

Wiltshire Council

Cabinet

13 December 2016

Subject: Procurement of a new temporary agency supplier

Cabinet Member: Councillor Dick Tonge - Finance

Key Decision: Yes

Executive Summary

The council's contract for the supply of agency staff ended on the 19 November 2016. To ensure continuity of supply while the re-procurement concludes the contract is continuing with Comensura on a rolling basis awaiting approval of a formal extension agreement through this report.

To reduce the period under which we have to continue the current contract and further to a report to senior managers, a tender has been run against an Eastern Shires Purchasing Organisation (ESPO) framework that replaced the one under which we previously procured the current temporary agency contract.

It is anticipated the current contract will need to be extended to the 31 August 2017 and a contract extension requested with Comensura due to competing demands and capacity/resource available in HR & OD to support any implementation.

We tendered to establish a replacement 3 year contract with an option to extend for a further one year subject to satisfactory performance. The requirement has been designed to assist the council in managing its requirements as efficiently and effectively as well as mitigating any risks of fines associated with using personal services companies, commonly known as IR35. This risk is in relation to the proper payments of taxes due to HMRC based on their status in relation to employment rather than contracted services.

We received 3 tenders and through a robust evaluation process, one company has been identified as the winner to whom any award of contract would be made. The outcome of the tender is summarised in the attached evaluation outcome report as Appendix 1.

Proposals

That Cabinet delegate to the Associate Director for People and Business Services following consultation with the Cabinet member for Finance and the Associate Director for Legal and Governance, the authority to approve:

1. The extension of the current contract with Comensura until 31 August

2017

2. The award of contract for an initial three year period and the authority to exercise the option to extend the contract for one year subject to satisfactory performance

Reason for Proposals

The council has an ongoing requirement for agency staff to deliver its business and a contract to deliver temporary agency services meets this need.

Dr Carlton Brand
Corporate Director

Wiltshire Council

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Purpose of Report

1. To seek Cabinet approval to award the contract to the supplier as detailed in Appendix 1 of this report.

Relevance to the Council's Business Plan

2. A contract to manage the council's temporary agency supply will support all Business Plan outcomes as agency workers provide the council with the people resources to deliver services where there are gaps in the established workforce

Main Considerations for the Council

3. Wiltshire Council has tendered for a Managed Service Provider (MSP) to supply its entire temporary and (where appropriate) permanent labour.
4. The award of a new contract will secure access to a service for the planned use of temporary staff that provides the council with workforce flexibility whilst delivering best value for money
5. Wiltshire Council has a current vendor neutral solution with Comensura awarded through MSTAR (Managed Services for Temporary Agency Resources). A vendor neutral solution is one in which the supplying agency does not directly supply/employ the temporary staff, but sources them from other Agencies, maximising access to the supply chain. The current contract with Comensura expired in November 2016 but is to be extended until 31 August 2017 with the new contract taking effect on 1 September 2017. The extension required is due to competing priorities and the resource/capacity needed within HR & OD for implementation.
6. The main considerations in the procurement of a new contract have been:
 - To secure value for money services and optimise its use of temporary staff in line with the council's direction of travel to reduce agency spend as part of the wider budget savings needed
 - To provide a simple to use, efficient and effective portal for managers that need to hire temporary staff

- To secure high quality management information to enable the council to manage its temporary staff requirements better, working with the successful supplier
- To direct all agency spend through the framework wherever possible and appropriate to continue to keep 'off-contract' spend to the absolute minimum
- To manage its business well in the face of reduced funding from Central Government
- To address internal constraints of, for example, recruitment freezes
- To continue to support and develop the local economy by the use of SMEs (small and medium enterprises)

Background

7. The current provider, Comensura, was appointed as the council's Vendor Neutral Managed Service Provider under an ESPO MSTAR framework in 2011
8. Comensura is a supply management specialist, that manages the supply of temporary labour in large organisations across the public, private and not for profit sectors and has been awarded 'supplier status' under the ESPO framework agreement.
9. Comensura have been providing a vendor neutral solution to local authorities in the south west since 2005 and now have a significant number of clients which accounts for 71% of agency worker spend through a managed service solution in the south west region
10. In May 2016, senior council officers approved a recommendation to procure this service through a further competition via the ESPO framework, Lot 1.
11. That procurement has been undertaken, accompanied by an extension to the current contract to enable the procurement to be delivered. The outcome of the tender is at Appendix 1

Overview and Scrutiny Engagement

12. The Financial Planning Task Group has been monitoring spend on agency staff for some time and a discussion about the procurement process (excluding the outcome detailed in Appendix 1) and its aims was undertaken with the Overview and Scrutiny chair, vice-chair and the Financial Planning Task Group chair on Tuesday 29 November 2016 by the report authors

Safeguarding Implications

13. The specification used for the procurement of the new contract included clear requirements to adhere to Wiltshire Council's safeguarding policies and procedures for the supply of all temporary agency workers to the council. The requirement includes the audit of all agencies used by the MSP in the supply of temporary agency workers to ensure that the council's safeguarding policies

and procedures are met. There was also a requirement to outline the processes involved should any agency fail an audit.

14. The tender evaluation process was also marked against a specific question relating to safeguarding:

“In relation to the quality and suitability of staff supplied, how will your organisation manage its supply chain to ensure the appropriate checks have been carried out on Candidates prior to submitting them to the Customer for an Assignment? For example, DBS, repeated submission of rejected candidates, CV including evidence of qualifications and professional body registrations (e.g. HCPC), proof of identity, checking not previously employed by Wiltshire Council, references and critically important – any relevant safeguarding checks”

Public Health Implications

15. The hiring of agency staff is often needed when there are business critical resource issues (e.g. social work) and lack of capacity within the permanent workforce. Without a MSP in place, there is the potential for delays in the hiring process, impacting on the health and well-being of the permanent workforce

Procurement Implications

16. This report is wholly related to a procurement and these issues are central to the main body of the report, so not expressly addressed in this section.

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

17. Equality and diversity is embedded throughout the ESPO MSTAR2 framework and suppliers reflected this requirement within their tenders. By signing up to the framework, MSPs and consequently all agencies supplying temporary labour to the council will have to agree to the equality and diversity requirements set out within the framework agreement. This addresses our Public Sector Equality Duty (PSED) requirements under the Equality Act. On-going contract management will also address any equality considerations when relevant to ensure the council's obligations under the PSED are met.

Environmental and Climate Change Considerations

18. None considered to apply

Risk Assessment

19. An emerging risk is that HMRC is introducing more rigorous controls on the use of Personal Service Companies by the public sector from 1 April 2017. This has been subject to recent consultation (ending 18 August 2016) and the final IR35 regulations have yet to be published and assessed for impact.

20. The arrangement with an MSP, if used as the council's main route to secure agency staff, except for those exceptional and very limited in number roles that are so specialist as to require a different supplier, will help manage our IR35 risk effectively. However, hiring agency workers outside of this contract creates risk of fines for failure to adequately assess the employment and tax status of the agency personnel used.

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

21. Due to fragmented spend across the whole range of council's services, the council would not be able to secure value, manage IR35 risk, or understand its corporate requirements and manage them effectively through a coordinated and robust approach, particularly when buying critical agency staff such as waste drivers and loaders, or social workers.

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

22. There is still, albeit a greatly reduced risk with IR35 requirements which needs to be managed. The response to the consultation has not been released by the HMRC and further discussions with the new MSP will have to take place when the detail regarding the new IR35 regulations are known

Financial Implications

23. There has been a continued business need under a contractual arrangement over the previous three years for temporary agency labour with spend levels as detailed below:

- Category spend on Agency of £8,300,000 for financial year 2015/16
- Category Spend on Agency of £9,216,015 for financial year 2014/15
- Category spend on agency of £7,750,298 for financial year 2013/14

24. The increase in spend for 2014/15 was the result of an increase in the numbers of agency social workers in safeguarding and assessment (operational children's service) to reduce the numbers of caseloads per social worker and to implement the 'caseload promise' as part of the social work recruitment and retention campaign

25. These figures cover 18 categories of job types largely divided between social care, IT, technical, legal and general industrial services. The funding for these requirements comes from individual service operational budgets.

26. The contract has been aligned to our strategic direction to reduce spend on agency staff with the aim to continue this reduction further during the overall period of the contract. Further details of savings calculations based on the comparison of the existing temporary agency contract with the new can be found in Appendix 1 of this report

27. The proposed provider following the tender exercise represents the lowest price and thus is supported on a simple financial analysis. At present the

current provider includes a surcharge percent in the charge rates that is then rebated to the council and remains within the council to support for example HR with the improvement of services to try and reduce the need for future spend on temporary staff. As part of the tender award and final negotiations a new surcharge level will be agreed with the preferred bidder before final tender award. Assuming that surcharge at least equals the current percent then this will help mitigate any further risk of any potential financial consequences. As such finance support the proposals within this report

Legal Implications

28. In a staff related contract TUPE (transfer of undertakings protection of employment) considerations always stand to be examined carefully. It might be thought in this case that TUPE would be a factor. On review and taking into account the practical arrangements it is the view of Legal Services that TUPE will NOT apply to the staffing arrangements here. This view was taken in the main because the temporary staff are NOT employees and TUPE only applies to transferring employees.
29. In regard of the Terms and Conditions of contract, as this is a framework put together by ESPO with pre-tendered terms and conditions, Wiltshire Council's ability to amend the terms and conditions is extremely limited. However, it is an established Framework commonly used by Local Authorities and the terms are fair to the Council then the terms and conditions are acceptable without amendment.
30. The ESPO framework and the Council's Invitation to Tender (ITT) appear to be compliant with Procurement Regulations. Any bridging extension will also be compliant if done as contemplated in the procurement documents of the contract being replaced.

Options Considered

31. The May 2016 senior management report outlined three options:
 - Undertake a full OJEU process
 - Undertake a mini-competition via the ESPO MSTAR2 Framework
 - Undertake a mini-competition via the Yorkshire Purchasing Organisation (YPO) framework
32. The Strategic Procurement Hub undertook a desk top analysis of the two frameworks and projected that a mini competition against MSTAR2 would provide the most cost effective contract route - albeit maximising efficiencies will predominately come from effective resourcing management to limit the level of spend on these services as part of the wider HR workforce strategy.
33. The ESPO option was presented jointly by the Associate Director, People and Business and the Associate Director, Corporate Function, Procurement and Programme Office and approved by the Corporate Directors and a mini competition was undertaken against the ESPO framework, Lot 1.

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Appendices

Appendix 1: Procurement evaluation report and Annex A: procurement outcome
(undertaken as Part II as it contains exempt information)

Background Papers

The following documents have been relied on in the preparation of this report and
can be supplied on request by the report authors:

None