


<p>Cabinet Decision</p> <p>14 June 2016</p>	
<p>Report of: Zena Cooke, Corporate Director, Resources</p>	<p>Classification: Unrestricted</p>
<p>Strategic ICT Partnership – Agilisys Contract Review</p>	

Lead Member	Councillor Edgar
Originating Officer(s)	Sean Green – Service Head ICT, Customer Access and Transformation
Wards affected	All Wards
Key Decision?	Yes
Community Plan Theme	Not Applicable

Executive Summary

The Council has an outsourced contract for ICT services in the form of a Strategic Partnership Agreement with Agilisys that was awarded in May 2012. The contract runs until 2019 and allows for one opportunity before that date to execute a voluntary termination by the Council. The Council commissioned an independent review of the contract to assess the existing contractual and operational arrangements as there were a number of concerns regarding the contract and the Council's ICT performance.

The review was undertaken over a four month period and the review provided four options. Given the need to significantly invest in and improve the council's ICT infrastructure, the planned relocation from Mulberry Place and the cost implications of voluntary termination, it was agreed that the option to improve the contractual arrangements through negotiation rather than voluntary termination should be pursued. The review also highlighted the need to strengthen the partnership with Agilisys and to put in place robust governance and performance management arrangements if the decision was taken to revise the contract.

This report sets out the outcome of the contract negotiations and the proposed material changes to the contract and to the governance and operational arrangements that will improve the performance of the contract and ensure the provision of high quality ICT services to the Council.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Approve the changes to the contract with Agilisys.
2. Delegate to the Director of Resources, after consultation with the Head of Legal Services, any final changes to the Deed of Variation that sets out all the agreed contractual changes under Part 3 – Responsibility of Functions Part A Corporate Delegations paragraph 10.4 Scheme of Management.
3. Note the improved governance and performance management arrangements that are being incorporated in the contract to strengthen the strategic partnership and operational arrangements between Agilisys and the Council.
4. To note the work being undertaken to establish the Council's ICT investment requirements and implementation plan that will support and form part of the Council's wider transformation plan.
5. Authorise the Service Head, Legal Services, following consultation with the Director of Resources to execute all necessary contract documents in respect of the contractual changes referred to at recommendations 1 and 2 above.

1. REASONS FOR THE DECISIONS

- 1.1** The Council's current ICT contract with Agilisys is not considered to be performing effectively and the contract only allows one opportunity to review and revise the contract under voluntary termination. Of the four options available to the council, the option to review and revise the current contract with Agilisys was considered to be the best option for the Council and would enable improvements to be made, within the existing core contract cost.

2. ALTERNATIVE OPTIONS

- 2.1** The review of the Strategic Partnership with Agilisys set out four potential options:

1. Do nothing: Continue with current arrangements
2. Do minimum: Tactical / point fixes to address priority issues only
3. Fix: Fundamentally review and re-set arrangements
4. Exit: Exit current arrangement with Agilisys (and move to appropriate alternative)

- 2.2** The "fix" option was considered to be in the best interests of the Council at this time given the current performance of the contract, the risks in changing ICT arrangements and the costs associated with voluntary termination. The Council's plans for ICT transformation and the significant investment requirement as well as the ICT work required to move successfully to the new Civic Centre in 2020/21 were key considerations.

3. DETAILS OF REPORT

Introduction

- 3.1** This report sets out the details of the contract negotiations and the proposed material changes to the current ICT contract with Agilisys to ensure the provision of high quality ICT services, to enable the delivery of the Council's Transformation plans and the planned move to the new Civic Centre in 2020/21.

Background

- 3.2** The Council has an outsourced contract for ICT services in the form of a Strategic Partnership Agreement with Agilisys that was awarded in May 2012. The contract runs until 2019 and allows for one opportunity before that date to execute a voluntary termination by the Council.
- 3.3** In order to establish whether to exercise the option for voluntary termination, the Council commissioned an independent mid-term review of the contract to assess the existing contractual and operational arrangements as there were a

number of concerns regarding the contract and the Council's ICT performance.

- 3.4** In order to enable the Council to undertake the mid-term review, Agilisys agreed to extend the period during which the Council could exercise the option of voluntary termination and confirmed they would fully participate in the review. The date by which voluntary termination could be exercised by the Council was extended from March 2016 to July 2016.
- 3.5** The Review considered seven areas – objectives, performance, governance, perceived pain points, operating model and technology architecture, value for money and Spirit of Partnership.
- 3.6** A 3-phase approach was used which analysed the current state, set out options and presented the final report and recommendations.
- 3.7** Over a 5-week period, 90 stakeholders were interviewed, including staff at all levels, Members and Agilisys staff. Contractual, service and other relevant documentation was reviewed and the findings were analysed against commercial, service, technology and relationship frameworks.
- 3.8** The current state analysis identified that, whilst the perception of the end to end IT service was generally poor, particularly for projects, Agilisys were in general meeting all contractual Key Performance Indicators (KPIs) and the service management arrangements appeared sound. However, the review identified some fundamental weaknesses in communications, governance and the underpinning commercial arrangements that resulted in expectations being unclear and/or misaligned with delivery and that the desired behaviours for both the Council and Agilisys were not clear, monitored or incentivised.
- 3.9** The outcome of the review was presented to the Council's Corporate Management Team in January 2016. The review provided four options for consideration:
 1. Do nothing: Continue with current arrangements
 2. Do minimum: Tactical / point fixes to address priority issues only
 3. Fix: Fundamentally review and re-set arrangements
 4. Exit: Exit current arrangement with Agilisys (and move to appropriate alternative)
- 3.10** These options were assessed against the following criteria on the basis they would need to be achieved within 18 months:
 1. Enables clarity of joint partnership objectives and links to achievement of LBTH Corporate priorities - Enables strategic, political and cultural fit
 2. Enables effective delivery of day to day operations and performance measurement
 3. Enables effective technology change and Digital transformation through improved project delivery
 4. Provides an effective method to demonstrate on-going value for money

5. Enables reduction in cost of IT service provision
 6. Enables Innovation in IT service provision and technology
 7. Delivers effective governance and informed decision making
 8. Optimises the Operating model (Client Team, Directorate IT / IT Partner roles and responsibilities)
 9. Promotes desired behaviours from both Council and IT Partner
 10. Minimises cost/risk/duration of transition to future state
- 3.11** Given the need to significantly invest in and improve the council's ICT infrastructure, the planned move to the new Civic Centre and the cost implications of voluntary termination, it was agreed that the option to improve the contractual arrangements through negotiation rather than voluntary termination should be pursued. This option was considered to be the most likely to meet the criteria set out above within 18 months.
- 3.12** The review had also highlighted the need to strengthen the partnership with Agilisys and to put in place robust governance and performance management arrangements if the decision was taken to revise the contract.
- 3.13** A Council project team was established to undertake the contract negotiations, including the ICT client team, finance and legal, with a view to producing an agreed deed of variation to the existing contract before the 1st July 2016 deadline to exercise voluntary termination.
- 3.14** The contract negotiations with Agilisys have focussed on the key areas that needed to be revised to ensure the Strategic Partnership delivers the expected improvements and benefits for the remainder of the contract period. The negotiations have primarily covered and addressed commercial, governance and operational arrangements.

The key areas covered by the contract negotiations are set out below:

Exclusivity

- 3.15** The current contract gives Agilisys rights to exclusivity, which means they have a right for a first quote on all the Council's back office services (for outsourcing purposes) and any services or solutions related to IT.
- 3.16** This right has been negotiated out of the revised contract, with Agilisys now having preferred partner status for the provision of core ICT services, but the Council can procure ICT outside of the contract if it chooses. The Council has committed to £1million per annum new project spend for the remainder of the contract period. This represents approximately 50% of the current annual project spend with Agilisys. A 5% fee on equipment purchases has also been agreed up to a maximum of £50k per annum with the potential for this to be returned at the end of the contract. The Council will produce an annual stakeholder and relationship plan with Agilisys to maximise partnership opportunities to support the Council's strategic and enabling objectives.

- 3.17** The proposed changes will give the Council flexibility and choice whilst Agilisys continue to be the Council's preferred ICT partner.

Third Party Expenditure (Schedule 25)

- 3.18** The existing contract details third party contracts that were passed to Agilisys in 2012. These details had to be warranted as the details were not comprehensive at the point of transfer. This has resulted in the need to reconcile excess payments to and from Agilisys, which has required significant resource to undertake and has led to protracted disputes.
- 3.19** It is proposed to complete a one-off reconciliation to "rebase" the third party contract details as at the date of the revised contract. This will include scope and volume information for all the key and high value contracts. A joint procurement savings plan will be produced and pro-actively managed through strengthened governance arrangements.
- 3.20** The proposed changes will deliver simpler, well defined working arrangements that will be more efficient, minimise cost excesses and disputes going forward, with improved joint planning, forecasting and escalation processes.

Performance Management

- 3.21** Whilst the mid-term review identified that Agilisys were in general meeting all contractual KPIs and the service management arrangements appeared sound, the existing KPIs used to measure contract performance and the success of the partnership are considered to be limited and not a reflection of what is important to the council
- 3.22** It is proposed to introduce a new broader and deeper set of performance measures (82 KPIs/PIs) that will cover areas including, Customer satisfaction, Value for Money, Innovation, People, Agility, Continuous Service Improvement, Relationship, Corporate Responsibility and Operations. These performance measures will be reviewed annually to ensure they remain relevant to the Council's ICT priorities.
- 3.23** The proposed changes will enable improved monitoring and reporting, enabling early corrective action and robust contract and performance management, which will be part of the formal partnership governance arrangements.

Business As Usual Activity

- 3.24** The existing arrangements for differentiating business as usual and project activity have been an area of concern with a perceived lack of transparency. It is proposed to introduce an annual plan to ensure all main application upgrades are set out and those that are business as usual are confirmed in advance and regular reports provided. The existing guidelines for business as

usual activity will continue, but more complex work or work requiring external resources will be progressed as projects. Detailed reports for projects or changes that do not fall within business as usual activity will be produced.

- 3.25** The proposed changes will provide strengthened governance, more effective resource allocation, greater transparency, performance measurement and reporting.

Governance and Relationship Management

- 3.26** The existing governance and relationship management arrangements are not as effective as required, with a lack of sufficient contractual obligations for the Council and Agilisys to deliver the strategic objectives of the Partnership.

- 3.27** It is proposed to incorporate a number of improvements to the existing arrangements, including a partnership agreement, a joint operations plan, an annual relationship survey and relationship development plan. Formal governance arrangements at the strategic, operational and tactical level to promote and deliver jointly continuous improvement and innovation, with clearly stated values and ways of working.

- 3.28** The governance structure of the new relationship model will be as follows:

1. **Executive Strategic Board:** An annual review of the previous year, an assessment of the relationship and the setting of the strategic direction for the forthcoming year.
2. **Strategic Partnership Board:** Quarterly reviews of progress to date, current performance, joint operations plan, key issues, innovation and any escalations
3. **ICT Strategy and Commissioning Board:** Monthly review of the ICT strategy and new requests for ICT projects and resources
4. Monthly performance reviews to review progress against the contractual performance measures.

- 3.29** The proposed changes establish a more sophisticated and robust relationship model, to enable collaborative working, more efficient and effective working practices, with systematic review and continuous improvement embedded in the strengthened governance arrangements.

Project Arrangements

- 3.30** The existing arrangements for commissioning, managing and delivering projects were considered to be overly bureaucratic, inefficient, with slow delivery and poor transparency on progress, resource allocation and cost.

- 3.31** It is proposed to introduce a more agile streamlined process, with more detailed, transparent information provided to monitor and track progress.

- 3.32** The proposed changes introduce a new process that has been designed and agreed between the Council and Agilisys and is already being used with new

templates and significantly improved information on the allocation of resources, tracking and progress. The new governance arrangements include an ICT Strategy and Commissioning Board that will ensure the corporate prioritisation of projects against an annual ICT project and programme plan.

Relocation of Service Desk and Provision of 24/7 service desk

- 3.33** The current service desk arrangement is provided locally in the borough and is only available between 8am and 6pm Monday to Friday.
- 3.34** It is proposed that the service desk availability be increased to 24/7 to reflect the Council's flexible working arrangements and future transformation plans that will include greater use of and access to digital services. The proposed changes will mean that the service desk will be relocated to the Agilisys team based in Rochdale and is expected to affect up to 6 Agilisys staff.
- 3.35** If agreed, the proposed change will be implemented within 3 months of the contract change, with Agilisys meeting the costs of transition and any redundancy costs if they arise.

Other Proposed Contract Changes

Innovation approach

- 3.36** It is proposed that the Council and Agilisys appoint senior managers to be their ICT innovation champions. These officers will have joint responsibility to develop an innovation pipeline and plan to be presented to the Strategic Partnership Board quarterly. This will enable the Council to maximise the opportunities arising from ICT innovation.

Historic Volume Adjustments

- 3.37** It is proposed to remove the volume adjustment calculation from the contract. This covered payments due to Agilisys if the Council exceeded the number of staff employed in the Council at the start of the contract in 2012 and a service charge rebate to the Council from Agilisys should the Council have less staff than those employed at the start of the contract. This will be a benefit in terms of the Council's wider transformation plans and increased use of digital services, given the number of Council staff currently without access to ICT.

Applications Availability Calculation

- 3.38** It is proposed that the availability of Applications will be measured separately for the purposes of KPI performance and potential penalties to Agilisys. This will ensure the Council is able to effectively monitor the performance of individual applications that are key to service provision.

Outstanding Financial Claims

- 3.39** A number of historic financial claims made by both the Council and Agilisys that were in dispute have been reviewed and resolved as part of the contract negotiation. These include the Historic rate card, Applications penalties, Roman Road data centre charges, volume adjustments and third party expenditure. These claims have been resolved within the existing contract without incurring additional unbudgeted costs for the Council. As part of the review, the current contract payment arrangements have been reprofiled over the remainder of the contract, which will improve the cashflow position for Agilisys. The re-profiling does not impact on the contract cost or the budget allocated to meet the cost of the contract for the remaining term.

Apprenticeship Programme

- 3.40** The current contract requires Agilisys to recruit apprentices over the life of the contract. Agilisys also have a wider apprenticeship programme. As part of the contract negotiations, Agilisys have agreed to work more closely with the Council's Economic Development team in relation to the apprenticeship programme, which will make the process for placing apprentices more aligned and help to maximise the employment opportunities for local residents.

ICT Operating Model, Strategy and Transformation Investment

- 3.41** It is acknowledged that the changes negotiated to the Agilisys contract will not in themselves ensure high quality ICT service provision that is fit for purpose and delivers transformation.
- 3.42** Changes to the Council's ICT operation model and a comprehensive medium term ICT strategy are critical to the delivery of high quality ICT and the Council's transformation agenda.
- 3.43** The Council has engaged SOCITM (Society of ICT Managers) to review the Council's requirements in terms of both the operating model and the ICT strategy. The review of the ICT operating model covers Business Engagement, Governance, Contract Management, Application Support and Value for Money.
- 3.44** The ICT Strategy review covers a number of key themes: ICT reliability and performance; Digital and Mobile Working; Information Management; Partnership Working
- 3.45** The recommendations arising from the SOCITM review will be considered and agreed by the end of June 2016. A business case for the ICT Transformation programme will be produced based on the agreed recommendations. The ICT investment required to deliver the Council's ICT Strategy is currently estimated to be in the region of £8 and £12 million over the next 3 years. The final business case will set out the resource requirements and will be considered as part of the Council's Medium Term Financial Strategy.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1** The additional costs of the contract review by ATOS and SOCITM together with the additional external costs involved in re-negotiating the contract terms are estimated at £165k and have been met from existing ICT resources.
- 4.2** The contract has been re-negotiated on the basis of no change to the existing management fee for the core services (c£9.5m per annum). The costs in relation to projects have been in the region of an additional £2m per annum. It is proposed that the revised governance arrangements will include an assessment of value for money.
- 4.3** The Council has agreed to guarantee £1m per annum of additional project work with Agilisys or alternatively compensate Agilisys for profit forgone on that level of work. Based on the actual spend per annum of £2m to date, this is considered to be a prudent estimate based on the level of previous work placed through this contract. Having negotiated the removal of the exclusivity clause it is to be expected that, where value for money can be demonstrated, other suppliers may be used and the value of work placed with Agilisys would fall as a consequence. There is therefore a risk that the Council may have to meet the cost of this guarantee to Agilisys. If that were the case there would be no tangible benefit to the Council and no provision exists to meet this cost. The maximum value of the guarantee has been estimated at £160k being the loss of 16% profit on £1m.
- 4.4** However, as 20% of the management fee is 'at risk' from a revised 'broader' set of KPI's and there is significant emphasis placed on working within improved formal governance arrangements, it is to be expected that these processes will enable the partnership to deliver some of the transformational benefits originally envisaged.
- 4.5** In reviewing the proposals for changing the contract the Council should also consider the implications of early termination at July 2016 which is the remaining opportunity to terminate but carries compensatory costs estimated at between £3m -£5m.

5. LEGAL COMMENTS

- 5.1** The Council has a duty to achieve Best Value in respect of its expenditures. This is by virtue of Section 3 of the Local Government Act 1999. One of the ways in which the Council ensures Best Value is by ensuring that there is continuous improvement within the services it purchases. From the substance of the report it is clear that in order to continue to achieve Best Value then the services required remodelling to meet the Council's needs.
- 5.2** However, this service is of a type and value which would ordinarily come under the remit of the prevailing European Law. The applicable regulations and law are those that were in force at the time the contract opportunity was

advertised. Therefore, this contract is subject to the Public Contracts Regulations 2006.

- 5.3** The Regulations apply where the Council is seeking a new offer to purchase works goods or services. Therefore, if the remodelled contract represents a new offer then the Council should have subjected the new model to competition.
- 5.4** The 2006 regulations do not provide for the construction of a new offer and this was later clarified in the court case known as Presstext. Presstext set down the three main characteristics of a new offer where if one characteristic could be found in the contract variation then the variation constituted a new offer and should therefore, be subject to a new tender process. The 3 characteristics are whether the change:
- 5.4.1 it would have changed who bid for or won the contract under the original tender process or
 - 5.4.2 extends the scope considerably to encompass services not initially covered; or
 - 5.4.3 changes the economic balance of the contract in favour of the contractor in a manner not provided for in the original contract
- 5.5** As regards the subject matter of the variation it is a question of fact as to whether any of the proposed changes offend one of these three principles. However, the nature of the “changes” are substantially to clarify the position as to how the partnership works, potentially decreases the extent of the services sought and does not improve the contractor’s economic position overall. Therefore, it is unlikely that a challenge that the contract should have been resubmitted to competition would succeed.
- 5.6** In order to provide certainty around the position and following the execution of the variation agreement the Council should consider posting a Voluntary Ex-Ante Transparency notice in the European Journal which would specifically disallow ineffectiveness claims following expiry of the 30 day period following the placing of the notice.
- 5.7** It is unlikely that any of the changes will require consultation for the purposes of either S.3.2 of the local government Act 1999 or S.149 of the Equality Act 2010.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1** The revised contractual arrangements will indirectly support the delivery of the Council’s One Tower Hamlets objectives.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The proposed changes to the contract with Agilisys are expected to provide better value for money for the Council. The negotiations were on the basis that there would be no additional costs for the Council, whilst delivering additional service benefits and improvements. New and significantly improved governance, new stakeholder management and engagement model, new project processes, new BAU processes, KPI dashboard and management will mean much better management of the Council's ICT resources.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 There are no direct SAGE implications arising from this report.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 The main risks have been highlighted within the body of the report.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 There are no direct Crime and Disorder Reduction implications arising from this report.

11. SAFEGUARDING IMPLICATIONS

- 11.1 There are no direct Safeguarding implications arising from this report

Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- Atos Strategic Partnership Mid-Term Review January 2016

Officer contact details for documents: Sean Green