

SLOUGH BOROUGH COUNCIL

REPORT TO: Cabinet

DATE: 20th June 2022

SUBJECT: Re-procurement of Adult Social Care Domiciliary Care Contracts

CHIEF OFFICER: Marc Gadsby, Executive Director People (Adults)

CONTACT OFFICER: Jane Senior – Associate Director People Strategy and Commissioning
Suzanne Binns Group Manager-Purchasing

WARD(S): ALL

PORTFOLIO: Cllr Natasa Pantelic, Social Care and Public Health

KEY DECISION: YES

EXEMPT: Part Exempt – Appendices 1 – 4 are exempt as they contain the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: “Information relating to the financial or business affairs of any particular person (including the authority holding that information)”

DECISION SUBJECT TO CALL IN: YES

APPENDICES: Appendices 1-4 (Part II)
Equality Impact Assessment (Part I)

1 Summary and Recommendations

1.1 This report seeks approval to award contracts to 9 suppliers of domiciliary care which have been tendered by competitive process via the Council’s Adult Social Care Dynamic Purchasing System. This will ensure a sufficiency of supply once the first tranche of existing contracts expires in July 2022.

Recommendations:

Cabinet is recommended to:

1. Agree to the award of contracts to 9 suppliers for the provision of domiciliary care. This will be to suppliers 1,9,10,13,15,16,19, 22 and 24. Full details are contained at Exempt Appendix A.
2. Agree to the issuing of contract extensions and variations to existing tranche 1 providers who did not bid for new contracts, for a six month period until 16 January

2023. This will enable providers to continue to work with up to 155 service users whilst alternative arrangements are put in place, but not to take on new referrals

3. Note that lessons learned from the tendering process relating to tranche 1 will be built into arrangements concerning the tendering process for tranche 2 .
4. Delegate authority to the Executive Director for People (Adults) in consultation with the Lead Member for Public Health and Social Care to have oversight of the mobilisation period and to be kept apprised of changes in the local adult social care market.

Reason:

To ensure a sufficiency of supply of domiciliary care in the local area, which has been secured through competition.

Commissioners Review

This report has been reviewed by Commissioners.

2 Report

Introductory paragraph

- 2.1 In March 2022, Cabinet approved the re-tendering of two tranches of domiciliary care contracts. This report set out the results of the tendering and evaluation process for the first tranche of contracts and recommends contract award to 9 suppliers. This is an increase of 3 suppliers from the current total of 6 within Tranche 1.
- 2.2 The provision of good quality domiciliary care enables individuals with assessed care and support needs to remain living at home, thus promoting independence and reducing the need for more expensive residential care.
- 2.3 Domiciliary care providers play an essential role within the health and social care system. Not only by delivering care to those who are assessed as requiring it, but also by enabling timely discharge from hospital, freeing up hospital bedspaces and facilitating moves back home. Local authorities are required, under s5 of the Care Act 2014, to ensure a diverse and sustainable market to meet eligible assessed care needs including care at home for those who require it. This includes the provision of directly commissioned care as well as provision for those in receipt of Direct Payments and self-funders.
- 2.4 The provision of domiciliary care meets the following Council priorities and objectives:

Slough Health and Wellbeing Strategy

Priority Two- Integration – Increasing the proportion of people living independently at home, and decreasing the number of people living in care homes.

Slough Corporate Plan

- An environment that helps residents live more independent, healthier and safer lives

Domiciliary care enables individuals with assessed care and support needs to remain living at home, thus promoting independence and reducing the need for more expensive residential care

- A council that lives within our means, balances the budget and delivers best value for taxpayers and service users

The provision of domiciliary care prevents the need for take up of more expensive residential care. This supports the Council to balance the budget and deliver best value.

Options considered

2.5 In the report to Cabinet in March 2022, a number of options were considered:

Option	Pros	Cons
<p>Option 1</p> <p>Do not re-tender contracts which are due to expire.</p>	<p>This would reduce resource pressure placed upon teams engaged in procurement activity.</p>	<p>Not tendering for contracts which are due to expire will leave a limited number of contracted suppliers available to deliver services.</p> <p>Individuals receiving a service would need to transfer to another provider if they wished to continue receiving a commissioned service.</p> <p>It is unlikely that in-contract suppliers would be able to expand capacity to meet demand. This might lead to purchasing activity which is not compliant in order to respond to demand and urgent system pressures, including supporting discharge from hospital.</p>
<p>Option 2</p> <p>Retender contracts via the Adult Social Care Dynamic Purchasing System.</p> <p>Recommended</p>	<p>Maintains sufficiency and diversity of supply.</p> <p>Supply secured through competitive processes in order to meet best value requirements.</p>	<p>Economic pressures placed upon providers are likely to have an impact upon the market and potentially upon the price secured at the present time.</p>

	<p>Allows for further competition to take place when securing individual packages of care.</p> <p>Allows providers flexibility to deliver to a higher or lower number of people depending upon workforce availability.</p>	
<p>Option 3</p> <p>Retender using a different method eg block contracts</p>	<p>Providers have surety of income and can plan their businesses more effectively.</p> <p>Simple payment schedule is less resource intensive for Council staff.</p>	<p>Might not be able to deliver contracted hours due to workforce pressures.</p> <p>If service demand fluctuates below block level, the Council pays for undelivered hours. Therefore, not cost effective.</p>
<p>Option 4</p> <p>Retender both tranches at the same time.</p>	<p>This would reduce resource required by managing one procurement rather than two.</p>	<p>Contracts have different end dates and there is no scope to extend contracts terminating earlier.</p> <p>Current arrangements help spread the risk and ensure that competition is undertaken under different market conditions. This has been beneficial for securing good quality provision at affordable rates.</p> <p>The market is undergoing a period of uncertainty including those relating to inflationary pressures– and the timing is not optimum for retendering the first tranche of contracts.</p> <p>Retendering the second tranche of contracts – when further information concerning Adult Social Care Reforms is released and the Fair Cost of Care Exercise is undertaken – might provide greater certainty for suppliers interested in investing more business in Slough.</p>

2.6 Option 2 was considered to be the most suitable option for ensuring a diverse and sustainable market to meet eligible care needs, which took account of market fluctuations.

Background

- 2.7.1 Domiciliary Care plays an essential role within the health and social care system. Care workers provide care and support to individuals with assessed needs within their own homes, to enable them to stay independent for longer. Care and support activities can include administration of medication, helping people with transfers (for example from bed to chair), helping with washing, dressing and toileting and other forms of personal care. Domiciliary care providers enable people to return home after a hospital stay, thus ensuring that hospital discharge takes place on time and that individuals do not need to stay in hospital longer than necessary.
- 2.8 The referral process is managed by allocating packages of care to the lowest priced supplier who has availability across all tranches of contracted supply and can meet the individual service user's needs.
- 2.9 The Council currently pays providers on a per minute basis for actual delivery of care up to the commissioned visit duration. It is normal for payments to be around 85% of the cost of commissioned hours. Where any additional time has been required on individual visits, due to an emergency situation or a temporary fluctuation in need, these are then checked before being authorised for billing. The council saves around £1m over the year by paying on a per minute basis.
- 2.10 All care workers employed by suppliers are paid at or above the National Living Wage and all care workers are paid travel time.
- 2.11 The report to March Cabinet 2022 concerning the re-procurement of domiciliary care sets out that the current commissioning strategy has been to periodically undertake procurements via the Adult Social Care Dynamic Purchasing System (DPS). This has meant that the Council has been able to maintain a sufficiency and diversity of supply, secured at competitive prices. This approach has also meant that the Council has been able to manage market risks - such as maintaining access to alternative suppliers where a provider has failed. The Council has also been able to contract with a number of market entrants (at a lower price) as well as more established providers, thus ensuring competitiveness in the local market. Periodic refresh of contracted suppliers not only attracts new entrants to the market, but also means that there are phased contract end dates which spreads the risks associated with supply failure upon re-procurement.
- 2.12 The report provided information that during the previous 12 month rolling period, 1471 packages of domiciliary care for people had been commissioned across all providers at an approximate cost of £6.8M. This equates to approximately £17.91 per hour.
- 2.13 642 packages of domiciliary care had been commissioned from tranche one providers whose contracts are due to expire in July 2022 at a weighted average cost of £18.21 per hour.
- 2.14 Costs associated within each of the tranches were set out within the March 2022 paper to Cabinet as follows:

Contract Expiry Date	Total packages of care	Weighted Average Hourly Price	Total annual expenditure
Tranche 1 July 2022	642	£18.21	£3.5m
Tranche 2 December 2022	386	£18.06	£1.6m
Beyond 2022	443	£17.21	£1.7m
Totals	1471	£17.91	£6.8m

2.15 The annual costs contained with the table above concerning Tranche 1 contracts, were considered to provide an indication of the potential annual expenditure going forward. Information was also provided concerning market conditions which could influence the prices secured. Although other factors concerning the Council's approach to awarding inflationary uplifts, government support in the form of Workforce Recruitment and Retention grants for providers, and the upcoming Adult Social Care Reforms were also considered as being potentially mitigating factors in the prices that could be secured.

The Procurement Process

- 2.16 A Procurement Officer from the Commercial Team was consulted on the procurement process and published the requisite notifications. The procurement was undertaken in accordance with the Public Contracts Regulations 2015.
- 2.17 Expressions of Interest from providers were sought using a Find a Tender Prior Information Notice (PIN) issued on the 1st April 2022 through the SE Shared Services Portal informing them of the opportunity being let through the ASC DPS, and inviting providers not already registered on the DPS to make their applications. Applications to the DPS were assessed, and successful organisations were admitted onto the existing DPS and provided with instructions on how to locate the Mini-competition opportunity.
- 2.18 All organisations currently on, and also those successful in joining the relevant DPS Lots were invited to participate in the mini-competition.
- 2.19 The mini competition was also advertised on Find a Tender through the SE Shared Services Portal with a deadline for submissions of the 3rd May 2022.
- 2.20 At Tender, bidders were required to submit a Method Statement and Pricing Schedule with regard to the services tendered, alongside their required declarations and other contractual documentation returns.
- 2.21 213 expressions of Interest (EOI) were received and 24 organisations submitted returns by the deadline. **Those returns have been evaluated.** The remaining 189 non-bidding suppliers will be contacted to identify the reasons why they did not make a return.
- 2.22 Of the 24 bidding organisations, 23 are established CQC registered providers, 1 organisation is a new Slough based start-up without current CQC Registration Status. 2 organisations are existing suppliers from the Tranche 1 cohort (of which

there are 6 in total), 1 is an existing provider for SBC but not from Tranche1 or 2, and did not need to bid.

4 existing suppliers of the 6 suppliers within Tranche 1 did not bid for contracts. This is for a number of reasons set out at 2.36 below. Existing providers have fed back on their intention to bid for services when a new round of procurement takes place later in the year to coincide with Tranche 2 contracts coming to an end.

2.22 This has created a difficulty in that c155 service users in receipt of domiciliary care provision, could potentially need to be assessed and receive provision either through a direct payment or by transfer to an alternative contracted provider. During the tender process, bidders were informed that a decision would be made as to whether existing service users would be transferred from the current providers after evaluation of the submitted tenders.

2.23 Legal advice has been sought in order to provide the 4 existing suppliers of the 6 suppliers within tranche 1 who did not bid for new contracts with a contract variation or new term of contract to allow them to continue to provide services to their current clients for a period of up to 6 months from the 17th July 2022. This will allow time for assessments to be undertaken and for stability to be achieved over the Christmas period when the second tranche providers' contracts terminate in December 2022. Further information concerning options in regard to this matter is shown at section 2.41 below.

In accordance with regulation 59 of the PCR 2015, these suppliers have "self-certified" their compliance with the selection requirements, and confirmed that none of the grounds for exclusion apply, to retain admittance to the DPS. They have confirmed that already submitted documents are still applicable, or have provided new documents as preceding ones have expired, or circumstances have changed.

2.24 Quality Evaluation

2.24.1 The specification and contract terms were amended during 2021 in preparation for a previous procurement round. A number of co-production meetings were held with representatives from social work teams, health colleagues and the co-production network. Feedback ensured that the following areas were incorporated into method statements which were evaluated during the procurement process:

- Meeting the needs of the individual
- Safety and safeguarding – including operating safely during covid.
- Quality assurance
- Approaches to staff recruitment, retention and training.
- Pricing and capacity building.
- Business Continuity Planning.
- Information systems and their use for monitoring service provision.
- Approach to partnership working with the Council and others.

2.28 Bidders were required to complete 20 questions within the submitted Method Statement in relation to the quality of the service. Bidders were informed in the guidance issued of the weightings that would be applied to each question.

- 2.29 On evaluation, bidders were required to score a minimum of 45.5 points out of a possible 65 for the generic Home Support Services Lot 1 Method Statement and 14 points out of a possible 20 for the COVID19 Response Service Lot 2 Method Statement. Failure to meet the thresholds resulted in no progression to an award of contract. Lot 2 bidders were required to meet the minimum threshold in both Lot 1 and Lot 2 scoring for the award of contract.
- 2.30 An evaluation panel comprising 3 officers from the People Strategy and Commissioning Team, the Adult Social Care Social Work Operational Team, and the Purchasing Team undertook independent scoring and a moderation meeting was held and facilitated by a Group Manager. Economic Standing Status assessments were undertaken by the Finance Team.

Evaluation Outcome

- 2.30 Quality Method Statement Scores ranged from 31.3 to 52.9 across the 24 submissions.
- 2.32 A total of 9 bidders of the 24 scored at or above the minimum Quality threshold of 45.5.
- 2.33 3 of the bidders also passed the minimum quality threshold for delivery of the domiciliary care COVID19 response service.
- 2.34 The outcome of the tender evaluation is set out at Exempt Appendix A. A full list of bidding organisations is set out at Exempt Appendix B. The price and the Care Quality Commission (CQC) rating for existing Tranche 1, Tranche 2 and Tranche 3 contracts is set out at Exempt Appendix C. The price and CQC Quality Rating for incoming providers is set out at Exempt Appendix D.

Lessons Learned

- 2.35 There is a need to provide general information to providers registered on the DPS on factors they should consider when submitting proposals in order to maximise their chances of success at mini-competition stages. The quality of returns was such that a number of bidders failed to address all areas of the questions.
- 2.36 4 out of 6 existing suppliers within Tranche 1 did not bid for contracts. This is due to a number of reasons which are primarily administrative and include:
- Inability to properly navigate the SE Shared Services Portal
 - Not keeping contact details up to date and therefore missing notifications
 - Not being clear about process
- 2.37 Existing providers have fed back of their intention to bid for services when a new round of procurement takes place later in the year to coincide with Tranche 2 contracts coming to an end.
- 2.38 Lessons learnt will be factored into the next procurement round for tranche 2 contracts. For example, providers will be directed to the training videos and manual on the SE Shared Services Portal on how to navigate the portal. Training will also be provided on how to construct a bid.

Unanticipated Risks

- 2.40 The risk assessment provided for the March Cabinet report assessed the residual risk of existing providers not bidding for contracts as being Low – as providers would be keen to continue to work with their clients. Whilst this is correct, administrative difficulties were not anticipated as being a factor in existing providers not bidding for new contracts.
- 2.41 4 existing suppliers of the 6 suppliers within Tranche 1 did not bid for new contracts. This has implications for up to 155 service users as well as significant resourcing implications. The options concerning onward provision of domiciliary care for these service users, along with the positive and negative impacts of implementing each option are set out in the table below:

Option	Pros	Cons
<p>Option 1</p> <p>Immediately arrange for all 155 service users to have an assessment and to be transferred to a direct payment, a managed account or a new contracted provider or existing contracted provider from tranche 2 or tranche 3, prior to contract expiry of tranche 1 contracts in July 2022.</p>	<p>A move to a direct payment or to a managed account could be more cost effective than receiving a directly commissioned package of care.</p> <p>Existing and new contracted providers could benefit from an immediate increase in business.</p>	<p>It will be heavily resource intensive to undertake 155 assessments, and to arrange for direct payments, managed accounts or transfer to another provider to take place.</p> <p>This would require significant additional resource (which the Council is unable to afford) in order to manage assessments and transfers of care safely and effectively. Given the current recruitment market there are no guarantees that additional resource could be obtained. Any requirement to undertake this activity outside of this arrangement would require at least some suspension of business as usual activity both across social work and purchasing teams. This would mean that the People (Adults) directorate is not compliant with its</p>

		<p>statutory duties and will also create knock on impacts across the health and social care system – particularly in regard to hospital discharge.</p> <p>Could cause significant disruption in regard to continuity of care.</p> <p>Could cause service user and family dissatisfaction and distress</p> <p>Take up of direct payments or a managed account are voluntary and cannot be made compulsory.</p>
<p>Option 2</p> <p>Award a contract extension / variation for a 6 month period from 17th July 2022 to existing tranche 1 providers which enables them to work with existing service users but which does not permit new placements.</p>	<p>Allows sufficient time for reviews to be undertaken and for service users to take up a direct payment, a managed account or a transfer of care as appropriate.</p> <p>Bidders were informed at Tender through the clarification process that an option for service users to remain with their existing providers could be a possibility.</p>	<p>New and existing contracted providers do not benefit immediately from the possibility of transfers of care.</p>

Market Conditions

2.42.1 There have been significant changes to the local market conditions since approval was given by Cabinet to proceed with the tender.

2.42.2 The inflation rate for April 2022 stands at 9% and inflation is anticipated to increase further in the year ahead.

2.42.3 It has also been announced that there are further increases in the cost of fuel.

2.42.4 Other local authorities close to Slough have recently reported a significant lack of success at tender with major increases in fee rates and in some instances providers choosing not to take up contract award offers.

2.42.5 Providers are gaining experience from cost of care exercises being carried out across the country and this is likely to increase provider fees.

2.42.6 Providers are reporting increased issues in their ability to recruit and retain staffing, due to competitive rates of pay in other local labour market sectors due to the decreased movement of labour from Europe.

2.42.7 Market conditions have had a combined impact upon the fee rates submitted by successful tenderers. Further details containing fee rates are contained at Exempt Appendix 3 and Exempt Appendix 4.

Managing Cost Pressures and Sufficiency of Service

2.42.8 In order to ensure sufficiency of supply, it is recommended that the 9 organisations scoring over the relevant quality threshold are progressed through to contract award based upon Economic Standing checks. Start-up suppliers will be required to submit assurance statements, cashflow and profit and loss forecasts, and/or other evidence of sufficient resources to mobilise the contracts before awards are made.

2.42.9 In order to manage associated cost pressures, the Council's processes for assigning domiciliary care orders to suppliers is:

- 1) All suppliers in contract will be ranked in accordance with their tendered costs. This ranking will include all current suppliers and those successful at this tender and any future tender
- 2) Work will be assigned to the lowest cost supplier for any given order subject to:
 - a. The supplier having the necessary capability to perform the work
 - b. The supplier having the necessary capacity (*i.e.* available competent staff and equipment for the required task) to perform the work at the required times
- 3) Should that supplier not be able to take on the work, this will then pass to the next lowest cost supplier who has the capability and capacity to perform the work.

Preparation for the Next Stage

2.43 Further to approval of the recommendations by Cabinet, the People Strategy and Commissioning Teams will work with the successful bidders to deliver the implementation plan set out at 2.44 below.

2.44 Implementation Plan

Implementation Plan	Date
Pre-award Economic Standing checks completed	20/05/2022
Pre-contract mobilisation and demobilisation plan development with providers- ensure TUP(E) due diligence is undertaken between outgoing and incoming providers, where applicable.	22/05/2022 - 16/07/2022
Demobilisation of existing contracts with Tranche 1 suppliers who did not bid in this Tender and do not bid in the next tranche or are unsuccessful in the next tranche.	01/06/2022-16/01/2023
Review of service users regarding options to receive a Direct Payment/Managed Account Service/Individual Service Fund, or transfer to an alternative provider.	22/05/2022-16/01/2023
Monitor staff recruitment and induction in new suppliers and plan transfers of service users and referral dates.	22/05/2022-16/01/2023
Contingency - Bring forward contract start dates with new suppliers if there are capacity issues in our current supplier list due to transfer of service users from outgoing contractors before 17th July 2022.	21/06/2022
Meetings with new providers to agree contract monitoring QA systems, performance workbooks and engagement forums with providers	22/05/2022-16/07/2022
Monitor mobilisation plan implementation.	22/05/2022-16/07/2022
Contract Go-Live Dates by 17th July 2022	17/06/2022

Contract monitoring

- 2.45 Performance workbooks will be agreed with providers and contract monitoring and contract management meetings will be scheduled.
- 2.46 The quality of provision will be monitored through the Quality Assurance team and reported to the Care Governance Board.
- 2.47 The People Strategy and Commissioning Team will be making improvements in the way the services are monitored. Further consultation has been undertaken with the Co-production network in consideration of the methodologies to be used going forward to improve opportunities for feedback, aspects of service to identify and measure performance in order to facilitate improvements to the quality of services provided.
- 2.48 We know from our annual surveys, that service users view the following areas as being important:

- Staff arriving on time
- Staff staying for the whole time of their visit time
- Having the same care staff Training of staff
- Carer to Service User Matching
- Recruitment and retention
- Meet language and cultural needs of Slough's diverse community

2.49 Additionally we also need the agencies to :

- Work in partnership to improve services
- Have robust quality checking systems
- Implement safe working practice

2.50 Co-production members discussed and added the following items:

- Improved recruitment and speed of access to a person who speaks the same language as the service user
- Treating people with dignity and respect, communicating with the person and getting to know their preferences and likes, their spiritual/religious needs as well as their physical needs.
- Taking care to ensure a suitable environment – e.g. put the radio on their favourite channel.
- Trustworthy.
- Matching care workers to the service user.
- Treating care staff well. Obtaining and reacting to their feedback. Help them to make a complaint or suggest an improvement in the service and act upon it.

As well as email, telephone calls and face to face visits the co-production network members suggested:

- Surveys should include face to face meetings with care staff as well – perhaps introduction of a provider care staff forum.
- Carers survey as well to gather the views of relatives et

3. Implications of the Recommendation

3.1 Financial implications

3.1.1 Homecare providers are already legally required to pay care workers National Living Wage, and this is a rate that is subject to inflation increments. The budget for Domiciliary Care is £5.314m and the total spend for the 2021/22 financial year was £6.8m. This includes £3.5m spend with Tranche1 suppliers. The council has budgeted an additional £2m for Care purchasing (including Domiciliary Care) inflation.

3.1.2 In the Risk Management Implications section at para 3.3.1 of the Cabinet Report of the 21st March 2022, the medium risk factor associated with a lack of continuity of

supply if existing suppliers did not bid, or bid at excessive price was set out with mitigating actions. The mitigating action in relation to bids received at excessive price was shown as “All new packages of care will be set-up with the most cost-effective organisation.” An exempt appendix to the report also included modelling information concerning potential cost increases should providers bid at similar rates to nearby local authorities. The potential cost pressures were estimated to be up to £196K per annum for tranche 1 providers.

- 3.1.3 Two of the existing tranche 1 suppliers increased their prices averaging £0.90 per hour, equivalent to a full year cost of £112k – this is £84K lower than the potential cost pressures identified in the March Cabinet Report. In consideration of the current service user profile, if the equivalent of 30% of the service users currently with existing suppliers were to transfer to a provider whose price is £1.71 per hour lower then this would mitigate £45,747 of the £112k potential additional cost pressure. However, it should be noted, that disrupting the possible long term care arrangements of an individual purely on cost purposes is unethical and would have significant resource implications both for operational and purchasing teams. Similarly, if a further 30% of new referrals are allocated to providers using the mechanism set out above in paragraph 2.42.9 again would realise £45,747 of cost pressures.
- 3.1.4 In order to ensure continuity of supply, and management of cost pressures, existing tranche 1 suppliers will be provided with an additional 6-month term of contract to continue to supply services to service users allocated to them during their existing contract period. This provision will be set at the price at the end of the existing term. No new service user allocations will be made to them during this term, until or unless they have applied and been successful at a future mini competition.
- 3.1.5 This period will allow for service user reviews to identify, where appropriate, service transfers to other Care providers, from existing tranche 1 suppliers that did not bid or were unsuccessful in any subsequent mini competition to which they applied, or are excessively priced. Where a service user wishes to remain with their current provider or take up the offer of a Personal Budget via a Direct Payment / Managed Account / Individual Service Fund Account to have choice and control over how their care and support needs are met.
- 3.1.6 Personal budgets have proven to be a cost-effective solution in meeting the care and support needs of individuals with typically a reduction of between 8-9% of annual spend against budget. It should be noted that whilst an offer of a direct payment can be made to an individual, this cannot be mandated.
- 3.1.7 As a demand led provision, Domiciliary Care expenditure will need to be monitored very closely to ensure sustainability within the stated budget envelope. The Adult transformation project initiatives to diverting demand at front door and ensuring competitive “target price” for care provisions should mitigate against any adverse budgetary effects.

3.2 Legal implications

3.2.1 The Care Act 2014 requires the local authority to meet identified eligible needs as assessed under s9 of the Care Act, and to meet that need with appropriate provision. Where this is identified as domiciliary care, then there is a duty placed upon the Council to make that provision.

3.2.2 The Care Act statutory guidance states that 'high quality, personalised Care and Support can only be achieved where there is a vibrant, responsive market of services available'.

3.2.3 Under section 5 of the Care Act, the local authority has a duty to shape and maintain an efficient and effective market of services for meeting care and support needs in the local area

3.2.4 The duty applies in relation to services that the Local Authority commissions directly, but also to other non-commissioned services in its area (including those used by self-funders), universal services and services provided by partners (such as health or charitable services) that together create the marketplace.

3.2.5 The market that is shaped should ensure that any person requiring Care and Support/Support services:

1. Has a variety of providers supplying a variety of services to choose from;
2. Has a variety of high quality services to choose from; and
3. Has sufficient information to make an informed decision about how to meet the needs in question.

3.2.6 In order to fulfil its duty to promote diversity and quality in service provision the Local Authority must ensure it has effective strategies to shape the marketplace and commission the right services.

3.2.7 Use of a properly established Dynamic Purchasing System (DPS) to procure Domiciliary Care Contracts is a compliant procurement approach in accordance with both the Council's Contract Procedure Rules and the Public Contracts Regulations 2015.

3.2.8 The DPS must be operated as a completely electronic process and must be open, throughout the period of validity of the DPS, to any economic operator that satisfies the selection criteria

3.2.9 To procure under a DPS, the council must follow the rules of the restricted procedure, which means that any economic operator can submit a request to participate in response to the call for competition by providing the information for qualitative selection requested by the council. The minimum time limit for receipt of requests to participate, where a prior information notice (PIN) is used as a means of calling for competition, is 30 days from the date on which the PIN is sent to the UK e-notification service - *Find a Tender*.

3.2.10 The council must offer unrestricted and full direct access free of charge to the procurement documents, by means of the internet, on an ongoing basis from the date on which the PIN is sent. This requirement can be satisfied by providing a link to a procurement portal (such as Intend SE Portal) where potential candidates can access the documents.

- 3.2.11 The council must finalise their evaluation of requests to participate in the DPS, in accordance with the applicable selection criteria, within ten working days following their receipt, and must simultaneously and in writing invite the economic operators which have expressed their interest to confirm their continuing interest, and invite the selected candidates to submit their tenders.
- 3.2.12 The minimum time limit for receipt of tenders must be at least ten days from the date on which the invitation to tender is sent. However, the council may set the time limit for the receipt of tenders by mutual agreement between the council and all selected candidates, provided that all selected candidates have the same time to prepare and submit their tenders.
- 3.2.13 Where the council awards a contract under a DPS, there is no compulsory standstill period.
- 3.2.14 The council must either send a contract award notice within 30 days after the award of each contract based on the DPS or group such notices on a quarterly basis and send the grouped notices within 30 days of the end of each quarter.
- 3.2.15 HB Public Law can advise as required on the DPS procedural requirements and contract awards and conclusion.
- 3.2.16 Legal advice has been sought in order to provide the 4 existing suppliers of the 6 suppliers within tranche 1 who did not bid for new contracts with a contract extension or new term of contract to allow them to continue to provide services to their current clients for a period of up to 6 months from the 17th July 2022. This will allow time for the assessments to be undertaken and for stability over the Christmas period to be achieved when the second tranche providers' contracts terminate in December 2022. (Further information and options considered are shown at s 2.41 above.) HB Public Law will provide advice on the contract extensions or new short-term contracts as required.
- 3.2.17 In accordance with regulation 59 of the PCR 2015, these suppliers have "self-certified" their compliance with the selection requirements, and confirmed that none of the grounds for exclusion apply, to retain admittance to the DPS. They have confirmed that already submitted documents are still applicable, or have provided new documents as preceding ones have expired, or circumstances have changed.

3.3 Risk management implications

- 3.3.1 The recommended option decision will ensure the sufficiency of supply when the existing contracts terminate on the 16th July 2022 for tranche 1 and 1st December 2022 for tranche 2. The table below sets out the risks associated with the proposed course of action and the mitigating actions.

Risk	Assessment of Risk	Mitigation	Residual Risk
Mobilisation will not take place on time.	Medium	<p>Use other current suppliers for supply. Transfer existing service users with expiring contractors to current suppliers or offer Direct Payment, Managed Accounts or Individual Service Fund Accounts to remain with their current provider.</p> <p>Extend the contracts with outgoing suppliers for a period of 6 months from the 17th July 2022 to allow demobilisation over a longer period of time.</p>	Low
Quality of new providers will not be satisfactory.	Low	Scoring of quality at Tender evaluation required a minimum threshold of 45.5 out of a possible 65 points.	Low
Care staff will not be adequately paid as providers seek to offer competitive prices.	Medium	Tenderers were requested to submit a breakdown of their fee rates including staff wage costs and explain how their pricing ensures sustainability.	Low
Service users may be required to have a change of care worker.	Medium	TUP(E) will apply in most circumstances for the transfer of care packages between agencies. However, a Direct Payment, Managed Accounts or Individual Service Accounts to remain with their current provider.	Medium/Low
Risk of challenge to the procurement process	Low	In accordance with regulation 59 of the PCR 2015, these suppliers have "self-certified" their compliance with the selection requirements, and confirmed that none of the grounds for exclusion apply, to retain admittance to the DPS. They have confirmed that already	Low

		submitted documents are still applicable, or have provided new documents as preceding ones have expired, or circumstances have changed.	
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3.4 Environmental implications

3.4.1 During the procurement process suppliers were requested to provide a copy of their environmental impact assessment and impact management measures.

3.4.2 The table below provides examples of environmental impact measures that affect home care services:

Environmental Impact	Management Measures
Carbon emissions from staff travelling to work and between service user households.	Staff recruitment centred on local residents thus reducing travel to work carbon emission footprint. Promotion or provision of bicycles for staff travel. Promotion of walking routes for rosters. Promotion of car sharing. Promotion of electric powered cars.
Hazardous Waste management	Promotion and support of service user recycling of household waste packaging. Infection control policies and procedures. Staff trained in infection control and incontinence waste storage and disposal. Use of incontinence waste removal service.
Office and equipment waste management	Use of confidential paper shredding and recycling service. Use of recycled ink cartridges for printers. Recycle electronic equipment with ethical supplier. Reduce paper usage by using electronic alternative methods for communication e.g. electronic rostering and care delivery records.

3.5 Equality implications

- 3.5.1 In March 2022 an Initial Equalities Impact Assessment was provided see Annex 1.
- 3.5.2 Engagement with the Co-production network has been undertaken and as identified in paragraph 1.6 above further engagement with providers was required regarding carer to service user matching, recruitment and retention, meeting language and cultural needs of Slough's diverse community, and improved recruitment and speed of access to a person who speaks the same language as the service user.
- 3.5.3 Bidders were required to set out how they will recruit and retain staff to meet the needs of Slough's diverse community in their submitted proposals. Proposals were scored taking into account the requirements and equality implications.
- 3.5.4 Some suppliers are now licenced to recruit people from overseas which may assist in the recruitment of staff with specific language and cultural knowledge.
- 3.5.5 Engagement with our current suppliers has resulted in increased availability for Punjabi speakers and male carers.
- 3.5.6 The supply will be monitored throughout the lifetime of the contracts and any shortfalls addressed through engagement with our suppliers. The contracts call for suppliers to work in partnership with the council to improve the quality of supply throughout the duration of the contract.
- 3.5.7 Specific workshops, and forums will be held to engage with providers and the co-production network throughout the lifetime of the contracts to improve the quality of person-centred care.

3.6 Procurement implications

The following table sets out the options that were considered in relation to the procurement route and strategy at Cabinet in March 2022.

The following table sets out the options that have been considered in relation to the procurement route and strategy for the local home care services supply in Slough.

Procurement Strategic Approach	Consideration	Recommended
Use of Suppliers engaged through mini-competition stage on the ASC Dynamic Purchasing System (DPS)	<p>The approach allows for regular refresh of the list of contracted suppliers at any time, as and when required, via advertisement of mini-competitions.</p> <p>New suppliers to the local market are engaged through application to join the DPS at any time with the knowledge that there will be opportunity to apply at mini-competition stage for supply contracts.</p>	<p>Yes.</p> <p>Offers time efficient and flexibility for refresh of suppliers for generic and specialist services.</p> <p>Maintains sufficiency of supply and new entrant competition in the market.</p>

Procurement Strategic Approach	Consideration	Recommended
	<p>Early engagement with suppliers successful on joining the DPS allows organisations to understand</p> <p>The DPS also allows a time efficient process for specific specialist services to be procured.</p>	
One or Sole Supplier	<p>Whilst in theory there may be opportunities for economies of scale, there are increased overheads for supporting larger services leading to increased fee levels. The local market becomes uncompetitive. The provider is unlikely to be able to compete with other providers for workforce – as other providers outcompete in terms of wage payments. There are no suppliers present in the local market who would be capable of performing the role of sole supplier. Local authorities are moving away from this model due to the experience with supplier failures.</p>	<p>No.</p> <p>High risk of supply failure and lack of sufficiency of supply.</p> <p>Removes new entrant supplier competition in the market.</p>
One Lead Supplier with subcontractors/consortia	<p>The home care market is highly competitive with individual providers competing for market share and for supply to other local authorities. The lead provider is unable to compete with the subcontractors for staffing and this leads to a service failure by the Lead supplier. Most often this requires further procurement to directly contract with alternative providers. Equally consortia arrangements are not sustainable due to the competing interests of the constituent parties.</p>	<p>No.</p> <p>High risk of supply failure and lack of sufficiency of supply.</p>

Procurement Strategic Approach	Consideration	Recommended
Small Number of Suppliers – each with restricted geographical area of operation	The referral and service demand patterns across the borough is not conducive for geographical areas of operation. On consultation with providers they have indicated that this is an operational option which is likely to fail. Workforce retention issues and supplier failure is highly likely leading to supply failure and the need to re-procure.	No. High risk of supply failure and lack of sufficiency of supply.
Fixed Framework of larger number of providers	Experience within the borough has indicated that the number of viable providers reduces over the lifetime of the framework leading to shortage of supply. This results in the need to reopen the framework or purchase off framework. The length of time required for the procurement opportunity to be open is longer than alternative methods, lengthening the timescale for procurement and alternative supply. The opportunity for new more competitive suppliers to enter the framework is restricted and the likelihood of failed procurement exercise is heightened.	No. High risk of supply failure over time, with decreased ability to bring new entrants into the local market and maintain competition in the market. Supplier failure leading to lack of sufficiency of supply.
Joint Procurement with other neighbouring local authorities/E Berkshire.	Neighbouring authorities have set their rates for current procurement of domiciliary care at a fixed hourly rate. Both areas have historically operated without using the DPS approach. One authority is now going to utilise a DPS approach after failure of a lead provider approach. Both areas have experienced sufficiency difficulties.	No.

Proposed Procurement Timetable

Tranche 1 contracts required for 17th July 2022

Procurement Stage	Estimated Timetable
Deadline for mini-competition	May 2022 Completed 3 rd May 2022
Evaluation Complete	11 th June Completed 17 th May 2022
Cabinet Award decision	20 th June 2022
Contract Award letters	24 th June 2022
Contract Mobilisation completed	17 th July 2022
Set up of Personal Budget/Direct Payments/ISF Accounts, TUP(E) Staff transfers as applicable. Demobilisation of outgoing supplier contracts completed	16 th January 2023

3.7 Workforce implications

3.7.1 A number of the current Tranche 1 suppliers did not submit bids. There will be increased workloads in the Adult Social Care Operational Team and the People Strategy and Commissioning Team. This will be to oversee any TUP(E) transfers as well as to manage service user reviews. It will also be to facilitate service user transfers to other providers or arrange for direct payments, managed accounts, or Individual Service Fund accounts as appropriate. The extent and location of the additional work is dependent on the number of service users requiring transfer between agencies and the number for which Direct Payments, Managed Account services and Individual Service Accounts are required to be set up and managed on a longer-term basis. There will not be a bulk transfer of individuals or staff to new providers. Any transfers will be managed on a case-by-case basis and where transfers are required these will be made to the most appropriate provider across all suppliers on the list.

3.7.2 Similar workforce implications may arise during the Tranche 2 procurement activity.

3.8 Property implications

3.8.1 Not Applicable.

4. Background Papers

Report to Cabinet in March 2022 – Re-procurement of Domiciliary Care Contracts.
Report to People Scrutiny Committee March 2022