

Waltham Forest CCG

Procurement Strategy and commissioning framework

Version 3.0
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Document History:

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1	September 2013		
2	16 April 14		Updated by Linda Finch re local process for procurement route decisions based upon substantive monitor guidance
3	28 July 15		Updated by Sharon Yepes Mora to reflect the latest guidance

Individual or Board Review History:

Name or Board	Role/Responsibility/Board name	Date	Version Reviewed
Jane Mehta / CCG Governing Body	Director of Strategy and Delivery	September 2013	1
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Governing body	Jane Mehta	Director of Strategic Commissioning	September 2013
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1. INTRODUCTION

- 1.1. Where Waltham Forest CCG proposes to award public contracts, it will ensure that the procurement is conducted in accordance with the EU Procurement Directives as implemented into UK law by the Public Supply Contracts Regulations 2015 [(as amended) (SI 2015/102)].
- 1.2. In addition, any clinical procurement process undertaken by Waltham Forest CCG, as supported by the NELCSU Procurement Team, will also comply with relevant national and regional guidelines and systems management tools issued by the Department of Health (DH), Monitor and NHS England. These include:
 - Procurement Guide for commissioners of NHS-funded services (DH, 30 July 2010)
 - The Principles and Rules for Cooperation and Competition (PRCC, July 2010)
 - Framework for Managing Choice, Co–Operation and Competition (May 2008)
 - The Equality Act 2010 (Section 149)
 - The Public Services (Social Value) Act 2012
 - Procurement of healthcare (clinical) services, briefings 1-4 (NHS Commissioning Board, September 2012).
 - The NHS (Procurement, Patient Choice and Competition) Regulations 2013 which support interpretation of section 75 of the Health and Social Care Act 2012 (11.03.13)
 - Managing conflicts of interests: Guidance for clinical commissioning groups (NHS England, March 2013)
 - Substantive guidance on the Procurement, Patient Choice and Competition Regulations (Monitor, December 2013)

A new EU Directive on public procurement was agreed on February 2014. The Directive makes changes to the current EU procurement rules and a new light touch regime will come into play for services under a threshold of 750,000 Euros (£625,050) from April 2016 onwards. With the abolition of the distinction between Part A and Part B Services, all services / supplies / works which are over the EU threshold will have to follow the EU procedures.

In February 2015, the Public Contracts Regulations 2015 (SI 2015/102) were published and came into force on 26 February 2015. These Regulations replace the Public Contracts Regulations 2006 in their entirety. They implement Directive 2014/24 on public procurement and contain a number of provisions aimed at ensuring small businesses have better access to public sector contracts.

The Regulations do not apply to any contract award procedure commenced before 26 February 2015 i.e. any process with a tender advert/OJEU published before 26 February 2015 are still subject to the 2006 Regulations.

In addition, nothing in the 2015 Regulations will apply to any contract award procedure commenced before 18 April 2016, if that procedure relates to the procurement of “health care services for the purposes of the NHS” within the meaning and scope of the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013.

1.3. Financial Controls:

Waltham Forest CCG’s Prime Financial Policies set out the following financial limits that will dictate the procurement requirements for all tenders:

Up to £4,999	Two verbal quotations
£5000 and £19,999	Two written quotations
£20,000 - £100,000	Three Written quotations
£100,000 - OJEU Threshold*	Three Competitive Tenders (sealed)
Over the OJEU Threshold	Full procurement process needs to be undertaken

Currently the OJEU threshold is £172,514 for all services. From April 2016 a new Light Touch Regime will be available for Social and Other Specific Services and these services will have a higher threshold of £625,050 (€750,000). The thresholds for all other services will remain the same as £172,514.

- 1.4. When considering whether or not a service should be competitively tendered, Waltham Forest CCG in partnership with the NELCSU will follow the DH Procurement Guide (see 1.2 above) or any successor document, the financial control limits (see 1.3 above) as well as other Prime Financial Policies/Standing Financial Instructions adopted and agreed by the CCG, taking into account the scale of the procurement, the degree to which the service specification and funding model have been developed, and the number of potential providers for the service.
- 1.5. The CCG must balance the requirements of complying with procurement law and reducing legal challenge with the need to make effective and integrated commissioning decisions that are right for their local population. Commissioners will ultimately need to make a decision on the appropriate procurement route for a contract. In some instances, particularly related to out of hospital services, there may only be a single provider capable of delivering the contract and in these instances it is likely that the award of a single contract may be appropriate. In other circumstances there may be several potential providers of the services in question and commissioners will need to determine whether some form of competitive procurement exercise is run.

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- 1.6. To strengthen the CCG's local commissioning and procurement process, a framework for decision-making has been adopted within Waltham Forest CCG. This is provided within the procurement strategy as part of a toolkit for locally commissioned out of hospital services. This framework has been developed in North West London with support from lawyers and in addition to a decision tree it also sets out examples of the evidence that the CCG should be able to provide to support their decision making as well as outlining a set of minimum standards that would be required of any holder of an NHS contract. The standards are not specific to any particular service, and in addition service specific requirements would need to be developed.
 - 1.7. Where it is agreed that a competitive tender should be undertaken, it is imperative that the process followed is subject to appropriate governance procedures. This is to ensure that due process is carried out, from the perspective of Waltham Forest CCG, in order to minimise the risk of challenge to the process by unsuccessful bidders, and associated costs and service mobilisation delays. This document therefore sets out the responsibilities of Waltham Forest CCG and also NELCSU in terms of the support it provides to the CCG to undertake clinical procurements. Where Waltham Forest CCG decides to procure a clinical service collaboratively with another CCG or CCGs, a lead CCG will need to be identified under whose governance arrangements the process will be managed.

2. CLINICAL PROCUREMENT POLICY

2.1. CLINICAL PROCUREMENT PRINCIPLES

Waltham Forest CCG will conduct all clinical procurements in accordance with the following principles:

- 2.1.1. **Fairness & Transparency:** on behalf of the CCG, the NELCSU Clinical Procurement Team will be clear and transparent in communications with providers about Waltham Forest CCG's commissioning intentions, decisions (or not) to tender, advertising of opportunities, procurement evaluation criteria, publication of decisions and mechanisms for feedback.
- 2.1.2. **Efficiency:** on behalf of the CCG, the NELCSU Clinical Procurement Team will ensure that the procurement process is as efficient and time effective as possible for both commissioners and providers; as an outcome, all procurements will aim to improve productivity, efficiency and effectiveness of services without compromising clinical quality.
- 2.1.3. **Quality:** Waltham Forest CCG commissioners will be supported by NELCSU to procure services to meet patient needs which are of the highest possible quality standard, and use appropriate measurable performance indicators to monitor provider performance. NELCSU will ensure that the procurement process and content supports Commissioners to encourage all providers to deliver continual improvement in the quality of services that they are commissioned to provide.
- 2.1.4. **Continuity:** Waltham Forest CCG commissioners will continue to work in partnership with key providers of NHS services but will be supported by the NELCSU Clinical Procurement Team where required continually to test these services to ensure that the current providers deliver best value for money.

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- 2.1.5. **Equality of treatment and non-discrimination:** Waltham Forest CCG will be supported by the NELCSU Clinical Procurement Team to clearly identify those services which will be put out for competition. All sectors and providers (NHS and non NHS) will be treated equitably in terms procurement rules, access to information, timescales, financial and quality assurance checks, and pricing and payment regimes.
 - 2.1.6. **Proportionality:** by means of advice and guidance given, Waltham Forest CCG commissioners will use procurement processes that are proportionate to the value, complexity and risk/benefit to patients of services procured; different procurement routes for different types of services will enable this. Potential costs to bidders will also be considered when assessing which procurement routes to follow.
 - 2.1.7. **Consistency:** Waltham Forest CCG commissioners apply national and local principles and rules consistently across all procurements that they undertake.
 - 2.1.8. **Professional Conduct:** Waltham Forest will ensure that all procurement personnel who support them to undertake procurements will be subject to the Professional Code of Conduct as published by the Chartered Institute of Purchasing and Supply (CIPS).

2.2. PROVIDER ENGAGEMENT/MARKET MANAGEMENT

- 2.2.1. On-going provider engagement is part of the Commissioning Cycle. Particular engagement activities (such as Information Events) will be undertaken that relate to individual procurement exercises, but Waltham Forest CCG is committed to maintaining an on-going dialogue with providers in order to involve them in shaping the CCG's commissioning intentions, and for providers to be clear about the shape and quality of service provision those commissioning intentions require.

2.3. SERVICE SPECIFICATIONS

- 2.3.1. Waltham Forest CCG's commissioners are committed to developing clear, outcome-focussed service specifications for use in tender exercises - in partnership with clinicians - in order to provide bidders with sufficient information to understand what commissioners want to buy while allowing for innovation where this is required.
- 2.3.2. The degree to which the service specification has or can be developed will also inform the procurement model followed, for example, for AQP procurements, the service specification and funding model must be fully developed prior to procurement.
- 2.3.3. **Governance:** service specifications will, as a matter of course, address the governance arrangements required of any service being procured in order to assure Waltham Forest CCG commissioners that a clear and robust governance structure is in place both across the service specified and within the organisation/organisations which wins/win the tender.
- 2.3.4. **Clinical engagement:** Waltham Forest CCG commissioners will engage with a range of clinicians both within their CCG and external to it to develop service specifications that are driven by clinical quality and have clinical buy-in.

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- 2.3.5. **Provider engagement:** In addition to on-going engagement with providers, Waltham Forest CCG commissioners will engage with providers in terms of financial, estates and workforce implications of potential procurements.
- 2.3.6. **Patient and public engagement:** Effective engagement with local patients and population will assist in identifying areas where health needs are not being adequately met, and where there is scope for improvement of services. This will include commissioners undertaking public and patient consultations before a procurement process begins, and engaging patient and public representatives where possible in procurement evaluation panels. Service users should also inform the shape of planned changes to provision. Engagement will be on-going through established CCG mechanisms and stakeholder events.

3. POTENTIAL PROCUREMENT ROUTES:

- 3.1 As part of the procurement process, all potential procurement routes should be considered to ensure that the route chosen is the most appropriate for the scale of the service being procured and the outcomes the procurement is intending to deliver. Appendix A sets out the routes that can be considered. The Procurement Working Group will lead on determining the most appropriate route and documenting the evidence and decision making against the criteria.
- 3.2 A standard procurement process will be followed in all cases. The procurement process to be followed, which sets out the responsibilities of commissioners and the procurement team, is set out in appendix B. Revised timescales are contained in Appendix B.
- 3.3 It should be noted that the procurement of contracts funded jointly between a CCG and a Local Authority across the sector for health and social care services will be subject to locally agreed procedures and the Standing Financial Instructions of the organisation leading the tender.

3.4 Competitive Tendering Routes

The most common routes for competitive tendering (see Appendix A for further details) include:-

i. **Open Procedure**

In the Open Procedure all applicants who respond to the Contract Notice will be invited to submit a tender for the contract opportunity. Generally speaking, the Open Procedure will be used for simple and straightforward procurements and for tenders under the EU threshold.

i. **Restricted Procedure**

The Restricted Procedure is used where the Contracting Authority wishes to restrict the number of Bidders who will be issued with the Invitation to Tender. Under the Restricted Procedure, a minimum of five (5) applicants must be invited to go through to the next stage of the procurement process (provided that there are five (5) suitable applicants).

If there are less than five (5) suitable applicants then you can proceed with the procurement process, provided that the number of applicants selected is sufficient to ensure genuine competition. The restricted procedure cannot be used for procurements under the EU threshold.

ii. Competitive Dialogue

The competitive dialogue procedure allows the contracting authority to enter into dialogue with bidders, following an OJEU notice and a selection process, to develop one or more suitable solutions for its requirements and to determine which chosen bidders will be invited to tender.

The competitive dialogue procedure is a flexible procedure, suitable where there is a need for authorities to discuss aspects of the proposed contract with candidates. For example, the procedure would be used where authorities cannot define clearly in advance the technical means capable of satisfying their needs or objectives, or where there is a range of options for the legal and/or financial structure of a project.

iii. Competitive Procedure with Negotiation

Under which a selection is made of those who respond to the advertisement and only they are invited to submit an initial tender for the contract. The contracting authority may then open negotiations with the tenderers to seek improved offers.

iv. Innovation Partnership Procedure

Under which a selection is made of those who respond to the advertisement and the contracting authority uses a negotiated approach to invite suppliers to submit ideas to develop innovative works, supplies or services aimed at meeting a need for which there is no suitable existing 'product' on the market. The contracting authority is allowed to award partnerships to more than one supplier.

v. Negotiated Procedure Without Prior Publication

This has narrowly defined circumstances where the contracting authority may award a contract using this method. Here the contracting authority can approach one or more suppliers seeking to negotiate the terms of the contract. One of the permitted circumstances is where, for technical or artistic reasons or because of the protection of exclusive rights, the contract can only be carried out by a particular supplier.

vi. Negotiated Procedures

It is recommended that this procedure is not used without good reason, usually due to the failure of a Restricted procedure on lack of competition grounds where only a single potential provider has been identified to be able to contract with. A negotiated procedure can then begin identifying the organisation and confirming to the market that negotiation has begun to contract with this supplier.

vii. Non Competitive Process

Competition may be waived in circumstances where the CCG is satisfied that the services to which the contract relates are capable of being 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. Where it is decided not to competitively tender for new services or

where services are significantly changed, CCG Governing Body approval must be obtained following any recommendation to follow this approach.

viii. Partnership Agreements

This is not partnership in a “legal” sense. Where collaboration and coordination is considered essential, for example in developing new integrated pathways, enabling sustainability of services, ensuring smooth patient handover, coordination etc. CCG may wish to continue with existing “partnership” arrangements. 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

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

3.5 SUSTAINABLE PROCUREMENT

Waltham Forest CCG recognises the responsibility and role it plays in reducing the impact it has as an organisation on the environment, and wishes to encourage health providers to do the same through reducing use of natural resources and in particular carbon emissions. The CCG therefore intends to utilise e-procurement methods as far as possible, and include tender questions and performance measures relating to environmental considerations in the contracts tendered. The CCG will encourage providers (and potential providers) to be innovative in reducing their environmental impact whilst maintaining excellent clinical quality standards and improved outcomes.

4. CLINICAL PROCUREMENT GOVERNANCE: RESPONSIBILITIES

4.1. Clinical Commissioning Groups:

4.1.1. **Pre-advertisement:** As the Contractor and Budget Holder, and where it intends to undertake a clinical procurement, Waltham Forest CCG will ensure that the correct procedures have been undertaken in accordance with the adopted Prime Financial Policies/Standing Financial Instructions – taking into account expected contract value for the life of the contract - in order to authorise the proposed tender to proceed to advert. This will include:

- Development of the Business Case
- Consideration and agreement of the Business Case, which should include the proposed procurement route (see Appendix A)
- Consideration and agreement of any waiver requirements, where, for example, an existing contract may need to be extended to accommodate a tender timetable.

4.1.2. **During the Tender process, Waltham Forest CCG will:**

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- Have tender opening procedures in place for manual return of ITT submissions and accept Due North/Pro-Contracts electronic audit trail for the opening of tender submissions received using an e-procurement process and portal
 - Provide leadership for the tender process and for the decisions made, and to identify the members of the evaluation panel
 - With NELCSU support, be responsible for developing and giving final approval for the service-specific documentation, in particular the service specification and the questions to be asked of bidders that relate to the specification
 - Provide a Lead to work with NELCSU Finance to develop the financial template, and to consider and assess the financial submissions received as part of a bid
 - (Where a manual tender process is undertaken) To identify a receiving address for the return of all completed tenders (usually the CCG AO), and to have appropriate procedures in place for the care of unopened tenders, and for the opening of them by independent, nominated officers in line with the CCG's Prime Financial Policies/Standing Financial Instructions.

4.1.3. Completion of the tender process:

- With NELCSU support, to develop and finalise the Contract Award report
- For the Contract Award report to be considered and agreed by the CCG Board as required under the SFI's, and with appropriate consideration given to potential conflicts of interest in the Board membership
- With NELCSU support, to lead service mobilisation planning and implementation with the successful bidder(s)
- To raise a Requisition/Purchase Order for the contract signed by the successful bidder

4.1.4. Exceptionality Waiver Process:

- As the Contractor and Budget Holder, Waltham Forest CCG will also have in place a waiver process to ensure an appropriate audit trail for decisions around contract extensions/variations, or where a single action tender has been awarded.

4.2. North East London Commissioning Support Unit:

4.2.1. Pre-advertisement: NELCSU's Procurement Team will:

- Provide advice and guidance to Waltham Forest CCG commissioners where required when developing business cases, particularly where a procurement route needs to be recommended.
- Require confirmation that the relevant Waltham Forest CCG Committee has approved the Business Case and the procurement route before the advert can go live

4.2.2. During the Tender process:

- Provide Waltham Forest CCG's Lead Commissioners and panel members with advice, support and guidance through all stages of the procurement process
- Provide Waltham Forest CCG's lead commissioners with documentation templates, including Pre-Qualification Questionnaires (PQQs) and Invitation To Tender (ITT) documents (Procurement Team), and the Financial Model Template that reflects the required billing format and cost code (NELCSU Finance Team)
- Co-ordination of the tender process as a whole
- All liaison with Supply2Health including the uploading of adverts (following approval by Communications)

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- All liaison with bidders during the tender process
 - Responsibility for uploading all finalised tender documents to the Due North e-Procurement system where an e-procurement process is undertaken
 - To be present at the formal opening of received tenders and responsibility for distribution of the completed tender documents received to panel members, where a manual tender process is undertaken.

4.2.3. **Completion of the tender process:**

- To contribute to the content of the Contract Award report as required
- To follow the Contract Award report with the issue of standstill/alcatel period letters for the required 10-day period, and for this period to expire before the successful bidder is made known in the public domain.
- To develop, populate and issue the NHS Standard e-contract based on the specification, agreed KPIs, and the successful bidder(s)' tender documentation, and ensure contract is signed (NELCSU Contracts Team)
- To support the lead Commissioner with mobilisation planning and implementation (NELCSU Contracts Team)
- To raise a Requisition/Purchase Order for the contract for the successful bidder

4.2.4. **Waiver Process:**

- Where requested, to provide advice and guidance on waiver procedures and to add comments to waiver requests (where required).

4.3 Award Criteria

Regardless of the type of tender, the CCG is required to award contracts based on the Most Economically Advantageous Tender (MEAT). This means that the CCG have to consider the quality of the service / supply / works as well as the price. Price/ costing means the whole lifetime cost of the contract.

This differs to the previous regulations as the detail of award criteria was at the discretion of the contracting authority and was previously permissible to award on price alone. However, as the majority of the awards are service based, quality is always a key consideration in the evaluation.

APPENDIX A: PROCUREMENT ROUTES:

There are a number of procurement options available to Waltham Forest CCG commissioners. The most appropriate choice will depend on a number of factors, including contract value, the status of the provider market, geography, the needs of patients and patient choice. The following describes the procurement routes that could be used, with some of the advantages and disadvantages of each.

Procurement Routes

Potential Procurement Route	When it may be considered	Advantages	Disadvantages	Estimated Timescale
Open tender (Combined Response Document)	<ul style="list-style-type: none"> Limited competition anticipated (i.e. few suppliers in the market) Niche requirement Patient/population need identified Specification, outcomes and KPI's determined pre-procurement 	<ul style="list-style-type: none"> Open to all suppliers Doesn't restrict small / medium enterprises Contract currency determined pre-procurement 	<ul style="list-style-type: none"> Volume of responses may be high and all will require evaluation 	<ul style="list-style-type: none"> 6 months (does not require PQQ stage; may require TUPE period before contract start)
Restricted tender	<ul style="list-style-type: none"> Large market available for competition Patient/population need identified Specification, outcomes and KPI's generally determined pre-procurement but can be refined during preliminary stages 	<ul style="list-style-type: none"> Two-stage process that can minimise impact of resources by restricting the number competitors Contract currency determined pre-procurement 	<ul style="list-style-type: none"> Could limit the number of suitable bidders 	<ul style="list-style-type: none"> 6-9 months (may require TUPE consultation period before contract start)
Competitive Dialogue	<ul style="list-style-type: none"> Insufficient suitable suppliers available Requires market development 	<ul style="list-style-type: none"> Flexible approach to complicated procurements Increases competition and encourages innovation Specification and funding model are only developed during the process 	<ul style="list-style-type: none"> Resource intensive to carry out dialogue phase Innovative approaches may vary making it difficult to evaluate bids on a like for like basis 	<ul style="list-style-type: none"> 12 months minimum

Potential Procurement Route	When it may be considered	Advantages	Disadvantages	Estimated Timescale
Competitive Procedure with Negotiation	<ul style="list-style-type: none"> No valid or suitable response received under Open or Restricted procedures When only one supplier may provide the service for technical, artistic or intellectual property right reasons Requirement is for research, experiment, study or development 	<ul style="list-style-type: none"> Contract terms are negotiated upfront from a selection of potential suppliers Assists in clearly defining the requirement and a selected number of bidders 	<ul style="list-style-type: none"> Resources intensive to carry out negotiations 	<ul style="list-style-type: none"> 6 months – but often follows an Open or Restricted process which has not identified a suitable provider
Innovation Partnerships	<ul style="list-style-type: none"> Authorities shall identify the need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market, and shall indicate which elements of this description define the minimum requirements to be met by all tenders 	<ul style="list-style-type: none"> Suitable for the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the performance levels and maximum costs agreed between the contracting authority and the participants The innovation partnership can be structured in successive phases following the sequence of steps in the research and innovation process, which may include the manufacturing of the products, the provision of the services or the completion of the works. 	<ul style="list-style-type: none"> Resource intensive Only available when a solution or service is readily not available in the market 	<ul style="list-style-type: none"> 6 – 12 months depending on the complexity of the required solution/service
Framework Call-off	<ul style="list-style-type: none"> Where an existing framework has been implemented, that satisfies all service requirements 	<ul style="list-style-type: none"> Reduces timescales – key terms have been agreed with suppliers appointed under the framework 	<ul style="list-style-type: none"> Specification is fixed and cannot be varied once framework is implemented 	<ul style="list-style-type: none"> 9-12 months to establish the framework, but once implemented, call-offs can take 1-3 months

Potential Procurement Route	When it may be considered	Advantages	Disadvantages	Estimated Timescale
<p>AQP (Any Qualified Provider)</p>	<ul style="list-style-type: none"> • Community based activities where local tariff has been agreed • Where facilitating patient choice is a key local priority • Where payment for actual activity is preferred over block arrangements 	<ul style="list-style-type: none"> • Designed to be a quicker process • Pre-qualifies potential providers, providing a 'pool' of potential supply • Supports Patient Choice as patients decide which qualified provider to use 	<ul style="list-style-type: none"> • Initial accreditation may involve processing a large volume of applications • Stage 1 accredited providers may never qualify to supply • May not generate large/sufficient interest, as no volume guarantees are given • Does not encourage new providers as there is no guarantee of return on investment 	<ul style="list-style-type: none"> • 6-9 months

ALTERNATIVES TO PROCUREMENT:

Contract Variation	<ul style="list-style-type: none"> When the value of a service development, re-design or expansion is within 10% of the existing contract value (or service line/s in an acute contract) 	<ul style="list-style-type: none"> A relatively quick process where continuity is beneficial when a service or pathway would benefit from being delivered in a different way 	<ul style="list-style-type: none"> Does not test the market for innovation or cost 	<ul style="list-style-type: none"> Needs to be negotiated with the current provider to ensure it is acceptable to them
Contract Management	<ul style="list-style-type: none"> As set out in the DH "Procurement guide for Commissioners of NHS-funded services" (July 2010, clause 2.3), contract management can be used where an existing contract is in place in order to secure incremental improvements/changes to existing services, or to address under-performance, as an alternative to procurement 	<ul style="list-style-type: none"> As above 	<ul style="list-style-type: none"> As above 	<ul style="list-style-type: none"> As above
Waivers	<ul style="list-style-type: none"> When contract end dates need to be harmonised prior to a tender involving several services When a service or contract would benefit from extension and the circumstances set out in the SFI's are met 	<ul style="list-style-type: none"> Enables developing or remodelled services further time to become established Continuity of service provider 	<ul style="list-style-type: none"> Where a market is developing or developed, may be regarded by potential providers as anti-competitive Does not test the market or demonstrate that VFM is being achieved 	<ul style="list-style-type: none"> Waiver process needs to be followed, with senior management authorisation obtained. Timescale depends on robustness of supporting evidence.
Single Tender Action (NHS Procurement, Patient Choice & Competition) Regulations 2013)	<ul style="list-style-type: none"> Where it can be robustly demonstrated that only one provider is capable of providing a particular service, there is no requirement to put a contract out for competitive tender Consideration of impact of procurement on pathway integration 	<ul style="list-style-type: none"> A quick process that saves resources and time involved in running a tender 	<ul style="list-style-type: none"> Does not test the market for innovation or cost 	<ul style="list-style-type: none"> Contract will need to be negotiated with identified single provider

APPENDIX B SHORTER TIME LIMITS

The time limits for EU tendering have changed and have reduced for certain procedures –

Procedure	Previous Time Limits	New Time Limits
Open Procedure	Open for 52 days	Bidders to respond to ITT 35 days (30 days where a tender can be submitted electronically)
Restricted Procedure	37 days for advert 40 days to respond to ITT	30 days for advert 30 days to respond to ITT (25 days where the ITT can be submitted electronically)
Competitive Dialogue	30 days for advert	No changes
Negotiated procedure without prior publication		
<p>In the specific case and circumstances laid down in the regulation, contracting authorities may award public contracts by a negotiated procedure without prior publication:</p> <ul style="list-style-type: none">• where no tenders/no suitable tenders/no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure• where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:—<ul style="list-style-type: none">(i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;(ii) competition is absent for technical reasons;(iii) the protection of exclusive rights, including intellectual property rights• insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with		

APPENDIX B

NORTH EAST LONDON CCGs/CSU PROCUREMENT PROCESS

The following table sets out the sequential stages in a clinical procurement process using a “restricted” (i.e. 2-stage) procurement route, establishing what needs to be done, in what order and by whom. The “restricted” route has historically been the route selected most commonly by commissioners as it allows the number of bidders put through to the ITT stage to be reduced on the basis of the quality of their PQQ submissions. This example should be taken as a template which can be applied to the circumstances of each particular tender, where a “restricted” route is chosen. The CSU Clinical Procurement Team will work with commissioners to develop an agreed timeline for each project.

<u>Steps in Clinical Procurement process</u>	<u>Timeline (working days and as a minimum – actual timeline would need to factor in panel commitments/annual leave/unavoidable delays and unforeseen events etc.)</u>	<u>Responsibilities of Lead Commissioner/CCG representatives</u>	<u>Responsibilities of CSU Clinical Procurement</u>	<u>Responsibilities of the CSU Contracts & Finance Teams</u>
1. Stage 1: Planning/pre-Advertisement				
Business Case approved by Clinical Commissioning Group/authorisation to proceed to advert given in accordance with SFIs	CCG Governing Body/Board process & decision	Lead Commissioner/CCG to gain approval/authorisation ensuring those making decisions have no conflicts of interest		
Development of tender-specific documentation: <ul style="list-style-type: none"> • Specification (inc. KPIs) • Advert text • MOI (Memorandum of Information) 	<ul style="list-style-type: none"> • Specification (inc. KPIs): finalised by time of ITT issue • Advert text: for upload to Supply2Health • MOI (Memorandum of 	<ul style="list-style-type: none"> • Lead Commissioner/CCG for Specification, MOI, EqIA and questions for the PQQ and ITT 	<ul style="list-style-type: none"> • Clinical Procurement Team will provide templates for procurement documents and previous examples of documents used; 	<ul style="list-style-type: none"> • CSU Contracts Team will provide support to lead CCG commissioners with development of the Specification (inc. KPIs), the

<ul style="list-style-type: none"> • PQQ (Pre-Qualification Questionnaire) • ITT (Invitation To Tender) • Equalities Impact Assessment (EqIA) • Financial Model Template 	<p>Information): to provide bidders at EOI stage with general information about the service/CCG area</p> <ul style="list-style-type: none"> • PQQ: for PQQ issue • ITT: for ITT issue • Equalities Impact Assessment: as part of Business Case • Financial Model Template: finalised by time of ITT issue 	<ul style="list-style-type: none"> • Finance lead for the confirmation of the Financial Model Template 	<p>will be responsible for uploading documents to e-Procurement system and/or issuing all documents to bidders</p>	<p>questions to be asked of bidders and any other documents as required</p> <ul style="list-style-type: none"> • Finance lead to develop the Financial Model Template
<p>Establish Evaluation Panel/Project Group: identify people willing to take part, including potentially commissioners, clinicians, GPs, independent and national representation, user/patient representation, local Finance lead, HR/IT & Quality Assurance reps etc.</p>	<p>Needs to be finalised by deadline for PQQ submissions</p>	<p>Lead Commissioner/CCG to establish</p>	<p>Clinical Procurement will require all assessment panel members to sign Declaration of Interest form before taking part in any assessment process. The team will also provide assessment panel members with training on procurement and use of any e-Procurement systems</p>	
<p>Notice given to current provider(s) if required</p>	<p>6 months minimum required</p>	<p>Lead CCG Commissioner to authorise issue of notice letter(s)</p>		<p>CSU Contracts Team to issue notice letter(s) in the name of the relevant CCG(s)</p>
<p>2. Stage 2: Pre-Qualification (PQQ)/Invitation to Tender (ITT)</p>				
<p>Finalise Advert text</p>		<p>Lead Commissioner</p>	<p>Clinical Procurement provides template and coordination support</p>	

Advert sent to Communications (for clearance)	Day 1		Clinical Procurement	
Advert Placed on Supply2Health website & Pro-Contracts e-Procurement system	Day 2		Clinical Procurement	
Finalise EOI form and MOI	By Day 2	Lead Commissioner	Clinical Procurement provides templates and coordination support	
Period for receipt of Expressions of Interest (EOI)	Day 3-17 (minimum 15 working days to ensure seen by widest audience and taking potential bidder leave into account)		Clinical Procurement issues and logs EOI requests	
Finalise PQQ	By Day 18	Lead Commissioner	Clinical Procurement provides template and coordination support	
PQQ issued to organisations submitting EOI's	Day 18		Clinical Procurement issues PQQs	
PQQ Bidders Day – clarify PQQ questions	Day 19-23 (to be agreed if required; best practice within first week of receiving PQQ)	Lead Commissioner to present service specific information	Clinical Procurement provides event coordination support	
Deadline for receipt for PQQ submissions	Day 37 (4 weeks as best practice)		Clinical Procurement oversees submissions by deadline and issues them to assessment panel/releases access to on-line submissions to Evaluation Panel	

Completion of evaluation for PQQ's	Day 46 (10 working days for Panel to assess and score; Panel must commit to completing task by deadline)	Evaluation Panel & Local Finance lead complete by deadline		CSU Finance Team to support CCG Finance lead with evaluation of Financial element of submission
Collation of PQQ scores and preparation for moderation session	Day 47		Clinical Procurement collate scores and prepare materials for moderation session	
PQQ Moderation Meeting	Day 48	Evaluation Panel & Local Finance must be present to discuss scores	Clinical Procurement leads moderation session	
Finalise ITT and Financial Model Template	By Day 49	Lead Commissioner & local Finance Lead	Clinical Procurement provides templates and coordination support	
Invitation to Tender issued to successful bidders	Day 49		Clinical Procurement issues ITT	
ITT Bidders day – clarify ITT questions	Day 50-54 (to be agreed if required; best practice within first week of receiving ITT)	Lead Commissioner/lead clinicians to present service specific information	Clinical Procurement provides event coordination support	
Deadline for receipt of ITT bids (4 weeks)	Day 68		Clinical Procurement oversees submissions by deadline and issues them to assessment panel/releases access to on-line submissions to Evaluation Panel	
Evaluation of ITT's completed by	Day 77 (10 working days for Panel to assess and score; Panel must commit to completing task by deadline)	Evaluation Panel & Local Finance complete by deadline		CSU Finance Team to support CCG Finance lead with evaluation of Financial element of submission

Collation of ITT scores and preparation for moderation session	Day 78		Clinical Procurement collate scores and prepare materials for moderation session	
Moderation Meeting for ITT's and preparation for interviews	Day 79	Evaluation Panel & Local Finance must be present to discuss scores and agree presentation topic and clarification questions to be asked	Clinical Procurement leads moderation session	
Presentation/interview day for bidders, with final evaluation by Panel	Day 84 (to allow bidders a week from moderation meeting to prepare)	Project Team, with Local Finance representative if necessary	Clinical procurement present to ensure due process undertaken	
3. Stage 3: Approval/Contract Award				
Contract award route: dependent on CCG SFIs, but needs sign-off by CCG Governing Body (and take into account need to ensure no Conflicts of Interest in the membership of the Governing Body making that decision.)	Day 85-94 (estimate: all within 10 working days) CCG Governing Body/Board process: Contract award paper to be prepared, presented and agreed	Lead Commissioner finalises Contract Award report and arranges for its consideration by CCG Governing Body with support and input from Clinical Procurement	Clinical Procurement provide procurement process detail input to Contract Award report	CSU Contracts Team will populate the NHS Standard e-contract based on the specification, agreed KPIs and the successful bidder(s)' tender documentation
Contract award date and letters sent to successful/unsuccessful bidders	Day 95		Clinical Procurement coordinates issue of letters	
10 day Alcatel/standstill period expires	Day 96-105 (10 calendar days but not ending on a weekend day)		Clinical Procurement oversees this and any extensions to the standstill period	

Feedback provided to successful/unsuccessful bidders	Day 96-105 (best practice to provide feedback within the standstill period, both written and face-to-face)	Lead Commissioner and other Evaluation Panel reps to provide feedback comments and be present at any feedback meetings	Clinical Procurement coordinates written feedback and any face-to-face meetings	
Contract signing/mobilisation	Day 106 onwards (assuming no use of Judicial Review or Remedies Directive by unsuccessful bidders)	Lead Commissioner to discuss (NOT negotiate) with successful bidder		CSU Contracts Team can issue contract to successful bidder(s) for discussion & signing, and support lead Commissioner with mobilisation planning and implementation
Possible TUPE process	Day 106-126 (1 month assumed: depends on size of staff group affected: 3 months if over 100 people)	Successful Bidder		
Service Commencement Date	Day 127	Successful Bidder		
New Contract end date logged on Clinical Procurement Forward Plan for re-tender	Day 128	Lead Commissioner to confirm service/contract start date	Clinical Procurement to log re-procurement date on Clinical Procurement Forward Plan	CSU Contracts Team update own records for future contracting round information