

# Request for approval to modify the Community Home Care Service Contract under Regulation 72 (1) (b) of the Public Contracts Regulations 2015. Contract ID: 9TNT-3CP1I0 (DN191973)

Date: 25/04/23

Report of: Head of Commissioning, Contracts & Business Development

Report to: Interim 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 seeks approval to modify the current home care services contract by extending the contract period for a period of 8 months from 1<sup>st</sup> June 2023 to 31<sup>st</sup> January 2024 with the option to extend for up to a further 6 months (overall 14 months if the extension is utilised). This will allow the contract to continue under the same terms and conditions for this time period. There is an ambitious and complex programme of work underway in the city to transform home care provision to a Community Health and Wellbeing service (CHWS). Recent developments, namely: external consultants coming on board, a partnership with local NHS providers being explored and a new pilot being planned, mean more time is needed to maintain the current contract terms before putting in place interim contracting arrangements.

## Recommendations

- a) The Interim Director of Adults and Health is recommended to approve the modification of the Community Home Care Service contract under Regulation 72 (1) (b) of the Public Contracts Regulations 2015 to modify the contract period for a further 8 months from 1<sup>st</sup> June 2023 to 31<sup>st</sup> January 2024, with the further option to extend for up to an additional 6 months (overall 14 months if the extension is utilised) with all the providers listed in appendix 1. The value for the modification overall is £55,066,666.00 (£31,466,666.67 for the initial 8 months and up to £23,600,000.00 for the 6 month extension period).
- b) The Interim Director of Adults and Health is recommended to note that the Head of Commissioning, Contracts and Business Development, Older Adults, will oversee the implementation of this decision.

## What is this report about?

- 1 To seek the approval to modify the Community Home Care Service under Regulation 72 (1) (b) of the Public Contracts Regulations 2015 to extend the contract period for a period of 8 months from 1<sup>st</sup> June 2023 to 31<sup>st</sup> January 2024 with the option to extend for up to a further 6 months. This will enable the continuation of the Community Home Care Service on the grounds that the additional services are required due to the technicalities of redesigning future home care provision as well as allowing time to plan for appropriate medium term interim contracting arrangements while the CHWS model is piloted in a specific part of the city.
- 2 A modification to the existing Community Home Care Service contract is required to extend the expiry date to maintain the statutory provision of home care services whilst this extensive programme of work is undertaken. This decision will be taken in line with Regulation 72 (1) (b) of the Public Contracts Regulations 2015 to modify the current contract to enable continued use of provision of Community Home Care Services, which has become necessary while the consultation for appropriate medium term interim contracting arrangements is carried out, and a change of contractor cannot be made without causing substantial duplication of costs for the Council. A change of supplier for only 14 months would not be practicable and would involve substantial duplication of costs to the Council.

## What impact will this proposal have?

- 3 This proposal will allow the continuation of the current contracting arrangements between Leeds City Council and our Primary and Framework contracted providers. This will ensure stability and continuity of service provision whilst work is ongoing to establish interim contracting arrangements to maintain the home care market in the city whilst our pilot is taking place.
- 4 An Equality, Diversity, Cohesion and Integration screening tool has been completed for the procurement (See Appendix 2).

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

☒ Health and Wellbeing

☐ Inclusive Growth

☐ Zero Carbon

- 5 The Community Home Care Service contributes to the Health and Wellbeing pillar of the Best City Ambition. The nature and ethos of the service contributes 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 health and sustainable communities.
- 6 The Best Council Plan vision of Leeds being the best city for health and wellbeing is supported through the delivery of the Community Home Care Service. This includes supporting more people to live safely and independently in an environment that they class as their own homes and giving people choice and control over their health and social care services.
- 7 Redesigning the way home care services are commissioned and delivered will support the delivery of the Council's 'Better Lives' strategy by maximising opportunities for local people with care and support needs to enjoy better lives, with a focus on: promoting choice, helping people to stay living at home, joining up health and social care services. These in turn support the ambition of the Best Council Plan 2020-2025 to be the best city in the UK, compassionate and caring with a strong economy, which tackles poverty and reduces inequalities.

## What consultation and engagement has taken place?

Wards affected: N/A

Have ward members been consulted?

☐ Yes

☐ No

- 8 The Executive Member for Health, Wellbeing and Adults has been briefed on this decision.
- 9 Contracted home care providers will be briefed prior to this decision being taken.
- 10 There has been, and will continue to be, extensive consultation with all stakeholders throughout this period in order that future service provision is fit for purpose and offers best value.

## What are the resource implications?

- 11 The total indicative cost of this decision based on current expenditure will be up to £55,066,666.00 (£31,466,666.67 for the initial 8 months and up to £23,600,000.00 for the 6-month extension period). Due to the nature of demand for the service this figure could fluctuate over the contract period.
- 12 As home care is a statutory requirement for the authority to provide, the cost of the service is included in the Adults and Health base budget. There will not be any additional financial impact as a result of this decision. The directorate reviews fees paid for home care services through a separate decision-making process.

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

- 13 Should the recommendation to modify the Community Home Care Service contract not be approved it could lead to a period where the Council is purchasing these services “off contract” making it much more difficult to maintain the necessary checks and oversight over the current home care provision. In addition, the council would not have any guaranteed provision of an essential statutory service, potentially leaving service users without a service and therefore not fulfilling its statutory responsibilities.
- 14 Should the recommendation to modify the Community Home Care Service contract be approved there is a potential risk of challenge from the provider market because of the original terms of the contract being changed. This is addressed under legal implications where there will be opportunity for any challenge during the 30-day period from publication of the modification notice and entering into a new agreement.
- 15 Should the recommendation to modify the Community Home Care Service contract be approved there is a potential risk of challenge from the spot provider market. However, this will be mitigated through future consultation on the interim contracting arrangements where we will aim to create a more sustainable and equitable market whilst our programme of transformation develops.

## What are the legal implications?

- 16 This is a Key Decision which is subject to call-in as the value of the modification is greater than £500,000. A notice has been published on the List of Forthcoming Key Decisions dated 13/04/2023. There are no grounds for keeping the contents of this report confidential under the Access to Information Rules.

- 17 The modification of contracts is governed under Regulation 72 of the Public Contracts Regulations 2015. This considers the extent to which a contract may be modified before it should be considered so substantially changed as to necessitate a new contract.
- 18 Under Regulation 72 (1) (b) contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part in any of the following cases: -
- (b) for additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement where a change of contractor –
- (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, or*
  - (ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority,*
- provided that any increase in price does not exceed 50% of the value of the original contract;*
- 19 In making this modification the above conditions of Regulation 72 (1) (b) (ii) are deemed to be satisfied for the following reasons:
- a) The additional services “have become necessary” because home care is a statutory requirement for the authority to provide and the recommissioning process has revealed several significant changes that need to be made in shaping a new model of home care type support in the future. This is complex and it is crucial to ensure that it is done correctly so that the next commissioned service has the best possible chance of success. This significant programme of change requires additional time to undertake the necessary consultation and analysis of current provision. Consequently, the extension period will ensure continuation of provision whilst allowing the time to review the findings from the external Consultants, and plan for the Community Health and Wellbeing Service pilot, including market engagement and planning interim contractual arrangements for the period following this extension whilst the pilot is taking place.
  - b) There has also been the development of a proposed partnership arrangement with local NHS services, due to the complexity of this, further time is required to work through the detail, systems, and processes to make it a success.
  - c) The Council is not currently in an adequate position to procure a new service, due to the technicalities of redesigning future home care provision to which has been brought about because of consultation with the market and end users. Therefore, to re-procure now instead of waiting until further evaluation and consultation has taken place, will result in significant inconvenience and substantial duplication of tendering costs. The additional 14 months is to allow the Council time for the consultation for a new system and implement a new system. To re-procure with a new contractor for only 14 months instead of waiting for the consultation to be finalised will result in substantial duplication of costs for the Council.
- 20 As indicated in paragraph 11, the total value of this decision will be up to £55,066,666.00 to modify the contract by the addition of 8 months with an option to extend up to a further 6 months. This equates to just under 24% of the value of the original contract, which is permissible under this modification. Taking these figures into account, the modification of the contract by the addition of 14 months does not exceed 50% of the initial contract value.
- 21 When contracts are varied on reliance on Regulation 72(1)(b), it is a requirement to submit a modification notice to Find a Tender (FTS) to alert the market that a modification to the contract has taken place (or is to take place). Once the notice is published on FTS it will start time running for bringing a claim for a breach of the PCR, 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 service will ensure a modification notice to that effect will be published.

- 22 However, if Regulation 72(1)(b) is used incorrectly, and it is subsequently determined that the conditions to permit Regulation 72(1)(b) are not met, the council will be open to legal challenge that it has breached the procurement rules by modifying the contract. Further, an aggrieved contractor could potentially argue that it has missed out on a competitive opportunity and thereby seek damages for that loss of opportunity. These risks are considered low for the reasons stated in this report, at paragraphs 14 and 15 above.
- 23 There is no overriding legal obstacle preventing the use of the Regulation 72 (1)(b) however the contents of this report should be noted. In making the final decision, the Director of Adults and Health should be satisfied that the course of action chosen represents best value for money.

## **Options, timescales and measuring success**

### **What other options were considered?**

- 24 The only other option that was considered was to let the contract expire. However, this would mean there was no contractual arrangement in place with any provider and therefore adequate provision could not be guaranteed.

### **How will success be measured?**

- 25 There will continue to be a robust performance management process in place that includes regular analysis of both quantitative and qualitative data to assess whether the required outcomes are being met.
- 26 A continuation of good quality service provision without disruption, that will enable a smooth transition to a further contractual arrangement at the end of this period.

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

- 27 The Head of Commissioning, Contracts and Business Development, Older Adults will be responsible for overseeing the implementation of this decision. This decision will be implemented by commissioning officers after the call-in period has lapsed. Contract variations will be issued upon confirmation of approval from the decision maker, and before the current contract expires on 31st May 2023.

## **28 Appendices**

1. List of Providers.
2. Equality, Diversity, Cohesion and Integration screening tool.

## **Background papers**

- None