

Report of Children’s Commissioning and Market Management

Report to Director of Children’s Services

Date: 7th November 2014

Subject: Waiver of CPRs 9.1 and 9.2 to award a one year contract to Leeds Weekend Care Association for delivery of targeted short breaks for disabled children, young people and their families



Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. This Waiver Report requests approval to award a 12 month contract to Leeds Weekend Care Association (LWCA) for the delivery of the Weekenders Club and the Out & About Club services. The contract shall commence on the 1st April 2015 and expire on the 31st March 2016.
2. This contract is required to ensure continuity of provision, whilst a full commissioning exercise is completed as part of a wider strategic and needs assessment for short breaks.
3. There is a risk of challenge by not going out to competition but this risk can be mitigated by the publication of a Voluntary Transparency Notice in OJEU immediately after the decision to award the contract to this provider has been taken and then waiting 10 days to see if any challenges are made.

Recommendations

4. The Director of Children’s Services is recommended to approve the waiver of Contracts Procedure Rules No 9.1 and 9.2 – High Value Procurements, and award a contract to LWCA in the sum of £194,214.

1 Purpose of this report

- 1.1 The purpose of this report is to request approval for the waiver of CPRs 9.1 and 9.2 (High Value Procurements) to award a one year contract to LWCA, from 1st April 2015 to 31st March 2016, for the delivery of targeted short breaks at a total value of £194,214.

2 Background information

- 2.1 Two contracts are currently in place with LWCA to deliver targeted short breaks for children and families; Weekenders Club (£171,852) and Out & About Club (£22,362). These contracts were awarded following a procurement exercise during 2009, where a number of lots were tendered for different types of short break. The contracts started in April 2010 and were for three years, with the option to extend by a further two 12 month periods. Both contracts are now in their final extension period.
- 2.2 Targeted short breaks are part of a continuum of provision and are a vital element of the duty to provide short breaks, which came into force in April 2011. The focus in Leeds is on increasing access to universal settings, so that children and young people with SEN and disabilities can take part in activities with their non-disabled peers and be active members of their local communities. In addition, this should help reduce demand on specialist services such as residential homes and Individual Support Workers. This is important if families are to be empowered to live normal lives and not become dependent on intensive services, with many children and young people then experiencing a sharp drop in provision when entering adulthood.
- 2.3 Feedback from families has shown that although being able to access universal settings is the main way they want to receive their short breaks, some also want targeted group-based activities, designed specifically for children and young people with SEN and disabilities. These tend to have higher staff to user ratios than universal, but are less intensive than specialist provision. The challenge is to ensure these activities are available for those who are assessed as needing them, whilst encouraging providers to be flexible, responsive and sustainable.

3 Main issues

Reason for Contracts Procedure Rules Waiver

- 3.1 The re-commissioning of targeted short breaks will involve a significant change in model to ensure it contributes effectively to the implementation of the new Children and Families Act, meets the expectations and needs of families and reduces demand on specialist provision. This change will require in-depth consultation with families, providers and other stakeholders before a strategy can be agreed. Leeds has also been liaising with other local authorities in the region and it is the intention that there is some joint working in order to maximize opportunities for sharing best practice and cost savings through economies of scale. In addition, reciprocal arrangements for accessing services across the region could be beneficial for families, particularly for those living near bordering authorities. It will not be possible to complete this work in time for the current contract expiry on 31st March 2015. A solution is therefore required to secure interim measures.
- 3.2 The preferred option is to award a further one year contract to Leeds Weekend Care Association. This will be for the same contract value, but the provider will be expected to offer improved value for money through a refocusing of service models, which will ensure services offer excellent quality at an appropriate cost. These services are a key component of Children's Services' short break offer because they are parent-led, child-centred and highly personalised. There are no concerns about the performance, quality and impact of these

services but when awarding a new 12 month contract, there will be the opportunity to improve monitoring procedures to enable the provider to better evidence this. This will involve refreshing the service specification and making savings where appropriate. The provider has demonstrated a commitment to working in partnership with Leeds Children's Services and flexibility to respond to changing need. They are keen to improve their value for money through changes to length of stay and age range, which will increase their ability to empower families to become more independent and so ready for adulthood. As part of this, LWCA intend to move towards a more self-sustaining funding model through the implementation of new fee structures. The aim would be to reduce excessive subsidy and work towards levelling the financial costs of accessing activities to be more in line with those paid by non-disabled children and young people. The unit cost is already competitive at £12 per hour of short break delivered. In other targeted short break provision in Leeds, hourly costs range from £5.17 for family peer group activities up to £95 for befriending.

- 3.3 Quarterly monitoring reports from the Contracts and Strategic Investment team, show that LWCA are consistently achieving all KPI's relating to referrals and service standards. The services are oversubscribed and, consequently, have over delivered on the total number of hours provided and number of service users expected to access the provision, as outlined within the service specification. The provider offers appropriate activities that challenge and develop children and young people and satisfaction levels amongst service users and their families and carers are high. The strength and quantity of LWCA's surveying methods, and the quarterly 'Every Child Matters' (ECM) outcomes-focused case studies submitted to LCC provide evidence that the provider is contributing strongly towards the achievement of ECM outcomes. Any issues with this provider are generally limited to future development needs around responding to the personalisation agenda and the need to become more self-sustaining and market driven. Establishing a greater number of firm KPI targets will be useful in future service specifications around numbers of service satisfaction requirements and acceptable levels of performance
- 3.3 The other option would be to competitively tender for a one year contract. This would avoid any risk of challenge from other providers who may wish to deliver this provision. However, this option is not recommended because it would not guarantee better value for money and could result in anxiety and service disruption for families. The current provider is well established within Leeds and is trusted by families. They deliver good quality services and are willing to explore ways to improve value for money during this period. Any tender exercise can cause anxiety for families, particularly where they rely on services such as this to provide much needed short breaks from their caring responsibilities. The purpose of short breaks is to help relieve stress within the family unit and prevent crisis, which could lead to more intensive intervention.

Consequences if the proposed action is not approved

- 3.4 If this waiver is not approved, a competitive tender would need to be undertaken. This is undesirable as it would involve significant officer time within tight timescales and would not guarantee better value for money.

Advertising

- 3.4 This decision has not been advertised. The contract has not been advertised through the OJEU open market process for the reasons outlined in section 3. It should be noted that this service falls under Part B of the European Regulations, therefore is not subject to the full regime. A voluntary transparency notice will be published.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 This decision will have a positive impact on children and young people with SEN and disabilities and their families because it will ensure continuity of short breaks, whilst a full re-commissioning exercise is completed. This process will involve wide and meaningful consultation with all stakeholders. A questionnaire is currently being promoted to gain the views of parents and carers and a consultation with children and young people with SEN and disabilities is due to start shortly. A joint provider consultation event is planned with other local authorities in the region for November 2014. This event will be supported by In Control, a national charity currently funded by central Government grants, fees from local authorities, health bodies and other organisations to help implement personalisation, and will aim to share ideas for future provision and what support providers may need to achieve greater personalisation and sustainability.
- 3.3.1 The current provision, which is being secured for a further 12 months by way of this waiver, was informed by extensive consultation undertaken during the spring of 2009 with disabled children, young people, their parent carers and other stakeholders. Since then, the provider has been undertaking regular consultation with service users and sharing this with the Contract Manager to evidence service user satisfaction and outcomes being achieved.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 An Equality Screening exercise is attached, which indicates no adverse equality impact to families or the wider community. As part of the re-commissioning of this provision during 2014/15, a new screening exercise will be undertaken.

4.3 Council Policies and City Priorities

- 4.3.1 This provision contributes to the Children and Young People's plan priority 6, Improve support where there are additional health needs, for which 'The number of disabled children accessing short breaks & levels of satisfaction' is a key indicator.

4.4 Resources and Value for Money

- 4.4.1 This waiver represents value for money in terms of both quality and cost because of the reasons outlined in section 3.

This waiver relates to a one year contract award at a total value of £194,214 revenue. The Complex Needs Services is currently committed to this budget for 2015/16.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 Giving the work to this provider without competition could leave the Council open to a potential claim from other providers, to whom this contract could be of interest, that it has not been wholly transparent. In terms of transparency it should be noted that European case law suggests that contracts of this value should be subject to a degree of advertising if it is considered that it would be of interest to contractors operating in another Member State and it is up to the Council to decide what degree of advertising is appropriate. In particular, consideration should be given to the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc) and the geographical location of the place of performance.

- 4.5.2 The Director of Children's Services has considered this and, due to the nature of the services being delivered and the requirement to be physically located in the City of Leeds, is of the view that the scope and nature of the services is such that it would not be of interest to other EU member states.
- 4.5.3 As these are Part B Services for the purposes of the Public Contracts Regulations 2006 ("Regulations"), and therefore not subject to the full procurement regime, the risk of challenge identified at paragraph 4.5.2 can be diminished somewhat by the publication of a voluntary transparency notice in OJEU immediately after the decision to award the contract to this provider has been taken and then waiting 10 days to see if any challenges are made. If no challenges are made a claim for ineffectiveness cannot be brought. Further, publishing such a notice will also start time running for any other potential claim for breach of the Regulations, which must be brought within 30 days of the date that an aggrieved party knew or ought to have known that a breach had occurred.
- 4.5.4 There is a risk of an ombudsman investigation arising from a complaint that the Council has not followed reasonable procedures, resulting in a loss of opportunity. Obviously, the complainant would have to establish maladministration. It is not considered that such an investigation would necessarily result in a finding of maladministration however such investigations are by their nature more subjective than legal proceedings.
- 4.5.5 Whilst there is no legal obstacle preventing the waiver of CPR 9.1 and 9.2, the above comments should be noted when making the final decision, the Director of Children's Services should be satisfied that the course of action chosen represents Best Value for the Council.
- 4.5.6 This decision is over £100k. It is therefore a high value procurement but is not subject to call in, being under the threshold of £250k. There are no grounds for keeping the content of this report confidential under the Access to Information Rules.

4.6 Risk Management

- 4.6.1 If this waiver is approved, there is a risk of challenge from other providers who may wish to deliver this service. However, this is mitigated by the short-term nature of the contract and the demonstration of good value for money by the current provider. All providers will be consulted as part of the new commissioning exercise to take place throughout 2014 and early 2015.

If this waiver is not approved, there is a risk that disabled children, young people and their families will lose much valued services and/or suffer anxiety about the tendering process and potential change of provider.

5 Conclusions

- 5.1 This waiver is the preferred option for securing this provision for 2015/16, whilst a full commissioning exercise is completed. There is a risk of challenge but this risk is low because the contract is only for a period of 12 months. The provider has delivered high quality services in Leeds for many years and has a very good reputation among families and professionals.

6 Recommendations

- 6.1 The Director of Children's Services is recommended to approve the waiver of the Contracts Procedure Rules No 9.1 and 9.2 – High Value Procurements, and award a contract to LWCA in the sum of £194,214.

7 Background documents¹

- 7.1 None

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.