

# Scrutiny & Overview Committee Supplementary Agenda



**5. Call-In: Mayor in Cabinet Decision on Temporary Workers Staffing Contract (Pages 3 - 12)**

A call-in request has been submitted on the decision regarding the Temporary Workers Staffing Contract taken by the Executive Mayor in Cabinet on 21 September 2022.

The Scrutiny & Overview Committee is asked to consider and respond to the Call-In in accordance with the procedure set out in the Council's constitution.

**9. Call-In: Mayor In Cabinet Decision On Temporary Workers Staffing Contract (Pages 13 - 20)**

This item sets out the confidential response to the Call-In request.

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<b>REPORT TO:</b>	<b>SCRUTINY AND OVERVIEW COMMITTEE</b> [11 <sup>th</sup> October 2022]
<b>SUBJECT:</b>	<b>CALL-IN: MAYOR IN CABINET DECISION ON TEMPORARY WORKERS STAFFING CONTRACT</b>
<b>LEAD OFFICER:</b>	Dean Shoesmith, Chief People Officer, Human Resources
<b>CABINET MEMBER:</b>	Councillor Cummings Cabinet Member for Finance
<b>PUBLIC/EXEMPT:</b>	Public

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<b>ORIGIN OF ITEM:</b>	This item has been triggered by the call-in of the key decision (2422EM) taken by the Executive Mayor in Cabinet on 21 September 2022.
<b>BRIEF FOR THE COMMITTEE:</b>	The Scrutiny & Overview Committee is asked to consider and respond to the Call-In in accordance with the procedure set out in the Council's constitution

## 1. EXECUTIVE SUMMARY

- 1.1 The Executive Mayor in Cabinet took the decision, at the Cabinet meeting on 21<sup>st</sup> September 2022, to award a four-year contract called off from the ESPO Mstar3 Framework London Collaboration Lot 1 Temporary Workers Staffing to the provider and for the maximum contract value stated in the part B award report.
- 1.2 A call-in request for the Scrutiny & Overview Committee to review this decision was received on 29<sup>th</sup> September 2022. The call-in request was submitted by the Chair, Vice-Chair, Deputy-Chair and one other member of the Scrutiny & Overview Committee.

### The Call-In Request

- 1.3 The reasons stated in the request as to why the Call-In has been submitted are:-
1. We need reassurance that this approach delivers value for money. We particularly want to make sure that this framework delivers the best outcome for the residents of Croydon as opposed to pursuing a more traditional competitive tendering process.
  2. We want reassurance that due process has been followed as there is a risk of legal challenge to the decision.

3. We lack the information to judge whether this decision is consistent with budget framework.
4. We want clearer explanation as to why the MStar3 Framework is the best option for the Council rather than the other options mentioned in the report.
5. We want reassurance that that this decision will meet the Council's strategic needs, particularly regarding workforce and recruitment.

**The outcomes desired from the Call-In are:-**

1. Reassurance that due legal and financial process has been followed.
2. Reassurance that the decision provides the best value for money for residents and
3. meets the Council's long term strategic workforce needs.
4. An efficient and helpful enquiry that also offers the Council guidance and reassurance without adding to the risk of delay.

**The following information has been requested to inform the Scrutiny & Overview Committee's consideration of the call-in request:-**

1. Further explanation on the legal advice provided.
2. The report mentions benchmarking – can this information be provided along with any other work to compare our situation with other London boroughs.
3. An evaluation of the previous contract in terms of quantitative and qualitative data – What does good look like? How has this informed the new process?
4. MStar3 Framework –what version is proposed to be used and when does it expire?
5. How much has the Council spent annually on the Adecco contract to date?
6. How has the Council assessed its needs for temporary workers.
7. What is the average length of time a temporary employee is in post and how many times are these contracts re-extended?

- 1.4 For the ease of reference, the issues raised above are addressed under each of the sub-headings below and in the accompanying Part B report that is exempt from publication.

## **2 Background**

- 2.1 The recruitment of a skilled workforce is essential for the Council to deliver its services. The recruitment market is challenging and requires specialist skills to attract talented staff and to do this in a timely manner to avoid service delivery being impacted.
- 2.2 Having a managed service provision for the recruitment of temporary staff within the Council provides economies of scale and avoids an ad-hoc and therefore potentially more expensive recruitment process. In addition, expert market knowledge can source temporary staff with appropriate skills and on-board those staff using a standard recruitment process that is cost effective.
- 2.3 The Council's existing contract for temporary staffing was awarded through the London Collaboration MSTAR2 framework in November 2016 and was due for re-procurement in time for November 2020. However, due to the impact of COVID 19, this contract was extended for an additional 2 years until November 2022.
- 2.4 A procurement exercise was conducted which led to the recommendation to award a four-year contract called off from the ESPO (Eastern Shires Purchasing Organisation) Mstar3 Framework London Collaboration Lot 1 Temporary Workers Staffing to the provider and for the maximum contract value stated in the part B award report.

## **3 Response to the points raised**

- 3.1 *We need reassurance that this approach delivers value for money. We particularly want to make sure that this framework delivers the best outcome for the residents of Croydon as opposed to pursuing a more traditional competitive tendering process.*
- 3.2 There are no guaranteed volumes within the contract, no minimum spend is stipulated which means spend can be decreased through internal demand management. Rates are also locked in for the duration of the contract which protects the council from inflationary rises.
- 3.3 Temporary staffing is a service that all Local Authorities utilise, and in 2011 Croydon joined a collaboration of London Boroughs to collectively procure for temporary staffing in order to maximise a greater purchasing power. Croydon Council first utilised this approach in 2012 for the initial MSTAR, and then again in 2016 for MSTAR2. The contract award report taken to Cabinet on the 21<sup>st</sup>

September 2022 proposed this route to market for the third time for MSTAR3. MSTAR3 is the procurement framework and the London Collaboration is a number of London Boroughs who have committed to using the MSTAR3 framework to achieve effective outcomes with economies of scale driving better costs because of the volume of business the collaboration provides to the suppliers to the MSTAR3 framework.

- 3.4 The London Collaboration undertook financial benchmarking against other frameworks as part of the further competition process. A London Collaboration call off from the Master Vendor model saved agency fees of 24% on comparable framework rates, the Neutral Vendor model saved 19%.
- 3.5 Framework prices are higher than that which the London Collaboration secured through further competition because they need to work for both small and large contracts which might call off from it. London Collaboration further competitions guarantee high volumes of throughput, so the Managed Service Providers are able to lower their prices in anticipation of a greater economy of scale.
- 3.6 Table 1 shows the 17 London Boroughs that are currently using the London Collaboration approach. This list will grow by a further 3 as new boroughs join the collaboration. The reasons given for the Councils moving from their previous route has been the improved prices secured through the London Collaboration further competition.

<b>Table 1 – Current Customers and Contract Status</b>		
<b>Borough</b>	<b>First Year Used</b>	<b>Route</b>
London Borough of Havering	2011	London Collaboration
London Borough of Newham	2011	London Collaboration
London Borough of Hounslow	2012	London Collaboration
London Borough of Tower Hamlets	2012	London Collaboration
London Borough of Barking & Dagenham	2012	London Collaboration
London Borough of Bromley	2012	London Collaboration
London Borough of Croydon	2012	London Collaboration
London Borough of Sutton	2012	London Collaboration
London Boroughs of Wandsworth & Richmond	2014	London Collaboration
London Borough of Ealing	2012	London Collaboration
Royal Borough of Kingston	2015	London Collaboration
London Borough of Barnet	2017	London Collaboration
London Borough of Haringey	2020	MSTAR2 Further Comp
London Borough of Hackney	2021	YPO Further Comp
London Borough of Hillingdon	2021	Further Comp
London Borough of Camden	2021	YPO Further Comp

- 3.7 Where the Collaboration Contract is not used, a small number of London Boroughs have run a further competition directly through the ESPO MSTAR3 framework or through the Yorkshire Procurement Organisation (YPO) HR framework.
- 3.8 There is only one council that has not completed further competition from a framework, and instead completed a Direct Award under the YPO Framework. No London Boroughs deliver the service internally, and no London Boroughs completed an open tender.
- 3.9 These arrangements are not uncommon within the public sector, with the GLA leading a similar collaboration involving themselves, TFL, the MET police, London Fire Brigade, London Ambulance service and others.
- 3.10 MSTAR3 expires on the 10<sup>th</sup> of April 2023. Councils can award a contract up until that point for a period of up to four years. MSTAR4 is currently being developed and is expected to be in place in early 2024.

**4. *We lack the information to judge whether this decision is consistent with budget framework***

- 4.1 Budgetary impact was set out in the Part A award report section 5. Further information is set out below.
- 4.2 There is no separate budget for temporary workers, or the margin and management fee associated with their use as set out in the original Cabinet report in section 5.1. The MTFS budget for the Agency spend is contained within the staff salary budgets.
- 4.3 The annual spend on agency workers has varied over the last few years, including a significant reduction since 2019 (table 2).

<b>Table 2 – Annual spend for the last 3 years</b>	
Calendar Year	Annual spend
2017	£30,765,816
2018	£37,831,961
2019	£44,392,251
2020	£24,631,225
2021	£14,711,006
2022 (spend to date)	£16,449,573

- 4.3 The spend projection for the current year to date is that spend is increasing, therefore the proposed maximum contract value has been set to accommodate any continued increase over the term of the contract.

- 4.4 It is considered very unlikely at this stage that the maximum contract value will be reached. This value is proposed because predicting the four-year staffing requirement is difficult to forecast with any certainty, particularly given current market uncertainties. The higher figure provides headroom in the contract to allow for variances without needing to undergo a new tendering process or a contract variance in the event that the upper limit is exceeded.
5. ***We want reassurance that due process has been followed as there is a risk of legal challenge to the decision***
- 5.1 Details are provided in Part B of this report as it contains exempt information as defined in paragraph no. 5 of Schedule 12a to the Local Government Act 1972 (as amended): Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. In all the circumstances, the public interest in maintaining the exemptions outweigh the public interest in disclosing the information.
- 5.2 For general information, a framework agreement is a contractual arrangement with one or more providers that set out terms and conditions under which agreements for specific purchases (known as call-off contracts) can be made throughout the term of the framework agreement. The purpose of using a framework is to enable contracting authorities to award individual contracts without going through a full procurement process each time. This is because the Public Contract Regulations 2015 (“PCR”) provide that, when awarding call offs under a framework agreement, there is no need to go through the full procedural processes set out in the 2015 Regulations, because one of the processes will have been followed in the establishment of the framework. This makes a framework a more time efficient route to contract award.
- 5.3 Under Regulation 33 of the PCR (copy attached as Appendix 1), a framework can set out three different ways to award a call-off contract:
1. Direct award – where all the terms and conditions are set out in the framework agreement and no amendments or additions to the terms are required. If the framework only has one supplier, it will always follow the direct award process;
  2. Mini-competition – where the terms and conditions in the framework need amending or supplementing a mini-competition allows a contracting authority the opportunity to put these to the suppliers on the framework and ask for tender responses that allow for objective evaluation of the additional offers. This is only relevant where the framework has multiple suppliers.



3. A combination of direct award and mini-competition – if the original procurement documents stated this as an option then the framework can allow for some circumstances where direct award is possible and for all other circumstances a mini-competition must be run.
- 5.4 The term of a framework agreement shall not usually exceed 4 years. Call-off contracts based on framework agreements may be longer than four years, and may extend beyond the expiry date of the framework.
6. ***We want reassurance that that this decision will meet the Council's strategic needs, particularly regarding workforce and recruitment.***

#### **Workforce needs**

- 6.1 The need for agency workers is completed through a review of the council's establishment and through monthly budget monitoring meetings. All requests for recruitment, including any requests for agency workers, must be approved through a central Spend Control Panel process. This panel can provide challenge and/ or recommend that alternative routes to resourcing needs are followed, e.g. internal secondments, acting up arrangements or fixed-term contracts.
- 6.2 A new people and cultural transformation strategy is in development currently but would not go into detail about the future agency worker supply as this is difficult to predict and manage in this way. Any workforce demands would be highlighted through the business plan/service planning cycle, as well as through financial monitoring meetings.
- 6.3 The Council has started a series of challenge sessions with each DMT to review high cost/long tenure placements and to seek alternatives such as conversion to permanent or fixed-term contracts. The DMT challenge session has started with CYPE, and others are to follow during November and December 2022

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**CONTACT OFFICER:** Dean Shoesmith, Chief People Officer, Human Resources  
**APPENDICES TO THIS REPORT**

#### **Appendix 1 – Public Contacts regulations 2015, Regulation 33**

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## Public Contracts Regulations 2015 – Regulation 33

### Framework agreements

33.—(1) Contracting authorities may conclude framework agreements, provided that they apply the procedures provided for in this Part.

(2) In these regulations, “framework agreement” means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

(3) The term of a framework agreement shall not exceed 4 years, save in exceptional cases duly justified, in particular by the subject-matter of the framework agreement.

(4) Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in this regulation.

(5) Those procedures may be applied only between those contracting authorities clearly identified for that purpose in the call for competition or the invitation to confirm interest and those economic operators party to the framework agreement as concluded.

(6) Contracts based on a framework agreement may under no circumstances entail substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph (7).

### *Awarding contracts based on a framework agreement*

(7) Where a framework agreement is concluded with a single economic operator—

(a) contracts based on that agreement shall be awarded within the limits laid down in the framework agreement; and

(b) for the award of those contracts, contracting authorities may consult the economic operator which is party to the framework agreement in writing, requesting it to supplement its tender as necessary.

(8) Where a framework agreement is concluded with more than one economic operator, that framework agreement shall be performed in one of the following ways:—

(a) following the terms and conditions of the framework agreement, without reopening competition, where it sets out—

(i) all the terms governing the provision of the works, services and supplies concerned, and

(ii) the objective conditions for determining which of the economic operators that are party to the framework agreement shall perform them, which conditions shall be indicated in the procurement documents for the framework agreement;

(b)where the framework agreement sets out all the terms governing the provision of the works, services and supplies concerned—

(i)partly without reopening competition in accordance with sub-paragraph (a), and

(ii)partly through reopening competition amongst the economic operators which are party to the framework agreement,

where this possibility has been stipulated by the contracting authorities in the procurement documents for the framework agreement;

(c)where not all the terms governing the provision of the works, services and supplies concerned are laid down in the framework agreement, through reopening competition amongst the economic operators which are party to the framework agreement.

(9) For the purposes of paragraph (8)(b)—

(a)the choice of whether specific works, supplies or services shall be acquired following a reopening of competition or directly on the terms set out in the framework agreement shall be made pursuant to objective criteria, which shall be set out in the procurement documents for the framework agreement;

(b)those procurement documents shall also specify which terms may be subject to reopening of competition.

(10) The possibilities provided for in paragraph (8)(b) shall also apply to any lot of a framework agreement for which all the terms governing the provision of the works, services and supplies concerned are set out in the framework agreement, regardless of whether all the terms governing the provision of the works, services and supplies concerned under other lots have been set out.

(11) The competitions referred to in paragraph (8)(b) and (c) shall be based on the same terms as applied for the award of the framework agreement and, where necessary, more precisely formulated terms and, where appropriate, other terms referred to in the procurement documents for the framework agreement, in accordance with the following procedure:—

(a)for every contract to be awarded, contracting authorities shall consult in writing the economic operators capable of performing the contract;

(b)contracting authorities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders;

(c)tenders shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired;

(d)contracting authorities shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the procurement documents for the framework agreement.

By virtue of paragraph(s) 3, 5 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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