

**Approval to award a new contract under Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 - Use of the negotiated procedure without prior publication - for the Support and Maintenance of the Council's SAP HR and Payroll system.**

Date: 12<sup>th</sup> December 2022

Report of: Principal Engineer, Shared Services

Report to: Chief Digital and Information Officer

Will the decision be open for call in?  Yes  No

Does the report contain confidential or exempt information?  Yes  No

### **Brief summary**

Approval to award a new contract under Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 - Use of the negotiated procedure without prior publication - for the Support and Maintenance of the Council's SAP HR and Payroll system.

### **Recommendations**

- a) The Chief Digital and Information Officer is recommended to approve the award of the new contract under Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 - Use of the negotiated procedure without prior publication of a Contract Notice to SAP (UK) Ltd for the Support and Maintenance of the SAP HR and Payroll system, for the period 1<sup>st</sup> January 2023 to 31<sup>st</sup> December 2023 at a cost of £259,510.26. The new contract has an increase of 3.3% RPI on last year's cost of £251,220.00. Total cost for 01<sup>st</sup> January 2023 to 31<sup>st</sup> December 2023 is now a total of £259,510.26.

## What is this report about?

- The Council's Business Support Centre (BSC) uses the SAP HR and Payroll system to maintain staff HR records and to manage and make payments in the region of £48m per month to approx. 34,000 Council employees, including schools, academies, and some affiliated external organisations.
- The Council's current Support and Maintenance contract (49074 – ITS190118) for SAP HR and Payroll system with SAP (UK) Ltd has been in place since 1<sup>st</sup> January 2022 and expires on 31<sup>st</sup> December 2022 with no options to extend, hence the need to award a new contract with the current provider.
- The new contract has an increase of 3.3% RPI on last year's cost of £251,220.00. Total cost for 01<sup>st</sup> January 2023 to 31<sup>st</sup> December 2023 is now a total of £259,510.26.
- The Council is currently undertaking a full review of its core systems, including its HR and Payroll requirements, with a view to carrying out a procurement exercise for a new fully integrated system.
- Awarding a new Support and Maintenance contract for the period 1<sup>st</sup> January 2023 to 31<sup>st</sup> December 2023 will ensure the Council can continue to use the SAP HR and Payroll system during the review period.
- The justification for seeking approval to award a new contract under Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 - Use of the negotiated procedure without prior publication of a Contract Notice to SAP (UK) Ltd for the Support and Maintenance of the SAP HR and Payroll system is that the system is proprietary to SAP (UK) Ltd and as such only they are able to provide appropriate levels of support and maintenance, as well as providing on-going developments and legislative updates to ensure the system remains HMRC compliant.
- The award of the contract for Support and Maintenance for the SAP HR and Payroll system contract will support and contribute to the Best Council Plan by underpinning Our People Strategy 2020 - 2025:
  - Spending money wisely.
  - Working as a Team for Leeds.
  - Enabling the Best Employee Experience.
  - Strengthening Our Culture and Values by:
    - Enhancing our workforce information and analytics to aid decision making.
    - Supporting our health and wellbeing programmes.
    - Facilitating the payment of the living wage and management of a fair and sustainable pay structure.

### What impact will this proposal have?

- 1 No wards will be impacted by this proposal

### How does this proposal impact the three pillars of the Best City Ambition?

Health and Wellbeing

Inclusive Growth

Zero Carbon

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### What consultation and engagement has taken place?

Wards affected: N/A

Have ward members been consulted?

Yes

No

- 3 Consultation was undertaken at the time of the original key decision to purchase the software.
- 4 The Council is currently undertaking a full core system review which will lead to the procurement and implementation of a fully integrated core solution, which will include HR and Payroll functionality.

### What are the resource implications?

- 5 There are no resource implications associated with the award of a new contract for Support and Maintenance for the SAP HR and Payroll system as it is only a continuation of existing support and maintenance services.

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

- 6 There are minimal risks associated with awarding a new contract to SAP (UK) Ltd for the Support and Maintenance of the SAP HR and Payroll system as it is only a continuation of existing support and maintenance services and has been used by the Council for a number of years. Procurement challenge risk is being managed in accordance with paragraph 10 of this report.
- 7 The decision to award a new contract will ensure that the Council will continue to receive support & maintenance services, as well as receiving on-going developments and legislative updates to ensure the system remains HMRC compliant during the core system review period.
- 8 If a new contract is not awarded, the Council would no longer receive legislative updates, which would render the SAP HR and Payroll system unusable as it would be non-compliant with HMRC regulations.
- 9 Any risks which are highlighted during the term of the new contract will be managed and mitigated through regular account management/supplier review meetings.

## What are the legal implications?

- 10 The decision to award a new contract for the Support & Maintenance of the SAP HR and Payroll system for the period 1<sup>st</sup> January 2023 to 31<sup>st</sup> December 2023 at a cost of £259,510.26 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 Council's Access to Information Rules.
- 11 The Council believes that the decision to award a new contract to SAP (UK) Ltd for the Support and Maintenance of the SAP HR and Payroll system is permitted pursuant to Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 which states:
- "32. -(1) In the specific cases and circumstances laid down in this regulation, contracting authorities may award public contracts by a negotiated procedure without prior publication.*
- (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: -*
- (b) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons: -*
- (ii) competition is absent for technical reasons, ...*
- but only, in the case of paragraph (ii)..., where no reasonable alternative or substitute exists, and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;"*
- Paragraph 2 of this report sets out the technical reasons why competition is absent and the reasons why no reasonable alternative or substitute exists, as required by Regulation 32(2)(b)(ii) that the Council would rely on to justify its decision.
- 12 Notwithstanding the above, there is the potential risk of challenge that there are no real reasons justifying the use of Regulation 32(2)(b)(ii), and that the Council is simply seeking to circumvent the application of the rules. However, due to the reasons set out in paragraph 2 of this report the risk of such challenge is low.
- 13 In addition, these risks can be further mitigated by the publication of a voluntary transparency notice on Find a Tender 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.
- 14 However, it should be noted that voluntary transparency notices themselves can be challenged. Although we have now left the European Union, the case of *Italian Interior Ministry v Fastweb SpA (Case C-19/13)* is still persuasive and highlights the limited protection that the voluntary transparency notice route can offer to contracting authorities wishing to make direct awards without following a fully transparent process for above threshold public procurements in accordance with the Public Contracts Regulations 2015. 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.
- 15 These comments should be noted by the Chief Digital & Information Officer and in making the final decision should be satisfied that doing so represents best value for the Council.

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

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

16 No other options have been considered at this time. The Council is currently undertaking a full review of its core systems, including its HR and Payroll system requirements, with a view to carrying out a procurement exercise for a new fully integrated system. To carry out a separate procurement exercise for a replacement HR and Payroll system at this point in time would not be practical or best use of Council resources or funds.

### **How will success be measured?**

17 Success will be measured by the Council's ability to continue to maintain and deliver key HR and Payroll services.

### **What is the timetable and who will be responsible for implementation?**

18 The new contract for the Support and Maintenance of SAP HR and Payroll system will be awarded as soon as is practicable and allowable after approval by Chief Digital and Information Officer, with a commencement date of 1<sup>st</sup> January 2023.

### **Appendices**

- None

### **Background papers**

- None