LONDON BOROUGH OF WALTHAM FOREST

1. SUMMARY

1.1 This report seeks the approval of the Portfolio Lead Member for Health and Wellbeing to the direct award of a contract for a community sexual health service. The direct award will enable the current service to continue until the re-commissioning of sexual health services is complete.

2. RECOMMENDATIONS

2.1 For the reasons set out in this report the Portfolio Lead Member for Health and Wellbeing is recommended to waive Rule 7 of the Council’s Contract Procedure Rules and approve the direct award of a contract for Community Sexual Health Services to North East London Foundation Trust (NELFT) for a period of up to a maximum of 18 months from October 2015 to March 2017 to enable the continuation of the community sexual health service in Waltham Forest.

3. PROPOSALS

Background

3.1 As a result of the passage of the Health and Social Care Act 2012 ("HSCA 2012") statutory functions and duties relating to public health services were transferred to the Council on 1st April 2013. As mentioned in the Cabinet reports from May and February 2013 a number of public health contracts were novated under a Transfer Order enacted by the Secretary of State under the powers granted by HSCA 2012.

3.2 As a result of the transition and transfer of functions, arrangements were made and are continuing for the Council to undertake
commissioning of public health services in exercise and discharge of the transferred functions and duties.

3.3 The Community Sexual Health contract was previously subject to a waiver granted in March 2014 by Cabinet to extend to the 30th September 2015. This was to ensure continuity of services and enable quality assurance, value for money and the necessary financial checks for these services. The services each needed to be reviewed in line with the Council’s Public Health commissioning intentions and the priorities of the Health and Wellbeing Strategy to inform the services to be re-commissioned.

3.4 A further extension by waiver is not permissible by virtue of the original procurement and contract terms and conditions. It is therefore proposed that the Council should waive the requirement for competition set out in Rule 7 of the Council's Contract procedure Rule and award a short term new contract to the current provider, North East London Foundation Trust (NELFT). As part of EU procurement regulations Contracting Authorities are able to publish a ‘Voluntary Ex Ante Transparency’ or VEAT notice. It is a means of advertising the intention to let a contract without opening it up to formal competition. The VEAT notice actively demonstrates compliance with the transparency requirement of the Procurement Regulations and the Council has the option of issuing such a notice. Further information is set out in para.7.2.

3.5 The timescale for the re-commissioning of sexual health services has lengthened because the transfer of the commissioning of NHS services to Local Authorities is in a state of flux with an embryonic market and all options need to be considered including an option to commission on a pan London and sub-regional basis. This approach supports the development of integrated sexual and reproductive health services that meet the sexual health needs of the people of Waltham Forest and improve health outcomes by providing quality and holistic services in the right place, at the right time, by the right people and at the right cost.

3.6 The duration of the direct award of contract for community sexual health services will allow for the completion of the re-commissioning of sexual health services in April 2017.

3.7 The community sexual health service provides rapid and easy access to the full range of contraceptive services (including LARC); and prevention, testing, diagnosis and management of uncomplicated sexually transmitted infections for all age groups. It also contributes to improving primary care through provision of training to GPs and pharmacists.

3.8 The Local Authorities (Public Health Functions and Entry to Premises by Local Health Watch Representatives) Regulations 2013 mandates each local authority to provide, or make arrangements to secure the provision of, open access sexual health services in its area. The direct
award of contract listed in this report will ensure that the council can continue to meet this mandatory obligation.

4. OPTIONS & ALTERNATIVES CONSIDERED
4.1 The council has a mandatory duty to ensure that the community sexual health service continues in order to meet its responsibilities with regard to the health of residents of Waltham Forest.
4.2 The current contracts expire on the 30th September. In order to ensure the continuation of the service until the completion of the re-commissioning the only available option is to make a direct award.

5. SUSTAINABLE COMMUNITY STRATEGY PRIORITIES (AND OTHER NATIONAL OR LOCAL POLICIES OR STRATEGIES)
5.1 The continued effective delivery of the service will make a significant contribution to the Council’s priority of protecting Waltham Forest’s most vulnerable residents, in particular to provide our children and young people with good quality health services.
5.2 Waltham Forest’s Health and Wellbeing Board’s priorities include ‘increasing the opportunity for residents to be healthy, starting with a focus on teenage pregnancy’ and reducing the number of smokers in the borough.
5.3 The Waltham Forest Health and Wellbeing Strategy includes the following priorities: A good start in life for children; A thriving retirement; embedding opportunities for preventing health and social problems; Safeguarding children, young people and vulnerable adults.

6. CONSULTATION
6.1 Consultation on this direct award of contract is not required. However the re-commissioning of sexual health services has involved extensive consultation and support for the approach adopted in the re-commissioning of sexual health services, The consultation has included:

- Extensive consultation with clinicians, service providers, service users and local residents was carried out in 2013 during the review of sexual health services. This also included dedicated engagement with young people through focus groups and surveys with over 400 young people.
- Further consultation was undertaken between September 2014 and January 2015 as part of the sexual health commissioning review.
- A consultation event was held on 28 April 2015 attended by attended by 30 stakeholders – clinicians, residents and service managers – to review and update the councils sexual health strategy.
7. IMPLICATIONS

7.1 Finance, Value for Money and Risk

7.1.1 The contract values of the direct award is as follows;

7.1.2 Community Sexual Health: 18 month contract from October 2015 to March 2017: £1,434,000.

7.1.3 There is an inherent risk in the use of a VEAT as the publication of a VEAT notice may increase awareness of the proposed direct award and so increase the risk of challenge from other service providers. This is considered to be a low level risk due to the following;

- Providers of sexual health services are aware of, and engaged in, the pan London wide approach to re-commissioning of sexual health services and so understand the rationale for the continuation of the service by direct award
- Many providers of sexual health services will be in a similar position with their commissioning authorities
- The extensive consultation on sexual health services to identify the current gaps in service and to inform the new model of services has raised awareness and understanding of the challenges and time required to properly re-commission these services.

7.2 Legal

7.2.1 In accordance with the LBWF Constitution this report is seeking the approval of the Portfolio Lead Member for the direct award of a contract to the North East London Foundation Trust (NELFT) for the provision of sexual health services for an interim period from October 2015 to March 2017 with a total value in the region of £1,434,000.

7.2.2 Revised EU procurement regulations were introduced into UK law by the Public Contract Regulations 2015 (PCR 2015). These are effective from 26 February 2015.

7.2.3 However, it is arguable that the subject matter of this report comes within an exemption by virtue of s.120 (PCR 2015) as a contract award procedure that relates to the procurement of health care services for the purposes of the NHS and will be executed before 18 April 2016.

7.2.4 Where applicable the exemption cited above means that the procurement regulations governing the subject matter of this report are the previous PCR 2006 and that this would be considered a “part B service”.

7.2.5 PCR 2006 part B services are exempt from the rigours of a full EU procurement process but must still satisfy principles enshrined in the Treaty for the Functioning of Europe (TFEU). These state that any procurement must demonstrate equality, fairness, transparency, and openness.
7.2.6 The publication of a notice calling for competition is not a strict requirement for PCR 2006 part B services. It has been suggested that a VEAT notice be issued prior to the direct award of the contract being considered by this report. A VEAT notice may offer limited protection but only when used correctly. Issuing a VEAT notice does not provide a complete defence but it may preclude a ruling of “ineffectiveness” by a court in the event of a challenge to the direct award of a contract.

7.2.7 However, the limited protection to be gained by the issuing of a VEAT notice is only available where the issuing body are able to demonstrate a genuine belief that the direct award of a contract without competition is permissible under the regulations. Absent such genuine belief and the VEAT notice will be disregarded.

7.2.8 As stated in paragraph 7.1.3 above the most obvious risk of issuing a VEAT notice is the publicity generated by the issuing of the notice. However, the commissioning of various health related services has been mandated from NHS England to local authorities. This has resulted in a state of flux and an embryonic market over which local authorities have no control. All commissioners and providers of these services are in a similar position of uncertainty and confusion for the immediate short term future. Therefore the risk of challenge to a direct award (whether a VEAT notice is issued or not) is significantly mitigated by these factors and that the award is for a short term, pending review and long term procurement decisions.

7.2.9 In the circumstances and for the reasons set out above those risks are inevitable yet minimal and acceptable.

7.3 Equalities and Diversity

7.4 The council’s public health responsibilities provide an opportunity through the delivery of its contracts and its Health and Wellbeing Strategy to ensure that all parts of our community have effective access to health improvement services.

7.5 Existing service contracts have been assessed to ensure that they reach those parts of the community that need them most and this will continue to be the approach taken when preparing future re-commissioning proposals.

7.6 This report proposes few changes to the existing contracts, and therefore the services provided. The recommendations in this report do not require a full equality analysis. However, an equality analysis will be included in the re-commissioning of sexual health services.

7.7 Sustainability (including climate change, health, crime and disorder)

7.7.1 There are no new sustainability implications arising from this report. The main sustainability implications for service provision involve the
energy efficiency of the buildings used by the service and how staff and users travel to deliver and access the services. These will be monitored in the regular meetings with the service provider.

7.8 Council Infrastructure

7.8.1 There are no implications arising from this report.

BACKGROUND INFORMATION (as defined by Local Government (Access to Information) Act 1985) - none