

**Governing Body
Paper Summary Sheet
Date of Meeting: 23 April 2013**

For: Decision Discussion Information to note

Agenda item & Title:	GOV/13/04b/07 Future Procurement Requirements for Community Services
Author:	Simon Truelove Chief Financial Officer
Lead Director	Simon Truelove Chief Financial Officer
Responsible Director:	Debbie Fielding, Accountable Officer
Executive summary – (what is proposed and intended impact) and recommendation:	The following paper outlines the legal and practical implications for setting out on the road to retender the Wiltshire Childrens and Adults Community Services and Maternity Services. Wiltshire CCG's future direction of travel will be heavily influenced by the work on transforming community services and the development of a specification for community services. Set against this direction is the legal framework which the NHS has to abide by for Procurement, Patient Choice and Competition set out in the Statutory Instruments for the NHS 2013-500 Public Procurement.
Evidence in support of arguments:	NHS Regulation 500, current operational considerations, current position of the community transformation, technical advice from the Central Southern Commissioning Support Service
Who has been involved/contributed:	Chief Financial officer for Wiltshire Technical Procurement Support from Central Southern Commissioning Support Service
Cross Reference to Strategic Objectives:	Re-tendering of the Community Services for Adults and Childrens and Maternity Services is connected to the Clear and Credible plan and the desire for

	NHS Wiltshire CCG to transform community services
Engagement & Involvement	Not at this stage
Communications Issues:	Not at this stage
Financial Implications:	Not known at present
Review arrangements:	None at present
Risk Management:	Risk of provider challenge due to perceived anti-competitive behaviour
National Policy / Legislation:	Requirement to Tender services
Equality & Diversity:	New specification for community services will ensure that all equality and diversity requirements are dealt with
Other External Assessment	None at present
Next Steps:	

Making the Decision to go out to Procurement for Community Adult and Children Services and Maternity Services

Background

Under the umbrella of Transforming Community Services (TCS) NHS Wiltshire was required to split its provider and commissioning responsibilities which resulted in Wiltshire Community Services for Adults and Childrens and Maternity Services being tendered and awarded to a new provider. Following the procurement process the contract was awarded to Great Western Hospital NHS Foundation Trust which went live on the 1st May 2010. The contract for both services was for 3 years and both had an end date of the 30th April 2014.

The commissioning arm of the NHS has seen significant restructuring with NHS Wiltshire CCG (WCCG) picking up the responsibility for commissioning Community Services for Adult and Childrens Services and Maternity Services. Given the current contract period for these services the WCCG is required to retender them within an appropriate timescale. If the WCCG agrees to this retender the current provider will need to be given a 1 year notice.

The following paper outlines the issues and regulations that the WCCG will need to take on board when deciding on the timescales for going out to procure for these services.

Development of Service Specifications

WCCG has established a strategic plan which focuses on the transformation of community services. This includes developing greater service integration between NHS primary care providers, NHS community services and Wiltshire Council social care services. The strategy is now being taken forward by a Programme Director for Community Transformation who is endeavouring to develop a specification for community services which all stakeholders are agreed to. This specification will be developed through the Community Transformation Steering Group which has representation from Wiltshire Council, WCCG and Great Western Hospital NHS Foundation Trust (GWHFT) and other parties as and when required. Most importantly the specification will be signed off by the GP commissioners and constituent practices.

The service specification will be based on dealing with the current operational challenges, benchmarks across the service, establishing opportunities that

can promote better integration of NHS and social care service and encompassing new innovation that will promote the efficiency and effectiveness of community services. More importantly this work will be influenced by establishing and identifying activity that is currently been undertaken in the wrong health or social care setting. Given the significance of this piece of work the timescales to achieve the new community specification is estimated to be between 6 and 9 months. It is envisaged that a new specification for Community Services for Adult and Childrens will not be ready until Autumn 2013 (Annex 1 presents the current Critical Path for Transforming Community Services)

For Maternity Services it is envisaged that the service specification will not change significantly with only minor amendments to the original specification which was used by NHS Wiltshire under TCS. GP Commissioners will need to be satisfied that it provides the services that they require. The revision to the Maternity Services specification will be carried out by Wiltshire Council Public Health under the memorandum of understanding between the Council and the WCCG. Based on this work it is envisaged that the new service specification would be completed and agreed by the Governing Body by the end of June 2013.

Operational Considerations

The WCCG is currently working very closely with Wiltshire Council Adult and Childrens Social Care Services, GWHFT, the current provider of community services and primary care within Wiltshire to flex and amend the community response in respect to urgent and community care. The current health and social care system is under significant pressure which requires the current model of care to be changed and added to. Variations to the current contract are being made as operational changes are being made. E.g. care coordination. GWHFT are undertaking significant work internally to change the models of care and intervention as well as responding to the commissioner challenges to increase productivity and efficiency. Some of these changes are being piloted with a view to ascertaining whether the future service specification should include such changes / transformation.

In order that the immediate transformation changes can be delivered it is felt that time is required to allow the current provider of community services to change the way its services respond to the current challenge. Clinical commissioners are also conscious that once the model of care can be agreed upon then it would be appropriate to test the market however there are a number of immediate changes that need to be made and new investments implemented which will support the delivery against the current operational pressure as well as assessing whether they are initiatives to be embedded into the future specification for community services.

For maternity services there is no obvious operational challenge over and above the normal efficiency requirements placed upon the current NHS

system. Tendering timescales would allow the current service specifications to be reviewed in order that the service could be retendered in line with the current contractual obligations.

Public Procurement Considerations

The CCG when deciding upon a procurement timetable must abide by the statutory instruments for NHS England. The NHS (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 sets out the rules and regulations that Health Bodies must abide by when setting out to procure a service (see annex 2).

For the re-procurement of the Community Services for Adults and Childrens and Maternity Services the CCG must ensure that it makes its decision based on the guidance set out in Part 2 Section 3 –Procurement: General Requirements. The relevant sections are shown below.

(1) When procuring health care services for the purposes of the NHS (including taking a decision referred to in regulation 7(2)), a relevant body must comply with paragraphs (2) to (4).

(2) The relevant body must—

***(a) act in a transparent and proportionate way, and
(b) treat providers equally and in a non-discriminatory way, including by not treating a provider, or type of provider, more favourably than any other provider, in particular on the basis of ownership.***

(3) The relevant body must procure the services from one or more providers that—

***(a) are most capable of delivering the objective referred to in regulation 2 in relation to the services, and
(b) provide best value for money in doing so.***

(4) In acting with a view to improving quality and efficiency in the provision of the services the relevant body must consider appropriate means of making such improvements, including through—

***(a) the services being provided in a more integrated way (including with other health care services, health-related services, or social care services),
(b) enabling providers to compete to provide the services, and
(c) allowing patients a choice of provider of the services.***

This section provides clarity that the WCCG must not restrict competition and where a contract is up for renewal it must ensure that there is a process to re-procure the service allowing for all providers the equal opportunity to bid for the service.

The WCCG must also endeavour not to engage in anti-competitive behaviour which would favour one particular provider or ignore any potential providers. This is described in section 10 which clarifies where commissioning bodies can restrict or delay the procurement process if there are clear grounds to do so.

(1) When commissioning health care services for the purposes of the NHS, a relevant body must not engage in anti-competitive behaviour unless to do so is in the interests of people who use health care services for the purposes of the NHS which may include—

(a) by the services being provided in an integrated way (including with other health care services, health-related services, or social care services); or

(b) by co-operation between the persons who provide the services in order to improve the quality of the services.

(2) An arrangement for the provision of health care services for the purposes of the NHS must not include any term or condition restricting competition which is not necessary for the attainment of—

(a) intended outcomes which are beneficial for people who use such services; or

(b) the objective referred to in regulation 2.

With relation to the procurement of Community Services for Adults and Childrens the need to establish a new service specification which establishes better integration / partnership working of services across primary care, community services and social care would be deemed to be a valid reason for delaying the procurement process and to extend the current contract with GWHFT. There would need to be a clear statement that the WCCG was using the time to update the service specification in light of the work that is currently been done on community transformation.

For Maternity Services there is no clear rationale for not going out to procure in line with the current contractual arrangements. Given that the service specification will not be requiring significant change or consultation it would be difficult to build a case under the regulations that the WCCG did not abide by the tendering requirements.

Summary and Recommendations

Taking into account the issues associated with developing / amending a new service specification for Adult and Childrens Community Services and Maternity Services, the current operational challenges facing the current services and the technical procurement law the following observations can be noted:

1. Commissioners need time to develop the new service specification for Adults and Childrens Community Services.
2. The service specification for Maternity Services could be reviewed and amended accordingly to enable a tendering exercise to be initiated in 2013/14.
3. Operational issues within the current community service are needed to be implemented now in order to support the current transformation of Adult and Childrens community services.
4. The Procurement Regulations state that commissioners should not undertake any anticompetitive behaviour unless it is felt that delaying or restricting a competition process would benefit the patient by creating an integrated / greater partnership model.
5. The WCCG will abide by the guidance of Part 3 of the NHS Regulation 500 to ensure that all potential providers of community services are treated the same.

Based on the facts described in the previous sections the following recommendations are asked of the Governing Body:

1. Agree to extend the current contract for Community Services for Adults and Childrens with GWHFT for one year.
2. Agree to serve notice to GWHFT for maternity services and to initiate a re-tendering process in line with the current contract period.

Annex 1 - Community Transformation Programme – Draft Critical Path

Milestone	Plan	Update as at Feb 2013	Update as at March 2013
Agree governance arrangements	Jan 2013	PMO with partnership programme board and small steering group Paper to Health & Wellbeing Board on 17th January	Completed
Agree work streams in outline and present overall governance and scope to HWB	Jan 2013		Completed
Agree shared clinical design principles	Jan 2013	CCG paper approved on January 22 nd 2013	Completed
Understanding the 'as is' situation for NHS and social care	Feb 2013	Undertaking workshops on systems flow to produce a potential 'to be' strawman for discussion. Risk stratification, case-finding and tracking yet to be undertaken – identifying priority patient/customer groups	Completed CareFirst and social work support for MDTs will be tested alongside use of Devon risk tool or equivalent in small number of beacon sites.
Identify priorities and potential for 'quick wins'	Feb 2013	Improving first/urgent response – business case being prepared for a simple point of referral and common assessment processes across the system to minimise hand-offs. Identify a cohort of vulnerable elderly for whom telecare and a supportive response service will reduce demand on emergency healthcare services.	Quick wins identified are: <ul style="list-style-type: none"> • Information sharing • RUH facilitated discharge • Telecare response • Night care • STARR review/action plan • SFT sub acute All the above are underway
Implement care co-ordination scheme	Feb 2013 - Mar 2014	Draft specification is accepted.	Roll out being planned with all 3 CCG groups. 2 pilots underway
Implement changes in urgent domiciliary response	Mar 2013 – Mar 2014	Requires changes in ways of working and may require changes in contracts. GWH is looking at piloting effective urgent domiciliary response in one CCG Group. + Urgent access to domiciliary care	H2L@H contractors meeting to explore faster response and range of night/live in care options. GWH accelerated improvement events are planning changes in NT response

Undertake system data modelling (patient tracking etc.)	Jan 2013 – Jul 2013	Meetings in January CCG and Council to agree cohorts to be modelled; likely to take c. 6 months	Commissioned clinical audit. Roll –out of risk stratification tool Mapping and gapping in specific communities (health, social care and VCS)
Work with GP practices, GWH, Wiltshire Council and AWP to redesign the out-of-hospital workforce and independent social care providers (care homes and domiciliary services)	Mar 2013 – Sept 2013	Mapping competency has begun and will take 2-3 months. Workforce redesign could be completed in another 2-3 months (at both group and practice level) meaning that a workforce development plan could therefore be completed by Sept 2013	1st workstream meeting held for People & Change Management (workforce) and action plan is being developed. LT now in post as People & Change Management Lead
Proposed model of care agreed in outline	Apr 2013	Straw man for health model prepared late Feb Social care input to be run in parallel with CCG circulation	Circulation began with NEW group March 5 th . CCC meeting of Mar 19 th should agree outline model of care Council agreement to outline model of care during same time period (circulation to MR, JC, SW)
Undertake financial modelling based on patient tracking etc.	Apr 2013 – Aug 2013	Financial information will be shared from the Council under confidentiality restrictions	Review of potential tools for tracking Investment planning will begin in March
Agree changes in system bedded capacity based on planned changes in out of hospital system	Jul 2013 – Sept 2013	Each stage towards ‘system maturity’ will need to be carefully agreed and planned to change patterns of investment from acute to primary and community care	
Consult on integrated working and required changes in workforce before re-tendering	Sept 2013 – Jan 2014	3-4 months minimum required for consultation	Conversation with Dir of Workforce & OD at GWH suggests early involvement of unions as well as current staff engagement Process needs matching for social care workforce changes
Outline Joint Commissioning Strategy ready for approval by JCB	Sept 2013	Elements of this will be shared at previous JCB meetings	Facilitated discharge model at RUH will need short-term stabilization whilst medium term (2013-14) changes in brokerage are agreed
JCB to define commissioning arrangements for re-	Sept 2013	This is decision point about whether health services will tender alone or structural	

tendering of community health services		integration with all or parts of social care workforce	
Whole system financial negotiation (QIPP and contractor negotiations)	Dec 2013 - Mar 2014		
Financial and legal agreements for long-term implementation of joint commissioning strategy	Dec 2013 - Mar 2014		
Public consultation on changes	Dec 2013 – March 2014		
Agree whole system change plan for 2014-15	Jan – March 2014		
Draft specification for health (or health and care) services	Jan 2014 – April 2014		
Tender starts	April 2014		
Implement in-year changes in system bedded capacity	April 2014 – March 2015	Subject to partner agreement and consultation	
Implement in-year workforce changes	April 2014 – March 2015	Subject to partner agreement and consultation	
Decision on chosen provider(s)	Sept 2014 – Dec 2014	May well be several providers of different sizes	
Transition planning	Sep 2014- March 2015	Smaller contracts can be planned quicker	
Implementation of contract(s) transition	Oct 2014 onwards	Smaller contracts can be transitioned earlier	
New Community Services provider(s) contract(s) goes live	April 2015	The scope of the contract (health and social care) will be defined September 2013	