

**NHS BOLTON CLINICAL COMMISSIONING GROUP**  
**Public Board Meeting**

**AGENDA ITEM NO:** .....12.....

**Date of Meeting:** .....8<sup>th</sup> January 2021.....

<b>TITLE OF REPORT:</b>	2020/21 Procurement Policy Review
<b>AUTHOR:</b>	John Holden
<b>PRESENTED BY:</b>	Melissa Maguinness
<b>PURPOSE OF PAPER: (Linking to Strategic Objectives)</b>	<p>The policy has been reviewed and updated.</p> <p>The main changes highlighted below:</p> <ul style="list-style-type: none"> <li>• Legislation post EU exit added (Part 1.4 – Page 5)</li> <li>• Developing new services considerations (Part 1.8 – Page 7)</li> <li>• Reference to the JSNA added in relation to market stimulation (Part 2.1 – Page 12)</li> <li>• Added awarding of contract legislation (Part 2.8 – Page 15)</li> <li>• Evaluation Methodology updated to include consideration of social value (Part 2.15 – Page 18)</li> <li>• Removed third party evaluation of potential conflict of interests as it creates risk of challenge (Part 2.10 – Page 16)</li> </ul> <p>The purpose of this procurement strategy and procurement policy document is to set out the following:</p> <ul style="list-style-type: none"> <li>▪ The context and strategic aims of the CCG in using procurement as an enabler to improve service outcomes for the registered population (procurement strategy).</li> <li>• To set out the rules and methodologies that the CCG will work to and clearly rules by which the strategy will be implemented (procurement policy)</li> </ul>

<b>LINKS TO CORPORATE OBJECTIVES (tick relevant boxes):</b>	<b>Deliver the outcomes in the Bolton Joint Health and Care Plan.</b>	
	<b>Ensure compliance with the NHS statutory duties and NHS Constitution.</b>	√
	<b>Deliver financial balance.</b>	√
	<b>Regulatory Requirement.</b>	√
	<b>Standing Item.</b>	
<b>RECOMMENDATION TO THE BOARD: (Please be clear if decision required, or for noting)</b>	For approval of the updated policy.	
<b>COMMITTEES/GROUPS PREVIOUSLY CONSULTED:</b>	CCG Executive SBS Procurement Team	
<b>REVIEW OF CONFLICTS OF INTEREST:</b>	None	
<b>VIEW OF THE PATIENTS, CARERS OR THE PUBLIC, AND THE EXTENT OF THEIR INVOLVEMENT:</b>	N/A	
<b>OUTCOME OF EQUALITY IMPACT ASSESSMENT (EIA) AND ANY ASSOCIATED RISKS:</b>	N/A	

# Procurement Strategy & Policy

<b>Policy Number</b>	<b>PROCURE01</b>
<b>Target Audience</b>	<b>CCG Executive CCG Staff Providers</b>
<b>Approving Committee</b>	<b>CCG Board</b>
<b>Date Approved</b>	<b>25th November 2020</b>
<b>Last Review Date</b>	
<b>Next Review Date</b>	<b>2 years following formal approval</b>
<b>Policy Author</b>	<b>Director of Transformation and Contract Performance &amp; Assurance Manager.</b>
<b>Version Number</b>	<b>FINAL v3.0</b>

The CCG is committed to an environment that promotes equality, embraces diversity and respects human rights both within our workforce and in service delivery. This document should be implemented with due regard to this commitment.

This document can only be considered valid when viewed via the CCG's intranet. If this document is printed into hard copy or saved to another location, you must check that the version number on your copy matches that of the one online.

Approved documents are valid for use after their approval date and remain in force beyond any expiry of their review date until a new version is available.

### Version Control Sheet

Version	Date	Reviewed By	Comment
Draft v0.1	Nov 15	CCG Executive	
Draft v0.1	Nov 15	CCG Board	Approved
Final v1.0	Nov 15	CCG Executive	
Final v2	Sep 18	CCG Executive	
Final v3.0	Nov 20	CCG Executive	Approved

Analysis of Effect completed: Equality Impact Assessment	By:	Date:
---	-----	-------

**BOLTON CCG PROCUREMENT STRATEGY AND PROCUREMENT POLICY**

Contents

Part 1 - Procurement Strategy

1.1 Introduction ..... 4

1.2 What is Procurement? ..... 4

1.3 Purpose and Scope ..... 4

1.4 Why is Procurement Important? ..... 5

1.5 Strategic Context ..... 6

1.6 Procurement Philosophy ..... 6

1.7 Securing Service Provision – An Active Procurement Strategy ..... 7

1.8 When Will Procurement Be Used? ..... 7

1.9 When Will There Be Re-Procurement of Existing Services? ..... 8

1.10 Market Management and Engagement Strategy ..... 9

1.11 When Could Services Be Decommissioned ..... 10

1.12 Roles and Responsibilities ..... 11

1.13 Decision Support Tool ..... 11

Part 2 - Procurement Policy (High Level)

2.1 Procurement Objectives ..... 12

2.2 Ensuring Procurement is Legally Compliant ..... 12

2.3 Procurement Rules and EU Principles ..... 13

2.4 Health and Social Care Act (2012) ..... 13

2.5 Publishing Contract Opportunities ..... 14

2.6 Compliance with Other Acts ..... 14

2.7 Role of the Governing Body ..... 14

2.8 Awarding of Contract ..... 15

2.9 Non-Compliant Procurement ..... 15

2.10 Code of Conduct and Conflict of Interest ..... 16

2.11 Procurement Process ..... 16

2.12 Procurement Workplan ..... 17

2.13 Ensuring Procurement is Effective ..... 17

2.14 Governance During the Procurement Process ..... 18

2.15 Evaluation Methodology ..... 18

2.16 Risk Management ..... 19

## **PART 1 - PROCURMENT STRATEGY**

### **1.1 INTRODUCTION**

The purpose of this procurement strategy and procurement policy document is to set out the following:

- The context and strategic aims of the Clinical Commissioning Group (CCG) in using procurement as an enabler to improve service outcomes for the registered population (procurement strategy) by ensuring adherence to the regulatory requirements and statutory guidance relating to Procurement

To set out the rules and methodologies that the CCG will work to and clearly rules by which the strategy will be implemented (procurement policy)

The purpose of the document is not intended to be comprehensively prescriptive or to provide detailed processes and procedures.

### **1.2 WHAT IS PROCUREMENT?**

Clinically led commissioning is the key process by which the CCG secures the best services for the registered population. The commissioning cycle requires robust and efficient procurement in order to successfully achieve best practice and realise the benefits for the registered population and the public.

Procurement is the formal process by which services are acquired from the best possible Provider. Procurement is used to acquire the right services from the right supplier at the right time, in the right place at the right price, for the best and right quality.

NHS Bolton CCG has a duty to commission services which meet the needs of the population and deliver value for money for the tax payer. Commissioning intentions are developed every year within the context of the CCG's strategic plans.

A 5 year strategic commissioning plan is being developed for the locality with the council and this will be available from October 2020.

Procurement of new services and re-procurement of existing services are essential commissioning tools to ensure that services are both affordable and meet the changes in registered populations' needs.

### **1.3 PURPOSE AND SCOPE**

This procurement strategy and procurement policy applies to all healthcare service procurement activities (clinical and non-clinical) within the CCG. This policy does not cover the procurement of goods. The procurement of goods is undertaken using the prime financial policy.

The CCG and Bolton Council will undertake procurements through a combination of in house and external experts. An evaluation of proposed procurements will be taken at the initiation of the project to identify the appropriate procurement partner.

This document sets out the procurement strategy and a high level procurement policy. This allows the reader to link the strategy to operational activity but this document does not provide detailed procedures or act as a procurement manual.

#### 1.4 WHY IS PROCUREMENT IMPORTANT?

There are a number of reasons why procurement is important:-

- EU and UK competition law requires the transparent and open procurement of services that are worth in excess of the identified Standing Financial Instructions and published threshold values;
- Following the EU exit the CCG will still be bound by Procurement, Patient Choice and Competition Regulations and by UK law – which will remain when EU Law is no longer required.
- NHS guidance requires the promotion of competition, wherever appropriate, through procurement;
- The CCG's constitution requires competition above set limits.
- Procurement driven competition can drive better value (service, quality, outcomes, access and cost);
- Procurement provides evidence to the public that the CCG is testing the healthcare market and maximising value for money.

Procurement and contracting processes ensure that agreements with providers are set out clearly and accurately with both the commissioner and the provider being clear about what is expected. By putting in place excellent procurement and contracting processes, the CCG can specify quality standards and outcomes and facilitate good working relationships with providers, offering protection to service users and ensuring value for money. The specific procurement process will depend on the scale and nature of any procurement and comply with UK law, CCG Corporate Governance requirements, financial policies and EU and national procurement policies and procedures.

All CCG procurements are aligned against the above context and with the intention to secure high quality, safe and cost effective health and social care services for the registered and local populations.

The overarching principles of public procurement within the NHS are as follows:

- **Transparency** – Commissioners are required to publish procurement strategies and intentions to procure, feedback to unsuccessful bidders, details of awarded contracts, maintaining availability of records which demonstrate how procurement decisions were made.
- **Proportionality** – The level of capacity and resource involved in the procurement process both on behalf of the commissioner and the potential providers

should be proportionate to the relevant factors, circumstances, total value, risks and complexity of the service being procured.

- **Equality/Non-discriminatory** – The duty to treat all potential providers equally. This could include level of engagement with certain providers on service design. To ensure any service specification has not been designed to exclude certain providers. Ensuring the deadline for submissions has not been set to favour certain providers.

## 1.5 STRATEGIC CONTEXT

NHS Bolton CCG has an ambitious vision to deliver fully integrated care across health and social care services, with primary care based firmly at the centre of this model. One where the registered population is treated by the right professional at the right time, in the right setting in an integrated model.

The CCG must deliver significant savings over the period covered by its Strategic Plan (2016 to 2021). This will require the CCG to undertake strategic transformation of services in order to deliver a care economy that improves health outcomes for the people of Bolton and is financially stable; resulting in a downsizing of hospital based activities and reinvestment in care outside of hospital with a focus on prevention and early intervention.

## 1.6 PROCUREMENT PHILOSOPHY

The CCG regards procurement as a strategic enabler to:

- Support a shift in activity and resources from a hospital setting to locations outside of hospital in line with the CCG's 5 year strategy; providing care closer to home for the registered population
- Achieve its vision for transforming and integrating healthcare in Bolton
- Delivering quality services and value for money from the public purse
- Create an environment where providers:
  - Understand and embrace the CCG's vision for its population
  - Are responsive to commissioners' intentions
  - Work with each other for the benefit of the people of Bolton
  - Innovate
  - Focus on health outcomes
- Meet the funding challenge we face in the next 5 years and beyond.
- Improving outcomes
- Enables a significant focus on social value

## 1.7 SECURING SERVICE PROVISION – AN ACTIVE PROCUREMENT STRATEGY

In line with its philosophy, the CCG will adopt the following:

- 1) Active market engagement and shaping: The CCG will work closely with our provider market, sharing plans and visions with them, regularly seeking their input on service redesign and reconfiguration across the whole of the provider market;
- 2) A Market Management approach: The CCG will be active in the market, encouraging and facilitating cooperation between providers of all types and size to reduce inefficiencies and nurture new providers and provider configurations or organisations where they bring benefit to the people of Bolton;
- 3) Broad stakeholder engagement: The CCG will seek to involve the registered population, carers, clinicians and wider stakeholders such as the VCSE sector. in the design of service specifications and the selection of providers whenever possible or appropriate;
- 4) Become a Customer of Choice: by being transparent, fair, consistent and open with all providers and by implementing proportionate and effective processes the CCG will make it easy for providers to engage with us, to understand our needs and to propose compelling solutions;
- 5) Use competition wisely: The CCG will use competitive processes appropriately and with rigour to improve quality, choice and value for money.
- 6) In collaboration with Bolton Council, produce and promote a Market Position Statement to enable providers to understand the market needs for the local population in order to inform service delivery and redesign

## 1.8 WHEN WILL PROCUREMENT BE USED?

Procurement will be used as part of a wider market management strategy to ensure the market shape is right to offer the best services to the registered population, the right level of choice, the highest quality and the most economic price.

When developing new services, consideration must be given to use Procurement and Market Engagement as a means to selecting the best provider for the service. There are circumstances in which a procurement process is not needed and these are outlined overleaf in figure 1.

The definition of a 'new service' is significant additional investment or significant redesign.

Fig 1. When do services not need to be procured?

**Where the value is too low**  
The CCGs SFI/SOs state:-

- Below £5,000 (life of contract) there is no need to conduct a competition
- Between £5,000 and £50,000 at least 3 competitive quotes should be sought and reviewed in an open and transparent manner
- Above £50,000 and should be competitively tendered

**Where competition might not be practical**  
In exceptional circumstances, a waiver of competition can be approved. The basis for waivers include:-

- where no market exists or alternative providers are not in existence
- where the service requirement is covered by an existing contract
- where NHS framework agreements are in place
- where the timescale precludes competitive tendering
- where specialist expertise is required and is available from only one source;
- there is a clear benefit to be gained from maintaining continuity with an earlier project. In such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering;
- for the provision of legal advice and services providing that any legal firm or partnership commissioned by the CCG is regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council for England and Wales in relation to the obtaining of Counsel's opinion) and are generally recognised as having sufficient expertise in the area of work for which they are commissioned.

**For a limited period to pilot a new service or way of working**  
In limited circumstances where a new service, pathway or way of working needs to be tested it may be appropriate to waive competition amongst current providers of similar services for the period of the pilot.

The waiving of competitive tendering procedures should not be used to avoid competition or for administrative convenience. A decision to waive a competitive tendering process must be supported by the relevant waiver documentation and signed by the Chief Officer and Chief Finance Officer.

## 1.9 WHEN WILL THERE BE RE-PROCUREMENT OF EXISTING SERVICES?

Where existing services meet certain criteria a **formal procurement appraisal should be undertaken to determine if services should be re-procured.** These criteria are set out below:-

Fig 2. *When should services be considered for re-procurement?*

<i>Quality concerns</i>	<i>Serious Untowards Incidents and complaints in services leading to serious concerns. Outstanding Remedial Action Plan open &gt; 12 months Services are not improving despite continued efforts by the provider.</i>
<i>Provider responsiveness</i>	<i>Providers are not responsive to commissioner plans and strategies.</i>
<i>Value for money concerns</i>	<i>Benchmarking of services suggest quality and cost could be improved. Providers have highlighted concerns that the cost of services is rising and/or CCG budgets for commissioned services are overspending or not delivering outcomes.</i>
<i>Expiration of contracts</i>	<i>The contract (including extensions) term is due to expire</i>

When criteria for re-procurement are triggered the CCG should make a decision to tender or waive using the criteria set out in fig 1. **Where the need for a re-procurement is then subsequently ruled out, a tender waiver must be completed stating why the existing service provider is being allowed to continue against the criteria set out in fig. 1.** Services meeting the criteria for re-procurement will be reported to the CCG executive and Board on a routine basis.

## 1.10 MARKET MANAGEMENT AND ENGAGEMENT STRATEGY

The CCG will monitor the market for each health service commissioned by reviewing the current market shape and assessing whether the introduction of a new provider or new providers in competition would be the most efficient means of securing improved services for the registered population. The CCG will use the following tools and techniques to undertake this assessment:

- Benchmarking – this will test if the CCG is getting value for money or if others are achieving better outcomes for less;
- Managing its contracts – the CCG will manage contractual performance robustly and ensure it has used all appropriate measures to optimise performance. Where relationships or contractual levers are not securing change the CCG will look at an alternative market model;

- Holding provider engagement events – as a minimum these will be held in advance of forthcoming procurements, but where specific pathways are being reviewed or developed, incumbent and prospective providers will be invited to discuss their expertise to enable the CCG to shape markets for the benefit of the registered population.
- Where appropriate the CCG will seek the advice and approval of the Competition and Cooperation Panel when undertaking large procurements that could create local monopolies or otherwise undermine competition in the area.

NHS Bolton 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 as commissioners the CCG recognises the value of effective staff engagement in improving the quality of commissioning and procurement.

The CCG recognises that the engagement of clinicians, the registered population and public in designing services results in better services. Our business processes require evidence of engagement for business cases to be approved and as a result, any procurement of services will have been informed by engagement at the design stage.

As well as engaging staff and service users within the business case development for a particular service development, the CCG is committed to engaging individuals within the procurement process. The CCG will ensure that the views of the public and service users and other relevant groups are taken into account when making any decision to go out to competitive procurement and when developing relevant tender documentation. As a CCG we will also ensure engagement with service users and the public when evaluating any formal tender processes, our expectation is that where relevant, service users will be represented on tender evaluation panels and be given the opportunity to inform the evaluation of tender submissions.

## **1.11 WHEN COULD SERVICES BE DECOMMISSIONED?**

The CCG Governing Body has established a set of principles to guide the CCG's 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 the way it approaches the decommissioning of services will be fair, open and transparent.

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

- i. Support from GP commissioners
- ii. Strong engagement, including local authorities, public and the registered population
- iii. A clear clinical evidence base underpinning proposals
- iv. The need to develop and support patients' choice

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

- i. Failure to remedy poor performance
- ii. evidence that the service is not cost-effective
- iii. evidence that the service is not clinically effective
- iv. insufficient need for the service

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

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

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

f. There will be no negative impact on the quality of care the registered population receive or on equality of care provision.

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

i. NHS Bolton CCG will ultimately take the decision with regard to the decommissioning of any service.

## **1.12 ROLES AND RESPONSIBILITIES**

Sound governance procedures are essential to ensure public money is spent appropriately and that the CCG conducts business transactions in an open, honest and equitable manner.

It is the responsibility of the CCG Board to ensure that the strategy is up to date and complies with relevant Procurement and Legislation and approve.

## **1.13 DECISION MAKING SUPPORT TOOL**

The CCG will develop and adopt a Procurement Decision Tool to support it in making informed, evidence-based decisions in relation to procurement.

## **PART 2 – PROCUREMENT POLICY (HIGH LEVEL)**

### **2.1 PROCUREMENT OBJECTIVES**

The objectives of procurement will be to:-

- achieve the best possible Service
- understand the true value of a contract as it not only includes the initial price, but the continuing costs over the lifetime of the goods or service
- achieve true value by acquiring the right services from the right supplier at the right time at the right place and at the right price and the right standard of quality and outcomes.

These objectives will be met by:

- Working with a wide range of service providers from the private, public, independent, voluntary and social enterprise sectors who can offer high quality, diverse and acceptable choices for local service users;
- Stimulating the supply market where the Joint Strategic Needs Assessment (JSNA) or other intelligence suggests that a wider portfolio of services or service providers is needed;
- Continuously reviewing existing contracts to ensure that they deliver in accordance with key performance indicators, offer maximum value for money and demonstrate continuous improvement in the quality and range of services on offer;
- Working with commissioning partners at sector and GM level to ensure that buying power and economies of scale are maximised through collaborative procurement initiatives.
- Ensuring that the appropriate level of corporate and clinical representation is used to evaluate specifications and bids. This should normally include at least one GP;
- Ensuring that all members of the panel declare any interests and are cognisant of, and compliant with the NHS Commissioning Board's Code of Conduct: Managing conflicts of interest where GP practices are potential providers of CCG commissioned services.

### **2.2 ENSURING PROCUREMENT IS LEGALLY COMPLIANT**

NHS Bolton CCG was established under the Health and Social Care Act (2012). 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 clinical commissioning groups 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.

## PROCUREMENT RULES AND EU PRINCIPLES

### 2.3 Responsibilities

All CCG employees with budgetary responsibility must make themselves familiar with the CCG's constitution, together with relevant detailed financial policies available via the intranet and corporate folder all relevant procurement procedures described in this document.

- a) **All procurements will comply with the requirements of the constitution.**
- b) **All procurements will comply with the requirements of the UK Procurement Regulations (The Public Contracts Regulations 2006 & 2015 as amended)), where they apply.**

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

Healthcare is currently excluded from the full requirements of the European procurement rules, however case law increasingly supports an approach that all goods and services procurements should comply with European rules and regulations.

Notwithstanding this, it is clear that even for healthcare (clinical) services (Light touch regime) there is an overriding imperative to comply with the Treaty for the Functioning of the European Union (TFEU).

### 2.4 Health and Social Care Act (2012)

The Health and Social Care Act describes the responsibilities of the commissioning organisations with the NHS and wider UK healthcare landscape.

#### Integrated Care, Choice and Competition

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. The Regulations ask commissioners to consider when procuring services the impact on the registered population who may have multiple healthcare needs and hence may traditionally have had to:

- Receive treatment from a number of different healthcare teams across a range of disciplines,
- Receive treatment over a number of different sites,
- Receive treatment from a number of different healthcare providers,

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 registered population a seamless service. NHS Improvement may test a commissioner's effectiveness in this by asking providers how they will co-operate in the delivery of the registered populations' care with other providers.

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 NHS Improvement will assess how available "Choice" is for the registered population and whether the number of providers in a particular market impacts on the incentive for providers to improve the registered population's care. Where plurality of providers doesn't exist there is no requirement to introduce this until the incumbent provider's contract is up for renewal.

## 2.5 Publishing Contract Opportunities

The Act deals with the requirements for:

- NHS England to maintain a website in which commissioners can publish notices (i.e. Supplier Registration Service),
- Arrangements to be put in place to enable providers to express interests in providing services,
- Commissioners to publish a notice where they do intend to publish their intention to seek offers from providers for a new contract
- The content of published notices
- The ability of commissioners to avoid posting a notice where they don't wish to invite interest from providers and which to award the contract with a single provider

In assessing the decision to not publish a notice NHS Improvement would assess whether there is only one provider capable to deliver the service or whether after a detailed review of local healthcare provision it is concluded there is a particular provider which is clearly superior in delivering the particular service and where the benefits of competitive tendering are outweighed by the cost of publishing the notice or running a competitive tender exercise.

There may be certain benefits in selecting a particular provider and this could be due to location of provision, availability of particular infrastructure or where there is an immediate clinical need for which the selection of a particular provider is necessary on clinical safety grounds.

## 2.6 Compliance with Other Acts

In undertaking procurements the CCG needs to ensure compliance with the Public Services (Social Value) Act 2012 (UK), the Equality Act 2010 (UK) and the Freedom of Information Act 2000 (UK).

## 2.7 Role of the Governing Body

The Governing Body has the ultimate responsibility for ensuring that the CCG meets its statutory requirements as described in the 2012 Health Act when procuring

healthcare services. The Governing Body will be transparent when making decisions to procure services and be the authorising body for awarding contract once a formal tender process has been completed. At all times when considering options for procurement the Governing Body will work with the guidelines set out by NHS Improvement as the appointed regulator of healthcare procurement and apply the NHS Improvement Key tests as detailed in Section 75 of the Health and Social Care Act.

## 2.8 Awarding of Contract

Depending on the nature and value of the procurement, the Governing Body can choose to delegate sign off to the Accountable Officer or Chief Finance Officer. Alternatively, the CCG Governing Body will receive a recommendation for contract award sign off the award of contract. Conflicts of Interest will need to be carefully managed in this process.

NHS Bolton CCG will ensure that records are maintained about decisions made in regard to the awarding of contracts which comply with the requirements of:

- Regulation 84 of the Public Contracts Regulations 2015; and
- Regulation 9(1) of the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013.

## 2.9 Non-Compliant Procurement

The consequences of procuring services in a non-compliant manner may lead to significant issues for the CCG, as well as for the individuals involved.

Failure to comply with procurement law can lead to a legal challenge, usually in the High Court. Possibilities include applications for an injunction to prevent the contract award; for the award decision to be set aside; in certain circumstances for the contract to be cancelled; and/or an action for an award of damages.

Failure to comply with the Procurement, Patient Choice and Competition regulations can be challenged separately by a complaint to the Co-operation and Competition Directorate of NHS Improvement. Possible enforcement action against commissioners includes declaring an arrangement ineffective, accepting undertakings from commissioners and directing a commissioner to put in place measures to prevent or remedy breaches and/or mitigate their effects.

Staff who become aware of an actual or potential challenge must ensure that the Chief Officer or Chief Finance Officer is made aware at the earliest possible opportunity and appropriate advice is obtained.

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

## 2.10 CODE OF CONDUCT AND CONFLICT OF INTEREST

NHS Bolton CCG will ensure that Healthcare Service tender processes promote equality and do not discriminate on the grounds of age, race, gender, culture, religion, sexual orientation or disability.

When commissioning services for which GP practices or other members of the Governing Body could be potential providers, or where staff may have a conflict of interest, the CCG will refer to the advice and guidance published by NHS England dealing with potential conflicts of interest.

NHS Bolton CCG has a requirement to manage conflicts of interest and has the following processes in place:

- arrangements for declaring interests;
- maintaining a register of interests;
- a conflicts of interest committee
- excluding individuals from decision-making where a conflict arises; and
- engagement with a range of potential providers on service design.

At the start of procurement processes, all members of the evaluation panel will sign a Conflict of Interest declaration, stating whether or not they have a potential conflict of interest in the process or not. Each potential conflict will be assessed within the context of the individual procurement and a decision made on the best way to mitigate the associated risks. This will generally be by way of:

- Recusal – individuals recuse themselves (i.e. abstain where the conflict exists);
- Removal – the individual takes no further part in the decision making process;

## 2.11 PROCUREMENT PROCESS

Having established that a competition needs to be run to procure a service, there are a number of options around the process. This will be decided based on an assessment of the most appropriate process for each procurement.

Procurement support will be deployed which engages with commissioners and dovetails with the full commissioning lifecycle. Specifically:

- Business case development
- Market sounding and management
- Service redesign support
- Commissioning and Procurement Strategy Development
- Procurement route selection
- Consultation
- Service specification development
- Development of evaluation criteria
- Contract development
- Tendering
- Bid evaluation

- Provider award
- Contracting and debriefing in the form of written feedback.

## 2.12 PROCUREMENT WORKPLAN

A procurement work plan will be prepared and published before the start 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 and 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 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 work plan 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 internet site, and updated quarterly. This will allow us to communicate short, medium and long term goals to the widest possible audience, and demonstrates a range of potential opportunities within the Bolton 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 NHS Bolton CCG, and a range of other levers will also be considered (e.g. delivery of service redesign through partnership working).

## 2.13 ENSURING PROCUREMENT IS EFFECTIVE

It is critical the CCG understands whether the market interventions it is making are effective and that procurement is having the desired effect. A range of tools will be used to gain this understanding including:

1. Setting and reviewing key performance indicators including:
  - Where needed, was sufficient interest from the market stimulated?
  - Were procurement risks identified mitigated and managed?
  - Did the procurement come in within the budget and to specification?
2. Holding a post procurement review with assessors and project sponsors
3. Holding reviews of the provider to ascertain whether bid promises are being met
4. Surveying stakeholders after implementation to ascertain whether the desired changes are being realised.

Commissioners need to manage their relationships and contracts with providers in order to ensure that they deliver the highest possible quality of service and value for money. This will involve working closely with providers to sustain and improve provision, engaging in constructive performance discussions to ensure continuous improvement. Commissioners will need to ensure that their providers understand and promote the values of the NHS.

The CCG's priorities are set in line with its commissioning strategies and plans.

Procurement advice should be sought by commissioners during the earliest stage of new projects. Projects often fail or are delayed as procurement implications have not been considered. Early consultation will enable procurement/non-procurement risks to be considered and mitigating actions implemented, as well as ensuring that appropriate and compliant timescales are discussed and agreed.

Where the CCG decides not to procure a service clear justification must be recorded in line with the requirements of the CCG's constitution as set out earlier in this document.

## **2.14 Governance during the Procurement Process**

When projects enter into the procurement phase, in order to ensure commercial rigour in the process, the Executive Leadership transfers to the Chief Finance Officer until the procurement is completed.

Robust governance arrangements must be in place for all procurement processes with all key decisions made at the appropriate level of authority, as detailed within the CCG's constitution. Procurement decisions must be supported by robust audit trails.

Procurement decisions and the monitoring of procurement processes are distinct from the monitoring of commissioning projects. Procurement decisions should be "the how" and should follow from commissioning decisions "the what".

Governance for each procurement process may vary slightly and will also be dependent on the complexities. Procurement advice should be sought during the scoping phase of any commissioning project.

A forward procurement plan will also be developed and reviewed quarterly.

Each procurement process will be approved by the CCG Executive before commencement. Potential conflicts of interest will be identified at this stage and referred to the conflicts of interest committee if appropriated.

## **2.15 Evaluation Methodology**

During the bid evaluation process banded weightings will be used with 10-20% of the scoring will be attributed to the evaluation of social value in line with the GMCA Social Value Policy (November 2014). The use of this policy ensures The CCG, in line with the Local Authority, will deliver social value through their commissioning and

procurement activities. The remaining will be scored against cost (30-60%) and outcomes (30-60%). This will allow us to flex dependent on the nature of the procurement.

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.

## 2.16 Social Value

The aim of the GMCA Social Value policy is to set out how the Combined Authority (and its members) will deliver social value through their commissioning and procurement activities.

The policy defines Social value as:

A process whereby organisations meet their needs for good, 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 economy, whilst minimising damage to the environment.

The objectives of the policy reflect this definition and are as follows:

- promote employment and economic sustainability - tackle unemployment and facilitate the development of skills
- raise the living standards of local residents - working towards living wage, maximise employee access to entitlements such as childcare and encourage suppliers to source labour from within Greater Manchester
- promote participation and citizen engagement - encourage resident participation and promote active citizenship
- build the capacity and sustainability of the voluntary and community sector- practical support for local voluntary and community groups
- promote equity and fairness - target effort towards those in the greatest need or facing the greatest disadvantage and tackle deprivation across the borough
- promote environmental sustainability - reduce wastage, limit energy consumption and procure materials from sustainable sources

Further details on the desired outcomes of these objectives are included in the GMCA Social Value policy in Appendix 2.

## 2.17 Risk Management

Risk management is an essential part of good procurement. Staff who manage procurement risk well are more likely to achieve the outcomes and objectives required from the delivery of the procurement.

A robust risk assessment process should be undertaken at the start of all procurement processes, where the Service exceeds £100,000 (based on the total lifetime contract value), the risk process shall also take place for lower value contracts where risks are evident.

It is important to note however, that risk management isn't a one off process. Risks in procurement change all of the time. The risk process must therefore be an iterative one and be managed and revisited at every stage of the procurement cycle and throughout the duration of the contract.

It is the responsibility of the individual(s) leading the project at each stage in the procurement cycle to ensure that all risks are appropriately identified and managed.

There are many risks that need managing in a procurement process so it is important that to identify all the relevant key stakeholders (i.e. other services, finance, legal, HR, IT, procurement, service users, etc.) who will require input into the particular project, as they will be able to identify risks and suggest or advise any appropriate counter measures within their field of speciality..

Risks can generally be categorised into ten potential areas:

1. Legal
2. Contractual
3. Financial
4. Political / Reputational
5. Technological
6. Economic
7. Environmental
8. Social (including the Social Value Act, employment, skills & apprenticeships)
9. Equality
10. Other including stakeholder, partnership etc.

At the start of a relevant procurement process a risk log must be developed in consultation with key stakeholders. It is the responsibility of the commissioner at this early stage of the project to ensure this process is undertaken and that the log is completed, maintained and embedded as a 'live' document which is re-visited at every stage of the cycle.

## WAIVER OF STANDING ORDERS/SCHEME OF DELEGATION AND PRIME FINANCIAL POLICY

### PRO-FORMA

Two copies of this form and declaration should be completed, signed and submitted initially to the Chief Finance Officer before final approval by the Chief Officer.

One copy will be retained in the Executive Office to satisfy audit trail requirements and one copy returned to you.

***(Once signed, please send to the Board Secretary, Lever Chambers, 27 Ashburner Street, Bolton, BL1 1SQ).***

---

Competitive tendering shall be undertaken in respect of all contracts for the supply of goods, materials and manufactured articles, for the rendering of services including all forms of management consultancy services (other than specialised services sought from or provided by the NHS), for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens) and for disposals (as set out in the CCG's Standing Orders, Scheme of Delegation, Prime Financial Policy and Procurement Strategy and Policy – further guidance attached at appendix 1) **except for expenditure, which does not exceed £5,000.**

- (1) Expenditure between £5,000 and £50,000 normally required **three** competitive quotes.
- (2) Expenditure over £50,000 is subject to competitive tendering procedures.

**However:** 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 and reported to the Audit Committee at each meeting.

**Please give full details overleaf of:**

- (i) The item
- (ii) The cost
- (iii) Reasons why:
  - (a) Three quotes have not been obtained or
  - (b) Tendering procedures not followed

**Item:-**

**Cost:-**

**Reason for not obtaining quotes or tendering procedures not followed (Please detail below):-**

---

# DECLARATION

I certify that I have seen all the documentary evidence to prove that the Waiver is justified and the price to be paid is fair and reasonable regarding:-

ITEM: .....

COST: .....

I also declare that:-

- The information I have given on this form is correct and complete as at the time of signing/submission. I understand that if I knowingly provide false or misleading information this may result in criminal, civil and/or disciplinary action. I consent to the disclosure of information contained on this form to the CCG for the purposes of any internal investigation and consent to disclosure by the CCG to the CCG's Anti-Fraud Specialist for the purpose of investigation, prevention, detection and prosecution of fraud, bribery and corruption.
- I have declared below any specific interests raised with regard to this waiver procurement activity.

NAME: .....

SIGNED: .....

TITLE: .....

DIRECTORATE: .....

DATE: .....

Declarations of interests:-

.....

.....

.....

.....

**AUTHORISATION**

Chief Finance Officer: .....

Chief Officer: .....

Date: .....

*Please return all documentation, once signed, to the Board Secretary, Lever Chambers, 27 Ashburner Street, Bolton, BL1 1SQ.*

## Appendix 1

### **Where the value is too low**

The CCG's Standing Orders/Scheme of Delegation and Prime Financial Policy state:-

- Below £5,000 (life of contract) there is no need to conduct a competition.
- Between £5,000 and £50,000 at least 3 competitive quotes should be sought and reviewed in an open and transparent manner.
- Above £50,000 and should be competitively tendered.

### **Where competition might not be practical**

In exceptional circumstances, a waiver of competition can be approved. The basis for waivers include:-

- where no market exists or alternative providers are not in existence;
- where the service requirement is covered by an existing contract;
- where NHS framework agreements are in place;
- where the timescale precludes competitive tendering;
- where specialist expertise is required and is available from only one source;
- there is a clear benefit to be gained from maintaining continuity with an earlier project. In such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering;
- for the provision of legal advice and services providing that any legal firm or partnership commissioned by the CCG is regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council for England and Wales in relation to the obtaining of Counsel's opinion) and are generally recognised as having sufficient expertise in the area of work for which they are commissioned.

**For a limited period to pilot a new service or way of working, in limited circumstances where a new service, pathway or way of working needs to be tested it may be appropriate to waive competition amongst current providers of similar services for the period of the pilot.**

**Appendix 2**

Greater Manchester Combined Authority Social Value Policy



social-value-policy  
(GMCA).pdf

---