

Exemption from Tender - IT Licence, Subscription, Maintenance and Support Contracts

File No: S064539

Summary

The City uses a broad range of IT applications, platforms and appliances that are critical to the delivery of its business functions. These products perform within an ecosystem of interrelated platforms that are managed via the City's strategy for core systems and digitalisation as set out in the operating plan.

Each application, platform or appliance may have multiple integration points with other systems and inter-dependencies as part of the City's IT architecture. As such, in most cases, these systems cannot simply be swapped for alternative products. Instead, they can be upgraded and/or replaced via planned work over a rolling 5-year horizon.

To support this planned approach and to maintain business continuity, it is essential to continue the subscription, licencing, maintenance and support arrangements with specific suppliers in line with the product management cycle.

Most of these applications have subscription, licencing, maintenance and support contracts in place that were established with suppliers at the time the products were procured and have been updated as required since.

This report recommends that Council grant an exemption from tender for the IT maintenance, support, subscription and licencing of the software applications, platforms and hardware appliances' agreements for the products or with the suppliers and for the periods listed in Confidential Attachment A.

The reasons for the recommended exemptions include:

- only one supplier can provide the goods or services
- transitioning to a new solution or replacing an existing asset will result in substantial implementation costs
- upgrades or changes to service requirements are planned to be implemented within the next 5 years and
- the current supplier has specialised knowledge of the City's needs, and their continued engagement will deliver value for money.

The estimated total contract value with each supplier listed in Confidential Attachment A is anticipated to exceed \$250,000 (including GST). The detailed reasons supporting each exemption from the tender request are outlined in Confidential Attachment A.

The requirement to invite tenders in section 55(1) of the Local Government Act 1993 does not apply to those contracts if Council decides by resolution that, because of the extenuating circumstances, as listed in Attachment A, a satisfactory result would not be achieved by inviting tenders (section 55(3)(i) of the Local Government Act 1993).

Recommendation

It is resolved that:

- (A) Council approve an exemption from tender in accordance with section 55(3)(i) of the Local Government Act 1993 for the provision of the maintenance, support, subscription and licencing of the software applications, platforms and hardware appliances for the extension and (if appropriate) option period listed in Confidential Attachment A to the subject report, noting that because of extenuating circumstances, a satisfactory result would not be achieved by inviting tenders;
- (B) Council note the reasons why a satisfactory outcome would not be achieved by inviting tenders differ for each application, platform or appliance and include:
 - (i) only one supplier can provide the goods or services;
 - (ii) transitioning to a new solution or replacing an existing asset will result in substantial implementation costs;
 - (iii) upgrades or changes to service requirements are planned to be implemented within the next 5 years; and
 - (iv) the current supplier has specialised knowledge of the City's needs, and their continued engagement will deliver value for money;
- (C) Council note that the detailed reasons as to why a satisfactory result will not be achieved by inviting tenders are outlined further in Confidential Attachment A to the subject report;
- (D) Council enter into the subscription, licencing, maintenance and support agreements for the relevant products or with the relevant suppliers upon the expiry of the current agreements for the respective extension period along with the optional extension, if appropriate, as listed in Confidential Attachment A to the subject report;
- (E) Council note the value for each product or supplier for the extension period and optional extension is noted in Confidential Attachment A to the subject report; and
- (F) authority be delegated to the Chief Executive Officer to finalise, execute and administer (including exercising options, if appropriate) the subscription, licencing, maintenance and support agreements for the relevant products or with the relevant suppliers as listed in Confidential Attachment A to the subject report.

Attachments

- Attachment A.** List of IT Licence, Subscription, Maintenance and Support Agreements Requesting Exemption from Tender (Confidential)

Background

1. The City has a number of software applications, platforms and hardware appliances that are in daily use and are critical to the delivery of its services to the community. The agreements associated with these applications, platforms and appliances have been established with suppliers and will require renewal. The estimated total contract value with each supplier listed in Confidential Attachment A is anticipated to exceed \$250,000 (including GST). The detailed reasons supporting each exemption from the tender request are outlined in Confidential Attachment A.
2. As part of its software asset management strategy, the City is continuing to identify software in use City-wide, confirming current use and contract periods to plan future contract requirements and terms, and also planning for replacements.
3. Software applications of this type have historically been licensed in perpetuity with additional annual support. However, technological advances have changed the licence model over time to an annual subscription model.
4. Maintenance and support are essential to ensure the availability and reliability of software by guaranteeing suppliers' availability to troubleshoot and rectify errors and / or to extend the lifecycle of an application or appliance through product enhancement. In many cases, retaining maintenance and support payments is integral to the licensing of the software.
5. The IT applications, platforms and appliances that are the subject of this exemption request are due to expire in the coming 2-14 months.
6. This report recommends approval of the exemption from tender for the provision of maintenance, support, subscription and licencing of the software applications, platforms and hardware appliances upon the expiry of the current agreements for the respective extension period, along with the optional extension, if appropriate, as listed in Confidential Attachment A to the subject report.
7. Generally, transitioning to new providers for these services entails significant financial burdens and potential business disruptions. For all service providers recommended for ongoing engagement through this report, the current product/service is effectively meeting the organisation's needs.
8. For some of the service providers any transition would necessitate substantial investment in both time and resources. This could lead to interruptions in daily operations, affecting productivity and potentially causing delays in critical projects.
9. For some products or services, there are plans to implement upgrades or changes to the service requirements within the next five years. These planned improvements are designed to enhance the current system's capabilities and address any emerging needs. Appropriate market engagements will be undertaken as part of these future projects.
10. For other products and services, the cost of taking the arrangement to market would be disproportionate to the potential value of change. Conducting a market evaluation, negotiating new contracts, and onboarding a new provider would require substantial financial and human resources. Given that the current product/service is already meeting business needs effectively and, given the suppliers' specialised knowledge of the City's needs, their continued engagement will continue to deliver value for money.

Performance Measurement

11. In most cases operational and financial performance targets of technology projects are monitored monthly, quarterly and annually through a combination of meetings, audits, inspections and reporting.

Risks

12. The recommendations in this report have been made following a due diligence process and the reasons for the recommended exemptions include:
 - (a) a lack of availability of alternative suppliers
 - (b) high costs and/or extensive business disruption associated with a transition to a new provider
 - (c) upgrades or changes to service requirements are planned to be implemented within the next five years and
 - (d) cost to take the arrangement to market would be disproportionate to the potential value of change.
13. This approach is within the City's risk appetite, which states:
 - The City has a responsibility to ensure that it has sufficient resources in the short, medium and long term to provide the levels of service that are both affordable and considered appropriate by the community.
 - The risk philosophy is centred around achieving a balance between innovation, community and user satisfaction and risk management, ensuring that the City meets its strategic objectives while maintaining a robust control environment.
 - The City acknowledges the growing significance of technology in enhancing service delivery. The City actively embraces innovative solutions and emerging technologies that facilitate improved service outcomes and optimised resource utilisation. The City also encourages its workforce to cultivate the capabilities and mindset necessary to support the effective application of these technologies.
 - The City has a minimal appetite for data loss and/or privacy breaches resulting from cyber incidents.

Financial Implications

14. There are sufficient funds allocated for these subscriptions, licencing, maintenance and support agreements within the current year's operational budget and future years' forward estimates.

Relevant Legislation

15. The exemption from tender process has been conducted in accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2021.
16. Local Government Act 1993 - Section 10A provides that a Council may close to the public so much of its meeting as comprises the discussion of information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.
17. Attachment A contains confidential commercial information of the suppliers which, if disclosed, would:
 - (a) confer a commercial advantage on a person or company with whom Council is conducting (or proposes to conduct) business; and
 - (b) prejudice the commercial position of the person or company who supplied it.
18. Discussion of the matter in an open meeting would, on balance, be contrary to the public interest because it would compromise Council's ability to negotiate fairly and commercially to achieve the best outcome for its ratepayers.

Critical Dates / Time Frames

19. The majority of the current subscription, licencing, maintenance and support agreements listed in Confidential Attachment A are due to expire on different dates within 2-14 months (as further specified in Confidential Attachment A).

Options

20. Other than retendering for these services, there are no other options available for this proposal. Maintenance and support not only extend the lifecycle of an application or appliance through product enhancements but, in many cases, are also integral to the licensing of the software.

Public Consultation

21. No public consultation has been undertaken.

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