

Item No. 15.	Classification: Open	Date: 17 January 2023	Meeting Name: Cabinet
Report title:		Gateway 3 – Variation Decision Contract for the Supply of Agency Workers	
Ward(s) or groups affected:		N/a	
Cabinet Member:		Councillor Stephanie Cryan, Communities, Equalities and Finance	

FOREWORD: COUNCILLOR STEPHANIE CRYAN, CABINET MEMBER FOR COMMUNITIES, EQUALITIES AND FINANCE

There are two reports at today's Cabinet meeting regarding the council's contract for the supply of agency workers. This Gateway 3 report seeks approval of a short extension to the council's existing contract to provide sufficient time for a new procurement exercise to be undertaken. It is followed by a Gateway 1 report, which seeks approval to initiate that procurement exercise.

The council is committed to reducing its spend on agency workers and building a stable, highly-skilled permanent workforce. This is especially important given the financial pressures facing the council, which have become more significant over the last year as a result of economic turmoil and the cost of living crisis. A new agency worker reduction programme is planned, which will include targets for each directorate, enhanced scrutiny of spend on agency workers, and important initiatives to develop the talent within our permanent workforce and create more entry-level routes into professional careers at the council.

As a result of these actions, the number of agency workers we engage is expected to fall, which will in turn reduce the cost of both our existing agency worker contract and the new contract we plan to let. That being said, there will always be circumstances where the use of agency workers continues to be necessary and appropriate. Where this is the case, effective management of our agency worker contract – including regular reviews of how it is used across the council – will be essential to ensuring we achieve value for money from our agency worker spend.

RECOMMENDATIONS

That Cabinet:

1. Approves the extension of the council's contract with Comensura for a period of up to nine months starting on 1 April 2023 at an estimated maximum value of £28.4m and including a three month break clause
2. Notes this extension is required to provide time for a new procurement exercise to be undertaken

3. Notes the large majority of contract spend is passed to agencies providing temporary workers and the fee payable to Comensura is less than 1% of the total contract value.

BACKGROUND INFORMATION

4. In December 2017, the then Cabinet Member for Finance, Modernisation and Performance approved a call-off contract with Comensura Limited via a framework established by the Yorkshire Purchasing Organisation (YPO). This was for an initial contract period of three years starting on 1 April 2018 and ending on 31 March 2021.
5. In February 2021, Cabinet approved a one year extension of the contract until 31 March 2022 via a Gateway 3 report. Subsequently, the then Cabinet Member for Finance, Performance and Democracy approved a further one year extension of the contract until 31 March 2023 via another Gateway 3 report.
6. Under the terms of the contract, Comensura are not responsible for directly providing agency workers to the council; rather, they manage a supply chain of agencies who are able to provide temporary workers who meet the council's requirements.

KEY ISSUES FOR CONSIDERATION

Key aspects of the proposed extension

7. The estimated value of the contract awarded to Comensura in 2017 was £60m for a period of three years – ie. £20m per annum. However, actual contract spend has been higher than this estimate. Further details are provided in the financial implications at paragraphs 27 to 32. The estimated maximum cost of the proposed contract extension is £28.4m.
8. There are a number of reasons why contract spend has been higher than initially estimated. These include:
 - the engagement of additional agency workers to support the council's Covid-19 response in 20/21 and 21/22
 - ongoing challenges recruiting and retaining qualified social workers, occupational therapists and other professional staff
 - the need to respond rapidly to new regulatory requirements arising from the Building Safety Act 2022.

9. The council is committed to reducing its spend on agency workers and building a stable, highly-skilled permanent workforce. This reflects the council's value "spending money as if it were from our own pocket" since it is often more expensive to engage an agency worker rather than hire a permanent employee. As a result, officers are establishing an agency worker reduction programme, which will include:
 - the development of dedicated action plans and targets for each directorate
 - enhanced scrutiny of all agency worker assignments that last longer than 12 months or cost more than £200 per day
 - a review of the council's approach to permanent recruitment, including a redesign of the council's employer brand and offer to employees
 - enhanced access to secondments and other similar development opportunities for existing employees
 - greater use of apprenticeships, internships and work placements to create entry-level routes into professional careers at the council.
10. The implementation of this programme is expected to deliver a material reduction to the council's spend on agency workers from 23/24 onwards. Nevertheless, there will always be circumstances where the use of agency workers continues to be necessary or appropriate – for example, where the council requires access to specialist skillsets for a defined period of time, or where there is a short-term peak in demand for a service.
11. While contract spend has been higher than initially estimated, Comensura have met the standards required by the council and there have been no significant performance issues.

Rationale for the proposed extension

12. The council's contract with Comensura is due to expire on 31 March 2023. The proposal to extend the contract by up to nine months, including a three month break clause, is required to provide sufficient time for a new procurement exercise to be undertaken. The maximum duration of this extension includes some contingency in case there is any slippage with or challenge to the new procurement process. The inclusion of a break clause will allow the contract to be ended in advance of its maximum duration so long as the council provides Comensura with three months' notice.

Future proposals for the service

13. In August 2022, an options appraisal was completed to assess the council's ongoing requirement for agency workers and the best approach to sourcing this service. The outcome of the options appraisal is addressed in a separate Gateway 1 report.
14. The anticipated timeline for a new procurement exercise to be undertaken is as follows:

Activity	Complete by:
Cabinet approval of a Gateway 1 report (proposed procurement strategy)	17 January 2023
Evaluation of tenders to be completed	22 February 2023
Approval of a Gateway 2 report (proposed contract award)	14 March 2023
End of scrutiny call-in period and notification that the Gateway 2 decision may be implemented	22 March 2023
Debrief notice and standstill period	3 April 2023
Contract award	3 April 2023
Service delivery commences	1 July 2023

Alternative options considered

15. The primary alternative to extending the council's contract with Comensura is to run a new procurement exercise. However, it would not be possible to procure and transition to a new supplier by the contract end date of 31 March 2023.

Identified risks to the proposed extension

16. The following risks have been identified and assessed:

Risk no.	Risk identified	Risk level	Mitigation
R1	Challenge to a further extension of the contract	Low/ Medium	The council will ensure the extension is in accordance with the terms of the YPO framework. YPO have confirmed that they do not object to this extension. The only reason for seeking an extension is to provide sufficient time for a new procurement exercise to be undertaken.

Risk no.	Risk identified	Risk level	Mitigation
R2	Supplier ceases to trade	Low	YPO regularly complete credit checks to ensure all framework suppliers, including Comensura, are on a sound financial footing. In addition, the council may choose to conduct further credit checks to provide additional assurance.

Contract management and monitoring

17. The council has well-established arrangements in place to manage the performance of this contract, including ongoing review of management information, quarterly contract review meetings, and an annual review meeting with Comensura's managing director.
18. Annual performance reports are presented and considered in line with the requirements of the council's Contract Standing Orders.
19. Comensura have met the standards required by the contract and there have been no significant performance issues.

Community, equalities (including socio-economic) and health impacts

20. Under section 149 of the Equality Act 2010, the council has a duty when exercising its functions to have due regard to:
 - the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
 - the need to advance equality of opportunity between persons who share protected characteristics and those who do not
 - the need to foster good relations between those who have protected characteristics and those who do not.
21. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
22. The proposed extension of the council's contract with Comensura is not anticipated to adversely impact on any of the duties defined in the Equality Act 2010.

Climate change implications

23. There are no climate change implications arising from the proposals set out in this report.

Social value considerations

24. Under the Public Services (Social Value) Act 2012, before commencing a procurement process, the council is required to consider how wider economic, social and environmental benefits may be secured. The social value considerations associated with the proposed contract extension are set out at paragraphs 25 and 26 below.

Economic and social considerations

25. The council's contract with Comensura has delivered tangible economic and social benefits, as follows:
 - Comensura has established a successful partnership with Southwark Works, which enables residents who are looking for a job to access temporary opportunities at the council.
 - Comensura has partnered with agencies in its supply chain – notably, Venn Group – to deliver workshops on CV writing and interview skills to over 300 residents.
 - Every year, Comensura has supported at least 30 agency workers to convert to permanent roles at the council. In the last financial year, 21/22, a total of 100 agency workers were appointed to a permanent job.
 - All agency workers supplied to the council, and the provider's own employees, are paid at least the London Living Wage.
 - In the last year, Comensura has created two new apprenticeship opportunities.

Environmental considerations

26. There are no significant environmental considerations arising from the proposals set out in this report.

Financial implications

27. This report seeks the approval of Cabinet for a further nine month extension (with a three month break clause) to the council's existing five year contract (3 + 1 + 1 years) with Comensura based on existing terms and conditions and commencing on 1 April 2023.

28. Under the council's current arrangements, payments are made to Comensura on a weekly basis following receipt of an invoice, which comprises both the cost of agency workers and contractual fee elements (sums payable to Comensura and the charge collected by Comensura on behalf of the framework provider, YPO). The large majority of contract spend is passed to the agencies who are providing temporary workers to the council. The fee payable to Comensura is for their supply chain management and software support.
29. Payments made to Comensura since 1 April 2018 are set out in the table below, along with the estimated maximum spend that will be incurred as a result of the proposed contract extension.

Year	Expenditure (£) (a)
2018-19	22,815,947
2019-20	27,350,945
2020-21	30,846,181
Total initial three year contract	81,013,073
2021-22	34,040,334
2022-23 (b)	38,872,353
Total contract spend to 31 March 2023	153,925,760
April 23 – December 23 (c)	28,389,314
Revised contract total including extension	182,315,074

- (a) Excludes internal recharges
- (b) Based on actuals to week 30 and projections for week 31 – 52
- (c) Based on average cost per working day (Aug. 22 – Oct. 22) x working days within the extension period of up to nine months
30. All costs incurred during the contract period will be met from existing business unit resources in line with current arrangements.
31. The council expects to reduce its spend on agency workers and officers are establishing an agency worker reduction programme, which will include the development of dedicated action plans and targets for each directorate.
32. There are no capital implications arising from the proposals in this report.

Legal implications

33. Refer to the concurrent provided by the Director of Law and Governance at paragraphs 38 to 43.

Consultation

34. There is no requirement to consult on the proposals in this report.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Head of Procurement

35. This report seeks approval from Cabinet to vary the council's contract with Comensura for a period of up to nine months starting on 1 April 2023 at an estimated maximum value of £28.4m and including a three month break clause. The maximum total spend through the contract is estimated to be £182.3m.
36. Cabinet should note the reasons for the variation are addressed at paragraph 12, the future of the service is addressed at paragraphs 13 and 14, the risks are addressed at paragraph 16, management and monitoring of the contract is addressed at paragraphs 17 to 19, the impact on equalities, health and climate change is addressed at paragraphs 20 to 23, and social value is addressed at paragraphs 24 to 26.
37. All agency workers supplied to the council as part of this contract, and the provider's own employees, are paid at least the London Living Wage.

Director of Law and Governance

38. This report seeks Cabinet approval to a variation of the agency worker contract which is being performed by Comensura Limited. Paragraphs 7 to 12 of this report set out the key aspects of the variation and the reasons why an extension is required.
39. Regulation 72 of the Public Contract Regulations 2015 (PCR 2015) permits modification to be made to contracts during their term in certain circumstances. This includes at regulation 72(1)(e) where the modification, irrespective of its value, is not substantial within the meaning of regulation 72(8).
40. The proposed modification of the council's agency worker contract is not considered substantial within the meaning of regulation 72(8) because the modification would not:
 - render the contract materially different in character from the one initially concluded
 - extend the scope of the contract considerably
 - have allowed other potential suppliers to participate or be selected or another tender to be accepted

41. Having considered the circumstances noted at regulation 72(8) for modifications which are considered substantial, it is considered that the agency worker contract can be modified under this provision.
42. Cabinet is advised that when relying on any grounds for exemption from the requirements of the PCR 2015, there is a potential risk of challenge on the basis that the council does not have sufficient grounds to justify extending the contract further. However, given that the modification is not substantial within the meaning of regulation 72(8), coupled with the fact that the council is in the process of re-tendering its agency worker contract as highlighted in the body of this report, it is considered that the risk of challenge is manageable.
43. The council's Contract Standing Order 2.3 requires that no steps are taken to vary a contract unless the expenditure involved has been included in approved revenue or capital estimates, or is otherwise approved by the council. Paragraph 30 of this report confirms how the proposed additional expenditure will be resourced.

Strategic Director of Finance and Governance (FC22/050)

44. This report requests approval from Cabinet for the extension of the council's contract with Comensura for a period of up to nine months starting on 1 April 2023 at an estimated maximum value of £28.4m and including a three month break clause. Full details are contained within the main body of the report.
45. The financial implications (paragraphs 27 to 32) provide details of the estimated value of the contract extension. The Strategic Director of Finance and Governance notes that the cost of the contract extension will be met from existing business unit resources in line with current arrangements.
46. Staffing and any other costs associated with the proposals in this report will be contained within existing departmental revenue budgets.

BACKGROUND DOCUMENTS

Background Document	Held by and Contact
Gateway 2 – Contract Award: Contract for the Supply of Agency Workers (18 December 2017)	Southwark Council Ben Plant ben.plant@southwark.gov.uk
Link: https://moderngov.southwark.gov.uk/documents/s66999/Report%20Gateway%202%20Contract%20award%20approval%20-%20managed%20service%20provider%20for%20agency%20staff.pdf	
Gateway 3 – Variation Decision: Contract for the Supply of Agency Workers (2 February 2021)	Southwark Council Ben Plant ben.plant@southwark.gov.uk
Link: https://moderngov.southwark.gov.uk/documents/s93374/Report%20Gateway%203%20-%20Variation%20Decision%20Extension%20of%20the%20Agency%20Worker%20contract.pdf	
Gateway 3 – Variation Decision: Contract for the Supply of agency Workers (1 March 2022)	Southwark Council Ben Plant ben.plant@southwark.gov.uk
Link: https://moderngov.southwark.gov.uk/documents/s105702/Report%20Gateway%203%20-%20Extension%20of%20the%20Agency%20Worker%20contract.pdf	

APPENDICES

No.	Title
None	

AUDIT TRAIL

Cabinet Member	Councillor Stephanie Cryan, Communities, Equalities and Finance	
Lead Officer	Althea Loderick, Chief Executive	
Report Author	Ben Plant, Director of HR and Organisational Development	
Version	Final	
Dated	6 January 2023	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Head of Procurement	Yes	Yes
Director of Law and Governance	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Contract Review Boards		
Directorate Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team	6 January 2023	