

Report of Interim Deputy Director Integrated Commissioning, Adults and Health,
Leeds City Council & NHS Leeds Clinical Commissioning Groups

Report to Director of Adults and Health

Date: 30th August 2017

Subject: Request to utilise the negotiated procedure without prior publication of a notice under Regulation 32 of the Public Contracts Regulations 2015 to engage with Methodist Homes Association (MHA) for extra care services at Yew Tree Court and Rosewood Court within the MHA Moor Allerton Care Centre with the intention of commencing contract 1st October 2017 for an initial period of 5 years

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 checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input 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. Extra care housing is a form of supported housing predominantly designed for older people. Individuals who live in extra care housing have their own self-contained homes with a legal right to occupy the property. The approach provides individuals with the choice and opportunity to maintain independent living within the community and can delay the need for more intensive residential care. Each extra care scheme has its own onsite care service registered with the Care Quality Commission to provide an onsite response service and planned care and support in line with tenants' wishes.
2. Leeds Adults and Health (Leeds A&H) engages care and support services at a range of extra care sites across the city, either through direct in-house provision or via contracts. These contracted services include Yew Tree Court and Rosewood Court (jointly known as the Moor Allerton Care Centre), where services must be delivered by Methodist Homes Association (MHA) as, being owners of the Moor Allerton Care Centre, they have the exclusive right to provide the extra care and support services to Service Users nominated to

apartments in the extra care scheme. This does not impact on individuals' right to choice in terms of their planned care and support.

3. More recently a contract was put in place on 1st April 2016 for 17 months by virtue of a waiver of Contract Procedure Rules (CPRs) 9.1 and 9.2. The waiver was to ensure continuation of service to the standards outlined in the specification while further work was undertaken on an extra care model for Leeds. Negotiation on the exact delivery model to be used still continues, with any new scheme likely to be based on the same or similar model as the Wharfedale View contract in Yeadon. This has been running for 9 months.
4. The arrangement to develop the Moor Allerton Care Centre saw Leeds A&H gain access to the scheme via a nominations agreement built in as a schedule of the contract for sale. This agreement was for 50% nomination rights to apartments in the completed extra care scheme. Recent discussions with MHA have indicated actual current nominations to be at 100%. The nominations agreement is for a period of 80 years from the practical completion of the scheme which was achieved 2005.
5. Analysis of the contract for sale and its associated schedules indicates the site was sold to MHA with the intention of establishing an extra care scheme. If operating to the parameters of the nominations agreement Leeds A&H would gain access to 50% of apartments and associated services, leaving the remaining 50% to be let at the discretion of MHA. Engagement with MHA to date has confirmed that they utilise a one service approach, covering both housing and care provision within their extra care schemes. MHA has also confirmed that there is no intention to allocate any of their building to a third party provider. Concerns cited include the potential impact on reputation and possible loss of revenue for the housing arm of the business.
6. Discussions were held with colleagues from Projects, Programmes and Procurement Unit (PPPU) and it was determined that there is sufficient justification to seek approval to utilise the negotiated procedure without prior publication of a notice under Regulation 32 (2) (b) (ii) of the Public Contracts Regulations 2015 with the intention of awarding a contract to Methodist Homes Association (MHA) on the grounds that only MHA are capable of meeting the Council's requirements as competition is limited due to technical reasons. The justifications for the use of this procedure are contained in paragraphs 3.1 to 3.5 of this report.
7. Further negotiation and engagement will be held with MHA in relation to the contract before final proposals are presented to the Director of Adults and Health. This will involve mapping out a plan to move away from the block contract approach and towards a model similar to that taking place in Yeadon. A key principle of this plan will be that the move from a block approach will have zero impact on existing tenants and will propose a phased approach as new tenancies become available.
8. The feasibility of incorporating the Leeds Living Wage into the contract will also be explored. Where approved these will be set in place via a variation to

contract. The outcome of this work will be summarised in a report to the Director of Adults and Health as part of a significant operational decision to award a contract.

Recommendations

9. The Director of Adults and Health is recommended to approve the use of the negotiated procedure without prior publication of a notice under Regulation 32 of the Public Contracts Regulations 2015, for an initial period of 5 years commencing 1st October 2017 at an annual value of £411,416.20, resulting in the award of a contract to Methodist Homes Association (MHA) to deliver extra care services at Yew Tree Court and Rosewood Court. The contract period is recommended to run from 1st October 2017 to 30th September 2022. This is with the proviso to review the service prior to the expiry of the agreement and to seek approval for the continuation of the contract for a further 5 years on a rolling programme. The formal approval process will be adhered to at the appropriate juncture.
10. Officers on behalf of Leeds A&H commissioning and PPPU will engage with MHA to finalise the terms of the contract and the long term vision to move towards the new Leeds model of extra care. The outcome of this engagement will be summarised and presented for significant operational decision prior to award of contract.

1. Purpose of this report

- 1.1 To seek approval from the Director of Adults and Health for the use of the negotiated procedure without prior publication of a notice under Regulation 32 of the Public Contracts Regulations 2015. This is with the intention of setting in place a contract with MHA for the delivery of extra care services at Yew Tree Court and Rosewood Court for a period of 5 years commencing 1st October 2017 at an annual value of £411,416.20. The contract period is recommended to run from 1st October 2017 to 30th September 2022. Final award of contract will be subject to a significant operational decision.

2. Background information

- 2.1 Extra care housing is a form of supported housing. It is usually designed to provide older people who have varying levels of care needs with a self-contained home and access to on-site care and support. The building provision is normally managed by a Registered Social Landlord (RSL), a not-for-profit housing provider approved and regulated by the Government through the Housing Corporation, or the Local Authority. The on-site care can be provided by the same group acting as RSL or through another provider contracted to operate at that site.
- 2.2 Leeds A&H currently commissions care and support services at extra care sites across the city, including Yew Tree Court and Rosewood Court with MHA in Moor Allerton. Yew Tree Court and Rosewood Court collectively consists of 70 properties and was originally launched in 2005. Originally 65 apartments

were available for social rent with the remaining five properties allocated to NHS Leeds for intermediate care, though this arrangement has now ceased. A waiver of CPRs was obtained on 29th May 2014 and again on 4th March 2016 to enter into agreement with MHA for the delivery of care and support at the scheme. These agreements were reached after a protracted period of the service being classified as off-contract spend, largely due to uncertainties around how best to approach the management of the care hours delivered at the scheme.

- 2.3 The extra care scheme and its associated service provision came about following the sale of the site where the scheme is delivered to MHA. The contract for sale (dated 18th August 2003) and its schedules cover the intended purpose of the site as well as an agreement on the percentage of apartments Leeds A&H can nominate to.
- 2.4 While the care and support covered by the interim extra care contract is purchased on a block basis, the service specification recognises and highlights circumstances where individuals may wish to directly manage their support through either direct payments or individual service funds. The current specification highlights how these circumstances will be managed as and when they occur.
- 2.5 In May 2015 Leeds City Council (LCC) signed up to Unison's Ethical Care Charter as part of the work on homecare services. The charter commits employers to move away from zero hour contracts, ensure the national minimum wage and travel time are paid, as well as make progress to a 'living wage' and provide good quality training to all staff. To date this charter has only applied to the homecare framework, approved 11th January 2016. This was following wide consultation about the homecare plans, working with staff, unions, homecare users and providers. Extra care is not part of the homecare framework and to date has not been subject to engagement.

3. Main issues

- 3.1 A review of the contract for sale covered how LCC sold the land at Cranmer Bank to MHA for the construction of an extra care scheme. As part of the contract for sale a nominations agreement was included granting LCC assured tenancies for 50% of the apartments. The terms of the nomination agreement include conditions that such tenancies or licences to persons nominated by LCC were to be covered under the same terms as those applying to non-LCC apartments. MHA retain the right to refuse (on reasonable grounds) to grant assured tenancies on the understanding that LCC would then be able to nominate further tenants or licensees. The nominations agreement itself is for a period of 80 years from practical completion. At the end of this period it is assumed that either LCC would negotiate a new agreement or that nomination rights would revert to being at the sole discretion of MHA. Discussions with MHA have indicated that actual nominations by LCC is currently at 100%.
- 3.2 Engagement with MHA has established that as the owner of the property they have no desire or intention to be a landlord to a separate service provider.

MHA have expressed that they do not develop services where they are not responsible for care and housing provision as MHA believe tenants experience the best service provision from a one team approach. This means it would not be possible to commission an onsite third party care provider to deliver 24/7 support.

- 3.3 One of the key components to MHA's approach is protection of reputation and business interests. There is a concern that if another care provider was to be on site providing care to tenants there would be a possible risk to MHA's reputation should that care not meet the required standards. A knock on effect of this could potentially be difficulties for MHA in letting properties and the associated loss of revenue that would come with this.
- 3.4 MHA's approach is with regards to the onsite care team presence and does not impact on individual tenant's freedom to choose planned care and support from another provider should they wish to do so. Historically the approach to accommodating choice under a block arrangement has been to reduce the block hours accordingly, though to date this has only occurred once and was at another MHA Leeds scheme.
- 3.5 In light of the circumstances detailed in this report it is proposed, following advice from PPPU, that the negotiated procedure without prior publication of a notice under Regulation 32 (2) (b) (ii) of the Public Contracts Regulations 2015 be used when looking to award the contract to MHA. This is due to the fact that the services can only be supplied by MHA and therefore competition is absent and no reasonable alternative is available for service users living at the Moor Allerton Care Centre in terms of an onsite care team presence.
- 3.6 In association with the nominations agreement there is a block number of 733 care hours. The contractual management of these block hours has fluctuated during the time that the scheme has been in operation, with there being a period when the service was classified as off-contract spend. A service specification was agreed and signed to April 2015 following a waiver of CPRs. The purpose of the service specification is to define expectations and service standards to be achieved for those tenants placed under the nominations agreement.
- 3.7 The block hours cover the full care staffing cost, which includes the planned care and support as well as the ambient 24-hour staffing presence. While the current specification details how this 24-hour presence should be delivered, there is no clear delineation between which funds are for planned care and which is allocated for the ambient 24-hour staffing presence.
- 3.8 A citywide approach to existing block contracted extra care has not as yet been finalised. The likelihood is that a scheme by scheme approach would be necessary with the long term goal of achieving a single citywide model. This work would be partially informed by the performance and financial data collated from Wharfedale View, a new extra care scheme in Yeadon which opened December 2016. As part of the negotiation process officers will work with MHA to devise a phased plan to move away from the current block arrangement to

one that reflects wider developments in extra care in the city. A key principle will be zero impact on existing tenants with a view of introducing the new model via new tenancies as and when they arise. The phased approach will be with regards to service charges with an opportunity to replace the block with a spot model from day one of the contract dependent on negotiation. The responsibility for meeting the costs of service will still lie with Leeds A&H.

- 3.9 The current contract agreement ends on the 30th August 2017. There will be a brief gap between the end of the current contract and commencement of a new agreement. This has been discussed with colleagues in PPPU and with MHA and service delivery will not be impacted.
- 3.10 Further negotiation to develop the contract with MHA will be necessary. This includes establishing and offsetting the impact of changes to the National Living Wage, which to date has not been accounted for within the contract. Work is also required to explore the feasibility of replacing the block contract approach as well as the viability of extending the Leeds Living Wage to this contract as introduced to homecare services under Unison's Ethical Care Charter. Assessments and recommendations would be presented to the Director of Adults and Health prior to contract award.
- 3.11 The recommendation for a 5 year contract with the proviso to review the service prior to the expiry of the agreement, and to seek approval for the continuation of the arrangement for a further 5 years on a rolling programme is made in recognition of the 80 years period of time covered by the nominations agreement included in the original contract for sale. To date 12 years of that agreement have passed.
- 3.12 The service covered in this report supports the Best Council Plan by enabling more people to live safely and independently in their own homes. The service is delivered in line with the Care Act 2014 in that it supports choice and control. This is achieved by operating to a model that recognises individuals' right to choose how they receive planned care and support.

4. Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Service users and carers are regularly consulted with on the quality at the scheme by the onsite care provider and this is then reported to commissioners as part of the contract performance management. This will continue to be the case for the duration of the proposed contract period. The scheme was classified as 'Good' when last inspected by the CQC in 2015.
- 4.1.2 The intention to set in place a contract with MHA using a negotiated procedure without prior publication of a contract notice was added to the list of forthcoming key decisions on 2nd August 2017.
- 4.1.3 As of 24th July 2017 the Executive Board Member for Health, Wellbeing and Adults has been briefed on the proposals contained in this report.

4.1.3 Any adjustments to the service model or service costs will involve consultations with the provider, service users, carers and other stakeholders.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 An Equality and Diversity Impact Assessment Screening Tool has been completed and is included at Appendix 1. This assessment demonstrates that the service meets the desired equality requirements.

4.2.2 Appropriate policies and procedures are in place at the scheme.

4.3 Council Policies and Best Council Plan

4.3.1 The work of extra care services helps contribute to all of the outcomes stated in the current Leeds Joint Health and Wellbeing Strategy. The nature and ethos of the services contribute to: people living longer and healthier lives; helping people to live full, active and independent lives; ensuring that people's quality of life is improved by access to quality services; involving people in decisions made about them, and; helping people to live in healthy and sustainable communities.

4.3.2 The Best Council Plan vision of Leeds being the best city for health and wellbeing is supported through the delivery of extra care services. This includes supporting more people to live safely and independently in their own homes and giving people choice and control over their health and social care services.

4.3.3 The investment in and development of extra care facilities is covered under the housing, care and support strand of the Better Lives programme. The aim here is to provide a variety of housing options that are adaptable to people's changing needs.

4.3.4 The provision of these extra care services means LCC is delivering and developing services in line with the ethos of the Care Act 2014, being "what can you do for yourself, within your local community, to help meet your own care needs". The overall environment of extra care services provides effective preventative services and information to help people maintain healthy and independent lives wherever possible.

4.4 Resources and Value for Money

4.4.1 The value for the proposed contract at Yew Tree and Rosewood Court is based on the current contract value of £411,416.20 per annum.

4.4.2 The hourly rate of the contract calculates to £10.76 and when compared with similar commissioned services is on average 11% less, though this will most likely change early into the contract as work takes place in relation to the National Living Wage and discussions around the Leeds Living Wage. The

hourly rate for the service is 34% less than the home care rate for the area. This difference is mainly due to the travel allowance on the home care rate.

4.4.3 The performance data for financial years 2015/16 and 2016/17 was analysed. On average MHA utilise 574.6 hours per week for the delivery of planned care and support from the block contract of 733 hours. This leaves an average of 158.41 hours per week allocated to cover the 24-hour staffing presence which is also part of the current contract model. The average value of this difference is £88,909.12, which compares favourably with the wellbeing cost at similar extra care services.

4.4.4 The budget has been identified within existing resources.

4.4.5 The current contract prices will be reviewed to determine the impact of implementing the National Living Wage. Further work will also be undertaken to evaluate the feasibility and impact of introducing the Leeds Living Wage in relation to the Ethical Care Charter. Funding requirements, should these arise will be managed in accordance with the directorate's normal processes, i.e. the budget setting cycle and monthly reporting procedures.

4.4.5 There will be some resource implications in terms of monitoring and reviewing the contracts in order to ensure the services continue to meet the necessary outcomes and that best value is delivered. These resources will be provided from within existing hours in the Adults and Health commissioning and contracts teams.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The decisions highlighted in this report will be taken by the Director of Adults and Health in line with the officer delegation scheme as detailed in Part 3 of the Council's Constitution.

4.5.2 As the overall value of this decision exceeds £250,000 this is a key decision and is subject to call in. There are no grounds for keeping the contents of this report confidential under the Access to Information Rules.

4.5.3 There is the potential risk of challenge that there are no real technical reasons justifying the use of the negotiated procedure without publication of a notice in accordance with the Public Contracts Regulations 2015, and that the Council is simply seeking to circumvent the application of the procurement rules. However, due to the reasons set out in Section 3 of this report this risk is perceived to be low. In addition, this risk can be diminished further by the publication of a voluntary transparency notice in Official Journal of the European Union (OJEU) immediately after the decision to award the contract has been taken and then waiting 10 days to see if any challenges are made. If no challenges are made the chances of a claim for ineffectiveness being brought are significantly reduced, and would only be successful if the Council had used the negotiated procedure without publication of a notice incorrectly. Further, publishing such a notice will also start time running for any other potential claim for breach of the Public Contracts Regulations 2015, 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 These comments should be noted by the Director of Adults and Health in making the final decision as to the award of this contract being the best course of action for the Council and that in doing so it represents best value for the Council.

4.6 Risk Management

- 4.6.1 If the recommendation is not approved there is a risk that the existing services will cease and service users will no longer be able to access this service.
- 4.6.2 If the recommendation is not approved the service may be subject to competitive tender. It should be noted that this would have resource implications for the council.

5 Conclusions

- 5.1 In approving this request to utilise the negotiated procedure without prior publication of a notice, service provision will be maintained and continue to be delivered in line with specified expectations.
- 5.2 The Commissioning Officer in conjunction with PPPU will oversee the negotiation process for the contract. Following final approval and award all services covered by the contract will be subject to robust contract monitoring and on-going review, both in terms of quality and value.
- 5.3 A period of engagement will take place with MHA in terms of exploring the model of service delivery at Yew Tree Court and Rosewood Court. During this engagement the impacts of changes to the National Living Wage will be assessed and the viability of extending the Leeds Living Wage to the service will be evaluated. Any proposed changes ensuing from this work will be brought to the attention of the Director of Adults and Health in the significant operational decision report for award of contract.

6 Recommendations

- 6.1 The Director of Adults and Health is recommended to approve the use of the negotiated procedure without prior publication of a notice under Regulation 32 of the Public Contracts Regulations 2015, for an initial period of 5 years commencing 1st October 2017 at an annual value of £411,416.20, resulting in the award of a contract to Methodist Homes Association (MHA) to deliver extra care services at Yew Tree Court and Rosewood Court. The contract period is recommended to run from 1st October 2017 to 30th September 2022. This is with the proviso to review the service prior to the expiry of the agreement and to seek approval for the continuation of the contract for a further 5 years on a rolling programme. The formal approval process will be adhered to at the appropriate juncture.

6.2 Officers on behalf of Leeds A&H commissioning and PPPU will engage with MHA to finalise the terms of the contract and the long term vision to move towards the new Leeds model of extra care. The outcome of this engagement will be summarised and presented for significant operational decision prior to award of contract.

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.