

Policy for Procurement and Contracting

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| Services  | Applicable  |
| Trustwide | X |
| Mental Health and LD  |  |
| Community Health Services  |  |

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2. - Responsibilities of the ELFT Contract Lead
3. - CDD Role 30 - Subcontract Registration
4. - Subcontract Registration
5. - Authority to Sign Subcontracts
6. - CDD and Shared Business Services
 |
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| 5 | 01/08/2021 | Sam Bhaskar |  | * Addition of changes to Procurement Regs with 2021 White Paper requirements for the supply of healthcare services
* Addition of mandatory 10% weighting for Social Value in tenders
* Executive Directors Financial limits increased to £50k
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| --- | --- | --- |
| **Paragraph** | **Contents** | **Page** |
| 1 | Introduction | 4 |
| 2 | Purpose | 4 |
| 3 | Proportionality | 4 |
| 4 | Rules and principles regarding competition | 4 |
| 5 | Non-discrimination and equality ofTreatment | 5 |
| 6 | Standing Financial Instructions (SFIs) | 5 |
| 7 | World Trade Organisation’s Government Procurement Agreement | 5 |
| 8 | Procurement thresholds contained within the Trust SFIs | 6 |
| 9 | ELFT Contract Lead | 6 |
| 10 | Provider Regime process for procurement of Healthcare services | 6 |
| 11 | Procurement Role | 8 |
| 12 | Contracts Team Role | 8 |
| 13 | Procurement Process | 8 |
| 14 | Service Specifications | 9 |
| 15 | Pricing | 10 |
| 16 | Sourcing suppliers | 10 |
| 17 | Supplier engagement | 10 |
| 18 | E-Tendering | 10 |
| 19 | Standard selection questionnaire | 10 |
| 20 | Evaluating selected tenders | 11 |
| 21 | Tender award | 11 |
| 22 | Contract and subcontract registration | 11 |
| 23 | Authority to sign contracts and subcontracts | 11 |
| 24 | Internal audit | 11 |
| 25 | Direct Award due to Extreme Urgency  | 12 |
| Appendix One | Financial Limits | 13 |
| Appendix Two | Procurement flowchart | 14 |
| Appendix Three | Flowchart for procuring goods and services | 15 |
| Appendix Four | Procurement process, roles and responsibilities | 16 |
| Appendix Five | Flowchart for Waiver process | 18 |
| Appendix Six | Checklist & template for tendered contracts | 20 |
| Appendix Seven | Contract Income / Expenditure Template | 21 |
| Appendix Eight | Glossary of terms | 22 |

# Introduction

In order to ensure consistent and high-quality procurement and contracting for East London NHS Foundation Trust (The Trust) it is important to have a policy. This document sets out the systems and processes for procuring [goods and services] and managing contracts which need to be compliant with legislation and consistent with the Trust’s strategic objectives and SFIs.

# Purpose

This policy aims to reduce risk by having a robust procedure available to staff with the following principals:

* + All Trust procurement and contracts processes are compliant with the Trust’s strategic objectives, national guidance, and relevant legislation.
	+ All contracts are developed and reviewed within a clearly defined accountability framework.
	+ Staff involved in the process have access to appropriate guidance and support.
	+ All new contracts are generated due to a clearly identified need.
	+ There is consistency in the development, implementation and review of all Trust contracts.
	+ Appropriate consultation takes place when contracts are being developed.
	+ All contracts are properly disseminated throughout the Trust.
	+ All contracts are monitored against agreed deliverables, with clear responsibility between Procurement, Contracts, Service Leads and other stakeholders
	+ All Contracts will be considered for a measurable impact against the Trusts Social Value and Anchor institution policy

# Proportionality

The level of resources the Trust allocates to the procurement process should be proportionate to the value, complexity and risk of the services, i.e. more resources will be required where higher benefits, costs savings, quality can be gained. The Pareto principle will be applied to manage resource constraints and ongoing risk calculation and management will be applied to manage the Trusts interests within the capacity of the Trusts Procurement and Contracting teams

Furthermore, when planning, designing, and running procurements, the Trust should have regard for the bidding costs suppliers incur and seek to avoid wasted costs due to significant delays or material scope changes. This can be mitigated by engaging the marketplace in advance of procurements.

# Rules and Principles regarding competition

The following rules must be applied to all procurement processes before commencement. They set out the principles of fair negotiation and competition.

The rules are as follows:

* Procurement undertaken by the Trust must be transparent and non-discriminatory and compliant to Public Contracts Regulations 2015 (as revised 2020).
* The 2021 White Paper, the Integration and Innovation: working together to improve health and social care for all, further supports the approach with a number of changes to procurement. These include removing the commissioning of NHS and public health services from the scope of the Public Contracts Regulations 2015 (as revised 2020), to be replaced by a bespoke NHS provider selection regime and a new duty on buyers in NHS organisations to act in the best interests of patients, taxpayers and their local populations. The procurement of non-clinical services (e.g. professional services such as consultancy) will remain subject to public procurement rules. KPI’s and service credits must be fair and equitable to both parties.
* Procurement Policy Note ("PPN") 06/20 requires key environmental, social and governance ("ESG") related themes to be evaluated expressly in all UK central government procurement from 1 January 2021, through the use of a 'social value model'. A minimum weighting of 10% must be given to ESG objectives in each procurement.
* This applies to all contracts awarded by UK central government departments, their executive agencies and non-departmental public bodies that are regulated by the Public Contracts Regulations 2015 (as revised 2020). ELFT falls into this category and must for all awarded contracts ensure that as part of section and monitoring processes 10% will be allocated into scoring bids from suppliers focusing on ESG requirements Principles on cooperation and agreements.
* As part of the initiative to work collaboratively within the Trust’s footprint, the procurement team is working with other Trusts and Local Authorities in North East London ICS, building partnerships to drive efficiencies, savings, reduce waste, and becoming an Anchor Institution across the system.
* The Trust and suppliers must collaborate to improve services and deliver seamless and sustainable care to patients.
* The Trust acting as Commissioner should advocate patient choice where appropriate.

# Non-discrimination and equality of treatment

The procurement process should not give an advantage to any bidder. This includes ensuring that decisions are taken, not with regard to the type of organisation specifically, but rather to how well that organisation meets the evaluation criteria.

Financial and quality assurance checks should apply equally to all types of suppliers, but be proportionate to the procurement process (see ‘proportionality’, above).

All suppliers must operate under these same principles when being asked to respond to any terms and conditions, tender specification, and pricing payment regimes, all of which must be transparent and fair.

# Standing Financial Instructions (SFIs)

SFIs detail the financial responsibilities, policies and procedures adopted by the Trust. They are designed to ensure that the Trust's financial transactions are carried out in accordance with the Law and Government Policy in order to achieve probity, accuracy, economy, efficiency and effectiveness. They should be used in conjunction with the standing orders and the Scheme of Delegation adopted by the Trust.

SFIs identify the financial responsibilities which apply to everyone working for the Trust and its organisations. They do not provide detailed procedural advice and should be read in conjunction with the departmental and financial procedure notes. All financial procedures must be approved by the Director of Finance.

Should any difficulties arise regarding the interpretation or application of any of the SFIs then the advice of the Director of Finance must be sought.

### **World Trade Organisation’s Government Procurement Agreement**

The WTO’s GPA is a voluntary trade agreement that governs public procurement. Procurement in the UK post-Brexit followed rules set by OJEU; these rules will now shift to be in line with the GPA.

The GPA includes both EU member states and non-EU states. It also outlines procurement principles, thresholds and rules that all those in agreement must adhere to. This agreement will allow the UK to have access to international public procurement.

1. **Procurement thresholds (included in Trust SFIs)**

|  |  |
| --- | --- |
| **Expenditure range** | **Procurement solution** |
| Up to £10,000 (Inc. VAT). | Quotation to be attached to the requisition obtained by requisitioner or Procurement. |
| £10,001 to £50,000 (inc. VAT). | Minimum of 3 competitive quotations, (Advertised on Contracts Finder, if value is over £25,000 excl. VAT). |
| £50,001 (inc. VAT) to WTO GPA tendering threshold\*.  | Formal tender procedure, advertised on Contracts Finder. |
| Above WTO GPA threshold. | Formal tender procedure governed by WTO GPA. |

\*WTO GPA Threshold £189,330 (Excl. VAT) for service contracts, £663,540 (Excl. VAT) for Social and Other Specific Services, and £4,733,252 (Excl. VAT) for works contracts, as at 1 January 2020).

1. **ELFT Contract Lead**

Each contract shall be initiated and led by a Service Manager (the ELFT Contract Lead), who will:

* + Have identified and justified the need for a subcontract in consultation with and under the authorisation of the appropriate Director or Service Manager.
	+ Have been allocated a budget in conjunction with Finance and /or a Head contract to cover the cost of the service or good;
	+ Help design the specification with the service/good;
	+ Have an in-depth knowledge of the service/good;
	+ Be involved in the contract management of the provisioned service to include:

Receive reports from the Supplier when necessary according to the contract and to monitor performance against any goals set out in the service specification;

Identify any issues, problems or successes the service/good has encountered;

Organise at regular intervals formal contract performance meetings as specified in the contract;

Work closely with the Commercial Development Department representative in the process of subcontract development/drafting, negotiation, review, extension, renewal and/or variation (all variation contracts to be undertaken in communication with the Contracts team;

Routinely report on performance to the appropriate management group/committee for high value and high risk sub-contracts, and report by exception to their Director and the CDD representative for other sub-contracts;

Hold a copy of the contract.

The Contract Lead or Deputy are responsible for informing CDD of new subcontracts, extensions of and any variations to the current subcontracts (i.e. changes or additions to services or products provided).

Every ELFT Contract Lead will have a deputy, who can carry out the Contract Lead’s duties in their absence.

1. **Provider Regime process for procurement of Healthcare services**

In accordance with the 2021 White Paper, consideration will take place regarding the type of Goods and Services that are being sought. The changes detailed in the white paper remove the commissioning of NHS and public health services from the scope of the Public Contracts Regulations 2015, to be replaced by a bespoke NHS provider selection regime and a new duty on commissioners to act in the best interests of patients, taxpayers and their local populations.

The Provider Regime is described below:

<https://www.england.nhs.uk/wp-content/uploads/2021/02/B0135-provider-selection-regime-consultation.pdf>

The Trust will have three choices when considering a provider for the delivery of healthcare services ensuring their decisions are based and documented on the key criteria of

* Quality (safety, effectiveness and experience) and innovation
* Value
* Integration and Collaboration
* Access, inequalities and choice
* Service sustainability and social value
1. **Continuation of existing arrangements**

When choosing to take this option as no other providers are available or the existing supplier is ~~g~~doing a good enough job as judged by the Trust we must ensure to

* take appropriate steps when awarding and managing contracts to ensure that the service will continue to deliver well
* be transparent about their intention to continue with the current arrangements by publishing their intent in advance, including their justification
* publish their intention to award the contract, with a suitable notice period (e.g. 4–6 weeks unless a shorter period is required due to the urgency of the case); and if during the notice period credible representations are received from other providers, the decision-making body must deal with them according to section 7 of the attached Provider Regime
1. **Identifying the most suitable provider for new/substantially changed arrangements**

When the service we are seeking from a supplier is changing a service/existing contract considerably; a brand new service is being arranged; the incumbent supplier no longer wants to or is no longer able to provide the services; or the Trust wants to use a different provider we will need to:

* set out clearly that they are using this approach to select a provider
* be satisfied that they can justify that the provider they are proposing to select is the most suitable provider (referring to the criteria set out in the regime) and any other relevant factors, and according to any hierarchy of importance the decision-making body decides is necessary
* have carefully considered other potential options/providers within the relevant geographical footprint (i.e. a local service is a local footprint, a regional specialised service is a regional footprint, etc) in reaching this decision and be able to evidence this
* publish their intention to award the contract, with a suitable notice period (e.g. 4–6 weeks unless a shorter period is required due to the urgency of the case)
* if during the notice period credible representations are received from other providers, the decision-making body must deal with them as set out in the Further considerations section of the Provider Regime
1. **Competitive procurement**

The Trust can chose to take this option where:

* the decision-making body is changing a contract/service substantially
* a new service is being arranged
* the incumbent no longer wants to or can no longer provide the services, or
* the decision-making body wants to use a different provider
* and after considering the key criteria, the decision-making body does not identify a single candidate that is the most suitable provider, and/or concludes that the most suitable provider can only be identified by carrying out a competitive procurement, then it would run such a process.

The Trust when competitively procuring the service must

* have regard to relevant best practice and guidance; for example, HM Treasury’s managing public money guidance
* ensure the process is transparent, open and fair
* ensure that any provider that has an interest in providing the service is not part of any decision-making process (i.e. when ICS Boards are using this process)
* formally advertise an opportunity for interested providers to express interest in providing the service
* compare providers against the criteria set out in the regime and any other relevant factors, and according to any hierarchy of importance they decide is necessary – which must be published in advance
* publish their intention to award the contract with a suitable notice period (e.g. 4–6 weeks unless a shorter period is required due to the urgency of the case)
* if credible representations are received from other providers about the process, deal with them as set out in section 7 of the Provider Regime
1. **Procurement Role (see appendices two to four)**

Procurement manages the strategic sourcing of all goods and services and the processes associated with this.

Both Procurement and Contracts are Managed by an Associate Director.

Procurement consists of a Senior Procurement Officer, 2x Procurement Officers, and 1x Procurement Support Officer

# Procurement is a strategic process that involves the activities and processes to acquire goods, services and works. Importantly, and distinct from “purchasing” which is the ordering and receipting of products, services or works, procurement includes the activities involved in establishing the fundamental requirements and sourcing activities such as market research, supplier evaluation, and the negotiation of contracts.

# The Procurement team is responsible to monitor the Trust’s spend and ensure its compliance to the SFIs. Where there is a matter of non-compliance, the team will address the spend and reduce their recurrence.

# Contracts Team Role (see appendices six to seven)

Contracts Team consists of a Senior Contract Officer, and 2x Contract Officers, and 1x Contract Support Officer.

The Contract Team is responsible for:

* drafting the Subcontract Document to be signed by Supplier and the Trust;
* negotiation of Terms and Conditions that are compliant with the Law, the Trusts Policy, Trust Strategy and, based on special requirements of the service provisioned;
* ensuring that contract compliance is achieved by the Supplier in collaboration with ELFT Contract Lead by encouraging accurate and effective monitoring of contracts;
* maintenance of accurate and up to date records of contracts, relevant documentation in relation to the contract such as Meeting Minutes, important correspondence between Suppliers and ELFT, contract variation and contract extension documents;
* following contract protocols before contract signoff which includes approval from Finance and Department Director;
* issuing contract variations, extensions, and letter of termination; and
* provide strategic advice and support to Contract Leads in subcontract negotiations.
1. **Procurement Process**

The procurement process should commence at least nine months (and a minimum of six) before the end of the existing agreement or before the new goods or services are required. See Appendix Three and Four.

Where the Trust is evaluating options upon termination or expiry of an existing agreement, the decision-making process and key factors to be considered will be broadly similar to scenarios where the Trust is seeking to secure new service models or significant additional capacity. The main difference is that the Trust is considering options and making decisions in relation to existing goods and/or services.

If the Trust has decided that the service is no longer required, the Trust can begin the termination process.

If, however, the service is still required, Procurement will work with the Contract Managers to begin a competitive procurement process, or if there is a clear and rational justification satisfying SFI clause 8.4.3, a waiver may be raised for approval by the Executive Director of Commercials and Chief Finance Officer and/or Deputy.

In addition, it is important to consider external arrangements namely SBS, CCS and LPP arrangements.

The need to cease agreements can arise through:

* 1. contract termination due to performance against the agreement not delivering the expected outcomes. This can be mitigated by appropriate agreement monitoring and management and by involving the suppliers in this. The agreement terms will allow for remedial action to be taken to resolve any problems. Should this not resolve the issues, then the agreement will contain appropriate termination provisions;
	2. the agreement expires; and
	3. services are no longer required.

The Trust will ensure where necessary that contingency plans are developed to maintain patient care. Where termination involves Human Resource issues, suppliers will be expected to co-operate and be involved in discussions to deal with such issues as agreed in the standard agreement.

***Outline of Procurement Process:***

New Requirements

Goods/Services/Works Delivered

Position Strategies and Governance

Manage external suppliers and markets

# Service Specifications

The purpose of the service specification is to describe the requirements, outcomes to be achieved and quality standards. It should give regard to relevant factors such as location, requirements of service users, and Key Performance Indicators (KPIs). It will also provide a useful basis for supplier’s engagement and which may also allow the service specification to be refined.

Operational and Clinical leads are responsible for drafting the service specification. This activity is supported by the Contracts and Procurement Team.

Also, it is important to have regard for the 3 Year plan. This covers important aspects of service development, workforce issues, external influences i.e. population health and social value, and capital development. This should be consulted before beginning any process for procurement.

# Pricing

The price for goods and services shall be accurately evaluated by the Trust. There are however some general principles that should be adopted.

* + - The price should include the cost of supplying the service to the Provider.
		- A cost breakdown should be obtained, to include, but not limited to; -
* Risk Premium-Profit / Mark-up
* Overheads
* Staffing
* Delivery

Cost models can be used to benchmark existing goods and services which contribute to assess value for money and allocated budget. The analysis of these cost models will require input from the Trust procurement and finance personnel, where appropriate.

A failure to evaluate costs could result in the Trust making a substantial loss and/or not achieving value for money.

# Sourcing suppliers

Once you have an accurate supply/service specification you will be able to look at what suppliers can offer in terms of services/products.

The purpose of the service/product specification is to describe the needs to be addressed and the outcomes to be achieved with quality standards. Also, it should give regard to relevant factors such as location, requirements of service users and access requirements. It will also provide a useful basis for supplier engagements and may also allow the service/product specification to be refined

# Supplier engagement

It is important to pre-engage with suppliers to develop and refine service specifications and explore the impact on such services on resources and staff requirements.

An advertisement is sometimes required for procuring goods and/or services (please see Procurement Thresholds) and involves suppliers being asked if they are interested in providing a service for the Trust.

# E-Tendering

The Trust uses Atamis Tender Management to manage the tender processes.

Atamis is configured to be compliant with the Public Contracts Regulations 2015 and is an end to end process for tender management. The Atamis system has IL3 security which is accredited by UK government.

The system publishes adverts in Contracts Finder, and Find a Tender (FTS).

# Standard Selection Questionnaire (SQ)

The standard Selection Questionnaire has been developed to simplify the supplier selection process for Bidders and is used in the Restricted Procedure.

For more information please see:

[**https://www.gov.uk/government/publications/procurement-policy-note-816-standard-selection-questionnaire-sq-template**](https://www.gov.uk/government/publications/procurement-policy-note-816-standard-selection-questionnaire-sq-template)**.**

# Evaluating Selected Tenders

A Project Team shall be formed to evaluate the tenders.

The evaluation panel should include Operational and Clinical leads, Procurement, Business Development Unit, and Finance. The stakeholders shall complete an evaluation to be kept as a permanent record. The evaluation should consist of financial and non-financial analysis.

Every tender evaluation has a weighting criterion and is based on the Most Advantageous Tender which analyses quality, service, social value, and price, (totalling 100%).

The technical qualitative analysis shall evaluate the bidder’s ability to meet specification and will score each in accordance with the pre-set criteria.

The financial analysis shall compare bidders’ costs and include any enhancements offered. It will also examine the financial stability of the bidder.

The ESG analysis evaluates the Bidder’s commitment, strategy, and cooperation to ELFT as an Anchor Organisation. This includes and is not limited to Real Living Wage, Sustainability, Local Employment, and Employment of Priority Groups as identified by ELFT.

As part of the evaluation it may be necessary to obtain written references from the potential supplier’s client base. These will preferably be other NHS Trusts or other Public Sector bodies.

In certain circumstances, it may be necessary to hold post tender discussions. Post tender discussions are used to clarify elements of an offer.

# Tender award

The panel will recommend an award of the contract to the Operational and Service lead and the Executive Team. Procurement will issue an award letter successful tenderer and a rejection letter to unsuccessful tenderers, offering debriefs.

A tender other than the lowest (if payment is to be made by the Trust or highest tender if payment is to be received by the Trust), shall not be accepted unless for good and sufficient reason the Executive Management Team decides otherwise on the basis of a report submitted by the procurement panel which supports the decision.

# Contract and Subcontract registration

All contracts and subcontracts shall be stored registered by the CDD on the Contract Management Database. The record will include details of the ELFT contract lead, start and expiry dates, the management committee/group receiving performance reports.

ELFT Contract Leads shall make certain that meeting minutes, KPI reviews, important correspondence (i.e. issues, agreement in principle of service changes), performance reports, are sent to CDD. This shall then be stored in the contract management system to guarantee contract records are up to date and accurate.

# Authority to sign contracts and subcontracts

Subject to the Financial Limits (Appendix one), subcontracts shall normally be signed by the Director or Acting Director of Service within which the Contract Lead is based. If the Contract Lead is the Chief Executive, the Deputy Chief Executive or a Director, they are able to sign.

The signatories of contracts and subcontracts shall be advised by CDD and the Contract Lead. However, the signatories shall ultimately be responsible for ensuring that the cost of the contract or subcontract has been adequately budgeted for and that the contract or subcontract is in the best interest of ELFT and its Service Users, and developed in compliance with ELFT’s Standing Financial Instructions, Standing Orders, this and other relevant policies, and in line with the relevant contract with ELFT’s commissioners.

# Internal Audit

Internal audit primarily provides an independent and objective opinion to the Accountable Officer, the Board and the Audit Committee on the degree to which risk management, control and governance support the achievement of the Trust agreed objectives. In addition, internal audit’s findings and recommendations are beneficial to line management in the audited areas. Risk management, control and governance comprise the policies, procedures and operations established to ensure the achievement of objectives, the appropriate assessment of risk, the reliability of internal and external reporting and accountability processes, compliance with applicable laws and regulations, and compliance with the behavioural and ethical standards set for the organisation.

Internal audit also provides an independent and objective consultancy service specifically to help line management improve the Trust’s risk management, control and governance. The service applies the professional skills of internal audit through a systematic and disciplined evaluation of the policies, procedures and operations that management put in place to ensure the achievement of the Trust’s objectives, and through recommendations for improvement. Such consultancy work contributes to the opinion which internal audit provides on risk management, control and governance.

Internal Audit should fulfil its terms of reference by systematic review and evaluation of risk management, control and governance which comprises the policies, procedures and operations in place to:

* + Establish, and monitor the achievement of, the Trust’s objectives
	+ Identify, assess and manage the risks to achieving the Trust’s objectives
	+ Ensure the economical, effective and efficient use of resources
	+ Ensure compliance with established policies (including behavioural and ethical expectations), procedures, laws and regulations
	+ Safeguard the organisation’s assets and interests from losses of all kinds, including those arising from fraud, irregularity or corruption
	+ Ensure the integrity and reliability of information, accounts and data, including internal and external reporting and accountability processes.

It is the responsibility of the Chief Financial Officer to ensure an adequate Internal Audit service is provided and the Audit Committee shall be involved in the selection process when/if an Internal Audit service provider is changed.

# Direct Award Due to Extreme Urgency

# In exceptional circumstances where goods and/or services in cases of extreme urgency without the need to advertise to the marketing or tendering. This is permissible under Public Contracts Regulation 2015 (amended 2020) clause 32(2) as per the guidance by Procurement Policy Note PPN01/21. ELFT can choose to direct award following by demonstrating the below conditions:

# Genuine reason for urgency *e.g. public health risk, loss of existing provision, or reacting to an emergency but not planning for one*

# The urgency was unforeseeable *e.g. situation is so novel that the consequences are not something ELFT could have predicted*. *Knowing something must be done is seen as foreseeable and fails this requirement.*

# It is impossible to comply with the timescales dictated by the PCR2015 (amended 2020) *e.g. no time to run accelerated procurement under open, restricted, competitive procedure with negotiation, or call-off contract from an existing framework*

# ELFT has not contributed to the urgency *e.g. extreme emergency was not raised or exacerbated by ELFT, and they are not a contributor to the situation.*

# If the four above conditions are satisfied, the direct award will be approved by the Chief Finance Officer and Executive Commercial Director by means of a waiver with clear justification on the decision. Contracts should be limited to only what is absolutely necessary in terms of goods, services and length of agreement.

**Appendix One - Financial Limits**

|  |  |
| --- | --- |
| **Role** | **Sum of Invoice Limit (£)** |
| Chief Finance Officer | 999,999,999 |
| Deputy Director of Finance | 999,999,999 |
| Chief Executive | 2,000,000 |
| Deputy Chief Executive | 50,000 |
| Executive Director of Commercial Development and Performance | 50,000 |
| Director of Operations | 50,000 |
| Chief Medical Officer | 50,000 |
| Chief Nursing Officer | 50,000 |
| Chief Information Officer | 50,000 |
| Borough Director – Luton Mental Health and Wellbeing  | 20,000 |
| Borough Director – Newham | 20,000 |
| Borough Director – Tower Hamlets | 20,000 |
| Borough Director – Specialist Services | 20,000 |
| Borough Director – City & Hackney | 20,000 |
| Director of Estates | 20,000 |
| Director of Human Resources | 20,000 |
| Associate Director of IT | 20,000 |
| Head of Forensics | 20,000 |
| Deputy Head of Forensic Service | 20,000 |
| Medical Director of Primary Care | 20,000 |
| Associate Director of Performance and Informatics | 20,000 |
| Borough Director – Bedford Mental Health and Wellbeing Services | 15,000 |
| Medical Director of Community Services | 15,000 |
| Financial Controller | 10,000 |
| Medical Director Bedford and Luton | 7,500 |
| Medical Director London | 7,500 |

**Appendix Two – Procurement flow chart**



**Appendix Three: Flowchart for Procuring Goods and Services**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Action** | **Activity** | **Responsibility** | **Sign-off date** | **Comments** |
| 1 | Trust Project Manager identified | ELFT member of staff who will be lead stakeholder towards the tender process and manage resulting contract/framework | PROCUREMENT |  |  |
| 2 | PID sign-off | PID to be signed off by Board member. | PROCUREMENT |  | PID will not always be necessary dependant on project/business need |
| 3 | Roles & Responsibilities / Project timetable | R&R’s of all Stakeholders plotted against project timetable steps. See below | ALL |  |  |
| 4 | Pre-contract award | * Award recommendation report
 | PROCUREMENT |  |  |
| * Acceptance letters and framework agreement
 | PROCUREMENT |  |  |
| * Purchasing reference guide
 | PROCUREMENT |  | To be forwarded to Operational Procurement |
| * Supplier set up for Oracle ordering
 | OPERATIONAL PROCUREMENT |  | To be set up before Standstill end |
| * Contract set up on Trust catalogue
 | OPERATIONAL PROCUREMENT |  |  |
| 5 | Contract | * Draw up contract (liaise with preferred bidder and stakeholder)
 | CONTRACTS |  |  |
| * Manage sign-off process.
 | CONTRACTS |  |  |
| * Upload onto contract register
 | CONTRACTS |  |  |
|  |  | * Monitoring of contracts
 | CONTRACTS |  |  |
| ***AT THIS STAGE OF THE PROJECT FULL RESPONSIBILITY TO BE HANDED OVER TO THE STAKEHOLDER******(T&C’s and any special terms / Purchasing reference guide(s) / outstanding issues)*** |
|  |  | * KPI’s
 | ELFT |  |  |
|  |  | * Review meeting schedule
 | ELFT |  |  |

**Appendix Four – Procurement Process Roles and Responsibilities**

**Local Tender / Framework Agreement / Further Competition**

This is based on a Restricted Procedure; two stage processes (PQQ and ITT stages).

For single Open Procedure stage skip PQQ and add “create specification” to ITT stage.

|  |  |
| --- | --- |
| **Stage** | **Role**  |
| **Agree PID** | **PROCUREMENT / PROJECT TEAM** |
| Confirm Budget  | FINANCE |
| Create Specification | PROJECT TEAM |
| Create SQ | PROCUREMENT |
| Sign off SQ | ELFT |
| Issue advert (Find a Tender and Contracts Finder), SQ available for download | PROCUREMENT |
| Deadline for bidder clarification questions | PROCUREMENT |
| Final SQ responses received from bidders | PROCUREMENT |
| Provisional checks of gateway and evaluation pack prepared | PROCUREMENT |
| **PQQ evaluation date (Project Team)** | **PROCUREMENT / ELFT** |
| Notification to successful and unsuccessful and bidder de-briefs | PROCUREMENT |
| Create ITT Pack | PROCUREMENT |
| Issue ITT to short-listed bidders | PROCUREMENT |
| Deadline for clarification questions | PROCUREMENT / BIDDER |
| Final ITT responses received from bidders. | PROCUREMENT / BIDDER |
| Preliminary compliance review / administration of ITT responses | PROCUREMENT |
| **ITT evaluation (Project Team)** | **PROCUREMENT / ELFT** |
| Bidder short-list and invite to presentation | PROCUREMENT  |
| Bidder presentation and Q&A | PROCUREMENT / ELFT / BIDDER |
| Bidder visits | PROCUREMENT / ELFT / BIDDER |
| **Final tender scoring / evaluation day (Project Team)** | **PROCUREMENT / ELFT** |
| Award Recommendation Report | PROCUREMENT / ELFT |
| Notification of successful and unsuccessful bidder / bidder de-briefs | PROCUREMENT |
| Standstill period (at least 10 days) | PROCUREMENT |
| Contract Award | PROCUREMENT |

***Alignment to Framework Agreement (direct call off)***

|  |  |
| --- | --- |
| **Stage** | **Role**  |
| Agree PID | PROCUREMENT / ELFT |
| Collection of spend data and requirements for Trust sites  | PROCUREMENT / ELFT / SBS OP / SUPPLIER |
| Create Specification | PROCUREMENT / ELFT / SBS OP |
| Comparison of data to SBS Framework Agreement  | PROCUREMENT / ELFT / SBS OP |
| Justification of award | PROCUREMENT |
| Appointment of new supplier | PROCUREMENT |

**Team Structure:**

**Appendix Five – Waiver process chart**



**Appendix Six: Checklist & template for Tendered Contracts**

|  |  |
| --- | --- |
| Commissioner |  |
| Service Contracted |  |
| Tender name |  |
| Person completing this contract assessment |  |
| Date when completed |  |

***Checklist [first two columns] and assessment template [last three columns]***

| **Part of contract** | **Detail of inclusion** | **RAG****rating** | **Issue** | **Response** |
| --- | --- | --- | --- | --- |
| PARTIES | Name and address of ELFT incorrect [NB ‘NHS’ is sometimes left out of the name]  |  |  |  |
| DEFINITIONSInclusion of tender documents | Inclusion of tender and bid documents in contract and commissioner policies and agreements (all of which cannot be varied by the parties to the contract). *Such documents can be appended to contract for information only – and this must be explicit.* |  |  |  |
| FINANCE SCHEDULE AND PAYMENT TERMS | Our estimate of costs above contract value |  |  |  |
| Performance related incentives/penalties risk to make costs exceed contract value - too greater proportion of contract dependent on performance |  |  |  |
| PAYMENTS AND DEFAULT | Any clause that allows the commissioner to reduce or suspend funding [other than penalties specified in the contract] |  |  |  |
| RECOVERY OF SUMS DUE TO THE AUTHORITY | For underspend |  |  |  |
| For services the commissioner judges as not having been delivered |  |  |  |
| CONTRACT SUM REVIEW | Allowing the commissioner to make unilateral changes |  |  |  |
| TUPE | ELFT Liable for cost of undeclared TUPE information over and above 5% of contract value |  |  |  |
| REDUNDANCY COSTS | No term making commissioner responsible for redundancy costs if the contract is terminated or (if funding is recurrent) the contract is not renewed on expiry |  |  |  |
| COMMENCEMENT AND DURATION  | Commencement date missing or not achievable |  |  |  |
| No end date |  |  |  |
| CONFIDENTIALITY | Contracts not confidential |  |  |  |
| Commissioner not bound by Caldicott or equivalent |  |  |  |
| Allows access to ELFT’s financial records |  |  |  |
| Allows access to patient and staff records |  |  |  |
| SUBCONTRACTING | Requires commissioner approval to the selection of subcontractors and to the termination of their contracts |  |  |  |
| PROVIDER’S EMPLOYEES | Posts specified in the contract.  |  |  |  |
| Appointments must be approved by commissioner |  |  |  |
| CONTRACT MANAGEMENT  | Dates, times and places of meetings set (rather than agreed) by commissioner |  |  |  |
| No provision for provider to call special meetings |  |  |  |
| No provision for provider to decide who represents them |  |  |  |
| Action plans imposed by the commissioner (rather than agreed by both parties) |  |  |  |
| Consistent with micromanaging – e.g. controlling staffing, details of service delivery, rather than focusing only on quality and level of service, and clinical outcomes |  |  |  |
| PERFORMANCE AND REPORTING REQUIREMENTS | Unreasonable number of KPIs. Duplicate KPIs. Unachievable targets |  |  |  |
| Routine reporting more frequent than quarterly – except in the case of reporting by exception. |  |  |  |
| Reporting allows inadequate time for Informatics and/or performance manager to generate accurate report. |  |  |  |
| VARIATIONS | No provision for variations proposed by ELFT |  |  |  |
| Variations imposed without agreement [other than mandatory national ones]; for example requirement to meet Head contract KPIs etc. |  |  |  |
| DISPUTES  | No provision for dispute resolution |  |  |  |
| No provision for escalation in dispute resolution process |  |  |  |
| TERMINATION  | No no-fault provision for notice of termination by provider |  |  |  |
| Too short (under 4 months) or too long (over 1/3 of the term of the contract) |  |  |  |
| EXPIRY | No provision for settlement of debts, and maintenance of confidentiality after termination or expiry of contract |  |  |  |

**Appendix Seven – Contract Income / Expenditure Template**

|  |  |
| --- | --- |
|  **Contract Info** |  |
| Contract Name |  |
| What is the contract for? |  |
| Income or Expenditure? Delete As applicable | Income or Expenditure |
| Commissioner |  |
| Contract Value |  |
|  |
| **Sign Off** | **Name and Date** |
| Step 5: Final signature process:Less than £50k signed by Mohit Venkataram. (Please send to Deputy DoF with confirmation of final agreement)More than £50k signed by Deputy DoF/Steven Course | Please delete as appropriate:Executive Commercial Director (less than £50k)Deputy DoF / CFO (more than £50k) |
| Step 4: Contract Approval – Mohit Venkataram |  |
| Step 3c: Service Approval – Service Director |  |
| Step 3b: IG Approval – Chris Kitchener |  |
| Step 3a: Performance Approval – Amar Shah (N/A if sub contract) |  |
| Step 2: Procurement Approval (if applicable).  Please tick SFI compliant route to market and name and date. |  | **Tick** | **Name and Date** |
| Tender |  |  |
| 3 Quotes |  |  |
| Framework Call-off/competition |  |  |
| Waiver |  |  |
| Step 1: Finance Business Partner Approval |  |

**Appendix Eight - Glossary of Terms:**

|  |  |
| --- | --- |
| **CDD** | **Commercial Development Directorate –** Consisting of Business Development, bid writing, Procurement and Contracting |
| **FTS** | **Find a Tender**Replaces OJEU effective 1st January 2021 |
| **ICS** | **Integrated Care System** |
| **OJEU** | **Official Journal of the European Communities.** This governed Public procurement in the UK prior to Brexit |
| **Restricted Procedure** | **2-part tender process under Public Procurement Regulations 2015**  |
| **WTO GPA** | **World Trade Organisation’s Government Procurement Agreement**  |