

# BIRMINGHAM CITY COUNCIL

## PUBLIC REPORT

<b>Report to:</b>	<b>CABINET</b>
<b>Report of:</b>	<b>Strategic Director for People</b>
<b>Date of Decision:</b>	<b>16 February 2016</b>
<b>SUBJECT:</b>	<b>FRAMEWORK AGREEMENTS EXTENSION FOR ADULTS' SERVICES AND CHILDREN'S HOME SUPPORT (C0074)</b>
<b>Key Decision: Yes</b>	<b>Relevant Forward Plan Ref: 001207</b>
<b>If not in the Forward Plan: (please "X" box)</b>	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>
<b>Relevant Cabinet Member(s) or Relevant Executive Member for Local Services:</b>	<b>Councillor Stewart Stacey – Commissioning, Contracting &amp; Improvement</b> <b>Councillor Paulette Hamilton – Health and Social Care</b> <b>Councillor Brigid Jones – Children's Services</b>
<b>Relevant O&amp;S Chairman:</b>	<b>Councillor Waseem Zaffar – Corporate Resources</b> <b>Councillor Majid Mahmood – Health and Social Care</b> <b>Cllr Susan Barnett - Education and Vulnerable Children</b>
<b>Wards affected:</b>	<b>All</b>

<b>1. Purpose of report:</b>
<p>1.1 To seek authority to extend the current Framework Agreement for the provision of adults' services, including home support and older adults residential care (with and without nursing) for a further 18 months from 1 April 2016 to 30 September 2017.</p> <p>1.2 To seek authority to extend the current Framework Agreement for children's home support from 13 August 2016 until 30 September 2017 to align with the adults' Framework Agreement.</p>

<b>2. Decision(s) recommended:</b>
That Cabinet:
<p>2.1 Authorises the extension of the current Framework Agreements for the provision of adults' services and children's home support until 30 September 2017 and notes the associated procurement timetable in 5.8 below for its replacement.</p> <p>2.2 Authorises the City Solicitor to negotiate, execute and complete all relevant legal documentation to give effect to the above recommendations.</p>

<b>Lead Contact Officer(s):</b>	Alison Malik Head of Service – Complex and Statutory Services Commissioning Centre of Excellence People Directorate	Maria Gavin Assistant Director – Complex and Statutory Services Commissioning Centre of Excellence People Directorate
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### **3. Consultation**

#### **3.1 Internal**

Key officers from Legal & Democratic Services and Corporate Procurement Services have been consulted on the content of this report and associated risks and options. Agreement was reached amongst Officers on 15 December 2015 that the proposed extension is the only practicable option at this stage. Work will continue with Officers from both areas, to further develop an alternative contractual framework for the commissioning of these services in future.

#### **3.2 External**

Formal consultation with service users or service providers is not required in this circumstance as the Framework Agreements provide a contractual framework for the commissioning of services on behalf of the service user. However, the Council has discussed the issues generally, as recently as November 2015, with providers through a range of forums. Once a formal decision has been made, a contract variation will be issued to all providers.

### **4. Compliance Issues:**

#### **4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?**

##### **4.1.1 Consistency with the Following Objectives in the Council Business Plan and Budget 2016+:-.**

This decision is consistent with the Council's overall objective of "making a positive difference every day to people's lives". The Framework Agreements are a contractual tool that allows the Council to commission statutory care services for the most vulnerable citizens - to improve their individual wellbeing.

More specifically the extension of the two Framework Agreements is consistent with the Council Business Plan and Budget 2016+ priorities as follows:

- A fair city – home support and residential care ensure that our citizens are safe and that people are cared for with dignity.
- A prosperous city – the commissioning of services supports the local economy, particularly as the majority of providers are Birmingham-based.
- A democratic city – care services are designed to support the 'whole person' and to assist with their individual wellbeing needs. This is particularly true of those services commissioned through the Framework Agreements, as a key scoring element for successful bids is based on how well each potential provider can meet the wider aspirations of the citizen.
- Council of the future - the Framework Agreements continues the implementation of the People Directorate's Business Transformation agenda.

#### 4.1.2 Compliance with the Birmingham Business Charter for Social Responsibility (BBC4SR) Including Living Wage Requirements

The Birmingham Business Charter for Social Responsibility was approved by Cabinet on 22 April 2013. To date however, few adult social care providers have signed up to the Charter because it includes a requirement to adopt the Living Wage and is only voluntary at this stage.

This is because the Living Wage Policy for Birmingham which was approved by Cabinet on the same day noted that social care contracts were outside the scope of the Living Wage Employer Accreditation License and consideration was dependent on the outcome of the Council's Service Review process; and legal clarifications; it would then be considered as part of the future budget setting processes.

Therefore during the period of the extension of the two Framework Agreements, providers will continue to be asked to voluntarily sign up to the Birmingham Business Charter for Social Responsibility.

The Council will work with providers as part of the process to replace the extended Framework Agreements, to support full implementation of the Birmingham Business Charter for Social Responsibility and the Birmingham Living Wage.

#### 4.2 Financial Implications

Services that are delivered under these Framework Agreements are procured via a micro-procurement, competitive tender basis. There is no obligation on the purchaser (Birmingham City Council) to buy anything from the framework, nor is there any obligation on the part of providers to bid for packages. However, the ultimate choice of supplier remains with the citizen – particularly in relation to adults' residential care.

Based on historic usage it is estimated that £126.3m will be spent through these Framework Agreements annually, funded from the Adult Social Care and Children's Home Care budgets. Some of these packages are longstanding and a price increase has not been made to these since 2006. In recognition of this, an interim offer was agreed by the Cabinet Member for Health and Social Care jointly with the Strategic Director for People on 28 January 2016 ('Stability in the Adult Home Support Market in Birmingham'). The costs of this are included within the overall financial provision below.

The Introduction of the Birmingham Care Wage elsewhere on this agenda will have an impact on providers who are commissioned through these Framework Agreements. The Council expects to be able to have sufficient funding to allow social care providers to be able to pay an hourly rate of at least £7.50 per hour from April 2016, an increase of 11.9% for those over 21 year olds on the National Minimum Wage of £6.70

The financial impact of this is expected to be £7.8m per annum (based on historical demand) which will be funded from within the draft 2016/2017+ budget which is subject to final approval by full Council on 1 March 2016. The full impact of this is considered within the 'Living Wage Update' report. The Council's budgetary provision increases over future years to ensure that providers can afford to pay the Birmingham Living Wage by 2018/19. Any underlying pressures for fee uplifts above this will need to be contained from within the Directorate's overall Budgets.

Paying the Birmingham Care Wage will ensure that service providers will more than meet their obligation to pay the Government's "National Living Wage" for over 25 year olds of £7.20 per hour.

#### 4.3 Legal Implications

Under Section 8 of the Care Act 2014, a local authority can discharge its duty to meet assessed eligible need for care and support under sections 18 to 20 of the Act, by providing care and support at home or in the community or goods or facilities and the local authority can provide these by arranging for them to be provided by another person or body other than the local authority.

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.

##### 4.3.1 Pre-Procurement Duty under the Public Service (Social Value) Act 2012

With effect from 1 April 2016, providers will be invited to voluntarily sign up to the Birmingham Business Charter for Social Responsibility. The People Directorate and Corporate Procurement Services will jointly work with providers to establish what social, environmental and economic benefits can be achieved from future commissioning activity. A key element of any new or replacement contractual arrangement will consider in full and make explicit, how the procurement will improve the economic, social and environmental well-being of Birmingham.

#### 4.4 Public Sector Equality Duty

Please see Appendix A and Appendix B. There are no adverse impacts identified.

### 5. **Relevant background/chronology of key events:**

#### 5.1 Service Background

The Council has a range of statutory duties and powers to assess the needs of citizens for care and support and commission a range of services that meet these needs (please see section 4.3 above). The Council currently commissions a wide range of care and support services, however this report focuses, on those services commissioned through two Framework Agreements – which currently include the commissioning of home support for adults' and children and residential care for older adults'. These are described in more detail below:

#### 5.2 Home Support (adults' and children's)

Home support services for adults' and children provide care in the citizen's home and can include help with:

- personal care including washing and dressing;
- housekeeping or cleaning;
- cooking and preparing meals;
- taking medications or health care needs; and
- companionship or activity based support.

### 5.3 Adults' Residential Care

Adult residential care is provided for those citizens who are unable to live independently in their own home. Residential care is usually separated into two categories:

1. Homes registered to provide personal care – these homes are able to provide personal care services similar to those provided by home support, but are delivered in a permanent care home setting.
2. Homes registered to provide nursing care – these homes are able to provide personal care services but also have registered nurses to provide care for any medical conditions or disabilities. Some nursing homes may also specialise in providing care for certain disabilities or conditions such as Dementia or Alzheimer's.

The Framework Agreement is currently only used to commission residential services for older adults i.e. those aged 65+. Due to an ongoing legal challenge, until such time as the review outlined in 5.8 below has been conducted, the Council will not implement the Cabinet decision made on 27 July 2015 in relation to the use of a Framework Agreement for residential care for younger adults' (aged 18 – 64).

### 5.4 Contractual Background

The decision to move away from block contracts and spot purchasing, was reviewed and evaluated through a detailed options appraisal as part of the Directorate's Business Transformation Programme in 2011. As a result of this, following Cabinet approval on the 30 January 2012, the Council entered into a Framework Agreement on 1 April 2012 for the commissioning of adults' services including home support; and residential care (with and without nursing) for older adults', which was to run for two years. In line with the original contract award, this was extended by the Strategic Director of Adults and Communities on 5 December 2013 for a further two years until 31 March 2016. A further Framework Agreement was entered into on 13 October 2014 for the provision of children's home support, which will expire on 12 August 2016.

Framework Agreements are a form of contract specified under the Public Contracts Regulations 2015. These are used by public bodies to set out terms and conditions under which specific call-off purchases can be made with one or more providers throughout the term of the agreement. It is usually only possible - under the Regulations - to use a Framework Agreement for a maximum period of four years, although this requirement is not absolute.

As part of the Business Transformation Programme Revised Full Business Case (2011), it was agreed that a micro procurement process would be used to allow for there to be a mini-competition between providers appointed to the framework panel, in order to determine which provider on the Framework Agreements would be allocated a new package. To assist with this process, an electronic solution was procured (via Service Birmingham) in 2012 called Sproc.net. This allows each assessed care package to be specified by the Council onto the web portal and for all accredited providers to view and bid upon these requirements. A process of assessing quality and price then allows the Council to award each individual package through a mini-competition. It should be noted that a number of care packages are purchased through citizens exercising their right to choose a care provider; these packages are published through Sproc.net, but only to the selected provider.

Officers of the Council were delegated Authority on 22 March 2012 to add new providers to those listed in the Cabinet Decision of 30 January 2012. The Council publishes information about the Framework Agreements on its website and through the Find it in Birmingham portal. A combination of the Framework Agreements and Sproc.net are used to allow new providers to come into the home support and residential care market at any time. However they must first demonstrate they meet the Council's criteria and agree to the terms and conditions of the Framework Agreements.

#### 5.5 Timescales

As a result of a number of changes and reviews, both corporately and within the People Directorate, it has not been possible to move to an alternative contractual basis ahead of the expiry of the existing adults' Framework Agreement on 31 March 2016. An interim solution is therefore required to ensure that the adults' social care market is not destabilised and that the Council can continue to fulfil care packages for adults', that are of a fair quality and price. Furthermore the children's home support Framework Agreement expires in August 2016 and it is recommended that this agreement is also extended. This will allow a single procurement exercise to take place in 2016/ 2017.

It is equally important that the Council continues to be able to demonstrate that a competitive approach is being taken to commissioning and that this is fair and transparent.

#### 5.6 Preferred option

The preferred option is therefore to extend the current Framework Agreements until 30 September 2017, allowing the People Directorate's Commissioning Centre of Excellence sufficient time to:

- Review existing contractual arrangements across the Commissioning Centre of Excellence and assess the extent to which any further categories of care/services could be incorporated into a new contractual arrangement.
- To assess the opportunities afforded by the new Public Contracts Regulations 2015, particularly in relation to the use of Dynamic Purchasing Systems.
- Stabilise the social care market whilst the Council is determining its approach to pricing.
- Stabilise the social care market whilst the Council continues to procure and implement a number of systems including the Electronic Home Visit Monitoring System (currently in the procurement phase) and Self Receipting and Self Billing (currently in the implementation phase). These will have financial savings for the Council, but will also place potential pressures on providers whilst we implement and deal with any initial teething problems.
- Review the contractual arrangements with the provider of our Sproc.net web portal (which has an extension option that can be exercised in September 2016), to ensure the solution continues to provide both value for money and a fit-for-purpose solution for the future.

## 5.7 Potential Risks

Any potential risks should be mitigated as follows:

- Officers of the Council have delegated authority to allow new providers to enter the current Framework Agreements throughout the term, meaning that new providers can join the Frameworks at any time, as long as they meet the minimum entry criteria and agree to the Council's terms and conditions.
- Each care package is commissioned through a mini-competition as described in 5.4 above. This ensures a fair and transparent process of allocating care packages to providers. This process also ensures that care packages are allocated based on a mixture of quality and price, with quality also focussing on how each provider can best meet the wider wellbeing goals and aspirations of the citizen.
- A contract extension would allow the Council to take a more holistic view of commissioning activity as described in 5.6 above, providing improved quality of outcomes for citizens and better value for money for the Council in the long-term.
- Continues the Council's investment in the systems used in the micro-procurement process and also the extensive work undertaken in developing quality standards and the overall care market in Birmingham.

5.8 An indicative timetable has been developed in conjunction with Corporate Procurement Services to ensure an alternative contractual arrangement is embedded within the 18 month extension period. Engagement activity will take place with providers and citizens who will be involved at all stages of the process. We will ensure that citizens' views are incorporated in all specifications and that the process is clear to all those effected. The proposed timetable is therefore as follows:

<b>Activity<sup>1</sup></b>	<b>Key dates</b>
Approval of Contract Extension by Cabinet	16 February 2016
Issue contract variation	February 2016
Business requirements gathering	January – March 2016
Business case to be confirmed	April 2016
Contract strategy approved by Cabinet including decision on Sproc.net (micro-procurement tool) extension	May 2016
Proposed Terms and Conditions/specifications, quality ratings, accreditation criteria and social value criteria developed for all categories of care	May - July 2016
Stage 1 Market and service user engagement	August – October 2016
Analysis and further development of proposals	November 2016
Stage 2 Market and service user engagement	November – December 2016
IT systems development	January - February 2017
Training and briefings (internal and external)	March – April 2017
OJEU notice, Pre-Qualification Questionnaire and all documentation published	February 2017
Contract Award Report	July 2017
Go Live for new solution	September 2017

<sup>1</sup> Additional activity not specifically included in the above timetable, but that will run in

parallel includes the potential implementation of the Electronic Home Visit Monitoring, Self Billing and Self Receipting and also the 'Living Wage Update' as described in section 4.1.2 above.

<sup>2</sup> The Framework Agreements will require a formal variation to affect the extension (as approved) and any price increases associated with implementation of the Birmingham Care Wage and the Birmingham Living Wage.

## 5.9 Contract Management

The micro-procurement system has a built in 'floor' and 'ceiling' tolerance price that ensures that prices are not accepted if they fall below a price whereby quality would be jeopardised, and to ensure that the budget can be managed appropriately.

The Framework Agreement is now embedded as the method of commissioning social care services for eligible citizens with almost 1,000 registered providers. Authority is now sought to extend this approach for a further 18 months in order to maximise further savings opportunities, demonstrated through the continued use of the Framework Agreement and associated micro-procurement system.

A provider Quality Framework has been established and is in operation to support commissioners to proactively manage the quality and performance of providers. Any breaches of contract, performance, quality or safeguarding issues are managed via the contract management and supplier relationship management process, in partnership with CQC and health partners, where appropriate.

Responsibility for the procurement of these contracts sits with the Head of Service – Complex and Statutory Services, as does the contract management and micro-tendering process. As detailed in 4.2 above, the packages of care individually commissioned through the Framework Agreements are paid for through the Adults' Social Care budget and the Children's Home Support budget.

## 6. **Evaluation of alternative option(s):**

6.1 To ensure business continuity and to find an alternative solution ahead of the current Framework Agreements expiring, there are regrettably a limited number of options available. These options are detailed below which includes the key issues and considerations for each:

### **Option 1 – Re-procure based on the existing terms and conditions and enter into a new Framework Agreement**

- Should any providers choose not to sign up to any new Framework Agreement the Council is unlikely to want to move those in residential care. This would be disruptive to an already vulnerable group of citizens and would also place an additional cost burden on the Council in re-assessing needs and finding alternative procurement routes for these care packages
- The amount of work involved to produce the necessary documentation and undertake tender evaluation would not be possible before 31 March 2016.
- Some providers may have a limited capacity to go through the procurement process twice in a very short space of time.



- There are a number of other projects/developments that are ongoing - primarily the Electronic Home Visit Monitoring System and the Council's implementation of the National Minimum Wage and National Living Wage as detailed in 4.1.2 and 4.2 above. It is therefore important that the Council minimises the impact of these on the market and protects some of our smaller providers.

### **Option 2 – Utilise another Framework Agreement**

- Any existing Framework Agreements let by other Authorities will not have been advertised for the volume and scale of care packages involved in Birmingham. We have commissioned over £72m of care through our Frameworks in 2015/16 and this is likely to pose significant risk of challenge to any other procuring Authority.
- The majority of neighbouring Authorities use fixed rates and block contracts or Framework Agreements that do not allow new providers to enter. The Council has invested significant resources into developing dynamic pricing and gained savings from this approach. Any move away from this would no longer be consistent with the Business Transformation Full Business Case.
- The Council has invested heavily in our electronic micro-procurement IT system (Sproc.net) and has a number of existing projects in progress. These are due to bring benefits and savings, but would have to be discontinued if we moved to fixed pricing.

## **7. Reasons for Decision(s):**

- 7.1 To enable the Strategic Director for People to continue to commission a framework of providers to deliver adults' services and children's home support under the existing Framework Agreements until 30 September 2017.

## **Signatures**

## **Date**

Cllr Stewart Stacey  
Cabinet Member for  
Commissioning, Contracting and .....  
Improvement

Cllr Paulette Hamilton  
Cabinet Member for Health  
and Social Care .....  
.....

Cllr Brigid Jones  
Cabinet Member for Children  
Services .....  
.....

Peter Hay  
Strategic Director for People .....  
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**List of Background Documents used to compile this Report:**

1. Cabinet Report of 30 January 2012 - "To establish a framework of providers for home care and care homes (with and without nursing)".
2. Delegated Authority Report of 22 March 2012 – "C0074 Home Support Services and Care Homes (with and without nursing)".
3. Delegated Award Report of 5 December 2013 – "Framework Agreement Extension for Home Support and Bed Based Care (C0074)".
4. Cabinet Report of 20 October 2014 - "Micro-procurement software for People Directorate".
5. Cabinet Report of 20 April 2015 – "Introduction of a Framework Agreement for Younger Adults' care providers and the use of micro-procurement process to purchase care services for younger adults' (18-64 years)"

**List of Appendices accompanying this Report (if any):**

1. Appendix A – Equality Analysis
2. Appendix B – Equality Impact Needs Analysis (2011)

<b>Report Version</b>	<b>V10</b>	<b>Dated</b>	<b>11 February 2016</b>
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