Agenda Item:

6

Dorset Health Scrutiny Committee

Dorset County Council

Date of Meeting	17 November 2014
Officer	Director for Adult and Community Services
Subject of Report	**Dorset County Hospital: Update regarding Pathology Services Tendering Project**
Executive Summary	Following reports and briefings to the Dorset Health Scrutiny Committee (DHSC) in November 2013 and in March, May and September 2014 regarding a Pathology Services tendering project, a special Task and Finish Panel was convened on 3 October 2014. The Task and Finish Panel wished to consider concerns raised regarding the procedures underlying the tendering process undertaken by Dorset County Hospital NHS Foundation Trust. The Panel were reassured that correct procedures had in fact been followed, but recommended that: • Consideration should be given to benchmarking preceding tendering in future projects of this nature; • Good communication with all stakeholders, including the public, was key within such projects; • Further evidence and assurance should be provided by the Trust to DHSC at their next full Committee (see Appendix 1). Since the Task and Finish meeting, a recommendation was made to and accepted by the Trust Board on 8 October 2014, that Pathology Services remain under the direct control of the Trust. This report updates the Committee with regard to that decision and the next steps.
Impact Assessment:	Equalities Impact Assessment: Not applicable.

	Use of Evidence: Report provided by Dorset County Hospital NHS Foundation Trust.
	Budget: None for Dorset County Council.
	Risk Assessment: Having considered the risks associated with this decision using the County Council's approved risk management methodology, the level of risk has been identified as: Current Risk: ~~HIGH~~/~~MEDIUM~~/LOW (Delete as appropriate) Residual Risk ~~HIGH~~/~~MEDIUM~~/LOW (Delete as appropriate)
	Other Implications: None.
Recommendation	That the Dorset Health Scrutiny Committee consider and comment on the report.
Reason for Recommendation	The work of the Committee contributes to the County Council's aims to protect and enrich the health and wellbeing of Dorset's most vulnerable adults and children.
Appendices	1 Notes from Task and Finish Group on the Dorset County Hospital Pathology Services tendering project, 3 October 2014
Background Papers	Reports and briefings to Dorset Health Scrutiny Committee, 19 November 2013; 10 March 2014; 23 May 2014; 10 September 2014: http://www1.dorsetforyou.com/COUNCIL/commis2013.nsf/MIN/B6AA9C129AFE265380257C210033D69E?OpenDocument http://www1.dorsetforyou.com/COUNCIL/commis2013.nsf/MIN/BDB6E7D1E6CD881880257C8D003FBBEC?OpenDocument http://www1.dorsetforyou.com/COUNCIL/commis2013.nsf/MIN/E8DCEA6BF2220C0D80257CE800346D26?OpenDocument http://www1.dorsetforyou.com/COUNCIL/commis2013.nsf/MIN/A19D893E441F1F1C80257D470039638A?OpenDocument
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Dorset County Hospital NHS
NHS Foundation Trust

Pathology Tendering Project Scrutiny Committee Brief

Purpose

1. The purpose of this paper is to report the outcome of Dorset County Hospital NHS Foundation Trust's (DCHFT) pathology tendering project.

Project Progress

2. The project had two aims, both have been met:
   - Using a tender process, compare our pathology services against other interested providers to determine if the Trust is providing the best value service.
   - Use the outcome of the tender process to inform a decision on the future provision of the service.
3. The Tender process attracted a number of bids. These were scored by the evaluation panel that consisted of 16 Trust staff; 8 clinicians, 6 specialists and 2 senior managers who scored areas relevant to their expertise.

   The bid that scored the overall highest for quality and price was then benchmarked against the in-house service. The evaluation panel submitted their findings to the Pathology Project Board. The Project Board reviewed the findings and considered the wider risks of all options. The Project Board made their recommendation to the Trust Board.

Project Outcome

4. On 8th October 2014, the Trust board voted in favour of the recommendation report that the Trust will continue to provide its own pathology services using the in house service.
5. This decision was informed by a unanimous recommendation from the Pathology Project Board. The Project Board's view was that when benchmarked against the service models proposed from external providers, the in-house remained the preferred option.

Task and Finish Group

6. A question was raised about the integrity of the process, specifically that information was shared with a bidder before the tender that gave them a competitive advantage. The Trust categorically denies any impropriety. Information about our pathology services was routinely shared with a number of suppliers of pathology services and local trusts before the tender exercise, and the trust is completely assured it was entirely legitimate to do so. Any and all such information was made available in the tender exercise to all bidders. The range and depth of information that went to bidders in the process included and exceeded any of that made available prior to tender.

Next Steps

7. Having met its aims, the project is closing down.

8. The Pathology Department will have to continue to meet its quality and budget targets. To support these efforts, investment has been agreed to bring the service up to the specification level of quality standards required now and in the future.

29 October 2014

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Appendix 1

Task and Finish Group on the Dorset County Hospital Pathology Services tendering project

Notes of a meeting held at Colliton House
Colliton Park, Dorchester on 3 October 2014.

Present:

Members of the Dorset Health Scrutiny Committee
Bill Batty-Smith (Chairman), Jane Hall, Ros Kayes, Mike Lovell and Gillian Summers.

Ian Gardner (County Council Member for Chickerell and Chesil Bank) also attended in his capacity as the County Council's nominated representative on Dorset County Hospital NHS Foundation Trust's Council of Governors.

Dorset County Hospital NHS Foundation Trust
Rab McEwan (Director of Operations), Paul Lewis (Project Manager) and Michael Tucker (Staff Representative).

Dorset County Council Officers
Ann Harris (Health Partnerships Officer), Dan Menaldino (Principal Solicitor) and Paul Goodchild (Senior Democratic Services Officer).

Election of Chairman

Resolved

1. That Bill Batty-Smith be elected Chairman of the Task and Finish Group.

Apologies for Absence

2. No apologies for absence were received from members.

Dorset County Hospital Pathology Services Tendering Project

3.1 The Task and Finish Group considered information which had been provided regarding Dorset County Hospital (DCH) NHS Foundation Trust's Pathology Services tendering project. The documentation included a summary of the involvement of the Dorset Health Scrutiny Committee (DHSC) to date, a letter from DCH staff to the Trust Board, a summary of questions and answers at DCH Trust Board meetings, a statement from the Dorset Health Campaign, request forms for pathology data from iPP (one of the bidders for the tender) and a list of documentation requested from DCH by the legal team working on behalf of Unison.

3.2 The Chairman welcomed all parties and explained that the DHSC had noted a number of queries and concerns regarding the tendering project. He clarified that the Group could not take decisions, but could make recommendations back to the DHSC. He also explained that, following the DHSC meeting on 10 September 2014, four issues had been identified for the Group to consider which were as follows:

a) the decision by the Trust to go out to tender instead of undertaking a review of the in-house service to explore quality and value for money;
b) the decision to prohibit the current in-house service from bidding for the tender, in view of the fact they had provided the service specification and would take part in the evaluation of the tenders. Why was the evaluation of bids not carried out independently?;
c) whether the Trust, or any officers, had any contact with potential bidders prior to the commencement of the tender process which would breach protocol; and

d) consideration of the tender documentation to enable a greater understanding of the process.

3.3 In response to a question on the confidentiality of the notes of the meeting, the Principal Solicitor explained that due to commercial sensitivity any information provided regarding bidders would remain confidential until after a decision on the outcome of the tendering project had been made by the Trust Board. He reminded members that any recommendations made and the notes of the meeting would potentially be considered by the DHSC at the next meeting and therefore would be made public at that stage, unless considered in exempt session.

3.4 Members noted that DCH had provided a great deal of information on the tendering project, but had not been able to do so until the day before the meeting. As a result this had not been shared with members of the Group and therefore would not be considered at the meeting. If it was decided that additional meetings were required this information could be circulated to members.

3.5 Regarding a letter from the Trade Unions associated with DCH, dated 3 September 2014, which had been included in the documentation which had been circulated to the Task and Finish Group, the Director of Operations confirmed that the Trust's Chief Executive had sent a letter of receipt and a further response which would address all points would be sent to the Unions in due course.

<u>The decision by the Trust to go out to tender instead of undertaking a review of the in-house service to explore quality and value for money</u>

3.6 The Director of Operations explained that the Lord Carter review of pathology services, which had been broadly accepted by the NHS a number of years previously, had recommended that services should be networked. There had been encouragement from the Department of Health to look at local collaborations with the private sector and other health organisations, and all Trusts were currently considering this in order to improve the quality of pathology services. He commented that it had been unfortunate that there had been confusion over why DCH had chosen to run a tendering exercise to review their pathology services. DCH had used the tendering exercise to compare their existing services against other providers to ascertain if the Trust was providing the best value services. It was NHS policy to market test and benchmark services and the pathology service was one of those areas currently under review.

3.7 Members noted that the tendering and benchmarking exercise had been undertaken as discussions regarding shared services with other hospitals had not been successful. Although there were frequent discussions between hospitals, plans for shared or joint services usually failed when contracts were considered. It was also noted that staff had been actively involved in the service review process. Members of the pathology service staff represented a majority on the Project Board and this included the local staff side union representative who had been involved with the project from the start.

3.8 One member commented that any tender exercise would usually be preceded by a business case and comparison study, including modelling of the existing service. She asked why this had not been done, given that the current in-house service had not been permitted to bid for the tender and outsourcing of the service would be most likely to be cost effective for the Trust. The Director of Operations explained that the in-house service had not been expressly invited to bid for the tender, but they were not prohibited from doing so. Staff had been asked to define the optimum level of service, which was then put out to the market. They were also asked how much it would cost to get the current service up to the optimum level. £500,000 had been invested in service improvements, and at least another £106,000 would be invested to bring the service up to the right level.

3.9 In response to a question on the balance between services at the hospital and those to be potentially delivered by a partner organisation, the Director of Operations explained that approximately 40-50% of the current pathology service budget was spent on consumables used in the processing of tests. If services were delivered in partnership different sites could have different specialities and therefore costs would be reduced through economies of scale. Some services would remain on site whatever the outcome. However there would be opportunities to look at how, for example, blood and urine processing for all GPs across Dorset could be dealt with at a more central location. The Project Manager explained that the service specification included a list of the tests which were in scope and the expected turnaround times for processing.

3.10 One member raised concern about service availability in the event of a major incident or disaster. The Director of Operations explained that each hospital would have emergency contingency plans and should a certain hospital not be able to meet the need internally, there would be escalation through nearby NHS organisations.

3.11 The Project Manager clarified that there was a perception that the model of service under consideration was a slimmed down service at DCH with an industrial hub located elsewhere. He confirmed that that was only one of the models under consideration, the other would include a service fully based at DCH.

3.12 One member raised concern that the proposals which had been submitted were not clear and had caused confusion. The Director of Operations explained that some parts of the tendering process had to be kept confidential due to commercial sensitivity, but that the tender document had been published and was available to the public. He also highlighted that although Unison had raised complaints about their own engagement, they had not complained about general stakeholder engagement.

3.13 The Staff Representative explained that the letter from staff members which had been included with the agenda papers outlined the concerns which had been raised internally at DCH. He commented that when the initial staff briefing paper had been published it had been a shock to staff. There had been a number of meetings with HR and the Project Manager in November 2013, and in February 2014 a Unison representative was invited to join the project team, although not allowed to speak at meetings. Staff had been unable to engage as thoroughly as they would have wished as they had their own work to do as well. The Project Manager confirmed that Trade Union representatives were invited to project meetings from December 2013, and 12 meetings had been held with pathology lab staff throughout the year. Members of the project team had been available to receive any comments and staff had been invited to also raise issues through line management.

3.14 In response to a further question, the Director of Operations confirmed that the final recommendation to the Trust Board had been formulated and had been unanimously agreed by the Project Board. The recommendation would be considered by the Board the following week.

3.15 The Principal Solicitor highlighted that the Trust officers had provided a reassuring account of the tendering process and that additional investment in the current service had been made. He asked the officers to explain why the review of the service and benchmarking had been carried out through a tendering process, as it did not seem usual to use a tendering exercise for this type of benchmarking review. He clarified that there was no suggestion that the process had been unlawful, but that there should be an explanation of why benchmarking against other Trusts had not been done in the first instance. The Director of Operations explained that the Trust had tried to work with other Trusts, but the pathology service was deteriorating and something had to be done quickly. The Trust Board had decided that tendering and benchmarking was the best way forward, so that serious

proposals for partnership working could be considered. The Trust had gathered data on the service over the last year through the tendering process.

3.16 The Chairman commented that if the performance of the pathology service had deteriorated then he would expect an independent review of the service along the lines of a Care Quality Commission inspection to see if it was fit for purpose. If any issues raised as part of the independent review could not be resolved the Trust would then go out to tender at that stage. The Director of Operations clarified that one part of the pathology service had been in special measures, and a number of other issues had been identified. It was NHS policy to benchmark and test the quality of services on an ongoing basis. Bidders had been asked to include how they would bring services up to specification as part of the tender process, and benchmarking had been done to compare the current in-house service against the best of the rest.

<u>The decision to prohibit the current in-house service from bidding for the tender, in view of the fact they had provided the service specification and would take part in the evaluation of the tenders. Why was the evaluation of bids not carried out independently?</u>

3.17 The Director of Operations explained that the Trust had never intended to bid for its own service, as that would involve bidding for a service which they were currently operating. The Trust owned all the assets and facilities of the current service and employed all of the staff, and would not sponsor a bid to provide services to themselves. He explained again that staff had never been told they were excluded from the process, but staff were very unlikely to be able to meet the service specification which was restricted to organisations which were prominent in the industry and had financial records for the previous five years.

3.18 The Chairman asked why an independent evaluation of the tenders was not carried out. The Director of Operations highlighted that the tender Evaluation Panel was comprised of clinicians and staff which currently provided the service at DCH, and they were best placed to write the specification and evaluate tenders. In response to a question from the Staff Representative, the Director commented that he would have been surprised if the current staff had sponsored a bid themselves without a link with an established company, as this meant they would not meet the requirements of the pre-qualifying questionnaire stage of the tender process.

3.19 In response to a further question on the evaluation of tenders, the Director of Operations explained that evaluation had been undertaken by DCH clinicians and staff and bids had been carefully scored by a group of staff who had an understanding of the service requirements. Bidders had not been told who would be on the Evaluation Panel, but were aware of the general process of bid evaluation. Six of the fifteen members of the Evaluation Panel would be directly affected by the decision, and three hospital consultants on the Panel would be indirectly affected. It was confirmed that the recommendation from the Evaluation Panel to the Trust Board had been unanimous.

<u>Whether the Trust, or any officers, had any contact with potential bidders prior to the commencement of the tender process which would breach protocol</u>

3.20 The Chairman commented that there had been an allegation that iPP, one of the bidders for the tender, had been made aware of the requirement approximately one year ago, prior to the release of the tender documents and had therefore gained an unfair advantage. The Director of Operations explained that Trust officers had contacted potential bidders prior to the start of the process, and also had detailed discussions with other hospital Trusts who could have responded to the tender. Visits had been organised for providers to look at the current services and get information which would later inform any tender bid. He confirmed that the Trust had not taken any action prior to the start of the tender process which would breach law, commercial business protocol or NHS policy.

3.21 In response to a member's question it was confirmed that the Trust was approached on a regular basis by provider organisations and other hospitals on pathology services. The Trust was open to discussions with partners on the best way to deliver services. The Director of Operations was not aware of any formal approaches to the pathology market prior to the decision to go out to tender. The Principal Solicitor asked if there had been any individual approaches to any particular organisations which would put them at an advantage. The Director of Operations explained that some providers had made special efforts to find out about DCH services, but discussions with those providers had been open and proper, and staff had been aware that they had been held. All information which had been exchanged had been made available to anyone involved in the tender process, and no advantage had been given to those providers involved in earlier discussions.

3.22 One member raised concern that the recent rapid changes in the NHS generally may destabilise the care provided. The Director of Operations commented that there was a great deal of change currently on-going, but that the proposals to group pathology services in view of the number of samples required to be processed could in principle not be argued against and would not negatively impact upon the provision of care. The private sector had much greater buying power and was able to reduce costs and save money. Currently there was no appetite for hospitals to group together as they wanted to retain control of their own areas.

3.23 The Chairman asked if equipment at DCH would be underused if the bulk of processing was contracted out to an external site. It was explained that if there was a large processing hub elsewhere, there would be smaller machines on site at DCH. There was currently a focus on point of care testing and in many cases samples were processed immediately.

3.24 In response to a question on the number of bidders, the Project Manager confirmed that 29 expressions of interest had been received, followed by eight initial bids, of which four had gone through to be evaluated by the Evaluation Panel. It was also confirmed that iPP had submitted a bid for the tender, and that meetings had taken place with South West Pathology Services, which was a joint venture between Yeovil Laboratory, Taunton Laboratory and iPP. South West Pathology Services were two thirds owned by the NHS.

3.25 It was confirmed that the tender documentation which had been submitted would not record discussions with any organisations prior to the start of the process. The Principal Solicitor summarised that assurance had been given that no organisation had been given favour in advance of the process, but that further reassurance would be provided if any documentation detailing discussions with potential bidders prior the start of the tender process be submitted for consideration by the Group or the DHSC. The Director of Operations confirmed that a report would be considered by the DHSC at the next meeting in November 2014, and the documentation which had been requested could be included.

<u>Consideration of the tender documentation to enable a greater understanding of the process</u>

3.26 Members were asked if they still wished to give full consideration to the tender documentation given the previous discussions. The Chairman commented that answers had been provided to the previous three issues and a greater understanding of the process had now been gained. Arising from that there appeared to be no evidence of procedural fault and responses had been received to questions raised in relation to the integrity of the process and whether different service specifications had been sent to different parties.

3.27 The Chairman highlighted that correspondence and communication with bidders and with the public were key issues, but that he was satisfied that the tender exercise had been undertaken within normal parameters. The Principal Solicitor

summarised the findings of the Group. There was a question over the Trust's decision to tender and benchmark at the same time, as it would be usual for a tender exercise to be informed by benchmarking. There had also been a concern that the Board had decided without benchmarking that the service was underperforming, without allowance for the fact that more investment in the service was required. The Director of Operations agreed that the process had not been usual, but that a decision had been taken to tender and benchmark as part of one process. He agreed that earlier benchmarking should have been undertaken, but highlighted that independent reviews of parts of the pathology service had been undertaken.

3.28 The Principal Solicitor went on to highlight that correspondence had referred to certain risk factors. He explained that the Group were not in a position to know how much weight was placed on these risk factors, but this could be considered by the DHSC after the Group had reported back. The Director of Operations suggested that the report to the DHSC would include information on the Board's decisions and the potential implications of those decisions. The Principal Solicitor explained that there could still be a legal challenge to the process after the decision by the Trust Board.

3.29 The need for good communication with staff and the public in future tendering exercises, subject to rules regarding commercial sensitivity, was also highlighted. Regarding the query over why the current in-house service did not bid for the tender when they had developed the service specification and would be part of the evaluation process, members were satisfied that this was because they would not be able to meet the service specification and was not a general competence issue.

3.30 It was confirmed that the Trust could still decide to keep the current in-house service. The Director of Operations highlighted that significant investment in the service had been made and this was a possibility.

<u>Recommended</u>

4. That the Dorset Health Scrutiny Committee note that:

a) for the Trust there was a learning point regarding the order in which benchmarking and tendering were undertaken, as a benchmarking exercise would ordinarily precede a tendering process as it would serve the purposes of (i) establishing whether a service needed to be tendered and (ii) informing the service specification if a tendering process goes ahead;

b) for the Trust there was a need for good communication with all stakeholders and the public in similar exercises in the future;

c) and that an update report would be considered by the Dorset Health Scrutiny Committee on 17 November 2014, which should include (i) an account, with supporting documents, of the Trust's communications with potential providers prior to the commencement of the tender process to ensure that there were no irregularities or conflicts of interest and (ii) assurances by the Trust that the points made in 4(a) and 4(b) above have been recognised and accepted.

Date of Next Meeting

<u>Resolved</u>

5. That a decision on the need for another meeting of the Task and Finish Group be made following consideration of the update report on the Dorset County Hospital pathology services tendering project at the Dorset Health Scrutiny Committee on 17 November 2014.

Meeting duration: 11.00pm to 1.20pm