



## TOOL D11 Guide to the procurement process

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D11

<b>For:</b>	Commissioners in primary care trusts (PCTs)
<b>About:</b>	This tool provides details regarding the correct procedure to follow when procuring services. It is not a complete and comprehensive procurement guide. However, it has been developed to assist PCT commissioners to better understand the tender process for procuring services that will help to tackle obesity. This tool assumes the decision has already been made by the PCT to procure services. PCTs are strongly advised to seek their own legal advice when using this procurement guidance; this guidance should not be taken in any way as constituting, or as a substitute for, legal advice.
<b>Purpose:</b>	To provide local areas with a high-level summary of key factors for PCTs to consider when commissioning services.
<b>Use:</b>	To be used when procuring services in conjunction with the <i>PCT procurement guide for health services</i> . <sup>199</sup>
<b>Resource:</b>	<i>PCT procurement guide for health services</i> . <sup>199</sup> <a href="http://www.dh.gov.uk">www.dh.gov.uk</a>

### 1. Commissioning obesity services

This tool is designed to support the overall commissioning of interventions to tackle obesity and promote healthy weight, using the five simple steps set out in *Healthy Weight, Healthy Lives: Guidance for local areas*<sup>2</sup> as a framework. Once local authorities, PCTs and their partners are clear on the intervention they need to commission to meet their locally set goals, the next step is to procure those interventions.

This tool provides a high-level summary of key factors for PCTs to consider when procuring services.

### 2. Is a formal procurement required?

This paper must be read in conjunction with the *PCT procurement guide for health services*<sup>199</sup> document which sets out guidance to assist PCTs in:

- i) deciding whether to procure; and
- ii) how to procure health care services through formal tendering and market testing.

There is no general policy requirement for the NHS to be subject to formal procurement process. It remains with the PCT as a Commissioner to decide whether they want to formally tender or not after carefully considering their internal governance, legal advice and advice in the *PCT procurement guide for health services*.<sup>199</sup>

However, the use of independent and third sector Providers to provide NHS-funded services is becoming more and more widespread and PCT Commissioners would be expected to select and use Providers who are best placed to deliver cost-effective and high-quality services.

If PCTs do decide to procure the required services, the general procurement thresholds can assist PCTs in making a decision as to which procurement route to follow.

### 3. EU Procurement Requirements and Regulations

#### Contract Value Thresholds and Tender Process

Public Sector procurement is governed by UK regulations that implement EU procurement directives; these apply specifically to any procurement with a total value over a specified threshold.

Where contract value is above the EU public procurement threshold, it is important to review whether the service falls within 'Part A' or 'Part B' of the procurement regulations. Contracts for health and social care services and some training services, including weight management training programme services (CAT24), are defined by procurement regulations as 'Part B' service contracts. Under the regulations, only certain procurement obligations apply to the award of Part B contracts. In particular, if a contract is for purely 'Part B' public services then an OJEU (Official Journal of the European Union) notice publication is not automatically required. For example, it is possible to advertise in local or national newspapers or trade journals rather than OJEU in some circumstances. In contrast, those contracts which are designated 'Part A' service contracts are subject to the full extent of the requirements of the procurement regulations.

The following table sets out basic rules for Part B services and is for information only.

Threshold for value of contract	Guidance Tender Process
<b>Contract values up to £139,893</b>	All tender processes must be fair, open and transparent. Bids should normally be obtained in writing depending on the value and type of service. PCT Commissioners are advised to liaise with their legal advisers to ensure they meet the necessary requirements. However, a PCT would normally issue tenders (with detailed service specifications) to a minimum of three interested Bidders, and following evaluation against predefined criteria the Bidder offering the best service and the right price would be awarded a contract.
<b>Contract values at or above £139,893</b>	EU public procurement threshold, which requires services to be advertised and tendered. A PCT would normally advertise the procurement for services more widely. PCTs should consider publishing an OJEU (Official Journal of the European Union) notice and in addition place advertisements in national newspapers or trade journals as appropriate.

**Note:** If the contract is one of a series of contracts for similar services then the aggregate value of all the contracts must be used in relation to the financial thresholds. Thresholds should be checked on the EU website as they may be revised. Go to [www.tendersdirect.com](http://www.tendersdirect.com)

The Department of Health's Procurement Centre of Expertise has set out the following different procedures for the procurement of Part A management services (only) which sets out the tender processes required. PCTs may choose to use this as a general guide when procuring weight management training services.

<b>Up to £4,000</b>	One quote
<b>£4,000 to £10,000</b>	Three written quotes
<b>£10,000 to £90,319 (up to EU threshold)</b>	Three or more formal tenders
<b>£90,319+ (over EU Part A threshold)</b>	EU public procurement limit applies

## 4. Procurement Route – Four Options

Once the PCT Commissioner has established what thresholds the services to be tendered fall into, they can decide which procurement option is most suitable to meet its needs. A number of considerations including the size and scope of the services, the service specification, the target market, and key stakeholders will drive this decision.

There are four main options available to PCTs for procurements that exceed the EU threshold:

**i) Open Tender** (all interested Bidders invited to tender)

All interested Providers (Bidders) who respond to an OJEU notice/advertisement must be invited to tender. This procedure does not allow for prequalification or selection prior to final contract award stage.

**ii) Restrictive Tender** (entails limited dialogue with Bidders)

Interested Bidders are invited to respond to an OJEU notice/advertisement by submitting a prequalification questionnaire (PQQ) in which they reply against defined criteria relating to their organisation's capability and financial standing. Following receipt and evaluation, a shortlist of Bidders are invited to tender. The PCT Commissioner can carry out some limited discussion and dialogue with Bidders prior to selecting the successful Bidder. The discussion can, for example, enable the Commissioner to clarify minor details about the bid, but does not allow for substantial negotiations around the service requirements and pricing.

The initial PQQ selection process allows PCT Commissioners to restrict the number of Bidders invited to tender to a more manageable number, allowing the Commissioner to focus more on the quality of bids and to make the assessment process more cost-effective.

**iii) Competitive Dialogue** (appropriate for more complex procurements and entails dialogue with Bidders)

The competitive dialogue procedure is a more flexible procedure than the Restrictive Tender procedure, and enables the PCT Commissioner and Bidders to discuss aspects of the contract and services prior to concluding and agreeing these. The Commissioner can utilise this process, for example, to help refine the service requirements further in discussions/negotiations with Bidders. On conclusion of this stage the Commissioner will issue a final Invitation to Tender (ITT), to which Bidders must respond with a final tender. There is opportunity for the Commissioner to ask Bidders to tweak or fine tune their bids further. The preferred Bidder(s) can then be selected.

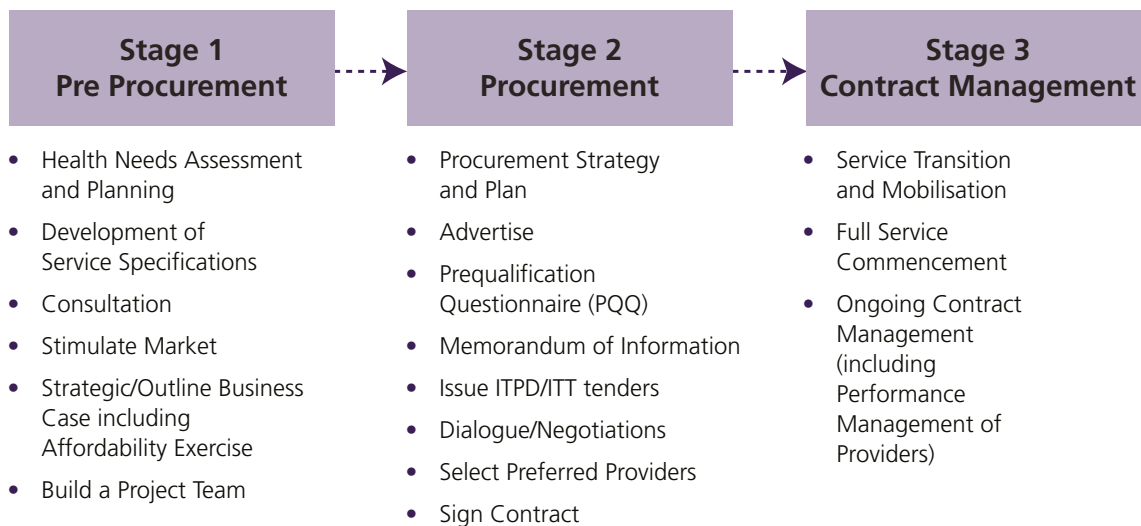
**iv) Competitive Negotiated Procedure with a Single Provider** (should only be used in very exceptional circumstances)

This procedure is limited to specific circumstances and should only be used when other procedures will not work, competition is not viable or appropriate, work is needed for research or development purposes, or where prior overall pricing is not possible.

In all of the options outlined above, the PCT Commissioner must ensure that an evaluation plan is in place and that the evaluation against which Bidders will be assessed are clearly set out.

## 5. Three Key Stages of Procurement

For any procurement route, and in line with the Office of Government Commerce (OGC) guidance, the process can be broken into three key stages:



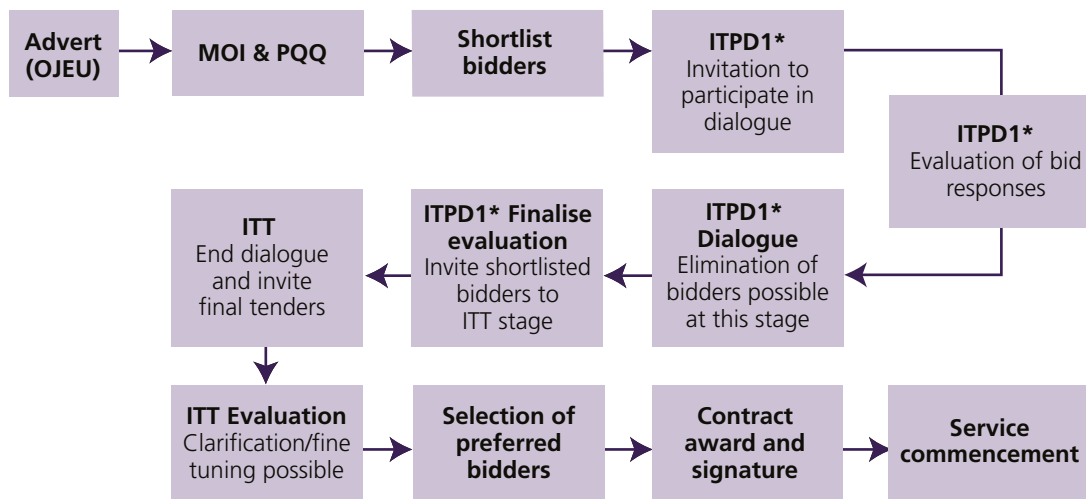
### A Typical Procurement Process that PCTs may consider

Detailed guidance and tools that expand on the information in this guide are currently being developed and will be available in late 2008. This will:

- provide a foundation for PCTs to build a comprehensive procurement plan
- provide a step-by-step guide to manage a procurement.

The following illustration sets out a high-level procurement process where dialogue is required with Bidders. The Invitation to Participate in Dialogue stage (ITPD) has been marked as optional. Whether or not the Dialogue route is pursued depends on the PCT's individual requirements.

#### Typical procurement process



\*Further stages of dialogue are possible, eg ITPD1, ITPD2. However, these should be planned for at the outset.

## Procurement Timelines

The time required to undertake a procurement can vary greatly depending on the size and complexity of the product(s) or service(s) being procured (from a few days or weeks to 12 months for larger scale procurements). Procurements may vary in size and duration – for example a PCT Commissioner may decide to tender on an individual user-by-user basis or undertake a procurement to cover all service users over the next four to five years. Some PCTs may choose to procure collaboratively and maximise the opportunity to benefit from economies of scale, which may also have an impact on the timescale.

## Competition Challenge

The *PCT procurement guide for health services*<sup>199</sup> should be read in conjunction with the 'Principles and Rules for Cooperation and Competition', published as Annex D of the 2008/9 Operating Framework,<sup>138</sup> and the *Framework for Managing Choice, Cooperation and Competition*.<sup>200</sup>

It is important to note that a Department of Health Cooperation and Competition Panel is being established in October 2008, which will need to be satisfied that PCTs have consulted and complied with the *PCT procurement guide for health services*<sup>199</sup> as a basis for the decisions they have made. More information about the Cooperation and Competition Panel is available in the *Framework for Managing Choice, Cooperation and Competition*.<sup>200</sup>

## Further Guidance

The Cross-Government Obesity Unit has commissioned the development of a set of tools to support PCTs and local authorities in the specific area of commissioning weight management services. The toolkit will be available in late 2008 and will provide practical support to local areas, including in the procurement of weight management services.

More detailed advice and template documents relating to procurement are currently available via the Equitable Access to Primary Care web-based toolkit which many PCTs are already familiar with. Go to [www.dh.gov.uk](http://www.dh.gov.uk)