

Report of Head of Public Health (Health Protection) / Commissioning & Contracts Officer

Report to Director of Public Health

Date: 12th December 2018

Subject: Awarding a cooperation agreement to Leeds Community Healthcare NHS Trust for the delivery of the Infection Prevention and Control Service, under clause 1.5.2 of Contract Procedure Rules pursuant to Regulation 12(7) of the Public Contract Regulations

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary of main issues

1. The existing contract with Leeds Community Healthcare NHS Trust (LCH) to deliver the Infection Prevention and Control (IPC) Service is due to expire on 31st March 2019 and cannot be extended further. This service provides reactive and proactive IPC advice and support to both LCH staff and provider services (e.g. childrens' services and care providers) across the city. Part of the service covers LCH's statutory and corporate responsibilities in relation to IPC (including healthcare associated infections).
2. Following a strategic review, the preferred option to continue the service was for both LCC and LCH to enter into a cooperation agreement, which will clearly set out each organisation's roles and responsibilities in relation to delivering IPC arrangements across the city.
3. The cooperation agreement is being jointly developed by the two organisations, with the Council taking the lead on the initial drafting. The intention is for the agreement to be in place from 1st April 2019. The agreement will continue indefinitely and will be subject to regular reviews by both parties. There would be option to terminate the agreement if it was not working satisfactorily.

4. The decision to award the cooperation agreement, for the delivery of the Infection Prevention and Control Service, falls within Clause 1.5.2 of the Contract Procedure Rules as it is a cooperation between public bodies and falls outside of the Public Contract Regulations pursuant to Regulation 12(7). Therefore it is not a procurement for the purpose of the Contract Procedure Rules.

Recommendations

- The Director of Public Health is recommended to approve the award of a cooperation agreement, for the delivery of the Infection Prevention and Control Service, to Leeds Community Healthcare NHS Trust, under clause 1.5.2 of Contract Procedure Rules, pursuant to Regulation 12(7) of the Public Contract Regulations, in the sum of £529,200 per annum.

1. Purpose of this report

- 1.1 The purpose of this report is to seek approval from the Director of Public Health to award a Cooperation Agreement to Leeds Community Healthcare NHS trust (LCH) to deliver the Infection Prevention and Control (IPC) Service, falling within clause 1.5.2 of Contract Procedure Rules (CPRs) pursuant to Regulation 12(7) of the Public Contract Regulations.

2. Background information

- 2.1 On 1st April 2013, the Leeds Primary Care Trust (PCT) ceased to exist and the Public Health function transferred to Leeds City Council as set out in the Health and Social Care Act 2012. Through a Statutory Instrument under the Act functions, resources, ring-fenced budget and assets and liabilities, including contracts, transferred to LCC via two Transfer Schemes.
- 2.2 To ensure service continuity and compliance with the Council's CPRs, all contracts including the IPC service were reviewed and LCH as the existing provider of this service was formally awarded a new contract based on Department of Health terms and conditions.
- 2.3 The current contract (DN192126 previously 9TVG-HXC1VS) with LCH was awarded from 1st April 2015 to ensure stability and continuity of this key public health service whilst providing the Council with sufficient time to undertake both a strategic review and develop plans to recommission the service. This contract expires 31st March 2019 and there is no further extension provision available.
- 2.4 The existing IPC service provides reactive and proactive IPC advice to both LCH staff and provider services across the city. The IPC service supports a wide range of services across the city including the provision of IPC audits into GP practices, audits of care home infection control standards, a range of infection control training to a will variety of audiences and support to the thirteen neighbourhoods delivering care packages to patients with complex requirements across the city.
- 2.5 LCH has the executive authority and responsibility for ensuring the implementation of strategies to prevent avoidable healthcare associated infections (HCAIs) as outlined in the Health and Social Care Act (2008). This responsibility falls within the remit of the IPC service and covers services provided within LCH and across the wider community.
- 2.6 The IPC service ensures that LCH provided services comply with the Health and Social Care Act – code of Practice for Infection Prevention and Control (2008), which enables registration with the Care Quality Commission. A key responsibility of the service is to undertake a learning and development programme to ensure that staff employed by LCH are equipped with the necessary knowledge, skills and resources, to provide safe care, in relation to IPC. The service also ensures that all LCH services meet the standards set out in the National Decontamination Strategy.

3. Main issues

- 3.1 As part of the strategic review and the development of future plans for the recommissioning for this specialist service, the Public Health Programme Board considered a number of options to deliver the service in November 2017. In accordance with legal advice from Procurement and Commercial Services, the Board supported the option to develop a cooperation agreement pursuant to Regulation

12(7) of the Public Contract Regulations for the future delivery of a city-wide, resilient and robust IPC service.

3.2 Under this regulation LCH and LCC would work cooperatively to continue to ensure provision of their designated IPC functions, both to the LCH corporate function and to the wider community. The advantages of this approach are:

- Providing stability in the IPC control system allowing established multiagency systems to continue to provide a safe and effective infection prevention function for the wider community.
- Ensuring joint accountability across the two organisations to ensure there is a robust and responsive IPC service.
- Ability to provide flexibility across the two LCH IPC functions to enable surge within the system to respond to a medium/ large scale infection prevention incident in Leeds.

3.3 Approval is now being sought for the award of a cooperation agreement between LCC and LCH from 1st April 2019. The agreement will set out the roles and responsibilities of each party (LCH and LCC) to deliver the IPC service, including:

- A commitment by both parties to jointly deliver the cooperation agreement.
- LCC's responsibilities will involve providing strategic leadership, funding and assurance to ensure Leeds has an effective and integrated IPC arrangements in place to protect the health of the population.
- LCH's responsibilities will involve the delivery a community IPC service for the wider community, including the internal LCH infection prevention and control corporate responsibilities.

3.4 The cooperation agreement is being jointly developed by the two organisations, with the Council taking the lead on the initial drafting. The intention is for the agreement to be in place from 1st April 2019.

3.5 The cooperation agreement will continue indefinitely with no expiry date but would be kept under review by both parties. It contains provision to vary the agreement subject to agreement by both parties (e.g. to accommodate changes to level of funding) and there is an option to terminate this agreement if it was not working satisfactorily.

4. Corporate considerations

4.1 Consultation and engagement

4.1.1 Consultation regarding the award of the cooperation agreement has been undertaken with the Executive Member for Health and Wellbeing, LCH and Adult & Health colleagues.

4.2 Equality and diversity / cohesion and integration

4.2.1 An Equality, Diversity, Cohesion and Integration Screening Form has been completed in relation to this decision, and there are positive implications for equality and diversity in regard to increase capacity and consistency across the city to manage of infectious diseases and IPC practices across different areas and population groups.

4.3 Council policies and best council plan

- 4.3.1 Our vision is for Leeds to be the best city in the UK: one that is compassionate with a strong economy, which tackles poverty and reduces the inequalities that still exist.
- 4.3.2 This agreement supports the outcomes of the Best Council Plan 2018-19 – 2020/21 Tackling poverty and reducing inequalities, which includes the best city priorities for health & wellbeing and safe & strong communities
- 4.3.3 Health and Wellbeing Strategy (2016-2021) whose ambition is ‘Leeds will be the best city for health and wellbeing’ and vision is ‘Leeds will be a healthy and caring city for all ages, where people who are the poorest improve their health the fastest’. This agreement encourages partnership working to help contribute towards achieving this.

4.4 Resources and value for money

- 4.4.1 The funding for this cooperation agreement is met by revenue Public Health funding (£529,200). This service has already been subject to a reduction in funding as a consequence of the central government cuts to the Public Health grant. The agreement contains provision to vary the agreement subject to agreement by both parties (e.g. to accommodate changes to level of funding available).

4.5 Legal implications, access to information, and call-in

- 4.5.1 Setting up this Cooperation Agreement is a key decision due to the annual value of funding provided by LCC to LCH and is subject to Call In. There are no grounds for treating the contents of this report as confidential with the Council's Access to Information Rules.
- 4.5.2 The decision to award this cooperation agreement falls within Clause 1.5.2 of the Contract Procedure Rules as it is a cooperation between public bodies and falls outside of the Public Contract Regulations pursuant to Regulation 12(7). Therefore it is not a procurement for the purpose of the CPRs.
- 4.5.3 Furthermore, it is considered that there is the potential risk of challenge despite the two public bodies having fulfilled the conditions of Regulation 12(7) of the Public Contracts Regulations 2015 that the Council is simply seeking to circumvent the application of the procurement rules. However due to the reasons set out in this report this risk is perceived to be low. In addition, this risk can be diminished further by the publication of a voluntary transparency notice in OJEU immediately after the decision to award the contract has been made and then waiting 10 days to see if any challenges are made. If no challenges are made the chances of a claim for ineffectiveness being brought are significantly reduced, and would only be successful if the Council had used Regulation 12(7) to award a cooperation agreement to Leeds Community Healthcare NHS Trust incorrectly. Further, publishing such a notice will also start time running for any other potential claim for breach of Regulations, which must be brought within 30 days of the date that an aggrieved party knew or ought to have known that a breach had occurred.
- 4.5.4 In making the final decision, the Director of Public Health should be satisfied that the course of action chosen, as to the awarding of a cooperation agreement, is the

best course of action for the Council and should be satisfied that doing so it represents best value for the Council.

4.6 Risk management

- 4.6.1 The Agreement has been drafted by both parties (LCH and LCC) and therefore both parties are aware and accept the roles and responsibilities identified.
- 4.6.2 The Agreement will be subject to quarterly progress monitoring and annual performance reviews by both parties to ensure service risks are managed and addressed.
- 4.6.3 The Agreement will continue as long as both parties are in agreement and contains provision to vary the agreement subject to agreement by both parties (e.g. to accommodate changes to level of funding) and there is an option to terminate this agreement if it was not working satisfactorily.

5. Conclusions

- 5.1 Approval is being sought to award a cooperation agreement to LCH which will set out each organisation's responsibilities and obligations in relation to delivering IPC arrangements across the city, which will include
- A commitment by both parties to jointly deliver the cooperation agreement.
 - LCC's responsibilities will involve providing strategic leadership, funding and assurance to ensure Leeds has an effective and integrated IPC arrangements in place to protect the health of the population.
 - LCH's responsibilities will involve the delivery a community IPC service for the wider community, including the internal LCH infection prevention and control corporate responsibilities.
- 5.2 The cooperation agreement is being jointly drafted by the two organisations, with the Council taking the lead on the initial drafting. The intention is for the agreement to be in place from 1st April 2019. The agreement will continue indefinitely with no expiry date and be subject to regular reviews by both parties. There would be option for either party to terminate following the termination procedure set down in the cooperation agreement

6. Recommendations

- 6.1 The Director of Public Health is recommended to approve the Council awarding a Cooperation Agreement to Leeds Community Healthcare NHS Trust to deliver Infection Prevention and Control at the sum of £529,200 per annum.

7. Background documents¹

- 7.1 None

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.