

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL
EXECUTIVE MANAGEMENT TEAM'S REPORT TO THE
CABINET

Date: 4th December 2019

Report Title: Renewal of Microsoft Enterprise Subscription Agreement

Submitted by: Executive Director (Resources & Support Services)

Portfolios: Corporate and Service Improvement, People and Partnerships

Ward(s) affected: All indirectly

Purpose of the Report

To seek approval to renew the Council's Microsoft Enterprise Subscription Agreement.

Recommendation

That Cabinet approves renewal of the Microsoft Enterprise Subscription Agreement for a further period of three years, following the completion of due diligence and a procurement exercise, delegating authority to enter into a contract to the Executive Director, Resources & Support Services in consultation with the Leader of the Council.

Reasons

- (a) The Council's existing Microsoft Enterprise Subscription Agreement expires in May 2020. Realistically the Council has no option but to renew this.
- (b) Conducting a due diligence exercise (Effective Licensing Position audit and Software Optimisation) will help to ensure the Council understands its licensing requirements over the life of the agreement and avoids costly mistakes.
- (c) The procurement exercise will help to ensure the Council achieves best value amongst its Large Account Resellers.
- (d) Delegating authority to the Executive Director, Resources & Support Services in conjunction with the Leader will ensure the Council can react quickly to any opportunities which avoid increased costs, whilst still operating in a transparent and safeguarded way.

1. Background

- 1.1. At present, the Council's ICT service supports nearly 400 active ICT users, including staff, Councillors, partner organisations and suppliers. They also look after 400 desktop machines, two data centres, 221 servers and 97tb of stored information, providing around the clock access to services which are core to the day to day business of the Authority. .
- 1.1. All Council owned desktop computers and the majority of the Council's servers use the Microsoft Windows Operating System. Many of the Council's core ICT requirements such as file access, print, email and productivity software are provided using Microsoft products. Just as ICT underpins the provision of all services, Microsoft products underpin the provision ICT.

- 1.2. In order to legally use Microsoft products, the council has to ensure that it has the correct types and numbers of licenses in place. Under current arrangements, the Council purchases and maintains its Microsoft obligations through an Enterprise Subscription Agreement, provided by a certified Microsoft Reseller. The agreements are typically procured through Crown Commercial Services, which allows the Council to access software at discounted rates.
- 1.3. The Council's current Enterprise Subscription Agreement expires in 2020 and this report outlines the options available to the Council to procure a suitable replacement.

2. **Issues**

2.1. *Our Agreement is Expiring*

Our current Enterprise Subscription Agreement (ESA) expires on May 31st, 2020. Aside from a small number of server products, the vast majority of our Microsoft software is provided through this agreement, on a subscription basis. As a result, when the agreement expires, we will no longer be able to legally use the associated applications, which include Windows desktop, Microsoft Office, Exchange (which underpins our email) and a number of other business critical systems.

2.2. *Our Software Assurance Benefits End*

The Council's ESA provides access to a programme called Software Assurance. This allows the Council to maximise the benefits of its Microsoft software and facilitates:

- The use of a single licence to cover multiple locations e.g. for home/agile working.
- License mobility supporting service continuity.
- Unlimited Internet Based User Training
- 24x7 problem resolution support
- Home Use programme
- Rights to new software releases at no additional cost

Software Assurance is an essential part of how the Council's ICT operates and without it, programmes such as agile working and the software infrastructure for line of business applications would become unfeasibly expensive.

2.3. *Our Maximisation Rights Will End*

The Council operates a heavily virtualised environment, meaning a small number of physical machines run a much larger number of virtual machines. Our ESA provides "maximisation rights" which allow the Council to run as many virtual servers and databases as required, simply by licensing the underlying physical infrastructure. To do this without an ESA would be extremely expensive, as each virtual server would require separate licensing arrangements.

2.4. *Our Costs Will Increase*

When the Council last renewed its ESA in 2017, it was preceded by an Early Commitment agreement signed in December 2016. The Early Commitment allowed the Council to fix its costs for three years, avoiding a 20% price increase activated in January 2017 and protecting the Council from further price rises of between 10% and 18%, introduced in October 2018. However, when our ESA expires both uplifts will be applied.

In addition, some of our existing products are no longer attract preferential pricing as previously secured through the Crown Commercial Services framework. As such, these products have seen significant price rises on top of the percentages previously mentioned.

2.5. *Our Current Agreement Isn't Cloud Optimised*

For a number of years, Microsoft has been aggressively pushing its customers towards cloud based provisions; more specifically the Office 365 and Azure cloud services. The Council's ICT strategy is moving in the direction of cloud provisioning. In addition, our Kidsgrove Datacentre is half way through its useful life and will not be replaced like for like. Our current ESA is not optimised for cloud provisioning and could result in excess costs should a significant change to our cloud utilisation be made.

3. **Proposal**

3.1. It is proposed that the Microsoft Enterprise Subscription Agreement is renewed by undertaking the following steps:

a) Undertake an Effective Licensing Position Audit

The Council's Large Account Reseller, Phoenix, will undertake an audit of our Microsoft estate to ensure that our licensing is appropriate for our usage. Any shortfalls found within the audit will be disclosed to the Council in order for appropriate mitigations to be made (such as removing under/inappropriately licensed software or adding required items to our current ESA).

The ELP audit will act as a baseline for our replacement ESA and help us to ensure that any significant issues are dealt with appropriately.

b) Complete a Software Optimisation Exercise

Microsoft offers multiple types of volume licensing agreements, within which there are multiple license types and terms. Each of these agreements are tailored to meet a specific market and need and choosing the right combination can mean the difference between achieving best value and significantly overpaying for a prolonged period.

ICT will engage with our Large Account Reseller to perform a software optimisation exercise. The intention being to identify the optimal licence types to meet both our current and future needs. The outcomes of the exercise in combination with our effective licensing position audit will make up the basis of a procurement exercise.

c) Undertake a Procurement

The value of the Council's Microsoft commitments is considerable. In 2019, we spent in excess of £115,000 and as mentioned previously, this will increase in 2020. To limit the Council's future exposure, ICT will conduct a procurement exercise through Crown Commercial Services using framework RM3733, Lot 2. This exercise will have to be completed prior to March 2020 as the extended framework expires at this point and currently, there is no replacement listed.

The procurement will be a competitive tendering exercise amongst all appropriate large account resellers awarded on a most economically advantageous basis.

d) Delegate Authority to the Executive Director, Resources & Support Services to Execute the Agreement

The precise value of the Council's future ESA will not be known until the aforementioned procurement exercise is undertaken. However, like-for-like comparison prices are included in section 8, Financial and Resource Implications.

It is proposed that following the completion of an appropriate procurement exercise, authority be delegated to the Executive Director, Resources & Support Services to execute a contract with the successful bidder, in consultation with the Leader of the Council. This authorisation would be on the provision that costs are no higher than those included within section 8. In all instances, the Head of Customer and Digital Services would be required to provide an overview of the procurement outcomes to Cabinet, explaining how best value is being achieved.

In the event that the final costs are higher, a report will be returned to Cabinet at the earliest possible convenience to explain the differences and seek further authorisation.

4. **Reasons for Proposed Solution**

4.1. *Effective Licensing Position Audit*

Whilst our existing ESA makes it easy for the Council to introduce new software as required and “true up” on its anniversary period, that same flexibility also makes it extremely easy to miss-license or under license the software we are using. In addition, Microsoft licensing is an ever changing field with many subtle differences and varying entitlements between license types, which are easy to misinterpret.

In 2015 for example, a Microsoft sponsored ELP audit identified that our SQL Server estate was licensed using a client-server rather than core-processor model. The latter was the appropriate model given that most of our services are online and as such, we cannot count users. The ELP audit allowed us to correct this error and acquire the appropriate license types without incurring “historical” licensing costs.

The ELP audit will ensure that our baseline licensing is appropriate for our current needs before we introduce anything further.

4.2. *Software Optimisation Exercise*

As mentioned, Microsoft’s licensing arrangements are extremely complex. Whilst the Council’s currently licensed products are appropriate for its usage today, they may be very costly in the future when the Council decides to move more of its services to the cloud. As such, we must ensure that the items included on our procurement requirements meet our future needs.

During our last renewal for example we included a single copy of Office 365 – not because we immediately required it, but because we knew that within the life of the agreement we would begin to explore it. Adding in one licence locked in the pricing for a further three years. Without this, any subsequent additions would have been at today’s prices, which are significantly higher.

The software optimisation exercise will not immediately save the Council money. It will however ensure that our procurement aligns with our strategic aspirations and supports the Council’s ambitions plans, at the least cost possible.

4.3. *Undertake a Procurement*

Due to the value of the Contact the Council’s standing orders mandate conducting a procurement exercise. The Crown Commercial Services framework RM3733, Lot 2, will allow the Council to undertake a competitive tendering exercise and maximise our value for money return.

During our last ESA procurement for example, two suppliers were monetarily pennies apart. However, our incumbent supplier was willing to offer significant “value add” initiatives such as complimentary support from product experts, ongoing account optimisation facilities and training “double ups” for the value of our training vouchers.

4.4. *Delegate authority to the Executive Director, Resources & Support Services to Execute the Agreement*

Undertaking an ESA procurement requires significant resources from both the Council and its suppliers. In addition, prices acquired are only typically valid for a maximum of 28 days and can be instantly invalidated if there is a substantial shift in external factors (such as the dollar/pound exchange rate or the announcement of a further price rise).

As mentioned in 2.4, the costs of our last ESA procurement were significantly reduced by executing an Early Commitment agreement. This was facilitated by delegating authority to the Executive Director, Resources & Support Services in consultation with the portfolio holder, allowing the Council to react quickly to shifting market conditions. This would not have been possible under the normal Cabinet decision making cycle.

Under this proposal, Cabinet are being made aware that a significant award will be made and the delegated authority will facilitate us completing this agreement promptly. However, the thresholds set will also mean that a degree of control remains in place. The follow up report provided by the Head of Customer and Digital Services will ensure complete transparency is maintained throughout, reducing the overall risk faced by the Council.

4.5. *There Are No Other Viable Options*

For a number of years the Council's priority with regard to Microsoft licensing has been one of cost optimisation. This is because in reality, the Council has no choice but to enter into a renewed ESA; our dependency on Microsoft products is such that we simply have to keep using them and at present, there is no alternative.

Whilst a small number of systems have migrated away from the Microsoft technology stack and undoubtedly more will in the future, in terms of our line of business applications, these are few and far between.

5. **Options Considered**

5.1. *Option 1: Do nothing*

The Council could allow its ESA to lapse but this would mean the authority would no longer be able to use its ICT. Our desktop and server infrastructure is underpinned by Microsoft products. Without these systems, the Council would not be able to conduct its day to day business for any significant length of time.

If the Council were to continue using its ICT infrastructure unlicensed, it would be subject to significant legal action. Representatives of the Federation against Software Theft (FAST) would also be entitled to remove any (and all) unlicensed equipment from the organisation, resulting in further costs, loss of data and significant reputational damage.

5.2. *Option 2: Move to Open Source*

For years, open source software has promised an alternative to the effective monopolies of major software providers such as Microsoft and Oracle. In some spaces this has been extremely successful, particularly new, "as-a-service" cloud systems that have been designed from the ground up to use open source solutions such as Linux, Apache and MySQL (to name but a few).

The Council uses open source software where ever possible but the vast majority of our line of business applications still require Microsoft products to function. Where systems are integrated with productivity tools, these are typically Microsoft Office products. Our print, email and file stores all run on Microsoft products and Windows servers. Our security is underpinned by Microsoft Active Directory and many of our applications store their data within Microsoft SQL Server databases. Put simply, we have no viable alternative to Microsoft products.

5.3. *Option 3: Move Entirely to Cloud Based Provisions*

The adoption of Cloud services within the public sector has been rapidly accelerated by central government's "Cloud First" ICT policy. A number of authorities within Staffordshire have recently started introducing cloud based productivity software such as Office 365, alongside specific line of business applications; at Newcastle, most recently our Customer Relationship Management system was moved to the cloud and this has been highly effective.

Whilst "as a service" and utility based computing will play an increasingly important part in the Council's future ICT mix, moving our services to the cloud is not an alternative to an ESA. Cloud infrastructure still requires the Council to obtain and license Microsoft products and cloud productivity software still requires a subscription and computer to run on. As such, cloud services must be considered as a complement to our ESA, not a replacement.

5.4. *Option 4: Renew Our ESA*

The Council has the option to renew its ESA for a further period of up to three years. Our previous agreement was signed under a Crown Commercial Services Memorandum of Understanding called the Cloud Transition Agreement. This agreement was replaced in 2018 by the Digital Transformation Agreement which still provides preferential pricing for government customers and runs until 2021. As our current agreement expires in May, our renewal can be completed before the DTA expires, securing any preferential pricing for the medium term.

Renewing our ESA will ensure that the Council remains in an appropriate licensing position and will protect the authority from further price increases for a period of three years. This will also give the Council greater flexibility in terms of new products, changing requirements and access to value add software assurance products.

6. Legal and Statutory Implications

- 6.1. The General Data Protection Regulations and Data Protection Act (2018) mandate that the Council takes every reasonable technical precaution to protect the personal information that it processes. Keeping software up to date is a well-recognised and accepted method of reducing the risk of a cyber-related incident and a key activity identified by the National Centre for Cyber Security.
- 6.2. Having a valid ESA in place will ensure that the Council continues to have access to the latest Microsoft software and security updates, which is essential given that the majority of the world's malware targets Microsoft based products. This trend is not because Microsoft make inherently insecure products, it's simply because of numbers; more of the world's computers run Microsoft software than anything else.

7. Equality Impact Assessment

No adverse impact has been identified as a result of delivering this proposal.

8. Financial and Resource Implications

- 8.1. The costs below outline how much the authority would have to pay if it renewed "as is" with its incumbent Large Account Reseller at today's prices.

Licensing Item	Cost (2017-20 ESA)	Cost (2020-23 ESA)	Difference
Client Access Licences	£9,157.50	£56,897.40	£47,739.90
Office Professional Plus	£25,140.00	£52,752.00	£27,612.00
Windows Virtual Desktop OS	£5,857.40	£31,638.60	£25,781.20
Windows Desktop OS	£4,699.56	£8,452.15	£3,752.59
Windows O365 Add on	0	£4,486	£4,485.60
Office 365 E3	£875	£4,939	£4,064.20
Windows Remote Desktop	£1,278.06	£1,346.30	£68.24
Exchange Server	£497.37	£691.68	£194.31
SharePoint	£1,306.71	£2,129.60	£822.89
SQL Server	£46,662.51	£67,020.14	£20,357.63
Windows Server OS	£15,055.08	£15,380.49	£325.41
Windows Server External Connect	£2,893.35	£2,893.23	-£0.12
Microsoft Project	£2,081.40	£2,276.60	£195.20
Total	£115,503.94	£250,902.99	£135,399.05

- 8.2. The costs shown above are per year. The total value of the ESA is estimated to be £752,708.97.
- 8.3. Our ESA costs are covered from ICT's main revenue budget. The likely additional pressures for 2020/21 onwards have been noted within the MTFs. A year one allocation of £50,000 for any unexpected expenses has also been included in ICT's capital spending plans for 2020/21 however, this will need to be reconsidered if the software optimisation exercise fails to identify alternatives.
- 8.4. Advanced preparations, such as undertaking the ELP Audit and Software optimisation exercise have already been accounted for by ICT and resources have been allocated from 2019/20 Capital funding to undertake these exercises, at a cost of £6,500.
- 8.5. It should be noted that ICT are considering these figures as worst case. They represent like-for-like costs for our current ESA products which, as mentioned, are not cloud optimised and in some

instances are no longer the most cost effective option. Alternative licensing models could potentially reduce our costs by £80,000-£100,000 per year in comparison to the 2020-23 ESA estimates. The planned Software Optimisation exercise is expected to confirm this.

9. **Major Risks**

9.1. A full risk assessment has been completed. The main risks identified include:

- Failure of the Software Optimisation exercise to identify suitable, more cost effective alternatives resulting in significant budget pressures
- Failure to renew our ESA resulting in legal action by Microsoft
- Failure to renew our ESA resulting in significant operational disruption
- Limitations on the Council's virtual server infrastructure and additional expense caused by lapsed software assurance
- Inability to utilise new technology and applications, undermining the Council's Digital Strategy

10. **Sustainability and Climate Change Implications**

10.1. No adverse impact has been identified as a result of delivering this proposal.

11. **Key Decision Information**

11.1. The overall contract value will be in excess of £50,000 and as such is considered as a key decision.

12. **Earlier Decisions**

- 12.1. March 2017, Cabinet – Renewal Options for Microsoft Enterprise Agreement
<https://moderngov.newcastle-staffs.gov.uk/documents/s22500/ESA%20Renewal%202.2%20Cabinet%202.pdf>
- 12.2. March 2014, Cabinet – Renewal of Microsoft Software Licensing Agreement
<https://moderngov.newcastle-staffs.gov.uk/documents/s10569/Microsoft%20Software%20Renewal.pdf>

13. **List of Appendices**

13.1. None

14. **Background Papers**

- 14.1. September 2019, Finance, Assets and Performance Scrutiny Committee – ICT Strategy and Development Programme
<http://svmma/documents/s30731/5%20ICT%20Strategy%20and%20Development%20Programme%202.pdf>