

**PROCUREMENT STRATEGY (P0996)**

**PROCUREMENT STRATEGY FOR THE PROVISION OF CARE HOMES WITH AND WITHOUT NURSING SERVICES AND CARE AND SUPPORT (SUPPORTED LIVING) P0996**

**1 Background**

1.1 The requirements and outcomes are set out in the accompanying Cabinet Report titled Regulated Adult Social Care Commissioning Strategy.

1.2 The existing services are delivered in 3 distinct services based on the service users' requirements:

- A) Care Homes With and Without Nursing Over 65yrs
- B) Care Homes With and Without Nursing Under 65yrs
- C) Supported Living 18 years and over

**2 Service Requirements**

The Council has a range of statutory duties and powers under the Care Act 2014 to assess the needs of citizens for care and support and commission a range of services that meet these needs.

**Adult Residential Care (with and without nursing)**

Residential care is provided for those citizens who are over 18 and unable to live independently in their own home. Residential care is usually separated into two categories:

- Homes registered with the Care Quality Commission (CQC) 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. These are referred to as Residential Care (without nursing) and the regulation and commissioning is of both the care and support and accommodation.
- Homes registered with the CQC to provide nursing care - these homes are able to provide personal care services but also have registered nurses to provide care for medical conditions or disabilities. Some nursing homes may also specialise in providing care for certain disabilities or conditions such as dementia. These are referred to as Residential Care (with nursing) and the regulation and commissioning is of both the care and support and accommodation.

**Supported Living**

Any references within this report and associated documentation to 'supported living' relate to the Care Quality Commission's definition which means "schemes that provide personal care to people as part of the support that they need to live in their own homes. The personal care is provided under separate contractual arrangements to those for the person's housing. The

accommodation is often shared but can be single household. Supported living providers that do not provide the regulated activity 'personal care' are not required by law to register with CQC".

The provision of Care and Support (Supported Living) will be delivered in accordance with health and social care policy to all young people with disabilities and adults. This includes those with complex health needs, the presentation of behaviours that challenge services, mobility needs and physical disabilities; sensory impairment (including acquired brain injury); cognitive impairment; dementia, learning disabilities and/or autism; and mental health needs.

### 3 Procurement Options

The following options were considered:

- Option 1 - Do nothing. This has been discounted because current arrangements come to an end on 1 May 2023. The future approach to commissioning of these essential services requires planning, development and ongoing investment as described above and to do nothing would put the Council at significant risk of destabilising the care market and being unable to meet its statutory duties to provide care.
- Option 2 - Tender for a Birmingham City Council only contract. This option was discounted on the basis the NHS has requested access to this framework agreement
- Option 3 - Use a collaborative framework agreement. This option was discounted as there are no collaborative framework agreements in place that meet the Council's requirement.
- Option 4 - Tender the services under the Light Touch Regime (LTR) similar to a Dynamic Purchasing System (DPS) to establish a Flexible Contracting Arrangement (FCA) framework which allows providers to be added at any time during the lifetime.. This is the recommended option because it retains an open market throughout the duration and can manage a high number of providers and contracts. Similar to a DPS, the FCA framework will be operated via an electronic portal with maximum automation for the required efficiency of time and resources.

### 4 Procurement Approach

#### 4.1 Duration and Advertising Route

The Flexible Contract Arrangement Framework will be for a period of 5 years, with the option to extend for up to two years. The opportunity will be advertised via Find a Tender, [www.finditinbirmingham.com](http://www.finditinbirmingham.com) and Contracts Finder.

The duration of the call off contracts will be based on the individual requirements.

#### 4.2 Procurement Route

The requirements will be tendered using a Flexible Contracting Arrangement framework via the "restricted" procurement route which is standard for a DPS type of procurement.

The procurement of these services will be subject to the Light Touch Regime of the Public Procurement.

#### 4.3 Scope and Specification

This framework is primarily for the Council and will also be available for Health to use.

The Council has a range of statutory duties and powers under the Care Act 2014 to assess the needs of citizens for care and support and commission a range of services that meet these needs. The Council currently commissions a wide range of regulated care and support services under the 2017 Commissioning Strategy approved by Cabinet.

The Council commissions care and support on behalf of almost 13,000 service users with eligible needs each year and the Council currently contracts with over 1100 independent care providers to deliver these statutory services, both within and outside of Birmingham.

The provision of Care and Support (Supported Living) will be delivered in accordance with health and social care policy to all young people with disabilities and adults. This includes those with complex health needs, the presentation of behaviours that challenge services, mobility needs and physical disabilities; sensory impairment (including acquired brain injury); cognitive impairment; dementia, learning disabilities and/or autism; and mental health needs.

The Commissioners will expect the service to provide:

- care and support that enables the citizen to do as much as possible for themselves
- a personalised and responsive service (with all staff delivering care being aware of citizens' personal preferences & agreed outcomes)
- care and support that encourages autonomy and independence
- a range of stimulation to meet the citizens needs and wishes within their own community
- activities that are meaningful for citizens
- equality of opportunity
- choice and the fulfilment of personal ambitions
- protection, dignity and respect
- relationship maintenance and opportunities to develop new relationships
- the meeting of religious, cultural and spiritual needs and wishes
- prevention of hospital admission and / or facilitation of safe discharge
- Housing tenure secured
- support with management of personal possessions
- to be involved with decision making over where and whom citizens live with

## 5 Market Analysis

### Summary

The care home and supported living markets are characterised by sufficient supply of diverse and good quality provision, although the current situation of high inflation is likely to further impact on provider and workforce sustainability. The current position enables both choice for service users but also the Local Authority to discharge its duties and manage risk within the markets. It is therefore critical that the Council continues to commission and contract with a range of suppliers.

### Care Homes

There is sufficient capacity within the Birmingham care market to meet current and future projected demand. Particularly, within the Older Adult (65 years +) market there is current oversupply with 14% of beds unoccupied but available for use, and the market is still recovering from a decline in demand experienced during the Covid-19 pandemic.

The local care home market is long established and composed of a large number of individual providers most of which operate just one home. A range of sizes of care home operate with the majority having less than 50 beds.

The majority of care homes are rated Good or Outstanding although 20% of the Market Requires Improvement. Inadequate homes are supported to improve by the Council and CQC or proactively managed to exit the market. Quality of contracted care homes has increased significantly between 2017 and 2022.

### Supported Living and Home Support

Barriers to entry are low and the market is fluid and competitive with suppliers both exiting and entering the market regularly. There is sufficient supply within the market to meet demand and particularly in supported living there is oversupply. There are risks associated with the current labour market, because of high inflation and the relatively low wages in the sector and these may impact sufficiency of supply in the short and medium term.

The local market is well established and composed of many small suppliers and is not dominated by large companies. Market share is well spread, and most suppliers support less than 50 service users.

The majority of suppliers are rated Good or Outstanding although similar to care homes a proportion Require Improvement. Inadequate suppliers are supported to improve by the Council and CQC or proactively managed to exit the market. Quality of contracted provision has increased between 2017 and 2022.

## 6 Market engagement

Some targeted market engagement has been carried out.

## 7 Tender Structure (Including Evaluation and Selection Criteria)

The quality / price balances below were established having due regard for the corporate document 'Evaluating Tenders' which considers the complexity of the services to be provided.

Tenders will be evaluated against a pre-set pass/fail criteria within the Carematch portal.

There will be 3 Lots:

Lot 1 - Care Homes With and Without Nursing Over 65yrs

Lot 2 - Care Homes With and Without Nursing Under 65yrs

Lot 3 - Supported Living 18yrs and over

The evaluation of tenders will be based on the assessment process set out below:

The criteria below will be assessed on a pass / fail basis:

Criteria	Evaluation
<b>STAGE ONE - Selection Stage</b>	
Company Information	Pass / Fail
Financial Information (including Insurance)	Pass / Fail
Health and Safety	Pass / Fail
Compliance with Equalities	Pass / Fail
Quality Management	Pass / Fail
Grounds for Mandatory Exclusion	Pass / Fail
Grounds for Discretionary Exclusion	Pass / Fail
Modern Slavery Act 2015	Pass / Fail
Technical and Professional Ability	Pass / Fail
Third Party Data Protection Requirements	Pass / Fail
Cyber Security Requirements	Pass / Fail
Commitment to Social Value Requirements	Pass / Fail
Declaration	Pass / Fail

Tenderers will be required to pass all sections of Stage 1 will be admitted to the FCA and can bid for contracts at Stage 2.

After the initial set up of the Flexible Contracting Arrangements System the system will remain permanently open.

## **STAGE 2**

Following the initial award, suppliers who have been successfully awarded in the relevant care category will be invited to bid for individual service packages via a further competition exercise as detailed

### **Quality (100%)**

Individual call off orders (individual care packages) under the Flexible Contracting Arrangements will be advertised via a micro tendering process on Care Match to relevant categories of providers, based upon the service user's care requirements, and then awarded to a provider based upon a quality determination. The provider quality determination, Provider Quality Rating, will be made in accordance with a Quality Assurance Framework as set out in the Tender documents.

The micro tendering process will facilitate short-listing and selection of a provider based on the following:

1. A long list of potential Providers from the Flexible Contracting Arrangement, who can meet the needs of the Service User, will be generated. This will be based upon: Provider categories, geographic location and service type.

2. The top 'ranked' provider(s) will be identified and the score will be based upon the Provider's Quality Rating in accordance with the Quality Assurance Framework.
3. The Service User will be presented with details of the top-ranked Provider(s). The Provider chosen to deliver Services to the Service User will have confirmed that they are able to meet the Service User's needs, preferences and requirements as described in the Support Plan. There may, however, be circumstances where the top-ranked Provider is not chosen by the Service User in line with statutory requirements.
4. If there is a tie between providers within an identical inspection rating then providers shall be ranked based upon customer feedback data gathered through the social work review process.

### **Social Value (0%)**

Social Value will not be used as an evaluation criteria as there is no guarantee of spend at this stage. There is also the potential for unfair competition at the further competition stage between the small and large providers. Additionally the evaluation process is automated due to the volumes and urgency to award for service delivery to start.

Bidders will be required to commit at Stage 1 to provide a Social Value Action Plan (SVAP) when requested making it a contractual requirement. Social Value Action Plans will be requested when the contract value threshold for a SVAP is achieved and will be part of the annual Quality Assurance process.

### **Price (0%)**

Price will not be used as an evaluation criteria as a fixed pricing model for this tender will be used in line with the accompanying cabinet report. Suppliers will have to confirm their understanding and acceptance to the fixed pricing model during the pass/fail evaluation at Stage one.

To reflect the complex range of support provided for those citizens aged 18 – 64 years old with a learning disability, mental health condition or with a physical disability, the Council will continue with the Guide Price and Open Book process established in 2017. This includes the Council using a Guide Price for various levels of need and any variations from this being managed and agreed using an 'open book' approach. The open book process will require providers to provide the cost of meeting the service users' needs and to provide a transparent and evidence-based breakdown of these costs.

## **8 Evaluation Team**

The process for accepting providers onto the Flexible Contracting Arrangement system is on a pass/fail basis. Feedback on unsuccessful applications is provided via a combination of automated and manual responses which will be undertaken officers from Corporate Procurement Services, Adult Social Care, with representatives from Health and Finance as required.

The evaluation of individual call-offs made under this agreement will be undertaken by Adult Social Care and Health Commissioning Officers.

## 9 Indicative Implementation Plan

The implementation plan below has been produced to meet the overall deadline for the project.

Note; there is no obligation to hold a standstill before admitting suppliers and commencing the FCA and as suppliers may apply, or reapply if previously not accepted at any time during the duration of the FCA, a standstill at initial set up would be of little value so this stage will not be applied.

<b>Activity</b>	<b>Anticipated Dates</b>
Cabinet Approval (Strategy)	13 December 2022
ITT Issued	20 December 2022
ITQ Return	27 January 2023
Evaluation Period	30 January - 24 February 2023
FCA Contract Award	27 February - 15 March 2023
FCA Award Letters Issued	15 March 2023
Contract Starts – Individual Contracts	3 April 2023
Contract Award Notices	Published Quarterly (within 30 days of the Quarter end)

## 10 Service Delivery Management

### 10.1 Contract Management

The DPS and contracts will be managed operationally by the Adults Social Care Team. The Head of Commissioning will work closely with both Directorate Finance and Assessment and Support Planning colleagues to manage the associated budget. The approach to contract management is set out within the Commissioning Strategy approved by Cabinet in December 2022. The key elements of the contract management approach are;

- Completion of an annual self-assessment by the provider against key contractual obligations and elements of the specification.
- Completion of an annual monitoring visit from either the Council, the CQC or the NHS.
- Quarterly collection of market intelligence information from all care providers.
- Regular analysis of customer feedback.
- Maintenance of a provider risk register to monitor complaints, safeguarding incidents, quality concerns, live credit alerts etc.
- Regular data sharing meetings with partners locally and regionally to ensure coordinated contract management of providers.
- A geographic commissioning presence to ensure better oversight of providers.
- Regular contract review meetings with providers with the largest market share; and
- Monitoring compliance with Social Value requirements including obtaining action plans at the Quality Assurance stage and monitoring as appropriate.
- Monitoring of contract awards and quarterly publishing of contract award notices in line with the Public Contract Regulations (PCR) 2015.

## 10.2 Performance Measurement

The DPS is responsive to service requirements and there are no SLAs, it is on a service need basis. Information on volumes and spend will be available.

The individual contract monitoring is included in the Quality Assurance process which ensures best quality with choice.

## 10.3 Data Protection

The 3<sup>rd</sup> Party Data Protection and Cyber Security requirements will be agreed with the relevant officers and included in the Invitation To Tender.

The Data Sharing Agreement will be agreed with Legal Services and included in the contract terms and conditions.



## **Social Value Rationale**

<p>Providers will produce a Social Value Action Plan as part of the annual Quality Assurance programme in the contract management stage. Commissioners will be able to support providers in the development of this plan. Key elements will be seeking to utilise local community assets via the MatchMyProject Scheme, links with Neighbourhood Network Services and support in the Environmental and Sustainability assessment.</p> <p>Social Value will not be part of the evaluation process, please refer to the Social Value section of the strategy for more information</p>
<p>The majority of the market is made up of small and medium suppliers, many of which are local businesses with a smaller number of medium and large national suppliers operating in the area.</p> <p>Although mature in terms of service provision the market is immature in terms of social value. There are opportunities for the care homes to become community assets as there are a range of facilities including meeting rooms which could be used by local community groups subject to safeguarding requirements. Comm</p>
Total Social Value Weighting: 0%
Qualitative / Quantitative split: Not applicable
Reasons for which themes are to be prioritised:
List the themes in order of priority (sub-weighting not applicable)
<p>Priority Theme 1: Local Employment</p> <p>Commissioners want more local employment on these contracts. There are a number of measures in the social value action plan where commitments could be made and achieved. One measure will be removed due to the vulnerability of the client group.</p>
<p>Priority Theme 2: Partners in Communities</p> <p>Commissioners want initiatives supporting disabled and vulnerable adults to build stronger community networks; e.g. befriending schemes, digital inclusion clubs, provision of community assets; e.g. use of meeting room or other facilities. Providers will be encouraged to join the Council's MatchMyProject scheme. One measure meets this requirement; providers will be guided to this measure.</p>
<p>Priority Theme 3: Green and Sustainable</p> <p>Commissioners have developed an Environmental and Sustainability assessment which requires providers to reduce their adverse impacts on the environment.</p>