



Buying your contractor

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Coverage

Context – the wider picture

Why buy – and the alternatives

Buy or make – and pricing

Structural issues

Investigation, due diligence, and the provisional purchasing decision

Purchase Agreement and documents

Completion



Context – the wider picture

- Regulatory framework – vfm focus
- Reducing budgets
- Pressure on the contracting sector – insolvencies
- VAT increase for housing associations
- Importance of maintenance to residents

Regulatory Code
Para 4.23

A provider's ability to drive value for money ... is a "key indicator of the quality of governance"

Options

- DLO
 - "Shared services" DLO
- Contractual joint venture
 - WOS model (DLO run by external contractor)
- Joint venture organisation
 - "equal" shares
- External contract(s)

Decision factors

- Expertise
- Management resources
- Risk appetite
- Scale and volume
- Geography
- Control
- Desire

DLO – “make” or “buy”

Resourcing

- Appropriateness of target's resources
- Interface issues eg IT
- Subcontracting arrangements

Price negotiation

- Asset value
 - Owned or leased
- Goodwill
 - Position under current contract(s)
 - Third party contracts
- TUPE and retention

Resourcing

- Workforce
- Vans
- Depots
- IT
- Materials supply (stores?)
- Specialist subcontractors
- Registrations (Gas safe, NICEIC, waste management)

Structural issues – positioning the DLO

Options

- Division – trading account
- Separate subsidiary

Employment terms

- Associated employer

Third party trading

- Corporation tax & gift aid
- *Teckal*

Decision factors

- Tax
- Simplicity
- Employment arrangements
- Third party trading
- Risk

Structural issues – EU procurement

Teckal case

- Control – “equivalent to control over internal departments”
- Activities – “essential part of activities” - turnover test

Requirement for DLO to follow EU procurement rules

- “Same organisation” analysis – contracting authority
- Implications of not being a *Teckal* subsidiary

Investigation & due diligence

Due diligence

- Purpose and extent
- Questionnaire
- Report

Consider

- Warranties
- Indemnities
- Price reduction?
- Retention?

Due diligence areas

- Corporate structure
- Accounts, finance, tax, grants
- Funding and security
- Insurances
- Employees & pensions
- Physical assets (vans, stock, IT equipment)
- Intangible assets (IPRs, data, IT software)
- Premises
- Environmental
- Regulatory (inc health and safety, licences, registrations)
- Contracts (with suppliers, subcontractors and customers)

Purchasing decision

Subject to contract

What to buy

- Assets
- Shares
- Part of business

Due diligence

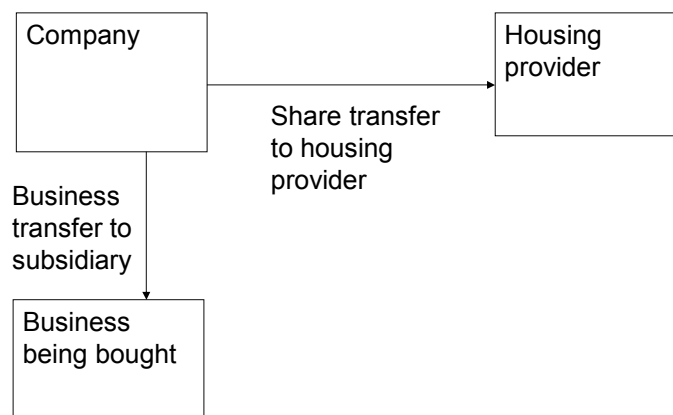
- Risks
- Protections

Value for money

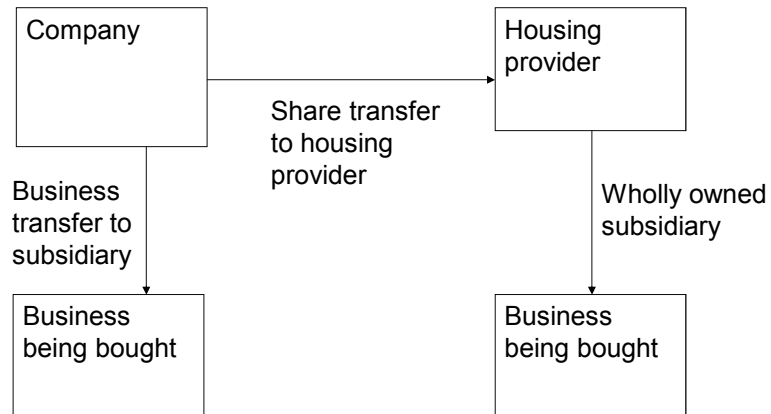
Board questions

- Do we understand what we are buying?
- Is the price right?
- Have we scoped the risks and got adequate protection?
- Do we understand the tax position?
- Is the structure right?
- Can we manage it – have we got the right people?
- Will we measure future performance by the right KPIs?
- Are we confident it will deliver good performance and value for money?

Hive down



Hive down



Purchase Agreement

Preconditions and obligation to satisfy them

Price and price adjustments

Agreement to transfer and completion arrangements

Warranties and indemnities

Tax covenant

Restrictive covenants

Confidentiality and announcements

Standard provisions (notices, disputes etc)

Typical warranties

- Due diligence information
- General (eg ownership, power to sell, legal compliance)
- Specific – arising out of due diligence
- Indemnities
- Tax

Completion

Disclosure letter

Company meeting

- formal approval of final documents etc
- resignations

Completion meeting

- Novations, transfers, etc

Apportionments, stocktake and completion accounts

First board meeting post transfer

Newco first board meeting

- Welcome & declaration of interests
- Appointment of Chair
- New Articles
- Name change
- Director resignations
- Stock transfer forms
- New registrations
- Approval of new
 - Insurances (group)
 - Banking arrangements
 - Auditors (group)

ANY QUESTIONS?

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