


Haringey Council

## REPORT TEMPLATE

Agenda item:

[No.]

Procurement Committee On the 19<sup>th</sup> February 2008

<b>Report Title: Amendment to Building Schools for the Future (BSF) Contractor Partner Oversight Protocol</b>	
Forward Plan reference number:	
Report of: <b>Director of the Children &amp; Young People's Service</b>	
Wards affected: <b>All</b>	Report for: <b>Key Decision</b>
<b>1. Purpose</b> 1.1 To propose, after discussion with Legal and Procurement advisors, the most suitable way of adapting oversight protocol agreed by the Committee in June 2007 and the subsequent changes to the Council's constitution.	
<b>2. Introduction by Cabinet Member</b> 2.1 I support this report, which adapts the Committee's decision of June last year to reflect the subsequent constitutional changes. The recommendations provide Members with the right level of involvement, giving transparency without causing delay to the school projects.	
<b>3. Recommendations</b> 3.1 That Members agree to the proposals in section 10 of this report	
Report Authorised by: <sup>PP</sup> <b>Director of the Children &amp; Young People's Service</b>	
Signed:  <b>IAN BATTLE, DEPUTY DIRECTOR.</b>	

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#### **4. Chief Financial Officer Comments**

4.1 The Chief Financial Officer has considered the report and, in light of the Head of Legal Service comments, supports the recommendations included within. It is an important variation to procedure that should be made in the interests of promoting best use of the resources made available to Haringey for Building Schools of the Future.

#### **5. Head of Legal Services Comments**

5.1 This report is seeking an amendment to the Procurement Committee decision of 27<sup>th</sup> June 2007 granting delegated authority to the Director of the Children and Young People's Service in consultation with Cabinet Member to award all "call-off contracts" under the Building Schools for the Future ("BSF") Contractor Partners Framework Agreement exceeding £250k in value.

5.2 The proposed amendment is necessary to bring the procedure previously agreed by the Procurement Committee for the award of the BSF Contractor Partner "call-off contracts" in line with recent changes to the Council's Constitution which now require the award of contracts valued at £500k and above, to be treated as Key Decisions.

5.3 Under the revised Constitution, Key Decisions may only be taken by the Cabinet, a Committee of the Cabinet, or by an individual Cabinet Member to whom power has been delegated by the Cabinet.

5.4 To facilitate compliance with the revised constitution therefore, a new procedure in relation to BSF Contractor Partner "call-off contracts" valued at £500k and above needs to be established.

5.5 The procedure proposed in this report complies with the Council's revised Constitution, and will promote transparency and Member oversight of the procedure for letting "call-off contracts" under the BSF Contractor Partners Framework Agreement whilst providing for the timely decision-making necessary to prevent cost overruns.

5.6 The Head of Legal Services confirms that there are no legal reasons preventing the Procurement Committee from approving the recommendations of paragraph 8 of this report.

#### **6. Head of Procurement Comments**

6.1 The BSF programme requires key and timely decision making in order to minimise potential risk to cost and time of individual schools projects.

6.2 The contract value of BSF projects fall largely within the reduced Forward Plan threshold of £500k.

6.3 The BSF programme must maintain momentum yet fully comply with the need for transparency and Member involvement and scrutiny of decision making, especially at the

stage of contract award.

- 6.4 The scheduled dates for Procurement Committee meetings present a real risk of delay and in acknowledging this risk, Procurement Committee in June 2007 agreed a Delegated Authority procedure - at a time when the Forward Plan threshold was set at £3m.
- 6.5 Subsequent to this decision by Procurement Committee, Council reduced the £3m threshold to £500k and which requires the June 2007 decision to be revisited.
- 6.6 Since the majority of BSF projects will exceed the revised Forward Plan threshold, it is recommended that TWO Members of Procurement Committee are involved in the Delegated Authority decision-making process along with the Director of the Children & Young People's Services.
- 6.7 All Delegated Authority decisions taken under the BSF procedure will be formally reported to the next Procurement Committee.
- 6.8 The Head of Procurement has been fully involved in reviewing the proposed change of Delegated Authority procedure and supports the recommendation now put before Procurement Committee.

## **7. Local Government (Access to Information) Act 1985**

- 7.1 See Part B for exempt information.

## **8. Background**

- 8.1 After considering the transparency, compliance and member involvement in procuring BSF Constructor Partners, the Procurement Committee meeting on 27 June 2007 Members agreed:
- 1) That the award of the call off contracts to contractors for the individual school projects under the Building Schools for the Future Programme be made by the Director of the Children and Young People's Service in consultation with the Cabinet Member for Children and Young People or, in her absence, the Leader of the Council.
  - 2) That approval be granted to the appointment of an additional Councillor to serve on the BSF Programme Board to provide further clarity and oversight into the activities of that Programme.
  - 3) That all decisions taken and progress made in the mini-competitions be reported to the next available meetings of the Procurement Committee.
- 8.2 Subsequently a change in the Council's Constitution, particularly the amount for a procurement to be included on the Council's Forward Plan as a key decision being reduced to £500k, triggered a review of BSF's arrangements.
- 8.3 The Acting Head of Legal Services called a meeting attended by the London Borough of Haringey's (LBH) Principal Lawyer for Partnership & Regeneration, Head of Procurement, Senior Project Lawyer –Corporate and BSF's Programme Director, Programme Manager, Procurement Support Manager and Construction Stream Lead.

8.4 The Corporate Officers were satisfied, on the basis of a thorough review by the BSF team, that

- a) as established last June, the usual process for procurement is not suitable for BSF.
- b) BSF team's processes are well attuned to complying with the Council's requirements and their procurement is undertaken in conjunction and under the direction of the Corporate Procurement Group.
- c) the special governance arrangements for BSF mean that there is Member and Officer supervision, and that the exception proposed would not form a precedent. The BSF Board includes the Councillors, the Chief Executive, the Director of Corporate Resources, the Director of the Children and Young People's Service and the Head of Corporate Finance.

8.5 Their joint recommendation is that the best way forward to reflect the constitutional change would be to recommend that the Procurement Committee adapt their June decision to allow the CYPS Cabinet Member and another Member (who should be a Procurement Committee Member), in consultation with the CYPS Director (as opposed to a Director in consultation with one Member) to award BSF project contracts which exceed the key decision threshold of £500k. They would also receive and decide on reports on any variation to the Indicative Maximum Contract Price (IMP) which occurs before the final contract is let. This may occur for a variety of legitimate reasons and would also require the prior approval of the BSF Board.

8.6 Six monthly progress reports on the overall programme will be made to the EAB and the Programme Director will brief the Leader regularly on the progress of the programme.

8.7 Under arrangements for support to the programme agreed at the last meeting all procurement activity will continue to be undertaken by Council procurement staff (funded by the BSF programme on an agreed basis) and the Head of Procurement, as advisor to this committee, will perform the independent procurement scrutiny role. Procurement staff as required will obtain Legal and Financial advice.

## **9. Financial Implications**

9.1 This report presents adjustments to Haringey Procurement processes to ensure that proper approval for the appointment of contractors for the 12 BSF Projects is secured within timeframes that meet agreed project plans. It has been calculated that the cost of delay on a sample of Wave 2 BSF Projects ranges from £2,000 to £6,000 per day (including inflation and project costs), so timely approval of construction projects within the agreed project plan is important to minimise additional cost impact.

9.2 Each of the BSF Projects is managed within an agreed Cash Limited Budget, and each contractor will be selected from a Framework based on a mini competition process to ensure that the project can be delivered within its Cash Limited Budget.

## **10. Recommendations**

- 10.1 That the Procurement Committee adapt their June decision by delegating decisions on the award of BSF Contractor Partner call-off contracts to the Cabinet Member for Children and Young People's Services (CYPS) and another Member (who should be a Procurement Committee Member) in consultation with the CYPS Director -,as opposed to a Director in consultation with one Member - where the value of the call-off contracts equal or exceed the key decision threshold of £500k .
- 10.2 That the Leader be requested to allocate decisions to award BSF Contractor Partner call off contracts valued at £500k and above to the Cabinet Member CYPS and to the other Cabinet Member from the Procurement Committee in the Forward Plan.
- 10.3 It is suggested that each of the Delegated Authority signatories should nominate a proxy to fulfil this role should they be unavailable.
- 10.4 All reports above £250k in value will contain legal comments (to be provided by Eversheds) confirming that the respective project contracts under the BSF Framework Agreement have been awarded in accordance with the Public Contracts Regulations, 2006.
- 10.5 Following the Delegated Authority signing after a mini competition from the BSF framework, an information report with comments from LBH Legal, Finance and Procurement will be presented at the next available Procurement Committee.
- 10.6 After the Pre-Construction stage is complete in a project (over £250k in value) it is reported to the Delegated Authority signatories with the Agreed Maximum Price (AMP) before the Construction works commences.

## **11. Use of Appendices / Tables / Photographs**

### Appendix A

Haringey BSF Procurement, Award of contract flow.  
(see Page 6)

