

North Yorkshire County Council

Health and Adult Services

Executive Members Meeting

27th April 2022

REPORT TO Corporate Director of Health and Adult Services (HAS) in consultation with Executive Member for Adult Services and Health Integration

Approved Provider Lists - Contract Extensions

This report includes a supporting Annex which contains exempt information as described in paragraphs 1, 3 and 5 of Part 1 of Schedule 12A to the Local Government Act 1972 (as amended).

1.0 Purpose Of Report

Health and Adult Services (HAS) utilise a number of Approved Provider Lists (APLs), which enable care and support teams to commission packages of care and social care services, to support people within North Yorkshire. These APLs were originally due to expire in 30th June 2021. A Key Decision was approved in April 2021 to extend the lists until 30th June 2022 in accordance with the Council's Contract Procedure Rules. The Service Development Team and Corporate Procurement Team are now seeking to obtain a Key Decision to enable these to be extended further until 31st October 2022.

2.0 Background

The three APLs that the Service Development Team is seeking to extend are:

APL title	Original Contract Term	Estimated contract value	Actual Annual Gross Spend
NYCC APL for Care Homes and Homes with Nursing	01/07/2016 – 30/06/2021	£350m	£105,968,013
NYCC APL for Domiciliary Care and Other Regulated Services	01/07/2016 – 30/06/2021	£90m	£55,467,633
NYCC APL for Non-Regulated Services	01/02/2017 – 31/01/2022	£21m	£4,726.143

All three lists have already been extended beyond the provisions for extension within the original contracts.

3.0 Issues for consideration

Further extension of the three current APLs is necessary to ensure the social care market in North Yorkshire is in a position to positively respond to the procurement exercise. It also takes account of the

fact that the care market has experienced extreme demands on services throughout the Winter period, in particular in response to Covid. The extension will enable the market more time to prepare for and respond to the procurement.

There has been limited/ no availability of resource internally to progress the procurement in line with the projected timeline due to resource required to respond to care market pressures and provider sustainability issues.

The providers continue to feel the effects of the pandemic and the longer term impact on the market is still unknown. These are key factors which need to be taken into consideration to ensure North Yorkshires commissioning strategy supports a sustainable market that meets the needs of people.

4.0 Performance Implications

N/A

5.0 Financial Implications

There are no anticipated savings from extending the APLs.

Each of the APLs includes a discretionary inflationary uplift clause.

The Cost of Care exercise has been undertaken which will inform fee setting, and we are embarking on the required Fair Cost of Care exercise(s).

6.0 Legal Implications and Governance compliance

Procurement and Legal have reviewed the contracts for the APLs. As outlined in this report undertaking a re-procurement exercise would mitigate any risks. However it is acknowledged that given the timescales and the other factors associated with the market this is not achievable.

Procurement and Legal are therefore recommending extending the APLs under Regulation 72 (1) (e) of the Public Contract Regulations 2015 which states:

72 (1) Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part in any of the following cases:-

(e) where the modifications, irrespective of their value, are not substantial within the meaning of paragraph (8);:-

8) A modification of a contract or a framework agreement during its term shall be considered substantial for the purposes of paragraph (1)(e) where one or more of the following conditions is met:—

(a) the modification renders the contract or the framework agreement materially different in character from the one initially concluded;

(b) the modification introduces conditions which, had they been part of the initial procurement procedure, would have—

(i) allowed for the admission of other candidates than those initially selected,

(ii) allowed for the acceptance of a tender other than that originally accepted, or

(iii) attracted additional participants in the procurement procedure;

(c) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;

(d) the modification extends the scope of the contract or framework agreement considerably;

(e) a new contractor replaces the one to which the contracting authority had initially awarded the contract in cases other than those provided for in paragraph (1)(d).

There is a potential argument that the proposed extension is a substantial change.

The APL will continue to operate in the same way so there will be no alteration to the overall scope of the contracts.

During the extension period the council will continue to accept applications to the provider list. This will ensure the APLs do not prevent providers from applying to join the list. This therefore mitigates the points under 8 (b).

As we will have commenced the re-procurement activity, if any challenge were brought, the council would be able to demonstrate that we are actively working on the re-procurement of the arrangements.

It should be noted that the e-tendering system has also recently been re-procured. The new system came into place from 1st January 2022.

Governance

The following approvals for the contract extensions have been achieved:

1. Procurement Assurance Board 7th April 22
2. Health and Adult Services Leadership Team 23rd December 21

The Head of Legal Services shall be party to the approval process. Legal Services have been engaged throughout in order to agree the recommendation to extend the APLs.

Following a Key Decision, contract extensions shall be provided to each provider.

7.0 Equalities Implications

N/A

8.0 Recommendations

HAS Executive is recommended to implement a Key Decision to enable the extension of the three Approved Provider List (APL) until 30 October 2022.

The exact extension period for each APL is detailed below:

- Care Homes and Homes with Nursing APL - Proposed Extension: 01/07/2022 – 31/10/22
- Domiciliary Care and Other Regulated Services APL - Proposed Extension: 01/07/2022 – 31/10/22
- Non-Regulated Services APL - Proposed Extension: 01/07/2022 – 31/10/22

Hannah Brown, Service Development Manager
Katie Longstaff – Senior Category Manager, Procurement
13th April 2022