

<b>Classification:</b> Open	<b>Date:</b> 22 November 2011
<b>Decision Maker:</b>	Cabinet Member for Children's Services
<b>Report title:</b>	Gateway 2: Award of Southwark School's for the Future (SSF) Phase 3b contracts
<b>Wards 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 3b, with a total value of £31,746,720 for construction services, £941,538 for ICT equipment and a lease premium for Highshore School, as set out in table 1 with the parties identified in table 1, subject to:
  - The approval by Partnership for Schools (Pfs) of the Final Business Case (FBC) which will include confirmation of funding for St Michael's and All Angel's Academy (SMaAA) and Highshore Special School.
  - 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 School Interface agreements set out in table 2 are entered into with 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 "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 the award of contracts to the LEPco. The partnership is now known as 4 Futures Limited.
- 6 In October 2011, the Leader delegated authority to approve the award of the phase 3b 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 3 of that report, and repeated 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).
- 7 Each contract has extension provisions as are set out in table 1. These provisions are not relevant to the construction contract. They are provisions within the ongoing services contracts and enable their extension i.e. the continuation of facilities management services after an initial period if desired.
  - 8 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).
  - 9 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 (which are not in Council ownership);
    - Allow Facilities Management services to be delivered, where relevant
    - Allow the supply of ICT equipment and, where relevant, an ICT service
    - Give warranties to the Council for property and human resources information that has been provided by the school; and
    - Secure agreement to make financial contributions they will make towards the costs in the contracts. The value of these agreements is set out in Appendix 1.
  - 10 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'.
  - 11 Works at SMAAA are to include the replacement of the existing church, funded by the Church and diocese, which is required to enable the effective delivery of the school proposals. The full £500,000 cost of the Church is included within the £31,746,720 total construction cost.
  - 12 Some enabling works, at a value of £272,475 have taken place over the summer holiday of 2011 ahead of construction starting in January 2012. This was progressed in order to minimise the disruption felt by the school at the point that construction starts. These works were delivered by 4 Futures and funded through the Southwark Schools for the Future (SSF) Contingency. At contract close these funds will be replenished by PfS grant monies made available at that time. These will be contained within the £31,746,720 total construction cost.
  - 13 The provision of ICT equipment and the provision of facilities management (FM) and ICT services has been agreed with the relevant school representatives, and is reflected in the contract documentation.
  - 14 Highshore will be granted a lease of that part of the site it will occupy for a term up to 125 years. In May 2007 Executive authorised the acquisition of a long term interest on or adjacent to the SMAAA site to be funded through the SSF Contingency.

- 15 The terms of lease are being negotiated and an agreement with the freeholder is sought to reflect current land values and offset council costs to date against the total lease premium.

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

Contract	Contract purpose	Parties	Initial term	Extension
Design & Build Contract – SMAAA/Highshore and the Church.	Detailed design work & build of St Michael and All Angels and Highshore Special 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 3b ICT Contract	ICT services including infrastructure work where applicable for St Michael and All Angels and Highshore Special School	London Borough of Southwark and 4 Futures Limited	3 years	N/A
Deeds of variation relating to the Facilities Management Agreement <sup>1</sup>	To join the umbrella contract for Facilities Management Services for the schools.	London Borough of Southwark and 4 Futures Limited	10 years	5+5+5 years
Development Agreement and Agreement for lease for Highshore Special School	To agree a long term interest for the site of Highshore Special School following completion of the works	London Borough of Southwark, Academy Trust, Southwark Diocesan Board of Education	Term of lease shall be up to 125 years	N/A
Lease or underlease for Highshore Special School	The lease/underlease of Highshore Special School to be executed following completion of the works	The ARK Academy and/or the Diocesan Board of Education and the London Borough of Southwark	Underlease/Lease for a term up to 125 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

<sup>1</sup>The variation to the Facilities Management Agreement may not be entered into simultaneously subject to further discussion with the schools in regard to their specific FM requirements

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

School interface agreements for each school and counterparties		
Agreement	School counterparties	Agreement purpose
Governing Body Agreement – Development Agreement	Where applicable: Governing Body of Highshore School, the Academy, ARK, Diocesan Authority, the parochial church council	Agreement covering the construction period, given school is in possession of the site
Governing Body Agreement – FM services agreements <sup>1</sup>	Where applicable : Governing Body of Highshore School, the Academy, the Diocesan Authority, , the parochial church council	Agreement governing the FM services for each school taking the FM service
Governing Body Agreement – ICT services agreements	where applicable: Governing Body of Highshore School, the Academy, the Diocesan Authority , the parochial church council	Agreement governing the ICT services for the phase 3a schools.
Associated documents and agreements	Other linked and associated documents and agreements relating	Various

to the headline contracts

<sup>1</sup>The Governing Body Agreement – FM will be entered into ahead of any relevant variation to the Facilities Management Agreement.

- 16 The timetable of the procurement process for St Michael’s and All Angel’s Academy and Highshore Special School is set out in table 3.

Table 3: Procurement milestones

Southwark GW1	August 2010
Stage 1 Submission	June 2011
Stage 1 Approval	July 2011
Stage 2 Submission	November 2011
Southwark Gateway 2 (this report)	November 2011
Contract Close	December 2011
Construction commencement	December 2011
Construction completion	September 2013

## KEY ISSUES FOR CONSIDERATION

### Policy Implications

- 17 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

- 18 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

- 19 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”.
- 20 The FM Agreement 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 is 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.

- 21 If a school/academy does not enter into the FM Agreement with 4 Futures Limited the school/academy is responsible for monitoring any FM service.
- 22 The SSF team is working closely with 4 Futures to prepare for financial close. Key elements of the work programme include:
  - 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.
- 23 4 Futures' First Track Record Test (the assessment of 4 Futures' performance against agreed indicators) was considered and passed by the Strategic Partnering Board in May 2010.
- 24 The second Track Record Test relating to current activity over phases 1, 2 and 3, and Assessment of Continuous Improvement Targets (CIP) was collated in October 2011. Of the 25 indicators that form the priority basket, only 20 were reportable in the current year. 4 Futures have met their target on 17 of these 20 indicators, and are addressing those which did not meet the required standard. These include Energy consumption (which has exceeded the agreed target), and school satisfaction with the operational phase, based on the Facilities Management service. This information will be presented to the Strategic Partnering Board, for consideration.

#### **Insolvency risk management (Parent Company Guarantee equivalent)**

- 25 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**

- 26 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.
- 27 The output specification has been re-drafted for inclusion as Schedule 1 of the Design and Build (D&B) contract (for St Michael's and All Angel's Academy and Highshore Special School).
- 28 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.

## **Community impact statement**

- 29 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 (Including Economic, Social and Environmental considerations)**

- 30 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).
- 31 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 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 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.
- 32 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.

## **Consultation**

- 33 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**

- 34 4 Futures is a limited company whose major shareholder is a plc with over 250 employees and an international area of activity.

## **Staffing Implications**

- 35 There may be TUPE implications relating to existing Facilities Management staff at Highshore Special School subject to the school's decision making around Facilities Management arrangements. If relevant, TUPE transfer will not occur until the FM service is due to commence at the school, which will be in October 2013.
- 36 Southwark HR (through the Children's Services department) will lead on any TUPE transfer of school staff, including appropriate consultation with unions.

## **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 update report to Cabinet dated October 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. This is expected to be £31,746,720 for the construction contract and £941,538 for ICT equipment; and
  - Diocesan Board of Education – are committing £500,000 for the cost of the provision of a new church on the site; and
  - Schools - who will commit to their financial contributions via back-to-back governing body agreements to be signed prior to contract award; and
  - The SSF capital contingency will fund the lease of land for Highshore school in line with Executive Approval.
- 39 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.
- 40 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. Highshore Special School is the only

community school in Phase 3b. For Academies and Voluntary Aided schools the Council will require an absolute commitment to meet the cost of any FM service and the council does not bear the risk associated with falling rolls.

- 41 Should Highshore opt for FM services then the FM contracts for the school will be funded from contributions from the school at nil cost to the council. The council may retain an ongoing financial risk to fund any shortfall due to a reduction in School Budget Share at Highshore. SMAA will not be opting for the FM services.
- 42 No ICT managed service is to be entered into by the Phase 3b schools. Capital investment in ICT equipment and infrastructure will be met entirely from BSF grant funding.
- 43 The overall anticipated contribution to Phase 3b by the Council is expressed in Table 4:

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

	<b>Amount</b>
Capital investment in construction	Nil
Capital investment in ICT	Nil
Capital investment for a lease premium for Highshore site	To be negotiated in line with Executive Approval
Revenue investment in ongoing services	Nil

- 44 The key variables affecting the Council’s contribution through the life of the FM 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 Highshore Special School in this phase)

\*\*The Council’s risk is to meet any shortfall of the contract RPIx increasing at a higher rate than the school’s funding.

- 45 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 3b to inform decision making in regard to options for the delivery of the remaining SSF projects.
- 46 Ongoing revenue liabilities remain within the project office budgets for the delivery of the programme agreed in February 2009.

**Value for Money (vfm)**



- 47 Value for money continues to be a priority and was assessed at financial close of phase 3a and at stage 0 and stage1 of phase 3b. 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.
- 48 Southwark’s External Technical Advisor continues to independently assess the Stage 2 submission in line with this vfm protocol. The projects are affordable within the agreed budget.

**Legal implications**

- 49 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.
- 50 It should be noted that the FBC will be issued to PfS and the Department for Education (DfE) in November 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**

- 51 Following approval of this report, the following key actions will be undertaken:
- all contractual documentation will be prepared for signing;
  - school interface agreements will be prepared for signing; and
  - final business case approval will be received.
- 52 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**

<b>Risk</b>	<b>Impact</b>	<b>Mitigation</b>
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.
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.

- 53 Recent changes in national policy enable existing community schools to apply for Academy status. Such a change represents a theoretical risk in regard to enforcing contractual agreements that are entered into with existing governing bodies. 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**

- 54 This report is seeking approval to award a range of contracts relating to four schools that form phase 3b of the SSF programme.
- 55 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.
- 56 Paragraph 51 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.
- 57 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 23 - 24 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 30 and 31 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.

### **Finance Director (CS 0165)**

- 58 This gateway 2 report seeks approval from the Cabinet Member for Children's Services to the award of contracts for phase 3b of the Southwark Schools for the Future programme, which involves construction services and ICT equipment for St Michaels and All Angel's Academy and for Highshore Special School.
- 59 Paragraph 38 confirms that the funding of £31,746,720 for the phase 3b schools construction and refurbishment works contracts is due to be met from Building Schools for the Future grants as will the ICT contract of £941,538. The £500,000 for the Church is included within the £31,746,720 total construction cost and will be funded by the Parish Church Council.
- 60 Paragraph 15 confirms that the cost of the lease for the land for Highshore is subject to negotiations and an up to date market valuation and that the council will be seeking to offset its costs. Paragraph 14 details that the cost is capped and will be met from the SSF contingency sum. Paragraph 45 explains that review of the SSF contingency confirms that the programme can be delivered within the sum provided within the current approved capital programme.
- 61 Paragraph 47 explains that revised protocols have been developed for the final phase of SSF to take into account market changes and continuous improvements within the programme. Paragraph 48 confirms that the council's technical advisor continues to assess the stage 2 submission in line with agreed protocols.

## Strategic Director of Communities, Law & Governance

- 62 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.
- 63 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 18<sup>th</sup> October 2011, the Leader delegated authority to approve the award of the Phase 3b BSF contracts as set out in Table 1 to the Cabinet Member for Children’s Services subject to certain conditions.
- 64 This is Phase 3b 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.
- 65 Table 2 details the School Interface Agreements which the council will enter into with ARK, the Academy and the Governing body of Highshore 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.

## 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	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”	<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
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

<b>Lead Officer</b>	Sam Fowler, SSF Project Director		
<b>Report Author</b>	Rebecca Ashton		
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Strategic Director of Communities, Law & Governance	Yes	Yes	
Finance Director	Yes	Yes	
Head of Procurement	Yes	Yes	
Cabinet Member	Yes	Yes	
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