

## Commissioning and Procurement Executive Committee – 14 June 2022

<b>Subject:</b>	Procurement of a Managed Service Provider for the supply of Agency Workers		
<b>Director / Corporate Director:</b>	Richard Henderson - Director for HR and EDI Clive Heaphy - Corporate Director for Finance and Resources		
<b>Portfolio Holder:</b>	Councillor Toby Neal - Housing and Human Resources		
<b>Report author and contact details:</b>	Rachael Morris, HR Business Lead (People) <a href="mailto:Rachael.morris@nottinghamcity.gov.uk">Rachael.morris@nottinghamcity.gov.uk</a>		
<b>Other colleagues who have provided input:</b>	Officers as per advisory comments		
<b>Key Decision</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<b>Subject to call-in</b>
			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Reasons:</b>	<input checked="" type="checkbox"/> Expenditure	<input type="checkbox"/> Income	<input type="checkbox"/> Savings of £750,000 or more
taking account of the overall impact of the decision			<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital
Significant impact on communities living or working in two or more wards in the City			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Type of expenditure:</b>	<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital		
<b>Total value of the decision:</b>	up to £30,000,000		
<b>Wards affected:</b>	All		
<b>Date of consultation with Portfolio Holder:</b>			
<b>Relevant Council Plan Key Outcome:</b>			
Clean and Connected Communities	<input type="checkbox"/>		
Keeping Nottingham Working	<input checked="" type="checkbox"/>		
Carbon Neutral by 2028	<input type="checkbox"/>		
Safer Nottingham	<input type="checkbox"/>		
Child-Friendly Nottingham	<input type="checkbox"/>		
Healthy and Inclusive	<input type="checkbox"/>		
Keeping Nottingham Moving	<input type="checkbox"/>		
Improve the City Centre	<input type="checkbox"/>		
Better Housing	<input type="checkbox"/>		
Financial Stability	<input checked="" type="checkbox"/>		
Serving People Well	<input checked="" type="checkbox"/>		
<b>Summary of issues (including benefits to citizens/service users):</b>			
<p>The council has been in a contract with a managed service provider for number of years in order to support the appropriate compliance and governance of agency spend and in order to source the appropriate periphery resource to bolster the core workforce in some of the council's key services to ensure their delivery is maintained and sustainable.</p> <p>The council has been using Executive agencies and niche agencies for the engagement of senior interim workers and those requiring specialist skills, at an additional cost to the organisation over and above the managed service provider. The current managed service provider is not currently able to source agencies at this level of skill or expertise due to the contractual implications we previously put into place in the original tender. The council was in a significantly different place in 2018 when the most recent contract was awarded and it would be appropriate for us to increase the value of the contract to cover off this spend, and bring it into one place.</p> <p>The current contract expires in August 2022, and there is an option to extend for a short period while we procure the new contract.</p>			

**Exempt information:** None.

**Recommendations:**

1. To grant authority to procure a managed service provider for the supply of agency workers for a contract duration of 3+1+1 years and with a value of up to £6,000,000 per annum, £30,000,000 total value over the contract lifespan.
2. To delegate authority to the Corporate Director for Finance and Resources to award the contract.
3. To grant authority to extend the current contract by up to three months from August 2022 in order for the tendering exercise to take place, to the value of £750,000.

**1. Reasons for recommendations**

- 1.1 To approve a procurement process to commence in order for the council to gain best value through the supply of agency workers for critical roles across the council.
- 1.2 An extension to the existing contract is being requested. This extension allows appropriate resource and time to procure the contract with the current expiration due in August 2022. The extension will be under the terms of the current ESPO framework.

**2. Background (including outcomes of consultation)**

- 2.1 The council has, and will continue to need to bolster our core workforce with agency workers. Before we engaged a managed service provider several years ago, management and oversight of agency costs was a concern for the organisation with regards to compliance and spend.
- 2.2 Management access agency resource through a business case approval process, signed off by Heads of Service.
- 2.3 Corporate funding is not available for covering the cost of agency workers, this is budgeted within services. Each service must budget appropriately within their establishment to cover the cost of the agency worker and they are charged directly as part of the agreement under the current contract.
- 2.4 The Council has been working with a management service provider since 2012 to support the control and governance of our agency spend across the organisation. This initial contract delivered savings and improved compliance in the way the council services engaged agency workers. In 2017, the council retendered for the second managed service provider contract of a value of £3m per year.
- 2.5 Since the managed service provider contract has been in place, the council has had greater oversight on its agency spend and we therefore advocate for a managed service provider to be engaged to support us to have appropriate governance in the engagement of agency workers. This approach also provides greater assurance on compliance.

- 2.6 As part of the council's management of agency workers from 2017 onwards, we put in place specific restrictions in the engagement of agency workers and the contracts were set up to be focused on those services that are statutory in nature or pose significant risk to the organisation if the workforce was not fully-staffed. Those predominant areas were in Children's and Adults social work services, cleaning services and those that relied on a workforce to deliver income for the council as part of the MTFP.
- 2.7 Since then, there has been considerable changes to the council in that time, coupled with quite significant changes in the labour market. Recruitment & Retention presents a significant challenge for our core workforce and we are even struggling in today's market to recruit agency workers to some of our critical roles. This is backed by data provided to us as part of contract management meetings with the current managed service provider.
- 2.8 As a result of the changes in the labour market, which is impacting our core workforce, more council services are needing to engage agency workers to fill workforce gaps. These services needing agency support are broader than ever and each of the four council directorates are citing challenges with recruiting new employees and retaining existing employees, and therefore are seeking to fill gaps with agency workers. It is a particular challenge to recruit to agency workers with specialist or niche skills as these are the roles that are the most difficult to recruit to.
- 2.9 One change that is more pertinent to Nottingham City Council is the development of the Together for Nottingham Plan. This plan describes themes of work the council has committed to deliver against, at pace. Some of the work has been contracted to executive interim agency workers in order for us to have the right people in post, with the right skills delivering some of this critical work. This has increased spend at this level that is out of scope of the current managed service provider, within the current contractual terms.
- 2.10 Due to this widening of demand, the supply has become more challenging for the current managed service provider, partly because our contract is fixed around where the agency need is across the organisation and doesn't allow for executive interim margins. In response to these challenges, it is proposed to include executive interim agency as a category and also be clearer about broadening our demands for agency workers across the organisation, as well as those roles that we find difficulty in recruiting.

This will lead to a larger spend on the holistic contract but it will be easier for the council to manage compliance and have more oversight on agency spend through the managed service provider. It should be noted that there may be some case-by-case agency recruitment that need to take place off-contract but this should be by exception, not the norm.

- 2.11 Agency spend has started to increase over the course of the 2021/22 financial year and the spend is not all in relation to the managed service provider contract. Recent financial analysis over the last two years is showing that we are roughly spending the same amount of money on agency workers (not all through the managed service provider and therefore best value is a challenge), but significantly more on interim executive agency workers, of which has significantly higher margins, and therefore higher cost if we recruit more workers in this space.

<b>Year</b>	<b>Agency Spend</b>	<b>Executive Interim Spend</b>	<b>Total</b>
2021/22	£4,699,132	£1,532,037	£6,231,169
2020/21	£4,896,519	£342,767	£5,239,286

2.12 Theme One of the Together for Nottingham (TFN) Plan focuses on the MTFs. Part of this work is looking at spending controls and oversight. As part of this, we are working on supporting cost reductions for agency workers. Whilst the cost of the agency worker is unlikely to change and the demand may stay the same, by widening the scope of agency workers and bringing in the executive interim options for the managed service provider to fulfil, we could reduce the margin we currently pay to some agencies that we engage (compliantly) outside of the managed service provider currently. This could lead to reduced agency savings for the council, and achieving the aims of the theme in the Transformation for Nottingham Plan.

### **3. Other options considered in making recommendations**

- 3.1 Not renewing the contract and ceasing the usage of agency resource. This option is not recommended from a compliance and financial perspective. Agency resource should always be used as a last resort but there is always likely to be need for agency cover in some of our high risk and statutory services, and those services with recruitment & retention challenges. It is for this reason that a corporate contract should be in place to manage and monitor usage and spend across the organisation.
- 3.2 Due to the challenges with sourcing agency workers, the executive interim market and the specialist skills set, we have recently had challenges through the current managed service provider contract. We have explored procuring via a Dynamic Purchasing System (DPS) but on the advice of procurement colleagues this option was discounted on the basis that this would produce challenges with governance and it would be unrealistic with current resources to manage these contracts.

### **4. Consideration of Risk**

- 4.1 A managed service provider provides a 'one-council' approach (in the main) for procuring agency workers. Agency and executive interim spend combined is increasing in cost for the council. Financial risks would be mitigated by the inclusion of specialist and executive interim agency recruitment as part of this contract.

### **5. Finance colleague comments (including implications and value for money/VAT)**

- 5.1 This decision seeks approval to spend up to £30.000m (£6.000m per annum) to procure a managed service provider for the supply of agency workers for a contract duration of 3+1+1 years. The value of the decision and contract values are based on previous years actual spend data.

- 5.2 The funding for this contact is to be met from existing MTFP budget contained across multiple service areas that will access this contract.
- 5.3 Each service area that spends against this contract will need to ensure its budget is managed effectively so that no financial overspend occurs and all agency related decisions are affordable.
- 5.4 The use of this contract should only be used where necessary and the most cost effective method of recruitment should be used.

Phil Gretton, Strategic Finance Business Partner – 30/05/2022

## 6. **Legal & Procurement colleague comments**

- 6.1 There are no significant legal issues arising from this report. The Council has an ongoing need to engage agency/locum/interim workers and in demonstrating compliance with its Best Value and procurement obligations authority is required to procure a managed service provider.
- 6.2 It is being proposed that to ensure that a procurement process can be appropriately run and to ensure that the Council's future needs are fully understood, that an extension for a further period of c.3 months is granted. As this is a call off arrangement under the ESPO procured framework such an extension is not considered to raise any legal concerns as it remains within the active framework that was awarded. Even if we had to consider the variation to the call-off contract within the provisions of Reg.72 Public Contracts Regulations 2015 this would, given the remit of the extension, be considered to fall under Reg 72(1)(e) and not be a substantial modification.
- 6.3 Regard must be given to any potential employment law related issues that may arise as a result of the engagement of any staff under the framework and an understanding of any agency worker rights that may be deemed to apply as a result of any engagement. It is advised that Legal Services are involved in the procurement process, particularly to review the framework and call-off provisions.

Naomi Vass – Team Leader, Contracts and commercial Team 1/6/22

## 6.4 Procurement

Our intention is to run the tendering exercise via the ESPO Mstar3 (ref 653F\_19) framework Lot 1a to procure the services of a Managed Service Provider.

We will also include a % weighting in the tender evaluation for the provision of executive interims to reflect the changing demand the Council now faces for the hire of temporary agency workers.

The 3-month extension is required to give us time to re-tender the contract. By extending under the current terms of contract, then this raises no significant procurement concerns.

Paul Ritchie, Procurement Category Manager (Products) - 25/05/2022

## **7. Other relevant comments**

### Human Resources

- 7.1 Human Resources & EDI will be responsible for managing the contract, once awarded. The details of which will be scoped up in the procurement documentation, with the advice and support of Procurement colleagues.
- 7.2 Agency resource is approved by Heads of Service and should only be used as emergency cover or for necessary business reasons as justified in the business case for sign-off, but is an essential option to ensure continuity of services to Citizens.

Marie Read, Senior HR Consultant – 1/6/2022

## **8. Crime and Disorder Implications (If Applicable)**

- 8.1 N/A.

## **9. Social value considerations (If Applicable)**

- 9.1 N/A.

## **10. Regard to the NHS Constitution (If Applicable)**

- 10.1 N/A.

## **11. Equality Impact Assessment (EIA)**

- 11.1 An EIA is not required as part of gaining approval for the procurement process but due regard to equality, diversity and inclusion will be considered in the procurement process.

## **12. Data Protection Impact Assessment (DPIA)**

- 12.1 A DPIA is not required as part of gaining approval for the procurement process but due regard to equality, diversity and inclusion will be considered in the procurement process.

## **13. Carbon Impact Assessment (CIA)**

- 13.1 A CIA is not required because it is not relevant for this work.

## **14. List of background papers relied upon in writing this report**

- 14.1 None.

## **15. Published documents referred to in this report**

- 15.1 None.