The Joint Venture Partnership

Governance Structure and Initial Set up

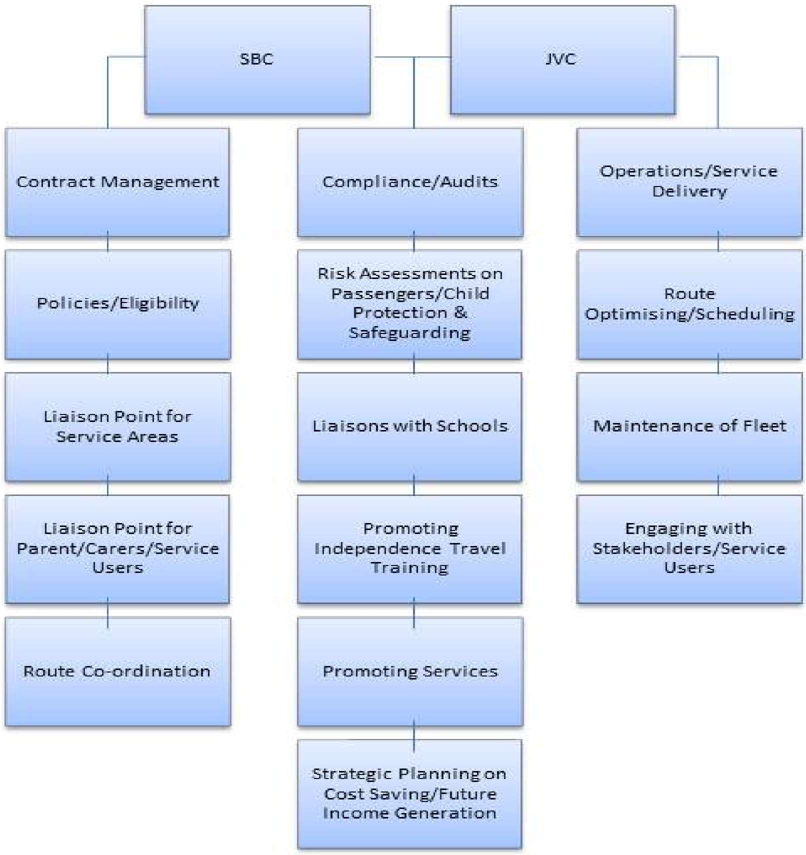
The procurement route will be selecting a preferred partner to form a Joint Venture under a Corporate Vehicle (JVC) with the Council, providing all of the Council's passenger transport services. This model allows the Council to access the skills and expertise of the market, whilst sharing the risk of delivery and any potential upside to the delivery of the service. The JVC is a well-recognised form of delivery vehicle and accepted by the private sector. Public sector controls can be maintained through reserved voting matters.

It should be noted that that there will be initial start-up, set up and legal costs and for contract mobilisation to include staff recruitment, training, and management which will be established as part of the procurement process. In respect of the requirement for a full PSV operating licence, there will also be the need to hold £4,000 for first vehicle and £3,200 for each vehicle thereafter in a bank account so evidence of this available to the traffic commissioner. The number of vehicles that will require a PSV licence will be determined through the procurement exercise which is aiming to integrate the transport service so less vehicles will require a licence

The JVC will be governed by a Board comprising of Directors from each organisation in a shareholding structure. A shareholding structure determines the profit share that is to be distributed between both partners. This structure allows the Council to have far greater control of the way the services are being delivered. Therefore this model usually offers the flexibility that is not available in rigid contracts, which often end up costing more and where contract variations are required and it will be essential that this flexibility will be built into the JVC agreement. It should be noted that the nominated Directors will need to receive the appropriate training before they agree to sign acceptance of their directorship.

Management and Service Structure

The management structure of the JV would need to be determined as part of the procurement process and development of the JVC with a structure that best reflects the Council's objectives, whilst ensuring the JVC can act commercially. Whilst the procurement exercise will determine the development of the management structure it is anticipated that the roles and responsibilities are likely to be split between the Council and the JVC as per the example on page 2:



Management and Service Structure

Share Holding Structure

The proposals from market engagement have indicated that the JVC partner would be the majority shareholder if the JVC partner was committing substantial investment as this places the JVC partner at a much higher commercial risk than the Council. During the procurement exercise the Council will make it clear that if the JVC Partner is the majority shareholder that a Council representative holds a corporate veto to ensure that the Council's policies and requirements are delivered.

It should be noted that whilst the proposed shareholding split demonstrates that the Council will be the minority shareholder for the reasons set out above the market engagement exercise has indicated that the profit from **additional** income generation could be split equally between the two JVC partners on a 50/50 basis which will need to be incorporated into the distribution policy and developed as part of the JVC agreement.

The indications from the market engagement have indicated that the JVC partner may be the majority shareholder as they will also assume the day to day management control of the business. As part of the procurement process a JVC agreement will need to be drawn up which will set out the commitment of both partners.

Inevitably there will be a small degree of financial risk to the Council in setting up a JVC with a third party. However, given the nature of the proposed JVC this risk is not considered high. It is unlikely that the creation of the JVC would cause any financial risk to the authority other than the loss of one-off set up costs should the company fail and at an early stage. There will be no transfer or joint ownership of assets planned and costs for the service will be invoiced to the Council through the JVC whereby the JVC Partner will be leasing (or will own) the purchased vehicles including other overheads/supporting costs to deliver the passenger transport services.

The proposed 'For Profit' JV model will operate under a full PSV operating licence although its sub-contractors could operate under a Hackney Carriage Licence. The 'For Profit' model provides the Council with the opportunity for additional income generation via ability to enter into contracts with academies, schools, other local authorities and local businesses for example.

Details of the arrangements between the two parties forming the JVC will be documented within 'Articles of Association' and/or shareholders agreement that contain the purpose of the company as well as the duties and responsibilities of its members. Contractual obligations and responsibilities of each party will be formalised and documented within a 'Joint Venture Shareholders Agreement' including the right of either party to terminate

Company Director Roles

Policies would need to be developed to confirm the duties of a Company Director for the JVC. The primary obligation and legal duty of care of directors of the JVC constituted as the JVC is to itself and not to the person of whom they are representative or by whom they are nominated. They have an obligation to exercise independent judgement and act in good faith as to promote the success of the JVC.

It should be noted that the nominated Directors will need to receive the appropriate training before they agree to sign acceptance of their directorship

Duration of the JVC

The duration of the JVC will be determined through the procurement exercise, although it should be noted that indications from the market engagement exercise have suggested that a minimum 10 year JVC agreement with options to extend or a 15 year JVC agreement would be more attractive to the JVC partner which is due to their substantial investment in the vehicles. By having a 15 year term means the JVC partner can purchase new vehicles (assets) which could be utilised to their fullest operating capacity. This in turn should also attract a more competitive bid than a shorter period for the JVC.