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Ms Janet Davies AM
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Pages	1 of 7

Dear Chair,

Correspondence from Dr Thompson in respect of the Contract for GP Out-Of-Hours Services in Cardiff

Thank you for your letter of 18th October 2005 seeking advice on a letter sent to you by Dr Thompson in respect of the above report, which the Audit Committee will consider on 10th November.

Whilst Dr Thompson's letter largely welcomed my report on the contract for GP out-of-hours services in Cardiff, he disagreed with my conclusion that the tender process was robust and fair, indicating his belief that the tender process was unfair and invalid for the following reasons:

1. information presented during the evaluation process was inaccurate and misleading, and the alleged multinational experience of CSUK was critical to the decision to award the contract to CSUK;
2. failure to evaluate the credentials of one tendering organisation, whilst having full access to information about the other, including accounts and complaints, is unfair practice; and
3. the LHB changed the tender specification after the second tender evaluation, to the disadvantage of one tendering organisation.

Before responding to each of these issues in turn, I think that it would be helpful if I explained the basis and nature of my overall conclusion on the tender process. At the end of my letter I also deal with two more general points about my investigation, raised by Dr Thompson.

My conclusion that the tender process was "robust and fair"

Dr Thompson says 'the report states in no uncertain terms that the tender process was 'robust and fair'. Those words are not an accurate summary of my conclusions on the tender process, which qualify the term "robust and fair" with the important word "overall" and are followed, in the heading for Part 1 of the report, by an additional clause outlining the deficiencies in the LHB's management of key risks surrounding the award of the contract to a new company such as CSUK.

As you know, it is the usual practice in a report such as this from the Auditor General for the language to be measured. In that context the use of the word "deficiencies" is very strong, reflecting the seriousness with which I viewed the weaknesses in the LHB's risk management.

I reached my conclusion about the tender process on the basis that:

a. a sub-group of the LHB General Medical Services Project Board, which included independent stakeholder representation, developed the service specification (paragraph 1.3 of my report);

b. the LHB openly advertised for tenders in the Health Services Journal (paragraph 1.3);

c. two evaluation panels, which included independent stakeholder representatives, assessed and scored the bids against clear non-financial criteria, before considering financial and affordability issues (paragraphs 1.3-1.4);

d. the CSUK bid scored 19 per cent higher than the Consortium's bid against these non-financial criteria, and was £1.2 million cheaper (paragraphs 1.5-1.6);

e. despite the confusion and disagreement about the meaning of the term 'integrated' within the service specification, the LHB took steps to include the Consortium in the evaluation process after the Consortium refused to recost its bid and to compare the bids on the basis of a common activity profile (paragraph 1.7); and

f. I agreed with the findings of an internal review of the tender process by the Welsh Assembly Government regional office, which concluded that "it would not appear that...the process followed by the LHB in the awarding of this contract was flawed in any material way" (paragraph 1.2).

However, following the selection of CSUK as the preferred bidder, there were deficiencies in the LHB's management of key risks associated with the decision to award the contract to a brand new company, particularly the process of due diligence and background checks. These deficiencies are set out specifically in paragraphs 1.12-1.19.

Dr Thompson argues that the tender process cannot be considered finalised until background checks have been made. I agree. Although the background checks fell short of the standard one would expect, I do not believe that that vitiated the process of bid evaluation. My report makes very clear that there is no reason why organisations should not contract with a new company when it is best placed to provide a service, but that there are inherent risks that need to be managed (paragraph 1.13). I therefore concluded that, while the tender process was robust and fair overall, there were deficiencies in the risk management process that supported the contract award.

Information presented during the evaluation process was inaccurate and misleading - the alleged multinational experience of CSUK was critical to the decision to award the contract

My staff reviewed the information provided by CSUK at the evaluation panels and found no evidence that it was inaccurate or misleading. In its presentation, CSUK's slides showed the Clinical Solutions Group logo at the top, but also contained a detailed management structure of CSUK. The presentation said that the Clinical Solutions Group software was used by the NHS, which NHS Wales subsequently confirmed to be true. Other information supplied detailed Clinical Solutions Group's clinical decision making software and its use in various countries. We found that Clinical Solutions Group software was indeed used in these countries, although Clinical Solutions Group did not provide out-of-hours services directly in those countries (see paragraph 1.29 of my report). At the time of the presentation, CSUK had a contractual relationship with Clinical Solutions Group enabling it to sell Clinical Solutions Group software under a reseller's agreement, which gave CSUK the right to use the logo and other stationery.

My staff examined the presentation and supporting literature that CSUK used at the evaluation panels. These make no reference to Clinical Solutions Group having experience of providing out of hours services, although there is reference to the previous experience of the staff CSUK proposed to deploy in Cardiff in providing out of hours services. We saw no evidence that CSUK claimed to be a subsidiary of the Clinical Solutions Group. A diagram in the presentation shows that there were a number of separate "Clinical Solutions" companies in different countries, of which CSUK was one example. Although the diagram does not explicitly spell out the legal nature of the relationship through a reseller's agreement, the presentation makes clear that CSUK had its own structure, Board of Directors, Chief Executive and staff, quite separate from Clinical Solutions Group.

My staff reviewed the LHB's formal notes of the evaluation panel, which summarise the assessments of each panel member. We also spoke to three members of the panel during the course of our investigation and subsequently spoke to the vice-chair of the LHB during the process of clearing my report. None of these records or interviews suggested that there was a need to carry out any further interviews or to examine the notes of individual panel members. The summarised notes of the evaluation panel correctly record the bidder as CSUK and provide no evidence to suggest that international experience was a material factor in the assessment of bids. Indeed, although the summarised notes refer to CSUK's lack of track record in the UK, which clearly suggests that the panel was aware of CSUK's lack of experience, the experience of bidders was not an explicit criterion in the assessment of bids.

Although my staff did not examine the handwritten notes of evaluation panel members referred to in the recent S4C programme, *Taro 9,* and in Dr Thompson's letter, they have now seen these notes and I am satisfied that they contain nothing that should cause me to question the facts and conclusions set out in my report. All members of the panel, besides Dr Watkins, who is referred to in Dr Thompson's letter, scored the Consortium bid more highly than the CSUK bid against the non-financial criteria. Both the LHB's summarised notes and the handwritten notes of individual panel members, from which the summarised notes were drawn, make it clear that the key considerations in evaluating the bids were the proposed models of service delivery, the attitude of the senior management teams and issues relating to clinical governance.

It is true that once CSUK had been selected as the preferred bidder, the LHB asked CSUK to provide a parent company guarantee. This request suggests that there was at this time a misapprehension about the precise nature of CSUK's contractual relationship with Clinical Solutions Group. However, CSUK wrote back to the LHB saying that it had made clear at the evaluation panel that it was a stand alone company, that Clinical Solutions Group was not its parent company and therefore could not provide a parent company guarantee. Consequently, LHB officials were aware that CSUK was a separate, standalone company when they signed the contract with CSUK in September 2004. Paragraphs 1.24 to 1.27 of my report identify the steps taken by the LHB to manage the risks associated with the absence of a parent company guarantee and CSUK's lack of a financial track record, and record my own view that there were deficiencies in the way the LHB managed these risks.

Failure to evaluate the credentials of one tendering organisation whilst having full access to information about the other, including accounts and complaints, is unfair practice

The report highlights the deficiencies in the LHB's background checks into CSUK as a new company. However, where a new organisation is bidding against a more experienced organisation, the organisation letting the contract must review the fuller information available from the more experienced organisation and seek to obtain the sort of information about the new company, outlined in paragraphs 1.15 to 1.19 of my report, which can help it assure itself that service and financial capacity risks will be appropriately managed. My staff found no evidence that information about the Consortium's complaints or financial position disadvantaged it relative to CSUK. By the time the LHB carried out its due diligence checks, the Consortium's bid had already received lower evaluation panel scores than CSUK.

The LHB changed the tender specification after the tender evaluation to the disadvantage of one tendering organisation

During study fieldwork my staff discussed the issue of the service specification with former members of the Consortium and Cardiff LHB. My report confirms that the LHB asked both the Consortium and CSUK to resubmit proposals based on a common activity profile because of differences in the bidders' interpretation of the service specification (paragraphs 1.7-1.8). In its internal review of the

tender process, the Welsh Assembly Government's regional director concluded that there had not been an unfair change in the service specification and that the Consortium's bid was over and above the LHB's requirements, being based on higher activity than the profile in the service specification. I agreed with the conclusions of the internal review by the Welsh Assembly Government's regional director that, in future, there needed to be greater effort at an early stage to resolve any misunderstandings over the service specification. My report shows that the LHB itself carried out an exercise to re-cost the Consortium bid on the basis of a common activity profile, which is further evidence that the LHB took steps to ensure that it could consider both bids on their financial merits and that neither would be disadvantaged. I am satisfied that the LHB treated both bidders equally in dealing with the misunderstanding of the specification, but that the LHB should have done more to ensure that both bidders clearly understood what it meant by the term 'integrated'.

General points

The submission did not ask the Auditor General to examine the tender process.

Dr Thompson's letter claims that the submission did not ask me to examine the tender process. I do not understand the basis of that claim: the original submission of 8 February 2005 from Dr Pierrepoint, chair of the Cardiff Local Medical Committee, explicitly stated that "the tender process adopted by Cardiff LHB might also be flawed and should be investigated by the appropriate authority".

It is, of course, entirely for me to decide the scope of any examination that I perform, so it is hardly relevant to debate whether or not I was asked to investigate the tender process. As it happens I did agree with Dr Pierrepoint's suggestion, and did investigate the tender process.

I must also add that the Local Medical Committee agreed the factual accuracy of paragraph 3 of the report with me prior to publication, which says that the Committee wrote to me, expressing the view that the tender process was flawed.

At no stage were the other agencies involved in the tender process asked for information or opinion

I am surprised that Dr Thompson alleges that my staff did not ask for information or opinion from other agencies involved in the tender process. There seemed little

point in meeting the two bidders who were not short-listed, nor did I consider it necessary to meet CSUK staff to discuss the tender process. My staff did, however, meet LMC members, who had previously been part of the Cardiff Integrated Care Consortium, on 7 April 2005. That meeting included discussion of issues raised in the report, particularly:

a) the baseline CADOC data which the LHB used to inform its service specification;

b) the Consortium's understanding of the service specification and the differing interpretations of the term "integrated"; and

c) how the Consortium was asked to revise its bid after the second evaluation panel.

I trust that this is helpful in addressing the points raised in Dr Thompson's letter in advance of the Committee's consideration of my report on 10 November.

Jeremy Colman
Auditor General for Wales