



**Executive**  
14<sup>th</sup> November 2005

**Report from the Director of  
Finance & Corporate Resources**

For Action

Wards Affected:  
ALL

**Authority to enter into a contract for the provision of  
Temporary Agency Workers**

Forward Plan Ref: CR-05/06 - 19

**1.0 Summary**

- 1.1 This report makes recommendations to the Executive for the award of a contract for the provision of temporary agency workers to Eden Brown Ltd. The contract was tendered by the London Borough of Hillingdon on behalf of all London boroughs.

**2.0 Recommendations**

- 2.1 That the Executive agrees that for the reasons set out in paragraph 3.6 of this report there are good financial and operational reasons to enter into a contract with Eden Brown for the provision of temporary agency workers without tendering in accordance the Council's Standing Orders.
- 2.2 That the Executive agree the award of the contract for the provision of temporary agency workers to Eden Brown subject to the Borough Solicitor being satisfied that appropriate terms and conditions of the contract have been agreed and finalised.

**3.0 Detail**

- 3.1 A contract has been entered into by various members of the West London Alliance with Eden Brown ("EB") for the provision of agency workers. The contract was tendered by the London Borough of Hillingdon in December 2003 with the intention that other London Boroughs would be able to sign up to the same contract following conclusion of the tender process. It is in place at Hillingdon, Harrow, Ealing, and Hounslow, as well as Enfield and Barking & Dagenham outside of the WLA. The tendered contract was for a period of 3 years commencing on 7 June 2004 for the London Borough of Hillingdon with the

option to extend for a further 2 years. The Council would wish to enter into its contract for 3 years commencing at the earliest in January 2006 with an option to extend for a further 2 years thereafter.

- 3.2 The EB solution would provide temporary agency workers (“temps”) via a ‘Vendor Managed Service’ (“VMS”). A VMS can be defined as a vendor that coordinates the activities of all agencies supplying temps used by the Council, acting as a ‘one-stop shop’. The VMS would obtain all of the temps from ‘first tier’ agencies, i.e. other than Eden Brown. Although Eden Brown could supply temps themselves as well, it will be Brent Officers that decide which CVs are selected, so EB will not have any advantage over competitors. Initially the same agencies as we currently contract with would be used, but Brent Officers would contact EB with their requirements. The first tier would then send details of candidates in the normal way.
- 3.3 The VMS provider will add a small fee to each invoice, but this will be negated by the reduction in margin negotiated with all the first tier providers, so the Council would not have to pay directly for the service: EB would keep 95p per hour from the cost reductions they secure from their negotiations with the second tier agencies to pay for the service, passing on the remaining reductions to the customer as lower rates for temps. If the cost reduction is, say 50p, then the fee payable will only be 50p. A base position is established for year 1, uplifted by inflation for subsequent years. This minimises the risk to the Council and means we will not find ourselves paying more for temps additionally there will be further savings made as the Council will no longer have to pay most ‘temp to perm fees’ when taking agency temps on as long as they have been with the Council for more than 14 weeks, Experiences at Hillingdon have been that this has represented a further saving of £25k during the first year.
- 3.4 Presently the Council deals with numerous temporary staff agencies, all of whom charge us different mark up rates (sometimes the same agency will charge different rates to different areas of the Council), all provide agency workers on different wage rates, few if any provide us with any information that enables us to monitor any element of the service, and most supply us on their terms of business that can be onerous in many cases.
- 3.5 As well as significant price reductions and the opportunity for process cost reductions, there are also other benefits such as opportunities to encourage applications from the local community including scope for targeting long term unemployed and other under-represented areas of the workforce, promote and nurture relationships with local businesses that make up the supply chain, better reporting to monitor and influence Equal Opportunities and diversity issues, safeguards against agency workers acquiring full time employment rights, consistent management reporting, and for Brent to be a preferred customer for first tier agencies and therefore strengthen our market position in areas where specialist agency workers have been choosing neighbouring boroughs in preference to Brent.
- 3.6 As well as these service benefits officers believe that the EB option provides best value on the following grounds:

- (a) Combined buying and bargaining power across the region.
- (b) Harmonisation of wages rates.
- (c) Joint initiatives with other West London boroughs to secure staff who are difficult to recruit.
- (d) Reduction in tender costs using the Hillingdon framework in excess of £50k.
- (e) Lessons on the implementation of the contract to be made from other boroughs helping to reduce abortive costs.
- (f) Savings will accrue more quickly with this shorter process, rather than going through a full tendering process.
- (g) Potential to co-operate with other WLA boroughs to stimulate local employment.
- (h) Co-operation on the management of the contract.

It is therefore felt that there are good financial and operation reasons for not tendering this contract and that a separate tendering exercise is not required.

- 3.7 The Procurement Team has reviewed the work undertaken by London Borough of Hillingdon when letting the contract. They are happy that EB can meet the requirements of Brent's Pre-Qualification Questionnaire and that the process was conducted in a fair and transparent manner. Officers have also undertaken a review of EB's financial standing from their latest accounts which are satisfactory.
- 3.8 The contract with EB will take between 4-6 months to negotiate and finalise. There may need to be transitional arrangements but existing temps employed when the contract is signed, will remain in place.
- 3.9 Experiences from other Councils have shown that the vast majority of agencies are prepared to join the EB contract.
- 3.10 In order to maximise the benefits it is intended that the EB contract be exclusive unless there is specialised requirement for staff that EB cannot supply or other contractual arrangements are in place. However, experience at other Councils shows that this is seldom the case.
- 3.11 The contract will cover all types of agency staff with the exception of blue collar workers. This was not part of the London Borough of Hillingdon agreement.
- 3.12 Following Executive Approval officers will enter into discussions with Eden Brown to agree and finalise the terms and conditions of the contract. The terms and conditions will largely be based on the Hillingdon contract with some amendment and clarification to address Brent's specific requirements. The services to be provided and pricing structure will remain unchanged.

## **4.0 Financial Implications**

- 4.1 The value of payment to agency staff is estimated to be circa £12m per year, so assuming that the Contract will be for a duration of 3 years plus a two year extension the total value over the 5 years will be around £60m.
- 4.2 During the first year of implementation a minimum saving of 3.5% is expected. This would deliver cashable savings of £420k per year. For example information received from LB Harrow has indicated that a cashable saving of £36k was made during August against a spend of £657k (around 5.3%). The average over 12 months was circa 3.5%, as was LB Hillingdon's cashable saving. In addition there are savings to be achieved in the reduction in the number of invoices processed, plus a reduction in temp to perm fees.
- 4.3 To implement a Vendor Managed Service will require a full time temporary post for 12 months with an estimated total cost of circa £50k. The staffing requirement was arrived at by identifying all the tasks that need to be completed, allowing for those that can be assigned to Eden Brown or existing staff. Experience in other boroughs has shown that initially a VMS creates considerable work for council staff with a lower on-going requirement to monitor the contract. In addition, it is anticipated that there may be legal costs (estimated at £5k). It is the intention to fund this by top-slicing the savings achieved before the balance is redistributed.

## **5.0 Legal Implications**

- 5.1 The provision of temporary agency workers falls within Part B Services under the EU Services Regulations and the contract therefore is not subject to the full application of the EU Procurement Regulations. It is however, subject to the overriding EU principles of equality of treatment, fairness and transparency in the award process.
- 5.2 The estimated value of the Eden Brown contract over the lifetime of the contract is in excess of £500,000 therefore the procurement and award of the contract is subject to the Council's Contract Standing Orders in respect of High Value contracts and Financial Regulations. Standing Orders would ordinarily require the contract to be tendered.
- 5.3 Standing Order 84(a) provides that the Executive may decide that a contract need not be procured in accordance with the Council's Standing Orders if there are good financial and/or operational reasons for this.
- 5.4 If the Executive grants an exemption to the requirement to tender it will be open for the Council to enter into the contract with Eden Brown. However, it would be prudent for the Council to undertake its own checks to ensure that Eden Brown is of sufficient economic and financial standing and has the necessary technical expertise to carry out the contract. Additionally the Council must ensure that the Eden Brown Contract represents best value.

5.5 The Executive's approval to the award of contract is to be subject to the agreement of the terms and conditions of contract with Eden Brown. Legal Services will provide advice to the Procurement Unit such terms and conditions. These will largely be based on the conditions of contract already agreed between Hillingdon and Eden Brown however, amendments will be necessary to meet Brent's specific requirements and the deal with areas where the contract is currently silent. In keeping with the EU principles of equality of treatment, fairness and transparency in the award process any amendments to the terms and conditions must not substantially alter the scope and nature of the contract which was tendered by Hillingdon.

## **6.0 Diversity Implications**

6.1 This contract will mean that it is far easier to monitor the diversity of Temporary Agency Staff, a group of workers that it has been traditionally hard to monitor.

## **7.0 Staffing /Accommodation Implications (if appropriate)**

7.1 Following the decision of the Court of Appeal in *Dacas v Brook Street* in 2004 the courts and Tribunals have become increasingly willing to find that temporary agency workers are employed by the client of the employment agency. A finding by a court or Tribunal that an agency worker was employed by the Council as the end user would mean, for example, that the worker would be entitled to join the Local Government Pension Scheme and would be entitled to claim unfair dismissal if his or her assignment was terminated after he or she had worked for the Council for a continuous period of at least one year.

7.2 The contract with Eden Brown could contain two types of safeguards to minimise the Council's liabilities in this area. First, the contract could provide that where the worker was supplied to the Council by Eden Brown itself that Eden Brown in its written agreement with the worker would formally acknowledge that it was the worker's employer. In these circumstances it is unlikely that a court or Tribunal would find the worker was employed by the Council. Where the worker was supplied to the Council by an agency other than Eden Brown itself the contract could require Eden Brown to ensure that the other agency in its written agreement with the worker formally acknowledged that it (the other agency) was the worker's employer. It would be important for the contract to allow the Council to monitor compliance with these provisions (for example by allowing it to inspect the agreements between the workers and the agencies). The contract would also need to ensure that if these provisions were breached the cost of claims made by workers against the Council were met by Eden Brown and that Eden Brown were insured against such costs.

7.3 Even if Eden Brown were able and willing to agree to these provisions this is likely to be on the basis that their and/or the other agencies' charges to the Council would be more than they would otherwise be. Eden Brown and the other agencies are also likely to require contractual commitments from the Council to protect their position e.g. cooperation by the Council in providing information, documentation and witnesses if dismissal on the grounds of misconduct or capability was being considered by the agency.

- 7.4 A second safeguard would be to provide that Eden Brown would indemnify the Council against any claim based on the worker being a Council employee, whether or not the worker was supplied by Eden Brown or another agency. The benefit of this safeguard as compared with the first is that the co-operation of the other agencies would not be needed. However the cost of such a safeguard is likely to be an increase in Eden Brown's charges and the contract would again need to require Eden Brown to take out insurance against such liabilities.
- 7.5 Some of the Council's liabilities to agency workers could be minimised by managers monitoring the length of agency assignments and terminating assignments before the worker had worked for the Council for a year. It is the intention as part of the work of the implementation Board, to consider how best to manage this issue.
- 7.6 The holder of the full time temporary post mentioned in paragraph 7.3 would gain the right to protection against unfair dismissal by the end of a 12 month fixed term contract. Before any decision not to renew the contract could be made the employee would have to be offered a meeting to discuss the position. The employee would have a right of appeal against a decision not to renew the contract. Failure to follow these steps would result in a Tribunal finding of unfair dismissal if a claim was brought. A Tribunal might also consider an attempt should be made to find the employee alternative employment if the contract is not renewed. Consideration should be given to offering the employee an initial 11 month contract.

## **8.0 Background Papers**

- 8.1 Report to CMT meeting of 19<sup>th</sup> October 2005.

## **9.0 Contact Officers**

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