

Wiltshire Council

Cabinet

3 July 2017

Subject: Consultancy - Neutral Vendor Service

Cabinet Member: Councillor Phillip Whitehead, Cabinet Member for Finance, Procurement, IT and Operational Assets

Key Decision: Yes

Executive Summary

The council spends a significant sum per annum on a range of specialist professional services and consultancy requirements spanning transformational change, general business support, planning support through to economic assessments and property related services. The exact sum is difficult to determine due to the historic decentralisation of procurement and errors in coding relevant spend to the Consultancy General Ledger (GL) code, which needs to be corrected to support this proposal's implementation. While the basis of the decline is uncertain, spend for the last three years for the relevant GL has been declining as shown below:

GL No.	GL Name	2014-15	2015-16	2016-17
433010	Consultants' Fees	6,247,092.36	5,334,486.27	4,535,877.56

The procurement of these services is under scrutiny by Government to ensure individuals taxation status under IR35 is properly assessed and managed by purchasing organisations; failure to do this could result in HMRC applying financial penalties on the council for loss of tax and NI contributions. Our internal auditors also contacted the Strategic Procurement Hub in May 2017 to commence an audit of IR35 in relation to the current methods around procuring these services.

These services are required by most departments in varying scale and frequency but are procured in a range of ways across the council including direct awards, using established frameworks and through competitive exercises. Corporate visibility of this procurement activity is limited and influence and control of this spend category is not supported by the current approach, consequently the opportunity to ensure best value is diminished. In addition, the lack of a clear corporate procurement approach could present a weakness in ensuring such services are paid for on achievement of performance milestones and potentially exclude knowledge/skills transfer to council officers to limit the need for future consultancy. To address these issues the council needs to establish a robust policy and process on the hiring of specialist professional services that provides visibility and manages risk, while also leveraging value from better procurement and contract management

practices.

The Local Authority owned Professional Buying Organisation, North Eastern Purchasing Organisation (NEPO), has established a compliant framework agreement for the provision of consultancy services through its single supplier, Bloom. This arrangement is well established across local government and in use in many other local authorities. This compliant framework can be accessed easily by signing a relevant call off agreement between the Council and Bloom. Under the call-off agreement Bloom will conduct a mini – competition for each consultancy need the Council has, and it will be for the Council as a result of the mini competition to select the consultancy provider it requires for each specific consultancy requirement. Bloom will then enter into a contract with the selected consultancy provider for the provision of the consultancy services to the Council. In applying the recommended approach, the council will in effect provide a clear solution for all its short-term resource needs, e.g. Comensura provides temporary agency workers and Bloom to provide the single route for consultancy and professional services.

There are significant governance and financial benefits of this approach that include

- Ensuring we can work with the right supplier whilst supporting our objective of creating a culture of seeking competitive supplier proposals for every project
- Easier access to opportunities for local suppliers
- Monitoring and controlling direct awards versus mini competitions – significant savings can be achieved through applying competitive pressure – Northumberland Council secured cashable savings of 9% when it adopted the solution in 2013
- Control of spend – providing visibility and transparency of all professional services and consultancy procurement with detailed reporting
- Mitigating IR35 risk by ensuring all needs for services are assessed correctly – either procured within the council’s agency recruitment framework (presently Comensura) or this proposed consultancy framework (with Bloom auditing every project requirement for IR35 risk)
- No restriction on the council establishing local framework arrangements or running its own procurements where this framework does not meet its needs – this is projected to be an exception when established
- Offering the council complete control of the evaluation and supplier selection process – online via a portal that, once trained, can be undertaken by service teams

Proposals

The Council implement the neutral vendor solution via Bloom with a goal of implementation commencing Autumn 2017. This project should be viewed as a Strategic Procurement initiative designed to aid the implementation of category management and support the council’s strategy around securing best value

Consultancy and Specialist Professional Services.

Cabinet to approve the award the provision of consultancy services to Bloom under the call-off agreement to the NEPO compliant framework agreement and to delegate to the Associate Director for Corporate Services the entering into and the finalising of the call-off contract.

Reason for Proposals

To establish improved governance and better control expenditure on the procurement of specialist professional services and consultancy.

**Dr Carlton Brand
Corporate Director**

Wiltshire Council

Cabinet

3 July 2017

Subject: Consultancy - Neutral Vendor Service

Cabinet Member: Councillor Phillip Whitehead, Cabinet Member for Finance, Procurement, IT and Operational Assets

Key Decision: Yes

Purpose of Report

1. This report seeks Cabinet approval for Officers to establish and execute agreements for a neutral vendor solution for the procurement of specialist professional services and consultancy through a compliant single supplier NEPO framework, delivered by its supplier Bloom. The outcomes include the improvement of procurement practice and governance resulting in the delivery of quality management information on the category, better value and cashable savings through influencing spend.

Relevance to the Council's Business Plan

2. Consultancy and specialist professional services are used across the business by service teams when their expertise is required, for example, supporting social care transformation, independent planning reviews, socio and economic sector assessments to help it deliver against its three key priorities:
 - protect those who are most vulnerable
 - boost the local economy; and,
 - bring communities together to enable and support them to do more for themselves

Background

3. Changes to the Intermediaries Legislation, commonly known as IR35 have been introduced. They place new responsibilities and liabilities on Public Bodies related to the correct assessment and taxation of Personal Service Companies (PSC) to address a Government concern about their treatment for taxation purposes. It aims to ensure that individuals that work off payroll through their own company, who would otherwise have been taxed as employees had they been engaged directly, pay employment taxes on their income. The continued ad-hoc procurement of such services by the council will place a requirement on managers to make those assessments, creating a demand on their resource. A neutral vendor manages that assessment based on each project brief.
4. Presently there is a lack of clarity for officers in understanding the difference between when consultancy should be procured and when temporary agency

workers would be hired. There is also a lack of clarity of expenditure on consultants with the coding of spend being set against variable GL, making it difficult to be certain what spend is properly categorised as specialist professional services or consultancy. The council also creates numerous vendor records and manage a significant number of invoices to support the current approach.

5. A report to CLT on 31 May 2016 secured approval to initiate a procurement project to consider options to consolidate spend and establish a single route for the procurement and management of consultancy and professional services. A report was due in the autumn but has been delayed while officers focussed on the replacement of the neutral vendor solution for agency staff.

Main Considerations for the Council

6. This proposal seeks to establish a single supplier funnel for consultancy services not procured through other formal arrangements. Exceptions will be managed through ad-hoc procurements by the Strategic Procurement Hub with commissioners applying the appropriate rigour around assessing the IR35 status of their requirements
7. The council spends a significant sum per annum on these services - see Financial Implications section of this report – such as specialist professional services and consultancy requirements spanning transformational change, general business support, planning support through to economic assessments and property related services. The exact sum is difficult to determine due to the historic decentralisation of procurement and errors in coding relevant spend to the Consultancy General Ledger (GL) code. To improve this it would be appropriate to ensure all consultancy is correctly identified through GL and that should be reviewed and corrected as part of this proposal. This proposal is an opportunity to better manage consultancy spend in relation to savings against budget and improved outcomes.
8. The procurement of consultancy services is under scrutiny by Government to ensure individuals taxation status under IR35 is properly assessed and managed by purchasing organisations. Failure to do this could result in HMRC applying financial penalties on the council for loss of tax and NI contributions. Our internal auditors have also commenced an audit of IR35 in relation to the current methods around procuring these services.
9. These services are required by most departments to varying degrees. They are procured in a range of ways including direct awards i.e. selecting a specific consultancy, using established frameworks – either direct award or competitively, and through council run competitive exercises. Corporate visibility of this procurement activity is limited and influence and control of this spend category is not supported by the current approach, consequently the opportunity to ensure best value is diminished. In addition, the lack of a clear corporate procurement approach could present a weakness in ensuring such services are paid for on achievement of performance milestones and potentially exclude knowledge/skills transfer to council officers to limit the need for future consultancy. To address these issues the council needs to establish a robust policy and process on the hiring of specialist professional services

that provides visibility and manages risk, while also leveraging value from better procurement and contract management practices.

10. The Local Authority owned Professional Buying Organisation, North Eastern Purchasing Organisation (NEPO), has established a compliant framework, known as NEPRO (recently rebranded as Bloom following a re-procurement of this service). This arrangement is well established across local government and in use in many other local authorities. This compliant framework can be accessed easily by signing a relevant agreement and operates as a neutral vendor through which we can meet almost all our consultancy needs over time – this mirrors the approach Comensura operates to deliver our temporary agency worker requirements. In applying the recommended approach, the council will in effect provide a clear solution for all its short-term resource needs, e.g. Comensura provides temporary agency workers and Bloom to provide the single route for consultancy and professional services.
11. There are significant governance and financial benefits of this approach that include

- Ensuring we can work with the right supplier whilst supporting our objective of creating a culture of seeking competitive supplier proposals for every project
- Easier access to opportunities for local suppliers
- Monitoring and controlling direct awards versus mini competitions – significant savings can be achieved through applying competitive pressure – Northumberland Council secured cashable savings of 9% when it adopted the solution in 2013
- Control of spend – providing visibility and transparency of all professional services and consultancy procurement with detailed reporting
- Mitigating IR35 risk by ensuring all procurement falls within the council's Agency recruitment framework (presently Comensura) or this proposed consultancy framework (with Bloom auditing every project requirement for IR35 risk)
- No restriction on the council establishing local framework arrangements or running its own procurements where this framework does not meet its needs – hoped to be exceptional when established
- Offering the council complete control of the evaluation and supplier selection process – online via a Portal that, once trained, can be undertaken by service teams

Overview and Scrutiny Engagement

12. Appropriate overview and scrutiny engagement on the proposals will be discussed with the new Chairman of the Management Committee once elected.

Safeguarding Implications

13. The impact of this proposal in relation to Safeguarding depends on each project brief that is ordered from the resulting service. Safeguarding clauses will be included in the main agreement that will apply to relevant orders and

officers will need to consider Safeguarding adequately to ensure it is addressed in their requirements documents should the standard terms not suffice.

Public Health Implications

14. It is not considered that there are any Public Health implications arising directly from this report or its recommendation.

Procurement Implications

15. The proposed route to market is well established and legally compliant under the Public Contract Regulations 2015. Officers will need to be trained in the new approach to defining and procuring the services and there may be gateways in place for checks during the initial period of any contract. Information and advice will need to be made available and support in place, particularly during implementation. This will place a resource demand on the Strategic Procurement Hub that will need to be carefully managed,

Equalities Impact of the Proposal (detailing conclusions identified from Equality Analysis, sections 4 and 5)

16. It is not considered that there are any Equalities implications arising directly from this report or its recommendation.

Environmental and Climate Change Considerations

17. The proposal has no direct environmental or climate change impacts.

Risks that may arise if the proposed decision and related work is not taken

18. Spend on specialist professional services and consultancy will be more difficult to influence, to leverage value from it and to manage IR35 risks. As a result the council will lose the opportunity to make savings from the spend and also risks fines where it has not adequately assessed and procured affected services.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

19. Bloom enables a flexible approach to market and we can select a supplier where it is essential to do so. However, if officers do not pursue a competitive approach to securing required services by enabling mini-competitions to be conducted by Bloom, the potential savings will not be realised. As this will make us IR35 compliant, a strong message and support is required from senior officers and leaders that in the absence of another formally agreed route to market, this is the solution to be used by all services. Only when it is proven not to meet needs will the Strategic Procurement Hub support a specific procurement activity to secure relevant services. The communications around implementation must also make clear an expectation of competition as well as requiring current and stimulating new suppliers to register with Bloom

to create our market through this solution. Management information will also identify officers that are requesting sole source suppliers and they will be targeted to determine if and how their supply base can be developed to stimulate competition for our business.

20. Detailed operating practices will need to be established with Bloom and Officers will need to be trained in relevant documentation and processes to be used. If officers do not produce appropriate milestone based requirements Bloom will reject them as not IR35 compliant. While this is a benefit in managing that risk, officers will need to be trained in writing outcome and output based requirements, otherwise delays in the process could occur.
21. Bloom's "pro-void" online portal may not be appropriate from day one and a paper based approach may be used initially until confidence in the operation of the contract is established with key services. This may affect the efficiency of the solution, though other councils have deliberately chosen to operate an offline solution first when introducing the solution to avoid ICT risks.

Financial Implications

22. The services are funded by a range of teams in consultation with the relevant Finance Officer. There is no specific single budget for these requirements. As and when requirements are issued to Bloom for fulfilment, the budget holder will be required to authorise the expenditure.
23. Strategic Procurement will review direct award requirements to ensure that the potential savings from this arrangement are exploited and a quarterly report on key metrics and financial performance against budgets for orders will be provided to the Procurement Board.
24. Bloom levy a 5% charge on the fees of the consultants/cies they onboard. This fee is not directly passed on to the council, but may be absorbed by the consultancy in quoting. It is a risk that if Officers do not take steps to create a competitive market and seek quotes via Bloom that a consultancy may simply pass that cost through, inflating the council's costs for that project. This 5% margin is not considered significant when compared to the additional charges levied by some Agencies for the consultants they provide to the council. Bloom offers a way for the council to create a direct relationship with smaller, single employee consultancy businesses or sole traders, which has the potential to reduce rates paid.
25. The charge above has the potential to be offset by savings from generating competition, specifying requirements better to avoid scope creep and managing the contracts effectively. Case studies have indicated that savings can be made, 9.7% of budget by Durham, 14% by Cumbria, 10% by Central Bedford and 13% by BANES. While the level of savings that Wiltshire might achieve is not certain, with appropriate action to implement the framework effectively a level of cost avoidance savings against budget should be anticipated for projects using it.
26. Spend information is shown below. This is taken from the relevant GL and is not accurate as spend may have been incorrectly included, or coded to other

GL and excluded from the sums. As the Tier 1 route to market for these services where a pre-existing council contract does not exist, this proposal will help ensure that the spend is better understood and influenced to maximise savings by bringing in spend that is currently outside the arrangement.

GL No.	GL Name	2014-15 £	2015-16 £	2016-17 £
433010	Consultants' Fees	6,247,092.36	5,334,486.27	4,535,877.56

Legal Implications

27. The council has a duty to ensure that appropriate tax is paid for services it procures. This solution offers a way to mitigate IR35 risk in relation to the services of consultants. The framework is also a compliant route to market that is in use by a range of other councils. Legal services will review the relevant documents to enable access to the Bloom framework to provide opinion on their fitness for purpose in relation to the requirement.

28. The spend on consultancy fees means that approval of the award for the provision of consultancy services to Bloom under the call-off agreement to the NEPO compliant framework agreement is a key decision. Under part 10 of the Constitution: Procurement and Contract Rules : Awarding a Contract provides that Cabinet approval must be obtained for any contract (or programme) which exceeds an annual value of £1 million or the total contract value exceeds £4million including any optional extension period;

29. Cabinet can then delegate to the Associate Director for Corporate Services the entering into and the finalising of the call-off contract.

Options Considered

30. There exists a range of options for accessing consultancy services, from running our own procurement through to accessing a framework established by a Public Buying Organisation like Crown Commercial services. In the sector of construction related Professional Services there are a range of sector specific options, however this report seeks to provide a comprehensive solution that over time may provide all the council's needs. The options considered were:

a. **Do Nothing.**

Consultancy spend will remain fragmented and its management in terms of risk and value will not be realised. As the council has an ongoing need for consultancy, this option would retain a fragmented and sub-optimal route to its management and is discounted. IR 35 risk is not managed.

b. **Run a council tender.**

The breadth of consultancy services required by the council is known to be significant and include a range from sole traders to the big 4 consultancies. It would not be a simple task to establish a single framework to deliver this, especially in the absence of clear demand and spend information. A solution already exists on the

market that is proven and legally compliant which can be easily accessed. Our own tender is not likely to deliver any further benefits over existing options. For these reasons this option is discounted.

- c. **Access a framework** (three framework options have been identified)
- i. Crown Commercial Services (ConsultancyOne). This framework is for a closed list i.e. we cannot add suppliers to it during the period of the contract and will not meet the wide range of council requirements. This means that a wide range of other consultancy agreements will continue to be required. The replacement being developed ConsultancyTwo is also being criticised for excluding SME consultancies which the council will continue to wish to work with. As this will not enable the council to onboard its current supply base and add to it in the future, this option is discounted.
 - ii. YPO (664). This framework has a wide range of Lots (but specifically excludes Estates consultancy) that mirror the council's needs. It is also a closed list which does not support the ambition to onboard suppliers and means that a wide range of other consultancy agreements will continue to be required. As this will not enable the council to onboard its current supply base and add to it in the future, this option is discounted.
 - iii. Bloom (ex NEPRO). This framework was set up by NEPO and has established a framework that allows consultancies to join at any time. This means that the council can require consultants to register with Bloom and seek quotes for services via them. The framework has a range of Lots that mirrors the councils requirements, including professional services so it is envisaged that there should be minimal need for any off contract spend on consultancy.

Conclusions

31. It is recommended that Cabinet approves the agreement of a contract with Bloom who were selected by NEPO as their framework provider and delegates authority to do so as detailed in the Executive Summary. This will enable the council to achieve its goals and secure the benefits outlined in this report.

Robin Townsend (Associate Director, Corporate Function, Procurement and Programme Office)

Report Author: Greg Lewis, Places Category Manager,
greg.lewis@wiltshire.gov.uk,

Appendices

None

Background Papers

None