

## ABERDEEN CITY COUNCIL

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COMMITTEE	<b>Education, Culture and Sport</b>
DATE	<b>21 November 2013</b>
DIRECTOR	<b>Gayle Gorman</b>
TITLE OF REPORT	<b>Schools Management Information System</b>
REPORT NUMBER:	<b>ECS/13/073</b>

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### 1. PURPOSE OF REPORT

This report is to inform committee of the imminent changes to the Schools Management Information System (MIS) and to seek approval of the proposed way forward.

### 2. RECOMMENDATIONS

It is recommended that the Committee:

- 2.1 notes the current contractual position and authorises relevant officers to negotiate and agree with Pearson Education Ltd
  - 2.1.1 a satisfactory termination to the Council's contract with that supplier and
  - 2.2.1 any ancillary matters;
- 2.2 approves the Council's application for membership of SEEMiS Group LLP and the entering into by the Council of all contractual or other legal documentation as may be necessary or desirable in order to facilitate such membership and the receipt by the Council of services from the LLP, with exemption being granted from any of the Council's Standing Orders relating to Contracts and Procurement in respect of which exemption is required in order to allow the foregoing; and
- 2.2 approves the estimated expenditure of £110K per annum over 5 years in respect of such membership of, and receipt of services from, the LLP, with a further report to be brought to Committee in due course if it is proposed to continue such arrangements beyond that 5 year period. The subscription funding currently spent with Pearson Education Ltd will be reallocated to SEEMiS Group LLP. This cost will continue to be paid from the existing MIS revenue budget. No additional funding is required for the MIS subscription.

### 3. FINANCIAL IMPLICATIONS

**Current Supplier: Pearson Education Ltd**

2013 – 14 subscription: £107K paid from revenue.

**Proposed Supplier: SEEMiS Group LLP**

2014 – 15 subscription: indicative £102K and a managed hardware service cost of £8K.

These proposed supplier costs are being revised and some are predicted to reduce.

Therefore, current revenue funding will be sufficient to meet the SEEMiS subscription.

### 4. OTHER IMPLICATIONS

Legal and procurement implications

The Council's legal service has been involved throughout this process and has provided the necessary advice for progressing the proposed move to SEEMiS.

To become a member of the SEEMiS Group Limited Liability Partnership (LLP), the Council's membership application would require to be granted. The Council would then need to sign a Deed of Adherence by which it would agree to be bound by the Members Agreement signed by the LLP and various local authorities which took effect on 1 July 2010. In order to receive the relevant services from the LLP, the Council would need to sign up to a Services Agreement.

If the Council subsequently wished to withdraw from the LLP, it would require to give 24 months' prior written notice. And, unless a specified termination event occurs, the Council or the LLP could only terminate the Services Agreement by giving 24 months' prior written notice.

### 5. BACKGROUND/MAIN ISSUES

- 5.1. Pearson announced in August 2013 that, as a result of major restructuring, it would be withdrawing its MIS product, e1, from the market worldwide. The four Scottish Local Authorities currently having a contract with Pearson successfully proposed that the end date be revised to September 2015 to allow for planning, procurement and implementation of such a large scale change. e1 will now continue to be supported by Pearson and adhere to statutory requirements until September 2015. Thereafter, e1 will continue to be available but it will not be supported.

- 5.2. After a competitive EU procurement exercise, Pearson Education Ltd (“Pearson”) was awarded a contract to supply a Management Information System (MIS) for schools in Aberdeen City in January 2011. The contract is for an initial term of three years with the option of two successive additional periods of one year each (i.e. the maximum possible duration is 5 years). This means that the initial term of three years will expire in January 2014.
- 5.3. Pearson is entitled to end the contract with Aberdeen City Council so that it does not run for the potential full 5 years, without any penalty – provided it does so in accordance with the terms of the contract.
- 5.4. Pearson is working to support the four Local Authorities to migrate to a new system. They have regular meetings with the four authorities, third parties and the proposed new supplier. They have allocated a project manager, volunteered help with training and supporting resources and offered support to ensure that all data required is transferred either automatically or manually if necessary. They are keen to leave a good impression. The Council intends to negotiate with Pearson with regard to bringing the current contract to an end, and achieving migration, in a satisfactory manner.
- 5.5. When it was known that Pearson would be withdrawing e1 all options for moving to a new system were appraised. The agreed conclusion of the four local authorities is that there is only one possible supplier. There are 28 Local Authorities in Scotland already working with SEEMiS Group LLP. No other provider can meet our specific Scottish requirements.
- 5.6. Subject to the comments in the “Management of Risk” section below, and following consultation with Aberdeen City Council’s legal and procurement arms, it is considered that SEEMiS Group LLP is the only alternative supplier and that the Council can contract with the LLP without going through a procurement process. The Council would require to apply to become a member of the LLP. All four Local Authorities are applying for membership.
- 5.7. The benefits of this for Scotland are that all local authorities would be working with the same system, there would be consistency of data held and potentially the strength of all 32 local authorities being on board means that the product could be developed to meet more of the requirements of education.
- 5.8. There is a 24 month period of notice and SEEMiS is a monopoly. However, the overriding national sentiment at this time is that it is a welcome development that all Local Authorities will be using the same system.
- 5.9. There is also change at SEEMiS Group LLP. They are currently improving their infrastructure, they have a new chief executive brought in to modernise and they are updating their governance which will reflect the proposed increase in the number of authorities involved.
- 5.10. Due to the scale of this change it is important to keep the momentum going. The planning needs to be exemplary and the implementation must be efficient. Time will be taken to achieve these objectives. The roll out should

happen as soon as practically possible. At this stage it is hoped that it will start in Spring 2014 after all testing is successfully achieved.

## 6. IMPACT

By maintaining the provision of a Management Information System this ensures that systems are in place to continue to support schools in the delivery of learning and teaching and in administration. In particular, it ensures continuity in areas including reporting to Scottish Government, reporting KPIs and pupil tracking, monitoring and reporting. It also allows schools to continue with curriculum planning, timetabling, easy access to shared data accessible by teachers and efficient administrative functionality including attendance and Educational Maintenance Allowance.

It addresses areas including:

### Council Business Plan

- Provide for the needs of the most vulnerable people;
- Help to ensure that all schoolchildren reach their potential;

### Education Culture and Sport Service Plan

- Using technology for learning
- Helping those with different needs: helping everyone reach their potential
- Working together: making sure services work together in the interests of the learner
  - Accelerate progress to improve learning outcomes for specific underperforming groups/areas

## 7. MANAGEMENT OF RISK

Procurement issues have been carefully considered by Officers. On balance it is considered that this proposed arrangement will probably not require a tender process to be undertaken.

In 2010, the external legal advisers instructed by some other local authorities in connection with the structuring of the LLP arrangements drafted the contractual documentation specifically with a view to benefiting from the so-called *Teckal* exemption (named after a court case) and therefore complying with the procurement rules.

To summarise, for the *Teckal* exemption to apply, two conditions must be met, namely that the Council must exercise over the LLP “*a control which is similar to that which it exercises over its own departments*” and the LLP must carry out “*the essential part of its activities*” with the Member Councils. It is considered that these two conditions would be likely to be met at present although care will obviously require to be taken to ensure that this continues to be the case in any changes in SEEMiS Group LLP arrangements.

Accordingly we cannot entirely rule out the risk of being found in breach of procurement rules. The consequences for the Council of a breach could

include the setting aside or shortening of the relevant contract(s), an award of damages, a financial penalty and reputational damage. This risk is considered to be low.

However, there are a number of factors which would seem to further reduce this small risk. One is that the LLP has now been in place for over 3 years without legal challenge. Nearly all Scottish local authorities are members and this would indicate a collective view that the risk is low. Perhaps most fundamentally, if (as is believed to be the case) there is genuinely no competitor who could meet the Council's requirement, the risk of a procurement challenge would be lower than in a case where there were other obvious competitors.

### Standing Orders

Standing Order 1(6)(a) of the Council's Standing Orders relating to Contracts and Procurement as shown below allows for an exemption from Standing Orders when justified by special circumstances;

*" 1(6) Subject to compliance with the provisions of the 2006 Regulations [now the 2012 Regulations] or any other rule of law: -  
(a) any contract may be exempted by the Council from any or all of the provisions of Part A of these Standing Orders, provided the Council is satisfied that the exemption is justified by special circumstances and a record shall be kept of these circumstances..."*

The contractual documentation which the Council would require to sign in order to become a member of, and receive services from, the LLP will not contain the "Corrupt or Illegal Practices", "Insurances" and "Freedom of Information" clauses in the exact terms required by SO 11, 13 and 26. However insurance and FOI are considered nevertheless to be adequately covered by the documentation and the absence of a corruption clause is not considered to pose a significant risk to the Council in this instance.

## **8. BACKGROUND PAPERS**

Not applicable.

## **9. REPORT AUTHOR DETAILS**

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