

Request to directly award the Leeds Domestic Violence Service contract under Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 to Leeds Women's Aid

Date: 1st July 2024

Report of: Head of Commissioning (Housing and Public Health)

Report to: Director of Communities, Housing and Environment

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Brief summary

The Council's existing contract with Leeds Women's Aid to deliver a domestic abuse support service, known as Leeds Domestic Violence Service (LDVS) (DN194503) is due to expire on 31st March 2025 and there is no further extension provision. This report is seeking approval to procure a new 3 year contract with Leeds Women's Aid using Regulation 32 of the Public Contracts Regulations 2015.

Recommendations

The Director of Communities, Housing and Environment is recommended to:

- a) Grant authority to utilise the provision under Regulation 32 of the Public Contracts Regulations 2015 ('PCR') to directly award a contract to Leeds Women's Aid from 1st April 2025. Contract award is contingent upon the provider meeting the required quality standards.
- b) Approve the confirmed budget of £888,698 per annum which is £833,898 from Communities, Housing and Environment and £54,800 from Public Health.
- c) Approve a contract period of 3 years commencing 1st April 2025 for the maximum value of £2,666,094.
- d) Agree that the specification and contract documentation for the service will allow provision to be scaled up and/or down dependant on the availability and level of any external funding which becomes available to enhance this core service.

What is this report about?

- 1 This report sets out the rationale to grant authority to procure a domestic abuse support service under Regulation 32(2)(b)(ii) of the PCR to directly award a contract to Leeds Women's Aid.
- 2 The current commissioned service - Leeds Domestic Violence Service (LDVS) - was procured in 2016 and began delivery on 1st April 2017. It is delivered by Leeds Women's Aid in partnership with Behind Closed Doors (BCD) and Women's Health Matters (WHM). Leeds Women's Aid has sub-contracting arrangements in place with BCD and WHM to deliver elements of the service. The contract was awarded for an initial period of five years and in January 2022 the full extension period of 36 months was agreed. The contract therefore expires on 31st March 2025 with no further options to extend.
- 3 LDVS is a city-wide service that supports victim-survivors of domestic abuse. The key elements are:
 - Emergency Accommodation: a combination of self-contained units within a refuge building offering 24/7 support and a range of dispersed properties in the community.
 - Community-based services
 - 24 hour helpline
 - Independent Domestic Violence Advocate (IDVA) provision
 - Group support
 - Drop-in provision
 - Community 1-1 support
 - Supporting key partnership arrangements
 - Daily Risk Assessment Meetings (DRAM)
 - Multi-Agency Risk Assessment Meetings (MARAC)
 - Claire's Law process
 - Domestic Homicide Reviews (DHR)
 - Multi-Agency Safeguarding Partnership (MASP)
 - Early Help Hub arrangements
 - Domestic Abuse Local Partnership Board (DALPB)
 - Domestic Abuse Voice and Accountability Forum (DAVA)
- 4 The need for a support service for victim-survivors of domestic abuse remains extremely high. The current service is consistently at full capacity.
- 5 Procurement options have been considered and there are a number of factors making long-term strategic planning difficult to undertake. Leeds Women's Aid have the expertise, experience, local knowledge, and local connections to deliver the service and it is maintained that no other supplier is able to provide the service at this time. All these factors are crucial to the successful delivery of the service, and there are currently no other providers suitable for the needs of Leeds City Council. Furthermore, as detailed below, due to the current uncertainties in the landscape surrounding the provision of the service, Leeds Women's Aid presently remains as the only suitable supplier:
 - the landlord of the refuge accommodation is undertaking a review of their housing stock and is only able to commit to the use of the current buildings until 31st March 2028.

- the national funding picture is unclear – additional funding from DLUHC to fund the New Burdens associated with the Domestic Abuse Act 2021 has been awarded to Local Authorities since 2020. DLUHC is currently consulting on whether to continue to ringfence this funding for Domestic Abuse Support or whether to include it in the general Local Authority pot. Their decision may impact the scope of the service we are able to commission.
- work is progressing on the Lettings Review / affordable housing agenda, the results of which will inform future provision.
- the need for stability as need and demand is high and cost of living pressures are affecting affordability.
- current pressures on the recruitment and retention staff.
- current pressures in the wider housing market which are affecting move-on options.

6 This shorter-term contract would provide stability to clients and to providers while we are waiting for clarity from the landlord regarding the properties, from DLUHC regarding future funding and the findings from the Lettings Review. The intention is to then undertake a full service review, including a market-sounding exercise, with a view to running a competitive procurement exercise during 2026/27. This will ensure the situation is re-assessed to ascertain whether any new competition has arisen at that stage. It is anticipated that more charities will develop the relevant expertise by 2026, which will allow for a competitive procurement to be considered without the need to rely on the provisions of Regulation 32.

7 It is therefore proposed that a contract be awarded to Leeds Women's Aid utilising the negotiated procedure without prior publication of a notice under Regulation 32 (2) (b) (ii) of the PCR, instead of undertaking a competitive procurement exercise at this time. The reasons for this are:

- Leeds Women's Aid are the only provider that has the expertise, capacity, experience and local knowledge and connections to deliver the service at this time, which correlates with the requirements of the provision as to a lack of competition for technical reasons.
- the current providers of the Leeds Domestic Violence Service are Leeds Women's Aid, Behind Closed Doors and Women's Health Matters. All three organisations are vastly experienced at providing this specialist service in the city. All three organisations work well in partnership and have a proven track record of delivering a quality service for their clients. Neither BCD nor WHM have the capacity to deliver the entire service independently and do not have experience of delivering refuge provision, however the overall service benefits from the expertise that they are able to bring to community-based elements of the service. This is done through sub-contracting arrangements with LWA.
- there are no concerns with the current provision which would suggest that there is any meaningful risk with entering into a new contract with Leeds Women's Aid. They have consistently met their contractual obligations and all three partners have engaged with clients, commissioners and other stakeholders with regard to ongoing service delivery and improvement.
- LDVS has been instrumental in establishing and developing key partnership arrangements in the city, particularly the daily DRAM, the twice weekly MARAC meetings and the DAVA Forum
- the LDVS brand is well established in the city for clients, health care professionals and third sector organisations.
- recommissioning the LDVS service in the city would provide continuity of care for vulnerable, at-risk clients and minimise disruption for those currently working with the service.
- LDVS has been awarded various pots of additional funding throughout the last contract period which allowed the service to offer enhanced support to people experiencing domestic abuse. The service is well placed to quickly deliver additional or new elements

of support to individuals and families in the city through their already established links and structures.

- 8 Utilising Regulation 32 (2)(b)(ii) of the PCR would still require Leeds Women's Aid to submit a Due Diligence document, method statement responses and Service Cost Analysis Form (SCAF) for evaluation. The contract will only be awarded if they meet the minimum required standards and the price included in the SCAF is within the allocated budget. Leeds Women's Aid will be encouraged to review their costs for delivering this service, but it is not expected that there will be any scope for achieving efficiencies as the service is operating at full capacity.
- 9 The service availability and scope will stay largely the same as there is no evidence of need for significant change. However, the budget envelope is the same as when the service was previously procured in 2016 and there is a recognition that without additional funding the Service will be unable to deliver the same level of activity due to the increase in costs since that time.
- 10 For 2023-25 the service was allocated funding from the Department of Levelling Up, Housing and Communities New Burdens funding resulting from the Domestic Abuse Act 2021. This funding allowed expansion and enhancement of the core provision funded by Leeds City Council. Future New Burdens allocations are not yet known, but when this has been confirmed, the intention is to continue funding the expanded and enhanced provision. The specification and contract documentation will allow provision to be scaled up and/or down dependant on the availability and level of this external funding.
- 11 The key principles of the current service have been reviewed and are considered still relevant. These principles are that the service will:
 - be inclusive and accessible
 - be flexible and responsive
 - have a Think Family, Work Family approach
 - be pro-active and resolute
 - be able to support service users with complex needs
 - be restorative and aspirational in approach
 - learn from others and share knowledge and expertise

What impact will this proposal have?

- 12 The proposal will ensure that a high-quality domestic abuse support service will continue to be available for the people of Leeds.
- 13 The service will continue to contribute to a range of key strategic and initiatives in particular the key aims of the Best Council Plan 2020-2025 which focuses on reducing health inequalities and improving the health of the poorest fastest.
- 14 The service will continue to contribute to the Health and Wellbeing Strategy which aims for people to live full, active and independent lives.
- 15 An Equality Diversity Cohesion Integration assessment has been completed and is attached. This will be used as a working document throughout the length of the contract to make sure that consideration of EDCI is an integral part of delivery.

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

Health and Wellbeing Inclusive Growth Zero Carbon

- 16 This proposal will contribute to the Health and Wellbeing pillar by:

- Keeping people safe from harm, protecting the most vulnerable
- Being responsive to local needs, building thriving, resilient communities
- Supporting families to give children the best start in life
- Improving social, emotional and mental health and wellbeing

What consultation and engagement has taken place?

Wards affected:

Have ward members been consulted? Yes No

- 17 A light-touch consultation exercise involving current providers, service users and wider stakeholders was undertaken and provided reassurance that the current delivery model remains valid and that no major changes are needed. More in-depth consultation will take place as part of the service review and competitive procurement exercise during 2026/27.
- 18 Client feedback is gathered by the current service around outcomes and satisfaction levels and this was considered.
- 19 The Executive Member for Resources, the Executive Member for Environment and Housing and Executive Member for Communities, Customer Services and Community Safety have been briefed and are supportive of this proposal.
- 20 Procurement and Commercial Services have been consulted about the procurement approach and are supporting the project team in commissioning this service.

What are the resource implications?

- 21 It is requested that the amount allocated for the contract be £888,698 per annum. This is the combined value of the current funding which is made up of £833,898 Communities, Housing and Environment and £54,800 Public Health. There is provision in both budgets for this service.
- 22 It is recognised that the council is in a challenging financial position, however it is important that support remains in place for victim-survivors of domestic abuse. A report by the national Women's Aid charity suggests that every pound invested in domestic abuse support services represents a £9 saving to the public purse (*source: Women's Aid. (2023) Investing to save: the economic case for funding specialist domestic abuse support. Bristol: Women's Aid*).
- 23 The service represents good value for money and has significant return on investment.
- it is a high quality and well performing service that addresses need. It is well led and has a committed staff team.
 - it is a key partner and adds value to other strategic pieces of work including: leading and / or being a member of key forums such as the DALPB and DAVA; supporting the DRAM and MARAC arrangements.
 - the service is very busy and continues to face a rise in demand.
 - through the process of financial modelling, the development of the performance framework, evaluation and then ongoing robust contract management value for money will be achieved through the maximisation of outcomes for the budget available.
- 24 The new service will be closely contract managed to ensure robust performance monitoring takes place and value for money is being achieved for the Council.

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

- 25 Officers from the Adults and Health Commissioning Team, the Safeguarding and Domestic Violence Team and PACS are overseeing the re-commissioning process and will ensure that the process adheres to the PCR, as well as the council's Contract Procedure Rules.
- 26 A risk register has been established and this will continue to be managed and updated. Significant risks will be reported to the DALPB.
- 27 Regarding use of the negotiated procedure without the publication of a notice, it must be noted that there is the potential risk of challenge that there are no real technical reasons justifying the use of the negotiated procedure without publication of a notice under regulation 32 (2) (b) (ii) in accordance with the PCR, and that the Council is simply seeking to circumvent the application of the procurement rules. The reasons set out at point 7 of this report are what the Council would rely on to justify this decision, and therefore the risk is perceived to be low.
- 28 In addition, this risk can be further mitigated by the publication of a Voluntary Transparency Notice (VTN) in the Find a Tender Service in accordance with the PCR and subsequent UK regulations, immediately after the decision to enter into negotiation has been taken and 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 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.
- 29 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 persuasive 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 procurement process in compliance with PCR. 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.
- 30 If this decision to reprocur a Domestic Abuse Support Service is not approved, the current service will fall out of contract on 31st March 2025 causing significant risk to the Council, its providers and victim-survivors. There is an evidenced need for this service, and should it not continue to be delivered beyond the expiry of the current contract, this would result in significantly reduced numbers of people being supported through their experiences of domestic abuse. There will be financial implications to the wider health and social care sector in the city as this service has a clear cost benefit.
- 31 Requirements relating to information governance and the processing of personal data will be included in the specification and monitored through contract management processes including the Quality Management Framework.

What are the legal implications?

- 32 The decisions contained in this report are treated as a Key Decision as the overall value is more than £500,000 and are therefore subject to call in. It was published on the List of Forthcoming Key Decisions on 15th February 2024.
- 33 The Council believes that the decision to award a direct contract to Leeds Women's Aid utilising the negotiated procedure without prior publication of a notice under the PCR (Regulation 32 (2) (b) (ii)) is permitted for the reasons cited in paragraph 7 above.

34 Regulation 32 (2) (b) (ii) of the PCR 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.

General grounds

(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:—

(a) ...;

(b) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:—

(i) ...,

(ii) competition is absent for technical reasons,

(iii)....,

But only, in the case of paragraphs (ii) and (iii), 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.

35 It is considered the above ground applies in this case as there is strong evidence that no reasonable alternative to Leeds Women's Aid providing the services exists, the technical reasons of which are stated in paragraph 6, and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement. In making their final decision, the Director of Communities, Housing and Environment should be aware of the risk of challenge to the Council identified above at paragraphs 27 to 29 and be satisfied that on balance the course of action chosen represents Best Value for the Council.

36 Given that this is not a competitive process and that there is a set budget for this contract, it is imperative that we obtain the best quality service available. Leeds Women's Aid will therefore be required to complete method statement responses, in respect of which they must obtain a minimum score in respect of each question.

37 As a public body, the Council must comply with the Subsidy Control Act 2022 when it is providing financial assistance to companies, charities and other organisations. A subsidy occurs when financial assistance is provided from public resources - whether directly or indirectly - and all the following conditions are met:

- the assistance confers an economic advantage on a recipient;
- the assistance specifically benefits a recipient over other entities in relation to the production of goods or the provision of services; and
- the assistance has, or is capable of having, an effect on (a) competition or investment within the UK (b) trade between the UK and another country or territory or (c) investment as between the UK and another country or territory.

38 This report does not contain any exempt or confidential information under the Access to Information Rules.

Options, timescales and measuring success

What other options were considered?

40 There is the option of ending the provision once the current contract expires. However, there is an evidenced need for this service.

41 Undertaking a competitive procurement process was considered, but for the reasons outlined in paragraph 7, it was considered that there would be no benefit to taking that approach.

How will success be measured?

42 The contract will include a Performance Framework for the purpose of monitoring service delivery and outcomes.

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

43 If approval is given, the intention is to start the procurement process in July 2024 and subject to the satisfactory conclusion of the process approval to award the contract in September 2024, with the new contract commencing on 1st April 2025.

Appendices

- Equality Diversity Cohesion Integration Impact Assessment

Background papers

- None