

13 September 2023		ITEM: 11
		Decision: 110665
Cabinet		
Re-Procurement of Contract - Managed Services for Temporary Agency Resources		
Wards and communities affected: All	Key Decision: Key – Spending above £750k	
Report of: Cllr Graham Snell - Portfolio Holder for Finance, HR and Payroll		
Accountable Assistant Director: Wendy Jackson – Interim Strategic Lead HR, Resourcing & Improvement		
Accountable Director: Jackie Hinchliffe - Director of HR, OD and Transformation		
This report is Public		

Executive Summary

This report sets out the options and recommendations for the re-procurement of the Council's agency worker contract.

Since 2011 the Council has worked with a 'Managed Service Provider' (MSP) for the provision of its agency resources. This model was procured as it realised best value for the Council with significant cost reductions and ensured a consistent approach to the management of good quality agency workers. The contract was originally awarded to Comensura as MSP in 2011, then following mini competition was awarded to Matrix SCM in December 2015 who have remained the Council's MSP to date.

The current service model of 'neutral vendor' MSP provides the best mix of cost certainty, ability to include local agencies and tier specialist providers for hard to recruit positions. The current contract performance has been good with consistent pricing, cost reductions and useful management information - however the contract expires on 15 December 2023 and this creates an opportunity to consider alternative arrangements to be in place by this date to ensure continuity of agency worker provision of suitable quality and for best value.

The re-procurement must be considered in the context of the Council's current position, having issued a Section 114 Notice as it was unable to balance the budget, its financial position is unprecedented and Government support will be required for many years. There are considerable concerns over the governance and scrutiny of strategic decision making, performance management and the pace of change and transformation. In this challenging content it is essential the Council retains the ability

to attract specialist skills and capacity needed to drive improvement and the agency workforce will be a key part of this.

Spend on agency workers will remain unavoidable as there is an ongoing requirement for a flexible workforce. It is critical that this is procured in a way that ensures the Council gets best value for money, continues to make tangible cost reductions and keeps the process of procuring agency workers as streamlined as possible.

The value and nature of this contract requires full compliance with EU Procurement Directives and as such this report sets out options for the re-procurement through either the Eastern Shires Purchasing Organisation (ESPO) MSTAR4 Framework 653F_23 (Managed Services for Temporary Agency Resources) or direct award to Essex County Council through the use of their DPS (Dynamic Purchasing System) and through the utilisation of ECC Recruitment Team.

1. Recommendations

Cabinet is asked to:

- 1.1 Agree to progress the re-procurement of an agency worker contract using the ESPO MSTAR4 Framework 653F_23 or direct award to Essex County Council through the use of their DPS (Dynamic Purchasing System) and through the utilisation of ECC Recruitment Team.
The new contract to commence on 15 December 2023, for a period of three years with an option to extend for one year.**
- 1.2 Approve delegation to award to the Director of HR, OD and Transformation in consultation with the Chief Finance Officer and Portfolio Holder in order to ensure maximum lead in time should service transfer be necessary.**

2. Introduction and Background

- 2.1 The current model and contract that the Council has in place for the provision and management of agency worker resources is a neutral vendor 'Managed Service Provider' (MSP), currently Matrix SCM with the contract due to expire 15 December 2023. The current contract was awarded in 2015 following a mini-competition exercise undertaken through the Eastern Shires Purchasing Organisation (ESPO). The current contract is unable to be extended further.
- 2.2 The provision of cost effective and quality agency workers is critical to enabling the Council to use resources effectively alongside its existing permanent and fixed-term staff.
- 2.3 Prior to the current arrangements, back in 2010 the Council allowed managers to liaise directly with recruitment agencies to source agency workers. This option was high risk and high cost as in many cases the terms and conditions and margins agreed with the agencies were up to 30%.

Around 45 different agencies were being used at that time, requiring 45 different invoices, timesheet systems which led to a high administrative burden and an ineffective use of resource with spend in the region of £9million.

- 2.4 The lack of an overarching corporate contract also meant it was difficult to accurately forecast the amount being spent on agency workers and the transparency of information on total Council spend was resource intensive, including for FOI requests.
- 2.5 The decision to move forward with a MSP model was made to ensure value for money, to ensure legislative requirements were met and a consistent approach taken by Directorates in engaging agency workers. This also allowed the ability to provide detailed management information to ensure the effective management of spend across the Council.

Agency Staff Spend and Usage

- 2.6 Spend on agency workers in each financial year since 2015/16 is shown in table 1 below. Spend on agency workers by directorate since 2015 is included at appendix 1.

Financial Year	Total Spend (£)
2015/16	8,350,656
2016/17	9,828,491
2017/18	9,233,500
2018/19	8,348,373.42
2019/20	9,357,547.64
2020/21	8,348,373.42
2021/22	11,281,668.74
2022/23	13,129,650

Table 1 - Agency spend FY 2015/16 to 2022/23

- 2.7 An increase in salary costs and on-costs (circa 30%) including statutory costs in line with AWR (Agency Worker Regulations) since the start of the MSP contract is a major factor for increased expenditure. The reduction in spend in 2020/21 reflected the reduction of agency worker resources during the initial Covid lockdowns.
- 2.8 Restrictions on recruitment of permanent and fixed-term staff from 2021 onwards, initially due to Covid then due to the S114 Notice, has resulted in additional agency resource filling critical workforce needs.
- 2.9 There are also several posts that were either externally grant funded or income generating, that provides some mitigation on actual spend including NATIS which is fully income generating and was primarily resourced through agency. In the Place directorate there were several senior roles that were Capital funded.

- 2.10 The use of Agency Workers has decreased in some areas due to efforts being made to control and reduce the usage through permanent recruitment, the provision of internal bank (casual) staff arrangements and scrutiny at recruitment panels to ensure roles are only being covered if they deliver a statutory service or roles to build capacity due to organisational change.
- 2.11 However, there will remain a need for an agency arrangement to meet peaks and troughs in demand as well as for time limited projects where it is not possible to secure staff through a fixed-term contract especially those individuals being brought in as part of the resource and capacity plan during the intervention process for an interim period.
- 2.12 The table below shows agency spend based on the interim structure in 2022/23 and how some of the spend was either grant or income funded.

Interim Directorate	Spend (£)	Grant / Income (£)	Spend minus Grant / Income (£)
Place	1,937,240	0	1,937,240
Public Realm	4,440,394	1,666,960	2,773,434
Adults, Housing & Health	566,438	22,808	543,630
Children's Services	3,782,844	74,533	3,708,311
HR, OD & Transformation	543,064	488,834	54,230
Strategy, Engagement & Growth	216,938	0	216,938
Legal	1,093,700	0	1,093,700
Finance	549,032	0	549,032
Total Council	13,129,650	2,253,135	10,876,515

Table 2 – Agency spend for 2022/23 based on interim structure

- 2.13 The categories of agency workers used in 2022/23 is show in table 3 below. This shows that the majority of spend on agency is within qualified social care, general industrial (waste) and interims.

Job Category	Client Net 22/23
Social Care Qualified	£ 3,211,564.57
Interims	£ 2,843,911.29
Legal	£ 2,328,449.30
Manual Labour / General Industrial	£ 1,761,266.47
Technical	£ 816,892.18
Admin & Clerical	£ 467,353.65
Engineering & Surveying	£ 416,145.91
Childrens Services	£ 326,215.40
Housing	£ 202,257.03
Housing & Planning	£ 117,136.39
Financial	£ 114,010.33

Procurement	£	94,907.77
IT	£	92,383.67
Commercial	£	92,032.13
Facilities & Environmental Services	£	81,104.97
Management	£	54,332.58
Human Resources	£	54,292
Sales / Marketing	£	31,076.38
Social Care & Health Non-Qualified	£	10,986.30
Catering / Hospitality	£	8,466.47
Planning	£	4,865.93
Total Spend for 22/23	£	13,129,650

Table 3 – Agency spend for 2022/23 based on Matrix category

- 2.14 Agency spend is not budgeted separately, costs are generally met through existing staffing budgets where permanent or fixed-term vacancies are unfilled. There is also a need to cover long-term sickness or other absences using agency workers in frontline services.
- 2.15 Using a managed service provider has been the easiest and most robust way of ensuring compliance with Agency Worker Regulations (AWR) 2010 which gives agency workers the entitlement to the same basic employment and working conditions as if they had been recruited directly, if and when they complete a qualifying period of 12 weeks in the same job. It also enables the Council to comply with changes regarding IR35 (also known as ‘off-payroll’ working), brought in April 2017, that required Public Sector bodies to determine the employment status of a worker increasing the risk to the Council if tax responsibilities were not appropriately managed for agency workers.
- 2.16 For the reasons outlined above, using a managed service provider is the preferred option of the majority of Local Authorities; examples of current clients of Matrix SCM alone include Westminster City Council, Barnet Council, and The Royal Borough of Greenwich. However, Essex County Council have in place a Temporary worker recruitment offer similar to the MSP model that could offer improved value for money. ECC work in partnership with Matrix and currently have 350 agencies within their supply chain compared with approximately 50 suppliers in our current arrangement.

3. Issues, Options and Analysis of Options

- 3.1 The current contract with Matrix SCM is unable to be extended further and it is therefore critical that options are considered moving forward.
- 3.2 The majority of costs in the provision of agency resource is the direct pay to workers and on costs (National Insurance, Holiday Pay and Pension, typically in region of 30%). The cost of the MSP, agency margins and ESPO framework charge are minimal, accounting to an average of 8.94% of the total spend of the contract each year. Appendix 2 details the agency margins payable against each job category that agency workers are provided for through the contract. The ESPO framework cost is currently 1p per hour worked. The cost to the MSP (currently Matrix SCM) is between 10p to 13p per hour worked.
- 3.3 An example fee structure is set out below showing what elements comprise a total hourly charge rate cost.

Level 1	Job Category	Job Title	Item Category	Current Pay Rate	Supply Fee	Matrix Management Fee	Current Charge Rate
Resources and Place Delivery	Interims	Strategic Lead Regeneration	Days	£561.80	£88.11	£1.04	£836.81
Public Realm	Manual Labour / General Industrial	Area Operative	Hours	£10.62	£0.50	£0.11	£14.36
Children's Services	Childrens Services	PA - Children Services	Hours	£15.76	£2.00	£0.14	£22.94

Table 3 – Example Fee Structure

Cost Reductions

- 3.5 The original decision to move to a neutral vendor MSP option in 2011 was partially driven by assumed significant cost reductions.
- 3.6 Since contracting with Matrix they have provided regular updates on cost reductions realised through the contract compared with costs provided to them at the start of the contract. The total cost reductions Matrix calculated for 2022/23 totalled £207,715. These cost reductions as based on the pre-contract charge rates provided to Matrix SCM, so if we had remained with the previous provider we would have incurred this additional cost for the same usage of agency workers.
- 3.7 Despite spend on agency increasing overall, due to the reasons mentioned in 2.7 to 2.10 of this report, the Council achieves best value through the MSP model and continues to see cost reductions on margins. This is helped by work from the MSP who ensure margins with the agencies are minimised and further reduced in cases when agency workers are engaged longer term.
- 3.8 Therefore, whilst a new agency worker contract is unlikely to deliver significant further cost reductions, the following should be prioritised in order to maximise financial control and avoid increased costs that would highly likely be incurred from not having a contract in place. The contract will look to support this as well as:

- Management of staff pay rate demands
- Control of usage of agency workforce overall
- Minimising agency margins for ongoing agency worker placements
- Ensuring off contract spend (spend on agency workers outside the MSP contract) remains minimal through ensuring that the new contract is fully able to meet all specialist requirements.

As part of the Council's improvement programme there are planned reductions in the use of agency staff through effective workforce planning.

3.9 Although the current MSP arrangement has worked well for the past twelve years it is appropriate at this stage to reconsider all options available to the Council. These are as follows:

Option	Approach	Benefits	Risks
A	Council runs its own in-house managed service for the provision of agency workers utilising a technology platform available via ESPO MSTAR4 Framework.	<p>Council has full oversight and control of agency worker resources and costs</p> <p>Build direct relationships with agency worker resource over time and establish reliable pool of resource</p> <p>Technology platform will enable workers to be automatically matched to jobs put forward by hiring managers.</p>	<p>Not able to have same coverage as existing agencies so may be difficult to source agency worker with skills and experience needed, likely resulting in a need to engage with other agencies direct at higher margins</p> <p>Investment in resources for in-house team to establish and run would not be cost effective</p> <p>Would need significant investment in systems and expertise to manage the payroll of agency workforce and mitigate risks of AWR and IR35</p>
B	Master Vendor MSP – operates with the view to providing all workers from their own agency base, only going to additional agencies (including local providers) when the roles cannot be filled	<p>Potentially a slightly cheaper option as master vendor margin could be lower</p> <p>Single point for management</p>	<p>Time consuming if agency resources cannot be identified through the master vendor</p> <p>Could lead to off-contract spend if</p>

		information and invoicing	Directorates unable to find appropriate workers via this route
C	Neutral Vendor MSP – current arrangement where MSP does not directly provide staff but filled via supply chain with multiple agencies signed up to consistent margins	<p>Minimal resources needed from Council to manage and administer</p> <p>Favours wide range of agencies to provide best opportunity to fill roles</p> <p>Single point for management information and invoicing</p> <p>Existing model for Thurrock that has worked effectively for twelve years</p>	Some specialist agencies may not sign up to supply to this model which can impact availability of skilled workers needed and could result in off-contract spend
D	Neutral Vendor Model – Direct award Council work in partnership with Essex County Council - ECC will provide a direct hire approach that may reduce expenditure against agency rates.	<p>Minimal resource needed from Council to manage and administer</p> <p>Able to utilise a wider range of agencies to provide best opportunity to fill roles</p> <p>Reduction in cost</p>	Some specialist agencies may not sign up to supply to this model which can impact availability of skilled workers needed and could result in off-contract spend

Table 4 – Options

- 3.10 The ESPO MSTAR4 Framework 653F_23 procurement route includes a number of providers within the neutral vendor model (Lot 1a). Call off is by mini competition (structured selection). Mini competition ensures that the Council is able to test the providers on service delivery and value for money and this is therefore the recommended procurement option in the event that direct award to Essex County Council is not approved, deemed PCR compliant or financially viable.
- 3.11 A full in-house procurement process would require a UK Procurement Regulation tender process to the open market which would be resource intensive and is unlikely to achieve a significantly better outcome than mini competition via ESPO.

3.12 It is recommended that Cabinet approve a competitive procurement process via the MSTAR 4 Framework to put in place a Neutral Vendor (option C). In the event of analysis showing that direct award to Essex County Council would be the most economically advantageous solution for the Council and is Public Contract Regulations 2015 compliant it is recommended that option D is approved.

4. Reasons for Recommendation

4.1 This report is provided to Cabinet in accordance with the Council's Contract Procedure rules to seek approval to proceed to tender for a contract with a whole life cost valued above £500,000. The total estimated spend on this contact over the maximum four-year period could be in the region of £40million with an average of 8.94% of this total cost paid directly to the agencies, MSP and ESPO framework. The fee percentage is based upon workers currently utilised via Matrix as of 18th August 2023.

4.2 The procurement exercise will enable to the Council to ensure:

- Best value is achieved, giving the Council the largest possible cost reduction opportunity
- Quality agency worker resources are easily available
- Simplify oversight and control of spend through management information
- Council resources to engage agency workers and to manage the contract are minimised.

4.3 The recommended option C or D as set out within section 3.9 of this report.

5. Consultation

5.1 An Officer group of directorate representatives will be set up to discuss the performance of the current contract to help review and further inform the procurement specification. This will ensure specific directorate needs relating to agency resources are considered.

6. Impact on corporate policies, priorities, performance and community impact

6.1 The provision of agency workers impacts directly on directorate operations and priority activity. A quality and cost-effective provision ensures that agency workers are available to fill urgent frontline need and the required skills and experience can be brought in to ensure the ongoing delivery of Council priorities.

7. Implications

7.1 Financial

Implications verified by: **Rosie Hurst**
Interim Senior Management Accountant

As set out in the report, effective provision of an agency worker contract ensures that the Council secures best value in the employment of contingent labour. Spend will vary according to directorate need and be funded from the relevant budgets. The majority of cost is in direct pay and on costs for the agency workers; however the procurement exercise will seek to ensure that any available cost savings in agency fees are maximised.

This procurement activity must be considered in the context of the Council's current financial position and S114 Notice. As identified in the options set out within the report the risk of not having a contract for the provision of agency workers could expose the Council to significantly higher spend through a lack of robust control and management reporting.

7.2 **Legal**

Implications verified by: **Kevin Molloy**
Principal Solicitor Contracts Team

Use of the ESPO MSTAR4 Framework as outlined above will allow the Council to discharge its obligations and comply with the Public Contracts Regulations 2015 with respect to national and internal procurement requirements. Legal Services should be kept informed as the procurement progresses to ensure compliance is maintained and any issues are flagged at an early stage.

7.3 **Diversity and Equality**

Implications verified by: **Becky Lee**
Team Manager, Community Development and Equalities

The provision of temporary staff through a Managed Service Provider and all agencies will be required to be compliant with equalities legislation including the Council's principles, policy and practices with regard to equalities and diversity, ensuring fair recruitment and employment for all.

7.4 **Other implications** (where significant) – i.e. Staff, Health Inequalities, Sustainability, Crime and Disorder, and Impact on Looked After Children

The Council will continue to utilise the appropriate measures to ensure that agency workers do not substitute permanent opportunities for extended periods of time. However, where it is necessary to engage a worker for a period longer than 12 weeks they are protected by the Agency Worker Regulations (AWR) which ensure that they are receiving comparable pay to

those that are permanent employees. The recommended approach set out within this report helps ensure the Council is fully compliant with AWR.

8. Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- None

9. Appendices to the report

- Appendix 1 – Agency Spend
<https://www.thurrock.gov.uk/sites/default/files/assets/documents/agency-spending-202209-v01.pdf>
- Appendix 2 – Stage 1 Form

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