

**Open Report on behalf of Andrew Crookham, Executive Director - Resources**

Report to:	<b>Executive</b>
Date:	<b>07 June 2022</b>
Subject:	<b>Approval to procure contracts for temporary agency staff</b>
Decision Reference:	<b>I026023</b>
Key decision?	<b>Yes</b>

**Summary:**

The Council's Temporary Agency Staff contracts are due to expire on the 4 September 2022. This report sets out a proposed course of action including a short extension to the existing contracts, procurement of a new contract and delegation of the necessary decisions.

**Recommendation(s):**

That the Executive:

1. Approves the recommendation to procure new contracts for the provision of (i) general and (ii) social care temporary agency staffing requirements through the ESPO MSTAR3 Framework Agreement with effect from 5 December 2022.
2. Approves extensions of 3 months to the current contracts.
3. Delegates to the Executive Director – Resources in consultation with the Executive Councillor for People Management, Legal and Corporate Property authority to give effect to the extensions and to determine the final form of the new contracts and to approve the entering into of the new contracts.

**Alternatives Considered:**

**1. Not Awarding the Contract**

The council is obligated to procure services of the value of these services according to the Public Contract Regulations 2015.

The council relies on contingent workers across a number of hard to recruit roles for example, social care, educational psychology and legal. This is currently due to national shortages and difficulties within the job market following Brexit and Covid.

Failing to award a corporate contract would see an increase in off contract spend, multiple individual contracts managed locally across the Council in each Director area, creating additional work for managers, potentially higher rates, and a reduced corporate understanding of spend and loss of the 1 pence per pound rebate, shown below. Without a central or corporate contract there is a risk that the costs will increase, and we will risk not being compliant with the Agency Worker Regulations, Working Time Directive and IR35.

## **2. Invitation to Tender**

Due to the number of providers within the market the open tender was rejected and the restricted procedure was considered. This was rejected due to the additional timescales involved to complete the selection stage and the likelihood that we would have the same providers that are already on the ESPO framework. It is also likely that we would not achieve the same rates as the framework due to economies of scale and we would not benefit from the 1% rebate.

### **Reasons for Recommendation:**

The course of action proposed is compliant with the Public Contract Regulations and offers a tried and tested and efficient route to procurement. The Council needs security of supply of these vital services along with the flexibility to increase or decrease agency staffing levels as per demand and at short notice. The Council also needs to ensure a seamless transition with no disruption to vital services should new providers be awarded the contracts.

### **Background**

1. The Council's current contracts for temporary agency staff with Comensura (for general staffing requirements) and Retinue (for social care staffing requirements) expire on 4th September 2022 with no further options to extend.
2. These contracts were procured in 2017 utilising the ESPO Managed Services for Temporary Agency Resources ('MSTAR') 2 framework agreement which has now expired and been superseded by the ESPO MSTAR3 framework agreement which it is proposed will be used for procurement of replacement contracts.
3. Between 1 April 2021 and 13 March 2022 the Council has spent c.£5 million on temporary agency staff through its contracts with Comensura and Retinue. The majority of this spend is through the Retinue contract for Social Workers with 70% of the total spend in relation to qualified and unqualified Social Workers. It is widely recognised that there is a national shortage of social workers and other key roles within the council. The council's ability to recruit and retain staff in these high-risk areas appears as risk no 7 on the strategic risk register. The Office for National Statistics (ONS) reported that in October to December 2021, the total number of vacancies increased by 127,800 (11.4%) on the quarter, with the largest increase seen in human health and social work which was up 26,800 (14.9%) to a new record of 206,000. Similarly, Brexit has meant there are less EU citizens within the U.K.

With the number of job vacancies between October to December 2021 rising to a new record of 1,247,000 in the UK, recruiting and retaining staff is becoming more challenging as salaries in the private sector rise. It is now seen as a candidate market with many skilled workers choosing to work for agencies which attract a higher rate of pay.

New and developing controls to mitigate this risk include the launch of Our People Strategy 2021 to 2024 which includes a focus on recruiting and retaining skill to enable current and future delivery of services within Lincolnshire.

4. This is a reduction of approximately £1m for 2021/22 from the previous contract spend due to the unprecedented circumstances and a reduction in agency staffing levels during the Covid pandemic, however this reduction is unlikely to continue for the reasons outlined in point 3 above.
5. During 2021/22 we used on average 116 agency staff which was 2.18% of the Council's employed staff. During this period there has been a significant migration of qualified care staff away from the Council with 79 leavers and only 54 starters. The Council has recruited more unqualified staff, but this still resulted in a shortfall of 50 staff, therefore agency staff was required.
6. In general these contracts have performed well and the return to a neutral vendor model in the current contract has addressed some issues with the recruitment of specialist posts required through the Council such as Social and Care workers, Legal staff, and Business Support staff and where staff are required at short notice.
7. It is proposed that the Council utilises the current MSTAR3 framework agreement, conducting a further competition for two new contracts with initial periods of 2 years with options to extend for a further three periods of 1 year to a maximum period of 5 years. The Contract period is in line with previous Agency Staffing contract terms and it allows the Council to review the contract requirements and ensure the contract remains aligned to the Council's People Strategy whilst ensuring security of supply.
8. The MSTAR3 framework has 14 providers under the Lot 1 Managed Service Provision including our incumbents Comensura and Retinue, along with other market leaders such as Hays, Manpower, Matrix, Pertemps and Reed. The scale of the Council's requirements are such that the Council needs to engage with a significant market provider most of whom are listed on the MSTAR3 framework. Further, due to the Council's membership of ESPO, the Council will receive a rebate of 1 pence per hours worked through the framework. Based on current spend this will result in a rebate of approximately £7,390 over the 5-year contract period.
9. The Council spent c£5 million between 2021/22 across both contracts with c£3.56 million of this spend attributed to the Retinue Contract. Most agency workers are paid at the same rate per hour as the equivalent employee of the Council except for social care, lawyers/senior lawyers and family learning tutors. Family learning tutors are not paid at LCC equivalent rates as we do not have a comparator within the Council and 86 people are currently paid above the equivalent Council employee rate. We have lost a number of qualified staff that have moved to

agency due to the attraction of agency pay rates and also that other Local Authorities around our borders are paying a grade higher than LCC. It has become increasingly difficult to engage staff in the care qualified category as working for agency is a much more attractive option financially. Whilst work is being undertaken to work with neighbouring Local Authorities with the East Midlands Memorandum of Co-operation, for example, to ensure pay rates for Social Workers is at an agreed rate it is still difficult for the Council to compete with the Agency pay rates within the Social Worker and Lawyer roles. A Level 2 Social Worker's starting pay is £17 per hour with LCC whereas they can achieve £35 per hour through an agency which is a variance of £18 per hour. A Senior Lawyer's starting pay with LCC is £21.03 per hour whereas they can achieve £51.51 per hour through an agency which is a variance of £30.48.

10. We currently pay booking and agency fees which vary depending on the job category and is a rate per hour. The rates range from £0.57 per hour for Admin and Clerical staff to a maximum of £3.21 per hour for qualified care staff. In 2021/22 we paid £349,529, which is 7% of the annual contract cost, on agency fees.
11. It is proposed that the Council's service requirements will remain largely the same, but for a small number of significant changes. These include the inclusion of a 'statement of works' option to enable the Council to onboard suppliers of specialist professional services, such as Audit Services. The benefit of this change will be a reduction in the number of off-contract appointments.
12. We are proposing a 70% quality and 30% price split as resourcing good quality agency staff with public sector experience with minimal notice is important to the Council.
13. We will also be taking a collaborative approach with Rutland County Council and South Kesteven District Council expressing an interest to join the procurement. As Lincolnshire County Council has the largest spend in this contract it will be LCC's requirements that we will be contracting with, each council will have their own contract and will be responsible for the contract management of their contract.
14. Pre-market engagement has shown that framework providers welcome this approach and there are no drawbacks in doing so; providers have confirmed that contracting authorities involved will not be in competition for the same provider market. Rutland and South Kesteven will benefit from improved rates and the Council will benefit from an estimated £1,500 of additional rebate over the 5 year contract period.
15. It is also proposed that the Council extends its current contracts with Comensura and Retinue for three months beyond their current expiry date. This is permissible under Regulation 72(1)(e) of the Public Contract Regulations 2015 which allows variations which are not substantial within the terms of the Regulations. A three-month extension will lengthen the implementation period from 6 weeks to 18 weeks which will make the Council's requirement more attractive to providers – as indicated by pre-market engagement - and enable a new provider to on-board local agencies in the event the incumbent providers are not successful.

16. Given the value of the proposed extensions the Council's Contract Regulations would normally have required a competitive process. Where an Executive Director is proposing an approach different to that set out in the Contract Regulations this must be approved. Approval of an alternative to a competitive process can be given by the Executive.

## **2. Legal Issues:**

### Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
- Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in section 149 may involve treating some persons more favourably than others.

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision-making process.

A separate Equality Impact Assessment has not been undertaken. However, the procurement supports the Council to enable front line services to be more responsive including services that support individuals who may have a protected characteristic such as people with a disability and younger and older people. Agencies are required to comply with Equality Act duties when they engage workers in the way the Council does when it engages workers. For example, the Agencies are required to have processes in place to enable the Council to continue to make its commitment to the "Disability Confident" scheme in that disabled applicants are guaranteed an interview if they meet the minimum requirements of the job description and person specification.

#### Joint Strategic Needs Assessment (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health and Wellbeing Strategy (JHWS) in coming to a decision.

The procurement supports the Council to ensure front line services are able to maintain contact and provide support, therefore maximising independence and wellbeing which is consistent with the principles underpinning the JSNA and the JHWS.

#### Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

The decision is not considered to have any implications for the section 17 matters.

### **3. Conclusion**

A further competition through the ESPO MSTAR3 framework will provide a compliant procurement process and an extension beyond the initial term of the contract until 4 December 2022 will enable a detailed and seamless implementation from the current contracts onto the new contracts in the even of a new Provider(s) being awarded the contracts. Utilising the ESPO framework and collaboration with South Kesteven District

Council and Rutland County Council will result in a rebate of up to £9,000 over the contract period.

**4. Legal Comments:**

The Council has the power to enter into the contracts proposed.

The procurement of new contracts and the extension of existing contracts are compliant with the Council's procurement obligations.

The decision is consistent with the Policy Framework and within the remit of the Executive.

**5. Resource Comments:**

Expenditure arising from the proposed contract is funded by service's staffing costs budgets allowed for within the Council's approved revenue budget.

**6. Consultation**

**a) Has Local Member Been Consulted?**

N/A

**b) Has Executive Councillor Been Consulted?**

Yes

**c) Scrutiny Comments**

The decision will be considered the Overview and Scrutiny Management Board on 26 May 2022 and the comments of the Committee will be reported to the Executive.

**d) Risks and Impact Analysis**

See the body of the Report

## **7. Background Papers**

No Background Papers within section 100D of the Local Government Act 1972 were used in the preparation of this Report

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