

Wiltshire Council

Cabinet
26 July 2011

Subject: **Nursing Home Provision for Older People including those with Mental Health Problems and People with Physical Impairments.**

Cabinet member: **Councillor John Thomson - Adult Care, Communities and Housing**

Key Decision: **Yes**

Executive Summary

The purpose of the report is to seek Cabinet approval to commission 350 beds through block contracts and a further 133 through framework agreements for the provision of nursing home care for people over 65 years and those with physical impairments who are assessed as requiring residential care.

There are 1652 registered nursing beds in Wiltshire (this does not include residential care such as that provided by Orders of St John). Of the 1652, the Council is currently purchasing 483 (29%) 312 new placements are made per annum which is offset by people leaving the service. This activity represents £16m per annum.

It is anticipated that this procurement will achieve efficiencies and procurement benefits to the Council whilst ensuring availability of nursing care in homes that meet the quality standards set by the Council.

This work will be undertaken in partnership with the NHS who will be commissioning a further 256 beds. This will assist with making the offer to providers very attractive and will ensure continuity of care for residents in nursing homes.

Proposals

To procure block contracts and framework agreements with the NHS for the provision of nursing home care for Wiltshire residents.

Reason for Proposal

In taking this approach the Council will benefit from greater security of market supply and achieve efficiencies through economies of scale. This will facilitate the discharge of people from hospital and ensure availability of nursing care throughout the county.

Name of Director: **Sue Redmond**

Designation: **Corporate Director, Department of Community Services**

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Purpose of Report

1. The purpose of this report is to seek approval to tender and to subsequently award contracts through delegated authority for up to 350 nursing beds. In view of the value of these contracts, £16.1m, the Constitution requires Cabinet approval.

Background

2. Wiltshire Council's procurement and commissioning programme objective is to achieve savings of £36 million over the next four years commencing in 2011/12. To achieve this, a number of phased procurement activities need to take place. The Department of Community Services (DCS) spend on nursing care for older people, those with mental health problems and for people with physical impairment has been targeted as one of the areas in which the Council expects to make savings.

3. Within Wiltshire, the largest population change is for the 85+ age group. This group is projected to increase by 61.7% between 2007 and 2021. This projected change means that the Council will be expected to purchase more nursing beds in the future.

4. There are 1652 registered nursing beds in Wiltshire (this does not include residential care such as that provided by the Orders of St John Care Trust). The Council currently buys 483 of these beds in Wiltshire with a smaller number purchased in care homes in the surrounding counties. The balance are purchased by the NHS, other local authorities or by people purchasing their own care.

5. On average the Council makes 312 new placements per annum in nursing homes, many of whom are placed from hospital. This is offset by a similar number who leave nursing placements in the same period. A further 35 people resident in nursing homes become the financial responsibility of the Council once their capital has diminished to below £23,500.

6. It is important that people being discharged from hospital, who require nursing care, are placed in nursing homes in a timely manner and to achieve this it is imperative that the Council has access to nursing beds.

7. Unlike many authorities, where there are gaps in service provision this is not the case in Wiltshire where there is a good overall level of supply in relation to the current population. However, as a result of purchasing only 29% of the market the Council is not in the strongest commercial position and could still potentially be in a position of not being able to obtain a placement at an acceptable rate if relying on spot purchasing.

8. To help strengthen the Councils commercial position the Council has put in place a number of block contracts. Of the 483 beds currently purchased, 122 beds are block contracted from 6 providers. These contracts were let in October 2005 following a procurement exercise and end on 31st March 2011. An extension to these contracts to 30th September 2011 has been authorised

9. The current spend for nursing is £16 million (current block spend is £2.7 million). It is anticipated that by offering providers an increased proportion of block contracts with secure income that significant reductions on this budget can be achieved.

10. Prior to recommending this approach previous actions have been to approach the market with a framework contract option (with no guarantee of spend) to gauge the market's interest in the potential fees the Council could be offering. Responses from the market demonstrated that this is not a viable option for providers for whom the lack of guaranteed business made this an unattractive proposition.

Main Considerations for the Council

11. DCS are looking for approval to go out to tender for up to 350 Block beds. The main considerations for Cabinet are:

Block contracts and a framework arrangement:

12. To ensure continued availability of supply, DCS is proposing to award a block contract and a supporting framework agreement. Having already undertaken the market test with an agreed rate framework proposal – and this being rejected – officers have identified that by guaranteeing placements under a block approach, there is a greater likelihood that providers will offer a competitive price to the Council. In view of the current usage of nursing homes outside the boundary of the County it is proposed to extend the offer to a 10 mile radius of the county boundaries.

13. Given that the Council currently buys 483 nursing beds it was decided that there would need to be a supporting framework contract for the remaining 133 the Council currently buys. This gives us both stability of a block contract and the flexibility of a framework contract needed to manage the nursing home market.

The choice agenda

14. Currently choice is restricted by bed availability at rates acceptable to the Council. It is anticipated that block contracts will increase the choice of homes available to the people of Wiltshire.

15. Geographically, Wiltshire has a good spread of Nursing homes and the Council will ensure, through the use of block contracts that there will be nursing home provision available across the county.

Value for money

16. Within the context of the procurement and commissioning savings programme the Council is looking to achieve efficiencies and procurement benefits from this activity. However, the Council will still be looking for best value by ensuring we use high quality nursing homes through the application of rigorous quality checks in the proposed tendering process. Contracts will only be awarded to those homes that have been rated at an acceptable level of compliance with the Care Quality Commission "Essential Standards of Quality and Safety regulations". The Care Quality Commission is responsible for monitoring the quality of service in care homes. Effective contract monitoring will ensure that value for money is maintained throughout the term of the contract.

Void costs

17. A block contract approach does require the consideration of void costs (i.e. payment for an empty bed). To minimise the risk of void payments the Council will monitor usage carefully, and operate two beds rates (standard and higher based on care needs). This will mean that providers can allow for movement between the two rates when placing a customer in their care home. Also by working jointly with health we will minimise the occurrence of voids. The two organisations can work together by ensuring that the other organisation will get a first refusal on a block bed before it can be realised to the self funding market.

18. Within the Contract providers will be entitled to accept referrals from other purchasers, where this impacts on availability of the block beds they will be required to apply for the Council's consent.

Contract

19. The Council is proposing to test the market to ascertain what the most cost effective method for commissioning the required services is, either:

- Fee Uplifts
 - Fixed price for the first few years
 - Annual uplift using a pricing mechanism
- Contract duration
 - Between 3 – 10 years

NHS Involvement

20. The Council will undertake the tender jointly with NHS Wiltshire. This is to ensure that advantage can be taken of the improved economies of scales, which will enable both parties to gain efficiencies.

21. A further benefit of joint working will be that customers will not have to move in the event of their becoming eligible for funding from the NHS and will reduce the scope for providers to generate competition and increased rates between the two organisations.

22. NHS Wiltshire is looking to buy up to 150 block beds.

Environmental Impact of the Proposal

23. This tender will ensure a level and choice of nursing provision across Wiltshire. This will reduce the level of travel and associated costs for families and will help to ensure that Wiltshire residents can remain living in Wiltshire.

24. As care homes consume a large amount of energy it is likely that this will be a significant on going running cost for the operator. It is anticipated that the cost of energy will increase sharply in the future at a rate of around 10% per annum. This will need to be taken account of when evaluating the approach to be taken in assessing bids as an uplift mechanism could assist with managing this risk. In preparing tender documentation account will be taken of energy ratings of homes and steps operators are taking to become more energy efficient.

Equalities Impact of the Proposal

25. Nursing Homes in Wiltshire are directly involved in providing employment for a significant amount of people from the local population. Currently they are also providing extensive employment opportunities for many who have lost employment as a result of the current economic situation.

26. The specification for the service will state that providers will be expected to demonstrate use of local resources and provision of services which take account of customer's religious and cultural needs.

Risk Assessment

27. Efficiency savings are a high priority for the Council. To be able to achieve the required financial objective these new contracts need to be established in a timely manner. The timescales and formal requirements around the tendering process may present a risk to the savings achieved in this financial year.

28. There has been a new ruling in a case against Pembrokeshire Council (see para. 34) about fee levels and structures for nursing homes placements. The findings of the Court were clear and must be taken into account in Wiltshire's process. Pembrokeshire County Council ("PCC") set prices and obliged nursing homes to take the set price as the contractual price for the provision of places. PCC set these prices by reference to a range of factors important to the care home market. The nursing homes affected challenged the prices set saying they were too low and in setting the price PCC had not taken into account all the important factors that had a bearing on price. The Court agreed with the nursing homes and found that because important factor that should have been taken into account had not been then PCC had set the prices illegally. The judge ruled that it was not acceptable for the Local Authority simply to say they cannot afford the fee levels. DCS are approaching the market through the tendering process to mitigate this risk.
29. Once the Council has committed to buying these block beds they must be utilised effectively to ensure maximum service and financial efficiency is achieved. Cabinet is advised that this may challenge customer expectations of available choice.
30. There is a risk that the market may reject this proposal. Working with the Nursing Home Association and holding an information day for any interested providers should mitigate this risk. As stated previously Wiltshire is heavily influenced by the self-funded market. This means that the Council is not a key buyer within this market. This will provide a significant risk to the Council achieving the savings through this contract because the nursing homes may choose to opt to market their services to the self funding market. However, working with the NHS could reduce this risk but not eliminate it.

Financial Implications

31. As a result of guaranteeing purchasing levels to providers it is expected that providers will be able to offer more competitive rates than currently. Efficiencies have been identified in the corporate procurement plan which are expected to be achieved across this budget area. This target is the subject of an opportunity assessment including market analyses.
32. The implementation of block contracts will mean that the Council will be committed to spend the agreed fee for the number of beds required. While we currently pay 0.01% on voids of our current block contract value. We anticipate that this could rise in financial terms as a result of the increased number of beds being purchased. The reasons for voids are many and are due to situations outside of the Council's control such as temporary absences such as hospital admissions. It is proposed to minimise this through rigorous contract management arrangements.

Legal Implications

33. The very recent court case relating to care home provision in Pembrokeshire is important to the buying in of nursing home places by Local Authorities. The findings of the Court were clear and must be taken into account in Wiltshire's process. Pembrokeshire County Council ("PCC") set prices and obliged nursing homes to take the set price as the contractual price for the provision of places. PCC set these prices by reference to a range of factors important to the care home market. The nursing homes affected challenged the prices set saying they were too low and in setting the price PCC had not taken into account all the important factors that had a bearing on price. The Court agreed with the nursing homes and found that because important factor that should have been taken into account had not been then PCC had set the prices illegally. The Court did not lay down a list of factors that should be taken into account, only saying that in this case the list was inadequate. Without a definitive list any decision to set prices taken by any authority is liable to be challenged for not having taken everything relevant into account. Clearly this sort of challenge is more likely where nursing homes feel the price is low and they want to drive prices higher.
34. In contrast where a tender competition is undertaken and the nursing homes themselves prepare the prices they submit in their tenders they cannot then challenge those prices saying the local authority had set them illegally. A tender exercise removes the risk of the type of challenge encountered by PCC. In addition as the services in question are subject to the Public Procurement Regulations (2006) they are then required to be tendered (even though as a Part B Services they attract the less extensive procurement tendering requirements of those regulations). Tendering also removes the risk of a challenge under those regulations).

Options Considered

35. Framework agreement: The Council has approached the market with a framework (no guarantee of provision) option. This market test came back with a negative response. The providers indicated that the fees were too low and with no guarantee of work this was not an acceptable option.
36. Spot Purchasing: This is the current position and is labour intensive, prevents market development and the development of partnerships with suppliers and has financial implications.
37. Block contracts: The block contracts option has been considered and is recommended for the following reasons:

- 37.1 It will rationalise the existing supplier base and enable partnerships with successful providers to be developed
- 37.2 It will reduce contract management and brokerage requirements that could result in savings to the Council in staff resources.
- 37.3 It will ensure supply of placements at fixed prices giving the Council more accurate budgetary projections.

Conclusions

38. By working closely with providers and involving them in the procurement process we will develop a service specification that promotes quality of care whilst ensuring procurement plan savings are achieved. This will enable the Council to maximise the opportunity for managing nursing demand and spend. By approving the undertaking of this procurement activity Cabinet are helping to shape a better future for nursing homes in Wiltshire.

Proposal

39. Cabinet is requested to resolve to:

Approve a procurement (tendering) process for the provision of nursing care for Older People, Older People with Mental Health problems and Customers with Physical Impairment;

Delegate its authority to execute the contracts resulting from the tendering activity to Sue Redmond, Director of Community Services.

Sue Redmond, Director of Community Services

Report Author:

Vicki Wyper
Commissioning Lead
DCS

Date of report: 15th June 2011

Background Papers

The following unpublished documents have been relied on in the preparation of this report:

Wiltshire's Older Peoples' Accommodation Strategy
Market Analysis of residential Care and Nursing Care – PA Consulting