

Agenda Item 7**Forward Plan reference number:** FP/445//03/16

Report title: Procurement of an Independent Living Developer Provider Framework	
Report to: Cabinet	
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Date: 19 July 2016	For: Decision
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County Divisions affected: All Essex	

1. Purpose of report

- 1.1 To seek Cabinet approval to establish a multi-provider framework to enable delivery of new independent living schemes.

2. Recommendations

- 2.1. To agree to procure a 7-year Council-led Framework Agreement for the provision of developer provider services for new Independent Living Schemes being delivered on land owned by and/or made available to a public sector organisation.
- 2.2. To note that Essex County Council is not obliged to procure schemes through the framework, and that the Council has the right to terminate any contract with a provider should delivery not be met.
- 2.3. To agree to procure the Framework Agreement using the restricted procedure.
- 2.4. To agree that the high level evaluation criteria are to be:
(a) 50:50 ratio for price and quality for the appointment to the framework; and
(b) 70:30 (price/quality) on the call off of individual schemes.
- 2.4 To delegate authority to the Executive Director of People Commissioning to finalise the detailed evaluation criteria.
- 2.5 To agree that the Executive Director of People Commissioning may award the framework to the successful bidders.

3. Background and proposal

- 3.1. Independent living schemes enable people to live more independently and they also allow the Council provide care at a lower cost. This is because residents either pay their own rent or can claim their rent as local housing allowance.
- 3.2. Independent living schemes are constructed to be suitable for people with social care needs; residents receive homecare services. Care services may be arranged:
 - By a care provider arranged by the landlord;
 - By residents making their own arrangements (using a personal budget or direct payment if they are eligible); or
 - By the Council commissioning care itself.
- 3.3. However, currently there is a gap in provision of Independent Living across Essex. There are not sufficient numbers of Independent Living units to take pressure from residential care placements.
- 3.4. There are currently around 5,000 individuals aged 55+ on the social care register who have a care need between 4–16 hours per week (which is often used as a qualifying criterion for existing extra care accommodation). Around 40% of these individuals have been assessed to be inappropriately placed into residential care due to a shortage of extra care accommodation across the county.
- 3.5. Therefore it is proposed that the Council should develop 2,500 Independent Living units that are available as either social/affordable rented units or ownership units. This target will need to be refined as the programme progresses, but is expected to be delivered over the next 5-7 years.
- 3.6. Around 700 units are already in operation or already in development through the existing ECC grant support scheme, meaning that the Council now needs to facilitate the provision of a further 1800 units.
- 3.7. Given that without incentives, housing developers have not developed independent living accommodation, the Council needs to invest in the development of such schemes.

Proposal

- 3.8. Delivery of independent living schemes requires the provision of an initial subsidy. The Council has a number of options for the delivery of independent living schemes:
 - ECC can build schemes itself and either sell the development to a provider or retain ownership of development.
 - Joint venture partnerships with providers.
 - Holding an open competitive procurement of a provider on a scheme by scheme basis

- Have a framework agreement with one or more providers so that the council can commission a provider to build a number of units of independent living accommodation in a particular locality.
- Disposal of land on terms which require the construction of an independent living scheme
- Creation of a charity or social trust to deliver accommodation.

3.9. The preferred option is to set up a multi-provider framework because:

- ECC does not have a large number of suitable sites to use for Independent Living or any directly employed care workers and an asset backed vehicles or other joint venture model was not appropriate.
- That approximately 900 units, 15 schemes of 60 units, needed to be delivered over five years therefore it was not appropriate to conduct individual tender exercises for each scheme.
- ECC does not have experience in managing dwellings and the operational / maintenance elements of completed schemes is best left to others.
- Requirements of the Care Act 2014 meant that ECC needs to facilitate increased use of direct payments and ECC needs to move away from awarding bulk care contracts.
- A framework will significantly reduce the cost of procurement.
- Multi-supplier frameworks maintain competitive tension.
- Developer provider frameworks are being managed by other Councils to successfully deliver independent living and the proposed framework draws upon the experience of these councils to create an attractive and effective framework.

3.10. Whilst there is no guaranteed volume of work to be let to contractors under a Framework Contract, current expectations are that the Council will be likely to award approximately 2 contracts per year for the 7 year duration of the Framework Agreement.

3.11. Established benchmarks of programme delivery, cost of care and customer satisfaction will be used as a basis for ongoing performance targets included in the contract.

3.12. The Council's high level evaluation ratio for mini-tender when the framework is in operation is 70:30 price to quality.

3.13. In some cases public sector land will be brought forward for independent living schemes. The purpose of the developer provider framework is to allow the speedy procurement of a developer who can build independent living schemes on public land. They would take ownership of the land and enter into a nomination agreement with the Council having nomination rights for 70 years.

3.14. The provider will be required to provide care to residents, although residents would usually be eligible to receive direct payments which they would be entitled to spend on care from any provider.

- 3.15. In practice residents would be likely to purchase care from the on-site provider if that care is provided to a good standard, with the Council ensuring that rents and care costs were affordable. The framework will prescribe the terms of any funding, fixed charges, indexed increases.
- 3.16. It is understood that the definition of “Affordable Rent” will change over the 70-year period. The Nominations Agreement will therefore contain a “Boiler Plate” clause triggering a discussion in the event there is a proposed change in law or policy which may affect a resident’s ability to pay the rent and service charges.
- 3.17. Independent Living rented units are only viable if the full rent is recoverable from housing benefit and the costs charged are reasonable. The Council has worked with Districts to agree a consistent approach to evaluating the costs for independent living schemes.

Timescale

- 3.18. The procurement timetable would see the framework awarded in late 2016 or early 2017.

4. Policy context and Outcomes Framework

- 4.1. A Vision for Essex 2013-2017 sets out the Cabinet’s vision and priorities for the next four years and this will inform the development of a revised corporate strategy designed to:
- increase educational achievement and enhance skills
 - develop and maintain the infrastructure that enables our residents to travel and our businesses to grow
 - support employment and entrepreneurship across our economy
 - improve public health and wellbeing across Essex
 - safeguard vulnerable people of all ages
 - keep our communities safe and build community resilience and
 - respect Essex’s environment.
- 4.2 The vision for Essex is based on the following principles
- We will spend taxpayers’ money wisely
 - Our focus will be on what works best, not who does it
 - We will put residents at the heart of the decisions we make
 - We will empower communities to help themselves
 - We will reduce dependency
 - We will work in partnership and
 - We will continue to be open and transparent.
- 4.3 The Council’s Outcomes Framework was adopted in February 2014 - a statement of seven outcomes that set out its ambition based on its Vision for Essex 2013-17 (outlined above). The Commissioning Strategies provide a focus for the Council and partners in targeting resources and shaping service delivery.

- 4.4 The Independent Living Programme supports meeting the following objectives identified in Whole Essex outcome 'People in Essex live independently and exercise control over their own lives:'
- Decrease use of residential care (numbers and spend).
 - Decrease the number of people who move directly into residential care following a hospital admission.
 - Increase the proportion of people living in their home.
 - Increase the number of people who are appropriately supported to regain their independence following a hospital admission.
 - Manage demand for social care better, diverting where possible away from formal care to other community-based resources.
 - More older people are able to continue to access informal care and support within their local communities.
 - Increase in the number of people who die in their usual place of residence.
 - Increase in the number of people who feel involved in planning end of life care.
 - Decrease in the number of people who have end of life care in hospital.

5. Financial Implications

- 5.1. Financial analysis has confirmed that Independent Living is significantly less expensive in terms of social care provision than residential care, as well as offering clients a range of quality of life benefits. When complete, the programme will deliver an on-going annual net revenue saving of £4.0m. The net revenue savings figure is derived by factoring in the annual staff cost and cost of borrowing.
- 5.2. The ability to ensure ongoing value for money for the Council will be enabled through the due diligence during the evaluation of bids from interested suppliers.
- 5.3. The capacity and capability on the client-side to procure, mobilise and manage the contract is already in place.
- 5.4. There is a cost associated with establishing the Framework. Staffing and consultancy resource costs of £50,000 will be incurred. These are already budgeted for in the 2016/17 financial year.
- 5.5. Ongoing costs during the lifetime of the Framework are limited to Framework contract management which will be undertaken by the Independent Living programme team

6. Legal Implications

- 6.1. It is proposed that the Council procure and let a 7 year Framework Contract. Regulation 33(3) of the Public Contracts Regulations 2015 states that framework agreements may last no more than 4 years 'save in exceptional cases duly justified'. A 7 year framework is therefore only lawful if it is exceptional and duly justified. In this case this is a framework for the development and provision of buildings. Each scheme will take several years to plan and develop, thus undermining the benefit of the framework.
- 6.2. The number of call-offs from the framework is likely to be relatively low given that each call off will be for a significant construction contract. There is no case law on what constitutes 'exceptional' but this is certainly an unusual framework and it is certainly very arguable that these are exceptional circumstances. After four years the Council will need to review to see whether the framework can still be considered exceptional and whether it remains safe to use it beyond 4 years.
- 6.3. Due to the size of the potential market, it is considered that the restricted procedure is the most suitable procurement route to take for the procurement of a Framework Agreement and the high level evaluation criteria are set out in paragraph 2 of this report.
- 6.4. There will be "Long Stop Date" clauses within the contractual documentation to ensure that applications for planning permission and building on site commence in accordance with an agreed timetable and the implementation of financial penalty clauses if the timescales are not adhered to.
- 6.5. Each call-off contract will be on the basis of a standard contract and nominations agreement to be created by ELS and issued with the invitation to tender. The terms will require:
 - ECC to have nomination rights for 70 years
 - The accommodation is to be available for 70 years
 - The rents for units receiving a capital subsidy from ECC are to be initially agreed and then indexed.
 - The provider to ensure that there is a care provider available whom residents may use but are not required to use.
 - There will be "claw back" provisions in the Agreement setting out how grant monies will be repaid in the event of a breach
 - The agreement will include a mechanism setting out how the "Nominations and Allocations Panel" will allocate accommodation to potential residents and whether their care need will be high medium or low
 - A mechanism within the Agreement which allows ECC to regulate care charges to ensure that care remains affordable for people whose care is funded by ECC.
- 6.6. The key risks around delivery of accommodation in this way are:
 - The risk of housing benefit changes making the scheme financially unviable. Unfortunately there is no way of mitigating this risk. It may

be thought that the government would not risk making such important accommodation unviable but there are no guarantees.

- The risk of the scheme being treated as a care home. The Care Standards Act 2000 defines a care home a place where accommodation is provided together with care. If accommodation is a care home then it is required to meet the Care Quality Commission standards and no housing benefit can be paid. This type of accommodation is provided around the UK and the CQC show no inclination to register it as a care home. This risk is currently assessed as low.
- The risk of provider failure - the council is making a contribution to the cost of accommodation in which it retains no interest. If the provider fails then its investment would be lost. It is important to have grant contractual conditions which seek to ensure a repayment of the grant if the accommodation is not available for the long term. However, grant conditions will only be enforceable if the recipient has the resources to repay.

- 6.7. If the Council or partner local authorities are donating land to the project consideration will need to be given as to whether is done through the grant of a long lease i.e. between 70 to 125 years or through disposal of the freehold title. If the latter then it is suggested that the interest is protected by way of a Legal Charge on the land repayable if it ceases to be used for Independent Living Schemes together with overage clauses allowing the Council and partner local authorities to benefit from any increase in land value in the event that it is sold on. As an extra measure a restrictive covenant will be placed on the land stipulating that it will only be used for the provision of Independent Living Schemes.

7. Staffing and other resource implications

- 7.1. New costs are detailed in section 5 of this report.

8. Equality and Diversity implications

- 8.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc on the grounds of a protected characteristic unlawful
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

- 8.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 8.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

9. List of Appendices

- 9.1. Equality Impact Assessment

10. List of Background Papers

None