



## Responding to tenders for new and existing clinical and non-clinical services

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<b>Contact for Review Name and Job Title:</b> Andy Turner – Head of Commercial Development				

## Associated Documentation:

### Trust Controlled Documents

Standing Orders, Standing Financial Instructions, and Reservation and Delegation of Powers (Scheme of Delegation)

### External Documentation

Current procurement regulations:

[http://www.legislation.gov.uk/uksi/2015/102/pdfs/uksi\\_20150102\\_en.pdf](http://www.legislation.gov.uk/uksi/2015/102/pdfs/uksi_20150102_en.pdf)

Procurement guidance:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/560272/Guidance\\_on\\_Light\\_Touch\\_Regime\\_-\\_Oct\\_16.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/560272/Guidance_on_Light_Touch_Regime_-_Oct_16.pdf)

### Legal Framework

The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (Procurement, Patient Choice and Competition Regulations):

[http://www.legislation.gov.uk/uksi/2013/500/pdfs/uksi\\_20130500\\_en.pdf](http://www.legislation.gov.uk/uksi/2013/500/pdfs/uksi_20130500_en.pdf)

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### Version History

Version	Date Issued	Brief Summary of amendments	Owner's Name:
1	28/10/2014	New Policy	Andy Turner – Head of Commercial Development

**(Please note that if there is insufficient space on this page to show all versions, it is only necessary to show the previous 2 versions)**

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# Executive Summary

## Responding to tenders for new and existing clinical and non-clinical services

<b>Document Objectives:</b>	To describe the Trust's policy on responding to tenders for new and existing clinical and non-clinical services
<b>Group/Persons Consulted:</b>	<ul style="list-style-type: none"> <li>• Director of Strategy and Operations</li> <li>• Deputy Director of Strategy and Planning</li> <li>• Operations Directors</li> <li>• Procurement Director</li> <li>• Deputy Director of Human Resources</li> <li>• Deputy Directors of Finance</li> </ul>
<b>Monitoring Arrangements and Indicators:</b>	This policy will be monitored primarily by the Head of Commercial Development on behalf of the Board and the Trust Executive Group
<b>Training Implications:</b>	The Head of Commercial Development will provide training to Corporate and Directorate management teams
<b>Equality Impact Assessment:</b>	Initial analysis completed and no potential or actual adverse impact on any relevant groups identified
<b>Resource implications:</b>	The Trust has a Commercial Function in place. Further resources required to support tenders and bid design will be considered on a case by case basis.
<b>Intended Recipients:</b>	Board of Directors Trust Executive Group Clinical and Corporate Directorates Management Teams
<b>Who should:-</b>	
➤ be <b>aware</b> of the document and where to access it	As above
➤ <b>understand</b> the document	As above
➤ have a <b>good working knowledge</b> of the document	As above

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## 1. Introduction

From 1 April 2013 the rules that governed choice and competition in the commissioning and provision of NHS funded services in England (Principles and Rules for Co-operation and Competition) were set on a firmer statutory footing through the conditions of Monitor's new NHS provider licence and through secondary legislation for commissioners<sup>1</sup>.

The impact of this increased statutory obligation on commissioners and the drive for obtaining value for money has resulted in an increasing number of healthcare services becoming open to competition. Open procurement offers the opportunity for Sheffield Teaching Hospitals to bid for the provision of further healthcare services but also represents a significant risk to the potential loss of existing services to other providers which include NHS Trusts, NHS Foundation Trusts, the independent and third sector.

Under new Public Contracts Regulations<sup>2</sup> published in 2015 the former distinction between Part A and Part B service contracts has been abolished, and a new light-touch regime (LTR) was introduced for certain health, social and other services. The list of services to which LTR applies is set out in Schedule 3 of the Public Contracts Regulations 2015 (Annex A). The key light-touch regime rules are Regulations 74 to 77 in the main document.

Contracting authorities now have to follow a new light-touch set of procurement rules for LTR contracts above the relevant threshold. The main mandatory requirements are:

- a) OJEU Advertising: The publication of a contract notice or prior information notice except where the grounds for using the negotiated procedure without a call for competition could have been used, for example where there is only one provider capable of supplying the services required.
- b) The publication of a contract award notice following each individual procurement, or if preferred, group such notices on a quarterly basis.
- c) Conduct the procurement in conformance with the information provided in the OJEU advert (CN or PIN) regarding: any conditions for participation; time limits for contacting/responding to the authority; and the award procedure to be applied.
- d) Time limits imposed by authorities on suppliers, such as for responding to adverts and tenders, must be reasonable and proportionate. There are no stipulated minimum time periods in the LTR rules, so contracting authorities should use their discretion and judgement on a case by case basis.

Authorities have the flexibility to use any process or procedure they choose to run the procurement, as long as it respects the other obligations above. There is no requirement to use the standard EU procurement procedures (open, restricted and so on) that are available for other (non-LTR) contracts. Authorities can use those procedures if helpful, or tailor those procedures according to their own needs, or design their own procedures altogether.

The LTR rules are flexible on the types of award criteria that may be used, but make clear that certain considerations can be taken into account, including (this is not an exhaustive list):

- the need to ensure quality, continuity, accessibility, affordability availability and comprehensiveness of the services;
- the specific needs of different categories of users<sup>1</sup>, including disadvantaged and vulnerable groups;

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<sup>1</sup> [http://www.legislation.gov.uk/uksi/2013/500/pdfs/ukxi\\_20130500\\_en.pdf](http://www.legislation.gov.uk/uksi/2013/500/pdfs/ukxi_20130500_en.pdf)

<sup>2</sup> [http://www.legislation.gov.uk/uksi/2015/102/pdfs/ukxi\\_20150102\\_en.pdf](http://www.legislation.gov.uk/uksi/2015/102/pdfs/ukxi_20150102_en.pdf)

- the involvement and empowerment of users;
- and innovation.

Reserved contracts for certain services in the light-touch regime. The new rules permit for certain LTR contracts to be “reserved” for organisations meeting certain criteria e.g. public service mutuals and social enterprises. These provisions are covered separately in Part 2 of the guidance.

Returning to this policy, the following document will describe;

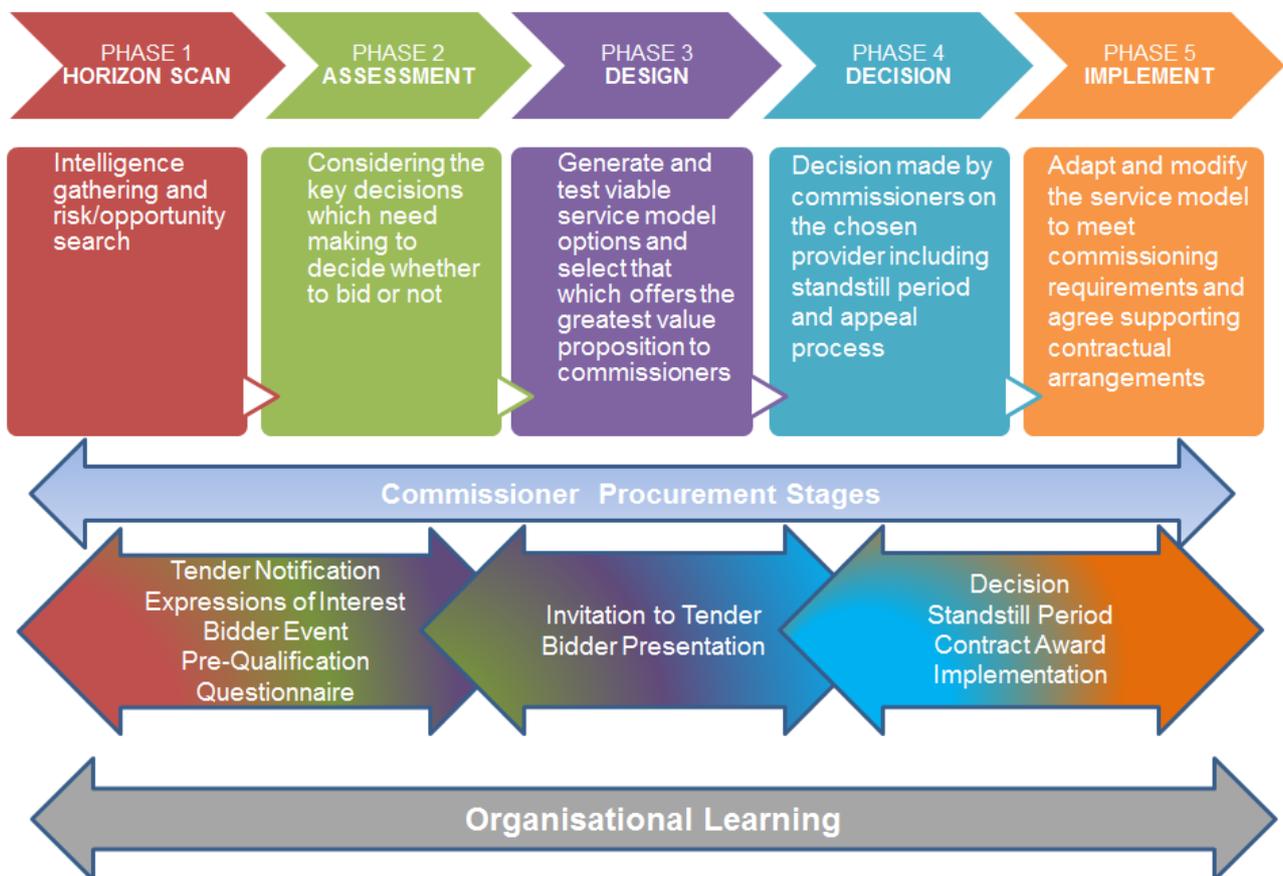
- an established process for identifying risks/opportunities where clinical services are open to competitive tendering;
- a framework for how bids should be developed
- a robust decision making process.

This policy solely relates to services being tendered by external organisations where Sheffield Teaching Hospitals NHS Foundation Trust (STH) is a potential bidder to provide clinical or non-clinical services either solely or as part of an alliance/partnership with other organisations. This policy does not relate to services which are tendered by the STH Procurement team.

## 2. The STH Commercial Tendering Process

There are five key phases of the STH commercial tendering process which are illustrated in **Figure 1** below. These phases are have been aligned to the various stages of the typical commissioner procurement process

**Figure 1 –The STH Commercial Tendering Process**



This policy describes the requirements within each phase of the STH commercial tendering process and is aligned to the formal procurement stages led by commissioners.

### 3. Horizon Scan

It is essential that STH is fully aware of all commercial opportunities and any potential risks to existing services open to competition through procurement by commissioners. This will be carried out in a number of ways which include;

- Searching procurement portals where tenders are published
- Reviewing commissioner procurement plans
- Directorate and Contracting Team intelligence

#### 3.1 Searching Procurement Portals

The main sources of tendering opportunities identified by the Commercial Development Team are through searching procurement portals and email alerts using defined search criteria agreed with directorates. The criteria include geographical areas, types of services or specific service lines which in all cases should align with the strategic aims of the Directorate. At the time of reviewing this policy guidance, the portals are described in **Figure 2** below.

**Figure 2 – Procurement Portals**

Procurement Portal Details	Website Address	How opportunities are identified
<p><b>Tenders Electronic Daily (TED)</b> The online version of the 'Supplement to the Official Journal' of the EU, dedicated to European public procurement. TED publishes 460 000 calls for tenders per year, for about 420 billion euro of value.</p>	<p><a href="http://ted.europa.eu/TED/main/HomePage.do">http://ted.europa.eu/TED/main/HomePage.do</a></p>	<p>Every contract notice is checked on a daily basis which meets our search parameters. The Commercial Development team also receive daily email alerts.</p>
<p><b>Contract Finder</b> Contracts Finder lets you search for information about contracts worth over £10,000 with the government and its agencies. The system is used to:</p> <ul style="list-style-type: none"> <li>• search for contract opportunities in different sectors;</li> <li>• find out what's coming up in the future;</li> <li>• look up details of previous tenders and contracts.</li> </ul>	<p><a href="https://www.gov.uk/contracts-finder">https://www.gov.uk/contracts-finder</a></p>	<p>Every contract notice is checked on a daily basis which meets our search parameters. The Commercial Development team also receive daily email alerts.</p>
<p><b>Procurement Portals</b> A number of procurement portals which are regularly used by Clinical Commissioning Groups, NHS England and Local Authorities.</p>	<p>Various</p>	<p>The Commercial Development team receive daily email alerts.</p>

Links to contract notices which meet agreed search parameters will be sent by email to the Directorate Management Team (Clinical Director, Operations Director, Nurse Director and Principal Finance Manager) at the earliest opportunity. Included within the email will be a brief summary of the tendering proposal which will include the service being tendered, the length and value of the contract and any key deadlines.

### 3.2 Commissioner Procurement Plans

As part of the annual planning cycle most commissioners publish procurement plans and/or commissioning intentions which indicate the anticipated services which are to be tendered in future years. These plans are reviewed annually and where risks/opportunities are identified these are recorded by the Commercial Development Team on the Trust Horizon Scanner and Tender Tracker.

### 3.3 Management Intelligence

The Contracts Team has well established relationships with commissioners which offers the opportunity to understand and be made aware of future tendering risks/opportunities. All such intelligence will be shared with the Commercial Development Team. Directorate Management Teams from time to time are also made aware of forthcoming tenders. Again, the Commercial Development Team should be notified to ensure the Trust can plan in advance of the tender being published.

## 4. Assessment

Careful consideration should be given whether a commercial tendering opportunity should be pursued. The key steps are summarised below and presented in **Appendix 1**.

- **Fit with the strategic direction**

Once a tendering proposal by commissioners is identified the Directorate Management Team must first consider whether the opportunity has the potential to deliver the directorate and the STH strategic objectives.

- **Impact on other business if don't bid**

The full implications on STH as a whole should be taken into consideration, particularly if the directorate which is assessing the tender may decide not to submit a bid.

- **Relationship with commissioners**

When assessing the tender proposal the existing relationship with commissioners should be considered. All necessary steps may need to be taken to develop and improve relations with the commissioner in advance of developing a bid.

- **We have competitive advantage**

Before deciding whether to bid or not directorates should also consider the extent to which STH has or can acquire any advantage over potential competitors. Directorates should consider the unique offer that STH can provide such as specialist clinical skills, expertise and infrastructure which cannot be easily replicated by our competitors.

- **We understand the commissioner's requirements**

The directorate should examine very carefully the commissioner's requirements to assess whether or not these can be met. This will require directorates to examine the available tender documents in detail (e.g. service specification) to understand the full extent of what is required.

- **We have the resources and skills available**

The directorate should determine whether it has the key resources and skills needed to deliver the tender requirements for both the tendering process and what may be the future service provision.

The Operations Director or person(s) with delegated authority should advise the Commercial Development Team of the decision whether to progress a tender opportunity or not. A decision is

requested within 5 working days of a contract notice being sent to the Directorate Management Team but ideally a decision, in full or in part, will have already been made prior to the tender being published.

If the directorate management team is not wishing to pursue the opportunity, they must indicate the reason(s) for their decision which will be logged and included in future reporting of commercial activity to TEG and the Board.

Please note that should clinical/corporate directorates choose not to pursue the tender, corporately the Trust reserves the right to submit an expression of interest / pre-qualification questionnaire where further information is required to make an informed assessment and/or gain market intelligence. Support would be required from the relevant directorate(s) where this is the case.

## 5. Design

The following section describes the bid design phase of the tendering process.

### 5.1 The Bid Design Team (BDT)

Once the decision is taken to tender for a service a Bid Design Team will be established at the earliest possibility. The purpose of this team will be to oversee all aspects of the delivery of a high quality, financially viable tender submission which exceeds commissioners' expectations. The Bid Design Team will largely depend on the size and scope of the tender but it is expected that core membership would consist of the following:

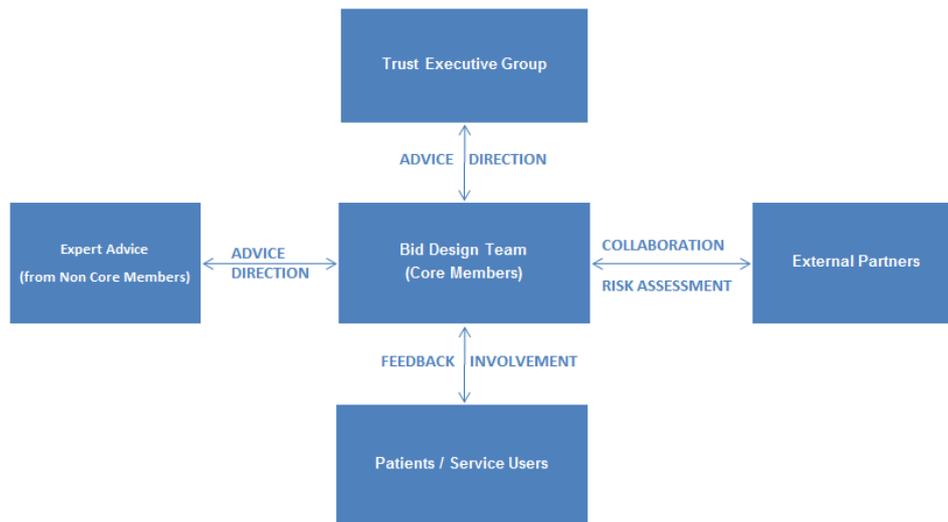
Role	Summary of responsibilities
<ul style="list-style-type: none"> <li>Head of Commercial Development</li> </ul>	Project manages the bid from design to completion
<ul style="list-style-type: none"> <li>Operations Director / Deputy</li> </ul>	Ensures development and sign off at directorate level of a high quality tender underpinned by a clear service model
<ul style="list-style-type: none"> <li>Dedicated Bid/Project Manager</li> </ul>	Dedicated resource to facilitate tender if required
<ul style="list-style-type: none"> <li>Clinical Lead / Deputy</li> </ul>	Leads clinical input, design and response to the clinical specification which is always essential
<ul style="list-style-type: none"> <li>Group Finance Lead / Deputy</li> </ul>	Leads and completes the financial assessment and a viable financial/pricing model on the tender
<ul style="list-style-type: none"> <li>Project Support Officer</li> </ul>	Acts as the interface with the procurement team via the electronic portal and supports the entire team during the tendering period.

**Appendix 2** provides a list of the detailed responsibilities of each of the core Bid Design Team members.

The Commercial Development Team will set out the governance arrangements with the relevant Operations Director which will incorporate a tendering timeline describing the key dates such as when the Pre Qualification Questionnaire, and/or Invitation to Tender is issued, the deadline for clarification questions, for internal review, approvals and for tender submissions, the commissioner decision making timeline and proposed contract implementation date.

**Figure 3** shows how the Bid Design Team interacts with stakeholders and partners.

**Figure 3 – The Bid Design Team Interactions**



- **Trust Executive Group**

TEG will provide advice, direction and approval to submit tenders on behalf of the Board. The Board of Directors and TEG will be appraised of all tendering activity on a regular basis through regular reports produced by the Commercial Development Team.

There may be occasions when a dedicated Project Manager may be required due to the annual contract value level, the level of risk to existing services, the number of directorates involved or the extent to how the service model needs to change. TEG will consider this and any support will be subject to a report to the Business Planning Team.

- **Stakeholder Engagement**

Dependant on the potential impact of the new service model on existing staff, the Bid Design Team will also consider the level of staff engagement which is required throughout the bid project lifecycle. The key consideration will be the involvement of staff to contribute to the proposed service model and the need for well-developed implementation plans should the tender submission be successful.

Patients/service users should be consulted on proposed service models with feedback sought from the Bid Design Team. Evidence of their engagement would be made clear as part of any tender submission.

- **External Partners**

A stakeholder analysis will be undertaken to assess current and desired relationships, interfaces and key messages with internal and external stakeholders. Where the Bid Design Team believes that in order to deliver the service model in the most efficient and effective way STH should work in conjunction with other public, private or third sector providers advice will be sought from TEG / TEG members where necessary.

## 5.2 Writing the bid

### Pre-Qualification Questionnaire (PQQ)

The PQQ will be completed and submitted by the Commercial Development Team as this predominately contains corporate information. As part of this where service specific questions must be answered support will be required from the relevant directorate.

### **Invitation to Tender (ITT)**

The ITT usually comprises of a number of detailed documents setting out the requirements for services being tendered and a set of templates for the submission. The key sections of the ITT submission are often the response to the clinical service specification and the financial model. The bid response should focus on ensuring the following minimum requirements are met:

- Produce a relevant and concise response with a consistent thread and prose throughout;
- Uses the tender headings and key phrases to answers the questions presented;
- Articulate the unique benefits of STH and provide evidence were available

Particular attention should be given to the specific requirements and weighting for each individual question which will be used by the commissioner to evaluate each response within the ITT. The Bid Design Team at an early stage will determine who is best placed to respond to each of the questions asked by commissioners. To ensure each submission is written consistently and produced to a high quality the Commercial Development Team will lead the coordination of the final response and allow for sufficient time within the process for consistency checking.

Within each ITT there is detailed guidance provided on how to respond to the tender. The Bid Design Team will review this for each tender opportunity.

### **5.3 Approval of the ITT Submission**

In line with Standard Financial Instructions (SFIs) the Board of Directors gives the Chief Executive (CEO) delegated authority to approve tender submissions. The CEO discharges this responsibility through the Director of Strategy and Operations who will sign off the tender response and the Director of Finance the financial model. TEG will collectively approve the submission of the tender submission by exception.

Within the procurement timeline sufficient time will be allowed for a final review of the ITT response by Executive Directors and where required TEG to allow for any necessary alterations to be made to the final submission. Wherever possible the tender submission will always be submitted a day before the deadline.

### **5.4 Subsequent Presentations**

Following submission at the ITT stage and dependant on the procurement process it may be necessary for STH to give a presentation on the bid submission to a panel of commissioners. The Bid Design Team, seeking direction from TEG / TEG members where necessary, will determine who is best placed to make the presentation but at the least this will be clinically led. The presentation material will be co-ordinated by the Commercial Development Team.

## **6. Decision**

Once a decision is made by commissioners STH will be notified. Where STH is successful commissioners will inform the Trust and advise that once the standstill period has ended steps should be taken to prepare for implementation of the service model in line with the agreed contract start date. Formal notification will be provided by the commissioners at this point and at this stage the Directorate Management Team will be informed to maintain confidentiality during the standstill period. STH will then issue a response to commissioners accepting the decision, acknowledging

the mobilisation period and confirming our commitment to develop the service during the length of the contract.

Where STH was not successful contact will be made with commissioners in writing seeking clarification as to why the decision was taken and to obtain the evaluation scores. Dependant on the procurement process specific to the tender, a decision will be taken by TEG as to whether an appeal should be submitted.

Should an appeal be made, the Bid Design Team will be kept informed of progress. Dependant on the circumstances the necessary representation and level of seniority will be considered for any subsequent meetings with commissioners to discuss the rationale behind the decision.

## **7. Implementation**

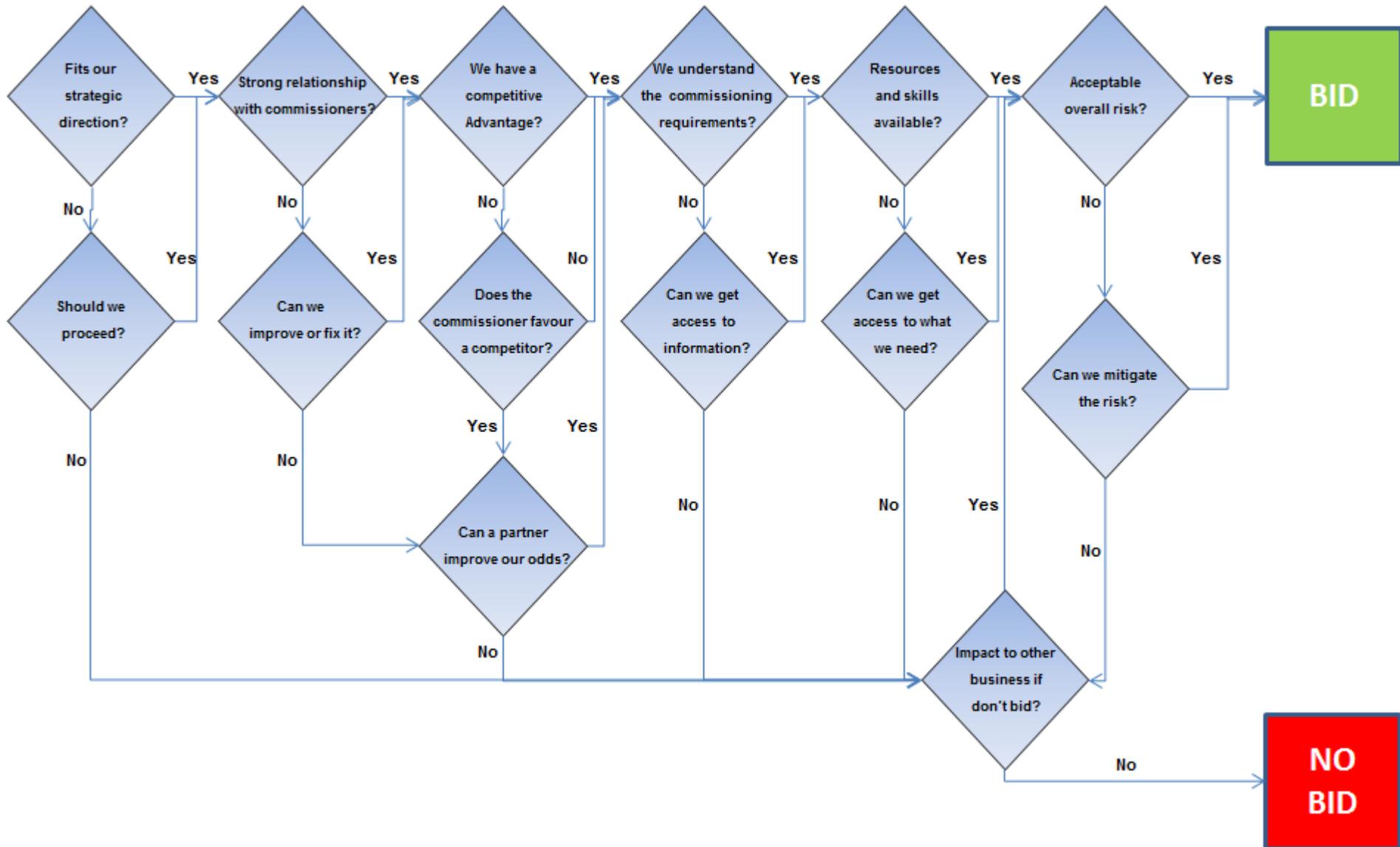
Where STH is successful in securing a tender the Bid Design Team will move into the implementation phase to prepare for commencement of the service and begin the process of formalising arrangements with commissioners in conjunction with the Contracts Team.

The implementation of the service will require a continuation of robust project management arrangements. These should be designed and agreed by the Directorate Management Team utilising support from other directorates and corporate teams as required.

The Contracts Director in conjunction with key service leads will assume lead responsibility for finalising the agreed contract documentation.

Prior to tendering project closure the Bid Design Team will meet to discuss lessons learnt. This will ensure both the team and the wider organisation can continue to learn from previous tenders so that processes can be refined to increase the likelihood of success in future. Lessons learnt will be collated and shared with directorates.

## Appendix 1 – Assessment Flowchart



## Appendix 2 – Bid Design Team Responsibilities

Role	Responsibility
Head of Commercial Development / Dedicated Bid / Project Manager	<ul style="list-style-type: none"> <li>• Project manages the bid from design through to completion</li> <li>• Jointly chairs meetings of the Bid Design Team</li> <li>• Liaison with commissioners where applicable</li> <li>• Oversee/manage relationships with potential partners</li> <li>• Organisational sponsor on behalf of STH</li> <li>• Tracking progress on actions agreed by Bid Design Team members</li> <li>• Ensuring TEG members are updated on progress of the bid and advice is sought on the direction which should be taken</li> <li>• Ensuring the final bid (tender) is signed off by TEG members</li> </ul>
Operations Director / Deputy	<ul style="list-style-type: none"> <li>• Securing backfill arrangements to ring fence clinical time where necessary</li> <li>• Jointly chair meetings of the Bid Design Team</li> <li>• Tracks progress on actions agreed by Bid Design Team members</li> <li>• Oversees/manages relationship with potential partners</li> <li>• Liaises with commissioners where applicable</li> <li>•</li> </ul>
Clinical Lead / Deputy	<ul style="list-style-type: none"> <li>• Provides essential clinical leadership as part of the Bid Design Team</li> <li>• Contributes key clinical input into the proposed new service model</li> <li>• Ensures that issues of clinical governance are fully considered as part of the newly proposed service model.</li> <li>• Ensures patient/service user feedback and previous evidence is incorporated into the proposed service model</li> <li>• Supports discussions with potential partners and other supporting bodies where necessary</li> </ul>
Group Finance Lead / Deputy	<ul style="list-style-type: none"> <li>• Assesses and reports total costs (direct and indirect) for the proposed service model so expected income versus expenditure can be calculated including the level of contribution to overheads.</li> <li>• For new opportunities considers where fixed infrastructure is covered by current activity and income and relatively low variable costs to step up and take on additional activity provide a viable option (i.e. through marginal pricing and economies of scale we can increase our surplus).</li> <li>• Undertakes sensitivity analysis to determine the break-even point</li> <li>• Considers those clarification questions which should be asked to address any financial uncertainties</li> <li>• Ensures sign off of the proposed financial model by the Director of Finance/Deputy</li> </ul>
Project Support Officer	<ul style="list-style-type: none"> <li>• Maintains the SharePoint site accessible only by the Bid Design Team including action logs and all relevant tender documents</li> <li>• Continuously reviews procurement portals to check for any additional information published by commissioners relevant to the tender including clarification questions and answers</li> <li>• In support of the Head of Commercial Development oversees the initial draft tender response by STH on SharePoint in accordance with bid writing guidelines and populates the document with relevant information as deemed appropriate by the Bid Design Team</li> <li>• Collates and inputs all required corporate information such as; bank details, CQC registration, data protection information, insurance including Public Liability, Employers Liability and CNPL Insurances, Monitor license details and VAT registration.</li> </ul>