

Variation to contract ref 81596 – Children’s Rights & Advocacy service delivered by Barnardo’s Services Limited using Regulation 72(1)(b) of the Public Contract Regulations 2015

Date: 29/11/2024

Report of: Commissioning, Market Management and Customer Service Team

Report to: Chief Officer – Resources, Transformation & Partnerships

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Brief summary

We are seeking approval for the following non-publishable, administrative decision, in line with CPR 21.6. and the Public Contract Regulations 2015 (PCR).

Due to current arrangements approaching expiry, the contract expiry date for contract reference 81596 with Barnardo’s Services Limited needs to be varied in order for the authority to continue delivering its statutory obligations in relation to Children’s Rights & Advocacy. The service provides advocacy and support in cases where children make complaints to the Children and Families directorate. It provides advice, advocacy and representation for children and young people making a formal complaint under Section 28 of the Children Act 1989 when requested by the young people.

The contract will be extended for up to six months, from the 1st April 2025 up to 30th September 2025, in order that opportunities to align services can be further explored. The cost of the extension will be £140,093. This represents a small uplift in funding to ensure the existing service model can continue to be delivered fully, pending a service redesign to ensure that future services remain within the financial envelope available. The uplift will not be applied to any future service and will be a ‘one-off’ increase in service funding. The total investment associated with this provision would now be £1,259,638, if the uplift and variation is approved.

Recommendations

- a) The Chief Officer for Resources, Transformation and Partnerships is recommended to:
- b) Agree to vary the expiry date for the contract with Barnardo’s Services Limited from 1st April 2025 up to 30th September 2025 using CPR 21.6 and PCR 2015, Reg 72, (i).
- c) Agree to an uplift on a ‘one-off’ basis to ensure the continued delivery of the current model. The actual uplift value will be £28,043 representing a 12.5% increase for the variation

period. The actual value of the extension period is £140,093. This will take the total investment associated with this provision to £1,259,638.

What is this report about?

- 1 This report is seeking to vary the current contract expiry date to extend the existing arrangements for a period of up to six months. The report also seeks to implement a 'one-off' uplift in funding to ensure the current delivery of statutory functions continues to be delivered while opportunities to align services within the directorate are fully explored with a view to achieving savings; this is due to service sustainability concerns raised by the current provider, where they have been investing their own resource (approximately £47,000 per annum) to support current service delivery.

What impact will this proposal have?

- 2 This proposal will allow the authority to remain compliant with legislation relating to the provision of advocates for Children Looked After and children subject to a Child Protection or Child in Need plan.

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

Health and Wellbeing Inclusive Growth Zero Carbon

- 3 This proposal supports all three of the council's Key Pillars. Through working together, mutual respect and understanding, this contract invests in making essential and statutory services accessible for children and young people to ensure that they receive the best possible outcomes and the best chance to realise their potential and thrive. Ensuring Children have a voice and are able to raise concerns is part of ensuring Leeds is the best city for Children and Young People.

What consultation and engagement has taken place?

Wards affected: n/a

Have ward members been consulted? Yes No

This is a city-wide service, and also supports young people who are placed out of borough.

After consultation with the Chief Officer for Children Looked After (he was head of service for Children Looked After at the time), a desk review was undertaken to ensure the provision was continuing to meet the needs of the service area. We engaged and discussed the provision with social work colleagues. We were satisfied the existing provision continues to deliver value for money and meet contractual and statutory outcomes. This approach was taken due to the shortened timeframe we had to get towards permission to procure.

What are the resource implications?

Due to the incumbent provider evidencing that they have been operating the service at a deficit for the duration of the contract, the actual uplift value of £28,043 will fund this service at the required sustainable level for the next 6 months, which will enable the Council to work with the market around future options for this statutory service to be delivered in-budget. This represents a 12.5% increase for the 6-month variation period and will take the total investment associated

with this provision to £1,259,638. There will be no changes to the level of staffing required to deliver the service.

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

- 4 The authority will be left open to challenge and possible legal action if there is not a Children's Rights & Advocacy provision in place. The extension to the current arrangement will allow further time for a market scoping exercise and tender to take place, and for the alignment of services to be fully explored which may yield some savings for the directorate. Any new service will also likely require a longer time to mobilise due to recruitment and training of staff in the local area eg 3 months minimum.

What are the legal implications?

- 5 This service provides a statutory function of the Council and therefore a service must be in place to ensure the Council remains fully compliant in delivering its statutory obligations. Under Section 28 of the Children Act 1989, the Local Authority provides independent advocacy and support in cases where children make complaints to the Children and Families directorate. This service provides advice, advocacy and representation for children and young people when making a formal complaint under the Children Act 1989.
- 6 The Council notes that the original value of the agreement was £1,119,545 which exceeds the relevant Services threshold under the PCR. As such, any modification to this agreement must be processed in line with Regulation 72 of the PCR. The Council relies on Regulation 72(1)(b)(i)-(ii) in processing this modification. For the avoidance of doubt, the provision of Regulation 72(1)(b)(i)-(ii) state:

“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, **and***

(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;”

- 7 It is maintained that all grounds of Regulation 72(1)(b)(i)-(ii) have been met as any new provider who successfully tenders for the service would need sufficient time to mobilise a new, innovative service (recruitment and training of local staff) and there cannot be any service gap due to the statutory nature of this provision. We will require sufficient time to seek innovative approaches and explore ways to merge additional services and achieve sustainability through innovation.
- 8 The final limb of Regulation 72(1)(b) pertaining to the value is also satisfied. The original value of the agreement was £1,119,545. The total value of this modification is £140,093 which represents 12.5% of the original contract value and is therefore below the 50% threshold.
- 9 When contracts are varied under Regulation 72(1)(b), it is a requirement to submit a modification notice on Find a Tender Service (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 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. The service will ensure a modification notice to that effect will be published. To note budget for existing contract is £168,000 and annual contract value is £223,909.

- 10 However, if Regulation 72(1)(b) is used incorrectly, and it is subsequently determined that the conditions to permit Regulation 72(1)(b) are not met, the Council will be open to legal challenge that it has breached the PCRs by modifying the contract. 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 this report, at paragraph 10 above.
- 11 The extension of the contract is also permitted under the Council's CPRs, in particular CPR 21.6.1 which states "contract variations must be carried out within the scope of the original contract. Contract variations that materially effect or change the scope of the original contract are not allowed". The proposed modification does not materially alter the original contract and is therefore compliant.
- 12 This course of action represents the most efficient use of the Council's resources to deliver this function. There would be insufficient time to recommission and mobilise a new, innovative service within the timescales we are working with. Other services that we are exploring jointly-tendering have later expiry dates, and this variation would aid alignment of this. Possibilities around this are being explored currently and a Market Sounding Exercise is due to be published shortly.
- 13 In making a final decision, the Chief Officer, Resources, Transformation and Partnerships should be satisfied that the course of action chosen represents best value for the Council and that it is in the Council's interest and the public interest that the current contract is varied / extended for the Council to meet its statutory obligations.

Options, timescales and measuring success

What other options were considered?

- 14 A full re-tender has been considered but, due to timescales and potential re-design, procurement colleagues have advised a variation to the contract end date would provide additional time to fully explore both the alignment of this provision with other services and allow for the re-design of the service to ensure that provision remains within the financial envelope available.

How will success be measured?

- 15 Success will be measured by the Council's ability to discharge its legal obligations and to ensure that Children Looked After continue to receive advocacy advice for issues they may need to raise about the council's provision of service to them.

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

- 16 If the contract variation is accepted, we will seek to implement the change immediately and work is already underway around exploring the alignment of service and redesigning of the specification as well as planning the tender activity.

Appendices

- N/A

Background papers

- N/A