

## CABINET

23 NOVEMBER 2010

### REPORT OF THE CABINET MEMBER FOR CHILDREN AND EDUCATION

This report is submitted under Agenda Item 12. The Chair will be asked to decide if it can be considered at the meeting under the provisions of Section 100B(4)(b) of the Local Government Act 1972 as a matter of urgency as the arrangements need to be in place before the next meeting of the Cabinet.

<b>Title:</b> Building Schools for the Future (BSF) Progress Report	<b>For Decision</b>
<p><b>Summary:</b></p> <p>The BSF Local Education Partnership (LEP) procurement is complete and Financial Close has been reached where contracts have been signed to create the LEP, the Private Finance Initiative (PFI) scheme for Dagenham Park Church of England School and enter into a Design and Build (D&amp;B) scheme for The Sydney Russell School. The Council has entered into supporting financial agreements which are detailed in the report below. These documents are consequential upon the decisions reached by the Cabinet on 28 September 2010. This report confirms these, and indicates the commitments that are necessary for the BSF schemes to continue.</p> <p>The contract formation process is underpinned by a Promissory Note from Partnerships for Schools (PfS) which sets out the finance available, but is conditional on the Council supporting the delivery of the projects via the project management arrangements set out in the Final Business Case i.e. the BSF team and the delivery of an electronic 'reference document' of the legal documents. When PfS has this document it may then issue the Funding Approval letter. This letter enables the Council to reclaim payments on the D&amp;B scheme in arrears, and the Revenue Support Grant for the PFI scheme at the time the scheme becomes available for service.</p> <p>Subsequent to Financial Close, the Department for Education (DfE) wrote to Local Authorities (LAs), asking that all existing BSF Schemes be reviewed with a view to finding significant savings. A review of the two schemes discloses that there are few savings of any significance, and indeed there would be considerable costs in varying either the PFI contract or the D&amp;B contract.</p> <p>Review of the schemes shows also that, given the demographic pressures the Council faces there would be an advantage in adding to the investment of The Sydney Russell School to create an extra 2 Forms of Entry (2FE) since this would save more than £3m in potential costs. The school has indicated it is willing to fund this additional space from its own resources by a combination of spending its own funds and borrowing from the Council and paying this money back over a period of 5 years. Retention of some of the existing buildings at Dagenham Park CofE School might be considered also, for a similar purpose, which would also save costs that would be inevitable in future.</p> <p>The BSF ICT Project has concluded negotiations with the Selected Bidder (RM) for the supply of ICT equipment and resources to the two sample schools, funded entirely by capital grant, and a range of optional additional services for all schools.</p>	

**Wards Affected:** All Wards for the obligations under the LEP contract and Parsloes and River wards for the two sample schools.

### **Recommendation(s)**

The Cabinet is recommended to:

- (i) Confirm the documents signed at Financial Close as set out in Appendix 1.
- (ii) Approve the approach to DfE requests for savings, which discloses that there are few savings of any significance, and indeed there would be considerable costs in varying either the PFI contract or the D&B contract, and the possibilities of claims for loss of profit being made.
- (iii) Support the proposal for the expansion of The Sydney Russell Comprehensive School by two forms of entry as part of the D&B Contract, to be funded by the School from its own resources and via a loan from the Council to the School;
- (iv) Approve the inclusion of £800,000 in the Council's Capital Programme to facilitate the loan to the School on the terms outlined in the report; and
- (v) Approve the entering into of the BSF ICT Contract with the Selected Bidder, RM Limited, for the supply of ICT equipment and resources to the two sample schools funded by capital grant, and to provide for optional additional services for all schools, funded from school budgets.

### **Reason(s)**

This report completes the BSF LEP process and will assist the Council in achieving its core values of: 'Achieving Excellence' 'Treating each other fairly and respectfully through improved school performance and better facilities to support community use of school facilities.

### **Comments of the Chief Financial Officer**

The terms agreed at financial close were within the outline business case originally approved ensuring the scheme is affordable.

The proposal to expand the existing capacity at Sydney Russell offers a better value for money solution than the main other solutions. Sydney Russell are proposing to put forward £600k from their own resources towards the capital project. The School currently has £543k carried forward in the revenue balances as at the end of 2009/10. The balance will be made up of other ring fenced standards fund capital grants.

The School are requesting funding of £800k, to be repaid over of 5 years, plus interest. The rate of interest will be linked directly to the interest rates set by the Public Works Loan Board (PWLB), which will be increased by 1% as a result of the Comprehensive Spending Review.

In order for the School to repay this loan, the school will receive additional formula funding for the additional 60 children. Based on the current levels of funding, the School is likely to receive an additional £180k per year in the first few years, increasing as the year group

progresses through to Key Stage 4. Although there will be costs associated with teaching the children, the school will benefit from some economies of scale. In addition, the School will be making additional efficiency savings within the current Senior Management structure which will be in place from 2012 onwards. Through a combination of both measures, the school will be in a position to repay the loan over a 5 year period.

The ICT programme will be funded entirely from capital grant. All additional ICT services will be funded by schools from their own budgets.

### **Comments of the Legal Partner**

The Legal Partner (Procurement Property and Planning) attended the LEP BSF Financial Close event on 28<sup>th</sup> October 2010 and sealed the BSF LEP contractual documentation on behalf of the Council.

The Legal Partner confirms that the list at Appendix 1 is an exhaustive list of the contractual documentation executed by the Council at Financial Close.

The report states that subsequent to Financial Close, the Department for Education (DfE) wrote to Local Authorities, asking that all existing BSF Schemes be reviewed with a view to finding significant savings.

The report confirms that a review of the Council's two BSF Schemes (The Sydney Russell School scheme, and Dagenham Park School scheme) has been undertaken and it has been established that any potential reductions of the Council's BSF schemes would be insignificant and costly to implement, and may involve some risk of claims against the Council for loss of profit.

The report further states that the review of the Councils two BSF Schemes has indeed highlighted that, given the demographic pressures the Council faces, better value would be obtained by a further investment in additional accommodation for a further 2FE at The Sydney Russell School to avoid inevitable future costs.

It is recommended that Cabinet approve the BSF team's approach to DfE's request to find savings on the Council's BSF Schemes i.e. that any potential reductions would be insignificant and costly to implement, and that better value would be obtained by further investments in additional accommodation for a further 2FE at The Sydney Russell School to avoid inevitable future costs.

The report confirms that The Sydney Russell School has indicated a willingness to fund this additional accommodation from its own resources and by borrowing from the Council.

The Cabinet Member for Children and Education is recommending that Cabinet approves borrowing by the Council to the extent necessary to support the proposal to expand the Sydney Russell School by 2FE, with a view to lending the money so borrowed to the School to add to its own resources, for the purpose of implementing the proposed expansion. It is anticipated that The School will pay back its borrowings over a period of 5 years.

The Local Government Act 2003 allows local authorities to borrow to invest in capital works and assets so long as the cost of that borrowing is affordable and in line with principles set out in the Prudential Code.

The final recommendation of the report is seeking Cabinet's approval to enter into the BSF ICT Contract with the Selected Bidder (RM Limited) for the supply of ICT equipment and resources to the two sample schools funded by capital grant, and to provide for optional additional services for all schools, funded from school budgets, upon approval of the BSF ICT Final Business Case which has been submitted to Partnerships for Schools for review.

Cabinet at its meeting held on 8th June 2010 had approved the appointment of RM Limited as the Selected Bidder in respect of the BSF ICT procurement. At that time it was envisaged that the value of the contract to be let would be £25m, based on anticipated funding.

The Secretary of State subsequently announced a reduction in the anticipated BSF ICT capital funding from £25m to £4.5m to cover the sample schools only, as opposed to the entire school estate as previously envisaged by the OJEU notice issued in respect of the contract.

External legal advisers to the Council's BSF Programme (Eversheds) identified a risk that this significant reduction in funding may leave the Council open to challenge on the basis that there has been a material change in the scope of the contract, meriting a re-tender of the contract.

Eversheds have however advised that re-tendering the contract also carries a risk of a possible legal challenge from the appointed Selected Bidder. Re-tendering would also involve a further procurement cost to the Council estimated at £175,000, and would introduce a significant delay in securing an ICT partner which the Council cannot afford as there is a real likelihood that the approved capital grant may be withdrawn or reduced in the event of any further delay in completing the procurement.

Eversheds have confirmed that the procurement risk associated with continuing with the procurement process, following the reduction in funding, has been mitigated by retaining the full scope of the original contract, but separating out those elements relating to capital investment from those elements relating to managed services, with the latter now being optional and deliverable subject to funding by the respective schools, under terms to be agreed with schools within the period of the contract, but with no obligation on the part of schools or the Council to commission the services.

The Council has, submitted a Final Business Case (FBC) to Partnerships for Schools (copy attached as Appendix 3 to this report) for approval as it is required to do prior to the release of BSF Funding, on this basis.

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## **1. Background**

- 1.1 The Cabinet at its 28 September 2010 meeting approved the Final Business Case which enabled the project to move forward to Financial Close together with LEP formation and entering into the BSF Contracts and the financial commitments entailed by the LEP and Special Purpose Vehicle (SPV) formation to operate the PFI facilities at Dagenham Park Church of England School (CofE) School.
- 1.2 The BSF Local Education Partnership (LEP) procurement is complete and Financial Close (28 October 2010) was reached where the above contracts have been signed to create the LEP, create the Private Finance Initiative (PFI) scheme for Dagenham Park CofE School and enter into a Design and Build (D&B) scheme for The Sydney Russell School. The Council has entered into supporting financial agreements which are detailed in Appendix 1. These documents are consequential upon the decisions reached by the Cabinet on 28 September 2010.
- 1.3 This report confirms these, and indicates the commitments that are necessary for the BSF schemes to continue. Promissory Note from Partnerships for Schools (PfS) which sets out the finance available, but is conditional on the Council supporting the delivery of the projects via the project management arrangements set out in the Final Business Case i.e. the BSF team and the delivery of an electronic 'reference document' of the legal documents. When PfS has this document it may then issue the Funding Approval letter. This letter enables the Council to reclaim payments on the D&B scheme in arrears, and the Revenue Support Grant for the PFI scheme at the time the scheme becomes available for service.
- 1.4 Subsequent to Financial Close, the Department for Education (DfE) wrote to Local Authorities (LAs), asking that all existing BSF Schemes be reviewed with a view to finding significant savings (see Appendix 2).
- 1.5 A review of the two schemes discloses that there are few savings of any significance, and indeed there would be considerable costs in varying either the PFI contract or the D&B contract, and the possibilities of claims for loss of profit being made.
- 1.6 Moreover, given the increased demand for school places, there would advantage in adding to the investment of The Sydney Russell School to create an extra 2FE. This would cost £1.4m possibly up to c£2m. It would be reasonable to expect that 2FE would cost normally of the order of £5m to £6m and thus would save more than £3m in potential costs. The School has indicated it is willing to fund this additional space from its own resources by a combination of spending its own funds and borrowing from the Council and paying this money back over a period of 5 years. The Cabinet is asked to approve borrowing to cover the school's proposed borrowings from the Council.
- 1.7 Retention of some of the existing buildings at Dagenham Park CofE School might be considered also, for a similar purpose, which would also save costs that would be inevitable in future.
- 1.8 Following Cabinet approval for the appointment of RM as selected bidder for the BSF ICT procurement on 8 June 2010, and a Cabinet report on progress of the BSF Project on 28 September 2010, commercial negotiations with RM have now been

concluded, and the Final Business Case for the ICT project has been submitted to Partnerships for Schools for approval.

- 1.9 The capital grant for ICT for the two sample schools is £4.549m and this is the value of the contract with RM.
- 1.10 Unlike the original proposals for ICT, which involved a capital grant and a managed service for all secondary and special schools for 8 years worth £41m, the funding announcement by the Secretary of State on 24 July 2010 limited the funding to the sample schools only, and removed the obligation for schools to become part of a full managed service.
- 1.11 A review of the contract, and its commercial prospects was undertaken by the BSF Project Team to see if there was a change of scope and value between the OJEU and the contract to be closed. This assessment was needed to determine whether there had been a material change in scope which merits a re-tender.
- 1.12 All the secondary schools in the borough were consulted and they advised that their intentions remained the same, in principle: namely to continue to invest in ICT capital as anticipated in the OJEU notice and to enter into a managed service contract. The value of the capital investment might be up to £25m in capital. The two sample schools have been offered £4.5m by PfS and the other schools are estimated to spend up to a similar pro rata figure from their own resources. This is similar to the £25m in (the region of) stated in the OJEU notice. The managed service is risk priced, at high performance standards in the OJEU notice at £140 per student per year. Actual spends are about £90 per student per year ex risk, at lower performance standards. The evaluation criteria which were used during the procurement process are still valid and justified.
- 1.13 This has been managed by retaining the full scope of the original contract, but separating out those elements relating to capital and those elements relating to services. The latter are optional and can be delivered under terms to be agreed with schools within the period of the contract, with no obligation on the part of schools or the Authority. On this basis, it is felt that the risk of a change of scope has been minimised. Whilst there is always the possibility of a legal challenge from a potential bidder, the risk of a successful legal challenge has been mitigated as far as practicable. There is a risk of a successful challenge, but this depends on market factors and the appetite to challenge, and remains subject to evolution of the law."
- 1.14 In any event, a new procurement also carries a risk of a possible legal challenge from the previously appointed selected bidder; secondly there would have been a further cost to the Council which has been estimated as being in the region of £175,000; thirdly this would have introduced a significant delay in securing an ICT partner, and not being able to back off the obligations that the Council is committed to with the LEP around the interface between the construction and the ICT; and fourthly, there has been, and still remains, a risk that the approved capital grant may be withdrawn or reduced in the event of any further delay and in the absence of a completed procurement.

## **2. Proposals**

- 2.1 The contract formation process is underpinned by a Promissory Note from Partnerships for Schools (PfS) which sets out the finance available, but is conditional on the Council supporting the delivery of the projects via the project management arrangements set out in the Final Business Case i.e. the BSF team and the delivery of an electronic 'reference document' of the legal documents.
- 2.2 When PfS has this electronic reference document it will then issue the Funding Approval letter. This letter enables the Council to reclaim payments on the D&B scheme in arrears, and the Revenue Support Grant for the PFI scheme at the time the scheme becomes available for service.
- 2.3 This report asks Cabinet to confirm the commitments entailed by the Promissory Note and to note the documents signed at Financial Close. These are given in Appendix 1 to this report. Promissory Note from Partnerships for Schools (PfS) which sets out the finance available, but is conditional on the Council supporting the delivery of the projects via the project management arrangements set out in the Final Business Case i.e. the BSF team and the delivery of an electronic 'reference document' of the legal documents. When PfS has this document it may then issue the Funding Approval letter. This letter enables the Council to reclaim payments on the D&B scheme in arrears, and the Revenue Support Grant for the PFI scheme at the time the scheme becomes available for service.
- 2.4 This report also asks the Cabinet to endorse the approach taken to DfE requests for savings indicated at paragraph 1.5. above, and also to approve the approach to future proofing the Council's obligations to provide school places at The Sydney Russell School outlined at paragraph 1.6. above. The Cabinet is asked to approve borrowing to cover the school's proposed borrowings from the Council.
- 2.5 This report also asks Cabinet to approve entering into a contract with RM for the supply of ICT equipment and resources to the two sample schools, funded entirely by capital grant, and for provision of optional additional services to all schools funded from school budgets under terms to be agreed at a later date between schools and RM.

## **3. Financial Issues**

- 3.1 See Comments of the Chief Financial Officer

## **4. Legal Issues**

- 4.1 See Comments of the Legal Partner (above)

## **5. Other Implications**

- 5.1 The Procurement and Operation of the LEP, PFI contract and D&B contracts are subject to a comprehensive risk register and as far as practicable risks are managed to an acceptable level.
- 5.2 The procurement of the ICT contract has been undertaken alongside the procurement of the LEP, and has been subject to the same oversight and risk

management strategies.

- 5.3 Contractual issues: there no further contractual issues relating to the LEP Procurement beyond those covered in the report to Cabinet 28 September 2010.
- 5.4 Staffing Implications: there are no staffing implications. The BSF Contract no longer involves a managed service as a condition of capital funding, and therefore there is no TUPE unless schools opt for one or more of a range of additional services to be offered under the contract, but under terms to be agreed between RM and schools at a later date.
- 5.5 Customer Impact: an Equality Impact Assessment in the BSF programme has been run with regular review dates since 2006. This has disclosed that the impact of the BSF programme is positive on all counts of: race, equality, gender, disability, sexuality, faith, age and community cohesion, but it should be noted that the BSF programme is now limited to two sample schools which will limit the positive impact of the programme. The secondary schools and the Trinity Special School will not now have BSF funding applied to them. It is expected however, that central government will substitute to some extent new funding to invest in these schools.
- 5.6 Safeguarding Children: this proposal contributes significantly to the Council's objectives to improve the wellbeing of children in the borough, reduce inequalities and ensure children's facilities are provided in an integrated manner, having regard to guidance issued under the Children Act 2006 in relation to the provision of services to children, parents, prospective parents and young people. This decision would facilitate the implementation of this programme.
- 5.7 Crime and disorder: the Crime and Disorder Act places a responsibility on the Council, as a responsible authority, to have regard to crime and disorder reduction and prevention in all its strategies, policies and service delivery. The proposal will contribute positively in terms of the Council's objectives to ensure that all young people can make a positive contribution and that the borough is a safe place. The additional resources which BSF will bring to the community will positively impact in terms of youth and community engagement. In terms of proposed developments work will be undertaken with contractors to ensure that sites are secured and that any opportunity for crime is minimised.
- 5.8 Property and Assets: this proposed decision would facilitate the improvement and renewal of significant Council assets: School buildings and facilities on two sites.

## **6. Background Papers Used in the Preparation of the Report:**

Executive Report 8 June 2010, Cabinet Report 28 September 2010; Executive Report 14 June 2010; Executive Report 25 March 2008, BSF Outline Business Case July 2009.

## **7. List of appendices:**

Appendix 1: List of Legal and Financial Documents entered into at BSF LEP Financial Close

Appendix 2: Letter from the Secretary of State 8 October 2010

Appendix 3: Final Business Case for ICT