




Report Title: <b>Information Report advising the Procurement Committee of the status of the Building Schools for the Future's (BSF) Constructor Partners (CP) Framework.</b>	
Forward Plan reference number (if applicable): <b>N/A</b>	
Report of: <b>Director of the Children &amp; Young People's Service</b>	
Wards(s) affected: <b>All</b>	Report for: <b>Non Key</b>
<b>1. Purpose</b> 1.1 To advise the Procurement Committee of the status of the BSF framework of Constructor Partners.	
<b>2. Introduction by Cabinet Member (if necessary)</b> 2.1 With a strong framework the Council will be able to achieve best value in the mini competitions ensuring as much capital as possible is spent to the benefit of the schools and local communities.	
<b>3. Recommendations</b> 3.1 That the Procurement Committee note progress on the Building Schools for the Future Constructor Partners framework.	
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#### **4. Chief Financial Officer Comments**

4.1 The Chief Financial Officer has been consulted on this report and has no specific comments to make.

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

5.1 The Public Contracts Regulations allows local authorities to enter into framework agreements with contractors and to select contractors for specific projects from the contractors with which it has concluded framework agreements.

5.2 The framework to which this report relates has been advertised in the Official Journal of the EU using the restricted procedure.

5.3 In April 2007 the Procurement Committee had agreed the appointment of six recommended contractors to the BSF Constructor Partners Framework Agreement.

5.4 Five of the Constructor Partners have agreed Terms and Conditions with the Council and have been admitted to the framework.

5.5 The Council is currently awaiting confirmation from Galliford Try that they will sign up to the Terms and Conditions as agreed by the other Constructor Partners.

5.6 The Head of Legal Services notes the content of the report and confirms there are no legal reasons preventing Members from approving the recommendations of this report.

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

6.1 The framework has been carried out in accordance with the EU directives.

6.2 Six contractors were originally appointed of which five have now agreed to the terms and conditions within the framework. This allows the mini competition process to proceed.

6.3 The Client needs to ensure that a risk register is in place for the framework and it is monitored on a regular basis.

6.4 The Head of Procurement therefore states that the framework is adequate to give best value for the Council.

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

7.1 [List background documents]

7.2 [Also list reasons for exemption or confidentiality (if applicable)]

#### **8. Strategic Implications**

- 8.1 The framework has one CP not signed up to the Terms and Conditions, Galiford Try. Galiford Try is able to service the larger contracts and if they signed up to the Terms and Conditions of the framework they would underpin the already competitive tendering process. With the five other CPs signed up there is no concern regarding achieving best value through mini competitions.
- 8.2 Galiford Try is seeking an amendment in the draft collateral warranty agreement between it and the third party beneficiary. The position is that consequential losses are unlimited (uncapped) in the BSF CP framework agreement. Galiford Try wants a cap on it.
- 8.3 The other five CPs accepted the terms with an uncapped consequential loss.

## **9. Financial Implications**

- 9.1 With five Constructor Partners, (Durkan, Breyer, Wilmot Dixon, Balfour Beatty and Apollo) signed up to the terms and conditions of the BSF CP framework, the assessment is that real competition can be achieved through the project mini competitions at the appropriate time.
- 9.2 The five contractors are viewed to be adequate to achieve best value.
- 9.3 With the recent contractual confirmation of Wilmot Dixon and Balfour Beatty, the framework is viewed to be strong in capacity and able to manage the BSF contracts.
- 9.4 The cost of engaging any contractor through the mini competition process is budgeted within the current BSF Project cost plans.

## **10. Legal Implications**

- 10.1 [click here to type]

## **11. Equalities Implications**

- 11.1 [click here to type]

## **12. Consultation**

- 12.1 A meeting between the head of Corporate Procurement, the Principal Lawyer for Partnership & Regeneration, The Programme Director for BSF, The BSF Construction Stream Lead, Eversheds (legal advisors) and BSF Procurement Support Manager took place on the 4<sup>th</sup> march 2008. It was agreed that the five constructors, who accept the terms and conditions of the framework, is completely adequate to serve the BSF programme and achieve best value.

## **13. Background**

- 13.1 The Council formed a framework of constructors to work on the design and build stages of the BSF construction programmes.
- 13.2 The Framework is set up under European legislative guidelines with six suitable tenderers (constructors) invited to join the framework.
- 13.3 Legal advisors, Eversheds, advised on the terms and conditions of the framework. They have encountered several challenges in multiple areas of the overall framework contract (a bespoke form of contract unique to BSF projects and non-industry standard).

13.4 Over the last six months, the concerns have been discussed and negotiated to a position where five contractors out of six have signed and returned the framework agreement.

13.5 With these signatures, the framework is live and BSF is able to conduct mini competitions from it.

#### **14. Conclusion**

14.1 The BSF framework is sufficiently strong to serve the programme of works while achieving best value.

#### **15. Recommendations**

15.1 That the Procurement Committee note progress on the Building Schools for the Future Constructor Partners framework.

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