

RECORD OF DECISION MADE UNDER DELEGATED AUTHORITY

***PART 1 – PUBLIC DOCUMENT**

SERVICE DIRECTORATE: Resources

1. DECISION TAKEN

Decision to appoint Essex County Council in respect of a managed service for the supply of Agency Workers. The agreement to be for a period of 3 years.

2. DECISION TAKER

Service Director : Resources

3. DATE DECISION TAKEN:

01/07/2023

4. REASON FOR DECISION

4.1 It is in the Council's best interests to collaborate with Essex CC as this will allow us to access much better agency rates than we would be able to obtain ourselves.

4.2 Using the Essex agreement will allow us far greater visibility over our agency staff and what they cost than we currently experience. This will allow for better management of Agency contracts.

4.3 Using the Essex agreement will ensure that IR35 legislation is consistently applied.

5. ALTERNATIVE OPTIONS CONSIDERED

5.1 We could have gone out to tender to try to find a 3rd party provider who could manage this service for us, however this would have been a time-consuming exercise at a time when we have limited resources available and there is no guarantee that we would achieve better rates than Essex is offering.

5.2 We are able to enter into the agreement whilst still having the freedom to source Agency workers ourselves if we choose, as it puts us under no obligation.

5.3 We could have chosen to do nothing and continue to manage the process ourselves, however this would not give us the visibility or reduced rates we could achieve under the Essex agreement.

6. CONSULTATION (INCLUDING THE EFFECT ON STAKEHOLDERS, PARTNERS AND THE PUBLIC)

6.1 There is no external consultation required

7. FORWARD PLAN

7.1 This decision is not a key Executive decision and has therefore not been referred to in the Forward Plan.

8. BACKGROUND/ RELEVANT CONSIDERATIONS

- 8.1 The Council has had difficulties recruiting in certain service areas for a number of years. This has meant a steady increase in the use of Agencies to source temporary workers to ensure that service delivery can continue.
- 8.2 We have made various attempts to get the Agency spend under our own contracts or framework agreements, but agencies were not interested in giving us reduced rates due to what they considered to be low levels of spend. Joining the Essex collaborative agreement, means that they can source our requirements using their own Dynamic Purchasing Framework, allowing us to achieve the same rates they enjoy under this agreement, for a small fee.
- 8.3 For the year 2021-22, total spend with agencies (ex vat) amounted to £768k across the Authority, with spend up to February 2023 in the current year (2022-23) coming in at £648k. It is currently unknown what percentage of this spend was paid as fees to the agencies themselves, as they are historically reluctant to disclose what amount is actually paid to the workers. The industry standard seems to be in the region of 20 -25%. Using this percentage would mean that the previous contract sum for agency fees, over a 3-year period, equated to £307k spread across the multiple agencies.
- 8.4 The spend on agencies over the last 3 years has exceeded previous levels of spend primarily due to the huge amount of extra covid related work required to be carried out by the Environmental Health Team. It is not expected that the requirement will continue at this level going forwards, however the area does experience issues with recruitment in general, so it is prudent to assume that there will be a continuing requirement in this area, albeit at a reduced level.
- 8.5 Recruitment of agency staff is delegated out to service areas and there is no corporate oversight concerning which agencies are used and whether some agencies offer better rates than others. Analysis of the agency spend shows that service areas tend to use particular agencies, and will only go to an alternative agency if their requirements cannot be met by the preferred agency. Using Essex County Council to source requirements for a small fee, will not only allow us access to much reduced agency rates, but also give us a much needed "Authority View" of how much we spend and where. The number of temporary workers and where they are located will give us more information on all aspects of agency staff. The fees will also be transparent, which is something we have not ever had in this area of spend. This will allow us to see how much we spend on labour and how much on the fees themselves. In addition, we will no longer have to analyse the spend ourselves, which can take a considerable amount of time each month.
- 8.6 IR35 legislation requires us to use worker questionnaires to gauge whether a worker will fall under the legislation. If they do, further checks must be carried out before we can determine whether they must be added to I-Trent as off-payroll workers, or whether we can pay them on invoice. Unfortunately, this check is not being carried out consistently, which is only identified once the agency spend is analysed each month. This has meant that sometimes workers have already started and are already being paid before this determination is being made. This has cost implications, if we have failed to ensure that tax and NI have been deducted as per the legislation. If we join the Essex agreement, they will carry out these checks prior to the worker being made available for us, thereby ensuring we are always compliant.
- 8.7 The Collaborative agreement allows us to source our own agency workers outside the agreement should this be required. We are not tied into the agreement in any

way. However, as they offer the facility to onboard any of our existing agencies and workers, we will receive far more advantageous rates if we source all our requirements using this service.

9. LEGAL IMPLICATIONS

9.1 This contract falls below the WTO GPA threshold as the contract value has been estimated at around £112k over a 3- year period. This means that our Contract Procurement Rules apply.

9.2 The entering into such contracts must comply with the Council's Contract Procurement Rules (CPRs) [Part B, Section 20 dated 19 January 2023] and Rule 14 of the CPRs sets out the circumstances in which a Single Tender can be considered.

9.3 Rule 14.1 (which relates to contracts below the WTO GPA Threshold) states that:

"Below WTO GPA Threshold

14.1 A single tender may be obtained when:

- (a) Prices are wholly controlled by trade organisations or government order and no reasonably satisfactory alternative is available; or
- (b) The works, goods, or services to be supplied consist of repairs to or the supply of parts or upgrading of existing proprietary machinery, equipment, software, hardware or plant and the repairs or the supply cannot be carried out practicably by alternative contractors; or
- (c) Specialist consultants, suppliers, agents or professional advisors are required and:
 - (i) Evidence that there is no satisfactory alternative; or
 - (ii) evidence indicates that there is likely to be no genuine competition; or
 - (iii) it is in the Council's best interest to engage a particular consultant, supplier, agent or advisor;** (Contact Procurement and Legal Services for advice) or
 - (d) Products are sold at a fixed price and market conditions make genuine competition impossible."

Rule 14.1 c) (iii) applies in this case. The ability to take advantage of the agency rates offered to Essex County Council by combining our spend with theirs, gives the Council much better rates than we could achieve elsewhere based on our spend alone.

9.4 Single Tenders with a contract value below the WTO GPA threshold must have prior written approval of the Service Director responsible, the Service Director: Legal and Community and the Service Director: Resources [Rule 14.2 of CPRs dated 19 January 2023]. This has been obtained.

9.5 Legal assisted Officers with the Contract to ensure that the Contract was properly executed and completed.

10. FINANCIAL IMPLICATIONS

10.1. Spend on Agency Workers has escalated over the last 2 years predominantly due to the huge increase in requirements relating to Covid 19. For 21-22 this meant £768k excluding VAT. It is therefore expected that the spend will start to fall again over the coming years. However, the difficulties experienced in recruiting staff to Environmental, Planning and Legal roles will mean that a requirement will remain. Analysis of the spend on Covid related expenditure, shows that annual spend is likely to fall back to the 2019-20 position of circa £300k at some point.

- 10.2 Fees payable to Essex County Council for the managed service will vary, depending on whether Essex have to source via agencies, source using their own bank of staff, or port over our existing workers to the new agreement. This has been analysed to allow comparison with existing fees paid and to show the potential fee savings that each scenario would bring. In reality, a mixture of these will be used, so the contract sum has been estimated as an average of £112k over the 3-year period.

11. RISK IMPLICATIONS

- 11.1. This contract falls under the WTO GPA threshold, so our own Contract Procurement rules apply. The Single Tender report sought to mitigate any risk by obtaining the approval of the Service Director, Legal and Community and the Service Director, Resources.
- 11.2. As other Authorities have already contracted with Essex County Council on the same terms we are being offered, the risk of challenge to this decision was deemed to be low.
- 11.3. Any agency can apply to join the Essex DPS therefore there is no risk that any agency would be discriminated against due to us joining this agreement.
- 11.4. The proposed arrangement will help reduce the risks associated with off-contract spend.

12. EQUALITIES IMPLICATIONS

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 As this report refers to a contractual arrangement, the equality implications for the community are nil.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 The Social Value Act and “go local” policy do not apply to this decision.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1. There are no known Environmental impacts or requirements that apply to this Decision.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1 The HR implications relating to recruitment and hard to fill roles are described under Background/ Relevant Considerations.

16. BACKGROUND PAPERS

- 16.1 *All background papers must be listed – see Guidance for details of legislative requirement*

17. APPENDICES

- 17.1 None

NOTIFICATION DATE

25/08/2023

Signature of Executive Member Consulted 

Date11/8/2023.....

Signature of Decision Taker 

Please Note: that *unless urgency provisions apply* EXECUTIVE decisions cannot be implemented until 5 clear working days have elapsed after the decision has been taken to allow for scrutiny call-in.

Call-in does not apply to NON-EXECUTIVE DECISIONS