

Birmingham City Council
Report to: Chief Executive (Acting) & Deputy
Leader



Date 13th October 2019

Subject: **ACIVICO DCFM CONTRACT EXTENSION**
Report of: Head of Contract Management, Corporate Procurement
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1 Executive Summary

- 1.1 For mutually beneficial purposes, secure agreement for a further 6 month extension to the current DCFM contract held between the City Council and Acivico (DCFM) Ltd, subsidiary of the Council's wholly owned company Acivico Ltd.
- 1.2 Varying the current contract term to 31 March 2020 will enable both the Council and Acivico to complete the range of ongoing development activity underway between the parties and align all of the relevant contract and governance mechanisms with the start of the new financial year 2020/21.
- 1.3 There are no cost implications with regards to this extension and Acivico maintains the guarantee that there will be no operational underwriting required by the Council, for 2019/20. Further, the new pricing mechanism for the DCFM contract is completed and will be brought in with immediate effect (rather than wait for the new contract), which will bring greater transparency and simplification for the charges applied under the DCFM contract.

2 Recommendations

- 2.1 Chief Executive Officer (Acting) and Deputy Leader of the Council, approve a 6 month extension, from 1 October 2019 to 31 March 2020, to the current Acivico DCFM contract.

3 Background

Following the Cabinet approval of Shareholder recommendations in December 2018, a 6-month extension to the current DCFM contract was granted, from 1 April 2019 to 30 September 2019, to provide time to develop and implement the necessary transformation of the company and the Council's contract and governance arrangements.

Specifically, the activity included within the Chief Officers report produced to agree the extension included:

- Restructuring of the companies within the Group
- Securing a new governance agreement between the Group and the Shareholder
- Agreeing a commercial loan facility to support implementation of a new target operating model for the businesses
- Commencing recruitment of a new senior leadership team
- Securing new Non-Executive Directors to replenish the Board makeup for the Group
- Agree new contract terms for the new DCFM contract

Officers from the Council and the company have been working together in partnership to progress a number of these activities. Over the summer we have together developed our understanding of what is required, and a number of achievements have been secured.

The restructuring of the companies within the Group is complete, along with the necessary bank accounts and background facilities. The commercial loan facility is now in place, however both the Council and Acivico required extended time to put this in place, so as to ensure that the terms were appropriate for a proper commercial arrangement.

The recruitment for new Non-Executive Directors is underway, scheduled to follow approval of the new Remuneration Policy in the summer, and we expect the new fully attended Board to be in place from November 2019.

Recruitment of a new senior leadership team has been suspended, following the Board's decision to secure the interim leadership team for an extended period, until March 2021. This was to provide stability and consistency in the leadership arrangements, for the immediate-medium term, but also necessary as the ability to recruit to sector relevant terms and conditions is not yet in place (further detail below).

However, there are a number of outstanding items which require further development and finalisation, for both the Council and Acivico. To enable these outstanding matters to be concluded it is therefore recommended that the further extension to 31st March 2020 is approved. These are summarised below.

Firstly, the new Governance & Management Agreement (formally referred to as the Shareholder Agreement) will now capture not only the governance arrangements for the shareholder relationship, but will also include matters relating to the retained Teckal controls for the two subsidiary companies that will remain under this regime, controls in relation to finance and Acivico's assurances to the Council in its commercial role as a finance facility provider, arrangements for the application of new employee terms and conditions within the parent company any commercial subsidiary companies (still yet subject to legal advice - further detail below) and terms that were originally part of the DCFM contract framework, will need to be transferred over to the Governance & Management Agreement.

Secondly, the new Articles of Association need to be revised to reflect the new Group company structure and account for the new Governance & Management Agreement and the operating model that will see both Teckal and non-Teckal subsidiary companies operating alongside each other for the term of the new DCFM contract.

Thirdly, there are a number of schedules within the DCFM Services Agreement that require further finalisation.

Finally, officers from both the Council and Acivico have been working with senior legal advisors commissioned by the Council, to develop and understand the implications arising from the implementation of sector relevant terms and conditions for any new employees within the Group and commercial subsidiaries. The key concerns being explored relate to equal pay and the Council's exposure to potential claims arising from Acivico recruiting on alternative conditions. The initial advice has been positive in this regard, however further exploratory work is required to ensure that the correct mechanisms and governance arrangements are in place, before the Council can agree with Acivico that they may proceed along this route.

Therefore, the Governance & Management Agreement, new DCFM contract, Articles of Association and agreements on new T's & C's, are all intrinsically linked and the extension proposed in this report will enable the Council and Acivico to ensure that these matters are all brought together appropriately and completed with full consideration of all the dependencies and impacts.

4 Alternative Options considered and Recommended Proposal

- 4.1 There are no practical alternative options given that Acivico is a wholly owned company of Birmingham Council.

5 Consultation

5.1 Internal

Officers from Corporate Procurement, Legal Services and finance have been engaged in development of this report.

5.2 External

The Group Chief Executive of Acivico Ltd, has been engaged in the development of this proposal, along with members of the Senior Leadership Team of the company.

6 Compliance Issues:

6.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

The recommended decision is consistent with the Council's policies, plans and strategies, as confirmed by the Council's Cabinet through the approval of the recommendations contained within the December 2018 report.

6.1.1 Birmingham Business Charter for Social Responsibility (BBC4SR)

6.1.2 Acivico is an approved signatory to the Birmingham Business Charter for Social Responsibility.

6.2 Legal Implications

There are no legal implications arising from this decision. The current DCFM contract does not restrict the number or term of the extensions that may be applied to it.

6.3 Financial Implications

There are no additional financial implications for the Council, arising from the provision of this extension.

For 2018/19 Acivico have halved the balance sheet losses for the company, and once exceptional items are excluded, have actually returned the company to a small profit.

For 2019/20, Acivico is on target to meet its business plan projections and maintains its guarantee that there will be no further operational underwriting of the business required from the Council.

6.4 Procurement Implications (if required)

There are no procurement implications arising from this decision.

6.5 Public Sector Equality Duty

There are no PSED considerations to undertake at this time.

7 Background Documents

7.1 Chief Officer Award Report entitled Acivico – DCFM Contract Extension dated 25th March 2019.

Recommendations Approved by:

Clive Heaphy.....
Chief Executive Officer (Acting)

Date.....

Councillor Brigid Jones.....
Deputy Leader Birmingham Council

Date.....