

# Procurement Policy

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The on-line version is the only version that is maintained. Any printed copies should, therefore, be viewed as 'uncontrolled' and as such may not necessarily contain the latest updates and amendments.

## 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 & Date	Date on Intranet
1.0	Procurement Manager	-	NHS North Lincolnshire CCG Governing Body – 12.12.13	
1.1	Procurement Manager	10.2 Public Contracts Regulations 2006 – From 1 January 2012 updated to Public Contracts Regulations 2006 – From 1 January 2014		
1.2	Head of Procurement (YHCS)	Updates in line with changes to Public Contract Regulations (2015)		
1.3	Head of Procurement (eMBED)	Annual refresh (2017)		
1.4	Head of Strategic Commissioning	Transfer to new format. Amendments in line with Financial governance policy (July 2017)		
1.5	Head of Strategic Commissioning	Updated in line with OJEU requirements	17/08/18	
1.6	Head of Strategic Commissioning	Updated with minor amendments : 5.0 & 10.2.1	24/10/18	
1.7	Head of Strategic Commissioning	Updated bribery section as per IAG mins 07/11/18	07/11/18	

**CONTENTS**

	<b>Page</b>
<b>1 Introduction</b>	
<b>2 Engagement</b>	
<b>3 Impact Analyses</b>	
<b>3.1 Equality</b>	
<b>3.2 Sustainability</b>	
<b>3.3 Bribery Act 2010</b>	
<b>4 Scope</b>	
<b>5 Policy Purpose and Aims</b>	
<b>6 Definitions <i>(if relevant &amp; appropriate)</i></b>	
<b>7 Roles / Responsibilities / Duties</b>	
<b>8 Implementation</b>	
<b>9 Training and Awareness</b>	
<b>10 Monitoring and Audit</b>	
<b>11 Policy Review</b>	
<b>12 References</b>	
<b>13 Associated Documentation</b>	
<b>Appendices</b>	

## **1 INTRODUCTION**

Procurement is the process by which services, goods, products and infrastructure are acquired from external organisations and providers. The procurement process starts with the identification of need and continues through to the end of the agreed contract or end of the useful life of the acquired asset.

### **1.2 Procurement can cover a range of purchasing methods:**

- Spot, low cost purchasing
- Quotations
- Full-scale Tenders
- Any Qualified Provider
- Framework Agreements
- Public Private Partnerships

### **1.3 Procurement plays a key role in delivering high quality, value for money, customer/patient centered services. This document outlines North Lincolnshire Clinical Commissioning Group's procurement policy, including general purchasing and tender process, legal obligations, environmental issues, and gives details of European Union tendering timetables.**

### **1.4 This Procurement Policy is an integral part of the commissioning cycle and fully observes established Prime Financial Policies and Standing Orders, and as a result should not be read in isolation.**

## **2 ENGAGEMENT**

This policy has been developed in conjunction with eMBED procurement team who provide specialist procurement advice and support to the CCG.

## **3 IMPACT ANALYSES**

### **3.1 Equality**

An Equality Impact Assessment had been completed. See appendix 2.

This policy document does not directly impact on any specific services, but sets a framework that will influence the selection of service providers once service requirements have been identified. As such, there is no impact on any protected group from the procurement policy - the impact on protected groups of individual services will be assessed as the need arises.

### **3.2 Quality**

A quality Impact Assessment has been completed. See appendix 2

This policy document does not directly impact on any specific services, but sets a framework that will influence the selection of service providers once service

requirements have been identified. The framework aims to ensure robust assessment of potential providers from a quality perspective. Individual service development proposals should include a quality impact assessment.

### **3.3 Sustainability**

A sustainability Impact Assessment has been completed. See appendix 2.

### **3.4 Bribery Act 2010**

Under the Bribery Act 2010, it is a criminal offence to:

- Bribe another person by offering, promising or giving a financial or other advantage to induce them to perform improperly a relevant function or activity, or as a reward for already having done so; and
- Be bribed by another person by requesting, agreeing to receive or accepting a financial or other advantage with the intention that a relevant function or activity would then be performed improperly, or as a reward for having already done so.
- Failure to prevent bribery; The Bribery Act also introduced a corporate offence for a relevant commercial organisation (the CCG) to bribe another person intending (1) to obtain or retain business, or (2) to obtain or retain an advantage in the conduct of business. The only defence available to the CCG against Bribery Act offences would be to prove that it had adequate procedures in place designed to prevent persons associated with it from undertaking any of the conduct outlined above.

These offences can be committed directly or by and through a third person and, in many cases, it does not matter whether the person knows or believes that the performance of the function or activity is improper.

It is therefore, extremely important that staff adhere to this and other related policies and documentation (as detailed on the CCG's intranet) when considering whether to offer or accept gifts and hospitality and/or other incentives.

If fraud, bribery and corruption are particularly relevant to a policy, the section should be headed Anti-fraud, Bribery and Corruption and should include a cross reference to the Local Anti-fraud, Bribery & Corruption Policy. The following wording should also be included:

If an employee suspects that fraud, bribery or corruption has taken place, they should ensure it is reported to the LCFS and/or to NHSCFA as follows:

- LCFS, AuditOne, Kirkstone Villa, Lanchester Road Hospital, Lanchester Road, Durham, DH1 5RD. Tel: 0191 4415936; Email: [counterfraud@audit-one.co.uk](mailto:counterfraud@audit-one.co.uk) or [ntawnt.counterfraud@nhs.net](mailto:ntawnt.counterfraud@nhs.net)
- The CCG's Chief Finance Officer,
- NHSCFA, 0800 028 40 60 (powered by Crimestoppers)
- Online: <https://cfa.nhs.uk/reportfraud>

## **4 SCOPE**

This policy applies to all staff, CCG members, temporary and seconded staff and all staff undertaking work on behalf of the CCG. This policy applies to all CCG

procurements (clinical and non-clinical). However, it is particularly relevant to the procurement of goods and services that support the delivery of healthcare.

## 5 POLICY PURPOSE & AIMS

North Lincolnshire CCG is committed to the provision and maintenance of high quality care and services for its local community. This policy is designed to provide guidance and instructions on the procurement of all goods and services provided to North Lincolnshire CCG.

The purpose of the policy is to ensure that when commissioning clinical services North Lincolnshire CCG:-

- acts to secure the needs of its local population, improving quality and efficiency of clinical services in line with the CCG strategic vision
- complies with the regulatory framework of all relevant legislation and guidance, its own Constitution, Standing Orders, Scheme of Delegation and Standing Financial Instructions
- 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 to meet service requirements.
- 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;
- maintains high standards of public trust and probity in its use of public funds.

## 6 DEFINITIONS/GLOSSARY

AQP	Any Qualified Provider
MEAT	Most Economically Advantageous Tender
OJEU	Official Journal of the European Union
VEAT	Voluntary Ex-Ante Transparency Notice
VfM	Value for Money

## 7 ROLES / RESPONSIBILITIES / DUTIES

### 7.1 Key Accountabilities

- Lead CCG Officer: Overall responsibility for Procurement lies with the Chief Operating Officer
- Procurement Support: Procurement and Delivery Support will be provided by eMBED Health Consortium for the term of the contract. Beyond the contract end date, the CCG will make a decision of the future arrangements using to the Buy, Do, Share approach.

### 7.2 Key Responsibilities

North Lincolnshire CCG will be responsible for:

- Approving the commencement of Procurement Activities
- Approving the preferred Procurement process
- Approving final service specifications, evaluation criteria and advertisements
- Providing clinical support throughout any procurement process
- Approving the final list of providers invited to tender, if carrying out a two-stage procurement process
- Approving the final award decision

## 8 IMPLEMENTATION

This policy will be available via the CCG intranet. On approval of this policy and any subsequent revisions, all previous policy versions will be archived.

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.

### 8.1 Key Procurement Principles

The key principles of good procurement, as laid down by the Department of Health, are shown below and will act as a touchstone for developing procurement practice.

- **Transparency** – including the use of sufficient and appropriate advertising of tenders, transparency in making decisions to tender or 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** – ensuring consistency of procurement rules, transparency on timescale and criteria for shortlist and award.
- **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.

### 8.2 North Lincolnshire CCG's Constitution<sup>1</sup>

The CCG's mission is 'To achieve the best health and well-being that is possible, for the residents of North Lincolnshire, within the resources available to the CCG'. The constitution sets out the arrangements made by the CCG to meet its responsibilities for commissioning care for the people to whom it is accountable. It describes the governing principles, rules and procedures that the CCG will establish to ensure probity and accountability in the day to day running of the clinical commissioning group; to ensure that decisions are taken in an open and transparent

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<sup>1</sup> <http://www.northlincolnshireccg.nhs.uk/data/uploads/publications/board-meetings%5C10-january-2013/item-7.8-ccg-constitution.pdf>

way and that the interests of patients and the public remain central to our priority aims:

- Continue to improve the quality of services,
- Reduce unwarranted variations in services,
- Deliver the best outcomes for every patient,
- Improve patient experience,
- Reduce the inequalities gap in North Lincolnshire,

### **8.3 NHS Principles**

The NHS Principles are outlined in the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations (2013) and Monitor's Substantive guidance on the Procurement, Patient Choice and Competition Regulations (2014). The key deliverables are:

- (a) Securing the needs of the people who use the services,
- (b) Improving the quality of the services,
- (c) Improving efficiency in the provision of the services

This policy has been created to support CCG staff to abide by the fundamental NHS principles and the CCG's constitution whilst remaining within the legislative framework described above.

### **8.4 Key Drivers and Considerations**

In developing this procurement policy it is clear that procurement best practice should be applied to all functional areas, specifically for Healthcare procurement the following business areas / drivers are important.

- **Service Quality, Safety and Effectiveness**

Providers must be able to demonstrate, via the completion of a detailed questionnaire regarding the services to be procured that the services to be provided are delivering the required outcomes and are of the highest possible quality, are safe and effective. North Lincolnshire CCG requires providers to demonstrate compliance with best practice, (including all clinical guidelines and advice), that they have clear clinical leadership, a planned clinical audit programme in place and to provide clinical data showing the safety and effectiveness of their services. North Lincolnshire CCG will not commission services from providers that cannot demonstrate compliance with established quality assurance frameworks.

- **Choice**

Whenever possible and appropriate, patients should be offered a choice of provider. North Lincolnshire CCG will work with key stakeholders to ascertain those services that will be delivered by a single provider, and those which will offer choice in the local area and will be explicit about the reasons for this. This process will need to comply fully with UK and EU competition requirements and will incorporate appropriate stakeholder consultation.

- **Potential for Service De-stabilisation**

North Lincolnshire CCG recognises that certain services must properly be reviewed in their totality. The impact of changes in a service on other services

provided by the organisation must be considered. Examples of these include emergency services. This does not preclude competition per se; however North Lincolnshire CCG will need to consider the extent to which the loss of certain services from a provider may jeopardise the overall provision of services. Equally, North Lincolnshire CCG will ensure that important areas such as training, local employment opportunities and sound policies and procedures are incorporated into all specifications.

- **Plurality and Innovation**

North Lincolnshire CCG is keen to encourage the innovative approaches that could be offered by new providers – including independent sector, voluntary and third sector providers. North Lincolnshire CCG is committed to the development of local providers that understand the needs of local communities. It will be important to ensure that North Lincolnshire CCG's approach to healthcare procurement is open and transparent and that it does not act as a barrier to new providers.

- **Service Development – Trials and Pilots**

In its drive to facilitate plurality and innovation North Lincolnshire CCG may need to conduct trials and pilots of new services or specifications to derive lessons and/or refine outcome specifications. With this in mind, North Lincolnshire CCG will be required to establish clearly that the project is a pilot via the definition and/or delivery of:

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

It is important for commissioners to use pilot projects only in circumstances where the clinical outcomes are not known or cannot be accurately predicted.

- **Networks and Links**

North Lincolnshire CCG recognises the importance of strong and effective clinical and service networks and on the value placed by many patients, carers and others on having a long-standing relationship with a clinician or service. It will be vital to ensure that North Lincolnshire CCG's approach does not undermine these networks and links.

- **Equity and Equality**

North Lincolnshire CCG will need to ensure that its approach does not widen health and service inequality gaps and that its approach serves to improve both health and access to services and to address inequalities gaps.

- **Partnerships with Commissioners**

It will be vital to ensure that where possible North Lincolnshire CCG's approach complements and supports the approach adopted by Partnering Organisations.

- **Partnerships with Providers**

North Lincolnshire CCG recognises the importance of maintaining positive and on-going relationships with providers so that services are sustained and improved continuously. Subject to its overriding legal obligations to advertise and/or tender services, North Lincolnshire CCG will, as part of its assessment process, seek providers, whether NHS or Non-NHS, that are committed to the health and well-being of the local population.

- **Value for Money**

The UK government has described their preference for commissioners of Healthcare (Clinical) Services to adopt the Most Economically Advantageous Tender (MEAT) approach when choosing providers. Commissioners are required to seek Value for Money (VfM) and to avoid 'gold-plating' services.

- **Significance**

North Lincolnshire CCG recognises that healthcare procurement processes will require significant time, attention and resources to organise and manage. Decisions will need to be taken as to whether and when competitive processes are adopted. Key to these decisions will be the significance and materiality of the service in question (whether current or new), the opportunities that competition will bring and the risks of adopting such an approach. Such opportunities and risks will include the requirements of patients, risks to service quality, service continuity and general impact.

- **Legal**

As a public body North Lincolnshire CCG's commissioning decisions must fully comply with EU and UK Regulations.

## **9 Prime Financial Policies/Procurement Approval**

**9.1** The CCG's Prime Financial Policies have established specific procurement requirements, which must be observed during all procurement activities.

**9.2** A number of key procurement gateways must obtain North Lincolnshire CCG Governing Body approval prior to commencement. These include:

- Decisions on which services to competitively advertise, or not to advertise
- Approval of individual procurement project strategy including the procurement approach to be adopted
- Approval of competitive procurement evaluation reports and the award of preferred supplier status

**9.3** North Lincolnshire CCG must maintain a record of all of the health care contracts it awards. This information will be published on the CCG website. The following information will be required for each contract:

- the name of the provider and the address of its registered office or principal place of business
- a description of the health care services to be provided
- the total amount to be paid or, where the total amount is not known, the amounts payable to the provider under the contract
- the dates between which the contract provides for the services to be provided, and
- A description of the process adopted for selecting the provider

## **10 Conflicts of Interest**

**10.1** In order to ensure a fair and competitive procurement process, North Lincolnshire CCG requires that all actual or potential Conflicts of Interest are identified and resolved appropriately. In terms of procurement, two key areas of potential concern exist:

- Tendering Processes and Bidder Behaviour

Potential providers should notify North Lincolnshire CCG of any actual or potential Conflicts of Interest in their responses. If the potential provider becomes aware of an actual or potential Conflict of Interest following submission it should immediately notify North Lincolnshire CCG.

North Lincolnshire CCG reserves the right to exclude at any time any potential provider from the process should any actual or potential Conflicts of Interest be identified.

Each potential provider must neither disclose to, nor discuss with, any other potential provider, any aspect of the procurement.

Each potential provider must not canvass or solicit or offer any gift or consideration whatsoever as an inducement or reward to any officer or employee of, or person acting as an adviser to North Lincolnshire CCG in connection with the selection of Providers. Conflicts of Interest, Collusion and Canvassing issues apply equally to North Lincolnshire CCG employees or others engaged by North Lincolnshire CCG in the procurement and decision making processes. At the commencement of all procurement projects, officers scheduled to participate in the procurement will be required to disclose any actual or potential Conflicts of Interest.

- Potential North Lincolnshire CCG and GP Practice Conflicts of Interest

A potential area for conflicts of interest exists where North Lincolnshire CCG commissions services that could be potentially provided by local GP Practices.

North Lincolnshire CCG Conflict of Interest Policy sets out the overall approach to dealing with potential conflicts of interest and should be fully observed. This will complement NHS England's guidance "Managing Conflicts of Interest: Statutory Guidance for CCGs (2014)"<sup>2</sup>

In terms of procurement a potential conflict of interest could exist where:

- An individual is currently employed by a bidder organisation or one of its subsidiaries
- An individual is currently employed by a bidder organisation or one of its subsidiaries
- A close family member or partner or close friend is currently employed by a bidder organisation or one of its subsidiaries
- An individual is currently a director or owner or controller of a bidder organisation, or have shares in a bidder organisation or their family, partner, or close relative has such shares in a bidder organisation

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<sup>2</sup> <http://www.england.nhs.uk/wp-content/uploads/2014/12/man-confl-int-guid-1214.pdf>

- An individual has been dismissed by a bidder organisation or have been subject to a disciplinary process by a bidder organisation
- An individual/organisation will derive financial benefit from the award of contract resulting from the tender process

Specifically for procurement, where a GP, practice officer and/or GP practice has a potential material interest in a procurement process or decision, the following steps should be observed:

- The lead procurement officer should be notified as soon as it becomes apparent that a potential conflict of interest exists. This information will be included on the procurement process conflict of interest template
- The GP, practice officer and/or GP practice where the conflict of interest rests, will be excluded from the formal procurement process and decision making process
- The Procurement Lead will ensure that all interested and bidding parties are treated equitably and fairly

Further practical guidance and specific case scenarios will be issued to all officers/staff involved in the procurement process.

## 10.2 Significant Procurement thresholds (CCG)

10.2.1 North Lincolnshire CCG observes the following procurement thresholds in line with the NL CCG Financial Governance Policy, (July 2017):

Up to £5000	Where the procurement of goods & services over the life of a contract is reasonably estimated to cost less than £1,000 - competitive quotes are not mandatory, but still remain good practice if cost effective to obtain. Where goods are reasonably estimated to cost more than £1,000 and less than £5,000, at least 3 competitive quotes must be requested unless a formal request for a single source tender is accepted (as set out in NL CCG Financial Governance Policy, July 2017)
£5,001 to £50,000	Where the procurement of goods & services is reasonably estimated to cost £ 5,000 or more, but less than £50,000 - the procurement decision must be based on obtaining and evaluating at least 3 competitive quotes.
£50,001 to European Procurement Threshold	Where a contract value is reasonably expected to equal or exceed £50,000, a competitive procurement needs to be undertaken in conjunction with procurement specialists, as appropriate.
Above European Procurement Thresholds	Where a contract value is reasonably expected to exceed European Commission thresholds, contracts must be let in accordance with the relevant EU directive (see section 10).

10.2.2 A number of national and regional agencies have established framework contracts which can be accessed by the CCG. As these frameworks have already been subject to a formal tendering exercise they can be accessed as an alternative to undertaking a formal quotation or tendering exercise (See section 12).

10.2.3 The Prime Financial Policies establish clear regulations and an approval process for the waiving of internal procurement thresholds, these must be observed. UK and European Competition requirements cannot be waived under any circumstance.

## **11 OJEU Procurement Thresholds**

11.1 Certain types of public procurement for goods and services above a certain value (Threshold) are obliged to be advertised across the European Union to provide fair opportunities for companies in member states to bid. The adverts appear in the Official Journal of the European Union and are referred to as OJEU notices. Threshold values are reviewed annually. Details of current OJEU Thresholds can be obtained from the following website: <https://www.ojeu.eu/Thresholds.aspx>

## **12 Non-Health Care Procurement**

12.1 All non-health care procurements will follow UK and European Competition Regulations, the Public Contracts Regulations 2015 and observe Prime Financial Policies.

## **13 National/Regional Framework Contracts**

13.1 A number of national and regional agencies have developed framework contracts which can be accessed by NHS organisations. These framework agreements have been appropriately tendered for by the relevant agencies which include:

- Government Procurement Service
- NHS England
- Regional NHS Procurement Agencies
- Regional Local Authority Procurement Agencies
- North Lincolnshire Council

13.2 The following considerations should be made before utilising a framework contract:

- The overall value of the contract
- The availability of a robust service specification and is it applicable to the terms of the framework agreement
- Is the framework available to CCGs
- Is a management fee chargeable for accessing the framework agreement
- Do the terms of the framework require a mini competition to be undertaken
- Do the agreed financial and service terms represent value for money

## **14 Tender Waivers**

14.1 In very exceptional circumstances, Formal Tendering procedures may be waived. The circumstances where this is applicable are outlined in the CCG Prime Financial Instructions.

14.2 It should be noted that it is not possible to waive European and UK Competition Requirements.

## 15 Health and Social Care Procurement

### 15.1 NHS Procurement

15.1.1 In 2012 the Department of Health issued further guidance on NHS procurement 'NHS Procurement - Raising Our Game'<sup>3</sup> sets out guidance and proposed actions for NHS organisations to improve procurement standards. Specifically six key areas for improvements are identified:

- levers for change
- transparency and data management
- NHS standards of procurement
- leadership, clinical engagement and reducing variation
- collaboration and use of procurement partners
- suppliers, innovation and growth

15.1.2 North Lincolnshire CCG, with the support of external commissioned procurement support where applicable, will ensure procurement processes adopt the key recommendations.

15.1.3 North Lincolnshire CCG in partnership with commissioned external procurement support where applicable will also ensure that all procurement activity is fully compliant with the latest Procurement Regulations. The 2013 NHS Procurement Regulations specifically place any obligations on North Lincolnshire CCG to:

- Ensure that all health care procurements aim to meet the needs of patients and services users. Improve the quality and efficiency of service delivery. Treat all providers (regardless of size and sector) equally and in a non-discriminatory manner. Be undertaken in a transparent manner
- The regulations place a requirement on North Lincolnshire CCG to consider whether health services can be provided in an integrated manner with other health and social care services
- The Regulations states that in circumstances where only one capable provider exists then no requirement would exist to advertise. The Public Contract Regulations further require the CCG to advertise to the market any direct award of contracts in these circumstances via a Voluntary Ex-Ante Transparency notice.
- North Lincolnshire CCG must not undertake any actions which are anti-competitive unless to do so would be clearly in the interests of the people who use the service – in these circumstances, a waiver may need to be sought. The NHS regulations refer to the areas of integration and co-operation to improve service quality as potential exceptions. Any considerations must be taken within the parameters of the Public Contracts Regulations 2015.
- North Lincolnshire CCG must maintain a record of all of the health care contracts it awards. This information will be published on a website which will be maintained by the NHS England
- The Regulations clearly state that North Lincolnshire CCG must not award a contract if the integrity and robustness of the procurement and award process has been (or appears to have been) compromised by conflicts of interest

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<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/216538/dh\\_134498.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/216538/dh_134498.pdf)

## **15.2 General Approach**

15.2.1 North Lincolnshire CCG will undertake all health and social care procurements in accordance with UK and EU Competition requirements. It will also observe Department of Health service guidance and NHS Improvement's Substantive guidance on the Procurement, Patient Choice and Competition Regulations<sup>4</sup>.

15.2.2 North Lincolnshire CCG's approach to health and social care procurement will be underpinned by the following principles:

- NHS and existing providers should be engaged at an early stage of service development
- Early and substantial engagement of existing providers is expected
- Early and substantial engagement of staff and their trade union representatives where applicable is expected
- Early and substantial public consultation will take place where appropriate
- Decisions are taken locally but within clear national guidelines
- Commissioners must demonstrate:
  - Fairness and transparency of process
  - Clear rationale for decision making
  - Needs-driven commissioning
  - Proportionality (that the commissioner acts proportionately to the size and seriousness of any problem)
- Commissioners are expected to secure best value and quality for patients and tax payers.
- Commissioners are expected to actively monitor the quality of the service and initiate a process with providers if services are not adequate.
- Robust oversight and assurance of all the above through North Lincolnshire CCG Governing Body.

## **15.3 When to Tender Services**

15.3.1 The key driver for any decision to tender a health or social care service will be the need to commission services from the providers who are best placed to deliver the needs of patients and the local population. The contract value of any service must be taken into consideration when making any commercial decisions and procurement activities carried out in line with the national legislation and local instructions.

15.3.2 Such decisions will fall into two types, either existing services or new services (including significantly changed services).

- Existing Services

If an existing service is covered by an in-date contract, is delivering effective value for money services which meets current service requirements, then the existing provider(s) may be retained.

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/283505/SubstantiveGuidanceDec2013\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/283505/SubstantiveGuidanceDec2013_0.pdf)

Where an existing service contract has come to the end of its contract period, and this contract has been previously competitively tendered, then a new competitive process is likely to be undertaken.

Where an existing service is provided on a provider list basis and has come to the end of its contract term, North Lincolnshire CCG will consider the potential for using AQP to increase the available provider pool.

Where an existing service contract has come to the end of its contract period, and this contract has not been previously competitively tendered, then North Lincolnshire CCG will examine the service to see if it is suitable for competitive tender observing the requirements set out in the latest Procurement Regulations.

- **New or Significantly Changed Services**

Where patient choice is a key driver, North Lincolnshire CCG will look at the potential for increasing the available provider pool through the use of AQP.

In situations where GP Practices are the only available and capable provider, then North Lincolnshire CCG will consider a single tender waiver for purchasing the service from GP Practices. In such circumstances the conflict of interest principles must be observed.

For services where a compelling reason does not exist to award on a single tender basis, competitive markets exist and it is not suitable for AQP, then North Lincolnshire CCG preference will be for a competitive tender process.

## **15.4 Provider Checks**

15.4.1 During AQP or competitive tender processes, assurance checks will be carried out on potential providers. These checks will examine:

- Financial viability and standing
- Legal Standing
- Clinical capacity and capability
- Clinical and Professional Governance
- Insurance Cover
- Quality Framework

15.4.2 For potential providers not sourced through AQP or a competitive process, additional checks must also be performed on:

- Viability of the Delivery Proposal
- Value for Money of the Proposal
- Affordability of the Proposal

## **15.5 Any Qualified Provider (AQP)**

15.5.1 Any Qualified Provider is a procurement model that CCGs can use to develop a register of providers accredited to deliver a range of specified services within a community setting. The model aims to reduce bureaucracy and barriers to entry for potential providers.

15.5.2 Under AQP, any provider that demonstrates that it meets the assurance and specific service requirements, and also agrees to the predetermined AQP price will be approved and can compete for activity within that specific market. The key to AQP is that there are no guarantees provided on payment or volume levels.

15.5.3 AQP opportunities will be advertised using Contractsfinder<sup>5</sup>.

15.5.4 AQP may not be appropriate in the following circumstances:

- Where the approved clinical pathway and service requirement dictates a single or limited number of providers
- Where limited activity levels exist and would not support multiple providers
- Where overall service costs will be significantly increased by adopting AQP
- Where some form competitive process is required to determine correct and appropriate pricing levels
- Where no fair and reasonable method of selecting between approved providers can be determined

## 15.6 Competitive Tenders

15.6.1 North Lincolnshire CCG will pursue and manage competitive tenders for health and social care through ensuring that choice, cooperation and competition are appropriately adopted. The competitive tenders undertaken by North Lincolnshire CCG will seek to fully observe the following key principles:

**Transparency** – Competitive Tenders should be fair and open and include a sufficient level of advertising. Specifically:

- North Lincolnshire CCG will endeavour to publish proposed procurement plans that will provide providers with information about commissioning intentions and future tendering opportunities
- North Lincolnshire CCG will select the most appropriate media for advertising tenders. The Contractsfinder procurement portal will be the primary advert media and any above thresholds contract must be advertised on OJEU TED portal as directed by the Public Contract Regulations 2015.
- North Lincolnshire CCG will only commission services from the providers who are best placed to deliver the needs of our patients and population
- North Lincolnshire CCG will procure services from suppliers that offer best value for money
- North Lincolnshire CCG will fairly manage and be transparent about potential conflicts of interest
- North Lincolnshire CCG will be transparent about its service requirements and how it will evaluate tender bids
- North Lincolnshire CCG will be transparent in disclosing the proposed award of contracts and providing debrief information to unsuccessful bidders

**Objectivity** - Key decisions must be based on documented objective data and criteria as part of the procurement process.

**Proportionality** – The competitive tendering process should be proportionate to the value and complexity of the services to be procured.

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<sup>5</sup> <https://www.gov.uk/contracts-finder>

**Non-discrimination** – The competitive tendering process must not discriminate among providers, and ensure that in the delivery of services, providers do not discriminate among patients or patient groups. Specifically:

- Service specifications and evaluation criteria will be developed so as to be generic and not favour specific potential providers.
- North Lincolnshire CCG will ensure that evaluation processes are fair and do not discriminate against particular potential providers.

**Accountability** – Officers involved in competitive tenders should strive to align their authority and legal powers with their accountability and legal duties.

**Subsidiarity** - Decisions should be made by the lowest competent authority and not unnecessarily escalated to Board.

**Consistency** - Formulation and implementation of policy must be internally coherent and consistent.

**Interdependency** - When assessing specific issues, commissioners and providers should understand and minimise the potential unintended consequences of any actions. As part of the overall approach to the above principles systems will be adopted that assist in:

- The design of local incentives and drivers.
- Driving quality in provision.
- Procurement and Contracting including management of change, failure and disputes.
- Market development and managements.
- Enabling and improving choice.
- Patient, public and market information.

15.6.2 North Lincolnshire CCG may also actively engage with third party organisations where appropriate to engage support or guidance within the commissioning and procurement process.

## **15.7 EU Directives and Procurement Regulations**

### **15.7.1 The Light Touch Regime**

The Public Contracts Regulations 2015 set out legal requirements and procedures for awarding public contracts above certain financial thresholds.

Under EU Procurement rules, services contracts are currently divided into two categories:

- Where a contracting authority seeks offers in respect of a public works, services or supplies contract with a value in excess of the applicable financial threshold;
- A new “light touch” regime for the health sector.

The light touch regime applies to the procurement of health, social and other services that fall within the Common Procurement Vocabulary (CPV) codes listed in Schedule 3 of the 2015 Regulations where the contract value is above a higher financial threshold (see table above).

There is a statutory requirement to follow the full EU Procurement rules, where legally-enforceable contracts are to be awarded, for supply of goods and/or services with an estimated full-life value the threshold (see table above) other than those specifically listed as being under the light touch regime.

The EU Treaty principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality apply to all procurements, for all services regardless of the regime they fall under.

15.7.2 This Policy complies with the requirements set out in the North Lincolnshire CCG current Standing Orders, Reservation and Delegation of Powers and Standing Financial Instructions.

## **15.8 Consultation**

15.8.1 Health service changes may be subject to patient and public consultation. Where applicable North Lincolnshire CCG will agree a consultation process at the outset of a procurement project on a case by case basis.

15.8.2 Major Service change proposals are subject to the Service Change Assurance Process managed by NHS England. North Lincolnshire CCG will follow the guidance set out in 'Planning, assuring and delivering service change for patients (NHS E, November 2015) ensuring full compliance with the assurance requirements.

## **15.9 Ethical and Sustainable Procurement**

15.9.1 North Lincolnshire CCG takes social and environmental factors into consideration alongside financial factors in making decisions on the purchase of goods and the commissioning of services. Our purchasing decisions where practicable consider whole life cost and the associated risks and implications for society and the environment.

15.9.2 The ethical procurement principle is to ensure that all people involved in our supply chain are treated fairly and reasonably, are not discriminated against and work in a safe environment.

15.9.3 The sustainability/environmental procurement principle is to deliver sustainable social and environmental activities both within our organisation but also in our supply chain.

15.9.4 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.

15.9.5 These overarching Ethical and Sustainable Procurement principles are embodied in the CCG's Sustainable Policy Framework.

## **16 TRAINING & AWARENESS**

Staff will be informed on the approval of this policy via the intranet and team meetings.

Individual Directorates are responsible for identification of training needs of their staff. Where training needs are identified, training will be arranged with the eMBED Procurement team.

## **17 MONITORING & AUDIT**

Annual audit against this policy will be undertaken in conjunction with the CCG Finance and Corporate teams. Where a purchase/contract has been made outside this policy, a remedial action plan will be developed.

## **18 POLICY REVIEW**

This policy will be reviewed in two years. Earlier review may be required in response to exceptional circumstances, organisational change or relevant changes in legislation/guidance, as instructed by the senior manager responsible for this policy.

## **19 REFERENCES**

This Procurement Policy reflects the current UK and EU legal and regulatory framework that the CCG will abide by, which consists of:

- The NHS (Clinical Commissioning Group) Regulation 2012 no. 1631 (2012)
- Securing best value for NHS patients (2012)
- Procurement briefings for Clinical Commissioning Groups (2012)
- Procurement Guide for commissioners of NHS-funded services (2012)
- Public Services (Social Value) Act (2012)
- Health and Social Care Act (2012)
- The National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations (2013)
- Monitor's Substantive guidance on the Procurement, Patient Choice and Competition Regulations (2014)
- Managing Conflicts of Interest: Statutory Guidance for CCGs (2014), updated 2017
- The Public Contracts Regulations (2015)

North Lincolnshire CCG Constitution  
North Lincolnshire CCG Financial Governance Policy (July 2017)  
North Lincolnshire CCG Standing Financial Instructions  
North Lincolnshire CCG Managing Conflicts of Interest Policy

## **20 ASSOCIATED DOCUMENTATION**

## **APPENDICES**

Appendix 1: Integrated Impact Assessment

<b>INTEGRATED IMPACT ASSESSMENT</b>		
Policy/project/function/service	NL CCG Procurement Policy	
Date of analysis:	August 2018	
Type of analysis completed	Quality	√
	Equality	√
	Sustainability	√
What are the aims and intended effects of this policy/project or function?	To support the CCG in ensuring it meets its legal obligations and secures value for money in the purchase of goods and services	
Please list any other policies that are related to or referred to as part of this analysis	Prime Financial Policies. Conflict of Interest Policy	
Who does the policy, project, function or service affect?	Employees	√
	Service users	
	Members of the public	
	Other (please list)	

## QUALITY IMPACT

	Please 'X' ONE for each			Brief description of potential impact	Mitigation strategy and monitoring arrangements	Risk 5 x 5 risk matrix)	
	Chance of Impact on Indicator					Likelihood	Consequence
	Positive Impact	No Impact	Negative Impact				
	X	X	X				
<b>PATIENT SAFETY</b>							
Patient safety /adverse events		✓		*			
Mortality position		✓					
Infection control MRSA/CDIFF		✓					
CQC status		✓					
NHSLA / CNST		✓					
Mandatory/statutory training		✓					
Workforce (vacancy turnover absence)		✓					
Safe environment		✓					
Standard & suitability of equipment		✓					
<b>CLINICAL EFFECTIVENESS</b>							
NICE Guidance and National Quality Standards, eg VTE, Stroke, Dementia		✓		*			
Patient related outcome measures		✓					
External accreditation e.g. professional bodies ie RCN		✓					
CQUIN achievement		✓					
<b>PATIENT EXPERIENCE</b>							

Will there be an impact on patient experience if so how		√					
Will it impact on carers if so how		√		*			
<b>INEQUALITIES OF CARE</b>							
Will it create / reduce variation in care provision?		√		*			
<b>STAFF EXPERIENCE</b>							
What is the impact on workforce capability care and skills?		√		*			
Will there be a change in working practice, if so, how?		√					
Will there be an impact on training		√					
<b>TARGETS / PERFORMANCE</b>							
Will it have an impact on performance, if so, how?		√		*			
Could it impact on the achievement of local, regional, national targets, if so, how?		√					
<p>* This policy will not have an impact on the above criteria, however there may be an impact on quality from the procurements undertaken under the remit of this policy. This will be assessed within the project level Impact Assessment</p>							

<b>EQUALITY IMPACT</b>							
Analysis Rating (see completion notes)	Red		Red/Amber		Amber		Green ✓
Approved by:	Commissioner Lead:	Jane Ellerton, Head of Strategic Commissioning			GP lead for E&D:		
	Date	20/08/18			Date		
<b>Local Profile Data</b>							
General							
Gender (Men and Women)							
Race (All Racial Groups)							
Disability (Mental and Physical, Sensory Impairment, Autism, Mental Health Issues)							
Religion or Belief							
Sexual Orientation (Heterosexual, Homosexual and Bisexual)							
Pregnancy and Maternity							
Transgender							
Marital Status							
Age							
<b>Equality Data</b>							
Is any equality data available relating to the use or implementation of this policy, project or function?	This policy will not have an impact on specific population groups, however there may be an impact on equality from the procurements undertaken under the remit of this policy. This will be assessed within the project level Impact Assessment						

List any consultation e.g. with employees, service users, Unions or members of the public that has taken place in the development or implementation of this policy, project or function.				
Promoting inclusivity; How does the project, service or function contribute to our aims of eliminating discrimination and promoting equality and diversity?				
<b>Equality Impact Risk Assessment test</b>				
What impact will the implementation of this policy, project or function have on employees, service users or other people who share characteristics protected by <i>The Equality Act 2010</i> ?				
Protected Characteristic:	No Impact	Positive Impact	Negative Impact	Evidence of impact and if applicable justification where a <i>Genuine Determining Reason</i> exists
Gender (Men and Women)	√			This policy will not have an impact on these criteria, however there may be an impact on equality from the procurements undertaken under the remit of this policy. This will be assessed within the project level Impact Assessment
Race (All Racial Groups)	√			
Disability (Mental and Physical, Sensory Impairment, Autism, Mental Health Issues)	√			
Religion or Belief	√			
Sexual Orientation (Heterosexual, Homosexual and Bisexual)	√			
Pregnancy and Maternity	√			
Transgender	√			
Marital Status	√			
Age	√			

## Action Planning

As a result of performing this Equality Impact Analysis, what actions are proposed to remove or reduce any risks of adverse outcomes identified on employees, service users or other people who share characteristics protected by The Equality Act 2010?

Identified Risk:	Recommended Action:	Responsible Lead	Completion Date	Review Date

## SUSTAINABILITY IMPACT

Staff preparing a Policy / Board Report / Committee Report / Service Plan / Project are required to complete a Sustainability Impact Assessment. Sustainability is one of the Trust's key Strategies and the Trust has made a corporate commitment to address the environmental effects of activities across Trust services. The purpose of this Sustainability Impact Assessment is to record any positive or negative impacts that this activity is likely to have on each of the Trust's Sustainability Themes.

	Positive Impact	Negative Impact	No Specific Impact	What will the impact be? If the impact is negative, how can it be mitigated? (action)
Reduce Carbon Emission from buildings by 12.5% by 2010-11 then 30% by 2020			√	This policy will not have an impact on these criteria, however there may be an impact on sustainability arising from the procurements undertaken under the remit of this policy. This will be assessed within the procurement process.
New builds and refurbishments over £2million (capital costs) comply with BREEAM Healthcare requirements.			√	
Reduce the risk of pollution and avoid any breaches in legislation.			√	
Goods and services are procured more sustainability.			√	
Reduce carbon emissions from road vehicles.			√	

Reduce water consumption by 25% by 2020.			√
Ensure legal compliance with waste legislation.			√
Reduce the amount of waste produced by 5% by 2010 and by 25% by 2020			√
Increase the amount of waste being recycled to 40%.			√
Sustainability training and communications for employees.			√
Partnership working with local groups and organisations to support sustainable development.			√
Financial aspects of sustainable development are considered in line with policy requirements and commitments.			√



