

# JOINT VENTURE FOR ENERGY & SUSTAINABILITY



# FOREWORD

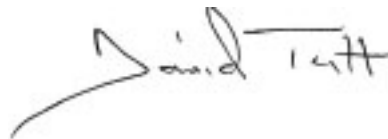
Eastbourne Borough Council and its neighbouring public sector partners want to step up and meet the future challenges of energy food, and long term sustainability. Things need to change, they need to change quickly and the solution has to be right.

The transition to a more sustainable society will be difficult but the rewards high. In the future, energy, food and transport will no longer be a burden or threat to our well being, we will have a more enjoyable and balanced environment, and importantly we and our community will have control.

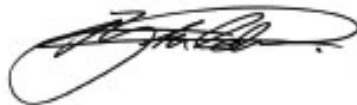
The Council is committed to this long term change and want to partner with an organisation that has the same appetite, skills and experience to make it happen.

We need to think the unthinkable, bring in innovation and re-create a new future.

If you want to be part of this opportunity and exciting journey it would be great to hear from you.



**David Tutt**  
Leader



**Robert Cottrill**  
Chief Executive

# CONTENTS

|     |                                     |           |
|-----|-------------------------------------|-----------|
| 1.  | BACKGROUND                          | <b>4</b>  |
| 2.  | OVERVIEW OF THE OPPORTUNITY         | <b>5</b>  |
| 3.  | POTENTIAL STARTER PROJECTS          | <b>13</b> |
| 4.  | LIST OF PUBLIC SECTOR BODIES        | <b>15</b> |
| 5.  | POTENTIAL JOINT VENTURE STRUCTURE   | <b>18</b> |
| 6.  | THE PROCUREMENT PROCESS             | <b>21</b> |
| 7.  | ENQUIRIES AND REPSONSES             | <b>25</b> |
| 8.  | IMPORTANT NOTICES                   | <b>26</b> |
| 9.  | DETAILS OF ADVISORS                 | <b>31</b> |
| 10. | PROCUREMENT DOCUMENTS AT THIS STAGE | <b>32</b> |

# 1. BACKGROUND

The purpose of this Memorandum of Information (MOI) is to provide background information for Potential Partners; to assist them in deciding whether or not to express an interest.

**This MOI sets out:**

- An overview of the opportunity;
- The procurement process which will be followed; and
- The response requirements and selection process.

This MOI should be read in conjunction with the Pre-Qualification Questionnaire (PQQ) for this opportunity which sets out in detail the information required and the basis on which Potential Partners will be invited to participate in the procurement process.

Any queries or additional information required in relation to this opportunity should be requested in accordance with the Enquiries and Responses Section of this document.

Those wishing to express an interest in participating in this procurement and be considered for selection as a Potential Partner must return the completed PQQ and supporting documentation in accordance with the information in the PQQ document by Midnight on 18 July 2016 by uploading to the InTend portal at <https://www.sesharedservices.org.uk/esourcing>

## 2. OVERVIEW OF THE OPPORTUNITY

### Context

We are facing an increasing number of sustainability challenges. The current pace of change to address them is too slow if we are to minimise the impacts that these challenges will bring.



With **Energy** there is the trilemma of increasing prices, future shortage of supply, and the need to reduce carbon emissions;



With **Food** there will be future uncertainty in the food chain when major global food regions are under threat from extreme weather patterns;



**Transport** in its current position brings congestion, compounds poor health and can restrict access to mobility;



**Waste** will need to be aligned with the circular economy so resources do not become a scarcity;



**Water** will have increased times of stress and shortages as a result of extreme weather events and a growing population so consumption needs to be reduced;



A **warming world** brings greater risk of flooding and damage to our health.

The solutions to deliver the change we need are attainable; what is required is the desire to make it happen, the right partners, and the persistence to see it through.

The Council has the desire to make this happen but a commercial partner is required to help it deliver this change over the next 30 years.

The eventual solutions can be radical if they meet the future needs e.g. if it is considered that we should move towards an all electric infrastructure then that will be the pathway.

**Importantly we need to bring in innovation. Think the unthinkable and re-create a new future.**

## 2. OVERVIEW OF THE OPPORTUNITY

The Council has already shown it has an appetite to change things for the better with its willingness to invest £13m in solar PV and funding the £40m redevelopment of the Devonshire Cultural Centre.

Delivering this change will improve peoples well being, quality of life and create a more enjoyable and stable environment. It will also offer a commercial opportunity to 'rewire' the local infrastructure and how society operates.

### Areas of Commercial Opportunities

The commercial opportunities that would be available for each of the sustainability sectors are based on what we want to achieve over the next 30 years. Overall this is an exciting opportunity to:

- Bring innovation and create the next social revolution;
- Shape urban and rural infrastructure for the next generation;
- Have a long term investment with a trusted and reputable public sector partner.

Once the Joint Venture has been set up it will consider the solutions that need to be delivered and it is anticipated that business cases will be jointly developed and taken forward.

We want to look at all possibilities and opportunities to deliver the sustainability objectives - including purchase of new land, use of compulsory purchase powers (CPOs), and commercial agreements with other landowners and freeholders.

A list of sites that have already been identified as potential starter projects are given in Section 3.

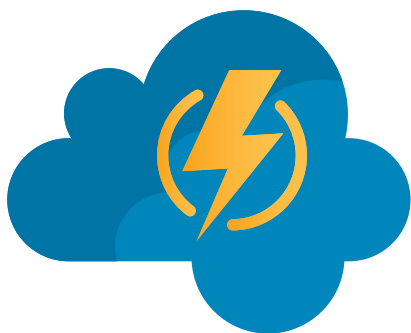
The commercial arrangements for the Joint Venture will be explored with those who are invited to participate in the next stage of the process and subsequent rounds of negotiation **but an important element that underpins any commercial arrangement is that both parties incentivise each other – we jointly work together to realise the benefits and make them happen.**

## 2. OVERVIEW OF THE OPPORTUNITY

Eastbourne Borough Council is the lead organisation procuring the Joint Venture. We are in discussions with other interested local authorities and public bodies who may wish to join the Joint Venture at a future date, and we are intending to undertake the procurement, so that those who do so can easily join and benefit from the procurement process that has already taken place. The list of public sector organisations who are within scope as potential future partners is set out in Section 4.

It is proposed that the Joint Venture will be the umbrella' agreement that manages and directs all other activities. The potential structure is outlined in Section 5.

The commentary for the remainder of this section looks at the potential commercial opportunities for each sustainability theme. Whilst no warranty or guarantee of the level or type of project can be given, in principle it can be assumed that Eastbourne Borough Council wishes to consider all of these activities so this is the indicative baseline level of activity of work. When other Public Sector organisations join the Joint Venture they may wish to participate in some or all of these activities, and potentially bring in other ideas.



# ENERGY

Currently, despite increased investment in renewable energy the UK is still heavily reliant on the use of fossil fuels to produce the majority of our energy needs. It is also using a transmission system that needs significant investment to keep it going, and has a structure that is complicated and burdensome for the end consumer. The Eastbourne energy market has an estimated value of at least £50m a year. The wider area has a value measured in billions.

Our vision is to reduce demand to its lowest possible level and then utilise local assets to meet this demand - creating self sufficient neighbourhoods or energy islands. Energy would be decentralised and work to benefit the local community, and for resilience would rely on capacity in neighbouring authorities as opposed to the National Grid.

Fossil fuels should be used as a last resort or for times of emergency. Instead the focus should be on fuels for the future including next generation biofuels (e.g. algae), tidal, hydro and solar. All generation would assume no subsidies from the Government. Each of the energy opportunities can be summarised below.

| Area                         | Opportunity   |
|------------------------------|---|
| Energy efficiency            | <ul style="list-style-type: none"> <li>• Industrial scale retrofit of properties (domestic and non-domestic) to reduce power and heat demand;</li> <li>• Provide advice and alternative dwelling solutions to (i) the Councils housing management and investment companies (Eastbourne Homes Limited and Eastbourne Housing Investment Company Limited) (ii) future companies the Council and its partners may set up and be involved in (iii) other developers;</li> </ul>   |
| Energy generation            | <ul style="list-style-type: none"> <li>• Investment in an area-wide network of energy hubs, utilising the area's natural assets, creating energy islands;</li> <li>• Build energy centres into new housing and commercial developments;</li> </ul>  |
| Energy supply                | <ul style="list-style-type: none"> <li>• Potential to supply energy to large sections of Eastbourne and surrounding areas with public sector backed energy supply licences;</li> <li>• Supply to the public sector participants and/or their customers through the Strategic Partnership Agreement;</li> <li>• Utilise market through issue of Licence Lite energy supply licences to other Councils in the Grid Supply Point Group (DNO region);</li> <li>• Utilise EBCs broadband company and water deregulation to create a multi-utility platform;</li> </ul> |
| Energy demand & distribution | <ul style="list-style-type: none"> <li>• Develop a true, real time smart grid that can balance load, demand, people's lifestyles and reduce reinforcement costs;</li> <li>• Manage energy networks and decentralised energy using the best technology to fit seamlessly into everything we do;</li> </ul>   |
| Energy R&D                   | <ul style="list-style-type: none"> <li>• Bring commercial reality to new technologies that can deliver cleaner cheaper energy;</li> </ul>   |



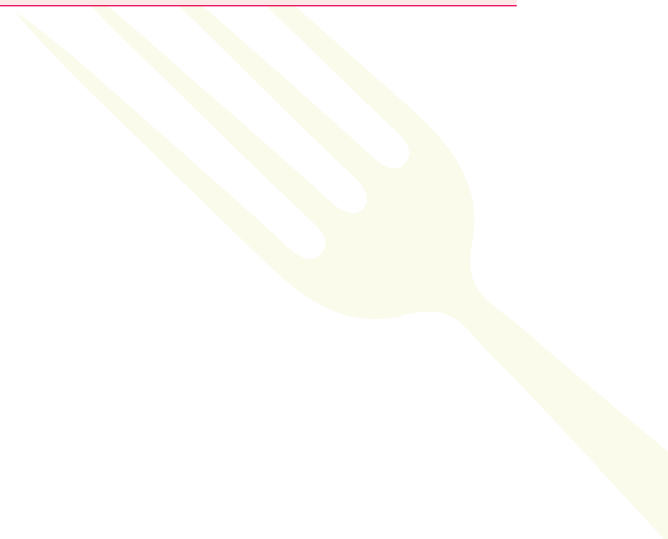


# FOOD

Currently the UK imports 75% of it's fresh produce and much of this is from regions that have or will have water stress as an issue. This will increase the likelihood of future price volatility which will have an adverse impact especially for those on low incomes.

Our vision is to create a network of commercial greenhouses that gives us local resilience to future food price increases, creates jobs and brings investment back into the UK. It will also give people direct access to cheaper fresh food improving the wider well-being of the local population.

| Area                             | Opportunity  |
|----------------------------------|--|
| Commercial Greenhouses           | <ul style="list-style-type: none"><li>• Create a network of next generation greenhouses (urban and rural) utilising technologies such as hydroponics to maximise yield and reduce running costs;</li><li>• Create combinations of housing, energy centres and greenhouses in communities that have restricted space and areas of poverty;</li><li>• Produce to be sold to supermarkets and/or new local cooperatives;</li><li>• Supply to the public sector participants and/or their customers through the Strategic Partnership Agreement.</li></ul> |
| Fresh fish or protein production | <ul style="list-style-type: none"><li>• Support the greenhouses and the potential threat to fish production with a changing climate, by setting up fresh fish aquacentres;</li><li>• Complement the supply chain by setting up alternative protein supplies;</li><li>• If tidal power is introduced, potential to set up aquaculture in lagoon marine space;</li><li>• Supply to the public sector participants and/or their customers through the Strategic Partnership Agreement.</li></ul>  |





# TRANSPORT

Currently we are locked into a car-based economy for the majority of journeys, even short ones that have other alternatives. This is having a detrimental effect on our health, income and environment.

Our vision is to change the focus of how people travel, getting more people to cycle and walk, share cars, and use public transport more. This will help to tackle the health issues that are mounting up e.g. obesity, give people a better sense of wellbeing, and save money.

This work will be done in consultation with East Sussex County Council (who have the responsibility for transport). Both Councils have produced a Cycling Strategy, soon to be updated with a Walking & Cycling Strategy.

| Area              | Opportunity  |
|-------------------|--|
| Cleaner transport | <ul style="list-style-type: none"><li>• Area wide cycle hire and adoption scheme;</li><li>• Improved cycle network and green tourism with links to the South Downs National Park;</li><li>• Investment in infrastructure to supply the range of cleaner fuelled motorised vehicles (including HGVs) i.e. Electricity and hydrogen.</li></ul> |
| Vehicle usage     | <ul style="list-style-type: none"><li>• Set up car sharing and community car clubs to reduce overall vehicle ownership;</li><li>• Introduce insurance backed schemes where people are rewarded for healthier lifestyles.</li></ul>   |





# WASTE

Currently collecting and disposing of waste presents a challenge to all those involved. Waste is not diminishing, recycling is plateauing and it is a cost burden.

Our vision is to adopt a resource-based economy (or Circular Economy). We want the waste that is produced by residents and businesses to be viewed as an asset, and be used wisely to benefit society.

East Sussex County Council has the responsibility for waste disposal, and the districts and boroughs have responsibility for waste and recycling collections. The current Joint Waste Contract for domestic collection expires in 2023 so there are limited opportunities at the present time. However this is an ever-developing field and there will be waste management opportunities that could be explored.

| Area             | Opportunity   |
|------------------|---|
| Waste collection | <ul style="list-style-type: none"><li>• Commercial waste collection;</li><li>• Food waste collections.</li></ul>                  |
| Circular Economy | <ul style="list-style-type: none"><li>• Biogas from organic waste;</li><li>• New products and income from usable waste.</li></ul> |





# WATER AND ADAPTATION

Currently water consumption per head is slowly improving but with projected population increases the amount of water required will at least remain the same. In extreme events this is an issue and with an uncertain future due to sea level rises, sufficient long term planning is required to ensure assets are protected or have the resilience to cope with extreme events.

Our vision is to plan and protect against changing weather patterns and build a resilient society.

| Area         | Opportunity   |
|--------------|---|
| Water Supply | <ul style="list-style-type: none"><li>• Potential to supply large sections of Eastbourne and surrounding areas with a public sector backed water supply licence;</li><li>• In conjunction with energy potentially offer a multi utility package;</li><li>• Supply to the public sector participants and/or their customers through the Strategic Partnership Agreement.</li></ul> |
| Adaptation   | <ul style="list-style-type: none"><li>• In conjunction with energy and food, view potential future adaptation infrastructure as an opportunity for income and growth.</li></ul>   |



### 3. POTENTIAL STARTER PROJECTS

The following table highlights the potential early projects the Joint Venture could be involved with:

| Title                             | Area                            | Potential  |
|-----------------------------------|---------------------------------|--|
| Pumping Station, Bedfordwell Road | Eastbourne                      | This is a large brownfield site that will be developed into flats and housing. There is scope for a district energy system which has the potential to expand to neighbouring buildings and areas.  |
| Cross Levels Way Energy Centre    | Eastbourne                      | This is a cluster of commercial buildings including the local hospital and Further Education college (Sussex Downs). An investment grade study has been carried out for the potential to install an energy network using CHP and private wire network. |
| Sovereign Leisure Energy Centre   | Eastbourne                      | The Councils flagship leisure centre is due to be redeveloped and part of this could include a new energy centre to meet the needs of the site and surrounding buildings and area.   |
| Commercial Nurseries              | Eastbourne and surrounding area | There are three sites in Eastbourne and the surrounding area that could readily be redeveloped into next generation glasshouses. Due to commercial sensitivity the locations will be disclosed at a later stage.                                       |
| Sussex Downs                      | East Sussex                     | A brown field site could be developed for housing but linked with an energy centre and/or a commercial greenhouse given its unobtrusive location.  |

### 3. POTENTIAL STARTER PROJECTS

| Title                  | Area                            | Potential  |
|------------------------|---------------------------------|--|
| St Elisabeths Church   | Eastbourne                      | The grounds contain two large derelict buildings which have been identified as a development site in the Local Development Plan. This land has the potential for flats, an energy centre and a commercial greenhouse.  |
| South Downs Cycle Hire | Eastbourne and surrounding area | There is potential to have a network of cycle hire hubs as gateways to the South Downs to promote Eastbourne and surrounding areas for green tourism. These will primarily be based within Council owned land and buildings.   |
| North Street Quarter   | Lewes                           | This is a brownfield site in the heart of Lewes that will be redeveloped into a mixed commercial and housing area. There is potential for a large district energy system that can utilise the adjacent River Ouse as a source of energy.   |
| ERF District Heating   | Newhaven                        | East Sussex Waste is disposed of at an Energy Recovery Facility (EFR) plant at Newhaven, located on an industrial estate that has potential for commercial development. The heat from this ERF is currently not used so there is potential for district energy scheme linked to new commercial buildings such as greenhouses or circular economy processing sites. |

## 4. LIST OF PUBLIC SECTOR BODIES

### Context

The Council is seeking a private sector partner (or partners) to participate and invest in a public:private partnership which will be established with the Council and which may also extend to other local government and public sector related organisations and associated partners at least within the geographic areas of Kent, Surrey, Brighton & Hove, East Sussex and West Sussex (the “JV Areas”). This set of JV areas mirrors the local DNO region. However the arrangements may extend to participation and delivery to other areas within UK over the life of the joint venture (“UK JV Areas”) if there are opportunities for further growth.

A number of Councils have already expressed an interest in the Joint Venture and will be observing development of the procurement. If the resulting procurement is favourable then it is very likely Eastbourne Borough Council will be joined by other public sector partners.

Participation may be either by direct participation in the Joint Venture or through the provision of services, works or supplies by the Joint Venture.

The potential structure of the Joint Venture is explained more in Section 5.

The Council currently undertakes services with and for other local government and public sector bodies (for example it has entered shared service arrangements with Lewes District Council which are expanding) and may wish to expand working relationships with and through its selected partner with other local authorities, public sector bodies, their associated partners and statutory successors and organisations created as a result of re-organisation or organizational changes and their wholly owned entities, across the JV Areas and the UK JV Areas.

### Qualifying Entities

The entities which may participate in this public:private partnership include the following entities (and in each case their statutory successors and organisations created as a result of re-organisation or organizational changes and their wholly owned entities) where they are based or operate within the JV Areas and across the UK (ie the UK JV Areas):

- Any body listed in the Public Sector Classification Guide of April 2016 published by the Office for National Statistics a copy of which is embedded in the MOI and which can be found at: <https://www.ons.gov.uk/economy/nationalaccounts/uksectoraccounts/datasets/publicsectorclassificationguide>

Examples of the entities listed are:

- Public Financial and Non-Financial Corporations
- Central Government Departments, Executive Agencies and Non Departmental Public Bodies: <http://www.direct.gov.uk/en/DI1/Directories/A-ZOfCentralGovernment/index.htm>
- Local Authorities: <http://openlylocal.com/councils/all>, <https://www.gov.uk/find-your-local-council>

## 4. LIST OF PUBLIC SECTOR BODIES

- National Park Authorities: <http://www.nationalparks.gov.uk>
- Police Forces: [http://www.police.uk/?view=force\\_sites#force\\_sites](http://www.police.uk/?view=force_sites#force_sites)
- Fire and Rescue Services: <http://www.fireservice.co.uk/information/ukfrs>
- NHS Bodies including Acute Trusts, Clinical Commissioning Groups, Mental Health Trusts, Health and Care Trusts, Ambulance Trusts, Area Teams, Special Health Authorities, Others and NHS property services:  
<http://www.nhs.uk/ServiceDirectories/Pages/NHSTrustListing.aspx>
- Registered providers of Social Housing listed by Homes and Communities Agency and in particular those on the list published by it in April 2016 <https://www.gov.uk/government/publications/current-registered-providers-of-social-housing>
- A local asset backed vehicle or asset investment vehicle between a body listed in the Public Sector Classification Guide and a private sector partner
- Local Enterprise Partnerships: <http://www.communities.gov.uk/localgovernment/local/localenterprisepartnerships/summaries/>
- Educational Establishments which provide compulsory, higher and further education including (without limitation) Academies, Children's Centres, Free Schools, LA Maintained Schools, Special Schools and Universities and Colleges and in particular the University of Brighton and the University of Sussex. A list of such bodies can be found here: <http://www.education.gov.uk/edubase/about.xhtml>
- Social Enterprises within Culture and Leisure. <http://www.sporta.org/member-directory>
- Third Sector and Charities. <http://www.charitycommission.gov.uk/find-charities>
- Hospices: <https://www.hospiceuk.org/about-hospice-care/find-a-hospice>  
<http://www.nhs.uk/Service-Search/End-of-life-hospice-services/LocationSearch/342>
- Any contracting authorities listed in Regulation 2(1) of the Public Contracts Regulations 2015 (as amended).
- Any central government authority as defined by Regulation 2(1) of the Public Contracts Regulations 2015 (as amended) listed by name or class in Schedule 1 to the Public Contracts Regulations 2015.
- Any entity which is defined as a utility under Regulation 5 of the Utilities Contract Regulations 2016.



## 5. POTENTIAL JOINT VENTURE STRUCTURE

### **Context**

The Council is aware that the opportunity needs to be worthwhile for the Potential Partner and that the potential Joint Venture structure needs to be flexible to meet the different and complex demands for the next 30 years.

The final Joint Venture structure and commercial terms are something that the Council wishes to develop during the negotiation process. The Council's preferred option is to implement an incremental partnership drawing on the approaches developed by, and lessons learned from, similar joint venture models such as LIFT and Building Schools for the Future and in particular the Hub concept that was developed by the Scottish Futures Trust. A link to the Scottish Futures Trust web site where further background information can be found is here: <http://www.scottishfuturestrust.org.uk/publications>.

### **The Hub Initiative**

The hub initiative sees the public sector organisations (Participants) within a hub territory working in partnership with each other and with a private sector delivery partner, taking a strategic long-term planning approach to the procurement of infrastructure to support the delivery of community services (such as health, social care and education). Within this arrangement there is a joint venture company (Hubco) and a Territory Partnering Agreement (TPA).

Hubco delivers certain partnering services to the Participants to support the planning, procurement and delivery of infrastructure projects within the hub territory – developing proposals and, subject to satisfying certain tests including value for money, delivering those proposals through its supply chain.

The Participants had the option of not becoming shareholders but still having the ability to partner with Hubco for the development/procurement/construction of identified projects. An organisation can be a shareholder in Hubco and party to the TPA with Hubco without necessarily having any projects initially identified in the project pipeline. All but a very few Participants chose not to become shareholding members. Some projects (including any that are wholly/partially debt funded) are delivered through a special purpose vehicle (sub hubco) established for a single project.

The provision of Partnering Services is the most significant feature of hub. In broad terms, these services include all that hubco can significantly contribute to the process of developing new projects to meet Participants' requirements and service needs including programme managing the delivery and in some cases subsequent operation of projects. Given that these services are delivered through a supply chain, and in some cases require private finance, the partnering services include those aspects as well.

The initial procurement exercise covered the selection of a private sector development partner to form a Hubco that will provide partnering services (including the delivery of new projects) to the Participants. Provided a new project is of a type that falls within the scope of the TPA (as described in the initial OJEU notice and procurement documentation) it is permissible for the Participants to procure that new project from Hubco without going through a new procurement exercise.

## 5. POTENTIAL JOINT VENTURE STRUCTURE

If an authority was named in the OJEU but did not sign the TPA it is not able to procure, either jointly with another authority or on its own, any projects from Hubco. It is, however, still entitled to rent or lease space in a facility procured from Hubco by another Participant. However it was provided that any such authority is able to become a signatory to the TPA (with the consent of the other signatories to the agreement) at a later stage. If it does so become a party to the TPA, it will have the same rights to procure projects from Hubco as the original signing authorities.

If an authority is not a shareholder in Hubco but has signed the TPA, it is still be entitled to use Hubco to procure projects on its behalf. It does not, however, have any obligation or entitlement to buy shares in Hubco nor provide subordinated debt to Hubco and as such will not get the share of any returns generated by Hubco. It will also not have any rights as a shareholder in relation to the operation and management of the Hubco.

### **The Proposed Model for EBC's JV for Energy and Sustainability**

Unlike the Hub model, rather than form a company at the outset for the Joint Venture element of the arrangements, the initial proposal is to have a contractual Joint Venture which may, if the parties agree, be incorporated during the course of the arrangements. The intention is to put in place a Strategic Partnership Agreement (SPA) which acts as the umbrella or top-level governance arrangement in terms of the relationship with the selected joint venture partner as well as act as the hub initiative TPA equivalent in relation to the delivery of projects, works, supplies and services. The SPA is therefore anticipated to set up multiple layers of involvement to cover these different elements.

EBC is willing to discuss the benefits of setting up a Joint Venture Company at the outset with Potential Partners during the procurement process.

The primary purpose of the initial contractual Joint Venture would be to develop business cases and once a business case is developed it could be taken forwards through separate project agreements and Special Purpose Vehicles (SPVs). The basis of the exact arrangements for each project would come out of the business plan process – these might be an extension of the JV in nature or might be more works, services or supplies based or involve concessions.

It is anticipated that the the Joint Venture will provide (or arrange for the provision of) "Partnering Services" in relation to the needs of the JV Areas and UK JV Areas primarily to provide and deliver (or manage the provision or delivery through its supply chain) of a mixture of energy and sustainability works, services and supplies ("Transformational Projects") the beneficiaries of which may be the public participants named in the contract notice or the wider public, commercial and other organisations based or operating in the UK.

The SPA would provide for additional public sector partners and investors who may want to join the arrangements to be admitted subject to agreement by the original parties.

## 5. POTENTIAL JOINT VENTURE STRUCTURE

The mechanisms to govern the interaction between Joint Venture partners, SPVs, other public sector bodies, potential additional investors, the partnership services, and partnership supply chain will be discussed during the procurement process and it is anticipated that by using the Scottish Futures Trust model, this will not be an onerous exercise. It is considered that this will give the Joint Venture the greatest flexibility and will be explored further in the later tender documents.

The Partnering Services to be provided by the Joint Venture may also include but will not be limited to: Partnering and Collaborative Working; Estate Management; demonstration of Continuous Improvement in Value for Money; Property Development; Supply Chain Management; Funding; Regeneration and Community Involvement; Strategic Estate Planning and Service Planning.

It is expected that for the construction and delivery of the physical elements of any projects the Joint Venture or its SPVs sets up, standard form contracts will be used i.e. for the construction of a greenhouse the base model terms and conditions would follow an appropriate form of NEC or JCT contract amended through the project approval process for the particular project.

For the supply of services, again industry standard form of contracts will be used wherever possible but there may be the need to create bespoke contracts. For example with energy generation, Power Purchase Agreements (PPAs) are now becoming standardised, however with the supply of food produce or cycle hire this is not the case.

## 5. POTENTIAL JOINT VENTURE STRUCTURE

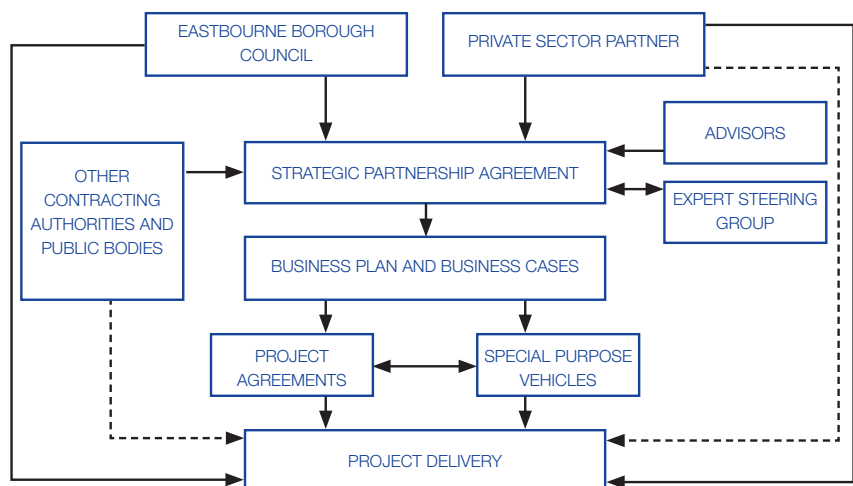
### Strategic Partnership Agreement

It is intended that the Strategic Partnership Agreement would draw upon many of the concepts from the Hub initiative but as explained above would also govern the top level Joint Venture arrangements.

A Strategic Partnership Agreement would give the potential to:

- procure a long term joint venture partner for Eastbourne Borough Council;
- procure the award of contracts which may be governed by public procurement rules at the same time as selecting the joint venture partner;
- have a multi-level arrangement with various public bodies who may join the arrangements at different times;
- allows an incremental approach to developing the joint venture and taking forward projects within the overall scope;
- give all parties the flexibility to join a particular work stream or opt out;
- public sector parties can choose to work jointly and severally with the private sector partner or they can act independently of each other with the private sector partner in relation to their own projects.

A possible structure chart for the SPA is given below. This would be adapted to incorporate a JVCO as per the Hub model if and when the benefits of doing so can be established.



## 6. THE PROCUREMENT PROCESS

The Council is following the Competitive Procedure with Negotiation process for this procurement in accordance with the Public Contract Regulations 2015.

It is envisaged that the procurement process will be undertaken in distinct Stages. The Council reserves the right to reduce the number of tenders after the initial tender stage but is not obliged to do so. The basis on which tenders (and therefore the number of Potential Partners competing) will be reduced will be set out in the Invitation to Participate which will be issued after the selection process Stage 1. The intention is to limit the amount of resource required for the early stages of the process and for each tender stage to build on the previous stages to develop the Final Tender as the number of participants reduces.

The Council reserves the right to award the contract on the basis of the Initial Outline Tenders without negotiation, however at the current time it is anticipated that this will not be the case.

The Council reserves the right to reduce the number of tenders to be negotiated (de-select) after each tender stage by applying the award criteria to the tenders but is not obliged to do so. The Council reserves the right to seek further information and clarification on submissions from particular tenderers during the de-selection process. The Council will wish to ensure that there are sufficient participants to ensure genuine competition in so far as there are enough tenderers to do so.

The detailed process for each negotiation stage will be set out in the Invitation to Tender and subsequent documentation for each stage. Any minimum requirements previously stated and the award criteria will not be subject to negotiation.

| Procurement Stage – Post PQQ Submission |                           | Anticipated Number of Participants at the end of Stage |
|---|---------------------------|--|
| Stage 1                                 | Selection                 | 3 - 6  |
| Stage 2                                 | Initial Outline Tender    |  |
| Stage 2A                                | Reduction in Participants | 3 - 4  |
| Stage 3                                 | First Round Negotiations  |  |
| Stage 4                                 | Initial Detailed Tender   |  |
| Stage 4A                                | Reduction in Participants | 2 - 3  |
| Stage 5                                 | Second Round Negotiations |  |
| Stage 6                                 | Final Tenders             | 2 - 3  |

# 6. THE PROCUREMENT PROCESS

## **Stage 1 – Selection**

This stage is to enable the Council to select Potential Partners to invite to participate in the tender and negotiation stages.

The Council (with the assistance of its external advisors) will carry out the selection process by evaluating Potential Partners responses to the PQQ.

Details of how this selection process will operate and the criteria being applied are set out in the PQQ which accompanies this MOI.

## **Stage 2 – Initial Outline Tender Stage**

Selected Potential Partners will receive an Invitation to Participate and an invitation to submit an Initial Outline Tender. This will set out in detail the process that will be followed during the procurement and the criteria for the award of the contract.

The Invitation will also specify the needs and requirements of the Council in more detail and any minimum requirements that all tenders must meet. It will contain an outline of a draft Strategic Partnership Agreement and the draft questions for the Initial Detailed Tender.

As the Initial Detailed Tender will contain commercially sensitive information there will also be the requirement to sign a NDA; a draft of which will also be circulated at during the Initial Outline Tender Stage.

The Initial Outline Tender will be seeking to understand how Potential Partners will address the future challenges and how they would approach future investments. The responses required to the Initial Outline Tender will be relatively high-level as the detailed questions will be saved for the Initial Detailed Tender and Final Tender Stages. This is to ensure a range of Potential Partners can have the opportunity for a fair assessment but without a heavy investment in resources.

The purpose of this stage is to make sure the Potential Partners

- understand what the Council is trying to achieve;
- have an understanding of all of the concepts the Council wants to take forward;
- have experience and knowledge of how it will deliver the concepts and business opportunities;
- is in agreement with the essential principles of the Strategic Partnership Agreement and structure of the Joint Venture.

The Council anticipates that it will reduce the number of tenders to be negotiated (de-select) at this stage by applying the award criteria to the tenders but is not obliged to do so (Stage 2A).

## 6. THE PROCUREMENT PROCESS

### **Stage 3 – First Round Negotiation Stage**

The Council may negotiate with Potential Partners who submitted Initial Outline Tenders (and who have not been de-selected) with the purpose of improving their content.

### **Stage 4 – Initial Detailed Tender**

The invitation to submit Initial Detailed Tenders will build upon the earlier Initial Tenders and any issues discussed in the First Round Negotiations. The Council may also issue a revised draft Strategic Partnership Agreement to reflect the negotiations.

The Council anticipates that it will reduce the number of tenders (Stage 4A) to be negotiated (de-select) at this stage by applying the award criteria to the tenders but is not obliged to do so.

### **Stage 5 - Second Round Negotiation Stage**

The Council may want to negotiate again with those Potential Partners who submit an Initial Detailed Tender (and who have not been de-selected) with the purpose of improving their content.

### **Stage 6 – Final Tenders**

At the conclusion of the Negotiation Stages, the Council intends to request the remaining Potential Partners to submit a final tender based on the initial tenders and the proposals developed during the Negotiation Stages. These will be evaluated against the contract award criteria and the Council then intends to select the Potential Partner to whom the contract will be awarded.

## 6. THE PROCUREMENT PROCESS

### Timetable

The indicative timetable for the key stages of procurement is outlined below. Whilst the Council has a strong desire to ensure that this timetable is adhered to, Potential Partners should note that it may be subject to change and further detail will be provided to those organisations selected to tender.

| Step | Milestone   | Date / Deadline  |
|------|---|------------------|
| 1    | Contract Notice / Issue PQQ and MOI                                   | 1 June 2016      |
| 2    | PQQ Response Deadline   | 18 July 2016     |
| 3    | Complete PQQ assessment and identify tender shortlist                 | 18 August 2016   |
| 4    | Notify Shortlisted Tenderers and de-selected applicants               | 25 August 2016   |
| 5    | Issue Invitation to Participate and Initial Outline Tender            | 1 September 2016 |
| 6    | Deadline for Initial Outline Tender Returns                           | 3 October 2016   |
| 7    | Clarification of Returns & Complete Initial Outline Tender Assessment | 14 October 2016  |
| 8    | Issue Invitation to submit Initial Detailed Tender                    | 21 October 2016  |
| 9    | Deadline for Initial Detailed Tender Returns                          | 20 December 2016 |
| 10   | Complete Initial Detailed Tender Assessment                           | 20 January 2017  |
| 11   | Commence Second Round Negotiations                                    | 23 January 2017  |
| 12   | Complete Negotiations and issue Invitation for Final Tender           | 03 March 2017    |
| 13   | Deadline for Final Tenders  | 14 April 2017    |
| 14   | Complete Final Tender Assessment                                      | 3 May 2017       |
| 15   | Identify Preferred Potential Partner                                  | 10 May 2017      |
| 16   | Commence Standstill Period  | 10 May 2017      |
| 17   | Complete Standstill Period  | 20 May 2017      |
| 18   | Confirm Appointment of Potential Partner                              | 24 May 2017      |
| 19   | Contracts in Place  | 24 June 2017     |
| 20   | Start   | 25 June 2017     |



# 7. ENQUIRIES AND RESPONSES

## **Enquiries**

Any enquiries in relation to this project or this documentation must be submitted to the InTend portal <https://www.sesharedservices.org.uk/esourcing> PLEASE NOTE that applicants must log in to the system in order to take part in the electronic tender process.

Please note that the Council does not intend at this stage to enter into detailed discussions. Companies should not make any contact with any employee of the Council or the Advisors or other interested authority or statutory body without the Council's prior written consent.

Please note that any responses given will be via the InTend portal and therefore may be circulated to all Potential Partners.

Where a Potential Partner considers that an enquiry or response will relate to commercially confidential information relevant only to itself and that it should not be circulated to others, it must include in the enquiry submission heading "In Commercial Confidence – Not to be circulated to other Potential Partners" and set out its reasons in the body of the submission.

If the Council considers that, in the interests of a fair and open competition, it cannot respond to the enquiry on a confidential basis, it will notify the Potential Partner and treat the enquiry as withdrawn. It will then be for the Potential Partner to resubmit the enquiry without the requirement for confidentiality if it requires an answer.

If the Council considers that the request for a confidential response is justified, then it will provide a response which is not circulated to other Potential Partners.

## **4.2 Freedom of Information Act 2000**

The Council is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Regulations 2004. Accordingly, all information submitted to it may need to be disclosed by the Council in response to a request under the Act or Regulations.

In making any submission during this procurement process, each Potential Partner acknowledges and accepts that information contained therein may be disclosed under the Act or Regulations without consulting the Potential Partner, or following consultation with the Potential Partner and having considered its views.

If Potential Partners consider that any of the information included in their PQQ response is commercially sensitive, please identify it and explain (in broad terms) what harm may result from disclosure if a request is received, and the time period applicable to that sensitivity. It should be noted that, even where it is indicated that information is commercially sensitive, the Council may be required to disclose it under the Act or Regulations if a request is received. Please also note that the receipt of any material marked confidential or equivalent by the Council should not be taken to mean that it accepts any duty of confidence by virtue of that marking. If a request is received, the Council may also be required to disclose details of unsuccessful Potential Partner responses.

## 8. IMPORTANT NOTICES

The attention of Potential Partners is drawn to the fact that by issuing this request to quote the Council is in no way committed to awarding any contract and reserves the right to cancel the appointment process at any point. The Council is not liable for any costs resulting from any cancellation of this appointment process nor for any other costs incurred by those expressing an interest in or making a submission for this opportunity.

The Council reserves the right to vary or change all or any part of the basis of the procedures for the process at any time or not to proceed with the proposed appointment at all. The Council reserve the right at any time:

- to issue amendments or modifications to the documentation;
- to alter the timetable to selection;
- and/or not to select a service provider and to withdraw from this process.

All Potential Partners are solely responsible for their costs and expenses incurred in connection with their participation in this procurement process. Under no circumstances will any of the Council team be liable for any costs or expenses borne by the bidder or any of its supply chain partners or advisors in this process.

Potential Partners should note that no submission or offer is deemed accepted until the relevant contractual documents have been duly signed on behalf of the Council and all other relevant parties and declared unconditional. No negotiation or communication with the Council whether prior to, during or subsequent to the selection process (including any notification of a successful submission) imply acceptance of any offer or constitute an indication that the Potential Partner will be awarded the position of service provider. Only the express terms of any written contract which is finally agreed and signed for and on behalf of the relevant parties and which is duly declared unconditional shall have any contractual effect.

The procurement documents are intended only as a preliminary background explanation of the Council's activities and plans and are not intended to form the basis of any decision on whether to enter into any contractual relationship with the Council. The procurement documents do not purport to be all inclusive, to contain all of the information that a Prospective Partner may require or to have been independently verified. The procurement documents should not be considered as an investment recommendation made by the Council Team to Prospective Partners. The Council Team will not be held liable to any party for any direct or indirect losses, financial or otherwise, associated with any contents of this invitation, associated documents or any research or analysis completed to date which is referenced in this document.

## 8. IMPORTANT NOTICES

None of the Council Team:

- Makes any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the procurement documentation provided. Any persons considering making a decision to enter into contractual relationships with the Council following receipt of the procurement documents should make their own investigations and their own independent assessment of the Council and its requirements for the project and should seek their own professional technical, financial and legal advice.
- Accepts any responsibility for the information contained in the procurement documents or their fairness, accuracy or completeness;
- Shall be liable for any loss or damage whatsoever or howsoever arising as a result of reliance on such information or any subsequent communication. Any and all liability is expressly disclaimed and excluded to the maximum extent permissible by law.

Nothing in the procurement documents or in any other written or oral information provided to any Potential Partners prior to execution of any agreement relating to the project should be relied on as a promise or representation as to the future.

Only the express terms of any written contract relating to the subject matter of the procurement documents as and when it is executed shall have any contractual effect in connection with the matters to which it relates.

For the purposes of the procurement, the Council Team are acting exclusively as the advisors to the Council and will not be responsible to anyone other than the Council in respect of advice given or services provided by them in connection with the procurement or services to be provided under the proposed contract.

In this document:

- no disclaimer is intended to exclude liability for fraud or fraudulent misrepresentation or any other liability which may not be limited under any applicable law..
- the “Council Team” means all or any of the Council, its members and officers, its advisors, and the directors, officers, members, partners, employees, other staff, agents or advisors of any such body or person.

## 8. IMPORTANT NOTICES

### **Non-Collusion**

The Council reserves the right to disqualify (without prejudice to any other civil remedies available to the Council and without prejudice to any criminal liability which such conduct by a Potential Partner may attract) any Potential Partner who, in connection with this process:

- a) fixes or adjusts the amount of its submission by or in accordance with any agreement or arrangement with any other Potential Partner (other than a member of its own consortium or supply chain);
- b) enters into any agreement or arrangement with any other Potential Partner to the effect that they shall refrain from making a submission or as to the amount of any submission to be submitted;
- c) causes or induces any person to enter such agreement as is mentioned in either paragraph a) or b) or to inform the Potential Partner of the amount or approximate amount of any rival submission;
- d) offers or agrees to pay or give or does pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other submission or proposed submission for this process; or
- e) communicates to any person other than the Council the amount or approximate amount of his proposed submission (except where such disclosure is made in good faith in order to obtain quotations necessary for the preparation of a submission).

The Council also reserves the right to disqualify (without prejudice to any other civil remedies available to the Council and without prejudice to any criminal liability which such conduct by a organisation) any Potential Partner who, in connection with this opportunity:

- a) offers any inducement, fee or reward to any member or officer of the Council or any person acting as an adviser for the Council in connection with this process;
- b) does anything which would constitute a breach of the Bribery Act 2010 or under Section 117 of the Local Government Act 1972;
- c) canvasses any officer or member of the Council in connection with this process.

## 8. IMPORTANT NOTICES

### **Information**

The Council may disclose detailed information relating to submissions to the Council's members, directors, officers, employees, agents or advisors and the Council may make the key documents available for private inspection by the Council's members, directors, officers, employees, agents or advisors.

The Council also reserve the right to disseminate clarifications and information that is materially relevant to the opportunity to all Potential Partners, even if the clarification or information has only been requested by one bidder. The Council will act reasonably as regards the protection of commercially sensitive information relating to Potential Partners in the light of the latest published guidance on this area.

## 8. IMPORTANT NOTICES

### **General Matters**

The Council reserves the right, in their sole discretion, to reject any submission.

Potential Partners should note that the information given at any stage may be subject to verification at any time during the procurement process. If any error, omission, false statement or misrepresentation is discovered, the Council reserves the right to disqualify the organisation, without regard to what stage the selection process has reached when the error, omission, false statement or misrepresentation is discovered.

Potential Partners should note that the Council reserves the right to terminate any ensuing contract with the organisation at any time if it is discovered that the organisation has made any false statement or material misrepresentation in any document submitted as part of this process.

The Council will rely upon the representations in response to this invitation in selecting those Potential Partners to become the appointed contractor and may seek its wasted costs from a Potential Partner if any representations are materially untrue or incorrect (or later become untrue or materially incorrect in the absence of immediate notification by the Potential Partner to the Council).

The Council reserves the right to reject or disqualify an organisation where any submission is submitted late, is completed incorrectly, is incomplete or fails to meet any other submission requirements which have been notified to the organisations.

This invitation and subsequent information will be provided on the same basis to all Potential Partners, however the Council reserves the right to seek clarification on submissions from particular Potential Partners during the selection process.

The Council is concerned to avoid conflicts of interest. Potential Partners should note that, the Council reserves the right to disqualify Potential Partners where there is an actual or potential conflict of interest. Potential Partners are encouraged to seek to clarify the Council's view on actual or potential conflicts at the earliest opportunity before submission.

By participating in this process any Potential Partner irrevocably agrees that this process and any resulting contract shall be governed by and construed in accordance with the laws of England and that the courts of England shall have exclusive jurisdiction to settle a dispute or claim arising out of or in connection with this process or any resulting contract.

## 9. DETAILS OF ADVISORS

|                           |                 |
|---------------------------|-----------------|
| Energy and Infrastructure | Cornwall Energy |
| Waste                     | Not appointed   |
| Transport                 | Not appointed   |
| Food                      | Not appointed   |
| Water & Adaptation        | Not appointed   |

# 10. PROCUREMENT DOCUMENTS AT THIS STAGE

## **Cabinet Report**

<http://democracy.eastbourne.gov.uk/ieListDocuments.aspx?CId=125&MId=1360&Ver=4>



**For further details please contact:**

[nick.adlam@eastbourne.gov.uk](mailto:nick.adlam@eastbourne.gov.uk)



1 Grove Road  
Eastbourne  
East Sussex  
BN21 4TW