

Report of Head of Service One Adoption West Yorkshire

Report to Director of Children & Families

Date: 7th May 2020

Subject: Award of a contract to Barnardo's for the delivery of an Interagency Adoption Placement Service



Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has consultation been carried out?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open 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

1. Main issues

- This report seeks approval to award a contract to Barnardo's for the delivery of an Interagency Adoption Placement service on behalf of One Adoption West Yorkshire (OAWY).
- A decision to procure this contract by way of competitive tender was published on 11 December 2019 and the tender was advertised on 20/01/2020. The tender exercise was unsuccessful. No bids were received but one potential bidder submitted a letter explaining why they were unable to bid. Negotiations with Barnardo's Services Limited have since been undertaken and agreement reached to minor changes in the model, which will enable them to deliver the service outcomes. It is therefore proposed a contract be awarded to Barnardo's Services Limited. This is in accordance with the Public Contracts Regulations 2015 (Regulation 32 (2) (a) on the grounds that no tenders have been submitted in response to an open procedure.
- The contract will be for 3 years, commencing on 25th May 2020 until 31 March 2023. There will be no options to extend this contract.

2. Best Council Plan Implications (click [here](#) for the latest version of the Best Council Plan)

- This proposal provides strong support for the refreshed Children and Young Peoples Plan and the Council's ambition to be a Child Friendly City. The outcomes delivered through this contract will contribute to a number of the outcomes and priorities within the plan, including the outcome to ensure all young people are safe from harm and the priority to help children live in safe and supportive families.
- This proposal also supports the 2019/20 – 2020/21 Best Council Plan priority make Leeds the best city for children and young people to grow up in.
- The Contractor will be required to consider the environmental impact of their approach to service delivery. They will be asked to demonstrate how they will reduce their carbon footprint, including making best use of technology and sustainable transport in delivering the outcomes required for this grant funding.

3. Resource Implications

- The estimated value of the contract is a maximum of £2,950,030 over three years.
- The value is based on the Interagency Fee, which is a charge that is paid when a local authority places a child with an adopter approved by another adoption agency (this could be another local authority, a regional adoption agency, or a voluntary adoption agency). The total charge for a one child placement in 2020/21 is £32,063 and the minimum number of children to be placed is 90 over the life of the contract. Discounts apply for multiple child placements.
- The Interagency Fee is set to increase annually in line with Consumer price inflation including owner occupiers' housing costs (CPIH) for the previous calendar year, as published by the Office for National Statistics. The permission to procure decision quoted an estimated total value of £2,888,487 because the intention was to fix the price using the 2020/21 interagency fee. However, in response to a question from a potential bidder while the tender was out, OAWY agreed to increase the fee annually in line with the CPIH. OAWY has also agreed to contribute financially to a Coordinator post in order to reduce the management cost to the consortia.
- One third of the fee for 30 placements will be paid as a block payment in advance at the beginning of each year of the contract to enable the Contractor to recruit and retain adopters to support local matches. The Chief Finance Officer approved partial payment in advance via a business case in December 2019. In year one of the contract, this equates to an advance payment of £320,630.
- Due to the contract being awarded during the COVID-19 pandemic, a number of temporary amendments to the payment arrangements have been agreed.

Recommendations

- The Director of Children and Families is recommended to approve the award of a contract to deliver an Interagency Adoption Placement service to Barnardo's. The contract will be for 3 years commencing on 25th May 2020 until 31 March 2023. The estimated value of the contract is £2,950,030.

1. Purpose of this report

- 1.1 This report seeks approval to award a contract to Barnardo's for the delivery of an Interagency Adoption Placement service on behalf of One Adoption West Yorkshire (OAWY).

2. Background information

- 2.1 The recruitment of adopters nationally is declining and the gap between the number of children waiting (increasing) and approved adopters waiting (decreasing) is widening.
- 2.2 OAWY placed approximately 150 children for adoption in 2017-18. Of these, approximately 60% were placed with internally recruited adopters and 40% with adopters recruited externally. Of the latter, 18 children were placed through voluntary adoption agencies.
- 2.3 These figures are based on the date of placement.
- 2.4 As with other Regional Adoption Agencies and Local Authorities, OAWY prioritises internally recruited adopters because they are able to support families more locally. However, the value of other RAAs and voluntary adoption agencies in the region are recognised and it is often preferable to match with adopters externally.
- 2.5 The ability of voluntary adoption agencies to find adopters children who wait longer is also valued. OAWY does not have sufficient numbers of adopters and can struggle to find adopters for some groups of children such as older children and sibling groups.
- 2.6 OAWY would like to see more children being placed locally where it is appropriate to do so. This means we look to place children within the West Yorkshire region or secondly in the wider regions surrounding the boundary of West Yorkshire, including the wider Yorkshire and Humber region and Lancashire. We believe this can only be achieved through:
- More adopters being recruited by all agencies in the region
 - More adopters being recruited who see the benefits of and are prepared to wait for a local match
 - More adopters being recruited who would like to adopt older children and sibling group
- 2.7 OAWY would like to make greater use of voluntary adoption agencies through:
- Improved coordination and joint working – e.g. single referral point, effective communication & information sharing; and
 - Formalising of relationships and clarity over expectations, roles and responsibilities by establishing a contract
- 2.8 To achieve this, OAWY would like to award a single contract to provide a minimum of 90 placements over the life of the 3 year contract.

3. Main issues

- 3.1 A decision to procure this contract by way of competitive tender was published on 11 December 2019 and the tender was published on 20/01/2020. However, the tender exercise was unsuccessful. No bids were received but one potential bidder submitted a letter explaining why they were unable to bid. Barnardo's submitted the letter on behalf of the Voluntary Adoption Agency consortia, a partnership of voluntary adoption agencies working in the West Yorkshire area, for which Barnardo's would be the lead contractor.
- 3.2 Negotiations with Barnardo's and the consortia have been undertaken and agreement reached to minor changes in the model, which will enable them to deliver the service. It is therefore proposed a contract be awarded to Barnardo's. This is in accordance with the Public Contracts Regulations 2015 (Regulation 32 (2) (a) on the grounds that no tenders have been submitted in response to an open procedure.
- 3.2 The contract will be for 3 years, commencing on 25th May 2020 until 31 March 2023. There will be no options to extend this contract. The estimated value of the contract is £2,950,030 over the 3 years.

4 Corporate considerations

4.1 Consultation and engagement

- 4.1.1 The proposal to procure a contract has been agreed by all five Local Authority members of OAWY.
- 4.1.2 The Executive Member for Children and Families has been consulted about the decision to procure

4.2 Equality and diversity / cohesion and integration

- 4.2.1 An Equality Impact Assessment Screening document has been completed and is attached at appendix 1. This demonstrates there is no impact on equality and diversity, cohesion and integration because this tender will formalise existing arrangements

4.3 Council policies and the Best Council Plan

- 4.3.1 This proposal provides strong support for the refreshed Children and Young Peoples Plan and the Council's ambition to be a Child Friendly City. The outcomes delivered through this grant funding will contribute to a number of the outcomes and priorities within the plan, including the outcome to ensure all young people are safe from harm and the priority to help children live in safe and supportive families.
- 4.3.2 This proposal also supports the 2019/20 – 2020/21 Best Council Plan priority make Leeds the best city for children and young people to grow up in.

Climate Emergency

4.3.3 The Contractor will be required to consider the environmental impact of their approach to service delivery. They will be asked to demonstrate how they will reduce their carbon footprint, including making best use of technology and sustainable transport in delivering the outcomes required for this grant funded provision.

4.4 Resources, procurement and value for money

4.4.1 The contract will be for 3 years, commencing on 25th May 2020 until 31 March 2023. There will be no options to extend this contract. The estimated value of the contract is £2,950,030 over the 3 years.

4.4.2 The Interagency Fee is set to increase annually in line with Consumer price inflation including owner occupiers' housing costs (CPIH) for the previous calendar year, as published by the Office for National Statistics. The permission to procure decision quoted an estimated total value of £2,888,487 because the intention was to fix the price using the 2020/21 interagency fee. However, in response to a question from a potential bidder while the tender was out, OAWY agreed to increase the fee annually in line with the CPIH.

4.4.3 The value is based on the Interagency Fee for 2020/21, which is a charge that is paid when a local authority places a child with an adopter approved by another adoption agency (this could be another local authority, a regional adoption agency, or a voluntary adoption agency). The total charge for a one child placement in 2020/21 is £32,063 and the minimum number of children to be placed is 90 over the life of the contract. Discounts apply for multiple child placements.

4.4.4 One third of the fee for 30 placements will be paid as a block payment in advance at the beginning of each year of the contract to enable the Contractor to recruit and retain adopters to support local matches. Approval to make partial payments in advance has been obtained from the Chief Finance Officer in order to comply with financial regulations and this was sought via a clear business case prior to procurement. In year one of the contract, this equates to an advance payment of £320,630. The remainder of the fee will be paid at the point of placement.

4.4.5 A review of payments versus placements will be undertaken in the 4th quarter of each financial year and where the number of placements falls below the target, 70% of the advance payment for the shortfall in placements will be clawed back.

4.4.6 OAWY will provide administrative support for the consortia to utilise. OAWY will also provide funding equating to 50% of the cost for the Co-ordinator role, where the post-holder will be employed by the consortia. This cost has been included in the estimated contract value.

4.4.7 It has also been agreed that where OAWY does not make the minimum number of referrals to the consortia each year, OAWY will pay the consortia the equivalent management cost per placement. In year one this equates to £2,494 per placement. The commitment to pay the Contractor the equivalent management cost per placement is made for year one only. OAWY is confident that the minimum number of referrals will be exceeded.

- 4.4.8 Due to the contract being awarded during the COVID-19 pandemic, a number of temporary amendments to the payment arrangements have been agreed. These include the advance payment being split into three instalments every three months to the value of £106,876.67. The remainder of the fee will be paid when an Agency decision has been made to match a child/ren with a particular adopter (rather than actual placement) with the ability for the Council to recover monies if the placement is unsuccessful. Finally, because the level of referrals and placements in year one are likely to be affected, a review of these levels and the application of the clawback and the equivalent management cost per placement will take place with the consortia after 6 months.
- 4.4.9 Performance will be overseen by the OAWY team based within Leeds City Council. Support for contract management will be provided by the Leeds City Council Commissioning and Market Management team as required.

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

- 4.5.1 The total estimated value of the contract is £2,950,030. A key decision gave permission to procure this contract on 11 December 2019. This decision is therefore a significant operational decision as a direct consequence of the key decision and is therefore not subject to call in.
- 4.5.2 Corporate financial regulations stipulate that payments should be made in arrears. Approval to waive Financial Regulation 13 and make partial payment in advance was given from the Chief Finance Officer as part of the permission to procure process.
- 4.5.3 As we are using the negotiated procedure without the publication of a notice, it must be noted that 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 section 3 of the report set out that the opportunity was originally advertised through OJEU, Contract Finder and YORtender DN455085 Interagency Adoption Placement Service and no bids were received so we entered into a negotiated procedure with Barnardo's and the other consortia members.
- 4.5.4 In addition, a Voluntary Transparency Notice (VTN) is being developed for publication on the Official Journal of the European Union (OJEU) in accordance with the Public Contracts Regulations 2015, and 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 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.

4.6 Risk management

- 4.6.1 A risk register has been produced and has been monitored and updated throughout the procurement process.
- 4.6.2 The timescales are very tight and there will be no mobilisation period between contract award and service commencement. However, the Contractor is an experienced and established adoption agency and so should be able to commence recruiting adopters soon after the start of the contract. The contract team will work closely with the Contractor to implement their delivery plan and ensure sufficient numbers of adopters are recruited in year one.
- 4.6.3 The value of the contract can only be estimated at this stage because the number of actual placements to be made is not known. Although the ambition is to place 90 children over the life of the contract, this may not be achieved and there is a financial risk in paying the recruitment fees annually in advance. Progress towards the target will be closely monitored and the contract will allow for a review of placements against payments and clawback after year two or three. The aim is to share the financial risk in order to enable agencies to invest in recruitment to support OAWY in making 30 adoption placements locally per year.

5 Conclusions

- 5.1 This report seeks approval to award a contract to Barnardo's for the delivery of an Interagency Adoption Placements Service.
- 5.2 This contract will help enable OAWY place more children for adoption and place more children locally. This will support the Leeds Children and Young People's Plan outcome to ensure all young people are safe from harm and the priority to help children live in safe and supportive families.

6 Recommendations

- 6.1 The Director of Children and Families is recommended to approve the award of a contract to deliver an Interagency Adoption Placement service to Barnardo's. The contract will be for 3 years commencing on 25th May 2020 until 31 March 2023. The estimated value of the contract is £2,950,030

7 Background documents¹

- 7.1 N/A

8 Appendices

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.

8.1 Appendix 1 – Equality Screening