

Item No. 16.	Classification: Open	Date: 17 January 2023	Meeting Name: Cabinet
Report title:		Gateway 1 – Procurement Strategy Approval: 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 1 report seeks approval to commence the procurement process for a new agency worker contract. Elsewhere on the agenda is a Gateway 3 report, which seeks approval to a short extension of our existing contract while this procurement process takes place.

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 the new contract proposed in this report. That being said, there will always be circumstances where the use of agency workers continues to be necessary and 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. The procurement strategy outlined in this report has been designed to ensure the council selects a provider who can meet our core requirement – the effective supply of agency workers – while offering competitive market rates that represent value for money and, critically, delivering their service in line with the council’s social value expectations.

We want to encourage greater use of local recruitment agencies, including those that are Black, Asian or Minority Ethnic led. In addition, our incumbent supplier has supported the delivery of employment and training programmes, and also developed a successful relationship with Southwark Works, enabling residents who are looking for a job to access temporary opportunities at the council. The specification we publish to support this new procurement process will include a

clear requirement to both maintain these aspects of the existing service and, importantly, develop them further so we continue to maximise the social value that can be achieved through the council's agency worker spend.

RECOMMENDATIONS

That Cabinet:

1. Approves the proposal to let a new contract for the supply of agency workers via Lot 1 of the Eastern Shires Purchasing Organisation (ESPO) framework Managed Services for Temporary Agency Resources (MSTAR3) for a period of three years with the option to extend for up to two years in one year increments, making a total estimated maximum contract value of £190.5m inclusive of the extensions
2. Notes the large majority of contract spend will be passed to agencies providing temporary workers and the fee payable to the successful supplier is expected to be 1% or less of the total contract value
3. Delegates authority to the Chief Executive to approve the contract award to the successful supplier in consultation with the Cabinet Member for Communities, Equalities and Finance

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. A Gateway 3 report recommending an additional extension for a maximum period of nine months will be put before Cabinet on 17 January 2023. The purpose of this extension is to provide sufficient time to let a new contract in line with the procurement strategy outlined in this report.
7. Under the terms of the existing 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.

Summary of the business case/justification for the procurement

8. 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.
9. 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.

Market considerations

10. Most local authorities use a managed service provider (MSP) to supply the agency workers they require. These providers are typically procured via framework agreements established by professional buying groups, most notably the Eastern Shires Purchasing Organisation (ESPO) or the Yorkshire Purchasing Organisation (YPO).
11. Most MSPs operate one of the following two business models:
 - Neutral vendor: The MSP does not directly provide agency workers; rather they manage a supply chain of agencies on the council's behalf. This is the model that applies to the council's existing contract with Comensura.
 - Master vendor: The MSP directly provides agency workers to the council; they may also manage a supply chain for the purpose of sourcing agency workers they cannot provide directly.

12. There are a number of providers operating neutral or master vendor business models, or both, who are able to meet the council's requirements. These providers are all accessible via frameworks.

KEY ISSUES FOR CONSIDERATION

Options for procurement route including procurement approach

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 following options were considered:

Option	Summary appraisal
1. Do nothing	This is not a viable option. While the council is committed to reducing its spend on agency workers, 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.
2. Establish an in-house agency	This is not a viable option. The council does not have the necessary status within the market to operate an in-house agency and attract all of the candidates who are needed to meet the council's requirements. The cost of establishing an in-house agency is estimated at approximately £400,000 per annum, which exceeds the estimated fee payable to an MSP. Even if an in-house agency was established, it is highly likely that it would also be necessary to establish a supply chain for the purpose of sourcing agency workers the council could not attract directly.
3. Competitive tender	This is a viable option. However, it is unlikely to deliver a better outcome than use of a framework established by a professional buying organisation.
4. Use of a framework: direct award to Comensura	This is a viable option. The council could make a direct award to its existing provider, Comensura, using either an ESPO or YPO framework. However, the council would forego the opportunity to assess the current market and seek to achieve savings on the cost of the existing contract.

Option	Summary appraisal
5. Use of a framework: further competition via ESPO	<p>This is a viable option. The council could run a further competition via the ESPO framework Managed Services for Temporary Agency Resources (MSTAR3). This agreement is commonly used by London councils. Lot 1 of the framework includes:</p> <ul style="list-style-type: none"> • ten suppliers who operate a neutral vendor business model • ten suppliers who operate a master vendor business model • six suppliers who operate both business models <p>The large number of London councils using this framework creates opportunity for collaboration with other boroughs, which could generate improved service delivery and/or financial benefits.</p>
6. Use of a framework: further competition via YPO	<p>This is a viable option. The council could run a further competition via the YPO framework Managing Temporary Recruitment for Local Authorities. This agreement is used by five London councils. Lot 1 of the framework includes fifteen suppliers who operate a mixture of neutral and master vendor business models. However, the limited use of this framework within London means it does not present the same opportunities for collaboration as the ESPO agreement.</p>
7. Use of a framework: direct award via London Collaboration call-off from the ESPO agreement	<p>This is a viable option. A collaboration of London councils led by Havering has run a further competition via the ESPO MSTAR3 agreement. Two suppliers were procured:</p> <ul style="list-style-type: none"> • neutral vendor business model: Matrix SCM • master vendor business model: Adecco <p>However, these providers are only available on an “off the shelf” basis – in other words, the council would have to contract with either provider using the specification developed by Havering; it would not be possible for the council to let a contract on the basis of its own specification.</p>

14. As a result of the options appraisal, the recommended approach is option 5: a further competition via the ESPO MSTAR3 framework agreement. This option is preferred because it:

- allows the council to run a competitive procurement process
- creates opportunity to collaborate with other London councils

- enables the council to let a contract on the basis of its own specification

15. None of the other options provide all three of these benefits.

Proposed procurement route

16. It is proposed to run a further competition via Lot 1 of the ESPO MSTAR3 framework agreement. All of the suppliers on this lot will be invited to participate in the further competition. This includes suppliers who operate master and neutral vendor business models, and both. Suppliers will be assessed against a specification using method statements focused on quality of service delivery and qualitative questions focused on price.
17. The MSTAR3 framework went live on 11 April 2019 and is due to expire on 10 April 2023. The terms of the agreement allow local authorities to call-off from the framework for up to four years. A call-off contract may be let any time up until the date the MSTAR3 framework expires. ESPO has confirmed that so long as a contract is signed by 10 April 2023, service delivery may commence at a later date.
18. MSTAR3 was established in line with the Public Contract Regulations 2015 and procured via the restricted procedure.
19. The steps that will be taken to select a successful provider are as follows:
- development of a specification, pricing documents and an evaluation matrix, which will be organised on the basis of 51% quality, 34% price and 15% social value
 - publication of documentation and invitation for providers to bid
 - evaluation of bids
 - contract award
 - transition to commencement of services via the new contract
20. Under the terms of the MSTAR3 framework, there is no requirement to award a contract if all bids fail to meet the council's threshold for price or quality, although this outcome is considered unlikely: see the risk table at paragraph 21.

Identified risks for the procurement

21. The following risks have been identified and assessed:

Risk no.	Risk identified	Risk level	Mitigation
R1	Challenge to the procurement outcome	Low	The council will adhere to the requirements of the MSTAR3 framework.
R2	Inadequate quality of submissions	Low	ESPO has completed robust due diligence on all of the providers included on the MSTAR3 framework.
R3	Procurement process is delayed	Low	The council is robustly project managing the procurement process. In addition, an extension to the council's existing contract with Comensura will create some contingency in case there is any slippage in the process.
R4	Supplier ceases to trade	Low	ESPO regularly complete credit checks to ensure all MSTAR3 suppliers remain on a sound financial footing. In addition, the council may choose to conduct further checks to provide additional assurance.
R5	Contract award is delayed beyond 10 April 2023	Medium	Under the terms of the MSTAR3 agreement, the call-off contract must be signed by 10 April 2023 although service delivery may commence at a later date. The procurement project plan (set out at paragraph 26) includes a target date of 3 April 2023 for completing the contract award. The call-off contract has already been reviewed by the council's legal contracts team.

Key/Non-key decision

22. This report represents a key decision because the proposed contract value exceeds £500,000. In addition, the council's protocol on key decisions states that agreement to commence a strategic procurement should always be treated as a key decision.

Policy framework implications

23. The council's workforce – both permanent and temporary – plays a critical role in delivering essential public services and enabling the achievement of priorities and commitments in the Council Delivery Plan.

24. Over the period of this contract, the council expects to achieve a material reduction in its annual spend on agency workers as a result of implementing a comprehensive agency worker reduction programme. 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.
25. 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.

Procurement project plan

26. Key milestones in the procurement of this contract are as follows:

Activity	Complete by:
Gateway 1 decision (proposed procurement strategy) entered on the Forward Plan	30 November 2022
Gateway 1 proposal considered by the Directorate Contract Review Board	30 November 2022
Gateway 1 proposal considered by the Corporate Contract Review Board	8 December 2022
Cabinet Member briefed on Gateway 1 proposal	20 December 2022
Notification of forthcoming Gateway 1 decision published	1 December 2022
Approval of Gateway 1 report	17 January 2023
Completion of tender documentation	17 January 2023
Closing date for return of tenders	7 February 2023
Completion of any clarification meetings, presentations and evaluation interviews	N/A – none planned
Completion of evaluation of tenders	22 February 2023
Gateway 2 decision (proposed procurement strategy) entered on the Forward Plan	30 November 2022
Gateway 2 proposal considered by the Directorate Contract Review Board	27 February 2023
Gateway 2 proposal considered by the Corporate Contract Review Board	2 March 2023
Notification of forthcoming Gateway 2 decision published	1 December 2022
Approval of Gateway 2 report	14 March 2023

Activity	Complete by:
End of scrutiny call-in period and notification that Gateway 2 decision may be implemented	22 March 2023
Debrief notice and standstill period	3 April 2023
Contract award	3 April 2023
Addition of contract to the council's contract register	3 April 2023
TUPE consultation to commence, if required (see paragraphs 27 and 28)	3 April 2023
Award notice placed on Find a Tender service	10 April 2023
Award notice placed on Contracts Finder service	10 April 2023
Service delivery commences	1 July 2023
Initial contract completion date	3 April 2026
Contract complete date if extension(s) exercised	3 April 2027 or 3 April 2028

TUPE/Pension implications

27. It is possible that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply should there be a change in service provider as a result of this procurement. Appropriate due diligence will be conducted before the procurement process commences. Suppliers will be advised of the outcome of this due diligence in the council's tender documentation.
28. There are no TUPE implications for the council as an employer.

Development of the tender documentation

29. The HR service will lead the development of the council's tender documentation, drawing on input from stakeholders across the council. This documentation will reflect the council's specific requirements for the service in addition to the core specification that is already in place as part of the MSTAR3 framework agreement.
30. The MSTAR3 framework includes pre-determined terms and conditions, accepted by each provider on the framework, which may be amended to reflect the specific requirements of the council.

Advertising the contract

31. It is not necessary to advertise the contract: this was done by ESPO when the framework was initially established. In line with the requirements of the framework, every provider on Lot 1 will be invited to submit a bid.

Evaluation

32. Providers will be evaluated on the basis of 51% quality, 34% price and 15% social value. The timely, high quality supply of agency workers is essential to the council: slow or poor quality supply could have an adverse and immediate impact on the delivery of essential services. Providers on the MSTAR3 framework have already had to demonstrate competitive pricing to secure their place on the framework. However, the council's further competition may drive down price further.
33. An evaluation matrix will be developed to assess each bid against the council's specification. The evaluation process will be undertaken by a panel of internal stakeholders including both strategic and operational managers.

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

34. 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
35. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
36. The proposal to let a new contract for the supply of agency workers is not anticipated to adversely impact on any of the duties defined in the Equality Act 2010.

Health implications

37. There are no significant health implications arising from the proposals set out in this report.

Climate change implications

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

Social value considerations

39. Before commencing a procurement process, the council is required by the Public Services (Social Value) Act 2012 to consider how wider economic, social and environmental benefits may be secured. The social value considerations associated with the proposed procurement exercise are set out at paragraphs 40 and 41.

Economic and social considerations

40. The council's incumbent provider has supported the delivery of employment and training programmes, and developed a successful partnership with Southwark Works, enabling residents who are looking for a job to access temporary opportunities at the council. The specification for this new contract will include a clear requirement to maintain and build on these important aspects of the existing service. In addition, the provider will be required to ensure that all agency workers supplied to the council, and the provider's own employees, are always paid at least the London Living Wage.

Environmental and sustainability considerations

41. There are no significant environmental considerations arising from the proposed procurement exercise.

Contract management and monitoring

42. The council has well-established arrangements in place to manage the performance of this contract. The approach to managing the existing provider includes ongoing review of management information, quarterly contract review meetings, and an annual review meeting with the provider's managing director.
43. Annual performance reports will be presented and considered in line with the requirements of the council's Contract Standing Orders.

Staffing/procurement implications

44. This procurement exercise will be managed within existing resources.

Financial implications

45. This report seeks Cabinet approval of the proposed procurement strategy outlined in the body of the report.
46. The maximum value of the initial three year contract, with service delivery commencing on 1 July 2023, equates to an estimated £114.3m based on the council's existing use of agency workers. If the contract is extended for a further two years, the maximum value of the contract will increase to an

estimated £190.5m over the total five year period. Further information is provided in the table below.

Year	Expenditure (£m) (a) (b)
2023-24 (July 23 – March 24)	29.0
2024-25	38.1
2025-26	38.1
2026-27 (April – June 26)	9.1
Total initial three year contract	114.3
2026-27 (July 26 – March 27)	29.0
2027-28	38.1
2028-29 (April – June 28)	9.1
Revised contract total including extension	190.5

(a) *Excludes internal recharges*

(b) *Based on average cost per working day (Aug. 22 – Oct. 22) x working days within the contract period*

47. While an estimated maximum contract value is set out above, it should be noted that:
- There is no minimum contract value.
 - Costs are dependent on demand and business units' usage.
 - All costs incurred during the contract period will be met from existing business unit resources in line with current arrangements.
48. It is anticipated that under the MSTAR3 framework, payment arrangements would remain unchanged from those currently in effect, which are:
- Payments are made to the managed service provider (MSP) on a weekly basis following receipt of an invoice, which comprises the cost of agency workers, a contractual fee element payable to the MSP, and the charge collected by the MSP on behalf of the framework provider.
 - All costs are charged to departments with the addition of a 10% internal charge.
49. There are no capital implications arising from the proposals in this report.

Legal implications

50. Refer to the concurrent provided by the Director of Law and Governance at paragraphs 54 to 59.

Consultation

51. There is no requirement to consult on the proposals set out in this report.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Head of Procurement

52. This report seeks approval from Cabinet to procure a contract for the supply of agency workers using Lot 1 of the ESPO framework Managed Services for Temporary Agency Resources (MSTAR3), which is allowable under the Public Contract Regulations 2015 and the council's Contract Standing Orders. The procurement is for a period of three years with the option to extend by a further two years in one year increments. The estimated maximum contract value including extensions is £190.5m. The majority of this spend will be passed to agencies providing temporary workers and the fee payable to the successful supplier is expected to be 1% or less of the total contract value.
53. Cabinet should note the procurement route is addressed at paragraphs 13 to 20 and 29 to 31, the risks are addressed at paragraph 21, the impact on equalities, health and climate change are addressed at paragraphs 34 to 38, confirmation of social value and payment of the London Living Wage is addressed at paragraphs 40 and 41, and the management and monitoring of the contract is addressed at paragraphs 42 and 43.

Director of Law and Governance

54. This report seeks Cabinet approval to the use of the ESPO framework Managed Services for Temporary Agency Resources (MSTAR3) for a three year contract with the option to extend by a further two years in one year increments.
55. Cabinet is requested to note that while the total estimated maximum value of the contract is £190.5m, the majority of the contract spend will be passed to agencies providing temporary workers and the fee payable to the successful supplier is expected to be 1% or less of the total contract value.
56. This report also seeks Cabinet approval to delegate the Gateway 2 contract award decision to the Chief Executive in consultation with the Cabinet Member for Communities, Equalities and Finance.
57. The nature and value of these services are such that they are subject to the tendering requirements of the Public Contracts Regulations 2015 (PCR). However, the ESPO framework was established following a PCR compliant

tendering process and the council is a party able to use the framework. The ESPO framework may therefore be used by the council without the need to advertise the opportunity on the Find a Tender service.

58. As noted in paragraph 16 of the report, a further competition will be followed and every supplier on Lot 1 of the ESPO framework will be invited to bid. Bidders will be evaluated on the basis of 51% quality, 34% price and 15% social value, as detailed in paragraphs 19 and 32 of the report.
59. Cabinet's attention is drawn to the Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010, which requires public bodies to have due regard, when making decisions, to the need to eliminate discrimination, harassment, victimisation or other prohibited conduct, advance equality of opportunity, and foster good relations between persons who share a relevant protected characteristic and those who do not share it. Cabinet is specifically referred to the community, equalities (including socio-economic) and health impacts at paragraphs 34 to 37 of the report setting out the consideration that has been given to equality issues.

Strategic Director of Finance and Governance (FC22/049)

60. This report requests Cabinet approval to let a new contract for the supply of agency workers via Lot 1 of the ESPO framework Managed Services for Temporary Agency Resources (MSTAR3). Details and background are contained within the main body of the report.
61. The financial implications (paragraphs 45 to 49) provide an estimated value of the contract based on the council's existing use of agency workers. The Strategic Director of Finance and Governance notes that there is no minimum contract value, and expenditure on this contract will be dependent on the demand from business units and available funding.
62. 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, Cabinet Member for 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