

**Subject:** Procurement of framework contract for temporary agency staff

**Cabinet Member:** Cllr Richard Clewer Deputy Leader and Cabinet Member for Corporate Services, Heritage, Arts & Tourism, Housing and Communities

**Key Decision:** Key

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#### Executive Summary

The council's current contract for the supply of agency staff was awarded in 2017 for three years plus an optional extension year. The extension year was utilised in 2019 giving a contract end date of 21 September 2021.

The tender will be run against an Eastern Shires Purchasing Organisation (ESPO) framework that replaced the one under which we previously procured the current temporary agency contract.

The requirement has been designed to assist the council in managing its temporary worker requirements as efficiently and effectively as possible, 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.

#### Proposal

This report recommends that Cabinet agree the following proposals:

1. That officers continue to undertake the tender programme, award and implement a new contract to replace the existing contract expiring on 21 September 2021.
2. That following this tender programme, that Cabinet delegate the subsequent authority to award a new contract for a duration of three years with an optional additional extension year, with a total estimated value of £24 million to the Director for HR&OD following consultation with the Cabinet member for Finance and the Director for Legal & Governance.
3. That Cabinet delegate the authority to approve any subsequent optional extension periods to the Director for HR&OD, subject to satisfactory performance and following appropriate consultation with the Cabinet member for Finance and the Director for Legal and Governance.

#### Reason for Proposal

The Council has an ongoing requirement for temporary agency staff to deliver its business and a contract to ensure a supply of temporary agency staff meets this need.

**Terence Herbert  
Chief Executive**

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### **Purpose of Report**

1. To seek Cabinet approval to proceed with a procurement for the supply of temporary agency staff, and following this procurement process, to delegate the award of the subsequent contract and potential extension (if utilised) in line with the proposal set out in 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.
3. We anticipate that as part of the organisational recovery programme the use of agency staff will reduce as we are better able to deploy our own workforce in a more flexible and agile way and use new approaches to ensure an improved internal supply of resource to fill current "hard to fill" roles in the future.

### **Main Considerations for the Council**

4. The Council is required to re-tender for a Managed Service Provider (MSP) to supply its entire temporary labour and where required the MSP will source permanent employees that if engaged by the council i.e. pass probation, will be subject to a fixed fee. Conversion of temporary labour to permanent will incur no fees.
5. The award of a new contract will secure access to a service for the planned use of temporary workers that provides the council with workforce flexibility whilst delivering best value for money.
6. Any future solution will need to integrate with the new ERP system which is likely to be implemented end 2022/early 2023.
7. The Council has a current vendor neutral solution with Matrix which was 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 Matrix is due to expire September 2021.

8. The main considerations in the procurement of a new contract are to;
  - a. Provide a simple to use, efficient and compliant portal for managers that need to hire high quality temporary workers.
  - b. Secure high-quality management information to enable the council to manage its temporary staff requirements, working with the successful supplier.
  - c. Build in the ability to integrate information from the provider's system with our current SAP and going forward any new ERP solution to ensure we can provide a holistic overview of total workforce costs.
  - d. Enable an effective competition, the details of what is required need to be clear and as accurate as possible and where relevant include the necessary statistics for role usage to enable projections for future temporary labour requirements.
  - e. Direct all agency, spend through the framework wherever possible and appropriate to continue to keep 'off-contract' spend to the absolute minimum.
  - f. Ensure services are resourced at a level that maintains service delivery balanced with the financial impact of Covid-19 and reduced funding from Central Government.
  - g. Address internal constraints of, for example, recruitment freezes.
  - h. Continue to support and develop the local economy using SMEs (small and medium enterprises).
  - i. Provide scope to enable temporary agency to permanent employment conversion without incurring significant fees.

### **Overview and Scrutiny Engagement**

9. A briefing will be offered to the Chairmen of the Overview and Scrutiny Management Committee and the Financial Planning Task Group prior to Cabinet, and their comments will be reported at the Cabinet meeting.

### **Safeguarding Implications**

10. The specification used for the procurement of the new contract will include clear requirements to adhere to the Council's safeguarding policies and procedures for the supply of all temporary agency workers to the council.
11. The requirement will include 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.

### **Public Health Implications**

12. None

## **Procurement Implications**

13. It is proposed that the procurement is processed as a further competition through the Eastern Shires Purchasing Organisation (ESPO) framework for Managed Services for Temporary Agency Resources (MSTAR) reference 653F\_19.
14. The benefits of this methodology are as follows:
- a. The pre-selection of suppliers has already been completed, meaning the suppliers on the framework have been pre-qualified as meeting the minimum capacity and capability for the contract. This also reduces the resource for the Council to carry out these checks internally.
  - b. The framework submissions include capped hourly rates for the job roles required, meaning that excessive hourly rates have already been removed from the process. As this framework is available to multiple public sector agencies there are also anticipated cost benefits from aggregation of demand.
  - c. This methodology allows the Council to complete a competitive process that is compliant with Wiltshire Council policy under the constitution for competition and compliant with the Council's obligations regarding procurement law under PCR 2015.
  - d. This methodology allows for timescales and resources to be applied effectively, as the minimum timescales under PCR 2015 for open or restricted procedures do not apply, and the framework provider has designed templates to allow efficient competition to take place with support throughout the process as required.
15. This requirement will pass Gateway 1 approval processes via Commercial Board, chaired by the corporate director of resources prior to issue.

## **Equalities Impact of the Proposal**

16. Equality and diversity are embedded throughout the ESPO MSTAR2 framework and suppliers must reflect 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.
17. On-going contract management will also address any equality and diversity considerations when relevant to ensure the Council's obligations under the PSED are met.

## **Environmental and Climate Change Considerations**

18. None are considered to apply.

## **Risk assessment**

19. No risks identified.

## **Financial Implications**

20. 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:
- a. The average monthly category spend on agency is £418,000 for 2020/2021
  - b. Category spend on Agency of £6,370,000 for financial year 2019/20
  - c. Category Spend on Agency of £8,000,000 for financial year 2018/19
  - d. Category spend on agency of £4,730,000 for financial year 2017/18

## **Legal Implications**

21. A robust procurement process (which is PCR 2015 compliant) should take place under the ESPO framework - with the council's legal department engaged to support the strategic procurement hub on this procurement.
22. A legal review of the ESPO framework and its terms and conditions should take place. It should be noted that the terms and conditions of the framework are mandatory for use for in a future contract. However, there remains the ability for the Council to add specific clauses and schedules that meet its specific needs. A final internal legal review should be requested on completion of these specific additions prior to contract award.

## **Workforce Implications**

23. Under the Council's organisational recovery programme, the aim is to increase the agility and flexibility of the Council's workforce to enable us to more effectively deploy staff, meet business requirement and to fill vacancies internally wherever possible.
24. In addition, activity is already taking place to implement "grow your own" schemes in areas where we find it most difficult to recruit and retain experienced staff (e.g. social care) which is where our reliance on agency staff (75% of all agency placements are within social care) is currently highest.
25. Longer term we anticipate this may reduce agency spend and any procurement will need to ensure that this is built into our approach. However, we are likely to always have some reliance on agency staff to deliver business critical services.
26. The hiring of agency workers is often needed when there are business critical resource issues (e.g., social work - 47% of agency placements are within children's social care and 28% within adult social care) and lack of capacity within the permanent workforce. Without an MSP in place, there is the potential for delays in the hiring process, impacting on delivery of services and on the health and well-being of the permanent workforce.

## **Options Considered**

### **Do Nothing**

27. Doing nothing is not a viable option at this time as this will lead to the expiry of the existing contract in September 2021 with no service to replace it. Without the provision of this service the Council would be required to source individual

temporary staff on an ad hoc basis. This will lead to greater use of internal resource to manage many more contracts, lack of consistency, reduced value for money, and could result in breach of procurement regulations by the disaggregation of spend.

### **Wiltshire Council procurement**

28. It is possible for the Council to proceed based on bespoke procurement rather than utilising a public sector framework to compliantly source this service. However, this type of process would require additional resource from both HR&OD and the strategic procurement hub. This would also add considerable time to the process as PCR 2015 minimum timescales would need to be followed and there would likely be a very high interest from suppliers which would need to be effectively managed. It would also not benefit from the advantages set out in procurement implications above.

### **ESPO Procurement**

29. As outlined in the “procurement” section above there are significant benefits to following a compliant route via the ESPO framework. This route is therefore recommended.

**Joanne Pitt**  
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