dated 6th July 2018

Brighton & Hove City Council

Supplemental Report to an Options Report for the delivery of responsive repairs services, planned maintenance and improvement programmes and large capital projects

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1 **Introduction**

1.1 This document has been produced by Trowers & Hamlins LLP and Savills (UK) Limited and has been prepared for use by Brighton & Hove City Council (**BHCC**) and should be read in conjunction and as supplemental to the initial Options Report we prepared and dated 19th April 2018.

1.2 BHCC has asked Trowers & Hamlins LLP and Savills (UK) Limited to respond to the questions noted in Section 2 below. These questions arose from the Procurement Advisory Board (**PAB**) meetings held on 30th April 2018 and 4th June 2018 and afterwards in relation to the initial Options Report.

2 **Questions as detailed in this report:**

2.1 The following questions have been raised though discussions at the above meetings and in relation to the Options Report presented to key stakeholders. The answers to these questions make up the body of this supplementary report.

- What position does BHCC hold in the market place?
- Can you provide a summary of the main risks BHCC faces when shaping services post 2020?

Questions relating to Delivery Options:

- How does the management and employment of staff operate in the wholly-owned subsidiary model?
- Would there be union representation in the employment board for this model?
- What would be the role of sub-contractors in the contracted service model?
- How does cost control operate across the models detailed? Do they provide scope for transparent costings? (inc. SoRs, Price Per Job, Price Per Property and Open Book)
- How would the Wholly Owned Subsidiary Model be affected by the pressure of shareholders?
- What is the impact of direct delivery in terms of saving on contractor profit margin?
- What would be the timescales for each of these options?
- How do each of the Options deliver a level of competitiveness between contractors?
- How do each of the Options relate to the ability to have an increased level of local spend?

- What would be the cost impact in terms of investment in a direct delivery service?
- What would be the resourcing requirements of the options detailed?
- Discuss client team requirements and customer contact centre?
- Achieving social value through the different options?
- What flexibility for works are there in different option to adapt to changing priorities?
- How is leaseholder consultation take place for a framework agreement?

3 Market Position and risk statement

3.1 BHCC's re-procurement of its repairs and maintenance service represents an attractive proposition to the market. A new contract will offer a reasonable-sized annual value and volume of work which will be attractive to both national contractors and the more regional players.

3.2 However, the key to success and making the new contract most attractive is by ensuring that the work is packaged into Lots in such a way that it encourages maximum interest and competition. Splitting the work packages into Lots for tender purposes means that the lot sizes and scope can be designed to maximise attractiveness to the market and encourage bids from Small and Medium Enterprises (**SMEs**) if this is a desired objective. At the same time, by allowing contractors to bid for more than 1 Lot (as per paragraph 3.3 below), it becomes even more attractive to some larger contractors and could result in lower costs to BHCC through greater economies of scale.

3.3 Whilst there are a number of contractors that would bid for an all-inclusive contract similar to the current contract, this would reduce the pool of contractors. With this in mind, we have suggested in the Options Report that capital and revenue work is therefore split and a ‘mixed economy’ route is adopted. However, it is recognised that contractors bidding for the revenue work will most likely be keen to undertake some of the capital work as well and this will help to defray set up and fixed costs across the contracts. Therefore it is imperative that the procurement model contains flexibility to accommodate this.

3.4 In respect of the individual options, the Outsourced Model (Option 2) will remain attractive to the widest audience as there are more contractors able to bid for this work. The Wholly-Owned Subsidiary Model (Option 3) and JV Model (Option 4) will have a limited number of participants that will tend to be the larger contractors experienced in this more complex type of contracting arrangement.

3.5 The contracting industry is always keen to engage directly with a client as main contractor rather than act as a sub-contractor and therefore BHCC will be able to attract interest in establishing its own supply chain. However, this requires a level of resource that BHCC is unlikely to have at the current time and therefore it would be expected to take some time to develop. BHCC also needs to operate within the confines of its own procurement rules as well as the requirement of the Public Contracts Regulations 2015 (**PCR 2015**). Similarly, the level of bureaucracy and some contractual obligations often imposed by local authorities can be off-putting to some smaller contractors used to operating in the private sector.

3.6 In summary, whilst we would certainly envisage good interest in a well-packaged opportunity if it were tendered, market conditions are different than when the contract was last procured in 2009. The construction market was considerably different at the time, struggling with the recession and impact of a number of contractor failures, and market sentiment is stronger now than it was then. This elevated activity, coupled with increasing risk around labour (the 2016 Farmer Review of the UK Construction Labour Model referred to the real ticking ‘time bomb’ of the industry’s workforce size and demographic), result in an increased risk of upward price pressure and the procurement model needs to recognise this.

4 Risk summary statement

4.1 **Skills:** Each of the delivery Options will require different management skills to support efficient delivery. Existing skills are likely to be aligned to delivery via a contractor model and the current model includes for outsourcing of some traditional client functions. BHCC will need to build the skills necessary, through a mix of internal and external resource, to effectively run the contracts. Running an in-house service will require commercial management skills that are not traditionally found within client contract management teams. The Subsidiary Options or JV Options may provide a middle ground where the skills can be provided by the contractor partner. In our experience, however, there would still be additional client skills required to run the Subsidiary and JV Models effectively.

4.2 **Investment:** The level of upfront investment varies considerably between delivery models and the savings would need to be delivered to generate return on this investment. This investment requirement would need to be clearly understood to inform a detailed appraisal of the options. The ability to deliver savings is closely linked to skills.

4.3 **Cost variance:** Some of the Options would involve additional exposure to the risk of overspend. Current contractual prices were procured in 2008 although inflation increases have been applied, it is likely that due to changes in the market over the last decade there is risk that all models will see differences to current costs.

4.4 **Legal, tax and accounting:** There are considerable legal, tax and accounting considerations. Whilst we are able to comment generally on some of the key issues it is essential that appropriate advice is taken once an Option has been selected to ensure that arrangements are appropriately structured. In addition wider tax and accounting impact, HR and pensions issues linked to transfer of staff, and legal and regulatory issues will likely require specialist advice.

4.5 **Procurement:** Any procurement must be structured to comply with the Public Contracts Regulations 2015, general EU Treaty principles and BHCC's internal governance rules.

4.6 **Leasehold**: Compliance with the appropriate regulations to ensure that BHCC meets its legal obligations for consultation and can also recover costs when delivering work.

4.7 **Timing**: Whilst April 2020 may seem some way off some of the delivery models discussed may take 18 months to plan, procure and mobilise. In addition, prior to this action a DLO business case may need to be produced and agreed with key stakeholders. This is likely to require an immediate start.

4.8 **Service:** Any change in service provider creates a risk to service delivery through the demobilisation and mobilisation phases. This will need to be managed and appropriate mitigation put in place.

4.9 **Control:** Increased control, in order to be able to adjust the approach to best meet need, is discussed as an advantage in a number of the delivery models. It should be noted that, particularly for the options where there is joint control, how control is structured on paper and how it operates in practice can differ. We have seen a number of examples, particularly in models with contractor involvement, where clients fail to effectively exercise the control available to them. It is therefore important to consider ongoing management expertise carefully alongside the initial structuring.

4.10 **Employee and industrial relations:** when re-procuring the service a relevant issue for all of the models is the need for BHCC to engage effectively and meaningfully with all affected employees, unions and other interested stakeholders in order to ensure that all parties are consulted and/or informed (when appropriate) of the ensuing changes. Failure to engage the relevant parties at the correct time could risk creating poor lines of communication and/or relationships with employees and unions to the detriment of the service delivery and the ultimate attainment of BHCC's objectives.

4.11 **Contractor default/insolvency:** The risk of contractor default/insolvency needs to be considered and appropriate mitigation put in place.

4.12 **Exit:** Through the current partnering arrangement and previous partnering contracts BHCC has gained experience of longer term arrangements. Exit routes should be carefully considered.

5 Questions relating to Delivery Options:

5.1 How does the management and employment of staff operate in the wholly-owned subsidiary model?

5.1.1 The employees delivering the services will be employed by a wholly owned subsidiary (**WOS**) of BHCC and will be the transferee in a transfer in of the incumbent contractor workforce under TUPE. This means the legal responsibility for the employment of those staff and any liabilities relating to the workforce in terms of employment law rests with the WOS. However on a day-to-day basis, decisions about managing the workforce are directed by a contractor who is employed to manage that workforce. Seen through the eyes of one of the employees what this means is that they receive instructions on what to do, and how and when to do it, from a manager as now, but that manager is employed by the contractor not the WOS.

5.1.2 However, the contractor cannot have the right to determine decisions about key aspects of the employment relationship: recruitment, termination of employment and so on. Ultimate control is retained by the WOS. That is because a transfer of control could result in the contractor being deemed to be the employer. Instead the contractor makes recommendations which are applied by the WOS. The limits on the contractors ability to make recommendations in relation to particular aspects of workforce management and the sharing of legal and commercial risk is set out in the agreement between the WOS and the contractor to provide that managed service.

5.1.3 In the model discussed, an employment board is established to deal with contentious decisions where a determinative decision is required by the employer (i.e. the WOS). This enables the contractors reason for making a recommendation can be explored alongside any reservations on the part of BHCC, for example a concern that a move to changing terms in conditions in the WOS could create potential risks for BHCC's industrial relations. Alternatively, BHCC could adopt an employment protocol with its selected contractor that deals with employment decisions and associated responsibilities/processes etc. A further option is for the contractor to indemnify BHCC against all or any employment claims/difficulties etc arising in connection with the contract. In our view this latter option is the least attractive, as a contractual indemnity may well cover all potential cost and legal liability, but it does not avoid the accrual of any embarrassment caused by the employment issue or mishandling of it by the contractor in the first place.

5.2 **Would there be union representation in the employment board for this model?**

There is no requirement for there to be union representation in the employment board and this is not usually the case. Normally, we would not recommend union representation on the board, given the risk that unions would use their role to either seek to block the contractor's recommendations for change, and/or could use information gathered from the Board in the course of negotiations with the Council.

5.3 **What would be the role of sub-contractors in the contracted service model?**

A question was raised about the role of sub-contractors. It was explained that Option Two would not be disadvantaged if sub-contractors were used.

5.4 **How does cost control operate across the models detailed? Do they provide scope for transparent costings**

A question was raised about cost control in relation to options 2, 3 and 4. Under Options 3 and 4 BHCC would have greater representation within the organisations and hence a better line of sight in respect of costs.. There was an enhanced management role for BHCC in terms of cost management.

Cost control will vary according to the delivery model and the pricing methodology. Ultimately direct delivery would allow BHCC direct control and cost transparency, but also bring the greatest exposure to cost variance. Control in the JV Model (Option 4) will be shared as will exposure to the cost variance. For the Outsourced Model (Option 2) and Wholly–Owned Subsidiary Model (Option 3) the level of cost control, cost transparency and the exposure to cost variance will be dependent on contract terms and pricing model. The primary pricing models are listed below along with some brief commentary on how each is typically used and the likely impact on cost control. Each of these models can be used with any of the Options 2,3 and 4.

5.4.1 **Schedule of Rates (SoR)**

(a) The contractor will price a percentage increase/decrease against the SoR and the appropriate work items from the schedule can be added on a job by job basis to arrive at a price for the work. The contractor’s percentage increase/deduction against the schedule can easily be varied for different work types or values. SoR is most commonly used for responsive repairs but can be applied across almost any work type, provided that the SoR includes the appropriate tasks. The current contract utilises a SoR.

(b) In general, SoR arrangements have a number of benefits:

- Ability to produce very accurate and detailed work schedules.
- Handling of variations in a fair and transparent way through adding and omitting schedule items as required.
- Support detailed benchmarking and analysis of work content and trends.
- National SoRs are well understood in the industry and can be used as a method of cost management and also monitoring productivity.

(c) SoR arrangements do carry additional risks including.

- No visibility of underlying cost- only SoR price.
- Risk of error given the large number of items typically included.
- High level of variations.
- Resource requirement to audit the appropriate use of schedule items.
- Administration associated with job processing and invoicing.

5.4.2 **Price per Job (PPJ)**

(a) A PPJ model offers an alternative to SoR based pricing for some work streams. The application of this approach is now fairly common in the sector for repairs and empty properties (known in the industry as voids). It is widely used for planned works through the use of "basket" rates.

(b) The application of PPJ approaches varies by work type. Typical approaches to common work types are listed below and these can be used in combination for any of the Options 2,3 and 4:

- Responsive repairs: An average price for all repairs up to a certain value (referenced from an underlying SoR).
- Voids: An average Price Per Void (**PPV**) based on a defined scope of works supplemented by a schedule of rates for additional tasks. Alternatively an average PPV based on a range of underlying SoR values (e.g. any job with SoR value of between £1,000 to £2,000 is charged at a pre agreed average price).

- Cyclical and planned: Generally a basket rate for a particular type of job/archetype combination, for example a boiler replacement to a one bed dwelling and extending to all-inclusive basket rates for component replacements of kitchens, bathrooms, windows etc.

(c) The PPJ approach offers a number of benefits:

- Client and contractor share an objective to control cost.
- Reducing administration.
- Clearer spend predictability.
- Rates can be easily aligned to business plan affordable rates.
- Client resource can be more focussed on quality and customer experience as opposed to SoR application/variations.

(d) The PPJ approach can bring additional risks, including:

- For work types where volume is variable (e.g. responsive repairs) this model can create an incentive for the contractor to do more repairs.
- The contractor carries more risk under this model and will price this. Subsequently the approach needs careful design to ensure that risk allocation is appropriate.
- An underlying SoR is still usually required and usage still needs to be logged and managed.
- Where a value cap is in place orders close to it will require careful management. For the same reason inclusion/exclusion lists also require careful drafting and management.
- No visibility of underlying cost- only job price.

5.4.3 **Price per Property (PPP)**

(a) The PPP model is now commonly used in the sector for responsive repairs and domestic gas servicing and maintenance. Typically it will be governed by a defined list of included/excluded activities and a cap on the value of individual orders (referenced from an underlying SoR). All work within these parameters is included and charged at an average price per property. Whilst this model could be used under all Options, it is likely to be best suited to Option 2 as it reduces BHCC's pricing risk.

(b) The PPP approach offers a number of benefits:

- Usually carries the lowest level administration as invoicing can be done periodically by arrangement for a set period of service provision.

- Clear spend predictability.

- Rates can be easily compared to Business Plan estimated rates.

- Customer satisfaction can increase as there is less delay for client approval of variations.

- Client resource can be more focussed on quality as opposed to schedule of rates application/variations.

- Contractor has an incentive to control volume as well as cost.

(c) The PPP approach can bring additional risk:

- Contractor has an incentive to limit works costs/volume. This needs to be carefully managed to ensure that requirements are being met.

- Contractor carries more risk under this model and will price this. Subsequently the approach needs careful design.

- The tender documents need to be underpinned by good quality and detailed repairs history otherwise tenderers will price in additional risk.

- An underlying SoR is still usually required and usage still needs to be managed.

- Where a value cap is in place, orders close to the value cap will require careful management to ensure that any extra claims are appropriate.

- Poor drafting of the inclusion/exclusions list creates a risk of a large number of claims for work outside the agreed price.

- Visibility of work cost and content at the local level can be lost.

- No visibility of underlying cost- only job price.

5.4.4 **Open-book**

(a) The use of Open-book type arrangements have continued to increase in the sector. Whilst there are a number of variations they all, in summary, focus on identifying remunerable cost items and agreeing the margin that can be added to those costs. Pricing is then generally based on the actual cost plus the agreed margin. It is a model that would work under

Options 2,3 and 4 although is probably best suited to Options 3 and 4 in this case.

(b) Open-book agreements can include 'pain and gain' principles to provide an incentive to the contractor to manage costs. Typically, this would involve setting a target cost. This could be a PPP/PPJ or target labour, material or plant costs. The contractor would receive a bonus or penalty based on an agreed percentage of any difference between the target and actual cost.

(c) Note that the TAC-1 Term Alliance Contract (which is one of the standard form contracts discussed in Annex 3 of the Options Report) contains a definition of "Open-book", requiring that the Service Provider declares all the elements of its price and making its invoices and books of account available to the client for inspection.

(d) The Open-book approach offers a number of benefits:

- Reduces the risk premium that will be included in the fixed price models.
- Open-book methodology can provide visibility of cost that isn't provided in the other models.
- Provides consistent margin across tasks reducing any incentive to complete the most profitable work types.
- Efficiency targets can easily be built in through target costs (where applicable).
- Client immediately benefits from changes/efficiencies.

(e) The Open-book approach can bring additional risk:

- Contractor can lose the incentive for efficient delivery if cost is reimbursable and margin is protected.
- Client carries more price variation risk (costs may go down or up).
- It can be hard to get reliable and detailed cost information.
- Additional skill and cost knowledge required in the client management team to interrogate and challenge.

5.5 **How would the Wholly Owned Subsidiary Model (Option 3) be affected by the pressure of shareholders?**

BHCC would be the sole shareholder in the WOS company. The commercial pressure on the labour-force in the WOS would come from the contractor partner managing the WOS, who is likely to seek to achieve a level of productivity and efficiency, in line with its tender.

5.6 **What is the impact of direct delivery in terms of saving on contractor profit margin?**

Typically a main contractor's declared profit margin is between 2-4% and we understand the current Mears contract runs at a 4%. However, this does not mean that direct delivery will directly result in savings of 4% as there will be other costs incurred by BHCC not incurred by an external contractor that will offset some of these savings. In setting up a DLO, BHCC would incur additional set-up costs (including IT, staff costs such as improved pension rights, potential higher purchasing costs) and BHCC may not have the same purchasing power as the contractor. A well-run DLO should also aim to make a return, and any profit would be returned to BHCC. .

For the WOS model, a similar level of profit would apply as for an outsourced model, albeit that the contractor is accepting a degree of risk in managing operatives it does not directly employ, and so a WOS contractor might seek a higher level of profit to balance this risk.

In a JV model, profit would be shared between the parties based on the contractual arrangements agreed in the JV governance documents. We anticipate that BHCC would be likely to be the major shareholder in a JV company, though the precise division of profit between the parties will be a matter of commercial negotiation, and consideration of the tax implications of the agreed structure.

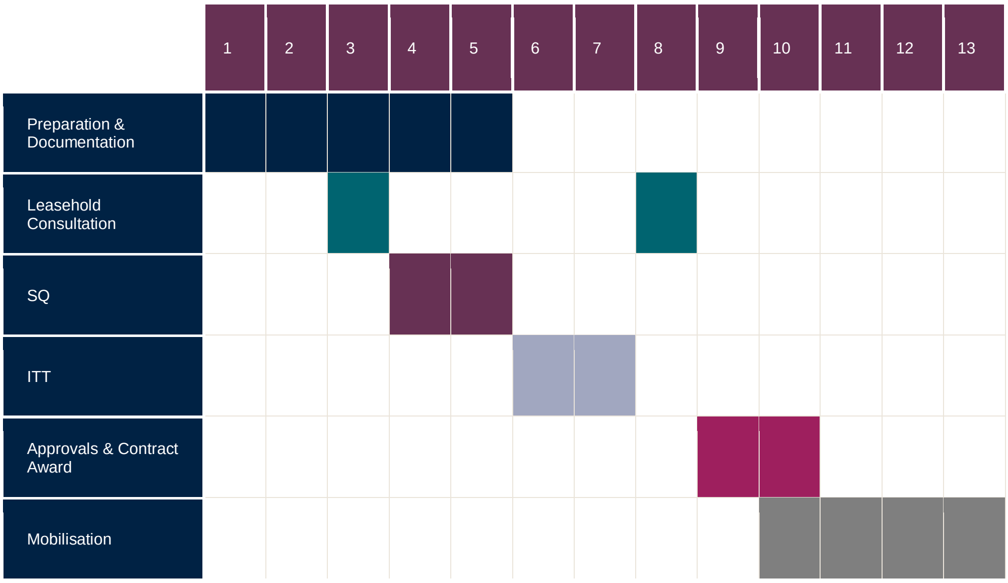
5.7 **What would be the timescales for each of these options?**

The timescales for each option vary and, as can be seen below, time is of the essence for each Option:

Outsourced Model (Option 2):

5.7.1 A typical Restricted Procedure procurement of the Outsourced Model (Option 2) would take 13 months as outlined below. It is possible to condense the timetable but care needs to be taken to ensure that the documentation accurately reflects requirements and that adequate mobilisation time is allowed. In this regard, the procurement work for this model would need to commence by March 2019. In advance of this, we recommend a detailed investment plan and procurement model is developed that establishes the tender packages and lots. Typically this can take up to 4 months assuming all requisite data is available.

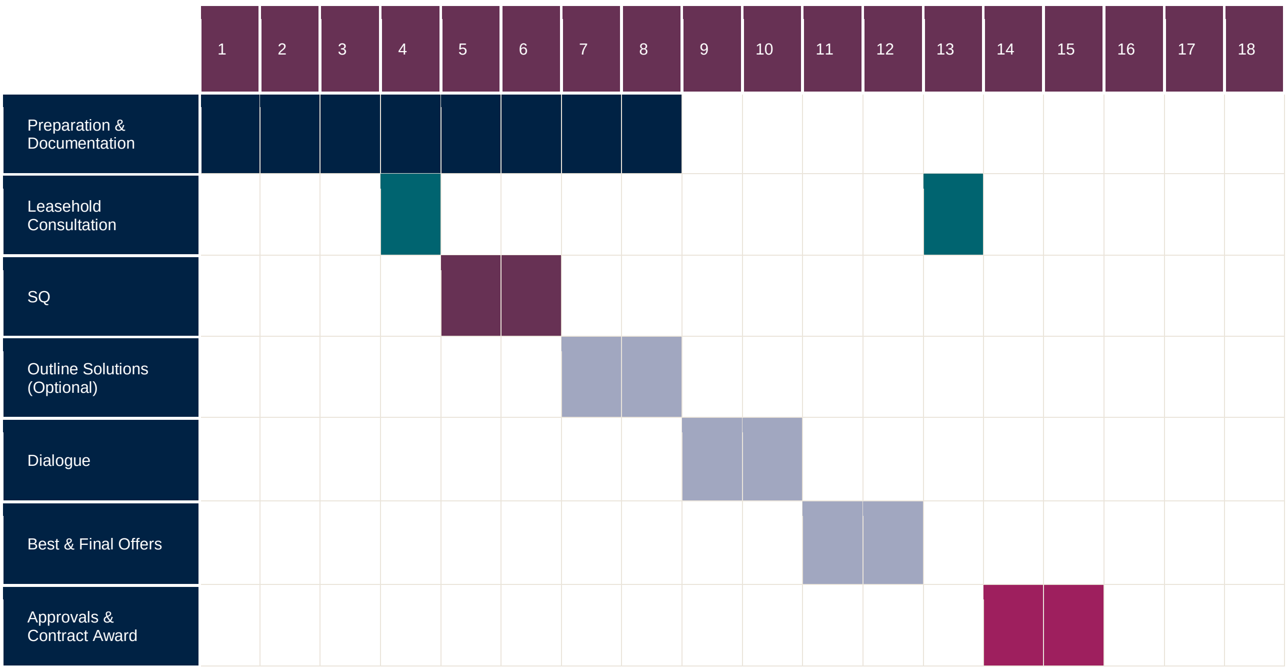
Month



Wholly-Owned Subsidiary Model (Option 3) and JV Model (Option 4):

5.7.2 The Wholly-Owned Subsidiary Model (Option 3) and JV Model (Option 4) are likely to require additional preparation time at the outset. It is likely that these models will be best suited to the Competitive Dialogue Procedure and subsequently additional time will be required in the procurement phase. These models would also benefit from development of investment plans prior to tendering similar to Option 2 above but the nature of the procurement process and the type of contract structure mean that this could be developed in parallel. A typical timetable of 18 months is set out below:

Month



DLO (Option 1)

5.7.3 The timetable for the establishment of a DLO (Option 1) is typically 18 months. We would envisage it taking 4 months to produce a detailed business case with mobilisation plan and presenting for consideration/approval. The business case would typically include for analysis of existing work scope and trends, identifying future work scope for the DLO, understanding of performance and productivity as well as resources, TUPE and HR issues, developing the financial model and cost benefit analysis, legal structure and tax, procurement of supply chain, mobilisation requirements, IT and fleet. If approved this would be followed by the mobilisation phase (typically 14-15 months) which would run alongside a supply chain procurement exercise (typically 13 months as detailed above). We recommend targeting completion of DLO mobilisation works (save for any TUPE transfer or subsequent recruitment) and any supply chain procurement 2 months prior to the end date of the existing contract in order to manage risk. In this regard, commencement of work on the outline business case ideally needs to start in August 2018. If additional time is likely to be required this needs to be added to the timeline.

5.7.4 If the DLO Option is to be considered then work on establishing the business case would need to start immediately in order to leave adequate time for DLO mobilisation and/or subsequent procurement work. We would recommend that work on implementing a DLO or Wholly-Owned Subsidiary or JV Model commence during October 2018 to allow effective mobilisation before current contract expiry. Any DLO business case would, therefore, need be considered and agreed during October 2018. Failure to do so could result in either a rushed procurement or mobilisation exercise which may increase service delivery risk. If a decision was delayed further there would be risk that a compliant procurement exercise could not be concluded before the expiry of the current contract.

5.8 **How do each of the Options deliver a level of competitiveness between contractors?**

5.8.1 It is possible to have a competitive element in all the models. The key issue is structuring the contract correctly at the outset, developing a long term investment plan that enables tenders to be invited against Lots and provides clarity on what contractors are tendering for. This will help to achieve the best possible initial tender prices, within a competitive environment, irrespective of the contract model.

5.8.2 The Outsourced model will deliver competitiveness through a number of options such as:

(a) Instead of using fixed term contracts similar to the current arrangement, a number of framework agreements can be set up for individual lots, covering a 4 year period, whereby a number of contractors who are subsequently instructed to deliver the works. The framework can be incentivised with call-offs based on performance thus rewarding highest performance with more work opportunities. Alternatively, mini tendering between the framework contractors on an annual or biennial basis can also be undertaken, though this would have the effect of splintering service delivery between a number of contractors;

(b) Market testing of rates on a periodic basis;

(c) Best value comparisons between contractors working concurrently on a framework;

(d) Incentivising contractors by offering greater volumes of work to the best performing/lowest cost contractor working via a framework;

5.8.3 The WOS and JV models offer fewer options to deliver competitiveness. The WOS model and JVCo will both utilise the TUPE transferred workforce for the revenue work and therefore the labour element is essentially fixed. The options for maximising competitiveness are therefore limited to the material supply chain and sub-contractors, both of which could be periodically tendered. For capital works, there is a similar range of options as per the outsourced model above. Mears currently sub-contract all large scale capital work elements via individual tenders and the new delivery vehicle of a JV or Wholly-Owned Subsidiary would probably do the same, at least in the short term. Therefore future mini-tendering or market testing can easily be adopted.

5.8.4 The DLO model offers similar options to the Wholly-Owned Subsidiary although all procurement would need to comply with BHCC tendering requirements.

5.9 **How do each of the Options relate to the ability to have an increased level of local spend?**

5.9.1 Virtually all of Savills/Trowers & Hamlins' partnering contracts procured over the last 15 years have "social value" clauses placing obligations on contractors to maximise the opportunities for local residents, businesses, supply chain etc. While the Public Contracts Regulations 2015 prevent the use of evaluation or award criteria directly favouring the use of local labour, it is possible to create various operational arrangements and KPIs that are intended to encourage the use of local firms, the employment of local residents and creation of local economic benefits. Working in conjunction with BHCC's Economic Development Department (or similar), the tender exercise needs to identify what type of social value BHCC is aiming to achieve and require contractors to put forward their proposals to deliver this. This will apply to all models, however, to differentiate between them we have set out some considerations below:

(a) DLO Model (Option 1) - This offers the greatest opportunity to directly engage local staff and businesses, as long as the respective procurement rules are followed.

(b) Outsourced Model (Option 2)

i The social value requirements are best effected through a partnering type contract and need to be stipulated in the tender documents and contractors' proposals and then subsequently evaluated. This sets the base case and thereafter it is incumbent on the client to drive the contract requirements through a performance management regime that makes social value a key requirement. In practice, most main contractors will look to utilise local supply chains where possible as they will be familiar with the city. Clearly, this will not be at any cost, as contractors will have tendered a rate for the work at tender stage and therefore will be kept to that by BHCC. If local supply chains become more expensive then it is unlikely that they will be engaged. The success of this type of arrangement is therefore often down to a level of ‘marketing’ by the client and contractor to engage local suppliers in the process and encourage them to work with the main contractors.

ii There is also the option to package the work in such a way that it fits the capacity of the local contracting market and thus encourages them to bid in the first place.

iii This model can also place obligations on the tenderers to employ local apprentices (as per current Mears contract) and make them responsible for ensuring their successful training etc but to achieve this requires longer term contracts and is nullified if an annual mini tender route is adopted as the contractors have no long term continuity of work.

(c) JV Model (Option 3) and Wholly-Owned Subsidiary Model (Option 4) – Similar to the DLO but with some commercial imperative to produce a return to the private sector partner but BHCC has a huge influence over how social value can be maximised.

5.10 **What would be the cost impact in terms of investment in a direct delivery service?**

The Options Report has some further detail on in this but, in summary, it is difficult to establish the likely investment in mobilising a DLO with great accuracy at this stage. In our experience, investment of between £1 million - 1.5 million is typical to effectively support the establishment of a medium size DLO. ICT investment is typically the largest cost item followed by external support (technical, procurement, legal, financial and marketing costs). Restructuring costs incurred following any transfer of staff from BHCC's incumbent contractor can also be a major cost item but is commonly the most variable. The extent to which existing infrastructure could be used will also have a bearing on the investment requirement.

5.11 **What would be the resourcing requirements of the options detailed?**

It is difficult to give an accurate picture on the level of resource without more detailed analysis and understanding. However we have provided some indication of the likely size of client teams based on stock size and current expenditure. This is based on the high level assumptions outlined below and should subsequently be treated with caution.

There is no set rule for the how the size of the client function is impacted by each of the delivery options outlined. It is common to see a reduced client function in organisations operating under the DLO model (Option 1) and, to a lesser extent, the JV model (Option 3). A number of organisations have widened the scope of outsourced delivery solutions to include some functions traditionally undertaken by client teams and this will impact on the size of the team. The number of contractors employed will also have an impact. Where organisations contract directly with multiple smaller contractors there is often a requirement for increased client resource to manage the various contracts.

In our experience a strong client function is critical to the effective delivery of asset management programmes, regardless of the delivery model. With this in mind, we would caution against an assumption that any one delivery model can reduce the size of the client team without a clear understanding of structure, roles and responsibilities. Ultimately the strategy, planning, monitoring and assurance activities traditionally undertaken by client teams will need to sit somewhere within the structure. The risks associated with them being reduced, or undertaken within the delivery function, need to be clearly understood.

We note that the delivery solution will result in a varied impact on corporate services (HR, finance, IT, procurementand legal servcies provided through Obris). The outsourced solution (Option 2) typically has the smallest impact. That said a change in the approach to outsourcing may result in some ICT and HR impact if any of the functions delivered by the incumbent contractor are insourced. A brief summary of the key considerations in each area is below:

- HR- The impact is likely to be greatest in the DLO (Option 1) and Wholly-Owned Subsidiary models (Option 4). The impact in the JV model will be dependent on the split of roles and responsibilities but there will, at least, be a requirement for an effective oversight function by BHCC.

- Finance- The impact is likely to be greatest in the DLO model where there will be a requirement to operate some sort of trading account. Any of the options that require a separate company will create a requirement for that entity to be governed and administered.

- ICT- Again it is likely to be the DLO model that has the greatest impact as the client and contractor functions will need to be supported by effective ICT. In all of the other delivery models contractor infrastructure can, at least to some extent, be utilised.

- Procurement- Procurement support will be required to mobilise under all of the delivery options. Under the DLO option there will be a need to procure and manage a supply chain including subcontractors and material suppliers alongside operational infrastructure. Procurement of the Wholly-Owned Subsidiary or JV model is likely to follow the Competitive Dialogue route which may require more procurement support than the Open or Restricted routes.

- Legal- Legal support will be needed to procure and mobilise under any of the options. The outsourced option is likely to require the lowest amount of legal support. Where the set-up of either a company needs to be considered (Wholly Owned Subsidiary, JV, DLO) legal support around vires issues and company formation is likely to be required. The Wholly-Owned Subsidiary, DLO and JV models are likely to require additional legal input to support the transfer of employees.

5.11.1 **Client Team (excluding Customer Contact Centre)**

Based on £28m total expenditure and assuming client costs of 6-8% we believe client costs would be £1.68m to £2.24m. This would typically equate to 28 - 37 staff.

5.11.2 **Customer Contact Centre**

We would expect the Customer Contact Centre function to require 8-10 staff.

5.11.3 **DLO Model (Option 1)**

(a) We have considered the likely work that could be undertaken by directly employed teams. We have made an assumption that responsive repairs, voids works and internal planned maintenance (kitchens and bathrooms) are the work streams that would be likely to be delivered through directly employed staff. Each is considered further below:

(b) Responsive repairs: We have assumed that 10-15% of work by value would be specialist and subsequently that subcontractors would be required to support delivery. In addition a further 5-10% of work by value would be subcontracted to deal with peaks and troughs in work flow. For these reasons we have assumed that 75% to 85% of responsive work could be delivered by directly employed staff. We don't have an expenditure split between responsive repairs and voids (empty properties) so we have assumed 2/3rds of the combined £5.13m (direct costs) average annual expenditure is on responsive- £3.42m. Indicative DLO turnover is therefore forecast to be £2.57m to £2.91m.

(c) Void repairs: We have assumed that 10-20% of work by value would be specialist and subsequently that subcontractors would be required to support delivery. In addition a further 20-30% of work by value would be subcontracted to deal with peaks and troughs in work flow. For these reasons we have assumed that 50% to 70% of void work could be delivered by directly employed staff. We do not have an expenditure split between responsive and void so have assumed 1/3rd of the combined £5.13m average annual expenditure is on voids- £1.71m. Indicative DLO turnover is therefore forecast to be £855k to £1.20m.

(d) On the basis of the assumptions outlined above, we believe that a DLO could likely turnover between £3.42m and £4.11m of direct work on responsive and void per annum. Based on each tradesperson turning over an average of £75k per annum we believe that a reasonable initial estimate of the size of the direct team is between 46 and 55 employees.

(e) Kitchen and Bathrooms: We have not seen the future investment requirements in detail but have based the assumption on expenditure on kitchen and bathroom replacements over the past two financial years- £1.89m. We have assumed that 70 to 80% of this work could be delivered by a DLO. Indicative DLO turnover is therefore forecast to be £1.33m to £1.52m. Based on each tradesperson turning over an average of £90k per annum we believe that a reasonable initial estimate of the size of the direct team is a further 15 and 17 employees.

(f) So a total 60 to 72 as a high level estimate of the direct team if Kitchens and Bathroom are included.

(g) DLO Overheads: We have assumed that overheads would be 15-20% of total expenditure. Based on £8m of turnover through the DLO this is between £1.2m and £1.6m of overheads expenditure which would suggest 20-27 staff.

5.12 **Achieving Social value through the different options**

5.12.1 All of the options have the ability to secure considerable social value outcomes for BHCC (see above at 4.9 in respect of local spend).

5.12.2 In terms of the outsourcing Options (2, 3 and 4), the Public Contracts Regulations 2015 permit the attainment of social value as a key procurement objective and therefore it can be incorporated into any procurement process run by BHCC in a meaningful and compliant manner. In order to ensure that the outsourcing options produce the required social value outcomes, BHCC will need to set out in the tender documents what its community investment strategy comprises and what particular elements of that overall strategy it is seeking to achieve through the procurement of its repairs and works contract. Any award criteria must be clearly stated, along with the relative weightings and should be able to distinguish between the different quality of bids/responses received.

5.12.3 The social value requirements set by BHCC should be proportionate to the value of the contract and should be clearly specified in the tender documents, and that specification should also track across into the pricing document, so that BHCC can clearly see how much it will be paying for the attainment of the social value outcomes. Consideration will also need to be made to what social value outcomes it seeks to deliver in relation to works delivered to leaseholder properties, so that disputes do not arise as to whether such additional costs are "reasonable".

5.12.4 Finally, the achievement of the social value outcomes agreed should be written into the contract as binding obligations, with contract management procedures put in place to monitor and ensure that such outcomes are pursued and achieved. Remedies for non- or under-achievement of social value outcomes can also be included in the contract document.

5.13 **Flexibility in works delivered**

5.13.1 All of the Options discussed can be structured in order to anticipate and incorporate additional works and services required by an active asset management and investment programme. If the direct delivery (Option 1) is selected, this would entail either the employment of additional staff with the alternative skills required for delivering regeneration or development work, or appointing consultants/delivery partners on an arms-length basis to assist BHCC in delivering the programme.

5.13.2 The outsourcing options (2, 3 and 4) would all need to anticipate the additional services and works required by a regeneration/investment programme in the original OJEU Notice and procurement documents and effectively incorporate them into the tender process. This would mean setting out a proposed specification and pricing model in the tender documents, along with any additional contract terms.

5.13.3 If BHCC is minded to include the potential for regeneration/investment works in the scope of the repairs works and services contract, it will need to ensure that a balanced message is presented to the market-place: eg that the delivery of the planned, major and responsive works and repairs remains the priority from day 1, but that the BHCC is looking at the potential advantages of utilising the contract for the additional works too.

5.14 **Additional leaseholder consultation requirements for a framework agreement.**

5.14.1 If BHCC advertises a framework agreement via an OJEU procurement process, it would be required to consult leaseholders pursuant to a Schedule 2 procedure under the Landlord & Tenant Act 1985, as amended by the Commonhold and Leasehold Reform Act 2002 and associated regulations (together, the **Service Charges Regulations**). The 1st stage consultation notice would need to be issued and the consultation period observed before the OJEU Notice was published. BHCC would then be required to undertake a further consultation under Schedule 3 of the Service Charges Regulations in respect of any "qualifying works" being carried out, where any tenant or leaseholder is being recharged more than £250 for those works. The Schedule 3 consultation is ordinarily carried out at the point that the call-off contract is entered into.

5.14.2 If BHCC advertises a stand-alone term contract, the process is the same as for framework agreements. BHCC would be required to undertake a consultation under Schedule 2 of the Service Charges Regulations before the OJEU Notice was published. In the event that the term contract covered "qualifying works", a Schedule 3 consultation would be required, normally at the point that the relevant order is issued pursuant to the term contract.

6 **Disclaimer and contact details**

6.1 This options appraisal Report has been prepared by Trowers & Hamlins LLP and Savills (UK) Limited for Brighton and Hove City Council (**BHCC**) for the purpose of considering procurement options for the delivery of BHCC's responsive repairs services, planned maintenance and improvement programmes and large capital projects. No liability is intended or should be inferred to any third parties or for any other purpose.

6.2 For more information, please contact:

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6th July 2018