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Paper Prepared By:	Kevin Parkinson	Date of Paper:	July 2017
Executive Sponsor:	Kevin Parkinson	Responsible Manager:	Kevin Parkinson
Committees where Paper Previously Presented:			
Background Paper(s):			
Summary of Report:	The Procurement Strategy will ensure that the CCG meets its legal duty with regard to compliance with procurement guidance and rules.		
Recommendation(s):	The Governing Body are requested to approve the Procurement Strategy.		
			Please Select Y/N
Identified Risks:			N
Impact Assessment: (Including Health, Equality, Diversity and Human Rights)			N
Strategic Objective(s) Supported by this Paper:			Please Select (X)
To Improve the health of our population and reduce inequalities in health			X
To reduce premature deaths from a range of long term conditions			X
To develop care closer to home			X
To commission safe, sustainable and high quality Hospital Health Care			X
To commission safe, sustainable and high quality Mental Health Care			X
To improve capacity and capability of primary care services to respond to the changing health needs of our population			X
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NHS Morecambe Bay
Clinical Commissioning Group
PROCUREMENT STRATEGY
v1.10

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Table of Contents

	Page
1. Introduction	1
2. Legal Framework	1
3. How We Will Work	2
4. Aims	2
5. Principles	3
6. Approach	5
7. Procurement Process	6
8. Accountability and Authorisation	7
9. Complaints and Dispute Resolution	7
10. Environmental and Sustainability	7
11. Guidance	8
12. Review	8

APPENDICES

Appendix A	Procurement Route Decision Making Process	9
Appendix B	Justification of Tendering Process	10

1. INTRODUCTION

This procurement strategy sets out how the CCG will develop its procurement activities. It does not set out the decision making routes or the detailed procurement process as these are covered by the governance mechanisms including the Scheme of Reservation and Delegation contained within the CCG's Constitution.

The decision to procure a service will have been reached using the CCG's prioritisation process, however the decision appertaining to the particular procurement route will be made using the flow chart shown in Appendix A and the supporting aspects for consideration detailed in Appendix B.

This Procurement Strategy has been designed to support the CCG by showing an understanding of the current requirements and guidance for procurement activities of NHS Bodies.

The strategy will also ensure that the CCG meets its legal duty with regard to compliance with the Public Contracts Regulations 2015 and The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013:

http://www.legislation.gov.uk/uksi/2015/102/pdfs/uksi_20150102_en.pdf

http://www.legislation.gov.uk/uksi/2013/500/pdfs/uksi_20130500_en.pdf

2. LEGAL FRAMEWORK

The Health and Social Care Act 2014:

<http://www.legislation.gov.uk/ukpga/2014>

and the associated NHS (Procurement, Patient Choice and Competition) (No 2) Regulations 2013, provide the framework for procurement of health care services by the CCG. When procuring health care services, the 2013 Regulations require NSH commissioners (CCGs and NHS England) to act with a view to:

- securing the needs of the people who use the services;
- improving the quality of services; and
- improving efficiency in the provision of services.

The 2013 Regulations require commissioners to procure services from providers who are most capable of delivering these objectives and who provide best value for money in doing so. The 2013 Regulations also prohibit commissioners from engaging in anti-competitive behaviour unless this is in the interests of patients.

NHS Improvement (the sector regulator for health services in England) has the role of protecting and promoting the interests of patients and has been granted powers to set and enforce a framework of rules for providers and commissioners. NHS Improvement has

published its 'Substantive Guidance on Procurement, Patient Choice and Competition Regulations' (December 2013) ('*Substantive Guidance*')

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/283505/SubstantiveGuidanceDec2013_0.pdf

designed to support CCGs and NHS England. NHS Improvement's Substantive Guidance makes it clear that it is for commissioners to decide which services to procure and how best to secure them in the interests of patients.

The Public Contracts Regulations 2015 determine the approach taken where the need for procurement is identified for goods or services that exceed cost thresholds.

3. HOW WE WILL WORK

We will work in partnership with patients, carers and families, partner organisations across public, voluntary and private sectors to develop high quality, safe and cost effective locality based services.

We will hold providers of services to account for the quality, safety and performance of their services. We expect local providers to aspire to be the best in their field and to involve and seek feedback on a regular basis from local patients and carers.

We will be held to account by NHS England and the local Health and Wellbeing Board as well as our patients and partner organisations for commitments we have entered into.

We will be open and transparent on our decision making and regularly hold meetings of our Governing Body in public and in different locations to improve access for people.

We welcome constructive feedback and suggestions on ways we can improve our commissioning and integration of services for the benefit of local people and to improve their outcomes of care.

In compliance with the NHS (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 the CCG will engage with members of the public and our resident patient population.

We wish to ensure our commissioning and contracting is based on clearly assessed population needs, clinically led and focuses on achieving improved measurable outcomes of care from integrated services for local patients, carers and their families.

We will comply with and implement the NHS Constitution, deliver the NHS Mandate locally and respond to the local population's healthcare needs in a fair and equitable way living within the resources we are allocated.

We will comply with the Principles set out in Section 6 of this strategy document.

4. AIMS

This Procurement Strategy is intended to support the CCG in achieving its statutory aims and objectives, to:

- secure the needs of health care service users;
- improve the quality of services; and
- improve the efficiency with which services are provided.

In addressing these aims and objectives, the CCG will, where relevant:

- engage with all stakeholders and relevant parties when a procurement is undertaken and at all stages of the process;
- engage with all fellow commissioners, stakeholders and relevant parties when a procurement is undertaken, including seeking Joint Commissioning wherever this opportunity arises in the best interests of local patients;
- understand and adhere to relevant policy and guidance regarding procurement type (e.g. Any Qualified Provider (AQP)/full tender/single provider tender);
- seek to enable greater choice for patients by expanding the number of qualified providers;
- ensure safe, high quality and equitable services are achieved and maintained across the CCG;
- ensure that the CCG achieves value for money in its procurement activities;
- ensure that the CCG makes clear and transparent decisions on whether any procurement is necessary in the interests of the local population;
- ensure that the CCG avoids possible conflicts of interest by ensuring transparency of all decision making through recorded declaration of interests and, if unavoidable, the effective management of any conflicts of interests; and
- ensure that each procurement process conducted by the CCG complies with the relevant guidance, legal requirements and best practice on procurement and sustainability.

5. PRINCIPLES

Applying the overarching doctrine of the commissioning and procurement process being open, fair, transparent and non-discriminatory. The following principles will be adhered to and the CCG will seek to act as to:

- secure the needs of patients who use services and to improve the quality and efficiency of those services, including providing them on an integrated model;
- act transparently and proportionately, and to treat providers in a non-discriminatory way;
- procure services from providers who are most capable of delivering the overall objective and that provide evidence based, best practice and value for money; and
- consider ways of improving services (including through services being provided in a more integrated way, enabling providers to compete and allowing patients to choose their provider).

In relation to each purchasing decision for a major service area concerning health care and social care services the CCG will test proposals and:

- consider the extent to which any form of competition is required and consider the most appropriate process and procedure for awarding the relevant contract or contracts;
- in that regard, give consideration whether the use of a framework agreement, including the use of approved lists, is the most appropriate means of appointing providers. The CCG will appoint the best provider, offering the best quality services that are affordable regardless of who the provider is as they will have passed the fit and responsible test in the first instance;
- when there is a joint procurement with the Local Authority, the CCG will ensure that it complies with applicable NHS guidance; and
- purchasing decisions will be led by priorities based on population needs and addressing health inequalities, clinical needs and measurable improvement in outcomes with clear clinical leadership informed by gather patient needs from the outset to provide evidence based services.

The CCG will, wherever possible and where it is consistent with legal requirements, ensure that contractual provisions, procurement procedures, selection and award criteria are designed to ensure that contractors and providers:

- are good employers who comply with all relevant employment legislation, including the Public Interest Disclosure Act 1998;
- maintain acceptable standards of health and safety and comply fully with all legal obligations;
- meet all HMRC obligations;
- meet all equalities and inclusion obligations as defined by the Equalities Act 2010;
- are reputable in their standards of business conduct;
- are registered appropriately and satisfactorily with the relevant regulatory bodies (e.g. Care Quality Commission);
- respect the environment and take appropriate steps to ensure they minimise their environmental impact;
- can evidence an appropriate record of involving patients in their services and providing high quality services;
- can demonstrate an appropriate record of successful partnership working with commissioners and other providers in the best interests of patients and the public; and
- are open and transparent with commissioners on all patient safety and quality issues within their services with accurate information and reporting.

In each procurement the CCG will consistently comply with the relevant law, exclude companies which have been convicted of offences, or whose director(s) or another person or company who has powers of representation, decision or control of the company has or have

been convicted of offences in the conduct of their business or committed an act of grave professional misconduct in undertaking their business. However, any corrective/remedial action taken by the company in response to such an offence will also be taken into account in determining their suitability as a bidder.

The CCG will, in each procurement (and consistently within relevant EU and international law) ensure that contractual provisions, procurement procedures and selection and award criteria prohibit or restrict contractors' use of offshore jurisdictions and/or improper tax avoidance schemes or arrangements and/or exclude companies which use such jurisdictions and/or such schemes or arrangements.

6. APPROACH

The CCG recognises that effective engagement with stakeholders is an essential requirement of all NHS organisations and will also offer substantial benefits to the generation of outcome-based service specifications. The CCG will engage with stakeholders at all appropriate times during the commissioning and procurement processes in accordance with the principles set out in the Communications and Engagement Strategy and in compliance with the NHS (Procurement, Patient Choice and Competition) (No 2) Regulations 2013.

Stakeholder engagement, including patient involvement with new and existing providers, and the involvement of members of the public, clinicians and other service users will occur at key points in the service review and procurement process.

Input from the above groups, will be used to ensure the views of patients are included in the services being commissioned and the CCG will engage with patients and patient groups to ensure that their views are included.

The CCG will decide on the most appropriate procurement route on a case by case basis, as set out above and in accordance with the framework of principles set out in the NHS (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 and in accordance with the Public Contracts Regulations 2015.

When making decisions on procurement options, the CCG will work with commissioning partners and will seek to ensure that the final decision complies with relevant legislations and regulations.

The procurement approach will be proportionate to the likely contract value and the commissioning objectives.

Further guidance in relation to the EU Principles and national legislation and how they apply to a specific case may be required and, where relevant, guidance will be sought from the identified Commissioning Support Unit. Where necessary, the CCG will engage specialist advisors who will be able to provide access to appropriate legal or other specialist advice on these issues.

Any decision taken by the CCG to procure services without a competitive tender will be clearly documented by the CCG.

7. PROCUREMENT PROCESS

The CCG will seek to comply with the EU Procurement Directives, the Public Contracts Regulations 2015 for what were Part A services (and adopt the light touch regime in 2015 when the CCGs exemption expires) and the NHS (Procurement, Patient Choice and Competition) (No 2) Regulations 2013.

The CCG will also take into consideration and seek to comply with NHS Improvement's Substantive Guidance on the 2013 Regulations (December 2013).

The general principles of the EU Procurement Directive are:

- **Transparency** – Opportunities will be advertised on Supply2Health and OJEU. Evaluations processes, award criteria and decisions regarding procurement will be published. Any conflicts of interest will be declared and managed.
- **Equal Treatment** – Evaluation criteria will be objective, non-discriminatory and carried out in accordance with published criteria. All parties will be able to apply for any opportunity the CCG wishes to tender.
- **Proportionate** – The procurement process will not be onerous and will be applied with consideration as to the complexity, risk and value of the service being commissioned. The CCG's Scheme of Reservation and Delegation details the scale of procurement process that needs to be undertaken.
- **Non-Discriminatory** – All bidders will be treated equally and information will be passed to all at the same time.

The EU Procurement Directive has two different service types as described in the Public Contracts Regulations 2015:

- **Substantive Regulations (Part A Services – non-Light Touch Regime)** – to which the full EU Directive applies – this includes goods, consultancy services and professional services.
- **Light Touch Regime** – Under the Public Contracts Regulations, health, social and other specific services will be subject to a 'light-touch' regime where the value of the contract is in excess of €750,000 (£589,148) or more, except where there is justification for using the negotiated procedure without prior publication. The Light-Touch Regime 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 codes. The list of services to which the Light-Touch Regime applies is set out in Schedule 3 of the Public Contracts Regulations 2015 (Annex A).

Under the light touch regime, commissioners have the freedom to determine the procurement procedure to use when awarding a contract, provided that they satisfy the principles of transparency and equal treatment of providers. Some of the factors that the CCG may take into account when designing and running its procurement processes includes:

- ensuring quality, continuity, accessibility, affordability, availability and comprehensiveness of the services;
- the specific needs of different categories of users, including disadvantaged and vulnerable groups;
- the involvement and empowerment of users;
- innovation; and
- any other related consideration.

The CCG should be aware that once a process has been designed and publicised, it should be adhered to, and departed from only if the conditions specified by the regulations are met.

The procurement of goods is subject to the full EU Directive.

The CCG will, where appropriate, adopt the principles and as good practice the full EU Directive when running any tendering exercise. This will minimise the risk to the CCG of any challenge during the procurement process.

The CCG will ensure that clear performance measures and effective contract levers are central to any agreed contract to provide evidence of compliance with public sector duties. The CCG will ensure that the procurement process is adequately resourced to ensure compliance with the above strategy and principles.

8. ACCOUNTABILITY AND AUTHORISATION

At each stage of any procurement the CCG will ensure that the project is authorised in accordance with the CCG's Governance arrangements.

Where the CCG uses external procurement support services, the final decision on any contract award will be made by the CCG Governing Body or the delegated sub-committee or Officer in line with the Scheme of Reservation and Delegation (Appendix D of the CCG's Constitution):

<http://www.morecambebayccg.nhs.uk/download/MBCCG-Constitution-v3.1> .

9. COMPLAINTS AND DISPUTE RESOLUTION

The CCG has in place a dispute resolution process as part of its overall complaints procedure. This will be adhered to in investigating any complaints from organisations who consider that the CCG has not complied with this strategy or any of the CCGs applicable policies and procedures.

10. ENVIRONMENTAL AND SUSTAINABILITY

The CCG recognises that as an organisation it is responsible for environmental and sustainability issues and will produce policies for these which will consider the impact of procurement activities on both the social and economic environment. This will enable goods and services to be sourced in a sustainable and environmentally friendly way.

11. GUIDANCE

This strategy is based on the following guidance:

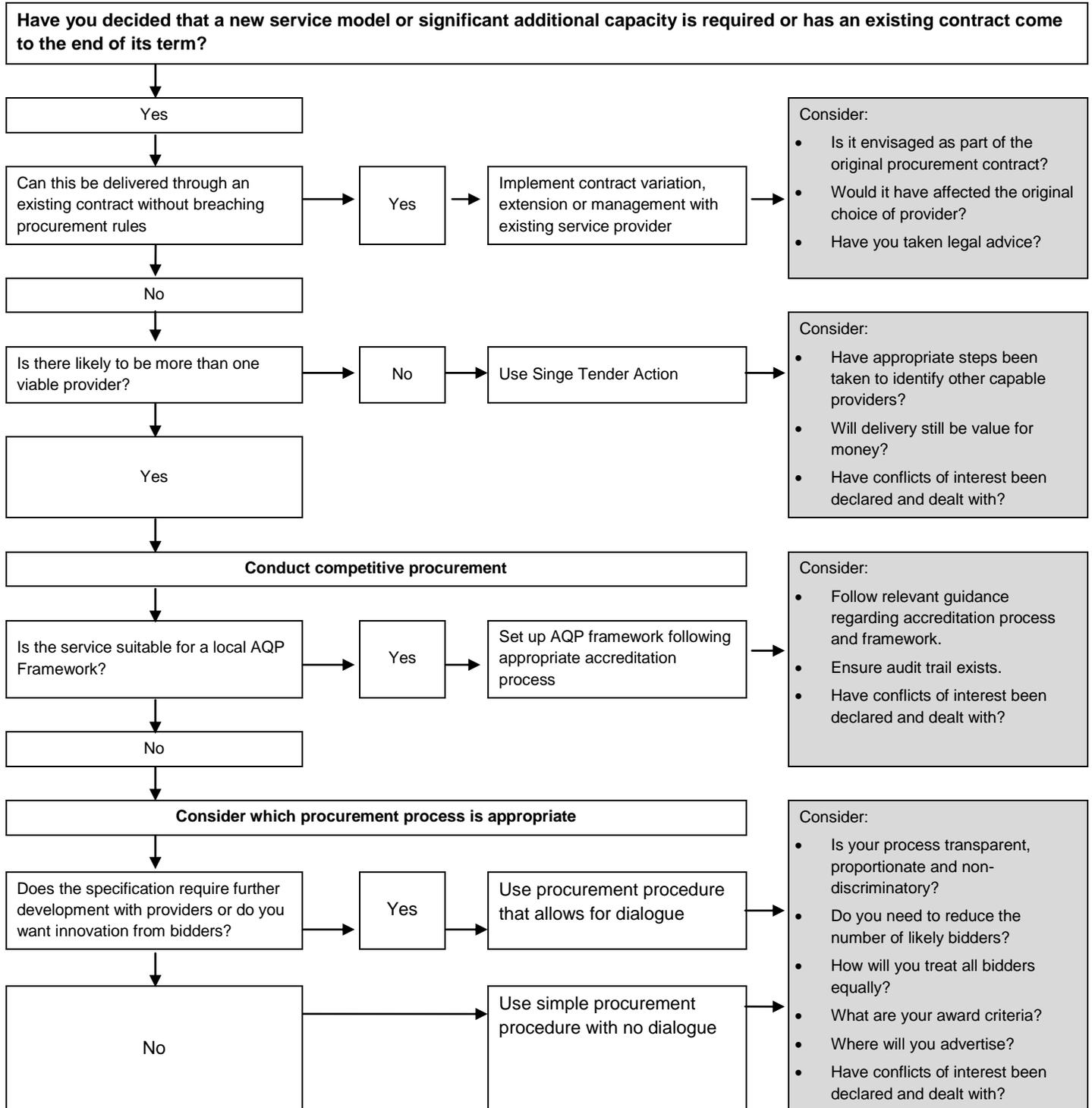
- Substantive guidance on Procurement, Patient Choice and Competition Regulations;
- EU Procurement Directives;
- Public Contracts Regulations 2015;
- Procurement, Patient Choice and Competition Regulations 2013;
- Procurement Guide for Commissioners of NHS Funded Services;
- Principles and Rules for Co-operation and Competition;
- Protecting and Promoting Patients Interests; the Role of Sector Regulations;
- Code of Conduct, managing conflicts of interest where GP Practices are potential providers of CCG commissioned services; and
- Managing conflicts of interest: guidance for clinical commissioning groups.

12. REVIEW

This strategy will be reviewed every two years, or earlier if required by changes in local or national requirements.

Appendix A

PROCUREMENT ROUTE DECISION MAKING PROCESS



Appendix B

JUSTIFICATION OF TENDERING PROCESS

Aspects to be considered when deciding whether competitive tendering is appropriate are set out below. These should be considered on a **cumulative** basis.

Consideration	Justification of Tendering Process		
	Strong	Medium	Low
Contract Value	>£172.5k		<£50k
Contract Length	>2 years		<=1 year
Level of market interest	>5 organisations (or unknown)		1 Organisation
Market capability (number of organisations believed to have required expertise)	>3 organisations (or unknown)		1 Organisation
Likely procurement costs to the CCG	<5% of total budget		>=1 year contract value
Availability of CCG staff to support procurement process	Resources available at no additional financial cost	Resources available at additional financial cost	Insufficient resource available
Confidence of achieving best provider for population needs without competitive tendering	Low	Medium	High
Confidence in achieving value for money (VFM) without tendering	Low	Medium	High
Urgency of requirements	>8 months		< 12 weeks
Ability to predict requirement	High	Medium	Low
Potential to improve value for money by tendering	High/Unknown	Medium	Low
Potential for Innovation	High	Medium	Low
Benefits of continuity with existing provider of same/related service	None	Some	Strong

In addition, the following potentially over-riding considerations should be taken into account:

- Is a specific provider required to protect essential public services (e.g. A&E)?
- Are services protected by monopoly rights? (e.g. in accordance with legal or administrative instrument)?
- Are there any procurement constraints linked to partnership funding (e.g. if the CCG is not a joint signatory to the contract)?