

<b>REPORT TO:</b>	<b>Councillor Alisa Flemming Cabinet Member for Children, Young People &amp; Learning</b>
<b>AGENDA ITEM:</b>	<b>Public background paper to item 13a - Cabinet 20/11/17</b>
<b>SUBJECT:</b>	<b>Contract Variation to Supervised Contact and Assessment Framework</b>
<b>LEAD OFFICER:</b>	<b>Barbara Peacock, Executive Director of People</b>
<b>CABINET MEMBER:</b>	<b>Councillor Alisa Flemming Cabinet Member for Children, Young People &amp; Learning and Councillor Simon Hall Cabinet Member for Finance and Treasury</b>
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT</b>	
<p><i>This framework meets the council's statutory duty to provide contact between families for looked after children, it also contributed to the Independence Strategy in helping families to be healthy and resilient and able to maximise their life chances and independence.</i></p> <p><a href="http://www.croydonobservatory.org/strategies/">http://www.croydonobservatory.org/strategies/</a></p>	
<b>AMBITIOUS FOR CROYDON &amp; WHY ARE WE DOING THIS:</b>	
<p><i>This framework meets the council's statutory duty and contributes to the administration's ambition to enable children and families to be healthy and resilient and maximise their life chances.</i></p>	
<b>FINANCIAL IMPACT:</b>	
<p>This report recommends a variation of an approx. £1.3m to the original Framework value which is £3.2m to support implementation of this extension. The variation of the Supervised Contact and Assessment is essential for service delivery.</p> <p>The extension will create an additional cost of £1.3m over the period October 2017 to October 2018. The additional pressure on the People Department budget, this financial year's pressure will be reported as part of the quarter 2 financial monitoring and the additional costs in 2018/29 need to be built in to the budget.</p>	
<b>KEY DECISION REFERENCE NO.: 3817CYPL</b>	
<p>This is a key decision as defined in the Council's Constitution. The decision may be implemented from 1300 hours on the expiry of 5 working days after it is made, unless</p>	

the decision is referred to the Scrutiny & Strategic Overview Committee by the requisite number of Councillors.

The Leader of the Council has delegated to the nominated Cabinet Member the power to make the decisions set out in the recommendations below:

## 1. **RECOMMENDATIONS**

The Cabinet Member for Children, Young People and Learning in consultation with the Cabinet Member for Finance and Treasury is recommended:

- 1.1 To note that the Director of Commissioning and Improvements has approved the use of Regulation 18 and Regulation 29 of the Council's Tenders and Contracts Regulations to directly award and extend the Framework Agreement for Supervised Contact and Assessments ("the Framework"); and
- 1.2 to approve the variation in accordance with 1.1, above, of the Framework to extend the term for one year. The total estimated value of the variation is estimated to be in the region of £1.3m (resulting in the total contract value increasing to £4.5m).

## 2. **EXECUTIVE SUMMARY**

- 2.1 In 2014 a contract award for the provision of supervised contact and assessments under a Framework Agreement was approved for a term of 2 years with an option to extend for a further 2 years at an estimated total value of £3.2m. The framework commenced on 1 November 2014 and therefore, if the extension options were invoked this would have taken the contract up to 31 October 2018.
- 2.2 In 2016 the contract term was extended by one year (CCB1170/16-17 on 11/10/2016) and in 2017 another CCB award report (CCB approval 3/07/2017) was invoked to enter a second year extension (1 November 2017 – 31 October 2018), assumed to be within the financial commitments referred to in the 2014 CSC report. The provision to extend was provided in the original contract award report.
- 2.3 Following further financial scrutiny, the report recommends a variation to the Framework value by £1.304m to account for any additional spend during the proposed period of extension and enable to Council to deliver the required improvements in the service following the recent Ofsted inspection. This will also ensure continuity of these services during an interim period (extension of supervised contact up to end of January 2018 and extension of assessments up to end of October 2018) allowing time to redesign the new service models.

- 2.4 A procurement strategy report for the new supervised contact and assessment services was agreed by CCB on 13th June 2017 (reference CCB1241/17-18) recommending to split the parenting and families assessment service from the supervised contact service and tender it separately due to the distinct nature of each service. This strategy report sets out the intention to retender supervised contacts, residential and psychological and psychiatric assessments. Since then, a competitive tender has taken place leading to a contract award to a single provider for the provision of supervised contact for an initial term of two (2) years commencing on 1st February 2018 with the possibility to extend for a further period/periods of up to 12 months, three (3) years in total, based on available budget, performance and need. The re-procurement of elements of Assessments are currently being planned. A number of elements of Assessment provision require further scoping in order to determine whether an in-house or alternative delivery method would achieve better outcomes and this variation will provide for that.
- 2.5 The content of this report has been endorsed by the Contracts and Commissioning Board.

<b>CCB Approval Date</b>	<b>CCB ref. number</b>
09/10/2017	CCB1286/17-18

### **3. DETAIL**

- 3.1 The original framework was let on the basis of the maximum value for the four year term being £3.2m. However, it has now become clear that the contract spend is projected to be in the region of £3.193m by end of August 2017 and £4.504m by end of October 2018. This will result in an increase in value by £1.304m (42%) over the original contract value.
- 3.2 During the contract period of the Framework, there has been an increase in demand on the service, which has led to an increase on both on/ off-framework spend for assessments. As a result, the efficiency savings have not been achieved and proposals are being investigated with a view to remodelling the supervised contracts through contracting with a single provider and in-sourcing assessments.
- 3.3 In the financial year 2016/2017 we have seen an increase in the number of s.31 court applications within this 12 month period, 113 compared with 76 in 2015/16. This increase of 37 cases is a 48% increase upon the number of proceedings in the previous year and will have required a budget for almost 50% more assessments and an increased amount of contact for children involved in court proceedings.
- 3.4 We have already issued 66 s.31 court applications in the 5 months since 01.04.2017, and if this trajectory continues we anticipate reaching approximately 160 applications by the end of this financial year (not accounting for any Ofsted related increases). Due to the unprecedented demand for this service there is little option but to extensively use the existing framework providers to meet the Council's statutory obligations.

- 3.5 The Ofsted inspection has highlighted the limited use of PLO (pre proceedings) and the need for the authority to ensure that it intervenes at an earlier stage. Steps are being taken in the care planning service to review all cases subject to child protection plans over 9 months to consider whether the PLO process needs to be considered as well as improvements to work around pre birth. The inspection also highlighted the need for decisions around children coming to the care of the authority at an earlier stage. This may well result in an increased number of families who are subject to this process and the overall demand on the contact and assessment service as the local authority seeks to improve practice around early permanence. The financial burden for all assessments undertaken outside of proceedings falls wholly on the authority and therefore this will impact on the amount of spend under this Framework Agreement.
- 3.6 The increase in value resulting from demand pressures and Ofsted related improvements will be considered in light of the PCR 2015 and Tenders & Contracts Regulations (despite the original tender published under the CPR 2006, part B services). Consideration of Regulation 72(1)(c) PCR 2015 provides for changes arising from circumstances which could not have been foreseen, as long as the change does not alter the overall nature of the contract, and each increase in price does not exceed 50% of the value of the original contract or framework agreement. This Regulation will be applied for the reasons provided above in Clause 3.3 and 3.4.
- 3.7 The Council has already issued notices to the providers on the framework to extend the term for the additional one year, i.e. up to 31 October 2018.
- 3.8 Whilst the service is currently undertaking tendering and scoping work to redesign the whole service provision to achieve better value and outcomes, this report seeks authority to vary the contract value for the full period of extension with the providers set out in 3.3 below, to ensure continuity of service.
- 3.9 The recommended providers on the Framework Agreement for Supervised Contact and Assessment for Social Care and Family Support, Lots A-K are detailed below. These providers submitted evidence of best value in terms of quality and price and were therefore the most economically advantageous tenderers.

Lot	Service Provision Activity	Recommended Providers to be awarded the Framework Agreement
Supervised contact		
Lot A (strategy report approved by CCB for re-procurement)	Supervised Contact Workers	1. Humane Recruitment Ltd 2. SWIIS International 3. CF Social Work
Lot B (strategy report approved by CCB for re-procurement)	Supervised Contact Venues	1. Red Gables Family Centre 2. Croham/SFC 3. SRoberts Consulting
Lot C.1	Supervised Contact Workers & Contact	1. St. Mary's 2. Croham/SFC

(strategy report approved by CCB for re-procurement)	Venues WITH Transport / Escorted Transport	3. Red Gables Family Centre 4. One Social Care
Lot C.2 (strategy report approved by CCB for re-procurement)	Supervised Contact Workers & Contact Venues WITHOUT Transport / Escorted Transport	1. St. Mary's 2. Croham/SFC 3. S Roberts Consulting 4. Red Gables Family Centre 5. One Social Care
<b>Assessments</b>		
Lot D (potential to deliver differently)	Parenting assessments	1. Core Assets 2. St. Mary's 3. CF Social Work
Lot E (potential to deliver differently)	Special Guardianship Order Assessments	1. One Social Care 2. Core Assets 3. CF Social Work
Lot F (potential to deliver differently)	Viability Assessments	1. Coral 2. Core Assets 3. One Social Care
Lot G (strategy report for re-procurement prepared for CCB 01/06/17)	Assessments of Parents with Mental Health & Learning Difficulties	1. CF Social Work 2. Core Assets 3. Atkinson Lewis
Lot H (potential to deliver differently)	Form F Assessments (Foster Carers)	1. CF Social Work 2. One Social Care 3. Core Assets
Lot I (potential to deliver differently)	Connected persons Assessments	1. CF Social Work 2. Core Assets 3. Wills Palmer
Lot J (strategy report for re-procurement prepared for CCB 01/06/17)	Residential Parenting Assessments	1. One Social Care 2. St Michael's Fellowship
Lot K (potential to deliver differently)	Reverse Residential Parenting Assessments	1. CF Social Work 2. Symbol Family Support Services Ltd

3.10 The Framework contains clearly defined contract management and performance management arrangements. Contract review meetings are to be held on a quarterly basis, with quarterly performance management reports submitted by awarded Providers who are actively delivering services.

#### **4. CONSULTATION**

4.1 Consultation with officers in Children Social Care, Legal, Finance and Governance with regards to this variation was undertaken.

4.2 On-going feedback from families and professionals informed the development of the specification with a focus on ensuring that contact and assessment services met the needs of Croydon’s most vulnerable families and ensured the best possible outcomes at the time of establishment. To help scope procurement a market engagement event was held on 28th April 2017 prior to tendering for the new contract for the provision of supervised contacts.

## 5 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

The costs associated with this framework contract extension are essential for service delivery and will need to be funded from the Council’s Revenue Budget as follows:

### 5.1 Revenue and Capital consequences of report recommendations

	2017/18	2018/19	Total
	£'000	£'000	£'000
<b>Budget</b>	<b>660</b>	<b>230</b>	<b>890</b>
<b>Anticipated Spend</b>	<b>1,482</b>	<b>637</b>	<b>2,119</b>
<b>Overspend</b>	<b>822</b>	<b>407</b>	<b>1,229</b>

2017/18 Budget*	2017/18 Forecast as at Qtr 1*	2017/18 Forecast Variance	2018/19 Budget*	2018/19 Forecast*	2018/19 Forecast Variance
110,833	268,276	157,443	-	-	-
155,833	121,257	(34,577)	-	-	-
394,000	1,092,472	698,472	229,833	637,275	407,442
660,667	1,482,005	821,338	229,833	637,275	407,442

It is anticipated that only an additional 3 month’s expenditure (November 2017 to January 2018) against the framework will be incurred for supervised contact with a further 12 months being incurred (November 2017 – October 2018) for residential and psychiatric assessment, and the remaining elements of the assessment service. The estimated expenditure in 2017/18 in the table above is modelled on these assumptions. It is anticipated that an overspend in the region of £1.3m will incur by October 2018 above the original framework value.

The service is a statutory service under the Children’s Act 1989 and is demand led and therefore it is difficult to accurately estimate the likely expenditure against the extended framework but work will be done to ensure the whole budget (including retendered services and extended ones) meets budgetary requirements. The budget has historically been overspending. The Procurement strategies for both supervised contact and assessment will seek to bring the spend back into line with budget, however an overspend is still likely. The service team are not ready to tender assessment services as more work needs to be done on the service model for assessment to ensure that the model chosen will reduced expenditure to budget levels. Supervised contact was tendered in June with contract start date of 1<sup>st</sup> February 2018.

## **5.2 The effect of the decision**

The implementation of the contract may commit the Council to an additional spend of £1.3m over the original contract value of this Framework Agreement during the period October 2017 until October 2018. As this is a Framework, there are no guaranteed volumes of work or value assigned to any provider. It will however, provide a mechanism to obtain contact and assessment services, when required, at a prior agreed price and level of quality until the Framework's expires.

## **5.3 Risks**

There is a risk that if the council are unable to commit to an additional spend with our existing Framework Providers, supervised contact and assessments will be spot purchased, leading to price increases and further cost pressures, in addition to those already incurred in this area of expenditure.

Variations to this value could be construed as modifications in the scope or changes to the services as originally tendered. In mitigation, there has been no material changes to scope or services which could have been foreseen at the time of tendering so it is highly unlikely that any challenge would be upheld as successful. Furthermore, as the services are partly remodeled and there is possibility of running further competition in the next 3 to 6 months the risk of any existing framework operator to challenge will be deemed as low.

## **5.4 Options**

Procurement options were set out in the Strategy report with the recommended approach. No other options were considered for the award.

## **5.5 Future savings/efficiencies**

It is expected that efficiencies will be made, by remodelling the service during the period of the contract extension, to be delivered from 2018/19, until then the unit cost prices will remain the same. Cost benefits are realised through obtaining competitive unit costs at the same and/or reduced level to those set in 2014 including options for volume discounts, which are applied yearly.

Approved by: Lisa Taylor Director of Finance, Investment and Risk

## **6. COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER**

6.1 The Solicitor to the Council comments that in respect of the recommendation to vary the current contract to extend the term consideration must be given to Regulation 72 of the Public Contract Regulations (PCR) 2015. A contract may be modified i.e. varied where the modifications are not considered 'substantial' (Reg.72 (1)(e)).

6.2 In terms of what might be considered a "substantial change" is defined in Regulation 72(8) as any change, irrespective of value, which meets one or more of these conditions:

- Materially alters the character of the original contract/framework;
- Would have allowed other potential suppliers to participate or be selected, or another tender to be accepted;
- Changes the economic balance in favour of the contractor;
- Extends the scope of the contract/framework “considerably”;
- A new contractor replaces the original contractor, other than where the change arises from a review or option clause in the original contract or from corporate changes such as merger, takeover or insolvency.

6.3 There is a risk that invoking the extension period when coupled with the increase in the contract value for the extension term, could be argued to:

- materially altering the original contract/framework
- extend the scope ‘considerably’
- change the economic balance in favour of the contractor

6.4 If challenged by a third party in this respect there is a risk that the contract extension might be found to be ineffective. The risk of challenge may be mitigated by publishing a VEAT notice in which the Council sets out why it considers the award of the contract, without prior publication of a contract notice, to be permitted by Part 2 PCR 2015, and then waiting at least 10 days before entering into the contract variation. However, a VEAT notice is only effective in providing protection where the legal justification for the direct award is sound and able to withstand any increased scrutiny that may be brought about by its publication. A VEAT will not offer the intended protection where it is issued in bad faith or where the proper due diligence is lacking, regardless of whether in good faith or not.

Approved for and on behalf of Jacqueline Harris-Baker, Director of Law, Council Solicitor and Monitoring Officer

## **7. HUMAN RESOURCES IMPACT**

7.1 This report recommends an extension of an existing framework agreement. This means the service provisions would remain as they are, and there are no human resources or TUPE implications arising from this report

Approved by: Debbie Calliste on behalf of the Director of Human Resources

## **8. EQUALITIES IMPACT**

8.1 A detailed/full Equality Analysis has not been undertaken beyond the initial screening, as there is no identified negative impact on any protected characteristic group as a consequence of the development of this framework.

8.2 The equality considerations were taken into account as part of the requirements defined within the original Invitation to Tender (including terms and conditions of contract) whereby there is a need for the Tenderers to demonstrate compliance with the Equality Act. Also, as part of the venue and assessment evaluations there was a need for them to demonstrate whether their proposed services will be accessible e.g. use of the Council’s Language line and also, the awarded Providers confirmed wheelchair accessibility for the proposed contact centre venues.



8.3 A question on diversity and meeting the needs of the community was included in the tender.

**9. ENVIRONMENTAL IMPACT**

9.1 There are no direct environmental impacts. However, as part of the proposed Framework Agreement the recommended Providers have agreed to the Council’s terms and conditions of contract which includes the obligation to comply with sustainability/environmental regulations.

**10. CRIME AND DISORDER REDUCTION IMPACT**

10.1 There are no crime and disorder reduction implications associated with the proposed procurement activity and subsequent services.

**11. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION**

11.1 Invoking one year of the extension period will enable service continuity and the development of a more efficient service model.

**12. OPTIONS CONSIDERED AND REJECTED**

- 12.1 Options have been considered as part of the extension report for Supervised Contacts and Assessments.
- Expiry of the current contract extension – option rejected as this would lead to spot purchasing, which is not compliant with the Public Contracts Regulations 2015.
  - Not invoking the extension period – option rejected due to time constraints and the necessity to maintain statutory provision.

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**CONTACT OFFICER:**

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<b>Post title:</b>	Category Manager
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**BACKGROUND PAPERS - LOCAL GOVERNMENT ACT 1972**

*None*

**APPENDIX** (if appropriate).None