

Procurement Policy

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Policy Statement

NHS Calderdale CCG procurement will be compliant with prevailing procurement regulations and in proportion to risk and will be used to support clinical priorities, health and well-being outcomes and wider CCG objectives.

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, the use of non-competitive and competitive tenders, multi-provider accreditation models such as Any Qualified Provider (AQP) and use of available framework agreements.
- 1.3 NHS Calderdale CCG's approach to procurement is to operate within legal and policy frameworks and actively seek to use procurement as one of the system management tools available to strengthen commissioning outcomes. It can do this through:
 - Increasing general market capacity and meeting CCG demand requirements;
 - Using competitive tension to facilitate improvements in choice, quality, efficiency, and access and responsiveness;
 - Stimulating innovation.

2. Associated Policies and Procedures

- 2.1 This policy and any procedures derived from it should be read in accordance with the following policies, procedures and guidance.
 - NHS Calderdale Clinical Commissioning Group Constitution
 - Joint Strategic Needs Assessment for Calderdale

- Code of Business Conduct
- Calderdale CCG Standing Orders and Standing Financial Instructions

2.2 Other legislation and guidance affecting procurement include:

- Section 14Z2 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 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.

3. **Aims and Objectives**

- 3.1 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.
- 3.2 To describe the transparent and proportional process by which the CCG will determine whether health and social services are to be commissioned through existing contracts with providers, through competitive or non-competitive process using tenders or via the use of AQP or available framework agreement.
- 3.3 To enable early determination of whether, and how, services are to be opened up to the market, to facilitate open and fair discussion with existing and potential providers and thereby to facilitate good working relationships.

- 3.4 To set out how we will meet statutory procurement requirements primarily the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013.
- 3.5 To enable Calderdale CCG to demonstrate compliance with the principles of good procurement practice:
- Transparency
 - Proportionality
 - Non-discrimination
 - Equality of treatment

4. Scope of the Policy

- 4.1 As far as it is relevant, this Policy applies to all Calderdale CCG procurements (clinical and non-clinical). However, it is particularly relevant to procurement of goods and services that support the delivery of healthcare and certain sections relate only to procurement of health and social services.
- 4.2 This Policy must be followed by all Calderdale CCG employees and staff on temporary or honorary contracts, representatives acting on behalf of Calderdale CCG including staff from member practices, and any external organisations acting on behalf of the CCG including other CCGs and any externally engaged commissioning support organisations.

5. Accountabilities and Responsibilities

- 5.1 Lead Manager
- 5.1.1 Overall day to day responsibility for procurement rests with the Head of Contracting and Procurement, accountable to the Chief Financial Officer.
- 5.2 Procurement support
- 5.2.1 Where it is required, procurement support will be provided by internal CCG resource i.e. the CCG's procurement function. In the case of collaborative projects this could be another CCG by agreement. The CCG will have systems in place to assure itself

that the relevant CCG's (or external agent) business processes are robust and enable the CCG to meet its duties in relation to procurement.

5.3 Authority

5.3.1 The CCG will remain directly responsible for:

- Approving the 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 provider

5.4 Arrangements for delegation of authority to officers are set out in the relevant Standing Financial Instructions. In the event of any discrepancy between this Procurement Policy and the SOs / PFPs, the SOs / PFPs will take precedence.

6. Guiding principles

6.1 When procuring health care services, the CCG is required to act with a view to:

- Securing the needs of the people who use the services
- Improving the quality of the services
- Improving efficiency in the provision of the services

6.2 The CCG is required and committed to:

- Act in a transparent and proportionate way
- Treat providers equally and in a non-discriminatory way, including by not treating a provider, or type of provider, more favourably than any other provider, in particular on the basis of ownership

6.3 The CCG is required and committed to procuring services from one or more providers that:

- Are most capable of delivering the needs, quality and efficiency required
- Provide the best value for money in doing so

6.4 The CCG is required and committed to act with a view to improving quality and efficiency in the provision of services, the means of doing so will include:

- The services being provided in an integrated way (including with other health care services, health related services, or social care services)
- Enabling providers to compete to provide the services
- Allowing patients a choice of provider of the services

6.5 The CCG is committed to act with a view to understanding the impact of its procurement and contracting actions on provider market(s), particularly in respect of the development and sustainability of existing providers as well as the future maturity and plurality of providers within such market(s).

6.6 Potential conflicts of interest will be managed appropriately to protect the integrity of the CCG's contract award decision making processes and the wider NHS commissioning system.

7. Public Procurement Obligations

7.1 The Public Contracts Regulations 2015 and The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 place legal requirements and procedures for awarding contracts above a certain threshold amount.

7.2 With the removal of Part A and Part B Services, the Public Contracts Regulations 2015 introduced a new "Light Touch Regime" for a very limited number of services¹. The threshold for advertising such services applies from 1 January and is amended every two):

- Light Touch Regime Services (the full list of services is at Appendix A) - £663,540
- Supply services (goods and/or services) - £122,976

7.3 All purchases or contracts which exceed the financial thresholds existing will be advertised in the [Government Find a Tender service](#)

7.4 In addition, the Public Contracts Regulations 2015 include a requirement that all documentation, including specification and evaluation criteria, must be made

¹ Schedule 3 of the Public Contracts Regulations 2015

available free of charge to any interested parties at the time of the advert being published.

- 7.5 The principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality apply to all procurements. The CCG's approach to fulfilling these requirements is described in section 15.
- 7.6 There is no statutory requirement to tender Health and Social services and no general policy requirement for Health and Social services to be subject to formal procurement processes. The Tendering and Contracting sections of Standing Orders and Standing Financial Instructions apply as applicable where the CCG elects to invite competitive and non-competitive bids for the supply of Health and Social services.
- 7.7 The CCG will, consistently with its obligations under, inter alia, the Public Contracts Regulations and applicable national law, ascertain whether it is necessary, desirable or appropriate to invite competition.

8. Conflicts of interest

- 8.1 Managing potential conflicts of interest appropriately is needed to protect the integrity of the wider NHS commissioning system and protect CCGs and GP practices from any perceptions of wrongdoing.²
- 8.2 General arrangements for managing conflicts of interest are set out in the Calderdale CCG Constitution and Conflict of Interest Policy. This section describes additional safeguards that Calderdale CCG will put in place when commissioning services that could potentially be provided by GP practices.
- 8.3 Where any practice representative on a decision-making body has a material interest in a procurement decision, those practice representatives will be excluded from the

² Code of Conduct: Managing conflicts of interest where GP practices are potential providers of CCG-commissioned services.

decision-making process (but not discussion about the proposed decision). This includes where all practice representatives have a material interest, for example where the CCG is considering commissioning services on a single tender basis from all GP practices in the area. Rules relating to Quoracy in these and other circumstances are set out in the CCG constitution.

- 8.4 Details of all contracts, including the value of the contracts, will be published on the CCG website quarterly after contracts are signed.

9. Procurement planning

- 9.1 A procurement plan will be maintained that will list all current and future procurements. The procurement plan will be reviewed on a regular basis taking into account local and national priorities; the CCG's commissioning intentions; and nationally mandated procurements. In addition, it will take into account the impact of completed and on-going procurements.
- 9.2 The plan will highlight the priority, timescale, risk and resource requirement for each potential procurement. Not every priority on the procurement plan will result in procurement, but the plan indicates the CCG's intention to review the service or activity which may result in procurement.
- 9.3 The plan will be developed as a key element to provide communication between the CCG, its membership and potential providers. Through transparent and open processes the CCG will actively encourage provider engagement.
- 9.4 The CCG will follow the requirement to communicate with providers and stakeholders in line with the procurement policy.

10. Procurement approach for non-clinical supply and service contracts

- 10.1. The CCG and / or its agents will follow appropriate public procurement rules and Standing Orders / Prime Financial Policies as appropriate.

11. Procurement approach for Health and Social service contracts

- 11.1 NHS Calderdale CCG will conduct health and social service procurements, as one part of market management and development, according to priorities established in its strategic plans.
- 11.2 Decisions of whether to tender will be driven by the need to commission services from the providers who are best placed to deliver the needs of our patients and population.
- 11.3 The decision-making process will vary depending on whether or not the service is an existing one, new or significantly changed.
- 11.4 Existing Services
- 11.5.1 For an existing service (i.e. one that is not new or significantly changed) that is not at the end of a fixed-term procured via competitive tender, where the service is fit for purpose, offers best value for money and continues to fit with the strategic direction of the CCG, the existing provider will normally be retained as long as far as it is appropriate to do so. The process is shown diagrammatically in Appendix B.
- 11.5.2 Where the provider of an existing service was selected for a fixed period via a competitive tender exercise and the fixed period (including any options for contract extension) are due to end, a new competitive tender exercise will normally be conducted to select the future provider of the service. If this is not considered to be appropriate the CCG may seek to extend the service but must be fully aware of any risks associated with doing so.
- 11.5.3 Where an existing service is provided by a limited number of providers, if considered appropriate and where practicable the CCG will seek to increase the provider base either through use of a framework or through the use of the AQP model (see section 12.1). The practicability of implementation of the framework or AQP model will take account of:
- Value of improving choice and contestability
 - Level of market interest and capability
 - Complexity of accreditation requirements and associated cost

- The appropriateness of the framework or AQP model to the service concerned

11.6 New or significantly changed services

11.6.1 The CCG's approach to secure services will in overall terms be the following:

- Determine whether the service can be accommodated through existing contracts with providers through future variations to those contracts, assuming that this possible without contravening procurement rules and guidance, and that quality, patient safety and value for money can be demonstrated.
- Whether there are demonstrable grounds to identify a specific provider or group of providers without competition, these are:
 - Where a service is designated as list-based where practicably GP practices are demonstrably the most suitable or only capable providers of a service
 - Where the service is of minimal aggregated value (less than £20,000), the CCG will consider procuring on a non-competitive basis from a suitably qualified provider
 - For technical reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded to only that provider i.e. there is only one provider that can meet the CCG's requirements
 - For reasons of extreme urgency, outside the control of the CCG, where it is not possible to award a contract to another provider in the time available
- Where there is a clear benefit to patients from the opportunity or requirement to broaden the choice of provider available to patients then the CCG's approach where applicable and appropriate will be the AQP model (see section 12).
- If the AQP model is not appropriate, the service is not of minimal value, the CCG's expectation is that the service will normally be subject to competitive tender for a single or limited number of providers, but all such cases will be subject to a review of whether a competitive tender process is appropriate on the grounds of proportionality, demonstrating best value, market maturity,

- Maintaining competitive tension and complying with procurement rules. Appendix C provides an indication of the aspects to be considered when deciding whether competitive tender is appropriate.

11.6.2 The proposed approach for New or Significantly changed Healthcare and Social services is shown in a flow diagram in Appendix B.

12. Approach to Market

12.1 Any Qualified Provider (AQP)

12.1.1 With the AQP model, for a prescribed range of services, any provider that meets criteria for entering a market can compete for business within that market without constraint by a commissioner organisation. Under AQP there are no guarantees of volume or payment, and competition is encouraged within a range of services rather than for sole provision of them.

- 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

12.1.2 The AQP model promotes choice and contestability, and sustained competition on the basis of quality rather than cost. Any service that is contracted through the AQP model does not need to be tendered, although it will be advertised as appropriate and potential service providers will need to demonstrate the required level of qualification.

12.1.3 A standard NHS contract will be awarded to all providers that meet:

- Minimum standards of clinical care (implying qualification/accreditation requirement)
- The price the CCG will pay
- Relevant regulatory standards

12.1.4 The CCG will have regard at all times to the public procurement principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality when applying the AQP procedure.

12.2 Competitive Tendering

12.2.1 It is anticipated that a number of services will be subject to competitive tendering in order to demonstrate the application of the principles of transparency, openness, equitability and obtaining and delivering value for money. Whilst there is no “checklist” that will definitively determine the appropriate use of competitive tendering, Appendix C provides an indication of the aspects to be considered when deciding whether competitive tender is appropriate.

12.3 Non-Competitive process

12.3.1 Competition may be waived in circumstances where the CCG is satisfied that the service (s) to which the contract relates, subject to consideration and decision, are appropriate to be provided only by that provider. In these circumstances the procedures set out within the CCG’s Standing Orders and Standing Financial Instructions must be followed.

12.3.2 Where it is decided not to competitively tender for new services or where services are significantly changed, CCG approval through the Scheme of Delegation must be obtained following any recommendation to follow this approach.

12.4 Framework Agreements

12.4.1 The CCG is able to use other public sector organisations framework agreements if a provision has been made in the framework agreement to allow this by the holder of the framework agreement i.e. Crown Commercial Service.

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

12.5 Partnership Arrangements

12.5.1 Where collaboration and coordination are considered essential, for example in developing new integrated pathways, enabling sustainability of services, ensuring smooth patient handover, coordination etc. the CCG may wish to continue with existing “partnership” arrangements or develop new ones. These “Partnership” arrangements must be formalised using the appropriate contract form and must provide:

- Transparency particularly with provision of information sharing good and bad practice
- A contribution to service re-design
- Timely provision of information and performance reporting
- Evidence of improved patient experience year on year
- Evidence of value for money

12.5.2 Partnership status must not be used as a reason to avoid competition and should only be used appropriately and be regularly monitored.

12.5.3 For partnership services the CCG may choose to commission the service from a partner but may also choose to tender for provision of the service, for example where the partner cannot meet the service model requirements or costs cannot be agreed.

12.6 Primary Medical Services (Core activities)

12.6.1 As part of the co-commissioning arrangement with NHS England the CCG has the responsibility for commissioning and monitoring the performance of GP services.

12.6.2 Where procurement is required in respect of primary medical services, the CCG will refer to and have regard to the latest guidance within 'The Primary Medical Care Policy and Guidance Manual' (PGM). The CCG may utilise appropriate NHS England frameworks i.e. national procurement tool for APMS and Caretaker GP Services.

12.7 Spot Purchasing

12.5.1 There will be the need to spot purchase contracts for particular individual patient needs or for urgency of placements requirements at various times. At these times, a competitive process may be waived. It will be expected that these contracts will undergo best value reviews to ensure the CCG is getting value from the contract. In all cases the CCG should ensure that the provider is fit for purpose to provide the particular service.

12.7 Grants

12.7.1 The CCG may elect to provide grant funding to third sector (charitable and/or voluntary) organisations. However, there should be no preferential treatment for third sector organisations. Use of grants can be considered where:

- Funding is provided for development or strategic purposes
- The provider market is not well developed
- Innovative or experimental services
- Where funding is non-contestable (i.e. only one provider)

12.7.2 Grants should not be used to routinely fund defined services or avoid competition where it is appropriate for a formal procurement to be undertaken.

12.8 Extending a contract

12.8.1 The CCG will be presented with a number of instances where the extension of a contract will be considered the most practical, pragmatic and cost-effective approach to allow the continuation of a service. A decision to agree an extension will always be subject to confirmation and approval that funding is available for the period of extension and be based on consideration of the risks and benefits to the CCG of

taking the action in respect of the particular service in question i.e. on a 'case by case' basis.

12.9 Variations

12.9.1 Contracts may be varied in the following circumstances:

- Where modifications have been provided for in the original procurement documents and/or would not alter the nature of the contract
- Where the modification is both less than 10% of the original value of the contract and less than the relevant applicable threshold and does not change the nature of the contract

12.9.2 For additional services or supplies that have become necessary and were not included in the initial procurement and where a change of contractor:

- Cannot be made for economic or technical reasons
- Would cause significant inconvenience or substantial duplication of costs
- In the above circumstances any increase in price must not exceed 50% of the value of the original contract

12.9.3 Modifications to contracts over the relevant threshold may also require completion of the waiver process and/or the publication of a Contract Modification Notice or a Voluntary Ex- Ante Transparency (VEAT) notice prior to the award.

13. Tendering Process

13.1 If a decision is taken to pursue a competitive tender process, there are a range of further issues that will be taken into account in the design of the process to be undertaken; these are not considered in detail in this Policy but which include:

- Market analysis (e.g. structure, competition, capacity, interest)
- Tender routes
- Procurement timescales
- Affordability

- Impact on service stability
- Procurement resource, including responsibilities and accountabilities
- Consultation and Engagement requirements
- Outcome-based specifications
- Existing related contractual arrangements
- Contract management
- Provider development
- Value for money

14. Financial and quality assurance checks

14.1 The CCG will require assurance about potential providers. Where this is not achieved through a formal tender process, the following financial and quality assurance checks of the provider, proportionate to the contract value and complexity, will be expected to be undertaken before entering into a contract:

- Financial viability
- Economic standing
- Corporate social responsibility
- Clinical capacity and capability
- Clinical governance
- Information Governance
- Quality/Accreditation

15. Principles of good procurement

15.1 The CCG in its approach to procurement will act in accordance with the following key principles:

- | | |
|-------------------------|---|
| Transparency: | Making commissioning intent clear to the marketplace.
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.

15.2 The CCG will ensure ongoing compliance with these principles by acting in the following ways.

15.2.1 Transparency

- The CCG will commission services from the providers who are best placed to deliver the needs of our patients and population
- The CCG will procure general goods and services using processes; and from suppliers; that offer best value for money
- The CCG will maintain on its website for public view a record of contracts held, procurement decisions and information about what services are to be procured and when they will be presented to the market
- The 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
- The CCG will use the most appropriate media in which to advertise tenders or opportunities to provide services, including using the Contracts Finder (or successor) portal to advertise all appropriate opportunities
- The CCG will robustly manage potential conflicts of interest and ensure that these do not prejudice fair and transparent procurement processes

- The CCG will ensure that all providers of Primary Medical Services (GP Partners) will declare any financial or commercial interest in an organisation to which they plan to refer a patient for treatment or investigation
- The CCG will provide feedback to all unsuccessful bidders
- The CCG will not contract with providers whose pricing strategy constitutes predatory pricing

15.2.2 Proportionality

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

15.2.3 Non-discrimination

- The 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
- The 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
- The CCG will ensure that shortlist criteria are neither discriminatory nor particularly favour one potential provider

15.2.4 Equality of Treatment

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

16. Contract Form

- 16.1 The CCG will ensure that the NHS Standard Contract or where appropriate an NHS Standard Deed of Variation will be used for all contracts for NHS funded health and social care services commissioned by the CCG. In exceptional circumstances, such as where a joint contracting arrangement is led by local authority, the CCG may agree to be party to a different form of contract.
- 16.2 The CCG will ensure that a standard Grant Agreement document will be used to record the provision of grants to third parties which will contain the provisions upon which the grant is made.
- 16.3 The CCG will ensure that an appropriate form of contract is used in respect of the purchase of goods and non-healthcare services. The form of contract used will be suitable and proportionate to the goods or services being procured.

17. Sustainable Procurement

- 17.1 The NHS is a major employer and economic force both in Calderdale, West Yorkshire and within the wider NHS North region. The CCG recognises the impact of its purchasing and procurement decisions on the regional economy and the positive contribution it can make to economic and social regeneration.
- 17.2 The CCG is committed to the development of innovative local and regional solutions, and will deliver a range of activities as part of its market development plan to support this commitment.
- 17.3 Wherever it is possible, and does not contradict or contravene the CCG's procurement principles or the provisions allowable under the Public Services (Social Value) Act 2012, the CCG will work to develop and support a sustainable local health economy.
- 17.4 The CCG is committed to consider as appropriate to the service being procured ethical, environmental and social factors as part of the evaluation process to determine and demonstrate value for money.

17.5 The CCG will take all reasonable steps and that which is allowable by law to ensure that contractors and providers are:

- Good employers who comply with all relevant employment legislation, including the Public Interest Disclosure Act 1998
- Maintain acceptable standards of health and safety and comply fully with all legal obligations
- Meet all tax and National Insurance obligations
- Meet all equal opportunities legislation
- Are reputable in their standards of business conduct
- Respect the environment

18. Public Services (Social Value) Act 2012

18.1 This Act, that came into force on 31 January 2013, will require commissioners at the pre-procurement stage to include how what is to be procured may improve social, environmental, and economic well-being of the relevant area, how they might secure any such improvement and to consider the need to consult.

18.2 Although the Act only applies to certain public services contracts and framework agreements to which the Public Contract Regulations apply, the CCG intends, as a matter of good practice, how what is proposed to be procured might improve economic, social and environmental well-being in order to maximise value for money. The considered application of the provisions of this Act and the use of the government policy themes and outcomes will provide the CCG with the means to broaden evaluation criteria to include impact on the local economy where the requirements are related and proportionate to the subject matter.

19. Use of Information Technology

19.1 The CCG will, in its normal course of business, utilise appropriate information technology systems i.e. e-procurement and e-evaluation methods will be used. These are intended to assist in streamlining our procurement processes whilst at the same time providing a robust audit trail. E-Tendering and E-evaluation solutions provide a secure and efficient means for managing tendering activity particularly for

large complex procurements. They offer efficiencies to both purchasers and providers by reducing time and costs in issuing and completing tenders, and particularly to purchasers in respect of evaluating responses to tenders.

20. Decommissioning services

20.1 The need to decommission contracts can arise through:

- 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
- Services are no longer required

20.2 Where services are decommissioned, the 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 cooperate and be involved in discussions to deal with such issues.

20.3 Where decommissioning involves the handing back or transfer of the CCGs or commissioned services information assets, the CCG will ensure that arrangements are in place for the secure transfer of information assets and that any arrangements for the destruction of information assets are appropriately carried out and a destruction certificate issued to the CCG / relevant data controller (in the case of personal data covered by data protection legislation).

21. Transfer of Undertakings and Protection of Employment Regulations (TUPE)

21.1 These regulations 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. The CCG will follow the relevant Government guidance

such as the *Cabinet Office Statement of Practice (COSOP) Staff Transfers in the Public Sector January 2000 (Revised December 2013)* (Cabinet Office, 2013)..

- 21.2 It is the position of the 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.
- 21.3 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.

22. Equality Impact Assessment

- 22.1 All public bodies have statutory duties under the Equality Act 2010. The CCG aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others.
- 22.2 In order to support these requirements, a single equality impact assessment is used to assess all the CCG's policies/guidelines and practices. This Procurement Policy was found to be compliant with this philosophy (see Appendix D).

23. Training Needs Analysis

- 23.1 All CCG staff and others working with the CCG will need to be aware of this policy and its implications. It is not intended that staff generally will develop procurement expertise, but they will need to know when and how to seek further support. The most urgent requirement is that all commissioning staff throughout the CCG should know enough about procurement to know to seek help when they encounter related issues; they must also be able to give clear and consistent messages to providers and potential providers about the CCG's procurement intentions in relation to individual service developments. Awareness of procurement issues is being raised through organisational development and training sessions for clinical and non-clinical members of the CCG.

24. Monitoring Compliance with this Strategy / Procedure

- 24.1 This Policy will be reviewed every three years.
- 24.2 In addition it will be kept under informal review in the light of emerging guidance, experience and supporting work. Given the changing environment it is likely that this Policy will need to be updated within a relatively short timescale.
- 24.3 Effectiveness in ensuring that all procurements comply with this Policy will primarily be achieved through “business as usual” review by the relevant Head of Service within the CCG.

25. References

Legislation:

Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. Mar 2004.

The Public Contracts Regulations 2015

The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020

Equality Act 2012

NHS Policy:

Principles and rules for Cooperation and Competition. July 2010. DH. (Gateway Ref: 14611)

Procurement Guide for commissioners of NHS-funded services; July 2010; DH (Gateway Ref: 14611)

Framework for Managing Choice, Cooperation and Competition. May 2008. DH. (Gateway Ref: 9914)

NHS Procurement. Raising our game; May 2012; DH (Gateway Ref 17646)

Code of Conduct: Managing conflicts of interest where GP practices are potential providers of CCG-commissioned services; October 2012; NHS Commissioning Board. (Gateway Ref: 06768)

Towards establishment: Creating responsive and accountable CCGs; February 2012; NHS Commissioning Board

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

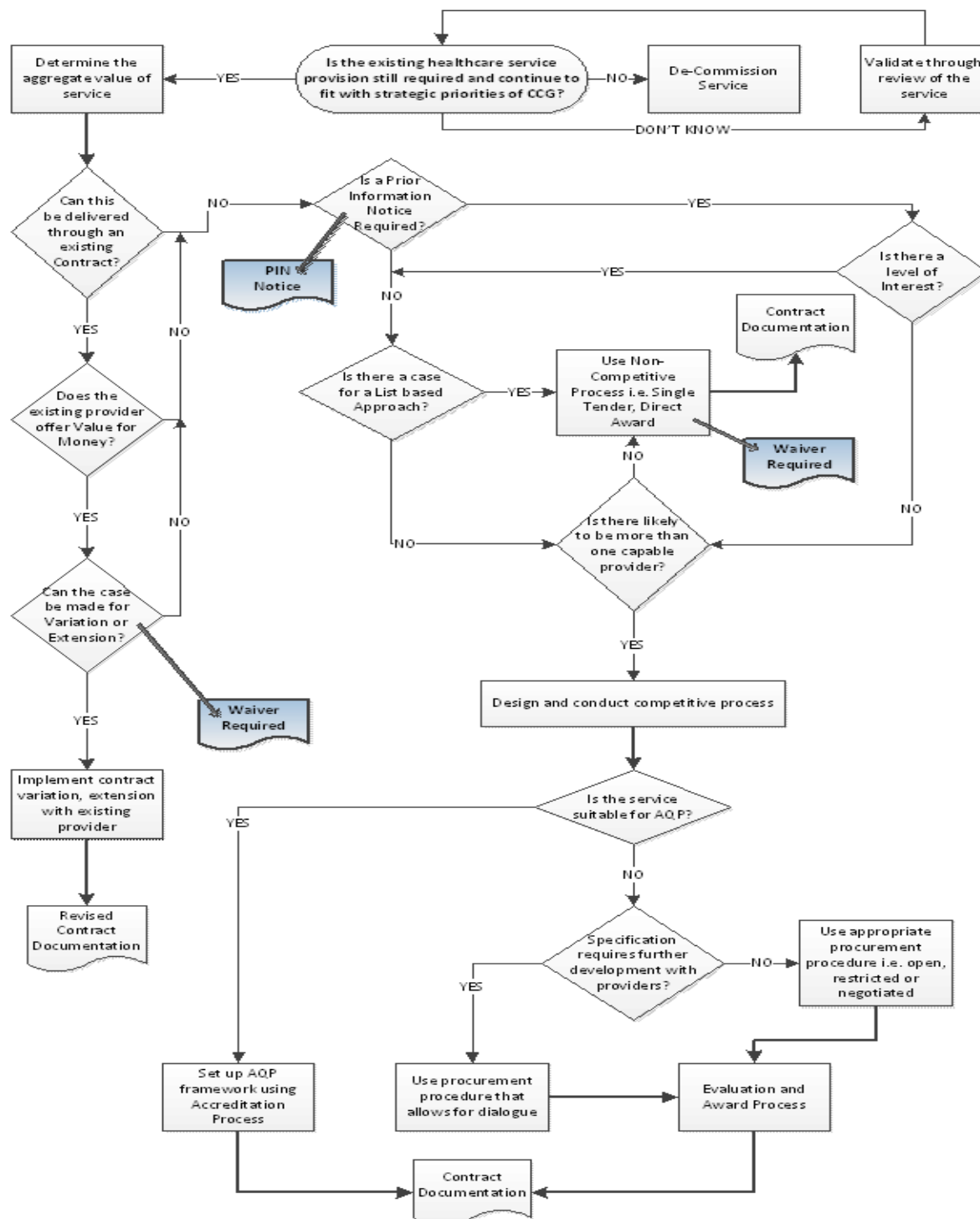
Appendix A: List of Services covered by the new Light-Touch regime

- Health, social and related services
- Administrative social, educational, healthcare and cultural services
- Compulsory social security services
- Benefit services
- Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services
- Religious services
- Hotel and restaurant services
- Legal services, to the extent not excluded by regulation 10(1)(d)
- Other administrative services and government services
- Provision of services to the community
- Prison related services, public security and rescue services to the extent not excluded by regulation 10(1)(h)
- Investigation and security services
- International services
- Postal services
- Miscellaneous services

Appendix B:

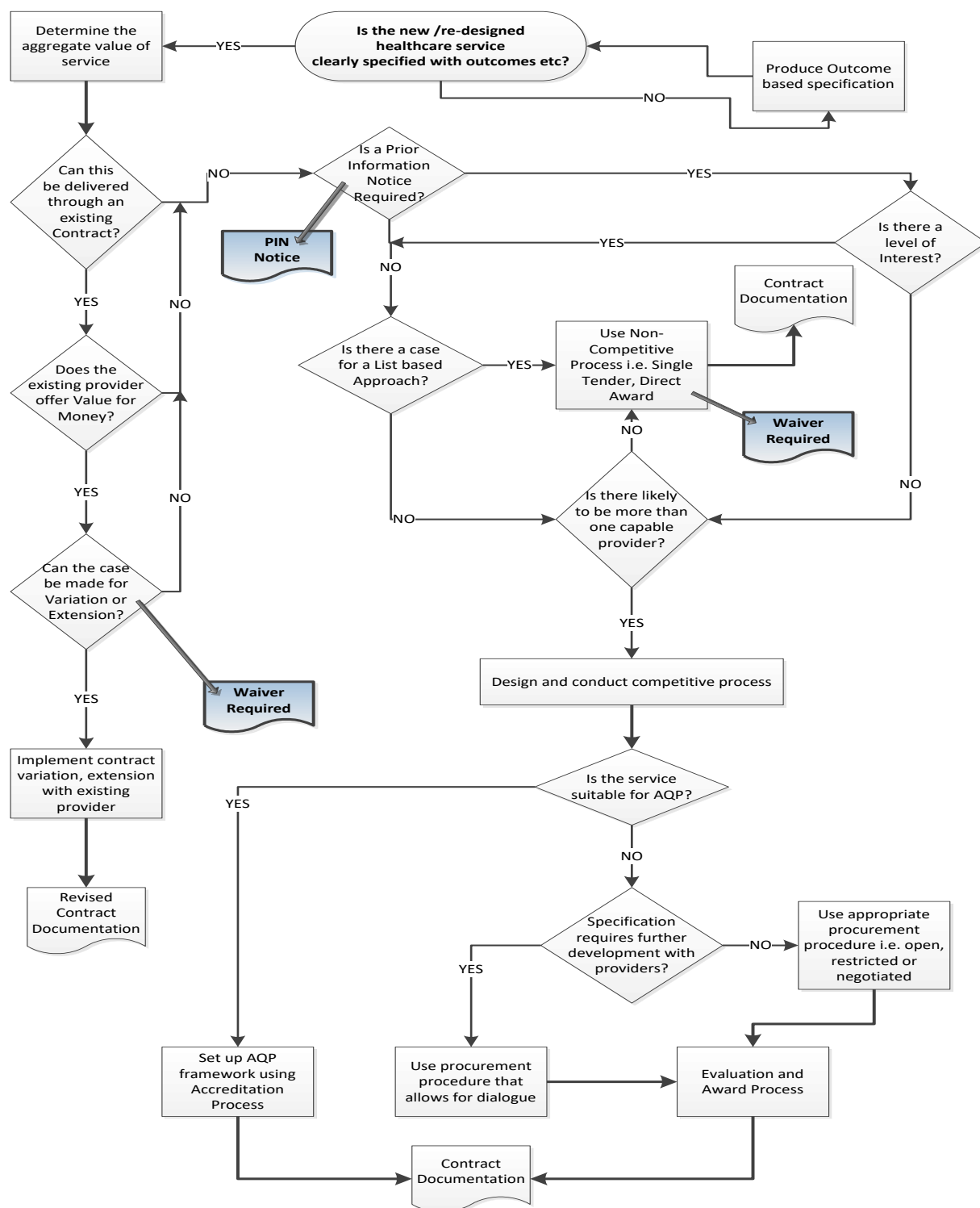
Procurement Approach for Existing Health and Social Services

Process to determine if procurement is needed, to look at number of providers in the market, review the current service and contract, to consider if a waiver would be appropriate and agree the next steps.



Approach for New or significantly changed Health and Social Services

Process to determine if procurement is needed, design the service, look at number of providers in the market, can it be delivered through an existing contract, to consider if a waiver would be appropriate and agree the next steps.



Appendix C: Aspects to be considered when deciding whether competitive tender is appropriate

Justification of competitive tender process (Strong, Medium, Weak)

Consideration	Importance (H, M, L)	Strong	Medium	Weak
Contract Value	H	>£174k		<£50k
Contract length	M	> 3 years		<=1 year
Level of market interest	H	>5 organisations (or unknown)		1 organisation
Market capability (number of organisations believed to have required expertise)	M	>3 organisations (or unknown)		1 organisation
Likely procurement cost to the commissioner	L	< 5% total contract value		>= 1 year contract value
Availability of procurement resource	L	Resource available at no additional financial cost.	Resource available at additional financial cost	Insufficient resource available
Confidence in achieving best provider for population needs without competitive tender	M	Low	Medium	High
Confidence in achieving Value for Money (VfM) without competitive tender	M	Low	Medium	High
Urgency of requirement	M	>8 months		<12 weeks

Consideration	Importance (H, M, L)	Strong	Medium	Weak
Ability to predict requirement	M	High	Medium	Low
Potential to improve VfM by tendering	M	High/Unknown	Medium	Low
Potential for innovation	M	High	Medium	Low
Benefit of continuity with existing provider of same or related service	M	None	Some	Strong

The consideration of the above elements and the outcome of this consideration should not be considered the basis of a definitive decision whether to undertake a competitive procurement process. It should be considered as a guide in support of the approach taken.

Appendix D: Equality Impact Assessment for this Policy

Equality Impact Assessment

Title of policy Procurement Policy

Names and roles of people completing the assessment:

Procurement Manager

Equality Lead

Date assessment started/completed: March 2021

1. Outline

Give a brief summary of the policy

This document sets out how NHS Calderdale CCG procurement will be in proportion to risk and will be used to support clinical priorities, health and well-being outcomes and wider CCG objectives

What outcomes do you want to achieve?

To facilitate open and fair, robust and enforceable contracts that provide value for money and deliver required quality standards and outcomes, with effective performance measures and intervention protocols.

2. Analysis of impact

This is the core of the assessment, using the information above detail the actual or likely impact on protected groups, with consideration of the general duty to: eliminate unlawful discrimination; advance equality of opportunity; foster good relations

Characteristics	Are there any likely impacts? Are any groups going to be affected differently? Please describe.	Are these negative, positive or neutral?	What action will be taken to address any negative impacts or enhance positive ones?
Age	None	N/A	N/A
Disability	None	N/A	N/A
Gender reassignment	None	N/A	N/A
Marriage and civil partnership	None	N/A	N/A
Pregnancy and maternity	None	N/A	N/A
Race	None	N/A	N/A
Religion or belief	None	N/A	N/A
Sex	None	N/A	N/A
Sexual orientation	None	N/A	N/A
Carers	None	N/A	N/A
Other relevant group	None	N/A	N/A
Human Rights	None	N/A	N/A
Health Inequalities	None	N/A	N/A

If any negative/positive impacts were identified are they valid, legal and/or justifiable? Please detail.

None identified

3. Monitoring, Review and Publication

How will the impact and effectiveness of the actions be monitored/reviewed and by whom?

Periodic review of procurement activity by the procurement manager and reporting into Finance and Performance Committee

When will this EQIA be reviewed and by whom?

Annual review by procurement manager

Lead Officer: Head of Contracting and Procurement

Review date: April 2022

4. Sign off

Lead Officer:

Director:

Date approved:

Once complete please forward to the Equality Lead, Kate Bell, in order to provide an audit trail for governance purposes.