

Forward Plan reference number: FP/032/01/24

Report title: Commencing new procurement for Social Care Platform Programme	
Report to: Cllr Christopher Whitbread - Chancellor of Essex and Cabinet Member Responsible for Finance	
Report author: Nick Presmeg – Executive Director for Adult Social Care	
Date: 27 February 2024	For: Decision
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County Divisions affected: All Essex	

Confidential Appendix

This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

1. Everyone's Essex

- 1.1 Everyone's Essex sets out strategic aims to help improve outcomes for Essex residents. Within those aims are a series of commitments to improve the lives of children, families, and vulnerable adults, including:
 - Promoting independence through working with key partners
 - Strengthening family resilience and stability by tackling the drivers of family instability
 - Improving safety and outcomes for vulnerable adults and children.
- 1.2 Essex County Council (ECC) has a strong record of delivering excellent, value for money services and it is essential that the Council has the systems and technology in place to support delivery of social care provision within the county.
- 1.3 There is scope and urgent demand to improve the current social care case management systems and tools to enable more efficient, targeted, and responsive service delivery for children and adults in need of an element of care provided by ECC.
- 1.4 Approving the recommendations set out in this report will enable ECC to continue to improve outcomes for some of Essex's most vulnerable residents in line with the Everyone's Essex vision.

2 Recommendations

- 2.1 Agree that ECC commences a competitive procedure with negotiation with the three companies that submitted bids for the prior restricted procedure tender as recommended in Option 1 set out in section 5 below.
- 2.2 Agree that the cost/quality criteria for the award will be 80% quality and 20% price (of which 5% of the quality score will assess social value).
- 2.3 Agree that approval of the tender procedure and detailed evaluation model is delegated to Executive Director for Adult Social Care.
- 2.4 Note that a further report will be brought back to the Chancellor of Essex with respect to award of the contract.
- 2.5 Agree that the profile of the approved drawdown of funding for the Programme from the Technology and Digitisation Reserve from 2023/24 is amended to:

2023/24 £1.721m
2024/25 £3.673m
2025/26 £4.410m
2026/27 £0.695m

Note that the profile for 2023/24 will be revised should the final funding required vary from that indicated above, with the impact of any variance being reflected in the 2024/25 allocation; and that future funding realignments, within the overall envelope, may be required should assumptions need to be amended through the future phases of the programme.

- 2.6 Agree that £1m remains ring-fenced in the Technology and Digitisation Reserve as contingency for the Programme, which, if required, would be subject to a further decision to draw down.
- 2.7 Note that it is expected that a further extension may be required to the contract for the current solution for up to a further 12 months from July 2025 and that this will be subject to further governance if required. The programme envisages that the costs for this will be met within the existing budget planned in the Medium-Term Financial Strategy (MTFS).
- 2.8 Note that a rolling contract for an initial period of seven years with break clauses at defined periods will provide ECC with additional flexibility to ensure it can realise value through the contract and have flexibility to determine the best timing for the re-procurement of a future solution.

3 Background and Proposal

- 3.1 ECC's Social Care Platform (SCP) stores and retrieves case management information for vulnerable children and adults which is a legal statutory

requirement. The SCP is a critical service system, and the information and detail it holds are essential in delivering and maintaining good outcomes for the people of Essex.

3.2 The SCP programme (the programme) was established in January 2020 in response to the contract for the social care case management systems with the current supplier expiring in 2021. In summary:

- The existing contract for the social case care management system was extended for a further two years with an option of a further one year if required.
- The programme undertook work to define the SCP requirements during 2021-22.
- Thereafter, a full tender (the “Initial Tender”) was developed to commercialise the requirements, to establish how the tender responses would be evaluated, and to run the procurement in accordance with the Public Contracts Regulations 2015 (“PCR2015”). This work took place June 2022-Jan 23
- The tender was published 6th Feb 2023 and responses were received 17th Apr 2023.
- Evaluation of the tenders commenced, it became apparent that the bidders could not meet our high-level requirements and would not deliver best value for the Authority.
- The programme is now bringing forward a recommendation on the approach to recommending the procurement.

3.3 Further details about the SCP, background to this programme, and the programme’s progress to date can be found in.

- SCPP - Approved Cabinet Report July 2022 FP-406-05-22
- When the tender commenced in Feb 2023, four suppliers initially expressed an interest in the tender however only three proceeded to bid. During evaluation it became apparent that the most economically advantageous tender could not be determined, and it was recommended that the procurement was abandoned at that stage without finalising the evaluation process. As a result, the Programme Board and Sponsor Group recommended abandoning this procurement in June 2023, and this decision was taken via an Executive Director action 20230906 Abandonment SCP.

Since this date, the programme has reviewed ECC’s requirements and evaluation approach, and made several changes to these to enable a successful outcome to be achieved.

3.4 The initial tender was conducted as a Restricted Procedure under the Public Contract Regulations 2015 as approved in July 2022. The Restricted Procedure is a two-stage process enabling the Authority to firstly apply a selection process to suppliers expressing an interest in the tender opportunity before inviting potential suppliers to submit bids. All requirements for the service including the contractual terms, must be set out in advance. Opportunity to explore ways of improving bidder offers or to negotiate any aspect of the tender is not available

via use of a Restricted Procedure. Bids must be submitted against the requirements as set out in the published tender documentation and the Authority must then apply the notified evaluation process to either identify the most economically advantageous tender or otherwise abandon the process and not award a contract to any bidder.

- 3.5 By contrast, a competitive procedure with negotiation (CPN) requires ECC to establish its minimum criteria and then ECC can request bidders to refine their bids in areas defined by ECC at the time it publishes the tender. Once the negotiation sessions have completed, ECC can then award a contract (or, as above, abandon the procedure without award).
- 3.6 Normally a CPN must include an open advertisement. However, in certain cases, where a procurement procedure was commenced and abandoned, regulation 26 of the PCR2015 allow authorities to commence a CPN without publishing a prior notice. That applied where, in response to an open or a restricted procedure, only irregular or unacceptable tenders are submitted.
- 4 In that case the Council is not required to publish a contract notice if they include all eligible tenderers who bid originally and do not include anyone else.
 - 4.1 None of the tenders received were acceptable in the prior procedure and it is recommended that this procedure pursuant to regulation 26 is followed.
 - 4.2 This does mean that not all market providers would be able to participate. It would not be unlawful to proceed with three bidders under regulation 26, provided that ECC is satisfied that proceeding with only three will be able to demonstrate value for money. This process remains competitive as a significant part of the limited market will be invited to submit tenders to ECC as part of this process.
 - 4.3 Due to the time pressures of the existing fixed-term contract and the impact of changing such a large and integral system, it is recommended that ECC seek to agree a rolling contract with the ability to break the contract upon giving notice. This means that ECC will have the ability to end the contract at a time right for ECC rather than being driven to a system change by a time pressure for a contract with a hard deadline. The break provision that will be included will be for a break upon 3 year's notice. The proposal is that it will not be possible to break the contract within the first seven years (unless terminated for specific causes). However, notice could be served at year 4 so that the contract could end at year 7 if needed. The 3-year notice period has been determined based upon anticipated tender and implementation times.
 - 4.4 The key driver for change is system quality, therefore the bid evaluation process will utilise a number of mechanisms to ensure this is achieved, including a 'pass/fail' approach to mandatory requirements, however, if a supplier fails, we reserve the right to pass them, and minimum scoring areas through an evaluation split in favour of quality:

Questions	Evaluation
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Functional & Technical requirements [minimum threshold]	Pass/Fail
Non-functional and Technical requirements	Pass/Fail 24.00%
Delivery & General requirements	51.00%
Social value	5.00%
Cost	20%

4.5 It is proposed that ECC recommence the programme procurement activity with the following principles:

- Conduct a CPN pursuant to PCR2015 regulation 26(4)(b) and invite only the three suppliers that submitted bids during the Initial Procurement
- Seek a rolling contract awarded to a single supplier with an initial term of seven years and break clauses to end the contract upon notice.

4.6 The planning assumption is that the procurement will launch in Spring 2024. In addition to an approx. 6-month tender process, it will take an estimated 18 months to implement the solution, therefore Go-Live can be achieved within 24 months (by December 2025). The programme will be delivered in phases, timescales for which will be highly dependent on the availability of both the supplier and internal resources:

Phase	Key Activities/Deliverables
Phase 1: Interim Procurement (Delivered)	<ul style="list-style-type: none"> ▪ Interim contract Award
Phase 2: Service & User Discovery (Delivered)	<ul style="list-style-type: none"> ▪ Requirements gathering ▪ Baselining ▪ Data analysis and remediation ▪ Tender preparation
Phase 3: Procurement	<ul style="list-style-type: none"> ▪ Tender process ▪ Bid evaluation. ▪ Contract award
Phase 4: Implementation and Go Live	<ul style="list-style-type: none"> ▪ System configuration & build ▪ Process redesign ▪ Data remediation & data migration ▪ Business change ▪ Testing/UAT ▪ User training ▪ Phased Go-live
Phase 5: Post Go Live Support	<ul style="list-style-type: none"> ▪ 'Hypercare' support to transition to BAU. ▪ Decommissioning ▪ Programme closure

5 Links to our Strategic Ambitions

5.1 This report links to the following aims in the Essex Vision

- Enjoy life into old age.
- Provide an equal foundation for every child.
- Strengthen communities through participation.
- Connect us to each other and the world.
- Share prosperity with everyone

5.2 Approving the recommendations in this report will have the following impact on the Council's ambition to be net carbon neutral by 2030: no adverse impact.

5.3 This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':

- A strong, inclusive, and sustainable economy
- A high-quality environment
- Health wellbeing and independence for all ages
- A good place for children and families to grow.

6 Options

6.1 The recommendations and options set out in this report represent the ways considered to be the most viable to achieve a new SCCP contract within the time constraints of the existing contract term. Each option (as with most procurement) carries their own element of risk, and the risk of challenge cannot be eliminated for any of the options, although compliant use of a framework (option 3) may carry less procurement risk than the others. However, the contract management risks may be greater due to the generic nature of the contract terms and conditions that would be used and considering the lessons learned during current contract management processes.

6.2 **Option 1 (recommended):** Commence a Competitive Procedure with Negotiation with the three bidders that submitted tenders during the original restricted procurement with a goal of securing a contract for an initial period of seven years followed by a rolling contract which can be terminated by either side on notice.

6.2.1 ECC does not often procure rolling contracts. However, we are recommending this approach to account for lessons learned with regard to procuring complex systems contracts with a fixed end date. Procuring a rolling contract makes it easier for ECC to exit the contract at a time of its choosing after seven years rather than at the end of a fixed period which may not be convenient. At the moment, the fixed end point of the existing contract creates organisational pressures that mean a new contract needs to be procured within a fixed timeframe. Although seven years is a relatively long time for an initial period, the

reality is that we will need this system for at least seven years. If the supplier fails to perform we may be able to terminate the contract, though the risk of that is considered to be low given the maturity of the market.

6.2.2 Obviously, this means that we will not be able to change suppliers for the first seven years of the contract and it is possible that new technologies will emerge over the next seven years which the new supplier may not adopt. That said, this market has been stable for some years now and the likelihood is that all suppliers will evolve their product over time. Seven years is only two years longer than a typical approach for IT procurement so it is unlikely that this will have a significant adverse impact, particularly given the length of time it will take to decide that a new contract is needed and to procure and implement a new contract. Nonetheless the Interim Technology Director is strongly of the opinion that this view should be drawn to the Cabinet Member's attention.

6.3 **Option 2 (not recommended):** Extend the existing contract for a short period of time to commence a competitive procedure with negotiation or a competitive dialogue with the market as a whole.

6.3.1 This option involves extending the current contract beyond its original term (beyond the originally procured extension options). The further extension would have to be made in line with regulation 72(1)(b) of the PCR15 and would likely achieve a further 12–18 months beyond the current contract expiry date.

6.3.2 ECC could use this time to further develop its requirements for the SCCP, research market abilities and developments, and further develop its tender requirements (again using a CPN or competitive dialogue procedure). Further market participants could participate rather than just the three who submitted tenders in response to the prior procurement, which was discontinued.

6.3.3 This option would allow ECC to consider the Social Care Reform activities taking place in the public sector. This may give further certainty into requirements for the SCCP, but it is recognised that sector reform and change is a constant and so there will always be an element of change and review required.

6.3.4 There are some risks associated with this option.

- Use of regulation 72(1)(b) could attract a legal challenge. However, PCR15 do allow variations, including extensions, pursuant to this regulation where the regulatory requirements are met, which they would be in this case.
- Extending the current contract would be made largely on the existing terms and the existing provision, meaning that the opportunity for improvements would be delayed.
- An extension to the current contract, due to the financial limits, would significantly limit the work we could do with the system and particularly for adults, this is having, and will have, a detrimental impact on how we can deliver the strengths-based support CQC expects us to

- This option would involve the requirement for a call-for competition and qualifying interested parties to the bid process. This process would add approximately 1½ years to complete the process.

6.4 **Option 3 (not recommended):** Call-off a new contract through conducting a mini-competition via a framework such as the Crown Commercial Service Vertical Applications Solutions framework (RM6259), Lot 2 Education, Community Health, and Social Care Solutions.

6.4.1 One benefit of using the framework is that it is a known and accepted framework that has already pre-qualified providers for admission to the framework, meaning that ECC need not undertake the qualification stage of a procurement.

6.4.2 Another benefit of using frameworks is that all providers on the framework have signed up to the core terms and conditions.

6.4.3 However, in practice, providers often seek amendments despite having signed up to the framework terms and conditions, which puts ECC in a difficult position as material amendments are prohibited by the PCR15. In addition, the terms and conditions for this framework may not provide the type of contract management abilities that ECC requires. Unsuitable contract management provisions may have a negative impact on transformational activities linked to the new SCCP (should these be taken forward).

7 Issues for consideration

7.1 Financial implications

7.1.1 The revised total estimated cost to procure and implement a new solution is set out in Table 1 in the Confidential Appendix. No additional funding is expected to be required however, it is necessary to reprofile the approved funding to reflect the impact of the delay as a consequence of the abandoned procurement; other assumptions that may impact on the costs remain broadly as set out in decision FP-406-05-22 and as set out in section 3.2 of this report.

7.1.2 The total investment approved to support the delivery of the programme since 2022/23, including the current procurement and implementation phases of the programme is £12.566m (of which £11.519m was approved in decision FP-406-05-22; of this amount, a total of £3.788m is forecast to be spent by the end of 2023/24. Due to the requirement to abandon the procurement and to revisit the approach to the procurement phase of the programme, the planned spend to date is significantly lower than had been anticipated. As set out in table 1 in the Confidential Appendix, the overall funding requirement from the reserve is not forecast to increase, however, the profile of the required funding is requested to be amended as set out in Table 2 below:

Table 2: Impact on the funding profile of the revised programme timeline

	Approved Funding £'000	Revision Required £'000	Movement £'000
2022/23	2,067	2,067	-
2023/24	6,948	1,721	(5,227)
2024/25	3,551	3,673	122
2025/26	-	4,410	4,410
2026/27	-	695	695
Total	12,566	12,566	-

7.1.3 The funding set aside for this programme includes costs to procure and implement a solution, including integration with existing systems and internal resource costs to support the overall programme delivery, including provision for data transformation (including data cleansing and migration from existing systems and proper linkage to individuals and cases), migration, and reporting requirements; additionally, it includes resources to complete the decommissioning costs of any end-of-life all systems replaced by the procured solution.

7.1.4 Whilst the impact of the extended timelines for the programme are being sought to be managed within the overall funding allocated, this has not been the case for the resources that have been, and are expected to continue to support the programme, that are opportunity costs, that is, that they are funded through existing service budgets. Further information in respect of the impact on resources is set out in Table 1 in the Confidential Appendix.

7.1.5 The revised implementation costs are sensitive to variations in the planning assumptions, such as the time required to complete the procurement and implement the contract. The programme will aim to contain any additional costs arising as a result of slippage in the timelines or additional implementation costs, however, in the event that this is not possible, it may be necessary to draw on the contingency currently set aside in the Technology and Digitisation Reserve for this programme of up to £1m. Drawing on the reserve will require additional governance by the programme to secure any further funding; in the interim, however, the contingency will be re-profiled into 2025/26.

7.1.6 A specific risk has been introduced in respect of the revised timeline for the procurement approach due to the inclusion of negotiation as this may extend the time required to conclude the process. This is to be mitigated by the programme through the development of a negotiation plan to support this process. This approach is expected to enable ECC to secure the most economically advantageous tender to support delivery of the service through the life of the contract.

7.1.7 It is acknowledged that the revisions to the procurement approach to CPN through regulation 26(4) brings potential additional risk as this is an untested route at ECC; any potential challenge to the procurement would be expected to result in additional costs, as a minimum, due to the time required to support such a challenge.

7.1.8 The proposed approach to move to a rolling contract for an initial period of seven years with break clauses at defined periods will provide ECC with additional flexibility to ensure it can realise value through the contract and have flexibility to

determine the best timing for the re-procurement of a future solution that can be influenced, for example, but changing market offering and conditions and the future organisational capacity to implement a change programme. Any decisions to end the rolling contract will be subject to the agreed contract terms and appropriate governance.

7.1.9 Active monitoring of the rolling contract will need to be undertaken by the Technology Services intelligent client function through a regular process to be established, to ensure that value for money is regularly reviewed alongside effective service performance to inform any decisions to continue or to end the contract.

7.1.10 The contract for the current solution expires in July 2025; the extended timeline for the programme may require a further extension to that contract. If this is needed, separate governance will be undertaken to agree this.

7.2 Legal implications

7.2.1 Due to the value and nature of the services to be procured, the Public Contracts Regulations 2015 (PCR15) will apply.

7.2.2 PCR15 regulation 26(4)(b) states that an authority may use a competitive procedure with negotiation when, amongst other criteria, where “in response to an open or restricted procedure, only irregular or unacceptable tenders are submitted.”

7.2.3 When relying on regulation 26(4)(b), a contract notice is not required to be published provided that all of, and only, the tenderers which submitted tenders in the original competition are invited.

7.2.4 While a competitive procedure with negotiation does allow for negotiation on elements of submitted tenders, the procedure also requires that the contracting authority be clear from the outset about its minimum requirements.

7.2.5 ECC must be satisfied that using this approach, rather than undertaking some other form of procurement, can adequately demonstrate that any solution selected will provide value for money.

7.2.6 As with all procurements, the risk of challenge cannot be eliminated.

7.2.7 With a rolling contract, ECC will need to ensure that it actively monitors the arrangements to be satisfied that the system and contract offer value for money arrangements that are suitable to meet the needs identified.

8 Equality and Diversity Considerations

8.1 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.

8.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, 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 Equalities Comprehensive 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

- 1: Confidential Appendix
- 2: Equalities Impact Assessment

10 List of Background papers

- SCPP - Agreement to abandon
- SCPP - Approved Cabinet Report July 2022 FP-406-05-22
- SCPP OBC v1.3

I approve the above recommendations set out above for the reasons set out in the report.	Date
Councillor Chris Whitbread – Chancellor of Essex and Cabinet Member with Responsibility for Finance	08.03.24

In consultation with:

Role	Date
Executive Director for Adult Social Care	27 February 2024
Nick Presmeg	
Executive Director, Corporate Services (S151 Officer)	28 February 2024
Director, Legal and Assurance (Monitoring Officer)	

Paul Turner

29 February
2024