



Leeds
Clinical Commissioning Group

PROCUREMENT POLICY

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1. Introduction

- 1.1. Procurement is a cyclical process in which goods, services and works are secured or purchased. The process spans the whole life cycle from identification of needs, through to the end of a service's contract or the end of the useful life of an asset. Procurement can encompass everything from repeat low-value orders, through to complex healthcare service solutions developed and delivered through partnership arrangements.
- 1.2. Effective procurement is an essential component of commissioning improved services and outcomes for local patients and communities and for ensuring value for money.
- 1.3. Procurement in the public sector is regulated by primary legislation and there are a range of procurement approaches available depending on the value of the procurement and the number of participants in the market. However The NHS Five Year Forward View and the Next Steps update published in March 2017 described a movement towards integrated care, delivered through collaboration across health and care systems. These new ways of working will require NHS Leeds CCG (LCCG) to develop new procurement and contracting models in line with guidance from NHS England.
- 1.4. The Public Contracts Regulations (PCR 2015) came into force on 18 April 2016 for CCGs when procuring health and care services (non-healthcare services have always been subject to PCR). These rules apply to public bodies, including CCGs, NHS England and local authorities, and have implications for the procurement of all contracts commenced after that date.
- 1.5. The PCR 2015 form part of the procurement landscape alongside the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 (PPCCR). Made under Section 75 of the Health and Social Care Act 2012, the PPCCR apply to NHS England and CCGs and are enforced by NHS Improvement. Whilst the two regimes overlap in terms of some of their requirements, they are not the same – compliance with one regime does not automatically mean compliance with the other. NHS LCCG will ensure that it complies with both regimes when procuring healthcare services.
- 1.6. The PPCCR follow a principles based approach leaving commissioners flexibility as to how best to procure and secure services in the best interests of service users. Commissioners need to comply with a number of requirements under the PPCCR to help them achieve the overall objective of securing the needs of patients and improving the quality and efficiency of services, including:
 - a) acting transparently and proportionately, and treating potential providers equally and in a non-discriminatory way;
 - b) procuring services from the providers that are most capable of delivering commissioners' overall objective and that provide the best value for money;
 - c) considering ways of improving services; and
 - d) having arrangements in place that allow providers to express an interest in a contract.
- 1.7. NHS LCCG's approach to procurement is to operate within legal and policy frameworks and where appropriate to use procurement as one of the system management tools available to achieve commissioning outcomes and increase value for money.

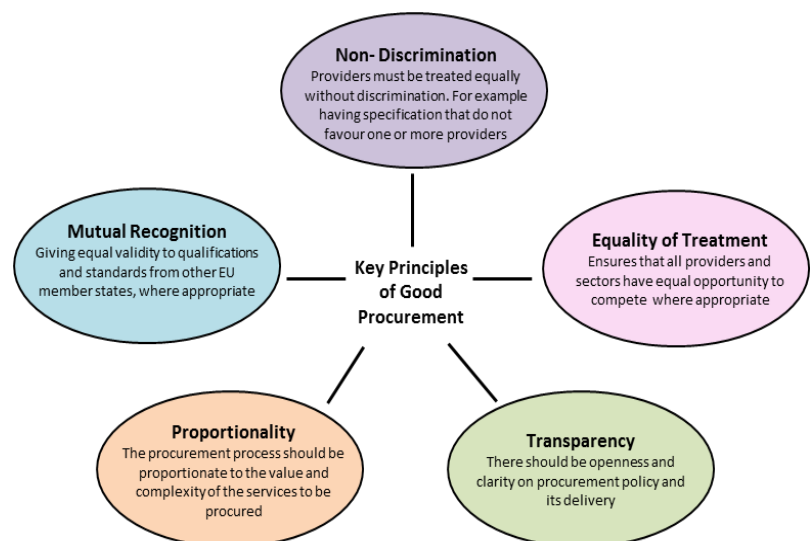
2. Associated Policies and Procedures

- 2.1 This policy and any procedures derived from it should be read in accordance with the following local policies, procedures and guidance:

NHS Leeds Clinical Commissioning Group Constitution
 NHS LCCG Detailed Financial Policies
 NHS LCCG Scheme of Delegation
 NHS LCCG Budgetary Control Framework
 NHS LCCG Declaration of Interests and Potential Conflicts of Interests Policy
 NHS LCCG Data Protection Impact Assessment (DPIA) Policy

3. Aims and Objectives

- 3.1 To set out how the NHS LCCG will meet its statutory procurement requirements to
- secure high-quality, efficient health care services that meet the needs of people who use those services; and
 - protect the rights of patients to choose who provides their health care in certain circumstances.
- 3.2 To set out the approach for facilitating fair, robust and enforceable contracts that provide value for money and deliver required quality standards and outcomes, with effective performance measures and contractual levers. (This document is not intended to be a detailed procedure manual. A separate Procurement Procedure Manual will be produced by March 2019 following consultation with relevant stakeholders.)
- 3.3 To enable early determination of whether, and how, services are to be opened to competition, to facilitate transparent and fair discussion with existing and potential providers and thereby to facilitate good working relationships.
- 3.4 To enable NHS LCCG to demonstrate compliance with the principles of good procurement practice in accordance with the EU Treaty Principles of:
- equal treatment;
 - non-discrimination;
 - proportionality;
 - transparency; and
 - mutual recognition.



4. Scope of the Policy

- 4.1 As far as it is relevant, this policy applies to all NHS LCCG procurements (clinical and non-clinical).
- 4.2 This policy must be followed by all NHS LCCG employees including staff on temporary or honorary contracts, representatives acting on behalf of NHS LCCG including staff from member practices, and any external organisations acting on behalf of NHS LCCG including other CCGs, EMBED, NECS and NHS Shared Business Services.

5. Accountabilities & Responsibilities

5.1 Governing Body responsibility

The Governing Body has the ultimate responsibility for ensuring that NHS LCCG meets its statutory requirements when procuring goods and services, including healthcare services.

The governing body must be transparent when making decisions to procure and be the authorising body for awarding a contract once an appropriate process has been completed.

When considering options for procurement the Governing body will follow the guidelines set out by NHS England and Crown Commercial Services

<https://www.gov.uk/guidance/transposing-eu-procurement-directives>.

5.2 Lead Responsibility

Overall responsibility for procurement within NHS LCCG rests with the CFO however individual managers will be responsible for recognising when a commissioning decision may have potential procurement implications and for seeking appropriate procurement support. Commissioning Managers are responsible for ensuring that they plan their commissioning decisions in sufficient time to carry out the required procurement process.

5.3 Procurement support

From September 2018 procurement support will be provided in-house by appropriately qualified and experienced staff in the Finance and Contracting Team. Where it is required and considered appropriate procurement support may also be provided by either:

NHS Shared Business Services; or	}	(or their successor contractors
Kier Business Services Ltd (EMBED).	}	subject to contract)
North East Commissioning Support (NECS)}		

Procurement support from external organisations may incur additional costs and therefore commissioning managers must consult the Finance and Contracting Team first before contacting any of the above organisations.

In the case of collaborative or partnership projects where NHS LCCG is not the sole or lead commissioner, procurement support arrangements will be agreed in consultation with the Lead Commissioner or Commissioning Partners on a case by case basis. This may involve support being provided by another CCG, Leeds City Council, or an independent procurement support service. Whenever external procurement support is provided by any organisation, NHS LCCG will have systems in place to assure itself that the supporting

organisation's business processes are robust and enable the organisation to meet its duties in relation to procurement.

5.4. Authority

If an external organisation is used to provide procurement support NHS LCCG will remain directly responsible for:

- Approving the procurement route;
- Signing off specifications and evaluation criteria;
- Signing off decisions on which providers are taken through to the Invitation to Tender (ITT) stage following a pre-qualification process (where appropriate)
- Making final decisions on the selection of the preferred provider.

Arrangements for delegation of authority to officers are set out in the Operational Scheme of Delegation, in the event of any discrepancy between this Procurement Policy and the Scheme of Delegation, the latter document will take precedence.

5.5 Engagement

NHS LCCG is committed to engaging relevant stakeholders in all aspects of procurement and encourages their engagement in the design and co-production of services.

The CCG recognises that the engagement of clinicians, patients and public in designing and procuring services results in better services. Business processes will therefore require evidence of engagement for business cases to be approved. This will ensure that procurement of services is informed by authentic and meaningful engagement.

In accordance with the NHS Constitution pledge, all staff will be engaged in changes that affect them.

5.6 Collaboration

NHS LCCG is committed to operating in a sustainable environment where all opportunities for efficiencies and economies of scale are considered and, where applicable applied. This includes the sharing of operational resources or commitment to specific joint projects/contracts across Leeds and the wider West Yorkshire footprint where this serves the best interest of the Leeds population. The move towards further integration will necessitate the development of new types of contracts for accountable care models and the CCG will follow guidance from NHS England on their application.

5.7 ISAP

As NHS LCCG moves towards commissioning integrated care systems, some of these complex contracts may include such a significant scope of services that the CCG's ongoing role will change. For example, the commissioner may take a more strategic role, establishing different relationships with neighbouring CCGs, the local authority and providers, and enable these bodies to carry out commissioning activities on its behalf. NHS LCCG will apply the NHS England Integrated Support and Assurance Process

(ISAP) where applicable to ensure that future arrangements are robust and viable and that the NHSLCCG continues to deliver its statutory functions effectively.

5.8 Equality Impact Assessment:

All public bodies have statutory duties under the Equality Act 2010. The NHS LCCG aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage against others. NHS LCCG will ensure, when applying this policy that it complies with its duties under the Equality Act 2010 and does not discriminate on grounds of race, colour, age, nationality, ethnicity, gender, sexual orientation, marital status, religious belief or disability.

5.9 Risk Management

When carrying out procurement activity, NHS LCCG will ensure that it plans adequate measures to identify and manage risk.

6. **Guiding Principles**

6.1. In accordance with the NHS LCCG's Constitution, when procuring health care services, NHS LCCG is required to act with a view to:

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

6.2. NHS LCCG is required and committed to:

- acting in a transparent way, including maintaining suitable records of key decisions relating to procurement, sharing information on future procurement strategies, and the use of sufficient and appropriate advertising of tenders.
- ensuring that procurement processes are proportionate to the value, complexity and risk of the services to be procured.
- treating providers equally and in a non-discriminatory way by not treating a single provider, or type of provider, more favourably than any other provider in particular on the basis of ownership.

6.3. NHS LCCG is required and committed to commissioning services from the providers that:

- are most capable of delivering to the quality and efficiency required
- provide the optimum value for money

6.4. NHS LCCG is required and committed to act with a view to improving quality and efficiency in the provision of services. The means of doing so will include:

- Providing the services in an integrated way (including with other healthcare services, health related services, or social care services as part of an accountable care system)
- enabling providers to compete to provide the services
- allowing patients a choice of provider of the services

7. Conflicts of Interest

- 7.1 For all procurement projects and decision making events, all members present must declare any interest or perceived conflict of interest in relation to the topic being discussed.
- 7.2 Potential conflicts of interest will be managed appropriately to protect the integrity of NHS LCCG's contract award decision making processes and the wider NHS commissioning system. This is to ensure public confidence and to protect the CCG and GP practices from any perceptions of wrong-doing.
- 7.3 General arrangements for managing conflicts of interest are set out in NHS LCCG's Constitution. This section describes additional safeguards that NHS LCCG will put in place when commissioning services that could potentially be provided by GP practices and/or other system partners.
- 7.4 Where any practice or system partner representative on a decision-making body has a material interest in a procurement decision, those practice representatives will be excluded from the decision-making process. See Section 19 of this policy for further details relating to GP Practices and GP Federation.
- 7.5 When contracting for integrated care models and/or accountable care systems NHS LCCG will take reasonable steps to ensure that competition is not distorted by allowing system partners who may tender for contracts access to information not available to other potential bidders and/or providers.

8. Compliance with Regulations

- 8.1 NHS LCCG and/or its agents will comply with EU and UK legislation and NHS LCCG's Detailed Financial Policies, Budgetary Control framework and Scheme of Delegation for the procurement of all goods and services, including healthcare services.
- 8.2 **BREXIT:** There is no official government statement yet regarding to the impact of BREXIT on EU and UK Public Procurement policy. Unless PCR 2015 is repealed this legislation will remain in force even after the UK leaves the European Union. NHS LCCG will update this section of the policy once information is available.
- 8.3 National Health Service Act 2006 Section 242 (Public Involvement and Consultation) requires commissioners of healthcare services to consult patients and the public- directly or through representatives. - in relation to service planning, development and consideration of service changes and decisions that affect service operation.
- 8.4 The Health and Social Care Act 2012 empowers CCGs to commission healthcare services for local populations. The duties of CCGs are set out in section 3 of the National Health Services Act 2006 with updated amendments and regulations in section 13 of the Health and Social Care act 2012.
- 8.5 Commissioners must comply with the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013. (Section 75) (PPCCR) where objectives include patient experience, outcomes and improved efficiency. These regulations (implemented under Section 75 of the Health and Social Care Act 2012) place requirements on commissioners to ensure that they adhere to good practice in relation to procurement, do not engage in anti-competitive behaviour and protect the right of patients to make choices about their healthcare.
- 8.6 The Public Contracts Regulations 2015 (PCR 2015) Regulations 74-76 require healthcare services with a lifetime value of £615,278 or above to be advertised Europe-wide via OJEU

(the Official Journal of the European Union) and in the UK via Contracts Finder. Under these regulations, healthcare services (classified as health, social or other services) may be procured using the “Light-Touch-Regime” (LTR).

- 8.7 PCR 2015 also stipulates specific procurement processes that must be followed for other goods and non-healthcare services over a lifetime value of £181,302 including VAT (for sub-central authorities).
- 8.8 The OJEU Thresholds stated in paragraph 8.6 and 8.7 are current as at January 2018. They are generally recalculated every 2 years and are communicated via a Procurement Policy Note (PPN) on the www.gov.uk website.
- 8.9 Other legislation relevant to this procurement policy includes:
- Local Government Act 1999. If a CCG is co-commissioning with the Local Authority, Section 3(1) of this Act sets out a duty of consultation.
 - Competition Act 1998
 - Public Services (Social Value) Act 2012. Commissioners are required to consider how the services they commission and procure might improve the economic, social and environmental well-being of the area.
 - Equality Act 2010- Section 149.
 - Freedom of Information Act (2000)
NHS LCCG will comply with the requirements set out in the Freedom of Information Act 2000 (Legislation .gov.uk, 2000) whilst conducting procurements. As part of this, information regarding individuals and organisations involved within the procurement process will be protected during all stages of the process. On commencement of the procurement process, NHS LCCG will make potential bidders aware of the requirement for the CCGP to comply with the Act.

9. Procurement approach for sub-threshold contracts

- 9.1. For goods and services with an aggregate value below the thresholds stated in paragraphs 8.6 and 8.7 the following rules will apply in accordance with the organisational scheme of Delegation:

9.2 Healthcare Services

- Under £10,000 a minimum of 2 written quotations must be obtained
- Between £10,000 and £100,000 a minimum of 3 written quotations must be obtained
- Between £100,001 and £615,227 a minimum of 5 written quotations must be obtained unless it can be evidenced that there are less than 5 capable providers
- For procurements in excess of £615,278 competitive tenders must be sought, the form of which is dependent on the precise goods and services involved. Therefore, for all tenders of healthcare services above £615,278 the advice of the Associate Director of Contracting and Procurement must be sought and commissioning managers must ensure that they allow sufficient time to conduct an appropriate process.
- For procurements of healthcare services under £615,278 PPCCR Section 75 Regulations still apply.

9.3 Non Healthcare Goods and Services

- Under £10,000 a minimum of 2 written quotations must be obtained
- Between £10,000 and £100,000 a minimum of 3 written quotations must be obtained
- Between £100,001 and £181,302 a minimum of 5 written quotations must be obtained unless it can be evidenced that there are less than 5 capable providers
- For procurements in excess of £181,302 competitive tenders must be sought, the form of which is dependent on the precise goods and services involved. Therefore, for all tenders of non-healthcare services above £181,302 the advice of the Associate Director of Contracting and Procurement must be sought and commissioning managers must ensure that they allow sufficient time to conduct an appropriate process.

9.4 Where open quotations are sought below the OJEU thresholds then the opportunity should be published on Contracts Finder instead of, or in addition to, other portals or sites for contracts over the value of £25,000. This does not apply where RFQs have been sent to specific providers in accordance with paragraph 9.1

9.5 All contracts must be subject to NHS Standard Terms and Conditions which must be stated with the specification and, although the quotations do not need to be in a specific format, a Request For Quotation (RFQ) template is available from the Finance & Contracting Department to ensure consistency. The only exception is where a framework agreement has been used in which case the terms and conditions pertaining to that framework will apply (See Section 13.2)

10. Circumstances where competitive tenders or quotations may not be required

10.1 NHS LCCG is committed to ensuring that services are procured in accordance with legislation. In limited circumstances the need to request quotations or competitive tenders may be waived. Regulation 32 of the PCR 2015 and the NHS LCCG scheme of delegation outline the following circumstances where contracts may be awarded without a full tender exercise:

10.1.1 in very exceptional circumstances where the Chief Officer and Chief Financial Officer decide that formal tendering procedures would not be practicable or the estimated expenditure or income would not warrant formal tendering procedures, and the circumstances are detailed in tender waiver and reported to the Audit Committee;

10.1.2 where the requirement is covered by an existing contract;

10.1.3 where national or local framework agreements are in place and have been approved by the Governing Body, NHS England or Crown Commercial Services;

10.1.4 where a consortium arrangement is in place and a lead organisation has been appointed to carry out tendering activity on behalf of the consortium members;

10.1.5 where the timescale genuinely precludes competitive tendering. NB failure to plan the work properly would not be regarded as a justification for a tender waiver;

10.1.6 where competition is absent for technical reasons (in accordance with PCR2015) or specialist expertise or technology is required and is available from only one source and this has been evidenced by market consultation that no reasonable alternative or substitute exists and is not the result of the artificial narrowing down of the parameters of the procurement ;

- 10.1.7 when the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate; or
- 10.1.8 there is a clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering.
- 10.2 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 in the case of 10.1.8 above.) In any event the tender waiver must comply with Regulations 32 and 75 of the Public Contracts Regulations 2015.
- 10.3 In any of the circumstances detailed in paragraph 10.1.1 to 10.1.8 a Tender waiver Form must be completed by the Commissioning Manager and approved by both the CFO and CO. Signed forms should then be sent to the Head of Governance. The same process will be used to waive the request for quotations.
- 10.4 Tender waiver forms over a value of £615,278 (healthcare services) or £181,302 (non-healthcare goods and services) will be sent to the Audit Committee for noting. In addition tender waivers over the EU Threshold may require the publication of a Voluntary Ex-Ante Transparency (VEAT) notice in the OJEU prior to the award. The advice of the Associate Director of Contracting and Procurement must be sought in these circumstances.

11. Contract Extensions and Variations to contracts during the contract term

- 11.1 In accordance with regulation 72 of the PCR 2015, contracts over the EU Threshold may only be varied in the following circumstances:
- 11.1.1 where modifications have been provided for in the original procurement documents and/or would not alter the nature of the contract.
- 11.1.2 where the modification is both less than 10% of the value of the contract and less than £615,278 and does not change the nature of the contract.
- 11.1.3 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 for the NHS LCCG,
- In the above circumstances any increase in price must not exceed 50% of the value of the original contract

- 11.1.4 where all of the following conditions are fulfilled:

- the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;
- the modification does not alter the overall nature of the contract;
- any increase in price does not exceed 50% of the value of the original contract

11.1.5 where a new contractor replaces the original contractor e.g. in the case of a merger or takeover.

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

11.3 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 in paragraph 11.1 above.

12. Partnership Agreements with Local Authorities

12.1 National Policy and local strategies both promote the increased integration of health and social care services however new models of contracting for care, including Accountable Care organisations (ACOs), Multispecialty Community Providers (MCPs) and Primary & Acute Care Systems (PACS), still need to be procured in the same way as lead provider contracts.

Alternatively several other mechanisms exist to support joint commissioning of services across health and social care such as:

12.2 Section 75 (S75) Partnership Agreements

Section 75 of the NHS Act 2006 sets out a number of powers that support partnership and joint commissioning across health and social care. Key provisions of the act allow NHS Bodies and Local authorities to establish pooled budgets, and also allow for the delegation of certain statutory functions from one partner to the other through a lead commissioning arrangement.

Section 75 powers are intended to be used where partnership arrangements are likely to lead to improvements in the delivery of NHS and Local Authority functions.

Although functions can be delegated, each partner remains liable for their own statutory duties.

12.3 Section 256 (S256) Agreements

S256 Agreements were established through the NHS Act 2006 and allow NHS commissioners to make payments to Local authorities towards any Local Authority expenditure which in the opinion of NHS LCCG would have an effect on the health of individuals, or which would have an impact on, or be affected by, NHS commissioned services, or are otherwise connected with other NHS functions.

They are payments to a local authority to support specific services, projects, capital costs, or other local authority activities which have a benefit for the NHS. However these agreements do not involve the transfer of any statutory health functions to the local authority.

S256 Agreements are not subject to formal procurement processes, as NHS LCCG is not directly commissioning or contracting for goods or services in this instance. However S256 agreements must comply with any relevant Directions published by the Secretary of State.

Section 256 specifies two prescribed documents to be completed when making the agreement:

- (i) *A Certificate of Expenditure (annual voucher)*
- (ii) *Memorandum of Agreement*

12.4 Better Care Fund

In addition to the two types of partnership agreements described above, the Better Care Fund (BCF) is a nationally mandated pooled budget across health and social care. The BCF is intended to promote further integration and support delivery of improved outcomes across health and social care to achieve the National Conditions and Local Objectives. It is a requirement of the BCF that NHS LCCG and the Council establish a pooled fund for this purpose. The BCF is not 'new money' and represents the summation of existing pooled and aligned budgets along with all existing local and national transfers from health to social care.

The Leeds City Council and the NHS LCCG currently use a Framework Partnership Agreement relating to the commissioning of health and social care funding. The Partners have entered into the Agreement in exercise of the powers referred to in Section 75 of the NHS Act 2006 (2006a) and/or Section 13(2) and 14(3) of the NHS Act 2006 as applicable.

NHS LCCG will ensure it adheres to any current and updated National Policy and Guidance on the Better Care Fund.

13. **Other Contracting Models**

13.1 Spot Purchasing

From time to time there will be the need to spot purchase contracts for particular individual patient needs or for urgency of placements requirements at various times. At these times, a competitive process may be waived using the same process described in paragraphs 10.2 to 10.4.

It will be expected that these contracts will undergo best value reviews to ensure that NHS LCCG is getting value from the contract. Value for money should be assessed by the manager with responsibility for signing off the spot purchasing agreement or individual service agreement, and then reviewed annually.

Sign off of spot purchase agreements should follow the Detailed Scheme of Delegation. In all cases the NHS LCCG should ensure that the provider is fit for purpose to provide the particular service. The process will follow EU and UK Public Procurement rules and NHS LCCG's Financial Policies and Scheme of Delegation as appropriate.

13.2 Framework Agreements

Framework agreements are pre-tendered agreements which are established in compliance with the PCR2015 and which, once established, can be used by NHS LCCG to purchase certain products and/or services without the need to carry out a full procurement process.

A framework can be established:

- By NHS LCCG for its own use
- By another CCG, Contracting Authority or central purchasing body such as the Crown Commercial Service.

Various existing frameworks are available for NHS LCCG to use such as the Crown Commercial Service (CSS) or NHS Shared Business Services (SBS) to purchase goods or services without a full local tender. Each framework will have its own ordering process to follow but the timescales and transaction costs are usually far lower than running a full procurement. The terms and conditions applicable to any subsequent call-off contract are defined by the particular framework agreement and may not be compatible with the NHS standard contract and therefore advice must be sought from the framework owner prior to conducting a mini-competition.

13.3 Any Qualified Provider (AQP)

AQP describes an approach for contracting for services whereby

- Providers qualify and register to provide services via an assurance process that tests providers' fitness to offer NHS-funded services.
- The CCG sets local pathways and referral protocols which providers must accept
- Referring clinicians offer patients a choice of qualified for the service being referred to
- Competition is based on quality, not price. Providers are paid a fixed price determined by a national or local tariff.

With the AQP model, for a prescribed range of services, any provider that meets criteria for entering a market can compete for business within that market. Under AQP there are no guarantees of volume or payment, and competition is encouraged within a range of services rather than for sole provision of them.

The AQP model promotes choice and contestability, and sustained competition on the basis of quality rather than cost. A service that is contracted through the AQP model may not need to be tendered using the full EU process although it must be advertised appropriately and potential service providers will need to be qualified/accredited. The NHS LCCG will consider PCR 2015 in relation AQP contracts and will have due regard at all times to the EU Treaty principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality when applying the AQP Procedure.

13.4 Grants

Where third sector organisations provide healthcare services, the NHS LCCG may elect to provide funding through a grant agreement. Use of grants can be considered where:

- NHS LCCG is only making a partial contribution to the costs of a service (e.g. where a service is also supported by charitable donations or other funding streams)
- Funding is provided for development or strategic purposes

- The provider market is not well developed
- The services are innovative or experimental
- Where funding is non-contestable (i.e. only one provider)

Grants will not be used to avoid competition where it is appropriate for a formal procurement to be undertaken.

NHS LCCP will follow NHS England Grant Agreement Guidance on the use of the draft model Grant Funding Agreement although the model grant agreement is non-mandatory and is for local adaptation as required.

14. Third sector providers and support for campaigns

- 14.1 NHS LCCG will support the Government's attempts to increase activity in third sector providers and small and medium enterprises. NHS LCCG will ensure that no organisation is discriminated against. NHS LCCG will act transparently and not request disproportionate demanding information, therefore reducing the barriers to entry. Commissioning Managers should refer to the Commissioning Code of Practice. The code provides a framework and promotes best practice in Commissioning which should be shared between all commissioners and all sectors in Leeds.
- 14.2 NHS LCCG will work in partnership with Leeds City Council and Third Sector Leeds to strengthen relationships between the public and third sectors to deliver the best outcomes for the people of Leeds in accordance with the Compact for Leeds.
- 14.3 Where NHS LCCG wishes to support a local or national campaign (e.g. through the purchase of campaign media) the Scheme of Delegation will apply in the same way as for the purchase of goods and services. The authorising Budget Holder must satisfy themselves that the campaign is compatible with the NHS LCCG commissioning strategy and that it conforms to the relevant NHS policies (e.g. in terms of branding, information governance etc.)

15. Contract Form

- 15.1 NHS LCCG will ensure that, where appropriate, the **NHS Standard Contract** will be used for all contracts. Where a framework agreement has been used the terms and conditions of contract will usually be those of the specific framework.
- 15.2 In exceptional circumstances, such as where a joint contracting arrangement is led by the local authority, the NHS LCCG may agree to be party to a different form of contract.
- 15.3 NHS LCCP will ensure that a standard Grant Agreement document will be used to record the provision of grants to third parties which will contain the provisions upon which the grant is made.

16. Pilot Projects

- 16.1 Pilot Projects may be commenced in circumstances where clinical outcomes are not known or when outputs cannot be predicted. Pilot projects must comply with EU and UK Procurement regulations.

17. Sustainable Procurement

17.1 NHS LCCG 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.

17.2 Wherever it is possible, and does not contradict or contravene NHS LCCG's procurement principles or applicable legislation and guidance, NHS LCCG will work to develop and support a sustainable local economy and health economy.

18. Consultancy expenditure/Interim Labour

18.1 Approval to engage an interim manager, consultant or consultancy company for any reason must be obtained in advance in accordance with Appendix 1 of the NHS LCCG Budgetary Control Framework.

18.2 In addition to 18.1 NHS LCCG is expected to secure advance approval from NHS England before engaging or continuing to employ off-payroll staff (including consultancy staff) who meet the following criteria:

- Cost greater than £600 per day (excluding VAT and expenses)
- Are engaged for a period greater than six months; or
- Are in roles of significant influence (e.g. Accountable Officers and Directors).

19. Primary Care Contracts

19.1 NHS LCCG will comply with the Primary Medical Care Policy and Guidance published by NHS England with regard to the procurement and award of primary care contracts; in particular in relation to whether a competitive process is required.

19.2 Where any practice representative on a decision-making body has a material interest in a procurement decision, those practice representatives will be excluded from the decision-making process. This includes where all practice representatives have a material interest, for example where NHS LCCG is commissioning services on a single tender basis from all GP Practices in the area.

20. Record Keeping and Register of Procurement Decisions

20.1 In accordance with the PPCC Regulations (2013) about record keeping the NHS LCCG will:

- publish details of all contracts they award (Regulation 9(1) via Contracts Finder and/or OJEU as appropriate
- record how any conflicts of interest have been managed (Regulation 6(2); and
- maintain details of how a contract award complies with their duties relating to effectiveness, efficiency and improvement in the quality of services and the delivery of services in an integrated way in the National Health Service Act 2006 (Regulation 3(5) of the PPCC Regulations).

20.2 NHS LCCG will maintain a Register of Procurement Decisions taken, either for the procurement of a new service, any extension or material variation of a current contract: This will include:

- The details of the decision;
- Who was involved in making the decision
- A summary of any conflicts of interest in relation to the decision and how this was managed by the NHS LCCG; and
- The award decision taken

20.3 The register of procurement decisions will be held and maintained by the Head of Corporate Governance & Risk and will include a list of all current and future procurements. Decisions will be added to the register as quickly as possible after they are made.

20.4 The Register of Procurement Decisions will be made available to the public by placing it on the NHS LCCG external website.

20.5 A Contracts Register will be maintained centrally by the Contracting Department as well as a copy of all NHS LCCG contracts.

21. Use of Information Technology

21.1 NHS LCCG will require providers of procurement support to offer appropriate information technology systems to administer the procurement process – such as e-tendering and e-evaluation systems. These are intended to assist in streamlining LCCG procurement processes whilst at the same time providing a robust audit trail.

22. Decommissioning Services

22.1 The need to decommission contracts can arise through termination of a contract due to performance against the contract not delivering the expected outcomes, expiry of a contract and/or a commissioning decision that the contracted services are no longer required. Where services are decommissioned, NHS LCCG will ensure where necessary that contingency plans are developed to maintain patient care. Where decommissioning involves Human Resource issues, such as TUPE issues, then providers will be expected to cooperate and be involved in discussions to deal with such issues.

23. Transfer of Undertakings and Protection of Employment Regulations (TUPE)

23.1 These regulations apply when there are transfers of staff from one legal entity to another as a consequence of a change in employer. This is a complex area of law which is continually evolving. NHS LCCG will follow the relevant Government guidance such as the *Cabinet Office Statement of Practice (COSOP) Staff Transfers in the Public Sector January 2000 (Revised December 2013)* (Cabinet Office, 2013).

23.2 It is the position of NHS LCCG to advise potential bidders that whilst not categorically stating TUPE will apply, it is recommended that they assume TUPE will apply when preparing their bids, and ensure that adequate time is built into procurement timelines where it is anticipated that TUPE may apply.

24. Complaints and Dispute Procedure

24.1 NHS LCCG's approach to contestability means that it is likely to pursue a wide range of competitive procurements to secure new and existing services.

24.2 NHS LCCG will utilise its dispute resolution processes to address and resolve any complaint received from either bidders/contractors or a member of the public

25. Training

25.1 All NHS LCCG staff and others working with NHS LCCG will need to be aware of this policy and its implications. It is not intended that staff generally will develop procurement expertise, but they will need to know when and how to seek further support.

25.2 All NHS LCCG Procurement & Contracting staff should be appropriately qualified. NHS LCCG will provide appropriate training to enable Procurement & Contracting staff to undertake their duties in accordance with the Regulations and recognised best practice.

25.3 All commissioning staff throughout NHS LCCG should have sufficient knowledge about procurement to know when to seek help when they encounter related issues; they must also be able to give clear and consistent messages to providers and potential providers about NHS LCCG's procurement intentions in relation to individual service developments.

26. Monitoring Compliance with this Policy

26.1 This Policy will be reviewed every three years.

26.2 In addition it will be kept under informal review by the Deputy CFO, to ensure that changes can be made and approved rapidly following any further developments or the publication of new or updated regulations and/or guidance.

26.3 Effectiveness in ensuring that all procurements comply with this Policy will primarily be achieved through review by the CFO.