## 11 AC  Procurement and Management of Consultants

<table>
<thead>
<tr>
<th>Policy number:</th>
<th>11 AC</th>
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<tbody>
<tr>
<td>Version</td>
<td>5.0</td>
</tr>
<tr>
<td>Approved by</td>
<td>Governing Body</td>
</tr>
<tr>
<td>Name of author/originator</td>
<td>Vicki Taylor, Vicki Deputy Chief Finance Officer</td>
</tr>
<tr>
<td>Owner (director)</td>
<td>Karen McDowell, Chief Finance Officer</td>
</tr>
<tr>
<td>Date of approval</td>
<td>July 2017</td>
</tr>
<tr>
<td>Date of last review</td>
<td>June 2017</td>
</tr>
<tr>
<td>Next due for review</td>
<td>June 2018</td>
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### Version control sheet

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<th>Date</th>
<th>Author</th>
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<td>1.0</td>
<td>July 2013</td>
<td>Vicki Taylor</td>
<td>Draft</td>
<td>Audit committee recommended for Governing Body to approve</td>
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<td>2.0</td>
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<tr>
<td>3.0</td>
<td>December 2015</td>
<td>Vicki Taylor</td>
<td>Draft</td>
<td>The introduction now includes a reference to the CCGs own Standards of Business Conduct and Conflicts of Interest Policy.</td>
</tr>
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<td>3.0</td>
<td>January 2016</td>
<td>Vicki Taylor</td>
<td>Final</td>
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<tr>
<td>4.0</td>
<td>December 2016</td>
<td>Vicki Taylor</td>
<td>Draft</td>
<td>Equality Analysis completed; wording strengthened in Section 1 re justification for employing external management consultants; and scope amended in Sections 5/6 and Section 3. Audit committee recommended for Governing Body to approve</td>
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<td>4.0</td>
<td>January 2017</td>
<td>Vicki Taylor</td>
<td>Final</td>
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<tr>
<td>5.0</td>
<td>June 2017</td>
<td>Vicki Taylor</td>
<td>Draft</td>
<td>Title changed from ‘Procurement of Management Consultants’ to ‘Procurement and Management of Consultants’; Section 1 paragraphs 4-6 included to clarify that the policy applies where procuring resource under a contract for services or if recruiting a resource under a contract of service. The policy also includes clarity on the new regulatory compliance and remuneration against the new regulations issued in October 2016; Section 10 paragraph 2- clarification surrounding definitions of the contract type, the employment status for the worker and the supplier as well as the non-employed contractors has been included in the policy.</td>
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<td>5.0</td>
<td>July 2017</td>
<td>Vicki Taylor</td>
<td>Final</td>
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Equality Statement

Guildford and Waverley CCG aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account the Equality Legislation including the Human Rights Act 1998 and promotes equal opportunities for all. This document has been assessed to ensure that no employee receives less favourable treatment on the protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity.

Members of staff, volunteers or members of the public may request assistance with this policy if they have particular needs. If the member of staff has language difficulties and difficulty in understanding this policy, the use of an interpreter will be considered.

Guildford and Waverley CCG embraces the four staff pledges in the NHS Constitution. This policy is consistent with these pledges.
Equality Analysis

Equality analysis is a way of considering the effect on different groups protected from discrimination by the Equality Act, such as people of different ages. There are two reasons for this:

- to consider if there are any unintended consequences for some groups
- to consider if the policy will be fully effective for all target groups

<table>
<thead>
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<th>Name of Policy:</th>
<th>Policy Ref:</th>
<th>Is this New?</th>
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<tr>
<td>Procurement and management of Consultants (previously called The Procurement Of Management Consultants)</td>
<td>11AC</td>
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<table>
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<tr>
<th>Assessment conducted by (name, role):</th>
<th>Date of Analysis:</th>
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<tr>
<td>Rachel McEwen, Management Accountant</td>
<td>05/01/2017</td>
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<table>
<thead>
<tr>
<th>Directorate:</th>
<th>Director’s signature:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finance</td>
<td></td>
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Who is intended to follow this policy?

This policy is aimed at staff at Guildford and Waverley CCG intending to undertake a project and require resource that cannot be provided by the CCG due to resource or skill limitations. The aim of this policy is to support the members of staff when procuring a management consultant ensuring that the process is completed accurately with fair and appropriate actions taken.

Who is intended to benefit from this policy?

The public who live within Guildford and Waverley will benefit from all Finance policies through sound management of available resources. The policies aim to provide staff with details on how to provide an organisation that legally complies to the NHS Standards of Business Conduct, eliminates fraud, bribery and corruption to frees up resources to provide quality care for the community.

Staff also benefit through clarity of their own responsibilities during the procedure.

1. Evidence considered.

2. Consultation.

3. Promoting equality.

In section 8, this policy sets out the standard of business conduct to ensure that this is a fair and open competition.
The Finance policies detail procedures to be followed and relate to all members of the Clinical Commissioning Group and benefit all in the Community. There is reasonable understanding for relevant equality groups.

4. Identifying the adverse impact of policies

| a) People from different age groups:                   |
| No Adverse impact.                                    |

| b) Disabled people:                                    |
| For staff with visual impairment, this policy can be read on the CCG’s website which can enlarge the font. |

| c) Women and men:                                      |
| No Adverse impact.                                     |

| d) Religious people or those with strongly help philosophical beliefs: |
| No Adverse impact.                                          |

| e) Black and minority ethnic (BME) people:              |
| No Adverse impact.                                      |

| f) Transgender people:                                  |
| No Adverse impact.                                      |

| g) Lesbians, gay men and bisexual people:               |
| No Adverse impact.                                      |

| h) Women who are pregnant or on maternity leave:        |
| Line Managers should ensure staffs returning from maternity or paternity leave are given time to update themselves on any changes made to these policies. |

| i) People who are married or in a civil partnership:    |
| No Adverse impact.                                     |

5. Monitoring
- Complaints to Line Manager or HR
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2. Legislative Framework/Core Standards ....................................................... 7
3. Scope ............................................................................................................. 7
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5. Standing Orders ......................................................................................... 8
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8. Standard of Business Conduct ................................................................. 9
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1. Introduction and Policy Objective

The employment of Management Consultants is governed by Department of Health guidance “The Procurement and Management of Consultants within the NHS” and also in an Audit Commission report entitled “Reaching the Peak Getting Value for money from Management Consultants”.

Related guidance for Officers is also “Standards of Business Conduct for NHS Staff” and the Code of Conduct for Managers issued in 2002 and the CCG’s own Standards of Business Conduct and Conflicts of Interest Policy. This requires officers to declare any interest they may have in a contract the CCG has or may award.

This document should be read in conjunction with NHS conditions of contract for consultancy and the confidentiality agreement for consultants.

If procuring resource under a contract for services then this policy applies; or if recruiting a resource under a contract of service, then Recruitment and Selection policy applies. Please refer to the ‘Definitions’ section for clarification between the different types of service.

When engaging resource under a contract for service, the same process applies as set out in the Recruitment and Selection Policy, including managers ensuring the HMRC Check Employment Status for Tax is completed with a satisfactory outcome.

Regulatory Compliance and Remuneration – on the 31st October 2016 NHS Improvement (NHSI) introduced a new approval process, requiring its prior approval for all interim (agency or otherwise) contractors attracting a daily rate over £750. This approval complements the Department of Health requirement for engagements of more than six months in duration, for more than a daily rate of £220, should include contractual provisions that allow employers to seek assurance regarding the income tax and NICs obligations of those engaged and to terminate the contract if that assurance is not provided. This applies for all contracted (non-employed) work paid via invoice or payroll.

At the outset of any project it is important to identify whether the project can firstly be managed in house. If this is not the case, (and this assessment needs to be clearly documented) the organisation must be convinced that the additional cost involved in engaging Management Consultants is clearly justified.

2. Legislative Framework/Core Standards

- Standards of Business Conduct for NHS Staff
- Code of Conduct for Managers issued in 2002
- Standards of Business Conduct and Conflicts of Interest Policy
- NHS conditions of contract for consultancy
- Confidentiality agreement for consultants

3. Scope

This document sets out guidance that should be followed when the organisation procures the support of Management Consultants.
4. Preparation of The Project Brief

The organisation should prepare a detailed project brief before any tendering processes are entered into with Management Consultants. This can be refined following discussion but in essence the brief should be the “Terms of Reference” for the engagement of the Consultants.

The project brief should include the following:

- Background to the project
- Project objectives
- Expected product or deliverables
- Project timetable
- The organisation’s contribution to the project
- Reporting requirements
- Proposal for submission
- Timetable for submitting proposal

5. Standing Orders

The procedure for tendering services on behalf of the CCG, which includes the recruitment of Management Consultants, is governed by the CCG’s Standing Orders.

The organisation shall ensure that competitive tenders are invited for all forms of management consultancy services (other than specialised services sought from or provided by the Department of Health).

Where the organisation elects to invite tenders for the supply of Consultancy services Standing Orders shall apply as far as they are applicable to the tendering procedure as well as the Directives by the Council of the European Union.

6. Approval Limits

Standing Orders and financial regulations govern approval limits. The organisation's Operational Scheme of Delegation section 10 indicates that the engagement of Agency, Interim and Consultancy staff requires the approval of a CCG Executive Director or the Chief Finance Officer.

7. Single Tender / Waiver Arrangements

The limited application of the single tender/waiver rules 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.

However, formal tendering procedures may be waived in accordance with the Tender Waiver policy. All arrangements in respect of waivers must be documented and approved in advance of contracts being awarded. All waivers must be reported to and recorded by the Chief Finance Officer (on behalf of the Chief Executive) and reported to the next meeting of the Audit Committee. In agreeing such arrangements due regard should be taken where:
a. The supply is proposed under special arrangements negotiated by the Department of Health in which event the special arrangements must be complied with;
b. The requirement is covered by an existing contract;
c. Buying Solutions agreements are in place and have been approved by the Board;
d. 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. The timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for single tender;
f. Specialist expertise is required and is available from only one source;
g. 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. 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 competitive tendering

8. Standard of Business Conduct

Fair and open competition between prospective contractors or suppliers for NHS contracts is a requirement of Standing Orders and of EC Directives on Public Purchasing for Works and Supplies. This means that:

- no private, public or voluntary organisation or company which may bid for NHS business should be given any advantage over its competitors, such as advance notice of NHS requirements. This applies to all potential contractors, whether or not there is a relationship between them and the NHS employer, such as a long-running series of previous contracts; and,

- each new contract should be awarded solely on merit, taking into account the requirements of the NHS and the ability of the contractors to fulfill them.

- NHS employers should ensure that no special favour is shown to current or former employees or their close relatives or associates in awarding contracts to private or other businesses run by them or employing them in a senior or relevant managerial capacity. Contracts may be awarded to such businesses where they are won in fair competition against other tenders, but scrupulous care must be taken to ensure that the selection process is conducted impartially, and that staff that are known to have a relevant interest play no part in the selection.

9. Selection Criteria

In advance of tendering a service the criteria for selecting consultants should be detailed. Normally a contract will be awarded to the firm with the lowest price. However for Management Consultancy services, the lowest price may not always represent the best value for money. Factors that may affect the success of a project include:
• Experience and qualifications of team members
• Understanding of client needs
• Feasibility and credibility of proposed approach
• Ability to complete the project on time

Once a final decision has been made it is important, if the lowest tender is not accepted, that the reasons should be recorded and documented.

10. Service Agreement

Before the contract starts the organisation and the contractor should agree in writing what work will be performed and the fees to be paid. Contracts should where possible be fixed price, with payments being linked to completion of specific tasks or outcomes. The agreement should typically cover:

• Description of project deliverables
• Project schedule with key milestones
• Fees and definition of reimbursable expenses
• Payment arrangements
• Reporting arrangements
• Arbitration/termination arrangements

For clarity the following definitions are used in determining contract type / employment status:

**Contract of service** – the worker is controlled by the CCG – they must perform the tasks they are instructed to by a line manager according to a job description, expected to work at a specific place during specific hours on specific days, present themselves for work and cannot send someone else as a substitute, have statutory rights, engage in employee benefits.

**Contract for service** – the supplier is expected to supply services and complete the work according to the CCG contract schedule specification, provide services to the standard required by the CCG as agreed in the contract, liable for any errors or defects, right to provide a substitute to complete the work specified in the contract.

**Non-Employed Contractors** – Those engaged under a ‘Contract for Service’ can be classed as ‘Off Payroll’ where specific regulations apply – (often known as IR35 or Intermediaries Legislation). These regulations ensure that individuals who work through their own company pay employment taxes and national insurance contributions (NICs) in a similar way to employees, where they would be employed were it not for the Personal Service Company (PSC), or other intermediary that they work through.

11. Monitoring Progress

Appropriate project management arrangements should be established. The project manager should:

• Ensure that the terms of reference for the project are in place, that regular meetings with the consultant(s) are in arrangement to review deliverables
• Ensure that the initial agreement is properly approved, that tendering procedures have been followed, that payments due are correct and that appropriate documentation is maintain

12. Reviewing Performance

A formal evaluation of the project should be carried out for all but the very shortest consultancy engagements. This should include details of whether the work was completed on time and to budget and, if not, why not. It should also indicate the extent to which the projects objectives where achieved or implemented.
## Appendix 1 Procedural Document Checklist for Approval

### Procedural document checklist for approval

To be completed and attached to any document which guides practice when submitted to the appropriate committee for consideration and approval.

<table>
<thead>
<tr>
<th>Title of document being reviewed:</th>
<th>Yes/No/Unsure</th>
<th>Comments/Details</th>
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</thead>
<tbody>
<tr>
<td>Policy framework for the development and management of procedural documents</td>
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### A. Is there a sponsoring director?

- **Yes**
- **Chief Finance Officer**

### 1. Title

- **Is the title clear and unambiguous?**
  - **Yes**
- **Is it clear whether the document is a guideline, policy, protocol or standard?**
  - **Yes**

### 2. Rationale

- **Are reasons for development of the document stated?**
  - **Yes**

### 3. Development Process

- **Do you feel a reasonable attempt has been made to ensure relevant expertise has been used?**
  - **Yes**
- **Is there evidence of consultation with stakeholders and users?**
  - **Yes**
  - **External Auditors**
  - **Staff Partnership Forum**

### 4. Content

- **Is the objective of the document clear?**
  - **Yes**
- **Is the target group clear and unambiguous?**
  - **Yes**
- **Are the intended outcomes described?**
  - **Yes**

### 5. Evidence Base

- **Is the type of evidence to support the document identified explicitly?**
  - **Yes**
- **Are key references cited?**
  - **Yes**

### 6. Approval

- **Does the document identify which committee/group will approve it?**
  - **Yes**
  - **Audit Committee to review and recommend approval from the Governing Body**

### 7. Dissemination and Implementation

- **Is there an outline/plan to identify how the document will be disseminated and implemented amongst the target group? Please provide details.**
  - **Yes**
  - **Published on the website**
  - **Significant changes to be highlighted in e-brief following approval**

### 8. Process for Monitoring Compliance
## Procedural document checklist for approval

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<table>
<thead>
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<th>Comments/Details</th>
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<tr>
<td>Have specific, measurable, achievable, realistic and time-specific standards been detailed to monitor compliance with the document?</td>
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</table>

### 9. Review Date

- Is the review date identified? Yes

### 10. Overall Responsibility for the Document

- Is it clear who will be responsible for implementing and reviewing the documentation i.e. role of author/originator? Yes

### Director Approval

On approval, please sign and date it and forward to the chair of the committee/group where it will receive final approval.

Name | Date
---|---
Signature

### Committee Approval

On approval, Chair to sign and date.

Name | Date
---|---
Signature
14. Appendix 2 Compliance & Audit Table

<table>
<thead>
<tr>
<th>Criteria</th>
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<th>Frequency</th>
<th>Reporting to</th>
<th>Action Plan/Monitoring</th>
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<tr>
<td>Terms of reference for the projects to be in place for the projects</td>
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<td>Annually</td>
<td>Relevant Committee</td>
<td>Terms of reference to be reviewed at the relevant committee.</td>
</tr>
<tr>
<td>Key deliverables and milestones of the project to be adhered to</td>
<td>100%</td>
<td>Annually</td>
<td>Relevant Committee</td>
<td>Paper to be discussed at the relevant committee and any area of concern highlighted by the project lead</td>
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</table>

The project manager should ensure that the terms of reference for the project are in place, that regular meetings with the consultant(s) are in arrangement to review deliverables and the initial agreement is properly approved, that tendering procedures have been followed, that payments due are correct and that appropriate documentation is maintain. Key deliverables should be set and adhered to.