
PROCUREMENT STRATEGY

FINAL VERSION – JANUARY 2017

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ORGANISATIONAL APPROACH TO PROCUREMENT

AIMS

There are two core aims of this procurement strategy.

1. To provide an overview of how the North, Central and South Manchester Clinical Commissioning Groups (referred to throughout this document as the Manchester CCGs) will conduct themselves and the principles that will be applied to all procurement activity while ensuring compliance with statutory guidelines.
2. To provide advice and guidance for all staff working within the CCGs who procure any goods or services by setting out the procurement principles, rules and methods that the CCGS will operate within.

This policy sets out the existing legal framework for procurement by public bodies in the UK, and moving forward the procurement policy will be updated in line with any changes to UK and EU legislation.

INTRODUCTION

Procurement is the process of acquiring goods, works and services and this process spans the whole cycle from identification of needs, through to the end of a services contract or the end of the useful life of an asset. Procurement encompasses everything from repeat, low-value orders through to complex healthcare service solutions developed through partnership arrangements. Procurement is central to commissioning that drives quality and value.

The Manchester CCGs have a responsibility to ensure that services are commissioned to meet the needs of the people of Manchester. Services have to be affordable, with a clear emphasis on Value for Money (VfM).

While this strategy is primarily concerned with procurement related to health services, the principles it outlines can be applied to the procurement of any service by the CCGs and any service provider.

There are a range of procurement approaches available which include working with existing providers, non-competitive and competitive tender processes and multi-provider models such as Any Qualified Provider (AQP). These approaches are explored in this strategy document, and in relation to every commissioning decision the Manchester CCGs will need to carefully consider which approach is appropriate.

PRINCIPLES

To ensure that services are commissioned fairly and transparently, the Manchester CCGs will comply with regulations governing best practice in procurement, protecting and promoting patient choice, and anti-competitive behaviour.

The Manchester CCGs will seek to develop the local health economy by encouraging new providers and supporting local and existing providers so that they can participate fully. A strong, vibrant and well informed market place for healthcare provision will encourage innovation and drive up quality.

The Manchester CCGs are required to conduct themselves in ways that meet the overarching principles of public procurement within the NHS, which are as follows:

Transparency – commissioner’s requirement to publish procurement strategies and intentions to procure, feedback to unsuccessful bidders, details of awarded contracts, maintaining availability of records which demonstrate how procurement decisions were made.

Proportionality – the level of capacity and resource involved in the procurement process both on behalf of the commissioner and the potential providers in relation to the value and complexity of the service being procured.

Equality/Non-discriminatory – the duty to treat all potential providers equally. This could include level of engagement with certain providers on service redesign. To ensure that the service specification has not been designed to exclude certain providers without appropriate justification. Ensuring the deadline for submissions has not been set to favour certain providers.

Where appropriate the Manchester CCGs will work in collaboration with the wider health economy to jointly commission and procure services. Examples of this could include when collaboration results in benefits to the populations of Manchester including reduction of procurement costs and increased leverage with providers.

ROLE OF CCG GOVERNING BODIES

When undertaking procurement the Manchester CCG Governing Bodies have the responsibility for ensuring that they meet their statutory requirements as described in the 2012 Health Act. The Governing Bodies will be transparent when making procurement decisions and be the authorising body for awarding contracts once a tender process has been completed. When considering options for procurement the Governing Bodies will at all times apply the guidelines set out by Monitor as the appointed regulator of healthcare procurement and apply its key tests as described later within this document.

STAFF, PUBLIC AND PATIENT ENGAGEMENT

The Manchester CCGs are committed to engaging relevant stakeholders in all aspects of procurement. The NHS Constitution¹ pledges that staff should be engaged in changes that affect them. Staff engagement is principally the responsibility of employers, but as commissioners the CCGs recognise the value of effective staff engagement in improving the quality of commissioning and procurement.

The engagement of staff, clinicians, patients and the public in the designing of services results in better quality services. The business case approval processes require evidence of stakeholder

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/448466/NHS_Constitution_WEB.pdf

engagement and as a result, any procurement of services will have been informed by engagement at the design stage.

In addition to this, the Manchester CCGs are committed to engaging individuals within the procurement process. The views of the public and service users are considered when making any decision to go out to competitive procurement and when developing relevant tender documentation. The Manchester CCGs ensure that relevant service users are represented on tender evaluation panels and are therefore given the opportunity to influence the outcome of procurement decisions.

QUALITY

All procurement activity undertaken by the Manchester CCGs will contribute towards the QIPP agenda as follows:

Quality – the quality of each service will be controlled through the evaluation of the bidder's tender submissions and subsequently maintained through Key Performance Indicator (KPI)/Commissioning for Quality and Innovation (CQUIN) measures during the contract management stage of the commissioning cycle.

Innovation – emphasis will be placed on innovation to enable suppliers to introduce efficiencies and new working practices into every area of service delivery.

Productivity – each tender will be evaluated against a range of measures to ensure that the provider can deliver the most appropriate service (as outlined in the service specification) whilst considering the financial implications of each tender submission. Cost is a key element to ensure that each service maintains the highest level of productivity.

Prevention – this area concerns the prevention of not only over-spend but also the problem of under or over supply. A contract that delivers too much or too little can be wasteful and can often be an unwelcome expense to the commissioner of the service. There can be associated risks to the provider which emphasises the need for thorough market analysis and the understanding of the service requirements to the success of the service.

SUSTAINABLE PROCUREMENT

The Manchester CCGs should 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 –

- Design
- 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.

THIRD SECTOR/SMALL & MEDIUM ENTERPRISE (SME) SUPPORT

The CCGs will aim to support and encourage SME suppliers, Third Sector Voluntary organisations and local enterprises in bidding for contracts. The Market Management GM Shared Service (Part of North West Commissioning Support Unit (NWCSU)) will work with service commissioners to ensure that competitive tender processes promote equality and do not discriminate on the grounds of age, race, gender, culture, religion, sexual orientation or disability.

The Manchester CCGs will aim to support government initiatives seeking the optimal involvement of SMEs 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 CCGs are committed to the development of local providers that understand the needs of local communities. It is vital to ensure that the Manchester CCGs' approach to procurement is open and transparent and that it does not act as a barrier to new providers.

DECOMMISSIONING

The Manchester CCGs will ensure that our approach to the decommissioning of services will be fair, open and transparent. A set of principles to guide our approach to decommissioning services is set out below.

- Proposals to decommission a service will meet the Secretary of State's four key tests for service change:
 1. Support from GP commissioners
 2. Strong engagement, including local authorities, public and patients
 3. A clear clinical evidence base underpinning proposals
 4. The need to develop and support patient choice
- There must be clear and objective reasons for the decommissioning of a service and these are likely to be based on one or more of:
 1. Failure to remedy poor performance
 2. Evidence that the service is not cost effective

3. Evidence that the service is not clinically effective – i.e. patient outcomes cannot be demonstrated
 4. Insufficient need for the service
- Proposals will be clearly in line with the Manchester CCGs' strategic objectives.
 - Patient and service users' views will be taken into consideration in any decision to decommission a service, with formal public consultation when required.
 - Proposals will be led by clinicians and will be based upon clear and strong evidence of clinical and cost effectiveness.
 - There will be no negative impact on the quality of care patients receive.
 - Proposals will be backed by a robust business case that describes the benefits of decommissioning and demonstrates that the benefits will be achieved.
 - The Manchester CCGs will ultimately take the final decision with regard to the decommissioning of any service.

ANNUAL PROCUREMENT PLAN

A procurement work plan will be compiled on an annual basis and before the start of each financial year to support the priorities and requirements set out in the Manchester CCGs' annual commissioning and business plans.

The purpose of the procurement work plan is to signal the direction of travel for potential and existing providers. The procurement work plan is a public document and ensures that the Manchester CCGs are transparent about their procurement decision making processes and rationale. It will be published annually on the CCGs internet sites, and updated quarterly. This will allow us to communicate short, medium and long term objectives to a broad audience and demonstrate a range of potential opportunities within the Manchester economy, rather than a series of unscheduled one-off procurements. This should encourage increased provider interest resulting in the development of the local health economy.

Not all commissioning priorities will have or will result in formal procurement activity. When considering appropriate actions to effect required changes and improvements, competition is one lever available to the Manchester CCGs and a range of other levers will be considered (e.g. delivery of service redesign through partnership working).

COMPLIANCE WITH PROCUREMENT RULES & REGULATION

PUBLIC PROCUREMENT LEGISLATION

All managers and commissioners with budgetary responsibility must familiarise themselves with the CCGs' Financial Policies and Procedures, together with the relevant procurement procedures described in this document.

There are 3 key pieces of legislation which govern procurement in NHS organisations –

- The Public Contracts Regulations 2006²
- The National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013³
- The Public Contracts Regulations 2015⁴

PUBLIC CONTRACTS REGULATIONS 2006

The Public Contracts Regulations 2006 (the 2006 Regulations) transpose European Directives on the required process for conducting public procurement into UK law. The 2006 Regulations require that certain procedures must be followed by relevant public bodies when awarding contracts above specified financial thresholds.

The Regulations divide services into so called "Part A" (or "priority") services and "Part B" (or "residual") services (please note that this position has been revised following the adoption of the 2015 Regulations into UK law; see later section for further information). Only Part A services are fully caught by the Regulations. Part B services are caught by a lesser regime, with only a few of the detailed rules of the Regulations applying.

Generally, Part B services are those that the EU considered to have no "cross-border interest" i.e. those which would largely be of interest only to bidders located in the Member State where the contract was to be performed. These include "Health and Social Services".

Where legally enforceable contracts are to be awarded for Part B services with estimated full-life value above £172,514 (the aggregate contract value across one or more commissioners, and net of VAT), there is a limited statutory requirement to apply some of the EU procurement rules.

The EU treaty principles of non-discrimination, equal treatment, transparency, and proportionality apply to all procurements, whether for Part A or Part B services. The Manchester CCGs' approach to fulfilling these requirements is described below.

Below-threshold contracts are not caught by the 2006 Regulations, but case law states that where the contract is of 'certain cross border interest' i.e. of interest to suppliers located in other EU

² http://www.legislation.gov.uk/uksi/2006/5/pdfs/ukxi_20060005_en.pdf

³ http://www.legislation.gov.uk/uksi/2013/500/pdfs/ukxi_20130500_en.pdf

⁴ http://www.legislation.gov.uk/uksi/2015/102/pdfs/ukxi_20150102_en.pdf

Member States, they should be tendered in line with the general principles of non-discrimination, equal treatment and transparency. The same applies to contracts for Part B services. For contracts which are to be awarded below the thresholds previously described, the requirements of the Manchester CCGs' Policies and Procedures should be followed.

THE NHS (PROCUREMENT, PATIENT CHOICE AND COMPETITION) (NO 2) REGULATIONS 2013

The NHS (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (the 2013 Regulations) - which were made pursuant to sections 75, 76, 77 and 304(9) and (10) of the Health and Social Care Act 2012 (the 2012 Act) contain a number of requirements that the Manchester CCGs must comply with to ensure that they:

- Adhere to good practice in relation to the procurement of health care services funded by the NHS.
- Protect the rights of patients to make choices with respect to treatment or other health care services funded by the NHS.
- Do not engage in anti-competitive behaviour unless this is in the interests of NHS health care service users.

The 2013 Regulations particularly govern the procurement of healthcare services, and operate alongside the 2006 and 2015 Regulations.

The 2013 Regulations require that, when procuring NHS healthcare services, in all cases the Manchester CCGs **must** act to:

- Secure the needs of healthcare service users.
- Improve the quality of services.
- Improve the efficiency with which services are provided.

This includes situations where the Manchester CCGs are seeking to secure the delivery of healthcare services through integration including with other healthcare and social services. Monitor has been granted certain enforcement powers to ensure that any healthcare procurement achieves the above and details of Monitor's key tests are described later within this document.

The Regulations do not impose a 'one-size-fits-all' approach; rather they attempt to allow CCGs flexibility within the framework of rules. It is recognised that healthcare need will differ in accordance with local conditions.

When procuring NHS healthcare services, in all cases the Manchester CCGs **must** -

- Act in a transparent and proportionate way
- Treat providers equally and in a non-discriminatory way (showing no favouritism, particularly on basis of ownership)

This requires the Manchester CCGs to conduct all procurement activity openly and in a manner which enables behaviour to be scrutinised. Procurement decisions must be proportionate to the value, complexity and clinical risk associated with the provision of the services in question. Commissioners must treat all providers equally, not favouring one provider (or type of provider) over another. Differential treatment between providers will require objective justification.

The Manchester CCGs are required to procure services from one or more providers that:

- Are most capable of delivering the needs, quality and efficiency required.
- Provide the best value for money in doing so.

When considering how best to procure healthcare services which improve quality and efficiency, and which meet the health needs of the Manchester population, the Manchester CCGs must:

- Consider how the services can be provided in an integrated way (including with other healthcare services or social care services)
- How to enable service providers to compete to provide the services
- How to allow patients a choice of provider for the services

In order to be able to demonstrate compliance with the 2013 Regulations, the Manchester CCGs are required to maintain a record of the decision-making process in relation to the award of any contract for healthcare services, regardless of whether the award of such contract was as a result of a competitive tendering process.

While the 2013 Regulations do not impose a requirement on the Manchester CCGs to undertake competitive tendering in all circumstances, where a CCG awards a healthcare contract without conducting a competitive process, it must again ensure that it is able to evidence, via a robust audit trail, that the decision not to tender followed a detailed review of the provision of local services and which identified the most capable provider of the services; that there was only one provider capable of providing the services; or that the benefits of tendering would be outweighed by the cost.

There is also an obligation on the Manchester CCGs not to award contracts in a manner which can be considered anti-competitive, unless the CCG is able to evidence that this is in the best interests of service users.

The 2013 Regulations place additional specific requirements on the Manchester CCGs to maintain records of all awarded contracts which demonstrate how the decision to award that contract complied with the CCGs' obligations under the NHS Act 2006, to maintain a record of all conflicts of interest arising as a result of a decision to award a contract, and how the effect of those conflicts were mitigated.

The 2013 Regulations make clear that they do not expressly require the Manchester CCGs to competitively tender for new contracts in all circumstances. The decision whether or not to publish a contract opportunity is not an isolated decision and will need to be taken in the context of commissioners' decisions about what services to procure and how to go about procuring them more generally.

When deciding whether or not to publish a contract notice, the CCG will need to ensure that this decision is consistent with the requirements of the 2013 Regulations. Monitor guidance advises that a CCG will be justified in a decision not to competitively tender a service where:

- There is only one provider that is capable of providing the services in question.
- Where a commissioner carries out a detailed review of the provision of particular services in its local area in order to understand how those services can be improved and, as part of that review, identifies the most capable provider or providers of those services.

- Where the benefits of competitively tendering would be outweighed by the costs of publishing a contract notice and/or running a competitive tender process

MONITOR'S ROLE

Under the 2013 Regulations, Monitor has been granted certain enforcement powers in relation to the healthcare procurement activities of CCGs, including -

- Investigatory powers
- Declarations of ineffectiveness
- Directions
- Accepting undertakings

Monitor's investigation powers are triggered by the receipt of a complaint from a third party alleging a failure to comply with the requirements of the 2013 Regulations.

MONITOR'S TESTING CRITERIA

The overarching purpose of the Monitor testing criteria is to ensure that any healthcare procurement achieves the following –

- Securing the needs of health care service users
- Improving the quality of services
- Improving the efficiency with which services are provided

The criteria that Monitor will evaluate in assessing whether the aforementioned objectives have been met are as follows:

- Steps taken to establish the levels of public engagement in the local community to establish whether the services being procured meet local health need.
- Establish whether a holistic view of the needs of healthcare users has been undertaken when procuring particular services, including their needs for related services i.e. services that health care users/patients can access from the same provider on the same site.
- Whether the commissioner has considered the needs of all health care users for which it is responsible when procuring services, including:
 - What steps the commissioner has taken to ensure equitable access to services, including by vulnerable and socially excluded members of the population.
 - Whether the commissioner has had regard to the different needs of groups of patients, such as the need for some patients to receive a service in a particular setting.
 - Whether the commissioner has considered the sustainability of services, including the impact that a procurement decision relating to one set of services may have on the ability of providers to deliver other services that health care users require.
 - Whether the commissioner has monitored the quality and efficiency of existing service provision and identified any areas where improvements are needed in advance of procuring services.

IMPACT OF THE PUBLIC CONTRACTS REGULATIONS 2015⁵

The 2015 Regulations introduce a number of significant changes to the existing rules (although it is again important to note this will only apply to the procurement of non-healthcare services by CCGs up until 18th April 2016. Beyond this point the rules will apply in their entirety to healthcare and non-healthcare contracts alike). Changes introduced by the 2015 Regulations include:

- Abolition of the Part A / Part B distinction within the 2006 Regulations.
- The new requirement to evaluate all bids on the basis of the Most Economically Advantageous Tender (MEAT) rather than price alone. It is particularly important therefore for the commissioner to specify quality standards and KPIs as part of the service specification. Where alternative providers are offering to provide the services at lower cost it will be important to undertake appropriate due diligence as to whether quality standards will be delivered, as part of the evaluation process.
- Introduction of the 'Innovative Partnership' procedure which will allow for public authorities to call for tenders to solve a specific problem without pre-empting the solution, thus leaving room for the contracting authority and the tenderer to come up with innovative solutions together.
- Introduction of the 'Competitive Procedure with Negotiation'.
- Introduction of shorter mandatory time limits.
- Greater freedom on public authorities to exclude bidders on the basis of previous poor performance.
- Introduction of measures to encourage greater participation from small and medium enterprises (SMEs).
- Introduction of a new 'Light Touch Regime' for certain types of services (see below).

THE LIGHT-TOUCH REGIME (LTR)

The new LTR is a specific set of rules for certain service contracts that tend to be of lower interest to cross-border competition. Those service contracts include certain social, health and education services, as defined in the Regulations.

This new simplified regime will have a higher threshold of £589,148 (the aggregate contract value across one or more commissioners, and net of VAT) and the only obligations, apart from general EU principles, which apply to services with a contract value above this threshold; are the rules in relation to transparency and publicity i.e. that all relevant contracts in excess of this threshold are advertised in the OJEU.

Contracts below the LTR threshold do not normally need to be advertised in the OJEU, unless there are concrete indications of cross-border interest.

In terms of procurement requirements for above-threshold services, the main mandatory requirements are:

- i) OJEU Advertising - The publication of a contract notice (CN) or prior information notice (PIN). Except where the grounds for using the negotiated procedure without a call for

⁵ http://www.legislation.gov.uk/uksi/2015/102/pdfs/uksi_20150102_en.pdf

competition could be used, for example where there is only one provider capable of supplying the services required.

- ii) The publication of a Contract Award Notice (CAN) following each individual procurement, or if preferred, group such notices on a quarterly basis.
- iii) Compliance with Treaty principles of transparency and equal treatment.
- iv) Conduct the procurement in conformance with the information provided in the OJEU advert (CN or PIN) regarding: any conditions for participation; time limits for contacting/responding to the authority; and the award procedure to be applied.
- v) Time limits imposed by authorities on suppliers, such as for responding to adverts and tenders, must be reasonable and proportionate. There are no stipulated minimum time periods in the LTR rules, so contracting authorities should use their discretion and judgement on a case by case basis.

Authorities have the flexibility to use any process or procedure they choose to run the procurement, as long as it respects the other obligations above. There is no requirement to use the standard EU procurement procedures (open, restricted and so on) that are available for other (non-LTR) contracts. Authorities can use those procedures if helpful, or tailor those procedures according to their own needs, or design their own procedures altogether.

In any event, until 18 April 2016 in England, commissioners of clinical healthcare services will continue with the existing Part B service regime and the 2013 Regulations.

SUMMARY OF REGULATION CHANGES

Up until 18th April 2016 -

- Procurement for NHS healthcare services will continue to be covered by the existing Part B regime set out in the Public Contracts Regulations 2006, alongside the requirements of the NHS (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013.
- Procurement for NHS non-healthcare services will now be covered by the new regime set out in the Public Contracts Regulations 2015.

After 18th April 2016 -

- All NHS procurement will be covered by the requirements of the Public Contracts Regulations 2015.
- Healthcare services with a contract value greater than £589,148 (the aggregate contract value across one or more commissioners, and net of VAT) will however be subject to a light-touch regime, which requires commissioners to publish in the OJEU, however affords them an extensive degree of discretion with regards to the actual competitive procedure to be carried out.
- Healthcare contracts below the light-touch threshold will not require to be advertised.

This policy will be updated as and when new guidance emerges in relation to the effect of the 2015 Regulations on CCGs. In any event, advice should be sought from the Market Management GM

Shared Service (Part of North West Commissioning Support Unit (NWCSU)) regarding the appropriate procedure to follow when procuring NHS services.

THE PUBLIC SERVICES (SOCIAL VALUE) ACT 2012

This Act requires commissioners at the pre-procurement stage to consider how what is to be procured may improve social, environmental, and economic well-being of the relevant area, how they might secure any such improvement and to consider the need to consult.

The Act applies only to certain public services contracts to which the Public Contracts Regulations apply. However the Manchester CCGs intend, as good practice, to consider how its procurement might improve economic, social and environmental well-being in order to maximise value for money. The considered application of the provisions of this Act will provide the CCGs with the means to broaden evaluation criteria to include impact on the local area.

EQUALITY ACT 2010 (UK)

The Manchester CCGs must consider their responsibilities under the Equality Act 2010⁶ for all healthcare (clinical) procurement conducted. Potential providers must not be discriminated against, in compliance with the requirement of the act, during the term of contract or the procurement process itself.

BRIBERY ACT 2010

The Bribery Act 2010⁷ reformed the criminal law of bribery, making it easier to tackle this offence proactively in both the public and private sectors. It introduced a corporate offence which means that commercial organisations including NHS bodies will be exposed to criminal liability, punishable by an unlimited fine, for failing to prevent bribery. The Manchester CCGs need to be aware of the overall framework of the UK's anti-bribery regime to ensure that their procurement arrangements, policies and procedures comply with it.

MANCHESTER CCGS' FINANCIAL POLICIES

The CCGs' Policies and Procedures set out the following procurement limits for both revenue and capital purchases.

⁶ http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf

⁷ http://www.legislation.gov.uk/ukpga/2010/23/pdfs/ukpga_20100023_en.pdf

Total Value of Purchase	Type of Procurement	Guidance
Up to £5k	1 written quotation	The procurement can be done locally and should follow the normal requisitioning procedures. All purchasers will be expected to adhere to those contracts which have been negotiated by regional or national procurement teams for all goods/services. Where no contracts have been negotiated, or if they prove unsuitable, purchasers are free to request quotes from the open market.
Between £5k and £50k	A minimum of 3 written quotes	The procurement can be done locally and should follow the normal requisitioning procedures. All purchasers will be expected to adhere to those contracts which have been negotiated by regional or national procurement teams for all goods/services. Where no contracts have been negotiated, or if they prove unsuitable, purchasers are free to request quotes from the open market. If 3 quotes cannot be secured then a waiver form is required.
Between £50k and £100k	Mini tender required	Some form of competitive process should take place. This is likely to require input from external procurement support (Market Management GM Shared Service (Part of North West Commissioning Support Unit (NWCSU))) and the budget holder should seek appropriate advice. If a competitive process is not going to be followed then a waiver form must be completed.
Over £100k	Full tender required	A full competitive process is expected to take place for services over £100k unless the Governing Bodies determine that the service will not be subject to tender and sets out the rationale for its decision. Where a full OJEU compliant tender is required the procurement work plan must be updated and Market Management GM Shared Service (Part of North West Commissioning Support Unit (NWCSU)) informed to enable capacity planning. Procurement requests should be directed through the Assistant Head of Finance – Contracting and Commissioning.

In some circumstances (outlined below) the procurement route specified above might not be appropriate. In these circumstances a procurement waiver may be requested and authorised by the Accountable Officer or Chief Finance Officer.

Waivers	
1	In very exceptional circumstances where the Chief Operating Officer decides that formal tendering procedures would not be practicable or the estimated expenditure or income would not warrant formal tendering procedures, and the circumstances are detailed in an appropriate CCG record.
2	A consortium arrangement is in place and a lead organisation has been appointed to carry out tendering activity on behalf of the consortium members.
3	The timescale genuinely precludes complete tendering but failure to plan the work properly would not be regarded as justification for a single tender.
4	Allowed and provided for in the Capital Investment Manual.
5	The waiving of competitive tendering procedures should not be used to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure.
6	Competition is not appropriate, e.g. where partnership funding is in place.
7	Benefits in terms of choice, quality, efficiency or responsiveness are not apparent.
8	Where it is decided that competitive tendering is not applicable and should be waived, the fact of the waiver and the reasons should be documented and recorded in an appropriate CCG record and reported to the Audit Committee at each meeting.

CONFLICTS OF INTEREST

When commissioning services for which GP practices could be potential providers, or where staff may have a conflict of interest, the Manchester CCGs will refer to the advice and guidance published by NHS England⁸.

The Manchester CCGs have a requirement to manage conflicts of interest and has the following processes in place:

- Arrangements for declaring interests.
- Maintaining a register of interests.
- Excluding individuals from decision-making where a conflict arises, and
- Engagement with a range of potential providers on service design.

PROCUREMENT RULES AVOIDANCE

The UK courts take a strict line when they perceive that public contracts have been awarded without taking the necessary steps to ensure competition rules have been complied with. Commissioners should be familiar with several forms of circumnavigation that have been commonplace within the NHS:

1. Pilot projects – awarding a contract through the guise of a pilot project. Pilot projects have been awarded as an interim measure when the commissioner has no intention to enter into a future competitive process.

⁸ <http://www.england.nhs.uk/wp-content/uploads/2014/12/man-confl-int-guid-1214.pdf>

2. Contract lengths are reduced to artificially alter the contract value to avoid the compulsory OJEU thresholds.
3. Using negotiation with existing providers as a way to improve services when the contract expires.

The UK courts have the authority to award damages to providers who have been unfairly excluded from the market.

PROCUREMENT TOOLKIT

PURPOSE

This toolkit provides a framework for decisions regarding procurement. Its aim is to support the CCGs in making appropriate and effective decisions about procurement, and ensuring consistency with the overarching principles for public services procurements.

The purpose of this guide is to enable commissioners to:

- Decide when to use procurement for a clinical service
- Determine what procurement approach to use if they are running a procurement

Commissioners are expected to ensure procurement activity complies with this guidance and in turn, use the processes outlined within this document to inform their procurement decisions

WHEN AND HOW TO USE PROCUREMENT

Local commissioning strategies should identify priorities for service improvement, such as implementation of improved quality standards, care pathway redesign, increased patient choice, more personalised care and promoting equality, increases in productivity, and , where necessary, investment in additional capacity. Commissioners will use either AQP, contract management or other forms of procurement to secure services for patients.

AQP should be used where commissioners are seeking to extend the current offer of choice of any provider in elective care and where, in the future, more services will be subject to a phased Any Qualified Provider model.

Contract Management can be used where an existing contract is in place in order to ensure incremental improvements/changes to existing services, or to address underperformance as an alternative to procurement (e.g. to reduce cost).

Procurement Options should be considered for securing services outside the scope of existing contracts, including additional choices for patients; new service models, significant increases in capacity and where existing contracts are due to expire or be terminated (e.g. where contract management is unable to address underperformance). The Department of Health has produced a decision support tool to aid decision making (see below).

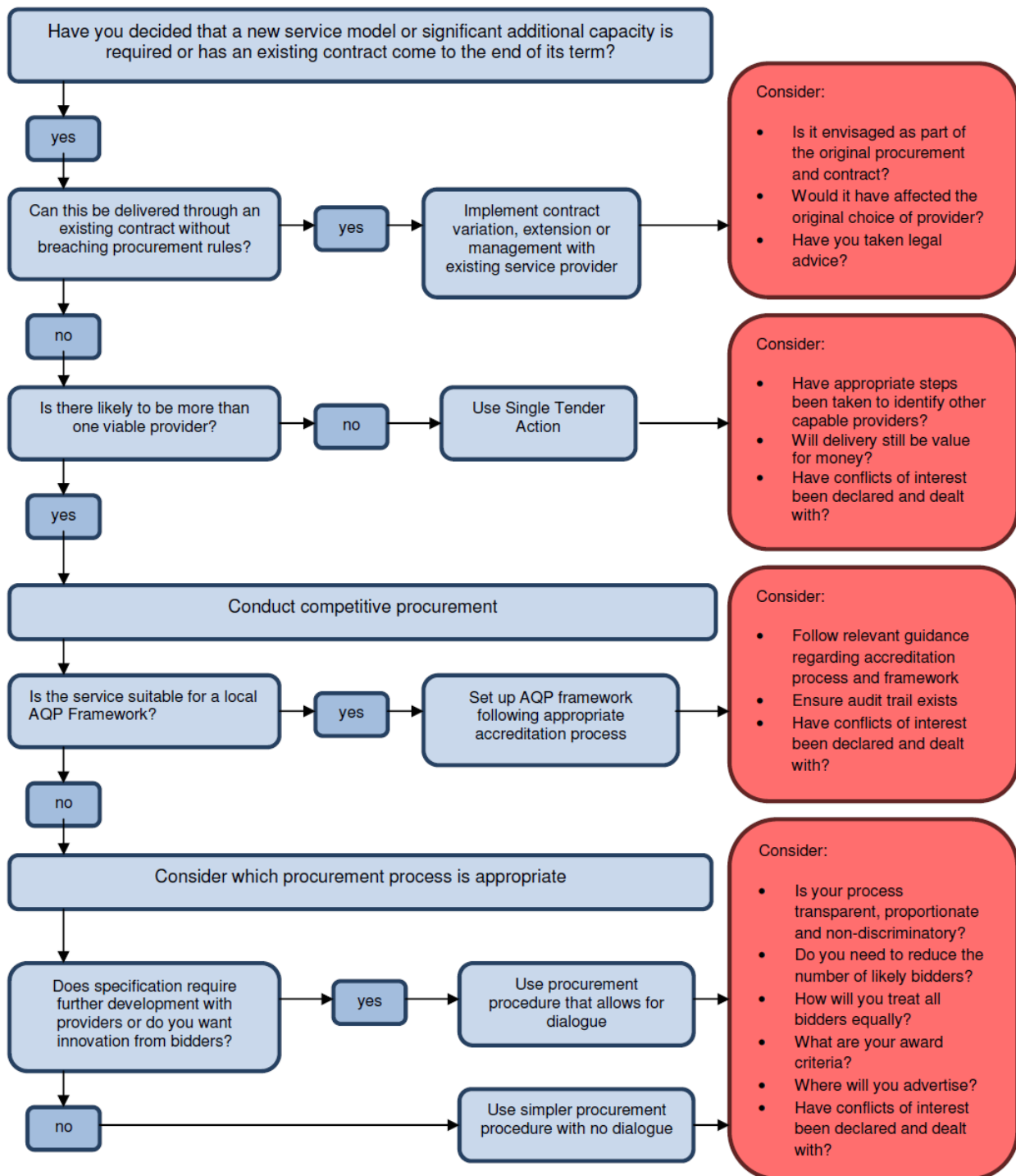
Commissioners will want to carefully consider and determine the rationale for their proposed approach before commencing procurement and where necessary should engage the support of the Market Management GM Shared Service (Part of North West Commissioning Support Unit (NWCSU)). The rationale for procurement decisions must be approved by the CCG's Governing Body (or under delegated authority) and should be documented to ensure transparency and accountability.

Decisions on which procurement model to use will largely be determined by what the commissioner is seeking to achieve, the nature of the healthcare market and outputs from provider engagement. Further considerations may include:

- The scale/importance of the new contract(s) being procured
- Is there an urgent clinical need (e.g. where existing services have been suspended and interim provision is urgently required)?

- Can the commissioner define the outcomes required, service specification, funding model and prices upfront?
- The degree of innovation being sought
- Is there more than one provider that could potentially deliver the services?
- Capacity of the commissioner to invest its commissioning resource and/or affordability of support from the local Market Management GM Shared Service.

The diagram overleaf gives an illustration of the procurement models and how decisions on which model to use may flow from the original commissioning intention, how well-defined the service specification is and what healthcare market analysis and provider engagement is indicating.



Source: NHS Commissioning Board, Procurement of healthcare (clinical) services Briefing 5: Summary of the decision-making process, September 2012

CONTRACT MANAGEMENT

Where there is a contract in place, commissioners should use the process in that contract to address concerns about that contract (e.g. underperformance). Using this process can be a cost-effective way of discharging commissioning requirements without the need for procurement which can be costly. Contract Management can also be used for incremental change to service provision, but only where change was envisaged in the contract and where this change does not materially alter the nature of the contract as originally procured such that it amounts to a new contract. This would be likely to be considered the case where:

- Other providers would have been interested in bidding for the contract if the change had originally been part of the specification when the service was originally procured.
- The contract would have been awarded to a different provider if the change had originally been included in the original service specification.
- The change involves genuinely new services not originally within the scope of the specification covered by the contract, or
- There is a significant change in the value of the contract.

The Manchester CCGs may be subject to challenge if a contract variation is used inappropriately and therefore commissioners should always take appropriate procurement advice before following this route.

PATIENT CHOICE OF ANY QUALIFIED PROVIDER (AQP)

Under AQP, any provider assessed as meeting rigorous quality requirements who can deliver services to NHS prices under the NHS Standard Contract is able to deliver the service. Providers have no volume guarantees and patients will decide which providers to be referred to on the basis of quality. It is a means of securing innovative services in line with patient preferences.

To determine whether patient choice of AQP is appropriate for a given service, commissioners should consider the characteristics of the service and the local healthcare system. This will include whether the service lends itself to patient choice, an assessment of the current market, how much competition and choice there is now and how much is required and what the barriers to entry are. The Directory of Qualified Providers will show whether similar opportunities for AQP for that service have been created elsewhere and what price and service specification were used giving a starting point for the procurement of the service.

One of the key features of the suitability of AQP is whether the circumstances of the service mean that patients would be in a position to exercise choice. So, it is more likely to be suitable for planned services than emergency services. Good examples are podiatry and adult hearing services and the current system effectively uses AQP for the vast majority of planned, acute care as patients choose which provider to be referred to for their first consultant-led outpatient appointment for most elective procedures. It is also important that a range of providers would be available.

Where the AQP route of procurement is decided, commissioners will need to determine the service specification and associated pricing structure, key contractual terms and assessment criteria before advertising the opportunity to the market. As set out above, it may find it helpful to refer to existing service specifications and prices before placing the advertisement. Once the opportunity

is advertised, providers are assessed using the nationally consistent qualification process and should qualify if they can –

- Meet rigorous quality requirements
- Meet the Terms and Conditions of the NHS Standard Contract
- Accept the NHS price for the service, and
- Provide assurances that they are capable of delivering the agreed service requirements that you have set and can comply with referral protocols.

Providers may challenge a decision not to qualify them where they feel that this has not been made on reasonable grounds. It is therefore essential that commissioners use the nationally consistent qualification process and that decisions are objective, reasoned and recorded at all times.

FRAMEWORK AGREEMENTS

A framework is an umbrella agreement which sets out the terms on which the purchasing organisation and the provider(s) will enter into contracts.

These agreements can be established on both a national or regional level and are constituted by a number of pre-approved providers who supply a similar range of goods from which a purchase can be made relatively quickly and easily.

Various framework agreements for goods and services are available through:

- Crown Commercial Service (CCS) (<http://ccs.cabinetoffice.gov.uk>)
- NHS Shared Business Services (SBS) (<https://www.sbs.nhs.uk/procurement/immediate-contract-access>)
- NHS Supply Chain (<http://www.supplychain.nhs.uk/>)

There are two options available to purchase from a framework agreement:

- Apply the terms of the framework agreement (direct call-off)
- Hold a mini-competition

The Manchester CCGs can be assured that the providers are both financially stable and that the goods and/or services on offer are of a high quality because the suppliers have already been approved and rigorously assessed. Any purchase made through a framework is also compliant with procurement legislation, provided that the rules to engage providers have been followed.

PILOT PROJECTS

In certain instances, it may be beneficial to the Manchester CCGs to offer a contract as part of a pilot project. It should be noted however that a pilot should not be used either as a stop gap measure where the CCGs have no intention of entering into a future competitive process, or where a previous contract has lapsed without a competitive tender having taken place, unless such an approach can be fully justified under the requirements of the 2006 and 2013 Regulations.

In order to identify new working practices through the use of pilot projects, the Manchester CCGs must establish that a project is in fact a pilot via the following definitions:

- There is a specific goal
- The timetable is clearly laid out with defined periods for the start and end dates
- Period for lessons to be learnt
- Clear and signed contract with the pilot service provider
- Robust plan/process for evaluation
- Right to terminate a pilot must be included if it is found to be unsafe or the outcomes cannot be met.

It is important for commissioners to use pilot projects only in circumstances where the clinical outputs are not known or cannot be accurately predicted. The Commissioner is advised to contact the Market Management GM Shared Service (Part of North West Commissioning Support Unit (NWCSU)) before embarking on a pilot project to ensure compliance with EU legislation.

MARKET TESTING

Prior to publishing a contract notice for a competitive tender, it may be beneficial to undertake market testing exercises, including publication of a Prior Information Notice (PIN), or holding one or more bidder days.

A PIN notice is a method of informing the marketplace in advance that the Manchester CCGs intend to competitively tender a contract(s) for certain services; and allows interested bidders to express their interest, and to prepare for the publication of the tender. This helps ensure that those bidders most capable of providing a high quality response are able to respond quickly once the contract notice is published.

PIN notices are also a useful way of developing the Manchester CCGs' knowledge of the marketplace – by inviting expressions of interest the CCGs can understand which and how many providers are interested in specific services, which in turn will help the CCGs understand which competitive tender process to use, or indeed, whether a competitive tender is required at all.

For non-healthcare contracts, the 2015 Regulations now allow a PIN to be used as a call for competition.

Holding bidder days is a good way for the CCGs to directly engage with the marketplace prior to publishing a contract notice. This is again useful in helping the Manchester CCGs understand the most appropriate route to market, but can also help inform the development of the service specification as it allows the CCGs to engage in dialogue with interested providers in advance of the initiation of the formal tender process.

Care should be taken that any market engagement does not give participating suppliers an advantage in any future tender, and that any relevant information disseminated as part of a market engagement process is shared with all providers at the commencement of the formal tendering process.

OPEN PROCUREMENT PROCESS

This process should be used where it is known that only a limited number of potential bidders are in the marketplace. This is normally established either through the Manchester CCGs' existing knowledge of the marketplace, or by carrying out market testing exercises in advance of publication of a contract notice.

Bidders who express an interest in tendering for the contract are issued with Invitation to Tender (ITT) documentation. These bidders will be required to answer very detailed and specific questions in relation to their proposed model of delivery against the CCG service specification, in order to ascertain their capability to deliver the goods/service being procured. Each section/question will carry a weighting, and Bidder responses will be evaluated by a team of CCG subject matter experts, in accordance with transparent evaluation criteria published as part of the ITT.

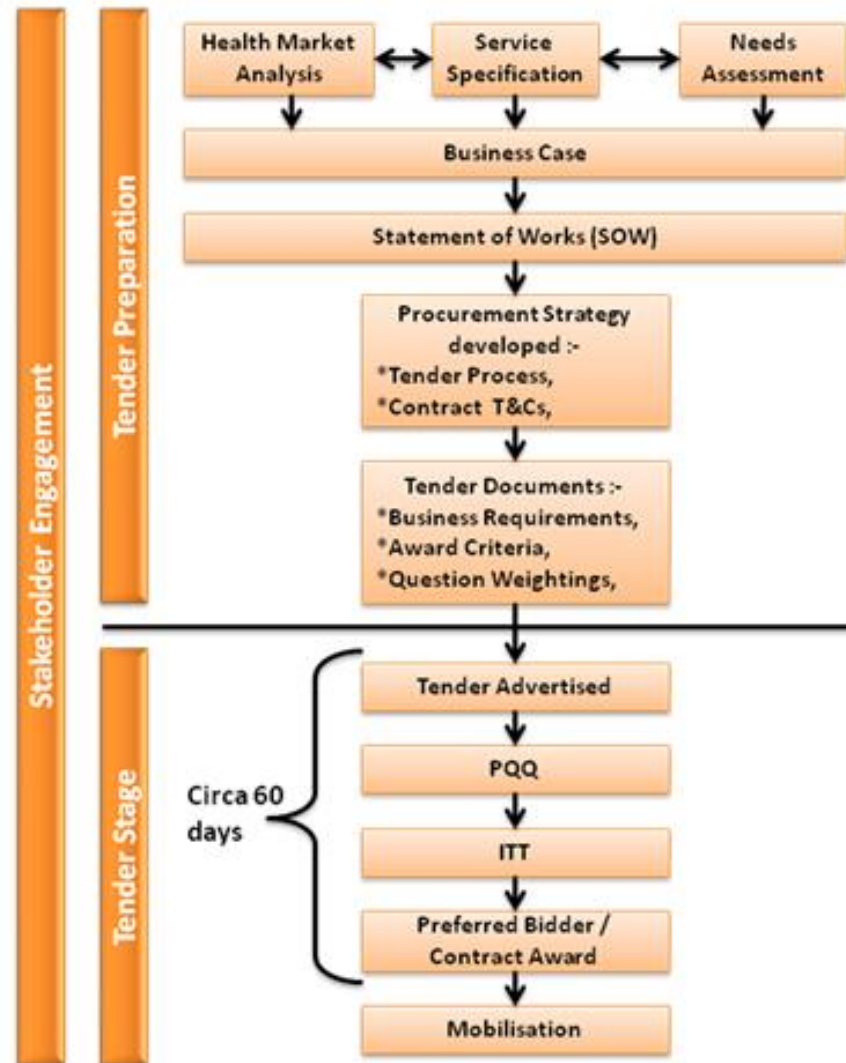
Following selection of a preferred provider to proceed to contract award, the CCG and provider will undergo a period of due diligence prior to signature of the contract and entry into the implementation phase.

RESTRICTED TENDER PROCESS

This process should be used where it is known that a significant number of potential bidders are in the marketplace, and it would be potentially too resource/cost intensive to use an open tender process. This process consists of a Pre-Qualification Questionnaire (PQQ) stage where bidders express an interest and respond to questions in relation to their suitability to deliver the contract, typically with regard to their commercial, technical and financial capabilities. The PQQ stage provides a method of shortlisting a pre-specified number of interested parties, all of which meet the required minimum qualification criteria, as set out in the tender documentation.

Shortlisted bidders will proceed to the Invitation to Tender (ITT) stage of the process, contract award, and implementation as per the open procedure.

A process model for a typical restricted tender process is outlined on the next page.



It should be noted that for tenders of non-healthcare contracts where the restricted procedure is to be used, the 2015 Regulations now require all tender documentation, including ITT, specification and contract, to be available from the date of publication of the contract notice.

COMPETITIVE DIALOGUE (CD) PROCESS

This process should be used in particularly complex procurement projects.

The CD process will proceed via PQQ as per the restricted process, following which shortlisted bidders will be invited to participate in dialogue. This will typically consist of a series of structured, timed meetings between the CCG and each bidder, where various elements of the proposed service and contract will be discussed. Dialogue will be closed at the point where the CCG feels that it is in a position to finalise the specification and contract, and where sufficient potential solutions to the CCG requirements have been generated. The dialogue stage may afford the CCG the opportunity to further down-select from the pool of bidders remaining within the process,

provided that bidders have been notified of this in advance. Following closure of dialogue, remaining bidders will be invited to submit a final tender, which will proceed as per the ITT stage within the open and restricted processes.

Under CD, there is very limited scope for negotiation of the contract terms following the closure of dialogue.

Where open, restricted or competitive dialogue processes are being undertaken via OJEU, the CCG is required to adhere to specific time restrictions as set out in the applicable Regulations, including adherence to the 10 day standstill (Alcatel) period following notification to all bidders of the outcome of the tender process.

FORM OF CONTRACT

The Manchester CCGs will ensure that the NHS Standard Contract or where appropriate an NHS Standard Deed of Variation will be used for all contracts for NHS funded health and social care services commissioned by the CCGs. Where non-healthcare contracts are awarded then the standard NHS Terms and Conditions for the Supply of Goods and Services should be used.

In exceptional circumstances, such as where a joint contracting arrangement is led by local authority, the CCG may agree to be party to a different form of contract.

In the exceptional circumstance that a non-standard NHS contract is used, the appropriate IG clause and appendix must be embedded into the contract to ensure suppliers comply with the Manchester CCGs' Confidentiality and Data Protection Policy.

AWARDING OF CONTRACTS

Depending on the nature and value of the procurement, the respective Governing Body may choose to delegate sign off to the Accountable Officer or Chief Finance Officer. If this process is not agreed for an individual procurement, the CCG Governing Bodies should be consulted on the outcome of the process and receive a recommendation for contract award before the CCGs make an award of contract.

The Manchester CCGs are also required to publish the following information on Contracts Finder following award of the contract:

- Who the contract was awarded to
- The value of the contract
- The criteria used to select the supplier
- A copy of the contract and any other contractual documents
- Whether or not the supplier(s) might subcontract some of the work

Where the full requirements of the 2006 or 2015 Regulations are to be followed, then a contract notice must be published on the TED website, which is the supplement of the Official Journal of the European Union (OJEU).