ENCLOSURE: H

Agenda Item: 97/13

NHS Bexley Clinical Commissioning Group

Governing Body (Public) Meeting

DATE: 26 September 2013

Title	Procurement Policy		
Recommended action for the Governing Body	That the Governing Body: **Approve** the attached draft procurement policy which was submitted for comment and discussion to the Governing Body Public Meeting on 25 July 2013.		
Executive Summary	This draft procurement policy shows both the national, local and European context of procurements. As a public body we are bound by both UK and EU law with regards to processes, and to NHS good procurement principles. This procurement policy is in its final draft stage and is circulated for comments. It is recognised that this is a lengthy document but provides the overview and context, together with step by step guidance throughout the processes. In this year of a transformational QIPP undertaking procurements fully, using the right procedures at the right time, are vital to deliver many of our QIPP schemes.		
Which objective does this paper support?	**Patients:**	Improve the health and wellbeing of people in Bexley in partnership with our key stakeholders	✓
	People:	Empower our staff to make BCCG the most successful CCG in (south) London	✓
	Pounds:	Delivering on all of our statutory duties and become an effective, efficient and economical organisation	✓
	Process:	Commission safe, sustainable and equitable services in line with the operating framework and which improves outcomes and patient experience	✓
Organisational implications	Key Risks (corporate and/or clinical)	Failure to comply with EU and UK procurement law can lead the CCG open	

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		to challenge through the UK courts
	Equality and Diversity	Good procurement will lead to services being compliant
	Patient impact	Engaging patients in design and procurement decisions can lead to better services for patients
	Financial	Procurement can be used for a tool to ensure that prices remain competitive, or to reduce costs through competition.
	Legal Issues	EU and UK procurement law must be complied with by public bodies
	NHS constitution	Requirements of the NHS Constitution should be enshrined in our contracts
Consultation (Public, member or other)	Not applicable	
Audit (Considered / Approved by Other Committees / Groups)	To be considered by all committees of the CCG	
Communications Plan	This will form part of a lunch and learn package for staff and members, all staff should be required to comply with these processes and procedures	
Author	Judith Hughes – Head of Procurement	
	Clinical Lead Not applicable	Executive Sponsor Sarah Valentine Director of Commissioning
Date	17 September 2013	

NHS
Bexley
Clinical Commissioning Group

NHS BEXLEY CLINICAL COMMISSIONING GROUP

Procurement Policy

Version 11.1

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Name	Date	Version	Reason	Status
J Hughes	26.04.13	V0.9	Updated to reduce content and incorporate comments	Draft
J Hughes	21.06.13	V10	Updated to reduce content and incorporate comments	Draft
J Hughes	21.06.13	V11.0	Updated to reduce content and incorporate SV comments	Draft

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1 Introduction, National, European and NHS context

1.1 Introduction

A fundamental principle of "Protecting and Promoting Patients Interests' is that clinical experts would take the lead in commissioning NHS services to meet patients' needs and foster improvements in quality and productivity. There is also a requirement to protect patient choice and for patients to make choices about their care and to have information to support these choices. These requirements are outlined in this policy.

1.1.1 This document sets out Bexley Clinical Commissioning Group's procurement policy, outlines the main considerations involved in undertaking a procurement on behalf of Bexley Clinical Commissioning Group and provides a resource for managers involved in the procurement process. Procurement staff can give advice on the practical application of this guide, in addition procurement staff are able to lead at key stages in the procurement process.

1.1.2 Bexley Clinical Commissioning Group is faced with the task of balancing the requirement to follow rules on procurement with the need to foster innovation and avoid an unduly bureaucratic or lengthy process, and it is hoped that this document will help in achieving this balance.

1.1.3 It is intended to be a living document and will require regular updating to keep abreast of developments in healthcare policy, the law and best practice. This policy applies to all personnel within Bexley Clinical Commissioning Group, including Commissioning groups.

1.1.4 This policy document has been prepared for use by all staff and members of Bexley Clinical Commissioning Group.

1.1.5 It gives guidance and instruction on each stage of the purchasing and supply cycle covering goods, services and works. It details procedures which must be followed to safeguard staff and to ensure probity and value for money. This manual should be read in conjunction with other Clinical Commissioning Group procedures and Department of Health Guidance.

1.1.6 Any queries on the application of this manual and any comments or suggestions for improvements should be referred to the Head of Procurement & Contracting in the Commissioning Directorate.

1.1.7 *Step by Step guides on specific subject areas are available* from the Head of Procurement & Contracting, in addition the NHS Commissioning Board has issued a set of guidance documents for CCGs on clinical procurement. Please follow the link to the NHS Commissioning Board guidance.
http://www.commissioningboard.nhs.uk/2012/09/14/procure-ccgs/?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+NHSCBoard+%28NHS+Commissioning+Board%29

1.2 National Context

1.2.1 Procurement is the acquisition of goods and/or services at the best possible total cost of ownership, in the right quantity and quality, at the right time, in the right place generally via a contract. Procurement can range from the placing of repeat low value orders to a complex procurement for healthcare involving the selection of long term partners. Procurement is a core function of Bexley Clinical Commissioning Group as it is central to:

1.2.1.1 Supporting Commissioning & Contracting decisions
1.2.1.2 Supporting the provision of services – ensuring suitable products & support services are available for provision of clinical services
1.2.1.3 Managing Resources
1.2.1.4 Delivering value for money, patients interest and improving quality
1.2.1.5 Demonstrating effective governance and probity

1.2.2 As part of this function Bexley Clinical Commissioning Group seeks to effectively manage choice and competition as part of a broader function of system management including the series of values, contracts, relationships and rules designed to protect and promote patients' and taxpayers' interests.

1.2.3 Health reforms currently being undertaken by the Department of Health are creating a different environment for commissioning by giving greater freedom for providers and greater plurality and choice for patients as well as opportunities for innovation, through clinically led commissioning membership groups, payment by results and the choice policy. Procurement clearly has a significant role to play in delivering these objectives as part of the decision making process and in delivering more diverse providers with more freedom to innovate and improve services.

1.2.4 This procurement policy sets out the principles, rules and methods that Bexley Clinical Commissioning Group will work to. The policy is intended to inform decision making as to how and when it is appropriate to seek to introduce contestability and competition as methods to help to define the most beneficial and cost effective modes of delivery.

1.2.5 The Cooperation & Competition Panel (CCP) was established by the Secretary of State to provide advice to the Department of Health on competition issues in relation to the application of the Principles and Rules of Cooperation and Competition (PRCC) which apply to all CCG contracted / funded health and social care services. Monitor now has a role in advising on issues relating to competition where it is in the best interest of the patient.

1.3 Public Contract Regulations 2006

a If your procurement of goods or general services is likely to be worth more than £113,057 over the life of the contract – general services (Part A) (excluding VAT), and the requirement is not subject to an existing OJEU Framework Arrangement, the full application of the Public Contracts Regulations is likely to apply. The Regulations specify detailed procedures, including adherence to strict timetables, requirements for advertising, invitations to tender, and the award of contracts.

b For health service procurements (refer to 2.12) valued at over £173,934 over the life of the contract – (Part B), and the requirement was not previously subjected to competition in the OJEU or under a Framework Agreement from another government department, partial applicability of the rules apply. There is no legal requirement to advertise in the OJEU, however there is a need to comply with the procurement principles and DH guidance and CCG policy, these include compliance with timescales, the principles of proportionality, equal treatment, transparency and non-discrimination. These services must be advertised in appropriate publications, including the mandatory requirement of advertising in supply2health for requirements above £100,000. Failure to comply will result in legal or administrative challenges.

c Compliance with EU Directives governing public procurement is a mandatory legal requirement. The penalties for non-compliance are severe, including the possible suspension

of any tender exercise or contract award process and/or unlimited financial damages. It should, however, also be appreciated that compliance can enable sourcing on a wider european scale, thereby increasing competition and the scope for getting best value for money. Also, the timetables can be used as a framework to help with project management.

d As a matter of policy and good practice, any requirement with an estimated value that is within 20% of the threshold should be tendered in accordance with the Regulations.

e EU procurements usually take between four and six months to complete, and this needs to be taken into account when business planning. Where the requirement is to be purchased from an existing Framework Agreement (refer to section 3.1.16), the timescales for the mini competition exercise is reduced considerably as there are no applicable mandatory periods and requests for technical information is kept to the minimum (as this has already been provided). Although the EU timetable can lengthen the overall time taken, the process is very similar to any other procurement – the majority of the work (and therefore time) is spent in specifying the requirement and evaluating the bids. The best way to speed up the process is to be clear about what goods/services you need and what information you want bidders to provide.

f Contact the Head of Procurement & Contracting for advice and guidance. Further information on EU procedures is contained below.

1.4 EU Procurement Directive / Public Contract Regulations 2006

1.4.1 Background

a The EU Directive has two levels of application – a full regime for services designated as Part A where the value of the Part A contract exceeds the relevant thresholds and a lighter regime for other services designated as Part B. The table below illustrates how the regulations apply to Part A and Part B services.

b The EU Procurement Directive 2004/18/EC has been applied in the UK by the **Public Contracts Regulations (SI 2006 / No 5).** The EU Directive and the Regulations implement the general EU principles of non-discrimination, transparency and equality which are applicable to EU member states. The EU procurement rules may be enforced either by the European Commission or directly in the courts by persons, such as unsuccessful bidders, who have been harmed by a breach of the rules.

c It is the aim of the EU member states to create a single European market devoid of all trading restrictions and barriers in which all businesses have an equal opportunity to compete. The EU regulates and monitors public sector procurement primarily through the EU Directive covering the supply of goods, services and works.

d In the UK, the Directives apply to all NHS contracting authorities. These legal rules also assure taxpayers, patients, commissioners and service users that the public purse is being used in a way that seeks best value for money for the contracted services, and guide officers in such matters.

Requirements	**Part A**	**Part B**
• Sufficient degree of advertising to satisfy principles of transparency, non-discrimination on grounds of nationality, and equality of treatment	**X**	**X**

• Tender advertised in the Official Journal of the European Union	X	
• Compliance with specified minimum timescales for providers to respond to adverts, pre-qualification checks and tenders	X	
• Competitive dialogue or negotiated procedure allowed only in specified circumstances	X	
• Detailed rules on selection and award criteria; contracts awarded either on the basis of the lowest price or the most economically advantageous offer (but note: award criteria must still be fair and non-discriminatory in the case of Part B contracts)	X	
• Provision of feedback to unsuccessful providers and standstill requirement after contract award and prior to contract execution (but note: the 'openness' principle may require that this should happen in practice in Part B contracts)	X	
• Issue of contract award notice to European Commission within 48 days of award	X	X
• Collation of relevant statistical data	X	X

1.4.2 Public procurement law tendering timetables

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e As a member of the European Union (EU) and a signatory to World Trade Organisation (WTO) agreements, the UK is governed by the following legislation as far as public procurement is concerned. The current legislation that forms the basis of mandatory procedures to be adopted for procurement in the public sector in the UK includes:

- The Treaty of Rome ('the EU Treaty');
- The Government Procurement Agreement (GPA);
- Directive 2004/18/EC of the European Parliament and of the Council of Europe 31 March 2004 ('the EU Directive');
- The Public Contracts Regulations 2006 ('the regulations');
- Council Directive 89/665/EEC relating to review procedures in the event of infringement of the Public Procurement Directives (the 'Remedies Directive'); and
- Relevant case law of the European Court of Justice.

1.4.3 EU Procurement Directive 2004/18/EC / Public Contracts Regulations 2006

Applicability of public procurement rules

a The categorisation of service types into Part A and Part B services[1] reflects the fact that certain services are regarded by the EU institutions as higher priority for the operation of the EU internal market.

[1] Part B services have a current threshold of £173,934 which is subject to change, and should be verified on Cabinet Office website. This refers to total contract value (http://www.cabinetoffice.gov.uk/resource-library/procurement-policy-note-1011-%E2%80%93-new-threshold-levels-2012-and-changes-use-accelerate)

b Part A services, the fully regulated category, include services such as telecommunications services, financial services, IT services, construction services and consultancy services. Part B services, the partially regulated category, include legal services, educational services and health and social services. Clinical services are, therefore, usually assessed by contracting authorities as Part B services. However, all commissioners should take legal advice as necessary, based on specific circumstances, to determine the correct categorisation.

c If services are determined to be Part B and the contract value is beneath the level set, then procurement is not obligatory by the EU(the DFP for BCCG are still applicable). Contracting authorities should be aware that if the contract value subsequently exceeds the threshold then the Part B requirements will apply. Parties should be certain that the contract will not exceed the threshold before disregarding Part B requirements. If the services are not Part B they will be Part A where the threshold is lower.

d The fact that Part B services are not subject to a full regime does not automatically mean that they should not be subject to competitive tenders. Competition is the main mechanism by which contracting authorities ensure that the EU principles of equality of treatment, transparency and non-discrimination are met. These principles are considered by the Commission to apply to tenders for both Part A and Part B services.

e If a contracting authority decides to mirror a Part A procedure, it should clarify that it is not bound by the full force of the regulations by stating the proposed contract is a Part B classification.

1.4.4 Public procurement law

Copies of public procurement law documents and other published guidance are available online at http://procurement.cabinetoffice.gov.uk/policy-capability/latest-policy-and-regulations/public-procurement-policy

1.4.5 NHS Procurement Guidance

a Securing Best Value for NHS Patients / NHS (Procurement, Patient Choice &Competition)

- Securing Best Value for NHS Patients (a consultative document), the guidance has now been followed up by Statutory Instrument "The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013. It is statutory from April 2013 (under Regulation 75 of Health Act, it will stand alongside the Public Sector Regulations with Monitor undertaking enforcement as an alternative to the courts).
- Requires commissioners to adhere to good procurement practice and protect patient choice.
- New proposals similar to PRCC principles. (Principles and rules for cooperation and competition - https://www.gov.uk/government/publications/principles-and-rules-for-cooperation-and-competition)
- Principle 1 – same under new regulation
- Principle 2 – Transparency, proportionality, non-discrimination, single tenders, qualification of Providers, publication of contracts.
- Principles 5 and 6 – Prohibition of anti-competitive conduct (preventing, restricting or distorting competition). i.e. minimum waiting times and caps on patient volumes restrict patient choice.
- Monitor's role to investigate and enforce.
- Requirement to advertise contract notices and award notices on the CCG's website.

b NHS Standards of Procurement

The document 'NHS Standard of Procurement' published in May 2012 recognises that procurement has a key role to play in supporting the delivery of Quality, Innovation, productivity and Prevention (QIPP). The NHS Standards of Procurement support the recommendations from the Public Accounts committee (April 2011) by providing a clear vision of good procurement and identifies high quality procurement performance. They enable CCGs' Boards to assess procurement performance and recognise areas for improvement to ensure value for money (VFM) is delivered through its procurement activity and its procurement partners.

c NHS Procurement: Raising our game

The document 'NHS Procurement: Raising our game' published in May 2012 states that procurement can play a valuable role in both dealing with the deficit and stimulating growth in the economy. The document describes the actions that the Department of Health and CCGs should take to improve NHS Procurement. These actions will address the recommendations made by the National Audit Office (NAO) and Public Accounts Committee (PAC).

d Amended NHS Procurement Regulations

The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013 were published on 13 February 2013 ("the original NHS Procurement Regulations"). These Regulations impose requirements on the NHS England and Clinical Commissioning Groups to ensure good practice when procuring health care services for the purposes of the NHS. Building on existing administrative rules – the Principles and Rules for Cooperation and Competition – first established by the Government in 2007, the Regulations are necessary due to the changes brought about by the Health and Social Care Act 2012, as the existing administrative rules would not apply to the commissioning bodies established under that Act.

2 Scope, Purpose and Definitions

2.1 Scope

The Procurement Policy includes guidance, best practice, template documentation and procurement processes for all healthcare as well as non healthcare goods and services, therefore it covers all areas of the CCG.

The Procurement Policy will increase awareness of procurement best practice and support the delivery of timely, statutorily compliant, clinically effective investments that represent value for money.

2.2 Purpose

The purpose of the Policy is to provide guidance and procedures to ensure all procurements are evidence based; deliver key business objectives; are affordable and viable; clinically effective and improve the quality of patient experience.

The aims / objectives of the Policy is to ensure that procurement best practice contributes effectively to the overall objectives and operational effectiveness of Bexley Clinical Commissioning Group.

The outcome of the Policy is to ensure an optimum competitive procurement process or where no competition undertaken, ensures justification / rationale for the decision.

2.3 Definitions

A Glossary of the definition of the terms and abbreviations is included at Appendix 1

2.4 Section A - Procurement Policy

2.5 Risks Associated with not procuring properly

Overview

a The risks associated with not following an adequately defined procurement process or with not applying sufficient resources, including suitably qualified and experienced personnel, include:

- Failure to treat patients
- The contract can be made, by the courts, to be ineffective;
- Delivery of a service which does not meet the organisation / health economy's needs;
- Failure to facilitate sufficient flexibility in the procurement process and resulting contract to allow it to accommodate future change and innovation;
- Risk of not delivering value for money and quality;
- Risk of the process being challenged by third parties, who may sue for damages etc.;
- Risk of directors / partners facing actions for breach of duty or even being held liable for corporate manslaughter if things go disastrously wrong;
- Opportunity cost of having inappropriate resources (i.e. specialists in other areas) focusing their time on procurement when they may be able to add more value elsewhere;
- Delivery of a contract which cannot be managed effectively;
- Delivery of a contract which cannot be enforced;
- Failure to ensure appropriate and valid insurance cover (including CNST);
- Risk of any of the above potentially becoming the subject of media attention;
- Risk of possible challenges from providers.
- Legal costs to BCCG

b As part of this process it is vital that the right procurement skills and experience are applied at each stage of the process. .

c It is vital that the Business case process is followed prior to any procurements being undertaken. In addition a Gateway type review process and Prince 2 methodology should be adopted for all high risk and high value procurements.

d Procurement failure usually points to a badly defined requirement (*Office of Government Commerce*). The Office of Government Commerce has produced much guidance on why procurements fail. This includes not being clear on:

- What is being secured / service specification
- What is actually fit for purpose
- Who should provide the required resource
- What are the risks, rewards and benefits

- What is the correct (and if required EU compliant) procurement methodology

e The following has been adopted to ensure the process and outcomes are robust and sustainable:

f Implemented procedures for:
- Approval of service specifications by project panels (including clinical leads)
- Approval of routes of procurement by the Governing Body
- Production of guidance for service specification development (The NHS Standard specification template for service specifications to be used in order to ensure all the relevant information is included at the commencement of the procurement process.)

2.6 Key Procurement Principles

The key principles of good procurement below will act as a touchstone for developing procurement practice in Bexley Clinical Commissioning Group going forward.

a **Transparency**[2] – including the use of sufficient and appropriate advertising of tenders, transparency in making decisions not to tender[3], transparency about commissioning strategies and intentions, about the outcome of service reviews, about documentation and process and the declaration and separation of conflicts of interest.

b **Proportionality** – making procurement processes proportionate to the value, complexity and risk of the services contracted, and critically not excluding potential providers through overly bureaucratic or burdensome procedures and including the third sector.

c **Non-discrimination** – ensuring consistency of procurement rules, transparency on timescale and criteria for shortlist and award. This includes documentation and, particularly, the identification of criteria and weightings that will be used as part of any evaluation process.

d **Equality of treatment** – ensuring that all providers and sectors have equal opportunity to compete where appropriate; that financial and due diligence checks apply equally and are proportionate; and that pricing and payment regimes are

[2] It is fundamental that adverts are used to ensure competitive procurements. From 1 October 2008, all NHS commissioners are required to post information about tendering opportunities and contract awards on the DH Portal site - **http://www.supply2health.nhs.uk/default.aspx** -, making it easier for suppliers to track down single opportunities and understand exactly what CCGs want. For commissioners, Supply2Health will help meet their legal requirements to advertise and potentially increase the number of suppliers responding to their adverts by reaching a wider audience. See embedded document.

NHS Supply2Health
Info 27012013 v1.0.

[3] Bexley CCG must act transparently and be able to demonstrate rationale for decisions.

transparent and fair. Ensuring that process does not give an advantage to any sector (public, private etc).

2.7 Competition – the Key Procurement Principles

a. All goods and services should be purchased by competition, unless they are of low value (less than £10,000 including VAT), or meets the requirements of section 29 of the CCG's Detailed Financial Policies and Operational Scheme of Delegation (DFP), in particular via the NHS London procurement hub. Competition avoids any suggestion of favouritism, discourages monopolies and demonstrates that value for money has been sought.

b. Typically, a competition is carried out through seeking written quotations or tenders from several providers, by inviting them to make an offer to supply specified goods or services at a stated cost or rate. Bexley CCG Detailed Financial Policies and Operational Scheme of Delegation requires the tendering of services above £50,000 (approval to procure must be granted via the BCCG Governing Body) and suggests that these are advertised on Supply2Health portal. The prerequisites are described more fully in the Step by Step guide (3.1).

c. All procurements over financial thresholds of £113,057[4] for Part A services or £173,9344 for Part B services (including health services) are subject to the Public Contracts Regulations and any staff undertaking procurements are bound by the general principles laid down in the provisions, even in circumstances where the Regulation does not apply (for example, with respect to procurements below the financial thresholds of the directives, the principles of transparency, proportionality, non discrimination and equality of treatment still apply).

Refer to the Public Sector Contracts Regulations 2006 and / or the CCG's Advertising Policy for details of Part A and Part B requirements.

2.8 Value for Money

a Government policy states that all central civil government procurements should be based on best value for money (VFM) and that Departments should seek to secure continuous improvements in VFM.

b Best VFM means taking into account, when making procurement decisions, "the optimum combination of whole life cost and quality necessary to meet the customer's requirement". In order to comply with Government policy on VFM, all procurement decisions within Bexley Clinical Commissioning Group must be based on robust assessments of all the options in each set of circumstances as well as patients interest, making full use wherever appropriate of Framework Agreements (refer to 2.11) Continuous improvements in VFM should be sought throughout the life of a contract through effective contract monitoring, management and control.

2.9 The proposal for a new Public Sector Procurement Directive

In December 2011 the commission published a proposal for a new directive intended to simplify and modernise the law on public procurement. The draft directive is now under

[4] From 1 Jan 2012 to 31 December 2013

discussion and the UK government expects the adoption of a final text in 2013. All states must then make any necessary changes to national law by a further 18 months, the changes will not therefore take effect in UK law until sometime in 2014.

The new directive does not provide for Part A and B services. All services contracts would be subject to the detailed (and restrictive) rules currently the case for works, supplies and Part A Services contracts. An exception is made for "social, health and education services" allowing a continuation of the current flexible approach.

However the flexible approach currently allowed for Part B services additionally require a contract notice in the European Official Journal revealing the intention to award a public contract as well as requiring the publication of a notice indicating details of the award of the contract. The threshold of application will however be greater than for other services (500,000 Euro in comparison with the 130,000 Euro which applies at present to Part A Services).

2.10 Rules and EU principles / criteria

2.10.1 As part of this Policy it is important to be clear that:

a. All procurements will comply with the requirements of the CCG's Detailed Financial Policies and Operational Scheme of Delegation.

b. All procurements will comply with the requirements of the European procurement processes, where they apply (Part A and Part B options)

2.10.2 Currently healthcare services are excluded from the requirements of the European procurement rules; however case law increasingly supports a Bexley CCG approach that all goods and/or services procurements should comply with European rules and regulations if the value is such that the OJEU procurement routes would apply. Notwithstanding it is clear that even for Part B services there is an overriding imperative to adhere to the Key Principles of good procurement as indicated at paragraph 2.6.

2.10.3 It is accepted that complex procurement processes and the application of rules can be a barrier to entry for some providers where they lack the skills or experience to participate fully. It is intended to create a development programme via a market analysis which will address how we engage more effectively with providers, patients, commissioners, stakeholders and service users so they can participate in, and inform procurement processes.

2.10.4 The EU Treaty and various Directives on procurement require competition as the mechanism by which contracting authorities ensure equality of treatment, transparency and non-discrimination. Nevertheless, it remains for Bexley CCG to decide whether a formal tender is required for healthcare services.

2.10.5 Considerations would also include Framework Agreements in which there are agreements with providers which set out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement. Note: The Framework Agreement term is commonly used to cover agreements which are not, themselves, covered by the definition of a contract to which the EU rules apply (though they may create certain contractually binding obligations). Such agreements set out the terms and conditions for subsequent call-offs but place no obligations, in themselves, on the procurers to buy anything and are free to use the frameworks when they provide value for money.

2.10.6 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 by the holder of the framework agreement, such as the Department of Health, London Procurement Programme, other CCGs). The EU rules for public procurement state the framework agreements should be for no longer than four years duration.

2.10.7 There are two methods for calling off services within Framework Agreements:

a. Option one: apply the terms of the framework agreement;

b. Option two: hold a mini-competition (if applicable/allowed). Here all providers on the framework who can meet the requirements are invited to submit a bid, these are then evaluated and business awarded following the same processes used for "conventional tenders". Any contract awarded can run beyond the framework agreement period, but the length of the contract extension must be reasonable.

2.11 Framework Agreements

a These non legally binding arrangements are called Framework Arrangements by the EU and may apply to services or supplies.

b Call-off arrangements (Framework Arrangements) which establish the terms on which Bexley Clinical Commissioning Group and a Provider may enter into any subsequent contract but do not commit Bexley Clinical Commissioning Group to buy anything, are not specifically provided for. Under an informal understanding between the Commission and member states, however, such arrangements may be treated as if they are contracts provided they are advertised and awarded in accordance with the Directive.

c If call-off arrangements are advertised and awarded in accordance with the Directive, there will not be any need to advertise individual contracts made within the arrangement. However the delegated limits on obtaining quotes and tendering will apply.

d Call-off arrangements which are likely to exceed the threshold should be advertised at the outset as though they were contracts. The duration for these arrangements must be limited to four years to ensure that value for money is still being obtained in a changing market place.

e Central Framework Agreements for a wide range of goods and services frequently purchased by Bexley Clinical Commissioning Group have been set up by the London Procurement Programme (LPP), these include Purchased Healthcare Services, Information Technology & Telecommunications, Professional Services, Legal Services, Agency, Estates and Facilities, Medical & Surgical, Pharmacy & Medicines Management, NHS Supply Chain and Haemophilia. Website www.lpp.nhs.uk. In addition central government have set up a large number of framework agreements for all public sector bodies to use: http://gps.cabinetoffice.gov.uk/about-government-procurement-service/buying-solutions (previously Buying Solutions).

f Other Framework Agreements (e.g. those set up by NHS Business Services Authority (NHS Supply Chain http://www.nhsbsa.nhs.uk/SupplyChain.aspx), Pro5 Group (Central Buying Consortium, Eastern Shires Purchasing Organisation, North East Procurement Organisation,

Yorkshire Purchasing Organisation www.espodealingdirect.org) and Other Government Departments) are also used where they provide better VFM. It is both Government and Clinical Commissioning Groups policy to use these Framework Agreements (FA) wherever they are appropriate to the purchases being made. Note however the FA's must be open to Other Government Departments (OGD) to utilise. Framework Agreements also provide comprehensive management information which is a key enabler to even greater VFM on a continuing basis.

g Free to access Framework agreements are also available from HealthTrust Europe LLP. This organisation provides a service to both the public and private sectors, framework agreements include, Office Supplies, Management Consultancy, Internal Audit and Counter Fraud Services, External Audit, Asset Financing (leasing), Salary Sacrifice Income Recovery, Bill Checking, Interpretation and Translation Services and Legal Services, the website address is www.healthtrusteurope.com.

h Disaggregation of Framework arrangements by using other providers will seriously impact on Bexley Clinical Commissioning Group's ability to achieve continuing VFM. In the long term this ultimately means that there are less resources to go around, although it may appear as if in the short term a particular commissioner might be gaining. This is usually not the case, as there is more to Framework Agreements than a simplistic price comparison. Details of the available LPP Framework Agreements are available on www.lpp.nhs.uk .

i NHS LIFT was an approach to the delivery of service development and capital investment for community-based health and social care. The initiative is designed to assist with the delivery of a "step change" in primary care. Local stakeholders will enter a public private partnership (PPP) agreement to own and develop fully maintained property for primary, community and social care users.

j ProCure21+ is a procurement method for publicly funded NHS Capital Schemes. It is currently being used to deliver community hospitals, primary care centres, mental health units and other acute services such as cardiac care and out-patient units. It stands along side the Private Finance Initiative (PFI) and the Local Investment Finance Trust (LIFT) initiative to deliver the future of NHS facilities.

2.10.9 Where goods and Services are procured via NHS Supply Chain and the LPP Procurement Hub this will mitigate risk of non compliant procurement process. These should only be used where it is beneficial to do so given that it is entirely appropriate to conduct procurements utilising internal expertise and resource.

2.10.10 Wherever possible standard form contracts should be utilised at award including the appointment of 'Any Qualified Provider' contracts. These are framework agreements.

2.12 Health Services Procurement Guidance

2.12.1 This Guide supports NHS commissioners in deciding whether and how to procure health services through formal tendering and market-testing exercises. The Principles and Rules for Cooperation and Competition sets a requirement for commissioning and procurement to be transparent and non-discriminatory, restates the policy requirement for commissioners to use providers who are best placed to deliver the needs of patients and populations, and ensure that contract awards complies with the NHS Act 2006. *Procurement Guide for Commissioners*

of NHS-funded services, July 2010 and Statutory Instrument the NHS (Procurement, Patient Choice and Competition) Regulations 2013.

2.12.2 Bexley CCG's Procurement Policy is designed to provide a framework to support decision making on the commissioning and contracting approach to be adopted in procurement. This is in tandem with Bexley CCG's approach to new and existing clinical services and is aligned with the CCG's Detailed Financial Policies and Operational Scheme of Delegation. This Policy is informed by and supports NHS Procurement Strategies.

2.12.3 As part of the initiative to raise standard in procurement, Bexley CCG is expected to ensure that there is a fit for purpose procurement process in place. To this end procurement process documentation is being developed by Bexley CCG to support Any Qualified Provider and Competitive Tender Processes. This is based on DH template documentation is available from the Head of Procurement & Contracting. This will increase awareness of procurement best practice and support delivery of timely, statutorily compliant, clinically effective investments that represent value for money.

2.12.4 It is intended that this procurement policy and associated plans/tools will facilitate delivery of nationally mandated projects and local investment priorities. Furthermore it is intended that this policy will mitigate the risks associated with ad-hoc procurements ensuring that procurements are evidence based, clearly specified, and costed to ensure they are affordable and viable.

2.12.5 Bexley CCG must ensure that it understands its duties and obligations; the extent to which it is accountable; and the potential risks to Bexley CCG and to the Secretary of State. Detailed Financial Policies and Operational Scheme of Delegation must be adhered to in all procurement and contract procedural rules. If in doubt, legal advice should be sought. Cabinet Office (previously the Office of Government Commerce) and DH Gateway review process should be used to provide assurance to contracting authorities that the procurement is conducted in accordance with best practice. Use of the Gateway process is mandatory for high risk and optional for low or medium risk procurements as defined by Cabinet Office/DH risk potential assessment. Basic considerations will include Market Analysis, Assessment of Procurement Strategy, Procurement Options and of the Procurement Routes. For further information contact on Gateway reviews contact the department of health on 0113 254 6213 or email dh_nhsgatewayreviews@dh.gsi.gov.uk .

2.12.6 The publication of the Department of Health Transaction manual is intended to help organisations develop boundaries for transactional activity, indicative transactional activities and plans, permitted transactions and relationship maps.

2.12.7 The Department of Health and Cabinet Office websites contain high-level generic procurement principles that are meant to provide a checklist and apply to any type of procurement. They provide important guidance, with links to the more detailed information and direction available. Bexley CCG will need to consider any additional requirements that they are subject to. For example, consider compliance with the "best value" obligations, in addition to these principles. The following criteria should be considered (not necessarily in this order) by Bexley CCG when considering whether to competitively tender:

Assessment	**Consideration**
Estimated value of the	The greater the value of the contract, the stronger the

contract	case for advertising the tender
Level of market interest and capability	The larger the number of potential providers for the services there are, the stronger the case for advertising the tender. This could override considerations based on the value of the contract
Government policy on protected services	Where the contracting authority can demonstrate that the service must be provided by a particular provider to protect essential public services, an advertised tender is unlikely to be necessary. (This must not be used to protect providers that are not best placed to deliver the needs of their patients and population)
Is there a reason that competition is not appropriate in this circumstance?	Do urgency considerations, due to factors beyond the contracting authority's control, preclude an advertised tender? Are the services protected by monopoly rights in accordance with a legal or administrative instrument? Is there only one supplier capable of providing services due to technical reasons or special or exclusive rights?

3 Procurement Overview and Process

3.1 The objectives of this procurement policy are to ensure that Bexley Clinical Commissioning Group achieves quality, innovation and value for money as well as demonstrating effective governance in all procurement activities by adhering to the following:

Procurement Principles
Essential principles which should form the basis for all procurement decisions.
Service Specification
The document which starts the procurement process and which the person writing the specification will use to commission services utilising procurement support. It is perhaps the key to the success of the procurement exercise.
Project Brief / Project Initiation Document (if used)
An initial document that describes the aims and ambitions of the project.
Business Case
A compelling business case should be developed along-side the service specification in line with the CCG's Project Management Office processes.
Procurement Brief
The document outlines the various procurement options and routes for a competitive tendering process.
Procurement Process
The procurement process should be managed as a project by suitably qualified and experienced staff.
Contract
A clear, well-structured legally binding contract is increasingly being seen as a pre-requisite for effective contracting.
Contract Management
Good contract management ensures that the procurement delivers in terms of value for money, quality of service and effective governance over the life of the contract.

a Each procurement exercise should, therefore, be conducted through an open (transparent), competitive tender process appropriate to the value and nature of the services to be procured and consistent with the principles of the EU procurement process, unless:

- an appropriate framework agreement already exists;
- the Any Qualified Provider (AQP) framework contract already exists,
- an appropriate existing contract already exists - including under local enhanced service (LES[5]) arrangements;
- exceptional circumstances apply requiring a waiver under section 18.3 of the CCG's Detailed Financial Policies and Operational Scheme of Delegation.

b For all major projects, the proposed procurement process should be set out in a Procurement Strategy/Brief document (separate to the Business Case). This will describe the proposed procurement methodology in detail and set out the argument for the proposed approach together with supporting evidence.

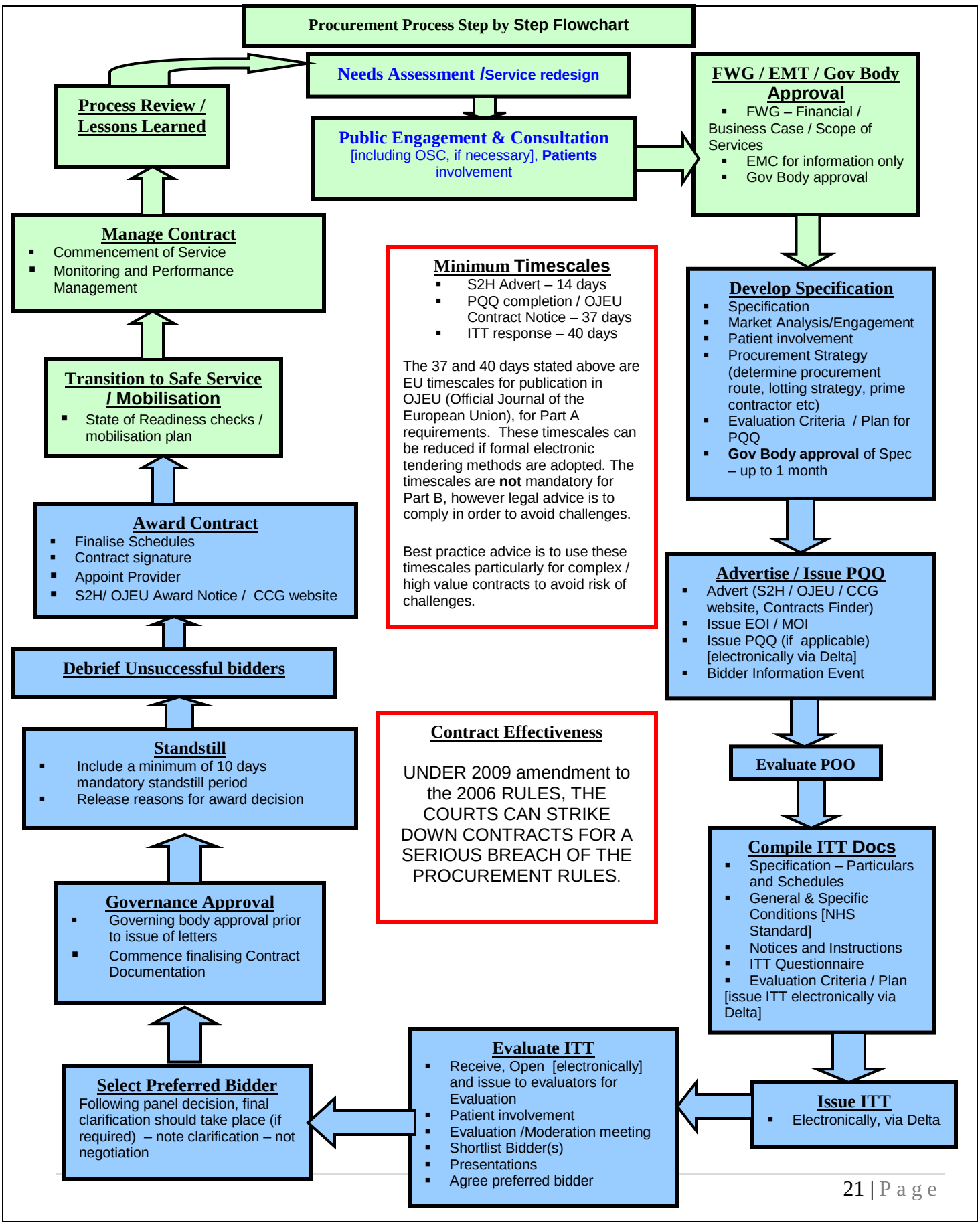
c The Procurement Strategy/Brief must be approved by the Executive Management Committee (EMC) and then by the Governing Body prior to any advertisement and in accordance with the CCG's Operational Scheme of Delegation and in all cases prior to the procurement process commencing.

d Where an open tender process is not adopted, Bexley Clinical Commissioning Group will still seek optimum value for money through other means, such as benchmarking, choice, market development and contract mechanisms.

e Further information on the procurement process including information on the use of Small Medium Enterprises (SME) is included in detailed guides from the Head of Procurement & Contracting.

[5] LES arrangements will cease from April 2014

3.1 Overview of Process



3.1.1 How procurement fits into the Commissioning process

a Procurement is not the same as 'commissioning'. Commissioning is the process of identifying the need and Procurement is how service contracts and providers are sought to meet the requirements.

b Procurement is defined as being the acquisition of goods and services from third party suppliers under legally contractual terms where all the conditions necessary to form a legally binding contract have been met. The process of procurement is also sometimes called purchasing, buying or contracting. While these words are occasionally used interchangeably, there is much more to procurement than merely entering into a contract. The Government Procurement Service (GPS)) definition of procurement is 'Procurement' means the whole process of acquisition from third parties (including the logistical aspects) and covers goods, services and construction projects. This process spans the whole life cycle from initial concept and definition of business needs through to the end of the useful life of an asset or end of a services contract. Both conventionally funded and more innovative types (e.g. PFI/PPP) of funded projects are included. This definition is consistent with modern supply chain management practices and that used in the 1995 White Paper (CM 2840) Setting New Standards. The process is not limited to the purchasing function in departments and is inherently multi-functional especially in large, complex and/or novel procurements. There is no difference between 'procurement' and 'acquisition' from the OGC Gateway perspective.

c Procurement is part of a cycle – starting with the identification of need to commissioning a service and ending with the end of a contract. So it has parallels with the cyclical process of commissioning.

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Procurement\Policy\c

d Within the public sector Service Level Agreements (SLA) are undertaken between sections, departments, divisions, directorates of the same organisation or between public sector bodies / parts of "the crown" ie between NHS bodies which are not Foundation Trusts. They are proxy contracts and as such they are not usually subject to the jurisdiction of the courts. Note however that Foundation Trusts are the exception to this rule as they are independent public sector organisations, not subject to the directions of the Secretary of State and will have legally binding contracts in place with CCGs, which are sunject to the jurisdiction of the courts as they are a contract in line with e) below.

e A Contract is an external contract between Bexley Clinical Commissioning Group and an external provider / commercial organisation which is subject to the jurisdiction of the courts.

3.1.2 Types of EU Procurement Procedures

In the following we show the types of procurement procedures used within the EU frameworks

The revised EU public sector Directives permit four tendering procedures:-

3.1.2a Open Procedure

Under this procedure all interested parties may submit tenders.
Information on tenderers' capacity and expertise may be sought and only the tenders of those deemed to meet minimum levels of technical and financial capacity and expertise are evaluated. If there are minimum requirements it is important that they be made clear in the notice or the request for tenders (RFT) to avoid unqualified bidders incurring the expense of preparing and submitting tenders.

3.1.2b Restricted Procedure

This is a two-stage process where only those parties who meet the minimum requirements in regard to professional or technical capability, experience and expertise and financial capacity to carry out a project are invited to tender.
As a first step, the requirements are set out through a contract notice in Supply2Health/OJEU and expressions of interest are invited from potential tenderers. The contract notice may indicate the relevant information to be submitted or the information may be sought via a detailed questionnaire to interested parties. The second step involves issuing the complete specifications and tender documents (RFT) with an invitation to submit tenders only to those who possess the requisite level of professional, technical and financial expertise and capacity.
It is important to note that, as a basis for pre - qualifying candidates, only the criteria relating to personal situation, financial capacity, technical capacity, relevant experience, expertise and competency of candidates set out in the revised Directive (Articles 45 to 48 of 2004/18/EC) are permissible. The European Court of Justice and the EU Commission have ruled clearly on this. Contracting authorities may opt to shortlist qualified candidates if this intention is indicated in the contract notice and the number or range of candidates indicated. Shortlisting of candidates who meet the minimum qualification criteria must be carried out by non - discriminatory and transparent rules and criteria made known to candidates. The Directives require that a number sufficient to ensure adequate competition is invited to submit bids and indicate a minimum of five (provided there is at least this number who meet the qualification criteria) and up to a total of 20.

3.1.2c Competitive Dialogue Procedure

This is a procedure, introduced under Article 29 of the revised public sector Directive 2004/18/EC, designed to provide more flexibility in the tendering process for more complex contracts, for example public private partnerships (PPPs). Contracting authorities must advertise their requirements and enter dialogue with interested parties, (pre – qualified on the same basis as for restricted procedure described at 3.1.2b above). Through the process of dialogue with a range of candidates, a contracting authority may identify arrangements or solutions which meet its requirements. Provided its intention is indicated in the contract notice or in descriptive documents supplied to candidates, a contracting authority may provide for the procedure to take place in successive stages in order to reduce the number of solutions or proposals being discussed. The reduction must be achieved by reference to the award criteria for the contract.
In conducting the dialogue, contracting authorities must ensure equality of treatment and respect for the intellectual property rights of all candidates. When satisfied about the best means of meeting its requirements, the contracting authority must specify them and invite at least three candidates to submit tenders. The most economically advantageous tender will then be selected. Aspects of tenders may be clarified or fine tuned provided that there is no distortion of competition or discrimination against any tenderer.

3.1.2d **Negotiated Procedure**

This is an exceptional procedure, which may be used only in the limited circumstances set out in Articles 30 and 31 of the revised public sector Directive. There are two types of negotiated procedure:

(a) *Contracting authorities advertise and negotiate the terms of the contract.*

This process should normally involve the submission of formal tenders by at least three candidates (pre-qualified on the same basis as for the restricted procedure described at 3.1.2b above, provided there are at least this number who meet the minimum qualification criteria) with negotiation on final terms in a competitive process. This procedure may be used mainly:

- where the nature of the requirement does not permit overall pricing;
- where it is not possible to specify requirements for a service with sufficient precision to enable tenderers to respond with priced tenders;
- where an open, restricted or competitive dialogue procedure has not attracted acceptable tenders.

(b) *Contracting authorities negotiate, without advertising, the terms of the contract directly with one or more parties*.

This is a departure from the core principles of openness, transparency and competition and is a very exceptional procedure. The main instances where this procedure may be used are:

- in cases of extreme urgency;
- when, for technical or artistic reasons or due to the existence of special or exclusive rights, there is only one possible supplier or service provider;
- when an open or restricted procedure has not attracted appropriate tenders (provided all those who submitted tenders are included in the negotiations and the specifications of the requirement are not altered substantially);
- extension of existing contracts and repeat contracts subject to certain conditions;
- for the purchase of supplies on particularly advantageous terms, from either a supplier definitively winding up a business or the receiver or liquidator of a bankruptcy, an arrangement with creditors or similar legal or regulatory procedure.

Contracting authorities should ensure that the precise circumstances justifying negotiation, as set out in the public sector Directive, exist before deciding on the use of this procedure. It should be noted that definitions of ‘exceptions’ and ‘urgency’ are strictly interpreted by the Commission and the Courts. Factors giving rise to urgency must be unforeseeable and outside the control of the contracting authority. Where one of these exemptions is invoked, the contracting authority must be able to justify the use of the exemption. Candidates must always be treated fairly and objectively in negotiations.

The use of the Negotiated Procedure would need to be approved by the Governing Body within the request for approval for procurement

3.1.3 EU Procurement Thresholds

http://procurement.cabinetoffice.gov.uk/sites/default/files/files/GP_content/Public_procurement_policy/New%20Threshold%20Levels%20for%202012%20%26%20changes%20in%20the%20use%20of%20the%20Accelerated%20Restricted%20Procedure%2010_11.pdf

3.1.4 Grants

a Although the term grant is widely used by health authorities, local authorities and voluntary organisations, there is no legal definition of a grant. However, in its simplest form a grant is like a conditional gift. In order to see how a grant differs from a contract, it is necessary to analyse a grant relationship in terms of the elements of a contract.

b Generally, parties to grant agreements do not intend to create a legal relationship such that the agreement is enforceable through the Courts (i.e. to ask a Court to order either party to fulfil their obligations under the agreement or award damages for non performance). If a voluntary organisation ceases to provide the service which is the subject of the grant or fails to provide the required monitoring information, the CCG would simply cease to pay the grant. This can be compared with a contractual relationship where the CCG may apply to the Courts for a remedy such as damages for any losses suffered, specific performance of the service which is the subject of the contract or a claim for negligence.

c Public Bodies must follow public procurement policy at all times. In certain circumstances grants are payable to third sector organisations. However, there should be no preferential treatment for third sector organisations. Use of grants can be considered where:

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

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

3.1.5 Electronic Tendering

a Electronic tendering (e-tendering) is the carrying out of the tender process using electronic means such as the internet and specialist e-tendering software applications. Bexley Clinical Commissioning Group has introduced an electronic tendering (e-Tendering) system for the CCG utilising technology provided by BiP Solutions Ltd. All our procurements covering quotations, pre-qualification questionnaires, invitations to tender and bidders tender responses, will be conducted through this system.

b The system provides a simple secure and efficient means for managing tendering activity and contract negotiations including secure document exchange with providers over the internet. It will help both Commissioners and Providers to reduce the time, effort and costs involved in the procurement life cycle.

3.1.6 Forming a Contract

a This can be a complicated area, mostly because it is all too easy to unintentionally create a legally binding contract by word, action or in writing (even if the document does not refer to itself as a contract), which could, of course, commit Bexley Clinical Commissioning Group to

unfavourable terms and conditions. For instance, many companies print their own terms and conditions on the reverse side of all correspondence and invoices, so unless the NHS Standard Conditions of Contract are already in place, the provider's terms will apply by default. If in doubt, or you are unsure about the contractual impact of any correspondence received, please contact the Head of Procurement & Contracting for advice **before** communicating with the proposed provider or supplier.

b By using Framework Agreements, and in the case of all procurements involving Bexley Clinical Commissioning Group's tender documentation, you will be commercially protected by virtue of the DH/NHS's Standard Contract automatically applying. Generally, approval is required for all contracts not using DH/NHS terms and conditions.

c Commissioners must have regard to the NHS Constitution whereupon it is now a legal duty to ensure that patients are offered 'free choice' of provider for their first outpatient appointment when referred by a GP. Bexley Clinical Commissioning Group must also have regard to extending patient choice into other areas in line with the development of national policy (e.g. care and support planning) for patients with long-term conditions, and maternity care. This is an example of competition 'in' the market i.e. where there are more than two providers of the same service.

3.1.7 The Transfer of Undertakings and Protection of Employment (TUPE)

Where in-house services are transferred to another provider the parties must comply with specific legal requirements, such as TUPE of and relevant codes of practice. Employment issues relating to TUPE will be considered early in the pre-tender process. Usually TUPE rules will apply where there is a defined group of staff carrying out a defined service for a single commissioner (i.e. on a one-to-one basis). Procurements will be considered on a case by case basis and specialist advice sought.

3.1.8 Contract Types and Standards

3.1.8.1 The Standard NHS contract should be used irrespective of contract value where Bexley Clinical Commissioning Group is commissioning clinical services. The contract allows for a developmental and proportionate approach in relation to appropriate monitoring information requirements.

a) Standard NHS Contract

The Standard Contract should normally be used if one of the following criteria applies:

- Where the Clinical Commissioning Group Providers deliver Acute, Ambulance, Community, Mental Health and Learning Disabilities services and out of hospital care;
- Where Bexley Clinical Commissioning Group contracts with practices – or consortia of practices which wish to provide community or secondary care-type services, where the service is provided to a population greater than that of their practice population;
- The service has been procured through open tendering and is delivered by either a commercial vehicle such as a limited company, a third sector organisation or an NHS organisation;

The Standard NHS Contract should normally be used when contracting with any provider for Acute, Ambulance, Community, Mental Health and Learning Disabilities and out of hospital care, however *exceptions may include*:

- Where Bexley Clinical Commissioning Group is contracting jointly with a local authority, and Bexley Clinical Commissioning Group is not the lead contractor, it may be

appropriate to use a local contract. Bexley Clinical Commissioning Group should ensure that the main provisions and requirements contained within the Contracts are incorporated into local agreements.

b) Care Homes Contract

The NHS Standard Care Homes Contract should normally be used when contracting for NHS funded care home services. The contract can be used with all types of care homes, including those providing care for older people, people with mental health problems and people with physical disabilities.

c) High Secure Contract

The NHS Standard High Secure Contract should is intended for use by the three Specialised Commissioning Groups responsible for commissioning high secure services and is intended to cover the services provided at Ashworth, Rampton and Broadmoor High Secure Hospitals.

d) Non Clinical Services

The NHS terms and conditions of contract (non-clinical) should be used for the purchase of non-clinical services e.g. consultancy / support services.

3.1.9 Contract Award

A tender report for the project must be signed off in accordance with detailed financial policies and operational scheme of delegation before bidders are advised of the outcome of the procurement.

This requires the report to be noted by the EMC and approved by the Governing Body.

The requirements for implementation of a "standstill period" (if applicable), and publication of the award notice in OJEU (if applicable) and Supply2health as well as Contracts Finder must be adhered to.

3.1.10 Signing of Contracts and Authorised Signatories

If contracts are not signed by both parties, there is effectively no binding agreement and thus no obligation for either party to adhere to the agreed terms of the contract. All contracts must be signed in a timely manner, preferably before the start of the contract to ensure the smooth running of services and compliance with policies agreed in principle. The signing of the contract must be undertaken by the appropriate officer in accordance with the operational scheme of delegation

Type of Contract	**Authorised Signatories**
Authority to award or sign contracts for goods/services after obtaining at least i) 1 quotation for expenditure less than £10,000 ii) 1 quotation for expenditure £10,000 to £50,000 iii) At least 3 written quotations	a) i) Budget Holder or Head of service ii) Assistant Director iii) Sign - Either Chief Officer, Chief Financial Officer, Director of Commissioning **or** Director of Governance & Quality . iv) Use Procurement Manager to tender and

	over£50,000	procure and note OJEU limits for non clinical services.
iv)	Competitive tenders in line with the CCG's procurement policy.	**All procurement must be authorised by an appropriate CCG Committee or assigned group prior to advertisement and on awarding of the contract. This usually being discussion at Executive Management Team and approval via Governing Body (but could be delegated to another Committee).** Sign – Either Chief Officer, Chief Financial Officer, Director of Commissioning **or** Director of Governance & Quality **after** approval of

3.1.11 Contract Novation, Assignment, Takeovers and Mergers

a A novation is when all the rights and obligations of one party to a contract are transferred to a new party to the contract.

b When a contract is novated, the new provider effectively takes on the same role as the old provider had under the contract. This means that the new provider is responsible for providing the goods or services and fulfilling all its other obligations under the contract, as well as having the right to receive payment and to enforce the terms of the contract. The old provider is released from its obligations under the contract and so will no longer be responsible for ongoing performance and compliance with the contract.

c A novation requires the agreement of all parties involved – the original provider, the new provider and Bexley Clinical Commissioning Group. From a legal point of view the existing contract comes to an end and a new contract on the same terms is entered into between Bexley Clinical Commissioning Group and the new provider. Therefore the novation must be approved by the correct contract signatories for Bexley Clinical Commissioning Group.

d The words novation and assignment are often used interchangeably. They are complex concepts and have different meanings and implications legally.

e If a provider assigns a contract or part of it to a new provider, the new provider can enforce the provider's rights under the contract (such as the right to be paid). The provider's obligations under the contract, however, do not transfer. This means that the current provider will continue to be responsible for providing the goods or services, even though the new provider may now provide those goods or services.

f Unlike a novation of a contract, in most circumstances an assignment does not need the consent of Bexley Clinical Commissioning Group unless the contract stipulates this. However, our NHS Standard Contract terms do require the prior written consent of Bexley Clinical Commissioning Group for an assignment of all or part of the rights under a contract.

g Where a provider fulfils a contract and that provider is subject to a take-over bid, by another company, the following should be undertaken:

- Complete provider appraisal checks;
- Obtain an evaluation of the provider's past performance;
- Draw up and sign a Novation Agreement or Deed of Novation document, including any security or confidentiality agreements.

This will ensure that the criteria set for selecting a provider are not circumvented.

h Insolvency. No matter how good the pre-qualification process of technical and financial assessment, companies fail. Although it is not illegal to trade with an insolvent company (as it may trade its way back to financial health), there is a danger that the provider may incur debts it would not have done had Bexley Clinical Commissioning Group not continued to contract with it. If there is any doubt about the financial stability of a company (during the competitive tendering process), the use of bank or parent company guarantees should be considered but remember the cost will be reflected in the contract price.

3.1.12 Debriefing of Tenderers

a For procurements subject to the EU legislation, Bexley CCG is required to debrief candidates who fail to be **shortlisted and** unsuccessful bidders within 15 days of receiving a written request. An unsuccessful bidder is entitled to be told the name of the successful bidder but not the contract price. It is good business practice to debrief all unsuccessful bidders so that they can prepare better in the future to respond to tenders.

b The range of prices should be disclosed if 3 or more bids have been received. It is good practice for the development of providers and their future competitiveness to offer a debriefing, so that all providers can understand why they were not selected and failed to win the contract.

c Debriefing should only be carried out by the procurement team.

3.1.13 Reporting on Statistical Requirements

a On an annual basis Bexley CCG must submit a return to the Cabinet Office (via DH / NHS London) for inclusion in the UK return to the EU. The report records the number and value of contracts awarded by each contracting authority above the threshold by the:

- procedure used (open, restricted, competitive dialogue, negotiated with and without prior notice);
- category of supply or service (the CPV number);
- nationality of the supplier or service provider.

b The provision of this information is mandatory and Bexley CCG must therefore maintain records from which it can be derived. The Head of Procurement & Contracting coordinates the return for Bexley CCG.

3.1.14 Green Procurements

a Bexley CCG recognises its responsibility for integrating sustainability objectives within its working practices. Social issues need to be considered equally in the procurement of all goods and services and incorporated into procurement processes. A guide has been developed which attempts to provide a detailed understanding of environmental issues around specific goods and services. The Office of Government Commerce's document on Social Issues in Purchasing should be consulted for more specific guidance.

b Whole life costing takes into account the financial impact that services / products have over the whole life of their use. This includes cost / price, running costs, disposal costs and other indirect or administrative costs that can vary between service / product models that impact on the requirements. 'The savings are calculated for each year of the equipment or service contract life. It shows either a simple payback time or the payback during the life of the equipment or service contract' (CIPS 1999, in IDeA 2003). Through whole life costing we can justify in economic terms the reduction of the environmental impacts of consumption when all the costs over the life of a product are considered instead of the capital cost, ultimately providing better value for money.

3.1.15 Sustainable Development

a Information from the following three paragraphs are included in all pre-qualification documents to ensure compliance with the CCG's obligations on sustainable development. They should also be included in other documents as appropriate, e.g. the specification for an AQP requirement.

b Bexley CCG is committed to providing and purchasing health care in a way that supports the UK sustainable development agenda and contributes to environmental improvements, regeneration and reducing health inequalities. Bexley CCG commissions extensive healthcare services for the people of Bexley. As employers and users of resources, these services have an impact on the local economy, environmental and community. Implementing responsible policies, which benefit rather than damage social, economic and environmental conditions can help to improve the health of the people of Bexley and reduce inequalities.

c This can be done in a range of ways, e.g. by developing employment opportunities for local people, minimising energy use and waste production, promoting sustainable travel and opening up procurement contracts to local suppliers. Bexley CCG will be using the NHS Good corporate Citizenship Assessment Model (www.corporatecitizen.nhs.uk/) to identify progress and develop a Sustainable Development Action Plan. Shortlisted bidders (i.e. ITT stage) may wish to use this tool to help inform their action plans and responses. It is expected that shortlisted bidders will have considered sustainable development in their responses to the tender document.

d Within the PQQ documents, the Provider will be asked to demonstrate awareness of sustainable development and to describe how it plans to improve the sustainability of its service. The Provider will be expected to provide on-going evidence of improvements in sustainability. Shortlisted bidders (i.e. ITT stage) will be asked to describe their plans to promote sustainable development, through their activities in procurement, employment, energy use, waste management, estates, transport and community engagement. This is referred to as a Sustainable Development Plan.

3.1.16 Social and Environmental issues (EU Law)

a At the 'selection stage' of the process i.e. PQQ, only compliance with minimum standards can be examined. When examining sustainability issues at the award stage (ITT) the award criteria must be 'linked to the subject matter (performance) of the contract", for example a criterion evaluating a providers ability to supply the energy required under the contract would be allowable, but a criterion which evaluated the provider's general ability to produce green energy would not. All criterion used must be capable of assessment and verification and have a clear and transparent method of assessment

b Social criteria must likewise also be linked to the subject matter of the contract. Social labels such as Fair Trade should be used with caution as they often relate to the well-being or improved lifestyle of the growers, therefore not relating directly to the end product itself.

3.1.17 Climate Change

a The Climate Change Act 2008 includes a legal requirement for the UK to reduce carbon emissions by 80% by 2050, a target of 10% has been set for the NHS to reduce emission by 2015 from a 2007 baseline (NHS Carbon Reduction Strategy). Demonstrating high quality healthcare will require the embedding of sustainable development into our processes.

3.1.18 Social Value (Public Services) Act 2012

a The Public Services (Social Value) Act 2012 (the Act) came into force on 31 January 2013. It requires 'contracting authorities' to have regard to economic, social and environmental well-being in the procurement of public services contracts.

b The Act states that all contracting authorities in England will, before starting a tender process, have to consider:

- how the services which are to be procured might improve the economic, social and environmental well-being of the relevant area; and
- how, in conducting the procurement, they might act with a view to securing that improvement.

In considering how to conduct the process, a contracting authority should only consider matters that are relevant to what is proposed to be procured and the extent to which it is proportionate to take such matters into account (i.e. has a direct impact on contract performance). They should also consider whether to undertake any consultation about the issues referred to in (i) and (ii) above.
The Act only applies to the Pre-Procurement stage.

c Impact on Public Contracts Regulations
The Regulations state that a contracting authority may stipulate conditions, including in relation to social and environmental issues, relating to the performance of a public contract, as long as they are compatible with EU law and are set out in the contract documents. The Act does not override the EU public contracts regulations. This means that the pursuit of social value cannot be used to discriminate between bidders or between bidders' national location.

3.1.19 Appealing an Award Decision and The Remedies Directive

The Public Contracts (Amendment) Regulations 2009 (S.I. 2009 No 2992) came into force on 20th December 2009. They implement Directive 2007/66/EC on improving the effectiveness of appeal procedures concerning the award of public contracts ("New Remedies Directive"), in England, Wales and Northern Ireland. The New Remedies Directive both strengthens the available options for legal review of procurements and increases the range of available remedies. The most significant changes introduced by the Amendment Regulations include:

- There is a distinction between the "selection" and "award" stages of a procurement process and the criteria which must be applied at each of these stages;
- A requirement to disclose the criteria, sub-criteria, weightings and methodology;
- The introduction of a new penalty of ineffectiveness, which will enable the Courts to strike down contracts that have been awarded in serious breach of the procurement rules;

- The introduction of two new penalties – civil penalties and contract shortening – which a Court can use as an alternative to ineffectiveness if it considers that there are important public interest reasons why the contract should continue.
- There is a new obligation to release the reasons for the award decision at the start of the standstill;
- There is a new obligation to allow extra time for bidders to receive the standstill notice where the notice is sent using non-electronic means only;
- Contracting authorities must provide a precise statement as to when the standstill period is expected to end, and how the timing of its ending might be affected by any contingencies or the date before which the contracting authority will not enter into the contract / conclude the framework agreement;
- The end of the standstill period is midnight at the end of the 10th or 15th day after the relevant sending date. Where the last day of a standstill period is not a working day, the period is extended until midnight at the end of the next working day.

3.1.20 Process Documentation / Templates

To facilitate procurements, a suite of template documents and guides have been produced.

- Procurement Brief [details the options and routes to decide the appropriate procurement method for external competitive procurements i.e. those that are not suitable for the Any Qualified Provider model.]
- Model Expressions of Interest (EOI), Memorandum of Intention (MOI) and Pre Qualification Questionnaire (PQQ) documents (standardised for e-tendering)
- Model / Template NHS Standard Contract Specification
- Model Invitation to Tender (ITT) (standardised for e-tendering)
- Model Evaluation strategy and evaluation plan
- Advertising Policy
- EU Legislation Policy
- Gateway Review Process
- Guide to Green Procurement
- Disputes Resolution Policy
- Conflicts of Interest Procurement Paper
- Procedure for Requisitioning, Ordering and Receipt of Goods and Services
- Step by Step Procurement Guide
- DH Healthcare Market Analysis Tool / Decision Support Tool
- Public Contracts Regulations 2006
- Public Contracts Amendment Regulations 2009
- Bexley CCG Tender Waiver form

Updated versions of the documents will be available from the Head of Procurement & Contracting.

3.1.21 Advertising the Requirement

a Contracts Finder is one of a series of government measures aimed at making it easier for suppliers, in particular small and medium-sized enterprises (SMEs), to find and apply for public sector contracts. It is the main source of government opportunities worth more than £10,000.

b Government buyers can use Contracts Finder to publish live opportunities for suppliers to bid for. Prime contractors can now use the system to publish sub-contracting opportunities

provided they have been sponsored by a government buyer. The site contains below and above OJEU opportunities. The above OJEU opportunities are taken automatically from Tenders Electronic Daily (TED) website.

c Bexley CCG will publish tenders and contract awards above £10,000 on Contracts Finder via the BiP Solutions Delta e-Sourcing website, this will ensure the principle of transparency is met.

3.2 When to contact Procurement

The Detailed Financial Policies and Operational Scheme of Delegation requires that all procurements must be authorised by the Governing Body. You will need to contact the procurement team prior to seek approval

a Once the decision has been taken to commence a procurement exercise (i.e. after FWG and Governing Body approval) all major Procurements should be managed as a project, following the DH Gateway review process and Prince 2 methodology. Further details on the gateway review process are available in a guide from the Head of Procurement & Contracting. Note the "Gateways" here are different to those in the Finance Working Group process.

b Following approval to undertake a procurement, the first step in the procurement process is a further meeting between procurement and the business area to discuss and agree the process, consultations, issues, procedure, final timetable etc, draw up a Procurement Brief (available from the Head of Procurement & Contracting) and establish a procurement panel. In any event, all procurements (and particularly those involving competitive tendering) must have the involvement of Procurement in order to ensure the correct procedure is adopted. The Procurement Brief will be attached to the Business Case and follow the agreed CCG approval route prior to commencement of the procurement. (Note: the Business Case is regularly used to obtain approval from the Governing Body (Section 3.1c)

c Wherever feasible, procurement staff should be brought into the discussions at the earliest possible stage of a project. They have a responsibility for referring back to the project lead any doubts they may have about the specification, description or recommended provider. They are also:

- experts (or have ready access to experts) in procurement and contract law;
- may have access to existing specifications;
- familiar with the requirement for selecting the most appropriate procurement route, including public sector/EU procurement routes and able to advise on the appropriate route;
- in a position to know whether the requirement is available under existing contracts;
- able to help with the development of a sourcing strategy; and
- able to help with project planning.

3.2.1 Advertising

All procurements over £10,000 must be advertised in Contracts Finder (to encourage use of Small and Medium Enterprises). Procurements over £100,000 must be advertised in Supply2Health (Bexley CCG's Detailed Financial Policies and Operational Scheme of

Delegation requires the tendering of procurements over £50,000 and suggests that these are advertised), and additionally, procurements with a total value in excess of £113,057[6] (for general services) or £173,934 (for health services) (excluding VAT), not previously subjected to competition in the Official Journal of the European Union (OJEU), are likely to be governed by European Union Directives on Public Procurement. Where a competitive tendering exercise is to be undertaken, the Head of Procurement & Contracting should be fully involved at each stage of the procurement. Contact Procurement on 020 8298 6000 and refer to the Step by Step Guide (3.1)

3.2.2 Procurement Options and Procurement Routes, including Waivers

a Procurement options should be considered for securing services outside the scope of existing contracts, including: new service models; significant increases in capacity and where existing contracts are due to expire or be terminated (e.g. where contract management is unable to address underperformance).

b It is ultimately for a CCG as a Commissioner to decide when and how to use procurement in individual cases. These decisions will be informed by service reviews, benchmarking, analysis of the healthcare market ('Healthcare Market Analysis') and engagement with providers and staff. The Department of Health has produced a decision support tool to aid decision-making (the decision support tool is available from the Head of Procurement & Contracting). However, national guidance cannot be definitive and determining the best course of action will depend on detailed local knowledge and judgement. Commissioning boards must act transparently and be able to demonstrate rationale for decisions. Furthermore, commissioners must treat providers fairly and ensure that their actions are consistent with their contractual obligations.

c Key considerations that would inform the commissioner's decisions may include:

- The commissioner's assessment of patient and population need (e.g. outputs from Joint Strategic Needs Assessment)
- Commissioning priorities (e.g. improved outcomes for particular patient or population groups and increased productivity)
- Service reviews
- Historical performance and user satisfaction data
- Benchmarking
- Quality standards and best practice advice (e.g. NICE guidelines)
- Analysis of the healthcare market (i.e. current and potential provision)
- Public, patient and staff engagement.

d There are a number of principle procurement routes that Bexley Clinical Commissioning Group can take in the commissioning of new services[7]. It is vital that Bexley Clinical Commissioning Group documents procurement decisions and demonstrates that decisions are justified and easily audited, to aid this process a Procurement brief template document has been produced for this purpose and is available from the Head of Procurement & Contracting.

[6] This threshold is operational from 1 January 2012 and will be reviewed on 1 January 2014. See also references, guidance and links for more information.

[7] Bexley CCG may continue to commission services from current service providers via the extension of existing contracts (providing extension option is included in the contract) and, subject to Detailed Financial Policies and Operational Scheme of Delegation or use a competitive tender process if suitable for the services under consideration.

3.2.3 When disclosure may not be appropriate

One argument against budget disclosure is that providers could submit bids close to the budget price, when more cost-effective and/or innovative solutions might otherwise have been proposed. The option of providing an indicative price or price band / funding envelope may help to ensure better value for money.

3.2.3.1 It may be unnecessary or counter-productive to reveal budgets when:

- There is already a robust cost-estimating methodology for a project or programme (or its constituent parts). In this case, a cost estimate can be produced, against which bids can be assessed without the need to disclose an actual budget.
- The specification for the subject of the procurement is clearly defined and there is good pricing information.
- There is flexibility in the budget, with the possibility of extending this for outstanding solutions.
- There are significant fears of collusion between providers, and concern over control of this.

Where the commissioner is unable to determine indicative costs and prices prior to tendering, this will be an indication that further work is needed to engage with providers and develop the specification or consider a competitive dialogue approach where it is justified by the scale or relative importance of the procurement.

3.2.4 When budget disclosure may be appropriate

Disclosure of budgets, along with a clear set of selection criteria or desired outcomes, might allow providers to self-deselect if they think the procurement is beyond their abilities, or if they think they cannot compete. If the budget is inadequate, bidders can also signal this in writing, or by just not showing interest and the commissioner can then take remedial action to address this. Conversely, if the budget information is withheld, bidders may not understand the value of the procurement and hence submit unrealistic bids. This leads to unproductive time spent reviewing bids by the evaluator and wasted bid costs and time for the bidder.

3.2.5 Budget disclosure could be considered under the following circumstances:

- When the procurement budget is fixed, and there is no scope for increasing it (in this case the budget should not form part of the evaluation criteria).
- When the amount of funds allocated to a procurement exercise is publicly available information.
- Where the procurement is commodity based (i.e. how many items can we get for a fixed amount?) and the content and quality of the required items is fully defined.
- Where the outcomes or specification are not fully defined. For example, in the case of research funding, where a series of topics have been identified, it is often advantageous to disclose the overall amount of funds available for each topic, and invite expressions of interest, asking for more focussed proposals for research projects under each topic heading and an estimate of cost / anticipated number of man-days work. This approach allows the evaluator to pick and choose the most appropriate proposals before refining the specifications and putting these out to tender.
- Where there is a strong degree of competition, disclosing the budget can actually help providers to focus on producing the most competitive solution for the money available.
- Where the commissioner has established a policy of openness with its provider base and has processes in place to ensure that risks associated with the disclosure are adequately mitigated.

Where the commissioner has provided indicative information on price and funding model (e.g. price ceilings), the differences in prices are to be taken into account when evaluating bids.

3.2.6 Disclosure of budgets / funding envelope

What does the Law say?

There are number of legal issues to consider before deciding whether or not to disclose a budget / funding envelope:

- There may be a good case for obtaining an exemption for budget disclosure requests received under the Freedom of Information Act using the commercial prejudice exemption. Public bodies are exempted from releasing information if it is likely to prejudice the commercial interests of any person. (A person may be an individual, a company, the public authority itself or any other legal entity.)
- Any disclosure of budget information to one bidder will usually require disclosure to all bidders. This is in accordance with the EU principles of non-discrimination, equal treatment and transparency. Be aware that disclosure of budget information to short-listed bidders at a late stage of a procurement exercise (i.e. ITT) may, in certain circumstances, be unfair to bidders that already have been eliminated.
- There is a common misconception that advertising an opportunity in Supply2Health / OJEU prohibits the disclosure of budgets. However, there is a section where budget information can be entered on the form and this is a good way of ensuring that all potential bidders have access to the same information at the same time.

The BCCG Procurement team can provide advice on the disclosure of budget information.

3.2.7 Specifications and Considerations

In developing this procurement policy it is clear that procurement best practice should be applied to all functional areas of Bexley CCG. Specifically for Healthcare procurement the following business areas / drivers are important:

3.2.7.1 Service Quality, Safety and Effectiveness

Providers must be able to demonstrate via the completion of a detailed questionnaire regarding the services to be procured and that the services to be provided are delivering the required outcomes, are of the highest possible quality, are safe and are effective. Bexley CCG will require providers to demonstrate compliance with best practice, (including NICE guidelines and advice), that they have clear clinical leadership, a planned clinical audit programme in place and to provide clinical data showing the safety and effectiveness of their services. Bexley CCG will not commission services from providers that cannot demonstrate compliance with Bexley CCG's quality assurance framework.

3.2.7.2 Choice and Competition

The NHS Constitution contains rights for people to make choices about their NHS care and to be given information to enable them to do this. It also contains rights for patients to choose their GP practice, and to express a preference for using a specific doctor within that practice. A key element of the right for patients to make choices about their care is the ability for patients to choose their provider, when referred for a first consultant-led outpatient appointment for most elective services (when this is clinically appropriate). This is closely linked to the rights in the NHS Constitution for patients to be involved in decisions about their care.

The Health and Social Care Act 2012 creates a framework in which choice and competition (on quality, not price) can operate, including appropriate safeguards. The approach focuses on protecting patients' rights to choice; ensuring good value for taxpayer's money and addressing abuses that act against patients' interests. The act provides for Monitor to become a sector specific regulator for healthcare, with an overarching duty to protect and promote the interests of people who use healthcare services. This means that competition issues are considered and the rules applied by a regulator who knows and understands the NHS. It is for commissioners to take decision on when and how to use choice and competition to improve services, in line with guidance from the NHS Commissioning Board and the choice mandate set by the Secretary of State.

Monitor's role in respect of competition would be to tackle specific abuses and unjustifiable restrictions that demonstrably act against patients' interests. Monitor would have powers to tackle abuses by providers through its licensing powers and, where relevant, by applying the Competition Act 1998, for example, Monitor could take action against a provider restricting patient choice.

For commissioners, Monitor would enforce regulations to ensure that good procurement practice is followed, that patients' rights to choice are protected and promoted and that restrictions of competition that are not in the interest of patients and the public are prevented.

Whenever possible and appropriate, patients and services will be offered a choice of provider. This may not always be the case for a range of reasons. Bexley CCG will work with patients, clinicians and providers to ascertain those services or procedures that will be delivered by a single provider in the local area and be explicit about the reasons for this situation. This process will need to comply with EU requirements for advertising and/or tendering the commissioning of services and PRCC. Examples where there may be overriding benefits to patients of limiting competition are: concentration of specialist services in regional centres or in providing services through a clinical network (*DH factsheet health and social care act*), acute hospital services that depend on high-cost infrastructure (i.e. facilities and equipment) and 24/7 access to highly specialised staff, as well as specialist, tertiary centres (*Protecting and Promoting Patients Interests – the role of sector regulation*).

3.2.7.3 Potential for Service De-stabilisation

Bexley CCG recognises that certain services must properly be reviewed in their totality. The impact of changes in a service on other services provided by the organisation must be considered. Examples of these include emergency services and cancer care. This does not preclude competition per se; however Bexley CCG will need to consider the extent to which the loss of certain services from a provider may jeopardise the overall provision of services. Equally, Bexley CCG will ensure that important areas such as training, local employment opportunities, sustainability and sound policies and procedures are incorporated into all specifications.

3.2.7.4 Plurality and Innovation

Bexley CCG is keen to encourage the innovative approaches that could be offered by new providers – including independent sector, voluntary and third sector providers. Bexley CCG will secure services from a mixed economy of providers and is committed to the development of local providers that understand the needs of local communities. It will be important to ensure that Bexley CCG's approach to healthcare procurement is open and transparent and that it does not act as a barrier to new providers, small providers or restrict competition.

3.2.7.5 Service Development – Trials and Pilots

In its drive to facilitate plurality and innovation Bexley CCG may need to conduct trials and pilots of new services or specifications to derive lessons and or refine outcome specifications. With this in mind Bexley CCG will be required to establish clearly that the project is a pilot via the definition and/or delivery of:

- Specific goal.
- Clearly defined timelines.
- Volume limits.
- Date definition and requirement including tracking shift in activity to assess lessons learnt.
- It is essential that the selection of a pilot provider does not give that organisation an unfair advantage when it comes to selecting a long-term provider. It is difficult to avoid this without going through some formal selection process for the pilot provider.
- It needs to be stressed that the key principles of all procurement (equal treatment, non-discrimination and transparency) need also to be applied in the selection of pilot service providers.
- Clearly defined contract with relevant obligations advising patients of any potential conflicts. The contract should also include a choice of provider for the patient.
- Robust process of evaluation and consideration of long term funding and will be dependent upon evidence of effectiveness.
- Rights of termination if determined that pilot is unsafe or failing in terms of outcome.

The process for considering procurement options following a pilot project will include.

1. Consideration by the Commissioning team of the future provision and procurement route for pilot.
2. That there should be no assumption that organisations who have undertaken pilots of services can be awarded longer term contracts for their provision.

3.2.7.6 Networks and Links

Bexley CCG recognises the importance of strong and effective clinical and service networks and on the value placed by many patients, carers and others on having a long-standing relationship with a clinician or service. It will be vital to ensure that Bexley CCG's approach does not undermine these networks and links.

3.2.7.7 Equity and Equality

Bexley CCG will need to ensure that its approach does not widen gaps in inequality, health or service provision and that its approach serves to improve both health and access to services and to address inequalities gaps. Equality Impact Assessments are a statutory requirement and must be incorporated into the procurement programme.

As part of the Equality Act 2010, the CCG has a requirement to comply with the general equality duty which applies to all procurements regardless of value, the value of the contract may, however, impact upon the relevance and proportionality of equality considerations. The aims of the equality duty is to protect disabled people and prevent disability discrimination.

In the Act, a person has a disability if:

- they have a physical or mental impairment
- the impairment has a substantial and long-term adverse effect on their ability to perform normal day-to-day activities

Equality considerations must be incorporated into the appropriate stages of the procurement processes, where relevant and proportionate, the duty also applies to the decommissioning of services. Staff involved in procurement will need to have a good understanding of the equality duty. Before you design and commission a service, it is helpful to understand the needs of the service users, including any needs due to having a protected characteristic and the information used to improve the design of the service. This will often involve engaging with existing or potential service users. If equality is of relevance to the service being provided, then you must decide to what extent, if any, the relevant equality matters should be incorporated into the various stages of the procurement process, taking into account proportionality.

Contract specifications should set out what equality outcomes the provider must achieve, e.g. how they will meet the needs of people with the protected characteristics, how take-up will be increased for different groups that may face barriers in accessing the service, what information the Provider needs to collect and report on i.e. monitoring health outcomes for a particular group.

3.2.7.8 Partnerships with other Commissioners

The Health and Social Care Act amends the NHS Act 2006 to make provision to enable CCG's to establish appropriate collaborative arrangements with other CCGs. A draft document "A framework for collaborative commissioning between clinical commissioning groups" draws out the legal requirements for collaborative commissioning across CCGs and the specific considerations that need to be taken into account.

Determining which services and contracts to collaborate on will be key for the CCG. To help these decisions, a database has been provided by the Commissioning Board which enables users to view the main providers for a CCG and the main commissioning CCG's for a provider. Using these in combination can help establish an understanding of the CCG-provider relationships within an area or health economy and identify which CCG's might wish to collaborate on what.

It will be vital to ensure that where possible Bexley CCG's approach also complements and supports the approach adopted by Borough Councils and the NHS Commissioning Board. Bexley CCG will consult the 'Framework for Collaborative Commissioning' for all procurements.

3.2.7.9 Partnerships with Providers

Bexley CCG recognises the importance of maintaining positive and ongoing relationships with providers so that services are sustained and improved continuously. Subject to its overriding legal obligations to advertise and/or tender services and put patients interests first, Bexley CCG will, as part of its assessment process, seek providers, whether NHS or Non NHS, that are committed to the health and well being of the Bexley population and ensuring that patients have greater choice and control over their care and treatment.

3.2.7.10 Value for Money and Pricing

Providers will need to demonstrate that services offer the best possible value for money for the investment made.

The Commissioner should seek competition on price for non-tariff services (whilst ensuring minimum quality standards are not compromised) or set prices in advance and seek competition on service delivery. Where more of the payment relies on performance metrics and other indicators being met,

the greater need for data to enable payment validation. Where competition is sought on price, more resources are needed within the procurement stage, but potentially, greater savings are delivered in the service itself.

You should contact the Finance department for information on pricing and financial advice.

3.2.7.11 Integration and Prime Contracting

Competition within the healthcare sector can enable integration. Tendering is a good example of where commissioners could use competition to drive the development of more integrated care. This process would create opportunities for provider to innovate and ensure that contracts are awarded to the provider(s) best able to meet patients' needs. Commissioners will decide which tools are most appropriate – 'one size does not fit all'. For some services and client groups e.g. older people, end of life care, children with complex needs, the homeless, cancer care), highly integrated services would be likely to best meet patient's and service users' interests. In such cases, commissioners may decide to run at tender for a "Prime Contractor[8]" who would be responsible for providing effective care co-ordination and delivery whilst protecting and promoting patients' interests.

Under a Prime Contractor model of delivery the arrangements work as a supply chain, linking the CCG to the prime contractor(s), they are in turn linked to a larger network of sub-contractors and / or other delivery partners. The CCG's main relationships are with the prime contractor and the CCG has limited formal contact with the other organisations involved in delivering the programme and responsible for ensuring that their sub-contractors all deliver services to the required standards.

Prime contractors are responsible for agreeing with their sub-contractors and other delivery partners who will deliver what aspects of the service. The CCG would expect prime contractors to work to an agreed code of conduct which the CCG will put in place to help ensure that there is an equitable relationship between prime contractors and their sub-contractors or other delivery partners – this will cover areas such as - adherence to the procurement principles; an open and transparent process for sub-contracting opportunities; timing of payments; no restrictive practices e.g. collusion; fairly assigning financial risks and rewards.

Subcontractors should 'flag' that they intend to have subcontractor arrangements in in their PQQ (pre-qualification questionnaire) response.

Further guidance on Prime Contractor arrangements will be provided by the Department of Health in 2013.

3.2.7.12 Legal

As a public body, Bexley CCG's commissioning decisions must comply with EU Regulations, UK Law and other relevant DH guidance. Such decisions may also be challenged by service users (i.e. patients, the public) and providers and may be susceptible to Judicial Review in the High Court. Some commissioning issues may also engage Bexley CCG's legal obligations to consult with the public and/or other relevant third parties / stakeholders. Integral to the process moving forward will be the oversight afforded by the National Commissioning Board and Monitor's competition panel.

3.2.7.13 Disputes Resolution Procedure

[8] There could be some choice of provider for specific services, e.g. access to diagnostic tests, advice and support etc, but this would be embedded within a co-ordinated pathway.

Until national guidance is in place, Bexley CCG will adhere to either the Pan London Local Competition Dispute Resolution Procedure (LC-DRP), or its own Dispute Resolution Policy which is in line with its responsibilities under The Principles and Rules for Co-operation and Competition published in July 2010. The process will be published on Bexley CCG's website for the purpose of transparency and to ensure commissioners and providers/bidders are clear on what constitutes a 'dispute' and what action Bexley CCG will take in light of one.

The approach can only be used for dealing with disputes relating to the co-operation and competition principles. This process complies with DH guidelines and is consistent with the competition dispute resolution processes of the other CCGs. The procedure includes the CCP appeals process. A copy of the CCG policy is included as Appendix 3.

3.2.8 Service Specifications

The model specification template from the NHS Standard contract and all headings will be adopted by the CCG for all specification development. A model specification is available from the Head of Procurement & Contracting.

Overview

3.2.8.1 The service specification is perhaps the single most important document in the procurement process, defining the objectives of the procurement exercise, the services and setting out the business requirements.

3.2.8.2 Clinical experts and patients will be involved in the development of the Specification. It may be appropriate to seek feedback from bidders (prior to commencement of the procurement) on a high level specification, provided that this does not influence the final specification in a way that favours a particular bidder or solution.

3.2.8.3 The Specification forms a key interface between the commissioning and procurement teams and requires significant input from both. It should be:

- Clear and concise, with enough information to enable those tendering to decide what services (or goods) to offer, and at what cost.
- Outcomes (and Outputs) based wherever possible, to allow providers scope to develop innovative solutions.
- Unbiased, ensuring that all bidders have equal opportunity to offer services (or goods) to meet its requirements.
- Owned and drafted by commissioners of the service (or goods) being procured.

3.2.8.4 The service specification in a healthcare procurement will be based on:

- Joint Strategic Needs Assessment (Public Health), informing joint health and social care commissioning priorities.
- Operating Plan, agreed CCG service development priorities.
- Local health needs assessment profile (Public Health), including the population profile and trends relating to health needs.
- GAP analysis reflecting national standards and NICE guidance.
- Activity profile in terms of current and forecast capacity (supply) and activity (demand).
- Any statutory requirements including Equality Duty / Equality Impact Assessment

3.2.8.5 Inputs

The inputs into the service specification include:

a. Information gathering and consultation from the needs assessment;
b. Stakeholder requirements, including consultation outcomes where relevant;
c. Complete and detailed business requirements, including identification of the outputs, outcomes (including equality outcomes) and targets and classification of requirements into Mandatory, Desirable and Information requirements;
d. Specific inclusions and exclusions to the service (or goods) being procured together with optional elements, taking into account the potential impacts on related contracts;
e. Implementation plan and timetable;
f. Changes to the organisation or to working practices which would be required to realise the objectives and full potential benefits of the procurement;
g. Requirements for flexibility to accommodate potential future business needs;
h. Performance management regime, key performance indicators and payment mechanism;
i. Ask for details of an exit / decommissioning strategy.

The service specification should not be drawn up in such a way as to limit, distort or restrict competition, including restricting tendering organisations to those within a specified area (although it is permitted to specify the area in which a service will be delivered). In addition, the specification should not be too open as this prevents realistic pricing and evaluation on a like for like basis.

3.2.8.6 Specification risks

The following should be adopted to ensure quality specifications are used:

a. All service specifications must be ratified by the Executive Management Committee. Prior to approval engagement with key stakeholders and CCG including the formally appointed patient representative group, and the locality commissioning groups will be undertaken. Further additional engagement is advised when these particular bodies are not appropriate.

b. Without evidence that the relevant consultation has been conducted, the service specification should not be approved for procurement. Continual adaptation of the draft specification through engagement with a wide range of stakeholders and clinical experts should ensure that the detail contained in it is clear, precise and correct.

3.2.8.7 Specification Evaluation Plan

The evaluation plan should set out the evaluation process and the evaluation model providing a means of recording and assessing the evaluator's findings.

The evaluation plan should be developed in parallel with the service specification to ensure:

- The right information is requested from providers;
- Supplier responses map easily onto the evaluation model;
- The service specification or ITT includes details of the criteria against which all of the bids will be evaluated.

Refer to 3.2.18 for further details on Evaluation of Tenders

3.2.9 Consultation

3.2.9.1 Bexley CCG has a legal duty to involve and consult patients and the public on service planning, the development and consideration of service changes and decisions that affect service operation. Consultation should, therefore, be carried out in relation to procurement exercises which involve service changes or affect service operation. Such consultation should take place when the proposals are sufficiently well formed to enable effective communication

but allowing sufficient time for the responses to be taken into account in shaping the final Service Specification, the procurement process and the contract mechanisms, all of which should be completed before the procurement is advertised. Consultation should also be continued after publication of the advertisement and Memorandum of Information and should help inform the Invitation to Tender and Evaluation Criteria. There is no minimum duration, but the time allowed for consultation must be appropriate having regard to the service change under duration. The engagement of the Patients' Forum / Bexley Patient Care Council will be an important starting point in the consultation process. The Patient Council sits on the CCG.

3.2.9.2 Bexley CCG is also obliged to consult its Overview and Scrutiny Committee where it is considering a 'substantial development' or 'substantial variation' in the provision of services.

3.2.10 Waivers – not seeking competitive tenders

3.2.10.1 In **all** cases there must be a sound business case to defend the need for the procurement and those proposing use of Waivers must detail the background to the requirement, give details of the reasons why it is requested, the options and alternatives available including any benefits/outcome of the project, be able to show how value for money and patients interest will be demonstrated in the absence of competition and the likely benefit for Bexley CCG in recommending that course of action. They must also name the provider and state / availability of market, cost of service, period of waiver / service, expected date of formal procurement. They must also be able to show that there is a robust defence against any (internal or external) challenge or claims of unfair competition.

Exceptions and instances where formal tendering / quotes need not be applied:

(a) the estimated expenditure or income does not, or is not reasonably expected to, exceed £50,000 or

(b) where the supply is proposed under special arrangements negotiated by the DH in which event the said special arrangements or must be complied with;

Formal tendering procedures **may be waived** by the Chief Officer & Chief Financial Officer in the following circumstances:

(c) in very exceptional circumstances where formal tendering / quoting procedures would not be practicable or the estimated expenditure would not warrant formal tendering procedures, and the circumstances are detailed in an appropriate record;

(d) where the requirement is covered by an existing contract;

(e) where PASA agreements or Public Sector Framework Agreement are in place;

(f) 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;

(g) where the timescale genuinely precludes competitive tendering but failure to plan the work properly would not be regarded as a justification for a single tender;

(h) where specialist expertise is required and is available from only one source;

(i) 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;

(j) 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;

(k) for the provision of legal advice and services providing that any legal firm or partnership commissioned is regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council for England and Wales in relation to the obtaining of Counsel's opinion) and are generally recognised as having sufficient expertise in the area of work for which they are commissioned. The Chief Officer, Chief Financial Officer or Director of Governance & Quality will ensure that any fees paid are reasonable and within commonly accepted rates for the costing of such work.

(l) where allowed and provided for in the Capital Investment Manual.

The waiving of competitive tendering procedures should not be used to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure, except in exceptional circumstances.

Where it is decided that competitive tendering is not applicable and should be waived, the fact of the waiver and the reasons should be documented and recorded in an appropriate record and reported to the Audit & Integrated Assurance Committee at each meeting.

A template Waiver form has been issued to all staff by the Chief Financial Officer.

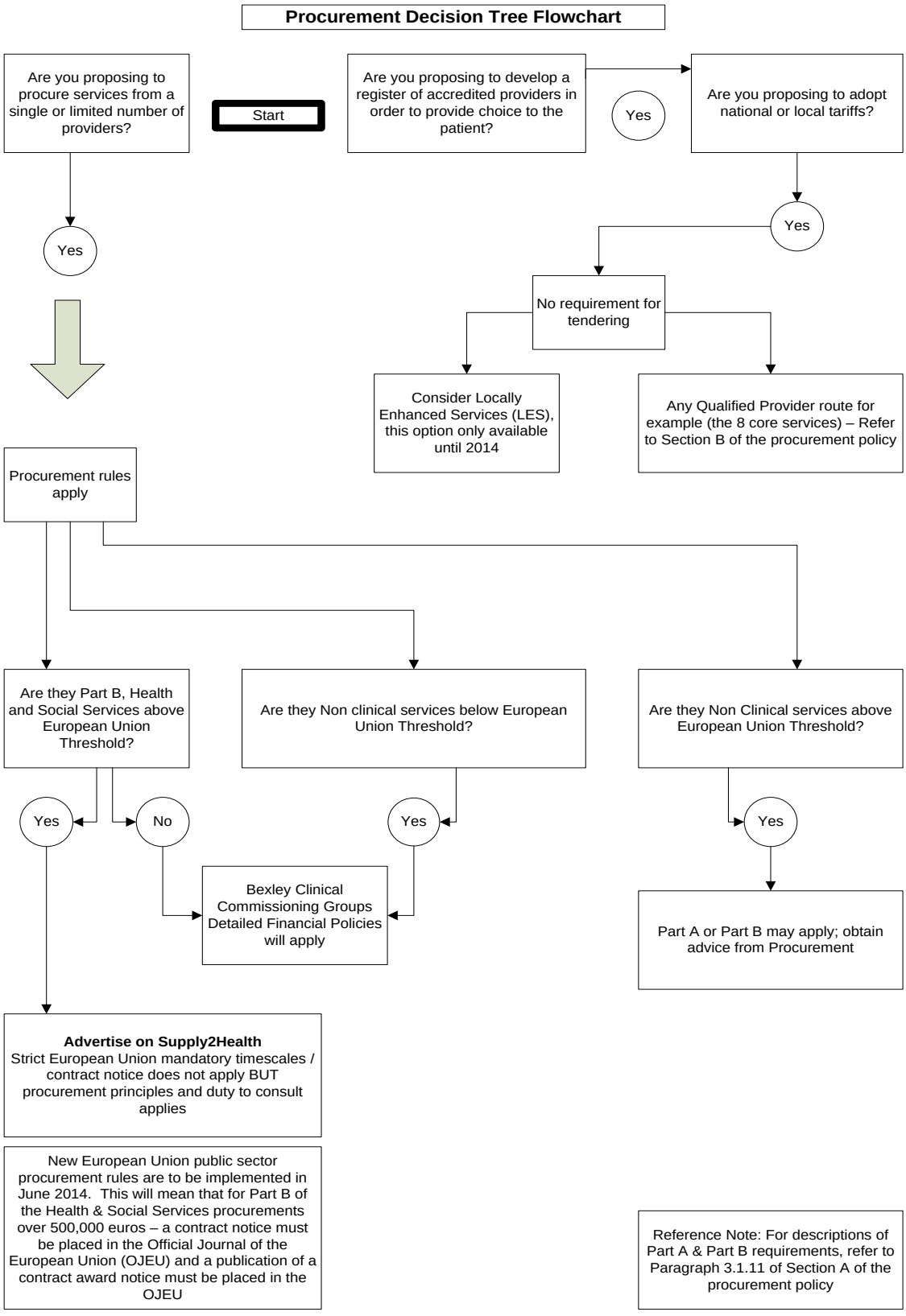
3.2.11 Stimulating a Market

Stimulating the market encourages a wide range of providers including small and medium sized companies to participate in significant healthcare projects. This will allow competition, innovation, and better outcomes

3.2.11.1 Bexley CCG may stimulate a market by:

- Undertaking market analysis / market development programme.
- Build supply side insight (knowledge of availability and existence of providers and knowledge of incentives for them to compete).
- Lowering barriers to entry and exit.
- Engage with providers to encourage building of consortia and partnership arrangements.
- Develop and manage provider / supply side.
- Offering advice and training about how to do business with Bexley CCG.
- Identifying and adopting contract conditions, specifications and bidder selection criteria which bring out the providers strengths, and avoiding those which put them off.
- Avoiding payment mechanisms which could damage cash flow.
- Giving providers enough time to respond, tender and gear up.
- Checking that providers tenders are realistic.

3.2.12 Procurement Decision Tree Flowchart



3.2.13 Pre-Procurement checklist

This checklist can be linked to the procurement cycle in table 3.1 of this policy. The CCG will ensure the following prior to proceeding to tender.

Planning		
1	Engagement (and consultation where relevant) has taken place with the relevant stakeholders and partners, e.g. communities, patients, service users, carers, providers and representative bodies such as Overview and Scrutiny Committees, Local Involvement Networks etc.	
2	Considered collaborative procurement	
3	Established effective project governance arrangements	
4	Skilled and experienced internal and external project support identified and secured (needs clearly identified)	
5	Clearly defined outcomes	
6	Affordability review and budget established	
7	Impact Assessments completed and agreed	
Developing Specifications		
8	Model specification template and headings from NHS Standard Contract adopted as best practice	
9	Evidence based, e.g. Map of Medicine, best practice, outcome based etc.	
10	Involved relevant professionals	
11	Involved patients, service users, carers and their representative bodies, e.g. British Heart Foundation	
12	Clearly specified outputs / outcomes to be achieved, e.g. link to Joint Strategic Needs Assessment / Local Area Agreements, Strategic Plan, etc.	
13	Approved and Agreed by CCG	
Project Management and Business Case		
14	Robust and resourced project plan spanning all stages of the procurement process, including Gateway Project Review for high risk procurements.	
15	Agreed, approved and resourced business case.	
Market Engagement		
16	Market engagement undertaken and assessed (where necessary), e.g. Request for Information or market engagement event	
17	Market Assessment includes spare capacity, gap analysis and consideration of the benefits of Any qualified Provider model and prime contractor model	
Procurement Strategy and Approach		
18	Thorough consideration of responsibilities, procurement options and issues	
19	A procurement plan and timetable agreed by procurement team	
20	PQQ and Tender evaluation plans agreed by responsible officer	
21	Appropriate model contract identified	
22	Secure Board agreement for large, novel, contentious or repercussive tenders (where relevant)	
23	Use Gateway Project Review Process where high risk procurement	
24	Procedure for decisions not to tender new or significantly changed services	
Audit		
25	Ensure all of the above is adequately documented, CCG approval prior to advertisement	

3.2.14 Any Qualified Provider

3.2.14.1 The term Any Willing Provider has been superseded by the term Any Qualified Provider (AQP). The purpose of AQP's is to create more choice and diversity of provision for patients in the NHS. Under 'Any Qualified Provider', patients can choose from a range of providers all of whom meet NHS standards and price. Prices paid to providers will be determined in advance by the NHS. This could be a national tariff where it applies, or a

locally agreed price. Patients will choose based on quality and individual preferences. Money will follow patients' choices. Competition will be on quality not price.

3.2.14.2 The Department of Health has identified areas of community based activity which could be established using this methodology, these are listed below:

- Musculo-skeletal services for back and neck pain
- Adult hearing services in the Community
- Continence services (adults and children)
- Diagnostic tests closer to home such as some types of imaging, cardiac and respiratory investigations to support primary assessment of presenting systems
- Wheelchair services (children)
- Podiatry services
- Venous leg ulcer and wound healing
- Primary Care Psychological Therapies (adults)

3.2.14.3 AQP contracts are **zero based, have no activity or financial guarantees** and the contract award in essence gives permission to provide services in a given locality following the accreditation of the provider and their inclusion on the local choice menu. Basically it involves registering Any Qualified Provider and permitting them to offer services to the public currently procured either from a single source or from a number of individually procured contracts (activity caps can work to restrict patient choice and their use is not in the best interests of patients).

3.2.14.4 Principles governing Any Qualified Provider approach

- Providers must pass a standard qualification process to ensure they meet the appropriate quality requirements.

- Providers need to be registered with the Care Quality Commission (CQC) where they are carrying out a service which is already regulated. If a provider does not need CQC registration, they will need to meet other, equivalent assurance requirements. Further details about the specific qualification requirements will be set out when Any Qualified Provider offers are posted on the NHS Supply2Health web site.

- The CCG will set local pathways and referral protocols which providers must accept. The CCG will set outcomes-based service specifications which encourages providers to innovate.

- There are four (4) Qualification Centres of Excellence covering the eight priority service areas. They support local commissioners in assessing provider applications.

- Application windows will be opened on a regular basis. It will be for the CCG to decide how often the window of opportunity is opened during a three year period, and this does not need to align with the contract period. The CCG could open the window twice a year, for example. The timeframe within which providers can apply will be a minimum of four weeks.

- All offers will be assessed by the CCG, perhaps supported by a Qualification Centre of Excellence, in line with the criteria outlined in the service specification and published with the AQP offer. [Refer to Appendix 2 for the AQP Process document]

- A national directory of qualified providers and contracts will allow information sharing across the NHS when the regulator or a commissioner terminates or suspends a contract. This could potentially make care safer for patients.

- Providers who have qualified as a provider of the service will sign the contract with Bexley Clinical Commissioning Group or group of commissioners. The contract sets out all the obligations placed on the provider during the lifetime of the contract.

- AQP procurements will last for three years. However, providers have their details re-validated each year on the anniversary of qualification, by confirming that they still hold the relevant registrations, etc. This does not mean that providers will have to fully re-qualify each year.

- Under AQP, the number of Providers cannot be restricted because Any Qualified Provider is intended to increase choice of provider for patients. Concerns about the potential number of providers entering the market can usually be addressed through good commissioning techniques, such as getting the price, service specification and referral protocols right.

- However, there are two circumstances where limiting the number of providers might be necessary and in the best interests of patients:

- To maintain safe clinical volumes – if the Clinical Commissioning Group decided that the benefits of patient choice of Any Qualified Provider were high, but clinical competence and quality might be affected if patient volumes per provider were too low.

- As a short-term approach to building a new Any Qualified Provider market – the Clinical Commissioning Group could limit the number of providers initially to encourage new providers to enter.

- SHAs/National Commissioning Board would need to agree to such a decision, and any cap would need to be time limited and set prior to issuing the advertisement. Before setting a limit on the number of providers, commissioners should assess whether Any Qualified Provider is the right route for that particular service or whether, for example, competitive tendering might be more appropriate.

- TUPE regulations do **not** apply to an AQP model and, where appropriate, legal advice will be sought for individual cases where a service is provided to multiple commissioners (i.e. on a one-to-many basis).

3.2.15 Financial and Appraisal

3.2.15.1 Selection of a provider should always be carried out by means of competition where at all possible, unless the circumstances justifying a waiver in section 18.3 of the Detailed Financial Policies and Operational Scheme of Delegation are met, as this provides assurance on Value for Money and patients interest. Where the estimated value of the requirement exceeds £173,934[9] (ex VAT) unless an existing Framework Agreement is used, the requirement does not need to be advertised in the Official Journal of the European Union (OJEU) as it is a Part B requirement (the Head of Procurement & Contracting will advise).

3.2.15.2 The Detailed Financial Policies and Operational Scheme of Delegation require the tendering of all requirements above £50,000, it is suggested that these requirements are advertised on S2H to ensure the process is open and transparent. However all requirements above £100,000 **must** be submitted via the Supply2health portal in order to comply with PRCC and SI NHS (Procurement, Patient Choice and Competition) Regulations 2013 requires the publication of all adverts on the CCG's website. This includes requirements for the Any Qualified Provider

[9] This threshold is operational from 1 January 2012 and due to be changed on 1 January 2014

(AQP) process. Advertisements in trade / specialist magazines should also be adopted where relevant and appropriate.

3.2.15.3 Financial appraisal can reduce, though not eliminate, the risk of placing business with a provider whose financial viability is unknown. It provides information for a more considered decision when sourcing providers or at the tender evaluation stage prior to contract award. On contract durations of more than one year it may be desirable to periodically re-check the financial viability of the provider (particularly for small enterprises) at regular intervals.

The checks that normally need to be made within a financial appraisal are:

- the provider's assessed turnover
- the provider's profitability and the relationship between gross and net profits
- the value of capital assets and return on capital employed
- the scale of borrowings, and ratio of debt to assets
- whether the provider has a financial backer or guarantor of some sort
- the possibility of takeover or merger affecting ability to supply the services
- whether the provider is "tied" to a small number of major customers, so that if one or two withdrew their business it might cause the provider financial difficulties.

You may need to gather additional information from the provider's accounts for a number of previous years or other sources. You may decide also to seek bankers or other credit references. If in doubt seek expert advice from Bexley Clinical Commissioning Group's Finance Section.

In addition, the procurement of a credit report from a firm such as Dun & Bradstreet is particularly useful. This can be obtained free of charge via the sid4health website, following registration. http://www.sid4health.nhs.uk/home.action

3.2.16 Provider / Market Engagement

3.2.16.1 Provider engagement is an on-going and integral part of the commissioning cycle and will involve both current and potential providers, before and after the procurement process. At all levels when undertaking provider engagement, the commissioner needs to ensure transparency, non-discrimination, proportionality and equality of treatment across all providers, incumbent and potential.

3.2.16.2 Testing / competition of ideas, this involves disseminating problems or issues to a range of providers and seeking proposals. The commissioner will need to have a clear idea of what the issues are and adequate expertise and time to analyse responses. This can be resource intensive. This gives providers a forum for them to test their ideas with a receptive commissioner and should the approach be selected, would enable them to be well placed to bid for the opportunity. Contractual mechanisms may be required to protect providers intellectual property whilst ensuring dissemination of innovation.

3.2.16.3 Any procurement of resulting ideas cannot be seen to be prejudiced through early engagement with a representative group of providers. Therefore the specification should focus on the outcomes sought, rather than on the specific technologies or products.

3.2.16.4 A communications and engagement "strategy" for the use of early engagement, advertisements and undertaking provider events should be developed for major / complex procurements.

3.2.17 Seeking Tenders

3.2.17.1 If providers are selected from existing framework agreements a mini competition may be appropriate. If selection is not from an existing contract or framework agreement, or a waiver is not justifiable, or the existing contract cannot be extended and the AQP process is not applicable, then a competitive tender exercise will be undertaken in the form of an Invitation to Tender (ITT).

3.2.17.2 The tender process is the means by which the providers are formally requested to submit a bid for the work. The specification and timetable together with the evaluation criteria will need to be agreed in advance, as well as who will comprise membership of the evaluation panel. [The Detailed Financial Policies and Operational Scheme of Delegation requires all services over £50,000 to be subject to competition using an ITT].

3.2.17.3 It is particularly important to set out the anticipated total scope and scale of your requirement at the outset, so that you can obtain the best value for money and make provision for extensions to the contract (to cover any unforeseen additional work) without further need for competition or approvals where appropriate. (NB: Providers are willing to agree more competitive rates for a longer term contract provided the full term is stated in the ITT).

3.2.17.4 The tender packages (restricted procedure), issued by the Head of Procurement (as required by section 31 of the scheme of delegation), will comprise two stages, a Pre-Qualification stage (the Pre-Qualification Questionnaire [PQQ]) and the tender stage (the Invitation to Tender [ITT]). The PQQ stage will comprise the Expression of Interest [EOI] / Advert, Memorandum of Information [MOI] and PQQ, with its own distinct evaluation strategy/criteria. The ITT pack will include: the Specification, Pricing schedule, the agreed Terms and Conditions of Contract [NHS Standard – for clinical services or other NHS conditions for non clinical services] and any other relevant schedules, also with its own distinct evaluation strategy/criteria. The evaluation strategy should be drawn up ideally at the same time as the PQQ / ITT documents, if not, it must be agreed before submission of the bids. PQQ and Tender responses will be submitted to Bexley Clinical Commissioning Group via the electronic tender system. The bid responses / tenders will be opened by appropriate senior CCG staff in accordance with the DFP. Relevant staff (evaluation panel members) will be able to access the responses after the closing date.

3.2.18 Evaluation of Tenders

3.2.18.1 It is normal practice to establish an evaluation panel to carry out the selection process. Responsibilities should be assigned in advance to carry out the technical / quality evaluation and the commercial evaluation. As part of best practice procurement and the 'duty to promote involvement of each patient' in the Health and Social Care Act 2012, Commissioners will involve patients in the evaluation. The Commissioner will work with the PALS team to devise a strategy for involving Patients Representatives / Bexley Patient Care Council. The requirements of sections 13 and 14 of the NHS Act 2006 must also be considered as part of the evaluation (effectiveness, efficiency, improvement in quality of services, promoting integration etc). It should be remembered that all information provided in a Bidders bid is commercial-in-confidence and must not be divulged to a third party.

3.2.18.2 The Commissioning team should draw up a standard evaluation / assessment plan of relevant technical / quality / clinical criteria against which each provider can be marked **before** the tenders are returned, bids cannot be opened until the criteria and weighting has been agreed. ***Weightings / scoring criteria are very important as the decision on award is made on the basis of the criteria.*** You must note that criterion used at the pre-selection

stage cannot be used at the award stage, examples of selection criteria are economic and financial standing and / or technical or professional ability. Marks can be weighted as necessary to reflect the relative importance of each aspect, however if marks are to be weighted, this should be made clear in the specification. Evaluators should bear in mind that the evaluation forms *could* be requested by the Bidder under Freedom of Information, or as part of the debriefing or standstill requirements. Therefore, any comments made on the evaluation form should be factual.

3.2.18.3 During the interview, questions should be aimed at establishing clearly how the providers would set about doing the work. Responses should include an indication of the providers understanding of the problem and what will be required of them, the relevance of any previous similar work, their background, and their commitment to the project. A summary of each interview should be made and retained with any assessment forms in the project file for debriefs, reference and subsequent audit purposes.

3.2.19 Contract Award and Other Related Matters

3.2.19.1 In November 2012, the CCG agreed that all contract awards must be approved by the Governing Body, the Operational Scheme of Delegation states that "All procurements must be authorised by an appropriate CCG Committee or assigned group prior to advertisement and on awarding of the tender & contract. This usually being discussion at Executive Management Team and approval via Governing Body". The procurement group will make a recommendation for approval by the Governing Body.

3.2.19.2 Following a final decision by the Governing Body the successful and unsuccessful providers will be notified of the outcome via the use of a standstill letter. At the end of the standstill period (a minimum of 10 calendar days), the successful provider will be formally notified by the Commissioner of the contract award. The award of the contract (thus authorising the work to start) commences by issuing the award letter and sending three signed copies of the contract to the Provider for signing, the Provider will return two copies. A commencement date for the work is included in the contract as standard. Finance is notified by the Commissioner of the contract arrangements. The Commissioner must also publish the award notice (OJEU/Supply2health/Contracts Finder/ CCG website) as appropriate.

3.2.19.3 The Provider(s) must not start any work on the requirement before formal approval / signature and / or the start of the contract. Before providing the provider(s) with any access to any official information, the project / contract manager must ensure that confidentiality requirements are satisfied, e.g. confidentiality undertakings, if relevant.

3.2.20 Signing of Contracts

All contracts must be signed by an appropriate Officer of the CCG – Refer to section 31 of the Operational Scheme of Delegation for the signing authority levels.

If contracts are not signed by both parties, there is effectively no binding agreement and thus no obligation for either party to adhere to the agreed terms of the contract.

All contracts must be signed in a timely manner, preferably before the start of the contract to ensure the smooth running of services and compliance with policies agreed in principle. This action must be undertaken by the appropriate commissioning manager.

3.2.21 Contract Management / Monitoring Performance

3.2.21.1 As with all contracts, the performance of the provider should be monitored by the commissioner or contract manager during the term of the contract to ensure value for money, patients interest, targets are met, milestones/activity levels delivered, invoices paid etc. **This covers all aspects** of contract management and the contractual relationship, including areas such as record keeping, contract control, monitoring the providers performance and re-tendering. It also details the capabilities, skills and qualities of a contract manager.

3.2.21.2 The step by step guide describes the technique of provider performance assessment. Only strategic providers for high level, complex contracts will require this level of contract management. You should liaise with the CCG's Contracts & Commissioning team for information on contracting, KPI's etc., prior to developing the specification.

3.2.22 Termination of Contracts and Decommissioning services

3.2.22.1 Under the terms of the NHS Standard Contract 2013 either party can terminate the contract by giving the other 12 months notice in writing. The contract may be terminated with immediate effect in certain circumstances e.g. force majeure, ceases business, insolvency, order to dissolve, persistent breach etc. If the NHS Standard contract is not used, then other applicable termination periods may apply.

3.2.22.2 Decommissioning services

An "exit plan" should be requested (and aligned to any that was requested with the tender document and forms part of the signed contract), outlining the actions required by both parties for smooth service cessation. The plan will cover as a minimum: patient continuity of care; patient records; staff; estate; equipment; stock (where funded by the commissioner), [and cost variations where contract covers other CCGs, block costs etc.].

Seek legal advice on TUPE issues which may affect decommissioning of collaborative contracts.

3.2.23 Disputes Resolution Procedure

PRCC Disputes

Until national guidance on the Disputes Resolution Process is in place, Bexley Clinical Commissioning Group will follow either the Pan London Local Competition Dispute Resolution Procedure (LC-DRP), or its own Dispute Resolution Policy pertaining to how it deals with complaints under the PRCC. A copy of the CCG policy is included as Appendix 3.

3.3 Roles and Responsibilities

a Responsibility for ensuring that Bexley Clinical Commissioning Group's policy is compliant with current legislation and best practice rests with Bexley Clinical Commissioning Group's Head of Procurement & Contracting. Procurement forms part of the Commissioning and Contracting Team, and provides a specialist procurement service to Bexley Clinical Commissioning Group. It is responsible for providing advice, support, guidance and training on a wide range of goods and services. Procurement works with teams to ensure that Bexley Clinical Commissioning Group's procurement policies and practices comply with UK Government, Commissioning Board, Department of Health, PRCC and the EU Procurement Legislation and that each contract delivers VFM.

b The Commissioning Support Unit – The South London Commissioning Support Unit (CSU) is currently hosted by the NHS ENGLAND within these the CSU provide "Advice and Support on

Clinical Procurement" to CCGs. These services are assessed by our in house procurement team.

c The Health and Social Care Act 2012 places a duty to plan and deliver education and training to persons who are employed in an activity which involves or is connected with the provision of services as part of the health service in England. The Head of Procurement & Contracting will provide quarterly procurement awareness training sessions to Bexley CCG staff and members as and when required. Training awareness will include case studies on procurements that have followed good and poor procurement practice and conflict of interest issues.

d Responsibility for the key stages appropriately rests with those involved in the procurement cycle. Commissioners and Project Leads have responsibility for preparation of the business case and obtaining approval to proceed for each procurement so far as it is within their budget. Preparation of the Specification is the responsibility of the commissioners who need to be clear about their requirements, advice can be sought from the Head of Procurement & Contracting. The development of the evaluation criteria is the responsibility of commissioners in conjunction with procurement and should ideally be written at the same time as the specification, the Head of Procurement & Contracting can advise where necessary. Staff need to be appropriately trained to dispense their procurement responsibilities professionally, effectively and in accordance with legislative & administrative requirements. The specification should be outcomes based and staff need to ensure that specifications are not written around a particular providers' requirement, pathway or solution.

e Managers need to have robust mechanisms for managing each stage of the procurement, Finance Staff need to have appropriate procedures in place for authorising expenditure in a timely manner, and Budget Holders need to ensure proper arrangements for approving expenditure that are consistent with the Detailed Financial Policies and Operational Scheme of Delegation.

The following table illustrates the division of responsibilities for various stages in the procurement process:

Table 3.3.1: Supporting roles from the Pre-Tendering Phase, to Tendering to Award of Contract and Debriefing

KEY THEMES/ Procurement Cycle	Finance Team	Procurement Team	Commissioning / Contracting support	Commissioning / Project Lead	Public Health / PPE	Clinical support [incl clinical governance]
Needs Assessment		Contribute		Contribute	Lead	Contribute
Business Case	Contribute	Contribute	Contribute	Lead		Contribute
Consultation			Contribute	Lead	Contribute	Contribute
Market Engagement		Contribute	Contribute	Lead		

Affordability Model	Lead		Contribute	Contribute		
Specification		Contribute	Contribute	Lead		Contribute
Tender documents		Lead	Contribute	Contribute		Contribute
Evaluation strategy		Contribute	Contribute	Lead		Contribute
Contract drafting		Lead	Contribute	Contribute		
Contract negotiation (after award)	Contribute	Contribute	Lead	Contribute		
Debriefing		Lead		Contribute		
Managing implementation			Contribute	Lead		Contribute
Managing performance	Contribute		Contribute	Lead		

f The procurement / tendering process will be led by the Project and Procurement leads. Procurement is a highly specialist and high risk area which is continually developing. It is, therefore, important for an organisation to seek expert guidance and support early in the process, whether internally or externally. The procurement process should draw on many disciplines from within the organisation (including clinical, commissioning, corporate governance, finance, legal, project management, risk management, contract management, human resources and estates) to the extent available and required by the nature of the procurement.

g With the development of clinically led commissioning membership groups and related service provision a better understanding of the potential for conflicts of interest may arise from the dual role of commissioner and GP provider and a formal requirement for the avoidance of conflicts of interest will be deemed necessary in the form of a confidentiality agreement and the use of "Chinese walls". GP's and other relevant parties should use their professional judgement to determine if there is a conflict of interest or potential for lack of probity and how best to address it. The Conflicts of Interest procurement paper which forms an annex to the CCG's Conflicts of Interest Policy is available from the Head of Procurement & Contracting.

3.4 Procurement Panel

a A procurement panel is required for all procurement processes. It is recommended that a procurement panel should comprise:

- The Project Lead
- Clinical Lead (Clinical Governance)
- Finance Lead
- Human Resources

- Commissioning Manager (if not project lead)
- Public Patient Engagement / Public Health (for patient involvement and needs assessment)
- Procurement

This panel needs to be formed prior to advertising the contract.

b Conflicted individuals (please refer to section 3.5) should not participate in procurements where they have an interest. Contact the CCG procurement team for further information and guidance.

c The procurement panel / team will establish the project and agree the timetable. A consultation process may be necessary and an equality impact assessments are required as part of the Business Case. All procurements will be undertaken using Bexley CCG's approved e-tendering solutions provider (wherever possible).

3.5 Conflicts of Interest

a Conflict of Interests is an issue that commonly arises during procurement activity and can occur when Bexley Clinical Commissioning Group is developing a service specification, when Bexley Clinical Commissioning Group is engaging with incumbent or potential providers in preparing them to provide solutions to deliver that service, or during the procurement process itself. When conflicts of interest arise, it is the responsibility of the CCG to manage them appropriately to ensure a robust and transparent procurement.

b Bexley Clinical Commissioning Group should engage with a range of providers, patient groups, clinicians and other appropriate staff (which may include their representatives or trade unions) from both incumbent and potential providers, to design, assess and test service specifications and explore procurement options. In doing so, Bexley Clinical Commissioning Group needs to manage potential conflicts of interest where a provider is working with the CCG on a specification for which they may later bid. Bexley Clinical Commissioning Group require all those supporting a procurement as commissioners (evaluators etc) to sign a declaration in respect of confidentiality and conflict of interest – this will also include 'other NHS/Commissioning Board' members and other commissioning support functions, which may liaise with Bexley Clinical Commissioning Group and providers prior to and during a procurement exercise. Further information can be found at the following websites.

http://www.england.nhs.uk/wp-content/uploads/2012/09/c-of-c-conflicts-of-interest.pdf or
http://www.england.nhs.uk/wp-content/uploads/2013/03/manage-con-int.pdf

c In some circumstances, a bidder's involvement in previous or parallel projects, its participation in multiple bids, or its participation in Bexley Clinical Commissioning Group's activities (e.g. as a provider of commissioning or consultancy services) may give rise to a possible conflict of interest in bidding for certain contracts. Ideally, this should have been identified at the pre-procurement stage. The use of contractual mechanisms or ethical walls may be sufficient to mitigate such conflict of interest.

d Procurement activities will be in accordance with Bexley CCG/Commissioning Board guidance on conflicts of interest and the CCG's Conflicts of Interest Procurement paper. Informal advice in respect of managing potential conflicts of interest during the commissioning / procurement / decommissioning process can be obtained from the Co-operation and Competition Panel

(CCP) via the phone Tel: 0207 270 4961 or e-mail info@ccp.gsi.gov.uk. For example when working and cooperating with providers and partners for the development or design of a new service, commissioners need to be mindful of the potential conflict of interest that may arise should a procurement of the service take place in the future. This type of conflict of interest may effectively preclude the provider from involvement in such a procurement.

e All tendering documentation will clearly state Bexley CCG's policy on managing conflict issues. Prior to any decision to exclude bidders on conflict of interest grounds, appropriate care will be taken as this decision could be challenged if the bidder can show they were excluded on grounds that are not consistent with the selection criteria.

f Until national guidance on the Disputes Resolution Process is in place, Bexley Clinical Commissioning Group will follow either the Pan London Local Competition Dispute Resolution Procedure (LC-DRP), or its own Dispute Resolution Policy pertaining to how it deals with complaints under the PRCC. This includes the process for dealing with complaints and will be made available on the CCGs' website so providers and potential providers are aware of these polices when engaging with Bexley Clinical Commissioning Group. A copy of the CCG policy is included as Appendix 3.

4 Monitoring Compliance & Effectiveness of the Policy

The Procurement Policy (originally produced for Bexley Care Trust) was checked by Audit in March 2012, the Auditors' requirements are incorporated in the revised CCG version.

The arrangements for monitoring the implementation of the Procurement Policy will be the annual external audit. External Audit will conduct the audit and the Head of Procurement & Contracting, in conjunction with Communications will agree a regular training programme.

The process for reviewing results and ensuring improvements in performance will be included in the Audit report and reported to the Finance Working Group.

5 Information Governance

5.1 Information Governance (IG) ensures necessary safeguards for, and appropriate use of, patient and personal information. Bexley Clinical Commissioning Group will ensure that all providers bidding adhere to the principles of IG, this will be undertaken at the PQQ stage of any tender and will be managed and monitored throughout the life of the contract.
The Information Governance Statement of Compliance (IG SoC) is the process by which organisations enter into an agreement with the Health & Social Care Information Centre (HSCIC) for access to the NHS National Network (N3). The process includes elements that set out terms and conditions for use of HSCIC systems and services including the N3, in order to preserve the integrity of those systems and services. The steps in the IG SoC process set out a range of security related requirements which must be satisfied in order for an organisation to be able to provide assurances in respect of safeguarding the N3 network and information assets that may be accessed. Please see the website below for further information.
http://systems.hscic.gov.uk/infogov

The Information Governance Toolkit (IGT) is an online tool that enables organisations to measure their performance against the information governance requirements.

The four fundamental aims of Information Governance are:

- To support the provision of high quality care by promoting the effective and appropriate use of information.

- To encourage responsible staff to work closely together, preventing duplication of effort and enabling more efficient use of resources.
- To develop support arrangements and provide staff with appropriate tools and support to enable them to discharge their responsibilities to consistently high standards. To enable organisations to understand their own performance and manage improvement in a systematic and effective way.

  The IGT has two functional aspects:-

  - To provide interpretative advice and guidance
  - To provide NHS organisations with a means of self assessing performance against key aspects of information governance,.

The toolkit contains a set of six initiatives or work areas as described below.

- Information Governance Management.
- Confidentiality and Data Protection Assurance.
- Information Security Assurance.
- Clinical Information Assurance.
- Secondary Uses Assurance.
- Corporate Information Assurance.

6 References and links to other documents

A. The Procurement Guide for Commissioners of NHS - Funded Services July 2010
B. Principles and Rules for Cooperation and Competition (PRCC) July 2010
C. Bexley CCG Detailed Financial Policies and Operational Scheme of Delegation
D. Public Contracts Regulations 2006
E. Public Contracts Amendment Regulations 2009
F. Health and Social Care Act 2012
G. Protecting and Promoting Patient's Interests: the role of Sector Regulation
H. The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013
I. The National Health Service Act 2006

Appendices

Appendix 1 - Abbreviations and Glossary

List of Abbreviations

AQP	Any Qualified Provider
BiP	Business Information Publications (BiP) Ltd, Bexley Clinical Commissioning Groups approved e-tendering solutions provider.
EOI	Expression of Interest
ITT	Invitation to Tender
LPP	London Procurement Programme
MOI	Memorandum of Information
OJEU	Official Journal of the European Union
PQQ	Pre-Qualification questionnaire
DFP	Detailed Financial Policies and Operational Scheme of Delegation

Glossary

Accelerated procedure

All the Regulations allow the time limits for a restricted or competitive negotiated procedure to be reduced where urgency makes the normal timescale impractical (the 'accelerated procedure'). Certain criteria must be met before time limits may be reduced. For example: a restricted procedure may be accelerated when urgency renders it impracticable to respect the normal deadlines for restricted procedures. Since this is an exception which may limit competition, it must be interpreted restrictively and limited to those cases where the contracting authority can prove the existence of objective circumstances (must be unforeseeable and not just unforeseen by the Contracting Authority) giving rise to urgency and a real impossibility of respecting the normal deadlines for restricted procedures.

AQP

When a service is opened up to choice of 'Any Qualified Provider', patients can choose from a range of providers all of whom meet NHS standards and price. Prices paid to providers will be determined in advance by the NHS. This could be a national tariff where it applies, or a locally agreed price. Patients will choose based on quality and individual preferences. Money will follow patients' choices. Competition will be on quality not price. Setting outcomes-based service specifications encourages providers to innovate.

Providers must pass a standard qualification process to ensure they meet the appropriate quality requirements. Providers only need to be registered with the Care Quality Commission (CQC) where they are carrying out a service which is already regulated. If a provider does not need CQC registration, they will need to meet other, equivalent assurance requirements. Further details about the specific qualification requirements will be set out when Any Qualified Provider offers are posted on the NHS Supply2Health web site.

Commissioners will own the service specification and will confirm if the provider can deliver that specification. The commissioner holds the contract held with a qualified provider – this means that the commissioner has a key role to play in the qualification of providers. Because providers are qualified, commissioners know that a range of safe, good quality and affordable providers are available to which they can refer their patients without the cost and effort of competitive tendering.

A national directory of qualified providers and contracts will allow information sharing across the NHS when the regulator or a commissioner terminates or suspends a contract. This could potentially make care safer for patients.

Competition

Goods, works or services should be acquired by competition unless there are compelling reasons to the contrary. Competition promotes economy, efficiency and effectiveness in public expenditure. Competition will also contribute to the competitiveness of providers, contractors and service-providers. Subject to Bexley Clinical Commissioning Group's legal obligations the form of competition should be appropriate to the value and complexity of the product or service to be acquired.

Government departments are subject to EC procurement rules and other international agreements setting out a legal framework to which they must adapt their contract award procedures.

Competitive tendering

Awarding contracts by the process of seeking competing tenders.

Contract

Often used to describe stand-alone document to set out the terms of the agreement between commissioner and provider, prepared to include specific conditions rather than the general conditions used in a standard purchase order.

Debriefing

The term used to describe the process of explaining to unsuccessful bidders why they have not been awarded the business, to help providers improve their competitive performance.

EU rules

References to EU rules mean the EEC Treaty, the EC procurement
directives as implemented in UK legislation, rulings of the European Court of Justice and other relevant EU law.

EU Directives

These have been implemented into the Public Contracts Regulations 2006 and set out procedures and practices that are to be followed by the public sector (Central and Local Government and other public bodies). The rules apply to contracts above certain value thresholds. These thresholds are periodically changed by the EU. Please refer to a contact in the Procurement team to obtain current threshold levels at which EU Directives apply.

Equal Treatment / Fair Process

The contract award process must be fair and seen to be fair. All providers are to be treated equally, given the same opportunities and information and evaluated fairly on the same basis. There must be no favouritism or bias or appearance of favouritism/bias in the award of contracts.

Framework Agreement

Also known as call-off agreements, standing agreements or standing arrangements. They are normally (but not exclusively) negotiated centrally and cover goods and / or services for which there is a regular and continuing demand. They enable individual purchases to be conducted upon the usually more favourable, centrally agreed terms and with the minimum of administrative effort.

Invitation to tender (**ITT**)

Procurement invites suppliers to bid for business usually setting out the Specification and terms and conditions. The ITT comprise all those documents - specification, terms and conditions, other schedules etc, sent to suppliers to enable them to bid.

Open Procedure

The open procedure means a procedure where all interested parties may tender for the contract. The contracting authority may lay down minimum requirements but may apply these criteria only after tenders have been received. They may not refuse to send out a tender to a party who appears not to meet their minimum requirements.

The restricted procedure

The restricted procedure means a procedure where the contracting authority selects from those providers who have expressed an interest, a number to be invited to submit tenders. The information, which the contracting authority is allowed to take into account at the first stage of a restricted procedure is described in the Regulations. Following this first stage, the contracting authority may choose to invite all who meet their requirements, or select a number to tender using objective and non-discriminatory criteria. Care must be taken to ensure that the number invited is adequate to provide competition (minimum of five candidates).

Competitive Dialogue procedure

The competitive dialogue procedure means a procedure following the issue of an advertisement in the OJEU notice and a selection process, the contracting authority then enters into dialogue with potential bidders, to develop one or more suitable solutions for its requirements and on which chosen bidders will be invited to tender. The procedure can only be used for '***particularly complex contracts'***.

Negotiated procedure

The negotiated procedure means the procedure whereby the contracting authority selects providers of its choice and negotiates the terms of the contract with one or more of them following the failure of the open, restricted or competitive dialogue procedure. An advertisement in the OJEU is usually required, but not always. Many distinguish negotiation with a single provider from the use of the 'competitive' negotiated procedure, where a call for competition is made by means of a notice in the Official Journal. The **'competitive negotiated' procedure** is not generally permitted for supplies and its use is restricted even for works and services contracts and its use must be justified.

OJEU

The Official Journal of the European Union, based in Luxembourg, which is the means by which notices are communicated to potential contractors within the European Union.

Prior Information Notice (PIN)

This is the periodic advertisement in the Official Journal of the European Union (OJEU) advising contractors and suppliers of the contracting authority's future procurement plans. The notice must be placed in product areas for supply contracts and in service categories for services contracts. It is necessary to give details of the essential requirements of each works contract to be let, once approval to proceed has been achieved.

In the case of supply and services contracts the PIN must be placed where the contracting authority expects to award covered contracts in product areas/service categories during the forthcoming 12 months which have a value, in aggregate, of above £869,670. In the case of works the threshold is £4,348,350, (these figures will change on 1 January 2014) and the requirement is to despatch the PIN as soon as possible after the intention is formed to award such a contract.

Services (anything, which is not a supply or a works).

Services are split into those which are classified as "priority" and which are included in Part A of Schedule 1 to the Public Contracts Regulations and those which are classified as "residual" and which are classified in Part B of that Schedule. Priority services are covered by the full rules whereas residual services need only obey some minor reporting requirements and the rules on technical specifications.

Part A
Service is defined within the CPC/CPV codes categories 1 to 16. The full rules apply to Part A service. Part A service is also referred to as a priority service

Part B
Service is defined within the CPC/CPV codes categories 17 to 27. You do not need to advertise this service in the Official Journal. It is also known as a residual service. Health and Social Services are Part B services.

Procurement

The purchase of goods, works, services in a way that achieves value for money for the CCG and is conducted in line with internal and international rules governing the procurement process.

Procurement Timescales

The timescales, which are compulsory, differ depending on the procurement route that is to be followed.

Selection of bidders

In contract award procedures, which involve the selection of suppliers to be invited to tender or negotiate, the selection should be made on the basis of objective criteria, taking account of the evidence permitted under the EC rules where they apply.

Service Level Agreement

Bexley CCG cannot enter into contracts with other parts of the same legal entity, such as the provider side (in-house service-provider) or other parts of the Crown. Internal agreements, which fall short of being contracts, are normally referred to as ‘service level agreements’. Service level agreements may have all the hallmarks of contracts other than the normal provisions for the enforcement of a contract.

Single tendering
Inviting only one provider or contractor to tender, this should only be used in exceptional circumstances. Refer to 3.2.6 for further details on single tendering.

Specification
Also sometimes described as a statement of requirement. A specification is a statement of needs to be satisfied by the procurement of external resources. The specification is a description of what we want to buy and what the supplier is expected to competitively tender against and consequently provide. It is the yardstick by which it is possible to gauge the quality of what is being provided against what is expected. It defines what the purchaser wishes to buy and consequently what the supplier is expected to provide.

The Evaluation Process

In order to preserve the integrity of the competitive process, it is imperative that the evaluation of proposals is undertaken objectively, consistently and without bias towards particular providers.

The Pre-Qualification questionnaire (PQQ)

The standard questionnaire is designed to be suitable for all contracts and asks general questions on the provider's financial & economic position and past experience in order to assess suitability, which can then be evaluated as appropriate to the proposed contract. The pre-qualification questionnaire is used at the first evaluation stage.

Tender Evaluation

The second stage evaluation will contain more subjective views on the company's ability to deliver its proposals. The evaluation will concentrate on what potential providers are now promising to do, rather than what they have done in the past. It will be concerned with whether the proposal does or does not meet requirements, or exceeds requirements.

At this stage price and quality of the proposed services/goods/works for this contract as set out in the providers proposal will be evaluated.

Value for money (VFM)

Value for Money (VfM) is defined as 'the optimum combination of whole-life costs and quality (or fitness for purpose) to meet the service user's requirement'. This is rarely synonymous with lowest price.

User's requirement

The purpose of procurement is to meet the service user's requirement. The requirement, including any specific level of quality or standard of service must, however, be tested critically for need, cost-effectiveness and affordability under whatever arrangements are in place for financial approval and separation of functions.

Appendix 2 – Any Qualified Provider document

Appendix 3 – CCG Disputes Resolution Policy

NHS
Bexley
Clinical Commissioning Group

[*name of this document*]

AQP Qualification Information

For the Provision of:

Any Qualified Provider for

[insert name of Services here]

On behalf of:

[Bexley Clinical Commissioning Group / insert names of participating CCG's]

Reference No: [xxxxxxxxxxxx]

Date of Issue: [xxxxxxxx]

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COVERING LETTER

Dear Potential Provider

Offer Reference Number:

This offer is for the provision of [insert name of Services] using the Any Qualified Provider (AQP) process.

The offer documentation comprises the following:

Document 1	AQP Qualification Information
Document 2	Service Specification
Document 3	AQP List of Policies Required

Please read these documents and the qualification questionnaire very carefully since failure to comply with the requirements contained therein will invalidate your submission.

There is a facility on the AQP online form to ask any questions in respect of the offer documents.

Bexley Clinical Commissioning Group reserves the right to change dates and times or modify any stage of the process including the introduction of additional steps or stages in order to maximise efficiencies.

We look forward to receiving your submission.

Yours faithfully

Jeanetta Nelson
Interim Head of Procurement & Contracting
Bexley Clinical Commissioning Group
221 Erith Road
Bexleyheath
Kent, DA7 6HZ

SECTION 1 – INTRODUCTION

1. Purpose and scope of this document

1.1 The purpose of this document is to provide information and instructions to allow Potential Providers to submit a response for qualification to deliver a **[insert name of Service]** using the Any Qualified Provider (AQP) process.

1.2 The process for the Procurement commenced with the submission for publication of the advert to Supply2Health on [Date].

1.3 As outlined in Supply2Health, Bexley Clinical Commissioning Group (CCG) is conducting the Procurement process on behalf of itself [and the other CCGs].

1.4 This AQP Application relates exclusively to the appointment of the Bidders to the [Project Name] and will be conducted on line.

This AQP Application consists of the following:

	Description
Stage 1, Sections 1 - 8	Compliance checking [by DH)
Stage 2	Assessment of Service Delivery
Stage 3	Local qualification by the Commissioning Authority

2. Instructions and Guidance for Completion

2.1 Service providers wishing to become and AQP providers will need to 'Register for an AQP account'. You will then log in to your AQP account and 'search for new offers or opportunities'. Choose the offer you wish to apply for and click the 'Apply' button at the top of the offer which will create a qualification questionnaire for you to complete. Complete your qualification questionnaire before the 'Reply by this time' date. You can use the online noticeboard to ask questions about the offer until a week before the offer closes.

2.2 Save your qualification questionnaire regularly. Check all sections of the questionnaire have been completed (indicated by a green tick). Click 'submit', and then 'Save' on your questionnaire to submit your application. You should also check the status of your questionnaire changes from 'Draft' to 'Submitted'.

2.3 Further Instructions and guidance information is available on the online qualification form and can be accessed by pressing the information icon button.

2.4 Where a specific response is required it must be submitted in the box provided. If you have care pathways, company accounts or other documents to include with your application, email them to AQPattachments@dh.gsi.gov.uk with the Supply2Health reference number in the subject line, and include your contact details.

2.5 All judgements are made solely on the information provided in the submission, so please take care to ensure that full answers are provided where called for. This is particularly important to note if you are known to or have had past relationships with the Contracting Authority as prior knowledge cannot be used to assess the documentation.

2.6 There are assessment criteria of Pass/Fail will be applied to Sections 1 – 4, 5.6, 5.8 and Section 6. The assessment scoring criteria of 0 – 4 will be applied to Section 5 apart from those questions identified earlier. Further details are provided in Table 2 and Table 3.

3. Qualification Submission Clarification

3.1 Bexley CCG reserves the right to request Potential Providers to clarify any part of their qualification response. Any requests for clarification will be issued via the Supply2Health online form. Potential Providers are encouraged to check the AQP system regularly during the process as failure to respond may result in your submission not been qualified. When a question has been raised by the assessment team the provider will be sent an email detailing the question raised. Potential Providers will have 48 hours to respond to the query.

3.2 If the Potential Provider fails to provide an adequate response to one or more points of clarification, or fails to respond in a timely manner, the Potential Provider may be excluded from progressing further in the process.

3.3 Clarification questions from the Potential Provider must be posted on the AQP Provider Notice board [insert link here] or are questions submitted via the 'Ask a question' button. Check to see if responses via the noticeboard are anonymised.

4. Qualification Timetable

4.1 Table 1 is the timetable for the qualification process. This is intended as a guide and whilst Bexley CCG does not intend to depart from the timetable it reserves the right to do so at any time.

Table 1

Milestones	Date
AQP Offer Published on Supply 2 Health	
Deadline for submitting clarification questions	
Deadline for AQP submission	
Assessment of submissions completed	
Providers notified if they have Qualified or Not Qualified	
Contracts signed and mobilisation starts	
Service start date	

SECTION 2 – COMMERCIAL FRAMEWORK

Potential Providers' attention is drawn to the following key commercial information:

1. General Information including Pricing

1.1 This AQP process is being led by Bexley Clinical Commissioning Group (on behalf of the Bromley, Bexley and Greenwich CCGs). These CCGs are collectively referred to as the Contracting Authority.

1.2 The service required from the potential provider is set out in the Service Specification.

1.3 The price offered to providers for this service is identified in [Schedule 3 of the Particulars]. This tariff **includes** the maximum CQUIN funding available. For 2014/15 and beyond, the price will be varied in line with the national assumptions on inflation and efficiency requirements issued by the Department of Health / NHS Commissioning Board for each year.

1.4 All providers who meet the required entry criteria will be awarded a contract under AQP. This contract offers **no guarantee** of activity or patient flows.

1.5 Providers will be qualified to provide services from [insert date] 2013 to [insert date] 2016.

1.6 The closing date for completion and submission of the qualification documents is **[insert date] 2013.**

2. Contract information

2.1 If qualified, your organisation will be required to accept the terms and conditions and be compliant with the **NHS Standard Contract 2013/14 (the Contract)** and any subsequent revisions thereof. Please note that the Contracting Authority will not enter into an arrangement with any individual or organisation that does not fully accept this requirement. Caveat responses will be considered as non-acceptance of this requirement.

2.2 The Contract can be downloaded from the NHS Commissioning Board website via the following link: http://www.commissioningboard.nhs.uk/nhs-standard-contract/. There are three separate sections to the Contract. These are:

– particulars containing the agreement, specification and other schedules
– the services conditions
– the general conditions

2.3 All schedules in the particulars of the contract will be completed by the Contracting Authority at Contract Award stage.

2.4 It is expected that the Contract will be separate to and independent of any existing contract currently in place between a Provider and any of the CCGs within the Contracting Authority, although this will be confirmed at the Contract Award stage. Each of the CCGs within the Contracting Authority will be an Associate to the Contract; one of the CCGs will act as the Co-ordinating Commissioner, and this will also be determined at the Contract Award stage.

2.5 The Contract Duration will be x months initially as the Contract issued by the NHS Commissioning Board is set to expire on 31st March 2014. Subject to satisfactory performance, a new NHS Standard Contract will be awarded from 1st April 2014.

2.6 There are no known or anticipated staff transfer (TUPE) requirements relating to this AQP procurement. OR

2.7 [According to the DH TUPE does not apply to AQP – however if TUPE is likely to apply, insert relevant paragraph having sought legal advice]

3. Further Information Required

3.1 Potential Providers are required to provide copies of policies with their submission as shown in Document 3.

SECTION 3 ASSESSMENT CRITERIA

1. Introduction

Please note that it is a mandatory requirement to respond to every question on the qualification form. In order to qualify for the Any Qualified Provider (AQP) process all questions with assessment criteria of pass/fail must be assessed as a pass.

1.1 In securing services from providers using the (AQP) model, NHS commissioners need assurance of competence, quality and safety. This process aims to ensure that appropriate information is gathered from providers for the relevant sections of the qualification form for this assurance to be secured.

1.2 This document sets out the criteria against which providers will be assessed after completing the on-line form.

2. Assessment

2.1 Table 1 shows how each of the questions will be assessed.

2.2 Some of the responses required are information purposes only; others have a pass/fail element to them.

Table 2

Section	Requirement	Required Response	Assessment
Section 1: Offer Details			
1.1	Service lines/Locality – For information		For Information
1.2	Pricing model confirmation	Positive	Pass/Fail
1.3	Agreement to terms of NHS Standard Contract		Pass/Fail
1.4	Consent to credit reference		Pass/Fail
1.5	Confirmation of relevant policies		Pass/Fail
1.6	Confirmation of 1.6		Pass/Fail
Section 2: Address			
2.1	Applicants representatives details	Information must be provided	Pass/Fail
2.2	Mobile facilities		Pass/Fail
2.3	Premises – address details		Pass/Fail
2.4	Organisation's legal entity name & address		Pass/Fail
2.5	Parent organisation		Pass/Fail
2.6	Parent organisation – name & address		Pass/Fail
Section 3: Organisation			
3.1	Organisation category (depending on organisations category, will depend on which of the following options you will see)	Information provided	For Information
3.2	SME	Information must be provided (if applicable)	Pass/Fail
3.3	Charitable organisation		Pass/Fail
3.4	State of incorporation		Pass/Fail
3.5	Incorporation information		Pass/Fail
3.6	Partnership arrangements		Pass/Fail
3.7	Describe arrangements		Pass/Fail

Section 4: Regulation			
4.1	Organisation requires monitor licence	Information must be provided (if applicable)	Pass/Fail
4.2	Monitor licence details		Pass/Fail
4.3	Monitor status details		Pass/Fail
4.4	CQC registration		Pass/Fail
4.5 – 4.11	CQC registration details		N/A
4.12	I do not have staff yet		Pass/Fail
4.13	Other regulatory bodies		N/A
Section 5: Service Delivery			
5.1	Contracts	Information provided (if applicable)	Not scored
5.2	Service experience	Meets assessment criteria	0 - 4
5.3	Care pathway	Information provided (if applicable)	0 - 4
5.3.1	Follow up care	Meets assessment criteria	0 - 4
5.4	Local services	Meets assessment criteria	0 - 4
5.5	Local agreements	Meets assessment criteria	Not scored
5.6	Clinical governance	Meets assessment criteria	Pass/Fail
5.6.1 – 5.6.3	Clinical governance and incident reporting	Meets assessment criteria	0 - 4
5.7	Innovation	Meets assessment criteria	0 - 4
5.8	Staff	Meets assessment criteria	Pass/Fail
5.8.1	Staff continuous development		0 - 4
5.8.2	Public Sector Equality Duty		0 - 4
5.9	Local question: Sustainability		0 – 4
	Local question: Key Service Outcomes		0 – 4
	Local question: Patient Experience		0 – 4
Section 6: Information Management and Technology (IM&T) Arrangements			
6.1	Connecting for Health requirements	Information must be provided.	Pass/Fail
6.2	Current status of IM&T solution		Pass/Fail
6.3	NHS e mail account		Pass/Fail
6.4	Local IM&T requirements		Pass/Fail
6.5	Compliance with Data Protection Act		Pass/Fail
Section 7: Legal, Commercial and Financial Compliance			
7.1	Finance requirements	Meets assessment criteria	Pass/Fail
7.2	Insurance cover		Pass/Fail
7.3	CNST arrangements	Information provided	Not scored
Section 8: Declarations			
8.1 – 8.3	Declarations (clinicians referred to in questionnaire will be delivering service; Regulation 23 of Public contracts Regulation not apply; no actual or potential conflicts of interest)	Confirmation provided	Pass/Fail

2.3 Each section of the form will be assessed individually and a **fail on one or more sections will result in an overall fail.**

2.4 The assessment process is made up of three stages as detailed below:

2.4.1 Stage 1

Compliance Check - Assessment responses will be subject to a compliance check; during this stage should a potential provider receive a fail for any assessment criteria in table 2, assessment responses will be excluded from further consideration in the assessment and therefore eliminated at stage 1.

2.4.1.1 At stage 1 the Department of Health (DH) will undertake a compliance check on the Provider's details as follows:

- Section 1 – Service offer details
- Section 2 - Addresses
- Section 3 - Organisation structure
- Section 4 - Regulation
- Section 5 - Service delivery information
- Section 6 - Information Management & Technology
- Section 7 - Legal and financial
- Section 8 - Declarations.

2.4.1.2 The Service delivery information in section 5 will not be checked by the DH (for services outside the core 8), but will be assessed by the CCG at Stage 3.

2.4.1.3 Once the DH is satisfied the Provider meets the core compliance requirements, the form is passed to a Qualification Centre of Excellence (QCE) or local commissioner who will make an assessment of the Provider's ability to deliver the service.

2.5a Stage 2 – Part 1

Financial Standing – Assessment of financial statements will be carried out; during this stage should a potential provider receive a fail for any of the assessment criteria in table 2, providers will be excluded from further consideration in the assessment process.

2.5b Stage 2 – Part 2

Service Delivery - Potential providers will be assessed against their responses to the service delivery element of the qualification questionnaire and will receive a pass/fail or a score of 0 – 4 against each of the questions.

2.5.1 If Service Delivery Assessment is undertaken by the Qualification Centres of Excellence (QCE) (for the 8 core services only), the QCE will:

- Where the provider has declared that any litigation or regulatory issues apply, the QCE will investigate the circumstances and make a recommendation to the CCG as to whether or not to proceed, and, if applicable
- The QCE team will check the qualification questionnaire, in line with the CCG's requirements, to determine the following:
    - How the Provider intends to deliver the service, and any relevant prior experience, in line with the assessment criteria and service specification
    - That an appropriate integrated care pathway has been described;
    - How the Provider intends to work with local health and social care services;
    - Details of clinical governance leads, processes and reporting arrangements;
    - Details of any innovative practice highlighted; and
    - The QCE will ensure that financial viability checks are carried out in line with the CCGs requirements. The accounts submitted in section 7.1 of Stage 1 will be used to make this assessment along with the credit checks and if necessary bank reference.

2.5.2 When the QCE has approved the Provider's form, it is passed to the CCG to assess the answers to any locally set questions and make the final decision whether to qualify the Provider.

2.6 Stage 3

2.6.1 Qualification - Providers will be qualified at this stage. The CCG will assess any locally set questions and conclude the outcome of the process. Successful Providers will move to contract signature, providing any conditions precedent of the contract have been met and will be listed in the National Directory of Qualified Providers**.**

2.7 Further information on the requirements for each of the sections of the form can be found in the on-line information button, next to each of the questions.

3. Service Delivery

3.1 The Service Delivery questions will be assessed on an individual basis by members of an assessment team against the published criteria.

3.2 Following independent assessments there will be an assessment meeting to discuss responses and to agree whether a Potential Provider's submission can be qualified.

3.3 Providers are advised to pay particular attention to the bulleted points following the questions that indicate to providers what commissioners are looking for in response to these questions.

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3.5 Providers are asked to keep their responses clear and succinct and to address all the points required. The maximum suggested word count per response is 750 words (approximately one and a half sides of A4).

3.6 Potential Providers will need to score a minimum of 50% of total score available to be qualified.

Table 2: Assessment Criteria:

Assessment Criteria	Result
Question not answered or there is some information missing. The response does not meet the full criteria and there is limited information provided or an answer that largely fails to address the question or that is flawed in aspects. There are significant gaps and no evidence that issues will be addressed and or managed in line with expectations and the standards required.	Fail
A comprehensive answer to the question in terms of detail, accuracy and relevance. A good degree of evidence to show the Bidder's ability to achieve what is stated within the response and achieves the required standard of delivery.	Pass
No evidence provided or evidence wholly unsatisfactory	0
Limited evidence provided. Evidence does not satisfactorily meet the requirements	1
The requirement has been evidenced satisfactorily and the response adequately meets the minimum requirements.	2
The evidence provided is more comprehensive and addresses the requirement in greater detail.	3
The evidence provided is comprehensive and addresses all elements in detail	4

3.7 Table 3 shows the questions that will be asked on the on-line form and the bullet points give an indication of the areas that the commissioner expects the provider to cover in their response, providing evidence and examples where appropriate.

Table 3

Service Experience (0 - 4)

Please ensure that you provide succinct responses that clearly address all the points required. As a guide, individual responses should not exceed 750 words (approx 1 ½ sides of A4)
5.2 With reference to the offer documentation please describe the experience you have of delivering this service and how you intend to deliver this service for the duration of the contract.
You are expected to provide full details of your ability to deliver the service for the duration of the AQP qualification period of 3 years. **NB The contract term is initially to the 31st March 2014; further contracts (depending on satisfactory performance) will be implemented in accordance with Department of Health Contract Guidance.**
Care Pathway (0 - 4)
5.3 With reference to the offer documentation please provide details of your pathway – particularly a description of how you will integrate with local health and social care services to deliver your pathway.
The Care Pathway is set out in the Service Specification. You are asked to provide a brief description here of your integration with local health services and how you will develop relationships with other health care providers.
5.3.1 Please provide proposals on how you intend to provide follow-up care where appropriate.
Local services (0 - 4)
5.4 Please describe how you intend to work with local Health and Social Care services, including referral and emergency protocols where necessary.
Here you should detail how you intend to work with other local health care providers to ensure that your service users receive the best possible care. You should include details of emergency protocols. With reference to the service specification, how you will work with local GPs to ensure that you manage: • Inappropriate referrals and exclusions • DNAs • Incomplete treatment/assessments • How you will engage with stakeholders in the management of the referral process • Your emergency referral procedure.
Clinical Governance (Pass/Fail)
5.6 Enter the name of your Clinical Governance Lead (CGL).
Please include details of their position held and email contact:
5.6.1 Describe the clinical governance process that you have in place **5.6.2 Describe how you will deal with clinical incident reporting** **5.6.3 How will your practitioners deal with immediate critical incidents**
Please provide all requested information. For 5.6.3 you should note that "immediate critical incidents" are Serious Untoward Incidents (SUIs)
Innovation (0 - 4)
5.7 Applicants should submit details of any innovation in service delivery you intend to provide not mentioned in the requirements that may add value to the patient.
If you have not specifically mentioned a service innovation already, then enter details here.
Staff (0 - 4)
5.8.1 Please describe how you will ensure that your workforce maintains appropriate levels of continuous development.

You are expected to provide details of how you will ensure your staff are appropriately trained, registered and qualified over the period of the AQP offer.
Your response should include but not be limited to details of:

- Staffing model and operational structure: to demonstrate skill mix, staff profiles, skills/experience, roles and responsibilities, accountability and reporting arrangements
- Recruitment policy – pre-employment checks, induction process etc.
- Equality and anti-discrimination policy and your approach to current equality and anti-discrimination legislation
- Mobilisation of staff – recruitment strategy
- Process for monitoring qualifications and registrations of staff (including details of which registered bodies) and how re-validations will be managed.
- Details of supervision, training, qualifications and experience of staff to whom care is delegated
- Process for monitoring training, identification of training needs and provision of continuous professional development (CPD).
- Proposals on how staffing gaps will be covered in the event of unexpected sickness or annual leave
- Procedure for management of performance and conduct of staff

If your service model is to use sub-contractors for any part, details of the above must be explicitly provided for all sub-contractors.

5.8.2 Describe how you would demonstrate compliance with the Public Sector Equality Duty Act.

Individuals have the right to quality health care regardless of personal circumstances. You are expected to describe your experience of working with a population of patients with diverse needs including sensitivities to age, gender, ethnicity, religion, sexuality and disability.

Your response should include reference to the following key areas

- How you will ensure that the service offered is respectful and does not discriminate on the grounds of age, sex, sexuality, ethnicity, disability or religion
- How you will provide information to patients whose first language is not English or who have hearing problems or visual problems
- How you will ensure compliance with the Disability Discrimination Act.

Other (0 - 4)

Local Question 1:
Please describe the following aspects of Service Sustainability
Given that AQP contracts are based upon zero activity, providers should describe

a) How they will ensure maintenance of skills and competency of the workforce delivering this service, and
b) How they will manage peaks and troughs in activity and what plans it has to ensure it has continued availability for patients.

Local Question 2:
Applicants should describe:
1. How they will meet the key service outcomes for the service Ref: Clause 4 of the specification.

Local Question 3:
Please describe your process for self-care and service user information Ref: Clause 3 of the specification

4. Assessment of Financial Statements

This assessment is carried out in relation to Question 7.1 from the Legal Section of the online qualification form and is based on a detailed review of the last three years' full sets of financial statements submitted by potential providers.

4.1 Criteria for Qualification / Disqualification

4.1.1 In order to qualify under Any Qualified Provider, the potential provider must pass the Finance Assessment.

4.1.2 Credit checks may be carried out based on the information provided in the qualification form. Failure to provide full details to allow credit checks to be undertaken may result in a fail leading to disqualification of the submission.

4.1.3 The following statements give the justification for a financial evaluator to fail a potential provider's response:

- The potential provider has not provided financial accounts for the three most recent years, or has provided incomplete financial accounts, and has failed to give a reasonable explanation as to why.
- The accounts are qualified.
- The potential provider is bankrupt.

4.1.4 A fail in this section will mean that the potential provider fails the Finance Assessment even if all other aspects of the evaluation pass.

SECTION 4 - INSTRUCTIONS FOR COMPLIANCE WITH IM&T FOR AQP SUBMISSIONS

The purpose of this section is to inform Potential Providers of the steps that need to be taken in order to comply with the IM&T requirements for the AQP process (as detailed in Section 6.1 – 6.5 of the Qualification Form). If there are any No responses in this section Potential Providers are asked to instigate these steps as IM&T compliance is a required element of the AQP process. **Please note that any costs incurred to implement this process are at the Potential Providers own risk as compliance with IM&T does not mean that Potential Providers will be qualified.**

1. Connecting for Health Requirements

1.1 Potential Providers should ensure that they make reference to their state of readiness in terms of Choose & Book. Further information on the registering for, and the use of, Choose and Book can be found at http://www.chooseandbook.nhs.uk/staff/started/providers

2. The Information Governance Statement of Compliance

2.1 Potential Providers wishing to access NHS digital services (for example, N3 connections, NHS mail, Choose and Book) must complete the Information Governance Statement of Compliance (IGSoC). IGSoC is the process by which organisations enter into an agreement with NHS Connecting for Health for access to its digital services.

2.2 Details for applying for IGSoC can be found at http://www.connectingforhealth.nhs.uk/systemsandservices/infogov/igsoc

2.3 The process has 4 stages and is completed once. Compliance is reconfirmed though annual submission of the information governance toolkit. Patient information must only be sent and received via a secure network.

2.4 All organisations that have access to NHS patient data must provide annual assurances that they are practising good information governance and use the Department of Health's Information Governance Toolkit (IGT) to evidence this. There are separate IGTs for Any Qualified Providers of clinical and non-clinical services. Potential Providers should achieve a minimum of level 2 against all requirements in the IGT. Where this will not be achieved prior to service commencement, the Commissioner can, at their own discretion, agree a plan with the Potential Provider to achieve level 2 in a reasonable time period.

2.5 Details on registering for IG Toolkit can be found at http://www.igt.connectingforhealth.nhs.uk/

3. NHS Mail Address

3.1 You must have an NHS mail address to send and receive patient identifiable data. NHS Mail addresses are only available to organisations with a connection to N3. More details about NHS Mail are available from the NHS Mail website

4. Local IM&T requirements: Information Governance Management

4.1 Potential Providers should have a named Caldicott Guardian/Information Governance Lead who has responsibility for all aspects of information governance and information risk within the organisation. It may be appropriate for larger organisations to additionally have a Senior Information Risk Owner with overall responsibility for information.

5 Data Protection Act

5.1 Potential Providers who are the data controllers of personal data must be registered with (that is, they have notified their data processing to) the Information Commissioner.
Details on how to notify with the Information Commissioner can be found on their website at http://www.ico.gov.uk/

6. Non-Compliance with IGSoC

If you have not completed the IGSoC process, installed an N3 connection, OR ACHIEVED Choose and Book Compliance (either directly, or as a result of not completing IGSoC/N3 requirements), you may still be able to sign an NHS Standard Contract, by agreeing to a Data Quality Improvement Plan, which will set out a timetable that you will be expected to achieve these milestones. Failure to meet the deadlines then becomes a contract management issue rather than a qualification process issue, between you and your commissioner(s).

SECTION 5 – IMPORTANT NOTICES

1. Confidentiality

1.1. Subject to the exceptions referred to in paragraph 1.3 below, the information is being made available by Bexley CCG on condition that:

1.1.1. Potential Providers shall at all times treat the information as confidential;

1.1.2. Potential Providers shall not disclose, copy, reproduce, distribute or pass the information to any other person at any time;

1.1.3. Potential Providers shall not use the information for any purpose other than for the purposes of a submission.

1.2. Potential Providers shall ensure that each Collaborative Potential Provider who receives any of the information is made aware of, and complies with, the provisions of paragraph 1.1 as if they were a Potential Provider.

1.3. Potential Providers may disclose, distribute or pass information to another person (including, but not limited to, for example, employees, consultants, subcontractors or advisers to the Potential Provider, the Potential Provider's insurers or the Potential Provider's funders) if either:

1.3.1. this is done for the sole purpose of enabling a submission to be made and the person receiving the information undertakes in writing to keep the information confidential on the same terms as set out in this document;

1.3.2. the Potential Provider obtains the prior written consent of Bexley CCG in relation to such disclosure, distribution or passing of the information.

1.4. Bexley CCG may disclose detailed information relating to submissions to the representatives from the participating organisations/trusts for private inspection where deemed necessary.

1.5. Bexley CCG will act in accordance with their duties under the Freedom of Information Act (2000), or any subsequent revisions of this act, regards the protection of commercially sensitive information or confidential information relating to the Potential Provider.

2. Changes

2.1. Potential Providers are subject to an ongoing obligation to notify Bexley CCG of any material changes in their financial or other circumstances. This includes, but is not limited to, changes to the identity of sub-contractors or the ownership or financial or other circumstances thereof and solvency of the Potential Provider. Bexley CCG should be notified of any material change as soon as it becomes apparent.

2.2. Potential Providers are reminded that any future changes in relation to collaborations, partnerships and sub-contracting must be notified to the contracting authority.

2.3. Failure to notify the contracting authority of any material changes or to comply with any of these provisions may lead to a Potential Provider being liable for non-Accreditation.

3. Advisors

3.1. Potential Providers will be responsible for obtaining all information and independent advice that they consider necessary for the preparation of their submission. Potential Providers must make their own independent assessment of this information and advice after making such investigation and taking such professional advice as they deem necessary.

4. Authorised Representative

4.1. All correspondence relating to this process will be addressed to the Potential Provider's Authorised Representative. The Authorised Representative must have full authority to represent the Potential Provider and attend any meetings on the Potential Provider's behalf. The authorised person will be the person named in section 2 of contract details on the online form.

5. Availability of Information

5.1. Any additional information which Bexley CCG deem necessary for a Potential Provider to be issued with, will be sent to each Potential Provider's Authorised Representative. It is the Potential Provider's responsibility to notify Bexley CCG of any change to the Authorised Representative's name or other contact details. Potential Providers may request that, for convenience, electronic correspondence be copied to individuals other than their Authorised Representative, however, Bexley CCG accept no liability for this and will consider all information sent to the Authorised Representative to have been received by the Potential Provider.

6. Disqualification

6.1. Potential Providers acting in contravention of the provisions set out in the documentation or any other information provided by Bexley CCG, may, at the sole discretion of Bexley CCG, be disqualified from further participation in this process.

7. Accuracy of Information and Liability

7.1. This Information has been prepared by Bexley CC in good faith but does not purport to be comprehensive or to have been independently verified. Potential Providers should not rely on the detailed information contained within and should carry out their own due diligence checks and verify the accuracy. None of the content within this information is, or should be construed as, a promise or representation as to the future.

7.2. Potential Providers considering entering into a contractual relationship with Contracting Authority should make their own enquiries and investigations of the Contracting Authority requirements beforehand. The subject matter shall only have contractual effect when it is contained in the express terms of an executed contract.

7.3. Neither Bexley CCG, or representatives from the participating organisations/trusts make any representation or warranty as to, or (save in the case of fraudulent misrepresentation) accept any liability or responsibility in relation to, the adequacy, accuracy, reasonableness or completeness of the Information or any section of it (including but not limited to loss or damage arising as a result of reliance by the Potential Provider on the information or any section of it).

8. Canvassing

8.1. Bexley CCG reserve the right to disqualify (without prejudice to any other civil remedies available and without prejudice to any criminal liability which such conduct by a Potential Provider or Collaborative Potential Provider may attract) any Potential Provider or Collaborative Potential Provider who, in connection with this:

8.1.1. offers any inducement, fee or reward to any of the persons referred to in paragraph 1.4 above;

8.1.2. does anything which would constitute a breach of the Bribery Act 2010, or any subsequent revisions of this act; or

8.1.3. canvasses any of the persons referred to in paragraph 1.4 in connection with this.

9. Non – Collusion

9.1. Bexley CCG reserve the right to disqualify (without prejudice to any other civil remedies available to them and without prejudice to any criminal liability which such conduct by a Potential Provider may attract) any Potential Provider who, in connection with this:

9.1.1. fixes or adjusts the submission, by or in accordance with any agreement or arrangement with any other Potential Provider or Collaborative Member of a Potential Provider (other than a member of its own consortium or supply chain);

9.1.2. enters into any agreement or arrangement with any other Potential Provider or Collaborative Potential Provider of a Potential Provider to the effect that shall refrain from making a Submission or as to the amount of any Submission to be submitted;

9.1.3. causes or induces any person to enter such agreement as is mentioned in either paragraph 9.1.1 or 9.1.2 or to inform the Potential Provider or Collaborative Potential Provider of a Potential Provider of the amount or approximate amount of any rival Submission;

9.1.4. offers or agrees to pay or give or does pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission relating to any other Submission or proposed Submission for the process; or

9.1.5. communicates to any person other than Bexley CCG the amount or approximate amount of proposed Submission (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of a Submission).

10. Publicity

10.1. Potential Providers shall not undertake (or permit to be undertaken) at any time, whether at this stage or after execution of contracts, any publicity activity with any section of the media in relation to the process other than with the prior written agreement of the Contracting Authority. Such agreement shall extend to the content of any publicity. In this paragraph the word "media" includes (but without limitation) radio, television, newspapers, trade and specialist press, the internet and email accessible by the public at large and the representatives of such media.

11. Right to Reject Submissions

11.1. Bexley CCG reserve the right to reject or disqualify a Potential Provider or a Collaboration of Potential Providers where:

11.1.1. a submission is submitted late, is completed incorrectly, is materially incomplete or fails to meet the submission requirements as set out in Section 3 of the Introduction, which have been notified to Potential Providers;

11.1.2. the Potential Provider and/or its Collaborative Potential Providers are unable to satisfy the terms of Article 45 of Directive 2004/18/EC and/or Regulation 23 of the Public Contracts Regulations 2006 at any stage during the Submission process;

11.1.3. the Potential Provider and/or its Collaborative Potential Providers are guilty of material misrepresentation in relation to its application and/or the process;

11.1.4. the Potential Provider and/or its Collaboration contravene any of the terms and conditions;

11.1.5. there is a change in identity, control, financial standing or other factor impacting on the selection and/or assessment process affecting the Potential Provider and/or its Collaboration.

11.2. The disqualification of a Potential Provider will not prejudice any other civil remedy available to Bexley CCG and will not prejudice any criminal liability that such conduct by a Potential Provider may attract.

12. Right to Cancel or Vary the Process

12.1. Bexley CCG reserve the right:

12.1.1. to cancel or withdraw from the process at any stage whether in respect of the contracting authority or otherwise

12.1.2. not to award a contract under this process;

12.1.3. to require a Potential Provider and/or its Collaboration to clarify their submission in writing and/or provide additional information within 24 hours of clarification request being made by Bexley CCG (failure to respond adequately may result in a Potential Provider not being successful in this round).

13. Provision of Further Information Prior to Submission

13.1. Bexley CCG is relying on the information provided by Potential Providers during Submission stage (including but not limited to information concerning the Collaborative Potential Providers and consortium structure). If, at any time during this submission process there are any material changes to the same, the Potential Provider must advise Bexley CCG as soon as practicable (even if this is prior to the submission of a Submission). Upon receipt of such information, Bexley CCG shall be entitled to revisit the selection and/or assessment of the Potential Provider and exclude the Potential Provider, if necessary, as a result of that process.

14. Freedom of Information

14.1 The Freedom of Information Act (2000) imposes duties of openness on Bexley CCG which will have an effect upon how they treat information received from Potential Providers.

14.2 Further information on this and on how it will be dealt with is available from Bexley CCG's website. Please quote "Freedom of Information on any subject heading.

15. Submission Process and Costs

15.1. Bexley CCG reserves the right at any time:

15.1.1. to issue amendments or modifications during the Submission Period;

15.1.2. to clarify Submissions once these have been submitted;

15.1.3. to alter the timetable to contract award;

15.1.4. not to award a contract; and/or

15.1.5. to withdraw from this process.

15.2. Any costs or expenses incurred by any Potential Provider or other person will not be reimbursed by Bexley CCG and neither Bexley CCG nor any of their representatives will be liable in any way to any Potential Provider or other person for any costs, expenses or losses incurred by any Potential Provider or other person in connection with their submission.

16. Governing Law

16.1. All documents and Submission must be prepared in the English language. This process and any subsequent contract awarded will be subject to English law and the exclusive jurisdiction of the English courts.

16.2. Any financial information requested by Bexley CCG is to be presented in Pounds Sterling.

NHS
Bexley
Clinical Commissioning Group

NHS BEXLEY CLINICAL COMMISSIONING GROUP

Competition Dispute Resolution Policy

Excellent healthcare – locally delivered

Author's name & Title:	Jeanetta Nelson, Interim Head of Procurement
Sponsor's name & Title:	Sarah Valentine, Director of Commissioning
Review date:	1st April 2014
Supersedes:	NHS SEL Competition Dispute Resolution Policy
Description:	Policy is for dealing with contraventions of any of the PRCC (Principles and Rules for Cooperation and Competition) rules.
Audience:	All Commissioning Staff

Consultation:		
Date	**Name**	**Title and /or Organisation**
18/03/2013	Sarah Valentine	Director of Commissioning
18/03/2013	Simon Evans- Evans	Director of Governance & Quality
18/03/2013	Nabil Jamshed	Corporate Governance & Risk Manager
18/03/2013	Alan Luke	AD Commissioning & Contracting
18/03/2013	Mary Stoneham	Corporate Office Manager

Approved by:		**Date:**	
Ratified by:		**Date**	

Version control

J Nelson	18.03.2013	0.1	New	Draft

Contents page

COMPETITION DISPUTE RESOLUTION POLICY

1. Introduction and Purpose

1.1 As a result of the introduction by the Department of Health (DH) of the promotion of choice and competition in the Health & Social Care Act 2012, CCG's are responsible for ensuring that different types of provider are treated fairly, when invited to bid for procurements or through choice arrangements (AQP). The CCG's role is to ensure that its decisions are fair, transparent and well informed.

1.2 The Secretary of State also established a national Co-operation and Competition Panel (CCP) to provide independent advice to the Secretary of State and Monitor in respect of contraventions of any of the 10 Principles and Rules of Cooperation and Competition. The national Co-operation and Competition Panel (CCP) will only consider issues where action to resolve matters locally have been exhausted.

1.3 To this end Bexley CCG is required to set up and run local Competition Dispute Resolution Processes and an independent Competition Dispute Resolution Panel (the Panel) to manage disputes at a local level before they are referred to the NHS CB[1] / CCP.

1.4 On 1st April 2013, failing implementation of national guidance on competition dispute resolution processes, Bexley CCG will, as a temporary measure, adopt either the Pan London Local Competition Dispute Resolution Procedure (LC-DRP), or adopt the following as good practice, thus ensuring the continuation of a fair, open, non-discriminatory and transparent process. [Under the Pan London arrangement, the complaint is logged by the CCG and forwarded to the Pan London group for action, using similar processes and the same timescales as stated in this policy.]

2. Scope, Exclusions and Core Principles

2.1 Scope

The CCG Competition and Dispute Resolution Process will consider:

- Disputes directly arising from the principles, actions/behaviours and rules set out in the Principles and Rules for Co-operation and Competition
  • Disputes that have a direct impact on the Principles and Rules
- Disputes related to NHS Promotion Code outside the remit of the Advertising Standards Authority (ASA).

2.2 Exclusions

[1] The role of the NHS CB in this process has not yet been agreed.

- Contractual disputes of a commissioning nature between a CCG and any provider in respect of an NHS Contract – this should be dealt with through the CCG's established commissioning processes.
- Non-competition issues.
- Any disputes that do not relate to the provision of healthcare services commissioned by the NHS.

2.3 Core Principles

- The overarching principles are set by reference to the approved QIPP and related operating plans.
- Our primary duty is to ensure that current and future citizens have access to the highest quality health services.
- There is a clear hierarchy that must be adopted in any criteria for considering investment and service change:
- What is right for patients
- What is in the public interest (population health, equity, VFM)
- Organisational/QIPP priorities.

3. The Complaint Process

The complaint process is described in detail in the stages below. On submission of a complaint on the completed pro-forma the Case Manager will forward the information to the Head of Procurement & Contracting to carry out an initial check to ensure that:

- The content of the dispute is covered by the PRCC.
- That it is Bexley CCG that is being complained about
- No legal proceedings have commenced
- There is evidence of full disclosure of all relevant and applicable information (including availability of connected individuals to provide evidence and or testimony)
- The issue is not a reserved matter under the PRCC. e.g. mergers

3.1 Stage 1 – Making a complaint to the CCG (2 working days max)

The complaint must be made to the CCG Case Manager, who is based in the Quality and Governance Team, using the form appended to this procedure and submitted to: nabil.jamshed@bexley.nhs.uk

An acknowledgement of receipt will be sent within **two working days**.

By completing the form, the complainant is confirming consent to the resolution of the complaint being handled under this Competition Dispute Resolution Policy.

3.2 Stage 2 – Initial triage of complaints received (7 working days max)

This stage is expected to be completed within **5 working days** from receipt, and the complainant notified within a **further 2 working days**.

Following the receipt of the complaint, the Case Manager, with advice from the Head of Procurement & Contracting, if not involved in the case, will make an assessment of the following factors:

- **Whether the complaint meets the acceptance criteria**. The CCG may contact the complainant at this stage and request clarification or further information. If the complaint is not deemed to meet the acceptance criteria, the complainant is notified that the complaint will not progress, and what further information is needed (if any).

- **Whether the complaint should be fast tracked to another organisation**, including the Advertising Standards Agency, Office of Fair Trading, or the national Co-operation and Competition Panel. In the event of onward referral, the claimant will be informed of the reasons why the CCG has reached this decision, (for example if the item concerns a merger or acquisition dispute) the course of action they need to take next and the process the complaint should follow.

The actions of the Head of Procurement & Contracting will be validated by the Assistant Director of Commissioning & Contracting or, in the absence of that post holder, the Director of Commissioning. Part of the triage process for complaints is to determine the Panel Chair who will lead the Dispute Resolution Panel. Where the complaint does not meet the acceptance criteria and is referred back to the complainant, this will require Panel chair approval.

Where the complaint is in scope, and not subject to fast tracking, it will proceed to the next stage.

Where fast tracking is required, the timescales, by agreement, may be reduced.

3.3 Stage 3: Lead Director review (10 working days max)

This stage aims to be completed within **10 working days** of completion of the triage.

Following the triage, the Assistant Director of Commissioning & Contracting, (the Lead Director) will review the complaint to determine whether a swift resolution can be achieved without need to call the panel. If the AD Commissioning & Contracting was involved in the procurement decision of the matter being disputed, then the Lead Director role will be undertaken by the Director of Commissioning.

As part of this process:

- The Lead Director may instigate an informal investigation to add detail.

- The Lead Director may seek to determine whether a swift resolution can be achieved, without the need to constitute the Dispute Resolution Panel, and without prejudice. Where appropriate, both parties must agree on a mediator for such discussions.

- The Lead Director may confirm that the case needs to be referred immediately to the independent Disputes Resolution Panel. (Stage4).

3.4 Stage 4: Dispute Resolution Panel (15 working days – 30 maximum)

If the complaint cannot be resolved by the Lead Director, the Dispute Resolution Panel will then formally review the complaint. The panel may invite representation in person if they deem this to be necessary and essential to the consideration of the case.

- The Panel will undertake a 'desk top' review of documentary evidence
- The Panel will agree whether or not more evidence is required
- The Panel will discuss the case at a meeting, convened within the Dispute Resolution Process (DRP) timetable.

This part of the process aims to be completed within **15 working days**.

If further investigation is required this must be **within a further 15 working days**.

3.5 Stage 5: The decision (5 days)

- The independent Competition Panel will make a final decision on the complaint within 2 months of the complainant's initial application, unless there are exceptional circumstances. In exceptional circumstances, both parties will be required to agree to 'stop the clock' for an agreed specific time period in order to take account of these circumstances.

- The Panel will write to the complainant, notifying them of its decision within 5 working days of the decision having been made, explaining the rationale, and and setting out the requirements for both sides for resolving the dispute.
  - The complaint may be upheld.
  - The complaint may be rejected.

- The final panel decision must be communicated within 2 months of the submission of the complaint.
- The Panel will also inform the NHS CB / CCP of their decision and if appropriate of any remedial actions to be undertaken, with timescales.
- The Lead Director will provide feedback to NHS CB / CCP on completion of any dispute resolution remedial actions.
- The complainant will be able to approach NHS CB / CCP to request an appeal hearing against any decision if they are still dissatisfied.

3.6 Appeals

- Complainants can appeal to the NHS CB following a panel decision
- Complainants can appeal to the National Cooperation and Competition Panel following the panel decision.

The panel will forward all appeals to the NHS CB / CCP and supply all documentation used by the panel in coming to its decision.

4. Roles and Responsibilities

4.1 Membership of the Panel

The selection of panel members will be made in the context of the dispute issue received, with clear recognition of the need to avoid conflict of interest.

Where necessary, the panel will seek to work with other CCG's and independent eternal experts and / or advisers to ensure independence of panel members. In addition the panel may obtain independent procurement advice from another CCG, the CSU or NHS CB unless conflicted.

The membership of the CCG panel will normally have the following 3 core members.

- Non-Executive Director (chair)
- Assistant Director of Commissioning & Contracting (The Lead Director), not part of the original procurement decision or matter being disputed.
- A second Director who was not part of the original procurement decision or matter being disputed.

The chair of the panel will also be able to call on other experts to provide advice depending on the nature of the case, although they will have no decision making role.

Administrative support will be provided by the CCG Case Manager who can be contacted on: nabil.jamshed@bexley.nhs.uk

When a complaint is made, the attached forms (appendices 2, 3, 4 and 5) are to be filled in by the complainant together with any supporting evidence and submitted electronically to the above address. procurement@bexley.nhs.uk

5. Training

5.1 All disputes will be handled at CCG level, there are no training requirements.

6. Review / Monitoring the implementation of the Policy

6.1 The arrangements for monitoring the implementation of the Policy will include annual external audit (part of the procurement audit). External Audit will conduct the audit and the Head of Procurement & Contracting will review the results.

6.1 The process for reviewing results and ensuring changes to the Policy will be included in the audit report and reported to the Finance Working Group.

7. References and links to other documents

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_118221

APPENDIX 1

10 Principles and Rules of Co-operation and Competition (July 2010 Summary)

Principle 1 Commissioners must commission services from the providers who are best placed to deliver the needs of their patients and populations;

Principle 2 Commissioning and procurement should be transparent and non-discriminatory and follow the Procurement Guide for Commissioners of NHS-funded services issued in July 2010.

Principle 3 Payment regimes and financial intervention in the system must be transparent and fair

Principle 4 Commissioners and providers must cooperate to improve services and deliver seamless and sustainable care to patients.

Principle 5 Commissioners and providers should promote patient choice – including where appropriate – choice of any willing provider, and ensure that patients have accurate and reliable information to exercise more choice and control over their healthcare;

Principle 6 Commissioners and providers should not reach agreements which restrict commissioner or patient choice against patients' and taxpayers' interests.

Principle 7 Providers must not refuse to accept services or to supply essential services to commissioners where this restricts commissioner or patient choice against patients' and taxpayers' interests.

Principle 8 Commissioners and providers must not discriminate unduly between patients and must promote equality.

Principle 9 Appropriate promotional activity is encouraged as long as it remains consistent with patients' best interests and the brand and reputation of the NHS.

Principle10 Mergers, including vertical integration, between providers are permissible when there remains sufficient choice and competition or where they are otherwise in patients and taxpayers' interests, for example because they will deliver significant improvements in the quality of care.

Each principle is supported by clearly defined actions and behaviours. The full document is available at:

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_118220.pdf

APPENDIX 2

Dispute Resolution Form

This form is for complaints relating to breaches of the Principles and Rules of Cooperation and Competition. The timescales are as set out in the procedure and any extensions to the timescale will be by agreement with the parties concerned.

If your complaint meets the entry criteria please not that any documents received by the NHS may be subject to Freedom of Information Act disclosure. In order for the CCG to process your complaint efficiently please complete all the relevant sections with appropriate information. If you require further advice or assistance please contact the CCG Case Manager (Nabil Jamshed, Corporate Governance & Risk Manager on: nabil.jamshed@bexley.nhs.uk or 020 8293 6xxx.

Stage 1 – Triage

Below is a list of questions which test whether your complaint is likely to meet the entry criteria for assessment. If you cannot answer "yes" to all of these questions, it is likely your complaint does not meet the entry criteria for consideration as a Competition Dispute. Attached overleaf are the forms A-D that are required to be completed at Stage 1 to include any documentary clarification and evidence that you might wish the panel to consider.

1. We confirm that the content of the dispute is covered by the Principles and Rules for Co-operation and Competition (PRCC)

YES/NO (Which Rule(s))	

2. We confirm that the information given in this form is a full and frank disclosure of all relevant and applicable information.

YES/NO	

3. We confirm that any individuals connected to the complaint will be made available to provide further evidence as required.

YES/NO	

4. We confirm that no legal proceedings have commenced

YES/NO	

5. We confirm that the dispute is not trivial or vexatious

YES/NO	

6. Please confirm if there is a time pressure applicable i.e. Alcatel.

YES/NO

_____

APPENDIX 3 - Dispute Resolution Questionnaire

Based on your responses to Stage 1 (assessment against the entry criteria), you should be able to answer one or more of the following questions which will help with our investigation. If your complaint concerns procurement, then you are likely to need to address one or more of Principles 1, 2, 3 and 10.

If your complaint is not covered by any of these Principles, it may be that the cause for complaint is not within the Principles and Rules of Cooperation and Competition criteria.

For any of the PRCC rules you consider to have been breached by the commissioner, explain why you consider this rule to be breached, please give examples specific actions or behaviours:

Principle 1
Commissioners should commission services from providers who are best placed to deliver the needs of their patients and population.

Why do you believe this principle has been breached?	
Can you refer and evidence the actions or behaviours that have resulted in your cause for complaint (Please be specific and attach any documentary evidence and list in the next section)	
Can you refer to the specific rule that has been broken regarding your cause for complaint	

Principle 2

Providers and commissioners must cooperate to ensure that the patient experience is of a seamless health services, regardless of organisational boundaries, and to ensure service continuity and sustainability.

Why do you believe this principle has been breached?	
Can you refer and evidence the actions or behaviours that have resulted in your cause for complaint (Please be specific and attach any documentary evidence and list in the next section)	
Can you refer to the specific rule that has been broken regarding your cause for complaint	

Principle 3

Commissioning and procurement should be transparent and non- discriminatory.

Why do you believe this principle has been breached?	
Can you refer and evidence the actions or behaviours that have resulted in your cause for complaint (Please be specific and attach any documentary evidence and list in the next section)	
Can you refer to the specific rule that has been broken regarding your cause for complaint	

Principle 4

Commissioners and providers should foster patient choice and ensure patients have accurate and reliable information to exercise more choice and control over their healthcare.

Why do you believe this principle has been breached?	
Can you refer and evidence the actions or behaviours that have resulted in your cause for complaint (Please be specific and attach any documentary evidence and list in the next section)	
Can you refer to the specific rule that has been broken regarding your cause for complaint	

Principle 5

Appropriate promotional activity is encouraged as long as it remains consistent with patient's best interests and the brand and reputation of the NHS.

Why do you believe this principle has been breached?	
Can you refer and evidence the actions or behaviours that have resulted in your cause for complaint (Please be specific and attach any documentary evidence and list in the next section)	
Can you refer to the specific rule that has been broken regarding your cause for complaint	

Principle 6

Providers must not discriminate against patients and must promote equality.

Why do you believe this principle has been breached?	
Can you refer and evidence the actions or behaviours that have resulted in your cause for complaint (Please be specific and attach any documentary evidence and list in the next section)	
Can you refer to the specific rule that has been broken regarding your cause for complaint	

Principle 7

Payment regimes must be transparent and fair.

Why do you believe this principle has been breached?	
Can you refer and evidence the actions or behaviours that have resulted in your cause for complaint (Please be specific and attach any documentary evidence and list in the next section)	
Can you refer to the specific rule that has been broken regarding your cause for complaint	

Principle 8

Financial intervention in the system must be transparent and fair.

Why do you believe this principle has been breached?	
Can you refer and evidence the actions or behaviours that have resulted in your cause for complaint (Please be specific and attach any documentary evidence and list in the next section)	
Can you refer to the specific rule that has been broken regarding your cause for complaint	

Principle 9

Mergers, acquisitions, de-mergers and joint ventures are acceptable and permissible when demonstrated to be in patient and taxpayers best interests and there remains sufficient choice and competition to ensure high quality standards of care and value for money.

Why do you believe this principle has been breached?	
Can you refer and evidence the actions or behaviours that have resulted in your cause for complaint (Please be specific and attach any documentary evidence and list in the next section)	
Can you refer to the specific rule that has been broken regarding your cause for complaint	

Principle 10

Vertical integration is permissible when demonstrated to be in the patient and taxpayers best interests and protects the primacy of the GP gatekeeper function; and their remains sufficient choice and competition to ensure high quality standards of care and value for money.

Why do you believe this principle has been breached?	
Can you refer and evidence the actions or behaviours that have resulted in your cause for complaint (Please be specific and attach any documentary evidence and list in the next section)	
Can you refer to the specific rule that has been broken regarding your cause for complaint	

APPENDIX 4

Any supporting information should be provided with the complaint, for example:

- Copies of any relevant documentation (e.g. minutes of meetings, board papers etc.) or communications (e.g. emails) involving the target/complainant as evidence
- Copies of any relevant industry reports/consumer surveys
- Details of any similar complaints/investigations/proceedings concerning the same or similar products/services (for example, an investigation by the European Commission).

Name of document 1	
Description of document 1	
Confirmation that document 1 has been attached	Yes ☐
Name of document 2	
Description of document 2	
Confirmation that document 2 has been attached	Yes ☐
Name of document 3	
Description of document 3	
Confirmation that document 3 has been attached	Yes

Please add more tables where appropriate ☐

APPENDIX 5

Declaration

Please provide the following details:

Declaration by an officer of the company or by the complainant (as applicable)

I confirm that no legal action has been commenced in relation to this matter and that I am willing to participate in the Competition Dispute Resolution process.

The information provided in this submission is correct and complete to the best of my knowledge and belief. * ☐

Submitted by (your name): *

Position in the Company: *

Date* (DD/MMM/YYYY)