



Report on a Proposed Section 85 Agreement Regarding the Provision of Social Housing via a Public Private Partnership under the Social Housing Strategy 2020

Section 1 Overview of the Programme

In November 2014, the Minister for the Environment, Community and Local Government (now the Minister for Housing, Planning, Community and Local Government) launched the Social Housing Strategy 2020. The Strategy provided for a number of measures to boost the supply of social housing including the use of off-balance sheet mechanisms one of which is a large scale Public Private Partnership (PPP) Programme.

The Social Housing PPP Programme will be a partnership between the Department of Housing, Planning, Community and Local Government (DHPCLG), the local authorities involved, the National Development Finance Agency (NDFA) and a specially formed Project Company.

On 13 October 2015, the Minister announced the approval of the first bundle of site locations which will accommodate approximately 500 new social housing units to be developed through the PPP Programme. The local authorities involved are Dublin City Council, South Dublin County Council, Louth County Council, Wicklow County Council and Kildare County Council.

Appropriate project governance arrangements have been put in place to oversee the Social Housing Bundle 1 PPP Programme. All the participating local authorities are represented on the Project Board and on the Project Team together with the Department, the NDFA and an independent Process Auditor.

The Social Housing Bundle 1 PPP Programme will be delivered through an '*availability*' based PPP contract. Under this type of contract the Project Company designs, builds, finances and maintains the social housing units for 25 years on sites provided under licence by the local authorities. Payment will be made only once construction of the units is complete and they are ready to house tenants. The payment comprises a monthly '*availability*' payment (or unitary charge) made over the 25 year term of the contract. Payment of the full amount of the monthly unitary charge is dependent on the houses/apartments being maintained to an acceptable standard and the satisfactory provision of associated services by the Project Company.

The use of off-balance sheet mechanisms allows the Government and local authorities to access otherwise unavailable funding, which in turn allows additional social housing to be built in the context of constrained State resources. In this way the upfront construction cost is covered by private funds, which are additional to the funding committed to the Government's social housing capital programme. The State then pays for the construction and management of these housing units over the contract period.

Section 2 Planning

Each participating local authority will be responsible for obtaining the necessary planning approval in respect of the proposed PPP social housing development in its functional area and will undertake the necessary public consultation procedure in respect of the proposed development as required under the Planning and Development Acts and Regulations.

Section 3 Procurement

The Project Company will be selected via an advertised tender competition, conducted by the NDFA in accordance with EU and national procurement regulations. Competitions are typically two stage with between 2 and 4 qualified parties invited to tender following a competitive, pre-qualification stage.

The objective of the tender stage is to identify the most advantageous tender based on pre-defined award criteria, usually a combination of price and qualitative criteria. The qualitative criteria may include, for example, design quality and quality of services based on the specific characteristics of a project, which will have been defined prior to tenders being submitted. Following assessment, the tenderer that submits the most advantageous tender is then appointed as the successful Project Company subject to the tender meeting a number of 'value for money' tests.

PPP projects are not just about building infrastructure, but also about putting together comprehensive, legally-enforceable arrangements for ensuring the proper management and maintenance of the infrastructure over the contract period.

It is also important to note that PPP projects are subject to a number of '*Value for Money*' tests before the contract is awarded. In the case of this project the key test compares the calculated costs of undertaking the project through the traditional model of delivering social housing against the successful tender in the PPP competition. If the PPP tender cost is less than the cost of undertaking the project through traditional means, then it is considered that the project offers '*Value for Money*' and the contract may be awarded.

Section 4 Overview of Functions/Responsibilities

It is proposed that the Social Housing Bundle 1 PPP Programme will be delivered utilising a single contract (Project Agreement) with a lead local authority acting as the contracting authority. It has been agreed that Dublin City Council will act as the lead local authority for the Bundle 1 Programme and it is also proposed that Dublin City Council will be the contracting party which enters into the PPP Contract (Project Agreement) with the Project Company in respect of the development of social housing and the management of the PPP contract.

As set out in Section 2 above, each participating local authority will be responsible for obtaining the necessary planning approvals. In addition each local authority will retain the following functions in respect of the PPP social housing development in its functional area:

- (i) responsibility for the calculation of the tenant's rents, in accordance with the local authority's differential rent scheme and
- (ii) 100% nomination rights for the PPP social housing units.

The Project Company occupies the land on foot of a licence granted by the contracting party for the specific purposes set out in the Project Agreement. It is noted, that at no stage does ownership of the land or houses transfer to the Project Company. The land always remains in the ownership of the local authority in whose functional area the development is constructed.

The local authority is the landlord for the purposes of the tenancy agreements with the tenants and it is proposed that the Project Company will act as the agent on behalf of the local authority in the administration of the tenancy agreements.

The Department of Housing Planning Community and Local Government is ultimately responsible for all unitary charge payments under the contract.

Section 5 Recommendation

I therefore recommend that in order to enable Dublin City Council to act as the lead local authority in the Social Housing Bundle 1 PPP Programme and to be the contracting authority, the following motion be adopted by Dublin City Council:

'Pursuant to Section 85 of the Local Government Act 2001 as amended Dublin City Council hereby agrees to enter into an Agreement with South Dublin County Council, Wicklow County Council, Kildare County Council and Louth County Council whereby Dublin City Council will carry out all of the functions of these local authorities in respect of the Social Housing PPP (Bundle 1) Programme with the following exceptions:

- *the nomination of tenants to be housed in the social housing development in the relevant local authority's functional area,*
- *the calculation of the tenants' differential rent,*
- *the role of landlord under the tenancy agreements and*
- *obtaining the necessary planning approvals and undertaking the public consultation procedures in respect of the development as required under the Planning and Development Acts and Regulations.*

It is hereby resolved under Section 85 of the Local Government Act 2001 as amended to enter into Agreements with the local authorities listed above for the provision of the services as outlined above.'

Owen P. Keegan
Chief Executive

Dated 23rd February 2017