

**Report of Deputy Director of Adults & Health**

**Report to Director of Adult & Health**

**Date:** 17<sup>th</sup> March 2021

**Subject:** Request the approval to vary the framework agreement for the Supply of Assistive Technology Equipment for Daily Living Framework 2017 in respect of all suppliers under the framework agreement through the modification of contracts during their term under Regulation 72 (1) (c) of the Public Contracts Regulations 2015.

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 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**

**1. Main issues**

- 1.1 The Leeds Community Equipment Service operates under a Better Care Fund Agreement between Leeds City Council and Leeds Clinical Commissioning Group (CCG). Leeds City Council is the lead commissioner for the arrangement and Adults and Health are the lead provider in the Partnership and deliver the Service in partnership with Leeds Community Healthcare.
- 1.2 On 12th April 2017, approval was given via delegated decision by the Director of Adults and Health for permission to establish a four year framework agreement for the supply of assistive technology equipment, for Disabled People and those requiring additional support to undertake daily tasks, for the Adults & Health and Children & Families Directorates.
- 1.3 The current framework agreement is due to expire on 31st May 2021 with no further options to extend. Regulation 33(3) of the Public Contracts Regulations 2015 do not permit above OJEU frameworks to exceed 4 years in total save in exceptional cases duly justified. The Council considers there are exceptional reasons justifying this request to extend the framework agreement for a further 12 months, as further detailed below.

- 1.4 The use of Regulations 72 (1) (c) permits a variation when: the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen. The current Covid-19 pandemic has resulted in an exceptional and unprecedented situation which was unforeseen by the Council. Covid 19 has significantly impacted on the procurement timetable of a replacement arrangement which should have already commenced (see paragraph 1.6 below) and the inoperability of the market to undertake a competitive procurement exercise as a result of measures imposed by the UK Government to contain the spread of Covid – 19 which has impacted on the lack of capacity in the market. During 2020 due to Covid 19 the service did not have the capacity to undertake a procurement exercise of this size. There are over 300 individual items of equipment which each require a review of their specification. Part of this review involves input from clinical staff such as occupational therapist, tissue viably nurses etc. These staff were not available during Covid 19 as they were required to work in patient facing roles. Their input is essential to ensure that the specifications which go out to tender are current and comply with the latest regulations. In addition the Council would be unable to conduct a transparent procurement process with regard to tender evaluation, specifically the product sampling which requires face to face demonstrations as these are products which the service and clinicians are unfamiliar with and product evaluation would be very difficult to achieve safely. Some products such as pressure relieving equipment, moving and handling etc. require customer interactions and clinical evaluation which is difficult to achieve with current social distancing measures imposed by COVID-19. The product evaluation traditionally takes place over five weeks and involves involvement from different clinician staff from the NHS as well as staff from the service. This usually takes place at Assisted Living Leeds. However, this was not possible during the Covid pandemic as Assisted Living Leeds is building for two key essential services, Leeds Community Equipment and Telecare Service. During the Covid pandemic Assisted Living Leeds has only been open to staff working in those two services in order to protect the services from the spread of Covid 19 and therefore fulfils condition regulation 72(1)(c)
- 1.5 The Leeds Community Equipment Service provides a range of daily living equipment to disabled adults, older people and children within Leeds. Authority to vary the end date of the framework agreement for the supply of Assistive Technology Equipment for Daily Living for all suppliers listed under the framework for a further 12 months to give sufficient time for a full competitive procurement process to be carried out is required due to the genuine, unforeseeable emergency which resulted in the Council being unable to start the new competitive procurement process in 2020.
- 1.6 The current procurement process should have commenced in April 2020 but has been delayed due to the restrictions of the covid 19 pandemic particularly in regards to the market's ability to respond to tender opportunities and the difficulties in the face to face product sampling aspect of the evaluation process. This was unforeseeable to the authority hence the need to continue with the current suppliers listed on the framework.
- 1.7 Due to the unknown timescales related to the period of Covid 19 restrictions and the vulnerable nature of individuals requiring continued supplies of this essential equipment, it is recommended that the end date of the framework agreement be varied for a further 12 months with the current suppliers to allow sufficient time to

re-engage the market due to the current lock down restrictions and undertake a new competitive procurement exercise with a new start date of 1st June 2022. It is not contemplated that any orders under the framework agreement with the existing suppliers need to have their expiry dates extended as all current orders will be fulfilled by 31<sup>st</sup> May 2021.

- 1.8 All of the providers who are on the framework agreement and are therefore subject to modification, if approved are included in Appendix 1 attached to the report. The modification does not alter the overall nature of the contract and therefore fulfils condition regulation 72(1)(c) in its entirety.

## **2. Best Council Plan Implications**

- 2.1 Council Business Plan – this work contributes to the outcome of people being able to live with dignity and stay independent for as long as possible.
- 2.2 Best Council Plan 2020 – 25 – this work contributes to making the Age-Friendly Leeds KPI by enabling people to live independently in a place of their choice and by providing help and support for people who want to use digital technology to make their lives better.

## **3. Resource Implications**

- 3.1 The framework agreement is for the supply of assistive technology equipment for Daily Living to Leeds Community Equipment Service with an annual base budget of £1,600,000 per year for adults and £400,000 per year for Children's equipment giving a total base budget of £2,000,000.
- 3.2 The framework agreement was for four years giving a total budget of £8,000,000.
- 3.3 Regulation 72(1)(c) permits a variation whereby all of the following conditions must be fulfilled:
- (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;
  - (ii) the modification does not alter the overall nature of the contract;
  - (iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement.

As the anticipated annual spend is £2,000,000, this is only 25% of the original value and also fulfils the condition of regulation 72(1)(c).

## **Recommendations**

The Director of Adults and Health is requested to –

- Approve the use of Regulation 72(1)(c) of the Public Contracts Regulations 2015 to vary the end date of the framework agreement for the supply of Assistive Technology Equipment for Daily Living to 31<sup>st</sup> May 2022.

- Implementation discussions will take place with the suppliers once the variation to the framework agreement is agreed.
- The proposed timescale for implementation is 1<sup>st</sup> June 2021 until 31<sup>st</sup> May 2022.
- The Service Delivery Manager- Assisted Living Leeds will be the officer responsible for the implementation.

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

- 1.1 The purpose of this report is to seek approval via delegated decision by the Director of Adults and Health to approve the authority to use Regulation 72 (1) (c) of the Public Contract Regulations 2015 to vary the end date of the framework agreement for the supply of Assistive Technology Equipment for Daily Living all suppliers listed under the framework for a further 12 months (from 31<sup>st</sup> May 2021 to 31<sup>st</sup> May 2022) to give sufficient time for a new full competitive procurement process to be carried out.
- 1.2 The anticipated value for a further 12 months will be £2,000,000. This no greater than 25% of the original value of the framework agreement.
- 1.3 This is a critical service that cannot be paused or delayed and therefore deemed essential. The service supports the health and social care community across Leeds and is vital to ensuring system flow between hospital and community settings. Assistive Technology equipment is not only preventative in stopping admissions into hospital but essential for supporting customers and families both day to day and with end of life provision. Without the equipment there would be long delays in hospital discharges and increased packages of care.

## **2. Background information**

- 2.1 On 12<sup>th</sup> April 2017, approval was given via delegated decision by the Director of Adults and Health for permission to establish a four year framework agreement commencing on 1<sup>st</sup> June 2017 and appoint a number of suppliers to it for the Supply of Assistive Technology Equipment for Daily Living for the Adults & Health and Children & Families Directorates.
- 2.2 The current framework agreement expires on 31<sup>st</sup> May 2021. A variation to the framework agreement end date is required to ensure the continuation of critical services beyond the current expiry date. It is not contemplated that any orders under the framework agreement with the existing suppliers need to have their expiry dates extended as all current orders will be fulfilled by 31<sup>st</sup> May 2021.

## **3. Main issues**

- 3.1 The Leeds Community Equipment Service operates under a Better Care Fund Agreement between Leeds City Council and Leeds CCG. Leeds City Council are the lead commissioner and Adults and Health are the lead provider in the Partnership and deliver the Service in partnership with Leeds Community Healthcare.

- 3.2 The service provides a range of equipment to meet daily living and nursing needs for disabled adults, older people and children. Equipment purchased by the Council, including that purchased through the Pooled Fund, is subject to procurement through Leeds City Council's procurement arrangements.
- 3.3 The current framework agreement is due to end on 31st May 2021. Not to have a contract in place will lead to significant off-contract spend and therefore, a variation to the framework agreement end date is required to meet the existing demand for the products for the service.
- 3.5 This framework agreement consist of three Lots:
- Lot 1 - Supply of equipment for Daily Living for Adults
  - Lot 2 - Supply of equipment for Daily Living for Children
  - Lot 3 – Special equipment and bespoke items
- 3.6 The scope and nature of the service is not impacted by the variation to the contract. Furthermore, the variation will enable the current contract to continue under its existing terms and conditions whilst the new procurement exercise, subject to an open tendering exercise is undertaken and finalised with a successful outcome. The annual anticipated cost of the framework agreement is £2,000,000.00. The original value of the 4 year framework agreement was £8,000,000.

## **4. Corporate considerations**

### **4.1 Consultation and engagement**

- 4.1.1 The procurement process to establish the framework agreement will include officers from Adults & Health, Children's Services and Leeds Community Healthcare. Officers involved in the procurement process are from both provider and assessment services. The same officers are involved in the development of the product specifications. Service users from the user involvement group will be part of the evaluation process.
- 4.1.2 A detailed Communications and Engagement Plan will be developed to ensure that all relevant stakeholders are informed / consulted to appropriate levels of information at the appropriate times in the procurement process.

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

- 4.2.1 An Equality Impact Assessment screening tool (Appendix 1) has been undertaken for the purposes of this recommendation, and has indicated that an EIA does not need to be carried out. There will be no adverse effect on any particular groups of people within the city by the proposal.

### **4.3 Council policies and the Best Council Plan**

- 4.3.1 The service contributes to National Indicator 142: the percentage of vulnerable people supported to achieve independent living.
- 4.3.2 Council Business Plan – this work contributes to the target to increase the number of people successfully completing a programme to help them relearn the skills for

daily living; increase proportion of older people (65 and over) who were still at home 91 days after leaving hospital into rehabilitation services; increase the percentage of service users who feel that they have control over their daily life.

- 4.3.3 Best Council Plan 2020 – 25 – this work contributes to the Better Lives programme and to the breakthrough project of making Leeds the best place to grow old.

#### **4.4 Climate Emergency**

- 4.4.1 At Full Council on 27 March 2019, Leeds City Council passed a motion declaring a Climate Emergency. In addition, the Leeds Climate Commission have proposed a series of science based carbon reduction targets for the city so that Leeds can play its part in keeping the increase in global average surface temperatures to no more than 1.5°C.

- 4.4.2 Environment and Sustainability considerations were taken into account while developing the specification. Provisions are included which advises that the service will work with suppliers to ensure that they assist Leeds City Council to achieve their carbon reduction targets and reducing emissions across its fleet and operations.

- 4.4.3 In terms of specifics for this contract, the provision of Assistive Technology equipment is a preventative measure that may reduce or eliminate the need for additional transport for the customer to hospital and also may reduce the package of care to the customer therefore reducing the number for visits from homecare staff. Both of these impacts are carbon positive in as much as they are removing the need for unnecessary journeys.

#### **4.5 Resources, procurement and value for money**

- 4.5.1 The original framework was advertised on the Council's tender website [www.yortender.co.uk](http://www.yortender.co.uk) and within the EU via an OJEU (Official Journal of European Union) notice under the open procedure on 28<sup>th</sup> September 2016. A competitive procurement exercise was undertaken in compliance with the Public Contracts Regulations 2015 which ensures that the Council obtains best value for money, in terms of fit for purpose products at the best price.

- 4.5.2 The variation to the framework agreement for a further 12 months will enable the Council to undertake a robust competitive procurement exercise and ultimately achieve best value under a new arrangement.

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

- 4.6.1 This is a Key Decision and is subject to call-in and was published on the List of Forthcoming Key Decisions on 4<sup>th</sup> January 2021. The report does not contain any exempt or confidential information under the Access to Information Rules.

- 4.6.2 The modification of contracts is governed under the Public Contracts Regulations 2015 at regulation 72 which permits certain types of modifications. The regulation considers the extent to which a contract may be modified before it should be considered so substantially changed as to necessitate a new procurement. Permissible grounds for modification include a need for additional services due to unforeseen circumstances (subject to 50% maximum increase in initial contract

value). It also requires the consideration of the effect of cumulative variations. Therefore this needs to be considered in taking this decision

4.6.3 The provisions of Regulation 72 (1)(c) provide an exception “where all of the following conditions are fulfilled:—

72 (1) Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part in any of the following cases:—

(c) 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;

(ii) the modification does not alter the overall nature of the contract;

(iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement.

4.6.4 In making this variation, the above conditions of Regulation 72 (1) (c) are deemed to be satisfied for the following reasons:

(i) The current Covid-19 pandemic has resulted in an exceptional and unprecedented situation which was unforeseen by the Council. Covid 19 has significantly impacted on the procurement timetable of a replacement arrangement which should have already commenced and the inoperability of the market to undertake a competitive procurement exercise as a result of measures imposed by the UK Government to contain the spread of Covid – 19 which has impacted on the lack of capacity in the market. During 2020 due to Covid 19 the service did not have the capacity to undertake a procurement exercise of this size. There are over 300 individual items of equipment which each require a review of their specification. Part of this review involves input from clinical staff such as occupational therapist, tissue viably nurses etc. These staff were not available during Covid 19 as they were required to work in patient facing roles. Their input is essential to ensure that the specifications which go out to tender are current and comply with the latest regulations. In addition the Council would be unable to conduct a transparent procurement process with regard to tender evaluation, specifically the product sampling which requires face to face demonstrations as these are products which the service and clinicians are unfamiliar with and product evaluation would be very difficult to achieve safely. Some products such as pressure relieving equipment, moving and handling etc. require customer interactions and clinical evaluation which is difficult to achieve with current social distancing measures imposed by COVID-19. The product evaluation traditionally takes place over five weeks and involves involvement from different clinician staff from the NHS as well as staff from the service. This usually takes place at Assisted Living Leeds. However, this was not possible during the Covid pandemic as Assisted Living Leeds is building for two key essential services, Leeds Community Equipment and Telecare Service. During the Covid pandemic Assisted Living Leeds has only been open to staff working in those two services in order to protect the services from the spread of Covid 19 and therefore fulfils condition regulation.

(ii) The current procurement process should have commenced in April 2020 but has been delayed due to the restrictions of the covid 19 pandemic particularly in regards to the market’s ability to respond to tender opportunities and the difficulties in the face to face product sampling aspect of the evaluation process. This was unforeseeable to the authority hence the need to continue with the current suppliers listed on the framework.

(ii) All of the providers who are on the framework agreement and are therefore subject to modification, if approved are included in Appendix 1 attached to the report. The modification does not alter the overall nature of the contract and therefore fulfils the condition of the regulation.

(iv) The contract sums set out at paragraph 3.6 of this report show the value of the initial contract, and the proposed increase due to the request to modify the contract. Taking these figures into account, the modification of the contract by the addition of 12 months equates to 25% (£2m) of the original contract value. The value of the additional period is less than 50% of the original contract value.

(v) The additional 12 months will also ensure all interested parties will be able to submit a formal tender under the new procurement exercise on completion of the service review.

4.6.5 It is considered that all the above conditions of Regulation 72(1)(c) are met due to the reasons set out at section 1 above. If this Regulation is used incorrectly, and it is subsequently determined that the above conditions are not met, the Council will be open to legal challenge that it has breached the procurement rules. Further, an aggrieved contractor could potentially argue that it has missed out on a competitive opportunity and thereby seek damages for that loss of opportunity. Under the current circumstances the risk of challenge is deemed to be relatively low since Leeds City Council, as the contracting authority, could not have foreseen that the pandemic would prevent the inoperability of the market to undertake a competitive procurement exercise.

4.6.6 It is also a requirement of Regulation 72 (3) that, when using Regulation 72 (1)(c), a notice to that effect must be published in OJEU to alert the market that such a modification to the contract has taken place (or is to take place). Once the notice is published it will start time running for bringing a claim for a breach of the Regulations, 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.

4.6.7 The above comments should be noted. In making their final decision, the Director of Adults and Health should be satisfied that the course of action chosen represents best value for the Council

## **4.7 Risk management**

4.7.1 If the end date of the framework agreement is not varied beyond 31st May 2021, the Service would have to purchase all equipment "off contract". There would be no contract prices which would be very likely to result in higher costs for equipment.

4.7.2 The higher unit costs on the budget would have a direct impact on customer waiting times for equipment.

4.7.3 The aim of the Service, to provide the right equipment quickly to enable people to live independent and inclusive lives, would be compromised should no framework agreement be formalised.

## **5. Conclusions**



- 5.1 Agreeing to the approval for the authority to vary the end date of the framework agreement for the supply of Assistive Technology Equipment for Daily Living all suppliers listed under the framework for a further 12 months to give sufficient time for a full competitive procurement process to be carried out will enable the Leeds Community Equipment Service to continue to meet the demand for community equipment for the people of Leeds, and support to the health and social care community.

## **6. Recommendations**

The Director of Adults and Health is requested to –

- Approve the use of Regulation 72(1)(c) of the Public Contracts Regulations 2015 to vary the end date of the framework agreement for the supply of Assistive Technology Equipment for Daily Living to 31<sup>st</sup> May 2022,
- Implementation discussions will take place with the suppliers once the variation to the framework agreement is agreed.
- The proposed timescale for implementation is 1<sup>st</sup> June 2021 until 31<sup>st</sup> May 2022.
- The Service Delivery Manager- Assisted Living Leeds will be the officer responsible for the implementation.

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

None.

## **8. Appendices**

### **8.1 Provider list**

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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.