

Procurement Policy

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Authorship: Phil Tolan
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Equality Impact Assessment Completed

**Sustainability Impact
Assessment** Completed

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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
2	Phil Tolan	Minor amendments	18/06/2015	N/A
3	Richard Mellor	EIA	08/07/2015	08/07/2015

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1 INTRODUCTION

Procurement is the process by which services, goods, products and infrastructure are acquired from external organizations 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.

Procurement can cover a range of purchasing methods:

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

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

This policy should be read with consideration for the following:

- 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),
- 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),
- The Public Contracts Regulations (2015),

This procurement policy document will also inform, and be informed by:

NHS Scarborough and Ryedale Clinical Commissioning Group Constitution
NHS Scarborough and Ryedale Clinical Commissioning Group Standing Orders
NHS Scarborough and Ryedale Clinical Commissioning Group Prime Financial Policies
NHS Five Year Forward View (2014)

This Procurement Policy is an integral part of the commissioning cycle and fully observers established Prime Financial Policies and as a result should not be read in isolation.

2 ENGAGEMENT

The 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 the CCG for guidance and assurance to all members of CCG staff, the public and all patient representatives.

3 IMPACT ANALYSES

3.1 Equality

All policies require an assessment for their impact on people with protected characteristics (defined in the guidance document). An Equality Impact Analysis Toolkit is available for this purpose and is attached at Appendix 1 of the Policy Framework Guidance Document, together with guidance on how to undertake the assessment.

Further advice is available from the CSU Corporate Affairs Team.

Once completed, insert appropriate wording from the Equality Impact Findings into this section of the document and record on the front sheet whether a full assessment or a screening has been undertaken. Include the completed assessment paperwork as an Appendix to the policy.

3.2 Sustainability

Anyone developing a policy or procedural document is required to complete a Sustainability Impact Assessment. The purpose is to record any positive or negative impacts that the policy is likely to have on each of the CCG's sustainability themes. The Sustainability Impact Assessment form is attached at Appendix 2 of the Policy Framework Guidance Document, together with instructions to help with completion. Include the conclusions in this section of the policy document.

Include the completed assessment paperwork as an Appendix to the policy.

3.3 Bribery Act 2010

CCG employees should be aware that a procurement process can be open to situations of bribery and abuse therefore the Bribery Act is particularly relevant to this policy. Under the Bribery Act 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.

These offences can be committed directly or by and through a third person and other related policies and documentation (as detailed on the CCG intranet) should be referred to when considering whether to offer or accept gifts and hospitality and/or other incentives.

Potential providers who are participating in quote or tender processes are routinely instructed to not contact CCG staff in order to influence the procurement process.

Anyone with concerns or reasonably held suspicions about potentially fraudulent activity or practice should refer to the Local Anti-Fraud and Corruption Policy and contact the Local Counter Fraud Specialist

3.4 Conflicts of Interest

In order to ensure a fair and competitive procurement process, the 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 bidders should notify the 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 the CCG.

The 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 the CCG in connection with the selection of Providers. Conflicts of Interest, Collusion and Canvassing issues apply equally CCG employees or others engaged by the 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. NHS.

Potential CCG and GP Practice Conflicts of Interest

A potential area for conflicts of interest exists where a CCG commissions services that could be potentially provided by local GP Practices. A general policy statement for dealing with potential conflicts of interest has been developed by the CCG and should be fully observed.

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
- 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:

1. 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,
2. 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,
3. The Procurement Lead will ensure that all interested and bidding parties are treated equitably and fairly.

All potential conflicts of interest must be managed in line with the NHS England's 'Managing Conflicts of Interest: Statutory Guidance for CCGs (2014)' guidance¹

4 SCOPE

Identify to whom the policy applies e.g. all staff, CCG Members, temporary staff, seconded staff, contractors and others undertaking work on behalf of the CCG etc.

5 POLICY PURPOSE & AIMS

This policy sets out to describe how the CCG will approach the market in consideration of its Prime Financial Policies and to meet its obligations under the Public Contract Regulations (2015). This policy is intended primarily to inform all CCG staff about how to safely engage with potential providers.

5.1 Significant Procurement thresholds (CCG)

Formal tenders are required where the intended expenditure exceeds the tender thresholds set out in the CCG's Prime Financial Policies.

Quotations are required where formal tendering procedures are not adopted and where the intended expenditure or income exceeds £5,000 but does not exceed the CCG Tender threshold. Quotations should be obtained from at least 3 firms\individuals. Written quotations should be used wherever practicable as an audit trail is required. If written quotations are not to be obtained, the authority of the responsible officer must be sought.

The Standing Financial Instructions 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.

5.2 OJEU Procurement Thresholds

Certain types of public procurements 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:

<http://www.ojeu.eu/Thresholds.aspx>

¹ <http://www.england.nhs.uk/wp-content/uploads/2014/12/man-confl-int-guid-1214.pdf>

The table below lists the OJEU Procurement Thresholds which apply from the 1st January 2015 until the 31st December 2015 (thresholds are net of VAT). At present the Department of Health sees CCGs and CSUs falling within the Entities listed in Schedule 1 thresholds. HOWEVER for all Part B type services, which include Health Related Services, the relevant threshold is £173934.

5.3 PUBLIC CONTRACTS REGULATIONS 2015 - FROM 1 JANUARY 2015

	SUPPLIES	SERVICES	WORKS
Entities listed in Schedule 1	£111,676 (€134,000)	£111,676 (€134,000)	£4,322,012 (€5,186,000)
Other public sector contracting authorities	£172,514 (€207,000)	£172,514 (€207,000)	£4,322,012 (€5,186,000)
Prior Information Notices	£652,050 (€750,000)	£652,050 (€750,000)	£4,322,012 (€5,186,000)
Small lots	£66,672 (€80,000)	£66,672 (€80,000)	£833,,400 (€1,000,000)

5.4 Non-Health Care Procurement

All non-health care procurements will follow UK and European Competition Regulations and observe Prime Financial Policies.

5.5 National/Regional Framework Contracts

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.

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,

5.6 Tender Waivers

In very exceptional circumstances, formal tendering procedures may be waived. The circumstances where this is applicable are outlined in the current Standing Orders, Reservation and Delegation of Powers and Prime Financial Policies.

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

5.7 Health and Social Care Procurement

5.7.1 NHS Procurement

In 2012 the Department of Health has issued further guidance on NHS procurement 'NHS Procurement - Raising Our Game' 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

The CCG in partnership with Yorkshire and Humber CSU will ensure procurement processes adopt the key recommendations.

The CCG in partnership with Yorkshire and Humber CSU will also ensure that all procurement activity is fully compliant with the latest NHS Procurement Regulations. The 2013 NHS Procurement Regulations specifically place an obligation on the 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 CCGs to consider whether health services can be provided in an integrated manner with other health and social care services.
- The Regulations state that in circumstances where only one capable provider exists then no requirement would exist to advertise.
- CCGs 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. The regulation refers to the areas of integration and co-operation to improve service quality as potential exceptions.
- CCGs 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 CCGs 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.

5.7.2 General Approach

The 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 its Principles and Rules for Cooperation and Competition.

The 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.
- Decisions are taken locally but within clear national guidelines.
- Commissioners must demonstrate:
 - Fairness and transparency of process.
 - Clear rationale for decision making.
 - Needs –driven.
 - 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 the CCG Board and Executive Governance Structure.

5.7.3 When to Tender Services

The key driver for any decision to tender or not to tender a health or social care service will be the need to commission services from the providers who are best placed deliver the needs of patients and the local population.

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.

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, the 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 the CCG will examine the service to see if it is suitable for competitive tender.

- New or Significantly Changed Services

Where patient choice is a key driver, the 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 the CCG will look 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 single tender basis, competitive market exists and it is not suitable for AQP, then the CCG preference will be for a competitive tender process.

5.7.4 Provider Checks

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.

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.

5.7.5 Any Qualified Provider (AQP)

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.

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.

AQP opportunities will be advertised using Contractsfinder².

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.

5.7.6 Competitive Tenders

The 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 the 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:

- The CCG will endeavour to publish proposed procurement plans that will provide providers with information about commissioning intentions and future tendering opportunities.
- The CCG will select the most appropriate media for advertising tenders. The Contractsfinder procurement portal will be the primary advert media.
- The CCG will only commission services from the providers who are best placed to deliver the needs of our patients and population.
- The CCG will procure services from suppliers that offer best value for money.
- The CCG will fairly manage and be transparent about potential conflicts of interest.
- The CCG will be transparent about its service requirements and how it will evaluate tender bids.
- The 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.

² <https://online.contractsfinder.businesslink.gov.uk/>

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 providers.
- The CCG will ensure that evaluations processes are fair and do not discriminate against particular bidders.

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.

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

5.7.7 EU Directives and Procurement Regulations

The Procurement Regulations require competition as the mechanism by which contracting authorities ensure equality of treatment, transparency and non-discrimination. This is reinforced in the DoH Framework for Managing Choice, Cooperation and Competition.

This Policy complies with the requirements set out in the CCG current Standing Orders, Reservation and Delegation of Powers and Prime Financial Policies.

All procurements will comply with the European Union (EU) Procurement Directives (as enacted by the UK Procurement Regulations). Under the current EU Procurement Regulations Healthcare Services are treated as Part B Services. However, there is still a requirement to adhere to the principles of the Procurement Regulations. *Please note: Significant changes to EU regulations, including Part B services are currently being finalised.*

5.7.8 Consultation

All major health service changes will be subject to patient and public consultation. The CCG will agree a consultation process at the outset of a procurement project on a case by case basis.

Major Service change proposals have been subject to the Service Change Assurance Process managed by SHA's. From the 1st April 2013 a revised assurance process will be undertaken by NHS England. The CCG will ensure full compliance with the relevant national Service Change Assurance requirements.

5.7.9 Ethical and Sustainable Procurement

The 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.

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.

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

All Health Care Procurement will observe the requirements of the Ethical and Sustainability Procurement Policies.

5.7.10 Procurement Dispute Resolution

Dispute Claims will be judged if they are eligible to enter CCG Dispute Resolution against the following criteria:

- The core basis of the dispute claim is covered by the principles and rules for co-operation and competition
- There is a full disclosure of all relevant and applicable information. This does not preclude the panel from asking for further information as it requires. Furthermore, any individuals connected to the complaint are on hand to provide further evidence / testimony as required.
- The CCG Dispute process is best placed to resolve the issue, as compared to other agencies.
- The dispute is not a reserved matter

- No legal proceedings have commenced.
- The dispute is not trivial, vexatious or an abuse of the Panel's procedures.
- There is adequate time for the panel to review the complaint appropriately, for example, if there are time-critical issues

CCGs are not expected to resolve reserved matters relating to the Principles and Rules for Cooperation and Competition that overlap with existing legislation and the role of competition authorities. Reserved matters include:

Reserved matters include:

- Competition Act (CA98) – chapter 1 covering agreements that effect an ‘appreciable’ prevention, restriction or distortion of competition (overlaps principles 1 and 4 of the Principles and Rules for Cooperation and Competition)
- Competition Act (CA) – chapter 2 dominant providers: predatory pricing, restrictive agreements (overlaps Principles 1, 4 and 7 of the Principles and Rules for Cooperation and Competition).
- Enterprise Act 2002 (EA02) – covering mergers or acquisitions which apply to ‘enterprising ceasing to be distinct (overlaps principle of the Principles and Rules of Cooperation and Competition).

The CCG will observe the following process in dealing with any procurement based disputes.

STAGE 1

All procurement dispute claims must be submitted in writing to the CCG Accountable Officer. The Accountable Officer will determine if the claim is:

- Is suitable for mediation prior to formal adjudication
- Whether the claim is of a serious nature that it should be fast tracked to NHS ENGLAND, Office of Fair Trading or other agency
- Whether the claim is reasonable and viable. In such circumstances the claim will enter formal CCG Dispute Resolution.

STAGE 2

The claim will be escalated to the CCG Procurement Dispute Panel. The Panel will have a core membership of:

- Chief Operating Officer
- Accountable Officer
- Procurement Lead
- Additional Independent Experts (as required)

The Panel will request evidence from the parties involved which supports their position. In addition the parties involved will be required to submit a joint paper which sets out in summary the areas the parties agree on and disagree on. The panel will then review the case and decide if any further information is required before a panel decision can be arrived at.

If the Panel is able to make a decision, it will write to them notifying them of the decision and the reason behind that decision. The NHS ENGLAND will also be notified of the decision. If the panel is unable to make a decision the case will be referred to the NHS ENGLAND. This stage should take no longer than 20 days.

Appeals against the Panel decision should be escalated to the NHS ENGLAND.

6 DEFINITIONS

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.

7 ROLES / RESPONSIBILITIES / DUTIES

Financial Instructions and the Scheme of Delegation have established specific procurement requirements, which must be observed during all procurement activities.

A number of key procurement gateways must obtain CCG Board approval prior to commencement. These include:

- Decisions on which services to competitively advertise, or not to advertise,
- Approval of competitive procurement evaluation reports and the award of preferred supplier status.

The 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 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.

Key Accountabilities

- Lead Officer: Overall responsibility for Procurement lies with the Chief Finance Officer
- Procurement Support: Procurement Support will be provided by Yorkshire and Humber Commissioning Support.

Key Responsibilities

The CCG will be responsible for:

- Approving the commencement of Procurement Activities,
- Approving the preferred Procurement process,
- Approving final service specifications, evaluation criteria and advertisements,
- Approving the final list of providers invited to tender,
- Approving the final award decision.

8 IMPLEMENTATION

Explain how the policy will be disseminated and implemented and by whom. For example, how it will be communicated e.g. through team briefings, by managers etc and who is responsible.

If the document is a revision, explain the process to be undertaken to remove outdated copies from the internet and ensure staff are aware of the new version.

If appropriate include the following statement – *‘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’.*

9 TRAINING & AWARENESS

Identify how staff will be made aware of the policy (*via the Internet is recommended*) and how any associated training needs will be provided to ensure compliance.

10 MONITORING & AUDIT

State how implementation and compliance will be measured in line with the policy objectives. Identify any key performance indicators.

11 POLICY REVIEW

Suggested text – *‘This policy will be reviewed in 3 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'.

12 REFERENCES

The following statutory guidance and legislation should be considered in conjunction with this policy:

- 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),
- 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),
- The Public Contracts Regulations (2015),

APPENDICES

List numbered Appendices with clear headings and cross reference within the policy document. Start each Appendix on a new page.

Equality and Sustainability Impact Assessment(s) paperwork should be appended as standard practice.

Add, as required:

- Any protocols, procedures and technical guidance to be followed which will ensure the policy is implemented appropriately, including any specific responsibilities.
- A summary of supporting information and/or guidance to assist staff in implementation.

APPENDIX A

Equality Impact Analysis: Form

September 2013

For support with completion of this documentation, please see the accompanying guidance and/or contact the Equality Lead in the North Yorkshire and Humber Commissioning Support Unit

1. Equality Impact Analysis

Policy / Project / Function:	Procurement Policy								
Date of Analysis:	8 th July 2015								
This Equality Impact Analysis was completed by: (Name and Department)	Richard Mellor Finance								
What are the aims and intended effects of this policy, project or function ?	Outline the framework the CCG operates within for carrying our procurement								
Please list any other policies that are related to or referred to as part of this analysis?									
Who does the policy, project or function affect ? Please Tick ✓	<table style="width: 100%; border: none;"> <tr> <td style="width: 80%;">Employees</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> <tr> <td>Service Users</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Members of the Public</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Other (List Below)</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	Employees	<input checked="" type="checkbox"/>	Service Users	<input type="checkbox"/>	Members of the Public	<input type="checkbox"/>	Other (List Below)	<input type="checkbox"/>
Employees	<input checked="" type="checkbox"/>								
Service Users	<input type="checkbox"/>								
Members of the Public	<input type="checkbox"/>								
Other (List Below)	<input type="checkbox"/>								

2. Equality Impact Analysis: Screening

	Could this policy have a positive impact on...		Could this policy have a negative impact on...		Is there any evidence which already exists from previous (e.g. from previous engagement) to evidence this impact
	Yes	No	Yes	No	
Race	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Sexual Orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Disabled People	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Gender	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Transgender People	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Pregnancy and Maternity	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Marital Status	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Religion and Belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Reasoning	The policy lays out the regulatory framework for procurements, all of which individually are required to be carried out taking account of the Equality Impact. The policy supports and requires appropriate consideration of Equality for each individual procurement.				

If there is no positive or negative impact on any of the Nine Protected Characteristics go to Section 7

3. Equality Impact Analysis: Local Profile Data

Local Profile/Demography of the Groups affected (population figures)

General	
Age	
Race	
Sex	
Gender reassignment	
Disability	
Sexual Orientation	
Religion, faith and belief	
Marriage and civil partnership	
Pregnancy and maternity	

4. Equality Impact Analysis: Equality Data Available

Is any Equality Data available relating to the use or implementation of this policy, project or function?

Equality data is internal or external information that may indicate how the activity being analysed can affect different groups of people who share the nine *Protected Characteristics* – referred to hereafter as ‘*Equality Groups*’.

Examples of *Equality Data* include: (this list is not definitive)

1. Application success rates *Equality Groups*
2. Complaints by *Equality Groups*
3. Service usage and withdrawal of services by *Equality Groups*
4. Grievances or decisions upheld and dismissed by *Equality Groups*
5. *Previous EIAs*

Yes

No

Where you have answered yes, please incorporate this data when performing the *Equality Impact Assessment Test* (the next section of this document).

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 towards our aims of eliminating discrimination and promoting equality and diversity within our organisation**

5. Equality Impact Analysis: Assessment Test

What impact will the implementation of this policy, project or function have on employees, service users or other people who share characteristics protected by *The Equality Act 2010* ?

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)	√			
Race (All Racial Groups)	√			
Disability (Mental and Physical)	√			
Religion or Belief	√			
Sexual Orientation (Heterosexual, Homosexual and Bisexual)	√			

What impact will the implementation of this policy, project or function have on employees, service users or other people who share characteristics protected by *The Equality Act 2010* ?

Protected Characteristic:	No Impact:	Positive Impact:	Negative Impact:	Evidence of impact and if applicable, justification where a <i>Genuine Determining Reason</i> exists
Pregnancy and Maternity	√			
Transgender	√			
Marital Status	√			
Age	√			

6. Action Planning

As a result of performing this 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 Actions:	Responsible Lead:	Completion Date:	Review Date:

7. Equality Impact Analysis Findings

Analysis Rating:	<input type="checkbox"/> Red	<input type="checkbox"/> Red/Amber	<input type="checkbox"/> Amber	<input checked="" type="checkbox"/> Green
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		Actions	Wording for Policy / Project / Function
<p>Red</p> <p>Stop and remove the policy</p>	<p>Red: As a result of performing the analysis, it is evident that a risk of discrimination exists (direct, indirect, unintentional or otherwise) to one or more of the nine groups of people who share <i>Protected Characteristics</i>. It is recommended that the use of the policy be suspended until further work or analysis is performed.</p>	<p>Remove the policy</p> <p>Complete the action plan above to identify the areas of discrimination and the work or actions which needs to be carried out to minimise the risk of discrimination.</p>	<p>No wording needed as policy is being removed</p>
<p>Red Amber</p> <p>Continue the policy</p>	<p>As a result of performing the analysis, it is evident that a risk of discrimination exists (direct, indirect, unintentional or otherwise) to one or more of the nine groups of people who share <i>Protected Characteristics</i>. However, a genuine determining reason may exist that could legitimise or justify the use of this policy and further professional advice should be taken.</p>	<p>The policy can be published with the EIA</p> <p>List the justification of the discrimination and source the evidence (i.e. clinical need as advised by NICE).</p> <p>Consider if there are any potential actions which would reduce the risk of discrimination.</p> <p>Another EIA must be completed if the policy is changed, reviewed or if further discrimination is identified at a later date.</p>	<p>As a result of performing the analysis, it is evident that a risk of discrimination exists (direct, indirect, unintentional or otherwise) to one or more of the nine groups of people who share <i>Protected Characteristics</i>. However, a genuine determining reason exists which justifies the use of this policy and further professional advice.</p> <p><i>[Insert what the discrimination is and the justification of the discrimination plus any actions which could help what reduce the risk]</i></p>

Equality Impact Findings (continued):

		Actions	Wording for Policy / Project / Function
<p>Amber Adjust the Policy</p>	<p>As a result of performing the analysis, it is evident that a risk of discrimination (as described above) exists and this risk may be removed or reduced by implementing the actions detailed within the <i>Action Planning</i> section of this document.</p>	<p>The policy can be published with the EIA</p> <p>The policy can still be published but the Action Plan must be monitored to ensure that work is being carried out to remove or reduce the discrimination.</p> <p>Any changes identified and made to the service/policy/ strategy etc. should be included in the policy.</p> <p>Another EIA must be completed if the policy is changed, reviewed or if further discrimination is identified at a later date.</p>	<p>As a result of performing the analysis, it is evident that a risk of discrimination (as described above) exists and this risk may be removed or reduced by implementing the actions detailed within the <i>Action Planning</i> section of this document.</p> <p><i>[Insert what the discrimination is and what work will be carried out to reduce/eliminate the risk]</i></p>
<p>Green No major change</p>	<p>As a result of performing the analysis, the policy, project or function does not appear to have any adverse effects on people who share <i>Protected Characteristics</i> and no further actions are recommended at this stage.</p>	<p>The policy can be published with the EIA</p> <p>Another EIA must be completed if the policy is changed, reviewed or if any discrimination is identified at a later date</p>	<p>As a result of performing the analysis, the policy, project or function does not appear to have any adverse effects on people who share <i>Protected Characteristics</i> and no further actions are recommended at this stage.</p>

Brief Summary/Further comments	
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Approved By		
Job Title:	Name:	Date:
Chief Finance Officer	Richard Mellor	8/7/15

SUSTAINABILITY IMPACT ASSESSMENT

Staff preparing a Policy/ Board Report / Committee Report / Service Plan / Project are required to complete a Sustainability Impact Assessment. Sustainability is one of the CCG's key priorities and the CCG has made a corporate commitment to address the environmental effects of activities across CCG 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 CCG's Sustainability Themes. For assistance with completing the Sustainability Impact Assessment, please refer to the instructions below.

Policy / Report / Service Plan / Project Title:				
Theme (Potential impacts of the activity)	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	√			Each individual procurement will look to build in actions to achieve our sustainability targets
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.			√	

INSTRUCTIONS FOR COMPLETING THE SUSTAINABILITY IMPACT ASSESSMENT

Sustainability is one of the CCG's key priorities and consequently the CCG has made a corporate commitment to address the environmental effects of its activities across all service areas. The purpose of the Sustainability Impact Assessment is to record any positive or negative impacts that a Policy / Board Report / Committee Report / Service Plan / Project is likely to have on each of the CCG's sustainability themes. The Sustainability Impact Assessment enables any relevant impacts to be identified and potentially managed.

The Sustainability Impact Assessment is based on assessing the impact of the activity against a series of criteria covering environmental sustainability issues. It would be most desirable for activities to score positively in as many areas as possible, although it is likely that some areas will score positively against some themes, and negatively against others.

Using the Sustainability Impact Assessment template

To complete the Sustainability Impact Assessment template, you should consider whether the Policy / Board Report / Committee Report / Service Plan / Project will have a positive or negative impact on each of the themes by placing a mark in the appropriate column. When you think there is likely to be an impact, please provide some annotations regarding the nature of the impact, and any actions that will be taken to address that impact. Users should note that not every theme will be relevant. Where this is the case the 'No Specific Impact' column should be marked. Users should also consider the following tips:

1. Make relative not absolute judgements (e.g. a new energy efficient service would score positively even if it consumes more energy than if no service were provided).
2. Be aware that small positive changes could be outweighed by negative ones (e.g. new energy efficient lighting in the short term may outweigh the benefits of maintaining current lighting).
3. If there are both positive and negative impacts, these need to be recorded in order to give a balanced view. Be objective and unbiased.
4. Concentrate on the most key significant issues - there is the potential to consider the appraisal in a very detailed way. This should be avoided at this stage.
5. Judge a proposal over its whole lifespan and remember that some impacts may change over different timescales.

If you require assistance in completing the Sustainability Impact Assessment please contact CSU Sustainability Lead.

Bribery Act 2010 Guidance

Introduction

On July 2011 the Bribery Act 2010 came into force, making it a criminal offence to give, promise, or offer a bribe and to request, agree or receive a bribe. It increased the maximum penalty for bribery to 10 years' imprisonment, with an unlimited fine. Furthermore the act introduces a 'corporate offence' of failing to prevent bribery by the organisation not having adequate preventative procedures in place. An organisation may avoid conviction if it can show that it had such procedures and protocols in place to prevent bribery.

The Ministry of Justice in its consultation and guidance set out six broad management principles whereby an organisation can demonstrate an effective defence by showing that it had effective bribery prevention measures in place.

Risk Assessment – this is about knowing and keeping up to date with the bribery risks you face in your sector and market;

Top level commitment – this concerns establishing a culture across the organisation in which bribery is unacceptable. If your business is small or medium sized this may not require much sophistication but the theme is making the message clear, unambiguous and regularly made to all staff and business partners;

Due diligence – this is about knowing who you do business with; knowing why, when and to whom you are releasing funds and seeking reciprocal anti-bribery agreements ; and being in a position to feel confident that business relationships are transparent and ethical;

Clear, Practical and Accessible Policies and Procedures – this concerns applying them to everyone you employ and business partners under your effective control and covering all relevant risks such as political and charitable contributions, gifts and hospitality, promotional expenses, and responding to demands for facilitation demands or when an allegation of bribery comes to light.

Effective implementation – this is about going beyond 'paper compliance' to embedding anti-bribery in your organisation's internal controls, recruitment and remuneration policies, operations, communications and training on practical business issues.

Monitoring and review – this relates to auditing and financial controls that are sensitive to bribery and are transparent, considering how regularly you need to review your policies and procedures, and whether external verification would help.

Relevance to the NHS

NHS organisations are included in the Bribery Act's definition of a "relevant commercial organisation". Any senior manager or executive who consents to or connives in any active or passive bribery offence will, together with the organisation, be liable for the corporate offence under the act.

Any individual associated with an organisation who commits acts or omissions forming part of a bribery offence may be liable for a primary bribery offence under the act or for conspiracy to commit the offence with others – including, for example, their employer.

Risks in breaching the Bribery Act

There are a number of risks entailed in breaching the Bribery Act. These include:

- Criminal sanctions against directors, board members and other senior staff as a corporate offence – Section 7 of the Act.
- Convictions of bribery or corruption may also lead to the organisation being precluded from future public sector procurement contracts.
- Damage to the organisation’s reputation and negative impact on patient/stakeholder perceptions.
- Potential diversion and/or loss of resources.

What do NHS organisation’s need to do?

There are a number of steps NHS organisations can take:

- The Board needs to understand its responsibility in respect of the act.
- Be clear that, as NHS organisations, you are covered by corporate liability for bribery on the part of their employees, contractors and agents.
- Take steps to make your employees, contractors and agents aware of the standards of behaviour that are expected of them: this may include training for employees who might be affected – for example, employees with responsibility for procurement.
- Review existing governance, procedures, decisions-making processes and financial controls, introduce them if not already in place and, where necessary, provide appropriate training for staff.
- Record the fact that these steps have been taken, as they provide the defence against corporate liability under the act.

Areas for Action

- Once risks have been assessed the organisation must put in place procedures that are *proportionate* to bribery risks that are identified.
- The checklist below provides details of areas for actions to assist in ensuring proportionate steps to ensure prevention and defence against corporate liability under the act. The checklist is based on best practice guidance documents issued by NHS Protect in May 2011, Ministry of Justice and other anti-bribery and corruption NGOs.
- Internal Audit and Counter Fraud Teams will provide support to the organisation to help ensure that assurance can be given against the points in the following checklist during 2012/13.

Bribery Act 2010 Guidance and Bribery Prevention Checklist

Areas for action	Expected Action	Evidence of Compliance/Assurance
1. Governance and Top Level Commitment	<p>The Chief Executive should make a statement in support of the anti-bribery initiative and this should be published on the organisation's website.</p> <p>The board of directors should take overall responsibility for the effective design, implementation and operation of the anti-bribery initiatives. The Board should ensure that senior management is aware of and accepts the initiatives and that it is embedded in the corporate culture.</p>	
2. Due Diligence	<p>This is a key element of good corporate governance and involves making an assessment of new business partners prior to engaging them in business. Due diligence procedures are in themselves a form of bribery risk assessment and also a means of mitigating that risk. It is recommended that at the outset of any business dealings, all new business partners should be made aware in writing of the organisation's anti-corruption and bribery policies and code of conduct.</p>	
3. Code of conduct	<p>The organisation should either have an anti-bribery code of conduct or a general code of conduct for staff with an anti-bribery and corruption element.</p> <p>The organisation should revise the Standards of Business Conduct Policy (or equivalent) and Declaration of Interests guidance (see point 4 below) to reflect the introduction of the Bribery Act.</p>	
4. Declaration of Interests/Hospitality	<p>The organisation should have in place a declaration of business interests/gifts and hospitality policy which clearly sets out acceptable limits and also a mechanism to monitor implementation.</p>	

Areas for action	Expected Action	Evidence of Compliance/Assurance
5. Employee employment procedures	Employees should go through the appropriate propriety checks e.g. CRB (Criminal Records Bureau) and/or a combination of other checks before they are employed to ascertain, as far as is reasonable, that they are likely to comply with the organisation's anti-bribery policies.	
6. Detection procedures	The organisation should ensure Internal Audit/Counter Fraud check projects, contracts, procurement processes and any other appropriate systems where there is a risk that acts of bribery could potentially occur.	
7. Internal reporting procedures	The organisation should have internal procedures for staff to report suspicious activities including bribery.	
8. Investigation of Bribery allegations	The organisation should have procedures for staff to report suspicions of bribery to NHS Protect (previously NHS Counter Fraud and Security Management Service) and the organisation's Local Counter Fraud Specialist for investigation/referral to the appropriate authorities.	
9. Risk assessment	MoJ (Ministry of Justice) guidance states "...organisations should adopt a risk-based approach to managing bribery risks...[and] an initial assessment of risk across the organisation is therefore a necessary first step". The organisation should, on a regular basis, assess the risk of bribery and corruption in its business and assess whether its procedures and controls are adequate to minimise those risks.	
10. Record keeping	The organisation should keep reasonably detailed records of its anti-fraud and corruption initiatives, including training given, hospitality given and received and other relevant information.	
11. Internal review	The organisation should carry out an annual internal review of the anti-bribery and corruption programme.	

Areas for action	Expected Action	Evidence of Compliance/Assurance
12. Independent assessment and certification	Proportionate to risks identified, the organisation should commission, at least every three years, an independent assessment and certification of its anti-bribery programme.	
13. Internal and External communications	<p>The organisation should publicise the NHS Fraud and Corruption Reporting Line (FCRL) and on-line fraud reporting facility.</p> <p>The organisation should publicise the Security Management role (theft and general security issues) and reporting arrangements.</p> <p>The organisation should work with its stakeholders in the public and private sector to help reduce bribery and corruption in the health industry.</p>	
14. Awareness and training	The organisation should provide appropriate anti-bribery and corruption awareness sessions and training on a regular basis to all relevant employees.	
15. Monitoring: <ul style="list-style-type: none"> • Overall Responsibility • Financial/Commercial Controls 	<p>A senior manager should be made responsible for ensuring that the organisation has a proportionate and adequate programme of anti-fraud, corruption and bribery initiatives.</p> <p>The organisation should ensure that its financial controls minimise the risk of the organisation committing a corrupt act.</p> <p>The organisation should ensure that its commercial controls minimise the risk of the organisation committing a corrupt act. These controls would include appropriate procurement and supply chain management, and the monitoring of contract execution.</p>	

