

Approval to use Regulation 72 (1) (b) of the Public Contract Regulations 2015 to vary the Council's Banking contract with National Westminster Bank Plc

Date: 14th February 2024

Report of: Senior Financial Manager

Report to: Chief Officer, Financial Service

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Brief summary

The purpose of this report is to seek approval to use Regulation 72 (1) (b) of the Public Contract Regulations 2015 (Regulations) to vary the current Banking Services contract with National Westminster Bank Plc with a contract value of £240,000 under the same terms and conditions but with an increase of rates for a period of twenty-four months from 1st April 2024.

Recommendations

- a) It is recommended that the Chief Officer Financial Services approves the use of Regulation 72 (1) (b) of the Public Contract Regulations 2015 to vary the current Banking Services contract with National Westminster Bank Plc to vary the end date to 31st March 2026 with a value of £240,000 under the same terms and conditions and as the existing contract but with an increase in rates as per the attached Appendix 1.

What is this report about?

- 1 The Council's contract for the provision of Banking Services was initially extended in February 2021 for 12 months and subsequently modified in March 2022 for twenty-four months with no further provision to extend the contract. There have been delays to the implementation of the North East Procurement Organisation (NEPO) framework contract for banking services which have caused delays to the Council's banking services procurement as it is our intention to utilise this procurement route.

- 2 A change of provider would require significant amendments to this system and many other council financial systems. Currently, finance and IDS officer resources are deployed to the forthcoming implementation of a new financial system and given the financial challenges faced by the Council the scope for availability of further resources is severely constrained. There are a number of interdependences between the banking services provision and the new financial ledger which still require fully specifying and testing. To change provider at this stage, simultaneously with the implementation of the new financial ledger, would be uneconomical and technically unviable.

What impact will this proposal have?

- 3 This report seeks approval to vary the end date of the existing Banking Services contract with National Westminster Bank Plc for a further period of twenty-four months with an end date of 31/03/2024 at a cost of £240,000 which equates to 17% of the original contract value which was c£1.4m. The revised schedule of rates attached in appendix 1 will increase costs by an estimated £19,976 at current volumes over the two years (£6,740 in the first year and a further £6,500 in the second year). This uplift has been built into the revenue budget for 24/25 to be agreed at the Council meeting in February.
- 4 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.

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

Health and Wellbeing Inclusive Growth Zero Carbon

- 5 The proposals will support the delivery of outcomes across all three pillars.
- 6 The contractor will meet all Legislation, Guidance and Good Industry Practice in environmental management and meet the objectives of the Council's sustainability policies.
- 7 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.

What consultation and engagement has taken place?

Wards affected:

Have ward members been consulted? Yes No

- 8 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.

What are the resource implications?

- 9 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.

- 10 Varying the existing contract period by twenty-four months will enable appropriate resources to be committed to the procurement. It is also anticipated that the NEPO framework contract for banking services would be in place within this timescale and would provide a value for money, efficient and effective procurement route.

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

- 11 The risk of an aggrieved contractor challenging a missed opportunity to tender is mitigated to a degree by the intention to subject this contract to competitive tender once the NEPO framework for Banking Services has been established. It is anticipated that the competitive tender exercise under this framework will commence early 2025, to award a new contract by 1st April 2026. The system and process requirements of the contract will also be more defined due to the implementation of the new Council financial ledger. This will enable the tender specification to be more relevant and current which is not possible at this point in time.
- 12 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 Contractor's performance will be continuously measured over the life of the contract.
- 13 It is essential that a banking service is maintained to ensure that the Council continue to meet its financial commitments.

What are the legal implications?

- 14 The Chief Officer, Financial Services has the required authority to make the proposed decision under the Director of Strategy and Resources sub-delegation scheme.
- 15 This is a Significant Operational Decision and is not eligible for call in as the value of the variation is below £500k.
- 16 There are no grounds for keeping the contents of this report confidential under the Access to Information Rules.
- 17 Under the Regulations the provisions of Regulation 72 (1) ((b) a contract may be modified without a new procurement procedure where additional services by the original contractor have become necessary and were not included in the original procurement, where a change of contractor:
 - (i) cannot be made for economic, technical reasons; and
 - (ii) would cause significant inconvenience or substantial duplication of costs for the Council, provided that any increase in price does not exceed 50% of the value of the original contract.
- 18 It is considered that all the above conditions are met due to the reasons set out at paragraph 2 and 3 above. However, if Regulation 72 (1) (b) 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.
- 19 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.

Options, timescales and measuring success

What other options were considered?

20 Do nothing is not an option as the Council will not be able to meet its financial commitments. Varying that contract by a further 24 months will enable the council to undertake a full banking procurement exercise and award a contract on a longer-term basis.

How will success be measured?

21 Success will be measured by

- Banking arrangements maintained
- New banking contract awarded to commence by 1/04/2026.

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

22 01/04/2024. Robin Thornton with the support of Procurement and Commercial Services.

Appendices

- Appendix 1

Background papers

- none