



**Wigan Borough**  
Clinical Commissioning Group

# Procurement Policy

<b>DOCUMENT CONTROL PAGE</b>	
<b>Title</b>	NHS Wigan Borough CCG Procurement Policy
<b>Supersedes</b>	Procurement Policy – October 2018
<b>Minor Amendments</b>	Policy has been entirely rewritten to ensure a consistent procurement approach across Greater Manchester CCGs.
<b>Author</b>	NHS Shared Business Services (SBS) Head of Procurement (North)  Associate Director - Financial Control and Governance
<b>Ratification</b>	Corporate Governance Committee Governing Body
<b>Application</b>	Policy will be used by any CCG employees who are responsible for procurement.
<b>Circulation</b>	All CCG employees
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### 1. EXECUTIVE SUMMARY

- 1.1 This document sets out NHS Wigan Borough Clinical Commissioning Group's ("WBCCG") Procurement Policy. It is designed to ensure that through the utilisation of best practice procurement processes we are able to commission high quality services to enable our population to live longer, healthier lives.
- 1.2 The policy is written within the context of the framework that requires WBCCG to adhere to legislation governing the award of contracts by public bodies, including the Public Contracts Regulation 2006. It is also intended to ensure that WBCCG complies with regulations under Section 75 of Health and Social Care Act, which places requirements on commissioners to adhere to good procurement practice, improve the quality of services, not to engage in anti-competitive behaviour, and to protect and promote the rights of patients to make choices about their healthcare.
- 1.3 This policy sets out the principles and rules that apply and clearly outlines how and when it is appropriate to seek to use competition or cooperation to apply other commissioning levers, including working with our partners, to achieve the most beneficial and cost effective models of delivery.

### 2. Introduction

- 2.1 WBCCG has a responsibility to ensure that there is a consistent, transparent and effective approach to the procurement, commissioning and contract management of goods, services and works.
- 2.2 When undertaking procurement activities WBCCG is required to comply with legal requirements, internal governance rules and professional and ethical standards in order to achieve efficient and productive procurement processes.
- 2.3 WBCCG is committed to meeting the regulatory requirements and statutory guidance relating to procurement. These include the application of the Public Contracts Regulations 2015, since 18<sup>th</sup> April 2016, in relation to the procurement of NHS commissioned health care services and the revised Managing Conflicts of Interest: Statutory Guidance for CCGs, published by NHS England in June 2016 and as amended June 2017.
- 2.4 With limited resources available, WBCCG must demonstrate that value for money is being achieved for all investments. Through service development proposals and Quality Innovation Productivity and Prevention (QIPP) schemes, an evidence based approach to identifying and delivering commissioning priorities will continue to develop.
- 2.5 A 'business as usual' approach to the commissioning and procurement of healthcare services will fail to secure better outcomes and value for money. Changes in the roles of hospitals and a shift to primary care leading and delivering more services in a community based setting, will require WBCCG to work more collaboratively to develop innovative procurement and contracting solutions.

- 2.6 This document seeks to provide WBCCG with a procurement policy that addresses all areas of spend, including contracts for healthcare services as well as the procurement of goods and non-healthcare services.

The policy seeks to:

- Define a clear purpose and scope for the policy;
- Confirm responsibilities and how capability will be assured;
- Reference the relevant regulatory frameworks;
- Outline key principles and considerations associated with process of awarding contracts;
- Ensure use of robust and consistent contractual terms and conditions;
- Detail how the policy will be reviewed; and
- Reference other relevant and interlinking policies.

### **3. Purpose**

- 3.1 This policy seeks to support WBCCG to deliver commission sustainable, affordable, and high quality services, whilst acting with a view to;
- meet the needs of the people who use the services;
  - improving the quality of the services; and
  - improving efficiency in the provision of the services.
- 3.2 This policy outlines how decisions to award contracts will be approached, reflecting current regulatory obligations, national policy and statutory guidance.
- 3.3 The Procurement Policy is not intended to be comprehensively prescriptive, but recognises the necessity for situational discretion when appropriate and, as such, this policy outlines key principles and considerations that will inform decision making.
- 3.4 This Policy aims to support:
- delivery of the statutory objectives of WBCCG as an NHS body;
  - the provision of high quality NHS services;
  - assurance of value for money;
  - compliance with regulatory obligations;
  - exercise of due diligence; and
  - assurance of public sector probity.
- 3.5 The Procurement Policy will be relevant to any situation where;
- a new contract needs to be established; or
  - an existing contract reaches the end of its lawful duration or;

- an existing contract needs to be reviewed for the provision of any goods or services, including healthcare services being established for the benefit of NHS patients.
- 3.6 WBCCG will actively use procurement to strengthen commissioning outcomes through;
- increasing general market capacity to meet the need and demand for clinical services in the local health economy;
  - using competitive tension to facilitate improvements in patient choice, quality, efficiency, access and responsiveness; and
  - being open to new and innovative approaches to delivering services.

#### **4. Regulatory & Policy Framework**

- 4.1 When considering awarding contracts for goods and services, specific regard should be given to the following (as may be amended);
- a) Public Contracts Regulations 2015, prescribing how public bodies need to act when deciding how to award public contracts;
  - b) NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013, including Monitor's substantive guidance on the same, setting out the responsibilities of NHS commissioning bodies and their obligations when awarding contracts for healthcare services;
  - c) Health & Social Care Act 2012;
  - d) Public Services (Social Value Act) 2012, requiring that consideration be given as to how improvements might be made in regard to economic, social and environmental well-being of the local area;
  - e) Managing Conflicts of Interest: Revised Statutory Guidance for CCGs (NHS England, June 2016);
  - f) Transfer of Undertakings and Protection of Employment Regulations (TUPE) 2006 as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014;
  - g) Equality Act 2010 (Section 149), setting out the Public Sector Equality Duty; and
  - h) Bribery Act 2010.

***See Appendix A: Regulatory Framework: Reference Sources for further detail in relation to the areas mentioned above.***

- 4.2 Regard will also be given to applicable guidance as may be published from time to time by: The Cabinet Office; Department of Health; NHS England; and NHS Improvement.

This also includes any legal implications that may follow when the UK leaves the European Union.

*See Appendix P: For further details in relation to implications of Brexit.*

- 4.3 This policy should be considered in accordance with WBCCG's:
- Constitution, which includes Standing Orders, Standing Financial Instructions, Schemes of Delegation and Prime Financial Policies;
  - Policy on the Management of Conflicts of Interest;
  - Standard of Business Conduct Policy;
  - Risk Management Policy;
  - Fraud Corruption and Bribery Policy;
  - Communication and Engagement Strategy;
  - Disciplinary Policy;
  - Raising Concerns (Whistle Blowing) Policy;
  - Contracting Policy;
  - Decommissioning Policy; and
  - Freedom of Information Policy.

## **5. Definition**

- 5.1 Procurement is central to driving quality and value and is describes the whole life-cycle process associate with the acquisition of goods, works and services; it starts with identification of a need and ends with the completion of a contract or the decommissioning of an asset, including performance management. Procurement encompasses everything from repeat, low-value orders through to complex healthcare service solutions developed through partnership arrangements.
- 5.2 The procurement process ensures that services, supplies or works are delivered under legally binding contractual terms, where all conditions, necessary to form a legally binding contract, are satisfied.
- 5.3 This Policy is designed to set out all of the requirements for WBCCGs staff and its advisors to comply with when awarding contracts for WBCCG. The requirements are based upon the current legal framework and national NHS guidance and will be updated in line with any future changes.

## **6. Aims and Objectives**

- 6.1 To set out the approach for facilitating open and fair, robust and enforceable contracts that provide value for money and deliver improved quality standards and outcomes, with effective performance measures and contractual levers.
- 6.2 To describe the transparent and proportionate process by which WBCCG will determine how health and social services are to be commissioned. Options include:
- Direct award, either via a contractual or PO arrangement

- Variation to an existing agreement
  - A competitive process
  - An Any Qualified Provider (AQP) accreditation process
  - Establishing a new, or accessing an existing framework
- 6.3 The above options will need to be considered and assessed to identify which route:
- Is compliant with all relevant legislation
  - Provides the best outcomes based on WBCCG objectives for each service
- 6.4 To set out how the statutory procurement requirements, primarily the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013 (The 2013 Regulations), will be met.

## 7. Scope

- 7.1 This policy applies to all officers who procure goods, services or works on behalf of WBCCG, including staff on temporary or honorary contracts, appointed representatives acting on behalf of WBCCG, staff from member practices and any external organisations (e.g. other Clinical Commissioning Groups, Commissioning Support Units etc.).
- 7.2 This policy applies to all expenditure by WBCCG for their operational and management needs, including;
- revenue expenditure and capital expenditure;
  - other corporate / indirect spend;
  - commissioned healthcare services; and
  - any fully delegated responsibilities under joint commissioning arrangements.
- 7.3 In the event of full delegation under the ICO, WBCCG is able to make procurement decisions subject to the terms of: their delegation agreement with NHS England; statutory guidance; applicable law; WBCCG's Constitution; and good practice, with the following exception:
- Under the delegation agreement, WBCCG is required to comply with NHS England's Standing Financial Instructions (SFIs) in the following circumstances:
    - **Settlement of a claim:** the value of the settlement exceeds £100,000;
    - **Scheme:** any matter under the Delegated Functions which is novel, contentious or repercussive; and
    - **Contracts:** in relation to contracts for Alternative Primary Medical Services Contracts (APMS), which has, or is capable of having, a term which exceeds 5 years.
- 7.4 Arrangements under which WBCCG collaborates with other public bodies (for example under non-legally binding Memoranda Of Understanding (MOU)) will not ordinarily constitute public contracts for the purposes of procurement law, but will be

subject to the internal approval processes for non-competed expenditure set out in the SFIs and this policy.

## **8. Key principles & considerations**

8.1 The following key principles and considerations will support and guide WBCCG when considering how to deliver their commissioning plans and making decisions as to how public funds will be invested through contracts for the procurement of goods and services, including health care services to be accessed by NHS patients.

### **8.1.1 Quality and value for money**

Assessments, processes and decision making will seek to identify the most capable provider(s) to support delivery of the statutory obligations and commissioning intentions of WBCCG (as outlined above). Decisions regarding contract award will be informed by assessments of value for money, this being an appropriate balance between quality and price.

The CCG recognises the obligations as public bodies, to consider how contract award criteria can address how a bidder's solution might offer ways to bring about additional added value in the form of improvements in regard to the social, economic and environmental well-being of the local area.

### **8.1.2 Competition**

The role of competition must be carefully considered to understand how it can support the delivery of the statutory obligations and commissioning intentions of WBCCG, recognising:

- The underpinning assumptions behind EU and UK procurement regulations, of the benefit of competition to drive best value for money, innovation and improved patient experience.
- The statutory obligations of WBCCG<sup>1</sup> to decide to the extent to which, and how competition might be used to meet the commissioning intentions.
- The role that patient choice can play in allowing providers to compete to offer for example, the most accessible services, or to deliver the best patient experience.
- Where the award of a contract presents the risk of appearing to be anti-competitive, the reasons for such a decision will be recorded by WBCCG. Such reasoning should be supported, where appropriate, by an assessment as to the benefits for patients and the NHS that is being considered to outweigh the potential benefits that could reasonably be expected through competition.

### **8.1.3 EU Treaty derived principles**

As a public body and a Contracting Authority, as defined in statute, it is recognised that processes and decisions regarding the award of contracts are expected to comply with the principles, derived from European Treaties, which underpin both EU

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<sup>1</sup> Health and Social Care Act 2012; and NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013



and UK procurement regulations and public procurement policy and guidance, including:

- **Transparency** in regard to decision making and contract opportunities;
- **Equality of treatment and non-discrimination**, ensuring that no providers or types of providers are treated more or less favourably; and
- **Proportionality**, ensuring that assessments, requirements and decisions are reasonable given the relevant factors, circumstances, total value and risks associated with the relevant contract.

To comply with the above and wider obligations in regard to transparency, WBCCG will ensure that details of all relevant contracts entered into are published in accordance with regulatory requirements and NHS policy.

*See Appendix H: Regulatory requirements to publish Contract Notices, including Table AE1*

#### 8.1.4 Patient choice

Where assessed as a viable and sustainable service delivery model, consideration will be given to the establishment of provider frameworks, offering contracts to more than one provider where each is able to offer NHS services to patients, including use of the Any Qualified Provider (AQP) model, recognising;

- both regulatory and national policy obligations to secure and safeguard patient choice for certain NHS services;
- the role that patient choice can play in driving quality and innovation, particularly in regard to patient focused care; and
- the regulatory obligations that apply to ensure patients are able to choose between any providers of secondary care consultant led services<sup>2</sup>.

#### 8.1.5 Specifying requirements

A clear definition of the requirements will be specified to inform decision making. Where appropriate, the development of service specifications will;

- focus on the outcomes to be delivered by the service, enabling providers of services increased ability to develop and offer innovative solutions to deliver increased benefit to patients and the NHS;
- involve relevant stakeholders, where appropriate, including existing providers, potential providers, other commissioning bodies and relevant patient representatives, including for the purpose of validating in regard to accuracy, reasonableness and appropriateness; and
- ensure that clear measures of effectiveness and/or successful delivery of outcomes are clearly articulated to enable effective ongoing management of the contract (e.g. Key Performance Indicators (KPIs) including adherence to the standard quality KPIs required for all healthcare contracts)

*See Appendix G: Specification.*

### 8.1.6 Patient and public engagement

Where appropriate or required by statute, proportionate consultation and/or engagement with patients and the public will be undertaken to inform the review, development and commissioning of NHS services.

Particular regard will be paid to patients most likely to be directly affected by any service change. The views and responses obtained from service users will be taken into account and consideration will be given to the potential benefits of service user representative roles during procurement processes to award contracts for health care services.

### 8.1.7 Market engagement

Recognition is given to the benefits of timely engagement with both existing and potential providers to inform the review and development of requirements for future contracts, particularly for healthcare services.

Where assessed as appropriate, proportionate market engagement will take place prior to any procurement process to: validate commissioning intentions and planning assumptions (including demand and activity modelling and financial factors); identify new service delivery solutions (including best practice); refine service requirements; explore innovative solutions; gauge and stimulate market interest and competition; identify any potential barriers and/or issues; and to inform selection and design of an appropriate process to award a contract – including potential evidence of a single or most capable provider.

Where a contract is to be 'called off' a framework, time permitting, engagement with framework providers will take place before any 'mini-competition' in order to assure their interest and ability to respond to an invitation to propose a competitive solution.

It is recognised that market engagement can be used to satisfy the obligation for WBCCG to make arrangements for potential providers to express an interest in providing services.

Market engagement will ensure equal treatment and non-discrimination between providers and types of providers. Notices inviting engagement from the market will be published via Contracts Finder<sup>2</sup> and where applicable, OJEU<sup>3</sup>.

### 8.1.8 Authorised decision making

Decision making for each stage of a process to award a contract will comply at all times with WBCCG's Scheme of Delegation and SFI's.

### 8.1.9 Managing potential Conflicts of Interest

WBCCG has a statutory obligation<sup>4</sup> to identify and manage any potential or actual conflicts of interests in regard to any decisions made in regards to the awarding of

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<sup>2</sup> Contracts Finder is the UK's official website for publishing details of public sector contract opportunities and contract award decisions.

<sup>3</sup> OJEU – the Official Journal of the European Union - The official website for publishing details of public contracts with regard to the Public Contract Regulations 2015

<sup>4</sup> Managing Conflicts of Interest: Revised Statutory Guidance for CCGs (NHS England, June 2016)

contracts. WBCCG will at all times, ensure compliance with both regulatory and statutory guidance in this regard, including assurance of full probity and transparency of decision making.

## **9. Accountabilities and Responsibilities**

### **9.1 Planning**

WBCCG will maintain a contracts database that supports regular review and identification of the status of each contract, including timelines for expiry and likely procurement planning (including market engagement). The Contracts Database will be maintained by the contracts team and updated by the responsible commissioning lead.

WBCCG will identify prioritised procurement requirements, taking account of existing contracts, and new service developments arising from the ICO, as well as local and national priorities.

The responsible commissioning lead will liaise with the contracts team to identify a Contract Lead who will provide the support throughout the procurement process.

### **9.2 Decision making and accountability**

WBCCG will ensure that all purchasing and procurement decisions, including contract awards, comply at all times with WBCCG's Constitution and, specifically, the Scheme of Reservation and Delegation and Standing Financial Instructions.

Whilst external agencies and commissioning support functions will be used to provide procurement services (including the provision of advice, guidance, processing of purchase requisitions, raising of purchase orders and undertaking competitive tendering, contract management support), WBCCG will remain directly responsible for approving;

- business cases intending to commit resources of WBCCG to invest through any contract;
- selection of the procurement process to award a contract, including decisions to competitively tender;
- final specifications, evaluation criteria and bidder questions;
- specifications, evaluation criteria and bidder questions;
- selection of potential bidders to invite to tender (where the procurement process includes a pre-qualifying and short-listing stage);
- approval of feedback to be provided to unsuccessful bidders;
- final decisions regarding contract award;
- decisions to terminate a contract which involves investment of resources; and
- contract signature.

WBCCG will ensure that records are maintained about decisions made in regard to the awarding of contracts which comply with the requirements of:

- a) Regulation 84 of the Public Contracts Regulations 2015; and
- b) Regulation 9(1) of the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013.

*See Appendix M: Regulatory Requirements to Maintain Records regarding Contract Award Decisions.*

### 9.3 **Qualified advice and guidance**

Appropriately qualified and experienced advice and guidance will be sought to inform decision making regarding the awarding of contracts and associated processes. Arrangements will exist for decision makers to have access to appropriately experienced procurement professionals and where appropriate, specialist procurement legal services.

*See Appendix O: Procurement Services supporting WBCCG.*

### 9.4 **Procurement training**

WBCCG will ensure that decision makers, including procurement evaluation panel members, have access to appropriate levels of training in regard to procurement matters commensurate with their responsibilities which will include general awareness of regulatory obligations and how and when to seek further support, advice and guidance. Training will include a focus on the safeguarding of information including personal and commercial to avoid breaches of regulatory and contractual obligations. Training will also ensure that there is awareness of WBCCG's Anti-Fraud and Anti-Bribery Policy, including how concerns can be raised through the Local Counter Fraud Specialists and NHS Protect.

*See Appendix O: Procurement Services supporting WBCCG.*

## **10. Policy monitoring and review**

- 10.1 This Procurement Policy will be reviewed annually to ensure that account can be taken of any changes to regulations, policy and guidance, including nationally reviewed procurement thresholds relevant to the application of the Public Contracts Regulations.
- 10.2 WBCCG will establish effective arrangements for communicating the requirements of this policy. This will include all new starters to the organisation being briefed on the requirements of this policy as part of their induction to WBCCG.
- 10.3 The implementation of this policy, and the effectiveness of the arrangements detailed within it, will be monitored by WBCCGs' Governing Body, and Audit Committee.
- 10.4 WBCCG will at least bi-annually commission an appropriately qualified third party provider to audit compliance with this policy and that robust processes and decision making in regard to the procurement of goods and services will be audited on a regular basis by an appropriately qualified third party provider.
- 10.5 WBCCG will arrange from time to time, independent checks to be carried out on random procurements to ensure compliance with the Procurement Policy, compliance with regulatory requirements and to deter and detect wrongdoing.

- 10.6 WBCCG will consider all appropriate actions that will offer a proportionate response to findings where there have been breaches of compliance with this Procurement Policy including possible disciplinary action in accordance with WBCCG's Disciplinary Policy and where any actions identified have the capacity to result in a criminal offence, a criminal investigation may be carried out.
- 10.7 Breaches of this Procurement Policy and/or concerns in regard to wrongdoing should be reported to WBCCG's Chief Finance Officer, the Local Counter Fraud Specialist and the Audit and Governance Committee as appropriate, having regard also to WBCCG's Anti-Fraud and Anti-Bribery Policy.

## **11. Forms of Contracts**

### **11.1 Contracts for supply and services**

All commitments (with exception of framework agreements) must be on NHS standard terms and conditions for the purchase of goods and supplies or any other standard for defined by Crown Commercial Services, as applicable. Any deviation must be pre-approved by the Chief Finance Officer.

### **11.2 Contracts for healthcare services**

The NHS Standard Contract is mandated by NHS England for use by commissioners for all contracts for healthcare services other than Primary Care. Therefore CCG officers must ensure that:

- When using the NHS Standard Contract in any procurement or market intervention, WBCCG must develop the contract in accordance with the current NHS Standard Contract Technical Guidance.
- Consideration is given to the use of the NHS England shorter-form version of the Standard Contract, for use in defined circumstances. This will complement the full-length version of the Standard Contract, which will continue to be used (and indeed will remain mandatory) in many situations.
- When applicable, other NHS England standard forms of contract are used, namely; Multi-Specialty Community Provider (MCP); and Primary and Acute Service (PACS) models.

### **11.3 Primary Care Contracts**

WBCCG shall ensure that standard contracts are used for Primary Care services including:

- PMS (Personal Medical Services) Contract
- APMS (Alternative Provider Medical Services) Contract
- GMS (General Medical Services) Contract
- NHS Standard Contract (Community-based service)
- Pharmacy – LPS (Local Pharmaceutical Service) Contract
- Dentistry – GDS (General Dental Service) Contract, PDS (Primary Dental Services Contract)

- 11.4 Guidance and examples of good assurance processes for novel and complex contracts is provided in “The Integrated Support and Assurance Process (ISAP): and introduction to assuring novel and complex contracts”.

*See Appendix B: Contract Terms and Conditions (for details of NHS terms and conditions for goods and services).*

## **12. In-House Arrangements**

- 12.1 The Public Contracts Regulations 2015 (PCR) regulation 12(1)) provides that contracts awarded to a contractor/supplier considered to be “in-house” will fall outside of the public procurement rules. Regulation 12 of the PCR provides that for a contractor/supplier to be considered “in-house” the following conditions must all be met:

- WBCCG must exercise a control over the contractor concerned that is similar to control that it exercises over its own departments;
- more than 80% of the activities of the contractor are carried out for WBCCG or for other legal persons controlled by WBCCG; and
- there is no direct private capital participation in the contractor.

- 12.2 In the event that WBCCG officers considers that a contract may be an in-house arrangement then they must contact the procurement lead or the Chief Finance Officer and Chief Accountable Officer, seeking addition legal advice where required, prior to awarding a contract without engaging in a competitive tender process or committing WBCCG to any expenditure.

## **13. Processes to award a contract**

- 13.1 Recognition is given to the array of possible routes available in respect of the process to award a contract for the provision of goods and services and the importance of ensuring that decisions taken are appropriate at the time and robust. Appropriately qualified and experienced advice and guidance will be sought to inform and understand the options available, including any potential risks and how these might be mitigated.

*See Appendix C: Tender / Procurement Routes.*

- 13.2 When engaging in a competitive tender process, WBCCG will, whilst ensuring that it complies both with its own policies and its legal obligations, seek to;

- select the method of procurement which is proportionate, most effectively ensures best value for the service(s) in question and provides fair and open competition;
- award contracts based on the most economically advantageous tender criteria with particular focus being given to those services that are most likely to deliver continuous improvement in terms of quality, efficiency and effectiveness;
- work with providers fairly and transparently at all times;

- recognise that certain specialities/services may have a monopoly on expertise and strive to seek out new and innovative relationships in order to widen the healthcare market;
- continuously explore ways of encouraging new providers into the market;
- monitor existing contracts and service arrangements via the tender process to ensure that they deliver best value in line with the competitive market;
- stimulate diversity and innovation, enhance choice for service users, and create the conditions in which new suppliers might take root and be able to enter the market; and
- design and deliver services to meet the differing needs of the community by consulting with prospective providers, other local NHS organisations and all sections of the local community.

## 14. Exemptions / Single Tender Action

14.1 The waiving of competitive tendering procedures will not be used;

- to deliberately avoid competition;
- for administrative convenience; or
- to award further work to a provider originally appointed through a competitive procedure where this would breach the procurement regulations.

14.2 A Single Tender Action (STA) Waiver is confirmation by WBCCG that a contract can be awarded without a competitive process (direct award). An STA waiver should only be granted in exceptional circumstances, such as:

- The requirement can be delivered by an existing contract, however, appropriate advice and guidance should be sought before committing WBCCG to expenditure or entering into a contractual arrangement.
- Reasons of extreme urgency, where the award should be no longer than is necessary to allow a competitive process to take place to procure these services.
- Specialist expertise is required and is only available from one source.
- A negotiated procedure without prior publication may be used for new services which are a repetition of similar services, already procured.
- A tender process has been conducted and failed to produce an outcome.

14.3 Where a WBCCG officer wishes to apply for an exemption they shall do so in accordance with Standing Financial Instructions or Prime Financial Policy and follow the process as outlined below:

1. An Exemption Request/Waiver Form must be submitted to the Chief Finance Officer (CFO), WBCCG Board or Audit Committee (sub-committee of WBCCG Board), dependent on the delegated financial limit, who will review the exemption form ensuring that the reasons for the exemption are clearly stated and meet the necessary criteria;

2. Chief Finance Officer will support or oppose the exemption application based on the submitted information;
  3. An outcome will be returned to the relevant commissioning lead documenting the decision within 7 working days of the outcome being decided; and
  4. All decisions arising from the Exemption Request Forms will be submitted for scrutiny by the Audit Committee.
- 14.4 In each case, WBCCG will check that it is still complying with the procurement regulations.

*See Appendix F: Tendering Healthcare: Deciding on Tender/No Tender*

## **15. Pilot Projects**

- 15.2 In order to identify new working practices through the use of Pilot Projects, WBCCG 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 a defined start and end date, with period for lessons to be learnt;
  - a clearly defined and signed contract exists with the pilot service provider;
  - there is a robust plan and process for evaluation; and
  - the right to terminate the pilot is included if it is found to be unsafe or the outcomes cannot be met.
- 15.3 It is important to use Pilot Projects only in circumstances where the clinical outputs are not known or cannot be accurately predicted. Each pilot must define how its success will be evaluated prior to the completion of its initial term. It is not ordinarily acceptable to extend a pilot service in order to evaluate its effectiveness.
- 15.4 The procurement of Pilot Projects must be undertaken according to the same standards applicable to the procurement of all other services.
- 15.5 Each pilot must be reported to the Finance and Performance Committee at the point it is commissioned.
- 15.6 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 adhered to, therefore WBCCG must ensure regulatory compliance, seeking legal advice wherever necessary.

*See Appendix E: 'Decision Guide': selecting an approach to award a contract (healthcare services).*

## **16. Collaborative Procurement**

- 16.1 Where there is clinical, quality, financial or process benefits to be obtained, WBCCG should consider the option of joint commissioning with other health or Local Authority commissioners.



- 16.2 Where procurement is the subject of joint commissioning between several commissioners or with Local Authority partners, decision-making must be consistent with the contents of this policy.
- 16.3 When a procurement process is the subject of joint commissioning with the Local Authority, Local Authorities are subject to the same legislative frameworks (Public Contract Regulations and European Union Procurement Directives), but may not be required to comply with NHS specific guidance and regulations, this will be considered and any issues arising from any differences will be clearly articulated in any joint procurement decision.
- 16.4 WBCCG and the Local Authority commission services under joint arrangements and in accordance with 16.2, the principles outlined are to be used in conjunction with both organisations procurement policies, contract standing orders (CSO's) and standing financial instructions (SFI's).

## **17. Sustainability**

- 17.1 The NHS is a major employer and economic force and WBCCG recognises the impact of its purchasing and procurement decisions on the regional economy and the positive contribution it can make to economic and social regeneration. WBCCG is committed to the development of innovative local and regional solutions, and will deliver a range of activities as part of its market development plan to support this commitment.
- 17.2 Wherever it is possible and does not contradict or contravene WBCCGs' legal obligations, WBCCG will work to develop and support a sustainable local health economy.

## **18. Information Technology**

- 18.1 Procurement processes will, where possible, be conducted electronically using appropriate systems that deliver robust audit trails and security of commercial confidentiality.
- 18.2 E-Tendering and E-evaluation solutions provide a secure and efficient means for managing tendering activity particularly for large complex procurements. They offer efficiencies to both WBCCG and providers by reducing time and costs in issuing and completing tenders, and particularly to WBCCG in respect of evaluating responses to tenders.
- 18.3 Recognition is given to procurement regulations which include obligations to provide procurement information to potential bidders electronically, free of charge.

## **19. Conflicts of Interest**

- 19.1 Managing conflicts of interest is needed to protect the integrity of the wider NHS commissioning system and to protect WBCCG from any perceptions of wrong-

doing. General arrangements for managing conflicts of interests are set out in WBCCGs' Constitution and Conflicts of Interests Policy.

- 19.2 A conflict of interest arises where an individual's ability to exercise judgment or act in one role is or could be impaired or otherwise influenced by that individual's involvement in another role. For the purposes of the procurement regulations, a conflict will arise where an individual's ability to exercise judgment or act in their role in the commissioning of services is impaired or otherwise influenced by their interests (or potential interests) in the provision of those services. NHS Guidance on conflicts of interest makes it clear that an interest includes an interest of:
- a) A member of WBCCG
  - b) A member of WBCCG's Governing Body
  - c) A member of committees or sub-committees of WBCCG's Governing Body
  - d) An employee
- 19.3 Where any of the above mentioned persons has an interest in a procurement decision, that person/those persons will be excluded from the decision-making process (but not necessarily from the discussion about the proposed decision). This includes where all practice representatives have a material interest in the decision, for example where WBCCG is considering commissioning services on a single tender basis from all GP practices in the area.
- 19.4 Where it is not practicable to manage a conflict by simply excluding the individual concerned from participating in relevant decisions or activities, WBCCG will need to consider alternative ways of managing the conflict such as, for example, involving third parties on the Governing Body of WBCCG who are not conflicted or inviting third parties to review decisions to provide additional scrutiny.
- 19.5 WBCCG will through its conflicts of interests register maintain a record of how they manage any conflict that arises between the interests in commissioning the services and the interests involved in providing them. This register will need to include:
- a) Details of the conflicted individual and their role/position within WBCCG
  - b) The nature of their interest in the provision of services
  - c) When the individual's interest was declared and how
  - d) Details of the steps taken to manage the conflict
  - e) The individual's involvement in the procurement process

## **20. Freedom of Information**

- 20.1 Section 1 of the Freedom of Information Act (FOI) (2000) gives a general right of access from 1 January 2005 to recorded information held by WBCCG, subject to certain conditions and exemptions. This information may be held in both manual and electronic form in accordance with the Data Protection Act 1998 and may be disclosed to third parties in accordance with the Act.
- 20.2 When preparing to enter into contracts, WBCCG must carefully consider their obligations under FOI and ensure any bidders/contractors are aware these will

contain terms relating to the disclosure of information by them. WBCCG may be asked to accept confidentiality clauses, for example to the effect that information relating to the terms of the contract, its value and performance will not be disclosed. FOI recognises that there will be circumstances and respects in which the preservation of confidentiality between public authority and contractor is appropriate, and must be maintained, in the public interest. However, it is important that WBCCG makes the contractor aware of the limits placed by FOI on the enforceability of such confidentiality clauses relating to the disclosure of information.

## **21. Equality and Diversity Statement**

- 21.1 All public bodies have statutory duties under the Equality Act 2010. WBCCG aims to design and implement services, policies and measures that meet the diverse needs of their service users, population and workforce, ensuring that none are placed at a disadvantage over others. When any change to services is to take place a full Equality and Quality Impact Assessment must be carried out prior to the change within the service.

*See Appendix N: Equality Impact Assessment.*

## **22. Decommissioning**

- 22.1 The Decommissioning Policy describes the process to follow to operationally manage the decommissioning of services, in a safe, fair and transparent manner, in line with WBCCG's governance processes and delegated limits as detailed in the Scheme of Reservation and Delegation. The Policy addresses the requirement for a robust process to appropriately decommission contracted services. Decommissioning impacts on patients, Wigan residents and providers, therefore a formal process is required which provides an evidence trail and ratification by a decision making authority that will withstand potential appeals or legal challenge by an affected party.

## **23. Policy Non-Compliance**

- 23.1 WBCCGs' officers must comply with this policy and the associated CCG policy and procedures at all times. Failure to comply may result in disciplinary action in accordance with the relevant CCG's disciplinary procedure.
- 23.2 In the event of non-compliance, full details of the non-compliance, any justification for non-compliance and the circumstances around the non-compliance must be reported to WBCCG's Audit Committee and the must report the non-compliance to the next formal meeting for action or ratification.
- 23.3 WBCCGs' officers are encouraged to be proactive in relation to the policy compliance and to raise compliance issues in early stages of the procurement process to prevent policy and legal non-compliance.

23.4 WBCCGs' officers must comply at all times with the Standard of Business Conduct Policy, WBCCG's Fraud, Bribery and Corruption Policy and any other corporate procedures and governance policies.

## Appendix A: Regulatory Framework Reference Sources

The following provides a list of reference sources for the Regulations and Acts of Parliament referred to within Section 4 of this policy that will be taken into account awarding contracts:

- Public Contracts Regulations 2015 (as amended)  
<http://www.legislation.gov.uk/uksi/2015/102/contents/made>
- NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013  
<http://www.legislation.gov.uk/uksi/2013/257/contents/made>
- Monitor's substantive guidance on the NHS (Procurement, Patient Choice and Competition)(No.2) Regulations 2013  
<https://www.gov.uk/government/publications/procurement-patient-choice-and-competition-regulations-guidance>
- Health & Social Care Act 2012  
<http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted>
- Public Services (Social Value Act) 2012  
<http://www.legislation.gov.uk/ukpga/2012/3/enacted>
- National Health Service Act 2006 Section 242 (Public Involvement and Consultation)  
<http://www.legislation.gov.uk/ukpga/2006/41/contents>
- Managing Conflicts of Interest: Revised Statutory Guidance for CCGs (NHS England, June 2017)  
<https://www.england.nhs.uk/commissioning/pc-co-comms/coi/>
- Transfer of Undertakings (Protection of Employment) Regulations 2006(TUPE as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014  
<http://www.legislation.gov.uk/uksi/2014/16/contents/made>
- Equality Act 2010  
<http://www.legislation.gov.uk/ukpga/2010/15/contents>
- Modern Slavery Act 2015  
<http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>
- Bribery Act 2010  
<http://www.legislation.gov.uk/ukpga/2010/23/contents>
- GDPR Act 2015

<http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

- The EU General Data Protection Regulation (GDPR)  
<https://ico.org.uk/for-organisations/resources-and-support/data-protection-self-assessment/getting-ready-for-the-gdpr/>
- Freedom of Information Act (2000)  
[http://www.legislation.gov.uk/ukpga/2000/36/pdfs/ukpga\\_20000036\\_en.pdf](http://www.legislation.gov.uk/ukpga/2000/36/pdfs/ukpga_20000036_en.pdf)
- Local Government Act 1999  
<https://www.legislation.gov.uk/ukpga/1999/27/contents>
- Competition Act 1998  
<https://www.legislation.gov.uk/ukpga/1998/41/contents>

## Appendix B: Contract Terms and Conditions

As set out in Section 10 of this policy, clear terms and conditions of purchase and supply are to be determined by WBCCG, in line with national policy and guidance as issued by the Department of Health and NHS England. (Please see reference sources below).

Type of provision being procured	Contract terms to be used and reference source
Goods and/or [non-healthcare] services	NHS Terms and conditions for the supply of goods: contract version NHS Terms and conditions for the supply of goods: purchase order version NHS Terms and conditions for the supply of services: contract version NHS Terms and conditions for the supply of services: purchase order version NHS Framework Agreement for the provision of services NHS Terms and conditions for the provision of managed services <a href="https://www.gov.uk/government/publications/nhs-standard-terms-and-conditions-of-contract-for-the-purchase-of-goods-and-supply-of-services">https://www.gov.uk/government/publications/nhs-standard-terms-and-conditions-of-contract-for-the-purchase-of-goods-and-supply-of-services</a>
Healthcare services	NHS Standard Contract, as mandated by NHS England <a href="https://www.england.nhs.uk/nhs-standard-contract/">https://www.england.nhs.uk/nhs-standard-contract/</a> For use across all patient accessed health care services including: <ul style="list-style-type: none"> <li>- Ambulance Services</li> <li>- Community Services</li> <li>- Acute Hospital Services</li> <li>- Mental Health Services</li> <li>- Community Services</li> <li>- Care Homes Services</li> </ul> Or where relevant, use will be made of any nationally developed forms of contract to support emerging Integrated Care Systems <a href="https://www.england.nhs.uk/nhs-standard-contract/">https://www.england.nhs.uk/nhs-standard-contract/</a>
Sub-contracts for healthcare services	NHS Standard Sub-contract for the provision of Clinical Services <a href="https://www.england.nhs.uk/nhs-standard-contract/">https://www.england.nhs.uk/nhs-standard-contract/</a>
GP services	General Medical Services (GMS) Contracts Personal Medical Services (PMS) Contracts Alternative Provider Medical Services (APMS) Contracts <a href="https://www.england.nhs.uk/commissioning/gp-contract/">https://www.england.nhs.uk/commissioning/gp-contract/</a>
Grants provided to voluntary organisations	A model agreement published by NHS England, being non-mandatory and able to be locally adapted <a href="https://www.england.nhs.uk/nhs-standard-contract/grant-agreement/">https://www.england.nhs.uk/nhs-standard-contract/grant-agreement/</a>
Any non-healthcare services being contracted as a call off from a framework	Where a contract is being awarded as a call-off from a lawfully established framework agreement, WBCCG may need to use the terms and conditions incorporated within the framework to ensure that the contract being awarded is lawful. Procurement advice should be sought.

## Appendix C: Tender/Procurement Routes

### Approach to market

It is anticipated that an increasing number of services will be subject to competitive tendering in order to demonstrate the application of the principles of transparency, openness, equal treatment, delivering value for money and compliance with the Public Contracts Regulations 2015.

There are a number of procurement routes available:

- a) Modification
- b) The open procedure (including Any Qualified Provider)
- c) The restricted procedure
- d) Competitive dialogue
- e) Competitive Procedure with Negotiation
- f) Innovative Partnership Agreements
- g) Any Qualified Provider (AQP)
- h) Spot Purchase
- i) Dynamic Purchasing System (DPS)
- j) Framework Agreements
- k) Grants

#### **a) Modification**

Consideration will be given to whether it is possible to vary or modify an existing contract, whether this will be to vary the scope of service and/or the overall contract value. Recognition is given to regulatory limitations as to when and to what extent an existing contract may be lawfully modified (varied) without triggering the need to re-procure a new contract. Recognising that modifying a contract does require negotiation with the incumbent provider in line with the process set out in the terms of the contract; alternative approaches should also be considered, including establishing a new contract. The amount of leverage should also be considered, whether there is a continuing assurance of value for money, or whether it will be in the best interests of the CCG and patients to explore wider competition.

#### **b) Open Procedure**

The open procedure requires that the tender documentation is sent to all interested companies upon request and bidder selection (shortlisting) does not apply. There is no control over the number of tenders submitted for evaluation; therefore it is imperative that a market analysis has been carried out. This procedure is generally used when there are relatively few known suppliers and the service/supply is relatively simple. The contract is advertised (by way of a notice, if the full EU Rules apply) and any responders are sent full



tender documentation. The option to use Any Qualified Provider is also within the open process.

### **c) Restricted Procedure**

Potential providers are required to complete a Selection Questionnaire (the “SQ”) to enable assessment of their suitability to tender for the contract. If successful in being shortlisted, they will be sent full tender documentation. The Selection Questionnaire typically requests the following information:

- a) Company Information (Name, address and company registration number etc.)
- b) Financial details
- c) Equal opportunities policy
- d) Environmental policy
- e) Health and Safety compliance
- f) Contract Performance
- g) Relevant experience
- h) Capability / Technical Competence / capacity

Once bidders have been selected to tender for the contract those bidders are sent an Invitation to Tender which includes the requirement for the bidders to respond, to award criteria, including pricing which will then be evaluated.

### **d) Competitive Dialogue**

This procedure is available for the award of “particularly complex contracts”. Where it is impossible to define a technical solution to meet the need(s) that has been identified, this procedure allows the CCG to engage in a dialogue with at least three bidders to define the best technical solution for the project. When it has been found, those bidders will be asked to submit their final tenders on the basis of the solution or solutions presented during the dialogue which are evaluated against pre-determined criteria.

### **e) Competitive Procedure with Negotiation (CPN)**

As with Competitive Dialogue, this procedure is available for complex contracts. Under this route negotiation with bidders is permitted. Under previous public procurement regulations the scope for using the negotiated was limited. Since 2015, the grounds for using CPN have been broadened and as a result it is likely to be used more frequently. Note that various safeguards concerning the conduct of the procedure have been added to ensure equal treatment and transparency. These safeguards include:

- i. setting minimum requirements at the beginning and not changing them during the negotiations;
- ii. having stable award criteria and weighting throughout the process;

- iii. informing tenderers in writing of any changes to the technical specifications;
- iv. not revealing confidential information from a candidate or tenderer to other participants without its specific consent;
- v. documenting all stages of the process; and
- vi. the submission of all tenders in writing. In terms of the process itself, negotiations may take place:
  - (a) on all aspects, other than the minimum requirements, such as quality, quantities, commercial clauses, social, environmental and innovative aspects;
  - (b) in stages with successive elimination by applying the award criteria; and
  - (c) on all tenders but the final one.

#### **f) Innovation Partnerships**

Partnership arrangements are aimed at stimulating innovation of products, services or works, currently not available on the market. As a procurement process, this largely follows the competitive procedure with negotiation (see above). Following a contract notice, expressions of interest are received and negotiation takes place with the potential partner(s). The partnership agreement is then awarded to one or more partners on the basis of the best price quality ratio. Following the award, the mobilisation structure covers two parts;

1. development of the innovative product, service or works; and
2. purchase(s) of the resulting supplies, services or works.

#### **g) Any Qualified Provider (AQP)**

Any provider that meets the stated criteria for entering a market can compete for business within that market without constraint by a commissioner organisation. Under Any Qualified Provider there are no guarantees of volume or payment, and competition is encouraged within a range of services rather than for sole provision of them. The Any Qualified Provider model promotes choice and contestability, and sustained competition on the basis of quality rather than cost. Any service that is contracted through the Any Qualified Provider 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.

#### **h) Spot Purchasing**

Spot purchasing (or spot contracting) happens when a service is purchased on a “one-off” basis, as and when they are needed. The need to spot purchase contracts exists for particular individual patients or for urgency of placement requirements at various times. At these times, a competitive process may be waived. However, where applicable the exemption process will apply and the commissioner will need to consider future provision such as setting up a framework agreement. It will be expected that these contracts will undergo best value reviews to ensure the CCG is getting value from the contract. In all cases the CCG must ensure that the provider is fit for purpose to provide the particular

service. Spot Purchases must be regularly reviewed to ensure that the CCG does not breach any procurement regulations.

### **i) Dynamic Purchasing System**

A Dynamic Purchasing System (DPS) is an electronic system that may be used to commission commonly used clinical services within a limited duration. A DPS works like a framework agreement except that during its life other providers may submit indicative bids on an on-going basis and, if they meet the published criteria, join 'the system'. A DPS may be used as an optional process designed to assist the CCG in setting up and maintaining a list of approved providers from whom they can achieve better value for money for commonly used clinical service purchases when the need arises.

### **j) Framework Agreements**

The CCG can either set up their own framework agreements or use other public sector organisations' framework agreements if a provision has been made in the framework agreement to allow this by the holder of the framework agreement (such as the Crown Commercial Services). The EU rules state that framework agreements should be for no longer than four years in duration except in exceptional circumstances. Where it is allowed for in the framework agreements there may be an option for running mini competitions. Here all providers on the framework who can meet requirements are invited to submit a bid, these are then evaluated and a contract awarded following the same processes as for tenders. Any contract awarded can run beyond the framework agreement period.

### **k) Grants**

Public bodies must follow public procurement policy at all times. In certain circumstances grants are payable to third sector organisations. However, there should be no preferential treatment for third sector organisations.

A third sector organisation describes a variety of organisations that are neither state nor private sector and includes voluntary and community organisations (registered charities, associations, self-help groups, social enterprises, cooperatives, etc.). They are independent of government, pursuing social, environmental and cultural objectives and reinvest any surplus in pursuit of these objectives rather than in making a profit.

Grants come in two forms: -

1. Grant - payments to outside bodies where a department is required, or wishes, to maintain detailed control over the expenditure and where a procurement approach is not suitable.
2. Grant in Aid - A payment by a government department (the "sponsor department") to finance all or part of the costs of the body in receipt of the grant in aid. Grant in aid is paid where the government has decided, subject to Parliamentary controls, that the recipient body should operate at arm's length.

Use of grants can be considered where:

- a) Funding is provided for development or strategic purposes
- b) The provider market is not well developed
- c) Innovative or experimental services
- d) Where funding is non-contestable (i.e. only one provider)

Grants should not be used to avoid competition where it is appropriate for a formal procurement to be undertaken and WBCCG should be satisfied that such grants would not constitute illegal state aid.

## Appendix D: Standing Financial Instructions (SFIs) and Tender Guidance: Summary of Thresholds and Timescales

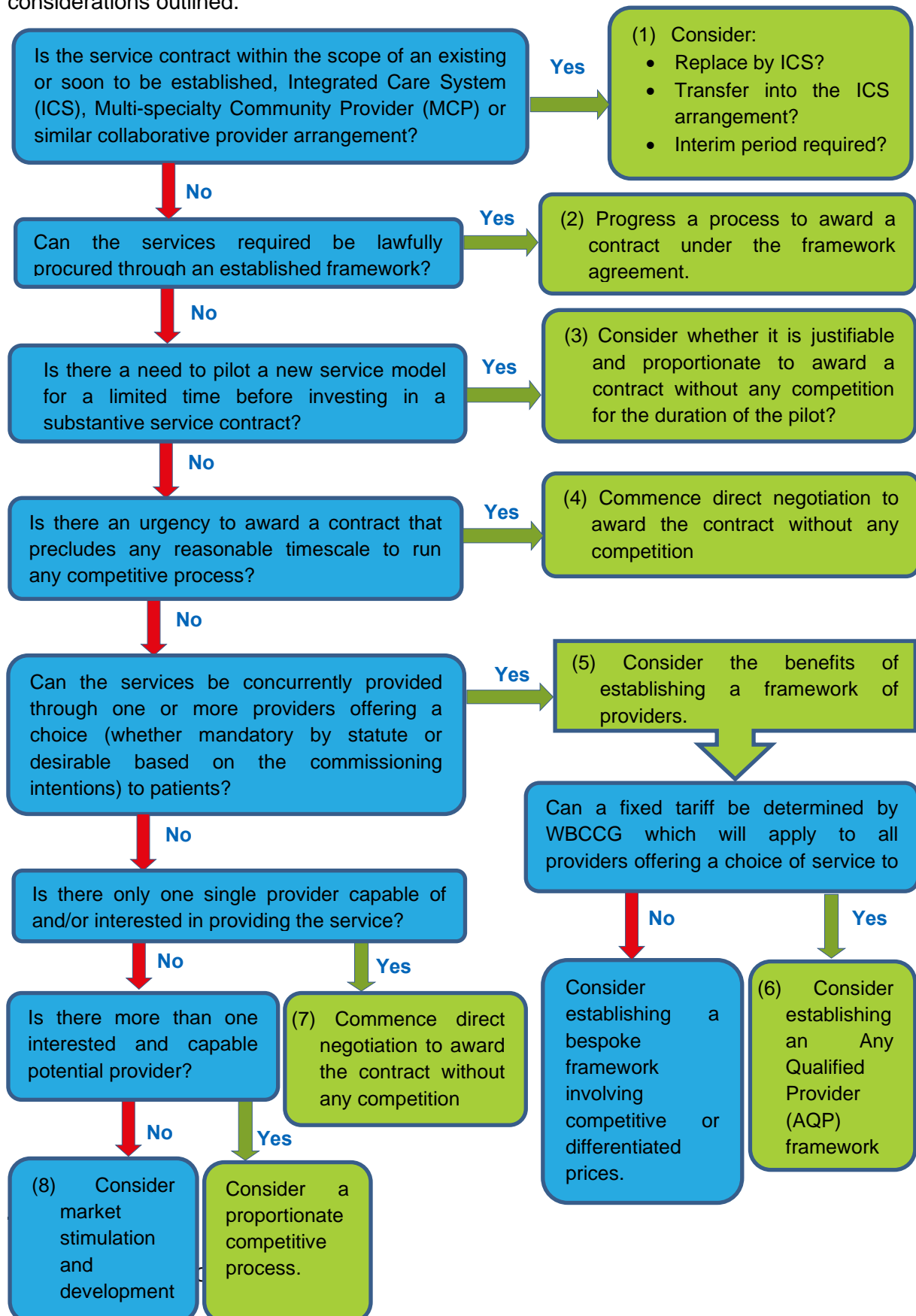
SFI Level - Total Contract Value	Procurement Process	Timescales	Example
Up to £20,000*	<b>No requirement to obtain quotes.</b> Although no formal requirement, it is deemed to be best practice and demonstrates value for money	1 Week	One off, low level Consultancy
Between £0,000 - £50,000*	<b>A Minimum of 3 written quotes must be sought.</b> Quotations should be in writing but not subject to formal receipt process. <ul style="list-style-type: none"> <li>Bids may be invited from informal/formal supply networks, via recommendations or sourcing trade magazines etc.</li> <li>WBCCG will then choose the best specification and record the outcome.</li> </ul>	1-4 Weeks	Service Review
£50,000* to European Union Directives levels**	<b>Consider procurement options</b> - seek advice from the Contract Management Group <ul style="list-style-type: none"> <li>Bids may be invited from informal/formal supply networks, via recommendations or sourcing trade magazines etc.</li> <li>Consider the use of appropriate frameworks</li> <li>Contract values exceeding £25k* must be advertised on Contracts Finder.</li> <li>The procurement procedure needs to be determined in advance of such advertisement.</li> <li>Conduct through an e-tendering system</li> <li>WBCCG will choose the most economically advantageous tender</li> </ul>	4 - 8 Weeks	Specialist Consultancy
In accordance with European Union Directives levels** and above	<b>Follow European Union Directives</b> - the Commissioning lead will produce a brief on the service required <ul style="list-style-type: none"> <li>All contracts above the EU threshold will be advertised on OJEU.</li> <li>The Commissioning lead should ensure that potential providers have sufficient time to submit offers, as specified under the EU Rules and/or when using the Light Touch Regime provisions.</li> <li>The recommended minimum numbers of shortlisted bidders is five, but this is subject to market interest and if there are not five bidders of sufficient quality, fewer may be invited subject to compliance with the procurement regulations.</li> <li>Bids are to be submitted on the on-line procurement portal</li> <li>The successful provider is identified on the basis of an evaluation with the rationale for the choice being recorded.</li> <li>An award notice must also be placed on OJEU.</li> </ul>	5-6 Months	Procurement of service.

**\*Values relate to the total contract value, including any optional extension periods.**

**\*\*See Appendix I: Current Regulatory Procurement Thresholds**

## Appendix E: 'Decision Guide': selecting an approach to award a contract (healthcare services)

The following flow chart, and supporting guidance, assists with the application of the considerations outlined.



- (1) Consideration to be given as to how, in contract form, the service is to be incorporated within scope of the ICS (or new form contract MCP, etc.). Should an existing service contract be decommissioned as a replacement service arrangement is to be established through an ICS? Can provision be made to novate/transfer an existing contract into the ICS contract? If the ICS has yet to be established, is it appropriate to extend an existing service contract for an interim period until the ICS is to be established? If an interim arrangement is required on a standalone basis see steps below.
- (2) An increasing range of frameworks are being established nationally by commissioning bodies and procurement organisations which can enable WBCCG to avoid a full procurement process and instead, either directly award a contract to a framework provider, or undertake a 'mini competition' as may be appropriate under the terms of the framework. Caution should be exercised when considering using a framework from another commissioner (whether a CCG or a local authority), that the framework lawfully permits WBCCG to contract through the framework, this having been transparently communicated to the market when the framework was established. Also, the service required is within the value range permissible within the framework. Advice regarding access to frameworks should be sought from the relevant procurement service.
- (3) A 'pilot' service is not necessarily a reason to avoid competition. Regard must be given to the level of risk involved, including financial, clinical, reputational, etc. to ensure that selection of the provider involves the necessary levels of due diligence. Consideration should be given to whether a speedy, proportionate process could be followed, in order to invite interest from the market and select a provider. Commissioners should record / document the rationale behind not competing the opportunity, if this option is chosen.
- (4) Procurement regulations do provide for circumstances where a contracting authority could not have reasonably foreseen the requirement, e.g. an unanticipated need to contract for a complex package of care that has arisen and requires an urgent solution. Caution to be exercised in that a lack of commissioner planning and a reasonable anticipation of requirements are unlikely to be considered reasonable justification to avoid a competitive or other process. Internal 'Tender Waiver' documentation must record the reasons and the decision taken.
- (5) Engagement with the market is essential to understand the viability and appropriateness of a framework. Presumptions should not be made regarding the potential interest of providers to willingly share in the provision of healthcare capacity. Consideration should also be given to the overall costs and benefits to WBCCG as well as patients when offering choice through multiple contracts. Issues to be explored may include service sustainability, economies of scale and minimum clinical activity levels to sustain clinical competence and patient safety.
- (6) An AQP is an NHS framework where any provider interested in providing a patient

service can apply to be awarded a contract, with the requirement that they are appropriately qualified, registered and agree to standard NHS contract terms and the fixed tariff set by WBCCG. AQPs support the offering of choice to patients in where they can receive healthcare. Engagement with potential providers should explore, test and validate interest from providers and the factors affecting their level of interest. Tariff setting should have regard to the commercial factors of relevance to the type of service provision and the feedback from potential providers. There may be occasion where competitive pricing may be appropriate, e.g. where the services offered across the provider landscape is variable and differentiated – such as care homes with nursing, where a common tariff may not be reasonable or feasible.

- (7) A single capable provider could arise for various reasons including: sole infrastructural or technical knowledge / ability; having specialist capability; clinical interdependency; etc. Justification for there being a single capable provider should be evidenced through market engagement, or there is a risk of subsequent legal challenge where WBCCG has failed to identify alternative capable providers, i.e. publishing via Contracts Finder / OJEU to invite expressions of interest.
  
- (8) Market engagement is critical to understand the level of potential provider interest and therefore the design of an appropriate and proportionate competitive procurement process. A pre-qualifying procurement stage, should only be used following an assessment that there is likely to be a high and unmanageable number of bidders. Although the Public Contracts Regulations 2015 prescribe a choice of procurement procedures (i.e. Open, Restricted, etc.), CCGs' do have considerable flexibility regarding which procurement process to follow, providing it remains compliant with the EU Treaty derived principles of transparency, equal treatment, non-discrimination and proportionality. Where market engagement fails to identify interested providers, a review should take place to understand possible reasons, particularly where this could be due to unreasonable specifications or payment model. Ways should be identified to further engage with the market to develop the capacity required to meet commissioning requirements.



## Appendix F: Tendering Healthcare: Deciding on Tender/No Tender

Key Considerations					
Question Number	Service Delivery	Options	Further Details / Rationale	If Green Potential to Waiver	If Red Procurement Required
Q1	<b>Modification - Specification</b> Is a significant material change to the specification of the service anticipated from the current service model?	If No, waiving procurement could be an option. Please provide details / rationale			
		If Yes/Unsure, Procurement may be required. Please seek further advice			
Q2	<b>Modification - Contract Value</b> Is the value of the service anticipated to change significantly from previous, taking into consideration both any increase or decrease in costs?	If No, waiving procurement could be an option. Please provide details / rationale			
		If Yes/Unsure, procurement may be required. Please seek further advice			
Q3	<b>Contract Value</b> Is the total value of the proposed contract term below the relevant EU threshold?	If Yes, alternative options to running a full procurement process may be possible. Please provide details / rationale			
		If the contract is above the relevant EU threshold then a robust procurement exercise is required. Please seek further advice.			
Q4	<b>Financial Risks</b> Are there financial risks associated with the current service?	If No, waiving procurement could be an option. Please provide details / rationale			
		If Yes/Unsure, procurement may be required. Please seek further advice			
<p><b>The above questions are to be considered as 'Key' in the decision making process when deciding if a service needs to go out to procurement or not and if any of the questions are answered with a Red option then there is an increased likelihood that a procurement exercise will need to be undertaken. Please note that this should only be used as a guide and where there is any doubt, you should contact the Greater Manchester Shared Services/ NHS Shared Business Services Procurement team to discuss further. For all procurements WBCCGs SFI's, EU Procurement Regulations and NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 need to be considered to ensure that all decisions are compliant.</b></p>					
<b>Departmental Approval</b>		<b>Name / Signature</b>	<b>Position</b>	<b>Date of Approval</b>	
<b>Commissioner Approval</b>					
<b>Procurement Approval</b>					

Further Considerations					
Question Number	Service Delivery	Options	Further Details / Rationale	If Green Potential to Waiver	If Red Procurement Required
Q1	Is there an option to extend the contract?	If Yes, waiving procurement could be an option. Please provide details / rationale			
		If No/Unsure, procurement may be required. Please seek further advice.			
Q2	Is the service fit for purpose in light of current and future requirements,	If Yes, waiving procurement could be an option. Please provide details / rationale			
		If No/Unsure, procurement may be required. Please seek further advice.			
Q3	Is there any risk of current/future targets/objectives of the service not being met?	If No, waiving procurement could be an option. Please provide details / rationale			
		If Yes, procurement may be required. Please seek further advice.			
Q4	Is demand being met / managed?	If Yes, waiving procurement could be an option. Please provide details / rationale			
		If No/Unsure, procurement may be required. Please seek further advice.			
Q5	Can the Commissioner demonstrate that the service offers value for money?	If Yes, waiving procurement could be an option. Please provide details / rationale			
		If No/Unsure, procurement may be required. Please seek further advice.			
Q6	Is the scope of the service anticipated to change significantly from previous?	If No, waiving procurement could be an option. Please provide details / rationale			
		If Yes/Unsure, procurement may be required. Please seek			

		further advice			
<p>Please note that current service performance alone is not a sufficient justification for not re-tendering and must be assessed in conjunction with all other criteria, SFI's, EU Procurement Regulations and NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013. Please also note that a significant change in scope, specification or value will suggest that re-tendering should be considered.</p>					
Question Number	Commercial / Procurement Considerations	Options	Further Details / Rationale	If Green Potential to Waiver	If Red Procurement Required
Q7	Are there any complexities involved with changing provider?	If No, waiving procurement could be an option. Please provide details / rationale			
		If Yes/Unsure, procurement may be required. Please seek further advice			
Q7	Is there limited provider capacity?	If No, waiving procurement could be an option. Please provide details / rationale			
		If Yes/Unsure, procurement may be required. Please seek further advice			
Q8	Is there plurality of provider? Justification for there being a single capable provider should be evidenced through market engagement.	If No, waiving procurement could be an option. Please provide details / rationale			
		If Yes/Unsure, procurement may be required. Please seek further advice			
Q9	Is the contract for routine elective services? Under the principle of free choice, these services should not be restricted to a single provider and should be commissioned under AQP.	If No, waiving procurement could be an option. Please provide details / rationale			
		If Yes/Unsure, procurement may be required. Please seek further advice			
Q10	Are there any political/legal consequences of a service change?	No, waiving procurement could be an option. Please provide details / rationale			
		If Yes/Unsure, procurement may be required. Please seek further advice			

**In Summary**

Given the status of health care service contracts within the procurement regulations, WBCCG recognises and may use as appropriate, the flexibility to design and run a procurement process that best meets the needs of WBCCG whilst ensuring that any such process remains compliant with the EU Treaty derived principles of transparency, equal treatment, non-discrimination and proportionality. For all decisions on procurement and to ensure WBCCG is being compliant, WBCCG needs to consider its SFI's, EU Procurement Regulations and NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013.

The waiving of competitive tendering procedures should not be used to avoid competition or for administrative convenience or to award further work to a provider originally appointed through a competitive procedure, unless there is a clear benefit to be gained from maintaining continuity with an earlier project and the benefits of such continuity outweigh any potential financial advantage to be gained by competitive tendering. In any event the tender waiver must comply with Regulations 32 and 75 of the Public Contracts Regulations 2015.

Where there is any doubt over the correct action to take, appropriate legal advice or guidance from legal procurement experts should be sought.

<i>Departmental Approval</i>	<i>Name / Signature</i>	<i>Position</i>	<i>Date of Approval</i>
<i>Commissioner Approval</i>			
<i>Procurement Approval</i>			

## Appendix G: Specification

The Cabinet Office defines a specification as "a statement of needs to be satisfied by the procurement of external resources". It can also be known as a statement of service requirement and output-based specification. The purpose of a specification is to present to providers a clear, accurate description of the local NHS's need, enabling the provider to propose a solution that will meet the need identified.

The NHS Standard Contract service specification should be used for all applicable services to ensure a consistent approach across the NHS. For those goods and services where the use of the NHS Standard Contract is not applicable (e.g. for consultancy), a local specification template is available. All commissioners are responsible for ensuring that any new services are migrated to the appropriate template.

When considering provider input, Commissioners must be aware of any information that, if adopted, could directly or indirectly favour a particular provider, or a particular provider/third party solution or technology. The specification template includes sections where the commission will input background material to help potential suppliers understand the requirement in context and provide supporting material.

A good specification **should**;

- define the requirement specification completely, clearly, concisely, logically and unambiguously;
- not focus on how the contract should be delivered, but on what the output(s) are expected to be
- contain enough information for potential providers to decide and cost the goods or services they will offer, or in the case of negotiated route arrive at realistic budgetary costs; and
- provide equal opportunity for all potential providers and comply with any legal obligations e.g. under UK law, the EEC Treaty, and EC Directive

A good specification **should not**;

- Over-specify the requirements; or
- Contain features that directly or indirectly discriminate in favour of, or against, any provider, product, process or source

### Key Performance Indicators (KPIs)

Key Performance Indicators (KPIs) provide the means for measuring and assessing provider performance using a mutually agreed set of robust criteria. Key Performance Indicators provide the key for effective management of the specific objectives of the contract and can highlight at an early stage variances to goals and expectations.

Key Performance Indicators help the Commissioner to understand how well the provider is performing against an agreed target. They enable the identification of improvement plans where performance is sub-optimal (see performance challenges) and also a means of comparing and contrasting performance of different areas. Key Performance Indicators can be a very effective way of communicating the priorities for the contract or relationship with a

provider. They highlight without ambiguity those aspects that the customer has clearly set targets against and implemented appropriate mechanisms to assess progress and measures effectiveness.

The objective of Key Performance Indicators is to provide quantifiable metrics to assess performance. This information should be compatible with existing data collection formats. The timescales for collecting this data must be clearly defined in the contract under a separate Key Performance Indicator – failure to provide this information will also need escalating under the breach protocol.

The following areas should be considered when developing Key Performance Indicators (KPIs):

- a) KPIs should be SMART (specific, measurable, actionable, realistic, and timely) and created in consultation with the provider.
- b) Performance Indicators should be specific, robust and unambiguous.
- c) Organisational KPIs should be linked with organisational objectives (i.e. 18 weeks, care closer to home).

## Appendix H: Regulatory requirements to publish Contract Notices

There are two sets of regulations, depending on whether the contract financial values exceed the relevant procurement thresholds, which govern the transparency of public contracts, including those awarded by a CCG.

### *See Appendix I: Current Regulatory Procurement Thresholds*

The provisions for both the procurement of healthcare services and the separate requirements relating to contracts for goods, non-healthcare services and works have been summarised below. However, Procurement advice should be sought to understand and confirm where the transparency obligations outlined below apply, depending on specific circumstances, contract values, routes to contract award, etc.

### ~ Healthcare Contracts Only ~

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

Regulation 4 of the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 states:

*“4(2) (2) Where **advertising** an intention to seek offers from providers in relation to a new contract for the provision of health care services for the purposes of the NHS, a relevant body must publish a contract notice on the website maintained by the Board under paragraph (1).”*

In practice, this means that a CCG must first decide whether or not the particular healthcare service, requires advertising; procurement advice should be sought to consider the issues, risks and options. Where it is determined that, in the circumstances, some form of advertising is appropriate, then an advert must be placed on Contracts Finder (subject always to the points raised in relation to the application of PCR 2015 to healthcare contracts above and below the relevant threshold set out in that legislation).

#### **Public Contracts Regulations 2015 – the Light Touch Regime**

**Notifying the market of a contract opportunity:** Regulation 75 requires that where a contracting authority intends to award a contract for healthcare services, being of a value above the relevant threshold for Schedule 3 Services, then this intention must be published through OJEU (the Official Journal of the European Union) by means of either a;

- 1) **Contract Notice; or a**
- 2) **Prior Information Notice (PIN)**
  - Alerts the market to upcoming contracts and where the contract is above the relevant threshold, may also be used to shorten the timescale for receipt of tenders to 26 days in certain circumstances.
  - If appropriate, confirm that the contract will be awarded without further publication and invite interested providers to express their interest in writing.

Online copies of these forms can be found at:

<http://simap.europa.eu/enotices/changeLanguage.do?language=en>

### 3) **Contract Award Notices**

- After the award of any contract for healthcare services of a value in excess of the relevant threshold (in which case a Contract Notice or PIN will have been issued already), Regulation 75 also requires a Contract Award Notice to be published in OJEU (the Official Journal of the European Union).
- Contract Award Notices must be published within 30 days following a contract being awarded, or may be published in bulk within 30 days at the end of each quarter.
- Whilst the Public Contracts Regulations 2015 include a specific exemption for CCGs from publishing details of 'below threshold' healthcare service contracts awarded on Contracts Finder, the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 obliges all contracts awarded for the provision of healthcare services for the purposes of the NHS (regardless of the contract value) to be published on Contracts Finder.

### **~ Contracts for goods and non-healthcare services ~<sup>5</sup>**

#### **Public Contracts Regulations 2015**

**Notifying the market of a contract opportunity:** Regulations 48 and 49 require that where a contracting authority intends to award a contract for goods or non-healthcare services, being of a value in excess of the relevant threshold, that this intention is published through OJEU (the Official Journal of the European Union) by means of either a;

- 1) **Contract Notice; or a**
- 2) **Prior Information Notice (PIN)**, which shall:
  - Confirm the types of services for which the contract is to be awarded;
  - If appropriate, confirm that the contract will be awarded without further publication and invite interested providers to express their interest in writing.

Online copies of these forms can be found at:

<http://simap.europa.eu/enotices/changeLanguage.do?language=en>

### 3) **Contract Award Notices**

- After the award of any contract in respect of goods and/or non-healthcare services for a value in excess of the relevant threshold, Regulation 50 also requires a Contract Award Notice to be published in OJEU (the Official Journal of the European Union);
- Contract Award Notices are to be published within 30 days following a contract being awarded.
- In addition to the above, where any contract is awarded in respect of goods and/or non-healthcare services for a value below the relevant threshold, then Regulation 108 requires that a Contract Award Notice is published via Contracts Finder. (See *Table AE1 below*).

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<sup>5</sup> Note that healthcare services are only one example of the range of services which are captured by Schedule 3



**Table AE1- Contract Award Notices**

<b>Type of contract</b>	<b>Total potential life value</b>	<b>OJEU</b>	<b>Contracts Finder</b>	<b>CCG Website</b>
Healthcare services	£663,540 or more	Yes	Yes	Yes
Healthcare services	Less than £663,540	No	Yes	Yes
Other Schedule 3 services	£663,540 or more	Yes	Yes	Yes
Other Schedule 3 services	£25,000 to £663,540	No	Yes	Yes
Other Schedule 3 services	Less than £25,000	No	No	No
Non-healthcare goods and services	£189,330 or more	Yes	Yes	Yes
Non-healthcare goods and services	£25,000 to £189,330	No	Yes	Yes
Non-healthcare goods and services	Less than £25,000	No	No	No
Works	£4,733,252 or more	Yes	Yes	Yes
Works	£25,000 to £4,733,252	No	Yes	Yes
Works	Less than £25,000	No	No	No

## Appendix I: Regulatory Procurement Thresholds

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

The NHS (Procurement, Patient Choice and Competition)(No.2) Regulations 2013 apply to contracts for the provision of health care services for the purposes of the NHS, regardless of their financial value, i.e. no financial threshold is stipulated.

### Public Contracts Regulations 2015

The Public Contracts Regulations 2015 set out financial thresholds above which these regulations apply.

These thresholds are reviewed and published by the Cabinet Office every two years, are published in Euros (€) and then fixed in pounds sterling (£) for the corresponding period.

Thresholds relate to the total potential life value of a contract over its expected term, including any potential extensions.

e.g. A contract with an annual value of £250,000 being awarded for 2 initial years with the option to be extended for a further year will have a total potential life value of £750,000 for the purposes of determining which set of procedural requirements are to apply to its award.

### EU Contract Value Thresholds as at 1<sup>st</sup> January 2020:

Category of contract	Current Threshold (applicable up to 31 December 2021)
Schedule 3 Services (including healthcare services)	£663,540 or more
Goods / Services Contracts (excluding healthcare services and other services falling within scope of Schedule 3) <sup>6</sup>	£189,330 or more
Works	£4,733,252 or more

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<sup>6</sup> 'Schedule 3' refers to Schedule 3 of the Public Contracts Regulations 2015 which lists specific types of social and other specific services (including healthcare services) which are not bound by all of the regulatory requirements of other more general services and have a higher contract value threshold before issuing any form of advertisement is mandated through OJEU.

## **Appendix J: Advertising, Opening and Evaluating Tenders**

### **Confidentiality**

The commercial confidentiality of tenders is to be protected and all tenders need to be treated in the strictest confidence throughout the tender process. No information relating to any tender is to be disclosed with the exception of the name of the bidder. Confidentiality of tenders needs to be maintained particularly during the debriefing process as the risk of questions being asked about a particular tender is higher unless required by law

### **Opt out clause**

All contracts advertises/tenders are to contain the following “Opt out Clause”.

“Any expenditure, work or effort undertaken by you prior to the award of a contract is a matter solely for your own commercial judgment. The CCG reserves the right to withdraw this tender invitation at any time or to re-invite tenders on the same or any alternative basis. In such circumstances, and in any event, the CCG and/or its advisers shall not be liable for any costs or loss of expenses whatsoever incurred by the bidder or any company, agent, subsidiary or organisation who may have contributed to the proposals submitted by the bidder in response to this tender invitation.”

The commissioner responsible for the procurement will allow adequate time when advertising the tender to enable potential providers sufficient time to apply with adequate notification in line with the EU Rules where applicable (see ‘Time Limitations’ section below).

### **Time Limitations**

Prescribed time limits for preparation and submission of tenders shall be adequate for all bidders to prepare and submit tenders. When setting the deadline for the return of applications the CCG must take account of all the circumstances, in particular, the complexity of the contract and the time required for drawing up tenders. Where the contract is fully governed by the EU Rules, the CCG should refer to the time limits that apply for each procedure (open, restricted, competitive dialogue or competitive procedure with negotiation).

For large or complex works or items of equipment, the CCG should consider whether the minimum periods set out in the EU Rules should be extended.

Timescales for receipt of Selection Questionnaires under the restricted procedure may be reduced by 7 days where notices are drawn up and transmitted electronically and timescales for receipt of tender responses may be reduced by 5 days where the contracting authority offers unrestricted and full direct access by electronic means to the contract documents.

### **Evaluation of Tenders**

Once all tenders have been received and the submission date has passed, the process of evaluation can begin. The criteria for the evaluation process will have been pre-set in the Invitation to Tender documentation and must be adhered to.

The evaluation will take account of all of the criteria set out in the Invitation to Tender documentation to determine the most economically advantageous tender. The process

needs to be a systematic, fair and open one. The extent and detail of that process and the makeup of the evaluation team should reflect the size, value and risk associated with the procurement.

Bidders must know prior to submitting a tender the quality / price balance to be used. This should be detailed in the Invitation to Tender documents. Each Tender/Procurement Lead must ensure that the following is written within the Invitation to Tender documents:

- A statement of the agreed balance between quality and price to be used in the final decision about contract award. This information must be given in the Tender Document.
- A statement of the evaluation criteria (including any sub-criteria) to be used in evaluation.
- The relative weightings of all criteria (and any sub-criteria) must be detailed in the Tender Documents (either an exact number or a meaningful range), used in tender evaluation, and subsequently included in the contract award report.
- A description of the methods which will be used to assess tenders.

### **Evaluation Scoring**

The basic objective of tender selection/shortlisting is to ensure that only bidders who can best demonstrate their suitable relevant experience, technical competence and sound financial standing can go on to compete for work. Bidders compete for the contract by submitting a detailed tender to WBCCG which will be assessed using the Tender Evaluation Scoring Sheet below.

The process of bidder evaluation must be transparent and auditable at all times. The tender advert or selection questionnaire should give full details of any weighting that will be applied when analysing bidders' responses. It must be consistent between all applicants for each contract. Where there are differences between the approaches taken for different contracts, then these differences should be dealt with in a consistent manner. The process of bidder selection scoring involves:

- a) Deciding on appropriate criteria
- b) Deciding on an evaluation system
- c) Administering the selection process

The evaluation system must set out, against each criterion:

- a) Whether an applicant needs to 'pass' rather than 'fail'
- b) If they have to meet (or exceed) a benchmark
- c) Or if they will be scored (for example 0-4) on their answers

The approach to selection must be consistent throughout and equally applied to all bidders. To draw up scoring matrices the panel must determine which of its criteria are mandatory

and which are desirable. Following that, consideration should be given as to whether there is any difference in the importance of the pricing or the quality of the tender. If there is, appropriate weighting should be given to these two different aspects of the tender.

The principles of transparency, equality and consistency must be adhered to when considering and evaluating all tender submissions. Adherence to these principles will allow the panel to undertake an assessment which will be auditable and defensible.

In order to achieve this panel members must ensure that they:

- declare any instances of bias or where they may have a pre-existing relationship/knowledge of a bidder to the other members of the panel before the evaluation is undertaken;
- understand the contents of each bidder's offer;
- understand the scoring criteria to be applied;
- understand the process to be used to rank the offers
- consider all relevant information supplied by bidders (as required by the Invitation to Tender) and their responses to any questions/clarification requests;
- do not consider irrelevant information supplied by the bidder i.e. information outside the scope of that requested in the Invitation to Tender;
- carry out the scoring in accordance with the scoring system set out in the Invitation to Tender;
- record fully the scores for each strand of the criteria awarded to each bidder;
- do not discuss the deliberations of the panel and/or the scoring of the tender with any colleagues outside of the panel; and
- at all times during the tender evaluation procedure consider whether a bidder would consider their behaviour to be fair and that there was a 'level playing field' for all bidders.

If there are ever any concerns that the fairness of the procedure could be called into question or a bidder prejudiced advice should be sought from the Chairperson of the panel or a relevant legal adviser.

Full records of the scoring of each and every tender must be kept. All score sheets should:

- a) Have the name of the bidder on it
- b) Have the name of the evaluator(s) on it
- c) Contain all scores
- d) Be signed by the evaluator(s) and dated
- e) Be kept with the original tenders

### **Risk Assessment (for due diligence/confirmation purposes)**

The information needed for the risk assessment should have already been collected as part of the bidder selection and tender evaluation processes. However, it may be necessary for Tender Lead/Procurement Lead along with a member from the Tender Selection Panel to visit the bidder's premises to examine support processes in operation and to visit their reference sites. This will be to satisfy members of the team that the quality of service offered can meet the CCG's requirements.

The risk assessment should be applied to the tender with the highest score and additional tenders if the evaluation panel feels that their scores are sufficiently close to the highest score. Subject to a satisfactory risk assessment, the bidder offering the highest scoring tender in terms of quality and price should be recommended for acceptance.

## **Appendix K: Rejection / Contract Award**

### **Automatic Rejection**

During evaluation it may become clear that some bids are either non-compliant or scoring too low to be acceptable if a minimum threshold has been set. The Tender Selection Panel can consider these as 'not credible' or 'non-compliant' bids where mandatory thresholds have not been met and discontinue the evaluation. This process must clearly document the rationale and reasons for suspending the evaluation of that particular tender. Where a tender is non-compliant because it does not achieve a minimum score that has been communicated to bidders in advance the tender should be rejected. The following checklists must be used to confirm non-compliant tenders:

- a) Has the bidder complied with contract conditions and specifications?
- b) Is the figure within the price range stipulated? (If applicable)
- c) Are there arithmetical errors? Do the tenders add up? If the bidder after submitting the tender informs WBCCG that there is an error in any of the prices or rates contained in their bid, WBCCG will afford the bidder an opportunity to confirm or withdraw its tender. However, the tender amount will be adjusted to correct arithmetic errors evident within the tender document e.g. where individual prices do not add up correctly to the total price tendered etc.
- d) Have all schedules been completed?
- e) Have they answered all of the questions? Tenders submitted without all of the information required for the evaluation criteria will be considered incomplete and may therefore be rejected. (Bidders will need to be informed of this within the tender application pack).

Tender/Procurement Leads must ensure that full governance has been adhered to. Full details of the bidders' non-compliance must be logged formally in order to be included within the rejection letter.

### **Standstill Period**

All procurements subject to the EU procurement regime must be subject to a mandatory standstill period of at least 10 calendar days (longer where standstill notices are not sent out by electronic means) between notifying unsuccessful tenders and the actual award of contract. This standstill period is to allow unsuccessful bidders the opportunity to challenge an award decision. Successful objections made during the standstill period could ultimately lead to award decisions being overturned.

WBCCGs' policy is that any tender award must allow a mandatory minimum standstill period of at least 10 calendar days between electronic notification of bidders of the contract award (which shall include required standstill information) and entering a contractually binding agreement with the winning bidder. See below for further details – under “Rejecting Bids”.

The commissioning lead must ensure that no appeals have been raised in that period or those appeals that have been raised have ended in a mutual agreed outcome. No steps to sign the contract with the winning bidder must be taken during the standstill period.

## Rejection Process

Unsuccessful bidders are notified individually in writing confirming:

- a) The award criteria
- b) The unsuccessful bidders score against those criteria
- c) The winning score against those criteria
- d) The name of the successful bidder
- e) The characteristics and relative advantages of the winning bid
- f) A precise statement of when the standstill period is going to end

The 10 calendar day standstill period begins from the day after the electronic notification is issued. It is recommended letters are always emailed or else a longer standstill period may need to be run. If the last day of the standstill period falls on a non-working day (i.e. a weekend or bank holiday) the period must be extended to the next working day.

Bidders may request an additional debrief, and requests may be made either orally or in writing. Please note commercially sensitive details (e.g. pricing) must **NOT** be divulged during a debriefing.

A letter to the successful bidder can also be sent at the same time as letters are sent to unsuccessful bidders. The letter must be prepared in consultation with legal services and cannot indicate to the contractor that you will enter into a contract with them. If no legal challenge has been launched by the end of the standstill period, the contract award letter may be issued to the successful bidder.

Should all of the tenders received be unacceptable due to low quality scores, underpricing or exceeding the available budget, a re-tender exercise may be necessary. However, before this takes place suitable market consultation should be effected to establish the reasons for the failure of the initial process. It may be that the specification needs to be rewritten in order to attract compliant bids. Where a formal process is carried out in accordance with the EU Rules, it may be possible (depending on circumstances) to utilise a different procedure such as a negotiation without prior publication whilst still remaining compliant with the EU Rules.

## Contract Award

The Contract may only be awarded once the Tender/Procurement Lead has presented their finding with their line manager and both parties are confident that:

- a) The contract is to be awarded following a process that was fair, open and transparent and in accordance with WBCCG's legal obligations
- b) Chosen by competitive bidding
- c) Awarded to the most economical advantageous tender
- d) Complaints or disputes involving bidding or award of the contract are resolved
- e) The contract improves the quality for patients



## Appendix L: Contract Extensions and Variations during the contract term

In accordance with regulation 72 of the PCR 2015, contracts over the EU Threshold may only be varied in the following circumstances;

- where modifications have been provided for in the original procurement documents and/or would not alter the nature of the contract;
- where the modification is less than 10% of the value of the contract and does not change the nature of the contract;
- for additional services or supplies by the original contractor that have become necessary and were not included in the initial procurement and where a change of contractor;
  - cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installation procured under the initial procurement, or
  - would cause significant inconvenience or substantial duplication of costs; or

**In the above circumstances any increase in price must not exceed 50% of the value of the original contract**

- Where a new contractor replaces the original contractor e.g. in the case of a merger or takeover.

Modifications to contracts over the EU Threshold may also require completion of the tender waiver process and the publication of a Voluntary Ex-Ante Transparency (VEAT) notice in the OJEU prior to the award. The advice of the CFO must be sought in these circumstances.

Contracts cannot be extended unless there is provision in the original procurement documents to do so or one of the provisions of Regulation 72 applies. A new procurement procedure is required for any contract variations or extensions except in the circumstances outlined above.

## **Appendix M: Regulatory Requirements to Maintain Records regarding Contract Award Decisions**

Section 8 of this Policy (Accountabilities and Responsibilities) recognises the regulatory obligations to maintain certain records in connection with the processes associated with the awarding of contracts. These are more fully set out below:

### ***Regulation 84 Documentation***

Regulation 84 of the Public Contracts Regulations 2015 sets out specific requirements for contracting authorities:

For every contract or framework agreement (or dynamic purchasing system), falling in scope of the PCR 2015, WB

CCG must draw up a written report to include;

- name and address of CCG;
- subject matter;
- value of contract or framework agreement (or dynamic purchasing system);
- names of selected bidders and reasons for their selection;
- names of rejected bidders and reasons for their rejection;
- reasons for any tenders being rejected for their price being abnormally low;
- name of successful bidder and the reasons for tender being successful;
- names of any main sub-contractors and the share of the contract intended that they will deliver;
- where either a Competitive Procedure with Negotiation or a Competitive Dialogue Procedure used, the circumstances justifying the use of such procedures;
- where a Negotiated Procedure without prior notice being issued is used, the circumstances justifying the use of this procedure;
- where applicable, the reasons WBCCG has decided not to award a contract, or framework agreement or dynamic purchasing system;
- where applicable, the reasons why electronic communications were not used for the submission of tenders; and
- details of conflicts of interests detected and subsequent measures taken to manage the conflicts.

\*WBCCGs use of a Post-Procurement Outcomes Report, recommending an award of a contract decision, should be designed to meet the above requirements.

\*The above report is not required for contracts called off from an existing framework agreement.

Where a Contract Award Notice is issued in accordance with PCR 2015, to the extent it already contains all information required above, this can be referred to in the alternative

Upon request from the EU Commission (while the UK remains in the EU) a copy of this Report must be supplied to the EU Commission.

WBCCGs shall ensure documented progress of all procurement procedures.

WBCCGs shall keep sufficient documentation to justify decisions taken in all stages of procurement procedures including:

- communications with interested providers and bidders;
- preparation of the procurement documents;
- where relevant, dialogue or negotiation with any bidder; and
- selection and award of the contract

Documentation required by Regulation 84 shall be kept for at least 3 years from the date of the award of the contract.

### **NHS 2013 Regulations Documentation**

Additionally, Regulation 9(1) of the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 sets out requirements for CCGs to maintain and publish a record of each contract awarded for the provision of health care services for the purposes of the NHS which shall include;

- name and registered address of the provider;
- description of the health care services to be provided;
- contract value or payments to be paid;
- contract start and end dates; and
- a description of the process adopted for selecting the provider.

## **Appendix N: Equality Impact Assessment**

Section 20 of this Policy recognises that when any change to services is to take place a full Equality and Quality Impact Assessment must be carried out prior to the change within the service.

## Appendix O: Procurement Services Supporting WBCCG

Section 8 of this policy recognises the importance of seeking appropriately experienced and qualified advice and guidance in regard to procurement matters.

NHS Wigan Borough CCG has access to a comprehensive Procurement Service provided by Greater Manchester Shared Services and NHS Shared Business Services.

Service provided	Contact
<p><b>Procurement advice and guidance</b>, including:</p> <ul style="list-style-type: none"> <li>- legal advice regarding compliance with regulatory framework (includes access to qualified expert procurement legal services)</li> <li>- development of procurement policy</li> <li>- procedures and strategy</li> <li>- regulatory risk assessments</li> <li>- development of contract award options</li> <li>- procurement awareness training and workshops</li> </ul>	<p>Stuart Moore, Head of Market Management  <a href="mailto:stuart.moore2@nhs.net">stuart.moore2@nhs.net</a>            07894 440381            Andrea Bird, Head of Procurement Services  <a href="mailto:Andrea_bird@nhs.net">Andrea_bird@nhs.net</a>            0161 212 3714 / 07770 982244</p>
<p><b>Clinical Procurement Service</b> (CCG commissioned health care services) - including:</p> <ul style="list-style-type: none"> <li>- market engagement</li> <li>- improvement of service specifications</li> <li>- design and delivery of procurement processes</li> <li>- development of evaluation methodologies</li> <li>- development of non-competitive assurance and due diligence processes</li> <li>- development of most capable provider assessments</li> <li>- mobilisation planning and project management</li> </ul>	<p>Stuart Moore, Head of Market Management  <a href="mailto:stuart.moore2@nhs.net">stuart.moore2@nhs.net</a>            07894 440 381            Andrea Bird, Head of Procurement Services  <a href="mailto:Andrea_bird@nhs.net">Andrea_bird@nhs.net</a>            0161 212 3714 / 07770 982244</p>
<p><b>Non-clinical Procurement Service</b> – including:</p> <ul style="list-style-type: none"> <li>- market engagement, analysis and development</li> <li>- spend analysis and development of strategies to improve CCG spend</li> <li>- competitive tendering</li> <li>- support to obtain competitive quotations</li> <li>- calling off contracts from framework agreements</li> <li>- development of framework agreements</li> </ul>	<p>Stuart Moore, Head of Market Management  <a href="mailto:stuart.moore2@nhs.net">stuart.moore2@nhs.net</a>            07894 440 381            Andrea Bird, Head of Procurement Services  <a href="mailto:Andrea_bird@nhs.net">Andrea_bird@nhs.net</a>            0161 212 3714 / 07770 982244</p>
<p><b>Operational Procurement Service</b> – including:</p> <ul style="list-style-type: none"> <li>- Processing of requisitions</li> <li>- Raising of Purchase Orders</li> <li>- Obtaining of quotations for low value (below procurement threshold) contracts</li> </ul>	<p>Stuart Moore, Head of Market Management  <a href="mailto:stuart.moore2@nhs.net">stuart.moore2@nhs.net</a>            07894 440 381            Andrea Bird, Head of Procurement Services  <a href="mailto:Andrea_bird@nhs.net">Andrea_bird@nhs.net</a>            0161 212 3714 / 07770 982244</p>
<p><b>Operational Procurement Service</b> – including:</p> <ul style="list-style-type: none"> <li>- Processing of requisitions</li> <li>- Raising of Purchase Orders</li> <li>- Obtaining of quotations for low value (below procurement threshold) contracts</li> </ul>	<p>Stuart Moore, Head of Market Management  <a href="mailto:stuart.moore2@nhs.net">stuart.moore2@nhs.net</a>            07894 440 381</p>
<p><b>Escalation of concerns, issues or complaints</b></p>	<p>Joanne Li            Associate Head of Contracting and Performance</p>

	GM Shared Services joanne.li@nhs.net 0797 07960841
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## **Appendix P: Post-Brexit Implications**

This Appendix sets out the latest guidance as to the expected lawful implications of advertising procurement opportunities to the market should the UK leave the European Union (Brexit).

WBCCG can obtain ongoing direct support and advice from GMSS/NHS SBS, who will support WBCCG to ensure that any and all lawful changes following Brexit are understood and taken account of in regard to all procurement related processes, procedures and review of this policy, as may be required.

Guidance as per Cabinet Office (updated 25<sup>th</sup> September 2019)

Reference: <https://www.gov.uk/guidance/public-sector-procurement-after-a-no-deal-brexit>