

Subject: Adults and Health and Children's Services are seeking to use the provision in Public Contract Regulations 2015, Regulation 32(2) Negotiated Procedure without prior publication to enter in to a contract with Leeds Centre for Integrated Living (LCIL) for 6 months, with an additional extension period of up to 6 months to the maximum value of £779,840 for the provision of Direct Payment Support Service from the 1st December 2021.

Date: 27TH October 2021

Report of: Deputy Director Integrated Commissioning, Adults Leeds City Council & NHS Leeds Clinical Commissioning Group

Report to: Director of Adults and Health

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 requests permission to use the provision in Public Contract Regulations 2015, Regulation 32(2) Negotiated Procedure without prior publication to enter in to a contract with Leeds Centre for Integrated Living (LCIL) for 6 months, with an additional extension period of up to 6 months to the maximum value of £779,840 for the provision of Direct Payment Support Service from the 1st December 2021.
- The current contract expires on 30th November 2021 and does not contain any options to extend. Therefore, the requested 6 months with an additional extension period of up to 6 months is required to ensure continuity of service whilst the service specification is revised, a procurement process takes place ; the facilitation of a six month mobilisation period to cover the anticipated transfer of staff under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) if required.
- In addition, the new contract will enable the Local Authority to deal with the return of advice information and guidance, and PA recruitment element of the service in-house along with the TUPE transfer of identified members of staff.
- The Best Council Plan (2020-25) provides the strategic plan for overarching vision for Leeds, including outcomes for the proportion of people who use social care services who have control over their daily life.
- The proposal in this report directly contributes to the Best Council Plan's overarching vision of tackling poverty and reducing inequalities
- The services make significant contributions to a range of the City Priority Plans, but particularly the Health and Wellbeing Plan and its priority to make Leeds the best City for Health and Wellbeing by 2030. This is achieved through supporting clients to make healthy lifestyle choices and to live safely.

Recommendations

- a) The Director of Adults and Health is recommended to approve Adults and Health and Children's Services request to use the negotiated procedure without prior publication of a notice under Regulation 32(2) of the Public Contract Regulations 2015 and to enter into a direct contract with Leeds Centre for Integrated Living (LCIL) for 6 months, with an additional extension period of up to 6 months to the maximum value of £779,840 for the provision of Direct Payment Support Service from the 1st December 2021.
- b) This is requested to enable the current Provider to continue its service delivery whilst a revised procurement process takes place; the facilitation of a six month mobilisation period to cover the anticipated transfer of staff under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) if required; to enable the return of advice information and guidance, and PA recruitment element of the service in-house along with the TUPE transfer of relevant members of staff.
- c) The Director of Adults and Health will use their delegated authority to take commissioning decisions which will be a direct consequence of this key decision, for example approval of the detailed specifications for procurement and subsequent contract award. This is subject to the decision being in line with the key principles and features as described in the report.
- d) The Director of Adults and Health will take this decision, and future decisions on behalf of Adults and Health and Children's and Families Directorates.

Why is the proposal being put forward?

- 1) Adults and Health and Children and Families Directorates have a contract with Leeds Centre for Integrated Living (LCIL) for the delivery of advice, information and guidance for individuals or families in receipt of a Direct Payment (DP) and employing a Personal Assistant (PA).
- 2) LCIL also provide a payroll service to manage their direct payment effectively and also facilitate support services on behalf of Leeds CCG for Personal Health budgets (PHB).
- 3) The provision of direct payment support services has been commissioned for a number of years through a number of different contracts. This service, until very recently has never been subject to a procurement exercise but came through historical funding arrangements.
- 4) Adults and Health completed a full review of the DP process. As part of the review process, members of LCIL staff who were managing the advice and information (the Independent Living Team (ILT)) were relocated to work more closely with social work teams. The focus of the review considered how Adults and Health, supported by the ILT could improve its processes both in terms of the ways in which social work staff help people to set up a direct payment and how recipients are subsequently supported, through the externally provided service to manage their services, including helping people to recruit and employ their own PAs.
- 5) The outcome of the review helped to identify the changes that were required to encourage and support more people to have a DP to enable them to arrange and manage their own care. The learning from the review and information gained from a Stakeholders event was used to explore a number of service delivery models. In April 2019 the DLT considered two options of

future delivery and decided to return the advice information and guidance element in-house with the TUPE transfer of members of the ILT and the Payroll service to undergo a procurement exercise.

- 6) Following the detailed review, a bidders event and service user consultation ensued and an authority to procure was approved by the Director of Adults and Health in January 2021.
- 7) The procurement of this service commenced February 2021 and the tender documents were published 12th February until 19th March 2021. Two Providers submitted applications, one of which was the current provider and neither provider met the minimum quality threshold to award the contract.
- 8) The abandonment of this tender exercise has required partners to reevaluate the timescales required to fulfil our obligation to the tendering of the PA Payroll and Managed Bank Account Service, and re-advertise this opportunity to seek a suitable delivery provider, whilst delivery is maintained by the existing service provider.
- 9) Due to the failure to appoint a provider, a request is being sought to use the negotiated procedure without prior publication of a notice under Regulation 32(2) of the Public Contract Regulations 2015 and to enter into a direct contract with Leeds Centre for Integrated Living (LCIL) for 6 months, with an additional extension period of up to 6 months to the maximum value of £779, 840 for the provision of Direct Payment Support Service from the 1st December 2021.
- 10) The abandonment of the tendering exercise for the PA Payroll and Managed Bank Account, also impacted on the aligned transfer of the advice information and guidance, and PA recruitment element of the service in-house to LCC along with the TUPE transfer of relevant LCIL staff.
- 11) The existing contract expires on the 30th November 2021.
- 12) The indicative timetable for a re-tendering process is as follows;

January 2022	Publication of Documents for PA Payroll and Managed Bank Account
May 2022	Contract Award
June 2022	Commence contract mobilisation and TUPE Transfer if required
December 2022	New service commences

- 13) The new contract timeframes will also allow for the TUPE transfer of staff responsible for the delivery of advice information and guidance, and PA recruitment in-house to the council which will take place alongside the procurement activity. The work to undertake this is in progress and it is envisaged to be implemented by May 2022.
- 14) The in-house workstream will be aligned to the procurement process and any mobilisation periods (if required) to ensure a seamless transition of provision to minimise the impact on service users and staff.

What impact will this proposal have?

Wards Affected: ALL

Have ward members been consulted? Yes No

- 15) The service will deliver on a city-wide basis so will impact all wards.
- 16) It is clear from information gathered through the Working Age Adult Commissioning Team contract management process that this service is essential and supports individuals to maximise their independence, their opportunities to maximise their choice and control for health and wellbeing, and how that can be facilitated via direct payments.
- 17) The proposal will enable LCIL to continue its service delivery whilst a revised procurement process takes place and allow the facilitation of a six month mobilisation period to cover the anticipated transfer of staff under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) if required. In addition, it will enable the return of advice information and guidance, and PA recruitment element of the service in-house along with the TUPE transfer of appropriate members of staff.
- 18) Individuals with disabilities are far more likely to be adversely affected by poverty, disadvantage and inequality. Maintaining this service is essential to maintain access to support and service provision for individuals in receipt of a direct payment, without which could be subject to further disadvantage.
- 19) An Equality Diversity Cohesion screening has been completed for this report and shows that all relevant aspects have been considered and there will be no negative impact on any particular groups as these proposals will continue existing service provision without change.
- 20) Furthermore, an ability to undertake a procurement will allow the Council to continue to strive to provide the best outcomes and service for individuals who have complex needs enhancing the opportunities to improve health outcomes and reduce health inequalities.
- 21) A full Equality Impact Assessment will be completed as part of the commencement of new provision and all equality and diversity risks will be monitored and reviewed through the joint project team and steering group.

What consultation and engagement has taken place?

- 22) As highlighted, a comprehensive review of the provision has been undertaken, the recommendations of which this new contract will help facilitate.
- 23) Detailed consultation with service users and stakeholders was undertaken as part of the review, and the views obtained will shape the new service specifications.
- 24) The Executive Member for Health, Wellbeing and Adults was briefed on this proposal in October 2021.
- 25) Advice has been sought from PACS throughout the duration of the review and will continue to be sought through the procurement process to contract award.

What are the resource implications?

- 26) The award of this provision will be jointly commissioned by the Directorate of Adults and Health who will lead the commissioning, and the Directorate of Children and Families.
- 27) The value of the contract incurred over the initial six-month period will be £389,920. Adults and Health contribution over the initial six-month contract is £314,420 and Children's and Families contribution, £75,500. The total maximum contract value of the initial six months with the option to extend for an addition six months will be no greater than £779,840. Adults and Health and Children and Families contribution to the budget for the new award is available within existing resources.
- 28) Financial modelling has been undertaken based on review findings, supplied service cost analysis form (SCAF) information, TUPE information and local and regional benchmarking.
- 29) Opportunities to ensure value for money for the Council are being undertaken as part of new contract, including a procurement exercise and new delivery of advice information and guidance, and PA recruitment element of the service in-house along with the TUPE transfer of appropriate members of staff. The contract has not received cost of living price uplifts during the life of the contract.
- 30) The funding resources available for this contract provision will be reduced aligned to the TUPE transfer of staff responsible for the delivery of advice information and guidance, and PA recruitment element of the service when this is insourced to the council.
- 31) Officer time will be necessary in order to undertake the procurement and future contract monitoring. This will be met through existing capacity from within the Working Age Adults Commissioning team
- 32) It is acknowledged that in light of the Council's current financial situation further efficiencies may be required in the future and these would need to be the subject of a contract variation or reflected in the final contracting documentation.

What are the legal implications?

- 33) This is a Key Decision which is subject to call-in as the maximum combined cost of the services detailed within this decision is greater than £500k. A notice was published on the List of Forthcoming Key Decisions in September 2021.
- 34) This report does not contain any exempt or confidential information under the Access to Information Rules.
- 35) The Council believes that the decision to award a new contract to LCIL for the provision of Direct Payment Support Service is permitted pursuant to Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 which states:
 - "32.(1) In the specific cases and circumstances laid down in this regulation, contracting authorities may award public contracts by a negotiated procedure without prior publication.
 - (2) The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases:-
 - (b) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:-
 - (ii) competition is absent for technical reasons,...

but only....where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;”

The section highlighted in page 3 of this report sets out the technical reasons required by Regulation 32(2)(b)(ii) that the Council would rely on to justify its decision.

- 36) 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.
- 37) In addition, risks can be diminished somewhat by the publication of a voluntary transparency notice on Find a Tender immediately after the decision to award the contract has been taken and then 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 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.
- 38) However, it should be noted that voluntary transparency notices themselves can be challenged. Although we have now left the European Union the case of Italian Interior Ministry v Fastweb SpA (Case C-19/13) is still persuasive and 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 procurement process in accordance with the Public Contracts Regulations 2015. 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.
- 39) These comments should be noted by the Director of Adults and Health and in making the final decision should be satisfied that doing so represents best value for the Council.

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

- 40) The work is being led by the Working Age Adults Commissioning Team, with support from PACS, reporting up to the Head of Commissioning (Working Age Adults). A small project team has been set up to oversee the procurement process and ensure that the process adheres to the procurement regulations, as well as the council's Contract Procedure Rules.
- 41) There are significant risks associated with not approving this proposal and ceasing investment in this service. Disinvestment would place a significant amount of additional pressure on social work teams and support services commissioned by both Adults & Health and Children's & Families, and would further disadvantage adults and families across Leeds who would struggle to find an alternate service and specialist provision elsewhere in the city.

- 42) The provision of the contract for 6 months, with an additional extension period of up to 6 months will allow for service continuity whilst:
- the service specification is revised,
 - a procurement process takes place;
 - the facilitation of up to six months mobilisation period to cover the anticipated transfer of staff under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) if required;
 - the TUPE transfer of relevant members of staff from the current providers Direct Payment Support Services (advice information and guidance) to the council.

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

Inclusive Growth

Health and Wellbeing

Climate Emergency

- 43) To support the Council's stated ambition of working towards a carbon neutral city by 2030, the impact on the climate should be considered across all officer work. Through ongoing contract management, the provider will be encouraged to actively engage with the climate change agenda. Examples could include adhering to and working within the values of Council policy and guidance in relation to climate change, a reduction in carbon emissions through, for instance, decreasing private vehicle usage, using and/or investing in 'eco-friendly' resources.
- 44) During the COVID 19 pandemic, the current provider has wholly embraced technologies allowing for remote service provision such as Zoom. This remains an option for clients even now face to face support is resuming. Supporting individuals at home reduces carbon emissions through less travel time to face to face appointments, and requirement to retain this option for clients will be clearly set out in the revised service specification.
- 45) The service directly contributes to the Council's Health and Wellbeing Plan and its priority to make Leeds the best City for Health and Wellbeing by 2030. This is achieved through supporting clients to make healthy lifestyle choices and to live safely.

Options, timescales and measuring success

a) What other options were considered?

- 46) Commissioning officers considered the option to proceed with a contract award for bidders following the previous tender exercise related to this provision, however as the providers did not meet minimum quality threshold criteria, this was not pursued.
- 47) The option of a direct contract award to the existing provider, without subjecting provision to another full procurement was also considered. However, advice received from PACS colleagues suggests that the risk of challenge from other providers in relation to this course of action could be high. Therefore, the option being pursued is to obtain a new contract to allow continuation of provision whilst a full and rigorous procurement exercise takes place.

b) How will success be measured?

- 48) The procurement exercise will be project managed by a project team comprising officers from Working Age Adults Commissioning and PACS, reporting up to the Head of Commissioning on key risks and milestones.

- 49) The service is subject to the WAA Commissioning Team’s contract management processes. This includes regular contract management meetings between the provider and LCC officers to discuss operational issues, service quality, and to gauge the service’s performance against the targets set out in the service specification.

c) What is the timetable for implementation?

- 50) The current contract expires on 30th November 2021. The indicative timetable for a re-tendering process is as follows;

January 2022	Publication of Documents for PA Payroll and Managed Bank Account
May 2022	Contract Award
June 2022	Commence contract mobilisation and TUPE Transfer if required
December 2022	New service commences

- 51) The work to undertake the TUPE transfer of staff responsible for the delivery of advice information and guidance, and PA recruitment in-house to the council is in progress and it is envisaged to be implemented by May 2022.

Appendices

- 52) Equality Impact Assessment screening tool

Background papers

- 53) None