

**Report of: HR Business Partner**

**Report to: Chief Officer HR**

**Date: 26<sup>th</sup> July 2020**

**Subject: : Authorisation of a Waiver of CPRs 9.1 and 9.2 for the award of an interim Framework Agreement for the Supply of Teachers and Educational Staff for Leeds maintained schools for a period of a year from 1<sup>st</sup> August 2020**

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has consultation been carried out?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open for call-in?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: CPR 9.1 & 9.2 Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

## Summary

### 1. Main issues

1. This report sets out the case for waiving CPR 9.1 and 9.2 'Over £100k - High Value Procurements' for the award of an interim Framework Agreement for the Supply of Temporary Teachers and Educational Staff for Leeds maintained schools for a period of a year from 1<sup>st</sup> August 2020 until 31<sup>st</sup> July 2021.
2. The current framework of 4 years was extended in August 2019 via a waiver until July 2020. A procurement exercise was due to commence in February 2020 just as the COVID-19 crisis began, however as a result this work has not commenced due to other more pressing priorities and work load as a direct impact of the crisis.
3. The HR service have already made a decision to carry out a full procurement exercise and are in discussions with Procurement and Commercial Services on how best to proceed in the current situation.

## **2. Best Council Plan Implications**

- 1 The ability to be able to offer a framework contract to supply educational staff to maintained schools ensures that the Authority is able to; keep our children safe in education, improve educational attainment for children in the City, ensure that achievement gaps are addressed especially for the most vulnerable children in the City.
- 2 The Framework asks that all agencies ensure that they comply with Leeds Safer Recruitment Policy, have effective management of resources, reporting and recording systems. They also have strategies for working with schools causing concern and are able to respond to the changing needs of supply in schools.
- 3 The framework also requests that staff that are representative of the community it serves.

## **3. Resource Implications**

- 1 This framework has an income generating potential of around £50,000 over the forthcoming academic year. Systems of monitoring and collection of the management fee have already been established and in terms of council resources to manage the framework, this is estimated at around one day per month.

## **Recommendations**

The Deputy Chief Officer Human Resources is requested to approve a Waiver of CPRs 9.1 and 9.2 'Over £100k – High Value Procurements' to award an interim Framework Agreement for the supply of Temporary Teachers and Educational Staff to Leeds schools, to the existing agencies on the framework (namely Academic Appointments Limited, Celsian Group Limited, Hays Specialist Recruitment Limited, Paragon Education Solutions Limited, Protocol Education Limited, Provide Education Limited and Randstad Education Limited) for the period 1st August 2020 to 31st July 2021.

## **1. Purpose of this report**

- 1.1 To approve a Waiver to award a Supply Agency Framework to Academic Appointments Limited, Celsian Group Limited, Hays Specialist Recruitment Limited, Paragon Education Solutions Limited, Protocol Education Limited, Provide Education Limited and Randstad Education Limited for the provision of Supply Teachers and Educational Staff in Leeds Maintained Schools.
- 1.2 In order to facilitate this process CPR's 9.1 and 9.2 'Over £100k - High Value Procurements' - will need to be waived.

## **2. Background information**

- 2.1 The current framework was set up as part of a request by schools that the authority make provision to reduce costs through economies of scale and provide a service which is robust in its monitoring of safeguarding and quality of staff.
- 2.2 The outcome of a rigorous full procurement tender exercise was the award of a framework in July 2015 for supply agencies to provide temporary teaching and teaching support staff for Leeds schools until July 2019. The framework was approved in respect of eight agencies (now reduced to seven) to provide supply staff for mainstream schools including: staff for special schools and children and young people with special needs; staff for 1-1 tuition in mainstream education; supply staff for 1-1 tuition for special needs and looked after children; and the provision of temporary staff for leadership in schools.
- 2.3 There has been a framework for the supply of temporary teaching staff to Leeds Schools since September 2008. Schools use agencies on a regular basis to provide absence cover for teaching staff and teaching support staff. Figures available for the last full academic year 2018/19 show that schools spent approximately £7.5 million per year in total on supply staff and around £5 million is spent on contract.
- 2.4 The framework has been successful and has enabled us to establish ongoing working practices and relationships with the agencies on the framework and more importantly to give schools a mechanism to report any issues, particularly around safeguarding and quality of staff and to enable the authority to intervene if necessary.
- 2.5 The on costs charged by the agencies are capped under the terms of the Framework as are the temporary to permanent fees. The framework also includes a 1% management fee which is paid by the school on each commission and then repaid to the Council creating an income stream.

## **3. Main issues**

- 3.1 The current framework of seven agencies is due to end on 31st July 2020.
- 3.2 In May 2019 the framework was extended for a further twelve months via a waiver until the end of July 2020. During this time the Schools HR team started to scope out further procurement options to be included in a new framework to be in place from 1st August 2020.

- 3.3 In February 2020, these options were presented to HRLT, following which a decision was made by the Deputy Chief HR Officer, to proceed with a full procurement exercise.
- 3.4 As the Local Authority has been at the centre of the City's response to the COVID-19 crisis it has not been possible to proceed further with the procurement due to the following reasons: all schools in the City have been partially closed and unable to participate in a procurement exercise due to the fact that they are operating under the government COVID-19 restrictions and may not be fully operational until the middle of the autumn term; agencies may also not be in a position to tender whilst staff are still furloughed and are unlikely to be working to full capacity. Additionally the Councils CLT have mandated that contracts and extensions must not be entered into for periods of more than 12 months.
- 3.5 The framework that is currently in place has provided a significant and valuable income stream for the HR traded service and research shows that the current framework contract is valued by schools.
- 3.6 It is important, now and for the foreseeable immediate future that the council provides as much support to Leeds maintain schools as possible. It difficult to predict how long the current crisis will last however it is likely that the demand for supply staff will be key to service recovery to cover periods of 'normal' staff absence as well as self-isolation and those staff that are required to 'shield'.
- 3.7 Offering a supply framework contract that schools can call upon puts the HR traded service in a more advantageous position to other private HR providers that are unable to do this, all be it that the contract is available to all maintained schools whether they be party to the HR SLA or not.
- 3.8 Gaining authority to waive CPR's 9.1 and 9.2 – High Value Procurements and continue with the current framework for a further 12 months would allow the service to continue to promote the framework in schools during this time and continue with a full procurement exercise as soon as is practically possible given the current situation.

#### **4. Consequence if the proposed action is not approved**

If the waiver is not approved this could result in a potential loss of income for the year 20/21 of around £50,000 along with the risk that schools may be then forced to use agencies that have less stringent safeguarding controls in place potentially putting children at a risk of harm

#### **5. Advertising**

No advertising has taken place as this report seeks to approve the waiver of the current framework.

#### **6. Corporate Considerations**

##### **6.1 Consultation and engagement**

- 6.2 The original procurement process consisted of an extensive consultation and engagement exercise with maintained schools and Trade Unions. Going forward we would want replicate this process but under the current circumstances schools are unlikely to have the resources to commit to engaging in a new procurement exercise.

### **6.3 Equality and diversity / cohesion and integration**

- 6.3.1 The original evaluation included a rationale by the agencies as to the methods they will use to recruit temporary staff which reflected the demography of the city, encourage diversity in recruitment, have due regard to equality and diversity and to ensure that positive action may be taken to address under representation of any particular workforce groups. All the agencies had to have an Equalities policy and be able to demonstrate safer recruitment.
- 6.3.2 Agencies were asked to provide method statements and plans detailing how they will provide and maintain an Equality Plan in respect of the services.

### **6.4 Council policies and the Best Council Plan**

- 6.4.1 This Framework is needed to ensure that the Council can uphold its statutory duty to keep children safe in education, and to carry out part of the Authority's commitment to promote a 'Child Friendly City' and improve educational attainment and achievement for children and young people .

#### Climate Emergency

This Framework will have some impact on carbon emissions and the climate emergency by encouraging schools to utilise agencies that are familiar with the demographic needs and impacts of the City, to support the local labour force and thus reducing travel into the City from further afield, engaging a local labour force into School's that are more familiar with the climate goals of the City and are best placed to educate our children in the same way.

### **6.5 Resources, procurement and value for money**

- 6.5.1 The HR traded service received an average income from this contract of around £50,000 per annum via a 1% rebate of the management fee.
- 6.5.2 The traded service team also carries out a vast amount of statutory work for the 200 plus, maintained schools in the City. This includes, for example, maintenance of safeguarding standards, mitigating against risk in terms of case work and employment tribunals and negotiation with the Trade Unions on policies and procedures. The income generated via the rebate is used to fund this work on behalf of the Authority.
- 6.5.3 The framework is purely for the use of schools and its extended services (before and after schools clubs) and it is at zero cost to the Local Authority.
- 6.5.4 When the framework was tendered in 2015 the suppliers Academic Appointments Limited, Celsian Group Limited, Hays Specialist Recruitment Limited, Paragon Education Solutions Limited, Protocol Education Limited, Provide Education Limited, and Randstad Education Limited were the most competitive bidders. Over the past academic year the contract has been monitored more effectively than previously, with income being tracked and invoiced each quarter in line with contract terms to create a steady income stream in to the service.

## **6.6 Legal implications, access to information, and call-in**

- 6.6.1 This is a Significant Operational Decision which is not subject to call-in. The report itself does not contain any exempt or confidential information under the Access to Information Rules.
- 6.6.2 The value of the direct award detailed within this report is below the threshold for the application of the Public Contracts Regulations 2015 for the procurement of public services contracts and therefore it is not subject to the full EU procurement rules. However, the Contracts Procedure Rules 9.1 and 9.2 require competition for procurements valued over £100k and the invitation of at least four written tenders. A waiver of these Contracts Procedure Rules is required to award the framework direct to these particular providers. Awarding a new framework direct to the providers in this way could leave the Council open to a potential claim from other potential providers, to whom this framework could be of interest, that it has not been wholly transparent. In terms of transparency it should be noted that case law suggests that the Council should always consider whether frameworks of this value could be of interest to contractors in other EU member states, and if it could, the opportunity should be subject to a degree of European wide advertising.
- 6.6.3 It is up to the Council to decide what degree of advertising would be appropriate. In particular, consideration should be given to the subject-matter of the framework, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc.) and the geographical location of the place of performance.
- 6.6.4 The Chief Human Resources Officer has considered this and due to the nature of the services being delivered to schools and the income value of the framework (approximately £50k per year), is of the view that the scope and nature of the services are such that it would not be of interest to providers in other EU member states at the values involved.
- 6.6.5 There is a risk of an ombudsman investigation arising from a complaint that the Council has not followed reasonable procedures, resulting in a loss of opportunity. Obviously, the complainant would have to establish maladministration. It is not considered that such an investigation would necessarily result in a finding of maladministration however such investigations are by their nature more subjective than legal proceedings.
- 6.6.6 Although there is no overriding legal obstacle preventing the award of this framework in this manner, in making their final decision, the Chief Human Resources Officer, should note the above comments and be satisfied that the course of action chosen represents best value for the Council.

## **6.7 Risk management**

- 6.7.1 If the waiver is not approved this would mean that Leeds maintained schools could procure supply staff from a variety of different suppliers, which has the potential to increase the safeguarding risk since these staff may not have undertaken rigorous safeguarding evaluations required as part of the framework requirements

## **7. Conclusions**

7.1 As outlined in the report, a waiver of CPRs 9.1 and 9.2 'Over £100k High Value Procurements' is necessary to award an interim Framework Agreement for the supply of temporary teachers and educational staff for the benefit of Leeds maintained schools.

7.2 This is a relatively short term arrangement with no impact on service users.

## **8. Recommendations**

8.1 The Deputy Chief Officer Human Resources is requested to approve a Waiver of CPRs 9.1 and 9.2 'Over £100k – High Value Procurements' to award an interim Framework Agreement for the supply of Temporary Teachers and Educational Staff to Leeds schools, to the existing agencies on the framework (namely Academic Appointments Limited, Celsian Group Limited, Hays Specialist Recruitment Limited, Paragon Education Solutions Limited, Protocol Education Limited, Provide Education Limited and Randstad Education Limited) for the period 1st August 2020 to 31st July 2021.

## **9. Background documents<sup>1</sup>**

9.1 None.

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<sup>1</sup> The background documents listed in this section are available to download from the council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

## Appendix 1

### What is your reason for waiving CPRs?

There is a genuine, unforeseeable emergency meaning there is no time to go through a procurement process e.g. to deal with the consequences of extreme weather.	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
To purchase supplies or services on particularly advantageous terms due to liquidation/administration.	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Requirement to put a contract in place with a current provider whilst a review of the services is completed.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Ran out of time to undertake a new procurement exercise	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Other (please provide summary here)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No