

Legal Comments - Contract for supply of support and licences existing NEC Housing System software
- Direct award to NEC Software Solutions UK Ltd.

Having obtained Spend Control Board approval (reference 7448) for the amount in question from the ringfenced Housing Revenue Account and having confirmed the proposed expenditure comprises eligible expenditure, officers are recommending spend on the direct award of a contract under the CCS (Crown Commercial Services) Vertical Applications Solutions framework agreement RM6259 - Lot 3 (the Framework).

The Council is permitted to call off services from suitable existing framework agreements provided the framework agreement is current, it is in scope of the Council's requirements and the Council is identified as being entitled to call off from it in the contract notice. The Framework satisfies these criteria.

Moreover, the Framework permits contracts to be called off by means of direct award (without the need to run a further competition) provided the award would be low value; urgency requirements are satisfied, and it would be appropriate considering value for money, timescales, complexity and whether other suppliers could meet the needs. In this instance, it is understood from officers that the requirement is of a suitable value, intrinsically linked to a system already within the customer's organisation and the product(s) they are looking to award are present on the Government eMarketplace and could be provided within the timescale required in a cost-effective manner. NEC Software Solutions UK Ltd are a named provider of the relevant services on the Framework lot.

The systems, services and licences required would allow Housing Services not only to continue to use existing key operational system without disruption, but also to continue the programme of work to further enhance the functionality provided to the business users and would be the most cost-effective solution at this juncture. Consequently, the recommended award would comply with the requirements of Regulation 33 of the Public Contract Regulations 2015 and it would therefore be lawful to approve the contract award subject to the officers ensuring, the award is made on a transparent and objective basis and that suppliers are treated equally and without discrimination. The Council and the supplier are expected to be transparent and must collate and retain adequate evidence and justification for audit purposes for the use of the direct award process. Buyers must not artificially narrow or sway competition. This will minimise the risk of challenge and the likelihood of success if a challenge is made, arising from the fact that a call for competition has not been undertaken. Officers are advised to follow the associated Buyers Guide for the Framework outlining the direct award process which must be complied with, including relevant notification requirements.

The requirement of the Council's Contract Procedure Rules must also be met prior to award of the contract. At the value concerned CPR rule 18.65 is satisfied and exemption from the usual expectation to obtain at least 3 tenders in writing is permissible given the legally accessible nature of the Framework in question. Once awarded and completed, the details of the contract must be entered onto the Council's Contract register and officer with management responsibility for the Contract should ensure this is achieved by liaising with the Legal Service Contracts and Commercial Team. It must also be advertised in accordance with the relevant transparency requirements.

The Council's Best Value duty dictates that the Council considers carefully the rationale for a direct award and the reasonableness of length of the contract award in satisfying that duty. In determining the proposed contract length officers should be cognisant of the desire to amalgamate similar services under one umbrella contract where possible to deliver improved value, and the time a full review and test of the market would take in practice to ensure future best value for the council in a

re-tender- repeated direct awards of short-term extensions are unlikely to be justifiable under the Framework. It is understood officers intend to benchmark and test the market within the next 12 months. Officers must ensure there is no artificial narrowing of competition and that economic operators are treated equally and without discrimination. Open competition would help the Council continue to demonstrate it is acting in a transparent and proportionate manner in securing the provision of the required services going forward.

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