



Department
of Health

Health Group Internal Audit

AUDIT TITLE:

“Protected Disclosure” in 2014 –
Review of two 2013 Care Quality Commission
procurements:

1. Risk Based Intelligence Approach
2. Organisational Design and Structure

HEALTH GROUP INTERNAL AUDIT REPORT

June 2015

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Transparency: The Department of Health, with the support of the Care Quality Commission (CQC), is publishing this report in the interests of transparency and openness. Although Internal Audit reports are not routinely published, this particular report is different from a normal internal audit report because it follows a request to review the action of an Arms Length Body following allegations made against it. We believe that the importance of public confidence in the CQC as a regulator means that it is in the public interest to publish this report on this occasion.

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Prepared by: Department of Health

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1. Executive summary

1. Following a disclosure in 2014, said to be a “Protected Disclosure” (made under Part 4A of the Employment Rights Act 1996), the Permanent Secretary of the Department of Health (DH) commissioned its Health Group Internal Audit (HGIA) service to undertake a fact finding review of the circumstances concerning two procurement exercises carried out by the Care Quality Commission (CQC) in February 2013 which resulted in contract awards being made to McKinsey & Company (McKinsey).
2. Following a detailed review of the two procurement exercises, which were for the Development of a CQC Risk Based Intelligence Approach and CQC’s Organisational Design and Structure (the pre VAT value of the contracts was £1,176,000 and £290,000 respectively), we found evidence of weak procurement practice - the key findings are as follows:
 - there were some procedural errors in relation to the procurement rules and practice:
 - as regards the **Risk Based Intelligence contract**, pre-tender mistakes allowed McKinsey exclusive access, which we believe gave it at least a perceived advantage. The tendering process was otherwise conducted properly;
 - for the **Organisational Design contract** -
 - pre-tender mistakes allowed McKinsey exclusive access; and
 - there were some procedural errors with respect to the manner in which the responses to tenders were considered, including McKinsey being given preferential treatment in the evaluation stage, which gave it an advantage.
 - in relation to both procurements - CQC did not keep a full audit trail of documentation concerning the procurement exercises.
3. The following allegations were not substantiated:
 - bullying or harassment in relation to the procurements; and
 - that CQC entered into a ‘verbal contract’ with McKinsey prior to the tender exercises.
4. We found no evidence that the changes to how the tenders for the Organisational Design contract were evaluated, or anything else, was motivated by improper financial gain, or any motive other than a belief that McKinsey would be the best choice at a time when urgent action was seen as important. Also, no allegations were made in relation to, and we found no evidence of inappropriate behaviour on the part of, McKinsey.

5. In the light of the conflict of evidence, the allegation that David Behan (the CQC CEO) asked the Executive Team to delete a specific email sent by him to them, concerning McKinsey, should not be upheld.

6. A further allegation was that concerns were raised by senior CQC staff (about the procurement process for these two procurements), at the time and in subsequent emails, which were not appropriately responded to. We have not found any evidence of what action, if any, was taken in relation to concerns raised. However, in light of the evidence we found relating to the concerns raised, it is not clear that any action needed to be taken in relation to the procurement process. This allegation is not, therefore, upheld.

2. Context

7. These procurements were taken forward at a time when CQC needed to demonstrate that it was positioned to respond quickly to the report of the Mid Staffordshire NHS Foundation Trust Public Inquiry (“the Francis Report”) published on 6th February 2013. It also needed to enable Government to make an early commitment to create Chief Inspector roles within CQC, which needed to overhaul its whole approach to inspection. The then new Chair (David Prior) and the CEO also wanted, after starting work in CQC in January 2013 and July 2012 respectively, to make significant organisational and staffing changes within CQC within a short space of time, partly as a response to the Francis Report.
8. In our judgement, although senior leaders at the time were mindful of the need to be compliant with procurement rules, their primary focus was on fulfilling the objectives set for the CQC following the Francis Report. A dialogue took place with McKinsey prior to the issue of the Invitation to Tender (ITT) because they were perceived (by the then Chair and the CEO) as having relevant experience in this area and a track record for doing things quickly.
9. Nevertheless, there were procedural errors in the procurement processes as indicated in this report.

3. Suggested next steps

10. We note that the capacity and capability of the CQC procurement team has improved since the time of these procurements with the recruitment of a fully qualified and very experienced procurement professional to lead on procurement matters.

11. Nevertheless, CQC should now commission:

- a structured programme of training across CQC to embed procurement principles and processes;
- an internal review of its procurement practices and procedures. If gaps are identified, CQC should take measures to ensure that it is compliant with the key principles of procurement practice. Aspects to be considered in the internal review should include:
 - arrangements to ensure that CQC is consistent with the DH Efficiency Controls and wider government procurement guidance;
 - process for the development of specifications and arrangements to engage with suppliers;
 - the conduct of evaluation boards; and
 - the management of procurement audit trails.

4. "Protected Disclosure" allegations and framework for our audit

12. In April 2014, a disclosure, said to be a "Protected Disclosure" (i.e. made under Part 4A of the Employment Rights Act 1996), was made to the DH by a member of staff of the CQC. The disclosure alleged the following in relation to procurement issues:
- *"Failure to comply with Government Procurement Rules in relation to a tender exercise carried out by CQC in February 2013, namely a review of CQC's Organisational Structures and the Development of a risk based intelligence approach for CQC";*
 - *"Failure to appropriately respond to the concerns raised by senior staff at that time, and in subsequent e-mails";*
 - *"Attempting to bully and intimidate staff to select McKinsey as a supplier";*
 - *"Verbally awarding a contract to McKinsey in advance of any procurement exercise"; and*
 - *"Providing McKinsey with preferential treatment as part of the above exercise".*
13. In the disclosure it was further alleged that, when discussing *"the issue of the appointment of McKinsey"*, the Executive Team were told by the CEO to *"delete the email sent by him on the 8th of February as CQC had to be 'seen to be following a procurement process'".*
14. Upon receipt of the disclosure, the Permanent Secretary commissioned HGIA to undertake a fact finding review of the circumstances concerning the procurements referred to in the "Protected Disclosure". The key objectives / scope of the review were to:
- ascertain the circumstances and audit trail surrounding the evaluation of the tenders and subsequent award (including the chronology of events);
 - review the award and decision making evidence to determine if they provide sufficient assurance that public money was being used in accordance with Government Procurement Rules; and
 - provide a report to management on our findings, which may include lessons learnt and recommendations to address any development points identified.
15. The principles under which this independent fact finding review was undertaken were based on the Public Sector Internal Audit Standards. This means, in particular, that the review's focus was on finding out and reporting on the evidence available; where there are

conflicts of evidence we have reported these but did not come to a view as to the weight to be given to the different accounts.

16. Except as set out below, our analysis excluded any review of:

- the business need for the contracts and contract management arrangements;
- the wider corporate governance arrangements and practices of CQC at the time of the procurements; and
- current procurement practices and arrangements.

17. Our fieldwork focused upon the audit trail underpinning the procurements; a detailed desktop analysis of documentation and discussions with current and former CQC staff that had been directly involved in the procurement tender processes, or in the events surrounding them. The then Head of HR Services (Lucy Robbins) declined an interview. The former Deputy CEO (Jill Finney) was happy to assist us, but indicated that on legal advice, as she was then taking legal action against CQC on an unrelated issue, she would only respond in writing.

18. We would like to place on record our appreciation to all parties who were involved in this review, for their co-operation and professionalism.

5. Detailed findings and conclusions

19. McKinsey was sourced for both contracts via the mini competition procedure from the most appropriate Government framework agreement (the Multi-Disciplinary Framework). In using this procedure, CQC was under an obligation to ensure that the procurement process was consistent with regulation 4(3) of the Public Contracts Regulations 2006, specifically to:

- treat all potential suppliers equally and in a non-discriminatory way, and
- act in a transparent way.

20. Although the points made below in relation to procedural errors concerning pre-tender discussions are relevant also to the Risk Based Intelligence contract, we found that the tendering process for this contract was otherwise conducted properly. McKinsey scored highest in the evaluation of the written tenders and was awarded the Risk Based Intelligence contract. This report will therefore mainly focus upon the tendering process for the Organisational Design contract in which we consider that there is evidence of some additional procedural errors in relation to procurement rules, with respect to the manner in which the responses to tenders were considered. This gave McKinsey an advantage in the evaluation stage.

21. Specific details of the evidence and how the procurement processes did not comply with proper procurement procedures can be found in Appendix A in this report, with a detailed timeline of events in Appendix B. The main material which formed the basis of this audit and the key points of our analysis are set out below.

22. The key timeline of events for the Organisational Design contract procurement was:

| Date | Event |
|-------------------------|--|
| Pre/early February 2013 | Various discussions between David Behan and/or David Prior with McKinsey |
| 07/02/2013 | Issue of the ITT |
| 14/02/2013 | Tender return date |
| 19/02/2013 | First evaluation panel |
| 20/02/2013 | Email sent to bidders for them to attend a presentation stage |
| 26/02/2013 | Second evaluation panel held (presentation stage) |

Pre-tender procurement stage

23. David Prior (the then CQC Chair) and David Behan (the CEO) told us that McKinsey was their preferred choice of supplier for the two contracts because of what they perceived to be McKinsey's detailed knowledge of the health sector, experience in dealing with significant reconfiguration of health bodies and reputation in the marketplace for quickly providing solutions to complex problems. Furthermore, both told us that McKinsey had assured them that they could provide a high level of consultancy resource at short notice that would be available to CQC throughout the lifespan of both contracts. With the Francis Report publication then imminent and the pressure on CQC to respond quickly, this was considered by them to be a significant undertaking by McKinsey. However, we have not seen any evidence to indicate that the CEO and the then Chair were closed to the possibility of working with a supplier other than McKinsey. In the CEO's case there is email evidence to indicate that he did consider it possible that a supplier other than McKinsey would be appointed (see below).
24. Procurement best practice requires that CQC should have ensured that all consultancies had the same opportunities for discussion with CQC (perhaps via a supplier open day) and were given the same information. This did not happen. All potential suppliers should be given equal access and the same information throughout the pre-tender and evaluation stages of the process.
25. Our detailed evidence of pre-tender procurement discussions is set out below:
- i. The then CQC Chair and the CEO confirmed that McKinsey were the only consultancy with whom discussions were held in advance of the two ITTs being issued (on 7th and 11th February 2013). In addition we have seen an email communication dated 18th February 2013, sent by the then CQC Chair to McKinsey discussing the organisational design work. This was sent after the ITTs were issued and before the first evaluation panel had convened for the Organisational Design tender on 19th February 2013;
 - ii. The fact that discussions had taken place with McKinsey, who had made a start on the work in question, was announced at an Executive Team meeting on 7th February 2013, as well as communicated by an email of 8th February 2013 from the CEO to Executive team members (at the time the ITTs were issued). This email stated that the CEO and the then Chair had already met McKinsey who might contact members of the Executive team and other CQC staff for advice and information. However, the CEO told us that he wanted the outcomes of the procurements to be determined in a manner consistent with government procurement rules. The email of 8th February 2013 may have created an impression that the decision to contract with McKinsey had already in effect been made. This is indicated by an e-mail (dated 15th February 2013), sent to John Lappin (the former Director of Finance) and others before the evaluation panel met, referring to

discussions with John Lappin and saying: “We have agreed that we are all concerned about the decision to go with McKinseys based on the information provided in the tenders”. However, John Lappin has stated to us that the sentiments expressed in this email were not his, as at that point McKinsey had not been appointed, i.e., there had been no “decision to go with McKinseys”.

iii. The CEO told us:

- that McKinsey were at this point (when pre ITT discussions took place with McKinsey) strictly ‘working at risk’;
- it was his clear intention that the supplier for this work would be formally selected in a manner compliant with government procurement rules. This is corroborated by an email sent by the CEO to Philip King, the then Director of Regulatory Development, on 25th February 2013 (the day before the second evaluation panel for the Organisational Design tender was held), which stated that the Organisational Design work “will be with whichever organisation wins the contract”. Further, John Lappin made clear to us that it was also his intention to provide proper governance for the procurements; and
- that the email of 8th February 2013 from him was intended to set out to the Executive team how the work was to be taken forward, including ensuring proper governance of the procurement activity (the email said that “John Lappin will lead on the procurement issues”).

iv. Following the ITTs being issued (on 7th and 11th February 2013), the CEO enquired in an e-mail (dated 12th February 2013) to John Lappin about “who will make the decision re McKinseys and when”, although the CEO told us that the email was intended to enquire about the progress of the procurement in general terms; and

v. The CQC procurement team and the first evaluation panel members told us that, from an early stage, they understood that McKinsey were the preferred supplier of the CEO and the then Chair. This was based upon hearsay and/or the visibility of McKinsey in the CQC Head Office rather than any preference at the time being clearly expressed to them by the CEO or the then Chair.

26. As a consequence of the early and exclusive access afforded to McKinsey in pre tender discussions, we believe that McKinsey had at least a perceived advantage over the other tenderers for both procurements. However, the then Chair and the CEO informed us that the information that was discussed with McKinsey was already at this point in the public domain as a result of the extensive consultation exercise leading up to the CQC Strategy for 2013-2016 “Making Services Better, Putting People First”.

The first evaluation panel for the Organisational Design ITT assessment

27. The first evaluation panel for the Organisational Design contract tender was held on 19th February 2013 and was made up of the then Interim Director of Intelligence - Nick Blankley, the then Head of HR Services - Lucy Robbins (who declined to be interviewed by

us) and the then Head of Finance, Estates and Procurement – Francesca Annetta. It was assisted by a panel moderator (a procurement officer). Nick Blankley told us that he was not involved in the procurement process until the first evaluation panel meeting when he was asked, at short notice, to chair that meeting.

28. The first evaluation panel was interrupted by Jill Finney. She told us that she “very reluctantly did so, only because I was instructed to do so by the CQC Chair”. However, the then CQC Chair told us that he has no recollection of such a conversation with Jill Finney on this point. We cannot establish the purpose of this visit because of the significantly differing accounts (as set out below) of those present about what Jill Finney had said, but any interruption of a tender evaluation is poor procurement practice in itself:

- the two panel members that agreed to be interviewed (Nick Blankley - the panel Chair and Francesca Annetta - the then Head of Finance, Estates and Procurement) and the moderator stated that Jill Finney had enquired about progress of their deliberations;
- in contrast, we have been passed a copy of an email from Lucy Robbins which is dated the day after the panel met and which stated that Jill Finney had asked members, upon the request of David Prior (the then CQC Chair), if they “were clear as to what was being required of them” and that if they were not clear they “should come out of the panel and call him so that we could get clarity”. The email went on to say, “It was clear from the body language and the tone of the conversation that David Prior was asking us potentially to choose McKinseys as the preferred supplier. The inference was not in any doubt in my mind” (although Lucy Robbins declined to be interviewed during this review, she indicated that the content of her e-mail, dated the day after the panel met, is an accurate reflection of what occurred);
- Jill Finney told us that the then CQC Chair had told her “to go into the room and advise the panel that the answer had to be McKinsey”. Accordingly, she said that she went into the room and passed this request on to the panel but made clear that she was asked to do so by the then CQC Chair and that she did not approve of the request. The panel asked her to leave, which she did; and
- the then CQC Chair stated that he could not recollect any events (including any phone calls) associated with the interruption but further told us that all panel members would have known that McKinsey were his preferred supplier.

29. In light of the differing accounts, we cannot come to a firm conclusion about what was said at this visit, but nevertheless the following is clear:

- the interruption of the deliberations of the evaluation panel was in itself inappropriate procurement practice. Such panels should be isolated as much as is possible from outside influences; and

- the panel members told us that they felt at the time that McKinsey was the preferred supplier of the then CQC Chair and the CEO. Panel members whom we interviewed indicated that the visit of Jill Finney made the members feel uncomfortable and the consensus was that it was an inappropriate intervention. Two panel members stated that it prompted a discussion amongst them about whether they should allow the intervention to influence their deliberations and that the panel members decided to disregard the visit and assess the bids on an objective basis. We note that the intervention did not prevent them awarding the highest score to one of the other bidders (referenced in this report as the 'other bidder') and the panel Chair told us that the outcome of the first panel was conclusive.

30. Following the first panel's evaluation of written tenders for the Organisational Design contract as set out in the published ITT documentation, the other bidder was assessed to have had the highest score with McKinsey scoring the lowest of the 3 bidders (as recorded in the bid evaluation scoring document produced as an outcome of the first panel). When we interviewed the panel members (save for Lucy Robbins who, as indicated above, declined our request for an interview) and the panel moderator they indicated the following:

- Nick Blankley (the panel Chair) said that the bids were scored and ranked and that this decision was 'conclusive'. Due to the passage of time, he could not recollect who all the bidders were, or what the ranking was, although he did recollect that McKinsey was not the winning bidder. This is recorded in the evaluation scoring documents. He thought though that it was unclear what the subsequent procurement 'process' would be. After the first panel had concluded he handed the process over to John Lappin. Nick Blankley explained to us that he was not involved in any further discussions other than to brief John Lappin of the outcome of the first panel meeting, and to attend the second panel meeting when requested.
- Francesca Annetta and the moderator told us that they could not recollect what the outcome of the panel was, but they could recollect that McKinsey was not the winning bid.
- John Lappin explained to us that he had been informed by the moderator that McKinsey's bid had not done well in the evaluation and that the other bidder had scored the highest. He said that he was also told that 'the panel had found it difficult to score the bids as the responses were so different' and that McKinsey had only provided a short bid document. John Lappin explained that although he had discussed the outcome with Nick Blankley, he was unable to recollect the details of that conversation.
- Nick Blankley confirmed that he had discussed the outcome of the first panel with John Lappin, but he was not able to recollect the detail of the discussions at those meetings. We were unable to find any other evidence about the decision of the first panel.

The second evaluation panel (the 'presentation panel')

31. John Lappin said that after discussion with the panel moderator and Nick Blankley he decided that the selection procedure for the evaluation of the Organisational Design contract tenders should include a presentation from all three bidders. John Lappin told us that:

- the purpose of the presentation was to test the bids better and to consider the results of the previous panel in the context of the presentation;
- in his opinion, the other bidders would not have been given the same opportunity (if their bid was short and/or if they had undersold themselves), but he felt that, because McKinsey had already been doing work in CQC and as they were 'known to be the best', it did not seem unreasonable to allow them to be able to present their bid at a presentation stage, and make sure that there were still three bidders in the process rather than just two; and
- he did not restart the tender process and go back to the market because (in his opinion) the same bidders would have responded.

32. We cannot determine at what time the CEO was informed of the progress of the procurement (see next paragraph). John Lappin told us that he did inform the CEO of the scores of the first evaluation panel, but also that the outcome of the panel was inconclusive, and he (John Lappin) had said to him that 'if McKinseys had undersold themselves then they should test the bids better and introduce a presentation stage'. However, the CEO does not have any recollection of this conversation with John Lappin or of a conversation with any other Directors at the time concerning the procurements.

33. The CEO has confirmed he was away on annual leave from 18/02/2013 to 20/02/2013 (inclusive) when the first panel, on 19th February 2013, was held, with invitations to the presentation panel being sent on 20th February 2013, before he arrived back from leave. A general catch-up meeting did take place on 21st February 2013 between him and John Lappin upon his return to the office at 9.00am on that day. The CEO confirmed that this meeting took place after the first evaluation panel but before the second panel. Further, he has told us that this was the most likely time he would have been updated on the progress of the procurements and would have been advised that there would be the need for a second stage based around a presentation.

34. A presentation panel (held on 26th February 2013) was introduced in which the bidders were to be guided by questions set by CQC.

35. We did not find any other evidence about the decision to hold a second panel (presentation stage). There is no suggestion that McKinsey requested, or were consulted about the possibility of introducing, this further presentation stage.
36. As a consequence of the decision to have a second presentation panel, McKinsey were given preferential treatment at the evaluation stage for the Organisational Design contract.
37. The general rule is that procurement decisions should be based upon the process set out within the ITT. This would, except in exceptional circumstances, require adherence to published ITT evaluation criteria/scoring methodology. Also, if supplier interviews/presentations are used to aid evaluation, this should be referred to clearly in the evaluation criteria together with the criteria/methodology used for marking. What the ITT said was that “Written submissions will be scored separately against the evaluation criteria”. Although unclear, this appears to suggest that evaluation would be on the basis of the written tender documents only. Additionally, although we understand that under certain circumstances deviation from the pre-determined procedures is allowed by procurement rules in order to obtain clarification, it would have been preferable if the possibility of a presentation stage had been made clear in the ITT.
38. Two of the members of the panel were changed for the presentation stage (it consisted of the CEO, John Lappin, who were not on the first panel, and Nick Blankley). We noted that the scores of the two panels differed significantly. We interviewed all of the presentation panel members who were in agreement that McKinsey was the most impressive bidder. However, we cannot independently confirm this as we were unable to obtain a copy of one of the three presentations (the other bidder’s presentation).
39. Although CQC has been able to provide much of the information we requested, there were some important gaps in the audit trail, most importantly, CQC has been unable to provide the copy of the other bidder’s presentation; although John Lappin told us that, at the time, he did retain copies of all of the presentations¹. However, the following points should also be noted:
- although the panel’s composition for the presentation stage was changed to include the CEO (who had been on annual leave at the time of the first evaluation panel) and John Lappin, we are convinced by the explanation of the procurement team and the CEO that it was appropriate to change the panel’s composition to ensure that sufficiently senior people were involved in the appointment in light of the nature of this work and the importance of the contract to the future of CQC. In addition, David Prior also told us that the decision to appoint or not appoint McKinsey was initially being

¹ He left CQC in July 2013.

made by what he perceived to be a junior team given the hugely important work under consideration. In his judgement, the decision needed to be made by a panel which included the CEO and John Lappin. In his view, the assessment had to be made by those who were privy to the strategic imperatives of the CQC Chair and the CEO; and

- the presentation questions set by CQC covered areas long in the public domain because they were based on the consultation exercise (Sept to Dec 2012) leading to the CQC Strategy for 2013-2016 “Making Services Better, Putting People First”.

40. Following the presentations, the second panel awarded in favour of McKinsey with its assessment score increasing by 93% whilst the other bidder’s score decreased by 29%. It is unclear from the evaluation documentation how the scores between the two panels should differ so markedly because of inadequacies in the audit trail which are set out below:

- the narrative for the scores of both of the first and second panels was in parts confusing and contradictory;
- we could not refer to individual marking sheets of panel members as CQC’s approach was to score on the basis of a consensus;
- we have been unable to review/compare the supplier presentations because CQC have been unable to provide a copy of the other bidder’s presentation documentation. We reviewed the McKinsey presentation and we found it to be a substantial document, but we cannot provide independent confirmation that it was superior to the other respondees.

Other related findings and observations

41. We were able to confirm that there was early dialogue between Senior Executives in CQC and the DH Director General of Finance to agree on the key deliverables and the relevant Government procurement framework to use. The business case for these procurements (which fell within the ambit of the DH Efficiency Controls) was retrospectively authorised by DH.

42. An allegation was made in the “Protected Disclosure” that David Behan, the CQC CEO, asked the Executive Team to delete the email of 8th February 2013 (referred to in the ‘Pre-tender procurement position’ section above) which stated that McKinsey had started work (although the CEO stressed to us that it was at this point ‘at risk’) and that they might be contacted by McKinsey for advice and information. Specifically, it was alleged in the “Protected Disclosure” that this request was motivated by a desire on the part of the CEO that “CQC had to be seen to be following a procurement process”.

43. The CEO told us that he strongly refuted this allegation. John Lappin also told us that he has no recollection of being asked to delete this email and indeed it was in his email account and it is also still in the CEO's sent account records. Apart from the person who raised the "Protected Disclosure" and the CEO, we also interviewed seven current or former CQC staff who routinely attended the weekly meeting where the email deletion remark had allegedly been made. The evidence shows that of these seven individuals:
- one did not support the allegation;
 - four could not remember such an incident; but
 - two did support the allegation.
44. In light of the conflict of evidence, the allegation that the CEO did ask the Executive Team to delete the email should not be upheld.
45. The following allegations in the "Protected Disclosure" were not substantiated:
- bullying or harassment in relation to the procurements (all of the members of the first evaluation panel that we interviewed, when asked, denied that there was any bullying);
 - that CQC entered into a 'verbal contract' with McKinsey.
46. It was also said in the "Protected Disclosure" that concerns were raised by senior staff of CQC about the procurement process for these two procurements which, at the time and in subsequent emails, were not appropriately responded to. The CEO told us that he has no recollection of any conversation or correspondence from any internal person at the time of the procurements raising concerns in respect of the conduct of the procurement process. We only found two pieces of evidence relating to this which relate to concerns being raised with the CEO or John Lappin (who was responsible for the procurements) at the time of the procurements:
- firstly, Jill Finney's written response to our questions said that, after the first evaluation panel for the Organisational Design contract tenders had met, she had verbally raised concerns about being asked to interrupt that meeting with the CEO and with John Lappin (who confirmed that a conversation did take place), as the senior responsible officer at that time for procurement within CQC. The CEO explained to us that he was on leave at the time of the first panel so Jill Finney could only have raised this when he returned from leave and after the decision had been made to hold a second panel. The CEO does not recall such a conversation, but he could not say for definite whether or not such a conversation took place. However, two of the panel members told us that the panel members decided to disregard the visit and assess the bids on an objective basis; nor did it prevent them from awarding the highest score to one of the other bidders.
 - secondly, there is an e-mail sent on 15 February 2013 to John Lappin and others (but not the CEO), before that first evaluation panel had met, referring to discussions with

John Lappin and saying: “We have agreed that we are all concerned about the decision to go with McKinseys based on the information provided in the tenders.” John Lappin told us that the sentiments expressed in that e-mail were not shared by him, as at that point McKinsey had not been appointed. It is not clear however whether this e-mail was raising a concern about the whole procurement process or only about the quality and cost of McKinsey’s tender for the Organisational Design contract.

47. We have not found any evidence of what action, if any, was taken in relation to the concerns raised. However, in light of the evidence we found relating to the concerns raised, it is not clear that any action needed to be taken in relation to the procurement process. This allegation is not, therefore, upheld.
48. Finally, although not referred to in the disclosure, it should be noted that we found no evidence that the changes to how the tenders for the Organisational Design contract were evaluated, or anything else, was motivated by improper financial gain, or any motive other than a belief that McKinsey would be the best choice at a time when urgent action was seen as important. Also, no allegations have been made in relation to, and we found no evidence of inappropriate behaviour on the part of, McKinsey.

The Audit Trail of procurement documentation

49. CQC have been able to provide much of the documentation we requested, however, there are some important omissions, as follows:
- as already noted, CQC could not now provide a copy of all supplier presentations (for the second Organisational Design evaluation stage) (although John Lappin told us that, at that time, he did retain a copy of all of the presentations; as indicated above, he left CQC in July 2013);
 - CQC do not have a detailed breakdown of McKinsey costs for the Organisational Design contract although they do for the Risk Based Intelligence contract. This breakdown would be needed for contract management purposes; and
 - CQC do not have signed copies of either contract and we are told that the original signed contracts are with McKinsey.

Suggested next steps

50. Whilst noting the progress CQC has made in strengthening its capacity and capability in procurement since the time of these two procurements CQC should now commission:
- a structured programme of training across CQC to embed procurement principles and processes;

- an internal review of its procurement practices and procedures. If gaps are identified, CQC should take measures to ensure that it is compliant with the key principles of procurement practice. Aspects to be considered in the internal review should include:
 - arrangements to ensure that CQC is consistent with the DH Efficiency Controls and wider government procurement guidance;
 - process for the development of specifications and arrangements to engage with suppliers;
 - the conduct of evaluation boards; and
 - the management of procurement audit trails.

Appendix A

| Finding | Evidence | Procurement rule or good practice |
|---|---|---|
| <p>1. Pre-ITT Discussions</p> <p>CQC only held discussions with McKinsey in advance of the ITTs.</p> | <p>All of the interviewees reported to us that they understood that David Behan (the CEO) and David Prior (the then CQC Chair) wanted to work with McKinsey and indeed both confirmed that this was the case and were very open about the fact that they held pre tender discussions with McKinsey. This was because of the need to respond with speed to the Francis Report and McKinsey was perceived to have the relevant experience and a track record for doing things quickly. However:</p> <ul style="list-style-type: none"> • The CEO told us that he made clear to the Executive Team his expectation that the right procurement governance be in place and directed John Lappin (the former Director of Finance) to ensure that this was the case. Further, that any pre-tender work undertaken by McKinsey was “at risk”; • The then Chair told us that he was specifically excluded for corporate governance reasons from any involvement in the procurements. <p>We found in our review of e-mail correspondence:</p> <ul style="list-style-type: none"> • That CQC held an exclusive dialogue with McKinsey in advance of the ITT documentation being issued. In addition, we | <p>Early supplier engagement is considered to be good procurement practice in clarifying what is available in the market place and identifying innovative approaches to achieve desired outcomes. However, steps should be undertaken by a buyer to ensure that as many potential suppliers as is possible are offered the opportunity to contribute to this process (for example, through an open day).</p> <p>All bidders who have expressed an interest in the procurement should be given the same information.</p> |

| Finding | Evidence | Procurement rule or good practice |
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| | <p>have seen an email communication dated 18th February 2013, sent by the then CQC Chair to McKinsey discussing the organisational design work, which was sent after the ITTs were issued and before the evaluation panels had convened;</p> <ul style="list-style-type: none"> • In an email sent by the CEO to the Executive Team on 8th February 2013, he stated that he and the then Chair had met McKinsey and that their representatives might be approaching CQC staff for advice and information (although note the CEO said that McKinsey were clear that they undertook the work at risk of not winning the contract); • The CEO sent an email to John Lappin on 12th February 2013 (following the issue of the ITTs) enquiring about “who will make the decision re McKinseys and when” rather than the progress of the procurement exercises per se. However, any adverse inference that may be drawn from this email must be balanced with the reading of an email the CEO sent to Philip King, the then Director of Regulatory Development, on 25th February 2013 which stated that the Organisational Design work was to be undertaken by “which ever organisation wins the contract”. | |

| Finding | Evidence | Procurement rule or good practice |
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| <p>2. Tender Evaluation Board Procedures</p> <p>The first evaluation board for the Organisational Design contract tender held on 19.2.2013 was (and all agreed) inappropriately interrupted by a visit from Jill Finney (the former Deputy CEO), although there is a lack of consistency in accounts concerning the message that was conveyed. Also, the visit did not appear to have influenced the work of the panel.</p> | <p>We interviewed 2 panel members (Nick Blankley and Francesca Annetta) and the moderator (a CQC procurement officer, who was present at the panel meeting to assist it and take notes) to determine the procedures that took place during the first evaluation panel (the third panel member, Lucy Robbins, declined our request for an interview). They all told us that the panel proceedings were interrupted by Jill Finney but all went on to state that she enquired in general terms about their progress.</p> <p>In contrast, we have been passed a copy of an e-mail from Lucy Robbins, who is no longer employed by CQC, which is dated the day after the panel met and which stated that Jill Finney had asked them if they “were clear as to what was being required” of them and that if they were not clear they “should come out of the panel and call him [the then CQC Chair] so that we [the panel] could get clarity”. The e-mail went on to say, “It was clear from the body language and the tone of the conversation that David Prior was asking us potentially to choose McKinseys as the preferred supplier. The inference was not in any doubt in my mind”.</p> <p>We asked Jill Finney for her recollection of events of that day and the key points of her written response</p> | <p>Evaluation panels should be isolated as much as is practical from outside influences.</p> <p>This is to create an environment in which panels can focus in an objective manner upon the responses to tender.</p> |

| Finding | Evidence | Procurement rule or good practice |
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| | <p>are set out below:</p> <ul style="list-style-type: none"> • On the day of the panel meeting, the then CQC Chair called her twice to ask if the evaluation panel had reached a conclusion; • On the third call, she was told to go into the room and advise the panel that the answer had to be McKinsey. She carried out this request although she made it clear to the then CQC Chair she did not approve of it; • That she reported the incident to David Behan on his return from leave, as well as to John Lappin and she stated both were alarmed at the then CQC Chair's request. John Lappin has confirmed that Jill Finney did discuss this with him in her office. He recalled that she stated that the then CQC Chair had asked that she interrupt the meeting and that she was concerned over his instruction to interrupt the process. The CEO could not recall such a conversation between him and Jill Finney; • At the conclusion of the panel deliberations, Nick Blankley (the chair of the panel) had told her that McKinsey were not their preferred choice; • That she had no personal motivation whatsoever to interrupt the panel and her | |

| Finding | Evidence | Procurement rule or good practice |
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| | <p>interruption 'only makes sense' in the light of the two earlier phone calls and direct instruction from the then CQC Chair; and</p> <ul style="list-style-type: none"> • That by the time of this procurement, she had already resigned and was due to leave in late February 2013 (only days after the procurement meeting). <p>David Prior told us that:</p> <ul style="list-style-type: none"> • He could not recall instructing Jill Finney to interrupt the panel (including making the three phone calls to her) but that panel members would have known his preference was McKinsey; • He thought that the decision to appoint or not appoint McKinsey was being made by what he perceived to be a junior team given the hugely important work under consideration. In his judgement, the decision should have been made by the CEO and other members of the senior leadership team; and • He was not involved in the development of the tender documentation or in any of the panels as he was expressly excluded by the then Executive team from any involvement in the procurements for corporate governance reasons. | |

| Finding | Evidence | Procurement rule or good practice |
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| | <p>Given the conflicting accounts, we are not able to confirm the detail of Jill Finney's visit, although interrupting a tender evaluation panel is of itself poor procurement practice.</p> | |
| <p>3. The Presentation Panel – held on 26.2.2013</p> <p>Following the outcome of the first evaluation panel for the Organisational Design contract (which scored the other bidder the highest and which was considered to be conclusive by Nick Blankley, but Francesca Annetta and the moderator could not recollect the outcome of the first panel), a second presentation stage was introduced into the process (the panel was revised to comprise the CEO, John Lappin, who were not on the first panel, and Nick Blankley).</p> <p>Although we note that no respondees raised any questions about the requirement for a presentation, for the purposes of</p> | <p>We reviewed in detail the ITT and other correspondence issued to the bidders. From this we confirmed:</p> <ul style="list-style-type: none"> • That there was no reference in the evaluation criteria to a presentation panel although we note that none of respondees raised an objection on this ground; and • That the questions posed to the respondees in the presentation panel were framed around topics long in the public domain as a result of the extensive consultation exercise leading up to CQC Strategy for 2013-2016 "Making Services Better, Putting People First". We have confirmed that this was the case. <p>We interviewed John Lappin, who was responsible for the procurement team, who stated that:</p> <ul style="list-style-type: none"> • Based on information he was given by the panel moderator, he informed the CEO of the scores of the first evaluation panel, but also that the outcome of the panel was inconclusive. He further explained to us that he said to the CEO that 'if McKinseys had | <p>The selection of suppliers should be based upon the criteria set out within the ITT. Although we understand that under certain circumstances deviation from the pre-determined procedures is allowed by procurement rules in order to obtain clarification, it is preferable to make clear any possibility of a presentation stage.</p> |

| Finding | Evidence | Procurement rule or good practice |
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| <p>transparency the evaluation of tenders should be based upon the criteria set out within the ITT. In this case, all that the ITT said was that “Written submissions will be scored separately against the evaluation criteria”.</p> <p>The panel membership was changed to include John Lappin and the CEO (who was on annual leave at the time of the first panel); the reason given for this was to ensure that sufficiently senior people were involved in the decision making in light of the importance of the contracts to the future of CQC. Also, we have confirmed that the topic areas set by CQC were long in the public domain as a result of the consultation exercise (undertaken from Sept to Dec 2012) leading up to its revised corporate strategy published in April 13.</p> | <p>undersold themselves then they should test the bids better and introduce a presentation stage’. The CEO told us that he had no recollection of this conversation and that he was away on annual leave in the period immediately before and after the panel (invitations for the presentation were sent out before the CEO’s return) although he did also tell us that he had a catch-up meeting with John Lappin upon his return to the office;</p> <ul style="list-style-type: none"> • The panel was changed to ensure “a higher input” from Senior CQC staff especially given the course of discussion that was anticipated would follow the presentations from the bidders; and • McKinsey’s presentation scored the highest and it was the unanimous decision of the panel to award in its favour. <p>When interviewed, Nick Blankley told us that after the first panel had concluded he handed the process over to John Lappin. In his opinion, the aspect which was inconclusive was what the subsequent procurement ‘process’ would be.</p> <p>The CEO told us that:</p> <ul style="list-style-type: none"> • He has no recollection of being told by John Lappin of the outcome of the first evaluation | |

| Finding | Evidence | Procurement rule or good practice |
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| | <p>panel (although as noted, he did confirm that a meeting with him did take place upon his return to the office after a spell of annual leave. Further, he told us that that meeting was the most likely time that he would have been updated on the progress of the procurements including the decision of John Lappin to have a presentation stage). He also told us that he would have been reliant on the advice of John Lappin in terms of procurement processes. In addition he agreed with John Lappin's account concerning the reasons for the change to the composition of the evaluation panel for the presentation stage.</p> <p>There is no suggestion that McKinsey requested, or were consulted about the possibility of introducing, a further presentation stage.</p> | |
| <p>4. Documentation of Decision Making</p> <p>Nick Blankley, the Chair of the first evaluation panel for the Organisation Design contract tenders told us that the panel decision was conclusive, Francesca Annetta and the</p> | <p>We interviewed the procurement team and two of the three members of the first evaluation panel for the Organisational Design contract. Our discussions were informed by our review of the ITT documentation and the evaluation panel scores and accompanying narrative.</p> <p>Nick Blankley told us that the first evaluation panel's decision was conclusive; the moderator and Francesca Annetta could not recollect the decision made by the panel (except that McKinsey was not</p> | <p>Procurement decisions should be clearly explained in documentation.</p> |

| Finding | Evidence | Procurement rule or good practice |
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| <p>panel moderator could not recollect the outcome of the first panel (although we found that the narrative for the scores of both of the panels was in parts confusing and contradictory).</p> <p>Also, all members of the second, presentation, panel were in agreement that McKinsey was the superior bidder and awarded it the highest score at this stage and therefore the contract. However, we cannot independently confirm their conclusions because of inadequacies in the documentation of decision making.</p> | <p>the winning bid); and John Lappin told us that he had been informed by the panel moderator that the panel had found it difficult to score the bids as the responses were so different and the McKinsey bid document was short. John Lappin and Nick Blankley both said that they had discussed the outcome, but neither of them was able to recollect the detail of this conversation. Nick Blankley told us that the aspect which (in his opinion) was inconclusive was what the subsequent procurement ‘process’ would be.</p> <p>We found that for the Organisational Design contract tenders, the evaluation scores after the second presentation panel had differed significantly to the first panel’s scores. This resulted in McKinsey who finished 3rd initially, coming 1st after the presentation. The narrative descriptions for the scores awarded was not very clear and, although all staff involved in the presentation panel stated that McKinsey’s presentation was far more substantial than all of the other bidders (and we found the documentation accompanying it to be very detailed), we could not independently confirm this as CQC could not now provide the presentation documentation from the ‘other bidder’ (the next highest scorer).</p> | |
| <p>5. The Audit Trail.</p> | <p>We requested from CQC documentation in support of both of the procurements. CQC could provide most of it but was missing:</p> | <p>All supporting documentation for decision making should be retained in a manner consistent with government document retention</p> |

| Finding | Evidence | Procurement rule or good practice |
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| <p>CQC could not now provide a copy of all of the supplier presentations to the Organisational Design contract presentation panel, as well as other documentation (e.g. a copy of the signed contracts) that we would expect to CQC to have.</p> | <ul style="list-style-type: none"> • Presentation document from one of the bidders (the other bidder) for the Organisational Design contract (we therefore saw only two of the three presentations); • The detailed breakdown of McKinsey's costs for the Organisational Design contract although it did have the breakdown for the Risk Based Intelligence contract; and • Both of the signed contracts which we were informed are with McKinsey. <p>In terms of the other bidder's presentation document (which CQC could not now provide), we were informed by the CQC procurement team that a copy had not been retained in the official audit trail. As a consequence we cannot independently comment on the decision of the second panel to award the contract to McKinsey. Post our audit fieldwork, John Lappin told us that he did retain copies of all the presentations (but he left the CQC in July 2013).</p> | <p>policies:</p> <p>http://www.nationalarchives.gov.uk/documents/information-management/sched_contractual.pdf</p> <p>Amongst other things, the guidance says that: "2.1 Departments should ensure that they keep a record of all contracts and related transactions on registered files. The files must contain a complete and accurate record of all internal and external documentation so that the stages and reasoning of the transactions are apparent. ..."</p> <p>Suggested periods for keeping such records include:</p> <ul style="list-style-type: none"> • Unsuccessful tender document – one year after date of last paper; • Interview panel, report and notes of proceedings – one year from end of contract; and • Signed contract – six years from end of contract. |

Appendix B – Time line of key events

| Date | Event |
|--------------------|--|
| Pre/early Feb 2013 | Various meetings or discussions held between the then CQC Chair and/or the CQC CEO and McKinsey (exact dates not known) |
| 06/02/2013 | Publication of the Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry (“the Francis Report”) |
| 07/02/2013 | Issue of the Invitation to Tender to develop CQC’s Organisational Design and Structure |
| 11/02/13 | Issue of the Invitation to Tender for the Risk Based Intelligence contract |
| 14/02/2013 | Tender return date for responses to the Invitation to Tender to develop CQC’s Organisational Design and Structure (3 tenders received) |
| 15/02/13 | Tender return date for responses to the Invitation to Tender to develop a Risk Based Intelligence Approach (5 tenders received) |
| 18/02/13 | Evaluation panel meeting for the Risk Based Intelligence contract tenders |
| 19/02/2013 | First evaluation panel meeting takes place for the Organisational Design contract tenders |
| 20/02/2013 | Email invite sent to bidders for them to attend and make a presentation concerning the tender to develop CQC’s Organisational Design and Structure |
| 26/02/2013 | Second evaluation panel meeting for the Organisational Design contract tenders |
| Date not known | Emails sent to unsuccessful bidders notifying them of the tender outcome |
| 09/04/2013 | Contract signed by CQC for the Organisational Design and Structure work between CQC and McKinsey |