

CCG Procurement Policy

Ratification Process

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Developed by	Contracts and Procurement Specialist
Reviewed by	Chief Finance Office
Approved by	Clinical Executive Committee
Ratified by	Governing body - 06.03.18
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Latest Revision date	January 2018
Review date	September 2018 (or earlier if required by local or national changes)

Document Control Sheet

Development and Consultation:	This Policy has been developed to support the CCG's Procurement Strategy. It is based upon the relevant statutory framework within the NHS and Procurement Legislation and the learning from the OPACs internal and external review findings, which have been formalised in the Integrated Support and Assurance Process.
Dissemination	The policy will be communicated to all staff and managers via the CCG extranet and public website
Implementation	This Policy will be implemented across the CCG.
Training	Training will be provided as relevant and in line with this Policy.
Monitoring	A report monitoring arrangements for effectiveness and compliance will be provided to the approving Committee (Audit Committee)
Review	Clinical and Management Executive Team
Links with other documents	The policy should be read in conjunction with: CCG Procurement Strategy CCG Constitution Standing Orders, Prime Financial Policies, Standing Financial Instructions, Scheme of Delegation Conflicts of Interest Policy CCG Commissioning Intentions (Annual) Records Management Policy
Equality and Diversity	The CCG has conducted an initial Equality Impact Assessment and has submitted this to the Equality & Diversity Lead for approval. An EIA will be repeated based on amended version of the document

Version Control

Version	Page/Para No	Description of Change	Date Approved
1		Draft	Request for legal advise
1.1	Whole Document	Review by LGSS Law to reflect new Regulations and general oversight of policy.	
1.2	Whole Document	Amendments following CMET meeting	
1.2 (Final)		Approved by Governing Body	12 May 2015
1.3	Whole document	Updated to take on board learning from OPACs procurement and external/internal review feedback.	6 September 2016
1.4	Document in full	Updated following GB feedback Incorporated recommendations from the PWC UCP Procurement Review published 27.09.2016	19 September 2016
1.5	Document in full	Updated following introduction of ISAP guidance by NHS England and NHS Improvement	January 2018

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1. Introduction

1.1 This Procurement Policy has been developed to ensure that all procurements agreed to be undertaken on behalf of NHS Cambridgeshire & Peterborough Clinical Commissioning Group (CCG) is consistent with the CCG's Procurement Strategy and the organisations objectives:-

- To secure the needs of health care service users;
- To improve the quality of services; and
- To improve the efficiency with which services are provided.

And to align with the FFtF programme:

- To focus on early interventions and increase the ability of patients and users to self-care
- To appropriately manage the patient flow through urgent care
- To increase the levels of Integrated Care delivered closer to home
- To increase provider collaboration across the county
- To deliver efficiencies and savings to fund system change and enable financial sustainability.

1.2 In addressing these objectives, the CCG will seek to:-

- a) engage with all fellow commissioners, stakeholders and relevant parties when a procurement is undertaken, including seeking Joint Commissioning wherever this is in the best interests of local patients;
- b) undertake and understand relevant policy and guidance regarding procurement type, (e.g. full tender/single provider tender);
- c) ensure safe, high quality and equitable services are achieved and maintained across the CCG;
- d) ensure that the CCG achieves value for money in its procurement activities;
- e) ensure that the CCG makes clear and transparent decisions on whether any procurement is necessary in the interests of the local population;
- f) ensure the CCG avoids possible conflicts of interest by ensuring transparency of all decision making through recorded declaration of interests and, if unavoidable, the effective management of any conflicts of interest;
- g) ensure that each procurement complies with all relevant guidance and legal regulations primarily the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013, the Public Contracts Regulations 2006 (as amended from time to time) and the Integrated Support and Assurance Process guidance May 2017.
- h) ensure the CCG complies with all legal requirements and best practice on procurement, including sustainability policies

1.3 Procurement is the all-encompassing term to describe the activities of obtaining the right goods, works and / or services from the right provider, at the right time, in the right place, of the right quality and at the right price. It encompasses everything from repeat,

low-value orders through to complex healthcare service solutions developed through partnership arrangements. There are a range of procurement approaches available which include working with existing providers, non-competitive and competitive tenders, multi-provider models such as Any Qualified Provider (AQP) and Framework Agreements.

- 1.4 Once a decision has been made to go out to procurement, this Policy sets out:-
- a) the CCG's approach for facilitating open and fair, robust and enforceable contracts that provide value for money and deliver required quality standards and outcomes, with effective performance measures and contractual levers.
 - b) the transparent and proportional process by which the CCG will determine whether health and social services are to be commissioned through existing contracts with providers, competitive tenders, via an AQP or framework approach or through a non-competitive process.
 - c) The CCGs approach with adoption of the learning following the premature end to the UnitingCare (UC) contract to demonstrate how the CCG is embedding the learning (appendix 3 – checklist to be completed for each procurement)
 - d) the process for early determination of whether, and how, services are to be opened to the market, to facilitate open and fair discussion with existing and potential providers and thereby to facilitate good working relationships.
 - e) how the CCG will meet statutory procurement requirements.
 - f) how the CCG will ensure it does not engage in anti-competitive behavior, and protect and promote the right of patients to make choices about their healthcare.
 - g) how CCG will demonstrate compliance with the principles of good procurement practice:
 - Transparency;
 - Proportionality;
 - Non-discrimination;
 - Equality of treatment;
 - Fair and open competition.

2. Purpose

- 2.1 The purpose of the policy is to ensure that when commissioning clinical services, the CCG:-
- i. complies with the regulatory framework of all relevant legislation and guidance, its own Constitution, Standing Orders, Scheme of Delegation and Prime Financial Policies;
 - ii. acts with a view to securing the needs of its local population, and improves the quality and efficiency of clinical services;
 - iii. treats providers fairly and equally and acts in a transparent and proportionate way;
 - iv. provides best value for money; (defined as 'the optimum combination of whole life cost and quality (or fitness for purpose) to meet the user's

requirement. This is rarely synonymous with the lowest price. Where an item / service is chosen that does not have the lowest whole life costs, then the additional value added benefits must be clear and justifiable.);

- v. ensures that all procurement is conducted honestly and legally, avoiding conflicts of interests;
- vi. ensures, where possible, that procurement is undertaken in a sustainable way, minimising the impact on the environment and considers social value; where appropriate, considering fair trade and ethical procurement;

The CCG is committed to demonstrate via this policy how the learning from the OPACs procurement, and the subsequent publication of ISAP guidance, has been embedded with the ultimate aim of restoring public trust around the CCGs ability to undertake procurement and its use of public funds.

3. Scope

- 3.1 As far as it is relevant, this Policy applies to all CCG procurements (clinical and non-clinical). However, it is particularly relevant to procurement of goods and services that support the delivery of healthcare and certain sections relate only to procurement of health and social services.
- 3.2 This Policy must be followed by all CCG employees and staff on temporary or honorary contracts, representatives acting on behalf of CCG including staff from member practices, and any external organisations/agencies acting on behalf of the CCG.

4. Statutory Framework

4.1 Other legislation and guidance affecting procurement in the NHS includes:

- Section 11 of the Health and Social Care Act, 2001 requires commissioners of healthcare services to ensure patients and their representatives are involved in and are consulted on planning of healthcare services
- Section 242 of the National Health Service Act, 2006 provides that commissioners of healthcare services have, in relation to health services for which they are responsible, a legal duty to consult patients and the public – directly or through representatives – on service planning, the development and consideration of service changes and decisions that affect service operation
- Section 75 of the Health and Social Care Act and Section 75 of the Health and Social Care Act and Statutory Instrument National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 places requirements on commissioners to ensure that they adhere to good practice in relation to procurement, do not engage in anti-competitive behaviour and promote the right of patients to make choices about their healthcare.
- **Public Contracts Regulations 2015**
The CCG must comply with the 2015 Public Contracts Regulations when carrying out its clinical procurement activities. On 26 February 2015, the

Public Contracts Regulations 2015 came into force. The new regulations replace the Public Contracts Regulations 2006. With effect from the 18 April 2016 healthcare services within the meaning and scope of 6.10 of the legislation will be subject to the new 'Light Touch' regime of the Public Contracts Regulations 2015.

Time limits imposed by the CCG on suppliers, such as for responding to adverts and tenders, must be reasonable and proportionate. There are no stipulated minimum time periods in the light touch regime. The CCG will use their discretion and judgement on a case by case basis.

Where there is only one provider capable of supplying the services required the CCG will need to articulate the grounds for using the negotiated procedure without a call for competition to record its decision making.

Following award of the contract the CCG must publish within 30 days of award a contract award notice. The new regulations also allow for a group award notice to be published on a quarterly basis. In this instance the award notices must be published within 30 days of the end of each quarter.

- **Integrated Support and Assurance Process (May 2017)**

NHS England and NHS Improvement recognise that the contractual arrangements through which some new care models will be implemented may mean:

- The contract structure, form, content or the calculation of the financial value of the contract envelope are 'novel';
- The bidder's organisational forms may be complex, as providers form legal entities and arrangements that allow for greater collaboration between partners; and
- A single procurement for a new care model can significantly affect incumbent NHS providers.

Reviews of the collapse of NHS Cambridgeshire and Peterborough Clinical Commissioning Group's contract with UnitingCare Partnership in December 2015 found that parts of the system worked in silos, while commissioners, providers and regulatory bodies did not have a full shared understanding of the contract risks. Clinical commissioning groups (CCGs), participating providers and their respective governing bodies and boards should ensure they are familiar with these reviews' recommendations before embarking on novel and complex contract structures (called 'complex contracts' in this guidance). This process identified seven key lessons, and four questions that need to be answered.

Seven lessons:

1. The service design needs to be right from the outset;
2. Cost information that legacy providers share with commissioners must be transparent;
3. Commercial skills and awareness will be needed;
4. Commissioners need to be clear on the role of external advisors and ensure that sufficient expertise is provided. The advice from different external advisers needs to be corroborated and the proposal should be consistent with the advice given;
5. Appropriate terms should be agreed at the start of the procurement process;
6. Contract award and/or commencement of service delivery should be delayed if issues are unresolved; and

7. NHS Improvement and NHS England should scrutinise the arrangements for these complex contracts through an integrated process.

Key questions:

- Will the service model produce net benefits?
- Are the provider and commissioner capable of managing the contract and the risk allocated to them?
- Have the consequences for other providers been thought through?
- Does the proposed service model merit considering adjustments to the regulatory approach, including the approach to failure?

NHS England and NHS Improvement established a group in August 2016 to design a consistent, streamlined process for supporting and assuring procurements for complex contracts. This group designed the Integrated Support and Assurance Process (ISAP) described in this document.

NHS England and NHS Improvement want to support commissioners and providers to identify, understand and manage the risks in developing such contracts². The ISAP provides a co-ordinated approach to reviewing the procurement and transactions related to complex contracts. It will enable all parties to learn from previous successes and failures and implement best practice.

The ISAP has two purposes: to support the work of local commissioners and providers in creating successful and safe schemes, and to provide a means of assurance that this has happened. It depends on:

- Competent local executives designing complex contracts and arrangements, along with providers successfully implementing services under those arrangements;
- Well-informed commissioner governing bodies and provider boards holding them to account and shaping the solution; and
- An integrated process carried out by NHS England and NHS Improvement providing final assurance that the complex contract arrangements have been robustly constructed according to defined good practice.

This document reflects our current guidance. The ISAP has been built on existing processes – for example, NHS Improvement’s approach to reviewing transactions for NHS foundation trusts– and will continue to be refined.

5. Roles, Responsibilities and Governance

5.1 NHS Cambridgeshire and Peterborough CCG

The CCG is legally accountable for commissioning of health services for its local population. In so far as clinical procurement is a means of commissioning clinical services (including service redesign) the CCG is responsible for:-

The outcome of the procurement process; and
Ensuring the process is carried out fairly and in accordance with the law, whilst ensuring improved health outcomes and value for money.

5.2 The Governing Body (GB)

The CCG GB will be responsible corporately for:-

- Approving the procurement route;
- Signing off specifications and evaluation criteria;
- Signing off decisions on which providers to invite to tender;
- Making final decisions on the selection of the preferred provider(s), considering this from a broad perspective rather than their own area of expertise.
- Scrutinizing all procurement risks and ensuring that all mitigation actions are addressed;
- Scrutinizing and providing the approval level of challenge to information and advice provided by professional advisors e.g. legal, financial, commercial, procurement expertise;
- As a result of the OPACs procurement a check list has been developed which is part of this policy. Each procurement presented to the GB will need to demonstrate to the GB that the check list has been completed and there are no issues that would prevent finalisation of the procurement.

When authorising and approving clinical procurement decisions the CCG will comply with its Scheme of Delegation as set out in its Constitution and Standing Financial Instructions.

5.3 Lay Members

Lay Members of the Governing Body will undertake a scrutiny/critique role to ensure there is independent review of procurement options and decision.

5.4 Lead Director

The Lead Director responsible for this Policy is the Chief Finance Officer.

5.5 Senior Responsible Owner

The CCG Executive Director leading the clinical commissioning work is known as the Senior Responsible Owner (SRO) for both the procurement exercise and for any follow up commissioning work needed once the procurement exercise has been completed. Executive Directors involved in commissioning, in consultation with relevant stakeholders, are responsible for agreeing service and care pathway designs and drawing up the specification of services required. Depending on the value of the new clinical services arrangement, the specification for a service may need CCG Governing Body approval before a competition for the service being launched.

It will be the responsibility of the SRO to ensure that they hold a direct relationship with all professional advisors appointment to support the procurement process including legal, financial and commercial advice.

It will also be the responsibility of the SRO to ensure that members of the Project Team have the relevant and appropriate procurement training to support the process.

5.6 Chief Finance Officer

The Chief Finance Officer or Deputy Chief Finance Officer will be responsible for oversight of all financial risks and ensuring that these are managed effectively and escalated to the CCG Governing Body. The CFO will be a member of the Core Project Team or delegated Committee (Procurement Programme Board), for significant or complex procurements, with appropriate financial representation provided for smaller value projects.

5.7 Procurement Support

The CCG is reviewing via a business case if it is more appropriate for the CCG to directly employ procurement expertise as its likely there are a number of procurements in the pipeline as part of the Sustainability Transformation Programme (STP).

Where it is required and considered appropriate, the CCG will determine the level of procurement support needed to undertake the procurement safely. This will depend on the complexity of the procurement and the rationale for the level of support required must be detailed in the procurement support proforma (Appendix 4) and signed off by the SRO.

This policy requires that any external procurement support is sought via a 3 tender process as a minimum and that references are requested. The selection of the preferred procurement provider will be signed off by the SRO for the relevant procurement and the Chief Finance Officer (CFO) or Accountable Officer (AO).

5.8 Procurement Advice

Where it is required and considered appropriate, the CCG will determine the level of procurement advice (legal, financial, commercial, other) needed to undertake the procurement safely. This will depend on the complexity of the procurement.

Procurement Advisors will be retained throughout the Procurement process and will attend the Core Project Team and relevant delegated Committee (Procurement Programme Board) / Governing Body meetings as required.

The scope of work commissioned from advisors should be reviewed in response to emerging risks and, where appropriate, extended to address these.

5.9 Procurement Oversight – Procurement Programme Board or Delegated Committee

The SRO will ensure that a Procurement Programme Board is established to provide strategic oversight for the entire procurement process. Alternatively, an appropriate Sub-Committee could provide this oversight. The relevant Group will be responsible for managing compliance in the following areas against relevant national and local protocols, guidance and strategies:

- governance including legal advice and risk management;
- finance;
- tendering;
- contract monitoring; and
- contract termination.

The SRO will be responsible for ensuring that the checklist (as per Appendix 3) is completed prior to any provider selection.

The Procurement Programme Board, via the SRO, will be responsible for providing detailed oversight to the Governing Body of all aspects of the procurement process, including risk management, legal advice, commercial advice and the full outcomes of any associated Gateway Reviews and other external reviews.

5.10 Project Team

A Project Team will be established to take forward the operational management of the procurement process, the size of which will be determined by the value and complexity of the procurement.

5.11 NHS England

Dependent upon the scale of the procurement, NHSE will be approached to provide constructive challenge and support, including via the ISAP guidance if appropriate.

5.12 Governance Structures for Procurement Process:-

<p>Level One CCG Governing Body (excluding any member who may have a potential Conflict of Interest)</p>	<ul style="list-style-type: none"> • Agree Business Case • Agree the procurement route and contract specification • Seek assurance that the procurement process has been completed as per the policy and strategy – via checklist compliance • Receive in full all information provided by relevant external advisors, and relevant reviews including Gateway reviews. External advisors should be present to answer questions and challenge • Review, scrutinize and challenge information and advice above. • Review all HIGH risks escalated to the CCG Assurance Framework & Risk Register and ensure that all mitigating actions are completed in line with agreed Action Plans. • Review the level of scope of procurement advice based upon the any emerging risks • Endorse the decision on the preferred bidder • Give authority to award the contract
<p>Level Two Programme Board or Delegated Sub-Committee (including the SRO – Executive Director and Chief Finance Officer of Deputy Chief Finance Officer)</p>	<ul style="list-style-type: none"> • Robust financial assessment based on business case and financial envelope • Monitor and assure work of procurement project team • Sign off the shortlist of bidders, the evaluation scoring criteria, the recommendation to the Governing Body to appoint a preferred bidder and the award of the Contract • Report to the Clinical Executive Committee and subsequent sign off by the CCG GB
<p>Level Three Procurement Project Team CCG Officers, Clinical and other Advisors</p>	<ul style="list-style-type: none"> • Manage the procurement to the project timeline • Develop all tender and contract documents • Develop and propose the evaluation scoring • Evaluate assessment criteria • Agree the contract terms and post procurement award and negotiate the contract • Prepare update and briefing reports for the Programme Board/Clinical Executive or Delegated Sub-Committee and GB. • Undertake adequate and relevant procurement training to support the delivery of the procurement.

6. Guiding Principles

- 6.1 In line with its Procurement Strategy, the CCG will conduct its procurement activities in compliance with the following principles as set out in legislation and national guidance. When procuring health care services, the CCG will seek to act so as:-
- a) To secure the needs of patients who use services and to improve the quality and efficiency of those services, including through providing them in an integrated way;
 - b) To act transparently and proportionately, and to treat providers in a non-discriminatory way;
 - c) To procure services from providers that are most capable of delivering the overall objective and that provide best value for money;
 - d) To consider ways of improving services (including through services being provided in a more integrated way, enabling providers to compete and allowing patients to choose their provider).
- 6.2 In relation to each purchasing decision concerning health care and social care services, the CCG will:
- a) Consider the extent to which any form of competition is required and consider the most appropriate process and procedure for awarding the relevant contract or contracts;
 - b) 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. The CCG will appoint the best provider, offering the best quality services that are affordable regardless of who the provider is as they will have passed the fit and responsible test in the first instance;
 - c) When there is a joint procurement with Local Authorities, the CCG will ensure that it complies with applicable NHS Guidance.
 - d) Purchasing decisions will be led by clinical needs and measurable improvement in outcomes with clear clinical leadership informed by gathering patient needs from the outset.
- 6.3 The CCG will, 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:
- i. Are good employers who comply with all relevant employment legislation, including the Public Interest Disclosure Act 1998;
 - ii. Maintain acceptable standards of health and safety and comply fully with all legal obligations;
 - iii. Meet all tax and national insurance obligations;
 - iv. Meet all equal opportunities legislation;
 - v. Are reputable in their standards of business conduct;
 - vi. Respect the environment and take appropriate steps to ensure they minimise their environmental impact;
 - vii. Can evidence an appropriate record of involving patients in their services and providing high quality services;
 - viii. Can demonstrate an appropriate record of successful partnership working with commissioners and other providers in the best interests of patients and public; and
 - ix. Are open and transparent with commissioners on all Patient Safety and Quality issues within their services with accurate information and reporting.

- x. Are aligned to the NHS Sustainability Agenda, and work towards the aims and objectives of the CCG's Sustainability Strategy and Sustainable Delivery Action Plan.
- 6.4 The CCG will, in each procurement and consistently in compliance with the relevant law, exclude companies which have been convicted of offences, or whose director(s) or another 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 of committed an act of grave professional misconduct in the conduct of their business. However, any corrective/remedial action taken by the company in response to such an offence will also be taken into account in determining the suitability as a bidder.
- 6.5 The CCG will, in each procurement, and consistently within 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
- 6.6 The CCG will only enter into contracts on behalf of the CCG unless an organisation has delegated its authority to the CCG, and the CCG may only enter into contracts within the statutory framework set up by the CCG and vice versa.
- 6.7 The CCG will decide on the most appropriate procurement route on a case by case basis, in accordance with the framework of principles set out in Monitor's 'Substantive Guidance' on the 2013 Regulations. In line with the Guidance, the CCG will consider the following key questions when they are procuring NHS health care services. Asking and satisfying themselves on these questions will help commissioners comply with the regulations.
- a) What are the needs of the health care service users we are responsible for?
 - b) How good are current services? How can we improve them?
 - c) How can we make sure that the services are provided in a more joined-up way with other services?
 - d) Could services be improved by giving patients a choice of provider to go to and/or by enabling providers to compete to deliver services?
 - e) How can we identify the most capable provider or providers of the services?
 - f) Are our actions transparent? Do people know what decisions we are taking and the reasons why we are taking them?
 - g) How can we make sure that providers have a fair opportunity to express their interest in providing services?
 - h) Are there any conflicts between the interests in commissioning the services and providing them?
 - i) Are our actions proportionate? Do they reflect the value, complexity and clinical risk associated with the services in question and are they consistent with our commissioning priorities?
- 6.8 The CCG will ensure that at any time during the procurement a providers legal entity changes that the provider is required to go through the PQQ stage again to ensure that the requirements of the PQQ is still met.

7. National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013

7.1 The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 provides that when a CCG procures health care services for the purpose of the NHS, it must act with a view to achieving the following objectives, thus the CCG:

- 4.1.1.1 must act with a view to securing patients' needs and improving the quality and efficiency of the service;
- 4.1.1.2 must act in a transparent and proportionate way and treat bidders equally and in a non-discriminatory way;
- 4.1.1.3 where third parties, assist or support a commissioner in their procurement activity, the commissioner must ensure that they follow the requirements of the Regulations in the same way the commissioner must do itself;
- 4.1.1.4 must maintain and publish a record of each contract awarded for the provision of healthcare services through the development of a Procurement Register. In addition, Regulation 9(1) of the Procurement, Patient Choice and Competition Regulations requires commissioners to maintain and publish a record of all the contracts that they award on the website maintained by NHS England for this purpose. This is currently <https://www.supply2health.nhs.uk/>;
- 4.1.1.5 must not engage in anti-competitive behaviour unless in the interests of patients;
- 4.1.1.6 must maintain a record of how any conflicts of interest between commissioners and providers are managed;
- 4.1.1.7 must maintain a record of how, in awarding the contract, the CCG / NHS England complies with certain statutory duties under the NHS Act 2006;
- 4.1.1.8 provide thorough justification if competition not required where services are only capable of being provided by a particular provider;
- 4.1.1.9 must publish contract notices (if applicable) and facilitate expressions of interest; and
- 4.1.1.10 consider improving quality and efficiency of services through providing services in an integrated way, enabling providers to compete and allowing patients a choice of provider.

7.2 The 2013 Regulations also govern the circumstances when the CCG may award a new contract for clinical services without a competition (Regulation 5). They provide that the CCG:

“may award a new contract for the provision of health care 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”.

7.3 When advertising an intention to seek offers for a clinical services contract, the 2013 Regulations require CCG to publish a contract notice on the dedicated website maintained by NHS England (Regulation 4) – NHS Supply2Health:

<https://www.supply2health.nhs.uk/S2H-Home.aspx>

The notice must include:

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

The CCG must also have arrangements in place which enable providers to express an interest in providing clinical services.

- 7.4 The obligation of transparency which is imposed on the contracting authority consists in ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of procurement procedures to be reviewed.
- 7.5 The 2013 Regulations also set out the role of Monitor, including its investigation and enforcement powers in relation to breaches or potential breaches of the 2013 Regulations.
- 7.6 Failure to comply with the 2013 Regulations can have serious consequences and result in serious sanctions for the CCG. Where there is doubt regarding CCG's compliance with its obligations, legal advice should be sought via the CCG Secretary / Deputy Director of Corporate Affairs.

8. European and UK Procurement Legislation

- 8.1 When procuring clinical services, the CCG will ensure that it complies with EU procurement law and the UK's implementing Regulations to the extent that these are applicable to the clinical services being procured. In particular it will ensure compliance with the requirements of:

- The Treaty on the Functioning of the European Union ("EU Treaty");
- Directive 2004/18/EC and the Remedies Directive 2007/66/EC;
- The Public Contracts Regulations 2015 (as amended); and
- Relevant EU and UK procurement case law.

Together the "EU Procurement Rules" including any updating European and/or UK legislation and case law which updates, amends or replaces them.

- 8.2 The EU Procurement Rules will apply where CCG proposes to enter in to a legally enforceable, written contract, for clinical services which has an estimated full-life value above the relevant financial threshold.
- 8.3 The EU Procurement Rules divide services in to the following categories:
- Procurement of Goods and Services: to which the full extent of the EU Procurement Rules apply at **£172,514 (excluding VAT)**;
 - Procurement of Light Touch Services: to which for specific CPV categories the EU Procurement Rules only apply in part. The EU thresholds apply at the higher threshold of **£625,050**.
 - Procurement of Works. The EU threshold applies at the threshold of **£4,322,192**.
- 8.4 The obligations applicable to clinical Light Touch services, and which the CCG will ensure it complies with include:
- treating providers equally and in a non-discriminatory way;
 - acting transparently (including the duty to advertise a contract where

- there is a likely cross-border interest);
- complying with the rules on technical specifications, including that these do not favour particular providers or present unjustified obstacles to competition;
- publishing a contract advertisement and an award notice in the Official Journal of the European Union ("OJEU"); and
- the provision of statistical and other reports.

8.5 For all procurements that will exceed the EU Procurement Thresholds detailed in 8.3, an advert must be prepared and sent to the Official Journal of the European Union (OJEU). For adverts in the OJEU the following steps must be followed:

The Contract Notice and Contract Award standard forms should be used - these are also available to download from the SIMAP website. Alternatively Commissioners may choose the templates within an electronic tendering system.

OJEU will publish the advert within 12 days. If using an electronic tendering system the advert will be placed in OJEU within 5 working days.

If CCG decides to also advertise in other publications (e.g. the national press, the Supply2Health website, a trade magazine etc), CCG must not:

- send the advert to the other publication(s) before the CCG send the advert to OJEU. Note: CCG does not have to await the publication of the OJEU advert, The CCG obligation is to ensure that the OJEU advert is dispatched before any other advert
- provide information or detail in the other advert(s) that does not appear in the OJEU advert.

For above threshold procurements a tender process that utilises the PQQ (such as the Restricted process) may be used.

At every stage of the procurement process up to selection of preferred bidder if there are changes to bidders organisational form that bidder is required to be assessed via the PQQ stage again. This is to confirm that the provider still meets the requirements of the procurement.

8.6 For below threshold procurements a tender process that utilises the PQQ (such as the Restricted process) cannot be use.

8.7 If the contract value is below the relevant threshold value at which an advert is mandatory, an advert can still be placed 'on a voluntary basis'. Case-law seems to indicate that voluntary publication of a notice in OJEU does not mean that the competition is subject to the processes and procedures of the Directives, however it is best practice to make this clear in the OJEU notice and subsequent tender documents.

8.8 Where the contract falls under the threshold of the EU Regulations, the Telaustria case ruled that the procedure employed must be still be consistent with the principles of the treaty, particularly the obligation of transparency and timescales for response to tenders, and that therefore a "sufficient" degree of advertising should be used.

8.9 Failure to comply with the EU Procurement Rules can have serious

consequences and result in sanctions for CCG.

8.10 The Public Services (Social Value) Act 2012 (the “Social Value Act”) applies to CCG when it carries out its clinical procurement activities. In accordance with its obligations under the Social Value Act, CCG will consider, at both selection stage (such as PQQ) and award tender stage:

- how the services to be procured may improve the social, environmental and economic wellbeing of its area; and
- how in conducting a procurement process CCG might act with a view to securing that improvement, including whether to undertake a consultation on these matters (or as part of CCG’s wider statutory obligations to consult).

9. Anti-Competitive Behaviour

9.1 The 2013 Regulations, and in particular Regulation 10, prohibits the CCG from engaging in anti-competitive behaviour unless to do so is in the interests of NHS health care service users.

9.2 Regulation 10 also provides that an arrangement or contract for the provision of clinical services must not include any term or condition restricting competition which is not:

- necessary for the attainment of the intended outcomes which are beneficial for the people who use the services;
- or the overarching objective referred to in Regulation 2 (as set out at Section 7.1 above).

9.3 The CCG must ensure that it complies with its obligations under Regulation 10.

9.4 The CCG will address this in the context that market development and the procurement of service provision are key enablers to the delivery of the CCGs objectives. Through market exploration and development C&PCCG will seek to identify and develop a provider base that can support the delivery of the shared CCG and STP objectives. As an alternative to the traditional full market tender exercise the CCG may select alternative routes to the market such as the Most Capable Provider, single tender action, the establishment of framework agreements and partnership agreements. This approach is supported by the NHS England ‘Five year Forward View (October 2014).

10. Governance and Standards of Business Conduct

10.1 When procuring clinical services, CCG will ensure that it complies with its duties under its Constitution (including its Standing Orders, Scheme of Reservation and Delegation and THE CCG’s financial policies).

10.2 Standing Orders and the Scheme of Reservation and Delegation ensure that decision-making is informed by intelligent information covering the full range of corporate, financial, clinical information and research governance and are central to CCG's governance framework and to sustaining the highest standards of corporate and personal probity, accountability and openness. Good governance provides the bedrock for effective performance and assuring better health and health services for the local population of Cambridgeshire & Peterborough.

- 10.3 Prime Financial Policies are referred to within the CCG's Constitution for the management of the CCG's financial affairs.
- 10.4 The CCG's Standing Financial Instructions detail the financial responsibilities, policies and procedures adopted by the CCG to ensure that the CCG's financial transactions (including procurement transactions) are carried out in accordance with the law and with Government policy. They are used in conjunction with the Scheme of Delegation adopted by CCG and included within the Constitution's Scheme of Reservation and Delegation.
- 10.5 The CCG's financial policies identify the financial responsibilities which apply to everyone working for the CCG and its Local Commissioning Groups.
- 10.6 Should any difficulties arise regarding the interpretation or application of any of CCG's financial policies then the advice of the Chief Finance Officer must be sought before acting.
- 10.7 The failure to comply with Standing Orders and Standing Financial Instructions can in certain circumstances be regarded as a disciplinary matter that could result in dismissal.

11. Procurement Approach

- 11.1 The CCG recognises that effective engagement with stakeholders is an essential requirement of all NHS organisations and will also offer substantial benefits to the generation of outcome-based service specifications. Therefore the CCG will engage with stakeholders at all appropriate times during the commissioning and procurement processes in accordance with the principles set out in the CCG's Communications, Membership and Engagement Strategy.
- 11.2 Stakeholder engagement including patient involvement with new and existing providers, and the involvement of members of the public, clinicians and other service users will occur at key points in the service review and procurement processes.
- 11.3 Input from the above groups, the CCG's Patient Reference Group and LCG Patient groups which have a wide range of relevant experience, will be used to ensure the views of patients are included in the services being commissioned and the CCG will work with patients and patient groups to ensure that their views are included.
- 11.4 The CCG will decide on the most appropriate procurement route on a case by case basis, in accordance with the framework of principles set out in Monitor's 'Substantive Guidance' on the 2013 Regulations.
- 11.5 When making decisions on procurement options, the will work with Commissioning Partners and will seek to ensure that the final decision complies with relevant legislation and regulations.
- 11.6 The procurement approach will be proportionate to the likely contract value and the commissioning objectives.
- 11.7 Further guidance in relation to the EU principles and national legislation and how they apply to a specific case may be required and, where relevant, guidance will be sought from the identified Procurement Support Framework providers, who will be able to provide access to appropriate legal or other specialist advice on these

issues, if considered necessary.

- 11.8 Any decision taken by the CCG to procure services without a competitive tender will be clearly explained by the CCG, documented and discussed/signed off by the Governing Body.

12. Managing Conflicts Of Interests

- 12.1 A conflict of interest arises where an individual's ability to exercise judgement or act in one role is or could be impaired or otherwise influenced by his or her involvement in another role or relationship. The individual does not need to exploit his or her position or obtain an actual benefit (financial or otherwise). A potential for competing interests and/or a perception of impaired judgment or undue influence can also be a conflict of interest.
- 12.2 The management of conflicts of interest is vitally important in the procurement of clinical services and managing them appropriately is paramount to the probity and accountability of CCG's decision making and will ensure that the principles of transparency, fairness and non- discrimination are upheld.
- 12.3 As an organisation led by GPs, CCG will be particularly subject to conflicts of interest or potential conflicts of interest when procuring clinical services. CCG will therefore adopt rigorous standards in the identification and management of conflicts or potential conflicts of interest to ensure that the above principles can be upheld.
- 12.4 Please refer to the CCG's Conflict of Interests Policy for further guidance.

13. Risk Management

- 13.1 In line with its Risk Management Policy, the CCG will ensure that it has adequate measures in place to identify and manage risk. Such measures may include ensuring:
- Clinical procurements are adequately prepared and planned;
 - Each clinical procurement project has an Senior Responsible Owner and that roles, responsibilities, reporting lines and channels of communication within the wider commissioning and Procurement Team are clear;
 - The individuals involved have the necessary expertise, experience and training to match the requirements of the role and its responsibilities (and that this is kept up to date);
 - Each project has a pre-agreed and end to end procurement strategy and timetable, tailored to the requirements of the project; the resources available, the business objective and which has identified and sought to minimise any risks involved;
 - Adequate and appropriate records are kept to comply with CCG's statutory obligations and to provide a robust audit trail of decisions and action taken;
 - A risk identification and escalation process is established at the outset, to include a risk register which is regularly reviewed and updated with appropriate risk management strategies to address each risk identified;

- Due weight will be given to the non-clinical aspects of procurement and specifically to the clinical risks arising from unidentified non-clinical risks.
- Due consideration of both provider and bidder economics should be given to quantify the financial risks associated with the proposed contract.
- Where identified risks have an impact on the CCG's statutory functions and strategic aims, these will be notified to the Governing Body escalated to the CCG Assurance Framework and Risk Register. The SRO will be responsible for ensuring that all mitigating actions are completed in line with agreed Action Plans.
- The scope of work commissioned from advisors should be reviewed in response to emerging risks and, where appropriate, extended to address these
- All identified HIGH risks will also be notified to NHSE at an early stage.
- The use of robust and up to date project and procurement documents, which are legally compliant, clear and unambiguous, and subject to a strict policy of version control; and
- The conduct of the entire process is in accordance with the law and key procurement principles namely: transparency; equal treatment; non-discrimination; proportionality and sound administration.

14. Procurement Planning

- 14.1 Each year, the CCG will ensure that a Procurement Plan will be maintained that will list all current and future procurements. The Procurement Plan will be reviewed on a regular basis taking into account local and national priorities; CCG's commissioning intentions and nationally mandated procurements. In addition it will take into account the impact of completed and on-going procurements.
- 14.2 The Plan will highlight the priority, timescale, risk and resource requirement for each potential procurement. Not every priority on the Procurement Plan will result in a procurement, but indicates CCG's intention to review the service or activity which may result in a procurement.
- 14.3 The Plan will be developed as a key element to provide communication between CCG, its membership and potential providers. Through transparent and open processes CCG will actively encourage provider engagement. This is something that will be developed in collaboration with the STP programme.

15. Approach to Market

15.1 Any Qualified Provider

- 15.1.1 With the AQP model, for a prescribed range of services, any provider that meets criteria for entering a market can compete for business within that market without constraint by a commissioner organisation. Under AQP there are no guarantees of volume or payment, and competition is encouraged within a range of services rather than for sole provision of them.

15.1.2 The AQP model will not always be appropriate, for example where:

- i. the number of providers needs to be constrained, e.g. the level of activity can only support one provider;
- ii. clinical pathways dictate a restricted number of providers;

15.1.3 Value for money cannot be demonstrated without formal market testing (e.g. to determine the price the CCG will offer for provision of the services); Innovation is required from the market and cannot be achieved collaboratively;

15.1.4 There is no effective method of selecting from amongst qualified providers for delivery of specific units of activity;

15.1.5 Overall costs would be increased through multiple provider provision because of unavoidable duplication of resources.

15.1.6 The AQP model promotes choice and contestability, and sustained competition on the basis of quality rather than cost. Any service that is contracted through the AQP model does not need to be tendered, although it will be advertised if appropriate (using Supply2Health) and potential service providers will need to be qualified.

15.1.7 A standard NHS contract will be awarded to all providers that meet:

- i. Minimum standards of clinical care (implying qualification/accreditation requirement);
- ii. The price the CCG will pay;
- iii. Relevant regulatory standards.

15.1.8 The CCG will have regard at all times to the EU Treaty principles of non- discrimination, equal treatment, transparency, mutual recognition and proportionality when applying the AQP procedure.

15.2 Competitive Tendering

It is anticipated that an increasing number of services will be subject to competitive tendering in order to demonstrate the application of the principles of transparency, openness, equitability and obtaining and delivering value for money. Most common routes include:-

15.3 Open Procedure

In the Open Procedure all applicants who respond to the Contract Notice will be invited to submit a tender for the contract opportunity. Generally speaking, the Open Procedure will be used for simple and straightforward procurements and for tenders under the EU threshold.

15.4 Restricted Procedure

The Restricted Procedure is used where the Contracting Authority wants to restrict the number of Bidders who will be issued with the Invitation to Tender. Under the Restricted Procedure, a minimum of five (5) applicants must be

invited to go through to the next stage of the procurement process (provided that there are five (5) suitable applicants). If there are less than five (5) suitable applicants then you can proceed with the procurement process, provided that the number of applicants selected is sufficient to ensure genuine competition. The restricted procedure cannot be used for procurements under the EU threshold.

15.5 Competitive Dialogue

The competitive dialogue procedure allows the contracting authority to enter into dialogue with bidders, following an OJEU notice and a selection process, to develop one or more suitable solutions for its requirements and to determine which chosen bidders will be invited to tender. The competitive dialogue procedure is a flexible procedure, suitable where there is a need for authorities to discuss aspects of the proposed contract with candidates. For example, the procedure would be used where authorities cannot define clearly in advance the technical means capable of satisfying their needs or objectives, or where there is a range of options for the legal and/or financial structure of a project.

15.6 Accelerated Procedures

These can be used in a Restricted or Negotiation with a call for competition procedure where urgency makes the normal timescale impractical. It does not alter the processes of the procedure, but it does reduce the timescales: The normal time limits of 37 days (or 30 days for electronic) to express an interest can be reduced to 15 days (or 10 days for electronic).

15.7 Competitive Procedure with Negotiation

Under which a selection is made of those who respond to the advertisement and only they are invited to submit an initial tender for the contract. The contracting authority may then open negotiations with the tenderers to seek improved offers.

15.8 Innovation Partnership Procedure

Under which a selection is made of those who respond to the advertisement and the contracting authority uses a negotiated approach to invite suppliers to submit ideas to develop innovative works, supplies or services aimed at meeting a need for which there is no suitable existing 'product' on the market. The contracting authority is allowed to award partnerships to more than one supplier.

15.9 Negotiated Procedure Without Prior Publication.

In certain narrowly defined circumstances the contracting authority may also award a contract using this method. Here the contracting authority would approach one or more suppliers seeking to negotiate the terms of the contract. One of the permitted circumstances is where, for technical or artistic reasons or because of the protection of exclusive rights, the contract can only be carried out by a particular supplier.

15.7 Negotiated Procedures

It is recommended that this procedure is not used without good reason, usually due to the failure of a Restricted procedure on lack of competition grounds

where only a single potential provider has been identified to be able to contract with. A negotiated procedure can then begin identifying the organisation and confirming to the market that negotiation has begun to contract with this supplier.

15.8 Non Competitive Process

Competition may be waived in circumstances where the CCG is satisfied that the services to which the contract relates are capable of being provided only by that provider. In these circumstances the procedures set out within the CCG's Standing Orders and Standing Financial Instructions must be followed. Where it is decided not to competitively tender for new services or where services are significantly changed, CCG Governing Body approval must be obtained following any recommendation to follow this approach.

15.9 Partnership Agreements

15.9.1 Where collaboration and coordination is considered essential, for example in developing new integrated pathways, enabling sustainability of services, ensuring smooth patient handover, coordination etc. CCG may wish to continue with existing "partnership" arrangements. These "Partnership" arrangements must be formalised using the appropriate contract form and must provide:

- 4.1.1.11 Transparency particularly with provision of information sharing good and bad practice
- 4.1.1.12 A contribution to service re-design
- 4.1.1.13 Timely provision of information and performance reporting
- 4.1.1.14 Evidence of improved patient experience year on year
- 4.1.1.15 Evidence of value for money

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

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

15.10 Spot Purchasing

There will be the need to spot purchase contracts for particular individual patient needs or for urgency of unique placements requirements at various times. At these times, a competitive process may be waived. It will be expected that these contracts will undergo best value reviews to ensure the CCG is getting value from the contract. In all cases the CCG should ensure that the provider is fit for purpose to provide the particular service. Generic placements should still be procured competitively in accordance with the regulations. This includes the set up of frameworks for calling off generic placements for care.

15.11 Framework Agreements

15.11.1 Framework Agreements are pre-tendered agreements which are established in compliance with the EU Procurement Rules and which, once established, can be used by the CCG to purchase certain products and/or services without the need to carry out a full

procurement process. The advantages of using a framework agreement is that, once established, it can be used to save both time and cost.

15.11.2 A framework can be established:

4.1.1.16 By the CCG for its own use; or

4.1.1.17 By another clinical commissioning group, contracting authority or a central purchasing body such as the Government Procurement Service (GPS).

15.11.3 If the CCG wishes to use a framework agreement established by another organisation, it should check that that the framework agreement has been established correctly, in accordance with any applicable obligations under the EU Procurement Rules; that the CCG is entitled to use the framework and that it is fit for the CCG's purpose.

15.11.4 In particular, the CCG should check:

4.1.1.18 that it has been identified as a body which is entitled to use the framework;

4.1.1.19 that its requirements fall within the specification of goods / services covered by the framework;

4.1.1.20 that the term of the framework has not expired;

4.1.1.21 that the terms and conditions applicable to call-offs made under the framework are acceptable to the CCG (as the CCG will be unable to make substantial modifications to these); and

4.1.1.22 that the pricing under the framework is acceptable.

15.12 Grants

15.12.1 Grants can be used to provide financial support to a voluntary organisation which provides or arranges for the provision of services which are similar to those in respect of which the CCG has statutory functions. NHS England has published a Grant Agreement, Guidance on the use of the draft model Grant Funding Agreement and a Bitesize Guide.

The model grant agreement is non-mandatory and is for local adaptation as required.

For further information, please visit

<https://www.england.nhs.uk/nhs-standard-contract/grant-agreement/>

15.12.2 Grants should not be used to avoid competition where it is appropriate for a formal procurement to be undertaken.

15.13 Pilot Projects

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

- i. There is a specific goal,
- ii. The timetable is clearly laid out with defined periods for Start date, End date, and the Period for lessons to be learnt,
- iii. Clear and signed contract with the pilot service provider,
- iv. Robust plan/process for evaluation,
- v. Right to terminate a pilot must be included if it is found to be unsafe or the outcomes cannot be met.

15.13.2 It is important to use Pilot Projects only in circumstances where the clinical outputs are not known or cannot be accurately predicted. Pilot Projects can be subject to legal challenge if they do not comply with EU procurement legislation therefore legal advice must be sought before a pilot commences.

16. Tendering Process

This section outlines the typical stages of a tendering process:

16.1 Advertising

- i. Advertisements 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 Supply2Health, THE CCG's website and when applicable the Official Journal of the European Union.
- ii. Advertisements are key to alerting the market, in increasing market stimulation and ensuring adequate competition.
- iii. If the contract value is below the relevant threshold value at which an advert is mandatory, an advert can still be placed 'on a voluntary basis'. Case-law seems to indicate that voluntary publication of a notice in OJEU does not mean that the competition is subject to the processes and procedures of the Directives, however it is best practice to make this clear in the OJEU notice and subsequent tender documents.
- iv. Where the contract does not fall within the scope of the Directives, the Telaustria case ruled that the procedure employed must be still be consistent with the principles of the treaty, particularly the obligation of transparency, and that therefore a "sufficient" degree of advertising should be used.
- v. The Public Contracts Regulations 2015 state that any procurements over **£25,000** must be published on Contracts Finder. This also includes the award notice.

16.2 Memorandum of Information (MOI) and Expressions of Interest (EOI)

- i. Procurements where the contract values exceed the relevant threshold may require the publication of a Memorandum of Information (MOI). 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.
- ii. 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 shared only with organisations to allow them to determine whether they wish to submit a formal Expression of Interest (EOI) in response to the advert.

16.3 Bidder Events

- i. Bidder events allow providers to obtain a more in depth understanding of the procurement requirements and provide an opportunity to: stimulate market interest, raise clarifications and questions, request additional information and obtain market information which may help shape the CCG requirements
- ii. Due to the cost implications of holding bidder events, the overarching principle of Proportionality will remain.

16.4 Pre-Qualification questionnaires

- i. A Pre-Qualification Questionnaire (PQQ) is used to enable the CCG to evaluate providers on their suitability (to secure the necessary reassurances about the capacity, capability and eligibility) to be short listed for the invitation to Tender stage.
- ii. Potential providers will complete a standard format PQQ with questioned tailored to reflect the service and procurement requirements.
- iii. The PQQ document is issued to all parties who submit a formal expression of interest. The PQQ will then be evaluated against predetermined PQQ criteria and enable THE CCG to move from a long-list of suppliers to a short-list.
- iv. The PQQ must only be used on tenders above the EU threshold.

16.5 Invitation to Tender

- i. The Invitation to Tender (ITT) documents are issued to short listed bidders who were selected following the PQQ process. The ITT documents consist of guidance and instructions to the bidders on the process and a response guide based on the approved detailed Service Specification (other than Competitive Dialogue Procedure). Elements of the ITT may include terms and conditions, contract specification, insurance, quality plans, method statements, pricing and fining schedules, bonds and guarantees, key performance indicators.
- ii. Bidders are required to submit their responses to address requirements within the ITT documents. The responses are evaluated against pre- determined, and pre-documented, criteria.

16.6 Tender evaluation

- i. 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.

- ii. An evaluation methodology is formally agreed before the ITT is issued as the ITT must include the relevant scoring criteria and weightings for each section.
- iii. The evaluation process should seek to identify the most economically advantageous Bid(s), both in terms of qualitative and quantitative criteria.
- iv. Multi-disciplinary teams including representation from relevant specialists e.g. HR, Finance, IM&T, Governance, Communications & Patient Engagement will be established for all procurements to ensure fair and transparent scoring of each submission.
- v. In conducting the evaluation, the evaluators must act in accordance with the key principles of the EU Procurement Directives:
 - 1. Fair & Open Competition
 - 2. Non-discrimination
 - 3. Equal Treatment
 - 4. Transparency
 - 5. Proportionality
- vi. All recorded comments and notes would be made available under a Freedom of Information Act request. Confidentiality must be respected and maintained throughout the evaluation process. Any potential or actual conflict of interest must be advised in advance of the tender evaluation.
- vii. Managing potential conflicts of interest appropriately is needed to protect the integrity of commissioners from any perceptions of wrong-doing. Any potential or actual conflict of interest must be advised to Project lead in advance of any tender evaluation. A conflict of interest may include but not be restricted to any direct or indirect links to any of the Bidders and significant shareholdings associated with any of the Bidders.

16.7 Contract award

- i. Following the evaluation panel, the successful provider will be identified based on their total score in the process. It is a legal requirement to notify all providers involved in the ITT process of the outcome. Authorisation for contract award will be sought according to the CCG's Scheme of Delegation which is appended to the CCG's Constitution.
- ii. Letters will be issued to the successful provider informing them of the CCG's decision and also to all unsuccessful providers informing them of the CCG's decision based on the scoring criteria. Information on the evaluation of tenders against the award criteria set out in the ITT, together with specific reasons for the award of these scores has to be provided under the Regulations. As part of Procurement Best Practice, this should be adopted for all Part B services. Further debriefs should only be conducted by email and if requested by a bidder. Only in exceptional circumstances should a telephone or face-to-face debrief be held.
- iii. Once these letters are issued, there will be a 'standstill' period of 10 days. A standstill period is a period of at least 10 calendar days

between the decision to award a public contract and the signing of the contract and is intended to give unsuccessful tenderers an opportunity to challenge the decision before their rights to obtain relief other than damages are closed off. For goods and Part A services the Public Contracts Regulations 2006 (the "Regulations") apply in their entirety to the selection of participants in this contract. This means that a mandatory minimum ten (10) calendar day standstill period will apply before any contract is concluded. As part of Procurement Best Practice this should be adopted for all Part B services.

- iv. Once the 'standstill' period has passed, the contract is then formally awarded to the successful provider(s).
- v. Provided a contract value is above threshold, once a contract has been awarded (including Part B service contracts), the awarding body must publish a notice in OJEU within 48 days of contract award. This notice must be on a Standard Form, available from the SIMAP website. Alternatively, the CCG may choose to use the standard templates with an electronic tendering system. It is mandatory for NHS England and CCGs to maintain and publish a record of each contract awarded for health care services on the Supply2Health website.
- vi. The CCG should ensure the correct use of contract to procure services in line with DOH guidance for both Part A and Part B services including use of the NHS standard contract, and NHS standard terms and conditions of contract for the purchase of goods and supply of services. The CCG may wish to obtain legal support with completing schedules within the NHS standard contracts and/or constructing bespoke contracts. The CCG will also need to comply with guidelines of the Supply2health e-Contracting system.
- vii. In line with Regulation 9(1) of the Procurement, Patient Choice and Competition Regulations, the CCG will maintain and publish a record of all the contracts that they award on the website maintained by NHS England for this purpose. This is currently <https://www.supply2health.nhs.uk/>

16.8 Post Contract Award and Performance Monitoring

- i. Contract management and post-procurement review are features of the post contract award stage. The CCG will ensure that lessons are learned through the audit of procurements, including reviewing delivery of the business case, operational effectiveness and user satisfaction levels.
- ii. Relationship management between the CCG and the provider(s) will hinge on agreed standards for the management interface and management information reporting, performance monitoring, financial reporting and payments, risk management, communication strategy.
- iii. Performance monitoring will require effective monitoring systems to be implemented, to include key performance indicators, standards and targets, variations to contract, timeliness of reporting, variance investigation, complaints, problem resolution and dealing with poor performance and exit strategies.

17. Financial and Quality Assurance Checks

The CCG will require assurance about potential providers. Where this is not achieved through a formal tender process, the following financial and quality assurance checks of the provider will be expected to be undertaken before entering into a contract:

- 4.1.1.23 Financial viability;
- 4.1.1.24 Implications of VAT;
- 4.1.1.25 Economic standing;
- 4.1.1.26 Corporate social responsibility
- 4.1.1.27 Clinical capacity and capability;
- 4.1.1.28 Clinical governance;
- 4.1.1.29 Quality/Accreditation.

18. Principles of Good Procurement

18.1 Transparency

Making commissioning intent clear to the market place. Including the use of sufficient and appropriate advertising of tenders, transparency in making decisions not to tender, and the declaration and separation of conflicts of interest. The CCG will ensure compliance with this principle in the following ways:-

- i. The CCG will commission services from the providers who are best placed to deliver the needs of our patients and population.
- ii. The CCG will procure general goods and services using processes and from suppliers that offer best value for money.
- iii. The CCG will maintain on its website for public view a record of contracts held and information about what services are to be procured and when they will be presented to the market
- iv. The CCG will determine as early as practicable whether and how services are to be opened to the market and will share this information with existing and potential providers.
- v. The CCG will use the most appropriate media in which to advertise tenders or opportunities to provide services, including using the Supply2Health procurement portal established by the DH to advertise all appropriate tenders and OJEU (where appropriate).
- vi. The CCG will robustly manage potential conflicts of interest and ensure that these do not prejudice fair and transparent procurement processes.
- vii. The CCG will ensure that all referring clinicians tell their patients and the commissioner about any financial or commercial interest in an organisation to which they plan to refer a patient for treatment or investigation.
- viii. The CCG will provide feedback to all unsuccessful bidders.
- ix. The CCG will not contract with providers whose pricing strategy constitutes predatory pricing.
- x. The CCG will comply with the transparency requirements of the Public Contracts Regulations 2015

18.2 Proportionality

Making procurement processes proportionate to the value, complexity and risk of the services contracted, and critically not excluding potential providers through overly bureaucratic or burdensome procedures. The CCG will ensure compliance with this principle in the following ways:-

- i. The CCG will ensure that procurement processes are proportionate to the

- value, complexity and risk of the products to be procured.
- ii. The CCG will define and document procurement routes, including any streamlined processes for low value/local goods and services, taking into account available guidance.
- iii. Will consider the splitting of opportunities into LOTS and note internally any justification where LOTS are not used (as per the Public Contract Regulations).

18.3 Non-discrimination

Having specifications that do not favour one or more providers. Ensuring consistency of procurement rules, transparency on timescale and criteria for shortlist and award. The CCG will ensure compliance with this principle in the following ways:-

- i. The CCG will ensure that tender documents are written in a non-discriminatory fashion e.g. generic terms will be used rather than trade names for products.
- ii. The CCG will inform all participants of the applicable rules in advance and ensure that the rules are applied equally to all. Reasonable timescales will be determined and applied across the whole process.
- iii. The CCG will ensure that shortlist criteria are neither discriminatory nor particularly favour one potential provider.

18.4 Equality of treatment

Ensuring that all providers and sectors 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 transparent and fair.

- i. The CCG will ensure that no sector of the provider market is given any unfair advantage during a procurement process.
- ii. The CCG will ensure that basic financial and quality assurance checks apply equally to all types of providers.
- iii. The CCG will ensure that all pricing and payment regimes are transparent and fair (according to the DH Principles and Rules Document).
- iv. The CCG will retain an auditable documentation trail regarding all key decisions.
- v. The CCG will hold all providers to account, in a proportionate manner, through contractual agreements, for the quality of their services.

19. Decommissioning Services

19.1 The need to decommission contracts can arise due to a number of reasons:-

- i. Termination of the contract due to performance against the contract not delivering the expected outcomes. This can be mitigated by appropriate contract monitoring and management and by involving the provider in this. The contract terms will allow for remedial action to be taken to resolve any problems. Should this not resolve the issues, then the contract will contain appropriate termination provisions;
 - The contract expires; and/or
 - Services are no longer required
- ii. A service review demonstrates existing services are not meeting the

health needs of the population. For example the service may be delivered in a location or at a time that may be unsuitable for patients or service changes may be required to reflect developments in medical technology and current standards of care

- iii. There is a clear and objective reason for the decommissioning of a service that is based on assessment of the current providers' performance, value for money and the need for service redesign to improve outcomes for patients
- iv. The original decision to commission the service was made on assumptions that were not realised
- v. There is an inability to demonstrate delivery of agreed outcome measures or failure to deliver outcomes, despite agreed remedial action as detailed in the relevant contract
- vi. Service does not deliver value for money, as demonstrated through financial review, utilising benchmarking tools
- vii. The investment in a service does not maximise the health gain that could be achieved by reinvesting the funding elsewhere
- viii. The service has limited clinical effectiveness or failure to meet relevant quality or safety standards

19.2 Decommissioning should be guided by the following principles:-

- i. The initiation of a decommissioning proposal must be based on sound evidence
- ii. Appropriate engagement with patients and the public must take place before any decommissioning decision is made
- iii. Appropriate engagement with clinicians, including the senior clinician responsible for the delivery of the service, before any decommissioning decision is made
- iv. An assessment of health impact and impact on Equality and Diversity of any decommissioning decision is made
- v. Consideration must be given to the potential adverse impacts of a decommissioning decision, such as patient safety or patient choice
- vi. Consideration must be given to alternative options to decommissioning a service
- vii. In the case of a service being decommissioned THE CCG must seek full assurance that there is a robust process in place to transfer patients to other services and that it is clear to all stakeholders to which alternative services patients are being redirected.

19.3 Where services are decommissioned, the CCG will ensure where necessary that contingency plans are developed to maintain patient care. Where decommissioning involves Human Resource issues, such as TUPE issues, then providers will be expected to co-operate and be involved in discussions to deal with such issues.

20. Summary Guidance on Section 256 Agreements with Local Authorities

Section 256 of the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) enables CCGs to make grants to local authorities towards expenditure on specified community services and any of the local authority functions specified below.

20.1 Community Services

In respect of community services, the CCG may make payments to:

- i. a local social services authority in connection with any social services functions.
- ii. a local education authority for the benefit of disabled persons; or
- iii. a local housing authority in connection with the provision of housing.

20.2 Local Authority Functions

In respect of local authority functions, the CCG may make payments in connection with the performance of any of the local authority's functions providing that in the opinion of the CCG the functions:

- i. have an effect on the health of any individuals;
- ii. have an effect on, or are affected by, any NHS functions; or
- iii. are connected with any NHS functions.

20.3 CCG obligations in respect of Section 256 Agreements

The CCG must also meet a number of conditions when making a grant under 256, these are set out in the NHS (Conditions Relating to Grant Payments by NHS Bodies to Local Authorities) Directions 2013:

- i. The CCG is satisfied that the payment is likely to secure a more effective use of public funds than the deployment of an equivalent amount on the provision of health services;
- ii. Where the grant payment is to meet all or part of the capital costs of a project, the grant amount must be determined before the project begins;
- iii. where the grant payment will be used by the local authority to fund part of a project, the CCG must be satisfied that the local authority intends to meet the remaining costs of the project. The CCG must also be satisfied that this will continue for as long as both the CCG and the local authority consider the project to be necessary or desirable;
- iv. the CCG must ensure, so far as is practicable, that the payment is used by the local authority in such a way as will secure the most efficient and effective use of the amount paid;
- v. if during the course of the grant period, the local authority reduces the level of service it provides below the level originally agreed then the CCG may reduce accordingly the amount of any further payments
- vi. so far as is practicable, ensure that the payment is used by local authority in such a way as will secure the most efficient and effective use of the amount paid.

20.4 Section 75 Agreements

Where appropriate, the CCG will enter into Section 75 Agreements which are an agreement made under section 75 of National Health Services Act 2006 between a local authority and an NHS body in England. Section 75 Agreements can include arrangements for pooling resources and delegating certain NHS and local authority health-related functions to the other partner(s) if it would lead to an improvement in the way those functions are exercised.

20.5 Audit Trail

To ensure financial probity and a clear audit trail Section 256 specifies two prescribed documents must be completed when making a grant:

20.5.1 A certificate of expenditure (Annual Voucher)

The Certificate of Expenditure must be completed by the recipient local authority. The auditors must certify that expenditure in relation to the project funded is fairly stated and in accordance with the relevant terms and conditions.

20.5.2 A Memorandum of Agreement

The second mandatory document is the Memorandum of Agreement. This must include:

- i. a statement of how the Section 256 transfer secures more health gain than an equivalent expenditure of money in the NHS;
- ii. a description of the scheme. In the case of revenue transfers, the services for which money is being transferred should be specified;
- iii. financial details and timescales. This should detail the total amount of money to be transferred under the grant and the amount that is to be transferred in each year. If this subsequently changes the Memorandum of Agreement must be amended and then re-signed;
- iv. details of the evidence that will be used to indicate that the purposes of the grant, as outlined in the Memorandum, have been secured.
- v. The Memorandum of Agreement must then be signed by both the CCG and the local authority.

21. Transfer of Undertakings and Protection of Employment Regulations (TUPE)

21.1 These regulations arose as a consequence of the 1977 EU Acquired Rights Directive and were updated in 2006. They apply when there are transfers of staff from one legal entity to another as a consequence of a change in employer. This is a complex area of law which is continually evolving.

21.2 Commissioners need to be aware of these and the need to engage HR support and possibly legal advice if there is likely to be a TUPE issue. Additionally, NHS Bodies must follow Government guidance contained within the "Cabinet Office Statement of Practice 2000/72 and associated Code of Practice 2004 when transferring staff to the Private Sector" also known as "COSOP".

21.3 It is the position of the CCG to advise potential bidders that whilst not categorically stating TUPE will apply it is recommended that they assume that TUPE will apply when preparing their bids, and ensure that adequate time is built into procurement timelines where it is anticipated that TUPE may apply.

22. Equality Impact Assessment

The CCG is committed to promoting equality in all its responsibilities – as commissioner of services, as a provider of services, as a partner in the local economy and as an

employer. This policy will contribute to ensuring that all users and potential users of services and employees are treated fairly and respectfully with regard to the protected characteristics of age, disability, gender, reassignment, marriage or civil partnership, pregnancy and maternity, race, religion, sex and sexual orientation.

23. Training Needs

23.1 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 they will need to know when and how to seek further support. The most urgent requirement is that all commissioning staff throughout the CCG should know enough about procurement to know to seek help when they encounter related issues; they must also be able to give clear and consistent messages to providers and potential providers about the CCG's procurement intentions in relation to individual service developments.

23.2 Awareness of procurement issues will be raised through organisational development and training sessions for clinical and non-clinical members of the CCG.

24. Documentation and Record Keeping

The CCG will comply with its statutory obligations to keep and maintain appropriate records.

Accurate record keeping and documentation is also fundamental to any procurement process and is also consistent with the CCG's obligation of transparency. A robust audit-trail should be maintained which records all steps and decisions taken (and the reasons for those steps / decisions). This assures the CCG's accountability, that its decisions can be scrutinised, and that it can accurately respond to formal complaints or challenges.

Formal document version control should also be implemented and all document versions retained in case of future need.

25. Monitoring compliance with this Policy

This policy will be reviewed annually. In addition it will be kept under informal review in the light of emerging guidance, experience and supporting work. Given the changing environment it is likely that this Policy will need to be updated within a relatively short timescale.

Effectiveness in ensuring that all procurements comply with this Policy will primarily be achieved through "business as usual" review by the relevant Senior Responsible Owner within the CCG.

26. References

26.1 Legislation

- Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. Mar 2004.
- The Public Contract Regulations 2006; SI2006; No.510
- The Public Contracts Regulations 2015; SI 2015 no.102. February 2015.
- Equality Act 2012

26.2 NHS Policy

- Procurement Guide for commissioners of NHS-funded services; May 2008; DH (Gateway Ref: 9915).
- Framework for Managing Choice, Cooperation and Competition. May 2008. DH. (Gateway Ref: 9914).
- NHS Procurement. Raising our game; May 2012; DH (Gateway Ref 17646).
- Code of Conduct: Managing conflicts of interest where GP practices are potential providers of CCG-commissioned services; July 2012; NHS Commissioning Board.
- Towards establishment: Creating responsive and accountable CCGs; February 2012; NHS Commissioning Board.
- National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013; February 2013

Summary of the CCG's obligations under the 2013 Regulations

Do the Regulations apply?	What to build into your commissioning strategy	When must you advertise a contract?	What must you do as part of your tender?	What records should you be keeping?
<p>The Regulations apply to NHS England, CCGs and any other organisation providing procurement support. The Regulations also apply to CSUs.</p>	<p>How decisions are reached regarding the potential market for a particular service.</p> <p>How a procurement will improve quality and efficiency in the service.</p> <p>Consider if there could be any conflicts of interest or potential conflicts and if so ensure there is a robust process for dealing with them.</p>	<p>Is there a market? If there is more than one possible provider capable of providing the service you must advertise.</p> <p>Are you working in partnership with local government? If you are entering into a Section 75 agreement with a local authority you do not need to advertise.</p> <p>Is there a material change to the contract? If there is and it is <u>not</u> mandated by NHS England you may need to advertise.</p>	<p>Advertise on <i>Supply2Health</i>.</p> <p>Include in the advert a description of the services and the evaluation criteria.</p> <p>Ensure you have put in place arrangements for providers to express an interest in a contract.</p> <p>Ensure your qualification criteria and any other criteria to establish a framework or AQP list is transparent, proportionate & non-discriminatory.</p> <p>Ensure your contract does not include any anti-competitive provisions unless necessary to achieve beneficial outcomes or the first objective.</p> <p>Publish on <i>Supply2Health</i> the following information about each contract:</p> <ul style="list-style-type: none"> o name & address of provider o details & date of service provision o value of contract o a description of the process followed 	<p>A full audit trail of each procurement, including your evaluation model.</p> <p>Keep a record of how each award of contract complies with your statutory duties as to effectiveness, efficiency, improvement in quality, and promotion of integration.</p> <p>Your process for ensuring you do not engage in anti-competitive behaviour unless it is in the interests of patients.</p> <p>How conflicts or potential conflicts were addressed in each process.</p>



**Cambridgeshire and Peterborough
Clinical Commissioning Group**

Equality Impact Assessment

Name of Proposal (policy/strategy/function/service being assessed)	Procurement Policy
Those involved in assessment:	CCG Secretary, Corporate Governance Team
Is this a new proposal?	Yes
Date of Initial Screening:	7 May 2015 (Updated September 2016)

What are the aims, objectives?	To support the CCG's Procurement Strategy and to ensure that the CCG complies with relevant legislation as set out in the Policy.
Who will benefit?	All CCG Governing Body and Member Practices in ensuring that the CCG complies with the relevant legislation set out in the Policy.
Who are the main stakeholders?	As above
What are the desired outcomes?	To secure the needs of healthcare service users To improve the quality of services and To improve the efficiency with which services are provided.
What factors could detract from the desired outcomes?	Lack of awareness and/or non-enforcement of the policy. Non-compliance by staff and contractors.
What factors could contribute to the desired outcomes?	Increased awareness of the requirements set out in the policy throughout the CCG. The provision of training, information and supervision will support the CCG to ensure high

	standards of procurement across the CCG.
Who is responsible?	The Chief Finance Officer has overall responsibility for the Procurement Policy
Have you consulted on the proposal? If so with whom? If not why not?	The Policy has been developed and discussed with the Clinical & Management Executive Team. The Policy has also been reviewed to reflect the recommendations in a number of Reviews undertaken following the collapse of the Uniting Care Contract.

Which protected characteristics could be affected and be disadvantaged by this proposal (Please tick)		Yes	No
Age	<u>Consider:</u> Elderly, or young people		✓
Disability	<u>Consider:</u> Physical, visual, aural impairment Mental or learning difficulties		✓
Gender Reassignment	<u>Consider:</u> Transsexual people who propose to, are doing or have undergone a process of having their sex reassigned		✓
Marriage and Civil Partnership	<u>Consider:</u> Impact relevant to employment and /or training		✓
Pregnancy and maternity	<u>Consider:</u> Pregnancy related matter/illness or maternity leave related mater		✓
Race	<u>Consider:</u> Language and cultural factors, include Gypsy and Travellers group		✓
Religion and Belief	<u>Consider:</u> Practices of worship, religious or cultural observance, include non-belief		✓
Sex /Gender	<u>Consider:</u> Male and Female		✓
Sexual Orientation	<u>Consider:</u> Know or perceived orientation		✓

What information and evidence do you have about the groups that you have selected above?

It is a requirement of every Procurement to undertake an Equality Impact Assessment prior to commencement of the process. Any issues identified will be managed through the process.

Consider: Demographic data, performance information, recommendations of internal and external inspections and audits, complaints information, JNSA, ethnicity data, audits, service user data, GP registrations, CHD, Diabetes registers and public engagement/consultation results etc.

How might your proposal impact on the groups identified? For example you may wish to consider what impact it may have on our stated goals: Improving Access, Promoting Healthy Lifestyles, Reducing Health Inequalities, Supporting Vulnerable People

Examples of impact re given below:

- a) Moving a GP practice, which may have an impact on people with limited mobility/access to transport etc.
- b) Planning to extend access to contraceptive services in primary care without considering how these services may be accessed by lesbian, gay, bi-sexual and transgender people.
- c) Closure or redesign of a service that is used by people who may not have English as a first language, and may be excluded from normal communication routes.

Please list the positive and negative impacts you have identified in the summary table on the following page.

1 Summary	
Positive impacts (note the groups affected) N/a	Negative impacts (note the groups affected) N/a

Summarise the negative impacts for each group:

This will be relevant to individual procurement processes which will follow the appropriate Equality Impact Assessment.

What consultation has taken place or is planned with each of the identified groups?

N/a

What was the outcome of the consultation undertaken?

N/a

What changes or actions do you propose to make or take as a result of research and/or consultation?

Briefly describe the actions then please insert actions to be taken on to the given Improvement Plan template provided.

N/a

Will the planned changes to the proposal:
Yes or No

Please state

Lower the negative impact?	N/a
Ensure that the negative impact is legal under anti-discriminatory law?	N/a
Provide an opportunity to promote equality, equal opportunity and improve relations i.e. a positive impact?	N/a

Taking into account the views of the groups consulted and the available evidence, please clearly state the risks associated with the proposal, weighed against the benefits.

N/a

What monitoring/evaluation/review systems have been put in place?

The policy will be kept under review by the Governing Body and be reviewed following any significant changes in national guidance or local operational arrangements.

When will it be reviewed?

Annually (next review due September 2016 or earlier if required).

Date completed:	September 2016
Signature:	Sharon Fox, Deputy Director of Corporate Affairs
Approved by:	Soomitra Kawal, Corporate Services Support Manager – Equality and Diversity
Date approved:	18 January 2018

Cambridgeshire and Peterborough CCG Procurement Checklist – Overview

Key Considerations	Checklist	Date of Update
Agree Senior Responsible Owner and establish Governance arrangements in line with the CCG's Procurement Policy		
Selection of appropriate procurement partner and/or internal resource		
Undertake initial Risk Assessment and consider the requirement for Procurement Advisors (Legal / Commercial / Financial / Other)		
Review legal framework and select appropriate procurement route		
Procurement checklist to ensure every activity detailed is completed		
Procurement partner to manage template distribution, including evaluation templates		
Procurement partner to manage and log all amendments to existing documents		
Completion of pre-tender activity, including activity trends and local specification		
Completion of Project Plan and Project Set-up activities		
Review all tender documents		
Complete document set for procuring Services		
Completion of questions, weightings, evaluation criteria and expected responses		
Appropriate Contract accompanies tender documents		
Delivery of the Evaluation Training		

Evaluation Team completion of Declaration of Interest (conflicts and confidentiality) forms		
Non-scoring Chair appointed for moderation process		
Completion of appropriate ratification report for Project/Programme Board sign-off		
Checkpoint 1 Delivery Strategy (Pre-tender assurance, pre-market engagement, service specification up to publication of documents to market)		
Checkpoint 2 Investment decision (Preferred bidder identified. Post-evaluation and before contract award including evaluator training and Conflict of Interest and Confidentiality through the process)		
Checkpoint 3 Operational review (mobilisation through go-live and then business as usual of the new procured service)		

Please refer to detailed stages set out in Appendix 3.1

Cambridgeshire and Peterborough CCG Detailed Checklist

Stage	Activity	Description
Step 1a – Select Procurement Partner and/or in-house resource	Task	An outline of the project will have been prepared and signed off by the appropriate authority in the CCG, along with a detailed Conflicts of interest review. In making this recommendation and supporting it, the project will be following the Commissioning strategy of the CCG. This is likely to be a formal Project Initiation document (PID) and is an outline to give authorisation to proceed to a Business Case (see step 2)
		Select a procurement partner & legal partner to support the procurement of the services to be purchased. Options to be considered should include: <ul style="list-style-type: none"> - explore the availability and capability of internal procurement resources; - utilise existing providers where the terms of their appointment permit; - call off such services under a recognised framework (either via a mini-competition or direct award, subject to the provisions of the framework); or - Competitively tender the appointment opportunity. In making such appointments, SRO's and PMs are reminded to follow the requirements of the Regulations and Financial instructions on the CCG website.
	Time	You will need to build in time for the selection of an appropriate partner(s) where required. You are advised to secure such support/make such appointments so as to have such advisers in place to assist with the pre-procurement steps. If internal resources are not available, no call off available will need to build in approximately 30-45 days to select a procurement partner and legal adviser, if appropriate, depending on which procurement route is selected.
	Risks	Inappropriate time planning in the selection of these partner(s) may impact on the overall procurement timelines and subsequently delay the proposed go-live date and/or result in advice not being available at the outset of the project.
	Action	You should complete a project plan activity schedule with appropriate timelines, including detailing all activities for pre-procurement, procurement and mobilisation.
Step 1b – Agree Procurement Process	Task	The procurement board/steering group should be formed and terms of reference set. Where this is a joint project a Memorandum of Understanding and cost allocation to be established. You should discuss the appropriate procurement route with the procurement partner and legal advisors taking into consideration the services to be procured and the application of relevant legislation especially those around the Public Contract regulations 2015 and the NHS (procurement, patient choice and Competition) (no.2) regulations 2013. Should a single tender action be being considered? Is the procurement being reviewed under the ISAP guidance?
	Time	Indicative timelines differ depending on the procurement procedure selected. As an indication an ITT for complex services may take between 6 and 12 months depending on the process followed and availability of resource.
	Risks	It is important to ensure that the services to be procured are clearly specified to your procurement partner and legal advisor as this will determine the most appropriate process to follow.

	Action	At the time of selecting the procurement procedure for the service, the CCG and procurement partner must review the Commissioning strategy, Commissioning workflow to determine the application of NHS regulations and Public Contracts Regulations 2006 and 2015 along with the NHS 2013 regulations.
Step 1c – Utilise Procurement Checklist	Task	A procurement checklist summary has been provided to assist in the planning of procurement activities for CCG service(s). In consultation with the chosen procurement partner this shows core activities common to all procurements and we would expect that this is likely to be amended and project teams insert their own specific activities and timelines associated with each activity. This checklist will also forms the basis of building a specific and detailed project plan for the procurement of these services.
	Time	Timelines for each of the activities may be inserted within the checklist or detailed project plan or both.
	Risks	The procurement checklist has been provided to outline common key activities which they need to complete. A detailed checklist can help demonstrate the robustness of a procurement procedure and conflicts of interest if it is subsequently reviewed by internal audit or subject to a challenge when the procurement has closed. However, the checklist in itself is not necessarily a sufficient tool to defeat any legal challenge and is not an acceptable alternative. For full detailed records.
	Action	You should ensure that all activities on the final procurement checklist for the project are in progress or completed at the relevant stage of the procurement process before proceeding to the next stage.
Step 2 – Completion of Pre-Tender Activity	Task	<p>There are a variety of activities that should be completed to support the production of a detailed business case and aligning to the commissioning strategy. Including but not limited to;</p> <ul style="list-style-type: none"> o Undertaking due diligence on existing arrangements (e.g. verify when contract notices need to be served), if at all; o Completion of the Conflicts of Interest procurement checklist from the statutory guidance (Annex G and Annex H). https://www.england.nhs.uk/commissioning/pc-co-comms/coi o Obtain all relevant information from existing providers such as, activity, estates, TUPE, technical to include in a data room so that Bidders may take trends into account when costing the service; <p>CCGs are to make explicit in all correspondence and documentation relating to activity levels/TUPE and unverified data that it does not warrant the accuracy of the data obtained for existing Providers</p> <ul style="list-style-type: none"> o Develop localised version of tender documents including specification with reference to any the National Commissioning Standards; o carrying out an Equality / Privacy Impact Analysis (Attached at Annex D); o Prepare NHS standard contract (if appropriate) with the tender documents to ensure the Bidders have sight of the terms and conditions and KPIs. o Confirm GP/Patient and other involvement in specification design subject to CCG confidentiality and conflict instructions. o Post agreement from CCG Governing Body Pre-market provider engagement – the CCGs may engage with the market prior to the publication of the tender opportunity to obtain information, which may be included in the Integrated Urgent Care service tender. o Consideration of TUPE o Engagement of legal support.
	Time	CCG to allow for appropriate timelines for obtaining and/or developing the above documentation.
	Risks	Legal advice should be sought throughout the project especially on the application of legislation, the availability of procurement routes and TUPE which may be affected by the type of service being tendered
	Action	CCGs to ensure that all pre-tender activities are completed prior to the commencement of the tender process and meet the requirements of Checkpoint 1.

Step 3 – Project Set Up	Task	<p>You are advised that the following activities should be completed prior to the publication of the tender opportunity:</p> <p>PID to CCG Board and establish Project Governance in line with local policies with Action Log, Risk Log, Engagement Log, COI log . Board to include stakeholders</p> <p>Establish steering group and TOR for each group</p> <ul style="list-style-type: none"> · Establish Project Plan – The procurement checklist can act as a catalyst in detailing the project plan activities example timeline tool : <ul style="list-style-type: none"> o Resources required, timings for each activity and roles and responsibilities; o Understand any Scrutiny, Health and Wellbeing Board, County and local Council and other challenges to timeline o Selecting an evaluation panel that is available for the duration of the procurement evaluation process. Evaluator availability should be confirmed to ensure presence for all stages of the evaluation process e.g. PQQ (if appropriate), ITT and presentation stage. Confidentiality/Conflict of interest forms must be completed by each member of the evaluation panel/project team and any member with conflicting interests as stated must be removed from the entire process; o Subject Matter Experts (SMEs) may be sought to form part of the evaluation team e.g. interoperability, telephony and clinical experts; o Preparation of Engagement plan and verify this with Comms team o Engaging their patient public involvement groups; o Consider all dates and process for all appropriate Governing Body for sign-off.
	Time	Need to plan timelines for completion of the above activities.
	Risks	Effective forward planning and control of the above activities will enable the smooth operation of the procurement process and avoid hurried decisions which may adversely affect the legality of or compromise the process. e.g. unavailability of personnel at key decision points
	Action	Ensure time is set aside to complete a detailed project plan, including forward planning on availability of the evaluation panel, including availability of SMEs.
Step 4 – Business case sign off/Tender Documents	Task	Procurement partner needs to finalise the form of procurement process to be used. In doing so, we must consider the legal framework.
		<ul style="list-style-type: none"> · Things to consider: <ul style="list-style-type: none"> o Service specification to be finalised and shared widely if possible to gather thoughts o Communication in line with plan to localities, Healthwatch and Patients, Health and Wellbeing Board, Special interest groups (stroke etc); specialised commissioning. o Business case and financial case prepared and run through exec teams for support. o Question setting sessions for all evaluators and understanding of what want to achieve. o Selection and award criteria and weightings to reflect local priorities in consultation with your procurement partner. o Use an appropriate electronic procurement portal is used for the tender process and that an audit trail is available to support the process. o Obtain appropriate procurement and internal sign-off of any changes to the documentation accompanying this guidance prior to publication.

	Time	CCGs should invest appropriate time in the review and finalisation of the documentation prior to publication, including incorporating any changes across all appropriate documents.
	Risks	Non-compliant documentation/errors and/or non-compliant procurement process may render the procurement process invalid. If this is the case, the CCG may need to abandon or repeat an earlier stage of the process.
	Action	Appropriate advice and sign-off of the procurement process must be obtained to ensure that a compliant set of documentation is available for tendering the service. This will assist in mitigating the risk of any challenges to the legality of the process selected due to the usage of non-compliant documentation.
Step 5 – Tender Process / Contract Award	Task	<p>The tender process stage is a critical stage in terms of working to deadlines and delivery of a number of key milestones, which rely upon multiple interdependencies for the successful completion of the tender process stage.</p> <ul style="list-style-type: none"> · A Bidder Q&A Briefing Session event should be considered by the CCGs to explain the process and clarify any questions. Holding such an event has benefits on both sides. Firstly, clarification questions via the procurement portal can be reduced by such an event and avoid duplicated questions. Secondly, it allows us not to expend vast amounts of time in answering numerous questions within tight deadlines, which may result in extensions being granted due to unanswered questions. · An evaluator briefing session. This would include selection of an independent chair/ normally procurement partner for the moderation process, appointing expert evaluators to evaluate specific areas of the bid, evaluation training, evaluation template process and moderation process. · Complete Checkpoint 2: Investment Decision (Post evaluation and before contract award). · Procurement partner to plan appropriate dates for the issue of feedback letters to preferred Bidder and unsuccessful bidders, Board ratification report sign-off (example included at Annex F), and concluding contract signatories. · Publish Contract Award Notice/confirmation of award.
	Time	CCGs are to set specific dates and times for this stage of the process in the master project plan and ensure that all evaluators are available for every stage of the process. Venues should also be booked early to ensure availability.
	Risks	Many legal challenges instigated by Bidders point to failures at this stage of the process. Therefore, care must be taken to ensure that the procurement rules and regulations are followed and evaluation process completed as per the evaluation guide and training session.
	Action	CCG Staff and procurement partner to fully brief all evaluators of the critical requirements of each step in the process to ensure successful delivery.

APPENDIX 4: SUPPORT
PROFORMA



**Cambridgeshire and
Peterborough**
Clinical Commissioning Group

Reference Number:			
Date:		Version:	

Purpose	<p><i>This document is to be completed by the Project Manager responsible when seeking procurement support to deliver this procurement and has been approved by the SRO prior to submission to the CCG Procurement Support team.</i></p> <p><i>This procurement value falls below the OJEU limit and the goods/services will be procured via a simple purchase order. Three quotes are to be obtained in accordance with the Organisation's SFIs.</i> <u>or</u> <i>This procurement value falls below the OJEU limit and the goods/services are being procured through a framework supplier.</i></p>
PROJECT:	
STP Work Stream / Directorate	
Project Manager:	
SRO:	
Executive Sponsor:	

Section A is an outline of the service/goods you are procuring

A1 – Brief Outline of Service:

Briefly describe an outline of the goods/service being procured

A2 – Financial Value of Service/Contract:

Please state the value of the service/contract you seek to procure in £xxx

A3 – Contract term:

Please state the length of the contract and any extension to the contract

A4 – Type of NHS Contract:

Please state the type of NHS contract to be used ie Full or short-form

A5 – Timescales:

The procurement will take x weeks/months to implement, with an anticipated 'go live' date of xxxxxxxx.

A6 – Type of Procurement:

Please state what type of procurement this will be i.e. open, restricted or competitive

Section B is about what you want from a Procurement Support supplier

B1 – Detail your Procurement requirements:

Please detail what Procurement Support you require:

- *Access to a Procurement portal/training for evaluators*
- *Preparing ITT documentation*
- *Liaising with bidders*
- *Advice on evaluation selection/weighting/scoring*
- *Setting up a market engagement event*
- *Basic legal advice*

B2 – Detail your selection criteria:

Please detail what selection criteria you will base the mini tender on:

- *Cost per hour or fixed cost*
- *Additional costs e.g. travel expenses*
- *Previous procurement work including outcomes they delivered*
- *Availability*
- *References*
- *Anything else that you want to base your selection on*

When complete please ensure this has been approved by the SRO and submit to: xxx