

Report

Report to:	Clyde Valley Learning and Development Joint Committee
Date of Meeting:	14 June 2021
Report by:	Chair of Clyde Valley Learning and Development Project Steering Group

Subject:	Clyde Valley Learning and Development Project – Non-Contractual Extension for Provision of e-Learning Platform (Learning Management System)
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1. Purpose of Report

1.1. The purpose of the report is to:-

- ♦ advise the Joint Committee of the intention to implement a non-contractual extension to the existing Brightwave Ltd contract for the provision of an integrated e-learning service on behalf of the Clyde Valley Learning and Development Group (CVLDG)

2. Recommendation(s)

2.1. The Joint Committee is asked to approve the following recommendation(s):-

- (1) that it be noted that the extraordinary circumstances of the Covid-19 pandemic have brought increasing demand for reliable online learning to be delivered to CVLDG Members;
- (2) that it be noted that consultation has taken place within the CVLDG membership establishing the reliability and capability of the existing Learning Management System provided by Brightwave Ltd;
- (3) that the intention to implement a non-contractual extension to the existing Brightwave Ltd contract, in accordance with South Lanarkshire Council's Standing Orders on Contracts, for the provision of an integrated e-learning service for a period of 24 months, effective from 1 August 2021, be noted; and
- (4) that it be noted that the indicative costs and pricing provided by Brightwave to continue to provide this service will continue to offer a discounted scheme based on the number of councils opting into the non-contractual extension.

3. Background

3.1. Brightwave Ltd has been the preferred supplier of e-learning services to the councils within the CVLDG since August 2009. During this period, two contracts have been let following competitive tendering processes. The current contract was awarded in June 2014 and came into operation on 1 August 2014.

3.2. South Lanarkshire Council, on behalf of the CVLDG, awarded Brightwave Ltd the contract to provide an integrated e-learning service for a period of four years with an option to extend this for a further three years.

- 3.3 In June 2018, the option to extend the contract was taken up by the Group. The extension is due to expire on 31 July 2021.

4. Current Position and Impact of Covid-19 Pandemic

- 4.1 Over the period of seven years of the current contract, Brightwave has demonstrated a level of reliability and consistently high level of customer support.
- 4.2 As a result, the supplier has achieved almost 100% availability of access 24 hours a day every day, since the contract began. As demand for access to e-learning continues to grow, this reliability has become the critical factor in delivering the required service to each council within the CVLDG.
- 4.3 This has become an increasingly significant factor over the past year due to the impact of the Covid-19 pandemic, subsequent lockdowns and resultant increase in online service delivery.
- 4.4 In a previous paper presented to the Joint Committee (22 February 2021), it noted significant increases in usage of online learning across all member councils, and it is now recognised that service delivery could not have been maintained in terms of learning and development without a robust and reliable Learning Management System (LMS).
- 4.5 With so many employees working from home and online communications playing such a major factor in providing support for employee health and well-being, maintaining a continuous service is of paramount importance and it is therefore essential to mitigate any risks as far as possible, particularly in relation to service compromise. Central to these risks would be the unknown factor of moving to a new system and service provider at the time of greatest demand and uncertainty.

5. Consultation with Members

- 5.1 Before making a formal recommendation on the optimal strategy to maintain a continuous and reliable service, the Project Steering Group undertook a consultation process with all member councils currently using the Brightwave contract (16 Councils).
- 5.2 The purpose of this consultation was:-
- ◆ to gather further evidence of satisfaction levels from members in relation to Brightwave's products, service levels and product support over the contract period
 - ◆ to establish future learning and development priorities for members
 - ◆ to consider what LMS functionality would be required to meet these needs
- 5.3 Using a variety of online techniques each of these questions was addressed and a feedback report was produced with recommendations.
- 5.4 This provided the reassurances required by the CVLDG Steering Group that maintaining continuity with Brightwave as supplier had many benefits and fewer risks.

6. Exercise of Non-Contractual Extension

- 6.1 The Standing Orders on Contracts of South Lanarkshire Council (SLC) (as lead authority) apply in relation to CVLDG procurement contracts. In addition, it is necessary that procurement decisions follow the regulations for Public Contracts (Scotland).

- 6.2 The use of the negotiated tendering procedure in terms of SLC's Standing Orders on Contracts Clause 9.3.1, in consultation with the Convener or Vice Convener, and Regulation 33(1)(b)(ii) of the Public Contracts (Scotland) Regulations 2015 can be justified on the basis that the services can only be supplied by Brightwave Ltd for technical reasons and no alternative exists. Additionally, the absence of competition is not the result of the artificial narrowing down of the parameters of the procurement.
- 6.3 Brightwave supplies the e-learning platform and owns the intellectual property rights of this technology and therefore only Brightwave can provide maintenance and support to the system.
- 6.4 Additional relevant Standing Order requirements (Standing Order 22.3(b)) are satisfied for the following reasons:-
- ◆ the original contract was won in competition – the current contract was awarded following an open procurement process
 - ◆ the costs of providing the services have not increased by more than 10% from those contained in the original contract
 - ◆ the extension proposed is reasonable in all the circumstances – the 24-month period will allow the procurement team to put in place a new contract via an open procedure which will take on average 9 months to complete the procurement and a further period of up to 6 months for implementation in the event of a change in provider. This will also allow all necessary approvals to be obtained from CVLDG and in terms of SLC's Standing Orders on Contracts for the new procurement process and award of any new contract
 - ◆ the period of the extension does not exceed the original period of the original contract – the original contract period was four years and a two year non-contractual extension is being sought
 - ◆ the original contract has not been extended previously in terms of Standing Order 22.3 – approval for a non-contractual extension has not previously been obtained
 - ◆ the Executive Director, Finance and Corporate Resources, South Lanarkshire Council is satisfied with the financial standing of the supplier
 - ◆ the supplier has achieved a performance rating of 70% and above in the performance appraisals carried out during the original contract period (Brightwave has achieved a rating of greater than 85%)

7. Conclusion

- 7.1 The CVLDG Steering Group has fully considered all options in order to maintain continuity of service, including all procurement possibilities. The Steering Group has determined that the most appropriate route is to award a 24-month non-contractual extension to the current contract.
- 7.2 The 24 months non-contractual extension offer from Brightwave continues to provide value for money based on the shared discount for the participating organisations.

8. Employee Implications

- 8.1. As the non-contract extension applies to the incumbent provider, an uninterrupted service will be guaranteed for all employees of the participating Clyde Valley Councils. Some internal preparatory work will be required prior to migration to the new technology platform. This work will be done in consultation with the supplier.

9. Financial Implications

- 9.1. As per the previous contract, the non-contractual extension retains the incentivised approach which brings a discount to annual licence fees depending on the number of councils who opt for this non-contractual extension.

- 9.2 Until member councils make their final decision about taking up the offer, final discounts cannot be calculated. However, indicative costings have been provided by Brightwave.
- 9.3 The existing contract pricing has been fixed for some seven years during which time there have been no inflationary price increases. It is recognised that more modern technology, added security features and greater functionality will necessitate an increase in price. Through the consultation process, Brightwave has made every effort to keep implementation and delivery costs as low as possible by maintaining the discount structure.
- 9.4 Despite this, pressure on budgets means that some member councils cannot commit to the terms of the new platform on offer, although they still require to provide online learning services. For this reason, Brightwave has offered to continue to offer the current technology platform (Tessello Go) as a fallback option.
- 10. Climate Change, Sustainability and Environmental Implications**
- 10.1 The information contained within this report has no sustainability or environmental implications.
- 11. Other Implications**
- 11.1 The fundamental benefits of content sharing between members of the CVLDG will still be available following the change-over to the new technology. This approach remains fundamental to the success of the Group and maximises the Group's capacity to develop online content.
- 12. Equality Impact Assessment and Consultation Arrangements**
- 12.1 Consultation has taken place with the Steering Group (Full Clyde Valley Members), as well as participating and procurement members who use the existing e-learning contract. (See paragraph 5).
- 12.2 An equality impact assessment will be completed once the non-contract extension is activated.

Gill Bhatti

Chair, Clyde Valley Learning and Development Project Implementation Steering Group

17 May 2021

Previous References

- ◆ 9 June 2014 – CVLDG – Procurement of e-Learning Service (Learning Management System)
- ◆ 11 June 2018 – CVLDG – Contract Extension for e-Learning Service (Learning Management System)
- ◆ 22 February 2021 – e-Learning Developments During the Covid-19 Pandemic

List of Background Papers

- ◆ Clyde Valley Learning and Development Joint Committee Minute of Agreement

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

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