NHS
North Yorkshire
Clinical Commissioning Group

Title of Meeting:	**Governing Body**	**Agenda Item: 8.4**
Date of Meeting:	**22 December 2020**	
Paper Title:	**Procurement Policy**	

Session (Tick)	
Public	X
Private	
Workshop	

Responsible Governing Body Member Lead Jane Hawkard, Chief Finance Officer	**Report Author and Job Title** Alec Cowell, Deputy Director of Financial Services & Reporting Steve Jordan, Assistant Director of Contracting and Procurement

Purpose (this paper if for)

Decision	Discussion	Assurance	Information
X			

Has the report (or variation of it) been presented to another Committee / Meeting?
If yes, state the Committee / Meeting: Yes. This policy has been reviewed by the Finance, Performance, Contracting and Commissioning Committee in November 2020.

Executive Summary
The Procurement Policy provides an overview of how the NY CCG will conduct itself and the principles that will be applied to all procurement activity while ensuring compliance with statutory guidelines.

The policy provides advice and guidance for all staff working within the CCG who procure any goods or services by setting out the procurement principles, rules and methods that the CCG will operate within.

The policy has been developed utilising the existing policies of the predecessor North Yorkshire CCG's. The policy has been reviewed by the Finance, Performance, Contracting and Commissioning Committee who has made a recommendation for the Governing Body to approve. The policy is attached at **Appendix A.**

Recommendations
The Governing Body is being asking to approve the Procurement Policy as recommended by the Finance, Performance, Contracting and Commissioning Committee.

Monitoring
Compliance to the procurement policy is undertaken by the Contracting Team and through the Internal Audit work plans.

Any statutory / regulatory / legal / NHS Constitution implications	This policy incorporates NHSE guidance and European Legislation.
Management of Conflicts of Interest	No conflicts of interest have been identified prior to the meeting.
Communication / Public & Patient Engagement	This policy will be published on the CCG website.
Financial / resource implications	Not applicable.
Significant Risks to Consider	No significant risks to consider.
Outcome of Impact Assessments completed	An equality impact assessment has been completed and is attached to the policy. As a result of performing the analysis, the policy does not appear to have any adverse effects on people who share Protected Characteristics and no further actions are recommended at this stage. There is a neutral impact in terms of sustainability.

Jane Hawkard, Chief Finance Officer
NHS North Yorkshire CCG

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PROCUREMENT POLICY

December 2020

Authorship:	Assistant Director of Contracting & Procurement
Committee Approved:	Finance, Performance Contracting & Commissioning Committee for review Governing Body for approval
Approved date:	December 2020
Review Date:	December 2023
Equality Impact Assessment:	Completed
Sustainability Impact Assessment:	Completed
Target Audience:	Governing Body and its committees and sub-committees, CCG staff, agency and temporary staff & third parties under contract
Policy Number:	NY049
Version Number:	1.0

POLICY AMENDMENTS

Amendments to the Policy will be issued from time to time. A new amendment history will be issued with each change.

New Version Number	Issued by	Nature of Amendment	Approved by & Date	Date on Intranet
0.1	Assistant Director of Contracting and Procurement	Updated to reflect merged NY CCG organisation naming. Section 7: • Updates to Managing Conflicts of Interest: Statutory Guidance for CCGs 2017 • Updates to reflect external organisations, staff and suppliers requirements to declare interest at appropriate point in the procurement process.	Finance, Performance Contracting & Commissioning Committee Reviewed: November 2020	N/A
0.2	Deputy Director of Financial Services & Reporting	Section 8: • Paragraphs 8.6, 8.7 & 8.8 have been updated to reflect the latest procurement threshold values	Finance, Performance Contracting & Commissioning Committee Reviewed: November 2020	N/A
1.0	Chief Finance Officer	Final policy for approval.	Governing Body Approved: December 2020	TBC

1. Introduction

1.1. Procurement is a cyclical process in which goods, services and works are secured or purchased. The process spans the whole life cycle from identification of needs, through to the end of a service's contract or the end of the useful life of an asset. Procurement can encompass everything from repeat low-value orders, through to complex healthcare service solutions developed and delivered through partnership arrangements.

1.2. Effective procurement is an essential component of commissioning improved services and outcomes for local patients and communities and for ensuring value for money.

1.3. Procurement in the public sector is regulated by primary legislation and there are a range of procurement approaches available depending on the value of the procurement and the number of participants in the market. However The NHS Five Year Forward View and the Next Steps update published in March 2017 described a movement towards integrated care, delivered through collaboration across health and care systems. These new ways of working will require NHS North Yorkshire CCG (NY CCG) to develop new procurement and contracting models in line with guidance from NHS England.

1.4. The Public Contracts Regulations (PCR 2015) came into force on 18 April 2016 for CCGs when procuring health and care services (non-healthcare services have always been subject to PCR). These rules apply to public bodies, including CCGs, NHS England and local authorities, and have implications for the procurement of all contracts commenced after that date.

1.5. The PCR 2015 form part of the procurement landscape alongside the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 (PPCCR). Made under Section 75 of the Health and Social Care Act 2012, the PPCCR apply to NHS England and CCGs and are enforced by NHS Improvement. Whilst the two regimes overlap in terms of some of their requirements, they are not the same – compliance with one regime does not automatically mean compliance with the other. NY CCG will ensure that it complies with both regimes when procuring healthcare services.

1.6. The PPCCR follow a principles based approach leaving commissioners flexibility as to how best to procure and secure services in the best interests of service users. Commissioners need to comply with a number of requirements under the PPCCR to help them achieve the overall objective of securing the needs of patients and improving the quality and efficiency of services, including:

- acting transparently and proportionately, and treating potential providers equally and in a non-discriminatory way;
- procuring services from the providers that are most capable of delivering commissioners' overall objective and that provide the best value for money;
- considering ways of improving services; and
- having arrangements in place that allow providers to express an interest in a contract.

1.7. NY CCG's approach to procurement is to operate within legal and policy frameworks and where appropriate to use procurement as one of the system management tools available to achieve commissioning outcomes and increase value for money.

1.8. For guidance and support please contact the Assistant Director of Contracting & Procurement. At the time of writing this policy the post-holder is Steve Jordan (steve.jordan@nhs.net).

2. Associated Policies and Procedures

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

NY CCG's Constitution
NY CCG's Operational Scheme of Delegation
NY CCG's Budgetary Control Framework
NY CCG's Declaration of Interests Policy
NY CCG's Data Protection Impact Assessment (DPIA) Policy

3. Aims and Objectives

3.1. To set out how NY CCG will meet its statutory procurement requirements to

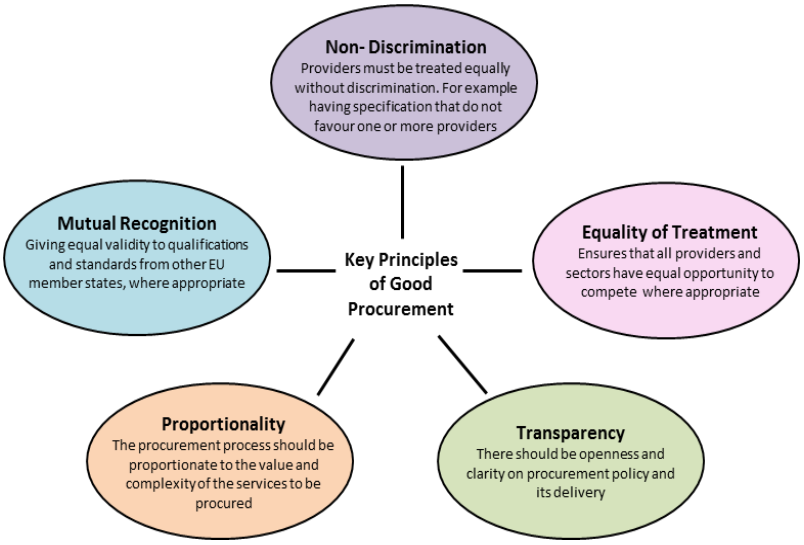
- secure high-quality, efficient health care services that meet the needs of people who use those services; and
- protect the rights of patients to a choice of healthcare provision.

3.2 To set out the approach for facilitating fair, robust and enforceable contracts that provide value for money and deliver required quality standards and outcomes, with effective performance measures and contractual levers. (This document is not intended to be a detailed procedure manual – please refer to the supplementary guidance for further information and NHS England guidance.)

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

3.4. To enable NY CCG to demonstrate compliance with the principles of good procurement practice in accordance with the EU Treaty Principles of:

- equal treatment;
- non-discrimination;
- proportionality;
- transparency; and
- mutual recognition.



4. Scope of the Policy

4.1. As far as it is relevant, this policy applies to all NY CCG procurements (clinical and non-clinical).

4.2. This policy must be followed by;

- all NY CCG employees including staff on temporary or honorary contracts and hosted staff working across other CCGs
- representatives acting on behalf of NY CCG including staff from member practices
- any external organisations acting on behalf of NY CCG including other CCGs, HCV ICS, NECS, NHS England and NHS Shared Business Services.

5. Accountabilities & Responsibilities

5.1. Governing Body responsibility

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

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

When considering options for procurement the Governing body will follow the guidelines set out by NHS England and Crown Commercial Services

https://www.gov.uk/guidance/transposing-eu-procurement-directives.

5.2 Lead Responsibility

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

5.3. Procurement support

Where it is required and considered appropriate, additional procurement support and advice will be commissioned and provided by North of England Commissioning Support (NECS).

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

5.4. Authority

NY CCG will remain directly responsible for:

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

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

5.5 Engagement

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

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

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

5.6 Collaboration

NY CCG is committed to operating in a sustainable environment where all opportunities for efficiencies and economies of scale are considered and, were applicable applied. This includes the sharing of operational resources or commitment to specific joint projects/contracts across the wider North Yorkshire footprint, the North Yorkshire & York footprint, Humber Coast and Vale Integrated Care System and West Yorkshire & Harrogate Integrated Care System, where this serves the best interests of NY CCG's population.

5.7 ISAP

As CCGs move towards commissioning integrated care systems, some of these complex contracts may include such a significant scope of services that the CCG's ongoing role will change. For example, the commissioner may take a more strategic role, establishing different relationships with neighbouring CCGs, the local authority and providers, and enable these bodies to carry out commissioning activities on its behalf. NY CCG will apply the NHS England Integrated Support and Assurance Process (ISAP) where applicable to ensure that future arrangements are robust and viable and that NY CCG continues to deliver its statutory functions effectively.

5.8 Equality Impact Assessment:

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

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

5.9 Risk Management

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

6. Guiding Principles

6.1. In accordance with NY CCG's Constitution, when procuring health care services, the CCG is required to act with a view to:

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

6.2. NY CCG is required and committed to:

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

6.3. NY CCG is required and committed to commissioning services from providers that:

- are most capable of delivering to the quality and efficiency required
- provide the optimum value for money

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

- Providing the services in an integrated way (including with other healthcare services, health related services, or social care services as part of an accountable care system)
- enabling providers to compete to provide the services
- allowing patients a choice of provider of the services

7. Conflicts of Interest

7.1 With regards to conflicts of interest, NY CCG will follow the guidelines as set out in NHSE : Managing Conflicts of Interest: Statutory Guidance for CCG and detailed within the CCG's Conflict of Interest Policy:.

https://www.northyorkshireccg.nhs.uk/home/about-us/publications/

7.2 For all procurement projects and decision making events, all members of the project team, evaluation team and wider stakeholders including any external organisations supporting the process must declare any interest or perceived conflict of interest in relation to the topic being discussed and the wider procurement. Declaration of Interest will be sought from all staff and potential suppliers at the appropriate points in the procurement process, including during single tender waiver procurements.

7.3 Potential conflicts of interest will be managed appropriately to protect the integrity of NHS NY CCG's contract award decision making processes and the wider NHS commissioning system. This is to ensure public confidence and to protect the CCG and GP practices from any perceptions of wrong-doing.

7.4. General arrangements for managing conflicts of interest are set out in NHS NY CCG's Constitution and the Conflicts of Interest Policy. This section describes additional safeguards that NHS NY CCG will put in place when commissioning services that could potentially be provided by GP practices and/or other system partners.

7.5. Where any practice or system partner representative on a decision-making body has a material interest in a procurement decision, those practice representatives will be excluded from the decision-making process. See the CCG's Conflict of Interest Policy for further information on Managing Conflicts of Interest Throughout the Commissioning Cycle.

7.6 When contracting for integrated care models and/or accountable care systems NHS NY CCG will take reasonable steps to ensure that competition is not distorted by allowing system partners who may tender for contracts access to information not available to other potential bidders and/or providers.

7.7 Where external procurement services are utilised, such as commissioning support services, (CSSs), NY CCG will seek assurance the external organisations business processes are robust and enable the CCG to meet its duties in relation to procurement (including those relating to the management of conflicts of interest). This would require the CSS to declare any conflicts of interest it may have in relation to the work commissioned by the CCG.

8. Compliance with Regulations

8.1 NY CCG and/or its agents will comply with EU and UK legislation and NY CCG's relevant policies and procedures as highlighted in section 2.1 above.

8.2 BREXIT**:** There is no official government statement yet regarding to the impact of BREXIT on EU and UK Public Procurement policy. Unless PCR 2015 is repealed this legislation will remain in force even after the UK leaves the European Union. NY CCG will update this section of the policy once information is available.

8.3 National Health Service Act 2006 Section 242 (Public Involvement and Consultation) requires commissioners of healthcare services to consult patients and the public, directly

or through representatives, in relation to service planning, development and consideration of service changes and decisions that affect service operation.

8.4 The Health and Social Care Act 2012 empowers CCGs to commission healthcare services for local populations. The duties of CCGs are set out in section 3 of the National Health Services Act 2006 with updated amendments and regulations in section 13 of the Health and Social Care act 2012.

8.5 Commissioners must comply with the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013. (PPCCR) where objectives include patient experience, outcomes and improved efficiency. These regulations (implemented under Section 75 of the Health and Social Care Act 2012) place requirements on commissioners to ensure that they adhere to good practice in relation to procurement, do not engage in anti-competitive behavior and protect the right of patients to make choices about their healthcare. These regulations give NHS Improvement the power to enforce these regulations rather than the courts.

8.6 The Public Contracts Regulations 2015 (PCR 2015) Regulations 74-76 require healthcare services with a lifetime value of £663,540 or above to be advertised Europe-wide via OJEU (the Official Journal of the European Union) and in the UK via Contracts Finder. Under these regulations, healthcare services (classified as health, social or other services) may be procured using the "Light-Touch-Regime." (LTR)

8.7 PCR 2015 also stipulates specific procurement processes that must be followed for other goods and services over a lifetime value of £189,330 including VAT (for sub-central authorities)

8.8 The OJEU Thresholds stated in paragraph 8.6 and 8.7 are current as at January 2020. They are generally recalculated every 2 years and are communicated via a Procurement Policy Note (PPN) on the www.gov.uk website

8.9 Other legislation relevant to this procurement policy includes:

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

9. Procurement Approach for Sub-Threshold Contracts

9.1. For goods and services with an aggregate value below the thresholds stated in paragraphs 8.6 and 8.7 the following rules will apply in accordance with the Operational Scheme of Delegation:

Non-Healthcare Goods & Services;

- Under £10,000 a minimum of 2 written quotations must be obtained
- Between £10,001 and £50,000 a minimum of 3 written quotations must be obtained
- Between £50,001 and the OJEU threshold a minimum of 5 written quotations must be obtained

Healthcare Goods & Services (Light-touch)

- Between £10,001 and £100,000 a minimum of 2 written quotations must be obtained
- Between £100,001 and the OJEU threshold a minimum of 3 written quotations must be obtained

All contracts that the CCG lets must be subject to NHS Standard Terms and Conditions which must be stated with the specification. The CCG must satisfy itself that any joint contracts that the CCG is a party to (such as a service established by the Local Authority or a framework agreement call-off) which are not based on NHS T&Cs have appropriate terms and conditions that the CCG can meet.

9.2 Where open quotations or tenders are sought below the OJEU thresholds then the opportunity should be published on Contracts in addition to, other portals or sites for contracts over the value of £25,000.

10. Circumstances Where Competitive Tenders or Quotations May Not be Required

10.1 NY CCG is committed to ensuring that services are procured in accordance with legislation. In limited circumstances the need to request quotations or competitive tenders may be waived. The following circumstances are where contracts may be awarded without a full tender exercise being undertaken:

- in very exceptional circumstances where the Chief Officer and Chief Financial Officer decide that formal tendering procedures would not be practicable or the estimated expenditure or income would not warrant formal tendering procedures, and the circumstances are detailed in single tender waiver documentation and reported to both the Finance, Performance, Contract, Commissioning Committee (FPCCC) and the Audit Committee (AC)

- where the requirement is covered by an existing contract;

- where national or local framework agreements are in place and have been approved by the Governing Body, NHS England or Crown Commercial Services;

- 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;

- where the timescale genuinely precludes competitive tendering (failure to plan the

work properly would not be regarded as a justification for a tender waiver);

- where specialist expertise or technology is required and is available from only one source and this has been evidenced by market consultation;

- when the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate; or

- 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.

10.2 The waiving of competitive tendering procedures should not be used to avoid competition or for administrative convenience or to award further work to a provider originally appointed through a competitive procedure (unless in the case of 8 above.) In any event the tender waiver must comply with Regulation 32 of the Public Contracts Regulations 2015.

10.3 In any of the circumstances detailed in paragraph 10.1.1 to 10.1.8 a Single Tender Waiver Form must be completed and signed by the Commissioning Manager alongside the relevant budget holder. The form should then be signed by a Deputy Director of Finance and the Chief Finance Officer and then taken to FPCCC and AC for noting. The form will be held on file by the contracting team.

11. Contract Extensions & Variations to Contracts during the Contract Term

11.1 In accordance with regulation 72 of the PCR 2015, contracts over the EU Threshold may only be varied in the following circumstances:

11.1.1 where modifications have been provided for in the original procurement documents and/or would not alter the nature of the contract.

11.1.2 where the modification is less than 10% of the value of the contract and does not change the nature of the contract.

11.1.3 for additional services or supplies by the original contractor that have become necessary and were not included in the initial procurement and where a change of contractor:

- cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installation procured under the initial procurement, or

- would cause significant inconvenience or substantial duplication of costs for the NY CCG.

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

11.1.4 where all of the following conditions are fulfilled:

- the need for modification has been brought about by circumstances which a diligent

contracting authority could not have foreseen;
- the modification does not alter the overall nature of the contract;
- any increase in price does not exceed 50% of the value of the original contract

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

11.2 Modifications to contracts over the EU Threshold may also require completion of the tender waiver process and the publication of a Voluntary Ex-Ante Transparency (VEAT) notice in the OJEU prior to the award. The advice of the Deputy CFO must be sought in these circumstances.

11.3 Contracts cannot be extended unless there is provision in the original procurement documents to do so or one of the provisions of Regulation 72 applies. A new procurement procedure is required for any contract variations or extensions except in the circumstances outlined in paragraph 11.1 above.

12. Partnership Agreements with Local Authorities

12.1 National Policy and local strategies both promote the increased integration of health and social care services. However new models of contracting for care, including Accountable Care organisations (ACOs), Multispecialty Community Providers (MCPs) and Primary & Acute Care Systems (PACS), still need to be procured in the same way as lead provider contracts.

Alternatively several other mechanisms exist to support joint commissioning of services across health and social care such as:

12.2 Section 75 (S75) Partnership Agreements

Section 75 of the NHS Act 2006 sets out a number of powers that support partnership and joint commissioning across health and social care. Key provisions of the act allow NHS Bodies and Local authorities to establish pooled budgets, and also allow for the delegation of certain statutory functions from one partner to the other through a lead commissioning arrangement.

Section 75 powers are intended to be used where partnership arrangements are likely to lead to improvements in the delivery of NHS and Local Authority functions.

Although functions can be delegated, each partner remains liable for their own statutory duties.

12.3 Section 256 (S256) Agreements

S256 Agreements were established through the NHS Act 2006 and allow NHS commissioners to make payments to Local authorities towards any Local Authority expenditure which, in the opinion of NY CCG, would have an effect on the health of individuals, or which would have an impact on, or be affected by, NHS commissioned services, or are otherwise connected with other NHS functions.

They are payments to a local authority to support specific services, projects, capital costs, or other local authority activities which have a benefit for the NHS. However these

agreements do not involve the transfer of any statutory health functions to the local authority.

S256 Agreements are not subject to formal procurement processes, as NY CCG is not directly commissioning or contracting for goods or services in this instance. However S256 agreements must comply with any relevant Directions published by the Secretary of State.

Section 256 specifies two prescribed documents to be completed when making the agreement:

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

12.4 Better Care Fund

In addition to the two types of partnership agreements described above, the Better Care Fund (BCF) is a nationally mandated pooled budget across health and social care. The BCF is intended to promote further integration and support delivery of improved outcomes across health and social care to achieve the National Conditions and Local Objectives. It is a requirement of the BCF that NY CCG and North Yorkshire County Council establish a pooled fund for this purpose. The BCF is not 'new money' and represents the summation of existing pooled and aligned budgets along with all existing local and national transfers from health to social care.

North Yorkshire County Council and NY CCG currently use a Section 75 agreement which incorporates other local CCGs who have a footprint within the county of North Yorkshire.

NY CCG will ensure it adheres to any current and updated National Policy and Guidance on the Better Care Fund.

13. Other Contracting Models

13.1 Spot Purchasing

From time to time there will be the need to spot purchase contracts for particular individual patient needs or for urgency of placements requirements at various times. At these times, a competitive process may be waived using the same process described in paragraphs 10.2 to 10.4.

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

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

13.2 Framework Agreements

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

NY CCG is currently a member of the following procurement organisations and can therefore access their framework agreements;

- NHS Shared Business Services
- Eastern Shires Purchasing Organisation (ESPO)

Other frameworks are available such as the Crown Commercial Service (CCS).

Each framework will have its own ordering process to follow but the timescales and transaction costs are usually far lower than running a full procurement. The terms and conditions applicable to any subsequent call-off contract are defined by the particular framework agreement and may not be compatible with the NHS standard contract and therefore advice must be sought from the framework owner prior to conducting a mini-competition.

13.3 Any Qualified Provider (AQP)

AQP describes an approach for contracting for services whereby

- Providers qualify and register to provide services via an assurance process that tests providers' fitness to offer NHS-funded services.
- The CCG sets local pathways and referral protocols which providers must accept
- Referring clinicians offer patients a choice of qualified providers for the service being referred to
- Competition is based on quality, not price. Providers are paid a fixed price determined by a national or local tariff.

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

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

13.4 Grants

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

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

Grants will not be used to avoid competition where it is appropriate for a formal procurement to be undertaken. A grant agreement does not fall under the Public Contracts Regulations (2015) as it is not a formal contractual arrangement. NY CCG

must be careful not to impose any expectations or restrictions (such as adhering to KPIs or instructions on how money is spent) on the grant awards or this will be viewed as a contract by the courts.

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

14. Third Sector Providers and Support for Campaigns

14.1 NY CCG will support the Governments attempts to increase activity in third sector providers and small and medium enterprises. It will ensure that no organisation is discriminated against and will act transparently and not request disproportionate demanding information, therefore reducing the barriers to entry. Commissioning Managers should refer to the Commissioning Code of Practice.

14.2 NY CCG will work in partnership with local borough councils, district councils, North Yorkshire County Council and third sector organisations to strengthen relationships between the public and third sectors to deliver the best outcomes for the local population.

14.3 Where NY CCG wishes to support a local or national campaign (e.g. through the purchase of campaign media) the Operational Scheme of Delegation will apply in the same way as for the purchase of goods and services. The authorising budget holder must satisfy themselves that the campaign is compatible with NY CCG's commissioning strategy and that it conforms to the relevant NHS policies (e.g. in terms of branding, information governance etc.)

15. Contract Form

15.1 NY CCG will ensure that, where appropriate, the NHS Standard Contract will be used for all contracts. Where a framework agreement has been used the terms and conditions of contract will usually be those of the specific framework.

15.2 In exceptional circumstances, such as where a joint contracting arrangement is led by the local authority, NY CCG may agree to be party to a different form of contract.

15.3 NY CCG will ensure that a standard Grant Agreement document will be used to record the provision of grants to third parties which will contain the provisions upon which the grant is made.

16. Pilot Projects

16.1 Pilot Projects may be commenced in circumstances where clinical outcomes are not known or when outputs cannot be predicted. Pilot projects must comply with EU and UK Procurement regulations. To comply with the OJEU limits, Pilot Project contract values should be kept below the relevant OJEU threshold because a Pilot project represents a direct award without competition. If the value exceeds the OJEU threshold NY CCG will have breached the regulations.

17. Sustainable Procurement

17.1 NY CCG recognises the impact of its purchasing and procurement decisions on the regional economy and the positive contribution it can make to economic and social regeneration.

17.2 Wherever it is possible, and does not contradict or contravene NY CCG's procurement principles or applicable legislation and guidance, NY CCG will work to develop and support a sustainable local economy and health economy.

18. Consultancy Expenditure / Interim Staffing

18.1 Approval to engage an interim manager, consultant or consultancy company for any reason must be obtained in advance.

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

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

19. Primary Care Contracts

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

19.2 The template included at Appendix 1 will be completed as part of the planning process for all services that may potentially be provided by GP Practices/GP Federation/ Primary Care Networks (either as a successful bidder in a competitive procurement process, as one of several qualified providers through an Any Qualified Provider (AQP) approach, or via a non-competitive process from GP Practices).

19.3 This template should be completed by the commissioning manager responsible for proposing the service or the service change/development. The completed template will be used to provide assurance to NY CCG's FPCC committee that proposed services meet local needs and priorities and that robust processes have been followed in selecting the appropriate procurement route and in addressing potential conflicts.

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

20 Record Keeping and Register of Procurement Decisions

20.1 In accordance with the PPCC Regulations (2013) about record keeping NY CCG will:

- publish details of all contracts they award (Regulation 9(1) via Contracts Finder and/or OJEU as appropriate
- record how any conflicts of interest have been managed (Regulation 6(2); and
- maintain details of how a contract award complies with their duties relating to effectiveness, efficiency and improvement in the quality of services and the delivery of services in an integrated way in the National Health Service Act 2006 (Regulation 3(5) of the PPCC Regulations).

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

- Details of the goods/services
- Clinical Lead and Contract Manager
- A summary of any conflicts of interest in relation to the decision and how this was managed
- The decision making body
- Who the contract was awarded to
- The contract value

20.3 The register of procurement decisions will be held and maintained by the Corporate Governance Manager. Decisions will be added to the register as quickly as possible after they are made.

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

20.5 A Contracts Register will be maintained centrally by the Contracting Department. Copies of all contracts will also be held by the Contracting Department.

21. Use of Information Technology

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

22. Decommissioning Services

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

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

23.1 These regulations apply when there are transfers of staff from one legal entity to another as a consequence of a change in employer. This is a complex area of law which is continually evolving. NY CCG will follow the relevant Government guidance such as the *Cabinet Office Statement of Practice (COSOP) Staff Transfers in the Public Sector January 2000 (Revised December 2013)* (Cabinet Office, 2013).

23.2 It is the position of NY CCG to advise potential bidders that whilst not categorically stating TUPE will apply, it is recommended that they assume TUPE will apply when preparing their bids, and ensure that adequate time is built into procurement timelines where it is anticipated that TUPE may apply.

24. Complaints and Dispute Procedure

24.1 NY CCG's conservative approach to contestability means that it is likely to pursue a wide range of competitive procurements to secure new and existing services.

24.2 NY CCG will utilise its dispute resolution processes to address and resolve any complaint received from either bidders/contractors or a member of the public.

25. Training

25.1 NY CCG staff, and others working with NY CCG, will need to be aware of this policy and its implications. It is not intended that staff generally will develop procurement expertise, but they will need to know when and how to seek further support.

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

26. Monitoring Compliance with this Policy

26.1 This Policy will be reviewed every three years. Readers are reminded to check the relevant OJEU thresholds as these change from time to time and may not be reflected accurately for the lifespan of this document.

26.2 In addition it will be kept under informal review by the Head of Finance, to ensure that changes can be made and approved rapidly following any further developments or the publication of new or updated regulations and/or guidance.

26.3 Effectiveness in ensuring that all procurements comply with this Policy will primarily be achieved through review by the CFO.

Appendix 1

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

Part 1: Questions applicable for all procurements

Service	
Question	**Comment & supporting evidence**
How does the proposal deliver good or improved outcomes and value for money - what are the estimated costs and estimated benefits? How does the proposal reflect the CCG's commissioning priorities?	
How have you involved the public in the decision to commission this service?	
What range of health professionals have been involved in designing the proposed service?	
What range of potential providers have been involved in considering the proposals	
How have you involved your Health and Well-Being board? How does the proposal support the priorities in the Joint Health and Well-being Strategy?	
What are the proposals for monitoring the quality of the service?	
What systems will there be to monitor and publish data on referral patterns?	
Have all conflicts and potential conflicts of interests been appropriately declared and entered in registers which are publicly available?	
Why have you chosen this procurement route?	
What additional external involvement will there be in scrutinising the proposed decisions?	
How will the CCG make its final commissioning decision in ways that preserve the integrity of the decision making process?	

Part 2: Additional Questions for Single Tenders (direct award) or AQP – where national tariffs do not apply

Question	Comment & supporting evidence
How have you determined a fair price for the service? (*Delete if tariff set prior to advertising)	

Part 3: Additional Question for AQP only (where GP practices are likely to be qualified providers)

Question	Comment & supporting evidence
How will you ensure that patients are aware of the full range of qualified providers from whom they can choose?	

Part 4: Additional Questions for Single Tenders from GP providers

Question	Comment & supporting evidence
What steps have been taken to demonstrate that there are no other providers that could deliver this service?	
In what ways does the proposed service go above and beyond what GP practices should be expected to provide under their core primary care contract?	
What assurances will there be that GP practice is provided high-quality services under the GP contract before it has the opportunity to provide any new services?	

Equality Impact Assessment

1. Equality Impact Assessment		
Policy / Project / Function:	NY049	
Date of Analysis:	14th December 2020	
This Equality Impact Assessment was completed by: (Name and Department)	Alec Cowell Deputy Director of Financial Services & Reporting Finance Dept.	
What are the aims and intended effects of this policy, project or function?	• This policy is about undertaking successful procurements of goods and/or services either as laid down in law or within guidance from such entities as NHS England/Improvement.	
Please list any other policies that are related to or referred to as part of this analysis?	• Conflict of Interest Policy	
Who does the policy, project or function affect? **Please Tick ✔**	Type	Tick those affected
	Employees	✔
	Service Users	
	Members of the Public	
	Other (List Below)	

2. Equality Impact Assessment: Screening					
	Could this policy have a positive impact on_____		Could this policy have a negative impact on_____		Is there any evidence which already exists from previous (eg from previous engagement) to evidence this impact
	Yes	No	Yes	No	
Race		✔		✔	
Age		✔		✔	
Sexual Orientation		✔		✔	
Disability		✔		✔	
Sex		✔		✔	
Gender Reassignment		✔		✔	
Pregnancy and Maternity		✔		✔	
Marriage and Civil Partnership		✔		✔	
Religion or Belief		✔		✔	
Reasoning	The CCG recognises its duty to promote equality and tackle discrimination through our procurement activity. We will seek to do this through all stages of our procurement process as appropriate.				
If there is no positive or negative impact on any of the Nine Protected Characteristics go to Section 7 Equality Impact Analysis Findings					

7. Equality Impact Analysis Findings								
Analysis Rating:	Red		Red / Amber		Amber		Green	✔

		Actions	Wording for Policy / Project / Function
Red **Stop and remove the policy / stop the project / stop the function**	**Red:** As a result of performing the analysis, it is evident that a risk of discrimination exists (direct, indirect, unintentional or otherwise) to one or more of the nine groups of people who share *Protected Characteristics.* It is recommended that the use of the policy be suspended until further work or analysis is performed.	**Remove the policy** **Stop the project** **Stop the function** Complete the action plan above to identify the areas of discrimination and the work or actions which needs to be carried out to minimise the risk of discrimination.	No wording needed as policy / project / function stopped
Red / Amber **Continue the policy / Continue the project / Continue the function**	As a result of performing the analysis, it is evident that a risk of discrimination exists (direct, indirect, unintentional or otherwise) to one or more of the nine groups of people who share *Protected Characteristics.* However, a genuine determining reason may exist that could legitimise or justify the use of this policy and further professional advice should be taken.	**The policy / project / function can be published with the EIA** List the justification of the discrimination and source the evidence (i.e. clinical need as advised by NICE). Consider if there are any potential actions which would reduce the risk of discrimination. Another EIA must be completed if the policy is changed, reviewed or if further discrimination is identified at a later date.	As a result of performing the analysis, it is evident that a risk of discrimination exists (direct, indirect, unintentional or otherwise) to one or more of the nine groups of people who share *Protected Characteristics.* However, a genuine determining reason exists which justifies the use of this policy and further professional advice. ***[Insert what the discrimination is and the justification of the discrimination plus any actions which could help reduce the risk]***

		Actions	Wording for Policy / Project / Function
Amber Adjust the Policy / adjust the project / adjust the function	As a result of performing the analysis, it is evident that a risk of discrimination (as described above) exists and this risk may be removed or reduced by implementing the actions detailed within the *Action Planning* section of this document.	**The policy / project / function can be published with the EIA** The policy can still be published but the Action Plan must be monitored to ensure that work is being carried out to remove or reduce the discrimination. Any changes identified and made to the service/policy/ strategy etc. should be included in the policy. Another EIA must be completed if the policy is changed, reviewed or if further discrimination is identified at a later date.	As a result of performing the analysis, it is evident that a risk of discrimination (as described above) exists and this risk may be removed or reduced by implementing the actions detailed within the *Action Planning* section of this document. ***[Insert what the discrimination is and what work will be carried out to reduce/eliminate the risk]***
Green No major change	As a result of performing the analysis, the policy, project or function does not appear to have any adverse effects on people who share *Protected Characteristics* and no further actions are recommended at this stage.	**The policy / project / function can be published with the EIA** Another EIA must be completed if the policy is changed, reviewed or if any discrimination is identified at a later date	As a result of performing the analysis, the policy, project or function does not appear to have any adverse effects on people who share *Protected Characteristics* and no further actions are recommended at this stage.

NHS
North Yorkshire
Clinical Commissioning Group

Sustainability Impact Assessment

Policy/Project: *Procurement Policy*

Domain	Review questions	Assessment of Impact	Brief description of impact	If negative, how can it be mitigated? / If positive, how can it be enhanced?
Models of Care	• Will it minimise 'care miles' making better use of new technologies such as telecare and telehealth, delivering care in settings closer to people's homes? • Will it create incentives to promote prevention, healthy behaviours, mental wellbeing, living independently and self-management? • Will it provide evidence-based, personalised care that achieves the best possible health and well-being outcomes with the resources available? • Will it reduce avoidable hospital admissions or permanent admissions to residential care or nursing homes? • Will it pay for services based on health outcomes rather than activity for example through personal budgets? • Will it deliver integrated care, that co-ordinate different elements of care more effectively and remove duplication and redundancy from care pathways? • More info: http://www.sduhealth.org.uk/areas-of-focus/clinical-and-care-models.aspx	**0 - Neutral**	*The procurement policy sets out the rules, regulations and best practice measures to ensure a timely & compliant procurement of goods and/or services occurs. The policy in itself has neither a positive or negative impact on these domains as these will be assessed, as appropriate at the commencement of assessing the service specifications for each and every*	

Domain	Review questions	Assessment of Impact	Brief description of impact	If negative, how can it be mitigated? / If positive, how can it be enhanced?
			procurement. This service specification will be undertaken in line with the CCG's commissioning polices.	
Travel	• Will it reduce 'care miles' (telecare, care closer) to home? • Will it reduce repeat appointments? • Will it provide / improve / promote alternatives to car based transport (e.g. public transport, walking and cycling)? • Will it support more efficient use of cars (car sharing, low emission vehicles, community transport, environmentally friendly fuels and technologies)? • Will it improve access to services and facilities for vulnerable or disadvantaged groups or individuals? • Have you quantified the health outcomes via the HOTT (Health Outcomes of Travel Tool) • More info: http://www.sduhealth.org.uk/areas-of-focus/carbon-hotspots/travel.aspx and https://www.sduhealth.org.uk/delivery/measure/health-outcomes-travel-tool.aspx	**0 - Neutral**		
Procurement	• Will it specify social, economic and environmental outcomes to be accounted for in procurement and delivery in line with the Public Services (Social Value)	**0 - Neutral**		

Domain	Review questions	Assessment of Impact	Brief description of impact	If negative, how can it be mitigated? / If positive, how can it be enhanced?
	Act 2012? • Will it stimulate innovation among providers of services related to the delivery of the organisations' social, economic and environmental objectives? • Will it reduce waste, environmental hazards and toxic materials for example by reducing PVC, antibiotic use, air pollution, noise, mining and deforestation? • Will it reduce use of natural resources such as raw materials, embedded water, and energy to promote a circular economy? • Will it support the local economy through local suppliers, SMEs or engage with third sector or community groups? • Will it promote ethical purchasing of goods or services e.g. increasing transparency of modern slavery in the supply chain globally? • More info: http://www.sduhealth.org.uk/areas-of-focus/commissioning-and-procurement/procurement.aspx			
Facilities Management	• Will it reduce the amount of waste produced or increase the amount of waste recycled? • More info: http://www.sduhealth.org.uk/areas-of-focus/carbon-hotspots/waste.aspx • Will it reduce water consumption? • Will it improve the resource efficiency of new or refurbished buildings (water, energy, density, use of existing buildings, designing for a longer lifespan)? • Will it improve green space and access to green space? • More info: http://www.sduhealth.org.uk/areas-of-focus/carbon-hotspots/energy.aspx	**0 - Neutral**		
Workforce	• Will it provide employment opportunities for local people? • Will it promote or support equal employment opportunities?	**0 - Neutral**		

Domain	Review questions	Assessment of Impact	Brief description of impact	If negative, how can it be mitigated? / If positive, how can it be enhanced?
	• Will it promote healthy working lives (including health and safety at work, work-life/home-life balance and family friendly policies)? • Will it offer employment opportunities to disadvantaged groups and pay above living wage? • More info: http://www.sduhealth.org.uk/areas-of-focus/social-value.aspx			
Community Engagement	• Will it promote health, increase community resilience, social cohesion, reduce social isolation and support sustainable development? • Will it reduce inequalities in health and access to services? • Will it increase participation including patients, the public, health professionals and elected officials to contribute to decision making? • Have you sought the views of our communities in relation to the impact on sustainable development for this activity? • Will it increase peer-support mechanisms? • More info: http://www.sduhealth.org.uk/areas-of-focus/community-resilience.aspx	**0 - Neutral**		
Adaptation to Climate Change	• Will it support mitigation of the likely effects of climate change (e.g. identifying proactive and community support for vulnerable groups; contingency planning for flood, heatwave and other weather extremes)? • More info: http://www.sduhealth.org.uk/areas-of-focus/community-resilience/community-resilience-copy.aspx	**0 - Neutral**		
Estimated carbon benefit	• What is the estimated carbon benefit (in terms of tCO_2e) from the implementation of this project? As opposed to the current business as usual position. Speak with your sustainability manager and see the following guidance:	**N/A**		

Domain	Review questions	Assessment of Impact	Brief description of impact	If negative, how can it be mitigated? / If positive, how can it be enhanced?
	• More info: http://www.sduhealth.org.uk/areas-of-focus/carbon-hotspots/pharmaceuticals/cspm/sustainable-care-pathways-guidance.aspx			