




Executive Decision Report

Decision maker(s) at each authority and date of Cabinet meeting, Cabinet Member meeting or (in the case of individual Cabinet Member decisions) the earliest date the decision will be taken	Cabinet Date of decision: 7 March 2016	
	Cllr Mary Weale Cabinet Member for Adult Social Care, Public Health and Environmental Health Date of decision: 12 February 2016	 THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA
	Cllr Rachael Robathan, Cabinet Member for Adults and Public Health Date of decision: 2 February 2016	 City of Westminster
Report title (decision subject)	Public Health , School Nurse services, Direct Award	
Reporting officer	Eva Hrobonova, Deputy Director of Public Health, Westminster	
Key decision	Yes	
Access to information classification	OPEN	

1. EXECUTIVE SUMMARY

- 1.1. Public Health services, including services for 5-19 year olds, became the responsibility of Local Authorities on the 1st of April 2013.
- 1.2. Contracts for the three boroughs were novated from the PCT and some were then extended to 1st April 2016.
- 1.3. The School Nurse services, including the NCMP, are currently delivered by Central London Community Healthcare (CLCH) across the three boroughs. The contracts

across all three Boroughs to date equals a total spend of £5,088,739 pa (see table on page 9).

- 1.4. The RBKC school nurse contract has been varied from 1st October 2015 to deliver an extended National Child Measurement Programme (NCMP) in the Golborne area as part of the Go Golborn child obesity initiative. The value of this provision is an additional £43,900 pa.
- 1.5. The recent review of 5-19 (school nurse) services across the three boroughs is informing a full service redesign and subsequent reprocurement exercise. The new services will provide a more equitable, efficient, evidence based and consistent service across the three boroughs and improve outcomes for school aged children as part of a joint agenda between Public Health and Children's Services.
- 1.6. This is being progressed through a re-commissioning and re-tendering business case presented in accordance with the governance structure for the three boroughs and will form the School Health Tender.
- 1.7. The reprocurement process began in November 2015 with the new service due to begin from November 2016.
- 1.8. This report seeks approval for a purposeful extension of contracts from each Borough to CLCH, using terms and conditions that have been approved for use, for the School Nurse services from 1st April 2016 until 31st March 2017 in order to allow time for a robust service redesign and tendering process. The total value of provision across the three authority is set out in Appendix A, Table 1. The justification for the waiver is set out in this report. These services need to continue through the direct award option as the terms and conditions of the existing contracts do not have an extension option that can be exercised. The recommendations for the direct award of three sovereign contracts to CLCH for the provision of school nurse services across the three boroughs for a period of 12 months includes the ability to terminate with 3 months' notice.
- 1.9. The risk of not approving the one year direct awards of contracts is that there will be at least a minimum 6 month gap in service provision which may put children and young people's health at risk and jeopardise the ability of a successful provider to recruit or retain appropriately trained staff. This contract covers mandatory services which we may be in breach of if there is a service gap.
- 1.10. Cabinet should note the potential legal implications of this direct award as reported in sections 7 and 11 of this report, to which commissioning officers recommend the Council(s) should take a balanced approach to risk.

2 BACKGROUND

- 2.1 From April 2013, local authorities became statutorily responsible for delivering and commissioning public health services for children and young people aged 5-19. These services are currently delivered by the school nursing service.
- 2.2 The existing NHS contract was novated to the three borough authorities for a one year period, effective from 1st April 2013. This was to allow public health commissioners to plan and submit a direct award of contract report, using local authority approved terms and conditions contracts for a period of two years effective from 1st April 2014. This formed the Executive Decision report "Public Health

Procurement Plan and Contract Award or Extension Report” which was approved for implementation in December 2013.

- 2.3 A single supplier, Central London Community Healthcare (CLCH) delivers these services across the three boroughs. The three school nurse services contracts includes delivery of the national child measurement programme (NCMP) which is a local authority prescribed service. The RBKC school nurse contract has been varied from 1st October 2015 to deliver an extended NCMP in the Golborne area as part of the Go Golborn child obesity initiative. The value of this contract variation for RBKC contract is an additional £43,900 pa, which will continue at same cost for 2016/17.
- 2.4 Since becoming responsible for 5-19 public health services, Public Health officers have undertaken an extensive review of the service and consulted with internal and external stakeholders.
- 2.5 The review identified that there are better ways to meet the needs of children and young people, schools and parents.
- 2.6 On the basis of that review and in consultation with Councillors a new model of School Health has been devised which will provide a more equitable, efficient, evidence based and consistent service across the three boroughs and improve outcomes for school aged children.
- 2.7 The decision has been made to re-commission a school health service using the new model as the service specification.
- 2.8 Re-commissioning business cases have progressed in accordance with the governance structure for the three boroughs and will form the School Health Tender.
- 2.9 The formal reprocurement process began in November 2015 with the new service planned due to begin from November 2016.
- 2.10 This report seeks approval for a one year direct award of contract for the School Nurse services from 1st April 2016 to 31st March 2017 in order to allow time for a robust service redesign and re-commissioning process. These services need to continue through the direct award option as the terms and conditions of existing contracts do not have extension options that can be exercised.

3 RECOMMENDATIONS

- 3.1 That the Executive Director of Adult Social Care and Health in consultation with Cabinet Member for Adult Social Care and Public Health, in addition to other borough specific delegates, for each authority approve the recommendation to directly award the contracts.
- 3.2 To note that each Authority’s governance procedure applies applicable to the value of contract award.
- 3.3 To note that the total spend for the school nurse services, across the three boroughs, for the 12 month period from 1st April 2016 to 31st March 2017 is £4,584,255 pa. This figure now includes the 10% saving achieved on previous year total spend for the provision.

For Hammersmith and Fulham Council, Cabinet is requested:

- 3.4 That Cabinet gives approval to award a contract for additional School Nurse services to the Central London Community Health Trust for the period 1st April 2016 to 31st March 2017 for the value of £1,728,119 pa, in accordance with Regulation 72 (1)(b)(ii) of the Public Contracts Regulations 2015 and on the grounds that not to do so will result in a temporary loss of service and significant inconvenience to vulnerable children, young children and their educational establishments.
- 3.5 Cabinet should note the potential legal implications of this direct award as reported in sections 7 and 11 of this report, to which commissioning officers recommend the Council(s) should take a balanced approach to risk.

For Royal Borough of Kensington and Chelsea, the Cabinet Member is requested:

- 3.6 To approve a waiver in accordance with paragraph 2.09-2.12 (exemption/waivers of contract regulation) of the RBKC Contract Regulations to waive the requirement to seek tenders in order to allow the local authority to directly award the contract to CLCH as listed in Appendix A, Table 1.
- 3.7 To approve the direct award of the contract to CLCH as listed in Appendix A, Table 1 for the values of £1,039,092 pa, effective from 1st April 2016 to expire on 31st March 2017.

For Westminster City Council, the Cabinet Member is requested:

- 3.8 The cabinet member approve a waiver in accordance with section 2.2 of the Westminster Procurement Code to allow the local authority to extend the contract to CLCH as listed in Appendix A, Table 1.
- 3.9 To approve the extension of the contract to CLCH as listed in Appendix A, Table 1 and for the values of £1,817,044 pa effective from 1st April 2016 to expire on 31st March 2017.

4 REASONS FOR RECOMMENDATIONS

- 4.1 The recommendations for the direct award of three sovereign contracts to CLCH for the provision of school nurse services across the three boroughs for a period of 12 months with the ability to terminate with 3 months' notice is proposed in order to:
- allow time to engage with relevant internal and external stakeholders around the future model and re-procurement.
 - Fit in with the timing for the completion of the smarter budgeting work.
 - allow sufficient time to redesign, re-procure services that will form School Health Service contracts.

- to ensure service continuity during the re-procurement phase.
- enable the termination of existing contracts ready for the new contract to begin following the re-procurement of the school health service.

4.2 Savings and efficiency discussion have taken place with CLCH over the past three months leading to this report. CLCH have been notified of efficiency savings of 10% of the existing contract values. These reductions in contract value will be implemented from April 2016 onwards. Figures in section 12 have been adjusted to reflect the savings made.

5 OPTIONS AND ANALYSIS

5.1 Option 1: do nothing – Do not Direct Award school nurse contracts.

Benefits of option 1

- There are no identified benefits for not extending the contracts for school nurse services.

Challenges presented by option 1

- The school nurse contracts end in March 2016 and would result in a gap in services for at least 6 months which could result in:
 - risks to children and young people, particularly regarding the safeguarding work of school nurses.
 - movement of school health workforce away from the three boroughs making it very difficult to fully resource a new school health service.

5.2 Option 2 – Direct Award : all school nurse contracts for 2016-17 (Recommended option)

Benefits of option 2

- avoids disruption of current services and associated risks

Challenges of option 2

- may require negotiation with current provider in order to ensure that they continue to provide the service as currently specified within reduced contract value to achieve efficiencies of 10%.

6 RISKS OF RECOMMENDED OPTION

Issue Identified	Risk	Potential impact	Likelihood	Mitigating factors
Budget: Funding received is insufficient to cover Direct Award Contract Prices for this period of award.	The contract pricing structure is that already paid to the supplier. We may have CLCH resisting an efficiency saving for the 2016/17 period	Medium	Medium	ASC (both adults and children's) and PH officers to work with the suppliers to examine the cost of staffing, service delivery cost for each of the borough services. This will establish if the existing contractual pricing structure deliver value for money within the allocated funding. We will

Issue Identified	Risk	Potential impact	Likelihood	Mitigating factors
				robustly push back where supplier challenges on the financial envelope.
Demand and Quality	The size of the client group increases due to changes in demographics, leading to increased demand. This places pressure on the budget (see above) and quality.	Medium	Medium	The demographic needs across the three boroughs are understood for this client group. An extensive service review has been completed for these services, to identify if the existing service arrangements deliver customer needs and to identify any gaps. Wider stakeholder input will also inform the new service model, when re-tendered, or influence other approaches for continued service delivery.
Timeline	There is a risk the 12 months period requested for contract award may not be sufficient.	Medium	low	Service review for this cohort of services has already been completed, incorporating the three authorities strategic commissioning intentions to develop integrated service model. A tender time table is already planned, a PIN notice has already been placed and a Supplier engagement event has been held so 12 months should be sufficient. The project team will consist of representatives from commissioning directorate and they will work closely with a wide range of stakeholders for this service area.
Timeline (2)	There is a risk that the 12 month period requested for contract award is too long, leading to "drift". Why not immediately re-tender	Medium	Medium	Preparation for the service review programme is concluded with recommendation and business case for the re-procurement duly submitted/presented to the wider authority stakeholders for information and approval. The latter has not been signed off as yet. The procurement timetable includes a 3 month mobilisation period following contract award This provides sufficient time to serve notice on the existing contract which will finish as the new one

Issue Identified	Risk	Potential impact	Likelihood	Mitigating factors
				begins.
Procurement Challenge	Risk of Procurement Challenge by a potential bidder for such services	High	Low	See section 7 below

7 RISK OF PROCUREMENT CHALLENGE

- 7.1 The Public Contracts Regulations 2015 (the Regulations) came into force at the end of February and implement revisions to the European public procurement regime as it applies in the UK.
- 7.2 The services that are the subject of this report used to be classified as “Part B” services under the previous Regulations of 2006; this meant that they were exempt from the requirement to tender them in accordance with those previous regulations, provided that there was not likely to be cross-border interest.
- 7.3 This distinction has now been abolished. Health and social services are now classified as Schedule 3 services which are subject to a regime known as the “the Light Touch Regime”, (LTR) if the value of the contract exceeds the current threshold of £625,050.00. One of the main requirements under the LTR is the obligation to advertise the opportunity on OJEU.
- 7.4 Where the authorities are at increased risk is where the Authorities propose a direct award of more than 12 months and do nothing. The risk of challenge for not complying with the Regulations would therefore be reduced if a shorter contract period is proposed, however, whilst there is a potential risk of challenge, authority officers have already commenced the re-procurement process and a market engagement event has already been held which provided a draft timetable for all interested parties who are all now aware of the timescales for the procurement relet.
- 7.5 Overall, despite this risk of challenge, it is considered in the best interest of the authorities to proceed with a direct award of contracts, and that there are exceptional circumstances to suggest that the appropriate waivers / exemptions from tendering should be granted.

Procurement time table

The below is an indicative time table for the Procurement process:.

Task	Duration	Start	Finish
Approval to proceed	4 months	May 2015	August 2015
PIN and Market Engagement	6 weeks	July 2015	August 2015
Procurement Strategy Report	4 months	September 2015	December 2015
Procurement	5 months	January 2016	June 2016
Contract Award	4 months	June 2016	September 2016
Mobilisation	3 months	October 2016	December 2016
Contract Begins		January 2017	

8 CONSULTATION

- 8.1 Each stage of the service review, redesign and procurement commissioners have fully engaged with internal and external stakeholders.
- 8.2 Procurement and Public Health officers have already held a market engagement event. This has ensured providers have met with authority officers and engaged with other suppliers at the event.

9 EQUALITIES

- 9.1 The importance of giving every child the best start in life and reducing health inequalities throughout life has been highlighted by Marmot 'Fair Society Healthy Lives' and the Chief Medical Officer (CMO).
- 9.2 Marmot and the Chief Medical Officer have both recognised the importance of building on the support in the early years and sustaining this across the life course for school-aged children and young people to improve outcomes and reduce inequalities through targeted support. Universal and targeted public health services provided by the school nursing service are crucial to improving health and wellbeing of school-aged children.

10 BUSINESS IMPLICATIONS

- 10.1 There are no business implications in relation to this proposed procurement however there is considerable social value.

11 LEGAL IMPLICATIONS

- 11.1 Health and Social Services are Schedule 3 services for the purposes of the Public Contracts Regulations 2015 (Regulations). Schedule 3 services are subject to the "light touch regime", if the value of the contract exceeds the current threshold of £625,050.00.
- 11.2 As the value of some the proposed contracts set out in Appendix A, Table 1 exceed the current threshold for Schedule 3 services, the authorities are required to comply with the requirements set out in the Regulations, which include the requirement to advertise the contract opportunity on OJEU. Consequently, the proposed recommendations will result in the contracts being at risk of being declared ineffective.
- 11.3 It cannot be said with certainty that there is no risk of challenge, however, on the basis of the information provided by council officers, it is felt that a risk of challenge in this particular case is low. In mitigation, the proposal to extend the term of the identified current contracts is to enable the Council to carry out a service redesign and a re-procurement of the contracts.
- 11.4 In respect of those contracts below the threshold for Schedule 3 contracts, Part 4 of the Regulations applies. This requires that all contracts should be advertised on the Contracts Finder website where the value of the contract exceeds £25,000, unless the authority's standing orders specify a higher value for advertisement.

Regulation 114 of the Regulations state that a material failure to comply with Part 4 of the Regulations does not itself affect the validity of a public contract. As such, the proposed contracts cannot be set aside on grounds of non-compliance.

Implications verified by: Kar-Yee Chan, Solicitor (Contracts), Shared Legal Services, 020 8753 2772 -

12 FINANCIAL AND RESOURCES IMPLICATIONS

12.1 The school nursing services finance breakdown:

Service name	Supplier	Start date	End date	Borough	Annual cost	April 2016 onwards, annual cost
School Nurse Service	CLCH	01/04/2014	31/03/2016	RBKC	£1,105,769pa	£995,192pa
School Nurse Service	CLCH	01/04/2014	31/03/2016	LBHF	£1,920,132pa	£1,728,119pa
School Nurse Service	CLCH	01/04/2014	31/03/2016	WCC	£2,018,938pa	£1,817,044pa
Variation to RBKC School Nurse Service to Include enhanced NCMP	CLCH	01/10/2015	31/03/2016	RBKC	£43,900pa	£43,900pa

12.2 The cost of extending the contracts can be met from existing budgets and represents a saving of 10% for each Council. The £43,900 spend in RBKC for the NCMP services can be accommodated within the current funds available.

12.3 However, given that Public Health are facing an 2015/16 in-year cut and there are still concerns over future grant levels, further work regarding costs will need to be undertaken during the main re-procurement. With budget/savings targets set before going to tender.

Implications completed by: Jon Laker, Finance Business Partner, Public Health, 020 7641 1059

13 PROCUREMENT IMPLICATIONS

13.1 The Strategic Procurement report for Public Health has been agreed by officers of the Contracts Approval Board, where colleagues at Hammersmith and Fulham and Kensington and Chelsea provided input and advice in its formulation. Procurement advice has been provided by Westminster City Council's Strategic and Commercial Procurement Team. In line with agreed protocols for Public Health services, Westminster procurement processes have been followed.

Director name

Eva Hrobonova, Deputy Director of Public Health, Westminster

Local Government Act 1972 (as amended) – Background papers used in the preparation of this report - December 2013, The “Public Health Procurement Plan and Contract Award or Extension Report” Executive Decision Report (EDR) – published

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Appendix A: TABLE 1.

Contract name	Supplier	Start Date	End Date	Local Authority	Aggregate value £	Annual Value £
Contract for the Provision of School Nurse Service	Central London Community Healthcare NHS Trust	01/04/2014	31/03/2016	Royal Borough of Kensington & Chelsea	2,211,538.0	1,105,769
Variation to RBKC School Nurse to Include NCMP	Central London Community Healthcare NHS Trust	01/10/2015	31/03/2016	Royal Borough of Kensington & Chelsea	21,950 (annual value- £43,900)	43,900
Contract for the Provision of School Nurse Service	Central London Community Healthcare NHS Trust	01/04/2014	31/03/2016	London Borough of Hammersmith & Fulham	3,840,264.0	1,920,132
Contract for the Provision of a School Nurse Service	Central London Community Healthcare NHS Trust	01/04/2014	31/03/2016	City of Westminster	4,037,876	2,018,938
					Total	£5,088,739