

Cabinet

Tuesday 15 June 2010

7.00 pm

Town Hall, Peckham Road, London SE5 8UB

Supplemental Agenda No. 3

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16.	Delegation for contract award for Phase 2 of Building Schools for the Future To seek agreement to delegate authority to the strategic director of children's services for the approval of the contract award as detailed in the report.	1 - 6

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Date: 9 June 2010

Item No.	Classification: Open	Date: 15 June 2010	Meeting Name Cabinet
Report title:		Delegation for contract award for Phase 2 of Building Schools for the Future	
Wards affected:		All	
From:		Strategic Director of Children's Services	

RECOMMENDATION

1. That Cabinet delegate authority to the Strategic Director of Children's Services to approve contract award for the contracts set out in table 1, subject to:
 - confirmation of funding from Partnerships for Schools;
 - the council's financial contribution being within the parameters set out in the closed version of this report.
 - advice from the Finance Director and Strategic Director of Communities, Law and Governance and consultation with the Cabinet Member for Children's Services.
2. That authority is delegated to the Strategic Director of Children's Services to enter into the agreements with the school's governing bodies as set out in Table 2 in regard to the management of the construction phase and ongoing revenue commitments to support Facilities Management and the ICT managed service.

BACKGROUND INFORMATION

3. On 2nd May 2007, Southwark Executive approved the Southwark Schools for the Future Outline Business Case (OBC). This OBC outlined a programme of investment in Southwark's secondary school estate enabled by funding from Partnerships for Schools (PfS) of £179m and supplemented by £20m of council's own funding to support the Phase 3 projects and provide a contingency across the programme.
4. In May 2009 Southwark entered into a Strategic Partnering Agreement with Transform Schools and a Local Education Partnership was established to deliver the BSF programme. This partnership has since been rebranded as 4Futures.
5. The BSF programme is split into three phases. Phase 1 projects are progressing on site. Current projections are that Tuke will open in September 2010 and St Michael's in January 2011. These projections are ahead of the opening dates anticipated within the OBC.
6. By September 2009 new project request letters had been issued for the Phase 2 projects (St Michael's and All Angels and Highshore, St Thomas the Apostle College, Sacred Heart, New School Aylesbury, Spa). These commissioning letters outlined the affordability and other constraints within which the project was to be developed by 4 Futures.

7. Sacred Heart was originally a PFI project planned to be delivered within Phase 3. In August 2009, with PfS approval, Sacred Heart was re-phased in order to mitigate challenges arising in funding of PFI projects and bring about economies through a combined PFI arrangement. It is intended that Sacred Heart is now to be delivered in Phase 2 as a joint PFI project with St Thomas the Apostle College.
8. Phase 2 projects are programmed to start on site in July 2010 in order that essential site establishment works can take place during the school holiday period so that disruption to schools is minimised.
9. St Michael's and All Angels and Highshore forms part of Southwark's Phase 2 programme. Concerns have been raised by the Department for Education in regard to the performance of the Academy and their falling rolls. The scheme approved at OBC was to increase the current school roll from 900 to 1200. These proposals are now under review with the Department for Education.
10. This project will no longer reach contractual close with the rest of Phase 2 in July 2010. There are potential financial implications caused by the delay to close and any deferment and/or change to the St Michael's and All Angels project. A report will be brought to Cabinet in due course outlining revised proposals for the delivery of this project.
11. New project request letters for the Phase 3 (Notre Dame, St Saviour's and St Olave's, Breedinghurst, KS3 & KS4 SILS and New School Rotherhithe) are programmed to be issued during August in order that project development can begin in September with a view to the first of the Phase 3 projects starting on site in Summer 2011. A Gateway 1 is to be considered by the Strategic Director of Children's Services in July. This Gateway 1 will not seek approval to progress New School Rotherhithe, a further report will be considered by Cabinet ahead of the progression of any proposals for New School Rotherhithe.

KEY ISSUES FOR CONSIDERATION

Resource implications

12. Table 1 summarises the contracts that are to be entered into at Financial Close of Phase 2.

Table 1: Contracts to be signed simultaneously at Phase 2 contract award

Contract	Contract purpose	Initial term	Extension
Project Agreement – St Thomas the Apostle College and Sacred Heart School	Detailed design, build and operations (i.e. Facilities Management) of St Thomas the Apostle College and Sacred Heart School	25 years	N/A
Design & Build Contract – New School Aylesbury	Detailed design work & build of New School Aylesbury	No term – dependent on completion of build and defects period (approx 3 years)	N/A

Design & Build Contract – Spa School	Detailed design work & build of Spa School	No term – dependent on completion of build and defects period (approx 3 years)	N/A
Phase 2 ICT Contract	ICT services for St Thomas the Apostle College, Sacred Heart, New School Aylesbury and Spa School	5 years	5 years
Deeds of variation relating to the Facilities Management Agreement	Umbrella contract for Facilities Management Services for non-PFI schools.	10 years	5+5+5 years
Management Services Agreement	Contractual relationship between LEP and PFI Special Purpose Vehicle	10 years	5 years
Funders Direct Agreement	Contractual relationship between LBS, LEP and funders for the PFI Special Purpose Vehicle.	25 years	N/A
Associated documents and agreements	Other linked and associated documents and agreements relating to the headline contracts, e.g. collateral warranties	Various	Various

13. The majority of the funding associated with these agreements will come from:

- PfS – who will confirm their funding commitment following approval of an FBC, to be submitted to them and approved by both themselves and the Department for Education immediately prior to contract award; and
- Schools – who will commit to revenue contributions in back-to-back governing body agreements to be signed prior to contract award.

14. Table 2 summarises the governing body agreements to be entered into with each school.

Table 2: Governing Body Agreements

Governing body agreement and counterparties		
Agreement	School counterparties	Agreement purpose
Governing Body Agreement – Development Agreement	Governing Body of each school	Agreement covering the construction period, given school is in possession of the site
Governing Body Agreement – FM services agreements	Governing Body of each non-PFI school	Agreement governing the FM services for non-PFI schools
Governing Body Agreement – ICT services agreements	Governing Body of each non-PFI school	Agreement governing the ICT services for non-PFI phase 2 schools.
Governing Body Agreement – PFI and ICT	Governing Body of PFI schools	Agreement governing FM and ICT services for PFI schools.

15. The estimated gross financial commitments arising as a result of the Phase 2 contracts, including funding expected from central government, contributions from schools and the resulting contribution to be made by the Council are set out in the closed version of this report.

16. At financial close, the council will not be committed to the full scope of the LEP programme (financial close for Phase 3 is anticipated in July 2011). However, the council will be committing to the suite of contracts as set out in Table 1 and those commitments that were made upon establishment of the Local Education Partnership and implementation of the phase 1 schools (Tuke School and St Michaels School).
17. It is recommended that the Cabinet delegate authority to the Strategic Director of Children's Services to approve contract award for the contracts set out in Table 1, subject to:
- confirmation of funding from Partnerships for Schools;
 - the council's financial contribution being within the parameters set out in the closed version of this report.
 - advice from the Finance Director and Strategic Director of Communities, Law and Governance and consultation with the Cabinet Member for Children's Services.
18. This delegation is required due to the short timescales from submission of costed proposals from 4 Futures, the review of Southwark's Final Business Case and confirmation of funding by Partnerships for Schools and the need to award the contract to enable construction to start during the summer holiday period. The delegated decision will be taken following advice from the Finance Director and the Strategic Director for Communities, Law and Governance.

Policy implications

19. There are no policy implications arising from this contract award. The procurement forms part of the wider Southwark schools for the future programme and as a result the policy implications have already been considered by the Executive in the report of May 2007.

Community Impact Statement (including local jobs and supply chain)

20. The community impact statement and equalities impact assessment were completed for the entire Southwark schools for the future project and approved by the Executive on May 2 2007. In summary, this 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.
21. The SSF programme has a robust performance management process in place to ensure that the outputs of the programme are effectively monitored and action taken where necessary to ensure that the wider benefits of the programme are realised.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

22. This report seeks the approval of Cabinet to delegate approval of the Gateway 2 (award decision) for the phase 2 schools noted in table 1 to the Strategic Director of Children's Services. As the award of phase 2 of the SSF project is a Strategic Procurement, the award decision is reserved to Cabinet, after taking advice from CCRB, but Cabinet can delegate that decision to a Chief Officer. Paragraph 20 of this reports notes the reasons for a delegation to the Strategic Director of Children's Services being requested. The nature of financial close in projects such as this means that there are a number of issues which will need to be concluded in tight timescales in the period leading up to contract award. For this reason it is proposed that the award decision be delegated, but subject to certain requirements being satisfied which are set out in paragraph 1.
23. Whilst it is possible for the Leader of the council to discharge this function, or delegate the decision to a member of the Cabinet, this would require a separate report under the strong leader legislation which is unfamiliar to funders. It will therefore pose less difficulty for the council in explaining the position to funders for the Cabinet to delegate to Chief Officer for this particular project. Part of this award relates to the completion of the PFI contract involving external funders, and as part of the contract award they will undertake a process of due diligence in relation to the governance and necessary approvals for this project, before approving that funding. Solicitors acting for the funders for Phase 1 of the project undertook due diligence for that phase, where delegation of Award was made to Chief Officer. The risks of delay in reaching award of Phase 2 are therefore reduced by delegating approval of the Gateway 2 in a similar method to Phase 1. As noted in paragraph 1, the award decision will be made in consultation with the Cabinet Member for Children's Services.
24. Approval is also sought to delegate authority to the Strategic Director of Children's Services to enter into the Governing Body Agreements in relation to the phase 2 schools (details of which are given in table 2). The agreements to be entered into at contract award are between the council and 4 Futures, but require the council to make certain commitments to 4 Futures in relation to each school. The council must therefore enter into Governing Body Agreements with each school to ensure that it has the relevant school's authority to make that commitment.
25. Cabinet is advised that external lawyers (Trowers and Hamlin) and internal lawyers have advised the council throughout Phase 2, and will continue to do so leading up to contract award.

Finance Director

26. The Finance Director notes the different contracts detailed in the report for phase 2 of the BSF programme and the work that will continue to financial close to ensure that value for money is achieved and that each contract meets affordability criteria.

REASONS FOR URGENCY

27. Southwark's Building Schools for the Future Final Business Case (FBC) is a collated document that Partnerships for Schools consider prior to confirming the

funding and enabling the contract to be let. PfS guidance advises that Authorities should allow up to 8 weeks for the FBC approval process.

28. The submission programme has been agreed with Partnerships for Schools to enable financial close at the end of July and this programme includes the date of the 15 June 2010 for the Cabinet decision to delegate contract award. Confirmation of delegation by Cabinet to enter into contracts is a key document within the FBC.
29. A delay to financial close would have significant financial and reputational implications.

REASONS FOR LATENESS

30. The programme leading to close is challenging. Costed proposals were received from 4 Futures on the 28 May 2010. The process of scrutinising these complex submissions and seeking essential clarifications to inform the affordability allowances outlined within this report has caused this report to be late.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Southwark Schools for the Future Outline Business Case	Southwark Council PO Box 64529 London SE1 5LX	Sam Fowler 020 7525 5095

AUDIT TRAIL

Lead Officer	Terry Parkin – Deputy Director of Children’s Services	
Report Author	Sam Fowler – SSF Project Director	
Version	Final	
Dated	9 June 2010	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Children’s Services	Yes	Yes
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	Yes	Yes
Head of Procurement	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional/Community council/Scrutiny Team	9 June 2010	

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