

FIN 01

Procurement Policy

Policy applicable to:

NHS Guildford and Waverley CCG	✓
NHS North West Surrey CCG	✓
NHS Surrey Downs CCG	✓

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Name of originator/ author	Karen McDowell, Chief Finance Officer
Owner (director)	Amber Byrne
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Working together as the Surrey Heartlands Clinical Commissioning Groups

Guildford and Waverley CCG | North West Surrey CCG | Surrey Downs CCG

Version control sheet

Version	Date	Author	Status	Comments / changes since last version
0.1	09/05/18	Amber Byrne, Procurement Programme Manager, SH CCGs	Draft	Deputy Director of Contracts: Non-Acute and Primary Care, Rachael Graham
0.2	03/08/18	Rachael Graham, Deputy Director of Contracts: Primary Care and Non-Acute, SH CCGs	Draft	Minor Revisions
0.3	06/08/18	Amber Byrne, Procurement Programme Manager, SH CCGs	Draft	Circulated to SH colleagues for comment
0.4	24/08/18	Paula Asberry, Senior Contract Manager Acute, (Interim), NWS CCG	Draft	Suggested improvements
0.5	28/08/18	Gillian Barnes, Head of Collaborative Contracts, SH CCGs	Draft	Suggested improvements
0.6	30/08/18	Alan Dixon, Senior Contracts Manager, SD CCG	Draft	Suggested improvements
0.7	31/08/18	Niki Baier, Deputy Director of Contracts: Primary Care and Non Acute, SH CCGs	Draft	SFI special losses VEAT Notices
0.8	03/09/18	Janet Barrett, Deputy Head of Procurement, Commissioning Support, NHS South of England Procurement Services	Draft	OJEU thresholds
1.0	24/09/18	Rachael Graham, Deputy Director of Contracts: Primary Care and Non Acute, SH CCGs	Final	Final review and incorporation of feedback – formatting.
1.1	28/09/18	Strategic Finance and Performance Committees	Final	Approved
1.2	11/09/19	Governance/ Procurement Teams	Final	Formatting

Equality statement

The Surrey Heartlands' CCGs aim 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 over others. We take into account the Human Rights Act 1998 and promote equal opportunities for all. This document has been assessed to ensure that no employee receives less favourable treatment on the protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity.

Members of staff, volunteers or members of the public may request assistance with this policy if they have particular needs. If the member of staff has language difficulties and difficulty in understanding this policy, the use of an interpreter will be considered.

We embrace the four staff pledges in the NHS Constitution. This policy is consistent with these pledges.

See next page for an Equality Analysis of this policy.

Equality analysis

Equality analysis is a way of considering the effect on different groups protected from discrimination by the Equality Act, such as people of different ages. There are two reasons for this:

- to consider if there are any unintended consequences for some groups
- to consider if the policy will be fully effective for all target groups

Title of Policy: Procurement Policy	Policy Ref: FIN01
Assessment conducted by (name, role): Rachael Graham, Deputy Director of Non Acute Contracts	Start date for analysis: August 2018 Finish date:
<p>Give a brief summary of the policy. Explain its aim.</p> <p>To ensure a consistent, efficient and best practice approach to procurement. The Policy aims to:</p> <ul style="list-style-type: none"> • Ensure all individuals involved in the procurement of clinical services have a clear understanding of their role and what is required of them • Protect the Surrey Heartlands CCGs and the officers involved in procurement from the risks associated with procurement not being conducted properly and • Ensure the outcomes, as detailed in the Procurement Strategy, are achieved. 	
<p>Who is intended to <u>benefit from</u> this policy? Explain the aim of the policy as applied to this group.</p> <p>Benefit from this policy will be multi-faceted:</p> <ol style="list-style-type: none"> 1. All service users within the Surrey Heartlands' CCGs commissioning geography are intended to benefit from the services commissioned by the CCGs through adherence to this policy that enables an opportunity for involvement and engagement in the procurement process, ensures patient feedback and experience influences the design of services to be procured and facilitates patient and stakeholder involvement in the process delivery. 2. Commissioners are intended to benefit from the policy via officer adherence to a robust and compliant process ensuring market testing to deliver quality, value for money services and compliance with national policy and legislation. 3. Wider stakeholders and general public will benefit from organisational compliance with legislative requirements, quality services and value for tax payers money and wider market stimulation producing a more competitive and innovative provider market place. 	

<p>1. Evidence considered. <i>What data or other information have you used to evaluate if this policy is likely to have a positive or an adverse impact upon protected groups when implemented?</i></p> <p>The policy has been written in line with legal and statutory requirements with regard to procurement and is applicable to all service users within the Surrey Heartlands' CCGs of Guildford & Waverley CCG, North West Surrey CCG and Surrey Downs CCG.</p>	
<p>2. Consultation. <i>Give details of all consultation and engagement activities used to inform the analysis of impact.</i></p> <p>None.</p>	
<p>3. Analysis of impact</p> <p><i>In the boxes below, identify any issues in the policy where equality characteristics require consideration for either those abiding by the policy or those the policy is aimed to benefit, based upon your research.</i></p> <p><i>Are there any likely impacts for this group? Will this group be impacted differently by this policy? Are these impacts negative or positive? What actions will be taken to mitigate identified impacts?</i></p> <p>The policy ensures compliance with relevant legislation and therefore ensures that all procurements are undertaken within these requirements which ensure fair, equitable and transparent processes.</p>	
a) People from different age groups (Age)	None
b) People with disabilities (Disability)	None
c) Men and women (Gender or Sex)	None
d) Religious people or those with strongly held philosophical beliefs (Religion or belief)	None
e) People from black and minority ethnic groups (Race)	None
f) People who have changed gender or who are transitioning to a different gender (Gender reassignment)	None
g) Lesbians, gay men, bisexual people (Sexual orientation)	None
h) Women who are pregnant or on maternity leave (Pregnancy and maternity)	None
i) People who are married or in a civil partnership (Marriage and Civil Partnership)	None
j) Carers	None
<p>If any negative or positive impacts were identified are they valid, legal and/or justifiable? Please detail.</p> <p>N/A</p>	

4. Monitoring- *How will you review/monitor the impact and effectiveness of your actions?*

Each procurement programme will include its own Equality Analysis as regards the service to be purchased in order to consider the effect on different groups protected from discrimination by the Equality Act. This will extend to identifying whether any cohorts of people outside of those with protected characteristics may be adversely affected. The service will be adjusted, if necessary, to ensure any inequality is addressed. This policy and its applicability will be reviewed every two years unless UK or EU legislation or national guidance dictates an earlier evaluation.

5. Sign off

Lead Officer:

Karen McDowell

Date approved:

Sept 2018

Contents

1. Executive Summary.....	8
2. Introduction and Policy Objective	9
3. Legislative Framework / Core Standards.....	11
4. Scope	12
5. Definitions.....	12
6. Roles and Responsibilities	15
7. Commissioner Obligations when Undertaking Clinical Services Procurements ...	16
8. Public Sector Procurement Legislation & Regulation	18
9. Accountabilities.....	24
10. When to Procure:The Decision Making Process	29
11. Procurement Processes	30
12. Procurement Register.....	37
13. Conflicts of Interest.....	38
14. Surrey Heartlands' CCGs Procurement Process/ Governance	40
15. Bibliography.....	47
Appendix A - Healthcare Procurement Decision Making Flowchart	48
Appendix B – Procurement Check List - Decision Making Support Tool.....	49
Appendix C – Advantages and Disadvantages of Healthcare Procurement Routes.....	53
Appendix D - Overview of the Public Procurement Regime.....	56
Appendix E - Commissioning medicines in service redesign	61
Appendix X – Procedural Document Checklist for Approval	64
Appendix X – Compliance and Audit Table.....	66

1. Executive Summary

- 1.1 The Surrey Heartlands Clinical Commissioning Groups (CCGs), Guildford & Waverley CCG, North West Surrey CCG and Surrey Downs CCG, have a responsibility to ensure that they have a consistent, transparent and effective approach to the procurement, commissioning and contract management of healthcare, goods, non-clinical services and works.
- 1.2 As commissioners of healthcare services, CCGs have a clear responsibility to ensure decisions are made and services commissioned that meet the needs of our populations. Services have to be affordable, within the limits of the available resources, with greater emphasis on the quality of outcome, rather than the quantity of provision. CCGs are statutorily required to procure healthcare services for the population they serve and are constitutionally obliged to improve quality of care and ensure the efficient use of resources.
- 1.3 Surrey Heartlands' CCGs' are committed to reducing health inequalities, delivering measureable population health benefits, improved patient experience and ease of access. Provision of health services within the CCGs should be convenient, timely, and consistent whilst being delivered in a way that is sustainable in the longer term.
- 1.4 When undertaking procurement activities CCGs are required to comply with legal requirements, internal governance rules and professional and ethical standards in order to achieve efficient and productive procurement processes.
- 1.5 The term "procurement" covers the tools and the processes available to CCGs to commission healthcare and goods and services. The procurement process can encourage competition, which in turn can lead to improvements in quality of care.
- 1.6 This policy aims to make real and positive contributions to the strategic direction of the Surrey Heartlands' CCGs in the following areas:
 - Streamlining procurement processes;
 - Making a direct contribution to improved patient care and treatment outcomes;
 - Managing change brought about by organisational reconfiguration;
 - Enabling the organisations to be more commercially focused;
 - Supporting collaborative procurement;
 - Enabling the organisations to support government initiatives in public procurement; and
 - Effective use of resources.
- 1.7 If, having read this policy, you have suggestions as to how it could be improved or require further guidance or advice please e-mail the Procurement Team: amber.byrne@nhs.net

2. Introduction and Policy Objective

- 2.1 Changes in the role of hospitals and a shift to primary care, leading and delivering more services in a community based setting, requires that CCGs work closely with all providers: acute, community, mental health, ambulance, social care and the third sector to develop innovative procurement and contracting solutions. The move to Integrated Care Partnerships will see a greater emphasis on single system care budgets. Consequently, a traditional approach to the commissioning and procurement of healthcare services may fail to secure integrated and cost effective pathways of care.
- 2.2 There are limited resources available and there is a requirement to demonstrate that CCGs are achieving value for money in the investments they make. An evidence based approach to identifying and delivering commissioning priorities will continue, through service development proposals and Quality Innovation Productivity and Prevention (QIPP) schemes
- 2.3 CCGs review services to be commissioned, be these newly identified or as a consequence of contract expiry, and identify opportunities to improve efficiency, extend choice, improve access, quality of outcomes and patient experience.
- 2.4 The challenge for Surrey Heartlands' CCGs is to commission services that offer the best quality and value for money within a finite resource. In order to ensure that efforts are focused most effectively it is necessary to target resources toward:
- Facilitating the right care for people who are ill, with particular emphasis on vulnerable groups such as the very young, very old and/or who have a life limiting condition.
 - Ensuring that services are safe, reliable and have the confidence of the people in the Surrey Heartlands geography.
 - Delivering services seamlessly so that service users are seen by the appropriate professional at the right times
 - Helping people to stay healthy for as long as possible, reducing health inequalities.
- 2.5 Clinical Commissioning Groups (CCGs) are statutorily required to procure healthcare services for the population they serve and are constitutionally obliged to improve quality of care and ensure the efficient use of resources.
- 2.6 Surrey Heartlands' CCGs will manage the procurement of their own management and operational needs to facilitate the delivery of effective health services to the local population for which they are responsible.

2.7 Objectives

- 2.7.1 This policy sets out the context in which procurement is agreed and seeks to ensure that the CCGs are legally and procedurally compliant. It seeks to provide assurance as to the most appropriate route to market for services. The policy has

been written taking into account current competition and procurement rules and will be updated in line with any future changes to UK and EU legislation.

- 2.7.2 It provides clear and effective guidance to all the CCGs' officers when undertaking procurement activities; it:
- sets out the laws, rules, regulations and policies applicable to procurement;
 - incorporates key procurement principles, standards and best practices;
 - supports probity in spending public funds;
 - delivers a methodology to drive procurement compliance and efficiency throughout the CCGs;
 - sets out the process from business need to contract management.
 - stipulates professional and ethical conduct;
 - sets out procurement procedures, templates and tools to support the CCGs' officers involved in the procurement of goods and services.
 - encourages efficiency, effectiveness, environmental and socio-economic sustainability
- 2.7.3 All expenditure by CCGs for their own operational and management needs is subject to this policy, including:
- Revenue expenditure and capital expenditure;
 - Other Corporate/Indirect spend (supplies procurements);
 - Commissioned Healthcare Services; and
 - Any fully delegated responsibilities under Co-commissioning arrangements
- 2.7.4 In the event of full delegation, CCGs, under Primary Care co-commissioning, are generally free to make procurement decisions subject to the terms of their delegation agreement with NHS England; statutory guidance; applicable law; the relevant CCG's Constitution; and good practice, with the following exception:
- 2.7.5 Under their delegation agreements, CCGs are required to comply with NHS England's Standing Financial Instructions (SFIs) in the following circumstances:
- Settlement of a claim: whilst the SFIs state this is applicable if the value of the settlement exceeds £100,000 it is often the case that smaller claims still require NHSE approval under their Special Cases Process – see Item 18 of the SFIs;
 - Any matter under the Delegated Functions which is novel, contentious or repercussive; and
 - The entering into any Alternative Provider Medical Services Contract (APMS), which has or is capable of having a term which exceeds 5 years.
- 2.7.6 Arrangements under which the CCGs collaborate with other public bodies (for example under non-legally binding memoranda of understanding (MOU)) will not

ordinarily constitute public contracts for the purposes of procurement law, but will be subject to internal approval processes for non-competed expenditure.

2.8 Procurement Principles

2.8.1 The procurement priorities for the Surrey Heartlands' CCGs support the strategic objectives set out in their Constitutions. The procurement priorities are:

- Empower members - ensure relevant staff, suppliers, partners and stakeholders are aware of the procurement strategy and understand how the strategy relates to them in terms of the approach to procurement decisions and relevant legal requirements;
- Involve users in procurement - involve the people who use and provide our services in the procurement process to meet local needs, improve service design and delivery;
- Identify procurement roles and responsibilities of appropriate staff across CCGs for the entire procurement process from inception through to contract end;
- Understand and influence the supply market - have a clear and current understanding of the supply market in which the organisation operates and help to shape the market to meet the needs of the Surrey Heartlands population; and
- Procure resources effectively – ensuring that the local health and care services continue to be provided whilst improving quality and ensuring best value.

3. Legislative Framework / Core Standards

3.1 See Item 8, page 17.

3.2 Authority

3.2.1 CCGs, via Committees and Officers in accordance with the Scheme of Delegation, are responsible for:

- Approving the procurement route and design thereof;
- Approving the contract form
- Signing off specifications and evaluation criteria;
- Publishing the entire suite of tender documentation at the first point of inviting responses from bidders i.e. at the point of PQQ publish the final contract to be entered into and the second stage requirements of bidders.
- Following a pre-qualification process (PQQ) via which providers' progress to the Invitation to Tender (ITT) stage when relevant. Depending on the market structure and commissioner's needs a one stage process may be followed where the most economically advantageous tender will be selected without a pre-qualification process;

- Following an Invitation to Tender (ITT) or Request for Proposals (RFP) process to determine the most suitable provider.
- Making final decisions on the selection of the preferred provider whilst adhering to the Surrey Heartlands' CCGs Constitutions.

3.2.2 Procurement decisions must therefore:

- Represent value for money;
- Be transparent and non-discriminatory;
- Follow sound governance processes;
- Comply with all relevant legislation;
- Comply with Surrey Heartland CCGs own procedures;
- Appropriately manage potential conflicts of interest; and
- Protect the integrity of contract award decision making processes and the wider NHS commissioning system.

4. Scope

- 4.1 The policy applies to officers who procure goods, services or work on behalf of the CCGs, including staff on temporary or honorary contracts, appointed representatives acting on behalf of the CCGs, staff from member practices and any external organisations (e.g. other Clinical Commissioning Groups, Commissioning Support Units etc.).
- 4.2 All must do so in accordance with this policy and any of the CCGs' applicable policies.
- 4.3 Any relaxation of the use of this policy must be agreed in advance by the Chief Finance Officer (CFO).

5. Definitions

Term	Definition
Alternative Provider Medical Services Contract (APMS)	A contracting route available to enable Primary Care Organisations to commission or provide primary medical services within their area to the extent that they consider it necessary to meet all reasonable requirements. The other routes are General Medical Services (GMS) and Personal Medical Services (PMS) contracts.
Clinical Commissioning Group (CCG)	Clinically-led statutory NHS bodies responsible for the planning and commissioning of health care services for their local area.

Term	Definition
Committees in Common	Mechanism for organisations to take decisions together on projects that cross organisational and geographical boundaries. Two or more organisations meeting in the same place at the same time. They will talk about the same things. They may reach the same conclusions. But under the umbrella term committee in common, the individual organisations remain distinct and (if the committee is decision-making) take their own decisions.
Community based setting	A location outside of an acute hospital from which medical services are provided. These settings should encourage community integration and involvement, expand accessibility of services and supports, promote personal preference and empower people to participate in their care.
Evidence based approach	A process in which a practitioner combines well researched interventions with clinical experience and ethics, and client preferences and culture to guide and inform the delivery of treatments and services.
GP List Based Services	Specified services to be rendered.
Integrated Care Partnership	Alliances of NHS providers that work together to deliver care by agreeing to collaborate rather than compete. These providers include hospitals, community services, mental health services and GPs. Social care and independent and third sector providers may also be involved.
Invitation to Tender (ITT)	A step in a competitive tendering process in which qualified suppliers are invited to submit bids for supply of specific and clearly defined goods or services during a specified timeframe. Sometimes called request for tender.
Memorandum of Understanding (MOU)	A type of agreement between two or more parties. It expresses a convergence of will between the parties, indicating an intended common line of action. It is often used either in cases where parties do not imply a legal commitment or in situations where the parties cannot create a legally enforceable agreement. It is a more formal alternative to a gentlemen's agreement.
Primary Care	Healthcare provided in the community for people making an initial approach to a medical practitioner or clinic for advice or treatment
Primary Care co-commissioning	Provides Clinical Commissioning Groups an opportunity to take on greater responsibility for general practice commissioning.
Procurement	The process of finding and agreeing to terms, and acquiring goods, services, or works from an external source, often via a tendering or competitive bidding process

Term	Definition
Population Health	An approach that aims to improve physical and mental health outcomes, promote wellbeing and reduce health inequalities across an entire population.
Pre-Qualification Questionnaire (PQQ)	A list of questions relating to the important criteria that a supplier must meet when applying for a contract. An effective tool to shortlist suppliers as those that fail to meet the required standards are disregarded in the process.
Quality Innovation Productivity and Prevention (QIPP)	A programme about reducing the amount of waste in the NHS and making sure that every pound that is spent brings the maximum amount of benefit to patients.
Request for Proposal (RFP)	An RFP is used where the request requires technical expertise, specialised capability, or where the product or service being requested does not yet exist. The RFP presents preliminary requirements for the commodity or service, and may dictate to varying degrees the exact structure and format of the supplier's response. Differs from an ITT which is an opportunity for potential suppliers to submit an offer to supply goods or services against a detailed tender.
Scheme of Delegation	A Financial Scheme of Delegations covers all financial transactions or transactions which have monetary implications e.g. loans, scheme payments etc. It provides guidance as to the spending limits of individuals within an organisation.
Standing Financial Instructions (SFI)	Designed to ensure that financial transactions are carried out in accordance with the law, Government policy and best practice in order to achieve probity, accuracy, economy, efficiency and effectiveness in the way in which an organisation manages public resources.
Standstill period	The standstill period provides for a short (at least 10 calendar day) pause between the point when the contract award decision is notified to bidders, and the final contract conclusion, during which time suppliers can challenge the decision.
Surrey Heartlands	Surrey Heartlands is a partnership of health and care organisations working together, known as an 'Integrated Care System' – partnerships where health organisations, the local authorities and others take a <i>collective responsibility</i> for improving the health of the local population, managing resources (including money) and making sure services are high quality.
Third sector	The part of an economy or society comprising non-governmental and non-profit-making organisations or associations, including charities, voluntary and community groups, cooperatives, etc.

6. Roles and Responsibilities

6.1 The Governing Bodies and Committees

- 6.1.1 The Governing Bodies have the ultimate responsibility for ensuring that a CCG meets its' statutory requirements when procuring (healthcare) services.
- 6.1.2 The Governing Bodies must be transparent when making decisions to procure services and be the authorising body for awarding a contract to a recommended preferred provider, once a formal tender process has been completed.
- 6.1.3 For collaborative/partnership procurements the Surrey Heartlands' CCGs have established a Committees in Common Forum during which time the individual CCG Governing Bodies will meet simultaneously to undertake decisions on cross-CCG procurements.

6.2 CCGs Procurement Lead:

- 6.2.1 This procurement policy is owned by the Chief Financial Officer responsible for the Contracting Function within Surrey Heartlands' CCGs. This function is responsible for:
- Ensuring that the principles of good procurement practice are embedded within the CCGs' organisations, monitoring legislation and incorporating any significant policy or procedural developments, or as required by statutory or mandatory requirements;
 - Reviewing and updating the policy on an annual basis following an approved change control process;
 - The review and sign-off for procurement exemptions in line with Single Action Tenders, prior to scrutiny by the Finance Committee;
 - Managing the procurement appeals process in line with the agreed framework.
- 6.2.2 However, managers and senior members of the Surrey Heartlands CCG will be responsible for recognising when a commissioning decision may have potential procurement implications and for seeking appropriate procurement support. Individual Directors and Deputy Directors are responsible for ensuring adherence to correct procurement procedures and the Scheme of Delegation.

6.3 Procurement Management and Support:

- 6.3.1 Where it is required and considered appropriate, procurement management and support will be provided by the Surrey Heartlands procurement team reporting to the Deputy Director of Contracts (non-acute). This is a small team; on occasion it will be necessary to recruit additional procurement programme management support for lengthy and complex procurement programmes.
- 6.3.2 Surrey Heartlands' CCGs commission specialist procurement support and advice which is currently provided by different organisations for each CCG. It is anticipated that arrangements will be consolidated in future with one overall specialist procurement provider:

- SBS for Guildford & Waverley CCG;
- NHS Commercial Solutions for North West Surrey CCG; and
- NHS South of England Procurement Services for Surrey Downs CCG.

6.4 Collaborative/ Partnership projects

6.4.1 In the case of collaborative or partnership projects where one CCG 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, or an independent procurement support service. Whenever external procurement support is provided by any organisation, the CCGs will have systems in place to assure itself that the supporting organisation's business processes are robust and enable a CCG to meet its duties in relation to procurement.

6.4.2 Where a joint procurement is to be pursued by two or more CCGs, then the procurement will be underpinned by a Memorandum of Understanding and a Collaborative Agreement between the parties that will, as a minimum, set out:

- the objectives of the procurement,
- identify which CCG will act as the lead,
- the approvals and reporting processes,
- roles and responsibilities within the project,
- how legal costs will be shared,
- how risks and benefits are shared
- dispute resolution arrangements and
- exit arrangements from the procurement.

7. Commissioner Obligations when Undertaking Clinical Services Procurements

7.1 To explain and document how CCGs meet statutory procurement requirements, primarily the Public Contracts Regulations 2015 and the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013.

7.2 To document the CCGs' approach for facilitating open and fair, robust and enforceable contracts that provide value for money and that deliver required quality standards and outcomes, with effective performance measures and contractual levers.

7.3 To determine the most appropriate procurement route to procure goods and services to meet Surrey Heartlands' CCGs operational and management needs: taking account of internal financial policies and procurement regulations. To reduce the cost of procuring goods and services CCG officers should make best

use of national or other frameworks where they are able to demonstrate value for money

7.4 To evidence a transparent and proportionate process by which CCGs will determine whether health and social services are to be commissioned through existing contracts with providers, competitive tenders, via a framework approach or through alternatives provided for in procurement regulations.

7.5 To enable early determination of whether, and how, services are to be opened to the market, to facilitate open and fair discussion with existing and potential suppliers and providers, thereby to facilitate good working relationships.

7.6 To demonstrate compliance with the general principles of good procurement practice. These are:

7.6.1 Transparency:

- Making purchasing and 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 appropriate management of conflicts of interest.
- All procurements must be able to account publicly for expenditure, contract opportunities should be advertised and evaluation and scoring criteria must be stated in procurement documents.
- All contracts awarded, whether through a formal procurement process or not, must be published in Contracts Finder and in the Official Journal of the European Union (OJEU) (for healthcare services a notice is only required in OJEU where value exceeds a total contract value of £615,278). CCGs must maintain a documented audit trail of key decisions.

7.6.2 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.
- All procurements should be carried out as cost effectively as possible.

7.6.3 Non-discrimination:

- Producing service specifications that do not favour providers or a group or type of providers; ensuring consistency of procurement rules, transparency on timescale and criteria for shortlist and award; objective evaluation criteria must be applied to all bids.

7.6.4 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.

- All potential providers must be treated the same throughout the entire procurement process; this means that the same information must be provided to all potential providers at the same time; and rules of engagement and evaluation criteria must be specified in advance of provider involvement and be applied in the same way to each potential provider.

7.7 Users of this policy should refer to the appendices to this policy which provide further guidance and clarification on the application of this policy in practice.

8. Public Sector Procurement Legislation & Regulation

8.1 NHS and wider public sector procurement activity is subject to international and national rules, principles, regulations and guidance.

8.2 In procuring services and goods, CCGs must comply with the legislation that governs the award of contracts by public bodies. This includes adherence to:

- The National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013, which provide a framework for the commissioning of clinical services on a principles basis;
- The Public Contracts Regulations 2015 (PCR 2015) paragraphs 3.3 to 3.6;
- Concessions Contracts Regulations 2016 (CCR 2016);
- National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (PPCCR 2013);
- The NHS Act 2006 (as amended);
- The Public Services (Social Value) Act 2012;
- The Equality Act 2010;
- Modern Slavery Act 2015;
- HM Treasury 'Managing Public Money';
- Section 75 of the Health and Social Care Act 2012, and its associated regulations (this places requirements on commissioners to ensure that they adhere to good practice in relation to procurement, do not engage in anti-competitive behaviour and promote the right of service users to make choices about their healthcare).
- Section 11 of the Health and Social Care Act 2001 (requiring that commissioners of healthcare services ensure service users and their representatives are involved in and are consulted on planning of healthcare services)
- Section 242 of the National Health Service Act 2006 (commissioners of healthcare services for which they are responsible have a legal duty to consult service users and the public – directly or through representatives – on service planning, the development and consideration of services changes and decisions that affect service operation).

- 8.3 This policy and any procedures derived from it should be read alongside and in conjunction with the following:
- The CCGs' Constitutions, which include Standing Orders, Standing Financial Instructions, Schemes of Delegation and Prime Financial Policies;
 - Detailed Financial Policies;
 - Conflicts of Interests, Standards of Business Conduct Policy, Risk Management Policy;
 - Fraud Corruption and Bribery Policy;
 - NHS England Standing Financial Instructions in so far as they impact on the procurement of GP services under full delegation of Co-Commissioning provision
- 8.4 Healthcare Services fall within Schedule 3 services (known as the Light Touch Regime (LTR)) under The Public Contracts Regulations 2015 which implement the European Union Procurement Directives into UK Law. For Schedule 3 services (LTR) CCGs are bound by the full impact of the Regulations but are allowed a degree of flexibility in terms of timescales and processes used. CCGs must however ensure that when procuring services, they comply with the principles of the Public Contract Regulations 2015 stated above and act equitably and in a non-discriminatory manner.
- 8.5 Procurements for healthcare services must also be conducted taking into consideration The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013. These Regulations impose requirements on CCGs to ensure good practice when procuring Healthcare Services, to protect service users' rights to make choices and to prevent anti-competitive behaviour. These Regulations provide scope for complaints to, and enforcement by NHS Improvement (NHSI) (formerly known as Monitor), as an alternative to challenging decisions in the courts. The Regulations apply alongside the Public Contracts Regulations 2015 and do not affect their application.
- 8.6 The Public Contract Regulations 2015 ("PCR")**
- 8.6.1 The Regulations are produced by the EU Courts and enacted into UK Law. Under LTR there are stipulations that must be met; these are as follows:
- a) Expenditure over £615,278 must be advertised in OJEU & Contracts Finder. The value of £615,278 is for total spend over the term of the contract, including any potential extension period, and is not value per annum.
 - b) If more than one expression of interest is received then a fair and transparent process must be undertaken and all bidders treated equally.
 - c) A Regulation 84 compliant Award Report must be produced, approved and kept on file for audit purposes.
 - d) An Award Notice fully detailing the process undertaken and outcome must be placed in OJEU and Contracts Finder.

8.6.2 Not following the above four points would breach the Regulations and may lead to a successful challenge from providers.

8.6.3 The Regulations can be viewed in full by clicking on the following link:
<http://www.legislation.gov.uk/ukxi/2015/102/contents/made>

8.7 The National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 (“PPCC”)

8.7.1 The PPCC Regulations were produced by Monitor (now known as NHS Improvement) on behalf of the Secretary of State for Health to exercise powers conferred by sections 75-77 and Section 304(9) & (10) of the Health & Social Care Act 2012. NHS Improvement is responsible for implementing the Regulations which it considers to be a set of principles to be used by Commissioners when procuring NHS Funded Services.

8.7.2 NHS Improvement may investigate a complaint received from a provider asserting that a CCG has failed to comply with a requirement imposed by the regulations. NHS Improvement may on its own initiative investigate whether a relevant body has failed to comply with the Anti-Competitive Behaviour requirements of the regulations.

8.7.3 The Regulations can be viewed in full by clicking on the following link:
<http://www.legislation.gov.uk/ukxi/2013/500/contents/made>

8.7.4 Commissioners have an obligation to ensure that when they procure healthcare services (irrespective of whether a formal procurement process has been carried out) they act with a view to (Regulation 2):

- a) securing the needs of the people who use the services,
- b) Improving the quality of the services, and
- c) Improving efficiency in the provision of the services.

8.7.5 In order to meet these requirements CCGs should consider a range of strategies including:

- a) providing the services in a more integrated way;
- b) enabling providers to compete to provide the services;
- c) allowing service users a choice of provider of the services;
- d) consideration of collaborative procurement.

8.7.6 For spends below £615,278.00 there is no legal obligation to advertise however it is important that the Commissioner can evidence a decision meets the stipulations of Procurement, Patient Choice & Competition (2) Regulations 2013. Where it is identified that there is likely to be more than one capable provider a CCG should advertise their requirements or undergo a fair and transparent process. This does not necessarily obligate the CCG to tender the services, although in most cases that is the next logical step, but it will provide evidence that the CCG has tried to engage with the market.

8.7.7 The Regulations also cover other matters that CCGs must consider when procuring services. These include:

8.7.8 **Award of a Contract without Competition**

- For expenditure above £615,278.00 direct award with no competition is covered under Regulation 32 of the Public Contract Regulations 2015 which states it is possible but only under the following circumstances:
 - Where no tenders or suitable tenders were received from providers in response to an Open or Restricted procedure procurement process.
 - Competition is absent for technical reasons (i.e. only one provider can meet the specification – and this can be evidenced and justified appropriately).
 - For reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for procurement cannot be met and this can be justified appropriately – poor planning is not appropriate justification.
- For expenditure below £615,278.00, CCGs may award a new contract for Healthcare Services without advertising an intention to seek offers, where CCGs are satisfied that the service is capable of only being provided by that provider or there are statutory or other reasons why a particular provider must provide those services, for example on clinical or safety grounds. The Commissioner would need to evidence it meets the stipulations of the Procurement, Patient Choice & Competition (2) Regulations 2013. Single tender action, or tender waiver as it is sometimes called, carries an inherent risk of challenge. It is therefore important to record the rationale for the decision. Failure to plan adequately is not acceptable as an urgent clinical need. Where a service is put in place for reasons of urgency or safety it should be considered an interim step with plans to undertake a competitive process as soon as possible.

8.7.9 **GP List Based Services**

- A further example of where an exemption to the procurement regulations (PCR 2015) applies is GP List based services. This is because of the requirement to have a patient list which clearly no provider other than a GP would be able to meet; therefore, a direct award to a GP or a consortium of GPs for these services is entirely appropriate in that it meets the criteria. In these instances, the opportunity should be offered on an 'open house' basis to all GPs ensuring each and every GP is given a fair and equal chance to submit their interest and a process then followed to identify the successful provider(s). This will be via simple expression of interest where multiple providers are sought i.e. in the case of Local Enhanced Services or via expression of interest followed by quality based questionnaire where a single provider is sought, for example GP cover for a local nursing home.

8.8 Public Services (Social Value) Act 2012

- 8.8.1 The Public Services (Social Value) Act places a requirement on commissioners to consider the economic, environmental and social benefits of their approaches to procurement before any procurement process starts. Commissioners also have to consider whether they should consult on these issues.
- 8.8.2 When considering how a procurement process might improve the social, economic or environmental well-being of a relevant area CCGs must only consider matters which are relevant to what is proposed to be procured. CCGs are only required to consider those matters to the extent to which it is proportionate, in all the circumstances, to take those matters into account.
- 8.8.3 This is a legal requirement and the CCG must undertake a Social Value Impact Assessment and should keep a formal record to show consideration of Social value has been made.

8.9 Consultation

- 8.9.1 Section 14Z2 of the NHS Act 2006 (as amended by the Health & Social Care Act 2012) states that: “The Clinical Commissioning Group must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways)”:
- in the planning of the commissioning arrangements by a CCG,
 - in the development and consideration of proposals by a CCG for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and
 - in decisions of a CCG affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.
- 8.9.2 CCGs should seek advice from Communications & Engagement experts and, if necessary, legal advice regarding whether or not formal consultation is required.
- 8.9.3 Whilst formal consultation is likely to be required where a new service is being introduced or there are fundamental changes proposed to any existing service provision, it is important that in any procurement there is continuous stakeholder engagement throughout. Surrey Heartlands’ CCGs must consider whether patient group representatives should be involved in the project team and in tender evaluation teams where formal procurements are undertaken. Care will need to be taken to ensure there are no Conflicts or potential Conflicts of Interest.
- 8.9.4 When Consultation is undertaken, in order for it to be lawful:
- It must take place when the proposal is still at a formative stage;
 - Sufficient reasons must be put forward about the proposal to allow for intelligent consideration and response;

- Adequate time must be given for consideration and response; and
- The outcome of the consultation must be conscientiously taken into account.

8.10 Public Sector Equality Duty

- 8.10.1 Under the Equality Act 2010 when public bodies make decisions, referred to exercising its functions in the Act, they must consider the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and foster good relations between persons who share a relevant protected characteristic and persons who do not share it : This is known as the Public Sector Equality Duty ("PSED").
- 8.10.2 Failure to comply with the PSED can result in any procurement being subject to a Judicial Review which can be invoked up to three months after the alleged breach, or even longer at the Courts discretion.
- 8.10.3 The PSED lies with the people making the decisions, usually a CCG's Governing Body. Responsibilities under the PSED cannot be delegated. The key is that the objectives of the Act are considered when making decisions ("have due regard to") but at the same time these are considered in the context of the prevailing circumstances, so would include matters such as financial or operational issues. As with Consultation if there is any doubt advice should be sought.
- 8.10.4 The Equality Act 2010 defines protected characteristics as:
- age;
 - disability;
 - gender reassignment;
 - pregnancy and maternity;
 - race (including ethnic or national origins, colour or nationality);
 - religion or belief;
 - sex;
 - sexual orientation;
 - marriage and civil partnership.

8.11 Fair Deal

- 8.11.1 Fair Deal was implemented on the 07/11/13. This gave all types of providers of NHS services access to the NHS Pension scheme. A New Fair Deal which affects NHS Pensions further was implemented March 2014. The New Fair Deal ensures that NHS staff previously compulsorily transferred out of the public sector will continue to have access to the NHS Pension scheme and includes allowing such staff to re-join the scheme.

- 8.11.2 Should staff who re-join the scheme have suffered a shortfall in contributions as a consequence of being originally transferred out of the NHS pension scheme, the New Fair Deal indicates that the new commissioners are responsible for any shortfalls.
- 8.11.3 New Fair Deal and the potential financial implications of bulk transfer of pensions should be considered in any new procurement. It is not an issue in the majority of cases but it should be considered when the outgoing provider has previously had staff TUPE transferred to it from the NHS. Any new provider would have to offer the option for staff to bulk transfer pension funds back into the NHS which could result in shortfalls.

9. Accountabilities

- 9.1 CCG Detailed Financial Policies are issued in accordance with the Directions issued by the Secretary of State for Health under the provisions of the NHS Act 2006 as amended by the Health and Social Care Act 2012, with responsibilities set out under that and subsequent secondary legislation for the regulation of the conduct of a CCG in relation to all financial matters.
- 9.2 These Detailed Financial Policies describe the financial responsibilities, policies and procedures adopted by the CCG. They are designed to ensure that the CCG's financial transactions are carried out in accordance with the law and Government policy in order to achieve probity, accuracy, economy, efficiency and effectiveness. They must be applied in the context of the CCG's latest Scheme of Delegation. For Surrey Heartlands' CCGs, a single Financial Scheme of Reservation and Delegation is in place.

9.3 Sustainable Procurement

- 9.3.1 As a public sector organisation, CCGs must be committed to the principles of sustainable development and demonstrate leadership in sustainable development to support central Government and Department of Health commitments in this area of policy, and the improvement of the nation's health and wellbeing.
- 9.3.2 Sustainable procurement is defined as a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment.
- 9.3.3 Sustainable procurement should consider the environmental, social and economic consequences of:
- Non-renewable material use;
 - Manufacture and production methods;
 - Logistics;
 - Service delivery,

- Use/ operation/ maintenance/ reuse/ recycling and disposal options.

9.3.4 Each supplier's capability to address these consequences should be considered throughout the supply chain and effective procurement processes can support and encourage environmental and socially responsible procurement activity.

9.4 Small and Medium Sized Enterprise (SME), and Third Sector Support

9.4.1 Surrey Heartlands' CCGs will aim to support and encourage SME, Third Sector and voluntary organisations in bidding for contracts as required under Government policy.

9.4.2 The CCGs will aim to support Government initiatives seeking the involvement of SMEs and the Third Sector in public service delivery without acting in contravention of public sector procurement legislation and guidance.

9.4.3 The NHS is keen to encourage innovative approaches that could be offered by new providers – including independent sector, voluntary and third sector providers. The CCGs are committed to the development of such providers.

9.5 Transparency

9.5.1 In 2010 the Government set out the need for greater transparency across its operations to enable the public to hold public bodies and politicians to account. This includes commitments relating to public expenditure intended to help achieve better value for money.

9.5.2 As part of the transparency agenda, the government made the following commitments with regard to procurement and contracting:

- All new central government tender documents for contracts over £10,000 to be published on a single website from September 2010, with this information to be made available to the public free of charge.
- All new central government contracts to be published in full from January 2011.

9.5.3 These rules apply to the NHS. To support Surrey Heartlands' CCGs in complying with these requirements, adverts are placed on Contract Finder.

9.6 Freedom of Information Act

9.6.1 CCGs are subject to Freedom of Information requests which may include information relating to procurements. Whilst during a procurement process some information may be withheld on grounds of commercial confidentiality, once the procurement has been completed this is unlikely to be the case.

9.7 Public and Patient Engagement

9.7.1 Surrey Heartlands' CCGs are committed to using Public and Patient Engagement at all stages of the commissioning cycle, including procurement, particularly in relation to:

- Strategic planning: engaging with communities to identify health needs and aspirations; and in engaging the public in decisions about priorities and strategies;
- Specifying outcomes and procuring services: engaging service users in service design and improvement; and patient centred procurement and contracting.

9.7.2 The CCGs abide by the Nolan Principles, "7 principles of public life - An overview of the Nolan principles", which are the basis of the ethical standards expected of public office holders. In particular:

9.7.3 'NHS services must reflect the needs and preferences of service users, their families and their carers – service users, with their families and carers, where appropriate, will be involved in and consulted on all decisions about their care and treatment'.

9.7.4 The NHS Constitution pledges that staff should also be engaged in changes that affect them.

9.7.5 Specific times when public and patient engagement will take place include:

- In the planning of commissioning arrangements;
- In the development and consideration of proposals for changes in commissioning arrangements where the implementation of proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health service available to them, and;
- In decisions affecting the operation of the commissioning arrangements where the implementation of decisions would (if made) have such an impact.

9.7.6 The CCGs fully recognise that the engagement of clinicians, service users and the public in designing services results in better services. Surrey Heartlands' CCGs business processes require a high degree of evidence of engagement in order for business cases to be approved and as a result, any procurement of services will have been informed by engagement at the design stage.

9.7.7 The CCGs ensure that the involvement and engagement of service users continues throughout the procurement process with involvement from the commencement of the procurement process in bidder engagement events, ensuring that the patient perspective remains at the heart of the process through to the evaluation of tender submissions and the identification of the preferred bidder. This engagement is supported by appropriate training, provided by the Surrey Heartlands procurement team and specialist procurement advisors.

9.8 Market Engagement

- 9.8.1 Where appropriate, Surrey Heartlands' CCGs engage with the market in order to test service design and appetite for procurement opportunities. Such activity is most likely conducted for new services and is managed proportionately to the contract value or the influence the service exerts within the health and social care system as a whole.
- 9.8.2 Conducting research with providers ensures that service specifications (always designed with the interests of service users at the fore) are deliverable, measurable and realistically costed.
- 9.8.3 It is also possible to share with the market, proposals for contract terms and conditions and the financial basis on which the contract will be constructed.

9.9 Collaboration

- 9.9.1 Surrey Heartlands' CCGs are committed to operating in a collaborative environment whereby all opportunities for efficiency and economies of scale are considered and where applicable, applied. This includes exploring opportunities for partnering with other commissioning organisations to ensure the best interests of the population can be met through collaboration.
- 9.9.2 When potential or actual procurement relates to services also offered by other organisations or populations covered by other CCGs in Surrey, we will explore the option to work in collaboration through a joint procurement agreement.

9.10 Commissioning and Decommissioning

- 9.10.1 Surrey Heartlands' CCGs ensure that the way we approach the commissioning and decommissioning of services is fair, open and transparent.
- 9.10.2 Proposals to commission or decommission a service will meet the Secretary of State's four key tests for service change:
- Support from GP commissioners
 - Strong engagement, including local authorities, public and service users
 - A clear clinical evidence base underpinning proposals
 - The need to develop and support patient choice
- 9.10.3 Where the CCGs are seeking to decommission a service, there must be clear and objective reasons for the decommissioning of that service. These are likely to be based on one or more of:
- Failure to remedy poor performance
 - Evidence that the service is not cost-effective
 - Evidence that the service is not clinically effective – i.e. patient outcomes cannot be shown
 - Insufficient need for the service

- 9.10.4 Commissioning and decommissioning proposals will be clearly in line with the CCGs' business aims and objectives, as set out in the CCG's annual commissioning intentions or operational plans.
- 9.10.5 Patient and service users' views will be taken into consideration in any decision to commission or decommission a service, with formal public consultation when required, via appropriate means of communication.
- 9.10.6 Proposals will be led by clinicians and will be based upon clear and strong evidence of clinical and cost effectiveness.
- 9.10.7 Proposals will consider the potential impact on medicines management processes and will be developed with the involvement of the medicines management team.
- 9.10.8 It is not intended that there will be any negative impact on the quality of care service users receive or on equality of care provision when services are decommissioned. In order to safeguard against this, an Equality Impact Analysis will be undertaken to identify any unintended adverse consequences and remedial action to address.
- 9.10.9 Proposals will be backed by a robust business case that describes the benefits of commissioning/decommissioning and demonstrates how the benefits will be achieved.
- 9.10.10 CCG Governing Bodies will ultimately take the decision with regard to the decommissioning of any service.

9.11 Financial and Quality Assurance Checks

- 9.11.1 Surrey Heartlands' CCGs require assurance about potential providers. Where this is not achieved through a formal tender process, the following financial and quality assurance checks on the provider may be undertaken on a transparent, equal, non-discriminatory and proportionate basis before entering into a contract:
- Financial viability;
 - Economic standing;
 - Clinical capacity and capability;
 - Clinical governance;
 - Quality/Accreditation,
 - Corporate social responsibility.
- 9.11.2 Strategic and Operational Plans are published on the Surrey Heartlands' CCGs websites and appropriate information is placed on the NHS Contracts Finder website. Information will be given as to which type of tender it is intended to commence.
- 9.11.3 A standstill period will be held between notifying the award of a contract and execution of a contract. Comprehensive feedback will be provided to bidders on the outcome of their bid.

- 9.11.4 An auditable documentation trail will be maintained regarding the decision to tender/not tender services, including formal sign off by the Governing Body/ies for the affected CCG/s.
- 9.11.5 The decision-making process will vary depending on whether the service concerned is an existing service, or whether it is a new or significantly changed service. A guide to that decision making is detailed in the following section.

10. When to Procure: The Decision Making Process

- 10.1 As stated previously, NHS Procurement is governed by two separate sets of Regulations:
- a) The Public Contract Regulations 2015 (“PCR”)
 - b) Procurement, Patient Choice & Competition (2) Regulations 2013 (“PPCC”)
- 10.2 As the threshold for PCR is £615,278.00 it is recommended that for expenditure of up to £615,278.00, PPCC is adhered to and its stipulations met and evidenced accordingly.¹
- 10.3 For spends of £615,278 and above then PCR is adhered to and appropriate steps followed accordingly.
- 10.4 Appendix A shows a decision flow diagram which will help guide employees to the correct procurement route. A detailed procurement checklist is attached as Appendix B, intended to help inform procurement strategies and to aid review/re-commissioning of services.
- 10.5 NOTE: where the requirement to be procured consists of a number of elements, e.g. a combination or a mix of goods and services and healthcare services, determining which part of the procurement regulations apply will be undertaken as part of the normal scoping arrangements during the pre-procurement stage. PCR 2015 states that “. . . the main ‘subject-matter’ [i.e. the requirements to be procured] shall be determined in accordance with which of the estimated values of the respective services, or of the respective services and supplies, is the highest.” For example, in the case of a requirement for a mix of healthcare service and goods, if the goods part constitutes the highest proportion of spend, the regulations that apply to goods must be followed and vice versa.
- 10.6 In broad terms, ‘goods’ are tangible consumable items and ‘services’ (non-healthcare services) are activities provided by people, such as lawyers, barbers, waiters etc.
- 10.7 In the case of Goods and Services, the financial thresholds are much lower than those for Healthcare Services. The current threshold for CCGs is £181,302 so

¹ Procurement threshold updates (and other Procurement Policy Notes) can be obtained from: <https://www.gov.uk/government/collections/procurement-policy-notes>

any contract value above this should be advertised or a suitable framework used for buying such goods/services.²

11. Procurement Processes

11.1 There are a number of procurement processes available and which one to adopt depends on the specific circumstances. Whilst CCGs do not have to follow exactly the procedures laid down in the Public Contract Regulations 2015, mirroring those procedures when a procurement process is used will demonstrate transparency and equity. The Surrey Heartlands procurement team can advise on the most appropriate method. The key is to ensure that all commissioning decisions including whether to procure, whether to decommission, whether to seek competition, etc. are recorded and an audit trail kept. Procurement options include:

11.2 Competitive Tendering

11.2.1 A competitive process (mirroring processes set out in the Public Contracts Regulations 2015) must be designed to demonstrate fairness, equality, transparency and non-discrimination in the procuring of services and will also achieve value for money.

11.2.2 There are several types of competitive tendering processes that can be considered. The ultimate choice of process will be informed by market analysis. For example, if a large number of providers are likely to be interested, a multi-stage tendering process should be considered (commonly referred to as the Restricted Process) to restrict the number of providers invited to bid. This can make the process more manageable. In response to the advert, interested parties only submit pre-qualification information, and those then shortlisted receive an Invitation to Tender (ITT).

11.2.3 Where it is envisaged that only a small number of providers are likely to be interested, a single stage tendering process could be considered (referred to as an Open Process), where pre-qualification and tender stages are conducted together. All potential suppliers complete a tender in response to the advertisement.

11.2.4 For a procurement where innovative solutions are being sought or the CCGs need to work with the providers to develop the service model, it may be more appropriate to use a process that allows for a dialogue with bidders, rather than just asking for bids in response to a defined specification. This is commonly referred to as Competitive Dialogue. Competitive dialogue can be a lengthy and resource intensive process and really should be restricted to those procurements where the service requirements cannot easily be defined and/or the financial structure is complex.

² NHS Terms & Conditions for procurement goods and services can be obtained from: <https://www.gov.uk/government/publications/nhs-standard-terms-and-conditions-of-contract-for-the-purchase-of-goods-and-supply-of-services>

11.2.5 All competitive tendering processes must be conducted fairly and transparently, and have clear criteria for award published in advance. If adopting a two stage Restricted Process, it is good practice to publish at the point of requesting pre-qualification information the intended ITT and contract documentation. This enables potential bidders to have sight of the entire process and fully assess their suitability to bid. It also ensures a clear commitment to demonstrating fairness, equality, transparency and non-discrimination in light of the fact documentation is published prior to qualifying bidders being appointed.

11.2.6 All contracts awarded, whether or not through a formal procurement process, must be published in Contracts Finder and in the Official Journal of the European Union (OJEU) (for healthcare services a notice is only required in OJEU where value exceeds a total contract value of £615,278.00).

11.2.7 **Prior Information Notices (PIN): There are two types of Prior Information (PIN) notice – each used in specific circumstances as follows:**

11.2.7.1 Standard PIN notice

- This is used as a method to notify the market of intentions in advance. This is typically used to encourage, increase and stimulate interest within the market place. An example of a PIN notice may be advertising a CCG's desire to look at Dermatology and include basic information such as anticipated timescales, overview of service, low level finance information and anticipated start date of procurement etc. This PIN notice has to be live for 35 days and for a maximum of 12 months i.e. you would have to start the procurement for the Dermatology service within 12 months of placing the PIN otherwise it would then become void. The Light Touch Regime, under which Healthcare falls, allows a CCG flexibility to create bespoke procurement process within timescales that a CCG feels appropriate.
- Under Public Contract Regulations (PCR) 2015 a new, second type of PIN notice has been introduced and this is now growing in popularity:

11.2.7.2 PIN acting as a 'call for competition'

- This is used as an actual advert so, for instance, if you wanted to procure Dermatology but were not sure of the level of market interest one option would be to place a PIN acting as a call for competition. The PIN is live for 35 days (mandatory) and providers are able to view the details (along with specification) to assess their interest. If they wish to express their interest, they respond to the PIN and their interest is logged. At the end of the 35 days the PIN closes and the expressions counted and logged. Only the providers who have expressed an interest to the PIN are then invited to the ITT process at a later date (Note – even the current provider (if any) has to respond with their interest to the PIN; without an expression

of interest no invitation will be issued to respond to the ITT). The subsequent procurement must be commenced within 12 months.

- Using a PIN like this is a good way to assess interest rather than going into an ITT process blind. For example, it is better to receive 50 expressions of interest to a PIN as a call for competition rather than 50 ITTs in response to an Open process. Using a PIN affords the commissioner the chance to design the procurement process and complexity around the number of interested bidders and type of bidders. If only one expression of interest is received then this is still sufficient evidence for compliance with PCR 2015 and providing the supplier is able to meet the specification, it is possible to direct award to them.

11.3 Non-Competitive Tendering

11.3.1 Where it is determined that a service/s are capable of being provided only by one provider or there is an urgent clinical need, it may be appropriate to proceed with “single tender action”, where a contract is awarded to a single provider – or a limited group of providers – without competition.

11.3.2 When considering a single tender action, it is crucial to ensure appropriate steps have been taken to identify other capable providers and whether or not the service will still represent value for money; evidence for this must be retained. Also whether or not there are potential conflicts of interest.

11.3.3 Regulation 32 of PCR 2015 states that a direct award with no competition, known as Negotiation procedure without prior publication, can be made if one of the following three stipulations can be met:

- No bids or no suitable bids in response to a procurement exercise (Open or Restricted).
- Technical reasons i.e. the service can only be provided by that provider for clinical reasons and this can be evidenced and justified appropriately.
- Reasons of extreme urgency due to unforeseen circumstances – this cannot be due to poor planning; it is normally due to pandemic or emergencies etc.

11.3.4 Commissioners must keep a record of the reasons for the decision for audit purposes.

11.3.5 The commonly used methodology for awarding a contract under such conditions is a Voluntary Ex Ante Transparency (VEAT) notice. First introduced in December 2009, a VEAT allows purchasers to issue an award to an organisation they believe to be the only body able to provide the service required. VEAT notices, which state the award of a contract, will typically be reported in the Official Journal of the European Union (OJEU).

11.3.6 Once published, a VEAT allows organisations which feel they could have competed for the contract a ten day ‘standstill period’ in which to mount a legal challenge. After that date, no later challenge can be lodged.

11.3.7 Contract Variation

- Contract variations are treated the same as any other spend and are addressed within PCR under Regulation 72. There are 6 tests that determine whether a variation can take place and provide appropriate justification accordingly. Commissioners are advised to approach the tests in order of appearance below.
- It is important to note that under PCR all variations for the life of the contract must be aggregated and included – you are not undertaking the tests for the change in isolation.

No	Test	Description
1	Threshold test	Variation cannot be more than 10% of the original value of the contract and/or above £615,278.00.
2	Provided for in contract test	The potential for this variation was included within the original procurement documentation at the ITT stage.
3	Materiality test	The variation cannot be a material change (material change is normally linked to 10% of the total value).
4	Inconvenience test	Additional services have become necessary that were not included in the original procurement and can only be provided by that supplier for technical reasons or to avoid significant duplication of costs. Cannot exceed 50% of costs.
5	Unexpected circumstances test	Changes required due to unforeseen circumstances - this would be an urgent change in legislation due to clinical need for example.
6	Takeover test	Provider is taken over by new provider.

- There is an approvals process within the Scheme of Delegation which must be followed for Contract Variations. It is important to check with the Surrey Heartlands procurement team prior to taking action to ensure a Variation is the correct approach and to avoid potential future challenge.

11.3.8 Any Qualified Provider (AQP)

- Under AQP, any provider who can meet quality requirements and agree to set prices (“tariff”) is accredited to deliver the service. Providers have no volume guarantees and service users will decide which provider they wish to use to carry out their treatment.
- To determine whether the use of AQP is appropriate, CCGs must consider the characteristics of the service and the local healthcare system. One of the key determinants of the suitability of AQP is whether the circumstances of the service enable the patient to be put in a position to exercise choice.

- AQP is suitable for planned community based services and is not suitable for urgent and emergency care services. Some examples where AQP might be suitable are some Dermatology services, Podiatry services, Anti Coagulation Services, Primary Eye Care Assessment Services and Adult (age related) Audiology services.
- Where AQP is used, the service specification, pricing structure, key contractual terms and assessment criteria needs to be determined before advertising. Once advertised, potential providers will complete an accreditation questionnaire. All providers who:
 - meet quality requirements;
 - agree to meet the Terms and Conditions of the NHS Standard Contract;
 - accept the standard price for the service; and
 - provide assurances that they are capable of delivering the agreed service requirements,
 - agree to advertise their services on Choose and Book will become accredited providers subject to satisfactory achievement of this criteria.
- Care should be taken around the quality standards set otherwise a CCG may have a large number of providers and the consequent contract management workload or too few to enable adequate patient choice.

11.3.9 Timescales for Healthcare Procurement

- The length of time procurement for healthcare services takes will vary according to the requirements of the specific procurement and what procurement process is used. As an indication, a typical procurement will take 5-6 months from placing the advert in OJEU & Contracts Finder to awarding the contract. This does not include pre-procurement activities such as market research, consultation, Social Value assessment, producing the service specification, etc. A procurement exercise can take less or more time depending on complexity, time allowed for bidder responses and the length of the evaluation period etc.
- See Appendix C for a checklist of procurement options and the advantages/disadvantages of each.

11.3.10 Partnership Agreements with Local Authorities

- National policy and local strategies both promote the increased integration of health and social care services - several mechanisms exist to support joint commissioning of services across health and social care:

11.3.11 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.
- Joint funding arrangements involve establishing pooled budgets where each partner makes defined contributions to a single fund, to be spent on jointly agreed services or projects, or to support functions delegated from one partner to the other.
- Delegation of statutory functions typically involves one organisation acting as lead commissioner on behalf of the partnership. The lead commissioner becomes responsible for carrying out the delegated functions and activities on behalf of the other partner(s) in order to achieve the specified objectives of the partnership. Although functions can be delegated, each partner remains liable for their own statutory duties.

11.3.12 Section 256 (S256) Agreements

- Section 256 Agreements were established through the NHS Act 2006 and subsequently updated through the Health and Social Care Act 2012.
- Section 256 Agreements allow NHS commissioners to make payments to Local Authorities towards any Local Authority expenditure which in the opinion of a CCG 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.
- Section 256 Agreements 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.
- Section 256 agreements are not subject to formal procurement processes, as the CCG is not directly commissioning or contracting for goods or services in this instance.
- However, Section 256 agreements must comply with any relevant Directions published by the Secretary of State. The latest Directions (May 2013) set out 2 key conditions for Section 256 agreements:
 - A CCG must be satisfied that the Section 256 transfer will be a more effective use of public funds than using the equivalent funding directly on health commissioned services.
 - So far as practicable, a CCG must ensure that the payment is used by the recipient in such a way as will secure the most efficient and effective use of the transferred funds.

11.3.13 Better Care Fund

- In addition to the two types of partnership agreement described above, the Better Care Fund (BCF) is a nationally mandated pooled budget across Health and Social Care.
- The BCF represents a unique collaboration between NHS England, the Ministry of Housing, Communities and Local Government (MHCLG), Department of Health and Social Care (DHSC) and the Local Government Association. The four partners work closely together to help local areas plan and implement integrated health and social care services across England, in line with the vision outlined in the NHS Five Year Forward View. It seeks to join-up health and care services, so that people can manage their own health and wellbeing and live independently in their communities for as long as possible.
- One of the most ambitious programmes ever introduced across the NHS and local government, the BCF encourages integration by requiring CCGs and local authorities to enter into pooled budgets arrangements and agree integrated spending plans. The conditions associated with the plans are:
 - Funding must be used for social care services which also have a health benefit
 - Local Authorities must have the agreement of their local CCGs regarding how the funding is used and the expected outcomes to be achieved
 - Local Authorities must be able to demonstrate that the transferred funding will improve social care services and outcomes for service users, in comparison with plans which do not include the funding transfer.

11.3.14 Spot Purchasing

- There may be the need to spot purchase contracts for particular individual patient needs or for urgency of placement requirements at various times. At these times, a competitive process may be waived. It will be expected that these contracts will undergo best value reviews to ensure the CCG 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 Scheme of Delegation for the CCG. In all cases the CCG should ensure that the provider is fit for purpose to provide the particular service.
- Any requirement to spot purchase will be carried out in accordance with the CCGs Prime Financial Policies.

11.3.15 Framework Agreements

- CCGs are able to use other public sector organisations framework agreements if a provision has been made in the framework agreement to

allow this. EU rules currently state that framework agreements should be for no longer than four years in duration.

- Where it is allowed for in a framework agreement there may be an option to run a mini competition. Here all providers on the framework who can meet requirements are invited to submit a bid, these are then evaluated and a contract awarded following the same processes as for tenders. Any contract awarded can run beyond the framework agreement period but the length of the contract extension must be reasonable.

11.3.16 Pilot Projects

- Pilot projects may be commenced in circumstances where clinical outcomes are not known or when outputs can't be predicted. They will be commenced in circumstances with a defined period, including evaluation and where the value is not believed to exceed any set levels. Pilot projects must comply with all relevant procurement rules and policies.

12. Procurement Register

12.1 The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013 sets out under Regulation 9 that:

- a) A relevant body must maintain, and publish on the website maintained by the Board under regulation 4(1), a record of each contract it awards for the provision of health care services for the purposes of the NHS.
- b) Such a record must, in particular, include in relation to each contract awarded
 - o (a) the name of the provider and the address of its registered office or principal place of business,
 - o (b) a description of the Healthcare Services to be provided,
 - o (c) the total amount to be paid or, where the total amount is not known, the amounts payable to the provider under the contract,
 - o (d) the dates between which the contract provides for the services to be provided, and
 - o (e) a description of the process adopted for selecting the provider.

12.2 In addition, statutory guidance on managing Conflicts of Interest for CCGs requires that CCGs publish information along with the details of who made any decision regarding how conflicts of interest were managed. Following formal award of a contract after procurement, each CCG's Procurement Register will be updated with this information and published on its website.

13. Conflicts of Interest

- 13.1 The National Health Service (Procurement, Patient Choice and Competition) Regulations (No.2) 2013 sets out high level requirements on managing conflicts of interest for the procurement of healthcare.
- 13.2 The regulations state that a CCG must not award a contract where conflicts or potential conflicts exist between the interests involved in commissioning such services and the interests involved in providing them affecting, or appearing to affect, the integrity of the award of that contract. In situations where such circumstances could arise, mitigating measures must be taken to ensure any conflicts are eliminated. For example, it will be appropriate to engage separately with staff involved in commissioning and staff involved in providing services.
- 13.3 In relation to each contract that is entered into, a CCG must maintain a record of how it managed any conflict that arose between the interests in commissioning the services and the interests involved in providing them.
- 13.4 Therefore, as part of any procurement process, all participants will have to sign a Conflict of Interest Declaration before any involvement. Any conflicts or potential conflicts must be managed to determine whether the individual who has declared such conflict or potential conflict can be involved in the procurement.
- 13.5 Examples of conflicts of interest include:
- Having a financial interest (e.g. holding shares or options) in a Potential Bidder or any entity involved in any bidding consortium, including where such entity is a provider of primary care services or any employee or officer thereof (Bidder Party);
 - Having a financial or any other personal interest in the outcome of the Evaluation Process;
 - Being employed by or providing services to any Bidding Party;
 - Receiving any kind of monetary or non-monetary payment or incentive (including hospitality) from any Bidder Party or its representatives;
 - Canvassing, or negotiating with, any person with a view to entering into any of the arrangements outlined above;
 - Having a close family member who falls into any of the categories outlined above; or
 - Having any other close relationship (current or historical) with any Bidding Party.
- 13.6 The above is a non-exhaustive list of examples and it is the participant's responsibility to ensure that any and all conflicts or potential conflicts – whether or not of the type listed above – are disclosed in the declaration prior to participation in the procurement process.
- 13.7 Any disclosure will be assessed by the Procurement Programme Board, the ultimate decision lying with the Senior Responsible Officer in the case of

disagreement, on a case-by-case basis. Individuals will be excluded from the procurement process where the identified conflict is, in the Awarding Authority's belief, material, and cannot be mitigated or reasonably dealt with in another way.

- 13.8 Most recently with the development of GP Federations, clinicians via CCGs, are given public money in order to commission healthcare which may potentially be provided by themselves and colleagues (emergent ACOs, GP Federations, Super Partnerships) thus creating real or perceived conflicts of interest. In order to mitigate any conflicts procurement, managers need to consider the involvement of clinicians from out of the area or retired GPs who understand the local demographics. If using clinicians locally, those involved in GP Federations or service provision of any kind, may need to be excluded from certain meetings and decision-making forums.

14. Surrey Heartlands' CCGs Procurement Process/ Governance

14.1 The following table specifies the activities required for a typical procurement. These will alter in terms of their importance and relevance depending on the complexity and value of the contract to be awarded.

14.2 This process will ensure appropriate governance throughout the procurement process programme.

No.	Activity	Agreed By	Notes
1.	<ul style="list-style-type: none"> Identify end objective/goals of procurement. Describe overall mission statement defining scope, schedule and resources/budget. Understand budget and relative flexibility between budget, scope, schedule and resources. Consult NHS Improvement guidance on how to purchase high quality healthcare services https://www.gov.uk/government/publications/procurement-patient-choice-and-competition-regulations-guidance 	Senior Responsible Officer	<i>Project Lead to initiate discussion regarding the procurement opportunity and work with wider stakeholders to scope the remit of the project.</i>
2.	<ul style="list-style-type: none"> Author Project Initiation Document, including Business Case, to be scoped and developed by Project Lead. This should include an outline of the contract situation e.g. expiry, new service requirement, need for competition, some initial market research. Seek confirmation of the need to establish a procurement programme board. 	Exec Team	<i>Depending on the value of the contract a paper may additionally be required at Surrey Heartlands Committees</i>
3.	<ul style="list-style-type: none"> Establish governance for the procurement process e.g. Procurement Programme Board of appropriate individuals to manage the procurement process. Author Terms of Reference for this forum. 	Exec Team	<i>Terms of Reference must detail the objectives for the forum, the limitations of the forum's responsibility, quoracy for decision making/ proposals and identification of any sub groups relevant to the procurement programme.</i>

No.	Activity	Agreed By	Notes
4.	Identify key stakeholders, including service users, and obtain agreement to participate in process. Ensure procurement goals meet the expectations of key stakeholders.	Exec Team	<i>Not all procurement programmes will merit sub groups but this should be considered at the outset.</i>
5.	<p>Appoint leads for sub-groups required to support the procurement programme as appropriate. For example:</p> <ul style="list-style-type: none"> • Specification Lead – Service Specification • Clinical Reference Group – input into Service Specification and evaluation criteria • Contract Lead • IG Lead - input to service specification and evaluation criteria • IT Lead – input to service specification and evaluation criteria • HR Lead - input to service specification and evaluation criteria. Oversee TUPE implications and strategy. • Estates Lead - input to service specification and evaluation criteria. Oversee Estates implications and strategy. • Finance Lead – Baseline financial information and input into FMT design and evaluation. • BI Lead – Baseline activity modelling and input into activity forecasting. <p>Ensure that these leads are available for evaluation.</p>	Procurement Prog Board	<i>Additional admin resource may be required if each of the sub-groups meet regularly as Minutes of all meetings must be kept and filed.</i>

No.	Activity	Agreed By	Notes
6.	Establish a shared repository for all documentation relating to the procurement and communicate its existence and filing guidelines.	Procurement Prog Lead	
7.	Research the available procurement options and work up timelines and associated resource implications for each. This will require an understanding of the need to undertake stakeholder engagement, research into current and future service provision, the need to engage independent consultancy, legal review etc as well as the usual procurement activities of preparing a service specification, contract, PQQ and ITT documentation.	Project Lead	
8.	<ul style="list-style-type: none"> • Author an Options Appraisal and Recommendation Paper including comparative timelines, costs, resourcing commitments and budgets. • Identify project deliverables making sure they are correlated to goals; breakdown activity required in order to reach end objectives. • Identify key project events/dates. • Submit to Surrey Heartlands Committees to seek approval for the strategic procurement approach to be adopted. 	Surrey Heartlands Committees	
9.	Author a Health Impact Equality and Diversity analysis to ensure the procurement objective can be fulfilled before work commences in error; also to identify gaps that will need addressing.	Project Lead	<i>This document should be revisited throughout the procurement and updated to provide an audit trail of considerations and actions undertaken as a consequence of issues it may identify.</i>
10.	Author a Privacy Impact Assessment analysis	Project Lead	<i>As above.</i>

No.	Activity	Agreed By	Notes
11.	Author a Social Value Impact Assessment analysis	Project Lead	<i>As above.</i>
12.	<ul style="list-style-type: none"> • Establish and maintain Registers for Conflicts of Interests and Confidentiality Statements. • Ensure any identified Conflicts of Interest are recorded and mitigating action (if any) is noted. 	Procurement Prog Lead	
13.	<ul style="list-style-type: none"> • Identify and appoint evaluators and moderators. • Issue diary alerts for these individuals to ensure they are aware of the commitment required of them and to provide as much notice as possible. 	Procurement Prog Lead	
14.	Produce Minutes of Meetings and Action Logs for all governance and work-stream meetings.	Procurement Prog Lead	
15.	Establish and maintain an overarching Risk Register delineated by work-stream/theme. Feed into Corporate Risk Register any risks deemed appropriate.	Project Lead	
16.	Publish a Prior Information Notice (PIN) to alert the market to the procurement opportunity.	Project Lead	
17.	<p>Undertake Public and Stakeholder engagement as required:</p> <ul style="list-style-type: none"> • <i>Public Engagement</i> - to research the current levels of satisfaction with the service; support compliance with Equality & Diversity obligations, understand service users and carers desires for the service and to inform the authoring of the Service Specification. A programme of engagement will likely be necessary across a variety of communications media. 	Procurement Prog Board & Comms Sub Group	<i>Procurement activity must be proportionate to the contract value. This stage may be scaled accordingly or may not be appropriate at all.</i>

No.	Activity	Agreed By	Notes
	<ul style="list-style-type: none"> • <i>Stakeholder Engagement</i> – to test market appetite for the procurement and contracting models including contract term; to assess appetite for the commercial model; to research the market regarding service and associated IT innovations. It is likely more than one stakeholder engagement event will be required to feedback on the service specification as it progresses to completion. • Project Lead to report findings to Procurement Programme Board. 		
18.	Strategic/mapping workshop to assess the outreach for the service, identify any overlap/ duplication within the system which will require mitigation and to analyse activity data and predict/model future anticipated activity.	Procurement Prog Board & BI Sub Group & Finance Sub Group	<i>Not all procurement programmes will merit such a workshop but this should be considered at the outset.</i>
19.	Clinical Reference Group to review engagement, provider feedback and draft service specification	Clinical Reference Group	<i>Clinical Reference Group to sign off clinical aspects of service specification.</i>
20.	Agree activity dataset	BI Sub Group & Finance Sub Group	
21.	Agree financial envelope/commercial model	Finance Sub Group	
22.	Clinical Committees to approve final service specification	Clinical Committees	

No.	Activity	Agreed By	Notes
23.	Procurement Programme Board to approve all tender documentation including PQQ/ITT, FMT, draft Contract and all appendices.	Procurement Prog Board	
24.	Committee/ Governing Bodies to approve, in line with scheme of delegation, all tender documentation including PQQ/ITT, FMT, draft contract and all appendices.	Committee/ Governing Bodies	
25.	Issue PQQ/ITT	Project Lead	
26.	<ul style="list-style-type: none"> • Arrange evaluator/moderator training session. • Author Evaluator/Moderator Handbook and distribute in support of evaluation exercise. 	Procurement Prog Lead	<i>The evaluation team is required to undertake training in order to ensure that they are appraised of each particular procurement opportunity and in case evaluation processes have changed. Ideally this training should take place in a face to face forum; a contingency conference call should be arranged for any evaluator/moderator not able to attend in person.</i>
27.	Evaluate and moderate PQQ/ITT responses	Procurement Prog Board & appointed evaluators	<i>The Surrey Heartlands' CCGs use a web based portal for evaluation, usually the AWARD system. Bidder responses are uploaded to the portal and evaluators log on to conduct assessments. Evaluators are only granted access to the questions they are personally evaluating. Moderators have sight of bidder responses to the questions they are moderating and the evaluations previously conducted. Using a portal such as AWARD provides an audit trail of procurement activity and supports the procurement team in the compilation of outcome letters to all bidders.</i>
28.	Governing Body to approve Preferred Provider	Governing Bodies	<i>This will entail authoring a Governing Bodies Report detailing the objectives for the procurement, methodology undertaken, parties to the contract, and number of bids</i>

No.	Activity	Agreed By	Notes
			<i>received, evaluation outcome and recommendation for the Preferred Bidder.</i>
29.	Observe standstill period – Alcatel	All	<i>The Alcatel mandatory standstill period is a period of at least ten calendar days following the notification of an award decision in a contract tendered via the Official Journal of the European Union, before the contract is signed with the successful supplier(s). Its purpose is to allow unsuccessful bidders to challenge the decision before the contract is signed. It is named after a pair of linked European Court of Justice cases which are jointly known as the Alcatel case (Case C-81/98). Within the UK, it was introduced by the Office of Government Commerce in 2005.</i>
30.	Issue Contract	Project Lead & Contract Lead	<i>A draft of the Contract will have been issued to Bidders with the procurement documentation. Following the procurement process the Contract will need to be completed with the Preferred Supplier details, the bid response appended to the contract and any discussions regarding contract terms held between the preferred provider and the Awarding Authority.</i>
31.	Service Mobilisation	Project Lead	<i>As Mobilisation precedes the commencement date it is critical it is built into the project plan with realistic timescales.</i>
32.	Author Lessons Learnt Report	Procurement Prog Lead	
33.	Update and publish Register of Procurement Decisions on CCG websites per NHSE COI Guidance June 2016	Procurement Prog Lead	

- 14.3 To ensure that the Governing Bodies are aware of all current and upcoming procurement activity, including timelines, a regular report including a Procurement Register is presented to the Executive Team. The latest Executive Procurement Report is included in the Chief Finance Officer's regular report to Governing Bodies.
- 14.4 The Surrey Heartlands' CCGs individual Schemes of Delegation detail the delegated duties/authorities relating to contract award.

15. Bibliography

- <http://www.legislation.gov.uk/>
- <https://www.gov.uk/guidance/public-sector-procurement-policy>

16. Appendix A - Healthcare Procurement Decision Making Flowchart

This Procurement Decision Flow Chart enables the Commissioner to see at a glance the process to follow and next steps. This should be used as a guide; further advice can be sought from the CCGs Procurement Team.



17. Appendix B – Procurement Check List - Decision Making Support Tool

Service to be commissioned:	
Estimated Value per Year:	
Planned contract period:	
Total contract value:	
Current contract expiry date (if applicable):	
Current provider(s) (if applicable):	

Lead Commissioner Name:	
Position:	
CCG:	

The purpose of the following questions is to help guide the commissioner's decision making process. The following questions should not be used as a purely mechanistic process for determining the commissioning approach. (For further guidance please refer to the notes before completing the tables below, and guidance issued by NHS Improvement).

1 - Questions commissioners should ask themselves when reviewing a healthcare service:-

What are the needs of the health care service users we are responsible for?	
How good are current services? Can we improve them?	
How can we make sure that the services are provided in a more joined-up way with other services?	
Could services be improved by giving service users a choice of provider to go to and/or by enabling providers to compete to deliver services?	
How can we identify the most capable provider or provider of the services?	
Are our actions transparent? Do people know what decisions we are taking and the reasons why we are taking them?	

How can we make sure that providers have a fair opportunity to express their interest in providing services?	
Are there any conflicts between the interests commissioning services and those providing them?	
Are our actions proportionate? Do they reflect the value, complexity and clinical risk associated with the services in question and are they consistent with our commissioning priorities?	

2 – Questions commissioners should consider when preparing to re-commission a service.

Market Capability Assessment (insert details of understanding of the market)

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INDICATORS FOR ANY QUALIFIED PROVIDED	Yes/No	Justification
Services can be provided by a range of providers		
It would be in the interests of service users to provide/increase patient choice, or it is a service for which patient choice must be offered.		
Are there service access inequalities?		
Is there a national or local tariff, or could a local tariff be developed?		

INDICATORS FOR COMPETITIVE PROCUREMENT	Yes/No	Justification
Competition would improve services (if not, why not?)		
It would be appropriate for one provider or limited number of providers to provide the service		
There is market for the services		
Competition on quality and price would be appropriate		

INDICATORS FOR DIRECT AWARD	Yes/No	Justification
NO COMPETITION		
Can the requirement be delivered via an existing contract without breaching procurement rules? (A material variation to an existing contract could amount to the award of a new contract).		
Service is patient list related		
Market review and engagement determines that there is only one capable provider		
Patient choice is not relevant		
Service is of low value, which may be relevant to the proportionality of conducting a competitive process.		
Service is closely related or co- located with other services (which could be relevant to whether there is only 1 capable provider).		

Decision:
Justification:

Guidance Notes

Background

Health Care (Clinical) Services contracts are subject to the Public Contracts Regulations 2015 in so much as they apply to Schedule 3 services. When procuring, CCGs must act TRANSPARENTLY, EQUITABLY, PROPORTIONATELY and in a NON-DISCRIMINATORY manner. They also require Commissioners to procure health care services to **secure the needs of service users** and to **improve quality and efficiency**, to procure services that are **value for money** and only from **capable providers**. Where it is decided to procure a service and where there is more than one capable provider the requirements must be advertised.

Procurements of health care (clinical) services must also be carried out in accordance with the Public Contract Regulations 2015 (PCR) and the NHS Procurement, Patient Choice and Competition (No.2) Regulations 2013 (PPCC) which exercise the powers the Secretary for Health has under the Health and Social Care Act 2012.

NHS Improvement has published guidance to support commissioners in understanding and operating in accordance with the regulations, which is available at <https://improvement.nhs.uk/>.

18. Appendix C – Advantages and Disadvantages of Healthcare Procurement Routes

Potential Procurement Route	When it may be considered	Advantages	Disadvantages	Estimated Maximum Timescale ³
Open tender (Combined Response Document)	<ul style="list-style-type: none"> Limited competition anticipated (i.e. few suppliers in the market) Niche requirement Patient /population need identified Specification, outcomes and KPI's determined pre-procurement 	<ul style="list-style-type: none"> Open to all suppliers Doesn't restrict small/medium enterprises Contract currency determined pre-procurement 	<ul style="list-style-type: none"> Volume of responses may be high and all will require evaluation 	6 months maximum (does not require PQQ stage; may require TUPE period before contract start)
Restricted tender	<ul style="list-style-type: none"> Large market available for competition Patient/population need identified Specification, outcomes and KPI's generally determined pre-procurement but can be refined during preliminary stages. 	<ul style="list-style-type: none"> Two-stage process that can minimise impact of resources by restricting the number competitors Contract currency determined pre-procurement 	<ul style="list-style-type: none"> Could limit the number of suitable bidders Ability to demonstrate VFM reduced 	6-9 months maximum (may require TUPE consultation period before contract start)
Competitive Dialogue	<ul style="list-style-type: none"> Insufficient suitable suppliers available Requires market development Complex contract where the contracting authority cannot define requirements on its own 	<ul style="list-style-type: none"> Flexible approach to complicated procurements Increases competition and encourages innovation 	<ul style="list-style-type: none"> Resource intensive to carry out dialogue phase Innovative approaches may vary making it difficult to evaluate bids on a like for like basis 	12 months

³ from publication of the service specification and notice to tender to appointment of a preferred bidder

Potential Procurement Route	When it may be considered	Advantages	Disadvantages	Estimated Maximum Timescale ³
		<ul style="list-style-type: none"> • Specification and funding model are only developed during the process 	<ul style="list-style-type: none"> • Risk to equal treatment of providers of same dialogue is not undertaken with all the preselected providers 	
Negotiated Procedure	<ul style="list-style-type: none"> • No valid or suitable response received under Open or Restricted procedures • When only one supplier may provide the service for technical, artistic or intellectual property right reasons • Requirement is for research, experiment, study or development 	<ul style="list-style-type: none"> • Contract terms are negotiated upfront from a selection of potential suppliers • Assists in clearly defining the requirement and a selected number of bidders 	<ul style="list-style-type: none"> • Resources intensive to carry out negotiations 	6 months maximum – but often follows an Open or Restricted process which has not identified a suitable provider
Framework Agreement Call-off	<ul style="list-style-type: none"> • Where an existing framework has been implemented, that satisfies all service requirements • Where the contracting authority is qualified to use it • Where framework allows call off without undertaking further competition 	<ul style="list-style-type: none"> • Reduces timescales • Key terms have been agreed with suppliers appointed under the framework 	<ul style="list-style-type: none"> • Specification is fixed and cannot be varied once framework is implemented 	6-9 months maximum to establish the framework, but once implemented call offs can take 1-3 months
AQP (Any Qualified Provider)	<ul style="list-style-type: none"> • Community based activities where local tariff has been agreed 	<ul style="list-style-type: none"> • Designed to be a quicker process • Pre-qualifies potential providers, providing a 	<ul style="list-style-type: none"> • Initial accreditation may involve processing a large volume of applications 	3-4 months maximum

Potential Procurement Route	When it may be considered	Advantages	Disadvantages	Estimated Maximum Timescale ³
	<ul style="list-style-type: none"> Where facilitating patient choice is a key local priority 	<ul style="list-style-type: none"> 'pool' of potential supply Supports Patient Choice as service users decide which qualified provider to use 	<ul style="list-style-type: none"> Stage 1 accredited providers may never qualify to supply May not generate large/sufficient interest, as no volume guarantees are given Does not encourage new providers as there is no guarantee of return on investment 	

19. Appendix D - Overview of the Public Procurement Regime

Before deciding whether a contract is going to be awarded following:

- a competitive process
- using Any Qualified Provider (AQP)
- a framework agreement
- a Single Tender Action
- other direct award without competition

It is essential that commissioners are aware of the rules and regulations that apply.

National Health Service (Procurement, Patient, Choice and Competition) Regulations (No 2) 2013

CCG must ensure that it complies with other national legislation that applies to its procurement activities. On 1 April 2013, the National Health Service (Procurement, Patient, Choice and Competition) Regulations (No 2) 2013 came into force, hereafter referred to the “Regulations”.

The Regulations apply to all health care services contracts entered into by CCGs for the purpose of the NHS (excluding pharmaceutical services) and contain a number of requirements that CCGs must comply with to ensure that they:

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

The Regulations set out the following core three-fold objective that commissioners must pursue when procuring NHS health care services:

- Securing the needs of health care service users
- Improving the quality of services
- Improving the efficiency with which services are provided, including through the services being provided in an integrated way

The CCGs must also pursue this objective when taking decisions that do not in themselves result in the award of a services contract, such as deciding which providers to enter into a framework agreement with and selecting providers to bid for potential future contracts.

In deciding whether a CCG has acted in accordance with this objective, NHS Improvement is likely to consider:

- The extent to which the CCG has engaged with the local community to identify their health care needs including related needs

- Whether the CCG has considered the needs of all health care users for which it is responsible
- Whether it has identified areas for improvement in advance of procuring services
- Whether the CCG has considered how the health care needs of the population can be best secured
- How the quality and efficiency of services might be improved

The Regulations set out some general and particular requirements that commissioners must comply with in order to achieve this core objective. They adopt a principles-based approach that is intended to give commissioners flexibility.

More generally, the CCG must:

- Act in a transparent, proportionate and non-discriminatory way
- Procure services from the providers most capable of achieving the three
- fold objective set out above
- Consider appropriate ways of improving services including through
- services being provided in a more integrated way,
- enabling providers to compete to provide services, and,
- allowing service users a choice of provider

More specifically, the Regulations contain specific requirements that the CCG must

- comply with when deciding whether and how to publish contract opportunities for NHS health care services. These require the CCG to:
- Ensure that arrangements exist for enabling providers to express an interest in providing any NHS health care services
- Publish a contract notice (which must contain certain information) on the website maintained by NHS England where it decides to publish an intention to seek offers from providers in relation to a new contract for the provision of NHS health care services

The Regulations provide that the CCG can award a new contract to a single provider

- without publishing an intention to seek offers from providers where it is satisfied that the services are capable of being provided only by that provider.

In addition, the Regulations set out requirements relating to the CCGs' procurement activity that cover:

- Establishing and applying qualification criteria
- Record-keeping
- Obtaining assistance and support when commissioning services
- Managing conflicts of interest
- Anti-competitive behaviour

- f) Patient choice

NHS Improvement has been given the role of ensuring that commissioners have acted within the legal framework established by the Regulations. It has issued guidance on the substantive provisions of the Regulations and separately, some guidance on its enforcement priorities in relation to the Regulations. The CCGs must refer to these guidance documents to ensure that they are complying with their legal obligations under the Regulations.

Public Services (Social Value) Act 2012

The Public Services (Social Value) Act 2012 (“Act”) came into force on 31 January 2013.

Essentially, the Act requires contracting authorities (which includes the CCGs) to consider, before commencing the formal procurement process for awarding a services contract (including health care services):

- How what is proposed to be procured might improve the economic, social and
- environmental well-being of the relevant area
- How, in conducting the process of procurement, it might act with a view to securing that improvement

In considering the second bullet point above, the CCGs must consider only matters that are relevant to what is being procured and the extent to which it is proportionate to take those matters into account in the circumstances. They must also consider whether to undertake any consultation in fulfilling their duty under the Act. The CCGs must comply with this duty except where an urgent need to arrange the procurement in question makes it impractical to do so (such urgency must not be attributable to undue delay brought about by the relevant CCG).

The CCGs should refer to the Cabinet Office’s Procurement Policy Note¹ which gives advice to commissioners on complying with the duties under the Act.

Other relevant Legislation and Guidance

Other legislation and guidance affecting procurement include but is not limited to:

- Section 242 of the National Health Service Act, 2006 which provides that
- commissioners of healthcare services have, in relation to health services for which they are responsible, a legal duty to consult service users and the public – directly or through representatives – on service planning, the development and consideration of services changes and decisions that affect service operation
- NHS Standards of Procurement which was revised and republished in June 2013
- Equality Act 2010 and the Public Sector Equality Duty aims supported by the guidance supplied by the Equality & Human Rights Commission in 2014 titled ‘Buying Better Outcomes’.

The CCGs are aware of the need to keep this Policy up to date and to monitor any changes in legislation. The CCGs must take note of any additional guidance, standards,

policies and other forms of 'soft' law that might impact on this Policy and the CCGs' approach to procurement

Transfer of Undertakings and Protection of Employment Regulations 2006 (TUPE)

The TUPE regulations enact the EU Acquired Rights Directive (Directive 2001/23). They apply when there are transfers of staff from one legal entity to another as a consequence of a change in employer. This is a complex area of law which is continually evolving.

Commissioners need to be aware of these and the need to engage HR support and possibly legal advice if there is likely to be a TUPE issue. Additionally, NHS Bodies must follow Government guidance contained within the "Cabinet Office Statement of Practice

- 2000/72, (COSOP) as amended or replaced from time to time and associated Code of
- Practice 2004 as amended or replaced from time to time when transferring staff to the
- Private Sector" also known as "COSOP".

The CCGs shall seek to provide bidders participating in a procurement with sufficient information for the bidders to be able to determine whether TUPE will apply to the procurement. It will ensure that adequate time is built into procurement timelines where it is anticipated that TUPE may apply.

Light Touch Regime

The new light-touch regime (LTR) is a specific set of rules for certain service contracts that tend to be of lower interest to cross-border competition. Those service contracts include certain social, health and education services, defined by Common Procurement Vocabulary (CPV) codes. The list of services to which the Light-Touch Regime applies is set out in Schedule 3 of the Public Contracts Regulations 2015.

The main mandatory requirements under the Light Touch Regime are:

- Official Journal of the European Union (OJEU) Advertising: The publication of a contract notice (CN) or prior information notice (PIN) except where the grounds for using the negotiated procedure without a call for competition could have been used, for example where there is only one provider capable of supplying the services required.
- The publication of a contract award notice (CAN) following each individual procurement, or if preferred, group such notices on a quarterly basis.
- Compliance with Treaty principles of transparency and equal treatment.
- Conduct the procurement in conformance with the information provided in the OJEU advert (CN or PIN) regarding: any conditions for participation; time limits for contacting/responding to the authority; and the award procedure to be applied.

- Time limits imposed by authorities on suppliers, such as for responding to adverts and tenders, must be reasonable and proportionate. There are no stipulated minimum time periods in the LTR rules, so contracting authorities should use their discretion and judgement on a case by case basis

20. Appendix E - Commissioning medicines in service redesign

Medicines are the most common treatment intervention and used in most services and pathways. Therefore, it is vital that services and care pathways which include medicines are safe, deliver improved patient outcomes, offer patient choice, a good patient experience and provide clinically effective and cost effective treatment. The term “medicines” also refers to devices, dressings and other healthcare products (such as oral nutritional supplements).

Recommendations

- Ensure that the supply and administration of medicines is considered in the early stages of the service redesign process.
- Consider how medicines included in the service will be supplied, for example; on an FP10; under a Patient Group Direction (PGD); direct supply of medicines or appliances to be personally administered.
- Ensure medicines supply systems are in place when a new service opens or starts.
- Medicines included in the service should comply with local formulary recommendations.
- Medicines services should be ratified by the local area prescribing committee if applicable.
- Consider any possible transfer of care issues. For example, when medicines are initiated or stopped – how will this be communicated between different care settings?
- If the service requires any additional funding and/or a prescribing budget (also known as cost centre), consider how this will be funded (programme budgeting or prescribing budget top slice).
- Ensure information about the new service and the key contacts involved are communicated to wider stakeholders, for example community pharmacists.
- Develop processes to monitor and ensure medicines services are safe and appropriate.

Points to consider in service redesign

- How will the service or pathway supply the medicine to the patient; on an FP10 NHS prescription form, under a PGD or supplied directly for personal administration to the patient?
- Will the service or pathway comply with current legislation and NHS regulations? Consider Care Quality Commission (CQC) standards, licences, Standard Operating Procedures (SOPs), policies and processes, controlled drug (CD) safe handling requirements, waste and Value Added Tax (VAT) regulations if necessary.
- Will the service or pathway comply with current evidence and best practice guidance? Consider National Institute for Health and Care Excellence (NICE)

guidelines, the local formulary and prescribing guidelines. Is a risk register or Medication Safety Officer required? Are there processes to allow safer transfer of care relating to medicine issues: www.prescqiipp.info/transfercare

- Will the service or pathway result in a need to decommission services? Consider existing provider contracts and notice periods, the engagement of existing providers and sub-contractors in service redesign, the transition period and how staff transfer will be managed.
- Will the service or pathway have cost implications for the way in which medicines are used compared to current arrangements? Is additional funding required? How will funding be calculated and transferred to the new service? Who will be responsible for funding: the Clinical Commissioning Group (CCG) or NHS England?
- Will the service or pathway be provided by staff adequately trained in the activities required? Consider professional registration, revalidation, clinical governance framework and/or competency frameworks – are these required?
- Will the service or pathway enhance patient safety, understanding of medicines and overall experience?
- Will the service or pathway require Key Performance Indicators (KPIs) and outcome measures to monitor performance? How will the service be monitored - activity measures, quality measures, performance against budget, audit or local Commissioning for Quality and Innovation (CQUINS)?
- Will the service or pathway require access to or advice from a specialist pharmacist? Is it a complex or specialist medicine or are vulnerable service users involved?
- Will the service or pathway require clear lines of responsibility and accountability to be defined? Consider legal liability, clinical governance, financial governance, professional ethics and codes of practice, employment contracts or inter-organisation responsibilities.

Above all it is important to think about medicine optimisation and to have a holistic approach to patient care by considering the patient as a whole and not focusing solely on one aspect of their treatment.

There are many useful resources available for support

NHS England has some useful resources for commissioners who are considering, and involved in, service reconfiguration:

- www.england.nhs.uk/resources/resources-for-ccgs/#service-change
- www.england.nhs.uk/resources/resources-for-ccgs/comm-for-value/
- NHS Specialist Pharmacy Services have produced two documents to support both commissioners and service providers to help plan, secure and monitor aspects of services that involve medicines
<https://www.sps.nhs.uk/articles/medicines-in-commissioning-resources/>

- FP10 supply: <http://www.nhsbsa.nhs.uk/PrescriptionServices.aspx>
- www.nice.org.uk/guidance/mpg2
- Direct supply:
archive.psn.org.uk/pages/pct_direct_supply_of_medicines_and_appliances.html
- www.supplychain.nhs.uk/casestudies
- <https://www.sps.nhs.uk/articles/optimising-systems-and-processes-of-wound-care-a-qipp-resource-of-good-practice/>

21. Appendix X – Procedural Document Checklist for Approval

Title of document being reviewed:		Yes/No/ Unsure	Comments/ Details
A	Is there a sponsoring director?	Yes	Karen McDowell
1.	Title		
	Is the title clear and unambiguous?	Yes	
	Is it clear whether the document is a guideline, policy, protocol or standard?	Yes	
2.	Rationale		
	Are reasons for development of the document stated?	Yes	
3.	Development Process		
	Do you feel a reasonable attempt has been made to ensure relevant expertise has been used?	Yes	
	Is there evidence of consultation with stakeholders and users?	Yes	Policy authored following experience of undertaking a number of procurements and incorporates Lessons Learned
4.	Content		
	Is the objective of the document clear?	Yes	
	Is the target group clear and unambiguous?	Yes	
	Are the intended outcomes described?	Yes	
5.	Evidence Base		
	Is the type of evidence to support the document identified explicitly?	Yes	Legislation and policy identified
	Are key references cited?	Yes	
6.	Approval		
	Does the document identify which committee/group will approve it?	No	Cover sheet used for appropriate committee
7.	Dissemination and Implementation		
	Is there an outline/plan to identify how the document will be disseminated and implemented amongst the target group? Please provide details.	Yes	Governance function
8.	Process for Monitoring Compliance		
	Have specific, measurable, achievable, realistic and time-specific standards been detailed to <u>monitor compliance</u> with the	Yes	Process adopted by Surrey Heartlands Contracts Team

Title of document being reviewed:		Yes/No/ Unsure	Comments/ Details
	document? Complete Compliance & Audit Table.		
9.	Review Date		
	Is the review date identified?	Yes	September 2020
10	Overall Responsibility for the Document		
	Is it clear who will be responsible for implementing and reviewing the documentation i.e. who is the document owner?	Yes	Amber Byrne
Director Approval			
On approval, please sign and date it and forward to the chair of the committee/group where it will receive final approval.			
Name	Karen McDowell	Date	Sept 2018
Signature			
Committee Approval			
On approval, Chair to sign and date.			
Name		Date	28/09/2018
Signature			

22. Appendix X – Compliance and Audit Table

Criteria	Measurable	Frequency	Reporting to	Action Plan/ Monitoring
All evaluation and moderation staff to complete Declarations of Interest & Confidentiality paperwork	100%	Per procurement	ICS Assurance and on request by Auditors	Individual Procurement Records
All evaluation and moderation staff to undergo training ahead of participating in a procurement evaluation	100%	Per procurement	ICS Assurance and on request by Auditors	Individual Procurement Records
Publication of Contract Award Notice within 30 days of contract award	100%	Per procurement	ICS Assurance and on request by Auditors	Contracts Finder web site https://www.gov.uk/contracts-finder Records Individual Procurement Records
Minimal number of clarification questions received from bidders against a tender (CQs received from multiple bidders regarding the same matter to be counted only once).	85%	Per procurement	Procurement Programme Board and Governing Body/ forum receiving final ratification report	Supporting evidence. A small number of clarification questions indicates the tender documents were comprehensive in explaining the requirements for the service.
Contract signed within a month of contract award	75%	Per procurement	Governing Body/ forum having approved the tender documentation and ratification report	Supporting evidence. A contract signed in a timely manner indicates a clear understanding and acceptance of the provider obligations under the contract terms. It demonstrates the procurement process was thorough, leaving no opportunity for a provider

Criteria	Measurable	Frequency	Reporting to	Action Plan/ Monitoring
				to attempt to alter terms post process.