

## **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 alternate products. Instead, they can be upgraded and/or replaced via planned work over a rolling five-year horizon.

To support this planned approach and to maintain business continuity, it is essential to continue the subscription, licencing, maintenance and support arrangements 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 which 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 with suppliers and for the periods listed in Confidential Attachment A.

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 for the provision of the 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, 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) high costs and/or extensive business disruption associated with a transition to a new provider;
  - (ii) upgrades or changes to service requirements are planned to be implemented within the next five years;
  - (iii) cost to take the arrangement to market would be disproportionate to the potential value of change; and
  - (iv) a lack of availability of alternative suppliers;
- (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 with the 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; and
- (E) 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 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. A previous request for exemption from tender for a select range of IT applications and appliances was granted by the Council on 23 October 2023 for up to six years.
6. The IT applications, platforms and appliances that are the subject of this exemption request are due in the coming months and, in some cases, require Council approval as they are due to exceed the previously approved exemption amounts. This report also covers systems and applications whose expiry has lapsed or is imminent.
7. The relevant IT applications, platforms and appliances were each originally procured using the required procurement processes. The Technology and Digital Services (TDS) unit has consulted relevant business representatives and the procurement team in preparation for this bulk exemption from tender request.
8. Technology and Digital Services frequently examines the market through market scans and tendering related to project work to identify alternatives to ensure IT applications, platforms and appliances deliver the best value for the City, its residents and visitors.
9. Due to the essential nature of some IT applications, platforms or appliances, it is anticipated that there will be future reports to Council to approve other exemptions from tender, as required.
10. This report recommends approval of the exemption from tender for the provision of the 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.

**Performance Measurement**

11. Operational and financial performance targets are monitored monthly, quarterly and annually through a combination of meetings, audits, inspections and reporting.

**Financial Implications**

12. 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**

13. 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.
14. 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.
15. 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**

16. The majority of the current subscription, licencing, maintenance and support agreements listed in Confidential Attachment A are due to expire on different dates within the next year (as further specified in Confidential Attachment A).

### **Options**

17. 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**

18. No public consultation has been undertaken.

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