

## NHS Nene and Corby Clinical Commissioning Groups Procurement Policy

### Document History

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Document Purpose:	This document sets out what the Clinical Commissioning Groups, its Commissioning Support Unit and associated organisations will do to comply with its obligations under Procurement Legislation
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Associated Documents:	Dispute Resolution Policy Conflicts of Interests Policy Gifts, Hospitality and Sponsorship Policy

**Revision History**

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**Policy Dissemination information**

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## 1. Purpose of this Policy

Procurement is an all-encompassing term to describe the activities of obtaining the right goods, works and/or services from the right provider, at the right time, in the right place, of the right quality and at the right price, generally via a contract.

This document describes NHS Nene and Corby Clinical Commissioning Group's ("**Nene and Corby CCGs**") Procurement Policy ("**Policy**"). The purpose of the Policy is to ensure that when commissioning services, Nene and Corby CCGs:

- complies with the regulatory framework of all relevant legislation and guidance, its own Constitution, Standing Orders, Scheme of Reservation and Delegation and Prime Financial Policies;
- acts with a view to securing the needs of its local population, and improves the quality and efficiency of clinical services;
- treats providers fairly and equally and acts in a transparent and proportionate way;
- provides best value for money;
- meets its short and long term objectives; and
- maintains high standards of public trust and probity in its use of public funds.

This Policy is part of Nene and Corby CCGs governance structure and provides the high level framework for the detailed guidelines and other documentation in the form of standards and procedures, which support this Policy.

## 2. Policy Scope and Application

This Policy applies to all clinical and non-clinical procurement activities by Nene and Corby CCGs, except the procurement of goods unless those goods form part of the clinical arrangement which is being procured.

This Policy will apply to:

- the members of Nene and Corby CCGs;
- the members of its Governing Body;
- the members of its committees or sub-committees and the committees (including joint committees) or sub-committees of its Governing Body;
- the members of its advisory panels or groups;
- its employees; and
- any other individual working on behalf of Nene and Corby CCGs.

Nene and Corby CCGs will ensure, when applying this Policy that it complies with its duties under the Equality Act 2010 and does not discriminate directly or indirectly against staff or potential service providers on the grounds of any of the protected characteristics.

## 3. Glossary

A glossary of the terms used in this Policy is included at Appendix 1.

## 4. Context – Planning and Delivery Framework

### 4.1. The Commissioning Cycle

Nene and Corby CCGs plans, procures, monitors and evaluates services through processes aligned to the Commissioning Cycle. Through this Nene and Corby CCGs seeks to commission services in accordance with the initiatives contained within its annual Commissioning Intentions and bi-annual Operational Plan; and in doing so supports the delivery of the aims and objectives set out in the NHS Long Term Plan and Northamptonshire Sustainability and Transformation Plan (STP).

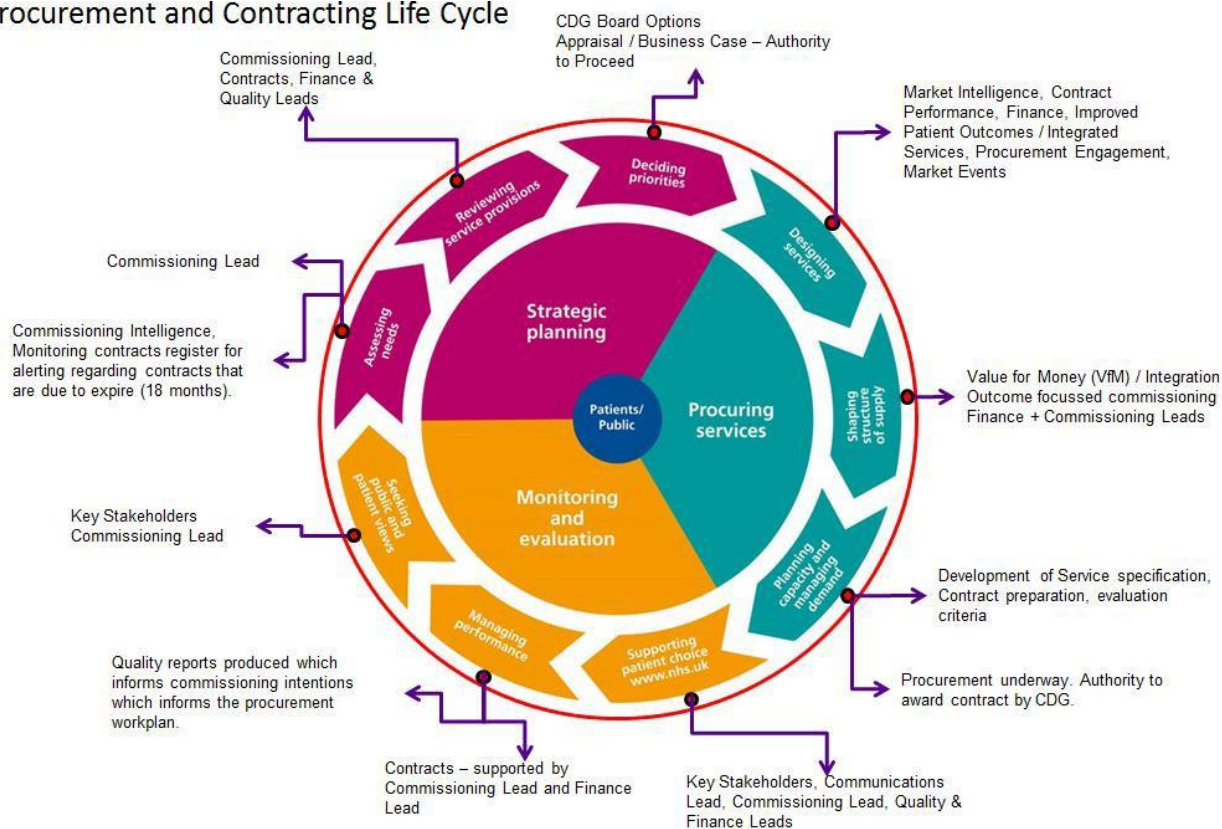
The Commissioning Intentions of 2019/20 have been issued during a time of significant change in the health and care system. Through the STP, Nene and Corby CCGs are working collaboratively with the Northamptonshire County Council, Northampton General Hospital Trust, Kettering General Hospital Foundation Trust, Northamptonshire Healthcare Foundation

Trust and Northamptonshire General Practice(s) to provide a framework for enhanced partnership working that ensures value is driven across the local health and care economy. This approach, putting clinical and quality drivers, patient pathways and transparency about activity in each setting, at the heart of what we do should ensure that organisational barriers do not prevent the best possible outcomes for the population delivered within the resources available.

The procurement of all services by Nene and Corby CCGs is delivered within, and is a key stage of, the Commissioning Cycle. Figure 1 below provides a diagrammatic representation of the commissioning cycle:

Figure 1:

Procurement and Contracting Life Cycle



4.2. Joint Commissioning with Northamptonshire County Council

Nene and Corby CCGs works in partnership with Northamptonshire County Council (“NCC”). Through the Section 75 Agreement and associated governance arrangements, Nene and Corby CCGs and NCC commission and manage the provision of joint services. As part of the initial scoping of a project and the development of a Business Case it is necessary to make a decision about which organisation is best placed to lead on the procurement. See Flow Chart

at Appendix 2. When commissioning services on behalf of both organisations, the lead partner must conduct such works in accordance with rules and regulations applicable to both the NHS and Unitary Authorities.

Further information for Northamptonshire County Council procurement policies and procedures can be found at:

<http://www3.northamptonshire.gov.uk/councilservices/business-and-economy/procurement/Pages/default.aspx>

The Finance, QIPP and Contracting Committee (“**FQCC**”) maintain oversight, and provide organisational challenge against the delivery of the Commissioning Cycle on behalf of Nene and Corby CCGs Governing Body.

#### **4.3. Co-Commissioning with NHS England**

Nene and Corby CCGs may wish to work with NHS England and, where applicable, other CCGs to exercise specified NHS England functions. Nene and Corby CCGs may enter into arrangements with NHS England and, where applicable other CCGs to:

- Exercise such functions as specified by NHS England under delegated arrangements; and
- Jointly exercise such functions as specified with NHS England.

Where arrangements are made for the CCG and, where applicable, other CCGs to exercise functions jointly with NHS England a joint committee may be established to exercise the functions in question. As part of the initial scoping of a project and the development of a Business Case it is necessary to make a decision about which organisation is best placed to lead on the procurement. When commissioning services aligned to the co-commissioning agenda, the lead partner must conduct such works in accordance with the rules and regulations applicable to the NHS.

The Nene and Corby CCGs Governing Body maintain oversight, and provide organisational challenge against the delivery of established Co-Commissioning Joint Committees.

## **5. Roles, Responsibilities**

### **5.1 NHS Nene Clinical Commissioning Group**

Nene and Corby CCGs is legally accountable for the commissioning of health services for its local patient population. Procurement is a means of commissioning clinical and non-clinical

services (including service redesign), and in this context Nene and Corby CCGs is responsible for:

- the outcome of the procurement process; and
- ensuring the process is carried out fairly and according to the law whilst ensuring improved health outcomes and value for money.

## **5.2 Senior Responsible Owner (“SRO”)**

The Nene and Corby CCGs Director leading the commissioning work is the Senior Responsible Owner (“SRO”) for both the procurement exercise and for any follow up commissioning and/or implementation work needed once the procurement exercise has been completed.

Directors involved in commissioning, in consultation with relevant stakeholders, are responsible for agreeing service and care pathway designs and drawing up the specification of services required. Depending on the value of the new services arrangement, the specification for a service may need Nene and Corby CCGs Board of Directors / Governing Body approval before a competition for the service is launched. **Please refer to the Nene and Corby CCGs Prime Financial Policies and Scheme of Reservation and Delegation contained within our Constitution.**

Wherever possible a procurement working group should be established by the SRO, to provide strategic oversight for the entire procurement process. The group is responsible for managing compliance in the following areas against relevant national and local protocols, guidance and strategies:

- governance;
- finance;
- tendering;
- contract monitoring; and
- contract termination.

If issues of a sensitive nature emerge during the course of a procurement process, the Nene and Corby CCGs Chair and Accountable Officer should be advised immediately. At their discretion they will inform members of the Governing Body.

## **5.3 Procurement Team**

The Procurement Team provides procurement support services for Nene and Corby CCGs.



The Procurement Team may be a Nene and Corby CCGs in-house team or a separate, legally distinct, commissioning support provider contracted to provide such services to Nene and Corby CCGs. Reference in this policy to the Procurement Team includes both a CCG in-house team and a legally distinct commissioning support provider (as the case may be).

The Procurement Team is responsible for:

- the delivery of procurement projects in line with Nene and Corby CCGs requirements; and
- for the provision of advice and support on procurement issues to Nene and Corby CCGs.

The Procurement Team has responsibility for the procurement transaction once a commissioning need has been identified and approval has been given by an appropriately authorised person / body to go to market.

The Procurement Team assists with market engagement (pre-procurement) and is responsible for all procurement transactional work.

As part of the Procurement Team, Nene and Corby CCGs Contract Management Team is responsible for preparing the contract and co-ordinating the appropriate associated contract schedules for inclusion within the tender documents and contract finalisation with the selected bidder(s). Subsequently the Contract Management Team will lead the service contract management.

To support the Procurement Team in carrying out its function the following will be required to inform the procurement route through which required services are to be presented to the market and support the population of the appropriate contractual documentation:

- a service specification completed within the National Standard Service Specification format where necessary;
- a copy of the Full Business Case commissioning proposal which supports the service specification;
- assurance that any necessary stakeholder consultation has taken place;
- any activity and financial data relevant to the service to be procured;
- any quality and reporting requirements relevant to the contract;
- details of any previous or existing contracts for the service; and
- details of any applicable national policy or guidelines.

Wherever possible a Procurement Team representative should be involved as early in the

business case development process as is feasible. This will ensure that the Procurement Team has a full understanding of the service requirements and can input into the development process from a procurement and contract management perspective.

## 6. Pre-procurement activities

Prior to commencing any procurement process, approval to proceed to market must have been obtained from an appropriately authorised person / committee of the CCG. This ensures that the planned procurement will develop services in line with the aims and objectives of Nene and Corby CCGs.

In preparing for procurement Nene and Corby CCGs should consider:

- The need to consult in accordance with its statutory obligations (including those under Section 3 of the National Health Service Act 2006, the Equality Act 2010 and the Public Services (Social Value) Act 2012). This must be assessed early in the process as consultation may influence the service design or the requirements for the services to be tendered.
- The need to carry out market research to understand if the CCG needs to enter into a procurement exercise, or if the aims and objectives can only be delivered by a “most capable provider”.
- The need to carry out market research to better understand the provider market to inform the procurement route and/or the service specification.
- Whether pre-market engagement with potential providers is appropriate to prepare for the procurement, to seek views on the draft service specification, and to inform potential providers of Nene and Corby CCGs procurement plans and requirements. In carrying out any pre-market engagement with potential providers, Nene and Corby CCGs will ensure that this does not have the effect of distorting competition or breaching the principles of equal treatment and transparency.
- Whether there are opportunities to collaborate with other commissioning organisations in the purchasing of services. Any opportunities identified should be explored and evaluated where these are consistent with achieving Nene and Corby CCGs statutory and local objectives (see Section 7 below). Through such exploration and evaluation Nene and Corby CCGs must be able to evidence that collaboration has been appropriately considered.
- Any risks associated with the planned procurement including how risks will be identified and managed.

## 7. Procurement – Objectives and Guiding Principles

The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (the “**2013 Regulations**”), provide that when a CCG procures health care services for the purpose of the NHS, it must act with a view to achieving the following objectives:

- (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 is inclusive of when services are provided in an integrated way (including with other health care services, health-related services, or social care services).

### 7.1 Local Objectives

The annual Nene and Corby CCGs Commissioning Intentions 2019/20 build upon the Nene and Corby CCGs 2 Year Operational Plan 2019/21 in setting out the plans through which the strategic aims and objectives, as described in the Northamptonshire STP, are to be delivered. Reference should be made to the current plan for further details.

In carrying out its commissioning role, Nene and Corby CCGs will adopt the following procurement objectives.

- Support the CCGs transformation through the delivery of high quality, responsive, innovative, affordable and sustainable services which are patient focused and deliver better healthcare outcomes for our population.
- Support the CCGs vision of service integration, with providers working together to deliver transformation along pathways, and ensure services are seamless and coherent for patients and professionals.
- Use the procurement of services as a tool to facilitate the delivery of organisational and system wide aims and objectives.
- Stimulate the provider market to provide competition to meet demand and secure required clinical, health and wellbeing outcomes.
- Effectively apply procurement skills, expertise processes and methodologies that ensure robust, high quality, value for money contracts.
- Ensure best value for money is achieved across the whole life of the contract, and that contracts generate the specified benefits and outcomes.
- All service specifications and procurements will be fair, transparent, equitable and

non-discriminatory, in line with the relevant legislation and guidance.

- Ensure that procurements are sustainable, ethical and in line with the CCGs vision and strategic priorities, delivering its corporate social responsibilities, supporting economic development in the local area, and achieving sustainability targets.
- The CCG will be open and transparent in the way it conducts commercial relationships with potential providers and existing providers.

## 7.2 Guiding Principles

The guiding principles which underpin Nene and Corby CCGs procurement activities are as follows. Where Nene and Corby CCGs works in partnership with other organisations (including support services), these guiding principles must be reflected within the arrangements.

**Purpose** – procurement decisions made by Nene and Corby CCGs managers should contribute to the goals of the whole system, the overarching objective and local objectives. They should have patient interest and the wider public interest at heart. Service specifications should be driven by the needs of the population.

**Transparency** – transparency is fundamental to accountability. Nene and Corby CCGs should conduct its procurement activities openly and in a manner that allows its behaviour to be scrutinised. This includes:

- Nene and Corby CCGs will be transparent in its procurement and commissioning activities. We will publish our strategy, operational plan and commissioning intentions;
- we will publish details of all procurements as required, and will notify all awards of newly competitive tendered contracts as above OJEU limits;
- once newly competitive tender contracts have been awarded, we will provide feedback to any unsuccessful bidders and allow a standstill period (if applicable) between notifying the contract award decision and executing the contract; and
- we will ensure an auditable documentation trail that is transparent and demonstrates full accountability for our decisions.

**Objectivity** – key decisions must be based wherever possible on objective data, information or criteria, or reasonable assumptions, and kept as public records for audit purposes, allowing for increased levels of transparency.

**Proportionality** – actions taken will be proportionate to the value, complexity, risks and

benefits to patients and the services provided. The criteria for evaluation of submissions will not be disproportionately demanding and in addition, we will ensure that bidders and providers do not incur unnecessary costs due to delays or changes in scope. All procurement processes will be as simple as possible, avoiding overly bureaucratic processes. The contractual framework will be appropriate and proportionate to the services commissioned.

**Equal treatment and non-discrimination** – we will ensure that the commissioning, contracting and procurement processes are non-discriminatory, neither unfairly including nor excluding any particular provider or sector of the market. We will make available all appropriate information in good time to enable potential providers to properly assess whether they wish to express an interest in providing the advertised service. We will clearly identify services to be put to competition, and in doing so ensure all providers are subject to the same checks and operate under the same principles when responding to any matters relating to the tender.

**Accountability** – Nene and Corby CCGs managers should strive to align their authority and legal powers with their accountability and legal duties. It should be clear, in statute and in practice, who is accountable for what; and what authority those accountable have to control their areas of responsibility.

**Subsidiarity** – decisions should be made by the lowest competent authority, in accordance with the Nene and Corby CCGs Constitution, Scheme of Reservation and Delegation and the Prime Financial Policies.

**Consistency** – we will apply national and local principles and rules in relation to procurement consistently.

**Timeliness** – sufficient time will be provided to bidders to support the submission of tender responses, which will be dependent upon the value and complexity of the contract. As a rule, where an OJEU advert notice is placed, the timescales set out in EU procurement will be followed.

**Interdependency** – when assessing specific issues, Nene and Corby CCGs should understand and minimise the potential unintended consequences of any actions.

**Service Integration** – providers are to be encouraged to use service integration as an enabler to ensure patients receive high quality, seamless care along pathways. The CCG will use innovative procurement vehicles to ensure that integration of provision is maintained and

enhanced, and look to providers to form partnerships with each other to deliver service transformation.

**Lessons learnt principle** – on completion of individual procurements, the Procurement Team should undertake a reflection exercise of the end to end procurement process. This internal process shall support organisational development and the continual improvement of good practice through the capturing of and building on lessons learnt.

### **7.3 How will the Overarching and Local Objectives be achieved?**

When procuring services Nene and Corby CCGs should have regard to the guiding principles set out in section 7.2 above and should aim to:

- work with a wide range of service providers from the private, public, independent, voluntary and social enterprise sectors who can offer high quality, diverse and acceptable choices for local service users;
- stimulate the supply market where intelligence suggests that a wider portfolio of services or service providers is needed;
- continuously review its existing contracts to ensure that they deliver in accordance with key performance indicators, offer maximum value for money and demonstrate continuous improvement in the quality, efficiency and range of services on offer, to meet the needs of Nene and Corby CCGs local population; and
- work with partners to ensure that buying power and economies of scale are maximised through collaborative procurement initiatives.

## **8. Applicable Legislation**

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

Nene and Corby CCGs must comply with the 2013 Regulations when carrying out its procurement activities. The 2013 Regulations impose obligations on Nene and Corby CCGs to ensure good practice in the procurement of services, to ensure the protection of patients' rights to make choices and to prevent anti-competitive behaviour.

In particular the 2013 Regulations require Nene and Corby CCGs when procuring services:

- to act with a view to securing the overarching objective (Regulation 2).
- to comply with general requirements including to:
  - act in a transparent and proportionate way;

- treat all providers equally and in a non-discriminatory way;
  - procure services from one or more providers that are capable of meeting the overarching objective and provide best value for money in doing so;
  - consider appropriate means of improving the quality and efficiency of the services including: through services being provided in a more integrated way; enabling providers to compete for the services and allowing patients a choice of providers; and
  - maintain appropriate records (Regulation 3).
- to manage conflicts and potential conflicts of interest when awarding a contract by prohibiting the award of the contract where the integrity of the award has been or appears to have been affected by a conflict; and to keep appropriate records of how conflicts of interest have been managed in individual cases (Regulation 6).
  - not engage in anti-competitive behaviour unless to do so would be in the best interests of NHS health care service users, and ensure that any contract or
  - arrangement for services does not include any term or condition restricting competition which is not:
    - necessary for the attainment of the intended outcomes which are beneficial for the people who use the services;
    - or the overarching objective referred to in regulation 2, as set out above (Regulation 10).

When advertising an intention to seek offers for a services contract, the 2013 Regulations require Nene and Corby CCGs to publish a contract notice on the dedicated website maintained by NHS England (Regulation 4) – NHS Contracts Finder:

<https://www.gov.uk/contracts-finder>

The notice must include:

- a description of the services to be provided; and
- the criteria against which any bids for the contract will be evaluated.

Nene and Corby CCGs must also have arrangements in place which enable providers to express an interest in providing services.

The 2013 Regulations also govern the circumstances when Nene and Corby CCGs may award a new contract for services without competition (Regulation 5). They provide that:

Nene and Corby CCGs “*may award a new contract for the provision of health care services*

*for the purposes of the NHS to a single provider without advertising an intention to seek offers from providers in relation to that contract where the relevant body is satisfied that the services to which the contract relates are capable of being provided only by that provider”.*

The 2013 Regulations also set out the role of Monitor, including its investigatory and enforcement powers in relation to breaches or potential breaches of the 2013 Regulations.

Failure to comply with the 2013 Regulations would expose Nene and Corby CCGs to challenge and possible sanctions and result in consequential loss / damage. Where there is any doubt regarding Nene and Corby CCGs compliance with its obligations, legal advice should be sought through the Procurement Team or Corporate Services.

The full text of the Regulations is available at:

<http://www.legislation.gov.uk/ukxi/2013/500/contents/made>

Appendix 2 provides a summary of Nene and Corby CCGs obligations under the 2013 Regulations.

## **8.2 European and UK Procurement Legislation**

When procuring services Nene and Corby CCGs will ensure that it complies with EU procurement law and the UK’s implementing Regulations to the extent that they are applicable to the services being procured. In particular it will ensure compliance with the requirements of:

- The Treaty on the Functioning of the European Union (“**EU Treaty**”);
- Directive 2004/18/EC and the Remedies Directive 2007/66/EC;
- The Public Contracts Regulations 2015\_

<http://www.legislation.gov.uk/ukxi/2015/102/contents/made>

Two regimes may apply. They are:

EU public procurement law

– Directive 2014/24/EU

– For procurements commenced before 18 April 2016: Public Contracts Regulations 2006 (as amended) (old PCR)

– For procurements commenced from 18 April 2016: Public Contracts Regulations 2015 (new PCR)

- Relevant EU and UK procurement case law.
- The “**EU Procurement Rules**” including any updating European and/or UK legislation and case law which updates, amends or replaces them.



The EU Procurement Rules will apply where Nene and Corby CCGs proposes to enter in to a legally enforceable, written contract, for services which have an estimated full-life value above the relevant financial threshold. Nene and Corby CCGs will be fully compliant with both its own Prime Financial Policies and EU thresholds which may vary, with the correct level being applied at the commencement of the procurement.

NHS Nene and Corby CCGs will ensure it complies with include:

- treating providers equally and in a non-discriminatory way;
- acting transparently (including the duty to advertise a contract where there is a likely cross-border interest);
- complying with the rules on technical specifications, including that they do not favour particular providers or present unjustified obstacles to competition;
- publishing a contract award notice in the Official Journal of the European Union ("OJEU"); and
- the provision of statistical and other reports.

Under the old PCR, a distinction was made between "Part A" services, which are fully subject to the procurement rules and "Part B" services, which are subject to only limited requirements. Clinical Services fell within Part B. The main reason for that distinction was that Part B services did not generally attract much cross-border interest. However, as those markets have developed there are cases where that distinction has lost some of its justification and as a consequence the new PCR no longer maintain the distinction between "A" and "B" services. The new PCR introduces a revised threshold of €750,000 and provides recognition that certain types of service contracts (inclusive of public sector contracts) will still have limited attraction to cross-border bidders. The new PCR allows for the undertaking of a "light touch regime" provided the maintenance of transparency, non-discriminatory and equitable treatment, and access to the remedies rules.

The financial threshold of the services to be procured will be calculated as the aggregate of all the similar services at the specific time. The procurement opportunity should not be subdivided for the purpose of reducing the total of the contracts such that the exercise is brought under the EU thresholds or Nene and Corby CCGs governance thresholds with the consequence of being exempt from more stringent procurement rules.

### **8.3 Equality Act 2010**

The Equality Act 2010 sets out a number of ‘protected characteristics’ upon which people are not allowed to discriminate against.

The Act sets out the Public Sector Equality Duty (“**PSED**”) which applies to Nene and Corby CCGs. This is a continuing duty and applies at each stage of the clinical procurement lifecycle (including when planning the procurement, developing the specification and contract, conducting the procurement process and following the contract award).

When making relevant decisions and at each stage of the clinical procurement lifecycle, Nene and Corby CCGs will meet its obligations under the Equality Act by consciously considering the need to:

- eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct;
- advance equality of opportunity between people who share protected characteristics and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

#### **8.4 Public Services (Social Value) Act 2012**

The Public Services (Social Value) Act 2012 (the “**Social Value Act**”) applies to Nene and Corby CCGs when it carries out its clinical procurement activities. In accordance with its obligations under the Social Value Act, Nene and Corby CCGs will consider, at the pre-procurement stage:

- how the services to be procured may improve the social, environmental and economic well-being of its area; and
- how in conducting a procurement process Nene and Corby CCGs might act with a view to securing that improvement, including whether to undertake a consultation on these matters (or as part of Nene and Corby CCGs wider statutory obligations to consult).

#### **8.5 Data Protection Act 1998 and the European General Data Protection Regulation 2016**

On 4 May 2016 the European General Data Protection Regulation – Regulation (EU) 2016/679 (GDPR) was passed. The GDPR builds upon the existing DPA and came into force

on 25 May 2018. Nene and Corby CCGs will ensure that it, and the providers with which it engages, act in a way that upholds the provisions of the GDPR and the eight data protection principles contained within the Data Protection Act 2018 (DPA) for the duration of the procurement and subsequent period for which the contracted services are delivered.

## **8.6 Relevant Guidance**

In meeting its obligations under the 2013 Regulations (the EU Procurement Rules, the Equality Act 2010 and the Social Value Act) and to ensure it adopts best procurement practice, Nene and Corby CCGs will have regard to any relevant Guidance produced by Monitor, NHS England, the Department of Health, the Equality and Human Rights Commission, and the Cabinet Office. Further details of current guidance can be found at:

- NHS Improvement <https://improvement.nhs.uk/>
- NHS England guidance: <https://www.england.nhs.uk/gp/gpfv/redesign/gpdp/online-consultations-systems-fund/procurement-guidance/>
- NHS England Integrated Support and Assurance Process: <https://www.england.nhs.uk/publication/integrated-support-and-assurance-process/>
- Equality and Human Rights Commission: <https://www.equalityhumanrights.com/en>
- Cabinet Office: <https://www.gov.uk/government/collections/procurement-policy-notes>

## **9. Nene and Corby CCGs Governance**

### **9.1 Nene and Corby CCGs Constitution, Standing Orders, Scheme of Reservation and Delegation and Financial Policies**

When procuring services, Nene and Corby CCGs will ensure that it complies with its duties under its Constitution (including its Standing Orders, Scheme of Reservation and Delegation and Nene and Corby CCGs financial policies). These include the information required to be included in the Constitution by Schedule 1A to the NHS Act 2006 (as amended by Schedule 2 of the Health and Social Care Act 2012).

The CCG Standing Orders and the Scheme of Reservation and Delegation (<http://www.neneccg.nhs.uk/> and <https://www.corbyccg.nhs.uk/>) ensure that decision-making is informed by intelligent information covering the full range of corporate, financial, information and research governance and are central to Nene and Corby CCGs governance framework

and to sustaining the highest standards of corporate and personal probity, accountability and openness. Good governance provides the bedrock for effective performance and assuring better health and health services for the population served by Nene and Corby CCGs.

Prime Financial Policies (“**PFPs**”) are included within Nene and Corby CCGs Constitution for the management of Nene and Corby CCGs financial affairs. In support of these PFPs, Nene and Corby CCGs has adopted more detailed financial policies, referred to together with the PFPs as “ Nene and Corby CCGs financial policies” - These detail the financial responsibilities, policies and procedures adopted by Nene and Corby CCGs to ensure that Nene and Corby CCGs financial transactions (including procurement transactions) are carried out in accordance with the law and with Government policy. They are used in conjunction with the Schedule of Matters Reserved to the Clinical Commissioning Group and Scheme of Delegation adopted by Nene and Corby CCGs and included within the Constitution’s Scheme of Reservation and Delegation.

Nene and Corby CCGs financial policies identify the financial responsibilities which apply to everyone working for the Nene and Corby CCGs and its constituent localities.

Should any difficulties arise regarding the interpretation or application of any of Nene and Corby CCGs financial policies then the advice of the Chief Finance Officer must be sought before acting.

The failure to comply with Standing Orders and PFPs may be regarded as a disciplinary matter.

## **92 *Nene and Corby CCGs Scheme of Reservation and Delegation and Authorisation Limits***

When authorising and approving procurement decisions Nene and Corby CCGs will comply with its Scheme of Reservation and Delegation as set out in its Constitution.

While conducting any procurement process Nene and Corby CCGs will adhere to relevant financial rules and regulations in ensuring that it does not enter into any practices that may be deemed as the artificial “splitting” of a single contract or purchase order.

## **9.3 *Standards of Business Conduct***

Nene and Corby CCGs members, members of its Governing Body, members of its committees or sub- committees and the committees (including joint committees) or sub-committees of its

Governing Body, members of advisory panels or groups, employees and any other individual working on behalf of Nene and Corby CCGs will at all times comply with Nene and Corby CCGs Constitution and be aware of the responsibilities outlined in it. They should act in good faith and in the interests of Nene and Corby CCGs and should follow the Seven Principles of Public Life set out by the Nolan Principles.

They must comply with Nene and Corby CCGs Standards of Business Conduct, and the requirements set out in the policy for managing conflicts of interest.

They must also comply with all current relevant guidance and policies including:

- the Code of Conduct for NHS Managers;
- Nene and Corby CCGs Fraud and Bribery Policy;
- Nene and Corby CCGs Gifts, Hospitality and Sponsorship Policy;
- Nene and Corby CCGs Disciplinary Policy; and
- Nene and Corby CCGs Raising Concerns at Work (Whistleblowing) Policy.

## **10. Transparency, Record Keeping and E-Tendering**

### ***10.1 Transparency and Publicity Obligations***

Transparency is fundamental to accountability and, as set out in Section 7 of this Policy - Nene and Corby CCGs have a legal duty, when conducting its clinical procurement activities, to act in a transparent way. Nene and Corby CCGs should conduct its procurement activities openly and in a manner that allows its behaviour to be scrutinised.

In addition to its legal obligations to act transparently, Nene and Corby CCGs will also comply with current Government guidance on transparency to publish information on concluded contracts and Nene and Corby CCGs expenditure.

### ***10.2 Documentation & Record Keeping***

As set out elsewhere in this Policy, Nene and Corby CCGs will comply with its statutory obligations to keep and maintain appropriate records.

Accurate record keeping and documentation is also fundamental to any procurement process and is also consistent with Nene and Corby CCGs obligation of transparency. A robust audit-trail should be maintained which records all steps and decisions taken (and the reasons for those steps / decisions). This enables Nene and Corby CCGs to have confidence that its decisions can be scrutinised, and that it can appropriately respond to formal complaints or

challenges.

Formal document version control should also be implemented and all document versions retained in case of future need.

### **10.3 E-Tendering & Evaluation Systems**

Future changes to the current EU Public Contracts Directive (2014/24/EU) will require (subject to a limited number of exceptions), that all communication and information exchanges for procurements falling within the scope of the Directive, be carried out electronically using products which are generally available, are interoperable and which do not restrict potential providers' access to the procurement procedure.

In readiness for the new Directive, and subject to the exceptions set out below, Nene and Corby CCGs will use electronic systems when carrying out any procurement exercise.

Tenders, tender documentation and communications with potential providers and bidders will be held and managed using a single e-procurement system portal.

Tenders will be evaluated using an appropriate web based system, which is accessed via the single e-procurement portal.

These electronic resources will be managed by the Procurement Team. The electronic systems are currently provided to Nene and Corby CCGs by the NEL Commissioning Support Unit ("NEL").

In some circumstances, it may be necessary for Nene and Corby CCGs to carry out a procurement process, including communications with potential providers and bidders and / or the evaluation of requests to participate and / or tenders, using non electronic methods. Where the use of non-electronic methods is proposed for a procurement and prior to the commencement of the formal procurement process this should be:

- discussed with the Procurement Team, including the processes and measures which will be put in place to ensure accurate and auditable records can be kept and any risks associated with the use of non-electronic means addressed; and
- approved by the Executive Director Contracting and Procurement.

## **11. Managing Conflicts of Interest**

A conflict of interest arises where an individual's ability to exercise judgement or act in one

role is or could be impaired or otherwise influenced by his or her involvement in another role or relationship. The individual does not need to exploit his or her position or obtain an actual benefit (financial or otherwise). A potential for competing interests and/or a perception of impaired judgment or undue influence can also be a conflict of interest.

The management of conflicts of interest is essential in the procurement of services and managing them appropriately is paramount to the probity and accountability of Nene and Corby CCGs decision making and will ensure that the principles of transparency, fairness and non- discrimination are upheld.

As an organisation led by GPs, Nene and Corby CCGs will be particularly subject to conflicts of interest, potential conflicts of interest, or perceived conflicts of interest when procuring services. Nene and Corby CCGs will therefore adopt rigorous standards in the identification and management of conflicts or potential conflicts of interest to ensure that the above principles can be upheld. Such a conflict could arise:

- in carrying out a competitive tender: where GP practices or other providers in which Nene and Corby CCGs members have an interest are amongst those bidding; or
- when procuring services through Any Qualified Provider where one or more GP practices (or other providers in which Nene and Corby CCGs members have an interest) is amongst the qualified providers from which patients can choose.

In managing conflicts of interest Nene and Corby CCGs will:

- comply with its statutory obligations in relation to the management of conflicts of interest;
- have regard to relevant Guidance published by NHS England and Monitor in relation to the discharge of its statutory obligations (including NHS England “ Managing Conflicts of Interest: Statutory Guidance for CCGs [June 2017], and associated templates <https://www.england.nhs.uk/commissioning/pc-co-comms/coi/>; and
- comply with its Constitution in relation to the management of conflict of interests including its:
  - Conflicts of Interest Policy
  - Gifts, Hospitality and Sponsorship Policy
  - Dispute Resolution Policy
  - requirement to maintain and publish on the CCG website the procurement register, inclusive of information regarding the governance process through which decisions were made and the management of conflicts of interest
  - Standards of Business Conduct
- Throughout the procurement process there are a number of checkpoints which NEL

undertake. These are:

- At the establishment of the project delivery group who will be responsible in the commissioning of the service At the point of bid submission all potential service providers submit a conflict of Interest declaration
- Prior to the commencement of the evaluation all evaluators(SMEs) make a formal declaration regarding those bidders who have applied via the procurement process
- All Conflicts of interests checks that have been carried out throughout the process are summarised in the final outcome report
- Any identified conflicts are reviewed and fully risk assessed by the CCG and where appropriate registered on the CCGs risk register

Nene and Corby CCGs will also ensure that individuals contracted to work on behalf of Nene and Corby CCGs or otherwise providing services or facilities to Nene and Corby CCGs will be made aware of their obligation with regard to declaring conflicts or potential conflicts of interest, and that this requirement is written into their contract for services.

## 12. Risk Mitigation and Management

In carrying out its procurement activities Nene and Corby CCGs will ensure that it has adequate measures in place to mitigate against and manage risk. Such measures may include ensuring:

- procurements are adequately prepared and planned;
- each procurement project has an SRO and that roles, responsibilities, reporting lines and channels of communication within the wider commissioning and Procurement Team are clear;
- the individuals involved have the necessary expertise, experience and training to match the requirements of the role and its responsibilities (and that these are kept up to date);
- each project has a pre-agreed and end to end procurement strategy and timetable, tailored to the requirements of the project; the resources available, the business objective and which has identified and sought to minimise any risks involved;
- adequate and appropriate records are kept to comply with Nene and Corby CCGs statutory obligations and to provide a robust audit trail of decisions and actions taken;



- a risk identification and escalation process is established at the outset, to include a risk register which is regularly reviewed and updated with appropriate risk management strategies to address each risk identified;
- the use of robust and up to date project and procurement documents, which are legally compliant, clear and unambiguous, and subject to a strict policy of version control; and
- the conduct of the entire process is in accordance with the law and key procurement principles namely: transparency; equal treatment; non-discrimination; proportionality and sound administration.

## 13. Ethical Considerations, Environmental Issues and Social Responsibility

### 13.1 Ethical Considerations

When carrying out its procurement activities, Nene and Corby CCGs will ensure that any provider that has the necessary abilities to be of service to the organisation has a fair opportunity to compete.

When working with its providers, and when problems arise with a provider's performance or behaviour Nene CCG will, wherever possible, work with the organisation concerned to help them meet the expected requirements.

Nene and Corby CCGs will strive to behave ethically and with integrity in all of its activities and to work with companies that uphold similar ethical standards and do not:

- exploit child or sweated labour;
- pirate the intellectual property of others;
- wilfully and avoidably damage the environment;
- or otherwise act in contravention of applicable laws.

Nene and Corby CCGs will encourage its providers to conform to the Ethical Trading Initiative Base Code ("**ETI Base Code**").

### 13.2 Sustainability Issues

More than half of the carbon footprint of the NHS in England is associated with the products and services it procures. Carbon emissions associated with the extraction, processing, assembly, packaging, transport, storage and handling of products and materials that are consumed directly and indirectly by service provider's account for 60% of the total carbon

footprint

Nene and Corby CCGs will aim to work with organisations that share a commitment to preserving the world's natural resources. When carrying out its procurement activities, insofar as is reasonably practicable and is consistent with procurement law and guidance, Nene and Corby CCGs will follow its:

- Nene and Corby CCGs Sustainability Policy and Action Plan; and
- the principles set out in the NHS Carbon Reduction Strategy.

## 14. Dispute Resolution Process

Where disputes arise we would hope that in most cases these could be resolved informally without recourse to a formal process. If however the dispute cannot be resolved informally, the Dispute Resolution Process should be referred to as set out in the Nene and Corby CCGs Dispute Resolution Policy.

## 15. Alternative Procurement Routes

### 15.1 Most Capable Provider and Single Tender

Where determined 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, or group of providers, Nene and Corby CCGs may consider it appropriate to proceed with a single tender action, where a contract(s) is awarded to a single provider – or a limited group of providers – without competition. In this instance these providers are referred to as the “most capable provider(s)”

Where Nene and Corby CCGs is in need of securing the provision of services due to an urgent need, it may consider securing the short term provision of services by using a single tender action without competition. Where Nene and Corby CCGs commission such a short term service via a single tender action, a further market assessment should be undertaken to determine the future route to market for services.

The law with regard to the “most capable provider” test and the single tender action is complex. It is therefore important that where Nene and Corby CCGs opts not to enter a competitive process, a record of the rationale and decisions made must be maintained.

It is good practice and prudent to advertise a most capable provide r/ single tender opportunity in the same way as for any other contract opportunity to demonstrate transparency and equality

of treatment and to determine that there really is only one capable provider (group of providers). Nene and Corby CCGs shall ensure that it has in place evidence of the review and options appraisal process that led to the decision that a single tender action was appropriate and all such awards will be reported to the NHS Nene and Corby CCGs Audit and Risk Committee.

## **15.2 Framework Agreements**

Framework Agreements are pre-tendered agreements which are established in compliance with the UK Public Contract Regulations 2015 and which, once established, can be used by Nene and Corby CCGs to purchase certain products and/or services without the need to carry out a full procurement process. The advantages of using a framework agreement is that, once established, it can be used to save both time and cost.

Any Qualified Provider is a form of framework agreement.

A framework can be established:

- By Nene and Corby CCGs for its own use; or
- By another clinical commissioning group, contracting authority or a central purchasing body such as the Crown Commercial Service (“**CCS**”).

If Nene and Corby CCGs wishes to use a framework agreement established by another organisation, it should check that that the framework agreement has been established correctly, in accordance with any applicable obligations under the UK Public Contract Regulations 2015; that Nene and Corby CCGs is entitled to use the framework and that it is fit for Nene and Corby CCGs purpose.

In particular, Nene and Corby CCGs should check:

- that it has been identified as a body which is entitled to use the framework;
- that its requirements fall within the specification of goods / services covered by the framework;
- that the term of the framework has not expired;
- that the terms and conditions applicable to call-offs made under the framework are acceptable to Nene and Corby CCGs (as Nene and Corby CCGs will be unable to make substantial modifications to these); and
- that the pricing under the framework is acceptable.

When commissioning services, Nene and Corby CCGs should in the first instance establish whether an appropriate framework agreement exists. Where an appropriate framework is

identified, Nene and Corby CCGs should seek to use this framework to commission the required service(s).

## 16. Terminating Contracts

Any decision either to vary a contract or terminate a contract prior to its expiry date must be carefully considered (including the consequences of doing so) and must be approved in accordance with the Nene and Corby CCGs Scheme of Reservation and Delegation as set out in its Constitution and the Authorisation Limits.

Advice should also be sought prior to taking or approving such a decision as the legal and practical consequences need to be appropriately considered.

## 17. Summary Guidance on Section 256 Arrangements with Local Authorities

### 17.1 Background to Section 256 Agreements

Section 256 of the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) enables clinical commissioning groups to make grants to local authorities towards expenditure on specified community services, The Better Care Fund and any of the local authority functions specified below.

- **Community Services and Better Care Fund** - Nene and Corby CCGs may make payments to:
  - a local social services authority in connection with any social services functions;
  - a local education authority for the benefit of disabled persons; or
  - a local housing authority in connection with the provision of housing.
- **Local Authorities Functions** - Nene and Corby CCGs may make payments in connection with the performance of any of the local authority's functions providing that in the opinion of Nene and Corby CCGs the functions:
  - have an effect on the health of any individuals;
  - have an effect on, or are affected by, any NHS functions; or
  - are connected with any NHS functions.
- **Nene and Corby CCGs obligations in respect of Section 256** - Nene and Corby CCGs must also meet a number of conditions when making a grant under Section 256; these are set out in the NHS (Conditions Relating to Grant Payments by NHS Bodies to Local Authorities) Directions 2013:
  - Nene and Corby CCGs are satisfied that the payment is likely to secure a more effective use of public funds than the deployment of an equivalent amount on the

- provision of health services;
- where the grant payment is to meet all or part of the capital costs of a project, the grant amount must be determined before the project begins;
  - where the grant payment will be used by the local authority to fund part of a project, Nene and Corby CCGs must be satisfied that the local authority intends to meet the remaining costs of the project. Nene and Corby CCGs must also be satisfied that this will continue for as long as both Nene and Corby CCGs and the local authority consider the project to be necessary or desirable;
  - Nene and Corby CCGs must ensure, so far as is practicable, that the payment is used by the local authority in such a way as will secure the most efficient and effective use of the amount paid;
  - if during the course of the grant period, the local authority reduces the level of service it provides below the level originally agreed then Nene and Corby CCGs may reduce accordingly the amount of any further payments; and
  - so far as is practicable, ensure that the payment is used by local authority in such a way as will secure the most efficient and effective use of the amount paid.

To ensure financial probity and a clear audit trail Section 256 specifies two prescribed documents must be completed when making a grant:

- **A Certificate of Expenditure (Annual Voucher)** - The Certificate of Expenditure must be completed by the recipient local authority. The auditors must certify that expenditure in relation to the project funded is fairly stated and in accordance with the relevant terms and conditions.
- **A Memorandum of Agreement** - This must include:
  - a statement of how the Section 256 transfer secures more health gain than an equivalent expenditure of money in the NHS;
  - a description of the scheme. In the case of revenue transfers, the services for which money is being transferred should be specified;
  - financial details and timescales. This should detail the total amount of money to be transferred under the grant and the amount that is to be transferred in each year. If this subsequently changes the Memorandum of Agreement must be amended and then re-signed; and
  - details of the evidence that will be used to indicate that the purposes of the grant, as outlined in the Memorandum, have been secured.

The Memorandum of Agreement must then be signed by both the CCG and the local authority.

## Appendix 1 - Glossary

Term	Meaning
2013 Regulations	The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013
Authorisation Limits	Nene and Corby CCGs authorisation limits as referred to at Section 9.3
Nene and Corby CCGs	NHS Nene and Corby Clinical Commissioning Groups individually or collectively
Nene and Corby CCGs Commissioning Intentions	Nene and Corby CCGs annual plan which sets out the Nene and Corby CCGs vision and annual plans to improve the health and well-being of the local population
Nene and Corby CCGs Operational Plan	Nene and Corby CCGs bi-annual plan which sets out the Nene and Corby CCGs vision and bi-annual plans to improve the health and well-being of the local population
Nene's CCG Strategy	Nene and Corby CCGs 5 year strategy sets out the Nene and Corby CCGs vision to improve the health and well-being of the local population
Nene and Corby CCGs financial policies	Nene and Corby CCGs Prime Financial Policies together with the detailed financial policies which Nene and Corby CCGs has developed in support of its Prime Financial Policies
Constitution	Nene and Corby CCGs Constitution which sets out in detail the arrangements Nene and Corby CCGs has in place to discharge its functions efficiently and effectively on behalf of our population
Contract Management Team	Nene and Corby CCGs contract management team (joint with Corby CCG) whose responsibilities include those set out at Section 5.3.
EU Procurement Rules	<ul style="list-style-type: none"> <li>• The Treaty on the Functioning of the European Union ("EU Treaty");</li> <li>• Directive 2004/18/EC and the Remedies Directive 2007/66/EC;</li> <li>• The Public Contracts Regulations 2006 (as amended);</li> </ul>

	<ul style="list-style-type: none"> <li>• The Public Contracts Regulations 2015; and</li> <li>• Relevant EU and UK procurement case law.</li> </ul> <p>Together the “EU Procurement Rules” including any updating European and/or UK legislation and case law which updates, amends or replaces them.</p>
Governing Body	Nene and Corby CCGs Governing Body appointed pursuant to and having the responsibilities set out at Part 6 of its Constitution.
Guidance	Applicable guidance, direction or determination to which Nene and Corby CCGs has a duty to have regard.
NHS Improvement	The sector regulator for health services in England
NHS England	NHS Commissioning Board being the body established by the NHS Act 2006 (as amended by the Health and Social Care Act 2012)

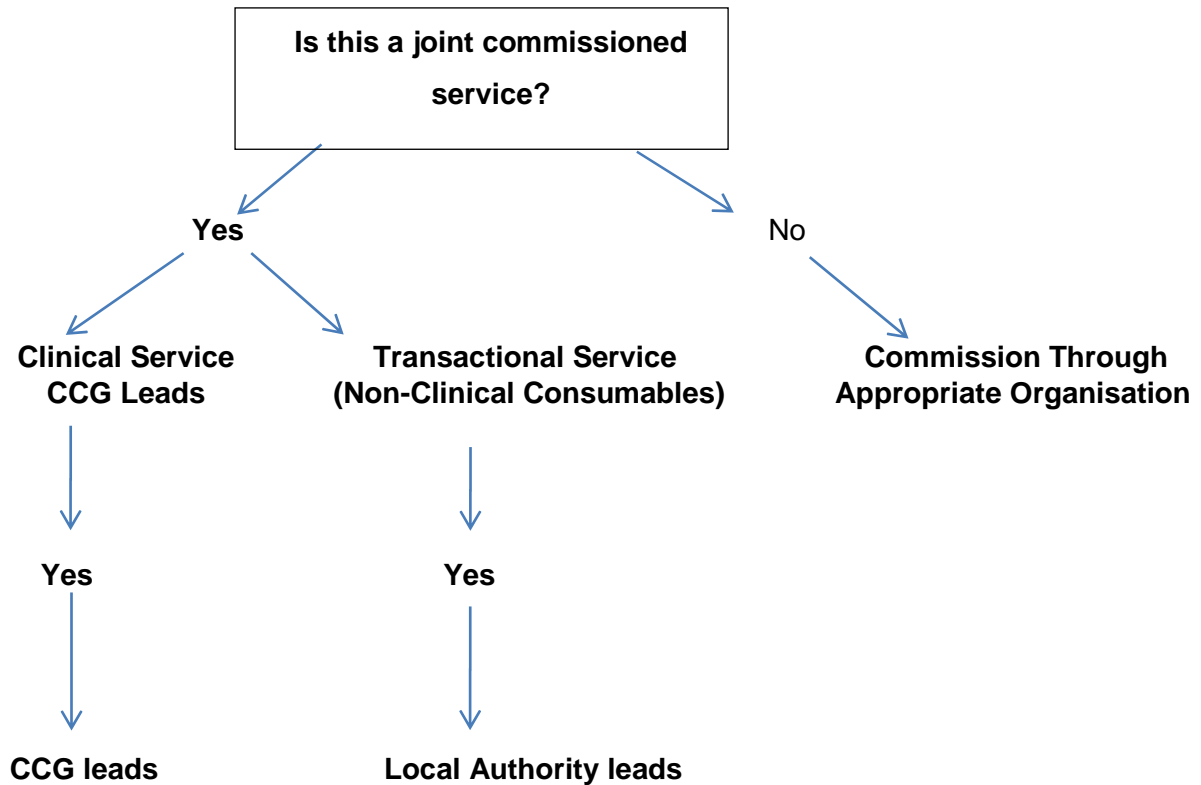
<p>Planning and Delivery Framework</p>	<p>Nene and Corby CCGs planning and delivery framework which provides the framework to deliver Nene's Plan for Patients</p>
<p>Policy</p>	<p>This procurement policy which applies to the Nene and Corby CCGs procurement activities.</p>
<p>Procurement Team</p>	<p>The team responsible for procurement transactional work and those other responsibilities set out at Section <a href="#">5.3</a></p>
<p>Prime Financial Policies or PFPs</p>	<p>Nene and Corby CCGs prime financial policies which are set out at Appendix E of its Constitution</p>
<p>Programme Management Office</p>	<p>Assures adherence of the process to deliver in accordance with the Board Assurance Framework.</p>



PSED	Public Sector Equality Duty being a duty under the Equality Act 2010
Scheme of Reservation and Delegation	Nene and Corby CCGs scheme of reservation and delegation which is included within Nene CCGs Prime Financial Policies as set out at Appendix E of its Constitution
Senior Responsible Owner or SRO	The Nene and Corby CCGs Director responsible for leading the procurement process as referred to in Section <a href="#">5.2</a> of this Policy.
Social Value Act	Public Services (Social Value) Act 2012
Standing Orders	Nene and Corby CCGs standing orders which are set out at Section 10 of its Constitution

## Appendix 2

### Process to determine who leads the Procurement



As part of the initial scoping exercise, parties should assess financial benefits derived from either party being the contracting lead for the service. This should be done in accordance with Local Authority SFIs.

It should be noted that if the Local Authority leads, some elements may be exempt from VAT therefore this can reduce the contract value leading to greater value for money which delivers greater efficiencies.

## Appendix 3 Summary of Nene and Corby CCGs obligations under the 2013 Regulations

Do the Regulations apply?	What to build into your commissioning strategy	When must you advertise a contract?	What must you do as part of your tender?	What records should you be keeping?
<p>The Regulations apply to NHS England, CCGs and any other organisation providing procurement support. The Regulations also apply to CSUs.</p>	<p>How decisions are reached regarding the potential market for a particular service.</p> <p>How procurement will improve quality and efficiency in the service.</p> <p>Consider if there could be any conflicts of interest or potential conflicts and if so ensure there is a robust process for dealing with them.</p>	<p>Is there a market? If there is more than one possible provider capable of providing the service you must advertise.</p> <p>Are you working in partnership with local government? If you are entering into a Section 75 agreement with a local authority you do not need to advertise.</p> <p>Is there a material change to the contract? If there is and it is <u>not</u> mandated by NHS England you may need to advertise.</p>	<p>Advertise on <i>Contracts Finder</i>.</p> <p>Include in the advert a description of the services and the evaluation criteria.</p> <p>Ensure you have put in place arrangements for providers to express an interest in a contract.</p> <p>Ensure your qualification criteria and any other criteria to establish a service, framework or AQP list is transparent, proportionate &amp; non-discriminatory.</p> <p>Ensure your contract does not include any anti-competitive provisions unless necessary to achieve beneficial outcomes or the first objective.</p> <p>Publish on <i>Contracts Finder</i> the following information about each contract:</p> <ul style="list-style-type: none"> <li>○ name &amp; address of provider</li> <li>○ details &amp; date of service provision</li> <li>○ value of contract</li> <li>○ a description of the process followed</li> </ul>	<p>A full audit trail of each procurement, including your evaluation model.</p> <p>Keep a record of how each award of contract complies with your statutory duties as to effectiveness, efficiency, improvement in quality, and promotion of integration.</p> <p>Your process for ensuring you do not engage in anti-competitive behaviour unless it is in the interests of patients.</p> <p>How conflicts or potential conflicts were addressed in each process.</p>
<p><b>Overriding objectives</b></p> <ul style="list-style-type: none"> <li>○ meet needs, improve quality and efficiency</li> <li>○ act transparently and in a proportionate way</li> <li>○ treat providers equally and in a non-discriminatory way</li> <li>○ procure services from providers best placed to deliver the first objective and which provide best value for money</li> <li>○ not to act in an anti-competitive way unless you can demonstrate it is in the interests of patients</li> </ul>				

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