

<b>Performance &amp; Finance Scrutiny Committee</b>	<b>Ref No: ECRXX 19-20</b>
<b>22 January 2020</b>	<b>Key Decision: Yes</b>
<b>Procurement for the Provision of Agency Workers Recruitment Services</b>	<b>Part I</b>
<b>Report by the Director of Law and Assurance and the Director of Finance and Support Services</b>	<b>Electoral Divisions: N/A</b>
<p><b>Summary</b></p> <p>This report sets out the options and proposals for the re-procurement of the temporary agency worker services and seeks approval to procure a new agency worker resourcing contract to coincide with the end of the current master vendor contract delivered by Manpower (as a sub-contractor of Capita) which expires on 30 September 2020.</p> <p>The Council's current agency worker spend, both on and off contract, is estimated at around £15 million per year (of which £42,133 is through Capita Shared Services) and is increasing due to a number of strategies concurrently in process, in support of our improvement programmes. The Council wishes to ensure there is a new arrangement in place to ensure there is suitable quality and cost effective provision for contingent labour where needed.</p> <p>The proposal is for a new contract for an initial period of three years with the option to extend for up to a further one year, with a total estimated maximum value of £72m.</p>	
<p><b>West Sussex Plan: Policy Impact and Context</b></p> <p>Temporary agency workers are an important part of the Council's workforce and help to ensure resilient and flexible service delivery. This enables the Council to ensure resources are in place where required to cover short term or specialist requirements and continue to deliver high quality services thereby meeting internal departmental needs and ultimately those of the Council's customers and residents.</p>	
<p><b>Financial Impact</b></p> <p>The proposed new contract will aim to move the off-contract spend under the control of the single contract by establishing a wider supply chain to cover all aspects of temporary agency hiring, and by adhering to the new Hiring &amp; Managing Agency Workers Policy. The contract value over the whole contract period of up to four years is forecast at £72m. However, over the life of this contract the Council will be working to further develop its contract management arrangements and will, through the proposed service model, ensure a robust process of compliance with the successful provider to manage demand and the market in order to ensure the new contract delivers best value for money</p>	

## **Recommendations**

That the Cabinet:

1. Approves the commencement of a procurement exercise for a new contract for the provision of temporary agency worker recruitment services, as detailed in this report, to commence in September 2020 for a period of three years with the option to extend for up to one further year at an estimated maximum contract value of £72m.
2. Delegates authority to the Director of Human Resources and Organisational Change to award the contract to the provider who submits the most economically advantageous tender and can best meet the quality and performance standards required by the Council.

## **Background and Context**

- 1.1 Temporary agency workers are an important part of the Council's workforce. The use of temporary staff enables the Council to operate without interruption to service levels, ensuring resilience and service continuity. There always will be a corporate requirement to engage temporary workers for a number of reasons:
  - to cover for vacancies pending recruitment
  - to cover for planned or unplanned absence (e.g. sickness or maternity)
  - to cover for filling a post pending a restructure/reorganisation
  - to cover for peaks in demand
  - to deliver fixed-term projects where capacity does not exist internally
- 1.2 For the past thirteen years the service has been delivered to the Council via a master vendor managed service provider Manpower Limited (Manpower). The original contract in 2006 focussed on the provision of services relating to domestic and social care in partnership with Hampshire County Council. The contract was novated to Capita Business Services (Capita) in 2012 as part of the outsourcing of a number of Council HR services. Capita have managed the contract for six years, as part of the SSO Contract. The current sub-contract between Capita and Manpower expires on 30 September 2020.
- 1.3 The managed service approach has delivered a number of benefits:-
  - Large reduction in invoices received (by consolidating all agency hiring to one invoice per week via Manpower);
  - Greater quality assurance through the auditing processes
  - Reduction in management time dealing with a large supply chain
  - Improved transparency/visibility of spend;
  - Enhanced management information
- 1.4 In 2019 additional service arrangements were agreed with Capita and Manpower which included:
  - an enhanced Interim/Executive category, engaging specialist and executive agencies to challenge the more expensive procurement frameworks reducing the council's reliance on interims being hired off contract.

- a Payroll Only function for when Manpower engages known candidates and incurs no 'introduction fee' an agency would normally charge.
- improvements such as reduced response times to queries and better management data provision.

## Current service provision

- 1.5 The Manpower contract is used throughout the Council by managers engaging temporary workers. Information on hiring patterns regarding Headcount for the last calendar year (on contract) is below:

<i>Description</i>	<i>Resources</i>	<i>Chief Executives Department</i>	<i>Place</i>	<i>Adults Services</i>	<i>Children Young People &amp; Families</i>	<i>Fire Services</i>	<i>Total</i>
<i>Administration</i>	1	16	5	3	19	2	46
<i>Commercial</i>	0	0	4	0	0	0	4
<i>Driver Trainers</i>	0	0	24	0	0	0	24
<i>Interim/Executive</i>	1	3	0	5	15	0	24
<i>Non - Professionally Qualified Care</i>	0	0	2	158	41	0	201
<i>Professional - IT</i>	0	0	0	0	0	1	1
<i>Professional - Management</i>	13	9	5	3	5	1	36
<i>Professional - Other</i>	0	0	0	0	0	0	0
<i>Professionally Qualified Care</i>	0	43	0	52	119	0	214
<i>Total</i>	15	71	40	221	199	4	550

- 1.6 This procurement proposal has been developed as a result of an options appraisal after an internal review on current services and organisational needs and a market engagement exercise. It recommends a tender exercise in order to engage a vendor neutral managed service, with a contractual obligation to increase the council's operational control over the provision of agency workers. This will mean the removal of third party control over the running of the contract, specifically in relation to the management of the supply chain and the Council will hold contracts directly with, and directly manage the supply chain.
- 1.7 Consideration will need be given to the potential establishment by the Council of a separate Children's Services Trust which could access the agency worker services via this contract. Otherwise it will have a significant financial impact on the overall value of the contract if the Trust procures its own agency worker services separate to the Council.

## 2. Proposal – the Procurement strategy

- 2.1 The proposed contract for services has a value in excess of the EU threshold for services and so the procurement process will need to comply with the Public Contracts Regulations 2015 and the Council's own Standing Orders on Procurement and Contracts.

- 2.2 It is proposed that the Council procures through an open tender a Vendor Neutral Managed Service for a term of a maximum period of four years (an initial period of three years with the option to extend up to one further year). The proposed contract term is in line with industry standards and provides enough time for the supplier to embed operations and gain a reasonable return, whilst allowing the Council the agility to react to market changes in a fairly rapidly changing and very competitive market. The proposed term will also enable the Council to remain flexible enough to maximise any future opportunities emerging from bringing the service in-house. It is proposed that the contract requires the provider to provide a vendor management system to remain in place upon the expiry or termination of the contract, which the Council could continue to use should the services be delivered in a different way in future.
- 2.3 The service will be for the supply of agencies across all categories of staffing except schools and will include contractors who are both deemed employed and self-employed for the purposes of tax and the IR35 rules. It is further proposed that the contract will have a provision to develop its own talent pool throughout the duration of the contract, reducing its reliance on agencies and building resilience in being able to source contractors directly. The talent pool provision will be a service which allows the Council to develop its own potential candidates, ideally from local and specialist markets, who will be engaged without an agency, therefore removing any agency fee. There will be a fee to run this provision, but it would be expected to be significantly lower than an agency fee.
- 2.4 It is imperative that the services bought must give value for money against public spend but at supply chain rates the market can sustain. On this basis the Council will be approaching the market with rates that have been evidenced from other available contracts and frameworks in place nationally, to work with supplying agencies mitigating the risk of a bidder submitting a pricing offer that would be too low for agencies in the supply chain to tolerate and causing a 'race to the bottom' of spend causing non-compliance to the contract and inability to appoint the relevant quality of worker needed in the organisation.

### **Future service provision**

- 2.5 Through discussion with key stakeholders across the Council, a set of principles has been developed for assessing any future service models:

**Ability to source high quality resource across a wide range of council services** –to ensure high quality provision across all Council services  
**Provides flexibility/experience to fill project/specialist/senior roles** – to build on the benefits derived from an integrated approach to resourcing executive and project roles and be able to respond to changing needs  
**Supports greater transparency** – a robust contract management model based on accurate and timely data that ensures accountability of supply chain and benchmarks against the wider market  
**Provides Value for Money and supports control over spend** – to ensure controls are in place to manage spend and decision making

**Customer-focused** – dedicated support to hiring managers, adequate quality assurance processes (e.g. CV quality check) and issue resolution

**Supports local employment and growth** – actively supports local employment and enables the Council to identify target groups to promote opportunity for local communities

**Partnership approach to managing market and demand** – to support active market management and act as a market disruptor where necessary

**Continuously innovating/developing** – best use of emerging technologies and industry best practice.

### 3. Consultation

- 3.1 In preparation of the re-procurement of this contract consultation has been undertaken with key stakeholders across the organisation, to understand their needs and what has worked and not worked so well in the current contract.
- 3.2 The recommissioning of the longer-term service provision will include organisation-wide engagement to ensure the service meets the diverse needs of the Council.
- 3.3 Part of the implementation plan will include a communications plan for engaging with hiring managers and the temporary agency worker population.

### 4. Financial

- 4.1 The last two financial years of spend through the Manpower Contract are:
- 4.2

Year	Expenditure
2018/2019	£11,010,157
2017/2018	£12,233,571

The Council has negotiated a number of benefits as part of the strategic contract management of Manpower Contract. These benefits will continue to be realised during the next contract. These benefits are:

- Development and implementation of an enhanced Interim/Executive category, engaging specialist and executive agencies to challenge the more expensive executive recruitment frameworks. This provision has already shown some strong signs of success in reducing the council's reliance on interims being hired off-contract through Frameworks such as ESPO and LGRP. Now, only 26% of all interims are hired through alternative frameworks, whereas at the beginning of 2019, this figure was at 100%.
- Development and implementation of a Payroll Only function. This is used in instances when Manpower as the supplier engages known candidates therefore eliminating the 'introduction fee' an agency would normally charge.
- Revisions to the Service Level Agreement to drive customer service improvements such as reduced response times to hiring manager queries and receiving CVs for roles, as well as ensuring adequate data is delivered to the council on a weekly, monthly and quarterly basis.

- 4.3 Based on analysis of the market rates, it is anticipated that the equivalent spend of £10m on agency would potentially only cost £9.5m in a re-procured contract.
- 4.4. In addition the Council spends on average £2.5m on temporary workers outside of the Manpower Contract.

	2019/20	2020/21	2021/22	2022/23
	£m	£m	£m	£m
Annual Expenditure	11.0	11.0	11.0	11.0
Anticipated cost reduction	0.0	0.5	0.5	0.5
Anticipated expenditure	11.0	10.5	10.5	10.5

## 5. Other Options Considered (and reasons for not proposing)

- 5.1 As a result of a 'Make or Buy' assessment it is considered that outsourced service provision would best deliver the intended outcomes and ensure a quality service in the short to medium term. However, as the opportunity exists for the Council to develop internal capacity and capability to deliver all or part of the service in-house, a part of the requirements of the winning bidder is to propose an optional exit strategy over the duration of the contract leaving behind its vendor management system (technology). In order to develop a commercially sustainable internal model, it would be necessary to assess the viability of trading this model to other authorities which would require time for this ongoing assessment in the initial 2-3 years. Any outsourced provision should not commit or guarantee any specific level of spend or volume through the contract.

### Service model options appraisal:

- 5.2 Three main service models are set out in the table below.
- 5.3 It is recommended that the Council develops a procurement strategy to source a Vendor Neutral Managed Service Provider including an optional exit strategy to bring the provision of service in-house in years 3 or 4 of the contract.

Service Model	Short Description	Ranking
Vendor Neutral Managed Service (VNMS)	Procurement service contracting with supply chain of agencies who bid CVs against roles with no	1 <sup>st</sup> (Recommended option)

	preferential treatment of any agency	
Master Vendor Managed Service (MVMS)  NB – this is the current Service model	Service pitching managing company’s candidates (directly or via an affiliated group of agencies) either entirely or by way of time-lapse or category, before a 2 <sup>nd</sup> tier of contracted agencies pitch	2 <sup>nd</sup>
Hybrid service	A mixture of both neutral and master vendors into one service/organisation	3 <sup>rd</sup>

## 6. Legal Implications

- 6.1 The contract between Manpower and Capita is due to expire on 19 September 2020. The contract between Capita and the Council is not due to expire until 30 September 2022. The Council therefore does not have to appoint a new contractor until 2022. However, for the reasons given in this report, it is proposed to end this part of the contract with Capita to coincide with the end date of the Manpower contract. The procedure in the contract with Capita will be followed to vary the contract accordingly.
- 6.2 The Council has an obligation to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.” The proposals in this report (including the change to a neutral vendor model and reducing off contract spend), will satisfy this requirement.
- 6.3 It is possible that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in relation to the incumbent provider and new provider on the commencement of the new service should there be a change in service provider as a result of this proposed procurement. Due diligence work will be carried out before the tender process commences and its results included in the tender pack for the new contract. There are no Council or ex-Council staff in scope of TUPE.

## 7. Risk Implications and Mitigations

- 7.1 There is a financial risk that the cost of agency staff will exceed available budgets but robust contract and demand management should enable any financial risks to be mitigated and it is anticipated that spend on agency staff will decrease throughout the contract period.
- 7.2 There is a risk that without going out to tender, the current contract is not set up with a wide enough supply chain to fill all roles with sufficiently, and the demands of the Council increasing the new contract will allow the

adoption of a wider supply chain to be able to fill roles across the council to all categories of staffing.

7.3 To manage the risks associated with a potential separate legal entity managing Children’s Services and its workforce requirements the invitation to tender and contract terms and conditions will allow for this potential future variation so that any new delivery model for children’s social care services will be able to continue to receive the services under the contract, either directly itself with the selected service provider or via the Council. It is understood that the majority of the services currently delivered are in respect of children’s social care. Should a separate legal entity be established, it will be able choose how it sources interims and temporary staff and may do so through other means.

7.4 In relation to the procurement process the following risks are addressed:

<b>Risk</b>	<b>Mitigating Action (in place or planned)</b>
No bids received or none that meet requirements	Market testing work has been undertaken and potential providers are aware of the opportunity
Mobilisation period time pressured	Careful planning and a suitably experienced provider will help mitigate this. Retention of professional support.
Services procured do not meet department needs	Key stakeholders have been consulted through the process and will be invited to participate in the evaluation stage where appropriate.
Off contract (Maverick) spend erodes the value of the primary contract	Robust operational contract management discipline with strategic contract management framework in place. Policies on engaging temporary workers have recently been reviewed and improved.

## **8. Equality and Human Rights Assessment**

8.1 It is not considered that a separate Human Rights assessment be required. Benefits for potential temporary staff with protected characteristics and the need to ensure no adverse impact on such individuals or groups will be considered as part of tender evaluation.

## **9. Social Value and Sustainability Assessment**

9.1 The Council will develop a local specification setting out specific West Sussex requirements for this service. This will include mandating that all workers engaged through the contract are paid, at a minimum, the National Minimum Wage and that the provider will work with the Council to support local people to engage through the supply chain and therefore access greater opportunities to fill Council roles. The Council will use equalities data to identify target groups within the Community. Furthermore, part of the



service and contract requirements will be to build a talent pool of direct workers which the Council will draw from, with a specific drive to find such workers in the local community.

- 9.2 The method statement questions used to assess the qualitative elements of the bids will include social value criteria which will in turn be linked to a set of social value KPI's within the eventual contract to measure and ensure delivery of any social value capital.

## **10. Crime and Disorder Reduction Assessment**

- 10.1 None considered applicable.

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