

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 21 September 2012	<b>Decision Maker:</b> Cabinet Member for Children's Services
<b>Report title:</b>		Gateway 2: Contract Award Approval Southwark School's for the Future (SSF) Phase 3c	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Strategic Director of Children's Services	

## RECOMMENDATIONS

- 1 That the Cabinet Member for Children's Services approves the award of the contracts for Southwark School's for the Future (SSF) Phase 3c to 4 Futures Limited and other associated parties, with a total value of £5,789,770 for construction services and £340,689 for ICT equipment, as set out in table 1 (at paragraph 16) with the parties identified in table 1, subject to:
  - The approval by the Department for Education (DfE) of the Final Business Case (FBC) which will include confirmation of funding for BSF Phase 3c (which includes Southwark Inclusive Learning Services Key Stage 3 and Key Stage 4 (SILS 3 and 4))
  - The financial implications for the council being within the parameters set out in paragraph 39 of this report
  - Confirmation from the council's Technical Advisor that the project represents value for money (in line with the agreed value for money protocol).
- 2 That the Cabinet Member for Children's Services authorises that the School Interface agreements set out in table 2 (at paragraph 16) are entered into with the parties stated in table 2.
- 3 That the Cabinet Member for Children's Services notes that the contract management arrangements for the contracts considered in this report have been approved by Southwark Executive on 17 February 2009, as part of the report entitled "Local Education Partnership co: partnership, governance and management".

## BACKGROUND INFORMATION

- 4 On May 2 2007, the council's Executive approved the gateway 1 report for the procurement of Southwark's LEP as part of the report entitled 'Southwark schools for the future: BSF Outline business case (OBC)'.
- 5 On October 29 2008, the Major Project Board approved the appointment of Balfour Beatty Capital, trading as Transform Schools ("Transform Schools") as the selected bidder and delegated authority to the Strategic Director of Major Projects to approve

the award of contracts to the LEPco. The partnership is now known as 4 Futures Limited.

- 6 On February 17 2009, Southwark Executive approved the transition and contract management arrangements for the contracts considered in this report, as part of the report entitled 'LEPco: partnership, governance and management'.
- 7 In May 2011 Southwark appointed a Technical Advisor, Faithful and Gould, to provide technical and financial expertise to support the Southwark's client function in the assessment and delivery of projects through 4 Futures Ltd.
- 8 In August 2012, the Leader of the council delegated authority to approve the award of the phase 3c BSF contracts (as set out in table 1) to the Cabinet Member for Children's Services, subject to:
  - confirmation of funding from the Department for Education (DfE).
  - the council's financial contribution being within the parameters set out in Table 3 of that report, and repeated in paragraph 38 of this report.
  - Confirmation from the council's Technical Advisor that the projects represent value for money (in line with the agreed value for money protocol).
- 9 The contracts outlined in table 1 form a suite of inter-related agreements which are based on national standard form documentation. The contracts will be entered into concurrently, but have different initial terms. This documentation has been subject to detailed review by Southwark Legal Services, with advice from external legal advisors (Trowers and Hamlins).
- 10 In order to secure agreement by the school counterparties (set out in table 2) to the financial contributions they will make towards the cost of the contracts, the council will also enter into a series of school interface agreements (see table 2). These agreements:
  - Allow the construction to take place on each school site.
  - Allow the supply of ICT equipment and, where relevant, an ICT service.
  - Give warranties to the council for any property information that has been provided by the school; and
  - Secure agreement to make financial contributions they will make towards the costs in the contracts.
- 11 Southwark Inclusive Learning Services act as small schools and pastoral hubs for those pupils who are temporarily unable to attend mainstream schools as a result of exclusion or other reason. The proposals for SILS 3 involve the refurbishment of the current Highshore School site, and provision of new mechanical and electrical services, following completion and decant of Highshore School to the site of St Michael's and All Angel's Academy (SMAAA). This refurbished site will provide for a 48 place SILS 3 provision.
- 12 The design has progressed to include for the co-location of KS3 and KS4 SILS services at the current Highshore site. This was following the cessation of original plans for SILS 4 to be located at the current Southwark College Site in Camberwell. The co-location of SILS 3 and SILS 4 will result in improved value for money being

achieved from the capital investment, the funding of which is a mixture of DfE grant and council's own funding.

- 13 In addition to improved value for money, the co-location of SILS 3 and SILS 4 will help to secure an improved curriculum pathway for young people, ensuring access to a high quality and relevant curriculum that best meets their learning needs and career aspirations. The co-location will also help to build closer partnerships between alternative provision and mainstream schools, as well as other service providers, to facilitate early intervention and provide young people with more integrated support.
- 14 The works are not due to commence until the conclusion of works at SMAAA and the decant of the existing Highshore to its new premises. In consideration of the interlinked property and contractual issues as a result of this, Cabinet were advised in June 2011 that contractual close for KS3 SILS was to be deferred until after that of SMAAA and Highshore (BSF Phase 3b). SMAAA and Highshore reached contractual close in December 2011.
- 15 The works are not due to commence until February 2014, at the earliest, on the conclusion of works at SMAAA and the decant of the existing Highshore to its new premises
- 16 The provision of ICT equipment and services has been agreed with the relevant school representatives, and is reflected in the contract documentation.

**Table 1: Contracts to be signed simultaneously at Phase 3c contract award**

Contract	Contract purpose	Parties	Initial term	Extension	Value
Design & Build Contract – SILS 3 and SILS 4	Detailed design work & build of SILS 3 and SILS 4	London Borough of Southwark and 4 Futures Ltd Limited	No term – dependent on completion of build and defects period (approx 3 years)	N/A	£5,789,770
Phase 3c ICT Contract	ICT services including infrastructure work where applicable for SILS 3 and SILS 4	London Borough of Southwark and 4 Futures Ltd Limited	3 years	N/A	£340,689
Associated documents and agreements	Other linked and associated documents and agreements relating to the headline contracts, e.g. collateral warranties	Various parties	Various	Various	N/A

**Table 2: School interface/governing body agreements**

School interface agreements for each school and counterparties		
Agreement	School counterparties	Agreement purpose
Service Level	Where applicable:	Agreement covering the construction

Agreement/Development Agreement	School Related Party for SILS 3 and SILS 4	period, given school is in possession of the site
Governing Body Agreement – ICT services agreements	where applicable: School Related Party for SILS 3 and SILS 4	Agreement governing the ICT services for the phase 3c schools.
Self Procuring Facilities Management Interface	Where applicable: School Related Party for SILS 3 and SILS 4	The School has opted to procure Facilities Management Services independently. This Agreement covers the interface issues with the ICT Service Provider and the Building Contractor which will be undertaken by the School/School Related Party.
Associated documents and agreements	Other linked and associated documents and agreements relating to the headline contracts	Various

### Procurement project plan (Key Decision)

17 The timetable of the procurement process for SILS 3 and SILS 4 is set out in table 3.

**Table 3: Procurement project plan**

Activity	Completed by/Complete by:
Forward Plan for Gateway 2 decision	October 2012
Approval of Gateway 1 Procurement Strategy Report	August 2010
Issue Notice of Intention	N/A
Invitation to tender	October 2011
Closing date for return of submission	24 August 2012
Issue Notice of Proposal	N/A
CCRB Review Gateway 2:	30 August 2012
Notification of forthcoming decision – Five clear working days	21 September 2012
Approval of Gateway 2: Contract Award Report	1 October 2012
Scrutiny Call-in period and notification of implementation of Gateway 2 decision	08 October
Alcatel Standstill Period (if applicable)	N/A
Finalisation of contract terms	08 October 2012
Contract award	09 October 2012
Add to Contract Register	October 2012
Contract start	Spring 2014
TUPE Consultation period	N/A
Publication of award notice in Official Journal of European (OJEU)	N/A

Activity	Completed by/Complete by:
Contract completion date	Spring 2015
Contract completion date – if extension(s) exercised	N/A

## KEY ISSUES FOR CONSIDERATION

### Description of procurement outcomes

- 18 This procurement will lead to the delivery of a new Southwark Inclusive Learning Services facility for Key Stage 3 and 4 at the site of the current Highshore Special School.

### Key/Non Key decisions

- 19 This report is for a key decision.

### Policy implications

- 20 The co-located SILS 3 and SILS 4 scheme will help to fulfil the statutory responsibilities of Southwark Children’s Services to provide full time education from the sixth day of a permanent exclusion.
- 21 There is no specific clause in the contract to require that the London Living Wage (or above) must be paid to all staff as there is no such provision in the model contract provided under the framework agreement. However, given the nature of the services being provided and our knowledge of typical salaries in this sector, we do not expect there to be any issue with the London Living Wage being provided.

### Tender process

- 22 4 Futures Ltd were appointed under a Strategic Partnering Agreement in May 2009 following an EU compliant competitive dialogue process. This agreement gives them exclusivity in regard to BSF projects and also outlines the staged process through which new projects are developed and approved.

### Tender evaluation

- 23 Their submission will continue to be considered by the BSF Project Office and Technical Advisor against the criteria outlined in the Strategic Partnering Agreement, value for money protocol and against the Authority’s Requirements in order to ensure that it meets these requirements and approval criteria.
- 24 The performance of the LEP in terms of outcomes for the council and Authority Related Parties is managed through the Strategic Partnering Board. The LEP’s performance is measured against the agreed key performance indicators (KPI’s) and Continuous Improvement Targets (CIT’s), which are reviewed annually (or as required) to ensure that they are an effective tool for the monitoring of performance.

The LEP continues to satisfy the requirements of the Track Record Test and monitoring of the performance of the LEP is ongoing.

**Plans for the transition from the old to the new contract**

- 25 Due to this award being made to an incumbent provider, there will be minimal transition issues.

**Plans for monitoring and management of the contract**

- 26 The projects will be monitored and managed by the BSF Project Office in the Chief Executive’s Department as part of the Principal Liaison Group (PLG) meetings between contractor and client and the technical assessment of milestones.
- 27 The School will not be entering into an FM Agreement with 4 Futures Ltd Limited, and therefore the school will be responsible for monitoring any FM service subsequently procured.

**Identified risks for the new contract**

- 28 The two key issues that lead to risk in association with this contract is the time gap between contract close and the start of works and the delay to date and any future delay to contract close. Risks arising are:

Rank	Risk	Mitigation
1	Change to educational requirements – Due to the gap between contract close and start on site the proposed use of the building may change leading to costs relating to that change.	Ensure that vision for building is supported by robust educational strategy for SILS.
2	Non-delivery as a result of withdrawal of funding - The funding for this project is not yet guaranteed. This would result in both non-delivery and abortive costs of works to date. Financial close will bring about a contractual funding commitment with the DfE.	Ensure no delays to financial close through robust programme management and timely decision making.
3	Site conditions – Due to the gap between contract agreement and start on site issues may arise on site (e.g. contamination) that could lead to additional costs.	Work closely with existing site user over period. Establish appropriate contingency.

## **Community impact statement**

- 29 As per the community impact statement and equalities impact assessment completed for the entire Southwark schools for the future project and approved by the executive on May 2 2007, the BSF Phase 3c project will have a significant impact upon the communities of Southwark. In particular:
- All schemes will ensure higher quality learning and teaching environments for young people.
  - All schemes are to be designed to facilitate community access to the buildings as part of the extended schools agenda.
  - All schemes are to be designed to provide a range of flexible spaces appropriate for the provision of integrated children's services.

## **Sustainability considerations (including economic, social and environmental considerations)**

- 30 4 Futures Ltd have created the following opportunities for local labour and market development:
- Young people – mentoring, training opportunities for young people, throughout supply chain, with clear understanding of how this can be linked into curriculum pathways, and a focus on hard to reach young people. This has included setting up talks with students from a Southwark school to encourage them to take Btec in Construction, providing a site tour and Health and Safety talk and a number of work experience placements for Southwark's students.
  - school staff – leadership and management training opportunities within the supply chain, for example, work shadowing, teacher placements in business, business management mentoring. This has included placements for London Southbank University students, and a Prince's Trust style programme being devised for under-represented groups in the Construction industry.
  - Targeted employment – work placement and apprenticeship opportunities, linked into Southwark's existing Building London Creating Futures ("BLCF") work place coordinator model. Also offers for local employment opportunities in support services, FM and ICT services.
  - Small and Medium-sized Enterprises ("SME") support – commitment to meet the buyer type events, and other mechanisms to secure opportunities for SME supply-chain, including Black and Minority Enterprises ("BME") (meet the buyer to be held in partnership with the council).
  - Additional Corporate Social Responsibilities ("CSR") activities or initiatives – other CSR activities, not required by legislation or regulations that demonstrate a commitment, such as voluntary initiatives etc. (Youth programmes).
  - The National Skills Academy for Construction which was formally launched at the end of March, offering courses to members of the community who wish to return to the construction industry.
- 31 The second track record test has shown that 4 Futures Ltd have exceeded their year two target of 20 jobs for local people by more than 100% (44 jobs), and have also exceeded their target for apprenticeships for Southwark residents.

- 32 The completion of this procurement will bring about significant investment in the property improving energy and water use. The investment will be delivered using sustainable materials and approaches.

### **Market considerations**

- 33 4 Futures Ltd is a limited company whose major shareholder is a plc with over 250 employees and an international area of activity.
- 34 As described in the March 2009 report 'Award of LEPco and BSF Phase 1 Contracts' to the Strategic Director of Major Projects, the council has also entered a Shareholder's Agreement with 4 Futures Ltd which will remain in operation throughout the term of the Strategic Partnering Agreement.
- 35 The Shareholder's of 4 Futures Ltd Limited are 80% held by a major PLC, 10% held by London Borough of Southwark and 10% BSFi (a Government Agency, Building Schools for the Future Investments).

### **Staffing implications**

- 36 None for this report.

### **Financial implications**

- 37 The report to Executive 'Southwark schools for the future: BSF Outline business case (OBC)' of May 2 2007 set out the financial implications for the council as stated in the draft OBC for the SSF secondary programme.
- 38 The funding for the contracts and agreements associated with this report will come from:
- Education Funding Agency (formerly Partnerships for Schools), and now a division of the DfE – who will confirm their funding commitment following approval of an FBC, to be submitted to them and approved immediately prior to contract award. This is expected to be £5,207,220 for the construction contract and £340,689. for ICT equipment; and
  - Southwark – a capital allocation relating to these Phase 3c schools within the budget established as per the Executive decision of 23 March 2010.
- 39 No FM or ICT managed service is to be entered into by the Phase 3c schools. Capital investment in ICT equipment and infrastructure will be met entirely from BSF grant funding.
- 40 The overall anticipated capital investment in BSF Phase 3c by the council is £582,550.



- 41 The SSF capital contingency has been reviewed for the size and appropriateness of amounts spent, committed, earmarked and allowed for with respect to retained council risks in delivering all three phases of the programme. A full capital position statement will be reported to Cabinet following the closure of phase 3c to inform decision making in regard to options for the delivery of the remaining SSF projects.
- 42 Value for money continues to be a priority and was assessed at financial close of phase 3a, 3b and at stage 0 and stage 1 of phase 3c. Revised Value for money protocols were developed for the final phase of SSF, operational schools and the use of 4 Futures Ltd to deliver other capital projects. These revised protocols take into account the market changes in the construction industry and continuous improvements on previous phases.
- 43 Southwark's External Technical Advisor continues to independently assess the Stage 2 submission in line with this value for money protocol. The projects are affordable within the agreed budget.

### **Legal implications**

- 44 All of the legal agreements have been based on Partnerships for Schools standard agreements, with some minor derogations approved by Partnerships for Schools and, where appropriate, Partnerships UK.
- 45 It should be noted that the FBC will be issued to the Department for Education (DfE) in September 2012 to secure the confirmation of funding and their approval for contract award. It should be noted that this approval is likely to be given in a staged manner, with the final funding approval only being given on the day that the contracts are signed.

### **Consultation**

- 46 School and Children's Services representatives have been involved in the design development process. Consultation has been carried out locally ahead of the statutory consultation being conducted through the planning process.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Head of Procurement**

- 47 This is a gateway 2 report seeking award approval for the SSF Phase 3c contract, subject to the considerations detailed at paragraph 1.
- 48 Paragraph 21 reiterates the gateway one advisement that BSF projects are exclusively reserved to 4 Futures Ltd as appointed under the Strategic Partnering Agreement in May 2009.
- 49 Paragraphs 23 and 24 detail the evaluation protocol for such projects, and paragraph 18 confirms that the desired procurement outcome of the delivery of a new Southwark inclusive learning facility for key stage 3 and 4 at the site of the current Highshore special school is expected to be achieved.

- 50 Paragraph 28 highlights both the substantive gap between contract award and commencement, and that the funding for this project is not yet guaranteed. The accompanying risk table details the mitigating action proposed to address these.
- 51 Paragraphs 26 to 27 confirm the contract monitoring and management arrangements that will be put in place for the project, and that to date the LEP has met the required performance requirements.

### **Director of Legal Services**

- 52 This report seeks the approval of the Cabinet Member for Children's Services to award the contracts set out in table 1, subject to the satisfaction of certain issues which are noted in paragraph 1 of this report. The report also seeks approval to enter into the School Interface agreements detailed in table 2.
- 53 In August 2012 the Leader delegated authority to approve the award of the Phase 3c BSF contracts as set out in Table 1 to the Cabinet Member for Children's Services subject to certain conditions.
- 54 This is Phase 3c of the BSF project. The original procurement of the LEP (completed in May 2009) was procured in accordance with the EU Regulations, using the competitive dialogue process, and fully in accordance with the council's Contract Standing Orders. At that time, the council entered into a Strategic Partnering Agreement with the LEP, which is the vehicle for how future phases of the BSF project are agreed and let.
- 55 Table 2 details the School Interface Agreements which the council will enter into with the School Related Party at contract award. The nature of the BSF project is that the council enters into the contractual arrangement with the LEP/LEP parties in respect of each school. It is therefore necessary for the council to enter into a separate agreement with the school, to ensure that any obligation or responsibility which the council has agreed in respect of that school, is 'backed-off' to the school, who are able to satisfy the requirement.
- 56 All of the contracts to be awarded are based on the PfS standard form (agreed for previous phases of the project), except in relation to project specific amendments needed for phase 3c, which have been agreed with the DfE.
- 57 Contract Standing Order 2.3 provides that no contract may be awarded unless the expenditure has been approved. Recommendation 1 confirms that these awards of contract are subject to the approval by the DfE of the Final Business Case (which includes confirmation of funding), and subject to the financial implications for the council being within the parameters set out in paragraphs 37-43 of this report.

## Strategic Director of Finance and Corporate Services (NR/FCS/7/9/12)

- 58 This gateway two report recommends that the Cabinet Member for Children's Services approves the award of the contracts for Southwark School's for the Future (SSF) Phase 3c to 4 Futures Limited and other associated parties subject to certain caveats and notes that the contract management arrangements for the contracts have been approved by Southwark Executive on 17 February 2009.
- 59 The Strategic Director of Finance and Corporate Services notes the financial implications contained within the report, in particular that funding from the Education Funding Agency for a substantial proportion of the budget will be confirmed after the submission of a full business case. Officer time to effect the recommendations will be contained within existing budgeted revenue resources.

### BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Southwark Schools for the Future (SSF): Update to Cabinet and delegation of award of phase 3b contracts	160 Tooley Street, SE1 2TZ	Rebecca Ashton 0207 525 4808
Report to Executive: SSF Outline Business Case	160 Tooley Street, SE1 2TZ	Rebecca Ashton 0207 525 4808
Executive report "LEPco: partnership, governance and management"	<a href="http://www.southwark.gov.uk/uploads/file_40673.pdf">http://www.southwark.gov.uk/uploads/file_40673.pdf</a>	Rebecca Ashton 0207 525 4808
Contract Register Update - Gateway 2	160 Tooley Street, SE1 2TZ	Rebecca Ashton 0207 525 4808

### APPENDICES

Appendices
N/A

## AUDIT TRAIL

<b>Lead Officer</b>	Sam Fowler, SSF Project Director		
<b>Report Author</b>	Rebecca Ashton		
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<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>			
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>	
Director of Legal Services	Yes	Yes	
Strategic Director of Finance and Corporate Services	Yes	Yes	
Head of Procurement	Yes	Yes	
Cabinet Member	Yes	No	
<b>Contract Review Boards</b>			
Departmental Contract Review Board	Yes	Yes	
Corporate Contract Review Board	Yes	Yes	
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