

Forward Plan reference number: FP/164/05/18

Report title: Integrated Residential and Nursing Framework extension and re-procurement	
Report to: Cabinet	
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Date: 22 November 2018	For: Decision
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County Divisions affected: All Essex	

1. Purpose of Report

- 1.1 Essex County Council (ECC) provides residential and nursing care to older people and currently sources providers through a framework agreement for Integrated Residential and Nursing Care (IRN). The current IRN Framework is used by ECC as well as Mid Essex, North East Essex, West Essex, Castle Point & Rochford, Basildon & Brentwood and Southend CCGs (together the CCGs). The current IRN Framework is due to expire in February 2019 and ECC is seeking to extend this arrangement until June 2019 while the fresh framework is established and procured. The aim will be to establish significantly higher take up of the new framework will improve quality of care, enable better view and control of the market, better value of money, and delivers the true benefit integration with our health partners.

2. Recommendations

- 2.1. Agree to invite tenders for a framework agreement for service providers across Essex to deliver residential and nursing care services, with initial pricing to be based the pricing matrices set out in Appendix B using a one stage tender process compliant with the light touch regime. Call-off contracts under the framework will be awarded via a ranked list or through mini competitions. The framework contract will be awarded for 6 years with annual refreshes under which all providers can review their prices and new providers can be admitted to the framework.
- 2.2. Agree to extend the current IRN Framework Contract from 8 February 2019 to 7 June 2019.
- 2.3. Authorise the Cabinet Member for Adults and Health to award the new IRN Framework contracts following the completion of the procurement process and to re-open competition at least once each year for the annual refreshes and any additional review points as required to alter the price and quality criteria to meet with Corporate, Legislative or ECC Outcomes.

- 2.4. Authorise the Director, Adult Social Care to award the new IRN Framework Contract to new entrants, following the review points.

3. Summary of issue

BENEFITS OF PROPOSAL

- 3.1. We must have a legally compliant mechanism for purchasing and ensuring supply of Residential and Nursing Care in 2019; this is a statutory service for some of our most vulnerable older people in the county. The proposal in this report offers the opportunity to improve the financial and other conditions attaining to the residential and nursing frameworks in order to achieve a significantly greater take up from providers, thus enhancing market stability for the benefit of residents and better value for ECC. There are clear benefits for ECC, the service user and the provider:
- 3.1.1. The service user is more likely to receive good and outstanding care. Service users and their families will have more choice enabled by a new bed availability tool and a better approach to top ups for framework providers under which providers will be able to charge a 'top up' fee for additional services or more expensive accommodation if this is requested by an ECC-funded service user or by a member of a service user's family, where the top up is then paid for by a third party such as the service user's family.
- 3.1.2. ECC and CCGs will benefit from an integrated price model that delivers true benefits of integration with our health partners, reduce escalation of spot provision and avoidance of a significant cost pressure should we choose to do nothing.
- 3.1.3. Providers will have the following incentives to join the framework:
- Increased prices available on the Pricing Matrix
 - Framework Providers will be given priority over spot providers
 - Top Ups will be available to Framework providers (Top up are where the service user is given the opportunity to choose to have a more expensive placement if a third party can afford to top up the ECC framework rate.)
 - Placements via mini competition will be offered to framework providers only to address capacity issues and provide incentives to the market in hard to place areas or for difficult to source provision (e.g. Nursing, Dementia, seasonal Pressures).
 - Implementation of a Bed Availability Tool (an IT system) for an efficient placement process
 - Streamlined tender process

Please see Appendix A for details of the procurement to be used and the contractual model.

BACKGROUND

Tender for Residential and Nursing support services

- 3.2. ECC currently funds the provision of care for approximately 3850 older people in a residential setting and 610 older people in a Nursing setting. The current annual gross cost of care to ECC for supporting older people in a nursing or residential setting (which may include care homes and long stay hospitals) is approximately £127 million gross spend.
- 3.3. ECC currently has four types of purchasing arrangements in place with providers under which it can procure care provision in a residential setting:
- 2015 IRN Framework Contract which is due to expire February 2019
 - Nomination Contracts with Hatherley Ltd and Corner House Care Ltd. Under these contracts, ECC is required to pay for the nominated bed for up to 28 days void payment when they become vacant. These contracts expire in 2025 and are deemed out of scope of the procurement for new services.
 - Block Contracting arrangement with Excelcare Limited within 9 homes across Essex, these beds are paid for regardless of whether they are used or vacant. These contracts will expire in 2025
 - Various “spot” contracts for the ad hoc purchase of beds. These placements are made outside of current framework agreements, these are only purchased as and when required.
- 3.4. ECC relies on a framework (the IRN Framework) to make placements into residential and nursing care. The framework expires in February 2019. Unless we have a new contract in place for 2019 we will only be able make ‘spot’ placements, which makes it harder for ECC to be assured that it will be able to continue to have sufficient availability of Residential and Nursing Care places to comply with its statutory obligations.
- 3.5. The current spread of spend across the IRN Framework, our Nomination and Block contracts and Spot is as per the tables below. Currently the framework is utilised at 48% on Residential placements and 18% on Nursing placements however, it is the future intention to move away from spot purchasing arrangements and to place predominantly via the framework.

Residential - Older People	
IRN	48%
Spot	46%
GTD/Nomination	6%
Total	100%
Current average IRN rate	£490.27
Current average Spot rate	£613.44
Difference	25%

Nursing - Older People	
IRN	18%
Spot	81%
GTD/Nomination	1%
Total	100%
Current average IRN rate	£559.54
Current average Spot rate	£725.51
Difference	30%

Tender for Residential and Nursing support services

The above information was taken from a sample of data in December 2017.

- 3.6. Our goal is achieving at least 80% of framework placements on the new Residential matrix and 60% of framework placements on the new Residential with Nursing matrix. See appendix A for further information.
- 3.7. ECC and the CCGs are committed to ensuring the people of Essex experience high quality and consistent health and care outcomes. This is one of the reasons why ECC and the CCGs are working in partnership to adopt a more co-ordinated approach to the care market.
- 3.8. By working together, we have been able to develop a shared service specification, quality indicators and for the first time an integrated pricing model. Our proposed introduction of a shared pricing matrix for Nursing Care (that ECC and CCGs take a base price from) will allow more transparency and alignment between the rates paid by ECC and by CCGs; the pricing matrix for nursing and residential care is set out in Appendix B. This joined up approach will also benefit providers through simplification and consistency.
- 3.9. Each party on the framework will separately contract with providers for services. At present, some CCGs are reviewing their options regarding the use of the framework. However, they have requested to be named on the framework to enable them to use it should they so wish. Whether or not the CCGs choose to use the framework, it will be robust enough for ECC to contract with providers independently.
- 3.10. The proposed scope of the new IRN Framework for ECC covers predominantly Older People (Over 65) in residential and nursing care.
- 3.11. For further information around the provider and user engagement process and detailed procurement information read Appendix A.
- 3.12. £28,000 of the sustainability fund in the Adults function will be earmarked to be carried forward in to 2019/20 for the purposes of resourcing a staff member for a 12 month period to mitigate against the risk of default against top ups, this role will be used to check the third party has sufficient means to pay the top up throughout the length of placement.

BED AVAILABILITY SYSTEM

- 3.13. A new Bed Availability Tool will be implemented as part of the new IRN Framework, and this tool is being procured separately following a separate decision and will be ready for the commencement of the new IRN Framework. This tool will support ECC in placing Adults by delivering a clearer picture of capacity on the framework and across the market. It will improve placements being made on the framework and is essential for enabling Top Up Payments with framework providers, as it will allow framework bed capacity to be more accurately tracked. Adults will be placed with providers on the IRN

Framework, that are showing vacancies within the Bed Availability Tool, based on the placement process and the criteria to meet the needs of the Adults (e.g. specified distance, the assessed needs of the Adult).

CARE MARKET

3.14. For the reasons set out above, ECC is confident that the care market in Essex is operating in a sustainable way for the majority of the market. There is enough capacity in the market to maintain stability. ECC is confident that the proposal and the initiatives within the new framework will assist providers to become more sustainable (initiatives outlined in Appendix A). ECC has a duty under section 5 of the Care Act 2014 to promote the efficient and effective operation of a market in services for meeting care and support needs with a view to ensuring that any person in its area wishing to access services in its area has a variety of providers to choose from. In discharging this duty ECC must have regard to the following in particular.

a) the need to ensure that the authority has, and makes available, information about the providers of services for meeting care and support needs and the types of services they provide;

b) the need to ensure that it is aware of current and likely future demand for such services and to consider how providers might meet that demand;

c) the importance of enabling service users with needs for care and support, and carers with needs for support, who wish to do so to participate in work, education or training;

d) the importance of ensuring the sustainability of the market (in circumstances where it is operating effectively as well as in circumstances where it is not);

e) the importance of fostering continuous improvement in the quality of such services and the efficiency and effectiveness with which such services are provided and of encouraging innovation in their provision;

f) the importance of fostering a workforce whose members are able to ensure the delivery of high quality services (because, for example, they have relevant skills and appropriate working conditions).

3.15. With respect to the specific requirements of section 5:

a) ECC makes available, information about the providers of services for meeting care and support needs and the types of services they provide. This will be further improved by the implementation of the Bed Availability System.

Tender for Residential and Nursing support services

- b) ECC regularly reviews demographic information about needs and likely future needs. It is currently able to meet needs at the rates paid under the framework.
 - c) ECC encourages providers to provide opportunities for residents to participate in education or training although participation in work is less relevant for those older people who need residential accommodation.
 - d) ECC monitors the performance of homes in order to consider the sustainability of the market care homes. As stated above the rates paid overall do appear to be sustainable and the market appears to be operating in a sustainable way.
 - e) ECC recognises the importance of fostering continuous improvement in the quality of such services and the efficiency and effectiveness with which such services are provided and encouraging innovation in their provision. ECC does this by the work outlined above and as such the proposed cap price will seek to promote efficiencies.
 - f) ECC works hard to ensure that there is a high quality work force by training and recruitment initiatives as outlined above.
- 3.16. A copy of the statutory guidance is attached can be found at: <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>. The following paragraphs are of particular relevance:

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. It should also allow retention of staff commensurate with delivering services to the agreed quality, and encourage innovation and improvement. Local authorities should have regard to guidance on minimum fee levels necessary to provide this assurance, taking account of the local economic environment. This assurance should understand that reasonable fee levels allow for a reasonable rate of return by independent providers that is sufficient to allow the overall pool of efficient providers to remain sustainable in the long term.

...

4.35 Local authorities should consider the impact of their own activities on the market as a whole, in particular the potential impact of their commissioning and re-commissioning decisions, and how services are packaged or combined for tendering, and where they may also be a

supplier of care and support. The local authority may be the most significant purchaser of care and support in an area, and therefore its approach to commissioning will have an impact beyond those services which it contracts. Local authorities must not undertake any actions which may threaten the sustainability of the market as a whole, that is, the pool of providers able to deliver services of an appropriate quality, for example, by setting fee levels below an amount which is not sustainable for providers in the long-term.

...

10.27 In determining how to meet needs, the local authority may also take into reasonable consideration its own finances and budgetary position, and must comply with its related public law duties. This includes the importance of ensuring that the funding available to the local authority is sufficient to meet the needs of the entire local population.

EXTENSION OF CURRENT FRAMEWORK

- 3.17. The current Integrated Residential Nursing Framework Agreement will expire on 7 February 2019. It is proposed to extend this contract until June 2019 when the new framework will be in place. If the recommendations in the report are approved it is intended that the new framework agreement will be in place in June 2019. A key part of the new framework will be the introduction of new digital technology such as the Bed Availability Tool (set out in paragraph 3.13 above), this extension is required in order to provide enough time for this to be implemented.

4. Options:

A number of options have been considered:

4.1. DYNAMIC PURCHASING SYSTEM

- 4.1.1. Under this option, ECC would create a Dynamic Purchasing System (DPS) for commonly purchased services, which is an electronic process identifying the type of services ECC requires. All providers who meet the minimum quality standard must be admitted to the DPS and new providers are able to join any time during the life of the DPS. ECC would then invite all the suppliers on the DPS (or the relevant category within the DPS) to bid for the specific contract in order to provide services to an Adult. The lowest priced bidder would be awarded the contract and the Adult placed with that bidder. This option is not recommended as the market does not currently appear to have capacity for implementing and delivering a DPS system, so ECC would need to work with the market to prepare them for a DPS system, including conducting a pilot.

4.2. PRIME PROVIDER MODEL

- 4.2.1. Under this option ECC would contract with one or more suppliers who will lead and manage placements within a particular area. ECC would fund the provider

to broker all packages within the allotted area at a fixed price. The lead provider would be responsible for contracting and managing placements, and ECC would not be involved in the service delivery. This option has been rejected because this is not appropriate for the current market: ECC would have to work with the market or invest in the market to shape and support a prime provider infrastructure.

4.3. BLOCK PURCHASING

- 4.3.1. ECC would block purchase a fixed number of beds around the county to satisfy anticipated demand. This is not recommended as the average placement cost often ends up being higher as we are forced to pay for empty beds if we do not have people to fill them.

4.4. RE-PROCURE FRAMEWORK CONTRACT IN ITS CURRENT FORM

- 4.4.1. This would not address the issues within the current contract as identified by the market as to why providers were not willing to join the current IRN Framework, such as the lack of top-up payments in the current IRN Framework and that many placements are made via spot rather than via the framework.

- 4.4.2. The previous IRN Framework is not a fully integrated model, therefore by re-procuring the framework in its current form this would delay the integration with Health.

4.5. DO NOTHING:

- 4.5.1. We could let the framework expire and move to spot for all placements. We would need to procure on a spot basis which would be unlikely to achieve best value. This would also be non-compliant with the Public Contract Regulations.

4.6. NEW FRAMEWORK (RECOMMENDED APPROACH)

- 4.6.1. We could procure a new framework agreement in a manner which complies with the light touch regime. This is recommended because it would build on the good work initiated during the current IRN Framework to provide certainty and continuity in the market, with added ability to handle the issues we currently have in the market. It will retain a network of operators in each locality which will maintain competition whilst we look at longer term objectives. Also, working in a more integrated manner with our Health partners to deliver the true benefits of Integration.

- 4.6.2. The intent is to ensure that the Framework model will provide care and support to all residents referred by ECC regardless of any disability or other conditions and will support ECC, and the Providers to stabilise the workforce, capacity or demographic issues

- 4.6.3. This new approach to the IRN Framework will also support the sustainability of the market; allowing for a mixed economy of public and private funders, by

better enabling top up payments on the framework ensuring a variety of choice for service users and their families.

5. Next steps

- 5.1. Proceed to procurement process as outlined above.

6. Issues for consideration

6.1. FINANCIAL IMPLICATIONS

- 6.1.1. Expenditure on care home placements (Residential and nursing combined) is forecasted to be c£127m (gross) or £70m net in 2018/19, and is expected to grow in future years in line with inflation and demographic pressures. The Medium-Term Resource Strategy takes account of these expected pressures.
- 6.1.2. Although the rates proposed for the Framework have increases higher than the expected inflationary pressures, particularly for Nursing, the rates have been carefully calibrated against current market conditions, and the prices that ECC is currently paying for placements, whether on a spot or framework basis, and as such the framework rates are considered to be affordable, based on a set of assumptions on how successful the framework will prove to be, and how the market is likely to respond.
- 6.1.3. The lowest price point on the Residential framework is proposed to increase by 7.6% and is fixed in all districts; there is a maximum price point set for each district, and in some cases the maximum price point has changed. This means that there is not a fixed increase in the maximum price possible. The change in the maximum price point varies from a reduction of 0.02% to an increase of 7.36%, with the average being a 3.6% increase.
- 6.1.4. The lowest price point on the Nursing framework is proposed to increase by 13.3% and is fixed in all districts; there is a maximum price point set for each district, and in some cases the maximum price point has changed. This means that there is not a fixed increase in the maximum price possible. The increase in the maximum price point varies from 0.5% to an increase of 24.8%, with the average being a 13.6% increase.
- 6.1.5. The maximum price point in each district, for both Residential and Nursing has been set with regard to the prevailing market conditions in that district – simply put, the ease of finding placements on the framework, and the average rates achieved in that district for placements made in the last 12 months.
- 6.1.6. The maximum price point on the framework in all instances is lower than the average spot prices achieved as outlined above in paragraph 3.4, but the increase in rates on the framework should incentivise at least some providers to join the framework, with compensation for providers in a reduction in price in the form of greater volumes.

- 6.1.7. With expenditure on the scale of this activity, minor variations in average prices can have a significant impact, and as such the approach is not risk free, and it is possible for expenditure to rise by a greater or lesser amount than anticipated, however this will continue to be robustly monitored.

6.2. LEGAL IMPLICATIONS

- 6.2.1. The Care Act 2014 places a duty on ECC to promote the efficient and effective operation of a market in services for meeting care and support needs in its area. Whilst ECC is not required to set out a minimum price for care, it clearly does have to ensure that the rates paid are sustainable.
- 6.2.2. Statutory guidance says that ECC should have evidence that the price it pays for care is sufficient to meet the costs and to meet the requirement for quality. ECC is expected by guidance to have evidence that Providers pay staff at least the minimum wage.
- 6.2.3. IRN Services fall within 'social and other specific services' within Schedule 3 of the Public Contracts Regulations 2015 (the Regulations) and the total contract value is estimated to exceed the threshold of £615,278. As a result, the procurement of a new Ranked List is subject to the 'light touch regime' of section 7 of Chapter 3 of the Regulations.
- 6.2.4. Section 7 of Chapter 3 of the Regulations requires ECC to publish its intention to award a contract for 'social and other specific services by either a Contract Notice or a Prior Information Notice (subject to conditions relating to the contents of both the Contract Notice and Prior Information Notice, please see paragraph 6.2.3 below).
- 6.2.5. A 6 year framework agreement is permitted pursuant to the Public Contracts Regulations 2015 as the service is subject to the Light Touch Regime, therefore the length of the framework can be as determined with relevance to the type of service by the contracting authority and is not limited to 4 years. However, ECC is ensuring that it continues to comply with its best value duty by opening the framework up each year to permit new entrants and to permit existing providers to resubmit prices, and to allow best value reviews. In addition, a 6 year framework will ensure co-termination with the current block residential contract in place so that ECC can then conduct a re-commissioning exercise for the service as a whole.
- 6.2.6. ECC can extend the framework lawfully under the Regulations if a change in contractor cannot be made for economic or technical reasons. Given that the extension is for four months and is necessary in order to align with ECC's new IT system to be used under the new IRN framework which is proposed to be implemented in June 2019, it appears to be the case that a change in contractor at this stage for approximately 4 months would cause substantial duplication of costs and significant inconvenience to ECC meaning that a contractor cannot be changed for economic reasons.

7. Equality and Diversity implications

- 7.1. The Public Sector Equality Duty applies to ECC 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.
- 7.2. 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).
- 7.3. 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. List of appendices

- 8.1. Appendix A – Provider and Service User Engagement; Proposed Contract Model and Procurement
- 8.2. Appendix B – 2019/2020 Pricing Matrices for nursing and residential care
- 8.3. Equality Impact Assessment

9. Background Documents

None