

<b>To be completed for all waiver requests to the Contract Standing Orders</b>			
<b>Waiver request for the Direct Award 2 CHS SEND Contracts</b>			
<b>Waiver value: £2,039,144</b>			
<b>Request Author:</b> Paul Triantis Strategic Lead		<b>NOTED by:</b>	
<b>Directorate:</b> CHS		<b>Section 151 Officer on recommendation from Head of Procurement</b>	
<b>Contact Details</b> E-mail: Paul.Triantis@lbhf.gov.uk		<b>Date:</b> 29/04/2020	

*NOTE: All waivers must be sent to the Head of Procurement for initial approval.*

## 1. RECOMMENDATION:

1.1 That the Section 151 Officer approves a waiver of Contract Standing Order 19.1 on the following ground:

22.3.1.2. competition is absent for technical reasons

## 2. JUSTIFICATION:

2.1. Approval of a waiver of the competition requirements to the enable the following direct awards at table 1 below, direct awards would ensure that vital existing provision of Special Educational Needs and Disability Services (SEND) – Speech and Language Therapy (SALT) is secured over the coming year when the Council are going to rely significantly on the providers and their workforce to both continue their services and support the Local Authority deliver our services in response to the COVID-19 epidemic.

**Table 1**

Provider	Start Date	Expiry Date	Provision to Extend in contract (Duration)	Proposed duration of contract extension/direct award / funding contribution to CCG	Capped value of new contract (£)	New Total Value of Contract
Central London Community Healthcare NHS Trust (CLCH) - SALT	CCG-held Block contract (N/A)	CCG-held Block contract (N/A)	CCG-held Block contract (N/A)	01/04/2019 - 31/03/2020	927,070	N/A - Funding Contribution Only
Central London Community Healthcare NHS Trust (CLCH) – SALT	CCG-held Block contract (N/A)	CCG-held Block contract (N/A)	CCG-held Block contract (N/A)	01/04/2020 - 31/03/2021	1,112,074	N/A Funding Contribution Only

- 2.2. The above contracts set out in the table at paragraph 2.1 are specialist SEND services with a limited provider market of NHS trusts. Competition via 3<sup>rd</sup> sector or private organisations is deemed absent for technical reasons due to the need for a large number of specialist health staff required to fulfil the obligations of the contract, which is unlikely to be fulfilled by non-NHS providers due to the extensive resources required to fulfil the council's requirements for this service provision. Furthermore, potential limited geographical competition between NHS health trusts is not currently possible due to the Covid-19 epidemic, as trust staff have been redeployed nationally for the foreseeable future to frontline health roles to combat the effects of the virus, making any switching of NHS providers impossible at the current time.
- 2.3 Not approving the direct awards will pose a significant risk to the health and wellbeing of vulnerable children, young people and families who would not be able to access these vital specialist services.
- 2.4 Desktop analysis indicates that contracts are performing adequately and are meeting local need appropriately and will continue to do so for the critical 2020-2021 period.
- 2.5. The total value for both contracts in table 1 at paragraph 2.2 over the proposed term (1 April 2019 to 31 March 2021) will be **£2,039,144**.

### **3. LEGAL IMPLICATIONS:**

- 3.1 This report recommends the waiver pursuant to Contract Standing order (CSO) 22.1 of the Council's competition requirements under CSO 19.1 to either use existing framework arrangements or undertaken a single stage of open tender or a two stage (with pre-qualification stage tender) to enable the direct awards of the contracts in table 1 at paragraph 2.1 on the ground that "competition is absent for technical reasons" CSO 22.3.1.3). Competition via 3<sup>rd</sup> sector or private organisations is deemed absent for technical reasons due to the need for a large number of specialist health staff required to fulfil the obligations of the contract. The head of procurement and S151 Officer need to be satisfied that the author of the report has sufficiently justified this ground for the waiver.
- 3.2 The value of the contracts with Central London Community Healthcare NHS Trust (CLCH) are in excess of the EU Threshold as set by the Public Contracts Regulations 2015(PCR). As such the PCR will apply to any award of the contract. Further the current contract was directly awarded to CLCH on a number of occasions
- 3.3 It is recommended that a short direct award is entered with CLCH until the Council is able to re-procure the services or enter into a formal partnership arrangement with CLCH. It is noted that competition is deemed absent in the third and private sector due to the extensive resources required to fulfil the volume of work the Council requires in respect of this service provision. On this basis, the Council is advised to consider entering into a section 75 agreement with CLCH. This will allow for the pooling of resources and/or delegation of health-related functions between the Council and the NHS trust. A consultation must be carried out with service users prior to entering into this arrangement. It is recommended that officers agree a section 75 arrangement with CLCH and commence a consultation process as soon as possible. No further direct award should be permitted with CLCH outside a

section 75 agreement. Further advice should be sought from the legal team on this agreement.

*Implications completed by Hannah Ismail, Solicitor, Sharpe Pritchard LLP, external legal advisers seconded to the Council tel 0207 405 4600*

- 3.4 Exempt Legal Paragraph - It should be noted that where the Council does not comply with the Regulations the Council may be found in breach of the Regulations. The remedies available to an aggrieved bidder in respect of a direct award would include a claim for ineffectiveness (i.e. the cancelling of a contract), and such a declaration by the Courts could also include a civil financial penalty and damages. If a challenge were raised the chances of success are very high. To mitigate the losses, it is proposed that suitable contractual provisions are agreed with that allow the Council to terminate the contract immediately in the event it is declared ineffective.