

# Health & Wellbeing Board

Date of Meeting 15<sup>th</sup> February 2017



**Report Title:** Children's Community Health Services Contract Duration

**Ward:** City Wide

**Strategic Director:** Alison Comley

**Report Author:**

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Fiona Butter, Programme Director CCHS Recommissioning, Bristol CCG  
Mike Pingstone, Associate Director of Procurement, NHS South, Central and West Commissioning Support Unit

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**Purpose of the report:**

To request that the Health and Wellbeing Board agree to increase the potential period of extension within the contract for the provision of Children's Community Health Services (CCHS) from 2 years to 5 years. The initial term of the contract is 5 years to commence 1 April 2017. The contract duration was initially advertised as 5 year contract with an option to extend up to 2 years (a 5+2 contract). The contract was won by Sirona care and health as Prime Provider working in partnership with Bristol Community Health (BCH) Community Interest Company (CIC), Avon and Wiltshire Mental Health Partnership NHS Trust (AWP) and University Hospital Bristol NHS Foundation Trust (UH Bristol). The agreement to extend the contract after the initial 5 year period will be sought from all commissioners and could be in increments of 1 year or variations of up to a total of 5 years based on this recommendation. The 4 other commissioning organisations have agreed to the extended contract period and are awaiting a decision from Bristol City Council.

**Recommendation for the Mayor's approval:**

1. To approve the increase of the potential period of extension of the CCHS contract from 2 years to 5 years.



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## The proposal:

1. Bristol Clinical Commissioning Group (CCG) is the lead Commissioner for the CCHS contracts on behalf of itself, Bristol City Council, South Gloucestershire CCG, South Gloucestershire Council and NHS England. In order to source a substantive provider, the Commissioners undertook a robust competitive procurement process as required by procurement guidelines. In November 2016 we awarded the contract and have since been working to finalise contract details.
2. The contract for Bristol & South Gloucestershire's Children's Community Health Services (CCHS) was awarded to Sirona care and health CIC as the Prime Provider of the partnership consisting of;
  - Sirona care and health CIC
  - Bristol Community Health CIC (BCH)
  - Avon and Wiltshire Mental Health Partnership NHS Trust (AWP)
  - University Hospital Bristol NHS Foundation Trust (UHBristol)
3. At this point all commissioners of CCHS are in agreement to award a 5+5 year contract though we await a decision from Bristol City Council. Seeking this future option at this stage, rather than later into the contract term, reduces the risk of challenge related to the procurement process.
4. In summary the reasons for proposing a longer extendable period are that it would enable:
  - A greater ability on the part of Sirona to enter into a risk share agreement with commissioners over the term of the contract and to commit to:
    - Staff
    - Premises
    - IT
    - Peripherals (photocopiers; communications; mobile phone contracts; outsourcing)
  - a clear statement of intent, support and partnership between all parties
  - a greater focus and energy in bringing about change thereby creating more chance of successful transformation
  - an ability to seek investment partners, especially in the field of technology, who are often looking for longer term relationships
  - a reduction in costs at both commissioner and provider level associated with procurement processes. This will also negate the service development void experienced during procurement as both provider and commissioner attention is focussed on procurement not development.
  - stability both for service users and for staff thereby enabling the delivery of a high quality solution for a longer period
  - the offset of set up costs over a longer period and negate the need to hold back funding for re-tendering within a relatively short period of time
  - commissioners to build longer and more lasting relationships with providers thereby increasing our chances of on-going high performance; better relationships often lead to fewer incidents and or issues of poor performance. In addition, a greater shared understanding of our service models and requirements will enable us to both look for areas of consolidation across existing services as well as the potential addition of new service offerings
  - to deal with fluctuating demand and costs more flexibly knowing we have a longer period over which to absorb the variances

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- greater opportunity for efficiencies in non-critical/non pay activities where this is more efficient as suppliers are more likely to want to do business with a stable, long term partner
  - the joint development of meaningful KPIs and outcome measures which might not materialise for a number of years but which could demonstrate the real added value that the services give to children, young people and families in our communities.
5. Key risks and opportunities based on the above and the likely consequences of not extending the contract will be:
- The CCHS contracts are jointly commissioned by 5 commissioning organisations and there are in excess of 15 different service specifications. The recommissioning process is therefore complex and has taken 3 years from commencement to contract start. The process, led by Bristol Clinical Commissioning Group, has required a dedicated team of project managers, procurement specialists with financial support and it has consumed considerable time of all service managers/ commissioners. The cost of the dedicated recommissioning team and the project has been £650,000 over 3 years which, if spread across the contract term of 7 years is £93k per annum, the cost of which was split pro rata across all commissioning organisations. If the contract duration is longer then there will not be a need to repeat the process for possibly 10 years and the equivalent annual cost is £65k per annum thereby creating a saving of £28k per annum so over 3 years saving of £84K.
  - There are significant financial challenges that come with this contract and our provider is committed to working with commissioners to do everything possible to meet these and deliver a high quality service for all children, young people and their families. Knowing that there is a potential for a longer term partnership would enable Sirona to manage risk and enable us to deal with fluctuating demand and costs more flexibly. We are unable to place a financial value on this at this stage although we already know that there are year on year pressures on the contract of circa 7% (£2.4m). We are currently in negotiation with Sirona about how these pressures will be met including proposals for reductions in service provision.
  - Sirona is also keen to look at the potential for greater efficiencies in non-critical/non-pay activities; the potential for a longer term will allow better procurement of non-pay elements of the service. Early indications are that suppliers are more likely to want to do business with a stable, long term partner and an extension to the contract will strengthen their ability to negotiate better terms. A 5% saving on the 10% non-pay element of the contract value would lead to an annual saving of £173k per annum.
  - The Commissioners are confident that a robust, auditable procurement has been undertaken, however there is risk of challenge in any process. It was recognised at the start of the process that the services were highly cost-pressured, but also that the ability to modernise the service – both in terms of service delivery and IM&T/Estates infrastructure – was key to the successful delivery of the service. Given the nature of the procurement it is believed that the award of contracts on the basis of 5+5 is both proportionate and necessary. In terms of transparency (as a form of risk mitigation), it will be necessary to make clear within the formal EU award notice that the contracts have been let for a period of 5+5, however there is no need to send out any additional contract notices through the OJEU (the formal EU public procurement portal). Rules governing the ability of a contracting authority to vary a contract (PCR2015 regulation 72) are not relevant to this case

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because the contract has not yet been let, and that regulation only applies to in-contract variations.( see legal comment below)

- There are risks associated with awarding the contracts on the basis of 5+5 rather than 5+2. The key risk is that an aggrieved party (likely a potential bidder), comes forward to challenge the Commissioners' decision, stating that they would have expressed interest in the procurement had it originally been advertised on the basis of 5+5. There was limited interest in the formal advert for the service, and only one bidder was taken past the initial pre-qualification questionnaire stage of the procurement. Given the limited initial interest, and the significant cost and other pressures associated with the services, it is unlikely that any organisations would formally challenge a modification to the contract term.
- In terms of challenge, it should also be noted that costs do not immediately or significantly accrue upon receiving threat of a legal challenge - costs accrue through the defence of a legal challenge. . any challenge would be received by the lead commissioner – Bristol CCG. It is therefore Bristol CCG on which any initial internal resource and expenditure would fall. Serious consideration would be given by the commissioning partners as to whether to defend any challenge

## **Consultation and scrutiny input:**

### **a. Internal consultation:**

The proposal has been discussed at People Leadership Team, Neighbourhoods Leadership Team, and CPG, Senior Leadership Team, Cabinet members for People and Neighbourhoods and The Mayor. The recommendation was to proceed to health and Well Being board for a decision. Discussions at these meetings have raised the question of the likelihood of challenge and the opportunities for agreed cost savings from the provider if the contract period is extended. The CCG who are leading the procurement process believe the risk of challenge is low (see above point 5). In terms of savings the provider is already facing significant financial challenges, but there will be opportunities for year on year financial savings to be made with 6 months' notice.

### **b. External consultation:**

Bristol CCG, the lead Commissioner for the CCHS contracts in addition to all other commissioners of CCHS; South Gloucestershire CCG, South Gloucestershire Council and NHS England have been consulted and agree to this proposed extension option.

**Risk management / assessment:**

**FIGURE 1**

**The risks associated with the implementation of the (subject) decision :**

No.	RISK  Threat to achievement of the key objectives of the report	INHERENT RISK		RISK CONTROL MEASURES  Mitigation (i.e. controls) and Evaluation (i.e. effectiveness of mitigation)	CURRENT RISK		RISK OWNER
		(Before controls)			(After controls)		
		Impact	Probability		Impact	Probability	
1	Risk of any challenge being received regarding the contract length	<b>Medium</b>	<b>Low</b>	<p>Explicitly note the extended term at the appropriate committee of each Commissioner whilst formally awarding the contract – This puts the 5+5 amendment in to the public domain through multiple channels, and starts the standard 30 day timescales for a procurement law challenge.</p> <p>Send associated Contract Award notices to the OJEU on the basis of a 5+5 contract term – Similarly to above, this ensures that the market knows about the length of the awarded contract.</p> <p>Ensure that the contract with Sirona would not be signed within 30 days of the formal award – This limits the potential cost of any challenge received, as the Commissioners would not have entered in to any binding relationship with Sirona during the 30 day period referenced above.</p> <p>Within the signed contract with Sirona, the extension options would clearly state that the offering of the 5+5 would be at the gift of the Commissioners, and that the Commissioners would be able to exercise any extension or extensions up to a maximum of 5 years, thereby allowing the Commissioners to only take up a 2 year extension if necessary. Although the standard timescale for a procurement challenge is 30 days, making clear the Commissioners right to revert to 5+2 within the contract would limit the risk of challenge throughout the entire life of the contract, not just prior to contract signature.</p>	<b>Low</b>	<b>Low</b>	SW CSU (Bristol CCG)

**FIGURE 2**

The risks associated with not implementing the (subject) decision:

No.	RISK  Threat to achievement of the key objectives of the report	INHERENT RISK		RISK CONTROL MEASURES  Mitigation (i.e. controls) and Evaluation (i.e. effectiveness of mitigation).	CURRENT RISK		RISK OWNER
		(Before controls)			(After controls)		
		Impact	Probability		Impact	Probability	
1	Loss of financial benefits and service developments;  <ul style="list-style-type: none"> <li>• Slower transformation and therefore longer to deliver outcomes</li> <li>• Higher cost</li> <li>• Inability to attract external investment to support transformation moving forward</li> <li>• Higher procurement costs over the period</li> <li>• Earlier procurement will distract from service delivery during a period of significant transformation.</li> <li>• Reduces the “window of opportunity” to make far reaching changes to services</li> </ul>	Medium	Medium		Medium	Medium	Public Health Bristol City Council
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**Public sector equality duties:**

**Public sector equality duties:**

Before making a decision, section 149 of the Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:

- i) eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
- ii) advance equality of opportunity between persons who share a relevant protected characteristic and those do not share it. This involves having due regard, in particular, to the need to:
  - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic.
  - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
  - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- iii) foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to tackle prejudice and promote understanding.

During the reprocurement there has been extensive consultation including an equalities impact assessment. This proposal to extend the contract period does not change the service delivery model that

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has been designed as a result of the consultation. Public sector equalities duties will be maintained and monitored throughout the life of the contract.  
No extra advice sought.

### **Eco impact assessment**

This has been considered at the awarding of contract stage. The contract extension will be likely to have a positive eco impact as it will delay the need for a new tender process and the associated costs that are required when a new provider is awarded a contract. For example, a change in IT systems, paperwork etc.

I agree that there are no significant impacts arising, and a small benefit in terms of reduced paperwork etc.  
Steve Ransom, Environmental Programme Manager

### **Resource and legal implications:**

The total annual contract value is £34.6m a year commencing in April 2017. The contract value for a 5 year period is therefore £173.m. Extending for 5 years would be an additional £173.m

The BCC contribution to this is  
Public Health Grant £8.65m  
People - General Fund £1.27m  
DSG £0.54m.  
Total £10.46m

Based on the current annual contract value, the BCC contribution is 10.46M. The contract allows for BCC to propose reductions to the annual contract value and service levels.at 6 months notice, however there may be mitigating costs associated with this, e.g. cost of redundancies.

Based on the current BCC funding, a contract extension of 5 years will cost £10.46m each year, a total of £52.3m for 5 year

There are additional savings through delaying the recommissioning process because the cost of the dedicated recommissioning team has been £650,000 over 3 years which, if spread across the contract term of 7 years is £93k per annum, the cost of which was split pro rata across all commissioning organisations. If the contract duration is longer then there will not be a need to repeat the process for possibly 10 years and the equivalent annual cost is £65k per annum thereby creating a saving of £28k per annum so over 3 years saving of £84K

### **a. Financial (revenue) implications:**

The financial (revenue) implications of this are in practice subject to future decisions about whether BCC's exercises its option to extend the contract and if so by how long. Based on the current annual contract value the cost per annum to BCC would be £10.46m, split between funding sources as set out in the report. The report outlines that the contract allows for BCC to propose reductions to the annual contract value, allowing some flexibility for BCC to manage any changes in funding available both during the initial term and for any period of extension. There may be mitigating costs associated with this, e.g. the cost of redundancies and these would need to be taken into account in any assessment of changes to the annual contract value proposed.

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**Date**

**02/02/17**

**b. Financial (capital) implications:**

**Comments from the Corporate Capital Programme Board:**

*No advice sought*

**c. Legal implications:**

Although the contract has not been let, the principles set out in Regulation 72 (variations) would still be relevant in assessing the materiality of the proposed changes. So if the change would breach the Regulation if implemented after award, then making the change prior to award is likely to be viewed as a significant change in the contract terms requiring a new tender. However it is noted that the change is being promoted by the Council/CCG etc. and not to suit a particular bidder i.e. it is primarily a change in the interests of the commissioners. Also the contract term was not raised as an issue by any bidder, or any non-bidder as an issue. The issue will be whether any unsuccessful bidder (or indeed anyone who did not bid) could legitimately argue that the additional 3 years would have been significant, and impacted on their bid, or any decision not to bid. The Commissioners' view is that, in context, the change is not so significant that it would have had a material impact on those who might have been interested in providing the service either bidding or not. The intention not to give a once only 5 year extension, but extend by increments of one year helps mitigate any risk of challenge. Given that the additional 5 years is entirely at the discretion of the Commissioners, and there is therefore no guarantee of even one year extra, all potential bidders would have to assume they were bidding for a 5 year contract. Accordingly the change from a possible extension of up to 2 years, to a possible extension of up to 5 years, is unlikely to be viewed as material.

**Advice given by Eric Andrews**

**Date 01/02/2017 Senior Solicitor, Legal and Democratic Services**

**d. Land / property implications:**

*No advice sought*

**e. Human resources implications:**

*There are no specific HR issues to consider as part of this request*

**Advice given by Alex Holly** HR Business Partner

Neighbourhoods, Talent and Resourcing

**Date 26<sup>th</sup> January 2017**