

Approval to award a new contract under Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 – Use of the negotiated procedure without prior publication – to Link Maker for the Link Maker Adoption Matching Licence

Date: 06/06/2022

Report of: Head of Service One Adoption West Yorkshire

Report to: Deputy 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 for the award of a new contract under Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 - Use of the negotiated procedure without prior publication of a Contract Notice –Link Maker without subjecting the opportunity to competition, for the Link Maker Matching Licence until 30/06/23.
- This proposal supports the 2020-25 Best Council Plan priority to make Leeds a Child Friendly City where families are supported to give children the best start in life.

Recommendations

- a) The Deputy Director of Children and Families is recommended to approve the award of a new contract under Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 - Use of the negotiated procedure without prior publication of a Contract Notice - to Link Maker for the Link Maker Matching Licence. The contract shall be for the period 01/07/22 to 30/06/23 with the option to extend by up to 36 months. The renewal cost for the initial 12 month contract period will be £59,364.38. The potential total value if the extension is taken up in full has been estimated at approximately £307,978.

Why is the proposal being put forward?

- 1 Leeds has worked in collaboration with other Local Authorities and Voluntary Adoption Agencies (VAAs) throughout the Yorkshire and Humber region to create a new model of service delivery for adoption services, in line with the Education and Adoption Act 2016 and Adoption Regionalisation agenda. The West Yorkshire Regional Adoption Agency (RAA) known as One Adoption West Yorkshire (OAWY) was formed to deliver this agenda on 1st April 2017, at which time the responsibility for adoption services across West Yorkshire transferred to Leeds City Council as host of OAWY. This includes responsibility for commissioning activity and so it is Leeds City Council that holds the contract with Link Maker on behalf of the five local authorities in the RAA since 2017: Bradford, Calderdale, Kirklees, Leeds and Wakefield.
- 2 The web-based Link Maker matching service provides a national database of children and families accessible to adoption social workers and approved adopters. The system serves to increase placement choice for children awaiting adoption through creating access to a UK-wide pool of available adopters. The service includes registration to an online portal, which assists in finding prospective adopters for children and young people. This service is only available under licence. The provision of the Link Maker matching service assists OAWY in ensuring children and young people are matched with prospective adopters able to meet their needs in a timely way.
- 3 A National Adoption Register was due to be developed, which would replace the requirement for the Link Maker online matching portal. However, this development was abandoned. In 2019 a project group was formed to determine whether the online matching service should be subject to a competitive tender process. The Leeds City Council Corporate ICT representative advised that, as this service is very specialised and widely used by other regional adoption agencies and voluntary adoption agencies, it would not be in the best interests of the service users for OAWY to commission a service through a separate provider. OAWY therefore continued the arrangement with Link Maker on behalf of the region in 2020 and the current arrangement with Link Maker Systems Ltd expires 30 June 2022.
- 4 The Link Maker matching service continues to be used by most regional adoption agencies (RAAs) and voluntary adoption agencies (VAAs) to assist in identifying suitable prospective adopters, therefore continuing to commission this service will ensure consistency of provision. It is believed that developments will occur on a national level during the next two years and so a 12 month contract is proposed with extension options.

What impact will this proposal have?

Wards affected: N/A

Have ward members been consulted?

Yes

No

- 5 No individual wards in Leeds will be impacted by these proposals because the provision is delivered on a regional basis.
- 6 An Equality Impact Assessment Screening document has been undertaken. This identifies there is no impact in respect of equality and diversity as a result of this decision because it continues existing provision.

What consultation and engagement has taken place?

- 7 There are no particular legal or statutory requirements to undertake consultation as part of these decisions. Consultation takes place regularly with regional partners at the OAWY Board, where the continuation of these services has been approved.
- 8 PACS have been consulted regarding the most appropriate procurement route to continue funding this service.
- 9 The Chief Officer Finance and Chief Information and Digital Officer have been consulted to obtain approvals for advance payments and the awarding of a contract for an online resource.

What are the resource implications?

- 10 The value of the licence in year one is £59,364.38. This includes a 20% discount plus a 3% discount for late confirmation of the price following a previous calculation error by the supplier. The licence fee is mostly made up of a scale fee, which is a fee per child in the care of the authority (average over the last 3 years). This has increased by 9% since April 2021. It is also made up of a customer fee to cover financial process and administration, which has risen by 7%. The price increase this year represents an increase of 31% over the last 2 years. This is in line with rising business costs and predicted inflation. An exact total value for the four year duration of this decision is not possible because it is largely based on the average number of children looked after over the last 3 years but has been estimated at £307,978 should the extension option be taken up in full.
- 11 Link Maker have provided a cost breakdown by local authority so that the funding for this licence can be reviewed with each local authority if needed to help manage the OAWY budget.
- 12 As an existing licence holder OAWY receives a 20% discount in continuing this arrangement with Link Maker Systems Ltd.
- 13 OAWY will also receive one month free service provided Link Maker are in receipt of the full payment prior to the current licence expiration date of 30 June 2022. Corporate financial regulations stipulate that payments should be made in arrears. Approval to make payments in advance has been given by the Chief Finance Officer as part of the governance process. Making this advance payment represents value for money for OAWY and supports the council's value of spending money wisely.
- 14 The budget for this contract has been confirmed by finance.
- 15 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.

What are the legal implications?

- 16 This report involves a Significant Operational Decision and is not subject to call in. There are no grounds for keeping the contents of this report confidential under the Access to Information Rules.
- 17 The Council believes that the decision to award a new contract to Highton Consultancy for provision of independent advice and quality assurance to the OAWY Adoption Panel 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, in the case of paragraph (ii) ..., 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;”

Paragraph 2 of this report sets out the technical reasons why competition is absent and the reasons why no reasonable alternative or substitute exists, as required by Regulation 32(2)(b)(ii) that the Council would rely on to justify its decision.

- 18 Notwithstanding the above, there is the potential risk of challenge that there are no real reasons justifying the use of Regulation 32(2)(b)(ii), and that the Council is simply seeking to circumvent the application of the rules. However, due to the reasons set out in paragraphs 3 and 4 of this report the risk of such challenge appears low.
- 19 In addition, these risks can be further mitigated 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.
- 20 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 applicable and highlights the limited protection that the voluntary transparency notice route can offer to contracting authorities wishing to make direct awards without following a fully transparent process for above threshold public procurements 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.
- 21 In making their final decision, the Deputy Director for Children and Families should be aware of the risk of challenge to the Council identified above and be satisfied that on balance the course of action chosen represents Best Value for the Council.

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

- 22 The risk of making an advance payment for this service is considered to be very low as Link Maker is currently the preferred option for the majority of RAAs and VAAs. The Link Maker

Systems Ltd licence agreement that Leeds City Council signs on behalf of OAWY has been reviewed and approved by the council's legal advisor.

- 23 Due to the significant increase in cost over the last two years for the licence, OAWY has reviewed the budget and confirmed their ability to renew the contract for a further 12 months but will review how the price is calculated to ensure it is fair and accurately reflects the volume of work and numbers of children referred.
- 24 In the event that this proposal is not approved, continuity of service for children and families currently receiving the service would not be possible. This disruption would leave an unacceptable gap in the OAWY service offer and have a negative impact on the council's priorities as outlined in the Child and Young People's Plan.

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

- Inclusive Growth Health and Wellbeing Climate Emergency

- 25 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.

Options, timescales and measuring success

What other options were considered?

- 26 No other options were considered for the reasons outlined in this report.

How will success be measured?

- 27 Performance will be overseen by OAWY who will ensure that the system continues to meet need and any issues are resolved in a timely manner.

What is the timetable for implementation?

- 28 The existing agreement is due to expire on 30/06/22 and if full payment is paid in advance prior to this date, OAWY will receive one month free service.

Appendices

- 29 Equality Impact Screening Form.

Background papers

- 30 None.