

**Report of: Executive Member for Finance, Performance and Community Safety**

| <b>Meeting of:</b> | <b>Date</b>     | <b>Ward(s)</b> |
|--------------------|-----------------|----------------|
| Executive          | 9 February 2017 | All            |

| <b>Delete as appropriate</b> | <b>Exempt</b> | <b>Non-exempt</b> |
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|                              |               |                   |

**SUBJECT: Procurement Strategy – Contract for the provision of contingent labour**
**1 Synopsis**

- 1.1** This report seeks pre-tender approval for the procurement strategy in respect of the supply of agency workers to the London Borough of Islington in accordance with Rule 2.5 of the Council’s Procurement Rules.
- 1.2** The Council relies on contingent workers to fulfil short-term capacity needs, as well as additional capability when there are skills shortages. The use of contingent workers is under ongoing scrutiny and measures are being taken to reduce it, both in terms of the number of workers and the council’s expenditure on them. There has been considerable success as a result of this unfinished work. However, there will always be a requirement to access some additional skills and capacity in order to deliver responsive services.

**2 Recommendations**

- 2.1** To approve the procurement strategy for the contract to supply all contingent workers, both agency workers and interims via Lot 1 of the HR Services and Solutions (Temporary and Permanent Recruitment, Consultancy and Related HR Services) framework agreement number 569, provided by Yorkshire Purchasing Organisation (YPO).
- 2.2** To delegate authority to award the contract to the Corporate Director of Finance and Resources in consultation with the Executive Member for Finance, Performance and Community Safety.

### 3 Background

#### 3.1 Nature of the service

This report recommends a process for the procurement of all categories of contingent labour across the Council (both agency workers and interims). Agency workers are used by Islington to provide short-term resources to fill absences, vacancies and add capacity to deal with peaks in workflow. Interim staff – usually highly skilled professionals – can enable the authority to fill skills gaps, work on fixed term projects and add an external perspective to the management of the organisation. To ensure a high calibre of candidates and an effective process for sourcing, placing and managing these individuals, it is important for Islington to secure a service solution that is reflective of the changing needs of the business and the dynamic nature of the external market for skills and talent.

The current contract is due to expire in January 2018 and there is no provision for an extension.

#### 3.2 Estimated Value

The value of the contract is approximately £113m, based on current spend, and is for a 4 year period. Projected savings are based on this value, although work under way to reduce this spend means that such savings will also reduce.

The procurement of this new contract will seek to generate savings for Islington. The aim will be to achieve this by finding more flexible ways of delivering the service and securing a supplier that will provide a solution which is capable of delivering the same (or improved) quality of service at a lower cost and with improved consistency in candidate quality.

The management fee will be controlled by requiring suppliers to consider solutions that can be flexed to meet the needs of different departments and job roles. Where there is strong supply and candidates of a similar calibre it may be possible to look for a more technology-led sourcing solution. By contrast, where there is a need to understand the specific nature of a vacancy for a specialist position the solution being sought will need to demonstrate excellent processes for matching candidates to complex business requirements.

**Preferred Option:** The preferred option is a flexible solution which considers the best mix of cost and quality for different types of supply dependent on hiring managers' needs, the nature of supply, the nature of the work and the required timeframe. The resultant solution will ensure that there are different approaches followed in different business areas, reflecting need. It will take into account the technologies available and the optimum balance between costs and outcomes (i.e. quality of candidates) in order to provide a cost-effective service.

#### 3.3 Timetable

The current contract is due to expire in January 2018. The timetable below sets out the key milestones.

In order to achieve the best outcome, HR will consult with managers to identify specific business needs. A working group will be set up and continue over the life of the project. It will ensure project milestones are achieved with all stakeholders having the opportunity to contribute to the procurement process. The project will be appraised regularly, risks identified and actively managed. Advice will be sought throughout from procurement specialists. Representatives from user departments across the Council will be involved in developing the specification, tender assessments and selection of the solution that best meet the needs of the organisation.

| <b>MILESTONE</b>                   | <b>DATE</b>                 |
|------------------------------------|-----------------------------|
| Executive considers proposal       | February, 2017              |
| Development of specification       | February – April 2017       |
| ITT issued                         | May 2017                    |
| Contract award                     | September/October 2017      |
| Contract implementation/transition | October 2017 – January 2018 |

### 3.4 Options appraisal

Since January 2013, Comensura has been supplying the majority of Islington Council's agency worker requirements under a neutral vendor arrangement. It is proposed that a single provider is now sought to satisfy all of the Council's requirements – both agency workers and interims – to simplify the contracting burden. The intention is to commission a flexible contract that combines the benefits of a single managing agent with access to a broad array of talent that resides in the supply chains of generic, specialist and local niche supply agencies. Islington is also particularly concerned with ensuring that the contract reflects the Council's commitment to equality and inclusion and the Council's wider social value agenda.

Various models of supply have been reviewed as part of research into this issue which has demonstrated that authorities are now, quite rightly, requiring a solution which is tailored to meet their needs, rather than attempting to fit them, generally unsuccessfully, into a standard model. Therefore, boroughs such as Hackney and Westminster have recently gone to the market and set out their own specification without indicating a model, but asking suppliers to recommend a way forward against their specific requirements. This 'blended' approach means they will be looking at a different way of operating with the supplier which will be driven by the needs of the authority and not be reliant on provider models which are outdated. The proposal is to design a specification bespoke to the Council's requirements and look to the suppliers to propose an appropriate option.

A number of conclusions were drawn from this exercise, specifically:

- An internally managed service is ruled out on the basis that for Islington Council to set up its own service (including purchase of a relevant I.T. system, establishment of specialist supply chains, additional resource within Finance, compliance team and a resource for direct sourcing) would be expensive. The cost for this model is estimated at in excess of £200,000 staffing costs per annum, plus approximately £60,000 per annum for an appropriate IT system to run the process, which exceeds the cost of the service currently provided by Comensura.
- There is no existing 'one size fits all' solution, with different models being more appropriate for different types of contingent worker.
- There is no single model that appears to provide a 'better' solution than any other. Across London different boroughs are using different solutions with there being no one approach which proves more attractive (or more successful) than any other. It is how the service is tailored and the contract managed that determines success.

After a full review of the procurement options available, it is proposed that the best option that offers the Council value for money is to procure the service via the HR Services and Solutions (Temporary and Permanent Recruitment, Consultancy and Related HR Services) framework agreement provided by YPO, Lot 1 : Managed Services for Contingent Labour – including health and social care. This framework will offer the best value for the following reasons

- YPO offers a framework of pre-assessed providers against a broad set of requirements, which a choice to carry out a further mini competition;
- YPO are offering a financial incentive (all members of the purchasing group receive a dividend). At current levels of spend, this could equate to £180K for the Council, although, as spend reduces of course the amount of the dividend will reduce.

It is important that transfer to a new provider takes place without any disruption to services. Careful planning for implementation promoting continuity of service (including the transfer of workers to a new supplier should this be necessary) is required before a contract is awarded.

### **3.5 Key Considerations – References to social value and impact on staff**

There is a possibility that TUPE will apply to the staff of the current provider of this service to the Council, Comensura. If this is the case, Comensura will need to ensure that the contract conditions established by YPO contain an indemnity protecting the Council from TUPE claims. The Comensura staff providing the service to Islington Council through the current contract would transfer to the new provider, ensuring continuity of service for the Council.

Pay rates for contingent labour are within the control of the Council. Therefore our policy of paying at least the London Living Wage would apply. The provider will also be required to ensure that their employees are also paid at least the London Living Wage as one of the criteria for the contract. YPO will advise how social value can be maximised in this contract via the framework, and recommendations to ensure social value will be included in the tender specification.

### **3.6 Evaluation**

The Framework allows the option for either direct award or award by further competition. It is proposed that the 'further competition' route be undertaken to allow maximum benefit to the Council. A specification will be produced following extensive consultation with the Council's departments including social value considerations. A competition will be undertaken with the 10 providers on the framework. The framework includes a broad array of suppliers, each of which may provide a somewhat different solution. These solutions will then be reviewed to determine the best option for Islington given the Council's specific requirements. The framework allows for a choice in the price/quality ratio, and a ratio of 60% for quality and 40% for price, is recommended.

### **3.7 Business Risks**

A risk register will be agreed as part of the project control process. With such a large contract being used by managers across the Council, the implementation of the contract is a key consideration. Within the tendering documentation appropriate questions and weighting will be taken into account to ensure the successful provider can effectively manage the transition. This will need to include an element of training for hiring managers to ensure they understand the new ways of working and indeed how any new system will work.

**3.8** The Employment Relations Act 1999 (Blacklist) Regulations 2010 explicitly prohibit the compilation, use, sale or supply of blacklists containing details of Trades Union members and their activities. Following a motion to full Council on 26 March 2013, all tenderers will be required to sign the Council's anti-blacklisting declaration. Where an organisation is unable to declare that they have never blacklisted, they will be required to evidence that they have 'self-cleansed'. The Council will not award a contract to organisations found guilty of blacklisting unless they have demonstrated 'self-cleansing' and taken adequate measures to remedy past actions and prevent re-occurrences. The adequacy of these measures will initially be assessed by officers and the outcome of that assessment will be reviewed by the Council's Procurement Board

**3.9** The following relevant information is required to be specifically approved by the Executive in accordance with rule 2.6 of the Procurement Rules:

| <b>Relevant information</b>   | <b>Information/section in report</b>  |
|---|---|
| 1 Nature of the service   | Agency Worker Contract to supply temporary labour of all types across all departments.  |
| 2 Estimated value   | The estimated value per annum is £28m, although this is expected to reduce as the council continues to drive down its agency usage.<br>The agreement is proposed to run for a period of 4 years. There is no option to extend the contract under the YPO framework. |
| 3 Timetable   | See paragraph 3.3 above. The new contract must run from January 2018, when the current one expires.   |
| 4 Options appraisal for tender procedure including consideration of collaboration opportunities                               | A blended, customer-led option.<br>See paragraph 3.4 above.   |
| 5 Consideration of:<br>Social benefit clauses; London Living Wage; Best value; TUPE, pensions and other staffing implications | Islington Council is committed to paying the London Living Wage.<br>There will be a need to assess whether TUPE will apply if the current provider is not awarded the new contract.   |
| 6 Evaluation criteria   | The award criteria will be developed with stakeholders from all the Council's departments. They will include the ability to meet both capacity and skills requirements in a cost-effective and highly responsive manner.<br>See paragraph 3.4 above.                |
| 7 Any business risks associated with entering the contract  | The likelihood of being unable to let this contract is low, although the impact is high, as the Council relies for service delivery on agency workers.<br>See paragraph 3.7 for details of risks.   |
| 8 Any other relevant financial, legal or other considerations   | Savings are anticipated through the reduction in use of contingent labour, the inclusion of interims in this contract and the dividend paid through the YPO framework.  |

## **4 Implications**

### **4.1 Financial implications:**

The cost of the contract will be met from existing budgets and is dependent on the overall use of agency staff. Without altering the pay received by individual workers, it is estimated that the changes in the new contract will save the Council around £180K per annum based on current spend, through the dividend paid through the YPO framework. It is anticipated that additional savings can be achieved through including the use of interims/consultants within the new contract, as well as through a reduction in the use of agency workers, which is where considerable efforts are being focused. This will be factored into the Council's budget process and Medium Term Financial Strategy going forward.

### **4.2 Legal Implications**

The council has powers under section 112 of the Local Government Act 1972 to procure staff as it thinks is necessary for the proper discharge of its functions. The Council has power to enter into contracts with providers of contingent labour under section 1 of the Local Government (Contracts) Act 1997. The Executive may provide Corporate Directors with responsibility to award contracts with a value over £2 million using revenue money (council's Procurement Rule 16.2).

The proposed contract is a contract for services. The threshold for application of the Public Contracts Regulations 2015 (the Regulations) is currently £164,176.00 for service contracts. Contracts above this threshold must be procured with advertisement in the Official Journal of the European Union and with full compliance of the Regulations. The council's Procurement

Rules also require contracts over the value of £164,176.00 to be subject to competitive tender.

The proposed procurement strategy is to use the framework for HR Services and Solutions (Temporary and permanent recruitment, consultancy and related HR services), Ref 569, established by the Yorkshire Procurement Organisation (YPO) on behalf of various organisations, including all local authorities. The YPO framework was procured in compliance with the Public Contracts Regulations 2015 and OJEU advertisement. The duration of the framework is from 7<sup>th</sup> December 2015 to 6<sup>th</sup> December 2018 with an option for YPO to extend the framework for a further year. It is therefore available for use by the council as proposed in the report. A contract may be awarded in accordance with the provisions set out in the framework.

In deciding whether to award the contract to the selected service provider the Corporate Director of Finance and Resources should be satisfied as to the competence of the supplier to provide the services and that the contract price represents value for money for the Council.

#### **4.3 Environmental Implications**

There are no known potential environmental impacts linked to this procurement.

#### **4.4 Resident Impact Assessment**

The Council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The Council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The Council must have due regard to the need to tackle prejudice and promote understanding.

The equalities implications of the use of agency workers are monitored regularly. The most recent evaluation was carried out with data gathered from October 2016. A Resident Impact Assessment has been completed, identifying that there will be no negative differential impacts from the award of this contract. A copy of the RIA will be kept in the contract folder and will be available on request.

### **5 Reason for recommendations**

- 5.1 The option proposed will present the best value, as it will be designed specifically to meet all the temporary resourcing needs of the Council in a responsive service.

Final report clearance:

**Signed by:**



30 January 2017

Executive Member for Finance, Performance  
and Community Safety

Date

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