

CABINET MEETING: 16 JUNE 2016

**AGENCY WORKER CONTRACT RE-PROCUREMENT / INTERIM
ARRANGEMENTS**

REPORT OF CORPORATE DIRECTOR RESOURCES

AGENDA ITEM: 9

**PORTFOLIO: CORPORATE SERVICES & PERFORMANCE (COUNCILLOR
GRAHAM HINCHEY)**

Reason for this Report

1. To enable Cabinet to consider and approve the re-procurement of the council's agency worker contract via a mini-competition through the National Procurement Service (NPS) All Wales Agency Worker Framework. The duration of the arrangement will run from 1st December 2016 to 7th September 2018 with an option to extend until 7th September 2019. The contracted value of this procurement will be £28million.
2. To delegate authority to the Corporate Director of Resources in consultation with the Cabinet Member with responsibility for Corporate Services and Performance to:
 - carry out a mini-tender under the Framework Agreement to select a Provider using the relevant framework sub evaluation criteria and weightings.
 - deal with all ancillary matters pertaining to the mini competition.
 - award a User Agreement with the Provider selected (most economically advantageous provider) and placing orders under the User Agreement.
 - should the Council wish to continue with the services after September 2018, to approve extending the User agreement until 7 September 2019.
3. To approve a further interim direct award to the incumbent agency provider via the National Procurement framework (NPS) All Wales Agency Worker framework for a 5-month period (1/7/16-30/11/16) to allow the mini competition tender to be run up to contract award to a value of £4.2million.

Background

4. The incumbent provider for Agency worker provision, Comensura, has been in place since 2008 following two competitive OJEU tenders.
5. As part of the 2008 procurement exercise, a full review of the arrangements that were in place at that time was undertaken which resulted in the introduction of a vendor neutral solution. This was an innovative approach to deliver value for money and process efficiency savings and also supported and promoted the Council's sustainable development objectives. It was the first vendor neutral arrangement in Wales and subsequently, Monmouth, Neath Port Talbot and Caerphilly Councils "bolted on" to the contract that Cardiff tendered and subsequently awarded with Comensura.
6. A Vendor Neutral provider is a third party organisation which manages agency contracts, and effectively delivers a "brokerage service" to its customer. The supplier is not permitted to provide agency workers from its own resource pool. It is the responsibility of the vendor neutral company to enter into contracts with a group of tiered agencies on a neutral basis, and to ensure that workers are provided from these agencies to the Council as the customer, for the ongoing procurement of all agency worker requirements.
7. Since 2008, cashable savings from the reduction in agency management fee combined with system and process improvements achieved through the introduction of a hosted online portal have delivered savings over the two consecutive contracts in excess of £5million. Some of the system improvements related to back office functions including the approval process, with increased efficiencies in procurement, invoicing and billing arrangements.
8. The Council spends in the region of £10.8million a year across the Directorates for agency workers in relation to this contract which is managed via its in house agency (Cardiff Works) which has responsibility for managing the Comensura Vendor Neutral agency contract and all agency commissioning.
9. Directors are responsible for monitoring and managing the spend on agency workers in their service and are provided with monthly management information reports on the level and reasons for spend.

Issues

10. The Council's contract with Comensura expired on 31st January 2016. An officer decision report sought a direct award for an initial 5-month interim period (1/2/16 – 30/6/16) through the National Procurement Service (NPS) All Wales Agency Framework. This provided contract compliance and continuity of service whilst a service review was conducted looking at potential commercial opportunities for Cardiff Works.
11. The subsequent review made the recommendation for Cardiff Works to continue its in-house service provision for administrative and clerical temporary workers as it does not currently have the capacity or commercial ability to offer the complete agency worker solution. However, Cardiff Works

continues to report on all Council agency demand and undertakes key contract management responsibilities and this will continue for any subsequent third party arrangement in order to proactively drive performance and cost management.

12. As part of the in-house service review an options appraisal was considered as to whether a Master Vendor or Vendor Neutral sourcing strategy should be undertaken as part of the re-procurement. Users of a Master Vendor Model source the supply of agency workers from one or more suppliers. The supplier provides agency workers directly itself or from a small pool of agencies, with the majority of supply coming from the master vendor itself. The risk with this approach is that if the percentage of agency workers a Master Vendor can supply directly from its own resource pool is limited, this will have a negative effect on its capacity to service the Council's needs, additionally this approach traditionally relies on the Master Vendor's own resource pool cutting out access to local SME agencies in the supply chain.
13. It is necessary for the Council to continue to engage agency workers to allow flexibility in the workforce and it is also vital the Council has an agreement in place with a partner that will ensure that the benefits of encouraging access to local SMEs is maintained. Continuing with the current Vendor Neutral model will maintain the existing local supply base and will protect agency margins, ensuring that all relevant local agencies have access to agency opportunities. Accordingly, to allow a procurement through the mini competition process (including lead in time) it is recommended to award a further direct award to Comensura for the period 1/7/16 – 30/11/16.
14. The National Procurement Service (NPS) implemented its framework for the provision of Agency Workers on the 8th April 2015. There are two supply solutions, Vendor Neutral and Master Vendor, which have been explained above.

Reasons for Recommendations

15. The approvals requested in this Report will allow the benefits that have been achieved from the current arrangement to continue under a compliant contract, ensure continuity of service thus giving confidence that the engagement of agency workers will continue to be managed effectively.
16. The Council's Commissioning and Procurement team has undertaken a comparison using Cardiff's existing agency spend / usage data compared against the maximum published rates contained within the NPS All Wales Agency Framework which will potentially reduce through the proposed further mini competition. On this basis, use of the NPS framework would see a minimum reduction in agency fees of £78,000 per annum. It must also be noted Cardiff have negotiated a reduction in the NPS framework levy to £0.02/hour per transaction.
17. Without an Agreement in place, the Council will be unable to effectively manage the use of Agency Workers. This will result in increased expenditure for the Council.

Financial Implications

18. The extension of the current agency arrangements will ensure that existing rates can continue whilst the process of establishing a long term solution through the NPS Framework is undertaken. Any costs associated with implementing the new arrangements will be met from within existing resources.
19. Based upon a review of the existing NPS All Wales Agency rates, the Council can, through further competition, potentially improve its current agency management fee providing security of provision at a lower cost whilst providing access to improvements in the market since the last arrangement was let in terms of portal improvement including regulatory compliance and better management reporting.

Legal Implications

20. The report recommends (recommendation 1) that approval is given for the award of contract using National Procurement Service (NPS) framework. It is understood that the framework has been put in place in accordance with the European procurement regulations.
21. A participating local authority can carry out a mini-competition to establish which Framework Supplier provides the most economically advantageous tender. Whilst Legal Services has not reviewed the Framework Agreement, it is understood that the award of the Framework Agreement is compliant with EU procurement law. Any Call off contract must be carried out in accordance with the Call Off Process set out in the Framework Agreement. Legal Services are instructed that the tender process and evaluation criteria proposed accords with the Framework Agreement. It should be noted that the terms and conditions will be those as set down by the Framework Agreement and the client department should satisfy themselves as to whether they are suitable for their requirements.
22. Further legal advice and implications should be sought as and when necessary and upon approval of any award and extension.
23. With regards the interim 5-month contract, cabinet approval is sought on the basis that a previous 5 month contract has been awarded and the total value of both contracts are over £5million. The NPS Framework allows for a direct award on the basis of comparison of rates. Legal Services are instructed that this has been done.
24. The decision maker should also be satisfied that the procurement is in accordance within the financial and budgetary policy.

HR Implications

25. There are no real HR implications arising from this report as agency workers are not employees of the Council. It is essential that agency workers are able to be procured by Directorates for short term cover for a variety of reasons.

26. Should a new provider be appointed, there will be an anticipated 3-month implementation period when the Council will need to ensure that all managers who currently use the existing arrangements are fully trained and conversant with the new online ordering, authorising and time sheeting system that would need to be implemented. The implementation will be managed by the provider with support from Cardiff Works and the Council may have to appoint a project manager to support the implementation.
27. However, the Agency Workers Regulations mean that the Council needs to be far more vigilant in its continued engagement of agency workers beyond the 12-week period where they gain the same rights as permanent workers.
28. Directorate managers are continually reminded that agency workers should be utilised for short, unplanned cover and not engaged instead of recruiting to vacant posts etc.

RECOMMENDATIONS

Cabinet is recommended to;

1. approve the procurement of agency worker services under the National Procurement Service (NPS) All Wales Agency Framework Agreement for the Managed Service for Provision of Agency Workers
2. delegate authority to the Corporate Director of Resources in consultation with the Cabinet Member with responsibility for Corporate Services and Performance to: carry out a mini-tender under the Framework Agreement to select a Provider using the relevant framework sub evaluation criteria and weightings.
 - deal with all ancillary matters pertaining to the mini competition.
 - award a User Agreement with the Provider selected (most economically advantageous provider) and place orders under the User Agreement.
 - approve extending the User agreement until 7 September 2019 should the Council wish to continue with the services after September 2018.
3. approve a further interim direct award to the incumbent agency provider via the National Procurement framework (NPS) All Wales Agency Worker framework for a 5-month period (1/7/16-30/11/16) to allow the mini competition tender to be run up to contract award to a value of £4.2million.

CHRISTINE SALTER

Corporate Director

10 June 2016