

Procurement Policy for Healthcare and Goods and Services

VERSION CONTROL

Version:	1.0
Ratified by:	Governing Body Meetings in Common
Date ratified:	20 th March 2019
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Name of responsible committees:	Finance and Performance Committee
Date issued:	March 2019
Review date:	January 2020

VERSION HISTORY

Date	Version	Comment / Update
March 2019	1.0	Approved by Governing Body Meetings in Common

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1. Introduction and Overview

This Procurement Policy outlines key principles and considerations that will inform decision making. It is not intended to be comprehensively prescriptive and recognises the necessity for situational discretion when appropriate.

Consideration will need to be given to application of this Procurement Policy when the CCGs seek to establish contracts collaboratively across wider contracting authority organisations, including other CCGs and local authorities. Recognition will be given to their respective procurement policies and agreement will be sought to ensure a mutually acceptable approach on a case by case basis, ensuring that potential conflicts with this Procurement Policy are considered by the Senior Management Team of the affected CCGs and/or local authorities, as the case may be.

Recognising the often complex and continually developing regulatory regime that impacts on decisions to award contracts, appropriately qualified and experienced advice and guidance should be sought to inform decision making regarding the awarding of contracts and associated processes. Arrangements should exist for decision makers to have access to appropriately experienced procurement professionals and where appropriate, specialist procurement legal services.

This policy document will govern and inform the procurement decisions of the CCGs and to provide assurance as to the most appropriate route to market for all types of goods and services. All CCG staff must comply with this Policy.

This Policy takes into account current competition and procurement rules and will be updated in line with any changes to UK and EU legislation, this policy may need a thorough review on or after the anticipated Brexit.

This Policy will be reviewed and updated in line with amendments to EU Thresholds which occur bi-annually on the 1st January. The current thresholds are covered in Appendix B of this document.

For the policy to be effective and for procurement to make a strategic impact within the organisation, the scope and content of the policy must be applied to all non-pay expenditure procured within the CCG.

The main aims of this policy are to make real and positive contributions to the strategic direction of the organisation in the following areas:

- Achieving the NHS 5 year forward view and the Long Term Plan
- Supporting the efficiency agenda across the NHS
- Support the STP system control totals
- Streamlining procurement processes
- Making a direct contribution to improved patient care and treatment outcomes ensuring equality across the healthcare community
- Enabling the organisation to be more commercially focussed
- Supporting collaborative procurement
- Enabling the organisation to support government initiatives in public procurement
- Effective use of resources

The CCG commissions specialist procurement support and advice from NHS Arden & GEM CSU (AGCSU). The CCG's Chief Finance Officer (CFO) together with support from AGCSU will have overall responsibility for the implementation of the strategy.

This procurement policy has therefore been developed to ensure the scope, context, and legal responsibilities of both the CCG and the CSU are compliant.

2. General Procurement Principles

The following principles govern the administration of procurement within the CCG:

- 2.1. Procurement of healthcare services must be conducted in accordance with the **Public Contracts Regulations 2015 (PCR 2015) Light Touch Regime (LTR)**, which applied to Healthcare Services from 18 April 2016 and the **National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 (PPCC 2013)**
- 2.2. Procurement of non-healthcare goods and services must be conducted in accordance with the **Public Contracts Regulations 2015**.
- 2.3. Procurement of healthcare services and non-healthcare goods and services must be conducted in accordance with the CCGs' Prime Financial Policies (PFPs) and Standing Financial Instructions (SFIs).
- 2.4. The CCG will also ensure that the following principles, embedded within PCR 2015, are complied with:
 - 2.4.1. **Proportionality** - procurements must be carried out as cost effectively as possible. The level of resources applied should be proportionate to the value and complexity of the services to be procured, although it is recognised that low to medium value procurements, i.e. with a total contract value under the EU threshold, may also contain particularly high risk or contentious issues (political, patient interest, patient safety, TUPE etc.) which may need (significant) resources to resolve.
 - 2.4.2. **Transparency** – procurement activities must be transparent. CCGs must be able to account publicly for expenditure and actions by advertising procurement opportunities, publishing evaluation and scoring criteria in procurement documents, publishing details of contract awards on Contracts Finder and the Official Journal of the European Union (OJEU), where required by Regulation and/or internal policies. The CCG will also maintain an auditable documentation trail of key decisions and ensure that any actual or perceived conflicts of interest are managed appropriately. See Section 6 for further details.
 - 2.4.3. **Non-Discrimination** - the specification and procurement process must not discriminate against, or in favour of, any particular provider or group of providers. Objective evaluation criteria must be applied to all bids (and PQQs/Selection Questionnaires where used).
 - 2.4.4. **Equality of Treatment** - all potential providers must be treated the same throughout a procurement process. This means that the same information must be provided to all potential providers at the same time, and the rules of engagement and evaluation criteria must be specified in advance of provider involvement and be applied in the same way to each potential provider.

3. Scope and Context of the Policy

The scope of this policy covers the expenditure of the CCG which includes the procurement of all goods and services, as well as the procurement of healthcare services.

The CCG requires this policy to be followed by:

- All employees and appointees of the CCGs (including all individuals working within the CCGs in a temporary capacity, including agency staff, seconded staff, students and trainees, and any self-employed consultants or other individuals working for the CCGs under contract for services).
- Any other individual directly involved with the business or decision-making of the CCGs.

There is a legislative framework within which public sector procurement operates. The CCG has a duty to meet these legislative responsibilities whilst ensuring the health needs of its population is being met. This is supported by public sector procurement regulations, NHS specific regulations and guidance plus other regulations, which include, but is not limited to (and is subject to change):

- The Public Contracts Regulations 2015 for healthcare services.
- The National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013
- The Public Services (Social Value Act) 2012
- Equality Act 2010
- Freedom of Information Act 2000

4. Healthcare Services Procurement

Procurement of healthcare services must be conducted in compliance with:

- **Public Contracts Regulations 2015 (PCR 2015) (Light Touch Regime);** and
- **The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (PPCC 2013).**

These regulations impose requirements on CCGs to ensure equal treatment of providers and good practice when procuring healthcare services, to protect patients' rights to make choices, and to prevent anti-competitive behaviour. It should be noted that, where there is any potential conflict between the two sets of Regulations, the requirements of the Public Contract Regulations 2015 will take precedence.

4.1. Public Contracts Regulations 2015 (PCR 2015) - Light Touch Regime (LTR)

The **Mandatory Requirements** of these Regulations are:

i) **OJEU Advertising:** contracts for healthcare services must be advertised in OJEU via the publication of a Contract Notice or Prior Information Notice (and procure in a compliant manner) if the total contract value exceeds the current EU Threshold (**see Appendix B**). The exception to this is where the grounds for using the negotiated procedure without a call for competition could have been used, for example where there is only one provider capable of supplying the services required, and the lack of market interest has been confirmed.

ii) The publication of a **Contract Award Notice** following each procurement, in order to comply with the full regulations. For the Light Touch Regime an award notice may be published after the contract award, or if preferred, grouped and published on a quarterly basis.

iii) **Compliance with Treaty principles** of transparency and equal treatment.

iv) **Conformance with the information provided in the OJEU advert** (Contract Notice or Prior Information Notice) regarding any conditions for participation, time limits for contacting/responding to the CCG, and the award procedure to be applied.

v) **Imposing reasonable and proportionate time limits on suppliers**, such as for responding to adverts and tenders. There are no stipulated minimum time periods in the LTR rules, so the CCG should use its discretion and judgement on a case-by-case basis.

4.1.1. **Award of a Contract Without Competition**

The CCG may make a direct award of contract for healthcare services without advertising an intention to seek offers. To do so, the CCG must be satisfied that the services required are capable of being provided by only that provider (or the CCG can clearly and robustly demonstrate that the provider identified is the most capable) and the award also complies with Regulation 32 of the Public Contract Regulations 2015 (See below).

For total contract value above the EU Threshold, the possibility of a direct award with no competition is covered under Regulation 32 of the Public Contract Regulations 2015. This states it is only possible under the following circumstances:

- a) Where no tenders or no suitable tenders were received from providers in response to an Open or Restricted procedure procurement process; or
- b) Competition is absent for technical reasons (i.e. only one provider can meet the specification, and this has been evidenced and justified appropriately); or
- c) For reasons of extreme urgency brought about by events unforeseeable by the CCG, the time limits for procurement cannot be met and this has been justified appropriately – poor planning is not an appropriate or acceptable justification.

For a total contract value below the EU Threshold the CCG must instead comply with the stipulations of the Procurement, Patient Choice & Competition (2) Regulations 2013 (See section 4.2 below).

4.1.2. **Contract Variation**

Where a contract is already in place with a provider, the CCG may be able to use it compliantly 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. Regulation 72 spells out these requirements.

A change would be considered “material” where:

- a) 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; or
- b) the contract would have been awarded to a different provider if the change had originally been included in the original service specification; or
- c) the change involves genuinely new services not originally within the scope of the specification; or

- d) there is a significant change in the value of the contract.

Regulation 72 provides the opportunity to vary existing contracts and is detailed in **Appendix A**. Where the CCG believes that any of the conditions detailed in this Appendix may apply to enable them to compliantly vary a contract, the rationale should be clearly documented, and specialist procurement/legal advice sought.

4.2. The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013.

These regulations apply regardless of total contract value. The key points of the legislation are as follows. For the full Regulations refer to <http://www.legislation.gov.uk/ukxi/2013/500/contents/made>

4.2.1. Procurement: Objective

When procuring healthcare services a CCG must act with a view to:

- a) securing the needs of the people who use the services,
- b) improving the quality of the services, and
- c) improving efficiency in the provision of the services.

This can include through the services being provided in an integrated way.

4.2.2. Procurement: General Requirements

When procuring healthcare services, a CCG must:

- a) act in a transparent and proportionate way; and
- b) treat providers equally and in a non-discriminatory way, including by not treating a provider more favourably than any other provider, in particular on the basis of ownership.

The CCG must procure the services from one or more providers that:

- a) are most capable of delivering the procurement objective (Section 5.1.1); and
- b) provide best value for money in doing so.

In acting with a view to improving quality and efficiency in the provision of the services, the CCG must consider appropriate means of making such improvements, including through:

- a) the services being provided in a more integrated way,
- b) enabling providers to compete to provide the services, and
- c) allowing patients a choice of provider of the services.

4.2.3. Advertisements and Expressions of Interest

The PPCC Regulations do not mandate the publication and advertisement of contract opportunities, or notices prior to awarding a contract. When advertising an intention to seek offers, the CCG must publish a notice on Contracts Finder (a website dedicated to the advertising of opportunities for providers of healthcare).

4.2.4. Powers of NHS Improvement (formerly Monitor) to Investigate

NHS Improvement (or any subsequent body) may investigate a complaint it has received from a provider where it believes a CCG has failed to comply with a requirement imposed by the PPCC regulations.

NHS Improvement may also investigate whether a relevant body has failed to comply with the requirements of the PCC regulations on its own initiative, however this is likely to be in exceptional circumstances only.

4.3. Procurement Options

When commissioning healthcare services the CCG has several procurement options that are available to it. The main options are as follows:

1. Contract Variation
2. Direct Award without Competition (Issue of a new contract)
3. Competitive Tendering
4. Any Qualified Provider (AQP)

4.3.1. Contract Variation

Where there is a contract already in place the CCG may, in some instances, vary this contract to secure incremental change to service provision. This variation could include amendments to the scale of the contract (i.e. increase / decrease in activity volumes) or minor amendments to the service delivery model / specification. All parties to the contract will need to agree any amendment. Care must also be taken when amending contracts to ensure that relevant procurement Regulations are complied with. This is covered further in section 4.1.2 above.

4.3.2. Direct Award Without Competition

Where it is determined that the services are capable of being provided by only one provider, it may be possible for the CCG to proceed with a direct award, where a contract is awarded to a single provider – or a limited group of providers – without competition. When considering a direct award of contract, the CCG needs to ensure that this would be in compliance with the relevant Procurement Regulations. In most circumstances a direct award without competition is unlikely to be in compliance with Procurement Regulations; therefore specialist procurement/legal advice should be sought where this option is being considered.

4.3.3. Competitive Tendering (Light Touch Regime)

Under the Light Touch Regime it is open for the CCG to determine its own procedure, provided that it is transparent and treats bidders equally. In addition, any time limits imposed within the process are required to be both 'reasonable' and 'proportionate'. To ensure that these principles are complied with it is often easier and safer to design a procedure that mirrors existing 'Full Regime' procedures such as the Open or Restricted process.

Within the 'Full Regime' Regulations there are several types of competitive tendering processes that can be considered. The choice of process will be informed by a number of relevant factors, including the nature and size of the relevant provider market. For example, if a large number of providers are likely to be interested or market complexity that could potentially lead to legal challenge, a multi-stage tendering process should be considered (commonly referred to as the Restricted Process) to restrict the number of providers invited to bid. This can make the process more manageable. In response to the advert, interested parties only submit pre-qualification information, and those then shortlisted receive an Invitation to Tender.

If a smaller number of providers are likely to be interested, a single-stage tendering process should be considered (referred to as Open Process); where pre-qualification

and tender stages are conducted together. All potential suppliers complete a tender in response to the advertisement.

For procurement where innovative solutions are being sought, or the CCG needs 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. In the Full Regime this is referred to as 'Competitive Dialogue'.

All competitive tendering processes must be conducted fairly and transparently, and have clear criteria for award published in advance.

4.3.4. Any Qualified Provider (AQP)

Under AQP, any provider who can meet the necessary quality and contractual requirements and agree to the pre-set price(s) (tariff) is accredited to deliver the service. All accredited providers are awarded contracts to deliver the service(s) but these have no volume or payment guarantees. Patients will decide which provider they are referred to.

To determine whether or not AQP is appropriate, the CCG must consider the characteristics of the service, the market and the local healthcare system. This will include whether the service lends itself to patient choice. 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 suitable for planned and non-complex services than emergency services. Good examples are podiatry and adult hearing services.

Where AQP is used, the service specification, tariff, key contractual terms and assessment criteria must be determined before advertising.

Once advertised, providers should qualify if they:

- a) meet quality requirements;
- b) meet the Terms and Conditions of the NHS Standard Contract
- c) accept the tariff for the service; and
- d) provide assurances that they are capable of delivering the agreed service requirements that have stipulated.

The CCG must ensure that AQP contracts are procured in compliance with PCR2015 and PPCC.

4.4. Timeframe (Healthcare Procurement)

The length of time procurement for healthcare service takes will vary according to the requirements of the specific procurement. As an indication, a typical above threshold procurement can take 6 months from placing the advert on Contracts Finder and OJEU to the award of contract. This period excludes the additional time necessary for pre-procurement planning activities such as market research, public consultation, social value assessment, equality impact assessment, financial and affordability considerations, consideration of lotting, internal approvals etc. nor the mobilisation phase (typically a minimum of 3 months and longer for complex procurements) once a provider has been appointed and before service commencement.

Procurements could take less or more time than this depending on their complexity, time allowed for bidder responses, any process failures, any challenges by bidders etc.

Under PCR 2015, there is also a need to have the procurement documents ready and accessible to applicants/bidders once the advert is issued. Time to undertake this is in the pre-procurement phase.

4.5. Public Contracts between entities within the Public Sector

Regulation 12 of the Public Contract Regulations 2015 is an exception which allows co-operation between different public sector legal persons. This regulation is extensive and very technical and is summarised as follows:

Where the awarding CCG controls the legal person and vice versa

The control must be similar to departmental control; the CCG must have a decisive influence in the strategic direction and be able to make significant decisions. 80% of the activities of the controlled entity need to be for tasks set by the controlling CCG. There must be no private capital involved.

Where there is joint control by various CCGs/contracting authorities

This is similar to the first exception and contains a similar set of requirements. Control: 80% activity limit, no controlling interest by private capital. However, the key difference is that the control is shared by various contracting authorities

Where the contract is between two CCGs/contracting authorities

This is in essence, co-operation contracts between two contracting authorities. There are a whole set of requirements which need to be fulfilled. The aim of the contract must be for the provision of public services and achieving objectives they have in common (it does not apply to supplies and works). The co-operation must follow only considerations related to the public interest. The contracting authorities perform less than 20% of the activities covered by the arrangement in the open market.

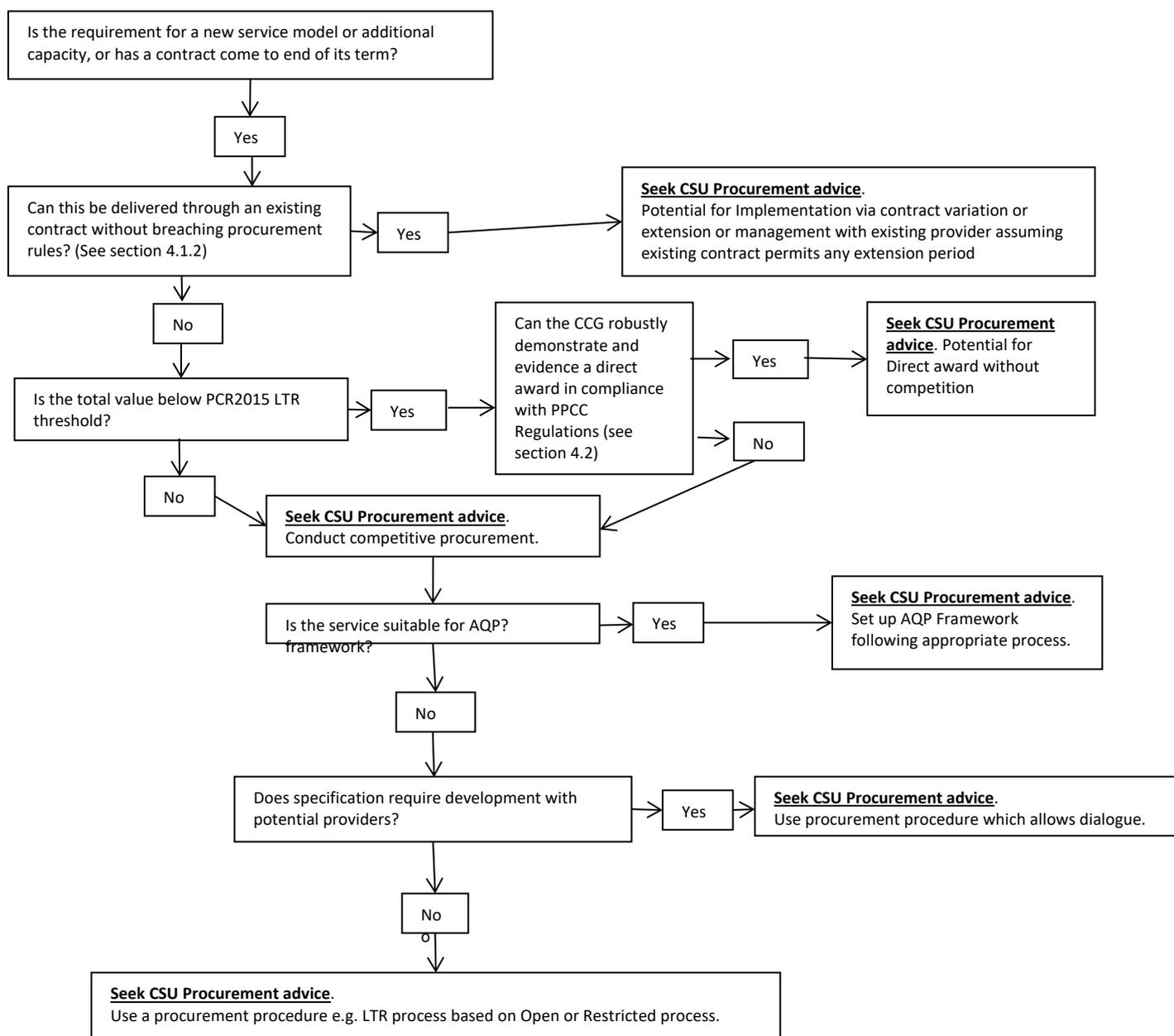
There are other clauses within the section which identifies areas that fall outside the scope of the regulations but should only be implemented after the CCG has sought legal advice.

4.6. Procurement Decisions Log

The CCG is required to publish all procurement decisions on their website and update this regularly. A procurement decision register must be maintained in relation to the decision and the decision making process. This allows the CCG to demonstrate that it is acting fairly and transparently and in the best interest of patients and the local population. The Register must be in line with the requirements of the document "Managing Conflicts of Interest: Statutory Guidance for CCGs" published in December 2014 by NHS England.

The CCG procurement decision log can be found through the following link:
<https://www.coventryrugbyccg.nhs.uk/About-Us/Governing-Body-Members/Managing-Conflicts-of-Interest>

Summary of the Healthcare Procurement Decision Making Process



When considering a Direct Award without Competition, the CCG must ensure that appropriate steps have been taken to identify other capable providers and consider whether or not delivery will still represent value for money, and whether or not there is any potential conflict of interest.

When considering a contract variation, extension or management with an existing provider, the CCG must determine whether it was envisaged as part of the original procurement and contract and whether or not it has affected the original choice of provider.

For an AQP, the CCG will follow relevant guidance regarding the accreditation process and framework.

Where a competitive tendering process is required, a process will be adopted that follows the Public Contracts Regulations 2015.

5. Goods and Non-Healthcare Services Procurement

Goods and Services procurement must be carried out in accordance with legislation and in accordance with the CCG's Prime Financial Policies (PFPs) and Standing Financial Instructions (SFIs).

The table below summarises the CCG's PFPs, and corresponding procurement options based on total expected contract value of the procurement:

Total Contract Value	Type of Procurement	Procurement Options*
Up to £10,000 (see 5.1)	Transactional	Supplier via approved requisition
Between £10,001 and £30,000 (see 5.2)	Competitive Quotes	Use available framework (e.g. Crown Commercial Service, ESPO, NHS Supply Chain, SBS, etc.) If no framework exists, obtain three quotations
Over £30,000 (C&R and WNCCGs) / £50,000 (SWCCG) to EU Threshold (see 5.3)	Formal competitive tender	Use available framework (e.g. Crown Commercial Service, ESPO, NHS Supply Chain, SBS, etc.) Seek specialist procurement advice from the CSU.
Over EU Threshold £181,302	Full OJEU advertisement and tender	Advertise in Europe (OJEU) and publish notice in Contracts Finder (for UK).

* In all cases, specialist advice is available from the AGEM CSU Transactional Procurement Team.

When goods and non-healthcare services are required, the AGEM CSU Transactional Procurement Team will act on requests to order upon receiving an approved requisition. The responsibility to raise a requisition lies with the individual and/or department requiring the goods or services. The CCGs' PFPs must be taken into account when the requisitioner is planning to raise a requisition.

5.1. For Expenditure up to £10,000

A requisition should be raised by the person who requires the goods or services and must follow normal CCG requisitioning and authorisation processes.

5.2. For Expenditure Between £10,001 and £30,000 / £50,000

The procurement should be carried out by the requisitioner obtaining three competitive quotations, where reasonably possible, and raising a requisition following normal CCG requisitioning and authorisation processes. The quotations should be attached to the requisition. Specialist advice and support is available from the AGEM Transactional Procurement Team if required.

5.3. For Expenditure Above £30,000 / £50,000

It is preferable to use an existing framework agreement (e.g. via Crown Commercial Services) to enable an efficient procurement process within reasonable timescales. If no framework is available, the CCGs' PFPs require that a full competitive tendering process is undertaken above £30,000 and a full OJEU compliant process above the OJEU threshold. Full OJEU compliant tenders for goods and services are not included within the standard Transactional CSU SLA for goods and services, but mini-competitions via

framework agreements are. Procurement advice should be sought from the AGEM CSU Procurement Contact.

5.4. Tender Waivers/Single Tender Actions (STAs)

If no competitive process for goods & services above the value of £10,001 (but below the OJEU threshold) is to be followed, then a tender waiver form must be completed in accordance with CCG PFPs. Advice should be sought from AGEM Transactional Procurement or AGEM Healthcare Procurement if there is any doubt as to whether a tender should be conducted. Where a need to tender is being waived, then an approved tender waiver document must be submitted by the requisitioner with the requisition.

5.5. Requisitioners

The CCG will ensure that all departments that are likely to need to procure goods and services have nominated representatives who are able to raise requisitions, with appropriate authorisation limits for different requirements. The CCG will ensure that any changes to authorisation limits are notified to requisitioners.

In conjunction with AGEM CSU, the CCG will ensure that requisitioners receive appropriate training and have access to up to date procedure notes.

5.6. Framework Agreements

Where possible for goods and services the CCG will utilise existing public sector framework agreements. A framework is an agreement with suppliers that establishes the terms governing contracts that may be awarded during the life of the agreement. In other words, it is a general term for agreements that set out terms and conditions for making specific purchases (call-offs).

A framework covers the provision of a generic group of goods, works or services (or a combination), for example:

- Goods – office furniture
- Services – consultancy

Frameworks can take a number of forms, including a framework with one supplier for a specific category or a framework with a number of suppliers from which the CCG can choose to purchase items or between which they can choose to conduct further competition.

The framework agreement itself may be a contract, but only if the agreement places an obligation to purchase. In this case, it is treated like any other contract, and the EU procurement rules apply.

However, a framework agreement is more likely to not be a contract itself, but merely an agreement about the terms and conditions that would apply to any order placed during its life. In this case, a contract is made only when the order is placed and each order is a separate contract.

These agreements can be established on a regional or national basis under EU procurement rules. Numerous framework agreements are available through, for example, the Crown Commercial Service. Purchases should be made using a framework where possible, and in accordance with access instructions.

5.7. Local Contracts

The AGEM CSU Transactional Procurement Team will help budget holders and requisitioners deliver local procurements processes for specific goods and services which are not available through an existing regional or national agreement or catalogue.

5.8. Timeframes (Goods and Services)

It is the responsibility of the CCG staff to obtain relevant quotes that comply with CCG PFPs. Arden & GEM CSU Transactional Procurement support may be requested for competitive tendering and mini-competitions; for which there may be additional cost. For advice and guidance CSU procurement lead contact information can be found in section 11.7.

Purchases requiring competitive quotes typically take 2 weeks, those requiring formal competitive quotes or mini-tender take typically 4-6 weeks and those which are the subject of EU procurement rules, a minimum of 4-6 months. It is the responsibility of the requisitioner to take these timescales into account when planning a purchase.

The AGEM Transactional Procurement Team endeavours to process all requisitions within two working days.

5.9 Contract Award

Note that for all contracts awarded over £10K, there is a requirement for the award to be notified in Contracts Finder, except where the requirement has been procured compliantly through a framework.

6. Conflicts of Interest

The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 set out high level requirements on managing conflicts of interest for the procurement of healthcare services.

These state that a CCG must not award a contract where conflicts, or potential conflicts, exist between the interests involved in commissioning such services and the interests involved in providing them affect, or appear to affect, the integrity of the award of that contract.

In relation to each contract that it has entered into, the CCG must maintain a record of how it managed any conflict that arose between the interests in commissioning the services and the interests involved in providing them.

Therefore, as part of any procurement process, all participants will have to sign a Conflict of Interest Declaration before any involvement. Any conflicts or potential conflicts must be managed before the individual who has declared such conflict or potential conflict can be involved in the procurement.

If a conflict (or potential conflict) arises during a procurement process then this should be managed before the individual, who has declared such conflict or potential conflict, can continue to be involved in the procurement.

Examples of conflicts of interest include:

- Having a financial interest (e.g. holding shares or options) in a potential bidder or any entity involved in any bidding consortium including where such entity is a provider of Primary Care services or any employee or officer thereof (bidder party);
- Having a financial or any other personal interest in the outcome of the evaluation process;
- Being employed by or providing services to any bidder party;
- Receiving any kind of monetary or non-monetary payment or incentive (including hospitality) from any bidder party or its representatives;
- Canvassing, or negotiating with, any person with a view to entering into any of the arrangements outlined above;
- Having a close family member who falls into any of the categories outlined above; and
- Having any other close relationship (current or historical) with any bidder party.

This is a non-exhaustive list of examples, and it is the participant's responsibility to ensure that any and all conflicts or potential conflicts – whether or not of the type listed above – are disclosed in the declaration prior to participation in the procurement process.

Any disclosure will be assessed by the CCG on a case-by-case basis. Individuals will be excluded from the procurement process where the identified conflict is, in the CCG's opinion, material and cannot be mitigated or be reasonably dealt with in another way. There are specific requirements where CCG GP practices are potential providers of services in accordance with the following NHS England Guidance¹.

Please refer to the CCG's Conflict of Interest Policy which can be found via the following link:

<https://www.coventryrugbyccg.nhs.uk/About-Us/Governing-Body-Members/Managing-Conflicts-of-Interest>

7. Governance

All procurement activity and decisions will be taken in accordance with the CCG's governance processes.

These Governance processes are outlined in relevant key documents such as:-

- CCG Constitution
- Scheme of Reservation and Delegation
- Prime Financial Policies (PFPs) (Including Standing Financial Instructions and delegated limits)
- Policy on Standards for Business Conduct
- Record of Procurement Decisions Log – which is posted to the CCG website on a quarterly basis

A link to the CCG's Constitution can be found via the following link:

<https://www.coventryrugbyccg.nhs.uk/About-Us/Publications-and-Policies/Our-Constitution>

¹. <https://www.england.nhs.uk/publication/managing-conflicts-of-interest-revised-statutory-guidance-for-ccgs-2017/>

7.1. Roles and Responsibilities

Roles	Responsibilities
CCG Governing Body	<p>The CCG Governing Body is responsible for setting out the approach for facilitating open and fair, robust and enforceable contracts that provide value for money and deliver required quality standards and outcomes, with effective performance monitoring and contractual levers.</p> <p>Arrangements for delegation of authority to officers are set out in the CCG Prime Financial Policies, Scheme of Reservation and Delegation and Detailed Financial Policies.</p>
CCG Audit and Governance Committee	<p>The Audit and Governance Committee is responsible for scrutinising all waivers of competitive tendering. It is a formal sub-committee of the CCG Governing Body.</p>
Chief Finance Officer	<p>The Chief Finance Officer is the CCG's Procurement Lead with responsibility for ensuring that the principles of good procurement practice are embedded. This includes responsibility for monitoring changes in procurement legislation, and involvement in sign-off of procurement exemptions prior to scrutiny by the Audit and Governance Committee.</p>
Individuals	<p>All staff in commissioning roles will be responsible for working within the boundaries of this Policy. It is critical that these staff know enough about procurement and procurement legislation to know to seek help when they encounter related issues. They must also be able to give clear and consistent messages to providers and potential providers about the CCGs' procurement intentions in relation to individual service developments. In instances where staff are unsure about a course of action, then they should seek advice and guidance from either their line manager or the CCG's Procurement Lead in the first instance.</p>

7.2. Approvals and Records

Whilst external agencies and commissioning support functions may be used to provide procurement services (including the provision of advice, guidance, processing of purchase requisitions, raising of purchase orders and undertaking competitive tendering), as well as contract management support, the CCG remains, at all times, directly responsible for approving:

- Business cases intending to commit resources of the CCG to invest through any contract;
- Selection of processes to award a contract, including decisions to competitively tender (or not);
- Final specifications, evaluation criteria and bidder questions;
- Final content and tenor of any advert required to be published (whether on Contracts Finder and/or on OJEU);

- Selection of potential bidders to invite to tender (where a pre-qualifying and short-listing stage is part of a procurement process);
- Approval of feedback to be provided to unsuccessful bidders;
- Final decisions regarding the awarding of a contract (whether to make an award or not);
- Decisions to terminate a contract which involves investment of resources of the CCG;
- Contract signature.
- The CCGs should always ensure that records are maintained about decisions made in connection with the process undertaken leading up to the awarding of contracts which comply with the requirements of:
 - Regulation 84 of the Public Contracts Regulations 2015; and
 - Regulation 9(1) of the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013.

See Appendix C – Regulatory Requirements to Maintain Records regarding Contract Award Decisions.

8. Patient, Carer and Public Engagement

In line with the NHS Constitution and the Health and Social Care Act 2012, the three CCGs will ensure that patients and the public are involved in the planning of commissioning arrangements, the development and consideration for proposals for changes in services and in decisions affecting the operation of commissioning arrangements. Working in partnership with patients, carers and the public is a key factor to the design, procurement and monitoring of services.

The duty to involve patients and the public applies from the very outset of a commissioning decision-making process, before procurement commences. Each CCG will, where appropriate, take steps to obtain the views of the public at the earliest possible stage, while proposals are still being developed. The appropriate level of public involvement will depend on the specific circumstances of the service to be commissioned or changed.

The CCGs will determine the most appropriate method of engagement and consultation according to the service being procured (whether by being consulted or provided with information or in other ways). For major commissioning projects a communication and engagement plan should be drawn up to explain how the CCG will seek to involve the public and patients and how they can put forward their views throughout the process.

The CCGs are also subject to other legal duties which may require consultation with the public. These include the Public Sector Equality Duty and the obligations under the Public Services (Social Value) Act 2012.

In addition, the CCGs adhere to the statutory guidance set out by NHS England for “Patient and public participation in commissioning health and care”. These key principles are embedded into the methodology we use to deliver engagement. When undertaking formal

consultation with the public, the CCGs will adhere to the Gunning Principles for consultation. In line with these requirements, the relevant CCG will work in partnership with patients, carers and families, and partner organisations across the public, voluntary and private sectors to develop high quality, safe and cost effective locality based services.

9. Public Sector Equality Duty

A CCG is subject to a duty under s149 of the Equality Act 2010 to have due regard in the exercise of its functions to the need to:

- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Act;
- b) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it;
- c) Foster good relations between persons who share a relevant protected characteristic and those who do not share it.

An Equality Impact Assessment will be undertaken by the CCG, before or during the planning stage of a procurement, which shows the impact of the procurement on people within each group of protected characteristics and which will be considered by the decision makers. Where there is an adverse impact, the Assessment will show how that impact will be mitigated throughout the procurement.

The CCG aims to design and implement services, policies and measures that meet the diverse needs of our population and workforce, ensuring that none are placed at a disadvantage over others.

10. Other Considerations

10.1. Procurement Training

The CCG should ensure that decision makers, including procurement evaluation panel members, have access to appropriate levels of training in regard to procurement matters commensurate with their responsibilities which will include general awareness of regulatory obligations and how and when to seek further support, updates, advice and guidance. Training will include a focus on the safeguarding of information (including personal and commercial) to avoid breaches of regulatory and contractual obligations. Training should also ensure that there is awareness of the CCG's Anti-Fraud and Anti-Bribery Policy, including how concerns can be raised through the Local Counter Fraud Specialists and NHS Protect.

10.2. Collaboration

There are areas of contracts and procurement in which collaboration is likely to bring benefits, whether it is the sharing of operational resources, or commitment to specific joint projects and/or contracts. Economies of scale can be achieved in both operational activity and through leveraging collective spend.

Collaborative procurement opportunities will be considered where benefits can be identified, including joint tendering opportunities where complementary service specifications exist. Collaborative procurements will be carried out in line with the CCG's Governance process and any collaborative agreement put in place for the project.

10.3. The Public Services (Social Value) Act 2012

The Social Value Act 2012 came into effect on 31 January 2013. The Act requires CCGs to consider how what is to be procured may improve the social, environmental and economic wellbeing of the relevant area i.e. the area in which the CCG operates or the area on behalf of which it is procuring. CCGs also have an obligation to consider the need to consult on the issue.

The Act requires consideration of matters which are relevant to the services procured and then only if it is proportionate to take those matters into account. Therefore, at the service conception, design, and specification development stage, the commissioning CCG will ensure that social value has been considered. Inclusions in a specification as a result of consideration will be taken into account during the evaluation process of the relevant procurement.

The CCGs will keep a formal record to show how social value has been considered on a project by project basis. i.e. Forming part of a specific commissioning strategy or business case etc.

10.4. Sustainable Procurement

The CCG is committed to the principles of sustainable development and demonstrating leadership in sustainable development to support Central Government and Department of Health commitments in this area of policy, and in 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:

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

On this basis, each potential provider's capability to address these consequences will be considered throughout the supply chain. Effective procurement processes can support and encourage environmental and socially responsible procurement activity.

10.5. Small and Medium Sized Enterprise (SME), and Third Sector Support

The NHS is keen to encourage innovative and value for money approaches that could be offered by new providers, including independent sector, voluntary and third sector providers. The CCG is committed to the development of such providers and will aim to support and encourage these organisations in bidding for contracts where appropriate to deliver affordable services.

The CCGs will aim to support Government initiatives seeking the involvement of SMEs and the Third Sector/Independent Sector in public service delivery without acting in contravention of public sector procurement legislation and guidance.

10.6. Transparency

In 2010, the government set out the need for greater transparency across its operations to enable the public to hold public bodies and politicians to account. This includes commitments relating to public expenditure intended to help achieve better value for money. The government made the following commitments with regard to procurement and contracting:

- All new central government tender documents for contracts over £10,000 to be published on a single website from September 2010, with this information to be made available to the public free of charge.
- All new central government contracts to be published in full from January 2011.

These rules apply to the NHS. To support the CCG's in complying with these requirements, the CSU will place adverts on Contracts Finder and OJEU as required by procurement regulations.

10.7. Use of Information Technology

Procurement processes should, where possible, be conducted electronically using appropriate systems that deliver benefit to the CCG in terms of speed of communication with providers, shorter mandatory minimum timescales, robust audit trails and security of commercial confidentiality. Recognition is given to procurement regulations which include obligations to provide procurement information to potential bidders electronically, free of charge.

The eProcurement system used by Arden & GEM CSU to meet this requirement is EU Supply. The link to this system is as follows: <https://uk.eu-supply.com/login.asp?B=UK>

10.8. Specifying Requirements

When seeking to award any contract for goods or services, a clear definition of requirements is always required to inform decision making. Where appropriate, the development of service specifications will seek to focus on the outcomes to be delivered by the service, enabling providers of services increased flexibility to develop and offer innovative solutions to deliver increased benefit to patients and the NHS.

The development of service specifications ought, where appropriate, to seek to involve relevant stakeholders, including existing providers, potential providers, other commissioning bodies and relevant patient representatives, including for the purpose of validating accuracy, reasonableness and appropriateness. The clearer the specification from the outset means the greater certainty that providers understand the required outcomes and will deliver against those outcomes.

Where requirements are being specified for the provision of healthcare services, the templates mandated within the NHS Standard Contract will be used. Specifications will ensure that clear measures of effectiveness and/or successful delivery of outcomes are clearly articulated to enable effective ongoing management of the contract (e.g. Key Performance Indicators (KPIs)).

10.9. Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

When re-commissioning / procuring services, potential TUPE implications should be considered and identified before commencing any procurement process. Specialist procurement and/or HR advice should be sought as appropriate.

10.10. OJEU Thresholds

The current OJEU procurement thresholds can be found at **Appendix B**.

10.11. Arden & GEM CSU Senior Management Contacts

Arden & GEM CSU procurement contacts can be found at **Appendix D**.

Appendix A

Public Contract Regulations 2015, Regulation 72 (Contract Variation)

“Modification of contracts during their term”

72.—(1) Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part in any of the following cases:—

(a) where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses or options, provided that such clauses—

(i) state the scope and nature of possible modifications or options as well as the conditions under which they may be used, and

(ii) do not provide for modifications or options that would alter the overall nature of the contract or the framework agreement;

(b) for additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor—

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

(ii) would cause significant inconvenience or substantial duplication of costs for the

CCG, provided that any increase in price does not exceed 50% of the value of the original contract;

(c) where all of the following conditions are fulfilled:—

(i) the need for modification has been brought about by circumstances which a diligent CCG could not have foreseen;

(ii) the modification does not alter the overall nature of the contract;

(iii) any increase in price does not exceed 50% of the value of the original contract or

framework agreement.

(d) where a new contractor replaces the one to which the CCG had initially awarded the contract as a consequence of—

(i) an unequivocal review clause or option in conformity with sub-paragraph (a), or

(ii) universal or partial succession into the position of the initial contractor, following

- corporate restructuring, including takeover, merger, acquisition or insolvency, of
- another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Part;
- (e) where the modifications, irrespective of their value, are not substantial within the meaning of paragraph (8); or
- (f) where paragraph (5) applies.

(2) Where several successive modifications are made:—

- (a) the limitations imposed by the proviso at the end of paragraph (1)(b) and by paragraph (c)(iii) shall apply to the value of each modification; and
- (b) such successive modifications shall not be aimed at circumventing this Part.

(3) Contracting authorities which have modified a contract in either of the cases described in paragraph (1)(b) and (c) shall send a notice to that effect, in accordance with regulation 51, for publication.

(4) Such a notice shall contain the information set out in part G of Annex 5 to the Public Contracts Directive.

(5) This paragraph applies where the value of the modification is below both of the following values:—

- (a) the relevant threshold mentioned in regulation 5, and 70
- (b) 10% of the initial contract value for service and supply contracts and 15% of the initial contract value for works contracts, provided that the modification does not alter the overall nature of the contract or framework agreement.

(6) For the purposes of paragraph (5), where several successive modifications are made, the value shall be the net cumulative value of the successive modifications.

(7) For the purpose of the calculation of—

- (a) the price mentioned in paragraph (1)(b) and (c), and
 - (b) the values mentioned in paragraph (5)(b),
- the updated figure shall be the reference figure when the contract includes an indexation clause.

(8) A modification of a contract or a framework agreement during its term shall be considered substantial for the purposes of paragraph (1)(e) where one or more of the following conditions is met:—

- (a) the modification renders the contract or the framework agreement materially different in character from the one initially concluded;
- (b) the modification introduces conditions which, had they been part of the initial procurement procedure, would have—
 - (i) allowed for the admission of other candidates than those initially selected,
 - (ii) allowed for the acceptance of a tender other than that originally accepted,or
- (iii) attracted additional participants in the procurement procedure;
- (c) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;
- (d) the modification extends the scope of the contract or framework agreement considerably;

(e) a new contractor replaces the one to which the CCG had initially awarded the contract in cases other than those provided for in paragraph (1)(d).

(9) A new procurement procedure in accordance with this Part shall be required for modifications of the provisions of a public contract or a framework agreement during its term other than those provided for in this regulation”.

Appendix B

Type	Threshold	Effective Date
Supplies & Services	€221,000/£181,302	From 1 January 2018
Light Touch Regime (inc. Health)	€750,000/£615,278	From 1 January 2018

(w.e.f. 1 January 2018 for a period of 2 years)

Appendix C

Regulatory Requirements to Maintain Records regarding Contract Award Decisions

This Policy recognises the regulatory obligations to maintain certain records in connection with the processes associated with the awarding of contracts. These are more fully set out below:

Regulation 84 Documentation

Regulation 84 of the Public Contracts Regulations 2015 sets out specific requirements for contracting authorities:

For every contract or framework agreement (or dynamic purchasing system), falling in scope of the PCR 2015, the CCG must draw up a written report to include:

- Name and address of CCG;
- Subject matter;
- Value of contract or framework agreement (or dynamic purchasing system);
- Names of selected bidders and reasons for their selection;
- Names of rejected bidders and reasons for their rejection;
- Reasons for any tenders being rejected for their price being abnormally low;
- Name of successful bidder and the reasons for tender being successful;
- Names of any main sub-contractors and the share of the contract intended that they will deliver;
- Where either a Competitive Procedure with Negotiation or a Competitive Dialogue Procedure used, the circumstances justifying the use of such procedures;
- Where a Negotiated Procedure without prior notice being issued is used, the circumstances justifying the use of this procedure;
- Where applicable, the reasons the CCG has decided not to award a contract, or framework agreement or dynamic purchasing system;
- Where applicable, the reasons why electronic communications were not used for the submission of tenders;

- Details of conflicts of interests detected and subsequent measures taken to manage the conflicts.

A Post-Procurement Outcomes Report, recommending an award of a contract decision, should be designed to meet the above requirements. This report is not required for contracts called off from an existing framework agreement.

Where a Contract Award Notice is issued in accordance with PCR 2015, to the extent it already contains all information required above, this can be referred to in the alternative

Upon request from the EU Commission (while the UK remains in the EU) a copy of this Report must be supplied to the EU Commission.

The CCGs shall ensure documented progress of all procurement procedures.

The CCGs shall keep sufficient documentation to justify decisions taken in all stages of procurement procedures including:

- Communications with interested providers and bidders;
- Preparation of the procurement documents;
- Where relevant, dialogue or negotiation with any bidder;
- Selection and award of the contract.

Documentation required by Regulation 84 shall be kept for at least 3 years from the date of the award of the contract.

NHS 2013 Regulations Documentation

Additionally, Regulation 9(1) of the NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 sets out requirements for CCGs to:

Maintain and publish on the website maintained by the Board under regulation 4(1), a record of each contract awarded for the provision of health care services for the purposes of the NHS which shall include:

- Name and registered address of the provider;
- Description of the health care services to be provided;
- Contract value or payments to be paid;
- Contract start and end dates;
- Description of the process adopted for selecting the provider.

Appendix D

Arden & GEM CSU Procurement Contacts

Name	Position	Phone & Email
Laraine Wooding	Senior Procurement Manager	larainewooding@nhs.net 07850 213389
Richard Ward	Procurement Manager	richard.ward11@nhs.net 07967 793387
Michael Barlow	Procurement Manager	Michael.Barlow1@nhs.net 07712 303 317
Craig Stephens	Procurement Manager	craig.stephens@nhs.net 07917 828 285