

Request to use the provision in Public Contract Regulation 2015, Regulation 32(b) (ii) Negotiated Procedure without prior publication to enter into a contract with Leeds Centre for Integrated Living (LCIL) for 12 months plus up to an additional period of 12 months for the maximum value of £1,004,834 for the provision of a Payroll and Managed Bank Account (MBA) Service from 1st September 2022.

Date: 15th August 2022

Report of: Deputy Director, Integrated Commissioning

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

Brief summary

This report requests authority to utilise the provision of the PCR 2015, Reg 32(b) (ii) negotiated procedure without prior publication to enter into a contract with Leeds Centre for Integrated Living (LCIL) for 12 months plus up to 12 months, for the provision of a PA Payroll and Managed Bank Account Service commencing 1st September 2022.

The contract is for 12 months plus up to 12 months with a total maximum cost of £1,004,834 (£502,417 per annum).

The service will provide payroll assistance to individuals in receipt of a direct payment and employing a Personal Assistant (PA) to deliver their care and support. The managed bank account (MBA) service will provide support for individuals who have difficulty managing financial and administrative responsibilities related to their direct payment.

The service will make significant contributions to a range of 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 will be achieved through supporting clients to make healthy lifestyle choices and to live safely. The proposal in this report directly contributes to the Best Council Plan's overarching vision of tackling poverty and reducing inequalities, supporting self-care, with more people managing their own health conditions in the community; working as a system to ensure people get the right care from the right people in the right place.

Recommendations

- a) The Director of Adults and Health is recommended to approve Adults and Health and Children's Services request to use of the provision of the Public Contract Regulations 2015, Regulation 32(b) (ii) Negotiated Procedure without prior publication to enter into a contract with Leeds Centre for Integrated Living (LCIL) for 12 months with an addition extension

period of up to 12 months, to the maximum value of £1,004,817 (502,417 per annum) for the provision of a Payroll and Managed Bank Account Service from the 1st September 2022.

- b) The request to utilise PCR 2015 Reg 32(b) (ii) negotiated procedure without prior publication to award a contract to LCIL is to enable Adults and Health to re procure the previous unsuccessful tender; to embed the newly transferred in house LCC service – (Leeds Direct Payment and PA Support Hub) into Adults and Health and to enable the wider review on Direct Payments in the city to take place.
- c) The contract award will continue the provision of a Payroll/MBA service to Adults and Health and Children and Families and the contract value will be met through existing Adults and Health and Children Services budgets.

What is this report about?

- 1 A request to utilise PCR 2015, Reg 32(b)(ii) to award a contract to LCIL for the provision of a PA Payroll and Managed Bank Account Service for individuals in receipt of a Direct Payment, commencing 1st September 2022.
- 2 The service is currently commissioned by Adults and Health and Children and Families Directorate to provide direct payment support services. The service also facilitates support services on behalf of Leeds Integrated Care Board (LICB) for personal health budgets (PHB).
- 3 The existing contract with LCIL expires on 31st August 2022.
- 4 Adults and Health completed a full review of the current Direct Payment Support Service in 2019/20, which resulted in the decision to return the information, advice and guidance and the PA recruitment element of the service in-house, along with the TUPE transfer of relevant staff and the payroll and managed account services to undergo a procurement exercise.
- 5 A procurement exercise for a PA Payroll and Managed Bank Account commenced February 2021 but following a failure to appoint a suitable provider based on the evaluation criteria, the timescales to tender and re-advertise the PA Payroll and Managed Bank Account Service was re-evaluated, whilst delivery was maintained by the existing service provider.
- 6 A request was sought to use the negotiated procedure without prior publication of a notice under Regulation 32(2) of the Public Contract Regulations 2015 to enter into a direct contract with Leeds CIL for 6 months (£389,920) with an additional extension period of up to 6 months to the maximum value of £779,840 per annum for the provision of Direct Payment Support Service from the 1st December 2021.
- 7 The extension was included in this decision to enable sufficient time to implement the transfer of ten members of staff responsible for the PA employment support function into the Council, and to again, re-advertise and procure PA Payroll and Managed Bank Account Service.
- 8 During the first 6-month period of the contract award, extensive work had been undertaken to analyse and map all aspects of service delivery information submitted by the provider as part of the staff transfer to LCC. This mapping also coincided with a parallel city-wide exercise reviewing the Direct Payment system in Leeds, with the aim of identifying the

changes required to encourage and support more people to have a Direct Payment and manage their own care more effectively.

- 9 Due to the complexity of the work being undertaken, the utilisation of three months of the additional extension was required to enable the completion of the TUPE transfer of staff from the current provider to LCC by the 1st September 2022.
- 10 The TUPE LCIL staff once transferred to LCC will continue to work closely with the existing provider, using shared IT systems and processes to minimise the impact and disruption to service users during this transition period by maintaining the service status quo as much as possible.
- 11 Furthermore, the embedding of staff into LCC will have a significant impact in how a new procured Payroll/MBA will need to look, and what further functionality and tasks would be necessary for it to deliver support for Direct Payment and Personal Health Budget holders, and their PAs in the city. These changes will have an impact on the model of delivery and tender documents for the future payroll/MBA procurement.
- 12 The wider review of the direct payment and PA support city-wide system has also necessitated a delay to the procurement of the PA Payroll and Managed Bank Account Service.
- 13 Due to the TUPE transfer and embedding of LCIL staff to LCC, shared IT systems, potential Payroll/MBA model and tender re-design and minimising service user disruption, other options of Payroll/MBA delivery would cause significant inconvenience and cost to LCC, a significant impact on delivery for service users and stakeholders and it is on that basis, which, for technical reasons, necessitate why a direct provision for Payroll/MBA should be maintained by the existing provider.
- 14 An interim service specification for a Payroll/MBA only service has been finalised which will allow the temporary continuation of service delivery whilst the wider Direct Payment review work is taking place, and the embedding of the staff team is transferred within LCC.
- 15 A future procurement exercise will take place in autumn 2023 and contract award in Spring 2024 with a new service commencing summer/autumn 2024, dependent on the mobilisation period required.
- 16 The lead in time for the procurement exercise is necessary due to factors that will affect a new service specification:
 - The embedding of the new in-house Leeds Direct Payment and PA Support Hub into Adults and Health from 1st September will require a period of stability and consideration of processes and practical operations which may change their interface and relationship with a commissioned payroll provider. Their feedback and development will be crucial in any future Payroll/MBA specification and Direct Payment process.

- Wider review on Direct Payment work, and the PA offer will also affect how the processes and systems work across operational and social work services – it is important this has time to take place to inform tender documentation.

What impact will this proposal have?

- 17 It is clear from information gathered through the Working Age Adult Commissioning Team contract management process and social work operational services 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.
- 18 The service will:
- deliver on a city-wide basis so will impact all wards.
 - delivers some of LCC statutory responsibility under the Care Act 2014 to ensure individuals receive financial and administrative support to use and manage their direct payment.
 - consolidate skills and confidences for individuals who want to manage their finances independently.
 - embed social value practices to identify and measure additional outcomes to be delivered.
- 19 This provision delivers a service for people with physical and sensory disabilities in the city, who are more likely to be adversely affected by inequality and poverty. Without such provision, the health and wellbeing of individuals in receipt of a direct payment would be adversely affected.
- 20 **How does this proposal impact the three pillars of the Best City Ambition?**
- Health and Wellbeing Inclusive Growth Zero Carbon
- 21 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.
- 22 The service will contribute towards the best city ambition by:
- Supporting self-care, with more people managing their own health in the community.
 - Reducing health inequalities and improve the health of the poorest fastest.
- 23 The service will 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.

- 24 Developing and supporting Direct Payments, improving the offer, availability and training of PAs also supports a local and diverse work force in Leeds, the use and development of micro and small enterprises which in turn supports inclusive growth in the city.
- 25 An improved and diverse work force also encourages opportunities for local support which could reduce unnecessary journey times and travel. This helps to reduce carbon emissions and environmental pollution which contributes to city actions to better manage air quality.
- 26 The type of interventions provided are aimed at improving health and well-being, whilst being managed in the community, including the prevention of hospital admissions which helps ensure we better manage our use of resource intensive (and high carbon footprint) health and care services.
- 27 Furthermore, the service specification will require that the service undertakes to meet all legislation, guidance and good industry practice in environmental management and the objectives of the Council's sustainability policies. Officers from Adults and Health will work with the provider through the established contract management process to ensure the service is proactively seeking to minimise its carbon footprint and thereby support the Council in achieving its ambition to be carbon neutral by 2030.

What consultation and engagement has taken place?

Wards affected: Have ward members been consulted? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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- 28 Detailed consultation with service users and stakeholders was undertaken as part of the review, and the views obtained will shape all new service specifications and future tenders.
- 29 The Executive Member for Adults and Health was consulted on the proposal on 15 August 2022
- 30 Procurement and Commercial Services (PACS) will provide advice and guidance on the procurement process.

What are the resource implications?

- 31 The award of this contract will be jointly commissioned by the Directorate of Adults and Health and the Directorate of Children and Families.
- 32 It is requested that the maximum amount allocated for the contract over the 12 months plus up to an additional 12 months will total £1,004,834 (£502,417 per annum). Children's and Families contribution is £100,483 per annum, Adults & Health is £401,934 per annum.
- 33 It is acknowledged that in light of the Council's current financial situation further efficiencies will be required in the future and these would need to be the subject of a contract variation or reflected in the final contracting documentation with the provider. This includes supporting LCIL in its planned upgrade of their IT system which, once successfully implemented, should result

in reduced staffing requirements thereby delivering efficiencies. It is expected that this will be applied for the up to 12-month extension period option provided through this decision. Any change to the budget will in turn impact the service specification and be discussed with the provider.

- 34 Officer time will be necessary to undertake the procurement and future contract monitoring. This will be met through existing capacity from within the Working Age Adults Commissioning team.
- 35 The new PA Payroll Manage Bank Account contract commencing 1st September 2022 will continue to be closely contract managed to ensure robust performance monitoring takes place, efficiencies value for money is being achieved for the Council.

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

- 28 The provision of the contract for 12 months plus up to 12 months will allow service continuity whilst the transfer of the TUPE staff is embedded, also allows the continuation of the city-wide direct payment review work to take place with stability of existing provision and the procurement exercise for a permanent PA Payroll and MBA Service.
- 29 A mobilisation period has been built into the procurement timetable to ensure that the service can be fully mobilised before the contract start date.
- 30 The work is being led by the Working Age Adults Commissioning Team, with support from PACS, Service Transformation Team and wider Adults & Health colleagues reporting up to the Head of Commissioning (Working Age Adults). A project team has been set up to oversee and manage any project risks associated with this contract.
- 31 If this decision is not approved, the current services contract will end 30th August 2022 causing significant risk to the Council and its providers. 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.

What are the legal implications?

- 32 This is a Key Decision since the total value of the contract exceeds £500,000,00 and is therefore subject to Call In. It was published on the List of Forthcoming Key Decisions on 27th June 2022. This report does not contain any exempt or confidential information under the Access to Information Rules.
- 33 The Council believes that the decision to award a new contract to LCIL for the provision of Payroll and Managed Bank Account Services 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;”

- 34 Paragraphs 10-13 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.
- 35 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 10-13 of this report the risk of such challenge appears low.
- 36 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.
- 37 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.
- 38 In making their final decision, the Director, Adults & Health 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.

Options, timescales and measuring success

What other options were considered?

- 41 An option to pursue a more immediate procurement for the PA Payroll/MBA element of this service provision was considered, however due to the wider Direct Payment system review

which is currently taking place, as well as the transfer of PA employment support and functions to LCC, it was not considered a suitable option to pursue at this time, given the likely changes made both internally to LCC systems and processes which would affect the look and functionality of any future procurement.

How will success be measured?

- 42 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.

What is the timetable and who will be responsible for implementation?

- 43 The Head of Service Commissioning is the officer responsible for implementation of this contract and will liaise with Procurement and Commercial Services (PACS) to oversee its implementation before the existing arrangement expires on 31st August 2022. PACS will be requested to issue a 12 month plus up to an addition 12-month contract.

Appendices

- 44 Equality Diversity Cohesion Integration Screening

Background papers

- 45 None