

**BIRMINGHAM CITY COUNCIL
PUBLIC REPORT**

Report to:	CABINET	
Report of:	Peter Hay, Strategic Director - Adults and Communities	
Date of Decision:	30 January 2012	
SUBJECT:	TO ESTABLISH A FRAMEWORK OF PROVIDERS FOR HOME CARE AND CARE HOMES (WITH AND WITHOUT NURSING)	
Key Decision: Yes	Relevant Forward Plan Ref: 404674	
If not in the Forward Plan: (please "tick" box)	Complied with Rule 15	<input type="checkbox"/>
	Complied with Rule 16	<input type="checkbox"/>
Type of decision:	Executive	
Relevant Cabinet Member:	Councillor Sue Anderson, Adults and Communities	
Relevant O&S Chairman:	Councillor Deirdre Alden, Chair Health & Adults O&S Committee	
Wards affected:	All	
1. Purpose of report:		
1.1	For Cabinet to authorise the commencement of tendering activity and to delegate authority to the Strategic Director of Adults and Communities in consultation with the Strategic Director of Corporate Resources and the Director of Legal and Democratic Services to appoint the successful providers to the framework agreement.	
1.2	This report provides details of the procurement process to establish a framework of providers of home support and care homes (with and without nursing care) for adults.	
2. Decision(s) recommended:		
That Cabinet:		
2.1	authorises the commencement of tendering activity as detailed in Appendix 5 , to establish a framework of providers of home support and care homes (with and without nursing care) for adults.	
2.2	delegates authority to the Strategic Director of Adults and Communities in consultation with the Strategic Director of Corporate Resources and the Director of Legal and Democratic Services to appoint the successful providers to the framework for a term of up to two years.	
2.3	authorises the Director of Legal and Democratic Services to negotiate, execute and complete all necessary documents to give effect to the above recommendations.	
2.4	delegates authority to the officers named in paragraph 2.2 to extend the framework after its initial term of two years for a further period of up to two years in accordance with its terms.	
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3. Consultation

Consultation should include those that have an interest in the decisions recommended

3.1 Internal

The Cabinet Member for Finance has been consulted regarding the contents of this report and supports the report proceeding to an executive decision. Relevant officers of the Council and the NHS have also been consulted regarding the contents of this report and have agreed with the contents of the report.

3.2 External

Current providers and those who wish to be providers have been given the opportunity to comment on the proposed framework both in workshops settings and in writing. **Appendix 3** identifies all stakeholders consulted and **Appendix 6** sets out the Frequently Asked Questions raised as part of the consultation, together with the Directorate's responses.

4. Compliance Issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies focused on "A Global City with a Local Heart"?

Details of how this decision supports relevant Council policies, plans or strategies are included in **Appendix 1**.

4.2 Financial Implications

This decision will enable the Directorate to continue to contract for externally provided services to meet its statutory duty. The budget available for third party payments is currently £192.5m for Year 11/12. However future budgets are subject to Directorate and Corporate Consultation although the delivery of the Framework Agreement will not be dependant upon the outcome of the consultation.

The Directorate is currently preparing a Report for Cabinet on the outcome of the Open Book process to determine the current range of costs for care for year 2011/12, which is scheduled for March 2012.

4.3 Legal Implications

The relevant legal powers are contained in the National Health Service and Community Care Act 1990, the National Assistance Act 1948 and The Chronically Sick and Disabled Persons Act 1970 together with associated legislation and guidance relating to the provision of community care services.

The Council is enabled, by section 111 of the Local Government Act 1972, to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.

The Council therefore has a general power to enter into contracts for the discharge of any of its functions.

Any companies recommended for acceptance will have a policy that complies with the West Midlands's Common Standard for Equalities in Public Procurement.

The requirements of Standing Order No. 11 in respect of the Council's Equal Opportunities Policy will be incorporated into the contract documentation.

The requirements of the Equality Act 2010 will be specifically included in the contract documentation to draw tenderers' attention to the detail of, and the need to comply with, that Act.

Any company recommended for acceptance will have a policy that complies with the Birmingham City Council Going for Green Standard.

This contract will support the Birmingham Sustainable Procurement Compact.

4.4 Public Sector Equality Duty

The Public Sector Equality Duty drives the need for equality assessments (Initial and Full); a summary of the statutory duty is included as **Appendix 2**. A Full EINA/Equality Analysis has been undertaken and is attached as **Appendix 3** and issues relating to the Supplier Market have been identified on pages 10, 11 and 12 of the EINA. This is a working document and will be updated throughout the life of the framework agreement.

As well as the risk log, all risks are identified within the Equality Analysis with solutions/mitigation as to how they will be managed.

5. Relevant background/chronology of key events:

- 5.1 The current contracts for care homes and for domiciliary care were let a number of years ago, and have been extended on a number of occasions. On 14 March 2011 Cabinet agreed a number of decisions, including the current extension until 31 March 2012. The new approach will rationalise and align the contractual arrangements for the majority of regulated service providers going forward. On 19 May 2011 the High Court ruled in respect of the Judicial Review regarding Adults and Communities' Universal Resource Allocation System and the 2011/12 Budget, and a number of recommendations in relation to transforming the delivery of social care were quashed. However, the only decision which was not quashed was to implement the savings agreed in the Council Plan with respect to care fees paid to third parties and the extension and management of existing agreements pending introduction of new framework agreements.
- 5.2 A framework agreement is a general term for agreements with a provider, or providers, that set out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement. They are used for products, works or services where requirements are needed on a repetitive basis but where the exact quantities are unknown. They are particularly useful, because once a framework is established, the process for awarding individual call-offs is both faster and less costly than would be the case if the requirement was procured separately. (www.ogc.gov.uk).
- 5.3 The Council seeks to enter into a framework agreement with providers of services regulated by the Care Quality Commission. The framework agreements will take over from the current contractual arrangements for Home Care and Care Homes with and without nursing. This framework is for all client groups and thus aims to streamline and provide transparency and equity as to how services are commissioned for service users. This is for the benefit of both service providers and service users.
- 5.4 This framework agreement is a procurement activity which is intended to be a transitional arrangement moving towards the Council's Future Operating Model (FOM) for commissioning adult care services. Framework agreements are more suited to Personalisation as they allow choice and control to citizens as to who delivers their services, as the Council seeks to move away from block contracting arrangements. The future commissioning model following the framework agreement sees customers being encouraged to manage their own individual budget and where possible (and where legislation permits), purchase support (support brokerage) from a range of providers in the market place.
- 5.5 The Council is also seeking to make efficiencies and savings via mini competitions, which would take place under the framework. There will be no contracted prices and so providers will need to be competitive in terms of quality and price in order to 'win' bids for packages of care. It moves the Directorate away from Council set rates to market driven competitive prices, stimulates competition and allows new providers to enter the market at any time. The Directorate currently purchases services from a range of providers via block contracts, spot purchasing and other micro commissioning processes, depending on the needs of individual service users and the most appropriate type of support available in the market at any given time. The use of the budget boards and internal processes already in place can result in negotiation on price with providers for individual service packages. Costs will naturally vary for packages because of the range of such factors and the Directorate will manage the range of bids arising from the mini tendering process using existing principles of budget management.
- 5.6 The framework agreement differs from the current contractual arrangements by allowing one process with terms and conditions for multiple services. There is no block contracted pricing, the structure of pricing will be market driven providing greater value for money and quality. The Framework will provide greater transparency and accountability as well as greater service user choice.
- 5.7 The framework agreements will be awarded for a two year period commencing 1st April 2012; with a possible extension of up to two years. Any extension would be based upon the pace of the review of packages of care and the move to the Government's target requirements for Direct Payments and Individual Budgets. At the launch of the Framework Agreements in April 2012, all new service users' support packages will be commissioned using the Framework. As existing service users' packages are reviewed, the Directorate

- will work with the service user and their family, as well as the provider, to use the Framework to re-commission those packages where appropriate.
- 5.8 There is no obligation on the purchaser (BCC) to buy anything from the framework, nor is there any obligation on the part of providers to bid for packages. However, the choice of supplier will be made by the citizen.
- 5.9 **Appendix 4** gives details of the framework structure and **Appendix 5** gives details of the tender process.

6. Evaluation of alternative option(s):

- 6.1 The decision to move away from the current contractual arrangements to framework agreements was reviewed and evaluated through an options appraisal as part of the Directorate's Business Transformation Programme. The approach was then approved by Cabinet on 14 March 2011.
- 6.2 The absence of the delegated authority sought in paragraph 2.2 above would have implications on the ability of the Directorate to commence appointing the successful providers to the framework agreement for a term of up to two years.

7. Reasons for Decision(s):

- 7.1 To enable the Strategic Director for Adults and Communities to tender for this requirement and deliver a framework of providers of home support and care homes (with and without nursing care) for adults, within the time scales agreed by Cabinet on 14 March 2011.

Signatures (or relevant Cabinet Member approval to adopt the Decisions recommended):

Chief Officer(s):

Cabinet Member:

Dated:

List of Background Documents used to compile this Report:

- Consultation Outcome - Universal Resource Allocation System and Citizen Statement Cabinet Report March 2011
- The Framework Agreement for Home Care and Care Homes with and without nursing.

List of Appendices accompanying this Report (if any): *(Appendices must only be used in genuinely appropriate circumstances, for example, where separate documents have to be attached and are not to be used for merely continuing text of reports)*

1. Relevant Council Priorities, Plans or Strategies.
2. Summary of Public Sector Equality Duty
3. Full EINA/Equality Analysis
4. The Framework Agreement
5. Tender Structure
6. Consultation FAQs and Directorate Responses