

Report of: Head of Digital Change, Resources and Housing

Report to: Director of Resources and Housing

Date: 6th December 2018

Subject: **Approval to use the Negotiated Procedure without prior publication of a contract notice to award a new contract to SAP (UK) Ltd for the Support and Maintenance of the Councils HR and Payroll System.**

Are specific electoral Wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, name(s) of Ward(s): Citywide		
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?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number: Appendix number:		

1. Summary of main issues

- 1.1 This report has been compiled to provide information to support the request to use the Negotiated Procedure without prior publication of a contract notice under Regulation 32 (2)(b)(ii) to award a new contract direct to SAP (UK) Ltd for on-going support and maintenance of the Councils HR and Payroll system.
- 1.2 SAP is one of the Councils main systems and is used to maintain HR records and pay employees in LCC, schools, academies and some affiliated external organisations. The Council's Business Support Centre (BSC) uses SAP to process over 80 monthly payrolls and maintain 40,000 employee records, which enables them to generate £1.6m income.
- 1.3 Awarding a new support and maintenance contract will ensure the Council can continue to use the SAP HR and Payroll system, which is HMRC regulations complaint, until a full review of the Council's core systems can be completed.
- 1.4 The approval to award a new contract to SAP (UK) Ltd for the Support and Maintenance of the councils HR and Payroll systems until 31st August 2021 will bring it line with other Council core system contract end dates.

2. Recommendations

- 2.1 The Director of Resources and Housing is recommended to approve the use of the Negotiated Procedure without publication of a notice under Regulation 32 (2)(b)(ii) of the Public Contracts Regulations 2015, to award a new contract to SAP (UK) Ltd for the Support and Maintenance of the Councils HR and Payroll system for the period 1st January 2019 to 31st August 2021.
- 2.2 The cost for support and maintenance is approximately £230,000 per annum.

1. Purpose of this report

- 1.1 To gain approval to use the Negotiated Procedure without publication of a notice under Regulation 32 (2) (b) of the Public Contracts Regulations 2015, to award a new contract to SAP (UK) Ltd for the Support and Maintenance of the Councils HR and Payroll system for the period 1st January 2019 to 31st August 2021 at a cost of approximately £230,000 per annum.

2. Background Information

- 2.1 The Council implemented SAP as its corporate HR and Payroll system in April 2003 following a procurement exercise and a subsequent lengthy and complex implementation project.
- 2.2 The current contract for support and maintenance of the Council's HR and Payroll system expires on 31st December 2018.
- 2.3 The Council uses SAP as its corporate HR and Payroll system to maintain HR records and pay employees in LCC, schools, academies and some affiliated external organisations. The Council's Business Support Centre (BSC) uses SAP to process over 80 monthly payrolls and maintain 40,000 employee records.
- 2.4 The decision to award a contract to SAP (UK) Ltd is taken on technical grounds, as the SAP HR and Payroll system is proprietary to SAP (UK) Ltd and as such only they are able to provide appropriate levels of support and maintenance, as well as providing on-going developments and legislative upgrades to ensure the system remains HMRC compliant.
- 2.5 SAP (UK) Ltd continue to develop the system and provide regular updates to ensure it meets all regulatory and legislative requirements.
- 2.6 The SAP system is heavily embedded within key HR and payroll business processes, is used widely across the Council and also used by a large proportion of our external customers (schools and academies), with over 9,500 active users.
- 2.7 The decision is to award a new contract to SAP.

3. Main issues and procurement options

- 3.1 The current contract for support and maintenance of the Council's SAP HR and Payroll system expires on 31st December 2018. Failure to award a new contract to SAP (UK) Ltd for support and maintenance would leave the Council without a compliant HMRC Payroll system.
- 3.2 SAP currently meets all HR and Payroll business requirements and continues to be developed to achieve efficiencies and budget savings targets.
- 3.3 Through its long and widespread use, SAP is one of the Council's core systems and is heavily embedded within key HR and Payroll business processes. To carry out a full procurement at this point in time would not represent best use of Council resource or money at this time. A change of such a key system would require an extensive procurement exercise as well as a significantly sized project team supported with external consultancy to resource and manage the implementation.

- 3.4 The SAP system is proprietary to SAP (UK) Ltd and as such only they are able to provide support, maintenance and regular updates to ensure that the system complies with all regulatory and legislative changes.
- 3.5 During the term of this contract, LCC will undertake a systems review to assess the ongoing requirements around core systems for human resourcing, payroll, performance, learning, recruitment and financial services with a view to complete a full procurement exercise by 31st August 2021.

4. Corporate Considerations

4.1 Consultation and Engagement 4.1.1 Consultation has taken place with key stakeholders across the relevant Council departments and all support the decision to award a contract to SAP (UK) Ltd for the support and maintenance of the SAP HR and Payroll system.

5. Equality and Diversity / Cohesion and Integration

5.1 An equality impact screening exercise has been undertaken (copy attached at Appendix I), which concludes there are no Equality and Diversity/ Cohesion and Integration issues associated with this decision.

6. Council Policies and the Best Council Plan

- 6.1 It is paramount that procurement within Leeds City Council is undertaken with a view to ensure openness, transparency and fairness and that contracts are awarded in line with the Council's Contract Procedure Rules and EU Public Contract Regulations.
- 6.2 This award of a contract to SAP (UK) Ltd for the support and maintenance of the Council's HR and Payroll systems will contribute to the delivery of the following Council policies and priorities:

- Spending Money Wisely

7. Resources and value for money

- 7.1 The decision to award a contract to SAP (UK) Ltd for the support and maintenance of the Council's HR and Payroll system for the period 1st January 2019 to 31st August 2021 represents best use of Council funds and resources.
- 7.2 During contract negotiations SAP (UK) Ltd have offered a 5% reduction on the current support and maintenance contract providing LCC with saving of £67,000 per annum.
- 7.3 The procurement of a new contract will be managed by the Shared Service and Housing Hub working with DIS Strategic Sourcing and a Head of Human Resources.
- 7.4 Provision has been made in the Council's revenue budget for Shared Services. The overhead of the support and maintenance fees are taken into account when calculating the charges for our external customers to ensure the income generated covers an appropriate proportion of the cost.

8. Legal Implications, Access to Information and Call In

- 8.1 The award is a Significant Operational Decision taken by the Director of Resources and Housing and is not subject to call in. There are no grounds for keeping the contents of this report confidential under the Access to Information Rules.
- 8.2 There is the potential risk of challenge that there are no real technical reasons justifying the use of the negotiated procedure without publication of a notice under Regulation 32 (2)(b)(ii) of the Public Contracts Regulations 2015, and that the Council is simply seeking to circumvent the application of the procurement rules. However, due to the reasons set out in Section 3 of this report, this risk is perceived to be low.
- 8.3 In addition, these risks can be diminished somewhat by the publication of a Voluntary Transparency Notice (VTN) in the Official Journal of the European Union (OJEU) 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.
- 8.4 However, it should be noted that Voluntary Transparency Notices themselves can be challenged. The recent case of *Italian Interior Ministry v Fastweb SpA (Case C-19/13)* highlights the limited protection that the Voluntary Transparency Notice route can offer to contracting authorities wishing to make direct awards without following an OJEU process. 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.
- 8.5 These comments should be noted by the Director of Resources and Housing and in making the final decision should be satisfied that doing so represents best value for the Council.

9. Risk Management

- 9.1 The main risk to the Council is that non-approval of the request to award a new contract for Support and Maintenance would render the Council's Payroll system as "not fit for purpose" which would result in the inaccurate salary payments of staff salaries, rendering it non-compliant with HMRC regulations.
- 9.2 The decision to award a contract to SAP (UK) Ltd remove this risk as it will ensure continued support and maintenance, enabling future upgrades to be applied to the SAP system, thereby ensuring it remains HMRC compliant until such time as a full core systems review has been carried out.
- 9.3 Failure to award a new support and maintenance contract would have a significant impact on the Council's ability to provide HR and Payroll services to staff and external customers.

9.4 Any contract risks which are highlighted during the term of the contract will be managed and mitigated through regular account management/supplier review meetings.

10. Conclusions

10.1 The current contract for the support and maintenance of the Council's SAP system expires on 31st December 2018. The SAP system is heavily embedded in the Council's HR and Payroll process and continues to meet business needs; the decision to award a new contract to SAP (UK) Ltd for the support and maintenance of the Council's HR and Payroll system until 31st August 2021 is therefore considered the most appropriate cost effective approach whilst a core systems review is being undertaken.

11. Recommendations

11.1 The Director of Resources and Housing is recommended to approve the use of the Negotiated Procedure without publication of a notice under Regulation 32 (2)(b)(ii) of the Public Contracts Regulations 2015, to award a new contract to SAP (UK) Ltd for the Support and Maintenance of the Councils HR and Payroll system for the period 1st January 2019 to 31st August 2021.

11.2 The cost for support and maintenance is approximately £230,000 per annum.

12. Background documents¹

12.1 N/A

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.