

Review of procurement options in relation to the Managed Service Provider of agency workers

Report of: Cllr Richard Wenham, Deputy Leader and Executive Member for Corporate Resources,
(richard.wenham@centralbedfordshire.gov.uk)

Responsible Director(s): Charles Warboys, Director of Resources
(charles.warboys@centralbedfordshire.gov.uk)

Purpose of this report

This report considers the re-procurement options for the Managed Service Provider contract for agency workers and the recommended approach. The Director of Resources, in consultation with the Deputy Leader and Executive Member for Corporate Resources, was delegated with the decision making on the most appropriate way forward by the Executive at the meeting of 7th August 2018. The Executive also approved an interim award based on our current arrangements until August 2019, along with a recommendation to take a report to the Corporate Resources Overview and Scrutiny Committee prior to commencing the re-procurement.

RECOMMENDATIONS

The Committee is asked to:

- 1. Note the contents of this report and provide its views on the proposed approach to be considered by a future meeting of the Executive.**
- 2. Recommend to the Executive a contract extension of an additional 12 months with Comensura on the existing ESPO (Eastern Shires Purchasing Organisation) framework arrangements, taking the Council to August 2020.**
- 3. Support the deferral of the procurement of the Managed Service Provider contract to provide the necessary time to undertake the tendering and implementation process once the most appropriate consortium framework is determined.**

Background

1. The Council has made very significant reductions in its use of agency staff during the last 4 years since the introduction of the previous contract. 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 with the ongoing improvements to our approach to workforce planning, the increasing development of transferable skills, the use of apprenticeships to create a pipeline for hard to fill areas and our drive for digitisation.

2. 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	

The Current Arrangements

3. 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 Eastern Shires Purchasing Organisation (ESPO), North East Procurement Organisation (NEPO), Yorkshire Purchasing Organisation (YPO) and Crown Commercial Services (CCS) have all 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. The consortia charge a small premium on the hourly rate (typically around half to one percent) to cover their costs in preparing and supporting the framework.
4. The Council's contract for the engagement of agency staff was awarded to Commensura in 2014 via a mini competition using the ESPO MSTAR framework. This came to an end on 2nd November 2018.
5. This contract was with Comensura and was primarily a 'low cost' transactional arrangement. It delivered the bulk of the Council's requirements through a digital system approach, limiting the more costly human interfaces with the supplier which is one of the ways costs were driven down.
6. Although it is clearly the expectation of the Council that hiring managers will use the Comensura contract to source all temporary staff, it is possible for

managers to use other options such as contracting directly or through employment agencies outside of the contract. This only tends to be exercised for the sourcing of technical or specialist temporary roles. Analysis indicates that spend outside of the current contract represents only around 2.5% of the total spend on agency staff.

7. During the course of the contract there was further progress made in reducing transaction costs by integrating Comensura's systems with the Council's SAP system through the customisation of SAP and the development of Comensura's Cnet system. This gave hiring managers improved functionality particularly with raising purchase orders, requesting and selecting staff and to authorise timesheets. With the implementation of S4 Hana this is being reviewed as the process for raising purchase orders is being changed to a standardised approach.
8. The contract came to an end on 2nd November 2018 having been extended to the maximum extent specified when it was originally procured. During this time ESPO launched an updated version (MSTAR2) but the Council's contract retained the original MSTAR1 arrangements.
9. ESPO intends replacing the MSTAR2 framework in April 2019 with a revised MSTAR3 framework. This is likely to offer councils a wider range of options within the framework but the details and the pricing schedule will not be known before launch.
10. In accordance with the Executive Committee decision of 7th August 2018 a 9 month interim contract for the supply of agency staff was awarded to Comensura using the direct award route of the MSTAR2 framework. During the contract negotiations with Comensura, the option to extend this contract by an additional 12 months was also agreed in case it was required.
11. The principle of the current contract has been negotiated on the basis that the Council is in no worse a position and potentially a better position than if it had remained on MSTAR1.

The Rebate

12. 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.
13. 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.

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. However, this arrangement also means that the true cost of the use of agency workers is not transparent to budget managers. This may affect the ability of managers to compare the costs of different solutions for meeting their needs for temporary staff at a local level. 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.
16. The report to the Executive stated that: "... it is ... 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." It is expected that these changes will be implemented when the new contract is in place rather than in relation to the current contract with Comensura. This in itself has no budgetary impact, relating only to how the rebate is shown within Directorates. The overall price paid by the Council would be unchanged.

Key Objectives

17. 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, if possible.

Route to market options

18. The contractual models for the supply of temporary staff to large organisations have evolved. With all types there are individual recruitment agencies both large and small, some generalist that cover a wide spectrum of categories and sectors, others focusing 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, potential pay parity issues and a lack of control on costs regarding negotiated rates. Two models emerged to address these challenges – the ‘neutral vendor’ and the ‘master vendor’ solutions.
19. 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 recruitment agencies. Comensura is contracted as a neutral vendor to the Council.
20. In the master vendor arrangement, the provider is the primary source of agency workers but will subcontract to other agencies for specialist areas or in other circumstances where they cannot meet demand directly.
21. 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. Further menu options are also becoming available, including recruitment of permanent staff and developing statement of works for temporary staff based on outputs rather than hours worked.
22. Within each of these arrangements there can be variations. The degree of support from the provider can range from a purely transactional arrangement (where the hiring manager does most of the work in terms of identifying requirements and selecting workers as per our current neutral vendor arrangements), to ones where the provider offers consultancy advice and selection support. The latter arrangement, whilst more expensive than the former, offers additional benefits if the MSP has a good understanding of the requirements of the role and an extensive supply chain by undertaking a more tailored approach to sourcing candidates, such as, head hunting.
23. As there are suitable frameworks available which the Council can access and for which considerable work has already been undertaken by professional buying organisations, the full tender approach is not considered to be an effective option.
24. Due to the conditions in the labour market, whereby there is a high employment rate and a national shortage of supply in some key areas, such as the care sector, an increase in supplier costs is forecasted. Frameworks offered by professional buying organisations such as ESPO and YPO have converged over time and have similar charge rates. As rates and prices from providers would be achieved by mini competition the choice of framework is more related to the ability of the framework to meet the Council’s service requirements. In

addition, the service offered by framework providers is highly relevant in supporting the Council's team in developing its mini competition approach.

25. Collaboration models whereby local authorities and other related organisations work together to form their own service provider is another type of contract that has been considered. This is a longer term strategic option that would require significant investment in start-up costs, facilities, consultancy and the development of the necessary skills and supply chain. To be successful, this model requires a high agency spend, for example, those with an agency spend of £20M or more. The first 3 years costs would be high as a hybrid model with a mix of neutral vendor and direct appointments is needed whilst the supply chain is built up. Kent Council who offer a collaboration model and consultancy, recently estimated that a maximum 10% direct fill rate could be realised in the first year. Whilst a regional agreement may be negotiated to fix the rates with those collaborating, each authority would be seeking to fill the same hard to fill roles from the same pool of candidates.

Feedback from Hiring Managers

26. The Executive report stated that: "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." This has been delivered through the creation of a 'stakeholder group' of hiring managers and undertaking a survey of all managers to get their feedback.
27. The survey was carried out in the autumn of 2018, it was sent to 132 recruiting managers and 28 responded, therefore only a 21% response rate was achieved. The findings can be summarised as follows:
 - a. 54% satisfied with the providers rates and a further 25% were neither satisfied nor dissatisfied.
 - b. 66% easy to set up a new order and general satisfaction with the transactional aspects of the current system.
 - c. 61% dissatisfied with the sourcing of suitably qualified/experienced candidates, however, only 15% typically found there to be no candidates that were suitably qualified/experienced.
 - d. 32% dissatisfied with the integration of the provider system with the Council's purchase order and invoicing system.
28. It is intended that these findings alongside further engagement with the Stakeholder group of recruiting managers will be used to inform both the selection of a framework and of a supplier within the chosen framework.
29. As part of this engagement a number of quick win actions were also identified to assist in improving current processes until any new contract is agreed.

Recommendations

30. The Executive report set out the intention to make a choice between MSTAR3 and other frameworks and to then undertake a 'mini-procurement' within a chosen framework in order to award and go-live with effect from August 2019. A mobilisation period of approximately three months would be required to transition to a new contract/provider and to develop the integration between the provider's system(s) and the Council's. Therefore, the contract award would need to be made by the end of April 2019.
31. When the Executive report was drafted it was expected that the terms of the MSTAR3 framework would be available in early 2019 to enable a choice to be made and for procurement to take place as soon as the framework was 'live'. However, it is now clear that details along with the pricing schedule and the full functionality of the new modular framework will not be available until the planned launch date of 12th April 2019. It should also be noted that this date is not guaranteed by ESPO. The modular framework that is being developed is a very different offer from MSTAR2 with some modules currently being developed.
32. It should also be noted that the planned procurement and mobilisation timescale coincides with the implementation dates for S4 Hana. The successful contractor's systems will be expected to link or integrate with both S4 Hana and Success Factors.
33. Given these factors it is considered that aiming for an implementation date of August 2019 would not be practically achievable. The recommendation is that the Council should therefore defer the procurement process to allow sufficient time to effectively assess the new MSTAR3 framework against other consortium frameworks and to undertake a meaningful procurement process and an effective implementation process.
34. Such an approach would necessitate the use of the extension built into the current arrangements with Comensura. The contract only allows for an extension of 12 months, a shorter extension period was explored but could not be agreed especially as the current contract was only for 9 months. However, it offers the Council the most preferential rates available on MSTAR1 and MSTAR2.

Council Priorities

35. This action supports the Council's priority of being a more efficient and responsive Council by maintaining flexibility in delivering services during times of peak demand or discreet pieces of technical or specialist work.
36. It also contributes to protecting the vulnerable and the provision of great resident services by having sufficient suitably qualified/skilled and vetted workers in post at the right times.

Corporate Implications

Legal Implications

37. The Council has made a valid direct award to Comensura via MSTAR2 for the interim period of 9 months with an additional 12 month option to extend, as the competitive process has already been undertaken in the procurement of the Framework. Comensura are on Lots 1 and 3. There has been no challenge to the award.
38. As the award via MSTAR2 has been made before the framework expires on 10 April 2019, that call off can run to its end including options to extend for an additional period of 12 months, even if that end is past the expiry of the framework.
39. During the interim, a decision can be taken as to the procurement of the next contract, via other frameworks if necessary, as decided by the Executive at its August 2018 meeting.
40. The proposals set out in the report take into account the requirements of the Public Contracts Regulations 2015.

Financial and Risk Implications

41. The approach proposed is intended to deliver agency arrangements at the same cost as under the current contract. As the current contract is based on a 'low-cost' transactional system, there are no further financial savings to be made. As part of the re-procurement process the service requirements will be reviewed to ensure that it is best value.
42. It has recently become clear that the implementation of S4Hana is now on a convergent path with that of the implementation of a new supplier for temporary staff if the original re-procurement timetable is retained. As a result the existing supplier (Comensura) will need to change their purchase ordering process for the final two months of its interim contract if the original 9 month duration is adhered to. The risk is that a change of supplier may negatively impact the service as Comensura will be unwilling to invest in the extra administration required.
43. 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. A reference group of managers from across the Council has been formed to provide challenge and

feedback on proposals.

Equalities Implications

44. 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.
45. 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.

Conclusion and Next Steps

46. In order to undertake a meaningful assessment of ESPO's MSTAR3 framework against the offers available from other frameworks to ensure the most appropriate route to market is determined, an extension to the re-procurement deadline is recommended.
47. The interim extension of the Comensura contract for this period provides the Council the most cost-effective interim solution and additionally mitigates any risk of disruption to existing temporary worker arrangements or processes.
48. The recommendations for a further extension, along with any comments and recommendations from this committee will be submitted to a future meeting of the Executive.

Appendices

None

Background Papers

None

Report author(s): Tim Hoyle

Strategic Commissioning Social Care , Health and Housing.

Tim.Hoyle@centralbedfordshire.gov.uk