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Report of White Rose Strategic Commissioning Group

Report to the Director of Children and Families

Date: 6th October 2020

Subject: Request to modify and to extend the contract term of the White Rose Framework Agreement until the 30th June 2021 for the provision and education to young people with special education needs and disabilities (SEND) on behalf of Yorkshire and Humber regional partners, under Public Contracts Regulations 2015, 72 (1) (c)



Are specific electoral wards affected? If yes, name(s) of ward(s):	☐ Yes	⊠ No
Has consultation been carried out?	⊠ Yes	□ No
Are there implications for equality and diversity and cohesion and integration?	☐ Yes	⊠ No
Will the decision be open for call-in?	⊠ Yes	☐ No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix number:	☐ Yes	⊠ No

Summary

1. Main issues

- The Regional Framework Agreement for White Rose Independent Education or Education and Care Placements for Children with Special Education Needs and Disabilities (SEND) provides suitable placements options to enable the participating Local Authorities to meet their statutory duties.
- Leeds is the leading authority for this framework which is currently utilised by 12 Local Authorities across the region.
- The original framework contract was awarded in 2017 (DN201548) and subsequent refresh (DN308425, DN374555 and DN442786) are due to expire on 31.03.2021 with no further options to extend available.
- A review of the framework has been undertaken in order to ensure the new
 procurement continues to provide a seamless service. This required a lengthy
 consultation process with key stakeholders. However this was delayed due to the
 impact of COVID-19 requiring additional time and alternative methods to carry out
 these consultations.

- This report seeks approval to modify and extend the contract term of the White Rose Framework Agreement until the 30th June 2021 for the provision and education to young people with special education needs and disabilities (SEND) on behalf of Yorkshire and Humber regional partners, under Public Contracts Regulations 2015, 72 (1) (c)
- There are 15 Local Authorities and Children's Services Trust in the White Rose Agreement but 12 are members of the current SEND framework. These are Barnsley MBC, City of Bradford Metropolitan District Council, The Borough Council of Calderdale, Doncaster Council, East Riding of Yorkshire Council, The Borough Council of Kirklees, Leeds City Council, North East Lincolnshire, Rotherham Borough Council, Sheffield City Council, Wakefield Metropolitan Council and York City Council.

2. Best Council Plan Implications

- The framework agreement will assist the council in achieving its aims of becoming a child friendly city, improving the health and wellbeing of some of our most vulnerable children as well as ensuring they are safe and feel safe.
- The Framework contributes to Leeds and Partners' ambition to be the best city for children to grow up in and ensures all children do well at all levels of learning and have the skills they need for life by encouraging the improvement of educational attainment and closing achievement gaps for children and young people vulnerable to poor learning outcomes.
- In addition to the supporting educational outcomes for vulnerable young people
 the framework agreement contributes to ensuring that children are young people
 are physically safe, stable and emotionally secure, protected from ill treatment,
 neglect violence, Sexual and Child Criminal Exploitation (CS E & CCE), and free
 from bullying and discrimination, and are protected from involvement in crime,
 antisocial behaviour and other risk taking therefore and boosting their social,
 emotional and mental health wellbeing.
- All White Rose partnership local authority policies and priorities are reflected in the agreement and will continue to be mirrored in ongoing quality assessments of provision.

3. Resource Implications

- There is no obligation for the participating authorities to purchase any services from any bidder on the framework. No undertaking or any form of statement, promise, representation or obligation is being made, or has been made by the Council in respect of the total quantities or values of the services to be bought.
- By collaborating via the framework agreement local authorities across the region can continue to achieve best value for money in comparison to prices that could be paid by Leeds and other local authorities against the different Lots prior to the framework arrangement.

Recommendations

The Director, Children and Families is recommended to approve the modification and extension of the contract term of the White Rose Framework Agreement until the 30th June 2021 for the provision of education and or care to young people with special education needs and disabilities (SEND) on behalf of Yorkshire and Humber

regional partners, under Public Contracts Regulations 2015, 72 (1) (c)

1. Purpose of this report

- 1.1 The report is in relation to the regional White Rose Independent Education or Education and Care placements for Children with SEND Framework Agreement and seeks approval to:
- 1.1.1 Modify and extend the existing framework agreements (DN201548, DN308425, DN374555 and DN442786) by three months until the 30th June 2021 as permitted under the under Public Contracts Regulations 2015, 72 (1) (c)
- 1.2 In the meantime calls off against the framework will continue to be made against those providers where service models and prices have determined that they are able to meet the need.
- 1.3 The framework contract does not guarantee the provider any placements. The same practices around identifying the most suitable match in terms of quality and price will continue and will be subject to governance processes that are in place.

2 Background information

- 2.1 The White Rose framework agreement for independent education or education and care placements for children with Special Education Needs and Disabilities is the overarching agreement enabling participating Local Authorities to make placements with approved providers.
- 2.2 The Agreement enables Local Authorities to make placement as required but places no obligations on the Procurers to purchase any placement service from the Provider. The Procurers may go outside of this Framework Agreement to purchase placement services for children and young people if they deem it appropriate.
- 2.3 The contract was established with the support of the region's Chief Executives and Directors of Children's Services as a regional framework agreement, with the assurance that all relevant and current law was embedded into the tender documentation and contracts with the providers.
- 2.4 The participating authorities share resources across the region to ensure that the contract continues to meet need and that providers are managed in a transparent and consistent manner to help deliver quality outcomes for the young people placed with providers on the framework. Strategic issues are also managed through the Yorkshire and Humber Children's Services Commissioning Board that has representation from the participating authorities.

2.5 There are 15 local authorities or Children's Trusts in the White Rose framework partnership, although only those listed below currently participate in the SEND contract. The framework is open to include the remaining local authorities should they decide to use it in this period.

Barnsley Metropolitan Borough Council
City of Bradford Metropolitan District Council
The Borough Council of Calderdale
Doncaster Metropolitan Borough Council
East Riding of Yorkshire Council
Kirklees Metropolitan Borough Council
Leeds City Council
North East Lincolnshire Council
Rotherham Borough Council
Sheffield City Council
Wakefield Metropolitan Council
York City Council

3 Main issues

- 3.1 The original framework contract was awarded in 2017 (DN201548) and subsequent refresh (DN308425, DN374555 and DN442786) are due to expire on 31.03.2021 with no further options to extend available.
- 3.2 This Framework Agreement is for the provision of education with or without residential provision covering the age range 0 to 25 years as required for referred Child/Young Person who presents with SEND and is placed by the Local Authority in accordance with the Education Act 1966 and 2002.
- 3.3 This framework agreement has been undergoing a comprehensive review with the aim of putting new arrangements in place prior to the expiry of the existing contract. The aim of the review is assure that the service is fit to meet the desired outcomes for Young People. This requires a lengthy consultation process with key stakeholders (young people/ Parents, Providers and Local Authorities etc). Unfortunately this process was unavoidably delayed due to the impact of COVID-19 requiring additional time and alternative methods to carry out these consultations. This means that the project team won't be able to complete the review and undertake the procurement within the original timeline. The requirement for the modification and extension to the White Rose Framework Agreement has been brought about by circumstances which the local authority could not have foreseen.

The Public Contracts Regulations 2015

- 3.4 The Public Contracts Regulations 2015 provide for the framework for tendering and appointing contracts.
- 3.5 Regulations 72 (1) (c) states contracts and frameworks may be modified during their terms without a new procurement procedure where all of the following conditions are fulfilled:—
 - (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;
 - When planning the review and re-procurement for this agreement, the Local Authority could not have foreseen the pandemic and the impact and delays

COVID-19 will create to enable the depth of consultation required to influence the new service requirement.

- (ii) the modification does not alter the overall nature of the contract;
 - The Framework Agreement sets out standard terms and conditions, service standards and price. During the period of the extension these will remain unchanged. No new providers will be allowed to join the framework agreement
- (iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement.
 - It is estimated that the additional value for the three months extension will not exceed on the framework agreement advertised value

4. Corporate considerations

4.1 Consultation and engagement

- 4.1.1 The Yorkshire and Humber Children's Services Commissioning Board, chaired by a Director of Children's Services and attended by Assistant Directors from across the region has been updated on progress and has endorsed this recommendation.
- 4.1.2 The strategic commissioners and placement managers across the region are involved and will continue to be involved in the review and recommissioning of the service.
- 4.1.3 Young people and parents and carers have been consulted as part of the review process.
- 4.1.4 Engagement and consultation with the provider market will continue with during the development and commissioning of the new agreement; they continue to be informed in respect of the proposed changes.

4.2 Equality and diversity / cohesion and integration

- 4.2.1 An equality impact screening form has been completed and is attached as appendix 1.
- 4.2.2 There were no actions arising from the equality screening to be incorporated in to the varying, extension and awarding of this contract.

4.3 Council policies and the Best Council Plan

- 4.3.1 This extension will support the best council plan priorities of keeping people safe from harm and reducing the number of children looked after.
- 4.3.2 This extension will support Children and Families Services commitment to:
 - Ensure that the most vulnerable are protected.
 - Increase the number of children and young people participating and engaging in learning.
 - Improve social, emotional, and mental health and wellbeing.
 - Ensuring that our young children that are looked after are safe and their voices heard.
 - Works toward the aim of achieving a Child Friendly city.

Climate Emergency

4.3.3 The service specification requires bidders to consider the environmental impact of their approach to service delivery. Ongoing quality assessment includes encouraging providers to make the best use of technology and sustainable transport in their day to day operations.

4.4 Resources, procurement and value for money

- 4.4.1 As local authorities across the Yorkshire and Humber region are collaborating together to commission there is the potential to deliver efficiency savings through this Framework Agreement. This is based on the earlier prices paid by Leeds against the different Lots to be awarded across the framework being higher in the majority of cases than the average price available on the framework.
- 4.4.2 The framework itself also contains mechanisms to help ensure value for money at secondary all off. It is possible to agree lower than tendered fees based on the needs of the individual young person and to agree block arrangement with the provider as part of the second recall to competition at a reduced cost under this arrangement.

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

- 4.5.1 The original opportunity was advertised on Leeds City Council's supplier contract management system and the Official Journal of the European Union (OJEU) on the basis of the contract commencing for a period of two years with an option to extend for a further period of two years.
- 4.5.2 The Public Contracts Regulations 2015, 72 (1) (c) provide the framework for modifications of contract during their terms without a new procurement procedure. Sections 3.4 and 3.5 details show compliance this requirement.
- 4.5.3 A modification notice will be issued in the OJEU and a voluntary 10 days standstill period applied to inform of the modification and reduce the potential risk of challenge.
- 4.5.4 The decision to extend the contract is classified as a key decision and will be subject to call-in.

4.6 Risk management

- 4.6.1 A risk register is in place and overseen by the contract monitoring and management activity of the region. Ongoing quality provision within the framework will be monitored through the work of this team.
- 4.6.2 The utilisation of the framework call-off should ensure that value for money continues to be a key assessment during the operation of the contract.
- 4.6.3 The extension ensures that it meets the objectives of measuring price and quality for our most vulnerable children and young people.
- 4.6.4 The extension period is kept to the minimum to ensure that the new service can be provided as soon as possible and that any new providers can join the agreement at the earliest opportunity

5. Conclusions

- 5.1 Without the option to make placements on this regional Framework Agreement for the supply of care provision and education to young people with special educational needs and disabilities, the purchasing of external SEND would continue across the region but with an uncoordinated approach and with the market place seen to lead on the nature, quality and price of the provision.
- 5.2 This approach could create additional pressures on Children and Families' Services and continued efficiency savings and qualitative benefits would not be realised.
- 5.3 The proposal to modify and extend the current agreement will enable to continue to make placement under agreed terms and allow the project team to complete the review and recommissioning of the new service despite the delays as a result of the pandemic.

6. Recommendations

6.1 The Director, Children and Families is recommended to approve the modification and extension of the contract term of the White Rose Framework Agreement until the 30th June 2021 for the provision and education to young people with special education needs and disabilities (SEND) on behalf of Yorkshire and Humber regional partners, under Public Contracts Regulations 2015, 72 (1) (c)

7. Background documents¹

7.1 EDCI attached.

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.