

Report of the Strategic Director of Corporate Resources to the meeting of the Corporate Overview and Scrutiny to be held on 23rd March 2021

AC

Subject:

AWARD OF A CONTRACT FOR TEMPORARY AGENCY AND EXECUTIVE INTERIM STAFFING

Summary statement:

This report is provided for information to advise members of a forthcoming procurement from a national framework agreement for the award of a contract for a temporary agency and executive interim staffing contract. The value of the proposed contract is in excess of £2 million and in line with the requirements of Contract Standing Orders, (CSO 7.2.1), a report must be produced to allow members to consider matters prior to the commencement of the procurement process.

EQUALITY & DIVERSITY:

Equality and Diversity in recruitment and selection panels is a Council Management Team and Executive supported decision to ensure all recruitment and selection panels have as a minimum gender and ethnicity balance, which has been implemented for permanent, fixed term and secondment recruitment processes and must extend across appointments made via procurement, inside IR35 and temporary agency routes. This will be mandated and reported against on the Comensura ordering platform.

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Overview & Scrutiny Area:

Corporate

1. SUMMARY

- 1.1 This report seeks to inform members of a forthcoming procurement and award of a new contract for temporary agency staff and interim executive appointments for a term of three years from April 2021 to February 2024, with an option of a one-year extension, subject to satisfactory performance of the appointed supplier.
- 1.2 The procurement set out in this report will be carried out in accordance Contract Standing Orders and the call off criteria in the Managed Services for Temporary Agency Resources Framework 653F_19 procured and operated by the Eastern Shires Purchasing Organisation (ESPO).

2. BACKGROUND

- 2.1 The Council currently uses a managed service provider to supply its agency worker and executive interim staff requirements. The Neutral Vendor model manages the end-to-end recruitment process which creates competitions for all recruitment agencies in the supply chain which then drives fulfilment rates. To keep their place on the supply chain agencies must put forward their best workers which leads to an average fulfilment rate of 99.8%.
- 2.2 The Council's current contract is with Comensura, a neutral vendor provider for the provision of agency workers which has been in place since February 2017 via a YPO framework and prior to this via ESPO iterations of the MStar temporary staffing frameworks, under both regimes the contracts have been subject to regular performance reviews and have made savings year on year through competitions with the supply chain.
- 2.3 The Council has a recruitment of agency policy which has an embedded agency procedure which has been in place since 2012, it is well established and is complied with in most agency worker appointments. The procedure requires hiring managers to only utilise agency workers when there are no alternative options available. Where agency workers are used, a business case must be completed detailing the reasons for the usage. Sign off on agency control is agreed at diarised fortnightly meetings between the Director of Finance and the Director of Human Resources.
- 2.4 Following the reform of the intermediaries' legislation' and introduction of IR35 in April 2017, all public sector employers have been responsible for determining the IR35 status for all their contractors, regardless of if they are agency workers or self-employed. We have made full use of the agency contract to enable oversight of agency workers and to comply with the law ensuring income tax and National Insurance deducted as we would for employees.
- 2.5 Due to the nature of these framework agreements social value considerations do not apply to the individual contracts subsequently called-off under them. Our current call-off contract is via the YPO and although they have gained social value through their procurement we cannot add extra social value considerations relevant to our district. However, we have been able to add a social value element to our call off by adding local employment agencies to the supply chain.

- 2.6 The neutral vendor model combines a purpose-built procurement system which manages our hiring processes and allows our managers to release roles to pre-approved recruitment agencies within minutes. Commensura manage the supply chain of agencies and they support our staff with a 24/7 account management system. This platform supports transparency in what agency staff we have at any given time, financial information and that the agency worker has been fully vetted and meets our qualification and professional registration where necessary.

3. ENSURING THAT EVERY POUND COUNTS

Opportunities for the new contract

- 3.1 The Council has an opportunity to add recruitment of permanent executive and top management personnel to the new contract. This contract is the fourth generation agency staffing, each iteration has brought improvements and additional services. By adding permanent executive recruitment, which traditionally involves a procurement exercise, and evaluation for best value plus the hidden transactional costs associated with procurement and invoice processing, we can achieve savings, and based on historical spend data from 2018 to 2020 the savings would have been 16.5% of £184K which is £30,400.
- 3.2 As a local authority we must advise of the employment status decision in IR35 cases on or before the contract is entered into, those on the agency contract have this as standard. We have however some IR35 contracts which run through our internal pay roll. We can cut down on transactional activities, open negotiations on rates with contractors and have contracts in place with a complete and up to date real time reporting capability for all in scope of IR35 contractors by adding them to the agency contract.

IR35 on Internal Pay Roll			
April 2018 - March 2019	April 2019 - March 2020	April - Dec 2020	
£568,483.00	£378,050.00	£259,073.00	£1,258,026.00

- 3.3 There are times when the corporate contract is not utilised which results in off contract agency spend, specialist teaching staff and school ancillary staff have been one of these categories. We have now full compliance with the corporate contract for agency staff in this area of spend, however we do not use a sufficient amount of school staff to look attractive commercially. The Strategic Contracts Team have made significant inroads into education off contract expenditure and more agencies have proved willing to supply via our corporate contract. We plan on making the education market more attractive to the agencies by encouraging our schools to make use of the contract. If sufficient schools commit to using the contract individual schools will make cost savings and we will all benefit from a reduction in the overall cost. The Strategic Contracts team will work with the contract holder as we recognise that more needs to be undertaken from the council side to expand on-framework supply to include teaching roles across the district

Examples of where the contracting model works

- 3.4 A major benefit of the corporate agency contract is it is not a standardised, one size fits all approach to temporary agency staffing at the Council. The contract runs on a number of different models however at the heart of the contract is achieving flexibility in urgent requirements for agency staff whilst obtaining best value and reducing officer transactional time.
- 3.4 Residential and Day Care Services were experiencing issues with fulfilment and quality of candidates. The Service had got themselves in to a position where they were not raising orders in a timely manner, telephoning agencies not on the contract and had amassed a backlog of timesheets. Reputationally external agencies didn't want to work with the Service and internally officers blamed the corporate contract for not being able to supply to their requirements. Through negotiation and some trial and error a hybrid solution was deployed to meet the needs and requirements of the Service. Three local suppliers now understand the business, are able to provide the Council with quality candidates from around the district and the solution has been in place for two years with reviews at least quarterly. The local suppliers are companies based in Bradford and Keighley.
- 3.5 Health and Wellbeing had significant issues in recruiting Best Interest Assessors, (BIAs), a specialist and highly skilled professional role. A large number of BIAs were required for specific projects and through the contract we were able to utilise a talent pool option of pre-vetted, quality assured and specially trained in the specifics of how the Service required the assessments to be produced bank of agency workers. HMRC had become involved with the Service and because we were able to show that all BIA recruitment was now through the corporate contract and we had rectified the issues the Service had entangled themselves in going "off contract", HMRC were satisfied at the resolution and took no further action. Three years on from this these roles are now part of a normal ordering process open to the full supply chain to fill at significantly lower rates than what the Service area negotiated with their preferred contracting model.
- 3.6 We have carried out a limited permanent recruitment solution for posts the Council has found hard to fill through its normal recruitment routes, under the current contract. However, due to procurement implications, variation of the contract is limited to fewer than ten opportunities. Recognising that this has been and continues to be a problem across the public sector to recruit to hard to fill roles the proposed new contract has expanded on the recruitment element to cover two separate areas, top management posts as reported above and now all officer levels below these with no limit to the use.
- 3.7 Using historical ordering data the awarding of the new contract will have an immediate saving of £178,500 on agency charge rates. A re-procurement of our supply chain for roles which have been filled for at least a year, should produce a further savings per week on current agency staff.
- 3.8 From April 2018 until Dec 2020 £4,173,532.64 of the total agency contract expenditure was spent within the district recruitment agencies which strengthens local businesses and supports the wider inclusive economic goals of increasing local supply chains.

Future Innovation

- 3.9 Prior to the first COVID19 lockdown period we were trialling a Comensura app which enabled managers to approve agency worker time sheets on their smart mobile phones. Under the new contract we will roll out, with the help of our IT department, single sign on protocols meaning managers will use their Council log-ins and have a seamless experience of timesheet approval there will be no need for multiple passwords.
- 3.10 We have pioneered the use of scheme of works, (SOW), where Service areas have required agile project teams, to work in time or task limited situations. These areas have included Highways and Adult Services where we have saved officer time and Council money. The largest monetary use of these in recent times has been in Children's Services but because we have been trialling SOWs we have not rolled these across the Council as part of a standard approach but will be able to going forward as they're now a feature in the new contract. Where we have used them successfully we have made savings on standard agency rates. Scheme of works now become known in a new terminology as hybrid models, and the Council's use of these has helped Comensura shape what they look like for their customers.

4. FINANCIAL & RESOURCE APPRAISAL

- 4.1 The use of agency workers and in scope of IR35 consultants can provide an effective and efficient way to supplement skill shortages or provide temporary resource to deal with peaks in volume of work or specialist projects. However, expenditure on agency workers and consultants must be accommodated within existing service area budgets or external funding.
- 4.2 There are no direct financial implications arising from the recommendations of this report. However, managing staffing expenditure more effectively will clearly have financial implications over time.
- 4.3 The resource to contract manage this contract will sit within the Procurement Service with the Strategic Contracts Team.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

- 5.1 At times, when temporary staff have been taken on outside of the corporate contract there has been no specification of work, contracts, or time sheets. Managers may not always be aware of, or understand, the implications of IR35 or how they are exposing the council to risk of reputational damage and HMRC investigation and fines. A mandatory e-learning package will be developed for ordering managers to complete before they are permitted to place orders for agency staff or consultants.

6. LEGAL APPRAISAL

- 6.1 The Council's Contract Standing Orders provide for details of contracts with estimated value in excess of £2m be reported to the relevant Overview and Scrutiny Committee.
- 6.2 As indicated above, interim and consultancy appointments are covered by Contract Standing Orders.
- 6.3 The procurement set out in this report will be carried out in accordance Contract Standing Orders and the call off criteria in the Managed Services for Temporary Agency Resources Framework 653F_19 procured and operated by ESPO.
- 6.4 The National MSTAR3 specification states that the successful managed services provider for agency staff is responsible for ensuring all agencies meet the standards and policies of the Council, including the equality and diversity policy. The Agency Staff Contract in itself does not discriminate against any of the groups with a protected characteristic. The Council expects that agencies will provide evidence through Comensura, that agency staff are treated fairly at all stages of selection for placements.

7. OTHER IMPLICATIONS

7.1 SUSTAINABILITY IMPLICATIONS

- 7.1.1 There are no sustainability implications with the award of this contract.

7.2 GREENHOUSE GAS EMISSIONS IMPACTS

- 7.2.1 There are no greenhouse gas emissions impacts with the award of this contract

7.3 COMMUNITY SAFETY IMPLICATIONS

- 7.3.1 None

7.4 HUMAN RIGHTS ACT

- 7.4.1 None

7.5 TRADE UNION

- 7.5.1 None

7.6 WARD IMPLICATIONS

- 7.6.1 None

**7.7 AREA COMMITTEE ACTION PLAN IMPLICATIONS
(for reports to Area Committees only)**

7.7.1 None

7.8 IMPLICATIONS FOR CORPORATE PARENTING

7.8.1 None

7.9 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

7.9.1 The framework specification and associated documents have the latest requirements of the General Data Protection Regulations (GDPR), Data Protection Act 2018 and the Council's technical security requirements for Data Information Systems and Confidentiality.

8. NOT FOR PUBLICATION DOCUMENTS

8.1 Appendix 2 – Commercial Analysis – commercially confidential.

9. OPTIONS

9.1 The Council directly award to Comensura Ltd Lot 1A from a framework managed by Eastern Shire Purchasing Organisation, namely MStar 3 653F_19 for Managed Services for Temporary Agency Resource Lot 1A. - this would result in immediate savings and is the recommended option.

9.2 The Council directly awards to Comensura via of the framework agreement managed by Yorkshire Purchasing Organisation Managing Temporary and Permanent Recruitment - 942

9.3 The Council undertakes an open OJEU tender however with national frameworks available to all local authorities' savings and negotiated rates are unlikely to be matched. Given that most local authorities utilise frameworks for agency staff suppliers have less of an appetite to bid for separate tendering processes as it is time consuming and a costly procurement response exercise for tenderers, a cost usually factored into the pricing model.

10. RECOMMENDATIONS

Recommended -

10.1 *That the report is noted and the option that the Council should make a direct call off from the National ESPO (Eastern Shires Purchasing Organisation) framework: MStar 3 653F_19 for Managed Services for Temporary Agency Resource Lot 1A.*

11. APPENDICES

11.1 Appendix One - Spend and analysis on current agency contract

11.2 Appendix Two - Commercial analysis

12. BACKGROUND DOCUMENTS

12.1 None

Appendix One

1. Overall Agency Spend on Comensura Contract

The charts below show the cost of agency staff engaged through the corporate contract in each department and total combined costs to the Council broken down into years with the top ten job titles agency workers fulfilled in those years.

In summary the total spend on agency staff by department per year has been, April - Dec 2020 **£15,658,999.02**, 19/20 **£15,876,512.78** and in 18/19 **£9,808,513.39**

We can see that the rise in the use of social workers and team manager roles in Children's Services began to rise in 18/19 but has since exponentially risen in the subsequent two years. The Strategic Contracts Team, working with the contractor have put in place social work project teams periodically at commercially competitive pay rates however there continues to be issues where services go separately to agencies not on our supply chain.

Department April - Dec 20		Top Ten Job Roles April - Dec 20	
Chief Executive	£114,901.61	Care Assistant (Days)	£681,330.17
Childrens Services	£10,653,227.91	Independent Reviewing Officer	£271,965.53
Corporate Resources	£1,352,499.63	Practice Supervisor	£412,736.11
Health and Wellbeing	£2,030,076.53	Programme Lead (Children'S Social Care)	£278,842.34
Place	£1,508,293.34	Residential Practitioner	£279,100.39
Grand Total	£15,658,999.02	Senior Engineer (Projects)	£428,754.64
		Service Manager	£353,186.11
		Social Worker Level 3	£6,253,271.29
		Support Worker Childrens (Nvq Level 3)	£373,626.07
		Team Manager	£1,090,868.29
		Grand Total	£10,423,680.93

Department 19/20		Top Ten Job Roles 19/20	
Chief Executive	£129,026.63	Care Assistant (Days)	£495,342.68
Childrens Services	£10,027,770.93	Education Project	£369,103.24
Corporate Resources	£904,886.18	Gardener - Driver/Gardener	£301,889.59
Health and Wellbeing	£2,398,709.97	Head Of Service (Social Work)	£311,876.48
Place	£2,416,119.08	Residential Practitioner	£553,572.94
Grand Total	£15,876,512.78	Senior Engineer (Projects)	£594,247.21
		Service Manager	£617,071.28
		Social Worker Level 3	£5,557,478.88
		Support Worker Childrens (NVQ Level 3)	£258,787.14
		Team Manager	£1,384,041.10
		Grand Total	£10,443,410.53

Department 18/19		Top Ten Job Roles 18/19	
Chief Executive	£65,439.69	Best Interests Assessor	£469,644.36
Childrens Services	£4,199,623.26	Care Assistant (Days)	£321,555.04
Corporate Resources	£720,186.00	Gardener - Driver/Gardener	£310,930.53
Corporate Services	£140,178.72	Labourer	£408,332.42
Environment and Sport	£65,965.98	Refuse Collector	£368,754.79
Health and Wellbeing	£2,284,696.50	Senior Engineer (Projects)	£440,525.94
Place	£2,332,423.26	Senior Transport Planner	£295,760.64
Grand Total	£9,808,513.39	Service Manager	£385,477.11
		Social Worker Level 3	£2,810,198.36
		Team Manager	£467,586.90
		Grand Total	£6,278,766.09

2. Justification for Agency Social Worker Order

Justification by ordering managers for the requirement of social workers per year. April to December 2020 shows an added addition of the COVID classification as a reason for agency requirement.

Children's Social Workers Justification April - Dec 20	Number of Orders	Children's Social Workers Justification 19/20	Number of Orders
Cover Pending Service Review	163	Cover Pending Service Review	366
Covid-19	348	Holiday Cover	158
Holiday Cover	116	Leave - Maternity	2
Leave - Other	32	Leave - Other	87
Legacy Temp	47	Legacy Temp	104
Planned Peak Work (More Than 1 Month)	46	Planned Peak Work (More Than 1 Month)	20
Project Work (Undertake)	19	Project Work (Undertake)	14
Recruitment Process Cover (Permanent Post)	160	Recruitment Process Cover (Permanent Post)	736
Secondment Cover	10	Secondment Cover	10
Short Term Additional Demand (Less Than 1 Month)	79	Short Term Additional Demand (Less Than 1 Month)	2
Sickness - Longer Term (More Than 1 Month)	25	Sickness - Longer Term (More Than 1 Month)	44
Sickness - Short Term (Less Than 1 Month)	287	Sickness - Short Term (Less Than 1 Month)	344
Vacancy Freeze Cover	5	Training Cover	1
		Vacancy Freeze Cover	14
Grand Total	1337	Grand Total	1902

Children's Social Workers Justification 18/19	Number of Orders
Cover Pending Service Review	68
Holiday Cover	38
Leave - Maternity	28
Leave - Other	40
Legacy Temp	131
Planned Peak Work (More Than 1 Month)	18
Project Work (Undertake)	23
Recruitment Process Cover (Permanent Post)	342
Short Term Additional Demand (Less Than 1 Month)	8
Sickness - Longer Term (More Than 1 Month)	141
Sickness - Short Term (Less Than 1 Month)	96
Vacancy Freeze Cover	24
Grand Total	957

