Sandwell and West Birmingham
Clinical Commissioning Group

Update on the Procurement of End of Life Care Services across Sandwell and West Birmingham CCG

A report for the Joint Health Overview and Scrutiny Committee for Sandwell & West Birmingham

July 1. 2015

Update on the Procurement of End of Life Care Services

1. Introduction

In March 2014 the Sandwell and West Birmingham CCG Governing Body supported a proposal to use a Social Impact Bond (SIB) to fund the development of a Coordination Hub and Urgent Response team for End of Life Care (EOLC). Launched by the Government, Social Impact Bonds (SIBs) are considered a catalyst for the development of innovative delivery models and transfer risk to socially motivated investors often from charitable foundations. It was recognised that utilising a SIB could provide a range of benefits to commissioners and service users, i.e.

- Provide organisations with the flexibility to bring in new systems, innovative approaches and management expertise
- Provide rigorous data analysis and on-going project monitoring to ensure that the service is always focused on delivering improved outcomes for patients, and ensure the CCG only pays if these are achieved

2.0 Background.

Working in collaboration with Marie Curie Cancer Care, Social Finance, (DH appointed partners) and Bevan Brittan the project team developed a proposal for a new finance and contracting model with 2 defined elements being funded through the proposed SIB. Rigorous data analysis was undertaken by Social Finance which indicated a level of outcome targets which was considered achievable and financially viable for investors. The CCG also applied to the Big Lottery Fund/Cabinet Office for a level of funding to support delivery the outcomes.

To ensure confidence in the data, an internal analysis was undertaken to confirm the metric developed by Social Finance remained appropriate. This exercise resulted in significant changes to the metric as it was felt that the activity would in fact be less than that originally estimated, making the margins much tighter.

3.0. Procurement Process

Following extensive market engagement with a wide range of stakeholders, potential investors and intermediaries (organisations liaising between investors and providers

/ commissioners) it quickly became clear that the investor and intermediary market was very limited for this type of investment. Further engagement was undertaken, on a one to one basis with a range of intermediaries, to promote interest and encourage engagement with provider partners.

The procurement process began in August 2014. A prequalification questionnaire (PQQ) was issued and resulted in 2 returns both of which met the criteria. An Invitation to Tender (ITT) was then issued to both. This process closed on January 22. 2015.

One shortlisted bidder did not return a bid as they felt that there would need to be detailed negotiation around the financial metric, and to submit a return without this would result in a non-compliant bid. The second bidder returned a bid. However on review it evaluated as non-compliant. The bidder's rationale for this variance was based on disagreement around the baseline activity described in the revised metric. Furthermore they proposed negotiation to resolve the issues around the metric.

The CCG were therefore in a position where they did not have a compliant bid to take forward. A number of alternative options were considered by the Governing Body.

4.0 Options

In line with procurement rules the following options were considered by the CCG Governing Body.

Option 1

The first option was to continue with the procurement, despite the fact that a non-compliant bid had been received. This approach would have required the CCG to enter into negotiation with the second bidder in order to arrive at an arrangement which was mutually beneficial. Despite the fact that this would be likely to have delivered a solution which would work well for the CCG, it also carried a heightened risk of legal challenge. The initial Official Journal of the European Union (OJEU) notice stated that the CCG would not accept variant bids – this would have given any aggrieved party a sound basis on which to challenge. For this reason it was considered that taking this option would carry a very high risk of legal challenge.

Continuing with the tender submitted by the second bidder was therefore not recommended.

Option 2

A further option was to roll back the procurement to the stage of close of PQQ. The tender documents could then be re-issued to the 2 bidders and the competitive dialogue procedure adopted. This would have given both parties who were initially invited to tender the opportunity to negotiate with the CCG – an outcome which both providers had indicated that they would find beneficial. There were a few issues identified with this approach. Firstly, it is not strictly in line with what the CCG are permitted to do. The OJEU notice stated that the CCG would be carrying out a restricted procurement process. Changing the process at this point in the procurement could have led to a risk of challenge from another party who indicated that they would have been interested in submitting a PQQ, but suggested timescales were not sufficient for them to secure an investment partner. There was therefore a possibility that there could be a challenge from them (or another party who had not identified themselves) if the procurement were to be rolled back and the process changed. The basis of their argument was likely to have been that had they known that a competitive dialogue process was to be run, they would have had more time to firm up any conversations with investors, and that on this basis they would have submitted a PQQ. They could therefore argue that they had been unfairly excluded from the process.

In addition to the above, this option would have required much extra resource and up to an extra 6 months may have been required. Competitive Dialogue is particularly resource intensive and would also put extra pressure on the budget for this procurement. The combination of extra resource required and risk of legal challenge made it difficult to recommend this option.

Option 3

Thirdly, was to cancel the procurement as it stood. The main risk here surrounded not taking the single remaining bid through. However, as the bid was essentially non-compliant, the risk was deemed to be very limited.

In agreeing to cancel the existing procurement, a number of options were available which were largely dependent on whether or not the CCG wished to continue the SIB. It was apparent from the work undertaken to date that the use of a SIB was restricting the market, (the number of intermediaries able to support the setup of a SIB was very limited). If the CCG wished to continue with a SIB and be completely compliant, the process would be to re-run the PQQ and then go out to tender again on the basis of a competitive dialogue. It was estimated that this would take a minimum of 9 months or longer to complete.

If the CCG decided that the SIB was not the correct way to proceed, it made sense to combine the procurement for the Hub and Urgent Response Team, (group 1 services) with the tender for the remaining non acute EOLC services, (group 3 services) which was being procured concurrently. Given the need for providers to work together on such a provision, it was likely that the number of competing bids would be reduced making it possible to use the open tender process which allowed for a shorter timeline. It was thought that the process could be completed in between 6 and 8 months.

The Governing Body were asked to make a decision regarding the viability of continuing to secure a SIB to support implementation of the new model for EOLC. The options presented highlighted the associated risks and challenges including the obstacles to overcome in agreeing a financial metric that was both viable and acceptable to all parties.

The Governing Body were also presented with the costs associated with proceeding without a SIB if the CCG was to fully implement the desired model of care. This was estimated at £758,537.

4.0 Governing Body Decision February 2015

Having reviewed the available options the Governing Body agreed to:-

- Discontinue further work on securing a Social Impact Bond
- Cancel procurement process for group 1 services
- Cancel procurement process for group 3 services
- Commence a procurement process for merged group 1 and 3 services.
- Agree to fund the shortfall

The project team therefore proceeded to develop a new service specification and contracting framework. They also engaged with the provider market to inform them of the changes and contracting options.

4.0 Current Position

An open procurement process commenced in March 2015. A market engagement event was held where stakeholders raised concern around the time made available to prepare their bids under the new contracting arrangements. In response to this an additional 6 weeks was made available.

The Invitation to Tender was published in March and closed on July 1. It is anticipated that, subject to the submission of viable bids being received, the contract will be awarded by the end of September 2015 and the new service will commence in January 2016.