SCOTTISH CAPITAL INVESTMENT MANUAL

NPD~~PPP~~ Guide–: Section 1 of 4

Preparing for NPD~~PPP~~ Procurement

17 December 2009

Commented [IM1]: Consider as noted – 'section 1 of 4'

Commented [IM2]: This date would have to be aligned with date of acceptance relative to proposed ammendments

Appendix 1

Preparing for NPD~~PPP~~ procurement

Contents

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

1. Introduction

1.1 This section of the guidance sets out the basis upon which schemes in the NHS in Scotland should be selected to procure under NPD (Non-Profit Distributing)~~Public Private Partnerships (PPP)~~ and what preparations the public sector should undertake prior to commencing the formal procurement process. It must be read in conjunction with the SCIM Introduction, Approvals and the Business Case Guide section of the Scottish Capital Investment Manual which sets out the process for appraising and developing proposals for capital investment in NHSScotland whether publicly or privately funded.

~~PPP~~ NPD refers to a partnership between public bodies, local authorities or central government, and private companies to deliver a public project or service. ~~PPPs~~ NPD projects typically involve the joint ownership of a special purpose vehicle (~~established~~SPV) established under company law. NPDs~~—~~, therefore, in former PFI / PPP terms, ~~are~~ are essentially non-profit distributing ~~PPP~~PPP's, ~~—~~further details of which can be found in Part 3.

1.2 The practical guidance in this section covers:

- overview of the business case process
- roles and responsibilities of the public sector team;
- skills, training and where to turn for help;
- the selection and management of advisers;
- developing project scope and the output specification;
- determining the procurement structure;
- obtaining planning permission;
- openness and consultation;
- SE/STUC Staffing protocol;
- monitoring milestones.

1.3 These tasks must be completed, in addition to developing the Outline Business Case (OBC) and receiving OBC approval before the formal procurement begins. Section 2 – From OJEU to Contract Award of the Scottish Capital Investment Manual outlines the next steps, which begin with advertising the scheme in the Official Journal of the European Union (OJEU).

2. Overview of the Business Case Process

Introduction

2.1 This guidance is concerned with schemes ~~which~~ that may be suitable for private sector design, construction and funding.

Overview

2.2 The strategic context for any scheme must be established at the outset through the appropriate Local Delivery Plan and should be consistent with its overarching objectives. Guidance on establishing the strategic context is set out in the Business Case Guide of the Scottish Capital Investment Manual. The objectives at this point are to:

- identify the current provision of health services;
- identify the required provision;
- make the case for change.

2.3 The value, type of scheme to be procured and delegated authority limits determines the business case process that should be followed. Delegated limits are covered in the Approvals guide. The process will include:

- the Initial Agreement (IA),
- Outline Business Case (OBC); and
- the Full Business Case (FBC).

The exception is where ~~PPP~~ NPD is being tested, in which case the Standard Business Case must be followed by a Full Business Case and a Full Business Case Addendum (FBC(A)). The process is outlined in figures 1 and 2 overleaf and explained in more detail at **Appendix 1a** of this section.

2.4 The development of the IA, OBC, FBC and FBC(A) is explained in the Business Case Guide.

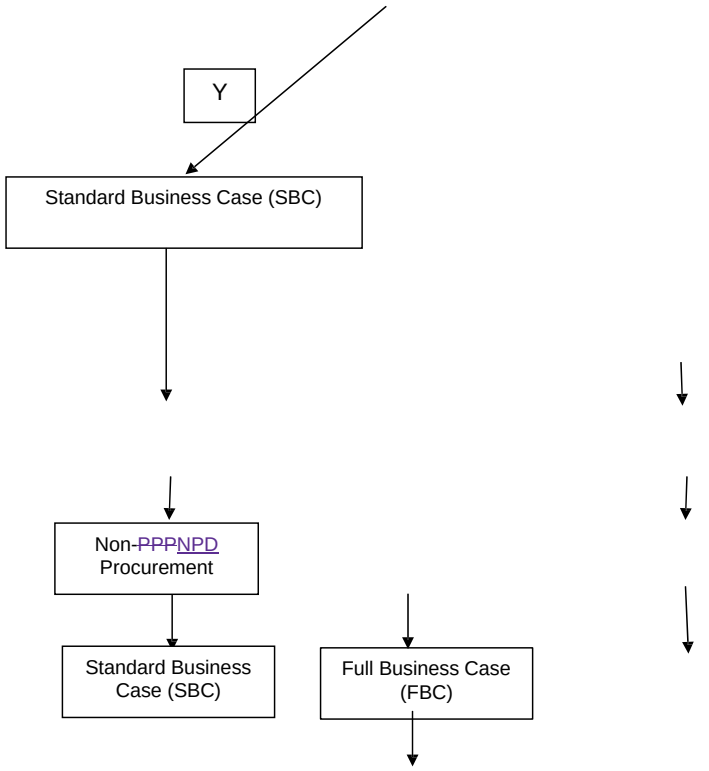
The requirement to consider ~~PPP~~NPD

2.5 All procurements in the NHS, which would involve capital expenditure, should ~~normally~~ typically consider ~~PPP~~ NPD as a potential procurement method. Generally, ~~PPP~~ NPD is suited for projects with capital expenditure requirements in excess of £20m, however, projects with capital expenditure of between £5m and £20m may ~~have previously~~ demonstrate~~d~~ value for money under ~~PPP~~NPD, and projects of this size should be tested on a ~~case by case~~case-by-case basis. Where an NHSScotland Body considers that a project is not appropriate for procurement under ~~PPP~~ NPD the NHSScotland Body should fully explain this in the OBC.

2.6 The role of the CIG is explained more fully in **Chapter 3** of this section. **Appendix 2a** of this section contains a tool for conducting a formal assessment of whether a project is likely to be viable as an ~~PPP~~ NPD scheme. In addition, there may be circumstances when the outcome of the assessment is borderline or there are unique features ~~which~~ that lead to choices in procuring the project. In such circumstances an informal market sounding exercise may be appropriate, together with a review of the market and evidence from other similar projects. Appendix 2b of this section sets out a model for conducting an informal market sounding exercise. The CIG will determine whether or not the project should be exempt from the requirement to consider ~~PPP~~NPD. Each project will be considered on its own merits and will not necessarily set a precedent for

later schemes.

Fig 1: NHS Board/Special Health Board Process



2.6 Those NHS bodies with delegated responsibility can determine for themselves whether or not to consider these projects for ~~PPP~~ NPD but ought to be able to justify their decisions, particularly in the context of their duty to achieve value for money. If responsibility has not yet been delegated then all Initial Agreements (IA) and Outline Business Cases (OBC) for projects other than IM&T projects in excess of £1.5m must receive approval from the SGHFD before continuing. The Approval limits are outlined at **Appendix 1b** of this section.

Approval and publication

2.7 Current arrangements, taking into consideration Freedom of Information provisions, are that all Business Cases (and Addendum where the procurement is done through ~~PPP~~NPD) and the contract must be made publicly available within a month of approval being given by CIG or financial close. This is discussed further in **Chapter 9, Openness and Public Involvement**, of this section.

Further information

Scottish Capital Investment Manual, Business Case Guide

3. Roles and responsibilities of the public sector team

Introduction

31 The best private sector ~~PPP~~ NPD bidders are likely to be highly organised and very purposeful. Public sector teams need to be at least as well prepared in order to negotiate effectively and arrive at an optimal solution. Arrangements will have been considered and a shadow project team may have been set up for the drafting of the Initial Agreement (IA). But to avoid unnecessary expenditure, preparation for procurement normally only begins in earnest once the IA is approved.

32 The starting point is to be clear about tasks, roles, responsibilities and in the context of the overall programme (i.e. who is responsible for what between the members of the public sector team, including advisers)? There may be some overlap in functions but specific responsibilities for performing tasks must be clearly allocated. Local circumstances will vary but typically, the roles and responsibilities for a major ~~PPP~~ NPD procurement is broadly as described in **Figure 3**. One general rule is that advisers should advise, not lead or negotiate, except on very specific, closely bounded tasks.

3.3 NHS bodies should also consider the relevant guidance in the Project Organisation section of this guidance. Key members of the project team will be involved in negotiations with bidders and the NHSScotland body should consider whether training courses (such as negotiation skills) for the team as a whole would be useful.

3.4 Various publications and sources of guidance are available, which deal with this important area, in particular the OGC website which should be referred to pre-procurement. The SGHD Key Stage Review (pre OJEU) requires NHS bodies to confirm that the correct governance and project management structures are in place for the ~~PPP~~ NPD procurement.

4. Skills, training and where to turn for help for delivering an ~~PPP~~ NPD project

Introduction

4.1 ~~PPP~~ NPD transactions can raise some unfamiliar and complex issues. Although the project team will be able to deal with many of them, they will probably not have the breadth of expertise to address them all. Relevant guidance and advice from other public sector bodies can help to fill the skills gap. In addition, the NHSScotland body will be likely to require the assistance of some external advisers, although the intention is, ~~that~~ as ~~PPP~~ NPD becomes more widespread in the NHS, more of the expertise should come from within the service.

4.2 One of the main lessons to emerge from previous projects is that it is important to "know thy team" - only with a good understanding of the project team's strengths and weaknesses can Chief Executives and Project Directors make informed decisions about what additional expertise is required and at what stage. For example, some NHS bodies will need more assistance with the evaluation of risks in the deal than others and so on.

4.3 The project leaders must decide how best to address any skills gaps. The first port of call is to look elsewhere within the NHSScotland body - for example, non-executive directors may have some skills and experience which can be of direct benefit or alternatively the NHSScotland body could buddy with another NHS Organisation who has been through the NPD process~~it~~.

Skills within the public sector team

4.4 NHS bodies should consider the time that will be needed from employees as the scheme develops, for example in participating in evaluation teams. Suitable arrangements should be put in hand to provide cover for employees' daily activities as appropriate.

4.5 NHS bodies should carry out a formal assessment of the individual requirements of a role against the competencies of those holding the position to identify the gaps. A Competency Framework to assist with this is available. The continued strength and viability of their team should be assessed on a regular basis. Teams should identify which skills are available in-house and which skills are to be brought in from the private sector or elsewhere in the NHS.

4.6 Suggested skill requirements include:

- Healthcare Strategic Planning;
- Capacity Modelling;
- Capital Investment Principles;
- Project Management;
- Facility Design & Construction;
- Facilities Management;
- NHS & Corporate Finance;
- Managing NPD~~PPP/PFI~~;
- Contract Management;

- HR Planning.

Guidance and advice

4.7 NHS bodies should also make use of the guidance now available on ~~PPP~~ NPD procurement (e.g. SG Infrastructure Investments Unit, SGHD Capital Planning and Investment website, OGC, Partnerships UK, DoH ~~PPP~~NPD website). In addition to the material in this section, other sections of the Scottish Capital Investment Manual offer general advice on procurement (~~,~~ e.g. business case preparation, output specification drafting, etc). The vast majority of ~~PPP~~ NPD issues are not unique to health but typically arise across the entire public sector. It follows, therefore, ~~that~~ generic guidance on ~~PPP~~ NPD applies to the NHS as it does to most other sectors (e.g. Colleges, etc). A series of topic specific ~~PPP~~ NPD guidance booklets has been produced by Scottish Government Infrastructure Investments Unit and these are cross referenced in this guidance where appropriate.

Commented [IM3]: This would logically need to be cross-checked & aligned accordingly

4.8 Advice is also available from the SGHD Major Projects Advisor at the and on the SGHD Capital Planning and Investment website.

Training

4.9 Training forms a key part of the preparation of the public sector team for the ~~PPP~~ NPD procurement process. This can include both generalist ~~courses such~~courses such as negotiation skills and investment appraisal, as well as ~~and PPP~~NPD specific courses such as understanding the ~~PPP~~ NPD procurement process and developing payment mechanisms.

4.10 SG Capital Planning and Asset Management can provide information on available training and training programmes, with ~~and~~ funding ~~is~~ available to support training needs identified within projects via a structured skills gap analysis. Project Directors of current projects may submit bids for funding for local initiatives or for funds to enable eligible staff to benefit from the central provision of training. Various external bodies host and facilitate ~~PPP~~ NPD training. This can usefully complement the sources available from websites detailed above.

5. The selection and management of advisers

Introduction

5.1 The proper use of advisers can be a key factor in timely and successful ~~PPP~~ NPD procurement. Failure to appoint the right advisers or to manage them correctly can have an adverse impact on an ~~PPP~~ NPD scheme. External advisers are costly and poor selection/management of this resource ~~could~~ has the potential to be extremely wasteful of public funds.

5.2 The purpose of this chapter is to provide a number of recommendations as to:

- the thought processes that an NHSScotland body should go through in deciding when to appoint advisers;
- the kind of advisers an NHSScotland body should consider appointing at the different stages of ~~the~~ a given NPD project;
- the most appropriate stage within the NPD procurement process at which the appointments should be made;
- the management structures that should be put in place to ensure ~~that~~ the NHSScotland body gets the best out of its advisers.

Appointing an external adviser

5.3 In deciding whether to appoint external advisers, NHS bodies should consider the following:

- the skills already available in-house or those which may be developed through training/mentoring (see **Chapter 5** of this section);
- the help available elsewhere within the public sector (~~—~~eg from guidance, PFCU, etc);
- the complexity and technical requirements of the NPD project.

5.4 For a given ~~PPP~~ NPD project, skills may be broadly subdivided into:

- technical expertise: legal, financial, design and construction, insurance, FM, property or other technical skills (e.g. equipment, ICT, ~~-~~etc);
- ~~PPP~~ NPD expertise: knowledge of the process from other projects and experience of issues and their resolution;
- market knowledge: understanding of how to present the project, who would be interested, what issues the market will be prepared to negotiate on;
- sector knowledge: understanding of the health care environment and future developments, including knowledge of where risks, opportunities and costs lie;
- presentation skills: assistance in the promotion of the projects, especially where this involves the active promotion of their market appeal.

When to appoint advisers

5.5 When there are gaps identified in the in-house expertise available, NHS bodies should consider using appropriate professional advisers. The stage at which

advisers should be appointed and the nature of their involvement should always be determined by where their input and experience can add value to the procurement process and in practice will vary from one project to another.

Typically, advisers have been appointed at the following stages:

- healthcare advisers: when setting the strategic context for the scheme and where appropriate in the preparation of the Outline and Full Business Cases;
- technical and financial advisers: to assist in the development of the Outline Business Case and related areas before OJEU and thereafter working through to financial close;
- technical advisers: to assist in preparing the OBC, ITPD and output specifications, in the evaluation of bids, costing and deliverability of participants' design solutions and in the monitoring and implementation of the contract;
- legal advisers: to work through from OJEU to financial close.

5.6 There is, inevitably, a balance to be struck in the timing of appointments. Early appointment of advisers increases their familiarity and involvement with the project and draws on ~~PPP~~ NPD experience quickly. It may also provide opportunities for advisers to identify potential problems early and to avoid time being spent "firefighting" later on.

5.7 Seeking appropriate advice early should not increase costs overall provided that advisers are properly managed. Indeed, it may well avoid time consuming and costly negotiation later in the process. Objectives and work programmes for advisers being appointed when the scheme is at an embryonic stage should be as tightly defined as possible. For example, when scheme options are being considered, the NHSScotland body may wish to obtain advice as to which of them is best suited to ~~PPP~~ NPD especially for any ~~evolving PPP structures such as NPD~~related structures that are considered not to be the norm. Under such circumstances, it may prove to be useful for a highly focused meeting to be arranged with advisers, which ~~. This~~ could be held at comparatively little cost when considered in conjunction with what could be gained~~.~~

5.8 Delaying the appointment of advisers until too late in the process can limit the extent to which the adviser can add value and lead to later expense and ~~a~~ likely sub~~-~~optimal deal.

5.9 However advisers are appointed and regardless of their nominal role, the prime responsibility for scheme delivery remains with the NHSScotland body. The NHSScotland body ~~can not~~cannot abdicate this responsibility.

Steps for appointing advisors

5.10 The following steps should be taken when appointing advisors:

- Clarify scope of works for each advisor / discipline;
- Work up draft Tender Requirements for advisory disciplines;
- Issue OJEU advert (NB. unless because of exceptional services an OJEU advertisement is not required);
- Issue standard NPD Pre~~-~~Qualification Questionnaire (PQQ) to interested parties along with draft Invitation to Tender (ITT). (NB. The draft ITT is ~~for advisors~~for advisors to comment on pre-tender);
- Agree PQQ evaluation procedures, methodology, scoring and individuals;
- Receive and evaluation of PQQs using evaluation documents/

spreadsheet.

- Shortlist tenderers. Note that PQQ short-listing scores are discarded after short-listing and play no further part in evaluation;

- Issue final ITT (i.e. after it has been updated for any comments received in the PQQ period) to short-listed tenderers along with dates and arrangements for return of tenders. Include a potential ~~date for~~date for interviews;

- Agree ITT evaluation procedures, methodology, scoring and individuals;

- Open tenders (NB. ensuring compliance with standing financial instructions). Evaluate tenders (NB. at this stage, it may be possible to dispense with one or more tenderers depending on how many shortlisted). If required, request clarifications from tenderers and reiterate as necessary until level playing field for comparisons is achieved;

- Interview short-listed tenderers (sample questions attached);

- Evaluate advisors immediately post interview using spreadsheet;

- If required, carry out further clarifications with tenderers and reiterate as necessary until level playing field for comparisons is achieved;

- Unless you have fully delegated authority, recommend appointment of first ranked tenderer to Chief Executive or appropriate committee for formal approval;

- Inform successful tenderer and commence agreeing contract / appointment terms;

- Do not inform unsuccessful tenderer until ten days after initial award of contract (see Scottish Procurement Policy Note SPPN (06) 2005 dated 17 June 2005); and

- Carry out debriefing of tenderers as necessary.

Formatted: Bullets and Numbering

5.11 In order to help NHS Bodies with the appointment of advisors Health Facilities Scotland has produced a range of standard documents as outlined in the following paragraphs.

a) **Standard PQQ for all disciplines** – this is available on the Health Facilities Scotland website. It provides an outline of the ~~structure which~~structure, which should be adopted to appoint technical, financial and legal advisors. Each NHSScotland body will be required to review it to ensure it ties into the particular skills they require for their project.

b) **PQQ evaluation template** (NB. with indicative weightings) – this provides a template evaluation framework to facilitate the short-listing of advisors. The weightings will require to be confirmed by the NHSScotland body prior to issue of the Information Memorandum and Pre-qualification Questionnaire. This is available on the Health Facilities Scotland website.

Commented [IM4]: Consider including a hyperlink here to noted location

c) Draft Invitation to Tenders (ITTs) for financial, technical and legal – the draft ITTs will require to be tailored to reflect the specific tasks required of the advisors and the evaluation process the NHSScotland body will adopt for example, in relation to weighting evaluation criteria. They will also need to provide project specific information. Copies of the ITTs ~~are available~~are available on the Health Facilities Scotland website. This is supplemented by an ITT evaluation spreadsheet which is available on the Health Facilities Scotland website and can be used to assist in recording the results of the evaluation of the tenders

prior to inviting short-listed participants to interview.

d) Sample interview questions for financial, technical and legal – the questions provide a core set of generic ~~questions which~~questions, which may be useful when interviewing advisors prior to appointment. These will be supplemented with specific question arising from the advisors tenders and reflecting the specific nature of the scheme. This is available on the Health Facilities Scotland website.

e) Interview evaluation spreadsheet for all disciplines (NB. with indicative weightings). This will need to be tailored to reflect the specific evaluation criteria adopted by the NHSScotland body. This is available on the Health Facilities Scotland website (refer to above website hyperlink).~~.~~

5.12 In addition to the above the following documents are available to help develop the procurement timetable for the appointment of advisors:

- Sample overall procurement timetable available on the Health Facilities Scotland website.
- Sample appointment timetable available on the Health Facilities Scotland website.

5.13 Further details on advertising for advisors, the selection of advisors and the payment for advisors are provided below.

The selection of advisers

5.14 The competitive process for selecting advisers should aim to secure the best quality and value advice for the NHSScotland body. Subject to the scope of advisory work required, the need to advertise in OJEU and the number of organisations expected to tender, the following gives an indication of the steps to follow. This process may be simplified for smaller scale projects.

Advertising the contract

5.15 The NHSScotland body will need to consider certain legal issues before procuring advisory services. In particular, the Public Contracts (Scotland) Regulations 2006 and the Utilities (Scotland) Regulations 2006 may apply to the procurement of advisory services (other than legal services) that are expected to cost more than a threshold value. The current threshold figures that apply are contained within Scottish Procurement Policy Note SPPN 11/2009. These thresholds are updated every two years. for advisers will normally be advertised under the Restricted Procedure. Generally, all advisers other than legal advisers on which expenditure is expected to exceed the threshold should be procured under the public procurement regulations and advertised in OJEU. The public procurement regulations are discussed further in Appendix 2 of the From OJEU to Contract Award section of this guidance. NHS bodies should ~~also advertise~~also advertise the procurement of all advisers in Government Opportunities.

5.16 If the EU procurement regulations do not apply, the manner of advertising and procurement becomes subject to the NHSScotland body's discretion and good practice within service-wide procurement policy guidelines. ~~In these~~In these circumstances advertising the contract widely through trade journals and other contacts is recommended to ensure that the NHSScotland body is able to select from a wide sample of candidates. NHS bodies may also approach firms of advisers already known to them and draw to their attention the fact that they are advertising.

Evaluation and selection of advisers

5.17 Evaluation criteria used to select advisers should follow naturally from the

definition of objectives and deliverables and should be established before

advertising the contract. **Cost of advice is a key criterion, but should not be the sole determinant. The lowest bid may not mean best value for money.** It may be an indication of an adviser who is seeking the instruction as a means of buying experience. It is unacceptable for NHS bodies to have to pay advisers for "learning on the job". This may ultimately increase costs and will result in the NHSScotland body receiving sub optimal advice. The most experienced advisers may be more expensive, but may be able to apply their skills more efficiently than apparently cheaper alternatives. In making their choice, NHS bodies should obtain commitments from participants that the same people who make the bid presentation will also continue to be personally involved throughout the project and not replaced by other individuals without good cause.

5.18 The evaluation criteria should also allow for consideration of potential advisers':

- demonstrate ability to contribute to the delivery of the project and provide value for money;
- experience and expertise in relevant areas – not only corporately, but more importantly the individuals who are to work on the project;
- ability to supply the full resources necessary at peak periods of work during the procurement.

5.19 Responses to this Invitation to Tender in the form of priced bids, and presentations if required, should be evaluated against the criteria already established to select the best value for money and most skilled team. In particular, NHS bodies should ensure that the selected advisers demonstrate a clear understanding of what is expected of them and the wider requirements of the NHSScotland body in undertaking the project.

5.20 NHS bodies should not confine their decision regarding appointment on the basis only of information provided to them by potential advisers. References given by bidding advisers should be taken up from NHS bodies who have had experience of the firms they are considering and they should be asked for their views on the quality of service received and, more importantly, the individuals who will be appointed to the project.

5.21 It is good practice to offer a de-briefing to unsuccessful participants at the Invitation to Tender stage.

Payment

5.22 Payment mechanisms and fee levels agreed with advisers must be carefully considered by NHS bodies to ensure that best value is achieved and that the risks of cost and related impact of time overruns are strictly controlled. Experienced advisers should be able to offer terms that meet these requirements by focusing effort on areas of genuine added value and helping to control project cost overruns, for example by capping fees to an agreed level.

5.23 NHS bodies should expect the most competitive arrangements on advisory services where there is already significant market experience (for example in the development of pre-qualification documents), which means that fixed price agreements are achievable or where advisers are competing ~~strongly for~~strongly for business. Confidence among advisers that the procurement process proposed by the NHSScotland body is ~~well managed~~well managed and that they can work with management will also reduce costs.

Fee structures

5.24 There ~~is~~are a variety of fee structures that may be used for ~~PPP~~NPD advice. Often advisers will accept payment for services on different terms for ~~different phases~~different phases of the work. NHS bodies may ask for alternative

bids which are based on different

rates, e.g. an hourly rate or a reduced rate to reflect the inclusion of a success fee. With the exception of advice on the feasibility stage of a project, procurers should consider at least some success fee element. This is because, in a straight fee basis arrangement, there is no explicit incentive to close the deal. Fee structures might also be agreed on the basis of:

Time based

5.25 Although this allows the greatest flexibility, it does expose the NHSScotland body to cost overruns. Advisers may prefer to be paid on this basis where there is uncertainty about the level of effort required, but should anticipate that the expected fee income from this structure could be less than that from a structure where they accept more risk - such as success fees.

5.26 In the event that NHS bodies decide to accept a bid on a time basis, it is good practice to request the production of detailed estimates in ~~advance for~~advance for fees against discrete stages or deliverables for the project against which outturn fees can be compared and comparisons made. This will help show up where overruns are occurring.

Fixed fees

5.27 Fixed fee contracts are commonly offered by legal, corporate finance and design advisers for ~~PPP~~NPD advice in the stages up to issue of the Invitation to Participate in Dialogue for the project and sometimes beyond. Again, this will depend on the uncertainties in the project, the degree of precision in defining advisers' responsibilities in the terms of reference and confidence ~~in the~~in the NHSScotland body's project management team.

5.28 If a fixed fee contract is agreed the NHSScotland body should agree in depth with the advisers the level of work that they will be providing under the contract. This should be in terms of the minimum specified hours to be worked at each stage of the procurement for a given output. This will also enable a clearer comparison of bids.

Capped fees

5.29 Variable fees capped to an agreed level provide NHS bodies with a good mechanism to control costs while sharing incentives to keep costs low once contracts have been signed. As with fixed fees, advisers may not be willing to cap fees where there is lack of clarity in their responsibilities and the resources they will be required to provide. In these circumstances it is unrealistic to expect advisers when bidding to commit to a cap before they have had an opportunity adequately to scope the work in discussion with the NHSScotland body's team.

5.30 For time and capped fees, NHS bodies should ask for monthly billing and auditing so that problems with fees are ~~signalled~~signaled early.

Success fees

5.31 In some cases advisers are prepared to offer success-fee based contracts or terms where an element of payment is dependent upon success. With the exception of advice on the feasibility stage of a project, NHS bodies should consider at least some success-fee element, as open-ended fee-based payments do not incentivise advisers to close deals. While success fees provide shared incentives between the NHSScotland body and its advisers, the extra risk for the advisers may result in their expectation of higher overall fees.

Management of advisers

5.32 NHS bodies will not obtain value for money from advisers without managing them effectively. Key considerations include:

- making sure that relevant expertise is available at meetings (but NHS bodies should always first consider whether the attendance of advisers is at all necessary);
- limiting of the numbers of advisers that attend meetings to key personnel;
- making sure that advisers have a clear picture about what is expected of them and the timescales within which they must operate;
- asking advisers to agree with one another which are to have prime responsibility in given areas so as to avoid duplication;
- ensuring that all advisers have equally effective systems in place to manage their own team;
- setting budgets with advisers for fees and monitoring their costs;
- ensuring that advisers have a clear client within the NHSScotland body (e.g. the finance or project director);
- not being afraid to demand that poor performers be replaced or not to pay for bad work or advice.

5.33 Regular monitoring of the performance of advisers as the project develops is essential. Concerns regarding performance should be raised with advisers as early as possible.

5.34 It is important to define the scope of work as clearly as possible before contracting with the adviser. However, changes in timetable or scope may develop through the course of the project and this may impact on advisers and their fees.

5.35 Changes in scope will always have to be confirmed to advisers, but the NHSScotland body will need to avoid having to re-negotiate its terms of appointment with its advisers after every such change. Therefore, a key item in relation to selection will be the attitude of advisers to ~~change and~~change and their willingness to be flexible.

Summary

5.36 Efficient use of external advisory services depends upon:

- recognising that the role of advisers depends on the NHSScotland body's internal strengths, the nature of the project, the combination of advisers to be used and their ability to work as part of the public sector team;
- obtaining support from high-quality advisers and ensuring that contracts deliver value for money;
- obtaining advisers who are skilled in the relevant areas;
- obtaining support from the appropriate individuals who will be available when needed;
- controlling costs, particularly by being as specific as possible in setting terms of reference;

- avoiding conflicts of interest among advisers;
- NHS bodies maintaining ownership of the project, understanding key procurement issues and providing clear directions to advisers;
- effective management structures being put in place.

6. Developing the scope of the project

Introduction

6.1 Whilst the NHSScotland body is preparing the Outline Business Case for a scheme it should also be devoting resources to developing the scope of the project. This should be complete before the NHSScotland body commences the formal procurement process by advertising in OJEU. In addition, forecast affordability implications of a ~~PPP~~NPD project must be understood and underwritten by the NHSScotland body.

6.2 Key areas which should be addressed in determining the scope of and the level of risk within, the project before OJEU are:

- services to be covered by the scope of the project;
- approach to staffing requirements;
- procurement strategy;
- procurement structure (i.e. NPD) ~~or PPP~~ or an alternative procurement vehicle?
- ~~i~~If NPD selected as a procurement route, identification and role of charitable bodies
- procurement timetable;
- value for money;
- output specifications for the facilities and services;
- CPAM costings and designs;
- Affordability
- Accounting treatment

6.3 These areas will be assessed as part of key stage review 1

6.4 This section covers output specifications and scoping of services. The remaining topics are covered in Section 3, Technical & Commercial Issues, of this guidance.

Developing output specifications

6.5 The output specifications for the facilities and services for which participants are expected to submit proposals will cover the NHSScotland body's requirements for objectives, outputs or outcomes. They will also cover the minimum quality and performance standards on which the Conventional ~~Procurement Assessment~~Procurement Assessment Model ("CPAM") is based. Output specifications will also be required for services (both clinical and non-clinical~~) which~~), which will continue to be provided by the NHSScotland body. Participants will need these to be able to produce proposals for facilities that meet the NHSScotland body's requirements. **This is a critically important part of the process.**

6.6 The specifications should concentrate on **what** must be achieved, rather than **how** to achieve it. In that way, they should encourage innovation, performance in line with the NHSScotland body's requirements and superior cost effectiveness. The responses from participants may also exceed the NHSScotland body's

Commented [C&B5]: Is this still used?

Formatted: Font: Bold

Formatted: Font: Bold

minimum requirements as stated in the specification. However, it is important that the specifications faithfully reflect the outputs delivered in the CPAM (the NHSScotland body's "reference project"). The output specifications will be

extremely important in encouraging a response that provides high quality healthcare and meets the NHSScotland body's business objectives. Department of Health Standard Output Specifications, which can be adapted for local use, are available on the Department of Health website.

Who should prepare output specifications?

6.7 It is good practice to include a wide range of interested parties when drawing up the output specifications. This should include representatives of the staff who depend on, or who are users of, the particular service. They will therefore be drawn from clinical and non-clinical staff, managers and those with a technical background or who are directly responsible for providing the service now. Care should be taken not to re-specify what currently exists but to consider what may be required or be of benefit in the future. It is easier to do this by thinking in terms of outputs and outcomes. However, setting out the existing service specifications may provide a useful starting point although these should be subject to a critical analysis, for example to establish what is done, how and by whom.

6.8 Depending on the size and scope of the scheme, the NHSScotland body may also need external advisers who have previous experience in drawing up output specifications for other projects - particularly if the ~~specifications involve~~specifications involve providing a new facility from which the NHSScotland body will be delivering clinical services.

6.9 Output specifications are wholly different from input based specifications and the project team and its advisers will have to encourage everyone involved to think in terms of outputs rather than inputs. They will also have to co-ordinate the preparation of the specifications so that they are consistent across the services. A key area of importance is to specify the interfaces between services included and excluded from the ~~PPP~~NPD deal.

6.10 NHS bodies should not underestimate the amount of work and the ~~time involved~~time involved in drawing up comprehensive output specifications for a project. The project team should manage their development and should also ensure that nominated stakeholders within the NHSScotland body are responsible for ~~and have~~and have ownership of given output specifications.

6.11 NHS bodies should consider how best to interpret clinicians' requirements in a way that can be understood and acted upon by participants and their design teams.

Defining the NHSScotland body's requirements

6.12 The facilities and services to be provided under the project will need output specifications that outline the NHSScotland body's requirements. Those requirements will include:

- facilities that both support the clinical and other services that will be offered there and meet the NHSScotland body's investment objectives;
- support services (hard and soft FM);
- other services (both clinical and non-clinical) that will continue to be provided by the NHSScotland body.

6.13 The specification of the NHSScotland body's requirements should not be too prescriptive. They should be outlined in terms of the performance ~~standards which~~standards, which the NHSScotland body will require. The output specifications should be based on the NHSScotland body's needs not wants

and the NHSScotland body

should ensure that services are quantifiable and measurable. The private sector will then be given scope to decide how the services should be provided.

6.14 The steps involved in preparing output specifications are the same regardless of the size and nature of the project:

- stage 1 – define the scope;
- stage 2 – set objectives;
- stage 3 – define requirements and performance standards;
- stage 4 – identify the constraints;
- stage 5 – set out estimated activity levels and flows;
- stage 6 – develop a system for performance measurement.

Stage one - define the scope

6.15 The scope of the services or facilities covered by the output specifications must be quite precise in order to avoid any misunderstanding between the NHSScotland body and contractors about their respective responsibilities.

6.16 Points to consider include:

- the services and activities that are included and the boundaries with other services excluded from the scope of the scheme;
- services that are specifically excluded;
- whether the services extend to all NHSScotland body sites.

Stage two - set objectives

6.17 Overall objectives should be expressed in terms of outputs: what is the NHSScotland body trying to achieve? Objectives must be consistent with the NHSScotland body's business objectives and specific service requirements. When setting objectives, NHS bodies should also consider how particular services or elements contribute to its overall model of care. Setting the objectives and defining the scope of the scheme should be an interactive process.

Stage three - define requirements and performance standards

6.18 The NHSScotland body's requirements for facilities and services ~~should be~~should be precise, quantifiable and provide a means of objectively assessing the extent to which the standard has been achieved. Requirements should cover statutory requirements, Patient Charter requirements, National Targets, NHSScotland body policies, requirements of end users, good practice and NHSScotland body defined standards.

6.19 The NHSScotland body should also set out its proposed model of care. This should include the proposed departmental relationships for services.

Stage four - identify the constraints

6.20 Any constraints that will restrict the way in which participants develop solutions should be disclosed. For example: the managerial and operational policies of the NHSScotland body or known constraints imposed by the local planning authority or other statutory bodies.

Stage five - set out estimated activity levels and flows

6.21 An indication of the size of the service needed should be expressed in terms of measures of activity that best reflect demand, for example the number of inpatient days or day cases. This will enable participants to form an opinion of the likely facilities needed. The NHSScotland body should offer very clear guidance on the size of facilities it believes is appropriate, but participants are ultimately responsible for the decision based on their own assessment of the necessary inputs. The NHSScotland body should not rule out opportunities for the private sector to make improvements through innovation.

6.22 The NHSScotland body should also provide details of current levels of patient needs and identify any known or perceived issues ~~which~~ that could impact on quantities.

Stage six - develop a system for performance measurement

6.23 There must be a system for measuring the performance of the private sector operator against the requirements and performance standards for the facility or service specified. The principles and the framework of ~~the performance~~the performance monitoring regime should be developed in consultation with the NHSScotland body's advisers and the end users. The ~~performance monitoring~~performance-monitoring regime will need to be developed sufficiently so that details can be set out as part of the payment mechanism in the Invitation to Participate in Dialogue ("ITPD"). Since the private sector operator and the NHSScotland body must work in partnership, the performance monitoring system should be robust, challenging and fair, but not needlessly intrusive or excessive.

6.24 The NHSScotland body should also consider whether monitoring systems should be led by the private sector operator and supported by the NHSScotland body's own systems. It is not necessary to fully develop ~~systems which~~systems that the operator will be asked to provide. However, the measures provide an important input into the payment mechanism, a procedure for calculating the fee due to the supplier for the delivery of the service. They should be developed sufficiently so that the NHSScotland body has a clear idea of how the performance of services will be measured and so that participants have a clear idea of what is expected of them. The NHSScotland body should retain the right to monitor performance directly,
e.g. as an extreme measure in the event of default.

6.25 The main objectives for the measurement framework are:

- to provide an objective method of measuring performance;
- to minimise the time spent by the NHSScotland body on monitoring;
- to provide incentives to meet the minimum requirements.

6.26 Bidding is costly and the NHSScotland body must bear in mind that unless potential participants have all the information they need about the output specifications, they may either not bid or may price bids higher which would adversely affect the value for money and affordability of the scheme. Therefore, before prospective participants undertake detailed work based on the output specification, they could be given an opportunity to comment on the proposed format and content and to seek clarification on any points. They could also be asked to suggest any amendments that they consider appropriate. NHS bodies should also be aware that participants may seek reimbursement if NHS bodies seek clarification meetings after their stated date for the conclusion of the dialogue phase and they may be required to defray participants additional expenses by agreeing a formula for their repayment. To avoid this, NHS bodies should make sure that participants are given sufficient information, support and

guidance through the procurement process and ensure the Invitation to Participate in Dialogue, information provided during the dialogue phase and the

Invitation to Submit Final Tenders is fully developed and fit for purpose.

6.27 The nature of the output specifications and the performance measurement regime will need to be incorporated into the payment mechanism which the NHSScotland body will need to develop as part of the Invitation To Participate in Dialogue and Dialogue phase. Payment mechanisms are also discussed in **Chapter 5** of Section 3 on Technical & Commercial Issues of this guidance. A payment ~~mechanism briefing~~mechanism-briefing note has been issued by the SG Infrastructure Investments Unit which provides further guidance on the development and management of the payment mechanism.

6.28 A key area to consider is performance related risk for the operator and how this will be reflected in the payment mechanism to ensure both that the operator is incentivised to maintain high levels of performance and that suitable deductions are made to payments for poor or non-performance.

Infrastructure and facilities

6.29 The NHSScotland body should not be too prescriptive about what facilities and infrastructure the private sector should provide. Although the NHSScotland body should refer to the preferred option (for example new build on greenfield site) set out in the Outline Business Case, it should not prevent participants putting forward alternative proposals that are consistent with the NHSScotland body's business objectives. However, the parameters of any potential solution must be sufficiently specified to prevent participants developing ~~proposals which~~proposals that the NHSScotland body could not consider – for example, facilities ~~and services~~and services outside the scope of the project or an unacceptable geographical location of the facilities.

6.30 Any constraints that will place restrictions on participants when they are developing solutions should be stated. For example: restrictions on planning permission, access to the site during the construction phase or the need to keep hospital services operational during the construction phase.

6.31 The NHSScotland body should set out the minimum building design quality, facilities and services required in terms of outputs and outcomes that are needed to provide an appropriate environment to deliver health care services to patients in a manner that is consistent with the NHSScotland body's objectives in terms of risk transfer and value for money.

6.32 Traditional procurement approaches allow a "trial and error" attitude during the development of the detailed design with solutions being created and modified in an iterative process. This is appropriate for a client organisation where the detailed design comes before a contractual commitment to build. It is hazardous in the ~~PPP~~NPD environment where increasing contractual commitments are being made with a private sector partner before the detailed design is complete. Some elements of evolution in design ~~is~~are both inevitable and healthy as different professionals discuss service needs and potential developments. But it should be possible to reduce uncertainty without stifling innovation and as such ~~PPP~~NPD requires clearer thinking from the outset. Time and effort invested by the NHSScotland body at this stage will greatly assist the ~~PPP~~NPD process and thereby improve potential value for money.

6.33 The requirements for the design should be defined by identifying the outcomes and outputs required. These requirements will set the framework for the design within which the more detailed requirements for the services to be provided as part of the scheme can be accommodated.

6.34 A good design makes the best use of valuable resources. It must also be achievable. A ~~well designed~~well-designed building should do exactly what you need and will do it in an efficient manner. Within the basic cost of fulfilling the need, it will also provide as much extra added value to the lives of those who use

it.

6.35 The output specifications should address issues of design and design quality that will be important to the scheme. One key ~~area which should be addressed~~area that should be addressed is the degree of flexibility and adaptability of buildings the NHSScotland body requires to allow for changes in the operations of the NHSScotland body throughout the contract period. These concepts can be very difficult for the NHS to articulate, given the potential for change in future patterns of service delivery, but factors to bear in mind include:

- flexibility - during a building's lifetime its constituent parts may have to ~~fulfil~~fulfill more than one function due to technical advances and changes in medical treatment techniques. Flexibility should be an in built feature of the design to allow for minor adaptations and alterations to be undertaken without the NHSScotland body incurring excessive costs. The capacity for the building to respond to these changes will also assist in guarding against the risk of the structure becoming obsolete before the contract end;

- adaptability - the capacity for major change for any healthcare building in relation to either its expansion or contraction is a risk that should be estimated at the time of the initial design conception.

6.36 The NHSScotland body should give examples of key ~~factors which will be considered when assessing flexibility and adaptability such as growth, change~~factors that will be considered when assessing flexibility and adaptability such as growth, change or ~~contraction which~~contraction, which the design will have to demonstrate that it can ~~fulfil~~fulfill.

6.37 Flexibility and adaptability are achieved at a cost. The NHSScotland body should take the appropriate advice on the cost implications of requirements within the output specifications. The extent to which participants are asked to include an allowance for flexibility and adaptability in their designs should also ~~be reflected~~be reflected in the CPAM.

6.38 The output specification for facilities which are fit for purpose require architectural and environmental standards that will have to be set in consultation with specialist professional and technical advisers and with reference to statutory requirements, the NHSScotland body's overall design philosophy and NHS guidance. Guidance should include Scottish Health Facilities Notes~~, Health~~, Health Building Notes, Design Guides, Scottish Health Technical Memoranda, Scottish Health Guidance Notes, Scottish Hospital Technical Notes, Health Technical Memoranda (England and Wales), Health Guidance Notes (England and Wales). This guidance is available on the Health Facilities Scotland website. Other issues to be covered include:

- operational issues;

- ~~spacial~~spatial and functional relationships;

- clinical adjacencies;

- the type of environment - the use of natural light, external views, de-institutionalised atmosphere etc;

- access arrangements for staff, patients, visitors, suppliers and disabled people;

- use of labour-saving technology and designs;

- rationalisation of resources by use of flexible facilities (multi-purpose rooms, operating theatres etc), the grouping of facilities and extending the working day;

- the provision of staff amenities;

- links with community care providers and potential scope for integrating the use of facilities;
- site master-planning to allow for the possible down-sizing and/or expansion of clinical departments;
- environmental standards including, for example, the NHSScotland body's objectives in terms of energy efficiency and for reducing and recycling waste.

6.39 The NHSScotland body should have a clear idea before it commences the procurement of the extent to which it will need to approve the clinical functionality of the designs provided by the private sector prior to financial close.

Support services

6.40 The NHSScotland body should set out what services it expects to be provided by the private sector as part of the project. NHS bodies will continue to be the employer of clinical staff and staff providing soft facilities management services in a NHS clinical facility when the services are fully integrated with clinical services as covered in CEL 46 (2008). Services which can generally be included in ~~PPP~~NPD schemes are set out in Figure 5 below, however, NHS bodies should decide what services are to be included in their ~~PPP~~NPD schemes before they issue the OJEU notice in accordance with the STUC Staffing Protocol as detailed in HDL(2006)10 and CEL 46 (2008) which are mandatory.

6.41 Participants will be responsible for developing the operational policies and identifying their requirement for the facilities for support services based on the output specifications for each service. In this way participants will be able to put forward a solution that will maximise opportunities to deliver efficiencies in the provision of support services - for example, the use of the participant's own commercial, organisational and management systems.

Figure 5: Services which can be included in a ~~PPP~~NPD scheme

Services which may be provided by the private sector under a ~~PPP~~NPD agreement
Grounds and gardens maintenance
Property and building maintenance
Equipment maintenance
Waste disposal
Pest control
Security
Courier services
Information Management and Technology Systems
Financial services
Telecommunications
Energy and utilities
Sterile Supply Services/SSDs
Stores

Commented [IM6]: Whilst what is noted / listed here is correct, it would likely be a good idea to re-shape this in the context of services typically included in an NPD scheme (e g hard FM), along with a list of services that 'could' be provided (e g some soft FM services on the understanding that the 'ideal' NPD model / structure is for same to be provided by the Public sector partner)

Services which may be provided by the private sector under a ~~PPP~~NPD agreement
Reception
Postal services
Residential accommodation
Day nursery and creche services

6.42 Separate output specifications should be produced for each of the services for which the short-listed participants will be invited to submit proposals. However, the NHSScotland body should take care not to restrict service delivery to current patterns and should allow participants to come up with innovative proposals. These specifications will define the nature of a partnership with the private sector ~~operator which~~operator, which may run for many years and are therefore extremely important. Output specifications should also cover other non-clinical services for which the NHSScotland body expects to remain responsible.

6.43 Advisers can be used to help the NHSScotland body draw up the specifications but they should, at a very early stage, consult the end users and service managers who will have detailed knowledge of the standards and their relative importance. The NHSScotland body should retain ownership of the specification and not rely entirely on its advisers.

6.44 The scope of the service covered by the output specification must be clearly defined, particularly in relation to the boundaries with other services both included and excluded from the scheme. This will avoid any misunderstandings between the NHSScotland body and the participant about their respective responsibilities. For example, questions over ownership of assets (bed linen, cutlery etc) and responsibility for laundry services. In addition, the NHSScotland body should not introduce constraints on how the participant organises the operatives, for example multi-skilling, unless such constraints are fundamental to the delivery of direct patient services. The NHSScotland body may wish to list assets, other than those which will be provided by the private sector operator, that will be available for use in the delivery of support services.

6.45 The output specifications should also take account of the NHSScotland body's operational policies and service level issues such as response times and proposed monitoring arrangements. The NHSScotland body should also consider what sorts of mechanisms will be used to cater for changes in the level and requirements of services during the contract period.

6.46 In cases where the service will continue to be provided on another hospital site, the NHSScotland body should consider the potential benefits of extending the private sector service to all sites: for example, improved co-ordination, increased flexibility and the opportunity for greater efficiency.

6.47 NHS bodies should also consider IT and equipment services they will require to be provided as part of the project. The provision of IT and equipment as part of larger ~~PPP~~NPD deals is discussed in **Chapter 9** of Section 3 on Technical & Commercial Issues.

Excluded services

6.48 So that the facility supports the delivery of the objectives of each of the clinical services and any other services (e.g. soft FM) outwith the project, the NHSScotland body must produce ~~specifications which~~specifications that define the functional relationships, the functional content and the key operational policies

within it.

This should take account of reasonable clinical working practices and performance standards and also clinical adjacencies. The NHSScotland body should make reference to both medical advances and the need to meet any change in demand.

Clinical services

6.49 The defining of the functional relationships between the ~~clinical services~~clinical services will enable the participant to produce a design that maximises efficiency. For example, the pharmacy may be best situated near to the ~~out-patient~~outpatient department.

6.50 The broad specification of the functional content of the facility needed to support the services using it should consider:

- the indicative caseload and/or number of beds by ~~specialty~~specialty, including ~~specialty~~specialty performance targets (for example average length of stay, occupancy rates, etc);
- the notional number of beds per ward and proportion of single rooms required. This will be influenced by the NHSScotland body's intentions about the delivery of patient care (for example, care philosophy) and any national imperatives such as single-sex wards;
- Patients Charter requirements;
- National Standards/Targets;
- hygiene facilities required (for example, en-suite facilities to a proportional number of beds etc);
- types of patient to be treated (for example, in-patients, out-patients and high or low dependency);
- planned patient flows;
- planned patient activity by ~~specialty~~specialty;
- the continuous need for the facilities to cope with minor adaptations and alterations in response to service need, technical advances or statutory changes.

6.51 The solution for the building design and operation of the facilities has to support the delivery of the key operational policies. This should include details of how patient care is to be delivered and the operational policies needed to support it – for example, total patient care, the notional number of sessions per week in key facilities and the hospital working day.

Soft FM services

6.52 The defining of the functional relationships between the soft FM services and a full explanation of soft FM policies will enable the participants to produce a design that maximises efficiency and economy. Input specifications will be central to this.

Other tenants

6.53 Where other tenants of the NHSScotland body's existing premises are to be included in an ~~PPP~~NPD project (e.g. GP's, etc), the output specifications for the building and service requirements should make reference to the other tenants with tenancy details. These requirements should be signed off by the tenants to avoid late disputes regarding facilities or costs.

Further information

Department of Health Standard Output Specifications

Health Facilities Scotland provides operational guidance to NHSScotland and those working in the healthcare estates field relating to the planning, design and maintenance of healthcare buildings and covers non-clinical topics such as estates engineering, building and architecture, procurement, safety, environment, energy, property management, clinical waste management, sterilisation, legionella and other estates-related pathogenics, hazards and safety action notices and fire safety.

7. Planning permission

7.1 As part of the preparation for ~~PPP~~NPD schemes, NHS bodies are expected to obtain outline planning permission for the sites to be developed prior to advertising the scheme in OJEU. Where outline planning permission is not appropriate, for example, where the site involves a listed building or buildings in a conservation area and full planning consent is required instead by the planning authority, then NHS bodies should discuss the requirements of the project with the Private Finance & Capital Unit.

7.2 It should also be made clear to participants that obtaining outline planning permission before the project was advertised should not limit their scope for innovation in bids. If a bid was returned that advocated the use of a different site or required outline planning permission to be re-obtained then this, and any additional time delay, would be considered alongside any ~~bids which~~bids that were within the outline planning permission already obtained. The NHSScotland body would need to compare the costs and benefits of the different bids.

7.3 Where an NHSScotland body proposes that surplus land is to be included in a scheme, then it is recommended that outline planning permission for any sites is obtained as early on in the procurement process as possible. The value of a site may depend on the type of outline planning permission that can be obtained for it, which will affect the affordability parameters of the scheme. If ~~a~~an NHSScotland body is considering including land and buildings within a ~~PPP~~NPD scheme they should consult **Chapter 8** of Section 3 on Land and Buildings.

Note, in all circumstances the risk of full planning risk and ~~full planning~~full planning permission is to be passed from the NHSScotland body to the preferred participant.

7.4 Judicial Review risk is not time limited in Scotland (compared with England where it is a defined 12 weeks). Participants will however often accept the ~~12 week~~12-week period as a reasonable period for this risk. Judicial Review risk centres ~~around~~on challenge to the authenticity of the outline planning permission process. The starting position for NHS bodies is that the preferred participant must be required to factor this risk into its proposals and funding documentation etc.

7.5 NHS bodies should also ~~cross refer~~cross-refer to relevant Land and Building Guidance relevant to the NHS and to Chapter 8 of Section 3 on Technical & Commercial Issues.

Further information

Planning Advice Note PAN 55: Private Finance Initiative and the Planning Process

Commented [IM7]: Related cross-reference, whilst valid, likely needs to be realigned too, essentially covering a related Planning Advice Note (etc) for NPD and the Planning Process

8. Openness and Public involvement

Introduction

8.1 In the past, ~~PPP~~NPD schemes and the like (e.g. past PFI & PPP schemes) have often been perceived as secretive and exclusive by the communities they serve. The degree of public involvement and openness has typically varied between schemes.

8.2 Openness and public involvement are key features of the NHS. ~~PPP~~NPD schemes usually involve major changes to the provision and location of NHS services. Local people and their representatives must be able, therefore, to comment on and respond to options and proposals. Active communication and a continuing dialogue, including early discussion of any changes, should be encouraged and a standard feature of all ~~PPP~~NPD schemes. The guidance in this chapter is intended, therefore, to establish a more consistent approach to consultation, dialogue and the release of information. NHS bodies should agree a communications strategy early on, effectively ~~and~~ developing and implementing an appropriate action plan that takes the following noted guidance into account.

Consultation and dialogue

8.3 A proposal for a major project requires the production of an Initial Agreement (IA) to demonstrate service need for a major capital investment. In the document the NHSScotland body is required to set out its plans to communicate and explain its proposals to the local community throughout the process of developing the scheme and to provide opportunities for views from the public to be expressed and considered.

8.4 There is a 'Duty of Public Involvement' within the NHS Reform (Scotland) Act 2004 ~~which~~ that creates a duty directly upon NHS bodies to involve the public in the design and delivery of services. An ~~PPP~~NPD proposal is considered a major service change and NHS bodies should follow the guidance "Involving, Engaging and Consulting the Public in Developing Health and Community Care Policies and Services". The consultation period should begin when proposals are reasonably ~~well developed~~well developed so that there can be meaningful consultation, but clearly the consultation has to be conducted before any final decisions are made. The precise timing will be decided upon by the NHSScotland body.

8.5 The NHSScotland body should set up the project board once preparation of the OBC starts. Among the project board's roles are representing the wider ownership of the project and agreeing an internal and external communication plan so all stakeholders can be appraised of the project. The project board's external communication plan should ensure ~~that there~~that there are clearly agreed arrangements and mechanisms to keep interested external parties informed and updated about the service options being considered in the OBC. The project team is responsible for ensuring that the external and internal communication plans are in place and are executed.

8.6 After the OBC has been approved the arrangements and mechanisms agreed under the external communication plan should remain in place throughout the ~~PPP~~NPD procurement period, ensuring a continuing dialogue ~~between the~~between the NHSScotland body and interested external parties as the NHSScotland body selects a private sector partner and develops an ~~PPP~~NPD solution ~~which~~ that meets the service requirements identified in the OBC. External parties must have the opportunity to express their opinions and views and seek answers to questions on behalf of those they represent during the ~~PPP~~NPD procurement period. They must have a genuine opportunity to influence decisions before they are taken.

8.7 In making documents and papers available for the continuing dialogue described in paragraph 9.11, NHS bodies must observe the guidelines on access to information which are discussed under "Making information available" below.

Certain information received from participants or produced by the NHSScotland body may be commercially sensitive and NHS bodies must be clear about the exact nature and implications of any confidentiality or restricted access arrangements ~~which~~ that they decide upon. NHS HDL (2005)19 advises of the SGHD policy on openness in relation to the publication of contracts and other key documents in accordance with the Freedom of Information (Scotland) Act 2002.

8.8 If the service element of an ~~PPP~~NPD solution differs significantly from that originally approved in the OBC, such that it is different from the proposals already consulted on, the NHSScotland body will need to extend the original consultation.

8.9 In order to reduce uncertainty for the private sector and thereby optimise value for money, all the statutory consultation exercises (apart from those under TUPE which will be ongoing) must be completed wherever possible before a scheme proceeds to OJEU and the private sector becomes involved.

8.10 The OBC and FBC must include a discrete ~~section which~~section that summarises the statutory consultation exercise and continuing dialogue. This must set out the major concerns and issues raised and how these were taken into account by the Health body. It will be a requirement of business case approval that the consultation, information and dialogue requirements set out above are observed.

Guidelines for making information available in the ~~PPP~~NPD bidding process

8.11 To be meaningful and effective, the dialogue between an NHSScotland body and interested external parties during the ~~PPP~~NPD procurement period must be based on valid and adequate information. A key requirement for ~~managing the~~managing the procurement process properly is a well prepared and widely understood strategy for the disclosure and dissemination of information.

8.12 The general principle to be followed is set out in the SGHD's ~~guidance on~~guidance on openness in relation to the publication of contracts and other key documents in accordance with the Freedom of Information (Scotland) Act 2002, NHS HDL (2005)19.

8.13 This guidance attempts to balance the desire to achieve greater openness and accountability with the need to ensure that competitiveness in the public marketplace is at least not harmed and preferably encouraged. The intention should be to facilitate more effective access to procurement related information whilst being as cooperative with suppliers as possible. Public Bodies should not agree to hold information in confidence unless it is genuinely confidential in nature.

8.14 As a general principle, the acceptance of confidentiality agreements by public bodies, other than in exceptional circumstances, is discouraged and this applies equally to terms included in tender documentation and conventional contracts. The inclusion of terms which restrict the disclosure of information relating to the contract beyond the restrictions permitted in the Freedom of Information Act i.e. the information constitutes a trade secret or its disclosure under the Act would, or would be likely to, prejudice substantially the commercial interests of any person, should be strongly resisted.

8.15 At the outset of any procurement, the conditions of procurement should clearly explain that information provided to the NHSScotland body by the contractor/participant/supplier ~~may~~might be subject to disclosure under the Act. When entering into ~~PPP~~NPD contracts, NHS bodies must comply with the terms of clause 52.3 of the SGHD Standard Form Project Agreement.

Commented [IM8]: This cross-reference should be checked & fully aligned with related standard form (NPD Model) as amended / compiled by the SFT (ref Scottish standard form project agreement part of the SCIM PPP Manuals web page section)

8.16 However, the legitimate commercial concerns of the contractor/participant/supplier should be recognised and the conditions of procurement should encourage the identification of ~~information which~~information that is truly sensitive. This information will be useful

as it will highlight where consultation is needed in the event of a request. The contractor/participant/supplier should be asked to justify the sensitivity of the information and how long it is likely to remain so. NHS bodies should, ideally, before accepting information regarded by the Company as commercially sensitive, take steps to ensure that the Company understands the possible implications of the Act.

8.17 Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the NHSScotland body could agree with the contractor/participant/supplier a schedule of the contract, which clearly identifies ~~both~~ information ~~which~~ that should not be disclosed, as well as ~~and~~ information ~~which~~ that will be released. Any acceptance of such confidentiality provisions must be for a good reason, be capable of being justified to the Commissioner and include the proviso that information which is not, in fact, exempt under the terms of the Act or whose disclosure is required on public interest grounds, may have to be disclosed regardless of any agreement.

8.18 There may be circumstances where publication would prejudice the purchaser's legitimate commercial interests, in which case the harm risked by publication would have to be weighed against the public interest in disclosure. However, subject to these considerations, and subject to other legitimate reasons for withholding information as set out in the Code of Practice on Openness in the NHS in Scotland, the remainder of the contract should be made publicly available on request.

8.19 Most of the ~~information which~~information that could be regarded as genuinely commercially sensitive, in that its release during the ~~PPP~~NPD procurement period might jeopardise the competitive process and achievement of value for money, is provided in response to the ITPD. Information provided in response to the preliminary ITPD in this category might include innovative design and construction points, methods of financing, risk allocation, treatment of surplus land or other specific features of the scheme. Information provided in response to the final ITPD might include details of the financial model, the payment mechanism, the tariff and charging arrangements, methods of financing and sources of income.

8.20 To be transparent and fair, NHS bodies should seek to ensure that, as far as possible, the same level of information should be available on each participant during the dialogue with external parties. NHS bodies should use the presentation to establish a consistent and fair approach to the release of information with all the remaining participants. However, NHS bodies should take care to avoid a level of information ~~release which~~release that simply accepts the lowest common denominator. Variations in the commercial practices and conventions of participants is inevitable and, in any case, it is likely that further discussions and clarifications will need to be undertaken as the details of bids are developed.

8.21 Trades Unions representing staff at NHS bodies who are anticipated to transfer to a potential private sector partner are entitled to hold meetings with shortlisted participants to discuss staff issues. The information requirements for this process are dealt with separately in the **Chapter 9** of this Section on Fair treatment of staff.

8.22 It should be noted that these guidelines on the release of information do not provide an option on the part of NHS bodies to refuse to release information regarding the particular outputs to be purchased under the ~~contract or~~contract or the general terms on which the NHSScotland body initially proposes or subsequently has agreed to do business. This means that, unless a genuine commercial sensitivity can be demonstrated, the NHSScotland body should make available during the ~~PPP~~NPD procurement period the contract notice placed in OJEU, the Memorandum of Information, the Prequalification Questionnaire and the ITPD.

Data Room

Release of key project documents

8.23 Guidance for Scottish public bodies on the implications of the Freedom of Information Act in relation to the procurement process and the release of information has been prepared by the Scottish Procurement Directorate (SPD) and is available on the Scottish Government website.

8.24 NHS bodies must consider the powers available to the public for accessing information under the Freedom of Information Act. It is therefore advised that NHS bodies should ensure that all information relevant to the Business Case and contract is made accessible (the SPD guidance gives advice on timing of release). This includes the FBC Executive Summary and the "Plain English Summary" of the contract as well as all submitted annexes.

8.25 Initial Agreements (IAs), Outline Business Cases (OBCs), Full Business Cases (FBCs) and contracts may still be edited to remove text of a commercially sensitive nature but it must be clearly stated in these ~~documents what~~documents what information has been excluded on the grounds of commercial confidentiality. Removal should be considered with reference to exemptions under the Freedom of Information Act. Any ~~documents which contain references to suppliers~~documents that contain references to suppliers must be cleared with the appropriate supplier(s) before publication.

8.26 Irrespective of the capital value of the project, IAs, OBCs, and FBCs and FBC(A)s should be made publicly available no later than one month from the announcement of their approval, ~~PPP~~NPD contracts within one month of financial close.

8.27 Within one month of approval or financial close, a copy of the IA, OBC, FBC and FBC (A) (if applicable) should be placed with the local authority, on view at the NHSScotland body for staff and patients and with the local Health Council.

8.28 The NHSScotland body should have accessible on its premises a hard copy of the business case(s) and ~~PPP~~NPD contract.

8.29 **For schemes in excess of £5m**, the key documents (OBC, FBC and addendum, if applicable, documents should also be displayed at the local main public library and SPICe, the Scottish Parliament library (see paragraph 9.30 below). To let the general public know that these documents are available for perusal, an advert should be placed in the local press detailing their placement in the local library and the date from which the documents can be viewed. Separate adverts are required for OBCs and FBCs. The advert for the ~~PPP~~NPD FBC should ~~state the~~state the expected date when it is anticipated that the addendum will be added to the FBC in the local main library. No further advert needs to be placed for the FBC addendum.

8.30 **For schemes in excess of £5m**, a copy of the key documents should be sent to the Capital Planning and Asset Management Division, Scottish Government Health Directorate, Basement Rear, St Andrew's House, Edinburgh, EH1 3DG which will arrange for the documents to be placed in the library of the Scottish Parliament (SPICe). Although a paper copy of the documents is acceptable for SPICe, a CD Rom is preferred. Each document should clearly show a contact name, address and telephone number within the NHSScotland body for enquiries specific to the project. Each ~~PPP~~NPD document should also state that general enquiries on ~~PPP~~NPD should be addressed to Mike Baxter on 0131 244 2082 or by email to Michael.Baxter@scotland.gsi.gov.uk.

8.31 **For schemes in excess of £5m,** it is now mandatory for NHS bodies to set up a section of their website dedicated specifically to such projects. The approved Business Cases and ~~PPP~~NPD contract should be placed there together with as much documentation and information as possible.

8.32 For Staff Partnership Representatives and the public library, the NHSScotland body should make contact and enquire whether they will be happy to accept a CD Rom instead of paper. The NHSScotland body must however be assured that the public library, in particular, has the facilities to ensure that all documentation is accessible to the public in that format.

Further information

Commented [IM9]: Opportunity for other relevant references to be listed here

NHS Reform (Scotland) Act 2004

Scottish Public Sector Procurement and Freedom of Information Guidance

Freedom of Information Act (Scotland) 2002

9. Fair treatment of staff

Introduction

9.1 On 11 November 2002, Ministers published the Scottish Government / STUC Protocol on staffing matters in Public Private Partnerships (PPP's) to ensure fair employment policies and practices are followed by ~~PPP~~relevant contractors in all new contracts. This document sets out ~~the~~ key principles and good practice, which public sector organisations are expected to follow when considering and progressing ~~PPP~~bids / projects where this requirement may be a considerations~~.~~ It will typically be enforced in ~~cases which~~cases that involve Scottish Executive / Government funding support.

92 A copy of the Protocol can be found in the following guidance HDL (2003)50, HDL (2004)18 and HDL(2006)10 on the SGHD Capital Planning and Investment website.

Staff Transfers

9.3 It is not an automatic requirement of ~~PPP~~NPD to transfer employees, although the defined contract service will normally include some services currently carried out by public sector employees. If applicable, t~~T~~he circumstances of each case will vary. Where there is a transfer of undertaking employees must be told immediately. They must be advised in writing of the intention to transfer employees, when such a transfer might take place and that TUPE (and other guidance on pensions) will apply.

9.4 Under TUPE a transfer exists in terms of a Hard FM ~~PPP~~NPD contract. This means that as part of the undertaking staff have the right to transfer to the new contractor. However, some employees, will as a matter of principle, wish to remain in the employment of NHS Scotland or at least another public sector employer and not transfer to a private sector employer. In these cases NHS employers should seek to redeploy, relocate or retrain employees and guidance is provided in HDL(2006)10.

Pensions

9.5 HM Treasury has published guidance to Departments and Agencies on the treatment of Staff Pensions upon transfer from Central Government, A Fair Deal for Staff Pensions. So far as ~~PPP~~NPD projects are concerned, this requires that:

- transferring staff should be offered a broadly comparable pension by the new employer, both on initial transfer and at second and subsequent contracting rounds (this applies also if staff are transferred back in to the NHS under TUPE as this is simply another transfer);
- the new employer's pension scheme should allow transferring staff the option of moving their accrued credits into that scheme on a fully protected basis;
- the instructions for the involvement of the Government Actuary's Department in assessing broad comparability and bulk transfer arrangements should be followed.

Further information

STUC Memorandum of Understanding

Commented [IM10]: May want to include some comments here / additional text that again acknowledges that this (i e the transfer of staff, etc) is typically, if indeed at all, applicable to NPD

Commented [IM11]: Note above comment

10. Milestones / Key Stage Review

10.1 All NHS bodies undertaking major ~~PPP~~NPD procurements are required to agree with the SGHD a series of milestones to be met, both during preparation for procurement (from IA to OJEU) and then for the duration of the procurement up to financial close. These milestones may be published or used by Ministers in response to queries about the progress of high profile schemes. If an NHSScotland body consistently fails to meet milestones and appears to be unable to deliver a prioritised scheme, CIG will refer issues to DG Health and Wellbeing, and then Ministers**.**

10.2 There is no prescribed timescale set by SGHD for schemes to progress through the stages up to advertising a project in OJEU. The length of time taken to produce the OBC, undertake necessary consultations and obtain outline planning permission will depend upon circumstances specific to each scheme. Excessive delays between IA submission and OJEU will however result in the IA being revisited.

10.3 Following OBC approval, the SGHD will review NHS bodies' progress through the Key Stage Review (KSR) process and Gateway Reviews. The following KSR process is in place:

- KSR 1 – pre OJEU;
- KSR 2 – pre ITPD issue;
- KSR 3 – pre Preferred Bidder;
- KSR 4 – covered by the Full Business Case.

Further details on the KSR process, the requirements and timescales plus KSR forms are provided at the Capital Planning and Investment website

10.5 ~~OBC and~~OBC ~~FBC~~and ~~reviews~~FBC reviews~~, and~~, ~~in~~and ~~particular~~in ~~Value~~particular ~~for~~Value ~~Money~~for ~~and~~Money and ~~—~~affordability ~~elements~~, are key milestones ~~which~~ that SGHD will require full sign off on.

Appendix 1: Key Documents for approval

Notwithstanding any wider infrastructure investment planning undertaken directly by the centre, typically at programme level, Health bodies must develop and submit details of projects in the following forms at various stages of the project's development.

Initial Agreement

Purpose

The Initial Agreement (IA) is a brief ~~document which~~document that establishes the need for change and sets out the proposal in the context of the NHSScotland body's strategy. The IA ensures that the project meets the objectives of the Local Health Plan and~~, if~~, if appropriate, is consistent with the Property Strategy.

Mandatory for

- For NHSScotland body and NHSScotland body projects (other than IM&T) with a capital cost of £5m (inclusive of VAT) or greater;
- For NHSScotland body and NHSScotland body IM&T projects with a project life cost over the first 4 years of the project (or the project life, if shorter) greater than £1m (inclusive of VAT);
- For Special Health Board projects (other than IM&T) with a capital cost of £0.5m (inclusive of VAT) or greater; and
- For Special Health Board IM&T projects with a project life cost greater than the current OJEU threshold for advertising (approximately £100k).

Outline Business Case (OBC)

Purpose

The OBC is a detailed ~~document which~~document that identifies the preferred option and procurement route and supports and justifies the case for investment. The emphasis is on what has to be done to meet the strategic objectives identified in the IA. A full list of options will be reduced to a short list of those which meet agreed criteria. An analysis of the costs, benefits and risks of the short listed options will be prepared. A preferred option will be determined based on the outcome of a benefits scoring analysis, a risk analysis and a financial and economic appraisal. It's suitability for ~~PPP~~NPD procurement should be assessed in accordance with the Scottish Governments Value for Money Assessment Guidance [*insert link*].

Commented [IM12]: No link – consider getting this incorporated

Mandatory for

- For NHSScotland body and NHSScotland body projects (other than IM&T) with a capital cost of £5m (inclusive of VAT) or greater;
- For NHSScotland body and NHSScotland body IM&T projects with a project life cost over the first 4 years of the project (or the project life, if shorter) greater than £1m (inclusive of VAT);
- For Special Health Board projects (other than IM&T) with a capital cost of £0.5m (inclusive of VAT) or greater; and
- For Special Health Board IM&T projects with a project life cost greater than the current OJEU threshold for advertising (approximately £100k).

Full Business Case (FBC)

Purpose

The FBC explains how the preferred option, identified in the OBC, would be implemented, how it can be best delivered and at what cost. The preferred option is developed to ensure that best value for money for the public purse is secured. Project management arrangements and post project evaluation and benefits monitoring are also addressed in the FBC.

Mandatory for

For all ~~PPP~~NPD projects irrespective of value. For projects ~~outwith~~out with the capital limits described in the next 4 bullet points, the FBC need not be submitted to SGHD;

- For NHSScotland body and NHSScotland body projects (other than IM&T) with a capital cost of £5m (inclusive of VAT) or greater;
- For NHSScotland body and NHSScotland body IM&T projects with a project life cost over the first 4 years of the project (or the project life, if shorter) greater than £1m (inclusive of VAT);
- For Special Health Board projects (other than IM&T) with a capital cost of £0.5m (inclusive of VAT) or greater; and
- For Special Health Board IM&T projects with a project life cost greater than the current OJEU threshold for advertising (approximately £100k).

Full Business Case – ~~PPP~~NPD Addendum (FBC(A))

Commented [IM13]: Noted NPD addendum reference should be checked for full alignment & correct cross-referencing

Purpose

After financial close, an addendum to the FBC should be prepared. The Addendum should set out any changes in the project between FBC approval and financial close and summarise the commercial contract in plain English.

Mandatory for

- For all ~~PPP~~NPD projects irrespective of value.

Appendix 2a: ~~PPP~~NPD Feasibility Assessment[1]

"~~PPP~~NPD ability"

Background

The appropriateness of progressing programmes of investment or individual projects via a ~~PPP~~NPD delivery and investment route will initially be considered centrally by SGHD. This process is detailed in the Scottish Government ~~PPP~~NPD VFM Assessment guidance for Programme Level assessments and specific project assessments. This guidance details a key initial ~~PPP~~NPD suitability ~~checklist which~~checklist that will be considered at the initial stages of programme level and individual project level assessment. The information in this section complements the Scottish Government wide guidance. This section will help NHS bodies justify investment rate decisions at the individual project level.

Commented [IM14]: Note reference that will likely need to be realigned too

1 Introduction

1.1 "~~PPP~~NPD ability" can be described as a process that assesses the likely attraction of a project to the ~~PPP~~NPD market and its scope for successful ~~delivery through~~delivery through maximising the anticipated benefits of the ~~PPP~~NPD procurement process.

1.2 It is the ultimate aim of any project deemed suitable to be financed using private finance that it generates a variety of good quality proposals from participants. This will ensure that in selecting the best option the choice is based on overall value for money offered and competition between participants is maintained at all stages in the process.

1.3 It is therefore necessary to undertake a robust assessment of the project, at Outline Business Case stage and prior to OJEU, which incorporates the dynamics and specific nature of the proposed development.

1.4 This assessment tool is designed to address and measure the key ~~factors which~~factors that are likely to result in the delivery of a successful ~~PPP~~NPD solution.

2 Background: assessing whether the project is suitable for ~~PPP~~NPD

2.1 The "~~PPP~~NPD ability" assessment should set out the key items of background to the scheme including:

- Title and scope of the project;
- Nature of development e.g. new build, refurbishment of existing site, demolition of existing facility and rebuild, development of greenfield / brownfield site;
- Requirement to link with retained estate development including accessing existing services; and
- Estimated capital cost and price base.

[1] *This assessment tool has been developed in conjunction with Secta Group Limited, a specialist health and social care consultancy. It has been developed based on Secta's*

recent experience of working both with the NHS and participants on PFI projects across the UK. Secta are part of the Tribal Group of companies who are a major provider of consultancy and support services to the public sector.

3 Methodology Followed to Assess "~~PPP~~NPD ability"

3.1 The process used to assess the "~~PPP~~NPD ability" of the ~~proposed scheme~~proposed scheme is as follows:

- An initial assessment looking at **'Internal Factors'** covering organisational, financial and other aspects known to have a major influence on participants when considering which schemes to bid for.
- A secondary detailed qualitative **'External Factors'** assessment of the scheme to match it against well-proven parameters needs to be undertaken. The assessment uses a range of broad categories to examine the potential for a successful ~~PPP~~NPD solution. These factors are scored and weighted to give an overall qualitative assessment of ~~PPP~~NPD potential.
- Assuming the project is appropriate for ~~PPP~~NPD a subsequent quantitative assessment will also be undertaken. In cases where the qualitative assessment indicates that there is significant scope for the project to attract private sector interest but where the OBC indicates that scheme ~~-~~affordability is likely to be a key determinant in securing approval shadow bid affordability ~~modelling~~modeling will be required.

3.2 This tool has been developed based on a ~~review of~~review ~~recent~~of recent ~~PPP~~NPD schemes, coupled with in-depth knowledge from working with a number of major contractors and taking account of their preparation and assessment of factors in considering which schemes to bid for.

4 Internal Factors – Initial Assessment

4.1 As outlined in the previous section, there are a number of factors that ~~PPP~~NPD participants consider are critical in terms of the NHS organisations ability to support the successful delivery of a project. Many of these are mandatory requirements as part of the development of the Outline Business Case.

4.2 These factors often include the following outlined in Figure 1 below. Each should be considered and an assessment made, based on the current status of the project, as to whether each is satisfied. This can be indicated by clicking on the relevant boxes. A cross indicates a positive assessment.

4.3 Projects where the initial assessment indicates that a significant proportion of the boxes can be checked should, subject to VfM Assessment Guidance requirements, proceed to the next stage of the assessment. In instances where the majority of the boxes remain unchecked there should be early discussion with PFCU and the project should be re-evaluated prior to proceeding to the ~~next stage~~next stage concentrating on those areas where gaps exist.

Figure 1 - Likely Participant Assessment of Scheme

Assessment Factor	Local Assessment	Comment
NHSScotland body's management approach to ~~PPP~~NPD		All participants are keen to work with health organisations that ~~have :~~have: A well established Project Team with input and support of senior executives A Project Team with a full time, dedicated Project Director - with appropriate experience

Assessment Factor	Local Assessment	Comment
		Wide ranging clinicians support for the development A clear and stable management structure Early partnership engagement has taken place as required in NHS HDL(2003)50 and NHS HDL(2004)18 A robust OBC preferred option has been identified backed by a comprehensive appraisal process Clear requirements
Financial viability		Published accounts show achievement of key financial targets for the last 3 years. NHS organisation has clear steer on asset management NHSScotland body can afford the CPAM and shadow bid model affordability implications - which is accurate and appears to match high level requirements
SGHSCD(s) Commitment		Clear unambiguous sign up to the scheme at all stages including Initial Agreement and OBC In schemes with more than one NHSScotland body involved or where third party income is a feature sign up from all parties is secured
Property Strategy		The proposed solution is consistent with the local property strategy

5 External (~~PPP~~NPD Market) Factors

5.1 The ~~PPP~~NPD market is continually evolving and maturing with specialist organisations entering the market place. The key high level factors that will influence the level of interest in a scheme are:

- The capital value of the scheme;
- The extent of new build versus refurbishment involved;
- Land and site issues;
- Scope of FM service provision;
- Equipment procurement;
- The client's position vis-à-vis Internal Factors (see section 4~~) ;~~);; and
- Other NHS market ~~opportunités~~opportunities being advertised at the same time.

5.2 These are examined in more detail below.

Capital Value

5.3 Participants will normally examine the estimated capital value of schemes carefully before committing resources to the procurement. Different Participants will tend to target different sizes and types of schemes. There are three main reasons for this, namely:

5.4 Often low value capital schemes do not provide high returns for the project set up costs involved and contractors may believe that these schemes suit an alternative and cheaper procurement bid process such as design and build - where the bid costs involved will be relatively high in ~~percentage terms~~percentage terms and the rate of return not attractive.

5.5 Funders (normally banks) tend not to vary procurement costs, such as due diligence according to the size of the scheme. This stance tends to be reflected in the level of fees charged and/or the interest rates offered to participants.

~~5.6~~Although capital value is often a key factor in influencing participant interest in a project there is evidence that specialist players are entering the market and targeting projects with a relatively low capital threshold. This is particularly relevant in the primary care facilities market where schemes are delivered through the use of a partnership arrangement with a third party developer. Typically, ~~PPP~~NPD projects are suited for schemes (NB. as a minimum) with a capital value in excess of

~~5.7~~5.6 £20m.

New Build v. Refurbishment (inc requirement to link with existing healthcare facilities)

~~5.8~~5.7 There is evidence to suggest that a number of contractors are not keen on refurbishment schemes for the reasons outlined earlier in terms ~~of risk~~of risk and return. The work is slow, generally (there is often a requirement to arrange decanting of facilities) and mixes operational facilities with ~~construction areas~~construction areas. Any risk transfer agreed is likely to result in a premium to the tariff to cover the exposure - unknown records and material risks could prove costly and participants price risk accordingly.

~~5.9~~5.8 Although ~~PPP~~NPD can work for refurbished accommodation, it is significantly more difficult to secure better value for money. This is partly due to the resistance of the private sector to take on risk for a building that they were not involved in designing or building. Also many public authorities do not keep detailed records of infrastructure drawings and material components. This makes it much more difficult for the contractor to ascertain the risks involved in the scheme or the changes they may need to bring the building up to normal condition i.e. condition B of the NHS Estates classification categories (sound, operationally safe and exhibits only minor deterioration). This is not only true in cases, for example involving asbestos but where there is considerable M&E work required such as a partial upgrading or a change in function for example outpatients to a ward area.

~~5.10~~5.9 In addition, ~~the refurbishment~~the ~~does~~refurbishment ~~provide~~does provide ~~PPP~~NPD partners with less opportunity for design efficiencies in size, FM delivery or in supporting integration that would normally be possible for a new build development.

Land and site issues, planning issues

~~5.11~~5.10 All contractors will consider access and egress issues. All sites following the Construction Design Management Regulations have to be safe sites. Sites that are restricted and land-locked will be more difficult to work within and provide more expensive operating, security and delivery issues than greenfield, brownfield or easily segmentable sites. Closed sites will also reduce the ability of

Formatted: Bullets and Numbering

Formatted: List Paragraph, Indent: Left: 0.21 cm, Right: 0.19 cm, Line spacing: Exactly 12 pt

Commented [IM15]: Formatting wise item 5 7 needs to be formatted such that it comes into line with 5 6 above & 5 8 below – computer won't let this be done in tracking mode

Commented [IM16]: Note formatting problem, which will need to be addressed

the partner to innovate in terms of a suitable solution.

~~5.12~~5.11 Participants are unlikely to be supportive of projects where ~~outline planning~~outline-planning consent has not been granted for the proposed site or where the local plan indicates that there are likely to be specific difficulties in securing relevant consents for healthcare development.

Equipment

~~5.13~~5.12 Participants will examine closely the scope of equipment provision (normally groups 2 to 4) in ~~PPP~~NPD projects. They will often see schemes where equipment is integrated into the ~~PPP~~NPD project or where there is a clear equipment strategy as offering added attraction.

6 External Factors - Qualitative Assessment

6.1 The high level factors outlined above can be assessed and scored against a range of criteria and evaluation parameters. These are shown in the matrix provided in Figure 4 below.

6.2 The detailed qualitative assessment of the scheme is undertaken against factors in five weighted categories as set out in Figure 2 below:

Figure 2 - Qualitative Assessment – Weighting

Category	Weighting
Capital Efficiency	40%
Revenue (Facilities Management) Efficiency	20%
Potential to Transfer Risk	30%
Residual Value	5%
Potential for alternative source of income	5%

6.3 Each parameter in Figure 4 should be considered and the extent to which the project provides scope to satisfy the requirements of the criteria should be scored using the following scale:

Figure 3 - Qualitative Scoring Scale

Extent of Contribution	Score
No scope for the project to contribute	0
Some scope for the project to contribute	1
Good potential for the project to contribute	2
The project offers scope to contribute significantly	3

6.4 The score for each part of the matrix (A to E) in Figure 4 below should be totalled manually and the relevant score included in the shaded box at the end of each section. The totals should then be entered into Figure 5 and subsequently be multiplied by the weights as given in Figure 2 above to arrive at a weighted score. Finally, the weighted scores should be totalled to reach a final score.

Figure 4 - Detailed Qualitative Assessment for "~~PPP~~NPD ability" of Potential Capital Scheme – Evaluation Parameters

Ref	Scheme Title

Scoring System

0 = No scope for the project to contribute
1 = Some scope for the project to contribute
2 = Good potential for the project to contribute
3 = The project offers scope to contribute significantly

Capital Cost

Major Criteria	~~PPP~~NPD Opportunity	Detailed Test	Score (0-3)	Comments
A Potential for ~~PPP~~NPD to be more capital cost effective ***Weighting* = 40%**	**A1 Increase the scheme to generate economies of scale**	• Enlarging the scheme to allow greater use by other users • Changing the quality and range of service provision of the scheme to make it more attractive to users • Adding extra facilities/services which cater for other customers		
	A2 Design Innovation	• Adding in 'higher technology' or including built in technology upgrades to save labour or reduce other ongoing costs		

Major Criteria	~~PPP~~NPD Q… t… it	Detailed Test	Score (0-3)	Comments
		• Using new materials to ~~provide a~~provide a quicker build or cheaper capital expenditure • Using new building techniques through design team integration ~~to provide~~to provide lower maintenance and lifecycle costs • Redesigning the scheme in some way to make it more efficient and therefore		
	A3 Reduce NHS Capital Costs	• Changing the ~~specified materials~~specified materials without altering the quality ~~of the~~of the facility (and therefore no change to service standards), such as using either lower cost replaceable fittings or achieving a ~~higher procurement~~higher procurement discount • Tighter control over subcontractors who may take an equity stake in the project • Longer term materials that have lower replacement cycles such as high tech roofing • Redesigning the scheme in some other way to make it cheaper to build • Providing a higher level of integration of departmental services and therefore a smaller gross floor area (e.g. shared		
A. OVERALL POTENTIAL FOR ~~PPP~~NPD TO BE MORE COST EFFECTIVE				(max. possible = 36)

Major Criteria	~~PPP~~NPD Q… t… it	Detailed Test	Score (0-3)	Comments
B Potential revenue efficiencies ***Weighting = 20%***	**B1 Lower costs through economies of scale**	• Provision by large multidisciplinary specialist FM providers		
	B2 Lower costs through more efficient service provision	• Provision by specialist FM providers • Optimising the interface between build solutions and FM provision through design innovation • Working FM facility ~~equipment for~~equipment f o r longer hours such as HSDU sterilisers, therefore reducing requirement for plant and/or machinery		
	B3 Sharing the facility with other users	• Enlarging the scheme for shared NHS and private sector use and sharing running costs and overheads		
	B4 Help increase effectiveness	• Increasing the throughput to take advantage of positive associations between higher volumes of work and better outcomes for patients • Changing the quality of the facility, or the embodied technology, to make it better for users • Redesigning the scheme in some other way, the better to suit users' requirements		
B OVERALL POTENTIAL FOR ~~PPP~~NPD TO GENERATE FM SAVINGS				(max. possible = 24)

Major Criteria	~~PPP~~NPD Questionnaire	Detailed Test	Score (0-3)	Comments
C Potential risk transfer to private sector ***Weighting* = 30%**	**C1 Design risks**	• Failure to design to brief and build to design.		
	C2 Construction risks	• Incorrect time estimate, unforeseen ground conditions, on-site security, site safety, third party claims, delay events, force majeure, non NHS legislation, changes in taxation, contractor default, poor project management, contractor/sub contractor industrial action, building commissioning, availability of adequate labour, availability of construction materials		
	C3 Performance risks	• Latent defects, sub-contractors performance and default, industrial action, availability of facilities		
	C4 Operating cost risks	• Incorrect cost estimates, non NHS legislative change, inflation		
	C5 Revenue variability	• Third party income streams and demand		
	C6 Technology and obsolescence	• Buildings, plant and equipment may become obsolete during the contract		
C OVERALL POTENTIAL TO TRANSFER RISK				(max. possible = 18)

Major Criteria	~~PPP~~NPD Opportunity	Detailed Test	Score (0-3)	Comments
D Potential residual value and transfer of surplus land to private sector ***Weighting = 5%***	**D1 Location of Land**	• Location of facilities in relation to other healthcare facilities		
	D2 Re-siting of the facility	• Constructing the new build facility closer to the edge of the ~~site to~~site to achieve separate identity • Constructing facilities that could serve an alternative purpose such as hotel, conference or office accommodation if sited so as to be able to segregate from the health site at a later date		
D OVERALL POTENTIAL FOR THE AVAILABILITY OF RESIDUAL VALUE				(max. possible = 9)
Major Criteria	**~~PPP~~NPD Opportunity**	**Detailed Test**	**Score (0-3)**	**Comments**
E Potential for alternative source of income? ***Weighting =5%***	**E1 Recover its cost via user charges to make the scheme more financially free standing**	• Making the facility/equipment/system larger or smaller and more profitable • Changing the quality of the facility/equipment and making it more profitable • Redesigning the scheme/project in some way so as to allow additional profitable uses		
E. OVERALL POTENTIAL FOR PRIVATE SECTOR TO GENERATE OTHER INCOME				(max. possible = 9)

6.5 The results of the above assessment should now be summarised in Figure 5 below:-

Figure 5 – Summary of Qualitative Assessment of "~~PPP~~NPD ability"

Ref	Scheme Title	Capital Costs if Publicly Financed

Summary of Assessment of Scope for ~~PPP~~NPD			
	Raw Score	**Weighting**	**Weighted Score**
A Capital Efficiency	/36	40%	
B Revenue (FM) Efficiency	/24	20%	
C Risk Transfer	/18	30%	
D Residual Value	/9	5%	
E Alternative Income Stream	/9	5%	
WEIGHTED '~~PPP~~NPD ABILITY' SCORE			

Rating of Score		**Indicated Action**
Score 0 - 25% = Minimal prospects for ~~PPP~~NPD~~/PFI~~		Unsuitable for ~~PPP~~NPD~~/PFI~~ - public capital
Score 25-50% = Some prospects for ~~PPP~~NPD~~/PFI~~		Combine with other schemes, re-evaluate
Score 50-75% = Good prospects for ~~PPP~~NPD~~/PFI~~		Review, re-evaluate and modify scheme to increase opportunities for securing best value
Score 75%+ = Excellent prospects for ~~PPP~~NPD~~/PFI~~		Test scheme for ~~PPP~~NPD~~/PFI~~

Note – the weighted score is calculated by multiplying the raw score per category by the weighting (e.g. if the score for Capital Efficiency were 27/36, then the weighted score would be 30.

7 Quantitative Assessment

7.1 In the majority of cases the OBC will indicate that scheme affordability is likely to be a key determinant in securing SGHD approval and where the qualitative assessment indicates that there is significant scope for the project to attract private sector interest, it will be necessary to undertake a quantitative and "cost" assessment of the likely cost of a privately financed solution. This should confirm that the outcome of a positive qualitative assessment can be supported by a cost profile which, when compared against a publicly funded solution, offers value for money to the NHS. Applying the Scottish Government ~~PPP~~NPD VFM Assessment guidance will be a key aspect of this process.

Commented [IM17]: Note cross-reference & ensure associated alignment / correctness

7.2 It is possible at this stage to assess the likely value for money and affordability of an ~~PPP~~NPD when compared to the NHSScotland body's Conventional Procurement Assessment Model (CPAM). To calculate this, a range of key financial inputs are fed through a high level model which estimates a likely tariff based on that input – this is called the shadow tariff. These inputs would include:

- Capital Costs (including equipment if it is proposed to be included in the scheme);
- Lifecycle costs;
- FM costs (incorporating scope of proposed FM service provision);
- SPV management charges;
- Price indexation;
- Senior debt / junior debt / equity ratios;
- Rates of return (senior debt / subordinated debt / equity). Under NPDO there will be no return to equity however, assumptions will require to be made regarding the level of forecast donations;
- Interest rate buffers; and
- Funder debt and loan cover ratios.

These elements are also used in the standardised VfM assessment model.

7.3 Incorporating all of the inputs required to develop a shadow ~~PPP~~NPD tariff is a specialised exercise requiring the application of a sophisticated financial model to determine the impact different inputs have on the shadow tariff. Furthermore, funders have different requirements in relation to outputs, specifically, cash management, which required detailed interpretation of the model to ensure that their likely requirements are not breached.

7.4 A key factor in the delivery of a successful project is demonstrating value for money (VFM). To show VFM, part of the SGHD assessment process requires that the Net Present Costs (NPC) of the preferred option through ~~PPP~~NPD, be compared to the NPC of a traditional procurement as projected in the CPAM.

7.5 It is important to stress that ~~PPP~~NPD providers may make significantly different assumptions when structuring their solution and as such the shadow tariff may be materially different to bids actually received. Bids received will, of course, be based on the ~~PPP~~NPD provider's own assessment of cost (based on their design solution), timetable, financial structure and risk.

7.6 Consequently, the shadow tariff is intended for use in assessing the likely value for money and affordability of the scheme for OBC purposes and prior to receipt of bids.

8 Overall Assessment and Conclusions

8.1 The following key conclusions should be made based on the findings of the assessment:

- Reference to result of qualitative assessment;
- Key factors which are likely to make the scheme attractive/unattractive to the private sector;
- Comment on impact of scheme size on likely attractiveness and VFM;
- Summary of potential to transfer risk and key factors which impact thereon;
- Impact of likely scope of FM service provision on attractiveness of the scheme and potential to deliver VFM;
- Reference to likely ~~PPP~~NPD tariff from quantitative assessment and ability of the scheme to deliver VFM solution within affordability parameters (only if shadow tariff incorporated in assessment);
- Commentary on likely project timescales focussing on how risks of protracted procurement will be managed; and
- Application of the SG ~~PPP~~NPD VFM Assessment guidance .

Commented [IM18]: Ditto to afore comments in this regard

Appendix 2b: ~~Informal Market~~Informal ~~Sounding~~Market ~~Exercise~~Sounding ~~and~~Exercise and Scheme promotion

1 Introduction

At OBC stage NHS bodies are expected to consider and assess the viability of a project for ~~PPP~~NPD. On occasions the outcome of the assessment may be borderline or the project itself may have some unusual features which lead to choices on how the project could be procured e.g. significant level of refurbishment, opportunity to include additional elements and so on. In these circumstances it may be useful to conduct an informal sounding of the prospective ~~PPP~~NPD bidding market to achieve some or all of the following objectives:

1. Obtain a clearer picture on whether the project is likely to be attractive.

2. Identify ways to enhance its attractiveness.

3. Identify factors to avoid which may reduce its attractiveness.

This section offers some guidance on how such an informal market sounding exercise may be undertaken.

2 First Steps

It is important to recognise 2 potential risks in this process:

1. The potential to compromise the procurement process.

2. The validity of the information obtained as a more positive picture than is true may be offered.

On the first it is important to take appropriate legal advice on the process. When inviting individuals or organisations to take part it should be made clear that the exercise does not form part of a formal procurement and is without prejudice to any future negotiations. Participants should also be assured that any information shared will be treated in strict confidence. On the second it is simply something to be aware of.

Before proceeding the approach to be taken should be contained in a formal paper to be approved by the appropriate Project Board. A typical approach will be:

1. Identify objectives – what is wanted from the process.

2. Identify those whose participation will be sought – and why.

3. Identify the specific question areas to be covered.

4. Outline who will undertake the exploration.

5. Whether it will be by correspondence and/or interview/site visit.

3 The Process

Once this process has been approved in outline detailed arrangements can then be made as follows:

Participants

Advice on who to involve will always be available from PFCU and any advisors already appointed. Typically it will include consortium members from other ~~PPP~~NPD projects procured or at preferred bidder stage covering construction contractors, FM providers and funders, advisors themselves working for both the public and for private sector and others NHS bodies involved in or with experience of ~~PPP~~NPD.

The Panel

The exercise should be conducted by a small number of key individuals at a senior level who will have responsibility for the project but the Chief Executive ~~should not~~should not be involved in order to maintain impartiality should any of the interviewed organisations subsequently wish to bid for either the ~~PPP~~NPD project or the specialist advisor role.

Procedure

The procedure should be written up and any meetings should be recorded. This will involve issuing a standard letter to all participants explaining the background to the ~~project,~~project, along with the reason for conducting the exercise, why they have been invited, how it will be conducted and explaining it is not part of a formal procurement. A standard briefing pack should also be produced covering background, scheme content and any additional opportunity that may exist and then a summary of key issues and actions upon which views are sought. A report on the responses should be written and submitted to the Project Board along with any recommendations for approval.

Questions to be asked

Clearly this will vary with each project depending upon the issues that arise from the viability assessment. Potentially it will cover issues such as:

a) New build verses~~s~~ refurbishment

b) Sites/planning

c) Scope of services to be included

d) ~~equipment~~Equipment/IT

e) Location

f) Scope for other users to be involved

g) Timescales

h) Project bundling

And so on.

4 Summary

There are many circumstances where informal market soundings may be appropriate. Accordingly the nature of such exercises will vary. It is therefore not sensible to issue prescriptive guidance on how they should be conducted. The key principles however are:

- Clarity about the objectives;
- Determine and agree the process before commencing;
- Undertake a structured and consistent approach;

- Take appropriate advice to ensure any ensuing procurement is not compromised;
- The information gained may not be conclusive.

The PFCU co-ordinates a market information and market promotion ~~network which includes NHS~~network that includes NHS bodies at all stages of the ~~PPP~~NPD process. The Group shares information and approaches to marketing and scoping of projects and it includes input from the advisory market.

Scheme promotion

Once this process has been completed, it is expected that the following courses of action may be appropriate:

- Address or resolve the scheme specific issues (to the extent possible) and to the extent required to be able to progress the scheme to market (on a Project Team basis);
- Compile a project brief detailing the key features of the project (scope of accommodation, key timings, scope of the services, project management arrangements and level of stakeholder support) which could be ~~used in~~used in advocating the project to potential participants;
- Initial calls to be made to contact lists to confirm appropriate organisations and representatives are recoded and to take contacts forward following any market contact;
- One on one interviews as part of projects scoping exercise;
- A Prior Information Notice (PIN) could be let to inform the market that the respective project will go to formal advert in the next 3-6 months (having considered the timing of other competing schemes and release of participants from schemes in procurement) and indicate the date of an open day for the project. A briefing pack would be sent to anyone who responds to the PIN notice;
- Delegated project team members follow up this by calling the contact list, advising them of the PIN and offer to send the briefing pack;
- Hold an Open Day for Participants which would be attended by relevant organisations from the wider health economy;
- As part of the open day (and as a follow up), the Project Team to obtain further feedback on the scope and content of each Project in so far as it impacts on its attractiveness to the bidding market (this can be done via a questionnaire or one to one meetings); and
- Issue OJEU notice (if there is a delay in this, issue an updated project brief to interested participants).

Before any of the above can be carried out, it is vitally important that the project team develop a coherent and consistent message to deliver to the market, particularly with regards to the timing and content of the project. Experience has shown that ~~projects which are delayed or re-scoped~~projects that are delayed or re-scoped post "warming" of the market, usually suffer in terms of participant interest due to a lack of confidence in the procuring organisation.

Following the market launch (and PIN if this approach is followed), participants will have the opportunity to meet with the Project Officers to become more familiar with the scheme. This can also provide an opportunity for participants to deliver feedback on how the scope of the scheme could be amended to ensure their participation and improve competition (and therefore aide the delivery of best value).

Given the above, the following areas should continue to be addressed:

- **Develop scope and risk allocation.** The Project Team should give early consideration to the Project Agreement (and commercial scope of the Project) and in doing this, set out how important scheme-specific matters will be dealt with;
- **Develop overall project timetable.** Existing project timetables should be reviewed and updated;
- **Focused marketing.** The Project Team will continue to target those potential participants who have the capacity and capability to undertake the Project and engage with them in one-to-one discussions;
- **Set prospective dates for PIN advert.** This will be a key market warmer for the scheme in question;
- **Set prospective dates for OJEU advert.** Adverts will only be placed if a competition is likely to emerge; and
- **Set prospective dates for OJEU advert.** Adverts will only be placed if a competition is likely to emerge.