

# Contracts & Commissioning Board (CCB)

## Contract Variation Report

Date of meeting	23rd September 2021
By	Leanne Bobb, Lead Commissioner Public Health & Prevention, Commissioning & Procurement
Title	Continuation of Targeted Community Testing Provision
Project Sponsor	<i>Rachel Flowers, Director of Public Health</i>
Executive Director	Elaine Jackson, Assistant Chief Executive
Lead Member	Cllr Janet Campbell, Families, Health and Social Care including Public Health Cllr Callton Young Resources and Financial Governance
Key Decision	1921FHSC

### 1. Recommendations

#### The CCB is requested to endorse the recommendation below:

Pursuant to Regulation 30.3 of the Tenders and Contracts Regulations the Cabinet Member, Families, Health and Social Care, in consultation with the Cabinet Member Resources and Financial Governance, is recommended to approve an extension by way of variation of the existing contract for the provision of lateral flow testing provided by Global Production Squad Ltd (GPS) until 31<sup>st</sup> March 2022 for a maximum additional cost of £1,181,436.00 (maximum aggregated value of £2,007,960.35) whilst a procurement exercise is undertaken for the future provision of this service.

### 2. Background & strategic context

Lateral Flow testing for high-risk population groups who are asymptomatic was introduced by the Department of Health and Social Care (DHSC) as part of their strategy to manage the Coronavirus pandemic in December 2020.

There are two key aims of lateral flow testing:

- i. Surveillance  
'finding out the incidence and prevalence of COVID-19 in the population, and changes to these over time; this may help give early warning to a potential outbreak situation (2 or more related cases)'
- ii. Active Case finding  
'identifying positive cases of COVID-19 within the population, and ensuring they self-isolate to reduce transmission to other people; this could include regular testing of the contacts of a case'

Lateral Flow Antigen testing involves the processing of swab samples with a Lateral Flow device (LFD). The device detects a protein (antigen) when the person is infectious, highlighting a coloured strip on the device to show a positive result. Results are determined within 20 to 30 minutes of swab collection and do not require a lab for processing. They require minimal training to operate and do not need to be administered by a health professional. LFD are for testing asymptomatic people; people with symptoms will be able to continue to access tests through the network of NHS Test and Trace facilities.

Following approval from CCB on 28 January 2021, a procurement exercise went live on the London Tenders Portal (ref. DN520446) for the provision of Lateral Flow testing. Following a competitive exercise Global Production Squad was awarded the contract for a 6 week period as per the funding agreement with DHSC. This contract was then extended until 31st July 2021 under emergency regulation 19.3 which was approved by Procurement Board and notified to cabinet. DHSC extensions to the programme has been in 3 month tranches but are always shared with very little time to make changes, making it difficult in keeping in line with the correct procurement governance.

In the Central Government Autumn & Winter Plan, Lateral Flow testing is described to be needed until the end of March 2022 what is now called Targeted Community Testing. A flexible approach is needed to support lateral flow testing which moves away from static sites and allows for a model that is mobile and can reach different communities.

The Targeted Community Testing programme should ensure people who are disproportionately impacted by COVID-19 and those who are underrepresented within our communities are helped to access testing within the borough. There is a strong emphasis on health promotion and the safe practice measures of 'hands, face, space, fresh air' as the best lines of prevention.

The service will still need to include the provision of surge PCR testing if a variant of concern (VOC) is identified within the Borough. With each block of surge testing that is undertaken in response to a VOC there is the risk that this will in itself lead to the need for further surge testing to be undertaken. This is either directly through the discovery of other cases of the same VOC within those tested through the surge testing, or through the discovery of other cases of the VOC, or another variant, through symptomatic testing in existing testing sites across the wider area due to genomic testing being fully switched on across the local area following the discovery of the initial VOC. Ordinarily 5% of tests have their genome tested but when a VOC is discovered this is applied to 100% of symptomatic tests within the local area. The decision to 'turn on' genomic testing is taken by DHSC. The decision as to whether further surge testing is required will likely be made by DHSC and PHE.

### 3. Financial implications

Details	Internal		Period of funding	External		Period of funding
	Capital	Revenue		Capital	Revenue	
Cost of original contract					£826,524.35	15 <sup>th</sup> February – 31 <sup>st</sup> July 2021
Cost of variation					£1,181,436.00	01 <sup>st</sup> August – 31 <sup>st</sup> March 2022
TOTAL Aggregated value					<b>£2,007,960.35</b>	

Funding for the Targeted Community Testing programme is provided as an external grant from the Department of Health & Social Care (DHSC) which is approved by HM Treasury and is ring-fenced funding specifically allocated for the targeted community lateral flow testing as part of the COVID-19 response. All costs associated with this service are reimbursed by DHSC and costs are submitted monthly and paid back into the Public Health budget which is managed by the Director of Public Health within Cost Centre C1400N.

Funding arrangements for this provision is currently only agreed until the 31<sup>st</sup> December 2021. In the past, confirmation of funding from HM Treasury has always been provided only within a few days of the previous guaranteed period ending and has only ever confirmed funding for a further 3 months. For example: confirmation received on 27<sup>th</sup> September for funding until the end of December. Therefore, if testing is continued to be used as a preventative tool to help reduce the spread of COVID-19 throughout the winter months, this situation is likely to be replicated at the end of December 2021 for funding arrangements until 31<sup>st</sup> March 2022.

If the HM Treasury is unable to provide the confirmation that funds are available, it is proposed that we use the Contain Outbreak Management Fund (COMF), a ring-fenced grant from the Ministry of Housing, Communities & Local Government (MHCLG) which also sits in the Public Health Budget. The COMF is available to support local authorities in England to help reduce the spread of coronavirus and support local public health, but is only available for use until the end of this financial year (31<sup>st</sup> March 2022). Therefore, this budget is available to be used to support the financial commitments for the contract extension if HM Treasury refuse to fund beyond December and the Authority is committed to a notice period.

Ideally in order to be have a compliant contract that meets the Authorities Tendering and Contracting Regulations; a procurement exercise for the provision of targeted community testing should take place.

In parallel to extending the current contract, a procurement exercise will be conducted and a contract issued as soon as feasibly possible. The contract will be for a 12 month period, with robust notice periods to ensure there is no financial exposure should HM Treasury curtail the programme. If we are able to proceed on this basis, we will present a Procurement Strategy to the Procurement Board for a one stage, open procurement exercise under the light touch regime (LTR) for the provision of a Targeted Community Testing service for high-risk population groups who are asymptomatic. The estimated contract value is in the region of £2million for a 12 month period; this estimation is based on the current costs of the programme. A procurement exercise will be undertaken with the

approach that the provision is not guaranteed but could be called upon as and when required, similar to how a framework would be organised. For this purpose we will ensure that the terms and conditions reflect this approach and the recommended 30 day notice period is maintained. Government guidelines could change; therefore we are procuring this service in order to have the option available to us. **If at any point the government does not provide funding or a grant to support the service, notice will be served and the service will be decommissioned. The estimated costs to cover the notice period (30 days) is £140,000, if there is no government funding to support the notice period costs beyond 31<sup>st</sup> March; this has been agreed to be paid for from the Public Health budget.**

We are therefore proposing to extend the current service provider's contract up to 31<sup>st</sup> March 2022, either by utilising the grant from DHSC or, should that not be available, to use COMF. The procurement exercise will make future provision compliant with the Authority's tendering and contracting regulations and will allow for ongoing provision if required and financially supported by Central government. In the contract variation, there will be provision to terminate the current provider should they be unsuccessful in the new procurement exercise.

#### 4. Supporting information

##### **Performance**

GPS have performed well and responded eagerly to LBC's requirements throughout the duration of the contract, specifically at the start of the pandemic when the Authority was required to undertake surge testing. Service user feedback has been excellent and was publicly broadcast on the ITV evening news at one of the testing sites. GPS continue to provide solutions to the LFT programme which has supported the Authority in meeting the ever evolving requirements instructed by Central Government. GPS's ability to be flexible with resource; in terms of quickly deploying a relevant and trained workforce has enabled the Authority to be able to response to these challenges.

##### **Proposed extension value & term including the aggregated value and % increase to the value of the original award**

The proposed extension to the contract is from 01<sup>st</sup> August 2021 - 31<sup>st</sup> March 2022; the value of the extended period is £1,181,436.00 which totals an aggregate value of £2,007,960.35 which is an increase of 143%

##### **PCR analysis and any risk of challenge**

- Extending the contract will enable us to continue to have the service available via the incumbent provider and ensures that the contract is compliant within the Council's Tendering and Contracting regulations.
- However the aggregated value takes the contract well over the threshold for light touch regime; which was deemed as low risk by the Board at the first extended period.
- There is a risk of challenge; however this risk is reduced if we are able to secure the approval from the MHCLG to use the COMF to start a procurement exercise as soon as possible.
- Finance colleagues have advised that undertaking a procurement exercise without having guaranteed funding from any source beyond 31<sup>st</sup> March is too high.
- All South West London boroughs have either decided to direct award to certain providers or have used agency staff to deliver the provision using emergency regulations.
- We are unaware of any authorities that have been challenged in relation to their decision making.
- Global Production Squad Ltd (GPS) has been delivering this service since 15<sup>th</sup> February 2021 and has been a valuable partner offering significant flexibility and support with the programme; they have continued to deliver the contract with varying levels of uncertainty therefore we believe they will accept the offer of the extension
- The contract can be terminated on four week's notice

##### **Options considered:**

###### **1. *Extend the contract until the 31<sup>st</sup> March only and decommission***

- Central Government Autumn & Winter Plan, described Targeted Community Testing being needed until the end of March 2022. Therefore based on this information there may no longer be a need for this type of testing provision.
- Testing requirements are reducing – there is less need to test in order for residents to undergo daily activities and with the successful rollout of the vaccination problem there is greater immunity however future provision will be based on how well healthcare services can cope throughout the winter months and numbers of positive cases.

- This would be high risk; as the Authority would not have the right governance in place if the service is needed beyond 31<sup>st</sup> March 2022

## **2. Deliver the service using temporary (Agency) staff and in-house expertise**

- This would be a complete change to the current arrangement and would require dedicated resource and commitment from the Public Health COVID team to manage the agency staff to deliver the service
- Using agency staff in light of the Authorities situation with a number of staff having been made redundant or who are currently at risk; has been frowned upon.
- Public Health would have to provide clear direction and support for mobilising the new way of delivering the service
- This option is likely to be the cheapest but would be more resource heavy on the Authority.

## **3. Procure a new contract for the provision of targeted community Testing**

- Undertaking a full procurement exercise requires time this would result in there being a significant gap in provision if an extension to the current contract is not approved.
- Funding is currently not guaranteed beyond 31<sup>st</sup> December; therefore we do not have a robust way of paying for a contracted service.
- There are capacity issues within the commissioning and procurement team making this more difficult to ensure an exercise is undertaken in a timely manner. Additional support may be sought within alternative teams and the dedicated Public Health COVID team

### **Re-procurement options going forward**

Even with the contract being extended this could still result in a tight timeline for a procurement process. A procurement process would be the best option going forward in order to ensure we would have a compliant contract in place which could be managed for the foreseeable future. Running a procurement exercise in parallel to the extended period would help to mitigate the risk of challenge as we would be able to terminate the original contract and start the new contract once the procurement was completed and contract award approved by Cabinet.

A procurement strategy paper will be brought to Board once a clear outcome of the funding is agreed. Due to the existing contract value a 'Find a Tender' notice would have to be issued. This route is lawful under PCR as they are covered under light touch procurement rules as they fall under the following CPV codes:

- 85000000 Health and social work services
- 85323000 Community Health Services.

The procurement exercise will be undertaken with the approach that the provision is not guaranteed but could be called upon as and when required, similar to how a framework would be organised. For this purpose we will ensure that the terms and conditions reflect this approach and the recommended 30 day notice period is maintained. Government guidelines could change; therefore we are procuring this service in order to have the option available to us; however there is a strong possibility that very little may be required.

## **5. Conclusion**

In the Central Government Autumn & Winter Plan, Lateral Flow testing is described to be needed until the end of March 2022 what is now called Targeted Community Testing. The Director of Public Health has a statutory role to protect the health of Croydon residents and the provision of a targeted community testing service to asymptomatic people supports this; whilst we manage everyday activities in the mists of a global pandemic.

In order to for the Authority to continue to meet this requirement; it is recommended to:

- Extend the current contract the existing contract for the provision of lateral flow testing provided by Global Production Squad Ltd (GPS) until 31<sup>st</sup> March 2022 at an additional cost of £1,181,436.00 (maximum aggregated value of £2,007,960.35) with the assurance of COMF being made available if HM Treasury decide to no longer funding the testing programme but the Authority is bound by a notice period. All costs for this provision are to be reimbursed by the DHSC or COMF (if necessary).

## **6. Outcome and approvals**

CCB outcome	Date agreed	
<i>Insert outcome of CCB discussion</i>	Service Director <b>Rachel Flowers</b>	05/10/2021
	Cabinet Member for Finance & Resources <b>Cllr Callton Young</b>	06/10/2021
	Finance <b>Mirella Peters</b>	07/10/2021
	Legal <b>Sonia Likhari</b>	29.9.2021
	Lead Member (over £500k) <b>Cllr Janet Campbell</b>	06.10.2021
	CCB	CCB1697/21-25 - 07/10/2021

## 7. Comments of the Council Solicitor

The current contract term expired 31<sup>st</sup> July 2021 however services have continued to be provided. The proposed contract variation will need to record that the extension is deemed to take effect from 1<sup>st</sup> August 2021. Other legal considerations are covered in the report.

Approved by Sonia Likhari, Corporate Solicitor, on behalf of the Director of Law and Governance

## 8. Chief Finance Officer comments on the financial implications

Approved by Mirella Peters on behalf of the Chief Finance Officer