

**ESTATE MAJOR PROJECTS AUTHORITY COMMITTEE - MINUTES**

**Venue:** Meeting Room 3, 1<sup>st</sup> Floor Site  
Offices, Midland Metropolitan  
Hospital, Cranford St. B66 2RT

**Date:** 3rd October 2019, 13:15-13:45

**Members:**

Mr R Samuda (RS) Non-Executive Director (Chair)  
Mr T Lewis (TL) Chief Executive  
Mr H Kang (HK) Non-Executive Director  
Mr M Hoare (MH) Non-Executive Director  
Mr M Laverty (ML) Non-Executive Director  
Cllr W Zaffar (WZ) Non-Executive Director

**In Attendance:**

Ms D McLannahan (DM) Acting Director of Finance  
Mr A Kenny (AK) Director of Estates & NHP

Minutes	Reference
<b>1. Introductions</b>	Verbal
The Committee members provided an introduction for the purpose of the meeting recording.	
<b>2. Welcome and declarations of interest</b>	Verbal
<ul style="list-style-type: none"> <li>RS welcomed Committee Members to the meeting</li> <li>No declarations of interest were declared.</li> </ul>	
<b>3. Apologies for absence</b>	Verbal
<ul style="list-style-type: none"> <li>No apologies</li> </ul>	
<b>4. Minutes from the meeting held on 30 August 2019</b>	EMPA (10/19) 001
<ul style="list-style-type: none"> <li>The minutes of the meeting held on 30 August 2019 were accepted by the Committee</li> </ul>	
<b>5. Matters arising (action log)</b>	EMPA (08/19) 002
<p>The Committee reviewed the action log and the following updates were provided:</p> <ul style="list-style-type: none"> <li>TL reported that, with regard to the current risk assessment of service instability, this was a question of whether acute medicine could be sustained. He reported that the Trust was in no better or worse position than a year ago when the data was first presented to the Board.</li> <li>TL further reported that the estimated impact of the respiratory reconfiguration on the service instability compared to the current state, would be reported at the formal Board meeting in October.</li> <li>RS suggested carrying discussion of the Strategic Board Assurance Framework: EMPA Controls (item 6) to the next meeting. This was agreed by the Committee.</li> </ul>	

6. Strategic Board Assurance Framework: EMPA Controls	EMPA (10/19) 003
<p><b>Action:</b> TL to report the estimated impact of respiratory reconfiguration on the service instability to the October formal meeting.</p> <p><b>Action:</b> Discussion of the Strategic Board Assurance Framework: EMPA Controls to be tabled for discussion at the next Committee meeting.</p>	
7. Homes England Progress Report	EMPA (10/19) 004
<ul style="list-style-type: none"> <li>• AK reported that the main issue was to ensure the Trust continued to have access to the sites on the Birmingham City site and reported he was in daily dialogue with Homes England who had been fair in helping the Trust achieve this aim.</li> <li>• AK reported that a lease deed had been obtained covering a period to 31 December 2019, after which it would lapse. AK reported that the choice was either to renew the deed to 31 December 2022 or 9 January 2023. The difference in dates was related to Homes England’s long post-Christmas break and represented no other significance. TL commented that it was extremely important to sign the new lease before the Trust was invited to sign the Midland Met contract.</li> <li>• To expedite the process, the Committee agreed to delegate the date decision to AK, providing the date was not before 31 December 2022.</li> <li>• RS and AK confirmed there was nothing materially different, i.e. new clauses in the lease, other than continuance of payment.</li> </ul>	
<p><b>Action:</b> AK to decide on a lease deed date with Homes England so that the deed can be signed as soon as possible.</p>	
8. Hard FM – Accounting Treatment Update – Lots 3 & 4	EMPA (10/19) 005
<ul style="list-style-type: none"> <li>• DM referred to a paper which had been tabled at the last Committee meeting, which set out outline treatment and introduced a new, more comprehensive comparison of external versus in-house accounting treatment. She reported that its purpose was <ul style="list-style-type: none"> <li>○ Clear identification of commercial advantage or disadvantage to either party.</li> </ul> </li> <li>• DM reported the table showed no real or material difference between external and in-house bids in most categories listed in the paper.</li> <li>• There was a significant difference however in the recharge of staff costs category under Lot 4. DM reported that an in-house bid for Lot 4a or 4b would involve internally employed staff and at the point of contract, no VAT would apply. Staff costs, overhead and recharges associated with capital from an external bid however, would have unrecoverable VAT applied.</li> <li>• DM expressed the view that it would be important, as part of the appraisal process, to exclude the VAT implications from the assessment and/or have a clear breakdown of overhead associated with Lot 3 &amp; 4 to ensure a comparable and transparent position.</li> <li>• RS clarified that if there was an external bid, a ceiling would be applied, thereby transferring the risk of costs overrun on specified items to the external bidder.</li> <li>• ML commented that the possible ringfencing of monies for the in-house team had been discussed previously, so that a like for like comparison could be achieved. A mechanism for achieving this had not been decided. DM expressed the view this would be possible if the Committee chose that course</li> </ul>	

of action. Through RS that was agreed.

- TL expressed the view that it would be very important to confirm the ringfencing possibility by adding more detail to the escrow account question, being mindful of the recently announced changes to the NHS capital regime. He expressed the view that a Committee decision on the issue needed to be made before appraisal of the bids to avoid it appearing as a reaction to the bids.
- DM agreed to formulate a clarification document, taking into account details of the recent NHS capital regime announcement. She reported that NHS Trust guidance and the establishment of limited companies had been consulted. DM expressed the view that it was possible for an NHS Trust to set up a limited company providing it was for a clear commercial reason and was for the benefit of patients. A company established purely for the recovery of VAT was unlikely to be permitted. DM reported that similar action by other NHS Trusts had revealed that there was a high degree of sensitivity and oversight of such moves at Ministerial level. She reported that any limited company project would take around 12 months to establish.
- TL suggested the management team could deliver a briefing to the Committee to ensure the potential commercial upsides of an external bid were real and not illusory.
- DM reported that the subject of deductions for poor performance had been introduced by the procurement team with the intention of applying similar standards to internal and external bids. TL commented that termination clauses had not been set out and needed to be clear.
- RS confirmed that VAT and risk were discriminating variables, but the evaluation mechanism would attend to these issues.

**Action:** DM to provide a written clarification to the Committee that an escrow mechanism is capable of being created for an in-house bid and how it would work in practice.

**Action:** AK to arrange a written commercial briefing by the management team about the specification requirements.

## 9. Land Related Matters – Midland Met CPO

- AK reported that the Trust was focusing on understanding the aspirations of Pall Mall. He reported Pall Mall had one claim for around £150,000. Pall Mall had wanted payment from the Trust because there had been some damage on the site, allegedly caused by contractors (not Trust contractors) but the Trust had not made any payment. (This was a claim dating back to 2014.)
- AK further reported that Pall Mall had an additional claim in excess of £260,000. This second claim related to works that had not been delivered to standard.
- TL suggested waiting until March 2020 when the Land Plan Tribunal claims expired which would provide a near absolute defence, unless there was evidence that the Trust's agent had encouraged the view that the Land Tribunal would not apply. TL reported that past documentation was being examined to see if such evidence existed. The legal team had advised that if no evidence was found, then the defence would be that the party would be out of time to pursue litigation. The Committee agreed to delay until March 2020.
- TL further reported that the legal team had advised that land use other than for a CPO could not be used as grounds for fresh legal action.
- ML and MH both supported the proposed course of action which was agreed.

## OTHER ITEMS

### 10. Meeting effectiveness / matters to raise to the Trust Board

Verbal

<ul style="list-style-type: none"> <li>• Not discussed</li> </ul>	
<b>11. Any other business</b>	<b>Verbal</b>
<ul style="list-style-type: none"> <li>• No other business discussed</li> </ul>	
<b>12. Details of Next Meeting</b>	
<ul style="list-style-type: none"> <li>• The next regular meeting to take place on Friday, 25 October 2019 from 15:00 to 16:30 in Room 13, Education Centre, Sandwell General Hospital.</li> </ul>	

Signed .....

Print .....

Date .....