

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Policy and Resources Cabinet Board

21st September 2016

Report of the Head of ICT and Corporate Procurement - Stephen John

Section A - Matter for Decision

Wards Affected: All

Extension of the Framework Agreement for the Provision of Multifunctional Devices and Services

Purpose of the Report

1. To seek approval to extend the current Framework Agreement for the provision of multifunctional devices and services (the "Framework") to ensure continuity of supply of the provision of multifunctional devices and services and to allow for the procurement and implementation of a new framework for the provision of multifunctional devices and services (the "Service").

Executive Summary

2. The report seeks authorisation to exclude the requirements of competition, to suspend Rule 2.1 of the Council's Contracts Procedure Rules ("CPRs") and to extend the Framework Agreement.

Background

3. The Framework is a call-off from the Crown Commercial Service Framework for Multifunctional Devices and Services Managed Print Services and Print Audit Services (the "CCS Framework").
4. The Framework commenced on the 1st November 2012 for a period of three years with an option to extend for a further year, such option having been implemented.
5. The due date for the end of the Framework is 31st October 2016.
6. Canon (UK) Limited (the "Framework supplier") is the sole supplier appointed to the Framework.
7. It was anticipated that the Crown Commercial Service (the "CCS") would have their replacement Framework (the "proposed CCS framework") in place upon expiry of the CCS Framework on 31st August 2016.
8. However, at the present time the expected commencement date of the proposed CCS framework is 26th October 2016, which would not allow enough time to award a call-off framework prior to expiry of the Framework.
9. The National Procurement Service (the "NPS") have included the Service in its pipeline for an All Wales Framework (the "proposed NPS Framework" but the commencement date is not expected until January 2017.
10. Therefore continuity of the provision of the Service is at risk.
11. For the reasons set out below, in order to ensure continuity of supply of the Service, it is necessary to extend the Framework for a period of 6 months from the Framework end date, including an option to extend up to a maximum period of an additional 6 months.
12. The reasons:
 - 12.1 The continuity for the provision of multifunctional devices and services is at risk between the end of the Framework and the commencement date of the proposed CCS Framework.

12.2 Following the award of the proposed CCS Framework and the proposed NPS Framework, time will need to be allowed to undertake potential mini competitions under one of the proposed Frameworks.

12.3 It will be necessary to allow sufficient time for the implementation of a new Framework.

Financial Impact

13. The costs for an extended 6 month period of the Framework are estimated to be in the sum of £135,000.

14. The Council will continue to pay the Framework supplier in accordance with the conditions of contract under the Framework which provides greater certainty of price.

Equality Impact Assessment

15. An Equality Impact Screening Assessment has been undertaken to assist the Council in discharging its Public Sector Equality Duty under the Equality Act 2010. After completing the initial screening assessment it has been determined that this proposal does not require an Equality Impact Assessment.

Workforce Impacts

16. Continuity of the Service is critical to ensure the efficient management and provision of service of all Council service users in relation to the Service.

Legal Impacts

17. From the information set out above the estimated cost of the purchase of the Service will be as follows:

17.1 for the initial period of 6 months: £135,000

17.2 if the option to extend up to a maximum period of a further 6 months is implemented: £270,000

18. Consideration therefore must be given to the requirements of the Public Contract Regulations 2015, which requires that contracts over the value of £164,176 for this particular type of service should be tendered competitively in the Official Journal of the European Union.

19. Rule 33(3) of the Public Contract Regulations 2015 states that term of a framework agreement shall not usually exceed 4 years.

20. Members should note therefore that that these agreements are being entered into without a procurement exercise being undertaken and attention is drawn to the risks of the process of entering into these agreements with no competitive process.

21. Failure to comply with these rules may lead to a claim and the agreement being rendered ineffective by the Courts. Advice from the Cabinet Office is that “the impacts of a successful ineffectiveness claim are clearly very high”. This could involve both the cancellation of current contractual arrangements and/or the threat of a financial penalty determined by the Courts.

22. However, it would be contended that the risk of challenge is somewhat limited here as it is the Council’s intention to utilise the proposed CCS Framework or the proposed NPS Framework for the eventual appointment of a service provider and this exercise will be undertaken at the same time as the extension is to be put in place.

23. In addition, the Council must ensure that suitable contractual arrangements can be put in place for the provision of the Services without delay and to ensure continuity is not disrupted for the Councils’ service users currently using the present Supplier.

24. In addition, the Council must comply with our own internal CPRs which provide that the Council will, whenever possible put a contract of this value out to open tender.

25. Rule 2.1 of the CPRs provides that where the value of the contract is over £50,000 tenders shall be invited using whichever of the tender procedures referenced is deemed appropriate. As part of the Recommendations, an exclusion of the CPRs will be sought.

Risk Management

26. This Report seeks to minimise the risk to the Council by ensuring continuity of the Service pending the Council undertaking a new procurement exercise either through the proposed CCS Framework or the proposed NPS Framework to secure a new Framework for the Service.

Consultation

27. There is no requirement under the Constitution for external consultation on this item.

Recommendations

It is recommended that:

28. That the requirements of competition are excluded and Rule 2.1 of the CPRs is suspended.

29. It is recommended that the Framework is extended for a period of 6 months including an option to extend up to a maximum of a further 6 months to utilise either the proposed CCS Framework or the proposed NPS Framework for the eventual appointment of a contractor or alternatively run its own competitive tender exercise and either of these exercises will be undertaken at the same time as the extension is to be put in place.

Reasons for Proposed Decision

30. To ensure continuity of the provision of the Service pending the implementation of a new Framework.

Implementation of Decision

31. It is proposed for the three day call in period to apply.

Appendices

32. N/A.

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