Agenda Item No: 5

PUBLIC HEALTH ENGLAND SEXUAL HEALTH SERVICES COMMISIONING PILOT

To: **Health Committee**

Meeting Date: **February 7th 2019**

From: **Director of Public Health**

Electoral division(s): **All**

Forward Plan ref: **2019/029**

Key decision: **Yes**

Purpose: **This paper seeks the support and approval of the Health Committee to award an interim contract for the delivery of the Integrated Contraception and Sexual Health (iCaSH) service to the current provider, Cambridgeshire Community Services (CCS). The CCC interim contract will run for six months commencing October 1 2019 and terminating on the 31 March 2020**

Recommendation:

The Health Committee is requested:

1. **Review the rationale for the request to award an interim contract.**
2. **Support the interim contract being awarded to CCS for the delivery of iCaSH services in Cambridgeshire.**
3. **Support the publication of a Voluntary Ex Ante Transparency Notice (VEAT) to mitigate any procurement risks.**

If the request is supported:

4. **Authorise the Director of Public Health, in consultation with the Chairman and Vice Chairman of the Health Committee, to formally award the contract subject to compliance with all required legal processes**
5. **Authorise the Director of Law, Property & Governance to approve and complete the necessary contract documentation.**

Officer Contact:		***Chair Contact:***	
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1. BACKGROUND

1.1 Since 1st April 2013, Local Authorities (LAs) have a statutory duty to commission a wide range of Sexual and Reproductive Health (SRH) services as part of their wider public health responsibilities.

1.2 The current iCaSH contracts held by CCC and Peterborough City Council (PCC) were awarded to Cambridgeshire Community Services (CCS) via separate competitive tender processes and both are due to expire in 2019. The two local authorities are working together to jointly recommission iCaSH services for the two areas with the aim of having one contract. To enable the joint commissioning of these services there is a need to align the termination dates of the two contracts.

1.3 The two local authorities are one of two areas in the country that are part of a national Public Health England (PHE) feasibility study to develop collaborative cross sectoral commissioning approaches across LAs, Clinical Commissioning Groups (CCGs) and NHS England sexual and reproductive health services. This work follows a joint DHSS and PHE report describing the impact upon SRH services of the 2013 Health and Social Care Act which divided sexual and reproductive health commissioning between these three commissioning organisations. The reports found that commissioning of services was fragmented and consequently related pathways were unaligned. Participation in the Study was previously approved by the Health Committee and Joint Commissioning Board in May 2018. The work undertaken as part of the national study informs and is part of the re-commissioning process.

2. MAIN ISSUES

2.1 The original CCC contract was awarded for a three year period from October 2014 to September 2017 with the option to extend for a further two years. The extension was granted and the contract will end on the 30th September 2019. Similarly the original PCC contract was awarded for a three year period from July 2014 to June 2017 with the option to extend for a further two years. Again the extension was granted and the contract is due to end on 30th June 2019.

2.2 There would not be any change in the annual value of the interim contract which will have the following pro rata value.

- CCC: The contracted value for the 6 months interim contract between 1st October 19 and 31st March 20 is £1,615,209.

2.3 The current services are funded until June 2019 for PCC and September 2019 for CCC. There is dedicated funding for services within the two LA Public Health Grants that would be allocated to the interim contracts. However an objective for the re-commission is to identify savings in the new single contract.

2.4 The proposal to continue to commission CCS to provide iCaSH services across the two areas until March 30th 2020 is supported by CCS.

2.5 The proposal will require the agreement of both local authorities in addition to the provider. This paper has been reviewed and approved by the Joint Commissioning Board.

2.6 The re-commissioning commenced in the early summer of 2018 with an initial view to have a new service in place in by September 2019. All the possible contract extensions have been used but a three month contractual arrangement would have been sought for the PCC service to align it with the CCC service. However the rationale for having an interim direct award contract until March 2020 reflects not only the need to align dates but also other complexities and considerations that make for a longer procurement process.

- Nationally there are many new developments in the delivery of iCaSH services that have the potential to deliver efficiencies and these are being explored as options for both areas
- The areas are very different in terms of needs and patient profile which involves a wider range of consultation events
- The recommissioning also involves working with the CCG and NHSE which requires some alignment with their commissioning processes is desirable.
- CCS is the main provider of sexual health services across the region and the market will require stimulation if there is to be robust competitive process.

2.7 The following alternative options have been considered

a) Do not award an interim contract but accelerate the commissioning process.
If the commissioning process is accelerated the key complexities and issues described in section 4.1 above would undermine a robust commissioning process and the odds of securing the best possible service. In addition to avoid some form of exemption or interim contract the CCC contract would have to end in June 2019 to align it with the PCC contract.

b) Contracts end as per schedule creating a break in service delivery until April1 2020
A gap in provision which would contravene the legal responsibilities of LAs to provide or make arrangements to secure open access sexual health service in their areas [Regulation 6, Part 2 of the Local Authorities Regulations 2013 (SI 2013/351)]. It would pose a serious threat to public health.

c) Undertaking a competitive tender for an interim period.
Completing a tender for a maximum contract length of 9 months raises a number of issues.

- Competitive retendering within the short time frame would be very challenging, impacting upon the quality of the exercise and award result.
- There is a distinct lack of other suitable providers in the market so the likelihood of a successful competitive tender exercise is low. Time for market development is limited within the short time scales.
- Multiple short term procurements are discouraged due to the destabilising effect on service provision and staffing. iCaSH provision is acutely challenged by the lack of specialist nurses and any further losses would have a significant impact on the clinical capacity of any service model going forward. In addition it is a clinical service which requires a specialist environment that requires a level of investment that would not be attractive to providers of a short term contract.

2.8 The risks associated with this proposal reflect the legal position with regard to a direct award. Advice has been sought from the legal and procurement teams in both CCC and PCC and is summarised as follows.

a) The value of the proposed “extensions” or “interim contracts” is over £1million per contract for a period of 6/9months. This sum is in excess of the PCR 2015 EU Schedule 3 limit and this flags the risk of being in breach of procurement law. To be fully compliant procurements must be undertaken for all service contracts which exceed the EU threshold. The Contract Rules stipulate that an exemption can never be used where the total value of the contract exceeds the EU threshold. There is nothing in law or contractually which would allow either Authority to reach such an agreement with their current provider, without risk, but the breach could be mitigated.

b) Whilst both Authorities have a statutory duty to provide the service and there is a reputational risk if services are not available, this is not in itself mitigation to any challenge from the EU. The service has to be provided, but it could have been provided compliantly had the procurement been carried out in time. The mitigating factors reflect the large scale nature of this re-commissioning project and the statutory services involved. It is a re-commission with complex arrangements which are taking time to plan and develop across a whole system commissioning landscape. These factors have made it difficult to re-commission prior to current contract expiry dates.

c) The aim is to secure delivery of the longer term strategy and objectives through a well-planned robust commissioning exercise that will achieve greater efficiencies and better delivery of the services.

d) The Authorities could issue a Voluntary Ex Ante Transparency Notice (VEAT) as a means of advertising the intention to let a contract without opening it up to formal competition. The VEAT notice would provide sufficient information for the justification of the decision and would allow potential providers the opportunity to challenge the approach. This reduces the risk of claims against a direct award of the contract by the Local Authorities being upheld and it does demonstrate transparency. In addition this is only a short term arrangement and the intention is to proceed with a procurement process during 2019.

3. ALIGNMENT WITH CORPORATE PRIORITIES

Report authors should evaluate the proposal(s) in light of their alignment with the following three Corporate Priorities.

3.1 Developing the local economy for the benefit of all

The report above sets out the implications for this priority in **2.2, 2.3**

3.2 Helping people live healthy and independent lives

The report above sets out the implications for this priority in **2.6, 2.7**

3.3 Supporting and protecting vulnerable people

The following bullet points set out details of significant implications identified by officers:

- The new commissioning model will enable any health inequalities or inequities in service provision to be addressed through identification of needs and the better alignment of sexual and reproductive services that target vulnerable high risk populations.

4. SIGNIFICANT IMPLICATIONS

4.1 Resource Implications

The report above sets out details of significant implications in

4.2 Procurement/Contractual/Council Contract Procedure Rules Implications

The following bullet points set out details of significant implications identified by officers:

- Any implications for procurement/contractual/Council contract procedure rules will be considered with the appropriate officers from these Departments and presented to the Health Committee before proceeding.

4.3 Statutory, Legal and Risk Implications

The following bullet points set out details of significant implications identified by officers:

- Any legal or risk implications will be considered with the appropriate officers from these Departments and presented to the Health Committee before proceeding.

4.4 Equality and Diversity Implications

The following bullet points set out details of significant implications identified by officers:

- Any equality and diversity implications will be included in the pilot study; a Community Equality Impact Assessment will be completed.

4.5 Engagement and Communications Implications

The following bullet points set out details of significant implications identified by officers:

- The pilot study will include consultation with service providers and users; a Community Impact Assessment will be completed.

4.6 Localism and Local Member Involvement

The following bullet points set out details of significant implications identified by officers:

- The commissioning of sexual and reproductive health services will involve working with individuals and communities to identify how that can best protect and improve their sexual health.

4.7 Public Health Implications

The following bullet points set out details of significant implications identified by officers:

- The re-commission will improve the sexual health of the population through ensuring that the different commissioned pathways and services are integrated and support the improvement of outcomes

- These service developments will need to include targeted actions that will address any inequalities and improve the outcomes for the most vulnerable and at risk populations.

Implications	**Officer Clearance**
Have the resource implications been cleared by Finance?	Yes Name of officer: Clare Andrews
Have the procurement/contractual/ Council Contract Procedure Rules implications been cleared by the LGSS Head of Procurement?	Yes Name of officer: Paul White
Has the impact on statutory, legal and risk implications been cleared by LGSS Law?	Yes Name of officer: Nicola Malloy
Have the equality and diversity implications been cleared by your Service Contact?	Yes Name of Officer: Liz Robin

Have any engagement and communication implications been cleared by Communications?	Yes Name of Officer: Matthew Hall
Have any localism and Local Member involvement issues been cleared by your Service Contact?	Yes Name of Officer: Liz Robin
Have any Public Health implications been cleared by Public Health	Yes Name of Officer: Liz Robin

SOURCE DOCUMENTS GUIDANCE

Source Documents	**Location**
Public Health England: Making it work: A guide to whole system commissioning sexual health, reproductive health and HIV 2015	https://www.gov.uk/government/publications/commissioning-sexual-health-reproductive-health-and-hiv-services
Public Health England: Sexual Health, Reproductive Health and HIV: A Review of Commissioning 2017	https://www.gov.uk/government/publications/sexual-health-reproductive-health-and-hiv-commissioning-review