AGENDA ITEM NO 6
REPORT NO 718/11

ANGUS COUNCIL
ANGUS COUNCIL – 3 NOVEMBER 2011

EAST CENTRAL TERRITORY HUB – APPOINTMENT OF A PRIVATE SECTOR DEVELOPMENT PARTNER AND ESTABLISHMENT OF HUBCO

JOINT REPORT BY DIRECTOR OF CORPORATE SERVICES AND THE DIRECTOR OF EDUCATION

ABSTRACT:

This report provides an update on the procurement process and seeks members’ approval for the appointment of a Private Sector Development Partner and the establishment of hubco for the hub East Central Territory.

1. RECOMMENDATIONS

1.1 It is recommended that Council:

(i) approve the selection of Amber Blue (a consortium of Robertson Group Ltd., International Public Partnerships Ltd. and Forth holdings Ltd.) as the Private Sector Development Partner in hubco, as recommended by the hub East Central Territory Programme Board;

(ii) approve the establishment of hubco, the investment in hubco shareholding of £100 and the provision of Participants’ working capital of c£300k, all costs to be met from the Capital Enabling Funds made available by the Scottish Government/Scottish Futures Trust;

(iii) approve the entering into of the Territory Partnering Agreement, Shareholders’ Agreement and Participants’ Agreement, with delegated authority for signature to the Head of Law & Administration to execute the same on behalf of the Council, following the resolution of final clarifications and subject to the final agreement of the Head of Law & Administration;

(iv) approve the appointment of Mr Tom Steele, Director of Strategic Projects and Property, NHS Forth Valley as the B Shareholders’ Director on the Board of hubco;

(v) approve the appointment of Miss Catherine McFie, Territory hub Programme Director, as the B Shareholders’ Representative and Participants’ Representative under, and in terms of, the Participants’ Agreement, with delegated authority to take any action, grant any approval or consent, or sign any notice, required in terms of the Shareholders Agreement and Territory Partnering Agreement;

(vi) approve the appointment of Craig Clement and Gordon Cargill (to act as deputy) as the Council’s officer representatives on the Territory Partnering Board, both with delegated authority to make any decisions on its behalf which require to be taken by the Territory Partnering Board pursuant to its constitution; and

(vii) approve the content of the Territory Delivery Plan and the identified projects therein which includes the replacement of Brechin High School and the potential new primary school in Arbroath.
2. BACKGROUND

2.1 Reference is made to Report 618/11, approved by the Council at its meeting on 15 September 2011, which provided background information and updated members on the current position regarding the establishment of the East Central Territory hub, together with the implications for the replacement of Brechin High School and the new primary school in Arbroath.

2.2 That report also provided information regarding the progress made at that time with the procurement of a Private Sector Development Partner.

2.3 Members may also recall that once the Private Sector Development Partner has been selected, a new company (referred to as hubco) will be formed involving the Private Sector Development Partner, the 17 public sector bodies (the Participants) and the Scottish Futures Trust.

2.4 The hubco structure will encompass both private project finance and traditionally publicly funded developments. The equity and working capital of hubco will be split among the Private Sector Development Partner, the 17 Participants and the Scottish Futures Trust (split 60%, 30% and 10% respectively).

2.5 A Shareholder’s Agreement between the Private Sector Development Partner, the 17 Participants and the Scottish Futures Trust will regulate the respective rights/responsibilities of each party and set out the matters in relation to which hubco must first obtain the consent of each category of shareholder. Three different classes of shares will be issued, A Shares, B Shares and C Shares to Amber Blue, the 17 Participants (jointly) and Scottish Futures Trust, respectively. Each class of share will carry the same voting rights.

2.6 A hub Territory Partnering Agreement between the 17 Participants and hubco will set out the rights/obligations of the parties, including the provision of partnering services by hubco to the Participants and the exclusivity provisions granted by some of the Participants to hubco.

2.7 There is also a requirement for a Participant’s Agreement between the 17 Participants, which sets out the decision making processes of the 17 Participants acting jointly as 30% shareholder in hubco. The Participant’s Agreement contains details of voting processes among the 17 Participants.

2.8 While it is not obligatory for Local Authorities to participate in hub, Report 618/11 sets out the rationale for including the Council’s project to replace Brechin High School and the potential opportunity to include the new primary school in Arbroath, pending the outcome of the Scottish Ministers ‘call-in’ decision.

2.9 Engaging in hub therefore provides the Council with an additional and alternative procurement option, with hub providing a robust partnership framework.

3. PROCUREMENT PROCESS AND EVALUATION

3.1 Introduction

3.1.1 Further details of the procurement process and evaluation are included in Appendix 1 to this Report and the following sections provide key summary information.

3.2 Procurement Phase

3.2.1 The hub procurement phase included:

- initial formation of the Territory and Territory Programme Board;
- the appointment of Territory Programme Director and Project Manager to establish East Central hub Territory’s Participants governance and financial management arrangements;
- the development of the East Central hub Territory’s strategic delivery plan;
- the preparation of the standard form Territory Partnering Agreement, Shareholders Agreements and delivery contracts; and
- the procurement of the Territory’s Private Sector Development Partner to form the hubco.

3.3 Timescale of Procurement Process
3.3.1 The East Central hub Territory OJEU was issued in September 2010, with a shortlist of three tenderers approved in February 2011, which was followed by the competitive dialogue process. The three short listed tenderers selected to participate in the Competitive Dialogue Process were:

(i) Alba (a consortium of Cyril Sweet Group PLC and Millar Corporate Holding Ltd.);
(ii) Amber Blue (a consortium of Robertson Group Ltd., International Public Partnerships Ltd. and Forth holdings Ltd.); and
(iii) Inspiredspaces (Carillion PLC).

3.4 Competitive Dialogue Process

3.4.1 The competitive dialogue process commenced in March 2011 with ‘kick-off meetings’ with each of the tenderers, followed by three rounds of formal meetings with each tenderer plus separate technical, legal and financial meetings.

3.4.2 In July 2011, a ‘close of dialogue meeting’ was held with each of the tenderers bringing the dialogue to a close. During the process a number of formal clarifications were issued to tenderers.

3.5 Evaluation Team

3.5.1 An Evaluation Team was formed from the Territory Programme Team along with three participant member representatives from NHS Forth Valley, Fife Council and Clackmannanshire Council and a representative from Scottish Futures Trust.

3.5.2 The team were granted delegated authority from the Programme Board to undertake the detailed assessment and scoring of submitted Final Tenders. The Territory Programme Director chaired the evaluation team which was supported by Scottish Futures Trust and Legal, Technical and Financial advisors.

3.6 Evaluation Criteria and Process

3.6.1 The evaluation criteria matrix has evolved from commencement of the dialogue phase and revised to improve clarity and understanding for both tenderers and the evaluation team. The initial criteria were approved by the East Central Territory Programme Board before the Invitation to Participate in Dialogue (ITPD) was issued in February 2011.

3.6.2 The evaluation criteria are split into non-price, which accounts for 55% of the total mark, and price at 45% of the total mark.

3.7 Final Evaluation Scores

3.7.1 The final evaluation scores are summarised in the table below:

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Non–Price (55%)</th>
<th>Non-Price (55%)</th>
<th>Non-Price (55%)</th>
<th>Price Evaluation (45%)</th>
<th>Price Evaluation (45%)</th>
<th>Total Score*</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Establishing and operating hubco Company (10%)</td>
<td>Approach to Partnering (35%)</td>
<td>Key Performance Indicators &amp; Continuous Improvement (10%)</td>
<td>Qualitative (25%)</td>
<td>Quantitative (20%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alba</td>
<td>7.00</td>
<td>21.70</td>
<td>6.40</td>
<td>14.80</td>
<td>17.50</td>
<td>67.40</td>
<td>2</td>
</tr>
<tr>
<td>Amber Blue</td>
<td>7.00</td>
<td>23.80</td>
<td>7.40</td>
<td>13.60</td>
<td>17.00</td>
<td>68.80</td>
<td>1</td>
</tr>
<tr>
<td>Inspiredspaces</td>
<td>7.60</td>
<td>23.80</td>
<td>7.30</td>
<td>13.10</td>
<td>0**</td>
<td>51.80</td>
<td>3</td>
</tr>
</tbody>
</table>

* note 1: total scores have been taken from detailed master score sheet therefore there is a small rounding adjustment
**note 2: the Inspired spaces bid scored 0 in the price evaluation, due to their pricing information being the highest by a significant amount**

3.7.2 This shows that Amber Blue has achieved the highest score and is proposed to be appointed as Private Sector Development Partner.

3.7.3 At its meeting held on 12th October 2011, the hub East Central Territory Programme Board proposed the selection of Amber Blue as the preferred bidder to become the Private Sector Development Partner. The proposal was later approved by the hub National Programme Board on 13th October 2011.

4. CORPORATE GOVERNANCE

4.1 Members may recall that a summary of the roles and responsibilities of the Territory Partnering Board and Shareholders Forum was set out in Appendix 2 to Report 618/11. For completeness, this information is also included as Appendix 2 to this report, updated where applicable with details specific to Amber Blue.

4.2 Members will appreciate that hub is a new initiative which doesn’t easily fit within the existing corporate governance arrangements of the Council. Suitable consultation and liaison mechanisms will therefore be established between the Council’s representatives on the Hub Partnering Board and other senior Council officers. Members will receive periodic updates on the activities of the East Central Territory hub in the form of an annual plan and an annual report after the year end and approval by Angus Council members will continue to be required prior to any Council capital projects being procured through hub.

4.3 The Council’s Financial Regulations already permit procurement through a collaborative procurement body such as Hubco and as such Hubco contract rules will apply to any Council projects procured through this route.

4.4 In terms of representation arrangements, the Participants are entitled to have a B Shareholders’ Director on the Board of hubco. The East Central Territory Programme Board proposed at its meeting held on 12 October 2011, that Mr Tom Steele, Director of Strategic Projects and Property, NHS Forth Valley, who is currently the chair of the Territory Programme Board, be approved to undertake that role.

4.5 There is also a requirement to have a Participant’s representative to act on the Participants’ behalf as the B Shareholders representative and Participant’s representative under, and in terms of, the Participant’s Agreement, with delegated authority to take any action, grant any approval or consent, or sign any notice, required in terms of the Shareholder’s Agreement and Territory Partnering Agreement. The East Central Territory Programme Board proposed at its meeting held on 12 October 2011, that Miss Catherine McFie, who is currently the Territory hub Programme Director, be approved to undertake that role.

4.6 It is also proposed that, at this time, Angus Council’s representation on the Territory Partnering Board, is delegated to Craig Clement, Senior Education Manager and Gordon Cargill, Education Project Manager (to act as deputy), on the basis that Angus Council’s main projects identified within the hub project pipeline are Education Department projects, namely the replacement of Brechin High School and potentially the new primary school in Arbroath. As noted above, mechanisms will be established to enable officer representatives to convey information obtained in this forum to other senior Council officers and the Council’s nominated representative with delegated authority shall be reviewed when this is deemed appropriate, depending on the Council’s use of the hub procurement option and associated projects. The role of the Territory Partnering Board is described more fully in Appendix 2 to this Report.
5. LEGAL ISSUES

5.1 Legal Advisors (Pinsent Masons) were appointed to act on behalf of the Participants to support the hub Programme. A summary of the main terms of the Territory Partnering Agreement (which covers exclusivity and the legal implications of approving Identified Projects and designating projects as “Qualifying Projects” and the services to be provided by hubco), Shareholders Agreement, a note of value for money and a flowchart detailing the project approval process are included in Appendix 3 to this Report.

6. COMMUNICATIONS

6.1 The East Central hub Territory Programme Board has previously acknowledged the need for the Territory to employ effective and meaningful engagement mechanisms. The importance of effective communications to the success of the programme warranted the creation of a Territory Communications Plan. That plan mapped out the key stakeholders and established arrangements for ensuring the regular flow of information in regards to the territory’s procurement programme, the preparation of the Territory Delivery Plan, and general briefing information to increase understanding of the hub with the marketplace and local public sector.

6.2 The Territory Delivery Plan, which is included in Appendix 4 to this Report is a ‘live’ document, to be reviewed at least annually, which sits alongside the other hub documentation, in particular the territory Partnering Agreement, Shareholder’s Agreement and Participants’ Agreement, and sets out the strategic direction and requirements of hubco and the Participants.

6.3 The Territory Programme has received widespread support from all Participants and continues to build an effective partnership working ethos, linking integration and co-location with a new direction for the delivery of local public services. In this regard, use has been made of the existing partnership structures, associated networks and participants’ forums to achieve widespread consensus on where the programme can best help its partners deliver local priorities.

6.4 A series of events have been held to raise awareness of the East Central hub Territory programme and has included:

- A Bidders’ Day;
- Community Planning Partnerships presentations;
- Executive Delivery Group presentations;
- DLO presentations;
- Construction Forum presentations;
- Finance and Resource Committee presentations; and
- Pipeline Project Boards and Teams presentations.

6.5 Following the announcement of the Preferred Bidder, further opportunities will be taken to consult with territory Participants, other key stakeholders, the appointed Private Sector Development Partner, and the hubco, to ensure that the territory’s communications are progressed and optimised. This is particularly important given the need to rapidly develop an effective business working relationship between the territory’s many interests.

7. NEXT STEPS

The Project Plan annexed at Appendix 5 to this Report sets out the next steps to signature of the Territory Partnering Agreement and other contractual documents.

8. RISKS

The Council is relying on the formation of hubco in order to progress and develop the Brechin High School Community Campus project. The risk to the Council is therefore the potential for delay in organising the various parties to obtain approval and sign the required contract documents on the Financial Close date programmed for 8 December 2011.
9. **FINANCIAL IMPLICATIONS**

9.1 There are no direct financial implications identified for the Council as a result of this Report and the Council is not obligated to use the hub procurement route for future projects if it chooses not to. The only exception to this is the Brechin High School replacement project where procurement through hub is a condition of Scottish Government financial support (unless the Local Authority can demonstrate that better value could be achieved using an alternative procurement route). Members are also reminded that the Council has been successful in achieving a funding award of £661,500 from SFT if the proposed new primary school in Arbroath is procured through hub.

9.2 The costs associated with the management of the procurement process and assistance with taking forward initial schemes, in terms of Participant support from the East Central Territory Team, has been and will continue to be met from within the financial resources allocated by the Scottish Government/Scottish Futures Trust to the hub East Central Territory Programme Board.

9.3 The equity required by the 17 Participants who will become shareholders, to set up the hubco is £100 and working capital is c£300k. These funds have been made available through the hub Capital Enabling Funds received from the Scottish Government/Scottish Futures Trust.

9.4 The hub East Central Territory Programme Board have a revenue budget of £1.4m which is forecast to last until 2015 and this budget will be closely monitored by the Territory Partnering Board, with appropriate reporting to Participants. The Territory Partnering Board will be required to make a recommendation to Participants on the level of budget and associated staffing required after 2015. The Council will be required to consider the financial implications of this at that time. However, members should note that the Council is currently under no obligation to meet any future costs that may arise.

9.5 The financial implications associated with the development of specific projects (e.g. the replacement of Brechin High School) using the hub initiative, will be the subject of separate committee reports, as appropriate.

10. **HUMAN RIGHTS IMPLICATIONS**

10.1 There are no human rights implications arising from this report.

11. **EQUALITIES IMPLICATIONS**

11.1 The issues dealt with in this report have been the subject of consideration from an equalities perspective. An equalities impact assessment is not required.

12. **ANGUS COMMUNITY PLAN AND SINGLE OUTCOME AGREEMENT**

12.1 This report contributes to the following local outcome(s) contained within the Angus Community Plan and Single Outcome Agreement 2011-2014:

- Angus Council is a good place to live in, work and visit;
- Individuals are supported in their own communities with good quality services;
- Our communities are developed in a sustainable manner.

13. **CONSULTATION**

13.1 The Chief Executive, Head of Finance, Head of Law and Administration and Head of Property have been consulted in the preparation of this report.
14. CONCLUSION

14.1 The outcome of the procurement process to select the Private Sector Development Partner to join with the hub East Central Participants and Scottish Futures Trust to establish hubco for the East Central Territory, has identified the Amber Blue consortium (comprising Robertson Group Ltd., International Public Partnerships Ltd. and Forth holdings Ltd.) as the preferred partner. Accordingly, this Report seeks approval for the Council to progress with Amber Blue and enter into the various agreements that are required to establish the formal relationships between parties.

COLIN MCMAHON
DIRECTOR OF CORPORATE SERVICES

NEIL LOGUE
DIRECTOR OF EDUCATION

NOTE: The background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report are:

- Report No 352/10 The Scottish Futures Trust, Implementing the Hub Initiative – Angus Council on 13 May 2010
- Report No 750/10 Brechin High School: Update - Education Committee on 20 October 2010
- Report No 50/11 Brechin High School: Funding Position – Education Committee on 20 January 2011
- Report No 618/11 East Central Territory Hub – Angus Council 15 September 2011
1.0 Introduction

1.1 This Appendix details the evaluation process and its outcomes in respect of the competition to appoint a Private Sector Development Partner (“PDSP”) for the hub East Central Territory.

2.0 Competitive Dialogue Process and Timetable

2.1 The following table details the steps in the competitive dialogue procurement process and the timetable from its commencement to completion.

<table>
<thead>
<tr>
<th>Procurement Step</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>OJEU Notice</td>
<td>30 September 2010</td>
</tr>
<tr>
<td>Return of Pre Qualification Questionnaires</td>
<td>19 November 2010</td>
</tr>
<tr>
<td>Selection of Shortlist of Tenderers</td>
<td>11 February 2011</td>
</tr>
<tr>
<td>Issue of Invitation To Participate in Dialogue to shortlist (“ITPD”)</td>
<td>24 February 2011</td>
</tr>
<tr>
<td>Kick-off Meetings</td>
<td>2-4 March 2011</td>
</tr>
<tr>
<td>Bilateral Meetings</td>
<td>15, 16 &amp; 18 March 2011</td>
</tr>
<tr>
<td>Interim Submission 1</td>
<td>29 March 2011</td>
</tr>
<tr>
<td>Bilateral Meetings</td>
<td>26-28 April 2011</td>
</tr>
<tr>
<td>Interim Submission 2</td>
<td>9 May 2011</td>
</tr>
<tr>
<td>Bilateral Meetings</td>
<td>1-3 June 2011</td>
</tr>
<tr>
<td>Interim Submission 3</td>
<td>14 June 2011</td>
</tr>
<tr>
<td>Close of Dialogue</td>
<td>25-27 July 2011</td>
</tr>
<tr>
<td>Issue of Invitation to Submit Final Tender (“ITSFT”)</td>
<td>9 August 2011</td>
</tr>
<tr>
<td>Final Tenders Submitted</td>
<td>30 August 2011</td>
</tr>
<tr>
<td>Hub East Central Programme Board Preferred Tenderer Selection</td>
<td>12 October 2011</td>
</tr>
<tr>
<td>Hub National Programme Board Approval of Preferred Tenderer Selection</td>
<td>13 October 2011</td>
</tr>
<tr>
<td>Execution of Final hub East Central Partnering Agreements</td>
<td>8 December 2011</td>
</tr>
</tbody>
</table>

3.0 Evaluation of Pre Qualification Questionnaires

3.1 A total of 9 Prequalification Questionnaires ("PQQs") received in response to OJEU ref 2010-129251. These were evaluated in accordance with the Information Memorandum and the PQQ.

3.2 Each submission was required to pass three general hurdles before being fully scored and ranked.

- **Compliance Check:**
  
  Each submission went through the compliance check.

- **Financial Evaluation:**

  Each compliant submission then underwent the financial evaluation which consisted of quantitative and qualitative elements. Each submission was required to achieve a minimum score of 40.
3.3 Having received a report on the evaluation of the submissions and details of the final scores, at its meeting held on 10 February 2011, the hub East Central Territory Programme Board agreed to shortlist the following 3 Applicants and invited them to participate in dialogue:

- Alba;
- Amber Blue; and
- Inspiredspaces.

3.4 The Invitation to Participate in the Dialogue was issued to the three short-listed tenderers on 24 February 2011.

4.0 The Competitive Dialogue Process

4.1 The dialogue process commenced with the issue of the Invitation to Participate in Dialogue. As noted in the table in paragraph 2.1 above, the competitive dialogue process initiated with a kick-off meeting, there followed 3 formal meetings with each tenderer plus separate legal, financial and technical/ Key Performance Indicator meetings. Following the three rounds of meetings there followed a close of dialogue meeting, bringing the dialogue process to a close. Throughout the dialogue process, a number of formal clarifications were issued to tenderers.

4.2 At its meeting held on 8 August 2011 the hub East Central Territory Programme Board considered a report on the competitive dialogue process and agreed to close the dialogue and to authorise the issue of the Invitation to Submit Final Tenders ("ITSFT"). Tenderers were notified of the close of dialogue and issued with the ITSFT on 9 August 2011.

4.3 Final Tenders were submitted by Alba, Amber Blue and Inspiredspaces on 30 August 2011.

5.0 Evaluation of Final Tenders

5.1 The following table details the steps in the evaluation process:

<table>
<thead>
<tr>
<th>Tasks</th>
<th>Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final Tenders Submitted</td>
<td>30 August 2011</td>
</tr>
<tr>
<td>Compliance Check</td>
<td>31 August 2011</td>
</tr>
<tr>
<td>Review of Bids – Initial Assessment Any Clarifications/ Additional Information Required</td>
<td>31 August – 8 September 2011</td>
</tr>
<tr>
<td>Initial Evaluation Meeting</td>
<td>9 September 2011</td>
</tr>
<tr>
<td>Further Evaluation &amp; Issue of Clarifications to Tenderers</td>
<td>9-23 September 2011</td>
</tr>
<tr>
<td>Interim Evaluation Meeting</td>
<td>23 September 2011</td>
</tr>
<tr>
<td>Further Evaluation &amp; Issue of Clarifications to Tenderers</td>
<td>24 September – 2 October 2011</td>
</tr>
<tr>
<td>Scoring Meeting</td>
<td>3 October 2011</td>
</tr>
<tr>
<td>Final Evaluation Meetings</td>
<td>6, 7 October 2011</td>
</tr>
<tr>
<td>Hub East Central Territory Programme Board Meeting to approve selection of preferred tenderer</td>
<td>12 October 2011</td>
</tr>
<tr>
<td>Hub National Programme Board to Approve Selection of Preferred Tenderer</td>
<td>13 October 2011</td>
</tr>
</tbody>
</table>

5.2 The three tender submissions were evaluated to determine the most economically advantageous tender. The weighting applied to the Price Evaluation was 45% and the weighting applied to the Non Price evaluation was 55%. Price and Non-Price elements were evaluated and scored in line with the following evaluation criteria:
(i) **Price (45%)**

The Price Evaluation comprised a qualitative component and a quantitative component.

The Qualitative Price Evaluation (25%), focussed on the Tenderer’s approach to delivering value for money, costing of New Projects and the financial management of hubco which is further broken down as follows:

- Approach to costing and VFM @ 55%;
- Financial Management inc. raising finance @ 20%; and
- DBFM Funding @ 25%.

The Quantitative Price Evaluation (20%) focussed on construction costs, DBFM costs, and 5-year hubco costs and Pricing Pro-formas.

(ii) **Non-Price Evaluation (55%)**

The non-price evaluation comprised:

- Establishing and operating hubco (10%);
  - Strategy governance and management of hubco @ 60%;
  - Management systems for hubco @ 40%;

- Approach to Partnering (35%);
  - Ongoing Partnering service @ 20%;
  - Engage supply chain to provide Partnering services @ 20%;
  - New Project Approval /delivery @ 25%;
  - Supply chain appointment @ 15%;
  - Sustainability @ 5%;
  - Whole Life Costs @ 10%;
  - Strategic Service provision @ 5%;

- KPIs and Continuous Improvement (10%);
  - Measure Performance & review contractual compliance @ 35%;
  - Continuous Improvement - Project development @ 35%; and
  - Continuous Improvement Ongoing Partnering @ 30%.

It should be noted that the three main non-price evaluation criteria (black style bullets) had a number of evaluation sub-criteria (open circle style bullets) which were detailed in the Invitation to Submit Final Tender.
Corporate Governance

In terms of Corporate Governance of the hubco, the hub East Central Territory Programme Board has agreed the following:

- a detailed proposal for establishment of the Territory Partnering Board;
- the resources and organisation structure required to manage the Client organisation for hubco including the management and capacity support resources required by the public sector to interface with hubco;
- the arrangements for ensuring the accountability and probity of hubco to the Territory Partnering Board;
- appointment of a Territory Director to the hubco Board - the director is not representing the interests of his/ her appointing organisations, but instead has to act in the best interests of hubco; and
- appointment of a B Shareholders’ Representative to represent the local public sector participant's interests as shareholders.

Territory Partnering Board

Pursuant to clause 14 of the Territory Partnering Agreement ("TPA") a Territory Partnering Board ("TPB") will be established to provide strategic input into the long-term running of the hub project. In particular, the TPB will meet regularly (at least once every three months) to review performance and financial aspects, to approve each new edition of the Territory Delivery Plan (TDP) (annually), to give guidance and approval in respect of new project proposals, and to generally manage the provision of Partnering Services by hubco to the Participants. Unless a project is a “Qualifying Project” and therefore subject to exclusivity (see further Appendix 3 summary of TPA) a new project will not be included within the TDP without the express written consent of the Participant whose project it is.

Each Participant is required to appoint a Participant’s Representative on to the TPB who should be appropriately empowered to agree matters on behalf of the particular Participant. In addition, each Participant’s Representative will act as the effective point of contact between hubco and the particular Participant.

In addition to the Participant's Representatives, the TPB will include a member appointed by the Board of hubco and may also include representatives of other stakeholders (however Stakeholder voters will be non-voting).

Decisions of the TPB will be taken by majority vote subject to an affected Participant not being bound by a majority decision that its own Representative has not supported by voting in favour.

A non-executive, non-voting, chairman will be appointed on an annual basis form amongst the Participants Representatives and the intention is that the Chairman will rotate annually among the different Participants Representatives.

hubco Board

hubco will be a private limited company governed by the Companies Act 2006. The shares will be allocated 60% to the private sector partner, 30% to the Participants and 10% to Scottish Futures Trust.

The Board of Directors will be made up of three directors appointed by Amber Blue, one director appointed by Scottish Futures Trust and one director by the local public sector investors (as a group). Each director will have one vote and except in respect of shareholder consent matters, decisions will be made by majority vote. Additionally, the directors will be required to appoint an independent, non-voting chair.
A number of matters are reserved for shareholder consent including revision to the hubco business plan, restructuring of hubco’s debt and tendering for any additional business outside the scope of the Territory Delivery Plan. The matters reserved for shareholder consent require a majority of each class of shareholder to vote in favour i.e. the private sector shareholder(s), SFT and a majority of the local public sector shareholders must all vote in favour for any such resolution to be carried. The process for voting among B Shareholders will be set out in the Participants’ Agreement.

The duties of a director within a private limited company are primarily to the company and to its members as a whole. The duties are derived from common law and statute.

The Bid presented by Amber Blue includes for provision for payment of fees to each of the five board directors and to the chair with deferred payment of Directors fees until after year three of operation of hubco.

The SHA provides for a Shareholders’ Forum to be established (comprising all of the shareholders, plus the Chair of hubco), to meet twice a year. The role of the Shareholders’ Forum will be to review:

- the effectiveness of hubco in fulfilling its objects;
- the past & present business activities of hubco;
- the performance by all parties of their obligations under the SHA and the TPA; and
- the hubco board’s response to any queries previously raised.

The Shareholders’ Forum does not have any power to issue directions or instructions to the board, but the board must “carefully consider the conclusions of the Shareholders’ Forum in formulating their plans for the Company”.

### Participant/ Client Organisation

The key challenge for the Participants in a hubco environment remains that of client capacity building – ensuring that the right mix of skills and resources is available to translate the increased public investment into high quality service provision.

Due consideration therefore requires to be given to the resourcing of a client side organisation which will effectively manage the day-to-day performance of the hubco. In doing so, it is very important that the client side organisation does not duplicate the skills, expertise, knowledge and experience that the private sector partner brings to the venture, however it must have the appropriate skills and experience to manage the activities and outputs of hubco and provide assurance to the TPB that the strategic requirements of the TDP are being achieved.

It is also very important that the internal resources of the Participants are aligned in order to provide an effective and efficient input to the strategic development of the hubco’s business plan.

Activities to be managed by client side organisation on behalf of TPB and in the capacity as shareholder are set out as follows:

1. Transfer knowledge and current plan status of existing projects and ensure new ‘ways of working’ are established with no risk to existing project momentum.

2. The client side organisation will require to provide assurance to the TPB that all strategic partnering costs and Stage 1/2 business cases for new projects are robust and demonstrate vfm.

3. Coordinate legal review of all schemes prior to financial close.

4. Provide assurance to the TPB that all programme/project plans proposed by hubco are robust, realistic, appropriately resourced with risks clearly identified and plans in place to mitigate such risks.

5. Conduct regular reviews of the Territory Delivery Plan, the five local delivery plans and project and partnering services to assure performance and identify recovery actions where appropriate.
6. Conduct regular programme, project and partnering service reviews to assure performance and identify recovery actions where appropriate.

7. Manage continuous improvement and contractual KPIs with hubco to ensure that obligations are being met.

8. Manage overall relationship and provide regular updates to TPB and hubco public sector Director and the B Shareholder representative (the Participants). In recommending a preferred solution an overarching objective will be to provide a long term sustainable organisation which can operate effectively without reliance on external consultants. However, both continuity from the existing programme structure, and knowledge transfer are key success factors and it is important to recognise the significance of this.
Summary of the Standard Form Territory Partnering Agreement (TPA)
March 2010

General

1. The Territory Partnering Agreement (“TPA”) is an agreement entered into among hubco and the participating local public sector bodies (“Participants”) within the Territory.

2. The TPA establishes a long-term partnering relationship among hubco and the Participants with the aims of improving the efficiency of delivery of community-based facilities, delivering economies of scale through shared facilities, making the best use of public resources and providing continuous improvement in both cost and quality in public procurement.

3. The TPA will last for 20 years but may be extended for an additional 5 years by one or more Participants.

Territory Partnering Board

4. The Territory Partnering Board (“TPB”) will be responsible for reviewing the partnering arrangements and managing hubco’s performance under the TPA. The TPB will comprise one representative from each of the Participants, one representative nominated by hubco and such other non-voting representatives of local stakeholders as the Participants unanimously agree.

5. The TPB will meet at least every 3 months. Decisions of the TPB will be by majority vote and there will be no casting vote. TPB decisions affecting any Participant will only bind that Participant where that Participant’s representative on the TPB has voted in favour of the decision.

6. The TPB is to be a forum for open exchange of ideas and to enable Participants to discuss their forthcoming accommodation and service delivery requirements. The TPB will approve the Territory Delivery Plan and ensure that hubco’s proposals for New Projects are consistent with the Territory Delivery Plan.

Projects

7. The TPA contains a mechanism for the identification and approval of New Projects. The Participant(s) procuring a particular project will have the right of approval over hubco’s proposals for that project.

Partnering Services

8. Under the TPA hubco is required to provide a range of Partnering Services being “Ongoing Partnering Services” (such as membership of the TPB, input to the Territory Delivery Plan, delivering New Projects, supply chain management, demonstrating continuous improvement in delivering value for money), “Project Development Partnering Services” (the development of proposals for New Projects) and other “Strategic Support Services” (such as strategic estate planning and service planning).

9. It is expected that hubco will recover its Ongoing Partnering Services and Project Development Partnering Services costs as part of its general business overheads through payments under specific Project Agreements. The costs of providing Partnering Services are recorded on the basis of a schedule of rates that form part of the private sector partner’s bid. These rates shall be reviewed annually by reference to RPI, to other relevant local and national trends and to the rates and prices actually paid by hubco for similar services.
Exclusivity

10. The TPA will grant hubco a degree of exclusivity to develop proposals for (and ultimately deliver) New Projects within the first 10 years. The 10-year exclusivity arrangement applies to (i) certain identified projects (ii) NHS primary/community care projects with a capital value in excess of £750k (iii) joint NHS/local authority projects with a capital value in excess of £750k on which the NHS is lead procurer. The Participants will have the option to procure other projects using hubco, in which case exclusivity will only apply at the point at which a project is formally allocated by the relevant Participant to the Territory Delivery Plan.

11. If the hubco fails to satisfy the Participants’ identified and prescribed requirements for a project (including demonstrating value for money), then the right is reserved for the Participants to procure the project through other means. This exclusivity arrangement will be withdrawn if hubco’s performance is poor (based on agreed targets for performance and continuous improvement).

Value for Money

12. hubco will, as part of the Partnering Services have an obligation to work with the Relevant Participant(s) from the conception of each New Project to appraise the available options for each New Project in order to identify the best available value for money solution and ensure the best available value for money is achieved through the appropriate consideration of all viable options and informed choices. Value for money will be determined through a combination of open book pricing, benchmarking and market testing.

13. Pricing information for certain prime and non-prime cost elements of projects will be submitted at the tender stage. This information will be used to derive caps for the costs of elements of New Projects delivered through hubco.

Continuous Improvement

14. hubco’s performance under the TPA will be measured against key performance indicators. Poor performance can trigger failure of a Track Record Test (which leads to suspension of exclusivity) and/or “Significant Performance Failure” (see Acts of Default below).

Insurance

15. hubco will be responsible for taking out specified insurances (save where these are not available on the worldwide insurance market with reputable insurers or are being offered on such terms and conditions that the risk is not generally being insured against). hubco will also be obliged to take out any insurances required by law.

Acts of Default

16. If any Participant:

- Materially breaches the exclusivity arrangements
- Fails to participate in the TPB and this has a material adverse effect on hubco
- Breaches the TPA in a way that delays the execution of a Project Agreement by more than 40 Business Days
- Fails to make payment of amounts exceeding £100,000

or if hubco’s assets are expropriated, sequestered, nationalised or requisitioned by a Participant, hubco is entitled to suspend performance of its obligations under the TPA to the relevant Participant(s). Alternatively it may terminate the TPA (as regards the relevant Participant(s)) and obtain compensation where the Participant(s) have been given notice and failed to remedy the default. A third option is for hubco to continue to perform its obligations to the relevant Participant(s) but, after the Participant(s) having been given initial notice and failed to remedy the default, serve further notice specifying the effect that the default is having on hubco and requiring compensation.
17. If hubco:

- Defaults under one or more Project Agreements
- Commits a “Significant Project Failure” (which will be defined during the competitive dialogue by reference to specific KPIs)
- Commits a material breach of its obligations
- Ceases to provide all or a substantial part of the Partnering Services
- Fails to comply with the assignation/sub-contracting provisions
- Fails to make payment of amount(s) exceeding £10,000
- Becomes insolvent (or any hubco subsidiary delivering a specific project becomes insolvent)

or if any hubco subsidiary delivering a specific project fails to terminate a supply chain agreement where required to do so under a Project Agreement then each Participant may elect to suspend exclusivity. Suspension of exclusivity will expire when hubco remedies the relevant default. In addition, the Participants may (acting together and depending on the nature of the default in question) either (a) require hubco to replace the supply chain member responsible for the default or (b) require hubco to put forward a rectification or improvement programme or (c) ultimately serve notice of a TPA Material Default and terminate the TPA.

Change in Parties to the TPA

18. Other public bodies or other persons may become Participants under the TPA where the existing Participants and hubco agree, in which case the new Participants will be required to sign an accession agreement under which they are bound to the terms of the TPA as if they had been party to it originally.
Summary of the Standard Form Shareholders’ Agreement (SHA)
March 2010

General

1. The Shareholders’ Agreement (“SHA”) is an agreement entered into among the shareholders in hubco and hubco itself.

2. There are three classes of Shareholder in hubco and their shareholdings are split as follows:
   - Scottish Futures Trust (A Shareholders) – 10%
   - Local public sector participants (B Shareholders) – 30%
   - Private Sector Development Partner (C Shareholders) – 60%

   The voting rights and distribution rights are the same for each class of share.

3. The intention is to establish hubco as a private sector controlled vehicle that will introduce a management team with the necessary skills to drive forward the process of New Project development and continuous improvement over a series of projects. The Private Sector Development Partner will therefore have control of the Board of directors, although there are a number of reserved matters that require the consent of the majority of each class of Shareholder.

Directors and Management

4. The hubco Board will comprise one director appointed by the A Shareholders, one director appointed by the B Shareholders and three directors appointed by the C Shareholders. In addition, the Shareholders will appoint a non-executive, non-voting Chair.

Shareholder Consent Matters

5. A key protection for the minority Shareholders is that there are a number of matters reserved for Shareholder consent. These require the consent of a majority of each class of Shareholder and include matters such as approving revisions to the hubco Business Plan, appointment of the Chair, declaration and payment of dividends, remuneration of employees and changes to hubco’s articles of association.

Shareholders Forum

6. The Shareholders’ Forum will comprise representatives from each Shareholder and will meet twice a year with the Board to review hubco’s activities and performance and to review each party’s performance under the SHA. The Shareholders’ Forum gives the Shareholders the opportunity to raise any queries with the directors.

Distributions

7. The directors will determine the distribution of dividends subject to traditional restrictions (such as positive P&L reserves, sufficient working capital) but the declaration and payment of dividends is a matter reserved for Shareholder consent.

Budget & Financial Information

8. hubco is to keep the Shareholders supplied with certain financial information such as audited accounts, proposed updates to the Business Plan and cash flow information.
Transfers of Shares

9. The articles of association contain pre-emption rights that apply to the transfer of shares in hubco. The C Shareholder(s) are not entitled to transfer their shares during the Lock-in Period (i.e. the first 5 years of hubco’s existence) and there are, for the same period, restrictions on changes in ownership of the Private Sector Development Partner. In addition there are restrictions at all times on the transfer of C Shares to Unsuitable Third Parties.

10. Any B Shareholder is entitled to transfer its shares at any time to another B Shareholder or to a signatory to the Territory Partnering Agreement that is not already a B Shareholder.

Term and Termination

11. There is no date specified for the SHA to come to an end. It will therefore continue until there is a winding up, or one Shareholder owns all of the share capital, or the Shareholders agree to terminate it. There are, however, default provisions (including, insolvency of the Private Sector Development Partner or hubco’s material default under the Territory Partnering Agreement) that give the A Shareholders and B Shareholders the right to purchase the C Shareholder’s Shares and debt at the lower of market value and subscription/par value.

Sub hubcos

12. Where a Sub hubco is formed for a specific project it is anticipated that hubco will provide the whole equity capital requirement of the Sub hubco, and may also provide a subordinated loan for this vehicle, calling on funds invested in hubco by its Shareholders. It is, however, possible that alternative structures for the provision of the subordinated debt element may be considered – for example direct provision of subordinated debt to Sub hubco by hubco Shareholders (although the SHA imposes no obligation on the Shareholders to provide this).
The hub initiative: Pricing and Value for Money

The purpose of this note is to provide a summary of the mechanisms for pricing and demonstrating value for money on new projects that are procured through hub.

Overview

- Tenderers have been asked to submit, as part of their final tenders, schedules detailing certain prime and non-prime costs\(^1\). The costs proposed by the successful tenderer will form a pricing schedule that sits within the Territory Partnering Agreement.
- For a new project, the parties will first select a “Comparator” project from the pricing schedule for the purposes of the Project Development Fee. During the approval process the parties will be agreeing a “Comparator” project from the pricing schedule for the other elements of the new project. Different projects from the pricing schedule could be used as Comparators for different elements of a new project and it may be that no Comparators exist for certain elements.
- The Comparator figures will be adjusted as appropriate to reflect the specifics of the new project in question (e.g. for inflation, scale, complexity, programme and location). The principles behind such adjustments are set out in the Territory Partnering Agreement and will be supplemented by method statements to be provided by the tenderers.
- The adjusted Comparator figures will set pricing caps for the relevant elements of the new project.
- The prices that hubco submits for a new project will be compared against the adjusted Comparators and (even for elements for which a Comparator exists and a cap applies) other available benchmarking information.
- hubco must always operate open book pricing. In addition, the parties may agree (and in any case procuring authority has an overriding right to require) that hubco (or one of its sub-contractors) should carry out competitive tendering within its supply chain and/or market testing. Competitive tendering or market testing can be applied to individual elements of a new project or to a new project in its entirety.
- Tenderers will be asked to submit, as part of their final tenders, method statements detailing their proposed approach to ongoing supply chain management and supply chain selection on individual new projects.
- Pricing is, of course, only one aspect of the value for money assessment that a procuring authority will undertake for a new project. Tenderers have been asked to submit, as part of their final tenders, method statements detailing their approach to demonstrating overall value for money.

Contractual Process for Pricing/ VFM

The pricing and value for money of hubco’s proposals for New Projects is tested through the two-stage New Project Approval Process.

Prior to Stage 1

- The parties will agree the Comparator (and appropriate adjustments) for the Project Development Fee (i.e. hubco’s total fee (costs plus any margin or return) for taking a project through the New Project Approval Process). This will determine the Project Development Fee Cap for each stage and the whole approval process and the Project Development Fee that hubco proposes within its Stage 1 Submission for each stage and for the whole approval process cannot exceed these caps.

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\(^1\) Prime costs are based on bills of quantities (and drawings and specifications) from three historic projects from within the Territory (one health (dental)/community centre, one primary school and one secondary school). The non-prime costs (preliminaries, profit, survey/design fees, hubco portion, management fees and general overheads and profit) are based on projects which are representative of the broad pipeline, for each of which tenderers have been provided with basic construction cost, construction programme, site information, floor area and a general description on use.
Stage 1 (RIBA Stage C)

- Within 4 weeks of a New Project Request (which triggers Stage 1 of the approval process) the parties agree the Comparators (and appropriate adjustments) for the individual elements of the New Project. The adjusted Comparators become caps for the relevant elements.
- In advance of the Stage 1 Submission, hubco must provide the authority with a draft Pricing Report analysing the proposed costs for the New Project against the adjusted Comparators and other benchmarking information from projects within and out with the Territory and within and out with the hub initiative.
- The draft Pricing Report must be prepared on an open book basis. In addition, the authority can require (or hubco can suggest) competitive tendering within the supply chain and/or market testing. The rationale for sharing a draft Pricing Report in advance of the Stage 1 Submission is that it allows an early opportunity to factor a competitive tender/market test exercise in to the approval process.
- Where a requirement for competitive tendering and/or market testing is identified after submission of a draft Pricing Report, hubco shall submit an updated draft reflecting the results of such exercise(s).
- Where the parties have agreed a Comparator (and therefore a cap) for an element which is then required to be Market Tested, the cap(s) will be dis-applied and the parties will have to accept the results of the Market Testing.
- The Project Development Fee Cap can be adjusted to take account of any Market Testing exercise that is required for elements for which Comparators exist (on the basis that it might be reasonable to assume that Market Testing will not be required for elements that have Comparators).
- The Stage 1 Submission must include a value for money assessment containing:
  - the Pricing Report;
  - an elemental cost plan; and
  - an indicative financial model or development amount analysis.

The value for money assessment must also explain how, in line with the relevant Method Statements, hubco’s proposals demonstrate value for money and meet the relevant targets and commitments in the KPIs.

Stage 2 (RIBA Stage E)

- This is essentially a repeat of the Stage 1 process, albeit with more certainty on the detail of the new project.
- The parties re-agree the Comparators (and appropriate adjustments) (more accurate/detailed information about the project may point to different/additional Comparators being relevant).
- In advance of the Stage 2 Submission hubco must provide further draft Pricing Reports (and the same process applies as per Stage 1 in relation to open book pricing, competitive tendering and market testing).
- The Stage 2 Submission must include an updated value for money assessment.
APPENDIX 3 (iv)
PROJECT APPROVAL PROCESS

STAGE 1
Focus is on strategic background to investment business case

Projects Included in TDP

New Project Request

Territory Delivery Plan outlines a programme of service needs and projects derived from local hub Delivery plans.

New Project Request

Written request by Relevant Participant for hubco to produce a Stage 1 Submission supported by information appropriate to amount of prior development.

hubco Reviews New Project Request

hubco seeks clarification as necessary to enable meaningful response, then confirms in writing within 20 Business Days of receipt of a New Project Request whether or not it will submit a Stage 1 Submission to the Relevant Participant(s).

hubco Submits Stage 1 Submission

A Stage 1 Submission is produced within 3 months (or longer period agreed between hubco and the Relevant Participant). It includes option appraisal, outline design solution to RIBA Stage C (or such lesser work stage as the Relevant Participant may require), providing a Project Development Fee and costs and programme for completing Stage 2.

Stage 1 Pricing Report

As part of its Stage 1 Submission, hubco produces a pricing report analysing its predicted maximum cost of the New Project. hubco and the Relevant Participant(s) agree which elements or components (as may be adjusted) of the Pricing Data projects can be used as Comparators. These act as price caps but hubco must (including where there are no Comparators) still price on an open book basis and compare against these and other benchmarking information. The Relevant Participants can also require competitive tendering and/or market testing. Drafts of the report are to be provided and updated to reflect outcome of further work prior to inclusion in Stage 1 Submission.

Stage 1 Approval Process

Relevant Participant(s) have 2 months from the date of receipt in which to notify hubco of approval or rejection of Stage 1 Submission. If following the date of the New Project Request, hubco has failed the Track Record Test then the Relevant Participants are entitled to reject the Stage 1 Submission. Hubco meets its own development costs except where the TPA provides otherwise.

Stage 1 Approval

Stage 1 Project Development Fee payable at this stage for Stage 1 Approved Projects.

STAGE 2
Focus is on detail of the scheme

Pricing Report showing predicted cost

hubco Submits Stage 2 Submission

Stage 1 Approved Project developed by hubco to RIBA Stage E within the maximum time period for submission indicated in the Stage 1 Submission. The Stage 2 Submission includes the design, plans and drawings, a draft Project Agreement, financial model, commitment letters and a programme from Stage 2 Approval to Financial Close.

Stage 2 Pricing Report

Stage 1 Pricing Report process is repeated but on the basis of more developed information to produce an analysis of hubco’s predicted cost of the New Project.

Stage 2 Approval

Relevant Participant(s) approve or reject on specific grounds within 60 Business Days. Approval is determined by achievement of Approval Criteria, although the Relevant Participant(s) can reject on other specified grounds. A submission failing one or more Approval Criteria may be resubmitted within 30 days of rejection.

Conclude Project Agreement

Following Stage 2 approval hubco and the Relevant Participant(s) work together to conclude the project contract. Stage 2 Project Management Fee for an approved DBB will be paid on signing of the project agreement and for an approved DFM will be paid in the service charge.
Appendix 4

Appendix 5