

Report of the Applications Manager, Environment & Housing

Report to the Director of Environment & Housing

Date: 22nd April 2016

Subject: Award of a contract between Leeds City Council and Orchard Information Systems Limited

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

A decision of the Executive Board on 10 February 2016 determined that the Council should enter into interim arrangements with existing providers to facilitate the procurement of a single supplier for Housing ICT services.

These arrangements include a contract between the Council and Orchard Information Systems Limited ("Orchard") for the period from May 2016 to December 2018 (the "New Contract") on the same terms and conditions on which Orchard are currently engaged with the Council dated 26th August 2011 (the "Existing Contract").

As reported to Executive Board, the Orchard contract is over the EU threshold for service contracts (and therefore subject to the Public Contracts Regulations 2015) and would be subject to competition. It has subsequently been determined that the "Negotiated Procedure without Publication of a Notice" can be used, and therefore a further decision is required to account for specific procurement requirements relating to this procedure and the New Contract.

It should be noted that the decision to enter into the New Contract is consequential to the Key Decision made by Executive Board on 10 February 2016 to progress the Housing ICT solutions project and the decision to enter into interim arrangements with existing supplier. It is therefore a significant operational decision and does not need to appear on the List of Forthcoming Decisions.

Subject to comments in paragraph 3.14, all issues have been resolved to the satisfaction of the Housing ICT Solutions project team and PPPU (the "Project Team").

Recommendations

It is recommended that the Director of Environment & Housing:

- Notes the outcome of the meeting of the Executive Board on 10 February 2016 and the supporting information in the report to the Board
- Gives authority to use of the Negotiated Procedure without Publication of a Notice under the Public Contracts Regulations 2015 by reason of Regulation 32 (2) (b) (ii) of such Regulations in respect of the New Contract.
- Gives authority for the appointment of Orchard on the terms and conditions of the New Contract.
- Gives authority for any other necessary action to be taken to affect the New Contract.

1 Purpose of this report

1.1 The report provides a summary of issues and risks and requests Director of Environment & Housing to:

1.1.1 Give authority to use of the Negotiated Procedure without Publication of a Notice under the Public Contracts Regulations 2015 by reason of Regulation 32 (2) (b) (ii) of such Regulations in respect of the New Contract.

1.1.2 Give authority for the appointment of Orchard on the terms and conditions of the New Contract.

2 Background information

2.1 The report to Executive Board set out proposals for the undertaking of a procurement exercise for Housing ICT solutions and included details of the proposed interim arrangements to ensure continuity of provision and a smooth transition to the new arrangements.

2.2 Please refer to Agenda Item 19 of the [Public Reports Pack](#) of the Executive Board meeting of 10 February 2016 for further background on the Housing ICT solutions project.

3 Main issues

Previous Executive Board Decisions

3.1 Interim arrangements for existing contracts, including Orchard, were proposed in the report to Executive Board, and included:

- a. At paragraph 6.4: *“It is proposed to continue the current supplier arrangements by negotiation of new contracts for a period of two years from April 2016.”*; and
- b. At paragraph 6.6: *“For reasons of efficiency, it is also proposed that the terms and conditions of the existing contracts should be carried forward to the new contracts.”*

3.2 Resolution 139(b) of Executive Board as set out in the [Minutes](#) of the meeting of 10 February 2016 states *“That the proposed interim arrangements, including the waiver of*

Contract Procedure Rules 8.1 and 8.2 (in accordance with those rules) be approved, be approved, to ensure continuity of provision and a smooth transition to the new arrangements.”

- 3.3 The existing Orchard contract is due to expire in September this year. To facilitate the Housing ICT Solutions project, it has been agreed that the New Contract will be entered into with Orchard to run until December 2018 (on the same or substantially the same terms as the Existing Contract subject to amendments agreed with the support of PPU's Commercial Team). This is to allow continuation of services whilst the wider Housing ICT Solutions project takes place.

EU Procurement Considerations

- 3.4 The Orchard contract is valued at £257,420.50 per year and therefore is over the EU threshold for service contract, so it is subject to the Public Contracts Regulations 2015. In this regard it has been determined that the “Negotiated Procedure without Publication of a Notice” can be used.

- 3.5 The Negotiated Procedure without Publication of a Notice is proposed for the new Orchard contract by reason of Regulation 32 (2) (b) (ii) of the Public Contract Regulations 2015. This is on the ground that competition is absent due to technical reasons (i.e. as the support and maintenance of the Orchard Software can only be carried out by Orchard and the Council would not be able to integrate new software from any other provider into the Council's systems prior to it being replaced by the wider Housing ICT Solutions project, and the cost would be prohibitive to do so and as set further set out in paragraph 3.10 below).

- 3.6 There is a procurement risk relating to this approach as set out in paragraph 6.8 of Agenda item 19 of the Public Reports Pack which is considered to be low:

“There may be a risk of challenge from other potential providers who have not been given an opportunity to tender for this work to cover this interim period. However, given the complex technical environment in which the software applications have to work and the fact that the Council is undertaking a procurement exercise to replace the current systems, it is considered that the risk is low.”

- 3.7 The procurement risk is also considered low as it is unlikely that anyone will challenge the appointment of Orchard as alternative providers will most likely be bidding for the wider contract under procurement. It is the responsibility of the decision maker to ultimately justify the use of the procedure taking into account any associated risks.

- 3.8 Consent of the Director of Environment & Housing Environment & Housing and Chief Procurement Officer is required for use of the Negotiated Procedure without Publication of a Notice under the CPR10.2 (and as a consequence of this consent, there is no requirement to obtain a waiver of CPRs 9.1 and 9.2 in respect of the New Contract).

- 3.9 Consent of the Chief Procurement Officer is being obtained for use of the Negotiated Procedure without Publication of a Notice under the CPR10.2.

Value for Money Considerations

- 3.10 The appointment of Orchard on the terms and conditions of the New Contract is considered best value for money in light of the wider procurement of the Housing ICT Solutions as reported to Executive Board as follows:

- 6.5 *As the various housing management systems sit within a complex technical environment, it would not be possible to seek short term replacement point solutions as these could not operate on a standalone basis and it would require considerable technical work and cost to develop interfaces with a core system which is to be replaced anyway.*
- 6.6 *For reasons of efficiency, it is also proposed that the terms and conditions of the existing contracts should be carried forward to the new contracts.*
- 6.7 *There is a risk that the phased implementation of a new system due to its complexity may go beyond the planned two year period. Sufficient flexibility to extend support of the current systems beyond the phased transition period should be built into the renewed support contracts.*

- 3.11 Note that the Housing ICT Solutions procedure is considered value for money itself as set out in paragraph 7.1 of Agenda Item 19 of the Public Reports Pack of the Executive Board meeting of 10 February 2016.
- 3.12 Orchard have agreed to enter into the New Contract on the same rates and for the same contract price as the Existing Contract and has agreed not to apply indexation for the term of the New Contract. The contract price is considered to be the market rate for the current housing management solution (noting that the new Housing ICT Solutions procurement will provide us with confidence that the Council's contract for Housing Management provide the best service offering in the market place plus best value).
- 3.13 In 2011 the Council undertook a value for money assessment of the Orchard housing management solution which demonstrated that the solution was meeting best value. In addition Orchard provided a £40,000 discount of their S & M contract by including all of the Council's bespoke developments into their core solution.

Form of Terms and Conditions

- 3.14 The Contracts Procedure Rules, at CPR 3.1.15, require that all Council contracts are entered into using standard terms and conditions. However CPR 12.2 states that where the Council's terms and conditions are not suitable, other terms and conditions can be used where formally approved in writing by the PPPU/PU. PPPU will approve the terms and conditions of the New Contract for the reasons set out paragraph 6.6 of the Executive Board Public Reports Pack as set out above.
- 3.15 The New Contract will be on substantially the same conditions as the Existing Contract, and will include the following amendments.
- a. contract end date of 31 December 2018
 - b. inclusion of 2 options to extend for 6 months. A consequential amendment in Schedule 6 Appendix 2 has been made so that the time frame for utilising Service Credits has been decreased from 12 months to 6.
 - c. Schedule 2, the PSI software detail has been updated to include additional modules and the Castleton software has been included. The Castleton SLA has also been added.
 - d. The terms and conditions have been updated to reflect agreements made pursuant to Contract Change Notes previously agreed between and signed by the parties.

- e. An Exit Management Plan that Orchard has added. This is a welcome change and the details will be considered and agreed.
- f. confirmation that charges will held at present level and no indexation will be applied (other than for the PSI and Castleton sub-contracts, in respect of which Orchard will pass on increases up to 2% per annum should they be subject to the same).
- g. Orchard has confirmed that they will accept 3 months' notice period to terminate, but any un-apportioned support is non-refundable and the Council would need to provide the notice prior to the maintenance renewal date. The details of this are being considered.

The majority of these are required to reflect the agreed interim arrangements and also to document previous agreed changes in respect of the Existing Contract. The Project Team is confident that it can resolve the other issues (namely (e) to (g)) and on such resolution the terms and conditions of the New Contract will be acceptable for the interim period subject to the value for money implications of (f) above being considered by the Director.

Note that Orchard have confirmed that it has no staff that will be subject to TUPE as a result of the Housing ICT project should Orchard not be successful and the New Contract terminate.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Paragraph 7.1 of the Executive Board report set out the consultation and engagement arrangements for the project as a whole

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 There are no new ECDI implications arising from this report. An ECDI screening was undertaken in relation to the project as a whole and included in the Executive Board report in February.

4.3 Council policies and City Priorities

- 4.3.2 This project underpins the key housing priorities and supports and complies with the council's policies and ambitions relating to digital technology and an efficient and enterprising organisation.

4.4 Resources and value for money

- 4.4.1 See paragraphs 3.10 to 3.12 above.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 The New Contract has been developed in compliance with Contract Procurement Rules (CPR).
- 4.5.2 There is no requirement to obtain a waiver of CPRs 9.1 and 9.2 where the Chief Officer and the Chief Procurement Officer approves use Negotiated Procedure without Publication of a Notice under the Public Contracts Regulations 2015 as set out in CPR10.2.

- 4.5.3 This report does not contain exempt information under Access to Information.
- 4.5.4 This report is a Significant Operational Decision as it is a decision made in consequence of the Key Decision made by Executive Board on 10 February 2016 as referred to above and is not eligible for call-in.
- 4.5.5 There will be a requirement to publish a voluntary transparency notice in the Official Journal of the European Union. This will initiate a 10 day standstill period that will need to be observed before the new contract with Orchard can be entered into. After the standstill has been observed an award notice will be published under regulation 50 of the Public Contracts Regulations.

4.6 Risk Management

- 4.6.1 Please refer to paragraph 7.6 of Agenda Item 19 of the Public Reports Pack of the Executive Board meeting of 10 February 2016

5 Conclusions

- 5.1 Taking into account the above, the New Contract has been drafted and agreed with Orchard and is ready to be entered in to.

6 Recommendations

- 6.1 It is recommended that the Director of Environment & Housing Environment & Housing:
- Notes the contents of the minutes of the meeting of the Executive Board on 10 February 2016 and the supporting information in Agenda Item 19 of the Public Reports Pack.
 - Approves the use of the Negotiated Procedure without Publication of a Notice under the Public Contracts Regulations 2015 by reason of Regulation 32 (2) (b) (ii) of such Regulations in respect of the New Contract.
 - Approves the appointment of Orchard on the terms and conditions of the New Contract.
 - Gives authority for any other necessary action to be taken to affect the New Contract.

7 Background documents

- 7.1 None.