

PROCUREMENT POLICY

November 2021

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POLICY AMENDMENTS

Amendments to the Policy will be issued from time to time. A new amendment history will be issued with each change.

New Version Number	Issued by	Nature of Amendment	Approved by and Date	Date on Internet
V1.0	Andrew Wilson	Final Release Version	July 2013	
V1.1	Anna Bourne	Draft revised version to take into account new procurements regulations and CCG policy format.	November 2015	
V1.2	Anna Bourne	Amendments arising from Audit Committee.	January 2016	
V1.3	Anna Bourne	Revised to take into account new procurement, regulations, thresholds and CCG structure.	Audit Committee and Governing Body – July 2017	01 August 2017
V1.4	Abigail Combes, Head of Legal and Governance	Revised to reflect new governance structure.		
V1.4	Anna Bourne Senior Procurement Lead	Revised to reflect updated procurement processes and EU thresholds		
V1.5	NECS Healthcare Procurement and Market Management Team	Updated to reflect the procurement Legislation in regards to the procurement of Healthcare Services under the Public Contract Regulations 2015 (as amended) and the EU Exit as from 1 January 2021	Finance and Performance Committee – November 2021	November 2021

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CONTENTS

1.	INTRODUCTION.....	4
2.	POLICY STATEMENT	5
3.	IMPACT ANALYSES.....	5
4.	SCOPE.....	5
5.	POLICY PURPOSE	6
6.	HEALTHCARE SERVICES PROCUREMENT – LEGISLATION & REGULATION	7
7.	SINGLE TENDER WAIVER PROCEDURE.....	11
8.	CONTRACT VARIATION	12
9.	NHS VALE OF YORK CCG GOVERNANCE AND STANDARDS OF BUSINESS CONDUCT	15
10.	CONSULTATION.....	15
11.	MANAGING CONFLICTS OF INTERESTS.....	17
12.	ANTI-FRAUD AND BRIBERY	19
13.	RISK MANAGEMENT	19
14.	PROCUREMENT PLANNING.....	20
15.	PROCUREMENT PROCESSES AND PROCEDURES	20
16.	TENDERING PROCESS.....	25
17.	PRINCIPLES OF GOOD PROCUREMENT.....	28
18.	DECOMMISSIONING SERVICES	30
19.	TRANSFER OF UNDERTAKINGS AND PROTECTION OF EMPLOYMENT REGULATIONS (TUPE)	31
20.	POLICY IMPLEMENTATION.....	32
21.	TRAINING AND AWARENESS.....	32
22.	POLICY REVIEW.....	32
23.	ASSOCIATED POLICIES	32
24.	CONTACT DETAILS	32
25.	APPENDIX 1 : EQUALITY IMPACT ANALYSIS.....	33
26.	APPENDIX 2: SUSTAINABILITY IMPACT ASSESSMENT	36
27.	APPENDIX 3 SINGLE TENDER WAIVER FORM.....	41
28.	APPENDIX 5 PROCUREMENT DECISION PROCESS.....	43
29.	APPENDIX 6 TAKING ACCOUNT OF SOCIAL VALUE IN THE AWARD OF CENTRAL GOVERNMENT CONTRACTS.....	44

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 Clinical Commissioning Group's (NHS Vale of York CCG) 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.
- 1.4.** 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.
- 1.5.** Other legislation and guidance affecting procurement including :
- Section 11 of the Health and Social Care Act, 2012 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 (the 'PPCC Regulations') 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 2015 (as amended)
- Public Procurement (Amendment etc.) (EU Exit) 2020
- The Public Services (Social Value Act) 2012
- Equality Act 2010
- Operational Guidance to the NHS-Extending Patient Choice of Provider (DOH).
- Everyone counts: Planning for Patients outlines specific requirements that are appropriate to commissioned services.
- NHS England Guidelines.
- Cabinet Office Guidelines.

2. POLICY STATEMENT

2.1. 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

3.1. Equality

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 at Appendix 1.

3.2. Sustainability

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 at Appendix 2.

4. SCOPE

4.1. As far as it is relevant, this policy applies to all NHS Vale of York CCG procurements (clinical and non-clinical). It is, however, 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.

4.2. 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.

4.3. 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.

5. POLICY PURPOSE

5.1. 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.

5.2. 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.

5.3. 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.

5.4. 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 and the Public Contracts Regulations 2015 (the PCRs) (as amended).

5.5. 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.

5.6. 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**

5.7. To ensure each procurement is consistent with relevant UK 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. Following the transition from the EU on 1 January 2021 some EU Procurement Law will continue to apply. For any procurement procedures that are ongoing at the end of the transition period, the existing regulatory regime will continue up until contract award.

5.8. In each procurement and in line with new Government Legislation as from 1 January 2021, explicitly evaluate a minimum of 10% social value proportionate to the contract, utilising the Social Value Model so that social benefits that can be achieved in the delivery of the contract(s).

6. HEALTHCARE SERVICES PROCUREMENT – LEGISLATION & REGULATION

6.1. Applicable Legislation

Healthcare Services fall within Schedule 3 services (known as the Light Touch Regime (LTR) under **The Public Contracts Regulations 2015 (as amended)** which implement the European Union Procurement Directives into UK Law. For Schedule 3 services (LTR) the CCG is bound by the Regulations but is allowed a degree of flexibility in terms of timescales and processes used. However the CCG **MUST** ensure that when procuring services it complies with the principles of the Public Contract Regulations 2015 (as amended) and acts **TRANSPARENTLY, EQUITABLY** and in a **NON-DISCRIMINATORY** manner.

Procurements for Healthcare Services must also be conducted taking into consideration **The National Health Service (Procurement Choice and Competition) Regulations 2013**. These Regulations impose requirements on CCG's to ensure good practice when procuring Healthcare Services, to protect patients' rights to make choices and to prevent anti-competitive behaviour. These regulations provide scope for complaints to, and enforcement by NHS England and NHS Improvement (NHSE/I) (formerly known as Monitor), as an alternative to challenging decisions in the courts. The Regulations apply alongside the Public Contracts Regulations 2015 (as amended) and do not affect their application.

The Public Contract Regulations 2015 (as amended) are European Law and therefore supersede the Procurement, Patient Choice & Competition (2) Regulations 2013 which are UK Regulations.

6.2. The Public Contract Regulations 2015 (PCR)

The Regulations are produced by the EU Courts and enacted into UK Law. Under LTR there are stipulations that **MUST** be met – these are as follows:

- Expenditure over £663,540 must be advertised in Find a Tender (FTS) and Contracts Finder. The value of £663,540 is for total spend over the life of the contract, including optional extensions and is not value per annum. **N.B.** EU regulatory thresholds are subject to change every 2 years.
- If more than one expression of interest is received then a fair and transparent process must be undertaken and all bidders treated equally.
- A Regulation 84 compliant Award Report must be produced, approved and kept on file for audit purposes.
- A Contract Award notice fully detailing the process undertaken and outcome must be placed in FTS and Contracts Finder for contract values over the EU procurement Thresholds. For contract values over £10,000; Contracts Finder advertisements, although not mandatory for Healthcare Services should be used as best practice to seek competition and drive best value.

From the 1 January 2021, the PCR continue to apply in their entirety with only the following amendments to:

- Contract Advertising Platform – advertising rules for contract opportunities remain unchanged, however; there is no longer a requirement to advertise contract opportunities within the Official

Journal of the European Union (OJEU); this has been replaced by the UK platform Find a Tender; and

- The European Single Procurement Document (ESPD) will remove the reference to Europe and be known as the Single Procurement Document (SPD).

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

6.3. The National Health Service (Procurement, Patient Choice and Competition (No 2) Regulations 2013 (PPCC)

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

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

- 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.

In order to meet these requirements the CCG should consider a range of strategies including:

- providing the services in a more integrated way;
- enabling providers to compete to provide the services;,,
- allowing patients a choice of provider of the services;,,
- consider collaborative procurement.

Both sets of procurement Regulations are there to ensure Commissioners adhere to the following principles:

- **act in a transparent and proportionate way**, for example by advertising opportunities, publishing Commissioning plans, and publicising evaluation criteria. In addition the PCRs (as amended) require the CCG to publish in FTS & Contracts Finder all contract awards it makes including those where no formal procurement process has been undertaken. The award notice must include the name of the provider, description of the services, total amount to be paid, contract period and describe how the provider was accepted.
- treat providers **equally** and in a **non-discriminatory** way, including not treating a provider more favourably than any other

provider, in particular on the basis of ownership, i.e. you cannot “favour” an NHS organisation including General Practitioners over other NHS Provider types such as the independent or third sector, and ensure service specifications are based on outcomes required rather than how providers should deliver the service.

For Services that fall under Chapter 3 of the PCRs (as amended) spend below £663,540 there is no legal obligation to advertise however it is important that the Commissioner can evidence their decision meets the stipulations of the Procurement, Patient Choice & Competition (2) Regulations 2013; and provide evidence of Value for Money (VFM) to provide the necessary assurance of accountability of public money expenditure.

Value for Money (VFM) is defined as ‘*the optimum combination of whole life costs and quality (or fitness for purpose) to meet the user’s requirements*’.

Procurements that fall under the UK Thresholds can be limited by location (subject to criteria in the Policy Procurement Note 11/20 (PPN)), and or SME’s and VCSEs, however the focus for this is to ensure value for money which can only be achieved by a competitive process. Where it is identified that there is likely to be more than one capable provider the CCG should advertise their requirements or undergo a fair and transparent process. This **does not** necessarily obligate the CCG to tender the services, although in most cases that is the next logical step, but it will provide evidence that the CCG has tried to engage with the market.

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

6.4. Award of a Contract without Competition

For expenditure over £663,540 direct award with no competition is covered under Regulation (32) of the PCRs 2015 (as amended) which states it is possible but only under the following circumstances:

- Where no tenders or suitable tenders were received from providers in response to an Open or Restricted procurement process.
- Competition is absent for technical reasons (i.e. only one provider can meet the specification and this can be evidenced and justified appropriately).
- For reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for procurement cannot be met and this can be justified appropriately, poor planning is not appropriate justification.

For expenditure below £663,540 the CCG may award a new contract for Healthcare Services without advertising an intention to seek offers, where the CCG is satisfied that the service is capable of only being provided by that provider or there are statutory or other reasons why a particular provider must provide those services, for example on clinical or safety grounds. The Commissioner would need to evidence it meets the stipulations of the

Procurement, Choice & Competition (2) Regulations 2013 and evidence that the decision is VFM.

6.5. GP List Based Services

As CCGs move towards the development of Primary Care Networks (PCN) which consists of groups of GPs working together with a range of local providers, including across primary care, community services, social services and social care. Requirements for enhanced GP services will be contracted via the Network Contract Direct Enhanced Service (DES) as specifically set out in the Network agreement in the first instance.

It should also be noted that NHS Vale of York CCG will be the legally contracting authority for the PCN and therefore National and Local completion legislation and guidance will still apply when contracting through this route.

6.6. Public Services (Social Value) Act (2012)

The Public Services (Social Value) Act (2012) places a requirement on commissioners to consider the economic, environmental and social benefits of their approaches to procurement before any procurement process starts. Commissioners also have to consider whether they should consult on those issues.

When considering how a procurement process might improve the social, economic or environmental well-being of a relevant area the CCG must only consider matters which are relevant to what is proposed to be procured. The CCG is only required to consider those matters to the extent to which it is proportionate in all the circumstances, to take those matters into account.

6.7. ROLES / RESPONSIBILITIES / DUTIES

Procurement Support

NHS Vale of York CCG does not have its own internal procurement resource. The Procurement advice for Healthcare services is currently provided by the North of England Commissioning Support Unit (NECS) who 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, any external consultants, CSU's or relevant CCG's business processes are robust and enable the CCG to meet its duties in relation to procurement.

6.8. 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)

- When authorising and approving clinical procurement decisions NHS Vale of York CCG will comply with its Scheme of Delegation and Detailed Financial Policies

Governance structure for Procurement Process:

<p>Level One 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"> • Agree the procurement route and contract specification • Agree contract value and length • Endorse the decision on the preferred bidder • Give authority to award the contract
<p>Level Two Executive Committee</p>	<ul style="list-style-type: none"> • Monitor and assure work of procurement team • Management and Mitigation of risks and issues • Sign off the shortlist of bidders, the evaluation scoring criteria, the recommendation to the Governing Body to
<p>Level Three Procurement Project Team NHS Vale of York CCG Officers, Clinical and other Advisors</p>	<ul style="list-style-type: none"> • Manage the procurement • Develop all tender and contract documents • Propose the evaluation scoring • Evaluate assessment and negotiate the contract • Prepare update and briefing reports for the Finance and Performance Committee and Governing Body. • Risk Management and Freedom of Information

6.9. CCG PROCUREMENT THRESHOLDS

Quotations are required where formal tendering procedures are not adopted:

For expenditure less than £5,000, 2 verbal quotes are required

For expenditure between £5,000 and £25,000, 3 written quotes are required

For expenditure between £25,001 and £49,999, 5 written quotes are required

If the expenditure is greater than £50,000 but less than the EU Regulations limit (£189,330 Type A goods & services and £663,540 Healthcare Services), then a formal tender is required.

7. SINGLE TENDER WAIVER PROCEDURE

Formal tendering procedures may be waived in the following circumstances:

- Regulation (32) (a) - where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission where it so requests

- Regulation (32) (b) where the works, supplies or services can be supplied only by a particular economic operator for any of the following: -
 - (i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;
 - (ii) competition is absent for technical reasons;
 - (iii) the protection of exclusive rights, including intellectual property rights
- Regulation (32) (c) - insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with.

There is a clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering.

For the provision of legal advice and services providing that any legal firm or partnership commissioned by the CCG is regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council for England and Wales in relation to the obtaining of Counsel's opinion) and are generally recognised as having sufficient expertise in the area of work for which they are commissioned. The Chief Finance Officer will ensure that any fees paid are reasonable and within commonly accepted rates for the costing of such work.

The waiving of competitive tendering procedures should not be used to avoid competition or for administrative convenience or to award further work to a provider originally appointed through a competitive procedure, this is in breach of the PCRs 2015 (as amended).

Where it is decided that competitive tendering is not applicable, i.e. is not legally bound to by legislation or falls under the criteria of PCRs (as amended) (Regulation 32) and should be waived, the fact of the waiver and the reasons should be documented and recorded on the Single Tender Waiver Form see Appendix 3 and reported to the Audit Committee at each meeting.

8. CONTRACT VARIATION

- 8.1. Contract variations can be considered where there is already a contract in place and if the circumstances (s) are in accordance with PCR 2015 (as amended) under Regulation 72.

Contracts and Framework agreements maybe modified without a new procurement procedure in accordance with this Part in any of the following cases:

- (a) Where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revisions clauses or options, provided that such clauses –
 - (i) State the scope and nature of possible modifications or options as well as the conditions under which they maybe used, and

- (ii) Do not provide for modifications or options that would alter the overall nature of the contract or the framework agreement.
- (b) For additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor-
 - (i) Cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services, or installations procured under the initial procurement, or

Would cause significant inconvenience or substantial duplication of costs for the contracting authority, provided that any increase in price does not exceed 50% of the value of the original contract.(c) Where all of the following conditions are fulfilled: -

- (i) the need for modification has been brought about by circumstances which a diligent contract authority could not have foreseen:
- (ii) the modification does not alter the overall nature of the contract;
- (iii) any increase in price does not exceed 50% of the value of the contract or framework agreement.

The CCG must consider the impact of contract variations/modifications including the benefits and risks and appropriate approval processes.

Regulation 72 – Modification of contracts during their term		
Ref	Description	Application
(a)	Where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revisions clauses or options, provided that such clauses –	
(a)(i)	State the scope and nature of possible modifications or options as well as the conditions under which they may be used, and	The initial tender documents and specifications(s) and associated complaint adverts i.e. contract notice have detailed the modifications and options.
(a)(ii)	Do not provide for modifications or options that would alter the overall nature of the contract or the framework agreement.	There is not a material change to the original published specification and contract advertised in the original tender.
(b)	For additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor	
(b)(i)	Cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services, or installations procured under the initial procurement, or	Services that can only be provided by the current provider. NB this must be due to speciality i.e. a product or service that cannot be substituted.
(a)(ii)	Would cause significant inconvenience or substantial	Not providing VFM, i.e. as the cost of switching outweighs or duplicates in

	duplication of costs for the contracting authority, provided that any increase in price does not exceed 50% of the value of the original contract.	terms of resource and monetary value the cost for the CCG if they were to have another provider, providing the cost does not exceed 10% of the value of the original contract.
(c)	Where all of the following conditions are fulfilled: -	
(b)(i)	The need for modification has been brought about by circumstances which a diligent contract authority could not have foreseen:	I.e. Pandemic situations. NB this cannot be used if the CCG have failed to plan for a procurement process.
(c) (ii)	the modification does not alter the overall nature of the contract;	There is not a material change to the original published specification and contract advertised in the original tender.
(c)(iii)	any increase in price does not exceed 50% of the value of the contract or framework agreement.	The modification of the contract, in terms of monetary value does not exceed 50% of the value of the original contract.
(d)	Where a new contractor replaces the one to which the contracting authority had initially awarded the contract as a consequence of:	
(d)(i)	An unequivocal review clause or option in conformity with sub paragraph (a); or	The initial tender documents and specifications(s) and associated complaint adverts i.e. contract notice have detailed the modifications and options.
(d)(ii)	Universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger acquisition or insolvency, of another economic operator that fulfils the current criteria of qualitative selection initially established, provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this part;	Contracts can be varied where there has been a need or change in provider due to takeover, merger or insolvency. The new economic operator (provider) may need to vary the contract providing it is still within the above criteria.
(e)	Where the modifications, irrespective of their value, are not substantial within the meaning of paragraph 8 of Regulation 72 or	The modification of a contract or a framework agreement during its term where 1 or more of the listed criteria apply.
(f)	Where paragraph 5 of Regulation 72 applies.	Where the value is below both of the following values: (a) the relevant EU thresholds and (b) 10% of the initial contract value

9. NHS VALE OF YORK CCG GOVERNANCE AND STANDARDS OF BUSINESS CONDUCT

- 9.1.** 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).
- 9.2.** 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.
- 9.3.** 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.
- 9.4.** NHS Vale of York CCG's financial policies identifies the financial responsibilities which apply to everyone working for NHS Vale of York CCG and its constituent localities.
- 9.5.** 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.
- 9.6.** 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.
- 9.7.** Due diligence must be undertaken in the form of completing a Data Protection Impact Assessment (DPIA) prior to commissioning a new supplier or service where personal information is to be processed. This is to ensure appropriate safeguards are in place regarding the security and confidentiality for protecting personal information, this is required under Data Protection and GDPR legislation. Contracts will state the roles and responsibilities of both parties in relation to the technical and organisational controls to protect personal information.

10. CONSULTATION

- 10.1.** 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.

10.2. 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.

10.3. 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

10.4. 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

10.5. The rules regarding preliminary market consultations and prior involvement of candidates to tenderers is outlined in Section 5 of the PCR (2015). Market Consultation should form part of the planning process. Contracting Authorities may seek or accept advice from independent experts or authorities or from market participants, such advice can be used as long as it does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.

10.6. Early engagement for the healthcare services market encourages stimulation of the market and provides many benefits including:

- Reducing barriers to entry;
- Encourages providers to work collaboratively;
- Helps manage expectations of the market;
- Develop the knowledge of the providers and the CCG of the market capability and capacity;
- Defining objectives and deliverables of the service; and
- Giving providers enough time to respond to opportunities.
- Market engagement must be conducted with the support of the procurement professionals to ensure that the approach is sufficiently open, fair, and transparent and will not distort the market.

11. MANAGING CONFLICTS OF INTERESTS

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

- **Conflict of Interest**
- **Business Conduct**

11.2. The NHS PPCC Regulations 2013, NHS Managing Conflicts of Interest Statutory Guidance and RCRs (as amended) (regulation 24) set out the requirements on managing conflicts of interest for procurement of healthcare.

11.3. All members of the CCG must declare an interest in regards to all procurement activity and comply with NHS England's; the CCGs Standards of Business Conduct Policy in terms of identifying, declaring, recording and managing conflicts of interests.

11.4. 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.

11.5. Examples of conflicts of interest include :

- Having a financial interest (e.g. holding shares or options) in a Potential Bidder or any entity involved in any bidding consortium including where such entity is a provider of Primary Care Services or any employee or officer thereof (Bidder Party);
- Having a financial or any other personal interest in the outcome of the Evaluation Process;
- Being employed by or providing services to any 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.

11.6. 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.

11.7. 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.

11.8. 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.

11.9. 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.

11.10 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; including all officers involved
- Nature of interest in the procurement process
- How conflict was managed
- Any ongoing conflict of interest following the award of the contract
- All parties to a contract must declare conflicts of interest i.e. the CCG; the provider and all material sub-contractors.

11.11. 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

11.12. The register of procurement decisions will be updated whenever a procurement decision is taken.

11.13 The register of procurement decisions will be published on the NHS Vale of York CCG website.

11.14 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
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.

11.15.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.

12. ANTI-FRAUD AND BRIBERY

12.1. 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.

12.2. Bribery offences are covered in Exclusion Grounds, Regulation 57 of the PCR (2015) (as amended), which are applicable under best practice.

12.3. Any suspicions or concerns of acts of fraud or bribery can be reported online via <https://www.reportnhsfraud.nhs.uk> or via the NHS Fraud and Corruption Reporting Line on 0800 028 4060. This provides an easily accessible and confidential route for the reporting of genuine suspicions of fraud within or affecting the NHS.

13. RISK MANAGEMENT

13.1. 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.

14. PROCUREMENT PLANNING

14.1 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.

15. PROCUREMENT PROCESSES AND PROCEDURES

15.1 There are a number of procurement processes and procedures available and which one to adopt depends on the specific circumstances. The key is to ensure that all commissioning decisions including whether to procure, whether to decommission, etc. are recorded and an audit trail kept.

Procurement Procedure

- Negotiated Procedure without prior publication. (Direct Award or more often known as Single Tender Waiver, see note below)
- Open Procedure (Appendix C)
- Restricted Procedure (Appendix D)
- Competitive Dialogue (Appendix E)
- Competitive Procedure with Negotiation (Appendix F)
- Innovation Partnership (Appendix G)

Procurement Processes

- Framework (Appendix H)
- Dynamic Purchasing Systems (Appendix I)

- Electronic Auctions (Appendix J)
- Any Qualified Provider (Appendix K)

- 15.2.** When procuring clinical healthcare services the CCGs will consider the local commissioning priorities such as: Joint planning; Integrated Care and Patient pathway redesign.
- 15.3.** It is important that the CCG take a consistent approach to all their procurement decisions including consistent; Stakeholder Communications; Consideration of the best method and appropriateness of each procurement route; and market engagement / communications.
- 15.4.** Negotiated Procedure without prior publication is the direct award of a contract (sometimes referred to as Single Tender Waiver). This process allows the CCG to depart from usual obligations on open competition and transparency and negotiate a contract directly with one or more providers. The process must only be adopted when considered strictly necessary under specific circumstances in line with Regulation 32. The rationale must demonstrate with supporting evidence that there is only one provider capable of delivering the services and that they can deliver value for money. Single Tender Waivers carry an inherent risk of legal challenge and the governing body must be assured of the rationale for the decision
- 15.5.** Open competition – all applicants who respond to a Contract Notice will be invited to submit a tender for the contract opportunity. This method is best suited to non-complex procurement activity where the size of the market is relatively small.
- 15.6.** Restricted competition – this procedure should be used where the CCG is looking to restrict competition to those providers who can demonstrate they can meet minimum selection criteria. A defined number of short-listed providers are then invited to tender for the opportunity. This approach is best suited to non-complex procurement activity with larger markets.
- 15.7.** Competitive dialogue – this procedure allows the CCG to enter into dialogue with a small number of short-listed providers following a pre-qualification process prior to submitting a final tender. This approach is designed for high value, complex procurements where the CCG cannot clearly define in advance the technical specifications capable of meeting their objectives.
- 15.8.** Competitive procedure with negotiation – this procedure is similar to the competitive dialogue procedure, however, initial tenders are submitted which are the basis for subsequent negotiation(s) prior to a final tender being submitted. This approach is designed for high value, complex procurements where the CCG cannot define clearly the objectives that they wish to realise.
- 15.9.** Innovation Partnership - this procedure is appropriate for the requirement for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market. The tender documents would define the minimum requirements to be met and the submissions would be assessed against the required criteria. The CCG would then invite those that have met the requirements to participate in the procedure. The negotiation

process may take place in successive stages to reduce the number of bidders invited to submit tender response documents.

Procurement Processes

15.10. Framework agreements are pre-tendered arrangements which are established in compliance with procurement legislation. Once established the framework can be used by the CCG to purchase services either via a direct call off or a mini-competition without the need to carry out a full competition, which can save both time and money for the CCG. The CCG must comply with the terms and conditions of the framework. A framework is established for a defined period of years e.g. 4 years; however, a contract can be awarded in the last month of the framework for the number of years the CCG requires, beyond the termination of the framework.

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).

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. 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.

15.1. 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

15.2. 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.

15.11. Dynamic purchasing system (DPS) – this procedure reflects that of a restricted route and is a two stage process that tests the capacity, capability and technical competence of bidders in accordance with the PCR. This procedure may also be known as a pseudo dynamic purchasing system (PDPS) which is set up under the Light Touch regime for health care contracts within the PCRs. Once set up a DPS or PDPS allows the CCG to call off from those who are registered which enables efficiency in respect of timescales required to advertise services. A DPS allows bidders to apply at any time which can attract new entrants to the market and can encourage competition through bidding for opportunities. This approach is used for commonly used services readily available in the market. NHS England has adopted a DPS process which is specifically for healthcare services in line with Schedule 3 of the PCRs which can be used by CCGs.

15.12. Electronic auctions – this procedure is a procurement tool that uses web-based software to allow potential suppliers to compete online, in real time, to provide prices for the goods/services under auction. The initial stage of the tender may be carried out using healthcare flexibilities under LTR. Those bids that qualify are then invited to participate in the eAuction. eAuctions can be based on price alone or other criteria such as quality, delivery or service levels can also be taken into account. This approach is used when the services can be specified precisely.

15.13. Any Qualified Provider – a process by which any provider assessed as meeting rigorous quality requirements who can deliver services at a pre-set tariff, under the NHS Standard Contract is able to deliver the service. Providers have no volume guarantees and patients will decide which provider they are referred to on the basis of quality. Consideration should be given to the characteristics of the service and the local healthcare system to determine whether patient choice under AQP is appropriate for a given service. This consideration will include whether the service lends itself to patient choice, an assessment of the current market, the degree of choice and competition in the market and potential barriers to entry.

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.

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 NHS Improvement to take part in this truncated selection process. All providers will be required to operate within the same pricing structure.

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.

15.14. 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.

15.15 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,
- 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.

The timetable is clearly laid out with defined periods for :

- Start date,
- End date,
- Period for lessons to be learnt.
- 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.

16. TENDERING PROCESS

This section outlines the typical stages of a tendering process. Notification and electronic availability of procurement documents must be available immediately from date of notice publication is mandatory and the URL address must be provided in the notice or invitation to express interest.

16.1. 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.

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

16.2. Market Engagement / 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.

Bidder Events may be held prior to or following the commencement of the formal procurement process to inform the market and allow bidders to obtain a more in depth understanding of the procurement requirements and provide a further opportunity to stimulate market interest. Note: There is a risk of challenge from holding a bidder event and it is essential to ensure that all interested parties are provided with the same level of information during the procurement process, so all information provided, points of discussion, etc. from any bidder event must be made available to all.

Due to the cost implications of holding bidder events, the overarching principle of Proportionality will remain and other methods such as virtual events where appropriate can be considered .

16.3. Selection Questionnaires

The Single Procurement Document (SPD) is a self-declaration of businesses' financial status, abilities and suitability for a public procurement procedure. Guidance was created under the European Union (EU) 2014 Directive on Procurement and implemented by Regulation 59 of the UK's Public Contracts Regulation 2015 which first introduced the European SPD. Since the transition of the UK leaving the EU on 1 January 2021 this is now referred to as the SPD in the UK. The SPD may be submitted by bidders interested in tendering, as an element of the Selection Questionnaire (SQ), for contracts for the supply of goods, works or services to public bodies located anywhere within the UK. Where bidders have self-declared in the SPD, they must be able to provide all evidence in support of their self-declaration on request and prior to award of a contract. The

ESPD is applicable to all over threshold procurements with the exception of social and other services i.e. clinical healthcare services, however the CCG should consider the use of the SPD as supplier selection is a key stage in public procurement where you gather information on and make assessments of prospective bidders' credentials, before considering tenders. This includes gathering information about companies track records, financial credentials, whether they have been involved in corruption, whether they meet various selection criteria and so on.

16.4. Potential providers will complete an SPD with questions in 3 parts:

- Part 1 – covers basic information about the supplier;
- Part 2 – covers a self-declaration regarding whether or not any of the exclusion grounds apply; and
- Part 3 covers a self-declaration regarding whether or not the company meets the selection criteria in respect of their financial standing and technical capacity.

The SPD document is issued to all parties who submit a formal expression of interest. The ESPD will then be evaluated against predetermined SPD criteria.

16.5. Invitation to Tender

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.

Bidders are required to submit their responses to address requirements within the ITT documents. The responses are evaluated against pre-determined, pre-documented and pre-published, criteria.

16.6. Memorandum of Information (MOI)

Larger scale procurements may require the publication of a Memorandum of Information (MOI) which is sometimes referred to as a prospectus. 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 process.

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 available to any organisations who register their interest in the procurement through an electronic procurement portal. The information allows potential providers to make an initial assessment of the opportunity so that they can determine whether they wish to proceed to the next stage.

16.7. 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.

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.

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

Multi-disciplinary teams including representation from relevant specialists e.g., HR, Estates, Finance, IM&T will be established for all procurements to ensure, appropriate, fair and transparent scoring of each submission.

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

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

All recorded comments and notes would be made available under a Freedom of Information Act 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.

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.

16.8. 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.

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. 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.

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.

Once the 'standstill' period has passed, the contract is then formally awarded to the successful provider(s).

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.

NHS Vale of York CCG will ensure that details of all contracts, including the contract value, are published on its Register of Procurement Decisions on their 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.

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.

16.9. 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.

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.

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.

17. PRINCIPLES OF GOOD PROCUREMENT

17.1. 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.

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

17.2. 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 FTS (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 bidders both successful and unsuccessful.
- NHS Vale of York CCG will not contract with providers whose pricing strategy constitutes predatory pricing.

17.3. 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.

17.4. 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.

17.5. 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.

18 DECOMMISSIONING SERVICES

18.1. 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

18.2. 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.

18.3. 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.

19 TRANSFER OF UNDERTAKINGS AND PROTECTION OF EMPLOYMENT REGULATIONS (TUPE)

19.1. 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.

19.2. 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”.

- 19.3.** 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.

20 POLICY IMPLEMENTATION

- 20.1.** The policy will be disseminated by being made available on the intranet and highlighted to staff through newsletters, team briefings and by managers.
- 20.2.** 'Breaches of this policy may be investigated and may result in the matter being treated as a disciplinary offence under the CCG's disciplinary procedure'.

21 TRAINING AND AWARENESS

- 21.1.** In This policy will be published on the CCG's website and will be available to staff on the organisation's intranet.
- 21.2.** The policy will be brought to the attention of all new employees as part of the induction process. Further advice and guidance is available from the Head of Legal and Governance.

22 POLICY REVIEW

- 22.1.** This policy will be reviewed annually.

23 ASSOCIATED POLICIES

Vale of York CCG Constitution
FIN02 Detailed Financial Policies
COR01a Business Conduct policy
COR01b Conflict of Interest Policy
COR13 Local Anti-Fraud, Bribery and Corruption Policy

24 CONTACT DETAILS

Head of Contracting and Analytics
Telephone : 07738 892872
Email : valeofyork.contactus@nhs.net
Address : NHS Vale of York Clinical Commissioning Group
West Offices, Station Rise, York. Y01 6GA

25 APPENDIX 1 : EQUALITY IMPACT ANALYSIS

1.	Title of policy/ programme/ service being analysed
	FN01 Procurement Policy
2.	Please state the aims and objectives of this work.
	Updated Procurement Policy to reflect current EU Regulations and legislation
3.	Who is likely to be affected? (e.g. staff, patients, service users)
	Internal Policy document
4.	What sources of equality information have you used to inform your piece of work?
	N/A
5.	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
	The analysis of equalities is embedded within the CCG's Committee Terms of Reference and project management framework.
6.	Who have you involved in the development of this piece of work?
	<p>Internal involvement: Senior Management team</p> <p>Stakeholder involvement: Consultation with Senior Managers</p> <p>Patient / carer / public involvement: 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>
7.	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
	(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)

Disability People who are learning disabled, physically disabled, people with mental illness, sensory loss and long term chronic conditions such as diabetes, HIV)	Consider building access, communication requirements, making reasonable adjustments for individuals etc.
Neutral Impact	
Sex Men and Women	Consider gender preference in key worker, single sex accommodation etc.
Neutral Impact	
Race or nationality People of different ethnic backgrounds, including Roma Gypsies and Travellers	Consider cultural traditions, food requirements, communication styles, language needs etc.
Neutral Impact	
Age This applies to all age groups. This can include safeguarding, consent and child welfare	Consider access to services or employment based on need/merit not age, effective communication strategies etc.
Neutral Impact	
Trans People who have undergone gender reassignment (sex change) and those who identify as trans	Consider privacy of data, harassment, access to unisex toilets & bathing areas etc.
Neutral Impact	
Sexual orientation This will include lesbian, gay and bisexual people as well as heterosexual people.	Consider whether the service acknowledges same sex partners as next of kin, harassment, inclusive language etc.
Neutral Impact	
Religion or belief Includes religions, beliefs or no religion or belief	Consider holiday scheduling, appointment timing, dietary considerations, prayer space etc.

Neutral Impact	
Marriage and Civil Partnership Refers to legally recognised partnerships (employment policies only)	Consider whether civil partners are included in benefit and leave policies etc.
Neutral Impact	
Pregnancy and maternity 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	
Carers 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	
Other disadvantaged groups 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	
8. Action planning for improvement	Not applicable to FN01 Procurement Policy

Sign off
Name and signature of person / team who carried out this analysis Liza Smithson – Head of Contracting and Analytics
Date analysis completed - November 2021
Name and signature of responsible Director Simon Bell (approved via email)
Date analysis was approved by responsible Director November 2021

26. 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	Liza Smithson (Head of Contracting and Analytics)

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		

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 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	
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	

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 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		
	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		

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?
	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		
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		

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?
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	

27. APPENDIX 3 SINGLE TENDER WAIVER FORM

EXEMPTIONS FROM PROCUREMENT

Formal tendering procedures may be waived in the following circumstances:

- a. Where the requirement is covered by an existing contract and the additional expenditure does not constitute a material difference (e.g. change of scope, or increase in value of 10% or more), or result in a shift in the economic balance of the contract in favour of the provider.
- b. Where the timescale genuinely precludes competitive tendering but failure to plan the work properly would not be regarded as a justification for a single tender.
- c. Where specialist expertise is required and is available from only one source.
- d. When the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different providers for the new task would be inappropriate.
- e. There is a clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering.
- f. For the provision of legal advice and services providing that any legal firm or partnership commissioned by the CCG is regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council for England and Wales in relation to the obtaining of Counsel's opinion) and are generally recognised as having sufficient expertise in the area of work for which they are commissioned. The Chief Finance Officer will ensure that any fees paid are reasonable and within commonly accepted rates for the costing of such work.

The waiving of competitive tendering procedures should not be used to avoid competition or for administrative convenience or to award further work to a provider originally appointed through a competitive procedure.

Where it is decided that competitive tendering is not applicable and should be waived, the fact of the waiver and the reasons should be documented and recorded on the Single Tender Waiver Form and reported to the Audit Committee at each meeting.

Value	Approval & Sign Off
Up to £250,000	Chief Finance Officer, or Chief Nurse and Accountable Officer
Up to £500,000	Chief Finance Officer, and Accountable Officer
>£500,000	Governing Body including Chief Finance Officer, and Accountable Officer

END USER REQUESTING WAIVER

Project Title	
Supplier	
Total Cost	
Description of Services	
Requested by	
Date	
Reason for not following procurement process	

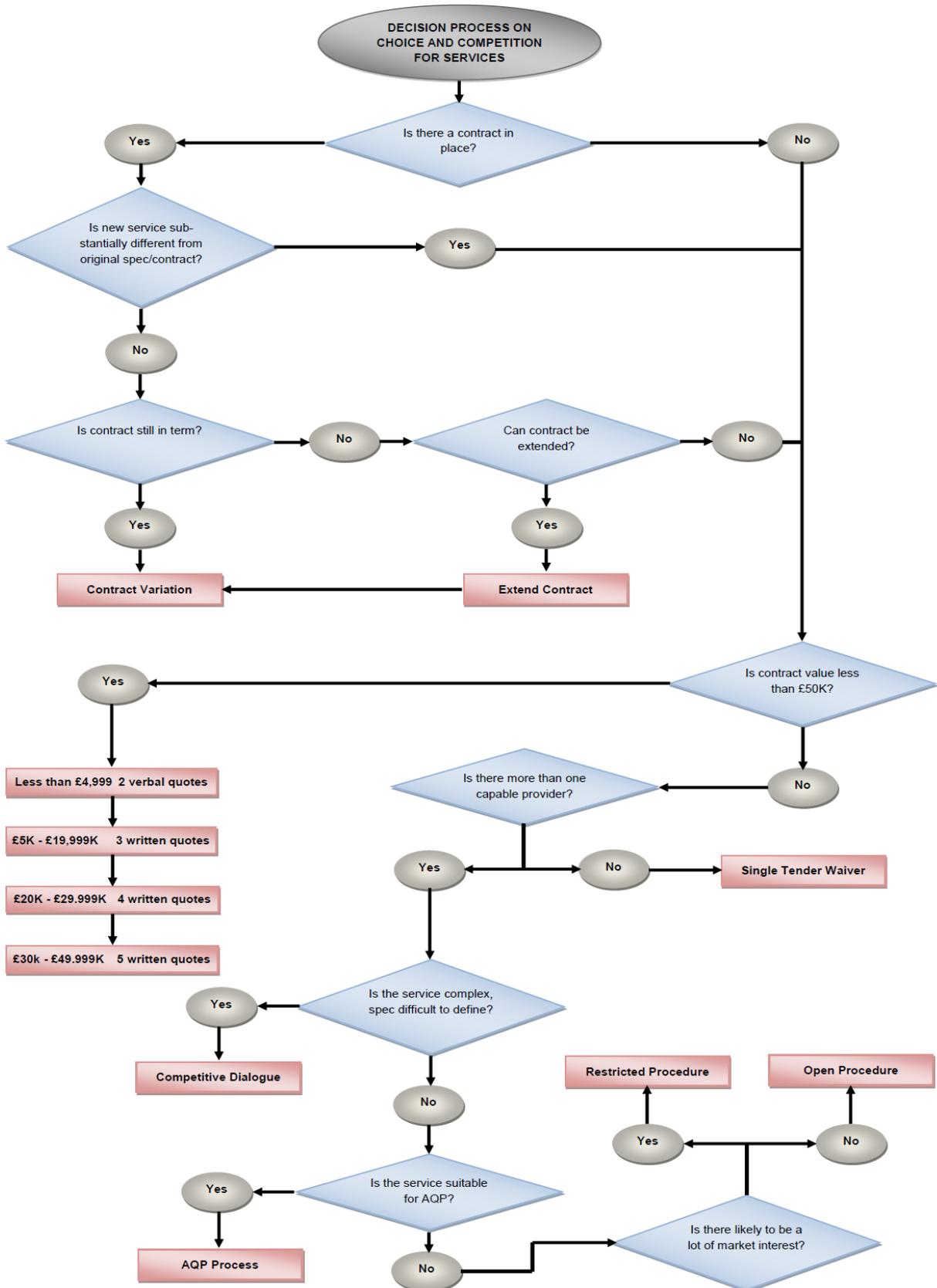
PROCUREMENT LEAD

Recommendation	
Reason for Recommendation	
Name and Title	
Signature	
Date	

NHS VALE OF YORK CCG SIGN OFF

Name and Title	
Signature	
Date	

28. APPENDIX 5 PROCUREMENT DECISION PROCESS



29. APPENDIX 6 TAKING ACCOUNT OF SOCIAL VALUE IN THE AWARD OF CENTRAL GOVERNMENT CONTRACTS

Social Value Model and Criteria

Social Value must be explicitly evaluated in all central government procurements, where the requirements are related and proportionate to the subject-matter of the contract rather than just 'considered' effective from 1st January 2021. A minimum of 10% of the total evaluation criteria must be assigned to social value (a higher weighting can be applied if applicable).

The Social Value Model provides policy themes and outcomes which must be used as part of the social value evaluation criteria. The themes applicable to the service delivery should be selected as part of the evaluation criteria.

Social value themes and policy outcome are listed below:

Themes and Outcomes		
Theme	Policy Outcome	Delivery Objectives – what good looks like
COVID - 19 Recovery	Help local communities to manage and recover from the impact of COVID -19	<p>Activities that, in the delivery of the contract:</p> <ul style="list-style-type: none"> - Create employment, re-training and other return to work opportunities for those left unemployed by COVID-19, particularly new opportunities in high growth sectors. - Support people and communities to manage and recover from the impacts of COVID-19, including those worst affected or who are shielding. - Support organisations and businesses to manage and recover from the impacts of COVID-19, including where new ways of working are needed to deliver services. - Support the physical and mental health of people affected by COVID-19, including reducing the demand on health and care services. - Improve workplace conditions that support the COVID-19 recovery effort including effective social distancing, remote working and sustainable travel solutions.
Tackling economic inequality	Create new businesses, new jobs and new skills	<p>Activities that, in the delivery of the contract:</p> <ul style="list-style-type: none"> - Create opportunities for entrepreneurship and help new, small organisations to grow, supporting economic growth and business creation. - Create employment opportunities particularly for those who face barriers to

		<p>employment and/or who are located in deprived areas.</p> <ul style="list-style-type: none"> - Create employment and training opportunities, particularly for people in industries with known skills shortages or in high growth sectors. - Support educational attainment relevant to the contract, including training schemes that address skills gaps and result in recognised qualifications. - Influence staff, suppliers, customers and communities through the delivery of the contract to support employment and skills opportunities in high growth sectors.
	Increase supply chain resilience and capacity	<p>Activities that:</p> <ul style="list-style-type: none"> - Create a diverse supply chain to deliver the contract including new businesses and entrepreneurs, start-ups, SMEs, VCSEs and mutuals. - Support innovation and disruptive technologies throughout the supply chain to deliver lower cost and/or higher quality goods and services. - Support the development of scalable and future-proofed new methods to modernise delivery and increase productivity. - Demonstrate collaboration throughout the supply chain, and a fair and responsible approach to working with supply chain partners in delivery of the contract. - Demonstrate action to identify and manage cyber security risks in the delivery of the contract including in the supply chain. - Influence staff, suppliers, customers and communities through the delivery of the contract to support resilience and capacity in the supply chain.
Fighting Climate Change	Effective stewardship of the environment	<p>Activities that:</p> <ul style="list-style-type: none"> - Deliver additional environmental benefits in the performance of the contract including working towards net zero greenhouse gas emissions. - Influence staff, suppliers, customers and communities through the delivery of the contract to support environmental protection and improvement
Equal opportunity	Reduce the disability	<p>Activities that:</p>

	employment gap	<ul style="list-style-type: none"> - Demonstrate action to increase the representation of disabled people in the contract workforce. - Support disabled people in developing new skills relevant to the contract, including through training schemes that result in recognised qualifications. - Influence staff, suppliers, customers and communities through the delivery of the contract to support disabled people.
	Tackle workforce inequality	<p>Activities that:</p> <ul style="list-style-type: none"> - Demonstrate action to identify and tackle inequality in employment, skills and pay in the contract workforce. - Support in-work progression to help people, including those from disadvantaged or minority groups, to move into higher paid work by developing new skills relevant to the contract. - Demonstrate action to identify and manage the risks of modern slavery in the delivery of the contract, including in the supply chain
Wellbeing	Improve health and wellbeing	<p>Activities that:</p> <ul style="list-style-type: none"> - Demonstrate action to support the health and wellbeing, including physical and mental health, in the contract workforce. - Influence staff, suppliers, customers and communities through the delivery of the contract to support health and wellbeing, including physical and mental health.
	Improve community integration	<p>Activities that:</p> <ul style="list-style-type: none"> - Demonstrate collaboration with users and communities in the co-design and delivery of the contract to support strong integrated communities. - Influence staff, suppliers, customers and communities through the delivery of the contract to support strong, integrated communities.