CRITIQUE OF EXISTING EVI PROCUREMENT OPTIONS

For Scottish Futures Trust

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1 INTRODUCTION

1.1.1 We are supporting Scottish Futures Trust ("**SFT**") in their role as delivery partner for Transport Scotland's Electric Vehicle Infrastructure Fund, which aims to support Scottish local authorities to develop and deliver public electric vehicle charging infrastructure ("**EVI**") in partnership with the private sector in furtherance of Transport Scotland's vision for Scotland's public electric vehicle charging network.

1.1.2 We are assisting SFT with this programme by preparing a suite of template documents to be made available to, and which may be used by, local authorities as part of in their procurement of EVI. This critique focuses on reviewing the procurement options available to local authorities in Scotland for a concession contract – whereby a contractor (or concessionaire) finances all or a major part of the supply, installation, maintenance and operation of EVI in a local authority area, and is entitled to exploit that work by taking in revenue generated by the EVI during the term of the contract. While passing revenue to the concessionaire, this also allows local authorities to pass on much of the cost and the risk involved in a project of this nature. This approach potentially allows the Electric Vehicle Infrastructure Fund to go further, faster by securing private sector investment and supplier funding. This delivery model appears to one that is most closely aligned with a the key priority of Transport Scotland's Electric Vehicle Infrastructure Fund to enable public and private capital to work together and enable the delivery of EVI in parts of Scotland where private investment on its own may not be viable.

1.1.3 Other delivery models are available such as the traditional local authority owner operator model where the EVI is fully funded by the public sector as well as the leasing of local authority sites to a third party operator whereby the local authority has no on-going role in monitoring or managing the services provided from such sites.

1.1.4 The purpose of this critique is to look at procurement options for concession type contracts which are already available to Scottish local authorities relating to EVI, to consider the relative merits and suitability of each approach, and to guide the design of the template documents we are preparing with SFT. It is not intended to constitute formal legal advice to SFT or others. For the avoidance of doubt, we understand that this critique may be shared with local authorities wishing to take forward charging infrastructure projects and Transport Scotland for their consideration, but we recommend that they seek independent legal advice on the matters detailed in it.

1.1.5 In section 3 of this critique, we consider and review documentation provided by SFT for the following procurement options which are available to Scottish local authorities:

(a) Crown Commercial Service's Vehicle Charging Infrastructure Solutions dynamic purchasing system (the "**CCS DPS**");

(b) Oxford City Council's Dynamic Purchasing System for the Supply of Electric Vehicle Charging Infrastructure and Associated Services (the "**Oxford DPS**");

(c) Scotland Excel's Electric Vehicle Charging Infrastructure Framework (the "**Scotland Excel Framework**"); and

(d) the option of carrying out a standalone procurement, directly awarding a contract for EVI without using a framework or DPS.

1.1.6 In section 4 of this critique, we review the documentation provided by SFT in relation to two case studies – looking at the approach taken by councils who have already procured concession contracts for EVI. This is done with a view to supporting local authorities considering procurement options, their relative merits and possible next steps. We will review documents relating to:

(a) Blaenau Gwent County Borough Council and four other authorities' procurement for the installation, operation and maintenance of electrical vehicle charging points (the "**Gwent Procurement**"); and

(b) West Sussex County Council and six other authorities' procurement for the planning, installation and deployment, service and maintenance of Electric Vehicle Chargers across the county of West Sussex (the "**West Sussex Procurement**").

2 CONSIDERATIONS

In reviewing the existing procurement options, we have used the following list of categories as a frame of reference. These are based upon the pragmatic realities of what would be involved in a local authority using any given option, as well as the benefits and advantages that would make an option desirable as opposed to others. This list is not exhaustive, and there will be strengths and weaknesses of different options that we consider that do not fit into any of these categories, but we hope it is a helpful interpretive guide.

2.1 Accessibility

2.1.1 Whether a procurement option can be used by a Scottish local authority, and what time or money would have to be spent doing so, could determine very quickly whether or not it is a suitable option. We will also consider an option's accessibility to potential suppliers, and whether an authority would be limiting their choices by using a particular model.

2.2 Award Process

2.2.1 Some frameworks and dynamic purchasing systems allow for direct award of a contract, with the competition in accordance with the relevant procurement

regulations already having taken place, as necessary. Some provide for call-off competitions or other internal award processes. Running a standalone procurement requires a process which is compliant with the relevant procurement regulations. The award process followed affects the amount of work and risk involved in awarding the contract, but also the speed with which an authority can make an award and get work underway.

2.3 Authority

2.3.1 Local authorities will be familiar with SPPN 03/2017, in which the Scottish Government warned of the risk of "speculative frameworks" which are offered by commercial organisations using a contracting authority under the regulations as a "flag of convenience". We have addressed the reputation and relevant experience of the contracting authorities offering frameworks and dynamic purchasing systems, while recognising that it will ultimately be the decision of a local authority whether or not to use a particular framework or dynamic purchasing system for their specific EVI project.

2.4 Available Goods, Works and Services

2.4.1 Although all of the procurement options we have considered are in the EVI sector, the exact scope of what can be purchased using them is variable. From installation and maintenance works, through to back-office and network management services, local authorities will have a broad range of needs – and not all procurement options can meet those needs in the same way.

2.5 Alternative Funding Arrangements

2.5.1 As mentioned above, one of Transport Scotland's aims for the Electric Vehicle Infrastructure Fund is to maximise private sector / supplier investment. Public sector budgets are only getting tighter, and many authorities will not have the option of large, up-front spending to purchase and install EVI, with revenue not increasing until the network is operational and use of electric vehicles increases over time. We will consider the flexibility of different procurement options in accommodating supplier funding as well as grant funding and other alternative funding arrangements.

2.6 Appeal to Local Authorities

2.6.1 While all of these considerations are, to some degree, about how a procurement option benefits local authorities, we will draw out any specific advantages that we think may impact an authority's decision of which option to use. This will include benefits to authorities, and to local EVI users, of each approach.

2.7 Appeal to Suppliers

2.7.1 A procurement option could be perfect from the perspective of an authority, but will be no good to anyone if it doesn't attract bids from the suppliers who have the capacity to provide the goods, works and services as well as the ability to mobilise supplier finance. We will consider what about a procurement option is likely to incentivise suppliers to tender for a contract and therefore produce the most competitive offers for local authorities to choose from.

2.8 Allocation of Risks and Responsibilities

2.8.1 One of the key variables in different contracts relating to EVI is where risks and responsibilities fall between the authority and the supplier. Some local authorities will want to maintain maximum control of the network in their area, the location of chargers, the tariffs, and so on – but with that will come exposure to costs, risk and the volatility of future revenue streams. Private sector suppliers will be more likely to accept the risks associated with investing in operating, maintaining and expanding a network if they also have a good opportunity to make a return on their investment. To do this, they will need appropriate operational control so they can make sure it is run in a commercially viable way that meets the needs of their customers. Local authorities will need to find the right balance in allocating risk and responsibility on a case-by-case basis – and this will influence which procurement option is the most suitable.

3 PROCUREMENT OPTIONS

3.1 The CCS DPS

3.1.1 With an estimated total value of £450,000,000, the CCS DPS is by some way the largest scale EVI procurement option available to local authorities. This is unsurprising as Crown Commercial Services, the UK Government's procurement agency, is the largest public procurement organisation in the country. This means there is no risk of this DPS being seen as "speculative". This large-scale buying power attracts suppliers, as it potentially gives them access to all UK public sector bodies. Further, being structured as a DPS rather than a framework allows for new suppliers to join at any time. However, despite its scale, when the Scottish Government issued a request for information as part of its EVI "Procurement Portfolio Review" in May 2021, only 6 of 64 public body respondents said they *"use or have access to CCS for charging infrastructure"*. So, while the CCS DPS scores highly on accessibility in theory, awareness and uptake seem to be low which may, to some extent, reflect the demand for EVI to date.

3.1.2 The award process for the CCS DPS is a call-off competition run by a public sector buyer (in this case a local authority) among the suppliers currently on the DPS. Due to the scale of the system, there will be many suppliers who are not interested in any given contract – for reasons of scale, geography, specialism, and so on. Competitions can be run using the CCS eSourcing portal and template competition pack, or a contracting authority's own portal and documents.

3.1.3 The products available on the CCS DPS are extensive – ranging from consultancy and feasibility studies before a project commences all the way through to decommissioning services. The DPS also includes a "service filter" for an end-to-end service. Due to the range of suppliers, the CCS DPS provides a good opportunity for buyers to find a suitable partner to meeting their particular needs.

3.1.4 The DPS divides the products available into different "funding arrangements". While the full range of products and services are available for buyer-funded purchase or lease (paid for by the buyer's capital resources, possibly supplemented by grant or match funding), only the provision of installation locations or a full end-to-end service are available on the supplier funded filters. The DPS documents refer to a revenue gain-share arrangement, a "concession model" (where the supplier remunerated from provision of services to users, and costs and risks "fully or partially" transferred from buyer to supplier) and a "no fee model" (where the supplier operates the infrastructure at no cost to Buyer – but locations of chargers are determined solely on the basis of their revenue earning potential).

3.1.5 Of the supplier funded options, it seems likely that the "no fee model" gives significant control to the supplier. While this may be suitable in certain instances it may make it more difficult for local authorities to guarantee an equitable geographical spread of EVI in line with the priorities of the EVIF programme and Scottish Government's draft Vison for Scotland's public EV charging network. The concession model, as described in the specification documents, seems to be flexible enough to cater to the specific requirements of local authorities in terms of balancing the competing desires to attract supplier-funding and to maintain control of the management of the EVI. However, the core terms of the CCS DPS operate on the basis local authorities will be self reliant when it comes to implementing such an arrangement. If a local authority wanted, for example, a buyer-funded lease of EVI equipment, then the CCS DPS provides suitable terms in a schedule ("DPS Order Schedule 22") which can essentially be plugged in to the standard order contract. They appropriately refer to and vary the core terms in order to form a suitable lease contract which local authorities can use as a starting point (or even an advanced draft) in preparing their contract. **There is no equivalent schedule or set of terms for a concession arrangement**. Again, this leaves the relatively complex work of turning the core terms of the DPS into a concession contract for the contracting authority to do for themselves, which may not be suitable in all instances.

3.1.6 In terms of appeal to local authorities, The CCS DPS's greatest strength may also be its greatest weakness. The thing which makes the CCS DPS stand out in every way is its scale. This is an advantage in terms of access to a wide range of suppliers and can be economically beneficial. However, it also means that the documentation that underpins the DPS – the DPS agreement itself, and the core terms provided for specific orders – take a necessarily broad-brush approach. Catering to the whole of the UK public sector, understandably, makes it difficult to tailor for the needs of individual contracting authorities. CCS have taken the approach of providing fairly basic "core terms" which can then be amended and adapted as necessary. While this

does provide flexibility, it also provides uncertainty to buyers and suppliers who may have varying expectations of what any particular contract will ultimately look like. This may lead to additional workload for contracting authorities that have to invest time and energy in refining the "core terms" before going to market, or to negotiations beyond the basic commercial terms which parties generally expect to tender on the basis of.

3.1.7 While access to such a large section of the public sector is the primary appeal for suppliers, the flexibility of the CCS DPS is also potentially a benefit. Suppliers will have standard terms and conditions which they prefer to use, and the CCS core terms leave space for many such terms to be considered on a case-by-case basis by the parties. For example, the CCS DPS does not prescribe or limit the term of contracts awarded under it. Suppliers generally prefer longer contracts – particularly in the EVI sector as it allows them more time to make back initial investment in infrastructure and to benefit from the predicted increase in the uptake of electric vehicle usage in Scotland. As in other DPSs we have reviewed, suppliers are charged what the CCS DPS describes as a "Management Levy", which is payable to CCS for their services in managing and organising the DPS as a whole. While there are provisions to say that this levy cannot be passed on to the buyer, it will inevitably be priced in by the supplier at some stage in the process. The publicly available DPS documents do not disclose the amount of this levy.

3.1.8 One important thing to flag where public authorities are considering using the CCS DPS is that it was established in May 2020 for a four-year term, meaning that authorities will have to be confident that they will be sufficiently prepared to go to market and award a contract by May 2024 if they wish to use this DPS. It seems likely given the strategic importance of EVI to public policy that CCS will launch an updated DPS on the conclusion of this one. Given the scale of CCS as an institution and the extensive supplier-base they have access to, any new DPS could be well placed to provide up-to-date terms which reflect the latest position in terms of market norms and public funding options.

3.2 The Oxford DPS

3.2.1 Oxford City Council have been something of an EVI leader in the UK public sector. Having begun installing infrastructure early, they have also used their expertise in this sector to manage a DPS which other UK public authorities can use. While smaller in scale than the CCS DPS, the Oxford DPS benefits from a team with direct experience of introducing EVI as a local authority.

3.2.2 Oxford City Council manage the DPS directly – evaluating suppliers who wish to join and entering into "customer access agreements" with public bodies who wish to make purchases. This means there is no risk of a "speculative framework" as the DPS is run directly by a reputable public body with legitimate interest and expertise in the sector. Like other DPS providers, Oxford City Council take a "supplier rebate", in this case this is 0.7% – 1.5% of the value of the contract. While there is

no direct cost to purchasers for use of the DPS, one would assume that this will have a knock-on effect on the prices offered by suppliers under the DPS. Customers can then run call-off competitions, in which they must offer to all of the suppliers on the relevant lot of the DPS the opportunity to bid for the contract.

3.2.3 In terms of alternative funding arrangements and the allocation of risks and responsibilities, the Oxford DPS is unique among the DPSs we have reviewed in that they have prepared a template concession contract, which we understand will be available for call-offs under the DPS imminently. This will allow public authorities to award contracts on a concession basis (allocating the risk and the opportunity for profit to the supplier, in exchange for the works and services being wholly or largely funded by the supplier). We have had access to the draft concession terms and they appear to be a good reflection of what we understand to be market standard for contracts of this nature.

3.2.4 While the concession terms and conditions speak of the authority applying for public funding to support the EVI project, they are generally drafted on the assumption that the concessionaire will meet the costs of purchasing, connecting, managing, operating and maintaining the EVI. There is then a flexible provision for a revenue or profit sharing arrangement and/or a land use fee to be paid from the concessionaire to the authority. We understand that Scottish local authorities may be able to access funding from Transport Scotland's Electric Vehicle Infrastructure Fund and, while there is room for this being incorporated into Oxford's concession terms and conditions through the general provisions around public funding, this couldn't be incorporated in detail (and therefore the benefits of the public funding may not be able to be relied on by prospective concessionaires pricing their tenders) in the way that it could in a bespoke contract.

3.2.5 The balance of risk and responsibility allocated between the parties to the concession contract can be shifted by the authority calling off the contract to the concessionaire in various ways. For example, while the template terms and conditions provide a minimum specification, mostly contained within the "Compliance Standards" applicable to the whole DPS, this can be added to and expanded on by the authority. The more detailed the specification, the more control the authority takes over how the EVI network will look and will be operated. This gives the concessionaire less scope to take risk and responsibility themselves. By way of illustration, if an authority specifies each charger must be the most expensive, highest spec charger available on the market, then this will cost the concessionaire more money and will have consequential effects on the tariffs set for the network and any profit or revenue sharing arrangement. Another example of this is that the authority can determine whether or not to require that the tariffs the concessionaire sets are "competitive with the market rate". Restricting the tariffs in this way may give authorities more control in meeting their public policy objectives for an equitable network, but would also reduce the ability of the concessionaire (and in turn the authority) to make profit from the network. These are just two examples of various decisions that authorities

will have to make when considering allocation of risk and responsibility in a concession contract.

3.2.6 The Oxford DPS is comprised of nine lots, with a range of products available to purchasers. There are currently over 25 suppliers on the DPS, some lots are quite bespoke and have fewer registered suppliers than others. Lot 1 is the broadest, offering an end to end / turnkey service (available on a concession basis), and currently has 22 available suppliers. This lot includes *"all aspects of the goods, works and services required to provide and operate a smart EV charging estate."* Lot 2 ("network operation") is also available on a concession basis. Others, such as lot 8 (EV energy storage solutions and capacity management) or lot 9 (E-Car Club EV charging solutions) are more bespoke and would not be suitable for a concession contract. A local authority looking for something highly specific, needing access to suitable suppliers, could do well to look to the supplier experience available via the Oxford DPS.

3.2.7 The Oxford DPS has been quite effective at attracting suppliers. This is at least in part because of Oxford City Council's expertise, which they make available to suppliers as well as purchasers – offering tools to support tender writing and bid responses. This is also a benefit for local authorities, who may receive a higher calibre of bid and benefit from more competitive responses to any call-off contract.

3.3 The Scotland Excel Framework

3.3.1 The final procurement option that we will consider is the Scotland Excel Framework. Launched in May 2022, this framework offers Scottish local authorities (and other Scottish public bodies) access to 33 suppliers across 4 lots, divided into 6 geographical regions. Although Scotland Excel are not a contracting authority acting directly (as CCS or Oxford City Council are), we do not consider there to be any risk of this being thought to be a "speculative framework". Scotland Excel are a well-established framework provider and centre of procurement expertise, the procurement was carried out by Renfrewshire Council as the contracting authority acting on behalf of Scotland Excel, and the framework has been designed with the EVI needs of Scottish local authorities in mind.

3.3.2 Unlike any of the other procurement options we have considered, the Scotland Excel Framework allows authorities to award contracts without running a competition process. The Framework allows for authorities to directly select a supplier to ask for a quotation via its "selection procedure". It also allows for a mini-competition via its "competitive selection procedure", and which procedure is followed is at the discretion of the buyer.

3.3.3 The four lots are divided as follows:

(a) Lot 1 – service/works contracts for supply, installation and maintenance of EV charging equipment and associated items;

(b) Lot 2 – goods contracts for supply only of EV charging equipment and associated items;

(c) Lot 3 – engineering and construction contracts for installation of EV charging equipment and associated items; and

(d) Lot 4 – service contracts for maintenance of EV charging equipment and associated items.

3.3.4 This is the only procurement option we have considered that does not include an option of a contract for the operation of a network of EVI. These lots only cover the hardware – supplying it, installing it and maintaining it. There are no options for planning a network, providing payment mechanisms for customers, or for supporting the operation of a network with back-office services. Local authorities could therefore only use the Scotland Excel Framework if they intend to operate the network themselves, or procure the operation of the network separately. This may be a suitable approach for a local authority looking to maintain or expand their existing network in the short term in advance of procuring a concession contract, or another arrangement, for operation of the expanded network going forward.

3.3.5 Contracts awarded under the Scotland Excel Framework are based on NEC contracts – these are industry standard contracts for engineering and construction work, which give authorities and suppliers assurance that the terms are going to be equitable. However, these are all standard works, goods or service contracts in which the authority pays the supplier for, and the supplier provides, install and maintains the EVI. Authorities will need to consider whether or not these terms can accommodate the kind of arrangement they are looking for for their project.

3.3.6 The 33 suppliers who are on the Scotland Excel Framework have invested time and effort into getting onto the framework and, unlike with a DPS, know that no other suppliers will be admitted for its term. This means they will be looking to make the most of their place on the framework, and to make a return on the time that they have invested already. Further, local authorities can know that suppliers will, hopefully, be comfortable with the NEC contract terms (as amended by the framework) and so there should only be minimal negotiation on any given call-off contract.

3.3.7 If local authorities are looking for the specific supply or works contracts that the Scotland Excel Framework offers, then it seems to be a very good procurement option. However, its limitations in terms of alternative funding arrangements and the fact that it doesn't offer operation of the EVI network will rule it out for some projects.

3.4 **Standalone Procurement**

3.4.1 Another option which is available to local authorities is to run a standalone procurement process exclusively for their contract. This offers the benefit of maximum flexibility and control over the process, but requires the most work, time and risk of an authority.

3.4.2 This process is more onerous than any award process under a framework or DPS – as it requires running a fully compliant tender procedure in line with the relevant regulations. Given the likely scale of EVI projects the relevant regulations would potentially be the Public Contracts (Scotland) Regulations 2015 (for a contract for goods, works or services) or the Concession Contracts (Scotland) Regulations 2016 (for a concession contract).

3.4.3 As well as running a compliant procurement procedure, a local authority carrying out a standalone procurement would have to prepare contractual documents that:

(a) suitably specify their requirements for works goods and services;

(b) govern the funding arrangements for the contract; and

(c) allocate risks and responsibilities relating to the operating of the EVI network appropriately between the authority and the supplier.

3.4.4 Aspects of each of these elements could also be formed as part of the tender process. The authority could ask bidders to supply technical specifications, a pricing schedule, a proposed capital investment, estimated tariffs and various other relevant aspects as part of the bidding process. These would then be scored by the authority and would contribute towards deciding which supplier to award the contract to. This allows these elements to be competitively determined and should theoretically produce better results for the authority.

3.4.5 While having full control over the content of contractual documents may be appealing to local authorities, drafting suitable documents for a project of this scale is no small task. Authorities will need to factor this in when considering the time it will take to prepare, procure and award a contract. While SFT intend on providing template contractual documents, much of the detail will be project-specific and will need to be considered on a case-by-case basis, so this does not eliminate all of the time or effort involved for the procuring authority.

3.4.6 A key aspect of a standalone procurement compared to using a framework or DPS is that the authority will need to attract suppliers to bid for the contract. Centralised procurement activities carry the advantage of a large buyer base and a term of several years – meaning they provide more opportunities for suppliers to secure contracts. A standalone procurement will have to be commercially appealing enough to encourage suppliers to invest time and money in researching and preparing a bid, all without any guarantee that they will be successful in securing the contract.

3.4.7 A standalone procurement also generally takes longer than an award via framework or DPS. Timescales vary depending on the type of contract, the relevant regulations and procurement process followed but it is never a particularly quick process. A summary of the minimum time periods under the Public Contracts (Scotland) Regulations 2015 and the Concession Contracts (Scotland) Regulations 2016 are set out in the table at Schedule 1 below. However, Local Authorities should be aware that these are a minimum and that further rules apply to the setting of time limits in each set of regulations. Moreover, appropriate time should be allocated for other aspects of the procurement process such as the preparation of tender specifications, related tender document and the evaluation of tender responses as well as securing all necessary approvals to award a contract.

3.4.8 The use of Prior Information Notices (PINs) can help to decrease the time that the procurement process takes. Firstly, on a legal basis, a PIN can in some instances replace the need for a contract notice or shorten the period for responses to a contract notice. Secondly, they can include a request for information and give Local Authorities a means of testing market interest in their proposed contract. Thirdly, they give potential suppliers awareness that the opportunity to bid for the contract is coming and the chance to consider whether to bid. However, Local Authorities should ensure that a PIN is published suitably early so that the benefit is not offset by the time that can be added by adding an additional step to the process.

3.4.9 With the minimum timescales adding up to almost three months in most cases, the whole procedure, including planning and preparation before publication of the contract notice (and potential negotiations, standstill period and challenges at the end of the procurement process), can potentially take five months or more - the circumstances will clearly vary from procurement to procurement. Further, it may not be wise to procure a contract in the fastest possible timescales. Bidders may be able to produce better submissions, and Local Authorities may be better able to evaluate their options, when given more time.

3.4.10 Another perceived disadvantage of a standalone procurement compared to using a framework or DPS is that the authority bears the risk of a procurement challenge – which can be costly and can delay a contract commencing. However, the decision to use a framework or DPS is not free from the risk of a challenge either. In a recent case, *Consultant Connect Limited v NHS Care Boards [2022] EWHC 2037 (TCC)*, the contracting authorities were found to have improperly decided to use a framework and their procurement process was successfully challenged by a supplier who was not a party to that framework. Further, the risk of challenge in any procurement can be minimised (though perhaps never fully eliminated) by carefully managing the procurement process in compliance with the relevant regulations.

3.4.11 Despite increased costs, time and risks, the advantage of having full control of the design of a contract and procurement process should not be underestimated. Every local authority is different, as is every geographic area and every EVI network. The details of contractual provisions need to be considered in any case, and a local

authority potentially places itself in the best position if it can consider these details without the limitations of pre-agreed framework terms.

3.4.12 Further, as this critique shows, no framework or DPS is going to be perfectly suited to every local authority's needs. There are also costs, time and risk involved with reviewing different centralised procurement routes, choosing the most appropriate ones, adapting the contract to suit the individual project to the extent that that can be done, and (in most cases) running a call-off competition.

4 CASE STUDIES

4.1 The Gwent Procurement

4.1.1 In 2019, five neighbouring local authorities in South-East Wales worked together to procure a contract for the installation, operation and maintenance of a network of EV charge points across their area. The lead authority for the procurement process was Blaenau Gwent County Borough Council. While this wasn't a framework or DPS, and so cannot be "used" by local authorities directly, there is much that can be learned from and replicated from the approach and the contract documents. Whether adopting the Gwent approach wholesale and then tweaking to meet the needs of the particular authority or relying on a framework/DPS and incorporating some of the methods or contractual terms from Gwent where suitable, local authorities may benefit from considering Gwent's experience. Wholesale adoption in particular could save local authorities the time and effort of having to reinvent the wheel while maintaining maximum control over the process.

4.1.2 In the Gwent Procurement, the authorities ran a standalone procurement, awarding two contracts together to the successful bidder:

(a) a works contract for the installation of the chargepoints, funded by OLEV funding (conditions of which were incorporated into tender docs), meaning that infrastructure was the property of the councils; and

(b) a concession contract for the operation, maintenance and upgrade of the infrastructure over a period of five years (with the option of a three year extension), based on a profit share arrangement which was competitively tendered in bidder's submissions.

4.1.3 The appeal of this two-contract approach for suppliers is that the purchase and installation of the EVI is fully funded, and they are not exposed to the associated costs or risks. In other arrangements, contractors have to spend a considerable amount on supply and installation before they have the opportunity to make any income by exploiting the EVI – this removes the need for that loss up front from suppliers. This explains why a five year concession contract was a possibility (where generally suppliers want a longer period so as to be able to recuperate their investments). The appeal for the authorities is that they own the infrastructure and

so could re-procure a subsequent concession contract without having to worry about acquiring the EVI from the outgoing supplier or sourcing new chargepoints, etc. from an incoming supplier. The question it leaves for authorities is whether or how they would be able to secure funding for this approach. The Gwent authorities had over £600,000 of OLEV funding available – and as public sector budgets are getting tighter, that kind of up-front spending will not be possible in every situation. This is, however, perhaps a model that authorities would want to keep in mind for the future.

4.1.4 At the end of either a fully funded or part funded concession type contact there will be value both in the below and above ground assets. In most concession type contracts the charging location and at least the below ground assets revert to the ownership of the local authority. At this point, the Authority owns a more expansive, pre-existing EV network with higher chargepoint utilisation than there is now. The provision of that network to a subsequent concessionaire could be of equivalent or more value to a supplier of a fully funded works contract for installation of replacement and/or further EVI, and so there would be a greater incentive for the concessionaire to carry out unfunded installation works.

4.1.5 The funding arrangement with regards to the Gwent concession contract, however, is something that could be replicated now. The authorities did not have to commit to any expenditure – the costs of operating, maintaining and upgrading the EVI lie with the supplier – including sourcing, arranging and managing electricity supply contracts. In fact, the authorities would receive a share of the supplier's profit and so could make money rather than spending it. From the supplier's perspective, they are able to exploit the EVI and keep the profit, subject to a share going to the authorities. The profit share, because it was part of the supplier's bid in the procurement process, will not be more than the supplier is able or willing to offer – but the competitive nature of the procurement should help produce a favourable outcome for the authorities. Other concession contracts (such as the one under the West Sussex Procurement) use a share of revenue, rather than of profit, as the mechanism for payments going to the authorities.

4.1.6 Though the assets are owned by the authorities (paid for by OLEV funding under the works contract), the risks associated with operating the network lie with the supplier. In fact, the contractual documents rule out any on-going cost to authorities. The costs of *"Installation, operation, future upgrades and maintenance of the chargepoints and all hardware, software, metering & electricity supply, back office, payment, communication (including SIM fees), and call handling systems"* are borne by the supplier. Despite taking on these costs and liabilities, the supplier does not seem to be able to set the tariff charged to users. Although the contract is not explicit about tariff-setting, the specification refers to allowing *"the host"* to design the charging model and the *"ability for the charge point owner to set multiple levels of tariff"*. Although not defined terms, "host" and "charge point owner" seem to refer to the relevant authorities.

4.2 The West Sussex Procurement

4.2.1 Similarly to the Gwent Procurement, the West Sussex Procurement was carried out by several local authorities in geographical proximity working together in procuring EVI. This was also a standalone procurement, so is not available to other authorities to use directly but can be learned from and replicated. They did, however, build in access for "collaborating organisations" within West Sussex – meaning that landowners in the area such as parish councils, social housing providers and local charities could have EVI installed on their land which would be part of the network operated under the contract.

4.2.2 Unlike the Gwent Procurement, the West Sussex Procurement secured one contract for the whole process. In fact, the contract started earlier in the process than the Gwent Procurement's works contract as it includes the planning and design of the EVI network as well as its installation, provision, management and maintenance. This was all governed by one concession contract, based on payment of proportion of revenue from all charging sessions to council in return for the right to exploit and profit from the network. The inclusion of a planning stage under the contract provides the contracting authorities and the successful tenderer with the flexibility to work out a project plan that works for all parties without the supplier having to invest too much time in research and planning their provision before knowing they have got the contract. However, it would be important during such a planning process to make sure that the contract requires the provision of EVI in all areas to meet the local authority's policy objectives regardless of the commercial attractiveness of individual locations and the concessionaire's financial objectives.

4.2.3 This approach may be less attractive to suppliers than the Gwent Procurement approach – they bear more of the associated costs, and payments to the authorities don't just come out of any profit, but out of all revenue.

4.2.4 However, one benefit to the West Sussex approach for suppliers may be that the above ground hardware associated with the network (most significantly, the chargers) remains their property. Costs associated with maintenance and upgrades of hardware will benefit the supplier beyond impact on sales, as the value of the assets is on their balance sheet – not that of the authorities.

4.2.5 In terms of allocation of responsibilities, the concession contract includes a grant of a licence in favour of the supplier for access to property for surveying and carrying out works, a right to use the highway for the provision of the services and, where the infrastructure is to be installed on land off of the highway, a template lease document that does the same. Beyond that, the operation of the service lies with the supplier. In the words of the preamble to the contract, the authorities, *"have entrusted the planning, provision, management and maintenance of its Services to the Service Provider, the consideration of which consists in the right to exploit the Service"*. While the authorities receive a predetermined share of revenue, they do not have control over how much that revenue is – the supplier has control of price

setting, subject to certain contractual conditions. The electricity supply is the duty of the supplier under the pro forma lease (for chargers not on the highway), but it's not entirely clear how that was handled for chargers on highways (where there is to be no lease in place). One thing that the authorities did retain control over was the locations of the portfolio of chargers – this allowed for them to ensure that areas less attractive to the supplier were provided for as well as the "hot spots" where the most money was likely to be made such that the supplier is to work to include a minimum of 10% of any chargepoints in less commercially viable sites over the contract term.

5 CONCLUSION

5.1.1 While there are options available to Scottish local authorities in the procurement of EVI, there does not appear to us to be one stand-out option when it comes to procuring a concession contract for the installation and operation of a network. The Gwent and West Sussex case studies show that this model is possible but, as standalone procurements, cannot be used directly in the way that a DPS or Framework can. While the CCS DPS offers flexibility in terms of call-off contracts and has advantages in terms of time and cost to local authorities, much of the work (and time and cost) in adapting contracts to suit a supplier funded concession arrangement would have to be incurred on a case-by-case basis by the local authority. The Scotland Excel Framework is not for the purpose of that kind of contract and cannot be adapted to be so. The Oxford DPS will imminently provide template concession terms which are up-to-date, reflect market practices and have been prepared by a local authority with experience and expertise in this area. For a Scottish local authority looking to procure a concession contract under a DPS or framework, this may therefore be an attractive option. However, use of any DPS or framework is, by nature, limiting of an authority's control over the terms of the contract. It may be the case that the Oxford DPS terms do not meet an authority's particular needs or outcomes.

5.1.2 We therefore see there being an opportunity for SFT to support Scottish local authorities by making available a template contract that they could tailor for use in the procurement of EVI in their respective standalone procurements. These documents could be bespoke to the needs of the market in Scotland at this time: recognising the commercial terms that Scottish local authorities may expect and, crucially, dovetailing with the conditions of Transport Scotland's Electric Vehicle Infrastructure Fund. Provision of template contract would, like a DPS or Framework, reduce the workload required of local authorities in preparing a contract to go to market. However, in a standalone procurement the contracting authority always retains maximum flexibility. A template contract could be adapted and tailored to suit the particular needs of the local authority without any restriction, where in a DPS or Framework this can only be done on a limited basis.

5.1.3 As discussed above at Section 3.4, a standalone procurement is not without its disadvantages compared to use of a framework or DPS. While SFT's development of a template contract would mitigate the extra work to some extent, it does not

remove the workload of engaging with the market, attracting suppliers and carrying out some form of qualification stage. A framework or DPS allows an authority to skip these early steps and move straight to running a competition for award of the contract (although the preliminary work of, at minimum, defining a scope of services and tailoring a contract could still be extensive). The extra work of a standalone procurement can be further mitigated by, for example:

(a) engaging with the market early, to ensure that the contract which is subsequently developed and advertised is an attractive proposition for suppliers;

(b) working co-operatively with other local authorities, whether informally by sharing lessons learned and best practice or through more formal cooperation such as a joint procurement; and

(c) considering outsourcing some of the more specialised work – whether that is drafting or refining the concession contract, or developing a technical specification for the EVI to be procured – which could place a particular burden on local authorities.

5.1.4 Whatever route Scottish local authorities choose to follow, procuring EVI at the scale anticipated over the coming years will not be a straightforward process. We hope that our template concession contract is a useful tool, both for SFT as a delivery partner for the Electric Vehicle Infrastructure Fund and for local authorities who choose to use it.

SCHEDULE 1 – MINIMUM TIMESCALES

	Public Contract (Scotland) Regulations 2015 – Open Procedure	**Public Contract (Scotland) Regulations 2015 – Restricted Procedure**	**Public Contract (Scotland) Regulations 2015 – Competitive with Negotiation**	**Public Contract (Scotland) Regulations 2015 – Competitive Dialogue**	**Public Contract (Scotland) Regulations 2015 – Innovation Partnership**	**Concession Contracts (Scotland) Regulations 2016**
Despatch of contract notice to receipt of responses / expressions of interest	35 days (5 day reduction if tenders can be submitted electronically) (15 days where a PIN (Prior Information Notice) has been published)	30 days (PIN can be used instead of contract notice as means of calling competition)	30 days (PIN can be used instead of contract notice as means of calling competition)	30 days	30 days	30 days (PIN can be used instead of contract notice as means of calling competition)
ITT / ITN to receipt of bids / initial tenders	N/A	30 days (5 day reduction if tenders can be submitted electronically)	30 days (5 day reduction if tenders can be submitted electronically)	N/A	N/A	22 days (5 day reduction if tenders can be submitted electronically)
Standstill	10 days	10 days	10 days	10 days	10 days	10 days