



**NHS South Kent Coast CCG**

**Kent and Medway  
Sustainability and Transformation Plan**

**Integrated Impact Assessment**

**Invitation To Quote**

Commercial in Confidence

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# 1 Executive summary

## 1.1 *Context and purpose*

1. This Invitation To Quote (ITQ) is issued on behalf of NHS South Kent Coast CCG (the Commissioner) and defines the procurement process (the Procurement) of an Integrated Impact Assessment service (IIA or the Service) to support the Kent and Medway Sustainability and Transformation Plan (STP). The STP is being executed collaboratively by the CCGs in Kent and Medway:
  - NHS Ashford CCG
  - NHS Canterbury and Coastal CCG
  - NHS Dartford Gravesham Swanley CCG
  - NHS Medway CCG
  - NHS South Kent Coast CCG
  - NHS Swale CCG
  - NHS Thanet CCG
  - NHS West Kent CCG
2. The purpose of this document is to provide potential providers (Bidders) with sufficient information to enable them to give the Commissioner a quote (Bid) for provision of the Service.
3. The background and context of the commissioning requirement for the Service are described in the documents which accompany this document. (Annex A)
4. The service requirement is described in the draft Service Specification which accompanies this document. (Annex B)
5. The Commissioner is supported in this project by NHS North and East London CSU (NEL CSU) and its procurement partner NHS Commercial Solutions (NHSCS), which is managing this procurement.

## 1.2 *Summary*

6. The ITQ process operates in three simple steps:
  1. Bidders complete their Bid and submit it to the Commissioner (See section 2 Instructions for completing the Bid)
  2. The Commissioner evaluates Bids and selects the Preferred Bidder (See section 3 Bid evaluation)
  3. The Commissioner and the Preferred Bidder conclude a contract (See section 4 Concluding the Contract)
7. While aiming for proportionality, the Commissioner has set out a comprehensive and detailed definition of the procurement process to ensure clarity and full transparency.
8. The following sections of this ITQ therefore set out:

- a) The details of each step
- b) Details of the procurement process (See section 5 Procurement process)
- c) Details of governance and administration for the procurement (See section 6 Governance and administration)

### **1.3 Deadline for Bid submission**

9. The deadline for Bidders to submit their Bid is:
- 12 noon on 5 May 2017
10. The Commissioner may not consider any Bid which does not meet the deadline.

### **1.4 Overall timetable**

11. The outline timetable for the procurement process is below. The details will be agreed with the Provider, and will form part of the contract.

Activity	Completion Date
Invitation to quote published	20 Apr 2017
Receipt of completed bids	12 noon 5 May 2017
Successful provider selected and informed	16 May 2017
Service start date	17 May 2017
Pre-consultation report deliverable completed	7 July 2017

### **1.5 Documentation**

12. The Procurement documents comprise the following:

Document	Description
Process and guidance	Procurement process Instructions for bidding
Context	Commissioning background and context (Annex A)
Service specification	Service requirements (Annex B)
Questionnaire	Questions for Bidders and template for response (Annex C)
Contract	Draft contract for the Service (Annex D)

**1.6 Publication of Procurement**

13. The Procurement is advertised on Contracts Finder and is open to all bidders.

**1.7 Communication between Commissioner and Bidder**

14. The Communication Channel for the exchange of information between the Commissioner and the Bidder will be:
- email to and from [andy.glenister@nhs.net](mailto:andy.glenister@nhs.net)

## 2 Instructions for completing the Bid

### 2.1 Overview

15. Bidders are advised to carry out the following steps when compiling their Bids:
- carefully read this document and all supporting documents
  - compile the required responses by answering all questions in this document and as further identified through the Communication Channel in accordance with the relevant instructions and guidance
  - submit the Bid through the Communication Channel.
    - Email: andy.glenister@nhs.net

### 2.2 Nature of response

16. Bidders must provide a response to all questions. If a Bidder believes that a question is not applicable then it should indicate this by writing “N/A” OR “Not Applicable” and provide a reason as to why they believe it does not apply. Failure to do so may result in a non-compliant response and lead to disqualification.
17. Where a word limit is stated in the Bidder response box, the response of Bidders should not exceed the stated word limit. If Bidders wish to respond by cross-referencing other documents, they may do so provided that:
- The document, or specific section of the document, is directly relevant and applicable to the specific response required, and
  - The cross-referencing to the document or section of the document is clear.
18. Bidders may submit additional information as supplementary files.
19. Bidders should provide in their response sufficient evidence and examples to give the Commissioner assurance of their capabilities, their capacity and their solution as appropriate. Bidders should relate their response directly to the Service, and should avoid: “generic” or “model” answers, information which not directly relevant to the specifics of their Bid, and unsupported statements
20. Bidders are wholly responsible for the accuracy and completeness of the information provided in their Bid. This includes information submitted in relation to Bidder Parties.

### 2.3 Bid format

21. Providers should use the following software formats when compiling their Bids

<b><i>File Type</i></b>	<b><i>Software Package or File Format</i></b>
Text based documents	Readable by Microsoft Word in .doc



<b><i>File Type</i></b>	<b><i>Software Package or File Format</i></b>
	or .docx format
Spread sheet based documents	Readable by Microsoft Excel in .xls or .xlsx format
Graphics files	Readable by Microsoft PowerPoint in .ppt or .pptx format or .jpg format
Report and accounts	Portable Document Format in .pdf format
Compressed files	.zip format ONLY (not .rar)

22. The Bid may include any necessary supporting documents which must be clearly referenced. Included documents must not be included as embedded or object-linked documents, but must be provided as discrete documents.
23. Each document in the Bid must be named so as to identify the Bidder, to identify the purpose of the document, and to distinguish the documents from each other. For example, "Acme Ltd – Main response – Annex A"
24. Failure to provide Bids in the required format or quantity may lead to a Bid being set aside without evaluation and the Bidder's exclusion from further consideration in this Procurement.

## ***2.4 Commissioner treatment of response***

25. The Commissioner reserves the right to reject any Bid that fails to comply fully with the requirements of the process set out in this document, or which makes any misrepresentation in supplying any information requested.
26. In evaluating Bids, the Commissioner will only consider information provided in response to the relevant stage of the Procurement. Bidders should not assume that the Commissioner has any prior knowledge of the Bidder or their Bidder parties, or their practice or reputation, or its or their involvement in existing services, projects or procurements.

## ***2.5 Bidder changes***

27. Each Bidder is subject to an on-going obligation to notify the Commissioner of any material changes to the information included in its Bid, including but not limited to changes to the identity of Relevant Organisations or the ownership or standing thereof. Changes should be notified as soon as they become apparent using the Communication Channel.
28. Failure to notify the Commissioner of any material changes may lead to the Bidder being liable for disqualification.
29. In the event that the Bidder notifies the Commissioner of a change to its Bid, the Commissioner reserves the right in its absolute discretion to

refuse to allow such a substitution or introduction of information. In exercising its absolute discretion to either refuse or allow such a change, the Commissioner may take into account whether such change is material to the delivery of the Service.

## **3 Bid evaluation**

### **3.1 *Evaluation principles***

30. The criteria for the Bid evaluation are designed to allow the selection of the Bid that offers the most economically advantageous terms and represents the best VfM, rather than lowest price alone.
31. To determine the best value for money bid, the Commissioner will assess the overall combination of capability, solution, delivery, bid price, affordability, and risk.
32. Bidders' responses will be assessed based on the requirements as stated in the attachments to this document using the evaluation criteria described below.
33. The evaluation is designed to avoid disadvantaging Bidders from different market sectors or of different corporate size and structure. For instance, where a Bidder does not have a credit or debt rating they will not be disadvantaged.
34. The Commissioner reserves the right to vary the evaluation process to support continued competition, to avoid unnecessary bidding costs, and to adhere to subsequent technical or legal guidance, or for other reasons at its sole discretion.

### **3.2 *Evaluation criteria***

35. The evaluation criteria represent the key issues that are important to the Commissioner when determining the attractiveness, robustness and acceptability of Bid. These criteria are weighted to produce a "whole of Bid" grading for each Bid and to reflect the specific needs of the Procurement.
36. Criteria are linked to specific questions in the questionnaire in Annex C. The questionnaire shows the relative weight of each question.

#### **3.2.1 *Affordability***

37. The Commissioner has defined an affordability envelope for the Service:
  - The total price (excluding VAT) must not exceed £100,000.00

### **3.3 *Evaluation scoring***

#### **3.3.1 *Scoring process***

38. Scoring of responses to questions is conducted by subject matter experts (SMEs) who have expertise relevant to the question. SMEs are required to declare any potential conflict of interest in the Procurement. When such a conflict is identified and could be perceived to have a material effect on the outcome on the evaluation, the SME is precluded from involvement in any area which could be affected.
39. For critical areas of evaluation responses may be assessed by more than one subject matter expert, organised into groups (workstreams).

The SMEs in the group may select a workstream lead to facilitate development of a census score for the group.

### **3.3.2 Assessment of responses for pass/fail**

40. Assessment of responses to pass/fail questions is conducted prior to assessment of scored questions.
41. Pass fail questions cover:
  - Delivery within the required timescale
  - Delivery within the required financial envelope
  - Acceptance of contractual terms and conditions
42. Bidders who do not satisfy the pass/fail questions will not proceed to assessment of scored questions.

### **3.3.3 Assessment of responses for scoring**

43. Assessment of responses to scored questions is conducted in stages:
  - First, individual scoring by SMEs.
  - Second, scoring is moderated by SMEs in their workstream groups to review individual scores and develop the consensus score for the workstream. Where consensus cannot be reached on the scoring of a response to a question for any bidder, that question is removed from consideration for all bidders.
  - Third, scoring is moderated across all workstream leads to ensure consistency of approach and execution.
  - Finally, scoring is further reviewed by subject matter experts when the outcome of the evaluation is such that the overall scores of bidders are very close. The overall scores are defined to be very close when the outcome is materially affected by (a) the difference in scoring of any single question or (b) the difference in scoring of any single workstream when the relative scoring of bidders by that workstream is different from the relative scoring of bidders by any other workstream.

### **3.3.4 Questions evaluated in relation to price**

44. Responses to questions are scored according to the scheme set out in Annex E.

### **3.3.5 Questions evaluated in relation to price**

45. The score for the questions related to price criteria will be set as follows:
  - the lowest priced bid within the affordability envelope will receive 100% of the marks related to the price criteria
  - all other bids within the affordability envelope will receive 100% of the marks related to the price criteria less the percentage by which the bid is more expensive than the lowest priced bid

**3.3.6 Clarification of Bids**

46. The Commissioner reserves the right to require Bidders to clarify their Bid in writing. Such clarifications questions do not seek to elicit additional information to that initially requested in the Procurement documents, nor give Bidders an opportunity to correct incomplete or otherwise non-compliant submissions.
47. It is likely that any response to a clarification question will be required within two working days of request. Failure to respond adequately or within the deadline will be reflected in the evaluation of the Bid and may result in exclusion of the Bidder from further participation in the Procurement.
48. In exceptional circumstances, the Commissioner reserves the right to request a meeting with individual Bidders during the Bid evaluation stage to facilitate a rapid clarification of points raised.

## **4 Concluding the Contract**

### **4.1 Recommendation**

49. Following approval of the evaluation outcome the Commissioner will notify all Bidders of the outcome of the evaluation via the Communication Channel. The notification will include the identity of any Recommended Bidder.

### **4.2 Contract completion**

50. Following evaluation the Commissioner will aim to conclude the Contract with the Recommended Bidder.
51. The Commissioner reserves the right to amend the Contract to incorporate information as provided by the Recommended Bidder in its Bid response and to seek clarifications and confirmation of commitments.
52. The Commissioner reserves the right in its absolute discretion not to proceed to award any Contract at any point prior to the entry into a binding Contract with the Recommended Bidder(s).
53. The Commissioner requires the Provider to be a viable legal entity prior to entry into the contract.
54. The Contract awarded will be separate to and independent of any existing contract currently in place between the Provider and the Commissioner.

### **4.3 Payment mechanism**

55. Payment to the Provider will as described in the Service Specification and the Contract.
56. Payments will be subject to achievement of a range of Key Performance Indicators (KPIs) as described in the Service Specification and the Contract. Failure to reach the KPIs may be subject to financial penalties.

### **4.4 Service commencement**

57. Following contract award and in accordance with the Provider's agreed mobilisation plan, the Commissioner and the Provider will work together towards service commencement at the contractually agreed date. The Commissioner encourages and supports early mobilisation of the service.

## **5 Procurement process**

58. This section provides an overview of the Procurement process. Specific instructions to Bidders are contained in Section 3.

### **5.1 Procurement context**

59. This procurement does not fall within the specific requirements of the Public Contract Regulations 2015 or the Procurement Patient Choice and Competition Regulations 2013.
60. The procurement aims to ensure that the Commissioner engages the best value for money provider using an approach which is transparent, fair and proportionate to the scope and value of the Service.

### **5.2 Procurement structure**

61. This Procurement is structured as a single Lot covering the whole Service. The Commissioner intends to appoint a single Provider.

### **5.3 Procurement procedure**

62. The Commissioner wishes to establish the most economically advantageous Bid ("MEAT") for the Contract. The Commissioner has set out criteria which define the characteristics by which the most suitable Bid will be selected, together with the relative weights of those criteria, and the questions by which potential solutions will be assessed.
63. Bidders must submit Bids with their responses to those questions, set out using the format provided by the Commissioner.
64. The Commissioner will assess the responses and determine the most suitable Bid and a Recommended Bidder.
65. The Commissioner will aim to conclude the Contract with the Recommended Bidder.

### **5.4 Commissioner reserved rights**

66. The Commissioner reserves the rights:
- To revise the procurement plan any time in order to support competition, avoid unnecessary costs associated with a Bid, and/or adhere to any technical, legal or commercial guidance and/or for any other substantial technical or administrative reason (at its sole discretion).
  - To cancel or withdraw from the Procurement at any stage
  - Not to award a contract under this Procurement.

### **5.5 Communication between Commissioner and Bidder**

#### **5.5.1 Authorised Representative**

67. All correspondence relating to this Procurement will be sent to the Bidder's Authorised Representative. The Authorised Representative

must have full authority to represent the Bidder and attend any meetings on the Bidder's behalf.

### **5.5.2 Availability of information to Bidders**

68. Any information additional to the Procurement which the Commissioner deems necessary for a Bidder to be issued with will be sent to each Bidder's Authorised Representative.
69. It is the Bidder's responsibility to notify the Commissioner of any change to the Authorised Representative's name or other contact details.
70. Information for Bidders will be published through the Communication Channel using the Authorised Representative's contact details as known to the Commissioner.

### **5.5.3 Bidder communication**

71. Unless stated otherwise in these instructions or in writing from the Commissioner, all communications from Bidders relating to the Procurement must be directed to the Commissioner only via Communication Channel.
72. The Commissioner will not accept any other forms of communication (including telephone calls, postal queries/submissions, faxes or other email communications) relating to the Procurement.
73. Bidder requests for clarification must be submitted in accordance with the procedure set out in this document.
74. Under no circumstances should Bidders approach the Commissioner or any current service provider (including their staff or advisers or patient representatives) seeking further information in relation to the Procurement. Any such approaches (direct or indirect) may result in the Bidder's exclusion from further consideration in the Procurement.

### **5.6 Intention to submit a Bid**

75. In the event that an organisation does not wish to participate further in the Procurement, the organisation is requested to notify the Commissioner accordingly. The Commissioner would appreciate an explanation for any non-participation.

### **5.7 Bid preparation and due diligence**

76. The Commissioner has aimed to minimise the burden on Bidder to participate in the Procurement, with due regard to (a) the scope and value of the Service, (b) the Commissioner's intention to ensure safe delivery of Service by the best placed provider, and (c) the Commissioner's commitment to achieving best value for patients and taxpayers. Notwithstanding that, it is necessary for the Commissioner to impose some conditions on Bidder participation in the Procurement.
77. Bidders must obtain for themselves and at their own expense all information necessary for the preparation of Bids. Bidders are solely responsible for all costs and expenses incurred in connection with the preparation and submission of their Bid and all other stages of the



Procurement. Under no circumstances will the Commissioner or any of their advisers or representatives be liable for any costs or expenses borne by Bidders and/or any of their Bidder Parties in the Procurement.

78. Bidders are required to complete and provide all information required by the Commissioner in accordance with the requirements of the Procurement. Failure to comply with the terms of the Procurement may lead to the Commissioner rejecting a Bid.
79. The Commissioner relies on Bidders' own analysis and review of information provided. Consequently, Bidders are solely responsible for obtaining the information which they consider necessary in order to make decisions regarding the content of their Bids and to undertake any investigations they consider necessary in order to verify any information provided to them during the Procurement ("Due Diligence").
80. Bidders must form their own opinions, making such investigations and taking such advice (including professional advice) as is appropriate, regarding the Service and their Bid, without reliance upon any opinion or other information provided by the Commissioner or any of its advisers and representatives. Bidders should notify the Commissioner promptly via the Communication Channel of any perceived ambiguity, inconsistency or omission in any Procurement document, any associated document and/or any other information issued to them during the Procurement.

### **5.8 Bidder clarification requests**

81. All requests for clarification about the requirements or the process of this Procurement must be submitted in accordance with the procedure set out in this document.
82. The Commissioner will endeavour to respond to each clarification question received during the clarification stage (and before the clarification deadline) within three working days. Bidders must make any such clarifications well in advance of the clarification deadline to ensure responses.
83. Each clarification request should be made as follows:
  - a) covering a single point for clarification
  - b) giving a reference to the document, section and paragraph to be clarified
  - c) giving a bidder defined unique reference identifier
  - d) sent as a separate message through the Communication Channel
84. In order to ensure equality of treatment of Bidders, the Commissioner intends to publish the questions and clarifications raised by Bidders together with responses from the Commissioner to all participants on a regular basis via the messaging area. The source of each question or clarification will not be disclosed.

85. Bidders should indicate if a query is of a commercially sensitive or confidential nature. For example there disclosure of such query and the answer would, or would be likely to, breach any legal duty of confidentiality to which the Bidder is subject or prejudice its commercial interests. Bidders must set out the reason(s) for non-disclosure in the request for clarification in sufficient detail for the Commissioner to understand and consider these. It is NOT sufficient simply to add a heading or label such as “Confidential” or “Commercial in Confidence” – such indications will be ignored unless proper justification is provided.
86. If the Commissioner:
- does not consider the query to be of a commercially sensitive or confidential nature, or
  - considers the query to be one which all Bidders would potentially benefit from seeing both the query and the Commissioner’s response
- it will reserve the right (at its total discretion) to refuse such a request and will inform the requesting Bidder of any such decision. The Bidder will then have the right to withdraw the question or clarification, or else consent to it being answered, in which case the query and answer will be disclosed to all Bidders

## **5.9 Bid submission requirements**

87. The Bid must be created in the form specified in the instructions in the Procurement documents. Failure to do so may render the Bid non-compliant and it may be rejected.
88. Bidders must submit their Bids by the deadline. Failure to submit a response by the deadline may result in the disqualification of the Bidder from participating in the Procurement.
89. The Commissioner may at its own absolute discretion extend the closing date and time for the receipt of Bids.

## **6 Governance and administration**

### **6.1 General**

90. Bidders should read all instructions carefully before compiling their Bid. Failure to comply with the requirements for the Bid may result in rejection of the Bid. Bidders are advised therefore to acquaint themselves fully with the extent and nature of the Service and corresponding contractual obligations.
91. The Bidder shall ensure that each and every employee, officer, servant or agent, sub-contractor, consortium member and adviser of the Bidder abides by the terms of these instructions
92. All material issued in connection with this Procurement shall remain the property of the Commissioner.
93. All documentation and communication shall be in English.

### **6.2 Accuracy of information and liability**

94. Whilst the information in this Procurement and supporting information has been prepared by the Commissioner in good faith, it does not purport to be comprehensive or to have been independently verified.
95. None of the Commissioner, NHSCS, or any of its directors, officers, members, partners, employees, advisers, other staff or agents:
  - Makes any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the Procurement documents; or
  - Accepts any responsibility for the information contained within, or referred to by, the Procurement documents, or for the fairness, accuracy or completeness of that information nor shall any of them be liable for any loss or damage (other than in respect of fraudulent misrepresentation) arising as a result of reliance on such information or any subsequent communication relating to this Procurement.
96. Any persons considering making a decision to enter into a contractual relationship with the Commissioner should make their own investigations and their own independent assessment of the Commissioner and their requirements for the Service and should seek their own professional financial and legal advice.
97. For the avoidance of doubt the provision of clarification or further information in relation to the Procurement documents or any other associated documents is only authorised to be provided following a clarification query made in accordance with the process described in this document.

### **6.3 Contact with Commissioner**

98. Neither the Bidder, nor any of its subcontractors, or advisers shall make contact in direct relation to the Procurement with any employee, agent or

consultant of the Commissioner who are in any way connected with this Procurement, during the period of the Procurement, unless instructed otherwise by the Commissioner.

99. It is accepted that Bidders may continue any normal business contacts and relationships.

#### **6.4 Bidder Warranty**

100. By submitting the Bid, the Bidder warrants that, save as disclosed in writing to the Commissioner with the Bid, any information supplied by it remains true and that it has:
- Not passed a resolution, nor is it the subject of an order by the court, for the relevant entity's winding-up otherwise than for the purposes of bona fide reconstruction or amalgamation, nor has it had a receiver, manager or administrator on behalf of a creditor appointed in respect of its business or any part thereof, nor is it the subject of proceedings for any of the above procedures, nor is it the subject of similar procedures under the law of any other states;
  - Not been convicted of a criminal offence relating to the conduct of its business or profession;
  - Not committed an act of grave misconduct in the course of its business or profession;
  - Fulfilled its obligations relating to the payment of social security contributions under the laws of England and Wales or the country in which it is established;
  - Fulfilled its obligations relating to the payment of taxes under the laws of England and Wales or the country in which it is established;
  - Not made any material misrepresentation in providing any of the information required in relation to the above;
  - Not disclosed, copied, reproduced or distributed and will not disclose, copy, reproduce or distribute any information contained in this document or supplied by the Commissioner on behalf of the Commissioner to any third party at any time except for the purpose of enabling a response to the Procurement to be prepared ;and

#### **6.5 Consortium Bids and Sub-Contracting**

101. If a Bid is submitted by a consortium, the Commissioner will require any agreement(s) to be entered into by all Consortium members on a joint and several basis. In the case of a lead entity which is specially created for this contract, Commissioner will also require confirmation that the Consortium will provide a sufficient level of security, whether by way of guarantees from Consortium members or their parents, or otherwise.
102. Bidders are subject to an on-going obligation to notify the Commissioner of any material changes in their financial or other circumstances. This includes, but is not limited to, changes to the identity of sub-contractors or the ownership or financial or other circumstances thereof and

solvency of the Bidder. The Commissioner should be notified through the Communication Channel of any material change as soon as it becomes apparent.

103. Bidders must therefore be entirely clear in their submission of their Bid structure if contemplating a joint venture, a special purpose vehicle or a main and sub – contractor relationship. Changes in bidding structure which are made after final submission of Bids and/or which are not fully explained in the Bid may not be accepted.
104. Bidders are reminded that any changes in relation to their Bidder Parties must be notified to the Commissioner. Failure to notify the Commissioner of any material changes or to comply with any of these provisions may lead to a Bidder being disqualified.
105. The Commissioner reserves the right to refuse to allow any such change as referred to and to disqualify any Bidder from further participation in the Procurement in the event that such a change is made. In exercising their absolute discretion to either refuse or allow such a change, the Commissioner may take into account whether such change is material to the delivery of the Service.
106. In the event that the Commissioners are prepared to consider such a change, further evaluation of the Bidders entity is likely to be required and may result in the Commissioner refusing to allow the change.
107. If any Bidder, or any relevant Bidder Party, makes a misrepresentation in any part of its dealings with, or responses to the Commissioner, such Bidder may be disqualified.
108. The decision whether or not to disqualify any Bidder will be at the absolute discretion of the Commissioner.

## **6.6 Procurement costs**

109. Each relevant organisation and their advisers are fully responsible for all costs incurred by them arising out of or in connection with this document, their responses to this document and all future stages of the Procurement. Neither the Commissioner, nor any of its advisors or representatives will be responsible for any costs, howsoever arising (including, without limitation, any loss of profit or economic loss), incurred by any relevant organisation or their advisers or any other person in relation to the Procurement.

## **6.7 Non-collusion and canvassing**

110. The Commissioner reserves the right to disqualify (without prejudice to any other civil remedies available to The Commissioner and without prejudice to any criminal liability which such conduct by a Bidder or any of their Bidder Parties may attract) any Bidder who (or whose Bidder Party), in connection with this Procurement:
  - Offers any inducement, fee or reward to any representatives or advisers of the Commissioner, or any Clinical Commissioning Group, NHS England or any other branch of the NHS local or central

government with responsibility for the services forming the subject matter of this Bid process, or any of their advisers

- Does anything which would constitute a breach of the Bribery Act 2010
- Canvasses any of the persons referred to above in this section in connection with this Procurement, or
- Contacts any of the persons referred to above prior to conclusion of the Contract about any aspect of the Procurement in a manner not permitted by the Procurement documents (including without limitation contact for the purposes of discussing the possible transfer to the employment of the Bidder of such person).

111. Each Bidder must not canvass or solicit or offer any gift or consideration whatsoever as an inducement or reward to any officer or employee of, or person acting as an adviser to, the Commissioner, in connection with the selection of Bidders or the Provider in relation to the Procurement.

## **6.8 Freedom of information**

112. Bidders are reminded that, in accordance with the obligations and duties placed upon public authorities by the Freedom of Information Act 2000 (the "FOIA"), the Commissioner may, acting in accordance with the Secretary of State's Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the said Act or the Environmental Information Regulations 2004 (the "EIR") be required to disclose information submitted to it by Bidders in connection with this Competitive Dialogue process.

113. In the event that such a request is received by the Commissioner, then the Commissioner shall, in accordance with its obligations under the Code of Practice made under section 45 FOIA, consult with any party whose interests are likely to be affected by disclosure. However the Commissioner shall be responsible for determining at its absolute discretion whether any such information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR and whether any such information is to be disclosed in response to an information request. Accordingly, the Commissioner cannot guarantee that any information marked "confidential" or "commercially sensitive" will not be disclosed.

114. Information may be exempt from disclosure under FOIA where its disclosure would be likely to prejudice the commercial interests of any person, but the Commissioner can give no assurances as to whether or not information received from Bidders in connection with this Competitive Dialogue would be disclosed in response to a request made under FOIA. In particular, the Commissioner is required to form an independent judgement concerning whether the information is exempt from disclosure under the FOIA or the EIR and whether the public interest favours disclosure or not.

115. In respect of any information submitted by a Bidder that it considers to be commercially sensitive the Bidder should:

- Clearly identify such information as commercially sensitive;
  - Explain the potential implications of disclosure of such information; and
  - Provide an estimate of the period of time during which the Bidder believes that such information will remain commercially sensitive.
116. Where a Bidder identifies information as commercially sensitive, the Commissioner will endeavour to maintain confidentiality. Bidders should note, however, that, even where information is identified as commercially sensitive, the Commissioner may be required to disclose such information in accordance with the FOIA or EIR. Accordingly, the Commissioner cannot guarantee that any information marked 'confidential' or 'commercially sensitive' will not be disclosed.
117. Where a Bidder receives a request for information under the FOIA or the EIR during the Procurement, this should be immediately passed to the Commissioner via the Communication Channel and the Bidder should not attempt to answer the request without first consulting with the Commissioner.
118. The Commissioner intends to publish the services contract post award subject to the redaction of any content that may be exempted from disclosure under the FOIA.
119. If further information is required on how the Commissioner will handle requests for information received under the FOIA, Bidders should submit any queries via the Communication Channel.

## **6.9 Disclaimer**

120. The information contained in the Procurement documents is presented in good faith and does not purport to be comprehensive or to have been independently verified.
121. Neither the Commissioner, nor any of its advisers 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, Bidder Member, financiers or any of their advisers, orally or in writing or in whatever media.
122. Interested parties and their advisers must therefore take their own steps to verify the accuracy of any information that they consider relevant. They must not, and are not entitled to, rely on any statement or representation (express or implied) made by the Commissioner, or any of its advisers.
123. The Commissioner reserves the right to change the basis of, or the procedures (including the timetable) relating to, the Procurement, to reject any, or all, of the Bid, not to invite a Bidder to proceed further, not to furnish a Bidder with additional information nor otherwise to negotiate with a Bidder in respect of the Procurement.
124. The Commissioner or any of its advisers shall not be obliged to appoint any of the Bidders and reserves the right not to proceed with the

Procurement, or any part thereof, at any time. Nothing in this document should be interpreted as a commitment to award the Contract.

125. Nothing in the Procurement documents is, nor shall be relied upon as, a promise or representation as to any decision by the Commissioner in relation to this Procurement. No person has been authorised by the Commissioner or its advisers or consultants to give any information or make any representation not contained in the Procurement documents and, if given or made, any such information or representation (express or implied) shall not be relied upon as having been so authorised.
126. Nothing in the Procurement documents or any other pre-contractual documentation shall constitute the basis of an express or implied contract that may be concluded in relation to the Service Procurement, nor shall such documentation/information be used in construing any such contract. Each Bidder must rely on the terms and conditions contained in any contract when, and if, finally executed, subject to such limitations and restrictions that may be specified in such contract. No such contract will contain any representation or warranty (express or implied) in respect of the Procurement documents or other pre-contract documentation.
127. References to Procurement documents include all information contained in them and any other information (whether written, oral or in machine-readable form) or opinions made available by or on behalf of the Commissioner, or any of their advisers or consultants in connection with this Procurement or any other pre-contract documentation.

### **6.10 Confidentiality**

128. Subject to the exceptions referred to below, the contents of the Procurement documents are made available by the Commissioner on condition that Bidders:
  - shall at all times treat the contents of the Procurement documents and any related documents (together called the “Information”) as confidential;
  - shall not disclose, copy, reproduce, distribute or pass any of the Information to any other person at any time or allow any of these things to happen, save as allowed for below;
  - shall not use any of the Information for any purpose other than for the purposes of submitting or deciding whether to submit a Bid; and
  - shall not undertake any publicity activity within any section of the media.
129. Bidders may disclose, distribute or pass any of the Information to their Bidder Parties and advisers provided that either:
  - This is done for the sole purpose of enabling a Bid to be submitted and the person receiving the Information undertakes in writing to keep the Information confidential on the same terms as if that person were the Bidder; or



- The Bidder obtains the prior written consent of the Commissioner in relation to disclosure, distribution or passing of Information; or
- The disclosure is made for the sole purpose of obtaining legal advice, insurance quotations, or financial or commercial advice from external advisers in relation to the Procurement or to any Contract arising from it and the person receiving the Information undertakes in writing to keep the Information confidential on the same terms as if that person were the Bidder; or
- The Bidder is legally required to make such disclosure.

### **6.11 Confidential information**

130. Confidential Information means all information which is supplied by the Commissioner to a Bidder whether in writing, orally or in any other form, directly or indirectly from or pursuant to discussions with such Bidder or which is obtained through observations made by such Bidder which is designated by the Commissioner as confidential or which is otherwise of a confidential nature.
131. Each Bidder shall hold in confidence any Confidential Information, provided that such Bidder shall not be restricted from passing such information to its professional advisers or its proposed sub-contractors (subject to obtaining appropriate confidentiality) but only to the extent necessary to enable it to prepare its bid and participate in this Procurement.
132. The Procurement documents are intended for the exclusive use of the Bidder and are provided on the express understanding that the Procurement documents and the information contained in them, or in connection with them, will be regarded and treated as strictly confidential. The Procurement documents may not be reproduced in whole or in part, nor furnished to any persons other than the Bidder, other than for the purposes of:
- Taking legal advice in connection with completing this Procurement and/or
  - Obtaining information from potential partners, sub-contractors or funders, or obtaining advice from legal, financial, insurance or other professional advisers, where required expressly by the Procurement or otherwise where necessary, and relevant to the Bidder's Bid and/or
  - Obtaining input from any other relevant parties that Bidders can demonstrate is necessary in preparing their Bid,
- subject always to the Commissioner's prior written consent to such disclosure (which it can withhold in its absolute discretion) and provided that in, each case, Bidders obtain from such parties prior to such disclosure, confidentiality undertakings of at least equivalent strength to this Section.

133. Upon written request from the Commissioner, Bidders shall promptly provide evidence to the Commissioner that such undertakings have been provided.

### **6.12 Publicity**

134. Bidders must not undertake (or permit to be undertaken) at any time, whether at this stage or after execution of Contracts, any publicity activity with any section of the media in relation to the Procurement other than with the prior written agreement of the Commissioner. Such agreement shall extend to the content of any publicity. In this paragraph the word "media" includes (but without limitation) radio, television, newspapers, trade and specialist press, the internet and email accessible by the public at large and the representatives of such media.
135. No publicity regarding the Procurement of the Service or the award of any Contract will be permitted unless and until the Commissioner has given express written consent to the relevant communication.

### **6.13 Copyright**

136. Bidders are reminded that the copyright to the Procurement documents rests with the Commissioner and their appointed advisors. The Procurement documents may not either in whole or in part be copied, reproduced, distributed or otherwise made available to any other third party without the prior written consent of the Commissioner except in relation to the preparation of a Bid. All documentation supplied by the Commissioner in relation to this Procurement is, and shall remain the property of the Commissioner and must be returned on demand, without any copies being retained.

### **6.14 Interpretation**

137. In this document, except where the context otherwise requires:
- words importing one gender include all other genders and words importing the singular include the plural and vice versa;
  - the list of contents, glossary and headings to the parts and paragraphs of this document and any Appendices and Annexes hereto are for ease of reference only and shall not affect the construction of this document; and
  - The laws of England and Wales shall apply to this Bid process and any agreement entered into pursuant to it, and the Bidders, by participating in it, irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales in respect of any dispute or difference arising out of, or in connection with, this Bid exercise. All other jurisdictions are hereby excluded irrespective of the domicile or nationality of any Bidder or its members (save only for the purposes of enforcement of judgments of the Courts of England and Wales in the jurisdiction in which the party liable to make payment or otherwise fulfil the terms of the judgment is resident or domiciled).

**6.15 Validity of Bids**

138. All Bids must remain open for acceptance for a period of 120 days from the Bid response deadline. A Bid valid for a shorter period may be rejected

**6.16 No inducement or incentive**

139. The Procurement documents are issued on the basis that nothing contained in them constitutes an inducement or incentive nor has in any other way persuaded a Bidder or Bidder Party to submit a Bid or enter into any contractual agreement.

**6.17 Disqualification of Bidders**

140. Bidders acting in contravention of the provisions set out in the Procurement documents or of any other rules or requirements notified by the Commissioner, may, at the sole discretion of the Commissioner, be disqualified from further participation in this Procurement.

**6.18 Conflicts of interest**

141. The Commissioner requires all actual or potential Conflicts of Interest (Col) to be resolved to their satisfaction prior to the selection of Recommended Bidder. Bidders are required to disclose all actual or potential Col in their Bid.
142. In the event that any actual or potential Conflict of Interest comes to a Bidder's attention following the submission of its Bid, that Bidder should immediately notify the Commissioner via the Communication Channel.
143. Failure to declare such conflicts and/or failure to address such conflicts to the reasonable satisfaction of the Commissioner could result in a Bidder being disqualified.

**6.19 Right to reject bids**

144. The Commissioner reserves the right to reject or disqualify a Bidder and/or its Bidder parties where:
- A Bid is submitted late, is completed incorrectly, is materially incomplete or Fails to meet the submission requirements which have been notified to Bidders
  - The Bidder and/or its Bidder parties are guilty of material misrepresentation in relation to its application and/or the process
  - The Bidder and/or its Bidder parties contravene any of the provisions set out in the Procurement documents, or
  - There is a change in identity, control, financial standing or other factor impacting on the selection and/or evaluation process affecting the Bidder and/or its Bidder parties.
145. The disqualification of a Bidder will not prejudice any other civil remedy available to the Commissioner and will not prejudice any criminal liability that such conduct by a Bidder may attract.

## **Annex A   Commissioning background and context**

This information is included in the service specification,

Please refer to Annex B.

## **Annex B    Service requirement**

Please refer to separate document.

## **Annex C    Questionnaire**

Please refer to separate document.

## **Annex D    Contract**

Please refer to separate document.

## **Annex E    Scoring scheme**

Please refer to separate document