

Report title: Commissioning of Specialist Adoption and Special Guardianship Order Support Services	
Report to: Cllr Louise McKinlay, Cabinet Member for Children and Families	
Report author: Chris Martin - Director for Strategic Commissioning Children and Families	
Date: 17 September 2019	For: Decision
Enquiries to: Christina Pace, Head of Commissioning for Vulnerable People	
County Divisions affected: All Essex	

1. Purpose of Report

- 1.1 The purpose of this report is to obtain approval to procure a framework of Specialist Adoption and Special Guardianship Order (SGO) support services across Essex, Thurrock and Suffolk. The intention is to collaborate with Suffolk County Council (SCC) and Thurrock Council with Essex County Council (ECC) acting as Lead Authority. The existing Essex framework for adoption and SGO support expires in December 2019 and requires improvements to ensure that it is fit for purpose in the future.
- 1.2 ECC and its partner local authorities require these services to fulfil their duties to provide post adoption and SGO support as specified in the Children and Families Act 2014 and the Special Guardianship Regulations 2005. The aim of providing adoption and SGO support is to improve the stability and resilience of Adoptive and SGO families by strengthening the range and quality of support services available to them.

2. Recommendations

- 2.1 To agree to undertake a procurement jointly with Thurrock and SCC, with ECC acting as the Lead Authority, to establish a four year framework for the provision of specialist adoption and SGO support services (the Framework) in accordance with the approach set out in paragraph 3.13.
- 2.2 Agree that the Commissioning Director – Children, Mental Health, Learning Disabilities and Autism, be authorised to enter in to the Framework Agreement with successful bidders appointed to each of the Lots.
- 2.3 Agree that the Commissioning Director – Children, Mental Health, Learning Disabilities and Autism, be authorised to call off contracts as required and provided within ECC budget, pursuant to the provisions set out within the Framework Agreement.
- 2.4 Agree that the Commissioning Director – Children, Mental Health, Learning Disabilities and Autism, be authorised to enter in to call off contracts awarded by ECC pursuant to the Framework Agreement.
- 2.5 To Agree that ECC will enter into a collaboration agreement with Thurrock and SCC which will govern the way in which the parties will co-operate in the operation of the Framework Agreement.

- 2.6 Agree that the Commissioning Director – Children, Mental Health, Learning Disabilities and Autism, be authorised to agree, in consultation with ELS, the terms of the Collaboration Agreement between the local authority partners and enter into the agreed Collaboration Agreement. A form of Collaboration Agreement will be put in place between ECC, Thurrock and SCC.
- 2.7 Agree that the Commissioning Director – Children, Mental Health, Learning Disabilities and Autism, in consultation with the Cabinet Member for Children and Families, and in consultation with Thurrock and SCC may re-open and refresh the Framework as and when required to permit new entrants to join and for existing providers to apply to be appointed to additional Lots.

3. Summary of issue

- 3.1 ECC has a statutory duty to provide adoption and SGO support services as specified in the Children and Families Act 2014 and the Special Guardianship Regulations 2005. Support Services should include:
- Services to enable discussion of matters relating to adoption
 - Assistance in relation to arrangements for contact
 - Therapeutic services
 - Services to ensure the continuation of an adoptive relationship
 - Services to assist in cases of disruption
 - Counselling, advice and information
 - Financial Support
- 3.2 Some of the above support is provided in-house and where additional specialist support is not available in-house, ECC currently commissions services from a range of external providers via an existing framework.
- 3.3 Currently ECC Adoption and SGO support services are commissioned through a framework agreement which has been in place since September 2015 and has an expiry date of September 2019. The initial procurement of the framework increased the number of providers available to Essex to commission these specialist services and strengthened performance management.
- 3.4 The Adoption Support Fund (ASF) was made available to all Adoption Agencies in England in May 2015 and provided additional funding for therapeutic support for Adoptive and SGO Families where children were previously looked after. ECC has been working actively with adoptive families and providers to make the best use of the ASF and as a result a large proportion of the spend on the current framework is drawn down via the Adoption Support Fund with less the 10% provided via ECC budgets. Accordingly the approximate spend per year through the current framework is £582,000 for Essex, and separately our partners expenditure on these services is £126,000 for Thurrock and £480,000 for SCC with a combined spend of £1,188,000. If the Adoption Support Fund were to end/reduce, then the spend may be significantly reduced however the framework will still be the vehicle used to purchase additional support.
- 3.5 The future funding arrangement for the ASF is not yet clear and the present fund is due to end in March 2020 although the DFE have committed additional funding until November 2020 to enable families to continue to access some support beyond March 2020 for approved therapy packages which start in the 2019-20 financial year.

Funding will be on a reducing number of months from April 2019, with therapy that starts in July-November 2019 receiving a maximum of nine months funding (see appendix 2). An evaluation of the ASF has taken place (The Evaluation of the Adoption Support Fund 2017 see appendix 1) which suggests positive results for adoptive families from the usage of the ASF. If, however the ASF is not continued, the adoption and SGO support services teams will continue to commission support services but the cost must then be met within the current ECC budget.

- 3.6 Although there are still challenges to the sufficiency of the specialist provision, it is proposed that the new framework will be able to be re-opened with the potential to allow new entrants to enter at a time as agreed by ECC, Thurrock and SCC. This is different to the current closed framework and will bring more flexibility to sourcing provision and provide further opportunities to providers.
- 3.7 The overarching aim of creating a framework is to enable the ECC and its partner local authorities that require adoption and SGO support services to have a compliant mechanism to purchase a variety of specialist therapeutic services to support the individual family's needs identified via assessment by the SGO and Adoption team. Thus, improving the stability and resilience of Adoptive and Special Guardianship Order families.
- 3.8 SCC and Thurrock have agreed to work jointly with ECC to be able to call off from the new adoption and SGO framework. All three local authorities will be signatories to the Framework Agreement, and a collaboration agreement between the local authority partners will be put in place. This supports the move to a regional approach for adoption support services and supports future partnership working arrangements. SCC has confirmed that the decision to commission these services jointly rests with the Head of the Adoption Services in consultation with SCC DMT. Thurrock have also approved procuring through use of this Framework.
- 3.9 Ongoing engagement takes place with SGO and adoptive families in Essex when an adoption support plan is created to ensure the services commissioned are supporting the family. ECC and SCC Adoption and SGO front line staff have been part of the commissioning project group to determine the support required. Both staff and parental views have been incorporated into this re commissioning ensuring that the Lots available reflect all the services they need to have in the future and those they have accessed in the past.
- 3.10 To ensure the adoption and SGO support services provided continue to meet family's needs, the Lots have been extended to include all the support services listed within the ASF, increasing the variety and availability of support services for the teams to meet family's needs. Some of these services will be new services for families and some were previously procured using the RFQ process or having obtained a waiver as the providers offering these services were not on the current framework.
- 3.11 The provision of adoption and SGO support links to Strategic Aim 2 within the Corporate Strategy: Help people get the best start and age well.

Procurement Approach

- 3.12 The need for adoption or SGO support can arise quickly and the support provided must be the most appropriate one to meet a child's needs. This means that ECC, Thurrock and SCC need to be able to have easy access to a range of reliable, efficient and effective external adoption and SGO support services to meet the families/child's need.

It is proposed that the Framework will have the following Lots of support services which are in line with the support criteria for the ASF:

- Lot 1 Training
- Lot 2 Therapeutic Intervention
- Lot 3 Specialist Assessments
- Lot 4 Short Breaks

- 3.13 This procurement process will use the Open Procedure (one stage process) and will comply with the light touch regime. This will allow potential tenderers to qualify and then apply for their preferred intervention(s) by completing relevant bespoke questions. The framework will set up using a split of 60/40 on quality/price with a minimum pass threshold.
- 3.14 It is also envisaged that the same 60/40 quality/price split will apply at call off during any mini-competition process with a minimum pass threshold around the needs of the family and the support they have requested, as this could have an impact on the providers on the relevant Lot regarding resource and the necessary expertise. The ability to direct award may be reserved in certain circumstances.
- 3.15 All submissions will be evaluated by a team comprised of officers from ECC, Thurrock and SCC. Once tenderers have qualified and have been successfully appointed on to the framework, the mini-competition process (call-off process) will be operated by Social Workers from each Local Authority to carry out their own call-off process but following the process workflow put in place and thus not having any further impact on ECC resources.
- 3.16 Under the current framework, as the price split is high, the award has always gone to the lowest bidder and not necessarily the best quality bidder. As this contract meets the needs of the most vulnerable families, ECC are requesting to change the price and quality split for this procurement in order to try and ensure potential breakdowns of adoptions and SGO's are prevented and the best outcomes achieved for those families.
- 3.17 Currently the Adoption Support Fund (ASF) is used to fund over 90% of the provision within the current Framework with less than 10% being funded through ECC budget. The ASF requirements are clear that the funding should be used to support quality provision and that parental views are paramount in deciding the support provided.
- 3.18 All Local Authorities are happy to continue with the establishment of a further framework despite the concerns around the continuation of AF funding as the framework will act as a compliant route to market and provide no guarantee of work to successful tenderers.
- 3.19 ECC will ensure the service specification and the method statements are robust to evaluate the quality effectively. Provider quality will be assessed against set transparent criteria that will ensure quality service provision. Providers' scores for quality and price will then be added together to produce an overall score.
- 3.20 All providers will be required to be registered with OFSTED unless they are sole practitioners and must either have a minimum rating of 'Good' or be a new provider who has not yet been assessed in order to be accepted onto the framework. If a provider is in the process of registering with OFSTED upon application to the

Framework this will be acceptable as long as evidence is provided of the submission of application and the local authorities reserve the right not to award the Framework or call off from the provider until such time as it is satisfied that the provider is registered. Any provider who is accepted onto the framework and then subsequently receives a rating of 'Requires Improvement' will be suspended from the framework and new referrals will not be made until the Ofsted rating improves to 'good' or better.

- 3.21 Any provider who is accepted onto the framework and then subsequently receives a 'Requires Improvement' or 'inadequate' judgement from Ofsted will be placed on an improvement plan and will be suspended from any new referrals until the Ofsted rating improves to 'good' or better. Generally, children placed with such providers will remain with the provider whilst the improvement plan is in place. However, we reserve the right to remove the children if deemed in the interest of the child or if we have any concerns.
- 3.22 The intention is for the invitation to tender to be issued in September 2019, with the successful providers being notified in October 2019 to facilitate the Framework being put in place for December 2019.
- 3.23 It is recommended that the Framework is for a period of four years on terms which include provisions to allow the local authorities to re-open the framework during its term on a yearly basis or at commissioners' discretion. This will enable new entrants who did not express an interest in the original procurement to join the framework at a later date and existing providers to apply for new Lots. The mechanism for the operation of the refresh will be set out in the Framework agreement.
- 3.24 Each Local Authority will agree and sign a Collaboration Agreement, which will govern the way in which the parties will co-operate in the operation of the Framework Agreement.

4. Options

Option 1: Do Nothing

- 4.1 This option is untenable; the current framework is due to expire in December 2019 leaving the adoption and SGO support services without a commercially prudent and legally compliant mechanism to purchase adoption and support services. A new procurement is required to ensure compliance with the applicable requirements of the Public Contracts Regulations 2015. This option also provides very limited opportunity to exert any further oversight and control over costs, quality and performance. Therefore, this option is not recommended.

Option 2: Commission a framework on a wider regional footprint

- 4.2 Under this option, ECC would work with more or all East of England Regional Adoption Alliance partners to commission a regional framework. This would be in line with national guidance on joint commissioning within regional adoption arrangements. However, not all authorities within the region have the same contractual timescales or service model and would not be able to work within the timescales required by ECC to replace the existing framework. The regional adoption alliance is in addition still developing their joint commissioning arrangements. Therefore, this option is not recommended at this time, although ECC will continue to co-operate with all regional partners to develop joint commissioning principles and plans.

Option 3: Lead Provider Model

- 4.3 This option would allow one point of contact / more simplified contract management and the risk of sourcing and delivering all services needed are passed on to the lead provider. However, this means that control is passed to provider with regard to what partners they choose, which could put the choice/variety required by the Adoption and SGO team at risk and leave them unable to meet the individual family's requirements and those of the ASF. There is also concern that the market is not ready for this approach because it would require experience and expertise in managing a robust supply chain (consortia or sub-contracting approach) and this is not the core purpose of their present service offering. This approach also potentially reduces competition in the market in the long term.

Option 4: Managed Service Provider (A single service provider)

- 4.4 This approach has one point of contact and simplifies contract management. However, there is currently no single provider who could deliver the range of support required across the counties. Therefore, this approach is not recommended.

Option 5: Set up a framework of multiple providers with Lots - recommended option

- 4.5 A framework gives the ability for providers to be quality checked and creates an approved list of high-quality providers who can demonstrate track record and experience, and evidence they can meet individuals' and family's needs.
- 4.6 Robust and meaningful performance indicators can be implemented linked to outcomes for individuals and families. A framework also means that ECC, SCC and Thurrock are not legally obliged to guarantee any volume of work to the successful providers, this is particularly important given the future of the ASF is currently unclear. Using a framework with a refresh mechanism means that the system can be opened to new entrants during its four-year duration, potentially creating greater diversity and capacity in supply, which is one of the key requirements being sought by the Adoption and SGO team through this procurement. It also allows the potential to create further competitive tension to drive best value relying on market forces at the time of the re-opening.

5. Issues for consideration

5.1 Financial implications

- 5.1.1 The criteria for the tender of 40% Price 60% Quality highlights the need to balance a high-quality offer with the current financial constraints faced by ECC, SCC and Thurrock which is intended to offer better value for money. The anticipated value of the services required per annum is £582,000 for Essex, £126,000 for Thurrock and £480,000 for Suffolk with a combined spend of £1,188,000. per annum for each of four years from September 2019.
- 5.1.2 The commissioning process recognises the need to ensure the right range and quality of support is available in the most efficient, effective, equitable and sustainable way.
- 5.1.3 There are no cashable savings aligned to this activity, however, this support service is key to prevent and reduce adoption breakdowns and improve the outcomes for children and families. The consequence of any family breakdown often results in the need for significant high long-term cost to the authority.
- 5.1.4 The framework will run until 2020/23 and the Medium-Term Resource Strategy (MTRS) reflects the current available resource;

	2019/20	2020/21
	£'000	£'000
Services Fees & Charges	£ 582	£ 582
Adoption Support Fund	(£513)	(£513)
Net Budget (ECC)	£ 69	£ 69

5.1.5 Funding via the Adoption Support Fund is uncertain beyond 2020/21 and should it not be continued then the adoption and SGO support services team will continue to provide support services internally, but the cost of procuring any external service provision if this could not be met within the agreed ECC budget would necessitate a review of the commissioning approach and internal budget position.

5.2 Legal implications

5.2.1 Local authorities have a duties to provide services pursuant to section 14F of the Children and Families Act 1989 (as amended), the Children and Families Act 2014, section 3(1) of the Adoption and Children Act 2002, The Adoption Support Services Regulations 2005, and the Special Guardianship Regulations 2005 (SI2005/1109). Statutory Guidance on Adoption was also issued by the Department for Education in July 2013: regard must be given to it when carrying out duties relating to the adoption of children and the recruitment and support of adopters in England. Revised statutory guidance on special guardianship was issued by the Department for Education in January 2017 (replacing the former guidance issued in 2005): regard must be given to it when carrying out duties relating to the provision or assessing and supporting special guardianship.

5.2.2 The provision of a range of Adoption Support Services is required by the Adoption and Children Act and by the associated regulations includes:

- Services to enable discussion of matters relating to adoption
- Assistance in relation to arrangements for contact
- Therapeutic services
- Services to ensure the continuation of an adoptive relationship
- Services to assist in cases of disruption
- Counselling, advice and information
- Financial Support

5.2.3 Adoption and special guardian order support services fall within 'social and other specific services' within Schedule 3 of the Public Contracts Regulations 2015 (PCR). This means that, although the total value of all call-off contracts expected to be awarded under the four-year framework is estimated to exceed the current EU procurement threshold, the purchase of these services is not subject to the full rigours of EU procurement law. These Services are subject to the 'Light Touch Regime' or Section 7 of Chapter 3 of the PCR. However, ECC is still required to carry out a competitive process to establish the framework and award the contracts. The procurement process must follow the principles of equality, transparency and non-discrimination.

5.2.4 Each local authority has contracts in place with existing providers to provide these services. As such there is the potential for TUPE to operate to transfer staff from the employment of existing providers to providers who are awarded call off contracts pursuant to the framework agreement. Accordingly legal

advice will be sought by each local authority in relation to the procurement exercise and how and whether it is necessary to factor in TUPE.

6. Equality and Diversity implications

- 6.1 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.
- 6.2 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).
- 6.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a characteristic.

7. List of appendices

- 7.1 Appendix 1 - Equality Impact Assessment.

8. List of Background papers

ASF Transitional Funding
The Evaluation of the Adoption Support Fund 2017

I approve the above recommendations set out above for the reasons set out in the report.	Date
Cllr McKinlay - Cabinet Member for Children and Families	10/10/19

In consultation with:

Role	Date
Chris Martin – Director, Strategic Commissioning Children and Families	17 September 2019
Executive Director for Finance and Technology (S151 Officer)	17 September 2019
Nicole Wood	
Director, Legal and Assurance (Monitoring Officer)	17 September 2019
Paul Turner	

