

Report of Head of Finance (Technical)

Report to Chief Officer, Financial Services

Date: 16th February 2021

Subject: Approval to use Regulation 72 (5) of the Public Contract Regulations 2015 to vary the Council's Banking contract with National Westminster Bank Plc

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 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
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:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary

1. Main issues

- The Council's contract for the provision of Banking Services is due to expire on 31st March 2021 with no further provision to extend the contract.
- Initial meetings took place between January and March 2020 to scope out future requirements and commence a procurement exercise. The project team agreed the procurement timetable with a plan to publish the tender in May 2020.
- Due to the outbreak of the Coronavirus pandemic in March 2020 no further meetings have taken place and the project has stalled due to the significant challenges Financial Services has had to prioritise. This has been further compounded by the loss of resources as a result of the Early Leavers Initiative.
- It is therefore necessary to vary the current Banking Services contract with National Westminster Bank Plc to extend the end date of the contract by twelve months to 31st March 2022. This additional period should enable the resource situation to stabilise and will allow for a full procurement procedure to be conducted.
- In formalising this variation the Council is relying on Regulation 72 (5) of the Public Contract Regulations 2015 whereby a contract may be modified without a new procurement procedure provided that:

- the value of the modification is below both the EU threshold of £189,330 and represents no more than 10% of the initial contract value
- the modification does not alter the overall nature of the contract

The variation would represent a contract value of £140k which is approximately 10% of the overall contract value.

- This report seeks approval to vary the end date of the existing Banking Services contract with National Westminster Bank Plc for a period of 12 months.

2. Best Council Plan implications (see the [latest version of the Best Council Plan](#))

- By utilising the existing contract, the Council will be able to continue with its current banking arrangements until such time as a new contract has been awarded.

3. Resource implications

- The original project team will need to be revised as some members of the team are no longer available due to either leaving the Council or being occupied with other more pressing priorities.

Recommendations

- a) It is recommended that the Chief Officer Financial Services approves the use of Regulation 72 (5) of the Public Contract Regulations 2015 to vary the current Banking Services contract with National Westminster Bank Plc to extend the end date to 31st March 2022 with a value of £140,000 under the same terms and conditions and rates as the existing contract.

1. Purpose of this report

- 1.1 The purpose of this report is to seek approval to use Regulation 72 (5) of the Public Contract Regulations 2015 to vary the current Banking Services contract with National Westminster Bank Plc for with a contract value of £140,000 under the same terms and conditions and rates.
 - 1.1.1 This is to allow for the position with resources, notably within Financial Services, to stabilise and to allow for a full procurement procedure to be conducted, as originally planned before the Coronavirus pandemic broke out.

2. Background information

- 2.1 The contract was awarded in 2011 for an initial period of five years with provision to extend for up to five further years.
- 2.2 From April 2011 there have been separate contract awards in respect of: Lot 1 Banking Services with National Westminster Bank Plc and Lot 2 Card Payment Services (now referred to as Merchant Acquiring services) with Worldpay Ltd.
- 2.3 The Merchant Acquiring services contract has since been re-procured under a separate exercise and a new contract will commence on 1st April 2021. This contract award was subject to a separate decision taken in November 2020.

3. Main issues

- 3.1 In order to continue the use the existing contract, a variation is required under [Regulation 72 \(5\) of the Public Contracts Regulations 2015 \(Regulations\)](#) which provides for a modification to a contract originally procured in line with the Regulations to be varied by up to 10% of the initial contract value, providing the value of the modification is below the current threshold for goods/services (currently £189,330) and does not alter the overall nature of the contract.
- 3.2 The overall total contract value is £1.43m and the value of the variation period is £140k, which represents an increase in scope of the original contract value of approximately 10%
- 3.3 The variation requires approval from the Chief Officer, Financial Services.
- 3.4 If approval at 3.1 above is obtained, a Variation Agreement will then be issued to National Westminster Bank Plc to obtain their acceptance of the variation.

4. Corporate considerations

4.1 Consultation and engagement

- 4.1.1 Consultation is not required to inform the decision in this report, however, when the new procurement re-commences Heads of Finance will be consulted regarding the revised specification.

4.2 Equality and diversity / cohesion and integration

- 4.2.1 There are no specific implications in respect of equality and diversity.

4.3 Council policies and the Best Council Plan

- 4.3.1 This contract variation will allow the Council to continue to operate efficiently and make the best use of his resources whilst the new procurement gets underway.

Climate Emergency

- 4.3.2 The contractor will meet all Legislation, Guidance and Good Industry Practice in environmental management and meet the objectives of the Council's sustainability policies.
- 4.3.3 The specification requires the contractor to make optimum use of continuing technological developments in order to provide a cost effective service and minimise environmental impact. Details of developments in the banking sector/new products which would be of interest to the council are to be brought to the Council's attention by the contractor.

4.4 Resources, procurement and value for money

- 4.4.1 The contract variation is considered the best option since the current contractor, National Westminster Bank Plc, has already demonstrated value for money through the original tender exercise and as such, the immediate cost and resources required to run a further competitive exercise have been reduced.

4.4.2 Varying the existing contract period by twelve months will enable appropriate resources to be committed to the procurement once the current impact on resources (caused by the Coronavirus pandemic and the resultant loss of staff through the Early Leavers Initiative) has a chance to stabilise.

4.5 Legal implications, access to information, and call-in

4.5.1 The Chief Officer, Financial Services has the required authority to make the proposed decision under the Chief Officer Financial Services Officer Delegation Scheme.

4.5.2 This is a Significant Operational Decision and is not eligible for call in as the value of the variation is below £500k.

4.5.3 There are no grounds for keeping the contents of this report confidential under the Access to Information Rules.

4.5.4 Under the Regulations the provisions of Regulation 72 (5) states that where the value of the modification is below both of the following values:

(a) the relevant threshold mentioned in regulation 5, and

(b) 10% of the initial contract value for service and supply contracts

the variation is permitted provided that the modification does not alter the overall nature of the contract.

4.5.5 It is considered that all the above conditions are met due to the reasons set out at section 3 above. However, if this Regulation is used incorrectly, and it is subsequently determined that the above conditions are not met, the Council may 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.

4.5.6 The above comments should be noted. In making their final decision, the Chief Officer, Financial Services, should be satisfied that the course of action chosen represents best value for the Council.

4.6 Risk management

4.6.1 The contract is proactively managed and monitored regularly to ensure the benefits of the services are maximised. As already agreed at the time of award, the Contractors' performance will be continuously measured over the life of the contract.

5. Conclusions

5.1 In order to allow the continuation of vital banking services, the decision requested in this report will enable the Council sufficient time to secure the resources necessary to re-commence the procurement exercise and to award a new contract as of 1st April 2022.

5.2 By using the existing contract the Chief Officer, Financial Services will have reassurance of the process being carried out in accordance with regulations to meet statutory obligation. A variation is therefore required under [Regulation 72 \(5\) of the Public Contracts Regulations 2015](#), which provides for a modification to a contract originally procured in line with the Regulations to be varied by up to 10% of the initial contract value, providing the value of the modification is below the current

threshold for goods/services (currently £189,330) and does not alter the overall nature of the contract.

6. Recommendations

- 6.1.1 It is recommended that the Chief Officer Financial Services approves the use of Regulation 72 (5) of the Public Contract Regulations 2015 to vary the current Banking Services contract with National Westminster Bank Plc to extend the end date to 31st March 2022 with a value of £140,000 under the same terms and conditions and rates as the existing contract.

7. Background documents¹

- 7.1 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.