Procurement Policy

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Appendices

Policy Statement

Newham CCG procurement will be compliant with prevailing procurement regulations and in proportion to risk and will be used to support clinical priorities, health and well-being outcomes and wider CCG objectives.

1. INTRODUCTION

1.1 Procurement is central to driving quality and value. It describes a whole life-cycle process of acquisition of goods, works and services; it starts with identification of need and ends with the end of a contract or the end of useful life of an asset, including performance management. Procurement encompasses everything from repeat, low-value orders through to complex healthcare service solutions developed through partnership arrangements.

1.2 There are a range of procurement approaches available which include working with existing providers, non-competitive and competitive tenders, multi-provider models such as Any Qualified Provider (AQP) and frameworks.

1.3 Newham CCG's approach to procurement is to operate within legal and policy frameworks and actively to use procurement as one of the system management tools available to strengthen commissioning outcomes. It can do this by:

- Increasing market capacity and meeting CCG demand requirements;
- Using competitive tension to facilitate improvements in choice, quality, efficiency, and access and responsiveness;
- Stimulating innovation.

2. ASSOCIATED POLICIES AND PROCEDURES

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

- Newham Clinical Commissioning Group Constitution
- Code of Business Conduct
- Newham Standing Orders and Prime Financial Instruction
- WELC CCG Collaborative agreement

2.2 Other legislation and guidance affecting procurement include:

- Procurement Guide for commissioners of NHS-funded services (DH, 30 July 2010)
- The Principles and Rules for Cooperation and Competition (PRCC, July 2010)
- Framework for Managing Choice, Co–Operation and Competition (May 2008)
- The Equality Act 2010 (section 149)
- The Public Services (Social Value) Act 2012
- Procurement of healthcare (clinical) services, briefings 1-4 (NHS Commissioning Board, September 2012).
- The NHS (Procurement, Patient Choice and Competition) Regulations 2013 which support interpretation of section 75 of the Health and Social Care Act 2012 (11.03.13)
- Managing conflicts of interests: Guidance for clinical commissioning groups (NHS England, March 2013)
- Section 11 of the Health and Social Care Act, 2001 requires commissioners of healthcare services to ensure patients and their representatives are involved in and are consulted on planning of healthcare services
- Section 242 of the Health and Social Care Act, 2006 provides that commissioners of healthcare services have, in relation to health services for which they are responsible, a legal duty to consult patients and the public, directly or through representatives on service planning, the development and consideration of service changes and decisions that affect service operation.

- Section 75 of the Health and Social Care Act and Section 75 of the Health and Social Care Act and Statutory Instrument National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 places requirements on commissioners to ensure that they adhere to good practice in relation to procurement, do not engage in anti-competitive behaviour and promote the right of patients to make choices about their healthcare.
- Monitor Briefing Note – Substantive Guidance on the Procurement, Patient Choice and Competition Regulations, December 2013.

3. AIMS AND OBJECTIVES

3.1 To set out the approach for facilitating open and fair, robust and enforceable contracts that provide value for money and deliver required quality standards and outcomes, with effective performance measures and contractual levers.

3.2 To describe the transparent and proportional process by which the CCG will determine whether health and social services are to be commissioned through existing contracts with providers, competitive tenders, via an AQP or framework approach or through a non-competitive process.

3.3 To enable early determination of whether, and how, services are to be opened to the market, to facilitate open and fair discussion with existing and potential providers and thereby to facilitate good working relationships.

3.4 To set out how we will meet statutory procurement requirements primarily the National Health Service (Procurement, Patient Choice and Competition) Regulations 2013

3.5 To enable Newham CCG to demonstrate compliance with the principles of good procurement practice:

- Transparency
- Proportionality
- Non-discrimination
- Equality of treatment

4. SCOPE OF THE POLICY

4.1 As far as it is relevant, this Policy applies to all Newham CCG procurements (clinical and non-clinical). However, it is particularly relevant to procurement of goods and services that support the delivery of healthcare and certain sections relate only to procurement of health and social services.

4.2 This Policy must be followed by all Newham CCG employees and staff on temporary or honorary contracts, representatives acting on behalf of Newham CCG including staff from member practices, and any external organisations acting on behalf of the CCG including other CCGs and the North East London Commissioning Support Unit (NELCSU).

5. ACCOUNTABILITIES & RESPONSIBILITIES

5.1 Lead Manager

5.1.1 Overall accountability for procurement rests with the Chief Financial Officer.

5.2 Procurement support

5.2.1 Where it is required and considered appropriate procurement support will be provided by the North East London Commissioning Support Unit and in the case of collaborative projects by another CCG. The CCG will have systems in place to assure itself that the NELCSU's or relevant CCG's business processes are robust and enable the CCG to meet its duties in relation to procurement.

5.3 Authority

5.3.1 The CCG will remain directly responsible for:

- Approving procurement route;
- Signing off specifications and evaluation criteria;
- Signing off decisions on which providers to invite to tender;
- Making final decisions on the selection of the provider.

5.4 Arrangements for delegation of authority to officers are set out in the relevant Standing Financial Instructions. In the event of any discrepancy between this Procurement Policy and the SOs/SFIs, the SOs/SFIs will take precedence.

6. GUIDING PRINCIPLES

6.1 When procuring health care services, the CCG is required to act with a view to:

- Securing the needs of the people who use the services,
- Improving the quality and outcomes of the services, and
- Improving efficiency in the provision of the services

6.2 The CCG will build on the learning and value gained from involving patients in previous procurements (such as the Urgent Care Centre), for all future procurements and service redesign exercises. The CCG is required and committed to:

- Seek the views of patients and carers at the start of the planning and redesign stages for new services and service changes. This would include the design of the service model and the requirements made on providers as described in the service specification
- Involve patients and carers during the procurement phase, either in the design of questions in the tender documentation, during the evaluation of bidder responses or in the bidder interview stage
- Engaging with local Newham patient groups such as Health Watch, the Patient Forum, Community Reference Group and the Health and Social Care Network to support the activities described above, see Section 10.

6.3 The CCG is required and committed to:

- Act in a transparent and proportionate way
- 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

6.4 The CCG is required and committed to procuring services from one or more providers that:

- Are most capable of meeting the needs, quality and efficiency required
- Provide the best value for money in doing so
- Demonstrate high quality patient centred outcomes

6.5 The CCG is required and committed to act with a view to improving quality and efficiency in the provision of services, the means of doing so will include:

- The services being provided in an integrated way (including with other health care services, health related services, or social care services)
- Enabling providers to compete to provide the services
- Allowing patients a choice of provider of the services
- Ensuring procurement decisions support the integration of services and pathways in line with the CCG's objective of developing integrated care. This includes taking into account integration of services when making decisions on which procurement route is the most appropriate for that service.

Whilst ensuring that quality, access and efficiency are not adversely affected.

6.6 The CCG is committed to act with a view to understanding the impact of its procurement and contracting actions on provider market(s), particularly in respect of the development and sustainability of existing providers as well as the future maturity and plurality of providers within such market(s).

6.7 Potential conflicts of interest will be managed appropriately to protect the integrity of the CCG's contract award decision making processes and the wider NHS commissioning system, see Section 8.

7. PUBLIC PROCUREMENT OBLIGATIONS

7.1 The Public Contracts Regulations 2006 which transpose European Directives place legal requirements and procedures for awarding contracts above a certain threshold amount.

7.2 Within the EU Procurement rules, services contracts are currently divided into two categories:

- Part A - to which the full regime of EU rules apply; and
- Part B - where only some of the EU procurement rules apply.

7.3 "Health and social services" are categorised as a "Part B" service. There is a specific list of services that qualify as "Health and social services" and these are, in broad terms, services delivered by healthcare professionals (See Appendix A).

7.4 There is a statutory requirement to follow the full EU Procurement rules, where legally-enforceable contracts are to be awarded, for supply of goods and/or services with an estimated full-life value above the nationally defined value, see Appendix B, other than those specifically listed as Part B services.

7.5 Where legally-enforceable contracts are to be awarded for Part B services with estimated full-life value above the nationally defined value, see Appendix B, there is a limited statutory requirement to apply some of the EU procurement rules.

7.6 The EU Treaty principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality apply to all procurements, whether they are for Part A or Part B services. The CCG's approach to fulfilling these requirements is described in section 15.

7.7 There is no statutory requirement to tender Health and Social services and no general policy requirement for Health and Social services to be subject to formal procurement processes. The Tendering and Contracting sections of Standing Orders and Standing Financial Instructions apply where the CCG elects to invite competitive and non-competitive bids for the supply of Health and Social services.

7.8 EU Procurement rules changed in January 2014 when the European Parliament passed the EU Directive on Procurement 2013. The key change is the abolition of the current Part A/B services distinction, leading to a requirement for all services above a €750,000 threshold to advertise in the *OJEU*. Failure to comply with this, such as in case of a direct award, could trigger the application of the public procurement remedies regime with the risk of the contract being declared ineffective. Newham CCG's Procurement Policy will be updated once the UK Government enacts this in UK law, probably in September to December 2014.

8. CONFLICTS OF INTEREST

8.1 Managing potential conflicts of interest appropriately is needed to protect the integrity of the wider NHS commissioning system and protect CCGs and GP practices from any perceptions of wrong-doing.[1]

8.2 The CCG has agreed a policy on conflicts of interest arising from the operation of the group's Board, Committees, Transformation Programmes and working groups. The aim of this policy is to protect both the organisation and the individuals involved from any appearance of impropriety and demonstrate transparency to the public and other interested parties. This section describes additional safeguards that Newham CCG will put in place when commissioning services that could potentially be provided by GP practices.

8.3 The Board of NHS Newham Clinical Commissioning Group have ultimate responsibility for all actions carried out by staff and committees throughout the clinical commissioning group's activities. This responsibility includes the stewardship of significant public resources and the commissioning of healthcare to the community. The board will therefore ensure the organisation inspires confidence and trust amongst its patients, staff, partners, funders and suppliers by demonstrating integrity and avoiding any potential or real situations of undue bias or influence in the decision-making of the Clinical Commissioning Group (CCG).

8.4 This conflict of interest policy respects the seven principles of public life promulgated by the Nolan Committee. The seven principles are:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership.

8.5 The CCG has a legal obligation in accordance with its constitution and terms of establishment created by the NHS Commissioning Board, and to avoid situations where there may be a potential conflict of interest. The CCG's Conflict of Interest Policy applies to all employees and appointed individuals who are working for NHS Newham Clinical Commissioning Group and members of the CCG Board, Committees and Transformation Programmes and any other decision making groups.

[1] Code of Conduct: Managing conflicts of interest where GP practices are potential providers of CCG-commissioned services.

8.6 Anyone contracted to provide services or facilities directly to the Clinical Commissioning Group will be subject to the same provisions of this policy in relation to managing conflicts of interests. This requirement will be set out in the contract for their services.

8.7 The Conflict of Interest policy supports a culture of openness and transparency in business transactions. All employees and appointees of NHS Newham Clinical Commissioning Group are required to:

- Ensure that the interests of patients remain paramount at all times be impartial and honest in the conduct of their official business
- Use public funds entrusted to them to the best advantage of the service, always ensuring value for money
- Ensure that they do not abuse their official position for personal gain or to the benefit of their family or friends
- Ensure that they do not seek to advantage or further, private or other interests, in the course of their official duties.

8.8 NHS Newham Clinical Commissioning Group will view instances where this policy is not followed as serious and may take disciplinary action against individuals as appropriate. It is the responsibility of all staff employed or appointed by the NHS Newham Clinical Commissioning Group and those serving in a formal capacity to ensure that they are not placed in a position which creates a potential conflict between their private interests and their CCG duties.

8.9 NHS Newham Clinical Commissioning Group needs to be aware of all situations where an individual has interests outside of his / her Contract of Employment or other involvement with the CCG, where that interest has potential to result in a conflict of interest between the individual's private interests and their CCG duties. All decision-makers must therefore declare relevant and material interests to the NHS Newham Clinical Commissioning Group upon appointment, when a new conflict of interest arises, or upon becoming aware that the CCG has entered into or proposes entering into a contract in which they or any person connected with them has any financial interest, either direct or indirect.

8.10 All persons appointed by the CCG are required to declare any relevant and material interests, and any gifts or hospitality offered and received in connection with their role in the clinical commissioning group, these are detailed further in the Conflict of Interest Policy. Where individuals are unsure whether a situation falling outside of the above categories may give potential for a conflict of interest they should seek advice from the Chief Officer. Managers of NHS Newham Clinical Commissioning Group must ensure members of staff are aware of the policy and process to be followed.

8.11 The template included at Appendix D will be completed as part of the planning process for all services that may potentially be provided by GP practices (either as a successful bidder in a competitive procurement process, as one of several qualified providers through an AQP approach, or via a non-competitive process from GP practices). The completed templates will be used to provide assurance to the CCG Audit Committee that proposed services meet local needs and priorities and that robust processes have been followed in selecting the appropriate procurement route and in addressing potential conflicts. It is intended that completed templates will be made publicly available via the CCG website.

8.12 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 (but not discussion about the proposed decision). This includes where all practice representatives have a material interest, for example where the CCG is considering commissioning services on a single tender basis from all GP practices in the area. Rules relating to quoracy in these and other circumstances are set out in the CCG constitution.

8.13 Details of all contracts, including the value of the contracts, will be published on the CCG website shortly after contracts are signed.

9. PROCUREMENT PLANNING

9.1 A procurement plan will be maintained that will list all current and future procurements. The procurement plan will be reviewed on a regular basis taking into account local and national priorities; the CCG's commissioning intentions; requirements of "Everyone Counts" (and subsequent iterations); and nationally mandated procurements. In addition it will take into account the impact of completed and on-going procurements.

9.2 The plan will highlight the priority, timescale, risk and resource requirement for each potential procurement. Not every priority on the procurement plan will result in procurement, but the plan indicates the CCG's intention to review the service or activity which may result in procurement.

9.3 The plan will be developed as a key element to provide communication between the CCG, its membership and potential providers. Through transparent and open processes the CCG will actively encourage provider engagement.

9.4 Procurement Governance

The CCG's Procurement Group will undertake procurement planning and have oversight of all procurement decisions based on advice from the CCG's Commissioning Committees and Transformation Programme Groups. These decisions will be made based on the information completed in the Procurement Options Brief, see form in Appendix C, which will be completed by the procurement project lead and clinical lead.

9.5 All Procurement decisions will be approved and minuted by the CCG Procurement Group which reports to the Newham CCG Board.

10. PATIENT ENGAGEMENT IN PROCUREMENT

10.1 Newham CCG is committed to putting patient engagement at the heart of the procurement process and to build on the learning and value from previous successful procurement such as the Urgent Care Centre. We value patients as equal partners and will put in place processes in place to ensure this happens. The CCG ambition is to embed patient engagement across the commissioning cycle.

10.2 Prior to designing any procurement process we are committed to working with patients and Healthwatch Newham to determine the extent and the best way to involve patients; this can include any of the following:

- Evaluation Panel Member
- Input into service specifications
- Patient feedback on current or proposed pathway particularly service redesign through focus groups, questionnaires or other methodologies
- Interview Panel Member with equal voting rights
- Development of patient experience KPIs and indicators in contracts
- Development of engagement offer in monitoring of contracts

10.3 The CCG will also use different engagement structures to involve patients and the public, this can include:

- Community Reference Group
- Patient Forum
- Healthwatch Newham
- Patient Participation Groups
- Service Users

10.4 The CCG will also strive to take into account guidelines issued by the Patient and Public Voice team at NHS England on involving patient representatives in the procurement process as well as the development of a PPE Procurement Charter by patient and public groups in collaboration with the CCG.

10.5 The extent of patient engagement will be proportionate to the size and scale of the procurement or service redesign. Larger procurements may require multiple points of engagement and longer timescales to complete engagement exercises.

11. PROCUREMENT APPROACH FOR NON-CLINICAL SUPPLY AND SERVICE CONTRACTS

11.1. The CCG and/or its agents will follow EU public procurement rules and Standing Orders/Standing Financial Instructions as appropriate.

12. PROCUREMENT APPROACH FOR HEALTHCARE AND SOCIAL SERVICE CONTRACTS

12.1 The emerging Monitor guidance on Choice, Competition and Conflicts of Interest which for the most part replace the previous Department of Health Principles and Rules for Cooperation and Competition, provide a set of rules that govern system management within the NHS. They recognise that the service is no longer a system based on tight controls of the means of provision, but largely an open system with a defined purchaser/ provider split, which commissioners need actively to manage.

12.2 Newham CCG will conduct health and social service procurements, as one part of market management and development, according to priorities established in its strategic plans.

12.3 Decisions of whether to tender will be driven by the need to commission services from the providers who are best placed to meet the needs of our patients and population.

12.4 The decision-making process will vary depending on whether or not the service is an existing one, new or significantly changed.

12.5 **Existing Services**

12.5.1 For an existing service (i.e. one that is not new or significantly changed) that is not at the end of a fixed-term procured via competitive tender, where the service is fit for purpose, offers best value for money and continues to fit with the strategic direction of the CCG, the existing provider will normally be retained as long as it is appropriate to do so. The process is shown diagrammatically in Appendix E.

12.5.2 Where the provider of an existing service was selected for a fixed period via a competitive tender exercise and the fixed period (including any options for contract extension) is due to end, a new competitive tender exercise will normally be conducted to select the future provider of the service.

12.5.3 Where an existing service is provided by several providers, the CCG will consider whether there are advantages in continuing with several providers (or indeed increasing further the number of providers), or whether there are advantages in consolidation to a single service provider.

12.5.4 Procuring several providers or increasing the number of providers can be achieved either through use of a framework or through the use of the AQP model (see section 12.1). The practicability of implementation of the framework or AQP model will take account of:

- Value of improving choice and contestability;

- Level of market interest and capability;
- Complexity of accreditation requirements and associated cost;
- The appropriateness of the framework or AQP model to the service concerned
- Impact on increased service fragmentation and complexity of pathway choice
- Viability of service providers if multiple providers are awarded contracts

12.5.5 The requirement for consolidation into a single provider would be the default position when there are no requirements to increase choice and contestability. Additionally, a single provider would be desirable where there was a need for pathway integration with other providers and use of multiple providers would result in pathway inefficiencies.

12.6 New or significantly changed services

12.6.1 The CCG's approach to secure services will in overall terms be the following:

- To determine whether the service can be accommodated through existing contracts with providers through future variations to those contracts, assuming that this is possible without contravening procurement rules and guidance, and that quality, patient safety and value for money can be demonstrated.
- To determine whether there are demonstrable grounds to identify a specific provider or group of providers without competition, these include:
    - When the provider having full access to the patient's healthcare record is deemed essential or will beyond reasonable doubt demonstrably increase the quality or cost effectiveness of the service provided e.g. where a call and re-call system is required.
    - Where knowledge that can only be secured through real-time access to the patient record of other health problems will make a material difference to the choices made or reduce the likelihood of sub-optimal treatment or side effects occurring, or increase the consultation time because clinical information needs to be collected from the patient and hence reducing the quality of the patient experience, (see section 8.3).
    - When the provider or group of providers will provide higher levels of patient access or integration of services for the Newham population than alternative providers could.
    - Where the service is of minimal value (less than £20,000 pa)

In these cases the CCG will consider procuring on a non-competitive basis.

- Determine whether for technical reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded to only that

provider i.e. there is only one provider that can meet the CCG's requirements.

- Determine whether for reasons of extreme urgency, outside the control of the CCG, it is not possible to award a contract to another provider in the time available.
- Where there is a requirement to broaden the choice of provider available to patients then the CCG's approach where applicable and appropriate will be the AQP model (see section 12).
- If the AQP model is not appropriate, the service is not of minimal value, the CCG's expectation is that the service will normally be subject to competitive tender for a single or limited number of providers, but all such cases will be subject to a review of whether a competitive tender process is appropriate on the grounds of demonstrating best value, market maturity, maintaining competitive tension and complying with the EU procurement rules. Appendix F provides an indication of the aspects to be considered when deciding whether competitive tender is appropriate.

12.6.2 The proposed approach for New or Significantly changed Healthcare and Social services is shown in a flow diagram in Appendix E.

13. APPROACH TO MARKET

13.1 Any Qualified Provider

13.1.1 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 without constraint by a commissioner organisation. 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 will not be appropriate, for example where the number of providers needs to be constrained, e.g.
  - Where the level of activity can only support one provider;
  - Where clinical pathways dictate a restricted number of providers
- Value for money cannot be demonstrated without formal market testing (e.g. to determine the price the CCG will offer for provision of the services);
- Innovation is required from the market and cannot be achieved collaboratively;
- There is no effective method of selecting from amongst qualified providers for delivery of specific units of activity;
- Overall costs would be increased through multiple provider provision because of unavoidable duplication of resources.

13.1.2 The AQP model promotes choice and contestability, and sustained competition on the basis of quality rather than cost. Any service that is contracted through the AQP model does not need to be tendered, although it will be advertised if appropriate and potential service providers will need to be qualified.

13.1.3 A standard NHS contract amended as per the provision in 16.2, will be awarded to all providers that meet:

- Minimum standards of clinical care (implying qualification/accreditation requirement);
- The price the CCG will pay;
- Relevant regulatory standards.

13.1.4 The CCG will have regard at all times to the EU Treaty principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality when applying the AQP procedure.

13.2 Competitive Tendering

13.2.1 It is anticipated that an increasing number of services will be subject to competitive tendering in order to demonstrate the application of the principles of transparency, openness, equitability and obtaining and delivering value for money. Whilst there is no "checklist" that will definitively determine the appropriate use of competitive tendering, Appendix F provides an indication of the aspects to be considered when deciding whether competitive tender is appropriate.

13.3 Non-Competitive process

13.3.1 Competition may be waived in circumstances where the CCG is satisfied that the services to which the contract relates are capable of being provided only by that provider or there where service provider integration is paramount. In these circumstances the procedures set out within the CCG's Standing Orders and Standing Financial Instructions must be followed.

13.3.2 Where it is decided not to competitively tender for new services or where services are significantly changed, CCG Board approval must be obtained following any recommendation to follow this approach.

13.4 Provider Partnership Arrangements

13.4.1 Where collaboration and coordination is considered essential, for example in developing new integrated pathways, enabling sustainability of services, ensuring smooth patient handover, coordination etc. the CCG may wish to continue with existing "partnership" arrangements. These "Partnership" arrangements must be formalised using the appropriate contract form and must provide:

- Transparency particularly with provision of information sharing good and bad practice
- A contribution to service re-design
- Timely provision of information and performance reporting
- Evidence of improved patient experience year on year
- Evidence of value for money

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

13.4.3 For partnership services the CCG may choose to commission the service from a partner but may also choose to tender for provision of the service, for example where the partner cannot meet the service model requirements or costs cannot be agreed.

13.5 **Spot Purchasing**

13.5.1 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 the CCG is getting value from the contract. In all cases the CCG should ensure that the provider is fit for purpose to provide the particular service.

13.6 **Framework Agreements**

13.6.1 The CCG is able to use other public sector organisations framework agreements if a provision has been made in the framework agreement to allow this (that is the by the holder of the framework agreement, such as the Government Procurement Service). The EU rules state that framework agreements should be for no longer than four years in duration.

13.6.2 Where it is allowed for in the framework agreements there may be an option for running mini competitions. Here all providers on the framework who can meet requirements are invited to submit a bid, these are then evaluated and a contract awarded following the same processes as for tenders. Any contract awarded can run beyond the framework agreement period but the length of the contract extension must be reasonable.

13.7 **Grants**

13.7.1 In certain circumstances the CCG may elect to provide a grant payable to third sector organisations. However there should be no preferential treatment for third sector organisations. Use of grants can be considered where:

- Funding is provided for development or strategic purposes
- The provider market is not well developed
- Innovative or experimental services are being developed
- Funding is non-contestable (i.e. only one provider)

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

14. TENDERING PROCESS

14.1 If a decision is taken to pursue a competitive tender process, there are a range of further issues that will be taken into account in the design of the process to be followed; see appendix F, these are not considered in detail in this Policy but which include:

- Market analysis (e.g. structure, competition, capacity, interest);
- Tender routes;
- Procurement timescales;
- Affordability;
- Impact on service stability;
- Procurement resource, including responsibilities and accountabilities;
- Consultation and Engagement requirements;
- Outcome-based specifications;
- Existing related contractual arrangements;
- Contract management;

- Provider development.
- Value for money

15. FINANCIAL AND QUALITY ASSURANCE CHECKS

15.1 The CCG will require assurance about potential providers. Where this is not achieved through a formal tender process, the following financial and quality assurance checks of the provider will be expected to be undertaken before entering into a contract:

- Financial viability;
- Economic standing;
- Corporate social responsibility
- Clinical capacity and capability;
- Clinical governance;
- Quality/Accreditation.

16. PRINCIPLES OF GOOD PROCUREMENT

16.1 The key principles of good procurement are:

- Transparency:
- Proportionality:
- Non-discrimination:
- Equality of treatment

Making commissioning intent clear to the market place, including the use of sufficient and appropriate advertising of tenders, transparency in making decisions not to tender, and the declaration and separation of conflicts of interest;

Making procurement processes proportionate to the value, complexity and risk of the services contracted, and critically not excluding potential providers through overly bureaucratic or burdensome procedures;

Having specifications that do not favour one or more providers. Ensuring consistency of procurement rules, transparency on timescale and criteria for shortlist and award; and

Ensuring that all providers and sectors have equal opportunity to compete where appropriate; that financial and due diligence checks apply equally and are proportionate; and that pricing and payment regimes are transparent and fair.

16.2 The CCG will ensure compliance with these principles in the following ways.

16.2.1. Transparency

- The CCG will commission services from the providers who are best placed to meet the service needs of our patients and population.
- The CCG will procure general goods and services using processes and from suppliers that offer best value for money.
- The CCG will maintain on its website for public view a record of contracts held and information about what services are to be procured and when they will be presented to the market

- The CCG will determine as early as practicable whether and how services are to be opened to the market and will share this information with existing and potential providers.
- The CCG will use the most appropriate media in which to advertise tenders or opportunities to provide services.
- The CCG will robustly manage potential conflicts of interest and ensure that these do not prejudice fair and transparent procurement processes.
- The CCG will ensure that all referring clinicians tell their patients and the commissioner about any financial or commercial interest in an organisation to which they plan to refer a patient for treatment or investigation.
- The CCG will provide feedback to all unsuccessful bidders.
- The CCG will not contract with providers whose pricing strategy constitutes predatory pricing.

16.2.2. Proportionality

- The CCG will ensure that procurement processes are proportionate to the value, complexity and risk of the products to be procured.
- The CCG will define and document procurement routes, including any streamlined processes for low value/local goods and services, taking into account available guidance.

16.2.3 Non-discrimination

- The CCG will ensure that tender documents are written in a non-discriminatory fashion e.g. generic terms will be used rather than trade names for products.
- The CCG will inform all participants of the applicable rules in advance and ensure that the rules are applied equally to all. Reasonable timescales will be determined and applied across the whole process.
- The CCG will ensure that shortlist criteria are neither discriminatory nor particularly favour one potential provider.

16.2.4 Equality of Treatment

- The CCG will ensure that no sector of the provider market is given any unfair advantage during a procurement process.
- The CCG will ensure that basic financial and quality assurance checks apply equally to all types of providers.
- The CCG will ensure that all pricing and payment regimes are transparent and fair (according to the DH Principles and Rules Document).
- The CCG will retain an auditable documentation trail regarding all key decisions.
- The CCG will hold all providers to account, in a proportionate manner, through contractual agreements, for the quality of their services.

17. CONTRACT FORM

17.1 The CCG will ensure that the NHS Standard Contract or where appropriate a NHS Standard Deed of Variation will be used for all contracts for NHS funded health and social care services commissioned by the CCG. In exceptional circumstances, such as where a joint contracting arrangement is led by local authority, the CCG may agree to be party to a different form of contract.

17.2 All contracts issued by the CCG will include a requirement for providers to clearly inform clinicians and potential patients about their organisational status including Company ownership and whether they are a public, voluntary or privately owned provider. This will include digital and physical communication including signage.

17.3 The CCG 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.

18. SUSTAINABLE PROCUREMENT

18.1 The NHS is a major employer and economic force both in Newham. The CCG 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.

18.2 The CCG is committed to the development of innovative local and regional solutions, and will deliver a range of activities as part of its market development plan to support this commitment.

18.3 Wherever it is possible, and does not contradict or contravene the CCG's procurement principles or the provisions allowable under the Public Services (Social Value) Act 2012, the CCG will work to develop and support a sustainable local health economy.

19. PUBLIC SERVICES (SOCIAL VALUE) ACT 2012

19.1 This Act that came into force on 31st January 2013, will require commissioners at the pre-procurement stage to consider how what is to be procured may improve social, environmental, and economic well-being of the relevant area, how they might secure any such improvement and to consider the need to consult.

19.2 Although the Act only applies to certain public services contracts and framework agreements to which the Public Contract Regulations apply, the CCG intends, as a matter of good practice to consider how what is proposed to be procured might improve economic, social and environmental well-being in order to maximise value for money. The considered application of the provisions of this Act will provide the CCG with the means to broaden evaluation criteria to include impact on the local economy.

20. USE OF INFORMATION TECHNOLOGY

20.1 Wherever possible appropriate information technology systems i.e. e-procurement and e-evaluation methods will be used. These are intended to assist in streamlining our procurement processes whilst at the same time providing a robust audit trail. E-Tendering and E-evaluation solutions provide a secure and efficient means for managing tendering activity particularly for large complex procurements. They offer efficiencies to both purchasers and providers by reducing time and costs in issuing and completing tenders, and particularly to purchasers in respect of evaluating responses to tenders.

21. DECOMMISSIONING SERVICES

21.1 The need to decommission contracts can arise through:

- Termination of the contract due to performance against the contract not delivering the expected outcomes. This can be mitigated by appropriate contract monitoring and management and by involving the provider in this. The contract terms will allow for remedial action to be taken to resolve any problems. Should this not resolve the issues, then the contract will contain appropriate termination provisions;
- The contract expires; and/or
- Services are no longer required

21.2 Before a service is decommissioned full regard will need to be considered to the potential costs of decommissioning.

21.3 Where services are decommissioned, the CCG 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 with all legal TUPE obligations, to consult with effected staff, and to co-operate fully with the new service provider.

22. TRANSFER OF UNDERTAKINGS AND PROTECTION OF EMPLOYMENT REGULATIONS (TUPE)

22.1 These regulations arose as a consequence of the 1977 EU Acquired Rights Directive and were updated in 2006. They 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.

22.2 Commissioners need to be aware of these and the need to engage HR support and possibly legal advice if there is likely to be a TUPE issue. Additionally, NHS Bodies must follow Government guidance contained within the "Cabinet Office Statement of Practice 2000/72 and associated Code of Practice 2004 when transferring staff to the Private Sector" also known as "COSOP".

22.3 It is the position of the CCG to advise potential bidders that whilst not categorically stating TUPE will apply it is recommended that they assume that 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.

23. EQUALITY IMPACT ASSESSMENT

23.1 All public bodies have statutory duties under the Equality Act 2010. The CCG 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 over others.

23.2 As part of the review of newly procured services and on-going contract monitoring, the CCG will carry out, or request providers to carry out an Equality Analysis particularly with regard to the measurement of outcomes and impact for patients with protected characteristics.

23.2 In order to support these requirements, a single equality impact assessment issued to assess all the CCG's policies/guidelines and practices. This Procurement Policy was found to be compliant with this philosophy (see Appendix G).

24. TRAINING NEEDS ANALYSIS

24.1 All CCG staff and others working with the CCG 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. The most urgent requirement is that all commissioning staff throughout the CCG should know enough about procurement to know 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 the CCG's procurement intentions in relation to individual service developments.

24.2 Awareness of procurement issues is being raised through organisational development and training sessions for clinical and non-clinical members of the CCG.

25. MONITORING COMPLIANCE WITH THIS STRATEGY / PROCEDURE.

25.1 This Policy will be reviewed every three years.

25.2 In addition it will be kept under informal review in the light of emerging guidance, experience and supporting work. Given the changing environment it is likely that this Policy will need to be updated within a relatively short timescale.

25.3 Effectiveness in ensuring that all procurements comply with this Policy will primarily is achieved through "business as usual" review by the relevant Head of Service within the CCG.

26. REFERENCES

Legislation

Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. Mar 2004.

The Public Contracts Regulations 2006; SI 2006 no.5. Jan 2006. Equality Act 2012

NHS Policy

Principles and rules for Cooperation and Competition. July 2010. DH.(Gateway Ref: 14611).

Procurement Guide for commissioners of NHS-funded services; May 2008; DH (Gateway Ref: 9915).

Framework for Managing Choice, Cooperation and Competition. May 2008.DH.(Gateway Ref: 9914).

NHS Procurement. Raising our game; May 2012; DH (Gateway Ref 17646).

Code of Conduct: Managing conflicts of interest where GP practices are potential providers of CCG-commissioned services; July 2012; NHS Commissioning Board.

Towards establishment: Creating responsive and accountable CCGs; February 2012; NHS Commissioning Board.

National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013; February 2013

Monitor Briefing Note – Substantive Guidance on the Procurement, Patient Choice and Competition Regulations, December 2013

Appendix A. List of Part B Health and Social Services

Health and social work services.
Health services.
Hospital and related services.
Hospital services.
Surgical hospital services.
Medical hospital services.
Gynaecological hospital services.
In-vitro fertilisation services.
Obstetrical hospital services.
Rehabilitation hospital services.
Psychiatric hospital services.
Orthotic services.
Oxygen-therapy services.
Pathology services.
Blood analysis services.
Bacteriological analysis services.
Hospital dialysis services.
Hospital-bedding services.
Outpatient care services.
Medical practice and related services.
Geriatric services.
Psychiatrist or psychologist services.
Home for the psychologically disturbed services
Ophthalmologist
Dermatology
Orthopaedics services.
Paediatric or urologist services.
Paediatric services.
Urologist services.
Surgical specialist services.
Community Dental practice and related services.
Dental practice services.
Orthodontic services.
Orthodontic-surgery services.
Miscellaneous health services.
Services provided by medical personnel
Services provided by midwives
Services provided by nurses
Home medical treatment services
Dialysis home medical treatment services
Services provided by sperm banks
Services provided by transplant organ banks
Company health services
Medical analysis services
Pharmacy services
Medical imaging services Optician services
Acupuncture and chiropractor services
Chiropractor services
Veterinary services
Domestic animal nurseries
Social work and related services
Welfare services for the elderly
Welfare services for the handicapped
Welfare services for children and young people
Social work services without accommodation
Daycare services and Child daycare services
Daycare services for handicapped children and young people
Medical practice services.
General-practitioner services.
Medical specialist services.
Gynaecologic or obstetric services.
Nephrology or nervous system specialist services.
Cardiology services
Pulmonary specialists' services.
ENT or audiologist services.
Gastroenterologist and geriatric services.
Medical practice services.
Advisory services provided by nurses
Paramedical services
Physiotherapy services
Homeopathic services Hygiene services
Home delivery of incontinence products
Ambulance services
Residential health facilities services
Residential nursing care services
Services provided by medical laboratories
Services provided by blood banks
Home delivery of provisions
Guidance and counselling services
Family services
Welfare services not delivered through residential institutions
Rehabilitation services
Vocational rehabilitation services
Social services
Community health services

Appendix B – Financial Limits Applying To EU Procurement Rules

There is a statutory requirement to follow the full EU Procurement rules, where legally-enforceable contracts are to be awarded, for supply of goods and/or services with an estimated full-life value above £116,676, (as of May 2014) other than those specifically listed as Part B services.

Where legally-enforceable contracts are to be awarded for Part B services with estimated full-life value above £172,514, (as of May 2014) there is a limited statutory requirement to apply some of the EU procurement rules.

These financial limits are amended annually and will be revised as such with an amendment to this document.

Appendix C - Procurement Options Brief

Contract	
Lead CCG Officer	
Lead CSU Officer	
Lead Committee	
Who will be responsible for any procurement?	
Current position	
Current value	
Contract end date for existing contracts	
Date of submission to Procurement Cttee	
Details of current contract (Value, end date, existing provider, reasons for re-procurement, has a service review been completed. If no contract then is an equivalent service provided through other means?)	
Options for contracting (including benefits/financial savings/risks to the methodologies) **Option 1 –** **Option 2 –** **Option 3 -**	
Recommendation to the Committee (including CSU Procurement team advice if available)	
Other Issues for consideration Will the recommended procurement route be completed before an existing contract is terminated? If no – what interim arrangements are proposed and are there any risks/barriers/costs to this? Has a needs assessment been carried out, if yes please provide details? Has there been any market engagement with potential providers?	

Is there a national service specification or one that could be adapted for local use? Is there a requirement for providers to deliver significant innovation in the service model? Is there a case for the service to remain with an existing provider because of pathway integration? Is there any further work in progress or issues that the Procurement Group should be aware of e.g. collaborative arrangements, quality of service, need for consultation etc.? Has the relevant Commissioning Committee been consulted and recommended a service model and contract type? Has a service specification been developed? Please attach.

Appendix D: Template to be used when commissioning services that may potentially be provided by GP practices

NHS Newham Clinical Commissioning Group

Service:	
Question	**Comment/Evidence**
Questions for all three procurement routes (Competitive tender, AQP, Single tender)	
How does the proposal deliver good or improved outcomes and value for money - what are the estimated costs and the estimated benefits? How does it reflect the CCG's proposed commissioning priorities?	
How have you involved the public in the decision to commission this service?	
What range of health professionals have been involved in designing the proposed service?	
What range of potential providers have been involved in considering the proposals?	
How have you involved your Health and Wellbeing Board(s)? How does the proposal support the priorities in the relevant joint health and wellbeing strategy (or strategies)?	
What are the proposals for monitoring the quality of the service?	
What systems will there be to monitor and publish data on referral patterns?	
Have all conflicts and potential conflicts of interests been appropriately declared and entered in registers which are publicly available?	
Why have you chosen this procurement route?[2]	
What additional external involvement will there be in scrutinising the proposed decisions?	
How will the CCG make its final commissioning decision in ways that preserve the integrity of the decision-making process?	

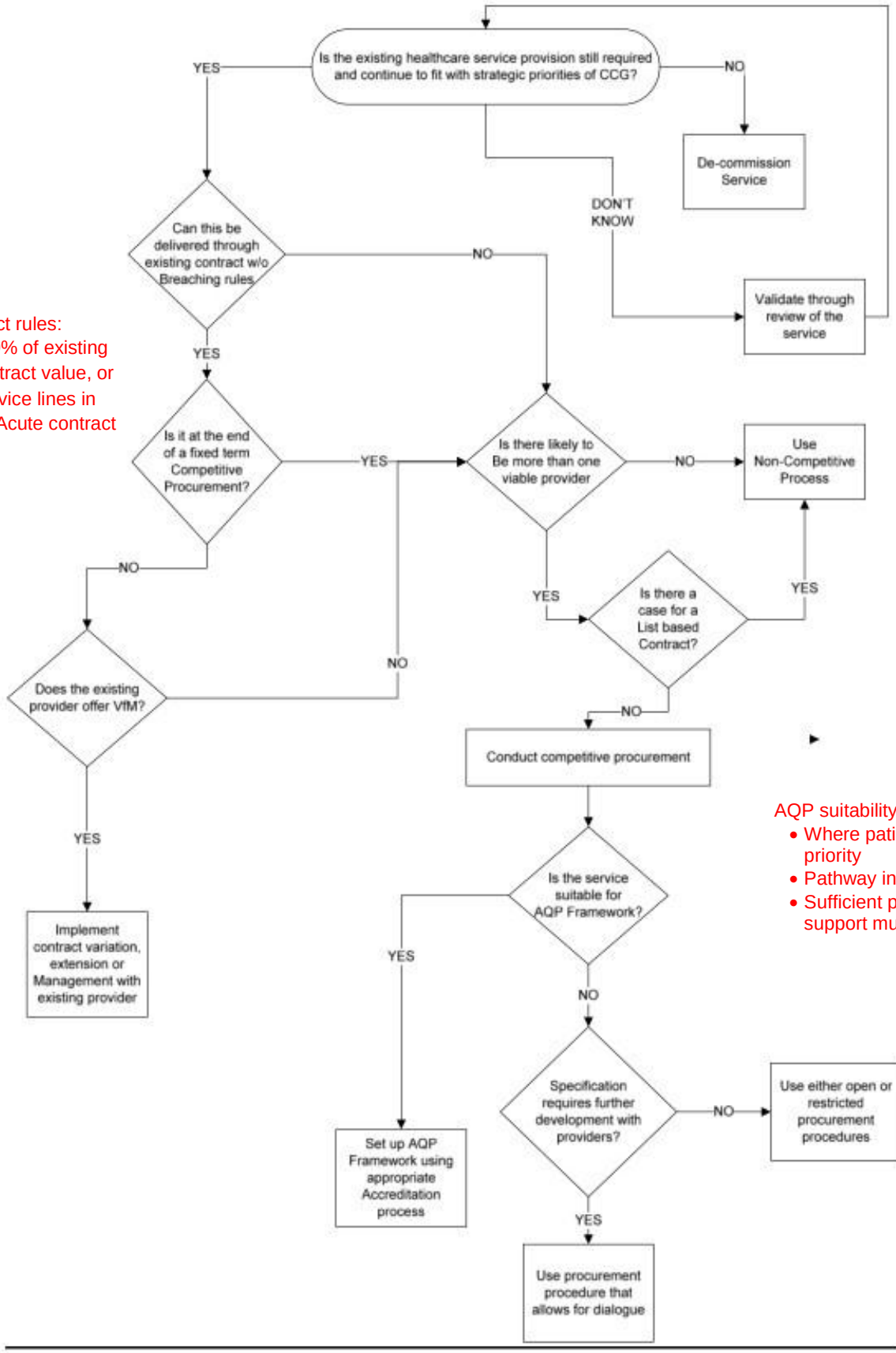
[2] Taking into account S75 regulations and NHSE guidance that will be published in due course, Monitor guidance, and existing procurement rules.

Additional question for AQP or single tender (for services where national tariffs do not apply)	
How have you determined a fair price for the service?	

Additional questions for AQP only (where GP practices are likely to be qualified providers)	
How will you ensure that patients are aware of the full range of qualified providers from whom they can choose?	

Additional questions for single tenders from GP providers	
What steps have been taken to demonstrate that there are no other providers that could deliver this service?	
In what ways does the proposed service go above and beyond what GP practices should be expected to provide under the GP contract?	
What assurances will there be that a GP practice is providing high-quality services under the GP contract before it has the opportunity to provide any new services?	

Appendix E - Procurement Approach - Approach for Existing Health Services



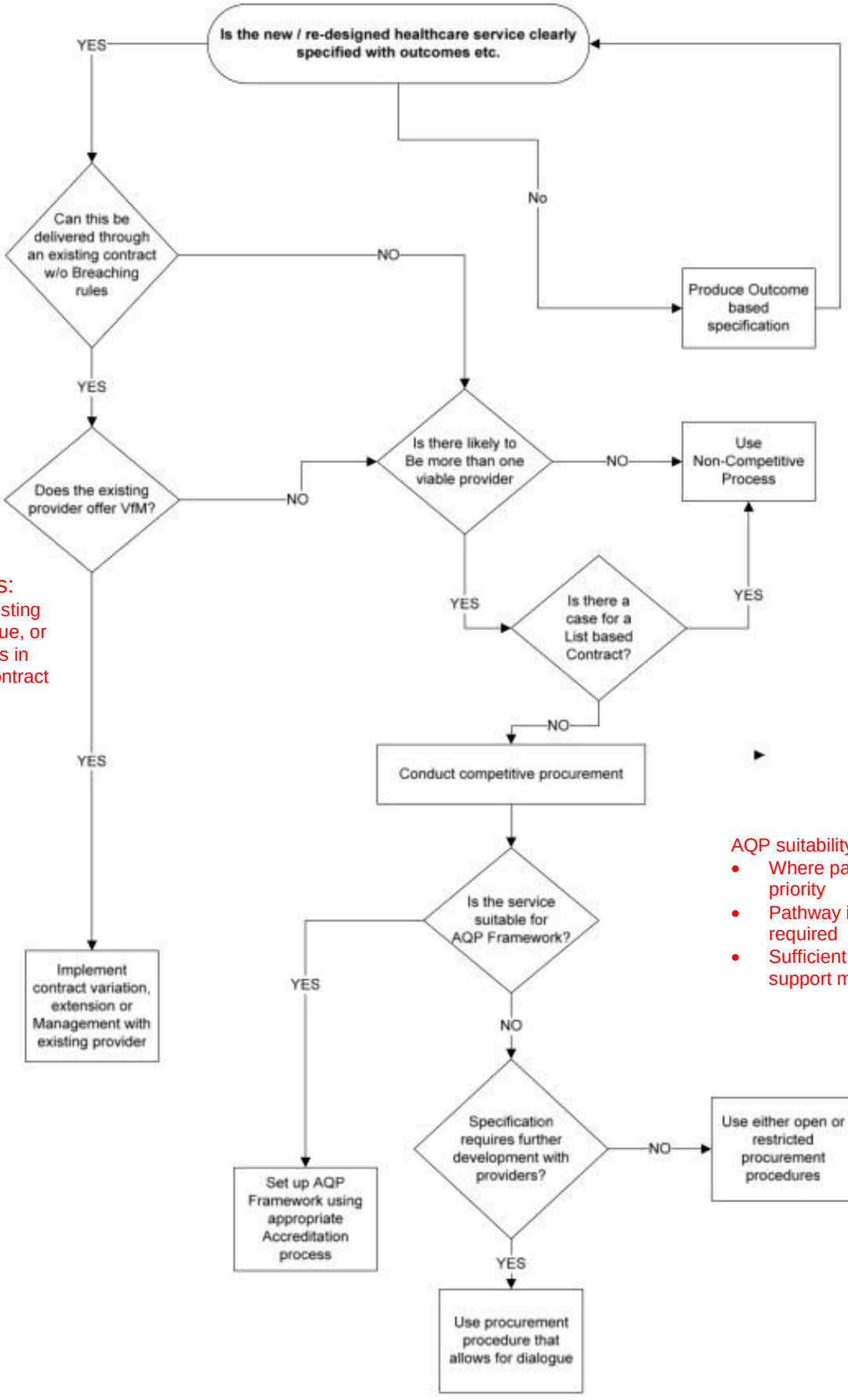
Contract rules:

- <10% of existing contract value, or
- Service lines in an Acute contract

AQP suitability:

- Where patient choice is a high priority
- Pathway integration NOT required
- Sufficient patient numbers to support multiple providers

Approach for New or significantly changed Health Service



Contract rules:

- <10% of existing contract value, or
- Service lines in an Acute contract

AQP suitability:

- Where patient choice is a high priority
- Pathway integration NOT required
- Sufficient patient numbers to support multiple providers

Appendix F: Aspects to be considered when deciding whether competitive tender is appropriate

Consideration	Importance (H,M,L)	Justification of competitive tender process		
		Strong	Medium	Weak
Contract Value	H	>£174k		<£50k
Contract length	M	> 3 years		<=1 year
Level of market interest	H	>5 organisations (or unknown)		1 organisation
Market capability (number of organisations believed to have required expertise)	M	>3 organisations (or unknown)		1 organisation
Likely procurement cost to the CCG	L	< 5% total contract		>= 1 year contract value
Availability of procurement resource	L	Resource available at no additional financial	Resource available at additional financial cost	Insufficient resource available
Confidence in achieving best provider for population needs without competitive tender	M	Low	Medium	High
Confidence in achieving Value for Money (VfM) without competitive tender	M	Low	Medium	High
Urgency of requirement	M	>8 months		<12 weeks
Ability to predict requirement	M	High	Medium	Low
Potential to improve VfM by tendering	M	High /Unknown	Medium	Low
Potential for innovation	M	High	Medium	Low
Benefit of continuity with existing provider of same or related service	M	None	Some	Strong

In addition the following, potentially-overriding, considerations will be taken into account:

- Is a specific provider required to protect essential public services? (e.g. A&E)
- Are services protected by monopoly rights? (e.g. in accordance with a legal or administrative instrument)
- Are there any procurement constraints linked to partnership funding? (e.g. if the CCG is not a joint signatory to a contract)

Appendix G. Equality Impact Assessment for this Policy Newham CCG - Equality Impact Assessment 2011

Title of policy, project or service

Directorate and service	NHS Newham Clinical Commissioning Group
Name and role of officers completing the assessment	
Date assessment started/completed	August 2012

Equality impact assessment is a way of systematically analysing a new or changing policy, strategy, process etc to identify what effect, or likely effect it could have on 'protected groups' to ensure appropriate decisions, which reduce health inequalities, address discriminatory consequences and maximise opportunities to promote equality, are made.

This toolkit has been developed to meet our obligations under the Equality Act 2010 general duty to;

- **eliminate unlawful discrimination**, harassment, victimisation and any other conduct prohibited by the Act;
- **advance equality of opportunity** between people who share a protected characteristic and people who do not share it **foster good relations** between people who share a protected characteristic and people who do not share it.

Public bodies have to demonstrate **due regard** to the general duty. Due regard means active consideration of equality must influence the decision/s reached - as employers; in policy development, evaluation and review; in the design, delivery and evaluation of services, commissioning and procurement.

Having **due regard** to the need to **advance equality of opportunity** involves considering the need to:

- remove or minimise disadvantages suffered by people due to their protected characteristics; meet the needs of people with protected characteristics; and
- encourage people with protected characteristics to participate in public life or in other activities where their participation is low.

Fostering good relations involves tackling prejudice and promoting understanding between people who share a protected characteristic and others.

Following a recent judicial review (costing Birmingham City Council a reported £600k) due regard was described as 'creating a decision making process that links the policy design, macro or micro, with the details of the impact of policy on individuals'. Before making policy decisions, even Newham level decisions about allocation of resources, an organisation must understand the potential impact of its decision on individuals (not necessarily named individuals, but a suitable range of typical service users) and ensure that this is explicitly factored into its decision-making.

This assessment process therefore aims to ensure we have;

- evidence of consultation and other engagement activities that elicit sufficient information to enable it to identify the impact of a proposed decision on individuals;
- informed the decision-makers of the potential impact and expressly considered how this can be reconciled with the organisations equalities duties;
- informed decision-makers how adverse impacts of a decision in Newham be mitigated and whether there are alternatives to the proposed decision that could be taken that would avoid or reduce adverse impact.

1. Outline	
Give a brief summary of your policy, project or service Aims Objectives Links to other policies, including partners, national or regional	This document sets out how Newham CCG procurement will be in proportion to risk and will be used to support clinical priorities, health and well-being outcomes and wider CCG objectives.
What outcomes do you want to achieve Desired outcomes Benefits Who for	To facilitate open and fair, robust and enforceable contracts that provide value for money and deliver required quality standards and outcomes, with effective performance measures and intervention protocols

2. Consideration of relevant information	
Protected Group	**Consultation, engagement or experience data**
General issues	This strategy document does not directly impact on any specific services, but sets a framework that will influence the selection of service providers once service requirements have been identified. As such, there is no impact on any protected group from the procurement strategy - the impact on protected groups of individual services will be assessed as the need arises. A wide range of stakeholders have been consulted on this strategy; any equality issues raised by them will reviewed and acted upon as appropriate, with this EQIA amended accordingly.
Human rights	No specific relevant data
Age	No specific relevant data

Carers	No specific relevant data
Disability	No specific relevant data
Sex	No specific relevant data
Race	No specific relevant data
Religion or belief	No specific relevant data
Sexual orientation	No specific relevant data
Gender reassignment	No specific relevant data
Pregnancy and maternity	No specific relevant data
Marriage and civil partnership (only eliminating discrimination)	No specific relevant data
Other relevant group *a group you identify as relevant i.e. rural communities, asylum seekers and refugees	No specific relevant data
	No specific relevant data
	No specific relevant data

Protected Group	**Evidence, data or research available**
General issues	No specific relevant data
Human rights	No specific relevant data
Age	No specific relevant data
Carers	No specific relevant data
Disability	No specific relevant data
Sex	No specific relevant data
Race	No specific relevant data
Religion or belief	No specific relevant data
Sexual orientation	No specific relevant data
Gender reassignment	No specific relevant data

Pregnancy and maternity	No specific relevant data
Marriage and civil partnership (only eliminating discrimination)	No specific relevant data
Other relevant group *a group you identify as relevant i.e. rural communities, asylum seekers and refugees	No specific relevant data

3. Analysis of impact

This is the core of the analysis; using the information above please detail the impact on protected groups, with consideration of the General Equality Duty.

	What key issues have you identified	**What action do you need to take to address this issue**	**What difference will this make**
General issues	None	None Required	N/A
Human rights	None	None Required	N/A
Age	None	None Required	N/A
Carers	None	None Required	N/A
Disability	None	None Required	N/A
Sex	None	None Required	N/A
Race	None	None Required	N/A
Religion or belief	None	None Required	N/A
Sexual orientation	None	None Required	N/A
Gender reassignment	None	None Required	N/A
Pregnancy and maternity	None	None Required	N/A
Marriage and civil partnership (only eliminating discrimination)	None	None Required	N/A
Other relevant group	None	None Required	N/A

Having detailed the actions you need to take please transfer them to onto the action plan below.

4. Action Plan				
Issues identified	**Actions required**	**Progress milestones**	**Officer responsible**	**Timescale**
None	None	N/A	N/A	N/A

5. Monitoring, Review and Publication			
How will your review/monitor the impact and effectiveness of your actions?		N/A	
When will the proposal be reviewed and by whom?		Reviewed by NCCG Clinical Commissioning Executive as part of the approval and review process for the Strategy	
Lead Officer		**Review date:**	

6. Sign off			
Lead Officer			
Director		**Date approved:**	

Once complete please forward to the Equality leads