

REPORT TO: CABINET

DATE: 25 NOVEMBER 2009

SUBJECT: BUILDING SCHOOLS FOR THE FUTURE: OUTCOME OF READINESS TO DELIVER RESUBMISSION

WARDS AFFECTED: ALL WARDS

JOINT REPORT OF: PETER MORGAN
STRATEGIC DIRECTOR OF CHILDREN'S SERVICES

CONTACT OFFICER: CHRIS DALZIEL (0151 934 3337)

**EXEMPT/
CONFIDENTIAL:** NO

PURPOSE/SUMMARY:

To report on the outcome of the resubmission of the Readiness to Deliver (RtD) document and subsequent actions.

REASON WHY DECISION REQUIRED:

Cabinet approval is required to progress discussions relating to a joint Local Education Partnership (LEP).

RECOMMENDATION(S):

Cabinet is recommended to:

- (i) note the outcome of the resubmission of the Readiness to Deliver document and subsequent actions;
- (ii) confirm support for continued discussions which may lead to the setting up of a joint LEP between Sefton and Wirral MBCs.

KEY DECISION: Yes.

FORWARD PLAN: Yes

IMPLEMENTATION DATE: Following the expiry of the "call-in" period for the Minutes of the Cabinet Member meeting.

ALTERNATIVE OPTIONS:

Not appropriate.

IMPLICATIONS:**Budget/Policy Framework:** None.**Financial:** There are no financial implications directly associated with this report.

CAPITAL EXPENDITURE	2009/ 2010 £	2010/ 2011 £	2011/ 2012 £	2012/ 2013 £
Gross Increase in Capital Expenditure				
Funded by:				
Sefton Capital Resources				
Specific Capital Resources				
REVENUE IMPLICATIONS				
Gross Increase in Revenue Expenditure				
Funded by:				
Sefton Funded Resources				
Funded from External Resources				
Does the External Funding have an expiry date? Y/N	When?			
How will the service be funded post expiry?				

Legal: Not appropriate.**Risk Assessment:** A full risk assessment of the BSF programme is being developed.**Asset Management:** Not appropriate.**CONSULTATION UNDERTAKEN/VIEWS**

CORPORATE OBJECTIVE MONITORING:

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		✓	
2	Creating Safe Communities		✓	
3	Jobs and Prosperity		✓	
4	Improving Health and Well-Being		✓	
5	Environmental Sustainability		✓	
6	Creating Inclusive Communities		✓	
7	Improving the Quality of Council Services and Strengthening local Democracy		✓	
8	Children and Young People		✓	

LINKS TO ENSURING INTEGRATION:

Not appropriate.

IMPACT UPON CHILDREN'S SERVICES TARGETS AND PRIORITIES:

Not appropriate.

LIST OF BACKGROUND PAPERS RELIED UPON IN THE PREPARATION OF THIS REPORT

09/23 June 09 July - Overview and Scrutiny, Cabinet Member and Cabinet - Approval of the first Readiness to Deliver (RtD) Submission
20/27 October 2009 - Overview and Scrutiny/Cabinet - Approval to proceed with the statutory proposals required to advance BSF

BUILDING SCHOOLS FOR THE FUTURE: OUTCOME OF READINESS TO DELIVER RESUBMISSION

1. Background

- 1.1 Members will recall that Sefton was invited to resubmit their Readiness to Deliver (RtD) document in September 2009.
- 1.2 Members will further recall that;
- ✚ some temporary part-time appointments (Project Director and Project Manager) have been made to cover the period leading up to formal entry into the programme;
 - ✚ preliminary discussions with Wirral MBC have taken place to explore the possibility of a joint Local Education Partnership (LEP);
 - ✚ the BSF Project Board, chaired by the Deputy CEO has continued to meet on a regular basis to drive forward the preparation required for BSF;
 - ✚ a Skills and Resources Review has been conducted by Local Partnerships (formerly 4ps) to identify any issues that need to be addressed in Sefton in order for progress to be made.

2. Outcome of the Readiness to Deliver Resubmission

- 2.1 The Strategic Director of Partnerships for Schools (PfS) wrote to authorities who had resubmitted a RtD document on 16 October 2009. This confirmed that where a local authority's RtD was considered to demonstrate an appropriate level of readiness to join BSF then these authorities would be invited to attend an RtD Review Panel, at which PfS and the Office of the Schools Commissioner (OSC) would discuss areas of the RtD in further depth.
- 2.2 Sefton attended a Review Panel meeting on 5 November 2009 with Alan Moore, Peter Morgan, Simon Jones (Director, Capita Symonds) and Richard Coates (Interim Project Director) representing Sefton.
- 2.3 The main outcomes of that meeting are detailed below:
- ✚ Overall PfS complimented Sefton MBC on the resubmitted RtD and requested that additional supporting information be provided by 30 November 2009.
 - ✚ Further clarification and an indicative timeline on stakeholder engagement and consultation was requested. If Sefton are accepted onto the BSF programme their stakeholder engagement will be accelerated early in the New Year. PfS also requested a copy of the project revenue budget which identifies funding for stakeholder engagement, consultation and change management allocations and an additional £250,000 will be added to the revenue budget bringing this total commitment to £3.5 million over the financial years 2009/10 to 2013/14.
 - ✚ PfS requested further clarification on the basis of the £10 million affordability gap (capital) and Sefton MBC's corporate commitment to this. This commitment was verbally confirmed at the meeting and a letter from Sefton's section 501 officer will be forwarded to PfS as part of the resubmission.
 - ✚ Thirteen local authorities were invited to briefings at the beginning of November and PfS confirmed that twelve local authorities will be allocated a place on the BSF programme. If Sefton is successful then they will be invited to attend a Remit Meeting between January and March 2010; this meeting between the Local Authority, PfS and other government agencies is the formal start of the BSF project.
 - ✚ In line with normal BSF procedures the funding allocation for Sefton would be confirmed after approval of the Outline Business Case (OBC) which is anticipated to be in late 2010.

3. Appointment of Advisors to Support Legal, Finance and IT in BSF

3.1 Expressions of Interest have been sought from external advisors from the Partnerships for Schools (PfS) Framework to support BSF workstreams in Legal and Finance and from the British Educational Communications and Technology Agency (Becta) for IT. Tenders have subsequently been invited from interested parties and the timetable for return of tenders, short-listing and interviews is detailed below. Appointment of Legal advisors is a two-stage tendering process.

Finance & IT Advisor Appointments	Tenders invited	Tenders Returned	Interviews	Award of Contract
	23 October	13 November	Week Beg. 30 November	Week Beg. 7 December

Legal	Tenders invited (Stage 1)	Tenders Returned	Tenders invited (Stage 2)	Tenders Returned	Interviews
	22 October	6 November	16 November	4 December	14 December

Interview panels for each advisor appointment, consisting of appropriate senior officers, internal audit and the Project Director, were agreed at Project Board on 20 October 2009.

3.2 A further report on this Cabinet agenda seeks approval to delegate the appointment of external advisors to the Project Board. Subject to this approval the Project Board will confirm these appointments on 15 December 2009.

4. The Local Education Partnership

4.1 Members will recall that the original RtD submission in May 2009 (approved by Cabinet 9 July 2009) confirmed that Sefton would adopt the standard LEP as the default model for procurement. Discussions are progressing, at Officer level, on a joint LEP with Wirral MBC and officers from Wirral will seek their Member agreement in principle, in November, to progress this matter with Sefton. Both parties will work towards a joint Memorandum of Understanding and a draft version of this document is attached for information at Annex A.

4.2 A summary of the benefits and challenges associated with a joint LEP are tabled below:

Benefits	Challenges
<ul style="list-style-type: none"> ✚ Savings in procurement costs ✚ Potential savings from scale of programme and strong competition generated ✚ Benefits from combined contract monitoring/management ✚ Continuity of personnel across both programmes ✚ Potential long-term savings in LEP administration and management costs 	<ul style="list-style-type: none"> ✚ To agree main strategic issues with Wirral MBC ✚ To maintain local identity around individual BSF programmes ✚ To ensure that the LEP delivers the benefits identified for Sefton ✚ To ensure transparency in the costs of each programme so that neither Council subsidises the other ✚ Extent of exclusivity offered and any conditions to be satisfied

4.3 Members may wish to consider confirming their support for these continued discussions which may lead to the setting up of a joint LEP between Sefton and Wirral MBCs.

5. National College BSF Leadership Programme

- 5.1 Representatives from the nine phase 1 schools and four senior officers have been taking part in the above BSF Leadership Programme. This aims to support local authorities and school leaders during the pre-procurement stages of BSF, working to build capacity and accelerate change at a key stage in the process. The programme provides challenge and support to local authorities and school leaders as they develop their Strategy for Change documentation.

6. Recommendation(s)

6.1 Cabinet is recommended to:

- (i) note the outcome of the resubmission of the Readiness to Deliver document and subsequent actions;
- (ii) confirm support for continued discussions which may lead to the setting up of a joint LEP between Sefton and Wirral MBCs.

Sefton and Wirral Building Schools for the Future Projects

Memorandum of Understanding - Heads of Terms

We refer to the joint procurement of the Sefton and Wirral Building Schools for the Future Projects.

Terms and expressions used in this letter shall, unless the context otherwise requires or admits bear the meanings ascribed thereto in the Memorandum of Understanding of even date herewith and made between the Council of Sefton (1) and Wirral Council (2) (MoU).

In accordance with the MoU:

- (1) Sefton and Wirral will share BSF joint project procurement costs on a 50:50 basis. Wirral to reimburse the costs incurred by Sefton at each Key Milestone in the procurement process. Sefton and Wirral will agree the process for timing for payment.
- (2) If Wirral withdraws from the procurement between Key Milestones or following selection of the PSP then it will pay its pro rata share of the costs on the basis as set out in paragraph 1 up to the date of withdrawal (on the basis of the timing of the costs being incurred rather than invoiced)
- (3) Without prejudice to paragraphs 4 and 5, withdrawal from the procurement by Sefton and Wirral for any reason will not result in any costs additional to those identified in paragraphs 1 and 2 above
- (4) If the joint procurement ceases to continue for a reason unconnected with the actions of Sefton and Wirral (such as withdrawal of funding) then each Local Authority will bear their own abortive costs and any costs to be apportioned pursuant to paragraph 1 up to the date the joint procurement ceases
- (5) Should Sefton decide not to proceed with the procurement in circumstances where Wirral is not then able to proceed with its procurement at all or without incurring substantial additional costs or should Wirral withdraw from the procurement because it cannot accept a fundamental decision made in relation to the joint procurement, then Sefton and Wirral will negotiate in good faith as to the reimbursement by Sefton to Wirral of any costs Wirral has paid to Sefton pursuant to paragraph 17 above such reimbursement to be such part of the sums so paid by Wirral as is reasonable in all circumstances and in the event of a failure of the two Local Authorities to agree the reimbursement then either party may refer to the disputer to an independent arbitrator (who shall be legal counsel of appropriate experience in local authority and procurement work) to be agreed by the two Local Authorities or in default of agreement by the President of the Law Society
- (6) Sefton and Wirral will agree how the LEP Initial Set-Up Costs will be apportioned and how continuous improvement savings will benefit both Local Authorities

This letter sets out the principles to be applied in relation to the payment of BSF joint procurement costs:

1. The proposed team structures of the Sefton BSF team shall be reviewed and approved by Wirral for the purpose of cost recovery.
2. Similarly Sefton shall approve the inclusion of any of the Wirral BSF team to be involved in the joint procurement exercise and the relevant costs shall be netted off the costs to be paid to Sefton by Wirral.
- 3.1. Wirral shall pay 50% of the net Sefton in-house costs
- 3.2. Wirral shall pay 50% of the agreed external consultancy costs.
- 3.3. Wirral shall pay 50% of the joint procurement marketing and communication costs (including associated project specific costs such as an internet based document management system)
4. External consultancy costs shall be based on the tenders submitted to Sefton by the consultants and these costs shall be monitored by Sefton and Wirral shall be advised of any likely increase in those costs.
5. Any additional consultancy work shall be agreed between Sefton and Wirral and apportioned on a basis which reflects the nature of the work and its relevance to the joint procurement.
6. It is not anticipated that any additional costs shall be incurred beyond the joint procurement and any costs incurred will need to be agreed by the two authorities if Wirral is to contribute. Further, following the establishment of the Local Education Partnership it is not anticipated that any costs will be paid by Wirral unless specified and agreed in the MoU.
7. Wirral shall reimburse the above costs within 20 working days of receipt of a relevant invoice save where further information is required or an element of the cost is disputed. Any undisputed element shall be paid accordingly and a disputed part paid on the resolution of that dispute.
8. By Countersignature below Sefton shall confirm its agreement to these terms.

PROCUREMENT OF STRATEGIC DEVELOPMENT PARTNER FOR BUILDING
SCHOOLS FOR THE FUTURE

MEMORANDUM OF UNDERSTANDING

BETWEEN

SEFTON & WIRRAL METROPOLITAN BOROUGH COUNCILS

draft

Background

1. Sefton Metropolitan Borough Council (“Sefton”) and Wirral Metropolitan Borough Council (“Wirral”) (each a “Local Authority” and together the “Local Authorities”) have agreed to work together to procure a strategic partner to deliver their respective Building Schools for the Future projects.
- 2 This Memorandum of Understanding (“**MoU**”) sets out how the Local Authorities will work together during the procurement including evaluation, process governance arrangements and the agreed position with respects to costs.
- 3 Both Local Authorities are committed to this joint procurement (the “**project**”) and are fully committed to the procurement timetable.

Joint working arrangements

- 4 The Project will be led by a project director (see paragraph 7 to 9 below) the “**Project Director**”) and progressed by a joint delivery team (the “**Project Delivery Team**”) with representatives from each Local Authority. The Project Director will be nominated by Sefton as Lead Authority. The joint Project Delivery Team will be based at XXXX in Sefton and support and work with the Project Director. A chart setting out the project management structure is attached at Appendix 1.
- 5 A joint Strategic Project Board has been established with representatives from each Local Authority (the “**Strategic Project Board**”).
- 6 Each Local Authority will be responsible for its own approvals via their respective governance and decision making arrangements.

Project Director

- 7 The Project Director is XXXX. A Deputy Project Director will be nominated and appointed by Wirral (the “**Deputy Project Director**”).
8. The Project Director will be supported by and work with the Project Delivery Team being the single point of contact for bidders throughout the joint procurement.
9. The Project Director will (in consultation with the Deputy Project Director where appropriate and practicable).

matters relating to the Project:

be the principal contact in all dealings with contractors, consultants and other external organisations directly involved in the procurement and provide all related decisions and directions on behalf of the Local Authorities and Consultation with Sefton and Wirral in line with paragraphs (g) and (h) below:

- (c) Be responsible for external press and radio communication:
- (d) be responsible for external communications with organisations such as Partnerships for Schools, Treasury, DCSF and Local Partnerships with the exception of any matter in connection with Wirral’s Readiness to Deliver and any Strategy for Change and Outline Business Case which will be led by the Wirral Deputy Project Director:

- (e) be responsible for the management of information as between Sefton and Wirral to ensure both Local Authorities have all relevant documentation, information and assistance in relation to the procurement (particular at Key Milestones) and be responsible for ensuring that the evaluation team structure accommodates representatives from Sefton and Wirral:
- (f) meet regularly with the Wirral Project Sponsor or Wirral Deputy Sponsor to discuss all matters in connection with the joint project:
- (g) consult jointly with the Project Sponsors and Deputy Sponsors from Sefton and Wirral on matters of policy, direction, finance and content of the Project: and

Where a dispute, conflict or issue arises which cannot be resolved by the Project Director (in consultation with the Deputy Project Director), then the dispute, conflict or issue shall be escalated to the “**Project Sponsors**” (being or the “**Deputy Sponsors**” (to be nominated by Sefton and Wirral). Any unresolved issues will be taken to the joint Strategic Project Board for resolution.

Joint Procurement of a Local Education Partnership

Pre procurement Stage

Strategy for Change

Input required as to requisite level of joint input and working?

Outline Business Case

Input required as to requisite level of joint input and working?

Procurement Stage

Evaluation of Bids

Both Local Authorities will participate in the evaluation and selection of the preferred private sector partner (“**PSP**”)

Each project evaluation sub-group/team will include representatives from Sefton and Wirral. The evaluation structure will be such that each individual sub-group will score and those scores will be recommended to the main evaluation team and Strategic Project Board. All parts of the evaluation including any scoring, selection or deselection will be undertaken in accordance with an agreed evaluation methodology.

Sefton and Wirral will take the recommendations of the Strategic Project Board to their respective Cabinets for approval (delegated as necessary).

Joint Key Milestones

- 13** (a) Wirral input into the preparation, submission approval of Sefton's Strategy for Change
- (b) Wirral input into the preparation, submission approval of Outline Business Case

- (a) issue of the OJEU Notice:
- (b) issue of the Invitation to Participate in Dialogue Part 1 to longlisted bidders:
- (c) issue of the invitation to Continue Dialogue Part 2 to shortlisted bidders:
- (d) any decision to de-select a bidder following stage (c) before moving to stage (e)
- (e) issue of any Invitation to Submit Final Bids to remaining bidders: and
- (f) selection of the PSP.

14 Each Local Authority will confirm to the other at each KEY Milestone in writing that it wishes to continue with joint procurement of the Project.

15 The final Key Milestone will be the selection of the PSP at the end of the dialogue phase of the competitive dialogue procedure.

16 Should either Local Authority not be in a position to proceed with the Project within agreed timescales, or choose not to proceed with the partnership the remaining Local Authority may choose to proceed as a single project subject to procurement advice at that point in time as to whether that approach is viable.

Costs

17 Sefton and Wirral will share BSF joint project procurement costs on a 50:50 basis, Wirral to reimburse the costs incurred by Sefton at each Key Milestone in the procurement process. Sefton and Wirral will agree the process and timing for payment.

18 If Wirral withdraws from the procurement between Key Milestones or following selection of the PSP then (subject to paragraph 21) it will pay its pro rata share of the costs on the basis as set out in Paragraph 17 up to the date of withdrawal (on the basis of the timing of the costs being incurred rather than invoiced).

19 Without prejudice to paragraphs 20 and 21, withdrawal from the procurement by Sefton and Wirral for any reason will not result in any costs additional to those identified in paragraphs 17 and 18 above.

20 If the joint procurement ceases to continue for a reason unconnected with the actions of Sefton and Wirral (such as withdrawal of funding, cessation of the Building Schools for the Future Programme etc) then each Local Authority will bear their own abortive costs and any costs to be apportioned pursuant to paragraph 17 up to the date the joint procurement ceases.

21 Should Sefton decide not to proceed with the procurement in circumstances where Wirral is not then able to proceed with its project at all or without incurring substantial additional costs or should Wirral withdraw from the project and the joint procurement because it cannot accept a fundamental

decision made in relation to the joint procurement, then Sefton and Wirral will negotiate in good faith as to the reimbursement by Sefton to Wirral of any costs Wirral has paid to Sefton pursuant to paragraph 17 above such reimbursement to be such part of the sums so paid by Wirral as is reasonable in all circumstances and in the event of a failure of the Local Authorities to agree the reimbursement then either party may refer to the dispute to an independent arbitrator (who shall be legal counsel of appropriate experience in local authority and procurement work) to be agreed by the Local Authorities or in default of agreement by the President of the Law Society.

- 22 Sefton and Wirral will agree how the LEP Initial Set-Up Costs will be apportioned and how continuous improvement savings will benefit both Local Authorities.

Investment in the LEP

- 23 Subject to the joint procurement progressing as planned, Sefton and Wirral will sign the Strategic Partnering Agreement and intend to invest in the LEP on a 50:50 basis (although any equity or subordinated debt required from the relevant Local Authority into a project company (directly or via the LEP) will be invested by the relevant Local Authority. Two public sector directors will be appointed to the LEP board, one from each local Authority.

Dispute Resolution

- 24 Where a dispute, conflict or issue arises cannot be resolved by the Project delivery Team at Senior Officer level, then the dispute, conflict or issue shall be escalated to the Project Sponsors or the Deputy Sponsors. Any unresolved issues will be taken to the Project Board for resolution.

General

- 24 It is agreed for the purpose of the Contracts (Rights of Third Parties) Act 1999 that this MoU is not intended to, and does not, give to any person who is not a party to this MoU any rights to enforce any provisions contained in this MoU.
- 25 This MoU has been prepared to support Sefton and Wirral working in partnership to deliver the joint procurement outlined. Whilst not legally binding it demonstrates the support for the project from Sefton and Wirral and documents the joint working arrangements to be in place until a PSP is in place.

Signed by:

Signed by:

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Chief Executive
On behalf of Sefton MBC

.....
Chief Executive
On behalf of Wirral MBC

Date: