

Subject:	Microsoft Enterprise Subscription Agreement Renewals		
Date of Meeting:	21st March 2019		
Report of:	Executive Director for Finance & Resources		
Contact Officer:			
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Ward(s) affected:	(All Wards);		

FOR GENERAL RELEASE**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 Currently Brighton & Hove City Council uses Microsoft software licence agreements to provide Council employees with access to software productivity packages such as Word, Excel, Email, Calendar and Skype. The licencing also covers IT infrastructure elements used in the delivery of business applications to the organisation.
- 1.2 The current Microsoft software licence agreements have a term of three years which will expire in June 2019. There is an option to extend the reseller contract for up to 2 years, but this would not cover the third year of the new agreements so we are not utilising the extension. .
- 1.3 This report sets out recommendations arising from work carried out by officers on the options for the future provision of Microsoft software licence agreements and outlines the competitive procurement process which has been carried out in order to select a reseller to provide the Microsoft software licence agreements.
- 1.4 A procurement process on behalf of all Orbis partners has been carried out to identify a software reseller for the provision of new Microsoft software licence agreements. Officers are now seeking approval to award a contract to the preferred bidder (Phoenix Software Limited).
- 1.5 The value of the new contract, based on the tendered prices, will be £2.7m over the three year term.

2. RECOMMENDATIONS

That Policy, Resources & Growth Committee:

- 2.1 Approves the award of a reseller contract for the provision of Microsoft software licence agreements to Phoenix Software Limited with a term of three years.
- 2.2 Approves the award of software licence agreements to Microsoft, each with a term of three years for the following products and services under Microsoft's Educational and Enterprise Licensing subscriptions:
 - (i) The Windows operating system (Windows 7, Windows 10);
 - (ii) Microsoft Office (Word, Excel, PowerPoint, Visio & Project);
 - (iii) Office 365;
 - (iv) The Microsoft Active Directory identity management service that securely manages user accounts;
 - (v) The Microsoft Active Directory access control service that ensures users are only allowed to access to their work;
 - (vi) The Microsoft SQL database service that stores the data for applications, including the Electoral Register (Xpress), Clients of Concern Register (CCR) and various document management systems (IDOX, Workforce 360);
 - (vii) The Microsoft Intune service that is used to secure and manage the corporate iPhone devices issued to BHCC councillors and staff.
 - (viii) The Microsoft Direct Access service that allows user laptops to connect to the office from home.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 To deliver 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 other local authorities and our Orbis partners.
- 3.2 The new Microsoft software licence agreements will replace the current three year agreements, which expire in June 2019 and ensure that the most appropriate, cost effective, flexible and compliant licensing solution is

implemented to meet the current and future needs of the organisation. The process is outlined at Appendix 1.

3.3 The new agreement will provide the licence coverage for the Microsoft suite of services. This includes:

- The Windows Operating System;
- Microsoft Office including Outlook, Word, SharePoint, Excel and PowerPoint;
- User access licenses.

The functionality provided by this agreement is critical for the Council to carry out its functions.

3.4 Brighton & Hove City Council entered into three-year software licencing agreements with Microsoft via software reseller Phoenix Software Limited in 2016. The contract is with a reseller because Microsoft only provide their products through licensed resellers, and do not deal directly with customers. The current contract with Phoenix fixed the pricing for the licences across the three year initial term, avoiding year on year Microsoft price increases. The two year extension price is not fixed and would need to be renegotiated.

3.5 During this time, Microsoft pricing for the UK Public Sector increased significantly due to currency exchange rates and a drop in the value of £sterling, with Microsoft harmonising pricing across six different currencies. The most recent of these Microsoft increases came into effect on the 1st October 2018.

3.6 If the Council enters into new Microsoft software licensing agreements by the end of March 2019, three months earlier than the expiry of the current agreements, the Council will benefit from the pre-October 2018 Microsoft pricing.

3.7 This action will avoid additional spend of £35,000 per annum, £105,000 over the three year period of the new agreements.

3.8 Even when taking advantage of the pre-October 2018 pricing the cost of the new Microsoft software licence agreements will still equate to a 42% increase when compared with the cost of the current licence agreements.

	Current Contract	Renewal Quote	Tendered Price
Annual Cost	£0.644m	£0.944m	£0.907m
Total (3 years)	£1.932m	£2.832m	£2.721m

3.9 In parallel to running a mini-competition under the Microsoft lot of the Kent County Council framework to identify the preferred software reseller, Orbis Procurement have initiated a piece of work challenging Microsoft on the price

increases and are pushing for the Public Sector to be treated in a similar way to educational institutes and the third sector, whose licences cost a third of the price. The public sector standard price is negotiated on behalf of authorities by the Crown Commercial Service (CCS).

3.10 The group challenging and negotiating with Microsoft includes a Crown representative, Crown Commercial Services (CCS), the Local Government Association (LGA) and the Society of Information Technology Managers (SOCITM). This process is ongoing, and so far has resulted in the following results:

- The deadline for signing up to the pre-October pricing has been extended from 31 December 2018 to 31 March 2019, this also avoids any further price rises prior to the start of the agreements;
- Microsoft have agreed to provide additional support for five councils, including Surrey County Council. Orbis Procurement are following this up and pushing for the additional support to cover all Orbis partners; due to IT&D being an integrated Orbis function all three councils may benefit from any advice received. The five selected councils will be used as case studies to showcase how public sector authorities can optimise their investment in Microsoft products and services and achieve value for money and efficiencies.

Any further savings agreed through the Microsoft intervention, or as a result of the challenge process, will be included in the new agreements.

3.11 The range of functionality included in the Microsoft software will increase under the renewal. This and improvements in existing functionality will mean that some 3rd party solutions can be terminated reducing costs by £110,000 over the three year contract period. Examples of this extra and / or improved functionality are device encryption, anti-virus software and mobile device management. The extra functionality is included as standard with the licenses selected. Two Microsoft partners (Phoenix & Softcat) were used to identify and confirm the best Microsoft license option to maintain as a minimum current functionality. The M365 E3 user license bundle was identified by both partners as the core user element of the agreement. This license option when compared with a like with like license renewal will cost the council £1.5M less over the three year contract period.

Software Strategy

3.12 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.

Microsoft is the preferred operating platform of choice for the following reasons:

- It is well established in all sectors but especially strong in corporate environments and across local government. All Council partner organisations are either on premise with Microsoft or using O365 at this time. This has made convergence easier; examples being with the NHS, East Sussex Country Council and Surrey County Council.
- The vast majority Software vendors build integration with Microsoft in mind and alternative products would cause issues for a number of council services.
- A substantial vendor support ecosystem provided lots of choice of applications and people to work with (over 30,000 suppliers).
- The availability of an App Store approach which gives access to lots of developments free of charge or at low cost.

3.13 In 2015 a detailed review was undertaken to compare Microsoft with the comparative products provided by Google. The review of the market including potential alternatives is an on-going activity carried out by IT & Digital. The findings from the analysis conducted for the original business case for Microsoft O365 remain valid.

3.14 There are some key business, financial and technical reasons which currently still support the business case for remaining with Microsoft as our chosen collaboration suite partner of choice:

- Moving to Google G-Suite as an alternative to Office 365 would work out more expensive if the aim was to still maintain Microsoft Products on our laptop, desktop and server estates.
- The way in which the licensing works – not renewing the O365 licencing would mean the Council would have to licence the Office suite “on-premises” or seek alternatives (such as Open Office) which would have a significant “cost of change”, impact to productivity of our customers, and cause problems for line of business systems which exclusively integrate with Office.
- Furthermore, the licensing for each individual device (client access licence) is bundled up within the current O365 offer. Therefore, we would need either to seek to licence devices “on premise” at higher cost or consider alternative desktop operating systems such as Ubuntu or Redhat. This would present a significant cost of change and familiarisation challenge for our customers whilst severely reducing our inter-operability with the majority of the rest of the world.

3.15 In summary the decision to use Microsoft products has not changed and is compounded by the fact that any change of direction would still require a renewal with Microsoft to allow for the time required for the relevant implementations and migrations to happen. Google G-Suite does not offer certain features that our customers have come to expect such as single sign on from Outlook or via G-

Suite's web interface. To implement such functionality in a meaningful way would still involve licensing Microsoft cloud licensing in the form of Azure AD to make this work and would result in additional cost and complexity.

Key Implications

- 3.16 By awarding a contract to a Microsoft Licensing Solution Partner for the provision of Microsoft software licensing agreements - which will commence on 1 July 2019 - the Council will ensure it continues to have licences to use Microsoft software. Under this contract, the reseller is accountable for licencing advice and the proposed licence solutions recommended to the Council, and this indemnifies the Council from liability for incorrect licensing advice provided to them.
- 3.17 Performance of the reseller will be monitored and benchmarked through a series of Key Performance Indicators (KPIs) as detailed in the contract and reviewed at regular operations meetings.
- 3.18 The management responsibility for both the reseller contract and the Microsoft software licence agreements lies with IT&D Contract Managers. The contracts will be managed in line with the Contract Management Strategy and plan as laid out in the contract documentation. This also provides for fixed annual license charges at the commencement of the licence agreements, flexibility to increase and decrease license volumes annually on anniversary, and capped mark-up on any additional types of licenses that may be required.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 Extension of the current reseller contract was considered but rejected for the following reasons:
 - The extension would be for a maximum of two years, so would only provide support for the initial two year period of the new three year agreements. This would leave the council unable to purchase additional licences during the final year of the agreement, because these cannot be purchased directly with Microsoft and the contract would have expired with the reseller;
 - The pricing quoted for the new agreements, under the possible extension to the reseller contract, was reviewed and a benchmarking exercise indicated that the council could make further saving by running a competition for the provision of new Microsoft software.

4.2 Alternative frameworks were considered as potential routes to market, but were rejected because they were general software frameworks with no specific emphasis on Microsoft licensing subscription services. The Kent County Council framework contained a Microsoft specific lot which provided the council with access to a range of high level Microsoft accredited resellers and for this reason was identified as the preferred route to market. All of the resellers on the dedicated Microsoft lot have a high level of Microsoft accreditation and partnership status, which provides assurance that the resellers will secure the best pricing from Microsoft and provide a high level of experience. Full details of the Procurement process can be found in Appendix 1

5. COMMUNITY ENGAGEMENT & CONSULTATION

5.1 The community is not consulted on IT & Digital procurements. The market is engaged in line with procurement policies and procedures.

5.2 The full range of Orbis IT&D and Procurement experience has been utilised to produce the proposed approach.

6. CONCLUSION

6.1 The existing software licensing agreements with Microsoft will expire on 30 June 2019. A competitive mini-competition process in compliance with the requirements of Public Contract Regulations 2015 and the Contract Standing Orders has been completed. The recommended supplier offered overall best value for money.

6.2 The award of the new reseller contract and licensing agreements in March will enable the Council to continue to use Microsoft software under licence. By awarding the contract and committing to the new licensing agreements before 31 March 2019 the Council will avoid the October 2018 price rise and any further price rises prior to the commencement of the new agreements. This action will avoid the price rise of £35,000 per annum, £105,000 over the three year term of the new agreements.

6.3 Savings delivered by carrying out this procurement include the following:

Saving Description	Year 1	Year 2	Year 3	Total
October price rise avoidance	£35,000	£35,000	£35,000	£105,000
Termination of other products, enabled by additional functionality provided by the new licenses	£37,000	£37,000	£37,000	£111,000
Tendered price compared to pre-	£80,664	£15,664	£15,664	£111,993

tender quotes				
Total	£152,664	£87,664	£87,664	£327,993

- 6.4 The tendered pricing will not be the final contract value. The first piece of work carried out by the reseller is to review the users and licenses to identify any further savings. The reseller has identified alternative approaches to the licensing which should deliver further savings. The contract also includes annual reviews of the licensing and quantities can be reduced or increased.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The existing three year Microsoft enterprise agreement costs an estimated £0.644m per annum and has a two year extension option. However this option does not fix the price at the current rate. The proposal to enter a new three year agreement by the end of March 2019 for a June 2019 start date is expected to increase the cost to £0.907m per annum. Entering into the agreement by this date instead of waiting until June 2019 is estimated to save £0.035m per annum. The contract increase was anticipated when setting the 2019/20 budget and has been included in budget estimates.
- 7.2 There is an ongoing challenge with Microsoft over its pricing policy for the public sector; if this delivers cashable savings this will reduce the contract cost. In addition the enterprise agreement will allow certain third party software solutions to be replaced saving those contract costs. Both of these cost reducing options are not quantifiable at this stage but once they crystallise will be reflected in Targeted Budget Management (TBM) reports to this committee and in future years' budget setting proposals.

Finance Officer Consulted: James Hengeveld

Date: 22/2/2019

Legal Implications:

- 7.3 The council is a 'best value authority' by virtue of Section 1 of the Local Government Act 1999. This means the council "must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness." The proposals in this report will meet this duty through combining re-procurement activities together with Surrey County Council and East Sussex County Council.
- 7.4 A procurement of services of this value must be undertaken in accordance with the requirements of the Public Contracts Regulations 2015 ('PCRs'). The procurement route utilised was a call off against the Microsoft Lot of the KCS

National Software Products and Services Framework. Legal officers have reviewed this framework and have confirmed that it complies with the requirements of the PCRs.

- 7.5 In accordance with Part 4 of the council's Constitution, Policy, Resources & Growth Committee is the appropriate decision-making body in respect of the recommendations set out in Section 2 above. In addition, in order to comply with CSO 3.1, authority to enter into contracts in excess of £0.5 million must be obtained by the relevant Committee.

Lawyer Consulted:

Isabella Sidoli

Date: 21/02/19

Equalities Implications:

- 7.6 The Council has been mindful of its equalities duties under the Equality Act 2010 in carrying out the tender process and letting the contract with due regard to the need to eliminate discrimination in age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.7 Brighton & Hove City Council is committed to providing its services in a way, which promotes equality of opportunity at every possibility. The contract document stipulates that the reseller will comply with the relevant Equality and Diversity legislation. It is expected that the appointed suppliers will be fully committed to equality and diversity in their service provision and will ensure compliance with all anti-discrimination legislation.
- 7.8 There are no TUPE implications.

Sustainability Implications:

- 7.9 No significant implications arising from this report.

Risk and Opportunity Implications

- 7.10 The Microsoft software licensing agreements allow for decreases in licence numbers as part of an annual declaration and true-up activity, which will allow the Council to reduce licence subscriptions should the opportunity arise.
- 7.11 There is ongoing work, which will continue throughout the term of the reseller contract, looking at the licences we hold and ensuring that we have the right levels and types (including full licences and educational licences), with a view to reducing volumes and costs.
- 7.12 The proposed award is to a reseller 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. The recommended tenderer successfully completed satisfactory financial checks.

7.13 The following key risks associated with the recommendations have been identified, along with mitigation activities:

Category	Risk Description	Mitigation Activity
Financial	Additional licenses 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.

SUPPORTING DOCUMENTATION

Appendices:

1 Procurement Processes

Appendix 1 – Procurement Process

Summary of Procurement process in respect of the contract for Microsoft Enterprise Subscription Agreements

1. The existing contract for the provision of Microsoft Enterprise Subscription Agreements will expire on 30 June 2019. A mini-competition process compliant with the Public Contracts Regulations 2015 and Procurement Standing Orders has been carried out.
2. Extending the current Brighton & Hove City Council contract was initially considered, but benchmarking of the quoted renewal cost indicated that we could deliver savings through holding a further competition.
3. The following options were considered.

a. Option 1 – Run a mini-competition under the KCS Software Products and Associated Services framework for new Microsoft Enterprise Subscription Agreements

This framework has been chosen because there is a dedicated Microsoft Lot and includes our incumbent reseller and the resellers that currently deliver other contracts for the Council. All of the resellers on the dedicated Microsoft lot have a high level of Microsoft accreditations and partnership status, which provides assurance that the resellers will receive the best pricing from Microsoft and provide a high level of experience. The framework also includes the ability to carry out a direct award to our incumbent reseller, but benchmarking and supplier engagement activities indicated that savings could be achieved by carrying out a further competition. Option 1 was the preferred option.

b. Option 2 – Run a mini-competition under the an alternative framework for new Microsoft Enterprise Subscription Agreements

The use of either the Crown Commercial Service (CCS) or Health Trust Europe (HTE) frameworks were considered, but these were rejected because they did not have a dedicated Microsoft lot and the HTE framework didn't include our incumbent reseller.

c. Option 3 – Run a full EU compliant tender

This option would not deliver any additional benefits to the frameworks that were considered, but would require additional time and resource commitment. The time requirements of this approach would mean the Council would not meet the Microsoft commitment deadline of 31 March 2019.

4. In order to implement Option 1, a mini competition on the framework was published. Participation in the mini-competition procedure is accessible to all companies on the

Microsoft Lot of the KCS Software Products and Associated Services framework.

5. The tender stage commenced on 11 January 2019. By the closing date of 12:00 Midday on 31 January 2019 responses from seven (7) tenderers had been submitted.
6. The tenders were evaluated using a two stage evaluation. Stage 1 was the quality evaluation, with a minimum threshold of 70% required to progress to stage 2. Stage 2 was the price evaluation, with the lowest priced proposal identified as the preferred bidder.
7. In accordance with best practice each response to Quality/Technical questions were assessed by three (3) evaluators independently. The evaluators then met to discuss and moderate their scores in the presence of an experienced moderator.
8. Five (5) tenderers achieved the minimum 70% threshold for the Stage 1 evaluation.
9. The Evaluating Panel recommends that tenderer who submitted the lowest Stage 2 bid is appointed to the Microsoft Enterprise Subscription Agreements contract.
10. All tenderers were informed of the preliminary outcome of the procurement process and that the formal tender results are subject to approval by the Committee to award the contract.