



**Open Report on behalf of Martin Samuels, Executive Director – Adult Care and Community Wellbeing**

Report to:	<b>Councillor Mrs S Woolley, Executive Councillor for NHS Liaison, Integrated Care System, Registration and Coroners</b>
Date:	<b>15 – 22 December 2023</b>
Subject:	<b>LCC Coronial Toxicology Services</b>
Decision Reference:	<b>I030209</b>
Key decision?	<b>Yes</b>

**Summary**

The report seeks approval from the Executive Councillor to re-procure the 'LCC Coronial Toxicology Services' contract.

This is to ensure the Council is able to meet its ongoing statutory duty under the Coroners and Justice Act (2009) to arrange toxicology services for the Lincolnshire Coroner. The Coroner has a duty to certify and register deaths, via investigation of the cause of death, for any cases referred. The Coroner utilises the results of Toxicological screening in ascertaining the cause of death which can be used in court proceedings at inquest.

**Recommendation(s):**

That the Executive Councillor for NHS Liaison, Integrated Care System, Registration and Coroners:-

1. approves the re-procurement of the Toxicology contract by way of an Open tender with the intention of awarding a single contract.
2. delegates to the Executive Director – Adult Care and Community Wellbeing in consultation with the Executive Councillor for NHS Liaison, Integrated Care System, Registration and Coroners authority to determine the final form of the new contract and to approve the entering into of the contract.

**Alternatives Considered:**

1) To further extend the current agreement:  
Whilst this would ensure that the Council is able to fulfil its legal obligations under the Coroners and Justice Act 2009, there are no further extension periods available within

the current contract. Therefore this option was rejected as it would not be compliant with the Public Contract Regulations 2015.

2) To tender via an established Framework in accordance with the Council's CPPR's:

This contract has historically been tendered via an ESPO Framework however, on expiry of the framework ESPO made the decision to not reprocure the framework. The Commercial Team have conducted research and no suitable frameworks have been found which the Council is able to access.

In the absence of an available Framework the Open procedure is the most compliant route to market and will offer the Council the best commercial outcome within a very limited market.

**Reasons for Recommendation:**

The current agreement is due to end on 31st July 2024 with no further options to extend. Therefore, the Council intends to publish the 'Coronial Toxicology Services' re-procurement in February 2023.

Following consultation and advice from the commercial team, an open tender/procedure has been chosen as the most appropriate route by the service area to ensure maximum engagement with the market. A re-tender is compliant with the Public Contract Regulations 2015, will allow for specification improvements for security of supply, costs and will ensure the flexibility to adapt to changing coronial areas, therefore enabling the Council to meet its statutory duty.

**1. Background:**

**Context:**

There is a legal obligation for the Council to provide toxicology analysis under The Coroners and Justice Act (2009) to enable the Coroner to fulfil their statutory role to provide coroners services in Lincolnshire.

The toxicology contract, whilst an independent contract, works alongside our current post-mortem and mortuary services contract assisting in providing a cause of death to the Coroner and bereaved families in Lincolnshire, thus meeting the Council's legal obligation.

At a national level the total number of registered deaths in England and Wales fell in 2022 compared to 2021 but the number of deaths reported to coroners rose by 7% in that same period. Of those deaths reported to coroners 43% resulted in post-mortem examination and 17% proceeded to an inquest; of the conclusions recorded, natural causes, accident/misadventure and unclassified conclusions were the most prevalent, up 40%, 14% and 7% on 2021 respectively. From the 43% of deaths referred to coroners that resulted in post-mortem examination, 24% of these required toxicology analysis to assist in determining a cause of death. This is an increase of 4% compared to 2021.

These national trends are reflected in Lincolnshire’s statistics and although it is uncertain at this time if this trend of increasing toxicology volumes will continue, population and demographic factors within Lincolnshire suggest it is likely and thus it is prudent to plan for further increases.

<b>Lincolnshire volumes</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
<b>Referrals</b>	3272	2951	3228
<b>Post-mortems</b>	1279	1374	1488
<b>Toxicology</b>	336	343	470
<b>% of Post-mortems Requiring Toxicology</b>	26.3%	25%	31.6%

To meet its current requirement of approximately 400 cases for toxicology analysis per year the Council currently has 1 contract operating with a toxicology provider, being University Hospitals of Leicester NHS Trust. The current contract value is £140,000 per annum.

Volumes will not be committed to in the tender process therefore, allowing the required flexibility.

**Procurement Process:**

A new contract is expected to run for a period of three years commencing 1st August 2024, ending 31<sup>st</sup> July 2027. There will be an option for the Council to extend by one additional period of two years. The ultimate date of conclusion will be no later than the 31st July 2029 if the extension period is taken.

The award criteria will focus on quality to ensure; the toxicology reports are written in a clear accessible format to enable use in court proceedings, to ensure timescales are met preventing delays to the Coroner and to encourage the sharing of sector knowledge/trend information. The award criteria will also focus on cost to ensure best commercial outcome is achieved. As a result of market engagement a change in the market regarding pricing as ‘price per case’ rather than ‘price per test’ was identified. This will allow for a single toxicology price rather than a schedule of rates which has historically made it hard to predict annual spend. Due to current market conditions there is an expectation of a price increase for toxicology services therefore, competing the requirement through an open tender process using price and quality will help to mitigate any increase. Pricing will be fixed for the initial contract term of three years thereby allowing for surety of budgets and greater control of forecasting and planning.

The Council’s current contract has performed well in meeting increasing demand with only occasional, minor operational issues experienced. Lotting will not be utilised in the re-tender as there are only very few specific tests that most suppliers cannot do, which isn’t attractive to award separately. It is envisaged that these will be sub-contracted by the successful Supplier. This approach was confirmed as market standard during pre-market engagement sessions with suppliers. KPI’s will be utilised to focus on collection schedule

adherence, report standards, report turnaround times and Management Information reporting which will ensure potential operational issues are minimised.

A decision by HM Chief Coroner has been pending since late 2020 that relates to the merger of the North and North East Lincolnshire coronial area with either the Lincolnshire or East Riding and Hull coronial areas. The decision has been repeatedly delayed and is now expected in the January of 2024. It is hoped that this will result in a merger of the Lincolnshire coronial area with the North and North East Lincolnshire coronial area. The new contract will allow for an increase in scope and volume reflective of the additional requirement expected.

In January 2013, the Public Services (Social Value) Act 2012 came into force. Under the Act the Council must before starting the process of procuring a contract for services consider two things. Firstly, how what is proposed to be procured might improve the economic social and environmental wellbeing of its area. Secondly, how in conducting the process of procurement it might act with a view to securing that improvement. The Council must only consider matters that are relevant to the services being procured and must consider the extent to which it is proportionate in all the circumstances to take those matters into account. In considering this issue the Council must be aware that it remains bound by the PCR 2015 which itself through its requirement for transparency, fairness and non-discrimination places limits on what can be done to achieve these outcomes through a procurement.

The toxicology service does not directly contribute to the economic social or environmental wellbeing of the area.

Under section 1(7) of the Public Services (Social Value) Act 2013 the Council must consider whether to undertake any consultation as to the matters referred to above. The service and the value it delivers is well understood. Best practice recently adopted elsewhere has been reviewed. This and the market consultation carried out is considered to be sufficient to inform the procurement. It is unlikely that any wider consultation would be proportionate to the scope of the procurement.

## **2. Legal Issues:**

### Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

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

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in section 149 may involve treating some persons more favourably than others.

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision-making process.

*A separate Equality Impact Assessment has not been undertaken. There are not considered to be any direct impacts of the chosen procurement route on people with a protected characteristic.*

Joint Strategic Needs Assessment (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health and Wellbeing Strategy (JHWS) in coming to a decision.

*There are not considered to be any direct implications of the choice of procurement route on the JSNA or the JHWS.*

## Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

*The decision is not considered to have any implications for the section 17 matters.*

### **3. Conclusion**

The Council is required to undertake a procurement exercise to identify an appropriate supplier of Coronial Toxicology Services to enable the Council to fulfil its obligation to meet its ongoing statutory duty under the Coroners and Justice Act 2009.

Following consultation and advice from the commercial team, an open tender/procedure has been chosen as the most appropriate route by the service area to ensure maximum engagement with the market. The contract will be awarded to the supplier whose tender scored the highest, and which provides the Most Economically Advantageous Tender (MEAT) against the Council's chosen award criteria.

The Executive Councillor is invited to approve the publishing of an Open tender to achieve this.

### **4. Legal Comments:**

This project is within the Council's powers and is in accordance with a compliant procurement process and within the remit of the Executive Councillor to determine.

### **5. Resource Comments:**

Based on the variability seen through engagement undertaken, there is a potential risk that the £140,000 existing budget is not sufficient to cover the future cost of this statutory service. The scale of the increase will only be known once the procurement exercise has been concluded however with a maximum exposure of up to £70,000, wider Public Protection budgets can support.

### **6. Consultation**

#### **a) Has Local Member Been Consulted?**

n/a

**b) Has Executive Councillor Been Consulted?**

Yes

**c) Scrutiny Comments**

The decision will be considered by the Public Protection and Communities Scrutiny Committee at its meeting on 12th December 2023 and the comments of the Committee will be reported to the Executive Councillor.

**d) Risks and Impact Analysis**

The Risks and Impact Analysis is outlined in the body of the report.

**7. Background Papers**

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by Emma Golds, who can be contacted on [emma.golds@lincolnshire.gov.uk](mailto:emma.golds@lincolnshire.gov.uk).

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