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Implementation of Standardisation of PFI Contracts (SoPC)

This letter sets out HM Treasury guidance, endorsed by the Chief Secretary to the Treasury, on how Version 3 of SoPC should be used by authorities procuring through the Private Finance Initiative (PFI).

2. HM Treasury has now published an updated version of SoPC on its public website, meaning that it is freely available to both the public and private sectors. Two versions of SoPC will be made available. The clean copy is the one currently available on the HM Treasury website. A marked-up copy, which will show the changes made from Version 2, will follow shortly. Practitioners should note that the Treasury will no longer be publishing SoPC through Butterworths LexisNexis.

3. As 'PFI: Meeting the Investment Challenge' makes clear, HM Treasury is keen that there should be "more rigorous enforcement of the standardised PFI contract across both the public and private sectors." This is because the process of standardising PFI contracts helps spread best practice, improves PFI procurements across the public sector, and significantly reduces the length and cost of the procurement process.

4. In keeping with this policy goal, Version 3 of SoPC should now be used from 14 May 2004 by procuring authorities and their advisors for all projects that have not reached commercial close by this date.

5. We appreciate that for some projects this may create extra work in implementing Version 3 at a relatively late stage in the procurement process. However, HM Treasury believes that it is important that the PFI community should begin to work to a single SoPC text as soon as possible so that the significant benefits of standardisation can be felt throughout the system. In addition, we expect that a large number of the changes made in Version 3 of



SoPC are already being used in existing contracts. Where they are not, experience has shown that on a number of projects recent changes on permitted borrowing and refinancing have been relatively straightforward to introduce even at a late stage in negotiations.

6. If a procuring body believes that it is impossible to amend an individual contract so that it is compliant with Version 3 SoPC, within the parameters set out in paragraph 4 above, it will need to receive specific approval for its approach from HM Treasury.

7. In order to further embed the implementation of SoPC, HM Treasury would encourage procuring bodies to develop SoPC compliant sector specific contracts where such documents would spread best practice amongst a wide range of projects, reduce bid costs and shorten timescales for closing deals. We recognise that a number of departments already have sector specific contracts or are currently in the process of developing them. It is important that these contracts are consistent with Version 3 SoPC.

8. To ensure that existing and future sector specific contracts deliver value for money and are compliant with the latest version of SoPC, HM Treasury will need to review them and will have final approval over their content and introductions. HM Treasury anticipates that the work to approve all existing sector specific contracts should take approximately 6 months. We will contact individual departments to discuss the specific timetables for agreeing their contracts. In assessing issues relating to the approval of sector specific contracts HM Treasury may obtain advice from Partnerships UK (PUK). HM Treasury may also consider making the services of PUK directly available to procuring bodies under the terms of its framework agreement in order to assess individual SoPC issues relating to sector specific contracts.

9. Where it is neither practical nor beneficial for sector specific contracts to be developed, we expect that projects will not derogate from Version 3 of SoPC. Any exceptional need to derogate must first be approved by HM Treasury. In assessing issues relating to derogations from SoPC, HM Treasury may obtain advice from PUK.

10. HM Treasury understands that PFI procuring bodies may still want to seek advice directly from PUK on any exceptional need for derogations from SoPC. We have no objection to procuring bodies obtaining such advice. However, since we are seeking to establish SoPC compliance as standard practice and believe that derogations should only be made in exceptional cases, procuring

bodies that wish to discuss potential derogations with PUK should look to fund this work themselves.

11. Given the important benefits which will flow from embedding standardisation across the public sector, projects which are non-compliant with Version 3 of SoPC and have not had their derogations or sector specific contract approved by HM Treasury will not have the Final Business Cases (FBCs) of their projects approved. Similarly, Local Authorities should be made aware that HM Treasury will now make SoPC compliance a pre-requisite for approval of PFI projects at the Project Review Group.

12. In order to monitor compliance with Version 3 of SoPC and to better understand the nature of PFI deals being undertaken, procuring bodies should forward an electronic copy of all PFI contracts as signed at financial close from 14 May 2004 to HM Treasury Corporate and Private Finance team.

13. In the near future HM Treasury will also seek to set out a detailed procedure for the approval of sector specific contracts and the submission of any derogations from SoPC for approval. HM Treasury will meet with Departments shortly to discuss this work further.

14. I hope that this clearly sets out HM Treasury's need for a consistent and thorough application of new SoPC terms across all sectors. If you wish to discuss these issues further please contact either John Russell (Tel: 020 7270 4488, e-mail: john.russell@hm-treasury.gov.uk) or Jon Fuller (Tel: 020 7270 4496, e-mail: jon.fuller@hm-treasury.gov.uk) in the Treasury Corporate and Private Finance team.

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