

## **PFI PROJECT SUPPORT AND INTERVENTION STRATEGY**

### **Introduction**

CLG's PFI Project Support and Intervention Strategy provides an overview of the approach of the Department on monitoring, guidance, advice, facilitation, transactor support and also, if considered necessary, intervention in respect of the development and procurement of local authority PFI projects funded by CLG, and managed by CLG or the Homes and Communities Agency (HCA).

The Strategy is intended for use by CLG and HCA PFI Programme Teams across the Housing, Fire and Joint Service Centre (JSC) PFI sectors and applied in respect of their programme and governance role and relationships with local authorities.

The Strategy is also published to inform local authorities and the market of the roles of CLG, its' CPFU and Programme Teams, and the HCA with regard to sustaining the efficient and robust development and procurement of PFI projects funded through CLG PFI programmes.

In this respect the Strategy is timely in responding to the 'Lifting Burdens Task Force' calls for government to 'document and publish in advance preferred timetables for departmental evaluation and approvals' and to 'clearly define the role of central government (and non-departmental bodies) in local government PFI'.

### **Background to Support and Intervention Strategy**

The background to this Support and Intervention Strategy is outlined below, as follows:

- CLG's CSR07 PFI Commitments
- Performance Monitoring of PFI Programmes and Projects
- Maintaining Competitive Procurement
- Compliance with PFI Guidance

### **CLG's CSR07 PFI Commitments**

CLG has entered into CSR07 PFI programme commitments to HMT under its CSR07 settlement. These commitments cover procurement timescales and changes in PFI credit requirements and scheme scope from date of PRG endorsement to financial close.

The Department itself has also set project development guideline timescales i.e. from Expression of interest to PRG endorsement. At the same time the department is working to reduce these times, by requiring more robust EoIs to inform bidding rounds, and providing guidance on how to develop these.

## Guideline Timescales

<b>PFI Programme</b>	<b>Development Timescale – from Expression of Interest approval to PRG endorsement</b>	<b>Procurement Timescale – from PRG endorsement to Financial Close *</b>
HRA Housing	Within 18 months Round 6: within 12 months	Within 30 to 36 months
Non-HRA Housing	Within 18 months Round 6: within 12 months	Within 24 to 30 months
Fire	Within 18 months Round 6: within 12 months	Within 22 months
JSC (Joint Service Centres)	Within 18 months	Within 22 months

\* Although it is recognised that the time required for planning sign off and judicial review after preferred bidder but before financial close can have a significant impact.

Local authorities should endeavour to develop PFI projects within guideline development timescales and will be expected as a CLG condition of approval, following PRG endorsement, to progress and complete project procurement within the guideline procurement timescales. These timescales are not targets i.e. where a local authority is able to produce a robust OBC within a much shorter timescale, this will be considered for approval and submission to PRG by the Department. Departmental support for projects where progress is such that a project is considered highly likely to extend beyond the guideline development or procurement timescales will be subject to review.

The value for money of PFI credits diminishes over time and local authority and bidder costs increase over time. There is a strong value for money rationale for efficient and timely development and procurement of PFI projects by local authorities. Time is money.

## PFI Credits and Project Scope

CLG has entered into commitments with HMT in respect of changes in levels of PFI credits and project scope following PRG endorsement. Any increase in the allocated level of PFI credits or reduction in project scope sought by a local authority from the date of PRG endorsement should not be material. A material change would constitute an increase of PFI credits of £20 million (or 20% if that is lower) or more, an equivalent reduction in project scope, or a combination of both PFI credit increase and project scope reduction adding up to the same overall scale of change.

Local authorities should aim and endeavour to make a robust assessment of project affordability at OBC stage including sensitivities and other resources available to the authority. CLG / HCA scrutiny and challenge of projects at OBC stage is intended to ensure that projects are ready to proceed to market and are robustly affordable.

The default position is that it is the responsibility of a local authority to meet any PFI project funding gap that arises following PRG endorsement. The Department/HCA will require evidence and justification of exceptional circumstances outside the control and influence of a local authority and evidence of value for money before it will consider any request for additional PFI credits or change of project scope.

PRG consideration and approval will be required in respect of any proposed material change in PFI credits or project scope and any such proposal must have both HCA and CLG support. No presumption should be made by a local authority that any such request will be supported by CLG, HCA or PRG.

### **Performance Monitoring of PFI Programme and Projects**

CLG has a responsibility to seek continuous improvement in the delivery of PFI programmes and projects across all sectors. This includes certainty and speed of project procurement and robustness and stability of project affordability at all stages of the procurement process.

PFI Programme Teams should review and assess their sector projects on a regular basis and in-depth from the perspectives of their viability and deliverability.

Every local authority within a CLG-funded PFI programme from Expression of Interest stage is required to submit regular Performance Monitoring Reports to their Programme Team. In the case of Housing this is on a monthly basis, while the Fire or JSC programmes require quarterly reports. Exception reports should also be submitted by local authorities to their Programme Teams whenever a material issue arises and which impacts or may impact adversely on the project. There should be transparency of development and progress between local authorities and their Programme Team.

PFI Programme Teams in turn produce Quarterly PFI Programme and Project Performance Monitoring Reports that are considered by the Department's Central Private Finance Unit and reported to the CLG's PFI Board (these are also made available to HM Treasury). CLG / HCA PFI Programme Teams also produce Exception Reports for their and CLG's CPFU timely consideration and review of project issues arising outside the quarterly reporting cycle.

CLG's PFI Project Performance Monitoring Reports are based on the following principles:

- Assessment of project viability and deliverability is undertaken through a 'Traffic Lights' or RAG approach:
  - Red – material negative variance / serious cause for concern
  - Amber – moderate negative variance / some cause for concern
  - Green – nil or close to nil negative variance / little or no cause for concern
- The RAG assessment of project viability and deliverability is applied to a range of project criteria, as set out below:

<b>Item</b>	<b>Performance Criteria</b>	<b>Definition</b>
<b>1</b>	<b>Timescale and Progress</b>	Actual timescale of project development pre-PRG endorsement of the OBC and actual timescale of project procurement post PRG endorsement compared to guideline timescales and milestones over project development and procurement stages
<b>2</b>	<b>Affordability</b>	Summary capital, revenue and overall project affordability based on PFI credit allocation, authority funding and project costs, sensitivities and risk management over the duration of the contract
<b>3</b>	<b>PSC VfM</b>	If project is in development or likely to need to go back to PRG, certainty that HMT quantitative and qualitative tests will show PFI better VfM than PSC.

<b>4</b>	<b>Cost Benchmarking</b>	Summary cost analysis of PFI scheme output costs including comparison with the costs of similar provision under PFI and other funding routes e.g. Housing PFI benchmarking with SHG costs
<b>5</b>	<b>Land Supply and Sites</b>	Certainty of land supply, securing land supply and the suitability of sites; planning status and deliverability, including timescales and any special requirements e.g. Conservation Area or Listed Building.
<b>6</b>	<b>Market and Funding</b>	In the early stages, realistic market sounding which outlines the project and means of procurement. Implementation of an efficient procurement approach and process that will support and help maintain competitive procurement / market competition (as below), meet procurement guideline timescales and ensure compliance with PFI requirements including SoPC.
<b>7</b>	<b>Authority Capability</b>	Authority capability to successfully develop and procure the project
<b>8</b>	<b>Overall Viability and Deliverability</b>	An overall assessment of project viability and likelihood of project delivery taking into account the above six criteria.

### **Maintaining Competitive Procurement**

PFI is based on the principle of providing value for money. Competitive procurement is considered to provide an essential market framework and discipline for achieving and demonstrating value for money.

Maintaining competitive procurement tension up to appointment of Preferred Bidder is essential for PFI projects. Market failure is not desirable, undermines the potential for achieving value for money and is not an acceptable position from a CLG / HCA or HMT perspective.

Such market failure or lack of competition occurs where there is only a single bidder for a project or perhaps where there are two or more bidders but only one is considered to be credible.

Local authorities should endeavour to develop a robust approach to project procurement that will be likely to deliver competitive procurement up to selection and appointment of Preferred Bidder. Procurement approaches will be subject to rigorous scrutiny at OBC stage and any subsequent proposed material variation to the endorsed procurement approach will require CLG / HCA approval before the relevant stage of market engagement i.e. before OJEU, ISOS, ISDS or ISRS as appropriate. This will be a condition of approval following PRG endorsement. From 2009 CLG will be required to formally report to Treasury on the level of competition in signed projects.

Where competitive procurement appears to be 'at risk' and a single credible bidder situation might emerge, a local authority will be expected to be pro-active and take effective action to try to maintain competitive procurement. CLG / HCA will expect to be kept fully informed of any such situation from when the risk is initially identified.

Where a single credible bidder situation does arise, CLG and HCA's default position is that the project should normally be subject to re-tendering unless the local authority can provide evidence and justification of exceptional circumstances outside the control and influence of a local authority i.e. market failure and not procurement failure, and also evidence of still being able to achieve value for money, and how, before it will consider continuation of procurement with a single bidder.

No presumption should be made by a local authority that single bidder procurement will be supported by CLG or HCA.

### **Compliance with Established Requirements for PFI Projects**

It is a role of CLG / HCA to ensure that PFI projects comply with PFI requirements and guidance set out by HM Treasury and supported by 4ps, Partnerships UK and the Department. In particular it is important that its PFI-funded projects comply with SoPC (Standardisation of PFI Contracts), as varied by Sector Standard Contracts where these are available. This standardisation is designed and intended to help ensure the smooth procurement of projects from PRG endorsement through to financial close and into their operational phase.

Derogations will not normally be permitted from SoPC and Sector Standard Contracts unless there are scheme specific reasons and these provide value for money.

Derogations will not normally be considered for reasons of simply improving project affordability.

A local authority's default approach should be to resist derogations proposed by bidders during the procurement process unless they are scheme specific and provide value for money. Any proposed derogations arising during the procurement process should be raised at the earliest opportunity with CLG / HCA.

If Sector or SoPC proposed derogations are supported by CLG / HCA they will also require consideration and approval by PUK, and also possibly by PRG and HMT, before being permitted.

Under the Competitive Dialogue procurement process, proposed derogations must be resolved prior to the call for final tenders. Proposed local authority derogations, including bidders proposed derogations, that are or might reasonably be considered to be material should be identified and raised initially with the PFI programme teams at the earliest possible opportunity. This process must not be left until just before the intended date for the selection of the Preferred Bidder as resolution may then influence the process. Derogation requests will not normally be considered by CLG after Preferred Bidder appointment.

For any projects still under the Negotiated Procedure, proposed material derogations should be raised and approved by CLG, PUK and as necessary HMT before selection and appointment of the Preferred Bidder and certainly will require to be resolved before FBC approval.

No presumption should be made by a local authority that any proposed material derogation will be supported by CLG.

### **Housing PFI Programme – Respective Roles of CLG and HCA**

CLG and HCA PFI Housing responsibilities and accountabilities are summarised below:

- **CLG Role:** PFI governance; project scrutiny, challenge and approval including of PFI credits; co-ordination and consistency across PFI programmes; and payment of support grant and making of subsidy determinations for approved local authority PFI housing projects.
- **HCA Role:** management of delivery of the PFI housing programme; supporting and ensuring delivery of PFI housing projects by local authorities in accordance with HMT and CLG guidance and requirements; making

recommendations to CLG on the allocation of PFI credits for PFI housing projects; and managing such recommendations within the overall CSR07 PFI housing programme funds available.

The HCA is the primary and first point of contact of local authorities in respect of PFI housing projects under development or procurement. The HCA is therefore responsible for implementation of CLG's PFI Project Support and Implementation Strategy in respect of Housing PFI projects.

#### **4ps**

The 4ps have a role, the resources and expertise to advise and support local authorities across the range of local government PFI programmes and projects. Their joint production and joint-ownership of Sector Procurement Packs enhances the ability of the 4ps to advise and assist local authorities on PFI projects.

The scope of 4ps services includes: interpretation and advice on Sector Procurement Packs and Standard Contracts, procurement advice, project support, PFI workshops and training, local authority network meetings and advice on Expressions of Interest and Outline Business Cases.

Local authorities are to be encouraged by CLG / HCA to liaise and work with the 4ps.

#### **Ladder of Support and Intervention**

CLG / HCA undertake a range of support and intervention roles with local authorities in respect of PFI projects from their initial development through to financial close. This ladder of support and intervention is consistent with general CLG policy on the relationship between central and local government.

The 5 steps of CLG's PFI ladder of support and intervention are set out below.

#### **Step 1 – Guidance and Requirements**

PFI guidance and requirements which apply to CLG's Fire, Housing and JSC PFI sector programmes are provided by HMT, PUK, 4ps and CLG.

Guidance and requirements documentation include:

- PRG Criteria
- Local Government PFI Project Support Guide
- HMT PFI Guidance<sup>1</sup>
- Competitive Dialogue Procurement Guidance
- Housing PFI Procurement Pack(s)
- Fire & Rescue Services PFI Procurement Pack
- Joint Service Centres PFI Procurement Pack
- CLG Programme Bidding guidance

Local authorities and their advisers should ensure they are well-briefed and understand PFI guidance, principles and detail, and especially mandatory PFI generic and sector specific project requirements.

The above documents can be accessed via 4ps, HCA, CLG and HMT websites.

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<sup>1</sup> [www.hm-treasury.gov.uk/ppp\\_index.htm](http://www.hm-treasury.gov.uk/ppp_index.htm)

## **Step 2 – Advice**

CLG / HCA Programme Team officers advise and support the procurement and delivery of PFI schemes within their area and level of PFI expertise and competence. CLG / HCA Programme Teams are also supported by professional advisers and experts, including 4ps and PUK, and by the Department's CPFU.

PFI Programme officers welcome the raising of general queries and issues by local authorities and will endeavour to respond constructively and clearly within a reasonable timescale.

Local authorities may also approach 4ps direct and are encouraged to form constructive relationships and communications with the 4ps in addition to with CLG / HCA Programme Teams.

## **Step 3 – Facilitation**

CLG / HCA PFI Programme officers will engage with local authorities to help facilitate solutions to and resolution of specific issues during the project development or procurement phases.

Appropriate means of doing so might be, for example, through a short series of focused meetings or a workshop-based approach.

CLG Fire and HCA Housing PFI Teams are also willing to consider allocation of an appropriately skilled PFI Transactor to work with local authorities, possibly also including engagement with bidders where appropriate, to bring specialist expertise to bear on particular issues and problems.

Deployment of a PFI Transactor by the CLG Fire or HCA Housing PFI Teams on a facilitation basis would normally be at no cost to a local authority.

## **Step 4 – Transactor Support**

CLG Fire and HCA Housing PFI Teams may also consider longer-term allocation of an appropriately skilled PFI transactor to work with and support local authorities on a long-term basis both at project development and procurement phases.

Deployment of a PFI Transactor by the CLG Fire or HCA Housing PFI Teams on a longer-term project support basis would be subject to upfront agreement with an authority in respect of the role and remit of the transactor. A transactor would be supplementary to a local authority's own project team resources, internal staff and external advisers, would work part-time for a set number of days per month and would on no account replace any required local authority project management or adviser resource.

Funding of the transactor could either be by HCA / CLG (CLG only for Fire programme) or by a Local Authority / Fire and Rescue Authority, subject to the circumstances of the project and agreement between HCA / CLG and the authority. In some cases, HCA / CLG may wish to make it a commitment of continuing to support a project that the authority funds the transactor in whole or part.

A transactor would have an advisory and facilitation role and not have any delegated decision-making responsibility. Responsibility for delivering a PFI project within the parameters of EU procurement, current PFI guidance and requirements would remain fully with the local authority.

## **Step 5 – Intervention**

CLG / HCA have a market management role and a responsibility to ensure certainty and speed of programme deliver and project procurement, robustness and stability of project affordability and ensure ongoing value for money in respect of allocated PFI credits at all stages of the procurement process. Project circumstances may require intervention action in some cases.

Where it is apparent that there is a need for CLG / HCA to proactively intervene in project procurement, this being assessed through the project monitoring process with regard to performance assessment criteria, such intervention will normally have been discussed with and its possibility and likelihood notified in advance to a local authority. Such intervention should not come as a surprise to a local authority.

CLG proposes a graduated approach to intervention. Depending on a local authority’s response and progress made, the level of intervention and engagement by CLG may be escalated on a gradual basis which could ultimately lead to withdrawal of support for a given PFI project.

The graduated approach to intervention is set out below:

Stage	Graduated Intervention	Detail
1	Improvement Notice	To formally bring attention to the general area where improvement is required.
2	Directive Notice	To formally notify where specific action is required
3	Transactor Assignment	To assign a Transactor to advise and support the local authority, to monitor the project and to advise CLG / HCA.
4	Withdrawal of Support	Withdrawal of PFI credit allocation, only when all other actions to achieve a resolution of issues and successful procurement have been explored and subject to Ministerial approval

### **Conclusion**

This CLG PFI Project Support and Intervention Strategy is applicable to all CLG PFI Programme projects – Fire, Housing and JSC - in development or procurement.