



## **Strategy for the Procurement of Health Care Services**

### **Incorporating: Market Management Strategy & Dispute Resolution Policy**

**1 December 2018 to 30 November 2020**

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## **Executive Summary:**

This document incorporates reference to legislative changes resulting from the introduction of the European Union Public Contracts Regulations 2015. These came into force on 1 April 2015 for the provision of goods and generic services. Further changes which apply to certain reserved categories of service (including the provision of healthcare and social services and referred to as the Light Touch Regime) became effective on 18 April 2016 are also referenced.

The strategy takes account of the latest Conflicts of Interest (COI) guidance, issued by NHS England, and provides advice on the requirement to ensure that organisations bidding for GCCG contract opportunities (including the commissioning of services from GP practices in which GPs have a financial interest) declare COI's as part of the market testing processes.

The document will be updated as required to take account of case law arising from the introduction of the Public Contracts Regulations 2015, changes which may result from the UK's decision to leave the European Union or GCCG's transition to any new organisational form driven by its Sustainability and Transformation Partnership model.

## Section 1: Procurement Strategy

### 1. Purpose / Introduction:

- 1.1 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.
- 1.2 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.
- 1.3 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 EU procurement regulation, UK Government legislation and Department of Health procurement best practice guidance.
- 1.4 GCCG aims to provide patients with greater choice and focusses on the quality of clinical outcomes, rather than targets and seeks to empower clinicians and other healthcare professionals to use their judgement to innovate. To achieve these aims, GCCG will:
  - 1.4.1 Continuously review current health care services provision arrangements from a broad clinical and contractual perspective.
  - 1.4.2 Obtain quality information data to inform transparent and fair decision making processes.
  - 1.4.3 Ascertain whether it is mandatory, desirable or appropriate to invite competition in accordance / compliance with EU Public Contract Regulations 2015 and the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013.
  - 1.4.4 Actively manage the provider market, creating greater patient choice whilst maintaining quality outcomes
  - 1.4.5 Engage and work closely with the local community and a range of health care providers to deliver collaborative and integrated services
  - 1.4.6 Apply robust, fair and proportionate procurement processes that follow all mandated and 'good practice' requirements.
  - 1.4.7 Apply award criteria that takes account of whole life costs and overall service quality (Most Economically Advantageous Tender)
  - 1.4.8 Put in place robust contractual arrangements to ensure service delivery.

### 2. Procurement policy:

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

Body:	Publication:
European Union and UK Government Legislation	Equality Act 2010
	Health and Social Care Act 2012
	Managing Conflicts of Interest – Guidance for CCG's (Jun 2017)
	NHS Act 2006
	Operating Framework (Annual)
	Operational Guidance to the NHS: Extending Patient Choice of Provider (2011)
	Procurement, Patient Choice and Competition Regulations (Dec 2013)
	Public Contracts Regulations 2015
	Public Services (Social Value) Act 2012
NHS Gloucestershire Clinical Commissioning Group	Equality Strategy
	Gloucestershire Joint Health & Wellbeing Strategy
	Integrated Annual Operating Plan
	NHS Gloucestershire CCG Constitution
	Public and Patient Engagement Strategy
	Quality Strategy
	Prime Financial Policies
	Strategic Commissioning Intentions

3. Overarching procurement principles:

- 3.1 GCCG will work to secure the needs of patients who use services and to improve the quality and efficiency of those services, including through providing them in an integrated way. It will act transparently and proportionately, and treat providers in a non-discriminatory manner.

Services required will be procured from providers that are most capable of delivering the overall objective and that provide best value for money. GCCG will continually consider ways of improving services (including through services being provided in a more integrated way, enabling providers to compete and allowing patients to choose their provider).

- 3.2 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 external web site
	State outcomes of service reviews and whether a competitive tender, AQP or other procurement process is to be used.
	Pricing tariffs and other payment regimes will be fair and transparent.
	Advertise suitable procurement opportunities and contract awards via Contracts Finder, the Official Journal of the European Union and the GCCG website as applicable.
	Maintain an auditable tender documentation trail (including any decisions not to tender), providing clear accountability.
	Publish details of all contracts awarded on its external website, including contractor names, addresses, contract type, value, duration and procurement process utilised.
<b>Proportionality:</b>	Commissioner resources to 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) to 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. Procurement intentions:

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

5. When to procure:

5.1 The GCCG as a Central Government Public Sector Contracting Authority is governed under the EU Procurement Directive and the following thresholds apply from 1 January 2016\* (changes biennially):

	Supplies	Services	Light Touch Regime Services*	Works
<b>Thresholds (Excl. VAT) Sub Central Body</b>	£181,302 Total aggregated contract value**	£181,302 Total aggregated contract value**	£615,278 Total aggregated contract value**	£4,551,413 Total aggregated contract value**

\*Light Touch Regime (LTR) threshold of £615,278 used for the provision of Health and Social Care Services.

\*\*Total duration of the proposed contract including any agreed extension options.

6. Triggers for contesting a service:

6.1 The GCCG will consider contesting services in the following circumstances:

6.1.1 New service requirement: Where GCCG commissions a new service contract (a service not previously provided).

6.1.2 Contract expiration: Where an existing contract is coming to the end of its agreed term, or can reasonably be considered to be likely to come to an end for other reasons (for example a provider notifying commissioners that it is considering withdrawing service provision).

6.1.3 Failure to achieve quality standards: Where an existing provider is failing to achieve (or make sufficient progress on achieving) local or national quality standards or targets, or is not meeting the reasonable expectations of service users.

6.1.4 Value for money: Where an existing service offers poor value for money when compared to other relevant local or national benchmarking information

6.1.5 Service redesign: Where a new type of service differs significantly from that currently in place (in terms of service model, volumes or types of activity, or financial value) such that a new range of service providers or partnerships might offer advantages in terms of patient care or cost compared to that currently in place.

7 Contestability decision:

7.1 The GCCG, in reaching a contestability decision will consider the anticipated benefit versus risk assessment which will cover, as a minimum, information in response to the following risk assessment checklist:

7.1.1 Has the Commissioner considered the whole life costs of the proposed contract? Does this value exceed the Light Touch Regime threshold (see paragraph 5 – above)?

- 7.1.2 Has the Commissioner clearly identified the reason(s) for contesting the service (see triggers for contesting a service, paragraph 6 above)?
- 7.1.3 Is the Commissioner clear on the service specification and quality standards that are required in the contested service(s) (or is at least clear on the specific benefits that will be achieved by procuring a new service, if the detailed specification is to be developed at a later stage)?
- 7.1.4 Has the Commissioner identified any linked services which are highly likely to become clinically, operationally or financially unviable for Gloucestershire residents if not contested in parallel with the main service(s) under consideration?
- 7.1.5 Has the Commissioner considered the timescales and costs involved in contesting a service, such that they are able to fairly represent the benefits that could be achieved over and above an approach working with the existing provider(s)?
- 7.1.6 Is there evidence of a sufficient market of providers, or potential providers, to minimise the risk of significant gaps in the service(s) concerned and to ensure that patient choice is maintained or expanded?
- 7.1.7 Have current service costs been benchmarked, and an assessment of current and future demand and capacity been undertaken, such that the risk of increased costs is minimised and there is explicit information on affordability as part of the tendering decision?
- 7.1.8 Has the proposer ensured that other key co-commissioners have been informed of the GCCG's proposals, and that explicit agreement is being secured where a service is jointly commissioned for Gloucestershire residents?
- 7.2 Where a decision is taken by the GCCG to contest a service, consideration should also be given to the means by which the service might best be contested. There are a number of broad options:
- 7.2.1 A traditional tendering process, resulting in the award of a time limited contract to a single provider, multiple providers (by LOT) partnership of providers or consortia with lead bidder / subcontractor arrangements.
- Procurement staff will follow one of a range of EU mandated procurement processes (or at their discretion a bespoke process where the process conducted under the Light Touch Regime). The competitive tender and the resulting outcome will be published on the Contracts Finder web portal, in the Official Journal of the European Union and the GCCG external web site.
- 7.2.2. Use of the 'Any Qualified Provider' procurement process which allows for the contested service to be offered to, and provided by, a range of providers, as long as they can demonstrate they fulfil key requirements. These include:
- Fulfilling any obligatory registration requirement.
  - Ability to meet the GCCG's service specification in full.

- Accepting the national or local tariff price (where applicable) as specified by the GCCG.
- Accepting a standard DH contract with the GCCG, without any guarantees of volumes of activity or levels of funding.
- Ensuring potential conflicts of interest are acknowledged and minimised (for example where a referral is made into a service run or associated with the original referrer, and who may therefore gain financially from that referral).
- Ensuring adequate choice is provided on treatment options, and in any onward referral to another commissioned service.
- Providing a service that is sufficiently flexible to respond to and meet individual needs.

An AQP model may be more appropriate to higher volume services with less complex interfaces with other services.

7.2.3 Establishment of a framework contract or Dynamic Purchasing System to accredit a number of suitably qualified providers.

7.3 All suitable procurement processes will be advertised in accordance with EU PCR2015.

## 8 Decision not to tender:

8.1 If, after a risk assessment and consideration of the principles contained within this strategy, the GCCG determines that a competitive tender process is not required or is inappropriate, the reasons shall be clearly recorded on the Decision Not to Tender Form (see Appendix 2).

8.2 The GCCG Governing Body must approve any decision not to tender where the total aggregated contract value exceeds the Light Touch Regime threshold (see paragraph 5 for threshold value)

## 9 Procurement processes:

9.1 The procurement process starts from identification of need, the decision to market test 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.

9.2 Once a decision has been made to procure, there are a range of procurement procedures available to the GCCG. These include the Open, Restricted, Negotiated and Competitive Dialogue procedures.

9.3 Under the Light Touch Regime, GCCG is permitted to modify established procurement procedures or design its own process provided that it complies with the mandatory requirements as shown in paragraph 19.2.

9.4 Advice should be sought from GCCG procurement staffs on the most appropriate route for each service tender.

## 10 Market analysis:

10.1 GCCG procurement and contracts staff will utilise service specification detail to benchmark comparable contracts to determine a range of fair and appropriate service

costs. This activity will be conducted routinely for all high value health care services and prior to determining whether formal procurement is undertaken.

10.2 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

10.3 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.

10.4 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.

## 11 Provider engagement:

11.1 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.

11.2 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.

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

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

- Placement of a Contracts Finder advertisement (and relevant specific journal advertisements as applicable)
- Prior Information Notice in the Official Journal of the European Union
- Public / Private Reference Groups

- Website notifications

## 12 Public and patient engagement:

12.1 In accordance with s14Z2 of the Health and Social Care Act 2012, Clinical Commissioning Groups are required to involve and consult patients and the public:

- In their planning of commissioning arrangements;
- In the development and consideration of proposals for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which services are delivered to the individuals or the range of health services available to them;
- In decisions affecting the operation of commissioning arrangements where the implementation of the decisions would (if made) have such an impact.

12.2 GCCG's patient and public engagement will be conducted in accordance with its engagement strategy: An Open Culture: A Strategy for Engagement and Experience. The strategy will use The Engagement Cycle to inform its engagement activities.

GCCG will actively engage and support patients and other members of the public in procurement processes to ensure:

- Their views inform the development of service specifications
- Identification of service providers who better meet the needs of patients
- Innovative approaches to service development are considered
- Potential service providers are identified and able to bid for contract opportunities
- Active participation in decision making panels including clarity about patient representation on panels, their role, terms of reference, support and training.

The benefits of this approach include increasing public confidence and better relationships with providers of services. It also paves the way to improved monitoring and performance management, particularly if patients are also part of those monitoring processes.

12.3 In addition, GCCG will keep the wider public informed, hold briefing events so that the public find out what is going on and about proposals being developed and ensure that Healthwatch Gloucestershire and locally elected representatives such as local MPs and HCOSC members receive early briefings regarding planned procurement activities.

## 13 Procurement of goods and generic services:

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

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

## 14 e-Tendering:

14.1 In accordance with PCR2015, GCCG procurement staff will conduct procurement processes (including AQP and other framework processes) via an e-tendering

information technology system wherever practically possible. An automated system provides a secure and clear management audit trail.

15 Collaborative procurement:

- 15.1 GCCG Procurement staffs will design procurement work plans in accordance with year-on-year GCCG Governing Body 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 South Central & West Commissioning Support Unit (SCWCSU) staff, other Clinical Commissioning Group procurement staffs or nationally designated procurement teams to deliver complex / cross-boundary procurements where required.

The SCWCSU will provide transactional and generic services procurement to GCCG in-line with their service level agreement.

16 Contract duration:

- 16.1 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.

- 16.2 Contract durations in excess of 3-years may be advertised, procured and awarded subject to GCCG Core Leadership Team or Governing Body approval.

17 Contract management:

- 17.1 GCCG Contract Team 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.

- 17.2 The GCCG's Commissioning Implementation Manager will lead and actively 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.

18 Social value legislation:

- 18.1 The Public Service (Social Value) Act 2012 came into force in January 2013. Under this legislation, public sector organisations are required to consider how the services that they commission and procure might improve the economic, social and environmental well-being of the area that they serve.

- 18.2 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.

18.3 GCCG will consider the social value implications of all prospective procurement processes and incorporate its responsibilities under the Act in key procurement documentation. GCCG will ensure that positive health, social and environmental outcomes are captured and assessed during the commissioning process at ITT stage and ensure that these added benefits are measured and linked to the performance of the contract.

19 Public contracts regulations 2015:

19.1 The European Union Public Contracts Regulations 2015 (PCR2015) came into force on 1 April 2015. These regulations contained a specific set of rules entitled the Light Touch Regime (LTR) which would apply to certain service contracts types including Health, Social Care and Education. Implementation of the LTR element was delayed until 18 April 2016 and only applies to contracts where the total aggregated contract value exceeded €750,000 (approximately £615,278).

19.2 The LTR allows contracting authorities such as GCCG flexibility to conduct its procurement processes as it chooses i.e. GCCG is not limited to the standard EU procedures which include, among others, Open, Restricted, Competitive Dialogue, Negotiated etc. However, GCCG is now bound by a small number of mandatory requirements as follows:

19.2.1 OJEU Advertising. GCCG is now required to publish a contract notice or a prior information notice except where the grounds for using the negotiated procedure without a call for competition could have been used. For examples, where there is only one provider capable of supplying the service required.

19.2.2 The publication of a contract award notice following procurement or if preferred, collate such notices and publish on a quarterly basis.

19.2.3 Compliance with EU treaty principles of transparency and equal treatment.

19.2.4 Conduct the procurement in accordance with the information provided in any OJEU advertisement (contract notice or prior information notice) regarding; any conditions for participation, time limits for contracting / responding to GCCG; and the award procedure to be applied.

19.2.5 Time limited imposed by GCCG on suppliers must be reasonable and proportionate. There are no stipulated minimum time periods in the LTR rules, so GCCG may use its discretion and judgement on a case by case basis.

20 Conflicts of interest:

20.1 GCCG manages potential conflicts of interest in accordance with NHS England statutory guidance (updated June 2017) and the Procurement, Patient Choice and Competition Regulations (No.2) 2013. The latter places a requirement on the GCCG to ensure that it adheres to good practice in relation to procurement, does not engage in anti-competitive behaviour that is against the interests of patients and protects the rights of patients to make choices about their healthcare.

20.2 GCCG will take the following steps to manage potential conflicts of interest:

20.2.1 Doing business appropriately;

- 20.2.2 Being proactive, not reactive;
- 20.2.3 Being balanced and proportionate;
- 20.2.4 Conduct its business openly and transparently;
- 20.2.5 Secure expert advice;
- 20.2.6 Engaging appropriately with providers;
- 20.2.7 Creating clear and transparent commissioning specifications;
- 20.2.8 Follow proper procurement process and legal arrangement;
- 20.2.9 Ensure sound record keeping, including up-to-date registers of interests; and
- 20.2.10 Adopt a clear, recognised and easily enacted system for dispute resolution

20.3 Specifically, GCCG procurement staff will:

- 20.3.1 Issue a conflicts of interest template when commissioning from GP practices, including provider consortia or organisations in which GP's have a financial interest.
- 20.3.2 Issue a conflicts of Interest template for bidder / contractor completion and return in all Invitation to Tender processes
- 20.3.3 Maintain a record of all declarations of interest associated with procurement processes undertaken and develop a process for assessing identified COI's and determining whether bidders should be excluded from bidding opportunities.
- 20.3.4 Issue a conflicts of interest declaration form to prospective project team members at the outset of the procurement to ensure that any potential conflicts are identified and addressed.
- 20.3.5 Maintain a record of all procurement decisions which will be subject to routine Audit Committee scrutiny. This record will be published on NHS Gloucestershire CCGs external website.

21 Quality and sustainability impact assessments:

21.1 It is essential that services delivered improve quality and enhance patient experience. GCCG has developed a Quality and Sustainability Impact Assessment which is used when there is any change to the way services are commissioned and delivered. The Impact Assessment includes:

- Duty of quality
- Patient experience
- Patient safety
- Clinical effectiveness
- Prevention
- Productivity and innovation

## Section 2: Market Management Strategy

### 1 Introduction:

- 1.1 This strategy sets out the way in which the NHS Gloucestershire Clinical Commissioning Group (GCCG) will work to develop a health care market which supports delivery of its strategic commissioning plan. The strategy will identify the principles by which the organisation will enable the development of an appropriate provider market to meet local needs and improve patient experience. This strategy should be read in conjunction with the GCCG's Procurement Strategy (Section 1).
- 1.2 Our understanding of what constitutes an effective market management strategy in the NHS continually evolves. However, the dual functions of market analysis (understanding the current and potential market) and market development (supporting the development of innovation, quality and a diverse health care market) are central to developing a competitive provider environment and informed decision making about procurement routes.
- 1.3 This strategy will support the commissioning organisation to understand the steps to good market management that enables the delivery of the strategic commissioning plan and helps describe the market development needs at each stage in the commissioning cycle.
- 1.4 The GCCG is keen to ensure that the benefits of a competitive environment and new providers are harnessed. The ultimate aim in applying any system or market management techniques is to ensure that it results in an improvement in patient experience, outcomes and value for money.

### 2 Market management in the NHS:

- 2.1 As leaders of the local health system the GCCG has a responsibility to lead and manage the NHS system. Market Management is a pivotal element of effective system management.

Step:	Description:
Ensuring Local Strategic Coherence	<ul style="list-style-type: none"> <li>▪ Engaging with the population around the strategy for the system (including formal consultation)</li> <li>▪ Ensuring that all system tools and techniques including market management result in a cohesive local system</li> </ul>
Building and Working the Market	<ul style="list-style-type: none"> <li>▪ Design of local incentives and local choice offer</li> <li>▪ Market development</li> <li>▪ Procurement</li> <li>▪ Contracting</li> </ul>
Maintaining Market Effectiveness	<ul style="list-style-type: none"> <li>▪ Information for, and communication to the Patients, Public and the Market</li> <li>▪ Managing service change through the market</li> <li>▪ Managing the market by:                             <ul style="list-style-type: none"> <li>- Managing service / provider failure</li> <li>- Managing disputes</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>- Driving quality in provision</li> <li>▪ Managing local political interface on market decisions</li> </ul>
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2.2 The ultimate aim in applying any system or market management techniques is to ensure that it results in an improvement in patient experience, outcomes and value for money.

One of the best ways we can achieve this is to construct excellent provider relationships based on a common understanding of the service requirements through clear specifications for services based on good care pathways and models of care; effective contract performance monitoring and management systems, and to build up strong relationships with providers over time.

In some cases it is necessary and appropriate to have competition for services in order to secure improved outcomes, maintain complex service integration and patient experience. In other cases it is possible and desirable to maintain existing suppliers, whilst continuing to drive quality improvements.

### 3 NHS Gloucestershire CCG's approach to market management:

3.1 The GCCG's approach to market management will focus on three clear activities; contract management; market analysis (including robust procurement processes) and market development. Market analysis and market development activities need to be undertaken in a planned and prioritised way in order to maximise the benefits to be derived through any procurements offered to the market.

3.2 The vision for the future provider landscape for the GCCG is to provide greater diversity where this is appropriate underpinned by two key principles:

- Increasing choice for users of services
- Provider development or contestability to drive up the quality of services and reduce costs

This will be achieved through a considered use of competition to improve quality.

3.3 It is not always possible or appropriate to increase the number of providers in the market; there are other levers which need to be utilised to improve and shape the market and drive up quality. These include using contract performance levers, patient user participation in service reviews and analysis of data in respect of quality of services.

#### 3.4 Contract management:

The first stage of Market Management will be to consider the appropriateness of contestability as a system lever. In some cases, as described in section 5, robust contract management and effective supplier management, i.e. working with our current providers of patient care will improve outcomes; patient experience; quality and reduce failings. There are some circumstances where it is immediately apparent that contesting the service is not feasible or beneficial to improving outcomes and value for money:

- The service is a specialised service where provider designation has already taken place at a national or regional level
- Where the service to be procured has such strong service alliances with an existing service that an extension to an existing agreement is appropriate (complex service integration).
- Where the cost of undertaking a contested approach cannot be justified in light of the contract value (proportionality)
- Where the GCCG wishes to encourage provision from within a sector that might otherwise not prevail through a contested approach
- Where failing to award a contract to a preferred provider would put other core services at risk i.e. recognising the need to safe guard against unintended consequences relating to service viability and tipping points.

3.5 The GCCG will also ensure it demonstrates how as many of the possible benefits associated with a contested approach are realised through strong commissioning and specification of services.

Where it is not absolutely apparent that competition would not be beneficial then the GCCG will use the contestability framework to support the making of a decision about contestability. The GCCG will ensure that when a decision not to contest a service is reached, this will formally be documented and made available to interested parties. Only after deciding that contestability is needed to improve outcomes will the GCCG progress to market analysis:

3.6 Market analysis:

The GCCG will adopt an eight step approach to market analysis as shown in the table below.

Delivering outputs for each of these steps will require joint working across the GCCG. The GCCG's procurement team will support lead commissioners in understanding the tasks required to undertake market analysis.

Step:	Description:
<b>Agree Scope:</b>	<ul style="list-style-type: none"> <li>▪ Identify and clarify market segment area to be addressed:                             <ul style="list-style-type: none"> <li>▪ Geography</li> <li>▪ Specific pathway</li> <li>▪ Providers</li> <li>▪ Competition and choice for patients</li> </ul> </li> <li>▪ Agree which part of the overall system for that market segment will be reviewed:                             <ul style="list-style-type: none"> <li>▪ Prevention</li> <li>▪ Assessment</li> <li>▪ Diagnostics</li> <li>▪ Intervention</li> <li>▪ Post-acute</li> </ul> </li> </ul>

<p><b>Assess Market Needs &amp; Demand:</b></p>	<ul style="list-style-type: none"> <li>▪ What services are required</li> <li>▪ How can these be delivered</li> <li>▪ Where are services required</li> <li>▪ How will needs/demands change or grow</li> </ul>
<p><b>Assess Current Market Performance:</b></p>	<ul style="list-style-type: none"> <li>▪ Comparative analysis of existing providers</li> <li>▪ Articulate performance issues</li> </ul>
<p><b>Provider Analysis:</b></p>	<ul style="list-style-type: none"> <li>▪ Map providers:             <ul style="list-style-type: none"> <li>▪ What capacity sits where</li> <li>▪ What is the balance of spend/activity</li> <li>▪ What access is there for the patient group</li> </ul> </li> <li>▪ Provider performance:             <ul style="list-style-type: none"> <li>▪ Do they meet GCCG requirements</li> <li>▪ Do they meet patient needs</li> <li>▪ Why over or under performing</li> <li>▪ What plans to improve</li> </ul> </li> </ul>
<p><b>Competitive Environment:</b></p>	<ul style="list-style-type: none"> <li>▪ Is there competition in the market</li> <li>▪ What is the basis for competition</li> <li>▪ Review barriers to entry or exit</li> <li>▪ Who are the potential providers who could enter the market</li> <li>▪ Are there examples of good practice elsewhere</li> </ul>
<p><b>Map out a Preferred Future Landscape:</b></p>	<ul style="list-style-type: none"> <li>▪ What provision does the GCCG want to see where</li> <li>▪ What will the basis for performance measurement be</li> <li>▪ Should it be contestable</li> <li>▪ Should integration be encouraged at certain points of the system</li> </ul>
<p><b>Assessment of Market Intervention Levers:</b></p>	<ul style="list-style-type: none"> <li>▪ What can the GCCG do to change the provider landscape:             <ul style="list-style-type: none"> <li>▪ Competitive tendering</li> <li>▪ Contracting</li> <li>▪ Talk to Providers</li> <li>▪ Incentives</li> <li>▪ Penalties</li> </ul> </li> </ul>
<p><b>Implementation Plan:</b></p>	<ul style="list-style-type: none"> <li>▪ What levers should be used by when</li> <li>▪ How does the GCCG want to monitor market performance</li> <li>▪ What information does the GCCG need to do this better in the future</li> </ul>

3.7 Market development:

The aim of market development activity is to encourage a range of providers, willing and capable of responding to GCCG contracting opportunities and hence facilitating

the commissioning of services of a high quality and which demonstrate effective use of NHS resources.

As services are reviewed and potentially redesigned and as commissioners gain a greater understanding of the needs of their patients, the provider(s) best placed to deliver the needs of the patient may well be different from the current service provider(s), this will only be possible if there are effective and willing providers in the market capable of responding to GCCG contracting opportunities.

GCCG Procurement and Contracting staffs will undertake a number of activities to support the development of existing and potential providers.

- Develop and manage its relationship with existing and potential providers, including all sectors (NHS, Private and Voluntary / Third Sector organisations)
- Advertise for new and potential providers using both traditional procurement processes and the “Any Qualified Provider” procurement routes (where appropriate)
- Provide advice to potential providers on the qualification and assurance process required to become a local provider of NHS Services
- Proactively shape the market through dialogue and procurement
- Qualify providers who are interested in providing services to support the GCCG’s commissioning intentions. This will include an assessment of the providers capacity and capability to meet the minimum standards required to deliver NHS care
- Ensure that appropriate support is available to providers to facilitate their involvement in the procurement process.

4 Developing provider competence and capability:

Where provider options are limited and the preferred procurement approach requires the development of providers to ensure that appropriate services can be secured; the GCCG will identify and support the development of providers to enable market entry.

Support may take the form of advice, signposting to education, training and business development opportunities. Any offer of support in this way must be transparent, proportionate, non-discriminatory and adhere to NHS rules of competition and contestability.

5 Market management support to the commissioning cycle:

5.1 Assess needs / Review of provision:

- Produce an updated map of current service providers relevant to the commissioning programme
- Identify providers that could be involved in helping define the needs assessment
- Provide market intelligence on the current provider market and any future trends
- Identify provider market gaps and any failing providers
- Are the current services delivering key national and local targets
- Do current providers offer services that are consistent with best practice and local and national strategy

- Determine the impact on the current and future provider market (will the introduction of new providers have a detrimental impact on the provision of services to patients)
- Where required begin a search for alternative providers

5.2 Decide priorities and investment:

- Identify and qualify potential providers
- Gain decision whether to invest in developing providers
- Engage potential providers in the commissioning process
- Is the effort of developing the supply market justified by the benefits for patients

5.3 Define the service:

- Ensure clear service specifications are developed
- Identify the implications on the provider market of the proposed service
- Support providers in bidding for services

5.4 Shape structure of supply:

- Provide assurance on the selection process of providers
- Ensure provider requirement documents are robust
- Oversee the commissioner selection process

5.5 Formalise and communicate :

- Clear awards process with feedback to unsuccessful providers which may help them develop for the future
- Clear implementation plan for delivery of new services

6 Contract and performance management frameworks:

Market management is underpinned by effective contract, performance management (including quality) and procurement frameworks.

6.1 Contract management:

- Regular discussions with all key providers. Formal Contract Boards and appropriate subgroups in place for all major contracts
- Clear issue resolution / escalation processes
- Consistent and rigorous negotiation processes
- Use of the standard NHS Contract (unless bespoke contract documentation is appropriate)

6.2 Performance management:

- Predictive modelling, analysis and performance management
- Clear Key Performance Indicators (KPIs) and defined performance improvement targets
- Regular and timely performance data analysed by efficiency, quality, outcomes, comparative benchmarks and patient experience
- Achievement of national targets and local KPIs.

6.3 Service quality:

Understanding the quality of services provided is a key element of market management. The following indicators will all be considered as part of a provider review i.e.

- Mortality rates
- Readmission rates
- Length of stay
- First to follow up ratio's - outpatients
- Conversion rates
- DNA rates

7 Measurement of success:

- Clear articulation of current and future provider market
- Robust contracts negotiated with clear outcome measures
- Robust contract/performance management processes in place
- Capability is improved within the organisation

8 Conclusion:

This strategy sets out the GCCG's approach to market management and, together with the GCCG procurement strategy, forms an integral part of the GCCG's approach to system management. It explains the way in which the dual functions of market analysis and market development will support delivery of the GCCG's commissioning intentions.

Market management is an evolving concept for the NHS and this strategy will require regular review to ensure that it is consistent with patient experience, national policy and local requirements.

## Section 3: Dispute Resolution Policy:

### 1. Introduction:

- 1.1 The GCCG will work to reach resolution of any dispute arising from contracting and commissioning decisions. Disputes, not resolved by access to any contractual terms that may exist between them, may arise over decisions about contractual sanctions and termination, remuneration, practice area and 'opt-outs.'
- 1.2 Contractors have the right of appeal in some circumstances against contracting / commissioning decisions. The Procurement, Patient Choice and Competition Regulations apply alongside the EU Public Contracts Regulations 2015. The former regulations, however, are a bespoke set of rules for the health care sector and provide a mechanism for NHS Improvement, as sector regulator, to investigate complaints and take enforcement action. The regulations are designed as an accessible and effective alternative to challenging decisions in the courts.
- 1.3 For the avoidance of doubt this Dispute Resolution Process is a non-contractual process and is intended for use in situations where the prospective parties have decided not to follow other resolution solutions that may be available to them including formal contract dispute resolution or action under statutory or legal provision available in UK law.
- 1.4 In the event that a provider or potential provider of services wishes to dispute the procurement / contracting / commissioning or related decision-making decisions by use of this Dispute Resolution Process, the following process will be followed:
  - 1.4.1 The GCCG will seek to resolve any disputes by local resolution. A conciliation process will be proposed in all cases.
  - 1.4.2 If the dispute is not successfully resolved at local level, the complainant or the GCCG can refer the dispute to NHS England.
  - 1.4.3 If the dispute is not successfully resolved by NHS England, it may be referred to NHS Improvement for investigation / review.
- 1.5 The appellant may withdraw the appeal at any time during the process. If for any reason an appeal is withdrawn, the GCCG will not accept a future appeal on the same grounds.

### 2. Objectives of the dispute resolution process:

- 2.1 The GCCG's objectives of this process are as follows:
  - To resolve competition disputes transparently, fairly and consistently and to mitigate risks and protect the reputation of the NHS.
  - To be compliant with NHS Improvement's (formerly Monitor) acceptance criteria
  - To prevent where possible legal challenge and external referral processes.
  - To provide confidence to parties that the process is fair and transparent, enhancing willingness to participate in the market.

3. Acceptance criteria:

3.1 The CGG will only accept appeals that meet the following criteria:

- The content of the dispute is covered by NHS Improvement's complaints procedure and no legal proceedings have commenced.
- There is complete disclosure of all relevant and applicable information. Any individuals connected to the complaint are available to provide further evidence or testimony and the GCCG is not precluded from requesting more detailed information to make an informed decision.
- To provide confidence to parties that the process is fair and transparent, enhancing willingness to participate in the market.
- That the GCCG is the commissioner or lead commissioner for the service in question.
- The dispute is not trivial or vexatious
- The dispute is raised within 3 months of the disputed event occurring.

4. NHS Gloucestershire CCG process:

4.1 Stage 1: The complaint:

The GCCG will acknowledge the appeal within two working (business) days of receipt.

The first stage is to gather information (see attached form – Appendix 3) and complete an initial assessment. A nominated officer will be appointed to carry out the assessment.

Following the initial assessment, the GCCG may instigate an informal investigation to add further detail. This stage is to be completed within 14 days. Following this assessment there will be an opportunity for conciliation between the parties. A timescale will be set and notified to each party.

If the criteria for dispute are met and conciliation has not resolved the issue, the nominated officer will complete a report for the GCCG Panel.

4.2 Stage 2: GCCG panel:

Membership – the Panel has three core members:

- Lay Member (Chair)
- Executive Director
- Head of Procurement

The nominated officer will attend to present their investigation.

The Panel will formally meet and review the case. This stage is to be completed within 20 working days. Both parties will have had the opportunity to submit written material in advance of the hearing. Both parties may be offered the opportunity to attend the Panel.

4.3 Stage 3: The decision:

The GCCG Panel has 4 potential outcomes:

- Complaint upheld
- Further investigation needed – to be completed within a maximum 20 working days
- Complaint rejected
- Complaint judged to be beyond the scope of the Panel so will be referred to NHSCB Regional Panel (NHS England) or to the National Co-Operation and Competition Panel.

The GCCG will write to the complainant(s) notifying them of its decision, explaining the rationale and any course of action required.

If the complainant does not believe the case has been satisfactorily resolved an appeal can be lodged with NHS England.

All results of the process will be presented to the GCCG Governing Body on an annual basis for information. Reports will include summaries of complaints and outcomes, as well as performance against target timescales.

**Appendix 1**

**Form of Declaration of Conflict of Interest for Bidders / Contractors**

<b>Name of Organisation:</b>	
<b>Details of interests held:</b>	
<b>Type of Interest:</b>	<b>Details:</b>
Provision of services or other work for the CCG or NHS England	
Provision of services or other work for any other potential bidder in respect of this project or procurement process	
Any other connection with the CCG or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the CCG's or any of its members employees judgements, decisions or actions	

<b>Name of Relevant Person</b> (complete for all Relevant Persons)		
<b>Details of interests held:</b>		
<b>Type of Interest:</b>	<b>Details:</b>	<b>Personal interest or that of a family member, close friend or other acquaintance?</b>
Provision of services or other work for CCG or NHS England		
Provision of services or other work for any other potential bidder in respect of this project or procurement process		
Any other connection with the CCG or NHS England, whether personal or professional, which the public could perceive may impair or otherwise influence the CCG or any of its members employees judgements, decisions or actions		

To the best of my knowledge and belief, the above information is complete and correct. I undertake to update as necessary the information.

Signed:

On behalf of:

Date:

**Decision Not to Tender**

<b>Project Manager:</b> <i>(Name)</i>	
<b>Project Director:</b> <i>(Name)</i>	
<b>Date:</b>	
<b>Reference Number:</b>	

<p><b>1. Project Title and Background:</b> <i>(Include summary of proposed service and cross reference to annual operating plan)</i></p>
<p><b>2. Proposed Contract:</b> <i>(Include proposed provider, contract duration and proposed commencement date)</i></p>
<p><b>3. Market Assessment:</b> <i>(Summary of outcome of market assessment supporting the proposal)</i></p>
<p><b>4. Financial Assessment:</b> <i>(Anticipated total aggregated contract value)</i></p>
<p><b>5. Reasons for Not Tendering::</b> <i>MUST ensure that reasons are permitted in accordance with the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013. See Annex 1 for summary of Regulations.</i></p>

<b>6. Risk Assessment:</b> <i>(Identify risks to patients if proposal is rejected / Identify risks to GCCG if proposal is accepted)</i>
<b>7. Due Diligence:</b> <i>(Basic financial and quality assurance checks must be undertaken in respect of proposed service provider. This will include: financial viability, economic standing, clinical capacity &amp; capability, governance, affordability / value for money)</i>
<b>8. Stakeholder Engagement:</b> <i>(Is the proposal acceptable to patients? Include findings of any patient engagement)</i>
<b>9. Procurement Comments:</b> <i>(Confirmation that the narrative provided in 5 (above) complies with current legislative requirements as summarised in Annex1 1)</i>

<b>Approved / Rejected by GCCG Governing Body / Core Leadership Team in accordance with Prime Financial Policy:</b> <i>(Signature)</i>	
<b>Date:</b>	
<b>Comments:</b>	

**Summary of the National Health Service (Procurement, Patient Choice and Competition (No.2) Regulations 1 April 2013**

Reg No.	Narrative:
<p><b>Two</b></p>	<p><b><u>Objective</u></b></p> <p>When procuring health care services for the purposes of the NHS, a relevant body must act with a view to:</p> <p>(a) Securing the needs of the people who use the services,                      (b) Improving the quality of the services, and                      (c) Improving efficiency in the provision of the services,</p> <p>Including through the services being provided in an integrated way including with other healthcare services, health-related services, or social care services.</p>
<p><b>Three</b></p>	<p><b><u>Procurement - General Requirements:</u></b></p> <p>When procuring health care services for the purposes of the NHS, a relevant body must comply with paragraphs 2 to 4:</p> <p>(2) The relevant body must:</p> <p>(a) Act in a transparent and proportionate way, and                      (b) Treat providers equally and in a non-discriminatory way, including by not treating a provider, or type of provider, more favourably than any other provider, in particular on the basis of ownership.</p> <p>(3) The relevant body must procure the services from one or more providers that:</p> <p>(a) Are most capable of delivering the objective referred to in regulation 2 in relation to the services, and                      (b) Provide best value for money in doing so.</p> <p>(4) In acting with a view to improving quality and efficiency in the provision of the services the relevant body must consider appropriate means of making such improvements, including through:</p> <p>(a) The services being provided in a more integrated way including with other health care services, health-related services, or social care services),                      (b) Enabling providers to compete to provide the services, and                      (c) Allowing patients a choice of provider of the services.</p> <p>(5) A relevant body must, in relation to each contract awarded by it for the provision of healthcare services for the purposes of the NHS, maintain a record of:</p> <p>(a) In the case of a contract awarded by the Board, details of how in awarding the contract it complies with its duties as to effectiveness, efficiency etc, improvement in quality of services and promoting integration;                      (b) In the case of a contract awarded by a CCG, details of how in awarding the contract it complies with its duties as to effectiveness, efficiency etc, improvement in quality of services and promoting integration.</p>

<p><b>Five</b></p>	<p><b><u>Award of a new contract without a competition:</u></b></p> <p>A relevant body may award a new contract for the provision of health care services for the purposes of the NHS to a single provider without advertising an intention to seek offers from providers in relation to that contract where the relevant body is satisfied that the services to which the contract relates are capable of being provided only by that provider.</p> <p>For the purposes of paragraph 1, a relevant body is not to be treated as having awarded a new contract:</p> <p>(a) Where the rights and liabilities under a contract have been transferred to the relevant body from the Secretary of State, a Strategic Health Authority or a Primary Care Trust; or  (b) Where there is a change in the terms and conditions of a contract as a result of:</p> <p>(i) A change in the terms and conditions drafted by the Board under regulation 17 of the 2012 Regulations (terms and conditions to be drafted by the Board for inclusion in commissioning contracts), or  (ii) New terms and conditions drafted by the Board under that regulation.</p>
<p><b>Six</b></p>	<p><b><u>Conflicts of Interest in purchasing health care services and supplying such services</u></b></p> <p>A relevant body must not award a contract for the provision of health care services for the purposes of the NHS where conflicts, or potential conflicts, between the interests involved in commissioning such services and the interests involved in providing them affect, or appear to affect, the integrity of the award of that contract.</p> <p>In relation to each contract that it has entered into for the provision of healthcare services for the purposes of the NHS, a relevant body must maintain a record of how it managed any conflict that arose between the interests in commissioning the services and the interests involved in providing them.</p> <p>An interest referred to in paragraph 1 includes an interest of:</p> <p>(a) A member of the relevant body,  (b) A member of its governing body,  (c) A member of its committees or sub-committees or committees or sub-committees of its governing body, or  (d) An employee.</p>
<p><b>Ten</b></p>	<p><b><u>Anti-Competitive Behaviour:</u></b></p> <p>When commissioning health care services for the purposes of the NHS, a relevant body must not engage in anti-competitive behaviour(a), unless to do so is in the interests of people who use health care services for the purposes of the NHS which may include:</p> <p>(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.</p> <p>(2) An arrangement for the provision of health care services for the purposes of the NHS must not include any term or condition restricting competition which is not necessary for the attainment of:</p> <p>(a) Intended outcomes which are beneficial for people who use such services; or  (b) The objective referred to in regulation 2.</p>

**Dispute Resolution Form**

1. Complainant contact details:

<b>Name:</b>	
<b>Address:</b>	
<b>Telephone Number:</b>	
<b>Email Address:</b>	
<b>Date:</b>	
<b>Name and title of the person(s) authorised to represent the complainant:</b>	

2. Acceptance criteria:

<b>Evidence that each of the acceptance criteria has been met:</b>
<p><u>Acceptance Criteria 1:</u></p> <p><i>The content of the dispute is covered by NHS Improvement's complaints procedure and that no legal proceedings have commenced.</i></p> <p><u>Evidence 1:</u></p>
<p><u>Acceptance Criteria 2:</u></p> <p><i>There is complete disclosure of all relevant and applicable information. Any individuals connected to the complaint are available to provide further evidence or testimony and the GCCG is not precluded from requesting more detailed information to make an informed decision.</i></p> <p><u>Evidence 2:</u></p>
<p><u>Acceptance Criteria 3:</u></p> <p><i>To provide confidence to parties that the process is fair and transparent, enhancing willingness to participate in the market.</i></p> <p><u>Evidence 3:</u></p>

Acceptance Criteria 4:

*The GCCG is the commissioner or lead commissioner for the service in question.*

Evidence 4:

Acceptance Criteria 5:

*The dispute is not trivial or vexatious*

Evidence 5:

Acceptance Criteria 6:

*The dispute is raised within 3 months of the disputed event occurring.*

Evidence 6:

3. Basis of complaint:

**Details of the basis of the dispute and which principles are breached:**

4. Evidence:

**Any supporting evidence available:**

5. Summary statement:

**A statement as to the desired outcome or resolution:**

This form should be completed and forwarded by email or post to:

Procurement Team  
NHS Gloucestershire Clinical Commissioning Group  
Sanger House  
5220 Valiant Court  
Delta Way  
Gloucester Business Park  
Brockworth  
Gloucester  
GL3 4FE

Email: [david.porter6@nhs.net](mailto:david.porter6@nhs.net) or [paul.wilkinson2@nhs.net](mailto:paul.wilkinson2@nhs.net)