

MICROSOFT 3 YEAR LICENSE AGREEMENT RENEWAL

**FINANCE, MODERNISATION AND PERFORMANCE
(COUNCILLOR CHRIS WEAVER)**

AGENDA ITEM: 13

Reason for this Report

1. To seek the approval of Cabinet;
 - i) For the Council to either procure its Microsoft software renewal via the Crown Commercial Service (CCS) Technology Products and Associated Services framework agreement (using Microsoft Spring 2024 aggregation - NFC166), or Welsh Government's WGCD (Welsh Government Commercial Delivery) / NPS (National Procurement Service) IT Products and Services (ii) Framework Agreement. The contract value of this procurement is estimated to be in excess of £5M.
 - ii) To delegate the authority to the Corporate Director, Resources in consultation with the Cabinet Member for Finance, Modernisation and Performance and legal services to determine which framework to utilise and generally deal with all aspects of the procurement process and associated matters up to and including the awarding of the contract.

Background

2. All Council and Schools employees with computer access make use of Microsoft subscription licences to facilitate essential everyday tasks. These include Office, Teams and more specialist software, such as Visio, Project and Power BI. The Authority also requires Microsoft licences for its server and cloud environment, and to use Microsoft's enhanced security functionality. Microsoft subscription contracts are managed in 3-year terms. The current term is due to end 30/06/24 and the Council must ensure any renewal is compliant with The Public Contracts Regulations (PCR) 2015.
3. The previous / current contract was let via Welsh Government's IT Products and Services (ii) Framework, which offers a PCR compliant route to market. The Council has recently taken the opportunity to be part of an aggregated procurement exercise run by the Crown Commercial Service's Aggregation team, under their Technology Products and Associated

Services framework agreement RM6098 (Microsoft Spring 2024 aggregation -NFC166). Due to the Council's licensing volumes, it is not possible to contract directly with Microsoft.

4. The aggregation process places no obligation on the Council to commit to a contract but allows the opportunity to be part of a wider procurement exercise (9 public sector organisations included in Lot 2 Local Government Devolved) to leverage better value through increased volume. CCS estimate up to 3% savings through their aggregated procurements.

Issues

5. CCS, an Executive Agency of the Cabinet Office, negotiates a Memorandum of Understanding (MoU) with Microsoft every three years. The current MoU is DTA21 (Digital Transformation Arrangement 2021) but DTA24 is due to be implemented from 01/05/24. The aggregation exercise had to be based on current pricing for award purposes, but locks in supplier margins for the duration of the contract. Final pricing options will not be known until DTA24 is confirmed (the framework route has provision for this). As part of the procurement exercise, CCS have provided buyers with 'worst case' scenario figures using the tendered supplier margins and their pricing / discount estimates. These figures have been used to inform contract value estimates, but final figures will not be known until April / May 2024.
6. The intention, when DTA24 pricing is known, is to gauge whether the aggregated tender exercise with CCS or Welsh Government's IT Products and Services (ii) Framework, offer the best value for the Council. The latter already has a published maximum markup margin for Microsoft products and allows the option for direct award or further competition. Insight Direct (UK) LTD was the winning supplier of Lot 2 of the CCS aggregation exercise, though they are not a supplier on Welsh Government's framework.
7. Whilst final DTA24 pricing is not yet known, the projections from CCS would represent a significant increase in costs from the DTA21 agreement. Although unlikely, it's not yet confirmed whether Microsoft will allow customers to utilise DTA21 pricing / discounts. Microsoft list pricing is fixed UK wide, so the frameworks offer the best opportunity to achieve the lowest possible pricing.
8. Although unlikely, if the Council can use DTA21, it may offer the best pricing option. Authority to proceed would need to be in place by the end of March / early April to allow this potential option to be taken forward. This is the reason for the more urgent requirement for a decision, allowing the Council to choose the best value route.
9. In addition to the above, the use of the CCS framework (via the aggregated procurement) is subject to further clarification from CCS. Accordingly, the recommendation is to seek approval in principle to procure either via the aggregated procurement or the Welsh Government framework and to

delegate to the Corporate Director Resources in consultation with others to determine the route to be taken, amongst other things.

Reason for Recommendations

10. As the estimated contract value exceeds £5,000,000, to comply with Financial Procedure Rules, and Contract Standing Orders and Procedure Rules, Cabinet approval to proceed is required.
11. Due to the timings of the release of the DTA24 Microsoft MoU, it's not possible to wait until pricing is known to seek Cabinet approval – prior approval is therefore required to delegate the authority to complete the necessary procurement activities, allowing the Council to utilise the most appropriate procurement option.

Financial Implications

13. The actual financial cost will not be known until the procurement mechanism is both identified and actioned but there is a revenue budget within the ICT service. The final cost will also be determined by the number of licenses being agreed which will amongst other things have considered any headcount reduction being undertaken by the Council reduced. Any differences between the final cost of the contract and the budget will be managed within the existing and future budgetary framework decisions over the life of the contract.

Legal Implications

14. The report seeks approval in principle to procure via either of the 2 frameworks mentioned in the report and to delegate authority for further decisions (as set out in the report). Any procurement via a framework must be carried out in accordance with the process set out in the framework Agreement. Legal services have not reviewed the frameworks. Before placing reliance on a framework and awarding a contract, in summary, the client department should satisfy itself that the Council was identified in the contract notice (advertising the framework opportunity) as a party entitled to use the framework for the intended procurement/contract and the framework process is followed and, in respect of direct awards, that the framework allows direct award. The client department should also satisfy itself as to the T&CS and as to whether they are suitable for their requirements and complete all necessary information in those T&CS before commencing the procurement process. With regards the CCS framework, further clarification is needed and accordingly, further legal advice should be sought on the CCS framework and aggregated process before using it. Legal Services are instructed that further clarification is being sought from CCS. Any further legal implications will be set out in the delegated report.

Equality Duty.

15. In considering this matter, the Council must have regard to its public sector equality duties under the Equality Act 2010 (including specific Welsh public sector duties). This means the Council must give due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. The protected characteristics are: age, gender reassignment, sex, race – including ethnic or national origin, colour or nationality, disability, pregnancy and maternity, marriage and civil partnership, sexual orientation, religion or belief – including lack of belief.

Well Being of Future Generations (Wales) Act 2015

16. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.
17. In discharging its duties under the Act, the Council has set and published well-being objectives designed to maximise its contribution to achieving the national well-being goals. The well-being objectives are set out in Cardiff's Corporate Plan 2023-26. When exercising its functions, the Council is required to take all reasonable steps to meet its well-being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well-being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.
18. The wellbeing duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:
 - Look to the long term.
 - Focus on prevention by understanding the root causes of problems.
 - Deliver an integrated approach to achieving the 7 national well-being goals.
 - Work in collaboration with others to find shared sustainable solutions.
 - Involve people from all sections of the community in the decisions which affect them.
19. The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

General

20. The decision maker should be satisfied that the decision is in accordance within the financial and budgetary policy and represents value for money for the council.
21. The decision maker should also have regard to, when making its decision, to the Council's wider obligations under the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards."

HR Implications

22. No anticipated HR implications from this decision / procurement exercise.

Property Implications

23. No anticipated property implications from this decision / procurement exercise.

RECOMMENDATIONS

Cabinet is recommended to:

- 1) Approve in principle for the Council to procure its Microsoft software renewal via either the Crown Commercial Service (CCS) Technology Products and Associated Services framework agreement (using Microsoft Spring 2024 aggregation - NFC166), or Welsh Government's WGCD (Welsh Government Commercial Delivery) / NPS (National Procurement Service) IT Products and Services (ii) Framework Agreement.
- 2) Delegate authority to the Corporate Director, Resources in consultation with the Cabinet Member for Finance, Modernisation and Performance and the Monitoring Officer to determine which framework to utilise and generally deal with all aspects of the procurement process and associated matters up to and including the awarding of the contract.

SENIOR RESPONSIBLE OFFICER	Isabelle Bignall Chief Digital Officer
	15 March 2024