

# **PROCUREMENT**

## **A SUMMARY GUIDE OF KEY POINTS**

**In Relation To Procurement Principles and Legislation**

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**NATIONAL LEGISLATION, POLICY AND GUIDANCE**

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

- NHS (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (where the commissioner is NHS England or a CCG)
- The Public Contracts Regulations 2006 for services governed by the NHS (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (where the commissioner is NHS England or a CCG)
- The Public Contracts Regulations 2015 for goods, works and services NOT governed by the NHS (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (where the commissioner is NHS England or a CCG)
- 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
- Crown Commercial Service Guidance

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

**CCG PROCUREMENT THRESHOLDS**

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.

<b>Quotations are required where formal tendering procedures are not adopted and:</b>	
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

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

**EU THRESHOLDS**

Where public sector bodies are purchasing supplies or services or commissioning works, which are over the relevant Threshold, then the Regulations must be complied. The relevant Thresholds are (as of March 2015):

Supplies and Services not covered by the PCCR 2013 Regulations	<b>£172.514</b>
Healthcare services (that are subject to the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013)	<b>£172,514</b> until 18th April 2016, at which point the threshold will rise to <b>£625,050</b>
Works	<b>£4,322,012</b>

### **EU PROCUREMENT REGULATIONS 2015 AND HEALTHCARE SERVICES**

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.

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.

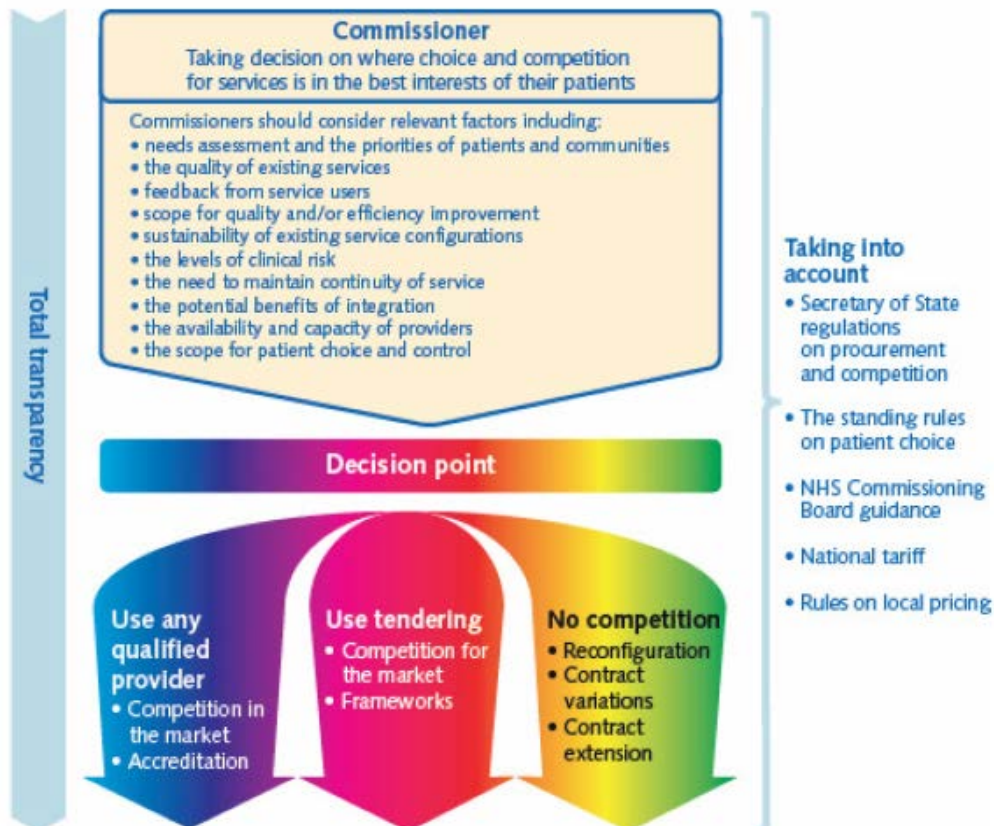
Failure to comply with the EU Procurement Rules can have serious consequences and result in sanctions for NHS Vale of York CCG.

### **COMMISSIONING DECISIONS (COMPETITION OR NOT)**

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

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

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



## THE NHS'S REACTION TO NATIONAL AND EUROPEAN PROCUREMENT REQUIREMENTS

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

This will also include for any tender process that is not subject to the Directives, (for example, the estimated value of a contract falls below the relevant threshold), EU Treaty-based principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality apply. Some degree of advertising, which is appropriate to the scale of the contract, is likely to be necessary to demonstrate transparency. This is in line with the UK objective of achieving value for money in all public procurement - not just those covered by the EU Procurement Directives.

For healthcare services contracts, the commissioners will need to ensure compliance with the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013.

Commissioners will ensure they have access to specialist legal and procurement resource to facilitate and monitor compliance with these rules and regulations, as

well as to demonstrate effective procurement processes in carrying out both strategic and transactional purchasing activity.

The provision of a 'Procurement Policy' (plus standard documentation and processes) will enable Commissioners to facilitate and monitor compliance with all procurement rules and regulations, as well as ensuring the organisation demonstrates effective procurement processes in carrying out strategic purchasing activity.

ADVERTISING OBLIGATIONS FROM 18 APRIL 2016

Contract value	Advertising requirements	Type of process	Contract award notice
£0-24,999	No advertising requirements *	N/A	N/A
£25,000 to EU threshold	Contracts Finder *	At authority's discretion (Using Treaty principles)	Contracts Finder
<b>Above EU threshold:</b> <b>Goods and services:</b> <b>£172,514</b> <b>Works: £4,322,012</b>	OJEU + Contracts Finder	Open, Restricted, Competitive Dialogue, Competitive Procedure with negotiation, or innovation partnership	OJEU + Contracts Finder
<b>Above EU threshold:-</b> <b>Healthcare Services:</b> <b>£625,050</b>		"light touch" - that complies with transparency and equal treatment	

## BEST PRACTICE PROCUREMENT AND STRATEGIC SOURCING

All the procurements which relate to Healthcare services that are subject to the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013, they will, until 18<sup>th</sup> April 2016, fall within Part B of Schedule 3 of Part 10 of the Public Contract Regulations 2006 (the "Regulations") (and therefore not subject to the full scope of the Regulations). The NHS will, nevertheless, apply best procurement practice throughout the whole of any procurement process.

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

## GOVERNANCE STRUCTURE FOR PROCUREMENT PROCESS

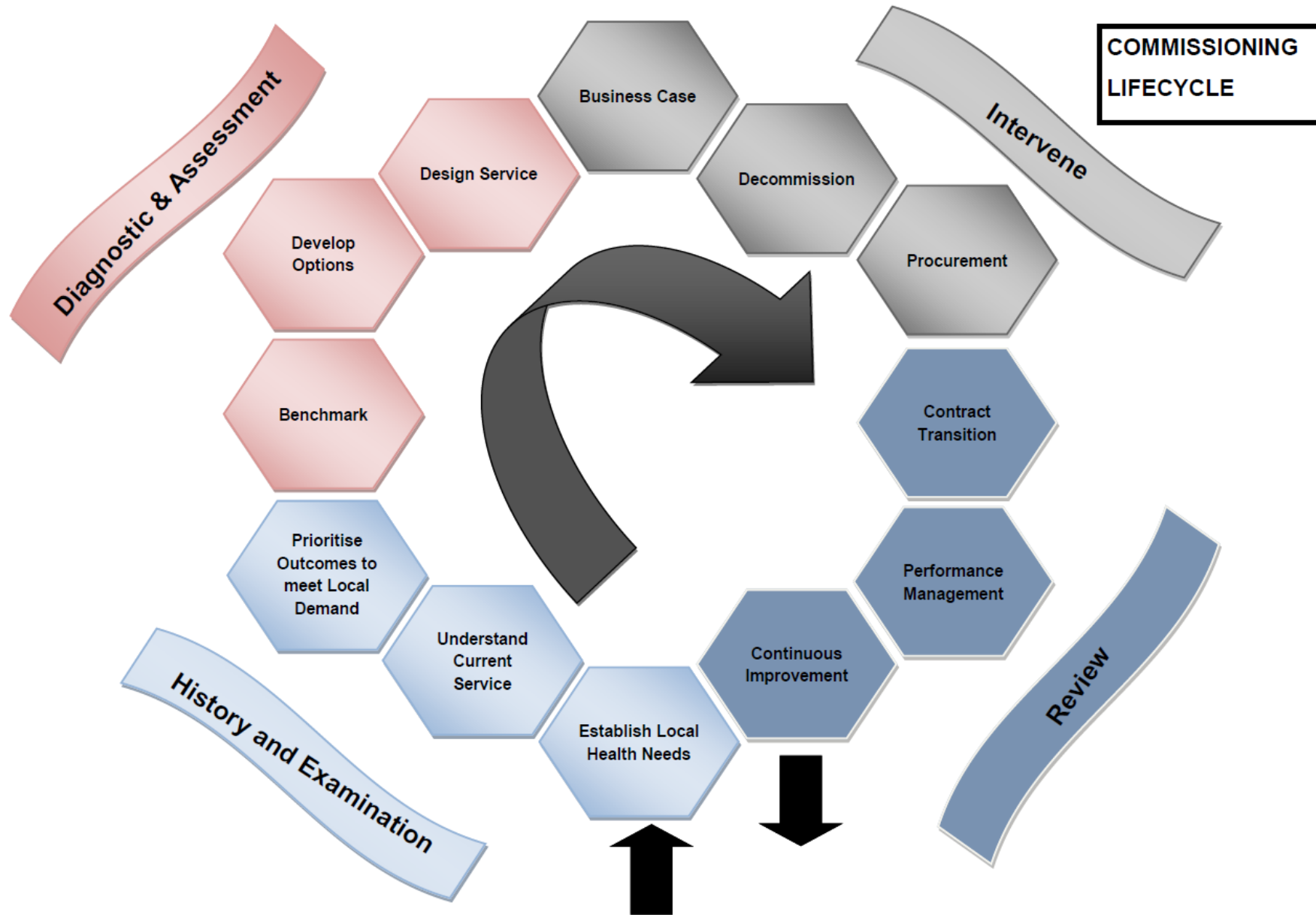
<p><b>Level One</b> NHS Vale of York CCG Governing Body (excluding any member who may have a potential Conflict of Interest)</p>	<ul style="list-style-type: none"> <li>• Agree the procurement route and contract specification</li> <li>• Endorse the decision on the preferred bidder</li> <li>• Give authority 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>

## KEY CONTACTS FOR PROCUREMENT

Tracey Preece – Chief Finance Officer  
Lynette Smith - Head of Corporate Assurance and Strategy  
Anna Bourne – Senior Procurement Lead



# COMMISSIONING LIFECYCLE



PROCUREMENT DECISION PROCESS

