

Item No. 15.	Classification: Open	Date: 2 February 2021	Meeting Name: Cabinet
Report title:		Gateway 3 – Variation Decision Extension of the Agency Worker contract	
Ward(s) or groups affected:		None	
From:		Councillor Rebecca Lury, Finance and Resources	

FOREWORD – COUNCILLOR REBECCA LURY, CABINET MEMBER FOR FINANCE AND RESOURCES

This report confirms our intention to extend the current contract with Comensura to provide the council with ongoing agency worker support as required.

This is in line with the contractual terms, and we will also be setting out our intention to begin a full procurement process for the future contract.

We are conscious of the pressures within the 2021-22 budget to make significant savings on the use of agency staff, and whilst those plans are being taken forward, we will be working closely with our current supplier to support these programmes of work. Looking ahead to the new contract, this will also remain front of mind, ensuring that we are procuring a service that best supports the ambitions for employment of staff across the council.

RECOMMENDATION

1. That cabinet approves the extension of the agency worker contract with Comensura Limited for a period of one year commencing 1 April 2021 at an estimated cost of £30m, making the total value of the contract £111.5m.

BACKGROUND INFORMATION

2. On 18 December 2017, the then cabinet member for finance, modernisation and performance approved a call-off contract with Comensura Limited (referred to as 'the contract'), via the Yorkshire Purchasing Organisation (YPO) framework. This was for an initial contract period of three years from 1 April 2018 to 31 March 2021 with the option to extend by a further one year.
3. The contract provides a vendor neutral managed supply solution for agency workers. Thus, Comensura does not supply workers directly but seeks to source agency workers from a variety of vendors (agencies) with assignment opportunities posted simultaneously to a tiered supply chain.

4. Although the existing contract has been in place for three years, the relationship with Comensura dates back to 2006. Over the 14 years, Comensura has developed an in-depth understanding of the council's resourcing requirements and has worked with colleagues across the borough to enhance the approach it takes to support Southwark values. Comensura have delivered tangible benefits to our local community through the below activity:

Social Values Work

- Working with external providers (Southwark Works) to increase employment opportunities within the borough by ensuring Southwark Works get access to entry level roles before the other providers on the supply chain (Southwark Works were able to access 64 out of the 64 entry level roles during 2019 - 2020).
- Engage with Southwark Works for large volume local employment opportunities, for example, the need to source polling officers and clerks for the local GLA elections in May.
- Working with the local branch of the Venn Group to provide CV writing and interview technique briefings for job hunters in the local community (including a remote offer during the pandemic). A total of 59 local residents signed up to the sessions with a final attendance of 39.
- Ensuring all Comensura employees and workers in the supply chain are paid the London Living Wage (LLW) as a minimum.
- Supporting the transition of agency workers from temporary roles to permanent or fixed term employment within the Council (73 roles were converted in 2019 to 2020 – 68 to permanent roles and five to fixed term opportunities).
- Working with the supply chain to increase the number of local unemployed people into employment. The data captured indicates that 23% of all the workers in the supply chain came from our local community and 12% of suppliers have their main office based within the Borough.
- To create within Comensura apprenticeship opportunities, which they have achieved at a minimum of one apprentice per year.

KEY ISSUES FOR CONSIDERATION

Key Aspects of Proposed Variation

5. The nature of the proposed variation is to exercise the option in the existing contract and extend for a period of 12 months.
6. The value of the initial three year contract, based on estimated demand, was £60m inclusive of the fixed charge to Comensura and YPO; plus the option to extend for one year with a total estimated value of £75m. However, the actual costs have been higher than the original estimate. These are detailed in the financial implications section of the report.

7. The council continues to place great emphasis on the reduction of agency worker usage and spend. This is being achieved through continuous review and monitoring of the contracts performance with Comensura which sits alongside a reduction strategy led by the councils Chief Officer team.
8. To further support the reduction strategy, a review of the employee establishment numbers, current vacancy rates and agency usage will be conducted with key stakeholders (HR, Finance and budget holders). This will ensure the reduction strategy targets root causes and influencing factors, rather than just the published agency numbers. Involving key stakeholders will also ensure the 2021 – 2022 budget challenges are considered when agreeing service demands, key priorities and associated resourcing needs.
9. Whilst there is an increased spend against estimated costs, the wider contract performance has met the required standards and there have been no critical performance issues.

Reasons for Variation

10. The current contract is due to expire on 31 March 2021 and in line with procurement guidelines the council needs to decide whether or not to utilise the extension option. Approving the extension will allow sufficient time for a new procurement exercise to be undertaken.
11. This report seeks to exercise the extension option and to increase the contract sum. Comensura has managed the contract positively and therefore, we foresee no reason not to extend.
12. The quarterly review meetings held with Comensura have been positive with data for the previous three months showing a 100% fill rate on engagements. Demand for agency workers during 2020-2021 has been attributed to a variety of reasons (such as addressing skills shortages and meeting high demand areas of the business at short notice) which has been necessary to maintain delivery of services across the council.

Future Proposals for this Service

13. A re-procurement exercise will begin in early 2021 with the considerations for a future model:
 - To continue with a managed service, applying a vendor neutral model by which the council contracts with a single organisation which in turn contracts with a range of agencies to meet the demand for temporary workers in all required disciplines.
 - To move to a managed service with a single supplier (master vendor); the provider endeavours to supply all workers directly and in the event

of not having a suitable candidate available, will work within their own supplier network to meet the demand. The council can (with the master vendor's agreement) nominate one or more specialist agencies to work with the master vendor.

Proposed timeline for new procurement (which will include a request for the Gateway 1 report to be delegated to the portfolio lead as the individual decision maker (IDM)).

Date	Activity
February 2021	Submission of Gateway 0 (options assessment)
March 2021	Submission of Gateway 1 report (procurement strategy)
June 2021	Expressions of interest to be received
July 2021	Date of sending out tenders
October 2021	Completion of the evaluation of tenders
November 2021	Submission of Gateway 2 report (contract award)
December 2021	Contract awarded
April 2022	New contract commences

Alternative Options Considered

14. The management and performance of the contract has worked well and been in line with the commitments made by Comensura. It is therefore appropriate to invoke the planned contract extension clause whilst preparations are made to retender the contract.

Identified risks for the Variation

15. The one year extension is provided for under the terms of the existing contract. The risk of a procurement challenge is low as the extension is permitted under regulation 72 of the Public Contracts Regulations 2015.

Policy implications

16. The continued use of agency workers as part of the council's wider resourcing strategy is likely to remain albeit in reduced numbers. Factors influencing are unlikely to be resolved in the medium term in areas of skills shortage or high demand.

Contract management and monitoring

17. The council's contract register publishes the details of all contracts over £5,000 in value to meet the obligations of the Local Government Transparency Code. The Report Author must ensure that all appropriate details of this procurement are added to the contract register via the eProcurement System.
18. There is a well-established robust approach to monitoring which includes volume data, consideration of key performance indicators, managed through regular provision of management data, quarterly meetings and an

annual review. Feedback is also sought from the experience of operational HR staff and managers.

19. The performance by Comensura is deemed to have met the required standards and there are no critical performance issues that would prohibit approval of this extension request.

Community impact statement

20. As a supplies contract for internal use by the council, this decision has a small impact on local people and communities. However, the vendor neutral model enables the managed service contractor to encourage participation by local businesses in the vendor (agency) list.

Social Value considerations

21. The Public Services (Social Value) Act 2012 requires that the council considers, before commencing a procurement process, how wider social, economic and environmental benefits that may improve the well-being of the local area can be secured. The social value considerations included in the tender (as outlined in the Gateway 1 report) are set out above in the background section in relation to the commitments that will continue to be delivered under the contract.

Economic considerations

22. To exercise an existing provision to extend a contract is an efficient use of resources for the council. Recouping further the investment made in awarding the contract for the initial three year term.

Social considerations

23. The numbers of firms that supply a managed service are relatively few.
24. The use of a managed service has been significant in ensuring that agency worker at parity rate, receive London Living wage as a minimum. This would be impossible to police were the council to contract directly with individual agencies.
25. Comensura employ approximately seventy staff at across their headquarters in Luton and countrywide.

Environmental/Sustainability considerations

26. Whilst there are no specific environmental implications, the service is web based and essentially paperless.

Financial implications

27. This report proposes a one year extension to the existing three year contract based on existing terms & conditions.
28. Under present arrangements, payments are made to Comensura on a weekly basis upon receipt of an invoice, which comprises agency worker costs and contractual fee elements (sums payable to Comensura and the charge collected by Comensura on behalf of YPO).
29. The above mentioned costs are recharged to departments, with the addition of a 10% internal charge (retained within Strategic Finance and predicated against council wide resourcing requirements).
30. Payments to Comensura (extrapolated to the end of the current year) are detailed in the table below, along with estimates for the revised contract total, to include the proposed one year extension.

Year	Expenditure (excluding internal r/c) £
2018/19	22,815,947
2019/20	27,350,945
2020/21*	31,260,503
Total Estimated Initial 3 Year Contract	81,427,395
2021/22**	30,000,000
Revised Estimated Contract Total Including 1 Year Extension	111,427,395

* Estimated amount based on pro-rata calculation of actuals @ Week 39

** Estimate quantified by HR elsewhere in this report

31. If the current spend rate for 2020-2021 continues until the end of the financial year, the projected costs for 2020-2021 will be £31,260,503. Averaging the past three years spend for the one-year extension and accounting for the year on year increasing agency spend, we estimate the additional cost for one year extension as £30m. Our ambition is to reduce this level of agency spend. A reduction strategy is being developed by the Chief Officer team to deliver tangible outcomes for each department based on their budget targets to reduce agency spend and consolidate the permanent workforce by converting agency workers to permanent status where practically possible.

Investment Implications (Housing Contracts only)

32. Not applicable

Legal implications

33. Refer to the legal concurrent of the Director of Law and Governance.

Consultation

34. This is not a matter which requires public consultation or referral to the council's trade unions.

Other implications or issues

35. None.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance (CE20/066)

36. The strategic director of finance and governance notes the recommendations in this report. The financial implications as noted will be managed within the existing agreed budgets for the council's general fund and housing revenue account.

Head of Procurement

37. This report seeks approval from cabinet to extend the agency worker contract with Comensura by one year from 1 April 2021 at a cost of £30m, making the total contract value of the contract £111.5m.
38. This extension is allowable under EU Public Contract Regulations 2015 (originally let under), the latest legislation applied after Brexit and the council's contract standing orders (CSO).
39. This report confirm that workers are paid London living wage (LLW) and risks are detailed in paragraph 14.
40. The contract is managed and monitored as detailed in paragraphs 16 – 18.

Director of Law and Governance

41. This report seeks cabinet's approval to a variation of the existing agency worker contract which is being performed by Comensura Limited. This report sets out the extent of the required variation and the reasons why the variation is necessary.
42. There are six situations or safe harbours in Regulation 72 of the Public Contracts Regulations 2015 (the Regulations) in which contracts may be modified without a new procurement procedure. If the modification does not fall within one of the six safe harbours, a procurement exercise is required. Under Regulation 72(1)(a), a modification is permitted where the

initial procurement documents provide for amendments to the contract (regardless of their value), in clear, precise and unequivocal review clauses, as long as such clauses:

- (i) state the scope and nature of possible modifications as well as the conditions under which they may be used; and
- (ii) do not provide for modifications that would alter the overall nature of the contract.

43. The proposed variation of the agency worker contract is consistent with the Regulations. As noted in paragraphs 5 and 6 of this report it is confirmed that the terms of the existing contract include express provision for extending the contract beyond its initial term by a further one year.
44. The proposed variation is also consistent with the council's Contract Standing Orders (CSOs). CSO 2.3 requires that no steps are taken to vary a contract unless the expenditure involved has been included in approved revenue or capital estimates, or is otherwise approved by the council. Paragraph 28 of this report confirms how the proposed additional expenditure will be resourced.

Director of Exchequer (for housing contracts only)

45. Not applicable

Director of Education (for schools contracts only)

46. Not applicable

REASONS FOR URGENCY

47. Urgent consideration of this report is required to ensure the one-year contract extension can be implemented before the expiry of the existing contract (April 2021). The financial impact of not extending the contract would be significant for our existing agency workers (circa 450 workers) and for the council regarding the cost savings the contract provides (approx. £1M in 2019 – 2020).

REASONS FOR LATENESS

48. It was not possible to circulate this report five days clear in advance of the meeting due to an administrative and technical error.

BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
None		

APPENDICES

No	Title
None	

AUDIT TRAIL

Cabinet Member	Councillor Rebecca Lury, Finance and Resources		
Lead Officer	Melanie Medley, Head of Human Resources		
Report Author	Andrea Armstrong, Strategic Lead, HR Customer Delivery		
Version	Final		
Dated	26 January 2021		
Key Decision?	Yes		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title	Comments Sought	Comments included	
Strategic Director of Finance and Governance	Yes	Yes	
Head of Procurement	Yes	Yes	
Director of Law and Governance	Yes	Yes	
Director of Exchequer (for housing contracts only)	No	No	
Director of Education (for schools contracts only)	No	No	
Cabinet Member	Yes	Yes	
Contract Review Boards			
Departmental Contract Review Board	Yes	Yes	
Corporate Contract Review Board	Yes	Yes	
Cabinet Member	Yes	Yes	
Date final report sent to Constitutional Team		26 January 2021	