Cabinet – 12 September 2012

Transition of Public Health Contracts

Portfolio: Councillor Bird – Leader of the Council

Related Portfolio Councillor Barbara McCracken – Social Care and Health
Councillor Zahid Ali – Public Protection
Councillor Rachel Andrew – Children's Services
Councillor Anthony Harris – Leisure and Culture

Service: Public Health

Wards: All

Key decision: Yes

Forward plan: Yes

1. Summary

1.1 Members will be aware that the Council takes on new Public Health responsibilities from 1 April 2013. A significant proportion of the service is currently delivered through a range of contracted providers. Given the number and scope of contracts currently in place, and the timescale for transition, it will not be possible or appropriate to undertake competitive procurement procedures in every case. Authority is now being sought to enable new agreements to be put in place that will ensure continuity of service.

2. Recommendations

2.1 That members note, in order to protect the council's financial interests, it is assumed that all public health costs will need to be managed within the ring fenced funding that is allocated by the Department of Health.

2.2 That authority be delegated to the Executive Director for Neighbourhood Services, in consultation with the Leader of the Council, to enter into contractual arrangements for public health services using the most appropriate procurement procedures.

3. Report detail

3.1 The Public Health services transferring to the Council on 1 April 2013 comprise a range of directly provided and externally commissioned services. A summary of contracts and spend during 2011/12 is detailed in **Appendix A**. This is included in the confidential part of the agenda due to the commercially sensitive nature of the data. These services are currently delivered by a number of providers including NHS organisations, private and third sector providers as well as the Council.

3.2 A contracts management workstream has been established as part of the Public Health Transition Project and this comprises public health, finance, contracting and procurement representatives of the Council and the PCT. This group has reviewed a schedule of some 140 contracts to ensure that there is visibility of all current agreements which will then be used to inform future commissioning plans. It should be noted that, as many of the agreements are with NHS bodies, they have not been subject to formal procurement procedures. This is because in accordance with NHS regulations, agreements between NHS bodies are not legally-binding contracts and therefore exempt from formal procurement processes. However, service specifications and formal agreements are in place and these need to be examined as part of a due diligence process. Going forward NHS organisations will be external to the Council and therefore there will be a need for a number of contracts to be subject to more formal procurement activity and/or alternative arrangements put in place. Where appropriate existing frameworks and agreements will be explored, i.e. the Council being an associate to NHS contracts, to minimise the procurement activity. This will also present an opportunity to review current arrangements against existing Council contracts to see what synergies there are and the opportunities that may arise.

3.3 In conjunction with public health commissioners, the workstream group has met to identify contracts which are to be continued post 1 April 2013 and have developed, subject to due diligence, recommendations as to potential future arrangements. To help facilitate this, a set of procurement principles have been agreed by the Public Health Transition Board and these are shown in **Appendix B**. All contracts and arrangements have been documented and the principles will be applied to each arrangement individually

3.4 Given the scope and scale of contracts to be reviewed, developed and renegotiated in advance of the transfer date of 1 April 2013, full scale procurement processes will not be possible or appropriate in all cases given the time constraints. It is for these reasons that delegated authority to award contracts is being sought.

3.5 In developing new contracts the Council has to ensure that future arrangements are compliant both with the Council's Contract Rules and EU procurement legislation. Given the value of externally commissioned services and pressure on finances it is essential that robust processes are adopted by commissioners to ensure that value for money arrangements are put in place that fall within the anticipated resource envelope. There is ongoing discussion with commissioners to inform the detailed plan of future procurement intentions which is being developed. It is likely that the majority of services fall within the Part B category which reduces the scope of EU procurement regulations that apply. There will need to be an ongoing programme of procurement and contract management activity to ensure that contractual arrangements remain fit for purpose and deliver the outcomes required by commissioners to provide quality services to patients and residents. When looking at new contractual agreements consideration will be given the adoption of Think Walsall principles to maximise the services delivered through local providers.

4. Council priorities

4.1 Public Health services are a key contributor to the Council's priority to improve the health and wellbeing of the residents living in the borough.

4.2 This report is relevant to a number of related portfolios as a number of public health services are provided to older people, children and seek to encourage residents to have more active lifestyles.

5. Risk management

5.1 The transition of contracts to ensure continuity of service and the availability of sufficient funding to support them represent the two most significant risks in the overall Public Health transition programme. These risks have been identified within the programme risk register and are regularly reviewed and actively managed. Further action may be required under urgency to safeguard the Council's interest.

6. Financial implications

6.1 An indicative shadow public health budget has been allocated to the PCT for 2012/13, and ongoing expenditure is currently in line with this allocation. However the basis for allocating funding to local authorities via a ring fenced grant in future years has not yet been finalised, and given the current uncertainty, there is a risk that there may be pressure on available resources. To protect the council's financial interests all public health costs, both contractual and non contractual, will need to be managed within the funding that is allocated (this will include costs associated with any requirement for additional resources within procurement as set out in paragraph 9.1 of this report).

7. Legal implications

7.1 The information received so far from Walsall PCT shows that it has over 100 current contracts with service providers, of which all but three expire on 31 March 2013, the day before the Council becomes responsible for various Public Health functions.

7.2 All new contractual arrangements must comply with the Public Contracts Regulations 2006 (as amended) and the Council's Contract Rules. There will be a significant amount of Legal input in the development of new contracts and review of existing arrangements to determine the Council's ability to continue to access them.

7.3 For the current period (2012/2013) the NHS requires use of the 2012/13 NHS Standard Contract for all acute hospital, ambulance, community and mental health and learning disability services. It is not yet known whether the Council will be required to use an NHS Standard Contract for services for which it will be responsible from 1 April 2013 onwards.

8. Property implications

8.1 None as a direct consequence of this report

9. Staffing implications

9.1 The procurement and subsequent contract management of the public health contracts is an additional function to the Council. As outlined in 3.1 above, the existing procurement activity within the PCT has largely been exempt and focused in the main on the negotiation of contracts with NHS bodies and ongoing contract

management rather than the conduct of a large number of competitive procurement exercises. It is envisaged that once contracts are transferred to the council, there will be an increase in the latter and additional staffing will therefore be needed to undertake the planned procurement activity and the management of the new and inherited contracts which are awarded. There are currently no procurement and contract staff identified to transfer from the PCT to the Council.

9.2 In addition the due diligence work in preparation for the transition of contracts is a one off workload representing a significant peak in demand which can not be met from within existing resources. In view of the critical nature of this work, to safeguard the Council's interest, specialist high level procurement input is necessary. Temporary resources will need to be engaged with an anticipated cost of around £40,000.

10. Equality implications

10.1 Consideration of equality issues is fully integrated into the procurement decision making process. All contracts will as a minimum, include conditions which:

- Prohibit the contractor from unlawfully discriminating under the Equality Act
- Require them to take all reasonable steps to ensure that staff, suppliers and subcontractors meet their obligations under the Equality Act.

11. Consultation

11.1 Council Legal and Finance officers as well as Public Health Finance and Commissioning have been consulted in the preparation of this report.

Background papers

None

Author

Lawrence Brazier
Procurement Manager
☎ 658471
✉ brazierl@walsall.gov.uk

Jamie Morris
Executive Director

3 September 2012

Councillor Bird
Leader of the Council

3 September 2012

Walsall Council

PROCUREMENT PRINCIPLES - PUBLIC HEALTH CONTRACTS

The following is a list of principles agreed between Walsall Council and Walsall PCT and will be adopted in relation to all existing public health contracts or contracts with public health elements; and the procurement of all new public health contracts or renewal of any such contracts during the transition year April 2012 – March 2013, **and** which will become the responsibility of Walsall Council as at 1 April 2013.
(It is not intended to be an exhaustive list and will be amended or added to with prior agreement from both parties).

1. *In order that the optimum future procurement arrangements can be determined for each contract the current arrangements will be identified. This will include identifying whether each contract has been subject to competitive tendering and/or whether any value for money criteria has been applied, and whether a robust service specification is available.*

2. *Director of Public Health to identify "which contracts are required" post 2013*
   - *2.1. NHS to convert existing SLA arrangements to full NHS contracts (unless agreed otherwise between both organisations)*
   - *2.2. NHS to update all full contract dates to 31/03/13 (subject to agreement of the optimum procurement action as per principle 3)*
   - *2.3. NHS will provide WMBC with specifications for existing contracts (to ensure best continuity of service post transition in April 2013)*

3. *It is recognised that contracts cannot be novated unless a formal contract is in place at the time of transfer (1st April 2013). Once the contract has been agreed as needed by DPH, agree how each contract will be treated (extended, associated, novated, fresh procurement) and its relative priority within the procurement workstream. Key options include:*
   - *a) PCT to extend contract beyond 31/03/13*
   - *b) PCT to undertake procurement exercise to award new contract to be effective on or before 01/04/13 or*
   - *c) WMBC, subject to the availability of resources, conduct procurement exercise to award new contract to be effective on or before 01/04/13,*

   Other actions may be taken subject to mutual agreement between both parties.

4. *Both parties to mutually agree and understand the risk and liabilities associated with each contract and this may impact on the procurement action (as per principle 3) to be applied.*

5. *Where the PCT is currently an Associate Commissioner for a contract on a multi-lateral basis (ie contract awarded by an external body), it will be investigated*

whether the Local Authority can become an Associate Commissioner and this will be considered as an option alongside the other procurement options set out in Principle 3.

6. *Where public health services form part of the Acute and Community Contract currently held by the PCT with Walsall Healthcare NHS Trust it will be investigated if the Local Authority can become an Associate Commissioner to this contract in respect of these services and this will be considered as an option alongside the other procurement options set out in Principle 3.*

7. *The current NHS principle that Lead and Associate Commissioner roles will be applied on a mutually beneficial basis without any administrative charge being made will be applied wherever possible (in line with existing arrangements).*

8. *During the duration of transition planning the PCT's Assistant Director of Contracting and Procurement and the Local Authority's Head of Procurement will be the respective professional leads and will work in partnership to determine the optimum procurement route for each service in consultation with the DPH, and at all times they will apply best public procurement principles and practice in accordance with legislation and governance arrangements.*

9. *Where pressure of procurement resource is evident, all parties to prioritise procurement workload.*

Date:	**Date:**
Signed:	**Signed:**
Print Name:	**Print Name:**
Designation: **On behalf of Walsall Council**	**Designation:** **On behalf of Walsall PCT**