

AGENDA ITEM: 12 Pages 97 - 101

Meeting	Cabinet Resources Committee
Date	4 April 2012
Subject	Variation and Extension of Contract with JADU Ltd
Report of	Cabinet Member for Customer Access and Partnerships
Summary	The report seeks: (i) authority to waive contract procedure rules to vary the contract with JADU Ltd by £20,000; and (ii) authority to extend the contract with JADU Ltd by £47,490.

Officer Contributors	Andrew Cox, Project Manager, One Barnet
Status (public or exempt)	Public
Wards affected	ALL
Enclosures	None
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in	Not applicable

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1. RECOMMENDATION

- 1.1 That Committee authorise a waiver of Contract Procedure Rule 5.6 to vary the contract with JADU Ltd by £20,000. This increase of 19% is greater than that allowed by the Contract Procedure Rule of a 10% variation.**
- 1.2 That Committee authorise the extension of the contract with JADU Ltd to July 2013 with an additional cost of £47,490 to give a total contract value of £171,629.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Delegated Powers Report 1235, 21 January 2011 – approved the appointment of JADU Ltd as a partner to the council and that the council enter into a contract with JADU Ltd.
- 2.2 Audit Committee at its meetings on 16th June 2011 and 6th September 2011 reviewed and agreed the Procurement Controls and Monitoring Action Plan produced following the comprehensive review of the Council's contract monitoring arrangements.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The Corporate Plan 2011-13 states that “we will continue to drive costs out of the Council through transforming our internal organisation” and that we will focus on “...making sure we get the best value from resources across the public sector, including our people and our assets”. To meet the Council's corporate priority of “Better services with less money” there is a strategic goal to maximise improvements and savings in back office functions.
- 3.2 The aim of the proposed extension and variation to the JADU Ltd contract is to ensure that the Council's ‘One Barnet’ objectives are not hindered and that the council website can continue to be rolled out and supported. Therefore, this contract needs to be extended to cover the period between now and until any new service provider agreement under the NSCSO procurement is fully executed.

4. RISK MANAGEMENT ISSUES

- 4.1 There is a risk caused by a change in scope to the hosting element of the contract with JADU Ltd as this element, although mentioned within the specification, was not comprehensively evaluated. The risk was assessed as low to medium due to the hosting element of the contract being the minor element compared to the provision of the software, which the evaluation had focussed on.
- 4.2 Without the extension of this contract it will not be possible to maintain support for the council website past the end of July 2012.
- 4.2 Some of the savings identified in 2012-13 budgets are reliant on the new council website. If the waivers are not granted then there is a risk that the predicted savings may not be achieved.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 Under the Equality Act 2010, the council and all other organisations exercising public functions on its behalf must have due regard to the need to: a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; b) advance equality of opportunity between those with a protected characteristic and those without; c) promote good relations between those with a protected characteristic and those without. The 'protected characteristics' referred to are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation. It also covers marriage and civil partnership with regard to eliminating discrimination.
- 5.2 With respect to this decision the original procurement process asked questions of the bidders about their equalities policies and through the evaluation the evaluators were satisfied that these policies met the council's expectations.
- 5.3 The council's website, which this contract supports is open to all regardless of any protected characteristics.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 The anticipated 2012 / 2013 spend relating to this contract is tabulated below. Any RPI/CPI increases will be in line with nationally published rates and will be subject to negotiation under the terms of the contract. The costs below (and variation with any RPI uplift) are funded within the existing IS budget provision.

Contract	Anticipated 2012 / 2013 spend	Comment
JADU Ltd	£47,490	Includes one year extension through to end July 2013 for support and maintenance of the website including additional modules to be purchased via the variation to the contract outlined in this report. Includes an 8 month extension through to end April 2013 for the hosting of the website (extension will allow time for NSCSO contract to go live and changes to be planned and implemented)

- 6.2 The contract variation of £20,000 is to enable the purchase of the ePay module and a pack of service days. These will be funded from the One Barnet budget allocated to Website Transformation within which there is sufficient budget to cover this spend. This is a variation of 19% of the original contract value.
- 6.3 There are no issues related to Staffing and Property
- 6.4 There is less than 10 months remaining before outsourcing of the service under NSCSO, leaving a short period of time to address and implement major procurement projects.

7. LEGAL ISSUES

- 7.1 The contract between the council and JADU Ltd was entered into in July 2011 for a period of one year, until July 2012 at a value of £104,139.

- 7.2 The contract with JADU Ltd includes a specific clause to allow the extension of the contract.
- 7.3 The contract value, including the value of the variation and extension is below the new European threshold of £173,934, which came into effect in January 2012. Consequently, the obligations imposed by the Public Contracts Regulations 2006 (as amended) are not triggered.
- 7.4 The Treaty provisions of equal treatment, fairness and non-discrimination must be complied with, by the council, in carrying out its functions and in exercising its powers.
- 7.5 With respect to the council's own Contract Procedure Rules, the Cabinet Committee has power to waive any one or more of those Rules if satisfied that waiver is justified on any one or more of the grounds set out in Section 8, below.
- 7.6 The extension and variation of the contract will be included in a supplementary document executed by the council and JADU Ltd.

8. CONSTITUTIONAL POWERS

- 8.1 The Constitution, Part 3, Section 3.6 sets out the functions of the Committee
- 8.2 Rule 5.8 of the Contract Procedure Rules enables a Cabinet Committee to waive the requirements of the Contract Procedure Rules if satisfied, after considering a written report by the appropriate officer, that the waiver is justified because:
 - 8.2.1 the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Procedure Rules is justifiable; or
 - 8.2.2 the contract is for works, supplies or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or
 - 8.2.3 the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English Law); or
 - 8.2.4 there are other circumstances which are genuinely exceptional.
- 8.3 Contract Procedure Rule 5.6 enables variation and extension to a contract provided that:
 - 8.3.1 in the case of a contract variation and in accordance with the terms and conditions of that contract:
 - 8.3.1.1 the variation is notified to and agreed in writing with the contractor;
 - 8.3.1.2 any additional expenditure necessarily incurred does not exceed 10% of the initial contract;
 - 8.3.2 in the case of an extension to a contract:
 - 8.3.2.1 the initial contract was based on a competitive tender or quotations;
 - 8.3.2.2 the initial contract has not been extended before; and

- 8.3.2.3 the value of the extension is less than half the cost of the existing contract without the extension and has a budget allocation.

Waiver of the Contract Procedure Rules is being sought, herein, on the basis of exceptional circumstances, in view of the complex nature of the contract which require variation; the time which it would take to carry out a full procurement process; and the impending externalisation of NSCSO to an external partner.

9. BACKGROUND INFORMATION

- 9.1 The procurement of JADU Ltd was approved in January 2011 by Delegated Powers Report 1235 following the conclusion of a competitive quotes exercise.
- 9.2 The contract when signed with JADU Ltd in July 2011 was for a value of £104,139, which although within the limit of the total contract value agreed by DPR 1235 varied significantly from the value used as part of the tender evaluation of £67,899. The difference between the contract value and the tender value is due to the inclusion of hosting for the website within the first year of the contract with JADU Ltd.
- 9.3 The contract variation, a total of £20,000 and 19% of the original contract value, is required to purchase:
- 9.3.1 The JADU ePay module which is a component of the software, not originally specified which enables the council to embed the receipt of payments within the structure of web forms to provide a better and more seamless customer experience and will provide considerable extra functionality to the website.
- 9.3.2 Service days which will be required for items such as the creation and installation of a development environment and other small tasks that will be required to maintain the website over the contract term.
- 9.4 The contract extension, for a total of £47,490 (46% of the original contract value), is required to extend the hosting from the current end date of July 2012 to April 2013 and support and licensing of the website from the current end date of July 2012 to July 2013..

10 LIST OF BACKGROUND PAPERS

None

Legal – SS
CFO – JH/MC

