Procurement Transparency
<table>
<thead>
<tr>
<th>Title: Procurement Transparency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Author:</td>
</tr>
<tr>
<td>Finance &amp; NHS Directorate, Procurement, Investment &amp; Commercial Division (PICD)</td>
</tr>
<tr>
<td>Cost centre - 19890</td>
</tr>
<tr>
<td>Document Purpose:</td>
</tr>
<tr>
<td>Policy</td>
</tr>
<tr>
<td>Publication date:</td>
</tr>
<tr>
<td>March 2015</td>
</tr>
<tr>
<td>Target audience:</td>
</tr>
<tr>
<td>Foundation Trusts and NHS trusts</td>
</tr>
<tr>
<td>Contact details:</td>
</tr>
<tr>
<td>John Warrington</td>
</tr>
<tr>
<td>Procurement, Investment and Commercial Division</td>
</tr>
<tr>
<td>Skipton House</td>
</tr>
<tr>
<td>80 London Road</td>
</tr>
<tr>
<td>Elephant &amp; Castle</td>
</tr>
<tr>
<td>London</td>
</tr>
<tr>
<td>SE1 6LH</td>
</tr>
</tbody>
</table>

You may re-use the text of this document (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/

© Crown copyright
Published to gov.uk, in PDF format only.
www.gov.uk/dh
Applicability

This document follows on from both Better Procurement Better Value Better Care [1] (DH August 2013) which included a number of commitments around the transparency of procurement information and the Procurement Transparency Guidance (DH April 2014) issued against the 2014/15 NHS Standard Contract.

This document provides guidance to all NHS Provider organisations. The 2015/16 NHS Standard Contract continues to include a requirement that ‘the Provider must comply with Transparency Guidance if and when applicable’[2]. From April 2015, the guidance and requirements contained within this document will be applicable to all Foundation Trusts and NHS trusts.

Although this document is not applicable to independent sector Providers of NHS healthcare, such Providers may wish to consider the benefits of adopting the guidance in this document.

Key Changes

This document follows the same structure and format as the 2014/15 Procurement Transparency Guidance and contains 11 “actions for NHS providers”. The key changes from the actions included in the 2014/15 version are:

**Action 3** which relates to non-disclosure or confidentiality agreements has an additional aspect included; it is recommended that NHS Providers should submit evidence to their Audit committee that steps have been taken to comply with this requirement.

**Actions 5-9** which all relate to opening up procurement and being transparent about expenditure; have been updated to move away from a preparatory stage to a need for action as these requirements are now embedded in legislation.
**Action 10** relates to publication of spend data each month; the requirement for preparation to publish line level data has been removed but now includes the requirement to take preparatory steps to publish details of any supplier rebates.

**Context**

The wider Government agenda on transparency aims to enable the public to hold public bodies and politicians to account. The requirement, in relation to procurement transparency, is to ensure that:

- expenditure data is shared to identify savings opportunities.
- small enterprises are sighted on public sector business opportunities, both future procurement plans and current opportunities to tender for new contracts;
- there is transparency about how public money is being spent;

Taken together, these measures will increase competition, encourage growth and greater innovation and lead to better value for money from the public purse.

**Sharing expenditure data**

The sharing of procurement expenditure data between NHS Providers will enable the comparison of prices, leading to increased competition amongst the supplier base and the prioritisation of specific expenditure categories for procurement action.

*Better Procurement Better Value Better Care* sets out a commitment to establish a national Spend Analysis and Price Benchmarking service. The NHS eProcurement strategy [3] which was published in May 2014 sets out how this commitment will be taken forward. In essence all NHS Providers will be required to submit procurement transaction data to the national service, with a guiding principle that all data will be placed in the public domain. Work is progressing to establish the national service, which is likely to become operational during 2016.
The service will return spend analysis reports to each NHS Provider detailing benchmarked price variations against peer group NHS Providers and highlighting priority areas of opportunity. In the meantime, NHS Providers are required to:

1) continue to take preparatory steps during 2015/16 to enable the submission of accounts payable and purchase order data to the national service Provider. Work is ongoing in 2015 with a subset of NHS Providers to develop and test data extraction and interpretation. Once complete, further guidance will be issued to all NHS Providers.

2) respond to quarterly requests for price information in relation to a rolling basket of 25 items. Requests will be issued directly to NHS Providers. Each response will be benchmarked and summary reports will be returned to each NHS Provider for information/action. An initial request was issued and a report published on the Atlas of Variation in August 2014. Since then quarterly reports have been published on the Atlas of Variation drawing from nationally available data. Future requests may be issued directly to NHS Providers as appropriate.

3) continue to refrain from entering into any non-disclosure or confidentiality agreements with any supplier that may have the effect of restricting the sharing of procurement expenditure data, including prices, with the national Spend Analysis and Price Benchmarking service. It is recommended that NHS Providers should submit evidence to their Audit committee that steps have been taken to comply with this requirement.

**Orthopaedic joint replacements**

The National Joint Registry (NJR) was set up to monitor the performance of orthopaedic implants for joint replacement. It collects and manages a range of clinical data relating to approximately 190,000 patients each year, including details of specific components implanted into each patient.

A pilot project was undertaken in 2013, where commercial pricing information was supplied to the NJR, bringing clinical and commercial data together. The resulting analysis enabled participating NHS Providers to review, by surgeon, the range of
orthopaedic implants used and prices paid, set against benchmark information
detailing lower quartile, upper quartile and average prices paid.

The NJR have extended this analysis and reporting service and issued guidance,
including training and a help desk service, to all NHS Providers of orthopaedic joint
replacement services, enabling clinicians and procurement teams to make informed
decisions about the selection and pricing of orthopaedic implants. From April 2015,
NHS Providers of joint replacement services are required to:

4) routinely submit their orthopaedic implant pricing information to the NJR.

Opening up Public Procurement

Small businesses find it difficult to do business with the public sector, including NHS
Providers, and are often deterred by excessive burdens imposed through the
procurement process and lack of visibility of opportunities.

Although over recent years a number of guidance documents have been issued by
Crown Commercial Services to address these issues, reforms have now been set
out in Part 4 of the new Public Contracts Regulations 2015 (PCR 2015) [4], which
came into force on 26th February 2015.

These new reforms make public procurement more accessible to SMEs and will help
ensure a simpler and more consistent approach to procurement across all public
sector authorities. They take account of the wide consultation and engagement that
the Government has undertaken with public bodies, small businesses and trade
bodies over the last two years and in response to Lord Young’s recommendations to
Government in his report on ‘Growing Your Business’ (May 2013) [5].

These reforms improve the way public bodies administer Pre-Qualification
Questionnaires (PQQs), the accessibility of contract opportunities and prompt
payment of suppliers.

They provide a valuable opportunity for NHS Providers to achieve increased quality
and value for money in the procurement of goods and services, in particular by
making procurement opportunities more accessible to smaller businesses and voluntary organisations.

**Exemptions**

The procurement of Healthcare Services for the purpose of the NHS within the meaning and scope of the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013 are exempt from these reforms.

The key reforms contained in PCR 2015 are:

**Abolition of a pre-qualification stage for procurements below the EU thresholds, and a requirement to have regard to guidance on qualitative selection issued by Crown Commercial Services for above EU threshold procurements including the use of a standard set of questions as appropriate.**

NHS Providers may not include a pre-qualification stage in any procurement where the value of the procurement is below the EU threshold for goods and services, currently £111,676 for NHS trusts and £172,514 for Foundation Trusts. In practical terms, this means that PQQs used as part of a pre-qualification stage are not permitted. However NHS Providers may ask questions relating to a potential supplier provided that the questions are proportionate and relevant to the subject matter of the procurement.

**A requirement for contracting authorities to insert provisions in all public contracts to ensure prompt payment through the supply chain**

NHS Providers must ensure that all contracts contain suitable provisions stating that valid undisputed invoices will be paid by the contracting authority within 30 days. Contracts must also contain a condition requiring contractors to include similar provisions in their contracts down the supply chain.

In addition, NHS Providers must publish statistics showing the proportion of invoices paid in accordance with these obligations; the total amount of any liability to pay
interest which arose during the year; and the total amount of interest actually paid in discharge of any such liability. This figure must be published annually in relation to the previous 12-month period at the end of the NHS Provider’s accounting year.

The requirement to advertise as many public sector opportunities in one place (Contracts Finder), and to publish award notices for contracts and call-offs from framework agreements [8].

NHS Providers must ensure that when they advertise a new procurement opportunity above certain thresholds, that the advert is placed on the new national Contracts Finder portal [9].

This portal must be used in addition to, or instead of any local or regional portals currently being used. The threshold is £25,000 for both NHS trusts and Foundation Trusts. Where existing standing orders are in place, that have a higher value for advertising opportunities, the higher value applies rather than £25,000.

NHS Providers are required to undertake the following actions from April 2015:

5) abolish the use of a pre-qualification stage for procurements below the EU threshold

6) have regard to the guidance on qualitative selection issued by Crown Commercial Services for above threshold procurements and use the standardised set of questions as appropriate

7) include provisions in all contracts to ensure prompt payment through the supply chain and prepare to publish statistics showing the proportion of invoices paid in accordance with these obligations, the total amount of any liability to pay interest which arose and the amount of interest actually paid.

8) ensure that all contract opportunities with a contract value over £25,000 are advertised on Contracts Finder, unless standing orders are in place for a higher threshold
Being transparent about expenditure

To ensure that small businesses see the benefit of these reforms, NHS Providers need to report on their contracts awarded and their spend with small businesses (SMEs) and voluntary community and social enterprises (VCSEs).

Once a contract has been awarded NHS Providers are required to publish the details on Contracts Finder and include an indication of whether the contractors are SMEs or VCSEs.

9) ensure that all contract award notices over £25,000 or the higher threshold determined by standing orders are published on Contracts Finder and an indication if the contractor is an SME or VCSE

10) publish details of total spend by supplier each month on their websites and take preparatory steps to publish details of any supplier rebates.

Performance reporting

It remains our intention to publish procurement performance to highlight variation across NHS Providers. The Department of Health is using the NHS Atlas of Variation[^10] as the preferred mechanism for publishing variation in procurement performance across the NHS. The aim of publishing data is to enable NHS Providers to focus on the key areas of procurement performance that need to be addressed at the local level.

The NHS Procurement Dashboard[^11] is a tool developed to improve transparency and understanding of procurement performance, which provides a balanced scorecard and supports internal governance. NHS Providers are required to:

11) Continue the use of NHS Procurement Dashboard during 2015/16 in order to report publicly against the core metrics for 2015/16 financial year.
Implementation

Key actions for NHS Provider organisations

1) continue to take preparatory steps during 2015/16 to enable the submission of accounts payable and purchase order data to the national service Provider. Work is ongoing in 2015 with a subset of NHS Providers to develop and test data extraction and interpretation. Once complete, further guidance will be issued to all NHS Providers.

2) respond to quarterly requests for price information in relation to a rolling basket of 25 items. Requests will be issued directly to NHS Providers. Each response will be benchmarked and summary reports will be returned to each NHS Provider for information/action. An initial request was issued and a report published on the Atlas of Variation in August 2014. Since then quarterly reports have been published on the Atlas of Variation drawing from nationally available data. Future requests may be issued directly to NHS Providers as appropriate.

3) continue to refrain from entering into any non-disclosure or confidentiality agreements with any supplier that may have the effect of restricting the sharing of procurement expenditure data, including prices, with the national Spend Analysis and Price Benchmarking service. It is recommended that NHS Providers should submit evidence to their Audit committee that steps have now been taken to comply with this requirement.

4) routinely submit their orthopaedic implant pricing information to the NJR

5) abolish the use of a pre-qualification stage for procurements below the EU threshold

6) have regard to the guidance on qualitative selection issued by Crown Commercial Services for above threshold procurements and use the standardised set of questions as appropriate
7) include provisions in all contracts to ensure prompt payment through the supply chain and prepare to publish statistics showing the proportion of invoices paid in accordance with these obligations, the total amount of any liability to pay interest which arose and the amount of interest actually paid.

8) ensure that all contract opportunities with a contract value over £25,000 are advertised on Contracts Finder, unless standing orders are in place for a higher threshold

9) ensure that all contract award notices over £25,000 or the higher threshold determined by standing orders are published on Contracts Finder and an indication if the contractor is an SME or VCSE

10) publish details of total spend by supplier each month on their websites and take preparatory steps to publish details of any supplier rebates

11) Continue the use of NHS Procurement Dashboard during 2015/16 in order to report publicly against the core metrics for 2015/16 financial year.

**Key actions for Department of Health**

1) Establish the national Spend Analysis and Price Benchmarking service

2) Publish further guidance specifying the data requirements for the national Spend Analysis and Price Benchmarking service

3) Issue quarterly price benchmarking requests as appropriate for a rolling basket of 25 items
References

6. requirements on pre-qualification questionnaires
7. paying invoices in 30 days down the supply chain

For further information:

Sandra Barrow e-mail: Sandra.barrow@dh.gsi.gov.uk
Pat Kavanagh e-mail: pat.kavanagh@dh.gsi.gov.uk
Maxine Globe e-mail: maxine.glob@dh.gsi.gov.uk