

NHS KIRKLEES CCG STANDING FINANCIAL INSTRUCTIONS

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This document should be read in conjunction with the following CCG documents:

- Standing Orders and Prime Financial Policies
- Scheme of Reservation and Delegation and operational Scheme of Delegation
- Process for the issue and receipt of tender documents
- Policy on Procurement.

This document is part of the CCG's detailed financial policies, which support the Prime Financial Policies, and together are referred to as the CCG's financial policies.

Key considerations

The delegation shown is the lowest level to which authority is delegated. Where subordinate staff assist in dealing with an issue, appropriate control must be maintained.

1 Compliance

- 1.1 All employees or third parties engaged to act in any capacity relating to procurement or management of contracts shall comply with the Standing Orders, Prime Financial Policies, Standing Financial Instructions, procurement policies and the latest guidance produced by NHS England.
- 1.2 Failure to comply with the Standing Orders, Prime Financial Policies, Standing Financial Instructions and the related Procurement Procedures may result in disciplinary action against employees, or steps being taken against third parties in line with contractual terms.
- 1.3 All employees and companies / contractors / suppliers engaged on the CCG's behalf must ensure that any conflicts of interest are declared as set out in the Conflicts of Interest Policy.
- 1.4 Current Public Contract Regulations require the advertisement of opportunities in the designated portal (i.e. Find A Tender), if applicable. The limits and rules are subject to review and change, therefore confirmation must be sought. A notice of contract award in the designated portal is required.
- 1.5 Where Public Contract Regulations may be applicable, managers must consult the Chief Finance Officer or their nominated representative to ensure full compliance with requirements.
- 1.6 Where an appropriate standard or code of practice is current at the time of tender, each written contract should require that the goods, services or works will be in accordance with that standard.
- 1.7 The procurement of contracts must comply with relevant legislation.

2 Exemptions/Exclusions

- 2.1 No exemptions can be made to the CCG's Prime Financial Policies or Standing Financial Instructions unless authorised by the Accountable Officer after considering a written report. A written record of the reasons for the decision must be retained and reported to the Audit Committee.
- 2.2 A Register of Exemptions will be maintained centrally by the Chief Finance Officer or their nominated representative, detailing the nature and value of all the contracts where an exemption has been obtained. A report will be provided to the Audit Committee.

3 Values and the inclusion of Value Added Tax

3.1 All amounts quoted refer to values inclusive of Value Added Tax.

4 Pre Contract Requirements and Assessment of Risk

4.1 All procurement activity must comply with the CCG's procurement policies.

4.2 In all cases before **commencing any procurement** process for goods, services or works with an estimated value in excess of £50,000, the following is required:

- (a) A business case to justify planned procurement and include:
 - (i) a written risk assessment, identifying key risks and the actions required to ensure that an acceptable level of risk is maintained
 - (ii) a written record of the reasons for decisions, updated as appropriate
 - (iii) an appropriate specification which will form the basis for the contract
 - (iv) an estimate of the total cost of the contract (including costs for the full term of the contract, maintenance and continuing costs, and any disposal costs, i.e. whole life time cost)
 - (v) signed authorisation in line with the authority limitations.
 - (b) consultation with the Chief Finance Officer or their nominated representative on appropriate contract documentation, including terms and conditions
 - (c) for expenditure on buildings the Chief Finance Officer needs to be consulted to advise on process. In addition the business case will need to set out the service need, the capital and the revenue costs.
 - (d) a schedule of prioritised and weighted evaluation criteria, including (as appropriate), price, technical merit, quality, sustainability, equality, analysis of cost or any other relevant criteria. The evaluation criteria must not include any non-commercial considerations
 - (e) unless provided for in paragraph 8 (Aggregation of Contracts), confirmation that supplies of a similar nature are being purchased together, and that orders are not split or disaggregated. To do so is a breach of these financial policies, and may be a breach of Public Contract Regulations.
- 4.3 In all cases before **commencing any contract** for goods, services or works with an estimated value in excess of £50,000, the following is required:

- (a) evidence that each supplier has the technical capability and capacity to enter into a contract
 - (b) a report detailing the financial standing of any proposed supplier for any contract exceeding £100,000 or less where the procurement is considered business critical.
- 4.4 Pre-tender consultation with suppliers must be transparent and not prejudice any potential supplier.
- 4.5 Technical advice for the preparation of a specification may not be sought from a supplier where it will provide an unfair advantage to any supplier or distort equal and fair competition.
- 4.6 Where there is a relevant Approved List of Contractors, this must be used as the source of providing the names of contractors from whom quotations and tenders are sought. There must be a consistent selection process in line with regulations, directives, Department of Health guidance and these financial policies.

5 Competition Requirements for Contracts below £20,000

- 5.1 For contracts where the estimated expenditure or income does not, or is not reasonably expected to, exceed £20,000 the Head of Contracting and Procurement should advise the most efficient method of procurement, which demonstrates value for money, keeping a written record of the reason and action taken. As a minimum written quotations should be sought from **at least one, but preferably up to three** provider(s)/supplier(s).
- 5.2 Procurement should be carried out in accordance with these financial policies and Department of Health Guidance.

6 Competition Requirements for Contracts above £20,000

- 6.1 For contracts with whole life costs **between £20,000 and £50,000** a minimum number of **three competitive written quotations** should be obtained.
- 6.2 Formal tendering procedures must be applied where the estimated whole life costs exceed £50,000.
- 6.3 When assessing the potential value of a contract the whole life costs of the contract should be considered. The cumulative costs of a service with

contractors must also be taken into account when assessing what competition requirements are needed.

- 6.4 For contracts valued above £20,000 up to £50,000, the Accountable Officer may give permission for procurement to take place without competitive quotations being sought in exceptional circumstances for the reasons provided in 7.1 below.
- 6.5 For contracts valued over £50,000, the Accountable Officer in conjunction with another Governing Body member may give permission for procurement to take place without a tender process for the reasons provided in 7.1 below.
- 6.6 Where it is decided that competitive quotations are not applicable and should be waived, the fact of the waiver and the reasons should be documented and recorded in an appropriate CCG record and reported to the Audit Committee at each meeting.

7 Exceptions and Instances Where Formal Quotations or Tendering is Not Required

- 7.1 The requirement for formal quotations may be waived by the Accountable Officer, and the requirement for tendering procedures may be waived by the Accountable Officer in conjunction with another Governing Body Member, in the following circumstances:
 - (a) in very exceptional circumstances where the Accountable Officer decides that competitive quotations or tendering procedures would not be practicable or the estimated expenditure or income would not warrant formal competitive quotations or tender procedures, and the circumstances are detailed in an appropriate CCG record
 - (b) where the requirement is covered by an existing NHS contract
 - (c) where framework agreements that are open and accessible to the CCG are in place and have been approved by the Governing Body
 - (d) where a consortium arrangement is in place and a lead organisation has been appointed to carry out tendering activity on behalf of the consortium members

- (e) where the timescale genuinely precludes competitive quotations or tendering. Failure to plan the work properly would not be regarded as a justification for waiving the requirement for competition
 - (f) where specialist expertise/service/works/goods are required and these are available from only one source (specialised service)
 - (g) when the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate
 - (h) where there is a clear benefit to be gained from maintaining continuity with an earlier project. However, in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competition
 - (i) for the provision of legal advice and services providing that any legal firm or partnership commissioned by the CCG is regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council for England and Wales in relation to the obtaining of Counsel's opinion) and are generally recognised as having sufficient expertise in the area of work for which they are commissioned. The Chief Finance Officer will ensure that any fees paid are reasonable and within commonly accepted rates for the costing of such work.
 - (j) where allowed and provided for in the Capital Investment Manual.
- 7.2 The waiving of competitive quotations or competitive tendering procedures should not be used to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure.
- 7.3 If, after a contract has been agreed, the contractor requests a revision and the revision brings the total contract value to less than the original approved and allocated funding then the revision can be considered with the approval of the relevant Head of Service.
- 7.4 If after a contract has been agreed the contractor requests a revision which brings the total amount to greater than the original approved and allocated funding then the contract has to be resubmitted for approval depending on the contract value to the original approval authorities.

- 7.5 Procurements which subsequently breach thresholds after original approval, without the appropriate authorised notices of variation, shall be considered a breach of financial policies and will be acted upon in line with para 1.2. Such breaches will be documented in an appropriate CCG record and reported to the Audit Committee at each meeting.

8 Aggregation of Contracts

- 8.1 If a number of contracts of a similar nature are to be tendered, and the total cost of the contracts exceeds the tender threshold of £50,000, they must be tendered as one contract. If the total aggregated contract value exceeds the Public Contract Regulations (see paragraph 1.5) they **must** be tendered as one contract.

(Total cost means whole life costs of the contract.)

- 8.2 Tenders for services which require a number of providers to be working in the market place in order to introduce flexibility and competition can be tendered as one, however, separate contracts can be awarded to more than one provider. For the avoidance of doubt, the value of the contract over the whole contract term represents the total value of the contract.

9 Approved Lists

- 9.1 Where the CCG has determined that it will use Approved Lists, the CCG's Head of Contracting and Procurement shall ensure that the firms/individuals invited to tender (and where appropriate, quote) are among those on approved lists. Where in the opinion of the Chief Finance Officer it is desirable to provide tenders from entities not on the approved lists, the reason shall be recorded in writing to the Accountable Officer.
- 9.2 Where the Chief Finance Officer has decided in writing that a new approved list of contractors is required for the supply of goods and services an approved list may be compiled.
- 9.2.1 At least four weeks before the approved list is compiled the approved list must be advertised on the designated portal, or in any other journal, newspaper etc., where it is considered that this would be beneficial, inviting contractors to indicate their interest in inclusion on the list.

9.2.2 The list must be kept by the Contracting Team and should:

- (a) Contain the names of all suppliers who wish to be included and who have been approved by the Chief Finance Officer following an evaluation process.
- (b) Indicate the level of contract value as recommended by the Chief Finance Officer and the categories of work for which approval is given.

9.2.3 The list may be amended by the addition of further contractors approved by the Chief Finance Officer or by the exclusion of contractors who are not meeting the requirements of the CCG. The Contracting Team will maintain a written record of the reasons for inclusion or exclusion.

9.2.4 The list must be reviewed at least every four years in accordance with Public Contract Regulations.

9.3 Tendering from Approved Lists

9.3.1 Tenders should be sent to a minimum of three suppliers on the approved list, selected by strict rotation. The Chief Finance Officer shall maintain a written register recording details of all invitations to tender, including reasons for selection and the responses received.

9.3.2 If a contract falls under the Public Contract Regulations regime, then existing approved lists cannot be used, and the contract must be advertised under Public Contract Regulations.

10 Tendering and Procurement

10.1 Unless the competition requirements have been waived in accordance with paragraph 7.1, contractors must be appointed by one of the following methods:

(a) *Selective tendering from an Approved List*

Selective tendering from an Approved List is appropriate when there is a need to tender for a particular type of service on a frequent basis.

(b) *Contracting with “Any Qualified Provider” (AQP) from an Accredited Approved List*

Contracting with “Any Qualified Provider” is appropriate when services are required on an ad-hoc basis or to facilitate patient choice. It may be described as an accreditation process underpinned by a framework agreement or “call off” contract.

Use of an Approved List will be required in accordance with Paragraph 9.2 (Setting up Approved Lists).

(c) The Open Tendering Procedure

Under the Open Tender Procedure all interested candidates who respond to a Government's Contract Finder (<https://www.gov.uk/contracts-finder>) advertisement if appropriate (and other adverts placed where it is considered that this would be beneficial) must be invited to tender. The best bid is chosen according to evaluation criteria. Under this procurement route, the advertisement and Service Specification must be very clearly defined so that bidders know exactly what is being procured. There is no scope to negotiate with bidders.

This procurement route is more appropriate for goods/services that are not complex in nature.

(d) The Restricted Tendering Procedure

Under the Restricted Tendering Procedure, interested candidates are invited to respond to the Government's Contract Finder (<https://www.gov.uk/contracts-finder>) advertisement if appropriate (and other adverts placed where it is considered that this would be beneficial) by submitting an expression of interest.

A shortlist of candidates is then drawn up and invited to tender. There is no scope to negotiate with tenderers following receipt of bids.

The Restricted Tendering Procedure should be used for goods or services that are more complex in nature and where short listing is required to ensure that the contractor has the appropriate technical ability to provide the goods or services being tendered for. A detailed specification will sent to short-listed providers when they are invited to tender.

(e) Competitive Dialogue Tendering

The use of the Competitive Dialogue Procedure is applicable only for particularly complex contracts where development of the detailed specification will take place during the tender process.

Under the Competitive Dialogue Procedure shortlisted parties are invited to participate in dialogue which may have several stages. Once the dialogue is concluded, suppliers are invited to submit a final tender. There is

provision for bidders to clarify, specify and fine-tune their final bids before a preferred bidder is chosen.

Robust governance is required as there needs to be careful management of bids and avoidance of conflicts of interest to ensure equality of treatment and avoid any unfair advantage between bidders.

Use of the Competitive Dialogue Procedure must be approved by the Chief Finance Officer or their nominated representative.

11 Invitation to Tender or to be Included on an Approved List

11.1 All invitations to tender or for expressions of interest in a tender or inclusion on an Approved List must be advertised on Government's Contract Finder (<https://www.gov.uk/contracts-finder>) advertisement, if appropriate. If it is considered that it would be beneficial the tender or Approved List may also be advertised in one or more newspapers or appropriate journals.

11.2 All requests for expressions of interest or invitations to tender shall state the date and time as being the latest time for receipt.

11.3 The CCG will keep a register of the companies that have expressed an interest and whether or not they have been invited to tender.

11.4 All tenders, other than those being submitted via electronic tendering software, shall be submitted in accordance with the following requirements:

- Tenders must be submitted in a plain sealed package or envelope addressed to the Accountable Officer bearing a pre-printed label supplied by the CCG and the latest date and time for the receipt of such tender.
- Tender envelopes shall not bear any names or marks indicating the sender. The use of courier/postal services must not identify the sender on the envelope or on any receipt so required by the deliverer.

12 Evaluation of Tender, Quotations and Expressions of Interest

12.1 Prior to accepting a tender, quotation or expression of interest, the Tender Evaluation Team must evaluate all submissions in accordance with the criteria set out in paragraph 4 (Pre Contract Requirements and Risk Assessment).

12.2 Tenders must be evaluated by a Tender Evaluation Panel comprised of a minimum of three appropriately experienced people.

12.3 The Tender Evaluation Panel is required to maintain written records of:

- the weighting and evaluation criteria used to assess the submissions
- the recorded schedule of scoring for each panel member, including detailed reasons for scoring decisions
- a signed record of attendance and agreement with the scoring decisions and choice of tenderer.

13 Acceptance of Tender or Quotation

13.1 Successful tenderers will be those offering the best value for money to the CCG, in accordance with the Tender Evaluation Criteria, or where price is the only consideration the cheapest.

13.2 No tender or quotation shall be accepted which will commit expenditure in excess of that which has been allocated by the CCG and which is not in accordance with these financial policies.

13.3 A written, signed record of the decision to award a contract will be kept by the CCG and will be reported on to the Audit Committee at each meeting.

13.4 A Notice of an award of contract must be published on the designated portal in accordance with Public Contract Regulations.

13.5 All tenderers must be informed of the outcome of the tender process and provided with detailed feedback on their submission in relation to each of the evaluation criteria.

13.6 A standstill period will be required in accordance with Public Contract Regulations or the latest guidance produced by the Department of Health.

14 Use of Seal and execution of documents by signature

14.1 Authority to execute documents by seal and/or signature is held by the Accountable Officer, Chair of the Governing Body or Chief Finance Officer, in accordance with relevant Standing Orders. It is important that final contracts are signed, either physically or by acceptable electronic means, by the appropriate authority prior to commencement of activity.