

Cabinet

24 January 2017



Report Title: *Specialist Commissioning Arrangements for a Sub-Regional Independent Fostering Agency Framework /Dynamic Purchasing System Tender*

Ward: *ALL*

Strategic Director: *John Readman - People*

Report Author: *Ann James – Head of Service Children in Care and Care Leavers;
Harriet Andrew – Specialist Commissioning Business Manager*

Contact telephone no. & email address *0117 3574151
ann.james@bristol.gov.uk; harriet.andrew@bristol.gov.uk*

Purpose of the report:

This report outlines progress on a sub-regional Independent Fostering Agency Framework/Dynamic Purchasing System(DPS) Tender which forms one element of Bristol's [Sufficiency Plan](#): Placements for children in care and homes for care leavers 2016-2019. The Plan was endorsed by the Children and Families Board in July 2016. Its purpose is to ensure the availability of placements of the right range and quality for children in care and care leavers in and around the Bristol area.

The placement of children in care in a foster family is the primary placement choice for the majority of children in care. In order to secure sufficient placements Bristol utilises both its in-house fostering service and the independent sector. The majority of independent fostering agency (IFA) placements are secured through a sub-regional Framework Agreement that expires on 31st March 2017. In order to continue to deliver the quality and range of placements required by children in care both in Bristol and across 6 other Local Authorities in the sub-region, Bath and North East Somerset are leading a tender that will result in a new four year Framework Agreement/DPS, effective from 1st April 2017. Children in care and care leavers are involved in setting the specification for the new contracts, helping set questions in the invitation to tender document and the evaluation of submitted bids.

This report seeks endorsement of the approaches being taken to deliver the tender and agreement to proceed to award contracts to those IFAs who meet the quality and cost criteria as set out in the tender.



Recommendation for the Mayor’s approval:

1. To agree the approaches being taken to tender for independent fostering agency placements and ancillary services as set out in this report including:
 - for the Services to be provided by those fostering agencies appointed under Framework Agreements/DPS, pursuant to individual contracts for each placement purchased from the framework/DPS;
 - the anticipated start date of the Framework Agreements/DPS to be March 2017; and
 - consultation with and involvement of children and young people to inform the tendering process.
2. To agree to carry out the Tender in partnership with six other local authorities in the northern part of the South West of England, with Bath and North East Somerset as lead authority.
3. To delegate to the Strategic Director, People, the authority to enter into Framework Agreements/DPS for the services outlined above at the end of the tender process.

The proposal:

1. Underpinned by the values outlined in Bristol’s [Corporate Parenting Strategy](#), the IFA Framework/DPS supports the delivery of Objective 5 of the Strategy:

‘Ensure enough good quality placements for children by recruiting, retaining and commissioning sufficient foster carers to offer children placement choice, to keep children placed locally and to achieve high levels of placement stability.’
2. Commissioning is increasingly recognised as the primary mechanism for delivering better outcomes, whilst using resources more efficiently. The Sufficiency Plan: Placements for children in care and homes for care leavers 2016-2019, and the commissioning of a new IFA Framework Agreement/DPS as one of the actions within that Plan, follows the corporate standard set by the Enabling Commissioning Framework. The Plan sets out how we will commission the range and number of placements required to meet the needs of the children in care and care leaver population; support the delivery of improved outcomes; and achieve value for money.
3. In order to deliver this Framework/DPS, Bristol's Specialist Commissioners are working closely with specialist commissioners in the sub-region as well as with Bristol’s Strategic Commissioning and Procurement Services.
4. Bristol’s Sufficiency Plan 2016-2019, recognises the need for a mixed economy of providers, asking Bristol to build its in-house fostering capacity to care for “teenagers, sibling groups, disabled children and children with complex behaviours”, as well as recognising the need for independent sector placements. In particular the Plan sets out the intention to use the new framework/DPS to commission ‘step down’ placements from residential to foster care for those children whose needs can be met within a family setting, thereby reducing the need for more costly out of area residential placements, the demand for which has grown over the past two years. This Framework/DPS will engender competition amongst providers and create a preferred provider list where the quality and price of such placements are assured, and a forum created to support the monitoring and scrutiny of the cost and quality of

placements. This report therefore outlines the reasons for and progress to date to commission and award a 4 year IFA Framework/DPS by 31st March 2017.

5. National and Local Context:

6. The population of Bristol is growing rapidly, most notably in the under 17 age group, which grew by 14.5% over the ten years to 2015, and those under 4 years growing even more rapidly showing an increase of 29.9% over the same period.
7. Bristol City Council faces significant financial pressure which makes it crucial that we contain the council's spend on placements for looked after children by making sure we place children in the suitable, cost effective and stable placements.
8. There is a shortage of housing in Bristol, particularly affordable housing for low-income households. This makes it hard to find housing for care leavers and impacts on the ability to recruit local foster carers with spare rooms for children in care.
9. Set against this context, Bristol's children in care population has remained relatively steady in terms of numbers. There were 675 children in care on 31st March 2016, five fewer than in March 2012. In terms of the rate of children in care per 10,000 of the under 18 population, it has reduced from 78 in 2012 to 73 in 2016. This brings Bristol's rate per 10,000 closer to the national average of 60 and below that of its statistical neighbours and the core cities, possibly reflecting the impact of prevention and early intervention work aimed at supporting more children to live successfully within their birth family. This differs from the national picture where the rate per 10,000 and number of children in care has grown in recent years.

10. Commissioning the Framework/DPS on a sub-regional basis

11. The regional consortia of councils will carry out a tender process to appoint a number of IFAs on the basis of cost, quality and the ability to deliver sufficient placements locally. The tender process will consist of inviting IFAs to submit bids to be appointed to the Framework/DPS, evaluation of those bids and award to successful bidders.
12. A framework/DPS establishes the terms and conditions, service specification and prices that will apply to the agreed provision of any services under the relevant framework agreement/DPS. Whenever the Council wishes to procure services, in this case to appoint a provider of a foster placement for a child, it will enter into a contract with that provider under the terms and conditions specified in the framework agreement/DPS. The tender process will enable the Council to achieve best value, prove equality of treatment of providers, and satisfy the obligations imposed on the Council by the Public Contracts Regulations 2006 whenever it procures services over certain thresholds.
13. There are rules within the framework agreement/DPS regarding how, when and to which organisation individual contracts will be offered. A contract for a placement is formed only when a placement is required. There is no obligation on the part of the Local Authority to offer individual contracts. This means that spend from the placement budget is committed only when placements are required and in which children are placed. Additionally, it provides flexibility for placement commissioners to seek

other specialist providers where the services needed are outside of the scope of the framework agreement, or if there are capacity issues with the providers on the framework/DPS.

14. The local authorities who have said they will enter into a partnership agreement to procure the fostering placement framework panel are:
 - i. Bath and North East Somerset
 - ii. Bristol
 - iii. Gloucestershire
 - iv. North Somerset
 - v. South Gloucestershire
 - vi. Swindon
 - vii. Wiltshire
15. There is a Participation Agreement between the seven participating local authorities that details the legal arrangements for working together to commission independent fostering agency placements.
16. Throughout the commissioning of this Framework/DPS there is a shared commitment to work with partners and the market to deliver more with fewer resources.
17. Currently in the Northern sub-region of the South West there is a Framework agreement for the delivery of IFA placements to children in the care of eight local authorities. The current Framework was led by Bristol and was the second sub-regional IFA framework that Bristol has entered into. It was awarded in April 2013 with a contract period of 3 plus 1 year. It will therefore end on 31st March 2017.
18. The Framework delivered 34 quality assured IFAs and a 'Top 10' for Bristol, assessed on grounds of quality, local delivery and price. The sub-regional contract value since April 2013 has been in excess of £22 million per annum (all local authorities). The Framework has been assessed as successful by the participating local authorities and the relationship with the market is now well developed. Mini-tenders have been run off the Framework by individual local authorities in order to ensure that the particular needs of its children in care population are met. In Bristol, this has included the development of Treatment Foster Placements.
19. Bristol's spend on IFAs has averaged £7.6 million per annum. In terms of achieving value for money, the average unit cost of a placement has reduced by 10.8% over the lifetime of the current framework. In addition to this, inflationary uplift has been avoided and discounts have been achieved through long-term placement agreements, sibling placement agreements and, cost and volume arrangements both as an individual authority and as part of the sub-region. Without a framework/DPS arrangement, Bristol's market information suggests the cost of agency placements would rise by at least 5%.
20. It is the assessment of the participating local authorities in the current Framework that to re-tender on a sub-regional basis will allow further efficiencies as a result of:
 - i. opening the market and creating competition to drive up quality, support innovation and deliver value for money through increased economy, efficiency and effectiveness
 - ii. combined tendering reducing the cost pressure of such an exercise on individual local authorities

- iii. a more efficient and cost effective tendering process for IFAs who undertake only one tendering process in which they are required to demonstrate one set of quality and performance criteria for all participating local authorities
- iv. economies of scale in terms of performance monitoring and evaluation
- v. a more coherent and robust message to IFAs about the needs of the sub-region
- vi. encouraging IFAs into the sub-region and individual local authority areas
- vii. incentivised recruitment and retention of carers able to meet the specific identified needs of each local authorities children in care, including through each local authority 'banding' its primary preferred providers within the Framework
- viii. by acting as a whole the local authorities within the sub-region benefit from scale and market share in negotiating prices

21. If Bristol is to be able to adequately meet the needs of an increasingly diverse and complex cohort of children in its care and contain its placement spend, particularly on the highest cost out of authority residential placements, it is imperative that Bristol continue to build a diverse and skilled foster care population. It will do this through the development of its in-house fostering service and excellent market management of the independent sector. A Framework/DPS tender enables Bristol to do this by communicating clearly its need for placements - both range and type. Examples of the way in which IFA placements offer greatest value include:

- i. Treatment or specialist foster placements as an alternative to children's home or residential placements
- ii. accredited local parent and child assessment placements as an alternative to residential assessments
- iii. placements for children who present a risk to themselves and others, most notably children who present a sexual risk to others
- iv. placements outside Bristol for those children assessed to be at significant risk within the City, such as those assessed as at very high risk of committing criminal offences or of being sexually exploited/abused

22. The detailed needs analysis undertaken by Bristol for the Sufficiency Plan 2016-2019 has been replicated in the 6 other participating local authorities for the purposes of the tender. This analysis forms the basis of the Market Position Statement that was published on 19th July 2016 and included in the invitation to tender published on 17th November 2016. (The full Commissioning Timetable is attached as Appendix 1). There is evidence of an increased demand for foster placements nationally and across the sub-region and, just as with Bristol, all participating local authorities are focussing on measures to contain this upward trend through improved early help and timely exit, and all aim to contain or reduce placement spend using strategies similar to those outlined in Bristol's Sufficiency Plan.

23. At a time of increased demand and reduced resources in every local authority, the new IFA Framework/DPS will contribute to Bristol's ability to deliver on the significant financial challenges currently being faced. This tender forms part of the Family Finding and Placements element of the Sufficiency Plan 2016-2019 which identifies a need to shift the balance of placement types (from residential to specialist fostering, from IFA to in-house foster care) in order to support a continued reduction in per placement spend and ensure the continued delivery of value for money. To this end, price will be given significant weighting in the tender evaluation process.

24. As with Bristol, partner local authorities have reviewed the existing Framework and considered the outcomes it has delivered. All are agreed that a Framework is currently the most effective way to ensure high quality, cost contained, local placements and that a sub-regional tender enables the participating authorities to build on recognised good practice and existing market relationships. Evidence from the Commissioning Support Programme together with market intelligence in each local authority indicates that, by acting together, local authorities can more effectively manage the market in terms of quantity, quality, range, price and proximity of provision. This is within what is already a fairly well developed mixed economy of provision and a reasonably mature placements market across the sub-region.
25. The costs of participating in the tender will be shared equally between the 7 local authorities who are committed to signing the participation agreement and using the Framework/DPS to procure IFA placements (circa £4k each paid to the lead LA).

Involving children & young people in re commissioning the Framework/DPS

26. In line with Bristol's commitment to involving children and young people in the design and establishment of the service they receive and building on past involvement, children in and leaving care will be involved in the procurement process as 'young commissioners'.
27. In addition to the direct involvement of a small group of children and young people, and consultation undertaken for the Sufficiency Plan, there is a wealth of information and views available nationally, for example from the [Office of the Children's Commissioner](#) detailing children's views and experiences of being fostered. Also, within each of the 7 participating authorities, there are participation services and surveys to elicit young peoples' views upon which we have based the service specification and key performance indicators for carers and providers.
28. Specifically in relation to this tendering exercise a group of children in care and care leavers are working with commissioners to contribute to devising the service specification (itself based on the National Fostering Contract, with variations) and parts of the tender questionnaire. Young people will score responses and make recommendation to the Officer Panel at the tender evaluation stage in December 2016.

Consultation and scrutiny input:

Scrutiny involvement is not anticipated as needed in relation to this specific report as the Sufficiency Plan – Placements for children in care and homes for care leavers 2016-2019 was previously submitted to the Corporate Parenting Panel and it was endorsed by Children and Families Board on 13th July 2016.

a. Internal consultation:

Not applicable

b. External consultation:

Market Engagement Event with IFAs – 19.07.16

Other options considered:

Do nothing - means that Bristol will revert to spot purchase arrangements with individual providers. It will risk price increases estimated, on the basis of market intelligence to be approximately 5%. Bristol will also risk a less coherent relationship with the market in which to indicate its current and future placement needs. Additional discounts secured through the Framework/DPS may be lost and quality assurance/monitoring measures would be required on an individual Bristol/IFA basis that would inevitably increase administration costs. Ultimately, Bristol may not be able to secure sufficient placements in the independent market to meet its duties and the needs of the children in care population.

Individual LA tender - may deliver similar benefits to a sub-regional IFA tender but at greater cost to Bristol and to IFAs. As detailed earlier there are a number of benefits to the economy of scale created by a sub-regional tender.

Block contracts - offer similar benefits to that of a Framework/DPS but reduces flexibility and potentially inhibits the market's ability to adapt to changing number and need. Any potential additional discounts that may be brokered by the local authority or authorities would be offset by the requirement to pay void payments. It is unlikely that the levels of placement diversity could be delivered alongside the number of placements required through sole use of block contract arrangements.

Bristol has made use of a block arrangement with one of its main IFA providers where it assessed that this supported the IFA's ability to provide sufficient placements and delivered financial benefits to the local authority.

Conclusion - No value is seen in Bristol or any other of the authorities tendering individually. Economies are achievable by authorities through individual Local Authority/Fostering Agency cost and volume arrangements.

Risk management / assessment:

FIGURE 1

The risks associated with the implementation of the (subject) decision :

No.	RISK	INHERENT RISK		RISK CONTROL MEASURES	CURRENT RISK		RISK OWNER
		(Before controls)			(After controls)		
		Impact	Probability		Impact	Probability	
	Threat to achievement of the key objectives of the report			Mitigation (ie controls) and Evaluation (ie effectiveness of mitigation).			
1	There is a risk that the Framework/DPS will not deliver sufficient placements of the type and quality required.	High	High	The IFA Framework/DPS re-tender forms just one part of a wider placements strategy that is focussed on supporting more children to live safely within their family and for those	Medium	Medium	Strategic Director

	This is a high risk because there is a recognised shortage of foster carers both locally and nationally at a time when numbers in care are increasing.			<p>children who do require local authority care, to increase the number of children living with local authority foster carers. The in-house fostering service continues to recruit and retain higher numbers of carers. It is unlikely that placements will be lost as a result of the Framework/DPS tender.</p> <p>The new Framework/DPS is likely to provide more agencies and placements than the current one. But should that not be the case, Bristol would look outside the Framework/DPS for providers as it does on occasion now.</p>			
2	There is a risk that providers will use the new tender as an opportunity to increase prices.	Medium	Medium	<p>The new Framework/DPS will be awarded on the grounds of cost and quality.</p> <p>The Framework/DPS will open the market to further competition and the potential for new providers to enter the market with more competitive pricing structures.</p> <p>Providers who do not submit competitive prices may not be awarded the contract or may not maintain a 'top banded' position on the Framework/DPS.</p>	Low	Low	
3	There is a risk of challenge (inc legal challenge) to the tender from IFAs.	Medium	Medium	<p>Participation Agreement includes a clause stating BCC will not be liable for any losses suffered by participating LAs.</p> <p>SCPS are working with Specialist Commissioning on the tender to ensure procurement regulation compliance.</p> <p>Legal advice has been obtained and oversight of the tender and all its associated documents is being provided.</p> <p>Consultation has/is being undertaken with stakeholders including providers.</p>	Low	Low	
4	An unforeseen occurrence may delay the tender publication, evaluation and contract award stages, resulting in the current Framework ending before the new contract is in place.	Medium	Medium	<p>There is a project team (rather than one person) ensuring a resilience to the delivery of the contract within timescales.</p> <p>The commissioning timetable builds in the period 3rd February to 31st March 2017 as a lead in period. Should times for tender publication, evaluation and award slip, this lead in time will be shortened to ensure contract award by 31st March 2017.</p> <p>If however, the contract could not be awarded by 31st March an approach would be made to the Chief Auditor for a waiver whilst the contract was awarded and to the market to continue under the same arrangements as the previous contract until the new Framework is delivered.</p>	Low	Low	

FIGURE 2**The risks associated with not implementing the (subject) decision:**

No.	RISK	INHERENT RISK		RISK CONTROL MEASURES	CURRENT RISK		RISK OWNER
		(Before controls)			(After controls)		
		Impact	Probability		Impact	Probability	
	Threat to achievement of the key objectives of the report			Mitigation (ie controls) and Evaluation (ie effectiveness of mitigation).			
1	Without a new Framework/DPS there is a risk that placement prices will increase	High	High	<p>Bristol could run its own Framework/DPS and continue under existing arrangements via a waiver if it did not participate in the sub-regional tender. To do so, Bristol would need to allocate suitable resource from within its strategic commissioning service.</p> <p>If this were not possible, Bristol would look to develop individual arrangements with IFAs.</p> <p>Both options will be more costly and increase the risk of failing to deliver sufficient placements.</p> <p>There is a risk however that IFA's focus on Bristol would be lessened as it would be competing with the command of the sub-region.</p>	Medium	Medium	Strategic Director
2	Without a new Framework/DPS there is a risk that the market will not understand Bristol's needs and will therefore not deliver sufficient placements.	Medium	Medium	<p>Bristol will continue to utilise its established structures to communicate with the market and will circulate, on an individual LA basis, its intelligence about the cic population and forecast needs.</p> <p>It would also negotiate prices and would seek permission to undertake a framework tender on a Bristol only basis.</p>	Low	Low	

Summary guidance on how to complete the risk assessment is available on the [Source](#)

Public sector equality duties:

Before making a decision, section 149 of the Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:

- i) eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
- ii) advance equality of opportunity between persons who share a relevant protected characteristic and those do not share it. This involves having due regard, in particular, to the need to:

- remove or minimise disadvantage suffered by persons who share a relevant protected characteristic.
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
 - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- iii) foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to tackle prejudice and promote understanding.

The service aims to tackle discrimination and promote equality for all groups.

Providers will be required to demonstrate their commitment to providing an inclusive environment that is equally effective in meeting the needs of all protected characteristics. Providers will also be required to comply with the s.149 Equality Act 2010 public sector duty to have due regard to equality objectives. Contract monitoring will include comparing outcomes for children and young people in different equality groups.

Eco impact assessment

No negative impacts are anticipated from this proposal. Positive impacts are likely to arise from reduced travel due to better provision within the Bristol area, but the significance of this is unknown.

Consulted with Steve Ransom, Environmental Programme Manager, Bristol City Council Energy Service.

Resource and legal implications:

Finance

a. Financial (revenue) implications:

The existing sub-regional Independent Fostering Agency Framework has contributed to efficiency savings in the cost of care placements through effective management of the market. The current cost pressure in the care placements budgets is attributable to the number of children in care which continues to increase. The sub-regional Framework has helped mitigate the increase cost.

The table below summarises Bristol's spend on IFA Placements.

	2012/13	2013/14	2014/15	2015/16	2016/17* Forecast	% change
Annual Spend on IFA placements	£7,381,453	£7,988,375	£7,597,147	£7,440,748	£6,960,000*	-5.7%
Number in IFA placements at 31 st March	189	192	205	203	195* Sept	+3.2%
Average weekly cost per IFA placement	£751.10	£800.12	£712.68	£704.88	£670.00	-10.8%

*year end forecast

There are significant budget pressures in the costs of Looked After Children which are included in the proposed 17/18 budget and medium term financial plan. This framework seeks to reduce the impact of those pressures by obtaining best value for money from independent foster care placements.

Advice given by Michael Pilcher / Finance Business Partner
Date 06/01/17

b. Financial (capital) implications:

Not applicable.

Advice given by Michael Pilcher / Finance Business Partner
Date 06/01/17

Comments from the Corporate Capital Programme Board:

Not applicable.

c. Legal implications:

Legal and Procurement have been advised that their proposed amendments to the ITT documentation and contract have been taken on board, therefore, provided that:

- the Lead Authority (Band & North East Somerset Council) procuring the Fostering Framework complies with the Public Contract Regulations 2015 and acts reasonably, and
- and the indemnity granted by the Council in the Participation Agreement (agreement between the local authorities participating in the framework) is on reasonable terms,

the level of risk to the Council should be low, both in relation to any procurement challenges and any potential liabilities under the Participation Agreement.

Advice given by Eileen A Waters / Locum Solicitor
Date 29/11/16

d. Land / property implications:

Not applicable

Advice given by Insert name / job title
Date Insert

e. Human resources implications:

Not applicable

Advice given by Insert name / job title
Date Insert

Appendices:**Appendix 1 – Commissioning Timetable**

Date or Target Date	Activity
17 th November 2016	ITT issued to potential suppliers
19 th December 2016 @12pm midday	Establishment of DPS (Round 1) – Return Date (Opening of next Round)
3 rd February 2017	Successfully Applicants – Notified
3 rd February 2017	Unsuccessful Applicants – Notified
1 st April 2017	Commencement Date of Contract

Appendix 2 - insert title of appendix etc.**Access to information (background papers):**