

GOVERNING BOARD			
Date of Meeting	20 January 2021	Agenda Item No	8
Title	Reprocurement of the Non-Emergency Patient Transport Service		
Purpose of Paper	<p>To approve the extension of the above contract for a further two six month periods (30.09.2022 or 31.03.2023).</p> <p>The current contract was extended for a further 6-month period in July 2020. At this time, an amendment notice was published under regulation 72 of the Public Contracts Regulations 2015, due to urgent circumstances that a diligent Contracting Authority could not have foreseen. The justification for extending under this premise was focussed on the impact of Covid-19 on the current contract and associated procurement process. SoEPS would recommend that a further amendment is made to the contract under regulation 72, due to the second wave of the pandemic and the subsequent impact cited above. However, the CCGs must be mindful that other providers could challenge this justification. We would hope that under the current circumstances, challenges to health critical strategic decisions would not be made, however we cannot predicate or guarantee this. Patient transport is not considered a healthcare service, as such any extension would be subject to the full force of the regulations, and any challenge could be directed straight to the high court in order to prevent the CCGs from materially amending the contract.</p> <p>In this instance, providers can challenge for ineffectiveness 30 (+ 7) days from the date the notice is published under Ineffective Remedies. If the extension is challenged, the contract will have to be re-tendered within the existing timescales in order to meet 01/04/2022. We strongly recommend that the revised contract is not entered into/signed off until the 30 (+7) day period has elapsed in order to mitigate the risk of a potential claim for ineffectiveness and/or damages. If the revised contract has been signed a damages claim would usually amount to the claimant(s) loss of profit and overhead contribution.</p> <p>To interpose a legal challenge by a provider it could cost in the region of £25K to £30K in provider's legal costs (per claim) which a judge could order are paid by the CCGs, added to the CCGs own legal costs. A financial penalty can also be imposed by the court for breach of the Procurement Regulations. The amount will depend on the seriousness of and specific circumstances related to the breach (unable to provide an estimate as they are reviewed on a case by case basis).</p> <p>Additional costs will also be incurred by CCGs in defending a claim/court case which will depend on the specific case. If the extension has already been entered into and it has to be cancelled</p>		

	<p>then the provider could claim breach of contract. Costs to be borne by the contracting authority are also staff time in resolving the dispute. There is also a risk of negative publicity.</p> <p>The CCGs must also be mindful that the contract value may not be increased by more than 50%. This threshold is cumulative and must take account of all previous amendments to the contract. Based on the original contract value and taking into account the previous 6-month extension, a further 12 month extension will be within this threshold. However, the CCG must consider this rule if any further changes to the contract are required, as this would significantly increase any risk of challenge.</p> <p>If the decision to extend is challenged, and therefore the procurement needs to continue, the CCGs would be able to manage this with reduced timelines, but to note, there is absolutely no slippage whatsoever.</p> <p>The service specification has been drafted and financial modelling prepared. Should we proceed with the original timelines there will be a final review of finances and activity in order to publish the tender in March 2021 the contract envelope value is based upon pre-Covid 19</p>
<p>Recommendations/ Actions requested</p>	<p><u>Reasons for extension:</u> Due to the global covid pandemic there have been huge inconsistencies in activity and this is impacting on modelling for future demand:</p> <ul style="list-style-type: none"> • There has been a significant increase in discharges in 2020 and the CCG needs to analyse if this is a trend due to covid or new activity. • The long term plan expects a reduction in outpatient appointments by 30%. However, there will be some catch up of appointments post covid and this needs to be factored into the activity modelling. Long covid will impact on demand for outpatient appointments. • Prior to the pandemic, there was an expected increase in renal outpatient appointments. The impact of covid may now change this expected forecast, particularly with the extremely vulnerable and their care needs. • Activity during covid includes the transporting of patients who are suspected or positive covid who may not have been eligible under the normal criteria. • There is a national review of NEPTS taking place; recommendations have been delayed with no defined date; and therefore we are not sighted on the national agenda. • Constant changes to social distancing impacts on service delivery and we are not able to forecast against constant changes. Our current provider is able to flex the service within 24 hours' notice to ensure the safety and care of our current patients using this service. <p>In view of all the above, we are unable to future proof the service for the entire contract until the pandemic has stabilised.</p>

	<p>Financial implications: The Contract envelope for this requirement is :</p> <p>Call handling – Lot 1 is estimated at £288,000 for the first six month extension. This is based on the 2020/21 value as extended to 31.3.2022 and will be subject to annual inflationary and activity based variation. Investment may increase by up to 10% of the 2020/21 baseline or decrease by 10% should demand fall in exceptional circumstances significantly below the current activity. Any future activity will be subject to variation because of any changes to national guidance.</p> <p>The contract value for Lot 2 is estimated at £5.3 million for the first six month extension. This is based on the 2020/21 value as extended to 31.3.2022 and will be subject to annual inflationary and activity based variation. Investment may increase by up to 10% of the 2020/21 baseline or decrease by 10% should demand fall in exceptional circumstances significantly below the current activity. Any future activity will be subject to variation because of any changes to national guidance.</p> <p>CQUIN would be based on up to 1.25% uplift to the contract value and only accessible upon successful performance of the Contract KPIs.</p>
<p>Engagement Activities – Clinical, Stakeholder and Public/Patient</p>	<ul style="list-style-type: none"> • NHS E national NEPTS review – whilst an update was expected November 2020 we are informed this will not be until the earliest in February 2022. <p>Feedback to shape the service specification:</p> <ul style="list-style-type: none"> • Renal Department monthly reviews • 10 September 2019 - workshop with current transport provider / four acutes • 12 November 2019 – review meeting / agreement of next steps • Feedback has been sought from Primary care, the Diabetic Screening clinic, outpatient clinics, acutes, the renal department and renal patients to inform the service • Acutes and outpatients have also been collating feedback from patients. • The lead commissioner and quality lead also completed a non-emergency patient transport service shift, working alongside the patient transport crew. • Each hospital liaison officers provided feedback via their weekly / monthly catch up meetings. • Performance is reviewed at monthly contract review meetings • Monthly review meetings - Renal Department, PHU (clinicians, lead nurses, service managers, Kidney Care UK, patient representatives, transport providers , commissioners of the service) • Weekly calls with the current transport provider and stakeholders –

	<p>acutes and community providers</p> <ul style="list-style-type: none"> • January 2020 an online patient survey by CCG • 23 January 2020 the lead commissioner met with Caroline Young, Kidney Care UK, • 19 February 2020 lead commissioner met with Renal Patient Representatives (Gill Schofield, Richard West).
Item previously considered at	
Potential Conflicts of Interests for Board Members	
Author	Debra Purdy / Andrew Wood
Sponsoring member	<p>Andrew Wood Director of Strategic Finance Hampshire and Isle of Wight Partnership of Clinical Commissioning Groups</p>
Date of Paper	15 January 2021