

REQUEST FOR DMPC DECISION – DMPCD 2015 71

Title: Microsoft – Premier Support and Customer Support Agreements

Executive Summary:

This is a request to approve a single tender action to award a multi-year Premier Support agreement, and annual Customer Support Agreements for XP and Server 2003, to the value of £3,115k to Microsoft Limited. This support is for wide-spread, business critical applications and operating systems for which support is necessary. Whilst assurance has been received from MPS that the negotiated contracts are consistent with pricing achieved by other Government departments, MPS need to continue to challenge Microsoft on specific day rates and to work with other Microsoft customers to more fully demonstrate value for money.

Recommendation:

The DMPC is asked to approve the :

1. award, without competition, of a three year 2016/17-2018/19 Premier Support agreement at a value of £1,391k ,
2. award, without competition, of an annual Customer Support Agreement for XP from April 2015 at a value of £1,080k, and
3. award, without competition, of an annual Customer Support Agreement for Server 2003 from July 2015 at a value of £644k
4. MPS to set out and present to MOPAC the plans, costs and savings arising from the migration away from XP and Server 2003 and to identify any other systems/software which may be obsolete or near to end of support.

Deputy Mayor for Policing And Crime

I confirm I have considered whether or not I have any personal or prejudicial interest in this matter and take the proposed decision in compliance with the Code of Conduct. Any such interests are recorded below.

The above request has my approval.

Signature



Date 25/6/2015

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE DMPC

Decision required – supporting report

1. Introduction and background

- 1.1. MPS has Microsoft technology at the heart of its IT infrastructure, with over 35,000 desktops/laptops using the Windows XP operating system, and over 350 server platforms running on Windows Server 2003.
- 1.2. This paper proposes the award of contracts to Microsoft to enable on-going customer support for both Windows XP and Windows Server 2003 for a 12 month period, and a three year contract for Premier Support.

2. Issues for consideration

- 2.1. Only Microsoft can provide the support as they retain the Intellectual Property Rights to the source code. Not renewing the support arrangements would expose MPS to significant risk to the stability and security of its systems and is not an option.
- 2.2. MPS needs to purchase the Premier Support agreement in order to secure a Customer Support Agreement, and to secure the proposal Microsoft requires payment in advance. Microsoft only allow one-year Customer Support Agreements.
- 2.3. In 2014/15 MPS obtained Microsoft support via the Governments Crown Commercial Service (CCS) framework. Support for 2015/16 was anticipated to be via the same approach but CCS were unable to finalise a contract with Microsoft. In April 2015 MPS (and other Government departments) were forced to negotiate directly with Microsoft. By agreeing to a three year premier support agreement a significant discount to the Microsoft list price and the current fee has been obtained. In addition, a significant discount to the list price for the customer support agreements has been achieved.
- 2.4. The MPS has provided assurance that the proposals negotiated and recommended in this paper are consistent with other Government negotiated Microsoft deals for support. However, within the overall package there are elements, which the MPS are likely to be significant users of, which provide some concern as to value for money. MPS must robustly manage the demand upon the service, and should continue to work with the Governments Crown Commercial Service and to challenge Microsoft on these issues.
- 2.5. Digital Policing now have plans to reduce the incidence of XP based desktops through the Next Generation Desktop project, however this does not yet include plans for the elimination of XP from the MPS estate by March 2016. In addition, the removal of Server 2003 from the estate is not yet planned for and in these cases a further CSA will be required.

3. Financial Comments

- 3.1. The Premier Support Agreement will cost £464k p.a. – a total of £1,391k over the three years 2016/17-2018/19. The annual cost of the XP Customer Support Agreement is £644k for 2015/16, and the 12 month cost of the Server 2003 Customer Support Agreement is £1,080k. The costs of these support agreements, in total £3,115k, will be met from within the existing MPS Digital Policing revenue budgets for the relevant years.

4. Legal Comments

- 4.1. The Mayor's Office for Policing and Crime (MOPAC) is a contracting authority as defined in the Public Contracts Regulations 2015 (the Regulations). When awarding public contracts for goods or services valued at £172,514 or above, all contracting authorities must do so in accordance with the Regulations. This report confirms the value of the proposed contract award exceeds the above threshold. Consequently, the Regulations are engaged.
- 4.2. Regulation 32 provides the MOPAC may award a public contract by a negotiated procedure without publishing a contract notice in the OJEU where the services can only be provided by a single provider due to the protection of intellectual property rights. Microsoft are the only provider legally capable of providing the service based upon their exclusive ownership in the intellectual property rights to the software source code.

5. Equality Comments

- 5.1. There are no direct equality or diversity implications arising from this report

6. Background/supporting papers

Appendix 1

Public access to information

Information in this form is subject to the Freedom of Information Act 2000 (FOIA) and other legislation. Part 1 of this form will be made available on the MOPAC website within 1 working day of approval. Any facts/advice/recommendations that should not be made automatically available on request should not be included in Part 1 but instead on the separate Part 2 form. Deferment is only applicable where release before that date would compromise the implementation of the decision being approved.

Is the publication of **this** form to be deferred? NO

If yes, for what reason:

Until what date (if known):

Is there a **part 2** form

Yes

If yes, for what reason:

Commercial confidentiality.

ORIGINATING OFFICER DECLARATION:

	Tick to confirm statement (✓)
Head of Unit: Annabel Cowell has reviewed the request and is satisfied it is correct and consistent with the MOPAC's plans and priorities.	✓
Legal Advice: The MPS legal team has been consulted on the proposal.	✓
Financial Advice: The Head of Strategic Finance and Resource Management has been consulted on this proposal.	✓
Equalities Advice: Equality and diversity issues are covered in the body of the report.	✓

OFFICER APPROVAL**Chief Operating Officer**

I have been consulted about the proposal and confirm that financial, legal and equalities advice has been taken into account in the preparation of this report. I am satisfied that this is an appropriate request to be submitted to the Deputy Mayor for Policing and Crime.

Signature



Date

25/06/2015

Initiate and Award

Microsoft Premier Support Agreement

12 June 2015

Microsoft Premier Support Agreement –Business Case

1. DECISIONS REQUIRED AND KEY ISSUES

An opportunity has arisen to obtain a preferential deal with Microsoft for both our Customer Service Agreement (CSA) for Windows 2003 and Windows XP (which provides extended support beyond the normal lifecycle) and Premier Support Agreement (PSA, which provides a high level of dedicated technical support). In order to achieve this deal we have to sign a contract renewal and issue a purchase order by the end of June when this offer will expire.

Members are therefore asked to consider this proposal out of normal governance cycles and indicate whether they wish to accept this proposal

The purpose of this contract is

- To ensure that the MPS has access to patches and updates for "out of manufacturer supported" Windows 2003 and XP operating systems in order to:-
 - Ensure support of key business critical systems is maintained
 - Reduce the likelihood of system failures affecting business operation
 - Enable "Secure Systems" to maintain accreditation status
 - Minimise any risk of security breaches
- To provide access to Microsoft subject matter experts for complex support incidents
- To ensure pro-active assistance from Microsoft is provided for all the core MPS infrastructure

The key issues to consider are:

- The current MPS infrastructure is completely reliant on Microsoft technology to deliver all its key business functions.
- A large proportion of the Infrastructure relies on legacy operating systems that are at risk
- Microsoft are offering favourable terms for an extension to the Premier Support Agreement

The decision required is:

- **To initiate and award the Microsoft Premier support agreement with Custom Support for the Windows XP operating system and the Windows Server 2003 operating system.**

2. EXECUTIVE SUMMARY

The MPS has Microsoft technology at the heart of its infrastructure services strategy and will remain key to that strategy for the foreseeable future. Therefore support from Microsoft is an essential service for the MPS to ensure stability and security of its systems.

The MPS has over 35000 desktops/laptop systems running the Windows XP operating system and over 350 server platforms running business applications on Windows Server 2003. These include the MPS secure services teams who still have extensive reliance on these types of legacy systems including some which access information up to a protective marking of secret and therefore need to have appropriate support in place.

The MPS relies on the Windows XP desktop operating system which is now out of support and the Windows server 2003 operating system which goes out of formal support in July 2015.

The CSA for XP was subject to a Crown Commercial Service contract from April 2014-2015. Negotiations were taking place again with Microsoft to renew this contract for a further year, these discussions broke down in April leaving many government departments including the MPS to negotiate their own contract extensions.

When Crown Commercial Services announced that they would not renew the CSA XP contract, MPS approached Microsoft to negotiate a contract extension and at the same time challenged Microsoft to reduce the cost in line with MPS initiatives.

As a result Microsoft have offered a preferential deal for both a Customer Service Agreement (CSA) for Windows XP (which provides extended support beyond the normal lifecycle) and advance commitments for our existing Windows 2003 CSA and our Premier Support Agreement (PSA, which provides a high level of dedicated technical support) which could save the MPS £800k over three years. In order to achieve this deal we have to sign a contract renewal and issue a purchase order by the end of June (the end of their financial year) when this offer will expire.

There are three elements where support is required and included in the offer:-

- A CSA for XP from April 2015 to 2016;
- A CSA for Windows 2003 from July 2015 to July 2016; and
- A PSA for all Microsoft devices from April 2016 to April 2019.

It should be noted that Microsoft refuse to provide CSA cover without a PSA contract in place.

The MPS has a number of projects as part of the TTPi programme which are starting to address the obsolete desktop and server systems but they are not expected to upgrade all the systems within the next 12 months. There is therefore potential that both the CSAs for XP and Server 2003 may require further extension beyond April 2016.

The total commitment required is set out in the table below.

See Part 2 of the report

3. THE STRATEGIC CASE

The MPS currently uses Microsoft technology at the heart of all its infrastructure services to deliver business users with access to all systems, Microsoft will remain at the heart of the strategy for the foreseeable future. Microsoft have improved their systems by delivering better performance and security with the introduction of modern operating systems like Windows 7 and Windows 8.1. The MPS has not moved forward quickly enough to take advantage of these upgrades and finds itself reliant on legacy operating platforms.

The MPS has over 35000 desktops/laptop systems running the Windows XP operating system and over 350 server platforms running business applications on Windows Server 2003. These include the MPS secure services teams who still have extensive reliance on these types of legacy systems including some which access information up to a protective marking of secret and therefore need to have appropriate support in place.

The business completely rely on these platforms and any interruption to service availability could have catastrophic consequences.

The main threats that would be exposed by not having appropriate support in place are:-

- Systems security more likely to be compromised
- Operational interruption to service availability more likely
- No access to Manufacturer support following a critical failure delaying or preventing restoration of service
- Personal data compromised more likely
- Systems connectivity to other government agencies may be denied
- Systems accreditation could be withdrawn
- Reputational damage may be caused by any of the above
- Reputational damage caused by public knowledge that the MPS have not taken out this level of mitigation from Microsoft

It is therefore essential that the MPS has adequate support in place for these operating systems. The MPS currently has a Microsoft Premier Support agreement covering all devices which runs until June 2016 but does not have any Custom Support Agreement (CSA) in place for the support of Windows XP or Server 2003 (after July 2015). The MPS must have a Premier Support Agreement in place in order to purchase a CSA.

The CSA for XP was subject to a Crown Commercial Service contract from April 2014-2015. Negotiations were taking place again with Microsoft to renew this contract for a further year, these discussions broke down in April leaving many government departments including the MPS to negotiate their own contract extensions.

When Crown Commercial Services announced that they would not renew the CSA XP contract, MPS approached Microsoft to negotiate a contract extension and at the same time challenged Microsoft to reduce the cost in line with MPS initiatives.

As a result Microsoft has offered a preferential deal for both a Customer Service Agreement (CSA) for Windows XP (which provides extended support beyond the normal lifecycle) and advance commitments for our existing Windows 2003 CSA and our Premier Support Agreement (PSA, which provides a high level of dedicated technical support). In order to achieve this deal we have to have sign a contract renewal and issue a purchase order by the end of June (the end of their financial year) when this offer will expire.

The outsourcing to the towers model will place obligations on new providers to ensure the MPS move on to modern supported Microsoft platforms and remain in a fully supported status quo.

The MPS has a number of projects as part of the TTPi programme which are starting to address the obsolete desktop and server systems but they are not expected to upgrade all the systems within the next 12 months. There is therefore potential that both the CSA's for XP and Server 2003 may require further extension beyond April 2016.

Next Generation Desktop Phase 2 is running under the TTPi programme and it will upgrade or replace 20,000 devices on the MPS estate. We know at this stage though that there are over 35,000 devices on the estate. The TTPi team have worked in collaboration with the CRE Board and PSD plans as regards the future number of required devices which is what initially drove the 20,000 figure. The current understanding is that at least 8,000 machines could be targeted straight away to be removed and decommissioned from the estate that are not in use. The TTPi team are currently looking at how to achieve this and the overall programme is expected to be completed by February 2016. This does though leave a potential number of XP machines still on the estate and further analysis would need to be carried out as to whether these machines should be upgraded or removed.

For Windows 2003 Server, it is important to note that the TTPi programme are looking to virtualise a large part of the estate as part of the DC exit and hosting projects. However, the virtualisation only transforms the machine from a physical server to a virtual server - this work does not upgrade the Windows Operating System. Capgemini and Microsoft have therefore been engaged to produce a proposal to upgrade the Windows Server 2003 Operating System. The input to this programme of work is the PWC-led Application Landscape review to ensure we are only targeting servers and applications that will be required in the future. Once complete, this would then need to follow corporate governance via an OBC.

4. THE ECONOMIC CASE

Option Appraisal

Option 1: Do Nothing

The do nothing option is not feasible as it will leave key systems based on Windows XP and 2003 without operational support and I leave the MPS with significant reputational risk and possible interruption to operational service. The key risks of doing nothing are:-

- Systems security more likely to be compromised
- Operational interruption to service availability more likely
- No access to Manufacturer support following a critical failure delaying or preventing restoration of service
- Personal data compromised more likely
- Systems connectivity to other government agencies may be denied
- Systems accreditation could be withdrawn
- Reputational damage may be caused by any of the above
- Reputational damage caused by public knowledge that the MPS have not taken out this level of mitigation from Microsoft

We do however have the option not to accept the combined offer and negotiate separate contracts for the three elements but that would certainly be a less cost effective solution. Microsoft have indicated that the discount on offer is a package and cannot be disaggregated.

Option 2: Renew Microsoft Premier Support and Procure CSA for Windows XP and Windows Server 2003

This Option provides full access to Microsoft subject matter experts in the event of any systems failures. It will also provide privileged access to the Microsoft Premier Support portal for additional systems training and technical advice. The CSA upgrades provide full legacy operating system support for Windows XP and Windows server 2003 including security patches and major incident escalation. The Premier Support Agreement also provides a dedicate TAM (technical account manager) and a number of hours access to DSE (dedicated systems engineers) to work on both reactive and proactive Microsoft support on all the platforms used by the MPS.

There are no options available around levels of support and Microsoft only allow one-year CSA deals in order to create pressure to move off these old platforms.

The Preferred Option – see PART 2: EXEMPT SECTION OF THE REPORT

5. THE COMMERCIAL CASE

Introduction

The Microsoft agreement can only be purchased from Microsoft and there are no other options available. Microsoft exclusively owns the intellectual property rights in the source code to the software and will not license that IP to a third party in order that a third party can provide the services to us. Microsoft also will not assign the IP to the MOPAC in order that the MOPAC/MPS can provide the services directly to itself. Accordingly, Microsoft are the only provider legally capable of providing these services.

Required goods/services

These are as follows:

1. Microsoft Premier Support Agreement March 2016-March 2019
2. Custom Support Agreement for Windows XP for 1 year from April 2015
3. Custom Support Agreement for Windows Server 2003 for 1 year from July 2015

Proposed procurement route

This service can only be purchased directly from Microsoft so a single supplier quotation has been obtained.

The table below shows a comparison between the list prices for the required services compared to current MPS payment and the deal offered by Microsoft.

See Part 2 of the report

6. THE FINANCIAL CASE – see PART 2: EXEMPT SECTION OF THE REPORT

7. THE MANAGEMENT CASE

Operational Management Arrangements

Infrastructure Services will manage the Premier Support Agreement with Microsoft and ensure that the appropriate arrangements are in place for Cap Gemini (our current delivery partner) and the MPS Secure Services teams. This will ensure release mechanisms are in place for them to implement any updates or security patches. Infrastructure services will ensure Microsoft provide the appropriate reporting and escalation in line with the contracted service.

Legal Implications

The Mayor's Office for Policing and Crime (MOPAC) is a contracting authority as defined in the Public Contracts Regulations 2015 (the Regulations). When awarding public contracts for goods or services valued at £172,514 or above, all contracting authorities must do so in accordance with the Regulations. This report confirms the value of the proposed contract award exceeds the above threshold. Consequently, the Regulations are engaged.

Regulation 32 provides the MOPAC may award a public contract by a negotiated procedure without publishing a contract notice in the OJEU where the services can only be provided by a single provider due to the protection of intellectual property rights. Section 5 of this report confirms that Microsoft are the only provider legally capable of providing the service based upon their exclusive ownership in the intellectual property rights to the software source code. In the absence of Microsoft granting a legal right to a third party to provide these services or assigning the intellectual property rights in the software to the MPS, Microsoft remain the only legally capable provider available.

This Business Case recommends the initiation and award of a contract to Microsoft valued at £3,115,583. Paragraph 4.13 of the MOPAC Scheme of Delegation and Consent (the Scheme) gives the Deputy Mayor for Policing and Crime (DMPC) delegated authority to approve all requests to go out to tender for contracts of £500,000 or above.

Paragraph 7.23 of the Scheme gives the Director of Strategic Procurement consent to approve the award of all contracts, with the exception of those called in through the agreed call in procedure. With regard to the call-in procedure, paragraph 4.14 of the Scheme provides the DMPC reserves the right to call in any MPS proposal to award a contract for £500,000 or above. Accordingly, the DMPC should be invited to call the matter in if he so chooses before the Director of Strategic Procurement can give final approval for the contract award.

PART 2: EXEMPT SECTION OF THE REPORT

	£000
CSA XP (to April 2016)	1080
CSA 2003 (to July 2016)	644
PSA (to April 2019)	1,391
TOTAL	3,115

	List price (£000)	Current Fee (£000)	Budget set for 2015/16 (£000)	Offer (£000)	Cost Avoidance against list price (£000)	Cost avoidance against Current fee (£000)	Cost avoidance against budget (£000)
CSA XP/2003 (pa)	2,791	0*	1,700	1,724**	1,067	n/a*	(24) per year**
PSA (3 years)	3,293	2,000	667(one year) Equates to 2,000 for 3 years	1,391	1,902	609	609 over 3 years

* The current fee for CSA XP/2003 is shown as 0 due to the fact that the support costs for 2104/2015 were funded by Crown Commercial Services and not cross charged to MPS.

** A budget was set for CSA XP/2003 for 2015/16 in anticipation of costs being recharged from Crown Commercial Service, as this was understood to be the intention of CCS when this deal was under negotiation. The budget was set through DP committing to make offsetting savings to manage this pressure.

The Preferred Option

Microsoft technology is at the core of the MPS strategy for supported platforms going forward and option 1 does not address significant areas of risk, the recommended option is therefore option 2 which will extend the Microsoft Premier Support Agreement until March 2019 and provide CSA cover for both XP and Server 2003 for a minimum of 1 year.

Unless organisationally it is possible to transfer away from Windows XP and Server 2003 it is likely that a renewal for these CSA agreements will be required in 16/17. This is likely to come at a higher cost and will be the subject of a separate paper. Activities are being undertaken to try and mitigate the risk of requiring new CSA's, e.g. Next Gen Desktop will replace 20,000 (not all) Windows XP machines with Windows 8.1. The Data Centre project will also reduce some of the Server 2003 issues, but will not fully mitigate this issue. Capgemini are also doing a piece of work to review the MPS exposure to Windows 2003.

6 THE FINANCIAL CASE –

The table below compares the current provision in the MPS budget in respect of these services and compares it to the estimated position under the proposed contracts.

	2015/16	2016/17	2017/18	2018/19	Total
	£K	£K	£K	£K	£K
Current Revenue Budget:					
Premier SA	667	667	667	667	
CSA	1700	1700	1700	1700	
Total	2367	2367	2367	2367	
Recommended Option Revenue Impact:					
Premier SA	649	464	464	464	
CSA XP*	644	0	0	0	
CSA Server 2003*	810	270	0	0	
Total	2103	734	464	464	
Cost/(Saving) Revenue impact					
Premier SA saving	-18	-203	-203	-203	-627
CSA cost avoidance	-246	-1430	-1700	-1700	-5076
Total	-264	-1633	-1903	-1903	-5703

* Assumes 1-year renewal only.

The following points should be noted:

1. To secure the discount for the Premier agreement for 2016/17 - 2018/19, the agreement must be paid for in advance by 24 June 2015. This will be accounted for as a prepayment, and therefore costs will not hit the budgets until the years in which the service is received (e.g. 2016/17 - 2018/19).

The savings from the Premier support agreement in future years will be used by DP to meet savings targets implicit in the DP control totals in the Medium-Term Financial Plan.