

<b>Report to:</b>	<b>CABINET</b>
<b>Report of:</b>	<b>DIRECTOR OF COMMISSIONING AND PROCUREMENT</b>
<b>Date of Decision:</b>	<b>16<sup>th</sup> May 2017</b>
<b>SUBJECT:</b>	<b>COMMISSIONING STRATEGY FOR THE FUTURE OF BUILDING CONSULTANCY SERVICES</b>
<b>Key Decision: Yes</b>	<b>Relevant Forward Plan Ref: 003034/2017</b>
<b>If not in the Forward Plan: (please "X" box)</b>	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>
<b>Relevant Cabinet Member(s):</b>	Cllr Ian Ward, Deputy Leader and Cllr Majid Mahmood, Cabinet Member, Value for Money & Efficiency
<b>Relevant O&amp;S Chairman:</b>	Cllr Mohammed Aikhlaq, Corporate Resources and Governance
<b>Wards affected:</b>	<b>All</b>

**1. Purpose of report:**

- 1.1. To provide details of the process undertaken to assess and confirm the benefits of Building Consultancy being out of scope of the proposal to engage a Joint Venture partner for the delivery of Design, Construction and Facilities Management services, including integrated or direct services, with Building Consultancy potentially operating as an independent Wholly owned Company (WOC) for the provision of Building Consultancy services, or a variation of the service being brought back in house where Approved Inspector status can be continued.
- 1.2 To propose a further extension of the Council's current agreement with Acivico Building Consultancy Services Ltd for the provision of Building Consultancy Services.
- 1.3 The Private agenda report contains any confidential market information that has informed the decision.

**2. Decision(s) recommended:**

That Cabinet:

- 2.1 Notes the contents of this report.

<b>Lead Contact Officer(s):</b>	Mike Smith – Head of Commissioning - Corporate Procurement
<b>Telephone No:</b> <b>E-mail address:</b>	Corporate Procurement Services, Economy Directorate 0121 303 7519 mike.smith@birmingham.gov.uk

**3. Consultation**

Consultation should include those that have an interest in the decisions recommended

### 3.1 Internal

Acivico Ltd, including its Directors, have been consulted on the contents of this report and are supportive of the proposals.

Acivico Ltd has carried out initial communications and engagement with affected staff, trade unions (by Acivico) in respect of the commissioning of Building Consultancy services.

Officers from Planning and Regeneration, Legal, Finance, Corporate Procurement and HR have been involved in the preparation of this report.

Further consultation, including statutory consultation obligations, will be undertaken with service users, all affected employees, trade unions, Elected members and stakeholders as the process advances.

### 3.2 External

None.

## 4. **Compliance Issues:**

### 4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

4.1.1 This decision will support the Council's priorities to create a fair, prosperous and democratic city that is committed to protecting vulnerable citizens and maintaining essential services. This arrangement will support the following specific objectives:

- Transforming the City Council so that we can continue to work towards our objectives with significantly reduced resources.
- Working in partnership with our neighbouring councils.

### 4.2 Financial Implications

4.2.1 Acivico (Building Consultancy Ltd) is currently a special purpose trading vehicle within the wider wholly Owned Acivico Ltd Company business structure. It shares corporate / operational functions with Acivico DCFM Ltd, therefore if there was a formation of a Building Consultancy WOC independent of Acivico DCFM Ltd, this will lead to a separation of the shared corporate / operational functions and any consequential costs of this will be further determined at a later stage. 4.2.2 Building Consultancy Ltd's fees for the delivery of statutory services for which an external fee is prohibited are paid quarterly in advance based on budget and cash flow projections provided by Acivico Ltd and are approved by the Assistant Director of Finance, Economy.

4.2.2 A significant part of the budgeted income is received from external clients through charges. Charges are determined in accordance with the Building (Local authority charges) Regulations 2010 SI 2010 No 404 which authorises the recovery of reasonable cost of providing the principal operational functions, design assessment and site compliance inspections and are approved by the Planning Committee who hold the authority to set a scheme of fees for these services.

4.2.3 The remaining income is received from externally traded work. If Building Consultancy remained as a WOC it will be able to build on its success in achieving Approved Inspector (AI) status and allow them to trade nationally against private sector providers for building consultancy services and demonstrate solid growth in externally traded work. Having the AI status has led to a significant increase of initial notices being served and attracts an income stream considered excellent for a start-up in this field. AI activity and related income is forecast to continue growing in excess of 20% per annum over the next 3-5 years. At a later stage, it will have to be determined as to whether this additional income is sufficient to outweigh the costs of remaining as a Wholly Owned company, along with other considerations.

4.2.5 There should not be any change in the VAT implications for Building Consultancy in the event of remaining as a WOC. Building Consultancy would charge VAT on its services to BCC and other customers and can reclaim VAT on its costs. BCC would be able to reclaim any VAT charged to it by Building Consultancy.

4.2.6 There will need to be some extrication of support services, currently provided within Acivico for the Building Consultancy service. This will be fully revealed and concluded as the procurement process develops for the Acivico DC&FM service and will inform the decision as to whether the service remains as a WOC or reverts back to the Council. Likewise there are some overheads within Acivico, charged across DCFM and Building Consultancy that are a direct charge from the Council and not necessarily incurred in the operation of the business, e.g. the sharing of the council's overhead on the ICT contract. An analysis of those applicable to Building Consultancy will also be undertaken as part of this exercise and their treatment will also inform the outcome of the service structure.

#### 4.3 Legal Implications

4.3.1 If a decision is taken for Acivico Building Consultancy Company to continue to be a company that is wholly owned and controlled by the Council (otherwise known as a Teckal company) then it will be exempt for the purposes of EU procurement regulations (OJEU) as long as all but a de minimus proportion of its work is for the public sector.

4.3.2 The precise structure of any independent WOC is still to be determined and will be subject to a future Cabinet report.

4.4.1 An initial Equalities Assessment has been completed to decide whether revising the structure of Building Consultancy for the provision of the services currently provided under the Acivico Ltd contracts has any relevance to the equality duty contained in Section 149 of the Equality Act 2010. The initial screening identified that there was no requirement to assess it further at this stage. (See Appendix 1)

4.4.2 The requirements of Standing Order No. 9 in respect of the Council's Equal Opportunities Policy and the Equality Act 2010 will be incorporated into the terms of the extended contracts, as they are incorporated in the terms of the current Building Consultancy Contracts and any subsequent contract.

### 5. **Relevant background/chronology of key events:**

- 5.1 Acivico Ltd (a Wholly Owned Company (WOC)) comprises of 2 special purpose vehicles Acivico Design, Construction and Facilities Management (DCFM) Ltd and Acivico Building Consultancy (BC) Ltd.
- 5.2 Acivico Building Consultancy delivers the (Building Act 1984) services for which the Council has statutory responsibility in accordance with its contractual performance obligations. As well as the building regulation fee earning duties, these statutory services include dealing with dangerous buildings in the city, safety of sports grounds, enforcement action and the competent persons scheme.
- 5.3 The key reason this service was moved to Acivico Ltd was to improve the Council's ability to trade with the private sector as well as public sector clients and grow new income streams thereby increasing business and shareholder value.
- 5.4 In August 2014 Acivico Building Consultancy successfully gained a licence to operate as an Approved Inspector (AI). This allowed Acivico Building Consultancy to offer their regional and national clients continuity of service provider because as an Approved Inspector it is able to operate outside the Birmingham geographic area. This has led to a significant increase of initial notices being served and attracts an income stream considered excellent for a start-up in this field. If Building Consultancy remained as a WOC it could retain its AI status.
- 5.5 Acivico Building Consultancy services supports an array of high profile private and public sector clients including national retailers, regional health authorities, central government departments, other city and local authorities, universities and charitable trusts.
- 5.6 In addition, Acivico Building Consultancy has provided management, technical and operational support services to other local authorities to help meet their statutory obligations. This support service has also proved successful and has resulted in increased trading income. Clients receiving such services are Solihull MBC, Coventry City Council and Liverpool City Council.
- 5.7 Building Consultancy's performance is subject to robust levels of scrutiny through a quarterly Performance Management and Monitoring Board. This is chaired by a representative from the Economy Directorate (City Council Statutory Functions Officer) and is supported by officers from Corporate Procurement Services.
- 5.8 Service performance in relation to externally funded operations is also monitored against an agreed series of Key Performance Indicators and internally funded functions are subject to a comprehensive schedule of activity outputs. Building Consultancy Ltd has consistently demonstrated a high level of achievement against all KPIs
- 5.9 The Council's initial agreement with Acivico Ltd for the undertaking of Building Consultancy services was for a 5 year term expiring on 31 March 2017. This was extended following a Cabinet decision in March 2014, to continue the contract until 31 March 2019. The agreement however, allowed for an annual review of the expiry date and as such, following a Cabinet decision in March 2016, the contract was extended once again until 31 March 2021. This demonstrated the Council's confidence in Building Consultancy services and supported the Council's trading objectives.
- 5.10 The rolling Agreement approach demonstrates to major developers Birmingham City Council's continued confidence in Building Consultancy Ltd. The risk for Building Consultancy Ltd if the current Agreement is merely allowed to run its normal course

without extension is that major developers may lose confidence that Acivico Ltd will continue to have an on-going relationship with the City Council. As the Agreement term reduces this could reduce the overall turnover and this in turn would impact upon the amount of allowable trading and ultimately any profit that could be achieved. It is therefore proposed that a further extension to March 2023 is agreed.

- 5.11 In December 2016 a report was presented to Cabinet recommending the procurement of a Joint Venture (JV) partner with Acivico for the delivery of the Design, Construction and Facilities Management (DCFM) service. This report also recommended that an options appraisal be undertaken to establish the best model for the future delivery of Building Consultancy Services.

#### **Future delivery options considered**

- 5.12 Given the above, the Commissioning team have explored a range of options. The following section outlines each option considered, whilst the private report includes an evaluation of each option.

The options that were considered as part of the overall Commissioning strategy were as follows:

1. The setting up of a new Council function – or a variation of bringing the service back in-house where Approved inspector status can be continued.
2. Tender / Commission the market to deliver the service
3. The re-negotiation of existing arrangements with current providers - continue as an independent WOC.
4. Joint Venture - the creation of a public-private partnership, through a strategic contract
5. The joint commissioning or delivery of the service outcomes – LA collaboration

- 5.11 The options appraisal was undertaken by officers from Building Consultancy, Planning and Regeneration, Legal and Procurement.

- 5.12 Following the options appraisal, the Commissioning team recommend that two options are now explored further to deliver Building Consultancy services, either the establishment of a WOC for Building Consultancy services independent of the proposed Acivico DCFM Ltd JV or to enable the Building Consultancy service to come back in house with the ability to retain its approved inspector status.

- 5.14 A decision as to whether a WOC is established or whether the service will be brought back in house, will be reported to Cabinet at a later stage after considering financial, tax and legal implications etc.

#### **6. Evaluation of alternative option(s):**

- 6.1 A detailed assessment of each of the commissioning options has been used to inform the decision to further explore the establish a WOC for Building Consultancy services, independent of Acivico, which is set out in the Private Report.

**7. Reasons for Decision(s):**

- 7.1 To seek agreement that Building Consultancy services are out of scope of the proposal to engage a Joint Venture delivery partner for the delivery of Design, Construction and Facilities Management services, including integrated or direct services and to explore two further options for the delivery of Building Consultancy services.
- 7.2 To seek agreement to a further extension of the Council's current agreement with Acivico Building Consultancy Services Ltd for the provision of Building Consultancy Services.

**Signatures**

**Date**

Councillor Ian Ward  
Deputy Leader

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Councillor Majid Mahmood,  
Cabinet Member for Value  
for Money and Efficiency

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Nigel Kletz,  
Director,  
Commissioning &  
Procurement

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**List of Background Documents used to compile this Report:**

1. Cabinet report 14th March 2014 – Agreement extension for Acivico Building Consultancy Ltd
2. Cabinet report 22nd March 2016 – Extension of contracts with Acivico
3. Cabinet report 13<sup>th</sup> December 2016 – Commissioning strategy for Construction related and Facilities management services

**List of Appendices accompanying this Report (if any):**

1. Equality Assessment
- 2.
- 3.

<b>Report Version</b>	<b>4</b>	<b>Dated</b>	<b>3<sup>rd</sup> May 2017</b>
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**Appendix 1.**

