

CABINET

19 March 2013

Title: Proposed Amendments to the Procurement Gain Share Arrangements for the Elevate Joint Venture with Agilisys	
Report of the Cabinet Members for Finance and Customer Services	
Open Report	For Decision
Wards Affected: None	Key Decision: Yes
Report Author: Jonathan Bunt, Divisional Director of Finance	Contact Details: Tel: 020 227 8427 E-mail: jonathan.bunt@lbbd.gov.uk
Accountable Divisional Director: Jonathan Bunt, Divisional Director of Finance	
Accountable Corporate Director: Graham Farrant, Chief Executive	
Summary: This report describes the proposed new procurement gain share arrangements for the Elevate Joint Venture with Agilisys in response to a lower Council spend on procurement than originally forecasted. The proposals share the cost of the procurement service in exchange for the Council taking a larger proportion of any savings and agreeing to incorporate social care into the gain share arrangement.	
Recommendation(s) The Cabinet is recommended to: <ol style="list-style-type: none">1. Agree that the Incremental Partnership Services Agreement between the Council and Elevate East London LLP and Agilisys Ltd be varied to make amendments to the Procurement Gain Share arrangements, as detailed in paragraph 3.2 of the report; and2. Delegate authority to the Chief Executive, in consultation with the Head of Legal and Democratic Services, to finalise terms and agree all legal agreements and ancillary documentation necessary to fully implement and effect the proposals.	
Reason(s) Cabinet is being asked to approve the changes so that relevant and necessary Deeds of Variation setting out all the necessary amendments can be prepared and executed by all Parties.	

1. Introduction

- 1.1 The Council entered into a joint venture contract with Agilisys on 10 December 2010, thereby forming Elevate East London LLP. The initial transferring services were ICT, B&D Direct, Revenues and Benefits, and Accounts Payable and Procurement.

- 1.2 The Elevate arrangement was procured using the OJEU competitive dialogue procedure, and allowed within the scope of the OJEU for the transfer of further services as the partnership developed. On 1 March 2012, two further services were transferred: Transactional HR and Payroll, and on 1 April 2012 parts of Assets and Commercial Services were also moved into the Elevate arrangement.
- 1.3 A separate report to Cabinet on 13 November 2012 gave a summary of the performance of the initial transferring services for the first full year of the contract and a summary of the financial performance of the Elevate Joint Venture during this same period.

2 Procurement Service Background

- 2.1 As noted above, both the Accounts Payable and the Procurement functions transferred to Elevate. However, under the terms of the contract, unlike for the other services delivered by Elevate, the Council is not charged for these services. Instead, the contract allows for Elevate to benefit from savings generated on procurement activity under a savings gain sharing arrangement with the cost of running the procurement service underwritten by Agilisys.
- 2.2 Prior to the transfer to Elevate, the provision of the procurement and accounts payable services cost the Council approximately £770,000. As no fee was payable, the budgets for those services were taken as a saving to meet the costs of other parts of the Elevate contract.
- 2.3 The contract with Elevate provided for all identified and agreed procurement savings on in scope services to be split 60% to the Council and 40% to Elevate. It is from this 40% that the cost of the procurement and accounts payable teams would be recovered. If the amount of gain share due to Elevate is less than the cost of the teams, the shortfall is paid to Elevate by Agilisys. Similarly, if there is a surplus of gain share over the cost of the service, that is paid over to Agilisys. This provides the incentive for Agilisys as the Managing Partner of Elevate to continue to invest in the development of the service.
- 2.4 As part of the tendering and contract finalisation with Agilisys, it was made clear that not all Council spend would be available for gain share and that certain expenditure types and categories would remain out of scope. Those explicitly identified as out of scope for gain share were:
- Capital
 - Social Care (Adults and Children)
- 2.5 Up to 31 March 2012, approximately £565,000 of procurement savings were identified with £226,000 due to Elevate as gain share. Also during 2011/12, Agilisys invested in the procurement service by adding extra category manager resources and funding the implementation of the i-procurement module of Oracle.
- 2.6 Elevate also invested in specific additional resources to support the procurement of the new housing maintenance contract to replace the existing arrangement. Following the decision not to progress with elements of the procurement, Elevate have presented the Council with an invoice for £217,000 for abortive costs relating to the work undertaken up to that point. This invoice will be separately reviewed and processed in line with the existing contractual terms.

- 2.7 For 2012/13 and onwards, in the light of a lower than originally expected procurement spend by the Council, a new arrangement for the provision of Procurement and Accounts Payable has been requested by both partners.
- 2.8 Given the investment made in good faith by Agilisys on the basis of the expected level of spend, the Elevate Board agreed to reimburse Agilisys £638,000 of its outlay from under spends across all budgets within Elevate for the 2011/12 financial year.
- 2.9 The procurement gain share element of the Elevate contract remains in place and is clear about the required payments to Elevate for the identified and agreed savings to date. If an alternative procurement gain share arrangement is not agreed, the partners will revert to the existing contractual arrangement and gain share will be paid according to those terms.

3 Options Appraisal

- 3.1 The following options were identified initially through discussions between the Council, Elevate and Agilisys:
- (i) Leave the existing arrangement unchanged with procurement savings split 60% Council:40% Agilisys. This has been a source of tension within the partnership as it has led to a lower level of engagement with the procurement service and, with reducing spend levels, it has been harder for both partners to achieve the anticipated level of savings. This has led both sides to seek an amendment to the agreement.
 - (ii) Move from a 60:40 to 80:20 plus a fixed contribution to the procurement service by the Council. This was the initial recommended option as it retains the incentivisation for the managing partner whilst still enabling the Council to achieve significant procurement savings.
 - (iii) Move from a 60:40 to 90:10 plus a fixed contribution to the procurement service by the Council. Whilst this option is desirable to the Council, it has been rejected by Agilisys as the amount earned under gain share is not considered sufficient to fully meet the cost of employing additional category manager experts. Due to its attractiveness to the Council, the partners have sought to find a way to incorporate this option into the amended agreement.
 - (iv) Move to a fixed fee for the procurement service and remove the gain share clause. Whilst this was considered, both partners were keen for the incentivisation of the managing partner to continue and for that partner to continue to invest in the development of the service. The removal of any form of gain share would prevent that from occurring.
- 3.2 As discussions between the partners developed, it became apparent that, to satisfy all stakeholders, a composite solution would be required. Following extensive dialogue, the following recommended option was developed:
- A fixed annual contribution to the accounts payable service of £200,000 payable from 1 April 2012;
 - All pre-2012/13 savings continue at their agreed rate. This is approximately £226,000 from identified savings of £565,000;

- The next £5m of agreed savings in each year will be split 80:20 (Council:Agilisys);
- Above that cap, any agreed savings will be split 90:10 (Council:Agilisys);
- Social care (Adults) expenditure will be added to the services for which gain share can be earned by Elevate. All social care savings will be at 90:10 (Council:Agilisys) and will be outside the £5m savings cap. A draft process has been discussed between Adult and Community Services and Elevate/Agilisys, and this process will be finalised in the coming weeks to enable it to become within scope.

3.3 To enable a tier of savings at the 90:10 level, Agilisys requested that social care expenditure be moved to an in-scope category. It is recommended that this is included with all savings, which will accrue annually, being split 90:10 regardless of the value of the savings identified within the rest of the Council.

3.4 The additional value to the Council of the recommended option against the existing arrangement is dependent on the future value of the savings identified. The tables below illustrate how the recommended option compares to the existing contractual terms under two scenarios.

3.5 Table 1 illustrates the difference based on the already identified and agreed level of procurement savings for 2012/13 of £1.2m in addition to the £565,000 identified from previous years.

Table 1 – impact of proposed changes on gain share payable for identified savings in 2012/13

	Existing contract £000	Recommended option £000
Existing savings (40%)	226	226
Fixed contribution		200
2012/13 savings @ 40%	480	
2012/13 savings @ 20%		240
Total payable to Elevate	706	666
Savings retained by LBB	1,059	1,099

3.6 Table 2 illustrates the difference based on a further £1m of savings to table 1.

Table 2 – impact of proposed changes on gain share payable for an additional £1m of procurement savings

	Existing contract £000	Recommended option £000
Existing savings (40%)	226	226
Fixed contribution		200
2012/13 savings @ 40%	480	
2012/13 savings @ 20%		240
Additional £1m savings @ 40%	400	

Additional £1m savings @ 20%		200
Total payable to Elevate	1,106	866
Savings retained by LBB	1,659	1,899

- 3.7 Table 3 illustrates the difference should a total of £6m of procurement savings be achieved from in-scope services. This does not consider any savings in social care expenditure.

Table 3 – impact of proposed changes on gain share payable for £6m of procurement savings

	Existing contract £000	Recommended option £000
Existing savings (40%)	226	226
Fixed contribution		200
First £5m new savings @ 40%	2,000	
First £5m new savings @ 20%		1,000
Further £1m savings @ 40%	400	
Further £1m savings @ 20%		100
Total payable to Elevate	2,626	1,526
Savings retained by LBB	3,939	5,039

- 3.8 Beyond this level, for each additional £1m of procurement savings, the Council benefits by £300,000 from the change to the contract.

4 Consultation

- 4.1 Extensive discussions have taken place between Council officers and Members, Elevate staff and representatives from Agilisys which led up to this recommendation to Cabinet as well as the respective Boards of Elevate and Agilisys.

5 Financial Implications

Implications completed by: Jonathan Bunt, Divisional Director of Finance

- 5.1 The change of the procurement gain share from 60:40 to 80:20 and then 90:10 LBB:Elevate will assist the Council to meet its agreed savings targets from the Elevate partnership as a higher proportion of procurement gains will be retained. The revised agreement would transfer an element of the financial risk of providing the Procurement service within Elevate from Agilisys to the Council. All savings identified and agreed prior to this financial year will continue on a 60:40 split.
- 5.2 Tables 1-3 in section 3 above illustrate that, based on already identified savings levels, it is financially beneficial for the Council to move to the revised arrangements with the extra cost of the fixed contribution offset by the reduced gain share payment to Elevate.

6 Legal Implications

Implications completed by: Eldred Taylor-Camara, Legal Group Manager

- 6.1 The report sets out changes that are being proposed to be made to the Procurement Gain Share arrangements in the Agreement. These changes are set out in section 3 of this report.
- 6.2 Cabinet is being asked to approve the amendments and the Elevate Board will also need to approve the amendments in order for them to be effective. Relevant and necessary Deeds of Variation setting out all the necessary amendments will be prepared and executed by both Parties.
- 6.3 Legal Services have been consulted in the preparation of this report and has and will continue to be involved in the drafting of all necessary legal documentation.

7. Other Implications

- 7.1 **Risk Management** - the Council has approved significant savings to be achieved through procurement and amending the gain share arrangement reduces the risk of not achieving that saving.

Background Papers Used in the Preparation of the Report:

None.

List of appendices:

None.