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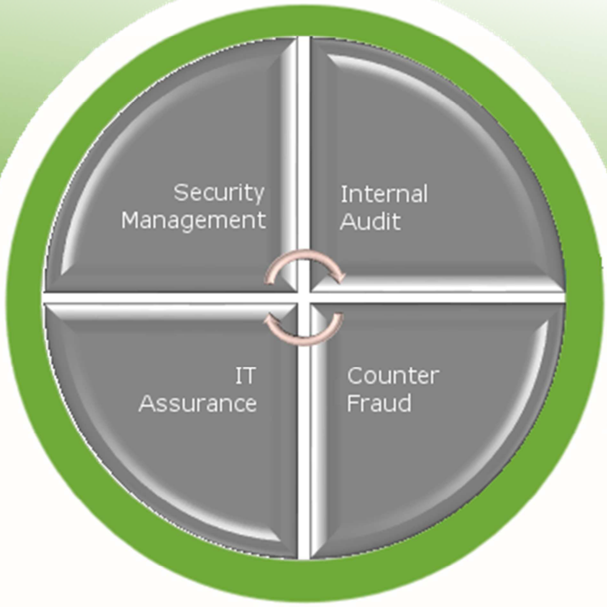

Review of Procurement, Operation and Termination of the Older People & Adult Community Services Contract (OPACS)

Internal Audit Final Report: CPCCG15/23

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Internal Audit Service

West Midlands Ambulance Service provides Internal Audit services to Cambridgeshire and Peterborough CCG. This report has been prepared following a request from the CCG for an independent internal investigation into the circumstances that led up to the termination of the OPACS contract in December 2015 with the aim of identifying learning points for any future procurement process. No responsibility to any third party is accepted as the report has not been prepared, and is not intended, for any other purpose.

Consultation & Distribution

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Aim and Headline Context

As the Internal Audit provider to Cambridgeshire and Peterborough CCG we have been asked to undertake an independent internal review of the circumstances that ultimately led to the termination of the Older Peoples and Adult Community Services (OPACS) contract. Internal Audit is an independent, objective assurance and consulting function and as such is well placed to provide an objective assessment to the CCG of processes deployed in the procurement of the contract and subsequent contract management.

The objective of the review is to document and evaluate CCGs systems, processes and controls deployed in the procurement and management of the subsequent contract in order to identify any systemic weaknesses that may have contributed to termination of the contract and importantly identify learning points for future procurements. The review focussed on the processes and mechanisms deployed by the CCG and the review of evidence was restricted to that held by the CCG or available in the public domain and interviews with Senior Executives Lay Chair and Lay Members of the Governing Body. It did not encompass review of any further evidence held by any of the contract bidders or other parties such as NHS England or Monitor.

The OPACS procurement was a significant undertaking for the CCG incorporating:

- extensive consultation with stakeholders,
- the design of a new clinical outcomes framework,
- the undertaking of a competitive procurement exercise, to design a new service model to deliver the outcomes, and the subsequent letting of a contract to new Lead Provider of Services.

This procurement was designed to achieve better clinical outcomes, services designed to meet patient needs in a sustainable manner.

Much of the work undertaken was ground breaking and as such carried inherent risk but the termination of the contract soon after its inception is an indication that there were mismatched expectations of the financial investment required to deliver the service delivery model.

Summary of Issues and Lessons to be Learned

Fundamentally the main reason for the early termination of the contract was a mismatch in the expectations of the CCG and the Lead Provider over the cost/value of the contract. Although significant efforts were made during 2015 to bridge this gap these were ultimately unsuccessful. Internal Audit has assessed the financial evaluation process employed as part of the ISFS evaluation and found that the CCG did have in place controls designed to ensure bids were within the estimated annual contract values and the values over the expected five years of the contract however other aspects of the process have been identified as contributory factors to the eventual early termination of the contract.

In considering contributory factors there are a number of issues arising from our review which provide opportunities for learning and application to future procurements. These are:

- The timing of regulatory approval of bidders Business case and associated conditions prior to approval (Section 3.3.2)

- Rigorous application of controls within the procurement including re-assessment of all bidders where the nature of the bidders had changed during the process (Section 3.1.6);
- No re-assessment of the particular risks proposed by the change in legal entity of the successful bidder to a Limited Liability Partnership (LLP) and not being aware of the details of the ownership agreement between the partners; Cambridge and Peterborough NHS Foundation Trust (CPFT) and Cambridge University Hospital NHS Foundation Trust (CUH Section 3.1.5);
- The failure to obtain Parent Company Guarantees from CPFT and CUH prior to the signing of the contract despite the engagement of external procurement and legal advisers (Section 3.1.10)
- The design of the evaluation process leading to a lack of knowledge of the of the legal entity and nature of the bidder at the time of evaluation by some of the work streams (Section 3.1.9);
- The CCG was not able to triangulate the bid with income assumptions contained within the business plan submitted by the Foundation trusts to the regulator (Monitor) (Section 3.2.4);
- Need to identify flags of concern in particular lack of access to the bidders business case, the inconsistency of the first invoice with the contract sum (Section 3.2.3) ;
- Ensuring early flagging of the seriousness of concerns with NHS England (Section 3.3.7)
- Enhancements to the reporting to the Governing Body (Section 3.4.1)

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1. Objective & Scope

1.1. Internal Audit has been asked to undertake an independent internal review of the circumstances that ultimately led to the termination of the Older Peoples and Adult Community Services (OPACS) contract. The objective of the review was to document and evaluate the CCG's systems, processes and controls deployed in the procurement and management of the subsequent contract in order to identify any systemic weaknesses that may have contributed to termination of the contract and importantly identify learning points for future procurements. The review focussed on the processes and mechanisms deployed by the CCG and the review of evidence was restricted to that held by the CCG or available in the public domain. It did not encompass review of any further evidence held by any of the contract bidders or other parties such as NHS England or Monitor.

1.2. As part of the review a series of interviews was undertaken with representatives of the CCG Executive team and Chair as well as a selection of lay members of the CCG Governing Body. Internal Audit also contacted Healthwatch Cambridgeshire representatives to obtain their perspective of the process.

2. Significance

2.1. The OPACS procurement was a significant undertaking for the CCG incorporating:

- Extensive consultation with stakeholders;
- The design of a new clinical outcomes framework;
- The design of a new service model to deliver the outcomes, via a competitive procurement exercise;
- The involvement and use of external technical advisers (Strategic Projects Team, Financial advisers Deloitte LLP and Legal advisers Wragge, Lawrence Graham &Co); and
- The subsequent letting of a contract to a new Lead Provider of Services.

2.2. This procurement was designed to achieve better clinical outcomes, services designed to meet patient needs in a sustainable manner. Much of the work undertaken was ground breaking and as such carried inherent risk but the termination of the contract soon after its inception is an indication that there were mismatched expectations of the financial investment required to deliver the service delivery model.

2.3. A competitive dialogue procurement process ran from July 2013; OJEU advert and Pre-qualification Questionnaire (PQQ) submission through to contract award to Uniting Healthcare LLP in November 2014 and contract commencement 1 April 2015. The contract was terminated in December 2015.

3. Our Findings

3.1. Project Control Framework and Procurement Process

3.1.1. The Project Control Framework established by the CCG was commensurate with the complexity and extent of the procurement. Key features included:

- The use of a two stage competitive dialogue procurement process (external advisers were the Strategic Project Team (SPT);
- A Governance framework designed to provide information and assurances to enable the Governing Body to reach informed decisions;
- A Programme Management Board responsible for operational oversight of the project including the maintenance of risk registers and action logs
- Technical Groups and Local Project Groups responsible for the delivery of individual tasks and projects and reporting to the Programme Management Board
- Use of external procurement, legal and financial advisers throughout the procurement process and particularly in evaluating outline and final business solutions from bidders.
- Use of Dept. of Health and NHS England Gateway reviews at key stages of the Older people programme, procurement and development of the Outcomes framework.

3.1.2. At an early stage of our investigations it was clear that the principal reasons for the termination of the contract were financial rather that service quality related, for this reason this report concentrates on the procurement process, and subsequent contract management rather than the development of the outcomes framework and service model.

3.1.3. The financial principles underlying the procurement and contract aims were:

- aligning improved patient outcomes with financial incentives;
- delivering recurrent financial balance in a sustainable way;
- sharing financial risk across the commissioner – provider system; and
- creating the conditions for investment and delivering a return on investment.

3.1.4. To assist in the delivery of these aims the contract period was to be for a minimum of five years with an option to extend for a further 2 (much longer than a traditional NHS healthcare services contract, financial reward was to be linked to outcomes and the bidders were asked to tender within a budget envelop established by the CCG (which took into account cost improvement expectations).

3.1.5. The competitive procurement process commenced on 3rd July 2013 with the publication of a Contract Notice on the Official Journal of the European Union (OJEU) and Supply2Health. The notice invited expressions of interest from parties wishing to submit a Pre-Qualification Questionnaire (PQQ) to deliver integrated care pathways for older people and a range of community services for adults. The PQQ sought responses from those parties who expressed an interest testing their capacity, capability, economic and financial standing and eligibility to take part in the procurement process. Twelve completed PQQs were received and evaluated.

The assessment of capacity, capability, economic and financial standing and eligibility was applied at PQQ stage; the ultimately successful bidder was a different legal entity to that which completed the PQQ and these checks were not applied to that entity.

3.1.6. The evaluation of the submitted PQQs included assessment against Financial, Legal, Clinical Service and Workforce criteria described in the PQQ, Bidders were ranked and the seven highest ranking Bidders for each Lot were selected to proceed to the next stage of the process, the Invitation to Submit Outline Solutions (ISOS) which ran until the deadline of 6th January 2014. These were subjected to further evaluation. As part of the ISOS submission suppliers were required to re-submit their PQQs where there had been a change. The eventual winner did not re-submit their PQQ despite the delivery vehicle now being described as a Limited Liability Partnership within their ISOS submission. It is understood that this is because the bidder considered that this did not represent a change as this had been previously reported to the CCG. The legal evaluation at this stage does however consider that the legal entity had changed from that which submitted the PQQ. The LLP was not registered/formed until 31 October 2014 after preferred bidder status had been announced.

It is unclear why the eventual winning bidder was not asked to re-submit their PQQ given the legal evaluation at ISOS stage, the implementation of such a step may have triggered a more formal risk assessment of the proposal and risks associated with contracting with a LLP.

3.1.7. After evaluation of the ISOS submissions four suppliers were asked to prepare and submit the final solutions (ISFS stage) with a closing date of 28th July 2014. One bidder withdrew. The three submitted bids were then subjected to further extensive evaluation. The evaluation process was complex and designed to achieve an objective evaluation of each of the bids. Features included:

- The breaking down of the evaluation into specialist work streams including Corporate Governance, Workforce, Estates, Finance etc;
- The use of moderators to ensure consistency of evaluation; and
- The Use of external specialist support for key technical areas including procurement, financial and legal evaluation.

3.1.8. The evaluation process was designed to ensure objectivity and fairness to all bidders. Many managers interviewed as part of our investigation expressed the opinion that one of the key drivers in the design of the procurement process generally and the evaluation process in particular was to ensure even handedness and because of the high profile nature of the procurement to avoid the possibility of challenge and potential judicial review. Indeed the final Dept. of Health "Gateway" review and report (November 2014) issued post identification of preferred bidder, commented that the "*procurement process, so far, has clearly been undertaken professionally. It is a mark of success for such a high profile, high value procurement that it has reached this stage, maintaining competitive tension, whilst also receiving no challenges to the process*".

3.1.9. The outcomes of the work stream evaluations were consolidated in a work stream evaluation report, prepared by the Strategic Projects Team, detailing outcomes of evaluation against each of the three ISFS bidders with indications of their respective strengths and weaknesses. From discussions with CCG Executive members involved in various evaluation work streams it is understood that not all were aware of the nature of the proposed LLP delivery vehicle. This is reflected in our review of the work stream evaluation reports which included: for example, the workforce evaluation report which comments "*was thoughtful and reflected well on the potential challenges facing the new provider. ….identity and culture was already visible for the evaluator, together with a clear picture of what they are going to provide to support the incoming workforce."*

The Corporate governance evaluation includes *"There was very strong narrative around risk management processes, and clear structure in place. This was demonstrated by assurance and, transparency and ownership at Board level, and at every level of the organisation".*

Both of these observations read as if Uniting Care to be the employer of the incoming workforce and had many levels within the organisation whereas in reality Uniting Care employed directly 20 to 30 staff (none of which were engaged in direct healthcare provision).

The different legal entity was not noted by the Strategic Projects Team in the main narrative of their contract evaluation report see paragraph 3.1.10.

Internal Audit therefore concludes there is a need to ensure clarity over the structure and nature of the bidders to better inform the evaluation and any change in the legal entity of the bidder needs to be fully reflected in the evaluation.

3.1.10 The legal evaluation was undertaken by the CCG's legal advisers and their report on the successful bidder identified the different legal entity of the bidder (compared to PQQ submission) and also identified the need for "performance guarantees to be in place from member organisations. The report goes on to record that this was raised with the bidder and accepted by them. Finally the legal evaluation records…" that this would need to be a condition attached to any decision to award them preferred bidder status ….." The legal evaluation report was included in the Strategic Projects Team "Invitation to Submit Final Solutions Evaluation report as Annex E submitted to the Governing Body in September 2014. The recommendations to proceed to appoint the preferred and reserve bidders contained in that report are not caveated with the need to obtain performance guarantees. The preferred bidder letters (drafted by the Strategic Projects Team) did not include any reference to the need for a Parent Company or Performance Guarantees nor was there any mention included in the "Preferred bidder contract issues log". It is of note that the Strategic Projects Team was appointed as procurement advisers for the ISOS and ISFS stages of the procurement following a competitive tendering exercise. The specification relating to that contract clearly states (page 22) that one of the responsibilities of the procurement adviser is to "Draft the 'provisional' recommended and reserve bidder letters that protects the C&PCCG's interests and commits the bidder to the commercial agreement." It may be argued that the absence of any reference to the need for Parent/Performance Company Guarantees did not fully protect the interests of C&PCCG.

The CCG assumed that because of the legal adviser's evaluation and agreement with the bidders, as well as the fact that the drafting of the contract was their responsibility that they would undertake the drafting of the Parent/Performance Company Guarantee.

Internal Audit understands that the CCG has sought independent legal advice to determine the circumstances surrounding the failure to draft and agree a "Parent Company Guarantee".

The failure to capture the need for performance guarantees from the partners of the preferred bidder is a weakness in the process and whilst it may not have prevented the termination of the contract it did increase the CCG risk profile in the event of contract failure.

The evaluation process failed to ensure that any issues requiring attention were resolved prior to awarding of preferred bidder status and this was exacerbated by the format of the evaluation report.

The preferred bidder letter did not require Parent/Performance Company Guarantees to be in place.

3.2. Contract Values and Payments

3.2.1. The fundamental reason for the termination of the contract in December 2015 was an inability to reconcile the CCG and Provider position in relation to contract value despite attempts to bridge the gap between the two positions. The value of the signed contract was clear £725 million over the five year period (£152 million in year one 2015/16) The CCG did acknowledge within the procurement process that the contract value would require adjustment for 2014/15 outturn (up or down) this was communicated to the preferred bidder in January 2015. From subsequent correspondence it is clear that the Provider believed there was opportunity to negotiate on other aspects of the contract value, post award.

3.2.2. At the outset of the process the CCG approach to the financial value of the contract was to seek solutions within a cost envelop that had been derived from examination of current cost of delivery but also included expectations of cost improvements to be achieved over the contract term. Bids were received from a variety of organisational types including consortia of NHS Organisations partnered with private sector organisations to straight private sector bids and from the eventual winner initially a consortia of two NHS Foundation Trusts but ultimately a Limited Liability Partnership owned (members) by the two Foundation Trusts.

3.2.3. As part of the Foundation Trust regulatory framework organisations need to seek approval of the regulator via the submission of a business case for any “significant transactions”. This applied to one of the partners of the Uniting Care Partners LLP. There was no requirement within the evaluation process for bidders to confirm whether there are any regulatory requirements to be satisfied prior to the signing of contracts. This would have highlighted to the CCG any preconditions required to be satisfied by any bidding organisation. Internal Audit understands that the CCG requested sight of the CPFT business case at a later stage but that this was declined. Whilst commercial sensitivities are understandable, at the very least the business case income assumptions should have been triangulated with the bid price. No further attempts were made to triangulate the bid value with the levels of income expected in the business plan despite there being contact between the CCG and Regulator late in 2014/15. There was a further flag indicating a mismatch in financial assumptions on the receipt of the first quarterly invoice (April 2015) which was in excess of the CCGs expectations.

3.2.4. The final Dept. Health Gateway report (November 2014) included discussion of feedback from stakeholders concerning the risks associated with the delivery of the service. It states *"Several stakeholders expressed concern about the overall financial viability of the programme within the financial envelope. The Review Team understands that this will be addressed by a business case that is currently being prepared. Although the procurement has not required a formal business case, the two partners (CUHFT and CPFT) who form the UCP are required by Monitor to submit a Full Business Case and Long Term Financial Plans."*

No recommendations were made in this report around the need to ensure the business case was fully in line with the accepted bid.

The evaluation process would be enhanced if at PQQ stage bidding organisations were asked to confirm any regulatory pre-requisites and the timescale for satisfying them.

In order to enhance assurance, use of triangulation opportunities to ensure the bidder income expectations are in line with the accepted bid should be made.

3.2.5. The financial evaluation formed 25% of the overall evaluation of the ISFS bids. It fell into three parts: the first to pass the "Financial Hurdle", the second was qualitative based on answers provided to 7 questions; the third was quantitative and based on the bid value in comparison to the CCG expected contract value. The two assessments were then combined to arrive at an overall assessment. Internal Audit notes that there was no minimum value threshold applied to the quantitative assessment but also that there was no competitive advantage of submitting a price more than 3.5% below the CCG estimated contract value. It is of note that the successful bidder scored the maximum number of points for the quantitative element of the financial evaluation but lowest in comparison to the other bids in the qualitative assessment of the financial evaluation. The combined effect was to place them highest in the overall financial assessment.

The financial hurdle consisted of three elements these were that the bids must:

- Have an expected annual contract value (EACV) which in each year is not greater than the CCG's budget plus transformational funding (as defined in the ISFS);

- Have a Net Present Value (NPV) over the 5 year contractual period which is not greater than the NPV of the CCG's budget plus the transformational funding; and

- Not assume any additional funding from the CCG over and above the budget plus the transformational funding.

All three bidders were assessed as having passed the financial hurdle.

3.2.6. In an effort to ensure the financial evaluation was able to compare bids on a like for like basis clarification questions were raised with bidders where bids appeared to caveating the bid value e.g." *Please confirm that they would deliver their solutions within the submitted EACV (and the transformational funding of £5m in the first two years) without assuming the receipt of any additional funding (whether from the CCG, for example but not limited to exceptional funding, EDS, LES/DES, readmissions or MRET or otherwise e.g. the Better Care Fund."* The successful bidder responded "Yes" to this clarification question.

3.2.7. The contract payment schedule recognized the need to provide the successful bidder with some degree of working capital support including the payment of the first two quarters payments of 2015/16 quarterly in advance plus the payment of £5 million transformation monies for each of the first two years of the contract. The original contract start date of 1 January 2015 was put back to 1 April 2015 (agreed in response to public consultation, July 2014). The CCG made payments in 2014/15 (in advance of the commencement date) of some £4.3 million in recognition of the bidder's need to mobilize. The OPACS Contract provided for repayment of the £4.3m Support Monies by reducing the Annual Contract Value by the £4.3m under a repayment profile and timescale to be agreed between the Parties. The value of the bid excluding any additional sums (£5m transformation funds et al.) was £726 million over the five year period with the contract value for 2015/16 some £152 million. This contract was signed in November 2014. There was recognition by both sides that the contract sum would need to be amended to take account of the activity outturn for 2014/15 once the value of this rebasing could be quantified (June 2015).

3.2.8. The final Dept. of Health Gateway report (received post preferred bidder letters November 2014) commented on the professionalism of the procurement process undertaken and was particularly complimentary concerning the process delivery in terms of maintaining competitive tension and avoiding any challenge to the process.

There is good evidence that the procurement process and in particular the financial evaluation at ISFS stage was designed and implemented In terms of ensuring financial bids were evaluated consistently and designed to ensure service delivery would be accomplished within the CCG budget.

3.3. Post Contract Negotiations

3.3.1 The mismatch between CCG and Uniting Care over contract value and the expected contract income are at the heart of the reason for the contract termination. Although the signed contract value is not in dispute (£726 million over the 5 year contract term), there is evidence of disagreement over the extent to which the contract value might be varied post award, this despite the clarifications given and the financial hurdle test contained in the ISFS evaluation process. In an effort to determine how this mismatch arose and to identify the efforts made to resolve the differences Internal Audit has reviewed:

- The bid documentation and associated bid clarification questions and answers made at the time of the ISFS submissions ;
- Correspondence between the CCG and UCP during the period between the signing of the contract in November 2014 and the eventual commencement on 1 April 2015 including agreement to a local variation of the contract
- Correspondence between the two parties in the period from the commencement of the contract and the termination in December 2015
- Evidence of the operation of the escalation and mediation process involving both NHS England and Monitor.

3.3.2 As has been discussed in section 3.2.3 one of the owners/members of Uniting Care LLP was required to obtain Monitor approval of its business case submission and consideration of this took place post signing of the contract but prior to commencement (November 2014 to end of March 2015). Whilst the CCG did not have access to the detail of the Business Case it was in discussion with Monitor on certain aspects including specific questions on contract wording. Internal audit understands that, as represented by UCP, a condition of approving the business case agreement of a local variation between the contract parties was required. In terms of impact on the subsequent negotiations around contract value Internal Audit highlights the following attributes of this local variation:

- Recognition of the need for re-basing of the contract value as a result of outturn in 2014/15 and other funding changes

- Acknowledgement that in respect of any items that UCP have not been able to accurately quantify due to shortfalls in information from the UCP due diligence process, and which may arise for a period of up to 6 months post service commencement, the parties may agree a contract variation.

This local variation was agreed by the CCG. Internal Audit has reviewed correspondence between Senior Executives and Lay Chair of the CCG that preceded agreement and it is clear that the risks associated with agreement were well rehearsed at that time. The decision to accept (although never formally ratified) was considered on balance to be the best course of action. This urgent decision was communicated to the Governing Body at development session in April 2015. The CCG Lay Chair believes it is important to note that the wording of the variation set out the process by which the contract "**may"** have been amended (rather than "**shall"** have been amended). It did not commit the CCG to agreement.

The acceptance of the local variation wording did satisfy the Monitor condition and incorporated the CCG acknowledgement that the contract would require amendment as a result of rebasing but also opened the possibility of further negotiations around contract value if raised within 6 months of the contract commencement. Although Internal Audit acknowledges that this variation was never formally ratified and that the variation committed the CCG to agreement of variation is disputed.

It should also be noted that the timing of the request for this change put additional pressure on the CCG to accept to ensure the ultimate success of the contract.

3.3.3 In May 2015 (one month after contract commencement) Uniting Care Partnership (UCP) presented to the CCG as part of general contract discussion, a request for additional funding totaling £34.3 million as summarised below:

Acuity	£6 million
Delays resulting in lost savings (Acute and CPFT)	£9.4 million
VAT	£4.9 million
2014/15 Outturn adjustments MRET	£6.6 million
Other activity adjustments	£5.3 million
Technical adjustments	£2.1 million

This triggered a series of meetings between the two parties where the CCG disputed the relevance of some of the claimed monies (Acuity, VAT and lost savings primarily) and on the 5th August the CCG wrote formally to Uniting Care offering an uplift in the contract value (£9.3 million) to reflect the 2014/15 outturn but linked explicitly to the original bid price. Other non-recurrent sums were also offered (£3.4 million e.g. System Resilience Funds for specified projects) and in addition the CCG offered additional cash support including; delay in repayment of the 2014/15 previously advanced (£4.3 million), payment in 2015/16 of the 2016/17 transformation monies (£5 million).

3.3.4 This offer was rejected by Uniting Care on 21 August based on their position that UCP faced a £34.5 million financial challenge in 2015/16. Of which it was acknowledged that £10.9 million might not be incurred or was subject to other mitigation**.** Of the remaining £23.6m: £8.4m was non-recurrent after 2015/16 (as it related to delays in savings); leaving £15.2m as recurrent with up to £9.9m of this relating to information shortfalls and to be resolved in a system wide financially neutral way.

3.3.5 UCP issued a proposed contract variation to the CCG dated 20th August which re-iterated the UCPs position re. Acuity, VAT, delays resulting in loss of savings, their calculations relating to the 2014/15 outturn and additionally £9.9 million in connection with information shortfalls in the UCP due diligence process. This variation was rejected by the CCG on the basis that it was not necessary as the contract provided for resolution of such matters already.

3.3.6 Further meetings of CCG and UCP Senior Management were held in order to resolve the issues, and agreement reached on an open book exercise which took place in September 2015. The starting position for this used the offer from the CCG of 5th August and compared this to the amounts requested in the draft contract variation (20th August); this showed a gap of £23.4 million. Meetings by this point included Chairs of the CCG CPFT and UCP (the Chair of UCP is also Deputy Chair of CUH) - which became a local oversight Group for a recovery plan process. The recovery plan resulted in reduction of the gap to c10m for 2015/16, but it should be noted that there were financial risks associated with delivery of recovery measures for all parties.

3.3.7 As part of the on-going dialogue with NHS England the CCG included within its assessment of achievability of financial surplus for 2015/16 an analysis of risks. Internal Audit notes that in the assurance report relating to Q4 2014/15, presented in June 2015, that the size of the risk identified as a result of "final settlement with UCP" as £3 million. There is no mention of the larger sum claimed by UCP as the size of their financial challenge in 2015/16.

The CCG flagged the risks associated with the situation to NHS England with a formal briefing provided on the 14th October 2015. The Local Oversight Group agreed on 17th November 2015 that most of the Recovery Plan had been completed and that the residual gap needed to be escalated to NHS England and Monitor. A meeting of all parties took place with NHS England Regional Director and Monitor Director on 23rd November. No additional bridging funding mechanisms were identified and the parties were advised to prepare for withdrawal from the contractual arrangements ensuring as little disruption to the health system as possible. The contract was terminated on 3rd December 2015.

From the information reviewed Internal Audit recommends that earlier formal notification and briefing of the issues to NHS England should have been made. Whilst this may not have altered the eventual outcome it would have signalled the seriousness of the situation and acknowledge the wider reputational damage that would have resulted from the failure of the contract.

3.4 Reporting and Escalation to the Governing Body

3.4.1 In order to determine the adequacy of reporting and escalation processes Internal Audit undertook a review of both Public and Private Governing body papers, agendas and minutes. Our examination confirms extensive reporting and discussion at Governing Body and Clinical Management Executive Team (CMET). There is good evidence of the raising of concerns regarding financial risk associated with the contract throughout 2015 and there is also evidence of requests for decisions regarding continued financial support and assistance with cash flow September and October 2015. There are some aspects of the procurement and contract management that we would have expected to be evidenced in Governing Body papers including:

- The change in role of the contractor from a Lead Provider to an integrator role and the CCG being in a position of co-commissioning (although this was flagged in a report to CMET 29 October 2014);

- Discussion of risks associated with the establishment of the LLP as the delivery vehicle from the preferred bidder; and

- Anything summarizing the issues or actions stemming from the contract evaluation report prepared by the SPT (particularly the need for performance guarantees which were within an annex of that report.);

- Specific reporting and agreement of the levels of cash support particularly the payment of sums to the contractor in 2014/15.

Whilst the Governing body papers clearly show engagement with the process there are gaps in the detail of reporting which may have impacted the Governing body's full understanding of the issues and risks as noted above.

4. Acknowledgements

Internal Audit would like to acknowledge the support given by Senior Officers and Lay Members of the CCG throughout the conduct of this review.

5. CCG Governing Body Response

The CCG welcomes the internal investigation undertaken by WMAS internal audit services and would like to thank the auditors for their thorough, balanced and considered approach, informed by and based upon the CCG's information and documentation and other evidence that is publicly available.

The CCG Governing Body has reviewed the report and carefully considered the lessons and recommendations set out in the report, which it accepts. There are clearly lessons to be learned and in light of this the CCG will in particular be reviewing how it conducts complex, high value procurements in the future, and our related procurement policy. The CCG will reflect on this report and the NHS England review that is due to be published shortly.

The ground-breaking, challenging and innovative nature of the integrated Older People's and Adult Community Services ('OPACS') procurement meant that the CCG relied heavily on external specialist advice, including legal and procurement advice. The CCG notes that the report suggests that further investigation may be required as to the advice and support that the CCG received from its external advisers in order to better understand the extent to which this may have contributed to the early termination of the OPACS Contract, lessons to be learned from this and consequently how best to mitigate the risks of such issues arising in the future. This applies particularly to how the fundamental change to the legal entity in the form of the UnitingCare Partnership, a Limited Liability Partnership, during the procurement, and to the Parent Company Guarantees that should have been in place as a condition precedent to the signing of contracts in consequence of that fundamental change.

The CCG is pleased to note that there is good evidence the procurement process and financial evaluation was designed to ensure that bids were evaluated to ensure service delivery within the CCG's budget. While the signed contract value was not disputed, the continued negotiations running in parallel with the mobilisation of new services and staff transfer clearly resulted in greater risk than would have occurred had the negotiations been concluded prior to commencement.

In addition, as the Audit Report observes, the fact that the CCG did not see the CPFT (UC) business case approved by Monitor meant that the CCG did not know that there was a fundamental mismatch between the financial assumptions that were in excess of the CCG's expectations and the UnitingCare bid. The CCG's evaluation process did not highlight the need for the regulatory requirements to be shared. That is an important learning point for the CCG and for the wider NHS conducting similar procurements. The delay in regulatory approval for the business case until the end of March 2015 also put additional pressures on the mobilisation of services and the contract variation negotiations.

The CCG hopes that this report alongside the NHS England review, due to be published shortly, will help other commissioners undertaking large scale and complex procurements.

The CCG remains committed to delivering an integrated, outcomes based service for older people and adults being cared for in the community. We welcome the support we have had from stakeholders to this model and we continue to work with partners, stakeholders and staff to ensure we are able to deliver a good quality service to our patients within the resources available to us.