



**Report of: Senior Project Manager, Resources & Housing**

**Report to: Chief Digital & Information Officer**

**Date: 8<sup>th</sup> July 2020**

**Subject: Approval to award a contract under Regulation 32(2)(a) of the Public Contract Regulations 2015 Negotiated Procedure without prior publication of a Contract Notice for the provision of Consultancy Services for a Community Cloud IT Build Partner.**

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has consultation been carried out?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open 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: None	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**Summary of Main Issues**

1. The Council, on behalf of the multi-organisational City Digital Partnerships Team (CDPT) is working with city based Healthcare partners on a project to create and provide a common, shared cloud based ICT platform (known as the “Community Cloud”) serving public services which can potentially expand in the future to host other city-based organisations, such as third sector organisations.
2. Delivery of the Community Cloud Programme will help generate savings and economies of scale through adoption of selective citywide initiatives, as well as significant year on year Income opportunities via delivery to external organisations and Health partners.
3. To support the overall delivery of this programme, the Council has already carried out a series of procurement exercises to contract for a range of Consultancy Services. The latest of these was an Invitation to Tender (ITT) - Scheme Id: DN453700, Contract Title: ITS200031f: Community Cloud - IT Build Partner which was published in January 2020. Unfortunately, although seven (7) bids were received, none were capable of acceptance by the Council and the procurement was abandoned on 5<sup>th</sup> May 2020.
4. COVID-19 and the dramatic increase in home working is putting pressure on the Council’s IT environment which is causing issues for both staff and delivery of services to citizens. The ‘new normal’ with continued extensive homeworking has led to an urgent need to accelerate the delivery of this project and move to cloud

based services delivered off the Council network. Compliance issues will also arise if end of life technology deadlines of mid-October 2020 are not met for the migration of email services into the cloud.

5. A partner is still required to assist with the delivery of the Community Cloud IT Build to provide knowledge, expertise and additional resource capacity. Given that the Council has now spent six months implementing the solution in line with designs from the previous stage of the programme, in order to continue to make progress this report seeks approval to directly award a contract under Regulation 32(2)(a) of the Public Contract Regulations 2015 to Softcat plc for the provision of Consultancy Services for a Community Cloud IT Build Partner.

### **Best Council Plan Implications** (see the [latest version of the Best Council Plan](#))

6. The award of this contract will support and contribute to the delivery of the following Council policies and priorities:
  - Improving the city's digital infrastructure and tackling climate change risks;
  - Improving Health & Well Being through increased organisational collaboration across LCC & Health Partners and supporting self-care outcomes.

### **Resource Implications**

7. There are no resource implications associated with the award of a contract to Softcat plc for the provision of Consultancy Services for a Community Cloud IT Build Partner. The contract value is within the available monies for Community Cloud IT Build within the Essential Services Programme capital budget. The supplier will be supported by Council staff currently working in the Community Cloud Project Team to deliver the project.

### **Recommendations**

8. The Chief Digital & Information Officer is recommended to approve the direct award of a contract under Regulation 32(2)(a) of the Public Contract Regulations 2015 Negotiated Procedure without prior publication of a Contract Notice to Softcat plc for the provision of Consultancy Services for a Community Cloud IT Build Partner.
9. The recommendation is made on the grounds that no suitable tenders were submitted in response to the Councils Invitation to Tender (ITT) - Scheme Id: DN453700, Contract Title: ITS200031f: Community Cloud - IT Build Partner.
10. The contract will be awarded following the observance of a voluntary ten day standstill period and will commence on the 20<sup>th</sup> July 2020 unless the parties agree a new commencement and expiry date, but in any event the duration of the contract will be two (2) years with a maximum contract value of £450,000.00.

### **1. Purpose of this report**

- 1.1 The purpose of this report is to seek approval to directly award a contract under Regulation 32(2)(a) of the Public Contract Regulations 2015 to Softcat plc for the provision of Consultancy Services for a Community Cloud IT Build Partner. The contract will be awarded following the observance of a voluntary ten day standstill period and will commence on the 20<sup>th</sup> July 2020 unless the parties agree a new commencement and expiry date, but in any event the duration of the contract will be two (2) years with a maximum contract value of £450,000.00.

## **2. Background information**

- 2.1 The Council, on behalf of the multi-organisational City Digital Partnerships Team (CDPT), is working with city-based Healthcare partners on a project to create and provide a common, shared ICT platform serving public services which can potentially expand in the future to host other city-based organisations, such as third sector organisations.
- 2.2 The Key Decision approving details of the overall project scope and funding was approved and published on 26<sup>th</sup> March 2019 (D48535).
- 2.3 The Council is taking the lead role in creating and hosting the Community Cloud, a common shared IT platform, to provide service capability which can be reused by partners across the city. This will help to ensure best returns for all parties by establishing a set of generic 'shared service' components based on achieving business outcomes; a key driver being the opportunity to bring local authority and healthcare professionals onto a common platform, which will enable opportunities for closer collaboration and better integration of local public services.
- 2.4 The advent of COVID-19 and the move to have most people working from home has placed a major strain on the Council's existing IT infrastructure resulting in service issues for staff and the services delivered to the citizens of Leeds. The 'new normal' with continued extensive homeworking has led to an urgent need to accelerate the delivery of this project and move to cloud based services delivered off the Council network. Compliance issues will also arise if end of life technology deadlines of mid-October 2020 are not met for the migration of email services into the cloud.

## **3. Main issues**

- 3.1 The Council published an Invitation to Tender (ITT) - Scheme Id: DN453700, Contract Title: ITS200031f: Community Cloud - IT Build Partner – seeking competitive bids from suitable tenderers to carry out this work. The ITT was published on the Yorkshire & Humber procurement portal YORtender on 8<sup>th</sup> January 2020 with a closing date of 19<sup>th</sup> February 2020. The ITT was also published on the Government Contracts Finder website and advertised in the Official Journal of the European Union.
- 3.2 The ITT was conducted in accordance with both the Council's Contract Procedure Rules and the Public Contract Regulations 2015.
- 3.3 Seven (7) tenderers submitted responses to the Council's ITT. Of these, four (4) tenderers failed to meet the Council's Standard Selection Questionnaire thresholds relating to Technical and Professional Ability so were excluded from the tender process. Evaluation of the remaining three (3) tender responses found that only one (1) bid met the Council's quality requirements, however the tendered price was deemed commercially not viable as it was unaffordable. As a result, the tender exercise was abandoned on 5<sup>th</sup> May 2020.
- 3.4 To proceed with this project the Community Cloud Programme Board considered a range of options:
  - a) Do Nothing
  - b) Continue with the project using internal resources
  - c) Carry out a re-tender exercise
  - d) Direct award to a partner organisation

3.5 After discussing the various options presented, the Community Cloud Programme Board determined that options a) and b) were not viable, option c) posed serious risks to project timescales, including the replacement of components in our existing infrastructure that become unsupportable from October 2020 combined with the increased pressure our existing infrastructure has faced in recent months with the significant move to staff working from home. Option d) was, therefore, deemed to be the most practical option to move the project forward to completion. Both Microsoft and Softcat plc were considered as suitable partners; Microsoft being experts in their own technology and Softcat plc having provided the designs that were being delivered against. Softcat plc were selected as providing better value for money.

#### **4. Consequences if the proposed action is not approved**

4.1 If this contract is not awarded then the Community Cloud Programme will continue to be delivered at a slow pace as a result of internal resources having to build up knowledge over time of the new technologies and how to configure them. Awarding a contract to an appropriately skilled and suitably experienced supplier will significantly improve both the quality and timeliness of delivery.

#### **5. Advertising**

5.1 There is no requirement to advertise this opportunity as the use of Regulation 32 of the Public Contracts Regulations 2015 allows for entering into a direct contract without publication of a contract notice provided the relevant circumstances set out therein are met. The Council will publish a Voluntary Transparency Notice in OJEU and observe a voluntary ten day standstill period prior to the award of a contract.

### **6. Corporate considerations**

#### **6.1 Consultation and engagement**

6.1.1 The Community Cloud Programme Board, whose membership includes senior management from the Council's Digital and Information Service and representatives from the city partners who will utilise the shared infrastructure, have been consulted and support the decision to award a contract to Softcat plc.

#### **6.2 Equality and diversity / cohesion and integration**

6.2.1 There are no specific issues relating to equality and diversity or cohesion and integration identified through the award of this contract.

#### **6.3 Council policies and the Best Council Plan**

6.3.1 The award of this contract will support and contribute to the delivery of the following Council policies and priorities:

- Improving the city's digital infrastructure and tackling climate change risks;
- Improving Health & Well Being through increased organisational collaboration across LCC & Health Partners and supporting self-care outcomes.

- Becoming a more efficient and enterprising Council - the move to cloud based computing, accessible to staff from anywhere will improve efficiency and increase productivity.

6.3.2 The Community Cloud Programme also directly supports the shared city ambition to develop a connected digital infrastructure and tools so that professionals can seamlessly work together – leading to more efficient and effective ways of delivering cross-organisational services.

#### Climate Emergency

This report relates to the procurement of Consultancy Services to assist the Council in the delivery of the Community Cloud Programme. Its impact on climate change initiatives will be to reduce the city's carbon footprint (and therefore overall spend on electricity across the city), through the creation and utilisation of a common, shared cloud based ICT platform which will enable tenant organisations to simplify, standardise and share IT solutions, which will also support and enable more joined up working, reducing complexity and the need for individual tenant organisations to utilise their own on premise IT solutions.

It will also reduce the need for travel by providing end-users from all tenant organisations with the ability to remotely connect and access business systems and information repositories at any time, from any appropriate place.

### **6.4 Resources, procurement and value for money**

6.4.1 The Community Cloud programme is funded from the Essential Services capital programme, which is a three year rolling programme. Funding for an IT Build Partner is included for years 20/21 and 21/22 and the value of this contract is within the monies provisioned.

6.4.2 The Council will allocate DIS resources to work alongside Softcat plc to deliver the outcomes of the programme and undertake knowledge transfer so as to be able to take this work forward in future.

6.4.3 The requirements for the provision of Consultancy Services for a Community Cloud IT Build Partner have previously been tendered as an OJEU open tender opportunity in accordance with Public Contract Regulations 2015. No suitable bids were received

6.4.4 As a consequence of the above, and in accordance with Regulation 32(2)(a) of the Public Contract Regulations 2015, the council now seeks approval to directly award a contract under Regulation 32(2)(a) of the Public Contract Regulations 2015 to Softcat plc for the provision of Consultancy Services for a Community Cloud IT Build Partner.

### **6.5 Legal implications, access to information, and call-in**

6.5.1 The decision to award a contract for the provision of Consultancy Services for a Community Cloud IT Build Partner at the proposed value of £450,000.00 is a Significant Operational Decision and is not subject to call in. There are no grounds for keeping the contents of the report confidential under the Access to Information Rules.

- 6.5.2 The decision to award a contract for Consultancy Services for a Community Cloud IT Build Partner is allowed pursuant to Regulation 32(2)(a) of the Public Contract Regulations 2015 which states:
- “32(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:
- (a) where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission where it so requests;”
- 6.5.3 It is considered that the above ground is met due to the circumstances set out in section 3 of this report.
- 6.5.4 Due to the level of spend it is considered that there is the potential risk of challenge from both the organisations who submitted a tender in the previous exercise and organisations who are not able to bid for the work due to directly awarding the contract to Softcat plc without seeking competition. In addition, there is also the potential risk of challenge that there are no real technical reasons justifying the use of the Negotiated Procedure without publication of a Contract Notice in accordance with Regulation 32(2)(a) of the Public Contracts Regulations 2015, and that the Council are simply seeking to circumvent the application of the rules to award this contract directly.
- 6.5.5 However, these risks can be diminished somewhat by the publication of a Voluntary Transparency Notice in 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.
- 6.5.6 However, it should be noted that voluntary transparency notices themselves can be challenged. The 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.
- 6.5.7 There is a risk of an ombudsman investigation arising from a complaint that the Council has not followed reasonable procedures, resulting in a loss of opportunity. Obviously, the complainant would have to establish maladministration. It is not considered that such an investigation would necessarily result in a finding of maladministration however such investigations are by their nature more subjective than legal proceedings.

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

## **6.6 Risk management**

6.6.1 The risks associated with the award of a Contract to Softcat plc are detailed in 6.5 of this report.

6.6.2 There are no programme risks associated with awarding a contract to Softcat plc for the provision of Consultancy Services as the IT Build Partner for the Community Cloud Programme. Softcat plc have previously worked in partnership with the Council and have delivered design elements of the Community Cloud Programme. The decision to award a contract to Softcat will ensure that the project can be completed on time and in budget.

6.6.3 If a contract is not awarded then the Community Cloud Programme will continue to be delivered at a slower pace as internal resources build up knowledge of the new technologies and how to configure them. Using an appropriately skilled and experienced partner will significantly improve both the quality and timeliness of delivery.

6.6.4 Any risks which are highlighted during the term of the contract will be managed and mitigated by the Community Cloud Programme Manager through regular contract review meetings.

## **7. Conclusions**

7.1 The award of a contract under Regulation 32(2)(a) of the Public Contract Regulations 2015 Negotiated Procedure without prior publication of a Contract Notice to Softcat plc for Consultancy Services as the IT Build Partner for the Community Cloud Programme represents the most practical and cost effective option.

## **8. Recommendations**

8.1 The Chief Digital & Information Officer is recommended to approve the award of a contract under Regulation 32(2)(a) of the Public Contract Regulations 2015 Negotiated Procedure without prior publication of a Contract Notice to Softcat plc for the provision of Consultancy Services for a Community Cloud IT Build Partner. The contract will commence on the 20<sup>th</sup> July 2020 unless the parties agree a new commencement and expiry date, but in any event the duration of the contract will be two (2) years with a maximum contract value of £450,000.00.

## **9. Background documents<sup>1</sup>**

9.1 None

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<sup>1</sup> 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.