

HEALTH AND WELLBEING BOARD

11 FEBRUARY 2014

Title:	Waiver of Standing Orders for Public Health Contracts
Report of the Director of Public Health	
Open Report	For Decision
Wards Affected: ALL	Key Decision: YES
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Sponsor: Matthew Cole, Director of Public Health	
Summary: <p>The purpose of this report is to seek a waiver of the requirement under the Council's contract rules to conduct a procurement exercise for contracts over £50,000.00.</p> <p>The transfer of the Public Health function to the Council from 1 April 2013 under the Health and Social Care Act 2012 resulted in the Council inheriting a range of contracts across different Public Health Service areas.</p> <p>The contracts novated or transferred to the local authority expire on March 2014. The services covered by these contracts each need to be reviewed in line with the Council's Public Health commissioning intentions and the priorities of the Health and Wellbeing Strategy. Following the review, the services the Council wishes or is required to retain need to be procured under new contracts.</p> <p>The re-commissioning of the new services will require an intensive procurement programme to ensure the process complies with both Contract Rules and where applicable, the Public Contracts Regulations 2006 (as amended). It will also be necessary for officers to comply with the Public Services (Social Value) Act 2012 requirements prior to commencing any procurement process.</p> <p>Following the transfer of Public Health functions to the Council we have been working to develop a procurement plan as attached in Appendix 1.</p> <p>The procurement programme will need to be conducted in stages so as to allow sufficient time and capacity to review the existing services and performance and engage with stakeholders to inform the new service provision. The staggered approach to procurement will also ensure continuity in service delivery and enable officers to stimulate the market and engage with key stakeholders as required.</p> <p>There is no provision for further extension of any of the contracts that have been novated to the Council. Hence further contracts need to be issued directly to the current providers under the same terms and conditions until such time as the procurement process for each contract has been completed and new competitively procured contracts for each service</p>	

can be awarded.

Recommendation(s)

The Health and Wellbeing Board is asked to:

1. Waive the requirement of the Council Contract Rules that requires us to conduct a procurement exercise for contract in the excess of £50,000.00. In accordance with contract rules 6.6.8 Public Health believe that there are exceptional circumstances why a procurement exercise cannot be undertaken at this stage.
2. Authorise the Corporate Director of Adult and Community Services to award the Public Health Contracts on the advice of the Director of Public Health listed in Appendix 1 to each of the current providers under the same terms and conditions as the current contract and for the duration detailed in Appendix 1.

Reason(s)

The contracts that were novated to the Council on 1st April 2013 cannot cease without alternative arrangements being in place. Equally, it is not possible in the limited time available prior to the cessation of the novated contracts for officers to assess the services required and conduct procurement processes in accordance with the relevant Contract Rules, and where applicable, the Public Contracts Regulations 2006 (as amended). Therefore in order for officers to directly award interim contracts to the current providers without undertaking any competitive process. The ground upon which a waiver is being sought is Contract Rules 6.6.8, which states "There are other circumstances which are genuinely exceptional.

1. Background/Scene Setting

- 1.1. On 1 April 2013 the delivery of Public Health services was transferred to local pursuant to the Health and Social Care Act 2012. At the same time Primary Care Trusts (PCTs) who until then managed contracts delivering public health outcomes ceased to exist.
- 1.2. The Statutory Transfer Scheme, enacted by the Secretary of State allowed public health contracts to legally "Novate" to the Council by a written Transfer Order from 1 April 2013. This included the transfer of all rights and liabilities existing under all clinical and non clinical arrangements
- 1.3. The majority of Public Health contracts were novated to the Council for 12 months from the point of transfer on 1 April 2013 on the NHS Standard terms and conditions. However, officers have come to the view that the novated contracts contained in Appendix 1 need to be continued in their current form for a further period of 12 to 18 months from their current expiration dates. This period will allow officers to undertake an informed assessment of future opportunities to increase quality and value for money and explore options to deliver these services in a more integrated and effective way. This will ensure that the needs identified in the Joint Strategic Needs Assessment and the key priorities within the Council's Health and Wellbeing Strategy are met by the newly procured contracts.
- 1.4. Re-commissioning of the contracts will include joint and integrated commissioning between the council, voluntary sector and NHS which in some cases will involve cross borough multilateral arrangements.

1.5. These arrangements have been informed by the Commissioning Priorities agreed at the Health and Wellbeing Board 5 November 2013. A procurement plan has been developed with a timeframe for each of the procurement exercises to allow for officers to implement the agreed proposals. This plan necessitates further issuing of contracts to current providers to allow for the procurement process to be completed and new contracts awarded.

2. Proposals and Issues

- 2.1. In order to allow sufficient time for completing the necessary process of obtaining approvals, undertaking consultation, running procurement processes in accordance with Contract Rules and the Public Contracts Regulations 2006 (as amended), the award of new contracts and the transfer of the new contracts to incoming provider/s, whilst also ensuring service continuity these projects will need to continue to 31 March 2015 with the exception of the Integrated Sexual Health Contract (it is proposed to extend this until September 2015). To facilitate this process it will require existing contracts to be extended to the incumbent provider until 31 March 2015. These extensions to contracts will be issued to each of the current providers on the same terms and conditions that presently exist. Contracts going forward from April 2015 will be issued on the Council's terms and conditions.
- 2.2. There are 7 sexual health contracts worth a total annual value of £2,479,000 and with a range of current expiration dates as detailed in Appendix 1. There are varying arrangements proposed for these contracts which are further detailed in Appendix 1. Sexual Health is a mandated service and must be provided; it is envisaged that the Integrated Services Universal Genitourinary medicine (GUM), Chlamydia and C-card will be procured as one contract. This will deliver an integrated sexual health service with one provider and ensure economies of scale and efficiency savings. The HIV Services currently provided will be evaluated during the financial year to determine the effectiveness of these current services.
- 2.3. Two of the sexual health contracts are complex contracts - the Integrated Sexual Health Contract delivered by Barking, Havering and Redbridge NHS University Hospital Trust (BHRUT) is delivered in conjunction with the London boroughs of Havering and Redbridge and the Chlamydia contract is delivered in conjunction with the London boroughs of Havering, Redbridge and Waltham Forest. Both of these contracts are due to expire on the 31 March 2014. In going forward officers across the three Councils are proposing to have one contract rather than two separate contracts to deliver a fully integrated sexually health service. Such a joint procurement of a complex service will take some time to complete and it is the intention of all parties to the current contracts to extend them for the period 1 April 2014 to 30 September 2015. The current exception to this is the Chlamydia contract; Barking and Dagenham are discussing with our neighbouring partners the option of having a one year contract with a break clause of six months.
- 2.4. With the BHRUT contract there is no advantage to be gained in expediting this procurement process as the current contract has been renegotiated with the provider by all the boroughs involved. This renegotiated contract is currently providing better value, has competitive rates and provides an enhanced service within the same contract value. If we commence tendering in April 2014, we will get a full year activity data including non-contracted activity and more knowledge about demand of these services across a range of providers.

- 2.5. The interim period of eighteen months will enable the three councils to focus on stabilising the sexual health services. In addition, officers anticipate obtaining greater clarity about the delivery of sexual health services across London and nationally by July 2014. Furthermore, the service includes highly specialist areas which can only be delivered from an acute trust setting, and includes linkages with primary care, thus the Council are keen to continue to support the development of these services and ensure best value without destabilising the delivery for people who need the service.
- 2.6. The values of the interim contracts will be frozen at current levels (or where appropriate price reductions sought) until the proposed end dates of the contracts.
- 2.7. The procurement process will ensure that the services provide value for money for the Council. Some of the contracts will be joined up and procured as a single contract to get maximum efficiency, some contracts will be procured jointly with other authorities, and where appropriate some contracts will have added service components.

3. Consultation

Consultation with partners and providers has taken place and a regular dialogue is ongoing.

4. Mandatory Implications

4.1 Joint Strategic Needs Assessment

The JSNA has highlighted sexual health (especially HIV and teenage pregnancy) and mental wellbeing as being areas in need of improvement. The oral health of the borough is conspicuously poor especially in children. In view of the measures in the Public Health Outcomes Framework it would be inadvisable to leave the borough with no provision, albeit temporary.

4.2 Health and Wellbeing Strategy

The Health and Wellbeing Strategy highlights the importance and actions required to improve sexual health and mental health or emotional wellbeing. Whilst oral health is not specifically identified in the Health and Wellbeing strategy – its presence in the Public Health Outcomes Framework and the conspicuously poor dental health in the borough makes it a priority.

4.3 Integration

One of the outcomes we want to achieve for our Joint Health and Wellbeing Strategy is to improve health and wellbeing outcomes through integrated services. The report's recommendations are underpinned for the need for effective integration of services and partnership working.

4.4 Financial Implications

There are no quantifiable financial implications to draw attention to. However, given the transition of contracts from NHS to LA this will mitigate against financial risks associated with a rushed procurement process and facilitate stability with respect to budget setting purposes. Value for money and future efficiencies can still be sought as reported in section 2.

[Completed by Faysal Maruf, Group Accountant – Finance]

4.5 Legal Implications

This report is seeking that the Health and Wellbeing Board (the “HWB”) waive the requirement, under the Council’s Contract Rules, to tender contracts noted in this report.

This report states that the waiver is sought on the basis that there is currently not sufficient time to complete the necessary process of obtaining approvals, undertake appropriate consultation and run procurement processes in accordance with the Contract Rules.

Contract Rule 6.6.8 states that the Council can waive the requirement to tender contracts on the ground that there are genuinely exceptional reasons why a procurement exercise should not be conducted.

Furthermore, Contract Rule 6.3 provides that in instances where the value of a contract is over £500,000, a waiver of the Council’s tender requirements must be obtained from Cabinet/ HWB.

In agreeing the Recommendations of this report the HWB needs to satisfy itself that reasons and grounds stated by officers in this report satisfy the requirement for the issuing of a waiver.

[Implications Completed by Bimpe Onafuwa, Solicitor]

4.6 Risk Management

The contracts listed in Appendix 1 are important to the continuing health of the residents of the London Borough of Barking and Dagenham. The provision of sexually health by the Council is a mandated service which must be provided and not having a number of these contracts in place would put the health of the population at risk.

5. Supporting Documentation

- [Barking and Dagenham’s Community Strategy 2013-1016](#)
- [Joint Strategic Needs assessment](#)
- [Joint Health and Wellbeing Strategy](#)
- Public Health Commissioning Priorities 2014/15

6. List of Appendices

- Appendix 1: Future Procurement of Public Health Projects