

Approval to directly award a new contract under Regulation 32(2)(b)(ii) of the Public Contracts Regulations to The Appropriate Adult Service Limited for delivery of a West Yorkshire Appropriate Adult Service

Date: 26 April 2024

Report of: Commissioning Manager

Report to: Deputy Director, Social Care

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Summary

This report seeks approval to directly award a contract directly to The Appropriate Adult Service Limited for delivery of a West Yorkshire Appropriate Adult Service from 1st April 2024 to 31st March 2025, with the option to extend for a further 6 months to 30th September 2025. The estimated value of the contract including extensions is £405,000.

This decision is sought under Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 - use of the negotiated procedure without prior publication of a contract notice. This decision will be a Significant Operational Decision.

Recommendations

- a) The Deputy Director, Social Care is recommended to approve the direct award of a new contract under Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 to The Appropriate Adult Service Limited (TAAS Ltd) for delivery of a West Yorkshire Appropriate Adult Service. The contract will be for one year commencing on 1st April 2024 until 31st March 2025, with the option to extend by a further 6 months to 30th September 2025. The estimated value of the contract including the extension is £405,000.

What is this report about?

- 1 This report seeks approval to award a new contract under Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 to TAAS Ltd for delivery of a West Yorkshire Appropriate Adult Service for both Children and Young Adults.
- 2 An Appropriate Adult (AA) is an individual person responsible for protecting (or 'safeguarding') the rights and welfare of a child or vulnerable adult who is either detained by police or is interviewed under caution voluntarily. A vulnerable adult is defined as "an adult who may be presenting as vulnerable." The role was created alongside the Police and Criminal Evidence Act 1984 (PACE). The police custody sergeant is responsible for identifying people who require an AA. Local Authorities have a legal duty under Section 38 of the Crime and Disorder Act 1998 to ensure provision of an AA for children via their Youth Offending Team (YOT). There is no legal duty on any agency to provide an AA for vulnerable adults. However, it is part of the PACE Code of Practice.
- 3 The Council has an existing contract with TAAS Ltd for this service, commissioned and contract managed by the Council on behalf of the West Yorkshire local authorities: Bradford; Calderdale; Kirklees; Leeds and Wakefield. The Council is working in collaboration with the five West Yorkshire local

authorities, West Yorkshire Police, and the West Yorkshire Combined Authority (WYCA). The contract was first awarded in 2018 following a full competitive tender process and then continued by way of a waiver of the Council's Contracts Procedure Rules (CPR) in 2020 to allow time for initiatives taking place with regards to AA provision to bed in and the implications fully understood. The current contract expires on 31st March 2024.

- 4 The service seeks to reduce instances of non-availability and delay of appropriate adults, ensuring high quality provision that meets the needs of children and vulnerable adults. Through the work of the West Yorkshire Appropriate Adults Steering Group, there are close working relationships with WYCA through nominating a Single Point of Contact (SPOC) whose role it will be to develop a shared understanding of respective roles and responsibilities. The Steering Group promotes regular and effective communication between the West Yorkshire local authorities, West Yorkshire Police and WYCA, factoring data and analysis of force needs into Appropriate Adult provision/commissioning within the relevant local authority area. Through the contract monitoring arrangements, there is regular monitoring provision/commissioning arrangements.
- 5 A Market Sounding Exercise was undertaken in 2023 to support a new competitive procurement exercise. This demonstrated a lack of market interest and capability to deliver the service. This is a highly specialised area of provision with a very limited market. Providers deliver on a regional basis and TAAS Ltd are uniquely placed to deliver in West Yorkshire. There are challenges involved in delivering this service, but overall performance is very good and there is a strong commitment to partnership working by TAAS Ltd and all funding partners. This decision therefore seeks the direct award of a new contract to TAAS Ltd.
- 6 The new contract is to be put in place prior to recommissioning the project from 2025 due to the incumbent providers' late notification to Leeds City Council in January 2024 that this contract is no longer a viable contract in its current form due to the high increase and demand.

What impact will this proposal have?

- 1 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.
- 2 Awarding a contract directly to TAAS Ltd will ensure Leeds and partner local authorities in West Yorkshire meet the statutory duty under Section 38 of the Crime and Disorder Act 1998 to ensure provision of an AA for children via their YOT.

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

Health and Wellbeing

Inclusive Growth

Zero Carbon

- 3 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.
- 4 Maintaining the provision of a West Yorkshire wide service supports the recommendations noted in the joint inspections in 2016 by HM Inspectorate of Prisons and HM Inspectorate of Constabulary (in partnership with the Care Quality Commission).

What consultation and engagement has taken place?

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 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 Appropriate Adults Steering Group, where the continuation of these services has been approved.
- 7 Procurement and Commercial Services (PACS) have been consulted regarding the most appropriate procurement route to continue funding this service and a waiver of the Council's CPRs in 2020.

What are the resource implications?

- 8 The steering group will use the opportunity of directly awarding a new contract to refresh the service specification to ensure it is fit for purpose based on the latest intelligence of demand and legislative requirements. During the life of the current contract, the service has experienced a 27.2% increase in requests with a 46% increase in Children Looked After. Rights, samples, and interviews form the bulk of requests for assistance. Total number of requests to the current service in 2020/21 were 4438 (1,960 were young people). In 2021/22, the figure increased to 5,648 (2,598 were young people). This presents challenges in demand which need to be carefully managed through very clear expectations as to the delivery model and collaborative working.
- 9 Finance colleagues have reviewed the finances and confirmed that there is a budget in place which is £207,791 of which LCC Children's receives £171,472 in contribution from partners (see attached table). The net LCC Children's contribution is £36,319. In the proposed new contract, the annual value will increase to £270,000 and contributions from partners will increase to £222,634. The LCC Children's contribution will be £47,366, an increase of £11,047. This increase will be funded from scope within the main YJS Grant, where the anticipated grant is expected to be higher than budgeted for in 24/25. With the 18-month proposal to £405,000 contract value, proportionately LCC Children's will fund from the higher contribution of £34,730 - (£71,049 less £36,319) from within the YJS main grant.
- 10 The Home Office paper 'Appropriate Adult PCC-Local Authority Partnership Agreement England – Improving provision for vulnerable adults' paper estimates that the unit cost of a Social Worker attending a call out is £300- £400. Having the contract with TAAS Ltd eliminates or vastly reduces this cost.
- 11 TAAS Ltd will be required to submit a Service Cost Analysis Form (SCAF) as part of this contract award. The SCAF will be used to identify any potential areas for saving as part of this new contract.
- 12 The quality and value for money of the service will continue to be monitored by the Commissioning and Market Management Service, Children & Family Services in collaboration with the Appropriate Adult Steering Group. Intelligence gained through the contract monitoring will be used to inform future commissioning.
- 13 The Council currently manage the administration of this contract and going forward there could be a potential for management fees to be paid from each of the West Yorkshire local authority partners.

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

- 14 The contract will continue to be performance managed by the Council in partnership the Appropriate Adult Steering Group.
- 15 The Council will act as the lead commissioner for this contract. Each local area will be responsible for managing demand within their local area in line with the contribution they make to this contract and the associated hours purchased. The contract will be managed through a West Yorkshire steering group.
- 16 Referral pathways may require a change as local areas manage demand.

What are the legal implications?

- 17 This is 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.
- 18 The Council believes that the decision to award a new contract to to Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 ('Regulations') 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 5 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.

- 19 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 paragraph 5 of this report the risk of such challenge appears low.
- 20 In addition, these risks can be further mitigated by the publication of a Voluntary Transparency Notice (VTN) on Find a Tender Service 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 the VTN 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.
- 21 However, it should be noted that a VTN 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 VTN 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 Regulations. A grey area remains around whether the protection of a VTN 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 VTN may well invite.
- 22 In making their final decision, the 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 money for the Council.

Options, timescales and measuring success

What other options were considered?

- 23 Consideration was given to completing a full tender exercise; however, this was considered an unsuitable procurement route to achieve best value for the reasons set out in paragraph 5.
- 24 A Market Sounding Exercise took place in February 2023 with no respondents to support this approach; hence the direct award for 2023 and subsequently a new contract to be put in place from 1 April 2024.

How will success be measured?

The contract will include key performance indicators that will be measured as part of on-going contract management.

This includes regular reviewing of service delivery, performance information including any identified risk via monthly contract management meetings with the provider.

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

25 The existing contract is due to expire on 31st March 2024 and so following approval, the contract will be awarded by 1st April 2024.

Appendices

- Appendix 1 – Equality Impact Screening Form
- TAAS AA Contract 2324 2425

Background papers

- None.