



Legal update — March 2017

Repairs & Maintenance Looking again at delivery models



In 2016, Golding Homes won the award for "Outstanding Approach to Repairs and Maintenance" at the UK Housing Awards. United Welsh won the same award in 2015 for "Maintaining High Quality Homes" Both organisations put in place a wholly owned subsidiary as the delivery model for their repairs service, following a strategic review as to how benefits could be achieved. Trowers & Hamblins acted for both in putting the model in place.

Against a background of reduced income and rising construction costs, how to secure best value in repairs and maintenance is an area of constant challenge. A strategic review of how the service is delivered can generate considerable benefits.

What are the biggest issues for RPs?

- Reduced profit margins have led to concerns about contractor insolvency in the sector;
- A need for greater degree of control and cost transparency;
- How to reduce costs generally, including VAT;
- RPs need to review value in procurement of their services on an annual basis;
- the Homes and Communities Agency monitors compliance by RPs with its Home Standard; and
- Outsourced contracts to the private sector leave RPs exposed on contractor insolvency and some RPs liable for VAT on labour costs.

Because of this exposure, and the need to ensure value for money, RPs are looking again at alternative delivery models. So what models are available?

Joint ventures

Structures differ, but there will generally be a number of advantages including:

- mitigation of risk of contractor insolvency;
- opportunity for the purchasing authority to promote training and employment opportunities for tenants;
- contractor values aligned with those of the purchasing authority;
- no VAT on labour costs;
- opportunities for third party business; and
- longer term investment/commitment by contractor.

The warranty of work would be backed by both the RP and the contractor and therefore the RP would not completely divest itself of responsibility for the standard of work.

Wholly-owned subsidiary

This structure involves the RP outsourcing to the private sector which accepts responsibility for delivery of the service as a whole but utilises a workforce which is employed by a member of the RP's group. Advantages include:

- mitigates risk of contractor insolvency;
- opportunity for landlord to promote training and employment opportunities for tenants;
- no VAT on labour costs for some RPs;
- retains external contractor warranty for the service;
- removes TUPE bidding risk on reprocurement; and
- may be possible to convert existing contracts without reprocurement.

Unlike the joint venture structure, there are limited opportunities for third party business.

What about DLOs?

We are supporting a number of RPs who are looking at the direct labour route. This has many advantages including:

- no risk of contractor insolvency;
- opportunities for tenants on training and employment;
- no VAT on labour costs; and
- possible opportunities for third party business.

The disadvantage is that the RP takes the risk of under-utilisation of the workforce and of poor performance and productivity. There will also be no or limited private sector-expertise.

Managed services

This involves the external management of an in-house labour force by a contractor on an arms-length basis. Its advantages include:

- mitigates risk of contractor insolvency;
- opportunity for landlord to promote training and employment opportunities for tenants;

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- no VAT on labour costs;
- possible opportunities for third party business; and
- buy-in of private sector expertise.

Disadvantages are that the contractor does not warrant the work and that there is limited value to the market relating to the management costs rather than the cost of delivery of the work.

Shared services

RPs are able to set up cost sharing vehicles (i.e. organisations that can provide VAT exempt services to their members). Members must all carry on VAT exempt or non-business activities, and the services supplied should be directly necessary for carrying on those activities (which should include repairs and maintenance). Advantages include:

- No requirement to advertise the procurement process;
- Allows strategic collaboration with other RPs; and
- Cost savings generated by sharing services with other RPs.

Local authorities can be members of a cost sharing vehicle to attract efficiency savings but must consider losing benefit or preferential tax treatment.

Dynamic Purchasing Systems

The rules around Dynamic Purchasing Systems (DPS) have changed, making them a more attractive procurement option for RPs.

DPS are similar to frameworks, but are open to any supplier who passes pre-established qualification criteria. New suppliers can join a DPS after it has been set up, unlike frameworks which are closed to new suppliers. RPs must then invite all members of a DPS to bid for an upcoming project.

Advantages of using a DPS include:

- Flexibility to call-off works and services as and when needed;
- New suppliers can join after set-up, allowing RPs to benchmark prices and maintain best value; and
- Easier integration of nominated suppliers in leaseholder consultation exercises.

DPS can be used for simple repairs and maintenance and construction requirements, although RPs need to consider how it will use and access the DPS, particularly as it has to invite all eligible members of the DPS to bid for new contracts.

Legal issues you cannot afford to forget:

Our experience in advising clients on all these options has highlighted the need for specialist advice on public

procurement obligations, leaseholder consultation requirements (where applicable), TUPE, pensions and the tax-effectiveness of the proposed arrangement.

RPs should also consider building in flexibility to anticipate changes in delivery, data protection and the crucial interface between the residents or occupiers of the affected properties and the chosen workforce.

Our track record in advising on these models has given us the expertise to provide our clients with a succinct and practical Options Appraisal for asset management procurement and structuring of bespoke proposals that achieve compliance while ensuring the best responses from the marketplace.

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