



City of Westminster

Cabinet Member Report

Meeting or Decision Maker:

Cllr David Boothroyd, Cabinet Member
for Finance and Council Reform

Date:

23 June 2023

Classification:

General Release

Title:

Proposed Changes to the Council's
Enterprise Agreement with Microsoft

Wards Affected:

All

Policy Context:

Digital and Innovation have a strategic ambition to create value and efficiency through digital. This decision will ensure Council operations are cost effective and efficient.

Key Decision:

Key Decision, an entry has been included for 28 days on the list of forthcoming decisions

Financial Summary:

The recommended option will provide better value for money for the Council over the next three years. Further details are below.

Report of:

Oliver Partridge, Chief Technology Officer

1. Executive Summary

- 1.1 Through the disaggregation programme, a number of issues have been identified surrounding cyber security and the existing shared tenancy in particular such as the limitations due to having a single security configuration for all three boroughs and a requirement for third party tools to secure the Council's technology landscape. It is recommended that the Council move from the current standard E3 licensing to E5 as well as extending the current 3-year Enterprise Agreement (EA) by two further years. This would result in an increase in ongoing revenue costs to the Council, however it would allow us to mitigate against these identified risks.
- 1.2 The Council is also keen to improve its security posture with reference to the National Cyber Security Council's (NCSC) Best Practice Controls guidance where it currently achieves a score of 'Good'. Moving to E5 licencing would unlock the ability to move to 'Better' and 'Best'. It is also worth noting that, according to Microsoft, around 70% of London Boroughs are now utilising the E5 licencing model.
- 1.3 Furthermore, moving to E5 should allow us to remove other third-party vendors from our estate, simplifying the Council's technology landscape, delivering a more cohesive experience, and potentially reducing existing costs (this cost avoidance is summarised in appendix one, please note additional options are described in the appendix, however these are for reference only).
- 1.4 Moving to E5 licencing as standard would also allow future options for the utilisation of the built-in Teams telephony platform to replace some of the current mobile or telephony solutions.

2. Recommendations

- 2.1 It is recommended that the Cabinet Member for Finance and Council Reform to approve:
 - (a) the non-compliant direct award by way of an extension to the existing call off contract under the KCS framework with the current provider Trustmarque (company number 02183240) for a further period of 2 years from 1 June 2024 to 31 May 2026 at a total contract extension cost of £4,268,391 excluding of Vat and £5,122,069 including of VAT.

(The total contract value of this contract will be £9,034,527 excluding VAT and £10,841,432 including VAT for WCC).

(The two year extension cost include the licence upgrade from E3 to E5 licence for the period 1 June 2024 to 31 May 2026)
 - (b) the early licence upgrade from E3 to E5 and for the Azure consumption for the period commencing 1 June 2023 to 31 May 2024 at a cost of £1,013,000 (£513,000 for the early licence upgrade and £500,000 for

the Azure consumption) excluding VAT and £1,216,303 including of VAT.

(The total contract value of this contract will be £9,034,527 excluding VAT and £10,841,432 including VAT for WCC).

- (c) that the Council enters into an Inter Authority Agreement (IAA) with RBKC and LBHF for the purposes of management of relationship between RBKC, WCC and LBHF.
- (d) a waiver to the Council's Contract Regulations in regard to the proposed extension and variation of the shared Microsoft Enterprise Agreement via a KCS Framework Change Control Notice (CCN) in order to support the services provided under the Enterprise Agreement.

3. Reasons for Decision

3.1 Given the disaggregation, the desire to move to an E5 licencing model and the imminent ending of the EA, Microsoft have proposed an extension of the existing EA by 2 years. The options are presented below with a number of benefits and challenges outlined within.

3.2 The first option would require re-procuring a new EA starting in June 2024 and the unit costs are all aligned to the existing EA until that point when an inflationary uplift (from June 2021 costs) is expected. Option 2 would fix in new unit costs until June 2026 from June 2023.

3.3 Option 1: Do nothing – remain on the current EA

3.3.1 This option would leave all officers on E3 licences. The increase from this financial year to next is as a result of inflationary and FX equalisation rises in unit costs (partly already materialised and partly forecast). Under this option, the Council would be paying an estimated further £394k for no recognised benefit other than maintaining current services.

3.3.2 This option will leave the Council with the same identified security risks which need to be addressed elsewhere – with additional software/tools with their own associated additional costs being required to mitigate against these.

Year	Projected Cost
2023-24	1,011,662
2024-25	1,405,975
2025-26	1,405,975
	3,823,613

3.4 Option 2: Extend the EA until June 2026 and 'ramp' all standard licencing from E3 to E5

3.4.1 This will give the Council better value for money over the 3-year period by locking in the unit costs under the protected pricing within the existing framework.

Year	Projected Cost	Increase from 'Do Nothing'	Less Cost Avoidance *	Net Increase from 'Do Nothing'
2023-24	1,525,248	513,586	(107,283)	406,303
2024-25	1,590,962	184,987	(283,100)	(98,113)
2025-26	1,677,429	271,453	(283,100)	(11,647)
	4,793,640	970,027	(673,483)	296,543

* Option 2 should allow for cost reductions within our Cyber Security budget of £283k for years 2 and 3 (and beyond) as detailed in the appendix to this briefing note. This is as a result of functionality being available within the E5 Suite that is currently being provided by other vendors. The figures above are indicative and are based on the assumption that we will be able to utilise the features during 2023/24 (and therefore remove existing vendors). This cannot be confirmed until the new licencing is in place and a technical review of the cyber security landscape has been completed.

3.4.2 This technical review may recommend further investment in our cyber security estate, which we will bring back to the Cabinet Member in due course.

3.4.3 There are potentially further costs (specifically around telephony) that can possibly be reduced as a result of moving to E5 Ramp and these will be explored further over the coming months if this option is preferred.

4. Background, including Policy Context

4.1 Westminster City Council currently operates a shared tenancy on Microsoft's 365 cloud services platform alongside the Royal Borough of Kensington and Chelsea (RBKC) and the London Borough of Hammersmith and Fulham (LBHF). The tenancy provides a variety of shared services including Outlook, Teams, and SharePoint.

4.2 Access to this tenancy is provided via an enterprise agreement (EA) which is usually renewed every 3 years. The current EA is scheduled to expire on 31

May 2024, at which point the Council(s) would need to sign a new agreement with a Microsoft Gold Partner in order to maintain the current level of service.

- 4.3 One of the benefits of signing a 3-year EA is that the unit costs are fixed throughout the period. This has meant the Council has avoided any inflationary increases during this past high-inflation period, but we would be subject to the global prices set by Microsoft when agreeing a new EA in 2024.
- 4.4 Alongside the above, the decision taken in 2021 to disaggregate the shared IT service dictates that the Council has a desire to move away from a shared tenancy onto its own sovereign platform. This would offer benefits including increased flexibility, control and security within our IT estate as well as the ability to further develop our relationship with Microsoft and other partners.

5. Financial Implications

5.1 Budgets for MS Licenses are held in Digital & Innovation under Technology: End User Computing W29048, CWH & HRA also fund their share based on headcount.

5.2 In addition the Azure Cloud consumption is held in W29408

£'000													
Contracts	Annual Budgets			Total Budget	Actuals			Forecast 23/24	Options Contract Proposals				Projected Total Contract Spend including Option 2
	Budget Held	Cost Centre	Budget Amount		Actuals 21/22	Actuals 22/23	Total Contract Costs		Option 1 2023/24	Option 2 2023/24	Option 1 2023/24-2025/26	Option 2 2023/24-2025/26	
MS Licenses	D&I/HRA/CWH	W29048	0.814 + 0.200 + 0.051	1.065	1.041 + 0.051	0.890 + 0.015	1.997	1.012	1.012	1.525	3.824	4.793	6.790
Azure Cloud Consumption	D&I/CWH	W29408	0.450 + 0.050	0.500	0.203 + 0.039	0.451 + 0.051	0.744	0.500	0.500	0.500	1.500	1.500	2.244
				1.565	1.334	1.407	2.741	1.512	1.512	2.025	5.324	6.293	9.034

5.3 Total budget for WCC is £1.065m, for MS Licenses, and £0.500m for Azure Cloud Consumption as outlined in the table above. These are both based on consumption and in 2022/23 the actuals were £0.905m and £.502m respectively.

Procurement options:

2023/24- 2025/26

Option 1: £3.824m

Option 2: £4.794m (variance to Option 1 increase, less Inflation cost avoidance £0.297m)

The increase in costs for the MS licenses will be £0.297m which includes the cost avoidance costs from reducing some other services as a result of the enhanced licenses.

5.4 The increase in costs is to be funded by a bid to the Corporate Inflation reserve, as this is in effect an inflationary increase, and thus far WCC has benefitted from no inflationary increases on the contract. Proceeding with

Option 2 ensures better value for money, and longer term cost avoidance, but with a larger pressure in 2023/24.

- 5.5 Azure Costs will continue at £0.500m per annum subject to consumption for 2023/24 to 2025/26 under current budgets
- 5.6 There are no potential savings associated with this procurement, but Option 2 allows for cost reductions within WCC Cyber Security budget of £283k for years 2 and 3 (and beyond) as detailed in the appendix to this briefing note which reduce the inflationary pressure overall. There are potentially further costs (specifically around telephony) that can possibly be reduced as a result of moving to E5 Ramp, however this will not reduce the overall budget, for which there will still be a pressure that will be funded from the Corporate inflation bid process.

Value for money

- 5.7 The option to start the new contract 1 year early mitigates future higher inflation costs, fixing the unit costs until June 2026 under the protected pricing framework over the period whilst also providing a higher level product meeting WCC security needs.
- 5.8 Were we to do a Direct Award through the G-Cloud framework then prices would increase, the suggested approach provides better pricing fixed until 2026.
- 5.9 Option 2. WCC gains the benefits of moving to E5 licences immediately (from June 2023) whilst avoiding further inflationary and exchange rate equalisation increases from June 2024 onwards and achieving cost avoidance over the coming years.

6. Legal Implications

- 6.1 The report is seeking the following approvals:
 - (a) Extension of the existing Microsoft Enterprise contract with Trustmarque (the Trustmarque Contract) for a further period of two years,
 - (b) Waiver to vary the Trustmarque Contract
 - (c) Authority to enter into an Inter Authority Agreement (IAA) with RBKC and LBHF,
 - (d) Variation of licence from E3 licensing to E5 Licencing
- 6.2 **Trustmarque Contract**
 - (a) This is a call off contract between the Royal Borough of Kensington and Chelsea (RBKC) acting as the lead authority on behalf of Westminster City Council (WCC) and the London Borough of Hammersmith and

Fulham (LBHF) and Trustmarque (Supplier). The contract is dated the 11th May 2021 with the commencement date of 1st June 2021 and expiring on the 31st May 2024. It is a three-year contract with no option to extend. The value of this contract (the Original Contract) is estimated at circa £7.7m.

- (b) WCC contribution to the Original Contract is estimated at circa £3,036,000.
- (c) The proposal within the report is for the scope of services to be amended to include a change from E3 Licence to E5 Licence. It is also proposed that the length of the contract be increased from three to five years. The value of the proposed variation is estimated at circa £5,122,069 (WCC contribution). The total value of the contract over the five-year period is estimated at circa £9,034,527 (WCC contribution). The value of the variation is therefore, more than 100% of WCC contribution to the Original Contract.

6.3 Proposed Variation

- (a) The Original Contract was procured in accordance with RBKC's Contract Regulations and Public Contracts Regulations 2015. WCC cannot vary the Original Contract because it is not a party to it. As a beneficiary of the contract, WCC can, approve expenditure to cover the costs associated with its use of the contract. Therefore, it is only, RBKC and Trustmarque that can lawfully vary the contract.
- (b) There are very limited circumstances in which contracts can be modified during their term and these are detailed in regulation 72 Public Contracts Regulations 2015 (PCR 2015).
- (c) Broadly, regulation 72(1) provides that modification is permissible where:
 - (i) such changes irrespective of their monetary value, have been provided for in the initial procurement documents.
 - (ii) additional services or works that have become necessary PROVIDED that any increase in price does not exceed 50% of the original contract.
 - (iii) a new contractor replaces new one.
 - (iv) the modification in question falls below the current threshold and not more than 10% of the initial contract.
- (d) The proposed variation does not fall within any of the circumstances set out above and therefore amounts to a direct award of a new contract. Award of contract without prior publication of contract notice (without

competition) presents a risk of challenge from disgruntled candidates on the basis that they have not been given the opportunity to bid for the contract.

- (e) The risk to WCC in the event of a successful challenge can be both financial and reputational. Where the Court is satisfied that a contract has been awarded without competition, it can make a declaration of ineffectiveness and or award damages. A declaration of ineffectiveness simply means that the awarded contract has been cancelled.

6.4 Waiver

- (a) WCC cannot lawfully waive the requirements of PCR 2015. However, the Executive Director can waive the requirements under the Procurement Code.

6.5 Award of a new contract

- (a) Regulation 72(9) provides that a new procurement procedure in accordance with Part 2 PCR 2015 shall be required for modifications of provisions of a public contract during its term other than those specified in this regulation 72. Variation to this contract as currently proposed will amount to a new contract.
- (b) Regulation 32 PCR 2015 provides limited circumstances in which RBKC can lawfully award a new contract without competition. RBKC must therefore, be satisfied that the conditions of regulation 32 PCR 2015 are met and to mitigate risk of challenge, must have published either voluntary transparency notice or contract award notice. A challenge can only be brought against RBKC and not WCC. However, a successful challenge will impact WCC operationally and financially.

6.6 Inter Authority Agreement

- (a) A joint procurement is normally undertaken on the basis of a collaboration agreement between the parties. The scope of the current Joint Working Arrangement between RBKC, WCC and LBHF in relation to ICT services (dated 1/10/15) does not include joint or collaborative procurement.
- (b) The report is therefore, seeking a separate approval of a collaboration agreement between the three boroughs covering these arrangements. Such an agreement should cover and detail the parties' obligations and limitation of liability.

- (c) The Inter Authority Agreement (IAA) should clearly spell out the extent and scope of liability of the parties in the event of a successful legal challenge to the award of contract and or breach of PCR 2015.
- (d) The IAA will therefore, provide WCC with the necessary tool for mitigating the risks of challenge.

7. Carbon Impact

- 7.1 There is no carbon impact as a result of this decision.

8. Equalities Implications

- 8.1 As this is an extension of an existing internal facing software contract there are no Equalities Implications

9. Consultation

- 9.1 N/A as no impact on any specific wards.

If you have any queries about this Report or wish to inspect any of the Background Papers, please contact:

Oliver Partridge, Chief Technology Officer

APPENDICES

WCC Total Cost of Ownership Model - v2

BACKGROUND PAPERS

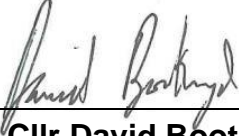
Gate 3 Report - EA Ramp Extension Final

NB: For individual Cabinet Member reports only

For completion by the **Cabinet Member for Finance and Council Reform**

Declaration of Interest

I have no interest to declare in respect of this report


Signed:  Date: 23 June 2023
NAME: **Cllr David Boothroyd**

State nature of interest if any:

(N.B: If you have an interest, you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled

Proposed Changes to the Council’s Enterprise Agreement with Microsoft and reject any alternative options which are referred to but not recommended.

Signed: 
Cabinet Member for Finance and Council Reform

Date: 23 June 2023

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, City Treasurer and, if there are resources implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2)

your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.