

Report of: Business Manager, City Development

Report to: Chief Officer Culture & Sport

Date: 13th July 2020

Subject: Approval to use Regulation 72 (1) (c) of the Public Contract Regulations 2015 to modify the Council's current contract with XN Leisure Systems Ltd for the support and maintenance of the Leisure Management System.

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

1. The Council's awarded a contract (DN202145 - LCCITS090014) to XN Leisure Systems Ltd for the provision of a Leisure Management System, including support & maintenance, for the period 1st September 2010 to 31st August 2015. The contract included options to extend by a further 5x 12 month periods. All options to extend have been taken and the contract now expires 31st August 2020.
2. To enable the Council to continue to use the Leisure Management System whilst it completes a full review of its current and future requirements and carry out a competitive procurement exercise for a replacement Leisure Management System, the current contract for support & maintenance of the Leisure Management System provided by XN Leisure Systems Ltd will require a modification to vary its end date to 31st August 2021.

Best Council Plan implications

3. The proposed variation to the contract will support and contribute to the delivery of the following Council policies and priorities:
 - Enable the Active Leeds Service to continue to support the Best Council Plan's objective of Health and Wellbeing and the aim of 'supporting healthy, physically active lifestyles;
 - The Best Council Plan has an ambition for 'Leeds to be the best city for health

- and wellbeing'. The work of the Active Leeds Service is essential to this and requires continued use of a Leisure Management System to support this ambition.
- Supporting healthy, physically active lifestyles, a Key Best City Priority in the Best Council Plan;
- Spending Money Wisely.

Resource implications

4. There are no resource implications associated with varying the end date of the current contract with XN Leisure Systems Ltd to 31st August 2021.

Recommendations

5. The Chief Officer Culture & Sport is recommended to approve the use of Regulation 72 (1) (c) of the Public Contract Regulations 2015 to modify the current contract with XN Leisure Systems Ltd for the support and maintenance of the Leisure Management System and vary the end date to 31st August 2021.
6. The decision to vary the end date of the current contract for a further 12 month period to 31st August 2021 is recommended for 2 reasons:
 - (i) on technical grounds – to ensure continued support & maintenance of the existing system. The Leisure Management System is fully embedded into the Council's systems and is proprietary to XN Leisure Systems Ltd, and as such, only they are able to provide the necessary technical support, maintenance and updates to the system.
 - (ii) to provide sufficient time for the Council to carry out a full competitive procurement exercise for a replacement Leisure Management System.
7. The annual cost for Support & Maintenance of the Leisure Management System for the period 1st October 2020 to 31st August 2021 is £39,242.18

1 Purpose of this report

- 1.1 The purpose of this report is to set out the reasons for seeking approval to use Regulation 72 (1) (c) of the Public Contract Regulations 2015 to modify the current contract with XN Leisure Systems Ltd for the support and maintenance of the Leisure Management System and vary the end date to 31st August 2021.

2 Background information

- 2.1 The Leisure Management System provided by XN Leisure Systems Ltd is a key line of business system operating in 17 sites, and is used by the Council's Active Leeds Service to manage the provision of leisure activities for citizens across the city, providing a range of functionality from point of sale through to back office functions such as reporting.
- 2.3 The Leisure Management System holds approx. 500,000 digital customer records and has approx. 350 users across the 17 sites. The system also integrates with a number of other software applications used by the Council, including direct debit payment collections, electronic payment solutions, door access control, reporting and intelligence tools and mobile fitness applications.
- 2.3 The Council is soon to commence a full procurement exercise to procure a new Leisure Management System, however, the project to procure and implement any new system will be lengthy and complex, and will require substantial resources. During this time it is important that the current Leisure Management System is supported and maintained whilst still in use.

3 Main issues

- 3.1 The Council currently has a contract with XN Leisure Systems Ltd for the Leisure Management System which expires on 31st August 2020.
- 3.2 The current Leisure Management System is 10 years old and does not now fully meet the Council's aspirations and visions for providing high quality leisure services to citizens across the city.
- 3.3 In addition to the age of the current system, a number of functional and technical issues have now been identified which necessitate the need to procure a new Leisure Management System that will meet the Council's current and future requirements.
- 3.4 To ensure continued support & maintenance of the existing Leisure Management System until such time as a new Leisure Management System is procured and implemented, it is necessary to vary the end date of the existing contract to 31st August 2021.

4 Consequences if the proposed action is not approved

- 4.1 If the proposed action to vary the end date of the current support & maintenance contract is not approved, the Council would be left without support & maintenance services for the existing system. As the Leisure Management System is a key line of business system, it is crucial to the operations of the Active Leeds Service, any issues arising through use of the system would be unsupported, which could result in significant operational disruption, customer dissatisfaction and potential loss of revenue, as well as potential reputational damage to the Council.

5 Advertising

- 5.1 This requirement has not been advertised. The Leisure Management System is proprietary to XN Leisure Systems Ltd, and as such only they can provide the necessary required levels of support and maintenance, as well as upgrades and fixes to the system.
- 5.2 The Council is currently carrying out a full review of its requirements with a view to conducting a full procurement exercise for a replacement Leisure Management system prior to the end of the contract variation period.

6 Corporate Considerations

6.1 Consultation and Engagement

- 6.1.1 Key stakeholders from the Council's Active Leeds Service, Finance team and Digital and Information Service (DIS) have been consulted and support the decision to vary the end date of the existing contract with XN Leisure Systems Ltd.
- 6.1.2 Executive member for Active Leeds is also supportive of the approach as consulted on the 5th May 2020.

6.2 Equality and Diversity / Cohesion and Integration

- 6.2.1 There are no specific Equality, Diversity, Cohesion and Integration impacts relating to this decision to vary the end date of the current contract with XN Leisure Systems Ltd.

6.3 Council Policies and City Priorities

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

- Application Rationalisation (DIS);
- Spending Money Wisely;
- The Best Council Plan has an ambition for 'Leeds to be the best city for health and wellbeing'. The work of the Active Leeds Service is essential to this and therefore the service requires an effective Leisure Management System to support this ambition.
- Supporting healthy, physically active lifestyles, a Key Best City Priority in the Best Council Plan;
- The Active Leeds Service has a strategic objective to increase digital and self-service opportunities; the functionality of the Leisure Management System will be key to the achievement of this objective.

Climate Emergency

This report relates to the provision of continued support & maintenance services for a software system, its impact on climate change initiatives is mainly through the support it gives those services using it. The system directly contributes by facilitating digital working e.g. electronic document management, on-line management of memberships and payment collections, as well as digital marketing, which removing the need for paper based systems.

6.4 Resources and Value for Money

6.4.1 As the Leisure Management System is currently in use and is fully embedded in the Council's IT infrastructure, there are no resource implications related to the decision to vary the end date of the current contract for support & maintenance.

6.4.2 The variation to the contract end date will enable the Council to carry out and complete a full review of its current and future requirements and carry out a full competitive procurement exercise for a replacement Leisure Management System.

6.4.3 The cost for varying the current contract for a further 12 month period to 31st August 2021 is £39,242.18 and represents value for money, which is also embedded already in existing revenue budgets for the service.

6.5 Legal Implications, Access to Information and Call In

6.5.1 The decision to award a contract at this value is a Significant Operational Decision 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.

6.5.2 Under the Regulations the provisions of Regulation 72 (1) (c) state that a contract can be modified when all of the following conditions are met –

“(i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;

(ii) the modification does not alter the overall nature of the contract;

(iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement”.

6.5.3 It is considered that all the above conditions are met due to the reasons set out at section 3 above. If this Regulation is used incorrectly, and it is subsequently determined that the above

conditions are not met, the Council will be open to legal challenge that it has breached the procurement rules. Further, an aggrieved contractor could potentially argue that it has missed out on a competitive opportunity and thereby seek damages for that loss of opportunity.

- 6.5.4 It is also a requirement of Regulation 72 (3) that, when using Regulation 72 (1) (c), a notice to that effect must be published in OJEU to alert the market that such a modification to the contract has taken place (or is to take place). Once the notice is published it will start time running for bringing a claim for a 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.
- 6.5.5 The above comments should be noted. In making their final decision, the Chief Officer Culture & Sport should be satisfied that the course of action chosen represents best value for the Council.

6.6 Risk Management

- 6.6.1 There are no risks associated with varying the end date of the current support & maintenance contract. The Leisure Management System is a mature system and has been used by the Council for a number of years.
- 6.6.2 Any risks which are highlighted during the term of the varied contract will be managed and mitigated through regular account management/supplier review meetings.

7 Conclusions

- 7.1 To ensure the Council has continued support & maintenance for the current Leisure Management System whilst it completes a full review of its current and future requirements and carries out a full competitive procurement exercise for a replacement Leisure Management System, the current contract for support and maintenance of the Leisure Management System provided by XN Leisure Systems Ltd must be varied in line with recommendations.

8 Recommendations

- 8.1 The Chief Officer Culture & Sport is recommended to approve the use of Regulation 72 (1) (c) of the Public Contract Regulations 2015 to modify the current contract with XN Leisure Systems Ltd for the support and maintenance of the Leisure Management System and vary the end date to 31st August 2021.

9 Background documents¹

- 9.1 None.

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.