NHS Derby and Derbyshire Clinical Commissioning Group

Procurement Policy

VERSION CONTROL

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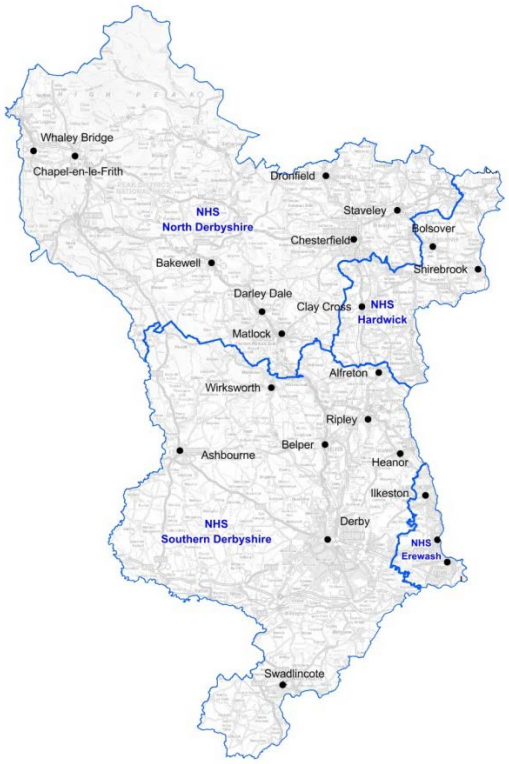
SECTION 1 – NHS DERBY AND DERBYSHIRE CCG'S APPROACH TO PROCUREMENT

1. INTRODUCTION

1.1 NHS Derby and Derbyshire Clinical Commissioning Group (the "CCG") comprises of 114 GP practices, with the responsibility for commissioning healthcare services for the Derbyshire population of approximately 1,045,550 people. The CCG aims to ensure that it delivers an NHS that is fair, personalised, effective and safe, providing effective choices for the population of Derbyshire.



1.2 To ensure the CCG commissions services fairly and transparently it complies with all procurement and competition law. The overarching principles of the Public Procurement within the NHS are as follows:

1.2.1 Transparency

The CCG is required to publish procurement strategies and intentions to procure; provide feedback to unsuccessful bidders; publish details of awarded contracts and maintain records which demonstrate how procurement decisions have been made.

1.2.2 Proportionality

The level of capacity and resource involved in the procurement process both on behalf of the CCG and the potential providers in relation to the value and complexity of the service being procured must be proportionate.

1.2.3 Equality/Non-discriminatory

The duty to treat all potential providers equally. This could include engagement with providers on service design to ensure service specifications have not been designed to exclude certain providers and the deadline for tender submissions has not been set to favour certain providers.

1.3 The CCG works jointly with a range of partners, including NHS England, Local Authorities, other local health providers and the voluntary sector, to maximise its ability to commission the highest quality services within the available resource allocation.

1.4 Where appropriate, the CCG works collaboratively across the wider health economy to jointly commission and procure services. The CCG actively participates in projects/programmes where there are benefits to the Derbyshire population, including the reduction of procurement costs and increased leverage with providers, by acting regionally.

2. PURPOSE

2.1 The purpose of this policy is to:

2.1.1 set out the aims and objectives of the procurement policy, providing an overview of how the CCG will operate and the ethos that will be applied to all procurement processes to ensure compliance with the statutory procurement guidelines; and

2.1.2 provide guidance and advice for all staff working in the CCG, when undertaking any procurement activity or decision making regarding the procurement of goods and services by defining the procurement principles, rules and methods that the CCG will work within. This policy reflects existing national guidance, in particular the requirements of the NHS Procurement, Patient Choice and Competition Regulations 2013 (No. 2), the Procurement Guide for Commissioners of NHS Funded Services, and Monitor's[1] Substantive guidance on the Procurement, Patient Choice and Competition Regulations.

2.2 The full legal and regulatory framework that the CCG will abide by is made up of:

- The NHS (Clinical Commissioning Group) Regulation 2012 no. 1631 (2012)

[1] From 1 April 2016, Monitor became part of NHS Improvement. However for the purposes of this policy and the documents referenced within, Monitor will continue to be used by way of referencing NHS Improvement

- Securing best value for NHS patients (2012)
- Procurement briefings for Clinical Commissioning Groups (2012)
- Procurement Guide for commissioners of NHS-funded services (2012)
- Public Services (Social Value) Act (2012)
- Health and Social Care Act (2012)
- The National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations (2013)
- Monitor's Substantive guidance on the Procurement, Patient Choice and Competition Regulations (2014)
- Managing Conflicts of Interest: Statutory Guidance for CCGs (2017)
- The Public Contracts Regulations (2015)
- Standards of Business Conduct and Managing Conflicts of Interest Policy

2.3 The CCG will view instances where this policy is not followed as serious and may take disciplinary action against individuals, which may result in removal from office in accordance with the provisions of the CCG's constitution and/or dismissal. A referral may also be made to the CCG's Counter Fraud Specialist for investigation and may lead to a criminal investigation as per the CCG's Fraud, Bribery and Corruption Policy. The following CCG policies (as amended) will apply to breaches of this policy where appropriate:

2.3.1 Raising Concerns at Work (Whistleblowing) Policy;

2.3.2 Standards of Business Conduct and Managing Conflicts of Interest Policy;

2.3.3 Disciplinary Policy; and

2.3.4 Fraud, Bribery and Corruption Policy.

3. CCG CONSTITUTION

3.1 The CCG aims to be an organisation capable of commissioning high quality services in an affordable and sustainable local health system.

3.2 The CCG's Constitution sets out the arrangements made by the CCG to meet its responsibilities for commissioning care for the people to whom they are accountable. It describes the governing principles, rules and procedures that the CCG will establish to ensure probity and accountability in its day to day running, to ensure that decisions are taken in an open and transparent way and that the interests of patients and the public remain central to its decision. The CCG commits to:

3.2.1 provide local clinical leadership to the NHS, and work with everybody who can contribute to its aims;

3.2.2 being open and accountable to patients and communities; ensuring they are at the heart of everything the CCG does;

3.2.3 understanding its population and addressing inequalities so that services are in place to meet needs, and plan services that best meet those needs now and in the future;

3.2.4 secure the best quality, best value health and social care services it can afford; and

3.2.5 use resources fairly and effectively.

4. ROLE OF THE CCG'S GOVERNING BODY IN THE PROCUREMENT PROCESS

4.1 The CCG's Governing Body has the ultimate responsibility for ensuring that the CCG meets its statutory requirements when procuring healthcare services.

4.2 The Governing Body is the authorising body for awarding a contract once a formal tender process has been completed, however this may be delegated to the Clinical and Lay Commissioning Committee or other appropriate committee or senior officer in accordance with the budget scheme of delegation. When considering options for procurement the Governing Body will work within the guidelines set out by NHS Improvement as the appointed regulator of healthcare procurement and apply the NHS Improvement Key tests as described within Section 2, paragraph 3 of this document.

5. STAFF, PUBLIC AND PATIENT ENGAGEMENT

5.1 The CCG is committed to engaging relevant stakeholders in all aspects of procurement. The NHS Constitution pledges that staff should be engaged in changes that affect them. Staff engagement is principally the responsibility of employers, but the CCG recognises the value of effective staff engagement in improving the quality of commissioning and procurement.

5.2 The CCG also recognises that the engagement of clinicians, patients and public in designing services results in better services. The CCG's business processes require evidence of engagement for business cases to be approved and as a result, any procurement of services is to be informed by engagement at the design stage.

5.3 As well as engaging staff and service users at the Project Initiation document (PID) development stage, the CCG is committed to involving individuals in the procurement process. The CCG ensures that the views of the public and service users are taken into account when making any decision to go out to competitive procurement and when developing relevant tender documentation. The CCG will also ensure engagement with service users and the public when evaluating tender submissions; its expectation is that relevant service users will be represented on tender evaluation panels and be given the opportunity to influence the outcome of procurement decisions.

6. QUALITY

The overall quality of a healthcare service will be determined by the successful implementation of the procurement process. Quality will be embedded throughout each process using the following tools:

6.1 Quality, Innovation, Productivity and Prevention (QIPP)

All tender activity undertaken by the CCG will focus on the QIPP agenda and each successfully delivered healthcare tender will contribute to this wider programme (where applicable):

6.1.1 Quality

The quality of each service will be assessed through the evaluation of the successful bidder's tender submission and subsequently managed through an agreed performance management framework established at the tender stage and included in the Contract. This will cover, where relevant, any appropriate health outcome measures specified as part of the tender process.

6.1.2 Innovation

Emphasis will be placed on innovation to enable suppliers to introduce efficiencies and new working methods into every area of service delivery.

6.1.3 Productivity

Each tender will be evaluated against published assessment criteria and weightings using the published scoring mechanism to ensure that the Contract is awarded to the Provider/Providers who is/are adjudged to have submitted the Most Economically Advantageous Tender.

6.1.4 Prevention

For procurements this focuses on the problem of under or over supply as opposed to considering any health improvement and inequalities issues, which will be addressed as part of the quality and outcome specifications. A contract that delivers too much or too little activity is wasteful and will inevitably be an unwelcome expense to the commissioner of the service. There can also be associated risks to the provider which emphasises the need for thorough market analysis and the understanding of the service requirements.

6.2 Commissioning for Quality and Innovation (CQUIN)

CQUIN payments enable commissioners to reward suppliers by linking payments to local quality improvements goals. The Contracts Department will offer advice to enable commissioners to embed these payments into the contractual agreement through an appropriate performance management framework as part of the tender process.

6.3 UK Government's Approach to Quality

Regulation 67 of the Public Contracts Regulations 2015 (the 'PCR 2015') states that Contracting authorities shall base the award of public contracts on the 'Most Economically Advantageous Tender' (MEAT) using a cost effectiveness approach such as life-cycle costing to assess this; this may include best 'price-quality ratio' as assessed on the basis of the award criteria.

7. COLLABORATIVE PROCUREMENT

There are areas of supply management in which procurement collaboration is likely to bring benefits to the CCG, whether it is the sharing of operational resources, or commitment to specific joint projects and/or contracts. Economies of scale can be achieved in both operational activity and through leveraging collective spend. Where a specific procurement warrants joint procurement activity and it can be evidenced that this would be the best thing for the Derbyshire population, the CCG will enter into collaborative procurement processes.

8. DECOMMISSIONING SERVICES

8.1 The CCG's Governing Body has considered a set of principles to guide its approach to decommissioning services, as set out below. The principles were developed to clarify the circumstances, and by what processes, services will be decommissioned and, if necessary, re-commissioned. The CCG will ensure that its approach to the decommissioning of services is fair, open and transparent.

8.2 Proposals to decommission a service will meet the Secretary of State's four key tests for service change:

8.2.1 support from GP commissioners;

8.2.2 strong engagement, including local authorities, public and patients;

8.2.3 a clear clinical evidence base underpinning proposals; and

8.2.4 the need to develop and support patient choice.

8.3 There must be clear and objective reasons for the decommissioning of a service. These are likely to be based on one or more of:

8.3.1 failure to remedy poor performance;

8.3.2 evidence that the service is not cost-effective;

8.3.3 evidence that the service is not clinically effective – i.e. patient outcomes cannot be shown; and/or

8.3.4 insufficient need for the service;

8.3.5 the redesign of a pathway or full service.

8.4 Proposals will be clearly in line with the CCG's business aims and objectives, as set out in our annual commissioning intentions.

8.5 Patient and service users' views will be taken into consideration in any decision to decommission a service, with formal public consultation when required.

8.6 Proposals will be led by clinicians and will be based upon clear and strong evidence of clinical and cost effectiveness.

8.7 There will be no negative impact on the quality of care patients receive or on equality of care provision.

8.8 Proposals will be backed by a robust business case that describes the benefits of decommissioning and demonstrates that the benefits will be achieved.

8.9 Decommissioning decisions will be consistent with the commitments in the contract with Voluntary, Community and Faith (VCF) sector providers and with partnership principles agreed with NHS Foundation Trusts and the Local Authority.

8.10 The CCG will ultimately take the decision with regard to the decommissioning of any service.

SECTION 2 – ENSURING CCG COMPLIANCE WITH PROCUREMENT RULES AND REGULATION

1. STATUTORY FRAMEWORK

1.1 The CCG was established under the Health and Social Care Act ('the 2012 Act'). CCGs are statutory bodies which have the function of commissioning services for the purposes of the health service in England and are treated as NHS bodies for the purposes of the National Health Service Act 2006 ('the 2006 Act'). The duties of CCGs to commission certain health services are set out in section 3 of the 2006 Act, as amended by section 13 of the 2012 Act, and the regulations made under that provision.

1.2 The NHS Principles are outlined in National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations (2013) and Monitor's Substantive guidance on the Procurement, Patient Choice and Competition Regulations (2014). The key deliverables are:

1.2.1 securing the needs of the people who use the services;

1.2.2 improving the quality of the services; and

1.2.3 improving efficiency in the provision of the services.

2. PROCUREMENT RULES AND EU TREATY PRINCIPLES

2.1 Responsibilities

2.1.1 All Managers and Commissioners with budgetary responsibility must make themselves familiar with the CCG's Operational Scheme of Reservations and Delegation, which form part of the CCG's Constitution, together with relevant detailed financial policies available via the intranet and all relevant procurement procedures described in this document.

2.1.2 All procurements will comply with the requirements of the Operational Scheme of Delegation.

2.1.3 Where applicable, all procurements will comply with the requirements of the European Union (EU) Procurement Directive 2014/24/EU as promulgated in UK law by The Public Contracts Regulations 2015 ('The Regulations'). Managers and Commissioners should seek advice from their Procurement Lead/CSU to confirm when and if these Regulations apply.

2.1.4 All clinical service procurements will abide by Monitor's Substantive guidance on the Procurement, Patient Choice and Competition Regulations.

2.1.5 The EU Treaty and EU Directive on procurement require competition as the mechanism by which contracting authorities ensure equality of treatment, transparency and non-discrimination of providers.

2.1.6 Regardless of whether procurement is 'above threshold' procurement, i.e. the contract value exceeds the threshold level above which it is mandatory to advertise the procurement in the Official Journal of the European Union (OJEU), it is important to note that the EU Treaty Principles still apply. All procurement with a value exceeding £25k must also be advertised on the Contract Finder portal.

2.2 Health and Social Care Act 2012

The Health and Social Care Act 2012 describes the responsibilities of the commissioning organisations within the NHS and the wider UK healthcare landscape. Where services exceed the OJEU threshold, EU law supersedes UK law in the event of a challenge.

2.3 Integrated Care, Choice and Competition

2.3.1 A key feature of the Health and Social Care Act is the emphasis on Integrated Care. Section 75 of the Act entitled 'Procurement, Patient Choice and Competition Regulations' requires commissioners to consider how they can procure services in a more integrated fashion to consider other healthcare services, healthcare related services and social services.

2.3.2 The Regulations ask commissioners to consider when procuring services the impact on the patient who may have multiple healthcare needs and hence may traditionally have had to receive treatment:

(a) from a number of different healthcare teams across a range of disciplines;

(b) over a number of different sites; or

(c) from a number of different healthcare providers.

2.3.3 No direct solution is given to address the issue other than to ensure that when procuring services they interface in a way which gives the patient a seamless service. Monitor (as described in Section 2, paragraph 3) may test a commissioner's effectiveness in this by asking providers how they will co-operate in the delivery of a patients care with other providers.

2.3.4 In relation to Choice and Competition, commissioners are required to ensure appropriate choice and competition exists in the market to drive up quality and efficiency. In testing this Monitor will assess how available 'Choice' is for patients and whether the number of providers in a particular market impacts on the incentive for providers to improve patient care. Where plurality of providers does not exist there is no requirement to introduce this until the incumbent provider's contract is up for renewal.

2.4 Publishing Contract Opportunities

The Health and Social Care Act 2012 deals with the requirements for:

2.4.1 NHS England to maintain a website in which commissioners can publish notices (i.e. Contracts Finder);

2.4.2 arrangements to be put in place to enable providers to express interests in providing services; (i.e. E-procurement system);

2.4.3 commissioners to publish a notice where they do intend to publish their intention to seek offers from providers for a new contract;

2.4.4 the content of published notices; and

2.4.5 in exceptional circumstances where the CCG is satisfied it is lawful not to advertise an opportunity and chooses not to advertise the opportunity at all (e.g. a CCG is commissioning a service worth £48k and its Standing Financial (SFI) states that contracts below £50k need not be advertised; and the Commissioner is certain there is no legal requirement to advertise; and the CCG does not voluntarily advertise the procurement[2].

2.5 Public Services (Social Value) Act 2012 (UK)

2.5.1 Commissioners must consider their responsibilities under the Public Services (Social Values) Act (2012) for all healthcare (clinical) procurements conducted. Consideration should be proportional and equitable whilst ensuring that the economic, social and environmental needs of the local community are met.

2.5.2 There is specific provision in UK and EU legislation to enable commissioners to include evaluation criteria which supports economic, social and environmental well-being within an area. Criteria could include financial investment, employment opportunities, carbon reduction and wider supply chain impacts amongst others.

2.6 Equality Act 2010 (UK)

Commissioners must consider their responsibilities under the Equality Act 2010 for all healthcare (clinical) procurements conducted. Potential Providers must not be discriminated against, in compliance with the requirements of the act, during the term of contract or the procurement process itself.

[2] Extreme caution should be taken when invoking this as an option. The decision to not publish a notice applies only under limited circumstances. The CCG should consult with their Procurement Lead / Commissioning Support Unit (CSU) to assess under what circumstances this would be applicable and refer to Regulation 32 of the PCR15. Legal advice should also be sort and clear and sound rationale is required to evidence why a competitive process is not required.

2.7 **Freedom of Information 2000 (UK)**

Commissioners must consider their responsibilities under the Freedom of Information Act 2000 for all healthcare (clinical) procurements conducted. Care must be taken to ensure the rights of individuals and the rights of all organisations associated with the procurement process are protected during all correspondence and associated actions. Potential bidders must be made aware of the commissioner's responsibilities as a public sector organisation under the act during the preliminary stages of any procurement process.

2.8 **Prevention of Fraud, Corruption and Bribery**

2.8.1 Fraud

(a) The Fraud Act 2006 came into force on the 15 January 2007 and introduced the general offence of fraud. This is broken into three key sections:

(i) fraud by false representation;

(ii) fraud by failing to disclose information;

(iii) fraud by abuse of position.

(b) The Fraud Act 2006 also created new offences of:

(i) possession and making or supplying articles for use in fraud;

(ii) fraudulent trading (sole traders);

(iii) obtaining services dishonestly.

2.8.2 Corruption/Bribery

(a) The Bribery Act 2010 replaced the previous Prevention of Corruption Acts 1889–1916 and created two general offences of bribery:

(i) offering or giving a bribe to induce someone to behave, or to reward someone for behaving, improperly; and

(ii) requesting or accepting a bribe either in exchange for acting improperly, or where the request or acceptance is itself improper.

(b) A new corporate offence was also introduced – negligent failing by a company or limited liability partnership to prevent bribery being given or offered by an employee or agent on behalf of that organisation.

(c) All individuals are required to be aware of the Bribery Act 2010 and should also refer to the CCG's Fraud, Corruption and Bribery Policy for further details.

2.8.3 Reporting Suspicions

(a) All cases of suspected fraud, corruption or bribery must be investigated by an accredited NHS Counter Fraud Specialist appointed by the CCG. Any concerns or suspicions relating to fraud, corruption or bribery must therefore be reported to the CCG's appointed Counter Fraud Specialist; Ian Morris (ian.morris7@nhs.net or 0115 8835319).

(b) Any suspicions or concerns of acts of fraud or bribery can also be reported online via https://www.reportnhsfraud.nhs.uk/ or via the NHS Fraud and Corruption Reporting Line on 0800 0284060. This provides an easily accessible and confidential route for the reporting of genuine suspicions of fraud within or affecting the NHS. All calls are dealt with by experienced trained staff and any caller who wishes to remain anonymous may do so.

3. THE ROLE OF NHS IMPROVEMENT (FORMALLY KNOWN AS MONITOR)

3.1 Under the Health and Social Care Act 2012, NHS Improvement, as the sector's regulator, must ensure that relevant procurement guidelines are adhered to across the health economy. A provider who raises a challenge or dispute in relation to a tender process should be initially managed through a local Dispute Avoidance and Reconciliation Process (DARP). Where the bidder is not satisfied by local DARP outcome bidders should be referred to Monitor who will investigate procurement disputes to establish if there is a case to answer.

3.2 NHS Improvement's decision is binding in these instances, as described by the role of NHS Improvement as the independent regulator of competition within the NHS (section 62 of the Health and Social Care Act (2012)). NHS Improvement may request that the commissioning authority re-tenders an opportunity should any fault be found in the methodology used to select service providers.

3.3 A provider also has the right to approach the County Court directly without approaching the CCG or NHS Improvement and in such instances the case may be heard through the local judicial system.

3.4 NHS Improvement's Testing Criteria

3.4.1 The overarching purpose of the NHS Improvement testing criteria is to ensure that any healthcare procurement achieves the following:

(a) improving the efficiency with which services are provided;

(b) improving the quality of services; and

(c) securing the needs of health care service users.

3.4.2 The following not only applies to let contracts but also when selecting providers for frameworks or shortlisting as potential future providers. The criteria that NHS

Improvement will evaluate in assessing whether the aforementioned objectives have been met are as follows:

(a) steps taken to establish the levels of public engagement in the local community to establish whether the services being procured meet local health need;

(b) establish whether a holistic view of the needs of healthcare users has been undertaken when procuring particular services, including their needs for related services i.e. services that health care users/patients can access from the same provider on the same site;

(c) whether the commissioner has considered the needs of all health care users for which it is responsible when procuring services, including:

(i) what steps the commissioner has taken to ensure equitable access to services, including by vulnerable and socially excluded members of the population;

(ii) whether the commissioner has had regard to the different needs of groups of patients, such as the need for some patients to receive a service in a particular setting;

(iii) whether the commissioner has considered the sustainability of services, including the impact that a procurement decision relating to one set of services may have on the ability of providers to deliver other services that health care users require; or

(iv) whether the commissioner has monitored the quality and efficiency of existing service provision and identified any areas where improvements are needed in advance of procuring services.

4. NHS DERBY AND DERBYSHIRE CCG'S DETAILED SCHEME OF FINANCIAL AND OTHER DELEGATIONS

The CCG's Standing Financial Instructions (SFI's) within the Detailed Scheme of Financial and Other Delegations within the Operational Scheme of Reservations and Delegation sets out the procurement limits for both revenue and capital purchases these are as follows:

	Responsibility	**Delegation Agreements**	**Further Information**
2	**Contracts**		
2.1	Financial appraisal of companies identified as potential tenders	Chief Finance Officer	Delegated to Chief Finance Officer
2.2	Authorisation of less than the requisite number of tenders/ quotes:		The requisite number of tenders/quotes: a) Up to £20,000, at

	Responsibility	Delegation Agreements	Further Information
	For all contracts of £250,000 and above For all contracts less than £250,000 Including Capital projects / Works Goods and Services	Accountable Officer Chief Finance Officer	least 3 written competitive quotations for goods/services obtained b) From £20,000 to £50,000, at least 5 written competitive quotations for goods/services obtained c) Above £50,000, a full tender is to be carried out in-line with the PCR 15 Regulations.
2.3	Authorisation of single tender / single quote action: For all contracts of £250,000 and above (illegal under EU Regulations) For all contracts less than £250,000 but above £4,000 (illegal under EU Regulations if above EU Threshold) including Capital projects/Works Goods and services	Accountable Officer Chief Finance Officer	Where a single tender / single quote is sought or received, the CCG shall as far as practical, determine that the price to be paid is fair and reasonable and that details of the investigation are recorded. Where a single tender/ single quote is authorised, this will be reported at the next Audit Committee.
2.4	Single tender/single quote action for maintenance or other support contracts for existing goods or assets where the CCG is contractually tied to specific companies.	Chief Finance Officer	Delegated to Head of Finance, who will maintain a register of such contracts approved.
2.5	Monitoring of the use of single tender/single quote action. A CCG's Waiver must be completed and forwarded to the Head of Finance.	Audit Committee on behalf of all Governing Bodies	Appropriate records to be maintained by the Chief Finance Officer as the basis for reporting, delegated to Head of Finance.
2.6	Advertising of	Accountable Officer	Delegated to the

	Responsibility	Delegation Agreements	Further Information
	contracts/awards: - must be advertised, - the CCG Procurement Manager will co-ordinate this via the appropriate web portal		CCG's Procurement lead
2.7	Opening of tenders (will be automatic if using an e-procurement portal for all tenders)	Any two from "List of CCG officers or Procurement Lead authorised to open tenders" where tender is over £50,000. Any one from list where tender is below £50,000.	
2.8	Permission to consider late tenders	Accountable Officer	
2.9	Tender ratification and award, including authorisation of any actions resulting from post tender negotiations: All types of tenders (on the lifetime value of the contract): a) Up to £50,000 b) Above £50,000 - Non-clinical spend - Clinical spend up to £1,500,000 - Clinical spend above £1,500,000	Budget Holder – Exec Director Accountable Officer Clinical Commissioning Lay Committee Governing Body	

	Responsibility	Delegation Agreements	Further Information
2.10	Signing of service provision contracts including letters of intent (the below is based on the lifetime value of the contract). This includes NHS, independent care placements, private sector and non-healthcare contracts Greater than £10 million Greater than £1 million and up to £10 million Greater than £100,000 and up to £1 million Less than £100,000	 Accountable Officer AND Chief Finance Officer Accountable Officer Chief Finance Officer Budget Holders – Exec Directors	All Works contracts of £500,000 and above should be sealed; other contracts should be sealed in the interests of the CCG.
2.11	Approval of variations or extensions to contracts: See 2.10 above		In all contracts the CCG should endeavour to obtain best value for money.
2.12	Sealing of documents	Chair (or Vice-Chair in the absence of the Chair) and one Executive Director	Subsidiary pages of Works contracts to be signed in accordance with Power of Appointment procedure

In certain circumstances the procurement route specified below might not be appropriate. In such circumstances a procurement Waiver may be requested by the relevant Director and authorised by the Accountable Officer or Chief Finance Officer.

4.1 **For expenditure up to £5,000**

The procurement can be done through the normal electronic requisitioning procedures via the Oracle system. All requisitions will be expected to adhere to those contracts which have been negotiated by Regional or National Procurement teams for all goods/services. Where no contracts have been negotiated, or if they prove unsuitable, purchasers are free to request quotes from the open market. All expenditure must be approved by the budget holder.

4.2 **For expenditure between £5,000 to £20,000**

The procurement can be done by listed officers and should either follow the normal requisitioning procedures or a three written quotation process. All requisitioners will be expected to adhere to those contracts which have been negotiated by Regional or National Procurement teams for all goods/services. Where no contracts have been negotiated, or if they prove unsuitable, purchasers are free to request quotes from other providers. A minimum of three organisations should be approached to provide written quotes. The quotes will be evaluated on best value for money basis.

4.3 **For expenditure over £20,000 and up to £50,000**

For this level of expenditure a competitive process should take place, in the form of three written quotes that are evaluated using the same rationale (MEAT) as the competitive tender process. This may require input from the Procurement Lead/ Commissioning Support Unit and the budget holder should seek appropriate advice.

4.4 **For expenditure over £50,000**

4.4.1 For expenditure over £50,000 and up to the Public Contract Regulations (PCR) 2015 Thresholds (updated January 2018) a competitive process should take place, and must ensure that the competition is fair, open and transparent to the market and evaluated using the same rationale (MEAT) as a formal competitive tender process. This will require input from the Procurement Lead/ Commissioning Support Unit and the budget holder should seek appropriate advice.

4.4.2 For expenditure exceeding the PCR 15 thresholds (update January 2018), a fully regulated competitive process is to take place for goods and/or services unless the CCG's Governing Body or appropriate committee or authorised authority has determined that the service will not be subject to tender and has set out the rationale for its decision.

4.4.3 If a competitive process is not going to be followed then a waiver form must be completed.

4.4.4 Where a full OJEU compliant tender is required the procurement work-plan must be updated and the Procurement lead informed to enable capacity planning. It is advised that the Procurement lead contacted at an early stage of any proposed procurement/reprocurement process, so they can advise accordingly.

4.5 **OJEU Tender Option**

4.5.1 A Project Opportunity Document (POD) is completed for all new projects, this should include the procurement option: Any Qualified Provider, Single Stage, Two-stage process etc., in order to help budget holders and commissioners to decide if a contract opportunity should be tendered or not. All 'no tender' decisions must be documented and should represent the decision of the organisation rather than an individual.

4.5.2 Advice should be sought from the Procurement Lead/Commissioning Support Unit if there is any doubt as to whether a tender should be conducted.

4.5.3 Where it is decided that competitive tendering is not applicable and should be waived, the fact of the waiver and the reasons should be documented and recorded in an appropriate CCG record (see the CCG's Standing Financial Instructions, Appendix 1 – Single Tender Waiver Form) and reported to the Audit Committee for information at each meeting.

5. AWARDING OF CONTRACTS

5.1 The Operational Scheme of Delegation illustrates the values and delegated sign off process for procurement. Where appropriate the CCG's Governing Body should be consulted on the outcome of a process and receive a procurement recommendation report for contract award before the CCG can make an award of contract.

5.2 Once a contract has been awarded and signed, the CCG's Procurement Decisions and Contracts Awarded Form (Appendix 1) and Procurement Register (Appendix 2) must be updated, in line with the CCG's Standards of Business Conduct and Conflicts of Interest Policy.

5.3 All contract award notices are to be published on the CCG's website, Contracts Finder and OJEU (as appropriate under PCR15).

6. AVOIDANCE OF PROCUREMENT RULES

6.1 The UK courts take a strict line when they perceive that public contracts have been awarded without taking the necessary steps to ensure competition rules have been adhered to. Commissioners should be aware of several forms of avoidance that have been commonplace within the NHS:

6.1.1 Pilot Projects/Proof of Concepts – Awarding a contract through the guise of a 'pilot project' without following the correct procedure (as described below in Section 2, paragraph 21):

(a) Pilot Projects have been awarded as a stop-gap measure when the commissioner has no intention to undertake a competitive process in the future. These contracts are often extended without competition; and

(b) projects have been labelled as a pilot when the previous contract lapses and procurement has not taken place;

6.1.2 contract lengths are reduced (i.e. a three year contract is awarded as a one year contract) to artificially alter the contract value to avoid the compulsory OJEU thresholds[3]; and

6.1.3 using negotiation with existing providers as a mechanism to improve services when the contract lapses (for clarification, negotiation is a viable method within the contract term but should not be used to renew or extend a contract).

6.2 The UK courts have the authority to award damages to providers who have been unfairly excluded from the market through the use of such tactics, depending on the circumstances.

7. DOCUMENT HIERARCHY

The CCG recognises that there is the potential for conflict between Local, Regional, National and European legislation within the UK healthcare system. The CCG will ensure that the processes it adopts comply with judicial legislation in accordance with the most up to date policies, guidance and procedures.

8. MOST ECONOMICALLY ADVANTAGEOUS TENDER (MEAT)

With support from the Procurement Lead/Commissioning Support Unit the CCG will ensure that every healthcare (clinical) service procurement will evaluate bidders' submissions using the MEAT strategy rather than solely on a lowest price basis. This approach allows commissioners to consider the whole life cost of bids and takes into account the quality of the deliverable elements. It will be for the commissioner of the service to determine the priorities when setting out the bid evaluation criteria.

9. MANAGING CONFLICTS OF INTEREST THROUGH THE COMMISSIONING CYCLE

9.1 Principles

The CCG will manage conflicts of interest by applying a number of principles, processes and safeguards through:

9.1.1 statutory requirements;

9.1.2 doing business appropriately – ensuring commissioning decisions are in line with the CCG's constitution, standards of business and commissioning strategy;

9.1.3 being proactive not reactive by:

(a) considering potential conflicts of interests (e.g. when appointing individuals to decision-making roles);

[3] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/850566/PPN_for_New_Thresholds_2020_pdf.pdf

(b) ensuring all CCG staff, in particularly decision-making staff and members of contract meetings are aware of their obligations to declare conflicts of interests;

(c) maintaining a register of interests; and

(d) agreeing in advance how to deal with scenarios where a conflict of interest occurs;

9.1.4 assuming individuals will act ethically and professionally, but may not always appreciate the potential for conflicts of interest or relevant rules and procedures;

9.1.5 being balanced and proportionate – ensuring rules are clear and robust but not overly prescriptive or restrictive so as to hinder the decision-making process;

9.1.6 being open and ensuring early engagement with patients, the public, clinicians and other stakeholders, including local Healthwatch and Health and Wellbeing Boards in relation to proposed commissioning plans;

9.1.7 responsiveness and best practice – ensuring that commissioning intentions are based on local health needs and reflect evidence of best practice;

9.1.8 transparency – ensuring that the approach taken is clearly evidenced by an audit trail;

9.1.9 securing expert advice – ensuring that commissioning plans take into account advice from appropriate health and social care professionals and experts;

9.1.10 engaging with providers – ensuring early engagement with both incumbent and potential new providers over potential changes to commissioned services for the local population;

9.1.11 creating clear and transparent commissioning specifications;

9.1.12 following proper procurement processes and legal arrangements;

9.1.13 ensuring sound record-keeping;

9.1.14 having in place a clear, recognised and easily enacted system for dispute resolution.

9.2 When commissioning services, the CCG shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures. A Procurement Checklist (Appendix 3) sets out factors that the CCG should address when devising plans to commission services so as to avoid any distortion of competition and to ensure equal treatment of all providers.

9.3 As part of the procurement or single tender waiver process, it is good practice to ask bidders to declare any conflicts of interest. This allows the CCG to ensure that they comply with the principles of equal treatment and transparency. When a bidder

declares a conflict, the CCG must decide how best to deal with it or ensure that no bidder is treated differently to any other. A Declaration of Interests Form for Bidders/Contractors must be completed (Appendix 4).

9.4 It will not usually be appropriate to declare such a conflict on the register of procurement decisions, as it may compromise the anonymity of bidders during the procurement process. The CCG will therefore retain an internal audit trail of how the conflict or perceived conflict was dealt with to allow them to provide information at a later date if required. The CCG is required under regulation 84 of the Public Contract Regulations 2015 to make and retain records of contract award decisions and key decisions that are made during the procurement process, but are not expected to publish them. Such records must include 'communications with economic operators and internal deliberations' which should include decisions made in relation to actual or perceived conflicts of interest declared by bidders. These records should be retained for a period of at least three years from the date of award of the contract.

9.5 The CCG will refer to the advice and guidance published by NHS England[4] dealing with potential conflicts of interest. This guidance describes the responsibility of the CCG to demonstrate that those services commissioned:

9.5.1 clearly meet local health needs and have been planned appropriately;

9.5.2 go beyond the scope of the GP contract; and

9.5.3 the appropriate procurement approach is used.

9.6 **Designing Service Requirements**

The way in which services are designed can either increase or decrease the extent of perceived or actual conflicts of interest. Particular attention is to be given to public and patient involvement in the CCG's service development. Public involvement supports transparent and credible commissioning decisions. It should happen at every stage of the commissioning cycle from needs assessment, planning and prioritisation to service design, procurement and monitoring. The CCG has a legal duty under the Health and Social Care Act 2012 to properly involve patients and the public in their respective commissioning processes and decisions.

9.6.1 <u>Provider engagement</u>

(a) The CCG aims to engage relevant providers, especially clinicians, in confirming that the design of service specifications will meet patient needs. This may include providers from the acute, primary, community, and mental health sectors, and may include NHS, third sector and private sector providers. However, conflicts of interest, as well as challenges to the fairness of the procurement process, can arise if the CCG engages

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

selectively with only certain providers (be they incumbent or potential new providers) in developing a service specification for a contract for which they may later bid. This should also be considered when engaging with existing/ potential providers in relation to the development of new care models.

(b) Provider engagement should follow the three main principles of procurement law, namely equal treatment, non-discrimination and transparency. This includes ensuring that the same information is given to all at the same time and procedures are transparent. This mitigates the risk of potential legal challenge.

(c) As the service design develops, it is good practice to engage with a range of providers on an ongoing basis to seek comments on the proposed design.

(d) Engagement should help to shape the requirement to meet patient need, but it is important not to gear the requirement in favour of any particular provider(s). If appropriate, the advice of an independent clinical adviser on the design of the service should be secured.

(e) Any decisions in regards to obligations under the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 and the Public Contracts Regulations 2015 shall be documented.

9.6.2 Specifications

(a) The CCG will seek, as far as reasonably possible, to specify the outcomes that they wish to see delivered through a new service, rather than the process by which these outcomes are to be achieved. As well as supporting innovation, this helps prevent bias towards particular providers in the specification of services. However, careful consideration should be given to the appropriate degree of financial risk transfer in any new contractual model.

(b) Specifications should be clear and transparent, reflecting the depth of engagement, and set out the basis on which any contract will be awarded.

9.7 Transparency in Procurement

9.7.1 The CCG will make the evidence of their management of conflicts publicly available. Complete transparency around procurement will provide:

(a) evidence that the CCG is seeking and encouraging scrutiny of its decision-making process;

(b) a record of the public involvement throughout the commissioning of the service;

(c) a record of how the proposed service meets local needs and priorities for partners such as the Health and Wellbeing Boards, local Healthwatch and local communities;

(d) evidence to the Audit Committee, and internal and external auditors that a robust process has been followed in deciding to commission the service, in selecting the appropriate procurement route, and in addressing potential conflicts.

9.7.2 Commissioning Support Units (CSU), are also expected to declare any conflicts of interest they may have in relation to the work commissioned by the CCG.

9.8 Register of procurement decisions

9.8.1 The CCG will maintain a register of procurement decisions taken, either for the procurement of a new service, any extension or material variation of a current contract, or single tender waiver. This must include:

(a) the details of the decision;

(b) who was involved in making the decision (including the name of the CCG clinical lead, the CCG contract manager, the name of the decision making committee and the name of any other individuals with decision-making responsibility);

(c) a summary of any conflicts of interest in relation to the decision and how this was managed by the CCG (see paragraph 9.3 in relation to retaining the anonymity of bidders); and

(d) the award decision taken.

9.8.2 The register of procurement decisions must be updated whenever a procurement decision is taken. The Procurement, Patient Choice and Competition Regulations 9(1) place a requirement on commissioners to maintain and publish on their website a record of each contract it awards. The register of procurement decisions is therefore publicly available and easily accessible to patients and the public on the CCG's website and upon request for inspection at the CCG's headquarters:

https://www.derbyandderbyshireccg.nhs.uk/about-us/conflict-of-interest/

A template procurement register can be found at Appendix 5.

9.9 Single Tender Waivers

The decision to use a single tender waiver should still be classed as a procurement decision. If it results in the CCG entering into a new contract, extending a contract, or materially altering the term of an existing contract, then it is a decision and should be recorded on the CCG's procurement register and website. Therefore, the same process in this section 9 should be followed for all single tender waivers.

9.10 **Contract Monitoring**

9.10.1 The management of conflicts of interest applies to all aspects of the commissioning cycle, including contract management, extensions and variations.

9.10.2 Any contract monitoring meeting needs to consider conflicts of interest as part of the process i.e. the Chair of a contract management meeting should:

(a) invite declarations of interests;

(b) record any declared interests in the minutes of the meeting; and

(c) manage any conflicts appropriately and in line with this policy.

This equally applies where a contract is held jointly with another organisation such as the Local Authority or with other CCGs under lead commissioner arrangements.

9.10.3 The individuals involved in the monitoring of a contract should not have any direct or indirect financial, professional or personal interest in the incumbent provider or in any other provider that could prevent them, or be perceived to prevent them, from carrying out their role in an impartial, fair and transparent manner.

9.10.4 All individuals should guard against providing information on the operations of the CCG which might provide a commercial advantage to any organisation (private or NHS) in a position to supply goods or services to the CCG. For particularly sensitive procurement or contracts, individuals may be asked to sign a non-disclosure agreement.

10. PRE-PROCUREMENT ENGAGEMENT

10.1 The PCR 2015 encourages consultation of the market, pre-procurement, provided this is within the parameters of Regulations 40 and 41, to which the CCG abides, provided that this is not anti-competitive or a breach of transparency and non-discrimination principles.

10.2 Where a supplier has had prior involvement in the preparation of the procurement, the CCG will ensure that the relevant information is disseminated amongst all bidders to ensure a level playing field and that sensible bid deadlines are set.

10.3 There is a presumption that the bidder, with prior involvement, will only be excluded if there is no other way to ensure equality of treatment amongst bidders.

11. OJEU THRESHOLDS

11.1 The PCR 2015 will only apply where the contract being awarded is within the scope of the PCR 2015 and exceeds a value threshold (which is set out in Article 4(a) to (d) of the Directive). Regulation 6 of the PCR 2015 sets out the rules on how to

calculate the value of a contract for the purposes of assessing whether the threshold is exceeded.

11.2 Current published thresholds are applicable from January 2018. Commissioners should consult their Procurement Lead/Commissioning Support Unit for advice on current thresholds and their application to ensure the correct procurement route is adopted.

12. ADVERTISING OPPORTUNITIES

The PCR 2015 requires all contracting authorities to offer full and unrestricted access to all the procurement documents from the date that a contract (OJEU) notice (or invitation to confirm interest following a Prior Information Notice) is published in the OJEU. 'Procurement documents' is a defined term in the PCR 2015 and will include, in addition to the call for competition itself, and non-exhaustively, technical specifications, descriptive documents, pre-qualification questionnaires (where applicable), invitations to tender, and the terms and conditions of the contract.

13. SERVICE CONTRACTS

13.1 A services contract will fall within the scope of the Light Touch regime if it is for the certain types of services listed at Schedule 3 of the PCR 2015. For these Light Touch regime contracts, a higher threshold than that for ordinary service contracts will apply, before the Light Touch regime is applicable. This threshold is set out at Article 4(d) of the Directive. The CCG will seek advice from the Procurement Lead/ Commissioning Support Unit on the threshold values.

13.2 Note that if a service is not listed at Schedule 3 of the PCR 2015 it will be subject to the full regime rather than only the Light Touch regime. Health, Social and Related Services are included in Schedule 3.

13.3 While the Light Touch regime is not prescriptive as to how contracting authorities design their procurement process for Light Touch regime services contracts, it does for the first time require that services contracts that fall within the Light Touch regime are advertised.

14. EXEMPTIONS FOR IN-HOUSE CONTRACTS AND JOINT CO-OPERATION

14.1 The CCG will adhere to and follow the PCR 2015 regulations as applicable, when commissioning services and awarding a contract that may be regarded as an exempt in-house contract. These apply where:

14.1.1 the contracting authority exercises over the contractor concerned a control which is similar to that which it exercises over its own departments ("similar control" in this context means the contracting authority exercising "a decisive influence over both strategic objectives and significant decisions" of the contractor. It includes

where this control is exercised by another body, provided that other body is itself controlled by the contracting authority);

14.1.2 more than 80% of the activities of the contractor are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other bodies that are themselves controlled by that contracting authority; and

14.1.3 there is no private sector ownership of the contractor, with certain exceptions.

14.2 An exemption for joint co-operation between contracting authorities may apply where the:

14.2.1 contract establishes joint co-operation in the performance of public services with a view to achieving mutual objectives;

14.2.2 implementation of the co-operation is governed only by the public interest; and

14.2.3 participating authorities perform “on the open market” less than 20% of activities concerned by the co-operation.

15. CHOICE OF PROCEDURE

15.1 Procedures Available

15.1.1 Under the PCR 2015 the standard procurement procedures available are as follows:

(a) Open (Regulation 27);

(b) Restricted (Regulation 28);

(c) Competitive with negotiation (Regulation 29);

(d) Competitive dialogue (Regulation 30); and

(e) Innovation partnership (Regulation 31).

15.1.2 Other processes also include negotiated procedure without prior publication (Regulation 32), Frameworks (Regulation 33), Dynamic Purchasing Systems (Regulation 34) and Electronic Auctions and Catalogues (Regulations 35 and 36).

15.2 Greater freedom to use competitive with negotiation and competitive dialogue procedures

15.2.1 Under the PCR 2015 these procedures can now be used when:

(a) needs cannot be met without adapting readily available solutions; or

(b) requirements involve design or innovative solutions; or

(c) the contract cannot be awarded without negotiation due to nature, complexity, legal or financial make up or risks attached; or

(d) the specifications cannot be established with sufficient precision; or

(e) following an open/restricted procedure, where only irregular or unacceptable tenders were submitted.

15.2.2 Should the CCG consider this choice of procedure, it is advised that specialist legal advice is sought with support from the Procurement Lead/Commissioning Support Unit.

16. TIMESCALES

The CCG will refer to the Procurement Lead/Commissioning Support Unit for advice on procurement timescales.

17. ABNORMALLY LOW TENDERS

Where a tender appears to abnormally low, the CCG shall require the bidder/s to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services.

18. REGULATION 84 REPORTS

18.1 The Procurement Lead/CCG will complete the Regulation 84 report in relation to each contract or framework that is awarded and ensure that it includes all the information set out at Regulation 84(1)[5].

18.2 As well as the general details of the winning bid, the suppliers involved, the value and subject matter of the contract, the Regulation 84 report on a particular contract must also include:

18.2.1 where the competitive with negotiation, competitive dialogue, or negotiated without notice procedure was used, the justifications for this choice;

18.2.2 where a procurement procedure is abandoned, the reasons why the contracting authority decided not to proceed;

18.2.3 details of any conflicts of interest identified and how these were resolved; and

18.2.4 if any bids were found to be abnormally low, reasons for the rejection of these.

18.3 A further requirement is to publish contract award notices for all contracts awarded over the value of £25k, into which includes contracts entered into without

[5] Note, the Cabinet Office has the right to request a copy of the report.

competition (e.g. acute contracts, GP contracts etc.). To be compliant, the CCG must publish contract award notices:

18.3.1 for any contract above the Contracts Finder threshold (currently £25k over the life of the contract) on Contract finder; and

18.3.2 for any contract below and above OJEU threshold (from January 2018, the value increased to £615K over the life of the contract) on Tenders electronic Daily (TED) as well as on Contract Finder.

18.4 The Procurement Lead/Commissioning Support Unit will publish contract award notices on behalf of the CCG where an OJEU tender process has been completed by the Procurement Lead/ CSU.

18.5 For procurements/expenditure completed by the CCG or via a third party, then a notice must be completed on Contracts Finder by the CCG or agents acting on their behalf.

18.6 All procurements must be listed on the CCG's website via the Procurement Register.

19. FRAMEWORK AGREEMENTS

19.1 A framework is an umbrella agreement which sets out the terms on which the purchasing organisation and the provider(s) will enter into contracts.

19.2 These agreements can be established on both a national or regional level and are constituted by a number of pre-approved providers who supply a similar range of goods from which a purchase can be made relatively quickly and easily.

19.3 Various framework agreements are available through:

19.3.1 The Crown Commercial Services (CCS);

19.3.2 NHS Shared Business Services (SBS);

19.3.3 NHS Supplychain;

19.3.4 Department of Health; or

19.3.5 NHS England – Lead Provider Framework.

19.4 Each framework agreement will define their purchasing terms. These may include:

19.4.1 <u>Apply the terms of the framework agreement</u>

This option would apply when the terms and conditions of a purchase are set out (e.g. Provider A is cheaper than provider B for the product you are looking for therefore no competition is required).

19.4.2 Hold a mini-competition

(a) Where the requirements are more complex the CCG will hold a mini-competition or 'call for further competition'[6].

(b) The purchaser can be assured that the providers on a framework are financially stable and that the goods and/or services on offer are of a high quality because the suppliers have already been approved and rigorously assessed. Any purchase made through a framework is also compliant with procurement legislation, provided that the rules to engage providers through the terms of the framework have been followed.

(c) The Procurement Lead/Commissioning Support Unit can advise commissioners on either the use of existing framework agreements or the procurement of a new framework agreement.

20. ANY QUALIFIED PROVIDER (AQP)

20.1 The use of AQP should be determined at a local level where increasing the role of competition and patient choice can be proven to improve quality and patient care. Providers must be Care Quality Commission (CQC) registered (or, where CQC registration is not required to deliver the service, an appropriate registration body) or licensed by Monitor to take part in this truncated selection process, and all providers will be required to operate within the same pricing structure.

20.2 The Procurement Lead/Commissioning Support Unit will advise commissioners on the suitability and applicability of the AQP procurement route.

20.3 It should be noted that whilst this is a zero value contract, the potential value of the overall contract should adhere to the same rules, and sign off process as other procurements.

21. PILOT PROJECTS/ PROOF OF CONCEPTS

21.1 In order to identify new working practices through the use of pilot projects, the CCG must establish that a project is in fact a pilot via the following definitions:

21.1.1 there is a specific goal;

21.1.2 the timetable is clearly laid out with defined periods for:

(a) start date;

(b) end date; and

[6] The CCG cannot just pick suppliers off the list and should approach all suppliers appointed to the framework in relation to a proposed call-off. In practice, frameworks with a large number of suppliers can, for this reason, be just as time consuming as embarking on a new procurement exercise.

(c) period for lessons to be learnt;

21.1.3 clear and signed contract with the pilot service provider;

21.1.4 robust plan/process for evaluation;

21.1.5 right to terminate a pilot must be included if it is found to be unsafe or the outcomes cannot be met; and/or

21.1.6 determine as part of the pilot if procurement would be applicable, and include the process into the timescales.

21.2 It is important for the CCG to use pilot projects only in circumstances where the clinical outputs are not known or cannot be accurately predicted. These are not recognised as a formal route under PCR15.

21.3 The CCG should contact the Procurement Lead/Commissioning Support Unit for specialist advice before embarking on a pilot project to ensure compliance with procurement and competition law.

22. DISPUTE AVOIDANCE

Where disputes arise as a result of a competitive procurement process the CCG's dispute policy will apply.

23. SUSTAINABLE PROCUREMENT

23.1 The CCG is committed to the principles of sustainable development and demonstrates leadership in sustainable development to support central Government and Department of Health commitments in this area of policy, and the improvement of the nation's health and wellbeing.

23.2 Sustainable procurement has been defined by the CCG as a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment.

23.3 Sustainable procurement should consider the environmental, social and economic consequences of:

23.3.1 design;

23.3.2 non-renewable material use;

23.3.3 manufacture and production methods;

23.3.4 logistics;

23.3.5 service delivery;

23.3.6 use/operation/maintenance/reuse/recycling/disposal options; and

23.3.7 carbon reduction.

23.4 Each supplier's capability to address these consequences should be considered throughout the supply chain and effective procurement processes can support and encourage environmental and socially responsible procurement activity.

24. THIRD SECTOR/SME SUPPORT

24.1 Where appropriate the CCG will support and encourage Small & Medium sized Enterprise (SME) suppliers, Third Sector/Voluntary organisations and local enterprises in bidding for contracts. The CCG will ensure that healthcare (clinical) service tender processes promote equality and do not discriminate on the grounds of age, race, gender, culture, religion, sexual orientation or disability.

24.2 The CCG will aim to support Government guidelines seeking the optimal involvement of SMEs and the Third Sector in public service delivery without acting in contravention of public sector procurement legislation and guidance.

24.3 The NHS is keen to encourage innovative approaches that could be offered by new providers – including independent sector, voluntary and third sector providers. The CCG is committed to the development of local providers that understand the needs of local communities. It is vital to ensure that the Organisation's approach to healthcare procurement is open and transparent and that it does not act as a barrier to new providers.

SECTION 3 – DERBY AND DERBYSHIRE CCG'S ANNUAL PROCUREMENT PLAN

A procurement work plan will be prepared at the beginning of each financial year to support the priorities and requirements set out in the CCG's annual commissioning and business plans.

The function of the procurement work plan is to highlight the proposed procurement priorities and opportunities, clearly defining the CCG's direction of travel for potential and existing providers. By adopting a project management approach to the prioritisation and delivery of all procurement activities, resources can be allocated to ensure effective delivery.

The procurement work plan is a key tool to improve communication between the CCG and providers. By having transparent and open processes, we will seek to actively encourage provider engagement at an early stage of any procurement, particularly when reviewing existing services with existing providers.

The Procurement Register is a public document and ensures that the CCG is transparent about its procurement decision making processes and rationale. It will be published annually on the CCG's internet site, and updated quarterly. This will allow the CCG to communicate

short, medium and long term goals to the widest possible audience, and demonstrates a range of potential opportunities within the Derbyshire health economy, rather than a series of 'one-off' procurements. This will encourage greater provider interest.

Not all commissioning priorities will have or will result in formal procurement activity. When considering appropriate actions to effect required changes and improvements, competition is only one lever available to the CCG, and a range of other levers will also be considered (e.g. delivery of service redesign through partnership working).

APPENDIX 1 – PROCUREMENT DECISIONS AND CONTRACTS AWARDED FORM

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

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

Signed: ..... Date: .....

On behalf of: .....

Please return to Frances Palmer, Corporate Governance Manager. Email: frances.palmer1@nhs.net

NHS Derby and Derbyshire CCG, Scarsdale, Nightingale Close, Chesterfield S41 7PF

If you require assistance in completing this form please contact Frances Palmer, Corporate Governance Manager. Email: frances.palmer1@nhs.net

APPENDIX 2 – TEMPLATE PROCUREMENT REGISTER

NHS DERBY AND DERBYSHIRE CCG PROCUREMENT REGISTER 2019/20														
Ref. No	**Service to be Procured**	**Reason for procurement**	**Reporting Governance** *Which sub-committees received the procurement updates?*	**Final decision taken and by whom at the CCG?**	**Comments**	**CCG Lead**	**CCG Clinical Lead**	**Summary of Conflicts of Interest Where was this identified?**	**If Yes - what actions were taken to manage the conflicts?**	**Successful Bidder**	**Value (£) excl VAT**	**Contract dates**	**Procurement Process i.e Competitive, Restricted Procedure, AQP**	**Collaborative Partners i.e None or other CCGs**

APPENDIX 3 – PROCUREMENT CHECKLIST

Service:

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

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

Please return to Frances Palmer, Corporate Governance Manager. Email: frances.palmer1@nhs.net

NHS Derby and Derbyshire CCG, Scarsdale, Nightingale Close, Chesterfield S41 7PF

If you require assistance in completing this form please contact Frances Palmer, Corporate Governance Manager. Email: frances.palmer1@nhs.net

APPENDIX 4 – TEMPLATE DECLARATION OF CONFLICTS OF INTERESTS FOR BIDDERS/CONTRACTORS

Name of Organisation:	
Details of interests held:	
Type of Interest	**Details**
Provision of services or other work for the CCG or NHS England	
Provision of services or other work for any other potential bidder in respect of this project or procurement process	
Any other connection with the CCG or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the CCG's or any of its members' or employees' judgements, decisions or actions	

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

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

Signed:.....

On behalf of:.....

Date: .....

Please return to Frances Palmer, Corporate Governance Manager. Email: frances.palmer1@nhs.net

NHS Derby and Derbyshire CCG, Scarsdale, Nightingale Close, Chesterfield S41 7PF

If you require assistance in completing this form please contact Frances Palmer, Corporate Governance Manager. Email: frances.palmer1@nhs.net

APPENDIX 5 – TEMPLATE PROCUREMENT REGISTER

NHS
Derby and Derbyshire
Clinical Commissioning Group

NHS DERBY AND DERBYSHIRE CCG PROCUREMENT REGISTER 2020/21														
Ref. No	**Service to be Procured**	**Reason for procurement**	**Reporting Governance** *Which sub-committees received the procurement updates?*	**Final decision taken and by whom at the CCG?**	**Comments**	**CCG Lead**	**CCG Clinical Lead**	**Summary of Conflicts of Interest Where was this identified?**	**If Yes - what actions were taken to manage the conflicts?**	**Successful Bidder**	**Value (£) excl VAT**	**Contract dates**	**Procurement Process i.e Competitive, Restricted Procedure, AQP**	**Collaborative Partners i.e None or other CCGs**