

## Approval to utilise Regulation 32 Contract 32(2)(b)(ii) of the Public Contracts Regulations 2015 to directly award a contract to Virgin Media Ltd for the provision of telephony services.

Date: 15<sup>th</sup> March 2024

Report of: User Experience Manager

Report to: Chief Digital Officer

Will the decision be open for call in?  Yes  No

Does the report contain confidential or exempt information?  Yes  No

### Brief summary

- To seek approval from the Chief Digital Officer to utilise Regulation 32 Contract 32(2)(b)(ii) of the Public Contracts Regulations (PCR) 2015 to directly award a contract to Virgin Media Limited for the provision of telephony services and allow the continuation of existing commercial arrangements with Virgin Media Limited to supply PSTN, ADSL and the C20 platform for a period of 12 months.
- A new contract is in place with Virgin Media O2 Business to supply a cloud hosted service for Teams direct routing, replacing the C20 platform. A project is underway to migrate the existing DDI numbers from the C20 platform to this new service.
- The Avaya telephony system utilised by the Contact Centre also runs on the C20 platform. This system is being replaced by Genesys, a CaaS solution provided by Virgin Media O2 Business. The Avaya system is due to be decommissioned by June 2024.
- A further project is underway to review all analogue PSTN and ADSL services in use within the Council as part of BT Openreach's analogue switch off in Leeds. This project will initiate the ceasing of analogue services provided by Virgin Media Ltd, or they will be provided by an alternative digital solution.
- As these projects progress, services provided by Virgin Media Limited will reduce, and ultimately will be provided by alternative contracts.

### Recommendations

- a) The Chief Digital Officer is recommended to approve a direct award contract to Virgin Media Limited for the provision of telephony services and continued provision of PSTN, ADSL and the C20 platform for a period of 12 months from the 1<sup>st</sup> April 2024 until 31<sup>st</sup> March 2025 utilising Regulation 32 Contract 32(2)(b)(ii) PCR 2015 with an anticipated annual total spend of £195,000 (excluding VAT).

### **What is this report about?**

- 1 The contract awarded to Virgin Media Limited for the provision of PSTN, ADSL and the C20 platform has expired.
- 2 A project is underway to review all analogue services in use within the Council as part of BT Openreach's analogue switch off in Leeds. Analogue services that are no longer required will be ceased presenting a cost saving to the Council. Required services will be migrated to an alternative digital solution.
- 3 A project is underway to migrate the DDIs on the C20 platform to a new service and contract supplied by Virgin Media O2 Business. The migration is due to be completed by June 2024.
- 4 The Avaya platform which runs on the C20 platform will be replaced by a CaaS solution.
- 5 The C20 platform will be removed from service once all telephony services have been migrated to new platforms. This is anticipated to be completed by June 2024.
- 6 The cost of this contract will be £195,000 per annum.
- 7 The justification for seeking approval to award a new contract under Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 - Use of the negotiated procedure without prior publication of a Contract Notice to Virgin Media Ltd for the provision of PSTN, ADSL and the C20 platform is that competition is absent for technical reasons, detailed in the brief summary section.

### **What impact will this proposal have?**

- 8 Due to the decommissioning of the analogue infrastructure in Leeds by 2025, PSTN and ADSL services provided by Virgin Media Limited will be ceased or migrated to an alternative digital solution. The Council has already ceased 90 lines as part of the analogue switch off project, with a further 274 lines anticipated to be ceased in May 2024.
- 9 As such the costs of PSTN and ADSL services provided by Virgin Media Limited will reduce on an ongoing basis until the project is completed.
- 10 Where possible Council services using analogue lines will be moved onto the internal Council telephone system utilising Microsoft Teams.
- 11 The DDIs on the C20 platform will be migrated to a new Cloud platform provided by Virgin Media O2 Business by June 2024.
- 12 The Avaya system which runs on the C20 platform will be replaced by an alternative CaaS solution by June 2024.

### **How does this proposal impact the three pillars of the Best City Ambition?**

Health and Wellbeing       Inclusive Growth       Zero Carbon

- 13 The award of this contract will allow the continuation of key services without disruption.
- 14 There is no climate emergency impact associated with this decision.

### **What consultation and engagement has taken place?**

Wards affected: All

Have ward members been consulted?

Yes

No

- 15 No consultation or engagement has taken place however consultation evidence is not needed to inform the decision in this report.
- 16 The Analogue Switch Off Project is engaging closely with Council services affected by the analogue switch off and working to move these onto internal telephone system utilising Microsoft Teams.
- 17 The Analogue Switch Off Project will also have to replace existing PSTN and ADSL solutions with their digital counterpart via BT to maintain ongoing Council services. These will be solutions which cannot be re-provided with an internal IDS solution but will need form part of a new contract in the future.

### **What are the resource implications?**

- 18 Continuation of the current arrangement with Virgin Media Limited will ensure no disruption to the services being provided and does not have any resource implications.
- 19 Resource has been allocated to the analogue switch off project. This project is responsible for co-ordinating the migration of services away from the analogue infrastructure.
- 20 Resource has been allocated for the move of the C20 services to the new platform. This project is responsible for co-ordinating the migration of DDI numbers to the new service provided by Virgin Media O2 Business.
- 21 Resource has been allocated for the implementation of the new Contact Centre telephony system. This project is responsible for co-ordinating the migration of DDI numbers to the new service provided by Virgin Media O2 Business.
- 22 Existing operational support processes will prevent delays in fault reporting and resolution.

### **What are the key risks and how are they being managed?**

- 23 The alternative to continuing with the current arrangements would be to undertake a procurement exercise and evaluate the provision of the required services by alternative suppliers. Given the requirement to move from analogue lines by 2025, this could potentially involve the risk of moving to a supplier which cannot provide the future services we need, or at the best value.
- 24 Moving to a different supplier would involve downtime of critical telephony services.

### **What are the legal implications?**

- 25 The decision to direct award a new contract to Virgin Media Limited for the provision of telephony services for the period 1<sup>st</sup> April 2024 to 31<sup>st</sup> March 2025 at estimated total cost of £195,000 is a Significant Operational Decision, but is not subject to call in. There are no grounds for keeping the contents of this report confidential under the Council's Access to Information Rules.
- 26 In accordance, with the Council's Contract Procedure Rules (CPR) the value of the proposed direct award is deemed to be a High Value Procurement, as it is over £100,000. CPR 9.1, states that in the absence of an internal service provider, an existing provider or relevant Third-

Party framework, then competition is required. CPR 9.2 specifies competition as obtaining at least four written tenders being invited. It should be noted that CPR 9.1 and 9.2 are subject at all times to CPR 10.2, which states:

*“Where the relevant Director in consultation with PACS agree that the negotiated procedure without publication of a contract notice applies there is no requirement to obtain a waiver of CPRs 9.1 and 9.2.”*

27 As previously stated in this report, the proposed direct contract award to Virgin Media Limited would be made by utilising the provisions of Regulation 32 PCR 2015 – Use of the negotiated procedure without prior publication. Therefore, in these circumstances, a waiver of CPR 9.1 and CPR 9.2 is not required. Importantly, where the estimated contract value exceeds the PCR 2015 relevant threshold (as would be applicable here), CPR 9.3 cannot be waived, meaning the provisions of CPR 10 in its entirety would apply, primarily that the contract would be subject to the Public Contract Regulations 2015.

28 The Council proposes that the decision to award a new contract to Virgin Media Limited for the telephony services is permitted pursuant to Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 which states:

*“32. -(1) In the specific cases and circumstances laid down in this regulation, contracting authorities may award public contracts by a negotiated procedure without prior publication.*

*(2) The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases: -*

*(b) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons: -*

*(ii) competition is absent for technical reasons, ...*

*but only, in the case of paragraph (ii) ..., where no reasonable alternative or substitute exists, and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;”*

Where, the contents of this report has set the technical reasons why competition is absent and the reasons why no reasonable alternative or substitute exists, as required by Regulation 32(2)(b)(ii) PCR 2015 that the Council would rely on to justify its decision.

29 Notwithstanding the above, there is the potential risk of challenge that there are no real reasons justifying the use of Regulation 32(2)(b)(ii) PCR 2015, and that the Council is simply seeking to circumvent the application of the rules. However, due to the reasons set out in the contents of this report the risk of such challenge is low.

30 In addition, these risks can be further mitigated by the publication of a voluntary transparency notice on Find a Tender immediately after the decision to award the contract has been taken and then waiting 10 days to see if any challenges are made. If no challenges are made the chances of a claim for ineffectiveness being brought are significantly reduced and would only be successful if the Council had used the negotiated procedure without publication of a notice incorrectly. Further, publishing such a notice will also start time running for any other potential claim for breach of the Regulations, which must be brought within 30 days of the date that an aggrieved party knew or ought to have known that a breach had occurred.

31 However, it should be noted that voluntary transparency notices themselves can be challenged. Although we have now left the European Union, the case of *Italian Interior Ministry v Fastweb SpA (Case C-19/13)* is still persuasive and highlights the limited protection that the voluntary transparency notice route can offer to contracting authorities wishing to make direct

awards without following a fully transparent process for above threshold public procurements in accordance with the Public Contracts Regulations 2015. A grey area remains around whether the protection of a voluntary transparency notice will be available where the contracting authority genuinely, but mistakenly, considers it was entitled to award the contract without notice. It shows that the safe harbour will only be 'safe' to the extent that the justification for the direct award is in itself sound and ready to stand up to the increased scrutiny that the publication of the voluntary transparency notice may well invite.

32 These comments should be noted by the Chief Digital & Information Officer and in making the final decision should be satisfied that doing so represents best value for the Council.

## **Options, timescales and measuring success**

### **What other options were considered?**

33 Leeds City Council must move away from analogue PSTN services because Openreach are turning this service off in Leeds by 2025.

34 Going out to tender was an option but this would have duplicated resources which have already been allocated to the Analogue Switch Off Project and we do not yet know what our future requirements will be from third party providers.

35 Contracts are already in place to provide Cloud telephony services to LCC via Teams, and the contact centre via a CaaS solution.

### **How will success be measured?**

36 The Analogue Switch Off Project is undertaking monthly reviews to ensure a there is a reduction in PSTN lines and work through technical solutions to support Council services with the transition.

### **What is the timetable and who will be responsible for implementation?**

37 Leeds City Council needs to have moved away from Analogue infrastructure by 2025. In the majority of cases Virgin Media provided telephone and data services will be ceased and these services moved onto internal telephone and network infrastructure or moved to a new provider.

38 The C20 SIP service is forecasted to be decommissioned by June 2024.

## **Appendices**

- None

## **Background papers**

- None