

**Forward Plan reference number: FP/775/07/20**

<b>Report title: Reopening of Framework for procurement of Individual Packages of Support for Children or Young Adults with Special Educational Needs or a Disability</b>	
<b>Report to:</b> Cabinet	
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<b>Date:</b> 15 September 2020	<b>For:</b> Decision
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<b>County Divisions affected:</b> All Essex	

## 1. Purpose of Report

- 1.1 This report seeks authority to draw down £13.2m from the high needs block of the Dedicated Schools Grant (DSG) and to reopen the Individual Packages of Educational Support (IPES) framework (the Framework) that was previously let by open procurement in 2018.

## 2. Recommendations

- 2.1 Approve the draw-down of an additional £13,200,000 from the high needs block within the Dedicated Schools Grant budget.
- 2.2 To reopen the Framework for individuals of packages of support to allow new providers to join and existing providers to refresh their existing pricing schedule and bid for additional lots that are currently in place.
- 2.3 To delegate authority to Cabinet Member for Skills and Education in consultation with to the Director for Education to award contracts to any additional providers who join the Framework following a successful procurement process.

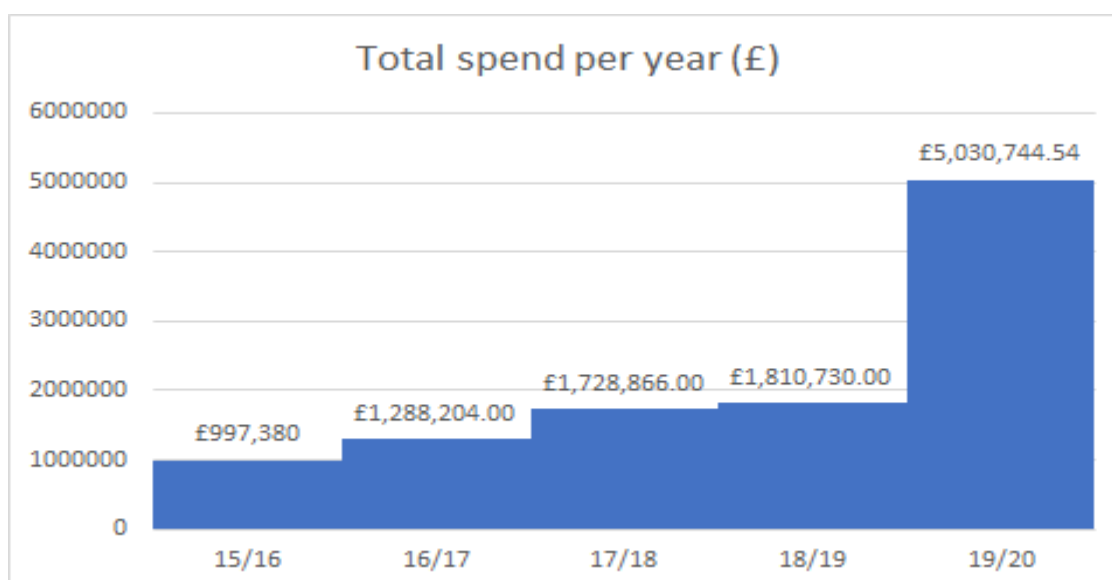
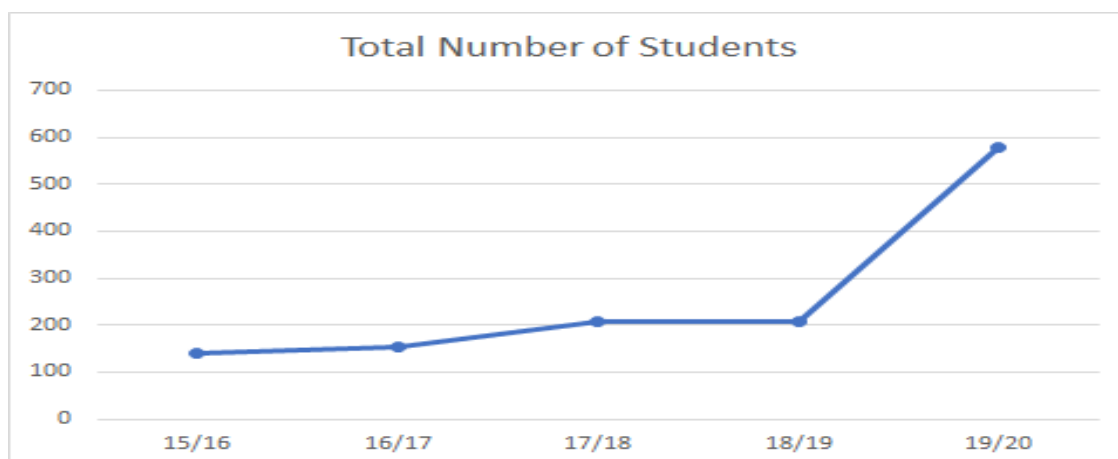
## 3. Summary of issue

### The Current Framework

- 3.1 In May 2018, Cabinet approved the procurement of the Framework to meet Essex County Council's (ECC) statutory duty to provide an alternative education provision such as Tuition or Vocational Training for children and young people living in Essex who have been permanently excluded or who, due to illness or other reasons are unable to receive suitable education. The Framework has a four-year term and commenced in April 2019.
- 3.2 The Framework replaces previous 'spot purchase' arrangements and provides greater competition in the market, greater control of cost and allows for contract

and supplier management ensuring reporting mechanisms and clear pathways are available to support attendance, safeguarding and pupil progress through reports submitted as part of the quality assurance process monitored by the service and ECC's contract management team.

- 3.3 The Framework currently has 14 suppliers providing county wide coverage and is used exclusively by three teams in ECC's Education Directorate: Special Educational Needs and Disabilities (SEND), Education Access and Virtual School. The Framework agreement contains provision for other contracting bodies to source services through the Framework subject to entering into an access agreement with ECC, however to date, it has not been used by other contracting bodies and all of the call off's have been by ECC.
- 3.4 The Framework is split into 4 lots:  
Lot 1- Tuition Services  
Lot 2- Vocational Services  
Lot 3- Virtual Learning Services  
Lot 4- Early Intervention Re-Integration Services.
- 3.5 In 2108, the initial estimated value of the Framework for its term of 4 years was £6,800,000 based on services for approximately 700 pupils. In its first year (2019/20), the Framework has supported 577 pupils at a value of £5,030,477 for year one. This represents an increase of 180 % in the number of pupils requiring the provision of alternative education from 2018/2019. The table at paragraph 3.7 below shows the demand for services from the Framework.
- 3.6 This unexpected demand for services from the Framework has exceeded forecasts and based on current demand, the initial estimated value of the Framework, which was included in the original procurement activity and notices will be exhausted by December 2020, rather than March 2023. It is estimated that if demand for call off services from ECC continues, based on the current level of demand for alternative education provision, ECC's use of the Framework will be £13,200,000.00 for the remainder of the Framework term until it expires in 2023. This estimated increase does not take into account the potential impact of Covid19 on the number of pupils requiring the provision of alternative education or any requirements for services from other contracting authorities.
- 3.7 The tables below demonstrate the growth in the number of pupils accessing the alternative education services from 18/19 to 19/20 and the associated impact on the financial requirement on the Framework in its first year. It is anticipated that this level of need and demand for services from the Framework is likely to continue until ECC's SEN and PRU capital programmes delivers the necessary increased capacity in the Essex special schools and pupil referral units (PRUS). The need for an increase in capacity has led to a programme for delivery of four new special free schools for autism and SEMH (the two areas of need driving the greatest demand and capacity deficit) and the development of a PRU estate which is fit for purpose. ECC are in discussion with the Department for Education regarding the construction of these schools and the target date for delivery is 2023



- 3.8 Essex has seen a 62.9% increase in the numbers of pupils entering PRU's since 2018. This is more than double the increase across the Eastern Region and England and will be one of the key drivers for the project linked to students who are Not in full time Education (NIFTE) project outlined at 4.6.
- 3.9 Capacity in PRU's has also been affected since April 2019 by Aspire, the West Essex PRU has been unavailable for placements due to it being placed into Special Measures by Ofsted. This has reduced the capacity in the PRU's for 19/20 by 103 places.
- 3.10 ECC, and the Schools Forum through allocated funding from the Direct Schools Grant, are committed to undertaking building works at a value of £84,000,000 on an 'invest to save' basis to increase the capacity of Essex Special Schools, Pupil Referral Units and Resourced Provisions in mainstream schools, this is in addition to a £28,000,000 investment from the Education and Skills Funding Agency (ESFA) to provide four new Special Schools across Essex. In total this investment will provide Essex with 619 places for children, with SEND and those

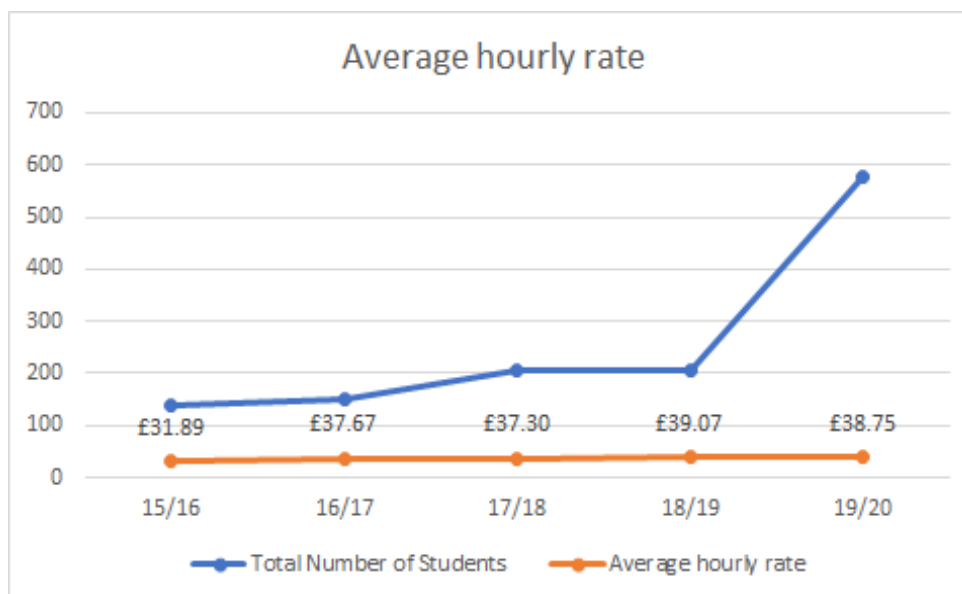
that are unable to attend school for whatever reason. This intensive programme of building and development is in progress and projected to be completed by 2023. It is expected that ECC's reliance on the Framework will reduce throughout this period, as more places become available.

3.11 The recommendations including the drawdown of £13,200,000 for IPES under the Framework will ensure that ECC can continue to meet the demand for alternative education provision until the new provision becomes available. The Framework will allow ECC to meet demand and enable ECC to continue to meet its statutory duties and to meet the following Strategic Priorities in line with the Organisation Strategy:

- Help people get the best start and age well
- Help create great places to grow up, live and work.
- Improve the Health of People in Essex
- Help people in Essex prosper by increasing their skills
- Help keep vulnerable children safer and enable them to fulfil their potential
- Improve the health of people in Essex
- Help to secure stronger, safer and more neighborly communities
- Develop the capability, performance and engagement of our young people

#### **4. Re-opening the Framework**

- 4.1 The Framework contains provision that ECC will re-open the Framework to new providers in year two for inclusion to years three and four ECC also has an overriding discretion to re-open the Framework to new providers where there is sufficient interest from new providers or there are sufficient grounds arising from a review of the Framework to merit re-opening.
- 4.2 There has been a steady growth in interest from the market to join the Framework and ECC's contracts management team are currently holding a waiting list of 27 providers.
- 4.3 It is anticipated that by increasing the number of providers on the Framework there will be a greater choice of available services and increased competition to further reduce the hourly rate which in turn will benefit the children and young people of Essex by delivering a greater variety of courses within Lot 2 for Vocational Services where choice is currently limited.
- 4.4 The chart below shows how the Framework has been successful in stabilising the hourly rate despite the number of students increasing. It is anticipated that the hourly rate will decrease further when the framework is re-opened due to increased number of suppliers and subsequent increase in competition.



- 4.5 Currently the Framework only has 2 providers in Lot 3 for Virtual services. It is anticipated that the number of providers will increase as a result of re-opening the framework, helping ECC to meet the new and unanticipated demand for these services due to Covid.
- 4.6 Re-opening the Framework in accordance with its terms, will allow ECC to increase the value of services that can be called off from the Framework. This will ensure that ECC can continue to source provision of the services required to meet its statutory duty until March 2023 whilst a re-evaluation of the alternative education provision takes place through the ECC Capital Programme and the NIFTE project, in turn, reducing the reliance on the IPES Framework. The NIFTE project is currently underway to understand, analyse and review the current system for the provision of alternative education in Essex. The NIFTE Project will help ECC understand why children are placed in alternative education provision and whether the provisions are fit for purpose and continue to meet needs in the future. The project is currently in development with a projected timescale for delivery in three years. As the NIFTE project, along with the SEN and PRU capital programme will be delivered incrementally, it is to be anticipated that demand would reduce during this timescale as individual projects are completed.
- 4.7 In view of the fact that the total spend under the Framework to date has been incurred solely by ECC, the projected value of the services to be delivered under the Framework for the remainder of the Framework term has been estimated on the current demand and spend by ECC.

## 5. Options

### **5.1 Option 1. Increase the budget of the existing framework without re-opening the framework**

#### **Benefits:**

- ECC will be able to source provision until March 2023 to meet its statutory duty whilst the wider commissioning intentions for alternative education are re-evaluated in line with the Capital Programme and NIFTE Project.
- Avoids the need for a procurement, and the associated resourcing issues.

#### **Risks:**

- The value of the Framework cannot be increased without re-opening the Framework.
- ECC will not have the opportunity to add new providers to Framework, which will impact the ability to achieve increased competition in the market, a reduction in cost and a wider variety of Education options available to support our young people.
- ECC could be unable to meet continuing demand with the existing provider base.

### **5.2 Option 2. Re-open framework to increase value and add providers – Recommended Option.**

#### **Benefits:**

- ECC will continue to meet its S19 statutory duty.
- ECC will be compliant with the Public Contract Regulations 2015 (the Regulations)
- ECC will be able to source provision until March 2023 to meet its statutory duty whilst the wider commissioning intentions for Education are re-evaluated in line with the Capital Programme and NIFTE project.
- ECC will have the opportunity to add new providers to Framework, which will result in increased competition in the market, a reduction in cost and a wider variety of Education options available to support our young people

#### **Risks:**

- Current providers on the Framework may review their pricing which may result in an increase.
- Resource implications for a Procurement on Education staff.
- Length of time taken for a procurement increases the pressure on the current allocated budget.

### **5.3 Option 3. Cease the framework and implement a different model.**

#### **Benefits**

- No need to re-procure the Framework.

### **Risks**

- Any new model will not be ready for implementation by December 2020 when the current budget is due to run out.
- Unable to make any placements with Alternative Education/Tuition Providers, without going back to Spot Purchasing and the associated risks.

## **6. Issues for consideration**

### **6.1 Financial implications**

6.1.1 The High Needs Block within the Dedicated Schools Grant funds Individual Packages of Educational Support.

6.1.2 The original funding available for the Framework was £1.7 million per year, however subsequently this has increased to £3.7 million in 2020/21, £7.8 million in 2021/22 and £8.2 million in 2022/23, so there are sufficient resources available to increase the value of the framework.

### **6.2 Legal implications**

6.2.1 There is provision in the Framework agreement for ECC to re-open the Framework to new entrants in year 2 which is a general discretion to do so subject to the conditions being satisfied. ECC are able to meet both of these criteria for the reasons set out in this report.

6.2.2 ECC has a duty under section 19(1) of the Education Act 1996 (as amended) to provide alternative education provision for children of compulsory school age that do not have access to school provision due to permanent exclusion or ill health.

6.2.3 Alternative education provision services are considered to be Light Touch for the purposes of the Public Contracts Regulations 2015 ('the Regulations') and are therefore not subject to the full rigour of the Regulations. ECC is therefore not required to procure these services using one of the procedures defined in the Regulations, provided that the procedure adopted complies with the treaty principles of transparency, equal treatment and fairness.

## **7. Equality and Diversity implications**

7.1 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.

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**

Appendix A - Equality Impact Assessment – Reference EQIA232416896

## **9. List of Background papers**

None