



Llywodraeth Cymru
Welsh Government

Descriptive Document
in respect of the
WEP Strategic Partnering
Delivery Model Procurement

July 2019

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GLOSSARY

21st Century Schools and Colleges (Band B) MIM Programme	means projects comprised within the 21st Century Schools and Colleges (Band B) Programme, where such projects have been expressly approved for funding through MIM, as identified in the draft programme attached at Part 1 of Schedule 8 (Draft Band B MIM Programme) of the Strategic Partnering Agreement and as may be adjusted from time to time to reflect revised funding allocations under the 21st Century Schools and Colleges (Band B) Programme;
21st Century Schools and Colleges (Band B) Programme	means phase 2 of the 21st Century Schools and Colleges strategic investment programme, led by Welsh Government in collaboration with the Welsh Local Government Association, local authorities, colleges and dioceses;
21st Century Schools and Colleges Team	means the project team described at Sections 7.3.2.1 to 7.3.2.6;
ACBR Enhancements	has the meaning given to it in the Template Project Agreement;
Act	has the meaning given in Section 1.2.2;
Additional Benefits	has the meaning given to it in the Strategic Partnering Agreement;
Additional Community Benefit Project Co Proposals	has the meaning given to it in the Template Project Agreement;
Approved Project	means a New Project which is a Qualifying Project and which has Stage 2 Approval;
Approved Purposes	has the meaning given to it in the Template Project Agreement;
Authority's Community Benefit Requirement KPIs	has the meaning given to it in the Template Project Agreement;
B Shareholder Member	has the meaning given to it in the Strategic Partnering Agreement;
Bid	means the written proposals submitted by a Bidder as part of this Procurement Process;
Bidder	means an Economic Operator who, following submission of an SQ Response, has been invited by the Contracting Authority to participate in the competitive dialogue for the role of the PSDP;
Bidders' Day	has the meaning given in Section 5.3;

BIM	means a Building Information Modelling system;
BIM Execution Plan	has the meaning given to it in the Strategic Partnering Agreement;
Boot Camp	means a series of intensive meetings between the Contracting Authority and each Bidder following the Draft Bid;
CBR Enhancements	has the meaning given to it in the Strategic Partnering Agreement;
"CDE"	has the meaning given to it at 1.1.2 of Appendix 3 of this Descriptive Document;
Community Benefits	means any contractual requirements which deliver a wider social, economic and/or environmental benefit in addition to the core purpose of the contract;
Community Services	has the meaning given to it in the Strategic Partnering Agreement;
Consultant	has the meaning given in the SQ;
Contract Notice	means the notice published by the Contracting Authority in the OJEU in relation to the Procurement Process published at the same time as this Descriptive Document;
Contracting Authority	means Welsh Government (Education Department) for and on behalf of the Participants;
Data Controller	means has the meaning given to that term under the Data Protection Laws;
Data Protection Laws	means law protecting the personal data of natural persons (including GDPR, the Data Protection Act 2018 and codes of practice issued from time to time by relevant supervisory authorities);
Descriptive Document	means this document;
Design Data	has the meaning given to it in the Template Project Agreement;
Dialogue Meeting	means a meeting between the Contracting Authority and a Bidder during the Dialogue Period;
Dialogue Period	means the period commencing on the date of issue of the ITPDSB to Bidders by the Contracting Authority and ending on the date of issue by the Contracting Authority of the notification that the dialogue has been concluded;
Disclosed Data	has the meaning given to it in the Template Project Agreement;
Draft Bid	means a draft final Bid that is submitted by Bidders prior to recess and Bootcamp that contains all items of their final Bid in

draft form;

Economic Operator(s)	means any person or public entity or group of such persons and entities, including any temporary association of undertakings, which offers the execution of works or a work, the supply of products or the provision of services on the market. Where the Economic Operator is a consortium, "Economic Operator" means each member of the consortium;
Education Strategic Investment Board	means the senior panel within Welsh Government with responsibility for the WEP Strategic Partner Delivery Model Procurement and MIM Projects in the education sector;
Education Sector Services	means education (including pre-school, primary, secondary and/or further education) services to the public within Wales;
EPortal	means BravoSolution etenderwales portal which can be accessed via: https://etenderwales.bravosolution.co.uk or such other web based portal as may be notified by the Contracting Authority;
Financial Support Provider	has the meaning given in the Selection Questionnaire;
Good Industry Practice	has the meaning given to it in the Template Project Agreement;
High Value Changes	has the meaning given to it in the Template MIM Education Project Agreement;
Identified Projects	means the projects listed at Section 2.3.3.1;
Information Commissioner	has the meaning given in the Data Protection Laws;
Information Requirements	means the information requirements of the relevant Participant to be set out in a Project BIM Agreement;
ITPDSB	means the package of documents comprising two Volumes, issued to each Bidder in respect of the 'Invitation To Participate in Dialogue and Submit a Bid' stage of the Procurement Process, as may be amended from time to time by the Contracting Authority, and shall include any supplemental documents issued as part of such stage. (A draft version of this document will be uploaded to the Eportal for information shortly after publication of the Contract Notice);

KPIs		has the meaning given to "Key Performance Indicators" in the Strategic Partnering Agreement;
Low Value Change		has the meaning given to it in the Template MIM Education Project Agreement;
Management Services Agreement		means any management service agreements entered into by WEPCo sub-contracting delivery of any of the Partnering Services;
MIM		means the Welsh Government's Mutual Investment Model;
MIM Project		has the meaning given to it in the Strategic Partnering Agreement;
Medium Value Changes		has the meaning given to it in the Template MIM Education Project Agreement;
Model Project		has the meaning given in Section 5.5.2;
New Project		has the meaning given to it in the Strategic Partnering Agreement;
New Project Request		has the meaning given to it in the Strategic Partnering Agreement;
New Project Approval Process		has the meaning given to it in the Strategic Partnering Agreement;
Nominal Equity IRR	Blended	means the amount of money generated by an investment by equity participation, loan or otherwise where the cashflows are based on current prices (by reference to the purchasing power of the time period to which they relate) and calculated post corporation tax and before shareholder tax;
OJEU		means Official Journal of the European Union;
Ongoing Services	Partnering	has the meaning given in the Strategic Partnering Agreement;
Participant		means (a) in respect of all matters prior to signature of the Strategic Partnering Agreement, the public sector entities listed in Section 2.1.1, who have expressed an intent to become party to the Strategic Partnering Agreement; and (b) following signature of the Strategic Partnering Agreement means the public sector entities who have signed the Strategic Partnering Agreement;
Partnering Services		means services to be provided to Participants pursuant to the Strategic Partnering Agreement (as set out in paragraph 1.2 to 1.4 inclusive of Section 1 (Specification) of Schedule 3 (Partnering Services)) and the performance by WEPCo of its obligations thereunder;

Partnering Services Costs	has the meaning given in the Strategic Partnering Agreement;
Partnering Sub-contractor	has the meaning given to it in the Selection Questionnaire;
Procurement	the procurement by the Contracting Authority of a PSDP for the WEP Strategic Partnering Delivery Model;
Procurement Process	means the procedure adopted by the Contracting Authority for the Procurement including prequalification and shortlisting, competitive dialogue, participation in Dialogue Meetings, submission of proposals in respect of Dialogue Meetings, Interim Submission, Bid and clarification and finalisation of the Strategic Partnering Agreement and any other documents to be entered into under and at the same time as the Strategic Partnering Agreement or in relation to the Procurement;
Project Agreement	has the meaning given to it in the Strategic Partnering Agreement;
Project BIM Agreement	has the meaning given to it in the Strategic Partnering Agreement;
Project Co	means, in the case of a MIM Project, the Project Service Provider counterparty to a Project Agreement with the relevant Participant;
Project Development Fee	has the meaning given to it in the Strategic Partnering Agreement;
Project Development Partnering Services	has the meaning given to it in the Strategic Partnering Agreement;
Project Service Provider	means any person that is obliged, pursuant to a Project Agreement, to provide the Project Services thereunder and, where not WEPCo, is a Subsidiary of WEPCo, or is a PSDP Related Party in the case of MIM Projects;
Project Services	has the meaning given in the Strategic Partnering Agreement;
Project Term	has the definition given to it in the Template Project Agreement;
PSDP	means the private sector delivery partner to be procured by the Contracting Authority in respect of the WEP Strategic Partnering Delivery Model;
PSDP Related Party	means a company which the PSDP holds the majority of the voting rights in, or a Subsidiary of such company;
Qualifying Projects	means: <ul style="list-style-type: none"> (a) the Identified Projects; and

- (b) all other 21st Century Schools and Colleges (Band B) MIM Programme projects, where such project has been identified by a Participant as being required to enable them to provide education based services in Wales;

Regulations	means the Public Contracts Regulations 2015 (SI 2015/102) and reference to " Regulation " is to a specific regulation thereof;
Relevant Standstill Period	has the meaning given in Section 5.6.1;
Reviewable Design Data	has the meaning given to it in the Template Project Agreement;
School Entities	has the meaning given to it in the Template Project Agreement;
Selected Bidder	means the Bidder who submits the Winning Bid;
Selection Questionnaire	means the selection questionnaire for the Procurement;
Senior Responsible Owner (or "SRO")	has the meaning given in Section 7.3.2;
Significant Performance Failure	has the meaning given to it in the Strategic Partnering Agreement;
SQ Response	means the information that each Economic Operator (including any Financial Support Provider, Partnering Sub-contractor and/or Consultant which submits a response to the Selection Questionnaire together with the Economic Operator) provides in response to the Selection Questionnaire;
Stage 1 Approval	has the meaning given to it in the Strategic Partnering Agreement;
Stage 1 Submission	has the meaning given to it in the Strategic Partnering Agreement;
Stage 2 Approval	has the meaning given to it in the Strategic Partnering Agreement;
Stage 2 Submission	has the meaning given to it in the Strategic Partnering Agreement;
Statistical Treatment Guidance	means national and European guidance issued on statistical classification which is relevant to the classification of MIM Projects, including the publication entitled A Guide to the Statistical Treatment of PPPs dated September 2016, issued by Eurostat and the European PPP Expertise Centre;
Strategic Outline	has the meaning given in the Strategic Partnering Agreement;

Programme

Strategic Partnering Agreement	means the WEP strategic partnering agreement entered into by WEPCo and the Participants pursuant to this Procurement Process substantially in the form contained on the Eportal as may be amended from time to time in accordance with the Procurement Process;
Strategic Partnering Board	has the meaning given in the Strategic Partnering Agreement;
Sub-contractor	has the meaning given to it in the Template Project Agreement;
Subsidiary	has the meaning given to it in the Strategic Partnering Agreement;
Supply Chain Assembly	means the process described at Section 2.6;
Supply Chain Members	has the meaning given in the Strategic Partnering Agreement;
Template MIM Education Project Agreement	means the Template MIM Standard Form Project Agreement to be set out in Section 1 of Schedule 7 of the Strategic Partnering Agreement substantially in the form contained on the Eportal as may be amended from time to time in accordance with the Procurement Process;
Template Design and Build Development Agreement	means the Template Design and Build Development Agreement to be set out in Section 2 of Schedule 7 of the Strategic Partnering Agreement substantially in the form contained on the Eportal as may be amended from time to time in accordance with the Procurement Process;
Template Project Agreement	means the Template MIM Education Project Agreement and/or Template Design and Build Development Agreement, as the context requires;
Template Project Co Shareholders' Agreement	means the Template Project Co Shareholders' Agreement to be set out in Section 4 of Schedule 7 of the Strategic Partnering Agreement substantially in the form contained on the Eportal as may be amended from time to time in accordance with the Procurement Process;
Template WEPCo Shareholders' Agreement	means the Template WEPCo Shareholders' Agreement to be set out in Section 3 of Schedule 7 of the Strategic Partnering Agreement substantially in the form contained on the Eportal as may be amended from time to time in accordance with the Procurement Process;
Tendered Element	has the meaning given to it in the Strategic Partnering Agreement;
Tender Process	has the meaning given to it in the Strategic Partnering Agreement;

Track Record Test		has the meaning given to it in the Strategic Partnering Agreement;
Welsh Government		means the government of Wales, established pursuant to the Government of Wales Act 2006;
Welsh Ministers		means the Welsh Ministers, appointed pursuant to Section 48 of the Government of Wales Act 2006 and their successors;
WEPCo or the Welsh Education Partnership		means the joint venture corporate entity to be established by WGCo and the Selected Bidder, that will be the partly responsible, under the Strategic Partnering Delivery Model for, amongst other matters, delivery of Partnering Services;
WEPCo Shareholders' Agreement		means the shareholders' agreement among the PSDP, WEPCo and WGCo, the form of which will be appended to the Strategic Partnering Agreement substantially in the form contained on the Eportal as may be amended from time to time in accordance with the Procurement Process;
WEP Partnering Model	Strategic Delivery	has the meaning given in 1.1.1;
WGCo		means the public sector equity shareholder in WEPCo, as defined in the Strategic Partnering Agreement and being a subsidiary of the Development Bank of Wales.

1. BACKGROUND AND STRATEGIC CONTEXT

1.1 Overview of WEP Strategic Partnering Delivery Model

- 1.1.1 This Descriptive Document outlines the scope of the Procurement for a private sector delivery partner (the PSDP), to partner with Welsh Government and specified local authorities and further education institutions (as Participants), in respect of the delivery of new projects for education and certain community facilities in Wales (the **WEP Strategic Partnering Delivery Model**).
- 1.1.2 The PSDP will be required to establish a joint venture special purpose vehicle (known as the WEPCo), which will be 80% owned by the PSDP and 20% owned by a subsidiary of the Development Bank of Wales (known as WGCo).
- 1.1.3 The Participants will enter into a Strategic Partnering Agreement with the newly formed WEPCo, under which WEPCo will be required to provide various 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.
- 1.1.4 The Participants have identified a programme of revenue funded 21st Century Schools and Colleges (Band B) Programme projects for delivery through the WEP Strategic Partnering Delivery Model, on an "exclusive" basis. A draft programme is attached at Appendix 2 of this Descriptive Document. Participants will also have the option to deliver, design and build capital projects for education facilities and Community Services through the arrangement, where these projects meet specific criteria. Community Services could include, leisure services, library services, or other educational community based services strategically related to 21st Century Schools and Colleges (Band B) Programme projects, within Wales.
- 1.1.5 This Descriptive Document outlines: details of the scope of the Procurement; the Procurement Process (including the anticipated timetable and use of the competitive dialogue procedure); the requirements of the Contracting Authority; and the award criteria and weighting.

1.2 Key Outcomes and Well-being of Future Generations (Wales) Act 2015

- 1.2.1 The WEP Strategic Partnering Delivery Model has been structured to achieve the following primary outcomes:
 - 1.2.1.1 To improve the efficiency and delivery of education and community based facilities across Wales, as a whole;
 - 1.2.1.2 To create a partnering arrangement for the delivery of the Well-being of Future Generations (Wales) Act 2015, to improve the social economic, environmental and cultural well-being of Wales;
 - 1.2.1.3 To deliver economies of scale;
 - 1.2.1.4 To make the best use of public resources;

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

1.2.2 The Well-being of Future Generations (Wales) Act 2015 (the "**Act**") is key legislation in Wales, which focuses on how public bodies can improve the social, economic, environmental and cultural well-being of Wales. The Act puts in place seven well-being goals:

- 1.2.2.1 a prosperous Wales;
- 1.2.2.2 a resilient Wales;
- 1.2.2.3 a healthier Wales;
- 1.2.2.4 a more equal Wales;
- 1.2.2.5 a Wales of cohesive communities;
- 1.2.2.6 a Wales of vibrant culture and thriving Welsh language; and
- 1.2.2.7 a globally responsible Wales.

1.2.3 The Contracting Authority has sought to develop the requirements of the Procurement in light of Participants' duties under the Act. As required under the Act, the Contracting Authority is seeking to develop a strategic relationship that promotes:

- 1.2.3.1 working together better;
- 1.2.3.2 involving people reflecting the diversity of their communities;

- 1.2.3.3 looking to the long term as well as focusing on now; and
- 1.2.3.4 taking action to try and stop problems getting worse - or even stop them happening in the first place.

1.3 Purpose of the Descriptive Document, Contract Notice and Selection Questionnaire

- 1.3.1 The intent of the Contract Notice, this Descriptive Document and the Selection Questionnaire is to permit the Contracting Authority to identify suitably qualified and experienced Economic Operators to be invited to participate in dialogue in respect of the Procurement.
- 1.3.2 The Procurement was advertised by the Contracting Authority in a prior information notice in the OJEU published on 22 February 2019 with reference number 2019/S 038-085633 and in the Sell2Wales portal, www.sell2wales.gov.wales on 21 February 2019 with reference number WA Ref:89961; and was further advertised in a prior information notice in the OJEU published on 1st July 2019 with reference number 2019/S 124-302925 and in the Sell2Wales portal, www.sell2wales.gov.wales on 1st July 2019 with reference number WA Ref:93422.
- 1.3.3 The Contracting Authority now wishes to progress with a competition for the Procurement.
- 1.3.4 The competition for the Procurement was advertised by the Contracting Authority in a contract notice in the OJEU and in the Sell2Wales portal, www.sell2wales.gov.wales.
- 1.3.5 The Contracting Authority's needs and requirements in respect of the Procurement are identified in the Contract Notice and this Descriptive Document.
- 1.3.6 The information contained in the Descriptive Document is given in good faith for the guidance of Economic Operators in completing their SQ Responses. No warranty or representation of any kind is given as to the accuracy or completeness of such information. Neither the Contracting Authority nor their advisers shall be liable for any errors, omissions or lack of specificity in such information. Any reliance on or use of any information contained within the Descriptive Document is entirely at the risk of each Economic Operator.
- 1.3.7 Economic Operators shall be responsible for carrying out their own review and checks to satisfy themselves as to the adequacy and correctness of the information provided in or referred to in the Descriptive Document, before relying on and using such information as part of any SQ Response.
- 1.3.8 No information provided in the Descriptive Document shall be construed as forming part of the Strategic Partnering Agreement.
- 1.3.9 Any reference herein to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time.

- 1.3.10 Bidders shall not place any reliance on verbal discussions, clarification and responses provided, or thought to have been provided, by the Contracting Authority at any briefings or at any point during the Procurement Process unless and until such responses are confirmed in writing by the Contracting Authority on contract award or issued as an addendum to this Descriptive Document or the ITPDSB.
- 1.3.11 Further details on the Selection Questionnaire are included in Section 8 of this Descriptive Document.
- 1.3.12 On 29 March 2017, the UK Government triggered Article 50 and formally began the process of the withdrawal of the UK from the European Union. At the time of the commencement of this Procurement, the timing of the UK's withdrawal from the European Union is unclear, though the UK and EU have agreed to extend the exit deadline to 31 October 2019. The Contracting Authority continues to consider the implications of the UK's withdrawal from the EU and reserves the right to amend the ITPDSB and any documents referred to therein during the Procurement Process, in order to give effect to any necessary changes arising as a consequence of such withdrawal.

2. CONTRACTING AUTHORITY'S REQUIREMENTS

2.1 Public Sector Participants

2.1.1 Subject to contract, the following local authorities and further education colleges have confirmed their intent to enter into the Strategic Partnering Agreement, alongside the Welsh Government:

- 2.1.1.1 Adult Learning Wales;
- 2.1.1.2 Blaenau Gwent County Borough Council;
- 2.1.1.3 Bridgend College;
- 2.1.1.4 Bridgend County Borough Council;
- 2.1.1.5 Caerphilly County Borough Council;
- 2.1.1.6 Cardiff and Vale College;
- 2.1.1.7 Cardiff Council;
- 2.1.1.8 Carmarthenshire County Council;
- 2.1.1.9 Ceredigion County Council;
- 2.1.1.10 Coleg Cambria;
- 2.1.1.11 Coleg Ceredigion;
- 2.1.1.12 Coleg Gwent;
- 2.1.1.13 Coleg Sir Gar;
- 2.1.1.14 Coleg y Cymoedd;
- 2.1.1.15 Conwy County Borough Council;
- 2.1.1.16 Denbighshire County Council;
- 2.1.1.17 Flintshire County Council;
- 2.1.1.18 Gower College Swansea;
- 2.1.1.19 Grwp Llandrillo Menai;
- 2.1.1.20 Grwp NPTC Group;
- 2.1.1.21 Gwynedd Council;
- 2.1.1.22 Isle of Anglesey County Council;
- 2.1.1.23 Merthyr Tydfil College;
- 2.1.1.24 Merthyr Tydfil County Borough Council;

- 2.1.1.25 Monmouthshire County Council;
- 2.1.1.26 Neath Port Talbot College;
- 2.1.1.27 Neath Port Talbot Council;
- 2.1.1.28 Newport City Council;
- 2.1.1.29 Pembrokeshire County Council;
- 2.1.1.30 Powys County Council;
- 2.1.1.31 Rhondda Cynon Taf County Borough Council;
- 2.1.1.32 Swansea Council;
- 2.1.1.33 Torfaen County Borough Council;
- 2.1.1.34 Vale of Glamorgan Council; and
- 2.1.1.35 Wrexham County Borough Council.

2.2 Strategic Partnering Agreement

2.2.1 The draft Strategic Partnering Agreement is a Welsh Government standard form document that is available on the Eportal, together with the following schedules:

- 2.2.1.1 Template MIM Education Project Agreement (Schedule 7 of the Strategic Partnering Agreement) which includes:
 - (a) Authority's Construction Requirements (Section 3 of Schedule 6 of the Template MIM Education Project Agreement);
 - (b) Service Level Specification (Section 1 of Schedule 12 of the Template MIM Education Project Agreement); and
 - (c) Payment Mechanism (Schedule 14 of the Template MIM Education Project Agreement);
- 2.2.1.2 Template Education Design and Build Development Agreement (Schedule 7 of the Strategic Partnering Agreement);
- 2.2.1.3 Template WEPCo Shareholders' Agreement (Schedule 7 of the Strategic Partnering Agreement); and
- 2.2.1.4 Template Project Co Shareholders' Agreement (Schedule 7 of the Strategic Partnering Agreement).

2.3 Exclusive Partnering Services and Project Services

2.3.1 Under the terms of the Strategic Partnering Agreement, WEPCo will have the sole and exclusive right and obligation for the initial ten (10) year term of the Strategic Partnering Agreement to provide all the services which comprise the Ongoing Partnering Services and the Project Development Partnering Services to each of the Participants. In respect of the Project Development Partnering Services, such exclusivity relates to Qualifying Projects only (see description at Section 2.3.3 below).

2.3.2 WEPCo shall also have the sole and exclusive right for the initial ten (10) year term of the Strategic Partnering Agreement to provide itself, or nominate its wholly owned Subsidiaries or, in the case of MIM Projects nominate a PSDP Related Party, to provide Project Services (in each case as Project Service Provider) to each of the Participants in relation to those Qualifying Projects that become Approved Projects within such period. A Participant shall then contract with WEPCo or its nominees under a Project Agreement for the provision of Project Services in relation to all such Qualifying Projects which become Approved Projects.

2.3.3 Qualifying Projects are:

2.3.3.1 the following "Identified Projects":

- (a) Coleg Gwent MIM project, estimated capex £56,000,000 (ex VAT);
- (b) Colleg Sir Gar MIM project, estimated capex £25,000,000 (ex VAT);
- (c) Neath Port Talbot College MIM project, estimated capex £30,000,000 (ex VAT);
- (d) Cardiff and Vale College MIM project, estimated capex 47,000,000 (ex VAT); and

2.3.3.2 all other 21st Century Schools and Colleges (Band B) MIM Programme projects, where such project has been identified by a Participant as being required to enable them to provide education based services in Wales.

2.3.4 The anticipated 21st Century Schools and Colleges (Band B) MIM Programme is attached at Appendix 2 and remains subject to Welsh Government approval.

2.3.5 WEPCo's exclusivity may be suspended where:

2.3.5.1 WEPCo has failed a Track Record Test; or

2.3.5.2 A WEPCo Event of Default (as defined in the Strategic Partnering Agreement) has occurred. For example where a 'Project Co Event of Default' or 'D&B Co Event of Default' has occurred under a Project Agreement, there is a Significant Performance Failure of WEPCo KPIs or any Project Service

Provider becomes insolvent or fails to terminate supply chain agreements as required under a Project Agreement.

2.4 Optional Partnering Services and Project Services

2.4.1 WEPCo will have no right or obligation, but may be requested by any Participant to provide:

2.4.1.1 Strategic Support Partnering Services;

2.4.1.2 Ongoing Partnering Services and/or Project Development Partnering Services after the initial ten (10) year term of the Strategic Partnering Agreement; and/or

2.4.1.3 Project Development Partnering Services in respect of potential New Projects which are not Qualifying Projects but are requested by a Participant in connection with the Project Services described at Section 2.4.2.1 or 2.4.2.3 below.

2.4.2 WEPCo will have no right or obligation, but may be requested by any Participant in certain circumstances to provide itself, or nominate its wholly owned Subsidiaries, or, in the case of MIM Projects to nominate a PSDP Related Party, to provide (in each case as Project Service Provider) to the Participants' Project Services in relation to:

2.4.2.1 capital projects identified by a Participant as required for the provision of Education Sector Services (where such projects have been expressly designated and formally approved under a Strategic Outline Programme) and/or Community Services in Wales;

2.4.2.2 Qualifying Projects that become Approved Projects after the expiry of the initial ten (10) year term of the Strategic Partnering Agreement, where the contract period is extended; and

2.4.2.3 FM Services that are not provided as part of any Qualifying Project but may be required in connection with the capital projects referred to at Section 2.4.2.1.

2.5 Scope of Partnering Services and Project Services

2.5.1 Partnering Services include:

2.5.1.1 **Ongoing Partnering Services**, being constant or recurrent Partnering Services that include:

(a) partnering and collaborative working with the Strategic Partnering Board;

(b) Partnering Service supply chain establishment and overall management; and

- (c) The achievement of value for money through effective monitoring, measurement and management.

2.5.1.2 **Project Development Partnering Services**, being Partnering Services provided by WEPCo in connection with the development of New projects and including:

- (a) New Project development and delivery through the New Project Approval Process (summarised in Fig.1 and Fig.2 below);
- (b) Supply chain establishment for New Projects through a Tender Process, including funding; and
- (c) the achievement of value for money in the delivery of New Projects.

2.5.1.3 Strategic Support Partnering Services, including:

- (a) strategic estate planning;
- (b) service planning; and
- (c) the achievement of value for money in the delivery of support services.

2.5.2 Broadly, the type of facilities that that could be delivered with the support of WEPCo through Project Services under the Strategic Partnering Agreement include:

2.5.2.1 schools, to include all levels of education from nursery through to sixth form (including nursery, primary, secondary, sixth form and any combination of the above);

2.5.2.2 further education colleges, including all types of educational facilities that provide further vocational training; and

2.5.2.3 community facilities that are strategically connected with specific 21st Century Schools and Colleges (Band B) Programme facilities approved to be delivered under the Strategic Partnering Agreement, including but not limited to facilities for leisure services, library services and other educational community based services to the public, within Wales.

2.5.3 Where Project Services are MIM Projects, they must be delivered by a newly formed special purpose vehicle, not WEPCo or its subsidiaries. The new special purpose vehicle, Project Co, will enter into a Project Agreement with the relevant Participant to deliver the relevant MIM Project. Where Project Services are capital projects or FM services, WEPCo and/or its subsidiaries may enter into agreements for the delivery of such capital projects and/or FM services directly with the relevant Participant.

- 2.5.4 The total estimated value of the Project Services and Partnering Services to be procured is between one billion pounds sterling (£1,000,000,000) (excluding VAT) and one billion, five hundred million pounds sterling (£1,500,000,000) (excluding VAT). The maximum aggregate value of all Project Services and Partnering Services that can be procured under the Strategic Partnering Agreement is one billion, five hundred million pounds sterling (£1,500,000,000) (excluding VAT). Both capital and revenue expended in respect of Project Services under the Strategic Partnering Agreement is to be accounted for in such sums.
- 2.5.5 A Strategic Development Plan (as defined in the Strategic Partnering Agreement) will guide the delivery of the Project Services. Its current remit the Identified Projects and the projects in the draft MIM programme but is under ongoing review/development. The SDP will constantly be under review and subject to development, however its remit shall remain at all times within the scope of services to be provided under the Strategic Partnering Agreement, including Clause 9 (Exclusive Nature of this Agreement).

2.6 Partnering Services and Project Services - Supply Chain Assembly

- 2.6.1 WEPCo is required to establish its supply chain for delivery of the Partnering Services which can either be delivered through a development service agreement between WEPCo and a party holding an interest in WEPCo or by appointing a supplier to WEPCo, for example in respect of technical elements of development work. WEPCo may have a number of these agreements in place considering the range of New Projects that might come to WEPCo from the Participants. The establishment of this supply chain on day one does not pre-determine the position for the next ten (10) years.
- 2.6.2 WEPCo will also be responsible for the establishment of the supply chain for a New Project or New Projects to ensure that services are provided by the most appropriate partner(s) and that optimal performance and value for money are achieved. A Participant may request supply chain assembly in respect of:
- 2.6.2.1 a New Project for a single facility;
 - 2.6.2.2 a New Project for a group or batch of facilities; or
 - 2.6.2.3 a group or batch of planned New Projects, in which case the Tender Process will be carried out in conjunction with the first of such New Projects, on terms that secure and maximise tangible benefits from repeat business and long-term business relationships.
- 2.6.3 The agreements that are awarded to Supply Chain Members at the conclusion of the supply chain assembly for New Projects shall be entered into by the relevant Project Service Provider.
- 2.6.4 Supply Chain Assembly and appointment of Project Service Providers for Approved Projects shall not be subject to a further EU regulated process (albeit that a form of competitive tendering process shall be followed in connection with the appointment of Supply Chain Members for Tendered Elements). The scope of Tendered Elements will be dialogued and it is anticipated that matters such as design and construction, funding, hard FM services, management services costs

and lifecycle will be included. This process must be conducted in a transparent and auditable manner, with clear selection criteria and evaluation methodologies, so as to demonstrate that any appointments of associates of the WEPCo, a B Shareholder Member or PSDP are at arms-length.

2.7 Partnering Service and Project Service Costs

2.7.1.1 Project Development Partnering Services are paid by way of Project Development Fees, estimated by WEPCo at Stage 1 of the New Project Approval Process using the Partnering Services Cost rates but subject to pre-agreed caps. Full recovery of costs is subject to the New Project becoming an Approved Project. Caps and rates are subject to adjustment on the terms set out in the Strategic Partnering Agreement.

2.7.1.2 Bidders will be required to submit a schedule of rates for Partnering Services within their Bid, together with caps on cost (on a staged basis) for the delivery of the Project Development Partnering Service for each New Project. Save for the Project Development Fees referred to above, the cost of Tendered Elements of New Projects will generally be established through the Tender Process for New Projects. However, Bidders will be required to submit a Nominal Blended Equity IRR for New Projects as part of their Bid. The Nominal Blended Equity IRR for New Projects will not be the subject of the Tender Process and will be capped for the first seven (7) years of the Strategic Partnering Agreement term.

2.7.1.3 See illustration at Fig.3 below by way of overview.

2.8 Project Development Partnering Services for MIM Projects

2.8.1 As noted above, Project Development Partnering Services for the development of New Projects may include the development of distinct categories of capital projects or MIM Projects. The Contracting Authority therefore requires Bidders to submit method statements and proposals for the delivery of Project Development Partnering Services within its Bid.

2.8.2 However, the successful delivery of MIM Projects in the education sector in Wales is a key objective of the Contracting Authority. The Contracting Authority therefore requires particular focus on Bidders' proposals for the delivery and implementation of MIM Projects through the New Project Approval Process, in order to meet Participant's requirements, including affordability requirements. Such proposals may include the approach to:

2.8.2.1 Preparation of a Stage 1 Submission to support a Participant's outline business case (or equivalent) for a MIM Project;

2.8.2.2 Preparation of a Stage 2 Submission to support a Participant's full business case (or equivalent) for a MIM Project;

2.8.2.3 Development of a funding solution and raising finance to deliver a MIM Project (including a senior debt funding competition);

- 2.8.2.4 Managing/optimising risk transfer to achieve certainty of delivery of MIM Projects;
- 2.8.2.5 Project managing a MIM Project up to financial close;
- 2.8.2.6 Assembly of Supply Chain Members, including but not limited to professional design team, construction contractor, hard facilities management provider and funders, that have the experience, resources and ability to deliver a MIM Project;
- 2.8.2.7 Optimising and clearly demonstrating value for money of proposed MIM Projects;
- 2.8.2.8 Development of concept designs and the carrying out of surveys in connection with the development of the construction works to be carried out under a Project Agreement; and
- 2.8.2.9 the nomination and establishment of Project Cos to contract with the relevant Participant for the delivery of a MIM Project.

2.9 Template Project Agreements

- 2.9.1 The Template MIM Education Project Agreement to be entered into by the relevant Participant and Project Service Provider for any approved education sector MIM Projects is available through the EPortal. Further context on the Template MIM Education Project Agreement is set out at Section 4 below.
- 2.9.2 A Template Design and Build Development Agreement to be entered into by the relevant Participant and Project Service Provider for the delivery of approved capital funded education sector projects is available through the EPortal.

2.10 Template WEPCo Shareholders' Agreement

- 2.10.1 The PSDP will be required to enter into a Template WEPCo Shareholders' Agreement with WGCo. The Template WEPCo Shareholders' Agreement will be entered into among WEPCo, 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.
- 2.10.2 The Template WEPCo Shareholders' Agreement sets out the rights attached to each class of share. It also contains limited protections for minority interests and "reserved matters" which require the prior consent of the holders of a majority of each class of material shareholder.
- 2.10.3 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.
- 2.10.4 Further details on the WEPCo structure are included at Section 3 below.

2.11 **Template Project Co Shareholders' Agreement**

2.11.1 For MIM Projects, the PSDP, the Project Co and WGCo will also enter into a template form of Project Co Shareholders' Agreement. The Template Project Co Shareholders' Agreement must be used on MIM Projects under the terms of the Strategic Partnering Agreement and is entered into by WGCo, the PSDP, Project Co and Hold Co. The terms of the Template Project Co Shareholders' Agreement are identical to the published MIM Shareholders' Agreement (dated March 2017), 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.

2.11.2 It is expected Project Co will be wholly owned by Hold Co in the usual way and the shareholdings in Hold Co will be as follows:

2.11.2.1 WGCo - 15 to 20% Shares; and

2.11.2.2 PSDP - 80 to 85% Shares.

2.12 **Building Information Modelling**

2.12.1 The use of Building information modelling is embedded within the WEP Strategic Partnering Delivery Model.

2.12.1.1 In line with Welsh Government policy and recognising the efficiencies and benefits which can be derived from the adoption of building information modelling, the Contracting Authority requires the adoption of Level 2 BIM on the WEP Strategic Partnering Delivery Model.

2.12.1.2 The creation of a digital information management processes across the WEP Strategic Partnering Delivery Model will maintain consistency in information delivery throughout the term of the Strategic Partnering Agreement and throughout the term of New Projects.

2.12.2 The Contracting Authority's principal objectives in its strategy for BIM adoption on New Projects procured under the WEP Strategic Partnering Delivery Model are:

2.12.2.1 the creation of appropriate and accurate asset registers for projects procured under the Strategic Partnering Agreement;

2.12.2.2 the efficient management of programme and project data on a day to day basis;

2.12.2.3 the smooth transition from project development and design (under the Strategic Partnering Agreement) through design, construction, commissioning, and operation of each new facility;

2.12.2.4 to support Welsh Government's aspirations to achieve betterment in:

- (a) capital and whole life cost of built assets via efficiency driven reduction;
- (b) sustainable delivery;
- (c) project delivery timescales; and

2.12.2.5 to provide Participants with access to up to date information on buildings at all times during the Project Term, including handback of responsibility for building maintenance (on termination or at the end of the Project Term) and following completion of construction of facilities.

2.12.3 The Contracting Authority's requirements for achievement of its strategy and objectives for BIM adoption are set out in more detail in Appendix 3.

2.13 Assurance and Sign Off of Construction in Projects

The Contracting Authority wishes to dialogue on how to embed and assure high standards in relation to the construction aspects of MIM projects especially in relation to ongoing monitoring during construction and appropriate testing and monitoring during handover and commissioning of the building prior to the commencement of operations. The Contracting Authority wishes to dialogue on how Bidders would scope the roles of a clerk of works, the Independent Tester and an additional M&E commissioning engineer to ensure optimisation of building quality and its performance in use. Draft scopes will be provided for consideration and mark up during dialogue. The Selected Bidder's solution will be incorporated into the Template Project Documents (including the Template Design and Build Development Agreement, to the extent applicable) prior to signature.

Fig.1

Stage 1 and Stage 2 Process – NON PATHFINDERS

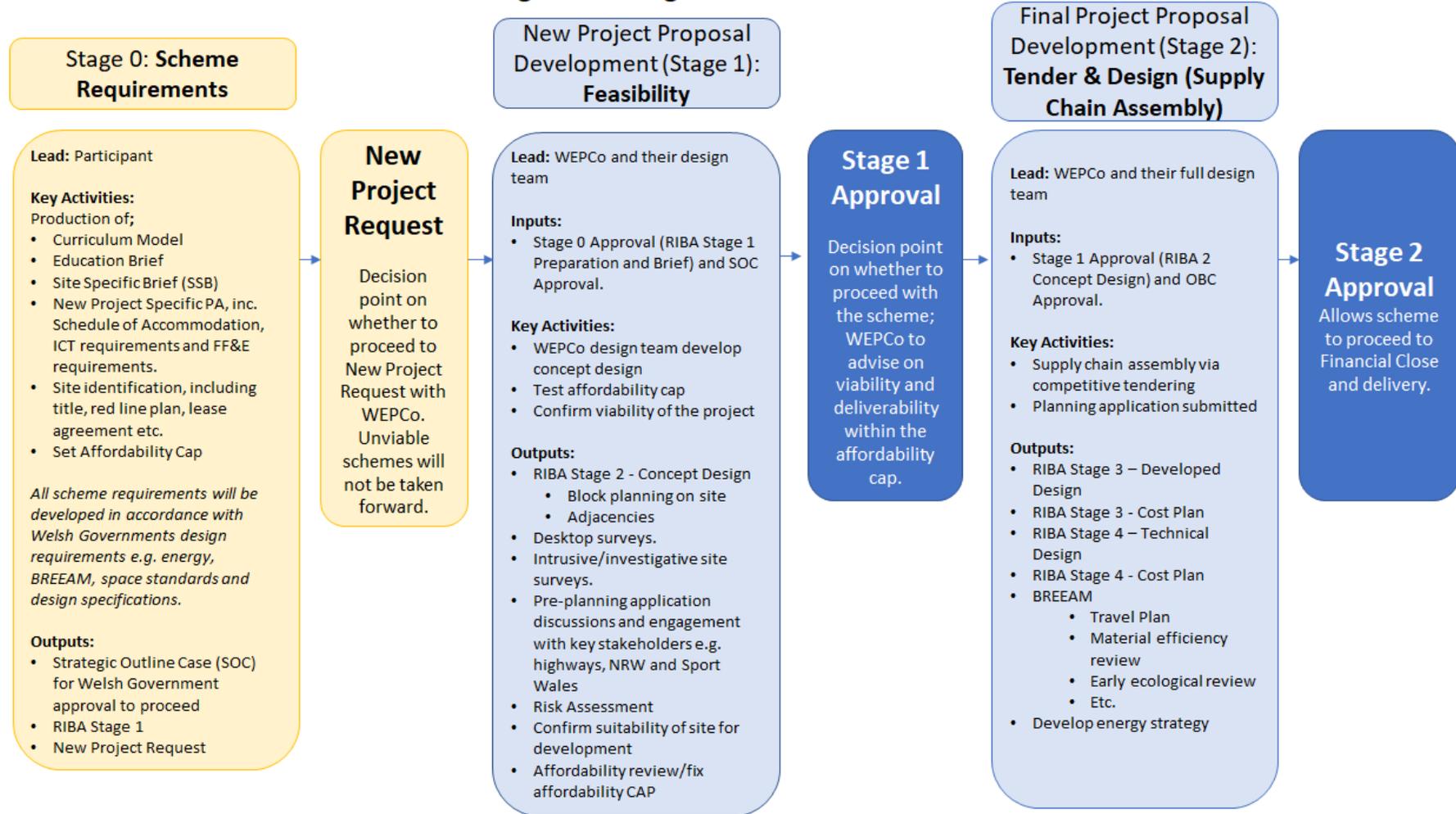


Fig.2

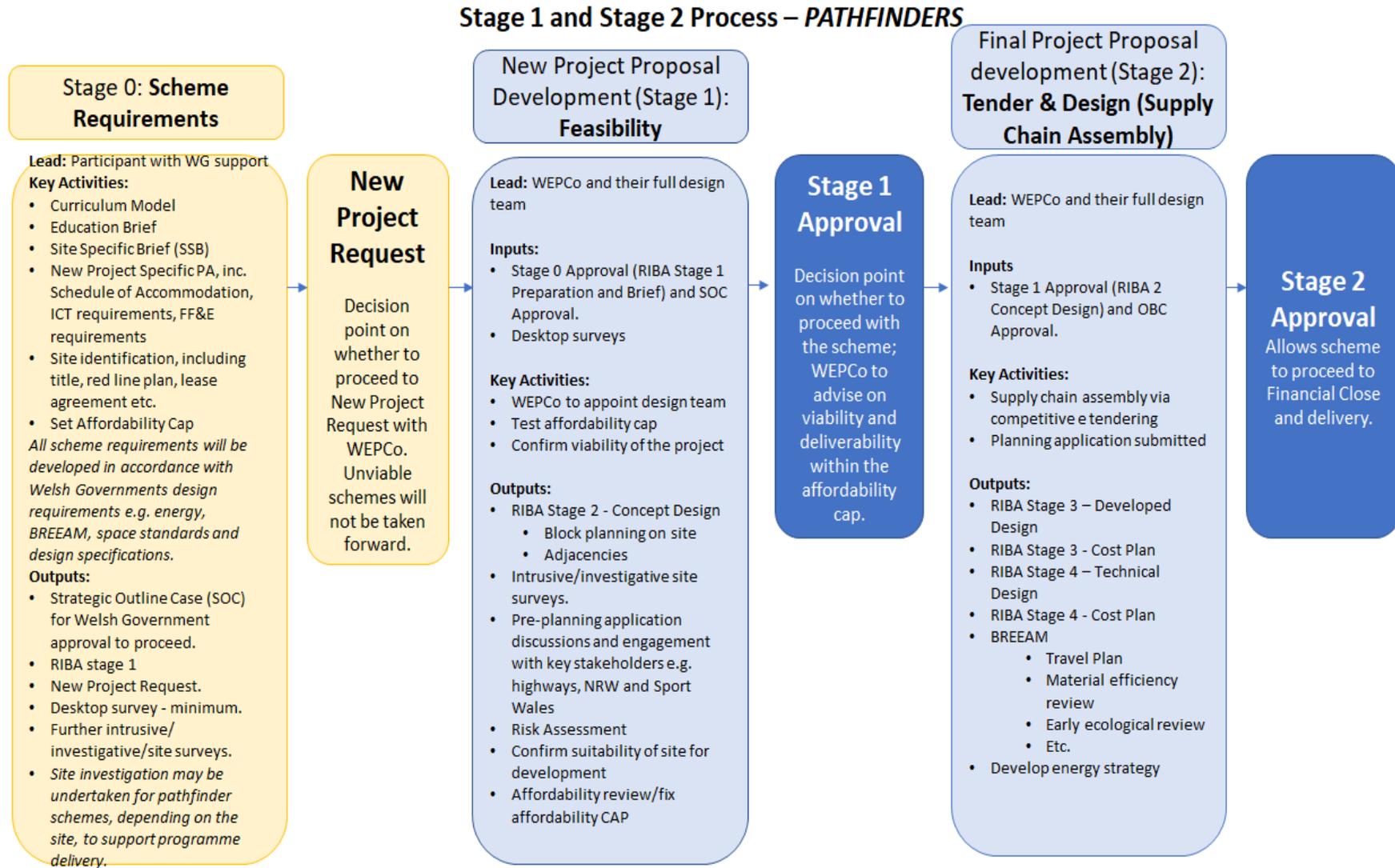
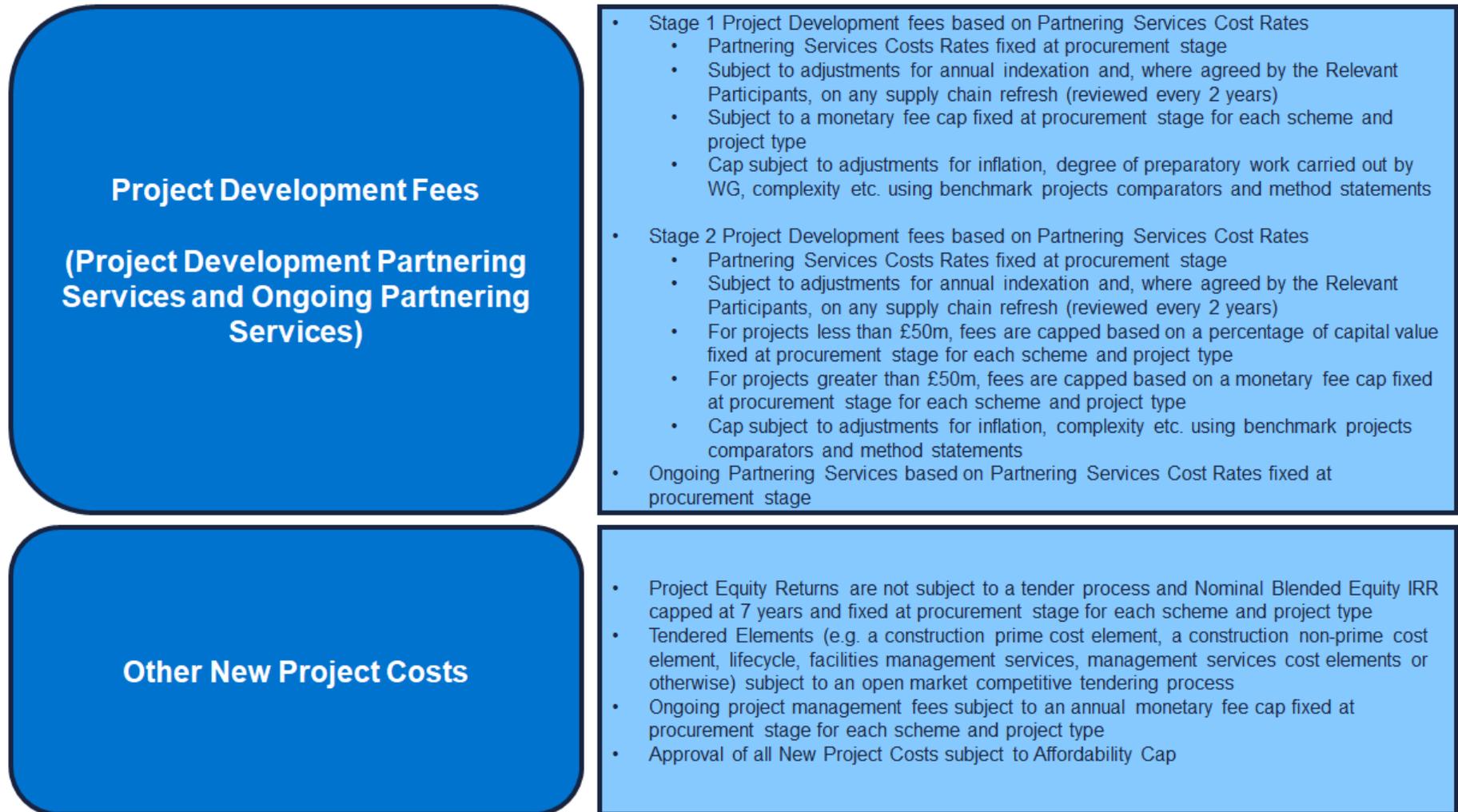


Fig.3



3. WEPCO STRUCTURE

3.1 WEPCo shall:

3.1.1 be an incorporated company with an anticipated private-public sector 80:20 equity split (the public-sector shareholding being held by WGCo);

3.1.2 be the subject of and a party to the WEPCo Shareholders' Agreement; and

3.1.3 be a signatory to the Strategic Partnering Agreement and provide Partnering Services and Project Services to Participants.

3.2 Where Project Services are MIM Projects, they must be delivered by a newly formed special purpose vehicle, not WEPCo or its subsidiaries. The new special purpose vehicle, Project Co, will enter into a Project Agreement with the relevant Participant to deliver the relevant MIM Project. Where Project Services are capital projects or FM services, WEPCo and/or its subsidiaries may enter into agreements for the delivery of such capital projects and/or FM services directly with the relevant Participant.

3.3 Diagram 1 below provides a simple visual of key aspects of the WEP Strategic Delivery Model structure.

3.4 The WEP Co Business Plan

3.4.1 The activities and projects to be undertaken by WEPCo will be governed by a business plan which is refreshed on an annual basis.

3.4.2 An initial business plan (to cover the first five (5) years) will be developed through the procurement of the PSDP and incorporated into the Template WEPCo Shareholders' Agreement. The initial business plan should include, as a minimum:

3.4.2.1 the resourcing requirements for WEPCo (including salaries, overheads and consultants fees);

3.4.2.2 business objectives and targets;

3.4.2.3 income forecasts, based on the Identified Projects and draft 21st Century Schools and Colleges (Band B) MIM Programme; and

3.4.2.4 the working capital requirements to finance the day to day running costs of WEPCo.

3.4.3 The business plan will be a key part of the overall proposals to be put forward by the PSDP in terms of the financials, expected running costs and general details on the general operations of WEPCo.

3.4.4 Participants may require the delivery of New Projects which are capitally funded and are subject to a Template Design and Build Development Agreement. WEPCo will be precluded from delivering any scheme funded by the capital element under the 21st Century Schools and Colleges (Band B) Programme until September 2024.

3.5 Resourcing of WEPCo

- 3.5.1 The day to day resourcing of WEPCo will be explored during the Dialogue Period. WGCo is not expecting to provide resources for the day to day activities of WEPCo, save for in respect of its role on WEPCo board.
- 3.5.2 Where Bidders propose that the day to day activities of WEPCo will be carried out by a general manager/partnership director (or equivalent role) as part of their overall solution, it is envisaged that this will be a cost to WEPCo.

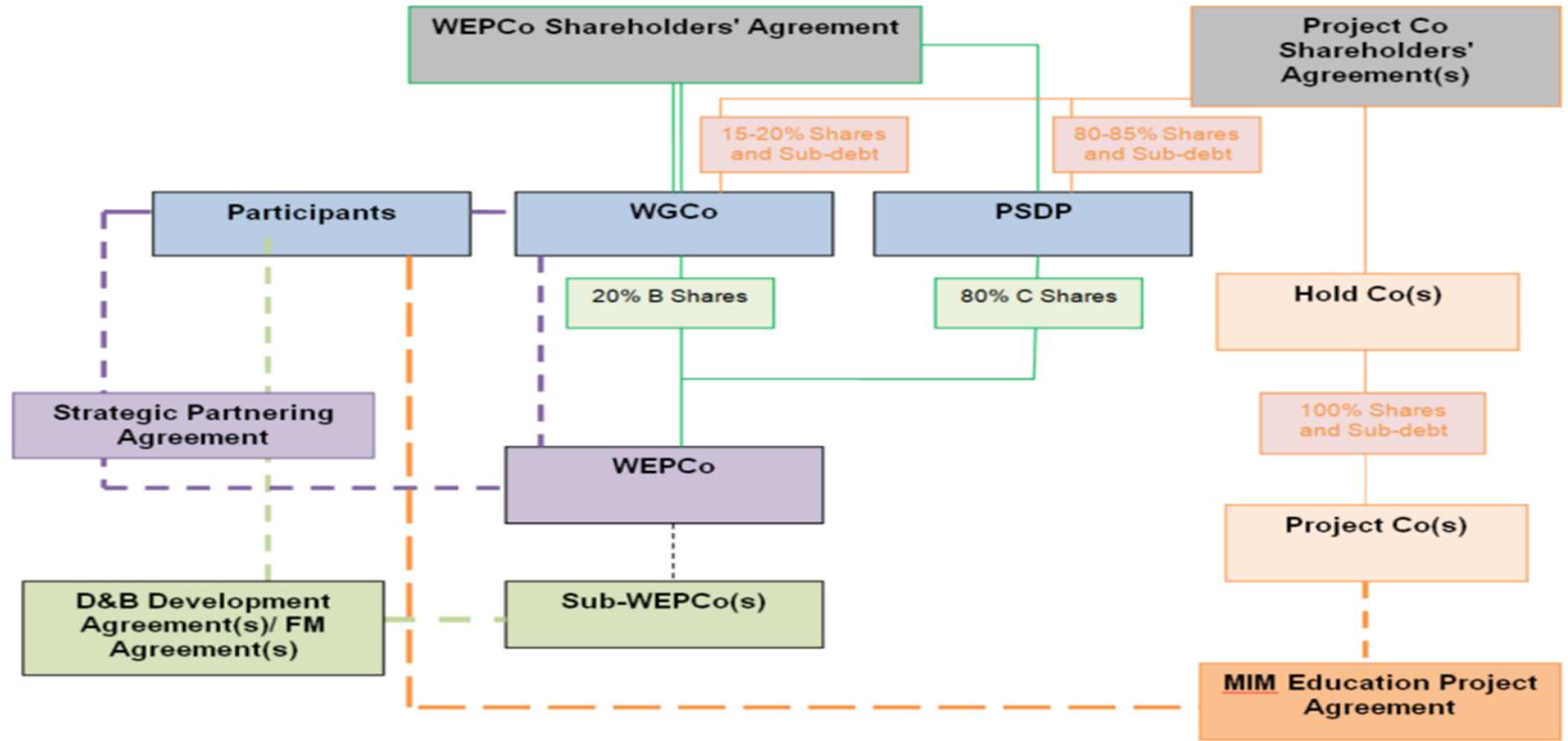
3.6 Management services to WEPCo arrangements

- 3.6.1 Bidders may propose that WEPCo enters into one or more Management Services Agreements under which the PSDP (or one of the Economic Operators comprising the PSDP) may provide services to WEPCo, in connection with WEPCo's obligations under the Strategic Partnering Agreement and pursuant to the WEPCo Shareholders' Agreement.
- 3.6.2 Where a Bidder anticipates that WEPCo will sub-contract its obligations through a form of contract or contractual arrangements to the PSDP (or one of the Economic Operators comprising the PSDP), Bidders should provide details during the Procurement Process.

3.7 Working capital requirements for WEPCo

- 3.7.1 WEPCo's working capital shall be regulated by the WEPCo Shareholders' Agreement and, where relevant, a working capital agreement. A form of working capital agreement is set out in Schedule 10 (Working Capital Agreement) of the Template WEPCo Shareholders' Agreement.
- 3.7.2 It is envisaged that WEPCo shall provide 80% of WEPCo's working capital and the remaining 20% will be provided by WGCo. It will however be open for Bidders to put forward their own proposals on WEPCo's working capital.

Diagram 1: WEP Strategic Partnering Delivery Model Structure

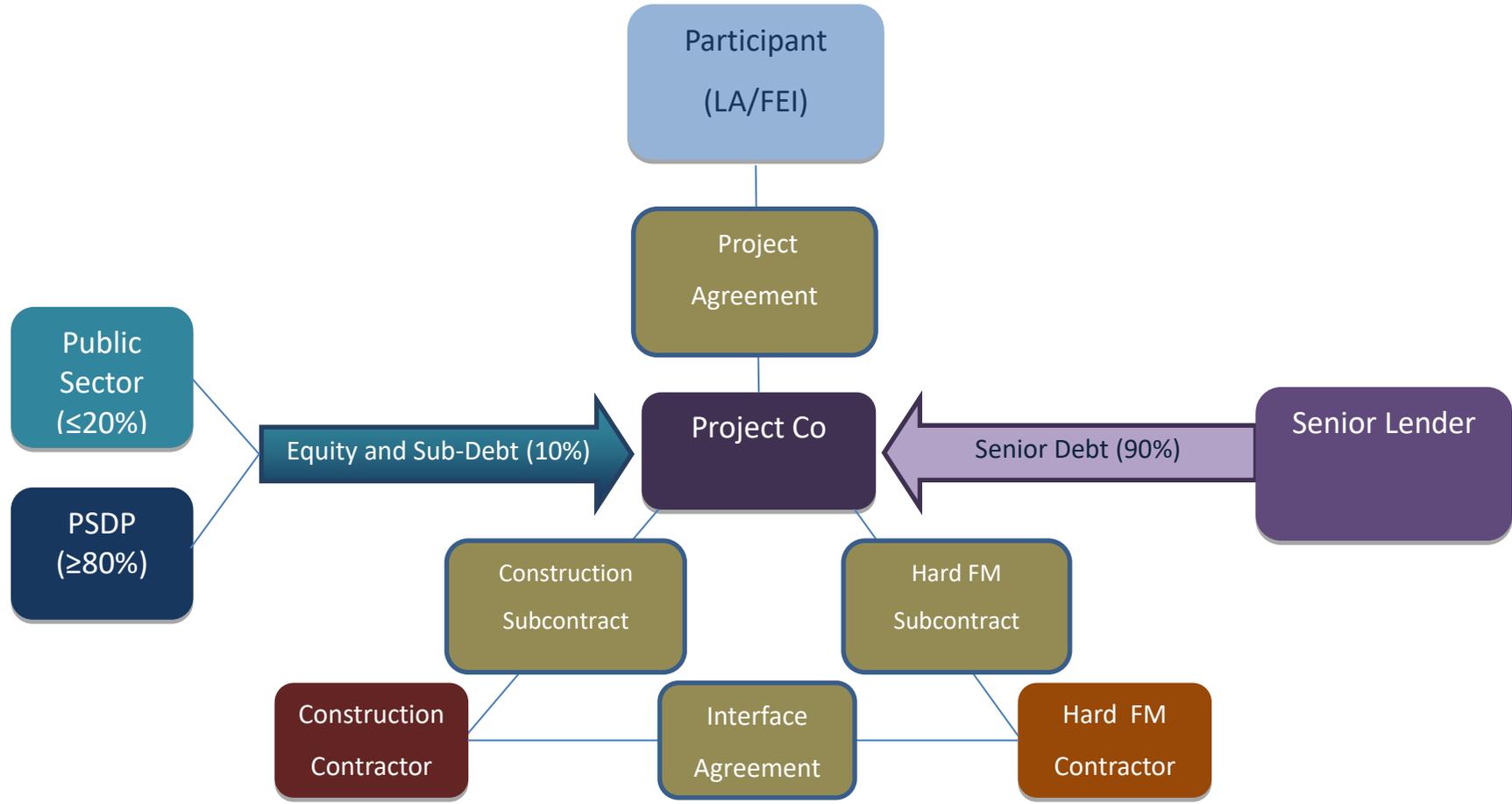


4. MUTUAL INVESTMENT MODEL PROJECTS

- 4.1 The WEP Strategic Partnering Delivery Model is being procured in the first instance to deliver education schemes that qualify for revenue funding under the MIM. The Template MIM Education Project Agreement is to be used for the delivery of MIM Projects in the education sector. MIM Projects should provide "off government debt" solutions (as classified under ESA 10 guidelines).
- 4.2 MIM provides for a contracting approach that builds upon the learning and knowledge of other UK PPP models but is tailored to meet the specific needs of the Welsh Government's infrastructure programme, Welsh Government policy, Welsh Government equity participation and Council Regulation (EU) No 549/13 on the European system of national and regional accounts in the European Union, together with related Statistical Treatment Guidance.
- 4.3 The Welsh Government's approach has generally been to:
 - 4.3.1 promote maximum value for money through commercially reasonable risk transfer that fits with Welsh policy and Statistical Treatment Guidance; and
 - 4.3.2 minimise transaction costs by using UK precedent and standard project agreements, adjusted as appropriate to reflect the above principles.
- 4.4 "Taking Wales Forward" is the Welsh Government's five (5) year strategic plan, setting out the programme and priorities which Welsh Ministers want to deliver over the 2016-2021 term of government. The central focus of "Taking Wales Forward" is to deliver real improvements in the everyday lives of people in Wales and for future generations. Priorities include: the improvement of Welsh healthcare services; continuing to invest in new and refurbished schools, community schools and college buildings by investing nearly £2 billion by 2024; and continuing to invest in better connectivity across Wales by promoting major transport infrastructure projects.
- 4.5 MIM was formally launched by the Welsh Government on 28 February 2017 and is seen as playing a useful role in "Taking Wales Forward", as procurement of projects using the MIM will drive improvement in public services and deliver a Wales which is prosperous and secure, healthy and active, ambitious and learning, united and connected.
- 4.6 MIM is based on traditional PPP structures but with the following core principles embedded:
 - 4.6.1 an emphasis on wider community benefits;
 - 4.6.2 enhanced stakeholder involvement;
 - 4.6.3 public sector equity investment;
 - 4.6.4 no soft services; and
 - 4.6.5 effective and efficient contract management by the public sector.
- 4.7 A summary of the MIM contract structure and associated payments is provided in the diagram 2 below.

- 4.8 The Template MIM Project Agreement to be used for education sector MIM Projects delivered under the Strategic Partnering Agreement has been developed from the MIM Standard Form Project Agreement (Accommodation Version), Version 1 published in March 2017. It has been developed to reflect sector specific requirements, legislative changes, changes in policy requirements and to meet the needs of the WEP Strategic Partnering Delivery Model.

Diagram 2: MIM Project Structure



5. THE PROCUREMENT PROCESS

5.1 Use of the Competitive Dialogue Procedure

- 5.1.1 The competition for the Procurement will be conducted in accordance with the provisions of the Regulations.
- 5.1.2 The Contracting Authority has satisfied itself that, in terms of the Regulations, it can use the competitive dialogue procedure. Accordingly, the Procurement will be conducted using the competitive dialogue procedure.
- 5.1.3 Evaluation of each Bid will be undertaken by the 21st Century Schools and Colleges Team, local authority and further education college representatives with support from financial, legal and technical advisers in accordance with the Regulations and the evaluation criteria referred to in this Descriptive Document.
- 5.1.4 Throughout the Procurement Process the Contracting Authority will work to the following principles.
 - 5.1.4.1 ensuring equality of treatment amongst all Bidders;
 - 5.1.4.2 respecting Bidder's commercially confidential proposals;
 - 5.1.4.3 establishing a clear and structured timetable with a Dialogue Meeting agenda and objectives agreed in advance; and
 - 5.1.4.4 requiring a proportionate level of input from Bidder's to appropriately evaluate Bidder's proposals.
- 5.1.5 This section provides an overview of how the Contracting Authority intends to structure the Procurement Process. Economic Operators intending to submit an SQ Response should refer to the Selection Questionnaire available through the EPortal and Section 8 of this Descriptive Document for the particular rules applicable to that stage of the Procurement Process.

5.2 Overview of the Competitive Dialogue Procedure

- 5.2.1 It has been decided by the Contracting Authority that following publication of the Contract Notice, the competitive dialogue procedure for the Procurement will be structured in the following successive stages:
 - 5.2.1.1 prequalification and shortlisting using the Selection Questionnaire;
 - 5.2.1.2 the ITPDSB issued to three (3) shortlisted Economic Operators (if sufficient compliant SQ Responses are received);
 - 5.2.1.3 Dialogue Meetings and interim submissions;
 - 5.2.1.4 Draft Bid and Boot Camp;
 - 5.2.1.5 close of dialogue and submission of Bids;
 - 5.2.1.6 evaluation of Bids;

- 5.2.1.7 Selected Bidder appointment;
- 5.2.1.8 Relevant Standstill Period; and
- 5.2.1.9 establishment of WEPCo, and entry into the Template WEPCo Shareholders' Agreement and execution of Strategic Partnering Agreement (and associated documents).

5.3 **Bidders' Day**

- 5.3.1 As advertised <https://www.eventbrite.com/e/education-strategic-partner-procurement-market-information-day-tickets-63976860512> the Contracting Authority will hold a Bidders' Day for the Procurement on 18 July 2019 at voco St David's Hotel Cardiff, Havannah Street, Cardiff CF10 5SD ("**Bidders' Day**").
- 5.3.2 At this Bidders' Day, the Contracting Authority will provide information to Economic Operators in respect of the scope of the Procurement, the Contracting Authority's requirements for the Procurement, timetable for the Procurement Process and other key information about the scope of the Procurement.
- 5.3.3 The relevant documents which should be accessed in advance of the Bidders' Day, including the Selection Questionnaire, can be accessed through the EPortal.

5.4 **Prequalification and Shortlisting**

- 5.4.1 Economic Operators are required to complete the Selection Questionnaire and provide all information required. SQ Responses shall be provided by Economic Operators to the Contracting Authority in accordance with the instructions provided in the Selection Questionnaire.
- 5.4.2 SQ Responses shall be evaluated in accordance with the evaluation process set out in the Selection Questionnaire, on the basis of each Economic Operator's economic and financial standing, technical and professional ability to deliver the Procurement.
- 5.4.3 If there are sufficient numbers of Economic Operators suitable to be selected to participate in the competitive dialogue, then the Contracting Authority would limit the number of Economic Operators to be invited to participate in the competitive dialogue to three, subject to those Economic Operators satisfying the minimum levels of economic and financial standing and/or technical and professional ability identified in the Selection Questionnaire. The three Economic Operators will be selected in accordance with the shortlisting procedure identified in the Selection Questionnaire.
- 5.4.4 Shortlisted Economic Operators will each receive a letter of intention to invite participation in the competitive dialogue and will be asked at that time, as a condition of participating in the competitive dialogue, to sign a confidentiality and non-collusion undertaking which is set out at the Appendix 1 to this Descriptive Document. Access to the Data Room will only be provided once the Contracting Authority has received a duly signed confidentiality and non-collusion undertaking in accordance with the letter of intention to invite participation in the competitive dialogue.

5.5 The Dialogue Period and Model Projects

- 5.5.1 The detailed procedure for submission of Bids and the content and operation of Dialogue Period meetings will be set out in the ITPDSB once formally issued at commencement of dialogue. An indicative procurement timeline is set out at 5.9 below.
- 5.5.2 The Procurement Process to select the PSDP includes the requirement to submit proposals with reference to model projects. The site-specific brief for each of the two the model projects to be used by Bidders will be set out in the Data Room (the "**Model Projects**"). The Model Projects shall provide assessment models that are representative of education facilities that can be delivered over the term of the Strategic Partnering Agreement and which remains relevant to the appointment of WEPCo irrespective of the number of MIM Projects initiated from the responses to the Model Projects.

5.6 Standstill

- 5.6.1 Subject to the Regulations and subject to the Contracting Authority's discretion to choose not to appoint a PSDP, the Contracting Authority shall by notice in writing, (the "**Award Decision Notice**"), as soon as possible after the decision has been made, inform all relevant Bidders of the Contracting Authority's decision to appoint a PSDP (as advertised by the Contract Notice). Such Award Decision Notice will include all information required by the Regulations and it is intended that such Award Decision Notice will be issued electronically to all such Bidders. The Contracting Authority will allow a period of at least ten (10) days to elapse between the date of despatch of such Award Decision Notice and the date on which the Contracting Authority and the PSDP form WEPCo and enter into the WEPCo Shareholders' Agreement (in advance of WEPCo entering into the Strategic Partnering Agreement with the Contracting Authority and the Participants, along with all other associated documents) (the "**Relevant Standstill Period**"). The date on which the Relevant Standstill Period will end will be stated in the Award Decision Notice.
- 5.6.2 The unsuccessful Bidders shall also be entitled to request a debriefing from the Contracting Authority.

5.7 Appointment of PSDP

- 5.7.1 Following expiry of the Relevant Standstill Period, or shortly after, and subject to the Contracting Authority's discretion to choose not to appoint a PSDP, the Selected Bidder will be appointed as the PSDP, and will be required to form WEPCo and enter into the WEPCo Shareholders' Agreement (in advance of WEPCo entering into the Strategic Partnering Agreement with Participants, along with all other associated documents).

5.8 Contract Award Criteria

- 5.8.1 The full details relating to the evaluation of bids (including the methodology and criteria) will be set out in the ITPDSB. As an overview, in determining the award of contract, the award criteria which shall be used to determine which Bid (after passing an initial compliance stage) is the most economically advantageous tender shall be a combination of:

Headline Evaluation Criteria	Weighting
Quantitative Elements	30%
Qualitative Elements	70%

5.8.2 The evaluation of the Quantitative Elements will be weighted as follows:

Summary of Evaluation Criteria (Quantitative Elements)			
Bid Requirements	Sub-Requirements	Bid Requirements Weighting	Sub-Requirements Weighting
G. Financial Element (Quantitative)	G1. WEPCo working capital requirements	100%	20%
	G2. Project equity returns		40%
	G3. Project management fees		10%
	G4. Stage 1 Project Development Fees caps		10%
	G5. Stage 2 Project Development Fees caps		10%
	G6. Partnering Services Cost Rates		10%

5.8.3 The evaluation of the Qualitative Elements will be weighted as follows:

Summary of Evaluation Criteria (Qualitative Elements)			
Bid Requirements	Sub-Requirement	Bid Requirements Weighting	Sub-Requirements Weighting
A. Partnership	A1. The Business Plan	10%	7.5%
	A2. Methodology for effective Board, Shareholder relationship, reporting		2.5%
B. Development: WEPCo Operation	B1. Model Project Development Appraisals (two submissions).	25%	10.0%
	B2. Development of Project Development Partnering Services Method Statements,		10.0%

Summary of Evaluation Criteria (Qualitative Elements)			
Bid Requirements	Sub-Requirement	Bid Requirements Weighting	Sub-Requirements Weighting
	including Method Statements for producing Stage 1 and Stage 2 Submissions and the Tender Process Methodology.		
	B3. Ongoing Partnering Service Method Statements		2.0%
	B4. KPIs		3.0%
	B5. Strategic Support Partnering Services Method Statement		Pass/Fail
C. Technical Works and Services	C1. Quality Assurance and Compliance of the Built Environment Method Statement	20%	5%
	C2. Energy Strategy Method Statement		5%
	C3. BIM Strategy Method Statement		2.5%
	C4. Change Management Method Statement		2.5%
	C5. Template MIM Project Agreement - Contracting Authority's Construction Requirements		2.5%
	C6. Template MIM Project Agreement - Service Level Specification		2.5%
D. Community Benefits	D.1.1. Acceptance of Community Benefit Requirement KPIs	5%	Pass/Fail
	D.1.2. Method statements for Community Benefit Requirement KPIs		Pass/Fail

Summary of Evaluation Criteria (Qualitative Elements)			
Bid Requirements	Sub-Requirement	Bid Requirements Weighting	Sub-Requirements Weighting
	D.2.1 CBR Enhancements		1.0%
	D.2.2. Method statements for CBR Enhancements		1.0%
	D.3.1 Additional Benefit proposals		1.0%
	D.3.2. Method statements for Additional Benefits		2.0%
E. Legal Evaluation	E1. Draft Strategic Partnering Agreement	10%	5%
	E2. Template MIM Education Project Agreement		3%
	E3. Template Education Design & Build Development Agreement		1%
	E4: Template SHAs		1%
F. Financial Evaluation (Qualitative)	F1. WEP Co working capital and resourcing plan	30%	5%
	F2. Approach to setting returns		10%
	F3. Approach to raising finance		10%
	F4. Payment Mechanism		5%

5.9 Indicative Procurement Timeframe

5.9.1 The illustrative dates for key anticipated milestones for the Procurement Process are identified below, and these dates may be amended by the Contracting Authority from time to time (at the Contracting Authority's absolute discretion).

Matter	Date(s)
Final Date for Clarifications	16 August 2019
Final SQ Return Date	9 September 2019
Issue of ITPDSB to Bidders	21 October 2019
Commencement of Dialogue	28 October 2019
Christmas Break	18 December 2019 - 5 January 2020
Continuation of Dialogue	6 January 2020
Return of Draft Bid Submission	14 February 2020
Recess	17 February 2020 to 28 February 2020
Boot camp	2 March 2020 to 19 March 2020
Close of Dialogue	20 March 2020
Return of Final Bids	9 April 2020
Evaluation of Bids	10 April 2020 to 24 June 2020
Appointment of Selected Bidder	25 June 2020
Standstill	26 June 2020 to 6 July 2020
Following formation of WEPCo, signature of WEPCo Shareholders' Agreement	September 2020
Signature of Strategic Partnering Agreement	September 2020

6. COMMUNITY BENEFITS POLICY CONTEXT

6.1 Community Benefits in Wales

6.1.1 The provision of Community Benefits through investment in public infrastructure is a key policy driver for the Welsh Government and it is one in which Wales has led the way in UK and European procurement.

6.1.2 The Welsh Government therefore actively seeks to derive benefits for communities through the WEP Strategic Partnering Delivery Model. The scale of the WEP Strategic Partnering Delivery Model has significant potential to drive greater social value and enhance private sector contributions to training, skills learning and education across Wales.

6.1.3 Diagram 3 below sets out the Welsh Government's primary community benefit policy objectives.

Diagram 3: Primary Policy Objectives



6.1.4 The Welsh Government's approach seeks to deliver social, economic and environmental benefit through the effective application of its Community Benefits policy as an integral consideration in the procurement of WEPCo.

6.1.5 Traditionally, Community Benefits have been of particular relevance to capital infrastructure developments in Wales. However, the MIM now requires the delivery of Community Benefits for all of its (revenue funded) schemes. The Welsh Government has been actively developing its approach to Community Benefits in this context and intends to align its approach across projects to be delivered directly through the MIM programme and projects (both capital and MIM) to be delivered through the WEP Strategic Partnering Delivery Model, subject to sector, value and project specific considerations.

6.1.6 Additionally, in approaching Community Benefits under the WEP Strategic Partnering Delivery Model, the Welsh Government is keen to take due account of benefits that can be derived from the long term strategic partner arrangement at Strategic Partnering Agreement level, as well as traditional benefits that can be

derived through individual Project Service Providers and the delivery of the New Projects under the Strategic Partnering Agreement.

6.1.7 Community Benefits form a cornerstone of the Welsh Government procurement policy and the Wales Procurement Policy Statement requires the public sector in Wales to 'apply Community Benefits to all public sector procurements where such benefits can be realised'.

6.1.8 Section 60 of the Government of Wales Act 2006 provides the express powers required to allow inclusion of Community Benefit requirements:

- (1) *The Welsh Ministers may do anything which they consider appropriate to achieve any one or more of the following objects:-*
- (a) *the promotion or improvement of the economic well-being of Wales,*
 - (b) *the promotion or improvement of the social well-being of Wales, and*
 - (c) *the promotion or improvement of the environmental well-being of Wales.*
- (2) *The power under subsection (1) may be exercised in relation to or for the benefit of:-*
- (a) *the whole or any part of Wales, or*
 - (b) *all or any persons resident or present in Wales.*

6.1.9 These powers underpin public sector bodies 'well-being' duties under the Act. The well-being goals set out in section 4 of that Act are summarised at Diagram 4 below. A public body must set and publish well-being objectives designed to achieve its well-being goals and take all reasonable steps to meet those objectives.

6.1.10 Welsh Government's primary policy objectives include:

- 6.1.10.1 recruitment and training of unemployed and economically inactive people;
- 6.1.10.2 creating new apprenticeships, particularly for young people aged 16-24 who are NEET, and providing opportunities for experience for existing apprentices;
- 6.1.10.3 delivering educational initiatives, such as engagement with local schools;
- 6.1.10.4 delivering educational initiatives, such as promotion of STEM subjects and career workshops on trades and professional services encompassed within the New Project operations;
- 6.1.10.5 developing supply chain initiatives that support opportunities for SMEs, social enterprises and the third sector;

- 6.1.10.6 delivering community initiatives, to support community engagement, regeneration and leaving a lasting legacy within the community; and
- 6.1.10.7 minimising the adverse environmental impact of projects and, wherever possible, making a positive impact on the environment and, by extension, the health and well-being of local people.

Diagram 4 Well-being of Future Generations (Wales) Act 2015 Goals

Goal	Description of the goal
A prosperous Wales	An innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including acting on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work.
A resilient Wales	A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change).
A healthier Wales	A society in which people's physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood.
A more equal Wales	A society that enables people to fulfil their potential no matter what their background or circumstances (including their socio economic background and circumstances).
A Wales of cohesive communities	Attractive, viable, safe and well-connected communities.
A Wales of vibrant culture and thriving Welsh language	A society that promotes and protects culture, heritage and the Welsh language, and which encourages people to participate in the arts, and sports and recreation.
A globally responsible Wales	A nation which, when doing anything to improve the economic, social, environmental and cultural well-being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being.

6.1.11 At Strategic Partnering Agreement level, WEPCo's obligations will include the delivery of specified Community Benefit outcomes that will be measured by reference to KPIs under Schedule 3 of the Strategic Partnering Agreement. These KPIs will relate to outcomes from delivery of the Ongoing Partnering Services by WEPCo and outcomes from the delivery of the Project Development Partnering Services (i.e. securing commitments to Community Benefits from the supply chain through the delivery of Approved Projects).

- 6.1.12 WEPCo will be tested during the term of the Strategic Partnering Agreement on its ability to deliver Community Benefit Requirement KPIs, CBR Enhancements and Additional Benefits at WEPCo level and its ability to facilitate commitment to Authority's Community Benefit Requirements KPIs, ACBR Enhancements and Additional Community Benefit Project Co Proposals at Project Service Provider level. WEPCo will be obliged to monitor and report on performance against the specified KPIs at Strategic Partnering Agreement level and such performance will form part of the Track Record Test. Failure of the Track Record Test can lead to suspension of exclusivity or exclusion of responsible Supply Chain Members from bidding for New Projects. Welsh Government intends to dialogue the full scope and extent of KPIs with Bidders during dialogue and the approach will be the subject of evaluation, as described at Section 6.2 below.
- 6.1.13 In recognition of the obligation on WEPCo to procure commitment to certain KPIs through the delivery of New Projects, the KPI framework will also be stepped down to Clause 29 and Schedule 29 of the Template Project Agreements, where appropriate. Similarly, the Project Service Provider will then be obliged to monitor and report on performance against the specified KPIs and will be subject to financial lump sum payments for failure to deliver, at Project Agreement level. However, such payments shall be the sole and exclusive remedy available to the Relevant Participant for non-compliance (and will not count towards payment mechanism deductions or termination triggers on MIM Projects).

6.2 Evaluating Community Benefit KPIs during the Procurement Process

- 6.2.1 The approach to evaluation of the Community Benefit KPIs in the Strategic Partnering Agreement is broadly as follows:

6.2.1.1 Community Benefit Requirement KPIs

- (a) KPIs associated with the delivery of the Ongoing Partnering Services and Project Development Partnering Services by WEPCo are set out in column 2 of Table 3 of the Appendix to Section 3 of Schedule 3 of the Strategic Partnering Agreement.
- (b) The KPIs at column 2 of Table 3 of the Appendix to Section 3 of Schedule 3 of the Strategic Partnering Agreement will also include:
- (i) **Authority's Community Benefit Requirement KPIs (Project Agreement level)** - procuring commitment by Project Service Providers to specified Authority's Community Benefit Requirement KPIs at Project Agreement level. The volume of Authority Community Benefit Requirement KPIs that WEPCo must procure Project Service Providers commit to on Approved Projects, is determined by reference to the formula in the Template Project Agreement e.g. the number of person weeks of training and/ or apprentices to be provided per million pounds of capex.

- (ii) **ACBR Enhancements (Project Agreement level)** - to use the Tender Process to procure and evaluate, on a value for money basis, commitments by Project Service Providers to higher volumes of the Authority's Community Benefit Requirement KPIs (by way of ACBR Enhancements) at Project Agreement level.
 - (iii) **Additional Benefits (Project Agreement level)** - to use the Tender Process to procure and evaluate, on a value for money basis, commitments by Project Service Providers to Additional Community Benefit Project Co Proposals at Project Agreement level.
- (c) Acceptance of these KPIs will be evaluated on a pass/fail basis. The Bidders' Ongoing Partnering Services Method Statements and Project Development Partnering Services Method Statements for achievement of such KPIs will also be evaluated on a pass/fail basis.

6.2.1.2 CBR Enhancements

- (a) Bidders will be invited to commit to higher levels of the Community Benefit Requirement KPIs at Strategic Partnering Agreement level, to be delivered by WEPCo in respect of the Ongoing Partnering Services and Project Development Partnering Services.
- (b) The increased value of Community Benefits at Strategic Partnering Agreement level and the Bidder's Ongoing Partnering Method Statements and Project Development Partnering Services Method Statements for delivery will be scored in evaluation.

6.2.1.3 Additional Benefits

- (a) Bidders will be invited to commit to additional KPIs for the delivery of Community Benefits through the Ongoing Partnering Services and/or Project Development Partnering Services. Bidders will be required to submit details of such offerings in their Ongoing Partnering Services Method Statements and/or Project Development Partnering Services Method Statements (as appropriate).
- (b) The value, scope and deliverability of the proposed Additional Benefits will be evaluated and scored where these meet the compliance criteria (i.e. they address the objectives of the Act and are tangible and measurable benefits linked to the subject matter of the agreement (within the meaning of Regulation 67(5) of the Regulations).

6.2.2 Welsh Government will attribute 5% of the overall evaluation score to Community Benefits.

6.3 Supply Chain and SMEs

6.3.1 The Contracting Authority's community benefit requirements are aimed at opening up opportunities for small organisations, such as SMEs and the third sector. Participants will therefore be required to:

6.3.1.1 demonstrate WEPCo's Supply Chain Assembly includes SME/supply chain opportunities; and

6.3.1.2 participate in "Meet the Buyer" events (which will be facilitated by the Contracting Authority).

6.3.2 In addition to Community Benefits, the Contracting Authority expects Economic Operators to maximise economic and environmental benefits through compliance with the following specific contractual requirements:

6.3.2.1 Clause 58.4 (Sub-Contractors) of the Template Project Agreement includes provision that when Project Co enters into a contract with a Sub-contractor for the purpose of carrying out the Project Operations, it must cause a term to be included in such sub-contract (and sub-contracts at all tiers) that requires payment to be made to the Sub-contractor within thirty days;

6.3.2.2 Section 2 (Records to be Kept) of Schedule 19 (Record Provisions) of the Template Project Agreement requires Project Co and its Sub-contractors (at all tiers) to have books of account available for inspection by the Contracting Authority on reasonable notice, including details of payments to Sub-contractors; and

Clause 27.9 (Position on expiry or earlier termination of this Agreement) of the Template Project Agreement requires that Project Co shall comply with the Ethical Employment Code and encourage all Sub-contractors to sign up.

7. PROCUREMENT PROCESS ASSURANCE AND ORGANISATIONAL STRUCTURE

7.1 Engagement with Stakeholders

7.1.1 As set out in Section 5.2 of this Descriptive Document, the Procurement will be conducted using the competitive dialogue procedure.

7.2 Welsh Government Approval:

7.2.1 Welsh Government approval will be required at key points of the procurement process including pre-OJEU, on down selection and on appointment of Selected Bidder. Ministerial approval is also required at key stages of the Procurement Process.

7.2.2 Key decisions will be made by the Education Strategic Investment Board on which sits both SROs as advised by the MIM Programme Director and other senior civil servants in Welsh Government.

7.2.3 External assurance will also be provided by a panel of experts at key stages to inform the Education Strategic Investment Board's recommendations to the Ministers under 7.2.4.

7.2.4 The Procurement involves two Government Departments, namely Welsh Treasury and Education. Final sign-off is therefore required at key stages from Minister for Finance and Trefnydd and the Minister for Education.

7.3 Contracting Authority Key Roles

7.3.1 The Contracting Authority has identified the following key roles to facilitate the delivery of the Procurement:

7.3.2 Senior Leadership Team

Senior Responsible Owner ("**SRO**"): Steve Davies (Director of Education) and Andrew Jeffreys (Director of Finance). The SRO owns the vision for the Procurement and provides clear leadership and direction and secures the investment required to set up and run the Procurement.

7.3.2.1 MIM Programme Director 21st Century Schools and Colleges: Sara Humber

The MIM Education Programme Director is a senior commercial lawyer with extensive PPP experience in education and other sectors. The MIM Education Programme Director reports to the SROs and is operationally accountable for the delivery of the Procurement including the competitive dialogue process.

7.3.2.2 21st Century Schools and Colleges MIM Education Finance Lead: Neil Okninski

The MIM Education Finance Lead is a qualified accountant with wide ranging PPP experience.

7.3.2.3 21st Century Schools and Colleges MIM Education Legal/Commercial Project Director: Richard White

The MIM Education Legal/Commercial Project Director is a senior qualified commercial lawyer with broad PPP delivery experience in education and other sectors.

7.3.2.4 21st Century Schools and Colleges MIM Education Commercial/Procurement Project Director: Graham Spence

The MIM Education Commercial/Procurement Project Director is highly experienced as a commercial director and has extensive experience of partnering arrangements, finance and procurement.

7.3.2.5 21st Century Schools and Colleges MIM Education Programme Manager: Charlotte Arnell

The MIM Education Programme Manager is an experienced project manager with extensive experience in competitive dialogue and structuring processes to enable programme delivery.

7.3.2.6 21st Century Schools and Colleges MIM Education Programme Administrator: Claire Habberfield

The MIM Education Programme Administrator is an experienced Welsh Government official who has extensive experience of the internal workings of Welsh Government and will assist the team.

7.4 Contracting Authority Advisors

7.4.1.1 The Contracting Authority has appointed the following professional advisers to support with the Procurement Process:

- (a) Technical: Gleeds
- (b) Legal: DLA Piper UK LLP
- (c) Financial: PwC
- (d) Insurance: Willis Towers Watson

8. SELECTION QUESTIONNAIRE

8.1 Selection Questionnaire and Evaluation

8.1.1 The Selection Questionnaire sets out the information which is required by the Contracting Authority in order to assess the suitability of Economic Operators to be shortlisted to participate in the competitive dialogue stage of the Procurement. The Selection Questionnaire also includes details of how SQ Responses will be evaluated at Appendices 2 and 3 of the Selection Questionnaire.

8.1.2 Any response to the SQ:

8.1.2.1 provides Economic Operators with the opportunity to demonstrate to the Contracting Authority that they satisfy the required levels of economic and financial standing and professional and technical ability in respect of the Procurement;

8.1.2.2 allows Economic Operators to describe their relevant experience on previous projects;

8.1.2.3 provides the Contracting Authority with appropriate information on Economic Operator's relevant Partnering Sub-contractors, Consultants and Financial Support Providers (if applicable); and

8.1.2.4 provides the Contracting Authority with comparable information about each Economic Operator in a consistent and structured manner.

8.1.3 The Contracting Authority advises Economic Operators to read the Contract Notice, Descriptive Document and SQ carefully to ensure they are fully aware of the Contracting Authority's requirements.

8.1.4 The information which each Economic Operator shall be required to provide in respect of its SQ Response is set out in the SQ.

9. FURTHER RULES RELATING TO THE PROCUREMENT

9.1 Freedom of Information

9.1.1 Economic Operators should be aware that, whilst the Contracting Authority (and Participant(s), where relevant) shall use reasonable endeavours to hold information submitted to the Contracting Authority as confidential information or commercial information (where such categorisation or marking is indicated by the Economic Operator at the time when such information is submitted to the Contracting Authority), this shall be subject to the Contracting Authority's and the Participant's obligations under law and may need to be disclosed and published by the Contracting Authority (and/ or a Participant). The Contracting Authority may disclose such confidential or commercial information to Participants. Without prejudice to the foregoing generality, the Contracting Authority and Participants are subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. This means that any person who makes a valid request for information held by the Contracting Authority or Participants will be entitled to receive it, unless all or part of that information can be withheld as a result of one or more of the exemptions or exceptions in the relevant legislation. The decisions of the Contracting Authority or Participant(s) (as applicable) in the interpretation of the relevant legislation shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms, subject to determination of an appeal against any agreement or refusal to release any information by the Information Commissioner.

9.1.2 The Contracting Authority and/ or Participants may be required to disclose information (including commercial information or confidential information) in circumstances including but not exclusive to the following:

9.1.2.1 for purposes connected with the exercise of the Contracting Authority's and/ or Participant's functions, including:

- (a) any audit or examination of the Contracting Authority's and/ or Participant's accounts or the use of its resources; and
- (b) scrutiny by the National Assembly for Wales (or any of its committees or sub-committees) or any other department, office or agency of the Welsh Government and/or Her Majesty's Government in Wales or the United Kingdom, and their servants or agent, of the exercise of its functions;

9.1.2.2 for the purposes of:

- (a) the prevention or detection of crime;
- (b) the apprehension or prosecution of offenders;
- (c) any regulatory or investigatory activity;
- (d) any legal obligation (including any order of a court of competent jurisdiction); or

- (e) seeking legal, accounting, tax or other professional advice for the purposes of the Procurement Process;
 - 9.1.2.3 which is or becomes public knowledge (otherwise than by virtue of a failure to comply with the terms of this Descriptive Document);
 - 9.1.2.4 in accordance with the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 in response to a request for information made to the Contracting Authority or a Participant; and
 - 9.1.2.5 in compliance with any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure.
- 9.1.3 Economic Operators should be aware that, when disclosing information in the manner described in Section 9.1.2 above, the Contracting Authority or Participant (as applicable) may be unable to impose any restriction upon the information provided to Elected Members of the National Assembly for Wales, or Members of the United Kingdom Parliament.
- 9.1.4 Accordingly, if any Economic Operator considers that any of the information included in the SQ Response is commercially sensitive or confidential this shall be identified with an explanation (in broad terms) of what prejudice or detriment might result from disclosure and/or publication. The Contracting Authority will then consult with the Economic Operator in considering any valid request received before replying to such request. It should be noted that even where an Economic Operator has indicated that information is commercially sensitive or confidential, the Contracting Authority (and/ or Participants, as applicable) may still choose to disclose this information.
- 9.1.5 Receipt by the Contracting Authority at any time of any material marked as commercially sensitive, confidential, commercial in confidence or equivalent should not be taken to mean that the Contracting Authority accepts any duty of confidence by virtue of that marking or be otherwise bound by that marking in handling any subsequent requests under the Freedom of Information Act 2000 or Environmental Information Regulations 2004.
- 9.1.6 Economic Operators should satisfy themselves as to the implications of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, and seek legal advice as necessary.

9.2 **Copyright**

- 9.2.1 The copyright in this Descriptive Document and the Selection Questionnaire and its related materials belong to the Contracting Authority.
- 9.2.2 Except for the purposes of participating in the Procurement Process, Economic Operators shall not reproduce the Descriptive Document in any form (including photocopying or storing by electronic means) without the specific written permission of the Contracting Authority.

9.2.3 The Descriptive Document (and any copies thereof and/or any supplemental documents issued at any time) is and shall remain the property of the Contracting Authority which is entitled to demand their return and/or destruction at any time.

9.3 Confidentiality

9.3.1 Clarifications sent to the Contracting Authority and responses thereto supplied by the Contracting Authority should be kept confidential and shall not be copied, reproduced, disclosed or distributed to others at any time by Economic Operators without the prior written consent of the Contracting Authority (other than to directors, officers, employees and professional advisers of the Economic Operator who need to know the confidential information contained therein, and only to the extent necessary for the purpose of evaluating whether or not and on what terms the Economic Operator might proceed with a more detailed review of the matters discussed in the Descriptive Document and provided that such persons undertake the same responsibilities as set out herein). Any party who the Contracting Authority considers is in breach of this requirement may be excluded from this Procurement Process, without prejudice to any other rights which the Contracting Authority may have.

9.3.2 The Contracting Authority may make detailed information relating to SQ Responses available for inspection by, or may otherwise disclose such information to, the Contracting Authority's directors, officers, employees, executive agencies, other government departments, agents, advisers, the School Entities, relevant Participants and their respective advisers.

9.4 Data Protection & NIS

9.4.1 The Bidder shall comply with its obligations as Data Controller under the provisions of the Data Protection Laws and grant the undertakings set out in the Confidentiality and Non-Collusion Letter attached at Appendix 1 to this Descriptive Document.

9.5 Publicity and Media Statements

9.5.1 Economic Operators shall obtain the Contracting Authority's prior written consent (on form, content and purpose) before any statements or other disclosures regarding the Descriptive Document, the SQ Response and the Economic Operator's participation in the Procurement Process generally are made to the press, media, industry journals or into any other public domain (including seminars, conferences and parties' own promotional or technical literature and internal and external intranet or website). Failure to obtain the Contracting Authority's prior written consent (at the Contracting Authority's absolute discretion) may result in curtailment of further participation in this Procurement Process or such other sanctions as the Contracting Authority considers appropriate. It shall be each Economic Operator's responsibility to ensure that any statement or disclosure, if consented to by the Contracting Authority, is used in a manner which does not depart materially from the form and content so consented.

9.6 Disqualification

9.6.1 Any breach of the requirements of this Section 9 shall entitle the Contracting Authority to disqualify the Economic Operator.

- 9.6.2 The Contracting Authority reserves the right to disqualify, in its absolute discretion, any Economic Operator, and thereby exclude them from participating in this Procurement Process, who is found by the Contracting Authority to have misrepresented information at any stage of this Procurement Process or, otherwise, who is determined by the Contracting Authority to have provided information or confirmations which prove to be untrue or incorrect. The Contracting Authority's decision on the matter shall be final and conclusive.
- 9.6.3 The disqualification of an Economic Operator will not prejudice any other civil remedy available to the Contracting Authority and will not prejudice any criminal liability that such conduct leading to the disqualification by an Economic Operator may attract.
- 9.6.3.1 The Contracting Authority shall disqualify any Economic Operator and thereby exclude them from participating further in this Procurement Process (without prejudice to any other civil remedies available to the Contracting Authority and without prejudice to any criminal liability which such conduct by an Economic Operator (or any party involved in its SQ Response) in connection with this Procurement, or the Project:
 - 9.6.3.2 offers any inducement, fee or reward to any member or officer, employee or, where relevant, member of the Contracting Authority, the School Entities or any relevant Participant or any person acting as an adviser to them in connection to the Project;
 - 9.6.3.3 does anything which would constitute a breach of section 117 of the Local Government Act 1972 or of the Bribery Act 2010;
 - 9.6.3.4 canvasses any of the persons referred to in paragraph 9.3.2 in connection with the Procurement; and/or
 - 9.6.3.5 contacts any officer, employee or, where relevant, member of the Contracting Authority, the School Entities or any relevant Participant prior to the appointment of a PSDP about any aspect of this Procurement in a manner not permitted by this Descriptive Document or the ITPDSB (including without limitation contact for the purposes of discussing the possibility of their future employment or engagement by the Economic Operator).

9.7 Revisions by the Contracting Authority to the Descriptive Document and Procurement Process

- 9.7.1 The Contracting Authority reserves the right to make revisions to any volume of the Descriptive Document (including the technical requirements for the Procurement and the, Template Project Agreement), Selection Questionnaire and ITPDSB (together with any associated documents) and/or the context, process, timing and structure of the Procurement Process at any time. No additional time in relation to submission deadlines for the SQ Responses will be granted, following notification of any such revision, unless the Economic Operators are expressly notified of any extension by the Contracting Authority.

9.8 No Liability for Costs

- 9.8.1 Each Economic Operator shall be solely responsible for all costs, expenses and liabilities incurred in connection with the Procurement Process including preparation and submission of any SQ Response, preparation and submission of any Draft Bid or Bid, attendance at Dialogue Meetings, preparation of deliverables for Dialogue Meetings and all related activities.
- 9.8.2 The Contracting Authority shall not, under any circumstances, be liable for any costs howsoever incurred by those participating in this Procurement Process or otherwise.

9.9 Discontinuance or Suspension of the Competition for the Procurement

- 9.9.1 The Contracting Authority may elect to discontinue or suspend the Procurement Process at any time without selecting any Bidder or a Selected Bidder. The Contracting Authority may do so without responsibility or liability to any Economic Operators, the Participants and the potential Selected Bidder resulting from such discontinuation or suspension, including any liability for any costs or expenditure incurred by, or inconvenience caused.
- 9.9.2 Should the Contracting Authority be required to suspend the Procurement Process, the Contracting Authority will issue instructions to Economic Operators regarding the expected duration of the suspension and other related matters.
- 9.9.3 The Contracting Authority reserves the right not to award the contract as a result of the Procurement Process.
- 9.9.4 In the event that at any stage an Economic Operator decides not to pursue its interest in the Procurement Process, that Economic Operator shall notify the Contracting Authority as soon as possible.

9.10 Conflict of Interest

- 9.10.1 Without prejudice to Part 2.3 of a SQ Response, Economic Operators are instructed to ensure that their participation in this Procurement Process, their appointment as Selected Bidder (if successful), and their use of any advisers, consultants or Sub-contractors has not and will not create any conflict of interest or any situation which might compromise the Contracting Authority's duty to manage an open, fair, non-discriminatory and competitive Procurement Process and the Contracting Authority's interests generally. Any conflict or potential conflict shall be reported in writing to the Contracting Authority immediately.
- 9.10.2 The declaration of a potential conflict of interest shall not result in automatic disqualification of an Economic Operator.
- 9.10.3 The Contracting Authority will assess the likelihood of any conflict of interest affecting the Procurement Process, taking into account the Economic Operator's proposal for dealing with the conflict of interest, in deciding whether or not to consider the Economic Operator ineligible to participate in this Procurement Process.

- 9.10.4 If it appears that the conflict of interest will affect the Procurement Process, the Contracting Authority will discuss the matter with the Economic Operator and seek to agree a method for dealing with the conflict of interest satisfactorily.
- 9.10.5 In the event that agreement is not reached on terms acceptable to the Contracting Authority, the Economic Operator may be disqualified by the Contracting Authority (at its absolute discretion) and excluded from further participating in this Procurement Process. The Contracting Authority's decision on the matter shall be final and conclusive.
- 9.10.6 In the event that an Economic Operator fails to declare such a conflict of interest or a potential conflict of interest, the Economic Operator may be disqualified by the Contracting Authority (at its absolute discretion) and excluded from further participating in this Procurement Process. The Contracting Authority's decision on the matter shall be final and conclusive.

9.11 Further information

- 9.11.1 If you have any queries about WEPCo generally or this procurement specifically, please address any correspondence and/or queries through the message portal on the EPortal.
- 9.11.2 Further rules and procedures, including in respect of clarifications prior to the dialogue period, are set out in the Selection Questionnaire.

9.12 Governing Law

- 9.12.1 The Procurement Process and all documentation referred to in this Descriptive Document will be subject to the laws of England and Wales and the exclusive jurisdiction of the courts of England and Wales.

APPENDIX 1 - CONFIDENTIALITY AND NON-COLLUSION LETTER

[TO BE TYPED ON WELSH GOVERNMENT LETTERHEAD]

[Insert Bidder Name and Address]

[20xx]

Dear Sirs

**WELSH GOVERNMENT (EDUCATION DEPARTMENT) FOR AND ON BEHALF OF THE PARTICIPANTS ("CONTRACTING AUTHORITY")
PROPOSED AWARD OF A CONTRACT FOR THE PROCUREMENT OF A PRIVATE SECTOR DELIVERY PARTNER IN RELATION TO THE WEP STRATEGIC PARTNERING DELIVERY MODEL ("CONTRACT")
CONTRACT REFERENCE: [***]**

Further to your selection as one of the Dialogue Bidders to proceed to the invitation to participate in dialogue and submit bids ("**ITPDSB**") stage of the Procurement Process, set out below are the confidentiality and non-collusion undertakings to be given by you to the Contracting Authority.

1. DEFINITIONS

In this letter, the following phrases have the meanings set out below:

- 1.1 "**Act**" means the Freedom of Information Act 2000;
- 1.2 "**Associate**" means:
 - 1.2.1 any subsidiary, holding company or subsidiary of a holding company of the Bidder [; and
 - 1.2.2 any other person who it is proposed should jointly bid with the Bidder, as part of a consortium or other joint bid; and
 - 1.2.3 any company formed or acquired to be formed or acquired by the Bidder and/or your Associates to bid for or enter into the Contract;] [**Note: Bidder to delete please if not relevant.**]
- 1.3 "**Authorised Disclosee**" means any Associate, Funder or Professional Adviser in respect of whom the requirements of paragraph 2.1.3 have been fully satisfied;
- 1.4 "**Bid**" means the written proposals submitted by a Bidder as part of the Procurement Process and in response to the bid requirements in the ITPDSB;
- 1.5 "**Bidder**" means [**Note: Bidder to insert name of company/ firm, registration details and registered office**];

- 1.6 **"Confidential Information"** means all information (whether disclosed orally, or in written, electronic or machine readable form) comprising or relating to:
- 1.6.1 the information contained in the ITPDSB and any associated documents, and any other information supplied to or by the Bidder as part of the Procurement Process (including clarifications);
 - 1.6.2 the terms of the proposed Contract to be entered into between the Winning Bidder and the Contracting Authority and any proposals (including any legal, financial, technical and insurance proposals) made by the Bidder, the Contracting Authority and/or any Contracting Authority Party in relation to the Contract or any discussions or arrangements, and proposed discussions or arrangements between any of the Contracting Authority Parties, the Contracting Authority and/or the Bidder in relation to the Project;
 - 1.6.3 any contracts or arrangements, proposed contracts or arrangements, discussions or negotiations between the Contracting Authority Parties inter se or between the Contracting Authority Parties or any of them and any other party involved in the Procurement Process or the Project;
 - 1.6.4 the terms of, or terms being sought in respect of, any licence, consent, authorisation, approval or certificate required for the purposes of the Project or any information relating to any application or negotiations relating to the same, or the terms on which any party has agreed to withdraw any objection to any application for such a licence, consent, authorisations, approval or certificate or to support, co-operate with or provide any land, supplies, works or services for the purposes of the Project;
 - 1.6.5 any information relating to the financial position, financial or business affairs or financial or business prospects of any Disclosing Party;
 - 1.6.6 any other negotiations, discussions, contracts, arrangements, specifications, plans or proposals of any Disclosing Party relating to any part of the Project or the Procurement Process; and
 - 1.6.7 any other information relating to any Disclosing Party or to the Project which is of evident commercial sensitivity to any Disclosing Party, other than any information which:
 - 1.6.7.1 is in the public domain or has otherwise been published other than due to a breach by the Bidder or any Disclosee of the terms of any Confidentiality Undertaking; or
 - 1.6.7.2 is proven to have been in possession of the Bidder or any Disclosee and freely disclosable by it prior to such disclosure other than due to a breach of any Confidentiality Undertaking;
- 1.7 **"Confidentiality Undertaking"** means any of the undertakings set out in this letter and any similar undertakings given by the Bidder in relation to the Procurement Process;
- 1.8 **"Contract"** means the contract to be entered into by the Contracting Authority, the Participants and the Winning Bidder in respect of the Project;

- 1.9 **"Contract Notice"** means the notice published by the Contracting Authority in the Official Journal of the European Union in relation to the competition for the procurement of the Contract dated [****];
- 1.10 **"Contracting Authority Party"** means any of the Contracting Authority or a Participant, and any advisers appointed by the Contracting Authority a Participant or any of Contracting Authority's or Participants agents, employees, consultants, contractors and sub-contractors of any tier and its or their directors, officers and employees, and **"Contracting Authority Parties"** shall be construed accordingly;
- 1.11 **"Data Controller"** has the meaning given to that term under the Data Protection Laws;
- 1.12 **"Data Protection Laws"** means the Law protecting the personal data of natural persons (including GDPR, the Data Protection Act 2018 and codes of practice issued from time to time by relevant supervisory authorities);
- 1.13 **"Dialogue Bidder"** means as the context requires, those economic operators who have been invited to participate in dialogue, invited to continue dialogue or invited to submit final tenders by the Contracting Authority in respect of the Project;
- 1.14 **"Disclosee"** means any Associate, Funder or Professional Adviser of the Bidder and any other person to whom Confidential Information is disclosed by or on behalf of the Bidder in accordance with the terms of the Confidentiality Undertaking;
- 1.15 **"Disclosing Party"** means such of the Contracting Authority and any Contracting Authority Party as may directly, or indirectly through the agency of any other party, disclose Confidential Information to the Bidder or its Associates, Funders or Professional Advisers;
- 1.16 **"Funder"** means [**Note: Bidder to delete/amend as appropriate**];
- 1.17 **"ITPDSB"** means the package of documents, issued to the Bidder in respect of the invitation to participate in dialogue and submit bids stage, as may be amended from time to time by the Contracting Authority, and shall include any supplemental documents issued as part of the ITPDSB stage of the Procurement Process;
- 1.18 **"NIS Regulations"** means the Network and Information Systems Regulations 2018 and all guidelines, guidance notes, codes of practice and codes of conduct issued from time to time by a Relevant Authority;
- 1.19 **"Participants"** means the public sector parties to the Contract (as listed in the Descriptive Document published with the Contract Notice);
- 1.20 **"Procurement Process"** means the competitive dialogue procedure adopted by the Contracting Authority for the procurement of the Project, including the prequalification and shortlisting, competitive dialogue participation in dialogue period meetings, submission of proposals in respect of dialogue period meetings, initial solutions, detailed solutions and final tenders and clarification and finalisation of the Contract and any other documents to be entered into under or in relation to the Contract;
- 1.21 **"Professional Adviser"** means any legal, financial, technical or other adviser retained by the Bidder or any Funder of the Bidder to advise in relation to the

Procurement Process, the Contract or the Project and "**Professional Advisers**" shall be construed accordingly;

- 1.22 "**Project**" the procurement of a PSDP to work with Participants on the delivery of education and community facilities in Wales;
- 1.23 "**PSDP**" means the private sector delivery partner who is the Winning Bidder;
- 1.24 "**Regulations**" means the Environmental Information Regulations 2004;
- 1.25 "**Relevant Authority**" means any court within the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom, or of the European Union, or of the Welsh Ministers or the National Assembly for Wales;
- 1.26 "**Reportable Incident**" means any incident or event arising in connection with the Procurement Process having an actual adverse effect on:
 - 1.26.1 an electronic communications network within the meaning of Section 32(1) of the Communications Act 2003;
 - 1.26.2 any device or group of interconnected or related devices, one or more of which, pursuant to a program, perform automatic processing of digital data; or
 - 1.26.3 digital data stored, processed, retrieved or transmitted by elements covered under paragraph (a) or (b) for the purposes of their operation, use, protection and maintenance,and which has a significant impact on the Contracting Authority and/ or any Participant(s) discharging its statutory duties or functions;
- 1.27 "**WEPCo**" means the special purpose vehicle established by the PSDP, who is party to the Contract with the Participants; and
- 1.28 "**Winning Bidder**" means the Dialogue Bidder who achieves the highest ranking following the evaluation of the Bid submitted in response to the ITPDSB to establish the most economically advantageous tender.

2. CONFIDENTIALITY AND OTHER OBLIGATIONS

- 2.1 In consideration of the disclosure to the Bidder of the ITPDSB and other Confidential Information as may be disclosed during the course of the Procurement Process, the Bidder acknowledges and undertakes to the Contracting Authority and the Contracting Authority Parties, subject to paragraph 2.4, that all Confidential Information (and all intellectual property therein) which is disclosed to the Bidder:
 - 2.1.1 shall remain the property of the Disclosing Party or Disclosing Parties who are entitled to the same, and no rights whatsoever in any Confidential Information shall be deemed to have been conferred upon the Bidder, its Associates, Funders or Professional Advisers except as expressly stated in this letter;
 - 2.1.2 will not be used by the Bidder or any of its Associates, Funders or Professional Advisers except for the purpose of participating in the Procurement Process pursuant to the ITPDSB and preparing and submitting

proposals for the award of the Contract or otherwise for the purposes of clarifying and fine-tuning, funding its potential obligations under, or making arrangements for the award of, the Contract, or otherwise for the purposes of the Procurement Process;

2.1.3 shall not be disclosed to, or permitted to come into the possession of, any person other than to any Associates, Funders or Professional Advisers:

2.1.3.1 the identity of whom, and the proposal to disclose information to whom, has previously been notified in writing to the Contracting Authority;

2.1.3.2 who have confirmed in writing to the Bidder that they have been made aware of the requirements of this letter;

2.1.3.3 who have confirmed in writing to the Bidder that they will observe and perform the same duties in relation to the Confidential Information as the Bidder is required to observe hereunder; and

2.1.3.4 who the Bidder shall otherwise use all reasonable endeavours to ensure observe and perform such duties as are referred to in paragraph 2.1.3.3 above; and

2.1.4 will only be disclosed by the Bidder to employees or officers of the Bidder who have been made aware of the Confidentiality Undertakings and who are directly engaged in relation to the Procurement Process (a list of whom the Bidder will supply to the Contracting Authority on request).

2.2 The Bidder further undertakes to the Contracting Authority and the Contracting Authority Parties that it will keep confidential and not reveal to any person, firm or company (save for its Authorised Disclosees who it shall procure observe like obligations to those set out in this paragraph 2.2) the Confidential Information and the fact of its participation or selection, or non-selection, for any stage of the Procurement Process or withdrawal from the Procurement Process, details of the terms of, or any discussions with the Contracting Authority and/or any Contracting Authority Party over the terms of, any proposal from the Bidder or the proposed Contract and any other proposed agreement, arrangement or associated documents relating to the Contract or the Procurement Process or any information concerning the terms which are or were included, or proposed to be included, in any proposal or the proposed Contract or any other offer made by, or sought from the Bidder, in the course of the Procurement Process.

2.3 The Bidder further undertakes to the Contracting Authority and the Contracting Authority Parties that it will, upon written demand from the Contracting Authority, forthwith:

2.3.1 return or procure the return to the Contracting Authority of any Confidential Information (and any and all copies extracts or reproductions thereof or any part thereof whether made by the Bidder or any Disclosee);

2.3.2 delete or procure the deletion of any and all data, records or other stored information from any disc, software, computer, word processor, or other system or device in the Bidder's or any Disclosee's possession, custody or control to the extent containing any Confidential Information; and

- 2.3.3 destroy or procure the destruction of all copies of any notes, analyses, computations, studies or other documents prepared by or on behalf of the Bidder or by any Disclosees, to the extent containing or reflecting any of the Confidential Information.
- 2.4 Nothing in this paragraph 2 shall prevent such disclosures of Confidential Information as are reasonably required:
 - 2.4.1 for the Bidder to prosecute or defend any action relating to the proposed Contract or the Procurement Process; or
 - 2.4.2 to be disclosed in accordance with a requirement imposed by law, or by the rules of any recognised investment exchange to which the Bidder may be subject, subject to prior notification of such disclosure to the Contracting Authority where legally permissible.

3. APPROACHES TO THE CONTRACTING AUTHORITY - COLLUSIVE TENDERING

The Bidder hereby undertakes not:

- 3.1 to hold discussions with, solicit the support of, or otherwise approach in connection with the award of the Contract, or the Procurement Process, or discuss the Procurement Process with any Disclosing Party other than the contacts nominated to the Bidder in writing by the Contracting Authority from time to time;
- 3.2 to make or offer any gift, loan, fee, or other advantage to any member, employee, officer, consultant, professional adviser or agent of any Disclosing Party as a bribe or other inducement or reward:
 - 3.2.1 for doing or not doing any act (or procuring the same) in relation to the Procurement Process or the award of the Contract; or
 - 3.2.2 for showing or not showing favour or disfavour to any person in relation to the Procurement Process or the award of the Contract;
- 3.3 other than with its Associates, Funders and Professional Advisers, acting in those capacities to enter into any agreement, arrangement or understanding with any person:
 - 3.3.1 to coordinate or collude together over the terms of any indicative or final proposals or other offers in respect of the Procurement Process or to exchange information about the contents of any such proposal or offer; or
 - 3.3.2 to offer particular terms or refrain from offering particular terms to the Contracting Authority or to pursue or refrain from actively pursuing the award of the Contract or otherwise to do or not to do any particular thing in relation to the Procurement Process or any dialogue with the Contracting Authority and/or any Contracting Authority Party,
- 3.4 to knowingly or recklessly make any false or misleading statement or submit any false or misleading information to any Disclosing Party or their respective consultants or professional advisers, in expressing interest in the Contract or in connection with any discussions, offers or proposals in respect of the Procurement Process; or

- 3.5 to instruct, encourage, assist or permit any other person to do or refrain from doing any act or omission which if it had been done or not done by the Bidder would have breached its obligations under this paragraph 3 (including, without limitation, encouragement or assistance in that regard to other Dialogue Bidders).

4. FREEDOM OF INFORMATION

- 4.1 The Bidder acknowledges that, for the purposes of the Freedom of Information Act 2000 ("**Act**") and Environmental Information Regulations 2004 ("**Regulations**"), the Contracting Authority and the Participants are "public authorities" within the meaning of the Act and Regulations and are, therefore, bound by the provisions of the Act and Regulations. This means that all information (including any material, data, records, drawings or other records) submitted to the Contracting Authority as part of the Procurement Process may need to be disclosed and/or published by the Contracting Authority in compliance with the Act and/or the Regulations or, as a consequence of judicial order, or order by any court, tribunal or body with the Contracting Authority to order disclosure (including the Information Commissioner) or as otherwise specified in Paragraph 4.2. Information will be considered as exempt from disclosure at the Contracting Authority's discretion and in accordance with the specific exemptions contained in the Act or Regulations. Information that is designated by the Bidder as 'confidential' or 'not for disclosure' or equivalent should not be taken to mean that the Contracting Authority accepts any duty of confidence by virtue of that marking.

- 4.2 The Contracting Authority may be required to disclose information (including Confidential Information) in circumstances including but not exclusive to the following:

- 4.2.1 for purposes connected with the exercise of the Contracting Authority's functions, including:

4.2.1.1 any audit or examination of the Contracting Authority's accounts or the use of its resources; and

4.2.1.2 (scrutiny by the National Assembly for Wales (or any of its committees or sub-committees) or any other department, office or agency of the Welsh Government and/or Her Majesty's Government in Wales or the United Kingdom, and their servants or agent, of the exercise of its functions;

- 4.2.2 for the purposes of:

4.2.2.1 the prevention or detection of crime;

4.2.2.2 the apprehension or prosecution of offenders;

4.2.2.3 any regulatory or investigatory activity;

4.2.2.4 any legal obligation (including any order of a court of competent jurisdiction); or

4.2.2.5 seeking legal, accounting, tax or other professional advice for the purposes of the Procurement Process;

- 4.2.3 which is or becomes public knowledge (otherwise than by virtue of a failure to comply with the terms of this letter);
- 4.2.5 in accordance with the Act and/or the Regulations in response to a request for information made to the Contracting Authority; and
- 4.2.6 in compliance with any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure.

5. DATA PROTECTION & NIS

- 5.1 The Bidder hereby undertakes to comply with its obligations as Data Controller under the provisions of the Data Protection Laws.
- 5.2 The Bidder hereby undertakes, in connection with the Procurement Process, to:
 - 5.2.1 take appropriate and proportionate technical and organisational measures to manage any risk it may pose to the security of the Contracting Authority's and the Participants network and information systems;
 - 5.2.2 cooperate with any audit by a Relevant Authority of its own network and information systems, and any such audit of the Contracting Authority's or a Participant's security and network and information systems (at no cost to the Contracting Authority or any Participant);
 - 5.2.3 notify the Contracting Authority and where relevant, the Participants, without undue delay upon becoming aware of a Reportable Incident and in any event within no more than 24 hours, such notification to include all details which the Contracting Authority (and where relevant, the Participants) may reasonably require in connection with that incident (including the time, duration, nature and impact of the Reportable Incident); and
 - 5.2.4 on request provide reasonable assistance to the Contracting Authority and Participants, to minimise the impact of any Reportable Incident affecting the Contracting Authority's and or a Participant's network and information systems and/or to enable the Contracting Authority to meet its obligations under the NIS Regulations.

6. MISCELLANEOUS

- 6.1 Nothing in this letter obliges the Contracting Authority (or a Participant):
 - 6.1.1 to proceed with, or complete the Procurement Process or any stage of the Procurement Process or to enter into the Contract (or any related contractual document), either at all or in any particular terms or manner; or
 - 6.1.2 to enter into the Contract (or any related contractual document) with the Bidder, or any other Dialogue Bidder either at all or in any particular terms or manner.
- 6.2 The Contracting Authority may elect to discontinue, suspend or alter the Procurement Process at any time without selecting the Selected Bidder with whom to enter into the Contract (or any related contractual documentation). The Contracting Authority shall not be liable for any costs, expenditure or losses incurred or suffered by the Bidder

resulting from such discontinuation, suspension or alteration, including any liability for any inconvenience caused.

- 6.3 This letter shall not constitute a commitment by any person to supply any Confidential Information or enter into any transaction with the Bidder in relation to the Procurement Process.
- 6.4 The exercise of the Contracting Authority's rights referred to under paragraph 6.2, the termination of the dialogue with the Bidder, the disqualification of the Bidder and/or the Bidder's return of Confidential Information in accordance with the terms of this letter will not release the Bidder from any continuing obligations under this letter.
- 6.5 The undertakings and commitments of the Bidder in this letter shall continue to apply until the Bidder is released by the Contracting Authority (such release not to be unreasonably withheld).
- 6.6 [Where two or more constituent organisations of the Bidder jointly sign this letter, they shall be jointly and severally liable for observing and performing these terms.]
[Note: Bidder to delete if not applicable.]

Please acknowledge and confirm your acceptance of the terms set out in paragraphs 1 to 6 above by signing and returning to us the attached duplicate of this letter by [*****].

The agreement constituted by the exchange of copies of this letter (and any non-contractual obligations and any disputes, proceedings or claims of whatsoever nature arising out of or in any way relating to this letter) shall be construed in accordance with the laws of England and Wales and be subject to the exclusive jurisdiction of the courts of England and Wales.

Yours faithfully

.....

[Project Director, WEP Strategic Partnership Delivery Model Procurement]

Welsh Government

For and on behalf of the Contracting Authority

.....

[Project Director, Bidder]

For and on behalf of the [Bidder]

**APPENDIX 2 - DRAFT 21ST CENTURY SCHOOLS AND COLLEGES (BAND B)
MIM PROGRAMME**

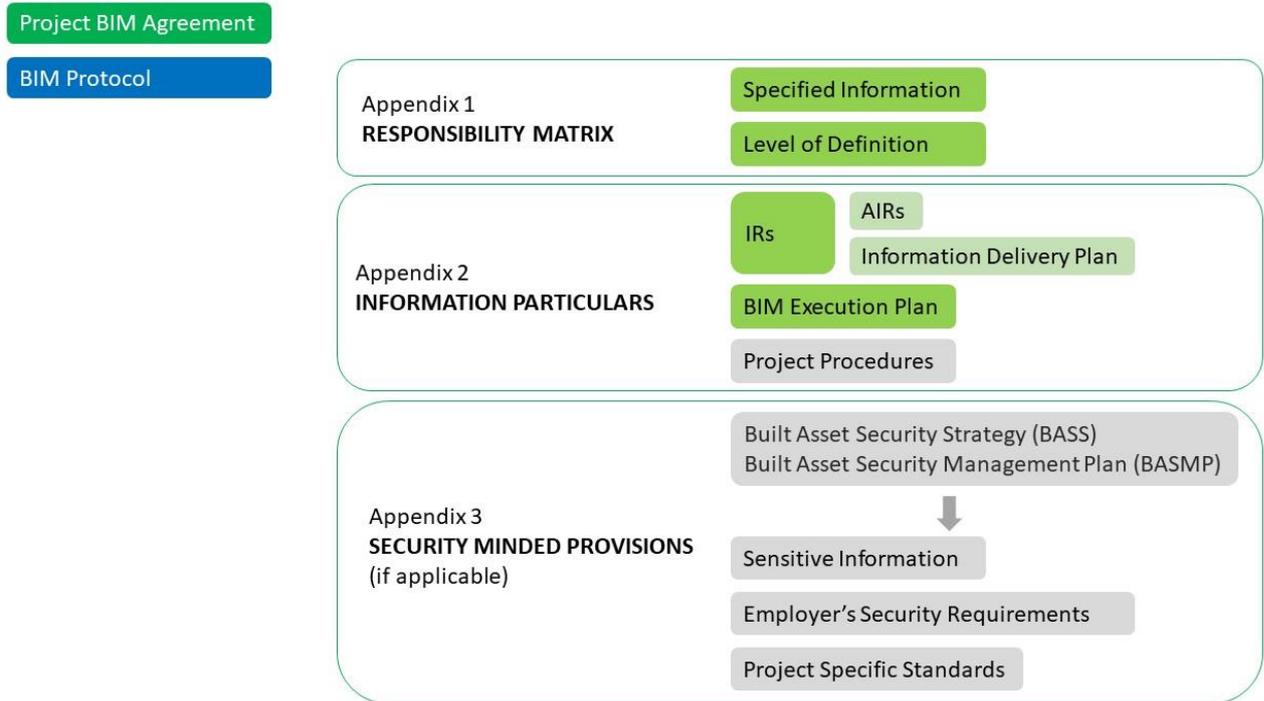
APPENDIX 3 - BUILDING INFORMATION MODELLING

1. THE CONTRACTING AUTHORITY'S REQUIREMENTS FOR BIM

- 1.1 The Contracting Authority's requirements for achievement of its BIM strategy and objectives are a solution which includes:
- 1.1.1 Incorporation of a Project BIM Agreement (addressing the key principles set out in paragraph 2 below) within the Strategic Partnering Agreement, with enhancements to a baseline responsibility matrix, information requirements, and security minded provisions on a project specific basis.
 - 1.1.2 The utilisation of a common data environment ("**CDE**") for each project which:
 - 1.1.2.1 stays with the potential New Project under the New Project Approval Process, through construction and operation and is capable of transfer to the Authority on handback, at the end of the Project Term (or on early termination);
 - 1.1.2.2 is secure (compliant with the security standards of Cyber Essentials Plus certificate [ncsc.gov.uk](https://www.ncsc.gov.uk) and the compliance with PAS 1192-2 and PAS 1192-3 and PAS 1192-5);
 - 1.1.2.3 is structured (information being categorised and labelled with the naming of files to be consistent and in line with BS 1192: 2007 to aid efficient file search, retrieval and validation);
 - 1.1.2.4 requires managed access (the approval process should be rigorous and transparent);
 - 1.1.2.5 has an IT maturity that allows for a secure transfer of potentially large data-sets;
 - 1.1.2.6 enables full audit trail/ time-stamped activity log (uploaded, viewed, downloaded, deleted);
 - 1.1.2.7 enables status referencing (checked, approved, signed off, etc.) assigned to users; and
 - 1.1.2.8 enables viewing of models and drawings via free software.
 - 1.1.3 The creation of component-based models which:
 - 1.1.3.1 are interoperable 3D models available for analysis using complimentary software;
 - 1.1.3.2 meet the requirements of the Information Requirements; and
 - 1.1.3.3 are capable of hosting parameters.
 - 1.1.4 A structured information exchange (asset and non-asset related information), including appropriate use of the information manager role (as described in paragraph 3 below) and adoption of COBie implementation; and

1.1.5 A BIM solution that is compliant with the standards set out in the core standards, specifications and codes of practice detailed below in Diagram 7 and set out in further detail in paragraph 4 below.

Diagram 7 – BIM Protocol Document Structure



- 1.2 The more detailed requirements of the Contracting Authority will be confirmed during the Dialogue Period, when the form of Project BIM Agreement is shared with Bidders.
- 1.3 The Contracting Authority's intention is for the benefits of BIM to flow to Participants under the Strategic Partnering Agreement and in respect of each potential New Project that becomes an Approved Project.
- 1.4 The Contracting Authority expects that Project Service Providers/Project Co and its Supply Chain Members/Sub-contractors will enter into a Sub-contractor BIM protocol that flows down the requirements of the Project BIM Agreement, reflects best practice and is based on market standards.
- 1.5 Diagram 8, sets out the anticipated overall structure of BIM obligations being incorporated, through the development phase of a New Project under the Strategic Partnering Agreement, to construction and (on MIM Projects) operation of the relevant facilities under a Project Agreement.
- 1.6 In order to ensure a smooth transition between the obligations of WEPCo in respect of BIM under the Strategic Partnering Agreement, and the obligations of the relevant Project Service Provider under a Project Agreement, it is envisaged that a single Project BIM Agreement will be entered into in respect of each New Project. The Project BIM Agreement to be completed by the Participant will be issued with the New Project Request. WEPCo will submit a BIM Execution Plan with their Stage 1 Submission in the form of the Construction Project Information Committee's (CPIC) pre-contract BIM Execution Plan. Within a month of commencing Stage 2

development, WEPCo shall submit the more detailed BIM Execution Plan in the form of the CPIC post-contract BIM Execution Plan.

- 1.7 In the case of Approved Projects, the Contracting Authority's expectation is that the Project BIM Agreement will be novated to the relevant Project Service Provider, who will take over responsibility for delivery of the BIM solution for the Project, as set out in the BIM Execution Plan and in accordance with the Project BIM Agreement.
- 1.8 An outline of the anticipated structure of the Project BIM Agreement (and the related sub-contractor BIM protocol is set out at Diagram 8 below).
- 1.9 Diagram 9 below shows a broad outline of the anticipated approach to BIM in MIM Projects, from inception of a New Project Request, through development and delivery of a project to the end of a Project Term.
- 1.10 Whilst key roles and responsibilities under the sub-contractor BIM protocol will be allocated among, WEPCo/ Project Co and the Supply Chain Members/ Sub-Contractors under the Project BIM Agreement, all roles and responsibilities of such parties will sit with WEPCo initially and then Project Co under the Project BIM Agreement. The responsibility matrix in the Project BIM Agreement will be aligned with the risk profile of the Template Project Agreement.
- 1.11 The Contracting Authority will provide the form of Project BIM Agreement to Bidders during dialogue and Bidders will be required to design their BIM Execution Plan under the Strategic Partnering Agreement based on a market standard form. Outwith this , Bidders will be invited to put forward a BIM solution which they consider will provide Participants with an accurate record, audit trail and model of the building and its elements for use in subsequent servicing and maintenance and in amending the building through future variations. Diagram 10 provides a brief overview of BIM during the Procurement Process.

Diagram 8 – Anticipated Overall Structure of BIM Obligations

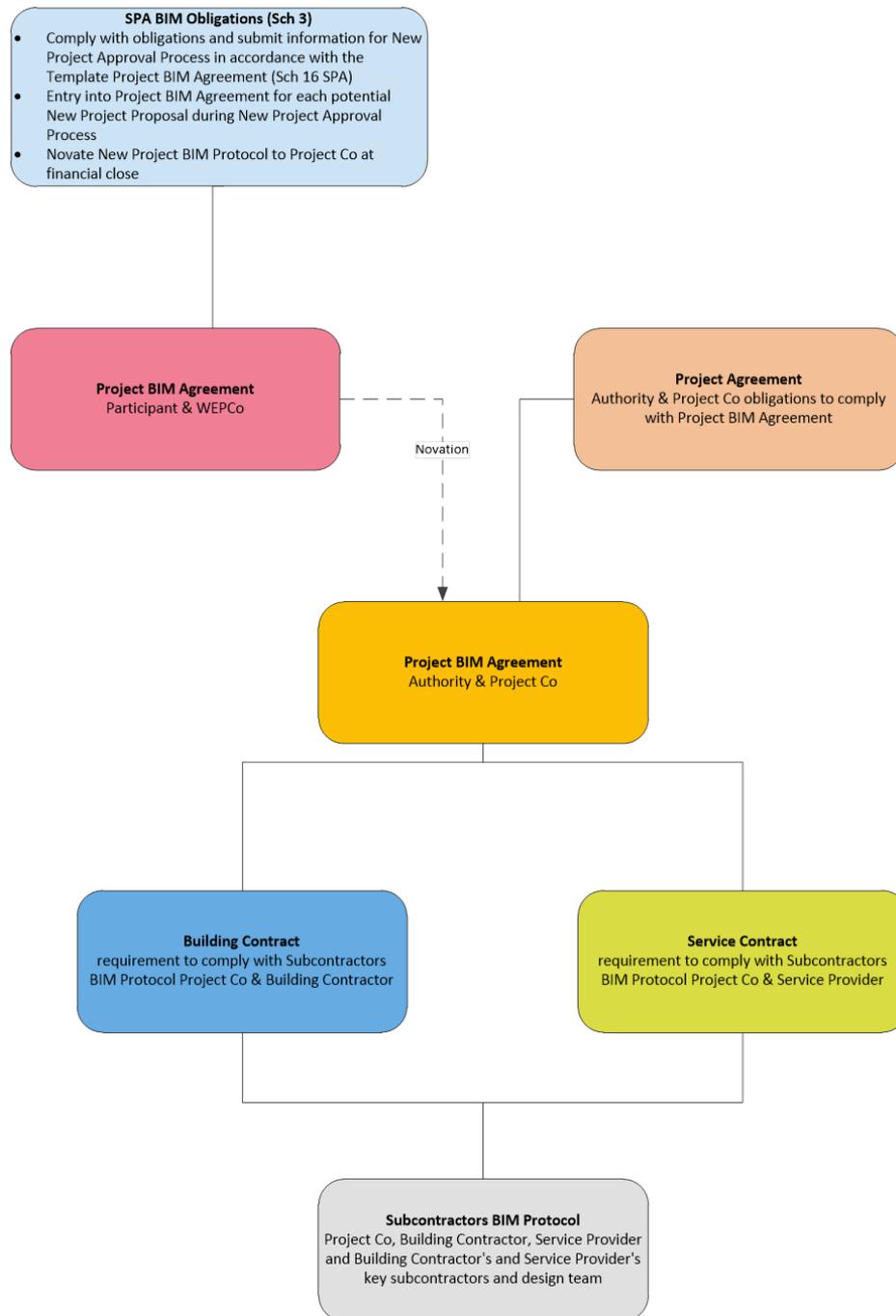


Diagram 9 - Outline of BIM: Project Development through to Handback on MIM Projects

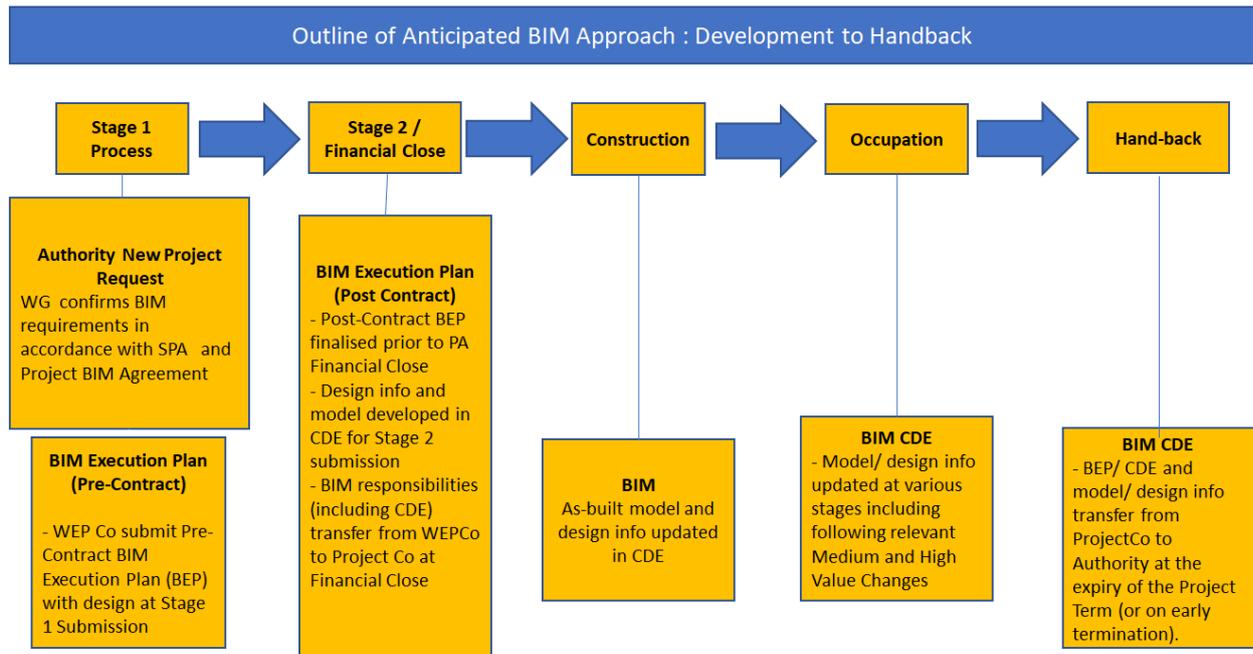
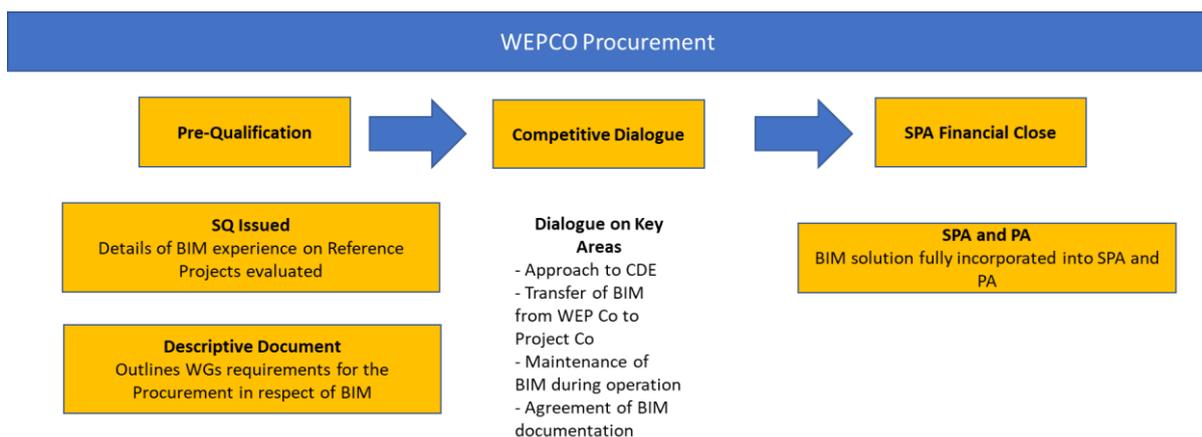


Diagram 10 - BIM in Procurement



2. PROJECT BIM AGREEMENT RESPONSIBILITIES

2.1 Detailed contractual provisions under the Project BIM Agreement will include the following WEP Co/ Project Co obligations:

2.1.1 to ensure that all relevant Supply Chain Members/Sub-contractors enter into the sub-contractors' BIM protocol with it, appropriately stepping down the terms of the Project BIM Agreement;

- 2.1.2 to exercise the level of skill and care required of it under Clause 12.3 (Design Responsibility) of the Template Project Agreement in performing its obligations under the Project BIM Agreement;
- 2.1.3 to comply with the Appendices to the Project BIM Agreement in respect of all models and the CDE;
- 2.1.4 In respect of MIM Projects, to make sure all materials and models that the Authority may require in connection with handback pursuant to Schedule 18 (Handback Procedure) of the Template MIM Education Project Agreement or on termination are provided to the Authority at such times as it may reasonably require (and to ensure appropriate transfer of materials and models on completion of works (or early termination) in respect of projects delivered under the Template Design and Build Development Agreement);
- 2.1.5 to be responsible for the establishment and management of policies, processes and the security procedures, as shall be set out in the security minded provisions;
- 2.1.6 to comply with the security minded provisions and to procure that all Supply Chain Members/Sub-contractors comply with the security minded provisions and do not cause or contribute to breach of the security minded provisions by the Authority;
- 2.1.7 to warrant the integrity of any data it provides to the Authority pursuant to the Project BIM Agreement. However, Project Co will not be responsible for any corruption, modification or amendment after such information has been delivered and signed off by the Authority's information manager as meeting the requirements of the Project BIM Agreement;
- 2.1.8 to attend and procure that all relevant Supply Chain Members/Sub-contractors attend meetings with the Authority's information manager; and
- 2.1.9 to comply with the data drops as set out in the information requirements, responsibility matrix and information delivery plan.
- 2.2 Any design or other data provided by the Authority in connection with the Project BIM Agreement is to be treated as Disclosed Data under the terms of the Template Project Agreement and no warranty is provided by the Authority.
- 2.3 The provisions of the Template Project Agreement relevant to intellectual property rights shall generally apply to all material, models and Design Data to be delivered pursuant to the Project BIM Agreement. The Authority shall require non-exclusive licences in respect of the material and any proprietary work for the Approved Purposes. However, the Authority shall only be entitled to amend or modify material or models to the extent provided for in the EIRs, which shall include on termination of the Project Agreement or key sub-contracts (including the construction contract and service contract).
- 2.4 Project Co's compliance with its obligations under the Project BIM Agreement will not be a defence to satisfaction of any of its other obligations under the Project Agreement.

- 2.5 There will also be provisions relating to the appointment of the information manager(s) and their roles and responsibilities. Where Project Co appoints its own information manager, it shall be entirely responsible for the acts or omissions of that information manager.
- 2.6 Data drops will be required under the Strategic Partnering Agreement in relation to all of the information required to achieve Stage 1 Approval and where relevant Stage 2 Approval. The Strategic Partnering Agreement will also include a general obligation on WEPCo to ensure that its design and design information is provided in accordance with the Project BIM Agreement to be annexed to the Strategic Partnering Agreement.
- 2.7 Data drops will be required under the relevant Project Agreement in relation to:
 - 2.7.1 design development through to commencement of construction;
 - 2.7.2 Reviewable Design Data and the review procedure generally;
 - 2.7.3 delivery of "as built" and operational manuals;
 - 2.7.4 Medium Value Changes and High Value Changes;
 - 2.7.5 Low Value Changes if they directly impact on the facility operation, security and/ or safety (e.g. affect the circulation, fire compartmentation, escape routes, escape strategies, occupancy, access points);
 - 2.7.6 Low Value Changes other than in 2.7.5 of this Appendix 3 on an annual basis or as part of a "catch-up" with a Medium Value Change or High Value Change data drop; and
 - 2.7.7 handback.

3. INFORMATION MANAGER ROLE

- 3.1 The Project BIM Agreement will require that the Participants, WEPCo and/ or Project Co appoint the information manager as follows for:
 - 3.1.1 **BIM PHASE 1** - New Project, Stage 1 (RIBA stage 0, 1 and 2) and Stage 2 (RIBA stage 3, and 4).
 - 3.1.2 **BIM PHASE 2** - Approved Project commencement (from the commencement of the construction period until the end of the Project Term (RIBA Stage 5, 6 and 7).
- 3.2 It is currently envisaged that the information manager's role shall be carried out in accordance with:
 - 3.2.1 CIC Scope of Services for the role of Information Management; and
 - 3.2.2 PAS 1192-2 Table 2.
- 3.3 It is expected that **information manager will:**
 - 3.3.1 enable reliable information exchange through the CDE;

- 3.3.2 maintain and receive information into the information model;
- 3.3.3 enable integration and co-ordination of information within the information model;
- 3.3.4 configure information for project outputs;
- 3.3.5 populate the information exchange format for the information model;
- 3.3.6 accept/ reject information exchanges within the CDE;
- 3.3.7 establish, agree and implement the information structure and maintenance standards for the information model;
- 3.3.8 receive information into the information model in compliance with agreed processes and procedures;
- 3.3.9 validate compliance with information requirements and advise on non-compliance;
- 3.3.10 maintain the information model to meet integrity and security standards in compliance with the information requirements;
- 3.3.11 manage CDE processes and procedures, validate compliance with them and advise on non-compliance;
- 3.3.12 initiate, agree and implement a project information plan and asset information plan covering:
 - 3.3.12.1 information structure across roles e.g.:
 - (a) software platforms (all levels of supply chain) appropriate to meet the Contracting Authority's requirements and project team resources;
 - (b) responsibility for the provision of information at each stage;
 - (c) level of detail of information required for specific project outputs e.g. planning, procurement, operational updates; and
 - (d) the process for incorporating as-constructed, testing, validation and commissioning information;
- 3.3.13 enable integration of information within the project team and co-ordination of information by design leads;
- 3.3.14 agree formats for project outputs;
- 3.3.15 assist project team members in assembling information for project outputs;
- 3.3.16 support the implementation of the Project BIM Agreement including updating the appendices (when required);

- 3.3.17 liaise with and co-operate with project team members and the Participants in support of a collaborative working culture;
- 3.3.18 assist the project team members in establishing information exchange processes, including:
 - 3.3.18.1 define and agree procedures for convening, chairing, attendance and responsibility for recording “information exchange process meetings”; and
- 3.3.19 participate in and comply with project team management procedures and processes including:
 - 3.3.19.1 risk and value management;
 - 3.3.19.2 performance management and measurement procedures;
 - 3.3.19.3 change management procedures including adjustments to budgets and programme;
 - 3.3.19.4 attendance at project and design team meetings as required; and
 - 3.3.19.5 agree and implement record keeping, archiving and audit trail for Information Model.
- 3.4 In undertaking these activities, the information manager will not accept any design responsibility or the right to issue any design related instructions.

4. CORE STANDARDS, SPECIFICATIONS AND CODES OF PRACTICE

The Project BIM Agreement will require compliance with the core standards, specifications and codes of practice detailed below:

- 4.1 ISO 19650-1 Organization and digitization of information about buildings and civil engineering works, including building information modelling (BIM) — Information management using BIM - Part 1: Concepts and Principles;
- 4.2 ISO 19650-2 Organization and digitization of information about buildings and civil engineering works, including building information modelling (BIM) — Information management using BIM - Part 2: Delivery phase of the Assets;
- 4.3 BS 1192 Collaborative production of architectural, engineering and construction information. Code of practice;
- 4.4 BS 1192+A2 Collaborative production of architectural, engineering and construction information. Code of practice;
- 4.5 PAS 1192-2 Specification for information management for the capital delivery phase of construction projects using BIM;
- 4.6 PAS 1192-3 Specification for information management for the operational phase of Assets using BIM;

- 4.7 BS 1192-4 Collaborative production of information. Fulfilling Employer's Information Exchange requirements using COBie;
- 4.8 PAS 1192-5 Specification for Security-minded BIM, digital built environments and smart Asset management;
- 4.9 PAS 1192-6 Specification for collaborative sharing and use of structured Health and Safety information using BIM;
- 4.10 BS 8536-1 Briefing for design and construction-Part 1: Code of practice for facilities management;
- 4.11 BS 8536-2 Briefing for design and construction-Part 2: Code of practice for Asset management;
- 4.12 BS 8541-1 Library objects for architecture, engineering and construction Part 1: Identification and classification. Code of practice;
- 4.13 BS 8541-2 Library objects for architecture, engineering and construction Part 2: Recommended 2D symbols of building elements for use in BIM CDM 2015 Construction Design Management Regulations 2015;
- 4.14 ISO 16739 Industry Foundation Classes (IFC) for data sharing in the construction and facility management industries;
- 4.15 CIC BIM Protocol, 2nd edition;
- 4.16 CIC Outline scope of services for the role of Information Management;
- 4.17 RICS Code of measuring practice 6th edition; and
- 4.18 NBS Uniclass 2015 classification.

5. EVALUATION OF THE SUPPLY CHAIN

- 5.1 It is expected that BIM Execution Plans submitted during the Tender Process are evaluated using the CPIC standard templates; CPIC – Construction Project Information Committee **CPIC**. The templates are as follows:
 - 5.1.1 BIM assessment form;
 - 5.1.2 IT assessment form;
 - 5.1.3 resource assessment form;
 - 5.1.4 pre-contract BIM Execution Plan assessment form; and
 - 5.1.5 post-contract BIM Execution Plan assessment form.
- 5.2 Formal information exchanges represent key gateways in the project and are points at which milestone activities/ decisions are undertaken (for example financial approval, regulation/ licencing application submission, appointment of contractors etc).

- 5.3 Plain language questions can be introduced with each information exchange so that the design and construction team understand the detailed requirements of the information exchange and can determine how best to respond.
- 5.4 The plain language questions offer a means of evaluation of the information exchange.