

Portfolio Holder decision record sheet

Name of decision maker: Cllr Graham Sutton

Portfolio: Planning and Regeneration

Date of Portfolio Holder decision: 28 November 2016

Title of decision:

To approve an exemption to comply with the Council's commissioning & procurement standing orders and award a contract directly without the need to carry out a competitive tendering process

Part II:

Part II reason:

Decision:

1. To retrospectively approve the suspension of the Council's commissioning & procurement standing orders to enable the direct appointment of Oyster Partnership for the provision of Agency Staff in the Planning Service without undertaking a tendering process.
2. The Council have already incurred expenditure of £392,242 with Oyster Partnership and have therefore breached the OJEU Threshold. As a result the Council should publish a contract award notice informing the market that it has awarded this contract to Oyster Partnership.

Reason

To maintain the statutory service in Planning (Development Management), it has been necessary to make a range of agency appointments to cover key vacancies.

The Council have a corporate contract for Agency Staff with Comensura and all Agency staff requirements should be commissioned through this arrangement.

If for any reason Comensura are unable to provide the appropriate calibre of Agency Staff, then the Client Officer is able to commission outside of this arrangement, but must comply with the commissioning and procurement standing orders.

The Council acknowledges that the level of expenditure on this contract has significantly exceeded the OJEU threshold and because a compliant tendering process was not undertaken at the outset, this has resulted in this contract now being in breach of the Public Contract Regulations 2015.

The Council should publish a contract award notice stating that it has awarded this contract to Oyster Partnership Ltd.

There is a risk that the Council could be challenged on the award of this contract from suppliers who may have bid for this requirement if it had originally been tendered; there is also a risk that the EU Commission may show an interest in the breach of the regulations.

However, suppliers only have 30 days to submit a challenge on this contract award from the publication date; once the 30 days has passed they are no longer able to challenge our decision.

Reports considered: (here reference can be made to specific documents)

N/A

Officers/Councillors/Ward Councillors/Stakeholders consulted:

Mark Gaynor, Corporate Director Housing and Regeneration

Ben Hosier, Group Manager Commissioning, Procurement and Compliance

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Sara Whelan, Group Manager Development Management and Planning
Andrew Howard, Team Leader Building Control

Monitoring Officer comments:

This retrospective suspension of standing orders requires an exemption to procurement standing orders to be granted from the Portfolio Holder responsible for the service in accordance with paragraph 20 of the Commissioning and Procurement Standing Orders. The circumstances requiring the suspension are noted in the body of the report.

Failure to comply with the Council's procurement standing orders and EU procurement rules could result in an ombudsman complaint, legal proceedings or a fine by the EU commission. Accordingly Officers must ensure all future contract awards are tendered in accordance with standing orders for 2017/18.

Deputy Chief Financial Officer comments:

The costs of agency staff already incurred in 2015/16 have been fully accounted for within the approved 2015/16 Statement of Accounts. Costs incurred in 2016/17 that exceed the approved budget are being reported and mitigation measures are being considered at Directorate and corporate level to manage the pressure in year and built into the medium term financial plan.

Implications:

Risk:

To not appoint into vacant roles would lead to a decline in planning performance and put the Council at risk of Standards intervention by DCLG, or being opened up to the service being provided by an Alternative Provider. Slow performance would also delay key developments taking place, with negative effects on the local economy.

Value for money:

The hourly and daily rates put forward are understood to be competitive.

Options considered and reasons for rejection:

Appointment into vacant in-house roles.

This process is now almost complete and there is only one agency member of staff now left in Development Management. Filling of the vacant roles by agency employees in 2015 was the only realistic option in terms of keeping the service running, with the exception of the external provider as set out below.

Use of an external provider.

In 2015 the Council appointed Terraquest Ltd to process a number of planning applications for a six month period. This had varying degrees of success and kept dependency on agency work down. The service is at almost full in-house complement now and this type of provider is currently not required.

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Portfolio Holder's signature:
Date:
Details of any interests declared and any dispensations given by the Standards Committee:

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Date decision record sheet received from portfolio holder:	
Date decision published:	Decision no:
Date of expiry of call-in period:	
Date any call-in received or decision implemented:	

Background

In 2015, the service suffered a high and unusual degree of turnover including staff leaving for new posts, one on career break, and maternity leave. Also the previous Group Manager left for a higher paid role in the private sector.

There was, after considering and deploying other options, the need to fill vacant posts swiftly. This was done with the Oyster Partnership.

Expenditure with Oyster Partnership Ltd for providing agency staff for Planning Services during 2015/16 was **£280,124** and 2016/17 was **£112,118**

DB100 1200 -	£139,404	+	£70,133	=	£209,537
DC100 1200 -	£85,533	+	£23,346	=	£108,879
DC110 1200 -	£44,004	+	£18,639	=	£62,643
UT220 1200 -	<u>£11,183</u>	+	<u>£0</u>	=	<u>£11,183</u>

Total **£280,124 + £112,118 = £392,242**

This report seeks authority to retrospectively award the contract to Oyster Partnership from 2015/16 until the present.

Any future requirements for Agency Staff in Planning Services will be provided through the Council's corporate contract for Agency Staff, or in accordance with Commissioning and Procurement Standing Orders.