



Llywodraeth Cymru  
Welsh Government

# **WEP Strategic Partnering Framework**

## **Education Technical Documents Market Engagement Paper**

**November 2018**

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## 1. Introduction

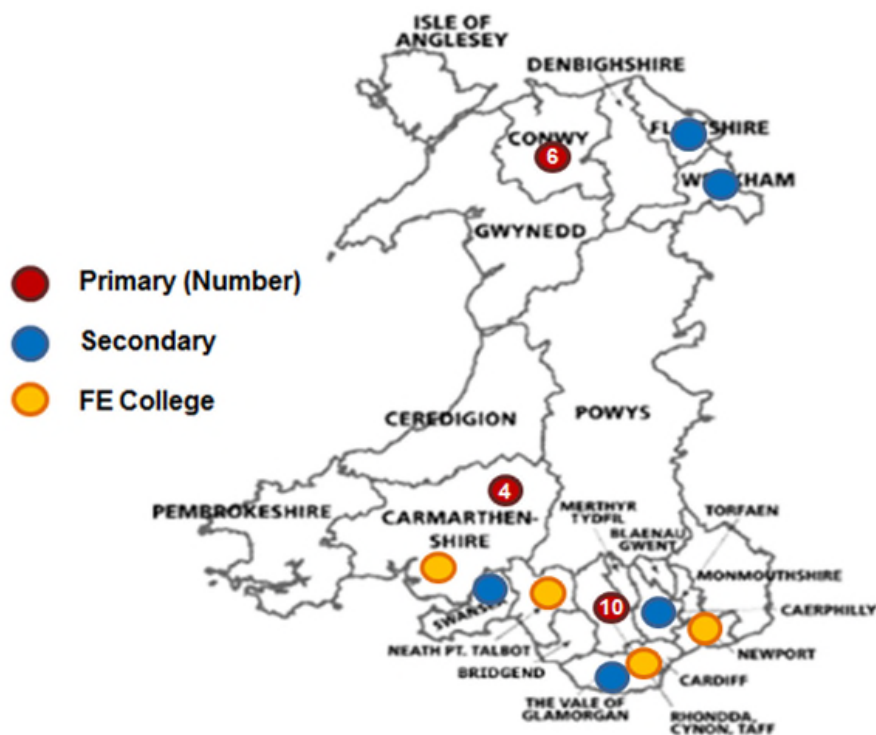
- 1.1 Welsh Government (“**WG**”) is currently preparing for the procurement of a Private Sector Delivery Partner (“**PSDP**”) to work with it on the delivery of education and community facilities throughout Wales, under a strategic partnering framework (the “**WEP Strategic Partnering Framework**”). A number of revenue funded Mutual Investment Model (“**MIM**”) education projects have already been identified for delivery through the WEP Strategic Partnering Framework, on an “exclusive” basis. Public sector participants will also have the option to deliver capital projects for education or community facilities through the framework, where these projects meet specific criteria.
- 1.2 A single PSDP is to be procured for Wales. The successful PSDP will be required to form a new “**WEPCo**” vehicle with WG and local authorities and further education institutions in Wales (“the **Participants**”). The Participants, WG and WEPCo will enter into a Strategic Partnering Agreement (“**SPA**”). Under the SPA, WEPCo will be required to provide partnering services to the Participants, including (i) project development and delivery; and (ii) supply chain assembly and management. The initial term of the partnering arrangement will be ten (10) years, with an optional five (5) year extension. An overview of the WEP Strategic Partnering Framework is set out at section 3 of this Engagement Paper.
- 1.3 The purpose of this engagement exercise is to communicate to the market and stakeholders WG’s proposed approach to the WEP Strategic Partnering Framework, including the standard form project documents. Documents are being released for engagement in two phases.
- 1.4 **Phase 1** - The following documents comprise Phase 1 and have been published with this engagement paper:
- 1.4.1 Standard Form Strategic Partnering Agreement;
  - 1.4.2 Template MIM Education Project Agreement, including Schedule 14 (Payment Mechanism) as a separate attachment;
  - 1.4.3 Template Project Co Shareholders' Agreement; and
  - 1.4.4 Template WEPCo Shareholders' Agreement.
- 1.5 **Phase 2** - The following documents comprise Phase 2 and will be published in the coming weeks:
- 1.5.1 Template Education Design and Build Development Agreement;
  - 1.5.2 Building Information Modelling (BIM) Paper;
  - 1.5.3 Community Benefits Paper;
  - 1.5.4 Energy Paper;
  - 1.5.5 Service Level Specification (Section 1 of Schedule 12 to the Template MIM Education Project Agreement); and
  - 1.5.6 Authority's Construction Requirements (Section 3 of Schedule 6 of the Template MIM Education Project Agreement).

## 2. Engagement Process

- 2.1 WG invites views on the Phase 1 engagement documents. The evidence gathered by this engagement will be considered by WG in reviewing and updating guidance for Participants and the final development of the standard form documents to be used in connection with the WEP Strategic Partnering Framework.
- 2.2 This document invites all parties with an interest or a potential interest in the delivery, construction, operation and/or financing of public sector assets and services under the WEP Strategic Partnering Framework to share their views with WG.
- 2.3 When responding, it would be helpful if interested parties provide supporting evidence, research or reference project examples where possible. To assist us in reviewing responses it would also be helpful if respondents can explain their particular interest in the discussion and also make clear if their response is as an individual, on behalf of a group or a representative body.
- 2.4 All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.
- 2.5 Phase 1 of this engagement will be open for response from the date of publication until **4 January 2019**. A date for Phase 2 will be communicated on publication of the Phase 2 documentation for responses
- 2.6 Please send responses to: [MIMMailbox@gov.wales](mailto:MIMMailbox@gov.wales)
- 2.7 WG will consider the evidence received and may, where appropriate, follow up through further engagement to obtain additional detail. Following the review of the evidence, WG will finalise the documents which form the basis of this engagement and these will be published on the WG website.
- 2.8 To meet WG's transparency commitments, it intends to publish all responses received to this engagement including the names of companies/organisations. However, we do not intend to publish the names of respondents who respond in an individual capacity. The contact details that are supplied will not be published and used only for the purpose of the evidence gathering exercise.
- 2.9 If you want some of the information you provide in your response to be treated as (i) confidential; or (ii) commercially sensitive, and not published please note that on your response and include the information in a separate annex. However, please be aware that, under the Freedom of Information Act 2000, there is a statutory Code of Practice with which public authorities must comply and which deals with, among other things, obligations of confidence and the test of prejudice to commercial interests. In view of this it would be helpful if you could explain to us why you regard the information you have provided to have been provided 'in confidence', or why disclosure of the information would prejudice your commercial interests. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. The decision as to whether or not to disclose information in response to a request under the Freedom of Information Act rests solely with WG.
- 2.10 WG will process your personal data for the purposes of considering your response and, if necessary, contacting you with questions about your response. Your personal data may be disclosed to WG's professional advisers, who will be subject to a duty of confidence. Our lawful basis for processing your personal data will be the performance of a task in the public interest. More information about how WG processes your personal data, including information about your rights, can be found in WG's privacy policy at [https://gov.wales/privacy\\_policy/?lang=en](https://gov.wales/privacy_policy/?lang=en)

### 3. Overview of WEP Strategic Partnering Framework

The aim of the WEP Strategic Partnering Framework is to provide a vehicle for efficient and effective planning, procurement, design, build and/or finance and maintenance of education and community based facilities in Wales. It will allow individual Participants to deliver MIM schemes at a local level without the need to batch schemes together with other Participants.



#### Key Outcomes

3.1 The WEP Strategic Partnering Framework has been structured to achieve the following primary outcomes:

- To improve the efficiency of delivery for education and community-based facilities across the region of Wales, as a whole;
- To create a framework for delivery of the Well-being of Future Generations (Wales) Act 2015, to improve the social, economic, environmental and cultural well-being of Wales;
- To deliver economies of scale;
- To make the best use of public resources;
- To provide continuous improvement in both cost and quality in public procurement;



- To facilitate and improve stakeholder engagement and transparency;
- To deliver a sustained programme of joint asset management and investment;
- To establish a more efficient and sustainable procurement methodology for public sector bodies that:
  - Reinforces joint strategic planning and delivery;
  - Is stable and long-term;
  - Delivers demonstrable value for money and continuous improvement;
  - Is flexible in its ability to respond to evolving service strategies and in being able to deliver through different contractual/funding routes; and
  - Is able to generate sufficient project size, volume and deal flow to attract private finance.

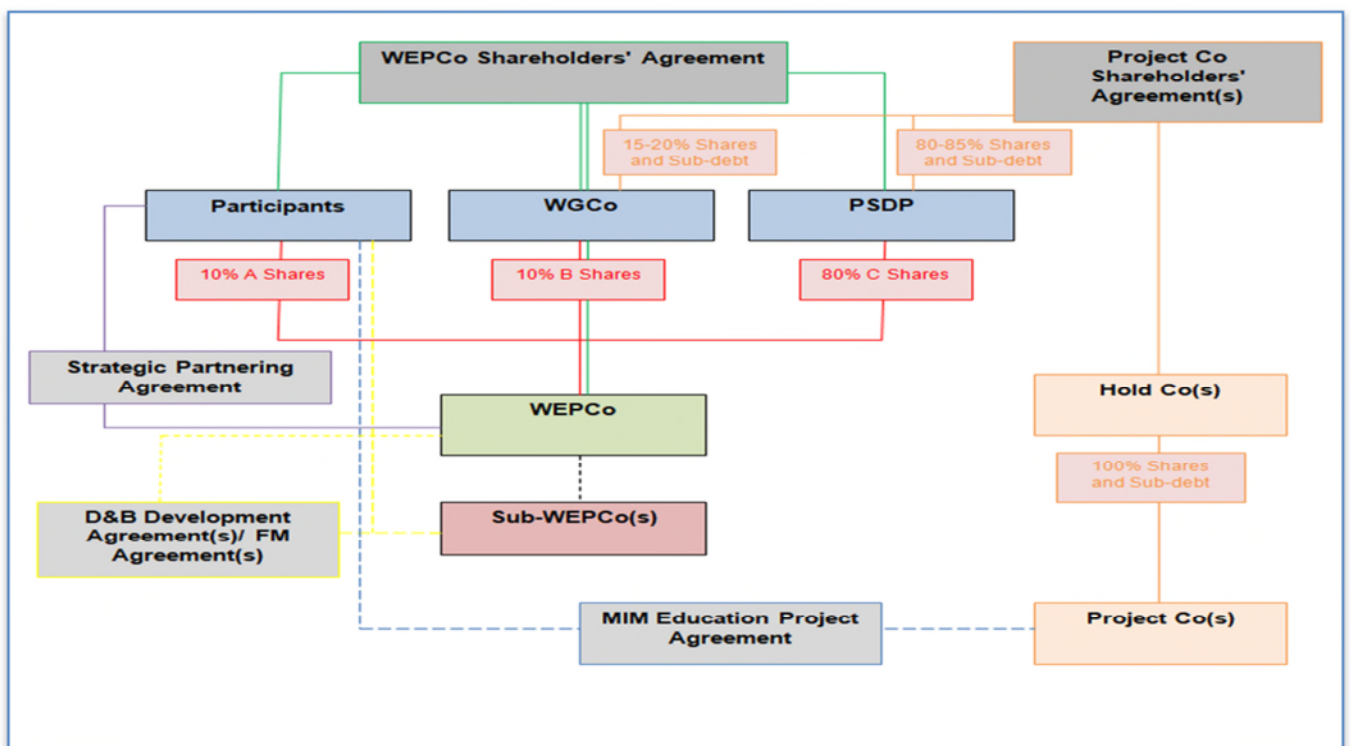
*Contract Structure*

3.2 Having a long-term joint venture structure among a number of Participants and the PSDP creates the basis of a formal partnership, the key features of which are:

- 3.2.1 Transparency of decision making;
- 3.2.2 Sharing of risk; and
- 3.2.3 Sharing of financial returns.

3.3 The sharing of risks and returns, from the development and delivery of both DBDA and MIM projects, creates the incentives within the WEPCo to drive ongoing performance and improvement. It encourages the Participants to place more projects within the WEP Strategic Partnering Framework and the private sector to deliver and manage these projects on an efficient basis. At MIM level, this structure has been designed to ensure projects delivered through MIM are "off balance sheet".

3.4 The structure of the WEP Strategic Partnering Framework is illustrated below:



### *Parties Involved*

3.5 The following paragraphs detail the various parties involved in the WEP Strategic Partnering Framework.

#### 3.5.1 **The Participants**

The Participants will be listed in the contract notice for the procurement of the PSDP. These will include WG and various local authorities and further education institutions in Wales. It is hoped that all the local authorities and further education institutions in Wales will agree to be listed in the contract notice to ensure that they have the opportunity to become a Participant and to use the WEP Strategic Partnering Framework in the future.



#### 3.5.2 **The PSDP**

The successful private sector bidder will be appointed as the PSDP, who is required to form WEPCo with WG and some or all of the Participants, pursuant to the standard WEPCo Shareholders' Agreement. The PSDP will be procured through a Competitive Dialogue process run by WG.

#### 3.5.3 **WEPCo**

WEPCo is the vehicle formed between the PSDP, WG and Participants, to deliver the effective planning, procurement and delivery of education and community based facilities. WEPCo will be responsible for providing the partnering services to the Participants under the terms of the SPA, including project development, supply chain assembly and management, estate

management, funding, demonstration of continuous improvement and value for money.

*Overview of Standard Form Suite of Documents*

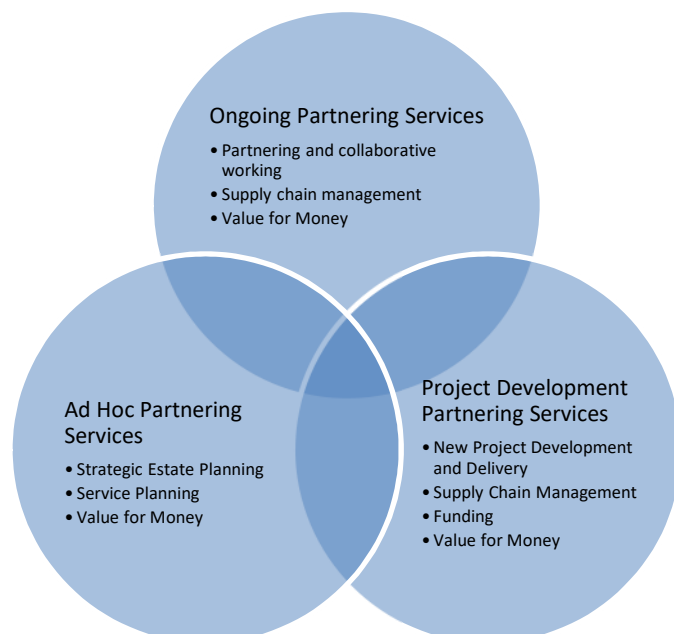
3.6 The key terms of each of the above mentioned consultation documents are summarised in brief below.

3.6.1 **Strategic Partnering Agreement (SPA)**

WEPCo will be required to enter into the SPA with some or all of the Participants listed in the contract notice. The SPA establishes the long-term strategic partnering arrangement between WEPCo and the Participants regarding, inter alia, the delivery of improved education and community based facilities in Wales. The SPA sets out the rights and obligations of the parties to the agreement, including the provision of "Partnering Services" by WEPCo, such as the "Project Development Partnering Services" relating to the development of New Projects. New Projects will be delivered using the appropriate form of Template Project Agreement contained within the SPA, so for example a batched MIM schools project would be delivered using the Template MIM Education Project Agreement.

The SPA also contains the terms on which "exclusivity" on New Projects is granted to WEPCo by the Participants. Broadly, WEPCo is granted a sole and exclusive right to provide (i) Ongoing Partnering Services; (ii) Project Development Partnering Services; and (iii) Project Services in respect of Qualifying Projects that become Approved Projects, for a period of ten (10) years. Qualifying Projects will include 21st Century Schools Band B MIM projects. Terms used in this paragraph are defined in the SPA.

WEPCo, by working closely with the public sector partners, will be expected to deliver improvements in the way that New Projects are delivered and the supply chain is managed. These improvements will be monitored through the value for money demonstrations process for New Projects and by measuring performance against key performance indicators and continuous improvement targets. The scope of Partnering Services to be delivered by WEPCo is illustrated below.





### 3.6.2 **Template MIM Education Project Agreement**

The Template MIM Education Project Agreement is the form of agreement to be used for delivery of new MIM projects and will be entered into by the relevant Participant (the Authority) and a specially created company (Project Co). It has been developed from the MIM "chassis", with education sector specific tailoring. The approach to school specifics has been drawn largely from the Department for Education's Priority Schools Building Programme.

The Template MIM Education Project Agreement reflects WG policies on ethical employment, community benefits, Building Information Modelling, Welsh language standards and new Data Protection legislation. The MIM Education Project Agreement has been drafted on the basis of a maintained community school project with some alternative drafting and/or drafting notes provided where it is to be used on a further education institution project.

### 3.6.3 **Template WEPCo Shareholders' Agreement**

The Template WEPCo Shareholders' Agreement will be entered into among the founding Participants, WGCo and the PSDP, at the time that each party subscribes for shares in WEPCo. The Template WEPCo Shareholders Agreement will set out the relationship between the various shareholders as well as regulate the manner in which WEPCo and any wholly owned subsidiaries are to be managed.

It is proposed that the shares in WEPCo be split into three separate classes of shares as follows:

- Participants - 10% A Shares
- WGCo - 10% B Shares
- PSDP - 80% C Shares

The Template WEPCo Shareholders' Agreement sets out the rights attached to each class of share. It also contains protections for minority interests and "reserved matters" which require the prior consent of the holders of a majority of each class of share.

The management of WEPCo is detailed in the Template WEPCo Shareholders' Agreement covering aspects such as appointment of directors, quorum for board meetings and how board resolutions are to be passed. It also covers aspects such as the working capital facility, the rights to be attached to each class of share, restrictions on transfers of shares and the allotment of new shares.

### 3.6.4 **Template Project Co Shareholders' Agreement**

The Template Project Co Shareholders' Agreement must be used on MIM projects under the terms of the SPA and is entered into by WGCo and the Developer. The terms of the Project Co Shareholders' Agreement are identical to the published MIM Shareholders' Agreement, save that there is no provision for third party equity funding competitions. The terms of the Template Project Co Shareholders' Agreement must be strictly adhered to, for classification purposes. The proposed shareholding is as follows:

- o WCo - 15 to 20% Shares
- o Developer(s) - 80 to 85% Shares

**4. Glossary**

<b>"DBDA"</b>	means design and build capital projects.
<b>"MIM"</b>	has the meaning given to it in paragraph 1.1 of this Engagement Paper.
<b>"New Projects"</b>	means projects for the delivery of new facilities or project services under the terms of the SPA.
<b>"Phase 1"</b>	has the meaning given in paragraph 1.4 of this Engagement Paper.
<b>"Phase 2"</b>	has the meaning given in paragraph 1.5 of this Engagement Paper.
<b>"Participant"</b>	means the public sector counterparties to the SPA with WEPCo, as defined in paragraph 1.2 of this Engagement Paper.
<b>"Private Sector Delivery Partner" or "PSDP"</b>	has the meaning given in paragraph 1.1 of this Engagement Paper.
<b>"Strategic Partnering Agreement" or "SPA"</b>	means the strategic partnering agreement entered into by WEPCo, WG and various local authorities and further education institutions pursuant to the procurement for a Private Sector Delivery Partner for the WEP Strategic Partnering Framework.
<b>"Template Education Design and Build Development Agreement"</b>	means the form of agreement set out in Section 2 of Schedule 7 of the SPA for use on design and build education projects.
<b>"Template MIM Education Project Agreement"</b>	means the form of agreement set out in Section 1 of Schedule 7 of the SPA for use on design, build, finance and maintenance projects, under MIM.
<b>"Template Project Agreement"</b>	means the template form of agreement contained in Schedule 7 of the SPA, including the Template MIM Education Project Agreement and Template Education Design and Build Development Agreement.
<b>"WEP Strategic Partnering Framework"</b>	means a strategic partnering model, involving the procurement of a long-term PSDP for the delivery of improved education and community facilities in Wales.
<b>"WEPCo"</b>	means the entity that is party to the Strategic Partnering Agreement charged with delivering the partnering services to the Participant under that Agreement.

**"WG"** has the meaning given in paragraph 1.1 of this Engagement Paper.

**"WGCo"** means the WG investment entity.