

Item No.	Classification: Open	Date: 7 July 2010	Decision Taker: Leader of the Council
Report title:		Gateway 2: Award of BSF Phase 2 contracts	
Ward(s) or groups affected:		All	
From:		Sam Fowler, SSF Project Director	

RECOMMENDATIONS

- 1 That the Leader approves the award of the contracts set out in table 1 for the parties identified in table 1, subject to:
 - The approval by PfS of the Final Business Case (FBC) which will include confirmation of funding for Sacred Heart School, St Thomas the Apostle College (STAC), Spa School and New School Aylesbury (NSA).
 - The financial implications for the council being within the parameters set out in the closed version of this report.
- 2 That the Leader authorises that the governing body agreements set out in table 2 are entered into with the school counterparties also stated in table 2.
- 3 That the Leader 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 "LEPco: partnership, governance and management".
- 4 That the Leader notes that a report will be prepared for the Council's Cabinet following contract award, providing an Southwark Schools for the Future (SSF) financial update, as set out in paragraphs 35-36 .
- 5 That the Leader notes that further details in regard to the proposals for St Michael's and All Angels (SMAAA) will be provided as part of an update report to Cabinet following contractual close of the Phase 2 projects.

BACKGROUND INFORMATION

- 6 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)'.
- 7 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

contract award for the LEPco. The partnership has since been rebranded as 4 Futures.

- 8 On June 15 2010, the Council's Cabinet recommended that the Leader delegate authority to approve the award of the phase 2 BSF contracts (as set out in table 1) to the Cabinet Member for Children's Services or the Strategic Director of Children's Services, subject to:
- Confirmation of funding from Partnerships for Schools, and each phase 2 school;
 - The Council's financial contribution being within the parameters set out in the closed version of that report.

The Leader's ability to take this decision himself was unfettered by this recommendation to delegate.

- 9 Each contract has extension provisions as are set out in table 1. The contracts 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 and extensions. 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 (governing bodies and diocese authority) to the financial contributions they will make towards the cost of the contracts, the Council will also enter into a series of governing body agreements (see table 2). These agreements:

- Allow the construction to take place on each school site (which are not in Council ownership);
- Allow ICT and Facilities Management services to be delivered at the school sites;
- Give warranties to the Council for property and human resources information that has been provided by the school; and
- Secure agreement by the governing bodies to the financial contributions they will make towards the costs in the contracts.

- 11 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'.

- 12 St Michael's and All Angels and Highshore formed 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.

- 13 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 change to the St Michael's and All Angels project. An update on the proposals for St Michael's and All Angels will be provided as part of a BSF update to Cabinet in the autumn.

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

Contract	Contract purpose	Parties	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	London Borough of Southwark and PFI Special Purpose Vehicle (SPV)	25 years	N/A
Design & Build Contract – New School Aylesbury	Detailed design work & build of New School Aylesbury	London Borough of Southwark and 4 Futures Limited	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	London Borough of Southwark and 4 Futures Limited	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	London Borough of Southwark and 4 Futures Limited	5 years	5 years
Deeds of variation relating to the Facilities Management Agreement	Umbrella contract for Facilities Management Services for non-PFI schools in Phase 2. This variation will also reflect arrangements for Sacred Heart during their decant in New School Aylesbury.	London Borough of Southwark and 4 Futures Limited	10 years	5+5+5 years
Management Services Agreement	Contractual relationship between LEP and PFI Special Purpose Vehicle	London Borough of Southwark and PFI Special Purpose Vehicle (SPV)	10 years	5 years
Funders Direct Agreement	Contractual relationship between LBS, LEP and funders for the PFI Special Purpose Vehicle.	London Borough of Southwark, PFI Special Purpose Vehicle (SPV) and Funders	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 Parties	Various	Various

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 and Diocesan Authority and Archbishop of Southwark where applicable	Agreement covering the construction period, given school is in possession of the site

Governing Body Agreement – PA & ICT	Governing Body of PFI schools and Diocesan Authority and Archbishop of Southwark where applicable	Agreement governing FM and ICT services, access to the site during construction and their involvement during construction for PFI schools.
Governing Body Agreement – FM services agreements	Governing Body of each school and Diocesan Authority and Archbishop of Southwark where applicable	Agreement governing the FM services for each school
Governing Body Agreement – ICT services agreements	Governing Body of each school and Diocesan Authority and Archbishop of Southwark where applicable	Agreement governing the ICT services for all phase 2 schools.

13. The timetable of the procurement process is set out in table 3.

Table 3: Procurement milestones

Stage 1 Submission – St Thomas the Apostle College	June 2009
Stage 1 Submission – Spa School	August 2009
Stage 1 Submission – New School Aylesbury	August 2009
GW1 - St Thomas the Apostle College	August 2009
GW1 – New School Aylesbury and Spa School	October 2009
Stage 1 Submission – Sacred Heart School	November 2009
GW1 – Sacred Heart School	December 2009
Stage 2 Submission	May 2010
Southwark Gateway 2 (this report)	July 2010
Contract Close (Phase 2)	July 2010
Construction commencement	August 2010

KEY ISSUES FOR CONSIDERATION

Policy Implications

14. 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 major projects board and the Executive in reports dated November 21 2007 and May 2 2007 respectively.

Tender Process

15. Details of the tender process were included in the October 2008 report to Major Project Board to appoint Transform Schools, as the selected bidder (see paragraphs 18-35 of that report), and it can be confirmed that these processes were followed successfully.

Plans for the Transition and Monitoring of the Contract

16. As set out above, 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".
17. The Project Agreement for Sacred Heart School and St Thomas the Apostle College, and the FM Agreement for Spa School and New School Aylesbury include benchmarking provisions as per the PfS standard form with project-specific variations agreed in dialogue with 4 Futures and PfS, which are intended to promote value for money in the delivery of services. The operation of these provisions will be overseen by the contract management team of the authority and be formally reported by the LEP to the Strategic Partnering Board for any decisions required.
18. The SSF team have been working closely with 4 Futures to prepare for financial close. Key elements of the work programme have included:
 - Securing planning permission for the schools;
 - Finalising the legal agreements;
 - Demonstrating value for money and benchmarking requirements; and
 - Completing all technical documentation required for the contracts.
19. The council received the first Track Record Test (the assessment of the 4 Futures' performance against agreed indicators) and Assessment of Continuous Improvement Targets (CIP) as part of the Stage 2 submissions for the phase 2 schools; the Strategic Partnering Board confirmed that it considered that the LEP had passed the first annual track record test on 25th May 2010, and the Continuous Improvement targets have been rolled forward for phase 2, and will be measured as part of the track record test for future years. The submission also stated that 4 Futures has achieved an 11% reduction on FM management costs between phase 1 and phase 2.

Insolvency risk management (Parent Company Guarantee equivalent)

20. The LEP is required to procure from certain individual contractors, including the main contractor, parent company guarantees. For the ICT agreement the LEP indemnifies the council against losses if the ICT contractor needs to be replaced. Furthermore, the agreements have a number of additional provisions that are not in standard contracts to protect the Council, for example risk management provisions, where potential risks are regularly reviewed. Southwark's internal legal team have advised that a performance bond/PCG is not required from LEP as part of this project, as the LEP has limited risk exposure and therefore is unlikely to be in an insolvency position.

Design specification compliance

21. The Council procured on the basis of an Output Specification. This specification was based on a standard document produced by Partnerships for Schools, but was tailored to the needs of Southwark and the schools concerned.
22. The output specification has been re-drafted for inclusion as Schedule 1 of the Project Agreement (for St Thomas the Apostle College and Sacred Heart School) and Schedule 1 of the Design and Build (D&B) contract (for Spa School and New School Aylesbury).
23. The proposals from 4 Futures comply with these specifications, except with minor derogations which were agreed as part of the Stage 2 submission and/or have been part of the fine tuning exercise.

Health & Safety

24. The Council's Health & Safety policies are included in the contracts as a contractual obligation.

Community Impact Statement

25. The Community Impact Statement (including local jobs and supply chain) was included in the report to Major Project Board to appoint Transform Schools (now rebranded as '4 Futures'), as the selected bidder (see paragraphs 52 - 54 of that report).

Sustainability Considerations

26. The sustainability considerations were included in the report to Major Project Board to appoint Transform Schools (now rebranded as '4 Futures'), as the selected bidder (see paragraphs 56 and 57 of that report).

Consultation

27. Consultation activities were summarised in the report to Major Project Board to appoint Transform Schools (now rebranded as '4 Futures'), as the selected bidder (see paragraph 55 of that report).

Market Development Considerations

28. 4 Futures is a limited company whose major shareholder is a plc with over 250 employees and an international area of activity.
29. In their final bid, 4 Futures included 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
 - school staff – leadership and management training opportunities within the supply chain, for example, work shadowing, teacher placements in business, business management mentoring.
 - Targeted employment – work placement and apprenticeship opportunities, linked into

Southwark's existing Building London Creating Futures ("BLCF") work place coordinator model. Also offer 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).

Staffing Implications

30. There are TUPE implications relating to existing ICT and Facilities Management staff at Sacred Heart School, St Thomas the Apostle College and Spa School. However, the TUPE transfer will not occur until the date of service commencement, which will be after the construction of the schools (earliest will be October 2011). No TUPE implications apply for New School Aylesbury as the school does not yet exist.
31. Southwark HR (through the Children's Services department) have led on TUPE of school staff, including appropriate consultation with unions.

Financial Implications

32. 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.
33. The report to Major Projects Board 'Southwark schools for the future: Outline business case (OBC) Update of November 21 2007 set out the updated financial implications contained in the final OBC approved by PfS & DCSF.
34. The majority of the funding associated with the agreements will come from:
 - PfS (in the form of PFI credits for St Thomas the Apostle College and Sacred Heart and capital grant for Spa and New School Aylesbury) who will confirm funding by their approval of a Final Business Case, to be submitted to them and approved by PfS and DfE immediately prior to contract award; and
 - Contributions from delegated budgets at STAC, Sacred Heart, NSA and Spa – who will commit to their financial contributions via back-to-back governing body agreements to be signed prior to contract award.
35. An SSF Financial Update report will be submitted to Cabinet in September 2010 to confirm the financial implications at close. The aim of the report will be to ensure that there is a clear corporate understanding of how affordability is to be managed over the lifetime of the BSF programme, as recommended by the 4Ps gateway review of the project undertaken in March 2009.
36. Further reports will be submitted to enable consideration of proposals for New School Rotherhithe and any funding issues arising through national decision making.

Legal implications

37. All of the legal agreements have been based on Partnerships for Schools standard agreements, with some minor derogation approved by Partnerships for Schools and, where appropriate, Partnerships UK.
38. It should be noted that the FBC has been issued to PfS and the Department for Education (DfE) 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 (see section on management of financial close below).

Management of process to financial close

39. Following approval of this report, the following key actions will be undertaken:
- 4 Futures will confirm funding for the PFI projects, securing approval from their bank's credit committee;
 - all contractual documentation will be prepared for signing;
 - governing body agreements will be prepared for signing; and
 - partial final business case approvals will be sought (it is likely that PfS will give the final approval of funding once all of the contract documents are engrossed and ready to sign).
40. A supplemental report will be considered by the Leader in July, to authorise the execution of the contracts set out in table 1, together with all supplemental and ancillary documentation. This report to be agreed on the date of financial close, will set out the stages that will take place as part of the contract award, with supporting evidence to demonstrate that each step can be completed within delegated authorities, as well as confirming the final unitary charge value, the final LEP and PFI investment values and a schedule of the total values associated with each contract. The report will also confirm that these values are within the affordability parameters.
41. There are outstanding risks that could lead to a delay to implementation. Each of these risks, together with the mitigation strategy, is outlined in the table below. In particular, the ongoing volatility in credit markets as a result of the banking crisis has the potential to impact on the project.

Table 4: Risks of delay to implementation of decision

Risk	Impact	Mitigation
PFI funding insufficient due to market lending environment	Project cost falls outside affordability parameters.	Partnerships for Schools have advised that additional funding will be made available to offset market lending challenges. Risk remains that due to national spending priorities this additional funding is unavailable.
National funding priorities change.	Funding is reduced, withdrawn or deferred. Abortive and additional fee	Demonstrable progress and high quality and timely submissions to

	costs resulting in a financial liability for the Authority and reduced outcomes for schools.	PfS and senior representations to DfE and PfS. On the 5 th of July it was confirmed that funding for Southwark's BSF programme would continue.
Delay to final agreement of contractor's proposals and contract documents	Delay to close as documentation is completed.	Ongoing monitoring, forward programming and review of resourcing to ensure close can be achieved.
Delays to due diligence as a result of council approval route	Delay to close.	Clarity of decision making process and transparency with funders.

42. Recent changes in national policy enable high performing schools to apply for Academy status. This represents a theoretical risk in regard to enforcing governing body agreements. The governing body agreements have been reviewed to ensure that they give appropriate consideration to this legislation.

Supplementary Advice from Other Officers

Head of Procurement

43. This report is seeking approval to award a range of contracts relating to three schools that form phase two of the SSF programme.
44. The award of these contracts will only take place once Partnership for Schools has approved the final business case and once confirmation is given that the financial implications for the council are within the parameters set out in the closed version of this report.
45. Paragraphs 39-40 describe the process from approval of this report to financial close. Table 4 outlines the risks of delay for that process and the mitigation actions that will be in place.
46. The arrangements for managing contracts awarded through the LEP are contained in a separate report entitled "LEPco: partnership, governance and management" that was approved by the Executive in February 2009. Paragraph 19 confirms that the LEP has been performing satisfactorily and has met the performance targets agreed for phase 1 of the SSF programme. Monitoring of performance will be ongoing and will continue to help inform any future award decisions.

Finance Director

47. 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.

Strategic Director of Communities, Law & Governance

48. This report seeks the Leader's approval 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 governing body agreements detailed in table 2.
49. 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 the Cabinet of June 15th 2010 recommended that the Leader should delegate the award decision under S14 of the Local Government Act 2000. The Leader can also take the decision himself under those powers in S14. The Leader determined that he would act as decision maker himself for this Gateway 2 report.
50. This is Phase 2 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.
51. Table 2 details the Governing Body Agreements which the council will enter into with the Governing bodies of each school 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.
52. All of the contracts to be awarded are based on the PfS standard form (agreed for Phase 1 of the project), except in relation to project specific amendments needed for phase 2, which have been agreed with PfS.
53. 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 PfS 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 the closed version of this report. As noted in paragraph 40, a supplemental report will be considered at financial close to enable the contract documents to be executed.

APPENDICES

Appendices

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Delegation for contract award for Phase 2 of Building Schools for the Future	160 Tooley Street, SE1 2TZ	Rebecca Ashton 0207 525 4808
Report to Executive: SSF Outline Business Case	As above	Rebecca Ashton 0207 525 4808
Report to Major Projects Board: Appointment of Selected Bidder for Southwark's Local Education Partnership	As above	Rebecca Ashton 0207 525 4808
Executive report "LEPco: partnership, governance and management"	http://www.southwark.gov.uk/uploads/file_40673.pdf	Rebecca Ashton 0207 525 4808
Final business case.	160 Tooley Street, SE1 2TZ	Rebecca Ashton 0207 525 4808

AUDIT TRAIL

Lead Officer	Sam Fowler - SSF Project Director	
Report Author	Rebecca Ashton	
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Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	Yes	Yes
Head of Procurement	Yes	Yes
Cabinet Member		Yes
Date final report sent to Constitutional Officer		8 July 2010