

Forward Plan reference number: FP/513/09/19

Report title: Inclusion of Offshoring to the Fujitsu TCS Contract	
Report to: Susan Barker, Cabinet Member for Customer, Communities, Culture and Corporate	
Report author: Melanie Hogger, Director of Technology	
Date: 19 March 2020	For: Decision
Enquiries to: Tracey Kelsbie, Chief Operations Officer, Technology Services or Suzanne Cannon, Supplier & Service Assurance Manager, Technology Services	
County Divisions affected: All Essex	

Confidential Appendices

This report has a confidential appendix or confidential appendices which are not for publication as they include exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

1. Purpose of Report

- 1.1 To seek approval for Fujitsu UK to have the ability to offshore components of future development work pursuant to the Transforming Corporate Systems contract (“the Contract”) which would significantly reduce the cost to ECC if such development work is commissioned by ECC during the remaining term of the Contract.

2. Recommendations

- 2.1 To agree to the variation of the Contract to provide for the potential offshoring of components of the development and support work by Fujitsu UK to the Fujitsu Global Delivery Centre (“GDC”) in India and agreement to a blended rate card between ECC and Fujitsu UK that reduces the cost of such development work.
- 2.2 To agree to the transfer of personal data outside of the European Economic Area (“the EEA”) (“a Restricted Transfer”) for the purposes of offshoring future development work and the appointment of Fujitsu India as a sub-processor.
- 2.3 To agree that the Director of Technology is authorised to enter into a tripartite agreement between ECC, Fujitsu UK and Fujitsu India governing the appointment of Fujitsu India as a sub-processor and the Restricted Transfer.

3. Summary of issue

- 3.1 The Contract is for a fully hosted, managed service for systems and services required by ECC staff and schools (known as TCS). These systems support areas such as: general ledger, accounts payable and receivable, cash management and bank reconciliation, purchasing, payroll, HR, financial

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modelling and forecasting, reporting, Pcard, risk management and recruitment. The Contract was recently extended for a further two years and discussions have been taking place with Fujitsu UK to determine where cost savings and efficiencies can be achieved during this period. The Contract will expire on 13 July 2021.

- 3.2 The Contract requires Fujitsu UK to identify changes in business processes and ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to ECC. Fujitsu UK has put forward a proposal for cost savings and efficiencies which consists of some project elements, support delivery and development work being offshored to their Global Delivery Centre (GDC) in India, under a subcontract arrangement to Fujitsu Consulting India Private Limited (“Fujitsu India”). This would include elements of the planned Oracle Cloud SaaS implementation.
- 3.3 All changes proposed by Fujitsu UK pursuant to the Contract have to follow robust change approval board processes both internally within Fujitsu and through the contractual change process between Fujitsu and ECC. Any change requires ECC officer approval prior to implementation. Going forward as a result of this change, it is proposed that all change requests for project and development work will initially be sent to Fujitsu UK who will decide whether it is appropriate to offshore to Fujitsu India. The decision to offshore will depend on the level of expertise and skill required. The service may result in a “blended” delivery, with components being delivered by both Fujitsu UK and Fujitsu India, and a corresponding “blended” rate card with offshore resources charged for at a lower rate. Through the change approval process, ECC has the right to reject a proposal from Fujitsu UK to utilise offshore resources.
- 3.4 All work completed offshore by Fujitsu India will be supported by the Fujitsu India staff involved in the initial development phase. Ongoing support and service delivery for network and telecoms, data centre hosting, boundary based security such as firewalls, information assurance, account and service management, will remain with UK (GB & NI) based staff.
- 3.5 Data and system residency physical servers will remain within the UK at Fujitsu’s London and Northern Ireland data centres with connectivity provided to Fujitsu India staff for the purposes of system administration only. To deliver services that are offshored Fujitsu India may need to access ECC’s personal data that is held in the UK at Fujitsu UK’s London and NI data centres.
- 3.6 Fujitsu UK acts as a data processor for ECC. ECC data and system residency which include personal data will remain within the UK but will be accessed by Fujitsu India. This constitutes a “restricted transfer” for the purposes of the General Data Protection Regulation (EU) 2016/679 (GDPR) and the Data Protection Act 2018 (“the Data Protection Legislation”). ECC therefore has a duty to ensure that where its personal data passes outside of the EEA, there are “appropriate safeguards” in place to protect that data.
- 3.7 In terms of data privacy and data security, the GDC in India complies with Information Security Management guidelines in line with ISO 27001:2013. Since year 2002 they have been certified for BS 7799-2, in May 2006 upgraded certification to ISO27001:2005 and in January 2018 to ISO 27001:2013 which is

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independently verified and certified by DNV GL Business Assurance (“DNV”). Compliance to this certification is audited bi-yearly by DNV and improvement measures are taken.

3.8 ISO 27001:2013 is a standard specification for an Information Security Management System (ISMS). An ISMS is the means by which Senior Management monitor and control their security, minimising the residual business risk ensuring that security continues to fulfil corporate, customer and legal requirements. Per ISO 27001:2013, procedures/safeguards are established that includes physical security, logical security, digital data security, transmitting information, disaster recovery, risk assessment, and protecting information on Confidentiality / Integrity / Availability (CIA) triangle.

3.9 The following are security measures implemented within the India GDC:

- Information security policies and procedures in line with ISO 27001: 2013
- Information security awareness.
- Information classification and implementation.
- Physical and environmental security.
- Incident logging and incident management.
- Access Control on access to network resources.
- Data backup policy through Centralized repository and security through access control.
- Human resource verification process.
- Redundant infrastructure for critical components.
- Designated CISO and information security team.
- Non-Disclosure and confidentiality agreements.
- Access Cards for entry into premises and Role Based restrictions to sensitive areas such as Server Room.
- Multiple sources for Internet and Telecommunication Service Providers.
- Fire detection and Fire Fighting (FM200 for critical Infrastructure).
- Multiple sources of electrical power.
- Project and facility disaster recovery plan.
- Business continuity Plan for the organisation.
- Continuous network monitoring and reporting.
- 24 X7 Support contracts from third party on all critical equipment’s and services.
- Network Vulnerability scanning and resolution.

3.10 ECC propose to address any risk involved in making a Restricted Transfer in the following way:

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- 3.10.1 to amend the Contract to incorporate ECC's standard data processing clauses including a data processing schedule setting out the nature, purpose and duration of the processing to be carried out by Fujitsu UK; and
- 3.10.2 to provide consent to the appointment of Fujitsu India as a sub-processor and the Restricted Transfer via a tripartite agreement between ECC, Fujitsu UK and Fujitsu India which ensures that ECC will have contractual rights against Fujitsu India in addition to Fujitsu UK.
- 3.11 Any saving to ECC following implementation of this change would be dependent on whether work is suitable to be offshored to Fujitsu India. This will be driven by the level of expertise required and the appetite for change from ECC. It is therefore difficult to estimate savings however the ability to offshore would provide ECC with the potential to make savings. For example, last year ECC commissioned 505 days of chargeable time which cost circa £400,000 whereas under the proposed new model and blended rate card, this would have cost £119,000. The actual cost saving to ECC going forward will be dependent on the volume of change ECC determines it needs to maintain and/or enhance system functionality.

4. Options

Option 1 – Vary the Contract to allow offshoring (recommended option)

- 4.1 This is the preferred option as it will enable ECC to commission changes at significantly lower cost than is currently being charged whilst ensuring that robust processes are in place to ensure compliance with the GDPR and legislation. The necessary checks have been carried out to ensure that any offshoring will comply with relevant information governance and data security standards. The tri-partite agreement will ensure that ECC has direct contractual rights against Fujitsu India to the extent that they are needed.

Option 2 – Do nothing

- 4.2 If ECC chooses not to incorporate this proposal into the Contract, it will not benefit from the potential cost savings that may arise as a result of such change. Offshoring will not be permitted until such time as this change is approved. ECC will not benefit from the cost saving proposal if the change is not agreed.

5. Next steps

- 5.1 If the recommendation in this report is approved, Technology Services will agree a contract change notice and the parties will seek to agree the variation to the Contract.

6. Issues for consideration

6.1 Financial implications

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- 6.1.1 There is no on-going budget available to support change requests under the Contract so, as currently, each request will be subject to sufficient budget being identified in advance of approval of works. The proposed blended rate card model, however, gives the potential for significant cost reductions to be realised for new change requests, including any upgrades required during the remainder of the Contract.
- 6.1.2 Cost reductions will only be realised where Fujitsu UK have determined it is appropriate to offshore the work to Fujitsu India. The decision to offshore will depend on the level of expertise and skill required. The service may result in a “blended” delivery, with components being delivered by both Fujitsu UK and Fujitsu India.
- 6.1.3 The confidential appendix attached to this report demonstrates the reduction in rates applicable if offshore resource is utilised; this represents an average rate reduction across the roles identified of 70%.

6.2 Legal implications

- 6.2.1 The processing of personal data is governed by the Data Protection Legislation. The Data Protection Legislation primarily applies to controllers and processors located within the EEA. Individuals risk losing the protection of the Data Protection Legislation if their personal data is transferred outside of the EEA. The Data Protection Legislation restricts transfers of personal data outside the EEA unless the rights of the individuals in respect of their personal data is protected in another way. The access of ECC personal data held within the EEA by Fujitsu India who are based outside of the EEA constitutes a Restricted Transfer for the purposes of the Data Protection Legislation.
- 6.2.2 In the absence of an “adequacy decision” in relation to India, the Restricted Transfer must be covered by an “appropriate safeguard”, as specified in the Data Protection Legislation. A contract between the data exporter and data importer incorporating the standard contractual clauses adopted by the EU Commission (“Model Clauses”) constitutes an “appropriate safeguard”.
- 6.2.3 As the data controller, ECC has a legal duty to ensure that where personal data is transferred outside the EEA appropriate safeguards are in place. ECC can mitigate against any risks by ensuring that Fujitsu UK have complied with the contractual provisions and by entering into a tri-partite agreement with Fujitsu UK and Fujitsu India incorporating the Model Clauses and governing the conditions of ECC’s consent to the sub processing and Restricted Transfer.
- 6.2.4 ECC is a contracting authority for the purposes of the Public Contracts Regulation 2015 (PCR 2015). The value of the Contract is above the financial threshold for service contracts and ECC must ensure that it complies with the PCR 2015 when modifying contracts during their term. The terms of the Contract allow the requested changes and the contract changes therefore fall within regulation 72(1) of the PCR 2015.

7. Equality and Diversity implications

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7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
- (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

7.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

8. List of appendices

The Model Clauses

Equality Impact Assessment

9. List of Background papers

None

I approve the above recommendations set out above for the reasons set out in the report.	Date
Councillor Susan Barker Cabinet Member for Customer, Communities, Culture and Corporate	19/03/20

In consultation with:

Role	Date
Executive Director for Finance and Technology (S151 Officer)	08/03/20
Stephanie Mitchener on behalf of Nicole Wood	
Director, Legal and Assurance (Monitoring Officer)	2.3.20

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Katie Bray on behalf of Paul Turner	
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