

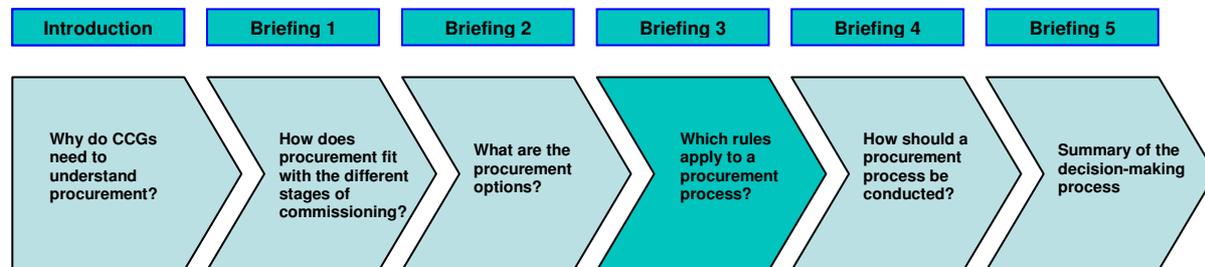
Procurement of healthcare (clinical) services

*Briefing 3: Which rules apply to a
procurement process?*

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Briefing 3: Which rules apply to a procurement process?



Whether you use Any Qualified Provider (AQP), a competitive process or award a contract following a Single Tender Action, you need to be aware of the rules and regulations that apply.

Procurement legislation

The EU Procurement Directives¹, implemented into UK law by The Public Contracts Regulations 2006², apply to the award of contracts by public bodies.³

Under the current Procurement Regulations, services are categorised as Part A or Part B services. Health and social care services are categorised as Part B services. Part A services include, for example, payroll services, patient transport services, cleaning services, consumables and equipment and commissioning support services.

When awarding a contract for Part A services, prescribed procedures and timescales must be followed. These are not dealt with in this Briefing. The NHS Commissioning Board will shortly be engaging with CCGs to explore the ways in which they might procure other goods and services, including commissioning support services (e.g. through procurement frameworks), and guidance will be published later in the year.

Currently, more flexible procedures can be used in conducting a procurement for Part B services (i.e. when awarding a contract for healthcare services). It is up to you to decide what form the procurement process takes but whichever process is chosen, the overarching principles of transparency, proportionality, equality of

¹ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_134/l_13420040430en01140240.pdf

² <http://www.legislation.gov.uk/uksi/2006/5/contents/made>

³ The EU Commission has published proposals to revise the existing EU procurement rules. CCGs will need to be aware of any changes when implemented and ensure that they comply with the revised rules as appropriate.

treatment and non-discrimination apply. One way to demonstrate that these principles have been followed is to mirror a Part A process.

Sector specific regulations on procurement, choice and competition

In addition to the legislation above, CCGs will need to be familiar with the requirements of the sector-specific regulations - the Procurement, Choice and Competition Regulations⁴ that will establish minimum standards governing procurement and contracting for healthcare services. The Department of Health is consulting on proposals for these regulations over the autumn and the regulations will come into force from April 2013. The proposed regulations build on the existing rules for commissioners set out in the Principles and Rules for Cooperation and Competition but place them on a firmer, statutory footing.

The overarching requirements of procurement

The existing guidance to commissioners, *the Procurement guide for the commissioning of NHS funded services*, sets out requirements to meet the overarching obligations of procurement law, namely:

Transparency

You must be able to account publicly for your expenditure and actions by:

- publicly stating your commissioning strategies and intentions;
- publicly stating the outcome of service reviews and how services will be secured (e.g. competitive tendering, AQP, or single tender action);
- advertising procurements on NHS Supply2Health[®] (where over £100,000) and OJEU, where appropriate (i.e. where high value and/or cross-border interest);
- publishing evaluation and scoring criteria in your procurement documents;
- publishing details of contract awards on NHS Supply2Health[®] and in OJEU (where over €200,000 in value);
- maintaining an auditable documentation trail of key decisions; and
- complying with Cabinet Office policy and guidance⁵ by publishing all tender opportunities and contract awards over £10,000 on Contracts Finder⁶.

⁴http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_118220.pdf

⁵<http://www.cabinetoffice.gov.uk/content/policy-and-guidance-transparency-public-sector-procurement-and-contracting>

⁶<http://www.contractsfinder.businesslink.gov.uk/>

Proportionality

The level of resources you apply to the procurement process should be proportionate to the value, complexity and risk of the services contracted.

Low value and less complex contracts may be procured using more streamlined processes. However, you must ensure that quality standards, including patient safety, are not compromised as a result. You must still ensure that you comply with the other principles of transparency, non-discrimination and equality of treatment.

Non-discrimination

The specification and bidding process must not discriminate against or in favour of any particular provider or group of providers. You must apply objective evaluation criteria and weightings to all bids. Your procurement process should not give any advantage to any market sector or nationality/geographical background. In awarding a contract, you should consider how the potential providers meet your objective evaluation criteria, not what sort of organisations they are or where they are from.

Equality of treatment

You must ensure that all potential providers are treated the same throughout the process. This means that you must:

- provide the same information to all potential providers at the same time; and
- specify rules of engagement and evaluation criteria in advance of provider involvement and apply them in the same way to each potential provider.

Conflicts of interest

You also need to be able to recognise and manage any conflicts of interest that may arise in relation to procurement. The NHS Commissioning Board Authority has published a *Code of Conduct*, which sets out recommended safeguards for CCGs when commissioning services for which GP practices are potential providers.