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Response Due: 26 June 2015

Dear Mr Hallworth

Freedom of Information Act 2000 – Request for Information

We are pleased to respond to your request for information and our response is set out below:

1/2. Has the contract been placed or provisionally placed? Who was the contract placed with or provisionally placed with?

Following the evaluation of bids, the CCG's Governing Body made a decision on 13 May 2015, to award the contract to a preferred bidder. It further agreed that the other bidder should be approved as a reserve bidder with whom the CCG could re-engage should a contractual agreement with the preferred bidder not be reached. The CCG has not yet entered into a contract.

In respect of the identity of the preferred bidder and reserve bidder, the CCG can confirm that it does hold this information however, for the reasons set out below, we are not providing this information.

Section 22 of the Freedom of Information Act provides a qualified exemption from disclosure if, at the time the public authority receives a request for information:

- The public authority holds it with a view to its publication.
- The public authority or another person intends to publish the information at some future date, whether determined or not; and
- In all the circumstances it is reasonable to withhold the information prior to publication.

The CCG has at all material times intended to publish who the contract is placed with, once it enters into the contract, through the publication of a contract award notice in accordance with applicable procurement rules. The CCG also publishes a Contracts Register on its website, which details all current contracts. The CCG therefore had a settled intention to publish this information in future at the time your request was received and continues to do so.

The CCG is of the view that, in all of the circumstances, it is reasonable to withhold the information prior to publication. We consider it to be sensible, in line with accepted procurement practice and fair to all concerned to publish this information in accordance with the procedure and timetable adopted for this procurement. We consider this to be particularly important in circumstances where one of the bidders has raised concerns and it is proper that the CCG carefully considers these concerns before issuing the contract award notice.

As the section 22 exemption is qualified, the CCG has also considered whether it is in the public interest for this exemption to be applied. The CCG has considered the strong public interest in transparency and accountability within the NHS. However, the CCG considers that, in this case, this is outweighed by the public interest that the procedure and timetable adopted for this procurement is followed and that premature announcements are not made while the process is "live" due to concerns being raised by one of the bidders remaining under consideration. We also believe it to be in the public interest that the bidders have the opportunity to communicate the final result of the procurement with their staff before a public announcement is made.

The CCG has therefore concluded that it is in the public interest to withhold this information under section 22.

3. The final total value of the contract

The estimated value of the contract over the period is £238.4m (NHS North Kirklees CCG £99m, NHS Greater Huddersfield CCG £139.4m).

4. The bid values of both bidders

We can confirm that we hold this information. However, for the reasons set out below, we are not providing this information.

Section 41 exemption for information provided in confidence

Section 41 of the Freedom of Information Act 2000 provides an absolute exemption from disclosure if information was obtained by the public authority from any other person (including another public authority) the disclosure of which would constitute an actionable breach of confidence. We are of the view that bids submitted as part of a competitive procurement procedure are submitted by bidders with a legitimate expectation of confidence. This is particularly the case where the information is commercially sensitive, as in relation to bid values (see below). In such circumstances, where disclosure could cause commercial detriment to the bidders, action for breach of confidence is a real possibility. We therefore consider that the section 41 exemption applies to this information.

Section 43 exemption for commercially sensitive information

Section 43 of the Freedom of Information Act 2000 provides a qualified exemption from disclosure where disclosure would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). The CCG is of the view that this information would, or would be likely, to prejudice the commercial interests of both the bidders for the service and those of the CCG.

Commissioners of health services, such as the CCG, are under a legal obligation to procure contracts through open competitive tenders. There can be at any one time a number of impending and on-going procurement exercises taking place for such services within both the NHS as a whole and the local health economy. The market for such services is highly competitive and current. In this context, the bidders' relevant commercial interests are their ability to participate competitively in the commissioning of health services and the CCG's relevant commercial interest is its ability to carry out efficient and economical procurement exercises in order to secure health services for the local population.

The CCG has carefully applied the statutory test of whether disclosure of this information would, or would be likely to, prejudice bidders' and the CCG's commercial interests. The CCG considers that making bidders' pricing proposals public would be likely to enable competitors to undercut such proposals. As a result of the above, the CCG considers that disclosure of such information would provide competitors with an unfair competitive advantage and undermine bidders' ability to compete on an equal footing in the market for such services or the wider health economy. Ultimately, this would be likely to reduce the likelihood of the bidders succeeding in future procurements for services of this type and would therefore be likely to prejudice the bidders' commercial interests. This would be likely to have the knock-on effect of prejudicing future tenders for such services by the CCG and thus would be likely to prejudice the CCGs' commercial interests also.

As the section 43 exemption is qualified, the CCG has also considered whether it is in the public interest for this exemption to be applied. The CCG has considered the strong public interest in transparency and accountability within the NHS. However, the CCG considers that, in this case, this is outweighed by the public interest that the bidders'/CCG's commercial interests should not be unduly harmed and that there should be a fair, competitive and buoyant market for public sector contracts so as to secure commissioners best value in the expenditure of public funds.

The CCG has therefore concluded that it is in the public interest to withhold this information under section 43.

5. The period of the contract.

The contract term will be 5 years with a two year extension available, thus allowing for a total of 7 years.

6. Confirm if any objection has been made by either bidder.

We can confirm that one of the bidders has raised a number of concerns and requested further information but we are not aware of a formal challenge having been issued.

7. If an objection has been made, who the objecting bidder is.

We confirm that we hold this information in relation to the concerns raised by one of the bidders. However for the reasons already set out in response to question 4, and expanded upon below, we consider this information to be exempt under sections 22 and 41. We are therefore not providing this information.

In relation to section 22, we consider that providing this information at this time would reveal the identities of both the preferred and reserved bidder. This information is intended for future publication and is therefore exempt under section 22 for the reasons set out in response to question 1.

In relation to section 41, we consider the concerns to have been made in confidence as part of the bidding process described in our response to question 4. This information is therefore also exempt under section 41.

8. The reason for the objection.

We confirm that we hold this information in relation to the concerns raised by one of the bidders. However, for the same reasons set out in response to question 7, above, we consider this information to be exempt under section 41. This is because the concerns were raised in confidence as part of the bidding process described in response to question 4. This information is therefore not being provided.

9. Who or which organisation will be carrying out any required scrutinizing if an objection was made?

As the concerns are not a formal challenge, it is currently being considered by Greater Huddersfield CCG and North Kirklees CCG.

10. If any cost will be associated to the scrutinizing.

It is likely that there will be costs associated with this matter. However, the scrutiny of the concerns is being handled by CCG staff. The CCG does not hold any information in relation to time spent by staff on this particular matter, the pro rata cost of such staff time or the level of any external costs or disbursements associated with this matter.

I trust that this information answers your original request. However if you are not happy with our response or the service you have received in relation to your request and wish to make a complaint or request an internal review of our decision you should write to the Governance & Corporate Manager, Greater Huddersfield Clinical Commissioning Group, Broad Lea House, Bradley Business Park, Dyson Wood Way, Bradley, Huddersfield HD2 1GZ, quoting the reference number above.

If you are not content with the outcome of the complaint or internal review with regards to this Freedom of Information request, you have the right to appeal to the Information Commissioner under Section 50 of the Freedom of Information Act. The Information Commissioner will not investigate your case unless you have exhausted our complaints procedure. The Information Commissioner can be contacted at: The Information Commissioners Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Re-Use of Public Sector Information

If you wish to re-use the information you have requested, in whole or in part, please write to the Governance & Corporate Manager, Greater Huddersfield Clinical Commissioning Group, Broad Lea House, Bradley Business Park, Dyson Wood Way, Bradley, Huddersfield HD2 1GZ, quoting the reference number above, stating the purpose(s) you wish to re-use the information for. You will receive a response within 20 working days of receiving your request with any conditions and charges that relate to the re-use of the information. These will be determined in line with the 'Re-use of Public Sector Information Regulations 2005 (SI 2005 No. 1515).

Yours sincerely

A handwritten signature in blue ink that reads "A. Stanley". The signature is written in a cursive style with a small dot at the end.

FOI Team