
Meeting	Cabinet Resources Committee
Date	18 April 2013
Subject	Interim IT Infrastructure Support Solution
Report of	Deputy Leader of the Council / Cabinet Member for Resources and Performance
Summary	The report asks Committee to note waiver of relevant rules within the Council's Contract Procedure Rules to approve an emergency arrangement to secure the continuation of critical IT Infrastructure services

Officer Contributors	Andrew Gee, Head of Information Systems Service Delivery
Status (public or exempt)	Public
Wards Affected	All
Key Decision	Yes
Reason for urgency / exemption from call-in	An emergency arrangement was required to secure continuation of critical IT services
Function of	Executive
Enclosures	None
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1. RECOMMENDATIONS

- 1.1 That the Committee notes the decisions, taken by the Director of Commercial Services to:**
- (i) **Waive, the tendering and competition requirements of the Contract Procedure Rules on the grounds of urgency as set out in Contract Procedure Rule 5.7; and**
 - (ii) **Enter into a short term contract with Capita for the provision of an interim IT infrastructure support service.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Cabinet Resources Committee 17th March 2005, (Decision Item 16).
RESOLVED – That the Council accept the tender of Prime Business Solutions Ltd to deliver and implement a Core Infrastructure for the Council and provide a managed service for three years, subject to the position on the performance bond being finalised, with the Council having the option to extend the contract for a further two years, subject to the Council and Prime Business Solutions entering into a contract in the appropriate terms.
- 2.2 Cabinet Resources Committee, 1 December 2008 (Decision Item 7) – the Committee approved the extension of the IT Managed Services contract for a period of 12 months (from 20 June 2008 to 20 June 2009) in accordance with the original contract which includes an option for the, original, 3 year contract to be extended to 5 years. The Committee delegated authority to the Director of Resources to extend the contract for a further period of 12 months (June 2009 – June 2010).
- 2.3 Cabinet Resources Committee, 2 November 2009, (Decision Item 13) - resolved that the IT Infrastructure Managed Services contract with 2E2 UK Limited be renegotiated and extended from 20 June 2010 for a period of up to three years.
- 2.4 Audit Committee, at its meetings on 16 June 2011 and 6 September 2011, reviewed and agreed the Procurement Controls and Monitoring Plan produced following the comprehensive review of the Council's contract monitoring arrangements.
- 2.5 Audit Committee, 8 December 2011 (Decision Item 10) - resolved to note the progress that management had made in implementing the agreed actions against the Procurement Controls and Monitoring Action Plan.
- 2.6 Cabinet Resources Committee, 28 February 2012, (Decision Item 12) – approved the variation of the council's managed service support contract with 2e2 in order to include, within the contract, the provision of support for the WISDOM software.
- 2.7 Cabinet Resources Committee, 4 April 2012, (Decision Item 17) - resolved to authorise: (i) the variation of the existing contract between the Council and 2e2, who, then, provided the council with a managed service for infrastructure, including authorisation of additional expenditure associated with the Telephone Technology Refresh Project, and Infrastructure Refresh Activity

(cost £350,000); and (ii) to spend £18,000 to provide a Contract Management E-Learning module for staff.

- 2.8 Cabinet Resources Committee, 18th October 2012, (Decision Item 14) resolved – That, in response to identified Council risks and One Barnet change projects, the Committee authorise a waiver of Contract Procedure Rules to enable purchases to be made from 2e2 UK Limited, the council's, then, Managed Service for IT Infrastructure provider, the additional annual cost for 2012/13 being £710,000. The annual contract costs £836,000 and is due to expire 21 June 2013.
- 2.9 Delegated Powers Report 1946, Interim IT Infrastructure Support Solution, 7 March 2013 - details a decision taken by the Commercial Director using urgent/emergency provisions to ensure continued support to the Council's critical IT services.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 It is considered that all corporate priorities are supported by ICT availability. Any loss of ICT availability to the council would have an immediate impact on all corporate priorities.

4. RISK MANAGEMENT ISSUES

- 4.1 The assessed impact of the loss of the infrastructure managed service contract is categorised as Almost Certain / Catastrophic (Corporate JCAD 25).
- 4.2 The managed service supported and maintained the council's ICT security, data storage, all data and telephony networks, all telephony services, and all remote access to council services.
- 4.3 All social care services are critically reliant on these ICT services, and residents are reliant on them for contact with the council.
- 4.4 Without the contractual support in place, the council would be unable to restore or ensure continuity of these critical ICT services.
- 4.5 The council IS staff are not skilled or resourced to deliver an adequate cover for these contracted services and the only way to secure continuation of service was to enter into an emergency arrangement with an alternative supplier.
- 4.6 2e2 withdrew its service within a few days of going into administration and finally terminated the service nine days after the administrators were called in.
- 4.7 The only options open to the council in order to mitigate risk was to secure an interim contract prior to entering into an EU regulated procurement (which could take six to nine months to complete) or transfer to the New Support and Customer Services Organisation (NSCSO) provider.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 Under the Equality Act 2010, the council and all other organisations exercising public functions on its behalf must have due regard to the need to: a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; b) advance equality of opportunity between those with a protected characteristic and those without; c) promote good relations between those with a protected characteristic and those without. The 'protected characteristics' referred to are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation. It also covers marriage and civil partnership with regard to eliminating discrimination.
- 5.2 The emergency service provider has committed to the provision of services under the Equality Act 2010 in their NSCSO proposals and will comply under this emergency contract.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 A new procurement may need to be undertaken for a replacement contractor or provider of the service previously provided by 2e2. This will take between six to nine months as a EU regulated procurement will be necessary. An emergency arrangement was necessary and to ensure that the council continued to obtain value for money when entering into a short term contract whilst the procurement activity took place, it was advantageous to enter into an interim services contract with Capita.
- 6.2 Capita have been identified as the preferred bidder for the NSCSO procurement. The requirement for this procurement included services that were provided by 2e2 and hence Capita's submission included these services. This submission was subject to a full EU competitive dialogue procurement and as such the provision has undergone a tender and evaluation process resulting in the most economical advantageous tender (MEAT). Under this procurement the intention was that the 2e2 contract would novate to Capita, upon commencement of the NSCSO contract and would, then, continue until its expiry.
- 6.3 This is an interim services contract . Once the outcome of the judicial review is known this interim contract will, either, be replaced by a longer term arrangement with Capita or a new procurement will be undertaken to identify a new provider of the service.
- 6.4 The council is not in a position to confirm the actual term of the contract due to the uncertainty of when the Judicial Review decision will be delivered and what that decision will be. The estimated additional cost to IS for this financial year is £90,744. The ongoing monthly estimated cost (including variable break/fix costs) is £72,595. This will be contained within the IS budget.

7. LEGAL ISSUES

- 7.1 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 requires all prospective executive decisions which are classified as key decisions (expenditure or savings over £500,000 or significant in terms of effects on two or more wards in the borough) to be published at least 28 days before the decision is taken. Where the publication of the intention to make a key decision is impracticable the decision may only be made where the Chairman of the Business Management Overview and Scrutiny Committee has agreed that the making of the decision is urgent and cannot reasonably be deferred. As referred to in section 10.1 below, the Chairman of the Business Management Overview and Scrutiny Committee has been consulted and has agreed that the making of the decision is urgent and cannot reasonably be deferred.
- 7.2 2e2 was placed into administration on 28th January 2013. Administration stops any legal action or process against a company from proceeding, unless the Administrators or the English Court give permission.
- 7.3 IT service is a Part A service pursuant to Schedule 3 of the Public Contracts Regulations 2006 (as amended). On the basis that IT Infrastructure support service to the Council formed part of the specification for the NSCSO no issue arises, in terms of European procurement law and the principles of the Treaty on the Functioning of the European Union, as a result of the Council having entered into the interim arrangement with Capita. However, as identified in paragraph 6.3 (above), should the outcome of the judicial review prevent the Council from continuing with the award of the NSCSO contract to Capita, it will be necessary to carry out a full procurement, in compliance with EU regulations and the Treaty principles, to identify and select a new provider of the service.

8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)

- 8.1 Council Constitution, Contract Procedure Rules – Section 5.7 provides that Directors/Assistant Directors may take decisions on urgent or emergency matters as set out in the Leader's Scheme of Delegation providing they report afterwards to the relevant decision making body setting out the reasons for the urgency. Such decisions include waiver of the Contract Procedure Rules where this is justified on the basis of urgency and one or more of the matters set out in 5.8 below
- 8.2 Council Constitution, Contract Procedure Rules – Section 5.8 states details the justifications for a waiver of the Contract Procedure Rules which include:

- 8.2.1 the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Procedure Rules is justifiable; or
 - 8.2.2 the contract is for works, supplies or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or
 - 8.2.3 the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English Law); or
 - 8.2.4 there are other circumstances which are genuinely exceptional.
- 8.3 The decisions which are set out in section 1 (Recommendations), above, were taken as emergency decisions in circumstances which were genuinely exceptional (rule 5.8.4).
- 8.4 In accordance with the provisions of Contract Procedure Rule 5.7, the fact that the decisions were taken, in the, then, prevailing circumstances is, now, being reported to the Cabinet Resources Committee.

9. BACKGROUND INFORMATION

- 9.1 An OJEU contract notice was posted on 2 April 2004, for:
- A wide area networking model that is flexible, scalable and cost effective
 - Provisioning multiple points of internet services to provide resilience to web facing systems and external e-mail
 - All Barnet's offices to have the standardised converged voice and data network solution that has been put into operation at North London Business Park
 - IP telephones will be installed in all offices.
 - Storage Area Networks will be implemented at Barnet House and Hendon Town Hall that will give the ability to share data from any office location in Barnet
 - A managed service to support the new infrastructure
- 9.2 In March 2005, the Cabinet Resources Committee approved acceptance of the tender of Prime Business Solutions Ltd to deliver and implement a Core Infrastructure for the Council and provide a managed service for three years. 2e2 took over Prime Business Solutions Ltd in 2008 and took on the council's contract.
- 9.3 The decision to enter into an interim contract with Capita was taken as an emergency short-term risk mitigation against the loss of critical council ICT services, imposed on the council due to 2e2 (UK) Limited, the Council's, then, ICT Infrastructure Managed Service supplier, having served notice of administration to the council on 29 January 2013.
- 9.4 This was a situation that was of genuinely exceptional circumstances. The

administration of 2e2 (UK) Limited was completely unforeseen and unexpected. A risk review had been carried out on 2e2, in January 2013, using Experian reports. The report stated that the company was satisfactory with high levels of borrowing and acquisition activity. There was no indication that this would lead to administration and hence could not have been predicted.

- 9.5 The Managed Infrastructure Service, previously supplied by 2e2 (UK) Limited, has since been withdrawn by the administrators, and all on-site contract services were removed on 8 February 2013.
- 9.6 The ICT services delivered include critical infrastructure services supporting the council's ICT services. Without a suitable replacement service the council would have been at risk of losing the majority of ICT in the event of any component failures.

10. LIST OF BACKGROUND PAPERS

- 10.1 DPR 1946 Interim IT Infrastructure Support Solution:
<http://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=4567>

Cleared by Finance (Officer's initials)	MC/JH
Cleared by Legal (Officer's initials)	SCS