

# Procurement Strategy for the Purchase of Health Care Services

## April 2013 to March 2015

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## 1. Purpose / Introduction:

NHS Gloucestershire's Clinical Commissioning Group (GCCG) is responsible for the commissioning of high quality, value for money health care services to the patients of Gloucestershire. The GCCG procurement strategy sets out its approach to achieving its delivery objectives through the application of good procurement practice.

Selecting the correct (most appropriate) procurement process can produce considerable quality improvements and cost savings. In the current NHS economic climate, we shall be required to make savings and efficiencies and strategic procurement is a useful tool in achieving this. It will also open up the market to a wider range of providers. This in turn shall help to drive up service quality, innovation and patient choice.

The objective of this policy is to provide a framework to ensure that all procurement activity is transparent; evidence based and delivers key business objectives. Clinical services procured should be innovative, affordable, viable, clinically safe and effective. Clinical service specification documents should set stretched targets to improve health outcomes and the quality of patient experience.

This procurement strategy does not offer detailed advice for specific health care groups or activity but sets out guidance for the GCCG on how to decide on the appropriate activity to be undertaken whilst ensuring compliance with current European Union procurement regulation, UK Government legislation and Department of Health procurement best practice.

The July 2010 White Paper "Equity and Excellence: Liberating the NHS" made clear the need for the NHS to deliver efficiency savings, whilst setting out the proposed direction for the NHS. This included:

- Focussing on clinical outcomes (quality) rather than targets
- Empowering clinicians and other health care professionals to use their judgement and innovate
- Giving patients greater choice

To achieve these aims, the GCCG will:

- Continuously review current health care services provision arrangements from a broad clinical and contractual perspective.
- Obtain quality information data to inform transparent and fair decision making processes.
- Ascertain whether it is necessary, desirable or appropriate to invite competition in accordance / compliance with EU competition regulations and / or the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013.
- Actively manage the provider market, creating greater patient choice whilst maintaining quality outcomes
- Engage and work closely with the local community and a range of health care providers to deliver collaborative and integrated services
- Apply robust, fair and proportionate procurement processes that follow all mandated and 'good practice' requirements.
- Apply award criteria that takes account of whole life costs and overall service quality (Most Economically Advantageous Tender)
- Put in place robust contractual arrangements to ensure service delivery.

## 2. Procurement Policy:

In order to achieve its strategic objectives, and in accordance with Department of Health guidance, the GCCG must ensure that all procurement activity undertaken is:

- Transparent
- Proportionate
- Non-discriminatory
- Equal (equality of treatment)

GCCG procurement staff will work in accordance with all local, national and European Union procurement guidelines which will include, but not be limited to, the following policy / guidance documents:

Body:	Publication:
Department of Health	The National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013
	Any Qualified Provider Operational Guidance (2011)
	Patient Choice (Nov 2011)
	Principles and Rules for Cooperation and Competition (Jul 2010)
	Procurement Guide for Commissioners of NHS-funded Services (Jul 2010)
	Securing Best Value for NHS Patients (Aug 2012)
	The Operating Framework (Annual)
European Union	EU Public Procurement Regulations 2006 (and any subsequent amendments to legislation as enacted from time to time)
	EU Remedies Directive (20 Dec 2009)
Monitor	Substantive guidance on the Procurement, Patient Choice and Competition Regulations (20 May 2013)
NHS England	Code of Conduct – Managing conflicts of interest where GP practices are potential providers of GCCG commissioned services (Oct 2012)
NHS Gloucestershire Clinical Commissioning Group	Equality strategy
	Gloucestershire Joint Health and Wellbeing Strategy
	Integrated Annual Operating Plan
	Quality Strategy
	Standing Orders and Standing Financial Instructions
	Strategic Commissioning Intentions
	Gloucestershire Clinical Commissioning Group Constitution
UK Government	Social Value Act (2012)

New national guidance does not introduce any general policy requirement that all NHS services should be subject to competitive tendering. The policy is to create an NHS that is much more responsive to patients and achieves better quality outcomes. A step to achieving

this is to increase the current offer of choice, giving patient's choice of Any Qualified Provider where relevant.

The Procurement, Patient Choice and Competition Regulations 2013 came into force on 1 April 2013:

- Regulation 2 - the benefits of arranging integrated services without the need for competition is emphasised. This confirms that one objective of procurement includes the services being provided in an integrated way. This is added to the other objectives of (a) securing the needs of patients, (b) improving quality and (c) improving efficiency. The decision to tender involves a balance between these objectives.
- Regulation 5 - Commissioners are not required to advertise if 'satisfied' that the services can be provided by a single provider only. CCG's retain 'reasonable' discretion in the decision.
- Regulation 10 - Commissioners must not engage in anti-competitive behaviour unless to do so is in the interests of people who use health care services for the purposes of the NHS which may include:
  - (a) by the services being provided in an integrated way (including with other health care services, health-related services, or social care services); or
  - (b) by co-operation between the persons who provide the services in order to improve the quality of the services.

Commissioners may also seek to use competition as a means of securing value for money. For example, Commissioners may procure services via a competitive tendering process to encourage providers to re-evaluate existing services, re-design pathways, consider whether to introduce new technologies and improve efficiency.

### 3. Overarching Principles of Procurement:

The GCCG will adhere to the principles of public procurement whilst undertaking all procurement activity as follows:

Principle:	GCCG Undertaking:
<b>Transparency:</b>	State Commissioning Strategies and Intentions:
	Publish short / medium procurement intentions on the GCCG web site
	State outcomes of service reviews and whether a competitive tender / AQP process is to be used.
	Pricing tariffs and other payment regimes will be fair and transparent.
	Advertise all procurement opportunities via Supply2Health, Contracts Finder and the GCCG website (as applicable) and notification of contract award.
	Maintain an auditable tender documentation trail (and for decisions not to tender), providing clear accountability.
	Publish details of all contracts awarded on its website, including contract type, value and, in the case of AQP contracts, the names of accredited service providers
<b>Proportionality:</b>	Commissioner resources must be proportionate to the value, complexity and risk of the service being procured.

	Contract duration to be proportionate to service type being commissioned.
	Whilst maintaining quality standards / patient safety, Additional award criteria (including financials) must be proportionate to the value, complexity and risk of the service being procured and will not discriminate against smaller organisations such as voluntary sector / social enterprises etc.
	The GCCG will seek to minimise bidder tender costs by avoiding timetable delays and significant changes to scope
<b>Non-Discrimination:</b>	The GCCG will ensure that the entire procurement process and associated documentation will not contain bias towards any particular bidder
	All evaluations criteria and associated weightings will be fully disclosed
	All relevant information will be disclosed equally and in good time to all prospective bidders
<b>Equality of Treatment:</b>	The GCCG will not favour a particular market sector i.e. public over private. Award decisions will always be taken based on a bidders ability to deliver the service rather than on the organisational type.
	Finance and quality assurance checks will be applied equally to all bidders

4. Commissioning Strategy / GCCG Procurement Intentions:

Procurement schemes undertaken are determined by the GCCG and are dependent on its annual Commissioning Intentions.

5. When to Procure:

The GCCG as a Public Sector Contracting Authority is governed under the EU Procurement Directive and the following thresholds apply since 1 January 2014 (subject to on-going review):

Procurement Thresholds (Public Contract Regulations 2006) are revised every 2 years\*.

	<b>Supplies:</b>	<b>Services:</b>	<b>Works:</b>
Entities listed in Schedule 1:	<b>£111,676</b>	<b>£111,676</b>	<b>£4,322,012</b>
Other Public Sector contracting authorities:	<b>£172,514</b>	<b>£172,514*</b>	<b>£4,322,012</b>

Thresholds shown above are net of VAT

\*Services threshold of £173,934 used for the provision of Health Care Services (EU Service Category: Part B)

6. Procurement Processes / Procedures (including Any Qualified Provider):

The procurement process starts from identification of need, the decision to tender through to the conclusion of a services contract and its on-going management. The development and management of provider markets to ensure capacity and capability is essential.

This Procurement Strategy has been developed to support consistent and transparent decision making within the GCCG when commissioning health care services.

The Procurement Strategy will identify the systems and procedures required for the GCCG to meet patient needs, demonstrate quality, governance and probity, good procurement practice and achieve value for money by delivering cost effective high quality services.

The GCCG's aim is to improve the quality and accessibility of services to patients through a process of service review, robust contracting, key performance indicators (KPIs) and provider development activity. The GCCG will work to develop provider markets as well as working with existing providers to improve service quality.

Once a decision has been made to procure, the main procurement routes available to the GCCG are detailed below. Advice should be sought from GCCG procurement staffs on the most appropriate route for each service tender.

<b>Procedure/ Process:</b>	<b>Description:</b>
<b>Any Qualified Provider:</b>	Allows Commissioners to increase choice to patients by qualifying / registering organisations to provide services via an assurance process that test providers fitness to offer the particular NHS-funded service. The Commissioner sets local pathways and referral protocols which providers must accept. Referring clinicians offer patients a choice of qualified provider for the service being referred to. Competition is based on quality not price; providers are paid a fixed price determined by a national or local tariff.
<b>Competitive Dialogue:</b>	Allows input into the tender process by participating bidders. There will be a 'Dialogue' phase where bidders are able to discuss all aspects of the contract with the commissioner. Dialogue generates solutions to the agreed requirements, and tenders are invited based on the bidder's solution.  The Competitive Dialogue route should only be used where the GCCG is unable, due to the complexity of its requirements to define the technical means capable of satisfying the GCCG's needs or objectives, specify either the legal or financial makeup of the project, and where neither the open or restricted procedure would be appropriate for the award of the contract.
<b>Framework Agreements:</b>	Although currently limited in scope for clinical services applications, the GCCG is permitted to access nationally negotiated framework agreements where appropriate. GCCG must conduct a mini-competition within the framework to select the most appropriate service provider where such framework rules apply.
<b>Grants:</b>	Public bodies must follow public procurement policy at all times. In certain circumstances grants are payable to third sector organisations. However, there should be no preferential treatment for third sector organisations. Use of grants can be considered where:

	<ul style="list-style-type: none"> <li>• Funding is provided for development or strategic purposes.</li> <li>• The provider market is not well developed.</li> <li>• Innovative or experimental services.</li> <li>• Where funding is non-contestable (i.e. only one provider).</li> </ul> <p>Grants should NOT be used to avoid competition where it is appropriate for a formal procurement to be undertaken.</p>
<b>Negotiated:</b>	<p>This procedure allows the Commissioner to select one or more potential bidders with whom to negotiate the terms of the contract. There are two types of Negotiated procedure either with or without prior advert. Bidders need to be invited to negotiate the terms of the advertised contract.</p> <p>Under the procedure without prior advert, the GCCG could negotiate directly with its supplier of choice – this is usually due to the protection of exclusive rights where the contract can only be carried out by a particular bidder. The procedure should only be used in limited circumstances as detailed in the Regulations.</p>
<b>Open:</b>	<p>No pre-qualification stage. All prospective bidders may respond to the advertisement by tendering for the contract, although only those meeting the selection criteria (if stated) will be entitled to have their tender assessed.</p>
<b>Restricted:</b>	<p>All interested parties may express an interest in tendering for the contract but only those meeting selection criteria, assessed by a pre-qualifying stage, will be invited to do so. An Accelerated Restricted Procedure can also be undertaken.</p>
<b>Single Tender Action:</b>	<p>Single tender actions should usually be avoided as this is contrary to achieving value for money through open and fair competition. Exceptionally, single tender actions may be justified where:</p> <ul style="list-style-type: none"> <li>▪ The work constitutes follow up work, which is directly related to a recently completed contract, and the added value gained from the additional work being given to the same contractor outweighs any potential reduction in price that may be derived through competitive tendering. However the follow up work should not be of significant cost (i.e. not more than 50% of the original contract value);</li> <li>▪ The expertise required is only available from one source. This may be due to ownership of exclusive design rights or patents but, nonetheless, the specification should be reviewed to ensure that no other product / service would meet user requirements.</li> </ul>
<b>Spot Purchasing:</b>	<p>There will remain a need to spot-purchase for particular individual needs i.e. urgent medical requirement to place a patient in specialist care facilities. Whilst this requirement is infrequent, a waiver of standing orders will be sought to comply with the GCCG's requirements for financial transparency and probity.</p>

## 7. Market Analysis:

GCCG procurement staffs / CSCSU contracts staff should utilise service specification detail to benchmark comparable contracts to determine a range of fair and appropriate service costs. This activity should be conducted routinely for all high value health care services and prior to determining whether formal procurement is undertaken.



Market analysis is carried out to determine if commercial sources exist and to establish whether a preferred contract option will result in fair and reasonable service costs. The GCCG should seek to determine:

- Likely (whole service) costs
- The types of organisations in the market place capable of delivering the required services
- Whether existing or new organisations have sufficient capacity to deliver the services solutions sought
- The most appropriate / proportionate procurement route

Market analysis should allow the GCCG to recognise local SME's and voluntary sector organisations operating in the area and help the GCCG to develop a capacity building plan for these organisations where required. This is useful when making service commissioning and procurement decisions by identifying market trends, market stability and performance profile of key prospective bidders.

Capacity building is an opportunity to identify areas of strength in supplying organisations to the GCCG and setting out opportunities for their development. To achieve this, GCCG staffs should work with potential service providers, as requested, to offer support, advice, training appertaining to the competitive tender process. This should enable SME's to compete more fairly with larger organisations.

#### 8. Provider Engagement:

Engagement with potential providers of health care services is an important element of effective commissioning. It is essential that both incumbent providers (where applicable) and prospective providers are included equally in the engagement process.

GCCG Commissioners may, and in accordance with Department of Health guidelines, use provider engagement to:

- Consider provider willingness / capability to deliver a service
- Establish / understand current provider landscape
- Lessons learnt from previous procurement schemes
- Assessing barriers to entry
- Development and testing of service specifications
- Determine most appropriate procurement routes
- Establish provider approaches to cost, risk, innovation, capacity, service locations and staffing requirements.

Resulting specifications will focus on service outcomes and not specific bidder technologies to ensure that any procurement process is without prejudice.

The GCCG may engender pre-procurement engagement through the following means:

- Placement of a Supply2Health, Contracts Finder (and specific journal advertisements where applicable)
- Prior Information Notice (Official Journal of the European Union)
- Public / Private Reference Groups
- Website notifications

#### 9. Procurement of Goods and Generic Services:

Procurement for the supply of all goods and non-clinical services is the responsibility of the Central Southern Commissioning Support Unit (CSCSU). The GCCG Commissioning Implementation Directorate shall be responsible for monitoring the quality of the service provided by the CSCSU.

The service level agreement between GCCG and CSCSU will contain key performance indicators to assist with the monitoring of the services provided.

10. e-Tendering:

A semi-automated / electronic approach to competitive tendering is presently used by GCCG procurement staffs when conducting competitive tendering processes. In-line with European Union guidance (December 2011), the GCCG is required to conduct all procurement processes electronically no later than 2017. The GCCG will investigate the availability of suitable electronic e-tendering systems and ensure that a compliant system is in place no later than the aforementioned date.

11. Collaborative Procurement:

GCCG Procurement staffs will design procurement work plans in accordance with year-on-year GCCG Board commissioning intentions and any ad hoc in-year requirements as may arise from time-to-time. While it is envisaged that most procurement will be conducted in-house, GCCG procurement staffs will actively engage with Central Southern Commissioning Support Unit (CSCSU) staff, other Clinical Commissioning Group procurement staffs or nationally designated procurement teams to deliver complex / cross-boundary procurements where required.

The CSCSU will provide transactional, mobile phone and generic services procurement to GCCG in-line with their service level agreement.

12. Contract Duration:

Whilst the 3-year NHS Standard Contract will be applied for the majority of health care services procurements, the GCCG will take account of the following factors before finally determining contract duration (and prior to procurement advertisement):

- Overall contract value
- Complexity of the procurement process (i.e. nature of health care service to be commissioned and its interaction with other services and service providers)
- Number of potential providers in the market place.

Contract durations in excess of 3-years may be advertised, procured and awarded subject to GCCG Board approval.

13. Contract Management:

CSCSU Contract staff will work with GCCG procurement staff from project inception (or a pre-determined key stage) to ensure that robust contracts are developed, implemented and monitored on an on-going basis.

The GCCG's Commissioning Implementation Manager will participate in high value / complex procurement projects to ensure that smooth transition from procurement contract award to service delivery commencement is managed in a proactive and timely manner ensuring key deadlines are achieved.

14. Procurement Participation Guides:

To develop the framework provided by this strategy document, we will produce comprehensive written procurement guides for use by our staff engaged in procurement related activity.

The guide will provide clear but comprehensive guidance for all GCCG staff when undertaking or participating in procurement activity. Initially two separate guides will be developed for Competitive Tendering and Any Qualified Provider processes.

15. Social Value Legislation:

Under recently enacted Social Value legislation, Public Sector organisations are required to consider how the service they commission and procure might improve the economic, social and environmental well-being of the area that they serve.

Social Value is a broad term and can be interpreted in a number of ways but could mean; a local person for a local job, an NHS Trust commissioning local patient groups (at cost) to run consultation events or a public body contracting with a private firm who employs local / long-term unemployed to service its contract requirements.

The GCCG will consider the Social Value implications of all prospective procurement processes and incorporate its responsibilities under the Act in key procurement documentation. The GCCG will take into account economic, social and environmental value, not just price, when commissioning health care services. This will involve requesting relevant policies or statement at the pre-qualification stage of the procurement process and seeking more specific information at ITT stage where it can be measured and linked to the performance of the contact.

16. Conflicts of Interest:

NHS England document (Oct 2012) entitled Code of Conduct, outlines guidance for managing conflicts of interest where GP practices are potential providers of CCG-commissioned services.

The GCCG will fully adopt this guidance to ensure that potential conflicts of interest are managed appropriately and that the GCCG and GP practices are protected from any perceptions of wrong-doing.

17. Quality and Equality Impact Assessments:

The GCCG will conduct Quality and Equality Impact Assessments prior to formal procurement process commencement. QIA's and EIA's will examine all proposed changes, assessing their impact on services, groups, individuals and communities. QIA and EIA outcomes will be made available on request.

18. Existing Commissioning Procurements – Organisational Transition:

As part of the transition to the new Commissioning architecture, the NHS Gloucestershire Clinical Commissioning Group will continue to progress all current procurement schemes commissioned by NHS Gloucestershire (Gloucestershire Primary Care Trust). These are:

<b>Procurement Title:</b>	<b>Anticipated Service Commencement Date:</b>
AQP – Computerised Tomography Services	April 2013
AQP – Elective Care Services	April 2013
AQP – Endoscopy Services	April 2013
AQP – Magnetic Resonance Imaging Services	April 2013
AQP – Non-Obstetric Ultrasound Services	April 2013