

**Report of: Assistant Development & Support Manager**

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

**Date: 25<sup>th</sup> March 2021**

**Subject: Approval to use Regulation 72 (1) (c) of the Public Contracts Regulations 2015 to modify the Council's current contract with ESRI UK Ltd for software licensing and support & maintenance of the Council's Geographic Information System (GIS).**

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 currently has a contract with ESRI UK Ltd (DN325981 - ITS200969) for the provision of software licensing and support & maintenance for its Geographical Information System (GIS). This contract is due to expire on 31<sup>st</sup> March 2021. There are no options to extend.
- The Council uses a number of components from the ESRI suite of products to support its Geographical Information System (GIS) strategy. It is an increasingly vital tool in socio-economic analysis, underpinning analysis and identification of key trends across the city.
- These components support a number of key solutions across the Council, for example: the Electronic Service Delivery platform, the corporate website ([www.leeds.gov.uk](http://www.leeds.gov.uk)), Development Control, Environmental Action Services, Highways Maintenance and the Local Land and Property Gazetteer.
- To enable the Council to continue to use the ESRI suite of products whilst it completes a full review of its current and future requirements and carry out a competitive procurement exercise for a replacement system, the current contract for software licensing and support & maintenance of the Council's GIS provided by ESRI UK Ltd will require a modification to vary its end date to 31<sup>st</sup> March 2022.

- The ESRI suite of products which underpins the Councils GIS is proprietary software, and as such only ESRI UK Ltd are able to provide necessary levels of software licensing and on-going support & maintenance, as well as necessary upgrades and fixes to the system. Without a contract in place, there is a significant risk of failure, which could have a detrimental effect on the availability and reliability of other key systems used across the Council. It could also lead to the Council becoming non-compliant with PSN and IG standards.

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

- The modification to the end date of the current contract for software licensing and support & maintenance of the Council's Geographic Information System (GIS) will support and contribute to the Best Council Plan:
  - By enabling the Council to continue to capture data and information, allowing it to understand the geographies of its place, its communities and its economies, and enable it to use that information to be more effective in its strategic planning, service delivery, monitoring activities and partnership working.
  - By making the best use of our resources, and in particular in relation to "Our digital capabilities."

## 3. Resource implications

- As the ESRI suite of products is currently in use and is fully embedded in the Council's IT infrastructure, there are no resource implications associated with modifying the existing contract and varying the end date to 31<sup>st</sup> March 2022.

## Recommendations

- a) The Chief Digital & Information Officer is recommended to approve the use of Regulation 72 (1) (c) of the Public Contracts Regulations to modify the current contract with ESRI UK Ltd for the software licensing and support & maintenance of the Council's GIS by varying the end date for a further 12 months to 31<sup>st</sup> March 2022 at a total cost of £99,000.00.

## 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 Contracts Regulations 2015 to modify the current contract with ESRI UK Ltd for software licensing and support & maintenance of the Council's GIS by varying the end date to 31<sup>st</sup> March 2022.

## 2. Background information

- 2.1. The Council uses a number of components from the ESRI suite of products to support its Geographical Information System (GIS) Strategy.
- 2.2. These components support a number of key solutions across the Council, for example: the Electronic Service Delivery platform, the corporate website ([www.leeds.gov.uk](http://www.leeds.gov.uk)), Development Control, Environmental Action Services, Highways Maintenance and the Local Land and Property Gazetteer.
- 2.3. The licenses to use these components were purchased on a perpetual basis, however, to ensure updates are applied so these licenses remain at the latest release version, they are underpinned by a support & maintenance contract. This support is only available from ESRI UK Ltd.
- 2.4. The current support & maintenance contract with ESRI UK Ltd expires 31<sup>st</sup> March 2021 with no options to extend.

### **3. Main issues**

- 3.1. The ESRI suite of products is fully embedded into the Council's IT infrastructure and is proprietary to ESRI UK Ltd, so only they can provide the necessary levels of on-going support & maintenance, as well as upgrades and fixes to the system.
- 3.2 The Council's current contract ends on 31<sup>st</sup> March 2021. If the contract is not varied to end 31<sup>st</sup> March 2022, then the Council will no longer receive updates, fixes and support & maintenance for its GIS system. Whilst the Council could continue to use the ESRI suite of products, without a contract in place, software licenses would not be updated to the latest versions and the Council would no longer receive technical support in the case of issues arising through its use, which could have a detrimental effect on the availability and reliability of other key systems used across the Council. It could also lead to the Council becoming non-compliant with PSN and IG standards. Furthermore, this would be off-contract spend.
- 3.3 The need for varying the end date of the current contract to provide an additional 12 months has been brought about by circumstances which the Council could not have foreseen. To carry out a full review of the Council's current and future GIS requirements and carry out a competitive procurement exercise for a replacement system will be a major undertaking and will require an extensive project team. Modifying the current contract to vary the end date of the existing contract for a period of 12 months until this exercise is completed represents best use of Council funds at this point in time. The modification will not alter the overall nature of the contract as the contract will be on the same terms, conditions and rates as the current contract.
- 3.4 The annual cost for software licensing and support & maintenance of the Council's GIS for the period 1st April 2021 to 31st March 2022 is £99,000.00. This increase in price does not exceed 50% of the value of the original contract and therefore is allowable under Regulation 72 (1) (c) of the Public Contracts Regulations.

### **4. Corporate considerations**

#### **4.1. Consultation and engagement**

- 4.1.1 Consultation has taken place with key DIS stakeholders, the DIS Strategic Sourcing team, the GIS Team Leader, Intelligence and Policy team, cross-council GIS users (via GIS Strategy Group).

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

- 4.2.1 There are no Equality and Diversity / Cohesion and Integration issues associated with the decision to modify the current contract with ESRI UK Ltd and vary the end date to 31<sup>st</sup> March 2022.

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

- 4.3.1 The Council's policy is to clearly understand the geographies of its place, its communities and its economies, and use that understanding to be more effective in its strategic planning, service delivery, monitoring activities and partnership working.
- 4.3.2 Effective use of GIS is key to this understanding, providing the intelligence that underpins the establishment and maintenance of such a wide-ranging base of knowledge. Effective use of GIS across the Council requires a cross-council approach, the recently refreshed GIS strategy looks to simplify, standardise and share a coherent approach to the future development of GIS within the council.

- 4.3.3 Web mapping enables the 'Where I Live' and 'Find My Bin Day' functionality on [www.leeds.gov.uk](http://www.leeds.gov.uk). It is also central to the running of CATs the Customer Access Transactional Services platform used in our Contact Centre and online to enable customers to report the location of graffiti, fly-tipping, potholes etc. online using a map.
- 4.3.4 Site allocations is reliant on Arc GIS On-Line tool. This was used to great effect in 2016 and is likely to be required again.

#### Climate Emergency

- 4.3.5 This report relates to licensing and support & maintenance for a software system, and as such there are no direct implications on climate emergency.

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

- 4.4.1 As the ESRI suite of products is currently in use and is fully embedded in the Council's IT infrastructure, there are no resource implications related to modifying the current contract with ESRI UK Ltd.

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

- 4.5.1 The decision to modify the contract for a period of 12 months at a total cost of £99,000.00 is a Significant Operational Decision and is not subject to call in. Although this decision does not have a financial impact greater than £100,000, it has been designated a Significant Operational Decision because it is considered appropriate to require a written record for reasons for transparency and accountability.
- 4.5.2 Provisions exist under the Public Contracts Regulations 2015 to agree a variation to an existing contract provided that the Chief Digital & Information Officer is satisfied that there are compelling reasons to do so as outlined in this report. 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.”
- 4.5.3 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 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.
- 4.5.4 It is also a requirement of Regulation 72 (3) that, when using Regulation 72 (1) (c), a notice to that effect must be published on Find a Tender 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. The service will ensure a notice to that effect will be published on Find a Tender.
- 4.5.5 Although there is no overriding legal obstacle preventing the use of Regulation 72 (1) (c), the above comments should be noted by the Chief Digital & Information Officer in making the final decision and should be satisfied that doing so represents best value for the Council.

## **4.6 Risk management**

- 4.6.1 There are minimal risks associated with varying the end date of the current contract with ESRI UK Ltd. The ESRI suite of products which forms the Council's GIS is a mature system and has been used by the Council for a number of years. Varying the end date will ensure the Council continues to receive software updates and support & maintenance until 31<sup>st</sup> March 2022.
- 4.6.2 A contract management plan will be put in place, and any risks which are highlighted during the term of the contract will be managed and mitigated through regular account management/supplier review meetings.

## **5 Conclusions**

- 5.1 There is a need to continue software licensing and support & maintenance for the Council's GIS estate to enable the Council to review its requirements with a view to carrying out a procurement exercise for a replacement system. Due to the proprietary nature of the software, software licensing and support & maintenance is only available from ESRI UK Ltd.
- 5.2 Modifying the current contract with ESRI UK Ltd for a further period of 12 months from 1<sup>st</sup> April 2021 to 31<sup>st</sup> March 2024 represents best value to the Council and will ensure continued support & maintenance of the existing GIS estate.

## **6 Recommendations**

- 6.1 The Chief Digital & Information Officer is recommended to approve the use of Regulation 72 (1) (c) of the Public Contracts Regulations to modify the current contract with ESRI UK Ltd for the software licensing and support & maintenance of the Council's GIS by varying the end date for a further 12 months to 31<sup>st</sup> March 2022 at a total cost of £99,000.00.

## **7 Background documents<sup>1</sup>**

- 7.1 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.