

WILTSHIRE COUNCIL

**CABINET:
23 February 2010**

FRAMEWORK CONTRACT FOR THE PROVISION OF AGENCY STAFF

Cabinet member: Councillor John Noeken - Resources

Executive Summary

The planned use of Temporary Staff provides the Council with flexibility during a period of transition and transformation. In order to provide necessary control and to provide important management information it is necessary to change the current service model. Due to the volume and value of the work it is necessary to procure a new contract under European Legislation.

Proposal

- 1) That Cabinet approve the commencement of the tendering process for the supply of Temporary Agency Staff.
- 2) That decisions to agree the final specification and tender evaluation methodology be delegated to the Director of Resources and the relevant Cabinet Member.

Reason for Proposal

To enable the procurement process to commence to ensure the new arrangements are in place later this calendar year.

Carlton Brand – Director of Resources

WILTSHIRE COUNCIL

CABINET

23 February 2010

FRAMEWORK CONTRACT FOR THE PROVISION OF AGENCY STAFF

Cabinet member: Councillor John Noeken - Resources

Purpose of Report

1. In order to comply with Council Financial and Contract Regulations relating to contracts with a value greater than £1m, Cabinet approval is sought to commence a competitive tender exercise under the European Union 'Restricted Tender' provisions for the future supply of Temporary Agency Staff through a Neutral Vendor Managed Service.

Background

2. Planned Use of Temporary Agency Staff provides the Council with workforce flexibility and this has been particularly important during the past year of transition and transformation allowing reduction in staffing levels without affecting permanent staff. The current total spend on temporary staff for Wiltshire Council is in the region of £7-£8m, compared with a total of £112m non-schools payroll budget (approximately 7%). As such, the Council needs to demonstrate value for money and comply with European Union (EU) legislation relating to this level of spend. The current contract was procured in collaboration with Bath and North East Somerset (BANES) and the former Wiltshire District Councils and operates as a non-exclusive category framework for an initial three-year period with an option to extend for a further year.
3. Taking advantage of the extension period, the current contract now expires in February 2011. This will enable a complete review of the usage of Temporary Agency Staff within the new Council ensuring that the proposal new contract is both 'fit for purpose' and, robust contract management processes are developed and in place by the start of a new contract.

Main Considerations for the Council

4. To ensure the prompt retendering of this complex service, a Project Board has been set up with the Service Director, Human Resources as Chairman. The Board includes key stakeholders and Councillor Jonathan Seed as the non-executive member appointed by the Overview and Scrutiny Management Board.
5. The Project Board, at the meeting in December 2009, approved a preferred option of adopting a neutral vendor managed solution for the future provision of Temporary Agency Staff. This option has a number of advantages but the main one is that Service Managers will have a single point of contact. The neutral

vendor will source all agency staff requirements on behalf of Wiltshire Council and will provide robust additional management information and web enabled ordering facilities.

6. A neutral vendor managed service does not supply its own staff enabling local Small and Medium Enterprises (SMEs) to compete on an equal basis with national recruitment agencies. The preferred business solution also aligns with the objectives of the Corporate Plan by supporting and promoting employment opportunities in Wiltshire.
7. The neutral vendor managed service has the ability to supply close to 100% of the demand for agency staff and provide key management information on what agency staff are on placement, where they will also ensure the Council is fully compliant with all legislation and policies relating to the engagement of agency staff.

Environmental Impact of the Proposal

8. There is no environmental impact of the proposal although the opportunity for the sourcing of local staff will contribute to the council's carbon reduction programme.

Equalities Impact of the Proposal

9. The proposed new contract would ensure regulations in relation to equality and diversity are fully met and can be closely monitored and reported on.

Risk Assessment

10. The current arrangements for the engagement of agency staff and existing processes and policies are putting the Council at major risk of possible challenge from suppliers and government departments. The new contract will provide both robust management and information and enable regular review to ensure compliance and manage risk as it occurs.
11. A full risk log for the procurement exercise form a major part of the project plan and this is regularly reviewed and updated by the Project Board.

Financial Implications

12. The proposal does not have direct financial implications but the successful retendering of the contract will provide improved opportunities for control over this area of large corporate spend. Recent research with authorities already using the neutral vendor model and industry soft market testing have identified the opportunity of significant savings on current rates and costs. Although the final figures will not be known until the retendering has been completed, research has shown that an average saving of around 6% are not uncommon against the current framework and other ad-hoc arrangements. A new and robust contract covering the recruitment of Agency Staff is seen as a category of spend where significant savings can be made.

Legal Implications

13. The council is carrying a major risk and the causes for the reliance of high cost agency staff used for long periods of time must be addressed. The council needs to be assured that proper arrangements are in place that meets with Contract Regulations, EU Procurement Directives and Employment Law. This will ensure that the council is not exposed to the danger that these staff could be viewed in law as employees with all the employment law implications, or open to HM Revenue and Customs (HMRC) challenge with their status.
14. Legislative changes to the EU Agency Workers Directive give agency staff equal pay and conditions after twelve weeks on a placement and must be in place by October 2011. The council must be in a position to know what and why agency staff is being used and the timeframe for each placement upstream in the process. Managers must also be aware of the procedures for using agency staff and clearly understand the rules of engagement.

Options Considered

15. There were two pre-tendered Neutral Vendor Framework Agreements arrangements available in the market that Wiltshire Council could buy-in to removing the need for a dedicated tendering process.
16. The first with Eastern Shires Procurement Office with Comensura. This contract had only one year left to run and it was not felt to be worthwhile for Wiltshire to consider this option given that it takes at least three months to set up the arrangement and re-tendering the contract would immediately follow the implementation phase.
17. The second with Dorset County Council also with Comensura. This contract also has one year left to run but has an option to extend for a further two years if performance levels are sustained. However, the contract value has already been exceeded and Wiltshire could be open to challenge under EU Procurement Directives rules by joining and significantly increasing spend on the existing contract.
18. In each case, both of the contracts do not take into account the need for parity with equal pay and conditions for agency workers and these changes will have to be re-negotiated with the incumbent supplier increasing the risks of joining.
19. The neutral vendor managed solution was a new business model six years ago, however, it is now well established in the market place and a new model is sought. This new arrangement will provide the council with greater flexibility on pricing structures and cost models; high quality management information, and also work with market conditions through a competitive tendering process. In addition, the model will also meet with all of Wiltshire Councils legal

requirements in terms of Contract Regulations, Employment Law and EU Procurement Directives.

Conclusions

20. The retendering of the current contract coupled with the introduction of robust management information and controls will ensure that the Council can meet all legal obligations and can demonstrate full value for money. As stated above this will require changes to our internal policies and processes but, the proposed new business solution will ensure upstream visibility and control, with accurate, timely high quality management information to inform future workforce planning.

Proposal

Cabinet is asked to;

- (i) Note the report
- (ii) Approve the commencement of a robust, transparent competitive tendering process using the EU restricted tender route to establish a new service for the provision of temporary agency staff through a Neutral Vendor managed service.
- (iii) Delegate to the Director of Resources in consultation with the Cabinet Member for Resources to agree the final tender specification and tender evaluation methodology for the retendering of the Temporary Agency Staff contract.

Reason for Proposal

21. The current contract expires in February 2011 enabling Wiltshire Council to strategically review this area of expenditure and establish a new service through a neutral vendor managed service. The intention of the procurement exercise is to have a new contractual arrangement in place by 1st November 2010, which will also ensure Wiltshire Council is compliant with Employment Law, EU Procurement Directives and Contract Regulations.

Name and title of Director: Carlton Brand, Director of Resources

Report Author: Nicky Griffiths

Name, title and contact details;

Nicky Griffiths,
Senior Procurement Officer
Tel: (01225) 771632
Email: nicky.griffiths@wiltshire.gov.uk

Date of report: 29th January 2010

Background Papers

Business Case for the Provision of Temporary Agency Staff
Options Appraisal for the Provision of Temporary Agency Staff
Risk Log for the Provision of Temporary Agency Staff

Appendices

