


Individual Mayoral Decision Not before 18 December 2014	 TOWER HAMLETS
Report of: Stephen Halsey, Corporate Director, Communities, Localities and Culture and Head of Paid Services	Classification: Unrestricted
Extension of Substance Misuse Treatment Service Provisions	

Lead Member	Cllr. Ohid Ahmed
Originating Officer(s)	Andy Bamber, Rachael Sadegh
Wards affected	All wards
Community Plan Theme	Safe and Cohesive, Healthy and Supportive
Key Decision?	Yes

Executive Summary

Since 1st April 2013, Substance misuse treatment services have been provided across the borough by a number of suppliers contracted by LBTH, via the Drug and Alcohol Action Team (DAAT). At this time the responsibility for the provision of substance misuse treatment transferred to the Local Authority as part of its Public Health responsibilities. All treatment services across the borough were contracted until 31/12/14 at which point contracts terminated.

The substance Misuse Strategy 2012-2015 adopted by Full Council in 2012 includes a commitment to re-procuring the current treatment system to better align service provision with the needs of the population of Tower Hamlets and to improve the effectiveness and value for money of treatment provision. In September 2014, the Mayor in Cabinet approved (following overview and scrutiny review) a new model of provision to be procured.

Since September 2014, appropriate Committees have considered the funding available for this re-procurement in light of required efficiencies to be made across Public Health Grant funded services. These new funding arrangements were considered at MAB in December and were agreed by Cabinet in March alongside a request to commence the re- procurement process.

Since re-procurement is unlikely to commence before Spring 2015 and contracts terminated on 31/12/14, there is a need to issue new fixed term contracts to existing suppliers to ensure continuity of service whilst the re-procurement process is conducted.

Recommendations:

The Mayor is recommended to:

1. Agree to grant new fixed term contracts (12 months from 01/01/15) to existing suppliers on their current terms and conditions to maintain continuity of service delivery while procurement processes are conducted and to ensure that vulnerable local residents are appropriately protected throughout the process.
2. Agree to the waiver of the application of the Council's Procurement Procedures to these contracts
3. Authorise the Corporate Director, Communities, Localities and Culture after consultation with the Head of Legal Services to finalise the terms of the limited fixed term contracts to existing suppliers.
4. Authorise the Head of Legal Services to execute the contracts on behalf of the Council.

1. REASONS FOR THE DECISIONS

- 1.1 All drug / alcohol treatment service contracts terminated on 31/12/14
- 1.2 The re-procurement of the treatment services via complete tender has been agreed by the Mayor and Cabinet. However, the process was significantly delayed during 2014 because of the protracted austerity debates to reduce the funding envelope for the treatment services. As a consequence the re procurement of the treatment services is not likely to commence until the Spring of 2015 following the recent Council approval of the new funding arrangements that are available for the Drug and Alcohol treatment services. It has not been possible to secure new services prior to this
- 1.3 Failure to ensure continuity of drug / alcohol treatment services would place a vulnerable population and the wider community at significant risk.
- 1.4 Continuation of services outside of a contractual agreement would incur significant risk for LBTH.

2. ALTERNATIVE OPTIONS

- 2.1 Terminate all current treatment service provision.

3. DETAILS OF REPORT

Background

- 3.1 All borough substance misuse services are commissioned and / or delivered by LBTH via the Drug and Alcohol Action Team (DAAT), the Drug and Alcohol Interventions Team (DAIT, formerly DIP) and Children's Services Commissioning.
- 3.2 The contracts for the provision of DAAT services were put in place a number of years ago (some via LBTH and some via THPCT) and have been extended on previous occasions. In April 2013, following the formal transfer of all contracts from THPCT to LBTH, existing suppliers were offered fixed term (12 month) contracts to facilitate continuity of service during the period of transfer. In April 2014, further fixed term contracts were offered for a period of 9 months during which a re-procurement process would take place. However, the re procurement was delayed by the proposal of public Health and ESCW to reduce the grant envelope for treatment services. The protracted nature of these negotiations and the eventual reduction in the grant available meant that the original re procurement proposals had to be re worked for submission with the new grant available. Contracts expired on 31/12/14.

Re-procurement Process

- 3.3 During the period from April 2014 to date, a significant amount of work was undertaken to prepare for competitive tender of services. A needs assessment and service review has been completed and a model for future service provision presented to the Mayor in Cabinet in July 2014. The decision was called in by overview and scrutiny in September and subsequently returned to Cabinet for agreement.

- 3.4 Further delays in the re procurement process were created when Public Health and ESCW recommended to MAB SARP a reduction to the treatment grant of £1m as part of the austerity measures and councils saving programme. The MAB SARP recommendation that was agreed on 24th September 2014 was referred to the February Cabinet meeting for ratification. The re-procurement process has now commenced following Cabinet approval in February.
- 3.5 Despite the process suffering a number of delays, there has been considerable consultation with partners, service providers and service users and there is an enthusiasm for the re-procurement process. The proposals have been agreed by Cabinet, supported by the Health and Wellbeing Board and Competition Board and have passed before Overview and Scrutiny.
- 3.6 To ensure continuity of service throughout this process, an extension of current provision of 12 months from 01/01/15 to 31/12/15 is required as the risk of non-continuity of services to the wellbeing of vulnerable groups is extremely high.
- 3.7 In this instance, lessons have been learnt about how to manage timelines for future savings proposals as a result of austerity requirements. The need for better forward planning to factor in the impact of delays in retendering of these particular critical services for which loss of service continuity is not an option, and continued extension of existing services is not ideal.
- 3.8 The Best Value review of LBTH conducted by PWC and the consequential Best Value Improvement Plan highlights the need for better central monitoring of contracts compliance in order to provide oversight on how issues such as these can be picked up earlier and acted upon. These measures will be implemented by September 2015.
- 3.9 A list of contracts and values has been provided in Appendix 1.

Extension Period

- 3.10 A timetable has been produced (Appendix 2) which details the procurement process that will be undertaken now that authorisation to proceed has been given by Cabinet in March. The timings have been shortened wherever possible to ensure the process is completed in good time. A one stage procurement process will be undertaken to limit the time required. Using this timetable, a recommendation for award would be established by the end of June. Tollgate 2 reports would be submitted to Strategic Competition Board in July. Committee dates are not yet available but the earliest date that the award recommendation could be considered by the Mayor in Cabinet would be November. If the award recommendation was accepted in November, contracts could be agreed and signed by mid-December (following call in period, standstill period and minimal contract negotiation).

- 3.11 It should be borne in mind that this timescale is dependent upon the award recommendation passing through all Committees on the dates intended with no call backs for amendments or further discussion and no call-in by overview and scrutiny. Experience of the process thus far would suggest that this is unlikely and therefore implementation within a 12 month extension period is possibly not achievable following this route.
- 3.12 The current treatment system consists of 17 contracts held by 10 different providers (statutory and third sector) operating on 14 premises, with approximately 104 members of staff. The re-procured treatment system will be streamlined significantly and implementation will involve TUPE of significant numbers of staff, transfer of current premises and / or identification of new premises, the formation of new working relationships within and outside the treatment system and the transfer of service user data / care plans. It is estimated that this process will take at least 3 months and will be project managed closely to minimise the risks of destabilisation that this change will bring. It will not be possible to commence this process before the winning bidder is notified and contracts are signed. In order to get new contracts in place with providers as soon as possible, it is proposed that the winning bidder(s) takes on services as they currently exist and then work towards the transformation of services within a defined implementation period. However, a minimum period of one month to transfer data / case files, work out accommodation and undertake a TUPE process would be necessary. This would be delayed by the Christmas period and therefore an actual start date of 01/02/16 would be reasonable.
- 3.13 Alternatively, the award recommendation could be presented via a Mayoral Executive Decision paper or authority to award could be delegated to Director level. This would shorten the decision process and enable signed contracts to be returned by mid-September (timeline provided in Appendix 3). New contracts could then start by 01/11/15 (in current form) and implementation of the new system could commence. This process would ensure new contracts are in place before the end of a 12 month extension.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The report sets out the amended timetable for the commencement of the re-procuring of the DAAT contracts. The recommendation in the report is for a 12 month contract extension to be agreed up to the 31st December 2015. The extension will be with the existing suppliers, on their current terms and conditions, to maintain the continuity of service delivery during the period up to when the new contracts are procured.
- 4.2 A twelve month extension period will mean that planned savings associated with DAAT, agreed as part of the 2015/16 budget process will not be fully realised. It is therefore imperative that procurement be implemented as quickly as possible. In any event, the contract extension period should be seen as a **maximum** of 12 months.
- 4.3 Where savings agreed as part of the 2015/16 budget will not be delivered as a result of this decision, alternative savings should be identified by the relevant Directorate(s) or alternatively, costs contained within existing budgets.

5. LEGAL COMMENTS

- 5.1. It is proposed to award 23 contracts for terms of 12 months, as set out in Appendix 1.
- 5.2. The Public Contracts Regulations 2006 have now been replaced by the Public Contracts Regulations 2015. The new regulations have abolished the old idea of "part B services" and a new regime has been introduced.
- 5.3. Services of the nature included in this report are now referred to in Schedule 3 of the new regulations. Schedule 3 lists a range of services (similar in scope to those that were covered by the old Part B services) to which a new threshold of £625,050 applies. This means that where the estimated value of a contract is below this threshold then the new regulations do not apply at all. It can be seen from Appendix 1 that only three of the proposed contracts would otherwise be subject to the new regulations.
- 5.4. Where such a contract is subject to the regulations the Council is required to:
 - Place an advert requesting bids for the services in the Official Journal of the European Union
 - Award a contract following a fair reasonable and transparent process
 - Place an award notice in OJEU
- 5.5. It is clear that the Council is at risk in respect of these three contracts as the proposed award is in breach of the new Public Contracts Regulations. Therefore, the Council could be subject to a challenge from an organization which has not had the opportunity to bid for the contracts. The Council could be subject to a damages claim and more significantly the purported contract could be annulled. This could leave the Council at risk of a subsequent challenge by the organization who considered that they had entered into a good contract with the Council
- 5.6. In respect of the remainder of the contracts shown in Appendix 1 the Council is required only to follow a fair and transparent process under the law following the general European principles. A direct award offends these principles but a remedy of having the contract declared ineffective is not open to a would-be challenger. It should be noted that no award notice need be placed in OJEU in respect of these contracts.
- 5.7. The Council has a duty under the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. This is referred to as the Council's best value duty.
- 5.8. One of the ways in which the Council achieves best value is by subjecting its purchases to competition in accordance with its procurement procedures and the Public Contracts Regulations 2015. The Council should be committed to working with these contractors during the new 12 month contract period to ensure that ways of working are advanced that ensure the occurrence of continuous improvements in line with the Council's best value duty.

5.9. The direct awards do not involve competition and therefore, the Council would not be following its own Procurement Procedures. Therefore, this requires a specific waiver of the application of the Council's procurement procedures to these contracts. Before doing so, the Mayor should first be satisfied that one of the grounds for waiving those procedures is made out. Relevant grounds for consideration are set out in section 12.1 of the procurement procedures and include the following:

12.1(a) the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and has demonstrated that only a single source of supply is available, or it is otherwise clearly in the Council's interest to do so

5.10. Reasons are provided in the report as to why it may be considered appropriate to deviate from the Council's procurement procedures, which may be summarised as follows-

- The Council has conducted preparatory work and intends to conduct public procurement from March 2015.
- The existing contracts will terminate before the procurement can be completed.
- The Council is obligated to continue to provide services in accordance with its statutory functions and it would be undesirable for no services to be provided until the new procurements have been completed and may in certain circumstances lead to the Council breaching other statutory obligations.

5.11. There is a risk of challenge to the proposed contract awards for alleged non-compliance with the duties outlined in 5.1 and 5.2 above. The risk is lessened as the Council clearly has a pragmatic reason for requiring these short term contracts and has some basis, by reason of the preparatory steps taken, that it is not the Council's long term intention to avoid competition.

5.12. Where a contract is for a value in excess of the new threshold the Council must issue an award notice as soon as possible, stating clearly the reason for the award. This will commence the time period within which a challenge which could cause ineffectiveness and reduce the risk of a successful challenge

5.13. Before awarding the contracts, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector equality duty). The level of equality analysis required is that which is proportionate to the function in questions and its potential impacts.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1. The current treatment system has been successful in attracting a wide spectrum of residents into drug / alcohol treatment and an extension of this arrangement would ensure continuity for a vulnerable population whilst a re-procurement process is conducted. Continuity of these services would ensure that services for drug / alcohol users remain available for, and accessible to, service users across the full range of gender, ethnicity, age, faith, disability, sexuality and all protected characteristics. The needs assessment completed in 2014 will be used to further target services to populations currently under-represented in treatment.

7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 7.1 No impact within this proposal

8. RISK MANAGEMENT IMPLICATIONS

- 8.1. There is significant risk to vulnerable residents if these services are not maintained throughout this period of change. Clients accessing services to recover from drug / alcohol addiction are at risk of significant harm to themselves and others if treatment were to be discontinued.
- 8.2. If treatment services in the borough were to terminate there would be no pharmacological (Methadone / Buprenorphine prescriptions, alcohol detoxification medications) or psychological (counselling, key working, day programmes) interventions available across the borough for dependent drug and alcohol users. This would undoubtedly result in an increased use of illicit drugs and excessive consumption of alcohol across the borough. This, in turn, would impact upon the level of ambulance call outs, hospital admissions, alcohol / drug related deaths and levels of crime and anti-social behaviour.
- 8.3. The Council has a responsibility to provide substance misuse services and extension of current provision would meet this responsibility
- 8.4. The Council is at risk of legal challenge due to the previous length of existing contracts though this may be mitigated by the publicly documented plans for competitive re-tendering of services.

9. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 9.1 Substance misuse is a key driver to increased crime and disorder. It is estimated that in Tower Hamlets every £1 spent on drug treatment saves £2.82 in crime and health costs.
- 9.2 Around 26% (dependent upon reporting month) of drug users in treatment have entered treatment via criminal justice routes and the treatment pathway is an important tool for reducing re-offending amongst drug users. A lapse in continuity of service is expected to result in a significant negative impact on crime and ASB across the borough.

10. EFFICIENCY STATEMENT

- 10.1 The reprocurement of services has been designed to deliver improved outcomes whilst reducing expenditure and there is a commitment to save £500k annually. Whilst these savings will not be realised until services are re-procured, the DAAT have considered savings that can be made outside of frontline services during the period of extension.

Linked Reports, Appendices and Background Documents Linked

Report

- DAAT Commissioning Intentions Cabinet report July 2014
- DAAT Commissioning Intentions Overview and Scrutiny Report September 2014.

Appendices

- Appendix 1 Substance Misuse Service Contracts and Values
- Appendix 2: Procurement Timetable v1
- Appendix 3: Procurement Timetable v2

Background Documents - Local Authorities (Executive Arrangements)(Access to information)(England) Regulations 2012

None

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