

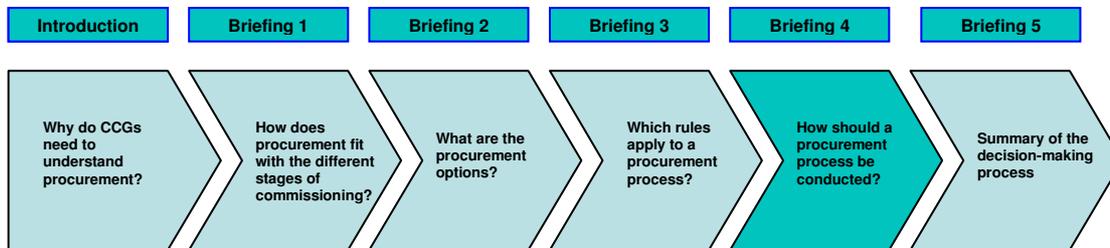
# **Procurement of healthcare (clinical) services**

*Briefing 4: How should a  
procurement process be  
conducted?*

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# Briefing 4: How should a procurement process be conducted?



This briefing focuses on the key points that are applicable in any procurement:

## 1. Advertising the procurement

Where you decide to proceed with a procurement, this should be notified to potential providers via NHS Supply2Health<sup>®</sup> and, where appropriate, the Official Journal of the European Union (i.e. where there is likely to be cross-border interest in the contract or it is a high value contract).

Advertising should provide sufficient detail of the services (what they are, how they are to be delivered, how they are to be priced, expected outcomes etc) and how you will award the contract (i.e. your evaluation criteria). This must allow bidders to clearly understand the requirements and express interest in providing the service.

If an Any Qualified Provider (AQP) approach is being adopted, an advertisement is also necessary so that providers are able to respond to the opportunity.

Where using commissioning support services to carry out procurements, a CCG will need to have developed and signed off service plans and service specifications, decided upon the appropriate procurement route and ensured that the advert correctly reflects its intentions.

## 2. Inviting providers to respond to your requirements

You will then need to issue a form of 'invitation to tender' or 'invitation to participate in a dialogue', which should specify the clinical and other requirements that the providers will need to meet, how providers should demonstrate their ability to meet those requirements, the process by which you will choose your preferred provider (e.g. method of shortlisting, terms of any negotiation etc.) and the criteria that you will use to evaluate the providers' responses. The invitation should set out the

timetable of the process, which should be realistically set with adequate time included for each stage.

This invitation will need to include the pricing strategy that will be adopted, the type of contract being offered, any associated contractual requirements and the length of the opportunity.

It is important that you are clear and consistent and you adhere to your stated processes so that providers have a fair and equal opportunity to respond to the offer you are making.

Where using commissioning support services your CCG will need to ensure that the invitation correctly reflects your intentions and determine evaluation criteria that reflect its priorities and requirements.

### ***3. Evaluating the responses***

Once a contract opportunity has been offered, you must then use a non-discriminatory, transparent and objective process to evaluate the responses. These evaluation and scoring processes should be stated at the time of the offer so that providers understand how the procurement process will be operated.

If you are looking to 'short-list' providers before evaluating bids, a pre-qualification process will be required. If you are looking to explore with providers new solutions and ways of working, you will need a procedure involving dialogue with bidders.

Public procurement policy usually requires that commissioners award contracts by selecting the Most Economically Advantageous Tender. This means that, rather than simply accepting the lowest price, you take into account overall value for money by considering factors such as quality and business risk.

For AQP, there needs to be a clear explanation of the way in which providers will be assessed when responding to the opportunity being offered.

Where using commissioning support services, CCGs should still be involved in the evaluation process to ensure that it is carried out appropriately. **The CCG should always make the final decision about any appointment.**

### ***4. Standstill period***

A standstill period is a period of at least 10 days between the decision to award a public contract and the signing of the contract and is intended to give unsuccessful tenderers an opportunity to challenge the decision before their rights to obtain relief other than damages are closed off.

Although the Procurement Regulations do not require a standstill period for Part B services, recent case law has determined that in some cases (e.g. for high-value

contracts and/or where there is likely to be cross-border interest), procurement processes should include a standstill period. You should therefore consider including a standstill period in any procurement process.

## **5. Contract award**

Contract awards over £100,000 are required to be published on NHS Supply2Health<sup>®</sup>. Contract awards over €200,000 are also required by law to be published in OJEU. In addition, in keeping with Cabinet Office rules for public procurement all public bodies, including NHS commissioners, are required to publish details of all contracts awarded over £10,000, including the name and address of the provider, the scope of services, contract value and expiry date in Contracts Finder<sup>1</sup>.

Where using commissioning support services, CCGs will need to check that these requirements are met.

## **What are the consequences of not complying with procurement obligations?**

Where a commissioner does not comply with its procurement law obligations, legal action may be brought against it. If an action is brought before the contract has not yet been entered into, the remedies could include: payment of damages, the procedure being suspended, or a decision or action being set aside.

Where the contract has been entered into already, the remedies include setting aside the contract and/or awarding damages, depending on the circumstances.

The Cooperation and Competition Panel, which currently applies the Principles and Rules of Cooperation and Competition, will have a distinct role within Monitor (the healthcare sector regulator) and will be able to investigate complaints of breaches by NHS commissioners of the regulations governing procurement.

## **Where can you find further guidance on procurement procedures?**

More detailed guidance is set out in the *Procurement guide for commissioners of NHS-funded services*. This includes an overview of competitive procurement models in Annex C.

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<sup>1</sup> <http://www.contractsfinder.businesslink.gov.uk/>

## **Can you delegate these responsibilities to another body?**

No. You are responsible for complying with these procurement obligations. Although you may enter into arrangements with other organisations (e.g. commissioning support services) for the delivery of certain procurement activities, the obligations remain yours. It is therefore essential that you understand your obligations and that you participate actively in the procurement activities even though decisions may be made on the basis of recommendations put to you by your commissioning support provider.

## **Collaborative and joint commissioning**

Where a procurement is the subject of joint commissioning between several commissioners and/or with Local Authority partners then decision-making should be consistent with the governance of the joint commissioning arrangement.

Local Authorities are subject to the same legislative frameworks, e.g. Public Contract Regulations and EU Procurement Directives, but may not be required to comply with NHS specific guidance and regulations.