NHS
Wolverhampton
Clinical Commissioning Group

Procurement Policy for Healthcare Services

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AMENDMENT HISTORY

VERSION	DATE	AMENDMENT HISTORY
V0.1	10th March 2015	First draft (G Hemer)
V0.2	24th March 2015	Update following meeting with SP 17th March (G Hemer)
V0.3	23rd April 2015	Updated to include local CCG detail (S Phillips)
V0.4	27th April 2015	Updated to include Procurement Register (S Phillips)
V0.5	1st May 2015	Updated to include DFP Authority Levels & CCG Conflict of Interest Policy (S Phillips)
V0.6	8th May 2015	Updated following comments and recommendations from P Mckenzie which included moving sections around and removal of Conflict of Interest Policy and replaced with link to policy.
V0.7	3rd June 2015	Inclusion of comments from CS, CB and ST. Inclusion of information relating to monthly reporting to Commissioning Committee and onto Governing Body and Procurement Register
V0.8	15th June 2015	Circulated for review and comment
V0.9	6th June 2015	Amendment to Regulations following further review by Graham Fox at MLCSU
V1.0	8th June 2015	2015/16 Procurement plan update by SP
V1.1	23rd August 2015	Presented to Commissioning Committee. Amendment made to remove procurement allocation from Appendix C.
V1.2	8th September 2015	Policy ratified at Governing Body and added to Approvals Audit table
V1.3	14th September 2015	Judicial Review timescale included p14.
V1.4	6th January 2017	Amended to reflect the Public Contract Regulations 2015 (PCR) and the Light Touch Regime (LTR) (Craig Stephens, CSU)
V1.5	17th February 2017	Text added to Sections 5 re determining which procurement regulations apply for mixed procurements & at Section 9.2 re adding use of a formal agreement when undertaking collaborative procurements (CSU)
V1.6	26th April 2017	Minor amendments made to table in Section 6 re communications to staff, website update and mobilisation. Removal of Appendix C (Procurement Plan) and Appendix D (Procurement Register) as these are live documents, to be separately maintained (VM).
V 1.7	15th May 2017	Addition of information pertaining to GP List based services (Section 4.2) Additional information put in regarding Prior Information Notices (PINs) to distinguish between standard PINs and those used as a call for competition (Section 5.2)
V 1.8	2nd August 2017	Revision made to GP List Based Services within Section 4.2, to simplify the narrative.

V 1.9	12th September 2017	Minor changes from Governing Body meeting - revision made to Section 4.5 - Public Sector Equality Duty. Marriage and civil partnership had previously been left off the protected characteristics. Appendix A has been added to the document in full (previously embedded)

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This document has been reviewed by:

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APPROVALS

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RELATED DOCUMENTS

These documents will provide additional information:

REF NUMBER	DOCUMENT REFERENCE NUMBER	TITLE	VERSION

Contents

1. Introduction

This policy document is intended to inform the procurement decisions of Wolverhampton CCG and to provide assurance as to the most appropriate route to market for healthcare services. This policy has been written taking into account current competition and procurement rules and will be updated in line with any future changes to UK and EU legislation.

The main aims of this policy are to make real and positive contributions to the strategic direction of the organisation in the following areas:

- Streamlining procurement processes
- Making a direct contribution to improved patient care and treatment outcomes
- Managing change brought about by organisational reconfiguration
- Enabling the organisation to be more commercially focused
- Supporting collaborative procurement
- Enabling the organisation to support government initiatives in public procurement
- Effective use of resources

The challenge for Wolverhampton CCG is to commission services that offer the best quality and value for money within a finite resource. In order to ensure that we focus our effort where it is most effective, we need to target resources that:

- Facilitate the right care for people who are ill, in particular those who are very young, very old and/ or who have a life limiting condition
- Ensure that services are safe, reliable and have the confidence of the people of Wolverhampton
- Deliver services seamlessly so that patients are seen by the appropriate professional at the right times
- Help people to stay healthy for as long as possible, reducing health inequalities.

Aims

- To improve the health of the population of Wolverhampton by focusing on those patients who currently endure inequity in health outcomes
- To ensure that service delivery is focused on patients and their needs

To ensure that the services are delivered to the right standards and to ensure quality remains at the heart of all commissioning decisions.

Wolverhampton CCG commissions specialist procurement support and advice which is provided by NHS Arden & Greater East Midlands (AGEM) CSU. This procurement policy has therefore been developed to enable the CCG to access the services of the CSU but also outlines the scope, context and legal responsibilities of both the CCG and CSU.

2. Scope and Context of the Policy

This policy concerns Healthcare Procurement only

There is a legislative framework within which public sector procurement operates and the CCG has a duty to meet these legislative responsibilities whilst ensuring the health needs of its population are being met. This is supported by Public Sector procurement regulations and NHS specific regulations and guidance, which includes, but is not limited to:

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

3. General Procurement Principles

The following principles should govern the administration of procurement within the CCG:-

3.1. Procurement of Healthcare Services must be conducted in accordance with The Public Contract Regulations 2015 and The National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013, including any subsequent guidance.

3.2. Procurement of Healthcare Services must adhere to the principles of the Public Contract Regulations 2015 as detailed in paragraphs 3.3 to 3.6.

3.3. **Proportionality** - All procurements should be carried out as cost effectively as possible. The level of resources applied should be proportionate to the value and complexity of the services to be procured.

3.4. **Transparency –** All procurements should be undertaken transparently. CCGs must be able to account publicly for expenditure and their actions in deciding whether or not to carry out a formal procurement. When carrying out procurements, contract opportunities should be advertised and evaluation and scoring criteria must be stated in procurement documents. All contracts awarded whether or not through a formal procurement process must be published in Contracts Finder and in the Official Journal of the European Union (OJEU) (for healthcare services a notice is only required in OJEU where value exceeds a total contract value of £589,148). The CCG must maintain a documented audit trail of key decisions.

3.5. **Non-Discrimination** - The specification and bidding process must not discriminate against or favour any particular provider or group or type of providers. Objective evaluation criteria must be applied to all bids.

3.6. **Equality of Treatment** - All potential providers must be treated the same throughout a procurement process. This means that the same information must be provided to all potential providers at the same time; and rules of engagement and evaluation criteria must be specified in advance of provider involvement and be applied in the same way to each potential provider.

4. Healthcare Services Procurement- Legislation & Regulation

Healthcare Services fall within Schedule 3 services (known as the Light Touch Regime (LTR)) under **The Public Contracts Regulations 2015** which implement the European Union Procurement Directives into UK Law. For Schedule 3 services (LTR) the CCG is bound by the full impact of the Regulations but is allowed a degree of flexibility in terms of timescales and processes used. However the CCG MUST ensure that when procuring services it complies with the principles of the Public Contract Regulations 2015 and acts **TRANSPARENTLY, EQUITABLY** and in a **NON- DISCRIMINATORY** manner.

Procurements for Healthcare Services must also be conducted taking into consideration **The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013.** These Regulations impose requirements on CCGs to ensure good practice when procuring Healthcare Services, to protect patients' rights to make choices and to prevent anti-competitive behaviour. These Regulations provide scope for complaints to, and enforcement by NHS Improvement (NHSI) (formerly known as Monitor), as an alternative to challenging decisions in the courts. The Regulations apply alongside the Public Contracts Regulations 2015 and do not affect their application.

4.1. The Public Contract Regulations 2015 ("PCR").

The Regulations are produced by the EU Courts and enacted into UK Law. Under LTR there are stipulations that **MUST** be met – these are as follows:

a) Expenditure over £589,148 must be advertised in OJEU & Contracts Finder. The value of £589,148 is for total spend over the life of the contract and is not value per annum.
b) If more than one expression of interest is received then a fair and transparent process must be undertaken and all bidders treated equally.
c) A Regulation 84 compliant Award Report must be produced, approved and kept on file for audit purposes.
d) An Award Notice fully detailing the process undertaken and outcome must be placed in OJEU and Contracts Finder.

Not following the above four points would breach the Regulations and may lead to a successful challenge from providers.

The Regulations can be viewed in full by clicking on the following link:

http://www.legislation.gov.uk/uksi/2015/102/contents/made

4.2. The National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 ("PPCC").

The PPCC Regulations were produced by Monitor (now known as NHS Improvement) on behalf of the Secretary of State for Health to exercise powers conferred by sections 75-77 and Section 304(9) & (10) of the Health & Social Care Act 2012. NHS Improvement is responsible for implementing the Regulations which it considers to be a set of principles to be used by Commissioners when procuring NHS Funded Services.

NHS Improvement may investigate a complaint received from a provider that the CCG has failed to comply with a requirement imposed by the regulations. NHS Improvement may on its own initiative investigate whether a relevant body has failed to comply with the Anti-Competitive Behaviour requirements of the regulations.

The Regulations can be viewed in full by clicking on the following link:
http://www.legislation.gov.uk/uksi/2013/500/contents/made

Commissioners have an obligation to ensure that when they procure healthcare services (irrespective of whether a formal procurement process has been carried out) that must act with a view to (Regulation2):-

a) securing the needs of the people who use the services,
b) improving the quality of the services, and
c) improving efficiency in the provision of the services.

In order to meet these requirements the CCG should consider a range of strategies including:-

a) Providing the services in a more integrated way;
b) enabling providers to compete to provide the services;
c) allowing patients a choice of provider of the services;
d) Consider collaborative procurement;

Both sets of procurement Regulations are there to ensure Commissioners adhere to the following principles:

a) **Act in a transparent and proportionate way**, for example by advertising opportunities, publishing Commissioning plans, publicising evaluation criteria. In addition the Regulations require the CCG to publish in OJEU & Contracts Finder all contract awards it makes including those where no formal procurement process

has been undertaken. The award notice must include the name of the provider, description of the services, total amount to be paid, contract period and describe how the provider was accepted;

b) treat providers **equally** and in a **non-discriminatory** way, including not treating a provider more favourably than any other provider, in particular on the basis of ownership, i.e. you cannot "favour" an NHS organisation including General Practitioners over other NHS provider types such as the independent or third sector; ensure service specifications are based on outcomes required rather than how providers should deliver the service.

For spends below £589,148 there is no legal obligation to advertise however it is important that the Commissioner can evidence their decision meets the stipulations of Procurement, Patient Choice & Competition (2) Regulations 2013. Where it is identified that there is likely to be more than one capable provider the CCG should advertise their requirements or undergo a fair and transparent process. This **does not** necessarily obligate the CCG to tender the services, although in most cases that is the next logical step, but it will provide evidence that the CCG has tried to engage with the market.

The Regulations also cover other matters that the CCG must consider when procuring services. These include:-

Award of a Contract without Competition

For expenditure above £589,148 direct award with no competition is covered under Regulation 32 of the Public Contract Regulations 2015 which states it is possible but only under the following circumstances:

a) Where no tenders or suitable tenders were received from providers in response to an Open or Restricted procedure procurement process.
b) Competition is absent for technical reasons (i.e only one provider can meet the specification – and this can be evidenced and justified appropriately).
c) For reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for procurement cannot be met and this can be justified appropriately – poor planning is not appropriate justification.

For expenditure below £589,148 the CCG may award a new contract for Healthcare Services without advertising an intention to seek offers, where the CCG is satisfied that the service is capable of only being provided by that provider or there are statutory or other reasons why a particular provider must provide those services, for example on clinical or safety grounds.

The Commissioner would need to evidence it meets the stipulations of the Procurement, Patient Choice & Competition (2) Regulations 2013.

GP List Based Services

A further example of where an exemption to the procurement regulations (PCR 2015) applies is GP List based services. This is because of the requirement to have a patient list which clearly no provider other than a GP would be able to meet; therefore a direct award to a GP or a consortium of GPs for these services is entirely appropriate in that it meets the criteria. In these instances the opportunity should be offered on an 'open house' basis to all GPs ensuring each and every GP is given a fair and equal chance to submit their interest and a process then followed to identify the successful provider(s). This will be via simple expression of interest where multiple providers are sought ie in the case of Local Enhanced Services or via expression of interest followed by quality based questionnaire where a single provider is sought, for example GP cover for a local nursing home.

4.3. Public Services (Social Value) Act 2012.

The Public Services (Social Value) Act places a requirement on commissioners to consider the economic, environmental and social benefits of their approaches to procurement before any procurement process starts. Commissioners also have to consider whether they should consult on these issues.

When considering how a procurement process might improve the social, economic or environmental well-being of a relevant area the CCG must only consider matters which are relevant to what is proposed to be procured. The CCG is only required to consider those matters to the extent to which it is proportionate, in all the circumstances, to take those matters into account.

This is a legal requirement and the CCG must undertake a Social Value Impact Assessment and should keep a formal record to show consideration of Social value has been made.

4.4 Consultation

Section14Z2 of the NHS Act 2006 (as amended by the Health & Social Care Act 2012) states that: "The clinical commissioning group must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being

consulted or provided with information or in other ways)":-

- in the planning of the commissioning arrangements by the CCG,
- in the development and consideration of proposals by the CCG for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and
- in decisions of the CCG affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.

The CCG should seek advice from its Communications & Engagement service and, if necessary, legal advice regarding whether or not formal consultation is required.

Whilst formal consultation is likely to be required where a new service is being introduced or there are fundamental changes proposed to any existing service provision it is important that in any procurement there is continuous stakeholder engagement throughout. The CCG should consider whether patient group representatives should be involved in the project team and in tender evaluation teams where formal procurements are undertaken. Care will need to be taken to ensure there are no Conflicts or potential Conflicts of Interest.

When Consultation is undertaken in order for it to be lawful:

- It must take place when the proposal is still at a formative stage;
- Sufficient reasons must be put forward about the proposal to allow for intelligent consideration and response;
- Adequate time must be given for consideration and response; and
- The outcome of the consultation must be conscientiously taken into account.

4.5 Public Sector Equality Duty

Under the Equality Act 2010 when public bodies make decisions, referred to exercising its functions in the Act, they **must** consider the need to:-

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant **protected characteristic** and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

This is known as the **Public Sector Equality Duty** ("PSED").

Failure to comply with the PSED can result in any procurement being subject to a Judicial Review which can be invoked up to three months after the alleged breach, or even longer at the Courts discretion.

The PSED lies with the people making the decisions, usually the CCG Governing body. Responsibilities under the PSED **cannot** be delegated. The key is that the objectives of the Act are considered when making decisions ("have due regard to") but at the same time these are considered in the context of the prevailing circumstances, so would include matters such as financial or operational issues. As with Consultation if there is any doubt advice should be sought.

The Equality Act 2010 defines protected characteristics as:-

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race (including ethnic or national origins, colour or nationality);
- religion or belief;
- sex;
- sexual orientation;
- marriage and civil partnership.

4.6 Fair Deal

Fair Deal was implemented on the 07th October 2013. This gave access to all types of Providers of NHS services to have access to the NHS Pension scheme. A New Fair Deal which affects NHS Pensions further was implemented March 2014. The New Fair Deal ensures that NHS staff previously compulsorily transferred out of the public sector will continue to have access to the NHS Pension scheme and includes allowing such staff to rejoin the scheme.

Should staff who rejoin the scheme have suffered a shortfall in contributions as a consequence of being originally transferred out of the NHS pension scheme, the New Fair Deal indicates that the new commissioners are responsible for any shortfalls.

New Fair Deal and the potential financial implications of bulk transfer of pensions should be

considered in any new procurement. It is not an issue in the majority of cases but it should be considered when the **outgoing provider has previously had staff TUPE transferred to it from the NHS.** Any new provider would have to offer the option for staff to bulk transfer pension funds back into the NHS which could result in shortfalls.

5. Healthcare Services Procurement Options

5.1 When to Procure

As stated earlier, NHS Procurement is governed by two separate sets of Regulations:

a) The Public Contract Regulations 2015 (“PCR”)

b) Procurement, Patient Choice & Competition (2) Regulations 2013 (“PPCC”)

The Public Contract Regulations 2015 are European Law and therefore supersede the Procurement, Patient Choice & Competition (2) Regulations 2013 which are just UK Regulations. As the threshold for PCR is £589,148 it is recommended that for spends up to £589,147 that PPCC is adhered to and its stipulations met and evidenced accordingly.

For spends £589,148 and above then PCR is adhered to and appropriate steps followed accordingly.

For more information or guidance please speak to the CSU Procurement manager:

Name	Craig Stephens
Telephone	07718 423 559
Email	Craig.stephens@nhs.net

Appendix A shows a decision flow diagram which will help guide the CCG and a detailed procurement checklist is attached as **Appendix B,** intended and to help inform procurement strategies and to aid review/ re-commissioning of services.

NOTE: where the requirement to be procured consists of a number of elements e.g. a combination or a mix of goods and services/ healthcare services, determining which part of the procurement regulations apply will be undertaken as part of the normal scoping arrangements during the pre-procurement stage (and documented in the Project Initiation Document). PCR 2015 states that “…..the main ‘subject-matter’ [i.e. the requirements to be procured] shall be determined in accordance with which of the estimated values of the respective services, or of the respective services and supplies, is the highest.” For example, in the case of a requirement for a mix of healthcare service and goods, if the goods part constitutes the highest proportion of spend, the regulations that apply to goods must be followed and vice versa.

In broad terms, ‘goods’ are tangible consumable items and ‘services’ (non-healthcare services) are activities provided by people, such as lawyers, barbers, waiters etc.

In the case of Goods and Services, the financial thresholds are much lower than those for Healthcare Services. The current threshold for CCGs is £164,176 so any contract value above this should be advertised or a suitable framework used for buying those goods/ services.

5.2 Procurement Processes

There are a number of procurement processes available and which one to adopt depends on the specific circumstances. Whilst the CCG does not have to follow exactly the procedures laid down in the Public Contract Regulations 2015, mirroring those procedures when a procurement process is used will demonstrate transparency and equity. The CSU procurement team can advise on the most appropriate method. The key is to ensure that all commissioning decisions including whether to procure, whether to decommission, whether to seek competition, etc. are recorded and an audit trail kept.

Procurement options include:-

5.2.1 Competitive Tendering

A competitive process (mirroring processes set out in the Public Contracts Regulations 2015) must be designed to demonstrate fairness, equality, transparency and non-discrimination in the procuring of services and will also achieve value for money.

There are several types of competitive tendering processes that can be considered. The ultimate choice of process will be informed by market analysis. For example, if a large number of providers are likely to be interested, a multi-stage tendering process should be considered (commonly referred to as the **Restricted Process**) to restrict the number of providers invited to bid. This can make the process more manageable. In response to the advert, interested parties only submit pre-qualification information, and those then shortlisted receive an Invitation to Tender.

Where it is envisaged that only a small number of providers are likely to be interested, a single stage tendering process could be considered (referred to as **Open Process**), where pre-qualification and tender stages are conducted together. All potential suppliers complete a tender in response to the advertisement.

For a procurement where innovative solutions are being sought or the CCG needs to work with the providers to develop the service model, it may be more appropriate to use a process that allows for a dialogue with bidders, rather than just asking for bids in response to a defined specification. This is commonly referred to as **Competitive Dialogue.** Competitive dialogue can be a lengthy and resource intensive process and really should be restricted to those procurements where the service requirements cannot easily be defined and/ or the financial structure is complex.

All competitive tendering processes must be conducted fairly and transparently, and have clear criteria for award published in advance.

All contracts awarded whether or not through a formal procurement process must be published in Contracts Finder and in the Official Journal Of the European Union (OJEU) (for healthcare services a notice is only required in OJEU where value exceeds a total contract value of £589,148).

Prior Information Notice (PIN)

Prior Information Notices (or PINs) are being used more and more by NHS Commissioners, particularly since the introduction of PCR 2015. There are two types of PIN notice – each used in specific circumstances as follows:

1 – Standard PIN notice. This is used as a method to notify the market of your intentions in advance. This is typically used to encourage/ increase/ stimulate interest within the market place. An example of a PIN notice may be advertising the CCG's desire to look at Dermatology and include basic information such as anticipated timescales, overview of service, low level finance information and anticipated start date of procurement etc. This PIN notice has to be live for 35 days and for a maximum of 12 months ie you would have to start the procurement for the Dermatology service (example only) within 12 months of placing the PIN otherwise it would then become void. The advantage of placing this PIN is not only does it pre-warn the market and help drum up interest but it also enables you to reduce your ITT timescales – for instance an ITT undertaken using the Open process can be reduced from 30 to 15 days. This type of PIN tends to not be used anymore as the Light Touch Regime to which Healthcare falls under allows the CCG flexibility to create bespoke procurement processes with timescales that the CCG feel are appropriate.

Under Public Contract Regulations (PCR) 2015 a new, second type of PIN notice has been introduced and this is now growing in popularity and is seen as the way forward:

2 – PIN acting as a 'call for competition'. This is used as an actual advert, so for instance, if you wanted to procure Dermatology but were not sure of the level of market interest one option would be to place a PIN acting as a call for competition. The PIN is live for 35 days (mandatory) and providers are able to view the details (along with specification) to assess their interest. If they wish to express their interest they respond to the PIN and their interest is logged. At the end of the 35 days the PIN closes and the expressions counted and logged. Only the providers

who have expressed an interest to the PIN can then be invited to the ITT process at a later date (NB – even the current provider (if any) has to respond with their interest to the PIN – no expression of interest, no invitation to ITT). The procurement would have to be commenced within 12 months. Using a PIN in this way is a good way to assess interest rather than going into an ITT process blind – for instance it is better to receive 50 expressions of interest to a PIN as a call for competition rather than 50 ITTs in response to an Open process. Using a PIN affords the commissioner the chance to design the procurement process and complexity around the number of interested bidders and type of bidders. If only one expression of interest is received then this is still sufficient evidence for compliance with PCR 2015 and providing they are able to meet the specification, you may direct award to them.

5.2.2 No Competition

Where it is determined that the services are capable of being provided only by one provider or there is an urgent clinical need, it may be appropriate to proceed with "single tender action", where a contract is awarded to a single provider – or a limited group of providers – without competition.

When considering a single tender action ensure appropriate steps have been taken to identify other capable providers, whether or not the service will still represent value for money, and whether or not there are potential conflicts of interest.

As per Section 4.2 of this policy, Regulation 32 of PCR 2015 states that a direct award with no competition can be made if one of the following three stipulations can be met:

a) No bids or no suitable bids in response to a procurement exercise (Open or Restricted).
b) Technical reasons ie - the service can only be provided by that provider for clinical reasons and this can be evidenced and justified appropriately.
c) Reasons of extreme urgency due to unforeseen circumstances – this cannot be due to poor planning, it is normally due to pandemic or emergencies etc.

Commissioners must keep a record of the reasons for the decision for audit purposes.

5.2.3 Contract Variation

Contract variations are treated the same as any other spend and are addressed within PCR under Regulation 72. There are now 6 tests that determine whether a variation can take place and provide appropriate justification accordingly. Commissioners are advised to approach the

tests in order of appearance below.

It is important to note that under PCR all variations for the life of the contract must be aggregated and included – you are not undertaking the tests for the change in isolation.

No	Test	Description
1	Threshold test	Variation **cannot** be more than 10% of the original value and/or £589,148
2	Provided for in contract test	The potential for this variation was included within the original procurement documentation in the ITT
3	Materiality test	Cannot be a material change (material change is normally linked to 10% of the total value)
4	Inconvenience test	Additional services have become necessary that were not included in the original procurement and can only be provided by that supplier for technical reasons or to avoid significant duplication of costs. Cannot exceed 50% of costs.
5	Unexpected Circumstances test	Changes required due to unforeseen circumstances - this would be an urgent change in legislation due to clinical need etc..
6	Takeover test	Provider is taken over by new provider

If you believe your variation fits within one of the above tests we advise you speak to procurement prior to actioning to ensure it is correct and avoid any future challenge.

5.2.4 Any Qualified Provider (AQP)

Under AQP, any provider who can meet quality requirements and agree to set prices ("tariff") is accredited to deliver the service. Providers have no volume guarantees and patients will decide which provider they wish to use to carry out their treatment.

To determine whether the use of AQP is appropriate, the CCG must consider the characteristics of the service and the local healthcare system. This will include whether the service lends itself to patient choice.

One of the key determinants of the suitability of AQP is whether the circumstances of the service enable the patient to be put in a position to exercise choice. AQP is suitable for planned community based services and is not suitable for urgent and emergency care services. Some examples where AQP might be suitable are some Dermatology services, Podiatry services, Anti Coagulation Services, Primary Eye care Assessment Services and Adult (age related) Audiology services.

Where AQP is used, the service specification, pricing structure, key contractual terms and assessment criteria needs to be determined before advertising.

Once advertised, potential provider will complete an accreditation questionnaire. All providers who:

a) meet quality requirements;
b) agree to meet the Terms and Conditions of the NHS Standard Contract;
c) accept the standard price for the service; and
d) provide assurances that they are capable of delivering the agreed service requirements,

will become accredited providers subject to satisfactory achievement of this criteria.

Care should be taken around the quality standards set otherwise the CCG may have a large number of providers with the consequent contract management workload or too few to enable adequate patient choice.

5.3 Timescales for Healthcare Procurement

The length of time a procurement for healthcare service takes will vary according to the requirements of the specific procurement and what procurement process is used. As an indication, a typical procurement will take 5-6 months from placing the advert in OJEU & Contracts Finder to awarding the contract. This does not include pre-procurement activities such as market research, consultation, Social Value assessment producing the service specification, etc. A procurement could be less or more than this depending on complexity, time allowed for bidder responses etc.

6. Wolverhampton CCG Procurement Governance

To ensure appropriate governance throughout the procurement process, it is intended that all procurements will follow the following stages:-

Stage:	Activity:	Agreed by:
1	Service Need/ Review proposal initially scoped and developed by identified project lead. This should include some initial market research.	Delivery Board
2	Option Appraisal and Recommendation from Delivery Board developed and taken to Commissioning Committee for approval by the project lead.	Commissioning Committee
3	Report taken to Commissioning Committee with outline business case, procurement option proposal and request to establish a Procurement Task & Finish Group overseen by the Delivery Board.	Commissioning Committee
4	Task & Finish Group established to develop: • Project Initiation Document • Service Specification • Evaluation Criteria • Finance / Activity Modelling • Consultation • QIA / EQIA • Social Value Impact Assessment • Procurement Timetable To be agreed and overseen by the Delivery Board.	Delivery Board
5	Full Business case and service specification taken to Commissioning Committee for final approval before advertising the procurement. There may be instances where the procurement is advertised before the final completion and approval of the service specification at Commissioning Committee which will be agreed in advance to meet timescales of the procurement.	Commissioning Committee
6	Task & Finish Group undertake procurement supported by CSU.	
7	Contract Award Report prepared by CSU Procurement lead and signed off by the Procurement Task & Finish Group before being presented to the CCG Governing Body (Private Session) for approval.	Governing Body
8	Following standstill Contract awarded to winning bidder(s). CCG website updated and communication to staff	
9.	Service mobilisation commences which could take up to 3 months or more for complex services but less for more straightforward services. As this precedes the commencement date it is critical for mobilisation to be built into the project plan with realistic timescales allowed for.	
10.	Task & Finish Group to develop Lessons Learnt report and presented to Commissioning Committee (Private Session)	Commissioning Committee

***Note**- where significant change is proposed to the service specification or to the procurement process, this will require formal approval through commissioning committee.

To ensure that the Governing Body are aware of all current and upcoming procurement activities including timelines, a regular report will be presented on a monthly basis to the Commissioning Committee that includes the Procurement Register, which will then be included in the Commissioning Committee Chair's regular report to Governing Body.

In line with the CCG's 'Detailed Financial Policies' the table below summaries the delegated duties/ authorities relating to award of contract:-

DFP Ref:	Authorities / Duties Delegated:	Delegated to:	Financial Limit:
7.11	Authority to waive tenders or quotations, or to accept a tender or quotation which is not the lowest.	CFO or AO	No Limit
7.20	Awarding of (or variation in) non-NHS legally enforceable contracts (after DFP compliant procurement process).	Budget Holder Director responsible for budget area CFO AO & CFO Governing Body	<u>Revenue</u> <u>Capital</u> Up to £30,000 Up to £30,000 £30,001 - £100,000 £30,001 - £100,000 £100,001 - £250,000 £100,001 - £250,000 £250,001 - £500,000 £250,001 - £500,000 £500,001 and above £500,001 and above The relevant amount is the total value of the contract for its entire duration including irrecoverable VAT.
7.20	Awarding of (or variation in) NHS contracts.	DoST DoST & CFO or AO CFO & AO Governing Body	Up to £250,000 £250,001 – £500,000 £500,001 - £1,000,000 £1,000,001 and above The relevant amount is the total value of the agreement for its entire duration.

<u>Abbreviations</u>

DFP	Detailed Financial Policies
CFOO	Chief Finance Officer
AO	Accountable Officer
DoST	Director of Strategy & Transformation

7. Procurement Register

The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013 sets out under Regulation 9 that:-

(1) A relevant body must maintain, and publish on the website maintained by the Board under regulation 4(1), a record of each contract it awards for the provision of health care services for the purposes of the NHS.

(2) Such a record must, in particular, include in relation to each contract awarded -

(a) the name of the provider and the address of its registered office or principal place of business,

(b) a description of the Healthcare Services to be provided,

(c) the total amount to be paid or, where the total amount is not known, the amounts payable to the provider under the contract,

(d) the dates between which the contract provides for the services to be provided,

(e) a description of the process adopted for selecting the provider.

In addition, statutory guidance on managing conflicts of interest for CCGs requires CCGs to publish this information, along with details of who made the decision and how any conflicts of interest were managed. Following formal award of a contract following procurement, the CCG's Procurement Register will be updated with this information and published on its website.

8. Conflicts of Interest

The National Health Service (Procurement, Patient Choice and Competition) Regulations (No.2) 2013 set out high level requirements on managing conflicts of interest for procurement of healthcare.

The regulations state that a CCG must not award a contract where conflicts, or potential conflicts, exist between the interests involved in commissioning such services and the interests involved in providing them affect, or appear to affect, the integrity of the award of that contract.

In relation to each contract that it has entered into, the CCG must maintain a record of how it managed any conflict that arose between the interests in commissioning the services and the interests involved in providing them.

Therefore, as part of any procurement process, all participants will have to sign a Conflict of Interest Declaration before any involvement. Any conflicts or potential conflicts must be managed to determine whether the individual who has declared such conflict or potential conflict can be involved in the procurement.

Examples of conflicts of interest include:

- Having a financial interest (e.g. holding shares or options) in a Potential Bidder or any entity involved in any bidding consortium including where such entity is a provider of primary care services or any employee or officer thereof (Bidder Party);
- Having a financial or any other personal interest in the outcome of the Evaluation Process;
- Being employed by or providing services to any Bidder Party;
- Receiving any kind of monetary or non-monetary payment or incentive (including hospitality) from any Bidder Party or its representatives;
- Canvassing, or negotiating with, any person with a view to entering into any of the arrangements outlined above;
- Having a close family member who falls into any of the categories outlined above; and
- Having any other close relationship (current or historical) with any Bidder Party.

The above is a non-exhaustive list of examples, and will be the participant's responsibility to ensure that any and all conflicts or potential conflicts – whether or not of the type listed above – are disclosed in the declaration prior to participation in the procurement process.
Any disclosure will be assessed by the CCG on a case-by-case basis. Individuals will be excluded from the procurement process where the identified conflict is in the CCG's opinion

material and cannot be mitigated or be reasonably dealt with in another way.

Wolverhampton CCG's Policy for Declaring and Managing Interests sets out the CCG's approach to managing conflicts of interest in more detail and is available on the CCGs website.

9. Other Considerations

9.1 Reference to Other Documents

As per Section 6 of this policy, all procurements will be in accordance with the NHS and CCG's governance arrangements. The key documents for consideration (but not exclusively) include:-

- NHS Constitution
- HM Treasury Managing public Money
- Prime Financial Documents
- Detailed Financial Policies
- Information Governance Policy
- Adult Safeguarding Policy
- Safeguarding children from Harm and Abuse Commissioning Policy
- Quality Patient safety Strategy for Commissioning
- Communication and Engagement Strategy
- Equality & Diversity Policy
- Conflicts of Interest Policy

9.2 Collaboration

There are areas of contracts and procurement in which collaboration is likely to bring benefits, whether it is the sharing of operational resources, or commitment to specific joint projects and/ or contracts. Economies of scale can be achieved in both operational activity and through leveraging collective spend.

Collaborative procurement opportunities should be considered where benefits can be identified, including joint tendering opportunities where complementary service specifications exist, and may include collaborating with non-NHS bodies. In all cases of collaboration, it is good practice to develop a formal agreement between the parties (eg Memorandum of Understanding), detailing all aspects of the arrangements to be applied to the joint procurement being undertaken.

9.3 Sustainable Procurement

As a public sector organisation, the CCG must be committed to the principles of sustainable development and demonstrate leadership in sustainable development to support central Government and Department of Health commitments in this area of policy, and the improvement of the nation's health and wellbeing.

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

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

- Non-renewable material use;
- Manufacture and production methods;
- Logistics;
- Service delivery,
- Use/ operation/ maintenance/ reuse/ recycling and disposal options.

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

9.4 Small and Medium Sized Enterprise (SME), and Third Sector Support

The CCG will aim to support and encourage SME, Third Sector and voluntary organisations in bidding for contracts as required under Government policy.

The CCG will aim to support Government initiatives seeking the involvement of SME's and the Third Sector in public service delivery without acting in contravention of public sector procurement legislation and guidance.

The NHS is keen to encourage innovative approaches that could be offered by new providers – including independent sector, voluntary and third sector providers. The CCG is committed to the development of such providers.

9.5 Transparency

In 2010 the Government set out the need for greater transparency across its operations to

enable the public to hold public bodies and politicians to account. This includes commitments relating to public expenditure intended to help achieve better value for money.

As part of the transparency agenda, the government made the following commitments with regard to procurement and contracting:

9.5.1 All new central government tender documents for contracts over £10,000 to be published on a single website from September 2010, with this information to be made available to the public free of charge.

9.5.2 All new central government contracts to be published in full from January 2011.

These rules apply to the NHS. To support the CCG in complying with these requirements, the CSU places adverts on Contract Finder.

9.6 Freedom of Information Act

The CCG will be subject to Freedom of Information requests which may include information relating to procurements. Whilst during a procurement process some information may be able to be withheld on grounds of commercial confidentiality, once the procurement has been completed this is unlikely to be the case. It should be noted that by complying with the Government's Transparency requirements some of this information will already be available and it may be a matter of just referring the requestor to Contracts Finder.

10. Summary

10.1 The CCG must comply with both the Public Contract Regulations 2015 and the Procurement, Patient Choice & Competition Regulations (No2) when procuring healthcare services.

10.2 The CCG must also consider its obligations regarding Consultation, Stakeholder engagement, Social Value and Equality.

10.3 The CCG must keep a record of all decisions regarding the procurement of healthcare services.

10.4 The CCG should ensure that it acts transparently by:-

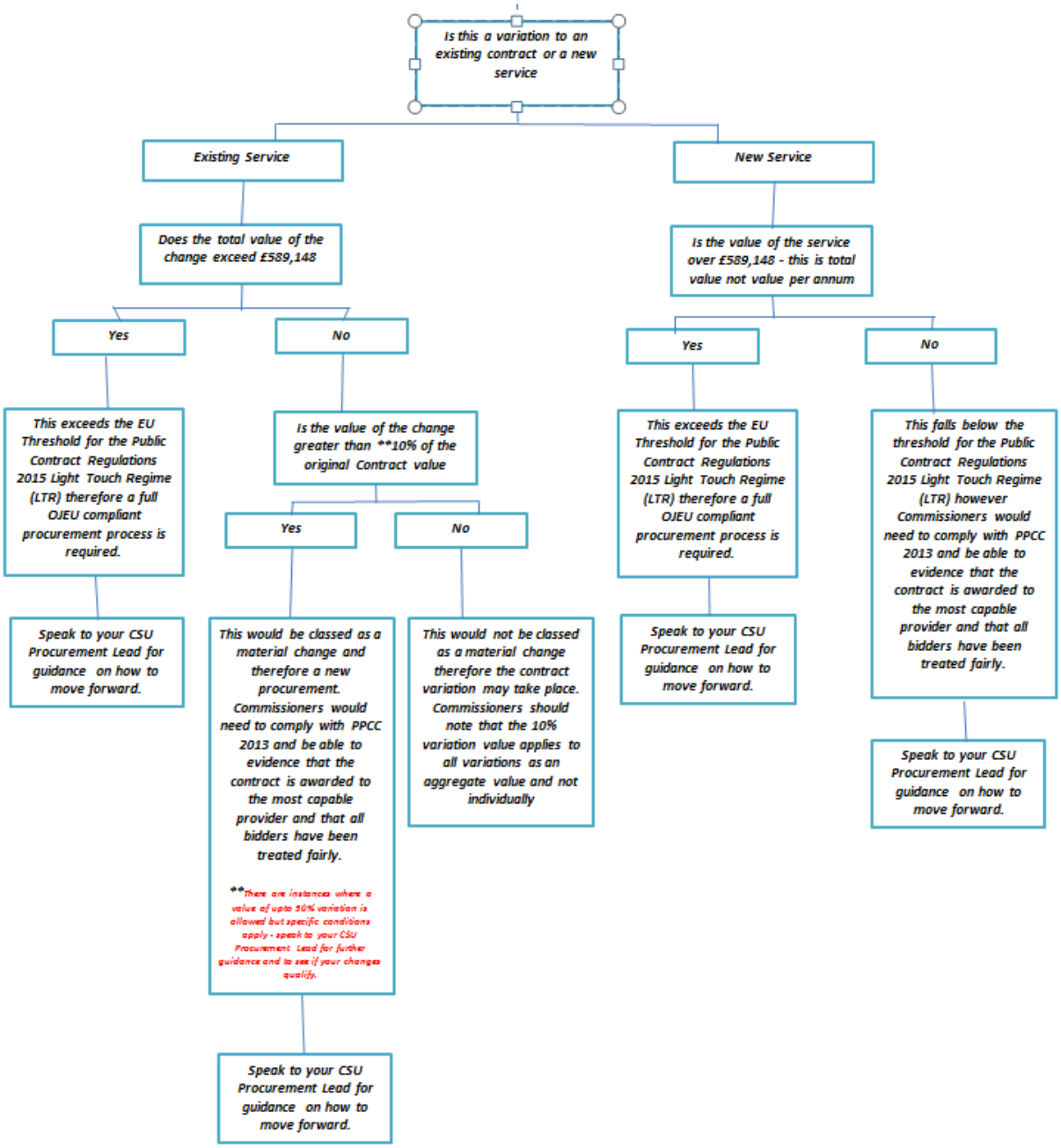
- Publishing details of its Commissioning Intentions on an annual basis;
- Advertising all opportunities where it has been identified there is more than one capable provider;
- Publishing all contract awards in Contracts Finder and where the contract value exceeds a total contract value of £589,148 in the Official Journal of the European Journal.

- Publishing evaluation criteria in procurement documents.

10.5 The CCG should utilise the expert advice and support provided by the CSU in undertaking any procurement.

Appendix A - Summary of the Healthcare Procurement Decision Making Process

Please find embedded Procurement Decision Flow Chart – this enables the Commissioner to follow a basic flow chart enabling them to see at a glance the process they need to follow and next steps etc. This should be used as a guide only and the CSU advises the CCG Commissioner to speak to the Procurement Account Manager for more detailed discussions.



Appendix B – Procurement Check List - Decision Making support Tool

Service to be commissioned:	
Estimated Value per Year:	
Planned contract period:	
Total contract value:	
Current contract expiry date (if applicable):	
Current provider(s) (if applicable):	

Lead Commissioner Name:	
Position:	
CCG:	

The purpose of the following questions is to help guide the commissioner's decision making process. The following questions should not be used as a purely mechanistic process for determining the commissioning approach. (For further guidance please refer to the notes before completing the tables below, and guidance issued by NHS Improvement).

1 - Questions that commissioners should ask themselves when reviewing a healthcare service:-

What are **the needs of the health care service users** we are responsible for?	
How good are current services? **Can we improve them?**	
How can we make sure that the **services are provided in a more joined-up way** with other services?	
Could services be improved by **giving patients a choice of provider** to go to and/or by **enabling providers to compete** to deliver services?	
How can we identify the **most capable provider** or provider of the services?	
Are our actions transparent? Do people know what decisions we are taking and the reasons why we are taking them?	
How can we make sure that **providers have a fair opportunity to express their interest** in providing services?	
Are there any conflicts between the interests commissioning services and those providing them?	

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?	

2 – Questions that commissioners should consider when preparing to re-commission a service.

Market Capability Assessment (insert details of understanding of the market)

INDICATORS FOR ANY QUALIFIED PROVIDER	Yes/No	Justification
Services can be provided by a range of providers		
It would be in the interests of patients to provide/increase patient choice, or it is a service for which patient choice must be offered.		
Are there service access inequalities?		
Is there a national or local tariff, or could a local tariff be developed?		

INDICATORS FOR COMPETITIVE PROCUREMENT	Yes/No	Justification
Competition would improve services (if not, why not?)		
It would be appropriate for one provider or limited number of providers to provide the service		
Application of resources would be proportionate to carry out a competitive tender		
There is market for the services		
Competition on quality and price would be appropriate		

INDICATORS FOR DIRECT AWARD	Yes/No	Justification
(NO COMPETITION)		
Can the requirement be delivered via an existing contract without breaching procurement rules? (A material variation to an existing contract could amount to the award of a new contract).		
Service is patient list related		
Market review and engagement determines that there is only one capable provider		
Patient choice is not relevant		
Service is of low value, which may be relevant to the proportionality of conducting a competitive process.		
Service is closely related or co- located with other services (which could be relevant to whether there is only 1 capable provider).		

Decision:-
Justification

GUIDANCE NOTES

This tool has been reviewed by Monitor, and their feedback has been taken into account. This does not imply that Monitor endorses the tool, or that decisions made using the tool will be compliant with the NHS (PPCC) (No 2) Regulations 2013. This therefore applies to spends below £589,148 only.

Background

Health Care (Clinical) Services contracts are subject to the Public Contracts Regulations 2015 in so much as they apply to Schedule 3 services. When procuring, CCGs must act TRANSPARENTLY, EQUITABLY, PROPORTIONATELY and in a NON-DISCRIMINATORY manner.

Procurements of health care (clinical) services must also be carried out in accordance with the Public Contract Regulations 2015 (PCR) and the NHS Procurement, Patient Choice and Competition (No.2) Regulations 2013 (PPCC) which exercise the powers the Secretary for Health has under the Health and Social Care Act 2012.

Monitor has published guidance to support commissioners in understanding and operating in accordance with the regulations, which is available at http://www.monitor.gov.uk/s75.

The PPCC Regulations also require Commissioners to act **transparently**, **equitably,** in a non-discriminatory manner and proportionately. They also require Commissioners to procure health care services to **secure the needs of patients** and to **improve quality and efficiency**. They also require commissioners to procure services that are **value for money** and only from **capable providers**. Where it is decided to procure a service and where there is more than one capable provider the requirements must be advertised.

(***There is no requirement in the PPCC Regulations for commissioners to publish a contract notice before awarding a contract to provide services. The decision whether or not to publish a contract notice is a matter for commissioners having regard to the decision-making framework set out in the PPCC Regulations. One circumstance in which it will be appropriate not to publish a contract notice is where there is only one provider that is capable of providing the services in question. Where there is more than one capable provider, commissioners should consider whether it is appropriate to publish a contract notice).***

There is a further requirement under the regulations for Commissioners to justify their

actions regarding the award of contracts irrespective of whether procurement was carried out. The PPCC Regulations are relevant whenever commissioners are awarding new contracts or making material variations to existing contracts (even if commissioners do not conduct a competitive tender process).

Transparency, Equal Treatment, Non-Discrimination and Proportionality

- **Transparency –** all procurement decisions and processes must be conducted openly and in a manner that can be scrutinised.
- **Equity & Non Discrimination –** all providers must be treated equally and commissioners must NOT favour one provider.
- **Proportionality –** commissioners need to consider the complexity, value and clinical risk of a service.
  If it is decided to procure the service then the process used, assessment criteria and information
  requested should be commensurate to the nature and value of the service.

Other considerations:-

- Service specifications need to reflect the service that will **best meet the needs of the patient**.
- **Is there a market,** i.e. is there a provider or more than one provider who can provide the service?
  Market research or market engagement may be necessary.
- **If there is only one capable provider can it be evidenced?** Are you sure that the specification is fit for purpose and does not include unreasonable constraints that may be barriers to other providers being able to bid? For example, is there only 1 provider with the infrastructure to deliver the service or has only 1 provider the necessary location, possibly co-located with other services, to be able to provide the services. Commissioners must have good reasons why only a particular provider or group of providers can provide the service.
- **What is the proposed contract value?** There is a cost to carrying out procurement so if you decide to procure the process used must be proportionate. Are the benefits of competitive tendering outweighed by the costs of running a competitive tender? Actions must be proportionate to the value, complexity and clinical risk associated with the provision of the service.
- In certain circumstances a **choice** of provider must be offered to patients (this does not necessarily mean unlimited choice) so this must be factored into the decision making.

Procurement options

The answers provided to the questions in this Decision Making Tool will help determine what the best way to commission services is and if procurement is a suitable option. Irrespective of whether or not procurement is undertaken the decision must be evidenced and justified and recorded by the CCG.

Should it be decided to undertake procurement, there are a number of different procedures which could be used:-

- **Competitive Tender** – where there is more than one capable provider and it is a service for which it is suitable to limit the number of providers of a services, for example where a commissioner wishes to offer one contract to one provider. There are different approaches to carrying out a competitive tender such as 'open' procurement where all interested parties can submit a bid, or 'restricted' where interested parties are shortlisted to bid.

- **Any Qualified Provider –** suitable for non-urgent, locally based services where there are a number of providers and where choice of provider will be beneficial to the patient, for example to improve access to services.

- **Frameworks –** useful for services such as continuing care where multiple providers are needed and where it is difficult to agree a single price (tariff). (Note: a framework is an agreement that provides commissioners with an option of providers to choose from. These providers may be offering services at different prices and service levels. An award of business under a framework agreement usually requires some form of further competition).