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Report title: Day Opportunities - Contract Changes	
Report to: Cabinet	
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Date: 17 September 2019	For: Decision
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County Divisions affected: All Essex	

1. Purpose of Report

1.1 In order to meet its duties under the Care Act 2014, Essex County Council (ECC) currently opts to commission a range of services known as 'day opportunities'. These services provide a chance for adults with disabilities and older people to take part in activities outside their home, as well as enabling a break for informal carers. They are currently commissioned in a number of ways.

1.2 This report asks the Cabinet to:

- Extend the current contract with Essex Cares Ltd by six months pending consideration of a longer term solution.
- Amend the framework agreement under which other Day Opportunities services are procured to improve processes and align with the future commissioning intent.

2. Recommendations

2.1. Agree to extend the current Essex Cares Ltd (ECL) Day Opportunities contract for six months until 31 March 2020 on the same terms while ECC scopes the future provision of these services.

2.2. Agree that the Executive Director, Adult Social Care is authorised to change the current framework agreement under which day opportunities are procured as set out in paragraphs 3.9 and 3.10.

2.3. Note that future decisions about the framework will be taken by the Cabinet Member for Adult Social Care and Health.

3. Summary of issue

- 3.1. In order to meet its duties under the Care Act 2014, Essex County Council (ECC) currently opts to commission a range of services known as 'day opportunities'. These services provide a chance for adults with disabilities and older people to take part in activities outside their home, as well as enabling a break for informal carers. They are currently commissioned in a number of ways. The two main ways are:
- Via a contract with Essex Cares Limited (ECL) where they provide capacity for up to 830 Adults.
 - Via a framework agreement whereby we have a number of suppliers and day opportunities can be procured from the most appropriate supplier.

Extension of contract with ECL

- 3.2. The current ECL contract had its origins in a block arrangement which was replaced by a two year contract for a one year block arrangement covering 2017-2018 and a cost and volume arrangement for 2018-2019, which expires on 30 September 2019. The current arrangement is for the provision of day opportunities services for legacy Adults of the previous contract – the maximum value for the period October 2018 to September 2019 is £10.3m – the exact amount is dependent on whether any of the legacy Adults leave the service.
- 3.3. The intention when the contract was awarded in 2017 was that everyone using the agreement would be reviewed within the two years of the contract, and to utilise the framework to move people to new outcome-based placements where possible. However due to the intensive amount of Community Team social worker input required to carry this out, the transfer to the framework has not been completed as envisaged.
- 3.4. There currently remain circa 830 Adults in receipt of this service as at 30 June 2019 and ECC need to ensure continuation of provision for this existing cohort post September 2019.
- 3.5. It is intended that work on the future scoping of day opportunities will continue with a view to identifying options which will facilitate the:
- 3.5.1. increased independence of Adults;
 - 3.5.2. planned move of Adults on to paid employment;
 - 3.5.3. review of buildings-based services
 - 3.5.4. agreement of a strategy to enable and progress Adults in order to reduce their reliance on traditional buildings-based services.
- 3.6. We believe that we can complete the transition within six months. It is proposed that the current prices for placements will apply to the extension.

Variation of Day Opportunities Framework Agreement

- 3.7. The Day Opportunities framework commenced in October 2018. In running the call-offs under the framework, it has been identified that there are operational issues and changes to the market which has resulted in the number of

placements being made through the framework being lower than anticipated. This is due to a number of factors including the length of time required to run the call off process, the number of providers able to bid, affordability issues and the option for providers to carry out assessments - this has resulted in only 10% of placements being made via the framework, although it is not necessarily the case that all placements could have been made via the framework because some people have needs which cannot be met via the framework.

- 3.8. On the basis of the identified issues, some potential changes to the framework processes were piloted between April and June 2019. Based on the feedback to and outcome of the call-offs conducted during the pilot, it is proposed that some amendments are made to the call-off procedure. It is considered that these changes will have the positive effect on various aspects of the call-off process allowing more placements to be made through the framework while treating bidders equally. These changes are also expected to refine and improve the experience for Adults who are having their placements sourced via the Framework by reducing the time taken for the placement to be completed and removing the possibility of assessments from several providers.
- 3.9. The amendments to the call-off procedure in current framework agreements are:
- 3.9.1. the number of providers who will be invited to submit a bid will be increased from three to five – this will reduce failed call-offs and give more providers an opportunity to bid – the market view is that the increased number of bidders does not significantly deter bidders;
 - 3.9.2. currently the expression of interest stage and bid stage are completed separately in that order regardless of the number of providers filtered. Where fewer than five organisations are filtered as potential bidders, ECC proposes to reduce timescales and run the expression of interest stage concurrently with the bid stage allowing placements to be awarded more quickly;
 - 3.9.3. currently providers can carry out an assessment with the Adult before submitting a bid. It is proposed to remove this assessment stage which will reduce the timescales to bid and make it easier for providers to bid. Feedback from providers is that this is workable; and
 - 3.9.4. bid submission deadlines to be reduced from two weeks to one week, allowing placements to be awarded more quickly.

Variation of Day Opportunities Framework in relation to re-opening

- 3.10. The framework agreement requires that the framework be re-opened up to three times per year for new providers and for existing providers to amend or increase their offering. Due to the issues experienced with the call-offs in this first year of the framework, the framework has not been re-opened yet. It is proposed that to facilitate a successful re-opening of the framework that:

- 3.10.1. the call-off procedure in the template framework agreement be amended in line with the proposed changes at paragraph 3.8 above to ensure all framework providers are on the same terms and conditions;
- 3.10.2. the tender evaluation criteria be amended only where strictly necessary to update requirements in line with changes in law and/or good practice and/or to clarify the requirements for specific questions which appeared to be unclear when the tender was run in 2018; and
- 3.10.3. the first re-opening of the framework occurs by latest December 2019.

Future decisions on the Day Opportunities Framework Contract

- 3.11. It is proposed that decisions relating to re-opening the framework are taken by the Cabinet Member for Health and Adult Social Care for the remaining term of the framework – the framework expires on 30 September 2022.

4. Options

ECL Day Opportunities Contract Extension

- 4.1 **Option one (recommended):** Extend the current contract for six months on the current terms while ECC scopes a wider transformational arrangement for these services. This will allow time for ECC to undertake further analysis of legacy users placed with ECL and identify new opportunities which may be available via the framework and outside of the day opportunities service such as community based and work experience.
- 4.2 **Option two:** Direct award a new contract for up to 2 years using the cost and volume model with obligations on ECL to deliver improvements to services in line with ECC's transformational strategies for these services. This option is not recommended as it does not deliver the substantial and wider market transformational changes required for these services which are being considered in the current re-scoping of these services.

Variation of Day Opportunities Framework Contract

- 4.3 **Option one (recommended):** To vary the call-off procedure as described to allow bids to be made in a shorter timeframe and to increase the chances of successful placements being made via the framework. To re-open the framework with the proposed amendments to the evaluation criteria and the date of re-opening to increase capacity on the framework which in turn increases the chances of successful placements being made.
- 4.4 **Option two:** Do nothing – do not vary the call-off procedure and evaluation criteria. This option is not recommended as call-offs will continue to fail and this will increase costs under spot placements which does not give the framework an opportunity to be tested or develop the market's ability to bid for placements which was one of the objectives of setting up this framework.

5. Issues for consideration

5.1. Financial implications

- 5.1.1. The current ECL contract charges are based on cost and volume using agreed sessional rates. The estimated cost of the proposed 6 month extension is expected to be between £4.8m and £5.1m. These estimates assume the current sessional rates will apply throughout the extension period. The top of the cost range assumes that the current monthly number of sessions continues throughout the extension period. The bottom of the cost range assumes that the pattern of reducing numbers of monthly sessions seen between October 2018 and May 2019 will continue.
- 5.1.2. The 2019/20 budget was set based on the £10.3m cap applied to year 2 of the ECL contract and as such the range of costs for the extension can be contained within the existing budget.
- 5.1.3. The proposed changes to the framework call-off procedure will have no financial implications. The existing approach, which uses an indicative budget range when sourcing a provider through the framework, will remain the same.

5.2. Legal implications

- 5.2.1 ECL fulfils the requirements of Regulation 12 of the Public Contracts Regulations 2015 (the “Regulations”) and as a result, ECC is able to award contracts to ECL without the need for competition on the open market.
- 5.2.2 ECC may therefore lawfully extend the current contract to ECL under the provisions of the Regulations.
- 5.2.3 The proposed amendments to the call-off procedure and the tender re-opening evaluation criteria have been designed to ensure that providers are not being unfairly disadvantaged by such changes and that any such changes have not been designed to favour any particular provider or set of providers. The impact of such changes will continue to be assessed during the remaining term of the framework.

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 particular characteristic.

7 List of appendices

- 7.1 Equality Impact Assessment

8 List of Background papers

Not applicable.