



Leeds
Clinical Commissioning Group

PROCUREMENT
POLICY

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1. Introduction

- 1.1. The role of procurement in commissioning is changing – traditionally seen as the process for conducting competitive tendering, it can now be seen in the wider context of how we organise the providers we work with to deliver better health outcomes. Recent innovative ways of working have demonstrated how we can successfully procure outcomes rather than activity and also that the way we design our procurement and contracting processes can have a major impact on encouraging and facilitating system integration and partnership working. Effective procurement is an essential component of commissioning improved services and outcomes for local patients and communities and for ensuring value for money.
- 1.2. Procurement in the public sector is regulated by legislation and there are a range of procurement approaches available depending on the nature of the services being procured, the value of the procurement and the number of participants in the market. However the NHS Long Term Plan describes a movement towards integrated care, delivered through collaboration across health and care systems. These new ways of working will require NHS Leeds CCG (**LCCG**) to develop new procurement and contracting models in line with guidance from NHS England and the CCG is already at the forefront of developing and implementing that change.
- 1.3. The Public Contracts Regulations (**PCR 2015**) came into force on 18 April 2016 for CCGs when procuring health and social care services (non-healthcare services have always been subject to PCR 2015). These rules apply to public bodies, including CCGs, NHS Foundation Trusts, NHS Trusts, NHS England and local authorities, and have implications for the procurement of all contracts commenced after that date above certain thresholds.
- 1.4. Contract awards in respect of “*health care services for the purposes of the NHS*”¹ are also subject to the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 (**PPCCR**) which follow a principles based approach leaving commissioners flexibility as to how best to procure and secure services in the best interests of service users. The PPCCR define a number of requirements to achieve the overall objective of securing the needs of patients and improving the quality and efficiency of services, including:
 - a) acting transparently and proportionately, and treating potential providers equally and in a non-discriminatory way;
 - b) procuring services from the providers that are most capable of delivering commissioners’ overall objectives and that provide the best value for money;
 - c) considering ways of improving services; and
 - d) having arrangements in place that allow providers to express an interest in a contract.However, it is important to remember that both PCR 2015 and PPCCR are likely to apply to the award of such contracts and LCCG’s procurement obligations under both sets of regulations still, currently, need to be assessed.
- 1.5. The NHS England consultation proposals for a new Procurement Regime have not been officially published due to the Covid-19 pandemic but they recognise that the current procurement rules relating to NHS services are potentially a barrier to delivering the vision of integrated care set out in Long Term Plan because they create a competitive dynamic between organisations which is inimical to creating sustainable integrated services, and can also create continual uncertainty, upheaval and disruption amongst providers. The consultation proposes removing healthcare services from PCR 2015 and in fact repealing

¹ Regulation 2 PPCCR

PPCCR altogether, and introducing a new set of rules for deciding which providers should deliver services which explicitly recognise the shift towards greater collaboration set out in the Long Term Plan. It is hoped that the new proposed regime will provide a more flexible framework for deciding who should provide healthcare services, allowing commissioners to make decisions that best meet the needs of patients and the local population. It would also ensure that decisions about spending public money are made transparently and fairly, and that NHS commissioners are accountable for their actions.

- 1.6 Balancing the delay in anticipated legislative changes with the vision of the organisation being developed by the *Shaping Our Future* programme; this document is an interim procurement policy which aims to outline a fair and transparent process for deciding which providers should deliver services, gives the CCG ultimate responsibility for decision making, and sets out a duty to ensure that the decisions about who should provide services are made in the best interests of patients, taxpayers and the local population whilst at the same time managing the risk to the CCG of legal challenges.

2. Associated Policies and Procedures

- 2.1. This policy and any procedures derived from it should be read in accordance with the following local policies, procedures and guidance:

NHS Leeds Clinical Commissioning Group Constitution
NHS LCCG Strategic Plan
NHS LCCG Scheme of Delegation
NHS LCCG Health Inequalities Framework
NHS LCCG Declaration of Interests and Potential Conflicts of Interests Policy
NHS LCCG Data Protection Impact Assessment (DPIA) Policy

3. Aims and Objectives

- 3.1. The aim of this Procurement Policy is to set out how LCCG will implement appropriate procurement and contracting processes and work with our partners and providers to
 - deliver better outcomes for people's health and wellbeing
 - reduce health inequalities and promote provider responsibilities for addressing health inequalities in accordance with the Health Inequalities Framework
 - use our budget so that we get quality services that offer the best value for the people of Leeds in terms of delivering the best possible outcomes for the resources we have available
 - facilitate our providers to join up their services, wherever possible, around people so that they get the highest quality of care in the right place.

4. Scope of the Policy

- 4.1. As far as it is relevant, this policy applies to all LCCG procurements (clinical and non-clinical).
- 4.2. This policy must be followed by all LCCG employees including staff on temporary or honorary contracts, representatives acting on behalf of LCCG including staff from member

practices, and any external organisations acting on behalf of LCCG including other CCGs, NECS and NHS Shared Business Services.

5. Accountabilities & Responsibilities

5.1. Governing Body responsibility

The Governing Body has the ultimate responsibility for ensuring that LCCG meets its statutory requirements when procuring goods and services, including healthcare services.

The governing body must be transparent when making decisions to procure and be the authorising body for awarding a contract once an appropriate process has been completed.

5.2 Lead Responsibility

Overall responsibility for procurement within LCCG rests with the Chief Finance Officer however individual managers will be responsible for recognising when a commissioning decision may have potential procurement implications and for seeking appropriate procurement support. Commissioning Managers are responsible for ensuring that they plan their commissioning decisions in sufficient time to carry out the required procurement process.

Thresholds for making decisions about procurements and contracts awards are detailed in LCCG's Operational Scheme of Delegation.

5.3. Procurement support

From September 2018 procurement support has been provided in-house by appropriately qualified and experienced staff led by the Associate Director of Partner Relationship Management. Where it is required and considered appropriate procurement support may also be provided by an external organisation (e.g. NHS Shared Business Services, NECS).

Procurement support from external organisations may incur additional costs and therefore commissioning managers must consult the Associate Director of Partner Relationship Management first before contacting any external procurement support organisations.

The Associate Director of Partner Relationship Management will also provide legal guidance on procurement and contracting issues or will procure relevant legal opinion where necessary.

In the case of collaborative or partnership projects where LCCG is not the sole or lead commissioner, procurement support arrangements will be agreed in consultation with the Lead Commissioner or Commissioning Partners on a case by case basis. This may involve support being provided by another CCG, Leeds City Council, or an independent procurement support service. Whenever external procurement support is provided by any organisation, LCCG will have systems in place to assure itself that the supporting organisation's business processes are robust and enable the organisation to meet its duties in relation to procurement.

5.4. Authority

If an external organisation is used to provide procurement support LCCG will remain directly responsible for:

- Approving the procurement route;
- Signing off specifications and evaluation criteria;
- Signing off decisions on which providers are taken through to the Invitation to Tender (ITT) stage following a pre-qualification process (where appropriate)
- Making final decisions on the selection of the preferred provider.

Arrangements for delegation of authority to officers are set out in the Operational Scheme of Delegation; in the event of any discrepancy between this Procurement Policy and the Operational Scheme of Delegation, the latter document will take precedence.

5.5 Engagement

LCCG is committed to engaging relevant stakeholders in all aspects of procurement and encourages their engagement in the design and co-production of services.

LCCG recognises that the engagement of clinicians, patients and public in designing and procuring services results in better services. Business processes will therefore require evidence of engagement for business cases to be approved. This will ensure that procurement of services is informed by authentic and meaningful engagement.

In accordance with the NHS Constitution pledge, all staff will be engaged in changes that affect them.

5.6 Collaboration

LCCG is committed to operating in a sustainable environment where all opportunities for efficiencies and economies of scale are considered and, where applicable, applied. This includes the sharing of operational resources or commitment to specific joint projects/contracts across Leeds and the wider West Yorkshire footprint where this serves the best interests of the Leeds population. The move towards further integration will necessitate the development of new types of contracts for integrated care models and LCCG will follow guidance from NHS England on their application.

5.7 ISAP

As LCCG moves towards commissioning integrated care systems, some of these complex contracts may require LCCG to go through the NHS England Integrated Support and Assurance Process (ISAP) where applicable to ensure that future arrangements are robust and viable and that LCCG continues to deliver its statutory functions effectively. LCCG will follow the applicable guidance from NHS England.

5.8 Equality Impact Assessment:

All public bodies have statutory duties under the Equality Act 2010. LCCG aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage against others. LCCG will ensure, when applying this policy that it complies with its duties under the

Equality Act 2010 and does not discriminate on grounds of race, colour, age, nationality, ethnicity, gender, sexual orientation, marital status, religious belief or disability.

5.9 Risk Management

When carrying out procurement activity, LCCG will ensure that it plans adequate measures to identify and manage risk.

5.10 Form of Contract

All contracts will use the appropriate form of NHS Standard Contract unless another suitable form of public sector contract has already been agreed (for example in the case of a pre-procured framework agreement).

6. Guiding Principles

6.1. In accordance with LCCG's Constitution, when procuring services, LCCG is required to act with a view to:

- Securing the needs of health care service users
- Improving the quality of the services, and
- Improving the efficiency with which services are provided

6.2 In accordance with LCCG's Strategic Plan, when procuring services, LCCG will aim to ensure that Leeds will be a healthy and caring city for all ages where people who are the poorest improve their health the fastest.

6.3 LCCG is required and committed to:

- acting in a transparent way, including maintaining suitable records of key decisions relating to procurement, sharing information on future procurement strategies, and the use of sufficient and appropriate advertising of tenders.
- ensuring that procurement processes are proportionate to the value, complexity and risk of the services to be procured.
- treating providers equally and in a non-discriminatory way by not treating a single provider, or type of provider, more favourably than any other provider in particular on the basis of ownership.

6.4 LCCG is required and committed to commissioning services from the providers that:

- are most capable of delivering to the quality and efficiency required
- provide the optimum value for money by securing the best possible outcomes for the resources that are available.

7. Conflicts of Interest.

7.1 It is LCCG's duty to have in place at all times appropriate measures to effectively prevent, identify and remedy any conflicts of interest arising in the conduct of procurement procedures to avoid any distortion of competition and to ensure the equal treatment of all providers.

- 7.2 For all procurement projects and decision making events, all members present and involved must declare any interest they may have or which may be perceived to compromise their impartiality and independence in relation to the topic being discussed.
- 7.3 Potential conflicts of interest will be managed appropriately at all times to protect the integrity of LCCG's contract award decision making processes and the wider NHS commissioning system. This is to ensure public confidence and to protect LCCG and GP practices from any perceptions of wrong-doing and the risk of associated legal challenge.
- 7.4. General arrangements for managing conflicts of interest are set out in LCCG's Constitution. This section describes additional safeguards that LCCG will put in place when commissioning services that could potentially be provided by GP practices and/or other system partners.
- 7.5. Where any practice or system partner representative on a decision-making body has a material interest in a procurement decision, appropriate measures will be put in place to ensure that the decision making process remains robust, which might include excluding those practice representatives from the decision-making process.
- 7.6 When contracting for integrated care models LCCG will take reasonable steps to ensure that competition is not distorted by allowing system partners who may tender for contracts access to information not available to other potential bidders and/or providers.

8. Compliance with Regulations

- 8.1 LCCG and/or its agents will comply with relevant EU and UK legislation and LCCG's Detailed Financial Policies, Budgetary Control framework and Operational Scheme of Delegation for the procurement of all goods services and works, including healthcare services.
- 8.2 Unless PCR 2015 with regard to healthcare services is repealed at some point in the future, this legislation will remain in force even after the UK leaves the European Union, albeit with a number of changes reflecting practical impacts (eg removal of access to OJEU and providing a domestic equivalent called Find a Tender Service or FTS). LCCG will update this section of the policy once information on legislative changes is available.
- 8.3 National Health Service Act 2006 Section 14Z2 (Public Involvement and Consultation by Clinical Commissioning Groups) requires commissioners of healthcare services to involve patients and the public- directly or through representatives - in relation to service planning, development and consideration of service changes and decisions that affect the manner in which services are to be delivered or the range of services available.
- 8.4 The NHS Act 2006 empowers CCGs to commission healthcare services for local populations and set out the duties of CCGs .
- 8.5 Commissioners must comply with the PPCCR (regulations which were implemented pursuant to Section 75 of the Health and Social Care Act 2012) where objectives include patient experience, outcomes and improved efficiency. These regulations place requirements on commissioners to ensure that they adhere to good practice in relation to procurement, do not engage in anti-competitive behaviour and protect the right of patients to make choices about their healthcare.

8.6 Other legislation relevant to this procurement policy includes:

- Local Government Act 1999. If a CCG is co-commissioning with a Local Authority, Section 3(1) of this Act sets out a duty of consultation in respect of Local Authority functions.
- Competition Act 1998
- Public Services (Social Value) Act 2012. Commissioners are required to consider how the services they commission and procure might improve the economic, social and environmental well-being of the area.
- Equality Act 2010 - Section 149.
- Freedom of Information Act 2000 (**FOI Act**) - LCCG will comply with the requirements set out in the Freedom of Information Act 2000 at all times, and in particular, whilst conducting procurements. As part of this, information regarding individuals and organisations involved within the procurement process will be protected during all stages of the process. On commencement of the procurement process, LCCG will make potential bidders aware of the requirement for LCCG to comply with the FOI Act.

9. Procurement approach for sub-threshold contracts

9.1. For goods and services with the following aggregate values (on a contract term basis, not annualised) set out in PCR 2015 the following rules will apply in accordance with the Operational Scheme of Delegation (all thresholds are inclusive of VAT):

9.2 Health & Social Care Services

- Under £10,000 – no quotations required
- Between £10,000 and £100,000 a minimum of 2 written quotations must be obtained
- Between £100,001 and £663,539 a minimum of 3 written quotations must be obtained unless it can be evidenced that there are less than 3 capable providers, in which case a waiver to the procurement process must be obtained from the Associate Director of Partner Relationship Management
- For procurements of £663,540 and above the opportunity must be advertised on the UK e-notification service called Find a Tender service (FTS) and competitive tenders must be sought or called off an authorised framework agreement unless the Accountable Officer and Chief Finance Officer have approved a waiver to the procurement process. The form of tender is dependent on the precise goods and services involved. Therefore, for all tenders of healthcare services contracts of £663,540 and above the advice of the Associate Director of Partner Relationship Management must be sought and commissioning managers must ensure that they allow sufficient time to conduct an appropriate process.
- Reference to “Health & Social Care Services” includes those services included in Schedule 3 of PCR 2015 which may not be directly related to healthcare but for which the Light Touch Regime also applies.

9.3 Non Healthcare Goods and Services

- Under £10,000 no quotations required

- Between £10,000 and £100,000 a minimum of 2 written quotations must be obtained
- Between £100,001 and £213,476 a minimum of 3 written quotations must be obtained unless it can be evidenced that there are less than 3 capable providers in which case a waiver to the procurement process must be obtained from the Associate Director of Partner Relationship Management
- For procurements of £213,477 and above the opportunity must be advertised in FTS and competitive tenders must be sought or called off an authorised framework agreement unless the Accountable Officer and Chief Finance Officer have approved a waiver to the procurement process. The form of tender is dependent on the precise goods and services involved. Therefore, for all tenders of non-healthcare services of £213,477 and above the advice of the Associate Director of Partner Relationship Management must be sought and commissioning managers must ensure that they allow sufficient time to conduct an appropriate process.

9.4 Where open quotations are sought then the opportunity should be published on Contracts Finder (or its legacy system) in addition to other relevant portals or sites for contracts over the value of £25,000. This does not apply where RFQs have been sent to specific providers in accordance with paragraph 9.2 and 9.3.

9.5 There is no required format for quotations but all contracts must be subject to NHS Standard Terms and Conditions or the NHS Standard Contract, as appropriate, which must be stated with the specification and, although the quotations do not need to be in a specific format, a Request For Quotation (RFQ) template is available from the Finance & Contracting Department to ensure consistency. The only exception is where a framework agreement has been used in which case the terms and conditions pertaining to that framework will apply.

10. Circumstances where competitive tenders or quotations may not be required

10.1 In limited circumstances the need to request quotations or competitive tenders may be waived. The decision to do so must be made in advance of awarding the contract and a waiver request form completed and authorised, having followed the Operational Scheme of Delegation accordingly and in good time. Formal tendering procedures may be waived in the following circumstances:

- 10.1.1 in very exceptional circumstances where the Accountable Officer and Chief Finance Officer decide that formal tendering procedures would not be practicable (for example the estimated expenditure or income would not warrant formal tendering procedures or that an alternative approach would realise better outcomes to the system as a whole). In this case the circumstances must be detailed in a Waiver to the Procurement Policy/Decision Record. All Waivers to the Procurement Policy must be reported to the Audit Committee;
- 10.1.2 where the requirement is covered by an existing contract;
- 10.1.3 where national or local framework agreements are in place;
- 10.1.4 where a consortium arrangement is in place and a lead organisation has been appointed to carry out tendering activity on behalf of the consortium members;

- 10.1.5 where the timescale genuinely precludes competitive tendering. Failure to plan the work properly would not be regarded as a justification for a waiver to the procurement process but a local or national emergency (such as a pandemic) may necessitate the suspension of competitive procurement. In the case of the latter, if a Procurement Policy Notice (PPN) has been issued by Central Government then those instructions should take precedence over this Procurement Policy. In this case a Decision Record must be agreed with the Associate Director of Partner Relationship Management;
- 10.1.6 where specialist expertise or technology is required and is available from only one source, where this is evidenced by market engagement;
- 10.1.7 when the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate or involve duplicate cost; or
- 10.1.8 there is a clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering and the risk of any potential challenge. This reason may be used only during the 3 years following the conclusion of the original contract.
- 10.2 The waiving of competitive tendering procedures should not be used as a means to avoid competition or for administrative convenience or to award further work to a provider originally appointed through a competitive procedure (unless in the case of 10.1.8 above).

11. Contract Extensions and Variations to contracts during the contract term.

- 11.1 In accordance with Regulation 72 of PCR 2015, contracts over the relevant financial threshold may only be varied in the following circumstances:
- 11.1.1 where modifications have been provided for in the original procurement documents and/or would not alter the nature of the contract.
- 11.1.2 where the modification is both less than 10% of the original value of the contract and less than the relevant applicable threshold (Health & Social Care Services - £663,540 Other services - £213,477) and does not change the nature of the contract.
- 11.1.3 for additional services or supplies by the original contractor that have become necessary and were not included in the initial procurement and where a change of contractor:
- cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installation procured under the initial procurement, or
 - would cause significant inconvenience or substantial duplication of costs for the NHS LCCG,

In the above circumstances any increase in price must not exceed 50% of

the value of the original contract

11.1.4 where all of the following conditions are fulfilled:

- the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen (including, for instance, a pandemic or other emergency);
- the modification does not alter the overall nature of the contract;
- any increase in price does not exceed 50% of the value of the original contract

11.1.5 Where a new contractor replaces the original contractor e.g. in the case of a merger or takeover.

11.2 Modifications to contracts over the relevant threshold may also require completion of the waiver process and/or the publication of a Contract Modification Notice or a Voluntary Ex-Ante Transparency (VEAT) notice in FTS prior to the award. The advice of the Associate Director of Contracting & Procurement must be sought in these circumstances.

12. Partnership Agreements with Local Authorities

12.1 National Policy and local strategies both promote the increased integration of health and social care services however new models of contracting for care, including integrated care providers, currently still need to be procured in the same way as lead provider contracts.

Alternatively several other mechanisms exist to support joint commissioning of services across health and social care which do not require a competitive procurement process such as:

12.2 Section 75 (S75) Partnership Agreements

Section 75 of the NHS Act 2006 sets out a number of powers that support partnership and joint commissioning across health and social care. Key provisions of the Act allow NHS Bodies and Local Authorities to establish pooled budgets, and also allow for the delegation of the exercise of certain statutory functions from one partner to the other through a lead or joint commissioning arrangement. Section 75 powers may be used where partnership arrangements are likely to lead to improvements in the delivery of the relevant NHS and Local Authority functions. Although the exercise of functions can be delegated, each partner ultimately remains liable for the discharge of its own statutory functions.

12.3 Section 256 (S256) Agreements

S256 Agreements were established through the NHS Act 2006 and allow NHS commissioners to make payments to Local Authorities towards any Local Authority expenditure which in the opinion of LCCG would have an effect on the health of individuals, or which would have an impact on, or be affected by, NHS commissioned services, or are otherwise connected with other NHS functions. They are payments to a Local Authority to support specific services, projects, capital costs, or other local authority activities which have a benefit for the NHS. However these agreements do not involve the transfer of any statutory health functions to the Local Authority.

S256 Agreements are not subject to formal procurement processes, as LCCG is not directly commissioning or contracting for goods or services in this instance. However S256 agreements must comply with any relevant Directions published by the Secretary of State. Section 256 specifies two prescribed documents to be completed when making the agreement:

- (i) A Certificate of Expenditure (annual voucher)
- (ii) Memorandum of Agreement

12.4 Better Care Fund

The Better Care Fund (BCF) is a nationally mandated pooled budget across health and social care. The BCF is intended to promote further integration and support delivery of improved outcomes across health and social care to achieve the National Conditions and Local Objectives. It is a requirement of the BCF that LCCG and the Council establish a pooled fund for this purpose in accordance with Section 75 of the NHS Act 2006.

Leeds City Council and LCCG currently use a Partnership Agreement relating to the commissioning of health and social care funding. The Partners have entered into the Agreement in exercise of the powers referred to in Section 75 of the NHS Act 2006 and/or Section 13(2) and 14(3) of the NHS Act 2006 as applicable.

LCCG will ensure it adheres to any current and updated National Policy and Guidance on the Better Care Fund or its replacement.

13. Other contracting models that do not require competitive tenders

13.1 Spot Purchasing

From time to time there will be the need to spot purchase contracts for particular individual patient needs or for urgency of placements requirements at various times. At these times, a competitive process may be waived.

It will be expected that these contracts will undergo best value reviews to ensure that LCCG is getting value from the contract. Value for money should be assessed by the manager with responsibility for signing off the spot purchasing agreement or individual service agreement, and then reviewed annually.

Sign off of spot purchase agreements should follow the Operational Scheme of Delegation. In all cases LCCG should ensure that the provider is fit for purpose to provide the particular service.

13.2 Framework Agreements

Framework agreements are pre-tendered agreements which are established in compliance with PCR2015 and which, once established, can be used by LCCG to purchase certain products and/or services without the need to carry out a further full procurement process, irrespective of the value.

A framework can be established:

- By LCCG for its own use
- By any other CCG, Contracting Authority or central purchasing body.

Various existing frameworks are available for LCCG to use such as those operated by the Crown Commercial Service (CCS) or NHS Shared Business Services (SBS) to purchase

goods or services without a tender, subject only to the terms of engagement of the relevant operator of the framework in question (which may permit direct awards, or otherwise require mini-competitions to be run). Each framework will have its own ordering process to follow but the timescales and transaction costs are usually far lower than running a full procurement. The terms and conditions applicable to any subsequent call-off contract are defined by the particular framework agreement and may not be compatible with the NHS standard contract and therefore advice must be sought from the framework owner prior to use.

13.3 Any Qualified Provider (AQP)

AQP lists established pursuant to PPCCR describes an approach for contracting for services whereby:

- Providers qualify and register to provide services via an assurance process that tests providers' fitness to offer NHS-funded services.
- The CCG sets local pathways and referral protocols which providers must accept
- Referring clinicians offer patients a choice of qualified 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.

With the AQP model, for a prescribed range of services, any provider that meets criteria for entering a market can compete for business within that market. Under AQP there are no guarantees of volume or payment, and competition is encouraged within a range of services rather than for sole provision of them.

The AQP model promotes choice and contestability, and sustained competition on the basis of quality rather than cost. A service that is contracted through the AQP model, pursuant to PPCCR, if deemed suitable to the particular service, may not need to be tendered using the full EU process although it must be advertised appropriately and potential service providers will need to be qualified/accredited, accordingly. LCCG will consider PCR 2015 in relation to AQP contracts and will have due regard at all times to the EU Treaty principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality when applying the AQP Procedure.

13.4 Grants

Where third sector organisations provide healthcare services, LCCG may elect to provide funding through a grant agreement. Use of grants can be considered where:

- LCCG is only making a partial contribution to the costs of a service (e.g. where a service is also supported by charitable donations or other funding streams)
- Funding is provided for development or strategic purposes
- The provider market is not well developed
- The services are innovative or experimental
- Where funding is non-contestable (i.e. only one provider)

Grants will not be used to avoid competition where it is appropriate for a formal procurement to be undertaken.

LCCG will follow NHS England Grant Agreement Guidance on the use of the draft model Grant Funding Agreement although the model grant agreement is non-mandatory and is for local adaptation as required.

14. Third sector providers and support for campaigns

- 14.1 LCCG will support the Government's attempts to increase activity in third sector providers and small and medium enterprises. LCCG will ensure that no organisation is discriminated against. LCCG will act transparently and not request disproportionately demanding information, therefore reducing the barriers to entry. Commissioning Managers should refer to the Commissioning Code of Practice. The code provides a framework and promotes best practice in Commissioning which should be shared between all commissioners and all sectors in Leeds.
- 14.2 LCCG will work in partnership with Leeds City Council and Third Sector Leeds to strengthen relationships between the public and third sectors to deliver the best outcomes for the people of Leeds in accordance with the Compact for Leeds.
- 14.3 Where LCCG wishes to support a local or national campaign (e.g. through the purchase of campaign media) the Operational Scheme of Delegation will apply in the same way as for the purchase of goods and services. The authorising Budget Holder must satisfy themselves that the campaign is compatible with LCCG commissioning strategy and that it conforms to the relevant NHS policies (e.g. in terms of branding, information governance etc.)

15. Contract Form

- 15.1 LCCG will use all reasonable endeavours to ensure that the appropriate **NHS Standard Contract** will be used for all contracts. Where a framework agreement has been used the terms and conditions of contract will usually be those of the specific framework.
- 15.2 In exceptional circumstances, such as where a joint contracting arrangement is led by the local authority, LCCG may agree to be party to a different form of contract.
- 15.3 LCCG will ensure that a standard Grant Agreement document will be used to record the provision of grants to third parties which will contain the provisions upon which the grant is made.

16. Pilot Projects

- 16.1 Pilot Projects may be commenced in circumstances where clinical outcomes are not known or when outputs cannot be predicted. Pilot projects must comply with EU and UK procurement regulations.

17. Sustainable Procurement

- 17.1 LCCG recognises the impact of its purchasing and procurement decisions on the regional economy and the positive contribution it can make to economic and social regeneration.
- 17.2 Wherever it is possible, and does not contradict or contravene LCCG's procurement principles or applicable legislation and guidance, LCCG will work to develop and support a sustainable local economy and health economy.

18. Consultancy expenditure/Interim Labour

- 18.1 Approval to engage an interim manager, consultant or consultancy company for any reason must be obtained in advance in accordance with Appendix 1 of the LCCG

Budgetary Control Framework.

18.2 In addition to 18.1 LCCG is expected to secure advance approval from NHS England before engaging or continuing to employ off-payroll staff (including consultancy staff) who meet the following criteria:

- Cost greater than £600 per day (excluding VAT and expenses)
- Are engaged for a period greater than six months; or
- Are in roles of significant influence (e.g. Accountable Officers and Directors).

19. Primary Care Contracts

19.1 LCCG will comply with the Primary Medical Care Policy and Guidance published by NHS England with regard to the procurement and award of primary care contracts; in particular in relation to whether a competitive process is required.

19.2 Where any practice representative on a decision-making body has a material interest in a procurement decision, those practice representatives will be excluded from the decision-making process. This includes where all practice representatives have a material interest, for example where LCCG is commissioning services on a single tender basis from all GP Practices in the area.

20. Record Keeping and Register of Procurement Decisions

20.1 In accordance with the PPCCR and PCR 2015 about record keeping LCCG will:

- publish details of all contracts they award (PPCCR - Reg 9(1): PCR 2015 – Reg 84) via Contracts Finder and/or FTS as appropriate
- record how any conflicts of interest have been managed (PPCCR - Reg 6(2): PCR 2015 – Reg 24); and
- maintain details of how a contract award complies with their duties relating to effectiveness, efficiency and improvement in the quality of services and the delivery of services in an integrated way in the National Health Service Act 2006 (PPCCR - Reg3(5)).

20.2 LCCG will maintain a Register of Procurement Decisions taken, either for the procurement of a new service, any extension or material variation of a current contract. This will include;

- The details of the decision
- Who was involved in making the decision
- A summary of any conflicts of interest in relation to the decision and how this was managed by the NHS LCCG; and
- The award decision taken

20.3 The register of procurement decisions will be held and maintained by the Head of Corporate Governance & Risk and will include a list of all current and future procurements. Decisions will be added to the register as quickly as possible after they are made.

20.4 The Register of Procurement Decisions will be made available to the public by placing it on LCCG external website.

- 20.5 A Contracts Register will be maintained centrally by the Contracting Department as well as a copy of all LCCG contracts.

21. Use of Information Technology

- 21.1 LCCG will require providers of procurement support to offer appropriate information technology systems to administer the procurement process – such as e-tendering and e-evaluation systems. These are intended to assist in streamlining LCCG procurement processes whilst at the same time providing a robust audit trail.

22. Decommissioning Services

- 22.1 The need to decommission contracts can arise through termination of a contract due to performance against the contract not delivering the expected outcomes, expiry of a contract and/or a commissioning decision that the contracted services are no longer required. Where services are decommissioned, LCCG will ensure where necessary that contingency plans are developed to maintain patient care. Where decommissioning involves Human Resource issues, such as TUPE issues, then providers will be expected to cooperate and be involved in discussions to deal with such issues.

23. Transfer of Undertakings and Protection of Employment Regulations (TUPE)

- 23.1 These regulations apply when there are transfers of staff from one legal entity to another as a consequence of a change in employer. This is a complex area of law which is continually evolving. LCCG will follow the relevant Government guidance such as the *Cabinet Office Statement of Practice (COSOP) Staff Transfers in the Public Sector January 2000 (Revised December 2013)* (Cabinet Office, 2013).
- 23.2 It is the position of LCCG to advise potential bidders that whilst not categorically stating TUPE will apply, it is recommended that they assume TUPE will apply when preparing their bids, and ensure that adequate time is built into procurement timelines where it is anticipated that TUPE may apply.

24. Complaints and Dispute Procedure

- 24.1 LCCG's approach to contestability means that it is likely to pursue a wide range of competitive procurements to secure new and existing services.
- 24.2 LCCG will utilise its dispute resolution processes to address and resolve any complaint received from either bidders/contractors or a member of the public.

25. Training

- 25.1 All LCCG staff and others working with LCCG will need to be aware of this policy and its implications. It is not intended that staff generally will develop procurement expertise, but they will need to know when and how to seek further support.
- 25.2 All LCCG Procurement & Contracting staff should be appropriately qualified. LCCG will provide appropriate training to enable Procurement & Contracting staff to undertake their duties in accordance with the Regulations and recognised best practice.

- 25.3 All commissioning staff throughout LCCG should have sufficient knowledge about procurement to know when to seek help when they encounter related issues; they must also be able to give clear and consistent messages to providers and potential providers about NHS LCCG's procurement intentions in relation to individual service developments.

26. Monitoring Compliance with this Policy

- 26.1 This Policy will be reviewed every three years.
- 26.2 In addition it will be kept under informal review by the Associate Director of Partner Relationship Management to ensure that changes can be made and approved rapidly following any further developments or the publication of new or updated regulations and/or guidance.
- 26.3 Effectiveness in ensuring that all procurements comply with this Policy will primarily be achieved through review by the CFO.