

Decision Maker: EXECUTIVE AND RESOURCES POLICY DEVELOPMENT AND SCRUTINY COMMITTEE

Date: 11 October 2017

Decision Type: Non-Urgent Non-Executive Non-Key

Title: CHANGE CONTROL NOTICES

Contact Officer: Lesley. Moore, Director of Commissioning
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Chief Officer: Lesley Moore, Director of Commissioning

Ward: All

1. Reason for report

- 1.1 This report provides an update on changes made to the process around Change Control Notices in light of recent internal audit reports.
- 1.2 The report also sets out the position on CCNs for the two main contracts within the Chief Executive's Department

2. **RECOMMENDATION**

The Committee is requested to note and comment on the information contained within this report.

Impact on Vulnerable Adults and Children

1. Summary of Impact: N/A
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Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Excellent Council
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Financial

1. Cost of proposal: Not Applicable:
2. Ongoing costs: Not Applicable:
3. Budget head/performance centre: Third Party Payments across the Council
4. Total current budget for this head: circa £190m
5. Source of funding: Existing Budgets

Personnel

1. Number of staff (current and additional): N/A
 2. If from existing staff resources, number of staff hours:
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Legal

1. Legal Requirement: As set out in relevant contracts
 2. Call-in: Not Applicable:
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Procurement

1. Summary of Procurement Implications: As per individual Contracts
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

3. COMMENTARY

- 3.1 The specification and management of change control is an important area of contract administration. Any changes to services, standards, processes or procedures are likely to have an effect on service delivery, on performance, on costs and on whether the contract continues to represent value for money for the Council or profitability for the contractor.
- 3.2 The Contract will incorporate clear and agreed change control procedures (CCN) and all changes to the contract must be fully recorded in accordance with the change control procedure that is set out in the relevant Contract. Therefore, effectively the CCN is ensuring that there is a legally binding amendment in place with all variations to the contract formally agreed and signed off by all parties.
- 3.3 It is important that even when things are going well, proper recording of all amendments to the contract are maintained and the agreed Change Control procedure followed. In the life of a long contract, there will inevitably be changes to personnel (and even to the ownership of the contractor). The time and trouble to keep an accurate record of changes and precisely what was agreed and when, may become invaluable when circumstances change (audit trail). This will further ensure the Council's interests are protected.

Understanding the implications of Change

- 3.4 Changes to the contract may affect the scope, the transfer of risk and even the financial viability of the arrangement, for either the Council or the contractor. It is therefore vital that the implications of change are understood.
- 3.5 It is also important to remember that if a change increases the scope of the contract significantly, it may take the Council outside the scope of the original specification or OJEU notice and it may be unlawful.
- 3.6 Changes generally have to be agreed by both parties to the Contract. It is therefore critical that any contractual requirements are followed and cost & service implications agreed.
- 3.7 It is also possible that some changes may be necessary in order to be compliant with any amendments in the law. The details of the contract should make it clear who is responsible for any costs associated with such changes. The contract terms should be checked should such circumstances arise.

Internal Audit Issues

- 3.8 In the last few years a number of Internal Audit reports have identified a significant number of Priority 1's on contracts, due to a lack of change controls being properly put in place when contracts have been varied or modified.
- 3.9 In a number of these, while it may be that member approval has been obtained to the change requirements, these have not subsequently been properly followed up in terms of notifying and agreeing the impact of these changes in the contract. It is clear from recent discussions with a number of our contract managers that there is confusion about what is legally required to be put in place, and that a committee report and emails between the contract manager and provider is not a legally binding contract.
- 3.10 In the light of this, the Director of Commissioning has issued new guidance and a standard CCN to all contract managers (to supplement the CCN in the Contract), which is available on

the Managers Toolkit. The Director of Commissioning is also leading on awareness and training for staff which should provide more confidence going forward.

- 3.11 A further change to existing practice is that when waiver forms are completed to extend existing contracts, these will no longer be signed off by the Director of Commissioning (if above £50k) unless a CCN is also in place.
- 3.12 Finally once the new contract database is fully populated with all historically information reports will be able to be run to highlight any changes in contract sums etc.

4. CHIEF EXECUTIVES DEPARTMENT

- 4.1 The two largest contracts within the Chief Executive's department are Liberata and BT.
- 4.2 Since the award of the Liberata contract in April 2011 there have been 109 Change Controls agreed which are listed on Appendix 1.
- 4.3 The original Contract with BT was awarded in April 2016 divided into 3 separate areas as set out in the Pan London Framework. Since then there have been two Change Control Notices issued as follows:
- CCN01195 Extension of existing contract - £7.8m (£2.6m p.a.)
 - CCN01196 Transfer of remaining ISD staff - £9.4m (£1.557m p.a.)
- 4.4 There are separate documents held within the ISD Client Unit for One-Off Projects and Service requests

EDUCATION, CARE & HEALTH DEPARTMENT

- 4.5 Appendix 2 sets out the change control notices agreed by ECHS over the last year

ENVIRONMENT & COMMUNITY SERVICES DEPARTMENT

- 4.6 A report will come back to this Committee in November 2017 listing the Change Controls for ECS.

5. PROCUREMENT IMPLICATIONS

- 5.1 The Councils Contract Procedure rules clearly sets out what is required by officers if contracts are to be varied in anyway. The Contract itself will also set out what action is required to vary a contract (this will have a section within the contract that deals specifically with this). It is the overall responsibility of the Director to ensure their staff fully understand and comply with these regulations.

6. FINANCIAL IMPLICATIONS

- 6.1 It is important that a formal signed contract is in place at the commencement of the contract start date and no payments should be made to the service provider until any outstanding contract issues have been resolved.
- 6.2 It is also important to capture all changes to contract terms & conditions during the length of the contract through agreed Change Control Notices which are signed off by all parties. This

will ensure that any disputes around performance or risks can then be legally addressed and help mitigate any losses for the Council.

7. LEGAL IMPLICATIONS

- 7.1 The, common law allows for a written contract to be changed by subsequent mutual agreement from both parties, whether oral or written. A contract can, even be varied by an oral agreement or by its parties' conduct, even where the contract itself contains a "no oral variation" clause. This position has been recently clarified and confirmed by the Court of Appeal in a case between *Gloobe Motors and RW Lucas Varity Electric Steering Ltd* where the His Honour Lord justice Beatson I stated "***The consequence in this context is that in principle the fact that the parties' contract contains a clause [preventing oral variation] does not prevent them from later making a new contract varying the contract by an oral agreement or by conduct.*** This was endorsed in the subsequent case of *MWB Business Exchange Centres Limited – v- Rock Advertising Limited*
- 7.2 This position can create potential for ambiguity and uncertainty on what was agreed and makes it essential to ensure that variations are recorded in writing to prevent a change in a fundamental principle of a contract arising from a loosely worded email or telephone call. The Council requires that all variations are completed by all officers managing the Contract in writing and where necessary also have the council seal affixed.

Non-Applicable Sections:	Personnel
Background Documents: (Access via Contact Officer)	Commissioning Division, Legal Dept., Managers Toolkit, contracts held with Managers etc.