

Classification: Open	Date: 7 July 2011	Decision taker: Cabinet Member for Children's Services
Report title:	Gateway 2: Award of BSF Phase 3a contracts	
Ward(s) or groups affected:	All	
From:	Strategic Director of Children's Services	

RECOMMENDATIONS

- 1 That the Cabinet Member for Children's Services approves the award of the contracts set out in table 1 for the parties identified in table 1, subject to:
 - The approval by Partnerships for Schools (PfS) of the Final Business Case (FBC) which will include confirmation of funding for Notre Dame, St Saviour's and St Olave's, The Charter and Bredinghurst Schools.
 - The financial implications for the council being within the parameters set out in table 4 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).
- 2 That the Cabinet Member for Children's Services 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 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 "LEPco: 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 contract award for the LEPco. The partnership has since been rebranded as 4 Futures.
- 6 On June 21 2011, the Leader delegated authority to approve the award of the phase 3a BSF contracts (as set out in table 1) to the Cabinet Member for Children's Services, subject to:

- confirmation of funding from Partnerships for Schools;
 - the council's financial contribution being within the parameters set out in Table 4 of that report, and repeated in table 4 of this report.
- 7 Phase 3a of the BSF programme includes Notre Dame, St Saviour's and St Olave's, Bredinghurst and The Charter School.
 - 8 Phase 3b of the BSF programme includes St Michael's and all Angel's Academy and Highshore School and SILS KS3, and will be subject to a further Gateway 2 report, expected in Autumn 2011.
 - 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 Hamblins).
 - 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 Facilities Management services to be delivered at the school sites (with the exception of St Saviour's and St Olave's);
 - 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'.

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

Contract	Contract purpose	Parties	Initial term	Extension
Design & Build Contract – Notre Dame School	Detailed design work & build of Notre Dame School	London Borough of Southwark and 4 Futures Limited	No term – dependent on completion of build and defects period (approx 3 years)	N/A
Design and Build Contract – Bredinghurst School	Detailed design work and build of Bredinghurst School	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 – St Saviour's and St Olave's School	Detailed design work & build of St Saviour's and St Olave's 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 3a ICT Contract	ICT services for Bredinghurst School, Notre Dame School, Charter School and St Saviour's and St Olave's School	London Borough of Southwark and 4 Futures Limited	3 years	N/A
Deeds of variation relating to the Facilities Management Agreement	Umbrella contract for Facilities Management Services for schools in Phase 3a.	London Borough of Southwark and 4 Futures Limited	10 years (aligned with Phase 2 timing)	5+5+5 years
Associated documents and agreements	Other linked and associated documents and agreements relating to the headline contracts, e.g. collateral warranties	Various Parties	Various	Various

**Including irrecoverable VAT*

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 together with the Diocesan Authority and Archbishop of Southwark where applicable	Agreement covering the construction period, given school is in possession of the site
Governing Body Agreement – FM services agreements	Governing Body of each school together with the 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 together with the Diocesan Authority and Archbishop of Southwark where applicable	Agreement governing the ICT services for all phase 3 schools.
Associated documents and agreements	Various	Various

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

Table 3: Procurement milestones

GW1 – Phase 3 Schools	August 2010
Stage 1 Submission – Notre Dame School	January 2011
Stage 1 Submission – St Saviour's and St Olave's School	January 2011
Stage 1 Submission – Bredinghurst School	January 2011
Stage 1 Approval	March 2011
Stage 2 Submission	June 2011
Southwark Gateway 2 (this report)	July 2011
Contract Close (Phase 3a)	July 2011
Construction commencement – All Schools	July/August 2011
Construction completion – St Saviour's and St Olave's School	October 2012
Construction completion – Notre Dame	January 2013

School	
Construction completion – Bredinghurst School	January 2013
Completion – The Charter School	Summer 2012

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 Facilities Management (FM) Agreement for Notre Dame and Bredinghurst Schools includes 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 first Track Record Test (the assessment of the 4 Futures' performance against agreed indicators) and Assessment of Continuous Improvement Targets (CIP) was presented to the Strategic Partnering Board in May 2010. Of the 24 priority indicators only 13 were reportable at that stage of the programme, and of those, all were meeting their targets. Consequently, the Strategic Partnering Board confirmed that it considered that the LEP had passed the first annual track record test.

20. Information for the second track record test (May 2010 to May 2011), relating to current activity over phases 1, 2 and 3 has been collated by 4 Futures. Of the 25 indicators that form the priority basket, only 20 are reportable in the current year. 4 Futures have met their target on 17 of these 20 indicators, and are investigating those which did not meet the required standard. This information will be presented to the Strategic Partnering Board, for consideration.

Insolvency risk management (Parent Company Guarantee equivalent)

21. The LEP is required to procure from certain individual contractors, including the main contractor, parent company guarantees. For the ICT (Information and Communication Technology) 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

22. 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.
23. The output specification has been re-drafted for inclusion as Schedule 1 of the Design and Build (D&B) contract (for Notre Dame, St Saviour's and St Olave's and Bredinghurst schools).
24. The proposals from 4 Futures comply with these specifications, except with minor derogations which were agreed as part of the Stage 2 submission and have been part of the fine tuning exercise.

Health & Safety

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

Community impact statement

26. 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

27. 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

28. 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

29. 4 Futures 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 schools 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 for July 2011
 - 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 the Community who wish to return to the construction industry.
30. The second track record test has shown that 4 Futures have exceeded their target for jobs for local people by more than 100% and have also exceeded their target for apprenticeships for Southwark residents.

Staffing Implications

31. There are TUPE implications relating to existing Facilities Management staff at Notre Dame School and Breedinghurst School. TUPE transfer will not occur until the FM service is due to commence at each school. Notre Dame School are seeking this transfer to take place at the earliest opportunity post-close, this will be in the Autumn of 2011 following appropriate notice and mobilisation periods. Breedinghurst shall be post construction in January 2013.
32. Southwark HR (through the Children's Services department) have led on TUPE of school staff, including appropriate consultation with unions.

Financial Implications

33. 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.
34. The update report to Cabinet of 21 June 2011 confirms that the funding for the contracts and agreements associated with this report 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.
 - Southwark – a capital allocation relating to these Phase 3a schools as per the Executive decision of March 2010; and
 - Contributions from delegated budgets at Notre Dame, St Saviour's and St Olave's and Bredehurst Schools – who will commit to their financial contributions via back-to-back governing body agreements to be signed prior to contract award.
35. The liabilities for lifecycle and FM, arising from these contracts will be funded by the schools and this arrangement will be formalised between the Council and the schools in the governing body agreements.
36. For community schools the contribution to meeting these costs is expressed as a percentage of School Budget Share, which is roll driven funding. The Council bears a risk for community schools that should rolls drop and funding decline, it will cover the amount by which the FM and lifecycle costs exceed the school contribution agreed. Bredehurst is the only community school in Phase 3a. For Academies and Voluntary Aided schools the Council will require an absolute commitment to meet the cost of the FM service and the council does not bear the risk associated with falling rolls.
37. No ICT managed service is to be entered into by the Phase 3a schools. Capital investment in ICT equipment and infrastructure will be met entirely from BSF grant funding.
38. The maximum overall anticipated capital contribution to Phase 3a by the Council is expressed in Table 4:

Table 4: Anticipated Council/School Investment in BSF Phase 3a

	Amount
Capital investment in construction	£3.6m
Capital investment in ICT	Nil
Revenue investment in ongoing services	Nil

39. The above capital liabilities are to be met from an allocation within the SSF Capital Contingency approved by Executive in March 2010.

40. The SSF Project Director will continue to work with Partnerships for Schools, Children's Services, Finance and Resources, the schools, governing bodies & diocesan authorities to identify other budgets in order to minimise the necessary financial contribution from the council, in accordance with the Executive decision May 2 2007.
41. The key variables affecting the Council's contribution through the life of the contracts are:
 - School contribution fluctuation as a result of changes in pupil numbers and/or changes in DSG allocations;*
 - RPIx (Retail Price Index excluding mortgage interest)**

*only relevant to community schools (only Bredinghurst School in this phase)

**met by schools and commitment captured in Governing Body Agreements

Value for Money (vfm)

42. The vfm protocol for LEP projects includes identifying key value for money indicators which are to be considered at each stage of the project, to ensure that the partnership is working in a way which delivers value.
43. Southwark's Technical Advisor continues to assess the Stage 2 submission in line with this vfm protocol. The projects are affordable within the grant funding and Council contribution identified in Table 4.
44. Where vfm is not demonstrable justification will be sought and if appropriate amendments will be made to the contractor's proposals (CPs) in order to ensure demonstrable vfm. If any amendments are required through this process this will result in a reduced financial liability for the Council against Phase 3a. Where the project is grant funded only this will result in an increased scope being delivered within the grant funding.

Legal implications

45. 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.
46. 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

47. Following approval of this report, the following key actions will be undertaken:
 - all contractual documentation will be prepared for signing;
 - governing body agreements will be prepared for signing; and
 - final business case approval will be received.
48. 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.

Table 6: Risks of delay to implementation of decision

Risk	Impact	Mitigation
Delay to approval of FBC	Delay to close as funding is not approved on time.	FBC to be submitted to PfS with enough time allowed for approval, including revised Pupil Placed Planning projections.
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.

49. Recent changes in national policy enable 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

50. This report is seeking approval to award a range of contracts relating to four schools that form phase 3a of the SSF programme. There will be a subsequent gateway 2 produced in the autumn 2011 relating to phase 3b.
51. The award of these contracts will only take place once Partnership for Schools has approved the final business case, confirmation is given that the financial implications for the council are within the parameters set out in Table 4 and the Council's technical advisor confirms that the projects represent value for money.
52. Paragraph 47 outlines the process from approval of this report to financial close. Table 6 outlines the risks of delay for that process and the mitigation actions that will be in place.
53. 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. Paragraphs 19 - 20 confirm that the LEP has been performing satisfactorily and has on the whole met the performance targets agreed for phases 1 and 2 of the SSF programme. Paragraphs 29 and 30 describe some of the economic benefits that 4 Futures has delivered since their appointment. The latest performance results have indicated that 4 futures has failed to meet 3 of the necessary performance targets and the report confirms that this will be the subject of further investigation and report to the strategic partnering board. Monitoring of performance will be ongoing and will continue to help inform any future award decisions.

54. The funding for the phase 3a schools construction and refurbishment works contracts is due to be met from BSF grants supplemented by £3.6m from the SSF capital contingency.
55. The ICT contract will be fully funded from BSF grant. FM contracts for the schools will be funded from contributions from the schools at nil cost to the council at financial close. The council will retain an ongoing financial risk to fund any shortfall due to a reduction in School Budget Share at Bredinghurst. However, the cost of the FM contract will be fully covered by contributions from Notre Dame.
56. 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. It is considered that the programme can be delivered with a £2.5m reduction in the contingency.
57. Value for money continues to be a priority and was assessed at financial close of phase 2 and at stage 0 and stage 1 of phase 3. Revised protocols have been developed for the final phase of SSF, operational schools and the use of 4 Futures to deliver other capital projects. These revised protocols take into account the market changes in the construction industry and continuous improvements on previous phases.

Strategic Director of Communities, Law & Governance

58. 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 governing body agreements detailed in table 2.
59. 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. By a Cabinet Decision dated 21 June 2011 the Leader delegated authority to approve the award of the Phase 3a BSF contracts as set out in Table 1 to the Cabinet Member for Children's Services subject to certain conditions.
60. This is Phase 3a 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.
61. 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.

62. All of the contracts to be awarded are based on the PfS standard form (agreed for Phases 1 and 2 of the project), except in relation to project specific amendments needed for phase 3a, which have been agreed with PfS.

63. 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 paragraphs 33-44 of this report

APPENDICES

Appendices
None

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 Soutwark'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
Value for Money Protocol	160 Tooley Street, SE1 2TZ	Rebecca Ashton 0207 525 4808

AUDIT TRAIL

Lead Officer	Sam Fowler, SSF Project Director		
Report Author	Sam Fowler, SSF Project Director		
Version	final		
Dated	7 July 2011		
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	Yes	
Date final report sent to Constitutional Officer			7 July 2011