

CABINET

17 DECEMBER 2013

GATEWAY 3 CONTRACT AWARD: SPEECH AND LANGUAGE THERAPY FOR SCHOOL AGE CHILDREN

Portfolio Holder: Councillor Mike O'Brien, Children's Services (Lead Member)

Report from: Barbara Peacock, Director of Children and Adults Services

Author: Marilyn Morgan, Partnership Commissioning Manager
Debbie Wright, Category Lead (People)

Summary

It is proposed that the Council should pool budgets with Medway Clinical Commissioning Group (MCCG) to deliver Speech and Language Therapy (SALT) services to school aged children and young people whose statements of special educational need include SALT.

It is also proposed that MCCG commission these services and that this arrangement be governed by MCCG entering into an agreement with the Council pursuant to Section 75 National Health Service Act 2006. Both the Council and MCCG currently purchase Speech and Language Therapy services from Medway Community Healthcare Trust (MCH).

The service specification is being clarified to ensure those children with the greatest assessed need obtain the statutory support. The service specification also allows for additional funding from MCCG, above and beyond the CCGs statutory duties, to complement those services funded by Medway Council.

An additional investment of £77,532 will enable Medway Council to fulfil the Council's legal obligations to meet the needs of children and young people whose statement of SEN or Education, Health and Care plans include speech and language therapy. By jointly commissioning this service, financial efficiencies will be realised. In addition to the above, MCCG have agreed a specific budget for children with primary health needs. The additional investment from the Council is likely to reduce from September 2014 if the Children and Families Bill becomes law, as this would impose on MCCG a new duty to meet the needs of these children.

1. Budget and Policy Framework

1.1 Contract Award Decision

- 1.1.1 It is proposed that the Council pool budgets with Medway Clinical Commissioning Group (MCCG) for Speech and Language Therapy Services and that MCCG to commission services for the Council. This will be achieved by the Council entering into an agreement with MCCG pursuant to Section 75 National Health Service Act 2006. Both parties currently buy Speech and Language Therapy services from Medway Community Healthcare Trust (MCH) with MCCG procuring services totalling £43m.
- 1.1.2 It is also proposed to increase the Council's annual spend from £200,000 to £277,000, reducing to £224,000 in 2015/16¹, in order to meet the local authority's legal obligations regarding provision of speech and language therapy for school-aged children with statements of special educational need.
- 1.1.3 Currently the Council has no written contract or contract monitoring process with MCH. Monthly payments of £16,667 are currently being made to MCH. It is further proposed that a Section 75 arrangement be put in place to formalise contracting arrangements with MCCG and that MCCG vary their existing contract to deliver the service specification. The different options for contracting this service jointly are shown below.

1.2 Statutory Requirements

- 1.2.1 Medway Council has a duty to meet the needs of children with a statement of special educational need requiring the provision of speech and language therapy. MCCG have a duty to meet the primary health needs of children.
- 1.2.2 From September 2014, a new legal duty is likely to arise if the Children and Families Bill becomes law. This will require MCCG to work with Medway Council to secure services for children with special educational needs, including speech and language therapy (announced in March 2013).
- 1.2.3 A complete review of Children with a Statement of Special Education Need has been completed and outlines the need for an additional investment of £77,532 from Medway Council to enable the Council's statutory duty to be met.

2. Background

2.1 Approvals Required From the Cabinet

- 2.1.1 To approve the provision of speech and language therapy to school age children and young people through a Section 75 agreement with MCCG.
- 2.1.2 To approve the increase in Council spend to a maximum £77,532 to meet the needs of stated children, reducing over the next two years as shown in the exempt appendix.

¹ See Exempt Appendix

2.1.3 To approve the Section 75 agreement to allow for the MCCG to vary their current contracts for a period of two years and three months until 31 March 2016, the expiry date of the existing MCCG and MCH contract, on the basis of a 15 month plus one year contract.

2.2 Contract Details

2.2.1 Procurement type

The procurement is for a Services procurement requirement to be facilitated through a section 75 agreement. This will enable MCCG to commission the services on the Council's behalf through the mechanism of variation of their current contract with MCH.

The Council currently procures these services on a recurring basis directly from MCH, although at the present time no contract for this is extant.

2.2.2 Contract duration

The proposed contract duration for this procurement requirement is for 2 years 3 months from 1 January 2014 to March 2016 to be contracted on a 15 month plus one year basis. The contract between MCCG and MCH expires in March 2016. During 2014/15. The Council will work with MCCG to review existing provision and identify opportunities to re-commission this service.

2.2.3 Contract value

The current spend with MCH from the Council is approximately £200,000 per annum. It is proposed to increase this to £277,532 to ensure that all statutory requirements are met. This is a block payment.²

2.3 Procurement Tendering Process

2.3.1 It is proposed that this procurement requirement is taken forward through a Section 75 Agreement enabling MCCG to commission the services for the Council through variation of the MCCG contract with MCH.

2.3.2 The specification outlining the variation is attached at Appendix 1 of the exempt appendix.

2.3.3 The specification and funding proposed have been approved as follows

- MCCG Clinical Advisory Group on 2 July 2013
- MCCG Commissioning Committee on 10 July 2013
- MCCG Finance and Performance Committee on 17 July 2013
- Medway Council CADMT on 23 July 2013

² See Exempt Appendix for full details

2.4 Other Information

- 2.4.1 In 2013, Medway Council and Medway Clinical Commissioning Group (MCCG) undertook to review the provision of speech and language therapy for children and young people of school age. The numbers of children assessed as needing speech and language input has risen substantially (nationally as well as locally). This has been ascribed to “an increased awareness of the centrality of good communication skills to children's learning, well-being and life chances”.³
- 2.4.2 There are three groups of school age children and young people whose needs are being met through current arrangements with MCH:
- a. Primary age school children with statements of special educational need (SEN) where a speech and language therapist has assessed the child and detailed the amount and range of therapy required within the statement. Local authorities have a statutory obligation to work in partnership with the NHS to ensure service delivery outlined in a statement takes place for all school age children.
 - b. Those with primary health needs (i.e. no statement of SEN).
 - c. Those without statements but who have also been assessed by a therapist as being in need of speech and language therapy.
- 2.4.3 Medway Council worked with MCH to identify those children with a statement of special educational need including those who are Looked After Children (LAC). 723 individuals were identified against a list of 330 currently being seen by MCH indicating a level of unmet need.
- 2.4.4 The service specification has been clarified with KPIs and outcomes being more clearly defined, and this targets the provision of speech and language therapy towards children with a statement of special educational need (SEN) and/or Looked after Children.
- 2.4.5 Through clarification of the service specification with MCH it was also identified that those children with primary health needs (and who did not have statement or LAC status) needed to be included. A further 176 individuals were identified with health only related issues. These children do not have statements. It is proposed that this will be dealt with in the Section 75 as an unpooled budget and the responsibility of the CCG.
- 2.4.6 Under the current funding arrangements schools are expected to meet the needs of children who do not have a statement or a primary health need through the delegated budgets. Schools will only be able to apply for additional funding from the Local Authority over and above this amount in some cases where the school can demonstrate a high level of need. Schools will have the option to purchase services from speech and language therapy providers (including, but not limited to, MCH) in order to meet the needs of those students.

³ Communication Champion for Children Report 2012.

3 Options

In arriving at the preferred option as identified within Section 4.1, the following options have been considered with their respective advantages and disadvantages.

3.1 Options

The following procurement options have been identified:

3.1.1 Council to contract for both MCCG and Council using a pooled budget

- This option would require the CCG contract with MCH to be varied to remove the speech and language therapy requirement from the CCG's current block contract and put in place a separate service line budget.
- MCH would have to agree to have the value of their current contract reduced.
- A S75 agreement would need to be implemented between the CCG and the Council to document the pooled budget arrangements.
- The Council would be required to perform a tender under EU regulations as it would be seen as a new contract. A new supplier may be chosen, in which case TUPE would apply.

3.1.2 Joint tender – but contract individually

- The contract between MCCG and MCH would need to be varied to remove the current Speech and Language Service for school age children from the block contract.
- A tender would need to be performed.
- Economies may not be realised in the event that separate contracts are placed. Currently this is identified as £51,000.

3.1.3 The Council to enter into a Section 75 agreement with MCCG to commission the services for the Council through variation to existing block contract with MCH

- CCG to vary its existing block contract to add Council spend of £277,532 per annum for 2 years 3 months of the current MCCG to MCH contract. The MCH contract expires in March 2016.
- It is also recommended that the contract variation should remove the SALT service for school age children from the Children's Therapy Service block of £1.4m and list it as a specific line/specification within the block contract.
- A S75 agreement to be put in place between Council and CCG to define:
 - Control of monies
 - Contract management responsibilities
 - Which joint committee has responsibility for the contract and the decision making capabilities that the committee has
 - The agreement will be reviewed after two years
- This negates the need to tender.

3.1.4 No Change

- The Council cannot continue to purchase the services in the current manner as there is no written contract in place to govern the current expenditure of £200,000 per annum.

4. Advice and analysis

4.1 Preferred option

4.1.2 It is recommended to ensure compliance with all applicable legislation and to implement the revised specification and additional funding in the most timely manner that option 3.1.3 be implemented.

4.1.3. Preferred option outcomes:

The current investment does not prioritise children whose needs Medway Council has a statutory duty to meet, i.e. those with a Statement of Special Education Need. The revised pooled budget specification will ensure that the provider will prioritise those children with the greatest assessed need, i.e. those children with statements, Looked After Children and, through additional funding from MCCG, those with a primary health need.

The following procurement outcomes/outputs have been appraised in the table below to demonstrate how the recommended procurement contract award will deliver said outcomes/outputs.

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?	How will recommended procurement contract award option deliver outputs/outcomes
Medway Council and Medway CCG meet their statutory responsibilities towards children and young people with speech and language needs	Numbers of children and young people identified against number of children and young people receiving appropriate service	SEN service Medway Council Partnership Commissioning Team, Provider	Through regular performance management meetings and monthly reports	Through specification detailing service priorities
Children and young people achieve 75% of their therapy targets when reviewed	Percentage of children and young people achieving targets	Partnership Commissioning team in conjunction with the provider	Through regular reporting	Through specified target

4.2 Procurement Project Management

This procurement project will be taken through the remainder of the Gateway Procurement Process through the utilisation of the existing category management and partnership commissioning teams.

4.3 Post Contract Award Contract Management

The contract management of this recommended procurement contract award will be resourced post award through the partnership commissioning team.

4.4 TUPE Issues

None.

5. Risk Management

5.1 Risk Categorisation

The following risk categories have been identified as having a linkage to this recommended procurement contract award:

Procurement process	<input type="checkbox"/>	Equalities	<input type="checkbox"/>
Contractual delivery	<input type="checkbox"/>	Sustainability / Environmental	<input type="checkbox"/>
Service delivery	<input checked="" type="checkbox"/>	Legal	<input type="checkbox"/>
Reputation / political	<input checked="" type="checkbox"/>	Financial	<input type="checkbox"/>
Health & Safety	<input type="checkbox"/>	Other/ICT*	<input type="checkbox"/>

Risk Categories	Outline Description	Risk Likelihood A=Very High B=High C=Significant D=Low E=Very Low F=Almost Impossible	Risk Impact I=Catastrophic II=Critical III=Marginal IV=negligible Impact	Plans To Mitigate Risk
a) Service delivery	Needs of children with statements or a primary health need are unmet.	C	2	Currently an unclear specification has resulted in the Councils statutory duty not being met in all cases. The implementation of the more well defined specification and the additional funding will ensure that service users with the highest needs will be met and the statutory responsibility being achieved.

b) Political and reputational	Needs of children <i>without</i> statements or a primary health need are unmet.	C	2	Responsibility lies with schools via their delegated budget MCH is developing a traded service model with schools to meet the needs of this group of children. Communications strategy has been drawn up with MCH to ensure that schools and affected families are aware of changes during the transition period to January 2013
-------------------------------	---	---	---	--

6. Consultation

6.1 Internal (Medway) Stakeholder Consultation

- 6.1.1 Before commencement of the procurement process in order to direct the specification as part of this procurement project, internal stakeholder consultation was undertaken with the Special Education Needs Service, LAC Health Service, Safeguarding Leads and appropriate service manager and Assistant Director.
- 6.1.2 Post award further internal consultation will be undertaken in order to aid the contract management.

6.2 External Stakeholder Consultation

The current provider and Partnership Commissioning have developed a joint communication strategy. The schools have been advised and communicated with about how these funding changes impact on speech and language services. Officers are working with those schools that currently benefit by receiving services that will not be funded under the pooled budget specification to address any concerns.

7. Procurement Board

- 7.1 This report was considered by Procurement Board on 13 November 2013 and the request:
- 7.1.1 To approve the provision of Speech and language therapy to school age children and young people through Section 75 agreement with MCCG.
- 7.1.2 To approve the proposed variation to the MCCG and MCH contract to clarify the specification and improve the definition of the KPIs and outcomes.

7.1.3 To approve the increase in spend to a maximum £77,532 to meet the demands of statemented children, reducing over the next two years.

7.2 The Monitoring Officer in consultation with the Board approved the request

8. Financial and legal implications

8.1 Financial Implications

8.1.1 The additional costs associated with the recommended procurement contract award as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9, is to be met from uncommitted funds against the independent and non-maintained SEN placements budget (10410). These funds are already in the base budget and do not need to be agreed through the budget setting process for 2014-15.

8.1.2 Detailed finance and whole-life costing information is contained within **Section 2.1 Finance and Whole-Life Costing of the Exempt Appendix** that accompanies this report.

8.2 Legal Implications

8.2.1 This recommended procurement contract award as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9, has the following legal implications which the Cabinet must consider

8.2.2 The power to enter into section 75 agreements is conditional on the following:

- the arrangements are likely to lead to an improvement in the way in which those functions are exercised:
- the partners have jointly consulted people likely to be affected by such arrangements.

The proposal demonstrates that improvements in the way the functions are exercised will be made. Consultation has been undertaken with both Medway Community Healthcare and with Medway Clinical Commissioning Group who agree to the proposed changes.

8.3 Procurement Implications

8.3.1 The Procurement Implications are set out within the report.

8.4 ICT Implications

8.4.1 This procurement requirement does not have any ICT implications

9. Recommendations

9.1 The Cabinet is requested to approve the letting of the Section 75 agreement to the Supplier as outlined within Section 2.5 'Procurement Contract Award Recommendation' of the Exempt Appendix

10. Suggested reasons for decision(s)

10.1 The recommendations contained within Section 9 'Recommendations' above are provided on the basis of ensuring that the council's statutory responsibility is met with regard to the provision of Speech and Language Therapy for school age children.

Lead officer contact

Officer:	Marilyn Morgan	Title	Partnership Commissioning Manager
Department	Partnership Commissioning	Directorate	Children and Adults
Extension	8696	Email	marilyn.morgan@medway.gov.uk

Background papers

The following documents have been relied upon in the preparation of this report:

Description of document	Location	Date
Communication Champion for Children Report 2012	http://www.makaton.org/Assets/Store/Downloads/FreeResources/TwoYearsOn.pdf	2012