

Subject:	Software Licence Renewal		
Date of Meeting:	2nd December 2021		
Report of:	Head of Human Resources		
Contact Officer:	Name:	Mike Brett	Tel: 01273 482865
	Email:	Mike.brett@eastsussex.gov.uk	
Ward(s) affected:	All		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 The council currently utilises a KCS Framework Agreement for a call-off contract with Phoenix Software Limited for the provision of their Microsoft Licenses. Two of the three, three-year Microsoft Enterprise License Agreements expire on 30th June 2022 and one expires on 31st July 2022. There is no option to extend these agreements.
- 1.2 This report recommends a joint procurement with our Orbis partners for these services to better achieve economies of scale and reduce the administration resources needed.
- 1.3 The purpose of this contract is to provide the licence coverage for the Microsoft end user applications and back-office server infrastructure used to deliver business applications to the Council. This includes Operating Systems, user access licences and other software such as Microsoft Office providing email, word processing and spreadsheet functionality all critical for the Council to carry out its functions.

2. RECOMMENDATIONS:

- 2.1 That Policy & Resources Committee grants delegated authority to the Executive Director of Finance and Resources to take all necessary steps to:
 - (i) Use the KCS Professional Services National Framework for the supply and delivery of Software Products & Associated Services 2 to procure a Licence Solution Partner (LSP) for the Council and its Orbis partners, East Sussex County Council and Surrey County Council
 - (ii) Award a contract to the successful Licence Solution Partner (LSP) to provide the Council with three Microsoft Enterprise Licence Agreements for a term of 3 years with an estimated total value of £3,306,000.00.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 To deliver easy to use, responsive public services to residents, the Council needs to provide easy to use, modern and efficient digital technology tools to its

staff. The Council has chosen to adopt a Microsoft-based software approach, in line with many partnering authorities.

- 3.2 The new Microsoft Enterprise Subscription Agreements will replace the current three-year agreements, which expire in 2022, and ensure the most appropriate, cost effective, flexible and compliant licensing solution is implemented to meet the current and future needs of the organisation.
- 3.3 The new agreements will continue to provide the licence coverage for the Microsoft end user applications and back-office server infrastructure used to deliver business applications to the Council. This includes Operating System, user access licences and other software such as Microsoft Office providing email, word processing and spreadsheet functionality all critical for the Council to carry out its functions.
- 3.4 Brighton & Hove City Council entered into its current Enterprise Subscription Agreements with Microsoft via software reseller Phoenix Software Limited in 2019. The pricing for the three-year term was fixed, avoiding year on year Microsoft price increases.
- 3.5 The Microsoft product suite represents a significant contribution to the Council's organisational productivity as well as the software being the basis of the Council's core infrastructure.
- 3.6 In 2019 the decision was taken that there should be a single Microsoft Licence Solution Partner for Brighton & Hove City Council and their Orbis partners, East Sussex County Council and Surrey County Council, securing the expertise and services of a single Microsoft Licence Solution Partner across all three Councils and assisting in developing and enabling the IT strategy for Orbis.
- 3.7 An initial report was taken to Procurement Advisory Board (PAB) on the 18th October 2021. (PAB Report provided separately)

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 Advantages of using the preferred route to market to source the Council a new LSP is that the KCS Framework is fully OJEU compliant and adheres to Public Contracts Regulations (2015). Its Terms and Conditions are designed specifically for the Public Sector and it provides options for mini competition meaning the tender can be based on the Councils' needs and there is opportunity to seek additional value. It not only includes the incumbent LSP but as founder members of the KCS Framework each Orbis authority can claim the 0.75% management fee paid by the successful bidder for being on the Framework. Each year a 0.75% rebate is claimable against the total value of each contract.
- 4.2 An alternative route to market for procuring these services was the use of an alternative Framework such as the NHS SBS Digital Workplace Framework. This Framework is also fully OJEU compliant and adheres to Public Contracts Regulations (2015), however it was designed primarily for the NHS despite the Public Sector being able to access it. It also allows for mini competition and includes the incumbent LSP, but the Council would be unable to claim the Management Fee back.

- 4.3 The Crown Commercial Services (CCS) Aggregated Tender provided another option. It too is fully OJEU compliant and adheres to Public Contracts Regulations (2015). Its Terms and Conditions were designed specifically for the Public Sector and our incumbent LSP won the previous Aggregated Tender run by CCS. Although greater savings are predicted through increased buying power and no commitment is required up front there would be an unknown number of buyers taking part which may affect savings. Due to the nature of this option, it wouldn't be wholly based on our needs and there would be no opportunity to seek additional value (such as support packages, training and any social value) as evaluation is based on 100% price.
- 4.4 The final consideration was setting up an Orbis framework. This would require a significant amount of upfront officer work and may not offer the benefits of accessing an established and robust framework for services which are commonly used by many Local Authorities.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 The stakeholders that have been consulted in relation to this project are as follows:
- Matt Scott, Chief Information Officer
 - Michael Brett, Core Infrastructure Manager
 - Morgan Rees, Enterprise Infrastructure Delivery Manager
 - Dan Snowdon, Head of Strategy & Engagement

- 5.2 No community engagement has been carried out due to the nature of the contract and the services it provides.

6. CONCLUSION

- 6.1 This report recommends that the Policy & Resources Committee delegates authority for the procurement and award of a contract for a Licence Solution Partner (LSP). Council officers will collaborate with Orbis partners in order to ensure the most appropriate, cost effective, flexible and compliant licensing solution is implemented to meet the current and future needs of the organisation.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 Microsoft does not deal directly with customers, but through Licence Solution Partners (LSP). There are a range of LSP's who can deliver this contract, but the differences in cost across them is very small.
- 7.2 Microsoft have increased their pricing considerably over the last few years and continue to do so.
- 7.3 A further price increase on a number of key products is due to take effect from **1st of March 2022**. The Councils incumbent LSP, Phoenix Software, initially advised us that it might be possible to early commit on some of the Orbis

Partners requirements (thus avoiding the March price increase), however early commit will not be possible for Brighton & Hove City Council due to their expiry dates falling after the end of Microsoft's fiscal year. Orbis Procurement spoke to their Microsoft Account Manager on the 20th October 2021 to see if anything could be done about this, however it was confirmed that early commit would not be possible for any of the Orbis Partners agreements.

7.4 The Councils working within the Orbis partnership have little leverage with Microsoft given there is no viable better value alternative to move to in the short to medium term and for some licences there is no alternative, but to purchase Microsoft.

7.5 Any licences purchased will be under the best Microsoft UK Public Sector (and Schools) discounts available. LSP's margins applied to the base Microsoft public sector pricing are governed by the frameworks we can purchase under so there is very little we can address in this regard through the procurement, with any savings likely to come post award by addressing the licence needs of each Council with Microsoft and the appointed Microsoft Licence Solution Partner (LSP) to ensure the most favourable terms and pricing are utilised.

7.6 As founder members of the KCS Framework each Orbis authority can claim the 0.75% management fee paid by the successful bidder for being on the Framework. Each year a 0.75% rebate is claimable against the total value of each contract.

7.7 The current costs to Brighton & Hove City Council are as follows:

Annual Cost			Total Annual Spend	Total 3 year spend
EA	SCE	School Agreement		
£'000	£'000	£'000	£'000	£'000
786	112	19	917	2,751

7.8 Based on the March 2022 price increases, Phoenix Software Limited have estimated the new costs to Brighton & Hove City Council to be:

Annual Cost			Total Annual Spend	Total 3 year spend
EA	SCE	School Agreement		
£'000	£'000	£'000	£'000	£'000
949	117	36	1,102	3,306

7.9 Therefore the estimated increased cost to the Council General Fund is £0.168m pa which will need to be incorporated into the budget setting process for 2022/23. The increased cost for schools is £0.017m.

Finance Officer Consulted: James Hengeveld

Date: 01/11/21

Legal Implications:

- 7.10 The Policy & Resources Committee is the appropriate committee for the recommendations set out in paragraph 2 above in accordance with Part 4 of the council's constitution.
- 7.11 The contract must comply with all relevant procurement legislation and the council's Contract Standard Orders and in order to comply with Contract Standing Order 3.1, authority to enter into contracts in excess of £500,000 must be obtained from the relevant Committee.

*Lawyer Consulted: Barbara Hurwood
04/11/2021*

Name Date:

Equalities Implications:

- 7.12 It is not clear whether an Equality Impact Assessment (EIA) has been carried out or needs to be carried out. The Council's Equalities Team have been contacted on this matter and a response is expected in due course. Should it be decided that an EIA is required, the service will ensure it is undertaken prior to tender.
- 7.13 There are no TUPE implications as a result of this new contract and the resulting Microsoft agreements.
- 7.14 A clause in the KCS Framework Terms and Conditions states:

'Throughout the duration of this Individual Contract the Supplier shall and in addition shall ensure that its Sub-Contractors shall discharge their obligations under this Individual Contract and supply the Goods and/or Services in accordance with their responsibilities under the Equalities Act 2010 encompassing the provisions of the Sex Discrimination Act 1975, Race Relations Act 1976 (Amended 2000) and the Disability Discrimination Act 1995 and Codes of Practice issued by the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission and shall in addition discharge its obligations under this Individual Contract and provide the Goods and/or Services in a manner consistent with the Customer/Participating Authority's policies and guidelines.'

Sustainability Implications:

- 7.15 We do not envisage any direct sustainability implications arising from this tender however we will be asking bidders to provide their own sustainability policies as part of the tender process (for information only) and asking that they adhere to our own sustainability policy if/when working on Council premises.
- 7.16 Microsoft claim that by continuing to use M365 the Council are getting a solution that is carbon neutral.
- 7.17 On January 28, 2021 Microsoft released its first Environmental Sustainability Report "A Year of Action" documenting progress the company has made since

announcing its 2020 commitments to become a carbon negative, water positive, zero waste company that protects more land than it uses by 2030.

- 7.18 As we intend to use an established Framework it is worth noting that providers are not obliged to offer Social Value/Community Wealth Building commitments, however officers can incorporate a question in the mini competition in order to address this. An appropriate question will therefore be devised based on common outcomes from both the Brighton and Hove Social Value Framework and Orbis Social Value Charter (used by ESCC & SCC) with responses being evaluated by the panel.
- 7.19 Microsoft have provided a number of examples of where they are delivering Social Value. A recent example is where, in response to the COVID19 pandemic and its impact on the global economy, they launched a global skills initiative aimed at bringing more digital skills to 25 million people worldwide.

Brexit Implications:

- 7.20 None

Risk and Opportunity Management Implications:

- 7.22 The Microsoft Enterprise Subscription Agreements allow for decreases in license numbers as part of an annual declaration and true-up activity, which will allow the Council to reduce license subscriptions should the opportunity arise.
- 7.23 There is ongoing work, which will continue throughout the contract, looking at the licenses we hold and ensuring that we have the right levels and types (including full licenses and educational licenses), with a view to reducing quantities and costs.
- 7.24 The award will be to a LSP via a public procurement framework, which means they will have successfully completed satisfactory financial checks as well as checks on competency in delivery of similar contracts at the pre-qualification stage.
- 7.25 The following key risks associated with the contract and contract award have been identified, along with mitigation activities.

Category	Risk Description	Mitigation Activity
Financial	Additional licences required due to growth in user population or back-office infrastructure	Where possible IT&D will fund within existing resources. If this is not possible it will be addressed through the budget planning process.

Reputational & Financial	Incorrect licensing in place and risk of audit and fines from Microsoft	Regular monitoring by IT&D and Microsoft Licensing Solution Provider to ensure Council is fully compliant, alongside engagement with Microsoft directly.
--------------------------	---	--

Public Health Implications:

7.26 None

Corporate / Citywide Implications:

7.27 To deliver easy to use, responsive public services to residents, the Council needs to provide easy to use, modern and efficient digital technology tools to its staff.

SUPPORTING DOCUMENTATION

Appendices:

1. Report presented to PAB on 18th October 2021.

