
Cabinet

31 August 2021

Name of Cabinet Member:

Cabinet Member for Strategic Finances and Resources – Councillor R Brown

Director Approving Submission of the report:

Deputy Chief Executive

Ward(s) affected: All

Title:

Managed Service Provider for Temporary Agency Workers

Is this a key decision?

Yes - It has the potential to affect all wards within the City and expenditure is in excess of £1m

Executive Summary:

The Council currently has a call off contract for the supply of temporary agency workers. This acts as a support contract if the Council's first choice sourcing routes of employment from the casual working pool or fixed term appointments are unsuccessful in fulfilling temporary staffing vacancies.

The current provider delivers a managed service provider (MSP) solution which involves supplying their own temporary workers as well as workers from a 2nd tier of suppliers, that the provider manage on behalf of the Council. Twenty nine 2nd tier supplier supplied agency workers to the Council in the last year. The 2nd tier suppliers tend to be used for more specialist requirements such as social care. As part of the contract, an electronic ordering system is supplied by the provider to allow the Council and suppliers to communicate requirements, supply c.v.'s, upload key support documentation for new starters and for the completion of timesheets. This ensures the Council quicker access to the temporary market, real time visibility of the status of requests and an electronic, auditable trail for all of our transactions.

The benefits appointing a managed service provider brings to the Council include:

- Contracting with one supplier with expertise of the market who can then source from an extensive supplier pool on the Council's behalf.
- A supplier that can manage all of the employment and IR35 legislation that are significantly higher in the temporary agency market.
- A saving in resource in staff not having to engage the market and contract manage multiple suppliers.
- One point of contact for all our requirements and queries.
- Benefitting from lower rates by accumulating our spend with one supplier.
- Obtaining management information on the Council's ongoing agency spend.
- A significant reduction in the amount of invoices the Council would have to process and pay.

Some investigation was completed prior to the procurement of the existing contract about the possibility of removing the contract and the Council potentially establishing its own 'agency'. The idea was raised following another West Midlands Authority establishing an in-house agency, removing the need for a MSP contract. The findings found that the implementation and ongoing costs would be significant and would not eliminate the need for agencies particularly in specialised markets such as social care. For these reasons establishing our own in-house agency to replace an MSP service was not recommended. In the last year a working group has revisited exploring mechanisms for the Council to potentially manage some of its temporary agency requirements in the future, but this has not progressed to anything definitive and would not be possible to implement prior to our current agency contract expiring.

The spend through the agency contract had been falling over a number of years. Over the last year, the contract has seen an increase in spend due to the Council's COVID response and the need to recruit additional resource to support the Council's with new requirements or to support the existing workforce. The increased spend is also a result of our HR Recruitment's work to move temporary contract requirements from alternatively procured contracts, onto the agency contract. This has increased the overall spend under the agency contract but delivered overall savings to the Council on the margins the alternative contracts charged.

Coventry City Council (CCC) led the procurement process for the existing contract with collaboration from Solihull Metropolitan Borough Council (SMBC) who also use the same contract. The existing contract was procured using ESPO's (Eastern Shires Purchasing Organisation) Managed Services for Temporary Agency Resource framework (MSTAR2). This allowed us to aggregate spend for both councils to achieve greater savings and efficiencies both by driving down prices and by resourcing one tender process instead of two. The contract is due to expire on the 25th June 2022 and has no contractual extensions available. Due to the value of spend the Council must follow the Public Contract Regulations 2015 and compliantly procure a new contract.

It has been agreed between SMBC and CCC that CCC will again lead the re-procurement of the new contract.

Procurement Services has investigated 3 compliant procurement routes available for the new contract. Further details on these can be found in 2.2 of this report. From the routes investigated, we feel the route that proposes the greatest value and lowest risk to be a further competition via ESPO's Managed Services for Temporary Agency Resource framework (MSTAR3). Further details on the reasoning for this can be found in 2.3 – 2.6 of this report.

Recommendations:

Cabinet is requested to:

- 1) Authorise the procurement of a new three-year contract with the option to extend for one further year for a managed service provider for temporary agency workers to commence from the 25th June 2022 and expire on the 24th June 2026 (if extension is taken).
- 2) Delegate authority to the City Solicitor to agree the award of contract to agree the award of contract(s) following a further competition using Eastern Shires Purchasing Organisations (ESPO) Managed Services for Temporary Agency Resource 3 (MSTAR3) Lot 1b.
- 3) Authorise the City Council to enter into Contract(s) with the successful supplier of the further competition for a three-year contract with the option to extend for one further year.

List of Appendices included:

None

Other useful background papers:

None

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or body?

No

Will this report go to Council?

No

Report title: Managed Service for Temporary Agency Workers

1. Context (or background)

- 1.1 Coventry City Council (CCC) currently has a contract for a managed service provider (MSP) for temporary agency workers. The provider supplies their own temporary workers as well as managing a 2nd tier of suppliers with twenty-nine having supplied the Council in the last year.
- 1.2 The contract was procured by Coventry City Council and includes Solihull Metropolitan Borough Council who use the contract. CCC and Solihull engage in joint contract management of the overarching contract whilst our in-house HR, supported as necessary by Procurement Services, contract manage CCC's agreement on a day to day basis.
- 1.3 The contract commenced on the 25th June 2018 and is due to expire on the 24th June 2022. There are no further contractual extensions available for the contract and so a procurement for a new contract is now required.
- 1.4 Solihull Metropolitan Borough Council (SMBC) have confirmed they wish to continue to collaborate with CCC and will retender with us subject to their own internal governance approvals.
- 1.5 The new contract will be to replicate the existing contract's core service model of appointing a managed service provider for temporary agency workers. There will be no guarantee of value or volume offered for the new contract. If our demand for temporary agency workers diminished, there would be no negative impact as a result to the Council.
- 1.6 The expenditure through the contract for the financial year 2020/21 at CCC was £7.3m. The year prior to this (2019/2020) saw a CCC expenditure of £4.9m.

2. Options considered and recommended proposal

- 2.1 Procurement Services has conducted research to identify the potential procurement routes available to the Council.
- 2.2 3 options were identified as per below:
 - Option 1 – Direct award using a public sector procurement framework
 - Option 2 - A over threshold tender
 - Option 3 - Further competition using a public sector procurement framework
- 2.3 For option 1, Procurement identified three procurement frameworks that allow the compliant award of a contract without requiring a tender process. Crown Commercial Services Public Sector Resourcing Framework (RM3749) is a sole supplier framework meaning a direct award could be made. The framework has been disregarded though as it did not include scope for social care supply which would have to be procured through an alternative framework. This would require the Council to procure and contract manage 2 contracts instead of 1 using more resource and potentially lose any savings made from the bulk procurement of all of our agency spend
- 2.4 As part of option 1, benchmarks were concluded on pre-submitted framework rates for the suppliers on the applicable lots for our MSP requirement; on Yorkshire Purchasing Organisations (YPO) Managing Temporary and Permanent Recruitment (942) and ESPO's Managed Services for Temporary Agency Resource 3 (MSTAR3) frameworks (MSTAR3), based upon 12 months spend from CCC and SMBC. The outcome of both benchmarks

was that the Council would only be able to appoint a new MSP, who has never supplied the Council before. That would represent a significant risk in moving a contract of such value and importance to a new supplier based on a benchmark exercise with no qualitative evaluation. By direct awarding, it is possible the standard framework rates that would need to be contracted upon may not be as competitive as what could be achieved by re-opening competition (options 2 and 3).

- 2.5 For option 2, the Council would need to publish a tender that any supplier, in a very populated and heavily legislated market, could access and respond to. It would take a significant amount of resource to evaluate and would carry significant risk, due the variety of different backgrounds / sizes / collaborations of suppliers that may tender. This could prove difficult for the Council to evaluate and manage. The option would also carry risk due to the expertise / understanding needed to incorporate everything that could be deemed technically / legislatively necessary into the tender and evaluate it through our own procurement process. Concluding a further competition (option 3) through a public sector framework would negate these risks, as the suppliers who can respond, have already been appointed following technical / legal input at the framework providers and been deemed suitable to deliver the services.
- 2.6 For option 3, the Council would conclude a further competition via either the ESPO or YPO frameworks benchmarked in 2.4. Both frameworks are very similar in that they offer the same scope for delivery, have a number of the same suppliers, the same rebate applied and could likely deliver similar outcomes. The differentiator between the frameworks from the benchmark concluded in 2.4, is that the ESPO framework indicated lower rates would be obtained for our contract than the YPO framework. For that reason, the use of ESPO's MSTAR3 framework would be recommended for further competition.
- 2.7 Following the considerations provided on all three options; the option that we have deemed is most likely to offer the Council the best value for money and least risk is option 3. For that reason, we intend to proceed to complete a further competition, using ESPO's MSTAR3 framework Lot 1b, to award the new contract.
- 2.8 Some investigation was completed prior to the procurement of the existing contract about the possibility of removing the contract and the Council potentially establishing its own 'agency'. The idea was raised following another West Midlands Authority establishing an in-house agency, removing the need for an MSP contract. The findings found that the implementation and ongoing costs would be significant and would not eliminate the need for agencies particularly in specialised markets such as social care. For these reasons establishing our own in-house agency to replace an MSP service was not recommended. In the last year a working group has revisited exploring mechanisms for the Council to potentially manage some of its temporary agency requirements in the future, but this has not progressed to anything definitive and would not be possible to implement prior to our current agency contract expiring.
- 2.9 A procured value of £52m shall be set for the contract to cover both CCC and SMBC expenditure over the potential maximum 4 year contract term. This has been set with some headroom due to the unknown as to how long COVID related agency expenditure may be required for. As per 1.5, setting this value gives no commitment to this value of expenditure or any specific value or volume for the new contract.
- 2.10 The intention for the new contract is to still pro-actively try to reduce our use of agency staff where possible which was shown prior in the falling expenditure prior to 2020-2021.

3 Results of consultation undertaken

- 3.1 Basic consultation has taken place with key stakeholders at CCC close to the service. The existing contract is managed by the Human Resources (HR) Recruitment on a monthly basis with quarterly review meetings joint conducted with SMBC representatives. Feedback obtained from services areas on the current contract will be taken and incorporated into the new specification. Following cabinet approval HR and Procurement Services will engage further with key stakeholders for their views and feedback to support the building of the tender documentation.

4. Timetable for implementing this decision

- 4.1 The current contract expires on the 25th June 2022. Subject to approval of this report, Procurement Services intend to publish the further competition to suppliers at the start of October 2021. Returns will be requested from suppliers for the start of November 2021. Evaluation will take place in November with the expectation that the contract will be awarded before the Christmas closure. Contract sign off and implementation would be expected in January 2022.

5 Comments from the Director of Finance and the Director of Law and Governance

5.1 Financial implications

Spend under the agency workers contract varies dependent on volume and mix of agency workers needed. In 2020/21 spend under the contract was £7.3m compared to £4.9m the year before. The cost of agency workers is funded by the relevant service department from within existing resources.

The Council does not provide suppliers with a guarantee of value or volume under this contract. If demand diminished for temporary agency workers, there would be no negative financial impact to the Council and spend under the contract would reduce accordingly.

Quarterly monitoring of expenditure on agency workers will continue throughout the contract.

5.2 Legal implications

Due to the potential value of the contract, the procurement in financial terms exceeds the threshold for a full competition and as such is subject to the Public Contracts Regulations 2015 (PCR 2015).

The procurement which is the subject of this report will also be subject to the Council's Contract Procedure Rules. There is therefore a requirement that it be tendered competitively and that the process be transparent, non-discriminatory and ensures the equal treatment of bidders.

In section 2.7 of this report it sets out the procurement strategy for this contract, that it will be procured by a further competition using ESPO's MSTAR3 national framework which allows a compliant procurement route in accordance with the PCR 2015.

6 Other implications

6.1 How will this contribute to the Council's priorities?

This contract is as a support contract if the Council's first choice sourcing routes of employment from the casual working pool or fixed term appointments are unsuccessful in fulfilling temporary staffing vacancies. It enables the Council to compliantly procure temporary workers and maintain a flexible workforce in line with current demands to support the delivery of the Council's priorities and services.

The contract provides value for money and compliance in relation to the procurement of agency workers. It also provides firmer controls on the use of agency workers and has in place sound management reporting to see where spend is taking place to target recruitment, maximise resources, and reduce spend on agency workers.

6.2 How is risk being managed?

Potential risk exists in terms of the risk of change if another MSP is successful in the further competition for the new contract. As this is a competitive market and there are ten suppliers on ESPO's MSTAR3 framework able to tender, there is a strong probability a new supplier could be appointed. Risks of change include disruption to current services reliant on agency workers, implementation of a new computer system and building new interface(s) to our in-house system, disruption to current agency staff who may need to TUPE to a new agency to continue working at the Council, and disruption to existing relationships the Council currently has through our existing MSP with 2nd tier suppliers who supply specialist workers.

Procurement will ensure as part of the further competition evaluation, implementation of the new contract is included. MSP's will have to include an implementation plan for the new contract with detail on how they will manage any potential risks to the Council. This will be scored and weighted to give the Council insight as to the MSP's resource and understanding. The market is heavily populated so switching providers is common and MSP's have expertise to manage and minimise disruption to customers.

Research shows a large proportion of MSP's work with the same second tier suppliers. A large number of 2nd tier supplied workers at the Council are within social care which is more specialised, so we expect if we switch MSP we will be able to maintain the same relationships and lines of communication established through the current contract. MSP's do not lock their supply chains and if the Council wishes to engage with a third party supplier, we can approach the MSP to establish a relationship with them to facilitate this through the contract.

The intention is that the contract will be awarded in December 2021 and signed in January 2022 to allow five months to implement the new contract. If the incumbent supplier is successful, this time would be used to review and improve existing processes. If a new supplier is successful, the implementation will be managed by HR with support from Procurement, ICT, Finance and other stakeholders from the Council. An implementation / project plan will be agreed and will highlight the resource required from both parties and key dates and milestones to be achieved. Internal communications will be frequent with the entire Council, with focused communications to areas that heavily rely on the contract such as social care. This will help to ensure understanding across the organisation and reduce the risk of potential disruption.

The current contract was implemented in 2018 replacing our existing MSP at that time. It was implemented with no significant disruption to the Council. Some of the same officers involved in the implementation will be available to offer their experience and expertise to the new implementation as required.

6.3 What is the impact on the organisation?

The organisation has an operational requirement to take on staff to cover for sickness absence, cover during service reviews, meet spikes in demand and undertake special projects. The provision of this contact provides best value for the organisation.

6.4 Equalities / EIA

The MSP's we will engage with through the further competition will already have been evaluated on equality including compliance with the Equality Act 2010. MSP's in the temporary agency market have equality legislation and initiatives high on their agenda due to the nature of the service they provide and how important it is to this market. MSP's will be asked to adhere and apply the Council's policies on equality. As a MSP they will also manage the 2nd tier supply chain applying and monitoring equality adherence on the Council's behalf.

6.5 Implications for (or impact on) climate change and the environment

Due to the nature of the contract there are no implications on the environment.

6.6 Implications for partner organisations

This is a shared contract between CCC and Solihull Metropolitan Borough Council. Our withdrawal from a collaboration on the contract would potentially impact on our partners because the reduced size of the potential contract spend would damage their ability to obtain such low costs in the future, as well as potentially ours. By not participating in the shared contract, Coventry and our partner organisation could see an increase in future rates.

Joint working has encouraged the sharing of best practice not just in relation to agency workers but also in relation to wider aspects of HR.

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