

# BRIDGEND COUNTY BOROUGH COUNCIL

## REPORT TO CABINET

14<sup>th</sup> SEPTEMBER 2021

### REPORT OF THE CORPORATE DIRECTOR - COMMUNITIES

#### SMALL BUSINESS RESEARCH INITIATIVE CONTRACT NOVATION

##### 1. Purpose of Report.

1.1 The purpose of this report is to seek Cabinet approval to waive the council's Contract Procedure Rules in accordance with CPR 3.2.9.4 in respect of the contract with PassivSystems Limited for Phase 2 for the Small Business Research Initiative and to enter into a Deed of Novation to novate that contract from PassivSystems Limited to Passiv UK Limited.

##### 2. Connection to corporate well-being objectives / other corporate priorities

2.1 This report assists in the achievement of the following corporate well-being objectives under the **Well-being of Future Generations (Wales) Act 2015**:-

1. **Supporting a successful sustainable economy**– taking steps to make the county borough a great place to do business, for people to live, work, study and visit, and to ensure that our schools are focused on raising the skills, qualifications and ambitions of all people in the county borough.
2. **Smarter use of resources**– ensure that all its resources (financial, physical, ecological, human and technological) are used as effectively and efficiently as possible and support the creation of resources throughout the community that can help deliver the Council's well-being objectives.

##### 3. Background.

3.1 In February 2019 Cabinet approved the Bridgend Local Area Energy Strategy and Smart Energy Plan. The strategy provides the vision for how heat could be decarbonised across Bridgend County Borough in line with UK Government carbon reduction targets.

3.2 The Smart Energy Plan contains several project ideas to be developed over the period 2019 – 2025 which will provide the evidence base for the decarbonisation of Bridgend County Borough in line with the Local Area Energy Strategy. The projects are divided into Deployment and Innovation projects. Innovation Project 4 "*Affordable Urban Heat Networks*" is seeking to identify innovative ways in which the cost of heat networks can be reduced.

3.3 In order to develop the idea BCBC submitted a proposal to Welsh Government through their Small Business Research Initiative (SBRI) to run an innovation competition (over two phases – Feasibility and Demonstration) to allow innovators in the market to come forward with ideas around how heat networks could be developed

at a lower cost to current market conditions. The proposal was approved and BCBC were awarded £200,000 of funding to run a Phase 1 competition (with an opportunity for further funding to be available for Phase 2 should the project successfully deliver Phase 1) that would invite innovative proposals from the market to reduce the cost of developing, building or operating heat network projects.

3.4 BCBC ran a competition in the autumn of 2019 and appointed 4 organisations to develop their ideas as part of Phase 1 of the SBRI process. The appointed organisations were:

- PassivSystems
- Nordic Heat
- Energy Systems Catapult
- London South Bank University (consortium lead)

3.5 The projects were originally scheduled to run from January – June 2020 but due to the Covid-19 pandemic it was decided to extend the contracts until December 2020 to ensure sufficient time for the Phase 1 feasibility studies to be completed. All four studies were successfully completed.

3.6 Welsh Government made a further £500,000 of grant funding available for Phase 2 and BCBC invited all the companies involved in Phase 1 to submit proposals for Phase 2 of the SBRI competition. Nordic Heat, PassivSystems and ICAX (member of the consortium led by London South Bank University) all submitted bids in February 2021. The bids were evaluated by a panel comprised of BCBC and Welsh Government representatives and it was decided that PassivSystems and ICAX would be awarded contracts (£250,000 per organisation) to demonstrate their project ideas as part of a Phase 2.

#### **4. Current situation / proposal.**

4.1 PassivSystems were awarded the contract to deliver their demonstration project as part of Phase 2 of the SBRI in March 2021. PassivSystems were, however placed into administration in April 2021. On the 21<sup>st</sup> April 2021 PassivSystems were acquired by Passiv UK.

4.2 As a consequence of this acquisition, Passiv UK have requested that the contract with PassivSystems be novated to Passiv UK Limited.

4.3 The Council's Contract Procedure Rules (CPRs) 3.2.9.4 provides that a contract can be modified without requiring a new procurement procedure where:

“a new Contractor replaces the one to which the Council had initially awarded the Contract as a consequence of:

...

(ii) universal or partial succession into the position of the initial Contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the Contract and is not aimed at circumventing the application of the Public Contract Regulations 2015;”

- 4.4 The Council has completed due diligence on Passiv UK Limited to ensure that they fulfill the criteria for qualitative selection initially established for the tender. Passiv UK Limited completed and returned the criteria for the initial qualitative selection and it was considered that they fulfilled those requirements. The overall nature of the contract will not be altered by this novation and there will not be any substantial modifications to this Contract.
- 4.5 As the value of the contract is over £100,000, Cabinet approval is required to waive the CPRs.
- 4.6 It is therefore proposed that the Council waives the requirement to obtain quotations or tender under Contract Procedure Rule 3.2.9.4, and enter into a Deed of Novation to novate the contract from PassivSystems Limited to Passiv UK Limited to deliver Phase 2 of the SBRI Affordable Urban Heat Networks Project.

## **5. Effect upon Policy Framework & Procedure Rules.**

- 5.1 This report is requesting a waiver of the Council's Contract Procedure Rules.

## **6. Equality Act 2010 Implications**

- 6.1 The protected characteristics identified within the Equality Act, Socio-economic Duty and the impact on the use of the Welsh language have been considered in the preparation of this report. As a public body in Wales, the Council must consider the impact of strategic decisions, such as the development or the review of policies, strategies, services and functions. It is considered that there will be no significant or unacceptable equality impacts as a result of this report

## **7. Well-being of Future Generations (Wales) Act 2015 Assessment**

- 7.1 The well-being goals identified in the Act were considered in the preparation of this report. The Act provides the basis for driving a different kind of public service in Wales, with five ways of working to guide how the Council should work to deliver wellbeing outcomes for people. The Council must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

- 7.2 The SBRI project addresses the five ways of working under the Act through:

- **Involvement:** The SBRI project will introduce innovation into the heat network sector providing the Council with new tools to develop a decarbonised heat system that meets the UK Net Zero decarbonisation targets in line with BCBC's Local Area Energy Strategy.
- **Long Term:** The aim of the SBRI is to identify new ways of developing and operating heat network projects which will have a positive long term impact on the sector, with the desired aim of reducing costs and increasing the viability of projects.
- **Prevention:** The SBRI will provide new key innovations that it is anticipated will help facilitate the successful development of heat network projects within

Bridgend in line with the Local Area Energy Strategy helping to achieve a Net Zero Bridgend.

- **Integration:** The SBRI will support innovation within the heat network sector aiding the Council to develop projects that will achieve carbon reductions within its own estate and across the County Borough, reduced whole life cost of heat (capital and revenue) and create economic opportunities through a clearly identified value chain for the area.
- **Collaboration:** The SBRI involves collaboration between a number of stakeholders within Bridgend (e.g. the Council, private sector, social housing providers etc.) to achieve its outcomes, which it is intended will have a positive impact on the heat network sector.

## **8. Financial Implications.**

- 8.1 There are no financial implications. Phase 2 costs remain the same and will be delivered through the Welsh Government grant for Phase 2 of the SBRI project. The grant has been accepted by the Council.

## **9. Recommendation.**

- 9.1 It is recommended that Cabinet:

- Authorises the waiver of the Council's Contract Procedure Rules to allow the modification of the existing contract with PassivSystems Limited in relation to Phase 2 of the Small Business Research Initiative by consenting to the novation of that contract to Passiv UK limited in accordance with Rule 3.2.9.4;
- delegates authority to the Corporate Director Communities to approve the final terms of the Deed of Novation required to novate the contract from PassivSystems Limited to Passiv UK Limited and enter into that Deed of Novation in consultation with the Interim Chief Officer, Finance, Performance and Change and Section 151 Officer, and Chief Officer Legal, HR and Regulatory Services and to arrange execution of the Deed of Novation on behalf of the Council, subject to such delegated authority being exercised in consultation with the Chief Officer Legal, HR and Regulatory Services.

**Janine Nightingale**  
**Corporate Director Communities**  
**8<sup>th</sup> September 2021**

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## **Background documents**

None