

External Audit Re-procurement

Agenda item 21 Paper 15	
Authors and contributors:	Justin Dix, Governing Body Secretary
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Relevant Committees or forums that have already reviewed this issue:	Audit Committee Governing Body Seminar
Action required:	To Agree
Attached:	Annotated guidance and project plan
CCG Strategic objectives relevant to this paper:	Financial balance Core business: relevant to all / most objectives
Risk	There is a small risk that the procurement will fail. In this event, the Secretary of State will intervene.
Compliance observations:	Finance: The External Audit function is key to ensuring the CCG has the right processes and controls in place around achieving its functions, particularly financial balance
	Engagement : With other local CCGs regarding joint procurement
	Quality impact: No specific issues
	Equality impact: No specific issues
	Privacy impact: No specific issues
	Legal: The procurement will take place with specialist advice to ensure that it is conducted legally, within an appropriate framework agreement

EXECUTIVE SUMMARY

1. Introduction

1.1. This paper sets out the process for appointing new External Auditors to the CCG when current arrangements end. It is a requirement of the process that the Governing Body formally establishes the panel that will conduct the appointment. It is proposed to work collaboratively with other CCGs on the procurement as this will be both efficient and bring economies of scale, and to do this through a joint committee approach that delegates the decision to that joint committee.

2. Background

2.1. From 1990 to 2015, the responsibility for auditing the NHS lay with the Audit Commission. The Commission appointed the external auditor for each NHS body - either its in-house audit staff, or a private sector company. The CCG's current auditors, Grant Thornton, were appointed to fulfil this function from April 2013 prior to the Audit Commission's abolition in 2015.

2.2. The Audit Commission closed on 31st March 2015 and legislation was enabled to fill the void in appointments. As a result of the Local Audit and Accountability Act 2014 passing into law, NHS England have confirmed that the current arrangements for External Audit will cease in 2016/17, and that CCG's will need to make arrangements to procure their own External Audit service from 2017/18. The Act specifies that all local public bodies covered by the legislation (including CCGs) must have auditor panels to advise on the selection, appointment and removal of external auditors, and on maintaining an independent relationship with them. The only exception to this would be if a body decided to make the appointment via a 'collective procurement', such as through a sector-led body (e.g. NHS England). There are no current proposals for any such approach in the NHS and guidance issued on the 18th March 2016 re-affirmed the need for local action on this.

3. Audit panels

3.1. The key elements of the guidance are that CCG's will need to undertake their own procurement of External Audit services, and in order to have those in place by 2017/18, will need to complete the process by December 2016. The CCG must create an Auditor panel to advise on the appointment of their external Auditors. The Auditor Panel will advise the Governing Body on appointment of an auditor, as well as advising on the External Auditor providing non audit services.

3.2. The auditor panel must advise on the selection and appointment of the external auditor, as well as the maintenance of an independent relationship with that auditor. This includes dealing with possible conflicts of interest. The auditor panel will have a role in establishing and monitoring the CCG's policy on the awarding of non-audit services – for example, if non-audit services are awarded to the external audit provider, how will the panel ensure that the auditors' independence is maintained?

3.3. The auditor panel must have a minimum of three members, and must have a majority of members who are independent and non-executive members of the governing body. The chair of the panel must also be independent and a non-executive member of the governing body. The chair of the governing body cannot be the chair of the auditor panel. Ultimately, the governing body makes the decision about the membership and chair of the panel.

3.4. "Independent", in relation to membership of an auditor panel, means that the member or prospective member is not in circumstances, and does not have relationships, which are likely to affect, or could affect his or her judgement in discharging his or her duties as a member of the panel.

3.5. The Audit Committee considered the requirements of the Auditor Panel at its meeting on 26th February 2016 and recommends that the Auditor Panel is constituted from the members of the Audit Committee. The Governing Body of the CCG has to confirm that it wishes to do this by resolving as such at a formal meeting in public. Having agreed to a panel, the CCG must consult and take account of the auditor panel's advice on the selection and appointment of the external auditor. The advice given by the panel must be published and, should the CCG not follow that advice, the reasons for not doing so must also be published.

3.6. The guidance recommends that the panel members are all independent, but can contain a minority of executives. It is recommended that the Chief Finance Officer and Governing Body Secretary are invited to attend, but that they are not members of the panel.

4. Joint Procurement

4.1. The guidance issued on the 18th March 2016 indicates that CCGs may work together provided they can agree the governance arrangements for this. It is proposed that the six CCGs in Surrey undertake a collective procurement using specialist support currently contracted by Guildford and Waverley CCG.

4.2. Given that external audit firms are effectively accredited and overseen by the Financial Reporting Council and their locally appointed Recognised Supervisory Bodies, the risk of CCGs collectively appointing a firm without the necessary capacity and capability is very low. It is therefore proposed that the joint committee is delegated with both overseeing the process and undertaking the procurement decision without further reference back to individual Governing Bodies. This is not only necessary to meet the required deadlines but also to negotiate the best possible audit fee.

5. Process failure

5.1. Should any CCG fail to appoint an external auditor, the legislation provides for the Secretary of State for Health or NHS England to either appoint an auditor for the CCG, or direct the CCG to appoint a named auditor. The CCG would then lose the ability to negotiate contract values but would also suffer reputationally.

6. Governing Body Decision

6.1. The Governing Body is asked to AGREE as follows:

6.1.1. That the existing Audit Committee members are the CCG's audit panel for the purposes of the procurement of external auditors from April 2017.

6.1.2. That a Joint Committee or Committee in Common arrangement is established between the six CCGs in Surrey or barring those, all Surrey CCGs wishing to work on collective procurement for the purpose of appointing external auditors, using agreed terms of reference Terms of Reference (currently being agreed but probably based on the existing framework approach).

Date of paper

18th May 2016

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Guidance on the Local Procurement of External Auditors for NHS Trusts and CCGs

<https://www.gov.uk/government/publications/procurement-of-external-auditors-for-nhs-trusts-and-ccgs>

18 March 2016

Following the changes to the local external audit arrangements from the Local Audit Accountability Act 2014, NHS trusts and clinical commissioning groups will need to procure and locally appoint their own auditors for the year 2017 to 2018 and subsequent financial years.

The duties of the auditors are set out in the Act, together with their compliance with the Code of Audit Practice issued by the NAO. The Code therefore has been used as the basis of a core audit specification.

Issue	Guidance	Local process note / timescales
Appointing authority	External auditors prepare their independent opinion on the organisation's statutory accounts and report to their Board or Governing Body, and are a key part of accountability arrangements. The Governing Bodies of each CCG are therefore responsible for their appointment and should be briefed accordingly.	Each Governing Body must formally agree any joint process TIMESCALE: BY END OF MAY IF NOT ALREADY DONE
Auditor panels	An auditor panel must be appointed to advise the Governing Body on the appointments (Part 3 section 8 and 9 of the Act) - most NHS bodies will decide to nominate their existing audit committee (or members of that committee) to act as their auditor panel.	Each Governing Body must establish an auditor panel TIMESCALE: BY END OF MAY IF NOT ALREADY DONE

Auditor panel role	<p>The Department of Health, together with the Healthcare Financial Management Association (HFMA), have produced guidance on the role of the panels</p> <p>https://www.gov.uk/government/publications/auditor-panels-for-nhs-trusts-and-clinical-groups</p> <p>HFMA have also produced an Example Terms of Reference for Auditor Panels.</p> <p>http://www.hfma.org.uk/NR/rdonlyres/35434078-7034-4AEA-9011-C8B33B81D1CE/0/APtermsofreference14Dec2015.pdf</p>	<p>It is proposed that each CCG agrees to use the guidance and that a joint committee is established known as the Joint Committee of CCG Audit Panels</p> <p>TIMESCALE: COMMITTEE IS ESTABLISHED AND MEETS BY END OF JUNE</p>
Term	<p>The appointment can be for longer than a year but there must be a new appointment at least once every 5 years and the auditor can be re-appointed for further terms. 3 to 5 years is 'normal' and considered an appropriate period for an auditor to develop a strong understanding of the organisation.</p>	<p>It is proposed that the specification will identify this e.g. 5 years with a break at 3 years.</p> <p>TERM TO BE AGREED AT JOINT COMMITTEE BEFORE END OF JUNE</p>
Eligibility	<p>An external auditor must be eligible for appointment in line with the Financial Reporting Council's (FRC) requirements</p>	<p>See also "regulation" below</p>

Compliance	External auditors are required to comply with the National Audit Office's (NAO) statutory Code of Audit Practice and have regard to any guidance issued by the NAO in support of the Code http://www.nao.org.uk/code-audit-practice/	The code of practice effectively sets out the role of external auditors
Specification	The above code has been used as the basis for a core specification for the procurement of external auditors. This can be found in Appendix A of the Guidance issued in March 2016 https://www.gov.uk/government/publications/procurement-of-external-auditors-for-nhs-trusts-and-ccgs	The code of practice has been used to establish a core specification – assume we will use a variation of this for the procurement SPECIFICATION TO BE AGREED AT JOINT COMMITTEE MEETING IN JUNE
Regulation	The Secretary of State has delegated most of his responsibilities for the regulation of external auditors of local public bodies to the FRC. This includes exercising oversight over the bodies recognised by the FRC as Recognised Supervisory Bodies (RSBs) - professional accountancy bodies - that will register and regulate eligible audit firms.	Effectively, external auditors are accredited by the FRC / RSBs
Conflict of interest	External auditors are required by their ethical standards to maintain their independence from the organisations they audit. A provider of internal audit services (and potentially some tax advice and other consultancy services) to the organisation would have a conflict of interest and will not be able to compete for the external audit contract.	The CCGs existing internal auditors cannot apply

<p>Procurement working group</p>	<p>To undertake the procurement, it is likely that a small working group will be needed consisting of members of the auditor panel, the procurement team and other key stakeholders. The group may also wish to consider whether a joint procurement with one or more other NHS bodies is appropriate and could offer some economies of scale, for example sharing the procurement cost. The governance arrangements and oversight between the bodies, if this option is taken forward, would need to be agreed.</p> <p>The working group would also need to determine what factors the Governing Board or Governing Body and the organisation consider important for the evaluation of the bids. As set out above the main audit scope is prescribed by the NAO Code of Audit Practice and firms must comply with the auditing standards, but further factors could include the firms' audit methodology and approach, their resourcing proposals, capability and experience and fee competitiveness. The group would also be expected to consider what should be the relative weighting for each criteria, including the balance between quantitative and qualitative factors, to provide the best value for money for the organisation.</p>	<p>The CCG auditor panels should nominate one person to be part of the working group</p>
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<p>Procurement approaches</p>	<p>The main procurement options are through an Official Journal of the European Union (OJEU) procurement compliant with Public Contract Regulations (PCR 2015) OR below threshold trust procurement OR from an existing framework agreement.</p> <p>Open procedure, restricted procedure and framework (mini competition) models are all acceptable and set out in Table 1 (Page 13) of the guidance. Appendix B to the guidance provides an example of information that could be requested at ITT. Appendix C provides an example of a set of assessment criteria. These have been compiled from NHS foundation trust examples, which have used frameworks in the past.</p>	<p>Subject to the advice of the procurement advisors and agreement of any joint committee it is probable that the framework agreement approach would be the most effective process. This is implied in the guidance.</p>
<p>Framework agreements</p>	<p>When conducting a mini-competition under a framework agreement, there is no legal obligation to observe a specified timescale and the evaluation is simpler. This usually results in a reduction in the time taken to procure. Appendix E of the guidance provides examples of some existing framework agreements used in the NHS for Audit Services - the CCGs will need to ensure that they are captured in the scope of the original OJEU advertisement and are entitled to call off under the framework terms. By calling off from an existing framework agreement CCGs have the assurance that all suppliers have passed the selection process based on technical ability, financial standing, and have demonstrated previous experience.</p>	<p>The joint committee needs to ensure it is using an appropriate framework agreement.</p> <p>TIMESCALE: ISSUE "TENDER" VIA FRAMEWORK AGREEMENT DURING JULY / AUGUST</p>

<p>Assessment</p>	<p>The guidance gives an example of how the criteria could be structured and scored, and guidance on the extent to which bidders will be able to be separated on each of the criteria, what will be distinguishing factors, and how this should influence the weightings, or adapt the scoring. This includes</p> <ul style="list-style-type: none"> • Specification – Methodology & Approach • Specification – Resources, Organisation Capability & Experience • Costs • Understanding of business, challenges and risks • Approach to planning and reporting External Audit work • Approach to delivery of External Audit Services • Approach to liaison with various parties in the CCG eg Internal Audit, Audit Committee etc • Quality of individual team members proposed • Appropriateness of leadership and experience • Robustness of own quality assurance procedures • Capacity to fulfil contract 	<p>Assume final assessment criteria will be agreed by the joint committee on the basis of advice from procurement advisors.</p> <p>TIMESCALE: FORMAL “BEAUTY PARADE” AND SCORING SOMETIME DURING SEPTEMBER</p>
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Deadline	Appointments must be made by 31 December 2016	<p>If we fail to appoint an external auditor by 31st December 2016, each CCG must immediately inform the Secretary of State through the NHS England Chief Finance Officer, who has powers to appoint an auditor. This would of course be reputationally unacceptable.</p> <p>TIMESCALE: BY END OCTOBER 2016</p>
Decision	<p>Within 28 days of an appointment being made, a NHS trust or CCG has to publish a notice to name the external auditor; the length of the appointment; the advice, or a summary of the advice to the Board or Governing Body, received from the auditor panel; and, where it has not accepted that advice, the reasons why not. This notice must be published on the organisation's website or in another format if the authority considers that it will reach the people who live within its area. The notice may leave out any information that may prejudice commercial confidentiality, unless it is in the public interest to publish such information.</p>	<p>Each CCG will need to do this individually</p> <p>TIMESCALE: BY END NOVEMBER 2016</p>
Monitoring of quality	<p>The Auditor Panel will need to consider how the quality of the external audit service will be measured and monitored, how that should be incorporated in the service requirements, and included in the bidders evaluation.</p>	<p>The joint committee could advise this but it is assumed that each CCG will contract individually after the joint procurement and therefore be responsible for monitoring individually the quality of external audit it is receiving. The joint committee could reconvene if there is a significant</p>

