

---

**Meeting:** Social Care Health and Housing Overview and Scrutiny Committee

**Date:** 5 November 2009

**Subject:** Bedfordshire and Luton Partnership NHS Trust Tender Process – Project Handover Update

**Report of:** Councillor Mrs Carole Hegley, Portfolio Holder for Adult Social Care and Health

**Summary:** The report provides Members with an update on the outcome of the tender process and the next steps.

---

Contact Officer: David Jones, Interim Assistant Director, Commissioning

Public/Exempt: Public

Wards Affected: All

Function of: Council

## **CORPORATE IMPLICATIONS**

### **Council Priorities:**

The outcome of the tender process should make a contribution to the vision to improve the quality of life of all in Central Bedfordshire.

### **Financial:**

The cost of the section 75 agreement for mental health services is contained within the Social Care, Health and Housing budget. The project work has been funded by the NHS. It has also required significant local authority officer time.

### **Legal:**

- (i) The process of securing a new Foundation Trust to take over the Trust will require the establishment of legally binding contracts with the new provider.
- (ii) The contracts will take the form of:
  - A Transaction Agreement with the New Provider that will govern the transfer of the BLPT undertaking assets and activities to the New Provider; and
  - A Services Contract between Central Bedfordshire Council, Bedford Borough Council, Luton Borough Council and the New Provider.

- (iii) The NHS have taken legal advice to confirm that this initial process if done as an 'As is' transfer does not require a formal consultation as laid down in the Health and Social Care Act 2001 and the NHS Act 2006. However it is the stated aim of the organisations involved to ensure that this is a transparent process with both key stakeholders and the public.
- (iv) Appropriate consultation will take place following the appointment of a new provider in respect of future development of mental health services and the delivery methods.

**Policy:**

- (i) The National Service Framework for Mental Health and the Mental Health Act 1983 places a joint duty on local authorities and the NHS to provide safe, sound and supportive services which deliver positive outcomes for people suffering from mental ill health and promote their independence and social inclusion. These arrangements are in line with the Council's commitment to improve the health and wellbeing of its citizens
- (ii) This process presents an opportunity for both commissioners and the new provider to refresh their commitment to local and national policy initiatives in relation to mental health and learning disabilities health and social care services.

**Risk Management:**

Given the requirements of this competitive process, prospective providers will need to give a clear commitment to the delivery of the current contractual requirements and to some extent this mitigates the risks to commissioners inherent within such a complex process. This process is not anticipated to increase each commissioner's respective financial exposure from its current baseline.

**Staffing (including Trades Unions):**

The former Bedfordshire County Council mental health officers were the subject of a Transfer of Undertakings (TUPE) arrangement. BLPT has, therefore, been responsible for consultation with staff, including trades unions.

**Equalities/Human Rights:**

The new provider will be required to comply with all relevant legislation/ regulations

**Community Safety:**

One of the outcomes should be an improvement in the safety of both patients and the community as service standards are enhanced.

**Sustainability:**

There are no direct sustainability implications.

## **RECOMMENDATIONS:**

- 1. that the Committee is asked to recognise the innovative nature of this transaction, the first of its kind in the UK, and the achievement of design and delivery of a preferred bidder in less than six months from commencement of the project in February 2009;**
- 2. that subject to BLPT and commissioner approvals, the Project Board requests support by the Committee to proceed to contract signature;**
- 3. that in the event that matters arise in the course of achieving such contract finalisation and approvals (including as a result of CCP scrutiny) which require a material change to the tender specification, the Project Board requests that the Committee supports such steps as are necessary to resolve such matters by, where appropriate, requesting bid clarifications and/or resubmissions, re-evaluating bids and, if necessary, replacing the preferred bidder with the reserve bidder;**
- 4. that the Committee is asked to note the contents of this report and agree arrangements to ensure that they review progress in relation to the new management arrangements for local mental health services later in the year.**

## **Introduction**

1. This report relates to the proposed 'As Is' transfer of Bedfordshire and Luton Partnership Mental Health and Social Care Partnership NHS Trust (the Trust) to another NHS organisation. It provides an update on progress since the July 2009 meeting.
2. The BLPT Project Handover Board has completed the invitation to tender and evaluated the bids received. This report confirms the outcome of the Project Board meeting of 16 September 2009 and requests the committee supports the appointment of preferred and reserve bidders as detailed in this report and mandate colleagues and the Project Board to continue the project through to award, mobilisation and handover stages.
3. South Essex Partnership University NHS Foundation Trust (SEPT) has been selected as the preferred bidder having:
  - responded fully to questions requested by the Service Users and Carers review group.
  - withdrawn their limitation on efficiency gains of 3% per annum reverting to standard public sector arrangements.
  - confirmed their commitment to local authority local management of services.
4. Hertfordshire Partnership NHS Foundation Trust has been selected as reserve bidder.

## Background

5. The need for this transfer follows a decision taken by the board of the Trust that due to a combination of factors, not least internal senior staffing changes and existing service improvement programmes, the Trust would not achieve the deadline of December 2009 set by the NHS East of England for all non Foundation Trusts to be ready for the Department of Health's approval process.
6. In January 2009 the chair of the Trust approached the NHS East of England with a proposal to seek an existing Foundation Trust to transfer the Trust to ensure that the best possible outcomes could be preserved for the local population.
7. The term 'As Is', referred to in 1.1 highlights a commitment on the part of all parties to ensure that the services transferred to the new provider are done so in a safe and timely manner, see Table 1. The transfer of services will be undertaken within the parameters of the existing service contracts and obligations under the s75 Agreement in place between the former Bedfordshire County Council and the Trust.

**Table 1**

Action	Completed by
Receive Expressions of Interest	24 April 2009
Prequalifying Questionnaire Stage	22 June 2009
Invitation to Tender Returned	24 August 2009
Recommendation of Award	16 September 2009
Award Ratified by Commissioners, BLPT and NHS EoE	w/c 22 September 2009
Due diligence and contract close	1 October 2009 to mid-November 2009
Contract Award	27 November 2009
Implementation and Transfer	1 December 2009 to 31 March 2010
Service Commencement	1 April 2010

8. Beyond the transfer period, commissioners have signalled a desire to engage in discussions with the new provider about developing and improving mental health and learning disability services into the future. Where appropriate we will engage in formal consultation proceedings in line with local commissioning strategies.
9. This change will primarily affect the NHS, Local Authority commissioners and the population of Central Bedfordshire, Bedford Borough, and Luton.
10. The project seeks to deliver a number of key objectives that will benefit the people of Central Bedfordshire, Bedford Borough, and Luton. Local Authority and NHS Commissioners have and will continue leading the process of both selection and performance management of the new provider. We will ensure that the required outcomes are achieved and report again upon the progress of the tender evaluation process and the selection of a new provider who will be required to present their plans to improve services to the Committee towards the end of this year. This will allow members to scrutinize the new arrangements and reassure themselves that both commissioners and the new provider organisation are effectively meeting the specific needs of the local populations.

11. The principal benefits of this project are:
  - The establishment of a Foundation Trust Provider which delivers specialist mental health and learning disability health and social care for the people of Bedford Borough, Central Bedfordshire and Luton.
  - Improved Organisational Governance and Learning
  - Synergy benefits and the freeing up of resources to improve direct service delivery
  - Improved safeguarding functions for vulnerable adults and other core functions delegated to the trust by the three local authorities within the context of their section 75 agreements
  
12. Following the request from the Trust board to seek a new provider Foundation Trust to take over the running of their organisation and related contracts, the NHS East of England commenced the process for an NHS only tender, working to the timetable set out in table 1. This is the first time a project of this scale and type has been carried out within the NHS and it essential that the process is fair, clear, transparent and accountable. A governance structure has been established to oversee the project. The project is led by the NHS and the project board is chaired by Sir Neil McKay, Chief Executive of NHS East of England. However, all appropriate measures have been taken to ensure that the needs of the NHS and the three respective Local Authorities are being addressed within the parameters of this process. The Executive Director for Adult Services, Bedford Borough is the lead officer for all three unitary councils receiving mental health services under the current arrangements. Executive officers from all parties are key members of the project board in addition to representatives from service user and carer organisations.
  
13. The transfer of the Trust's services are seen as an excellent opportunity for the 2 NHS and 3 Local authority commissioners to establish strong working relationships with an established Foundation Trust to ensure that the required standards are provided by the new organisation in a way that ensures the delivery of the respective commissioning strategies.
  
14. Under the new arrangements, the commissioners will benefit from having a legally enforceable Foundation Trust contract with a Trust that is committed to providing Quality, Productivity and Cost Effectiveness. It is anticipated that the new provider will be initially offered a three year contract by the NHS and that the 3 local Authorities of Central Bedfordshire Council, Bedford Borough Council and Luton Borough Council will enter into an extension of their section 75 agreements, to allow them sufficient time to evaluate the new providers performance prior to making any longer term commitment.

## **Progress**

15. The Project Board has now completed the invitation to tender stage of this project and seeks approval of its recommended provider.

16. Following the publication on 7 April 2009 of an NHS-wide notice calling for expressions of interest, 21 Trusts responded and 15 attended the bidder day on 4 June 2009. Five completed pre-qualification questionnaires were received by the closing date of 15 June 2009. Subsequently, four bidders were invited to submit offers to acquire BLPT. Four tenders were returned electronically via the East of England procurement portal by 24 August 2009 and evaluated by 24 stakeholders and representatives from the BLPT Board and staff side, EOE, specialist advisors, local government and NHS commissioners, as well as service user and carer representatives.
17. The evaluation process included:
- Individual review by evaluators in five groups, finance, legal, clinical, workforce and estates/transition/overview.
  - Evaluators' results reviewed by moderators.
  - Each bidder gave a separate presentation to the Service User and Carers Reference Group on 3 September 2009. Results of this were used to inform the Board to Board interviews.
  - Each bidder presented their proposal and answered questions at Board to Board interviews on 10 September 2009.
  - A draft Evaluation Report incorporating the outcomes of the Stage1 and Stage 2 evaluations was presented to the Project Board on 16 September 2009. Final Evaluation Report provided in Annex 2
18. The bidders were scored and resulted in the following ranking:
- 1<sup>st</sup> – SEPT
  - 2<sup>nd</sup> – Hertfordshire Partnership NHS FT
  - 3<sup>RD</sup> – Camden and Islington NHS FT
  - 4<sup>th</sup> – Cambridgeshire and Peterborough NHS FT
19. The 3rd and 4th place bidders were rejected as not meeting the required minimum score.

### **ITT Adjudication**

20. The Project Board met on 16 September 2009 to review the draft Evaluation Report. After a detailed discussion, it was agreed that neither bidder at that time was in a position to be recommended outright - each having one or more critical unaddressed issues.
21. Carer and service user representatives considered that SEPT had failed to address the questions asked for the Service User and Carer Reference Group presentation event held on 3 September 2009. In addition, SEPT had included in their bid an indication that cost efficiency improvements would be limited to 3%, regardless of actual NHS efficiency requirements.
22. Local government commissioners had expressed a strong requirement for bidders to provide senior locality management within each unitary boundary. This requirement applied to both SEPT and Hertfordshire Partnership NHS FT.

23. The Project Board agreed to ask the two bidders to respond to these issues and to reply by not later than 18 September 2009. The outcome of this enquiry to be ranked as follows:
- 1<sup>st</sup> place and preferred bidder – SEPT – if they were able to satisfy fully the three outstanding issues above, they should become the preferred bidder.
  - 2<sup>nd</sup> place and reserve bidder – Hertfordshire Partnership NHS FT – should SEPT fail to meet fully all the outstanding issues, then Hertfordshire Partnership NHS FT would become the preferred bidder, as long as they confirmed their agreement to Local Authority locality management, to the satisfaction of Local Authority commissioners.
24. In the event that neither bidder met the above requirements, the Project Board would consider further action at its next meeting on 28 September 2009.
25. Each bidder has now responded satisfactorily and, while in procurement terms evaluation scoring will be deemed as equal, based on the score and the Project Board's unanimous conclusion on 16 September 2009, SEPT are the preferred bidder subject to continuing to address reservations set out by the Service User and Carer Reference Group.

### **BLPT and Commissioner Approvals**

26. NHS commissioner and BLPT committed to seek approval of the above Project Board decision prior to the NHS EOE Board meeting on 24 September 2009. These met as follows:
- NHS Luton – AM 21 September 2009
  - BLPT – PM 22 September 2009
  - NHS Bedfordshire - PM 23 September 2009
27. All have now ratified the decision, subject to the bidders meeting the conditions set out in section 7.
28. Local Authority commissioners represented by Frank Toner, Executive Director of Adult Services Bedford Borough Council, provisionally agreed the recommendation. However, he confirmed that any acceptance of the recommendation would be subject to HOSC approval from each Authority at their respective October 2009 meetings.

### **Co-operation and Competition Panel (CCP)**

29. As anticipated by the project plan, on 10 July 2009, the CCP announced its intention to undertake a review of the transaction. EoE received CCP's draft interim report PM 16 September 2009. This report advises that CCP wish to investigate the current property protocol further - a document intended to reach consensus among BLPT, commissioners and bidders on the treatment of property. In concluding their draft letter CCP stated "*...that there is a realistic prospect that the acquisition of BLPT by any of the four short-listed bidders will result in a material adverse effect on patients and taxpayers, the CCP considers that further investigation is warranted and we will proceed to a stage 2 evaluation.*" CCP have advised this will conclude no later than 11 January 2010.
30. It is considered currently that CCP's position is contrary to current policy on transfer of assets through FT establishment. Currently, EoE is preparing a response to meet CCP's requirements, in conjunction with Monitor and the Department of Health. The Department of Health and Monitor have supported the EoE approach. CCP have confirmed their challenge is not in respect to any aspect of the process, or management of the project.

### **Next Steps**

31. There is a possibility that as a result of CCP's action, Monitor will need to delay its review of the preferred bidder's proposed merged organisation as detailed below, leading to a delay in completion of the project.
32. Once approved by the Board, two parallel processes are required. First, approval of the transaction within NHS rules and regulations and the Transaction Manual. This requires direction from and approval by the Transaction Board. Second, Monitor will need to review the new organisation formed by the merging of the preferred bidder and BLPT and the effect on the bidder's risk rating.
33. EoE prepared a paper to the NHS Transaction Board for 24 September 2009, requesting direction on approval of the transaction. This direction has confirmed that the Project Board will develop and approve a Full Business Case for submission to NHS East of England Board on 26 November 2009.
34. In parallel with approval processes identified by the BLPT, commissioners and EoE Boards and the Transaction Board, the Project Team will complete contract negotiations and finalise the contract with the preferred bidder.

### **Summary of Consultations and Outcome**



35. The following organisations have been consulted by the project team and have contributed to this report:

- Bedfordshire and Luton Partnership Trust
- NHS Luton
- NHS Bedfordshire
- Central Bedfordshire Council
- Bedford Borough Council
- Luton Borough Council
- NHS East of England
- Service User and Carer Representatives

**Background Papers (open to public inspection)**

Bedfordshire and Luton Partnership Trust Strategic Outline Case – May 2009

Local Authority Commissioner Requirements for Invitation to Tender Process – July 2009

Bedfordshire and Luton Partnership NHS Trust tender process – Next Steps – 7 July 2009

**Location of papers:** Priory House, Chicksands