


Individual Mayoral Decision Decision Log No: 115	
Report of: Corporate Director Communities, Localities and Culture	Classification: Unrestricted
Substance Misuse Contract Extensions	

Is this a Key Decision?	Yes
Decision Notice Publication Date:	10 December 2015
General Exception or Urgency Notice published?	Not required
Restrictions:	None

EXECUTIVE SUMMARY

Executive Summary

The Drug and Alcohol Action Team (DAAT) currently commissions drug / alcohol treatment interventions via 23 individual contracts with statutory and third sector providers (Appendix 1). In 2010, officers, together with representatives from the National Treatment Agency, identified that the treatment system was no longer fit for purpose and proposed that the treatment system should be redesigned in order to reduce costs and improve performance and pursue best value in this service area. A full needs assessment was undertaken and a new Partnership Substance Misuse Strategy developed (adopted at Full Council, Jan 2012), with an agreed commitment to redesigning the drug / alcohol treatment system. There was then, and remains now, an urgent need to re-procure this provision for three reasons:

- i) Most services have not been subject to a competitive tender for a number of years.
- ii) Current performance is declining across some providers
- iii) There is now an agreement to reduce the amount of Public Health Grant allocated to drug / alcohol services by £560k (from £8.8m to £8.24m, including £865k for in-house Drug and Alcohol Intervention team, formerly DIP, provision).

A procurement exercise has now commenced to procure three core drug / alcohol service contracts. Services are expected to commence in August 2016 (Appendix 2).

Current drug / alcohol treatment service contracts expire on 31/12/15, following an extension agreed via Executive Mayoral Decision in April 2015. A further extension of contracts is required to cover a gap in service between 01/01/16 and the implementation of new contracts in August 2016. There have now been two extensions agreed for these services since contract novation (from Tower Hamlets Primary Care Trust) in April 2013 (Executive Mayoral Decisions March 2014 and April 2015) and there are risks to the organisation of legal challenge because there will be a period of 2.5 years since novation of contracts during which services have not been open to competitive procurement. However, a series of past Executive decisions impacting on project time lines and technical problems with the procurement mean that the Council has little option if services are to continue to be provided to vulnerable adults. Procurement has now commenced and a decision to extend should be taken to maintain services in the short term to allow completion of a procurement process that is moving quickly towards completion and which will regularise the position.

DECISION

The Mayor is recommended to:

1. Extend current treatment service contracts for a period of up to 12 months whilst re-procurement is completed, contracts are awarded and an adequate implementation period is given.
2. Authorise the Corporate Director of Communities Localities and Culture after consultation with the Corporate Director Law Probity & Governance to take all appropriate steps in relation to the Public Contracts Regulations 2015 including the publication of a VEAT notice.
3. Confirm that the final contract award decision for contracts specified will be made by the Mayor in Cabinet.

APPROVALS

1. (If applicable) Corporate Director proposing the decision or his/her deputy

I approve the attached report and proposed decision above for submission to the Mayor.

Signed Date

2. Chief Finance Officer or his/her deputy

I have been consulted on the content of the attached report which includes my comments.

Signed Date

3. Monitoring Officer or his/her deputy

I have been consulted on the content of the attached report which includes my comments.

(For Key Decision only – delete as applicable)

I confirm that this decision:-

(a) has been published in advance on the Council's Forward Plan OR


(b) is urgent and subject to the 'General Exception' or 'Special Urgency' provision at paragraph 18 or 19 respectively of the Access to Information Procedure Rules.

Signed Date

4. Mayor

I agree the decision proposed in paragraph above for the reasons set out in paragraph 1 in the attached report.

Signed Date

Individual Mayoral Decision 10 December 2015	 TOWER HAMLETS
Report of: Corporate Director Communities, Localities and Culture	Classification: Unrestricted
Substance Misuse Contract Extensions	

Lead Member	Councillor Shiria Khatun, Cabinet Member for Safer Communities
Originating Officer(s)	Andy Bamber Service Head for Safer Communities, Rachael Sadegh DAAT Co-ordinator
Wards affected	All wards
Key Decision?	Yes
Community Plan Theme	Safe and Cohesive Community, Healthy and Supportive Community

Executive Summary

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- iv) Most services have not been subject to a competitive tender for a number of years.
- v) Current performance is declining across some providers
- vi) There is now an agreement to reduce the amount of Public Health Grant allocated to drug / alcohol services by £560k (from £8.8m to £8.24m, including £865k for in-house Drug and Alcohol Intervention team, formerly DIP, provision).

A procurement exercise has now commenced to procure three core drug / alcohol service contracts. Services are expected to commence in August 2016 (Appendix 2).

Current drug / alcohol treatment service contracts expire on 31/12/15, following an extension agreed via Executive Mayoral Decision in April 2015. A further extension of contracts is required to cover a gap in service between 01/01/16 and the implementation of new contracts in August 2016. There have now been two extensions agreed for these services since contract novation (from Tower Hamlets Primary Care Trust) in April 2013 (Executive Mayoral Decisions March 2014 and April 2015) and there are risks to the organisation of legal challenge because there will be a period of 2.5 years since novation of contracts during which services have not been open to competitive procurement. However, a series of past Executive decisions impacting on project time lines and technical problems with the procurement mean that the Council has little option if services are to continue to be provided to vulnerable adults. Procurement has now commenced and a decision to extend should be taken to maintain services in the short term to allow completion of a procurement process that is moving quickly towards completion and which will regularise the position.

Recommendations:

The Mayor is recommended to:

4. Extend current treatment service contracts for a period of up to 12 months whilst re-procurement is completed, contracts are awarded and an adequate implementation period is given.
5. Authorise the Corporate Director of Communities Localities and Culture after consultation with the Corporate Director Law Probity & Governance to take all appropriate steps in relation to the Public Contracts Regulations 2015 including the publication of a VEAT notice.
6. Confirm that the final contract award decision for contracts specified will be made by the Mayor in Cabinet.

1. REASONS FOR THE DECISIONS

- 1.1 There has been a commitment to re-procuring the current drug / alcohol treatment system since 2010 in order to pursue best value within this service area. Unfortunately, despite best efforts, Officers have been unable to progress this agenda until recently and new services will not be implemented until Q2 2016/17.
- 1.2 Current drug / alcohol treatment service contracts terminate on 31/12/15 following a previous extension granted via Executive Mayoral Decision in April 2015.
- 1.3 Without an extension to current contracts there will be a gap in service across all drug / alcohol treatment services between 01/01/16 and August 2016.

2. ALTERNATIVE OPTIONS

- 2.1 Terminate all treatment services until new contracts procured. This option involves considerable risk. There are in excess of 2000 residents accessing structured drug and / or alcohol treatment each year in the borough. Termination of services would leave a vulnerable population without services and would instigate risk of crime, violence and health harms affecting the individual, family and wider population. Withdrawal of services would also be contrary to national best practice, local and national strategies and would not comply with the statutory public health duties of the Health and Social Care Act 2012.
- 2.2 Continue with a selected number of services and terminate others. This option would be difficult without radical restructure across all services and would require an Equality Assessment and sufficient time for implementation. Such an exercise would involve two periods of service disruption (immediately and post procurement) and therefore would represent a significant risk to service users.

3. DETAILS OF REPORT

- 3.1. Background
- 3.2 The Drug and Alcohol Action Team (DAAT) currently commissions drug / alcohol treatment interventions via 23 individual contracts with statutory and third sector providers (Appendix 1). In 2010, officers and health partners identified that the treatment system was no longer fit for purpose and proposed that the treatment system should be redesigned in order to reduce costs and improve performance and pursue best value in this service area. A full needs assessment was undertaken and a new Partnership Substance Misuse Strategy developed (adopted at Full Council, Jan 2012), with an agreed commitment to redesigning the drug / alcohol treatment system. There is an urgent need to re-procure this provision for three reasons:
 - i) Most services have not been subject to a competitive tender since novated in 2013.
 - ii) Current performance is declining across some providers
 - iii) There is now an agreement to reduce the amount of Public Health Grant allocated to drug / alcohol services by £560k (from £8.8m to £8.24m, including £865k for in-house Drug and Alcohol Intervention team, formerly DIP, provision).
- 3.3 Officers led a redesign project supported by the National Treatment Agency (now Public Health England), Tower Hamlets Primary Care Trust, local Police and Probation services, statutory and voluntary sector treatment service providers and service users. In briefings with lead members and the Mayor, concerns were aired about the impact upon local service providers. With the agreement of CMT, detailed proposals for a new treatment system were drawn up. However the Executive was not in favour of a change in this area at this time wanting more work to be done on understanding the impact on local business and suspended the procurement project, instead agreeing

extensions to current contracts in Cabinet in 2013 (following novation of Public Health contracts from the PCT) and via Independent Mayoral Decisions in 2014 and 2015.

3.4 Cognisant of the lead in times and diminishing time line for re procurement Officers re-engaged with the redesign process in 2013 in an attempt to stay on the project critical path and to facilitate an early start to the commissioning process. An updated needs assessment, a new service review and options for a new treatment system were completed by May 2014 . Executive clearance to proceed was pursued and received via Cabinet decisions spanning July 14th, September 14th 2014 and March 15th 2015. These decisions were also reviewed by overview and scrutiny where officers re-enforced the Substance Misuse Strategy commitments to a re-designed treatment system agreed in Full Council and the procurement process that would be followed by officers. Appendix 3 illustrates the new treatment system structure.

3.5 Current Procurement Process

3.6 A competitive tender process has now commenced to procure the following 3 contracts:

- i. Drug / alcohol referral / outreach service
- ii. Drug / alcohol treatment service
- iii. Drug / alcohol recovery support service

3.7 A wide range of organisations were notified of our intention to tender and were invited to a market engagement event on 08/04/15. The procurement process being followed is a restricted process with negotiation (as agreed with procurement and legal leads) and this commenced in July 2015. This means that the process is in two stages (PQQ followed by ITT) and there is an option to negotiate with bidders before final submissions are made. The pre-qualification questionnaire (PQQ) was made available via the London tenders portal on 1st July and invitations to tender were sent on 3rd November following evaluation of PQQ responses.

3.8 Since Executive Clearance to proceed was secured, the procurement process has been delayed for a number of further reasons including a budget challenge as part of the MTFP planning process, the impact of new procurement regulations, further partnership negotiations necessary to reach agreement on certain aspects of the specification and an extended prequalification questionnaire (PQQ) process.

3.9 Budget Variation

Progress was delayed in the latter stages of 2014 with a Public Health budget proposal to reduce the DAAT funding by £1m. The proposal significantly impacted upon the budget for the development of the new treatment system. There followed protracted negotiations and the final savings amount was agreed at £560k. Following the Cabinet paper in March 2015, there remained some uncertainty regarding the overall budget for substance misuse services in order to achieve savings via the Public Health Grant. This was worked through in detail across directorates.

3.10 Service Specifications

As the service specifications for new services were developed, there was some concern from Tower Hamlets CCG in relation to the dual diagnosis (mental health and substance misuse) aspect of the service and additional work was completed to ensure this high risk area of treatment was specified in a way that satisfied all partners.

3.11 New Procurement Regulations

Procurement regulations changed significantly in February 2015 and resultant discussion between procurement and legal services about the implications for this project had an impact upon documentation required for this tender. The contracts will be procured via a restricted process with negotiation, a methodology not previously used within LBTH. The new regulations have changed the classification of these types of contracts which mean that the Council should publish its interim arrangements through a voluntary ex ante transparency notice (VEAT notice) to the marketplace. This will ensure that the Council is seen to be transparent about its commercial activities and will mitigate the risk of challenge.

3.12 Re-start of PQQ process

On 11th August 2015 the tender panel noticed that a number of bids were made by organisations that were included as subcontracting parties of other bids for the same service. Upon advice from the Council's legal team, Counsel opinion was sought regarding how to proceed in light of this finding. Counsel determined that being party to more than one bid for the same service was not permissible as this may distort competition. However, as the procurement documents did not provide any rules or flexibility in relation to this matter any bidders disqualified for this reason would have a legitimate claim against the Council on grounds of breach of transparency. Whilst being party to more than one bid is likely to distort competition, this could be argued by potential bidders. Following this Counsel's opinion procurement will be ensuring future advice to officers and ITT documentation will be amended to make clear that this is not permissible. If the process had not been subject to this delay an award recommendation would have been available within the timeframe of the original contract extension.

3.13 Upon advice of Counsel, bidding organisations were contacted to make clear that being party to more than one bid is not permissible and to ask them to resubmit their PQQ within 28 days.

3.14 A revised timescale for this procurement has been established with an expected completion date of late January 2016. It should be noted that this date will only be met if the right to negotiate is not exercised, a decision that will be taken following submission of the full bids in December. As this procurement will bring about a significant reconfiguration of services, a negotiation stage could better inform an award recommendation. If negotiation is used, the process is expected to extend by 1-2 months. Once the procurement process has concluded, a recommendation for award will proceed to the Executive for a decision to award.

- 3.15 New Contract Start Date and Extension required for Current Contracts
- 3.16 The actual contractual start date for new services will depend upon the process of agreeing the award recommendation – Cabinet / executive Mayoral decision / delegated authority. This decision will require Executive approval.
- 3.17 Timescales have been developed to provide an estimation of contract start date. As illustrated in Appendix 2, this will mean that contracts will not start until August 2016 and therefore a further extension to current contracts will be required to ensure service continuity for this cohort of vulnerable individuals.
- 3.18 There have now been two extensions agreed for these services since contract novation in April 2013 (Executive Mayoral Decisions Jan 2014 and April 2015) and there is concern about vulnerability of the organisation to legal challenge because the services have not been open to competitive procurement in a number of years. However, procurement has now commenced and a decision to extend would be taken against a backdrop of an already commenced and significantly progressed procurement process.
- 3.19 The timeline outlined demonstrates that a 9 month extension would be necessary. However, if we choose to exercise our right to negotiate, or if the executive decision making process is delayed in any way or called in, it would be useful to have authorisation to extend beyond 9 months. In this case, it may be prudent to issue contract extensions for 9 months with the option to extend for a further 3 months should this become necessary.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The report seeks the approval of the Mayor in Cabinet to extend the current treatment service contracts beyond the termination date of the 31st December 2015 for a further 12 months period. The purpose of the further extension sought is to enable the re-procurement of the contracts to be completed to ensure continuity of service provision for vulnerable individuals.
- 4.2 A total of £8.8m is provided through the Public Health Grant and allocated to fund the treatments contracts of £8.24m and £865k for the in-house Drug and Alcohol Intervention Team, formerly the DIP provision. As part of the Medium Term Financial Plan for 2015/16 a savings target of £560k was identified to be delivered through a reduction in the treatment contracts budget. The revised budget available for commissioning of the new contracts will be reduced by the savings target therefore the total provision will be £7.375m.
- 4.3 There is currently sufficient provision within the existing budget envelope to manage the contracts extension. However, this will mean that the planned savings reduction will not be fully realised in both 2015/16 and 2016/17.

5. LEGAL COMMENTS

- 5.1. It is proposed to award 23 contracts for terms of 9-12 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 three contracts referred to in paragraph 5.5, the Council could publish a voluntary ex ante transparency notice (“VEAT Notice”) in the OJEU. The purpose of the notice is to explain to the market why the Council has awarded these contracts and allows the Council to be transparent about its commercial activities and mitigates the risk by limiting the timeframe during which potential challenges can be made after a contract has been awarded. The VEAT Notice has the effect of starting a 10 day standstill period during which any potential challenges to these contracts (presuming that the Council’s reasons as stated in the notice allow for such a challenge) must be started within the specified time period. It is very unlikely that a challenge received outside the time period especially in respect of an ineffectiveness claim would be successful. (Where a VEAT Notice has not been published, challenges of ineffectiveness can be received within 6 months of the contract being entered into and this is reduced to 30 days

where a contract award notice has been published or where the bidders have been informed of the conclusion of the contract and a summary of the relevant reasons.)

- 5.7. The Council has previously not published a VEAT Notice in respect of these contracts because they were Part B Services under the Public Contract Regulations 2006 and as such, there was no obligation on the Council to follow the OJEU process; the only requirement was to conduct tenders in an open, fair and transparent manner. Since the introduction of the Public Contracts Regulations 2015, there is a new requirement in respect of contracts previously considered Part B Services with a value of £625,050.00 or above to be subjected to the OJEU process. In light of this and in relation to the 3 high value contracts, the Council would be potentially vulnerable to challenge from prospective bidders and as explained above at paragraph 5.6, the VEAT Notice will have the effect of mitigating these risks.
- 5.8. However, there is always a risk when publishing a VEAT Notice that within the relevant period the Council is challenged on its decision to award the contracts without having followed a competitive process. Notwithstanding this risk, the Council has a duty to be transparent and any claim for damages may be significantly reduced given that the intention behind the awards was not to act in an anticompetitive manner as the decision to award is notified to the market through the VEAT Notice.
- 5.9. 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.
- 5.10. 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.
- 5.11. 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.
- 5.12. 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:

- 5.12.1(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
- 5.13 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 –
 - 5.13.1 The Council has conducted preparatory work and intends to conduct public procurement from March 2015.
 - 5.13.2 The existing contracts will terminate before the procurement can be completed.
 - 5.13.3 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.
- 5.14 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.
- 5.15 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
- 5.16 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 Extension of current contracts would maintain a status quo and therefore would not necessitate an Equality Assessment. The re-procurement of the treatment system has been subject to an Equalities Assessment and widespread consultation. Extension of some contracts and not others (not a recommended option) would undoubtedly require an Equality Assessment and may impact upon different protected characteristic groups in different ways.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The Council is fulfilling its best value duty via the reprocurement of all current contracts. Whilst an extension of current contracts to facilitate this is not fully in line with best value duties specific to finance the fact that this is necessary to avoid breaching wider statutory responsibilities relating to care creates a best value rationale based on duty of care considerations. There is no other reasonable solution whilst services are being procured. Outside of this process, DAAT officers have already re-procured waste management services, are re-procuring equipment supplies contracts and are consulting on decommissioning an in-borough inpatient detoxification service. These additional activities are being pursued in order to achieve savings and improve outcomes. Whilst the set of circumstances that came together to cause the damage to the critical pathway of this procurement project were fairly unique and unlikely to be repeated a Best Value Learning framework is in place to minimise the risk of repetition of those circumstances where they were not inherent to the Directly Elected mayoral model.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 The decision regarding extension of current contracts does not have any impact upon the environment.

9. RISK MANAGEMENT IMPLICATIONS

- 8.1. Termination of services would result in significant risk to drug / alcohol users and their families / children as well as the general population. Without services in place drug users would not be able to access prescribed medication and psychological support and would return to purchasing and using illicit drugs. The health impact of continued drug / alcohol use would increase and could increase the rate of drug / alcohol related deaths across the borough as well as increase the burden upon health services. Extension of current contracts would mitigate against these risks. There is some theoretical risk of legal challenge to the short term contract extension. However such a challenge would be most likely to come from prospective contractors and as the Council has already started the procurement process the risk is considered to be relatively low.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 9.1 It is estimated that every ten addicts not in treatment in 2010-11 committed 13 robberies and bag snatches, 23 burglaries, 21 car-related thefts and more than 380 shoplifting thefts (Public Health England). LBTH has the 8th highest rate of alcohol related crime in London.
- 9.2 Termination of treatment services would have a considerable negative impact on crime and anti-social behaviour.

11. SAFEGUARDING IMPLICATIONS

- 11.1 There are in excess of 400 individuals in treatment at any one time who live with children and more who have access to children. The detrimental impacts of substance misuse on children of addicted parents are well documented. Withdrawing treatment and support from these individuals would place a significant number of children at risk and require review of all child protection plans involving substance misuse.
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Linked Reports, Appendices and Background Documents

Linked Report

- Equality Assurance Checklist.

Appendices

- Appendix 1: DAAT Contract Values
- Appendix 2: New Treatment System Structure

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- None.

Officer contact details for documents:

N/A

