



**Thurrock  
Clinical Commissioning Group**

## Procurement Policy

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<b>Name of originator/author :</b>	<b>Essex Commissioning Support Unit</b>
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### **Policy Statement**

NHS Thurrock Clinical Commissioning Group procurement will be in proportion to risk and will be used to support the clinical priorities, health and well-being outcomes and wider CCG objectives which are included in the Integrated Plan and NHS Constitution

## **1. INTRODUCTION**

Procurement is central to driving quality and value. It describes a whole life-cycle process of acquisition of goods, works and services. It starts with identification of need and ends with the award of a contract. The procurement process will establish the on-going contract monitoring arrangements in the contract to assure quality and effectiveness of delivery.

There are a number of procurement routes available within the healthcare environment in England which includes any qualified provider, competitive tender, multi-provider models and working with selected providers. These are detailed in Section 3.

NHS Thurrock Clinical Commissioning Group's (SCCG) approach to procurement is to operate within legal and policy frameworks and to use procurement as one of the system management tools available to strengthen commissioning outcomes.

It can do this through:

- Ensuring providers work in an integrated fashion where this is in the best interest of patients and promotes service efficiency;
- Increasing general market capacity to promote patient choice and meet the demand requirements of our population;
- Using appropriate procurement mechanisms to facilitate improvements in choice, quality, efficiency and access and responsiveness;
- Stimulating innovation.

If the CCG delivers effective commissioning and procurement practice, and engages well with all stakeholders then the service outcomes associated with this policy will be that:

- Patients experience the NHS and associated social care services as a joined-up personalised service in which they can exercise choice, rather than a disconnected set of services which they are required to navigate.
- Patients and service providers are treated fairly with dignity and the respect due to them at all times.

- Clinical decision-making and healthcare delivery is in line with evidence-based best practice and takes account of value for money.
- The logistics of healthcare delivery, within and across different care settings, are designed to meet patient clinical needs, whether long-term or acute, in the most effective way.

The CCG believes that it will only be able to deliver its vision in collaboration with others. Our success will depend upon close partnership working. We are committed to working in strong partnership with the local community, local authority and healthcare providers.

The CCG will develop collaborative and integrated service delivery with other health and social care economies where it is proven that this adds value.

## **2. PURPOSE OF POLICY**

This procurement policy sets out the framework within which the CCG will work to ensure that the development of commissioning strategies and any associated procurement directly contributes to the CCG's corporate aims and objectives and meets legal requirements.

It sets out the principles, rules and methodologies that the CCG will work to and clearly outlines how and when it is appropriate to seek to introduce contestability and competition as a means of achieving the best clinical outcomes and achieve value for money.

## **3. SCOPE OF POLICY**

This policy applies to all staff and members of the CCG Governing Body or its sub-committees, and any third party working in association with, or on behalf of, the CCG.

This policy applies to all CCG procurements (clinical and non-clinical). However it is particularly relevant to procurement of goods and services that support the delivery of healthcare and certain sections only relate to procurement of health and social services.

It applies to all commissioning processes and procurement activity and decision making related to the delivery of healthcare services

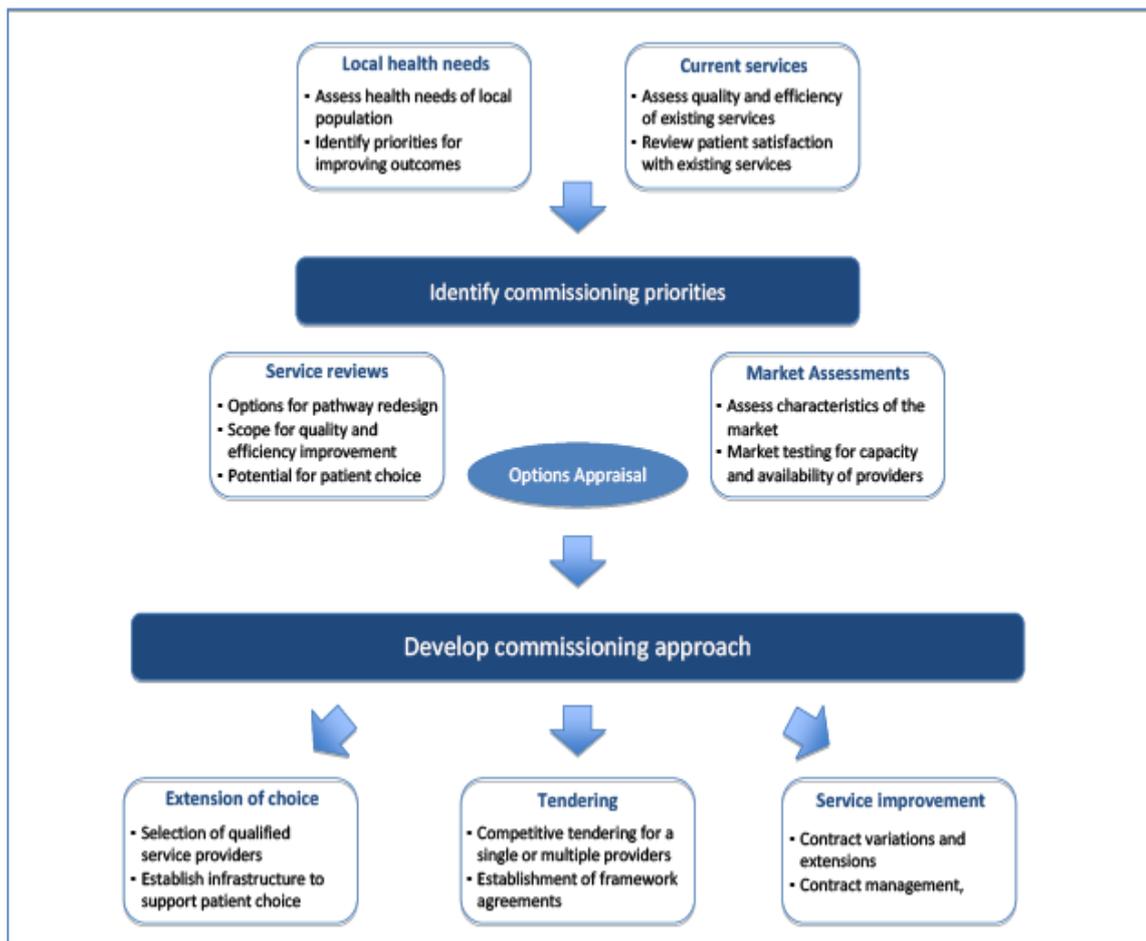
1. the development and approval of specifications for services
2. determination of which organisations shall provide services
3. determination of whether a service should be decommissioned

The following should be undertaken prior to conducting a formal procurement process:

1. **Commissioning Strategy** – publish with link provided via NHS Supply 2 health
2. **Commissioning needs assessment** – review service requirements against needs assessments.
3. **Service Specification** – develop requirements, outcomes to be achieved, quality standards, KPI's and other factors.
4. **Provider Engagement** – to develop and refine the service specification.
5. **Procurement option evaluation** - demonstrates the rationale for decision for procurement and selection of procurement process plus proposed duration of contract

The diagram below shows how the commissioning and procurement activities run in parallel to inform the key organisational decisions.

### **ROBUST DECISION MAKING TO SECURE BEST VALUE**



Source – Securing Best Value for NHS Patients Consultation (DH August 2012)

This policy should be read in conjunction with:

- The CCG Constitution and Standing Financial Instructions
- The CCG Conflicts of Interest Policy
- Thurrock Health and Wellbeing Plan
- Thurrock CCG Integrated Plan
- The Thurrock CCG Quality Strategy
- The Thurrock CCG Communications and Engagement Strategy
- The Thurrock CCG Equality & Diversity Strategy
- The Thurrock CCG Organisational Development Plan

#### 4. GUIDING PRINCIPLES THAT UNDERPIN THIS POLICY

There are four over-arching principles of public sector procurement:

**Transparency:** Making commissioning intent clear to the market place, including the use of sufficient and appropriate advertising of tenders, transparency in making decisions not to tender, and the declaration and separation of conflicts of interest;

**Proportionality:** Making procurement processes proportionate to the value, complexity and risk of the services contracted, and critically not excluding potential providers through overly bureaucratic or burdensome procedures;

**Non-discrimination:** Having specifications that do not favour one or more providers. Ensuring consistency of procurement rules, transparency on timescale and criteria for shortlist and award; and

**Equality of treatment:** Ensuring that all providers and sectors have equal opportunity to compete where appropriate; that financial and due diligence checks apply equally and are proportionate; and that pricing and payment regimes are transparent and fair.

The CCG will demonstrate compliance with these principles in the following ways.

##### 4.1. Transparency

- Stating and publishing commissioning strategies and intentions.
- Stating the outcome of service reviews including how service provision will be secured.
- Advertising of Procurement (where applicable) and notification of Contract Award.

- Ensuring transparency of documentation, processes and decisions
- The CCG will robustly manage potential conflicts of interest and ensure that these do not prejudice fair and transparent procurement processes.
- The CCG will ensure that all referring clinicians tell their patients and the commissioner about any financial or commercial interest in an organisation to which they plan to refer a patient for treatment or investigation.
- The CCG will provide feedback to all unsuccessful bidders.
- Any complaints regarding the procurement process will be handled through an explicit and publicised dispute resolution process

#### 4.2. Proportionality

- The CCG will ensure that procurement processes are proportionate to the value, complexity and risk of the products to be procured, and will be cognisant of bidder capacity
- The CCG will define and document procurement routes, including any streamlined processes for low value/local goods and services, taking into account available guidance.

#### 4.3. Non-Discrimination

- The CCG will ensure that tender processes and documents will be non-discriminatory and transparent at all times. This includes our obligations under our equalities and diversity duty.
- The CCG will inform all participants of the applicable rules in advance and ensure that the rules are applied equally to all. Reasonable timescales will be determined and applied across the whole process;
- The CCG will ensure that shortlist criteria are neither discriminatory nor particularly favour one potential provider.

#### 4.4. Equality of Treatment

- The CCG will ensure that no sector of the provider market is given any unfair advantage during a procurement process;
- The CCG will ensure that basic financial and quality assurance checks apply equally to all types of providers;
- The CCG will ensure that all pricing and payment regimes are transparent and fair (according to the DH Principles and Rules Document);

- The CCG will retain an auditable documentation trail regarding all key decisions;
- The CCG will hold all providers to account, in a proportionate manner, through contractual agreements, for the quality of their services.

## 5. ROLES AND RESPONSIBILITIES

### 5.1. CCG Board / Governing Body

The CCG Board has ultimate responsibility for ensuring that NHS Thurrock CCG complies with legal and regulatory requirements with regard to the delivery of effective procurement.

### 5.2. Chief Finance Officer (Lead Officer for Procurement)

Overall day to day responsibility for procurement within Thurrock CCG rests with the Chief Finance Officer with accountability to the Accountable Officer.

### 5.3. Procurement Services – Central Eastern Commissioning Support Unit (CSU)

The CCG will engage the services of a professionally qualified procurement team, who will develop and agree robust operating procedures, compliant with all relevant guidance regulation and legislation, and designed to achieve NHS Procurement Standards (May 2012)

Technical procurement support for healthcare procurements will be provided by the Central Eastern Commissioning Support Unit (CECSU), Technical support for non-healthcare activity will be sourced as required. A nominated CSU Procurement Lead will be designated to work with the CCG Commissioning Project Lead on each procurement.

The responsibilities of the Procurement Lead and Commissioning Project Lead will be clearly set out in respect of each project.

The CCG will have systems in place to assure itself that the Commissioning Support Unit's business processes are robust and enable the CCG to meet its duties in relation to procurement.

As the CECSU will be providing the Procurement and Market Management service on a managed service basis each CCG will retain responsibility for managing the performance of the CECSU service in line with their own expectations. This should be linked to the overarching performance management of the CSU, including the overarching KPIs and specific delivery against any agreed project objectives or KPIs.

Commissioning Support Unit performance will be reviewed at the Thurrock CCG Finance & Performance Committee.

#### 5.4. Finance & Performance Committee

This Committee has responsibility for monitoring the effectiveness of the CCG's procurement processes and the implementation of this policy.

#### 5.5. Authority

The CCG will remain directly responsible for:

- Approving decisions to procure (or not to procure a service) based on submission of a business case;
- Approving procurement route;
- Signing off specifications and evaluation criteria;
- Signing off decisions on which providers to invite to tender;
- Receiving a full procurement report agreed between the project lead and procurement lead in order to make the final decisions on the selection of the provider.
- Approving any variation to NHS Standard Contract, and specifically any variation to the duration of the contract and extension arrangements

### **6. Governance**

The CCG will ensure it has the appropriate Standing Orders (and any other relevant governance documents) of the NHS organisation to ensure the procurement of goods and services will be in accordance with all the regulations, guidance and local delegated authorities, reducing the risk of any challenge of inappropriate application of the rules regulations or the principles set out therein.

The CCG will ensure it has access to specialist legal for large and complex procurements to facilitate and monitor compliance with these rules and regulations, as well as to demonstrate effective procurement processes.

#### 6.1. Scheme of Delegation

Arrangements for delegation of authority to officers are set out in the relevant Standing Financial Instructions. In the event of any discrepancy between this Procurement Policy and the SOs/Detailed Financial Policies, the SOs/Detailed Financial Policies take precedence.

The CCG Governing Body will make all decisions relating to a contract with an anticipated value or current contract value is £250,000 or in excess of this.

The Finance & Performance Committee can determine all decisions relating to procurements with a value of less than £250,000 over the life of the contract.

## 6.2. Sealing and Signing of Contracts

- The CCG has a seal for executing documents where necessary in line with the constitution. This seal shall be used for :
- All contracts for the purchase/lease of land and/or building
- All contracts for capital works exceeding £100,000
- All lease agreements where the annual lease charge exceeds £10,000 per annum and the period of the lease exceeds beyond five years
- Any other lease agreement where the total payable under the lease exceeds £100,000
- Any contract or agreement with organisations other than NHS or other government bodies including local authorities where the annual costs exceed or are expected to exceed £100,000

Contracts can be signed in line with the Thurrock CCG Scheme of Delegation.

## 6.3. When is procurement required?

In accordance with the CCG Constitution, the group will seek to obtain the best value for money for goods and services received. In accordance with the requirements of the Standing Financial Instructions, the following must apply:

- All new clinical and non-clinical contracts with an anticipated value of £100,000 over the life of the contract must be subject to a formal procurement.
- Below that level, a structured competitive quotation process may be used as follows:

Value (£)	Number of quotations required	Level of advertising required	Process
01 – 5,000	3		In line with the SFIs
5,001 - 50,000	3		Technical procurement advice required Written quotation – approval
50,001- 100,000	4		Technical procurement advice required Written quotation – approval

- In the event that the financial threshold for procurement is subsequently exceeded within a competitive quotation process, this shall be reported to the Accountable Officer and Chief Finance Officer and be recorded at the CCG Audit Committee.

- The only exceptions where formal tendering need not be applied are:
- Where supply is proposed under special arrangements negotiated by NHS England.
  - Where the supply can be obtained under a framework agreement that has itself been procured in compliance with public procurement regulations
  - Where the CCG would be unable to fulfil its statutory functions because of limitations in the supply market which do not arise from failure to plan a procurement properly
  - where specialist expertise can be demonstrated to be available from only one source
  - for healthcare services where a completed contestability questionnaire provides objective evidence that competition is not the most appropriate way to comply with the Principles and Rules for Co-operation and Competition – Commissioners should commission services from the providers who are best placed to deliver the needs of their patients.

#### 6.4. Waivers

Formal tendering procedures may only be waived in accordance with the circumstances set out in the CCG Constitution. A copy of the CCG Waiver form is attached as Appendix 4

#### 6.5. Contracting and Tendering Procedures

The CCG requires all detailed procurement procedures adopted within the CCG and by any third party to be compliant with regulation and best practice, managed in electronic format and to be fully auditable in the event of a request by CCG appointed auditors or in the event of a competition complaint.

There should be no variation from agreed procurement procedures by a third party without the express and documented consent of the CCG.

There should be no variation from use of NHS National Standard contracts without the formal agreement of the CCG Governing Body, and NHS England if required.

The archiving of all documentation will be in accordance with the standards set out in the NHS Retention of Non-Clinical Records guidance. The destruction of documentation will be agreed in writing by the CFO.

More detailed guidance on tender procedures can be found in the Standing Financial Instructions and in Section 3 of this policy

## 6.6. Specifications

Clinical Service Specifications will be developed through the Commissioning Team and approved by the Clinical Executive Group before submission to the CCG Governing Body for final approval. Subject matter experts will be used to ensure specification validity where specific expertise is required or where this is agreed in order to manage a real or perceived conflict of interest. Non-clinical service specifications will be developed through time limited project groups before submission to the Governing Body for final approval.

## 6.7. Confidentiality and Conflicts

Every tender must require suppliers to give:

- a written undertaking to maintain confidentiality
- not engage in collusive tendering or other restrictive practice
- complete a declaration under Regulation 23 of the Public Contracts Regulations 2006

Managing potential conflicts of interest appropriately is needed to protect the integrity of the NHS commissioning system and protect clinical commissioning groups (CCGs) and GP practices from any perceptions of wrong-doing. All those participating in the development and evaluation of a tender, including third parties, will be required to sign a specific declaration of interest and a confidentiality agreement in accordance with the CCG policy on Conflicts of Interest.

All those engaged in development and evaluation of a tender should be reminded that all documentation, including emails, may be called upon as part of any investigation of a complaint, and that the use of non-secure email or social media for any communication is not permissible.

In addition to this the NHS England has issued a Code of Conduct document which specifically looks at where GP practices are potential providers of CCG-commissioned services. A copy of this template to be used in these circumstances is attached as Appendix 2 - Code of conduct, managing conflicts of interest where GP practices are potential providers of CCG-commissioned services

## 6.8. Complaints and Dispute Resolution

The CCG will have in place a separate Competition Dispute Resolution process to hear any complaints from organisations who consider that the CCG or its procurement support agent has not complied with applicable regulation or legislation, this Policy, the Rules for Co-Operation and Competition or any other relevant or associated Policies. The CECSU will revert to the relevant CCG Competition Disputes Resolution policy when required to do so.

## 6.9. Premises and Equipment

The CCG will be responsible for liaising with NHS Property Services Ltd to ensure that the impact on utilisation of existing premises and/or associated equipment or contracts has been fully reviewed, and incorporated into any proposed procurement arrangements.

Where applicable representatives of NHS Property Services should be included as full project team members from an early stage.

Where GP premises are, or may be, utilised as part of a procurement, then the Commissioning Project Lead will ensure that this information is discussed with primary care leads at the NHS England Area Team.

## 7. **Decommissioning services**

The need to decommission contracts can arise through:

- Contract Termination due to performance against the contract not delivering the expected outcomes. This can be mitigated by appropriate contract monitoring and management and by involving the provider in this. The contract terms will allow for remedial action to be taken to resolve any problems. Should this not resolve the issues, then the contract will contain appropriate termination provisions.
- The contract expires.
- Services are no longer required.

Where services are decommissioned, the CCG 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 co-operate and be involved in discussions to deal with such issues.

## 8. **Wider Stakeholder Consultation and Engagement**

The CCG Commissioning Lead will identify those stakeholders that should be part of consultation and engagement when preparing the Business Case for change, and will work with the Communications Lead to develop an agreed Communication Plan for the Project Team.

Where it is identified that providers should be engaged, then this opportunity will be advertised to ensure absolute transparency. This will include making available details of current service provision.

## 9. Healthcare Market Analysis, Development and Management

The Commissioning Project Lead will discuss with the Commercial Services Unit the level of analysis required for each project to establish:-

- whether there are already examples of analysis in this field available
- Whether there would be benefit in scoping the market analysis over a wider area
- Who will lead the analysis, and the conduct, format and timescale of the exercise.

### SECTION 3

## 10. PROCUREMENT ARRANGEMENTS

### 10.1. Background

The NHS and the wider public sector procurement are subject to EU rules and regulations and the national policy and specific sector guidance. Specifically the NHS is governed by the requirements of the following:

- The Public Contracts Regulations 2006 (as amended in 2009)
- [Procurement guide for commissioners of NHS-funded services](#) (DOH)
- Operational Guidance to the NHS-Extending Patient Choice of Provider (DOH)
- Principles and Rules for cooperation and competition (PRCC)
- The requirements as defined by the Co-operation and Competition Panel (CCP) from time to time; and
- The annual NHS operating Framework that outlines specific requirements that is appropriate to commissioned services.

The purpose of the EU procurement rules is to open up the public procurement market and to ensure the free movement of supplies, services and works within the EU. In most cases they require competition.

EU Procurement Rules apply to all public bodies. A public body in this context means the State, regional, local authorities, associations formed by one or more of such authorities or bodies governed by public law. Body governed by public law means anybody:

- Established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and;
- Having legal personality and;
- If Financed, for the most part, by the State, or regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the

State, regional or local authorities or by other bodies governed by public law.

A Contracting Authority is the name given by the Regulations to those public sector bodies who purchase Goods, Services and Works (including NHS organisations).

The following policy outlines these specific points, defining the requirements of these points and how the CCG will incorporate and react to these obligations.

## 11. PROCUREMENT LAW IN THE PUBLIC SECTOR

Public sector procurement is subject to EU rules and regulations and it is therefore critical that all procurement activity is conducted consistently, accurately, and effectively. The legal framework for public procurement is set out in the EU Procurement Directives as incorporated in UK law through the 'Public Contracts Regulations 2006 (the "Regulations")'. Where Contracting Authorities (including NHS organisations) wish to purchase Goods, Services or Works which are over the relevant thresholds (as set out below) (the "Thresholds") they must also consider the definitions of Supplies, Works and Services that are as follows:-

- **"Supplies"** contracts are essentially those for the supply (and installation where appropriate) or hire of products.
- **"Works"** is defined as "the outcome of building or civil engineering, works taken as a whole that is sufficient of itself to fulfil an economic and technical function".
- **"Services"** includes, for example, services such as maintenance of equipment, transportation, consultancy, technical services, health services etc.

### 11.1. Thresholds

Where public sector bodies are purchasing supplies or services or commissioning works, which are over the relevant Threshold, then the Regulations must be complied with insofar as they apply to the subject of the procurement. The relevant Thresholds are (as at January 2012):

- Supplies and Part A Services £113,057;
- Part B Services £173,934; and
- Works £4,348,350

Please note that figures are net of VAT and should include all extensions, prizes and renewals and reflect the cumulative annual contract value if the contract is for a period more than one year. **Contracts must not be artificially broken down to avoid the application of the Regulations.**

However, even where NHS organisations make purchases which are below this limit then (where the contract may be of interest to operators in other EU member states) they will still need to ensure that they comply with the general

EU Treaty principles of transparency, non-discrimination and proportionality by using those procedure's (as set out below) ("the Procedures").

It is also mandatory for CCG's and other Commissioning Organisations to advertise all Part B services that meet or exceed £100,000 on Supply 2 Health. Section 1.24 of the guide ('Procurement guide for commissioners of NHS-funded services') stipulates the following: *'From September 2008, it has been mandatory for PCTs to advertise procurements and contract awards on the NHS Supply2Health website. Commissioners must notify all award(s) of new competitively tendered contracts with a lifetime total value of over £100k on NHS Supply2Health and to OJEU for contracts over £156,442 (as amended from time to time). It is good practice to notify of any other contract award (subject to the lifetime contract value of £100,000) on NHS Supply2Health. This threshold may change according to cross government policy on procurement, at which point guidance will be issued.'*

### 11.2. Distinction between Part A and Part B Services

The Regulations split categories of Services into Part A (e.g. IT Services) and Part B Services (e.g. Healthcare Services).

- Type A Services – these are subject to the full rigour of EU procurement Directives/Rules, and
- Type B Services – only some of the EU procurement rules apply – namely, obligations relating to technical specifications and post-award information although best practice dictates the EU Treaty based principles should also be applied.

Services which fall into the category of Part A Services (and which are over the relevant Threshold) are subject to the full ambit of the Regulations. Whilst the Regulations have limited application to Part B (for example in relation to the publication of Contract Award Notices), Contracting Authorities are under an obligation to carry out these procurements in accordance with the general EU Treaty Principles of transparency, non-discrimination and proportionality. It is important to consider these procurements in the context of centrally issued guidance, such as the Procurement guide for commissioners of NHS-funded services, and the Contracting Authority's own governance arrangements such as their Standing Financial Instructions. This guidance assumes that Contracting Authorities as a matter of best practice will use a procedure which mirrors one of those set out in the Regulations when procuring Part B Services.

Part B services are only partially covered under the principle of "light touch". Whilst many people are aware that Health, education and social care are included under the Part B heading, in order to identify precisely which services fall under each heading it is necessary to refer to the CPV codes.

### 11.3. CPV (Common Procurement Vocabulary) Codes

The link below set out Part A and Part B Services by CPV code thus making it easier to confirm compliance with the Legislation in terms of the procurement

methodology used. This also confirms the importance of confirming the accuracy of the CPV code identified in the tender. For example sometimes a purchaser will use the generic CPV code such as 8500000. This represents all Health and Social Care categories. If this term is used it is suggested that a question should be asked of the purchaser requesting the precise CPV code or codes covered by the service to be purchased. This enables the Supplier to confirm whether or not the service is covered by Part B legislation, is partially covered, or not covered at all. It may be possible to challenge the procurement process where a service is incorrectly classified.

<http://www.epractice.eu/en/library/281871>

#### 11.4. The Procedures

They apply when public authorities (including NHS organisations) and utilities seek to acquire supplies, services, or works (e.g. civil engineering or building) the following procedures must be followed before awarding a contract when its value exceeds set thresholds or the contract is of interest to the wider EU community. Below are the most common routes to market all of which the CCG may utilise as and when appropriate.

##### 11.4.1. *Restricted Procedure*

The Restricted Procedure is used where the Contracting Authority wants to restrict the number of Bidders who will be issued with the Invitation to Tender. Under the Restricted Procedure, a minimum of five (5) applicants must be invited to go through to the next stage of the procurement process (provided that there are five (5) suitable applicants). If there are less than five (5) suitable applicants then you can proceed with the procurement process, provided that the number of applicants selected is sufficient to ensure genuine competition.

##### 11.4.2. *Open Procedure*

In the Open Procedure all applicants who respond to the Contract Notice will be invited to submit a tender for the contract opportunity. Generally speaking, the Open Procedure will be used for simple and straightforward procurements.

##### 11.4.3. *Competitive Dialogue*

The competitive dialogue procedure allows the contracting authority to enter into dialogue with bidders, following an OJEU notice and a selection process, to develop one or more suitable solutions for its requirements and to determine which chosen bidders will be invited to tender. The competitive dialogue procedure is a flexible procedure, suitable where there is a need for authorities to discuss aspects of the proposed contract with candidates. For example, the procedure would be used where authorities cannot define clearly in advance the technical means capable of satisfying their needs or objectives, or where there is a range of options for the legal and/or financial structure of a project.

#### 11.4.4. *Framework Agreement*

Can be used with open, restricted, negotiated or competitive dialogue procedures. A Framework Agreement is a general term for agreements with providers that set out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement. In most cases a framework agreement itself is not a contract, but the procurement to establish a framework agreement is subject to the EU procurement rules. In a few circumstances it may be the case that the framework agreement itself is a contract in its own right to which the EU procurement rules apply.

#### 11.4.5. *Accelerated Procedures*

These can be used in a Restricted or Negotiation with a call for competition procedure where urgency makes the normal timescale impractical. It does not alter the processes of the procedure, but it does reduce the timescales: The normal time limits of 37 days (or 30 days for electronic) to express an interest can be reduced to 15 days (or 10 days for electronic).

#### 11.4.6. *Negotiated Procedures*

It is recommended that this procedure is not used without good reason, usually due to the failure of a Restricted procedure on lack of competition grounds where only a single potential provider has been identified to be able to contract with. A negotiated procedure can then begin identifying the organisation and confirming to the market that negotiation has begun to contract with this supplier.

#### 11.4.7. *Any Qualified Provider (AQP) (UK NHS initiative only)*

AQP describes a set of system rules (accreditation framework) whereby for a prescribed range of services, any provider that meets the cost and quality criteria laid down by the Commissioner can compete for business within the market, without direct constraint by the commissioner. AQP is a procurement route that encourages competition between providers of routine elective or other services, where activity is driven solely by Service User choice.

Following the procurement process the regulations then require the authority to award (as set out below) (“the Award”) the contracts for these purchases in accordance the specific requirements of the Regulations.

#### 11.5. Advertising: The Requirement

An advert must be prepared and sent to the Official Journal of the European Union (OJEU).

- The Contract Notice and Contract Award standard forms should be used - these are also available to download from the [SIMAP](#) website. Alternatively Commissioners may choose the templates within an electronic tendering system.

- OJEU will publish the advert within 12 days. If using an electronic tendering system the advert will be placed in OJEU within 5 working days.
- If you decide to also advertise in other publications (e.g. the national press, a trade magazine etc.), you must not:
  - send your advert to the other publication(s) before you send your advert to OJEU. Note: you do not have to await the publication of the OJEU advert, your obligation is to ensure that the OJEU advert is despatched before any other advert
  - provide information or detail in the other advert(s) that does not appear in the OJEU advert
- If the contract value is below the relevant threshold value at which an advert is mandatory, an advert can still be placed 'on a voluntary basis'. Case-law seems to indicate that voluntary publication of a notice in OJEU does not mean that the competition is subject to the processes and procedures of the Directives
- Where the contract does not fall within the scope of the Directives, the [Telaustria](#) case ruled that the procedure employed must be still be consistent with the principles of the treaty, particularly the obligation of transparency, and that therefore a "sufficient" degree of advertising should be used.

The obligation of transparency which is imposed on the contracting authority consists in ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of procurement procedures to be reviewed.

**It is mandatory for CCGs and Commissioning Organisations to advertise all Part B services that meet or exceed £100,000 on Supply 2 Health. (This is contract value not annual value)**

#### 11.6. Tender Evaluation

The evaluation process should seek to identify the most economically advantageous Bid(s), both in terms of qualitative and quantitative criteria.

In conducting the evaluation, the evaluators must act in accordance with the key principles of the EU Procurement Directives:

- Fair & Open Competition
- Non-discrimination
- Equal Treatment
- Transparency
- Proportionality

All recorded comments and notes would be made available under a FOIA request. Confidentiality must be respected and maintained throughout the Evaluation Process. Any potential or actual conflict of interest must be advised in advance of the tender evaluation.

Stakeholder involvement in scoring/evaluating tenders should be part and parcel of any good procurement process, regardless of whether it is NHS or not.

#### 11.7. 10 day standstill period

For Part A services the Public Contracts Regulations 2006 (the "Regulations") apply in their entirety to the selection of participants in this contract. This means that a mandatory minimum ten (10) calendar day standstill period will apply before any contract is concluded. As part of Procurement Best Practice this should be adopted for all Part B services.

#### 11.8. Contract Award Criteria

In all instances, once a contract has been awarded (including Part B service contracts), the awarding body must publish a notice in OJEU within 48 days of contract award. This notice must be on a Standard Form, available from the [SIMAP](#) website. Alternatively, Commissioners may choose to use the standard templates with an electronic tendering system.

It is mandatory for CCGs and Commissioners to advertise all Part B services that meet or exceed £100,000 on Supply 2 Health - [www.supply2health.nhs.uk](http://www.supply2health.nhs.uk)

#### 11.9. De-brief

Once a decision as to contract award has been made, all unsuccessful bidders should be notified by the most rapid means of communication possible.

Feedback should be offered to all Bidders following the completion of a procurement. Comments taken during evaluations will be used as the basis of feedback provided to Bidders. Please note for PART A services, notice under regulation 32 of the Regulations applies, and therefore information on the evaluation of tenders against the award criteria set out in the ITT, together with reasons for the award of these scores has to be provided.

For the avoidance of doubt, selection criteria would assess economic and financial standing, whereas award criteria would assess technical capability and price.

## 12. National Policy and Guidance

### 12.1. 'Procurement guide for commissioners of NHS-funded services'

The 'Procurement guide for commissioners of NHS-funded services' provides specific advice on how commissioners should procure services in line with the requirements of the EU law and the Contracting regulations 2006 (as amended in 2009).

Section 1.1 of the guide stipulates the following: *'The role of commissioners, (i.e. PCTs or their agents) is to secure services to meet the health needs of their local populations, which deliver the best combination of quality to patients and value*

*for taxpayers. Procurement enables this by securing services through transparent engagement with providers, normally culminating in an award of new contract(s) albeit that this process may culminate in the award of a new Contract to an existing provider. Procurement is an integral part of the commissioning cycle’.*

The CCG recognises that in some cases it is necessary and appropriate to have competition for services in order to secure improved outcomes and patient experience, but in others it may be possible and desirable to maintain existing providers whilst continuing to drive quality improvements.

#### 12.2. ‘Operational Guidance to the NHS-Extending Patient Choice of Provider’ (DOH)

Since 2010, the Government has been committed to increased choice and personalisation in NHS - funded services. Choice for patients can be about the way care is provided, or the ability to control budgets and self-manage conditions. The government has specifically committed to extending patient choice of Any Qualified Provider for appropriate services.

#### 12.3. ‘The annual NHS operating Framework that outlines specific requirements that is appropriate to commissioned services’

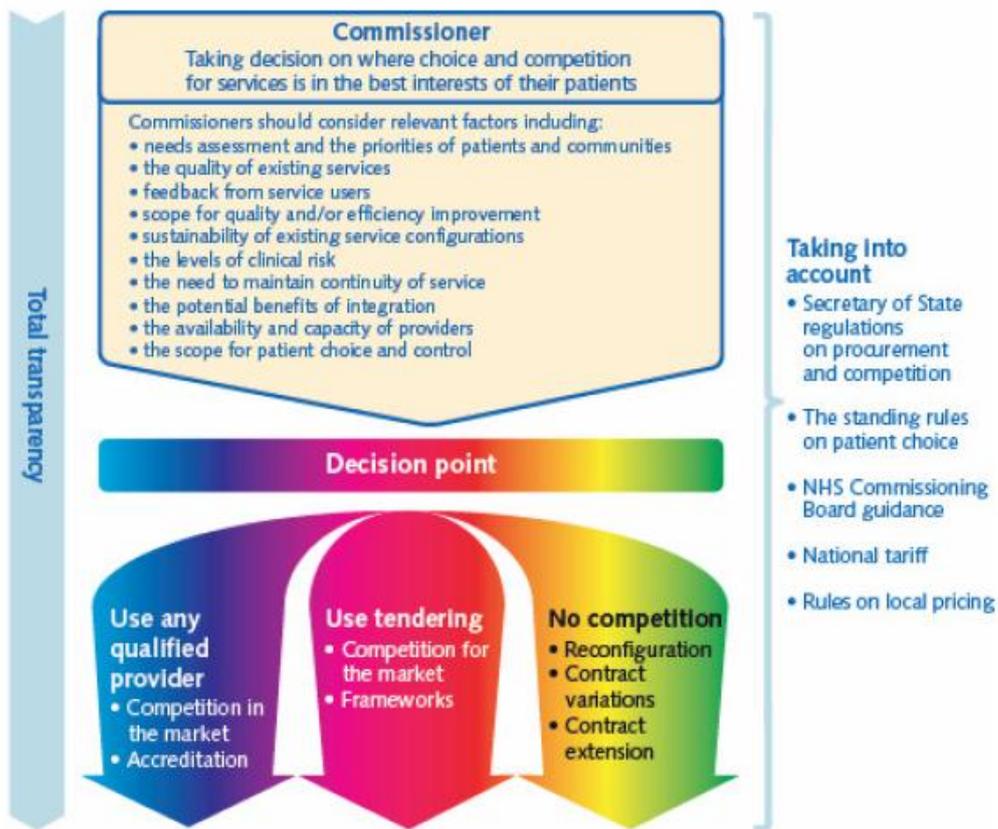
This NHS Operating Framework sets out the planning, performance and financial requirements for NHS organisations in 2012/13 and the basis on which they will be held to account. During the transition phase the CCG is committed to maintaining or improving the quality of services provided, while delivering transformational change and maintaining financial stability.

#### 12.4. ‘Commissioning Decisions (Competition or Not)’

As set out in “Protecting and Promoting Patients” Interests: the Role of Sector Regulation”, it is for commissioners to decide where choice and competition for services are in the best interests of patients. Commissioners should decide, taking into account a range of factors:

- whether to use tendering (“competition for the market”)
- whether to enable patients to choose from any qualified provider (“competition in the market”)
- whether to extend or vary existing contracts, or (where there are no other capable providers) to use a single tender process. (See Figure 2; Source Department of Health).

**Figure 2 – Commissioners decide when and how to use competition**



The CCG will react to this requirement by ensuring it has the capacity and specialist resource to enable it to make the most appropriate decision to meet the contingent circumstance through procurement management and best practice processes.

### 12.5. Latest guidance from NHS Commissioning Board

The NHS Commissioning Board Authority has recently published a series of procurement briefings for CCGs.

<http://www.commissioningboard.nhs.uk/2012/09/14/procure-ccgs/>

## 13. Procurement Management and Best Practice

### 13.1. Procurement Planning

Where the CCG has identified a number of potential imminent procurements, robust procurement processes in line with national policies and strategies will support the procurement for each of the projects progressed. Where required, partnership working will be embraced to maximize quality and productivity of all services contracted.

### 13.2. Service Capacity Issues

The provision of a 'Procurement Policy' enables the CCG to facilitate and monitor compliance with all procurement rules and regulations, as well as ensuring the organisation demonstrates effective procurement processes in carrying out both strategic and transactional purchasing activity. Any interim changes in legislation, case law and guidance from the Department of Health which have a potential to impact on process or best practice are also incorporated. The policy address a range of areas including development of provider markets as required including:

- Market Management Collaboration & Completion- using appropriate market management levers and strategies, including regional collaboration, to develop provider markets to meet current and future needs that will have a positive impact on outcomes.
- Procurement- ensuring all procurement activity is transparent, fair and equitable, with all decisions being made within a framework that delivers value for money and delivers required outcomes.
- Policy & Governance- policies and processes are efficient, effective and ensure compliance with legislation, regulations and EU directives in selecting market intervention strategies and contract award.
- Choice and Access Development of sustainable provider markets to deliver greater choice and access to healthcare in appropriate settings.

### 13.3. Procurement Management Approach

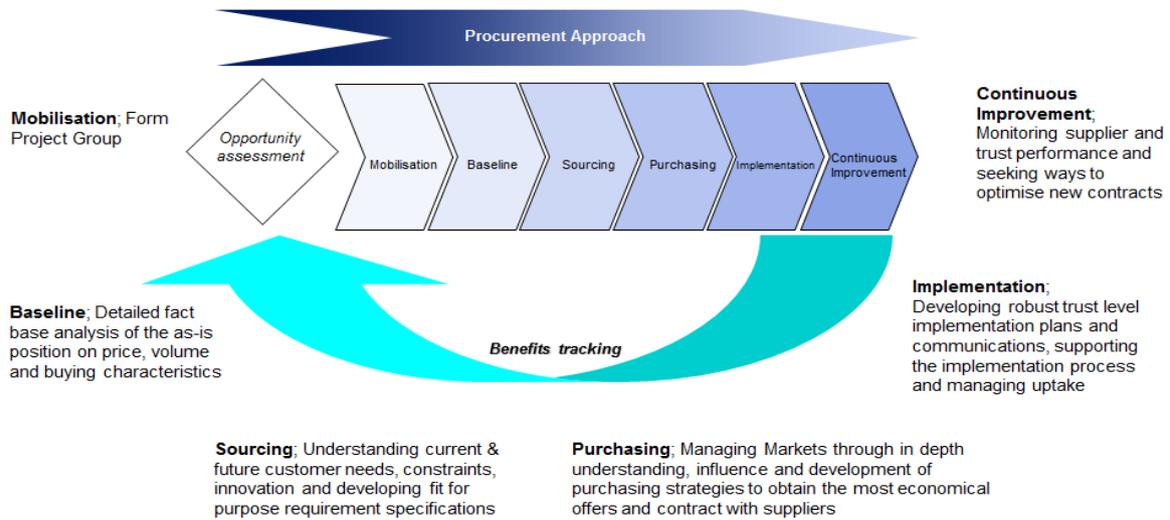
As part of the specialist support the CCG will ensure that an appropriate procurement approach is followed to allow compliance and reduce the risk of legal challenge and has a system to facilitate efficient and effective communication with the provider market (i.e. e-Tender solutions) an example of which has been provided below.

### 13.4. Best Procurement Practice

Although the vast majority of procurements will fall within Part B of Schedule 3 of Part 10 of the Public Contract Regulations 2006 (the "Regulations") (and therefore not subject to the full scope of the Regulations), the CCG will, throughout the whole of any procurement process, apply best procurement practice.

The CCG recognise that Procurement provides a transparent mechanism for securing new contracts for services which reflect patient and population needs. Done well, procurement can be a powerful tool for stimulating innovation and enabling improvements in quality and value. Procurement can stimulate or enable providers to develop new service models and/or redesign care pathways to improve quality of care to patients (e.g. greater personalisation) and make better use of the available healthcare resources in responding to the diverse needs of patients and communities.

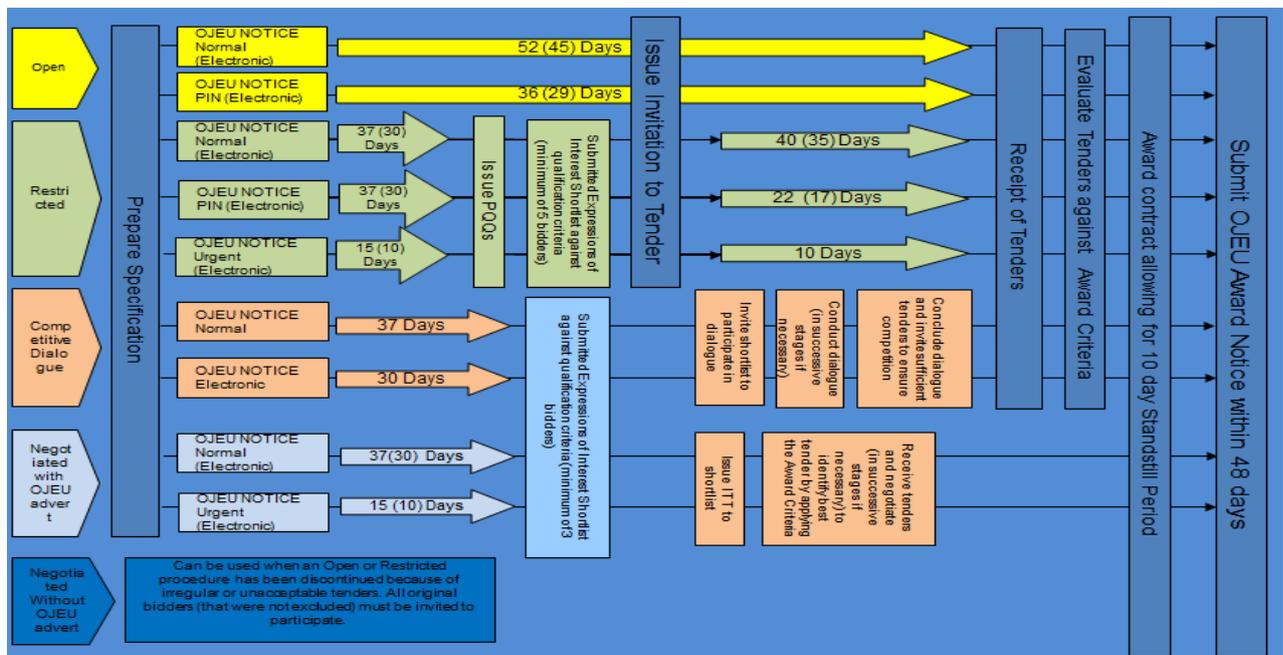
The flow chart below shows the key steps in a procurement process and how this aligns to the commissioning cycle, both working together to deliver the most effective outcome for the CCG and its patients.



To put this in terms of the commissioning cycle:

- Analysis:** encompasses the Opportunity assessment and mobilisation stage.
- Planning and Development:** takes in the Baseline and Sourcing stage.
- Implementation:** includes the Purchasing and Implementation stage.
- Management and Monitoring:** covers Continuous Development.

### 13.5. Procurement Timescales by Route



Replicated from 'The Scottish Public Procurement' Toolkit'

### 13.6. Using the Correct Contract

The NHS standard contract must be used to procure the following services:

- Acute services (including urgent care centres and walk in centres, irrespective of who the provider is or where the service is based)
- Community services
- Ambulance services (including non-emergency patient transport services)
- Mental health and learning disability services
- Nursing and care homes services (via the standard Care Homes contract)
- 111 services (although the Hempsons contract may also be used)

The 'Alternative Provider Medical Services' (APMS) contract may only be used to procure list-based primary care services (e.g. personal medical or Out of Hours services). It must not be used for any services, which are not list-based primary care services'.

For Part A services the following contracts should be used:

- [NHS standard terms and conditions of contract for the purchase of goods and supply of services](#)

### 13.7. Pre-Procurement Activities

The final section of this Policy sets out the processes that CCG use prior to conducting any procurement activity.

It is good practice to regularly review commissioned services to ensure they are appropriate, evidence-based, effective and delivering value for money. Service users, carers and other key stakeholders should be involved in this review. A review of commissioned services should be timely and undertaken prior to the expiry of a contract to determine whether it is appropriate to continue to commission the service.

No proposal to develop, reconfigure or de-commission a service can be progressed without clear authority from the appropriate decision-making body.

The Service Development/Redevelopment Checklist ("Pre-Procurement Checklist") that forms part of this document identifies in more detail the processes undertaken by the CCG at all stages pre any procurement activity. Thurrock CCG shall develop their own pre-procurement checklist but as a minimum adopt the headings and actions contained.

## 14. Other Factors

### 14.1. Training and Awareness

The CCG have access to an expert procurement team and will have direct access to CECSU that can provide commissioners and other CCG staff with

current up-to-date procurement advice and to ensure appropriate process governance is adhered to. The training shall be coordinated by the CECSU procurement team.

#### 14.2. Equality Impact Assessment

As part of the CCGs consultation process an equality impact assessment will be undertaken at relevant stages in the procurement process to ensure that the proposed/planned changes are assessed with regard to impact on groups, individuals or communities. The outcomes of such equality impact assessments will be published by the CCG upon request and as part of its equality scheme.

#### 14.3. Ethical and Sustainable Procurement

With a budget of in excess of £180m, the way we spend this money will have a significant impact on the area we serve. The CCG can have a significant impact on the local health economy by helping reduce health inequalities and improving the wellbeing of the community we serve. This will be achieved by commissioning services that are appropriate and from providers best placed to provide those services.

When making purchasing decisions we need to consider the opportunities for any additional social, economic or environmental benefit that we can bring to the community whilst working within the procurement rules and principles.

It is the intention of Thurrock Clinical Commissioning Group to develop and utilise local providers wherever possible taking due notice of procurement rules and regulations. The location of services will be considered. For example, a very specific localised service may be best provided by a local provider.

To assist the development of providers the CCG will be holding Provider Development workshops to describe commissioning intentions and to give help and guidance on procurement processes. In hosting these workshops all providers, both current and potential, should be invited as all providers should be treated equally. The Supply to Health website will be used to publicise the events.

## REFERENCE MATERIAL

Reference	Website
"The Public Contracts Regulations 2006"	<a href="http://www.legislation.gov.uk/uksi/2006/5/contents/made">http://www.legislation.gov.uk/uksi/2006/5/contents/made</a>
"The Public Contracts Regulations 2006" (as amended in 2009)	<a href="http://www.legislation.gov.uk/uksi/2009/2992/contents/made">http://www.legislation.gov.uk/uksi/2009/2992/contents/made</a>
NHS Regulations on Procurement, Patient Choice and Competition 2013.	<a href="http://www.dh.gov.uk/health/2013/02/ppcc-regulations-2013/">http://www.dh.gov.uk/health/2013/02/ppcc-regulations-2013/</a>
Procurement guide for commissioners of NHS-funded services (DOH)	<a href="#">Procurement guide for commissioners of NHS-funded services</a>
Principles and Rules for cooperation and competition	<a href="#">Principles and rules for cooperation and competition</a>
Operational Guidance to the NHS-Extending Patient Choice of Provider	<a href="http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_128455">http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_128455</a>
Commercial skills for the NHS	<a href="http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_113744">http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_113744</a>
The requirements as defined by the Co-operation and Competition Panel (CCP) from time to time;	<a href="http://www.ccpanel.org.uk/index.html">http://www.ccpanel.org.uk/index.html</a>
The annual NHS operating Framework that outlines and specific requirements that is appropriate to commissioned services.	<a href="http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_131360">http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_131360</a>
It is mandatory for Commissioners to advertise all Part B services that meet or exceed £100,000 on Supply 2 Health	<a href="http://www.supply2health.nhs.uk">www.supply2health.nhs.uk</a>
Thresholds	<a href="http://www.tendersdirect.co.uk/Help/Thresholds.aspx">http://www.tendersdirect.co.uk/Help/Thresholds.aspx</a>
CPV CODES	<a href="http://www.epractice.eu/en/library/281871">http://www.epractice.eu/en/library/281871</a>
OGC - General Procurement Guide	<a href="#">OGC - General Procurement Guide</a>
Protecting and Promoting Patients' Interests: the Role of Sector Regulation	<a href="#">Protecting and Promoting Patients' Interests: the Role of Sector Regulation</a>
Standard Contracts (namely PART A)	<a href="#">NHS standard terms and conditions of contract for the purchase of goods and supply of services</a>
NHS Standard Contracts (namely PART B)	<a href="http://www.dh.gov.uk/health/2011/12/nhs-standard-contract/">http://www.dh.gov.uk/health/2011/12/nhs-standard-contract/</a>

NHS Commissioning Board Authority has recently published a series of procurement briefings CCGs

<http://www.commissioningboard.nhs.uk/2012/09/14/procure-ccgs/>

The NHS mandate sets out the Government's ambitions for the NHS, which it is asking the NHS CB to achieve from April 2013 to the end of 2015

<https://www.wp.dh.gov.uk/publications/files/2012/11/mandate.pdf>

## APPENDICES

### Appendix 1 - Section 242 of the NHS Act 2006; Duty to involve patients



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### Appendix 2 – Code of conduct, managing conflicts of interest where GP practices are potential providers of CCG-commissioned services

## Appendices relating to Procurement Checklist:

### Appendix 3



Pre-Procurement  
Checklist Guide

### Appendix CL1 - HR Role in the Tendering Process



HR Role in  
Procurement.doc

### Appendix CL2 - Quality Impact Assessment Tool



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### Appendix CL3 - Equality Impact Assessment Tool



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### Appendix CL4 – SHA Reconfiguration template



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### Appendix CL5 – Secretary of State tests for service change (Gateway Ref: 14543)



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### Appendix 5 – CCG Waiver Form