

# PROCUREMENT POLICY

## November 2015

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NHS Vale of York Clinical Commissioning Group  
PROCUREMENT POLICY

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Please also see “Procurement Summary Guide of Key Points” which provides a high level summary of the key points in relation to Procurement Principles and Legislation

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## 1. INTRODUCTION

- 1.1 Procurement is central to driving quality and value. It describes a whole life- cycle process of acquisition of goods, works and services; it starts with identification of need and ends with the end of a contract or the end of useful life of an asset, including performance management. Procurement encompasses everything from repeat, low-value orders through to complex healthcare service solutions developed through partnership arrangements.
- 1.2 There are a range of procurement approaches available which include working with existing providers, non-competitive and competitive tenders, multi-provider models such as Any Qualified Provider (AQP) and Framework Agreements.
- 1.3 This document describes NHS Vale of York CCG's Procurement Policy. The purpose of the policy is to ensure that when commissioning clinical services NHS Vale of York CCG:-
- :
- complies with the regulatory framework of all relevant legislation and guidance, its own Constitution, Standing Orders, Prime Financial Policies, Scheme of Delegation and Detailed Financial Policies;
  - acts with a view to securing the needs of its local population, and improves the quality and efficiency of clinical services;
  - treats providers fairly and equally and acts in a transparent and proportionate way;
  - provides best value for money; (defined as 'the optimum combination of whole life cost and quality (or fitness for purpose) to meet the user's requirement. This is rarely synonymous with the lowest price. Where an item / service is chosen that does not have the lowest whole life costs, then the additional value added benefits must be clear and justifiable.);
  - ensures that all procurement is conducted honestly and legally, avoiding conflicts of Interests;
  - ensures, where possible, that procurement is undertaken in a sustainable way, minimising the impact on the environment;
  - meets its short and long term objectives; and
  - maintains high standards of public trust and probity in its use of public funds.

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

- 1.4 Other legislation and guidance affecting procurement include:
- Section 11 of the Health and Social Care Act, 2001 requires commissioners of healthcare services to ensure patients and their

representatives are involved in and are consulted on planning of healthcare services

- Section 242 of the National Health Service Act, 2006 provides that commissioners of healthcare services have, in relation to health services for which they are responsible, a legal duty to consult patients and the public – directly or through representatives – on service planning, the development and consideration of services changes and decisions that affect service operation.
- Section 75 of the Health and Social Care Act and Section 75 of the Health and Social Care Act and Statutory Instrument National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 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 patients to make choices about their healthcare.
- The Public Contracts Regulations 2006, applicable for procurements commenced before 26 February 2015
- The Public Contracts Regulations 2015 (as amended from time to time), applicable for procurements commenced from 26 February 2015.
- Equality Act 2010
- Operational Guidance to the NHS-Extending Patient Choice of Provider (DOH).
- Everyone counts: Planning for Patients outlines specific requirements that is appropriate to commissioned services.
- NHS England Guidelines.
- Cabinet Office Guidelines.

## **2. POLICY STATEMENT**

NHS Vale of York CCG (NHS Vale of York CCG) procurement will be compliant with prevailing procurement regulations and will be used to support clinical priorities, health and well-being outcomes and wider CCG objectives.

## **3. IMPACT ANALYSES**

### Equality

- 3.1 As a result of performing the screening analysis, the policy does not appear to have any adverse effects on people who share Protected Characteristics and no further actions are recommended at this stage. The results of the screening are attached.

### Sustainability

- 3.2 A Sustainability Impact Assessment has been undertaken. No positive or negative impacts were identified against the twelve sustainability themes. The results of the assessment are attached.

## **4. AIMS AND OBJECTIVES OF THE POLICY**

- 4.1 To set out the approach for facilitating open and fair, robust and enforceable contracts that provide value for money and deliver required quality standards and outcomes, with effective performance measures and contractual levers.
- 4.2 To describe the transparent and proportional process by which NHS Vale of York CCG will determine whether health and social services are to be commissioned through existing contracts with providers, competitive tenders, via an AQP or framework approach or through a non-competitive process.
- 4.3 To enable early determination of whether, and how, services are to be opened to the market, to facilitate open and fair discussion with existing and potential providers and thereby to facilitate good working relationships.
- 4.4 To set out how NHS Vale of York CCG will meet statutory procurement requirements primarily the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013, Public Contracts Regulations 2006 and the Public Contracts Regulations 2015 (as amended from time to time).
- 4.5 To ensure NHS Vale of York CCG does not engage in anti-competitive behaviour, and protect and promote the right of patients to make choices about their healthcare.
- 4.6 To enable NHS Vale of York CCG to demonstrate compliance with the principles of good procurement practice:
- Transparency
  - Proportionality
  - Non-discrimination
  - Equality of treatment
  - Fair and open competition

## **5. SCOPE OF THE POLICY**

- 5.1 As far as it is relevant, this Policy applies to all NHS Vale of York CCG procurements (clinical and non-clinical). However, it is particularly relevant to procurement of goods and services that support the delivery of healthcare and certain sections relate only to procurement of health and social services.
- 5.2 This Policy must be followed by all NHS Vale of York CCG employees and staff on temporary or honorary contracts, and representatives acting on behalf of NHS Vale of York CCG including staff from member practices..
- 5.3 NHS Vale of York CCG will ensure, when applying this Policy that it complies with its duties under the Equality Act 2010 and does not discriminate directly or indirectly against staff or potential service providers on grounds of race, colour, age, nationality, ethnicity, gender,

sexual orientation, marital status, religious belief or disability.

## 6. APPLICABLE LEGISLATION

6.1 The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 provides that the when NHS Vale of York CCG procures health care services for the purpose of the NHS, it must act with a view to achieving the following objectives, thus NHS Vale of York CCG:

- must act with a view to securing patients' needs and improving the quality and efficiency of the service;
- must act in a transparent and proportionate way and treat bidders equally and in a non-discriminatory way;
- where third parties, assist or support a commissioner in their procurement activity, the commissioner must ensure that they follow the requirements of the Regulations in the same way the commissioner must do itself;
- must maintain and publish a record of each contract awarded for the provision of healthcare services;
- must not engage in anti-competitive behaviour unless in the interests of patients;
- must maintain a record of how any conflicts of interest between commissioners and providers are managed;
- must maintain a record of how, in awarding the contract, the CCG / NHS England complies with certain statutory duties under the NHS Act 2006;
- provide thorough justification if competition not required where services are only capable of being provided by a particular provider;
- must publish contract notices (if applicable) and facilitate expressions of interest; and
- consider improving quality and efficiency of services through providing services in an integrated way, enabling providers to compete and allowing patients a choice of provider.

6.2 The 2013 Regulations also govern the circumstances when NHS Vale of York CCG may award a new contract for clinical services without a competition (Regulation 5). They provide that: NHS Vale of York CCG “may award a new contract for the provision of health care services for the purposes of the NHS to a single provider without advertising an intention to seek offers from providers in relation to that contract where the relevant body is satisfied that the services to which the contract relates are capable of being provided only by that provider”.

When advertising an intention to seek offers for a clinical services contract, the 2013 Regulations require NHS Vale of York CCG to publish a contract notice on the UK Government dedicated website ‘Contracts Finder Portal’:

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

The notice must include:

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

NHS Vale of York CCG must also have arrangements in place which enable providers to express an interest in providing clinical services. For example, replicating the contracts finder procurement notice on NHS Vale of York CCG's website.

6.3 For all procurements that will exceed the EU Procurement Thresholds detailed in 10.2 below, an advert must be prepared and sent to the Official Journal of the European Union (OJEU). For adverts in the OJEU the following steps must be followed:

- 
- The Contract Notice and Contract Award standard forms should be used as provided by the Procurement Team.
- The Procurement Team will place the advert using an electronic tendering system.
- OJEU will publish the advert, if using an electronic tendering system the advert will be placed in OJEU within 5 working days.
- If NHS Vale of York CCG decides to also advertise in other publications (e.g. the national press, the Contracts Finder website, a trade magazine etc.), NHS Vale of York CCG must not:
  - send the advert to the other publication(s) before the NHS Vale of York CCG send the advert to OJEU. Note: NHS Vale of York CCG does not have to await the publication of the OJEU advert, NHS Vale of York CCG obligation is to ensure that the OJEU advert is dispatched before any other advert
  - provide information or detail in the other advert(s) that does not appear in the OJEU advert
- If the contract value is below the relevant threshold value at which an advert is mandatory, an advert can still be placed 'on a voluntary basis'. Case-law seems to indicate that voluntary publication of a notice in OJEU does not mean that the competition is subject to the processes and procedures of the Directives, however it is best practice to make this clear in the OJEU notice and subsequent tender documents.
- Where the contract does not fall within the scope of the Directives, the Telaustria case ruled that the procedure employed must be still be consistent with the principles of the treaty, particularly the obligation of transparency, and that therefore a "sufficient" degree of advertising should be used.

The obligation of transparency which is imposed on the contracting authority consists in ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the services market to be



opened up to competition and the impartiality of procurement procedures to be reviewed.

- 6.4 The 2013 Regulations also set out the role of Monitor, including its investigation and enforcement powers in relation to breaches or potential breaches of the 2013 Regulations.

Failure to comply with the 2013 Regulations can have serious consequences and result in serious sanctions for NHS Vale of York CCG. Where there is doubt regarding NHS Vale of York CCG's compliance with its obligations, legal advice should be sought via the Head of Corporate Assurance and Strategy.

## 7. EUROPEAN AND UK PROCUREMENT LEGISLATION

- 7.1 When procuring clinical services NHS Vale of York CCG will ensure that it complies with EU procurement law and the UK's implementing Regulations to the extent that these are applicable to the clinical services being procured. In particular it will ensure compliance with the requirements of:

- The Treaty on the Functioning of the European Union ("EU Treaty");
- Directive 2004/18/EC and the Remedies Directive 2007/66/EC;
- The Public Contracts Regulations 2006
- The Public Contracts Regulations 2015 (as amended); and
- Relevant EU and UK procurement case law.

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

- 7.2 The EU Procurement Rules will apply where NHS Vale of York CCG proposes to enter in to a legally enforceable, written contract, for services which has an estimated full - life value above the relevant financial threshold. The applicable financial threshold for goods & services for the period 1st January 2014 to 31st December 2015 is £172,514 (excluding VAT). The applicable current threshold should be checked where the procurement takes place after 3 December 2015. It is not permitted to divide budgets to circumvent the relevant financial threshold.
- 7.3 Under the EU Procurement Rules the distinction between Part A services and Part B services has been removed and replaced with a 'Light Touch' Regime. A services contract will fall within scope of the Light Touch regime if it is for certain types of health, social and other services listed as Schedule 3 of the Public Contract Regulations 2015. The following link provides details of services listed at Schedule 3.

[www.legislation.gov.uk/ukxi/2015/102/schedule/3/made](http://www.legislation.gov.uk/ukxi/2015/102/schedule/3/made)

For these Light touch regime contracts, a higher threshold than that for ordinary service contracts will apply. The applicable threshold is presently

EUR 750,000 (approx. £625,000). The applicable threshold will need to be checked when a procurement takes place.

The Light Touch regime will not apply to any health services contracts that are within scope of the NHS (Procurement, Patient Choice and Competition) (No.2) regulations 2013 until 18 April 2016.

- 7.4 The obligations applicable to Light Touch Regime services, and which NHS Vale of York CCG will ensure it complies with include:
- treating providers equally and in a non-discriminatory way;
  - acting transparently (including the duty to advertise a Contract Notice or Prior Information Notice (PIN) in the Official Journal of the European Union (OJEU) and Contracts Finder);
  - complying with the rules on technical specifications, including that these do not favour particular providers or present unjustified obstacles to competition;
  - publishing a contract award notice in the Official Journal of the European Union (“OJEU”); and
  - the provision of statistical and other reports.

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

- 7.5 The Public Services (Social Value) Act 2012 (the “Social Value Act”) applies to NHS Vale of York CCG when it carries out its clinical procurement activities. In accordance with its obligations under the Social Value Act, NHS Vale of York CCG will consider, at the pre-procurement stage:
- how the services to be procured may improve the social, environmental and economic wellbeing of its area; and
  - how in conducting a procurement process NHS Vale of York CCG might act with a view to securing that improvement, including whether to undertake a consultation on these matters (or as part of NHS Vale of York CCG’s wider statutory obligations to consult).

- 7.6 Relevant Guidance
- In meeting its obligations under the 2013 Regulations, the EU Procurement Rules, the Equality Act 2010 and the Social Value Act and to ensure it adopts best procurement practice, NHS Vale of York CCG will have regard to any relevant Guidance produced by Monitor, NHS England, the Department of Health, the Equality and Human Rights Commission, and the Cabinet Office. Further details of current guidance can be found at:
- Monitor guidance:  
<https://www.gov.uk/government/publications/procurement-patient-choice-and-competition-regulations-guidance>
  - NHS England guidance:  
<http://www.england.nhs.uk/2012/09/14/procure-ccgs/>

- Equality and Human Rights Commission:  
[http://www.equalityhumanrights.com/uploaded\\_files/EqualityAct/PSE/D/bu\\_ying\\_better\\_outcomes\\_final.pdf](http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSE/D/bu_ying_better_outcomes_final.pdf)
- Cabinet Office:  
<https://www.gov.uk/government/collections/procurement-policy-notes>

## 8. ACCOUNTABILITIES AND RESPONSIBILITIES

- 8.1 Procurement Support – NHS Vale of York CCG does not have its own internal procurement resource. The Procurement support is currently provided by Attain Commissioning Services Ltd (Attain) and provides NHS Vale of York CCG with professional procurement support, advice, guidance delivering projects in line with NHS Vale of York CCG’s requirements. Where it is required and considered appropriate procurement support may also be provided by, a CSU and/or in the case of collaborative projects by another CCG. The CCG will have systems in place to assure itself that Attain, CSU’s or relevant CCG’s business processes are robust and enable the CCG to meet its duties in relation to procurement.
- 8.2 Authority – NHS Vale of York CCG will remain directly responsible for:-
- Approving procurement route
  - Signing off specifications and evaluation criteria
  - Signing off decisions on which providers to invite to tender
  - Making final decisions on the selection of the preferred provider(s)
- 8.3 When authorising and approving clinical procurement decisions NHS Vale of York CCG will comply with its Scheme of Delegation and Detailed Financial Policies
- 8.4 Governance structure for Procurement Process:-

<p><b>Level One</b> NHS Vale of York CCG Governing Body (excluding any member who may have a potential Conflict of Interest)</p>	<ul style="list-style-type: none"> <li>• Agree the procurement route and contract specification</li> <li>• Endorse the decision on the preferred bidder</li> <li>• Give authority to award the contract</li> </ul>
<p><b>Level Two</b> Quality and Finance Committee</p>	<ul style="list-style-type: none"> <li>• Monitor and assure work of procurement team</li> <li>• Sign off the shortlist of bidders, the evaluation scoring criteria, the recommendation to the Governing Body to appoint a preferred bidder and the award of the Contract</li> <li>• Assure the Governing body on the process</li> </ul>

<p><b>Level Three</b> Procurement Project Team NHS Vale of York CCG Officers, Clinical and other Advisors</p>	<ul style="list-style-type: none"> <li>• Manage the procurement</li> <li>• Develop all tender and contract documents</li> <li>• Propose the evaluation scoring</li> <li>• Evaluate assessment and negotiate the contract</li> <li>• Prepare update and briefing reports for the Quality and Finance Committee and Governing Body.</li> <li>• Risk Management and Freedom of Information</li> </ul>
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## 9. GUIDING PRINCIPLES

- 9.1 When procuring health care services, NHS Vale of York CCG is required to act with a view to:
- Securing the needs of the people who use the services,
  - Improving the quality of the services, and
  - Improving efficiency in the provision of the services
- 9.2 NHS Vale of York CCG is required and committed to:
- Act in a transparent and proportionate way and conduct its procurement activities openly and in a manner that allows its behaviour to be scrutinised
  - Treat providers equally and in a non-discriminatory way, including by not treating a provider, or type of provider, more favourably than any other provider, in particular on the basis of ownership
- 9.3 NHS Vale of York CCG is required and committed to procuring services from one or more providers that:
- Are most capable of delivering the needs, quality and efficiency required
  - Provide the best value for money in doing so
- 9.4 NHS Vale of York CCG is required and committed to act with a view to improving quality and efficiency in the provision of services, the means of doing so will include:
- The services being provided in an integrated way (including with other health care services, health related services, or social care services)
  - Enabling providers to compete to provide the services
  - Allowing patients a choice of provider of the services
- 9.5 NHS Vale of York CCG will ensure that service users, carers, staff and partners are engaged throughout the procurement process. If there are to be changes proposed to service delivery as part of the procurement process, this engagement may lead to more formal consultation if required.
- 9.6 Potential conflicts of interest will be managed in accordance with NHS Vale of York CCG's Conflicts of Interest Policy to protect the integrity of

the CCG's contract award decision making processes and the wider NHS commissioning system.

- 9.7 NHS Vale of York CCG staff and Board Members will exercise sound judgement when procuring goods and services taking into account the statutory framework and the provisions of this policy.

## **10. CCG PROCUREMENT THRESHOLDS**

- 10.1 Formal tenders are required where the intended expenditure exceeds the tender threshold in the Detailed Financial Policies. Formal tendering is required where expenditure is £50,000 or more.

- 10.2 Quotations are required where formal tendering procedures are not adopted and

- 
- For expenditure less than £5,000, 2 verbal quotes are required
- For expenditure between £5,000 and £19,999, 3 written quotes are required
- For expenditure between £20,000 and £29,999, 4 written quotes are required
- For expenditure between £30,000 and £49,999, 5 written quotes are required
- Expenditure of £50,000 or more requires a full competitive tender procedure to be applied.

- 10.3 The Detailed Financial Policies establish clear regulations and an approval process for the waiving of internal procurement thresholds and these must be observed.

## **11. ANTI-COMPETITIVE BEHAVIOUR**

- 11.1 The 2013 Regulations, and in particular Regulation 10, prohibits NHS Vale of York CCG from engaging in anti-competitive behaviour unless to do so is in the interests of NHS health care service users.

- 11.2 Regulation 10 also provides that an arrangement or contract for the provision of clinical services must not include any term or condition restricting competition which is not:
- necessary for the attainment of the intended outcomes which are beneficial for the people who use the services;
  - or the overarching objective referred to in Regulation 2 (as set out at Section 7.1 above).

NHS Vale of York CCG must ensure that it complies with its obligations under Regulation 10.

## **12. NHS VALE OF YORK CCG GOVERNANCE AND STANDARDS OF BUSINESS CONDUCT**

- 12.1 When procuring clinical services, NHS Vale of York CCG will ensure that it complies with its duties under its Constitution (including its Standing Orders, Scheme of Delegation and Prime Financial Policies). These include the information required to be included in the Constitution by Schedule 1A to the NHS Act 2006 (as amended by Schedule 2 of the Health and Social Care Act 2012).
- 12.2 Standing Orders and the Scheme of Delegation ensure that decision-making is informed by intelligent information covering the full range of corporate, financial, clinical information and research governance and are central to NHS Vale of York CCG's governance framework and to sustaining the highest standards of corporate and personal probity, accountability and openness. Good governance provides the bedrock for effective performance and assuring better health and health services for the people of the Vale of York.
- 12.3 NHS Vale of York CCG's financial policies detail the financial responsibilities, policies and procedures adopted by NHS Vale of York CCG to ensure that NHS Vale of York CCG's financial transactions (including procurement transactions) are carried out in accordance with the law and with Government policy. They are used in conjunction with the Scheme of Delegation adopted by NHS Vale of York CCG and included within the Constitution's Scheme of Delegation.
- 12.4 NHS Vale of York CCG's financial policies identify the financial responsibilities which apply to everyone working for NHS Vale of York CCG and its constituent localities.
- 12.5 Should any difficulties arise regarding the interpretation or application of any of NHS Vale of York CCG's financial policies then the advice of the Chief Finance Officer must be sought before acting.
- 12.6 The failure to comply with Standing Orders and financial policies can in certain circumstances be regarded as a disciplinary matter that could result in dismissal.

## **13. CONSULTATION**

- 13.1 As part of the process of redesigning services, health commissioners have a 'duty to involve'. This duty is still in place in the Health and Social Care Act 2012. There are two main stages to the 'duty to involve'. The first is an 'engagement' process, where commissioners will gather views from clinicians, patients, carers and other key partners. This phase is very important to the development and design of services. The second phase is not always necessary, but will involve a wider consultation process, aimed at the general public, to gather views about the proposals. A proportionate response to each consultation process should be considered. The results can be used, alongside the engagement work to

inform the procurement process.

13.2 Effective engagement is a key part of NHS Vale of York CCG procurement. Not undertaking engagement carefully can provide the greatest threat of challenge to a procurement process. The engagement activities will help inform whether a consultation process is required.

13.3 NHS Vale of York CCG recognises its duty to involve relevant clinicians, potential providers, patients and the public on:-

- The early stages of planning provision of services
- The development and consideration of proposals for changes in the way those services are provided
- Decisions to be made affecting the operation of those services, recognising that it is essential to enable patients to have a greater involvement in decisions about their care

13.4 NHS Vale of York CCG will adhere to the following principles on involvement during a procurement process:-

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

## **14. MANAGING CONFLICTS OF INTERESTS**

14.1 This section should be read in conjunction with NHS Vale of York CCG's policies on :

- Conflict of Interest
- Business Conduct

14.2 The NHS (Procurement, Patient Choice and Competition) Regulations 2013, NHS Managing Conflicts of Interest Statutory Guidance and Public Contract Regulations 2015 (regulation 24) set out the requirements on managing conflicts of interest for procurement of healthcare.

14.3 NHS Vale of York 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 affect, or appear to affect, the integrity of the award of that contract.

14.4 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 Bidder 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;
- Having any other close relationship (current or historical) with any Bidder Party.

14.5 Examples of potential conflicts of interest include:

- There is a real possibility that an outside interest will lead an individual to act in a way that is not impartial and independent in carrying out their duties on behalf of NHS Vale of York CCG;
- There is a real possibility that an outside interest held by a close personal relation, business associate or other person known to an individual will lead an individual to act in a way that is not impartial and independent in carrying out their duties on behalf of NHS Vale of York CCG;
- A fair minded and informed observer would conclude that one of the above interests exists and that there was a real possibility that the interest could lead the individual to act in a way that is not impartial or independent in carrying out their duties on behalf of NHS Vale of York CCG.

14.6 A conflict of interest arises where an individual's ability to exercise judgement or act in one role is or could be impaired or otherwise influenced by his or her involvement in another role or relationship. The individual does not need to exploit his or her position or obtain an actual benefit (financial or otherwise). A potential for competing interests and/or a perception of impaired judgment or undue influence can also be a conflict of interest.

14.7 The management of conflicts of interest is vitally important in the procurement of clinical services and managing them appropriately is paramount to the probity and accountability of NHS Vale of York CCG's decision making and will ensure that the principles of transparency, fairness and non- discrimination are upheld.

14.8 As an organisation led by GPs, NHS Vale of York CCG will be particularly subject to conflicts of interest or potential conflicts of interest when procuring clinical services. NHS Vale of York CCG will therefore adopt rigorous standards in the identification and management of conflicts or potential conflicts of interest to ensure that the above principles can be upheld. Such a conflict could arise:

- In carrying out a competitive tender: where GP practices or other providers in which NHS Vale of York CCG members have an



- interest are amongst those bidding; or
- When procuring clinical services through Any Qualified Provider: where one or more GP practices (or other providers in which NHS Vale of York CCG members have an interest) are amongst the qualified providers from which patients can choose; or
  - A conflict of interest may include but not be restricted to any direct or indirect links to any of the providers and significant shareholdings associated with any of the providers.
- 14.9 For each procurement undertaken a register of conflicts of interests will be maintained .The register will include:
- Details of the Health Service to be provided;
  - Names of conflicted persons
  - Nature of interest in the procurement process
  - How conflict was managed
  - Any ongoing conflict of interest following the award of the contract
- 14.10 The Head of Contracting on behalf of NHS Vale of York CCG will maintain a register of all procurement decisions taken. The register will include:
- Details of the decision;
  - Who was involved in making the decision (i.e. NHS Vale of York CCG Governing Body and others with decision making responsibility);
  - A summary of any conflicts of interest in relation to the procurement decision and how these were managed by NHS Vale of York CCG;
  - Evidence of the approach taken at every stage in the commissioning cycle, particularly at key decision points
- 14.11 The register of procurement decisions will be updated whenever a procurement decision is taken.
- 14.12 The register of procurement decisions will be published on the NHS Vale of York CCG website and will be supplied to NHS England.
- 14.13 In managing conflicts of interest NHS Vale of York CCG will:
- comply with its statutory obligations in relation to the management of conflicts of interest;
  - have regard to relevant Guidance published by NHS England and Monitor in relation to the discharge of its statutory obligations; and
  - comply with its Constitution and its Conflicts of Interests Policy
- 14.14 NHS Vale of York CCG will also ensure that individuals contracted to work on behalf of NHS Vale of York CCG or otherwise providing services or facilities to NHS Vale of York CCG will be made aware of their obligation with regard to declaring conflicts or potential conflicts of interest.
- 14.15 All bidders and contractors will be required to complete the Declaration of Interests Template in accordance with the NHS Vale of York CCG

Conflicts of Interest Policy and this requirement will be written into their contract for services.

## **15. ANTI-FRAUD AND BRIBERY**

15.1 NHS Vale of York CCG does not tolerate fraud and bribery. NHS Vale of York CCG procures goods and services ethically and transparently with the quality, price and value for money determining the successful supplier / contractor, not by receiving (or offering) improper benefits. NHS Vale of York CCG staff will at all times be required to comply with the Bribery Act 2010 and the NHS Vale of York CCG Anti-Fraud, Bribery and Corruption Policy

## **16. RISK MANAGEMENT**

16.1 In carrying out its clinical procurement activities NHS Vale of York CCG will ensure that it has adequate measures in place to identify and manage risk. Such measures may include ensuring:

- Clinical procurements are adequately prepared and planned;
- Each clinical procurement project has a Senior Responsible Officer (SRO) and that roles, responsibilities, reporting lines and channels of communication within the wider commissioning and Procurement are clear;
- The individuals involved have the necessary expertise, experience and training to match the requirements of the role and its responsibilities (and that this is kept up to date);
- Each project has a pre-agreed and end to end procurement strategy and timetable, tailored to the requirements of the project; the resources available, the business objective and which has identified and sought to minimise any risks involved;
- Adequate and appropriate records are kept to comply with NHS Vale of York CCG's statutory obligations and to provide a robust audit trail of decisions and actions taken;
- A risk identification and escalation process is established at the outset, to include a risk register which is regularly reviewed and updated with appropriate risk management strategies to address each risk identified;
- The use of robust and up to date project and procurement documents, which are legally compliant, clear and unambiguous, and subject to a strict policy of version control; and
- The conduct of the entire process is in accordance with EU/UK Procurement Regulations law and key procurement principles namely: transparency; equal treatment; non-discrimination; proportionality and sound administration.

## **17. PROCUREMENT PLANNING**

17.1 Wherever possible the Procurement representative should be involved as early in the business case development process as feasible. This is to ensure Procurement have a full understanding of the service requirements

and can input into the development process from a procurement and contract management perspective.

## **18. APPROACH TO MARKET**

- 18.1 Any qualified provider  
With the AQP model, for a prescribed range of services, any provider that meets criteria for entering a market can compete for business within that market without constraint by a commissioner organisation. Under AQP there are no guarantees of volume or payment, and competition is encouraged within a range of services rather than for sole provision of them.
- 18.2 The AQP model will not always be appropriate, for example where:
- The number of providers needs to be constrained, e.g. where the level of activity can only support one provider;
  - Where clinical pathways dictate a restricted number of providers;
  - Value for money cannot be demonstrated without formal market testing (e.g. to determine the price the CCG will offer for provision of the services);
  - Innovation is required from the market and cannot be achieved collaboratively;
  - There is no effective method of selecting from amongst qualified providers for delivery of specific units of activity;
  - Overall costs would be increased through multiple provider provision because of unavoidable duplication of resources.
- 18.3 The AQP model is an 'in market' procurement/contracting route. The use of AQP should be determined at a local level where increasing the role of competition and patient choice can be proven to improve quality and patient care. Potential service providers must be Care Quality Commission (CQC) registered (or where CQC registration is not required to deliver the service, an appropriate registration body) or licensed by Monitor to take part in this truncated selection process. All providers will be required to operate within the same pricing structure.
- 18.4 A standard NHS contract will be awarded to all providers that meet:
- Minimum standards of clinical care (implying qualification/accreditation requirement);
  - The price NHS Vale of York CCG will pay, and;
  - Relevant regulatory standards.
- 18.5 NHS Vale of York CCG will have regard at all times to the EU Treaty principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality when applying the AQP procedure.
- 18.6 Competitive Tendering  
It is anticipated that an increasing number of services will be subject to

competitive tendering in order to demonstrate the application of the principles of transparency, openness, equitability and obtaining and delivering value for money. Under the Public Contract Regulations 2015 five standard procurement procedures are available as follows, with the first three procedures being more commonly used:-

- 18.7 **Open Procedure (Regulation 27)**  
In the Open Procedure all applicants who respond to the Contract Notice will be invited to submit a tender for the contract opportunity. Generally speaking, the Open Procedure will be used for simple and straightforward procurements.
- 18.8 **Restricted Procedure (Regulation 28)**  
The Restricted Procedure is used where the Contracting Authority wants to restrict the number of Bidders who will be issued with the Invitation to Tender. Under the Restricted Procedure, a minimum of five (5) applicants must be invited to go through to the next stage of the procurement process (provided that there are five (5) suitable applicants). If there are less than five (5) suitable applicants then you can proceed with the procurement process, provided that the number of applicants selected is sufficient to ensure genuine competition.
- 18.9 **Competitive Dialogue (Regulation 30)**  
The competitive dialogue procedure allows the contracting authority to enter into dialogue with bidders, following an OJEU notice and a selection process, to develop one or more suitable solutions for its requirements and to determine which chosen bidders will be invited to tender. The competitive dialogue procedure is a flexible procedure, suitable where there is a need for authorities to discuss aspects of the proposed contract with candidates. For example, the procedure would be used where authorities cannot define clearly in advance the technical means capable of satisfying their needs or objectives, or where there is a range of options for the legal and/or financial structure of a project.
- 18.10 **Competitive with negotiation (Regulation 29)**  
This procedure replaces the Negotiated procedure and is a competitive process where negotiations are to be carried out with all bidders still in the procurement. Following negotiation on submitted tenders there will be a formal end to the negotiating and bidders will then be invited to submit a revised tender (very much like the tender phase in Competitive Dialogue).
- 18.11 **Innovation partnership (Regulation 31)**  
This procedure is intended to allow scope for more innovative ideas. The Supplier bids to enter into a partnership with a contracting authority to develop a new product or service.
- 18.12 **Non Competitive Process**  
Competition may be waived in circumstances where the CCG is satisfied

that the services to which the contract relates are capable of being provided only by that provider. In these circumstances the procedures set out within NHS Vale of York CCG's Standing Orders and Prime Financial Policies must be followed.

- 18.13 Where it is decided not to competitively tender for new services or where services are significantly changed, NHS Vale of York CCG Governing Body approval must be obtained following any recommendation to follow this approach by use of a Single Tender Action Waiver. The Waiver should give due reference to NHS Vale of York CCG own Detailed Financial Policies and the appropriate regulations that are being waived.
- 18.14 Partnership Agreements  
Where collaboration and coordination is considered essential, for example in developing new integrated pathways, enabling sustainability of services, ensuring smooth patient handover, coordination etc. NHS Vale of York CCG may wish to continue with existing "partnership" arrangements. These "Partnership" arrangements must be formalised using the appropriate contract form and must provide:
- Transparency particularly with provision of information sharing good and bad practice
  - A contribution to service re-design
  - Timely provision of information and performance reporting
  - Evidence of improved patient experience year on year
  - Evidence of value for money
- 18.15 Partnership status must not be used as a reason to avoid competition and should only be used appropriately and be regularly monitored.
- 18.16 For partnership services NHS Vale of York CCG may choose to commission the service from a partner but may also choose to tender for provision of the service, for example where the partner cannot meet the service model requirements or costs cannot be agreed.
- 18.17 Framework Agreements  
Framework Agreements are pre-tendered agreements which are established in compliance with the EU Procurement Rules and which, once established, can be used by NHS Vale of York CCG to purchase certain products and/or services without the need to carry out a full procurement process. The advantages of using a framework agreement is that, once established, it can be used to save both time and cost. Any Qualified Provider (AQP) is a form of framework agreement used for in market, relatively high volume, and routine elective care services.
- 18.18 A framework can be established:
- By NHS Vale of York CCG for its own use; or
  - By another Clinical Commissioning Group, contracting authority or a central purchasing body such as the Crown Commercial Service

(CCS).

- 18.19 If NHS Vale of York CCG wishes to use a framework agreement established by another organisation, it should check that that the framework agreement has been established correctly, in accordance with any applicable obligations under the EU Procurement Rules; that NHS Vale of York CCG is entitled to use the framework and that it is fit for NHS Vale of York CCG's purpose.
- 18.20 In particular, NHS Vale of York CCG should check:
- that it has been identified as a body which is entitled to use the framework;
  - that its requirements fall within the specification of goods / services covered by the framework;
  - that the term of the framework has not expired;
  - that the terms and conditions applicable to call-offs made under the framework are acceptable to NHS Vale of York CCG (as NHS Vale of York CCG will be unable to make substantial modifications to these); and
  - that the pricing under the framework is acceptable.
- 18.21 Various existing framework agreements for NHS Vale of York CCG are available to use. Common access routes include but not limited to:
- Crown Commercial Service (CCS)
  - NHS Shared Business Services (SBS)
  - NHS Supply Chain
  - Department of Health
- 18.22 There are two options available to purchase from a framework agreement:
- Apply the terms of the framework agreement:  
This option would apply when the terms and conditions of a purchase are set out (e.g. Provider A is cheaper than Provider B for the product NHS Vale of York CCG Commissioners are looking for therefore no competition is required). This is sometimes known as a direct call-off agreement.
  - Hold a mini-competition:  
Where the requirements are more complex the specification can be sent to several providers for quotes. NHS Vale of York CCG commissioners can be assured that the providers on the framework are financially stable and that the services on offer are of a high quality because the providers have already been approved and rigorously assessed. Any purchase made through a framework is compliant with procurement legislation, provided that the rules to engage providers have been followed.
- 18.23 Pilot Projects  
In order to identify new working practices through the use of Pilot Projects, NHS Vale of York CCG must establish that a project is in fact a pilot via

the following definitions:-

- There is a specific goal,
- The timetable is clearly laid out with defined periods for:
  - Start date,
  - End date,
  - Period for lessons to be learnt,
- Clear and signed contract with the pilot service provider,
- Robust plan/process for evaluation,
- Right to terminate a pilot must be included if it is found to be unsafe or the outcomes cannot be met.

18.24 It is important to use Pilot Projects only in circumstances where the clinical outputs are not known or cannot be accurately predicted. Pilot Projects can be subject to legal challenge if they do not comply with EU procurement legislation therefore specialist advice from Procurement and/or legal advice must be sought before a pilot commences.

## 19. TENDERING PROCESS

19.1 This section outlines the typical stages of a tendering process. It is important to note that from 26 February 2015, electronic OJEU notification & electronic availability of procurement documents immediately from date of notice publication is mandatory and the URL address must be provided in the notice or invitation to express interest.

19.2 Advertising  
Advertisements will be clear and will succinctly promote the procurement opportunity, encouraging suitably qualified providers to respond. The advert will be published in an appropriate means including Contracts Finder, NHS Vale of York CCG's website and when applicable the Official Journal of the European Union.

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

19.4 Memorandum of Information (MOI) and Expressions of Interest (EOI)  
Procurements where the contract values exceed the relevant threshold may require the publication of a Memorandum of Information (MOI). This would be issued at the same time as the advertisement and is the communication with the market at the first stage of the formal procurement.

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

- 19.6 Bidder Events  
Bidder events allow providers to obtain a more in depth understanding of the procurement requirements and provide an opportunity to: stimulate market interest, raise clarifications and questions, request additional information and obtain market information which may help shape NHS Vale of York CCG requirements
- 19.7 Due to the cost implications of holding bidder events, the overarching principle of Proportionality will remain.
- 19.8 Pre-Qualification questionnaires  
When a procurement is above the EU threshold a Pre-Qualification Questionnaire (PQQ) is used to enable NHS Vale of York CCG to evaluate providers on their suitability (to secure the necessary reassurances about the capacity, capability and eligibility) to be short listed for the invitation to Tender stage.
- 19.9 Potential providers will complete a standard format PQQ with questions tailored to reflect the service and procurement requirements.
- 19.10 The PQQ document is issued to all parties who submit a formal expression of interest. The PQQ will then be evaluated against predetermined PQQ criteria and enable NHS Vale of York CCG to move from a long-list of suppliers to a short-list.
- 19.11 Invitation to Tender  
The Invitation to Tender (ITT) documents are available to all bidders. The ITT documents consist of guidance and instructions to the bidders on the process and a response guide based on the approved detailed Service Specification (other than Competitive Dialogue Procedure). Elements of the ITT may include terms and conditions, contract specification, method statements, pricing and financial schedules, key performance indicators.
- 19.12 Bidders are required to submit their responses to address requirements within the ITT documents. The responses are evaluated against pre-determined, and pre-documented, criteria.
- 19.13 Tender evaluation  
The tender evaluation panel is a legal requirement of any tender process and its function is to ensure the safety, quality, performance, financial viability and merit of potential providers to serve patients on behalf of the CCG.
- 19.14 An evaluation methodology is formally agreed before the ITT is issued as the ITT must include the relevant scoring criteria and weightings for each section.
- 19.15 The evaluation process should seek to identify the most economically



advantageous Bid(s), both in terms of qualitative and quantitative criteria.

- 19.16 Multi-disciplinary teams including representation from relevant specialists e.g. HR, Estates, Finance, IM&T will be established for all procurements to ensure fair and transparent scoring of each submission.
- 19.17 In conducting the evaluation, the evaluators must act in accordance with the key principles of the EU Procurement Directives:
- Fair & Open Competition
  - Non-discrimination
  - Equal Treatment
  - Transparency
  - Proportionality
- 19.18 All recorded comments and notes would be made available under a FOIA request. Confidentiality must be respected and maintained throughout the evaluation process. Any potential or actual conflict of interest must be advised in advance of the tender evaluation.
- 19.19 Managing potential conflicts of interest appropriately is needed to protect the integrity of commissioners from any perceptions of wrong-doing. Any potential or actual conflict of interest must be advised to Project lead in advance of any tender evaluation. A conflict of interest may include but not be restricted to any direct or indirect links to any of the Bidders and significant shareholdings associated with any of the Bidders.
- 19.20 Contract award  
Following the evaluation panel, the successful provider will be identified based on their total score in the process. All contract awards must now be made to the “most economically advantageous tender”, using a cost effectiveness approach such as life-cycle costing to assess this; this may include best ‘price-quality ratio’ – as assessed on the basis of award criteria. It is a legal requirement to notify all providers involved in the ITT process of the outcome.
- 19.21 Letters will be issued to the successful provider informing them of NHS Vale of York CCG’s decision and also to all unsuccessful providers informing them of NHS Vale of York CCG’s decision based on the scoring criteria. As part of Procurement Best Practice information on the evaluation of tenders against the award criteria set out in the ITT, together with specific reasons for the award of these scores has to be provided.
- Further debriefs should only be conducted by email and if requested by a bidder. Only in exceptional circumstances should a telephone or face-to-face debrief be held.
- 19.22 Once these letters are issued, there will be a ‘standstill’ period of 10 days. A standstill period is a period of at least 10 calendar days between the decision to award a public contract and the signing of the contract and is

intended to give unsuccessful tenderers an opportunity to challenge the decision before their rights to obtain relief other than damages are closed off.

- 19.23 Once the 'standstill' period has passed, the contract is then formally awarded to the successful provider(s).
- 19.24 Provided a contract value is above threshold, once a contract has been awarded, the awarding body must publish a notice in OJEU within 30 days of contract award. It is mandatory for NHS England and CCGs to maintain and publish a record of each contract awarded for health care services on the Contracts Finder website.
- 19.25 NHS Vale of York CCG will ensure that details of all contracts, including the contract value, are published on its website as soon as contracts are agreed. Where NHS Vale of York CCG decides to commission services through Any Qualified Provider (AQP), it will publish on its website the type of services it has commissioned and the agreed price for each service. Further, NHS Vale of York CCGs will ensure that such details are also set out in its annual report. Where services are commissioned through an AQP approach, NHS Vale of York CCG will ensure that there is information publicly available about those providers who qualify to provide the service.
- 19.26 NHS Vale of York CCG should ensure the correct use of contract to procure services in line with DOH guidance for contracts under the 'Light Touch Regime' including use of the NHS standard contract, and NHS standard terms and conditions of contract for the purchase of goods and supply of services..
- 19.27 **Post Contract Award and Performance Monitoring**  
Contract management and post-procurement review are features of the post contract award stage. NHS Vale of York CCG will ensure that lessons are learned through the audit of procurements, including reviewing delivery of the business case, operational effectiveness and user satisfaction levels.
- 19.28 Relationship management between NHS Vale of York CCG and the provider(s) will hinge on agreed standards for the management interface and management information reporting, performance monitoring, financial reporting and payments, risk management, communication strategy.
- 19.29 Performance monitoring will require effective monitoring systems to be implemented, to include key performance indicators, standards and targets, variations to contract, timeliness of reporting, variance investigation, complaints, problem resolution and dealing with poor performance and exit strategies.

## 20. PRINCIPLES OF GOOD PROCUREMENT

20.1 The key principles of good procurement are:-

- **Transparency:** Making commissioning intent clear to the market place. Including the use of sufficient and appropriate advertising of tenders, transparency in making decisions not to tender, and the declaration and separation of conflicts of interest;
- **Proportionality:** Making procurement processes proportionate to the value, complexity and risk of the services contracted, and critically not excluding potential providers through overly bureaucratic or burdensome procedures;
- **Non-discrimination:** Having specifications that do not favour one or more providers. Ensuring consistency of procurement rules, transparency on timescale and criteria for shortlist and award; and
- **Equality of treatment:** Ensuring that all providers and sectors have equal opportunity to compete where appropriate; that financial and due diligence checks apply equally and are proportionate; and that pricing and payment regimes are transparent and fair.

20.2 NHS Vale of York CCG will ensure compliance with these principles in the following ways.

20.3 Transparency

- NHS Vale of York CCG will commission services from the providers who are best placed to deliver the needs of our patients and population.
- NHS Vale of York CCG will procure general goods and services using processes and from suppliers that offer best value for money.
- NHS Vale of York CCG will maintain on its website for public view a record of contracts held and information about what services are to be procured and when they will be presented to the market
- NHS Vale of York CCG will determine as early as practicable whether and how services are to be opened to the market and will share this information with existing and potential providers.
- NHS Vale of York CCG will use the most appropriate media in which to advertise tenders or opportunities to provide services, including using the Contracts Finder procurement portal to advertise all appropriate tenders and OJEU (where appropriate).
- NHS Vale of York CCG will robustly manage potential conflicts of interest and ensure that these do not prejudice fair and transparent procurement processes.
- NHS Vale of York CCG will ensure that all referring clinicians tell their patients and the commissioner about any financial or commercial interest in an organisation to which they plan to refer a patient for treatment or investigation.
- NHS Vale of York CCG will provide feedback to all unsuccessful bidders.
- NHS Vale of York CCG will not contract with providers whose pricing

strategy constitutes predatory pricing.

20.4 Proportionality

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

20.5 Non-Discrimination

- NHS Vale of York CCG will ensure that tender documents are written in a non-discriminatory fashion e.g. generic terms will be used rather than trade names for products.
- NHS Vale of York CCG will inform all participants of the applicable rules in advance and ensure that the rules are applied equally to all. Reasonable timescales will be determined and applied across the whole process.
- NHS Vale of York CCG will ensure that shortlist criteria are neither discriminatory nor particularly favour one potential provider.

20.6 Equality of Treatment

- NHS Vale of York CCG will ensure that no sector of the provider market is given any unfair advantage during a procurement process.
- NHS Vale of York CCG will ensure that basic financial and quality assurance checks apply equally to all types of providers.
- NHS Vale of York CCG will ensure that all pricing and payment regimes are transparent and fair (according to the DH Principles and Rules Document).
- NHS Vale of York CCG will retain an auditable documentation trail regarding all key decisions.
- NHS Vale of York CCG will hold all providers to account, in a proportionate manner, through contractual agreements, for the quality of their services.

## 21. DECOMMISSIONING SERVICES

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

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

- A service review demonstrates existing services are not meeting the health needs of the population. For example the service may be delivered in a location or at a time that may be unsuitable for patients or service changes may be required to reflect developments in medical technology and current standards of care
- There is a clear and objective reason for the decommissioning of a service that is based on assessment of the current providers' performance, value for money and the need for service redesign to improve outcomes for patients
- The original decision to commission the service was made on assumptions that were not realised
- There is an inability to demonstrate delivery of agreed outcome measures or failure to deliver outcomes, despite agreed remedial action as detailed in the relevant contract
- Service does not deliver value for money, as demonstrated through financial review, utilising benchmarking tools
- The investment in a service does not maximise the health gain that could be achieved by reinvesting the funding elsewhere
- The service has limited clinical effectiveness or failure to meet relevant quality or safety standards

21.2 Decommissioning should be guided by the following principles:-

- The initiation of a decommissioning proposal must be based on sound evidence
- Appropriate engagement with patients and the public must take place before any decommissioning decision is made
- Appropriate engagement with clinicians, including the senior clinician responsible for the delivery of the service, before any decommissioning decision is made
- An assessment of health impact and impact on Equality and Diversity of any decommissioning decision is made
- Consideration must be given to the potential adverse impacts of a decommissioning decision, such as patient safety or patient choice
- Consideration must be given to alternative options to decommissioning a service
- In the case of a service being decommissioned NHS Vale of York CCG must seek full assurance that there is a robust process in place to transfer patients to other services and that it is clear to all stakeholders to which alternative services patients are being redirected.

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

## **22. TRANSFER OF UNDERTAKINGS AND PROTECTION OF EMPLOYMENT REGULATIONS (TUPE)**

- 22.1 These regulations arose as a consequence of the 1977 EU Acquired Rights Directive and were updated in 2006. They apply when there are transfers of staff from one legal entity to another as a consequence of a change in employer. This is a complex area of law which is continually evolving.
- 22.2 Commissioners need to be aware of these and the need to engage HR support and possibly legal advice if there is likely to be a TUPE issue. Additionally, NHS Bodies must follow Government guidance contained within the “Cabinet Office Statement of Practice 2000/72 and associated Code of Practice 2004 when transferring staff to the Private Sector” also known as “COSOP”.
- 22.3 It is the position of NHS Vale of York CCG to advise potential bidders that whilst not categorically stating TUPE will apply it is recommended that they assume that TUPE will apply when preparing their bids, and ensure that adequate time is built into procurement timelines where it is anticipated that TUPE may apply.

## **23. EQUALITY IMPACT ASSESSMENT**

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

## **24. TRAINING NEEDS**

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

## **25. DOCUMENTATION AND RECORD KEEPING**

- 25.1 NHS Vale of York CCG will comply with its statutory obligations to keep and maintain appropriate records.

- 25.2 Accurate record keeping and documentation is fundamental to any procurement process and is also consistent with NHS Vale of York CCG's obligation of transparency. A robust audit-trail should be maintained which records all steps and decisions taken (and the reasons for those steps / decisions). This assures NHS Vale of York CCG's accountability, that its decisions can be scrutinised, and that it can accurately respond to formal complaints or challenges.
- 25.3 Formal document version control should also be implemented and all document versions retained in case of future need.
- 25.4 The Cabinet Office has the right to request a copy of a report in relation to each contract or framework contract that is awarded by NHS Vale of York CCG. Information that needs to be included within a report under Public Contract Regulations 2015, Regulation 84 can be found by following the link below:  
<http://www.legislation.gov.uk/ukxi/2015/102/regulation/84/made>

## **26. MONITORING COMPLIANCE WITH THIS POLICY**

- 26.1 This policy will be reviewed annually.
- 26.2 In addition it will be kept under informal review in the light of emerging guidance, experience and supporting work. Given the changing environment it is likely that this Policy will need to be updated within a relatively short timescale.

## **27. REFERENCES**

- 27.1 Legislation
- Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. Mar 2004.
  - The Public Contracts Regulations 2006; SI 2006 no.5. Jan 2006.
  - The Public Contract Regulations 2015
  - Equality Act 2012
- 27.2 NHS Policy
- Procurement Guide for commissioners of NHS-funded services; May 2008; DH (Gateway Ref: 9915).
  - Framework for Managing Choice, Cooperation and Competition. May 2008. DH. (Gateway Ref: 9914).
  - NHS Procurement. Raising our game; May 2012; DH (Gateway Ref 17646).
  - Code of Conduct: Managing conflicts of interest where GP practices are potential providers of CCG-commissioned services; July 2012; NHS Commissioning Board.

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- Towards establishment: Creating responsive and accountable CCGs; February 2012; NHS Commissioning Board.
- National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013; February 2013



28. APPENDIX 1: EQUALITY IMPACT ANALYSIS FORM

<b>1.</b>	<b>Title of policy/ programme/ service being analysed</b>
	FN01 Procurement Policy
<b>2.</b>	<b>Please state the aims and objectives of this work.</b>
	Updated Procurement Policy to reflect current EU Regulations and legislation
<b>3.</b>	<b>Who is likely to be affected? (e.g. staff, patients, service users)</b>
	Internal Policy document
<b>4.</b>	<b>What sources of equality information have you used to inform your piece of work?</b>
	N/A
<b>5.</b>	<b>What steps have been taken ensure that the organisation has paid <u>due regard</u> to the need to eliminate discrimination, advance equal opportunities and foster good relations between people with protected characteristics</b>
	The analysis of equalities is embedded within the CCG's Committee Terms of Reference and project management framework.
<b>6.</b>	<b>Who have you involved in the development of this piece of work?</b>
	<p><b>Internal involvement:</b> Senior Management team</p> <p><b>Stakeholder involvement:</b> Consultation with Senior Managers</p> <p><b>Patient / carer / public involvement:</b> This is an Internal policy aimed at staff employed by the CCG and contractors working for the CCG. The focus is on compliance with statutory duties and NHS mandated principles and practice. There are no particular equality implications.</p>
<b>7.</b>	<b>What evidence do you have of any potential adverse or positive impact on groups with protected characteristics? Do you have any gaps in information? Include any supporting evidence e.g. research, data or feedback from engagement activities</b>
	(Refer to Error! Reference source not found. if your piece of work relates to commissioning activity to gather the evidence during all stages of the commissioning cycle)

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<p><b>Disability</b> People who are learning disabled, physically disabled, people with mental illness, sensory loss and long term chronic conditions such as diabetes, HIV)</p>	<p>Consider building access, communication requirements, making reasonable adjustments for individuals etc</p>
<p>Neutral Impact</p>	
<p><b>Sex</b> Men and Women</p>	<p>Consider gender preference in key worker, single sex accommodation etc</p>
<p>Neutral Impact</p>	
<p><b>Race or nationality</b> People of different ethnic backgrounds, including Roma Gypsies and Travelers</p>	<p>Consider cultural traditions, food requirements, communication styles, language needs etc.</p>
<p>Neutral Impact</p>	
<p><b>Age</b> This applies to all age groups. This can include safeguarding, consent and child welfare</p>	<p>Consider access to services or employment based on need/merit not age, effective communication strategies etc.</p>
<p>Neutral Impact</p>	
<p><b>Trans</b> People who have undergone gender reassignment (sex change) and those who identify as trans</p>	<p>Consider privacy of data, harassment, access to unisex toilets &amp; bathing areas etc.</p>
<p>Neutral Impact</p>	
<p><b>Sexual orientation</b> This will include lesbian, gay and bi-sexual people as well as heterosexual people.</p>	<p>Consider whether the service acknowledges same sex partners as next of kin, harassment, inclusive language etc.</p>
<p>Neutral Impact</p>	

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<b>Religion or belief</b> Includes religions, beliefs or no religion or belief	Consider holiday scheduling, appointment timing, dietary considerations, prayer space etc.
Neutral Impact	
<b>Marriage and Civil Partnership</b> Refers to legally recognised partnerships (employment policies only)	Consider whether civil partners are included in benefit and leave policies etc.
Neutral Impact	
<b>Pregnancy and maternity</b> Refers to the pregnancy period and the first year after birth	Consider impact on working arrangements, part-time working, infant caring responsibilities etc.
Neutral Impact	
<b>Carers</b> This relates to general caring responsibilities for someone of any age.	Consider impact on part-time working, shift-patterns, options for flexi working etc.
Neutral Impact	
<b>Other disadvantaged groups</b> This relates to groups experiencing health inequalities such as people living in deprived areas, new migrants, people who are homeless, ex-offenders, people with HIV.	Consider ease of access, location of service, historic take-up of service etc
Neutral Impact	
<b>8.</b>	<b>Action planning for improvement</b> Not applicable to FN01 Procurement Policy

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<b>Sign off</b>
Name and signature of person / team who carried out this analysis Anna Bourne – Procurement Lead
Date analysis completed 1 December 2015
Name and signature of responsible Director Tracey Preece
Date analysis was approved by responsible Director 1 December 2015

## 28. APPENDIX 2: SUSTAINABILITY IMPACT ASSESSMENT

Staff preparing a policy, Governing Body (or Sub-Committee) report, service development plan or project are required to complete a Sustainability Impact Assessment (SIA). The purpose of this SIA is to record any positive or negative impacts that this is likely to have on sustainability.

Title of the document	FN01 Procurement Policy
What is the main purpose of the document	Updated Procurement Policy to reflect current EU Regulations and legislation
Date completed	November 2015
Completed by	Anna Bourne Procurement Lead

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Domain	Objectives	Impact of activity Negative = -1 Neutral = 0 Positive = 1 Unknown = ? Not applicable = n/a	Brief description of impact	If negative, how can it be mitigated? If positive, how can it be enhanced?
Travel	Will it provide / improve / promote alternatives to car based transport?	N/A		
	Will it support more efficient use of cars (car sharing, low emission vehicles, environmentally friendly fuels and technologies)?	N/A		
	Will it reduce 'care miles' (telecare, care closer) to home?	N/A		
	Will it promote active travel (cycling, walking)?	N/A		
	Will it improve access to opportunities and facilities for all groups?	N/A		
	Will it specify social, economic and environmental outcomes to be accounted for in procurement and delivery?	0	Questions within procurement documents to address these areas	
Procurement	Will it stimulate innovation among providers of services related to the delivery of the organisations' social, economic and environmental objectives?	1	Questions within procurement documents to address these areas	
	Will it promote ethical purchasing of goods or services?	1	Questions within procurement documents to address these areas	

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Domain	Objectives	Impact of activity Negative = -1 Neutral = 0 Positive = 1 Unknown = ? Not applicable = n/a	Brief description of impact	If negative, how can it be mitigated? If positive, how can it be enhanced?
Procurement	Will it promote greater efficiency of resource use?	0	Questions within procurement documents to address these areas	
	Will it obtain maximum value from pharmaceuticals and technologies (medicines management, prescribing, and supply chain)?	0	Questions within procurement documents to address these areas	
	Will it support local or regional supply chains?	0	Questions within procurement documents to address these areas	
	Will it promote access to local services (care closer to home)?	1	Questions within procurement documents to address these areas	
	Will it make current activities more efficient or alter service delivery models	1	Questions within procurement documents to address these areas	
Facilities Management	Will it reduce the amount of waste produced or increase the amount of waste recycled? Will it reduce water consumption?	N/A		
Workforce	Will it provide employment opportunities for local people?	N/A		
	Will it promote or support equal employment opportunities?	N/A		

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Domain	Objectives	Impact of activity Negative = -1 Neutral = 0 Positive = 1 Unknown = ? Not applicable = n/a	Brief description of impact	If negative, how can it be mitigated? If positive, how can it be enhanced?
	Will it promote healthy working lives (including health and safety at work, work-life/home-life balance and family friendly policies)?	N/A		
	Will it offer employment opportunities to disadvantaged groups?	N/A		
Community Engagement	Will it promote health and sustainable development?	0		
	Have you sought the views of our communities in relation to the impact on sustainable development for this activity?	N/A		
Buildings	Will it improve the resource efficiency of new or refurbished buildings (water, energy, density, use of existing buildings, designing for a longer lifespan)?	N/A		
	Will it increase safety and security in new buildings and developments?	N/A		
	Will it reduce greenhouse gas emissions from transport (choice of mode of transport, reducing need to travel)?	N/A		
	Will it provide sympathetic and appropriate landscaping around new development?	N/A		
	Will it improve access to the built environment?	N/A		



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Domain	Objectives	Impact of activity Negative = -1 Neutral = 0 Positive = 1 Unknown = ? Not applicable = n/a	Brief description of impact	If negative, how can it be mitigated? If positive, how can it be enhanced?
Adaptation to Climate Change	Will it support the plan for the likely effects of climate change (e.g. identifying vulnerable groups; contingency planning for flood, heat wave and other weather extremes)?	N/A		
Models of Care	Will it minimise 'care miles' making better use of new technologies such as telecare and telehealth, delivering care in settings closer to people's homes?	1	Questions within procurement documents to address these areas	
	Will it promote prevention and self-management?	1	Questions within procurement documents to address these areas	
	Will it provide evidence-based, personalised care that achieves the best possible outcomes with the resources available?	1	Questions within procurement documents to address these areas	
	Will it deliver integrated care, that co-ordinate different elements of care more effectively and remove duplication and redundancy from care pathways?	1	Questions within procurement documents to address these areas	