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Local Improvement Finance Trust
Liaison Organisation for Business Investors

LIFT LOBI Submission to the Department of Health Consultation on Business Case Approval Guidance for Primary Care Trusts with Existing LIFTs July 2008

Background to LIFT LOBI

LIFT LOBI is the Liaison Organisation for Business Investors in LIFT schemes. LIFT LOBI's membership currently comprises 14 organisations¹, which represents over 95% of the private equity investors in LIFT ventures around the country.

LIFT LOBI acts as a forum for debate and decision-making for members on all issues relevant to private equity investors in LIFT and speaks on behalf of its members in dialogue with Government, key policy makers, organizations representing the medical professions and NHS officials.

We are grateful for this opportunity to comment on the Department of Health's Business Case Approval Guidance and wholly support the aim of enabling better partnership working between PCTs, their local Private Sector Partner and LIFTCos. We look forward to a constructive dialogue with the Department on the issues as set out below in further detail.

This note and the points set out are the collective view of the industry. We hope to be able to work with the Department to implement the guidance where relevant and are happy to support central Government in explaining the rationale of the guidance to PCTs and SHAs.

Summary of key points

- LIFT LOBI welcomes the aim of the new business case guidance to build on the successes of the LIFT scheme and to ensure LIFT is fit for purpose to deliver primary care solutions post-Darzi.
- In particular, LIFT LOBI is pleased that the guidance aims to enable PCTs to act as 'intelligent and informed' clients. However, we believe the guidance needs to set out more explicitly the requirements and roles for PCTs as active participants in LIFT schemes, including a requirement to underwrite the costs of Stage 1 and share risk with the LIFTCo, where the requirements for Stage 1 Approval are significantly greater than those set out in the Strategic Partnering Agreement. The precise mechanism for risk-share can be negotiated locally.
- LIFTCos are ideally placed to provide support to PCTs in such areas as the development of business plans and service specifications. Over-reliance on external advice and consultants impacts significantly on both the value for money of a project and procurement times.
- Value for money is best demonstrated at a local level by ensuring that LIFTCos are not penalised for delivering innovative solutions to meeting service needs. Fundamentally, ensuring a robust planning stage in cooperation with LIFTCos will better enable value for money to be demonstrated.
- Particularly as part of any future relaunching of LIFT, it is vital that PCTs are aware of their role within the LIFTCo, and the benefits of LIFT as a flexible procurement mechanism which can effectively meet local service needs.
- LIFTCos *must* be seen by PCTs as partners rather than simply developers or suppliers. The guidance and the proposed accreditation system have potential roles to play in facilitating this.

¹ Accent Partnerships Ltd; the Assura Group; Babcock and Brown / Infracare Partnering Ltd; Community Solutions for Primary Care; Eric Wright Group Limited; Fulcrum Infrastructure Management; Guildhouse Investment Management; Land Securities Trillium; Primary Plus; Ryhurst; Sapphire Primary Care Developments; The Sewell Group Plc; Equity Solutions; Galliford Try.

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- LIFT LOBI believes that the tone of the guidance appears to be written to deal with poorly performing LIFTs and/or PCTs given its particular focus on value for money issues and market testing of construction prices. Nonetheless, where there already is a good relationship between the LIFTCo and the PCT and there is early contractor involvement, the detailed and prescriptive nature of the guidance may potentially compromise this relationship.

Stage 1 approval and the role of LIFTCos and PCTs

1. LIFT LOBI welcomes the move to ensure more certainty at the Stage 1 approval process because this is likely to significantly shorten the time for proposed projects to reach Stage 2 and ensure more robust approval criteria; thus improving overall procurement times for LIFT projects. However, there remains a concern that some of the additional work which will be required at Stage 1 as proposed in the consultation will lead to additional costly work for LIFTCos without the PCT having to cover the costs if it aborts the project.
2. A strong working partnership is at the heart of any successful LIFTCo and LIFT scheme. The guidance sets out a clear role for PCTs in the Stage 1 process, but LIFT LOBI believes that many PCTs will require additional support to carry out their proposed functions, particularly with regards to the creation of a design brief and in articulating their service specifications. It is therefore vital that LIFTCos can rely on an adequate brief and the quality of information provided by PCTs. LIFT LOBI members report that this can vary significantly across PCT areas. To support this we would propose ensuring that in every SHA there is a named individual that can provide guidance to PCTs on how to use their LIFTCo for support and to provide leadership for implementing this guidance.
3. Further evidence from LIFT LOBI members suggests that in many cases PCTs are reluctant to spend additional money or do not have the skills or capacity in order to undertake the extra work now required at Stage 1. This means that the cost associated with the additional work often falls on the LIFTCo. LIFT LOBI therefore believes that the guidance must be more explicit in ensuring that PCTs acknowledge their role and obligations in relation to the Stage 1 process. This will ensure more effective partnership working and enable and encourage risk-sharing. This might be achieved by a more explicit reference to the participant, i.e. the PCT's requirements. The guidance should also make clear that PCTs should underwrite the costs pre-Stage 1 to avoid LIFTCos taking on a disproportionate share of costs and therefore risk. It should be noted that the proposals in the guidance for Stage 1 approval are significantly more onerous than those included within Schedule 4 of the Strategic Partnering Agreement (SPA). LIFT LOBI believes it is appropriate to debate and negotiate the level of risk-share at the local level. We would propose the following inclusion in the guidance:

'The scope for a Stage 1 New Project Proposal to be produced by each LIFTCo is described within Schedule 4 of the Strategic Partnering Agreement (SPA) and it is recognised that this Guidance requires a greater level of work to be undertaken in developing a Stage 1 New Project Proposal. PCTs and LIFTCo's are to agree at the outset an appropriate level of work, together with associated cost, within which LIFTCo will develop a project at its own risk. It is anticipated that once this level of work has been achieved, local agreement will be reached on a cost and risk sharing mechanism leading to the full development of the Stage 1 New Project Proposal.'

4. It is clear from our experience that where there is a good working relationship with the PCT, the LIFTCo may be willing to take on this extra risk. However, it is vital that the guidance provides pathways for those LIFTCos where the relationship is currently less functional. The guidance needs to make explicit to PCTs that by taking an active role in relation to the Stage 1 process, they are likely to engender a trusting and supportive partnership arrangement with the LIFTCo.
5. The guidance needs to make more explicit the role that LIFTCos themselves can play in supporting PCTs with the Stage 1 approval Business Case process, and in particular developing the Participant's Requirements. Close partnership-working between PCTs and LIFTCos is likely to be more cost-effective than the extensive dependency on external advice and consultants, which is currently the case within many PCTs. Drawing on private sector expertise, LIFTCos can support their PCTs in putting together a robust business case as per Schedule 17 of the

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SPA. LIFT LOBI therefore suggests that the guidance sets out that PCTs should see their LIFTCo as the first port of call for support and guidance if they are unable to carry out tasks internally.

6. The guidance should make clear that PCTs that have wider strategies in place which set out the direction for primary care development in the local health economy, and which link in with the World Class Commissioning programme, are far more likely to develop a mature relationship with their LIFTCo than those PCTs who do not have this strategic approach. Putting in place a comprehensive commissioning strategy at PCT level provides more certainty for LIFTCos in terms of generating future projects meaning that LIFTCos are therefore likely to be more able and willing to take on extra risks. We would welcome an enhanced role for Community Health Partnerships (CHP) in supporting the development of PCT-level expertise, commissioning competence and ensuring strategic direction as well as taking a lead on marketing the LIFTCo to PCTs. LIFT LOBI would also like to see LIFTCos better engaged in the development of the Strategic Service Development Plan (SSDP). In addition, there needs to be more pressure on those PCTs that have not yet drawn up SSDPs to do so imminently.
7. Whilst strongly welcoming the aims of the guidance, LIFT LOBI has some concern over the level of detail in the guidance. There is a risk that if the guidance is followed to the letter, there may be a negative impact on procurement times as well as value for money and affordability of schemes. It is therefore important that PCTs receive appropriate practical support and guidance in relation to Stage 1. PCTs should be provided with examples of strong briefs and CHP should lead in the production of toolkits and workshops for PCTs. LIFT LOBI and its members would be very happy to assist in this process. Without such support, particularly in relation to struggling PCTs, the guidance is likely to be taken literally without much scope for local flexibility.
8. LIFT LOBI would also like to take this opportunity to set out that, whilst supporting many of the aims of the guidance document, there does exist some conflict with existing contractual arrangements (Strategic Partnering Agreement) which may need to be addressed by the Department.
9. There are a number of requirements in the guidance such as payment mechanism calibration (ref 2.3.62) and obtaining Outline Planning Permission (ref: 2.3.36) which will require significant additional work at Stage 1.
10. A further point to note is that where LIFTCos cover larger geographical areas, a more certain throughput of schemes enables LIFTCos to achieve economies of scale which balance risk. As a result LIFTCos may more likely be willing to take on additional risks at Stage 1.
11. As LIFT moves towards delivering a wider range of schemes, it is important to keep in mind the fact that Local Authorities as well as PCTs will need to sign-off on schemes. The Department will need to look closely at the best way of ensuring that, where this is the case, the two procedures are able to align and that Local Authorities are not put off engaging with LIFT by concerns around convoluted approvals processes.
12. LIFT LOBI is keen to ensure that for smaller schemes a more easily digestible form of this guidance is available to speed the approvals process. We would be happy to work with the Department to find a way of presenting this information with greater brevity.

Value for Money (VfM)

1. LIFT LOBI shares the guidance document's aim of ensuring value for money in LIFT schemes. As set out above, we believe that LIFTCos are ideally placed to provide much of the support to PCTs in demonstrating this value for money at Stage 1 Approval. We also believe that any real measure of value for money must take a holistic whole-cost approach, taking into account PCT's over-reliance on costly external advisors and the impact this has on both the overall cost of the project as well as potentially procurement times. There must exist a clear and strong cost control within the PCT. In order to achieve this type of holistic value for money approach, there must exist a level of cost-control amongst PCTs. Recognition of the VfM of improved service delivery must be a key factor in determining overall VfM.

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2. As set out in earlier sections of this submission, it is vital that measures are put in place to ensure the front-end development stages are carried out effectively. This means that the LIFTCo is able to present the PCT with a set of ranged costs within which LIFTCo investors take on varying levels of risk. This approach presents a clear indication of cost savings, such as through the delivery of more care closer to home and tariff savings. It is therefore vital that PCTs draw up and regularly update a robust SSDP as this will enable service cost savings to be demonstrated much more clearly.
3. Taking steps to enable a constructive and supportive relationship between PCTs and LIFTCos, as set out above, will ensure that many issues relating to value for money are adequately addressed. Ensuring that both parties take an active role in the planning process will also enable PCTs to better justify and explain costs and cost savings to the SHA. Furthermore, any problems identified, whether they relate to costs or to other issues, can accordingly be resolved through a mature dialogue between the partners.

Accreditation

1. LIFT LOBI welcomes the initiative to develop an accreditation system for LIFTCos and PCTs based on how well they can demonstrate an effective working relationship. Our submission makes it very clear that a strong relationship between partners is vital in order to maximise the benefits of LIFT within the local health economy. It is likely that the accreditation system will create a further incentive to achieve this.
2. As set out above, LIFTCos should act as the first port of call in the provision of support and guidance to PCTs in producing a business case. LIFT LOBI therefore believes it would be appropriate to accredit those LIFTCos that support their PCT partners in this way, based on the LIFTCo's ability to deliver this front-end planning. This should also ensure that Private Sector Partners have an additional incentive to deliver at the front-end and a further incentive to minimise costs associated with this process.
3. LIFT LOBI believes in a system of accreditation through which PCTs would be assessed according to their ability to deliver, based on the project plan and on putting in place a robust SSDP. Accreditation should be based on '360 degrees' feedback both from the PCT and the LIFTCo, as this would further strengthen the incentives for partnership working. As a further incentive, accredited status should not be continual – it should be possible for PCTs and / or LIFTCos to lose accreditation if things go wrong in either delivery or planning of subsequent projects. LIFT LOBI also strongly supports an increase in delegated thresholds for PCTs that are accredited, as suggested in the guidance.

Other points and specific comments

1. The documents helpfully lay out key documents for Stage 1 and Stage 2 in the appendices. The appendices are helpful although the level of detail in the guidance does not help, given the simplicity of the appendix.
2. LIFT LOBI does not believe it is helpful to state that projects 'should' obtain outline planning permission as set out in the guidance, particularly because of the significant amount of time this takes to obtain and of the willingness or otherwise of Planning Authorities to provide outline planning permission. We do not believe outline planning permission should be necessary given that health schemes are not generally contentious in planning terms and given that this requirement will potentially impact upon overall procurement times. In addition, a number of planning authorities do not permit outline planning applications.
3. Whilst the guidance describes Stage 1 and Stage 2 in some detail, it does not make reference to the Strategic Partnership Agreement (SPA), does not describe the business case process and does not make specific reference to commonly used terms such as the Outline Business Case (OBC) and the Full Business Case (FBC). Our understanding is that this is because this revised guidance replaces the OBC and FBC. If this is the case it is important to make a bold statement to that effect.

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4. Section 3.3.21 appears to remove the option to balance cost rises and cost savings to meet affordability. We would welcome some clarity on whether risk costs can be transferred within defined contingencies to ensure flexibility in this area whilst accepting these costs cannot be made available to fund underestimates of costs outside of defined contingencies.
5. The implementation of this guidance will be important and LIFT LOBI is keen to work with the Department to ensure that central principles are appropriately applied at SHA and PCT level.

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