

Cambridgeshire and Peterborough CCG Procurement Strategy

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1.7	Review of Document	Amendments made to reflect latest national guidance (Integrated Support and Assurance Process)	12 th January 2018

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NHS Cambridgeshire & Peterborough CCG Procurement Strategy

1. INTRODUCTION/CONTEXT

- 1.1 NHS Cambridgeshire & Peterborough CCG (C&P CCG) is an NHS body created by the Health and Social Care Act 2012. The CCG has received authorisation to commission healthcare services on behalf of its registered patients covering 103 GP member practices, as well as the delegated commissioning of GP services. These services apply to over 950,000 patients.
- 1.2 The CCG is led by a Governing Body (GB) with a GP Chair and a management lead as Accountable Officer (AO). The GB has a majority of clinicians representing member practices. The CCG has 5 GP practices within it which are situated geographically in other Local Authority areas and therefore in other Health & Wellbeing Board areas.
- 1.3 There is significant transformation required to ensure sustainable high quality services are in place and affordable. The Sustainability and Transformation Programme is the system vehicle for delivering the required transformation. The STP is referred to as 'Fit for the Future' (FFtF) and brings together providers and commissioners to work to agree a plan and delivery vehicle to reconcile the challenge facing the system of growing demand against a backdrop of financial pressures.
- 1.4 The primary purpose and responsibility of the CCG is to commission (plan, purchase and organise) health services on behalf of the registered patients of the member practices. It does this in partnership and collaboration with other commissioners for health and social care services covering the same population, as well as with patients and the public. The CCG has also recently taken on responsibility for the delegated commissioning of GP services.
- 1.5 NHS C&P CCG has a clear responsibility to ensure that services are commissioned to both deliver its vision and meet the needs of the population served. Whether contracts are coming to an end, or where service reconfiguration is required, decisions around the future sourcing and procurement of those services is required. NHS C&P CCG is required to decide how best to secure services in the interests of patients; ensuring the procurement of high quality and efficient health care services that meet the needs of patients and protect patient choice, are affordable within the limits of available resources with a clear emphasis on ensuring Value for Money.
- 1.6 This Procurement Strategy provides the overview of the CCGs approach to procurement ensuring the organisation is able to effectively address its responsibilities. Each procurement decision will be taken on its individual merits, in the context of this strategy, and in accordance with the relevant legal and policy requirements.

2. OUR MISSION, VISION AND VALUES

- 2.1 Mission - To empower our community to keep healthy and to provide good quality healthcare for all those who need it.
- 2.2 Vision - Cambridgeshire and Peterborough CCG will work in partnership to improve quality of care, to develop healthy communities through change and innovation, making wise decisions about how we use the resources available to us.
- 2.3 Values - We are committed to being;
 - a) Organised
 - b) Honest
 - c) Decisive
 - d) Innovative
 - e) Ambitious
 - f) Compassionate

3. KEY NATIONAL LEGISLATION AND GUIDANCE

- 3.1 This procurement strategy C&P CCG seeks to uphold its obligations under section 75 of the Health and Social Care Act 2012 and Public Contracts Regulations 2015 as they apply to Health and Social Care services from 18 April 2016.

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

- 3.2 The Health and Social Care Act 2012, and the associated NHS (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 provide the framework for procurement of health care services by the CCG.
- 3.3 When procuring health care services, the 2013 Regulations require NHS commissioners (CCGs and NHS England) to act with a view of
 - (a) securing the needs of the people who use those services
 - (b) improving the quality of services and
 - (c) improving efficiency in the provision of the services.
- 3.4 The 2013 Regulations require commissioners to procure services from providers who are most capable of delivering these objectives and who provide best value for money in doing so. The Regulations also prohibit commissioners from engaging in anti-competitive behaviour unless this is in the interests of patients.
- 3.5 NHS Improvement (NHSI) – is the sector regulator for health services in England and has the role of protecting and promoting the interests of patients and has been granted powers to set and enforce a framework of rules for providers and commissioners. NHSI (formally Monitor) published its 'Substantive guidance on the Procurement, Patient Choice and Competition

Regulations' (December 2013) ("Substantive Guidance") designed to support CCG's and NHS England. The Substantive Guidance makes it clear that it is for commissioners to decide which services to procure and how best to secure them in the interests of patients.

This strategy has been updated in the context of the following developments:

- The Integrated Support and Assurance Process – NHS Improvement and NHS England guidance assuring novel and complex contracts
- The Public Procurement (amendments, repeals and revocations) regulations 2016 No. 275
- The organisational learning from the Older Peoples and Adult Community Services (OPACs) procurement and the subsequent premature ending of the UnitingCare contract
- National Audit Office report – Investigation into the collapse of the UnitingCare Partnership contract in Cambridgeshire and Peterborough' 12/07/16)
- NHS England review of the UnitingCare Contract – NHS England publication Gateway Ref 05072
- Review of Procurement, Operation and Termination of the OPACs contract – internal audit report CPCCG 15/23
- PricewaterhouseCoopers Uniting Care Partnership (UCP) Review.
- NHS Procurement & Commercial Standards – Towards excellence. Version 3 – updated July 2016 (Commercial Division, DOH)

Public Contracts Regulations 2015

- 3.6 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.
- 3.7 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.
- 3.8 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.
- 3.9 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.

The Integrated Support and Assurance Process (May 2017)

- 3.10 With the move towards developing new care models to better integrate primary and specialist care, physical and mental health services, and health and social care; 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.
- 3.11 The reviews of the premature ending of the Uniting Care Partnership contract 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 (CCG), participating providers and their respective governing bodies and boards should ensure they are familiar with these reviews' recommendations before embarking on a novel and complex contract structures (called 'complex contracts' in this guidance).
- 3.12 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.

4. HOW WE WILL WORK

Our principles that will underpin the way we work

- 4.1 The CCG has undergone a very public review of its procurement approach following the premature end to the UnitingCare contract. There have been to date 3 external reviews and 1 internal review undertaken to analyse why the Older People's contract ended prematurely.
- 4.2 The lessons from these reviews are embedded within the strategy and the policy which is an appendix to this document.
- 4.3 As part of the Cambridgeshire and Peterborough Sustainability Transformation Programme (STP) the CCG is working collaboratively with health and social care commissioning and partner providers to develop and implement the plan to ensure modern, affordable services that are sustainable.
- 4.4 In line with our vision, mission and values, we will work in partnership with patients, carers and families, partner organisations across public, voluntary and private sectors to develop high quality, safe and cost effective locally based services.
- 4.5 We will ensure our commissioning and contracting is based on clearly assessed population needs, is clinically led and focuses on achieving improved measurable outcomes of care from integrated services for local patients, carers and their families. These will be sustainable from a quality and cost perspective.
- 4.6 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 evidence based, best practice and 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).
- 4.7 When undertaking novel or complex contracts the CCG will adhere to the 7 lessons and 4 questions set out in the ISAP guidance:

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 to ensure that sufficient expertise is provided and that the advice from different external advisers is corroborated. 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 novel and 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?
- 4.8 We will be open and transparent with procurement decision making - we will also be open to challenge and will embed learning into our everyday business.
- 4.9 The CCG recognises the specialist nature of procurement and has invested in a substantive specialist procurement post within the CCG. One post is not sufficient to support the volume of procurements undertaken by the CCG. Currently external advice is bought in separately to support each procurement. The CCG is considering buying in such external support on a retainer basis so that there is greater commercial expertise available when required.

5. OBJECTIVES

- 5.1 This Procurement Strategy is intended to support the CCG in achieving its 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.

5.2 Market development and the procurement of service provision are key enablers to the delivery of the CCGs and the collective FFtF 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).

6. GOVERNANCE

6.1 The internal and external reviews all identified shortfalls in the CCGs governance processes with the OPACS procurement and mobilisation. The governance section of the CCG's Procurement Policy has been strengthened to reflect the learning from these reviews. In summary:-

- At each stage of any procurement the CCG will ensure that the project is authorised in accordance with the CCG's governance arrangements, which are overseen by the Audit Committee.
- There will be clear GB oversight of the Procurement risks throughout the process up to contract award. High risks identified will be escalated to the CCG Assurance Framework and Risk Register and associated Action Plans produced and monitored in line with the CCG's Risk Management Framework. All High risks will also be notified to NHSE at the earliest opportunity.
- Where the CCG uses external procurement support the final decision on any contract award will be made by the CCG GB or delegated sub-committee.
- The Senior Responsible Owner for the Procurement will be an Executive Director of the CCG. The CCG's Chief Finance Officer or Deputy Chief Finance Officer will be embedded in the Procurement Programme Board / Delegated Committee.
- Critical external legal/commercial advice will be reviewed and signed off by the Audit Committee and the GB in line with the CCGs SFIs.

The CCG will seek a second opinion if this is thought to be necessary. The GB will receive full details of the advice received and have the opportunity to scrutinise this in detail prior to all stages of the decision-making process.

- Second opinions will be sought when any critical legal/commercial third party advice has been sought and this is deemed necessary. The Chair and AO acting on behalf of the GB will recommend when this is thought to be necessary/appropriate.
- The GB review and decision making around procurement will require Lay members to undertake a scrutiny/critique role to ensure there is as much independent review of the options/decisions as possible.
- Project controls will be established that are commensurate with the size and complexity of each procurement.

7. REVIEW DATE

This Strategy will be reviewed on an annual basis or earlier if required by changes in local or national requirements.