

# NHS Lewisham CCG

## DRAFT Procurement Policy

### 2016

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## **1. Policy statement**

NHS Lewisham CCG procurement will be compliant with the prevailing regulatory framework relating to procurements and will be used to support clinical priorities, health and well-being outcomes and wider CCG objectives.

This document should be read with other key CCG documents, including but not exclusively:

- Lewisham CCG Conflict of Interest Policy
- Lewisham CCG Commissioning Intentions
- Lewisham CCG Counter Fraud, Bribery and Corruption Policy
- Lewisham CCG Corporate Objectives
- Lewisham CCG Scheme of Delegation

## **2. Introduction**

2.1 Procurement is central to driving efficiency, quality, value and to ensure compliance. It impacts on the whole life- cycle process of acquisition of goods, works and services; it starts with identification of need and ends with the end of a contract or the end of useful life of an asset or period for service provision and, includes performance management. Procurement encompasses everything from repeat, low-value orders through to complex healthcare service solutions developed through partnership arrangements.

2.2 There are a range of procurement approaches available which include working with existing providers, non-competitive and competitive tenders, multi-provider models such as Any Qualified Provider (AQP) and Framework Agreements.

2.3 This document describes Lewisham Clinical Commissioning Group's (NHS Lewisham CCG) Procurement Policy. The purpose of the Policy is to ensure that when commissioning clinical / healthcare, health-related and social care services (and where relevant/appropriate non-clinical services) NHS Lewisham CCG:

- complies with the applicable regulatory framework, including all relevant legislation and guidance, its own Constitution, Standing Financial Instructions, Scheme of Reservation and Delegation and Prime Financial Policies;
- acts with a view to meeting the needs of its local population, and improves the quality and efficiency of clinical services;
- protects the rights of patients to choose who provides their health care in certain circumstances;
- treats providers fairly and equally and acts in a transparent and proportionate way;
- provides value for money; (defined as 'the optimum combination of whole life cost and quality (or fitness for purpose) to meet the user's requirement'). This may not always be synonymous with lowest price. Where an item / service is chosen that does not have the lowest whole life costs, then the additional value added benefits must be clear and justifiable;
- conducts all procurements transparently in accordance with applicable guidance and legislation , avoiding conflicts of interests;
- does not act anti-competitively, unless this is in the interests of patients (where this is permitted/complies with applicable guidance);

- undertakes procurement in a sustainable way where possible, minimising the impact on the environment;
- meets its short and long term objectives;
- maintains high standards of public trust and probity in its use of public funds; and
- is committed to the principles of ethical procurement and expects its suppliers to work towards constantly improving conditions in their supply chains.

This Policy is part of NHS Lewisham CCG's governance structure and provides the high level basis for the detailed guidelines and other documentation in the form of standards and procedures, which support this Policy.

#### 2.4 Other legislation and guidance affecting procurement includes:

- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement.
- The general principles derived from the fundamental principles of the Treaty on the Functioning of the European Union (i.e. equal treatment, transparency, non-discrimination, mutual recognition and proportionality).
- Public Contracts Regulations 2015.
- Concession Contracts Regulations 2016.
- The National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013, which are designed to ensure commissioners secure high-quality, efficient NHS health care services meeting the needs of people using those services, prevent anti-competitive behaviour by commissioners unless in the best interests of patients and protect the rights of patients to choose who provides their healthcare in certain circumstances, and implemented under section 75 of the Health and Social Care Act 2012.
- Duties under Chapter A2 of Part 2 of the National Health Service Act 2006.
- The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (which include requirements relating to patient choice).
- Public Services (Social Value) Act 2012, which requires consideration to be given to the improvement of economic, social and environmental well-being.
- Equality Act 2010, which requires compliance with the Public Sector Equality Duty when conducting public procurement.
- Operational Guidance to the NHS: Extending Patient Choice of Provider (Department of Health, 2011).
- Everyone counts: Planning for Patients 2014/15 to 2018/19 (NHS England, 2013), which outlines specific requirements relevant to CCG commissioned services.
- The NHS Constitution.
- NHS Improvement and Monitor Guidance, including, Monitor's Substantive guidance on the Procurement, Patient Choice and Competition Regulations.
- NHS England Guidance, including:
  - o Procurement of healthcare (clinical) services: Briefings for CCGs; and
  - o Managing Conflicts of Interest: Revised Statutory Guidance for CCGs (2016).
- Cabinet Office and Crown Commercial Service Guidance, including Procurement Policy Notes.

### **3. Aims and Objectives of the Policy**

- 3.1 To set out the approach for facilitating open and fair, robust and enforceable contracts that provide value for money and deliver required quality standards and outcomes, with effective performance measures and contractual levers.
- 3.2 To describe the transparent and proportional process by which the CCG will determine whether clinical / healthcare, health-related and social care services (and where relevant/appropriate non-clinical services) are to be commissioned through existing contracts with providers, competitive tenders, via an Any Qualified Provider (AQP) or framework approach or through another appropriate approach.
- 3.3 To enable early determination of whether, and how, services are to be opened to the market, to facilitate open and fair discussion with existing and potential providers and thereby to facilitate good working relationships, so far as such discussions comply with the requirements of, amongst other things, the Public Contracts Regulations 2015.
- 3.4 To set out how NHS Lewisham CCG will meet statutory procurement requirements primarily the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013 and the Public Contracts Regulations 2015 (as amended from time to time).
- 3.5 To ensure NHS Lewisham CCG does not engage in anti-competitive behaviour, and protect and promote the right of patients to make choices about their healthcare.
- 3.6 To enable NHS Lewisham CCG to demonstrate compliance with general principles of law relating to good procurement practice:
  - Transparency
  - Proportionality
  - Non-discrimination
  - Equality of treatment
  - Mutual recognition (ie giving equal validity to qualifications and standards from other Member States, where appropriate)

### **4. Scope of the Policy**

- 4.1 As far as it is relevant, this Policy applies to all NHS Lewisham CCG procurements (clinical and non-clinical). However, it has particular application in relation to procurement of goods and services that support the delivery of healthcare and certain sections relate only to procurement of clinical / healthcare services.
- 4.2 This Policy must be followed by all NHS Lewisham CCG employees, staff on temporary or honorary contracts, representatives acting on behalf of NHS Lewisham CCG including staff from member practices, and any external organisations acting on behalf of the CCG including other CCGs and the Commissioning Support Units (CSUs), other sub-contractors and/or Consultants.

### **5. Principles of good Procurement**

- 5.1 The key principles of good procurement are:-

- **Transparency:** Making commissioning intent clear to the market place, including the use of sufficient and appropriate advertising of tenders, transparency of contract terms, procedures, timescales and criteria for shortlist and award and in making decisions not to tender, and the declaration and separation of conflicts of

interest; and that pricing and payment regimes are transparent;

- **Proportionality:** Making procurement processes proportionate to the value, complexity and risk of the services contracted, and critically not excluding potential providers through overly bureaucratic or burdensome procedures. Acting proportionately with and between bidders/parties expressing interest in opportunities;
- **Non-discrimination:** Ensuring that the CCG does not unfairly favor one or more providers (including in respect of drafting specifications). Ensuring consistency of procurement rules;
- **Equality of treatment:** Ensuring that all potential providers and sectors are treated equally have equal opportunity to compete where appropriate; that financial and due diligence checks apply equally and are proportionate; and that pricing and payment regimes are fair; and
- **Mutual recognition:** giving equal validity to qualifications and standards from other EU Member States, where appropriate.

## 5.2 With a view to:

- commissioning clinical / healthcare services from the providers who are best placed to meet the needs of our patients and population; and
- procuring general goods, works and services using processes, and from suppliers, that offer best value for money,

NHS Lewisham CCG will test compliance with these key principles in the following ways:

## 5.3 Transparency

- NHS Lewisham CCG will conduct all of its procurement activities openly and in a manner that enables its behavior to be scrutinised.
- NHS Lewisham CCG will maintain on its website for public view a record of contracts held and information about what goods, works and services are to be procured and when they are expected to be presented to the market.
- NHS Lewisham CCG will determine as early as practicable whether and how contract opportunities are to be opened to the market and will share this information with existing and potential providers.
- NHS Lewisham CCG will use the most appropriate media in which to advertise contract opportunities, which may include the Contracts Finder procurement portal and OJEU (where appropriate).
- NHS Lewisham CCG will publish evaluation and scoring criteria in its procurement documents.
- NHS Lewisham CCG will robustly manage potential conflicts of interest and ensure that these do not prejudice fair and transparent procurement processes. This will be through the monitoring of existing registers, in line with the CCG Conflict of Interest Policy and through ensuring that declarations of interest are made throughout the procurement process.
- NHS Lewisham CCG aims for all referring clinicians tell their patients and the CCG about any financial or commercial interest in an organisation to which they plan to refer a patient for treatment or investigation.
- NHS Lewisham CCG will provide feedback to unsuccessful bidders.
- NHS Lewisham CCG will require an explanation from any potential provider whose tender appears to be abnormally low.
- NHS Lewisham CCG will publicly state the outcome of service reviews.

- NHS Lewisham will maintain an auditable documentation trail regarding all key decisions including the reasons for those decisions.
- NHS Lewisham will publish details of contract awards via OJEU and Contracts Finder, in each case, as required and in a timely manner.

#### 5.4 Proportionality

- NHS Lewisham CCG will use procurement processes that are proportionate to the value, complexity and risk of the goods, works and/or services to be procured.
- NHS Lewisham CCG will define and document procurement routes, including any streamlined processes for low value and less complex contracts, taking into account applicable guidance.
- NHS Lewisham CCG will develop appropriate commissioning priorities, recognising that more resources may be appropriate where greater benefits, cost savings or quality can be gained.

#### 5.5 Non-Discrimination

- NHS Lewisham CCG will aim to provide procurement documents that are written in a non-discriminatory fashion e.g. generic terms will be used rather than trade names for products.
- NHS Lewisham CCG will inform all participants of the applicable rules in advance and that the rules will be applied equally to all. Reasonable timescales will be determined and applied across the whole process.
- NHS Lewisham CCG's shortlist criteria will be neither discriminatory nor particularly favour one potential provider.
- NHS Lewisham CCG shall apply objective evaluation criteria and weightings to all bids.
- NHS Lewisham CCG will provide all potential providers with the same information about the bidding process at the same time.
- NHS Lewisham CCG will require providers to submit their bids within the same timescales and to the same deadline.
- NHS Lewisham CCG will ask providers to respond to the same or equivalent information requests, and share clarifications requested by one provider about the bidding process with all providers where the questions and answers are of general relevance.

#### 5.6 Equality of Treatment

- NHS Lewisham CCG will ensure that no sector of the provider market or national/geographical background is given any unfair advantage. Differential treatment between providers requires objective justification.
- NHS Lewisham CCG will confirm that basic financial and quality assurance checks apply equally to all types of providers.
- NHS Lewisham CCG will ensure that all pricing and payment regimes are transparent and fair.
- NHS Lewisham CCG will design service specifications so as not to exclude a provider or category of provider unnecessarily and without objective justification.
- NHS Lewisham CCG will hold all providers to account, in a proportionate manner, through contractual agreements, in relation to the quality of their goods, works and/or services.

### **6. Monitoring compliance with this Policy**

6.1 This Policy will be reviewed annually.

6.2 In addition it will be kept under informal review in the light of emerging guidance, experience and supporting work. Given the changing environment this Policy may need to be updated within relatively short timescales.

6.3 Effectiveness in ensuring that all procurements comply with this Policy will primarily be achieved through “business as usual” review by the relevant Head of Service within NHS Lewisham CCG.

## 7. **Accountabilities and Responsibilities**

7.1 Authority – NHS Lewisham CCG will remain directly responsible for:-

- Approving procurement routes
- Assigning appropriate support for procurements
- Signing off specifications, evaluation criteria and weightings and tender documents
- Signing off decisions on which providers to invite to tender
- Approving contract award recommendations on the selection of providers

7.2 When authorising and approving clinical and related non-clinical procurement decisions, NHS Lewisham CCG will comply with its Constitution and Standing Financial Instructions.

7.3 Governance structure for Procurement Process;

Level One NHS Lewisham CCG Governing Body (excluding any member who may have a potential Conflict of Interest. Guidance can be sought from the Conflict of Interest Guardian)	Endorse the decision of the selected bidder Give authority to award the contract
Level Two Finance and Investment Committee (excluding any member who may have a potential Conflict of Interest. Guidance can be sought from the Associate Director of Integrated Governance)	Agree Business Case(s) Agree the procurement route and contract specification Monitor and assure work of procurement team Sign off the shortlist of bidders, the evaluation scoring criteria, the recommendation to the CCG Governing Body to appoint a selected bidder and the award of the Contract Assure the CCG Governing Body on process
Level Three Procurement Project Team Lewisham CCG Officers, Clinical Advisors and other advisors (excluding any member who may have a potential Conflict of Interest. Guidance can be sought from the Associate Director of Integrated Governance)	Manage the procurement Develop all advertisements, communications, tender and contract documents Propose the evaluation scoring Evaluate, assess and draft the contract Prepare update and briefing reports for the Finance and Investment Committee and CCG Governing Body

7.4 For each procurement, a team will be established. Membership of the team will be drawn as required from, but not limited to:

- Project Lead
- Procurement Lead

- Clinical Governance Lead
- Finance Lead
- GP Clinical Representative
- Clinical Representative as required
- IM&T representative as required
- HR Advisor as required
- Specialist Subject Matter Experts (SMEs) as required
- Information Governance
- Public/patient representation

(A core group as a minimum should include: Project Lead, Procurement Lead and Finance Lead. If the procurement is in relation to a clinical service, this should also include a Clinical Representative).

## **8. Guiding Principles**

8.1 When procuring health care services, NHS Lewisham CCG is required to act with a view to:

- Ensuring the continued delivery of the services,
- Meeting the needs of the people who use the services,
- Ensuring the service will deliver what it is intended to deliver
- Improving the quality of the services, and
- Improving efficiency in the provision of the services,

including through the services being provided in an integrated way (including with other health care services, health-related services, or social care services).

8.2 When procuring health care services, NHS Lewisham CCG is required and committed to:

- Act in a transparent and proportionate way and conduct its procurement activities openly and in a manner that allows its behavior to be scrutinised, and
- Treat providers equally and in a non-discriminatory way, including by not treating a provider, or type of provider, more favourably than any other provider, in particular on the basis of ownership.

8.3 When procuring health care services, NHS Lewisham CCG is required and committed to procuring services from one or more providers that:

- Are most capable of meeting the objectives detailed at paragraph 8.1,
- Provide the best value for money in doing so, and
- Are affordable.

8.4 When procuring health care services, NHS Lewisham CCG is required and committed to act with a view to improving quality and efficiency in the provision of services, and consider appropriate means of doing so, including:

- The services being provided in a more integrated way (including with other health care services, health related services, or social care services)
- Enabling providers to compete to provide the services
- Allowing patients a choice of provider of the services.

## **9. Applicable CCG procurement legislation**

9.1 The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (the 2013 Regulations) provide that when NHS Lewisham CCG procures health care services for the purpose of the NHS Lewisham CCG:

- *must act with a view to securing patients' needs and improving the quality and efficiency of the service;*
- *must act in a transparent and proportionate way and treat providers equally and in a*

- non-discriminatory way;*
- where third parties assist or support a commissioner in their procurement activity, the CCG must ensure that they follow the relevant requirements of the Regulations in the same way the CCG must;*
- must maintain and publish a record of each contract awarded for the provision of healthcare services;*
- must not engage in anti-competitive behaviour unless in the interests of patients;*
- must maintain a record of how any conflicts of interest between commissioners and providers are managed;*
- must maintain a record of how, in awarding the contract, the CCG complied with certain statutory duties under the NHS Act 2006 (in relation to effectiveness, efficiency etc, improvement in quality of services and promoting integration);*
- must ensure that it is satisfied services are only capable of being provided by a particular provider before awarding a new contract to a single supplier without advertising an intention to seek offers;*
- must publish contract notices (if applicable) and facilitate the submission of expressions of interest; and*
- must consider improving quality and efficiency of services by providing services in a more integrated way, enabling providers to compete and allowing patients a choice of provider.*

9.2 Regulation 5 of the 2013 Regulations governs the circumstances when NHS Lewisham CCG may award a new contract for health care services without a competition. It provides that NHS Lewisham CCG:

*“may award a new contract for the provision of health care services for the purposes of the NHS to a single provider without advertising an intention to seek offers from providers in relation to that contract where the relevant body is satisfied that the services to which the contract relates are capable of being provided only by that provider”.*

9.3 When advertising an intention to seek offers for a new health care services contract, the 2013 Regulations require NHS Lewisham CCG to publish a contract notice on the dedicated website Contracts Finder:

<https://www.gov.uk/contracts-finder>

The notice must include:

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

NHS Lewisham CCG must also have arrangements in place which enable providers to express an interest in providing health care services.

## **10. European and UK Procurement legislation and guidance**

10.1 When procuring goods, works and/or services NHS Lewisham CCG will confirm compliance with EU procurement law and the UK’s implementing Regulations to the extent that these are applicable to the relevant contract opportunity. In particular direct compliance with the requirements of the following is required:

- The Treaty on the Functioning of the European Union (“EU Treaty”);
- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement;

- The Public Contracts Regulations 2015 (2015 Regulations); and
- Relevant EU and UK procurement case law.

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

10.2 The EU Procurement Rules will apply where NHS Lewisham CCG proposes to enter in to a legally enforceable, written contract, for goods, works and/or services which has an estimated value above the relevant financial threshold, and to a more limited extent where the estimated value is below the relevant financial threshold. The applicable financial thresholds can be found in Appendix B.

10.3 All services contracts are subject to the 2015 Regulations, where they meet the applicable threshold, unless they are expressly excluded from the 2015 Regulations.

The full regime will apply unless the services are listed in Schedule 3 of the 2015 Regulations, in which case a "light touch" regime will apply.

Health, social and related services and supply services of domestic help and nursing personnel, and administrative social and healthcare services are among those listed in Schedule 3 of the 2015 Regulations, and are therefore subject to the "light touch" regime.

10.4 The "light touch" obligations applicable to health and social services, and which NHS Lewisham CCG will comply with normally include:

- advertising in OJEU (either via a contract notice or prior information notice);
- advertising in Contracts Finder;
- publishing a contract award notice in OJEU and Contracts Finder.

NHS Lewisham CCG may devise its own procurement procedures that apply to above threshold Schedule 3 contracts which may take into account the specific needs of the services in question.

The procedures shall be at least sufficient to ensure compliance with the principles of transparency and equal treatment of providers.

NHS Lewisham CCG must conduct the procurement, and award any resulting contract, in accordance with the information contained in the advertisement regarding:

- conditions for participation;
- time limits for contacting the CCG; and
- the award procedure to be applied.

NHS Lewisham CCG may vary the process and award procedures only if all the following conditions are met:

- the failure to conform does not amount to a breach of the principles of transparency and equal treatment of providers; and
- the CCG has given due consideration to the matter and concluded there would be no such breach, documented that conclusion and the reasons for it, and informed the participants of the way in which the process will be varied from the

information contained in the notice.

All time limits imposed on providers, whether for responding to a contract notice or taking any other steps in the relevant procedure, must be reasonable and proportionate.

It would normally be necessary for NHS Lewisham CCG to at the very least source tenders before awarding the contract, in order to ensure that a transparent and competitive procurement has been undertaken.

NHS Lewisham CCG should ensure transparency about any award criteria to be used, and the weightings for the criteria and sub-criteria, to comply with the general transparency obligations.

Failure to comply with the EU Procurement Rules can have serious consequences and result in sanctions for NHS Lewisham CCG.

#### 10.5 Low value contracts

Where the estimated value of a contract is below the relevant threshold NHS Lewisham CCG must adhere the general principles of transparency, equal treatment and non-discrimination, proportionality and mutual recognition.

If NHS Lewisham CCG considers that compliance with these principles requires some degree of advertising, e.g. if the value of the contract exceeds £25,000 it must also be advertised on Contracts Finder.

NHS Lewisham CCG may not use a pre-qualification stage contracts with a value below EU Thresholds (See Appendix B)

NHS Lewisham CCG must normally publish a contract award notice in Contracts Finder within a reasonable time of awarding a low value contract.

#### 10.6 The Public Services (Social Value) Act 2012 (the “Social Value Act”) also applies to NHS Lewisham CCG when it procures services (clinical or otherwise) with a value equal to or greater than EU Thresholds (See Appendix B). In accordance with its obligations under the Social Value Act, NHS Lewisham CCG will consider, at the pre-procurement stage:

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

### 11. **Bribery Act and Counter Fraud**

One of the basic principles applicable to public sector organisations is the proper use of public funds.

NHS Lewisham CCG is committed to maintaining high standards of honesty, openness and transparency throughout the procurement process to ensure that this basic principle is maintained.

NHS Lewisham CCG has robust Anti-Fraud, Bribery and Corruption, the Conflict of Interest and Gifts & Hospitality policies in place that demonstrate its commitment to the good

governance and proper stewardship of public resources in pursuance of its goals and in meeting its statutory duties.

NHS Lewisham CCG is committed to ensuring that it has a robust procurement process in place with clear guidance, within its policies, for CCG staff who find themselves faced with incidents of suspected fraud, bribery or corruption.

NHS Lewisham CCG is committed to ensuring due diligence in all its business transactions to allay any suspicion of wrong doing and counter potential allegations relating to bribery or fraud. The CCG actively seeks to encourage anyone having reasonable suspicions of fraud and to report them. It is the CCG's policy, (in accordance with the Public Interest Disclosure Act 1998), that no employee will suffer in any way as a result of reporting reasonably held suspicions.

## **12. Anti-Competitive Behaviour**

12.1 The 2013 Regulations, and in particular Regulation 10, prohibit NHS Lewisham CCG from engaging in anti-competitive behaviour when commissioning health care services for the purposes of the NHS unless to do so is in the interests of NHS health care service users.

12.2 Regulation 10 also provides that an arrangement or contract for the provision of clinical / health care services for the purposes of the NHS must not include any term or condition restricting competition which is not necessary for the attainment of:

- the intended outcomes which are beneficial for the people who use the services; or
- or the overarching objective referred to in Regulation 2 (as set out at paragraph 8.1 above).

NHS Lewisham CCG must comply with its obligations under Regulation 10.

## **13. NHS Lewisham CCG Governance and Standards of Business Conduct**

13.1 When procuring clinical services, NHS Lewisham CCG will comply with its duties under its Constitution (including its Standing Financial Instructions, Scheme of Reservation and Delegation and NHS Lewisham CCG's financial policies). These include the information required to be included in the Constitution by Schedule 1A to the National Health Service Act 2006 (as amended by Schedule 2 of the Health and Social Care Act 2012).

13.2 Standing Orders and the Scheme of Delegation allow decision-making to be informed by intelligence and information covering the full range of corporate, financial, clinical information and research governance and are central to NHS Lewisham CCG's governance framework and to sustaining the highest standards of corporate and personal probity, accountability and openness. Good governance provides the bedrock for effective performance and assuring better health and health services for the people of Lewisham.

13.3 NHS Lewisham CCG's financial policies detail the financial responsibilities, policies and procedures adopted by NHS Lewisham CCG to ensure that NHS Lewisham CCG's financial transactions (including procurement transactions) are carried out in accordance with the law and with Government policy. They are used in conjunction with the Scheme of Delegation adopted by NHS Lewisham CCG and included within the Constitution's Scheme of Reservation and Delegation.

- 13.4 NHS Lewisham CCG's financial policies identify the financial responsibilities which apply to everyone working for NHS Lewisham CCG and its constituent localities.
- 13.5 Should any difficulties arise regarding the interpretation or application of any of NHS Lewisham CCG's financial policies then the advice of the Chief Finance Officer must be sought before acting.
- 13.6 The failure to comply with the CCGs prime financial policies and detailed financial procedures can in certain circumstances be regarded as a disciplinary matter that could result in dismissal.

## **14. Consultation**

- 14.1 As part of the process of redesigning services, health commissioners have a 'duty to involve' under section 14Z2 of the National Health Service Act 2006. There are potentially two stages to satisfying NHS Lewisham CCG's 'duty to involve'. The first is an 'engagement' process, where the CCG will gather views from clinicians, patients, carers, the public and other key partners. This phase is very important to the development and design of services. Where appropriate, a second phase will be undertaken to deliver a wider formal consultation process, aimed at the general public and other stakeholders, to gather views about the proposals.
- 14.2 Effective engagement is a key part of NHS Lewisham CCGs procurement process. The engagement activities will help inform whether, and what type of a consultation process is required.
- 14.3 The results will be used, alongside the engagement work to inform the procurement process, informing the direction of that process.
- 14.4 NHS Lewisham CCG has in place a Public Engagement Strategy (adopted October 2013), which sets out clearly the standard of engagement to be delivered by the CCG, in discharging its duties across the whole commissioning spectrum. This Policy requires that the principles and guidance set out in the Strategy are adhered to and that public involvement opportunities are provided as part of procurement processes undertaken.
- 14.5 The Strategy also contains further details of the legislative requirements for involvement and our obligations under the Equality Act 2010 which underpin engagement delivered by NHS Lewisham CCG (<http://www.Lewishamccg.nhs.uk/Pages/home.aspx>), or other third parties on its behalf.
- 14.6 Recognition of the importance of engagement as an active process of NHS Lewisham CCG is established in the CCG Constitution that provides the overarching framework for the organisation's activities.
- 14.7 Whilst being clear about and documenting any actual or potential conflicts of interest in line with the Lewisham CCG Conflict of Interest Policy, NHS Lewisham CCG recognises its duty to involve relevant clinicians, potential providers, patients and the public in:-
- The early stages of planning provision of services
  - The development and consideration of proposals for changes in the way those

- services are provided or the range of available services
- Decisions to be made affecting the operation of those services, recognising that it is essential to enable patients to have a greater involvement in decisions about their care.

14.8 NHS Lewisham CCG will adhere to its Public Engagement Strategy principles on involvement during a procurement process, and in particular:-

- Engage widely throughout the process
- Be clear about what the proposals are, who may be affected, what questions are being asked, and the timetable for responses
- Ensure engagement is clear, concise and widely accessible
- Give feedback regarding the responses received and how the engagement process influenced the procurement
- Implement a formal consultation process should there be any variations to the delivery of service
- Record engagement and input received

## **15. Managing Conflicts of Interest**

15.1 NHS Lewisham CCG will be required to make the evidence of their management of conflicts publicly available.

15.2 Potential conflicts of interest will be managed in accordance with NHS Lewisham CCG's Constitution and Conflicts of Interest Policy to protect the integrity of the CCG's contract award decision making processes and the wider NHS commissioning system.

15.3 NHS Lewisham CCG staff and Governing Body Members will exercise sound judgement when procuring goods and services taking into account the statutory framework and the provisions of the Conflict of Interest Policy.

15.4 A conflict of interest occurs where an individual's ability to exercise judgement, or act in a role, is or could be impaired or otherwise influenced by his or her involvement in another role or relationship. The individual does not need to exploit his or her position or obtain an actual benefit, financial or otherwise, for a conflict of interest to occur.

15.5 The management of conflicts of interest is vitally important in the procurement of clinical services and managing them appropriately is paramount to the probity and accountability of NHS Lewisham CCG's decision making and ensuring that the principles of transparency, equal treatment and non-discrimination are upheld. A register of declarations must be taken to each meeting and any potential declarations made at the start of each meeting.

15.6 As an organisation led by GPs, NHS Lewisham CCG will be particularly subject to conflicts of interest or potential conflicts of interest when procuring clinical services. Governing Body members, members of the CCG, committee members, subcommittee and working group members and employees of NHS Lewisham Clinical Commission Group will transact the CCG's business in line with Section 8 of the CCG's constitution (Standards of Business Conduct) and in line with Lewisham CCGs Conflict of Interest Policy.

15.7 Such a conflict could arise:

- In carrying out a competitive tender: where GP practices, GP federations or other providers in which NHS Lewisham CCG members or employees have an interest are amongst those bidding; or
- When procuring clinical services through Any Qualified Provider: where one or more GP practices (or other providers in which NHS Lewisham CCG members have an interest) are amongst the qualified providers from which patients can choose; or
- Where there are direct or indirect links to any of the providers and significant shareholdings associated with any of the providers.

15.8 In managing conflicts of interest NHS Lewisham CCG will:

- comply with its statutory obligations in relation to the management of conflicts of interest;
- have regard to relevant Guidance published by NHS England, Monitor and/or NHS Improvement in relation to the discharge of its statutory obligations; and
- comply with its Constitution and its Conflicts of Interests Policy
- Independent advice can be obtained through the Conflict of Interest Guardian, supported by the Associate Director of Integrated Governance.

15.9 Individuals contracted to work on behalf of NHS Lewisham CCG or otherwise providing services or facilities to NHS Lewisham CCG will be made aware of their obligation with regard to declaring conflicts or potential conflicts of interest in accordance with the Conflicts of Interest Policy and that this requirement is written into their contract for services or employment contract. This will include the requirement to complete the declaration of interest form and complete mandatory training.

15.10A procurement template, provided in Annex A , sets out factors that the CCG should address when drawing up their plans to commission services including general practice services.

## **16. Risk Management**

16.1 In carrying out its clinical procurement activities NHS Lewisham CCG will plan adequate measures to identify and manage risk. Such measures may include ensuring:

- Clinical, social care and/or related procurements are adequately prepared and planned;
- Each clinical and social care and/or related procurement project has an SRO and that roles, responsibilities, reporting lines and channels of communication within the wider commissioning and Procurement Team are clear;
- The individuals involved have the necessary expertise, experience and training to match the requirements of the role and its responsibilities (and that this is kept up to date);
- Each project has a pre-agreed and end to end procurement strategy and

timetable, tailored to the requirements of the project, the resources available, the business objective and which has identified and sought to minimise any risks involved;

- Adequate and appropriate records are kept to comply with NHS Lewisham CCG's statutory obligations and to provide a robust audit trail of decisions and actions taken;
- A risk identification and escalation process is established at the outset, to include a risk register which is regularly reviewed and updated with appropriate risk management strategies to address each risk identified;
- The use of robust and up to date project and procurement documents, which are legally compliant, clear and unambiguous, and subject to a strict policy of version control; and
- The conduct of the entire process is in accordance with the law and key procurement principles namely: transparency; equal treatment; non-discrimination; proportionality; mutual recognition and sound administration.

## **17. Procurement Planning**

17.1 A Procurement Plan will be maintained that will list current and future procurements. The Procurement Plan will be reviewed on a regular basis taking into account local and national priorities; NHS Lewisham CCG's commissioning intentions and nationally mandated procurements. In addition it will take into account the impact of completed and on-going procurements.

17.2 The Plan will highlight the priority, timescale, risk and resource requirement for each potential procurement. Not every potential procurement on the Procurement Plan will result in a procurement, but indicates NHS Lewisham CCG's intention to review the service or activity which may result in a procurement.

17.3 The Plan will be developed as a key element to provide communication between NHS Lewisham CCG, its membership and potential providers. Through transparent and open processes NHS Lewisham CCG will actively encourage provider engagement.

## **18. Approach to market**

18.1 Where it can be demonstrated that an existing clinical / health care service is fit for purpose, offers best value for money and continues to fit with the strategic direction of the CCG, NHS Lewisham CCG may consider whether to retain the existing provider following the expiry of its existing contract without competition would be compliant with the EU Procurement Rules. Where this cannot be demonstrated an appropriate procurement process should be undertaken.

18.2 NHS Lewisham CCG's approach to securing services will (in overall terms) be the following:

- Determine whether the service can be accommodated through existing contract(s) with providers through variations to those contracts, and ascertain whether this is possible without contravening EU Procurement Rules and, the provisions of the relevant contract and that quality, patient safety and best value for money can be demonstrated.
- Consider whether there are demonstrable grounds to identify a specific

- provider or group of providers without competition. These may include:
- Where a service is designated as list-based and a particular GP Practice is the only capable provider of a service, in which case the CCG will consider whether procuring that GP Practice on a non-competitive basis would be compliant with the 2013 Regulations and EU Procurement Rules.
  - For technical reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded to only that provider i.e. there is only one provider that can meet the CCG's requirements – but only where no reasonable alternative or substitute exists and the absence of alternative providers is not the result of the artificial narrowing down of the parameters of the procurement.
  - For reasons of extreme urgency brought about by events unforeseeable by the CCG, where it is not possible to undertake a procurement process in the time available.

Where the types of circumstances detailed in this paragraph 18 are not applicable, an appropriate level of advertising and competition will in most cases be necessary. Appropriate engagement with patients and the public must take place before any commissioning (or decommissioning) decision is made

### 18.3 Any qualified provider

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

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

- The number of providers needs to be constrained, e.g. where the level of activity can only support one provider
- Where clinical pathways dictact a restriced number of providers;
- Value for money cannot be demonstrated without formal market testing (e.g. to determine the price the CCG will offer for provision of the services);
- Innovation is required from the market and cannot be achieved collaboratively;
- There is no effective method of selecting from amongst qualified providers for delivery of specific units of activity;
- Overall costs would be increased through multiple provider provision because of unavoidable duplication of resources.
- The model is unsustainable.

18.6 The AQP model promotes choice and contestability, and sustained competition on the basis of quality rather than cost. Any service that is contracted through the AQP model does not need to be tendered, although it will be advertised if appropriate (using Contracts Finder) and potential service providers will need to be qualified in accordance with the application of transparent, proportionate and non-discriminatory qualification criteria.

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

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

- Any other transparent, proportionate and non-discriminatory qualification criteria.

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

#### 18.9 Competitive Tendering

18.10 It is anticipated that an increasing number of clinical / health care services will be subject to some form of competitive tendering in order to demonstrate the application of the principles of transparency, openness, equitability and obtaining and delivering value for money and/or to comply with the 2015 Regulations. Where a competitive process is required or beneficial the CCG will devise/select the route that is most appropriate. It is not necessary to follow a particular procurement process in relation to contract opportunities concerning clinical / health care services, however examples of common procurement routes, which may be adapted, include:-

#### 18.11 Open Procedure (under the 2015 Regulations)

All applicants who respond to the Contract Notice will be invited to submit a tender for the contract opportunity. No negotiation with bidders is permitted. This procedure suitable for simple and straightforward procurements, where tenders will be easy to evaluate.

#### 18.12 Restricted Procedure (under the 2015 Regulations)

This procedure is used where the CCG wants to restrict the number of applicants who will be invited to tender. Interested parties can submit an expression of interest, but only those meeting pre-qualification criteria (and scoring highest) will be invited to tender. A minimum of five (5) applicants must be invited to tender, unless fewer suitable candidates have applied and these are sufficient to ensure genuine competition. No negotiation with bidders is permitted, just a clarification of bids and finalisation of terms.

#### 18.13 Competitive Dialogue (under the 2015 Regulations)

This procedure allows the contracting authority to enter into dialogue with bidders, following a pre-qualification process, to develop one or more suitable solutions for its requirements and to determine which applicants will be invited to submit final tenders. The competitive dialogue procedure is a flexible procedure, suitable where there is a need for authorities to discuss aspects of the proposed contract with candidates. For example, the procedure would be used where authorities cannot define clearly in advance the technical specifications capable of satisfying their needs or objectives, or where the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of the risks attaching to them.

#### 18.14 Competitive Procedure with Negotiation (under the 2015 Regulations)

This has been described as a hybrid procedure because, as with the restricted procedure, it allows the authority to award a contract on the basis of an initial tender. However, like the competitive dialogue procedure, it also enables the authority to negotiate with bidders who submitted an initial tender, and any subsequent tenders, until it decides to conclude those negotiations. It is suitable for use in similar circumstances to the competitive dialogue procedure.

#### 18.15 Innovation Partnership (under the 2015 Regulations)

This involves the establishment of a structured partnership for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the agreed performance levels and costs. This route may be used where the authority is seeking innovative ideas where solutions are not already available on the market and there must also be an intention to include both the development of the outcome and its subsequent purchase (subject to meeting agreed performance levels and maximum costs) in the procurement.

#### 18.16 Non Competitive Process

18.17 For some low value procurements, NHS Lewisham CCG may consider whether some form of non-competitive process may be used, such as obtaining a number of quotes.

18.18 Where EU Procurement Rules, the 2013 Regulations and/or policies/guidance normally require competition, this may be waived in circumstances where the CCG is satisfied that the services to which the contract relates are capable of being provided only by a single provider or where other factors render a competitive process inappropriate. In these circumstances the procedures set out within NHS Lewisham CCG's Standing Orders and Standing Financial Instructions must be followed.

18.19 Where it is decided not to undertake a competitive procurement process for new services or where services are significantly changed, NHS Lewisham CCG Governing Body approval must be obtained following any recommendation to follow this approach.

#### 18.20 Partnership Agreements

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

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

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

18.23 For partnership services NHS Lewisham CCG may choose to commission the service from a partner but may alternatively undertake a competitive process, for example where the partner cannot meet the service model requirements or costs cannot be agreed.

#### 18.24 Spot Purchasing

- 18.25 There will be the need to spot purchase contracts for particular individual patient needs or for urgency of placement requirements at various times. At these times, a competitive process may be inappropriate. NHS Lewisham CCG should ensure that the provider is able to provide the particular service in accordance with the CCG's requirements.
- 18.26 Framework Agreements
- 18.27 NHS Lewisham CCG may procure using existing or new framework agreements.
- 18.28 Framework agreements are pre-tendered arrangements which are established in compliance with the EU Procurement Rules and which, once established, can be used by NHS Lewisham CCG to purchase certain products and/or services without the need to carry out a full procurement process. The advantages of using a framework agreement is that, once established, it can be used to save both time and cost.
- 18.29 A framework can be established:
- By NHS Lewisham CCG for its own use; or
  - By another clinical commissioning group, contracting authority or a central purchasing body such as the Government Procurement Service (GPS).
- 18.30 If NHS Lewisham CCG wishes to use a framework agreement established by another organisation, it should check that that the framework agreement has been established correctly, in accordance with any applicable obligations under the EU Procurement Rules; that NHS Lewisham CCG is entitled to use the framework and that it is fit for NHS Lewisham CCG's purpose.
- 18.31 In particular, NHS Lewisham CCG should check:
- that it has been identified as a body which is entitled to use the framework;
  - that its requirements fall within the specification of goods / services covered by the framework;
  - that the term of the framework has not expired;
  - that the terms and conditions applicable to call-offs made under the framework are acceptable to NHS Lewisham CCG (as NHS Lewisham CCG will be unable to make substantial modifications to these); and
  - that the pricing under the framework is acceptable.
- 18.32 Pilot Projects
- 18.33 In order to identify new working practices through the use of Pilot Projects, NHS Lewisham CCG must establish that a project is in fact a pilot by checking that the following requirements are present:-
- Specific goal,
  - The timetable is clearly laid out with defined periods for:
    - o Start date,
    - o End date,
    - o 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.

18.34 It is important to use Pilot Projects only in circumstances where the outputs are not known or cannot be accurately predicted. Pilot Projects can be subject to legal challenge if they have not been procured in accordance with EU Procurement Rules.

## **19. Tendering Process**

19.1 This section outlines the typical stages of a tendering process:

19.2 Advertising

19.3 Advertisements will be clear and will succinctly promote the procurement opportunity, encouraging suitably qualified providers to respond. The advert will be published via an appropriate medium including Contracts Finder, NHS Lewisham CCG's website and when applicable the Official Journal of the European Union (OJEU).

19.4 Advertisements are key to alerting the market, in increasing market stimulation and ensuring adequate competition.

19.5 If the contract value is below the relevant threshold value at which an advert is mandatory, an advert can still be placed 'on a voluntary basis'.

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

19.7 It may be appropriate to publish a Memorandum of Information (MOI). This could be issued at the same time as the advertisement and is the communication with the market at the first stage of the formal procurement.

19.8 The MOI is a document providing an overview of the services, supplies and/or works that will be competitively tendered. It contains the background information and context of the procurement. It will not contain any commercially sensitive information and will be shared only with organisations to allow them to determine whether they wish to submit a formal Expression of Interest (EOI) in response to the advertisement.

19.9 Bidder Events

19.10 Bidder events allow providers to obtain a more in depth understanding of the procurement requirements and provide an opportunity to: stimulate market interest, raise clarifications and questions, request additional information and obtain market information which may help shape NHS Lewisham CCG requirements

19.11 Due to the cost implications of holding bidder events, compliance with the overarching principle of proportionality must be considered.

19.12 Pre-Qualification Questionnaires

19.13 Where permitted, a Pre-Qualification Questionnaire (PQQ) is used to enable

NHS Lewisham CCG to assess whether providers are qualified to bid and to be short listed (where appropriate) for the tendering stage.

- 19.14 Potential providers will complete a standard format PQQ with questions tailored to reflect the service and procurement requirements.
- 19.15 The PQQ document is issued to all parties who submit a formal expression of interest. The PQQ will then be evaluated against predetermined PQQ eligibility and selection criteria and methodology and enable NHS Lewisham CCG to move to a short-list of suppliers.
- 19.16 Invitation to Tender
- 19.17 The Invitation to Tender (ITT) documents are issued to those candidates who have expressed an interest and/or who were selected following the PQQ process. The ITT documents consist of guidance and instructions to the bidders on the process and a response guide based on the approved detailed Service Specification (other than Competitive Dialogue Procedure). Elements of the ITT may include terms and conditions, contract specification, insurance requirements, quality plans, method statements, pricing and financing schedules, bonds and guarantees, key performance indicators.
- 19.18 Bidders are required to submit their responses to address requirements within the ITT documents. The responses are evaluated against pre-determined, and pre-documented, criteria.
- 19.19 Tender evaluation
- 19.20 An evaluation methodology must be formally agreed before the ITT is issued or earlier (pre advertisement) where an advertisement is to appear in OJEU and must include the relevant scoring criteria and weightings for each section.
- 19.21 The evaluation process should seek to identify the most economically advantageous bid(s), both in terms of qualitative and quantitative criteria.
- 19.22 Multi-disciplinary teams including representation from relevant specialists e.g. HR, Finance, IM&T will be established for all procurements to agree and apply a fair and transparent scoring of each submission (See paragraph 7.4).
- 19.23 In conducting the evaluation, the evaluators must act in accordance with the key principles of the EU Treaty:
- Non-discrimination
  - Equal treatment
  - Transparency
  - Proportionality
  - Mutual recognition
- 19.24 NHS Lewisham CCG may be obliged to make all recorded comments and notes available in response to a request under the Freedom of Information Act 2000. Confidentiality must be respected and maintained throughout the evaluation process. Any potential or actual conflict of interest must be advised in advance of the tender evaluation. The CCG's Conflict of Interest Policy must be followed at all times.
- 19.25 Managing potential conflicts of interest appropriately is essential in order to protect the integrity of NHS Lewisham CCG from any perceptions of wrong-doing. Any

potential or actual conflict of interest must be advised to the Project Lead as soon as it is apparent and in any event in advance of any tender evaluation. A conflict of interest may include but not be restricted to any direct or indirect links to any of the bidders and significant shareholdings associated with any of the bidders.

#### 19.26 Contract award

19.27 Following the evaluation, the successful provider will be identified based on their total score in the process. It is a legal requirement to notify all providers involved in the ITT process of the outcome. Authorisation for contract award will be sought according to the authorisation levels set out in NHS Lewisham CCG's prime financial policies and detailed financial procedures.

19.28 Letters will be issued to the successful provider informing them of NHS Lewisham CCG's decision and also to all unsuccessful providers providing information on the relative advantages and characteristics of the winning bid, the identity of the bidder and details of when any applicable standstill period ends (award decision notices).

Further debriefs should only be conducted by email and if requested by a bidder. Only in exceptional circumstances should a telephone or face-to-face debrief be held.

19.29 Once these letters are issued, there will be a 'standstill' period of 10 days in relation to procurements with an estimated contract value equal to or exceeding the relevant threshold. In accordance with best practice, NHS Lewisham CCG will normally apply a 10-day standstill period in respect of below threshold contract opportunities also.

The standstill period ends at midnight at the end of the tenth day after the date on which the CCG sends a compliant award decision notice to all the relevant operators (by fax or e-mail).

Where the standstill letter is sent by means other than fax or e-mail, the period ends at the latest by midnight at the end of the 15th day after the sending date (or earlier, if more than ten days after the date on which the last economic operator received the notice have elapsed).

19.30 Once the 'standstill' period has passed, the contract may then be formally entered into with the successful provider(s). Contracts will almost always be on NHS Standard Terms and Conditions (clinical and non-clinical), or use framework agreement terms, as appropriate.

19.31 Not later than 30 days after the award of an above threshold contract, contracting authorities are required to publish a contract award notice in OJEU.

19.32 NHS Lewisham CCG must normally publish a contract award notice in Contracts Finder within a reasonable time of awarding a below threshold contract.

19.33 It is mandatory for NHS England and CCGs to maintain and publish a record of each contract awarded for health care services on the Contracts Finder website and will maintain a register of procurement decisions taken, either for the procurement of a new service or any extension or material variation of a current contract which will include:

- The details of the decision;
- Who was involved in making the decision (including the name of the CCG clinical lead, the CCG contract manager, the name of the decision making

committee and the name of any other individuals with decision-making responsibility);

- A summary of any conflicts of interest in relation to the decision and how this was managed by the CCG; and
- The award decision taken.

19.34 NHS Lewisham CCG will use the correct contract to procure services in line with Department of Health guidance for both clinical and non-clinical goods and services. NHS Lewisham CCG may wish to obtain legal support with completing schedules within the NHS standard contracts and/or constructing bespoke contracts.

19.35 Post Contract Award and Performance Monitoring

19.36 Contract management and post-procurement review are features of the post contract award stage. NHS Lewisham CCG collates and acts upon lessons learned through the audit of procurements, including reviewing delivery of the business case, operational effectiveness and user satisfaction levels.

19.37 Relationship management between NHS Lewisham CCG and the provider(s) will hinge on agreed standards for the management interface and management information reporting, performance monitoring, financial reporting and payments, risk management, communication strategy.

19.38 Performance monitoring will require effective monitoring systems to be implemented, to include key performance indicators, standards and targets, variations to contract, timeliness of reporting, variance investigation, complaints, problem resolution and dealing with poor performance and exit strategies.

## **20. Financial and Quality Assurance Checks**

20.1 NHS Lewisham CCG will require assurance about potential providers. Where this is not achieved through a formal tender process, the following financial and quality assurance checks of the provider may be undertaken on a transparent, equal, non-discriminatory and proportionate before entering into a contract:

- Financial viability;
- Economic standing;
- Corporate social responsibility
- Clinical capacity and capability;
- Clinical governance;
- Quality/Accreditation.

## **21. Decommissioning services/Terminating Contracts**

21.1 The need to decommission contracts can arise for a number of reasons:-

- Termination of the contract due to performance against the contract not delivering the expected outcomes. This can be mitigated by appropriate contract monitoring and management and by involving the provider in this. The contract terms will allow for remedial action to be taken to resolve any problems. Should this not resolve the issues, then the contract will contain appropriate termination provisions;

- The contract expires;
- Services are no longer required;
- A service review demonstrates existing services are not meeting the health needs of the population. For example the service may be delivered in a location or at a time that may be unsuitable for patients or service changes may be required to reflect developments in medical technology and current standards of care;
- There is a clear and objective reason for the decommissioning of a service that is based on assessment of the current provider(s)' performance, value for money and the need for service redesign to improve outcomes for patients;
- The original decision to commission the service was made on assumptions that were not realised;
- There is an inability to demonstrate delivery of agreed outcome measures or failure to deliver outcomes, despite agreed remedial action as detailed in the relevant contract;
- Service does not deliver value for money, as demonstrated through financial review, utilising benchmarking tools;
  - The investment in a service does not maximise the health gain that could be achieved by reinvesting the funding elsewhere;The service has limited clinical effectiveness or fails to meet relevant quality or safety standards.

21.2 Decommissioning should be approached in accordance with the following:-

- The initiation of a decommissioning proposal must be based on sound evidence
- Appropriate engagement with patients and the public must take place before any decommissioning decision is made
- Appropriate engagement with clinicians, including the senior clinician responsible for the delivery of the service, before any decommissioning decision is made
- An assessment of health impact and impact on equality and diversity of any decommissioning decision is made
- Consideration must be given to the potential adverse impacts of a decommissioning decision, such as patient safety or patient choice
- Consideration must be given to alternative options to decommissioning a service
  - In the case of a service being decommissioned NHS Lewisham CCG must seek full assurance that there is a robust process in place to transfer patients to other services and that it is clear to all stakeholders to which alternative services patients are being redirected
  - a full check of relevant provisions in the Contract to establish that decommissioning and early termination is possible and if so at no or a reasonable and proportionate cost.

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

## **22. Transfer of Undertakings and Protection of Employment Regulations (TUPE)**

22.1 These regulations arose as a consequence of the 1977 EU Acquired Rights Directive and were updated in 2006. They apply when there are transfers of staff

from one legal entity to another as a consequence of a change in employer. This is a complex area of law which is continually evolving.

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

22.3 It is the position of NHS Lewisham CCG to advise potential bidders that whilst not categorically stating TUPE will apply it is recommended that they assume that TUPE will apply when preparing their bids, and allow adequate time is built into procurement timelines where it is anticipated that TUPE may apply, and for appropriate due diligence to take place.

### **23. Equality Impact Assessment**

23.1 NHS Lewisham CCG is committed to promoting equality in all its responsibilities – as commissioner of services, as a provider of services, as a partner in the local economy and as an employer. This Policy will contribute to ensuring that all users and potential users of services and employees are treated fairly and respectfully with regard to the protected characteristics of age, disability, gender, reassignment, marriage or civil partnership, pregnancy and maternity, race, religion, sex and sexual orientation.

23.2 As part of any procurement assessment, the CCG may wish to be provided with assurance and/or evidence of equality legislation compliance. A Checklist for this assurance is provided in Appendix C.

### **24. Training Needs**

24.1 All CCG staff and others working with NHS Lewisham CCG will need to be aware of this Policy and its implications. It is not intended that staff generally will develop procurement expertise, but they will need to know when and how to seek further support. The most urgent requirement is that all commissioning staff throughout NHS Lewisham CCG should know enough about procurement to know to seek help when they encounter related issues; they must also be able to give clear and consistent messages to providers and potential providers about NHS Lewisham CCG’s procurement intentions in relation to individual service developments.

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

### **25. Documentation and Record Keeping**

25.1 NHS Lewisham CCG will comply with its statutory obligations to keep and maintain appropriate records.

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

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

## **26. References**

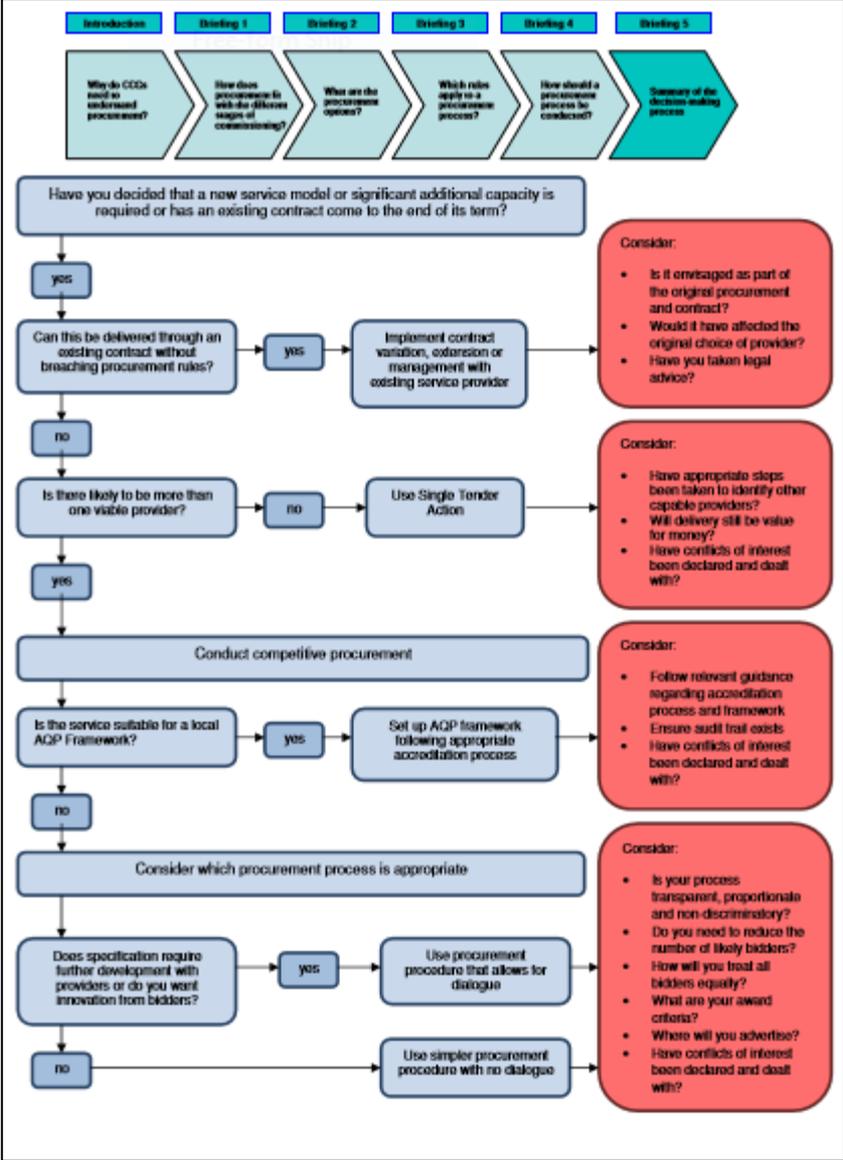
### 26.1 Legislation

- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement.
- Public Contracts Regulations 2015 (SI 2015/102).
- Health and Social Care Act 2012.
- National Health Service Act 2006.
- The National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 (SI 2013/500).
- Equality Act 2010.

### 26.2 NHS Policy

- Substantive guidance on the Procurement, Patient Choice and Competition Regulations; December 2013 Monitor
- Managing Conflicts of Interest: Revised Statutory Guidance for CCGs; June 2016; NHS England
- Code of Conduct: Managing conflicts of interest where GP practices are potential providers of CCG-commissioned services; October 2012; NHS Commissioning Board.
- Towards establishment: Creating responsive and accountable CCGs; October 2012; NHS Commissioning Board.
- Procurement of healthcare (clinical) services: Briefings for CCGs; September 2012; NHS Commissioning Board

# Appendix A: Summary of the Decision Making Process regarding Health Care Services.



## Appendix B: Financial Thresholds

The applicable financial thresholds (excluding VAT) applicable to NHS Lewisham CCG for the period 1st January 2016 to 31st December 2017 are currently:

- Goods / Services - £164,176
- Works - £4,104,394
- Light Touch Regime for Services - £589,148

## Appendix C: Checklist of Assurance Documentation required from Bidders

This Appendix provides a checklist of core documentation for assurance and compliance purposes from potential suppliers of NHS Services as part of the guidance for undertaking procurements.

- Business Continuity Plan
- Emergency Response and Resilience Plan
- Information Governance Policy
- Adult Safeguarding Policy (unless service is for children and young people only)
- Childrens Safeguarding Policy (unless service is for Adults only)
- Fraud and Bribery Policy
- Health and Safety Policy

## Annexes: Guidance Templates<sup>1</sup>

### Annex A

#### **Procurement checklist**

*To implement when procuring services from providers, to ensure full due consideration is given to the process of procurement. CCGs are advised to address the factors set out in the procurement template when drawing up their plans to commission general practice services. The procurement template includes a template to record procurement decisions and contracts awarded. The information should be promptly transferred onto the CCG's register of procurement decisions and contracts awarded.*

### Annex B

#### **Template Register of procurement decisions and contracts awarded**

*To complete and maintain up to date records of all procurement decisions and contracts. The register must be updated whenever a procurement decision is taken. The register of procurement decisions and contracts awarded should be published on the CCG's website and made available at the CCG's head office.*

### Annex C

#### **Template Declaration of interests for bidders/ contractors**

*For all bidders and/or contractors to declare any potential conflicts of interest that could arise if the Relevant Organisation was to take part in any procurement process and/or provide services under, or otherwise enter into any contract with, the CCG, or with NHS England.*

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<sup>1</sup> Adapted from NHS England Conflicts of Interest Guidance <https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2016/06/revsd-coi-guidance-june16.pdf>  
NHS Lewisham CCG: Procurement Policy  
Author: Victoria Medhurst      Date: 02/11/2016  
Status: Draft V1.5      Ratified on:

## Annex A: Procurement checklist

Service:	
Question	Comment/ Evidence
1. How does the proposal deliver good or improved outcomes and value for money – what are the estimated costs and the estimated benefits? How does it reflect the CCG's proposed commissioning priorities? How does it comply with the CCG's commissioning obligations?	
2. How have you involved the public in the decision to commission this service?	
3. What range of health professionals have been involved in designing the proposed service?	
4. What range of potential providers have been involved in considering the proposals?	
5. How have you involved your Health and Wellbeing Board(s)? How does the proposal support the priorities in the relevant joint health and wellbeing strategy (or strategies)?	
6. What are the proposals for monitoring the quality of the service?	
7. What systems will there be to monitor and publish data on referral patterns?	
8. Have all conflicts and potential conflicts of interests been appropriately declared and entered in registers?	
9. In respect of every conflict or potential conflict, you must record how you have managed that conflict or potential conflict. Has the management of all conflicts been recorded with a brief explanation of how they have been managed?	
10. Why have you chosen this procurement route e.g., single action tender? <sup>25</sup>	

<sup>25</sup>Taking into account all relevant regulations (e.g. the NHS (Procurement, patient choice and competition) (No 2) Regulations 2013 and guidance (e.g. that of Monitor).

11. What additional external involvement will there be in scrutinising the proposed decisions?	
12. How will the CCG make its final commissioning decision in ways that preserve the integrity of the decision-making process and award of any contract?	
<b>Additional question when qualifying a provider on a list or framework or pre selection for tender (including but not limited to any qualified provider) or direct award (for services where national tariffs do not apply)</b>	
13. How have you determined a fair price for the service?	
<b>Additional questions when qualifying a provider on a list or framework or pre selection for tender (including but not limited to any qualified provider) where GP practices are likely to be qualified providers</b>	
14. How will you ensure that patients are aware of the full range of qualified providers from whom they can choose?	
<b>Additional questions for proposed direct awards to GP providers</b>	
15. What steps have been taken to demonstrate that the services to which the contract relates are capable of being provided by only one provider?	
16. In what ways does the proposed service go above and beyond what GP practices should be expected to provide under the GP contract?	
17. What assurances will there be that a GP practice is providing high-quality services under the GP contract before it has the opportunity to provide any new services?	

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**Template: Procurement decisions and contracts awarded**

Ref No	Contract/ Service title	Procurement description	Existing contract or new procurement (if existing include details)	Procurement type – CCG procurement, collaborative procurement with partners	CCG clinical lead (Name)	CCG contract manger (Name)	Decision making process and name of decision making committee	Summary of conflicts of interest noted	Actions to mitigate conflicts of interest	Justification for actions to mitigate conflicts of interest	Contract awarded (supplier name & registered address)	Contract value (£) (Total) and value to CCG	Comments to note

To the best of my knowledge and belief, the above information is complete and correct. I undertake to update as necessary the information.

Signed:

On behalf of:

Date:

Please return to <insert name/contact details for team or individual in CCG nominated for procurement management and administrative processes>



## Annex C: Template Declaration of conflict of interests for bidders/contractors

<b>Name of Organisation:</b>	
<b>Details of interests held:</b>	
<b>Type of Interest</b>	<b>Details</b>
Provision of services or other work for the CCG or NHS England	
Provision of services or other work for any other potential bidder in respect of this project or procurement process	
Any other connection with the CCG or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the CCG's or any of its members' or employees' judgements, decisions or actions	

<b>Name of Relevant Person</b>	[complete for all Relevant Persons]	
<b>Details of interests held:</b>		
<b>Type of Interest</b>	<b>Details</b>	<b>Personal interest or that of a family member, close friend or other acquaintance?</b>
<b>Provision of services or other work for the CCG or NHS England</b>		
<b>Provision of services or other work for any other potential bidder in respect of this project or procurement process</b>		
<b>Any other connection with the CCG or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the CCG's or any of its members' or employees' judgements, decisions or actions</b>		

To the best of my knowledge and belief, the above information is complete and correct. I undertake to update as necessary the information.

Signed:

On behalf

of: Date: