
Decision Maker: **Executive**

Date: **14 September 2016**

Decision Type: Non-Urgent Executive Key

Title: **GATEWAY REPORT ON THE AGENCY STAFF CONTRACT
AND REVIEW OF FUTURE OPTIONS**

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Ward: All wards

1. Reason for report

This report serves two purposes

- (i) To provide a Gateway Review on Agency Staff Provision;
- (ii) To provide a review of the options available for the future contract;

2. RECOMMENDATIONS

- (i) **That Bromley should continue to use the London-wide Framework for the future provision of agency staff.**
- (ii) **Subject to (i) above being agreed that the Council agree Option 1.**

Corporate Policy

1. Policy Status: Existing policy.
 2. BBB Priority: Excellent Council.
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Financial

1. Cost of proposal: N/A
 2. Ongoing costs: Recurring cost.
 3. Budget head/performance centre: All
 4. Total current budget for this head: £
 5. Source of funding: LBB
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Staff

1. Number of staff (current and additional): Varies depending on demand
 2. If from existing staff resources, number of staff hours: Varies depending on demand
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Legal

1. Legal Requirement: No statutory requirement or Government guidance.
 2. Call-in: Call-in is applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

3.1.1 Bromley's contract with Adecco its Managed Service Provider for the provision of Agency Staff expires on 23 April 2017.

3.1.2 This report reviews the current arrangements and sets out the options for the future provision of the service.

3.2 The Current Service

London-wide Framework

3.2.1 The Eastern Shires Purchasing Organisation (ESPO) was asked by the Office of Government Commerce (OGC) to develop a national framework for the provision of agency staff services. The resulting arrangement is considered to be the best in class solution for the provision of these services throughout the UK.

3.2.2 A number of London Boroughs previously collaborated to undertake a mini-competition within this framework (MStar) to achieve a best value solution for London. This mini-competition combines the buying power of over 12 London authorities and achieves favourable rates for the provision of the service.

3.2.3 In 2012 Members made the decision to use the London-wide Framework for the future provision of agency staff. As a result, the Council now has a managed service provider Adecco through which it procures its temporary workers. The contract for the provision of services expires on 23 April 2017.

3.2.4 The original ESPO framework contract has recently been retendered by ESPO and an e-auction was undertaken earlier this year resulting in the MStar 2 Framework being established. Bromley provided input into the process and the competition is supported by the Society of London Treasurers, London HR representatives and the London Heads of Procurement.

3.2.5 The e-auction competition resulted in three solutions being available to Bromley under the framework; a Neutral Vendor solution similar to that which Bromley had before the award of contract to Adecco, a Managed Service Provision which is in place at the moment and a Hybrid option (combination of the two types of service).

The table below details the differences between each type of service.

Neutral Vendor	Master Vendor	Hybrid
The Managed Service Provider does not provide workers directly but manages a supply chain of multiple agencies	The Managed Service Provider operates with a view to providing all customer staff from their own agency base (including customers own pool) only going to additional agencies when the roles cannot be filled	This model allows customers to define their sourcing strategy by using a combination of neutral and master models and engaging with specialist agencies depending on their resourcing objectives

3.2.6. Previously Bromley moved away from a neutral vendor service in favour of the master vendor (MSP) option.

3.2.7 A Managed Service Provider will undertake to provide the majority of required staff itself, with the remaining staff being provided from local and small agencies thus ensuring that the local

economy is supported while still providing favourable rates to Bromley. The advantages of a Managed Service are similar to those of a Neutral Vendor service plus:

- Single provider who will provide staff and manage other agencies on Bromley's behalf
- Provide safeguarding and CV checking facilities to ensure that staff have the necessary DBS checks, right to work documentation, qualifications, etc.
- Single point of contact for managers, with the possibility of an on-site or local office based account manager
- Under the arrangement the Managed Service Provider (currently Adecco) is the employer of staff both for employment and tax purposes.

4. SERVICE PROFILE/DATA ANALYSIS

Current Performance

4.1.1 Adecco has been the Council's Managed Service Provider since 2013. The contract is monitored and in the period 15/16 fulfilment rates for vacancies were recorded at 86% against a target of 98%. Having a single provider managing the service means that Bromley has a clear picture of its establishment, the agencies in use and the costs involved, at all times. This has enabled a rigorous financial/management information system to be operated which reconciles costs and the allocation of staff to posts which would not be readily available should the authority revert to dealing directly with agencies at a local level. From 1 April 2015 to 31 March 2016 the spend on agency workers in the Council through the contract was £8,196,087 net. Social and Healthcare services continue to be the highest level of usage but generally agency staff are used in most departments across the Council. The bulk of this cost relates to direct payment of workers. The agency receives a "mark –up" rate ranging from £0.42ph to £4.62ph based on the category of the worker. For social care qualified staff the rate is £2.45ph and for unqualified is £0.87ph. Some of the rates for workers have reduced under the new framework compared to the last framework.

Audit Risk and Compliance

- 4.1.2 Continuing with a single provider for the provision of agency staff would ensure that managers remain within Financial Regulations and Contract procedure Rules as these are embedded in the processes with Adecco. It also assists in the authority's response to developing policy around the engagement of agency workers and our response to the changing legal and financial climate.
- 4.1.3 The contract has been secured through the use of a Framework which secures best value for money for the authority. Financial rules and monitoring processes are already in place and embedded in current practices. In addition regular audits are carried out both by Adecco and by Bromley's own internal audit Team. Monitoring meetings are held between Adecco and Officers within the Council with the view to holding Adecco to account for the performance of the contract.

5. STAKEHOLDER CONSULTATION/CUSTOMER PROFILE

- 5.1.1 Adecco's main business is the supply of professional administrative staff. For specialist areas Adecco has secured its own key suppliers to undertake such work on their behalf.
- 5.1.2 Customer experience is varied as the primary users of the contract are Social Care where there is a recognised national shortage of social workers. Adecco has secured specialist

agencies to support this area of recruitment and managers can go direct to them with their requirements.

- 5.1.3 Managers, Human Resources and Adecco are working together to improve processes and the quality of candidates especially for hard to recruit posts mainly in Children's Services and Adult Services. For example a joint forum was held on the 30th June and the Council has a dedicated Adecco contact person on site each week. Officers also attend a Pan London User Group to discuss service provision.

6.1 FUTURE OPTIONS

- 6.1.1 The Council's needs as an employer have been subject to considerable change over the past few years and as it continues to change the way services are delivered its workforce will be affected including the procurement of agency staff. It is essential that the Council is able to recruit and retain key staff whilst ensuring that it has sufficient flexibility to meet fluctuating levels of demand.
- 6.1.2 The cumulative spend on the contract since its commencement in 2013 to March 2016 is approximately £20 million net. Social and Health Care Services account for the majority of the expenditure but there is usage across the whole of the Council.
- 6.1.3 The Adecco contract is instrumental in managing not only the temporary but also the permanent recruitment staffing needs of the Council. The current contract helps to fill critical posts urgently and the recent cap on rates through the memorandum of Cooperation with other borough's is attempting to stabilise the social care market although this continues to be problematic due to the high levels of demand and insufficient levels of supply. In addition Managers are finding the use of agency staff to be a viable reduced risk option when managing a service that is going through a period of transition. This is likely to increase in light of the outcome of the recent Ofsted inspection and the commitment to improve services within Children's Social Care and also as the Council continues its commissioning journey where a more flexible approach to service delivery is required including the use of agency staff and non- standardised workers in general.

There are three main options moving forward for consideration:

6.2 Option 1

Master Vendor (Managed Service Provider)

- 6.2.1 Continue with the ESPO Framework and access Lot 2 Managed Service Provider for which Adecco is the preferred supplier. There are other agencies under Lot 2 and the Authority could run its own mini competition under the framework to explore whether it is achieving best value for money. With Adecco having won the e- auction however any mini competition is likely to result in a higher cost to the Council. The rates achieved by the London Collaboration are much lower than the national framework, and have been achieved through economies of scale based on a 70/30% split on price/quality.

6.3 Option 2

The Hybrid option

- 6.3.1 The benefit of this option is that this model allows customers to define their sourcing strategy by using a combination of neutral and master models and engaging with specialist agencies

depending on their resourcing objectives. Under the MStar framework Adecco is the preferred supplier under this option also. However the Council would then be responsible for dealing with individual agencies and also for managing the risk around safeguarding and compliance (see direct dealing option) below. This is likely to cause additional workload for which the Council is not currently resourced.

6.4 Option 3

Direct Dealing

- 6.4.1 The authority could revert to dealing directly with agencies, allowing managers to decide at the local level which agencies they use. This may allow managers to develop relationships directly with agencies to ensure the quality of candidates provided and the responsiveness of the agency to providing workers but there are a number of issues which dealing in this way poses.
- 6.4.2 Direct dealing would fragment spend across the authority and significantly reduce Bromley's buying power in terms of driving down agency margins. It would also reduce the variety of agencies that Bromley deals with, as the temptation would be to continue to use only those agencies with whom managers have developed relationships. This would reduce the pool of candidates available and also reduce the opportunities for new, local providers to enter the market place. This approach would also add significant additional costs in to the management of the arrangement and revert to contracting arrangements which have incurred significant additional service provision costs in the past. This approach is not recommended in any form.
- 6.4.3 Having a single provider managing the service means that Bromley has a clear picture of its establishment, the agencies in use and the costs involved, at all times. This has enabled a rigorous financial/management information system to be operated which reconciles costs and the allocation of staff to posts which would not be readily available should the authority choose to revert to dealing directly with agencies at a local level.
- 6.4.4 Currently, and under any future single-provider solution, Bromley pays one invoice per month for all agency staff. Should we move to the Hybrid Option or direct dealing, this would significantly increase the number of invoices processed and the associated costs, as each agency would bill separately for each individual member of staff.
- 6.4.5 A single provider can also help to address corporately the legal and policy issues around the engagement of agency staff. European legislation surrounding the engagement of agency workers is complex and requires the authority to ensure it has an accurate picture of the numbers and profile of its agency workforce to ensure that it reduces the risk of legal challenge around employment rights, equal pay, etc. This is particularly important following the outcome of the recent HMRC audit. Working with a single provider allows Bromley to do this and also to develop strategies with the provider around demand management, SME engagement and cost reduction.

7. MARKET CONSIDERATIONS

- 7.1.1 While other frameworks are available for Bromley to enter, these do not provide such favourable rates as those available through the ESPO Framework. Bromley could also tender alone for the service. However, joining with other London boroughs increases the volumes put through any resulting contract, making it more attractive to suppliers and more likely to obtain favourable rates for the authorities involved. At present, in addition to Bromley, Adecco provides services to a mixture of 11 other London Borough's/Council's.

- 7.1.2 As stated earlier in this report, the ESPO arrangement is considered to be the best in class solution for the provision of these services throughout the UK. It is supported by both the Society of London Treasurers and the London Heads of Procurement and HR.

8. SUSTAINABILITY / IMPACT ASSESSMENTS

- 8.1.1 All providers on the ESPO framework are asked to include in their bids an approach to ensuring that local agencies are included in the eventual solution. They have also been asked to provide options for the engagement of local people as agency workers including measures for engaging with the local long term unemployed and hard to reach sections of the community.

9. OUTLINE CONTRACTING PROPOSALS & PROCUREMENT STRATEGY

- 9.1.1 The current contract with Adecco expires on the 23rd April 2017 and Bromley will need to ensure that it has an arrangement in place to ensure that there is no loss of provision to Departments in the event that a further contract with Adecco is not procured through the ESPO framework.
- 9.1.2 Most Framework contracts are for a 3 or 4 year period with an option to extend for a further year included in the contract term. It is proposed that this arrangement is placed for an initial period of 4 years with an option to extend for a further year.

10. POLICY CONSIDERATIONS

- 10.1.1 Continuing with a single provider for the provision of agency staff ensures that managers remain with Financial Regulations and also Contract Procedure Rules as these are embedded in the processes with the provider. It will also assist in the authority's response to developing policy around the engagement of agency workers and our response to the changing legal climate.

11. COMMISSIONING AND PROCUREMENT CONSIDERATIONS

- 11.1.1 The framework arrangement used has been placed in compliance with the EU regulations and it should be noted that this is an area in which a number of other Council's in London have paid significant sums, or had costs awarded against them, for apparent breaches of the EU Regulations. In contracting through a national framework, in association with a number of other London Boroughs full consideration of these risks has been actively considered in the Procurement Strategy developed and put in place to manage this market.
- 11.1.2 The Council has previously provided a market review report to London Councils and Heads of Procurement which has led to the London Wide Framework tendering arrangements identified in this report being accepted as best procurement practice. This work was completed with inputs from ESPO and informed the arrangements included within the Framework Contract arrangements to be used.
- 11.1.3 The Framework Benefits from its overview by a Central Purchasing Organisation (ESPO) in terms of onward management of service providers and also ensures compliance with Public Procurement requirements.

12. FINANCIAL CONSIDERATIONS

- 12.1.1 The ESPO Framework is recognised as an established method of procurement providing a value for money option for securing agency staff. The cumulative spend on the Bromley contract since its commencement in 2013 to March 2016 is approximately £20 million net. It is difficult to quantify how much this spend will be impacted upon going forward but if further services are commissioned rather than directly employing staff in house then this spend is likely to reduce over time. Although it should be borne in mind that the bulk of the spend relates to Social Care.
- 12.1.2 Moving away from the current Adecco system will require a lot of work to our Employee database so that all agency staff are recorded correctly for Budget Monitoring purposes. Officers from the Financial Information System Team and IT team, who are currently working on other key projects would need to make changes to the database, which is quite time consuming (around 1 months' work), at a time when all resources are fully utilised. Therefore, these staff would either have to reprioritise their workload or information on use of agency staff recorded manually.

13. PERSONNEL CONSIDERATIONS

- 13.1.1 There are no direct personnel implications arising from the report mainly because the Council, irrespective of how agency workers are procured, is not the employer of agency staff. However, as stated above, the Agency Workers' Regulations (AWR) impose significant duties and obligations on hirers (end users) of agency staff as well as the employment agencies. In a nutshell, the aim of the AWR is to ensure that agency workers receive equal treatment in respect of some aspects of employment. The regulations were effective from 1 October 2011. There are two main rights now available to agency staff, namely
- a) Day one rights giving agency staff the right to communal facilities e.g. canteen, car parking facilities, etc and the right to vacancy information;
 - b) Week 12 rights i.e. the right to the same basic pay and terms and conditions of service as directly employed staff.
- 13.1.2 Consequently hirers turn to recruitment agencies and in particular Neural Vendor or Managed Service providers to provide the solution to work within the AWR, as an alternative to dealing directly with employment agencies – thus minimising all the risks associated with hiring agency staff. This arrangement will complement the current Special Recruitment Measures agreed by Chief Officers to ensure that employment opportunities are ring fenced to redundant/displaced staff first before agency staff, in line with the Council's legal obligation to minimise compulsorily redundancies and will also mitigate the employment risks associated with engagement of non- standardised workers.
- 13.1.3 This arrangement will also assist in the interim whilst the Council reviews its current Recruitment and Retention Strategy for Children's Social Care in light of the recent Ofsted outcome to ensure that Bromley remains competitive and an employer of first choice. The anticipated impact of this review is likely to reduce the Council's reliance on temporary workers for permanent social care positions in the longer term.

14. LEGAL CONSIDERATIONS

- 14.1.1 This report seeks the approval of the Executive to procure a contract for the provision of agency staff for a period of 4 years with an option to extend for a period of one year as per 14.1.3 below under the new framework. The bulk of the cost associated with the contract relates directly to payment to workers as outlined in paragraph 4.1.1. above.
- 14.1.2 Rule 5 of the Contract Procedure Rules provides that for a contract with a total value of £1,000,000 or more the Executive will be formally consulted on the intended action and contracting arrangements.
- 14.1.3 Rule 8 of the Contract Procedure Rules provides that for contracts with a value above £500,000/the EU threshold the Council must invite tenders from between 5 and 8 organisations and comply with the Public Contracts Regulations 2015. However, in this case, the Council wishes to use a Framework Agreement which was competitively tendered and complies with the Regulations. As stated above in the Financial Implications section paragraph 12.1.1 the estimated cost going forward is dependent on usage and recruitment and retention variables.
- 14.1.4 Under rule 3.6 the report author must consult with the Finance Director and the Director of Corporate before entering into collaborative procurement arrangements. The report author will need to consult with the Legal Department regarding the terms and conditions of the framework agreement and the call-off contract.

Non-Applicable Sections:	
Background Documents: (Access via Contact Officer)	(1) REPROVISION OF AGENCY CONTRACT Report to Executive (CE1206) 25 July 2012 (2) EXTENSION TO AGENCY CONTRACT Report to Executive (CEO16017) 23 March 2016