

Item No.	Classification: Open	Date: 5 December 2012	Decision Taker: Leader of the Council
Report title:		Gateway 2: Contract Award Approval for the Design and Build of the Elephant and Castle Leisure Centre	
Ward(s) or groups affected:		All	
From:		Chief Executive	

RECOMMENDATIONS

That the Leader of the Council

1. Approves the award of the Design and Build contract for the construction of the Elephant and Castle Leisure Centre to 4 Futures Limited, subject to:
 - The total financial value of the contract being less than the value as disclosed in the closed version 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);
 - The submission from 4 Futures satisfying the council's requirements.
2. Authorises the execution of the Lend Lease Interface Agreement, as outlined in Table 1 in paragraph 8 of this report.

BACKGROUND INFORMATION

3. At the cabinet meeting on 23 November 2010 the cabinet agreed a report considering the provision of a new leisure centre facility at the Elephant and Castle.
4. At the cabinet meeting the Leader of the council delegated to the cabinet member for finance and resources the appointment of 4 Futures to construct and deliver the Elephant and Castle Leisure Centre, through the first Gateway process, subject to existing protocols for LEP engagement and demonstrating value for money.
5. In June 2011, the cabinet member for finance, resources and community safety approved the Gateway 1 and 2 report for the procurement strategy approval and award of contract to the LEP for the design development of the Elephant and Castle Leisure Centre, and Gateway 1 procurement strategy approval for the appointment of the LEP to undertake the construction of the Elephant and Castle Leisure Centre under a Design and Build contract, within the total budget allocation as agreed by cabinet in November 2010.
6. In May 2012, the Leader of the council varied the executive scheme of delegation to delegate authority from cabinet to the Leader of the council to approve the award the contract for the construction of the Elephant and Castle Leisure centre (this report).

7. The contract and associated documents and agreements which are to be entered into at contract award are outlined in table 1, and form a suite of inter-related agreements based on national standard form documentation used for the Building Schools for the Future programme. This documentation has been subject to detailed review by Southwark Legal Services, with advice from external legal advisors (Trowers and Hamblins).
8. The new leisure centre is to be built on the western part of the existing centre site with the remainder being developed for residential use by Lend Lease. The council will be entering into an Interface Agreement with Lend Lease, which will outline the key site activities and responsibilities for each party in order to facilitate the construction. This will include the responsibility for the discharge of planning conditions, development of the shared area of the site and any other responsibilities arising from the adjacency and interaction of the developments.

Table 1: Contracts to be signed simultaneously at contract award

Contract	Contract purpose	Parties	Initial term	Extension
Design and Build Contract – Elephant and Castle Leisure Centre	Detailed design work and build of Elephant and Castle Leisure Centre	London Borough of Southwark and 4 Futures Limited	No term – dependent on completion of build and defects period (approx 3 years)	N/A
Lend Lease Interface Agreement	Effectively co-ordinate site activities and responsibilities to facilitate the construction	London Borough of Southwark and Lend Lease	N/A	N/A

9. The council will also enter into associated interface agreements which will outline the responsibilities for involved parties, departments within the council and their suppliers through the construction period.
10. The delivery of the new leisure centre forms a significant part of the Elephant and Castle Regeneration programme, and will provide a state of the art sports and leisure facility for the local community. The project reflects the council's ongoing commitment to its community, encouraging active lifestyles and providing an important civic building.
11. An agreement for Lease has also been entered into with Lend Lease with specific obligations on the council for the provision of vacant possession of a cleared site. As a result, in September 2012, the director of regeneration approved the award of a contract to Syd Bishop and Sons Limited for the demolition of the existing buildings.
12. Works are also underway to sensitively remove human remains located on the site associated with its historic use as a churchyard. These demolition and site

preparation works are currently progressing and are scheduled to be completed in February 2013.

Procurement project plan (Key Decision)

13. The timetable of the procurement process for Elephant and Castle Leisure Centre is set out in the table below, and shows that the construction of the leisure centre is programmed to be completed by September 2014.

Procurement project plan

Activity	Completed / Complete by:
Forward Plan for Gateway 2 decision	November 2012
Approval of Gateway 1 and Gateway 2 Report: Procurement Strategy and Procurement award of Local Education Partnership to deliver design work for the Elephant and Castle Leisure Centre and adjacent residential building and Gateway 1: Procurement Strategy for the appointment of the Local Education Partnership to construct the new Elephant and Castle Leisure Centre.	June 2011
Invitation to tender	June 2011
Stage 1 Submission	May 2012
Stage 2 Submission	30 October 2012
DCRB Review Gateway 2: Contract Award Approval for the Design and Build of the Elephant and Castle Leisure Centre (this report)	12 November 2012
CCRB Review Gateway 2: Contract Award Approval for the Design and Build of the Elephant and Castle Leisure Centre (this report)	22 November 2012
Notification of forthcoming decision – Five clear working days	5 December 2012
Approval of Gateway 2: Contract Award Report	13 December 2012
Scrutiny Call-in period and notification of implementation of Gateway 2 decision	20 December 2012
Finalisation of contract terms	13 December 2012
Contract award	21 December 2012
Add to Contract Register	December 2012
Contract start	28 February 2013
Contract completion date	September 2014

KEY ISSUES FOR CONSIDERATION

Description of procurement outcomes

14. This procurement will lead to the delivery of a new leisure centre facility for the residents and community of Southwark. Paragraph 26 of this report outlines the positive impact that the new centre will have on the local community.

Key/Non Key decisions

15. This report is for a key decision.

Policy implications

16. The new Elephant and Castle Leisure Centre will help to fulfil Southwark's fairer future promise to its local residents to encourage healthy lifestyles.

Tender process

17. 4 Futures Ltd were appointed under a Strategic Partnering Agreement in May 2009 following an EU compliant competitive dialogue process. This agreement enables the council to commission new projects, subject to a project approval process, as outlined in the LEP Engagement Protocol, including:
 - Works and services to/for the BSF programme (value circa £200m)
 - Works and services to/for other community facilities, including the redevelopment of the Elephant and Castle Leisure Centre.
 - The provision of ICT equipment and managed services
18. The Agreement outlines the staged process through which new projects are developed and approved. These stages include Stage 1 - new project proposals; and Stage 2 - new project final approval submission. The Stage 1 submission was submitted from the LEP to the council in May 2012, and reviewed by the BSF Project Office with support from external advisors. Following this, the LEP was given approval to proceed to Stage 2.
19. The Stage 2 submission was submitted from the LEP to the council on the 02 November 2012 and is currently being reviewed by the BSF Project Office, Leisure Representatives and the council's external Technical Advisor.

Tender evaluation

20. 4 Futures' 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 council's requirements in order to ensure that it meets these requirements and approval criteria. There is nothing indicated thus far in the evaluation that suggests these criteria will not be met.
21. The performance of the LEP in terms of outcomes for the council and council 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.

22. The LEP continues to satisfy the council's principal requirements in terms of performance, and are addressing any areas where performance has not consistently met the required standard, for the projects under the Building Schools for the Future Programme. Monitoring of the performance of the LEP is ongoing and is reviewed at the regular meetings with 4 Futures and their sub-contractors, alongside the Strategic Partnering Board.

Plans for the transition from the old to the new contract

23. There are no specific implications, as there is no existing contract in place.

Plans for monitoring and management of the contract

24. The contract 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.

Identified risks for the new contract

No	Risk	Rank	Impact	Mitigation
1	Delay to final agreement of contractor's proposals and contract documents.	Medium	Delay to close as documentation is completed	Ongoing monitoring and forward programming to ensure close can be achieved.
2	Interface with Lend Lease project which may result in potential site issues between parties	Medium	Potential delays to construction completion as a result of shared logistics arrangements and joint obligations.	Interface agreement clarifying obligations and identifying liabilities
3	Compensation events which may arise as a result of unknown site conditions	Low	Increased financial liability to the council.	High risk works carried out in advance of main works resulting in low residual risk.

Community impact statement

25. Throughout the pre-planning submission stage of this project there were opportunities for local residents and interest groups to comment on the proposals for the leisure centre and 4 Futures Ltd have demonstrated within the planning application how such feedback has been acknowledged through design.

26. The new leisure centre will provide state of the art, fully accessible facilities for all members of the local community. Coupled with a greater product offer and excellent transport links its contribution to improving the health of the borough will be significant, with an estimated 35 to 40 thousand visits per month compared to just 10 to 15 thousand visits per month to the old centre.

Economic Considerations

27. 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.
 - 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 offered courses to members of the community who wish to return to the construction industry.
28. 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.

Social Considerations

29. The procurement process for the Elephant and Castle Leisure centre project commenced prior to the council decision to apply the London Living Wage to contracts in February 2012. The form of contract for the Elephant and Castle Leisure Centre is to be based on the BSF standard form, and the council's London Living Wage requirements will be incorporated as an Authority Policy within the contract.

Environmental Considerations

30. The completion of this procurement will create a new leisure centre with significant improvements in annual energy consumption and efficiency, whilst providing energy in the most environmentally friendly way to reduce the annual CO2 footprint. This will be provided through the application of passive design principles and energy efficient systems. The investment will be delivered using sustainable materials and approaches.
31. The scheme will achieve a minimum BREEAM rating of Very Good, with the rating of 'Excellent' being targeted for completion of the new building.

Market considerations

32. 4 Futures Ltd is a limited company whose major shareholder is a plc with over 250 employees and an international area of activity.
33. On 13 May 2009 the council entered a Shareholders' Agreement with the LEP and others which will remain in operation throughout the term of the Strategic Partnering Agreement.
34. The shareholders of the LEP are: 80% held by a major PLC, 10% held by London Borough of Southwark and 10% Building Schools for the Future Investments LLP (a Government Agency, Building Schools for the Future Investments).

Staffing implications

35. None for this report.

Financial implications

36. The funding for the contract and agreements for which approval is sought through this report will come from within the £20m capital allocation identified by the council as per the Cabinet decision of 23 November 2010.
37. The 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 this scheme.
38. Value for money continues to be a priority, and revised Value for money protocols have been developed for the use of 4 Futures Ltd to deliver capital projects. These revised protocols take into account the market changes in the construction industry and continuous improvements on previous projects procured through the LEP.
39. Southwark's External Technical Advisor continues to independently assess the contract proposals in line with the agreed value for money protocol. The projects are affordable within the agreed budget.
40. In the course of the demolition and site preparation works exceptional findings have been uncovered and the associated costs of mitigation are under ongoing

assessment. Costs arising in association with these findings shall be met from regeneration reserves.

Legal implications

41. Legal agreements have been based on Partnerships for Schools standard agreements for Building Schools for the Future, with minor project specific amendments.
42. Please see the legal concurrent.

Consultation

43. Fusion and Leisure 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

44. This is a gateway two report seeking approval to award the design and build contract for the new elephant and castle leisure centre, and authorisation to enter into an accompanying interface agreement.
45. The report confirms that having met the required LEP project protocols to date, an award decision is now being sought, subject to the completion of the evaluations as detailed at paragraph 20, and thereafter confirmation that the three remaining considerations detailed at paragraph 1 have been met. It is noted that paragraph 20 advises that there is nothing in said evaluations to date to indicate that the required criteria will be met.
46. Paragraph 14 details the expected outcomes for this procurement, whilst paragraph 22 confirms that overall the LEP continues to meet the council's performance requirements.
47. Paragraph 24 confirms the contract monitoring and management arrangements that will be put in place.
48. The table on page 6 summaries the main risks identified with the new contract, none have a high ranking, and all have mitigations actions.

Director of Legal Services

49. The director of legal services notes the contents of this report which seeks the approval of the Leader to the award of the contracts set out in Table 1 subject to the satisfaction of certain issues which are noted in paragraph 1 of this report.
50. The nature and value of the contracts to be awarded (noted in table 1) are such that they are treated as Strategic Procurements under Contract Standing Orders. Approval of the award is therefore required from the cabinet. However in May 2012

the Leader of the council varied the executive scheme of delegation to delegate authority from cabinet to the leader of the council to approve the award of the contracts for the development of the Elephant and Castle leisure centre.

51. 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 the development of the Elephant and Castle Leisure Centre is agreed and let.
52. The construction contract to be awarded is based on the PfS standard form except in relation to project specific amendments needed for the Elephant and Castle Leisure Centre, which have been agreed with the Education Funding Agency.
53. Contract Standing Order 2.3 provides that no contract may be awarded unless the expenditure has been approved. The funding for this development will come from within the capital allocation identified in a cabinet decision dated 23 November 2010.

Strategic Director of Finance and Corporate Services

54. The strategic director of finance and corporate services notes the recommendations in this report. The contract will be awarded subject to the total financial value of the contract being less than the value as disclosed in the closed version of this report. The works will be funded from the capital allocation within the capital programme.
55. It is noted that the 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 this scheme. However following initial demolition and site preparation it is anticipated that there will be additional associated costs arising. It is anticipated that these costs will be met from regeneration reserves.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
'Procurement Strategy and Procurement award of Local Education Partnership to deliver design work for the Elephant and Castle Leisure Centre and adjacent residential building. Procurement Strategy for the appointment of the Local Education Partnership to construct the new Elephant and Castle Leisure Centre.'	160 Tooley Street, SE1 2TZ	Rebecca Ashton 0207 525 4808
Executive report "LEPco: partnership, governance and management"	160 Tooley Street, SE1 2TZ	Rebecca Ashton 0207 525 4808

APPENDICES

Appendices
N/A

AUDIT TRAIL

Lead Officer	Eleanor Kelly, Chief Executive	
Report Author	Rebecca Ashton, Approvals Manager	
Version	Final Open	
Dated	5 December 2012	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
Head of Procurement	Yes	Yes
Cabinet Member	Yes	No
Contract Review Boards		
Departmental Contract Review Board	Yes	No
Corporate Contract Review Board	Yes	No
Date final report sent to Constitutional Team		5 December 2012