

Newcastle Gateshead Clinical Commissioning Group

Corporate	CCG: CO13 Healthcare Procurement Policy
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Prepared By:	Head of Procurement and Market Management, NECS Revised by Head of Performance and Provider Management, NGCCG
Consultation Process:	CCG Head of Corporate Affairs. Executive Committee

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Document History

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1	28/02/2013	First Issue
2	November 2017	Rewritten to reflect current legislation and guidance
3	June 2019	Section 6.4 ii amended to extend the option to undertake sealed bids as opposed to formal procurement.

Equality Impact Assessment

Date	Issues
November 2017	Appendix B

POLICY VALIDITY STATEMENT

This policy is due for review on the latest date shown above. After this date, policy and process documents may become invalid.

Policy users should ensure that they are consulting the currently valid version of the documentation.

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1. Policy Statement

- 1.1 For the purposes of this policy NHS Newcastle Gateshead Clinical Commissioning Group will be referred to as 'the CCG'.

Procurement activity undertaken by the CCG will be compliant with the prevailing regulatory framework relating to procurement and competition and will be used to support delivery of CCG priorities in the commissioning of healthcare services.

This policy should be read in conjunction with other key CCG documents, including but not exclusively:

- NHS Newcastle Gateshead CCG Standards of Business Conduct and Declarations of Interest Policy
- NHS Newcastle Gateshead CCG Anti-Fraud, Bribery and Corruption Policy
- NHS Newcastle Gateshead CCG Constitution
- NHS Newcastle Gateshead CCG Safeguarding Children Policy
- NHS Newcastle Gateshead CCG Safeguarding Vulnerable Adults Policy

2. Introduction

- 2.1 The CCG aspires to the highest standards of corporate behaviour and clinical competence, to ensure that safe, fair and equitable procedures are applied to all organisational transactions, including relationships with patients, their carers, public, staff, stakeholders and the use of public resources. In order to provide clear and consistent guidance, the CCG will develop documents to fulfil all statutory, organisational and best practice requirements and support the principles of equal opportunity for all.
- 2.2 The CCG has a responsibility to secure services that meet the health needs of the local population and that deliver the best combination of quality to patients and value for taxpayers. When undertaking procurement activities to secure services the CCG is required to comply with legislation, internal governance rules and professional and ethical standards to ensure delivery of identified outcomes through efficient and effective procurement processes.

3. Status

- 3.1 This policy is a corporate policy.

4. Purpose and Scope

- 4.1 This policy covers the procurement of healthcare services only and does not cover the procurement of non-pay goods and services.

- 4.2 The purpose of this policy is to provide clear and effective guidance to all CCG officers when undertaking procurement activities and to ensure that when commissioning healthcare services, the CCG:
- acts with a view to meeting the needs of its local population and to improve the quality and efficiency of healthcare services;
 - complies with the applicable regulatory framework, including all relevant legislation and guidance;
 - acts in way which treats providers fairly and equally;
 - acts with transparency and proportionality;
 - seeks to achieve value for money;
 - does not act anti-competitively, unless this is in the interests of patients (and where this is permitted within legislation and guidance);
 - acts with a view to improving the economic, social and environmental well-being of the local area;
 - acts to ensure that modern slavery and Human Trafficking is not taking place in any part of our business and supply chains;
- 4.3 The policy has been developed in line with key applicable legislation which includes:
- EU Procurement Directives, implemented in UK law by The Public Contracts Regulations 2015 (the “Regulations”), which apply to the award of contracts by public bodies. As a public body the CCG is required to adhere to legislation that governs the award of contracts by public bodies, including the Regulations;
 - The National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 (the “PPCC Regulations”);
 - Public Services (Social Value) Act 2012 (the “Act”).

5. Definitions

- 5.1 *Commissioning* is the process of putting in place health services that effectively meet the needs of the population and includes assessing the needs of the population, prioritising health outcomes, specifying requirements and monitoring quality of services.
- 5.2 *Procurement* is the process of securing, or purchasing those services.

6. Principles

6.1 The objective of this policy is to provide a framework to ensure all procurements meet the overarching obligations of procurement law, namely, transparency, proportionality, non-discriminatory and equality of treatment. In addition the framework is designed to ensure that procurements are evidence based; deliver key business objectives; services are innovative, affordable and viable; clinically safe and effective; set stretched targets to improve health outcomes and the quality of patient experience.

6.2 The policy and all procurements are underpinned by a number of core principles that the CCG will observe. This will clearly demonstrate to all stakeholders including providers of services that the CCG is adopting a principled approach to the procurement of healthcare.

6.3 The CCG:

- will, consistently with its obligations under, inter alia, the Regulations, the PPCC Regulations and applicable Community law, ascertain whether it is necessary, desirable or appropriate to invite competition when purchasing in order to ensure it will incur only budgeted, approved and necessary spending;
- will seek value for money for all goods and services by reference to the optimum combination of whole life cost and quality;
- will, in relation to each purchasing decision concerning healthcare services;
 - consider the extent to which the Regulations and PPCC Regulations require any form of competition and consider the most appropriate process and procedure for awarding the relevant contract or contracts;
 - in that regard give consideration to whether the use of a framework agreement, including the use of approved lists, is the most appropriate means of appointing providers; and
 - ensure that it complies with applicable NHS guidance when procuring jointly with Local Authorities.
- shall, wherever possible and where it is consistent with legal requirements, ensure that contractual provisions, procurement procedures and selection and award criteria are designed to ensure that contractors and providers are:
 - good employers who comply with all relevant employment legislation, including the Public Interest Disclosure Act 1998;
 - maintain acceptable standards of health and safety and comply fully with all legal obligations;
 - meet all tax and National Insurance obligations;
 - meet all equal opportunities legislation;

- are reputable in their standards of business conduct; and
- respect the environment and take appropriate steps to ensure that they minimise their environmental impact.
- will, in each procurement and consistently with the relevant law, exclude companies which have been convicted of offences, or whose director(s) or any other person or company who has powers of representation, decision or control of the company has or have been convicted of offences in the conduct of their business or committed an act of grave professional misconduct in the conduct of their business, such as breaches of employment, equal opportunities or environmental legislation. However, any corrective/remedial action taken by the company in response to such an offence will be taken into account in determining its suitability as a bidder;
- will, in each procurement and consistently with relevant EU and international law, ensure that contractual provisions, procurement procedures and selection and award criteria prohibit or restrict contractors' use of offshore jurisdictions and/or improper tax avoidance schemes or arrangements and/or exclude companies which use such jurisdictions and/or such schemes or arrangements.

6.4 The CCG procurement policy identifies its principles when procuring health services as;

i) Transparency

The CCG will make commissioning intent clear to the market, including appropriate advertising of tenders, transparency of contract terms, timescales, short-listing and award criteria and in making decisions not to tender.

The CCG will account publicly for expenditure and actions through:

- publication of commissioning strategies and intentions, outcome of service reviews and the mechanism by which it will secure services on its website;
- advertising all procurements with a value in excess of £10,000 on Contracts Finder and in the Official Journal of the European Union (OJEU) where required (N.B. EU regulatory thresholds are subject to change; threshold = €750,000 (£589,148) as of November 2017);
- full publication of evaluation and scoring criteria in procurement documentation;
- publication of contract award details on Contracts Finder and in OJEU;
- maintenance of an auditable documentation trail of all key decisions which provides clear accountability;
- robust management of potential conflicts of interest;
- provision of feedback to unsuccessful bidders
- market management tools such as Prior Information Notices (PIN) will be used to ensure current and potential providers are aware of engagement opportunities.

ii) **Proportionality**

- The CCG will adopt procurement processes which are proportionate to the value, complexity and level of risk of the healthcare service to be procured.
- The CCG will equally carry out the financial and quality assurance checks for potential providers by undertaking an assessment of which is proportionate to the service that is to be procured.

The CCG's Financial Policies outline that formal tendering can be waived in exceptional circumstances where *"the Accountable Officer decides that formal tendering procedures would not be practicable or the estimated expenditure or income would not warrant formal tendering procedures, and the circumstances are detailed in an appropriate CCG record"*

In recognition of the cost and management capacity implications of undertaking a formal procurement, this policy permits that, under certain circumstances, the CCG can adopt a reduced tendering procedure in line with the "competitive quotations" process outlined in the CCG's financial policies so that the service can be offered to providers, but within a reduced timescale and with a reduced submission requirement on the bidders.

Circumstances under which this approach might be adopted are where:

- There are a limited number of potential providers in the market which are able to deliver the required service.
- The timeframe for the procurement and the nature of the service justifies adopting such an approach
- The value over a three year contract term is above the normal threshold for tendering, but the annual value does not exceed £80k
- After due consideration, the CCG is of the view that the risk of challenge to the decision to adopt this approach is minimal.
- The proposal has been approved by the Audit Committee on recommendation of the Accountable Officer either formally at a committee meeting or via Chairman's actions, to be reported subsequently to the committee

iii) **Non-Discrimination**

- All forms of procurement will be transparent and non-discriminatory. The specification and bidding process will not discriminate against or in favour of any particular provider or group of providers. Specifications will be written in generic terms and avoid the use of trade names.
- All tender documentation will identify objective evaluation criteria and weightings and include detailed scoring criteria that bids will be evaluated against. No provider will be given preference over another.

- The CCG will provide all information in good time ensuring all potential providers have the ability to assess the service provision and whether they wish to express an interest in providing that service.
- The CCG will not favour or advantage a provider from any sector (Public, Private, Third etc) or nationality/geographical background. This will ensure that the successful provider is selected in relation to their compliance with the evaluation criteria and not with regard to the type of organisation.
- The CCG will provide all potential providers with the same information about the bidding process at the same time.

iv) Equality of Treatment

The CCG will ensure that all potential providers and sectors are treated equally and have equal opportunity to compete where appropriate; that financial and due diligence checks apply equally and are proportionate and that pricing and payment regimes are fair.

v) Contracts

Standard NHS contracts or national template contracts will be used. Where no NHS contract is available a locally developed contract will be used until such times as a national template is available.

vi) Conflicts of Interest

All conflicts of interest that arise in relation to procurement will be declared and managed appropriately and in accordance with the requirements of:

- NHS England: Managing Conflicts of Interest: Statutory Guidance for CCGs: 2017
- CCG Constitution 2016
- NHS England: Standards of Business Conduct Policy 2013
- the Bribery Act 2010 and
- the PPCC Regulations
- NHS Newcastle Gateshead CCG Standards of Business Conduct and Declarations of Interest Policy

All potential providers will be required to declare potential conflicts of interest through completion and submission of a Declaration of Interest Form (detailed at Appendix A).

All internal parties and other key stakeholders involved in the procurement of a potential service, including decision making will declare any conflict of interest at the commencement of the procurement, which will be monitored throughout the process.

vii) Diversity

The CCG will promote diversity of provision and acceptable choices for local service users in accordance with the Equality Act 2010.

viii) Procurement competencies

Recognise the contribution of all functions in the CCG in delivering best procurement outcomes and support competency and development in the commissioning and procurement process.

ix) Use of Resources

The CCG will comply with internal governance and legal requirements for procurement procedures.

x) Sustainability

The CCG will consider the economic, environmental and social issues relating to services they intend to procure in accordance with the Act. In order to comply with the requirements of the Act, the CCG will consider:

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

7. National Policy Context

- 7.1 The CCG aims to address issues of health inequality, variations in access and to improve the health outcomes of the population of the CCG. To support this, investment will need to be delivered via robust procurement and investment planning. The CCG will need to determine which changes will occur to service delivery of existing services and where there will be benefit to patients in terms of access, choice and patient experience by identifying new providers into the market.
- 7.2 The latter might be through the 'Any Qualified Provider' (AQP) models, through competitive tendering or in exceptional circumstances through Single Tender Waiver (i.e. use of Negotiated Procedure without Prior Publication). To achieve this it is essential that there are well developed, transparent processes that are accessible and effective.
- 7.3 Where a CCG chooses to use commissioning support it will remain accountable whether or not it appoints others to carry out activities on its behalf. The CCG will not delegate responsibility for decisions in relation to procurement. As a public body, the CCG will adhere to legislation that governs the award of contracts by public bodies.

8. Procurement Planning

- 8.1 A procurement plan will be maintained that will list current and future procurements. The plan will be reviewed on a regular basis taking into account CCG commissioning intentions and national and local priorities.

9. Approach to Market

- 9.1 Where it can be demonstrated that an existing healthcare service is fit for purpose, offers best value for money, and continues to fit with the strategic direction of the CCG, the CCG may consider whether to retain the existing provider on expiry of its existing contract without competition would be compliant with procurement legislation. Where this cannot be demonstrated an appropriate procurement process should be undertaken.
- 9.2 The decision making process and range of factors that will be considered may be broadly similar in different scenarios and the process will be transparent, proportionate and non-discriminatory.

Key considerations that will inform a commissioner's decision may include:

- Commissioning Priorities
- Quality Innovation Productivity and Prevention (QIPP)
- Service Reviews
- Healthcare Market Analysis
- Public, Patient and Staff Engagement

10. Procurement Legislation and Process

10.1 Applicable procurement legislation

10.1.1 Some key provisions of the PPCC Regulations are set out below; please note that the list is not exhaustive and staff should have a full and detailed knowledge of the PPCC Regulations prior to undertaking procurement. The PPC Regulations provide that when the CCG procures healthcare services they must act with a view to:

- a) Securing the needs of the people who use the services,
- b) Improving the quality of the services,
- c) Improving efficiency in the provision of the services, including through the services being provided in an integrated way (including with other healthcare services, health-related services, or social care services);
- d) the CCG may award a new contract for the provision of healthcare services for the purposes of the NHS to a single provider without advertising an intention to seek offers from providers in relation to that contract where the relevant body is satisfied that the services to which the contract relates are capable of being provided only by that provider.

10.1.2 Healthcare services are listed under Schedule 3 of the 2015 Regulations and as such are subject to the “light touch regime”. Key CCG obligations (this is not an exhaustive list) under the light touch regime are:

- Advertising in OJEU
- Advertising in Contracts Finder
- Publishing a contract award notice in OJEU and Contracts Finder

10.2 Procurement process: In evaluating procurement options a decision will need to be made on which procurement route to adopt; key options are outlined below:

- Single Tender Waiver (uncontested procurement)
- Any Qualified Provider
- Framework
- Open Competition
- Restricted Competition
- Competitive dialogue

10.2.1 A Single Tender Waiver is the process where a contract is awarded to a provider without competition. The term is not defined within the Regulations, which refer to the process as the “negotiated procedure without prior publication”. The process allows the CCG to depart from usual obligations on open competition and transparency and negotiate a contract directly with one or more providers. The process must only be adopted when considered strictly necessary under the specific circumstances. The key provisions are set out in summary below (defined in full under Regulation 32 of the Regulations):

- (a) where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a

restricted procedure, provided that the initial conditions of the contract are not substantially altered.

- (b) where the works, supplies or services can be supplied only by a particular provider for any of the following reasons:
 - (i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance,
 - (ii) competition is absent for technical reasons,
- (iii) the protection of exclusive rights, including intellectual property rights, but only, in the case of paragraphs (ii) and (iii), where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement.
- (c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the CCG, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency must not be attributable to the CCG.
- (d) The procedure may be used for new works or services consisting of repetition of similar works or services to the provider which the CCG awarded an original contract, provided that such works or services conform with the original contract. This procedure may be used only during the 3 years following the conclusion of the original contract.

Provision of robust evidence to support the decision to undertake a single tender waiver is critical for audit purposes and to overcome challenges, e.g. evidence that there are no other providers to provide the required works or service. Undertaking market engagement and analysis can provide suitable evidence of lack of competition.

Note: where the CCG decides to procure through a Single Tender Action the rationale must demonstrate with supporting evidence that there is only one provider capable of delivering the services and that they can deliver value for money. Single Tender Actions carry an inherent risk of legal challenge and the governing body must be assured of the rationale for the decision.

10.2.2 Under AQP, any provider assessed as meeting rigorous quality requirements who can deliver services at a pre-set tariff, under the NHS Standard Contract is able to deliver the service. Providers have no volume guarantees and patients will decide which provider they are referred to on the basis of quality. Consideration should be given to the characteristics of the service and the local healthcare system to determine whether patient choice under AQP is appropriate for a given service. This consideration will include whether the service lends itself to patient choice, an assessment of the current market, the degree of choice and competition in the market and potential barriers to entry.

10.2.3 Framework agreements are pre-tendered arrangements which are established in compliance with procurement legislation. Once established the framework can be used by the CCG to purchase services without the need to carry out a full competition, which can save both time and money for the CCG.

- 10.2.4 Open competition – all applicants who respond to a Contract Notice will be invited to submit a tender for the contract opportunity. This method is best suited to non-complex procurement activity where the size of the market is relatively small.
- 10.2.5 Restricted competition – this procedure should be used where the CCG is looking to restrict competition to those providers who can demonstrate they can meet minimum selection criteria. A defined number of short-listed providers are then invited to tender for the opportunity. This approach is best suited to non-complex procurement activity with larger market.
- 10.2.6 Competitive dialogue – this procedure allows the CCG to enter into dialogue with a small number of short-listed providers following a pre-qualification process prior to submitting a final tender. This approach is designed for high value, complex procurements where the CCG cannot clearly define in advance the technical specifications capable of meeting their objectives.

11. Procurement Stages

11.1 Advertising

- 11.1.1 Adverts will be clear and will succinctly promote the procurement opportunity, encouraging suitably qualified providers to respond. The advert will be published in an appropriate means including Contracts Finder and the Official Journal of the European Union (OJEU) when applicable.
- 11.1.2 The scope of any procurement opportunity must be carefully considered prior to advertisement as any subsequent changes may result in a requirement to halt the process and re-advertise.
- 11.1.3 Advertisements are key to alerting the market, in increasing market stimulation and ensuring adequate competition. Adverts must provide sufficient detail of the services, including what they are, how they are to be delivered, how they are to be priced and expected outcomes. The advert should also detail how the contract will be awarded, i.e. high level evaluation criteria.

11.2 Memorandum of Information (MOI)

- 11.2.1 Larger scale procurements may require the publication of a Memorandum of Information (MOI) which is sometimes referred to as a prospectus. This would be issued at the same time as the advertisement and is the communication with the market at the first stage of the formal procurement process.
- 11.2.2 The MOI is a document providing an overview of the services that will be competitively tendered. It contains the background information and context of the procurement. It will not contain any commercially sensitive information and will be available to any organisations who register their interest in the procurement through an electronic procurement portal. The information allows potential providers to make an initial assessment of the opportunity so that they can determine whether they wish to proceed to the next stage.

11.3 Market Engagement /Bidder Events

- 11.3.1 Prior to the start of a procurement process, market engagement events may be held to stimulate interest and gain feedback from the market in relation to service specification, commercial and contractual models. This will also provide the CCG with information in relation to the size, shape and capability of the market. The CCG may also publish a Request for Information (RFI) to obtain written feedback from the market in the same areas.
- 11.3.2 Bidder Events are held following the commencement of the formal procurement process and allow providers to obtain a more in depth understanding of the procurement requirements and provide a further opportunity to stimulate market interest. Potential Providers are given the opportunity to raise clarification questions and request additional information. Note: It is essential to ensure that all interested parties are provided with the same level of information during the procurement process, so all information provided, points of discussion, etc from any bidder event must be made available to all.
- 11.3.3 Due to the cost implications of holding market engagement and bidder events, the overarching principle of Proportionality will remain.

11.4 Pre-Qualification Questionnaires

- 11.4.1 When the Restricted or Competitive Dialogue Procedure is utilised, a Pre-Qualification Questionnaire (PQQ) is used to enable the CCGs to evaluate providers in their suitability to be short listed for the Invitation to Tender /Invitation to Participate in Dialogue stage.
- 11.4.2 Potential Providers will complete a PQQ which allows the CCG to assess the capacity and capability, legal status and economic and financial viability of their organisation to deliver the service requirements. Note: The PQQ is an assessment of the organisation and not the service delivery and financial model which are tested at a later stage within the procurement process.
- 11.4.3 The PQQ document is published on a secure website and is available to all Potential Providers who register their interest on an electronic procurement portal.
- 11.4.4 Bidders are short-listed against a set of published evaluation and scoring criteria. Short-listed organisations are taken forward to the next stage of the procurement process.

11.5 Invitation to Tender

11.5.1 The Invitation to Tender (ITT) documents are issued to short-listed organisations or in the case of the Open Procedure they are combined with the PQQ in a single stage process. The ITT documents consist of guidance and instructions to the bidders on the process, detailed evaluation criteria, questions and corresponding response criteria based on the financial model, approved Service Specification and associated contractual requirements.

11.5.2 Bidders are required to submit their responses to address requirements within the ITT documents within a specified deadline. The responses are evaluated against pre-determined, and pre-documented evaluation and scoring criteria.

11.5.3 To avoid the risk of challenge it is essential that the process is clear and that the stated process is adhered to, thereby ensuring that all providers have a fair and equal opportunity to respond.

11.6 Tender Evaluation

11.6.1 Tender evaluation is the non-discriminatory, transparent and objective process used to evaluate bid responses. It is essential that details of evaluation and scoring processes are stated at the time of advertisement of the contract opportunity and that scoring undertaken by the evaluation panel is entirely consistent with those criteria and processes.

11.6.2 The tender evaluation panel is a legal requirement of any tender process and its function is to ensure the safety, quality, performance, financial viability and merit of potential providers to serve patients on behalf of the CCG.

11.6.3 Multi-disciplinary teams will be established for all procurements to ensure fair and transparent scoring of each submission. The Evaluation panel will consist of representatives appropriate to the service requirements and the size and scope of the procurement. A panel is typically made up of the following representatives:

- Procurement Representative (Facilitator)
- Commissioning Lead
- Clinical Representative
- Finance Representative
- Clinical Governance/Patient Safety Representative
- Contract Management Representative
- IM&T Representative
- Estates Representative
- HR Representative

11.6.4 Other representatives may sit on the panel, i.e. partners such as Local Authority. Roles and responsibilities of panel members must be clearly defined at the outset. Conflicts of interest will be taken into account when selecting panel members and all conflicts resolved to the satisfaction of the CCG prior to commencing evaluation of bid responses.

11.7 Contract Award and Standstill

- 11.7.1 Following evaluation of responses a successful provider will be identified based on their total score in the process. Contracts are to be awarded by selecting the provider offering the “Most Economically Advantageous Tender (MEAT)” which takes into account overall value for money. The criteria which determine the MEAT are those which are set out in the ITT.
- 11.7.2 The CCG will always make the final decision to award a contract to an identified successful provider; the decision must be based on the outcome of the evaluation.
- 11.7.3 All providers involved in the procurement process must be notified of the outcome. Letters will be issued to the successful and unsuccessful providers. It is essential that the content of the letters is fully compliant with the requirements of the Public Contracts Regulations 2015.
- 11.7.4 In accordance with best practice the CCG will normally apply a standstill period of at least 10 days between notification of the bidders of the outcome of the procurement process and contract award/signature should be adopted to allow unsuccessful providers to obtain further information and an opportunity to challenge the decision before their rights to obtain relief other than damages are closed off. The CCG may choose to further extend this period allowing additional time to resolve any issues that may arise, so as to avoid costly legal proceedings.
- 11.7.5 Once the ‘standstill’ period has passed, the contract is then formally awarded to the successful provider.
- 11.7.6 It is mandatory for CCGs to publish a record of each contract awarded for healthcare services on Contracts Finder and maintain and publish a register of procurement decisions as set out in the Standards of Business Conduct and Declarations of Interest policy.

12. Managing Issues/Disputes and Challenges

- 12.1 Organisations bidding to provide services may choose to raise an issue or dispute at any stage of the procurement process where they believe that the process being followed breaches regulations or guidance in some way. In these instances the CCG will aim to resolve the issue to avoid it progressing further, potentially to a formal legal challenge, wherever possible, whilst acting in accordance with the legislation and guidance governing procurement practice.
- 12.2 Where a provider wishes to raise an issue, they will be required to submit any correspondence through the electronic tendering portal being used to manage the procurement process to maintain a robust audit trail of communication and to ensure consistency in the messages delivered.

- 12.3 On receipt of correspondence from a provider raising an issue or dispute, a holding response will be issued in acknowledgement of receipt of the correspondence and to provide an indication of timescale for full response. Claims will be investigated initially by the procurement officer managing the process on behalf of the CCG. Following investigation, an approach to managing the issue will be agreed by the CCG Chief Officer or an officer acting under the delegated authority of the Chief Officer based on the nature of the issue raised. Specific legal advice may be sought at this point if necessary to provide guidance on available options prior to responding to the provider.
- 12.4 If the actions taken fail to resolve the issue raised by the provider, they may decide to progress to a formal challenge. The CCG will seek legal advice should the challenge progress to this stage.

13. Approval of Procurement Strategy

- 13.1 The process will ensure that the CCG and their commissioning partners (e.g. local authority) will;
- commission services which are safe and equitable for the population of the CCG
 - commission services that meet the strategic objectives of the CCG.
 - reduce the risk of legal challenge to the CCG by following best practice in procuring services
 - ensure robust and viable contracts are in place
 - stimulate the market to meet demand and secure required clinical, and health and well-being outcomes.
- 13.2 The process will ensure that the CCG and its commissioning partners comply with PCC Regulations when procuring health services:
- commissioning services that secure the needs of the people who use the services
 - acting with a view to improving the quality of the services
 - acting with a view to improving the efficiency in the provision of services
- 13.3 Before any procurement commences, it is essential that the CCG approves a Procurement Strategy, to be reviewed by the CCG Governing Body or a CCG Representative/Group nominated by the Governing Body.

The Procurement Strategy acts as the initial gateway to the procurement and includes information such as:

- Financial Envelope and Approved Authorisation
- Funding Information
- Current State
- TUPE implications
- Anticipated benefits in line with QIPP
- Market analysis
- Procurement Process

14. Market Development

- 14.1 Effective engagement with providers is crucial for effective procurement of healthcare services.
- 14.2 As such, one of the CCG roles is to identify current weaknesses in provision against the strategic aims and to assess where weaknesses in existing markets may be a contributing factor. Market analysis and engagement will be undertaken to assess the existing position and determine strategies for improvement where proportionate to the service requirement.
- 14.3 The CCG will seek to stimulate the market through appropriate publicity and marketing for identified services.

15. Capacity and Capability

- 15.1 The CCG needs to ensure that the right procurement capability and capacity is widely available and gaps are actively identified and managed to ensure;
- Commissioning staff have appropriate skills in procurement commensurate with their role;
 - The CCG has capacity and capability to undertake the procurement of healthcare services;
 - The CCG has a systematic process to demonstrate best value, governance and probity.

16. Procurement Governance

- 16.1 In order that procurements are planned, communicated and managed appropriately the procurement service will:
- Agree an annual procurement plan with the CCG by the end of March each financial year;
 - Be informed by the commissioning leads on the commencement of developing a service specification/commencing patient, public consultation;
 - Work with the appropriate individuals to determine the best route to procure the service, once the service specification has been developed;
 - Set a timetable and lead the process to ensure all milestones are met, legal and otherwise;
 - Receive communication relating to procurement decisions directly from the CCG electronically within 5 working days of the decision being taken to ensure all actions taken are in accordance with CCG decisions and to provide a robust audit trail;
 - Ascertain the type of contract to be offered, e.g. single contract, AQP, etc;

- Support the establishment of evaluation panels and facilitate the evaluation of proposals submitted by providers against pre-determined criteria;
- Ensure the process is audited providing an open and transparent framework that can stand scrutiny in the event of a legal challenge on the decisions made.

17. Risks, Pricing and Incentives

- 17.1 The consequences of not following best practice procurement processes and principles are that aggrieved providers may;
- Bring actions in the UK courts for damages and/or for the award decision to be set aside.
 - Bring wasted cost claims
 - Seek judicial review
 - Bring the breach to the attention of the European Commission by lodging a complaint which could lead to an investigation and formal legal proceedings in the European Court of Justice.
- 17.2 All decisions in relation to procurement will be determined by what it is trying to achieve for its patients and populations, including decisions on how prices, funding models and contract durations will reflect risk transfer and create incentives.
- 17.3 A commissioner will wish to review pricing mechanisms to complement the service specification and ensure they will drive the behaviours it is seeking to achieve, for example:
- Increased activity
 - Improved outcomes
 - Addressing Health Inequalities
 - Service Delivery
- 17.4 In turn, adjusting the funding model and prices to reflect an appropriate balance of risk will impact upon the extent to which revenues are determined by
- Performance Risk
As providers will generally be in control of performance, an appropriate transfer of risk would link prices and payments to performance
 - Demand Risk
When undertaking procurements, the CCG will consider how to manage risks of demand being higher, or lower, than anticipated. Contracts will be constructed so that the risk of greater demand lies with the provider where appropriate. However, providers are likely to require greater compensation if they are taking more risks, so contracts that transfer risk are likely to be more expensive.

18. Gainsharing

- 18.1 Gainsharing is a tool that allows the CCG to drive behaviours in providers which leads to cost savings. It allows both provider and commissioner to identify and share savings, and can be useful in developing longer-term strategic partnerships.
- 18.2 Contractual terms can encourage the reinvestment of the savings into patient care/ other efficiencies.
- 18.3 It is paramount that clinicians are involved in this process as they are best placed to understand how the process may be streamlined to reduce cost, strengthen efficiency and improve quality.
- 18.4 It is anticipated that Gainsharing will have the greatest impact on high-cost, high volume specialties for providers with a sufficient level of activity.
- 18.5 The benefits of Gainsharing are threefold:

Provider benefits:

- Keeping some of the savings
- Incentive to innovate
- Reduction in destabilisation risk

CCG Benefits

- Facilitates new patterns of provision where appropriate
- Getting better prices
- Reduced risk of the destabilisation of existing providers
- Bringing providers on the strategic journey

Patient Benefits

- Receiving treatments in more appropriate settings
- Financial benefits are reinvested to improve services.

- 18.6 The CCG will ensure one provider is not favoured above another and will be open, transparent and non-discriminatory regarding which providers it works with.
- 18.7 The CCG will also consider opening up these opportunities to new providers in order to ensure the best possible chance for innovative solutions.

19. Duties and Responsibilities

Council of Members	The Council of Members has delegated responsibility to the governing body (GB) for setting the strategic context in which organisational process documents are developed, and for establishing a scheme of governance for the formal review and approval of such documents.
Accountable Officer	The Accountable Officer has overall responsibility for the strategic direction and operational management, including ensuring that CCG process documents comply with all legal, statutory and good practice guidance requirements
Chief Operating Officer	The Chief Operating Officer will: <ul style="list-style-type: none"> • Update the policy as and when required to meet national and local policy. • Update the policy as and when required in order for Newcastle Gateshead CCG to meet legislative requirements • Communicate the policy throughout the organisation to ensure compliance.
All Staff	All staff, including temporary and agency staff, are responsible for: <ul style="list-style-type: none"> • Compliance with relevant process documents. Failure to comply may result in disciplinary action being taken. • Co-operating with the development and implementation of policies and procedures and as part of their normal duties and responsibilities. • Identifying the need for a change in policy or procedure as a result of becoming aware of changes in practice, changes to statutory requirements, revised professional or clinical standards and local/national directives, and advising their line manager accordingly. • Identifying training needs in respect of policies and procedures and bringing them to the attention of their line manager. • Attending training / awareness sessions when provided.

20. Training needs and Implementation

- 20.1 This policy will be available to all staff for use in ensuring that procurement activity complies with the relevant legislation and guidance.
- 20.2 Managers are responsible for ensuring that CCG staff have read and understood this document and are competent to carry out their duties in accordance with this policy.

- 20.3 All CCG staff and others working with the CCG will need to be aware of this policy and its implications. It is not intended that staff generally will develop procurement expertise, but to recognise when and how to seek further support.
- 20.4 A key requirement is that staff know enough about procurement to be able to give clear and consistent messages to providers and potential providers in relation to CCG procurement activity and intentions.
- 20.5 Awareness of procurement issues will be supported through organisational development and training sessions for CCG staff.

21. Documentation and Record Keeping

- 21.1 The CCG will comply with its statutory obligations to keep and maintain appropriate records in relation to procurement.
- 21.2 A robust audit trail will be maintained throughout the procurement process which records all steps and decisions taken, and the rationale for those steps/decisions in full compliance with Regulation 84 of the Regulations.

22. Other related policy documents

- NHS Newcastle Gateshead CCG Standards of Business Conduct and Declarations of Interest Policy
- NHS Newcastle Gateshead CCG Anti-Fraud, Bribery and Corruption Policy
- NHS Newcastle Gateshead CCG Safeguarding Children Policy
- NHS Newcastle Gateshead CCG Safeguarding Vulnerable Adults Policy

23. Legislation and statutory requirements

- Public Contracts Regulations 2015
- The National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013
- Public Services (Social Value) Act 2012
- Equality Act 2010
- Bribery Act 2010
- NHS Newcastle Gateshead CCG Constitution

24. Monitoring, Review and Archiving

24.1 Monitoring

The governing body will have a method for monitoring the dissemination and implementation of this policy. Monitoring information will be recorded in the policy database.

24.2 Review

- 24.2.1 The governing body will ensure that this policy document is reviewed in accordance with the timescale specified at the time of approval. **No policy or procedure will remain operational for a period exceeding three years without a review taking place.**
- 24.2.2 Staff who become aware of any change which may affect a policy should advise their line manager as soon as possible. The governing body will then consider the need to review the policy or procedure outside of the agreed timescale for revision.
- 24.2.3 For ease of reference for reviewers or approval bodies, changes should be noted in the 'document history' table on the front page of this document.

NB: If the review consists of a change to an appendix or procedure document, approval may be given by the sponsor director and a revised document may be issued. Review to the main body of the policy must always follow the original approval process.

24.3 Archiving

The governing body will ensure that archived copies of superseded policy documents are retained in accordance with Records Management: NHS Code of Practice 2009.

Appendix A – Declaration of Interest Form

Conflict of Interest

[Insert service title] Service

Tender Reference: **XXX**

For and on behalf of: NHS **[Insert Contracting Authority]**

This form is required to be completed in accordance with the CCGs Constitution, and s140 of the NHS Act 2006 (as amended by the Health and Social Care Act 2012) and the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 and related guidance.

All Bidders including sub-contractors, members of a consortium, advisors or other associated parties (Relevant Organisation(s)) are required to identify conflicts or any potential conflicts of interest that could arise if the Relevant Organisation(s) were to take part in any Procurement process and/or provide Services under, or otherwise enter into any Contract.

In the event of any identified Conflict of Interest or as soon as a Conflict of Interest becomes known the Relevant Organisation(s) must complete the information required on this form and return as an attachment via the messaging system on the eTendering portal.

If no Conflict of Interest exists please state none and upload the signed, scanned form to the eTendering portal with your Bid submission.

Notes:

Any changes to interests declared during the Procurement process must be notified to the Contracting Authority/**ies** by completing and signing a new Declaration form and submitting the completed form via the messaging system on the eTendering portal.

Relevant Organisation(s) and/or any person employed or engaged by or otherwise connected with a Relevant Organisation (Relevant Person) completing this Declaration form must provide sufficient detail of each interest so that the Contracting Authority/**ies** and a member of the public would be able to understand clearly the financial or other interest the person concerned has and the circumstances in which a conflict of interest with the business or running of the Contracting Authority/**ies** (including the award of a Contract) might arise.

If in doubt as to whether a Conflict of Interest could arise, a Declaration of the interest should be made.

Interests that must be declared (whether such interests are those of the Relevant Person themselves or of a family member, close friend or other acquaintance of the Relevant Person), include the following:

- the Relevant Organisation(s) or Relevant Person has provided or is providing services or other work for the Contracting Authority/**ies**;
- a Relevant Organisation or Relevant Person is providing services or other work for any other Bidder in respect of this Procurement process; and
- the Relevant Organisation(s) or any Relevant Person has any other connection with the Contracting Authority/**ies**, whether personal or professional, which the public could perceive may impair or otherwise influence the Contracting Authority/**ies** or any of its members' or employees' judgements, decisions or actions

Declarations:

Name of Relevant Organisation	
Type of Interest	Details
Provision of services or other work for the Contracting Authority/ ies	
Provision of services or other work for any other Bidder in respect of this project or Procurement process	
Any other connection with the Contracting Authority, whether personal or professional, which the public could perceive may impair or otherwise influence the Contracting Authority/ ies or any of its members' or employees' judgements, decisions or actions	
Mitigation in place to manage any identified conflicts	
Name:	
Title:	
Signature:	
Date:	

[complete for all Relevant Persons]		
Name of Relevant Person:		
Type of Interest:	Details:	Personal interest or that of a family member, close friend or other acquaintance?
Provision of services or other work for the Contracting Authority/ ies		
Provision of services or other work for any other Bidder in respect of this project or Procurement process		
Any other connection with the Contracting Authority/ ies , whether personal or professional, which the public could perceive may impair or otherwise influence the Contracting Authority/ ies or any of its members' or employees' judgements, decisions or actions		
Name:		
Title:		
Signature:		
Date:		

The Declaration of Interest form must be signed by an authorised signatory: in the case of a Partnership it should include a signature for each partner for and on behalf of the Relevant Organisation; in the case of a limited company, by an officer duly authorised, the designation of the officer being stated, in the case of Collaboration, by the Lead Bidder and where there is a parent company the details and a signature from the Guarantor.

The Contracting Authority/ies will have the sole right to determine whether an irreconcilable conflict of interest exists or may exist. An irreconcilable conflict will result in the Bidder being unable to submit a Bid response for evaluation.

NB: This document must be signed and the hard copy uploaded with your submission.

Appendix B

Equality Impact Assessment



North of England
Commissioning Support

Partners in improving local health



An Equality Impact Assessment (EIA) is a process of analysing a new or existing service, policy or process. The aim is to identify what is the (likely) effect of implementation for different groups within the community (including patients, public and staff).

We need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
- Advance equality of opportunity between people who share a protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not

This is the law. In simple terms it means thinking about how some people might be excluded from what we are offering.

The way in which we organise things, or the assumptions we make, may mean that they cannot join in or if they do, it will not really work for them.

It's good practice to think of all reasons why people may be excluded, not just the ones covered by the law. Think about people who may be suffering from socio-economic deprivation or the challenges facing carers for example.

This will not only ensure legal compliance, but also help to ensure that services best support the healthcare needs of the local population.

Think of it as simply providing great customer service to everyone.

As a manager or someone who is involved in a service, policy, or process development, you are required to complete an Equality Impact Assessment using this toolkit.

Policy	A written statement of intent describing the broad approach or course of action the Trust is taking with a particular service or issue.
Service	A system or organisation that provides for a public need.
Process	Any of a group of related actions contributing to a larger action.



STEP 1 - EVIDENCE GATHERING

Name of person completing EIA:	Tracy Hickman
Title of service/policy/process:	Healthcare Procurement Policy
Existing: <input type="checkbox"/> New/proposed: <input type="checkbox"/> Changed: <input checked="" type="checkbox"/>	
What are the intended outcomes of this policy/service/process? Include outline of objectives and aims	
<p>The purpose of this policy is to provide clear and effective guidance to all CCG officers when undertaking procurement activities and to ensure that when commissioning healthcare services, the CCG:</p> <ul style="list-style-type: none"> • acts with a view to meeting the needs of its local population and to improve the quality and efficiency of healthcare services; • complies with the applicable regulatory framework, including all relevant legislation and guidance; • acts in way which treats providers fairly and equally; • acts with transparency and proportionality; • seeks to achieve value for money; • does not act anti-competitively, unless this is in the interests of patients (and where this is permitted within legislation and guidance); • acts with a view to improving the economic, social and environmental well-being of the local area. • acts to ensure that modern slavery and Human Trafficking is not taking place in any part of our business and supply chains 	

Who will be affected by this policy/service /process? (please tick)
X Staff members x Other
If other please state: Provider organisations
What is your source of feedback/existing evidence? (please tick)
<input type="checkbox"/> National Reports <input type="checkbox"/> Staff Profiles <input type="checkbox"/> Staff Surveys <input type="checkbox"/> Complaints/Incidents <input type="checkbox"/> Focus Groups <input type="checkbox"/> Previous EIAs x Other
If other please state: Bidder feedback from previous procurement activity. Staff feedback/requests for advice

Evidence	What does it tell me? (about the existing policy/process? Is there anything suggest there may be challenges when designing something new?)
National Reports	
Staff Profiles	
Staff Surveys	
Complaints and Incidents	
Staff focus groups	
Previous EIA's	
Other evidence (please describe)	<p>Feedback has demonstrated a lack of knowledge in relation to procurement legislation and guidance. The policy outlines a transparent approach promoting equal access to opportunities for all provider organisations</p>



STEP 2 - IMPACT ASSESSMENT

What impact will the new policy/system/process have on the following staff characteristics: (Please refer to the 'EIA Impact Questions to Ask' document for reference)

Age A person belonging to a particular age

No impact - specific equality impact assessment to be undertaken at the design stage of each procurement

Disability A person who has a physical or mental impairment, which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities

No impact - specific equality impact assessment to be undertaken at the design stage of each procurement

Gender reassignment (including transgender) Medical term for what transgender people often call gender-confirmation surgery; surgery to bring the primary and secondary sex characteristics of a transgender person's body into alignment with his or her internal self perception.

No impact - specific equality impact assessment to be undertaken at the design stage of each procurement

Marriage and civil partnership Marriage is defined as a union of a man and a woman (or, in some jurisdictions, two people of the same sex) as partners in a relationship. Same-sex couples can also have their relationships legally recognised as 'civil partnerships'. Civil partners must be treated the same as married couples on a wide range of legal matters

No impact - specific equality impact assessment to be undertaken at the design stage of each procurement

Pregnancy and maternity Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context.

No impact - specific equality impact assessment to be undertaken at the design stage of each procurement

Race It refers to a group of people defined by their race, colour, and nationality, ethnic or national origins, including travelling communities.

No impact - specific equality impact assessment to be undertaken at the design stage of each procurement

Religion or belief Religion is defined as a particular system of faith and worship but belief includes religious and philosophical beliefs including lack of belief (e.g. Atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition.

No impact - specific equality impact assessment to be undertaken at the design stage of each procurement

Sex/Gender A man or a woman.

No impact - specific equality impact assessment to be undertaken at the design stage of each procurement

Sexual orientation Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes

No impact - specific equality impact assessment to be undertaken at the design stage of each procurement

Carers A family member or paid [helper](#) who regularly looks after a child or a [sick](#), [elderly](#), or [disabled](#) person

No impact - specific equality impact assessment to be undertaken at the design stage of each procurement



STEP 3 - ENGAGEMENT AND INVOLVEMENT

How have you engaged with staff in testing the policy or process proposals including the impact on protected characteristics?

No – however specific equality impact assessment to be undertaken at the design stage of each procurement process

Please state how staff engagement will take place:



STEP 4 - METHODS OF COMMUNICATION

What methods of communication do you plan to use to inform staff of the policy?

Verbal – through focus groups and/or meetings Verbal - Telephone
 Written – Letter Written – Leaflets/guidance booklets
 Email Internet Other

If other please state:



STEP 5 - SUMMARY OF POTENTIAL CHALLENGES

Having considered the potential impact on the people accessing the service, policy or process please summarise the areas have been identified as needing action to avoid discrimination.

Potential Challenge	What problems/issues may this cause?
1 None identified	



STEP 6- ACTION PLAN

Ref no.	Potential Challenge/ Negative Impact	Protected Group Impacted (Age, Race etc)	Action(s) required	Expected Outcome	Owner	Timescale/ Completion date
	None identified.					

Ref no.	Who have you consulted with for a solution? (users, other services, etc)	Person/ People to inform	How will you monitor and review whether the action is effective?
	Not applicable		



SIGN OFF

Completed by:	Tracy Hickman
Date:	20.10.2017
Signed:	Tracy Hickman
Presented to: (appropriate committee)	Executive Committee
Publication date:	December 2017