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Report of the Acting Director of City Development

Executive Board

Date: 9th March 2011

Subject: Future Options for Architectural Design Services

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In

(Details contained in the report)

EXECUTIVE SUMMARY

This report sets out the current position with the Council's internal construction design service – Architectural Design Service (ADS). It notes that the Council's current design alliance with Jacobs (the SDA) expires on 23rd July 2011 with advice from Legal Services that there is no basis for this contract to be extended.

The proposals set out in this report are intended to address a significant down turn in capital programme activity and subsequent budget shortfall and sustainability problem for ADS, in the context of the comprehensive spending review and the subsequent need to reduce Council spending significantly.

The report summarises the options considered for the future design support for Council projects. Of these options, two have merit, based on the initial appraisal: a proposed JV with Norfolk Property Services which is the preferred choice at this stage, and the option to separately procure design work, using existing frameworks where possible.

The report recommends that the service ceases in its current form and to commence the process of decommissioning the service in the most appropriate way to optimise current and future business needs.

The report seeks Executive Board approval to a joint venture with Norfolk Property Services (NPS) being actively explored and reported back to Executive Board by July 2011. The report sets out the range of issues and options associated with the potential for a joint venture should it prove viable. Staff associated with the work would TUPE transfer to the new organisation, or if the NPS option is not proving viable, staff would be placed into Managing Workforce Change.

Should it prove on further investigation that this option is not likely to work out in the Council's best interest, Executive Board is asked to agree that the default position is implemented that having ceased the in-house service, future activity is procured either singly or using existing available frameworks e.g. Office of Government Commerce (OGC) for an interim period pending further review and the recovery of the economy.

1.0 Purpose of This Report

1.1 This report summarises the options available to replace the Council's internal design service and seeks Executive Board approval in principle to transfer the service into a joint venture arrangement with Norfolk Property Services, subject to detailed consideration and a further report to Executive Board in July.

2.0 Background Information

2.1 The Architectural Design Service has evolved over a period of years; at one time having in excess of 150 staff servicing a significant capital programme. In response to the best value review of design services in 2003/4, the Council procured a design partner for a period of three years, Jacobs, with two allowable annual extensions. The last extension to the contract is due to expire on 23rd July 2011.

2.2 Over the course of the past five years, the capacity of ADS to offer a comprehensive service has diminished, to the point that the service is now unable to meet its income targets. The service is not financially sustainable in its current form given the limited amount of work, the failure to meet income targets and the Council's mounting budget pressures. The projected shortfall in income for this service for 2010/11 (at period 10) is approximately £490,000. The service will not meet its budget target in 2010/11 and the position may rapidly deteriorate during 2011/12 to the point where the service moves into a worsening deficit position, placing a pressure on the City Development budget.

2.3 Staff numbers have been reducing over the course of this financial year as efforts to prevent the service's financial position from worsening. There are now 40 permanent members of staff and 10 temporary / agency staff. Three members of staff will be leaving as part of the Early Leavers Initiative. ADS is over-reliant on temporary or agency staff to make up for either a skill deficiency or a mismatch of workload to professional disciplines. Its staffing resource is considered to be inadequate and the Council is now struggling to provide the critical mass and investment required to maintain and develop a high quality, multi disciplinary design service.

2.4 ADS has been affected by a reducing capital programme and there is limited or no prospect that this situation will improve over the next few years. In addition, the comprehensive spending review has resulted in the need to reduce the budget of the Development Directorate by 18% between 2011/11 and 2011/12. The ADS income shortfall in the region of half a million pounds in 2011/12 makes the budget situation even more difficult. Whilst it is expected that there will still be a need to meet the income shortfall to some extent in 2011/12, this situation is entirely unsustainable in

the context of the Council's current financial situation and other difficult decisions that need to be made to ensure the Council can balance its budget.

2.5 The view of officers is that there is no possibility that this situation can be turned around if the service continues in its current form. It is therefore clear that the Council needs to respond to the following issues:-

- the Jacobs Contract coming to an end in July 2011;
- the reduction in the Capital Programme;
- the unstable position that the in-house service currently faces.

2.6 Taken together, it is clear that a solution needs to be brought forward that responds to the issues highlighted above and provides a more stable and sustainable basis for the delivery of the Council's architectural design needs. In addition, the Council needs to consider a solution which enables it to deliver design arrangements that can meet the very varied nature of its design needs, including the need to meet funder requirements about certain aspects of design work and the need to respond to service requirements in an effective and timely way. This requires a multi-disciplinary design service and some flexibility about special arrangements for particular projects.

2.7 The options that have been considered to resolve this situation are:-

- Option 1: staff proposal
- Option 2: Jacobs secondment proposal
- Option 3: local authority JV with Norfolk Property Services
- Option 4: separately procure design services for individual jobs and / or use available frameworks e.g. OGC
- Option 5: existing framework available within LCC e.g. the LEP (Local Education Partnership) or PPPU's technical advisor contract
- Option 6: procure new external design framework
- Option 7: procure new design partner
- Option 8: establish a JV with a private sector company
- Option 9: shared service or JV with another local authority

2.8 These options are summarised below with a summary of the initial option appraisal outcome.

Option 1: staff proposal

2.9 Following the start of the consultation process about the possibility of ceasing ADS, which started in September 2010, a group of the staff developed an option to restructure the service which would have involved reducing its size and changing the way it works. A great deal of effort was put into this proposal and it was considered seriously as part of the review. If there was any serious scope to retain the service in this way, this option could have been used as the starting point. The Acting Chief Asset Management Officer has met this group of staff on a regular basis since the start of the consultation period. Unfortunately, the option is still unlikely to solve the issues of critical mass, income shortfall and some client dissatisfaction. Therefore it is not recommended. The staff group is aware of the reasons behind the decision not to recommend pursuing their option further.

Option 2: Jacobs secondment proposal

- 2.10 Detailed consideration has been given to an initial option put forward by Jacobs, the Council's current partner in the Strategic Design Alliance, after discussion with the Council. This would extend the existing contract by a further 12 months from July 2011 to July 2012, seconding a number of permanent architectural and surveying staff for a period of around 9 months. The Council's legal advice about this option is that a further 12 month extension would not be allowed if the contract value is greater than £156,000, which it would be. In terms of employment, legal advice is that the staff would be unlikely to enter managing workforce change until after the secondment period, which defers the employment issue, but does not solve it. Likewise, there is no guarantee that the deficit would be reduced through this arrangement.

Option 3: local authority JV with Norfolk Property Services

- 2.11 More recently, discussions have taken place with Norfolk Property Services about the possibility of Leeds entering into a joint venture arrangement with Norfolk Property Services. Norfolk Property Services Ltd is a public sector company that was formerly a Norfolk County Council business unit and is now a national provider of property consultancy services. It has partnership arrangements with a range of authorities including Wakefield, Hull, Barnsley, Stockport, Devon, Waltham Forest, and Wigan.
- 2.12 The NPS business model enables Leeds to transfer its activities into the company without going through a traditional procurement process. All of the NPS joint ventures to date have been established under the "Teckal exemption", which provides exemption from EU procurement regulations where the local authority has sufficient control and where the majority of work carried out is carried out for the participating local authorities. Legal advice has been sought which has indicated that the arrangement can be exempt. The detailed issues and options associated with the NPS are set out in paragraph 3 below.

Option 4: separately procure design services for individual jobs and / or use the Office of Government Commerce (OGC) Framework

This option would allow the Council to procure project design for single projects or call on companies included in the OGC framework to call off design services for schemes with a construction value of over £500,000. Activity below this level could be procured individually or carried out internally through CPM. Companies on the framework include, Turner & Townend; Mace; Jacobs; Faithful & Gould; Bovis Lend Lease; Capita; Mott McDonald; EC Harris; Gardiner & Theobald; RLB (Rider Levett Bucknall). This option would require a residual design service to be in place to complete the existing work programme.

Option 5: existing framework available within LCC e.g. the LEP (Local education Partnership) or PPPU's technical advisor contract

The LEP has exclusivity over certain Education and Leisure design and building activities. However, legal advice is that neither of the OJEU's associated with these vehicles is broad enough to include all the Council's general design work. Legal advice relating to the exclusivity of the LEP is covered in Appendix 1.

Option 6: procure new external design framework

This option is not recommended as it would be difficult to specify and tender on the basis of the anticipated work load. In addition, the costs and timescale associated with such a procurement are likely to outweigh the benefit of such an exercise, especially as a significant number of the companies who might be equipped to take Leeds' projects are already on the OGC framework.

Option 7: procure new design partner

Like option 6 above, this option is not recommended as it would be difficult to specify and tender on the basis of the anticipated work load. In addition, the costs and timescale associated with such a procurement are likely to outweigh the benefit of such an exercise. The Council would not be able to guarantee a minimum fee to the partner, which is likely to be a requirement.

Option 8: establish a JV with private sector company

Again, this option is not recommended as it would be difficult to specify and tender on the basis of the anticipated work load. In addition, the costs and timescale associated with such an exercise are likely to outweigh the benefit of such an exercise. The Council would not be able to guarantee a minimum fee to the partner, which is likely to be a requirement.

Option 9: shared service or JV with another local authority

This option is not recommended on its own due to the time it would take to establish such an arrangement and the risk that it would in effect combine organisations with a similar range of problems into a newly established organisation, in an untested way. However, it could be considered alongside the NPS option, either at the start or at a later stage.

2.13 In considering the above nine options officers have taken into account a range of factors, including:-

- potential to offer multi-disciplinary service;
- cost of establishing new arrangements;
- time taken to establish new arrangements;
- extent to which the Council would need to, and is able to, specify the level and anticipated value of activity;
- initial benchmarking of fee levels to ensure value for money;
- the ability of the arrangement to improve service quality and performance;
- the scope to build in additional benefits for the Council;
- financial implications;
- risk;
- legal implications;
- contract management requirements;
- employment implications in relation to managing workforce change arrangements and potential for TUPE;
- staff and trade union views.

2.14 Factors which have been of particular influence in this initial option appraisal have included the ability to specify service levels going forward, the whether the time and cost of procuring new arrangements is in proportion to the potential benefits offered by the exercise. Officers have also given some weight to the ability of an option to protect employment where possible and the potential for Council services to be

delivered through shared publically owned companies as a means of improving effectiveness and efficiency in their operation. Due attention has been given to legal advice.

2.15 On the basis of this initial option appraisal & analysis, and taking into account all of the factors listed above, officers recommend ruling out further detailed consideration of options 1, 2, 5, 6, 7, 8 and 9. Officers recommend that the NPS option is explored in more detail with a view to reporting back to Executive Board by July. If this option proves unworkable, officers recommended Option 4 (separately procure design services for individual jobs and / or other frameworks e.g. OGC as the fall-back position. It should be noted that in ruling out option 5 for this purpose, the current LEP agreement is not affected i.e. its exclusivity remains.

2.16 The NPS option, along with issues associated with it, is set out in more detail below.

3.0 Proposed NPS Leeds JVC - Main Issues

3.1 The NPS option has some potential benefits to the Council in current circumstances:-

- it can be set up more quickly than all other options, as it is a local authority service considered to be outside of the procurement regulations;
- there is no need to specify or guarantee a minimum level of business or income to the company;
- it allows the possibility that the design service can be made successful through the addition of new capacity and business;
- all permanent professional staff and a small number of support staff could transfer to the company on a TUPE basis;
- it could avoid redundancy for a group of staff who are unlikely to find a professional skills match in the Managing Workforce Change process;
- Staff and Trade Unions support this option;
- NPS has a track record with sustainable property management and construction which could potentially help Leeds reach its own energy efficiency and income targets;
- the Council can receive a profit share on a 50:50 basis in the form of a volume discount, but does not bear any losses other than a sliding scale of redundancy costs over the first three years should that be necessary;
- other associated services could potentially be added at a later stage if the Council wished, which could present a further option to consider for other services facing an uncertain future;
- in order to achieve best value, the Council could build an annual efficiency target into the business plan, aimed at producing year-on-year savings.

- 3.2 Officers have spoken to other authorities who have arrangements with NPS. There have been a range of positive comments, and lessons learned that will need to be tested further.
- 3.3 A joint venture could be established either as a single Leeds company or with a Leeds subsidiary to one of the other NPS JVs in the region (Wakefield, Hull or Barnsley). The advantage of the Leeds single option is that is easier to set up and the extent of the Council's control is clearer. This option allows Leeds to add further services, or join with other authorities at a later date if that is considered worthwhile at that time. However, the business would need to grow as the existing scale of activity in ADS is too small to justify a separate company over the medium term.
- 3.4 Leeds joining an existing NPS JV reduces overheads, there is no pressure on Leeds to add services which would possibly be the case with the single company option. However, it has not been done before and could take longer to establish as a result. In addition, Leeds' share in the company would need to be negotiated.
- 3.5 The NPS proposal is based on a three year business plan but a minimum ten year length of contract. Termination arrangements have been discussed but would need to be explored in more detail. However, if the company was failing, it could be wound up and the staff then working on Leeds' activity would need to TUPE to the Council's new arrangement. The company would bear the associated losses. There are specific and limited reasons why NPS could terminate the arrangement, but more flexibility for the Council to do so, with a review clause at 5 years.
- 3.6 It is important that the Council ensures that, despite the pressing financial and capacity issues with the existing service, it has taken the time to fully consider all issues relating to the potential joint venture, including:-
- the extent of the Council's control over the company;
 - the legal advice relating to competition and employment;
 - evidence that the option offers value for money, through some benchmarking and soft market testing if deemed necessary;
 - the extent to which the arrangement addresses the deficit;
 - the extent to which the arrangement offers additional benefits;
 - whether a single Leeds NPS venture or Leeds joining an existing NPS company is the recommended option;
 - the activities to which NPS could be granted exclusivity and where the Council may want to carefully specify exclusions from this;
 - the level of commitment from across Council directorates to use the new arrangements;
 - the experience and lessons of other authorities with NPS arrangements;
 - the termination arrangements;
 - the client and contract management arrangements necessary to properly manage the arrangement;
- 3.7 It is proposed that this detailed work takes place to test the viability of the proposal for a joint venture arrangement between the Council and Norfolk Property Services and that a further report outlining the results of this is brought to executive Board by July 2011.

4.0 Consultation

- 4.1 The proposal to cease ADS in its current form has been subject to a formal consultation period beginning with a staff meeting with the Acting Director of Development on the 6th September 2010, and followed with a number of meetings with Trade Union representatives.
- 4.2 The staff established a small group to consider their response to the proposal to cease the service. They sought volunteers to join this group from amongst the permanent staff. This group has met with the Acting Chief Asset Management Officer on a regular basis over the past five months. Joint meetings are now held with the trade Union representatives.
- 4.3 Updates for all staff have been done over the course of the review and a meeting of the whole staff is due to take place the week starting 28th February.
- 4.4 The view of officers is that a sufficient period of time and a sufficient level of effort has been given to consultation with staff and the Trade Unions about the proposals contained in this report.
- 4.5 Staff and TUs are supportive of the proposal to consider a JV. They would like to fully participate in the work which will take place to explore this option more fully. If the outcome of this exploration is found to be positive, they also fully support the TUPE transfer of most staff. If at some point it is found not to be viable, by mutual agreement, they accept that at that time (and not before) staff would go into the Managing Workforce Change procedure. They do not support exploring Option 4 concurrently with Option 3, but accept that Option 4 should be explored should the NPS option not prove viable.

5.0 Implications For Council Policy And Governance

- 5.1 The decision to establish a joint venture company rests with Executive Board. The decision sought at this meeting is in principle support which will allow the proposal to be explored more fully before being brought back for final decision by Executive Board later this year.
- 5.2 An Equality Impact Assessment has been completed and is available on request.

6.0 Legal and Resource Implications

- 6.1 Internal legal advice has been sought in respect of the potential to enter the proposed joint venture with NPS without a standard procurement; the challenge risk associated with this approach, and the Council's mitigation of these risks; and the application of TUPE and Managing Workforce Change procedures and the impact of the timing of the closure of ADS in its current form.
- 6.2 Full legal opinion will be provided when this matter is brought back to Executive Board in July 2011.
- 6.3 There are legal implications in relation to procurement included in this report. For future design services bought externally, the Council would need to make use of an existing framework or re-tender. The advice received is that it would not be possible to extend the Jacobs contract further without a procurement exercise, although works up to the EU procurement value (£156k) could be allocated to Jacobs in any case or the framework. As Jacobs believe that the contract can be extended, legal advice is being sought to confirm the position.

- 6.4 Legal advice in relation to the potential to enter into a joint venture with NPS is included in Appendix 1.
- 6.5 Legal advice in relation to employment matters is attached as Appendix 2. Appendix 2 is considered exempt under Access to Information Procedure Rule 10.4 (5) because it contains information relating to negotiations in connection with industrial relations and information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. It is considered in these circumstances that the public interest in maintaining the exemption from publication outweighs the public interest in disclosing the information.
- 6.6 The cost of setting up the arrangement with NPS will be limited to the Council's internal legal fees, estimated at circa £5,000.
- 6.7 The income shortfall in ADS is currently projected to be £490,000 in 2010/11. Whilst this is anticipated for this year, it can not be sustained to that extent in 2011/12. It is possible that the position can recover should the service transfer relatively quickly. However, the share of Council overheads that is currently charged to ADS will still be incurred and will remain a problem in terms of how this is to be funded. The sum in question is £380,000 for 2010/11 and is likely to be only slightly less in 2011/12.

7.0 Risk

- 7.1 A full risk assessment will be completed as part of the full exploration of the option to pursue a joint venture with NPS.
- 7.2 However, at this time the Council clearly faces the risk of managing an unsustainable design service. The Council could simply cease the service and procure its design services from private sector providers. This solution is clearly an option, but would leave the Council exposed to an external market with no residual internal capacity. Securing a joint venture with another public body would help to mitigate this risk.

8.0 Conclusion

- 8.1 In the context of the Council's reducing capital programme and its current revenue budget pressures, and the capacity issues that the service is facing, officers have concluded that the internal Architectural Design Service is not sustainable in its current form. Its inability to meet its income target is putting considerable pressure on Council budgets, and its staffing structure and capacity does not match its workload. The officer view is that there is no possibility of the service becoming sustainable in its current form.
- 8.2 A number of options have been looked at. On the basis of the initial options, it appears that two of these options have merit. The one which appears to offer a solution with some potential additional advantages is to transfer the service into a joint venture partnership with Norfolk Property Services, a wholly public sector owned company. If Executive Board is minded to agree that this option has some potential, it will be explored in more detail with NPS and with other authorities who have entered arrangements with NPS.
- 8.3 However, the option to separately procure design work using existing frameworks when appropriate e.g. OGC (Option 4) will also be explored in more detail at the next stage. Although staff and Trade Unions have asked that this is not done unless the NPS option proves not to be viable, it is the view of officers that it would need to be considered concurrently.

9.0 Recommendations

9.1 Executive Board is recommended to:-

- 1) end the formal consultation about ceasing the service, and agree to the proposal to cease the in-house Architectural Design Service in its current form;
- 2) agree to begin the process of decommissioning the service in the most appropriate way to optimise the current and future business needs;
- 3) agree to explore to the establishment of a joint venture arrangement with Norfolk Property Services (NPS) as the preferred route and subject to further detailed consideration, to be reported back to Executive Board in July 2011;
- 4) agree that officers should also explore alongside this in more detail the option to separately procure design services using existing frameworks where appropriate e.g. Office of Government Commerce (OGC).

Background Papers:

Equality Impact Assessment