

Governing Body

Agenda Item:	14
Date of Meeting:	1 September 2015
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Procurement of Commissioning Support Services

Recommendations (*Endorse, approve, receive, discuss*)

The Governing Body is asked to:

- Note progress with the procurement of commissioning support services.
- Note the risks arising with current arrangements
- Agree to pause the procurement process until current issues have been addressed
- Agree to extend contract with SCWCSU until September 2015 – except for those services which are to be in-housed.

Background

Since March 2015, Bristol, North Somerset, Somerset and South Gloucestershire CCGs have been working together to procure commissioning support services through the nationally managed Lead Provider Framework.

Purpose

To provide an update on the process for re-procurement of commissioning support services across Bristol, North Somerset, Somerset and South Gloucestershire (BNSSSG) and to agree the next steps.

Overview

The CCGs have agreed service specifications for the new services and issued these to potential suppliers on 11th June 2015. The Supplier Information pack also contained Key Performance Indicators, budget envelopes and criteria for successful Suppliers.

A Supplier day was held on 24th June to meet with potential Suppliers and share more detail on expectations. A deadline for Supplier responses was set for 5th August 2015.

Unfortunately a number of significant issues have arisen during the procurement process (set out in Appendix A) and the CCGs are now concerned that the process will not result in a service being delivered that offers any better value for money than the existing service. They believe that the current arrangements will result in significant costs for CCGs which exceed running costs envelopes.

There are a number of concerns about the governance of the process including issues of transparency and conflict of interest. These largely arise from the fact that CCGs are not directly

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Governing Body

managing the process and NHSE is liaising with Suppliers on their behalf. CCGs are currently unable to give assurance that the process meets good practice standards for procurement.

Due to local circumstances regarding the quality and cost of the delivery of services by the current provider BNSSSG CCGs were keen to be in the first wave of CCGs using the LPF and have received additional support. However the concerns raised by the process are now so significant that the CCGs feel they have no alternative other than to pause the process. Suppliers have already been notified that the planned deadline for responses (5th August 2015) will be rescheduled but the CCGs do not wish to set a new response date until their concerns have been addressed. As the CCGs will shortly be entering the contracting round for 2016/17 they are anxious to avoid disruptive and distracting procurement activity during this time and also during the winter period which could impact on performance. It will therefore not be possible to complete the procurement process in this financial year and the existing CSU contract will need to be extended until at least September 2016.

The most immediate and significant concern are the plans for in-housing services. The CCGs undertook a joint assessment of all commissioning support services to establish where there was a strong case for in-housing on both financial and quality grounds and identified 4 services which they would like to "in-house". These services are:

- Finance – formalising current embedded arrangements (all 4 CCGs)
- Quality – formalising current embedded arrangements (BNSSG only)
- CHC – formalising current embedded arrangements (Somerset only)
- Communications – establish a joint service hosted by Bristol CCG (BNSSG only)

Business cases for these services have been developed and (with the exception of communications) have been submitted to NHSE for approval.

The current provider (SCWCSU) has indicated that TUPE and stranded costs would make the transfer of staff prohibitively expensive. The CCGs are working together with SCWCSU to establish why services which are already significantly more expensive than CCGs' own staffing costs will cost even more if they are in-housed. They are also concerned that ongoing delays will have a negative impact on staff morale and performance which will affect delivery in the near future.

Financial Impact and Risks

Continuing with the current procurement arrangements is likely to result in a service with a higher cost and lower quality than the existing commissioning support service.

Legal Impact

Use of the LPF provides a mechanism for the CCG to buy its commissioning support services in a legally compliant manner and in a much quicker and more cost effective way than that of the full European procurement process (OJEU). However, current management of the procurement process is raising concerns in the CCGs which need to be addressed before continuation of the process

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Risk Implications, Assessment & Mitigation

A number of potential risks have arisen during the procurement process – These are detailed in Appendix A

Consultation, Involvement and Engagement

The CCGs have agreed to collaboratively commission and provide strategic leadership for the contracting of services where there is clear benefit to the population of each CCG.

The CCGs have reviewed section 14z2 of the Health and Social Care Act 2012 and are not undertaking formal public involvement and consultation in relation to this procurement. This is because the services to be procured are “back office” rather than health services. Responsibility for commissioning will remain with the CCG and decision making regarding delivery of services will not be impacted by the provider of Commissioning Support Services.

Equality Impact

Bidding suppliers will be expected to comply with the requirements of the Human Rights Act 1998 and there is an expectation that contracted providers will comply with the legislation set out in the Equalities Act 2010.

Evidence and Research

None required

Appendices

Appendix 1 – Risk Update

Lead Provider Framework

Bristol, North Somerset, Somerset and South Gloucestershire CCGs

Risk Update – 11th August 2015

Risk Area	Current Situation	Potential Implications
TUPE information	<p>CCGs have not been allowed to see TUPE information circulated to Suppliers. NHSE have undertaken due diligence with no input from CCGs</p> <p>CCGS do not have confidence that this information will accurately reflect the resource input into BNSSSG – It needs to be validated by the people who know what is happening on the ground.</p> <p>Suppliers have concerns that staffing costs are so high that a viable bid cannot be developed.</p> <p>Unclear NHSE guidance is preventing CSUs from sharing information – Written clarification from NHSE has been requested.</p>	<p>Inaccurate information may result in a lack of viable bids</p> <p>CCGs will not be able to respond to Suppliers queries on this information</p> <p>CCGs will be unable to effectively evaluate bids if they do not understand the assumptions on which they are based.</p>
Asset Information	<p>CCGs have not been allowed to see asset information (not yet circulated to Suppliers)</p>	<p>CCGs will be unable to validate this information and provide clarification on assets where ownership may be complex (e.g. Connecting Care)</p>
VAT	<p>NHSE have undertaken a mapping exercise to understand risks relating to recoverability of VAT. This information has not been shared with CCGs. CCGs have been assured that risk is not</p>	<p>CCGs will be unable to assess likely impact of VAT. Any impact of VAT chargeable is a direct impact to costs and currently unfunded.</p>

	likely to be significant. NHSE in discussion with HMRC but this is likely to take a few months	
Cost Envelope	Suppliers have expressed concern at overall cost envelope and day rates Cost envelope and day rates based on current spend adjusted for in-housing.	Increase in envelopes would represent poor Value for Money CCGs may now be unable to achieve VFM through negotiation with current supplier as market has raised expectations
Transparency and Conflicts of Interest.	Ongoing discussions between NHSE and Suppliers in informal settings as well in addition to formal clarification process. CCG responses to clarification questions not published until NHSE has approved. Significant public interest in LPF process and objections to market approach CCGs do not have access to BRAVO procurement system.	CCGs unable to control communications with Suppliers raising risk of challenge of bias CCGs unaware of content and nature of discussions and concerned that expectations are not being managed appropriately. CCGs will be unable to give assurance to Governing Body that procurement has been carried out in line with expectations of good practice.
Governance and due diligence	CCGs not allowed access to the original LPF submissions from providers (or the assessments of these submissions) and could not ask questions relating to this part of the exercise. CCGs have not received a formal assurance statement from NHSE on the outcome of this process	CCG's will not be able to do the usual due diligence checks in terms of financial stability, probity, organisational structure etc. of the providers. Governing bodies are very unlikely to accept this process as sufficiently robust as they would have to 'take on faith' the competency, capacity and safety of the provider without seeking their own assurance.
Timescales	Production of staff and asset information significantly delayed	Timescales for responses will need to be extended which will impact on mobilisation. Significant risk that process will not be completed for March 2016.

		Continuation of procurement (and mobilisation process) now likely to impact on the planning and contracting round for 16/17.
In-housing	<p>Delays in sign-off of in-housing business cases.</p> <p>CCGs completed robust analysis at start of LPF process to agree services to be in-housed. All based on improved cost and quality.</p> <p>Current CSU discussing in-housing proposals with NHSE.</p>	<p>Significant progress has been made in readiness to in-house staff and continued delay will have significant cost and quality implications for CCGs.</p> <p>Ongoing uncertainty for staff may impact on productivity and retention.</p> <p>Inability to in-house as planned likely to impact on planning and contracting round for 16/17.</p>
Focus of process	CCGs agreed that relationships were key to success and set expectations in "Ways of Working". All discussions with Suppliers now focused on cost and KPIs	Risk that service will not deliver and that positive working relationships will take a long time to develop.