

Crawley Borough Council

Report to Overview and Scrutiny Commission 8 February 2016

1

Report to Cabinet 10 February 2016

Agency Staff Procurement

Report of the Head of Partnership Services and Head of People and Technology, **PAT/26**

1. Purpose

- 1.1 This is a follow up report from 19 March 2014 to identify new options for sourcing temporary staff in the future.
- 1.2 Since the report was originally submitted, the Council has determined that a more suitable option to conducting a mini-procurement through the MSTAR framework agreement would be to procure a contract itself or with other neighbouring authorities under an EU tender process.

2. Recommendations

- 2.1 To the Overview and Scrutiny Commission:

That the Commission consider the report and decide what comments, if any, it wishes to submit to the Cabinet.

- 2.2 The Cabinet is recommended to:

- a) Agree to undertake an EU tender process to procure temporary agency staff instead of using MSTAR national framework agreement.
- b) Delegate authority to the Head of People and Technology and Head of Partnership Services in consultation with Cabinet Member for Resources
 - i) To commence an EU Procurement exercise for the appointment of suppliers and determination of the contract period and;
 - ii) To award the contract to the bidder submitting the most economically advantageous tender.

3. Reasons for the Recommendations

- 3.1 Procurement, Human Resources and Corporate Management Team, through further investigation, have determined that the best course of action for the Council now would be to undertake its own tender process. This is for the following reasons:
 - Undertaking a mini competition under the MSTAR agreement would involve a similar amount of time and staffing resource as undertaking a full EU tender process.
 - Undertaking the Council's own process would mean that local SMEs would be included and encouraged to submit a tender.

- Procurement and HR feel that the important client / supplier relationship would be better served by a direct relationship rather than through a third party under the MSTAR agreement predominantly because of more direct communication channels.
- Some of the Council's current key suppliers (e.g. Badenoch and Clark) are not part of the MSTAR agreement and therefore it is unlikely to solve the large issue of off-contract spend. This is likely to negate any savings to be made under the MSTAR agreement.
- Officers felt that one of the key benefits of the MSTAR agreement – an automated ordering and approval process would add little day to day value.

3.2 Procurement have investigated the possibility of a collaborative approach with the two other councils that are part of the Shared Procurement Service and both Horsham and Mid Sussex District Councils have expressed an interest in collaborating with Crawley in this process.

4. Background

4.1 The Council's current contract with Manpower officially expired in 2013 and subsequently a report was approved by Cabinet on 19 March 2014 to utilise the MSTAR framework agreement for the provision of temporary agency staff.

4.2 Following Cabinet approval a project group of service users was set up in April 2014 to progress the recommendation. Scoping and preparation of documentation was undertaken but various factors including an HR restructure and the expiry of the first MSTAR contract meant that the Council has not yet signed up to the framework agreement.

4.3 One of the main issues identified in the earlier Cabinet report was the amount of off-contract spend and this has continued to prove an issue. The total spend on temporary agency staff for 2014-15 was £236,000 with a quarter of this figure being outside the Manpower contract.

4.4 Since the 26 February 2015 the provision of Temporary Agency Staff has become a Part A service and subject to the full rules under the EU Directives leaving the Council more exposed to the risk of a legal challenge from suppliers or investigation by the Cabinet Office. Therefore having a compliant contract in place has become much more important.

5. Information & Analysis Supporting Recommendation and Discussion of Issue to be Resolved

5.1 The benefits and disadvantages for both the EU Tender option and accessing the MSTAR framework agreement are as follows:

Advantages

- Option to work with the market to frame something that is reflective of the Council's needs.
- Service managers will be able to maintain day to day relationships with suppliers and develop the degree of trust which they feel is so important, as well as the one to one contact and ownership of issues.
- Staff will be able to directly feed into the tender process and develop ownership of the contract.

Disadvantages

- Suppliers cannot be added mid-way through the contract.
- Tender process is time consuming and resource intensive and there will need to be time spent at the initial stages to ensure agency engagement in the process.

- The Council would be responsible for the contract and relationship management, auditing suppliers and checking that all legislation is complied with. This would require internal ownership as well as an internal contract manager.

6. Implications

6.1 Legal implications

Pursuing this course of action, as with the MSTAR framework agreement, will ensure that the council will have a contract in place which is compliant with EU law, therefore mitigating against the risk of challenge by suppliers or the Cabinet Office. Any procurement exercise undertaken will comply with the Public Contracts Regulations 2015 and the Council's Procurement Code.

6.2 Financial implications

It is anticipated that the Council will have more control of spend on temporary agency staff through centrally agreed rates and appointing a breadth of suppliers specialising in provision of temporary staff across different disciplines so as to minimise off-contract spend.

6.3 Resource implications

The amount of resource involved is very similar to carrying out a mini competition under the MSTAR framework. The procurement process may take 6 to 9 months depending on the level of market engagement and the number of suppliers interested in submitting a tender. The project group comprising representatives from HR, Procurement and service users will need to be re-established.

6.4 Risks

The main risk is that the contract fails to incorporate the most appropriate suppliers for the Council and off-contract spend continues, leaving the council exposed to a potential legal challenge.

The planned mitigation of the risk is to involve all of the Council's key procurers of temporary agency staff in the procurement process and undertake early market engagement of suppliers (advertised locally) to ensure that the contract is framed to best reflect the Council's staffing needs as well as to ensure that it is attractive to suppliers. Early market engagement will involve asking the suppliers to input into the formation and structure of the contract and through this it is hoped that suppliers will be incentivised to tender as has been apparent in similar schemes undertaken (e.g. the recent print tender where 8 suppliers out of 10 involved in the process submitted a final tender).

7. Background Papers

- Agency Staff Procurement (FIN/330) Minutes
[Overview & Scrutiny Committee 17 March 2014](#)
[Cabinet 19 March 2014](#)

Report author and contact officer: *Becca Williams, Procurement Officer, ext 8386*