

Report for **Cabinet 10 November 2020**

Title: Novation of SAP Managed Service Contract under Contract Standing Order(CSO) 10.03

Report authorised by : Director of Customers, Transformation and Resources

Lead Officer: **Carla Villa, x3111, carla.villa@haringey.gov.uk**

Ward(s) affected: N/A

Report for Key/

Non Key Decision: Key Decision

1. Describe the issue under consideration

1.1 This report seeks approval from Cabinet for the implementation of Contract Standing Order 10.03, which provides that contract novations valued at £500,000 (five hundred thousand pounds) or more may only be awarded, assigned or novated by the Cabinet.

2. Cabinet Member Introduction

2.1 To novate the contract for the SAP managed service to replace the company serving as the Council's main contractor by another company within the HCL group. This will allow for a continuation of the service for scanning services only until 31/5/21 when the contract expires.

3. Recommendations

3.1 For Cabinet to grant fresh approval for the novation of the SAP Managed Service Contract from Axon Solutions Ltd T/A HCL Axon to HCL Technologies UK Ltd under Contract Standing Orders 10.03 and 9.07.1(d).

3.2 For Cabinet to note that the contract value over the life of the contract, from the contract start on 16/9/13 until the contract's current scanning service expires on 31/5/21, is £4,321,781.00.

4. Reasons for decision

4.1 Cabinet was informed in Nov. 2019 that Axon Solutions T/A HCL Axon was being wound up as part of a restructure to reduce a complicated structure of the European companies within the HCL group and it would no longer exist. Axon Solutions T/A HCL Axon was proposing to novate the contract from them to another company within the HCL group, HCL Technologies UK Ltd, to allow for a continuation of the service provided. HCL's parent company in India, HCL Technologies Ltd was, and would remain after the proposed contract novation, a co-contractor with the relevant HCL subsidiary. Cabinet was asked to approve the novation and did. However, the restructure was delayed and in the meanwhile the contract was extended, varied and the value increased by

£197,334.00. The HCL group now wish to proceed. However, because of the change in the scope and value of the contract it is thought that fresh approval should be submitted as they will remain a supplier until May 2021.

5. Alternative options considered

- 5.1 Axon Solutions Ltd said that we are required to novate the contract as they are winding down the company due to a restructure.
- 5.2 Contract termination was considered but were unable to terminate all services as we require their scanning services until the contract end.

6. Background information

- 6.1 In 2013 a contract was let for the SAP Managed Service for a term of 6+2+2 years. The contract arrived at the end of the initial term (6 years) on 16/9/19 and approval was granted by the Director for Customers, Transformation & Resources for the contract to be varied and extended for 6 months rather than 2 years. This was then extended for a further 3 months to the 30/6/20 where at the end of this term all of the services were terminated with the exception of the scanning service which remains in place until 31/5/21. The contractor's responsibilities under the original contract are shared between one HCL group subsidiary, a UK-registered company, Axon Solutions Ltd t/a HCL Axon, which was responsible for providing the hosting, scanning, printing and invoicing and the HCL parent company registered in India, HCL Technologies Ltd, which was to provide the support and any development of the application. Under the proposed novation, Axon Solutions Ltd t/a HCL Axon would cease to be a party to the contract and would be replaced by a different UK-registered HCL subsidiary company, HCL Technologies UK Ltd, which will take over responsibility for the relevant service provision until the contract ends.

7. Contribution to strategic outcomes

- 7.1 To ensure continued service delivery until the end of the contract.

8. Statutory Officers comments (Chief Finance Officer, Head of Procurement),

8.1 Head of Finance

The proposed novation is required to ensure the continuation of the Council's SAP managed service, which now comprises just the scanning service element, and payments for that service until contract expiry. There are no other financial implications arising from the contents of this report.

8.2 Statutory legal comments on behalf of the assistant Head of Corporate Governance

- 8.2.1 Cabinet approved the award of the initial contract for the provision of a SAP managed service on 9th July 2013 to Axon Solutions Ltd t/a HCL Axon with an affiliate company, HCL Technologies Ltd, as a co-contractor.
- 8.2.2 This report is recommending approval of the novation of that contract from the main contractor, Axon Solutions Ltd t/a HCL Axon, to an affiliate company within the HCL group of companies, HCL Technologies UK Ltd, with the other original co-contractor company, HCL Technologies Ltd, continuing on in that role.

- 8.2.3 Under CSO 10.03 the Council may agree to the novation of a contract in the circumstances permitted under Reg. 72 of the Public Contracts Regulations 2015 (PCR 2015). Under CSO 9.07.1(d) the novation must be approved by Cabinet if the contract was valued at over £500,000 at the time of the award, as was the case with the SAP contract.
- 8.2.4 Under PCR 2015, reg. 72(1)(d)(ii) a novation is permitted where the company to which a contract was originally awarded is replaced by another company pursuant to a corporate restructuring provided certain other conditions are met. The other conditions are that the company to which the contract is being novated must meet the qualitative selection criteria of the contracting authority, the Council in this case, and there must be no other substantial changes to the original contract. The novation must also not be just an attempt to circumvent the requirements of the PCR 2015 (such as the usual requirement for tendering a contract). In this case, Legal Services have been consulted on the preparation of the novation agreement and confirm that no material contract changes are proposed other than the novation itself. The Council has also received assurances from the HCL Group that the proposed novation is being done as part of a bona fide rationalisation of their corporate structures to streamline business efficacy.
- 8.2.5 The initial Cabinet approval on 12 November 2019 was based on the novation of a contract expiring on 15 March 2020. The total value of this contract was £4,124,447.00. The contract has since been extended though only to continue the scanning service until end of May 2021 and the value of the contract has increased to £4,321,781.00. As a result of the updated contract particulars i.e. the extension period and added contract value of £197,334.00, a fresh Cabinet approval is required for this novation. In light of this and also of the confirmation by Strategic Procurement (see para. 8.3 of this report) that they have done due diligence on the HCL company taking over as main contractor, ie. HCL Technologies UK Ltd, and have no objections to the novation, the proposed novation appears to be permitted under the above PCR 2015 provision.
- 8.2.6 The Assistant Director of Corporate Governance is not aware of any legal reasons preventing Cabinet from approving the recommendation in the report.

8.3 Head of Procurement

CSO 10.03 allows that a contract may be novated in circumstances permitted in Regulation 72 of the Public Contract Regulations.

Regulation 72(1)(d)(ii) allows for the novation of the contract following a corporate restructure.

Due diligence has been undertaken on the novations and therefore Strategic Procurement have no objections to the novation

8.4 Equality comments

- 8.4.1 The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
- Advance equality of opportunity between people who share those protected characteristics and people who do not
- Foster good relations between people who share those characteristics and people who do not.

8.4.2 The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

8.4.3 This report recommends that Cabinet approve the novation of the SAP Managed Service Contract from Axon Solutions Ltd T/A HCL Axon to HCL Technologies UK Ltd under Contract Standing Orders 10.03 and 9.07.1(d). This will allow for a continuation of the service for scanning services until 31/5/21 when the contract expires.

8.4.4 There are no particular equalities implications arising from the proposed decision. As an organisation undertaking a public function on behalf of a public body, the contractor will be required to comply with the Public Sector Equality Duty within the scope of the contract.

9. Use of Appendices

n/a

10. Local Government (Access to Information) Act 1985 (if not applicable state)

N/A