

Sue Evans, Director of Human Resources & Organisational Change	Ref No: OKD16 20-21
June 2020	Key Decision: Yes
Novation and Extension of Agency Worker Contract	Part I
Report by Head of Resourcing Organisational Development and Talent	Electoral Divisions: n/a
<p>Summary</p> <p>This report sets out a change to the planned timetable for the re-procurement of the temporary agency worker services and seeks approval to novate the current contract from the arrangement between Capita Business Services (as part of the SSO contract) and Manpower Ltd, to a direct contract between the Council and Manpower Ltd and extension of that contract from the current expiration date of 30 September 2020 for 6 months to 31 March 2021.</p> <p>The Council's current agency worker spend, both on and off contract, is estimated at around £15m per year and is increasing due to a number of strategies concurrently in process, in support of the County Council's improvement programmes. The Council wishes to novate and extend to give the market and the County Council's high risk services that rely on agency staff, time to recover from the Covid-19 pandemic before going out to tender for a new contract as well as not wanting to put additional pressures on services that are at the sharp end of our response to Covid 19.</p> <p>It is proposed that the novation and extension will be to a maximum value of £7m</p>	
<p>West Sussex Plan: Policy Impact and Context</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>Financial Impact</p> <p>The forecast savings arising from the planned procurement will be delayed by six months.</p>	
<p>Recommendations</p> <p>That the Interim Director of HR and Organisational Change approves the novation of the current contract with Manpower from Capita Services Ltd to West Sussex County Council and that the contract is extended from 01 October 2020 to 31 March 2021. The estimated maximum contract value for the further 6 months is £7m.</p>	

Proposal

1. 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 13 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 has 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 A [key decision](#) was taken in February 2020 to initiate a procurement exercise for the provision of agency workers contract. The decision was to tender for an alternative model to the incumbent, that of a Vendor Neutral Managed Service meaning the service provider will procure a supply chain of agencies who bid without preference to the service provider for temporary work vacancies. The decision taken was for a 3 + 1-year contract to be procured starting the tender process at the end of March 2020, in order for the new contract to go live at the expiry of the current contract on 30 September 2020.
- 1.4 The tender was due to be released at the end of March 2020, however in the time leading up to release the Council became impacted by not having full control of some of the contractual details needed from Capita, which delayed the completion of the procurement documents.
- 1.5 In addition to this, as the Council was preparing to release the tender, the COVID-19 pandemic ensued and the UK went into 'lockdown'. The Council had to focus resources elsewhere to deal with the outbreak. After consultation internally with high risk services such as adult's care homes where a high number of agency workers are consistently used, there was considerable concern that engaging a new service provider in such circumstances would cause intolerable disruption and risk, particularly in services where COVID-19 has had the most severe impact.
- 1.6 Furthermore, after consulting with potential suppliers who had previously expressed an interest in bidding, there was concern expressed that responding to tenders during the initial phase of the pandemic could inhibit their capacity to respond to their best ability. This could have resulted in fewer bids, giving the Council limited options. Suppliers also expressed

concern in their ability to engage effectively with an organisation in the event of award, should the 'lockdown' continue during implementation phase (set for autumn). Any new service provider having to mobilise in a period of significant disruption, would limit their ability to gain credibility from the Council's hiring community which would potentially inhibit or certainly delay a successful implementation.

2. Proposal Details

2.1 The proposal is to:

- novate the existing contract between Capita and Manpower to WSCC, so there is a direct contract between WSCC and Manpower and full control by the Council during the proposed extension.
- Vary/terminate the relevant part of the SSO contract between WSCC and Capita. No concerns are envisaged with this as WSCC, Capita and Manpower already entered into a tripartite agreement whereby WSCC already pays Manpower direct, notwithstanding it does not have a contract with Manpower. Also Capita suggested the novation.
- Once novated WSCC to vary the contract to extend for 6 months in order to carry out a procurement exercise.

2.2 Considering the risks outlined, it is proposed a new or extended contract will allow the Council to properly conduct the tender and moderation meetings after the peak period of the COVID-19 impact, as well as allowing the critically impacted social care services to recover from the impact of the COVID-19 pandemic.

2.3 This will also allow all or any staff changes and TUPE implications to be properly understood and managed if the contract is novated to a direct relationship between the Council and Manpower.

2.4 The novation to the contract and the extension will be on the same terms as those currently in place, therefore providing the same level of service that the Council has received in recent months.

Factors taken into account

3. Consultation

3.1 The Cabinet Member for Economy and Corporate Resources has been consulted.

3.2 Service Providers that had expressed interest in bidding were contacted to gauge their ability to bid and implement a new service provision during the response to the Covid19 crisis. It was unanimously indicated that whilst possible to respond to a tender during this situation, there would be notable challenges particularly during implementation, such as potentially not being able to meet the hiring community at the point of implementation, difficulty with communications, training and the critical early relationships that are relied upon to embed the service.

- 3.3 Internal discussions with high risk areas indicated there was concern that a tender and change of service provider and service model, would place unreasonable pressure on the key element of the contract services, namely care workers (largely services directly from Manpower) who have been one of the most impacted areas of the COVID-19 pandemic. The concern being potential disruption to the supply chain at a time when continuity of the same care workers supporting the same care homes to limit the risk of transmitting Covid-19 is paramount.

4. Financial Implications

4.1

	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	.25	0.5	0.5
Anticipated expenditure	11.0	10.75	10.5	10.5

- 4.2 The financial improvements envisaged by the procurement could be delayed by six months, circa £250,000 Current cost saving work continues.
- 4.3 The proposal is to extend the contract with Manpower for 6 months until 31 March 2021, therefore the financial impact will be to a maximum value of £7m (giving leeway for increased spend), noting that a further £1m will remain off contract until the new service provision is implemented.
- 4.4 Value for money will be achieved / sustained through the continuation of the existing fees that were negotiated in 2018 which will be maintained for extension period. The current value-for-money would be put at risk by a sub-optimal tender outcome due to the current market pressures. These pressures are likely to present increased complexity in the mobilisation stage and introduce unknown variables into the bidders cost model. Such costs could remain throughout the contract and / or require addition resources to reduce over time.

5. Legal Implications

- 5.1 The proposed contract variation to extend the contract for 6 months has a value in excess of the EU threshold for services of £189,330 and therefore presents a potential risk of challenge as a "direct award" contrary to Public Contracts Regulations 2015. However, as explained above given the extension is necessitated due to COVID-19, a pandemic which could not have been foreseen, the contract terms and conditions will remain the same and the value of the extension is below 50% of the total value of the contract, it

is considered this variation and extension is permitted under Regulation 72(1)(c) of PCR 2015. Further as the extension period is only for 6 months, this is considered reasonable and proportionate in response to the situation, during which a competitive procurement process will be undertaken and therefore the risk of any challenge is considered low.

6. Risk Implications and Mitigations

Risk	Mitigating Action (in place or planned)
Potential legal challenge due to "direct award".	Mitigated by reg 72(1)(c) of the Public Contracts Regulations
Risk of C19 impact on tender/mobilisation of new contract	Mitigated by discussions with potential bidders who consider they will be able to respond and mobilise in new timeframe and that the worst of Covid19 likely to have passed
Risk of no tenders/no acceptable/compliant tenders	Mitigated by carrying out procurement exercise at later stage with reasonable timetable and engagement with market
Risk of second Coronavirus peak	Mitigated by discussions with potential bidders who consider they will be able to respond and mobilise in new timeframe and using remote technology to support the implementation phase if required. The industry and the County Council has adjusted during the last 3 months to new ways of working. The novation of the contract provides direct control to the Council.

7. Other Options Considered (and reasons for not proposing)

- 7.1 Continuing with the tender to the previous timelines was considered, however after consulting with potential bidders and internal high-risk areas, it became clear that this would create huge challenges to the successful tendering, implementing and embedding of a new service. Furthermore it would add an unacceptable risk of disruption to front line services during the COVID-19 pandemic.
- 7.2 Contract could remain with Capita Business Services and the Council would have to negotiate an extension of that contract. This option would offer less contractual control to the Council and forego any opportunity to re-negotiate with the supplier as the ability to liaise directly with Manpower to obtain critical information to prepare for the tender would be hindered.
- 7.3 It would also leave the Council with challenges around control over the contract whilst relying on Capita for certain critical information in order to proceed with the tender which was not forthcoming.

8. Equality and Human Rights Assessment

- 8.1 None considered applicable

9. Social Value and Sustainability Assessment

9.1 None considered applicable

10. Crime and Disorder Reduction Assessment

10.1 None considered applicable.

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Appendices

None

Background papers

None