

Allocation from the Rough Sleeping Initiative for grant award to St George's Crypt for continued provision of a 24 bed supported accommodation service and seek approval to direct award a contract for security services to GCA Securities and Facilities Management Ltd from 1st September 2024 to 31st August 2025

Date: 31st July 2024

Report of: Head of Commissioning (Housing Related Support 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

St George's Crypt (the Provider) are commissioned to deliver emergency accommodation for people who are homeless or rough sleeping at a 24-bed service (the Service), since April 2022. This report seeks to award up to £396,000 from existing Rough Sleeping Initiative (RSI) to extend the Service from 1st September 2024 to 31st August 2025 facilitated by a variation to an existing grant agreement dated 14 March 2024 to the Provider and direct award to an incumbent supplier for continued security provision required to deliver the Service under Regulation 32(9) The Public Contracts Regulations (PCR) 2015) and support accommodation costs not covered by Housing Benefit.

Recommendations

- a) Approve an additional grant allocation of £192,000 to the Provider to support the continuation of the 24-bed supported temporary accommodation from 1st September 2024 –31st August 2025, to be administered by a variation agreement, to vary the existing grant agreement made between the Council and the Provider dated 14th March 2024.
- b) Approve an award of a direct contract under Regulation 32(9) PCR 2015 of up to £204,000 to GCA Securities and Facilities Management Ltd ('GCA') to continue providing security services for the Service from 1st September 2024 to 31st August 2025.

What is this report about?

- 1 The Provider provides an accommodation service of 24 ensuite units of emergency accommodation for people who are rough sleeping. The Provider provides day to day support and specialist wrap around support is provided by a multi-agency approach, including Forward Leeds for drug and alcohol support, the mental health homeless team and health care from Bevan. Food is provided daily. The Service is required to meet need and to retain the range of options available to people who are found rough sleeping. It provides a safe placement and an opportunity to engage with people before a move to other supported accommodation or a private let which enables the Council to safely reduce the numbers of people found on the streets. This report recommends that funding is awarded to extend the Service from 1st September 2024 until the 31st of August 2025. The Provider is a well-established provider of supported emergency accommodation across different sites. The Service provides good outcomes for clients and is a key part of the pathway in Leeds for supporting people rough sleeping into accommodation.
- 2 People using the Service have multiple and complex needs, including mental and physical health problems, along with a history of homelessness and rough sleeping. The environment can become challenging, requiring interventions by staff and security to ensure the service remains a safe environment. GCA have delivered security with the Provider, for several years at different services. They are highly experienced in dealing with this client group and diffusing situations in a sensitive manner. Without this continued security provision, the Service would not be viable in managing ongoing risk issues.
- 3 Continuing with GCA is vital as they have experience of working with the complexities of this client group and maintaining the balance of supervision and security of people who are vulnerable but also can present risk to others. At present, we are not aware of any other security companies who would have the same experience of providing security in a sensitive way in emergency and supported accommodation. GCA are uniquely placed based on their experience of providing security in buildings that house people in need of emergency and supported housing who have complex needs.
- 4 The service provided by GCA offers value for money in terms of providing a competitive hourly rate with no management or travel costs added to the costs. Without this presence the Service would be unable to operate safely, and with insufficient existing staff resource to compensate for any lack of on-site security and supervision.

What impact will this proposal have?

- 5 The Service provides an important role in delivering emergency access accommodation and support, there is ongoing work by officers within Adults and Health and partner organisations to ensure provision continues as long as possible without any disruption. This further extension of grant funding will allow continuity whilst longer term options are considered for the Service.

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

Health and Wellbeing

Inclusive Growth

Zero Carbon

- 6 The financial allocation from the RSI will ensure commissioned services and partner organisations which engage with people who are homeless and rough sleeping can continue to effectively work together. Their work directly contributes towards the strategic aims of reducing the risks of rough sleeping, reducing health inequalities and finding suitable accommodation and support for vulnerable people.

What consultation and engagement has taken place?

Wards affected: City Wide Service

Have ward members been consulted? Yes No

- 7 The Executive Member for Housing has been consulted in June 2024 and is supportive of the proposal.

What are the resource implications?

- 8 Funding is required to cover costs of support staff delivered by the Provider and on-site security by GCA. GCA was used to provide security for the temporary hotel accommodation during the Covid-19 lockdown in 2020/21 and were well received; they have provided security at the Service since 2022 and therefore have experience working with the complexities of this client group and alongside the Provider. GCA offer value for money.
- 9 The funding to support the Service and the associated security provision for the extended period proposed in this report is to be allocated from RSI reserves. The total combined value of the award is up to £396,000.
- 10 There are no longer-term resource implications, the Provider and GCA are aware of the short-term nature of the funding and the proposals in this report can be scaled up or scaled down depending on future funding allocations.

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

- 11 The funding listed in this report is being allocated to deliver additional support to people who are rough sleeping or at risk of rough sleeping. Should the organisation fail to deliver this support then there is a risk that the Council could have to repay the grant to the Ministry of Housing, Communities and Local Government (MHCLG). This will be mitigated by payment in instalments, through robust monitoring by Adults and Health Commissioning Team and through ongoing updates and communication with MHCLG. Daily monitoring takes place around who is accommodated and there is oversight from the Gateway case management system.
- 12 The Service outlined in this report is already being delivered by the Provider and GCA who both have specialist knowledge and considerable experience in their respective field(s).

What are the legal implications?

- 13 The value of the expenditure detailed in this report in total is below £500,000, for this reason it has been determined that approval is an Administrative Decision and not subject to Call In. There are no grounds for keeping the contents of this report confidential under the Access to Information Rules.
- 14 The direct award contract proposed to GCA is over UK Public Procurement threshold for services, therefore CPR 9.3 cannot be waived and consequently CPR 10.2 will apply. As such the Council will be required to publish a Regulation 32 PCR 2015 notice, specifically here being reliant on Regulation 32 (9) PCR 2015 which states;

“the negotiated procedure without prior publication may be used for new works and services consisting of the repetition of similar works or services entrusted to the economic operator to which the same contracting authority awarded an original contract, provided that such works or services

are in conformity with a basic project for which the original contract was awarded following a procedure in accordance with Regulation 26(1) and (2)”

- 15 Notwithstanding the above, there is the potential risk of challenge that there are no real reasons justifying the use of Regulation 32(9) PCR 2015, and that the Council is simply seeking to circumvent the application of the rules. However, due to the reasons set out in this report the risk of such challenge is low. There is sufficient evidence demonstrating the existing supplier and track record in delivery of this specialist security role over previous years at temporary supported accommodation during the pandemic, and since at commissioned services which need this level of supervision and security. This is supported by anecdotal evidence from provider staff based at the services and their positive relationship with the current supplier. The company has been hundred percent reliable and delivered the service in a flexible and sensitive way.
- 16 In addition, these risks can be further mitigated by the publication of a voluntary transparency notice on Find a Tender 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.
- 17 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 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 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.
- 18 With regards to the additional grant funding (by variation agreement to vary an existing grant agreement dated 14th March 2024) to the Provider to deliver the Service, there is a risk of challenge that a grant payment is not a grant. Legally there is some confusion about when a grant can and cannot be used as there is a fine line between a grant (which is not caught by the procurement rules) and a contract for services (which is caught by the procurement rules). Although no longer directly applicable due to the UK's departure from the European Union the preamble to EU Procurement Directive 2014/24/EU (from which the Public Contracts Regulations 2015 were transposed into English law) is still persuasive and the directive makes it clear at paragraph (4) that “the mere financing, in particular through grants, of an activity, which is frequently linked to the obligation to reimburse the amounts received where they are not used for the purposes intended, does not usually fall within the scope of the public procurement rules”.
- 19 As such, unconditional grants are unlikely to meet the definition of a contract as set out in the Public Contracts Regulations 2015 (PCR 2015). However, where grants are used with strict qualification criteria and an obligation to pay back money if certain targets are not reached, the position is less straightforward and it is possible that an arrangement referred to as a grant could meet the definition of a contract set out in the PCR 2015 and, if it does, the PCR 2015 may apply. It is therefore extremely important to ensure that, if providing grants, the process followed does not fall within the definition of a “public contract” as set out in PCR 2015 which states –“contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services.”

- 20 As the Council will be entering into a variation agreement, to vary the existing grant agreement dated 14th March 2024 with the Provider, as such the Council will have no contractual control over enforcement of the terms of the grant agreement. The only sanction available with grant payments is for the Council to claw-back grant monies unspent or spent on matters for which the grant wasn't provided.
- 21 A Subsidy Control Assessment has been completed and found that the grant to the Provider does not qualify as a subsidy under the Subsidy Control Act.
- 22 There is no overriding legal obstacle preventing the award of the grant and contract and the contents of this report should be noted. In making their final decision, the Director of Communities, Housing and Environment should be satisfied that the course of action chosen represents best value for the Council.

Options, timescales and measuring success

What other options were considered?

- 23 There is no realistic alternative option to the provision of the accommodation service and associated ongoing security guarding and supervision to be maintained at the service, with short notice to seek an alternative provider with the right experience and also the difficulty in finding premises which offer appropriate accommodation and location. Going out to tender is not an option because of timescales and specific type of experience required of working in emergency and supported accommodation settings and with people with multiple needs.
- 24 Options have been considered for the period covered by this report with partners, whether this provision is needed longer term and other options. Due to demand the provision is needed and we have enough resource to fund until end of August 2025. As the Service is working well, the Provider and GCA are best placed to provide continuity of the Service and there are no other feasible options in the timescales required. The additional funding will allow stability whilst longer term options are considered. It is also anticipated that clarity will have been provided by MHCLG regarding the RSI funding by the end of the extended grant period. Decisions about the service beyond August 2025 will be made in the next 12 months.

How will success be measured?

- 25 Ongoing contract management of the commissioned services by officers within Adults and Health commissioning team, gathering evidence of successful joint working by GCA and the Provider and ensuring quality support is delivered to clients within the services. Success will be defined as people being safely housed and supported and assisted to make more permanent moves to settled accommodation.

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

- 26 These measures will be introduced from 1st September 2024, once approval is in place from the Director of Communities, Housing and Environment. The Commissioning Team will ensure a variation agreement to vary the existing grant agreement dated 14th March 2024 the Provider is executed and a direct award contract with GCA, is delivered prior to the start of the extended funded period.

Appendices

- none

Background papers

- Equality Diversity Cohesion Integration Impact Screening