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**Report of: Interim Deputy Director Integrated Commissioning**

**Report to: Director of Adults and Health**

**Date: 27<sup>th</sup> September 2017**

**Subject: To seek approval to waive Contracts Procedure Rule 15.2 to amend the quality threshold for the Advocacy Commission to 100% quality**

Are specific electoral wards affected? If yes, 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

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**Summary of main issues**

1. This report seeks approval to waive Contracts Procedure Rule 15.2 to amend the quality threshold for the proposed Advocacy Commission from 60% to 100%.
2. Following reports approved in February and July 2017 by the Director of Adults and Health (D44145 and D44710) preparations are in place to commence the procurement of the Advocacy Service. This is proposed to go out to tender throughout October 2017 with full mobilisation to commence 1 April 2018.
3. A review of the Advocacy service has been undertaken. The review considered future need and demand to inform the commissioning of the new service for the city as a whole. The review also demonstrated efficiencies have been made which has not impact on the quality of the service.
4. The reason for this request is to ensure that the future commissioned service is delivered to a high quality standard. Funding is provided through both NHS and LCC. The overall annual value of this contract will be £1,247,000 – this includes funding from NHS of £245,000 for issue based (non-statutory) advocacy. Thus, by having a 100%

quality threshold it will ensure that the council can place greater emphasis on the qualitative element of the service on behalf of the service users within this sum.

## **Recommendations**

1. The Director of Adults and Health is recommended to use the authority under CPR 1.3 using the procedures set down under CPR 27 to waive the requirements of CPR 15.2 and approve the use of a 100% quality evaluation for the Advocacy Support and Services Contract, within a pre-determined contract sum.
2. The Commissioning officer will liaise with Projects, Programmes and Procurement Unit (PPPU) regarding the procurement exercise to ensure the Public Contract Regulations 2015 and Contract Procedure Rules (CPR) are adhered to.

### **1. Purpose of this report**

- 1.1 The purpose of the report is to seek authorisation to waive Contracts Procedure Rule 15.2 so that the tenders for the Provision of Advocacy Support and Services can be evaluated based on 100% quality only within a pre-determined contract value.

### **2. Background information**

- 2.1 The Council has had a contract with Advonet to deliver advocacy services in Leeds since April 2013.
- 2.2 In addition to directly delivering independent, short term issue based advocacy to all user groups, this service also provides the following statutory advocacy services: Independent Mental Health Advocate (IMHA) and NHS Complaints Advocacy Service (LIHCA).
- 2.3 The current three year contract was initially awarded in 2013 and has been extended for a further two twelve month periods. The contract is due to expire on 31 March 2018.
- 2.4 A key decision was approved to commission the advocacy service contract in January 2017 (D44145) and a further report to incorporate the Independent Mental Capacity Advocacy (IMCA) service into the commission was approved July 2017. (D44710).

### **3. Main issues**

- 3.1 Leeds City Council intends to commission an organisation or consortia to provide an accessible, single gateway advocacy service for eligible people residing within the Leeds Local Authority Area. This service will be jointly funded by both the Council and the National Health Service (NHS). The service provider will be expected to deliver a number of statutory advocacy services including: Independent Mental Health Advocate (IMHA), NHS Complaints Advocacy service (LIHCA), Independent Mental Capacity Advocates (IMCA) and Care Act Advocacy, as well as directly delivering independent, short term issue based advocacy.

- 3.2 Following the procurement, the successful service provider will commence 1 April 2018 with the contract being of five (5) years duration. Subject to satisfactory performance it may be extended by the agreement of both parties up to a further period of three (3) years.
- 3.3 The structure of the project plan allows a sufficient period of 3 months for the contract to be fully mobilised if the contract was awarded to other than the incumbent provider.
- 3.4 The standard methodology of reviewing tenders is on a ratio of 60% quality and 40% price. However the budget for this service has been set and will be advertised as part of the tender documentation. This price frame has been rigorously tested against the required service over the past five years and where necessary efficiencies have already been made.
- 3.5 Having a fixed price model will allow the procurement process to focus on the quality and efficiency of the service provider. Based on the intensive work carried out with the existing provider over the previous 3 years looking at levels and types of referrals and the associated skill set required by advocates it is believed that an accurate and reliable projection of demand can be demonstrated going forward.
- 3.6 It is acknowledged that best value can often be achieved by obliging organisations to compete on price as well as quality; however, the indepth examination of the existing service supports the conclusion that any concessions gained by the Council in price from the successful provider will in all likelihood result in a reduced service offer.
- 3.7 It should also be noted that by setting an indicative price the contracted provider will then have flexibility to manage the budget to meet the varying service levels that they will be expected to provide within the budget.
- 3.8 The contract includes a number of statutory advocacy functions as described above. Reducing or omitting such services in order to reduce the overall cost is not possible as the Council will have to fulfill its obligations or risk legal redress.
- 3.9 The demand for all advocacy services may fluctuate and the associated skill set for the different strands of advocacy required will also vary in response. To encourage potential providers to minimise costs could also encourage a reduction of access to higher skilled advocates who need appropriate experience and knowledge to take on complex and challenging clients.
- 3.10 Target setting is a key element of the service specification. These targets will be monitored closely and regularly to ensure value for money is achieved.
- 3.11 It is considered that concentrating the focus on quality rather than a mixture of cost and quality will allow for a more in-depth and rigorous testing of potential service providers and will ensure when the contract is awarded the successful provider will be able to effectively and efficiently meet the demand for statutory and issue based advocacy.
- 3.12 The procurement process will offer an opportunity to take account of the Social Value Act and will determine how additional social value can be sought from providers as part of this process

#### **Reason for contracts procedure rules waiver**

- 3.13 In order to comply with the Contract Procedure Rules PPPU have advised that a waiver report is required to ensure that we meet the Council's obligations of transparency and openness.

- 3.14 There are no internal service providers capable of undertaking the required services.

### **Consequences if the proposed action is not approved**

- 3.15 If the recommendation to waive contract procedure rules is not approved then there is a risk that opportunities may be lost to fully test potential providers for quality as the indicative costs is already set.

### **Advertising**

- 3.16 The procurement opportunity will be advertised on YORtender and prospective bidders will be notified via this system

## **4. Corporate considerations**

### **4.1 Consultation and engagement**

- 4.1.1 The executive member for Adults and Health has been consulted and is supportive of the proposal.
- 4.1.2 A review of the existing service provider was undertaken in 2016 which involved extensive consultation with service users, staff, volunteers and other stakeholder. Feedback about the service was very positive. Service specifications for the forthcoming commission will be on the same basis as the current commission.
- 4.1.3 Consultation and engagement will be a requirement within the contract and monitored through a robust contract monitoring process.

### **4.2 Equality and diversity / cohesion and integration**

- 4.2.1 An Equality and Diversity Impact Assessment has been completed and can be found in Appendix 1.
- 4.2.2 Through the clauses set out within the contract documentation the successful provider will be required to have appropriate policies and procedures in place.

### **4.3 Council policies and best council plan**

- 4.3.1 The commissioning of this service supports aims in the Leeds City Council Best Council plan 2015-2020. In particular the objectives "Supporting communities and tackling poverty" and "Delivering the better lives programme".

### **4.4 Resources and value for money**

- 4.4.1 The value of the proposed Advocacy contract is £1,247,000 per annum. All activity will be closely monitored against expenditure and any underspend will be recouped by the service.
- 4.4.2 The resource implications in terms of monitoring and reviewing the proposed contract in order to ensure the service continues to meet statutory requirements and the necessary outcomes will be provided from within existing staffing in the Adult and Health commissioning and contracts team.
- 4.4.3 A full service review has been undertaken in 2016 which showed that the service was meeting its outcomes and providing value for money.

4.4.4 Changes to the quality evaluation criterion will ensure service users will receive quality services.

#### **4.5 Legal implications, access to information, and call-in**

4.5.1 The decision required within this report is a significant operational decision and is not subject to call in as the commission authority to tender has been approved

4.5.2 In order to comply with the Contract Procedure Rules PPPU have advised that a waiver report is required to ensure that the Council's obligations of transparency and openness are met.

4.5.3 The Public Contract Regulations 2015 allow for the cost element to be fixed and for the tenderers to compete on a quality basis only.

4.5.4 Although there is no overriding legal obstacle preventing the authorisation, the above comments should be noted. In making their final decision, the Director of Adult Social Care should be satisfied that the course of action chosen represents Best Value for the Council.

#### **4.6 Risk management**

4.6.1 The procurement process will be conducted in accordance with the Council's Contract Procedure Rules in order to ensure that a fair, open and transparent process is undertaken.

4.6.2 The contracts discussed within this report incorporate statutory advocacy services and the Council has a duty to facilitate this provision. Should this procurement not be approved the Council may not fulfill its statutory requirements.

### **5. Conclusions**

5.1 It is considered that a 100% focus on quality rather than the standard split between quality and price will allow for a better and more robust scrutiny of potential service providers due to the savings already identified via the review noting that the budget has been set at £1.247m.

### **6. Recommendations**

6.1 The Director of Adults and Health is recommended to use the authority under CPR 1.3 using the procedures set down under CPR 27 to waive the requirements of CPR 15.2 and approve the use of a 100% quality evaluation for the Advocacy Support and Services contract procurement within a pre-determined budget of £1.247m.

6.2 The Commissioning officer will liaise with Projects, Programmes and Procurement Unit (PPPU) regarding the procurement exercise to ensure the Public Contract Regulations 2015 and Contract Procedure Rules (CPR) are adhered to.

### **7. Background documents<sup>1</sup>**

7.1 None

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<sup>1</sup> 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.