

Approval to waive Contract Procedure Rules (CPRs) 9.1 and 9.2 and enter contract(s) by virtue of Regulation 32(9) of the Public Contract Regulations 2015 for the recruitment of specialist ICT resource formerly on the Digital and Information Service Temporary ICT Staff Framework Agreement.

Date: 21st May 2024.

Report of: Senior Resourcing Officer

Report to: Chief Digital & Information Officer

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Brief summary

Integrated Digital Service (IDS) currently employ a number of specialist contractors through recruitment agencies registered on two expired IDS framework agreements. IDS requires the continuation of service of the legacy contractors that were appointed through the expired IDS frameworks.

It was initially thought that the Resource Augmentation Framework could be used for the ongoing provision of IDS Business as Usual (BAU) contractor resource, however this framework delivers augmentation services to support planned projects and initiatives and has been deemed inappropriate for use to recruit BAU resource.

This report seeks approval to directly award seven contract(s) with the named recruitment agencies below to continue to provide the specialist ICT resource to cover IDS BAU, until a new route to market can be put in place.

The award of these contracts will require seven separate agreements and seeks to waive Contract Procedure Rules (CPR's) 9.1 and 9.2 (where relevant) and enter contract(s) by virtue of Regulation 32(9) of The Public Contract Regulations (PCR) 2015.

Recommendations

- a) The Chief Digital and Information Officer is recommended to approve the award of contracts with the recruitment agencies named in this report to supply the legacy contractors to allow continuation of critical IDS BAU resource whilst the service considers an appropriate replacement of the expired frameworks.

What is this report about?

- 1 Integrated Digital Service (IDS) currently employ a number of specialist contractors through a framework agreement, Ref - DN406263: ITS180022 Temporary ICT Staff Framework – for the

supply of ICT resource which expired on 13th January 2024. There were 6 approved recruitment agencies on the framework. A previous framework agreement ref DN189804 (9PBG-BH7NID) Temporary ICT Staff Framework – for the supply of ICT resource expired on 31st May 2019 had 1 approved recruitment agency registered on the framework.

- 2 IDS have recently established a Resource Augmentation Framework of providers to undertake a range of delivery, migration, support, and knowledge transfer activities for a range of portfolio projects that support services across the Councils directorates and upskill and provide support to teams within IDS. It was initially thought that the Resource Augmentation Framework could be used for the ongoing provision of IDS BAU resource, therefore a new procurement exercise was not undertaken. However, this new framework, delivers augmentation services to support planned projects and initiatives and is used for packages of digital skills for specific projects, rather than the ongoing requirement for BAU IT skills required for the day-to-day service requirements of IDS. Therefore, this framework has been deemed inappropriate for the specific requirements.
- 3 Several legacy contractors continue to be supplied through agencies on the previous frameworks and we request approval to continue with these contractors until their skills are no longer required or up to 31st March 2025. There is an ongoing requirement for staffing which sits outside the scope of the Resource Augmentation Framework and work is commencing with IDS on a strategy to put a new procurement route in place to better meet the requirements of the service.
- 4 This report identifies the services required and seeks approval to waive Contract Procedure Rules (CPR's) 9.1 and 9.2 in a single report to enter seven contracts with the named recruitment agencies below without seeking competition, to continue to supply skilled contractors, as these cannot be procured under expired frameworks, to ensure a compliant process.
- 5 Some of the contract(s) (owing to their value) will be subject to PCR 2015. This report identifies the services required and seeks approval to enter contracts by virtue of Regulation 32(9) of PCR 2015 which states "*the negotiated procedure without prior publication may be used for new works and services consisting of the repetition of similar works or services entrusted to the economic operator to which the same contracting authority awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded following a procedure in accordance with Regulation 26(1) and (2)*".
- 6 This report identifies the services required and seeks approval to enter contracts with the following recruitment agencies. Please note that the costs are estimated based on the individual contractors working 48 weeks during the year. This estimated contractual costs may reduce should IDS be in a position to release the contractors supplied by the respective recruitment agencies before the end of March 2025.
 - i. **Rullion Limited – Approval to Award a contract under Regulation 32(9)** of the PCR 2015 for the provision of temporary ICT staff. The contract is to retrospectively commence on 1st April 2024 and is due to expire on the 31st March 2025, with an estimated contract sum of up to £233,557 per annum.
 - ii. **Lorien Limited - Approval to Award a contract under Regulation 32(9)** of the PCR 2015 for the provision of temporary ICT staff. The contract is to retrospectively

commence on 1st April 2024 and is due to expire on 31st March 2025, with an estimated contract sum of up to £1,500,000

- iii. **Henderson Scott Limited – Approval to Award a contract under Regulation 32(9)** of the PCR 2015 for the provision of temporary ICT staff. This contract is to retrospectively commence on 1st April 2024 and is due to expire on the 31st March 2025, with an estimated contract sum of up to £437,320.
- iv. **Berkeley Square Limited – Approval waive CPRs 9.1 and 9.2** for the provision of temporary ICT staff. This contract is to retrospectively commence on 1st April 2024 and is due to expire on the 31st of March 2025, with an estimated contract sum of up to £100,000.
- v. **Certes Limited – Approval to waive CPRs 9.1 and 9.2** For the provision of temporary ICT staff. This contract is to retrospectively commence on 1st April 2024 and is due to expire on the 31st of March 2025, with an estimated contract sum of up to £105,033
- vi. **Venn Ltd – Approval to Award a contract under Regulation 32 (9) PCR 2015** for the provision of temporary ICT staff. This contract is to retrospectively commence on 1st April 2024 and is due to expire on the 31st of March 2025, with an estimated contract sum of up to £408,620
- vii. **Intelligent Resource Limited– Approval to waive CPRs 9.1 and 9.2** for the provision of temporary ICT staff. This contract is to retrospectively commence on 1st April 2024 and is due to expire on the 31st March 2025, with an estimate contract sum of up £110,000.

7 The proposed operating model and staffing structure for IDS includes the use of contractors (via recruitment agency appointments) to provide a continuation of resources until a sustainable model for the future is in place to support the delivery of the Council's Finance Strategy 2023 - 2026/27 and the outcomes of the Best Council Plan.

What impact will this proposal have?

- 8 IDS relies on temporary ICT resource to work on specific projects, to backfill for members of staff, who are working on projects which are capital funded, and as BAU resource. Funding is provided within budgets to cover this temporary headcount increase, and the use of external temporary ICT resource is the most effective way of managing these short/medium term resourcing demands which often require specific technical skills.
- 9 Failure to source suitably qualified and experienced ICT resource in a timely manner directly affects project delivery on critical Council projects.
- 10 An effective solution to ensure continuity of projects is to award contracts to the current contractors supplied by agencies formerly on the Temporary ICT Staff Frameworks – for the supply of ICT resource until they are no longer required. A suitable route to market will be put in place for these requirements going forward.

How does this proposal impact the three pillars of the Best City Ambition?

Health and Wellbeing

Inclusive Growth

Zero Carbon

11 IDS will ensure that the recruitment of specialist ICT resource is aligned to the council's recruitment and workforce planning initiatives and budget plans.

What consultation and engagement has taken place?

Wards affected:

Have ward members been consulted? Yes No

- 12 Consultation has taken place with IDS Senior Management to consider the most effective and flexible way IDS can ensure that a comprehensive, effective, efficient and economic service for the supply of temporary ICT resource can be provided.
- 13 The new Resource Augmentation Framework was considered for the ongoing provision of IDS BAU resource; however, the Framework delivers augmentation services to support planned projects and initiatives, and is used for packages of digital skills for specific projects, rather than the ongoing requirement for BAU (Business as Usual) IT skills required for the day-to-day service requirements of IDS. Therefore, this Framework has been deemed inappropriate for the specific requirements.
- 14 HR and the Trade Unions are aware of the Resourcing issues that IDS face in terms of sourcing niche specialist skills and understand the need for IDS to bring in temporary expertise.

What are the resource implications?

- 15 The challenge of recruiting and retaining staff with specialist ICT/Digital skills is increasing. The use of contractors with specialist skills is essential to ensure that the ability to maintain core 'lights on' service and to deliver projects and programmes which support efficiencies and service improvements.
- 16 The Council spends more than £3 million per year on the use of specialist ICT contractors. IDS agency staff are generally employed to work on specific projects, but also to fulfil the requirement for BAU IT skills to meet the service requirements of IDS. Funding is provided within project budgets to cover this temporary headcount increase and the use of contractor staff is the most effective way of managing these short/medium term resourcing demands, which often require specific technical skills. Failure to source suitable skilled contractor staff has a direct impact on delivery of critical Council projects, which in turn could affect front line services.
- 17 Due to the nature of the skills, IDS has little options available to seek better value than to set up our own frameworks and contracts, the skills required are not available with the council and direct employment appointments are not desirable to these resources due to the rates not being comparable. A new route to market is in discussion to replace the expired frameworks.
- 18 If the Council were to cancel these appointments and re-procure replacement services would likely exceed the value obtained through re-procurement. The mark-up/margin that we pay the agencies will remain the same until 31st March 2025.

What are the key risks and how are they being managed?

- 19 The supply of IDS resource is monitored by the IDS Senior Leadership Team to ensure it is appropriate for the requirements. When sourcing either augmentation resource or a contractor consideration is given as to whether this is the most appropriate action and represents best value for money for the council and there are no other suitable alternatives available.
- 20 The individual appointments and recruitment agencies will be managed and reviewed on a regular basis by the Senior Resourcing Officer and approval will be requested from IDS Senior Leadership Team for any ad-hoc recruitment requirements. Work is underway to find an appropriate solution and route to market for this requirement going forward.

What are the legal implications?

- 21 The decision to directly award seven individual contracts to named recruitment agencies (within this report) for IDS BAU contractor resource is designated as a Key Decision, (owing to its value of £2,885,530 for a period of 12 months), as such the decision will be subject to a call-in period. However, there are no grounds for keeping the contents of this report confidential under the Council's Access to Information Rules.
- 22 CPR 9 details the internal Council procedure for High Value Procurements (over £100k). The following three contract awards seek approval to waive CPR 9.1 and 9.2 respectively, to allow for the direct award of contracts to Berkeley Square (up to £100k), Certes (up to £105k) and Intelligent Resource (up to £110k) without seeking competition for the period 1st April 2024 until 31st March 2025. In accordance with CPR 9.4, the Director decision to waive CPR 9.1 and 9.2 must be taken in accordance with CPR 27, that such decision must only be made in exceptional circumstances (CPR 27.1) and that PACS must be consulted and notified in due course (CPR 27.2 and 27.3).
- 23 The following four contract awards seek approval to waive CPR 9.1 and 9.2 respectively, to allow for the direct award of contracts to Venn (up to £408k), Henderson Scott (up £437k), Lorien (up to £1.5 million) and Rullion (up to £233k). However, as these proposed contract values here are over UK Public Procurement threshold for services, CPR 9.3 cannot be waived and consequently CPR 10.2 will apply. As such the Council will be required to publish four Regulation 32 PCR 2015 notices, specifically here being reliant on Regulation 32 (9) PCR 2015 which states;
- “the negotiated procedure without prior publication may be used for new works and services consisting of the repetition of similar works or services entrusted to the economic operator to which the same contracting authority awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded following a procedure in accordance with Regulation 26(1) and (2)”*
- 24 Notwithstanding the above, there is the potential risk of challenge that there are no real reasons justifying the use of Regulation 32(9) PCR 2015, and that the Council is simply seeking to circumvent the application of the rules. However, due to the reasons set out in this report the risk of such challenge is low. The Council are undertaking a project to replace the expired frameworks with a new route to market, which could potentially open opportunity to other recruitment agencies in due course.
- 25 In addition, these risks can be further mitigated by the publication of a voluntary transparency notice on Find a Tender immediately after the decision to award the contract has been taken and then waiting 10 days to see if any challenges are made. If no challenges are made the chances of a claim for ineffectiveness being brought are significantly reduced and would only be

successful if the Council had used the negotiated procedure without publication of a notice incorrectly. Further, publishing such a notice will also start time running for any other potential claim for breach of the Regulations, which must be brought within 30 days of the date that an aggrieved party knew or ought to have known that a breach had occurred.

26 However, it should be noted that voluntary transparency notices themselves can be challenged. Although we have now left the European Union, the case of *Italian Interior Ministry v Fastweb SpA (Case C-19/13)* is still persuasive and highlights the limited protection that the voluntary transparency notice route can offer to contracting authorities wishing to make direct awards without following a fully transparent process for above threshold public procurements in accordance with the Public Contracts Regulations 2015. A grey area remains around whether the protection of a voluntary transparency notice will be available where the contracting authority genuinely, but mistakenly, considers it was entitled to award the contract without notice. It shows that the safe harbour will only be 'safe' to the extent that the justification for the direct award is in itself sound and ready to stand up to the increased scrutiny that the publication of the voluntary transparency notice may well invite.

27 These comments should be noted by the Chief Digital & Information Officer and in making the final decision should be satisfied that doing so represents best value for the Council.

Options, timescales and measuring success

What other options were considered?

28 It was initially thought that the Resource Augmentation Framework could be used for the ongoing provision of IDS BAU resource, however the framework delivers augmentation services to support planned projects and initiatives and is used for packages of digital skills for specific projects, rather than the ongoing requirement for BAU IT skills required for the day-to-day service requirements of IDS. Therefore, this framework has been deemed inappropriate for the specific requirements.

29 How will success be measured?

The award of these contracts for IDS staffing will ensure continuation of essential IT skilled resource within the IDS service until a replacement framework has been put in place to obtain these skills.

30 What is the timetable and who will be responsible for implementation?

These resources require to be secured as soon possible and will be implemented by IDS Resourcing.

Appendices

- EDCI

Background papers

- None