

## Committee: Cabinet

**Date: 14<sup>th</sup> June 2021**

Wards: ALL

**Subject:** Award of Contract for the supply of Temporary Agency Workers for the London Borough of Merton

Lead officer: Caroline Holland, Director of Corporate Services

Lead member: Tobin Byers, Cabinet Member for Finance

Contact officer: Ruth Poulter, HR Contract Manager

### ***Exempt or confidential report***

*The following paragraph of [Part 4b Section 10 of the constitution](#) applies in respect of information within this appendix and it is therefore exempt from publication:*

*Information relating to the financial or business affairs of any particular person (including the Authority holding that information).*

*Members and officers are advised not to disclose the contents of the appendix.*

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### **Recommendations:**

- A To award the new contract for the supply of temporary agency workers for a period of 2 years with a 2 year potential extension, starting from 13<sup>th</sup> December 2021 at an estimated value of £13m per annum.
- B To implement a vendor neutral solution, as currently in place, when the current Contract for the supply of temporary agency workers on 13<sup>th</sup> December 2021
- C In accordance with Contract Standing Orders (CSO 24.3) that authority be delegated to the Director of Corporate Services to exercise, in consultation with the Cabinet Member for Finance, the council's option to grant the extension of the contract term for any period up to two further years beyond the expiry of the initial contract term on 13 December 2023.

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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1 The purpose of this report is to explain the procurement process for a new temporary agency worker managed service contract and to recommend that Cabinet approves the award of the contract to Bidder A.
- 1.2 The procurement was conducted as a further competition exercise under Lot 1(a) of the MSTAR3 Framework Agreement and the new contract will enable further improvements to be made in terms of overall contract performance resulting in further efficiency gains and direct cost saving opportunities to be realised.
- 1.3 The London Borough of Merton has had a successful contractual

relationship with Bidder A (the incumbent) for the vendor neutral management of agency worker supply since the current contract started in December 2014.

## **2        DETAILS**

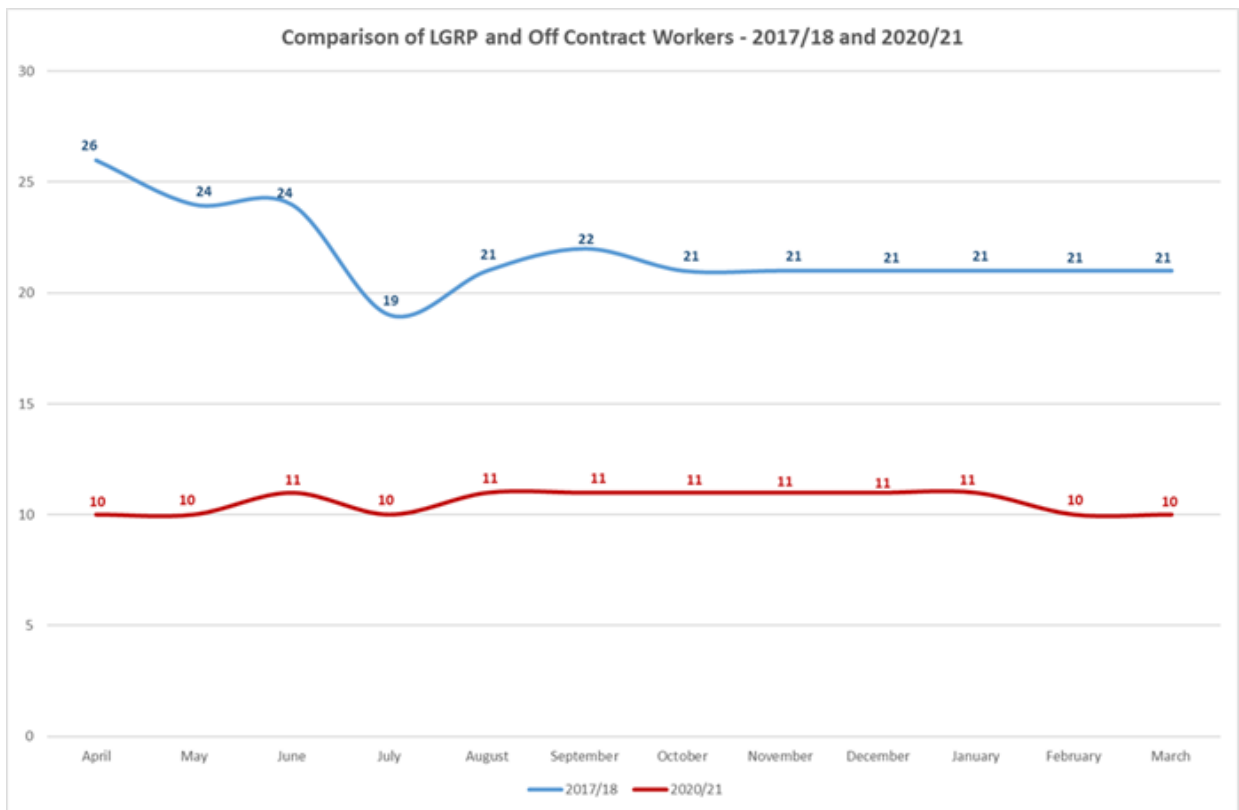
- 2.1. This report will outline the key features and benefits of this recommendation and the impact that this will have on overall improvements in service quality, cost control and value for money. The council needs to ensure that it retains a flexible solution to adjust to the challenging needs to reduce costs, improve efficiencies and at the same time create further controls in terms of governance and compliance relating to the management of agency worker supply.
- 2.2. The successful supplier operates as a neutral managed service provider which ensures that all Agency Workers are engaged on fair and equitable terms and conditions and that assignment requests are responded to by a variety of contracted suppliers who will compete for business on a level playing field thus supporting and promoting the Councils need to engage with SME suppliers and localised Agency Workers.
- 2.3. During the COVID-19 pandemic, it has highlighted that using a neutral vendor for our recruitment is incredibly beneficial. Merton Council did not have any issues with recruiting any temporary workers; we have a strong relationship with colleagues and all the agency suppliers, whereas some Councils have struggled with recruitment using master vendors. 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 SMEs giving all agencies on their supply list fair access to all roles released.

The vendor neutral service also manages all contracted staff providers on behalf of the Council and this has provided clear improvements in terms of visibility and control, compliance and governance as well as implementing a range of demand management and workforce planning initiatives via this business model.

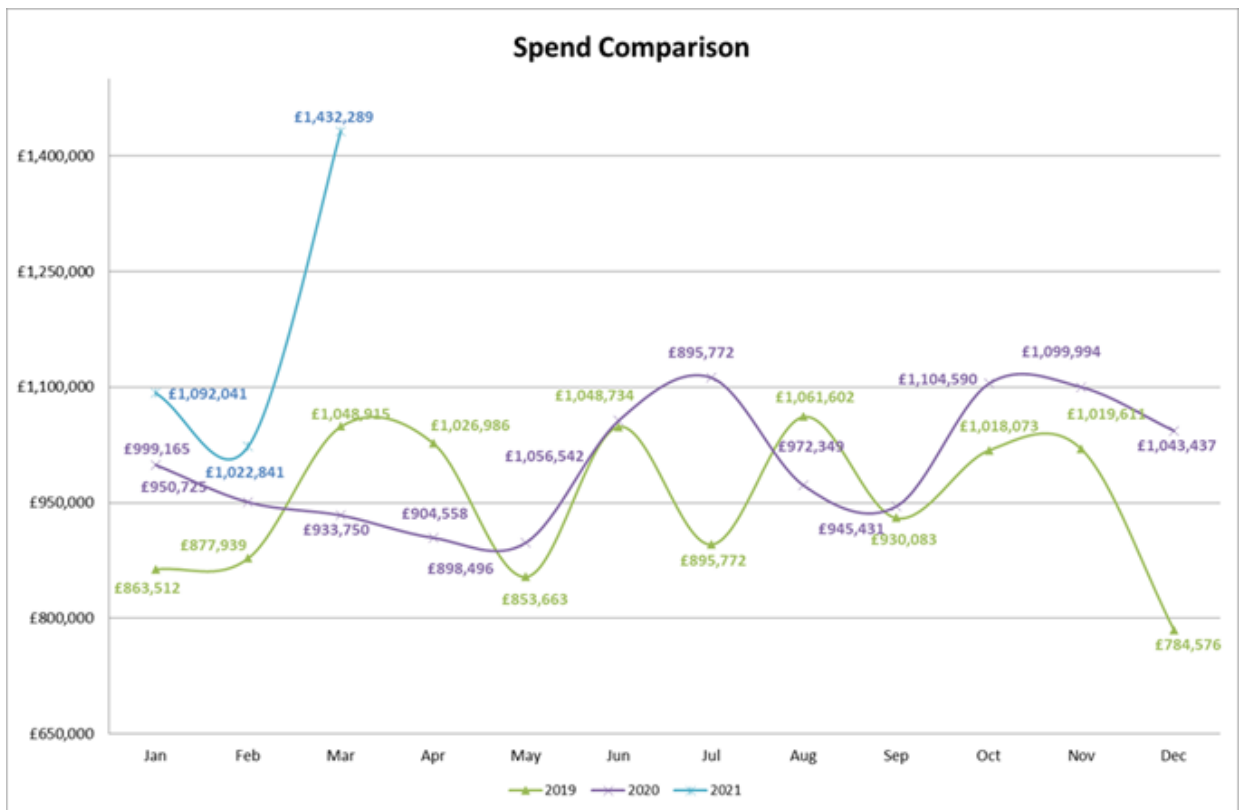
The successful supplier also offers a “payroll only” service, which allows Merton Council to process invoices and make payments to workers whose roles have been deemed as inside IR35, but were not signed up with an employment agency initially. This then mitigates the risk of fines from HMRC and ensures that we are working within the IR35 legislation.

The proposed service will include Statement of Works (or SOW) which is a formal Project that defines the entire scope of the work involved for a vendor clarifies deliverables, costs, and timeline. This allows the managers to set a price for the project which is paid on deliverables only and therefore negates the option to extend assignments thus saving the Council money.

- 2.4. During the current contract, Merton Council introduced an interim category, meaning that we are now able to fill and recruit a number of hard to fill roles and senior roles which had historically gone via the Local Government Resourcing Partnership (LGRP) framework and off-contract agencies. Since introducing the interim category we have been able to keep the costs of recruitment down by using the current supplier in the first instance for all roles as their margins are lower than off-contract and LGRP.
- 2.5. The below table outlines the decrease in the number of agency staff being engaged via off-contract agencies and the LGRP framework since the beginning of our current contract period. This has, in turn, reduced the risk to Merton by not using agencies who are not IR35 compliant and allowing us to reduce the off-contract spend and lower our costs.



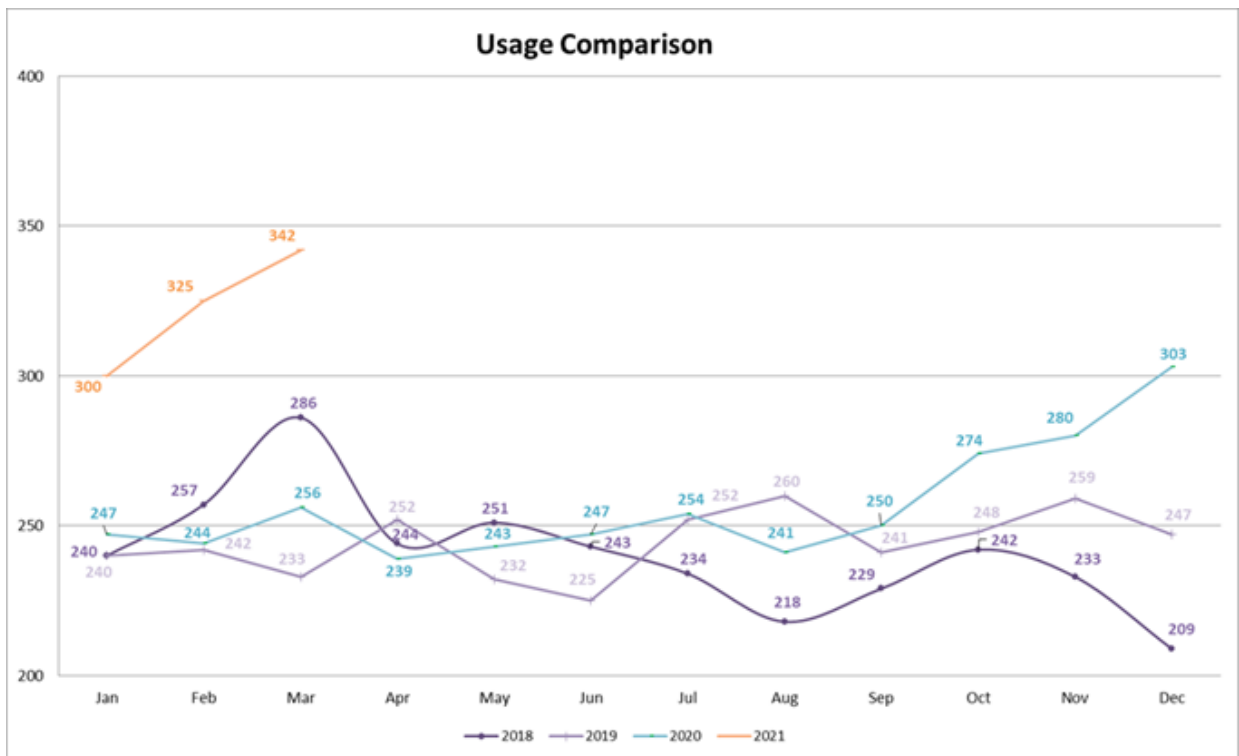
2.6. Overall monthly spend over the last 4 years, as you can see from the graphs the spend has increased this is due to a number of factors such as COVID 19, as the numbers have increased due to extra roles being created to combat COVID 19 issues and an increase in Interim and Temporary Workers



No of Interim Workers over the last 4 years.

	2017/18	2018/19	2019/20	2020/21
<b>April</b>	150	129	139	150
<b>May</b>	147	136	138	162
<b>June</b>	151	140	124	163
<b>July</b>	147	144	143	164
<b>August</b>	145	133	143	160
<b>September</b>	153	132	140	155
<b>October</b>	153	142	147	179
<b>November</b>	156	135	148	186
<b>December</b>	143	131	155	196
<b>January</b>	140	122	158	194
<b>February</b>	146	127	150	210
<b>March</b>	137	139	161	214

No of temporary Workers over the last 4 years.



- 2.7. The ITT was published on 08<sup>th</sup> March 2021, with a submission deadline of 12 Noon 06<sup>th</sup> April 2021. The Invitation to Tender (ITT) was published via the London Tenders Portal, and advertised to suppliers signed up to the ESPO framework agreement. A total of 3 submissions were received, and the evaluation of the bids was carried out in line with the evaluation methodology of the tender.
- 2.8. Of the 3 tenders received, 1 was disqualified which meant 2 tenders were deemed compliant and therefore in contention to be awarded the contract.
- 2.9. Suppliers were asked to submit their answers to the Method Statements questions along with their price quotes on the pricing schedule and Part B tender submission. Suppliers who failed to submit these documents were disqualified from the process, and would not be progressed to stage 2 and 3 – quality assessment and price assessment. A total of one supplier did not submit part B tender submission document and were in turn disqualified.
- 2.10. The tender evaluation comprised of three stages: the first of which was a compliance check, on a pass/fail basis; the second was the quality and technical evaluation in line with the methodology prescribed in the tender; and the third was the assessment of price.
- 2.11. The tender evaluation was carried out by a panel of four officers, all from the Learning and Development team. Each compliant tender was evaluated individually by each member of the evaluation panel to undertake the quality and technical evaluation. Details of the evaluation questions, scoring criteria and weightings can be found in Appendix B.
- 2.12. The panel, along with an officer from Commercial Services, met on the 30<sup>th</sup> April 2021 to discuss individual scores and comments for each question in order to arrive at an agreed, moderated score.

- 2.13. The names of the bidders and their respective scores are included at Appendices A, B and respectively.
- 2.14. The procurement documents states that the contracts would be awarded to the highest ranked bidder. The documentation also stated that the contracts would be awarded on the basis of the most economically advantageous tender to the Council, based on a 50% Quality and 50% Price split.
- 2.15. The bids were evaluated against the following seven Method Statement questions and a system demonstration to assess the quality of each bid:

No	Quality Questions	Weighting
Q1	What mechanism would you have to make sure the cv's supplied match the specification requested by the ordering manager?	5%
Q2	The supply for the following roles has proven to be problematic in the past for the Council <ul style="list-style-type: none"> <li>• Qualified Social Workers</li> <li>• Interim (IT Specialist)</li> <li>• Lawyers</li> <li>• Public Health</li> <li>• Engineering &amp; Surveying</li> </ul> <p>How will your organisation provide cover for these roles at short notice ?</p>	5%
Q3	What are your organisation's process for managing the risks associated with the below and the associated cost to the Council. <ul style="list-style-type: none"> <li>• Pension Auto Enrolment</li> <li>• Apprenticeship Levy</li> <li>• IR35 Legislation</li> </ul>	5%
Q4	Supply a detailed implementation project plan (from contract award to contract start) June 2021 to December 2021	5%
Q5	How will your organisation support local suppliers to engage with localised workforce?	5%
Q6	Statement of works are now being used more, how would you integrate this into current the requirements. E.g.: identify what roles could be statement of works, speak to managers and train managers on SOW. Can you confirm how virtual training is given to the managers and what this involves, we need training to be interactive and engaging.	5%

Q7	<p>The Council's ordering managers will be required to add a reference number on each order which corresponds to the permanent vacant post. The suppliers' system must be able to supply reports incorporating this reference number:</p> <p>Suppliers are required to provide sample reports as the below in their bid response.</p> <ul style="list-style-type: none"> <li>• List of current assignments reports</li> <li>• Submitted timesheet report</li> <li>• List of unapproved timesheets</li> <li>• Cost Code and hours worked report</li> <li>• Screen shot of an assignment to show pre and post parity pay and charge rates as displayed on assignment ( PAYE &amp; LTD)</li> </ul>	5%
System Demonstration	<p>Each task has been given a percentage of 3% weighting.</p> <ul style="list-style-type: none"> <li>• Task 1 – Create an order (access for our own position numbers on orders)</li> <li>• Task 2 – approve a timesheet</li> <li>• Task 3 – Extend an assignment.</li> <li>• Task 4 – Running MI Reports</li> <li>• Task 5 – Statement of Works function</li> </ul>	15%

The table below summarises the evaluation outcomes for each supplier we received bids for.

Bidder	Pass/Fail	Quality Score	Quality Weighting	Price	Final Weighted Score	Rank
Bidder A	PASS	32.0	50%	50.00%	100%	1
Bidder B	PASS	32.0	50%	27.42%	77%	2

### 3 ALTERNATIVE OPTIONS

- 3.1. During the COVID-19 pandemic, it was highlighted that using a neutral vendor for our recruitment was incredibly beneficial. Merton Council did not have any issues with recruiting any temporary workers whereas some Councils struggled with recruitment using master vendors.
- 3.2. 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 SMEs giving all agencies on their supplier list fair access to all roles released.



- 3.3. Therefore the best option for Merton Council was to run a further competition on Lot 1(a) via ESPO on the MSTAR3 framework so we could continue with the neutral vendor option. We looked at other frameworks Crown Commercial and YPO, however we found the ESPO framework more suitable and flexible to Merton Council's specific requirements.

#### 4. **CONSULTATION UNDERTAKEN OR PROPOSED**

- 4.1 An evaluation working group was formed in April 21 made up of 4 members from HR. The procurement board which is representative of the council departments have considered the options presented in a business case report to them in January 2021.

#### 5. **TIMETABLE**

##### 5.1

<b>Event</b>	<b>Date</b>
Invitation To Tender	4th March 2021
Deadline for receipt of clarifications	29 <sup>th</sup> March 2021
Deadline for receipt of Tenders	6 <sup>th</sup> April 2021
Evaluation of Tenders	7 <sup>th</sup> April – 27 <sup>th</sup> April 2021
Approval at Procurement Board	18 <sup>th</sup> May 2021
Cabinet	14 <sup>th</sup> June 2021
Notification of contract award decision	15 <sup>th</sup> June 2021
"Standstill" period	15 <sup>th</sup> June – 25 <sup>th</sup> June 2021
Confirm Award of Contract agreement	26 <sup>th</sup> June 2021
Target service commencement date	13 <sup>th</sup> December 2021

The successful supplier will provide an implementation plan immediately after the contract is awarded, as the successful supplier is the current supplier, we will not have to complete a full implementation, however we will updating the c.net system which comprises of a data cleanse on all current job roles, specs and rates and a line manager cleanse. We are also introducing a statement of works function and therefore training for hiring managers and other stakeholders will be part of the implementation plan and offered to all officers as required.

## **6. FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 6.1 Merton currently spends approximately £13m a year on temporary agency workers, although we have seen an increase in numbers and spend last year and this year due to COVID 19.

The agency workers' spend is not solely linked to the number of temporary workers engaged within Merton but to the workers' pay rates. The agency mark-up added onto the candidates' pay rate is a fixed fee, which means regardless of the pay to the candidate the charge rate will stay the same which ultimately benefits the Council in cost savings.

It should be noted that reducing the temporary workforce will not necessarily reduce the contract spend due to the increase in rates of pay to the workers, but there is regular review of highly paid interims at both a management level and at Member level, by the Standards & General Purposes Committee.

Cost reductions can only be achieved by either reducing the number of agency workers being hired or reducing their pay rates. The charge rates in the current contract are at a level that some agencies are already refusing to provide services to the Council. Lowering the charge rates further for a new contract would put the Council at risk of not being able to fill vacancies. A new contract is therefore unlikely to produce a saving compared to the current contract terms.

The cost of agency staff via the new contract will continue to be funded by the teams utilising those staff. Where the contract is used on behalf of CHAS, the cost of those staff will be recharged to CHAS via invoices raised by LBM. The value of spend via the contract will vary depending on the level of usage throughout the contract term.

Finance have carried out a credit check and also reviewed accounts and other financial information held at Companies House for the successful supplier and have no concerns regarding the company's financial stability.

## **7. LEGAL AND STATUTORY IMPLICATIONS**

- 7.1 The framework (ESPO MSTAR 3) is available for the Council to call off as local authorities are identified in it. The Council should ensure that the call off contract is awarded during framework. The Framework has been extended until 10<sup>th</sup> April 2023.
- 7.2 In order to be compliant with Contract Standing Order 12, the Council must ensure that it follows the process stated in the framework for conducting the mini-competition / tender under the framework. The Council should retain and document proof of compliance with the mini-competition rules.
- 7.3 The Council 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 in accordance with Contract Standing Order 32.

**8. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

8.1 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 letting the contract

Equalities requirements has been included in the specification – e.g. meeting standards regarding employment of traditionally disadvantaged groups having equalities policies and procedures in place, and a proactive approach to recruitment of under-represented groups throughout the supply chain.

The successful supplier must, in carrying out its functions, have due regard to the need to eliminate unlawful discrimination and harassment and to promote equality of opportunity in relation to disability, race and gender and the need to take steps to take account of disabilities, even where that involves treating the disabled more favourably than others (section 49A Disability Discrimination Act 1995; section 71 Race Relations Act 1976; section 76A Sex Discrimination Act 1975).

**9. CRIME AND DISORDER IMPLICATIONS**

9.1 There are no crime and disorder implications relating to the subject of this report

**10. RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

10.1 There is no risk awarding the contract under Lot 1(a) of the MSTAR3 Framework Agreement

**11. APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

- POTENTIAL SAVINGS.

**12. BACKGROUND PAPERS**

12.1 None

*Appendix A through to D (Commercially Sensitive Information)*

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