

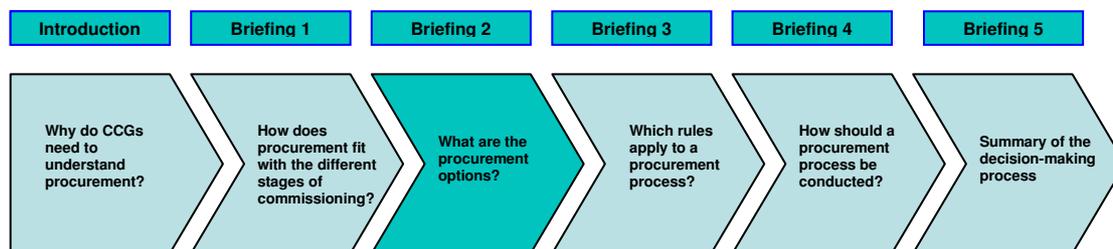
Procurement of healthcare (clinical) services

Briefing 2: What are the procurement options?

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Briefing 2: What are the procurement options?



Should you carry out a procurement process for healthcare services?

The first step is to assess whether a new healthcare service is required. Where an existing service is not being delivered to the required quality or quantity, your first step will be to secure improvements through contract management, for example through payment mechanism, performance monitoring and/or dispute mechanisms. Only after these mechanisms have been exhausted should termination of the contract and its replacement with a new service be undertaken.

Having established that a new healthcare service is required, you should first consider whether any existing contractual arrangements could be used to deliver the required services.

Where there is a contract for healthcare services already in place, you may be able to use the variation or change processes in that contract to secure 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.

As your CCG may be subject to challenge if you use a contract variation inappropriately, you should always take appropriate procurement advice before following this route.

Where none of these options is available, you will need to consider your procurement options for letting a new contract.

What sort of a procurement route is appropriate?

The main procurement routes available to you are:

- to open the service to Any Qualified Provider (AQP) and enable patients to choose from these providers;
- competitive tendering process to appoint a specific provider, a specified number of providers or collaboration of providers; or
- appoint a specific provider or group of providers without competition (Single Tender Action).

Which of these routes you choose will depend on various factors set out below, including the nature, scale and importance of the required service, the urgency of the clinical need, the number of potential providers, patients' preferences, and whether the service is suitable for an AQP approach.

The rationale for procurement decisions will need to be approved by the CCG (or under permitted delegated authority) and should be documented formally to ensure transparency and accountability.

In addition, and where appropriate, care should be taken to structure any procurement process in a way that makes it fair and transparent to all bidders (e.g. if using dialogue, all bidders that meet minimum requirements should be given the same opportunity to enter into such dialogue).

Patient choice of Any Qualified Provider

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, you 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 you a starting point for the procurement of your 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.

The AQP Resource Centre provides more information and a checklist¹ of activities commissioners should review when deciding on commissioning services through Any Qualified Provider.

Where you decide to use the AQP route, you 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, you 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 you use the nationally consistent qualification process and that your decisions are objective, reasoned and recorded at all times.

For more information, there is a commissioner toolkit for AQP at <http://www.supply2health.nhs.uk/AQPResourceCentre/Pages/AQPHome.aspx>

Competitive tendering process

This is the most common and wide-ranging route for procurement. Where there is more than one potential provider for a service and an Any Qualified Provider approach is not considered suitable, you may elect to run a competitive tender process in order to award a contract. A competitive process should ensure fairness and help demonstrate value for money.

¹<https://www.supply2health.nhs.uk/AQPResourceCentre/AQPServices/Qualification/Pages/Stage0.aspx>

There are several types of competitive tendering processes. For instance:

- if a large number of providers are likely to be interested, you should consider using a multi-stage tendering process to restrict the number of providers that are ultimately invited to bid. This can make the process more manageable and reduce costs both for your CCG and for the bidders;
- for a complex procurement or where you are seeking innovative solutions or need to work with the providers to develop the service model, it may be more appropriate to use a process that allows for a dialogue with bidders, rather than just asking for bids in response to a defined specification.

No competition - Single tender action

Where you determine through analysis of the market and proportionate and transparent engagement with potential providers that the services are capable of being provided only by one particular provider (e.g. for technical or economic reasons), or there is an urgent clinical need, you may consider it appropriate to proceed with a single tender action, where a contract is awarded to a single provider – or a limited group of providers – without competition.

The law in this regard is complex and carries an inherent risk of challenge. It is therefore important if you decide to take this route that you record the rationale for the decision. Failure to plan adequately is unlikely to be accepted as an urgent clinical need. Where a service is put in place for reasons of urgency or safety, you should consider this as an interim step and plan to undertake a competitive process as soon as possible.

It may be possible, in very limited circumstances, to award a contract to one provider to protect exclusive rights (e.g. intellectual property) that the provider holds, but only if another provider could not offer an equivalent service or way of providing the service, which would achieve the same outcome or aim.

It is good practice and prudent to advertise a single tender opportunity in the same way as any for other contract opportunity to demonstrate transparency and equality of treatment and to determine that there really is only one capable provider. You should ensure that you have in place evidence of the review and options appraisal that led to the decision that a single tender action is appropriate.

Conflicts of Interest

In all of the procurement routes described above, it is possible that the chosen provider or key personnel are also a member of the CCG. There is a conflict of interests in this situation. The Code of Conduct for CCGs² describes safeguards that

² See <http://www.commissioningboard.nhs.uk/files/2012/07/c-of-c-conflicts-of-interest.pdf>

CCGs are advised to put in place where commissioning services that may be provided by members of the CCG. These include a template to help CCGs assure themselves and others that the right process has been followed and a protocol to ensure that conflicted individuals do not participate in decision-making wherever possible.

You should ensure that these additional safeguards, as well as more general advice regarding conflicts of interest³, are followed with particular rigour where a single tender action procedure is used to award a contract. Failure to do so could result in a legal challenge to the procurement.

³The NHS Commissioning Board will publish guidance for CCGs on their duties with regard to managing conflicts of interest under the Health and Social Care Act 2012.