

**Proposed arrangements for the procurement of temporary staff
January 2023**

1. MATTER FOR CONSIDERATION

- 1.1 Procurement decisions that could lead to expenditure in excess of £10 million are reserved to Achieving for Children's (AfC) three owning councils. AfC currently spends in excess of £4m per year on temporary staff and the shortage of key workers nationally as well as many staff moving from permanent workforce to interim could mean that this will increase.
- 1.2 AfC currently uses a neutral vendor called Matrix to procure temporary staff. Agencies register with Matrix, who negotiate agency fees and other terms and conditions. AfC then posts vacancies and all the agencies register prospective candidates. This approach supports AfC to reach a wider pool of prospective candidates and to secure better rates and terms and conditions.
- 1.3 The contract with Matrix will come to an end during 2023 and so AfC needs to undertake a procurement exercise to secure a provider for upcoming years.
- 1.4 Following consultation with procurement advisers it is recommended that AfC uses the M-Star Framework to procure a new provider.
- 1.5 It is recommended that this procurement activity is undertaken with a view to appointing a new provider by July 2023. It is proposed to procure a provider for a minimum of three years with 2 optional extensions of a year. The maximum value of the contract with all extensions is therefore likely to be between £20 million to £22.5 million.
- 1.6 As a joint procurement decision is needed from all three of AfCs owning councils it is recommended that the final procurement decision is delegated to the Director of Children's Services in consultation with the relevant Lead member. This will ensure that a timely decision can be taken, following a compliant procurement process.
- 1.7 AfC will be supported by specialists from the South London Legal Partnership and Kingston Procurement Team in undertaking the procurement exercise.

2. CONTEXT

- 2.1 The cost of temporary staffing presents a challenge for most public sector organisations. This paper outlines the challenges AfC are facing and identifies the approach AfC is recommending to secure future arrangements for appointing temporary staff. The aim is to provide the organisation with a temporary worker solution which is streamlined, efficient, legally compliant and offers value for money.
- 2.2 As with many local authorities across the UK, AfC has experienced recruitment and retention challenges which has led to a reliance on agency workers to keep caseloads in front line teams reasonable. The consequence has been escalating workforce costs and a less stable workforce, as there is more turnover with interim staff.
- 2.3 AfC has signed up to regional social work agency pay memoranda of understandings for all three boroughs but it is generally recognised that these agreements are not having the impact that was hoped. Local Authorities often break the agreement to keep critical services supported and

agencies are finding creative ways around the agreed rates and terms. The memoranda are attempting to establish a more balanced social work workforce, to control agency worker rates and ensure accurate performance feedback on candidates. The recent changes to the agreements have put additional pressure on agency workers meaning that movement amongst the local agency workforce has decreased significantly, leaving AfC in a difficult position as hiring managers are struggling to appoint new staff.

3. CURRENT ARRANGEMENTS

- 3.1 In January 2021, AfC consolidated the recruitment of agency staff for all three boroughs into a single arrangement with Matrix. Matrix is a neutral vendor and was appointed through the Mstar framework. This route meant that suppliers were assessed as to whether they could provide resourcing for the broad range of personnel that AfC requires and AfC were also able to secure competitive rates.
- 3.3 The current neutral vendor service now manages most contracted staff on behalf of AfC and this has provided clear improvements in terms of visibility, control, compliance and governance. The arrangement has enabled AfC to have greater scrutiny over the use of agency workers including recruitment checks and rates paid.
- 3.4 The consolidation of the arrangements for all three boroughs into one has provided closer alignment between AfCs HR strategy and policy development functions as well as workforce and organisational development services.
- 3.5 The current supplier also enables AfC to manage workers whose roles have been deemed as inside IR35, but were not signed up with an employment agency. This then mitigates the risk of fines from HMRC and ensures that we are working within the IR35 legislation.
- 3.6 AfC currently spends over £4m on agency staff through the Matrix arrangement each year.

Type of cost	Charges (2021-2022)
Total client Net Spend	£ 4,006,532.41
Total number of hours	114,258
Total number of timesheets	3,482
Total agency fees	£ 239,989.11
Total MSP fee	£ 19,041.31

- 3.7 The amount per borough varies from year to year but broadly speaking 20% of the cost relates to Windsor and Maidenhead based staff with the remaining 80% being used on joint Kingston and Richmond teams.

4. POTENTIAL PROCUREMENT APPROACHES

- 4.1 There are three commissioning options for the appointment of an agency provider
- Use of a Framework where goods and/or services are defined and priced, and against which AfC can simply place an order with the supplier that best meets our requirements, usually known as a direct award

- Use of a Framework which includes both a call-off and a further competition option – where, if the solutions meet AfC’s needs we can simply place an order, or we can run a further competition if appropriate,
- Not to use a Framework and undertake a full procurement process, reaching out to the market.

4.2 Utilising a framework can ensure best value and avoid a lengthy procurement exercise. Frameworks are widely accessed by Local Government to support the sourcing of goods and services and therefore this route is recommended as the most appropriate procurement route.

5 RECOMMENDED PROCUREMENT APPROACH

5.1 Following a review of available options, it is recommended that AfC uses the MSTAR framework. This framework was successfully utilised in the last procurement exercise and our owning Councils have negotiated their own agency contracts through this route.

5.2 The MSTAR framework has been commissioned by the Local Government Professional Services Group and supported by the Efficiency Reform Group and the Department for Education. It has been designed, through extensive consultation with local authorities, to meet a range of user requirements, and has been structured to enable authorities to call off or mini-compete to find the option that best meets their needs.

5.3 The pre-selection of suppliers has already been completed, meaning the suppliers on the framework have been pre-qualified as meeting the minimum capacity and capability for the contract.

5.4 In addition the framework offers the following benefits

- This framework is compliant with UK/EU procurement legislation
- It will enable an efficient procurement process
- Service Providers listed on the framework have been assessed for their financial stability, track record, experience and technical & professional ability
- There are no additional charges and therefore comparisons on cost is far easier
- There are pre-agreed terms & conditions to underpin all orders
- The ESPO framework has proven experience, market knowledge and procurement know-how in the temporary staffing market

5.5 The ESPO MSTAR framework has the following relevant lots available to AfC

- Lot 1 - Managed Service Provision
- Lot 1a Neutral Vendor: MSP to manage a supply chain of Agencies.
- Lot 1b Master Vendor: MSP to generate a pool of staff, from which they will fill vacancies. Further tiers of agencies may also be used where necessary.

5.6 After a review of all Lots, the recommendation is that AfC utilise the MStar framework to access providers in Lot1a, the Neutral Vendors. Remaining with a neutral vendor enables AfC to continue to meet its policy objectives, which in general will mean reducing the amount of public money spent via the engagement of individual recruitment agencies.

5.7 Engaging with a Neutral Vendor ensures that AfC is able to continue to resource its temporary workforce through a commercial, sustainable and efficient model that will operate in the best

interests of AfC. This route has been beneficial over the last contract period.

- 5.8 A Neutral Vendor Managed Service is an unbiased provider of temporary staff, instead of filling roles directly themselves, they manage supply chains of agencies and local Small or Medium Enterprises giving all agencies on their supplier list fair access to all roles released.
- 5.9 This option enables AfC to have access to a broad supply chain immediately, there would be fair opportunity for all agencies to secure assignments (including the smaller recruitment agents), this can allow AfC to target current off contract suppliers to join the framework, there would be reduced cost and time to hire, a broader group of workers to attract to posts and options to reduce the spend off contract workers.
- 5.10 The drivers to continue with this route include greater AfC management control and oversight of the contract. In addition this includes the providers ability to:
- attract and negotiate with our current off contract suppliers to join their supply chain
 - provide reassurance on the following:
 - transparency and accurate management information sharing - enabling improved monitoring of the service, including equality and diversity performance
 - commitment to work with the local community and local businesses - offering opportunities to engage with AfC to even the small providers
 - experience of meeting KPIs and reporting on findings and outcomes
 - compliance with regulations - for example the Agency Worker Regulations, Implementation of the Terms and Conditions review for Temps and the London Wide Memorandum of Understanding for Qualified Social Workers.
- 5.11 Additional benefits of this arrangement include;
- Access to one provider who can offer a simple system solution that enables our managers to engage with and complete in a few steps to advertise an agency position, the system would need to be web based and mobile friendly, allowing managers to access on a range of devices.
 - AfC are likely to require supply staff similar to other local authorities and we know that the London Collaborative have successfully procured suppliers through the Mstar framework, demonstrating that they are able to meet demands of a range of children and social care requirements similar to AfC's needs.
- 5.12 It is recommended that a supplier is appointed for a minimum of three years with two optional extensions for a year each.

6. FINANCIAL CONSIDERATIONS

- 6.1 The reality of the current recruitment market and shortfalls of qualified and experienced staff in key children's services professions means that appointing a vendor that can offer competitive rates and quality staff is critical to supporting value for money in children's services over the coming years.
- 6.2 The vast majority of the contract value is paid in salaries to the recruited workers. The fee to the agency for recruitment services is a smaller proportion of the contract value than we would expect to see if we were to go to the open market. It is important that the future arrangement remains effective in negotiating these agency fees down.

- 6.3 The proposed framework approach will support AfC to appoint an experienced vendor. The procurement criteria will need to ensure that competitive pay and agency rates are prioritised as well as quality and quantum of available agencies and staff.
- 6.4 AfC will continue to monitor and discuss performance through the AfC Workforce Board and AfC Board of Directors.

7 OTHER CONSIDERATIONS

- 7.1 AfC requires the provider to have comprehensive risk management procedures in place, including a published and regularly reviewed disaster recovery and contingency plan to ensure continuity of service in the event of any incident. A risks and issues log is maintained and available at operational meetings and at any other times as requested by AfC. The risks to AfC include
- The legal implication of contracting directly. By using the framework it ensures AfC are following legislation on procurement and the framework has already undertaken due diligence. AfC legal advisors have already reviewed the proposed contracts to assess if there are any legal risks to AfC. This will be captured at the contracting stage with our legal team, a significant amount of due diligence has also been met by the London Collaborative in using this framework and provider.
 - Financial risk as the demand for agency workers increases, we are already seeing an increase between last year and this year. This must be mitigated through the continual effort to recruit permanent workers.
 - Delay in procurement, this could result in having to renegotiate higher fees with current providers until the new provision starts.
 - Our People and Payroll Team's capacity to meet the demands of the increase in use of agency workers as well as other conflicting priority work. This will be mitigated through a strong project plan and a timeframe for implementation that is achievable.

8. LEGAL CONSIDERATIONS

- 8.1 ESPO is a Central Purchasing Body as defined by the EU Combined Procurement Directive 2004/18/EC. The Framework Agreement is open to the entire wider public sector, including but not limited to, local government, educational establishments, the Police, Fire and Rescue Service and registered charities within the UK. AfC has confirmed access to this framework.
- 8.2 The MSTAR Framework Agreement is national in scope and has been established for use by the wider public sector. AfC can utilise the 'call off' as part of the framework. This will only be placed after the appropriate procurement requirements have been satisfied.
- 8.3 A robust procurement process should take place under the ESPO framework - with legal support to ensure that due process is followed.
- 8.4 AfC is required to publish details of the award on Contracts Finder as required by regulation 108 of the Public Contracts Regulations 2015 and enter the details in the relevant contract register.
- 8.5 A legal review of the ESPO framework and its terms and conditions should take place. It should be noted that the terms and conditions of the framework are mandatory. However, there remains the

ability for AfC to add specific clauses and schedules that meet its specific needs. A final internal legal review should be requested on completion of these specific additions and prior to contract award.

9. EQUALITY IMPACT CONSIDERATIONS

- 9.1 Analysis of the current temporary agency workers' profile shows that ethnicity, age and gender are varied, confirming no group will be disadvantaged as a result of changing the contract arrangements.
- 9.2 Within the framework it is made clear that the Service Provider shall not unlawfully discriminate within the meaning and scope of Equality Legislation or any other Law relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment. This will also be made clear in the specification to the provider.
- 9.3 Equality and diversity are embedded throughout the ESPO framework and suppliers must reflect this requirement within their tenders. By signing up to the framework providers, and consequently all agencies supplying temporary labour to AfC, will have to agree to the equality and diversity requirements set out within the framework agreement. This addresses our Public Sector Equality Duty (PSED) requirements under the Equality Act.
- 9.4 A full impact assessment will be conducted at the point of awarding the contract to a chosen provider and on-going contract management will also address any equality and diversity considerations when relevant to ensure AfCs obligations are met.

10. CONTACTS

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