

AGENDA ITEM 9

Report to Cabinet	Forward Plan reference number: FP/100/04/15
Date of Meeting: 26 January 2016	County Divisions affected by the decision: All Divisions
Title of report: Live at Home Project: Contracts for Domiciliary Care – Current Contracts & Update on Future Procurement	
Report by Cllr Dick Madden – Cabinet Member for Adults and Children	
Responsible Director: Helen Taylor, Director for Integrated Commissioning & Vulnerable People (Older People) Nick Presmeg, Director for Integrated Commissioning & Vulnerable People (Working Age Adults)	
Enquiries to: Graeme Green, Senior Project Manager - email: graeme.green@essex.gov.uk	

NOT FOR PUBLICATION

This report contains a confidential appendix listed in Part II of the agenda which is exempt from publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

1. Purpose of report

- 1.1. To seek approval from Cabinet to extend and vary the current Best Value Ranked List ("BVRL") contracts for the provision of Live at Home Services for a period of 12 months whilst a procurement process is completed and set a minimum price for the provision of such care.
- 1.2. To inform the Cabinet that, at present, the preferred approach for the procurement of services to be delivered from February 2017 onwards is a form of Ranked List but that further market engagement and financial modelling is needed and that a further report will be brought to Cabinet in April 2016 to seek authority to launch the procurement.

- 1.3. To ask the Cabinet to agree a drawdown from the Transformation Reserve of £81,000 to fund the extension of the current BVRL contract and ensure continuity of service delivery whilst the procurement is underway.

2. Recommendations

- 2.1. Approve an extension to the current BVRL contracts for a maximum of 12 months expiring in February 2017.
- 2.2. Agree that a further report to Cabinet is brought back in April 2016 setting out how the Council will procure services in the longer term.
- 2.3. Agree that, as part of the extension, all providers will be asked to resubmit prices for each district based on a revised pricing matrix and that these along with the provider's score relating to quality will be used to produce a new ranked list which will be used for care placements awarded after 10 April 2016.
- 2.4. Agree that current packages of care (whether awarded via the BVRL or via spot purchase) will be paid at the current rates but that with effect from 10 April 2016 the Council will apply a minimum rate of:
 - (a) £11.32 per hour for night sleeping and 24 hour live in care; and
 - (b) £13.92 per hour for all other care covered by these contracts.
- 2.5. Authorise the Director for Integrated Commissioning and Vulnerable People to approve the revised ranked list for the BVRL extension following the submission of revised proposals from providers.
- 2.6. Agree to draw down £81,000 from the Transformation Reserve to manage the extension to the current BVRL contract. This figure is explored in further detail in paragraph 5.7.

3. Background and proposal

Background

- 3.1. Essex County Council ("ECC") currently purchases Live at Home Support Services for Older People (65+), Adults with Learning Disabilities, Adults with Mental Health Needs, Adults with Physical and Sensory Impairments and Carers. This is managed through a BVRL with spot arrangements covering excess need.
- 3.2. Live at Home services are care services delivered in the person's home (sometimes called domiciliary care services). This includes personal care, cleaning and house care, practical and social support, minor health related tasks (excluding district nurse tasks), administration of medication and support during the night (either night sleep or night sitting).
- 3.3. ECC's proposed approach to Live at Home services supports wider commissioning intentions to focus on prevention, independence, and the

assets and strengths of people and communities. This will help ECC to deliver key responsibilities and duties under the Care Act (see paragraph 4.6). The extension of the current BVRL contracts enables officers to model the new Ranked List which will support the wider commissioning intentions.

- 3.4. The current spend on Live at Home Services (including Supported Living and Extra Care) is approximately £110m per annum across over 190 providers for over 9,000 service users.
- 3.5. Approximately £48m of this money is spent via the current BVRL contracts. These contracts were tendered in 2010 and awarded in 2011. Suppliers were given a range of prices and they select a price from this range for each service type and each district. They were also scored on quality. This produces a ranked order for each district. Placements sourced under the BVRL contracts are allocated in rank order, although providers are not required to accept any placements offered. If no ranked provider will accept the placement then it is awarded on an individually negotiated 'spot' rate. Spot rates are also used for particularly complex care. Approximately £62m per annum is spent on spot placements.
- 3.6. There are approximately 58 providers on the BVRL. The list is periodically reviewed. When the list is reviewed, providers may resubmit prices from the range and are reassessed on quality and a new ranked list is produced.
- 3.7. The prices of Live at Home Services have remained relatively static for a number of years. However, when the list has been reopened providers have had the opportunity to increase their prices but have not always done so.
- 3.8. As a result there has been an increase in the number of spot placements. At present, around 40% of placements are currently made via the BVRL process, the rest are spot placements. Spot placements usually occur when a provider on the BVRL has refused the package as they do not have the capacity to deliver the services requested, or will not accept it at the price quoted. The increase in the number of spot placements has been exacerbated by supply issues, particularly in rural areas, and also due to the increasing complexity of needs presenting to social care.
- 3.9. The BVRL contracts were awarded in 2011 for a period of 3 years with the option to extend for 2 periods of 12 months. The BVRL contracts therefore have a maximum term of 5 years and are due to expire in February 2016. There are no further provisions within the contract to extend beyond 2016; therefore any additional extensions will need to be mutually agreed between ECC and the BVRL providers.
- 3.10. A range of procurement approaches, including a Preferred List, Lead Provider Model and Dynamic Purchasing System, amongst others have been considered for the new contract. Having carefully considered the key risks, issues and lessons learnt by other local authorities who are tendering for similar services, it is likely that the Cabinet will be recommended to procure a replacement ranked list, this time via a framework agreement.

- 3.11. However, detailed work needs to be undertaken before a final recommendation can be made and it is proposed to report this to Cabinet in April 2016, with a view to the new contract being in place by early 2017 at the latest.

BVRL extension

- 3.12. The Council clearly needs to make arrangements for services to cover the period between the expiry of the current arrangements in February 2016 and the commencement of the new contract. It is proposed to extend the BVRL and existing spot arrangements for a maximum period of 12 months and offer the providers the opportunity to resubmit prices on the BVRL for new placements so that a re-ranked BVRL will apply from April 2016.
- 3.13. There is concern in the market about rates paid for Live at Home services. It should be noted that providers have been able to increase their prices for new placements on a number of occasions since 2011, but in some cases have chosen not to. However, it is acknowledged that the payment of historical rates, particularly for longstanding packages of care may be lower than market rates.
- 3.14. The BVRL extension will require a full re-ranking of the BVRL. Providers will be re-ranked based on the following criteria: Price – 40%, Quality – 40%, Innovation 20%. This is the same basis that the original contract was tendered.
- 3.15. The revised list will be reviewed and approved by the Director for Integrated Commissioning & Vulnerable People.
- 3.16. The extension of the BVRL contracts will enable ECC to:
- (a) Maintain stability in the market;
 - (b) Secure supply;
 - (c) Mitigate disruption to service users while ECC completes the procurement; and
 - (d) Run a compliant competitive procurement process.
- 3.17. It should be noted that not all providers may sign up to the extension, though officers are of the opinion that most of the major providers will. Officers do not foresee the failure of some providers to agree to the extension having an adverse effect on ECC's ability to place service users, but this may be at an additional cost.

Increase to Minimum rates

- 3.18. The Council does not apply inflationary or other increases to rates paid for packages of care once they have been accepted. If a provider finds a particular package uneconomic they are able to withdraw from that package and it will be reallocated via the BVRL, although in practice this seldom occurs. In addition to this, the introduction of the National Living Wage ("NLW") in April 2016 will increase costs to providers. Finally recent court decisions on the National Minimum Wage ("NMW") mean that that carers are

required to pay the minimum wage to staff even whilst they are asleep in a service users home.

- 3.19. The Council needs to ensure that the rates it pays reflect the costs incurred by providers. It is therefore proposed that the BVRL pricing matrices will be amended to increase both the top and bottom of the matrices to reflect both the impact of the NLW increase in April 2016 and the work undertaken to identify the Cost of Care in Essex.
- 3.20. It is also proposed to apply minimum levels to all current domiciliary care packages, whether awarded via the BVRL or on a 'spot' basis. It is proposed that from 10 April 2016, any existing placements will be paid a minimum of £13.92 (with the exception of Night Sleep and 24-hour Live in Care which is £11.32). This will not affect packages of care which are already paid at or above the new minimum. The new rates proposed are an increase of £1.48 (for personal care, night awake and carer services), £4.24 (night sleeping) and £5.96 (24hour live in care) over the current minimum rate card prices for these services. The justification for this is set out in the Confidential Appendix.
- 3.21. All Providers who mutually agree to extend the contract will have to confirm that they are compliant with all legislative requirements including NLW and Care Act requirements.

4. Policy context and Outcomes Framework

- 4.1. A Vision for Essex 2013-17 builds on and replaces the previous EssexWorks Commitment 2012-17 and was approved by Cabinet on 18 June 2013 subject to formal adoption by Council on 9 July 2013.
- 4.2. It sets out the Cabinet's vision and priorities for these 4 years and informs the development of a revised corporate strategy designed to
 - a) Increase educational achievement and enhance skills;
 - b) Develop and maintain the infrastructure that enables our residents to travel and our businesses to grow;
 - c) Support employment and entrepreneurship across our economy;
 - d) Improve public health and well-being across Essex;
 - e) Keep our communities safe and build community resilience; and
 - f) Respect Essex's environment.
- 4.3. The Vision for Essex is based on the following principles;
 - a) We will spend taxpayers' money wisely;
 - b) Our focus will be on what works best, not on who does it;

- c) We will put residents at the heart of the decisions we make;
- d) We will empower communities to help themselves;
- e) We will reduce dependency;
- f) We will work in partnership; and
- g) We will continue to be open and transparent.

4.4. The proposals in the report is consistent with those principles as follows:

- a) It will spend taxpayers' money wisely by minimising the need for on-going and more costly support care services through increased independence and independent living.
- b) It will put residents at the heart of the decisions we make by ensuring providers understand what good looks like for residents and their aim of independence.
- c) It will reduce dependency on services by increasing independence and independent living.

4.5. The Corporate Outcomes Framework has an outcome of increasing the proportion of people who live independently. The proposed contract will improve the accessibility to Live at Home Services and will therefore make a contribution to the delivery of this outcome.

4.6. The Care Act 2014 governs the delivery of social care by local authorities. Local authorities are required to adhere to the following principles whilst delivering social care services:

- a) *Wellbeing* - a broad concept, which should be embedded within all care and support services, it includes: personal dignity; physical and mental health and emotional wellbeing; protection from abuse and neglect; control by the individual over day-to-day life; participation in work, education, training or recreation; social and economic wellbeing; domestic, family and personal; suitability of living accommodation; and the individual's contribution to society.
- b) *Prevention* - a duty to prevent or delay the onset of needs from developing, this applies to all adults, regardless of their current needs or eligibility including carers.
- c) *Carers' rights* – a duty that entitles informal carers to care and support that takes into account their needs for a full life.
- d) *Assessment* – a duty to identify the person's needs and impact on their wellbeing, and the outcomes that the person wishes to achieve. Consideration if the person would benefit from the preventative services, facilities or resources including those available in the community. The

person's own capabilities and potential for improvement should be taken into account.

- e) *Eligibility* – care and support is subject to eligibility of need and financial means, which are set nationally.
- f) *Care and Support planning* - Care and support should put people in control of their care, with the support that they need to enhance their wellbeing and improve their connections to family, friends and community.
- g) *Personalisation* - 'Meeting needs' should recognise that everyone's needs are different and personal. Local authorities must consider how to meet each person's specific needs rather than considering what service they fit into.
- h) *Safeguarding* – to stop abuse or neglect wherever possible based on the key principles of empowerment, prevention, proportionality, protection, partnership and accountability.

4.7. Extending the current BVRL enables ECC to adhere to the Care Act Principles in the following ways:

- a) Adults with needs will be at the heart of the decisions surrounding how they achieve their outcomes, with input from their families and informal carers. This will mean that they know exactly how they will be supported and it helps them achieve the outcomes they want.
- b) Informal carers are included as part of the decision making process, recognising that they are expert partners in care.
- c) The wellbeing of residents will be measured not just through the tasks that are performed on them, but on how they achieve their outcomes, including social interactions, mental health and emotional wellbeing.

5. Financial Implications

5.1. The social care purchasing budgets impacted by these recommendations provide Domiciliary Care (Live at Home Services) for older people (OP); adults with physical and sensory impairments (PSI), learning disabilities (LD) and mental health (MH). They have a forecast expenditure of £109m (excluding mileage/expenses) in 2015/16 as shown by specialism in the table below.

Domicillary Care	OP	PSI	LD	MH	Total
	£m	£m	£m	£m	£m
BVRL	30	7	10	0	48
Spot	9	4	47	1	61
Total	39	11	58	1	109

5.2. The cost of the BVRL extension for the 12 months from 20 February 2016 to 19 February 2017 is expected to be between £55.7m - £58.7m against a

current expenditure of £48m. This is an increase of between £7.7m - £10.7m against the prior 12 months. The precise value will vary based on the demand and the market price.

- 5.3. In addition, it is anticipated that the cost of increasing current spot contracts to the new minimum BVRL price will increase the cost of placements to a total expenditure of between £69.3m - £70.4m, an increase of approximately £8.3m - £9.4m against the current expenditure of £61m. This value again will vary based on the demand and the market price. The confidential appendix to this report sets out the detailed financial assumptions and implications.
- 5.4. Within the increases identified in paragraphs 5.2 and 5.3 there is provision for 6,287 service users' packages (approximately two thirds) to be uplifted to the new minimum rates. The cost of uplifting these packages to the minimum rates is expected to be around £14m.
- 5.5. For the budgets impacted by these recommendations the total expenditure range for 2016/17 is expected to be between £125m - £129.1m. There is a total pressure in the range of £16m - £20.1m or 14.7% - 18.5%. However, the service has identified substantial savings from initiatives (as presented in the Cabinet report FP/333/12/15 on this agenda) to mitigate these pressures.
- 5.6. Should the extension not be permitted, ECC would instead need to spot purchase placements until a replacement contract could be implemented. Many of these spot placements would be from the same provider and would have a higher cost than a contract placement. Based on current placements the price difference would mean that the costs of spot placements would be between £7m and £8m over and above that set out in paragraphs 5.2 and 5.3 over 12 months. This process would require significant resource to manage the transition, which would involve a review of each service user package before it could be placed with the new provider; the cost of this resource has been estimated at an additional £1.8m.
- 5.7. The total new cost to deliver this project is £81,000. This particular contract extension is extremely complex given that the extension is by mutual consent and not part of the normal contract round. There are significant financial implications involved, and it will take a large number of subject matter experts to deliver the extension and prepare contract documentation for the formal tender. As such, professional project management capability (£68,000) has been needed to: manage relationships with Sponsor and other key stakeholders, control the scope, schedule and manage the team activities, co-ordinate delivery and quality assure the outputs, prepare documentation for formal governance and identify and manage risks. Funding is also required to update internal systems with pricing and contract changes (£13,000). All other costs are being treated as business as usual and are being funded through business budgets. A request is made to Cabinet to draw down this sum from the Transformation Reserve.

6. Legal Implications

- 6.1. The BVRL contracts commenced on 20 February 2011 for a term of 3 years with the possibility of extending for a further 24 months, in 2 periods of 12 months. There are no provisions within the contract for its extension beyond the expiry date of 19 February 2016.
- 6.2. The extension requested by this report is an extension of 20% of its term and approximately 25% of its value. When this contract was originally procured this contract was a part B service and was exempt from almost all the requirements of the Public Contracts Regulations 2006.
- 6.3. However the Public Contracts Regulations 2015 ('the Regulations') are now in force. They apply a 'light touch' to these contracts. However any extension of these contracts must accord with Regulation 72(1)(b) which permits contracting authorities to modify contracts if the modifications are
'for additional works, services or supplies by the original contractor that have become necessary and were not included in the original procurement, where a change of contractor... would cause significant inconvenience or substantial duplication of costs for the contracting authority; provided that any increase in price does not exceed 50% of the value of the original contract'
- 6.4. The extension is proposed to enable ECC to undertake a full procurement process for future provision. The procurement of a solution for a 12 month period from February 2016 is likely to cause substantial duplication of costs for ECC. The addition of a further year and any variation in price will not exceed 50% of the value of the original 5 year contract.
- 6.5. Paragraph 4.31 of the Statutory Guidance that supports the Care Act 2014, requires Local Authorities to assure themselves and have evidence that contract terms and conditions and fee levels are appropriate to provide the services:
'4.31 When commissioning services, local authorities should assure themselves and have evidence that contract terms, conditions and fee levels for care and support services are appropriate to provide the delivery of the agreed care packages with agreed quality of care. This should support and promote the wellbeing of people who receive care and support and allow for the service provider ability to meet statutory obligations to pay at least the national minimum wage and provide effective training and development of staff... Local authorities should have regard to guidance on minimum fee levels necessary to provide this assurance, taking into account the local economic environment. The tools referenced may be helpful as examples of possible approaches'.
- 6.6. Further legal advice is set out in the confidential appendix.

7. Staffing and other resource implications

- 7.1. There are no staffing implications for ECC as a result of the BVRL extension.

8. Equality and Diversity implications

- 8.1. Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when ECC makes decisions it must have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act
 - (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, race, marriage and civil partnership status, religion or belief, gender and sexual orientation.
- 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.
- 8.4. As this is a statutory service that is available to any individuals who have eligible social care needs, there is no negative impact on any of the protected characteristics.
- 8.5. In line with the Care Act 2014, the need for Providers to respect the cultural and religious beliefs of any of those in receipt of the service and to engage with these cultural and religious beliefs when achieving their outcomes is embedded into the contract documents.

9. List of Appendices

(available at www.essex.gov.uk if not circulated with this report)

Equality Impact Assessment
Confidential Appendix.

10. List of Background Papers

None