
Arrangements for the Supply of Agency Staff to the Council

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This report relates to a decision that is key

Purpose of this report

This report advises the Executive of the requirement to re-procure the contract for agency workers and proposes a timescale and approach to doing so.

RECOMMENDATIONS

The Executive is asked to:

- 1. approve the award of an interim contract for the supply of agency staff to the current supplier for a period not exceeding nine months as set out in paragraphs 21 to 23 below;**
- 2. note that a report detailing the options for procurement will be taken to Corporate Resources Overview and Scrutiny Committee before the delegated authorities below are exercised;**
- 3. delegate to the Director of Resources in consultation with the Deputy Leader and Executive Member for Corporate Resources the decision to determine the most appropriate consortium framework from within which to procure agency services to follow on from the interim arrangements set out in Recommendation 1;**
- 4. delegate to the Director of Resources in consultation with the Deputy Leader and Executive Member for Corporate Resources the decision to undertake a procurement process to select a supplier from within the consortium framework agreed in Recommendation 3; and**
- 5. delegate to the Director of Resources in consultation with the Deputy Leader and Executive Member for Corporate Resources the decision to award a contract to the supplier selected as a result of the process set out in Recommendation 4.**

Overview and Scrutiny Comments/Recommendations

This matter has not yet been considered by Overview and Scrutiny Committee. It is proposed to take a detailed report on the procurement options to the Corporate Resources OSC during the period of the new interim contract and prior to the long-term procurement activities, as set out in Recommendations 3 to 5 above, being commenced.

Background

1. The Council's current contract for the employment of agency staff was awarded in 2014 using the Eastern Shires Purchasing Organisation (ESPO) MSTAR framework contract. This comes to an end on 2nd November 2018.
2. The Council has made very significant reductions in its use of agency staff during that period. In 2013/14 the expenditure was in the region of £14M per annum and this has reduced steadily to around £7.5M in 2017/18. This downward trend is likely to continue as initiatives such as workforce planning take effect.
3. The spend on agency staff for 2017/18 can be broken down by Directorate and the analysis appears in the table below:

Directorate	Agency Spend (£k)	Percentage of Total
Chief Executive	82	1%
Children's Services	1578	21%
Community Services	850	11%
Public Health	1	0%
Regeneration	344	5%
Resources	429	6%
Social Care Health and Housing	4274	57%
Total	7559	

Contract Types

4. The contractual models for the supply of temporary staff to large organisations have evolved. With all types there are individual employment agencies both large and small, some with business across all employment areas, others focussing on specialisms such as IT or accountancy.
Dealing on a day-to-day basis with a multiplicity of competing agencies is generally not seen as effective and within the public sector also presents challenges in respect of procurement law. Two models have emerged to address these challenges – the 'neutral vendor' and the 'master vendor' solutions.

5. With the neutral vendor arrangement, the organisation has the relationship with the provider who does not provide any staff directly but sources them from a range of employment agencies. In the master vendor arrangement, the provider is the primary source of agency workers but will subcontract to other agencies in areas of speciality or in other circumstances where they cannot meet demand directly. More recently hybrid arrangements have emerged with providers offering a neutral vendor model for some types of staff and a master vendor model for others.
6. Within each of these arrangements there can be variations. The degree of support from the provider can be varied from a purely transactional arrangement (where the hiring manager does most of the work in terms of identifying requirements and selecting workers) to ones where the provider offers advice and support these areas. The latter arrangement is significantly more expensive than the former.

Procurement

7. Whilst local authorities are free to specify and procure contracts for this type of provision through the normal procurement processes, this is an area in which central purchasing consortia like ESPO, North East Procurement Organisation (NEPO), Yorkshire Purchasing Organisation (YPO) and Crown Commercial Services (CCS) have procured framework contracts that councils can access. Some of these frameworks have a single vendor but most contain a number of suppliers and councils can run a 'mini-procurement' to select a vendor from within a framework in the knowledge that procurement regulations have been satisfied and the contractual terms agreed.
8. The consortia charge a small premium on the hourly rate (typically around £0.02p) to cover their costs in preparing and supporting the framework.

The Current Arrangements

9. The Council currently has a neutral vendor contract with Comensura. This is primarily a 'low cost' transactional arrangement. It delivers the bulk of the Council's requirements, but temporary workers are also sometimes contracted with directly or through employment agencies outside of the contract.
10. During the course of the contract there has been further progress made in reducing transaction costs by integrating Comensura's systems with the Council's SAP system and by giving hiring managers access to the Comensura system to request and select staff and to authorise timesheets.

11. The current contract was sourced using the ESPO MSTAR framework. The contract comes to an end on 2nd November 2018 having been extended to the maximum extent specified when it was originally procured. ESPO subsequently replaced the MSTAR framework with an updated version (MSTAR2) but the Council's contract has retained the original MSTAR arrangements.
12. The MSTAR2 framework itself is being replaced in early 2019 by a revised framework (MSTAR3) but this will not be in place for November.

The Rebate

13. The current contract includes a rebate system whereby a proportion of the agency spend is refunded to the Council. The rebate is calculated on a 'per timesheet' basis and for 2017-18 averaged 9.3% of the total spend.
14. The income from the rebate has been incorporated into the Council's MTFP with forecasts for the rebate as set out below. The reducing income forecast year-on-year is based on an assumption about the reduction in the use of agency workers.

Financial Year	2018-19	2019-20	2020-21	2021-22	Total
Rebate Efficiency in MTFP	£695k	£645k	£595k	£545k	£2480k

15. The rebate system was introduced when the current contract commenced. This was possible because the new contract reflected a change in the underlying arrangement for the placement of agency staff – moving to the transactional model that required fewer resources within Comensura to deliver and thus reducing overall costs. Hiring managers were able to employ agency workers at a similar overall cost to previously whilst overall the costs to the Council were reduced. The receipt of a rebate was used to evidence the savings and focus them into a single budget line instead of the saving being spread across the whole organisation.
16. However, this arrangement also means that the true cost of the use of agency workers is not transparent to budget managers. This will affect the ability of managers to compare the costs of different solutions for meeting their needs for temporary staff. In addition, any reduction in the use of agency staff in excess of the forecast creates a budget pressure within Procurement where the income from the rebate is accounted for.

17. It is therefore proposed that the replacement arrangements do not include a rebate arrangement and that the charges to budget managers for agency workers reflect the true cost. Whilst this change in isolation will not have any net impact on the cost to the Council, there will need to be an adjustment to the Council's MTFP from 2018/19 onwards to remove the rebate income and redistribute this across the appropriate cost centres.

Spend Outside the Framework Contract

18. Although it is clearly the expectation of the Council that hiring managers will use the Comensura contract it is possible for managers to use other options. Analysis indicates that spend outside of the current contract represents only around 2.5% of the total spend on agency staff.
19. It is proposed that this would be one of the areas for discussion with hiring managers during the engagement period with the aim of getting an understanding of the extent to which other arrangements are being used and the reasons for this.

Key Objectives

20. In delivering the new arrangements the following key objectives have been identified:
 - a. Maintaining or improving the supply of appropriately vetted, qualified and skilled agency workers to meet current and future business requirements across the Council.
 - b. Delivering contractual arrangements for the use of agency staff that better meet the needs of hiring managers in terms of cost and quality.
 - c. Avoiding undue burdens on managers appointing and managing agency workers.
 - d. Reducing transaction costs whilst maintaining visibility of and accountability for expenditure.
 - e. A smooth and effective transition to the contractual arrangements that will replace the current ones.
 - f. Delivering total cost savings compared with the current contract.

Proposed Approach

21. Whilst there is an option to go forward either with a full OJEU procurement or a procurement through one of the current frameworks in time for a new contract to commence in November 2018, the preferred approach is to wait until MSTAR3 is available. To do this the Council could continue the arrangement with the current supplier past November 2018 by moving the contract across to the MSTAR2 framework and retaining them on the current terms.

This would be for a period of around eight months and would have negligible impact on the rest of the organisation as the current systems, processes and costs could be retained for that period.

22. The aim is to make a choice between MSTAR3 and other frameworks early in 2019 and to undertake a 'mini-procurement' within a chosen framework with the intention of having determined a new provider by 31st March 2019. It is estimated that a subsequent mobilisation period of approximately three months would be required to ensure a smooth transition to the new contract/provider and to develop the integration between the provider's system(s) and the Council's.
23. Prior to the letting of the new contract it is proposed that engagement is undertaken with managers across the Council to get their feedback and to clarify their needs and experiences. The proposed timescale allows the opportunity to do this in a meaningful way.

Legal Implications

24. The Council can make a direct award from MSTAR2 for the interim period of 9 months as the competitive process has already been undertaken in the procurement of the Framework. Comensura are on Lots 1 and 3.
25. MSTAR2 has been extended to 10 April 2019 and provided the Council has a call off in place before that date, that call off can run to its end, even if that end is past the end of the Framework.
26. The intention is to keep current systems, processes and costs retained for the interim period under MSTAR2. It is recommended that officers check the user guidance carefully and information about direct awards and the Lot so officers are clear that what they wish to happen can. An access agreement will need to be completed and then the pricing information will be sent out by way of response. There is no guarantee that the pricing will be the same as MSTAR1.
27. During the interim call off a decision can be taken as to the procurement of the next contract, via other frameworks.
28. The Council can make a direct award on MSTAR2 with little risk of challenge, given the framework has been in place since April 2015 and all providers on the framework are aware a direct award can be made.
29. The proposals set out in the report take into account the requirements of the Public Contracts Regulations 2015.

Financial and Risk Implications

30. The approach proposed is intended to deliver agency arrangements at a lower cost than under the current contract. However given that the Council has already moved to a 'low-cost' transactional system any savings are likely to be modest.
31. As noted in paragraph 17 the move away from the rebate system will require reconfiguration of budgets from 2018/19 onwards to reflect this.
32. The risks associated with this decision are being managed through a project management approach. A project board chaired by the Director of Resources has been convened to provide overall governance for the project, with project management support being delivered by the Social Care Health and Housing Directorate. The board also includes representation from HR along with input from Procurement, Finance and Communications. During the project it is planned to form a reference group of managers from across the Council to provide challenge and feedback on proposals.
33. Throughout the project the objectives set out in paragraph 20 will be used to guide decision-making.

Equalities Implications

34. Central Bedfordshire Council has a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics; age disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
35. Thus far no implications have been identified that would impact on people with protected characteristics. This matter will be kept under review and prior to the letting of a new contract any impacts identified will be reported to decision-makers.

Appendices

None