



Key Decision report of the Corporate Director of Resources

Officer Key Decision	Date: 16 April 2021	Ward(s): All
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Delete as appropriate	Exempt	Non-exempt
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REASON FOR URGENCY

The Software Enterprise Agreement provides the Council with continued use of Microsoft Office products. Microsoft Office is essential for the Council to conduct its day-to-day businesses, partners, residents, and service users. The current license agreements expire on 30 April 2021. A short-term arrangement has been found to not represent value for money for the Council and is cost prohibitive. Consequently, a longer-term arrangement is required which will exceed the threshold at which the decision can ordinarily be made by the Corporate Director, necessitating use of the urgency procedures.

SUBJECT: Procurement Strategy and Contract Award for new Software Enterprise Agreement

1. Synopsis

- 1.1 This report seeks pre-tender approval for the procurement strategy and contract award in respect of Software Enterprise Agreement for a 3-year period in accordance with Rule 2.7 of the Council's Procurement Rules.
- 1.2 The Software Enterprise Agreement equips the Council with the latest versions of the Windows operating systems, Microsoft Office suite (e.g., Outlook, Word, Excel, and PowerPoint), connect users and devices to Microsoft's most trusted communication and collaboration products (e.g., OneDrive and Teams).

2. Recommendations

- 2.1 To approve the procurement strategy and contract award for a new Software Enterprise Agreement to the value of £3.015m to Insight Direct (UK) Ltd for a period of 3 years commencing 1 May 2021.
- 2.2 To note the importance of the Software Enterprise Agreement for the efficient and effective delivery of Council services to businesses, partners, residents, and service users.
- 2.3 To note the contribution to being carbon neutral effective technology applications deliver the Council in support of social value, including commitments made specifically by Microsoft.

3. Date the decision is to be taken:

16 April 2021

4. Background

4.1 Nature of the service

The Software Enterprise Agreement licensing agreement allows the Council to legally access all the licensed software and products we obtain from Microsoft. These products include Windows operating system running our laptop devices, Office 365 (including SharePoint, OneDrive and PowerBI); supporting the systems in use across the organisation. Microsoft products are only available to be purchased from a licensed reseller, a company that purchases them with the intention of reselling them and cannot be purchased from Microsoft directly by the council.

The current Software Enterprise Agreement is due to expire 30 April 2021 and must be renewed. The current agreement provides licenses for 5,252 users and our End User Devices (EUC) that are all reliant on the use of Windows 7 and 10 Operating Systems (OS), and Office365 delivered under the Enterprise Agreement. If these applications were not available, the Council would not be able to deliver services to businesses, partners, residents, and service users. All operations would have to revert to being paper-based processing. There is no alternative product that can perform the functions delivered on the Microsoft software suite.

The Council must maintain a licensed estate for its software. Use of Office365 and laptop devices stop after 30 days of the Enterprise Agreement expiring and data stored in OneDrive and SharePoint Online will be deleted permanently. Microsoft technology is a fundamental building block of council infrastructure providing functionality to directly enable work across all the Council's priority activities. To minimise costs, the Council has been working with Microsoft and our reseller, to audit and minimise licenses purchased to the number of licenses required based on consumption. License numbers required are broadly consistent since 2018.

4.2 Estimated Value

Current spend is approximately £1.1million per annum from existing revenue budgets, under the existing Software Enterprise Agreement.

Microsoft offer the same pricing discount to all public sector resellers. The new Software Enterprise Agreement will be approximately £3.015million in total for the 3-year contract. The spend will be dependent on the number of licenses needed and any additional software products and subscriptions the Council needs over the term of the agreement. Increased costs are due to a combination of inflation, unfavourable exchange rate changes and the current Microsoft pricing for the Public Sector. There are notable indirect benefits around organisational performance and efficiency of continued running services using Microsoft products. To ensure we pay the lowest margin and get best value, the reseller must also offer added value to the Council in terms of social value and auditing our requirements and offering guidance and support as required.

4.3 Timetable

The current agreement started 1 May 2018 and ends 30 April 2021. The new agreement needs to be in place from 1 May 2021, when the existing Software Enterprise Agreement expires.

The reseller must notify Microsoft by 23 April 2021 to ensure enrolment of licenses in readiness for 1 May 2021 when the new Software Enterprise Agreement will start.

4.4 Options appraisal

In the interest of continued delivery of essential Council services to businesses, partners, residents, and service users, ceasing provision of the service is not a viable option.

Microsoft is a market leader in software products of this nature. The specialist nature of services precludes the council from being able to replace the services with in-house developed alternatives. Switching to a competitor alternative to Microsoft Office is cost prohibitive, would likely significantly reduce cross council effectiveness, risk unrecoverable reputational damage, and require impractical organisational change. Procuring a Software Enterprise Agreement ensures the highest levels of discount available and approximately 35% reduction on a standard Microsoft pricing model.

Advice has been sought directly from Microsoft to better understand the options available for licensing Microsoft products. The two options are to seek either an Enterprise Agreement that is only available on a 3-year contract or go outside of an Enterprise Agreement and carryout transactional licensing under their Cloud Solution Provider (CSP) programme. An Enterprise Agreement provides the best discounts and price locks; therefore, we must proceed with a 3-year contract. This also offers us best value for money.

The recommended approach is to continue externally commissioning the service, with a call-off contract from an external established framework agreement the most expedient route to market. A review of suitable framework agreements covering Software Enterprise Agreements accessible to the Council has been undertaken.

A call-off contract will be undertaken in accordance with the KCS framework agreement (Software Products & Associated Services 2 Y20011). KCS is a registered Trademark of Kent County Council.] This framework agreement allows the Council to access a compliant route to

market with lower margins than other framework agreements and is an efficient route to market.

The benefit of undertaking a 'call-off' contract from an established framework agreement is that the council reduces contract award time significantly and implement the new contract by 1 May 2021.

4.5 Key Considerations

Delivering a contribution to the council's social value objectives is a key element of this procurement strategy and contract award. The reseller must demonstrate their contribution over the duration of the contract to economic, environmental, and social benefits if they are awarded the contract. The framework agreement provides sufficient flexibility to ensure that the call-off contract will address the following key principles:

- A commitment by the reseller to pay at least the real London Living Wage
- Supportive learning, development, and skills opportunities
- School technology development and infrastructure
- Engagement will local business in the supply chain
- Reduced carbon footprint, being carbon neutral before the council's 2030 target.

Whilst this is a software licensing agreement, part of the service delivery includes cloud-based services from Microsoft. Microsoft made a commitment in 2020 to being Carbon 'negative' by 2030 and by 2050 to remove all the carbon the organisation has emitted since it was founded in 1975.

Due diligence was carried out regarding TUPE regulations.

4.6 Evaluation

A call-off contract will be undertaken via the framework agreement. The proposed evaluation criteria will be in line with the mechanism for the call off contract with (the quality/price ratio being) 40% Quality and 60% Price. The 40% quality includes 20% social value and the remaining 20% is the auditing of our requirements, guidance, and support. The price is based on the number of users and applications required for the agreement term, inclusive of reseller fees and volume discounts.

4.7 Business Risks

The call-off contract from the framework agreement is from an approved reseller meaning that all the resellers can access and transact the required licenses on behalf of the Council.

Failure to secure a new agreement will result in a significant corporate risk with the council unable to deliver essential services to businesses, partners, residents, and service users. If a new Software Enterprise Agreement is not procured, the Council will relinquish the rights to use all Microsoft software 1 May 2021. This would have a severe impact on business continuity and existing service provision with permanent loss of data stored in OneDrive and SharePoint Online, laptop devices would become unusable within 30 days and service would revert to paper-based processing.

- 4.8 The Employment Relations Act 1999 (Blacklist) Regulations 2010 explicitly prohibit the compilation, use, sale, or supply of blacklists containing details of trade union members and their activities. Following a motion to full Council on 26 March 2013, all tenderers will be required to complete an anti-blacklisting declaration. Where an organisation is unable to declare that they have never blacklisted, they will be required to evidence that they have 'self-cleansed'. The Council will not award a contract to organisations found guilty of blacklisting unless they have demonstrated 'self-cleansing' and taken adequate measures to remedy past actions and prevent re-occurrences.
- 4.9 The following relevant information is required to be specifically approved by the Executive in accordance with rule 2.8 of the Procurement Rules:

Relevant information	Information/section in report
1 Nature of the service	The Software Enterprise Agreement allows the Council to legally access all the licensed software products we obtain from Microsoft. See paragraph 3.1.
2 Estimated value	The estimated value per year is £1.005m. The agreement is proposed to run for a period of 3 year. See paragraph 3.2.
3 Timetable	The new agreement needs to commence 1 May 2021. See Paragraph 3.3
4 Options appraisal	As outlined within the report. See paragraph 3.4.
5 Key Considerations	As outlined within the report. See paragraph 3.5.
6 Evaluation	40% quality: 60% price. See paragraph 3.6.
7 Business Risks	As outlined within the report. See paragraph 3.7.
8 Any other relevant financial, legal, or other considerations.	As outlined within the report. See paragraph 4.

5. Implications

5.1 Financial implications:

The Software Enterprise Agreement contract with Insight Direct (UK) will commence 01 May 2021 and it is proposed to cover a period of 36 months with no optional extensions. The anticipated cost to the Council based on current volumes of licenses and Microsoft software needs is approximately £1.005million. The total contract spend for the term of the agreement is anticipated to be £3.015million.

The Digital Services division currently has the budget to fully fund this contract in full (including the anticipated increased costs from due to a combination of inflation, unfavourable exchange rate changes and the current Microsoft pricing for the Public Sector). The funds are held centrally within Digital Services' overall budget, to keep control and monitor the budget more effectively. As outlined within the report, the Council has been working with Microsoft and our reseller, to audit and minimise licenses purchased to the number of licenses required based on consumption. License numbers required are broadly consistent since 2018.

Digital Services will re-charge other directorates for specialist applications needed, which are not considered part of the overall corporate offer and budget envelope. By entering into a three-year Software Enterprise Agreement, the Council minimises the risk associated to additional unforeseen cost increases and further budget pressures for the Council.

5.2 Legal Implications:

The Council has power to do anything required to enable its staff to carry out its statutory functions (section 111 of the Local Government Act 1972 together with the relevant statutory functions), which would include entering into a software enterprise agreement. Accordingly, the Council may enter a contract with the successful supplier to secure the provision of that software enterprise agreement (section 1 of the Local Government (Contracts) Act 1997). The Council may enter the contract through resellers for the software rather than purchasing them direct from Microsoft, owing to the necessary licensing arrangements. Section 1 of the Localism Act 2011 provides the Council with the power to do anything that individuals generally do for the benefit of the local authority, area of the local authority or persons resident or present with the area of the local authority. The generality of the power is expressly not limited by the existence of any other power of the authority which to any extent overlaps the general power, provided that the other power does not impose restrictions or limitations and the authority is not trading.

The proposed contract is a public supply contract. The threshold for application of the Public Contracts Regulations 2015 (the Regulations) is currently £189,330 for supply contracts. Contracts above this threshold must be procured with advertisement in the Official Journal of the European Union (OJEU) up to 31 December 2020 and Find a Tender Service from 1 January 2021 in full compliance of the Regulations. The Council's Procurement Rules also require contracts over the value of £189,330 to be subject to competitive tender.

The proposed procurement strategy and contract award is a framework agreement to call-off a contract which was procured in compliance with the Public Contracts Regulations following an OJEU advertisement. The framework agreement is available to local authorities and therefore may be accessed by the Council for the supply of the software enterprise agreement and a

contract(s) may be awarded in accordance with the provisions set out in the framework agreement.

The Council wishes to utilise the KCS (Kent County Council) SOFTWARE PRODUCTS & ASSOCIATED SERVICES 2 Y20011 Framework Agreement. This a legally compliant framework agreement under the Public Contract Regulations 2015. The framework agreement expires 31 March 2024. The Council wishes to award to Insight Direct (UK) for a period of three years commencing 1 May 2021 for the sum of £3.015million. Part 6, Procurement Rule 2.7 states that in relation to this contract approval of the Procurement Strategy is required from the Executive.

A direct award under regulation 33(8) (a) Public Contracts Regulations 2015 is permissible under this contract providing Officers are satisfied that following their own due diligence, they have identified that Insight Direct (UK) offers best value for their requirements. The Council will enter a call off contract with the supplier so that there is continuity of existing goods/service from the supplier.

4.3 Environmental Implications and contribution to achieving a net zero carbon Islington by 2030:

The main environmental impact of this contract is the electricity used by the cloud servers hosting the software. However, Microsoft Cloud services are up to 93 percent more energy efficient and up to 98 percent more carbon efficient than traditional enterprise data centres. Compared to virtualised, high-end data centres, the Microsoft Cloud delivers big gains in energy efficiency and reductions in carbon emissions. Microsoft also made a commitment in 2020 to being Carbon 'negative' by 2030 and by 2050 to remove all the carbon the organisation has emitted since it was founded in 1975.

The software being purchased also enables ways of working that reduce other environmental impacts. Office 365 staff allows council staff to access emails and files from any location and on mobile devices, and alongside Microsoft Teams, reduces the need for staff to travel, in turn reducing travel-related environmental impacts such as vehicular emissions and contributing to congestion, while programmes such as Microsoft Forms reduce the need for paper forms, reducing material usage.

4.4 Resident Impact Assessment:

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

A Resident Impact Assessment was completed in March 2021 and the summary is included below. The complete Resident Impact Assessment is appended.

6. Reason for recommendations

- 6.1 The Council's current 3-year Software Enterprise Agreement for Microsoft software expires on the 30 April 2021. To enable the council to continue using this software, a new Software Enterprise Agreement must be in place effective from 1 May 2021.

7. Record of the decision:

- 7.1 I have today decided to take the decision set out in section 2 of this report for the reasons set out above.

Signed by:

Corporate Director of Resources

Date

Appendices

- Resident Impact Assessment

Background papers:

None.

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