

# Approval to use Regulation 72(1)(b) of the Public Contracts Regulations 2015 to modify the Council's current contract with Imperial Civil Enforcement Solutions Ltd for the provision of Support & Maintenance of the Council's Parking and Bus Lane Enforcement and Permit Management IT System

Date: 18<sup>th</sup> May 2022

Report of: Parking Manager

Report to: Chief Officer Elections & Regulatory

Will the decision be open for call in?  Yes  No

Does the report contain confidential or exempt information?  Yes  No

## What is this report about?

### Including how it contributes to the city's and council's ambitions

- The Council awarded a contract (DN190532 - ITS140047) to Imperial Civil Enforcement Solutions Ltd (ICES Ltd) for the provision of a Parking and Bus Lane Enforcement and Permit Management IT System for the period 1<sup>st</sup> July 2015 to 30<sup>th</sup> June 2020 with options to extend the contract for two further periods of 12 months. Both options to extend have been taken, the contract therefore expires on 30<sup>th</sup> June 2022. The original value of the contract (including extensions) was £1,171,875.00.
- The Council is seeking to modify the end date of the contract for a further 12 months to 30<sup>th</sup> June 2023. This will give the Council time to complete its current procurement exercise and award a contract for a new system. The value of the proposed variation is £85,000.00, which equates to approx. 7% of the original contract value.
- This report is to seek approval to use Regulation 72(1)(b) of the Public Contracts Regulations (PCR) to modify the current contract to enable continued use of the Parking and Bus Lane Enforcement and Permit Management System, which has become necessary while the current procurement exercise is carried out, and a change of contractor cannot be made on technical grounds and would cause substantial duplication of costs to the Council.
- The modification to the contract contributes to the city's and council ambitions by:
  - Promoting a Sustainable Infrastructure – improving air quality, reducing pollution and noise by deterring illegal parking and tackling traffic congestion.

## Recommendations

- a) Chief Officer Elections & Regulatory is recommended to approve the use of Regulation 72(1)(b) of the PCR to modify the end date of the contract with ICES Ltd for the provision of Support & Maintenance of the Council's Parking and Bus Lane Enforcement and Permit Management IT System.
- b) Modifying the end date of the contract for a further 12 months to 30<sup>th</sup> June 2023 will incur a cost of £85,000.00.

## Why is the proposal being put forward?

1. The Parking and Bus Lane Enforcement and Permit Management System is used by the Council's Parking Services. The system is a complete end to end parking services solution, and comprises both hardware and software, including handheld units, bus lane cameras, a permit system and a back-office system. All administration relating to Parking Services is carried out using this system.
2. The Parking and Bus Lane Enforcement and Permit Management System has performed well over the life of the contract, with minimal downtime.
3. The system is proprietary to ICES Ltd and as such only they are able to provide appropriate levels of support and maintenance, upgrades and fixes to the system. A change of supplier for only 12 months would not be practicable and would involve substantial duplication of costs to the Council.
4. The Council is currently undertaking a procurement exercise for a new system. A modification to the end date of the current contract will allow time for this exercise to be completed and for the new system to be implemented.

## What impact will this proposal have?

<b>Wards Affected: N/A</b>		
Have ward members been consulted?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

5. No wards will be affected by this proposal.

## What consultation and engagement has taken place?

6. Consultation has taken place with key stakeholders across the Council with regards to continued use of the current Parking and Bus Lane Enforcement and Permit Management IT System. The Council's Integrated Digital Service and Procurement and Commercial Services have also been consulted and support the recommendation to modify the current contract with ICES Ltd.

## What are the resource implications?

7. There are no resource implications associated with modifying the current contract with ICES Ltd for the provision of Support & Maintenance of the Council's Parking and Bus Lane Enforcement and Permit Management IT System as it is only a continuation of existing services.

## What are the legal implications?

8. The decision to modify the contract with ICES Ltd at a total cost of £85,000.00 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.
9. Provisions exist under the PCR to permit a modification to an existing contract without a new procurement provided that the Chief Officer Elections & Regulatory is satisfied that there are compelling reasons to do so as outlined in this report. Regulation 72(1)(b) states that a contract can be modified when all of the following conditions are met –  
*72(1) Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part in any of the following cases:—*
  - (b) for additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor –*
    - (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement; or*
    - (ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority,*

*provided that any increase in price does not exceed 50% of the value of the original contract.*
10. It is considered that all the above conditions are met for the following reasons:
  - (a) the additional services “have become necessary” to ensure a continuation of existing services while the Council is undertaking a procurement exercise for a new system and a change of supplier would not be practicable for the economic, technical and interoperability reasons set out in paras 1-4 above;
  - (b) the additional 12 months is to allow the Council time to complete a procurement exercise for a new system and implement a new system. To re-procure with a new contractor for only 12 months instead of waiting for the current procurement exercise to be finalised will result in substantial duplication of costs for the Council; and
  - (c) the value of the proposed variation is £85,000.00, which equates to approx. 7% of the original contract value. Taking these figures into account, the modification of the contract by the addition of 12 months does not exceed 50% of the initial contract value.
11. However, if Regulation 72(1)(b) 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. These risks are considered low for the reasons stated in this report.
12. When contracts are varied on reliance on Regulation 72(1)(b), it is a requirement to submit a modification notice to Find a Tender (FTS) to alert the market that a modification to the contract has taken place (or is to take place). Once the notice is published on FTS it will start time running for bringing a claim for a breach of the PCR, 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 modification notice to that effect will be published.

13. Although there is no overriding legal obstacle preventing the use of Regulation 72(1)(b), the above comments should be noted by the Chief Officer Elections & Regulatory in making the final decision and should be satisfied that doing so represents best value for the council.

### **What are the key risks and how are they being managed?**

14. There are minimal risks associated with modifying the end date of the current contract with ICES Ltd as it is a continuation of existing services which have been used by the Council for several years.
15. The decision to modify the end date of the current contract for a further 12 months to 30<sup>th</sup> June 2023 will ensure that the Council can continue to use its current Parking and Bus Lane Enforcement and Permit Management IT System until such time as the current procurement exercise is completed and a contract is awarded for a new system.
16. If the contract is not modified, the Council would no longer be able to use the Parking and Bus Lane Enforcement and Permit Management IT System, which would have significant operational impact on the Council's ability to administer and issue parking penalties and permits efficiently and in line with legal requirements.
17. Any risks which are highlighted during the remaining term of the contract will be managed and mitigated through regular account management/supplier review meetings.

### **Does this proposal support the council's 3 Key Pillars?**

- Inclusive Growth       Health and Wellbeing       Climate Emergency

18. 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.

### **Options, timescales and measuring success**

#### **a) What other options were considered?**

17. No other options were considered. Modifying the end date of the current contract with ICES Ltd will enable the Council to carry out and complete its procurement exercise and award a contract for the provision of a new Parking and Bus Lane Enforcement and Permit Management IT System.
18. If the end date of the current contract with ICES Ltd is not modified, then the Council would be left without an effective means of managing parking services. Whilst the Council could continue to use the current system, it would no longer receive support, upgrades or fixes from ICES Ltd in the event of any operational problems and it would be off contract spend.

#### **b) How will success be measured**

19. Success will be measured by the Council ability to continue to administer and issue parking penalties and permits efficiently and in line with legal requirements.

#### **c) What is the timetable for implementation?**

20. Approval is being sought to modify the current contract with ICES Ltd for Support & Maintenance of the Council's current Parking and Bus Lane Enforcement and Permit Management IT System before the current contract expires on 30th June 2022.

### **Appendices**

21. None

### **Background documents**

22. None.