

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

**Report to** Director of Adults and Health

**Date:** 10<sup>th</sup> April 2019

**Subject: Request to waive Contract Procedure Rules 9.1 and 9.2 to enter into a 6-month contract with the option to extend for a further 6-months with Methodist Homes Association for extra care at Assisi Place**

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 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**

- Contract procedure rules (CPRs) 9.1 and 9.2 were waived to facilitate a negotiated procedure to put a long-term contract in place with Methodist Homes Association (MHA) for extra care at Assisi Place (decision reference D46315). Due to reasons cited in paragraph 2 below, the award of the long-term contract has been postponed and interim contractual measures need to be in place prior to the end date for the current contract, which is 31<sup>st</sup> March 2019.
- Further work is necessary before the long-term contract can be awarded to ensure the final proposals to be approved by the Directorate Leadership Team (DLT) are fit for purpose. To accommodate this commissioning officers are seeking Director approval to waive CPRs 9.1 and 9.2, using the authority set out in CPR 1.3, to enter into an interim contract with MHA for six months with the option to extend for up to a further six months to allow time for this work to continue.
- The current annual value of the contract for Assisi Place is £284,529 for support to 100% of 45 apartments. This value has remained unchanged since 2011. During this time there has been national changes in relation to employees'

salaries, including pension contributions and living wages, which have contributed towards increased service delivery costs.

## **Recommendations**

4. The Director of Adults and Health is recommended to approve the waiver of CPRs 9.1 (requirement of competition) and 9.2 (invitation of a minimum of four written tenders), using the authority set out in CPR 1.3, to award a 6-month contract with the option to extend for a further 6-months to MHA for extra care services at Assisi Place. This contract is to commence 1<sup>st</sup> April 2019. A request to utilise the available 6-month extension will be subject to a separate decision.
5. The Director of Adults and Health is recommended to approve an increase to the contract value resulting in a contract value of £162,757.50 for the 6-month period. This represents an increase of £20,493 (14.4%) for the 6-month period.
6. The Director of Adults and Health is recommended to approve the continued use of the negotiated procedure without prior publication of a notice under Regulation 32 of the Public Contracts Regulations 2015 with the goal of establishing a long-term contract with the existing provider. The outcome of these negotiations and the recommendation to award a long-term contract will be subject to a separate significant operational decision.

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

- 1.1 To seek approval from the Director of Adults and Health to waive CPRs 9.1 and 9.2 as outlined under Recommendation 4 of this report and to continue work under the negotiated procedure for the future service provision.
- 1.2 To include within this an increase to the current contract value based on the details provided within this report.

### **2. Background information**

- 2.1 Contract procedure rules (CPRs) 9.1 and 9.2 were waived to facilitate a negotiated procedure to put a long-term contract in place with MHA for extra care at Assisi Place (decision reference D46315). The existing contract with MHA expires on 31<sup>st</sup> March 2019 with no extension periods available to invoke. An interim contract is now required to accommodate work between commissioners and the provider with the goal of setting in place a long-term contract using the negotiated procedure without prior publication of a notice under Regulation 32 (2) (b) (ii) of the Public Contracts Regulations 2015.
- 2.2 A report summarising the progress of the negotiations was presented at the Directorate Leadership Team (DLT) meeting held on the 13<sup>th</sup> March 2019 and discussed further at the meeting held on the 20<sup>th</sup> March 2019. It was identified through these discussions that further work was still needed to address continuing points of query with the goal of ensuring a fair outcome and equity across commissioned extra care services in the city.
- 2.3 Officers in Adults and Health and Procurement and Commercial Services will undertake the necessary work to analyse and address any discrepancies

identified within extra care delivery within Leeds. This work will be summarised and presented to DLT to provide the final steer on how best to proceed.

### **3. Main issues**

- 3.1 Further work is necessary to ensure that the final long-term contract that will be set in place are done so in a way that ensures consistency wherever possible across the city. This will involve looking at both the historical model of funding and the current Leeds Model for Extra Care to ensure arrangements going forward deliver viable services that are fair and affordable.
- 3.2 It is still the focus of this work to set in place a new long-term contract agreement with the existing provider using the negotiated procedure as detailed in the original requests to waive CPRs. Final recommendations for the award of contract will be made via a significant operational decision.
- 3.3 The original waiver report stipulated that officers would, wherever possible, endeavour to ensure: a zero impact on existing tenants; provide evidence that value for money is achieved, and; ensure the Council's commitment to the Unison Ethical Care Charter and a real living wage is included.
- 3.4 Commissioning officers are now looking to waive CPRs 9.1 and 9.2 to put in place an interim contract for 6-months with the option to extend for a further 6-months commencing 1<sup>st</sup> April 2019. This interim contract is to accommodate the work needed to ensure a fair outcome that minimises incongruences as far as possible between any of the arrangements going forward. The outcome of the work as defined in paragraph 3.1 will be incorporated into the longer term contract that is to commence under regulation 32 as detailed in 2.1.
- 3.5 Commissioning officers looked at the financial circumstances of the scheme as part of the analysis of extra care services. Engagement with the provider showed evidence of underfunding through the contract and subsidy by the provider to offset any deficit. The largest component of expenditure was care staff related. There was no evidence of staffing being poorly planned and comments made as part of inspection visits by the Care Quality Commission was that the service was sufficiently staffed. While other similar services have seen contract values increase, arrangements for Assisi Place have not. During this time national changes have increased staffing costs.
- 3.6 Arrangements at Assisi Place have been subject to periods of off contract spend and previous contracts have been set in place through the use of a series of waivers. Due to the history of the scheme's partnership development between the provider and Leeds City Council, it can be evidenced that these are unique circumstances that remove or offer compelling reasons to not go out to market for a full procurement. This was the basis for a previous request to use of the negotiated procedure without publication of a notice in accordance with the Public Contracts Regulations 2015.

## **4. Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 Commissioning officers have been in communication with the provider as part of the work towards negotiating a long-term contract. This has been an ongoing and constructive process covering service demand, delivery and funding.
- 4.1.2 As the currently planned outcome includes having no to minimal impact on existing service users, there has been no engagement to date on this specific area of work. In general service users and carers are regularly consulted with on the quality at the scheme by the 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 requested.
- 4.1.3 A briefing paper was submitted to the Executive Board Member for Health, Wellbeing and Adults on the 9<sup>th</sup> April 2019.
- 4.1.4 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 services covered by this report meet the desired equality requirements.
- 4.2.2 Appropriate policies and procedures are in place with the respective providers at all of the schemes.

### **4.3 Council Policies and Best Council Plan**

- 4.3.1 The development of and role of extra care within Leeds is a key component of the Council's business strategy going forward. The Leeds Inclusive Growth Strategy 2018-2023 states the commitment to build more than 1,000 units of extra care housing by 2028 to support older people.
- 4.3.2 The work of extra care services helps contribute to the outcomes stated within the Leeds Joint Health and Wellbeing Strategy 2016 - 2021.
- 4.3.3 The Best Council Plan 2018/19 – 2020/21 vision of Leeds being the best city for health and wellbeing is supported through the delivery of extra care services.

### **4.4 Resources and Value for Money**

- 4.4.1 The value of the requested decision to waive CPRs 9.1 and 9.2 is £162,757.50 for a 6-month contract commencing 1<sup>st</sup> April 2019. This includes an increase of £20,493 (14.4%) for the six-month period. The value of this increase was reached following a mid-year review of expenditure in 2018/19 and will be finalised with the provider once approval has been confirmed. Any request to utilise the extension period will be at the same value and will be subject to a separate decision.
- 4.4.2 Budget has been identified within existing resources.

4.4.3 The equivalent comparison for extra care is a residential-type service. This is due to both services sharing commonalities around staffing costs, with both extra care schemes and residential homes requiring adequate care staffing to ensure a feasible 24-hour presence. In Leeds in 2018/19 the standard weekly cost of residential care is £523 per person. The cost per person at Assisi Place (including full coverage of the wellbeing charge) is £223.

#### **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 value of the interim six-month contract is under £250,000 but exceeds £100,000 this report is submitted as a significant operational decision and is not subject to call-in.

4.5.3 Awarding a new contract direct to the provider in this way without seeking competition could leave the Council open to a potential claim from other providers, to whom this contract could be of interest, that the Council has not been wholly transparent. In terms of transparency it should be noted that case law suggests that the Council should always consider whether contracts of this value should be subject to a degree of advertising. It is up to the Council to decide what degree of advertising would be 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.

4.5.4 The Director of Adults and Health has considered this and, due to the nature of the services being delivered and the requirement to be physically located in Leeds, is of the view that the scope and nature of the services is such that it would not be of interest to providers in other EU member states.

4.5.5 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.

4.5.6 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 previously approved decision (reference D46315) this risk is perceived to be low.

4.5.7 These comments should be noted by the Director of Adults and Health in making the final decision as to the award of this interim 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 to enter into an interim contract is not approved there is a risk that the services would continue to be delivered off-contract after 31<sup>st</sup> March 2019, including all the risks that come with such a scenario.
- 4.6.2 The possibility exists that services could cease or be disrupted and service users will no longer be able to access support. This would impact on individuals who have been assessed as requiring care and support under the Care Act 2014.

## **5 Conclusions**

- 5.1 To accommodate the necessary work in relation to extra care it is necessary to waive CPRs 9.1 and 9.2 to ensure arrangements at Assisi Place remain on contract as the current contract expires on the 31<sup>st</sup> March 2019. This additional time will allow for further negotiations and wider analysis of the model to be undertaken.
- 5.2 As part of this waiver it is requested that the contract value be adjusted to reduce the operating financial deficit that exists for the service.
- 5.3 The outcome of the additional work is to be taken to DLT for consideration before any actions are taken in relation to arrangements going forward.

## **6 Recommendations**

- 6.1 The Director of Adults and Health is recommended to approve the waiver of CPRs 9.1 (requirement of competition) and 9.2 (invitation of a minimum of four written tenders), using the authority set out in CPR 1.3, to award a 6-month contract with the option to extend for a further 6-months to MHA for extra care services at Assisi Place. This contract is to commence 1<sup>st</sup> April 2019.
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## **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.