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## **Memorandum – Chief Officer Recommendation**

### **APPROVAL FOR EXTENSION TO THE CONTRACT FOR SERVICES AS FOLLOWS: (1) Reed Temporary Labour Usage Contract Extension**

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Dear Chief Officer

In accordance with Contract Standing Order 112 this memorandum seeks your approval for Brent Council to extend the contract with incumbent service provider for the services referred to in this report for a period of up to 6 months from 5th August 2017 to 4 February 2018 subject to a notice period of one month.

A summary of the background to the recommendation, including details of the contract and the reasons for the extensions, is outlined below.

#### **1.0 Recommendations:**

- (1) That you approve an extension to the Contract with the incumbent service provider for the provision of Temporary Labour Usage services (Agency Workers) for a period of six months from 5th of August 2017, subject to one months notice period. The terms and conditions of the current contract, including contract price will remain the same during the extension period.

#### **2.0 Background to the Proposed Extension:**

There is a requirement for the above contracts to be extended owing to the fact that the procurement process for award of a new contract for the provision of Temporary Labour services has been delayed.

Due to unforeseen delays in the procurement owing to the complexity of the arrangements and complication in the consideration of the various procurement options resulting in unexpected delays which has necessitated the need for the contract with the incumbent service providers to be extended for a reasonable period of time which is likely to be a maximum of 6 months. The current contract with Reed expires on 4<sup>th</sup> August 2017. It will be necessary for the council to continue with the current usage levels of temporary agency workers in order to pursue its business. Majority of agency workers are located in CYP and Adult Social Care as Social workers undertaking essential roles of safeguarding vulnerable children and adults. Given the timescales for the expiry of the contract officers believe that the decision should be exempt from the call in protocol.

The contract values for the existing contract is £4,058,604 for the 4 year duration of the contract. This value is made up of Reed fees and fees to other agencies but does not include the payment made to agency workers which are under separate contracts and which are exempt from Contract Standing Orders by virtue of a specific exception in paragraph 83(a) of Contract Standing Orders. The contract value for the extension period is £507,324

Below is a breakdown of the projected monthly and up to six months and express total as percentage of the total original contract value.

One Month	£84,554
Two Months	£169,108
Three Months	£253,662
Four Months	£338,217
Five Months	£422,770
Six Months	£507,324

Under section 3(b) of the table at paragraph 2.5 of Part 4 of the Constitution, Chief Officers are able to extend contracts and agreements without the need for Cabinet approval:

- (a) provided that the extension, variation, renegotiation, novation or assignment would not be in breach of the European Procurement Legislation.
- (b) provided that the extension, variation, renegotiation, novation or assignment does not substantially alter the terms and conditions of the contract.
- (c) provided that there is sufficient existing budgetary provision.
- (d) if the extension goes beyond the period of extension provided for in the contract (if any) or is otherwise not in accordance with the extension provisions in the contract:
  - (ii) in the case of any contract, agreement, deed or other transaction with a life of more than one year (including any possible extension provided for in the contract) the extension shall not exceed a period of one year.

### **3.0 The Benefits of the Extension**

The variation is needed for an additional period of time to allow for retendering of the services on a long term basis and it would cause the council significant inconvenience not to permit the modification in the circumstances. As the existing contract expires in a few days it is not feasible to enter into a short term contract with a provider other than the existing one for economic and technical reasons. The council is dependent on the continuation of services of agency staff for many of its key functions and a gap in availability of existing agency staff would have severe detrimental impacts on those services. In addition, there is insufficient time for any other provider to set up a new electronic system for ordering and approving payment of agency staff. It would cause the council significant inconvenience not to permit the modification in the circumstances.” Given the value of the extension period the modification is not considered to be substantial

This contract extension is being sought to ensure continuity of existing service provision. This will ensure that there are no GAPS in provision in the services. This will ensure that statutory requirements such as TUPE are fully met as well as practical requirements such as estates, staff relocation data transfer and IT systems are fully addressed and planning can take place for retendering taking full account of these matters. Reed have given their approval in principle for the extension under the same terms and conditions including contract price,

#### **4.0 Legal Implications**

Extending the contract would amount to a direct award of a new contract to Reed and this carries a risk of challenge by other potential suppliers and reputational risks for the Council, if challenged.

The Public Contracts Regulations 2015 permits modification (including extensions) of contracts during the contract term, without commencing a new procurement in the circumstances mentioned in Regulations 72. Regulation 72(1)(e) provides for modifications where irrespective of their value, such modifications are not substantial. Modification of a contract or a framework agreement during its term shall be considered substantial for the purposes of paragraph 1(e) where one or more of the following conditions is met:

- the modification renders the contract or the framework agreement materially different in character from the one initially concluded;
- the modification introduces conditions which had they been part of the initial procurement procedure, would have –
  - (i) allowed from the admission of other candidates than those initially selected,
  - (ii) allowed for the acceptance of a tender other than that originally accepted, or
  - (iii) attracted additional participants in the procurement procedure;
- the modification change the economic balance of the contract or the framework
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- agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;
- the modification extends the scope of the contract or framework agreement considerably;
- a new contractor replaces the one to which the contracting authority had initially awarded the contract in cases other than those provided for in paragraph (1)(d)

Paragraph 1.0 of this report provides that there will be no additional service or change to the conditions of the contract.

On the basis of the above details it is considered that there is delegated authority under the Council's Constitution for approval of the extension to the contracts to give effect to the same.

#### **WAY FORWARD**

Please confirm in writing in the approval box below whether or not you approve the extension to the contract referred to above.

If you have any questions or would like further information to be provided, please do not hesitate to contact me.

Yours sincerely

Mildred Phillips  
Head of Employee Services

I do / do not approve the extension and modification of the contracts for the period of up to six months on the terms as mentioned in the report above.

Signed:

**Chief officer**

Position:

Date: