

NORTH LINCOLNSHIRE COUNCIL

CHILDREN'S SERVICES CABINET MEMBER

**BUILDING SCHOOLS FOR THE FUTURE (BSF):
AWARD OF CONTRACT (FOR PROCUREMENT OF LOCAL EDUCATION
PARTNERSHIP(LEP))**

OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To consider the recommendation of the BSF Project Board regarding the award of contract to the LEP following the selection of preferred bidder on 3 April 2009.
- 1.2 The key stages undertaken in arriving at the recommendations in this report are as follows:
 - May Gurney Ltd was selected as preferred bidder following a competitive dialogue procedure approved by the Cabinet Member on 3 April 2009.
 - Since approval the BSF team has undertaken fine-tuning with the preferred bidder of the bid, including finalising all contracts with the bidder and Partnerships for Schools (PfS). This work will continue up to Financial close, primarily on Schedules to main contracts. The principle being followed in this fine-tuning and clarification phase is that there should be no significant change to price and risk agreed at close of dialogue stage with preferred bidder.
 - A report was considered and approved by Cabinet on 10 June 2009 to submit the final business case (FBC) to PfS, to confirm and note the capital and revenue consequences of the FBC, and to authorise the cabinet member to approve the award of contracts.
 - Having considered the outcomes of contract finalisation fine-tuning the BSf project board has been fully informed of the procurement process and recommends to the Cabinet Member that the final award of contracts be made as per standing orders.

2. BACKGROUND INFORMATION

- 2.1 The procurement plan for BSF in North Lincolnshire was based on the

'competitive dialogue' process. This means that the council engaged in detailed dialogue and negotiation with potential bidders until a preferred bidder was selected. Since the preferred bidder appointment work has focussed on finalising the contracts and obtaining any derogations to standard contracts from PfS. PfS approved a split close for contract signing because the Melior College Design and Build contract cannot be signed until full planning approval is received. It has been agreed with PfS that all other contracts will be signed and commence and Melior will be signed as soon as full planning is obtained.

- 2.2 The Lump sum maximum price has been agreed for Melior and is fixed until December 2009. If as a result of any planning obligations or delays this sum has to be re negotiated a further report will be prepared for the Cabinet Member.
- 2.3 May Gurney consortium includes contractor, ICT, FM partners and has created a LEP based on share equity as required by PfS. The LEP includes North Lincolnshire and PfS as shareholders and is a delivery and management vehicle to deliver BSf and other projects, subject to performance and funding in partnership with the council. The LEP will be commissioned to develop new projects, focussing initially on the BSF schools.
- 2.4 The Cabinet report of 10 June 2009 detailed the present financial and commercial position to procure the LEP. Regular progress reports will be presented to a strategic partnering board of the council on the performance of the LEP and the council will approve all new projects by the submission of business cases to identify and confirm sources of funding for each project.
- 2.5 The creation of a LEP is the default position of PfS and a pre-requirement to obtaining the significant capital grants available for BSF. PFS also require that the main contracts be signed at the same time (excepting Melior, which will be done after planning approval).
- 2.6 Financial close and signing of contracts is targeted for 21 July 2009. The final signing of the contracts will be done when the fine-tuning is complete. If there is a major change to risk or price before financial close that would affect the principal contracts then further briefings and consultation with BSF Project Board and Cabinet Member will be arranged to determine any necessary actions before such contracts could be agreed and signed.

On approval of the final award of contract by the Cabinet Member the council's authorised person will sign, seal, execute and deliver the documents listed in detail in Section 8 below.

3. OPTIONS FOR CONSIDERATION

- 3.1 The first option is to accept the recommendation of the BSF Project Board.
- 3.2 The second option is not to accept the recommendation of the BSF Project Board.

4. ANALYSIS OF OPTIONS

- 4.1 Option 1 above would permit commencement on the major BSF Design and build and ICT works to continue according to the agreed plan. Option 1 would also create the LEP and release the Phase1 capital grant funding from PfS.
- 4.2 Option 2 above would not allow the BSF programme to continue and would put at significant risk the receipt of capital funds. Option 2 would also significantly increase the risk that further agreed price and risk positions would alter at a cost to the council. Option 2 would also jeopardise any future BFS projects, as there is no other delivery or funding route for North Lincolnshire to secure BSF investment. Option 2 would incur further management and legal costs and possible financial set up and abortive design cost claims from the preferred bidder.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

- 5.1 Financial
 - 5.1.1 The financial implications of this report are reflected in the overall BSF programme budget as reported to Cabinet on 10 June 2009.
- 5.2 Staffing
 - 5.2.1 There are no direct staffing implications arising from this report.
- 5.3 Property
 - 5.3.1 There are no direct property implications arising from this report.
- 5.4 IT
 - 5.4.1 There are no direct IT implications arising from this report.

6. **OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 – CRIME AND DISORDER, RISK AND OTHER)**

6.1 The risk elements of BSF are considered monthly by the BSF Board. There are no other direct implications associated with this report.

7. **OUTCOMES OF CONSULTATION**

7.1 The BSF Project Board has considered the issues reflected in this report and has made its recommendation to the Cabinet Member for Children’s Services.

8. **RECOMMENDATION**

8.1 The Cabinet Member recommendation pursuant to paragraph 5.5 of the Project - Contract Standing Orders (approved by M Wedgewood and M Wood on 29 November 2007) is to approve and authorise the close of the North Lincolnshire Building Schools for the Future procurement and award the following contracts (“the Documents”) to Engage North Lincolnshire Limited as the successful bidder:

	Document	Parties
1.1	Strategic Partnering Agreement	(1) North Lincolnshire Council (2) Engage North Lincolnshire Limited
1.2	Shareholders Agreement	(1) North Lincolnshire Council (2) Engage North Lincolnshire Limited (3) BSF Investments LLP (4) Partnerships for Schools (5) North Lincolnshire Learning Partnership (PSP) Limited
1.3	ICT Contract	(1) North Lincolnshire Council (2) Engage North Lincolnshire Limited
1.4	ICT Contractor Direct Agreement	(1) North Lincolnshire Council (2) Engage North Lincolnshire Limited (3) MASS
1.5	ICT Parent Company Guarantee	(1) Cohort PLC (2) North Lincolnshire Council (3) MASS
1.6	Facilities Management Agreement	(1) North Lincolnshire Council (2) Engage North Lincolnshire Limited
1.7	FM Contractor Direct Agreement	(1) North Lincolnshire Council

		(2) Engage North Lincolnshire Limited (3) Norfolk County Services Limited
1.8	FM Parent Company Guarantee	(1) Norse Group (2) North Lincolnshire Council (3) Engage North Lincolnshire Limited
1.9	Design and Build Contract (Melior)	(1) North Lincolnshire Council (2) Engage North Lincolnshire Limited
1.10	Design and Build Contract (Brumby)	(1) North Lincolnshire Council (2) Engage North Lincolnshire Limited
1.11	Independent Certifiers Appointment	(1) North Lincolnshire Council (2) Engage North Lincolnshire Limited (3) Independent Certifier
1.12	Building Contractor Collateral Warranty in favour of NLC	(1) North Lincolnshire Council (2) Engage North Lincolnshire Limited (3) May Gurney Limited
1.13	Multi Disciplinary Consultant's Collateral Warranty in favour of the Authority	(1) North Lincolnshire Council (2) Engage North Lincolnshire Limited (3) NPS Property Consultants Limited
1.14	Structural and Civil Engineer's Collateral Warranty in favour of the Authority	(1) North Lincolnshire Council (2) Engage North Lincolnshire Limited (3) [To be confirmed]
1.15	Principal sub-sub-contractor's collateral warranty in favour of the Authority	(1) North Lincolnshire Council (2) May Gurney Limited (3) [[To be confirmed]
1.16	Governing Body Agreement (Melior College)	(1) North Lincolnshire Council (2) Governing Body of Melior College
1.17	Governing Body Agreement (Brumby College)	(1) North Lincolnshire Council (2) Governing Body of Brumby College
1.18	n/a	Such other legally binding documents including consents, waivers, undertakings, notices, letters, certificates and documents to be signed and/or initialled by the Authority, whether pursuant to the terms of any of the Documents or otherwise (and including, without limitation, any documents referred to in the Documents as 'Agreed Form' documents and the Local Government Contract Acts Certificates in respect of the SPA, SHA and FM Agreement).

SERVICE DIRECTOR LEARNING, SCHOOLS AND COMMUNITIES

Hewson House

BRIGG

North Lincolnshire

DN20 8XJ

Author: J Galbraith

Date: 30 June 2009

Reference: Cabinet Member Report – AC

Background Papers used in the preparation of this report:

Report to BSF Board 06 July 2009

Report to Cabinet 10 June 2009.