

Eye Care Digitisation Programme Final Internal Audit Report

May 2024

Cardiff & Vale University Health Board



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Auditors:	Ian Virgil, Head of Internal Audit Stephen Chaney, Acting Head of Internal Audit Philip Lewis-Davies, Principal Auditor
Executive sign-off:	Catherine Phillips, Director of Finance, CVUHB
Distribution:	Claire Osmundsen-Little, Director of Finance, DHCW Claire Salisbury, Deputy Director of Procurement Services, NHS Wales Shared Services Partnership
Committee:	Audit Committee



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Acknowledgement

NHS Wales Audit and Assurance Services would like to acknowledge the time and co-operation given by management and staff during the course of this review.

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Executive Summary

Purpose

At the request of Cardiff and Vale University Health Board (CVUHB), an audit was undertaken to comment on the current status of contractual commitments entered into by CVUHB to deliver the Eye Care Digitisation Programme. The review has focused on the Eye Care Digitisation Programme NHS Wales contract CAV-ITT-Project 42019 entered into between CVUHB and Toukaneyes Limited, trading as ToukanLabs UK, and its compliance with procurement legislation and CVUHB procurement processes.

Overview

While we have provided reasonable assurance over this review, in coming to this position we took into account the Variation Agreement that was completed during 2023, which clarified and updated several requirements from the original contract.

We have included the following matters arising:

- discrepancies on the contract award notice and wording relating to the contract term;
- the delay on the contract variation process;
- the completion of the Exit Plan during 2023; and
- further enhancements to the internal procurement process – i.e. the incorporation of a quality assurance process.

Additional conclusions identified outside of the scope of this review will be incorporated into the annual national NWSSP Procurement audit. All matters arising have been included within Appendix A.

Report Opinion

Reasonable



Some matters require management attention in control design or compliance.

Low to moderate impact on residual risk exposure until resolved.

Assurance summary¹

Objectives	Assurance
1 Compliance with procurement legislation.	Reasonable
2 Compliance with CVUHB procurement processes.	Reasonable

¹The objectives and associated assurance ratings are not necessarily given equal weighting when formulating the overall audit opinion.

Matters arising		Assurance Objectives	Control Design or Operation
1	Term of Contract	1, 2	Operation
2	CVUHB Procurement Process	1, 2	Design
3	Contract Award Notice	1, 2	Operation
4	Contract Variation	1, 2	Design
5	Exit Plan	2	Operation

Recommendation*		Assurance Objectives	Priority Rating
1	CVUHB Procurement Process	1, 2	Medium

- * We have raised one recommendation to enhance the controls associated with the five matters arising. This medium priority recommendation is reported within Appendix A and is presented as an optional consideration.

1. Introduction

- 1.1 The National Digital Eye Care Programme (the 'Programme') is a Welsh Government programme of work in place to digitise the Ophthalmology Electronic Patient Record [EPR] and Referral processes across NHS Wales. The Programme has been managed and delivered by Cardiff and Vale University Health Board (CVUHB) on behalf of the Welsh Government, all Welsh health boards and primary care optometrists.
- 1.2 The transition was agreed in principle and DHCW appointed a National Programme Manager in April 2023 to work with CVUHB, to plan and execute the Programme transition. A series of programme status review meetings were held to gather information from the senior CVUHB Programme Team, senior national programme stakeholders and Welsh health boards to determine the current status and expectations.
- 1.3 The transfer date of 1st June 2023 was approved by the DHCW Board at its May 2023 Board Meeting, noting the requirement to pause and reset the Programme during the period of due diligence and transition.
- 1.4 At the request of CVUHB, a review was established to comment on the current status of contractual commitments entered into by CVUHB, to deliver the Programme.
- 1.5 The scope is limited to a review of the status of contract CAV-ITT-Project 42019 entered into between CVUHB and Toukaneyes Limited, trading as ToukanLabs UK in November 2019, including the procurement arrangements.
- 1.6 The audit has focused on the Committees' and the Board's engagement and in particular, the objectives of the area under review were compliance with procurement legislation and compliance with CVUHB procurement processes.
- 1.7 Possible key risks considered within the review include:
 - The contract may not have been procured in compliance with legislation, exposing CVUHB to external challenge.
 - The contract may not have been procured in compliance with CVUHB internal process controls, resulting in a commitment that may not have been approved in an appropriate manner.
- 1.8 The scope of this audit did not include the control and management of the delivery of the contract post award. Whilst we considered procurement processes relevant to this contract, recommendations have only been reported if they are specifically applicable to CVUHB and within the scope of this audit. Otherwise, wider recommendations and / or opportunities relating to these processes will be incorporated into the national NWSSP Procurement audit.

2. Detailed Findings

Objective 1: Compliance with procurement legislation

- 2.1 As detailed in the Standing Financial Instructions (SFIs) the CVUHB Chief Executive (CEO) is ultimately responsible for procurement. Staff within the Procurement Team are employed by NHS Wales Shared Services Partnership (NWSSP) and provide a procurement support function to CVUHB.
- 2.2 NWSSP Procurement shall, on behalf of CVUHB, maintain detailed policies and procedures for all aspects of procurement including tendering and contracting processes. The CVUHB CEO is ultimately responsible for ensuring that CVUHB's Executive Directors, Independent Members, and officers follow procurement, tendering and contracting procedures.
- 2.3 The NWSSP Director of Procurement is responsible for ensuring that procurement, tendering and contracting policies and procedures are kept up to date and conform to statutory requirements and regulations.
- 2.4 We reviewed the procurement process for the Eye Care Digitisation Programme (the 'Programme') that resulted in the award of contract CAV-ITT-Project 42019 entered into between CVUHB (on behalf of NHS Wales) and Toukaneyes Limited, trading as ToukanLabs UK in November 2019.
- 2.5 The procurement process adopted was driven by the value of the contract which was in excess of the OJEU threshold. The procurement was an open procedure covered by the Government Procurement Agreement.
- 2.6 We noted the following issues of compliance with legislation and regulation from our review of the procurement of the Programme.
- 2.7 The Contract Notice (the 'Notice') published in support of the Invitation to Tender refers to the incorrect contract term. The Notice stated that the term of the contract was seven months, with an option to extend for a further three months rather than the actual term of five years, with an option to extend for a further two years period. This error, which occurred during the pandemic, was not corrected at the time and may have impacted potential bidders. We were informed that there have been no issues or concerns raised by the bidders involved within the process. We have raised this finding in [matter arising one in Appendix A](#).
- 2.8 Section 7.9 of the CVUHB PROC-CMP-01 Procurement Processes Core Management Procedure (the 'Procurement Procedure') includes details of controls in operation to prevent issues arising and to manage the risks. These include 'audit' and 'staff training' controls. However, whilst this is an appropriate course of action to help mitigate risk, the steps taken lack a preventative element e.g. to prevent a risk from arising, but rather detail a retrospective approach to the management of issues / risks. We have raised this finding within [matter arising two in Appendix A](#). During testing, we identified further recommendations over other procurement

processes. However, as these are outside the scope of this audit, we have not incorporated these points.

- 2.9 Furthermore, the Contract Award Notice (CAN) was not issued within the required period of 30 days of contract award. Despite this being a process step on the Procurement Checklist (the 'Checklist'), the failure to issue the CAN promptly went unidentified until October 2023 when the CAN was published. There is a need to ensure that the Checklist is monitored in real time to ensure all process steps detailed are completed promptly. We have raised this finding in [matter arising three in Appendix A](#). As above, the Procurement Procedure includes a specific section (7.9) to assist with mitigating risk associated with the CAN.
- 2.10 Per the CAN, the Programme contract was awarded for five years on 20th January 2020. A variation to the original agreement was drafted and signed by both parties on 17th July 2023. This document was followed by the Variation Agreement for the Project Agreement for the Programme, signed by both parties in January 2024.
- 2.11 As the variation exercise was performed in July 2023 and January 2024, this would indicate that whilst changes have now been approved and documented, this may not have been performed as the issues arose / were identified over the term of the contract.
- 2.12 Regarding this specific contract, we were informed that the Procurement Team did not become aware of the variation until February 2023. This update led to the contract variations in July 2023 and January 2024. The responsibility of this update resides with CVUHB, where the CEO is ultimately responsible for ensuring that CVUHB's Executive Directors, Independent Members and officers follow procurement, tendering and contracting procedures. We have raised this finding in [matter arising four in Appendix A](#).
- 2.13 The key elements included within the variation agreement are:
- i. confirmation of the effective date of the commencement of the contract;
 - ii. clarification of several points across Schedules A, B and C;
 - iii. the Implementation Plan from Schedule E; and
 - iv. the Exit Plan from Schedule E.

Conclusion:

- 2.14 We have raised four matters arising under this objective, based on a review of the Programme. Whilst three of the exceptions relate to matters arising with the original contract, these have now been resolved under the variation process albeit with a delay. Therefore, we have provided **reasonable assurance** for this objective.

Objective 2: Compliance with CVUHB procurement processes

- 2.15 As noted above, NWSSP Procurement shall, on behalf of CVUHB, maintain detailed policies and procedures for all aspects of procurement including tendering and contracting processes, and provide a procurement support function to CVUHB.
- 2.16 Our review of the procurement process for the Programme that resulted in the award of contract CAV-ITT-Project 42019 entered into between CVUHB (on behalf of NHS Wales) and Toukaneyes Limited, trading as ToukanLabs UK, identified the following issues that require to be clarified to demonstrate effective control within the procurement process.
- 2.17 A Request for Approval Procurement document (the 'Request document') was prepared in October 2019 requesting the approval of the contract recommendation of the Programme contract to ToukanLabs UK (contract ref CAV-ITT-Project 42019). The Request document was approved via Chair's Action, with the Vice Chair approving the expenditure, by signing the form in November 2019.
- 2.18 The Chair's Action was reported within the Chair's Report to the next Board meeting held on 28th November 2019 and endorsed accordingly.
- 2.19 The procurement process considers conflicts of interest from a tenderer perspective and from an internal CVUHB and NWSSP Procurement perspective. This requires all stakeholders to be engaged. We found that the stakeholders were engaged, declarations provided and that all bidders were required, and provided, such declarations as part of the Invitation to Tender process.
- 2.20 Within clause 18.1 of the original contract, it was stated that an Exit / Transition Out Plan should be provided within two weeks of the contract commencement date or by the date within Schedule E, if detailed. In this instance, Schedule E defined the timeframe as within three months of the Contract Commencement Date (the date at which both parties have signed the contract).
- 2.21 Whilst we have been provided with a copy of the 'Wales Eyecare Digitisation Programme OpenEyes Exit / Transition Out Plan V2', we have not been able to verify / determine the date that this was completed. However, we confirmed that it formed part of the variation process in 2023. This has been raised as [matter arising five in Appendix A](#).
- 2.22 We sought to determine whether the purchase orders raised corresponded to the financial commitments outlined within the contract. In particular, we requested extracts from Oracle to support the raising of requisition orders and the establishment of appropriate cost centres.
- 2.23 We confirmed that both the purchase order and cost centre process was in line with expectations. However, as part of our enquiries we were informed that there were financial mis-postings between numerous contract budget codes. A full reconciliation was completed by the Procurement Team, and we confirmed that for the contract with ToukanLabs, the expenditure incurred was approximately 10% over the contract value. However, there is a further 40% potentially remaining

(£454k excl. VAT) under Regulation 72, as permitted within the PCR15 Regulations. Under certain conditions within the Public Procurement Regulations 2015, Regulation 72, an extension of no more than 50% is permitted of the total value of the contract. However, Regulation 72 has not been exercised to date and there is no associated funding available. We have not reviewed this further as it was outside the scope of this audit.

Conclusion:

2.24 We have raised one matter arising under this objective, based on a review of the procurement of the Eye Care Digitisation Programme. Whilst we have reviewed the Exit Plan, we have been unable to determine the date that this was completed, other than as part of the variation process and thus, whether Paragraph 18.1 and Schedule E have been adhered to. Therefore, we have provided **reasonable assurance** over this objective.

Appendix A: Management Action Plan

Matter Arising 1: Term of Contract (Operation)	Impact
<p>A Contract Notice (CN) was issued under Directive 2014/24/EU - Public Sector Directive on 30 May 2019.</p> <p>The CN stated that the term of the contract was seven months, with an option to extend it for a further three months period at the Health Board's sole discretion in monthly intervals.</p> <p>This was incorrect, but clarification was provided by Procurement that the correct details were included within the associated documentation for the bidders. The contract that was tendered for had a term of five years with an option to extend for a further two years period at the Health Board's sole discretion in yearly intervals.</p> <p>This error was not corrected for at the time.</p>	<p>Potential risk of:</p> <ul style="list-style-type: none"> • A delay in correcting errors and omissions may create a period of non-compliance with legislation and could hinder the delivery of transparency requirements, until mitigating actions are taken.
Matter Arising 2: CVUHB Procurement Process (Design)	Impact
<p>During 2023, a new procurement procedure for CVUHB was developed by NWSSP Procurement, titled CVUHB PROC-CMP-01 Procurement Processes Core Management Procedure (the 'Procurement Procedure'). This was not in place at the time of the original contract being agreed and therefore, did not form part of our testing of the contract. However, we reviewed the content to determine if further enhancements can be implemented to assist with the ongoing management of CVUHB's procurement risks.</p>	<p>Potential risk of:</p> <ul style="list-style-type: none"> • Key procurement steps may not be completed fully / correctly, resulting in increased financial costs or reputational damage.

We also considered this document alongside the document management system (DMS) and concluded that the updated controls will assist with the mitigation of most procurement risks for CVUHB.

However, within this review, we advise consideration over the implementation of a quality assurance process for some key steps; primarily within Section 7 of the Procurement Procedure. This may not be appropriate in all circumstances, and we found a number of these preventative measures in place already (e.g. Senior Category Manager approval). However, within Section 7 a list of controls and monitoring to prevent issues arising does not include a preventative control. This may only require an administrative update to the Procurement Procedure, if these controls already exist, but if not, a quality assurance step should be considered for the critical aspects.

Matter Arising 3: Contract Award Notice (Operation)

Impact

Furthermore, the Contract Award Notice (CAN) was not issued within the required period of 30 days of the contract award. Despite this being a process step on the Procurement Checklist, the failure to issue the CAN promptly went unidentified until October 2023. We were informed that this primarily resulted from the impact of the pandemic, the reallocation of staff throughout the NHS and thus, the significant pressures that teams were under.

Potential risk of:

- A delay in correcting errors and omissions may create a period of non-compliance with legislation and could hinder delivery of transparency requirements until mitigating actions are taken.

Matter Arising 4: Contract Variation (Design)	Impact
<p>Per the Contract Award Notice (CAN) the Eye Care Digitalisation Programme contract was awarded for five years in January 2020. However, a variation to the original agreement was drafted and signed by both parties on 17th July 2023. This document was followed by the Variation Agreement for the Project Agreement for the Programme, signed by both parties in January 2024.</p> <p>Regarding this specific contract, we were informed that the Procurement Team did not become aware of the variation until February 2023. This update led to the contract variations within July 2023 and January 2024. Ultimately, the responsibility of notifying the Procurement Team of such changes resides with CVUHB.</p>	<p>Potential risk of:</p> <ul style="list-style-type: none"> • Variations and amendments to a contract during its life changes are not reviewed, approved, and documented in a timely manner.
Matter Arising 5: Exit Plan (Operation)	Impact
<p>Within clause 18.1 of the original contract, it was stated that an Exit / Transition Out Plan should be provided within two weeks of the contract commencement date or by the date within Schedule E, if detailed. In this instance, Schedule E defined the timeframe as within three months of the Contract Commencement Date (the date at which both parties have signed the contract).</p> <p>However, whilst we have been provided with a copy of the 'Wales Eyecare Digitisation Programme OpenEyes Exit / Transition Out Plan V2', we have not been able to verify / determine the date that this was completed. We confirmed that the Exit Plan was</p>	<p>Potential risk of:</p> <ul style="list-style-type: none"> • Contract conditions not being met. • Increased financial risk where the exit / transition out terms have not been agreed at the time of entering into the contract.

incorporated into the Variation Agreement (as a separate document), but this took place during 2023.

Whilst the risk associated with a delay in the production of the Exit Plan may be partially mitigated by the system being open source, this does not remove all risk and uncertainty associated with how any exit from the contract would be managed between the parties.

Recommendation for consideration	Priority
<p>1.1 We recommend, on the basis of the five matters arising, that CVUHB engage with NWSSP Procurement to determine if further enhancements to the procurement procedures should be implemented. This should consider:</p> <ul style="list-style-type: none"> • further enhancements to Section 7 of the CVUHB Procurement Procedure, including the use of a preventative control; • a review of checklists that may still be in use; • the process for the communication of contract variations or other changes; and • the mechanisms or controls for incorporating Exit / Transition Out Plans. 	<p>Medium</p>

Agreed Management Action	Target Date	Responsible Officer
1.1 <ul style="list-style-type: none"> The DMS was revised and relaunched in December 2023, these controls are in place within the DMS that sits under PROC-CMP-01, the DMS includes steps that cannot proceed without approval from the relevant person named within the step. All procurement staff have received the relevant training. 	COMPLETE	Assistant Director of Procurement Services
	October 2024	Assistant Director of Procurement Services
	Immediate	Assistant Director of Procurement Services
	Immediate	Assistant Director of Procurement Services

Appendix B: Assurance opinion and action plan risk rating

Audit Assurance Ratings

We define the following levels of assurance that governance, risk management and internal control within the area under review are suitable designed and applied effectively:

	Substantial assurance	Few matters require attention and are compliance or advisory in nature. Low impact on residual risk exposure.
	Reasonable assurance	Some matters require management attention in control design or compliance. Low to moderate impact on residual risk exposure until resolved.
	Limited assurance	More significant matters require management attention. Moderate impact on residual risk exposure until resolved.
	Unsatisfactory assurance	Action is required to address the whole control framework in this area. High impact on residual risk exposure until resolved.
	Assurance not applicable	Given to reviews and support provided to management which form part of the internal audit plan, to which the assurance definitions are not appropriate. These reviews are still relevant to the evidence base upon which the overall opinion is formed.

Prioritisation of Recommendations

We categorise our recommendations according to their level of priority as follows:

Priority level	Explanation	Management action
High	Poor system design OR widespread non-compliance. Significant risk to achievement of a system objective OR evidence present of material loss, error or misstatement.	Immediate*
Medium	Minor weakness in system design OR limited non-compliance. Some risk to achievement of a system objective.	Within one month*
Low	Potential to enhance system design to improve efficiency or effectiveness of controls. Generally issues of good practice for management consideration.	Within three months*

* Unless a more appropriate timescale is identified/agreed at the assignment.



NHS Wales Shared Services Partnership
4-5 Charnwood Court
Heol Billingsley
Parc Nantgarw
Cardiff
CF15 7QZ

Website: [Audit & Assurance Services - NHS Wales Shared Services Partnership](#)