

Trafford Healthcare NHS Trust

Proposed acquisition
by a Foundation Trust



Bidder Instructions

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Introduction

The purpose of the Bidder Instruction Pack is to provide details of the partner selection and transaction process to ensure bidders are informed in the best possible way to engage in the bidding process. The Pack contains the following information:

- Detail of the process, timescales and required Bidder actions
- Criteria for evaluation of bids and weightings
- Questions to be addressed in bids
- Legal Structure of Transaction
- Administrative Issues

Process, Timescales and Bidder Actions to Preferred Bidder

Stage	Description	Due/End Date	Bidder Action Required
Information Issue	Prospectus and Bidder Instruction Pack issued	4 April 2011	
Bidder Intention to engage Submission	Bidders must complete an intention to engage letter, a template of which is set out in appendix 1 of the Bidder instruction pack	11 April 2011	Return signed intention to engage letter by email to jessica.bradshaw@trafford.nhs.uk
Information Access Issue	Details of access arrangements to the THT VDD reports and virtual data room will be sent to bidders	13 April 2011	Confirm receipt of access details by email to chris.bailey@trafford.nhs.uk
Clarifications Period	Questions and clarifications regarding the Prospectus, Bidder Instruction Pack and process can be sent to the Project Team. Responses will usually be given in 2 working days directly to the bidder and will be anonymised and placed in the data room. On receipt of bidders intention to engage letter dates will be confirmed for bidders to attend the clarifications and directions meetings listed below	14 April 2011 – 31 May 2011	Send questions and clarifications to chris.bailey@trafford.nhs.uk
	Bidder Information Days will be held to give the opportunity for site visits to THT and meetings with members of the senior team	Dates TBC	
	Information and discussion sessions will be held with the Commissioners to allow bidders to seek clarifications	Dates TBC	
	Meetings with partners and stakeholder will be held to allow bidders to ask questions and seek clarification	Dates TBC	
	Bid direction meetings will be held with both THT and the Commissioners to receive initial views from bidders and give direction on ongoing bid development	Date TBC	

Stage	Description	Due/End Date	Bidder Action Required
Bid Submissions	Final written bids submitted	10 June 2011	Submit final bid to Jessica Bradshaw, Project Director, THT. Bidders must provide 5 hard copies of their complete bid and an electronic copy on a USB or CD
Bid Evaluation and Assessment Period		11 June 2011 – 31 July 2011	
	Bidder Presentations to Stakeholder Reference Group. The Reference Groups are advisory to THT Board and will provide views on bidder proposals but this does not form part of the formal assessment process	Date TBC	Confirm attendance at the presentation to chris.bailey@trafford.nhs.uk Attend, give presentation and take questions
	Bidder Interviews with THT Board/ representative of the SHA	26 July 2011	Confirm attendance at bidder interview chris.bailey@trafford.nhs.uk Attend interview
Preferred Bidder Selection	Final bidder selection agreed and communicated	31 July 2011	

Criteria for Bid Evaluation

The criteria against which bids will be evaluated are split into two sections, Test One and Test Two.

The criteria in Test One represent the key outcomes sought from a bidder by THT and its stakeholders. Test One criteria are as follows:

- **Provision of Appropriate Services Ensuring Access to Local Service for all Residents of the Trafford Borough**

Bidders must be able to identify the services they will provide and demonstrate a proposed distribution of services that provides good and equal access for all residents of the Trafford Borough with an emphasis on providing first point of contact care on a local basis

- **Provision of Safe and High Quality Clinical Services**

Bidders must be able to demonstrate a track record of provision of high quality, safe services and robust governance and assurance controls around quality of care and outcomes. Bidders must be able to describe how these would be applied in Trafford.

- **Commitment to the Development and Delivery of Integrated Care and Commissioning Intentions**

Bidders must be able to demonstrate an understanding of and commitment to integrated care and Trafford's commissioning intentions and be able to describe how they will continue their development and delivery within the proposed five-year resource envelope.

- **Partner, Stakeholder and Patient Engagement**

Bidders must be able to demonstrate a track record of successful engagement with partners, stakeholder and patients and be able to describe how they will manage engagement within Trafford

- **Innovation, Improvement and Transformation**

Bidders must be able to demonstrate a track record of delivering innovation, service transformation and improvements across their own services and their ability to apply these successful strategies to THT services in due course

The criteria in Test Two are the technical supporting actions which we believe are required to enable a transaction to be successfully completed.

The criteria in Test Two are as follows:

- Financial
- Workforce
- Estates
- Legal
- Transition and Integration

Assessment of Test Two criteria will be based on evidence of the bidder's current position and practice relating to these areas and their plans relating to the acquisition.

Bid Assessment Process

The Bid assessment process will be undertaken in three parts:

Part 1 - Evaluation of Written Bid Submissions

Written bid submissions will be evaluated against Test One and Test Two criteria. The outcome of this assessment will contribute 90% to the preferred bidder selection decision.

The weightings and process of evaluation will be as follows:

The specific questions to be evaluated are included in Section 5 of the Bidder Instruction Pack, broken down by category. A breakdown of how these question areas will be weighted is as follows:

Test One	
Overview	0%
Services distribution and access	30%
Service model and quality	25%
Integrated Care	20%
Partner/stakeholder/patient engagement	15%
Innovation, improvement and transformation	10%

Test Two	
Financial	40%
Workforce	30%
Estates	5%
Legal	5%
Transition and Integration	20%

Test One will be performed on all responses. A minimum threshold of 50% is required in each individual section, with an overall threshold across all sections of 60% required to pass Test One. Any bidder not achieving these minimum marks will not proceed to Test Two assessment.

Test Two will be performed on all responses that meet the threshold set in Test One. A minimum threshold of 50% is required in each individual section, with an overall threshold across all sections of 60% required to pass Test Two.

Determination of best placed bid from written Bid submission

The highest scoring bidder from Test One will be evaluated against the overall rating of scores from Test Two, and, so long as they are within 10% of best Test Two submission will then be graded as being the most successful overall bidder.

If they are outside of this 10% range, the next highest scoring bid from Test One will be taken forward to a similar assessment against the Test Two score. If they are within 10% of the best Test Two score, they will be ranked as the highest overall scored bidder from the written bid submissions. If not, the third placed bidder from Test One will be taken forward, and so on. It should be noted that it will not be possible for a bidder to achieve 'best placed bid bid' status unless they have at least "passed" Test One (i.e. achieved minimum 50% individual and 60% overall scores).

This exercise provides for the identification of the best placed bidder before bidder interview stage.

Part 2 - Presentation to Stakeholder Reference Group Representatives

Bidders are required to make a presentation to representatives of the stakeholder reference groups that have been established to support and advise the acquisition project. Representatives will be drawn from the PCT, GP Commissioners, TMBC, Patient Groups, THT Clinicians, THT Staff Side, Trafford GPs, Trafford OSC. The reference groups are advisory to THT Board and will be asked to give their view of bids in the context of the formal evaluation criteria. These views will inform the decision making process of THT Board but will not form part of the formal assessment process

Part 3 - Bidder Interview

Bidders will be required to attend an interview with THT Board, their advisors and representation from the SHA/Shadow Provider Development Board. Prior to the interview, the format and core questions for the interview will be issued to bidders. The Bidder Interview outcome will contribute 10% to the preferred partner selection decision.

Bidder Questionnaire

Bidders are requested in their bids to respond to the following questions: In this document “you” / “your” is defined as relating to the respective bidder organisation.

Test One Criteria

Overview

- Please describe your vision for the acquired entity and the future of services in Trafford
- Please describe why you feel you are the best placed organisation to acquire THT and deliver your vision
- What do you think will be the key challenges facing the combined entity, and in particular how will you work with commissioners to manage these challenges and within what timescales?

Service Model, Distribution and Access

- Indicate the acute health services you believe should continue to be provided within Trafford.
- Describe the service delivery model for these services, their proposed distribution by location and service type, identifying links to your own services for value added or other reasons.
- Identify any services you are likely to want to review and why; the timescale for any proposed reviews and resultant decision-making; and whether you believe this is likely to result in significant proposals for change requiring formal public consultation with the public, Trafford OSC and other stakeholders.
- Indicate your initial assessment of the likely impact of the proposed five-year resource envelope on the delivery, distribution and future model of services.

Service Quality and Safety

- Please describe how you would ensure the preservation of high quality in areas of activity where THT currently outperforms your organisation.
- Please describe your proposed approach to improving the overall quality of services in THT
- Please provide up to date evidence of your organisations performance on quality, this should include the following:
 - Confirmation that your organisation is registered without conditions by the CQC
 - Details of your organisation’s CQC quality and risk profile
 - Quality Account
 - Recent Board Quality Reports
 - Details of achievements against CQINs targets
 - PEAT Inspections
 - Deanery visit reports and action plans
 - Please describe your last serious untoward clinical incident, how you managed it and the outcomes for the services and organisation.

Integrated Care

- Please describe how you intend to engage with the commissioners, community services providers, and other key partners to continue the development and implementation of integrated care within Trafford
- Please provide details of any integrated care strategies or services provided by your current organisation

Partner, Stakeholder and Patient Engagement

- Please describe how you would manage communications and engagement with the following groups during the transition period and post acquisition:
 - Commissioners
 - Local Authority
 - Patient Groups
 - THT Staff
 - THT Clinicians
 - Trafford GPs
- Please provide details of your current communication and engagement strategy and plans and evidence of how they are implemented
- Please provide evidence of monitoring and assurance regarding the outcomes of your organisation's communication and engagement activity
- Please describe how you would ensure that Trafford is appropriately represented through the governor and membership structures within your Trust

Innovation, Improvement and Transformation

- Please provide examples of innovation, improvement and transformation activity within your existing organisation
- Please describe your organisation's improvement methodology
- Please describe the role of any clinical champions in your organisation and how they have driven service improvements together with engaging the wider clinical body.
- Please describe how you have engaged clinicians in service redesign using the outputs from SLR to drive quality and reduce cost
- Please identify how you would engage the THT clinical body and management team to embrace this methodology further so improving services further

Test Two Criteria

Financial

To enable an assessment your organisations performance in the following areas:

- Financial standing
- Financial control
- Financial management
- Financial reporting
- Value for money

Please provide evidence of your performance in these areas. This should include the following:

- Your current 5 year plan in LTFM format, including analysis of the Monitor risk rating assessment
- Your future combined entity 5 year plan in LTFM format, including analysis of the Monitor risk rating assessment
- A full set of your 09/10 and 10/11 audited accounts and audit management letter
- Head of internal audit opinion
- Statement of internal controls
- Month 12 management accounts and Board report

Workforce

To enable an assessment of the performance of your organisations current employment framework and employment practices and an assessment of your plans to integrated and manage the current THT workforce, please provide the following:

- A copy of your current workforce strategy.
- A description of the workforce policy and procedures that support the effective achievement of the workforce needs, particularly in relation to maintaining and improving sickness and turnover in order to improve staff morale, motivation and productivity.
- Please describe your current employee relations climate.
- Please describe how a positive employee relations environment will be achieved and maintained on the acquisition of THT and how you will work with the Unions to encourage and maintain positive employee relations and integrate staff side and management.

SECTION 5

- The number of staff employed during the last 12 months who left within the same period.
- Percentage levels of sickness and turnover within your organisation
- Evidence of your own Trust's quality results for the workforce, such as the staff survey and outline the improvement plan put in place to address any deficiencies.
- Please describe how you currently implement comprehensive learning and development for all of the medical and non medical staff, including student placements.
- Please include the provision of the percentage take up level of mandatory training at your own Trust
- Please state your current arrangements for:
 - Health and safety risks
 - Health and safety improvement measures
 - Occupational health
 - Working time regulations and safe systems of work;
 - Staff consultation and counselling
 - Safety audit
 - Accident reporting and
 - Health and safety record keeping and reporting
- Please submit your proposed operational management organisation structure chart, which should demonstrate key managerial roles and responsibilities, reporting relationships and accountabilities
- Please describe the induction process that you will implement to introduce Trust staff to your working environment of the new organisation.
- Please provide an overview of plans to harmonise the workforce of both Trusts in the new organisation.
- Please describe in detail how you propose to deal with the transfer of THT staff in line with Section 28.4 of the Transaction Manual.
- Please confirm that all employees who are active members of, or eligible to be members of, the NHS Pension Scheme will be entitled to continued membership or to join the NHS Pension Scheme.

Estates

- Describe how you will continue to use existing THT Estate and your plans and timescales for development and investment. Please link these proposals to you LTFM.
- What are your views on any efficiencies that can be gained from the combined property portfolios within the integrated organisations? How do you propose making the most of the current estate?

Transition and integration

To enable an assessment of your organisations capability and capacity to successfully deliver the acquisition transaction:

- Please provide an integration plan detailing how you would logistically merge the two businesses and the project arrangements for this.
- Please detail what staffing requirement or additional costs you envisage deploying / incurring during the transition phase, from what point and for how long. How do you intend to fund these? Will you seek any external advice to assist your transition / integration period?
- Please detail what handover requirements you envisage as being required on initial transition - e.g. access to existing interim personnel / wider management.
- Please detail what previous integration experience you have. What have been the challenges and how have you addressed them?

Legal

- Please confirm you will accept the transfer of all Trust assets on Completion; and assume responsibility for all trust liabilities on Completion.
- Please confirm you will enter into the Transaction Agreement on Exchange.
- Please confirm you will enter into the Transitional Agreement on Exchange.
- Please confirm you will enter into the Commissioning Contract(s) on Completion.

Legal Structure of Transaction

Overview

Subject to the appropriate approvals being received it is envisaged that the proposed transfer of the assets and liabilities of the Trust will involve the following stages:

- agreement on the terms and the execution of, a Transaction Agreement whereby the Successful Bidder is contractually bound to complete the acquisition of the Trust subject to any required consents e.g. monitor and to the passing of (i) a transfer order (“Transfer Order”) and (ii) a dissolution order (“Dissolution Order”) by the Secretary of State;
- agreement on the terms and the execution of, new Commissioning Contract between the Successful Bidder and the existing PCT commissioners;
- an agreed Transitional Agreement and plan for the transitional period between execution of the Transaction Agreement and the passing of the transfer order and dissolution order by the Secretary of State;
- legal completion of the Transaction Agreement (with the simultaneous passing of the Transfer Order by the Secretary of State) whereby the Successful Bidder becomes the legal “owner” of the Trust’s assets and liabilities; and
- the formal dissolution of the Trust by the passing of a Dissolution Order by the Secretary of State.

Key Legal Documents

Transaction Agreement

The main commercial agreement is the Transaction Agreement. In accordance with commercial good practice and as envisaged in the Transactions Manual, this will take the form of a transfer agreement in which there will be a clear apportionment of liabilities and identification of assets transferring to the Successful Bidder. The Transaction Agreement will need to be in an agreed form ready for signature on the contract signature date). This will amount to legal “exchange of contracts”. At this point, the Successful Bidder will be legally bound to complete the acquisition of the Trust subject only to the Secretary of State passing the Transfer Order and

Dissolution Order

THT Board is committed to working with the successful bidder to manage the transition period positively and support discussions with Monitor and the CCP. There will be a transitional period to enable a smooth

transition of service delivery between the Trust and the Successful Bidder during which time THT will need to continue to operate in the normal course of business and the agreed mobilisation plan can be put in place. Legal completion of the Transaction Agreement will take place on or before midnight on 31 March 2012, simultaneously with the passing of the Transfer Order by the Secretary of State.

At that point the Successful Bidder will become the legal owner of the assets and be responsible for the liabilities of the Trust. Transferring of title will be effected by the passing of a Transfer Order sanctioned by the Secretary of State. Immediately afterwards the Secretary of State will pass a Dissolution Order dissolving the Trust. As the Trust will cease to exist after the passing of the Dissolution Order, insofar as there are continuing obligations owed by the Successful Bidder under the Transaction Agreement, the DoH will be able to enforce those rights, on behalf of the local health economy.

Commissioning Contract

The second commercial agreement will be a new Commissioning Contract(s) to be entered into by the Successful Bidder and the current commissioners. It is intended that the Commissioning Contract(s) will be in a separate agreement between the Successful Bidder and the commissioners which will be in an agreed form and signed on the contract signature date.

Legal completion of the Commissioning Contract and the commencement of services will not occur until completion of the Transaction Agreement and will be subject to the completion of the other legal formalities, most notably the completion of the Transaction Agreement, the passing of the Transfer Order and the making of the Dissolution Order by the Secretary of State.

Transfer Order and Dissolution Order

It is intended that the transfer of the Trust’s assets and liabilities will be made pursuant to the powers under paragraph 14 of Schedule 4 of the NHS Act 2006. The Transaction Agreement will be entered into on the contract signature date and legal completion of that Transaction Agreement will be effected by a form of Secretary of State Transfer order. There will then be a separate dissolution order by the Secretary of State which will dissolve the Trust.

Transitional Arrangements

When the Transaction Agreement is signed on the contract signature date the Successful Bidder will become legally bound to acquire the assets and assume responsibility for the liabilities of the Trust subject only to the sanction of the Secretary of State (and the passing of the order for the Trust's dissolution).

Legal completion of the transfer of the Trust's assets and assumption of liabilities will not take place until later as mentioned above therefore there will be a transitional period of some 3 months (the Transitional Period) during which time the interests of the Trust, service users and the Successful Bidder need to be aligned.

The Trust will need to operate in a 'business as usual' framework and the Successful Bidder will be keen to ensure the Trust does not commit to material obligations or incur substantial liabilities without its consent.

It is imperative that an effective agreed transitional and mobilisation plan is in place to meet the requirements of all parties and regulators to ensure a clinically safe transition of services from the Trust to the Successful Bidder to ensure that quality care continues to be provided to all service users.

The mobilisation and transitional arrangements will be set out in a free standing transition agreement. There will be a number of provisions designed to effect a smooth transition of services during the Transitional Period. These include the following obligations on the part of the Trust:

- to carry on its operations in the ordinary course and in the same manner as prior to signature of the Transaction Agreement
- to consult with the Successful Bidder regarding significant management decisions
- to pay and discharge its debts and liabilities as and when they fall due in the ordinary course of business;
- invite a nominated director of the Successful Bidder to attend all Trust board meetings
- ensure the Successful Bidder receives reasonable access to information such as reports, Trust records and monthly Board reports

- not enter into any significant financial commitments outside the agreed budget without consultation with the Successful Bidder.
- to disclose promptly the Successful Bidder any material change or event affecting the Trust, its staff, its reputation, its assets, its service locations, its liabilities or its service users.
- The Successful Bidder will also have a number of obligations including to fully co-operate with the Trust, work with the Trust in the best interests of stakeholders, provide pre-agreed levels of resource and assistance to the Trust and implement the pre-agreed mobilisation plan all of which are designed to enable the smooth transition of services to take place. The Successful Bidder may also be required to provide 'interim' management personnel to fill key vacancies.

Administrative

8.1 Introduction and Overview

8.1.1 THT may vary the Transaction process in order to support continued competition, avoid unnecessary costs associated with a Bid and adhere to technical, legal or commercial guidance issued subsequent to the Prospectus and Bidder Instructions.

8.1.2 Bidders have been identified by THT as potentially suitable acquirers of THT and are now invited to submit Bids to this Bidder Instruction, specifically in the form of responses to the questions raised in Section 5 of this Bidder Instruction and in accordance with the other requirements of this Prospectus.

8.1.3 In the event of any inconsistency between the provisions of the Prospectus, Bidder Instructions and any previously issued documents or information, the provisions of this Prospectus and Bidder Instruction shall prevail. Save to the extent expressly referenced herein, the Prospectus and Bidder Instruction supersedes all previous documents and information that have been issued to Bidders. Provisions which remain in effect are expressly referenced herein.

8.1.4 Following receipt of Bidders' submissions, THT will formally evaluate responses in accordance with the Evaluation Criteria set out in Section 3 of the Bidder Instructions. The Bid evaluation will then be consolidated by THT and a Preferred Acquirer will be appointed. Finalisation of Contract terms and the obtaining of necessary approvals will then take place and, finally, the Contract will be awarded to the Preferred Acquirer.

8.1.5 While the information contained in the Prospectus and Bidder Instruction is believed to be correct at the time of issue, THT will not accept any liability for its accuracy, adequacy or completeness, nor will any warranty, expressed or implied, be given. The above exclusion extends to liability in relation to any statement, opinion or conclusion contained in, or any omission from, this Prospectus and in respect of any other written or oral communication transmitted or otherwise made available to any Bidder, and no representations or warranties are made in relation to such opinions, statements or conclusions. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of THT.

8.1.6 The Prospectus and Bidder Instruction should not be regarded as an investment recommendation made by THT or its appointed advisors. Each Bidder must rely on its own enquiries and on the terms and

conditions set out in the Contract as and when finally executed, subject to such limitations and restrictions as may be specified in such contract. Neither the issue of the Prospectus, nor any of the information presented in it, should be regarded as a commitment or representation on the part of THT or any other person to enter into a contractual arrangement.

8.1.7 The information contained in this Prospectus and Bidder Instruction may be changed by THT from time to time without prior (or any) notice being given by THT.

8.1.8 In this document, words such as "anticipate", "expects", "projects", "intends", "plans", "believes", "will", and words and terms of similar substance, indicate THT's present expectation of future events, which are subject to a number of factors and uncertainties that could cause actual requirements to differ materially from those described.

8.1.9 The continued participation of a Bidder in the Transaction process shall constitute that Bidder's acceptance of the provisions of the Prospectus and Bidder Instruction. Although it is intended that the remainder of this Transaction process will take place in accordance with the provisions of the Prospectus and Bidder Instruction, THT reserves the right to terminate, amend or vary the Transaction process including any of the provisions of the Prospectus and Bidder instruction by notice in writing.

8.1.10 Capitalised terms used in the Prospectus and Bidder Instruction are defined in the glossary of the Prospectus and Bidder Instruction.

8.1.11 The Prospectus, Bidder Instruction and any other documents subsequently issued by THT as part of the Transaction are to be kept strictly private and confidential by each Bidder, are provided solely for the purposes of this Transaction and must not be used for any other purpose or discussed with or disclosed to any party (other than their professional advisors) without the prior written consent of THT.

8.1.12 No publicity by a Bidder regarding this Transaction or the award of any contract will be permitted unless and until THT has given express written consent to the relevant communication. For example (and without limitation), no statements may be made to the media or other similar organisations regarding the nature of any Bid, its contents or any proposals relating thereto without the prior written consent of THT.

8.2 Bid Requirements

8.2.1 All Bids received by the prescribed deadline will be checked so as to determine whether they are Compliant Bids. If a Bid is at any stage of the Transaction not, or ceases to be, a Compliant Bid, then THT reserves the right to not evaluate that Bid any further and/or eliminate that Bidder from the Transaction.

8.2.2 THT requires that the Contract is entered into by a lead single entity as identified by Bidders in the Commitment Letter.

8.2.3 THT reserves the right to, at its discretion:

- (a) waive the requirements of the Bidder Instruction;
- (b) disqualify any Bidder whose Bid does not comply with the response requirements set out in this Bidder Instruction; and
- (c) seek additional information or verification, if THT has legitimate concerns about the Bidder's ability to perform its obligations, including (without limitation) in a financially secure way, over the term of the Contract.

8.3 Instructions on completing this Prospectus Submission

8.3.1 Bidders are advised to carry out the following steps when compiling their Bids:

- (a) carefully read the full Prospectus and Bidder instruction;
- (b) compile the required responses to the questions set out in Section 5 of this Bidder Instruction; and
- (c) submit a full and complaint Bid response in accordance with the terms of this Bidder Instruction.

8.3.2 A Bid shall only be a Compliant Bid where it:

- (a) includes a signed Commitment Letter;
- (b) complies with all of the provisions of this Bidder instruction; and
- (c) confirms acceptance of all contractual terms in the Contract as requested in the questions set out in Section 5 of this Bidder Instruction. Bidders who do not submit a Compliant Bid will be liable to disqualification.

8.3.3 In evaluating Bids, THT will only consider information provided in response to this Bidder Instruction. Bidders should not assume that THT has any prior knowledge of the Bidder, its practice or reputation, or its involvement in existing services, projects or procurements.

8.3.4 All relevant information required to support the Bid should be included in the Bidder's response or, where necessary, cross-referenced in it. Documents specific to the Bid, referenced in the Bid and provided to THT, will be considered as part of the Bid. Non-specific supporting documentation will not be considered.

8.3.5 Bidders are responsible for the accuracy of all information submitted within their Bids.

8.3.6 The Bid and accompanying documents must be complete and self-contained. Bidders must submit Bids which are succinct and which clearly relate to the requirements set out in this Bidder Instruction.

8.4 General

8.4.1 All documentation and communication shall be in English.

8.4.2 By signing the Bid, each Bidder and Authorised Representative warrants that, save as disclosed in writing to THT with the Bid, any information supplied by it remains true and that it has not made any material misrepresentation in providing any of the information required in relation to the above.

8.4.3 Bidders must comply and ensure that their Bids comply with the provisions set out in this Bidder Instruction. If any waiver or variation of these provisions is made in writing by THT this will be binding. Any such waiver or variation will be notified to the Authorised Representative of Bidders. Otherwise, no agent or any other servant or representative of THT has THT to vary or waive any of these provisions on behalf of THT. Any Bid which fails to comply with the provisions of this Bidder instruction and any amendments and/or supplementary information issued subsequent to it, shall be liable to be disqualified.

8.5 Bidder eligibility

8.5.1 Bidders are reminded of the eligibility requirements that apply to the Transaction process at all times. In particular, these include the provisions set out in Regulation 23 of the Public Contracts Regulations 2006 (as amended), attached as Appendix 2 to this Bidder Instruction. Any change in the eligibility of a Bidder must be notified immediately to THT in writing and may result in such Bidder being disqualified from any further participation in the Transaction process.

8.5.2 Any attempt by any Bidder or its appointed advisors to influence the Contract award process in any way will result in the relevant Bidder being disqualified. Specifically, but without limitation, Bidders shall not directly or indirectly at any time:

- (a) amend the content of any Bid in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is a proposed partner, supplier, subcontractor or funder;
- (b) solicit or obtain from any person information about the content of any Bid(s) submitted by another Bidder;
- (c) enter into any agreement or arrangement with any other person as to the form or content of any Bid(s) submitted by another Bidder or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any such Bid(s);
- (d) enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding such a person from submitting a Bid or Bids; or
- (e) exchange information with any other person (including other Bidders) on, or publish any information with regard to, a Bid or any Bidder's bidding strategy, other than in good faith with a proposed partner, supplier, subcontractor or funder.

8.5.3 In particular (but without prejudice to the generality of the foregoing) if the Bidder makes a misrepresentation in any part of its dealings with, or responses to THT, such Bidder may be disqualified

8.6 Canvassing and contacts

8.6.1 Direct or indirect canvassing by any Bidder or its appointed advisors in relation to this Transaction or any attempt to obtain information from any of the employees or agents of THT, the commissioners or other stakeholders, or their respective appointed advisors concerning another Bidder or any Bids submitted by another Bidder may result in disqualification at the discretion of THT.

8.6.2 Bidders and their proposed partner, suppliers, subcontractors or funders shall not in connection with the Transaction:

- (a) offer any inducement, fee or reward to any officer or employee of THT, the Department of Health or any of the commissioners or other stakeholders or their respective advisors in connection with the Transaction; or
- (b) do anything which would constitute a breach of the Prevention of Corruption Acts 1889-1916; or
- (c) canvass any of the persons referred to above in connection with the Transaction; or
- (d) except as expressly authorised by THT and subject to the provisions of this Prospectus, contact any officer or employee or agent of THT about any aspect of the Transaction including (without limitation) for the purposes of discussing the possible transfer to the employment of the Bidder of such employee or officer for the purpose of the Transaction or for soliciting information in connection with the Transaction.

8.7 Confidentiality and non-collusion

8.7.1 This Prospectus and Bidder Instruction is intended for the exclusive use of the Bidder and is provided on the express understanding that this Prospectus and the information contained in it, or in connection with it, will be regarded and treated as strictly confidential. This Prospectus and Bidder Instruction may not be reproduced in whole or in part nor furnished to any persons other than the Bidder save for the purposes of:

- (a) taking legal advice in connection with completing a Bid; and/or
- (b) obtaining information from a proposed partner, supplier, subcontractor or funders where necessary for and relevant to the Bidder's Bid and provided that in, each case, Bidders obtain from such parties prior to such disclosure, confidentiality undertakings of at least equivalent strength to that contained in the Commitment Letter.

8.7.2 Upon written request from THT, Bidders shall promptly provide evidence to THT that such undertakings have been provided.

8.7.3 Bidders must not disclose to, or discuss any aspect of this Prospectus and Bidder Instruction, or their Bids, with any other Bidder. Any such collusion with another Bidder may constitute an infringement of the PRCC and, possibly, Chapter 1 prohibition contained in Section 2(1) of the Competition Act 1998 and the Bidder shall also be liable to disqualification

8.8 Conflicts of Interest

8.8.1 Bidders are required to disclose actual, potential and perceived conflicts of interest to THT.

8.8.2 Bidders are responsible for ensuring that no conflicts of interest exist between their appointed advisors and THT and its appointed advisors. Any Bidder who fails to comply with this requirement may have its Bid disqualified at the discretion of THT.

8.8.3 THT requires that all actual or potential conflicts of interest are resolved to its satisfaction prior to the submission of Bids. In the event that any actual, potential or perceived conflict of interest comes to a Bidder's attention following the submission of its Bid, that Bidder should immediately notify THT.

8.8.4 Where proposed partners, suppliers, subcontractors or funders participate in more than one Bid, Bidders will be required to take steps to ensure that all Bids are prepared independently and that no confidential information relating to the relevant Bids responses is passed, whether directly or indirectly, via such third parties, between Bidders.

8.9 Bidder changes

8.9.1 Bidders are subject to an ongoing obligation to notify THT of any material changes in their financial or other circumstances. This includes, but is not limited to, changes to the identity of proposed partners, suppliers, subcontractors or funders and the ownership or financial or other circumstances thereof and solvency of the Bidder. THT should be notified of any such material change as soon as it becomes apparent.

8.9.2 Failure to notify THT of any material changes or to comply with any of these provisions may lead to a Bidder being disqualified

8.10 Changes to the Transaction process

8.10.1 Bidders are reminded that THT, at its discretion, reserves the right to vary the Transaction process in order to achieve the objective of the Transaction.

8.10.2 Without prejudice to the generality of the above, THT reserves the right to:

- (a) change dates and times for each stage of the Transaction process set out in Section 2; and

(b) modify any aspect or stage of the Transaction process itself and/or to introduce additional steps or stages into the Transaction process.

8.10.3 THT shall notify the Bidders' Authorised Representative of any such changes.

8.11 Disqualification of Bidders

8.11.1 Any Bidder acting in contravention of the provisions of this Prospectus may, at the absolute discretion of THT, be disqualified (without prejudice to any other civil or legal remedies available to THT and/or any other NHS Organisation and without prejudice to any criminal liability which such conduct by a Bidder may attract).

8.11.2 For the avoidance of doubt, disqualified Bidders will be excluded from any further participation in the Transaction process and in no circumstances will THT (or its advisors) be liable for any costs or expenses incurred by the disqualified Bidder and/or its partners, suppliers, subcontractors and funders as a result, directly or indirectly, of such disqualification.

8.12 Bidders' advisors

8.12.1 Bidders will be responsible for obtaining all information and independent advice that they consider necessary for the preparation of their respective Bids. Bidders must make their own independent assessment of the Transaction after making such investigation and taking such professional advice as they deem necessary.

8.13 Availability of information to Bidders

8.13.1 Any information additional to that contained in this Prospectus and Bidder Instruction which THT deems necessary for a Bidder to be issued with, will be sent to each Bidder's Authorised Representative. It is the Bidder's responsibility to notify THT of any change to the Authorised Representative's name or other contact details. Bidders may request that, for convenience, electronic correspondence be copied to individuals other than their Authorised Representative, but THT accepts no liability for this and will consider all information sent to the Authorised Representative to have been received by the Bidder.

8.13.2 Where a Bidder intends to use sub-contractors, it will be the responsibility of the Bidder to provide such sub-contractors with all necessary information

8.14 Freedom of Information

8.14.1 THT is committed to open government and meeting its legal responsibilities under the FOIA. Accordingly, any information created by or submitted to THT may need to be disclosed by THT in response to a Request for Information. Any persons may make a Request for Information at any time before or after Contract Award. THT may also decide to include certain information in the relevant publication scheme maintained under the FOIA.

8.14.2 In making a submission, each Bidder therefore acknowledges and accepts that the information contained therein may be disclosed under the FOIA, either without consulting the Bidder or following consultation with the Bidder and having considered its views.

8.14.3 Bidders must clearly identify any information supplied in response to this Bidder Instruction which they consider to be confidential or commercially sensitive and attach a brief statement of reasons, setting out what harm may result from disclosure and the time period applicable to the sensitivity.

8.14.4 However, Bidders should be aware that even where a Bidder has indicated that information is commercially sensitive, THT is responsible for determining in its absolute discretion whether such information is exempt from disclosure under the FOIA or must be disclosed in response to a Request for Information.

8.14.5 Bidders should also note that the receipt by THT of any information marked "confidential" or equivalent does not mean that THT accepts any duty of confidence by virtue of that marking, and that THT has the final decision regarding the disclosure of any such information in response to a Request for Information.

8.15 Copyright

The copyright in the Prospectus and Bidder Instruction is vested in THT. This Prospectus and Bidder instruction may not be reproduced copied or stored in any medium without the prior written consent of THT other than strictly for use in preparing a response or Bid.

8.16 Disclaimer

The information contained in this Prospectus and Bidder instruction is presented in good faith and does not purport to be comprehensive or to have been independently verified. Neither THT, nor any of its advisors accept any responsibility or liability in relation to its accuracy or completeness or any other information which has been, or which is subsequently, made available to any Bidder, partner, supplier, subcontractor, funder or any of their respective advisors, orally or in writing or in whatever media. Such persons must therefore take their own steps to verify the accuracy of any information which they consider relevant and are not entitled to rely on any statement or representation made by THT or any of its advisors.

8.17 No Liability for Costs

Under no circumstances will THT, the commissioners, other stakeholders, or any of their respective advisors, be liable for any costs, claims, losses or expenses incurred by Bidders, partners, suppliers, subcontractors, funders or their Authorised Representatives as a result (directly or indirectly) of any changes to the bidding process or the outline timetable or in connection with any bid costs, expenditure, work or effort incurred by Bidders in proceeding with or participating in this Transaction, including if the Transaction process is terminated or amended by THT.

8.18 Signature of documents

All Transaction documentation requiring a signature must be signed by the Authorised Representative of the Bidder.

8.19 Right not to award a contract

THT reserves the right in its absolute discretion not to appoint a Preferred Acquirer, or where a Preferred Acquirer has been appointed, not to award the Contract.

Glossary

THT and/or the Trust - means Trafford Healthcare NHS Trust

Prospectus - means this prospectus and such term shall include the Bidder Instruction Pack and all Appendices to each document

Commissioners and/or the PCT - means NHS Trafford

Contract - means the contract to be entered into by the Preferred Acquirer to acquire THT

Bidder - means an organisation intending to respond to this Prospectus by way of submitting a Bid

Bid - means a Bidder's response to this Prospectus as a bid to acquire THT

Compliant Bid - means a Bid that complies with the terms of this Prospectus

Preferred Acquirer - means a submission, in response to this Prospectus, to acquire THT

Transaction - means the project which is the subject matter of this Prospectus being the intention of THT to select a Bidder to acquire THT

Commitment Letter - means the letter issued to each Bidder with this Prospectus requiring commitment to the Transaction

Authorised Representative - means the representative of a Bidder who has been duly authorised to act on behalf of that Bidder in all respects relating to the Bid

FOIA - means the Freedom of Information Act 2000

Request for Information - means a request for information pursuant to FOIA

TGH – Trafford General Hospital

AGH – Altrincham General Hospital

SMH – Stretford Memorial Hospital

ICO – Integrated Care Organisation

ICS – Integrated Care System

CYPS – Trafford Children's and Young People's Service

GMSC – Greater Manchester Surgical Centre

OSC – Overview and Scrutiny Committee

UHSM – University Hospital South Manchester

CMFT – Central Manchester Foundation Trust

Bidder Instructions

Trafford Healthcare NHS Trust
April 2011

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