

Report of Deputy Director Integrated Commissioning, Directorate Adults and Health

Report to Director of Adults and Health

Date: 6th November 2017

Subject: Request to utilise the negotiated procedure without publication of a notice under Regulation 32 (2) (b) (ii) of the Public Contracts Regulations 2015 to enter into negotiations with Leeds Centre for Integrated Living in order to establish a new contract with them commencing 1 December 2017 for a period of 16 months for the provision of Independent Living Services. The value of the 16 month contract will be £1,039,786.

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 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. This report sets out a proposal to enter into negotiations with Leeds Integrated Living (LCIL) in order to establish a 16 month contract for the provision of Independent Living Services. The contract will provide a variety of support services for families with disabled children and adults with a disability, living in Leeds and wanting to take control of any help they need with personal care and daily living tasks.
2. Under the contract it is proposed to trial a revised direct payment process which would re-locate LCIL's Independent Living Advisors (ILA's) to work within social work teams in Pudsey, Seacroft, Technorth and Hunslet. The trial will run for a minimum period of six months from 6 November 2017.
3. In this trial, the ILA's would become the 'single point of contact' for social work staff and customers; responding to queries related to direct payments and providing some elements of support planning and information to customers before and after an assessment for direct payments is undertaken by a social worker. It is anticipated that the relocation of LCIL's staff to work in partnership with social workers will streamline the process to create efficiencies and time savings for staff, thus reducing the cost of delivery of direct payments and support to customers.

4. Pre-payment cards will also be introduced as an additional/alternative option to a traditional payroll system. It is anticipated that pre-payment cards will increase service user choice and reduce the cost of packages of care through the increased uptake of direct payments.
5. Two pre-payment providers have been identified and a procurement exercise is to be undertaken to identify a preferred provider for Leeds. It will be published on Yortender on 10 November with return responses to be received three weeks later.
6. The existing contract with LCIL ends on 31st October 2017 and a new contract is required from 1st December 2017 in order to ensure service continuity whilst the new approach for processing direct payments are trialled and prepayment cards are introduced in December 2017.
7. Due to the significant changes to the way these services will be delivered, as outlined above, approval is sought to utilise the negotiated procedure without prior publication of a notice under Regulation 32 (2) (b) (ii) of the Public Contracts Regulations 2015 on the grounds that competition is absent for technical reasons and there is no reasonable alternative.

Recommendations

1. The Director of Adult and Health is recommended to approve the use of negotiated procedure without publication of a notice under Regulation 32 (2) (b) (ii) of the Public Contracts Regulations 2015 in order to enter into negotiations with LCIL to establish a new contract with them for the provision of independent living services on the ground that competition is absent for technical reasons and there is no reasonable alternative due to the significant changes to the way these services will be delivered, as outlined above. The value of the 16 month contract will be £1,039,786.
2. The contract will commence on the 1st December 2017 for a period of 16 months.
3. The Commissioning Manager, Adults and Health, will implement this decision once it has been approved and 'Call In' has ended.

1 Purpose of this Report

- 1.1 To seek approval from the Director of Adults and Health to use the negotiated procedure without publication of a notice under Regulation 32 of the Public Contracts regulations 2015, with the intention of setting in place a contract with LCIL to provide a variety of support services for families with disabled children and Adults with a disability, living in Leeds and wanting to take control of any help they need with personal care and daily living tasks. The contract duration will be 16 months commencing 1st December 2017. The value of the 16 month contract will be £1,039,786.

2. Background information

- 2.1 LCIL had been a directly provided Council service since 1998 providing independent living support to disabled people/customers in receipt of a direct payment (including disabled children and younger people) in Leeds. LCIL became a User Led Organisation (ULO) independent from the Council in 2011. LCIL now operates as a not-for-profit

Company Limited by Guarantee with charitable status, governed by a Board of Directors/Trustees who are all disabled people living in Leeds.

- 2.2 In line with the Care Act 2014 recommendations, Directorate of Adult and Health's Service Transformation Team commenced a review of Leeds City Council's direct payment process in October 2016. On completion of the review, an options appraisal exercise was undertaken and a preferred model was identified and agreed by Access Care and Delivery DLT in December 2016.
- 2.3 LCIL was awarded a direct three year contract plus two 12 month extensions on 4 April 2011 under the Public Contracts Regulations 2006 (these being Part B services). The initial three years of the contract ended on 31 March 2014 and two twelve month extension periods were utilised until the contract ended on 31 March 2016. The value of the contract was £739,840 per annum. ASC contributed (£628,840) and Children's Services (£111,000). Subsequently Children's increased their contribution.
- 2.4 The service is provided to the following groups of people:
 - Adults receiving a social care direct payment
 - People with responsibility for a child/young person with SEN and disabilities who receive a direct payment for the child's education, health or social care needs
 - Young people aged 16-17 with SEN and disabilities who receive a direct payment for their education, health or social care needs.
- 2.5 LCIL comprises of ILAs, Independent Living Guides (ILGs) and Finance Support Workers to provide support for individuals wishing to employ a personal assistant. LCIL also has a partnership and involvement function and a support section to maintain the effective delivery of all LCIL's services whilst ensuring health and safety are maintained.

3. Main issues

- 3.1 It was necessary to enter into a new contract with LCIL for a ten month period from 1 April 2016 to January 2017 whilst the Service Transformation Team completed an analysis/review of the current direct payments delivery process and its level of activity, access and uptake.
- 3.2 The review of direct payments is part of Adults and Health strength based approach to modernising and transforming care management services. A specialist social work team and representatives from Adults and Health Commissioning, Finance and Audit evaluated all elements of the direct payment process, to determine what was effective, what needed to be changed and what efficiencies could be made. Due to the complexity of the direct payment process, the completion of the analysis negatively impacted upon the anticipated deadline, resulting in insufficient time to complete the analysis during the required contract period.
- 3.3 In order to ensure continuity of service, a nine month contract was granted to LCIL from 1 February 2017 to 31 October 2017 whilst the analysis was completed and an options appraisal undertaken. The options appraisal exercise identified a preferred model and a report detailing the options appraisal method and outcome was considered and agreed by Access, Care and Delivery DLT in December 2016.

- 3.4 The chosen outcome of the options appraisal proposed a partnership model between Care Management and LCIL. In this new approach, LCIL's ILA's (seven whole time equivalent members of staff) currently located at LCIL premises in Armley, will be relocated to Adults and Health care management teams, working closely with social workers based in Pudsey, Seacroft, Technorth and Hunslet.
- 3.5 The ILA's will become a 'single point of contact' for Council staff and customers, directing and responding to queries related to direct payments/personal budgets and provide support planning, employment advice training and information to service users after an assessment has been undertaken by a social worker.
- 3.6 As part of the service transformation, pre-payment cards will be introduced with new customers who opt to manage their direct payment by this method instead of a traditional payroll system. Currently, customers who use a direct payment either have to keep manual records, or have a support agency manage records on their behalf. These records, which support the spending of the direct payment, have to be submitted periodically to the Council. By its very nature this process is retrospective and it is in turn resource intensive to scrutinise returns and to follow up issues.
- 3.7 Pre-Payment cards enable an amount of money to be loaded directly onto a card; customers can then pay a provider without the money needing to go through their bank account. It is perceived as a cost effective option which could make it possible to support more people to manage their direct payments themselves, without the need for on-going support.
- 3.8 Two pre-payment providers have been identified and a procurement exercise is to be undertaken to identify a preferred provider for Leeds. It will be published on Yortender on 10 November with return responses to be received three weeks later.
- 3.9 Once the preferred provider has been identified IT will need to undertake a software penetration test to ensure compliance with information governance.
- 3.10 Trialling the revised direct payment process and pre-payment cards will test its efficacy as well as:
 - Enable the directorate to understand the requirements around capacity, demand, staffing from a commissioning perspective
 - Evidence the efficacy of having a single point of contact to coordinate and direct enquiries to audit, finance, and social workers
 - Establish whether social workers feel more supported and empowered via the partnership to better understand the direct payment process resulting in more customers encouraged to opt for a direct payment and/or pre-payment card to manage their personal budget
 - Increased uptake of prepayment cards will provide some efficiencies arising out of on-costs support (premises and support), thus improving the value for money element of this proposal
- 3.11 The trialling of the new direct payment process commences on the 6 November 2017 for a minimum period of six months. The final evaluation report will be presented to DLT for agreement by July 2018. The start date for the new service will be April 1 2019.

- 3.12 Further negotiations with Service Transformation, Commissioning, Children Services and Leeds South CCG are required to ensure the development of a pre-payment card system that best fits the needs of families and children and the future requirements of those in receipt of Personal Health Budgets.
- 3.13 A contract for 16 months will provide flexibility in the delivery and completion of the work outlined in points 3.4 to 3.8 above. The award of a contract will enable LCIL to continue to deliver its key services without disruption to service users.
- 3.14 Once the trial of the proposed model and pre-payment cards is complete it is anticipated that the final report, and its subsequent recommendations, will inform the development of a revised service specification in readiness for undertaking a procurement exercise for a newly commissioned Direct Payment Support Service during 2018/19.
- 3.15 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 by operating a model that recognises individual's right to choose how they receive planned care and support.
- 3.16 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 LCIL.

4.0 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Adults and Health service transformation review of direct payments during 2016 included consultation with 350 direct payment customers, families and carers. Further consultation will be undertaken as part of the procurement process and the service specification and model will be co-produced.

4.2 Equality and Diversity / Cohesion and Integration

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

4.3 Council policies and the Best Council Plan

- 4.3.1 The service directly contributes to the delivery of key outcomes within the Best Council Plan 2013/17, specifically to improve the quality of life for our residents, particularly those who are vulnerable or in poverty and the delivery of the 'Better Lives' objectives.
- 4.3.2 The services make significant contributions to a range of the City Priority Plans, but particularly the Health and Wellbeing Plan and its priority to make Leeds the best City for Health and Wellbeing by 2030. This is achieved through supporting clients to make healthy lifestyle choices and to live safely.

4.4 Resources and Value for Money

- 4.4.1 This report has been discussed with the Director of Children's/Families Services and an agreement has been reached on the extension and their financial contribution to the contract.
- 4.4.2 The total amount incurred over the 16 month period will be £1,039,786. Adult and Health contribution over the period is £838,454 and Children's and Families contribution is £201,334. This will be funded by existing annual contributions of £628,840 from Adults and Health and £151,000 from Children's and Families.
- 4.4.3 This service has been delivered by LCIL since April 2011. Though the contract has been adjusted for additional workloads, LCIL has not received cost of living price uplifts since this date; therefore the Council can demonstrate value for money has been achieved over this period. The Service will be subject to a competitive procurement exercise in 2018/19 to potentially achieve further efficiency savings.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 This is a Key Decision which is subject to call-in. A notice was published on the List of Forthcoming Key Decisions on the 30th August 2017.
- 4.5.2 This report does not contain any exempt or confidential information 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.
- 4.5.4 In addition, this risk can be diminished further by the publication of a voluntary transparency notice in 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.
- 4.5.5 However, it should be noted that voluntary transparency notices themselves can be challenged. The recent case of *Italian Interior Ministry v Fastweb SpA (Case C-19/13)* highlights the limited protection that the voluntary transparency notice route can offer to contracting authorities wishing to make direct awards without following an OJEU process. A grey area remains around whether the protection of a voluntary transparency notice will be available where the contracting authority genuinely, but mistakenly, considers it was entitled to award the contract without notice. It shows that the safe harbour will only be 'safe' to the extent that the justification for the direct award is in itself sound and ready to stand up to the increased scrutiny that the publication of the voluntary transparency notice may well invite.
- 4.5.6 These comments should be noted by the Director of Adults and Health and in making the final decision as to the award of this contract being the best course of action for the Council and should be satisfied that in doing so it represents best value for the Council.

4.6 Risk Management

- 4.6.1 The contract will continue to be performance managed by officers in Leeds City Council's Adults and Health section in partnership with Children's Services. This includes regular reviewing of performance information and quarterly contract management meetings with the provider, at which any delivery issues are discussed. To date the service has delivered in accordance with the service requirements and performance criteria outlined in the specification.

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 whilst the piloting of the organisational model for direct payments, its evaluation and the trialling of pre-payment cards are completed.
- 5.2 The Director of Adults and Health should note that:
- The Council's Projects, Programmes and Procurement Unit will be requested to issue the new contract
 - Sinead Cregan, Adult Commissioning Manager is the officer responsible for implementation

6 Recommendations

- 6.1 For the Director of Adults and Health recommend to approve the award of a public contract in accordance with the negotiated procedure without publication of a notice under regulation 32 (2) (b) (ii) of the Public Contracts Regulation 2015, in order to enter into negotiations with LCIL to establish a new contract for the provision of independent living services on the grounds that competition is absent for technical reasons and there is no reasonable alternative due to the significant changes to the way these services will be delivered, as outlined above. The value of the 16 month contract will be £1,039,786.
- 6.2.1 The contract will commence on the 1st December 2017 for a period of 16 months.

7 Background documents

None