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# PROCUREMENT POLICY

FINAL VERSION – AUGUST 2019

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## ORGANISATIONAL APPROACH TO PROCUREMENT

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### AIMS

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There are two core aims of this procurement Policy.

1. To provide an overview of how Manchester CCG will conduct itself and the principles that will be applied to all procurement activity while ensuring compliance with statutory guidelines.
2. To provide 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 CCGs will operate within.
3. To provide an overview of key considerations for staff when commissioning and procuring in partnership with the Council, and when the Council's procurement rules should apply.

This policy sets out the existing legal framework for procurement by public bodies in the UK, and moving forward the procurement policy will be updated in line with any changes to UK and EU legislation.

### INTRODUCTION

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*IMPORTANT: This Policy is intended for staff working on CCG-funded contracts. Staff working on Council funded contracts should follow the Council's procurement rules.*

Clinical Commissioning Groups are required by 'The National Health Service under the Health and Social Care Act (2012)' to have a nationally approved constitution. This outlines the fundamental principles which govern how the CCG and MHCC<sup>1</sup> operate and constitutes the recognised framework by which we are held accountable. In support of its duties under its Constitution, the CCG and MHCC is required to develop a set of documents setting out the rules and procedures which guide its decisions and must ensure documented evidence of outcomes is maintained.

Procurement is the process of acquiring goods, works and services covering the whole commissioning cycle from identification of needs, redesigning existing services, through to the end of a services contract or the end of the useful life of an asset. Procurement encompasses everything from repeat, low-value orders through to complex health and care service solutions developed through partnership arrangements. Procurement is central to commissioning that drives innovation, quality and value.

Manchester CCG has a responsibility to ensure that services are commissioned to meet the needs of the people of Manchester. Services have to be affordable, with a clear emphasis on Value for Money (VfM). Furthermore, transparency is important to maintain public and provider market confidence and reducing the risk of conflict and corruption through anti-competitive behaviours.

While this Policy is primarily concerned with procurement related to health services, the principles it outlines can be applied to the procurement of any service by the CCG and any service provider. This policy also acknowledges the differences in how MCC procures Adult Social Care and Public

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<sup>1</sup> Manchester Health and Care Commissioning (MHCC) is the partnership between NHS Manchester Clinical Commissioning Group (CCG) and Manchester City Council (MCC) which leads the commissioning of health, social care and public health services in the city of Manchester

Health services and where efficiencies in process can be of mutual benefit to both organisations. Key considerations when commissioning and procuring in partnership with the MCC are set out in CCG Procurement Toolkit. This Policy is closely linked to the Commissioning Policy.

There are a range of procurement approaches available which include working with existing providers, non-competitive and competitive tender processes and multi-provider models such as Any Qualified Provider (AQP). These approaches are explored in this Policy document, and in relation to every commissioning decision Manchester CCG will need to carefully consider which approach is appropriate. Through the success of MHCC, there is opportunity to jointly tender services with MCC for the benefits of Manchester residents utilising existing skillsets through both Manchester CCG and MCC. In the future, there may be opportunity to engage with MLCO for joint procuring of services.

## PRINCIPLES

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To ensure that services are commissioned fairly and transparently Manchester CCG will comply with regulations governing best practice in procurement, protecting and promoting patient choice, and anti-competitive behaviour.

Manchester CCG will seek to develop the local health economy by encouraging new providers and supporting local and existing providers so that they can participate fully. A strong, vibrant and well informed market place for healthcare provision will encourage innovation and drive up quality. Manchester CCG recognises the impact of the VCS and the opportunities they offer in shaping and designing services for local people and will explore these organisational types in the future to drive social value and outcomes for the population of Manchester.

Manchester CCG is required to conduct itself in a way that meets the overarching principles of public procurement within the NHS, which are as follows:

**Fairness & Transparency** – The requirement of commissioner's to publish procurement strategies and intentions to procure, feedback to unsuccessful bidders, details of awarded contracts, maintaining availability of records which demonstrate how procurement decisions were made. Robust Contracts underpin the services commissioned through competitive tendering processes allowing Manchester CCG to ensure effective provider delivery.

**Proportionality** – The level of capacity and resource involved in the procurement process both on behalf of the commissioner and the potential providers in relation to the value and complexity of the service being procured.

**Equality/Non-discriminatory** – The duty to treat all potential providers equally. This could include level of engagement with certain providers on service redesign. To ensure that the service specification has not been designed to exclude certain providers without appropriate justification. Ensuring the deadline for submissions has not been set to favour certain providers.

**Inclusive** – Services will be designed and procured with due regard to being open and inclusive to Manchester residents regardless and ensure that anyone who is covered by any of 9 protected characteristics can have fair and equal access to the services they need.

**Positivity** – Working with our partner organisations to deliver 'Our Manchester' strategy through effective stakeholder engagement, accurate data analysis and acting on best practice and innovative solutions.

**Collaboration** - Where appropriate the Manchester CCG will work in collaboration with the wider health economy to jointly commission and procure services. Examples of this could include when

collaboration results in benefits to the populations of Manchester including reduction of procurement costs and increased leverage with providers.

## ROLE OF MHCC BOARD

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The MHCC Board is responsible for overseeing the full range of commissioning functions, and those which support and enable commissioning activity and the running of MHCC. In order to meet NHS England requirements, the MHCC Board is constituted from two committees of MCCG meeting in common:

1. the Commissioning Board and,
2. the Partnership Board

The aim is to achieve the most minimal (legally possible) reservation of functions to MCCG's Governing Body and Manchester City Council meetings to ensure clarity of decision-making over MHCC in-scope functions. These reservations include the Audit and Remuneration functions, and a responsibility for an overview of the governance structure.

The membership of the MHCC Board operates as a single team including all members of the CCG's Governing Body, senior MCC representatives (Elected members and officers), and MHCC executive team members.

Further information relating to MHCC Board can be accessed via the [MHCC Governance Handbook](#). The organisational committee structure can be found at Appendix 1 to this Policy which covers all committees and their links within the organisation structure including the Finance Committee which plays a key role in MHCC's procurement assurance process.

## ROLE OF MHCC FINANCE COMMITTEE AND PROCUREMENTS

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The Finance Committee forms a key element of the governance structure for MHCC and is a sub-committee of the MHCC Board. The Committee has those executive powers delegated to it by the Board within the CCG's Scheme of Reservation and Delegation and its purpose is to make decisions and/or make recommendations to the Board on the areas that are defined as its responsibilities and within the delegation allowed for the Committee.

The Committee can establish such sub-groups as it deems necessary to support it to discharge its functions. The Committee will inform the Board of the establishment of such sub-groups and present to the Board the Terms of Reference of the subgroups, ensuring compliance with the Scheme of Delegation.

In terms of organisational procurement responsibility, the Finance Committee is responsible for ensuring:

- Monitoring the delivery and outcome of MHCC contracts and procurement of health and social care services:
  - Ensuring that performance meets the MHCC Strategic Commissioning Plan and the NHS Greater Manchester's statutory and regulatory duties.
- Monitor and fulfil its obligations within the commissioning and contracting cycle, with the support of relevant commissioning support services.
- Monitor investments ensuring there is a process for approval and prioritisation of investment areas to enable the Board to make sound decisions to procure / contract for services that deliver value for money and end user needs.

- Advise on the procurement route for commissioning intentions, in line with the Contracting and Procurement Strategies of MHCC.
- Ensure the tendering and contracting processes are conducted in accordance with MHCC Standing Orders, Standing Financial Instructions and relevant statutory and regulatory duties.
- Advise the MHCC Board on procurement matters.

## MANCHESTER LOCAL CARE ORGANISATION – INSCOPE SERVICES

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The CCG, through the Manchester Locality Plan is transforming its out of hospital services for the population of Manchester. The Manchester Local Care Organisation (MLCO) will be responsible for delivering both health and care services once the procurement has concluded. Community healthcare services that are currently commissioned and managed directly by the CCG will transfer through a phased approach to MLCO to allow MHCC to become a strategic commissioning organisation to deliver the key priorities for Manchester.

Services that are listed for phasing are classed as ‘in-scope’ and the CCG will be expected to work with MLCO partner organisations to address any changes to these services prior to transferring into the MLCO. Opportunities to redesign, procure or decommission non-effective ‘in-scope’ services should not stop, although further consideration to wider programmes of work must be taken into account.

This procurement policy will be updated over 2019/20 to account for how the CCG (and possibly MCC) services will be procured through the successful Provider organisation in the future including how the governance will be arranged to conduct robust and ethical procurements.

## STAFF, PUBLIC AND PATIENT ENGAGEMENT

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Manchester CCG is committed to engaging relevant stakeholders in all aspects of procurement. The NHS Constitution<sup>2</sup> pledges that staff should be engaged in changes that affect them. Staff engagement is principally the responsibility of employers, but as commissioners the CCG recognises the value of effective staff engagement in improving the quality of commissioning and procurement.

The engagement of staff, clinicians, patients and the public in the designing of services results in better quality and more inclusive services. In addition, it will also help us to maximise the social value derived from the procurement of services. The business case approval processes require evidence of stakeholder engagement and as a result, any procurement of services will have been informed by engagement at the design stage.

In addition to this, Manchester CCG is committed to engaging individuals within the procurement process. The views of the public and service users are considered when making any decision to go out to competitive procurement and when developing relevant tender documentation. Manchester CCG will ensure that relevant service users are represented on tender evaluation panels and are therefore given the opportunity to influence the outcome of procurement decisions.

## QUALITY

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All procurement activity undertaken by Manchester CCG will contribute towards the QIPP agenda as follows:

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<sup>2</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/480482/NHS\\_Constitution\\_WEB.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/480482/NHS_Constitution_WEB.pdf)

**Quality** – The quality of each service will be controlled through the evaluation of the bidder's tender submissions and subsequently maintained through Key Performance Indicator (KPI)/and quality monitoring measures during the contract management stage of the commissioning cycle.

**Innovation** – Emphasis will be placed on innovation to enable suppliers to introduce efficiencies and new working practices into every area of service delivery.

**Productivity** – Each tender will be evaluated against a range of measures to ensure that the provider can deliver the most appropriate service (as outlined in the service specification) whilst considering the financial implications of each tender submission. Cost is a key element to ensure that each service maintains the highest level of productivity.

**Prevention** – This area concerns the prevention of not only over-spend but also the problem of under or over supply. A contract that delivers too much or too little can be wasteful and can often be an unwelcome expense to the commissioner of the service. There can be associated risks to the provider which emphasises the need for thorough market analysis and the understanding of the service requirements to the success of the service.

## SUSTAINABLE PROCUREMENT AND SOCIAL VALUE

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Social value' incorporates the requirement to consider how we can use procurement and commissioning to derive benefit for our communities. As social value requirements include the need to build in economic, social and environmental wellbeing considerations into the services that public services procure, it acts as an umbrella approach for the areas set out in this section. Manchester CCG; as part of MHCC has committed to using its social value leverage to improve inclusion outcomes across our services. This is linked to a number of other strategies including the Our Manchester Strategy and the Our Healthier Manchester plan.

The CCG is committed to the principles of sustainable development and demonstrate leadership in sustainable development to support central government and Department of Health commitments in this area of policy, and the improvement of the nation's health and wellbeing.

Sustainable procurement is defined as a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment.

Sustainable procurement should consider the environmental, social and economic consequences of –

- Design
- Non-renewable material use
- Manufacture and production methods
- Logistics
- Service delivery
- Use / operation / maintenance / reuse / recycling and disposal options

Each supplier's capability to address these consequences should be considered throughout the supply chain and effective procurement processes can support and encourage environmental and socially responsible procurement activity.

## THIRD SECTOR/SMALL & MEDIUM ENTERPRISE (SME) SUPPORT

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The CCG will aim to support and encourage SME suppliers, Third Sector Voluntary (VCS) organisations and local enterprises in bidding for contracts. The Market Management GM Shared Service (Part of North West Commissioning Support Unit (NWCSU)) will work with service commissioners to ensure that competitive tender processes promote equality and do not discriminate on the grounds of age, race, gender, culture, religion, sexual orientation or disability.

Manchester CCG will aim to support government initiatives seeking the optimal involvement of SMEs and the Third Sector in public service delivery without acting in contravention of public sector procurement legislation and guidance.

The NHS is keen to encourage innovative approaches that could be offered by new providers – including independent sector, voluntary and third sector providers. The CCG is committed to the development of local providers that understand the needs of local communities. It is vital to ensure that Manchester CCG's approach to procurement is open and transparent and that it does not act as a barrier to new providers.

## ANNUAL PROCUREMENT PLAN

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A procurement work plan will be compiled on an annual basis and before the start of each financial year to support the priorities and requirements set out in Manchester CCG's annual commissioning and business plans.

The purpose of the procurement work plan is to signal the direction of travel for potential and existing providers. The procurement work plan is a public document and ensures that Manchester CCG is transparent about their procurement decision making processes and rationale. It will be published annually on the CCG's internet sites, and updated quarterly. This will allow us to communicate short, medium and long term objectives to a broad audience and demonstrate a range of potential opportunities within the Manchester economy, rather than a series of unscheduled one-off procurements. This should encourage increased provider interest resulting in the development of the local health economy.

Not all commissioning priorities will have or will result in formal procurement activity. When considering appropriate actions to effect required changes and improvements, competition is one lever available to Manchester CCG and a range of other levers will be considered (e.g. delivery of service redesign through partnership working).

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## COMPLIANCE WITH PROCUREMENT RULES & REGULATION

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### PUBLIC PROCUREMENT LEGISLATION

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All managers and commissioners with budgetary responsibility must familiarise themselves with the CCG's Financial Policies and Procedures, together with the relevant procurement procedures described in this document.

There are 2 key pieces of legislation which govern procurement in NHS organisations –

- The Public Contracts Regulations 2015<sup>3</sup> (replaced the Public Contracts Regulations 2006<sup>4</sup>)
- The National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013<sup>5</sup>

### THE NHS LONG TERM PLAN 2019 AND POTENTIAL IMPACT ON PROCUREMENT PROCESSES

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NOTE: At the time of updating this policy, the NHS Long Term Plan (LTP) describes the intentions of removing the perceived highly inflexible procurement regime applied to the NHS. The LTP proposes “to free up NHS commissioners to decide the circumstances in which they should use procurement, subject to a ‘best value’ test to secure the best outcomes for patients and the taxpayer<sup>6</sup>”.

The LTP explains that presently, competition and procurement rules create increased costs and not always secures the right outcomes for patients mainly across the GP/urgent care/community health service workforce. The LTP explains the intention to repealing the specific procurement requirements in the Health and Social Care 2012 Act. Furthermore, the LTP proposes to remove the stringent requirements placed on the NHS by removing itself from the Public Contract Regulations proposing instead, to agree its own statutory guidance for the NHS to follow where the protection and stronger emphasis on patient choice and control will be placed, including the priorities to deliver personalised care.

The changes recommended by the LTP will have significant implications on this policy including NHSI's (formally Monitor) competition role if implemented. This would require a fundamental change in legislation and will be heavily influenced by the outcome of Great Britain's exit from the European Union “Brexit” and the agreements made (or not made) thereafter.

The CCG will continue to work within the confines of existing procurement and competition legislation, as laid out within this policy until the recommendations of the LTP are made statute in English law.

### PUBLIC CONTRACTS REGULATIONS 2015

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The Public Contracts Regulations 2015 (the 2015 Regulations) replaced the Public Contracts Regulations 2006 (as amended) in its entirety on the 26<sup>th</sup> February 2014 as a means of transposing the Public Sector Reform Directive 2014/24/EU for conducting public procurement into UK law. The 2015 Regulations, apply to all procurements commencing on or after the 26<sup>th</sup>

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<sup>3</sup> [http://www.legislation.gov.uk/uksi/2015/102/pdfs/ukxi\\_20150102\\_en.pdf](http://www.legislation.gov.uk/uksi/2015/102/pdfs/ukxi_20150102_en.pdf)

<sup>4</sup> [http://www.legislation.gov.uk/uksi/2006/5/pdfs/ukxi\\_20060005\\_en.pdf](http://www.legislation.gov.uk/uksi/2006/5/pdfs/ukxi_20060005_en.pdf)

<sup>5</sup> [http://www.legislation.gov.uk/uksi/2013/500/pdfs/ukxi\\_20130500\\_en.pdf](http://www.legislation.gov.uk/uksi/2013/500/pdfs/ukxi_20130500_en.pdf)

<sup>6</sup> <https://www.longtermplan.nhs.uk/wp-content/uploads/2019/01/nhs-long-term-plan.pdf> (page 114)

February 2015 whereas, the 2006 regulations applies to procurements commenced prior to this date. It is important to recognise that the 2015 Regulations did not apply to the procurement of healthcare service contracts that were covered by the NHS (Procurement, Patient Choice and Competition)(No.2) Regulations 2013 (the "NHS Regulations") until 18 April 2016; coming into effect thereafter.

The 2006 Regulations also divided services into so called "Part A" (or "priority") services and "Part B" (or "residual") services which have been abolished by the 2015 Regulations as all services are required to follow full regulation unless they are covered by the 'Light Touch Regime' process.

The 2015 Regulations included a number of changes to the 2006 Regulations which are listed as follows:

- The requirement to evaluate all bids on the basis of the Most Economically Advantageous Tender (MEAT) rather than price alone.
  - Lowest price bids cannot be the focal point for awarding contracts.
  - It is particularly important for the commissioner to specify quality standards and KPIs as part of the service specification.
  - Where alternative providers are offering to provide the services at lower cost it will be important to undertake appropriate due diligence as to whether quality standards will be delivered, as part of the evaluation process.
- Introduction of the 'Innovative Partnership' procedure which will allow for public authorities to call for tenders to solve a specific problem without pre-empting the solution, thus leaving room for the contracting authority and the tenderer to come up with innovative solutions together.
- Introduction of the 'Competitive Procedure with Negotiation'.
- Introduction of shorter mandatory time limits.
  - PQQ minimum time limit is set to 30 days from dispatch to OJEU contract notice (all procedures).
  - ITT minimum time limit under the Restricted Procurement Procedure is now 30 days.
  - OJEU contract Award Notices must be issued within 30 days of contract award (previously 48 days).
- Greater freedom on public authorities to exclude bidders on the basis of previous poor performance.
- Introduction of measures to encourage greater participation from small and medium enterprises (SMEs).
- Introduction of a new 'Light Touch Regime' for certain types of services.

## THE LIGHT-TOUCH REGIME (LTR)

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The LTR is a specific set of rules introduced through the 2015 PCR for certain service contracts that tend to be of lower interest to cross-border competition (i.e. those countries within the EEA and EU). Those service contracts include certain social, health and education services, as defined in the Regulations.

This simplified regime will have a higher threshold of £615,278<sup>7</sup> (as of 1<sup>st</sup> January 2018) which is the aggregate contract value across one or more commissioners, and net of VAT and the only obligations, apart from general EU principles, which apply to services with a contract value above this threshold; are the rules in relation to transparency and publicity i.e. that all relevant contracts in excess of this threshold are advertised in the OJEU.

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<sup>7</sup> <https://www.ojeu.eu/thresholds.aspx>

Contracts below the LTR threshold do not normally need to be advertised in the OJEU, unless there are concrete indications of cross-border interest. In terms of procurement requirements for above-threshold services, the main mandatory requirements are:

- i) OJEU Advertising - The publication of a Contract Notice (CN) or Prior Information Notice (PIN). Except where the grounds for using the negotiated procedure without a call for competition could be used, for example where there is only one provider capable of supplying the services required.
- ii) The publication of a Contract Award Notice (CAN) following each individual procurement, or if preferred, group such notices on a quarterly basis.
- iii) Compliance with Treaty principles of transparency and equal treatment.
- iv) Conducting the procurement in conformance with the information provided in the OJEU advert (CN or PIN) regarding: any conditions for participation; time limits for contacting/responding to the authority; and the award procedure to be applied.
- v) Time limits imposed by authorities on suppliers, such as for responding to adverts and tenders, must be reasonable and proportionate. There are no stipulated minimum time periods in the LTR rules, so contracting authorities should use their discretion and judgement on a case by case basis.

Authorities have the flexibility to use any process or procedure they choose to run the procurement, as long as it respects the other obligations above. There is no requirement to use the standard EU procurement procedures (open, restricted and so on) that are available for other (non-LTR) contracts. Authorities can use those procedures if helpful, or tailor those procedures according to their own needs, or design their own procedures altogether.

## THE NHS (PROCUREMENT, PATIENT CHOICE AND COMPETITION) (NO 2) REGULATIONS 2013

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The NHS (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (the 2013 Regulations) - which were made pursuant to sections 75, 76, 77 and 304(9) and (10) of the Health and Social Care Act 2012 (the 2012 Act) contain a number of requirements that Manchester CCG must comply with to ensure that they:

- Adhere to good practice in relation to the procurement of health care services funded by the NHS.
- Protect the rights of patients to make choices with respect to treatment or other health care services funded by the NHS.
- Do not engage in anti-competitive behaviour unless this is in the interests of NHS health care service users.

The 2013 Regulations particularly govern the procurement of healthcare services, and operate alongside the 2015 PCR.

The 2013 Regulations require that, when procuring NHS healthcare services, in all cases Manchester CCG **must** act to:

- Secure the needs of healthcare service users.
- Improve the quality of services.
- Improve the efficiency with which services are provided.

This includes situations where Manchester CCG seeks to secure the delivery of healthcare services through integration including with other healthcare and social services. NHSI has been granted certain enforcement powers to ensure that any healthcare procurement achieves the above and details of NHSI's key tests are described later within this document.

The Regulations do not impose a 'one-size-fits-all' approach; rather they attempt to allow CCGs flexibility within the framework of rules. It is recognised that healthcare need will differ in accordance with local conditions.

When procuring NHS healthcare services, in all cases Manchester CCG must:

- Act in a transparent and proportionate way
- Treat providers equally and in a non-discriminatory way (showing no favouritism, particularly on basis of ownership)

This requires Manchester CCG to conduct all procurement activity openly and in a manner which enables behaviour to be scrutinised. Procurement decisions must be proportionate to the value, complexity and clinical risk associated with the provision of the services in question. Commissioners must treat all providers equally, not favouring one provider (or type of provider) over another. Differential treatment between providers will require objective justification.

Manchester CCG is required to procure services from one or more providers that:

- Are most capable of delivering the needs, quality and efficiency required.
- Provide the best value for money in doing so.

When considering how best to procure healthcare services which improve quality and efficiency, and which meet the health needs of the Manchester population, Manchester CCG must:

- Consider how the services can be provided in an integrated way (including with other healthcare services or social care services)
- How to enable service providers to compete to provide the services
- How to allow patients a choice of provider for the services

In order to be able to demonstrate compliance with the 2013 Regulations, Manchester CCG is required to maintain a record of the decision-making process in relation to the award of any contract for healthcare services, regardless of whether the award of such contract was as a result of a competitive tendering process.

While the 2013 Regulations do not impose a requirement on Manchester CCG to undertake competitive tendering in all circumstances, where a CCG awards a healthcare contract without conducting a competitive process, it must again ensure that it is able to evidence, via a robust audit trail, that the decision not to tender followed a detailed review of the provision of local services and which identified the most capable provider of the services; that there was only one provider capable of providing the services; or that the benefits of tendering would be outweighed by the cost.

There is also an obligation on Manchester CCG not to award contracts in a manner which can be considered anti-competitive, unless the CCG is able to evidence that this is in the best interests of service users.

The 2013 Regulations place additional specific requirements on Manchester CCG to maintain records of all awarded contracts which demonstrate how the decision to award that contract complied with the CCG's obligations under the NHS Act 2006, to maintain a record of all conflicts

of interest arising as a result of a decision to award a contract, and how the effect of those conflicts were mitigated.

The 2013 Regulations make clear that they do not expressly require CCGs to competitively tender for new contracts in all circumstances. The decision whether or not to publish a contract opportunity is not an isolated decision and will need to be taken in the context of commissioners' decisions about what services to procure and how to go about procuring them more generally.

When deciding whether or not to publish a contract notice, the CCG will need to ensure that this decision is consistent with the requirements of the 2013 Regulations. NHSI guidance advises that a CCG will be justified in a decision not to competitively tender a service where:

- There is only one provider that is capable of providing the services in question.
- Where a commissioner carries out a detailed review of the provision of particular services in its local area in order to understand how those services can be improved and, as part of that review, identifies the most capable provider or providers of those services.
- Where the benefits of competitively tendering would be outweighed by the costs of publishing a contract notice and/or running a competitive tender process

## NHSI ROLE

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Under the 2013 Regulations, NHSI (formally Monitor prior to merging with the TD to form NHS Improvement as of 1<sup>st</sup> April 2016) was granted certain enforcement powers in relation to the healthcare procurement activities of CCGs, including:

- Investigatory powers
- Declarations of ineffectiveness
- Directions
- Accepting undertakings

NHSI's investigation powers are triggered by the receipt of a complaint from a third party alleging a failure to comply with the requirements of the 2013 Regulations.

## NHSI TESTING CRITERIA

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The overarching purpose of the NHSI testing criteria is to ensure that any healthcare procurement achieves the following:

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

The criteria that NHSI will evaluate in assessing whether the aforementioned objectives have been met are as follows:

- Steps taken to establish the levels of public engagement in the local community to establish whether the services being procured meet local health need.
- Establish whether a holistic view of the needs of healthcare users has been undertaken when procuring particular services, including their needs for related services i.e. services that health care users/patients can access from the same provider on the same site.
- Whether the commissioner has considered the needs of all health care users for which it is responsible when procuring services, including:
  - What steps the commissioner has taken to ensure equitable access to services, including by vulnerable and socially excluded members of the population.

- Whether the commissioner has had regard to the different needs of groups of patients, such as the need for some patients to receive a service in a particular setting.
- Whether the commissioner has considered the sustainability of services, including the impact that a procurement decision relating to one set of services may have on the ability of providers to deliver other services that health care users require.
- Whether the commissioner has monitored the quality and efficiency of existing service provision and identified any areas where improvements are needed in advance of procuring services.

## THE PUBLIC SERVICES (SOCIAL VALUE) ACT 2012

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This Act requires commissioners at the pre-procurement stage to consider how what is to be procured may improve social, environmental, and economic well-being of the relevant area, how they might secure any such improvement and to consider the need to consult.

The Act applies only to certain public services contracts to which the Public Contracts Regulations apply. However Manchester CCG intends, as good practice, to consider how its procurement might improve economic, social and environmental well-being in order to maximise value for money. The considered application of the provisions of this Act will provide the CCGs with the means to broaden evaluation criteria to include impact on the local area.

Manchester CCG makes a strong commitment to achieving social value (SV) through its commissioned activity. Where the CCG procures services, SV will account for a minimum of 20% of all procurement scoring. This means that when MHCC uses public money to procure goods and/or services, providers will need to demonstrate that their offer will include measures to improve Manchester for the greater good.

There is a clear focus on using SV to improve inclusion of health and social care outcomes as part of our Inclusion and Social Value strategy. This means that we want to do more to improve equality and diversity above and beyond statutory requirements both within the health and social care workforce and service delivery and to apply the principles of human rights to service delivery.

## EQUALITY ACT 2010 (UK)

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The Manchester CCGs must consider their responsibilities under the Equality Act 2010<sup>8</sup> for all healthcare (clinical) procurement conducted. Potential providers must not be discriminated against, in compliance with the requirement of the act, during the term of contract or the procurement process itself.

## BRIBERY ACT 2010

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The Bribery Act 2010<sup>9</sup> reformed the criminal law of bribery, making it easier to tackle this offence proactively in both the public and private sectors. It introduced a corporate offence which means that commercial organisations including NHS bodies will be exposed to criminal liability, punishable by an unlimited fine, for failing to prevent bribery. The Manchester CCGs need to be aware of the overall framework of the UK's anti-bribery regime to ensure that their procurement arrangements, policies and procedures comply with it.

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<sup>6</sup> [http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga\\_20100015\\_en.pdf](http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf)

<sup>9</sup> [http://www.legislation.gov.uk/ukpga/2010/23/pdfs/ukpga\\_20100023\\_en.pdf](http://www.legislation.gov.uk/ukpga/2010/23/pdfs/ukpga_20100023_en.pdf)

## MHCC FINANCIAL POLICIES

The CCG's Policies and Procedures set out the following procurement limits for both revenue and capital purchases.

Total Value of Purchase	Type of Procurement	Guidance
Up to £3.5k	1 written quotation	The procurement can be done locally and should follow the normal requisitioning procedures. All purchasers will be expected to adhere to those contracts which have been negotiated by regional or national procurement teams for all goods/services. Where no contracts have been negotiated, or if they prove unsuitable, purchasers are free to request quotes from the open market.
Between £3.5k and £50k	A minimum of 3 written quotes	The procurement can be done locally and should follow the normal requisitioning procedures. All purchasers will be expected to adhere to those contracts which have been negotiated by regional or national procurement teams for all goods/services. Where no contracts have been negotiated, or if they prove unsuitable, purchasers are free to request quotes from the open market. If 3 quotes cannot be secured then a waiver form is required.
Between £50k and £100k	Mini tender or Advert and Tender Process i.e. Chest	Some form of competitive process should take place. This is likely to require input from external procurement support Market Management, part of Greater Manchester Shared Services (GMSS), or MCC's procurement team and the budget holder should seek appropriate advice. If a competitive process is not going to be followed then a waiver form must be completed.
Over £100k and up to EU Threshold (approx. £630k)	Full Tender or OJEU Light Touch Regime (LTR) Tender Process	<p>A full competitive process is expected to take place for services over £100k unless the Governing Bodies determine that the service will not be subject to tender and sets out the rationale for its decision. Where a full OJEU compliant tender is required the procurement work plan must be updated and Market Management, part of Greater Manchester Shared Services (GMSS), or MCC's procurement team informed to enable capacity planning. Procurement requests should be directed through the Assistant Head of Finance – Contracting and Commissioning.</p> <p>The organisation may adopt the LTR where this no risk of cross-border interest.</p>
Above EU Threshold (approx. £630k)	OJEU tender required	A full competitive process is expected to take place for services over £630k unless the Governing Bodies determine that the service will not be subject to tender and sets out the

		<p>rationale for its decision. Where a full OJEU compliant tender is required the procurement work plan must be updated and Market Management, part of Greater Manchester Shared Services (GMSS), or MCC's procurement team informed to enable capacity planning. Procurement requests should be directed through the Assistant Head of Finance – Contracting and Commissioning.</p>
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In some circumstances (outlined below) the procurement route specified above might not be appropriate. In these circumstances a CCG<sup>10</sup> procurement waiver may be requested and authorised by the Accountable Officer or Chief Finance Officer under the MHCC Scheme of Delegation:

<b>CCG Waiver Rationale</b>	
1	In very exceptional circumstances where the Chief Accountable Officer or Chief Finance Officer decides 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 an appropriate CCG record.
2	A consortium arrangement is in place and a lead organisation has been appointed to carry out <u>tendering</u> activity on behalf of the consortium members.
3	The timescale genuinely precludes complete tendering but failure to plan the work properly would not be regarded as justification for a single tender.
4	Allowed and provided for in the Capital Investment Manual.
5	A detailed review of the provision of local services has identified one capable provider of the service/s
6	Competition is not appropriate, e.g. where partnership funding is in place.
7	Benefits in terms of choice, quality, efficiency or responsiveness are not apparent.
8	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 CCG record and reported to the Audit Committee at each meeting.

The waiving of competitive tendering procedures should not be used to:

1. avoid competition or.
2. for administrative convenience or,
3. to award further work to a consultant originally appointed through a competitive procedure.

## MHCC CONFLICTS OF INTEREST POLICY

It is recognised that MHCC, in delivering both financial and clinically effective services often requires close collaboration with system partners which may at times introduce the risk of conflicts of interest arising.

The CCG, through complying with the NHS Constitution, remains committed to being open, transparent and delivering value for money for the tax payer. The CCGs own Constitution<sup>11</sup> also reinforces these values in that it states, in accordance with section 14L(2) of the 2006 NHS Act that the CCG will at all times observe “such generally accepted principles of good governance” in the way it conducts its business.

<sup>10</sup> Rules for approval of waivers on MCC contracts must follow MCC financial regulations

<sup>11</sup> <https://manchesterccg.nhs.uk/wp-content/uploads/NHS-Manchester-CCG-Constitution-November-2018-FINAL.pdf>

MHCC staff members engaged in the procurement of services will need to familiarise themselves with the MHCC [Conflict of Interest Policy](#) to prevent any risk of conflicts arising. If in doubt, colleagues must contact the [Corporate Governance](#) team for advice and guidance on how to mitigate the perceived Conflict of Interest.

In managing Conflicts of Interest, MHCC has the following processes in place:

- Arrangements for declaring interests.
- Maintaining a register of interests which is updated annually.
- Excluding individuals from decision-making where a conflict arises, and
- Engagement with a range of potential providers on service design,
- Whistleblowing
- Dealing with potential acts of Fraud or Bribery
- Identifying and Reporting Breaches

Appendix 2 covers the Procurement Declaration of Interest and Confidentiality Agreement which MHCC colleagues will need to complete as part of any new procurement exercise.

## PROCUREMENT RULES AVOIDANCE

The UK courts take a strict line when they perceive that public contracts have been awarded without taking the necessary steps to ensure competition rules have been complied with. Commissioners should be familiar with several forms of circumnavigation that have been commonplace within the NHS:

1. Pilot projects – awarding a contract through the guise of a pilot project. Pilot projects have been awarded as an interim measure when the commissioner has no intention to enter into a future competitive process.
2. Contract lengths are reduced to artificially alter the contract value to avoid the compulsory OJEU thresholds.
3. Using negotiation with existing providers as a way to improve services when the contract expires.

The UK courts have the authority to award damages to providers who have been unfairly excluded from the market.

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# CCG PROCUREMENT TOOLKIT

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## PURPOSE

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This toolkit provides a framework for decisions regarding procurement. Its aim is to support the CCG to make appropriate and effective decisions about procurement, and ensuring consistency with the overarching principles for public services procurements.

The purpose of this guide is to enable commissioners to:

- Decide when to use procurement for a clinical service
- Determine the procurement approach when undertaking a procurement
- Consider appropriate contracting mechanism for joint CCG/MCC procurements.

Commissioners are expected to ensure procurement activity complies with this guidance and in turn, use the processes outlined within this document to inform their procurement decisions

## WHEN AND HOW TO USE PROCUREMENT

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Local commissioning strategies should identify priorities for service improvement, such as implementation of improved quality standards, care pathway redesign, increased patient choice, more personalised care and promoting equality, increases in productivity, and , where necessary, investment in additional capacity. Commissioners will use either AQP<sup>12</sup>, contract management or other forms of procurement to secure services for patients.

Contract Management can be used where an existing contract is in place in order to ensure incremental improvements/changes to existing services, or to address underperformance as an alternative to procurement (e.g. to reduce cost).

Procurement Options should be considered for securing services outside the scope of existing contracts, including additional choices for patients; 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). The Department of Health has produced a decision support tool to aid decision making (see below).

Commissioners will want to carefully consider and determine the rationale for their proposed approach before commencing procurement and where necessary should engage the support of the Market Management team at GM Shared Service or MCC's Procurement department where there is scope to procure health and care services. The rationale for procurement decisions must be approved by the CCG's Governing Body (or under delegated authority) and should be documented to ensure transparency and accountability.

Decisions on which procurement model to use will largely be determined by what the commissioner is seeking to achieve, the nature of the healthcare market and outputs from provider engagement. Further considerations may include:

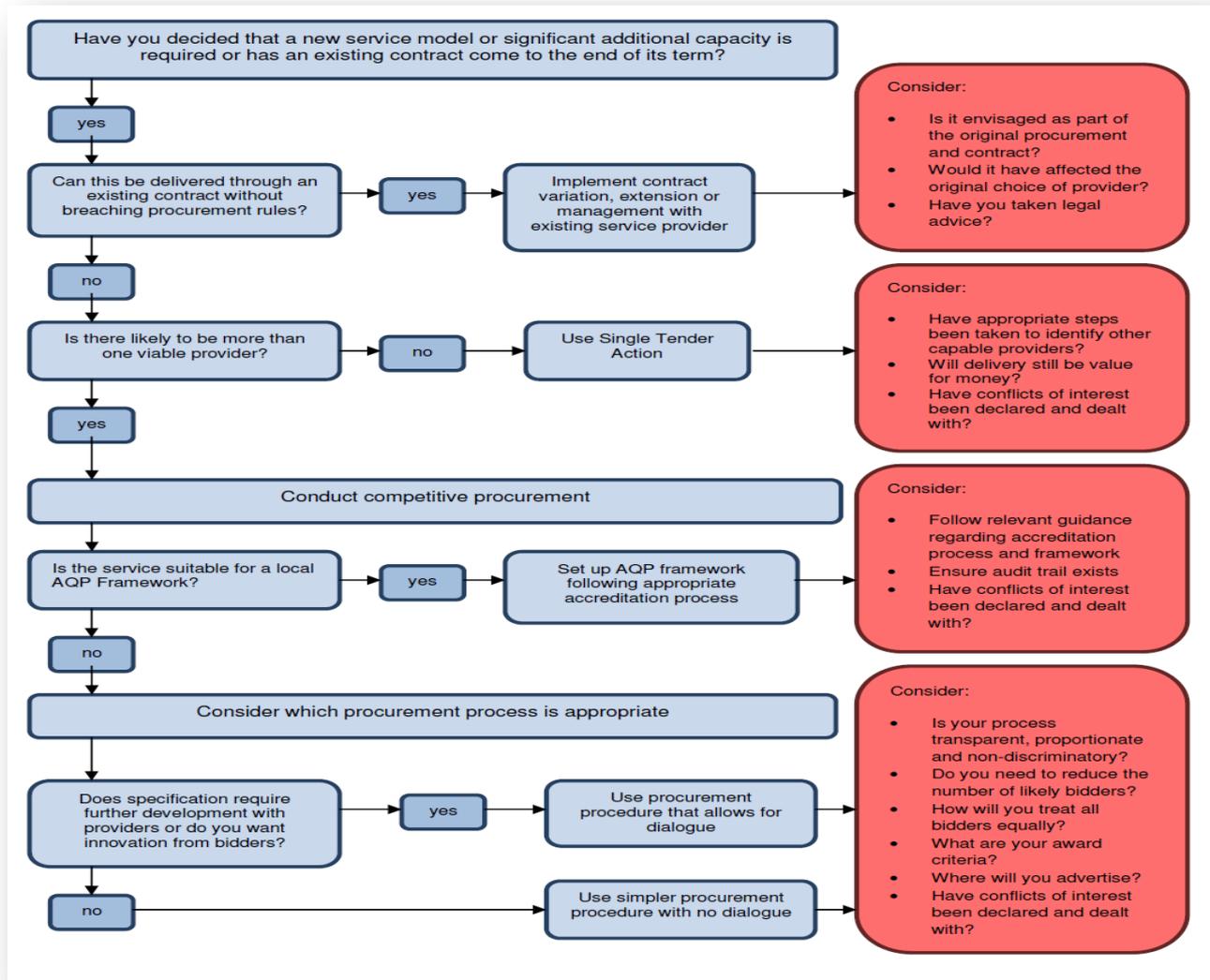
- The scale/importance of the new contract(s) being procured
- Is there an urgent clinical need (e.g. where existing services have been suspended and interim provision is urgently required)?
- Can the commissioner define the outcomes required, service specification, funding model and prices upfront?
- The degree of innovation being sought
- Is there more than one provider that could potentially deliver the services?

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<sup>12</sup> AQP should be considered where commissioners are seeking to extend the current offer of choice of any provider in elective care

- Capacity of the commissioner to invest its commissioning resource and/or affordability of support from the local Market Management GM Shared Service.
- Joint procurement with MCC or other CCGs within Greater Manchester,

The diagram overleaf gives an illustration of the procurement models and how decisions on which model to use may flow from the original commissioning intention, how well-defined the service specification is and what healthcare market analysis and provider engagement is indicating.



Source: NHS Commissioning Board, *Procurement of healthcare (clinical) services Briefing 5: Summary of the decision-making process, September 2012*

## GOVERNANCE CONSIDERATIONS FOR JOINT MHCC PROCUREMENT WITH MCC

### Introduction

The decision making for MCC statutory functions and financial delegation remains with MCC officers:

- Director of Adult Social Services (DASS) and,

- Director of Population Health (DPH).

Financial contributions of CCG and MCC are subject to annual review alongside the medium term financial plans. CCG and MCC hold their own financial positions and statutory responsibilities. Joint procurement activities must be compliant with MCC Financial Regulations and the Public Contracts Regulations 2015.

#### *Procurement Thresholds*

Whilst the CCG and MCC maintain separate bank accounts and financial transactions for the Pooled Budget, individual organisation Financial Regulations apply. When the expenditure is going through MCC's ledger then the procurement rules of MCC will be applied, likewise for the CCG. MCC's procurement thresholds (which are net of VAT) are set out below:

<b>Value</b>	<b>Record keeping of procurement process</b>	<b>Approval of contract award</b>	<b>Who leads procurement</b>	<b>Competition requirements *</b>	<b>Contract formalisation</b>
Up to £3,500	As per Reg 6.1, keep records of procurement.	If below £50k approval can be made by Head of Service  Waiver decisions below £50k requires approval of Chief Officer or Strategic Director	Directorate	One oral quotation, confirmed in writing where total value exceeds £500	One signatory
£3,501 to £30,000	As per Reg 6.1	Approval by Head of Service  Waiver requires approval of Chief Officer or Strategic Director	Directorate	At least 3 written quotes	Written contract  One signatory

£50,001 to EU threshold	As per Reg 6.2, keep records using Corporate Procurement template.	<p>If procurement of less than £250k, approval is by Strategic Director</p> <p>If procurement of more than £250k, approval is required from Strategic Director and City Treasurer</p> <p>Waivers above £50k up to EU threshold require approval of City Treasurer</p>	Corporate procurement	ITT to at least 3 candidates and advertised on Chest and UK contracts finder	<p>If low risk, one signatory,</p> <p>If medium /high risk or above £150k, two signatories</p>
Above EU thresholds	As per Reg 6.2, keep records using template.	If >£250k, approval is required from Strategic Director & City Treasurer	Corporate procurement	OJEU tender	Two signatories

The MCC Thresholds set out the procurement limits for both revenue and capital purchases. Full details of MCC thresholds can be found in Part 5 Section E of the Council's constitution. It should be noted that different thresholds apply to the procurement of consultancy below EU levels.

There is also guidance available on how to apply the Council's procurement and contract management rules:

- The Procurement Generic Model details the MCC Procurement process from start to finish
- The MCC Commissioners' and Contract Managers' toolkit (<http://intranet.mcc.local/corpserv/integratedcomm/Pages/default.aspx>) includes templates, flow diagrams and checklists for standard processes<sup>13</sup>
- The MCC Contract Management User Guide takes officers through the contract lifecycle.
- The MCC Contract Governance Framework sets out the detail of authorisations and approvals, following the RASCI approach (Responsible; Accountable; Support; Consult and Inform) to defining roles.

Please contact the Manchester Procurement Group on 0161 234 3591 for the above information.

<sup>13</sup> Includes Contract Management guides and toolkits however as of May 19 can only be accessed on the MCC intranet, which can only be accessed by MCC staff.

### *Joint procurement*

As part of the partnership between Health and the Council in Manchester, there is opportunity to jointly tender services with MCC for the benefits of Manchester residents utilising existing skillsets through both Manchester CCG and MCC. Where conducting joint procurement with the CCG, it may be appropriate to use either the Council's or the NHS standard contract and Terms & Conditions. This should be part of the preparation and decision making process

### *MCC Contract Management*

Where the contract is led by MCC, or where the contract is funded from MCC budgets, then accountability is to the Director of Adults Services [Director of Public Health] and to the City Treasurer, and the Council's rules for contract management must be followed. These are set out in the Council's Financial Regulations and guidance, namely the MCC Contract Management User Guide and toolkit.

### *Social Value*

The MCC social value toolkit for suppliers outlines what we want to achieve for Manchester's residents and neighbourhoods through social value. It provides guidance, information and contact details to support suppliers when considering social value when putting tenders together.<sup>14</sup>

### *Ethical Procurement*

MCC is committed to ensuring a high standard of ethical trade practices, across its commissioning and procurement activities. In accordance with its Ethical Procurement Policy the Council expects its suppliers, service providers and contractors to observe the policy's provisions and to demonstrate a similar commitment to an ongoing programme of ensuring and, where necessary, improving ethical practices locally and globally.

Working with Manchester City Council, all suppliers, service providers and contractors to Manchester City Council must commit to employing the highest ethical standards in every area listed in all sections of the policy, in their own operatives and those within their supply chain.<sup>15</sup>

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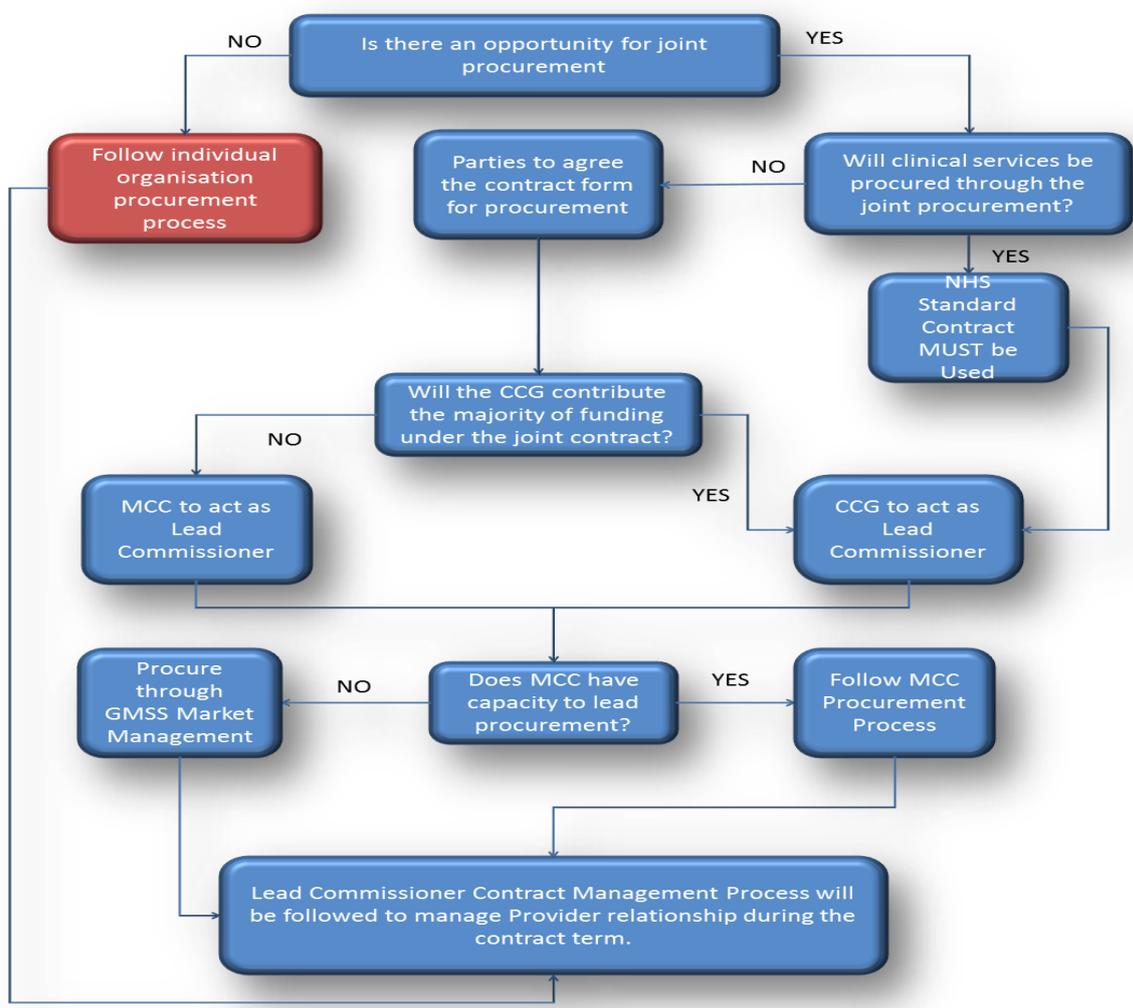
<sup>14</sup> <http://intranet.mcc.local/corpserv/procurement/Documents/SOCIAL%20VALUE%20TOOL%20KIT%2012.03.19.pdf> (only currently applicable to MCC staff as of May 19)

<sup>15</sup> [http://www.manchester.gov.uk/downloads/download/6446/ethical\\_procurement\\_policy](http://www.manchester.gov.uk/downloads/download/6446/ethical_procurement_policy)

## MHCC AGREEMENT ON JOINT PROCUREMENTS AND CONTRACT FORM

The CCG and MCC as part of the MHCC partnership have agreed to work together to align Contracts with Providers who deliver both Health and Care services, as described within the Contract Alignment Strategy. As MHCC progresses with its integration agenda and existing services begin to expire, opportunities to jointly procure services through the partnership will become more frequent. In these instances, both the CCG and MCC must agree on the approach to A) procuring these integrated services and 2) who is best placed between the CCG and MCC to lead on the contract management with the successful provider of those services, including the contractual arrangements to manage provider delivery.

The following flow diagram gives a high level overview on the steps to be followed where a joint procurement opportunity exists:



The NHS technical guidance is clear that clinical services are commissioned through the NHS Standard Contract.

## CONTRACT MANAGEMENT

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Where there is a contract in place, commissioners should use the process in that contract to address concerns about that contract (e.g. underperformance). Using this process can be a cost-effective way of discharging commissioning requirements without the need for procurement which can be costly. Contract Management can also be used for incremental change to service provision, but only where change was envisaged in the contract and where this change does not materially alter the nature of the contract as originally procured such that it amounts to a new contract. This would be likely to be considered the case where:

- Other providers would have been interested in bidding for the contract if the change had originally been part of the specification when the service was originally procured.
- The contract would have been awarded to a different provider if the change had originally been included in the original service specification.
- The change involves genuinely new services not originally within the scope of the specification covered by the contract, or
- There is a significant change in the value of the contract.

Manchester CCG may be subject to challenge if a contract variation is used inappropriately and therefore commissioners should always take appropriate procurement advice before following this route.

## PATIENT CHOICE OF ANY QUALIFIED PROVIDER (AQP)

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Under AQP, any provider assessed as meeting rigorous quality requirements who can deliver services to NHS prices under the NHS Standard Contract is able to deliver the service. Providers have no volume guarantees and patients will decide which providers to be referred to on the basis of quality. It is a means of securing innovative services in line with patient preferences.

To determine whether patient choice of AQP is appropriate for a given service, commissioners should consider the characteristics of the service and the local healthcare system. This will include whether the service lends itself to patient choice, an assessment of the current market, how much competition and choice there is now and how much is required and what the barriers to entry are. The Directory of Qualified Providers will show whether similar opportunities for AQP for that service have been created elsewhere and what price and service specification were used giving a starting point for the procurement of the service.

One of the key features of the suitability of AQP is whether the circumstances of the service mean that patients would be in a position to exercise choice. So, it is more likely to be suitable for planned services than emergency services. Good examples are podiatry and adult hearing services and the current system effectively uses AQP for the vast majority of planned, acute care as patients choose which provider to be referred to for their first consultant-led outpatient appointment for most elective procedures. It is also important that a range of providers would be available.

Where the AQP route of procurement is decided, commissioners will need to determine the service specification and associated pricing structure, key contractual terms and assessment criteria before advertising the opportunity to the market. As set out above, it may find it helpful to refer to existing service specifications and prices before placing the advertisement. Once the opportunity is advertised, providers are assessed using the nationally consistent qualification process and should qualify if they can:

- Meet rigorous quality requirements
- Meet the Terms and Conditions of the NHS Standard Contract
- Accept the NHS price for the service, and
- Provide assurances that they are capable of delivering the agreed service requirements that you have set and can comply with referral protocols.

Providers may challenge a decision not to qualify them where they feel that this has not been made on reasonable grounds. It is therefore essential that commissioners use the nationally consistent qualification process and that decisions are objective, reasoned and recorded at all times.

## FRAMEWORK AGREEMENTS

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A framework is an umbrella agreement which sets out the terms on which the purchasing organisation and the provider(s) will enter into contracts.

These agreements can be established on both a national or regional level and are constituted by a number of pre-approved providers who supply a similar range of goods from which a purchase can be made relatively quickly and easily.

Various framework agreements for goods and services are available through:

- Crown Commercial Service (CCS) (<http://ccs.cabinetoffice.gov.uk>)
- NHS Shared Business Services (SBS) (<https://www.sbs.nhs.uk/procurement/immediate-contract-access>)
- NHS Supply Chain (<http://www.supplychain.nhs.uk/>)

There are two options available to purchase from a framework agreement:

- Apply the terms of the framework agreement (direct call-off)
- Hold a mini-competition

Manchester CCG can be assured that the providers are both financially stable and that the goods and/or services on offer are of a high quality because the suppliers have already been approved and rigorously assessed. Any purchase made through a framework is also compliant with procurement legislation, provided that the rules to engage providers have been followed.

## PILOT PROJECTS

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In certain instances, it may be beneficial to Manchester CCG to offer a contract as part of a pilot project. It should be noted however that a pilot should not be used either as a stop gap measure where the CCG has no intention of entering into a future competitive process, or where a previous contract has lapsed without a competitive tender having taken place, unless such an approach can be fully justified under the requirements of the 2015 and 2013 Regulations.

In order to identify new working practices through the use of pilot projects, Manchester CCG must establish that a project is in fact a pilot via the following definitions:

- There is a specific goal
- The timetable is clearly laid out with defined periods for the start and end dates
- Period for lessons to be learnt
- Clear and signed contract with the pilot service provider
- Robust plan/process for evaluation

- Right to terminate a pilot must be included if it is found to be unsafe or the outcomes cannot be met.

It is important for commissioners to use pilot projects only in circumstances where the clinical outputs are not known or cannot be accurately predicted and that the information/lessons learnt derived from the project can be used to shape services for procurement at a later date. The Commissioner is advised to contact the Market Management GM Shared Service before embarking on a health pilot project to ensure compliance with EU legislation.

## MARKET TESTING

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Prior to publishing a contract notice for a competitive tender, it may be beneficial to undertake market testing exercises, including publication of a Prior Information Notice (PIN), or holding one or more bidder days.

A PIN notice is a method of informing the marketplace in advance that Manchester CCG intend to competitively tender a contract(s) for certain services; and allows interested bidders to express their interest, and to prepare for the publication of the tender. This helps ensure that those bidders most capable of providing a high quality response are able to respond quickly once the contract notice is published.

PIN notices are also a useful way of developing the Manchester CCG's knowledge of the marketplace – by inviting expressions of interest the CCG can understand which and how many providers are interested in specific services, which in turn will help the CCG understand which competitive tender process to use, or indeed, whether a competitive tender is required at all.

For non-healthcare contracts, the 2015 Regulations now allow a PIN to be used as a call for competition.

Holding bidder days is a good way for the CCG to directly engage with the marketplace prior to publishing a contract notice. This is again useful in helping Manchester CCG understand the most appropriate route to market, but can also help inform the development of the service specification as it allows the CCG to engage in dialogue with interested providers in advance of the initiation of the formal tender process. It can also raise awareness of our priorities and new requirements and ways of working, such as a stronger focus on social value and inclusion.

Care should be taken that any market engagement does not give participating suppliers an advantage in any future tender, and that any relevant information disseminated as part of a market engagement process is shared with all providers at the commencement of the formal tendering process.

## OPEN PROCUREMENT PROCESS

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This process should be used where it is known that only a limited number of potential bidders are in the marketplace. This is normally established either through Manchester CCG's existing knowledge of the marketplace, or by carrying out market testing exercises in advance of publication of a contract notice.

Bidders who express an interest in tendering for the contract are issued with Invitation to Tender (ITT) documentation. These bidders will be required to answer very detailed and specific questions in relation to their proposed model of delivery against the CCG service specification, in order to ascertain their capability to deliver the goods/service being procured. Each section/question will carry a weighting, and Bidder responses will be evaluated by a team of CCG

subject matter experts, in accordance with transparent evaluation criteria published as part of the ITT.

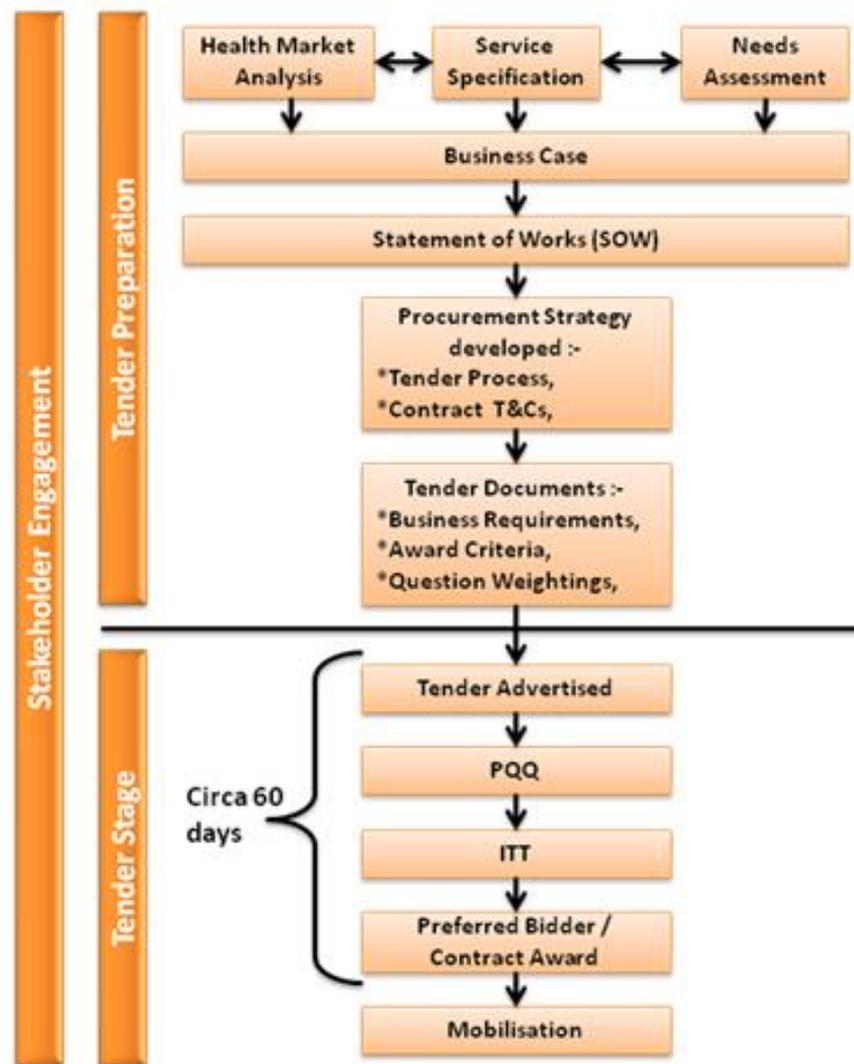
Following selection of a preferred provider to proceed to contract award, the CCG and provider will undergo a period of due diligence prior to signature of the contract and entry into the implementation phase.

## RESTRICTED TENDER PROCESS

This process should be used where it is known that a significant number of potential bidders are in the marketplace, and it would be potentially too resource/cost intensive to use an open tender process. This process consists of a Pre-Qualification Questionnaire (PQQ) stage where bidders express an interest and respond to questions in relation to their suitability to deliver the contract, typically with regard to their commercial, technical and financial capabilities. The PQQ stage provides a method of shortlisting a pre-specified number of interested parties, all of which meet the required minimum qualification criteria, as set out in the tender documentation.

Shortlisted bidders will proceed to the Invitation to Tender (ITT) stage of the process, contract award, and implementation as per the open procedure.

A process model for a typical restricted tender process is outlined on the next page.



It should be noted that for tenders of non-healthcare contracts where the restricted procedure is to be used, the 2015 Regulations now require all tender documentation, including ITT, specification and contract, to be available from the date of publication of the contract notice.

## COMPETITIVE DIALOGUE (CD) PROCESS

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This process should be used in particularly complex procurement projects.

The CD process will proceed via PQQ as per the restricted process, following which shortlisted bidders will be invited to participate in dialogue. This will typically consist of a series of structured, timed meetings between the CCG and each bidder, where various elements of the proposed service and contract will be discussed. Dialogue will be closed at the point where the CCG feels that it is in a position to finalise the specification and contract, and where sufficient potential solutions to the CCG requirements have been generated. The dialogue stage may afford the CCG the opportunity to further down-select from the pool of bidders remaining within the process, provided that bidders have been notified of this in advance. Following closure of dialogue, remaining bidders will be invited to submit a final tender, which will proceed as per the ITT stage within the open and restricted processes.

Under CD, there is very limited scope for negotiation of the contract terms following the closure of dialogue.

Where open, restricted or competitive dialogue processes are being undertaken via OJEU, the CCG is required to adhere to specific time restrictions as set out in the applicable Regulations, including adherence to the 10 day standstill (Alcatel) period following notification to all bidders of the outcome of the tender process.

## FORM OF CONTRACT

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Manchester CCG will ensure that the NHS Standard Contract or where appropriate an NHS Standard Deed of Variation will be used for all contracts for NHS funded health and social care services commissioned by the CCG. Where non-healthcare contracts are awarded then the standard NHS Terms and Conditions for the Supply of Goods and Services should be used.

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

In the exceptional circumstance that a non-standard NHS contract is used, the appropriate IG clause and appendix must be embedded into the contract to ensure suppliers comply with Manchester CCG's Confidentiality and Data Protection Policy.

Where conducting joint procurement with Manchester City Council, it may be appropriate to use the Council's standard contract and Terms & Conditions where non-clinical services are being procured.

## AWARDING OF CONTRACTS

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Depending on the nature and value of the procurement, the Governing Body may choose to delegate sign off to the Chief Accountable Officer or Chief Finance Officer. If this process is not agreed for an individual procurement, the CCG Governing Body should be consulted on the outcome of the process and receive a recommendation for contract award before the CCG makes an award of contract.

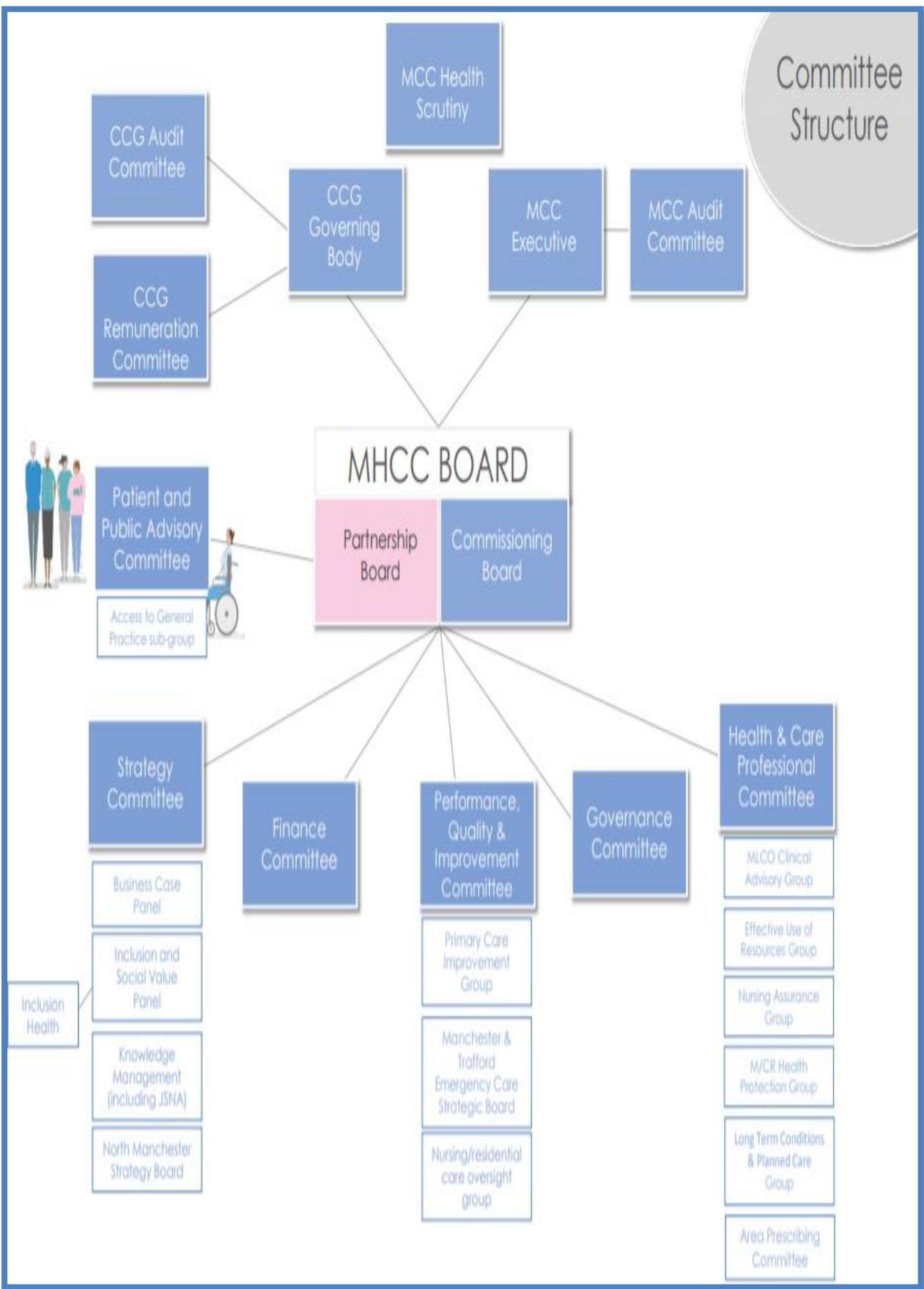


Manchester CCG is also required to publish the following information on Contracts Finder following award of the contract:

- Who the contract was awarded to
- The value of the contract
- The criteria used to select the supplier
- A copy of the contract and any other contractual documents
- Whether or not the supplier(s) might subcontract some of the work

Where the full requirements of the 2015 Regulations are to be followed, then a contract notice must be published on the TED website, which is the supplement of the Official Journal of the European Union (OJEU).

**APPENDIX 1 - MHCC COMMITTEE STRUCTURE 2019**



## APPENDIX 2 - DECLARATIONS OF INTEREST & CONFIDENTIALITY AGREEMENT

### Declarations of Interest & Confidentiality Agreement

Project Name	
Procurement Project Lead	

#### What is a conflict?

Broadly, a conflict of interest is a situation where an individual's ability to exercise judgment or act in one role is, or could be, impaired or influenced by that individual's involvement in another role.

A conflict will arise where an individual's ability to exercise judgment or act in their role in the **commissioning of services** is impaired or influenced by their interests in the **provision of those services**.

#### Legislation

Regulation 6(1) of the NHS (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (the "Regulations"), prohibits commissioners from awarding a contract for NHS health care services where conflicts, or potential conflicts, between the interests involved in commissioning such services and the interests in providing them affect, or appear to affect, the integrity of the award of that contract.

Regulation 6(2) of the Regulations requires commissioners to maintain a record of how any conflicts that have arisen have been managed.

Regulation 24 of the Public Contract Regulations 2015, Conflicts of interest states:

- 1) Contracting authorities shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.
- 2) For the purposes of paragraph (1), the concept of conflicts of interest shall at least cover any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.
- 3) In paragraph (2)— "relevant staff members" means staff members of the contracting authority, or of a procurement service provider acting on behalf of the contracting authority, who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure;

#### **Decision Making Process**

If a conflict of interest arises, a decision on any actions to be taken will be made in accordance with Manchester Health & Care Commissioning's conflict of interest policy.

The form must provide sufficient detail of each interest so that a member of the public would be able to understand clearly.

Completed forms are to be signed and the original signed hard copy should be handed to the procurement project lead or posted to the following address:

*[Insert name]*, Procurement Project Lead, Manchester Health and Care Commissioning, Second Floor, Parkway 3, Parkway Business Centre, Princess Road, Manchester, M14 7LU.

**Part 1: Conflict of Interest Declaration**

Please read statements 1 – 7 thoroughly. If you acknowledge and agree with each of the statements please complete Box A.

- If, at statement 2, you have no conflict of interest, move on to Part 2 – Confidentiality Agreement.
- If, at statement 2, you identify a potential conflict please complete the Declaration of Interest Form and move onto Part 2 – Confidentiality Agreement.

**Statements**

1. Neither I nor any member of my family, close friends or any other acquaintances, have any financial, non-financial, professional, non-financial personal or indirect interests of any nature in any individual, organisation or group who may express an interest or put forward a bid for this procurement;
  2. I have no conflict of interest of any kind, in providing input and/or advice in connection with this procurement;
- OR
2. I have identified an actual/potential conflict of interest in connection with this procurement  
*Please delete that which does not apply*
  3. I will advise Manchester Health & Care Commissioning as soon as it is known of any conflict of interest which may arise at any point during my involvement in this procurement;
  4. To the best of my knowledge, no-one with whom I have a direct association has expressed an interest or intends to submit a bid for this procurement;
  5. I waive the right to submit a bid for any tender opportunity with which I have had direct involvement;
  6. I have completed any mandatory conflict of interest training necessary;
  7. I have declared any conflicts in line with my organisation governance procedures;

<b>Box A:</b>			
I confirm and agree to the statements 1 – 7 which form the conflict of interest declaration.			
<b>Name</b>	<b>Position &amp; Organisation</b>	<b>Date</b>	<b>Signature</b>

**DECLARATION OF INTEREST FORM**

<b>Name:</b>				
<b>Position or relationship with MHCC:</b> (member, employee, committee member, contractor, volunteer)				
<b>Detail of interests held</b>				
<b>Type of Interest*</b>	<b>Description of Interest (including for indirect Interests, details of the relationship with the person who has the interest)</b>	<b>Date interest relates From &amp; To</b>		<b>Actions to mitigate risk: (to be agreed with procurement project lead)</b>

*The information submitted will be held by the CCG for personnel or other reasons specified on this form and to comply with the organisation's policies. This information may be held in both manual and electronic form in accordance with the Data Protection Act 2018. Information may be disclosed to third parties in accordance with the Freedom of Information Act 2000 and published in registers on the CCG websites.*

I confirm that the information provided above is complete and correct. I acknowledge that any changes in these declarations must be notified to the CCG as soon as practicable and no later than 28 days after the interest arises. I am aware that if I do not make full, accurate and timely declarations then civil, criminal, or internal disciplinary action may result. I have understood the CCG's Conflict of Interest Policy and Constitution.

I give my consent for this information to be published on registers that the CCG holds. If consent is NOT given please give reasons. Decisions not to publish information will be made by the Conflicts of Interest Guardian.

<i>Signed:</i>	<i>Date:</i>
<i>Signed(Procurement project lead)</i>	<i>Date:</i>

## TYPES OF INTEREST

Type of Interest	Description
<b>Financial Interests</b>	<p>This is where an individual may get direct financial benefits from the consequences of a commissioning decision. This could, for example, include being:</p> <ul style="list-style-type: none"> <li>• A director, including a non-executive director, or senior employee in a private company or public limited company or other organisation which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations;</li> <li>• A shareholder (or similar owner interests), a partner or owner of a private or not-for-profit company, business, partnership or consultancy which is doing, or which is likely, or possibly seeking to do, business with health or social care organisations.</li> <li>• A management consultant for a provider;</li> <li>• In secondary employment;</li> <li>• In receipt of secondary income from a provider;</li> <li>• In receipt of a grant from a provider;</li> <li>• In receipt of any payments (for example honoraria, one off payments, day allowances or travel or subsistence) from a provider;</li> <li>• In receipt of research funding, including grants that may be received by the individual or any organisation in which they have an interest or role; and</li> <li>• Having a pension that is funded by a provider (where the value of this might be affected by the success or failure of the provider).</li> </ul>
<b>Non-Financial Professional Interests</b>	<p>This is where an individual may obtain a non-financial professional benefit from the consequences of a commissioning decision, such as increasing their professional reputation or status or promoting their professional career. This may, for example, include situations where the individual is:</p> <ul style="list-style-type: none"> <li>• An advocate for a particular group of patients;</li> <li>• A GP with special interests e.g., in dermatology, acupuncture etc;</li> <li>• A member of a particular specialist professional body (although routine GP membership of the RCGP, BMA or a medical defence organisation would not usually by itself amount to an interest which needed to be declared);</li> <li>• An advisor for Care Quality Commission (CQC) or National Institute for Health and Care Excellence (NICE);</li> <li>• A medical researcher.</li> </ul>
<b>Non-Financial Personal Interests</b>	<p>This is where an individual may benefit personally in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit. This could include, for example, where the individual is:</p> <ul style="list-style-type: none"> <li>• A voluntary sector champion for a provider;</li> <li>• A volunteer for a provider;</li> <li>• A member of a voluntary sector board or has any other position of authority in or connection with a voluntary sector organisation;</li> <li>• Suffering from a particular condition requiring individually funded treatment;</li> <li>• A member of a lobby or pressure groups with an interest in health.</li> </ul>
<b>Indirect Interests</b>	<p>This is where an individual has a close association with an individual who has a financial interest, a non-financial professional interest or a non-financial personal interest in a commissioning decision (as those categories are described above). For example, this should include:</p> <ul style="list-style-type: none"> <li>• Spouse / partner;</li> <li>• Close relative e.g., parent, grandparent, child, grandchild or sibling;</li> <li>• Close friend;</li> </ul>

Type of Interest	Description
	<ul style="list-style-type: none"> <li>• Business partner.</li> </ul>

**PART 2: CONFIDENTIALITY AGREEMENT:**

Please read statements 8 – 16 and complete box B to acknowledge and agree that:

**Statements**

8. The documents made available to me, in electronic/hard copy format at any stage of the procurement process are classified, commercial, in confidence;
9. I confirm that none of these documents nor their contents will or have been released, disclosed or divulged by me, or on my behalf, to any third party without the relevant authorisation;
10. I understand that the release or disclosure of such material to a third party without such authorisation will be regarded very seriously and may result in disciplinary or formal action;
11. I will treat any verbal and written information issued to me in relation to the procurement as strictly confidential;
12. I will not share any information or documentation received with any third party without the express agreement of the Contracting Authority;
13. I will not leave hard copies of documents in any public place risking unauthorised access to them;
14. I will safeguard electronic access to documents at all times;
15. I will advise Manchester Health & Care Commissioning of any potential or actual breach of this agreement whether intentional or not; and
16. I will ensure the safeguarding of all documents and information at all times both pre and post award.

<b>Box B:</b>			
I confirm and agree to the statements 8 – 16 which form the confidentiality agreement.			
Name	Position & Organisation	Date	Signature