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Leeds Local Education Partnership Strategic Review – future options

Final following consultation with LEP Board 13/07/2016

1. EXECUTIVE SUMMARY

- 1.1 This report sets out the options for the Council with regards to the possible extension of the Strategic Partnership Agreement with the Leeds Local Education Partnership (LLEP) beyond its initial ten year term which is due to expire in April 2017. This report sets out the relative advantages and disadvantages of the LLEP.
- 1.2 Stakeholders and the LEP performance to date support an extension of the arrangements for a further five years subject to agreement on how any future relationship would ensure the arrangement represents continued value for Money. Consideration needs to be given to the matters at paragraph 7.7 and the future pipeline of work.
- 1.3 This report is prepared for the Director of Children's Services to support consideration by the Council whether to extend the LEP.

2 BACKGROUND

- 2.1 LLEP was formally established in April 2007 as part of the arrangements for the Building Schools for the Future (BSF) programme. The Local Education Partnership (LEP) structure was a national approach for batches of government funded capital investment in the schools to seek to deliver subsequent schemes beyond the original procurement in a cost efficient manner without duplicating procurement costs and timescales.
- 2.2 The LEP arrangements had an initial term of ten years and an option to review at that point for a further five years. The LEP had exclusivity to develop Council funded capital works over £100,000 on secondary schools and provided for a range of partnering services which could be applied to the wider estate. The initial procurement also afforded the right to the contractor to develop leisure facilities within the scope of the arrangements. The scope of the LEP was developed to be much broader than previous or standalone PFI schemes.
- 2.3 During the last ten years the policy environment for commissioning school places has altered radically with the estate currently comprised of a mixture of academy, trust, free, Voluntary Aided and maintained schools. It is clear however from current demographic trends there is a need for the authority to continue to undertake some investment in the schools estate, whether or not fully funded by central government, to meet demand for school places given the rising number of young people in the city.
- 2.4 Over the last ten years LLEP has delivered an extensive programme of capital investment in Leeds schools and leisure facilities with a value currently approaching £400 million. Whilst this level of spend is lower than was anticipated at the start of the

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procurement this is largely because the Wave 13 anticipated investment through the BSF programme didn't materialise due to a change in government policy. The Wave 1 scheme however was delivered fully and the significant external investment was fully secured.

- 2.5 Over the course of the ten years there have been a number of matters requiring resolution between the parties relating to abortive scheme development, liability for construction defects, TUPE transfer costs, insurance savings and operational performance of the PFI project companies. All of these issues have been able to be overcome through a partnership approach to working between the Council and the LEP and its contractors.
- 2.6 The LEP funds all project development activity from a management fee charge on new projects. If no new project development work is forthcoming then the LEP flexes its capacity to ensure that it is not carrying unnecessary overheads.
- 2.7 With regards to the LEP there are the following main options:
- a) Extend for a full five years
 - b) Extend for five years with some changes to the current arrangements negotiated by agreement
 - c) Extend for less than five years by mutual agreement
 - d) Don't extend the current arrangements

3 METHODOLOGY

- 3.1 The review comprised of a number of components which included:
- a) A review with LLEP as to the work undertaken to date under the arrangements
 - b) A desktop review of the Strategic Partnering Agreement and OJEU notice to determine the scope of works able to be undertaken by the LEP
 - c) Discussions with other local authorities approaching the end of their initial ten year term to understand how this issue is being approached elsewhere
 - d) A series of discussions with key stakeholders in the work undertaken with the LEP (see table below for interviewee list and paragraph 7.1 for question list for interviewees)

Organisation/ Role
General Manager LLEP
Head of Service, Learning Systems
Service Improvement Manager, Sport and Active Lifestyles
Head of Programme PPPU
Programme Manager (Schools PFI Contracts) PPPU
Chief Officer Finance (LCC LEP Board Director)

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Chief Officer PPPU (LCC LEP Board Alternate Director)
Senior Contracts Officer (BSF)
Built Environment Programme Manager

- 3.2 The review was undertaken over a three week period from late April – mid May 2016. The report below summarises the findings from this review and discussion at the LLEP Board on 13 July 2016 prior to any final consultation with members and a decision being made. Under the terms of the Strategic Partnership Agreement, if the LEP and the City Council must both agree (having regard to the education needs of the population within the Area and the LEP performance) that it would be beneficial to the provision of education in the Area to extend the Agreement, Leeds City Council must formally notify the contractor no less than six months prior to the tenth anniversary of the contract signature if it wishes to extend the option to extend for a further five years. As indicated above the extension requires the agreement of LLEP.

4 LLEP Appraisal

- 4.1 The table below sets out the context of works delivered by the LLEP arrangements to date.

Description of Works	Value £
Original BSF Construction (PFI Education)	131,000,000
Original BSF Construction (PFI Leisure)	41,000,000
Original BSF Construction (D&B Education)	147,000,000
Primary Capital Schemes	26,000,000
Other Primary Estate works, inclusive of Nightingale PS	11,000,000
Special Schools	12,000,000
Capital Maintenance Programme	5,000,000
Total construction delivered	373,000,000

- 4.2 The submission by LLEP as part of the review is appended to this report at Appendix A.
- 4.3 Leeds City Council hold a 10% share in LLEP. As the shareholdings have changed in LLEP since the date of the contract, the current shareholdings are listed below for completeness:

Company Name	Shareholders	Percentage Ownership	Share Type
Leeds LEP Limited	E4L Leeds PSP Ltd	80%	C
	Dalmore (was BSFi)	10%	B
	Leeds City Council	10%	A
E4L Leeds PSP Limited	E4L Limited Mott Macdonald Limited* (*nb no economic interest but some voting rights)	73.68% 26.32%	
E4L Limited	Dalmore (was Barclays Investments in Education)	50%	

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	Interserve PFI 2005 Limited	50%	
Interserve Investments PFI 2005 Limited	PFI Capital (Para 1) Limited Trevor Bradbury	99.9% 0.1%	
PFI Para (Holdings) Limited (from October 12)	Interserve Trustees Limited Dalmore Capital (Para 1) Limited	50.1% 49.9%	

- 4.4 From the above table it can be seen that Dalmore have effectively 57.8% of the shares in the LLEP. As a result any extension would have to be on terms acceptable to the equity partners as well as the LLEP.
- 4.5 The LLEP is resourced by a small team seconded from Interserve and is funded in full from a combination of SPV fees in the PFI project agreements and fees related to new project development which (excluding any costs for consultant input) currently amount to less than 3% of the overall capital value of the scheme.

5 LEGAL IMPLICATIONS

- 5.1 The legal review covered three areas, namely:
- If the LEP's arrangements are to be extended what are the contractual parameters around this?
 - What does the current LEP exclusivity/scope cover and is there any potential to change this?
 - If the LEP was to be extended is there scope to further change the procedures within the Strategic Partnering Agreement ("SPA") if they can improve service delivery or Value for Money?
- 5.2 In respect of a. above the analysis concluded that the extension is by mutual consent with Leeds City Council to notify LLEP at least six months prior to the extension date.
- 5.3 In terms of the current scope of LEP exclusivity this is determined by reference to the original OJEU notice as well as the terms of the additional contract. It is clear from the Strategic Partnering Agreement that whilst exclusivity is limited to secondary school works over the value of £100,000 (index linked), a far greater potential scope of services was anticipated subject to funding through the BSF programme which covered partnering services for other education settings.
- 5.4 The OJEU notice was issued in 2004 anticipated works up to £500m across schools and leisure facilities which index linked in 2016 prices would equate to a value of circa £705 million based on the last published inflation index, so the current value of works procured of circa £373 million is well within this tolerance.
- 5.5 It should be noted that to date a significant volume of work of circa £50 million in value has been commissioned for education related works not funded through the BSF programme and not subject to exclusivity. Leeds City Council has not received any formal challenge to these decisions but it has been necessary to consider in each case the risk of procurement challenge (albeit much of the activity was individual schemes below the EU threshold for Works contracts).

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- 5.6 The SPA sets out a series of requirements as to how the LEP is required to respond to the LCC's requirements for new projects through a New Project Development Process. This process provides for a staged process to project development, the market testing of principal works packages but not the main Sub Contractor and sets out a schedule of overhead charges and the contractual mechanism which will be used to undertake the works.
- 5.7 All of the above processes have been varied during the life of the arrangement in order to respond to market conditions and the contract provides for such variation within the parameters of the original agreement. The extent of works subject to exclusivity has not been varied. Any such variation seeking to increase the scope of exclusivity beyond secondary provision, for example, carries procurement challenge risk.
- 5.8 There has been no challenge to date to the placement of works under the terms of the Strategic Partnering Agreement and whilst there remains a risk of challenge, this risk is considered to be relatively low due to the nature of the original procurement and the scope of works that could be undertaken through the contract. It should be noted however that significant departure from the SPA processes in placing work with the LEP carries greater risk of challenge.
- 5.9 If significant changes are anticipated in relation to an extension, then the Council would need to consider the provisions of Regulation 72 of the Public Contracts Regulations. This essentially provides that a contract may be only be varied outside any clear terms contained within it to the extent it would not distort competition (ie other bidders would have participated or won) or create a materially different contract, or distort the commercial balance between the parties, and within strict parameters.

6 OTHER LOCAL AUTHORITIES

- 6.1 The issue of LEP extension was raised at a meeting of the Education Funding Agency Contact Management Forum in March 2016. At this meeting three other Wave 1 BSF authorities were represented whose contracts were due to expire within the next 12-18 months.
- 6.2 Of those authorities one was in favour of retaining the LEP with significant modifications to how it had initially sought to procure works, one was not using the LEP and unlikely therefore to renew and one was considering the benefits in the light of proposed legislation.
- 6.3 The OJEU notice also provided for use by a wider range of public agencies including local further education colleges, Partnerships for Schools (now succeeded by the Education Funding Agency), the Diocese and any statutory successors to the Local Education Authority. Therefore the arrangements have a potentially wider application than just LCC procured works.
- 6.4 No formal consultation has taken place as part of this review with other potential works / service commissioners however the Council is seeking to undertake some extension

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works to schools within the BSF portfolio. In addition Children's Services have written in support of the LEP seeking to deliver works for the EFA priority schools programme round two ahead of formal batched procurement.

7 STAKEHOLDER SURVEY

7.1 Each of the stakeholders contacted were asked a standard series of questions as follows to capture their thoughts on working with the LEP both historically and going forward:

- i. Can you briefly describe your experience of working with the Leeds LEP?
- ii. What are the main advantages for you of using the LEP to procure works?
- iii. What do you see as any disadvantages of using the LEP compared to other methods of procuring capital works?
- iv. If LCC was to extend the LEP arrangement for a further five years, what work do you envisage being commissioned to deliver through this mechanism in that time?
- v. If the LEP was to be renewed what changes if any would you want to see in the current arrangements to improve either delivery or value for money?
- vi. If the LEP wasn't there what alternative mechanisms would you wish to use to procure capital works and associated services?
- vii. Is there anything else you want to say about the LEP?

7.2 In terms of the experience of working with LLEP, most participants reflected on a mutually beneficial working relationship to date. Some participants reflected on the confused identity of the LEP and the need for greater clarity as to what capacity they were engaging with LEP employees, particularly where this related to existing PFI schools within the BSF portfolio. Some participants also reflected that the Council had not always been consistent or clear on how it commissioned works from LLEP.

7.3 The main advantages of using LLEP as a procurement framework were summarised as:

- a. Speed of delivery and ready access to pre procured contractor team
- b. Generally perceived by Children's Services as good value for money compared to other schemes
- c. Generally works perceived (with some exceptions) to be of high quality and within time and agreed budget parameters
- d. Local team able to respond quickly to ad hoc requests and seen as responsive to LCC needs (particularly at the feasibility and procurement stage)
- e. LLEP perceived to add value through check /challenge of contractor
- f. The LEP has adapted to deliver a significant programme of works and the ongoing senior level engagement has facilitated the resolution of commercial issues without detrimentally affecting the partnership approach to future scheme development

7.4 The following matters were perceived as issues in respect of use of the LLEP as a procurement route:

- a. Uncertainty around use of the SPA for works not formally subject to exclusivity

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- b. Lack of main contractor competition and need to ensure that value for money is maximised
 - c. A general lack of clarity as in what circumstances the LEP can be used and on what basis they should be engaged and when other procurement routes should be followed
 - d. The level of snagging issues / defects on some schemes has been relatively high questioning the added value provided during the construction phase
 - e. Over reliance on one procurement route can jeopardise perception from other contractors and their willingness to tender for works
 - f. Need to ensure alignment with other Council procurement arrangements (eg NPS , Yor Build)
- 7.5 All participants reflected on the current uncertainty in the landscape of education provision with the potential changes as a result of the current government policies regarding academies.
- 7.6 All involved from the procurement and commissioning of school places were clear that there was a need for additional places at primary and probably secondary level within the city. What was less clear as to what extent this would manifest in additional investment through the local authority and to what extent this would be in the form of DfE directly funding free schools and academies going forward. Given this level of uncertainty it is not possible to quantify the potential pipeline of work beyond what is currently planned and whether DfE may wish to utilise the LLEP framework.
- 7.7 If the LLEP arrangements are to be extended participants highlighted the following as areas which needed to be addressed:
- a. Clear guidelines to be developed (and governance around decisions) to ensure that there is an objective basis on how the LEP mechanism is selected for each set of works and what needs to be in place to engage productively.
 - b. The New Project Development Process to be amended to enable the City Council to require the main sub-contractor to be market tested to assess value for money where possible (this might be through use of suppliers listed on Yor Build or similar frameworks).
 - c. The New Project Development process to be reviewed in line with current market conditions to ensure that all relevant charges are justified.
 - d. Confirmation to be sought that the LLEP does not require any minimum volume of works and can be scaled back as appropriate should there be insufficient works commissioned as a result of the changing landscape of education provision both locally and nationally.
- 7.8 If the Strategic Partnering Agreement was to be terminated for any reason in April 2017, the Council would be able to access capital and associated works through a variety of other frameworks including Yor Build, Scape, EFA framework, Yor Consult

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and NPS however there are challenges to delivery timescales with these approaches for basic need schemes.

7.9 Overall stakeholders were positive about the contribution of the LLEP to a challenging programme of works to date and were minded to support a renewal of the arrangements for a further five years subject to the issues identified in Paragraph 7.7 above being addressed.

7.10 At the meeting of the LEP Board on 13 July 2016 board members welcomed the conclusions of the review undertaken, and requested the Council to consider a further extension of 5 years with exclusivity remaining as under the current SPA in relation to secondary school projects over £100k capital value.

8 RISKS

8.1 There is no risk attached to extending the SPA under the current terms. If the agreement is modified then procurement challenge would arise if any variation proposed was outside the provisions of Regulation 72 Public Contracts Regulations 2016. This is not proposed.

9 CONCLUSIONS

9.1 It is clear from the above that the LLEP has helped to facilitate the successful delivery of a major programme of investment in Leeds schools over the last nine years. There is strong stakeholder support for the retention of the Leeds LEP providing the arrangements can be successfully developed between the parties to ensure continued demonstration of value for money.

10 RECOMMENDATIONS

10.1 That Leeds City Council should enter into further discussions with LLEP as to the terms of any extension addressing the issues raised in Paragraph 7.7 above.

10.2 That separate consideration is given to clarifying the LCC processes under which the procurement route for school works is taken, to address the issues set out in this report.

10.3 That subject to satisfactory conclusion of discussions with the LLEP, a report be submitted seeking authority to agree an extension to the SPA.

Leeds City Council

PPPU 10/08/2016