

Approval to use Regulation 72(1)(b) of the Public Contracts Regulations 2015 to modify the Council's current contract with Touchstone-Leeds for the provision of Live Well Leeds, a Community Based Mental Health Service

Date: 31st May 2023

Report of: Interim Deputy Director Integrated Commissioning

Report to: Interim Director of Adults & Health

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Brief summary

Leeds City Council commissions Touchstone-Leeds to deliver Live Well Leeds - a Community Based Mental Health Service. The current contract commenced on 1st April 2019 and is due to expire on the 31st March 2024. There is no option to extend within the existing terms of the contract. The original value of the contract was £6,548,225.00.

This report sets out a proposal to vary the existing contract with Touchstone-Leeds under Regulation 72 (1)(b) of the Public Contracts Regulations 2015 by modifying the end date of the contract for a period of an additional twelve months. This will give the Council time to complete its full-service review. The total cost of the additional 12 month period until 31st March 2025 will be a maximum of £1,274,541.5 which includes a 5% efficiency saving that has been applied. The figure also includes a sum of £138,896 from Children's Services for work delivered in the Early Help Hubs. The value of the proposed variation is £1,274,541.5, which equates to approximately 18% of the original contract value.

A variation to the existing contract with Touchstone-Leeds is required to enable continued delivery of the Live Well Leeds - a Community Based Mental Health Service, while the Working Age Adults (WAA) Commissioning Team completes a full service review and consults on any revised model to ensure it remains fit for purpose, and a change of provider cannot be made on economic grounds and would cause substantial duplication of costs to the Council.

Recommendations

- a) The Interim Director of Adults and Health is recommended to approve the use of regulation 72(1)(b) of the Public Contracts Regulations 2015 to modify the end date of the contract with Touchstone-Leeds for the provision of Live Well Leeds – a Community Based Mental Health Service. The approval is for a period of an additional 12 months to the existing contract commencing on 1st April 2024 until 31st March 2025 at a maximum cost of £1,274,541.5.

What is this report about?

- 1 Leeds City Council commissions Touchstone-Leeds as the lead strategic partner to deliver a community based mental health service for people with mild to moderate mental health needs. This contract - Live Well Leeds, is due to expire on 31st March 2024.
- 2 The Live Well Leeds service model incorporates a strategic partnership led by Touchstone-Leeds alongside Community Links and Leeds Mind. It also includes a Delivery Network Partnership which is made up of 12 smaller community based and 3rd sector organisations located across the city. These organisations are: St Georges Crypt, New Wortley Community Centre, Leeds Irish Health & Homes, LS14 Trust, Shantona, Oblong, Space 2, Leeds BID, Leeds Gate, Basis, Hyde Park Source and Health for All. Many of these organisations have not traditionally delivered mental health services but all have an in-depth knowledge of the communities they work with and their needs.
- 3 Live Well Leeds offers a single point of access for all referrals including self-referrals, 7 days a week including evenings. Support available includes:
 - 1:1 support
 - Drop in cafes
 - Group sessions
 - Gender-specific activities
 - Culture-specific activities
 - User led activities
 - Outdoor activities
 - Peer support
 - Art/craft activities
 - Information technology
 - Information and signposting.
- 4 Live Well Leeds delivers a befriending service which is delivered with ring fenced funding from the ICB of £109,645k pa.
- 5 The service operates a small grants fund 'Live Well Grants' which administers individual grants of up to £1k. Since 2019, 94 grants have been awarded totalling over £84k granted to a wide variety of mental health and wellbeing projects and services including one off events and seed funding for new groups.
- 6 This report seeks approval to vary the contract end date for a period of 12 months by way of modification on the permitted grounds of Regulation 72(1)(b) of the Public Contracts Regulations 2015, in order to allow time to carry out a full service review on all the above elements of the service and consult with the market on any new or revised model based on learning from the best and most effective elements of the current model. A change of provider for only 12 months would not be practicable and would involve substantial duplication of costs to the Council.
- 7 A financial efficiency saving was made to this contract of £120,000 per annum which came into effect from Q3 2021/22 onwards.

What impact will this proposal have?

- 8 The scope and nature of the service is not impacted by the variation to the contract. This proposal will enable the continuance of a quality service that supports the mental wellbeing of individuals across the city.
- 9 An Equality Diversity Cohesion Integration screening has been completed and is attached. There are no issues to be addressed.
- 10 The service supports the health priorities within the Best Council Plan 2020 – 2025, namely:
- Reducing health inequalities and improving the health of the poorest fastest
 - Supporting healthy, physically active living
 - Supporting self-care, with more people managing their own health in the community

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

Health and Wellbeing Inclusive Growth Zero Carbon

- 11 This proposal delivers against the Health & Wellbeing Pillar of the Best City Ambition:
- 'Investing to ensure better and more equal access to essential services in health and learning, developed with and accessible for every community across Leeds'.
- 12 The Live Well Leeds Service is a single point of access service that any adult in the city can be referred to or self-refer into. Comprehensive monitoring data is compiled by the service showing there is a high demand for mental health support which increased during the pandemic. It shows the service has been successful in drawing service users from a wide demographic including those in the 10% most deprived neighbourhoods; individuals from a broad age spectrum from 18 to 90+ and with a current representation of 30% of service users who identify as from diverse ethnic communities.

What consultation and engagement has taken place?

Wards affected: All Wards

Have ward members been consulted? Yes No

- 13 Discussions have taken place with Live Well Leeds about the proposed additional 12 months variation in order to carry out a full service review. Discussions are ongoing around the 5% efficiency saving for 2024/25 and how that might be implemented. Live Well Leeds have agreed to work together with commissioners to implement the 5% saving.
- 14 Colleagues in the ICB have been consulted with in relation to the Befriending Scheme element of the Live Well Leeds Service which is delivered with ringfenced funding from the ICB.
- 15 An Equality Diversity Cohesion Integration screening has been completed and is attached. There are no issues to be addressed.

What are the resource implications?

- 16 The annual contract value for this service was £1,309,645 which includes a ringfenced amount of £109k from the ICB to deliver a befriending service. A 10% efficiency saving was applied to the local authority funding from Q3 2021/22 onwards as part of wider efficiency savings in Adults &

Health making the current annual contract value £1,189,645. For the additional 12 month period 2024/25 a further 5% efficiency saving has been applied to the local authority element making the annual value £1,135,645. This does not include the injection from Children’s Services for mental health support work in the Early Help Hubs which is covered by a contract variation and detailed below.

Live Well Leeds Resource Implications	Contract start value 1/4/19	2023/24	2024/25
Leeds City Council A&H	£1,200,000	£1,080,000	£1,026,000
ICB (Befriending)	£109,645	£ 109,645	£109,645 tbc
A&H/ ICB Total	£1,309,645	£1,189,645	£1,135,645
Leeds City Council Children’ Services injection for Early Help Hub work	n/a	£138,896.50	£138,896.50
A&H/ ICB & CS Total	£1,309,645	£1,328,541.5	£1,274,541.5

17 Discussions are ongoing with the ICB about their financial injection for the year 2024/25 which has not been confirmed whilst they are considering their own efficiency requirements. This has been relayed to the provider and discussions are underway as to how any change to the befriending budget would be managed. If the ICB decide not to continue to invest or reduce investment we will:

- Ensure communications continue throughout between ourselves and the provider, and ensure the ICB is also in direct communication.
- Ensure the reduction would be in line with COMPACT for Leeds particularly around notification timescales.
- Negotiate and review with the provider over the impact of any reduction to staffing/delivery etc.
- Amend the specification and outcomes/KPIs expected by variation to contract potentially depending on that impact

18 There is an injection of funds for 2024/25 from Children’s Services for Live Well Leeds to continue the work delivered in the Early Help Hubs of £138,896.50.

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

19 The variation to the contract to continue for a further 12 months will allow for service continuity during the period of the service being reviewed.

20 There is a risk around the level of investment from the ICB during the extension year, discussions are being undertaken with ICB colleagues to explore this.

21 The subsequent procurement exercise will be undertaken in a fair, open and transparent way and in adherence with the Public Contracts Regulations 2015 and the council’s own Contracts Procedure Rules.

22 Risks will be reviewed on a regular basis and the project team responsible for undertaking the service review and subsequent procurement exercise will continue to do this during the procurement process.

23 There are risks associated with not approving this proposal. Ending the contract in March 2024 would not provide sufficient time for the Council to fully review the service provision including consultation with staff and service users across the 3 strategic partners and 12 organisations that make up the delivery network. Disinvestment would place a significant amount of additional pressure on other mental health care and support services commissioned by both Adults and Health and the ICB in Leeds and would further disadvantage a vulnerable group of people experiencing mental health issues.

What are the legal implications?

24 The decision contained in this report is a Key Decision as the overall value is more than £500,000 and is therefore subject to Call In. It was published on the List of Forthcoming Key Decisions on 28th April 2023. There are no grounds for keeping the contents of this report confidential under the Access to Information Rules.

25 Under the terms of the contract DN325642 there is no option to extend.

26 The modification of contracts is governed under the Public Contracts Regulations 2015 at regulation 72. 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.

27 The variation is requested under the provision of Regulation 72 (1) (b) of the Public Contracts Regulations 2015, which states that modifications can be made where all of the following conditions are fulfilled:

72(1) 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.

28 It is considered that all of the above conditions are met because:

- The additional services for 12 months “have become necessary” to ensure a continuation of existing services while a full service review is being undertaken and allow appropriate consideration of the service model to be made, allowing sufficient time for a subsequent procurement exercise to be undertaken as required. The additional time is required to allow proper consideration of the service model to be undertaken, in order to be sure that the contract continues to meet the needs of the citizens of Leeds following the Covid-19 pandemic.
- A change of provider would not be practicable for economic reasons.
- To re-procure with a new provider for only 12 months instead of waiting for the full service review to be finalised will result in substantial duplication of costs for the Council.
- The value of the proposed variation is £1,274,541.5, which equates to approximately 18% of the original contract value. Taking these figures into account, the modification of the contract by the addition of 12 months does not exceed 50% of the initial contract value.

- 29 However, if Regulation 72(1)(b) is used incorrectly, and it is subsequently determined that the above conditions are not met, the council will be open to a procurement challenge that it has breached the Public Contracts Regulations 2015. 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 paragraphs 30 and 31 of this report.
- 30 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 Public Contracts Regulations 2015, 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.
- 31 To further reduce the risk of a procurement challenge, the Council will wait a minimum of 30 days from publication of the modification notice before entering into the variation. This gives any other market participants the opportunity to raise any queries or concerns in relation to the variation and reduces the chances of a successful challenge to this decision once the 30-day period has ended.
- 32 There is no overriding legal obstacle preventing the variation of this contract under Regulation 72 of the Public Contracts Regulations 2015. The percentage uplift is within the range permitted under the Regulations. In making the final decision, the Interim Director of Adults & Health should be satisfied that the course of action chosen, as to varying the contract, is the best course of action for the Council and should be satisfied that in doing so it represents best value for the Council.

Options, timescales and measuring success

What other options were considered?

- 33 The option to progress straight to a procurement exercise was considered. However, this would not have allowed for a full and detailed service review to be undertaken which is essential in terms of understanding the provision and informing the recommissioning process. This is especially relevant given the requirement to make efficiency savings. In addition, there are wider mental health landscape challenges which need to be given full consideration through a detailed service review, including the NHS Mental Health Community Transformation programme and the ICB's financial position.
- 34 There is the option of ending the provision once the current contract expires on 31st March 2024. However, there is considerable evidence of the need for this provision and disinvestment would have a negative impact on vulnerable service users.

How will success be measured?

- 35 This contract will be subject to the same contract management procedures throughout the additional 12 month period as have been in place since the beginning of the contract.

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

- 36 The Commissioning Programme Leader will oversee implementation of the additional 12 month period in conjunction with the Commissioning Contract Manager. Touchstone-Leeds as the lead strategic partner will manage the continuation of service provision through the extended 12 month period.

Appendices

- Equality Impact Assessment screening tool.

Background papers

- None