

Authority to utilise Regulation 32(2)(b)(ii) of the Public Contract Regulations 2015 to directly award a contract to Mott MacDonald Limited for support with ASGSF Development Pilots 2025/26

Date: 20/11/2024

Report of: National Adoption Commissioning Programme Manager

Report to: National Adoption Strategic Lead

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 utilise Regulation 32(2)(b)(ii) of the Public Contract Regulations 2015 (PCRs) to award a contract to Mott MacDonald Limited for support with adoption and special guardianship support fund (ASGSF) Development Pilots 2025/26.

This follows a decision taken in May 2022 for Leeds to accept grant funding from the Department for Education and act as a Lead Authority to commission services supporting the National Adoption Strategy.

The contract will start 01/11/2024 and expire 31/03/2026, with the option to extend by up to 36 months. The maximum potential contract value is £490,000.

Recommendations

- a) The National Adoption Strategic Lead is recommended to approve the proposals in this report for the Council to award a contract to Mott MacDonald Limited to provide support for the development of ASGSF pilots 2025/26. The contract will run from 01/11/2024 to 31/03/2026 with the option to extend by up to 36 months. The maximum potential contract value is £490,000.

What is this report about?

- 1 This report concerns the award of a contract to Mott MacDonald Limited using Department for Education (DfE) grant funding to support the work of Adoption England.
- 2 A decision was taken on 13/05/2022 to enter into an agreement and accept grant funding from the DfE. Grant funding is managed by the National Strategic Lead on behalf of all Regional Adoption Agencies (RAAs) to undertake activity on a national and regional scale in support of the National Adoption Strategy, with Leeds City Council acting as the lead local authority.
- 3 DfE grant funding to improve the adoption system for vulnerable children and young people has been in place since 2019. The grant for 2022/23 – 2024/25 is for work supporting improvements in early permanence (up to £3m) and national matching of children and families (up to £5 m) over the three-year period. It also includes £1.5m in 2023/24 and £2m in 2024/25 to support the development of new adoption commissioning arrangements at a regional and national level.
- 4 The contract with Mott MacDonald will provide essential support for the development and delivery of pilot projects to test ideas to make better use of the ASGSF to deliver therapeutic support in a more efficient and effective way. This contract will ensure there are systems, processes and guidance in place to support the design, application and delivery of the pilots. Mott MacDonald are contracted by the DfE as the delivery partner to manage the ASGSF. They are therefore an essential partner in the work to test ideas for developing the funds.
- 5 The need for the pilots stems from Adoption England's strategic objective to provide adopted people, and their families tailored help and support when they need it. The proposed changes will enable RAAs to develop services that encourage prevention and early support helping to build firm foundations for good family life for all their families in the region.
- 6 The changes will address the criticism of the ASGSF in not meeting the needs of adoptive families in a timely way and the "de-skilling" of adoption support and special guardianship staff who are spending more of their time assessing against the ASGSF criteria, completing and managing ASGSF applications. Social workers will be able to use the full spectrum of their skills to assess the needs of the children, to work with other professionals and parents to create an adoption support or special guardianship plan and to be part of delivering the support to families.
- 7 The pilots will allow the teams to recruit and retain staff and to develop partnerships with health partners, adoption support agencies, Voluntary Adoption Agencies (VAAs) and independent providers with the aim of improving pathways for children and young people to access support and improve the quality, availability and timeliness of the assessments, providing a better understanding of need. The involvement of in-house teams in delivering and reviewing the delivery of interventions would help to build more comprehensive knowledge of what works and identify and resolve problems at the earliest opportunity, whilst also providing more of a mixed market in provision.
- 8 The pilots will test the viability of pan-regional commissioning, which most of the RAAs view as a direction of travel to achieve sustainability, consistency and quality of adoption support services as well as services for special guardians in specific areas. The pilots will provide funding to enable the RAAs to develop services and strategic commissioning on a wide geographical footprint and test the impact on outcomes and value for money. The pilots will offer an opportunity to measure the impact on the use of fund, and whether a universal service offer lowers demand for ASGSF-funded services in the long-term.

What impact will this proposal have?

- 9 An Equality Impact Assessment Screening document has been undertaken. This identifies there is a positive impact in respect of equality and diversity in that it will advance equality of opportunity for children that are looked after, particularly those most vulnerable i.e. those with special educational needs and disabilities; those from Black and Minority Ethnic backgrounds and older children awaiting adoption and those in Kinship care.

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

Health and Wellbeing Inclusive Growth Zero Carbon

- 10 This proposal provides strong support for the refreshed Children and Young People's Plan and the Council's ambition to be a Child Friendly City. The outcomes delivered through this grant funding 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.
- 11 This proposal also supports the 2020-25 Best Council Plan priority to make Leeds a Child Friendly City where families are supported to give children the best start in life.

What consultation and engagement has taken place?

Wards affected: N/A

Have ward members been consulted? Yes No

- 12 No individual wards in Leeds will be impacted by these proposals because the work will be delivered to support the Adoption England Strategy at a national and regional level.
- 13 There are no particular legal or statutory requirements to undertake consultation as part of this decision. Consultation has taken place with RAA Leaders and Board Chairs with the National Adoption Strategic Lead and representatives from the DfE to explore options on how to design and manage the pilots to achieve positive outcomes. Mott MacDonald are the company appointed by DfE to manage the ASGSF and are a key, known partner in this work.

What are the resource implications?

- 14 The maximum total budget available for this contract is £490,000. The maximum budget for the initial 17-month contract term (01/11/24 to 31/03/26) is £190,000. The maximum budget available for the 36-month extension is £300,000. The future extensions and funding are subject to additional funding from the DfE.
- 15 Delivery of the contract falls into two components:
- Component 1 consists of the pre-go live stage, which will be delivered in line with the consultant's costed proposal. The maximum budget available for this component is £92,263.94, which will be paid to the Consultant in line with the agreed payment schedule in December 2024 and March 2025 and monitored against actual delivery.
 - Component 2 is for go-live and full delivery stages up to 31/03/2026. The maximum budget available for this is £97,736. This component also includes the extension option of up to 36 months, which has a maximum budget of £300,000. The total budget available for this

component is therefore up to £397,736. This component is subject to funding being available from the DfE and there is no guarantee of work or payment to the Consultant.

- 16 On-going contract management will ensure robust and collaborative monitoring of performance and progress against key objectives and delivery milestones stipulated in the contract.
- 17 Payment for delivery in the go live and full delivery stages will be drawn down from the total maximum budget based on activity. Payments will be made at regular intervals (monthly or quarterly).
- 18 This funding is additional revenue funding that is ring-fenced to deliver the outcomes specified in the DfE grant agreement. Awarding this contract will not create additional financial pressure to Leeds City Council. Should the contract not be awarded, Leeds City Council in consultation with the Adoption England Strategic Lead and RAA Leaders will make other arrangements for the allocated amount with other activity or not claim this amount from the DfE (we are paid in arrears). Any underspend of funding would also not be claimed. Leeds, as the lead local authority, will receive and manage the funding on behalf of all RAAs. The grant will be claimed for quarterly in arrears.

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

- 19 The rapid mobilisation of the pilots required will be challenging and this in turn creates risks for this contract not achieving the stated objectives. Mott MacDonald are a key partner in delivering the pilots and in delivery of a number of priorities identified in the Adoption England Strategy. They are a well known and trusted partner of Adoption England and the DfE and have a proven track record of working at pace and adapting to changing priorities and circumstances.

What are the legal implications?

- 20 This is a Publishable Administrative decision due to the value. This is also a direct consequence of a previous Key Decision to accept and distribute DfE grant funding taken on 13/05/2022 (reference D55203). The decision proposed by this report is not subject to call in.
- 21 The Council believes that the decision to award a contract to Mott MacDonald is permitted pursuant to Regulation 32(2)(b)(ii) of the PCRs Public Contracts Regulations 2015 which states:

*“32 (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;”*

- 22 The Council believes that the decision to award a direct contract to Mott MacDonald by utilising Regulation 32(2)(b)(ii) is permitted for the reasons set out below:
 - a) Mott MacDonald are the only provider to have been commissioned by the DfE to manage the ASGSF and have done so for the past 10 years. They are therefore the only body authorised and able to administer the fund and therefore support the development and delivery of the pilots. No other provider is able to deliver this particular service as they will not have access to the ASGSF, which is a key technical component of the delivery of this pilot.
 - b) There are no suitable alternatives or substitutes and there has been no artificial narrowing down of the parameters. In light of the fact that only Mott MacDonald are authorised by the

DfE to administer the ASGSF, the Council has no alternative options or choice in picking another provider.

- 23 There is the potential risk of challenge that there are no real technical 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 this report the risk of such challenge is considered to be low.
- 24 It must also be recognised that awarding a contract directly to Mott MacDonald without competition could leave the Council open to a potential challenge from other providers, to whom this contract could be of interest, that it has not been wholly transparent. However, for the reasons stated above, it is considered that such a risk of challenge is low. Although there is no legal obstacle preventing this proposed approach, the above comments should be noted and in making the final decision the National Adoption Strategic Lead should be satisfied that the course of action chosen represents best value for money for the Council.
- 25 In addition, these risks can be diminished somewhat by the publication of a Voluntary Ex Ante Transparency Notice (VEAT Notice) 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 a VEAT notice will also start time running for any other potential claim for breach of the PCRs, 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.
- 26 The National Adoption Strategic Lead should note that the proposed direct appointment of Mott MacDonald must also be assessed against the provisions of the Subsidy Control Act 2022 to ensure no unlawful subsidy is provided. The Council confirms that an assessment has been completed to demonstrate that the contract does not constitute a subsidy.

Options, timescales and measuring success

What other options were considered?

- 27 The only other option for funding this work would be for the DfE to fund directly through their existing contract with Mott MacDonald, where there is a budget for policy and development activity. However, there is no uncommitted budget remaining for 2024/25. Adoption England have underspend in their DfE grant for 2024/25 and all parties have agreed the ASGSF pilots are a priority and that use of the underspend for Mott MacDonald's support for the pilots is the preferred option.
- 28 If Mott MacDonald were not to do the work, the ASGSF development pilots would not be possible. This would be detrimental to the ambitions of the Adoption England Strategy and the collective ambitions of Adoption England and partners to improve the outcomes for adopted children and families and achieve better value for money.

How will success be measured?

- 29 The overarching objective of the contract is, in partnership with Adoption England, the DfE and other partners, to ensure the successful delivery of the ASGSF Development Pilots. In so doing, the Contract will support the delivery of the outcomes of the pilots as outlined in the project briefs.
- 30 The key objectives the Consultant will contribute to are:
- Agreed design for pilots

- Support for pan-regions in developing their expressions of interest
- Robust measurements and reporting cycles in place
- Pilot sites recruited
- Effective governance is in place

31 The key objectives the Consultant are responsible for are:

- Effective tools, templates and systems in place to go live on 01/04/2025
- Effective digital systems in place to mobilise pilots
- Pilot sites onboarded
- Pilot sites equipped with all necessary information materials and resources they need, presented in accessible formats
- Pilot sites have regular and effective communication about the tools, templates and systems and are able to access advice and support as needed
- Agreed funding formula

32 The RAA Leader's Group is responsible for ensuring projects and activities deliver the intended outcomes of the grant and that performance is robustly monitored against the priorities of the Adoption England Strategy.

33 The consultant will submit delivery and spend reports as a minimum every quarter to the Adoption England Central Team to enable progress to be tracked against the activity and objectives of the Contract and effective monitoring of spend against the total maximum budget.

34 The consultant will support the monitoring and evaluation of the pilot projects, which will involve monthly submission of child level data to the Consultant, progress review reporting to Adoption England Central Team, quarterly progress review meetings led by Adoption England and independent evaluation led by a research partner.

35 The Consultant will contribute to the Governance Group for the ASGSF Development Pilots, which will also consist of representatives from the DfE, Adoption England Central Team, CVAA and a research partner consultant.

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

36 Following approval for this decision, the new contract award will be processed as soon as possible, with a backdated start date of 01/11/2024.

37 The Adoption England Commissioning team is responsible for awarding the contract.

Appendices

- Appendix 1 - Equality, diversity, cohesion and integration (EDCI) screening.

Background papers