



London Procurement Partnership

Commercial advantage for the NHS by the NHS



Estates, Facilities & Professional Services

PFI Contract Review Framework User Guide

Framework Reference Number: LPP/2015/020

April 2016

Version Control

| Contributor(s) | Date | Version | Comments |
|---------------------|------------|---------|----------------------|
| Edward James | 01/04/2016 | 1.0 | Final for publishing |
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1. Introduction

This user guide is intended to provide information about the PFI Contract Review framework and to provide practical support to contracting authorities who wish to access the framework to award contracts.

Please note that the guidance provided within this document only applies to this framework and contracting authorities should ensure they refer to the guidance document which is relevant to the framework they wish to access to ensure that the right processes are being followed.

Procurement teams should be involved in the decision to access the framework to ensure that the decision fits with local procurement policies and contracting authorities' standing financial instructions.

1.1 Key Information

| | |
|-----------------------|--|
| Framework Title | PFI Contract Review |
| OJEU Reference Number | 2016/S 016-024415 |
| LPP Reference Number | LPP/2015/020 |
| Framework Period | 1 st April 2016 – 31 st March 2018 |

1.2 Background

The service allows NHS organisations to engage LPP, working in partnership with external PFI specialists, to look hard at their existing operational PFI contracts, and to institute measures to drive efficiencies and make savings in PFI contracts in line with the latest HM Treasury guidance. The suppliers will help and support LPP to provide member trusts with a 'one stop shop' multi discipline (financial, technical, legal) PFI efficiency review service.

LPP encourages a collaborative approach to working with the PFI Private Sector Partners (referred to as Project Co in the PFI Agreements) to identify and deliver efficiency savings over the short, medium and long term. This would involve LPP and the external Consultant(s) building on the existing working arrangements between the Trust and PFI Private Sector Partner at a local level to ensure appropriate resourcing, backing and performance management for the delivery of each identified savings project.

In June 2014 HM Treasury published its Code of Conduct for Operational PFI/PPP Contracts. The Code follows on from guidance issued in 2011 (Making Savings in Operational PFI Contracts). Broadly the Code says:

- It is not legally binding, but only voluntary and does not overturn any existing contractual provisions.
- The private sector will agree to provide a single "local" point of contact for each project who will have responsibility for co-ordinating the views of all private sector parties on that project.
- The private sector will also agree to engage constructively and in a timely manner when their public sector partners want to talk to them about making savings.

- Both sides will work to identify improvements and strategies to deliver efficiencies and savings. The word “engagement” stresses that it has to be more positive and proactive than mere talking.
- Both sides will engage responsively when considering variations to contracts. This is a clear message to those contractors who sometimes drag their feet when handling changes to PFI contracts. In particular it is agreed that where reasonable the 2008 Change Protocol should be incorporated into older contracts. This will help clarify how changes are managed and deal with such issues such as what funders’ due diligence costs should be and what happens if an authority does not agree the costs and wants to proceed themselves.
- The public sector signatories make similar commitments about constructive engagement, including a commitment to ensure that costs incurred by the private sector associated with realising efficiencies and savings are ‘proportionate’ (clearly the private sector had raised this as an issue).

1.3 Overview

The framework is a single lot with three suppliers. Each of the organisations appointed to the framework are supported by a supply chain of expert advisors who can be brought in to advise on specific areas e.g. legal or financial. The three make up of the three supply chains is:

1. BDO (Lead), Ward Hadaway (Legal), Mott MacDonald (Technical)
2. CIPFA (Lead), Trowers & Hamblins (Legal), Leviathan Consulting (Technical)
3. Local Partnerships (Lead), Green & Kassab (Technical)

Further information on the suppliers is included in Appendix A.

Lot 1 – PFI Review Service

The services which will be included within the review include:

| Task No | Task Area | Task Description |
|---------|----------------------------------|--|
| 1 | Contract Compliance Check | <p>Desktop review of the contractual documentation and non-technical contract compliance, in particular the project agreement and the payment mechanism to identify any possible cost saving potential and levers to implement savings using knowledge and experience from other signed PFI Projects.</p> <p>This task will entail reviewing a copy of the contract governing the PFI including any amendments thereto. Key items of which are (using common names):</p> <ul style="list-style-type: none"> • The Project Agreement (PA) • Schedules to the PA • Facilities Management Agreement • The design and construction subcontract • Credit/ Loan Agreement • The Financial Close model, including any amendments thereto. • The Gross Internal Floor Area of the PFI |

| | | |
|---|-----------------------------------|--|
| | | <p>estate.</p> <ul style="list-style-type: none"> ● Insurance documentation from Project Co. ● Information provided by Project Co at each renewal since Financial Close. ● Correspondence on any gain share arrangement. ● Correspondence and other information relating to variation margins charged by both Project Co and their service providers. ● A copy of any existing benchmarking report. ● A copy of the current invoice. |
| 2 | Contract Management Review | Independent evaluation of the contract management arrangements (including governance, systems and controls, resourcing, knowledge management) and recommending improvements. |
| 3 | PFI Savings Review | <p>Detailed analysis of the PFI contract documents and financial model to identify and quantify savings; stakeholder workshops to prioritise these and delivery of a high level implementation plan.</p> <p>This task will entail:</p> <p>Facilitate Stakeholder workshops.</p> <p>Assess potential savings options, providing advice on the payment mechanism impacts, potential costs/savings of changes and any impacts on the financial model. This should include carrying out appropriate modelling and identification of risks associated with proposed changes.</p> <p>Examination of the contract terms and conditions against actual utilisation and invoicing data. Proposing options for how services could be used differently and the risks associated with that.</p> <p>Provide further options not considered based on experience from other projects and sectors, including the potential savings and costs related to the options.</p> <p>Provide analysis of the Project Financial Model in line with Treasury guidance on making savings in operational PFI contracts. This should include:</p> <p>Analysis of the potential saving to take back Change in Law risk, including the risks associated with doing so;</p> <p>Analysis of any other Reserve account(s) and the potential to make savings by altering the risk profile;</p> |

| | | |
|---|--|---|
| | | <p>Analysis of insurance costs included and the contractual sharing mechanism that is in place;</p> <p>Analysis of the financial structure used and the potential for refinancing, including the costs of carrying out such an exercise and potential gain to the Trust;</p> <p>Calculate the termination costs for the contract. Work with the Trust to identify potential break points and termination cost at each date. This should include an assessment of swap breakage costs (if applicable);</p> <p>Provide ad-hoc modelling support to the Trust to assess Value for Money of proposed changes;</p> <p>Produce a high level implementation plan and provide support to the Trust in the development of the re-negotiation strategy.</p> |
| 4 | Commercial Implementation Support (Savings) | <p>Provide additional commercial capability to the Trust, including support in negotiating and documenting the savings.</p> <p>This task will entail:</p> <p>Provide support to the Trust through the negotiations, including carrying out financial modelling as required to assess any revisions to proposed changes;</p> <p>Identify key legal, Financial and commercial risks and provide advice to Trust on negotiation strategy;</p> <p>Provide support in quantifying savings proposed including the NPV of whole life savings;</p> <p>Review lender response, including documenting the due diligence process;</p> <p>Provide analysis of contractor's response to change notices against the Financial Model;</p> <p>Assess any impact on the payment mechanism resulting from changes proposed;</p> <p>Following agreement of savings evaluate the Contractor's re-run of the Financial Model, including reviewing optimisation method used, to ensure all savings are correctly accounted for.</p> |

| | | |
|---|------------------------------------|---|
| 5 | Specific Commercial Support | <p>Commercial support on specific contract issues such as dispute resolution, and benchmarking/market testing of soft FM services where included in the PFI contract.</p> <p>The task on benchmarking/market testing will include the following and other tasks as required by the Trust:</p> <p>Advise the Trust as to the most effective means of benchmarking/market testing the services taking account of existing service provision and any TUPE implications should there be a change in the Service Provider following the market testing exercise;</p> <p>Review and advise the Trust on the Contractor's deliverables for the benchmarking/ market testing exercise;</p> <p>Support the Trust on any contractual/ financial issues the Trust is seeking to resolve resulting from the benchmarking exercise and support the negotiations.</p> <p>Support the Trust in the analysis and evaluation of the bids from the market testing exercise. Support the Trust in meetings with the Contractor to clarify issues relating to the requirements and to the bids;</p> <p>Support the Trust on service handover/ commencement, internal communications and changes to the PFI contract to reflect the new service.</p> |
|---|------------------------------------|---|

The suppliers who have been awarded a position on each of the lots are included in Appendix A.

1.4 Expected Benefits

The service allows NHS organisations to have a review of their PFI contract, something that has historically been seen as 'untouchable'.

- An OJEU compliant route to market for PFI specialist advisors.
- The selected external advisors are highly experienced PFI finance, technical and legal experts who have a proven track record of delivering significant PFI savings across the public sector.
- Proven service with the first review delivering an optimum price reduction to the organisation of £4.81m on the soft FM element of the PFI contract over the next five years. This reduction represents a saving of around 12 percent on the annual spend on soft FM services, whilst maintaining service levels to the required standard.

- Services provided on a fixed or capped fee based on a competitive standard day rate rather than the 'success fee' model commonly adopted by commercial advisory organisations. This allows the NHS to keep all of the benefits delivered.

1.5 Awarding a Contract

To award a contract under this framework the contracting authority must complete an Access Agreement. LPP will contact you to understand your requirements and help you structure your contract review.

2. Management of the Framework Agreement

2.1 Framework Contracts

All suppliers who have been awarded a position on this framework have signed framework contracts with NHS London Procurement Partnership (LPP). LPP is responsible for the management of the framework contracts and will seek feedback from contracting authorities to ensure maximum value is derived from the framework.

2.2 Activity Based Income (ABI)

There is no Activity Based Income (ABI) charge associated with this framework. The NHS Trust will only pay for the number of days commissioned to undertake the review.

2.3 Management Information

LPP will collect on a monthly basis management information from each supplier for each contract they have been awarded under the framework. The management information will allow the category manager to have an overview of the supplier performance on specific contracts.

2.4 Framework Manager

Contracting authorities who have any questions regarding the framework should contact the framework manager in the first instance. This is the person identified on page 2 of this document.

2.5 Business Continuity Plans

As part of the supplier's application to be on the framework they have submitted to LPP generic business continuity plans. These have been reviewed and scored as part of the evaluation of the framework award. LPP strongly suggests that contracting authorities request as part of their mini competition specific business continuity plans relating to their service and location so these can be retained for the successful contractor.

3. Accessing the Framework

3.1 Framework Access

This framework is open to NHS Organisations.

3.2 Benefits of Accessing a Framework

There are a number of benefits of awarding contracts under a framework, these include:

- It is faster and less onerous than a full OJEU tender process.
- There is no need to assess framework suppliers against criteria such as financial standing or business probity as these have been assessed during the PQQ stage of the framework establishment.
- By using the framework there is no need for you to separately advertise your requirement.
- The framework is based on generic service specifications which contracting authorities can adapt to meet their specific requirements.
- The terms and conditions of the framework agreement and call off contracts have already been agreed with all framework suppliers therefore no further legal dialogue is required.
- By following these guidelines you can ensure that you are adhering to EU Procurement legislation.

3.3 Framework Access Charge

There is no charge for contracting authorities to access this framework agreement, the only charge payable to LPP is based on the number of days scheduled to undertake the review.

Appendix B sets out the key responsibilities of each party during the framework call-off/ mini competition process. Should a contracting authority wish for LPP to provide additional support, over and above what is shown in this document, in awarding a contract then LPP reserves the right to charge for these additional services. This will be discussed and agreed with each contracting authority on a case by case basis.

3.4 Framework Access Agreement

Contracting authorities wishing to access this framework should complete the framework access agreement in Appendix C and send this to the category manager. Once this has been completed the category manager will provide the contracting authority with access to the mini competition documents and advise the suppliers on the framework that the access agreement has been signed. Suppliers on the framework will not enter contracts under this framework with any contracting authority until the category manager has confirmed a signed access agreement is in place.

4. Running a Mini-Competition or Call-Off

4.1 Establishing a Project Team

Contracting authorities will need to establish a project team which is responsible for supporting the award of the new contract. This project team should include key stakeholders from across the organisation who can input into the specification and evaluate the quality of responses from suppliers under the framework.

The project team should be supported by a project lead who is responsible for ensuring the project is supported by the contracting authority's board and managing the implementation of the new contract.

LPP will liaise with the project lead as per the responsibilities matrix in Appendix B. If the contracting authority does not have the resource to undertake this internally then LPP can provide support but this may come at an additional cost. If this is required then you should contact the category manager to discuss further.

4.2 Key Decisions and Actions

By deciding to award a contract under the framework agreement much of the hard work has already been completed which should save the contracting authority time and money. A suite of mini-competition documents is available which can be tailored by the contracting authority to meet their specific requirements.

The key decisions and actions which will need to be completed by the contracting authority to award a contract under the framework are set out in the responsibilities matrix in Appendix B.

It is the contracting authority's responsibility to validate the data being sent out as part of the mini competition, check the evaluation of all bids and award the contract under the framework.

4.3 Undertaking a Mini Competition

To undertake a mini competition within the framework the contracting authority should refer to the responsibilities matrix in Appendix B and complete the framework access agreement in Appendix C. Once this is received by NHS LPP will agree to meet with the Trust to work up the scope of requirements.

LPP can choose a capable Supplier with whom to place an Order in one of the following ways:

- by choosing the Supplier who demonstrably offers best value for money for its requirement when judged against the criteria of: speed of available response, (including, without limitation, capacity to meet required deadlines and, where relevant, geographical location); quality (including as appropriate: capability, expertise, past performance, availability of resources and proposed methods of undertaking the work); and price;
- by operating a rota system between capable Suppliers; or
- by consulting in writing all the capable Suppliers and inviting them within a specified time limit, to submit a tender in writing for each specific contract.

The contracting authority will need to agree the specification of services and should build upon the generic specifications provided by LPP to ensure that their specification meets the service needs.

The mini competition documents will be returned by the suppliers and should be evaluated by the project team in line with the evaluation criteria which was set out within the invitation to tender. As part of the evaluation process supplier presentations may be undertaken. Suppliers should be provided with adequate time to prepare their presentations and should be given a clear brief of what to present.

Once the evaluation process is completed the contracting authority should notify all suppliers of the outcome of the mini competition and start a 10 day stand still period before concluding the contract.

4.4 Evaluation Criteria

The following evaluation criteria were set out within the framework agreement. The headings stated should be used as part of any mini competition within the framework however the contracting authority can include sub-criteria as long as these are clearly stated to all suppliers at the start of the mini competition process. The weightings can be changed to meet the contracting authority's requirements.

| Evaluation Matrix for Final Selection Process | | Weighting |
|--|--|------------------|
| Qualitative Proposals | | 60% |
| ➤ | Understanding of Scope of Services | 10% |
| ➤ | Capability | 10% |
| ➤ | Management Approach | 5% |
| ➤ | Organisational Structure and Resources | 10% |
| ➤ | Customer Services & Service Quality | 5% |
| ➤ | Reporting | 5% |
| ➤ | PFI Savings Plan | 5% |
| ➤ | Value for Money & Added Value | 3% |
| ➤ | Quality Assurance | 2% |
| ➤ | Risk Identification and Mitigation | 3% |
| ➤ | Continuous Improvement | 2% |
| Quality Weighting | | 60% |
| Pricing Proposals | | 40% |
| Price Weighting | | 40% |
| Total | | 100% |

4.5 Undertaking a Call Off

To undertake a call off under the framework the contracting authority should contact the Category Manager identified on page 2.

4.6 Transition, Planning and Support

As part of the mini-competition or call off process the successful supplier should provide you with a transition plan which clearly explains what tasks need to be undertaken and who is responsible for ensuring they are completed. This plan should set out the level of resource which is required from the contracting authority during the transition process. The expected timescales for each stage of the transition and the mobilisation as a whole should be shown. The contracting authority should review the suppliers performance against the plan on a regular basis throughout the transition.

4.7 Managing the Contract

The contracting authority should hold regular meetings with the supplier to review performance against agreed key performance indicators. Should the supplier fail to meet the agreed key performance indicators then the contracting authority should look to take corrective action as outlined within the contract document. The LPP category manager should be made aware of repeated failures in a supplier's performance and can be asked by the contracting authority to support rectifying issues.

4.8 Key Performance Indicators

LPP encourages the use of key performance indicators within contracts as a way of monitoring and managing supplier performance. Some suggested key performance indicators which are relevant to this contract have been included within the template specification document. Contracting authorities should ensure these meet their requirements and if necessary personalise them to ensure they do.

Key performance indicators should not be used to punish a supplier but should be built in to encourage and reward high quality performance of the contract. As such LPP suggests that key performance indicators are established which are achievable and agreed by both parties.

5. Frequently Asked Questions

5.1 What is a Framework and is it compulsory to join?

A framework is a general term for an agreement with a provider(s) which sets out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement. Frameworks are established for bodies to buy goods or services via a pre-approved list of suppliers.

5.2 If a supplier is not on the framework can they still take part?

No. The framework has been awarded via an OJEU process. Suppliers at the time of advert had the opportunity to register their interest in being awarded a position on the framework. The tender process for the framework has now closed and all lots awarded.

5.3 Do I need to invite all suppliers to a mini competition?

You will need to invite all suppliers for the lot under which you are undertaking your mini competition unless there are specific reasons why you believe a supplier cannot deliver the services you require. Where this is the case you should check with the supplier first to ensure that you are not challenged later in the process.

5.4 How long does a mini competition need to run for?

This will depend on the complexity of the service. Contracting authorities should take into account the size of the contract, the number of services included, requirements for supplier site visits and TUPE. On average LPP would suggest suppliers are given four weeks to respond to the mini competition. For specific advice please contact the category manager.

5.5 Do I have to apply a stand still period to a mini competition?

LPP encourages the application of standstill periods for all mini competitions under the framework, especially where the value of the contract exceeds the OJEU thresholds. This ensures transparency to all suppliers involved in the process and minimises the risk of challenge once a contract is awarded.

6. Appendices

6.1 Appendix A – Supplier Contacts by Lot

Lot 1 – PFI Contract Review

| Supplier | Email Address |
|--------------------|----------------------|
| BDO | Please contact LPP |
| CIPFA | Please contact LPP |
| Local Partnerships | Please contact LPP |

6.2 Appendix B – Responsibilities Matrix

| | Month 1 | Month 2 | Month 3 | Month 4 | Month 5 | Month 6 | | | | | | | | |
|-----------------|--|----------------------------------|--|----------------------------------|--|-----------------|---|-----------------------------|---|-----------------------------|--|--------------------|----------------|--------------------------|
| Trust | Initial Framework Enquiry | Submit Access Agreement | Complete Mini-Comp Documents | Finalise Mini-Comp Documents | Respond to Mini-Comp Queries | Host Site Visit | Quality Evaluation | Short List for Presentation | Attend Presentation | Award Decision/Ratification | 10 Day Stand Still | Agree Contract | Sign Contract | Mobilisation and Go Live |
| LPP | Share Framework User Guide | Set Access to Template Documents | Respond to Completion Queries | Check and Issue Mini-Competition | Respond to Mini-Comp Queries | | Download and Share Responses | Commercial Evaluation | Invite for Presentation | | Issue Intent to Award Letters | 10 Day Stand Still | Draft Contract | Issue Contract |
| Supplier | | | Complete Mini-Comp Returns | Attend Site Visit | Submit Mini-Competition Response | | | | Attend Presentation | | 10 Day Stand Still | | Sign Contract | Mobilisation and Go Live |
| Notes | LPP has a number of template documents which can be used for the mini-competition. Trusts can amend, replace or keep the templates as is. These documents are intended as a guide to help trusts outline their service requirement. The LPP team can answer queries regarding the template documents and provide advice but can not define your service requirement for you. | | LPP can issue your mini-competition for you through our e-tendering portal and work with you to structure responses to your Standing Financial Instructions. We will act as first contact for all queries regarding the mini-competition and forward any which require your input. These should be answered within 48 hours of receipt. Site visits should be arranged for all suppliers early in week 2 of your mini-competition. | | Mini-competition responses will be sent to our e-tendering portal. We will share these responses with you along with an evaluation template. The LPP team will undertake the commercial evaluation while your Trust scores the responses to the questions asked. | | From your evaluation 3-4 suppliers should be short listed for presentation. This will allow you to meet the proposed team which will deliver your contract and also ask any final clarification queries you may have. | | Following the presentations your evaluation should be completed. The evaluation document should be sent to LPP which will issue the intent to award letters. A 10 day stand still period will then begin. The trust's ratification process should be followed before a contract can be awarded. | | LPP will draft your contract based on the response and outcome of your mini-competition. This will be sent to you to check and once agreed will be sent to the supplier to sign. You may wish to engage your legal team should you make extensive changes to the LPP template contract. They will then send you a copy to countersign. Once the contract is signed you will enter the mobilisation period. Timescales for this will depend on service and award decision. Following mobilisation your contract will go live. | | | |



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6.3 Appendix C – Framework Access Agreement



London Procurement Partnership

PFI Contract Review Framework

Contract notice reference 2016/S 016-024415

ACCESS AGREEMENT

Between NHS London Procurement Partnership (Hosted by Guys
and St Thomas' NHS Foundation Trust) "LPP"

&

<<PARTICIPATING AUTHORITY NAME>>

Tender Ref: 2016/S 016-024415

Tender Title: PFI Contract Review Framework

1. This Access Agreement enables <<participating authority>> to access the services sourced by the Contracting Authority (LPP) as intended in the Official Journal of the European Union Contract Notice 2016/S 016-024415.
2. The Contracting Authority's single point of contact is **LPP Estates, Facilities & Professional Services Workstream**, which will be responsible for supporting <<participating authority>> in their understanding and operation of the PFI Contract Review Framework.
3. The Contracting Authority will make available to <<participating authority>> all details of the PFI Contract Review Framework, including named contacts.
4. <<participating authority>> will be entitled at any time during the term of this agreement to order products or services under the lots and sub-categories from any of the suppliers as specified in 3 above.
5. Unless otherwise agreed in writing, <<participating authority>> will have full responsibility and ownership for the administration and management of each individual awarded contract which will include, but is not restricted to, the preparation and issue of specifications, the receipt and evaluation of proposals and the issue of service contracts specific to their own business needs.
6. The Contracting Authority will retain overall responsibility for the management of the PFI Contract Review Framework.
7. Any variation to the terms and conditions of this framework must be notified, in advance, to the Contracting Authority.
8. <<participating authority>> shall provide management information to the Contracting Authority on an annual basis including;
 - Total number of contracts awarded by supplier, lot and sub-category.
 - Total level of business expenditure by supplier, lot and sub-category.
 - A record of any failures by suppliers to provide products or services in accordance with the relevant order.

Duration and termination

- This agreement shall commence on the **(insert date)** and shall give <<participating authority>> access until 31st March 2018 the date of expiry of the primary term of the contract.
- The Contracting Authority will notify <<participating authority>> if it intends to extend the PFI Contract Review Framework.

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- If the Contracting Authority extends the term of the access agreement will, unless otherwise agreed in writing, also be renewed for the extended term.

LPP reserves the right to withdraw <<participating authority>> access to the PFI Contract Review Framework at any time where it is apparent that LPP business is being adversely affected by this agreement and/or where the quality of service provided by the suppliers is impacted. In the event of such action being taken, any ongoing current contracts will be honoured.

| | | | |
|-----------------------|---|-----------------------|-----------------------------|
| For and on behalf of: | NHS London Procurement Partnership | For and on behalf of: | <<participating authority>> |
| Signature: | | Signature: | |
| Name: | | Name: | |
| Address: | Ground Floor, 200 Great Dover Street, London, SE1 4YB | Address: | |
| Title: | | Title: | |
| Date: | | Date: | |

6.4 Appendix D – Supplier Profiles

To be provided.