQ) documentation where needing to pre-qualify potential bidders during a procurement for a contract falling within scope of the procurement regulations. The CCG will have due regard to the scope and standards benchmarked by the national SQ when designing procurement processes for contracts falling outside the scope of the procurement regulations.

Written bid response

92. Either in the form of a bid response questionnaire or inviting the bidder to submit a written proposal, ensuring that the questions are appropriately focused on the specified requirements of the CCG;

Bid price

93. Which may be a competitive price within thresholds determined by the CCG, or confirmation of a tariff or service price proposed by the CCG. The CCG will ensure that bidders provide sufficient detail to justify bid prices being tendered to enable proportionate due diligence and scrutiny on the part of the CCG;

Employment protection

94. The CCG will have regard to relevant employment protection legislation and ensure that where relevant, there is an assurance that bidders understand, assess and take full account of their responsibilities in this regard;

Bidder presentation and interview

95. Including the role of setting scenarios for bidders to respond to;

Site visits

96. Consideration will be given as to how site visits to a bidder's premises may be used as either a scored element of the procurement evaluation, or forming part of the CCGs' due diligence before finalising any contract award decision;

Dialogue and negotiation

97. Where considered beneficial to the CCG and following expert procurement advice, the CCG may include some form of dialogue or negotiation stages with bidders as part of a formal procurement process.

Contract award criteria

98. The CCG will ensure that the criteria to be used to award a contract are carefully considered and relevant to each contract and its critical success factors, ensuring an absolute relevance to the CCGs' requirements, including how these are expressed through the developed service specification. In developing contract award criteria the CCG will consider:

Proposed solution

99. Including for example the bidder's service delivery model, workforce and management approach, systems, accessibility, etc;

Assurance of quality

100. How the bidder will assure that the required standards and levels of quality will be achieved and improved upon (including ensuring safeguarding);

Governance

101. How the contract will be effectively overseen and reported on;

Social Value

102. The CCG recognises their obligations as public bodies, to consider how contract award criteria can address how a bidder's solution might offer ways to bring about additional added value in the form of improvements in regard to the social, economic and environmental well-being of the local area;

Mobilisation

103. The confidence to be had in how the bidder is able to plan, resource and prepare for implementation of service delivery in a timely, compliant and safe manner;

Prices

104. The CCG will consider what role prices will play in the evaluation.

105. Where prices are being determined and set by the CCG, evaluation will ensure bidders accept the CCGs' prices whilst demonstrating the ability to provide a sustainable service.

106. Where bidders are to be invited to tender competitive prices, the CCG will consider setting clear and robust upper and lower affordability thresholds within which bid prices must comply.

107. Evaluation of bid prices will ensure that bidders understand:

- how bid prices will translate into contract prices and how these will be paid by the CCG (including the frequency and nature of the payment);
- the extent to which bid prices are required to be comprehensive, for example to include all set-up, mobilisation, TUPE transfer, equipment and systems costs;
- the potential requirement for block pricing, caps and / or marginal pricing;
- how any performance, incentive, penalty or risk/gain share payments will be calculated and applied to the contract.

108. In line with regulatory obligations, the CCG will ensure that bid prices are not abnormally low and where this appears to be the case, the CCG will require the bidder to explain their bid price, including evidencing that this is sustainable. The CCG will ensure that their rights are reserved during procurement process, to reject any bid where the price is abnormally low and the bidder cannot provide a reasonable, robust explanation assessed to be acceptable to the CCG.

Value for money

109. The CCG will ensure that the contract award criteria are appropriate to support a contract award decision on the basis of overall value for money.

Evaluation panel

110. Where appropriate the CCG will resource and appoint work-stream and subject matter experts to participate within a panel to evaluate bids received during a competitive procurement process. Where appropriate to the procurement of healthcare services,

the role of patient representatives will be considered. At all times, the CCG will have regard to the CCGs' Policy on the Management of Conflict of Interests.

Moderation of evaluation panel scoring

111. Where an evaluation panel has been established to evaluate bids, the CCG will ensure inclusion of a moderation phase to agree consensus evaluation scoring on behalf of the CCG which will inform the evaluation panel's identification and recommendation of preferred bidder(s) to be awarded a contract(s).

Due diligence

112. The CCG will ensure that proportionate due diligence is undertaken during and following procurement process to provide necessary assurance on the preferred bidder's ability to deliver what they have offered to the CCG. The CCG will consider what evidence and assurances will be appropriate to obtain from the Recommended Bidder in regard to its ability to comply with contractual terms and conditions and its lawful responsibilities.

Contract award decision

113. The CCG will ensure that contract award decisions are communicated to successful and unsuccessful bidders as soon as possible and will ensure:

- The provision of detailed written feedback to show the reasons for the decision; and
- That the relative merits and advantages of the winning bid are identified; and
- Bidders are able to learn from any potential weaknesses in their submitted procurement response to improve the quality of future procurement responses to the CCG.

114. The CCG will ensure that Contract Award Notices are published in compliance with regulatory requirements in terms of where and when notices are to be published and the level of detail to be published, including details of the contract and the appointed provider.

115. Where contracts are awarded without a competition, the CCG will consider the benefits of publishing Contract Award Notices ahead of, rather than after, entering into the contract to allow timely transparency where there is the potential for external challenge to the contract award decision.

116. See **Annex E** – Regulatory requirements to publish Contract Notices

Mobilisation:

117. To ensure that there is a seamless transition of service provision between incumbent and newly appointed service providers, the CCG will ensure that the awarding of a

new contract will ensure a focus on how mobilisation will be planned, resourced and overseen.

118. The CCG will assess the appropriateness to resource a governance role during the mobilisation phase, having regard to the relative risks, value and significance of service.

Contract signature:

119. Contracts will be signed with providers at the earliest opportunity following satisfactory necessary due diligence and following completion of a standstill period of at least 10 calendar days following notification to bidders of the contract award decision, where appropriate to the nature of the service, its value and regulatory requirements.
120. A pre-requisite to contract signature for healthcare service contracts will be the development by the provider of a comprehensive mobilisation plan considered sufficient by the CCG.
121. Where the CCG identifies any potential gaps or weakness during a procurement or assurance process leading up to the award of a contract, the areas of weakness will be addressed prior to entering into a contract.
122. The CCG will ensure that all relevant documentation received from a provider during procurement, or assurance process will be incorporated within the contract along with the CCG's service specification, as key 'documents to be relied upon' as the basis of understanding of the services to be provided.

Policy Review

123. This Procurement Policy will be reviewed annually to ensure that account can be taken of any changes to regulations, policy and guidance, including nationally reviewed procurement thresholds relevant to the application of the Public Contracts Regulations.
124. The CCG will at least bi-annually commission an appropriately qualified third party provider to audit compliance with this policy and that robust processes and decision making in regard to the procurement of goods and services will be audited on a regular basis by an appropriately qualified third party provider.

Annex A – Regulatory Framework: Reference Sources

The following provides a list of reference sources for the Regulations and Acts of Parliament referred to within Section 2 of this policy that will be taken into account when the CCG considers awarding contracts.

Public Contracts Regulations 2015

<http://www.legislation.gov.uk/uksi/2015/102/contents/made>

NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013

<http://www.legislation.gov.uk/uksi/2013/257/contents/made>

Monitor's substantive guidance on the NHS (Procurement, Patient Choice and Competition)(No.2) Regulations 2013

<https://www.gov.uk/government/publications/procurement-patient-choice-and-competition-regulations-guidance>

Health & Social Care Act 2012

<http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted>

Public Services (Social Value Act) 2012

<http://www.legislation.gov.uk/ukpga/2012/3/enacted>

Managing Conflicts of Interest: Revised Statutory Guidance for CCGs (NHS England, June 2016)

<https://www.england.nhs.uk/commissioning/pc-co-comms/coi/>

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

<http://www.legislation.gov.uk/uksi/2006/246/regulation/4/made>

Equality Act 2010

<http://www.legislation.gov.uk/ukpga/2010/15/contents>

Bribery Act 2010

<http://www.legislation.gov.uk/ukpga/2010/23/contents>

Annex B – Regulatory Requirements to Maintain Records regarding Contract Award Decisions

Section 4.1 of this Policy (Decision Making and Accountability) recognises the regulatory obligations to maintain certain records in regard to processes associated with the awarding of contracts. These are more fully set out below:

Regulation 84 Documentation

Regulation 84 of the Public Contracts Regulations 2015 sets out specific requirements for Contracting Authorities:

For every contract or framework agreement, falling in scope of the PCR2015, the CCG must draw up a written report to include:

- Name and address of CCG;
- Subject matter;
- Value of contract or framework agreement;
- Names of bidders and reasons for their selection;
- Names of rejected bidders and reasons for their rejection;
- Reasons for any tenders being rejected for their price being abnormally low;
- Name of successful bidder and the reasons for tender being successful;
- Names of any main sub-contractors and the share of the contract intended that they will deliver;
- Where either a Competitive Procedure with Negotiation or a Competitive Dialogue procedure used, the circumstances justifying the use of such procedures;
- Where a Negotiated Procedure without inviting expressions of interest or a competition, the circumstances justifying the use of this procedure;
- Where applicable, the reasons the CCG has decided not to award a contract;
- Where applicable, the reasons by electronic communications were not used for the submission of tenders;

Details of conflicts of interests detected and subsequent measures taken to manage the conflicts.

*The CCGs use of a Post-Procurement Outcomes Report, recommending an award of a contract decision, will be designed to meet the above requirements.

*The above report is not required for contracts called off an existing framework agreement.

The CCG shall ensure documented progress of all procurement procedures.

The CCG shall keep sufficient documentation to justify decision taken in all stages of procurement procedures including:

- Communications with interested providers and bidders;
- Preparation of the procurement documents;
- Where relevant, dialogue or negotiation within any bidder;
- Selection and award of the contract.

Documentation required by Regulation 84 shall be kept for at least 3 years from the date of the award of the contract.

NHS 2013 Regulations Documentation

Additionally, Regulation 9(1) of the NHS (Procurement, Patient Choice and Competition)(No.2) Regulations 2013 sets out requirements for CCGs to:

Publish details of each contract awarded for the provision of health care services for the purposes of the NHS to include:

- Name and registered address of the provider;
- Description of the health care services to be provided;
- Contract value or payments to be paid;
- Contract start and end dates;
- Description of the process adopted for selecting the provider.

Annex C – Procurement Services supporting the CCG

Sections 4.3 and 4.5 of this policy recognise the importance of the CCG seeking appropriately experienced and qualified advice and guidance in regard to procurement matters.

NHS Wigan Borough CCG has access to a comprehensive Procurement Service provided by Greater Manchester Shared Service and NHS Shared Business Services.

Service provided	Contact
<p>Procurement advice and guidance – including:</p> <ul style="list-style-type: none"> - legal advice regarding compliance with regulatory framework (includes access to qualified expert procurement legal services) - development of procurement policy - procedures and strategy - regulatory risk assessments - development of contract award options - procurement awareness training and workshops 	<p>Stuart Moore, Head of Market Management stuart.moore2@nhs.net 07894 440 381</p> <p>Andrea Bird, Head of Procurement Services (North) Andrea_bird@nhs.net 0161 212 3714 / 07770 982 244</p>
<p>Clinical Procurement Service (CCG commissioned health care services) - including:</p> <ul style="list-style-type: none"> - market engagement - improvement of service specifications - design and delivery of procurement processes - development of evaluation methodologies - development of non-competitive assurance and due diligence processes - development of most capable provider assessments - mobilisation planning and project management 	<p>Stuart Moore, Head of Market Management stuart.moore2@nhs.net 07894 440 381</p> <p>Andrea Bird, Head of Procurement Services (North) Andrea_bird@nhs.net 0161 212 3714 / 07770 982 244</p>
<p>Non-clinical Procurement Service – including:</p> <ul style="list-style-type: none"> - market engagement, analysis and development - spend analysis and development of strategies to improve CCG spend - competitive tendering - support to obtain competitive quotations - calling off contracts from framework agreements - development of framework agreements 	<p>Stuart Moore, Head of Market Management stuart.moore2@nhs.net 07894 440 381</p> <p>Andrea Bird, Head of Procurement Services (North) Andrea_bird@nhs.net 0161 212 3714 / 07770 982 244</p>
<p>Operational Procurement Service – including:</p>	<p>Stuart Moore, Head of Market</p>

<ul style="list-style-type: none"> - Processing of requisitions - Raising of Purchase Orders - Obtaining of quotations for low value (below procurement threshold) contracts 	<p>Management stuart.moore2@nhs.net 07894 440 381</p> <p>Andrea Bird, Head of Procurement Services (North) Andrea_bird@nhs.net 0161 212 3714 / 07770 982 244</p>
<p>Escalation of concerns, issues or complaints</p>	<p>Stuart Moore, Head of Market Management stuart.moore2@nhs.net, 07894 440 381</p> <p>Andrea Bird, Head of Procurement Services (North), Andrea_bird@nhs.net 0161 212 3714 / 07770 982 244</p> <p>Kate Rigden, Deputy Chief Finance Officer, kate.rigden@nhs.net 07887 210770</p>

Annex D – Contract Terms and Conditions

This policy sets out that the CCG will ensure that when procuring goods or services, that clear terms and conditions of purchase and supply are agreed and that these are to be determined by the CCG in line with national policy and guidance as issued by the Department of Health and NHS England.

The following sets out the reference sources for the terms and conditions to be used by the CCG.

Type of provision being procured	Contract terms to be used and reference source
Goods and/or [non-healthcare] services	<p>NHS Terms and conditions for the supply of goods: contract version</p> <p>NHS Terms and conditions for the supply of goods: purchase order version</p> <p>NHS Terms and conditions for the supply of services: contract version</p> <p>NHS Terms and conditions for the supply of services: purchase order version</p> <p>NHS Framework Agreement for the provision of services</p> <p>NHS Terms and conditions for the provision of managed services</p> <p>https://www.gov.uk/government/publications/nhs-standard-terms-and-conditions-of-contract-for-the-purchase-of-goods-and-supply-of-services</p>
Healthcare services	<p>NHS Standard Contract, as mandated by NHS England</p> <p>https://www.england.nhs.uk/nhs-standard-contract/</p> <p>For use across all patient accessed health care services including:</p> <ul style="list-style-type: none"> - Ambulance Services - Community Services - Acute Hospital Services - Mental Health Services - Community Services - Care Homes Services
Sub-contracts for healthcare services	<p>NHS Standard Sub-contract for the provision of Clinical Services</p> <p>https://www.england.nhs.uk/nhs-standard-contract/</p>
GP services	<p>General Medical Services (GMS) Contracts</p> <p>Personal Medical Services (PMS) Contracts</p> <p>Alternative Provider Medical Services (APMS) Contracts</p> <p>https://www.england.nhs.uk/commissioning/gp-contract/</p>
Grants being provided to	Grant Agreement – a model agreement published by NHS

voluntary organisations	England, being non-mandatory and able to be locally adapted https://www.england.nhs.uk/nhs-standard-contract/grant-agreement/
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Annex E – Regulatory requirements to publish Contract Notices

There are two sets of regulations which govern the transparency of public contracts, including those awarded by CCGs. These are set out below in regard to both the procurement of healthcare contracts, and also the separate requirements relating to contracts for goods and non-healthcare services.

Transparency is expected where a contract is to be established, and also following the award of a contract.

There are different requirements depending on whether the contract financial values exceed the procurement thresholds or are 'below threshold' – see Annex G to this policy (Regulatory Procurement Thresholds).

~ Healthcare Contracts Only ~

NHS (Procurement, Patient Choice and Competition)(No.2) Regulations 2013

Regulation 4 of the NHS (Procurement, Patient Choice and Competition)(No.2) Regulations 2013 sets out that where the CCGs intend to invite offers from providers in relation to a healthcare contract, that Contracts Finder is to be used to publish details of the contract opportunity and shall include:

- a description of the services to be provided; and
- the criteria against which any bids for the contract will be evaluated.

Regulation 4 also sets out that the CCGs must make arrangements to enable providers to express an interest in providing any health care service for the purposes of the NHS.

Public Contracts Regulations 2015

Notifying the market of a contract opportunity: Regulation 75 requires that where a Contracting Authority intends to award a contract for healthcare services, being 'above threshold', that this intention is published through OJEU (the Official Journal of the European Union) by means of either a:

- Contract Notice, to include:
 - Identification of the CCG as the Contracting Authority;
 - Brief description of the contract including CPV codes;
 - Conditions for participation in the process of selection;
 - Time limits for contacting the CCG in view of participation;
 - Brief description of the main features of the award procedure to be applied.
- Prior Information Notice (PIN), which shall:
 - Contain the following information:
 - Identification of the CCG;
 - Brief description of the contract including CPV codes;

- Timeframe and duration of the contract;
- Conditions for participation in the process of selection;
- Brief description of the main features of the award procedure to be applied.
- Confirm the types of services for which the contract is to be awarded;
- Confirm that the contract will be awarded without further publication and invite interested providers to express their interest in writing.

Ensuring transparency of contracts awarded: Regulation 75 also requires transparency of 'above threshold' healthcare contracts awarded by CCGs, regardless of the process of awarding such contracts (i.e. whether as a result of a competition or through a direct, or negotiated procedure).

Note – see **Annex G** to this policy (Regulatory Procurement Thresholds) for details of the financial value of contracts considered to be 'above threshold'.

The transparency required is the publication of a Contract Award Notice through OJEU (the Official Journal of the European Union) which must include:

- Identification of the CCG as the Contracting Authority;
- Brief description of the contract, including CPV codes;
- Number of tenders received;
- Price or range of prices to be paid;
- Name and address of the successful bidder being awarded the contract;
- Any other relevant information.

Contract Award Notices are to be published within 30 days following a contract being awarded, or may be published in bulk within 30 days at the end of each quarter.

~ **Contracts for goods and non-healthcare services** ~

Public Contracts Regulations 2015

Notifying the market of a contract opportunity: Regulations 48 and 49 require that where a Contracting Authority intends to award a contract for goods or [non-healthcare] services, being 'above threshold', that this intention is published through OJEU (the Official Journal of the European Union) by means of either a:

- Prior Information Notice (PIN), which shall:
 - Contain information including:
 - Identification of the CCG;
 - How the procurement documents can be accessed electronically;
 - Brief description of the contract including CPV codes;
 - Timeframe and duration of the contract;
 - Timeframe for the contract delivery and duration;
 - Time limits for expressions of interest;

- Brief description of the main features of the award procedure to be applied.
 - Confirm the types of services for which the contract is to be awarded;
 - Confirm that the contract will be awarded without further publication and invite interested providers to express their interest in writing.
- Contract Notice, to include:
 - Identification of the CCG;
 - How the procurement documents can be accessed electronically;
 - Brief description of the contract including CPV codes;
 - Conditions for participation in the process of selection;
 - Type of award procedure and any reasons for use of an accelerated procedure;
 - Explanation as to how any lots may or may not be limited, or reasons why the contract has not been divided into lots;
 - Contract award criteria;
 - Time limits for each stage of the procedure;
 - Brief description of the main features of the award procedure to be applied.

Ensuring transparency of contracts awarded: Regulation 50 also requires transparency of 'above threshold' contracts awarded for goods or non-healthcare services.

Note – see **Annex G** to this policy (Regulatory Procurement Thresholds) for details of the financial value of contracts considered to be 'above threshold'.

The transparency required is the publication of a Contract Award Notice through OJEU (the Official Journal of the European Union) which must include:

- Identification of the CCG;
- Brief description of the contract, including CPV codes;
- Description of the procurement;
- Contract award criteria;
- Number of tenders received;
- Price or range of prices to be paid;
- Name and address of the successful bidder being awarded the contract;
- Details of main subcontractors and proportion of the contract.

Contract Award Notices are to be published within 30 days following a contract being awarded.

Annex F – ‘Decision Guide’: selecting an approach to award a contract (healthcare services)

This policy outlines considerations when selecting the most appropriate route to awarding a contract. The following guidance is set out to assist with the application of the considerations outlined.

Q1. Is the service contract within the scope of an existing or soon to be established, Accountable Care Partnership (ACP), Multi-specialty Community Provider (MCP) or similar collaborative provider arrangement?

If ‘Yes’ – consider how the service contract should either be replaced by, or transferred into the ACP arrangement and the timing of this – see Notes below.

If ‘No’ – go to Question 2.

Notes: Consideration to be given as to how, in contract form, the service is to be incorporated within scope of the ACP (or new form contract MCP, etc.). Should an existing service contract be decommissioned as a replacement service arrangement is to be established through an ACP? Can provision be made to novate/transfer an existing contract into the ACP contract? If the ACP has yet to be established, is it appropriate to extend an existing service contract for an interim period until the ACP is to be established? If an interim arrangement is required on a standalone basis see steps below.

Q2. Can the services required be lawfully procured through an established framework?

If ‘Yes’ – progress a process to award a contract under the framework agreement.

If ‘No’ – go to Question 3.

Notes: An increasing range of frameworks are being established nationally by commissioning bodies and procurement organisations which can enable the CCG to avoid a full procurement process and instead, either directly award a contract to a framework provider, or undertake a ‘mini competition’ as may be appropriate under the terms of the framework. Caution should be exercised when considering using a framework from another commissioner (whether a CCG or a local authority), that the framework lawfully permits the CCG to contract through the framework, this having been transparently communicated to the market when the framework was established. Also, the service required is within the value range permissible within the framework. Advice regarding access to frameworks should be sought from the procurement service.

Q3. Is there a need to pilot a new service model for a limited time before investing in a substantive service contract?

If 'Yes' – consider whether it is justifiable and proportionate to award a contract without any competition for the duration of the pilot.

If 'No' – go to Question 4.

Notes: A 'pilot' service is not necessarily a reason to avoid a process to decide which provider is most capable of delivering a value for money service. Where a pilot is intended to run for 6 – 18 months, it may be reasonable and proportionate to directly award a contract, however regard should be given to the level of risk involved (including financial, clinical, reputational, etc.) to ensure that the selection of the provider is appropriate including all necessary due diligence being undertaken. Consideration should be given to whether a speedy, proportionate process can be undertaken to invite interest from the market and select a provider. Also, Commissioners should record/document the rationale behind not competing the opportunity if this option is chosen.

Q4. Is there an urgency to award a contract that precludes any reasonable timescale to run any competitive process?

If 'Yes' – commence direct negotiation to award the contract without any competition

If 'No' – go to Question 5.

Notes: Procurement regulations do provide for circumstances where a contracting authority could not have reasonably foreseen the requirement, e.g. an unanticipated need to contract for a complex package of care that has arisen and requires an urgent solution. Caution to be exercised in that a lack of commissioner planning and a reasonable anticipation of requirements are unlikely to be considered reasonable justification to avoid a competitive or other process. Internal 'Tender Waiver' documentation must record the reasons and the decision taken.

Q5. Can the services be concurrently provided through one or more providers offering a choice (whether mandatory by statute or desirable based on the commissioning intentions) to patients?

If 'Yes' – consider the benefits of establishing a framework of providers. Go to Question 6.

If 'No' – go to Question 7.

Notes: Engagement with the market is essential to understand the viability and appropriateness of a framework. Presumptions should not be made regarding the potential interest of providers to willingly share in the provision of healthcare capacity. Consideration should also be given to the overall costs and benefits to the CCG as well as patients when offering choice through multiple contracts. Issues to be explored may include service sustainability, economies of scale and minimum clinical activity levels to sustain clinical competence and patient safety.

Q6. Can a fixed tariff be determined by the CCG which will apply to all providers offering a choice of service to patients?

If 'Yes' – consider establishing an Any Qualified Provider (AQP) framework.

If 'No' – consider establishing a bespoke framework involving competitive or differentiated prices.

Notes: An AQP is an NHS framework where any provider interested in providing a patient service can apply to be awarded a contract, with the requirement that they are appropriately qualified, registered and agree to standard NHS contract terms and the fixed tariff set by the CCG. AQPs support the offering of choice to patients in where they can receive healthcare. Engagement with potential providers should explore, test and validate interest from providers and the factors affecting their level of interest. Tariff setting should have regard to the commercial factors of relevance to the type of service provision and the feedback from potential providers. There may be occasion where competitive pricing may be appropriate, e.g. where the services offered across the provider landscape is variable and differentiated – such as care homes with nursing, where a common tariff may not be reasonable or feasible. Advice and support

Q7. Is there only one single provider capable of and/or interested in providing the service?

If 'Yes' – commence direct negotiation to award the contract without any competition.

If 'No' – go to Question 8.

Notes: A single capable provider could arise for various reasons including: sole infrastructural or technical knowledge / ability; having specialist capability; clinical interdependency; etc. Justification for there being a single capable provider should be evidenced through market engagement, or there is a risk of subsequent legal challenge where the CCG has failed to identify alternative capable providers. i.e. publishing via Contracts Finder / OJEU to invite expressions of interest.

Q8. Is there more than one interested and capable potential provider?

If 'Yes' – consider a proportionate competitive process.

If 'No' – consider market stimulation and development to meet commissioning requirements.

Notes: Market engagement is critical to understand the level of potential provider interest. The designing of an appropriate and proportionate competitive procurement process should be informed as to the likely number of potential bidders. A pre-qualifying procurement stage, where intended to shortlist potential bidders to be invited to tender, should only be used following an assessment that there is likely to be a high and unmanageable number of bidders. Whilst the Public Contracts Regulations 2015 prescribe a choice of procurement procedures (i.e. Open, Restricted, etc.), CCGs' have

considerable flexibility to design a procurement process as long as it remains compliant with the EU Treaty derived principles of transparency, equal treatment, non-discrimination and proportionality. Where market engagement fails to identify interested providers, a review should take place to understand possible reasons, particularly where this could be due to unreasonable specifications of commissioning requirements including payment model. Ways should be identified to further engage with the market to develop the capacity being required to meet commissioning requirements.

Annex G - Regulatory procurement thresholds

NHS (Procurement, Patient Choice and Competition)(No.2) Regulations 2013

The NHS (Procurement, Patient Choice and Competition)(No.2) Regulations 2013 require that where a competition is to be used to award a contract for the provision of health care services for the provision of the NHS (amongst other social and educational services), regardless of financial value (i.e. no financial threshold is stipulated), arrangements are to be made to advertise such a competition, through the publication of an appropriate Notice through Contracts Finder (the UK's national web portal for ensuring transparency of all public sector contract opportunities and contract award decisions, available at <https://www.contractsfinder.service.gov.uk>)

Public Contracts Regulations 2015

The Public Contracts Regulations 2015 set out financial thresholds when regulatory obligations will apply to process for awarding a contract and the transparency in relation to contracts awarded.

These thresholds are reviewed and published by the Cabinet Office at least every two years.

Thresholds relate to the total potential life value of a contract, including any potential extensions.

e.g. A contract with an annual value of £200,000 being awarded for 2 initial years with the option to be extended for a further year will have a total potential life value of £600,000.

Thresholds as at 1st January 2016:

Contracts requiring transparency through OJEU (the Official Journal of the European Union):

- Goods and non-‘Schedule 3’ services* - £181,302 or more
- Works - £4,551,413 or more
- ‘Schedule 3’ services (including Healthcare) - £615,278 or more

Contracts requiring transparency through Contracts Finder (referred to as ‘below threshold’ contracts):

- Goods and non-healthcare services - from £25,000 and being less than £181,302
- Works - from £25,000 and being less than £4,551,413

*Note: 'Schedule 3' refers to Schedule 3 within the Public Contracts Regulations 2015 which lists specific types of public services which are not bound by all of the regulatory requirements and have a higher contract value threshold before transparency through OJEU is required.

Whilst the Public Contracts Regulations 2015 include a specific exemption from publishing details of 'below threshold' healthcare service contracts through Contracts Finder, the NHS (Procurement, Patient Choice and Competition)(No.2) Regulations 2013 provide a counter to this, obliging CCGs to ensure that Contracts Finder is used to ensure transparency of ALL healthcare contracts awarded (regardless of the contract value).