



**Executive**  
9<sup>th</sup> October 2006

**Report from the Director of  
Housing and Community Care**

For Action

Wards Affected:  
ALL

**Approval of the selection of Preferred Bidder for the  
Non HRA Housing and Social Care PFI Project**

Forward Plan ref: H&CC-06/07-10.

**1.0 Summary**

1.1 This Report describes developments in the prospective PFI scheme since the Executive last considered the item on 14<sup>th</sup> November 2005. It proposes that the Brent Co-Efficient Consortium be appointed as the preferred bidder for the scheme for the purpose of further detailed negotiations. It also seeks agreement to exclude the care services from the specification for the PFI and to authorise the Director of Housing and Community Care to develop options for the future provision of care services, such options to be reported back to members in due course.

**2.0 Recommendations**

2.1 To note the information contained in the exempt supplementary report found elsewhere on this agenda.

2.2 To agree to exclude the provision of social care from the specification for the PFI and to receive a further report back from officers on the future options for provision of those services.

2.3 To appoint the Brent Co-Efficient Consortium as preferred bidder for the Non HRA Housing and Social Care PFI scheme and to authorise the Director of Housing and Community Care to enter into detailed negotiations with the Consortium in respect of:

- up to 300 affordable dwellings

- up to 200 dwellings for letting to homeless households at market rents
  - up to 20 registered care home places
  - up to 15 supported living units and
  - up to 15 respite care beds.
- 2.4 To note that further consultation will be carried out with residents and carers on the type and location of accommodation to be provided for use by adults.
- 2.5 To note that a further report will be brought before members to seek agreement to award the PFI contract in due course.

### **3.0 Detail**

#### Background

- 3.1 The project addresses components in the Council's strategies, namely the provision of additional affordable housing, and the re-provision of accommodation for people with learning disabilities. It is the intention to provide these facilities through the Private Finance Initiative and PFI credits worth £26.3m have been awarded by the Department of Communities and Local Government (DCLG).
- 3.2 When it last considered these matters on 14<sup>th</sup> November 2005, the Executive selected three bidders to go through to the shortlist, namely those led by Hyde, Catalyst and Genesis and gave its approval to the evaluation criteria to be used by officers and external advisers to assess the bids to be received from them at the Invitation to Negotiate stage. The five principal evaluation criteria by which it was agreed that bids were to be evaluated were as follows:
1. the extent to which Bids meet the Council's requirements not only at commencement but throughout the Contract Period;
  2. whether or not the Bidders' technical proposals are deliverable (on their own and within the proposed timescale);
  3. whether or not the Bidders' proposals are sufficiently flexible to accommodate future needs of the Council in discharging its statutory responsibilities;
  4. the cost of the payments due to the Bidder throughout the Contract Period; and
  5. whether or not the Bidders' proposals offer value for money.
- 3.3 It was also agreed that bid submissions would be considered by specialist evaluation panels, each of which included a mix of the Council project team personnel and appropriate external advisers.
- 3.4 The evaluation panels assessed the Bids according to their quality and deliverability. The term quality in this context refers to fitness for

purpose and therefore covers any aspect of a Bid that affects the delivery of the Works or Services. Deliverability refers to the likelihood that all aspects of a particular bid (including timing and cost) could in fact be delivered by the Bidder concerned.

#### Detailed evaluation

- 3.5 These headings were analysed and described in some detail in the previous Executive Report and are described again in the appendices to this report.
- 3.6 Shortly before the ITN bids were due to be returned, one of the three short-listed bidders – Genesis – withdrew from the process. The Director of Housing and Community Care had been granted delegated authority to invite the consortia which had been placed fourth in the short-listing exercise to submit proposals if he considered that was appropriate to maintain competition but it was decided not to do so in the circumstances because of the very short period remaining in the planned bid preparation period and because of uncertainty that the consortium would be prepared to bid in the prevailing circumstances. Another factor was the ongoing commitment of the two remaining bidders to the project.
- 3.7 The two remaining bidders submitted full ITN proposals and these were assessed by the Project Team and Advisers having regard to the five principal evaluation criteria set out above under the following five headings:
- Design and construction
  - Care services provision and social services residential properties facility management services
  - Housing management of properties
  - Commercial and contractual
  - Financial
- 3.8 In turn, the results of the detailed evaluation of the ITN proposals were considered by the Project Board (on 22<sup>nd</sup> May 2006) which decided to seek further information and clarification from the two bidders on a number of areas. This was done by issuing bidder specific queries, etc. in the form of “Best and Final Offer” documentation but was predicated upon the principal need to reduce the scope of the potential project. In particular, bidders were asked to submit a bid which excluded the provision of social care. Both bidders had indicated that they planned to use specialist contractors to oversee the delivery of the social care services. The table contained in the exempt supplementary report sets out the relevant costs.
- 3.9 The bids prior to BAFO stage, and which included the provision of social care, exceeded Brent’s estimate of the cost of providing these services by a significant margin. Officers were satisfied that the

bidders had understood Brent's specification but that significant cost reductions could not be achieved in order to make the social care affordable within the context of the proposed PFI contract. On that basis the Director of Housing and Social Care invited bidders to submit their BAFOs on the basis that the social care provision is withdrawn from the PFI.

3.10 The buildings from which care would be provided remain within the proposed specification and they would receive fully planned preventative and reactive building services and engineering facility management services. These are:

- Up to 20 registered care home places
- Up to 15 supported living flats
- Up to 15 respite beds

#### Best and Final Offer

3.11 The evaluation of the Best and Final Offer (BaFO) submissions was undertaken against the same five evaluation principles described above but this time under just four of the five headings i.e. excluding social care, namely

- Design and construction
- Housing management of properties
- Commercial and contractual
- Financial

3.12 The detailed evaluation of the BaFO bids has now been undertaken and a summary of the outcomes is attached as Appendix 1. It is the evaluation panel's view that the consortium, named 'Brent Co-Efficient', have provided proposals which meet the evaluation criteria far better than those submitted by the second consortium (Catalyst).

3.13 Thus, it is recommended that Brent Co-Efficient be nominated as Preferred Bidder and that final negotiations be undertaken. The areas requiring resolution are, generally, technical matters and Appendix Two describes these under the broad headings of the evaluation criteria.

3.14 Once final negotiations have taken place, the Executive will receive a further more detailed Report describing the prospective contract. It will be at that time that the Council will be asked to award the contract.

3.15 In recommending Brent Co-Efficient as Preferred Bidder, the Council's officers and advisers will offer the unsuccessful bidder (Catalyst) feedback about their proposals and the reasons for their 'failure'.

#### Timetable

3.16 As a result of implementing the BaFO stage, the timetable to the prospective 'close' of the contract is set out below.

<b>Stage</b>	<b>Date</b>
Nomination of Preferred Bidder	9 Oct 06
Conclusion of negotiations	21 Dec 06
Submit Final Business Case to DCLG and Executive for approval	2 Feb 07
Commercial contract close	01 Mar 07
Financial close	22 Mar 07

### Care Services Accommodation

- 3.17 At the time when the original PFI scheme was planned, the Council had two residential homes – ‘Melrose House’ and ‘Homelea’ - with a total capacity of 25 permanent accommodation places and 9 respite care places. The specification for redevelopment included the provision of 20 permanent accommodation places. The original assumption was that within the two registered care homes, the total number of those in permanent accommodation would reduce by 5 as some would be supported to progress to the supported living accommodation which is part of the redevelopment.
- 3.18 However in May 2005 as a result of the urgent need to underpin the ‘Homelea’ building which had developed structural cracks, the five permanent residents were moved out of the home. Most of these residents had lived together for more than 10 years. Families and carers of the residents were consulted and involved in the relocation of the residents. Their main wishes were for the residents to be relocated at the same place, but this was not possible. One of the residents was relocated in Melrose House, the other four were relocated in 3 different residential homes. The residents have since settled down very well in their new accommodation.
- 3.19 Melrose is of a design that CSCI no longer thinks is appropriate – its size means that it does not provide the conditions or atmosphere of the type of home that most people live in. The buildings are dated, lack en suite lavatories and bathrooms, the bedrooms are small and facilities for mobility impaired users are very limited. It currently has 18 residents. A recent annual review of residents’ needs showed that 3 of the 18 can be supported to move on into supported living accommodation which will enable them to build on their existing skills, and develop more independent lifestyles. Those three residents are being progressed to move-on and this will leave only 15 permanent residents. This, plus the experience from the ‘Homelea’ relocation, has enabled us to review and conclude that the Council probably needs to redevelop only 15 permanent beds as opposed to the originally planned 20. However, it is proposed to retain flexibility at this stage and so the negotiations will be for 20 residential care places.
- 3.20 A view has been expressed by relatives of the residents of Melrose House through the consultation process that the residents should

remain together because of the friendships that have been built over the years.

- 3.21 Consultation with residents has been taking place on an on-going basis, in order to determine friendship groups and views on the new model of provision as well as moving. Residents have identified people that they would wish to continue living with in the future. Needs assessments and review processes have also identified that some residents need to move to more supportive environments because of their health and others to more independent forms of living.
- 3.22 The scheme that is being proposed by Brent Co-Efficient complies with the brief issued to them and offers a flexible approach to meeting the needs of existing residents and as well as future service users. It provides for a sustainable inclusive community approach whereby small “clusters” (5 bedded units with en-suite facilities and shared living room and kitchen) are set amongst general housing units.
- 3.23 The proposal at this stage, though this is still subject to negotiation, is to place three of the five cluster units (i.e. fifteen beds) in close proximity to one another - two clusters would be almost next door to each other with the third cluster very close by. It is anticipated that these units would be suitable for the Melrose residents. The remainder of the clusters are sited in different locations in the borough, possibly in Wembley and Kingsbury but, again, close to each other. It is felt that this design is more in keeping with the aspirations of younger residents and will also offer choice to future residents as to where they would like to live in the borough. In addition, the building design proposed by Brent Co-efficient offers the flexibility of being used as supported living units or as independent living flats thus supporting Brent Council’s policy to promote independent living
- 3.24 Valuing People, the white paper which sets out the direction for modernised learning disability services, emphasises the importance of giving people with learning disabilities the choice of different housing and support options, particularly more open housing access. Within this context, Valuing People reminds local authorities that people with learning disabilities should be able to choose between supported living, small scale ordinary housing and village/intentional communities.
- 3.25 As might be expected, the different models of service provision have different benefits. Dispersed housing and supported living offer more choice and opportunities to develop an ordinary life, individualised support and community inclusion. Village/intentional communities offer better activity planning, more routine day activities and better access to health checks. Dispersed housing and supported living models are also in keeping with the direction in which local authorities are expected to provide services for people with learning disabilities as described in Our Health, Our Care, Our Say and Better Life Chances for Disabled People.

- 3.26 Some relatives are requesting that the re-provision of Melrose is based upon a village/intentional community model which they believe may be achieved through the co-location of all residents on one site.
- 3.27 Valuing People refers to village/intentional communities as an option for people with learning disabilities. Village or intentional communities have been described as a “cluster of residential provision in own grounds sharing communal day and recreational facilities”. (Emerson et al, p.7, TLDR, Vol 5, Issue 1, January 2000). These tend to be well-established communities that have evolved over a period of time and are usually operated by charitable foundations with a strong religious or philosophical foundation. They are not usually created as part of a re-provision. Valuing People reminds us that this option exists, but does not insist that we should set up village communities. Instead Valuing People promotes the values of choice and inclusion. The research that Valuing People quotes found that people in village communities tended to be younger with less complex needs than people in dispersed housing. In addition, this research found that people who lived in dispersed housing were more likely to receive individualised care in a homely setting which supported choice and inclusion through social integration and involvement in leisure and recreational activities. This is the model of ordinary life that Valuing People promotes and this is what we aspire to in Brent.
- 3.28. Emerson (who carried out the DOH research) does refer to intentional communities of attachment and suggests an emphasis on people and relationships not on buildings and location. This approach is also what we have aspired to in Brent and considerable time and effort has been taken to work with residents to establish friendship groups which will inform the re-provision. It is important to remember that Melrose residents have not been able to choose who they share their home with in the past, and that some people may not want to continue to live together. Commitment has been given throughout the process to continuing to facilitate contact between people who wish to remain in contact. We need to balance our commitment to supporting friendships with the possibility of creating cluster housing models. All research shows that this highly institutionalised model offers the poorest quality of care and that people who live in them have either the same or a reduced level of friendship activities with other people with learning disabilities. In addition, co-location of all residents on one site would, in reality, result in a campus style provision of the kind the government has indicated should be closed down.
- 3.29 The PFI process has allowed us to ask bidders to take into account a number of principles. These include:
- Maintaining friendship groups
  - Developing an inclusive approach to the location of the building
  - Developing a model of service which gives people choice over where they want to live in the borough and which will meet future needs
  - Developing a cohesive service.

- 3.30 Co-location of all residents is not an option supported by the DoH nor by officers. However, as mentioned above, the current proposal is to co-locate some of the clusters and this may go some way to allaying residents' and carers' concerns. This accommodation would be integrated into local housing from a design perspective and local communities. This would enable residents to maintain contact with each other on a frequency of their choice and in locations of their choice as well as enabling people, both current and future service users, to develop more ordinary lives in keeping with the aspirations of Valuing People and Brent. It is proposed that ongoing consultation processes with service users and their carers and guardians will be utilised to discuss the final configuration of the scheme and establish the final requirements. This process may result in some redesign work for the Preferred Bidder but the requirement to do any such work at their cost will be a condition of their nomination as Preferred Bidder. Officers will be able to provide a verbal update of the ongoing consultations with service users and their carers and relatives at the Executive's meeting but the final detail will not be known until negotiations are concluded and will be reported back to members as part of the contract award report.

### Consultation

- 3.31 Consultation meetings have taken place with relatives and residents prior to the submission of the PFI proposal and during the negotiations.
- 3.32 As the PFI process progressed, an independent consultant was employed to work with and support residents around issues relating to the move, including identification of friendship groups and choices about where to live. Residents have been supported to visit other homes run by the bidders. At the point where bidders produced architectural plans, a meeting was held with residents who looked at plans and a model of a home and residents were able to comment on these. This feedback informed negotiations with bidders.
- 3.33. A series of meetings were also held with relatives beginning from when the PFI bid was first proposed. These meetings enabled relatives to explore the various possibilities about where the new service might be located and what the service should look like. Relatives have commented on the service specification and have been involved in looking at plans.

### Future Social Care Services Provision

- 3.34 On the basis that social care services are excluded from the PFI arrangements then there are two options for the supply of the social care:
- Continue to supply the care through in-house service delivery
  - Invite bids to provide the care from suitably qualified organisations



- 3.35 It is recommended that the Director of Housing and Community Care develop options for the future provision of social care services and report back to members in due course with proposals for future service provision.

#### **4.0 Financial Implications**

4.1 This section of the report addresses financial implications of the scheme. The financial evaluation of bids is part of the overall evaluation of the bids (see Appendix 1). This section of the report addresses:

- affordability of the recommended bid – how much it will cost and how the council will fund it;
- specific issues related to the provision of residential accommodation for people with learning disabilities;
- treatment of capital receipts;
- financial risks – which could affect the longer term viability of the arrangement;
- value for money of the recommended bid – the extent to which the council can be satisfied it has achieved value for money from the process;
- accounting treatment of the recommended bid – the basis on which the recommended bid is considered off-balance sheet.

##### Affordability

4.2 The council needs to be satisfied the bid is affordable to proceed with the project. The issue of affordability is complicated by changes since the original proposal for the PFI scheme was put forward in 2003, including (1) reductions in the council's overall funding requirement for temporary accommodation; and (2) removal of social care provision from the scope of the PFI project, which means that budgets previously identified as available to fund the scheme are no longer available.

4.3 The table in the exempt supplementary report sets out details of the cost of the Brent Co-Efficient bid to the council under:

- a. The standard bid that both bidders were required to submit at Best and Final Offer (BAFO) stage, which included provision of: 300 affordable homes, 150 temporary market rented homes, 15 supported living units, 15 respite beds and 20 cluster units for people with learning disabilities;
- b. Brent Coefficient's optional variant bid which differs from the mandatory bid as follows:
  - 250 affordable homes instead of 300;

- 200 temporary units instead of 150;
- a financing structure which reduces interest payable on loans.

4.4 Currently given that there is an affordability gap, officers' advice is that negotiations should be entered into with the preferred bidder with a view to reducing the cost of the bid, with the proposals in the optional variant bid providing the starting point for these discussions. The areas that these negotiations will focus on are as follows:

- a. Reviewing the mix of properties, including the possibility of reducing the number of permanent affordable units provided and increasing the number of temporary units provided. This would achieve reductions in the costs by increasing the amount of cross-subsidy between temporary market rented properties and permanent affordable accommodation. Whilst the benefit of the scheme – in terms of finding permanent accommodation for homeless families and reducing numbers in temporary accommodation – would be reduced, there would still be a significant number of additional permanent homes.
- b. Reviewing the rent charged for temporary market accommodation. The current rent proposed for temporary accommodation in the scheme is an average of £310 per week. This is broadly in line with average rents currently charged for Housing Association Leasing Scheme (HALS) properties but less than the rent charged on the council's Private Sector Leasing schemes. An increase in the rent, which in most cases would be covered by housing benefit subsidy, would reduce the unitary charge to the council.
- c. Reviewing the performance specification. The PFI bid included a high specification for the homes being provided and for performance of the contractor in ensuring the homes remain available at a high standard. It may be possible to achieve reductions in the proposed contract price by reviewing the specification and performance standards, whilst maintaining a high overall level of performance.
- d. Reviewing treatment of risk on value of properties at the end of the contract period (i.e. 2037). The current proposed contract conditions envisage that, at the end of the contract period, the council retains nomination rights to the permanent affordable housing units, but the temporary units are disposed of by the contractor to pay off what is known as Tranche B debt of £70m. The calculation of how much debt will be paid off involves the bidder assessing the risk associated with potential disposals receipts. It is the view of the council's advisers and council officers that Brent Coefficient has been very prudent in the amount of risk it has built into this calculation and that the full benefit of increases in property prices above those modelled in the Brent Coefficient submission will accrue to Brent Coefficient. Alternative approaches that ensure that the council would benefit

from increases in prices above those currently assumed will be reviewed with the preferred bidder.

- 4.5 Whilst the negotiations on items outlined above will be carried out with the aim of achieving reductions in the cost of the contract to the council, there are other factors that could offset reductions. These include the following possible risks:
- a. The cost of land to be acquired for the contract is greater than estimated in the Brent Coefficient bid;
  - b. Interest rates increase between now and Brent Coefficient being able to enter an interest rate swap to fix interest rates ;
  - c. The proposed business structure is not acceptable to HM Revenues and Customs and therefore VAT payments are higher than included in the Brent Coefficient bid (this will add about £100k per annum to the affordability gap);
  - d. Delay in reaching final agreement increases inflation provision required in the contract.
- 4.6 Officers will report back to the Executive with a proposed agreement and a mechanism for funding any remaining costs.

#### Accommodation for people with learning disabilities

- 4.7 Accommodation for people with learning disabilities is a relatively small element of the overall PFI scheme now that the care element has been removed. However, provision of accommodation for people with learning disabilities formed part of the overall case for PFI credits to government when the scheme was originally put forward and therefore total removal of this element would need to be agreed with government. In addition providing this accommodation as part of a larger scheme brings down the building costs of the replacement facilities – because of shared overheads between the provision of housing and residential accommodation – and therefore represents better overall value for money than providing the housing and residential accommodation separately. Any new build replacement facilities for Melrose – if provided outside of the PFI contract - are estimated to cost £2.268m, excluding the costs of site purchase. The estimated cost of providing these through the PFI contract is £2m.

#### Treatment of capital receipts for council properties

- 4.8 The Brent Co-efficient bid includes a number of council properties which could be used to provide housing units and residential accommodation under the proposed PFI scheme if the council agreed. Two of these sites - Melrose House and Homelea House – were earmarked at an early stage of the PFI for inclusion in the arrangement at nil cost to the PFI provider, as part of the arrangement to provide alternative residential accommodation for people with learning disabilities. This agreement was given in principle and will need to be

confirmed at the next stage when members will be provided with details of the unrestricted site values

- 4.9 There are other sites – John Wilson House (167 Willesden Lane) and 9 Willesden Lane – which are currently included in the council disposal programme with a minimum estimated capital receipt of £2m toward the council non-Right-to-Buy capital receipt target over the period of the current capital programme (2006/07 to 2009/10) of £10m. Inclusion of these properties in the PFI arrangement will reduce forecast receipts by a minimum estimated £2m. Formal valuations of these sites will be procured so that the true value of any capital receipt which it may be proposed be foregone may be considered. Given that these properties are being used to facilitate the provision of social housing through the PFI, it is proposed that this shortfall is offset against provision within the capital programme of £12m over the period 2006/07 to 2009/10 to fund provision of social housing grant to housing associations. This issue will be addressed in the report which will follow negotiations with the preferred bidder.
- 4.10 It had been suggested that Winkworth Hall (215 Chevening Road) might be transferred to the successful contractor as part of the PFI. However, the current lack of vacant possession has led to Winkworth Hall being suspended from the list of properties currently being considered for transfer. This property will be the subject of a separate Executive report.

#### Longer term financial risks

- 4.11 There is potential for the Council to be exposed to longer term financing problems. These, and their potential mitigating actions, are briefly described below.
- a. Risk of Brent Coefficient defaulting; in the unlikely event that Brent Co-Efficient were to default and their contract be terminated, the Council is fully protected. This protection is given through two principal means. Firstly, the principal funder is given the opportunity to “step in” and procure a suitable replacement. Secondly, if a suitable alternative supplier cannot be found all the properties revert to the Council, and the Government funding is still received so that any debt due the principal funder can be repaid (on the same basis as agreed between the funder and provider at the outset).
  - b. When approaching the date of the potential ‘closing’ of the contract, it is to be noted that the actual amount of the monthly Unitary Charge payable by the Council cannot be established until the interest rate is fixed i.e. the day of Financial Close. This can mean that Council’s need to grant delegated powers to an appropriate officer to agree the interest rate within a broad range of rates that have been previously analyzed and considered by Members. However, Members may prefer to have a known cost established for their consideration. It is possible to achieve this fixing of the interest rate for the funding required in advance of the

actual close date through a “swap rate” being agreed. A fee is incurred but the approach enables firm prices to be considered by the Council and this will be explored further with the Preferred Bidder;

- c. Risk of change to housing benefit subsidy regulations on income for temporary accommodation; as above, there is always a possibility that Government may not maintain its funding in due course but it is considered unlikely; and
- d. Were Brent to assume part of the risk associated with residual value of the properties at the end of the contract period (see above), there could be a cost to the council if prices increase at a lower rate than assumed. A residual value below that assumed in the contract would impact on the number of properties to which the council retains on-going nomination rights after the end of contract period.

#### Value for money

- 4.12 The requirements to show that the PFI procurement represents value for money are set out in the Treasury guidance ‘Value for Money Assessment guidance’ (August 2004). Three main value for money driver are identified:
  - the quality of the competition;
  - the success achieved in transferring to the private sector an appropriate level of risk; and
  - the reasonableness and stability of costs emerging from the competition following an efficient procurement process.
- 4.13 In terms of the quality of the competition, this has been reduced by one of the three ITN bidders dropping out of the process at an early stage. However, by undertaking a Best and Final Offers stage and confirming and clarifying particular aspects of bidders’ proposals, the aim was that the quality of bids was enhanced and the value obtained from the competitive process increased.
- 4.14 In terms of transferring risk, bidders have substantially accepted the PFI standard form of contract and have accepted a considerable financial risk relating to the collection of rent. There remain discussions to be had on specific matters, such as residual value risk but notwithstanding this a significant degree of risk transfer is likely to be achieved.
- 4.15 On the reasonableness and stability of costs, the council’s technical advisor has reviewed the cost assumptions made by the proposed preferred bidder and is satisfied that these are in line with current market rates. A detailed analysis has been undertaken of the proposed costs at each of Brent Co-Efficient’s potential sites; these show a range in the cost per square metre between £1,248 and £2,198. The overall

average cost is £1,481 per square meter; this is regarded as reasonable as it is within market rates as established through eight housing schemes that have recently 'closed' in London.

#### Accounting treatment

- 4.16 With a social housing project, the position with regard to balance sheet treatment is a little more complex than with other types of accommodation PFIs as there are significant revenues arising from the properties that need to be taken into account; the contractor will take the risk relating to rents, to large extent on their value and fully in terms of collection. Who takes residual value risk will be determined by considering the value for money implication.
- 4.17 Whilst there is some uncertainty as to exactly how residual value risk will be agreed, the value of rent is significantly greater than residual value (about five times in Net Present Value terms). Hence it will probably have a greater bearing on the accounting treatment. The contractor will also take some demand risk as the responsibility for finding tenants can be passed to the contractor if the Council is unable to identify potential tenants.
- 4.18 At this stage therefore, it is reasonable to believe that it should be possible to obtain an off balance opinion for this transaction.

### **5.0 Legal Implications**

#### *The procurement*

- 5.1 On 25 May 2005, in accordance with the approval of the Executive given in October 2004, a notice was placed in the Official Journal of the European Union (OJEU) seeking expressions of interest from organizations interested in bidding for the project. The OJEU notice confirmed that the Council would be using the negotiated procedure to award the contract. This permits the Council to pre-qualified bidders who respond to the OJEU notice and to select a number of them to negotiate with. The negotiated procedure is permissible under the Public Services Contract Regulations where the nature of the services to be provided, or the risks attaching thereto are such as not to permit prior overall pricing.
- 5.2 On 14 November 2005 the Executive selected the three shortlisted bidders to be invited to negotiate with the Council. Pursuant to Contract Standard Orders 88 and 89 the Executive also approved detailed evaluation criteria. The Executive agreed that each detailed evaluation criteria should be given equal weighting. Members are advised that following the evaluation of the responses to the ITN using the detailed evaluation criteria established by the Executive the two remaining bidders (after the consortium led by Genesis withdrew) were invited to submit best and final offers as was contemplated in the market brief approved by the Executive. The evaluation of the Best and Final Offer Submissions are now being reported to the Executive for consideration

and the Brent Co-Efficient Consortium is recommenced for appointment as preferred bidder in order that final negotiations can be undertaken.

#### *The Consortium and overall structure*

- 5.3 The Brent Co-Efficient Consortium is a consortium made up of Hyde Housing Association, Bouygues UK Limited and Bank of Scotland. Brent Co-Efficient is a special purpose vehicle (SPV) which has been established specifically to deliver the Council's PFI Contract. Each of Hyde Housing Association, Bank of Scotland and Bouygues UK will be shareholders in the SPV and will respectively have the following roles, Hyde – Housing Management Contractor, Bank of Scotland – Senior Lender and Bouygues UK – Building Contractor.
- 5.4 The contract, if awarded to the proposed preferred bidder, will be a contract for 30 years between the London Borough of Brent and Brent Co-Efficient Limited. Under the terms of the Contract Brent Co-Efficient Limited will take on all contractor responsibility and it will be up to Brent Co-Efficient to sub contract the various obligations to appropriate parties. All of the proposed sub contractors have been identified within the Brent Co-Efficient proposals. Brent Co-Efficient will sub contract its obligations to Hyde Housing Association (for housing management), Bouygues UK (for design and build) and to other non consortium members namely Ian Williams Property and Building Services Limited in respect of responsive repairs and cyclical maintenance and Notting Hill Housing Group in respect of the provision of interim temporary accommodation. Under the terms of the Contract the London Borough of Brent will pay to Brent Co-Efficient a contract fee for the delivery of the services. This is known as the Unitary Charge. The payment of the Unitary Charge will be subject to both availability deductions (if the assets being procured under the contract are not able to be utilised) and performance deductions (if the contractor fails to meet the performance standards). A series of performance indicators have been formulated which will form the basis upon which performance deductions may be made.
- 5.5. The Contract contains provisions which would allow the Council to terminate including, voluntary termination by the Council, Force Majeure (the happening of an event which frustrates the ability to continue the performance of the Contract) and Contractor Default. Under all termination scenarios there are complex provisions which need to be agreed in relation to the treatment of the assets which have been procured up to the point of termination and in respect of the payment of compensation to the contractor. The Contract will also make provisions for the regular monitoring and review of performance, the standard of accommodation to be built under the Contract, the Council's right in certain circumstances to step in and perform the Contract and a provision for resolution of disputes between the Council and the Contractor.
- 5.6 The terms of the Contract will not only need to be approved by the Council when agreeing the Contract but will also need to be signed off

by both PUK (Partnerships UK) and DCLG (the Department for Communities and Local Government).

- 57 Each of Hyde Housing Association, Bouygues UK and Ian Williams will enter into Direct Agreements with the Council pursuant to which the Council will have the right to step into the role of Brent Co-Efficient under the sub-contracts in certain default circumstances. Bank of Scotland will also enter into a Funders Direct Agreement with the Council which will entitle Bank of Scotland in certain circumstances of default to step into the role of Brent Co-Efficient and substitute an alternative provider in place of Brent Co-Efficient.

### *Negotiations*

- 5.8 Whilst there have been a series of negotiation meetings with the Brent Co-Efficient Consortium leading up to the final submission of the BaFO (as is permitted within the negotiation procedure) further negotiations will be required should the Executive approve the appointment of the Brent Co-Efficient Consortium as preferred bidder. The negotiations thus far have resulted in a significant degree of agreement over the terms of the contract (Project Agreement) with the significant outstanding matter relating to residual value treatment set out in more detail at Appendix 2. Members need to be aware that in order to secure the necessary PFI credits from the DCLG the Project Agreement needs to comply with SoPC3 and the Housing PFI Procurement Pack. Depending on who takes the risk on residual value then the Council could receive the benefit of a reduced unitary charge over the life of the contract. On the basis of the Best and Final Offer submitted by the Brent Co-Efficient Consortium this amounts to approximately £170,000 per annum saving to the Council. However, further discussions and refinement of the residual value treatment will need to take place during the final series of negotiations with the preferred bidder and specific approval from Partnership UK (PUK) and DCLG will be required in addition to any other contract provisions which do not comply with SoPC3. Members will be provided with a full report on the contract terms before the Executive is asked to approve the entry into the Contract. Members should note that in conducting negotiations with the preferred bidder the Director of Housing & Community Care will require some flexibility around numbers and mix of units and that the outcome of those negotiations (which will be reported to members) may indicate that a different number or mix of units would be best for the Council.
- 5.9 In order to qualify for PFI credits the ultimate arrangements in the Contract need to meet the test laid down in Financial Reporting Standard 5 (FRS5) which requires that on the basis of the risk transferred to the private sector the assets being procured under the contract are off the balance sheet of the Local Authority. This FRS5 analysis will be undertaken prior to commercial close and the analysis will be reported to members prior to entering authorising entry into the contract. Appendix 3 indicates the current position with regards to allocation of risk but members will be updated on this when the matter is next reported to them.



## *Legal Powers*

5.10 The Council has a number of powers which enable it to procure the accommodation and services envisaged within this contract namely:

- Part VII of the Housing Act 1996 places various duties on a local housing authority to secure that accommodation is available for persons who are homeless or threatened with homelessness including, Section 188: requiring the local authority shall secure that accommodation is available for a person's occupation if it believes that the applicant may be homeless, eligible for assistance and have a priority need and section 193 where, unless the local authority can refer the applicant to another local housing authority it shall secure that accommodation is available for occupation by an applicant where it is satisfied that an applicant is homeless, eligible for assistance and has a priority need and is not satisfied that he become homeless intentionally;
- Section 21 of the National Assistance Act 1948 provides that a local authority may with the approval of the Secretary of State and to such extent as he may direct, make arrangements for providing residential accommodation to persons aged 18 or over who by reasons of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them;
- Section 2 of the Local Government Act 2000 provides that every local authority has the power to do anything which they consider is likely to achieve any one or more of the following objects- (a) the promotion or improvement of the economic well-being of their area; (b) the promotion or improvement of the social well-being of their area; and (c) the promotion or improvement of the environmental well-being of their area. The power may be exercised in relation to or for the benefit of: (a) the whole or any part of the local authority's area, or (b) all or any persons resident or present in a local authority's area. This power includes the power for the local authority to amongst other things provide staff, goods, services or accommodation to any person. The power to promote well-being does not enable a local authority to do anything which they are unable to do by virtue of any prohibition, restriction or limitation on their powers which is contained in the enactment nor does it enable a local authority to raise money. Before exercising the power a local authority must have regard to the guidance that has been issued by the Secretary of State about the exercise of that power.
- Section 1 of the Local Government (Contracts) Act 1997 provides that every statutory provision conferring or imposing a function on a local authority confers power on the local authority to enter into a contract with another person for the provision or making available of assets or services, or both, (whether or not together with

goods) for the purposes of, or in connection with, the discharge of the function by the local authority.

### *Care Properties*

- 5.11 The Department of Health issued a statutory guidance under Section 7 of the Local Authority Social Services Act 1970 in order to implement proposals for improving the lives of all adults with learning disabilities. Part of the statutory guidance (Health Service Circular/Local Authority Circular 2001/16: LAC (2001) 23) gives implementation guidance on the Department of Health valuing people white paper - "Valuing People: A New Strategy for Learning Disability for the 21st Century" ("Valuing People"). This states, at paragraph 7.11:

*"7.11 - The Government expects local councils to give people with learning difficulties a genuine opportunity to choose between housing, care and support options that include:-*

***Supported Living:*** *this approach is concerned with designing services around the particular needs and wishes of individuals and less likely to result in housing and support that is designed around congregate living. Department of Health research has shown that supportive living is associated with people having greater overall choice and a wide range of community activities.*

***Small Scale Ordinary Housing:*** *Department of Health research has shown that small scale ordinary housing is likely to lead to better outcomes across a range of factors than is large housing or hostel provision.*

***Village and Intentional communities:*** *these comprise houses and some shared facilities on one or more sites. The Department of Health research shows such communities were associating with better activity planning, more routine day activities and better access to health checks. A study commissioned as part of the White Paper development found three thousand people living in 73 villages and intentional communities. This study and Facing the Facts also indicates that some local authorities are reluctant to support people with learning disabilities who wish to live, or whose family are making arrangements for them to live, in a village or intentional communities.*

- 5.12 The statutory guidance issued to implement Valuing People states:

#### ***"Choice in Housing***

*9. People with learning disabilities should be given a genuine opportunity to choose between housing, care and support options. Local authorities should therefore ensure that all housing options are considered when they are exploring the future housing, care and support needs of people with learning difficulties and their families. These options should include small-scale ordinary housing, supported living and village and intentional communities as well as residential care. None of these should be ruled out.*

## ***Expanding Housing, Care and Support Options***

*43. People with learning disabilities should be given a genuine opportunity to choose between housing, care and support options. Local councils in considering future housing, care and support and needs of people with learning disabilities and their families should therefore ensure that all options are considered. These options should include small-scale ordinary housing, supported living and village and intentional communities as well as residential care. Councils should respect the preferences of individuals and their families, wherever the preferred options will meet the individuals assessed needs and are affordable. Where there is limited demand for a particular option, councils and housing authorities may need to consider joining with neighbouring authorities to encourage the development of a greater range of provision”.*

- 5.13 At least one of the residents’ carers has asked for Melrose to be re-provided in the form of a village or intentional community. Members are required to consider this option and the guidance contained in ‘Valuing People’. That is not to say that members are obliged to re-provide Melrose in the form requested but they must give it serious consideration and consider the benefits and disbenefits of that type of service provision over others. This report seeks to address those issues. Further, it should be noted that further discussion with carers are ongoing and it is hoped that the configuration of the new buildings will be acceptable to most if not all residents and their carers. In any event, this matter will be reported back to members in due course.

### *Property Disposals*

- 5.14 Members will note that it is proposed that a number of Council owned properties will be used as part of the scheme and thus it is proposed that these council properties (some of which have already been identified and some which are still to be finalised) will be transferred to the contractor. If any of the properties are held for housing purposes then the Council has power to dispose of the properties subject to obtaining Secretary of State consent under section 32 of the Housing Act 1985 and unless a general consent applies as the specific consent of the Secretary of State will be required. For all other properties the Council has power to dispose under Section 123 of the Local Government Act 1972 which provides them the local authority may dispose of land held by them in any manner they wish provided that the consent of the Secretary of State is obtained if the consideration is less than the best that can reasonably be obtained. The Secretary of State has issued a general consent under section 123 of the Local Government Act 1972 (Circular 06/03: Local Government Act 1972 General Disposal Consent (England) 2003 Disposal of Land for less than the best consideration that can reasonably be obtained) which removes the requirement for authorities to seek specific consent from the Secretary of State for any disposal of land where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted ("the undervalue") is £2 million or less.

Members are not at this stage being asked to agree any property disposals members are reminded of their fiduciary duty which is owed to council tax and ratepayers within the borough which obliges the council when exercising its functions and thus when considering the recommendation in this report to make proper arrangements for securing the economic efficient and effective use of the local authority's resources. Members will need to consider whether to transfer any identified properties to the contractor in return for a reduced contract cost. In deciding whether to do that members will need to consider the potential capital receipt they would forego if the properties were sold on the open market together with all other relevant considerations.

## **6.0 Diversity Implications**

- 6.1 It may be noted that applicants' policies and procedures in respect of diversity issues have formed an element of the evaluation methodology that was applied.

## **7.0 Staffing/Accommodation Implications (if appropriate)**

- 7.1 The proposal will give staff opportunity to work in modern units which meet CSCI regulations and modern facilities and equipment to deliver services in.

- 7.2 In addition to the above, the proposal will also expand staff opportunities to be able to provide flexible services that promote independent living.

- 7.3 There are no TUPE implications at this stage because it is not proposed to include the care provision in the PFI. If members subsequently decide to procure a care services provider then a TUPE transfer may then arise but members will be given further more detailed advice on this at the time.

- 7.4 Since February 2006, there have been ongoing consultation meetings with both staff groups and unions over the redevelopment of Melrose, implications of tendering the service, TUPE and pensions. In total 7 meetings have been held of which 4 have been attended by Trade Unions. These consultations which are facilitated by a training professional are still on-going. In addition they are being programmed to assist staff as a service transformation vehicle with useful developmental topics being delivered in some of them.

- 7.5 All are positive about the improvements the proposal will bring to people with learning disability. They are also concerned about the implications for their jobs and the effect of TUPE and pension rights. The Pensions Manager and Human Resources staff have briefed staff and provided them during consultations with information on their employment rights, the implications of a TUPE transfer and the wish to have pension rights protected through the comparable scheme.

- 7.6 Staff have also been represented on the project steering group to finalise the tender specifications for the care and construction & design.

Representatives will be involved in the tender selection and validation process.

## **8.0 Background Papers**

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## **9.0 Contact Officers**

Christabel Shawcross  
Assistant Director of Community Care

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Director of Housing & Community Care

## APPENDIX ONE

<u>BaFO Evaluation Summary</u>	Proportion of overall score Mandatory	<u>CATALYST</u> Mandatory	<u>HYDE</u> Mandatory
<b>Design and Construction</b>	25.00%	8.6%	10.4%
<b>Management</b>	25.00%	12.8%	16.3%
<b>Commercial &amp; Contractual</b>	25.00%	1.7%	18.3%
<b>Financial</b>	25.00%	5.0%	22.3%
<b>Total Score for BAFO</b>	<b>100.00%</b>	<b>28.0%</b>	<b>67.1%</b>
<b><u>PASS/FAIL TEST</u></b>			
<b>Financial</b>			
Affordability		fail	pass
Balance sheet opinion		pass	pass

<b>DESIGN AND CONSTRUCTION</b>		Max Score	CATALYST	HYDE	weighting %
<b>compliance</b>	compliance with the requirements contained in the output specification	10	4	4	7%
<b>design</b>	efficiency of the building design	5	3	4	4%
	functional effectiveness of the design	5	3	4	4%
	quality of the proposed specification	5	3	3	4%
	overall concept and architectural quality	5	3	4	4%
	ability to meet exclusivety requirements	5	3	3	4%
<b>flexibility</b>	flexibility of design (the ability to accommodate future expansion/contraction)	15	3	3.5	11%
<b>planning</b>	approach to planning approvals	10	2	3	7%
	acceptability in planning terms (if applicable)	10	3	1.5	7%
<b>construction/decant</b>	the approach to the refurbishment works	5	2	5	4%
	the approach to the construction works (including in relation to decant and the sensitivity of care service users)	5	2	2	4%
	impact of work on residents	5	2	3	4%
<b>quality</b>	quality of component parts of the refurbishment and construction works	10	3	3.5	7%
	quality of lifecycle proposals	10	3	3	7%
	allocation of sinking fund for maintenance (cl 2.7.6)	10	3	3	7%
<b>costs</b>	robustness of costs	10	1	3	7%
<b>security</b>	premises security	5	2	2.5	4%
<b>delivery</b>	ability to deliver the required facility in accordance with the target completion date, timing of key activities (such as Decant)	10	3	3	7%
<b>TOTAL</b>		<b>140</b>	<b>48</b>	<b>58</b>	<b>100%</b>

<b>MANAGEMENT</b>	<b>Max Score</b>	<b>CATALYST Mandatory</b>	<b>HYDE Mandatory</b>
<b>Improving service delivery;</b>	10	2	8
<ul style="list-style-type: none"> <li>Reducing costs; and</li> <li>Dealing with changes</li> </ul>			
<b>Experience in project delivery:</b>	10	6	8
<ul style="list-style-type: none"> <li>during the scheme development, construction / refurbishment; and</li> <li>experience in service delivery phases, having particular regard to the requirements of safe working close to occupied dwellings and properties.</li> </ul>			
<b>Resource sufficiency</b>	20	8	12
<ul style="list-style-type: none"> <li>ability to deliver to specification on time; and</li> <li>ability to sustain quality standards including staffing, skill and experience and performance monitoring systems</li> <li>adequacy of the provision under the Health &amp; Safety (CDM) Regulations.</li> </ul>			
<b>Quality</b>	25	10	12
<ul style="list-style-type: none"> <li>the quality and innovation of the proposed scheme in design and service provision;</li> <li>the quality standards adopted and evidence of performance monitoring systems / registered quality management systems or equivalent.</li> </ul>			
<b>Workforce Issues</b>	15	9	9
<ul style="list-style-type: none"> <li>approach to staff transfers under TUPE and compliance with Circular 3/2003;</li> <li>approach to recruitment and retention of staff and improvement of working relations with staff;</li> <li>approach to provision of pension arrangements;</li> <li>quality of staffing; and</li> <li>proposals for the training of staff.</li> </ul>			
<b>Evidence of clear willingness to work together with the Council to achieve optimum standards of service for all Service Users, and that the strategic objectives of bidders are compatible with the values of the Council.</b>	20	16	16
<b>Total Scores for ITN</b>	100	51	65

<b>Commercial &amp; Contractual</b>	<b>Max Score</b>	<b>CATALYST Mandatory</b>	<b>HYDE Mandatory</b>
Details of the members of the Bidder's proposed consortium, their respective roles and the equity to be provided by each member;	5	1	4
The management structure of the Bidder's proposed consortium;	5	1	4
Parent company guarantees and/or performance bonds to be provided and insurance;	5	2	3
Risk management arrangements within the Bidder's proposed consortium, risks the bidder is not prepared to accept, risk allocation down the contractual chain;	25	0	18.75
Details of any of the proposed Contract terms which the Bidder is not prepared to accept, understanding SOPC3 and completeness of response to draft Project Agreement;	30	0	21
Evidence that the Funders and all members of the Bidder's proposed consortium support the position adopted in the Bid on commercial and contractual issues and acceptance of the proposed Direct Agreement;	5	1	4
Details of the Bidder's proposals in respect of the basis on which employees will transfer to the Bidder, and proposals in respect of consultations with employees, response to requirements of TUPE and pension provision.	0	0	0
<b>TOTALS</b>	75	5	54.75

FINANCIALS		Other advisor input	Max Score	CATALYST Mandatory	HYDE Mandatory
Evaluation Criteria	Category				
1. Affordability	A		Pass/Fail	fail	pass
1. Residual value treatment	B	LEGAL			
2. The "off balance sheet" position to the Council of the Project	B		Pass/Fail	pass	pass
1. Overall financial cost, measured as a Net Present Cost of charges from the Bidder to the Council, from the commencement of Services to the end of the Contract Term	C				
2. Extent of warranties, guarantees, indemnities and insurances (insofar as they are to be required by the Council);	C				
3. Extent of risk transfer	C		50	0	50
1. Proposals for indexation	D	TECHNICAL			
2. Robustness of supporting financial projections	D				
3. Completeness and comparability of the financial forecasts	D				
4. Completeness and robustness of operational, maintenance and capital costs	D				
5. The level of residual value	D				
6. The overall efficiency of the model (in terms of tax, ADSCR, LLCR, margins, etc)	D				
7. Sensitivity to changes in revenue, costs, inflation and interest rates	D				
8. Particular note will be taken of the financial strength of the Bidder and its capability to shoulder the various risks it is expected to bear, as well as the robustness of its financial projections	D				
9. Correlation of financial plans to the actual construction programme	D				
10. Robustness and completion of information provided for each type of finance, including actual terms and conditions of the subscribers or providers or where actual terms and conditions are not available, heads of terms	D				
11. Availability of standby finance	D				
12. Robustness of assumptions concerning the disposal of surplus property and third party revenues within the financing proposals and how the benefits are to be shared	D				
13. Likely deliverability of the proposals in line and in time with the requirements of the Council	D				
14. Financial impact of the proposed arrangements upon contract expiry	D				
15. Suitability of proposals to fund council changes	D		LEGAL		
16. Extent to which additional funding commitments [following a council change or otherwise] will be underwritten by parent company guarantees (where they are not formally members of the bidder)	D				
17. Acceptance of the refinancing clause in the project agreement	D		LEGAL LEGAL		
18. Clarity of SPV structure, including financial backing, tax structures and equity and debt structure	D				
19. Clarity of relationships between SPV and contractors	D			20	5
1. Shareholder support	E				
2. Letter of support from third party equity investors	E				
3. Letters of support from underwriting banks or financial institutions	E				
4. Identification of provider of due diligence funding	E				
5. Details of payments to be made on a variable basis	E				
6. Completeness of information on Bidder members and clarity of roles and responsibilities (including Method Statements and Proposals)	E		20	5	18
1. Proposals of abatement for non-availability and poor performance	F		10	10	6
<b>TOTALS</b>			100	20	89





## APPENDIX THREE

RISK CATEGORY	RESPONSIBILITY	
	Council	PSP
<b>PLANNING</b>		
CDM & Health and Safety Requirements		x
Detailed planning approval		x
Timescale for planning approval		x
<b>DESIGN</b>		
Alterations required by legislative and regulatory changes		
- Non-discriminatory legislative change		x
- Discriminatory change		x
Changes to design by Preferred Service Provider		x
Changes to design by Council	x	
Delays caused by statutory authorities such as utilities		x
Fit for purpose, i.e. does design meet the Output Specification		x
Design Warranties from sub-contractors		x
<b>GROUND CONDITIONS</b>		
Access to services for utility connections		x
Site conditions e.g. contamination, effects of tunnelling etc.		x
<b>CONSTRUCTION</b>		
Cost increase during design, e.g. due to incorrect bills of quantity		x
Cost increase during construction e.g. due to inflation		x
CDM and all health & safety requirements		x
Default by Preferred Service Provider		x
Default by Preferred Service Provider sub-contractor		x
Force Majeure	x	x
Increased in time or cost due to changes in design specification by Council	x	
Changes to design by Preferred Service Provider		x
Industrial action		x
Latent and inherent defects		x
Loss due to damage during construction		x
Reinstatement: rebuilding following damage, destruction etc.		x
Third party claims		x
Time overruns, milestones not met		x

RISK CATEGORY	RESPONSIBILITY	
	Council	PSP
<b>CONSTRUCTION continued</b>		
Weather conditions		x
Commissioning		x
Failure of systems, e.g. heating, lighting		x
Fit for purpose		x
Delayed certification of completion and cost of rectifying problems		x
<b>OPERATIONAL</b>		
CDM and health & safety requirements		x
Changes to service specification by Council	x	
Cost overruns, including by any sub-contractors		x
Default of contract		x
Default of sub-contractor or unsatisfactory performance of sub-contractor		x
Force Majeure	x	x
Emergency planning		x
Failure to meet performance standards		x
Fit for purpose		x
Industrial Action		x
Insurance, pre agreed insurance to be maintained		x
Obtaining, reviewing and maintaining licences and consents relating to service provision		x
Plant and machinery replacement, including building repairs		x
Reinstatement or rebuilding after damage (howsoever caused)		x
Provision of suitable alternative accommodation		x
Shortfall in revenue income / housing benefit administrative failures	x	x
TUPE		x
Benchmarking	x	x
Alterations required by legislative and regulatory changes <ul style="list-style-type: none"> <li>- Non-discriminatory legislative change (Capex)</li> <li>- Non-discriminatory legislative change (Operating Costs)</li> <li>- Discriminatory change</li> </ul>	x	x
Residual Value – Social Services element <ul style="list-style-type: none"> <li>- Housing element</li> </ul>	x	x
<b>DEMAND</b>		
Change in Council demand for Social Services element	x	

Change in demand for housing		x
<b>FINANCIAL</b>		
Changes in interest rates (after financial close)		x
Default of partner		x
Default / failure of sub-contractor		x
Delay in completion		x
Differential price inflation		x
Insurance		x