

Request approval to enter into direct award contracts, in accordance with Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015, with Methodist Homes Association for the provision of extra care services at: (1) Assisi Place; and (2) Yew Tree and Rosewood Court, and (3) a direct award contract with Creative Support for the provision of extra care services at Hampton Crescent

Date: 28th September 2022

Report of: The Deputy Director of Integrated Commissioning

Report to: The 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

The current block contractual arrangements with Methodist Homes Association for extra care service provision at: Assisi Place, Hunslet, Leeds LS10 2PR (contract ref. 51593); Yew Tree and Rosewood Court, Moor Allerton, Leeds LS17 5PT (ref. 51609) are currently due to expire on the 31st March 2023. The contract with Creative Support for extra care services at Hampton Crescent, Leeds, LS9 8NH (DN575953) is due to expire on the 31st October 2022, though a separate report accompanying this one is seeking to utilise the extension period available on that contract in order that it expires on 31st March 2023. This report is seeking approval to enter three new contracts as a result of a direct award utilising Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015, with the current service provider at each scheme for a period of two years with the option to extend for up to a further period of 12 months in any combination. Following approval of these requests commissioning officers and colleagues from Procurement and Commercial Services will engage in all work necessary to see contract arrangements finalised with a target of December 2022 for completion ahead of a 1st April 2023 contract start date.

Recommendations

- a) The Director of Adults and Health is recommended to approve the direct award of two-year contracts with the option to extend for a further period of up to 12 months in any combination in accordance with Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 (Use of the negotiated procedure without prior publication) to:
 - i. Methodist Homes Association for the provision of extra care services at Assisi Place. This contract is to commence 1st April 2023 and is for a total value of £1,027,867.16; This includes the value of the available extension, which would be subject to a

separate decision at the appropriate time. The value of the initial two-year contract will be £685,244.00

- ii. Methodist Homes Association for the provision of extra care services at Yew Tree and Rosewood Court. This contract is to commence 1st April 2023 and is for a total value of £1,441,208.82, This includes the value of the available extension, which would be subject to a separate decision at the appropriate time. The value of the initial two-year contract will be £960,806.00; and
 - iii. Creative Support for the provision of extra care services at Hampton Crescent. This contract is to commence 1st April 2023 and is for a total value of £923,361.00. This includes the value of the available extension, which would be subject to a separate decision at the appropriate time. The value of the initial two-year contract will be £615,574.00.
- b) Officers on behalf of Adults and Health Integrated Commissioning and Procurement and Commercial Services will complete all the actions necessary to ensure these contracts are in place for the 1st April 2023. Commissioning officers with support from the Service and Transformation Team, Legal, Housing Leeds, the Equality Team, Social Work and the Occupational Therapists will continue to finalise work with the goal of bringing all three schemes in line with the Leeds Model of Extra Care and the wider work around home care commissioning.

What is this report about?

- 1 Two of the three extra care schemes covered by this report were developed between Leeds City Council (LCC) and Methodist Homes Association in respect of (1) Assisi Place and (2) Yew Tree and Rosewood Court. Hampton Crescent was developed between LCC and Anchor Hanover Group, with Anchor Hanover Group providing the onsite care and support at the scheme until retracting from the market. Creative Support was established as the provider via a competitive procurement process and has remained the onsite provider of choice in line with the expressed wishes of the clients living at the scheme.
- 2 All three schemes were developed on former LCC land and, as part of these arrangements, LCC hold nomination rights to apartments as part of ensuring a return on our investment and to ensure access to affordable rented extra care apartments within the city.
- 3 Each scheme has been run and operated by the specific extra care provider since opening. Yew Tree and Rosewood Court was the first of the three schemes to open back in 2004 and consists of 65 apartments to which LCC holds nomination rights to 60 apartments. Next to open was Hampton Crescent, opening in Richmond Hill in 2007 and consisting of 40 apartments to which LCC holds all of the nomination's rights. Finally Methodist Homes Association opened Assisi Place in 2011 with this scheme consisting of 45 apartments to which LCC also holds all of the nomination rights. In general nomination agreements tend to be for a period of around 60 years in duration, though the schemes here vary from 20 years (Hampton Crescent) to 80 years (Assisi Place and Yew Tree and Rosewood). At the end of that period full nomination rights would either revert to the scheme operator for them to fill apartments as they see fit or for a new agreement to be negotiated between the council and the providers.
- 4 The current care contracts for the two Methodist Homes Association schemes currently expire on 31st March 2023. These contracts were both short term, 12-month agreements. The contract for Hampton Crescent was from 1st November 2021 to 31st October 2022 with the option to extend for a period of up to six months. All the contracts were awarded as direct awards with

the view to completing negotiations with all three providers around adopting a new way of commissioning services over longer contracts based on the Leeds Model of Extra Care at each scheme.

- 5 Following the commencement of this work by commissioning officers it was established early in the process that additional developments around the model were needed before it would be possible to roll it out across the existing block arrangements. Since the last award of these contracts commissioning officers have commenced a review of the Leeds Model of Extra Care, which includes the completion of a full Equality Impact Assessment and securing input from Legal Services as part of the wider work to ensure the robustness of the model. A presentation around the current nature of extra care in the city has been held with Service Delivery Managers and this has since led into engagement with social workers and occupational therapists to further establish the role of extra care within the city. Further engagement and work is taking place to bring the existing model up to date, including a market and demand review. Finally, a project board chaired by the Deputy Director for Integrated Commissioning is being established to oversee the delivery of this work, amongst other extra care projects.
- 6 At the same time as reviewing the Leeds Model of Extra Care work has commenced around the wider approach to commissioning home care in the city, which itself will most likely introduce changes that would also need to be considered when establishing new longer term contract arrangements with extra care providers. The changes to be introduced as part of the wider home care work are anticipated to be finalised by Spring 2024. The implication of the home care project, as well as the work to update and re-establish the Leeds Model of Extra Care, are the reasons as to why it is considered that awarding a longer-term contract utilising Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 is the most appropriate route forward at this juncture.
- 7 The award of the contracts requested in this report will provide commissioning officers with the time necessary to commence negotiations with onsite care providers at legacy extra care schemes with the aim of establishing new agreements in line with both the Leeds Model of Extra Care and wider home care commissioning. Negotiations are to take place with the existing providers at these schemes in the first instance as they are either part of the service model which LCC makes nominations in to or they are the confirmed provider of choice by the service users accessing their services. Individual choice around service provider can still be expressed at a service user level with individuals free to choose a different provider for their planned care and support wherever they wish to. The current mechanism to manage this through block contract arrangements is to issue the service user with a direct payment and adjust the block contract value accordingly.
- 8 The awarded contracts will continue the current contract arrangements delivery and funding. The ongoing negotiations during the lifetime of the requested contracts will focus on how care time is defined and purchased. The end care experience should not be negatively impacted through this work. The goal is to bring all extra care schemes under the same purchasing model and for that model to work in line with wider home care arrangements. This should bring improvements for service users and not have any negative impacts.

What impact will this proposal have?

- 9 The direct award of contracts requested here will ensure the continued provision of planned care and support alongside the 24/7 presence of care staff at all three schemes.
- 10 The grounds for the direct award are based on the nature of the work to take place, that being a move ultimately to further empower individual choice over the provider of planned care and

support at the schemes. Current tenants have the choice to opt for their own provider outside of the block contracting arrangement. In all three schemes the tenants have previously opted to continue to receive care and support from the onsite provider and this request to utilise Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 to establish longer term contracts will help ensure these arrangements continue.

- 11 This approach will ensure that at each scheme the current provider remains as one of the provider options available to existing and future tenants. This will help contribute to ensuring a smooth transition to a new model by working with the existing, established provider to help establish this.
- 12 Care and support at all three schemes continue to be of a high quality. The CQC assessed all three services to be good overall, with these ratings last verified on the 4th August 2022 when the CQC last undertook a desktop review of the data available to them.

How does this proposal impact the three pillars of the Best City Ambition?

Health and Wellbeing

Inclusive Growth

Zero Carbon

- 13 The work of extra care services helps contribute to all the outcomes stated in the current Leeds Joint Health and Wellbeing Strategy. The nature and ethos of the services contribute to: people living longer and healthier lives; helping people to live full, active, and independent lives; ensuring that people's quality of life is improved by access to quality services; involving people in decisions made about them and helping people to live in healthy and sustainable communities.
- 14 The main domains of the Best City Priorities as stated in the Best Council Plan 2020-2025 that this report contributes towards are 'Health and Wellbeing' and 'Age-Friendly Leeds'. The contract works towards achieving the outcomes: 'Be safe and feel safe'; 'Enjoy happy, healthy and active lives', and 'Live with dignity and stay independent as long as possible'.

What consultation and engagement has taken place?

Wards affected:

Have ward members been consulted?

Yes

No

- 15 The direct award of contracts requested here seeks to maintain the current services with no disruption in all three cases. As such ward members have not been consulted on the proposal.
- 16 Notification of this decision was published to the list of forthcoming key decisions on the 18th August 2022. Following the decision panel, the decision will be open to call-in up to 5pm on the fifth working day after the decision is made
- 17 As part of contract management process for all three schemes the feedback collated by the provider from service users, carers and other stakeholders has been screened by the contracting team as part of monitoring and quality assurance. Engagement will continue in the form of monitoring for the duration of the proposed two years (with the option to extend for up to a further 12-months) contract at each of the three schemes.
- 18 Further consultation and engagement will take place with all relevant stakeholders as part of the ongoing plans as commissioning officers work to revise current arrangements and bring them more in line with the Leeds Model of Extra Care.

19 The Executive Member for Adults Social Care, Children's Social Care, and Health Partnerships was briefed on this decision on the 4th of August 2022.

What are the resource implications?

20 Budget has been allocated within the 2022/23 financial year and is in place for each contract. This budget provision ensures there is adequate funding to cover each scheme as follows:

- Assisi Place at a current annual contract value of £342,622
- Yew Tree and Rosewood Court at a current annual contract value of £480,403
- Hampton Crescent at a current annual contract value of £307,787

21 The listed contract values are subject to further change in the 2022/23 financial year as Commissioning Officers complete negotiations to ensure all contracts covering planned care and support reflect the current commitment to a minimum hourly rate for care workers of £10.50. These costs are likely to increase each year in line with inflation. The changes to the contract values will be the subject of a future report but in all instances officers will be endeavouring to ensure that uplifts are within the allocated budget parameters.

22 There will be significant resource implications in terms of monitoring and reviewing the contracts to ensure the service continues to meet the necessary outcomes and that it delivers best value. Resources will also be needed to undertake negotiation discussions with the providers for each of the three schemes as part of work to set in place longer term agreements. These resources will be provided from within existing hours in the Leeds Adults and Health commissioning and contracts teams.

23 This is considered to be essential spend as the payments are the individual budgets of the specific tenants which are being used to provide their individual care and support needs.

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

24 If the recommendation is not approved there is a risk that services could cease or be disrupted, and service users will no longer be able to access support. This would impact on individuals who have been assessed as requiring care and support under the Care Act 2014.

25 If the work re-commissioning and re-designing Home Care is not completed within the maximum 3-year time frame that the requested direct awards are for then there is a risk that further requests for direct awards will need to be made. Officers will continue to liaise between teams to help minimise the risk of any delays.

What are the legal implications?

26 This is a Key Decision as the total value of the direct award contracts exceed £500,000 and is therefore subject to call in. This report does not contain any exempt or confidential information under the Access to Information Rules.

27 The Council believes that the award of direct contracts to Methodist Homes Association in respect of services at Assisi Place and Yew Tree and Rosewood Court and Creative Support in respect of Hampton Crescent is permitted pursuant to Regulation 32(2)(b)(ii) (use of the negotiated procedure without prior publication) of the Public Contracts Regulations 2015 which states:-

"32 (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;”

28 It is considered the above ground applies in this case as there is strong evidence that no reasonable alternative to Methodist Homes Association and Creative Support providing the services exists for the following reasons:

- The schemes are located at sites at which LCC holds nomination rights. At the Methodist Homes Association Schemes, this also ties LCC into the onsite provider which is covered by Methodist Homes Association and third parties are not permitted to run service provisions within the sites. As such LCC is tied to the provider at these sites. This is slightly different at Hampton Crescent where Creative Support is a procured provider however all existing tenants have chosen to be with this provider and the direct award continues this arrangement.
- Current tenants have the choice to opt out of receiving care from the on-site provider delivering care at their establishment as part of the block contracting arrangement.
- In all three schemes the tenants have opted to continue to receive care and support from the on-site provider as part of their ability to utilise their personal choice in respect of their care and support provider.
- The intention is to further empower individual choice over the provider of planned care and support at the schemes and ensure people’s existing provider is part of that choice.
- A review of the Leeds Model of Extra Care has commenced as part of the wider approach to commissioning home care in the city, following which it is likely that changes will need to be considered when establishing new longer-term contracts with extra care providers. The direct awards requested here will help ensure tenants current provider is a part of this work.
- The changes to be introduced as part of the wider home care work are anticipated to be finalised by Spring 2024. The direct awards requested here are intended to facilitate the predicted work needed to bring extra closer in line with home care.
- This review and wider home care work will determine the commissioning arrangements for extra care which will then be implemented following the conclusion of all this work.
- The ongoing work will determine how care time is defined and purchased. The intention is to bring all extra care schemes under the same purchasing model and for that model to work in line with the wider home care arrangements, which should introduce improvements for service users.

29 Notwithstanding the above reasons, there is the potential risk of challenge that the Council has not used the Regulation 32(2)(b)(ii) exemption properly, and that the Council is simply seeking to circumvent the application of procurement rules. However, due to the reasons set out in the preceding paragraph of this report, and due to the context set out in paragraphs five, six and seven of this report, this risk is perceived to be low.

30 Risks of procurement challenge can be diminished by the publication of a voluntary transparency notice in OJEU 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. The council intends to publish a voluntary transparency notice.

- 31 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.
- 32 There is also a risk of an ombudsman investigation arising from a complaint that the Council has not followed reasonable procedures, resulting in a loss of opportunity. Obviously, the complainant would have to establish maladministration. It is not considered that such an investigation would necessarily result in a finding of maladministration however such investigations are by their nature more subjective than legal proceedings.
- 33 In making their final decision, the Director of Adults and Health should be aware of the risk of challenge to the Council 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?

The direct award of contracts for the periods requested is the most feasible option as it helps continue existing arrangements and ensures continuity for all service users engaging with the care providers at each of the three schemes. The direct award supports the further intentions of utilising the negotiated procedure for contract award in moving forward once the Leeds Model for Extra Care review has been completed.

How will success be measured?

- 34 Commissioning officers working alongside colleagues in the Procurement and Commercial Services Team will establish the direct award contracts in good time, with all three contracts in place for the 1st April 2023.
- 35 Ongoing monitoring and evaluation of the contracts will ensure the services covered continue to meet the necessary outcomes and that all three deliver best value. Commissioning and contracts officers within Leeds Adults and Health Integrated Commissioning Team will oversee the monitoring activity.

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

- 36 If the recommendations for direct awards are approved commissioning officers and officers from Procurement and Commercial Services will commence work immediately to ensure the implementation of the new contracts before the current contracts expire on 31st March 2023.

Appendices

- Appendix 1: Equality Impact Assessment.

Background papers

- N/A