

Procurement framework for managing Commissioning changes

1. Introduction

This framework sets out NHS Kernow's management of major changes to the commissioning of services. Applying a consistent approach for the gathering of evidence, exploration of options and governance, ensuring compliance to all relevant laws and guidance is key to the successful commissioning of services. NHS Kernow is committed to providing high quality clinical services that meet the needs of local communities as set out in its Corporate Objectives and Annual Delivery Plan agreed by the Governing Body. NHS Kernow will look at all options and engage as appropriate to secure the best services for the local population.

2. Guiding principles

NHS Kernow recognises the importance in making decisions about the service it commissions in a way that does not call into question the decision that has been made or the process followed. NHS Kernow will commission services in a manner that is transparent, non-discriminatory and fair way with a view to:

- Meeting the needs of the people who use the services
- Improving the quality of the services
- Improving efficiency in the provision of the services

In doing so, the CCG is committed to:

- Engaging with providers and service users about its commissioning proposals and take their responses into account
- Where appropriate, undertake formal engagement and consultation
- Act in a proportionate and transparent way
- Treat providers equally and in a non-discriminatory way, including by not treating a provider or a type of provider more favourably than any other provider in particular on the basis of ownership.

3. Legislation

Where NHS Kernow intends to work collaboratively with an existing provider to effect a major change, it will evidence how due process has been followed to ensure all risks and benefits have been appropriately evaluated adhering to all relevant national and regional guidelines.

When NHS Kernow intends to procure a new contract by testing the market for competition, it will ensure compliance with EU Procurement Directives as implemented by UK Law and national guidance from NHS England, NHS Improvement and Crown Commercial Services, namely:

- 2015 Public Procurement Regulations
 - 2015 Light Touch Guidance - Crown Commercial Services

- Public Supply Contracts Regulations 2006
 - Public Contract Amendment Regulations 2009
 - Public Procurement (Miscellaneous Amendments) Regulations 2011
- Bribery Act 2010
- The Equality Act 2010 (Section 149)
- The Public Service (Social Value) Act 2012
- The NHS (Procurement, Patient Choice and Competition) Regulations 2013 which support interpretation of Section 75 of the Health and Social Care Act 2012 (11.03.13).
 - Also within the Act - Section 140 Managing Conflicts of Interest
- Procurement Guide for Commissioners of NHS funded services (DH, 30 July 2010)
- The Principles and Rules for Cooperation and Competition (PRCC, July 2010)
- Framework for Managing Choice, Co-Operation and Competition (May 2008)
- Procurement of Healthcare (Clinical) services, briefings 1-4 (NHS Commissioning Board, Sept 2012)
- Managing conflicts of interests: Guidance for clinical commissioning groups (NHS England, March 2013)
- A fair playing field for the benefit of NHS patients: Monitor's independent review for the Secretary of State for Health (March 2013)
- Commissioning Contracting for Integrated Care (Kings Fund Nov 2014)
- NHS Constitution

4. Financial controls

NHS Kernow's constitution sets out the financial limits for the management best value on any purchases carried out on the CCGs behalf.

Delivering Better Value

NHS Kernow will ensure all commissioned services aim to deliver value for money ensuring best quality and price for the service supplied.

5. Governance

To ensure thoroughness, consistency and to provide assurance to the Governing Body, a Procurement Committee, reporting to the Governing Body, will oversee the delivery of each project as the organisation's accountable group.

To ensure NHS Kernow has acted fairly and within the regulations and best practice guidance, each procurement commissioning change will be presented to the procurement committee for decision to proceed, auditable governance procedures must be followed to ensure that due process to minimise the risk of legal challenge of any potential or unsuccessful bidders.

Where NHS Kernow decides to procure a clinical service collaboratively with another CCG or organisation, a lead or joint commissioner will need to be identified and their governance arrangements must be used to oversee the process.

Procurement Committee

A Procurement Committee reporting directly to the Governing Body is established to ensure robust and transparent decision making regarding the identification and delivery of major commissioning changes. A regular report will be provided at Governing Body and will include assurance on conflicts of interests.

Project Steering Group (Task & Finish)

Formed to manage each project, this group exists for the life of the individual project and disbands after the contract is mobilised. Specific job roles from various departments will be a core group who sit on all projects and evaluation panels to ensure consistency and continuity of approach. A standard Terms of Reference to govern the duties and responsibilities and actions of the group will be used. This group will seek appropriate clinical and professional involvement as required. This group will also be responsible for ensuring robust public engagement is sought, as appropriate for the project and manage conflicts of interests.

Resources

A few procurement projects may be running simultaneously and other projects will be drawing from the same resources.

Some activities can be outsourced to external procurement organisations but not all activities, it is recognised that the resource available internally is limited and careful management and timetabling of procurements will be required to avoid 'overload' in certain areas particularly Clinical Governance, Information Governance, Information Management & Technology, Informatics, Health & Safety, Procurement, Programmes, Estates. Reference to the workplan of current projects will be essential in deciding how to proceed with any new projects about to start and the management of the existing projects to avoid project slippage

Conflicts of interest

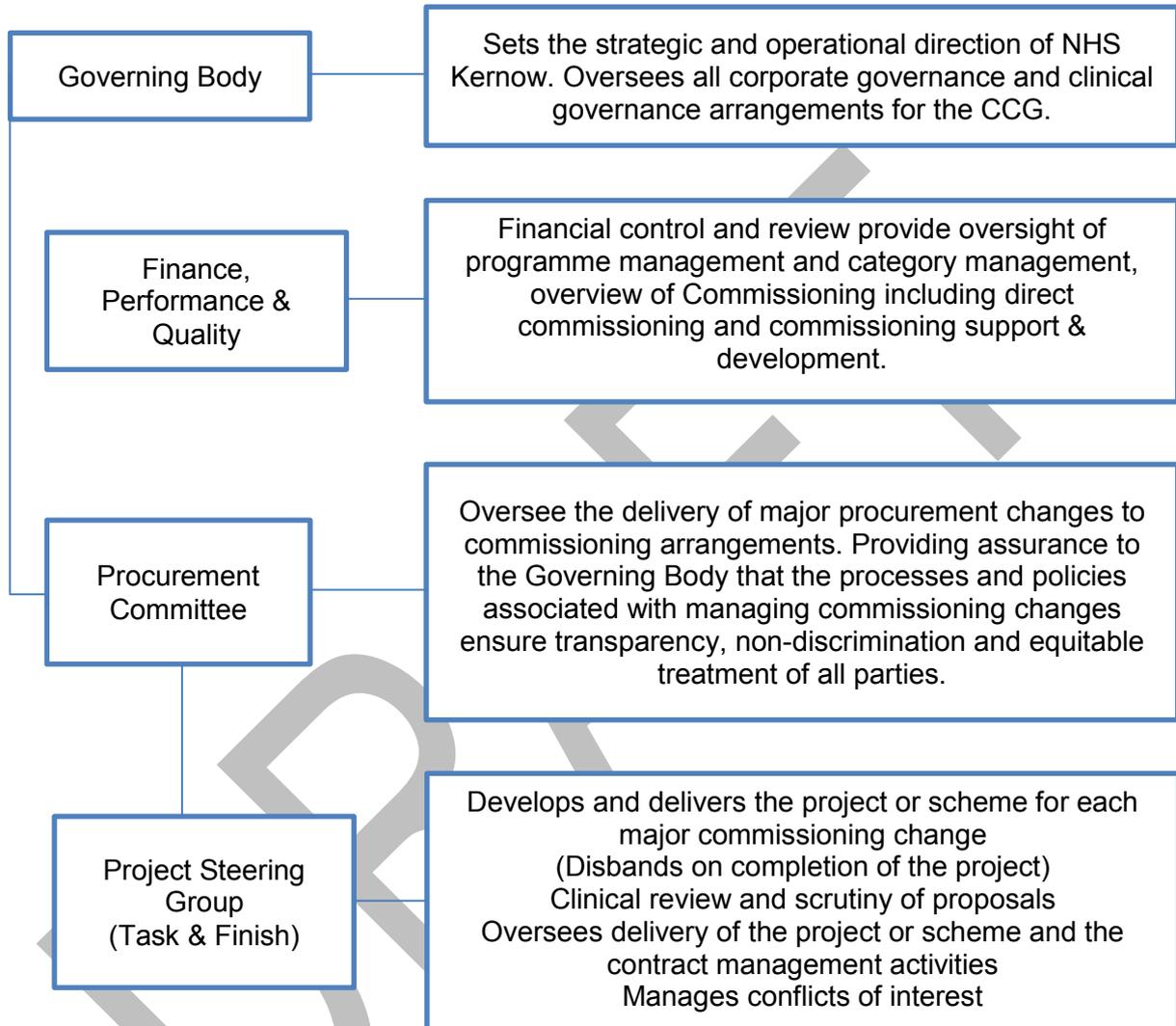
NHS Kernow recognises that conflicts of interest may arise in relating to managing a major commissioning change. For example:

- Where a proposed competitive tender is likely to attract bids from organisations in which a member of a decision making body has a financial or material interest, this interest must be declared and the group member will be excluded from relevant parts of those meetings and evaluations.
- Where a member of the Procurement Committee or key evaluation member are a member of staff or on the Board of the incumbent provider, this interest must be declared and the group member will be excluded from the relevant parts of those meetings and evaluations.

To ensure active management of this issue, NHS Kernow will maintain registers of interest, for all procurement assessment panel members. Each member will sign a Declaration of Interest form and NHS Kernow will keep records as to how conflicts of interest have been managed in line with section 14O of The National Health Service Act 2006, the NHS (Procurement, Patient Choice and Competition) regulations 2013.

Governance Structure

The diagram below sets out NHS Kernow’s governance structure for major commissioning changes.



6. Procurement Policy

Any procurement will be conducted in accordance with the following:

General Fairness & Transparency: In accordance with Clause 6.2 General Duties of its Constitution (NHS Kernow Constitution), NHS Kernow will be clear and transparent in all communications with providers about the CCG's commissioning intentions, decisions (or not) to tender, advertising of opportunities, procurement evaluation criteria, publication of decisions and mechanisms for feedback.

Efficiency: NHS Kernow will ensure that the procurement process is as efficient and time effective as possible for both Commissioners and Providers; as an outcome, all procurements will aim to improve productivity, efficiency and effectiveness of services whilst maintaining and seeking to improve clinical quality.

Quality: NHS Kernow Commissioners will procure services to meet patient needs which are of the highest possible quality standard, and use appropriate measurable performance indicators to monitor provider performance. NHS Kernow will ensure that the contract awarded as the result of a procurement process, as well as the procurement process itself, encourages all providers to deliver continual improvement in the quality of services that they are commissioned to provided.

Continuity: NHS Kernow will continue to work in partnership with key providers of NHS services to continually test these services to ensure that the current providers deliver best value for money.

Equality of Treatment and non-discrimination: NHS Kernow will clearly identify those services which will be put out to competitive tender, and to ensure that all sectors and providers (NHS and non NHS) will be treated equitably in terms of procurement rules, access to information, timescales financial and quality assurance checks, and pricing and payment regimes.

Proportionality: by means of advice, guidance and support, NHS Kernow commissioners will use procurement processes that are proportionate to the value, complexity and risk/benefit to patients of services procured. Different procurement routes for different types of services will enable this, potential costs to bidders will also be considered when assessing which procurement route to follow.

Consistency: NHS Kernow will apply national and local principles and rules consistently to all clinical procurements that they undertake.

Professional Conduct: NHS Kernow will ensure that all procurement personnel who undertake procurements will be subject to Professional Code of Conduct as published by the Chartered Institute of Purchasing and Supply (CIPS).

Equality & Non-Discrimination

The Health and Social Care Act 2012 Section 14z2 requires CCGs to ensure public involvement and consultation. The Public Services (Social Values) Act 2012 requires CCGs to ensure improvement in economic social and environmental wellbeing of the area and how any procurement would secure that improvement.

NHS Kernow will not discriminate and will promote equality of opportunity and pay particular attention to those groups or sections of society with poorer health and life expectancy. Public Sector Equalities Duties 2012 S149 promotes integration and the use of protected characteristics.

NHS Kernow will evidence through an Economic, Social and Environmental Impact Assessment for any proposed tender how it can evidence improvement to the wellbeing of the area.

Bribery

On July 1 2011, the Bribery Act 2010 came into force, a commercial organisation may be criminally liable for corrupt acts carried out on its behalf by third parties, and subject to potentially unlimited fines. In order to comply with the Bribery Act 2010 legislation, the CCG has put into place mechanisms to establish and maintain adequate procedures that prevent bribery.

To further comply with the Act a proper, thorough assessment of risk is essential during the procurement process. Where a proposed competitive tender is likely the CCG shall assess the level of risk and conduct a proportionate level of due diligence in order to take all necessary precautions to ensure that the CCG only forms business relationships with reputable and qualified partners and representatives.

7. Major commissioning change process

The process for managing a major commissioning change within NHS Kernow covers 4 key stages:

1. Pre- procurement phase (review and plan for change)
2. Collaboration or Competition
3. Mobilisation of the change
4. Contract and performance management

7.1 Pre-procurement phase

Each commissioning change will commence with a Project Initiation Document outlining the findings following a review of the current state and where a commissioning view is that change is required.

The Procurement Committee will review and endorse further work-up to a full business case for allowing a major commissioning change or advise on what further information is required to re consider the project at a later date.

Development of a full business case will utilise a range of skills of individuals within the organisation and the development of a Project Steering Group as a Task and Finish Group will be established to oversee its delivery.

The Business Case evidence will include:

An Outline Business Case

- Project Initiation Document
- Provider Engagement
- Service Review
- Contract Review
- Case for Change (draft)

Development into a Full Business Case

- All OBC content plus
- Market Assessment/Procurement strategy
- Service Redesign plans
- Case for Change (after full engagement)
- Service Model delivery options
- Procurement delivery options
- Contracting Strategy
- Stakeholder Engagement & Comms. Plans
- Co-operate or Competition Decision options
- 20 questions evidence

A major change commissioning project process has been developed to navigate through each of the key areas above to ensure consistency of approach, full compliance with all legislation, best practice guidance, and clarity for the individual in the organisation who is responsible for each task.

7.2 Collaboration or competition

The Procurement Committee will need to consider the content of the full business case and decide the best option from either collaborating with the existing Provider or running a procurement to test the current and alternative Providers.

In particular the NHS (Procurement, Patient Choice & Competition) Regulations 2013 place a specific duty on NHS Kernow to procure services that are:

- Most capable of securing the needs of patients, improving the quality and efficiency of services.
- Provide best value for money

These Regulations also make it clear that:

- Where it can be robustly demonstrated that only one provider is capable of providing a particular service, there is no requirement to put a contract out to competitive tender.
- Monitor has no power to force the competitive tendering of services. Decisions about how and when to introduce competition to improve services are solely up to CCGs. However, a court continues to retain the power to force a competitive tendering process to be undertaken by issuing an injunction if it determines that a CCG has acted unlawfully and is in breach of EU Procurement Regulations.

- Competition should not trump integration; commissioners are free to use integration where it is in the interests of patients. However, competition and integration should be seen as complementary rather than mutually exclusive. A well-designed competitive process can be used to achieve integration.
- The over-arching legally binding objectives of procurement are to secure the needs of patients and improve quality and efficiency.
- Legal advice on the interpretation of these regulations recognises that each situation is unique and requires due and careful consideration of all the circumstances. It is recommended that:
 - It can be inferred from the 2013 Regulations that there is an obligation to advertise (or competitively tender) where the services to which the contract relates are not capable of being provided by only one provider (Regulation 5).
- The “single provider” test is a hard evidential burden to satisfy. The circumstances under which the test may be met include for example:
 - i) that the provider is the only provider with the skills or capability to deliver the services
 - ii) that the provider is for reasons of patient safety, the only provider capable of delivering that service or
 - iii) following a reconfiguration services are required to be provided in a certain location by a particular provider.

7.2.1 Collaboration

When the CCG is satisfied it can meet the requirements of the Single Provider evidence a Collaboration/Co-operation Commissioning Change Project Process will be followed.

Notifications to the market (VEAT Notices or Contract Award Notices) cannot be issued without the Procurement Committee’s approval

7.2.2 Competition

When considering whether or not a service should be competitively tendered, NHS Kernow will ensure that any decision taken complies with the Regulations and Guidance set out in this Framework. The financial control limits, the scale of the procurement, the degree to which the service specification and funding model has been developed and the number of potential providers for the service.

Notifications to the market (Prior Information Notices or Adverts) cannot be issued without the Procurement Committee’s approval.

The Procurement Committee will agree with the Procurement Team which is the most appropriate organisation to run each procurement based on the following:

Contract Value £	NHS Kernow Responsibility	External	Comments
As per constitution	To ensure quotations are received in line with SFI’s/SFO’s requirements, using	Tenders could be carried out on NHS Kernow’s behalf by :-	Proportionate effort, value and risk may determine the

Contract Value £	NHS Kernow Responsibility	External	Comments
	<p>standard templates with a clear audit trail.</p> <p>Are there any benefits to NHS Kernow in collaborating or outsourcing the work?</p> <p>In-house if:</p> <p>Service is solely for a service for Cornwall & Isles of Scilly and</p> <ul style="list-style-type: none"> • NHS Kernow has capacity to manage • It relates to integration of services with Cornwall Council • Provider/Suppliers would be discouraged to bid if the tender covered a larger geography • The Specification is unique to Cornwall • Specialist Procurement skills/experience sit within NHS Kernow • There would be a conflict of interest if outsourced 	<p>The local CSU</p> <p>Another CSU</p> <p>Accessing a Framework Agreement and running mini competition in house</p> <p>Cornwall Supplies</p> <p>Consideration needs to be given to</p> <ul style="list-style-type: none"> • Capacity: does the external organisation have the resource capacity? • Expertise: does the external organisation have the expertise? • Timing: is one of the external organisations running a similar procurement for another CCG? Economies of scale to collaborate. • Scope and/or Scale: would Providers be encouraged to bid if the tender covered a larger geography or wider remit? 	<p>organisation best to carry out the tender process on NHS Kernow's behalf.</p> <p>No requirement for OJEU notice where 2015 Light Touch Regime applies</p>

Contract Value £	NHS Kernow Responsibility	External	Comments
		NHS Kernow can adopt a more generic specification to accommodate a collaborative approach?	

NHS Kernow's Procurement Department will prepare a work plan of approved projects for the Procurement Committee and provide updates of progress on all in house and outsourced projects.

7.3 Mobilisation and implementation of the change

NHS Kernow is committed to ensuring new services and changes to services are fully implemented following a major commissioning change. Working with the outgoing Provider to ensure a smooth exit strategy that is seamless to patients and protects patient safety. Working with the new Provider to ensure smooth transition, applying appropriate resources to ensure communication to relevant groups, operational procedures are set up and financial and contractual processes are in place.

7.4 Contract and performance management

Contract and Performance management will take over responsibility for the new contracted service after the commencement date of the new contract. Until that point the new service remains the responsibility of the Project Steering Group and the decommissioning of the old service remains the responsibility of the Contracts Team.

8.0 Appendices

(under development)