

## CABINET ITEM COVERING SHEET PROFORMA

### **AGENDA ITEM**

### **REPORT TO CABINET**

**3rd SEPTEMBER 2009**

### **REPORT OF CORPORATE MANAGEMENT TEAM**

## **CABINET DECISION/KEY DECISION**

Children and Young People – Lead Cabinet Member – Councillor A Cunningham

### **BUILDING SCHOOLS FOR THE FUTURE (BSF): SCOPE OF THE LOCAL EDUCATION PARTNERSHIP (LEP)**

#### 1. Summary

A Local Education Partnership (LEP) is the default procurement vehicle for BSF programmes with a capital value in excess of £100 million. Cabinet has already agreed in principle to the establishment of a LEP to deliver the Stockton-on-Tees BSF programme (most recently in Strategy for Change Part 2 agreed on 5 February 2009).

The LEP will enter a long-term Strategic Partnering Agreement with the Council to develop and procure BSF building projects for approval by the Authority, and to supply managed services for ICT and facilities management to schools in the BSF programme. The Agreement will grant to the LEP exclusive rights to provide these services for a fixed term, subject to satisfactory performance.

The Agreement could also allow the LEP to negotiate directly with the Council to provide other services in addition to those directly relevant to the BSF programme. Where the LEP could demonstrate best value, this would avoid any need to conduct a separate procurement process for those services.

This report describes the outcome of a series of workshops involving Council members, officers and school governors to consider the potential for including additional services within the scope of the LEP. The report also considers the likely impact of the LEP on services currently delivered by the Council or procured directly by schools. The recommendations in this report have been discussed with Partnerships for Schools and have been agreed by the BSF Project Board.

#### 2. Recommendations

Members are asked to agree that the notice to be placed in the Official Journal of the European Union (OJEU) advertising the Building Schools for the Future programme in Stockton-on-Tees should:

- 1) define the scope of services for which the Local Education Partnership (LEP) will be given exclusivity, namely the provision of:
  - a. capital building works funded by the BSF programme procured under Private Finance Initiative (PFI) or Design & Build (D&B) contracts;
  - b. maintenance and facilities management (FM) services for schools subject to capital works under the BSF programme;
  - c. a managed service to deliver Information and Communication Technology (ICT) to the schools in the BSF programme (including any facilities which may not be subject to BSF-funded capital works).
- 2) Include a statement that the LEP might be invited to provide the following additional services, but will not be granted exclusivity:
  - a. school building works funded by the Primary Capital Programme or other funding programmes;
  - b. building maintenance, facilities management, and a managed ICT service for schools (including primary schools) outside the BSF programme.

### 3. Reasons for the Recommendations/Decision(s)

A LEP is a joint venture company with shareholding owned by the local authority (10%), BSF Investments (part of Partnerships for Schools - 10%), and a private sector partner (80%). The private sector partner will be appointed by Cabinet after a competitive bidding process. This will be initiated by a notice published in the Official Journal of the European Union (OJEU) later this year.

The OJEU notice, and the Strategic Partnering Agreement that will follow, must specify the scope of LEP activity. They will define the services that the LEP will have exclusive rights to deliver. The services included in Recommendation 1) above are fundamental to the BSF programme and are the minimum likely to ensure a positive response from potential partners. The possibility of negotiating (without exclusivity) to provide additional services beyond BSF is likely to increase the attractiveness of the Stockton-on-Tees programme to potential bidders, while offering the Council opportunities to reduce procurement costs.

### 4. Members' Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering

questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;

- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

**Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.**

**AGENDA ITEM**

**REPORT TO CABINET**

**3rd SEPTEMBER 2009**

**REPORT OF CORPORATE  
MANAGEMENT TEAM**

**CABINET DECISION/KEY DECISION**

**BUILDING SCHOOLS FOR THE FUTURE (BSF): SCOPE OF THE LOCAL EDUCATION  
PARTNERSHIP (LEP)**

**SUMMARY**

A Local Education Partnership (LEP) is the default procurement vehicle for BSF programmes with a capital value in excess of £100 million. Cabinet has already agreed in principle to the establishment of a LEP to deliver the Stockton-on-Tees BSF programme (most recently in Strategy for Change Part 2 agreed on 5 February 2009).

The LEP will enter a long-term Strategic Partnering Agreement with the Council to develop and procure BSF building projects for approval by the Authority, and to supply managed services for ICT and facilities management to schools in the BSF programme. The Agreement will grant to the LEP exclusive rights to provide these services for a fixed term, subject to satisfactory performance.

The Agreement could also allow the LEP to negotiate directly with the Council to provide other services in addition to those directly relevant to the BSF programme. Where the LEP could demonstrate best value, this would avoid any need to conduct a separate procurement process for those services.

This report describes the outcome of a series of workshops involving Council members, officers and school governors to consider the potential for including additional services within the scope of the LEP. The report also considers the likely impact of the LEP on services currently delivered by the Council or procured directly by schools. The recommendations in this report have been discussed with Partnerships for Schools and have been agreed by the BSF Project Board.

**RECOMMENDATIONS**

Members are asked to agree that the notice to be placed in the Official Journal of the European Union (OJEU) advertising the Building Schools for the Future programme in Stockton-on-Tees should:

- 1) define the scope of services for which the Local Education Partnership (LEP) will be given exclusivity, namely the provision of:
  - a. capital building works funded by the BSF programme procured under Private Finance Initiative (PFI) or Design & Build (D&B) contracts;
  - b. maintenance and facilities management (FM) services for schools subject to capital works under the BSF programme;

- c. a managed service to deliver Information and Communication Technology (ICT) to the schools in the BSF programme (including any facilities which may not be subject to BSF-funded capital works).
- 2) Include a statement that the LEP might be invited to provide the following additional services, but will not be granted exclusivity:
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## **DETAIL**

### The Local Education Partnership

1. A Local Education Partnership (LEP) is the default procurement vehicle for BSF programmes with a capital value in excess of £100 million. The option of a non-LEP procurement route has been offered only to local authorities with significantly smaller programmes (such as Hartlepool), or those with an existing strategic partnership (such as Middlesbrough).
2. A LEP is a joint venture company with shareholding owned by the local authority (10%), BSF Investments (part of Partnerships for Schools - 10%), and a private sector partner (80%). The LEP will enter a strategic partnering agreement with the Council to develop school building projects for approval by the Authority and will procure those projects to deliver the local BSF strategy over (typically) a ten-year term. In spite of the shareholding ratio, the terms of the partnering agreement will require that all significant decisions are approved by all three parties through a Strategic Partnering Board. This Board will also monitor programme performance. The private sector partner will be appointed by Cabinet decision after a competitive bidding process. Bids will be invited through an advertisement placed in the Official Journal of the European Union (OJEU) later this year.
3. The advantages of the LEP approach are that:
  - a. Only one procurement process is needed for the entire BSF programme, saving significantly on future procurement costs.
  - b. The private sector partner will bring design and construction expertise to the programme, knowledge of the market and the resources of a large organisation.
  - c. The private sector partner has exclusive rights to all contracts specified in the OJEU notice (subject to satisfactory performance). This facilitates long-term planning, engagement of subcontractors, enables more rapid delivery of projects and offers economies of scale.
  - d. The scope of the LEP may be widened beyond BSF to include other building projects if the Authority wishes to consider using its partnership in that way.
4. On 6 October 2006 and again on 5 February 2009 Cabinet agreed in principle to the establishment of a LEP to deliver the Stockton-on-Tees BSF programme.

## Scope of the LEP

5. The OJEU notice must specify the scope of LEP activity. The minimum requirements quoted by Partnerships for Schools (in Schedule 12 to the standard template Strategic Partnering Agreement) include the design and construction of all capital works funded through BSF, life-cycle maintenance and facilities management at those schools, and a managed ICT service for schools in the BSF programme. Other services that might be offered to the LEP include non-BSF funded works at primary and secondary schools, a managed ICT service for primary schools, and other capital projects for the Council or its partners (e.g. regeneration, health or leisure projects).
6. A series of workshops involving Council members, officers and school governors has considered the potential for including additional services within the scope of the LEP. A full list of meetings at which the LEP and managed services were discussed is given at paragraph 30 below. As a result of these discussions it is recommended that the OJEU notice should offer the LEP:
  - a. exclusive rights to provide building works, maintenance and facilities management services, and a managed ICT service for schools funded by the BSF programme;
  - b. the possibility without exclusive rights of providing building works at schools funded by the Primary Capital Programme or other funding programmes, and building maintenance, facilities management, and a managed ICT service for schools (including primary schools), and other facilities, outside the BSF programme. The Council would be able to negotiate directly with the LEP to provide any or all of these additional services if it could demonstrate best value. This would avoid any need to conduct a separate procurement process.

## Impact of the LEP on existing services

7. The LEP would take responsibility for some services currently provided by the Council to schools, or undertaken by schools themselves. Significant examples are ICT technical support services and facilities management as described in the following paragraphs. The Authority will aim to ensure that as far as possible the staff employed by schools to provide those services will be offered the opportunity to transfer their employment to the new service provider on existing terms and conditions under TUPE arrangements. The relevant heads of service have confirmed that no centrally employed Council staff will be affected in this way.

## Centrally-managed ICT services for schools

8. One of the prime responsibilities of the LEP will be to manage an integrated ICT service for BSF schools. This is a requirement of the national BSF process. Currently, schools and colleges procure ICT equipment and technical support themselves from a range of sources. Systems are not mutually compatible and cannot support our vision of collaborative curriculum provision across Campus Stockton with anywhere/anytime access. ICT is central to transforming learning, and government agencies will require implementation of a single system across all schools in the BSF programme. Neither government nor the Authority will nominate a particular system or supplier: we must specify the functions that the ICT service will be required to provide, and the LEP will appoint a partner to provide it under a renewable contract. Dedicated BSF funding is provided for ICT infrastructure works (e.g. cabling and network servers), hardware and software. Schools (through the

Change Management Group) and Authority officers are working with external advisers to draw up a detailed ICT output specification for OBC. Essential functions will include the curriculum uses of ICT (including those linked to specialist subjects, lesson planning and assessment), remote access facilities, a virtual learning environment, management information (including pupil records, attendance registers, and communication with parents), building management systems (monitoring and control of heating, lighting and ventilation, access and security) and electronic access to services such as libraries, transport and catering. There may be additional ICT functions relating to extended services both on and off school premises.

### Facilities management (FM)

9. Government agencies require that the significant capital sums invested in BSF are protected into the future by means of putting in place “hard facilities management” and Lifecycle services arrangements and contracts. Hard FM contracts typically include building maintenance, heating, plumbing and electrical services. Lifecycle services include the major structural works required to keep the building fully operational over a minimum of a 25 year period. Where buildings are remodelled or refurbished under BSF Design & Build contracts, the Authority (and the Dioceses where appropriate) must contract through the LEP for hard FM services.
10. Discussions have taken place with Schools and School Governors in order to determine the most appropriate way of ensuring that Hard FM and Lifecycle contracts are delivered. Hard FM services (statutory and reactive) will be delivered through the LEP and will be funded directly by schools from their own resources. Lifecycle maintenance will be administered by means of a partnership between the Schools, Council and LEP. Funding for Lifecycle costs will be from a combination of sources and will be administered through a Lifecycle Fund held by the Council. Schools will contribute a percentage of their Devolved Formula Capital (DFC) to the Fund and further contributions will be made from the Council and from centrally held Dedicated Schools Grant. Discussions are taking place with diocesan representatives in respect of appropriate levels of LCVAP and VA School Governor contributions.
11. Schools will also contract individually for a range of “soft FM” services such as catering, cleaning and caretaking. Individual schools may be offered the option to contract through the LEP for any or all of the soft FM services if they wish.

### Next Steps

12. If agreed by Cabinet, the recommendations in this report will be incorporated into a draft OJEU notice. That notice will form one of the appendices to the Outline Business Case (OBC) which will be submitted for Cabinet approval before submission for assessment by government agencies.
13. Further reports will be brought to Cabinet in due course to consider the detailed process of establishing the LEP including draft Memorandum and Articles of Association for the LEP company, the membership of the Strategic Partnering Board and a draft Strategic Partnering Agreement between the LEP and the Council.
14. Regular communications will be maintained to ensure that all stakeholders are kept up to date with the developing BSF programme. These will include members’ seminars and regular scheduled meetings with school staff and their unions.

## **FINANCIAL IMPLICATIONS**

15. The detailed financial implications of the BSF programme will be set out in the Outline Business Case (OBC) document which will be considered by Cabinet on 1<sup>st</sup> October 2009.
16. Detailed discussions have been undertaken with schools and governors regarding the proposals for hard FM and lifecycle maintenance. Hard FM Services will be funded directly by schools from their delegated budgets. Lifecycle maintenance will be funded through a combination of school and diocesan contributions, together with funding from centrally held Dedicated School Grant and from the resources allocated by the Council to fund BSF into the future.
17. The costs of setting up and operating the LEP have been estimated at £3.3 million (as reported to Cabinet on 5 February 2009) over the life of the LEP which is expected initially to cover 10 years with potential to extend for a further 5 years. These costs will be funded from the resources earmarked for BSF in the Council's MTFP. It may be possible to reclaim part of the initial set up costs, estimated to be £500k, through PfS. This avenue for potential additional funding will be investigated.

## **LEGAL IMPLICATIONS**

18. Procurement of the LEP must comply with the requirements of the Public Contracts Regulations 2006 and associated Directives including the placing of the OJEU notice. The OJEU notice must be sufficiently specific in the proposed scope of the LEP if it is to be relied on for future procurement.
19. To establish the LEP the Council will enter into a Strategic Partnering Agreement and Shareholders Agreement.
20. These Agreements together with Design and Build, Facilities Management and ICT draft contracts will be required for OBC.

## **RISK ASSESSMENT**

21. This report asks Cabinet to agree the scope of the LEP, i.e. those services for which the LEP will be granted exclusivity and those others that may be offered to the LEP without exclusivity. A risk assessment has been carried out on the recommendations in this report. This is categorised as low to medium risk. Existing management systems and daily routine activities are sufficient to control and reduce risk. This was determined at a LEP Risk Workshop convened for that purpose to ensure there are no lost opportunities and all risks are mitigated.

## **SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS**

### **Economic Regeneration and Transport**

22. The Strategic Partnering Agreement with the Local Education Partnership will include targets to support the local and sub-regional economy by specifying, for example, the use of local sub-contractors and offering employment and training opportunities to local residents.

### **Safer Communities**

23. No negative implications.

### **Children and Young People**



24. The BSF programme is intended to improve services and transform education and learning for children and young people.

### **Health and Wellbeing**

25. No negative implications.

### **Environment and Housing**

26. The LEP will be required to meet Design Quality Indicators for all BSF projects. Transport-related environmental implications will be considered as a part of the BSF transport assessments. In terms of other environmental implications the programme will have a minimum target to achieve the BREEAM\* design standard of “very good” in all buildings. In addition the Council will look to maximise opportunities for onsite renewable energy generation (ground source heat, wind, solar, biomass etc) and design low carbon use buildings in line with Climate Change Strategy targets.

*\*BREEAM – Better Regulation Executive - Environmental Assessment Method. The Better Regulation Executive is a part of the government’s Department for Business, Enterprise and Regulatory Reform (BERR).*

### **CORPORATE PARENTING**

27. The Council’s BSF strategy includes targets to raise educational achievement and improve life chances for all children and young people in the borough including those looked after by the Authority.

### **EQUALITY IMPACT ASSESSMENT**

28. The BSF programme has been subject to an Equality Impact Assessment and has been judged to have a positive impact. No remedial actions are required.

### **CONSULTATION INCLUDING WARD/COUNCILLORS**

30. The proposed Local Education Partnership scope has been created in consultation with school representatives and council members to ensure they are fully informed and involved in its development. This consultation has taken the form of various meetings as indicated below:

#### Change Management Group meetings:

Change Management Group meetings are attended by all of the borough’s secondary headteachers and school governing body representatives are also invited to attend when necessary.

11<sup>th</sup> December 2008

29<sup>th</sup> January 2009

12<sup>th</sup> March 2009

26<sup>th</sup> March 2009

23<sup>rd</sup> April 2009 (including governor representatives)

11<sup>th</sup> June 2009 (including governor representatives)

#### School Governing Body meetings

Members of the BSF team also attended the following school governing body meetings to address any individual school queries regarding the LEP, Facilities Management and ICT proposals.

15<sup>th</sup> June 2009 - Blakeston School Governing Body meeting

16<sup>th</sup> June 2009 – Grangefield School Governing Body meeting

25<sup>th</sup> June 2009 – The Norton School Humanities College Governing Body meeting  
30<sup>th</sup> June 2009 – Thornaby Community School Governing Body meeting  
30<sup>th</sup> June 2009 – Ian Ramsey Church of England School governing Body meeting  
1<sup>st</sup> July 2009 – Grangefield School Governing Body meeting  
18<sup>th</sup> July 2009 - Stockton First Federation Governing Body meeting

#### Members' Seminars

All members were invited to attend BSF Members' Seminars which provide regular updates regarding the development of the BSF programme. The LEP, Facilities Management and ICT Managed Service proposals were discussed at these seminars as indicated below:

13<sup>th</sup> January 2009 and 19<sup>th</sup> January 2009  
11<sup>th</sup> March 2009 and 26<sup>th</sup> March 2009  
15<sup>th</sup> June 2009 and 18<sup>th</sup> June 2009

#### Union Meetings

Meetings have been held with unions to discuss the impact that a LEP would have on existing services and personnel.

Meetings with School Workforce JCC held on: -  
13-01-09; 09-02-09; 10-03-09; 12-05-09; 09-06-09.

Meeting with Mike Robinson / Julie Spittle: -  
TU Liaison Group 8<sup>th</sup> July  
Further information despatched on 15<sup>th</sup> July

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#### Background Papers

Cabinet reports dated 6 October 2006 and 5 February 2009.  
Strategy for Change Part 2

#### Ward(s) and Ward Councillors:

Not Ward-specific

#### Property

The BSF programme will introduce substantial capital investment to renew secondary school buildings.