

Annex 2: Revised scope, assumptions and key deliverables in respect of legal support provided by Bryan Cave Leighton Paisner LLP on the Affordable Homes Guarantee Scheme 2020

Scope of this document

This document sets out a revised scope and assumptions in relation to the legal advice to be provided by Bryan Cave Leighton Paisner LLP (BCLP) on the procurement of the Affordable Homes Guarantee Scheme 2020 (AHGS 2020). The revisions are in light of changes to the procurement method and timetable set out in the main body of this contract (Section 4 of Section B, Call Off Order Form and Call Off Terms for the Finance and Complex Legal Services RM3787, Affordable Homes Guarantee scheme 2020 Legal Support, Contract Reference: CPD/004/120/007) (the “**Order Form**”). The revised scope and assumptions relate to the period from 4 November 2019 (i.e. publication of the AHGS 2020 Invitation to Tender) until the finalisation of all Approved Form Documentation and entry into of the Concession Agreement (in accordance with the timeline at Annex A and assumptions below). All fee notes covering the period from the commencement of the work outlined in the main body of the contract until 31st October 2019 have been settled.

A revised timetable is provided below in light of the revised Scope and Assumptions, at Annex A.

Scope

Without prejudice to the ability for MHLCG to request extra over advice as required from BCLP as envisaged in the Order Form, the legal advice required in respect of AHGS 2020 is:

- a) To provide advice as needed on any legal issues arising from clarificatory questions submitted during the Initial Invitation to Tender (ITT) phase of the procurement. Any such work may be billed as extra overs at the quoted hourly rates;
- b) To review the proposed amendments to the Concession Agreement Heads of Terms and Guarantee Heads of Terms submitted by tenderers within Annex B3 of their initial tender proposals, along with the accompanying rationale and:
 - i. consider those proposals in the context of the Mandatory Requirements (paras 4.2-4.17 of Annex A1 of the Invitation to Tender), and advise MHCLG of any comments that imply a Mandatory Requirement is not accepted by a tenderer, or that there is a material risk of a Mandatory Requirement not being met;

- ii. consider those proposals in the context of the Sub-Criteria set out in Annex C¹ and Annex F of the AHGS 2020 Invitation to Tender, and identify any questions or Sub-Criteria to which you consider a comment may be relevant. BCLP will be provided with a full set of bid documents to ensure that their advice may be cross-referenced and put in the appropriate context. For example (and without knowing what any of the responses say as they haven't been shared with evaluators), question 2.5 requires bidders to demonstrate their ability to provide information required in a timely and accurate manner. If a bidder indicates in Annex B3 that they accept no responsibility for checking manifest errors in information provided by borrowers and/or chasing overdue information, then that would be relevant to evaluators' consideration of question 2.5;
- iii. consider whether any matters raised in Annex B3 are inconsistent with the Primary Objective or any of the Core Criteria;
- iv. present your findings referred to in paras i-iii above in a tabular format, including an explanation of your conclusions. This table should be provided to procurement officers only (David Minto and Louise Bates) in the first instance, by no later than 5pm on [27February 2020]; and
- v. respond to any legal or structuring questions raised by evaluators (via procurement officers) regarding tenderers' initial proposals. You may assume that no more than 6 hours of partner time will be required to answer any such questions (with any time beyond this being billed as Extra Over work).

For the purposes of the review and presentation of your findings referred to in paragraphs (i) to (iv) above, you should assume that you are only expected to report on issues raised by tenderers' responses to Annex B3 (in the context of the bidders' proposals) and that you will provide wider advice regarding bidders' proposals as described in paragraph (c) below.

- c) Following the initial evaluation of the initial tenders, to provide legal advice regarding shortlisted bidders' proposals, including those aspects of the tenders that MHCLG wishes to dialogue with bidders;
- d) If required, to attend relevant dialogue meetings with shortlisted tenderers , and provide further legal analysis of discussions if required.1 round of dialogue meetings is scheduled in Annex A and your attendance at 1 AHGS 2020 Oversight Board meeting is also anticipated. Should any further rounds be required a price for each additional round should be estimated based on the work carried out in the first round of dialogue meetings, and any significant deviation will be discussed between BCLP and MHCLG before agreeing a final fee note for the additional work;

- e) To undertake the work set out in paragraph (b) and (c) above in relation to the Final Tender submissions;
- f) If MHCLG proceed to Preferred Tenderer stage, to draft, negotiate and agree with the Preferred Tenderer the Approved Form Documentation (Concession Agreement, Guarantee terms and all Loan documentation) (with the scope of such Loan documentation being assumed to be in accordance with that specified in the clarification answer in the Order Form) within the timescales set out in Annex A and in consultation with MHCLG;
- g) Subject to negotiation with the Preferred Tenderer, BCLP is required to review rather than draft the Capital Raising documentation. Should BCLP be required to undertake a drafting role a price for this work will be agreed at that time; and
- h) To provide a wrap-up legal report by way of audit trail and sign-off for MHCLG, consolidating all the legal issues that arose in conjunction with the successful tenderer's bid and comments / proposed amendments, recording final negotiated positions, identifying any residual legal risk areas and record any mitigants and/or solutions adopted.

Assumptions

Without prejudice to the assumptions and clarifications applicable to the current Order Form:

- a) The price agreed in light of the above revised Scope will be capped i.e. be an upper threshold for the price of in-scope work;
- b) The timetable at Annex A may be contracted or extended by no more than 6 weeks with respect to non-capital raising documentation review work due to unenvisaged circumstances without requiring a revision of the above Scope or associated price. The timing backstop for capital raising documentation review work is 31 October 2020 as long as this work concludes within 8 continuous weeks from commencement;
- c) There will be no more than 3 initial and 3 final tenders to consider;
- d) All work relating to drafting, negotiating and agreeing Approved Form Documentation will be in-scope even if some of that work is undertaken post-Award, up to a limit of 6 weeks. Should any delay be longer than 6 weeks a discussion should be held with the Authority on the associated fees;
- e) BCLP may be required to attend meetings at MHCLG's or Homes England's offices in Victoria, London, or the Preferred Tenderer's or their legal counsel's offices in the City of London (Zone 1);

- f) BCLP will not be required to involve lawyers who provide specialist procurement advice, but this will be available if specifically requested. Such advice may be billed as extra overs at the hourly rates quoted and any potential work must be agreed between Simon Denison at MHCLG and Prashanth Satyadeva at BCLP before any instructions are provided;
- g) Except as modified by this letter, BCLP will provide the services as described in their response to the original invitation to tender dated 7 June 2019 in accordance with the terms of the Order Form; and
- h) In respect of BCLP's review of the capital raising documentation:

[Redacted]

Key Deliverables

BCLP will be required to produce the following products, subject to any additional requirements flowing from the above Assumptions and the current timetable at Annex [•]. The timetable for items (c) to (g) below, is to be agreed in due course.

- a) Analysis of the proposed amendments to the Concession Agreement and Guarantee Heads of Terms provided by the tenderers as part of their initial bids for review by MHCLG (ie the item referred to in paragraph b)iv) above, by 5pm on 27 February;
- b) Analysis of any points raised during the dialogue meeting(s) with shortlisted tenderers relevant to the Concession Agreement and Guarantee Heads of Terms and analysis under Key Deliverable (a) above, by 5pm on 31 March;
- c) Analysis of the proposed amendments to the Concession Agreement and Guarantee Heads of Terms provided by the tenderers as part of their final bids for review by MHCLG;
- d) Initial drafts of the Contract Package, agreed with MHCLG and ready to be shared with the Preferred Tenderer (and their legal counsel);
- e) Final drafts of the Contract Package, agreed with MHCLG and the Preferred Tender (and their legal counsel);
- f) To provide the wrap-up legal report referred to in (g) of Scope above; and
- g) Provide written and verbal advice for MHCLG on any further amendments or comments the Preferred Tenderer may propose, which MHCLG reserves the right not to use. Advice should be provided within 5 working days as a maximum of the amendments or comments being provided.