

Waiver of Contract Procedure Rules to award a contract to Barca-Leeds for delivery of the Youth Inclusion Commission service

Date: 24/06/2021

Report of: Youth Offer Lead

Report to: Director of Children and Families

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

What is this report about?

Including how it contributes to the city's and council's ambitions

- This report seeks approval to waive contract procedure rules to award a six month contract to Barca-Leeds for the continued delivery of the Youth Inclusion Commission service from 01/10/2021 to 31/03/22, with the option to extend by a further six months.
- This service supports the ambitions of the Best Council Plan and the ambitions of a Child Friendly City, including improving educational attainment and closing achievement gaps for children and young people vulnerable to poor learning outcomes; improving social, emotional and mental health and wellbeing; and helping young people into adulthood, to develop life skills and be ready for work.
- This contract is required to ensure service continuity whilst a tender for new Enhanced Youth Work contracts is completed, with those contracts anticipated to start from 01/04/2022. The tender will be informed by the findings of a review of targeted youth work, which were approved by Executive Board in April 2021.

Recommendations

- a) The Director of Children and Families is recommended to approve the waiver of contract procedure rules 9.1 and 9.2 (high value procurement) to award a contract to Barca-Leeds for the continued delivery of the Youth Inclusion Commission service from 01/10/2021 to 31/03/2022, with the option to extend by a further six months. The value of this contract will be £170,000 (£340,000 if the extension is taken up in full). The contract will be awarded and contract managed by the Commissioning and Market Management team.

Why is the proposal being put forward?

- 1 This contract is in scope of a review of targeted youth work, the findings of which were approved by the Executive Board in April 2021. One of the recommendations of the Executive Board report was to undertake a procurement to commission new Enhanced Youth Work services externally. The funding released from this contract will be reinvested in these new contracts, which are planned to start on 01/04/2022.
- 2 The current contract with Barca-Leeds is due to expire on 30/09/2021. It is proposed that for the purposes of service continuity, to allow for a planned wind down of this existing provision and undertake a procurement exercise, a further short-term contract is awarded to cover the period 01/10/2021 to 31/03/2022. It is also proposed that the contract has a six month extension option to allow for any slippage in the tender timetable.

What impact will this proposal have?

Wards Affected: All

Have ward members been consulted? Yes No

- 3 This contract is delivered city-wide, with a particular focus on those areas of the city with high indices of deprivation and need. There is no impact on any one ward of continuing the provision for a further six months and so Ward Members have not been consulted specifically on the decision to award a further short-term contract.
- 4 This decision will ensure that young people across Leeds aged 8 -13 year old continue to be supported by the Youth Inclusion Commission service to find alternatives to chaotic lifestyles which may involve significant levels of truancy, offending or antisocial behaviour.
- 5 The contractor will be required to commit to delivering social value as part of the service specification and explain how they will deliver social value within their delivery proposal that will form part of the contract.
- 6 Service delivery is focused on those areas of the city with high indices of deprivation and need. This is in recognition that Young people from areas of higher deprivation are disproportionately represented in the criminal justice system.
- 7 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 decision will continue existing provision through a new contract.

What consultation and engagement has taken place?

- 8 There are no particular legal or statutory requirements to undertake consultation as part of this decision. The contractor has been consulted and is aware of our intention to award a further short-term contract to continue the provision until new Enhanced Youth Work contracts start in April 2022.
- 9 This decision follows on from the review of targeted youth work. Extensive consultation took place with a wide range of key stakeholders as part of this review, including what services were in scope and the timetable for procurement.

What are the resource implications?

- 10 The value of the proposed contract is £170,000. The total potential value of the contract, if the extension option is taken up in full, is £340,000.
- 11 The budget for the Youth Inclusion Commission service sits within the Head of Service for Looked After Children budget area. This budget is within scope of the review of youth work provision and will be invested in new Enhanced Youth Work contracts from April 2022.
- 12 Performance, quality and impact will be closely monitored throughout the life of the contract to ensure value for money is achieved and essential learning is captured.

What are the legal implications?

- 13 This is a significant operational decision and as such is not subject to call in.
- 14 This report does not contain any exempt or confidential information under the Access to Information Rules.
- 15 Awarding a contract directly to Barca-Leeds via a waiver could leave the Council open to a potential claim from other providers, to whom this contract could be of interest, that it 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.
- 16 As this new contract is effectively an “extension” of the current (and previous) contracts entered into via a waiver of Contract Procedure Rules 9.1 and 9.2, resulting a total value of £1,700,000.00 being spent on these services since the 1st April 2018, a Voluntary Transparency Notice (VTN) is being developed for publication on Find a Tender 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 awarded a contract 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.
- 17 It should be noted that a VTN's 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 above threshold 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.
- 18 The above comments should be noted when making the final decision. The Director of Children and Families should be satisfied that the course of action chosen represents Best Value for the Council.

What are the key risks and how are they being managed?

- 19 The potential risks identified above are mitigated by the fact that this contract is short-term, providing a continuation of arrangements whilst the review of youth work provision is completed and longer-term arrangements are secured by way of competitive tender.
- 20 It is recognised that this is not the first time a short-term contract has been awarded as an interim measure to enable the review to be completed. This is the reason why it has been determined to publish a VTN and allowing a period of 30 days prior to awarding the contract. In addition, the review project team have consulted existing and potential providers and other stakeholders as part of the review and a Reference Group of internal and external providers was involved at key stages throughout. The delays with the review have been widely communicated and the sector has been supportive of the pause in the review to focus on a new vision for youth work, which further delayed the procurement.
- 21 The Director of Children and Families is asked to accept this request for the reasons stated in this report.

Does this proposal support the council's 3 Key Pillars?

Inclusive Growth Health and Wellbeing Climate Emergency

- 22 This service supports the council's Key Pillar for Health and Wellbeing through supporting vulnerable children and young people to improve their social, emotional and mental health and wellbeing.

Options, timescales and measuring success

a) What other options were considered?

- 23 The only other option available to us at this time would be to close the contract from 30/09/2021 and take the funding as a budget saving in 2021/22. This would be contradictory to the recommendation of the youth work review Executive Board report that there be no saving to the youth work budget. It would also have a detrimental impact on young people, families and communities by cutting valuable provision.
- 24 The current cohort of young people will not be supported by this contract in the same way once the new Enhanced Youth Work contracts are procured but the new contracts will be available to young people of this age group in wards with the highest levels of deprivation. Youth work can be very beneficial for young people at risk of truancy, offending or antisocial behaviour. Those with the highest level of need will not be offered the same type of individual support as this contract currently delivers because there is not the capacity for this in other existing services. Referrals to the Early Help, cluster support and Youth Offending Teams are likely to increase. This will need careful planning as part of contract closure. Awarding a further short-term contract to 31/03/2022 will allow more time to do this, which would be very helpful.

b) How will success be measured?

- 25 As part of ongoing contract management, the contractor will be required to submit a quarterly report containing data on quantity, quality and impact of service delivery. Contract management meetings will take place quarterly, led by the Commissioning and Market Management team with involvement from the service lead within Looked After Children. Impact on the wellbeing and life chances of young people, equality and diversity, poverty and social value are all included as part of this monitoring.

c) What is the timetable for implementation?

26 The existing contract is due to expire on 30/09/2021. In order for the contractor to retain staff, it is therefore important that we are able to implement this decision as soon as possible and by the end of June at the latest. This will give the contractor financial security to extend staff contracts to 31/03/2022.

Appendices

27 Appendix 1: Reason for waiving CPRs (see below)

28 Appendix 2: Equality Impact Assessment screening document (see attached)

Background papers

29 None.

Appendix 1

What is your reason for waiving CPRs?

There is a genuine, unforeseeable emergency meaning there is no time to go through a procurement process e.g. to deal with the consequences of extreme weather.	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
To purchase supplies or services on particularly advantageous terms due to liquidation/administration.	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Requirement to put a contract in place with a current provider whilst a review of the services is completed.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Ran out of time to undertake a new procurement exercise	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Other (please provide summary here)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No