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<b>Decision Maker:</b>	<b>Executive with pre-decision scrutiny from Adult Care &amp; Health Policy &amp; Development Scrutiny Committee</b>
<b>Date:</b>	<b>10<sup>th</sup> February 2021 with pre-decision scrutiny on 20<sup>th</sup> January 2021</b>
<b>Decision Type:</b>	Non-Urgent                      Non-Executive                      Non-Key
<b>Title:</b>	<b>CONTRACT PROCEDURE RULES: DELEGATED AUTHORITY ARRANGEMENTS FOR CONTRACT EXTENSIONS</b>
<b>Contact Officer:</b>	Laurence Downes, Assistant Director Governance & Contracts Tel: 020 83134805 E-mail: laurence.downes@bromley.gov.uk
<b>Chief Officer:</b>	Kim Carey, Director of Adult Social Care
<b>Ward:</b>	N/A

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1. Reason for report

- 1.1 At its meeting of 24<sup>th</sup> November 2020, the Adult Care & Health Policy & Development Scrutiny Committee (Adult Care & Health PDS) requested further information on arrangements for the delegation of authority to Officers to extend contracts. A decision by the Leader, on behalf of Executive, in relation to Report ACH20-067 (concerning delegated authority to the relevant Chief Officer to approve a formal contract extension option in due course) was deferred pending a further report to ACH PDS in January 2021.

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2. **RECOMMENDATION(S)**

2.1 It is recommended that:

- i. **Adult Care & Health PDS note this report and recommend to Executive that a deferred recommendation in Report ACH20-067(Direct Payments Support & Payroll Contract Award) is Approved, specifically the granting of delegated authority to the Director of Adult Services to apply the extension option for this contract, subject to Agreement with the Portfolio Holder and relevant Officers as determined by the Contract Procedure Rules.**
- ii. **Executive approve a deferred recommendation within the report ACH20-067.**

### Corporate Policy

1. Policy Status: Existing policy.
  2. BBB Priority: Excellent Council.
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### Financial

1. Cost of proposal: N/A
  2. Ongoing costs: N/A.
  3. Budget head/performance centre: N/A
  4. Total current budget for this head: £N/A
  5. Source of funding: N/A
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### Staff

1. Number of staff (current and additional): N/A
  2. If from existing staff resources, number of staff hours: N/A
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### Legal

1. Legal Requirement: Statutory requirement.
  2. Call-in: Call-in is not applicable.
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments: N/A

### **3. COMMENTARY**

- 3.1 On 24<sup>th</sup> November 2020, a Contract Award report was submitted for Leader decision with pre-decision scrutiny from Adult Care & Health PDS. The report (ACH20-067) concerned the award of contract for the Direct Payments & Payroll Support Service contract.
- 3.2 The report recommended an award of contract for a period of five years with an option to extend for up to two years. The estimated annual value of the contract was £202k, the estimated value of the initial contract term being £1,010k and the estimated value of the extension period being £404k (estimated whole life value of £1,414k).
- 3.3 The report recommended that delegated authority be granted to the Director of Adult Social Care to approve the extension option in due course, in Agreement with the Portfolio Holder and relevant Officers as determined by the Contract Procedure Rules.
- 3.4 Members of Adult Care & Health PDS queried the request for delegated authority for the extension option. In response, the Leader approved the award of contract but deferred a decision on the delegation of authority for the extension option to allow further investigation into the circumstances under which such authority is routinely delegated to Officers with a report to be presented to Adult Care & Health PDS at its January 2021 meeting.

#### **Delegated Authority Arrangements**

- 3.5 It is well established in both custom and practice and within the processes of the Council's Contract Procedure Rules that, at the point of Award of Contract, delegated authority to a suitable Chief Officer can be sought from Members to apply any extension options relevant to the contract. Such delegated authority is normally subject to Agreement with the relevant Portfolio Holder, the Assistant Director of Governance and Contracts, the Director of Corporate Services and the Director of Finance.
- 3.6 It has been normal practice for several years to request Chief Officer delegated authority for extensions; it is exceptional not to do so.
- 3.7 This is illustrated by considering all Contract Award reports submitted for Executive or Leader decision in the past three calendar years. Full details are provided in Appendix 1, but are summarised as follows:
- 26 Contract Award reports, where extension options were relevant, were submitted for decision between January 2018 and September 2020;
  - 24 of the 26 Contract Award reports submitted sought delegated authority to the relevant Chief Officer to approve the available extension option. All were approved;
  - Delegated authority was sought for a wide variety of extension options. The smallest duration of extension option was one year; the largest was eight years;
  - Delegated authority was sought for a wide variety of contract values. The smallest value of extension option was £236k; the highest was £34M;
  - The Contract Award reports covered all Portfolios in the Council with the highest number coming from the Adult Care & Health Portfolio with 10 requests for delegated authority, all approved;
  - Only two Contract Awards did not request delegated authority for the extension option. These were:

- the Contract Award for Environmental Services due the length and value of the extension option (eight years at £255M);
- the Contract Award for Housing Services due to the contract being awarded via exemption (although delegated authority was granted to apply variations to the contract up to £1.5M).

### **Contract Procedure Rules and Governance Arrangements**

- 3.8 Delegated authority to a Chief Officer for extension options is covered within the Council's Contract Procedure Rules in paragraph 13.4. Delegated authority is permissible provided:
- The delegated authority for the extension is sought and agreed at the point of Contract Award;
  - The extension is subject to Agreement with the Portfolio Holder, the Assistant Director Governance & Contracts, the Director of Corporate Services and the Director of Finance;
  - That required Contract Monitoring Reports have been completed;
  - That the extension option is Approved with at least six months left on the existing contract term;
  - That the extension is notified to Audit Sub-Committee as part of the bi-annual report on contract extensions, exemptions and variations.
- 3.9 Delegated authority is not assumed. It must be requested at the point of Contract Award and the decision maker, whether at Portfolio Holder or Executive level, must specifically approve the granting of delegated authority.
- 3.10 Similarly, delegated authority for the extension may be referred back to Member decision – for example, where the conditions of the delegated authority have not been met or where Contract Monitoring reports suggest greater scrutiny is required.
- 3.11 Where delegated authority has been granted, Members continue to have oversight of the contract (and the status of the extension option) via the following mechanisms:
- Annual Contract Monitoring Reports. As per 23.2 of the Contract Procedure Rules, all contracts with a whole life value of £500k or more are subject to an annual monitoring report submitted to the Portfolio Holder via the relevant PDS.
  - Quarterly Contract Database reports. Each PDS receives a quarterly report on all contracts with a whole life value of £50k or higher. The report includes a commentary setting out the status of each contract. The commentary typically notes where an extension option is available and where delegated authority has been granted to approve the extension.
  - Audit-Sub reports. All extensions with a value (cumulative) of £50k or higher are subsequently reported on a bi-annual basis to Audit-Sub Committee.
- 3.12 Where a decision on an extension has been delegated to Chief Officer then governance processes still apply as per the Contract Procedure Rules. A decision on an extension is subject to a formal Gateway report with input from Procurement, Legal and Finance. Agreement must be sought from the Assistant Director Governance & Contracts, the Director of Corporate Services, the Director of Finance and, finally, the Portfolio Holder, before a decision is made.

<b>Non-Applicable Sections:</b>	Policy Implications Financial Implications Legal Implications Personnel Implications
Background Documents: (Access via Contact Officer)	Report ACH20-067 24 <sup>th</sup> November 2020