

## HEALTH AND WELLBEING BOARD

8 September 2015

<b>Title:</b> Contract - Waiver for Integrated Sexual Health and Chlamydia Screening Coordination Services	
<b>Report of the Cabinet Member for Adult Social Care and Health</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> Yes
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<b>Accountable Divisional Director:</b> Matthew Cole, Director of Public Health	
<b>Accountable Director:</b> Anne Bristow, Corporate Director for Adult & Community Services	
<b>Summary:</b> <p>Local Authorities are mandated to commission comprehensive open-access, accessible and confidential contraceptive and sexually transmitted infections (STIs) testing &amp; treatment services for all age groups. In Barking and Dagenham, the Integrated Sexual Health and Chlamydia Screening Coordination Services are currently provided by Barking Havering and Redbridge University Hospitals NHS Trust (BHRUT) and the Terrence Higgins Trust (THT) respectively. The Council approved the issue of interim contracts for these services in February 2014 for a period of 18 months. Both contracts are due to expire on 30th September 2015.</p> <p>London Borough of Barking and Dagenham (LBBB) in partnership with the London Borough of Havering (LBH) and London Borough of Redbridge (LBR) undertook a Tri-Borough procurement of the services in January 2014 using the EU Restricted Procedure. Havering led on the Procurement with Barking &amp; Dagenham and Redbridge as associates. This process was abandoned, as the two bids received were substantially beyond the respective budgets of the three Councils.</p> <p>The 3 boroughs then proceeded to embark on a new tender process using the Negotiated Procedure (without prior publication of a contract notice) in accordance with the EU Regulations, to obtain fresh tenders in early 2015 from those who originally submitted bids. The new negotiation was commenced upon with the intention to award a contract in October 2015. Only one bid was received and that was from the incumbent provider BHRUT, while the other bidder failed to submit a bid on the basis that they were unable to deliver the service within the allocated budget.</p> <p>The new negotiation procedure also had to be discontinued due to both parties not reaching an agreement on financial grounds. The bidder BHRUT proposed a service cost of £4,393,095 (LBBB £1,422,790, LBH £1,480,888 and LBR £1,489,417) for the provision of the integrated sexual health service. However, one of the boroughs could not</p>	

proceed with the process due to financial constraints. The three boroughs then agreed to negotiate individually a new contract with the current providers and issue separate borough-based contracts for the provision of the services.

The initial plan was to include the Chlamydia Screening Coordination Service in the negotiations with BHRUT; however, they have said that they do not want to provide the service. The service will now be included as part of the primary care (GP and community pharmacists) public health services procurement.

## **Recommendations**

The Health and Wellbeing Board is recommended to:

- (i) Waive the requirement to tender in accordance with the Council's Contract Rules; and
- (ii) Delegate authority to the Corporate Director for Adult and Community Services, in consultation with the Director of Public Health, Chief Finance Officer and the Head of Legal and Democratic Services for the:
  - Direct award of a 1 year contract from 1<sup>st</sup> October 2015 to 30<sup>th</sup> September 2016 with the option to extend for a further 2 year period on an annual basis to Barking Havering and Redbridge University Hospitals NHS Trust (BHRUT) for the provision of an Integrated Sexual Health Service
  - Six (6) months contract extension to Terrence Higgins Trust to cover the notice period for the provision of the Chlamydia Screening Coordination Service in accordance with the strategy set out in this report.

## **Reason(s)**

### Integrated Sexual Health Service :

The Council needs to fulfil its legal obligation, as the current contract due to expire on 30<sup>th</sup> September 2015 cannot cease without alternative arrangements in place for continued service provision. Given the procurement timeline, it is not possible in the limited time available to complete a new tender process to award a new contract.

### Chlamydia Screening Coordination Service:

This is not a mandated service; therefore decisions are to be made on service continuation due to uncertainty with Public Health Grant and the need for efficiency savings. Extension period will be used to cover the notice period, develop primary care (GP & Pharmacists) role in the provision of the service and transfer fundamental functions as part of the procurement of primary care public health services.

*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. Introduction and Background**

- 1.1. The delivery of open access sexual health services is a mandated public health responsibility for the Council under the Health and Social Care Act 2012. Local authorities have a legal duty to commission HIV prevention, sexual health promotion, open access services for sexually transmitted infection, and contraception for all age groups.
- 1.2. These include free testing and treatment for sexually transmitted infections, notification of sexual partners of infected persons, free provision of contraception as well as the provision of information, advice and support on a range of issues, such as sexually transmitted infections (STIs), contraception, relationships and unplanned pregnancy.
- 1.3. The Integrated Sexual Health and Chlamydia Screening Coordination service contracts currently provided by BHRUT and THT respectively will expire on 30th September 2015.
- 1.4. The Council approved the issue of interim contracts for a further period of 18 months, ending 30 September 2015 on the basis that a procurement process would be undertaken, completed and a new contract for the services will commence on 1<sup>st</sup> October 2015.
- 1.5. In January 2014, a procurement exercise in respect of these services was undertaken in partnership with the London Boroughs of Havering and Redbridge with Havering leading on the procurement. The intention was to competitively tender under a Restrictive Procedure the Integrated Sexual Health and Chlamydia Screening Coordination Services as one contract for a period of five years with the option to extend for two years.
- 1.6. The intention was to award the new contract in April 2015 with a six month mobilisation period for a new integrated service starting on 1st October 2015. However, the Restricted Procedure had to be stopped because the two bids received exceeded the available funds by a considerable margin. The Restricted Procedure which was used does not provide any scope for negotiation.
- 1.7. After consultations with Procurement and Legal teams, the three boroughs then decided to enter into a new tender process, using the Negotiated Procedure (without prior publication of a contract notice) in accordance with the EU Regulations to obtain fresh tenders in early 2015 from the two original bidders.
- 1.8. In February 2015, new Invitation to Tender (ITT) documents were issued to the bidders for fresh bid submissions. By the due date of 19<sup>th</sup> March 2015, only two bids were received; one from the current provider and the other from another provider. The second bidder later withdrew from the process, stating its inability to deliver the service required within the financial envelope available without undue risks.
- 1.9. Following this, the three boroughs then entered into further negotiations with the current provider BHRUT. The first negotiation meeting was held on the 19<sup>th</sup> May 2015 with further meetings planned to continue up to 30<sup>th</sup> July 2015. However the new procurement process also had to be discontinued due to both parties not reaching an agreement on financial grounds.

- 1.10. The bidder BHRUT proposed a service cost of £4,393,095 (LBBD £1,422,790, LBH £1,480,888 and LBR £1,489,417) for the provision of the integrated sexual health service. However, one of the boroughs could not proceed with the process due to financial constraints. The three boroughs then agreed to negotiate individually a new contract with the current providers and issue separate borough-based contracts for the provision of the services.
- 1.11. The initial plan was to include the Chlamydia Screening Coordination Service in the negotiations with BHRUT; however, they have said that they do not want to provide the service. This will now be included as part of the primary care (GP and community pharmacists) public health services procurement.

## **2. Proposed Procurement Strategy**

### **2.1 Outline specification of the works, goods or services being procured.**

A direct award of a 1 year contract from 1<sup>st</sup> October 2015 to 30<sup>th</sup> September 2016 with the option to extend for a further 2 year period on annual basis for the Integrated Sexual Health Service to Barking Havering and Redbridge University NHS Trust (BHRUT) for the provision of the following:

- Contraception and abortion services
- Screening - HIV, Chlamydia (young people and high risk groups) and STIs
- Treatment interventions and service delivery for STIs and HIV
- Health promotion and disease prevention
- HIV prevention interventions

A six (6) months contract extension from 1<sup>st</sup> October 2015 to 31<sup>st</sup> March 2016 for the Chlamydia Screening Coordination Service to Terrence Higgins Trust for the provision of the following:

- Information on and access to sexual health services
- Outreach provision for Chlamydia screening
- Working with local pharmacies and GPs on Chlamydia Screening Coordination Services
- Performance management of primary care (GP practices & community pharmacies)

### **2.2 Estimated Contract Value, including the value of any uplift or extension period.**

These services will be funded from the Public Health Grant:

Allocated budget for the Integrated Sexual Health Service for 2015/16 is £1,400,000. Therefore, the estimated contract value is **£4,200,000** for 3 years (1+1+1)

Allocated budget for the Chlamydia Screening Coordination Service Contract for 2015/16 is £232,000. Therefore, the estimated contract value is **£ 116,000** for 6 months

### **2.3 Duration of the contract, including any options for extension.**

Three (3) years for the Integrated Sexual Health Service

Six (6) months for the Chlamydia Screening Coordination Service

### **2.4 Recommended procurement procedure and reasons for the recommendation.**

The recommended procurement procedure routes for these services at this time are:

1. A direct award of a 1 year contract from 1<sup>st</sup> October 2015 to 30<sup>th</sup> September 2016 with the option to extend for a further 2 year period on an annual basis to Barking Havering and Redbridge University Hospitals NHS Trust (BHRUT) for the provision of Integrated Sexual Health Service.
  - The contract will be commissioned as 'light touch' under the new Public Contract Regulations 2015, which came into force on 26<sup>th</sup> February 2015 without undertaking a competitive procurement process.
  - The Council will negotiate and issue a new borough based contract for the provision of service with break and variation clauses in the case of any changes in the market
2. Six (6) months contract extension to Terrence Higgins Trust for the provision of the Chlamydia Screening Coordination Service.
  - This is not a mandated service; therefore decision would be made on service continuation due to uncertainty with the Public Health Grant and the need for efficiency savings.
  - Extension period will be used to cover notice period, develop primary care (GP & Pharmacists) role in the provision of the service and transfer fundamental functions as part of the procurement of primary care public health services

Both contracts will be tightened with specific service requirements, and expected outcomes. Key performance indicators will be outlined in the service specification and agreed with the providers. Performance management of both services will be undertaken by the public health commissioners.

#### **Reasons:**

##### Integrated Sexual Health Service:

- Given the procurement timeline, it is not possible in the limited time available to complete a tender process and award a new contract.
- The Council needs to fulfil its legal obligation, as the current contracts due to expire on 30<sup>th</sup> September 2015 cannot cease without alternative arrangements in place for continued service provision.

- The proposed service cost of £1,422,790 by BHRUT is within the Council's (Public health) allocated budget for the service.
- There is currently a limited provider market for the service and this need to be developed before the Council can embark on another procurement process.
- Opportunity for the Council to negotiate an individual contract and work in collaboration with the current providers to identify and define the service best suited to satisfy the Council's requirements and local population needs.
- Allow time for the findings of the updated work on the London-wide integrated sexual health tariff which is due to be completed at the start of 2016/17, to be used in setting the tariff for the service. It is envisaged that the new tariff system, will help generate savings by providing additional tools for commissioners to implement changes, help encourage innovation in service provision, and implement a model that will be able to better meet high and increasing levels of sexual health needs and service use in a more cost-effective way.

#### Chlamydia Screening Coordination Service:

- This is not a mandated service; therefore decision is to be made on service continuation due to uncertainty with the Public Health Grant and the need for efficiency savings
- Extension period will be used to cover contract notice period, develop primary care (GP & Pharmacists) role in the provision of the service and transfer fundamental functions as part of the procurement of primary care public health services

*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"*

#### **2.5 The contract delivery methodology and documentation to be adopted.**

The standard Public Health Services Contract 2015 is the form of contract to be used for both contracts. The contract will have a break clause allowing notice to be given by either party for termination. This allows increased flexibility should a significant change in service provision be required.

#### **2.6 Outcomes, savings and efficiencies expected as a consequence of awarding the proposed contract.**

The outcome is to improve the sexual health of the population across the borough by building an effective, responsive and high quality sexual health service, which effectively meets the needs of our local community and offers a range of high quality, needs-led services which will target those most vulnerable in our boroughs.

There is an opportunity to negotiate a new tariff-based pricing model with the chosen provider over the life of the contract. Although the tariff model is

expected to deliver some cost efficiencies, the very nature of this on-demand service may impact on the ability to achieve these savings.

## **2.7 Criteria against which the tenderers are to be selected and contract is to be awarded**

Not applicable

## **2.8 How the procurement will address and implement the Council's Social Value policies.**

The Council's social value responsibilities are taken through its vision: One borough; One community; London's growth opportunity.

Through the award of the contracts to the providers, the Council will ensure service continuity that meet the needs of the local population, including provision of information, advice and support on a range of issues, such as sexually transmitted infections (STIs) testing and treatment, Chlamydia screening, HIV Testing, contraception, relationships and unplanned pregnancy.

In terms of the service contract, we will work with the provider to seek to identify local opportunities for apprenticeships, training and recruitment for residents.

## **3. Options Appraisal**

### **3.1 Do Nothing**

This option is not viable because the Council is mandated to provide open-access, accessible and confidential contraceptive and sexually transmitted infections (STIs) testing & treatment services for all age groups in the borough.

#### **Extend the contracts for a short period and undertake a competitive process.**

This option has already been tested and was unsuccessful. Given the timeline, it is not possible in the limited time available to complete a tender process and award a new contract with a six months mobilisation period. Market for this service need to be developed before the Council can embark on another procurement process.

#### **Direct Contract Award for 1 year with the option to extend for a further 2 year period on an annual basis (preferred option)**

The options of a direct contract award of the integrated sexual health service to the current provider BHRUT for a 1 year period with the option to extend for a further 2 year period on an annual basis as 'light touch' under the new Public Contract Regulations 2015.

#### **Advantage:**

1. Opportunity for the council to negotiate an individual contract and work in collaboration with the current providers to identify and define the service best suited to satisfy the Council's needs.

2. The Council is able to fulfil its legal obligation to its residents by having an open access sexual health service.
3. Residents will have no need to go elsewhere for treatment which will lower the council none contracted spend.
4. Opportunity to develop the market for the service

**Disadvantage:**

Risk of a challenge as the council has not gone through a competitive process – mitigation; Evidence that competitive processes already undertaken and unsuccessful, underdeveloped market, plan to go out to tender before the end of the new contract. Procure contract in line with Council's contract rules. Liaise with legal departments at all stages and ensure documentation is kept.

**4. Waiver**

Approval is sought to waive Contract Rule 28.8 in terms of conducting a formal procurement process. The justification for the waiver is to be judged under the following relevant points of the Contract Rules:

*Para. 6.6.2 That there is clear evidence the goods, services or works to be procured are of a specialist technical, artistic or proprietary nature, or*

*Para 6.6.3 That there is only one supplier in the market capable of providing the service, goods or works(e.g. a specific artist with intellectual property rights in a work of art) such that there is no benefit to be gained from competition.*

**5 Equalities and other Customer Impact**

The local authority will be providing an open access, universally provided Integrated Sexual Health Service that will meet the need of the whole population. The service allows for targeted provision for those parts of the population that have greater sexual health needs, these will include but not limited to; men who have sex with men. Young people, black African community, transgender communities



## 6. Other Considerations and Implications

Risk	Likelihood	Impact	Risk Category	Mitigation
No contract in place from 1st October leading to a negative impact on the sexual health of the local population and Council's reputation damaged	Medium	Very high	High	Early negotiations have started with the current providers to ensure continuous service provision with new contract in place by 1 <sup>st</sup> October 2015.
Market still under-developed at the end of the contract	Low	Medium	Low	Market warming activities to be held. Alternative providers outside of NHS will be identified and approached about interest in providing the services.
Contract award decision challenged by another provider	Low	Low	Low	Evidence that competitive processes already undertaken and unsuccessful, underdeveloped market, plan to go out to tender before the end of the new contract. Procure contract in line with Council's contract rules. Liaise with legal departments at all stages and ensure documentation is kept.
Increased cost of service, will have a negative impact upon the ability to deliver other areas of work	Medium	Medium	Medium	Essential that cost of the service is contained within the budgetary envelope. Use findings of the updated work on the London-wide integrated sexual health tariff which is due to be completed at the start of 2016/17, to be used in setting the tariff for the service
Provider failing to meet contractual obligations	Low	High	Medium	Robust and regular performance monitoring procedures, performance indicators and consequences of failure to meet them set out in service specification

Council may have to meet redundancy costs on the termination of the Terrence Higgins Trust (THT) Agreement for Chlamydia Screening	Medium	Medium	Medium	Further financial and legal advice to be obtained once the extended agreement with Terrence Higgins Trust is located
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## 6.2 **TUPE, other staffing and trade union implications.**

Council may have to meet redundancy costs on the termination of the Terrence Higgins Trust (THT) Agreement for Chlamydia Screening. Further financial and legal advice to be obtained once the extended agreement with Terrence Higgins Trust is located

## 6.3 **Safeguarding Children**

The provider has in place the necessary safeguarding protocols, in line with Council Policy and applies the Frazier Guidelines and Gillick Competency where a young person is under 16

## 6.4 **Health Issues**

The proposal is in line with the outcomes and priorities of the joint Health and Wellbeing Strategy. The direct awards of an interim contract should further enhance the quality and access of services as well as user and patient experiences. The proposal will have a positive effect on our local community

## 6.5 **Crime and Disorder Issues**

Not Applicable

## 6.6 **Property / Asset Issues**

Not Applicable

## 7. **Consultation**

In line with Council procedure the following have been consulted with:

- Statutory Proper Officer – Director of Public Health
- Corporate Director for Adult and Community Services
- Group Manager Finance Adults and Community Services
- Legal Services
- Councillor Maureen Worby- Portfolio holder for Adult Social Care and Health
- Procurement Board

## 8. **Corporate Procurement**

Implications completed by: Euan Beales, Head of Procurement and Accounts Payable

8.1 The Councils Contract Rules states that for all procurements with a contract value which exceeds £50,000, then there will be a requirement to conduct a formal tender, however the Contract rules allows for this requirement to be waived as long as there is valid justification.

8.2 The spend value exceeds the Light Touch threshold in line with the Public Contract Regulations 2015 and as such a direct award is being sought on the grounds that the market cannot support formal competition, it should be noted that a direct award

can be challenged, but can be supported through the interest in the previous failed tri borough process.

- 8.3 The proposed contract term of 1+1+1 will give the Council suitable time to warm the market to a point where a competitive environment can be utilised.
- 8.4 At the time of this report there were no alternative options available to the Council , and I support the recommendations made in this paper.

## **9. Financial Implications**

Implications completed by: Carl Tomlinson, Group Manager - Finance

- 9.1 The estimated contract value for an integrated sexual health service is £1,422,790 based on the previous contract estimate provided by BHRUT, against a 2015/16 budget of £1,400,000.
- 9.2 As the integrated sexual health service is mandatory, Public Health will be required to assign a further £23,000 to this budget from within the £2,640,000 allocated for sexual health overall or reduce the scope of the contract to adhere to the £1,400,000 allocated budget.
- 9.3 The budget for Chlamydia screening in 2015/16 is £232,000 and it is proposed to extend the contract with Terrence Higgins trust for 6 months (£116,000), until a decision is made on whether the Council will continue to provide a Chlamydia Screening Coordination Service as it is the only non-mandatory part of the sexual health service.
- 9.4 The option to award the contract directly to BHRUT is the most financially appealing as an open tender has failed twice before as there is no supply market for this service at a price that is affordable to the Council.

## **10. Legal Implications**

Implications completed by: Assaf Chaudry, Major Projects Solicitor, Legal and Democratic Services

- 10.1 This report is seeking that the Health and Wellbeing Board (HWB) waives the requirement, under the Council's Contract Rules, to tender contracts noted in this report.
- 10.2 By way of background a 3 Borough procurement process was commenced to procure health care services under a Restrictive Procedure in accordance the Public Contract Regulations 2006 now 2015 (PCR 2015). The Restrictive Procedure was abandoned and a new tender process namely a Negotiated Process without notice was commenced. This new process commenced by the tri-Boroughs has had to be discontinued due to the failure of receiving a bid which met the evaluation criteria as being the Most Economically Advantageous Tender.
- 10.4 The proposal therefore in this report is to award a contract for continued provision of Integrated sexual health services and Chlamydia Screening Coordination Services to the current contractor Barking Havering and Redbridge University Trust (BHRUT)

from 1<sup>st</sup> October 2015 for a period of 1 year with the option to extend for a further 2 year period on an annual basis and (6) six month contract to Terrence Higgins Trust. The value for these two contracts is in the region of £1,422,790. The Council's Contract Rules require contracts with a value of £50,000 or more to be advertised and opened to tender.

- 10.5 However the Contract Rules also provide for Cabinet/HWB or Chief Officers (as may be appropriate) to waive the requirement to tender or obtain quotes for contracts on any one of several grounds set out in Contract Rule 6.6.8, including the ground that there are "genuinely exceptional circumstances" why a competitive procurement exercise should not be conducted. Each ground is however subject to the proviso that the appropriate decision-maker considers that no satisfactory alternative is available and it is in the Council's overall interests.
- 10.6 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.
- 10.7 In considering whether to agree the recommendations set out above in this report, the Health and Wellbeing Board needs to satisfy itself that the reasons provided and grounds stated by officers are satisfactory and that no satisfactory alternative is available and it is in the Council's overall interests to grant the waiver.
- 10.8 However, It has to be noted that this direct award to the present provider given its value is also subject to the EU procurement rules and although HWB/Cabinet may be satisfied that sufficient grounds exist to grant the waiver this does not preclude the prospect that this direct award may be challenged by other unsuccessful providers since the Council has not awarded the contract under a competitive tendering process. The Council therefore needs to consider steps to mitigate such a risk and in this regard consideration needs to be given to reducing the period of award to BHRUT. In addition the Council needs to formulate and implement a future procurement strategy for integrated sexual health services.
- 10.9 Finally, consideration needs to be given to the potential risk that the Council may have to meet redundancy costs on the termination of the Terrence Higgins Trust Agreement. Further financial and legal advice should be obtained once the extended agreement with Terrence Higgins Trust is located.

**Background Papers Used in the Preparation of the Report:**

None

**List of appendices:**

None