

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Member for Public Health
Date:	26 July 2017
Title:	Approval of novations and delegation of authority to approve
Report From:	Director of Public Health

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1. Executive Summary

1.1. The purpose of this paper is to request that the Executive Member for Public Health delegates authority to the Head of Law and Governance and Monitoring Officer to approve the use of the modification process for novation of public contracts for public health which have a modification value in excess of £1million in circumstances where there is no change in the financial impact to the County Council. This would cover novations where there has been or proposes to be universal or partial succession, including takeover, merger, acquisition or insolvency, both following internal corporate restructuring and where there has been or proposes to be novations to an unconnected organisation. This would also align with the approach agreed for adult social care.

2. Contextual information

2.1. These requests are being made in the context of the County Council's Contract Standing Orders and The Public Contract Regulations 2015 ("the Regulations"). Clause 9.5 of Contract Standing Orders states;

"Any proposed modifications to existing contracts which have not been provided for in the initial procurement documents in clear, precise and unequivocal review clauses shall be approved by the Head of Law and Governance and Monitoring Officer where the value of the modification is less than £1 million and by the Executive where the value of the modification is £1 million or greater prior to agreement of such modification."

2.2. Under Regulation 72 (1) (d) (ii) of the Public Contract Regulations 2015 a public contract may be modified without a new procurement procedure where a new contractor replaces the one to which the contracting authority had initially awarded the contract as a consequence of "universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially

established, provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Part”.

- 2.3. Consequently, in circumstances where a public contract with a remaining value of over £1 million is proposed to be novated in accordance with Regulation 72 (1) (d) (ii), this shall be treated as a modification requiring approval from the Executive Member for Public Health.
- 2.4. To make sure all future novations of public contracts are dealt with in a timely manner, to minimise the impact on payment to suppliers and to ensure the quality of the services are maintained, it is recommended that authority to approve use of the modification procedure in these circumstances is delegated to the Head of Law and Governance and Monitoring Officer.

3. Proposals

- 3.1. In order to ensure that novations are processed in a timely manner it is recommended that the Executive Member for Public Health delegates authority to the Head of Law and Governance and Monitoring Officer. This would be following consideration by the Public Health Senior Management Team, a written request with reasons would then be sent to Legal Services. It would be for approval for the use of the modification process for novation of public contracts for public health which have a modification value in excess of £1million in circumstances where there is no change in the financial impact to the County Council. This would cover novations where there has been or proposes to be universal or partial succession, including takeover, merger, acquisition or insolvency, both following internal corporate restructuring and where there has been or proposes to be novations to an unconnected organisation.

4. Financial Implications

- 4.1. There are no financial implications of these proposals; the novations would not involve any additional spend or change to the duration of the contracts.

5. HR implications

- 5.1. As the services that are referred to in this report will continue to be provided by an independent Service Provider there are no Hampshire County Council staff issues involved with this process.

6. Legal implications

- 6.1. Any proposed novations of public contracts under Regulation 72 (1) (d) (ii), where the incoming provider fulfils the criteria for qualitative selection initially established and this does not entail other substantial modifications to the contract, will be a permitted modification under the Public Contract Regulations 2015.
- 6.2. All novations will be made in writing requiring the parties consent to the novation.

6.3. In exercising its functions an authority must have due regard to the need to: Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equalities Act and advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

7. Equalities impact assessment

7.1. Given that these proposals would have no impact on either people who use these services or the staff working in the services an Equalities Impact Assessment has not been carried out.

8. Recommendations

8.1. That the Executive Member for Public Health delegates authority to the Head of Law and Governance and Monitoring Officer to approve the use of the modification process for the novation of public contracts for public health which have a modification value in excess of £1million in circumstances where there is no change in financial impact on the County Council as set out in paragraph 3.1 of the report.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	yes
Maximising well-being:	yes
Enhancing our quality of place:	no

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

None

IMPACT ASSESSMENTS:

1. Equality Duty

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2 Equalities Impact Assessment:

The paper is concerned with novating existing contracts. There would be no impact on groups with protected characteristics through a novation. The impact on groups with protected characteristics would be considered when the original proposal for the service being novated was made.

2. Impact on Crime and Disorder:

2.1. No impact has been identified.

3. Climate Change:

3.1. How does what is being proposed impact on our carbon footprint / energy consumption?

There is no impact on our carbon footprint/energy consumption from these proposals

3.2. How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

This would be considered when the services being novated were originally awarded.