



Cabinet
22 May 2017

**Report from the
Strategic Director of Resources**

Wards Affected:
All

Award of a Contract for Oracle Implementation Services

***Appendix 1 is not for publication as it contains the following category of exempt information as specified in Part 3, Schedule 12A of the Local Government Act 1972, namely:**

“Information relating to the financial or business affairs of any particular person (including the authority holding that information)”

1.0 Summary

- 1.1. This report follows on from the earlier Cabinet Report dated 15 November 2016 which set out the options and proposals for the future of the OneOracle systems support and hosting arrangements upon expiration of the current contract in July 2018. It updates Cabinet on developments since November and seeks approval for award of a contract pursuant to the Council’s decision to implement the option for future arrangements approved by Cabinet in November 2016.
- 1.2. The original One Oracle system support and hosting contract was awarded in 2012 and the successful bidder was Capgemini. The Council is part of a 7 Council partnership which shares the hosting and support contract among the partners and Capgemini. The seven Councils are Barking and Dagenham, Brent, Croydon, Havering, Newham, Lambeth and Lewisham.
- 1.3. The partnership was established with the 6 original Councils in 2012 (Newham was a recent joiner who went live in 2016). The OneOracle system was implemented in August 2014. The initial contract for LOT2 - systems support and hosting with Capgemini expired in July 2016, and following a short market testing exercise this contract was extended to July 2018. Procurement rules prohibit further extension, other than in exceptional circumstances.
- 1.4. In November 2016 Cabinet approved the option for Brent to host the OneOracle system in-house and to offer the service to other partner Councils.

1.5 In order to be able to do this Brent will need to appoint a system integrator who can undertake the work of moving the system from the current servers in external data centres onto servers owned and managed by Brent.

1.6 Owing to reasons as detailed in this report below, it is considered after some investigation into the current position on intellectual property rights and associated rights of use in relation to the current system technology and planned use that the company best placed to undertake this work is the current provider of LOT2, Capgemini.

2.0 **Recommendations**

2.1 That Cabinet grants a waiver of the Council's Standing Orders for the award of contracts to enable the direct award of a contract to Capgemini for system integration work and services.

2.2 That Cabinet approves the award of a contract to Capgemini to undertake system integration work and services as mentioned in paragraph 1.5 at an estimated contract value of £488k for the Brent element. In addition, there is a minimum charge of approximately £25k for each of the other OneOracle partner Councils who choose to join Brent for system hosting, thus potentially an additional £150k, all of which will be met by the other Councils and is not a charge that Brent would need to be met from Brent budgets. Total potential value of the Capgemini contract overall is estimated at £650k if all other partner councils opt in.

2.3 That Cabinet authorises the delegation of authority to the Strategic Director of Resources for the purpose of negotiation and agreement of:

- a) terms of contract to be agreed with Capgemini as referred to in paragraph 2.2
- b) matters of intellectual property rights (IPR) and licence of Capgemini IPR for Brent and other OneOracle partner authorities (and other authorities) which may wish to use Brent's IT services in future; and
- c) terms of service to be offered by Brent and charging arrangements in relation to potential opportunities for Brent to provide hosting, support and archiving IT services to OneOracle partner authorities and other third party authorities

3.0 **Detail**

3.1 Since the Cabinet approval in November 2016 work has been undertaken to progress the data transfer to a Brent hosted solution. Certain aspects of the discovery phase have revealed that there are potential complications around the Intellectual Property Rights (IPR) of Capgemini.

3.2 To avoid any prolonged discussion and possibly significant additional costs to the Council regarding use of Capgemini's IPR and potential delay to the project, it is considered the option which would minimise risk and deliver the best value for money for Brent is to appoint Capgemini to move ("lift and shift") the current system into Brent data centres.

3.3 Due to the IPR issues any supplier, other than Capgemini, would not be able to undertake a "lift and shift" approach. Therefore, if a supplier other than Capgemini

were to be appointed the approach would necessitate a complete rebuild of the OneOracle system.

- 3.4 The cost of the “lift and shift” approach submitted by Capgemini in the recent tender is deemed to be cheaper than a rebuild by other suppliers. The costs are outlined in Appendix 1 of this report.
- 3.5 The Capgemini lift and shift approach is scheduled to take 6- 7 months and is deemed a much shorter timescale than a full rebuild and therefore reduces the risk of missing the project deadlines.
- 3.6 Therefore, in light of the significant risks outlined above and in the earlier Cabinet Report, and the lower costs involved in the narrower (more expedient) lift and shift approach using Capgemini, it is considered that awarding the proposed contract to Capgemini is the best option for Brent. There will still be a residual risk of IPR issues because Capgemini has certain IPR which is proprietary to it in relation to present system technology. However this lift and shift option minimises the risk of ongoing issues delaying implementation of future hosting option approved by Cabinet earlier. Capgemini has consented in principle to Brent’s ongoing use of its IPR for Brent future hosting purposes.
- 3.7 The other OneOracle partners are still considering the option of Brent hosting and/or providing the system for them. The potential income regarding the offer to other Councils is set out in Appendix 1. Capgemini has consented in principle to ongoing use of its IPR in the Brent in-house hosting option with Brent offering a future service to those councils currently using the OneOracle system. If Brent wanted to offer hosting services to other councils or bodies (beyond the existing group), this would need to be subject to negotiation.

3.8 The Procurement and Selection Process for the System Implementer.

- 3.8.1 In November/December 2016, a further competition exercise from Crown Commercial Services frameworks was carried out for the “lift and shift” approach to moving the system. As it has since transpired that this is not an approach that can be taken by suppliers other than Capgemini, for the reasons described in 3.1 to 3.6 above, this procurement cannot be taken forward via the further competition procedure.
However, Capgemini have provided a priced submission for the “lift and shift”, which may be used as the base for a contract to be directly awarded calling off directly under a CCS framework agreement for technology services or via direct contract award outside of the framework arrangements if necessary. It is proposed to make a Direct Award of a contract to Capgemini on the basis that (because of their IPR claim) they are the only supplier that can readily implement the Council’s requirements to shift to the Council’s in-house hosting solution within the necessary timescales approved by Cabinet earlier; and prior to expiry of current contract arrangements There will need to be included in the proposed contract, assurances and licence from Capgemini regarding any ongoing use of its IPR with regard to the Council’s planned hosting in future. This would be subject to negotiation.

4.0 Financial Implications

- 4.1 The total estimated costs associated with the project, including data migration, reconciliation costs, are shown in the appendices to this report. It is anticipated that these one off costs will be funded from earmarked reserves set aside for this project. Also included in the appendices are various scenarios to model the anticipated potential income streams that can be generated.
- 4.2 Detailed work on the financial implications of the support service will need to be undertaken when Officers have fully defined which partners may wish to buy into the Brent offer and to which degree (i.e. full support and hosting or just archiving). Until that time it is difficult to determine the exact scope of the service, including any TUPE and other setup costs. It is envisaged however that bringing the OneOracle hosting and support service back in house and having a service offer to the other OneOracle partners will help Brent IT achieve a significant saving in its ICT revenue budget.

5.0 Legal Implications

- 5.1 Under section 3(1) of the local Government Act 1989, Brent Council as a best value authority is under a general duty to make arrangements to secure continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness. Cabinet previously decided this would be best implemented with the option for Brent to move to Oracle on premise hosted service provided by the Brent in house IT team and Cabinet approved the procurement of a contract for application support services from the CCS Commercial Crown Services framework agreement.
- 5.2 As detailed in this report above, subsequent developments and considerations regarding the claims of Capgemini to IPR inherent in the current system technology have meant that officers have needed to review the position; and officers have sought to find a procurement solution which will enable project implementation within approved timescales, minimising any risk of infringement claims in respect of IPR.
- 5.3. The proposed contract option for lift and shift approach using Capgemini has an estimated contract value of £488k for system integration work and services for Brent systems and a further minimum £25k each for the other six partners (see Appendix 1). Total estimated contract value £650k if all partners join in. The Cabinet has already given authority under the terms of Cabinet decision dated 15 November for the Strategic Director of Resources to award a contract of sufficient value for this procurement. The position on Capgemini IPR has necessitated the need for there to be a direct award of the contract and officers seek authority to make the award with no formal tendering procedures either via use of CCS Framework Agreement referred to in paragraph 3.8.1 under Standing Order 86(e), or via direct contracting arrangements subject to negotiation with Capgemini (on terms similar to call off terms under the framework agreement mentioned). Cabinet approval and waiver is needed under the Council's Constitution with respect to these proposed contracting arrangements, As it is intended to use a CCS framework, CSO 86(e) indicates that no formal tendering procedures are required save that the framework agreement must be approved by the relevant Chief Officer to include confirmation that there is budgetary provision for the proposed call-off contract provided that the Chief Legal Officer has advised that participation in the Framework Agreement is legally permissible with it being established in accordance with the Public Contracts Regulations 2015. All of these requirements have been confirmed.

- 5.4 As recorded in the earlier Cabinet Report of November 2016 there is a potential intention for the Council's in house IT service to offer support and hosting services and or archive services to other members of the OneOracle partnership pursuant to the power under section 38 of the Local Government (Miscellaneous Provisions) Act 1976. Under this power the local authority's charges may exceed the cost of supply and the Council may exercise this power without establishing a company.
- 5.5 Subsequent discussions with the partner authorities have led to review of the future proposed contracting model across the OneOracle partners authorities (building in their view from the procurement perspective) and favours a co-operative contracting approach based either on a delegation of powers from the partner authority to Brent using a combination of Sections 101 & 111 Local Government Act 1972, or an agreement for mutual co-operation for delivery of common objectives & functions permitted under Regulation 12(7) Public Contract Regulations 2015 subject to relevant criteria being met and agreement with the other partners. Therefore the options are under review and will be subject to agreement of the other partner authorities who may wish to take Brent's hosting or archive services in the future.
- 5.6 Appendix 1 to this report, refers to opportunities for income generation in relation to potential charges for hosting, support and archiving services. Any such arrangements would need to be negotiated between the Council and the other local authorities in appropriate service contracts. In addition permission to use any IPR claimed by Capgemini will be needed for such arrangements.

6.0 **Procurement and Employment matters**

- 6.1 The procurement process for the system implementer partner is detailed in Section 3.8 above.
- 6.2 Capgemini have stated that if Brent were to provide the system hosting and support service to the other Councils there is a significant risk that TUPE will apply. The impact of this is not currently known. To mitigate the risk and associated costs Brent have proposed that any Councils who wish to join Brent share the costs of TUPE. Partner Councils are still considering whether they wish to join Brent or not.
- 6.3 If no other Councils join Brent then the risk of TUPE is reduced as there are 7 separate contracts between the Councils and Capgemini and it is deemed that if Brent were not providing a service to any other Councils and purely taking the service back in house the TUPE risk is significantly reduced.
- 6.4 If any partner authorities choose to take a service from Brent when their current contract with Capgemini ends, Brent would become the successor supplier and Capgemini staff who mainly support the service contracts with the relevant councils, would potentially transfer under TUPE and Brent would be required to take a transfer of the staff on their current terms and conditions. The detail of the effects of TUPE will depend on the precise organisational structure and the employment contracts for those eligible to transfer and will need to be kept under review. Further Due Diligence with Capgemini and the allocation of its staff across the present seven contracts is necessary.

7.0 **Diversity Implications.**

7.1 An equalities impact assessment will need to be undertaken as part of any restructure exercise which may follow, depending on the take up. This will be carried out as soon as officers know more about the implications to ICT staff.

8.0 **Staffing/Accommodation Implications**

8.1 It is difficult to quantify the full staffing implications of taking the service back in house and offering a service to other OneOracle Councils.

8.3 The number of Capgemini staff who are assigned for more than 50% of their time to the OneOracle is currently unknown, it is not considered to be a significant number of full time equivalents. As the staff are based in Glasgow it is anticipated that they will opt for redundancy rather than relocate but this is not yet confirmed.

8.2 In terms of accommodation implications, it is not anticipated that there would be significant growth in staff numbers who would need to be based at Brent. Officers will have to maintain a local presence in their current Councils.

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