

This is a published notice on the Find a Tender service: <https://www.find-tender.service.gov.uk/Notice/010891-2022>

Contract

Schools Information Management Systems (SIMS)

Merthyr Tydfil County Borough Council on behalf of itself and the schools listed in this notice

F03: Contract award notice

Notice identifier: 2022/S 000-010891

Procurement identifier (OCID): ocids-h6vhtk-033129

Published 28 April 2022, 8:57am

Section I: Contracting authority

I.1) Name and addresses

Merthyr Tydfil County Borough Council on behalf of itself and the schools listed in this notice

Civic Centre, Castle Street

Merthyr Tydfil

CF48 4TQ

Email

procurement@merthyr.gov.uk

Telephone

+44 1685725000

Country

United Kingdom

NUTS code

UKL15 - Central Valleys

Internet address(es)

Main address

<http://www.merthyr.gov.uk>

Buyer's address

https://www.sell2wales.gov.wales/search/Search_AuthProfile.aspx?ID=AA0347

I.4) Type of the contracting authority

Regional or local authority

I.5) Main activity

General public services

Section II: Object

II.1) Scope of the procurement

II.1.1) Title

Schools Information Management Systems (SIMS)

II.1.2) Main CPV code

- 72000000 - IT services: consulting, software development, Internet and support

II.1.3) Type of contract

Services

II.1.4) Short description

Transition from existing contractual model of perpetual licence of SIMS to local authority with associated support services, to software as a service model contracting directly with individual schools to provide SIMS and associated support services.

II.1.6) Information about lots

This contract is divided into lots: No

II.1.7) Total value of the procurement (excluding VAT)

Lowest offer: £673.50 / Highest offer: £15,376.20 taken into consideration

II.2) Description

II.2.2) Additional CPV code(s)

- 72260000 - Software-related services
- 72268000 - Software supply services
- 72261000 - Software support services
- 72300000 - Data services
- 72310000 - Data-processing services
- 72320000 - Database services

II.2.3) Place of performance

NUTS codes

- UKL15 - Central Valleys

Main site or place of performance

Merthyr Tydfil

II.2.4) Description of the procurement

Prior to the award of these contracts, the current provider (ESS) had a contract with the local authority under which it provided a perpetual licence to the local authority for the purpose of providing SIMS to the schools in the local authority's area, with associated support services.

ESS has now served notice to terminate that contract and requires that, in order to continue provision of SIMS, individual schools must enter into direct contracts with ESS to receive SIMS as software as a service.

In order to bring about the transition, the local authority will enter into a Facilitation Agreement ("FA") with ESS under which nothing of value is received by ESS and no

material services are provided to the local authority; it is purely an administrative arrangement to effect the transition. Each school in the local authority's area will enter into a School Contract ("SC") with ESS for the direct provision of SIMS as software as a service, at substantially the same cost as before.

The highest value SC is GBP15376.20 and the lowest value SC is GBP673.50.

The schools in the local authority's area whose governing bodies will enter into contracts with ESS are as follows:

Abercanaid Primary School

Afon Taf High School

Bedlinog Primary School

Bishop Hedley RC High School

Caedraw Primary School

Cyfarthfa High School

Cyfarthfa Park Primary

Dowlais Primary School

Edwardsville Primary School

Gellfaelog Primary School

Goetre Primary School

Greenfield Special School

Gwaunfarren Primary School

Heolgerrig Community School

Lawb Provision

Pantysgallog Primary School

Pen-y-dre High School

St Aloysius RC Primary School

St Illtyds RC Primary School

St Marys RC Primary School

Trelewis Primary School

Troedyrhiw Community Primary School

Twynrodyn Community School

Ynysowen Community Primary School

Ysgol Gymraeg Rhyd-y-grug

Ysgol Gynradd Coed Y Dderwen

Ysgol Santes Tudful

Ysgol Y Graig Primary School

The local authority publishes this notice on behalf of itself and the schools listed above but is not acting as a central purchasing body on behalf of the schools.

II.2.5) Award criteria

Quality criterion - Name: Ability to continue to provide SIMS / Weighting: 50

Cost criterion - Name: Continue to provide SIMS at substantially the same price / Weighting: 50

II.2.11) Information about options

Options: No

II.2.13) Information about European Union Funds

The procurement is related to a project and/or programme financed by European Union funds: No

II.2.14) Additional information

Contract duration: 36 months

Section IV. Procedure

IV.1) Description

IV.1.1) Type of procedure

Award of a contract without prior publication of a call for competition in the cases listed below

- The procurement falls outside the scope of application of the regulations

Explanation:

This contract award notice is intended to be a relevant contract award notice pursuant to Reg. 93(2), (3) and (4) of the Public Contracts Regulations 2015. It is published on a wholly voluntary basis and without prejudice to the local authority's and the governing body of each individual school's position that no prior publication of a contract notice, and thus no competitive tender exercise, was required in respect of the Facilitation Agreement (FA) and/or the individual Schools Contracts (SC).

IV.1.8) Information about the Government Procurement Agreement (GPA)

The procurement is covered by the Government Procurement Agreement: Yes

Section V. Award of contract

A contract/lot is awarded: Yes

V.2) Award of contract

V.2.1) Date of conclusion of the contract

25 March 2022

V.2.2) Information about tenders

Number of tenders received: 1

Number of tenders received from SMEs: 0

Number of tenders received from tenderers from other EU Member States: 0

Number of tenders received from tenderers from non-EU Member States: 1

Number of tenders received by electronic means: 1

The contract has been awarded to a group of economic operators: No

V.2.3) Name and address of the contractor

Education Software Solutions Limited

11 Kingsley Lodge, 13 New Cavendish Street

London

W1G9UG

Telephone

+44 7999709125

Country

United Kingdom

NUTS code

- UKI - London

The contractor is an SME

No

V.2.4) Information on value of contract/lot (excluding VAT)

Lowest offer: £673.50 / Highest offer: £15,376.20 taken into consideration

Section VI. Complementary information

VI.3) Additional information

Neither the local authority nor the governing body of any of the schools listed above accepts that the FA and/or the individual SCs are within the scope of application of Part 2 of the Public Contracts Regulations 2015 (as amended).

The FA has no "value" as such but simply puts in place an administrative mechanism to manage the transition of contracts from local authorities to schools. It is therefore below the threshold set out in Reg. 5 (as reviewed pursuant to Reg. 5A) of the 2015 Regulations and thus Part 2 of the 2015 Regulations does not apply.

The governing body of each individual school is a separate contracting authority and each individual SC is a separate contract. The values of the individual SCs entered into in the local authority's area range between GBP673.50 and GBP15376.20 in total over the three-year duration of each SC. Each such individual contract is therefore below the threshold set out in Reg. 5 (as reviewed pursuant to Reg. 5A) of the 2015 Regulations and thus Part 2 of the 2015 Regulations does not apply.

Further or in the alternative, neither the FA nor the individual SCs are subject to a requirement to carry out prior publication of a contract notice and/or any form of competitive tender, because the services can only be provided by one particular economic operator (ESS), because competition is absent for technical reasons pursuant to Reg. 32(2)(b)(ii) of the 2015 Regulations. This is because all of the schools in the local authority's area currently use ESS' SIMS product. It would take a minimum of 1 year to transition from ESS' SIMS product to another product, including implementation, testing, training staff and migration of data. To avoid serious disruption to the school's functions, that transition has to take place over the long summer holidays. ESS served 90 days' notice to terminate the current arrangements, shortly before Christmas 2021. It would therefore not be possible, in the timescales imposed by ESS, for schools to tender for and purchase an alternative product and transition to it, without suffering serious disruption to essential services which would affect the ability of schools to continue to function and which may require schools to close.

Further or in the alternative, neither the FA nor the individual SCs are subject to a requirement to carry out prior publication of a contract notice and/or any form of competitive tender, because of urgency pursuant to Reg. 32(2)(c) of the 2015 Regulations. The provision of an information management system is essential to the running of a school and a school cannot function without it. The notice to terminate the current contracts and the short timescale imposed by ESS were unforeseen by the local authority and the schools. Due to the short notice given by ESS, together with the time it would take to prepare and agree a specification and (following a tender exercise) to

transition to a new product, the timescales for the open or restricted procedure, or competitive procedure with negotiation, cannot be complied with in the time available.

It is intended in the future to advertise a competitive tender exercise for SIMS on an all-Wales basis, with award and transition to the new contracts resulting from such tender to coincide with the end of the 3-year term of the SCs entered into with ESS. Pre-tender market testing is likely to commence in the near future.

(WA Ref:118818)

VI.4) Procedures for review

VI.4.1) Review body

High Court

Royal Courts of Justice, The Strand

London

WC2A 2LL

Telephone

+44 2079477501

Country

United Kingdom