

Commissioning and Procurement Executive Committee – 10 October 2023

Subject:	Integrated and online Sexual Health Service contracts extension		
Corporate Director: Director:	Catherine Underwood - People Lucy Hubber - Public Health		
Portfolio Holder:	Councillor Linda Woodings – Adults and Health		
Report author and contact details:	Cara Squires, Public Health Lead Commissioning Officer Cara.Squires@nottinghamcity.gov.uk on behalf of Tracey Lamming		
Other colleagues who have provided input:	Tracey Lamming, Public Health Principal Nancy Cordy, Head of Strategy and Service Improvement Lisa Lopez, Public Health Commissioning Lead Tracey Moore, Commercial Business Partner Richard Bines, Solicitor, Contracts and Commercial Team Jo Pettifor, Category Manager, People		
Key Decision	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Subject to call-in	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Reasons: <input checked="" type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £750,000 or more taking account of the overall impact of the decision	<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital		
Significant impact on communities living or working in two or more wards in the City	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Type of expenditure:	<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital		
Total value of the decision: up to £2,015,798			
Wards affected: All			
Date of consultation with Portfolio Holder: 4 September 2023			
Relevant Council Plan Key Outcome: <div style="display: flex; justify-content: space-between;"> <div> Green, Clean and Connected Communities Keeping Nottingham Working Carbon Neutral by 2028 Safer Nottingham Child-Friendly Nottingham Living Well in our Communities Keeping Nottingham Moving Improve the City Centre Better Housing Serving People Well </div> <div style="text-align: center;"> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> </div> </div>			
Summary of issues (including benefits to citizens/service users): <p>The Health and Social Care Act (2012) requires local authorities to commission comprehensive sexual health services for its residents. The existing Integrated Sexual Health Service (ISHS) was commissioned across Nottingham City and Nottinghamshire County. The current contracts are due to end 31st March 2024.</p> <p>In accordance with the intention set out in the report to CPEC (March 2023) (see section 15.1), a Collaboration Agreement has now been entered between Nottinghamshire County and Nottingham City Councils. Both local authorities are undertaking a joint competitive procurement procedure of the new Integrated Sexual Health Service against the budget available.</p> <p>As agreed within the previous CPEC report, a competitive procedure with negotiation has been adopted as the commissioning option. However, due to the delays in advertising the ISHS tender, there is now a risk that the amount of time available to complete the</p>			

commissioning process and transition to new arrangements will be insufficient for the new contracts to commence on 1st April 2024. This report recommends extending the existing contracts by up to six months to allow sufficient time for the new services to mobilise safely and effectively.

The existing contracts to be extended, and cost implications, are detailed in the below table:

Table 1:

Service	Provider	Per Annum Contract Value	Pro-rata cost of 6-month extension*	Additional Costs**	TOTAL
Integrated Sexual Health Service	Nottingham University Hospitals Trust	£3,440,548	£1,720,274	£13,930.00	£1,734,204
Online sexual health services	SH:24	£563,189	£281,594	-	£281,594
TOTAL					£2,015,798

*Inclusive of PrEP allocation

**Additional costs are to compensate the financial burden of a 6-month extension on the provider, as it will require them to make financial commitments on IT systems that will incur a cost to them. This amount will only cover any additional costs that they incur and will not alter the economic balance of the contract.

It should be noted that the online sexual health services contract specifies that payment is based on activity levels, therefore £281,594 is a maximum up to value, but actual expenditure may be less. The total value of the decision will be funded from the ring-fenced public health grant allocation for 2024/25.

Impact on new Nottingham and Nottinghamshire Integrated Sexual Health Services (NNISHS) contract.

Previously, the spend approval for the new NNISHS was approved by CPEC on 14 March 2023 (see section 15.1) for a seven-year contract. There will now be an alignment of timelines with the extension of the contracts which will mean that the new service start date will be moved by 6 months from 1 April 2024 to 1 October 2024.

Exempt information: None

Recommendations:

- 1 To approve spend of up to £2,015,798 to extend existing sexual health contracts (as detailed in Table 1 above) for a maximum of 6 months (1 April 2024–30 September 2024).
- 2 To delegate authority to the Director of Public Health to enter appropriate deeds of variations to extend the existing sexual health contracts (as detailed in Table 1 above) for a maximum of 6 months to 30 September 2024.

1. Reasons for recommendations

- 1.1 Under the Health and Social Care Act 2012 there is a statutory duty for local authorities to commission comprehensive sexual health services for its residents. This includes provision of information, advice, and support on a range of issues, such as sexually transmitted infections (STIs), contraception, relationships and unplanned pregnancy.
- 1.2 Contractual arrangements are needed to continue the service uninterrupted. To bring in a new service would result in a higher risk to residents due to a disruption of services. It would cause significant inconvenience for residents.
- 1.3 Economically, a contract extension would cost significantly less than securing a new interim service. Similarly, it is economically favourable to continue with the existing service under the current contract terms and conditions.
- 1.4 A contract extension will ensure there is sufficient time available for both negotiations with bidder/s and for the mobilisation of a new and complex integrated service model for sexual health services.
- 1.5 It is possible that the market has responded well to our vision for sexual health services in Nottingham and Nottinghamshire and it is essential that there is adequate time to complete a comprehensive procurement process to get the best possible service for local citizens.
- 1.6 Currently, both the in-person and online sexual health services are utilised well therefore to extend these is the solution that offers the least risk in terms of current service provision, in terms of the future contract and for mobilisation.
- 1.7 The current contracts are jointly funded by Nottingham City Council and Nottinghamshire County Council and an extension is also dependant on Nottinghamshire County Council obtaining approval in line with their governance processes. However, this decision relates to the approval sought and expenditure to be incurred by Nottingham City Council, in relation to the proposed extension of the contracts.
- 1.8 With the information above taken into account, there are grounds to modify the existing contracts without a new procurement procedure at this stage as the additional services (of the type supplied by the current contracts) are necessary, were not included in the initial procurement and where a change of contractor:
 - cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, or
 - would cause significant inconvenience or substantial duplication of costs for the contracting authority,

Also, the increased price does not exceed 50% of the value of the original contracts, thereby satisfying regulation 72(1)(b) of the PCR 2015.

Variation of the online service contract would be secured compliantly through call-offs from the e-SRH Framework, and the Department of Health and Social Care have confirmed with our current online provider that any call-off contracts that are varied and end beyond the life of the e-SRH Framework will be honoured.

2. Background (including outcomes of consultation)

- 2.1 Background that informed the decisions behind sexual health procurement and service specification is detailed in the report that went to CPEC dated 14 March 2023 (see section 15.1).
- 2.2 The current service provider for Nottingham City is jointly contracted to deliver an ISHSs in Nottingham City and the south of the county. The sexual health system is complex, involving different organisations that commission various aspects of sexual health services. Since April 2013, local authorities have been responsible for commissioning a comprehensive (contraception and STI testing), open access sexual health service with costs met from the ring-fenced public health grant.
- 2.3 Previously, Integrated Sexual Health Services have been procured and commissioned jointly with Nottinghamshire County Council. This has been agreed as continuing to be the appropriate approach (as per previous CPEC paper on 14th March 2023) whilst ensuring that services provided meet the needs of the populations we serve.
- 2.4 Previous contract variations include a new contract value in 2018, Agenda for Change award and PrEP provision in 2021, extension to contract in 2022 until 2024 and PrEP in 2023 in accordance with Article 18.99 of the Contract Procedure Rules. The latter variation being approved by the parties to the joint contract on the basis of Regulation 72 (1) (e) and (8) PCR 2015 as a non-substantial modification to the contract.
- 2.5 The City Council directly commissions an online service which offers gonorrhoea and chlamydia testing, non-complex chlamydia treatment, condom and lubricant bolt-on delivery & HIV free testing via call offs from existing national frameworks.
- 2.6 The Department of Health and Social Care confirmed with the online provider that any call-off contracts that are varied and end beyond the life of the e-SRH Framework will be honoured. The online service offer includes:
 - Gonorrhoea and chlamydia testing;
 - Non-complex chlamydia treatment;
 - Condom and lubricant bolt-on delivery;
 - HIV free testing.

3. Other options considered in making recommendations

- 3.1 Setting up an interim service for the 6-month period. The time it takes to safely mobilise a service, it would be a break in the continuity of care for residents across Nottingham City and Nottinghamshire County and the logistics in the transfer of patient records for a short period. Therefore, this option is not recommended.
- 3.2 Do nothing. This would result in having no service for up to 6-months period. This is not considered to be a viable option due to the mandated responsibility both local authorities must provide an open access sexual health service to our residents.
- 3.3 The impact on citizens of no service which would result in residents either having no access to services or having to go elsewhere for sexual health service and us being charged by other local authorities for out of area activity. Therefore, this option is not recommended.

4. Consideration of Risk

- 4.1 The council's main risk is being unable to continue our statutory duty to commission comprehensive sexual health services for its residents, this extension will ensure the provision is maintained throughout the tender process.
- 4.2 The council recognises that we are moving forward on a shared timeline with Nottingham County Council, and therefore there are active working groups in place with regular communication to mitigate this risk.
- 4.3 Both councils are aware of the risks around TUPE and staffing which the extension would help mitigate. The councils want to give the providers as much notice as possible to secure staffing and any TUPE measures.

5. Best Value Considerations

- 5.1 Recommissioning in partnership with Nottinghamshire County Council after a Joint Health Needs Assessment was conducted, and both citizen and stakeholder engagement activities were completed.
- 5.2 Economically, it is appropriate to continue with the current service for an extension of 6 months. The current budget for our ISHS is lower than the new budget for the NNISHS, therefore extending on the same terms and conditions will cost less overall.
- 5.3 Efficiency-wise, the current service is performing and therefore to disrupt this for an interim or a new service that is not fully mobilised could have an impact on the quality of service that residents can access.
- 5.4 Considering the options available, the economic, environmental, and social value, the effectiveness of a contract extension provides the least health risk to residents across Nottingham and Nottinghamshire.

6. Finance colleague comments (including implications and value for money/VAT)

- 6.1 For reasons outlined by the report author, this decision seeks approval to allocate budget and approve spend of £2,034,118 from the Public Health grant to extend sexual health contracts for 6 months (1st April 2024 to 30th September 2024).

Service	Provider	Per Annum Contract Value	Pro-rata cost of 6-month extension*	Additional Costs**	TOTAL
Integrated Sexual Health Service	Nottingham University Hospitals Trust	£3,440,548	£1,720,274	£13,930.00	£1,734,204
Online sexual health services (see note 2)	SH:24	£563,189	£281,594	-	£281,594
TOTAL					£2,015,798
Note 2 the online sexual health contract is based on activities levels, this amount is the maximum value which can be spent on the contract.					

*Inclusive of PrEP allocation

**Additional costs are to compensate the financial burden this 6-month extension on the provider, as it will require them to make financial commitments on IT systems that will incur a cost to them. This amount will only cover any additional costs that they incur and will not alter the economic balance of the contract

- 6.2 The total cost of this decision to extend current contracts for 6 months is £2,015,798 and will be fully funded from the Public Health grant. This decision has no financial impact on the Medium-Term Financial Plan.
- 6.3 Once the decision is approved, a budget virement will be posted to realign the budgets, supporting budget managers to robustly monitor the budget.
- 6.4 The actual costs associated with this decision will require regular monitoring to form an audit trail against this grant funding and support robust forecasting. Any decisions taken will need to be captured against this decision value to ensure it is not exceeded. This information will also be used for internal/external reporting processes as required.

Tracey Moore, Commercial Business Partner - 5 September 2023

7. **Legal colleague comments**

- 7.1 Legislative Background to ISHS.
- 7.2 Part 2 of the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013 (“the Regulations”) imposes duties on local authorities to exercise prescribed public health functions of the Secretary of the State and to take prescribed steps in exercise of public health functions of their own, including the duty as to the improvement of public health (section 2B of the National Health Service Act 2006 (“the 2006 Act”)).
- 7.3 Regulation 6 of the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013 require local authorities to arrange for the provision of open access sexual health services for everyone present in their area; covering free sexually transmitted infections (STI) testing and treatment, and notification of sexual partners of infected persons; and free contraception, and reasonable access to all methods of contraception.
- 7.4 Part 3, regulation 9 operates to prevent the local authority being able to make and recover charges in respect of anything which the local authority is required to do in exercise of its public health functions under Part 2 of these Regulations. The services provided are therefore funded from the provision of the ring-fenced Public Health Grant from the Department of Health and conferred by section 31 of the Local Government Act 2003. The purpose of the grant is to provide local authorities in England with the funding required to discharge the public health functions detailed in grant conditions issued under a grant determination. These include:
 - 7.4.1 (a) functions under section 2B, 111 or 249 of, or Schedule 1 to, the 2006 Act;
 - 7.4.2 (b) functions by virtue of section 6C of the 2006 Act;
 - 7.4.3 (c) the Secretary of State’s public health functions exercised by local authorities in pursuance of arrangements under section 7A of the 2006 Act;

7.4.4 (d) the functions of a local authority under section 325 of the Criminal Justice Act 2003 (co-operating with the police, the probation service and the prison service to assess the risks posed by violent or sexual offenders);

7.4.5 (e) such other functions relating to public health as may be prescribed.

7.5 Regulation 7 of the Regulations creates a duty on local authorities to provide or make arrangements to secure the provision of a public health advice services to any clinical commissioning groups (now Integrated Care Boards) in their area, the purpose of which is to assist ICB in relation to their powers and duties to commission health services for the persons for whom they have responsibility.

7.6 Clinical Commissioning Groups have now been formally abolished by the Integrated Care Boards (Establishment) Order 2022 ("the 2022 Order"), which was made under provisions in the Health and Care Act 2022 ("the 2022 Act"). The National Health Service (Areas of Integrated Care Boards: Appointed Day) Regulations 2022 provides that ICBs come into effect from 1 July 2022.

7.7 Failure to provide the services identified in the report would place the Council in breach of the above statutory duties.

7.8 The contacts for the services in question comprises a public service contract for provision of services to the community within schedule 3 of the Public Contract Regulations 2015 ("PCR 2015") and is above threshold such that the 'light –touch' procurement regime will apply to the procurement of the commissioned ISHS's.

7.9 Variation of Exiting Contracts

7.9.1 Despite being 'light touch' contracts, regulation 72 would apply to schedule 3 contracts in order to comply with the principles of transparency and equal treatment. Any amendments to above threshold contracts falling under schedule 3 of the PCR 2015 will therefore need to satisfy one or more of the six permitted "safe harbours" outlined in regulation 72(1) of the PCR 2015.

7.9.2 Regulation 72 (1) (b) permits modification of a contract where services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor:

- (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, [and]
- (ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority,

provided that any increase in price does not exceed 50% of the value of the original contract.

7.10 Given the factual information provided above, reliance can be placed upon regulation 72(1)(b) as providing a safe harbour for modification of the proposed contracts.

- 7.11 In relation to the extension of the Online Sexual Health Services contract, it is understood that this would be achieved be through a compliant call-off from a national framework (the e-Sexual and Reproductive Healthcare Framework) and therefore is considered compliant with the Public Contract Regulations 2015 and the Council's own Contract Procedure Rules.
- 7.12 It is recommended that the extension periods are kept to the minimum possible duration necessary to allow for the transition to new contracts through the new procurement process.

Richard Bines, Solicitor, Contracts and Commercial Team – 23/08/2023

8. Other relevant comments

Procurement colleague comments

- 8.1 This decision proposes the extension of existing contracts for sexual health services to allow sufficient time to complete the procurement process for new contracts and a managed transition to the new arrangements. These services are commissioned jointly with Nottinghamshire County Council who are managing the procurement process through a competitive procedure with negotiation. The proposed extensions will enable the negotiation stage of the tender to be managed robustly and ensure continuity of provision during the transition period.
- 8.2 It is considered that the proposed extension of the contract for the Integrated Sexual Health Service is a permissible modification in accordance Regulation 72 (1)(b) of the Public Contracts Regulations 2015 and Article 18.110 of the Council's Contract Procedure Rules. In relation to the extension of the Online Sexual Health Services contracts, it is understood that these services will be secured will be through compliant call off from an appropriate national framework and this is supported from a procurement perspective.
- 8.3 It is recommended that the extension periods are kept to the minimum possible duration by completing the contract award and transition to new contracts in a timely way.

Jo Pettifor, Category Manager, People - 13 September 2023

9. Crime and Disorder Implications (If Applicable)

- 9.1 Not applicable

10. Social value considerations (If Applicable)

- 10.1 The current local service provides clinical care to Nottingham residents, and this would be affected if the service were not to extend without another service in place.
- 10.2 TUPE needs to be taken into consideration as our current service employs local people, and if there were no service to TUPE over to, those employees would be made redundant.
- 10.3 TUPE needs time to be safe and effective for those employed, therefore extending the mobilisation time for the new service means this can be done effectively.

11. Regard to the NHS Constitution (If Applicable)

11.1 N/A

12. Equality Impact Assessment (EIA)

12.1 Due regard will be given to any implications identified in an EIA.

13. Data Protection Impact Assessment (DPIA)

13.1 Due regard will be given to any implications identified in a DPIA.

14. Carbon Impact Assessment (CIA)

14.1 Due regard will be given to any implications identified in a CIA.

15. List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)

15.1 ISHS contract history;

15.2 CPEC paper March 2023;

15.3 JSNA 2019.

16. Published documents referred to in this report

16.1 Current Integrated Sexual Health Services:

16.2 New Nottingham & Nottinghamshire Integrated Sexual Health Services.