



Executive
26 May 2009

**Report from the Director of
Children and Families**

Wards Affected:
Preston Ward

**Wembley Park Academy : award of Design & Build (D&B)
contract and entry into a development agreement (DA)
with Ark**

Forward Plan Ref: n/a

Appendices 1 & 2 are not for publication

Appendices 1&2 are not for publication as they contain the following category of exempt information as specified in Paragraph 7, Schedule 12A of the Local Government Act 1972, namely: *“Information relating to the financial or business affairs of any particular person (other than the authority)”*

1.0 Summary

1.1 At their meeting of 15th December 2008 the Executive gave approval, to the draft Final Business Case with authority being delegated to the Director of Children and Families (C&F), in consultation with the Director of Finance and Corporate Resources to approve the final business case for onwards submission to Partnership for Schools (PfS).

1.2 This report updates members on progress since December 2008 and seeks approval to the award of the D&B contract to Willmott Dixon Construction Limited (Willmott Dixon) and the entering into a Development agreement with Ark.

2.0 Recommendations

The Executive are requested to:

2.1 To award the Design and Build contract for the construction of the Academy to Willmott Dixon subject to

2.1.1 Granting of planning permission

2.1.2 Approval of Final Business Case (FBC)

2.2 To enter into the Development Agreement for the construction of the Academy with ARK.

3.0 DETAIL

3.1 General Progress since the Report to Executive on 15th December 2008

Design Development

3.1.1 The design has developed further since the report to Executive in December 2008. A mid design quality indicator (DQI) session has taken place and the conclusion was that the clients (Brent and Ark) were very satisfied with the design. The massing and streamlined nature of the building reflects the number and age of the pupils. The building is simply organised allowing easy access and has strong internal/external relationships. Furthermore the building will add significantly to the urban landscape of the area and signal opportunities for learning for both pupils and the local community.

3.1.2 The scheme has also been reviewed by an independent design challenger Deborah Saunt who is director of award –winning architecture firm DSDHA. Ms Saunt acknowledges the contribution that this building will make to the Wembley Park area.

3.1.3 Subsequently the contractor's proposals (CPs) have been submitted and the designs reflect the requirements of both Brent and Ark as set out in the Authority Requirements (ARs).

3.1.4 The significant change in terms of delivery of the project since December is that due to delays with Planning the complete building cannot now be delivered for September 2010. A sectional completion has now been agreed which will deliver the primary school, and most of the first and second floor of the secondary building plus the sports hall for September 2010. This will enable the school to admit YR and Y7 pupils in the September. This sectional completion has been agreed by the DCSF. The full building will be handed over in December 2010.

3.1.5 It should be noted that the design does not include sprinklers. These were excluded on the understanding that the contractor will deliver a building that meets fire standards in accordance with the School Premises Regulations, the DCSF Constructional Standards, current building regulations, BB100 and any other relevant regulations or building bulletins contained within the Authority's Requirements.

3.1.6 The scheme also does not include provision for a bus layby as the advice received from Transportation was that this is not in fact required in this case in view of the proximity of a bus stop outside Wembley Park station.

3.1.7 The current scheme allows for an adult, floodlit, third generation football pitch and enhanced changing facilities to enable full community use. The additional cost of providing this pitch, a sum of £436k, is outside the funding model and funding is being sought from the Football Foundation.

If this funding is not secured, then the additional cost will be met from Children and Families Capital programme.

3.1.8 The accommodation schedule has been refined and agreed by all parties and forms part of the Final Business Case.

Affordability

3.1.9 The financial information in Appendix 1 indicates that the project is affordable within the funding available.

3.1.10 Navigant, our technical consultants, have assessed the capital costs and it is their view that the overall elemental breakdown appears to offer reasonable value for money.

3.1.11 Navigant has also assessed the Whole Life cost provisions and have concluded that overall the costs presented are within the acceptable range anticipated noting that the FF&E replacement costs are felt to be very high and the Facilities Management costs to be slightly low. Ark has confirmed their commitment to meeting the Life Cycle and hard FM costs.

Selected Panel Member Letter

3.1.12 The Selected Panel Member letter issued to Willmott Dixon at the end of the Invitation to Tender period identified a number of matters to be addressed before financial close. A copy of that letter is included in the FBC, Appendix 2 (see section 2.3) and the status of those matters referred to. Brent officers are satisfied with how those matters have been addressed.

3.2 Submission of FBC

3.2.1 Attached as Appendix 2 is the FBC as submitted. Final approval cannot be given by PfS until planning permission is secured.

3.2.2 The FBC sets out :

- (i) The details of the Local Competition carried out;
- (ii) That the Development Agreement has been agreed and is ready to sign
- (iii) That the scheme is affordable within the funding allocation;
- (iv) That the sponsor has confirmed their commitment to meeting Life Cycle and hard FM costs through the General Annual Grant (GAG).
- (v) That the ongoing ICT costs will be met by the sponsor through the GAG
- (vi) That the Design and Build Contract has been agreed with the contractor
- (vii) That the LA has resources in place for the duration of the project, including post-contract
- (viii) The agreed accommodation schedule
- (ix) The agreed programme of works setting out the sectional completion details.

3.3 Award of Design and Build Contract to Willmott Dixon

3.3.1 At their meeting of 15th December 2008, the Executive received information about the Outline Business Case approval and the Preliminary Invitation to Tender process (PITT). Willmott Dixon were the only tenderer.

3.3.2 Willmott Dixon submitted their contractor's proposals. These have been rigorously assessed by our technical advisers, Navigant, and by Brent and Ark officers. The Contractor's proposals are acceptable, represent value for money and will deliver the educational requirements.

3.3.3 Both Brent and Ark officers can confirm that the design developed supports the education vision and both parties have agreed the content of the Design and Build contract. The form of the Design and Build Contract is stipulated by PfS and amendments to it are only allowed with their agreement. In this case, only minor amendments have been made to the standard template.

3.3.4 The contract has been reviewed and all derogations agreed with PfS. Post contract signature, and in line with the normal process, certain items will require further input before the design, procurement and construction can be completed. These reviewable design data (RDD) items include for example the final selection of FF&E, the layout of the kitchen servery, and the layout of the toilet areas. They are expected not to have a net impact on the educational requirements.

3.3.5 The contract is within the funding allocation of £31.282M as set out in Appendix 1.

3.3.6 Given delays in the planning process the procurement programme has been squeezed so the completion of the whole building is not now achievable for September 2010. However a sectional completion has been agreed which will enable the school to open in September 2010 with its first tranche of secondary aged pupils. The key milestones being aimed for are as follows:

- 3rd September 2010 Completion of the primary school
- 3rd September 2010 Completion of the sports hall
- 3rd September 2010 Handover of ground floor and part of first floor secondary
- 22nd October 2010 handover of remaining secondary
- 10th December 2010 handover of complete site including external works

3.4 Development Agreement with ARK

3.4.1 The Development Agreement is entered into with ARK, simultaneously with the entry into of the Design and Build contract with Willmott Dixon. The Development Agreement commits the Council to take all necessary steps under the Design and Build contract to ensure that the Academy is fully constructed. It also sets out that upon the issue of the First

Certificate of Practical Completion (which as explained above is scheduled to be on the 3 September 2010 when the primary school, sports hall and ground floor and part of first floor of the secondary school are completed) the Council will then grant a licence to ARK to occupy the part of the school which has then been completed. Following completion of the remainder of the school, ARK will then be permitted to occupy the rest of the building and grounds under this licence. A period of 12 months is then allowed for the rectification of any defects which may be identified, and following the carrying out of any rectification which is required, ARK will then be granted a long lease.

3.4.2 As explained in previous reports to the Executive, London Underground Limited are the freehold owners of this site, but entered into an agreement for lease with the Council on 28 April 2008, under which they have agreed to grant a lease of 125 years and 1 day to the Council upon issue of the First Certificate of Practical Completion of the new Academy. This will then enable the Council to grant the licence referred to above to ARK, and then subsequently to grant to them a long lease of the new Academy. The lease will be for the unexpired term of the lease held by the Council from London Underground (in practice it is likely to be 123 years and 6 months or thereabouts).

3.4.3 The form of the Development Agreement and the lease which is annexed to it, are stipulated by Partnerships for Schools and amendments to the documents are permitted only with their agreement. In this case, the only substantial changes from the template documents reflect the sectional completion arrangements and the fact that ARK will receive a lease slightly shorter than the normal 125 year period.

3.5 Management of the Contract

3.5.1 The LA's Project Board, which meets once a month, will continue to support the project. The project management arrangements as outlined in the OBC will remain in place.

3.5.2 Monthly progress meetings with Willmott Dixon and their relevant supply chain members will take place with the local authority and the Academy. Willmott Dixon will be required to provide detailed progress update reports to these meetings, including all aspects of the construction phase progress, programme and critical pathway, financial, Health & Safety updates and any other project issues as required.

3.5.3 Willmott Dixon will be required to hold a minimum weekly meeting with the Local Authority and/or the Academy client representatives to discuss programmed work plans, and any site specific issues for the forth coming works schedule.

3.5.4 An agreed change control process will be put in place to identify clear lines of responsibility and authority. All proposed amendments to the Contractor Proposals will need to be authorised directly by the Local Authority's Project Manager, to ensure that cost, material specification and quality can be effectively managed throughout the life cycle of the construction phase

Planning

- 3.6 The Council's Planning Committee met on 28th April 2009 and resolved to grant planning permission subject to referral to the Government Office for London and the Mayor of London (at the time of drafting this report the formal outcome of those referrals is still awaited) and subject to a satisfactory Section 106 or other legal agreement. In particular, the Committee stipulated that measures to secure sustainability and to achieve a minimum BREEAM Very Good rating should be required. It also required certain highway works to be carried out. These particular requirements will be implemented through the Design and Build Contract.
- 3.7. To secure the approval of Transport for London to the scheme the Council has had to commit to funding a contribution of up to £420k towards additional bus capacity. This payment will be subject to verification to the Council's reasonable satisfaction, that additional bus capacity is needed to transport pupils from the south of the borough to the Academy.
- 3.8 A number of planning conditions need to be discharged before commencement on site. These include planning condition 15, which requires the surface water drainage scheme to be approved by the Environment Agency (EA). Any revisions to the scheme required by the EA, fall within the responsibility of the contractor to implement at his cost. The current drainage plans have been approved by LUL but any revisions would need to be further approved by LUL, but this cannot be unreasonably withheld or delayed.

Risk Review

- 3.9 Risk has been managed throughout the project and a workshop has been held at each stage of the project. The top 10 risk assessments within this scheme are attached as Appendix 7 to the FBC.
- 3.10 A start on site was programmed for the 18 May. Given that full planning permission is yet to be secured the programme will need to be reviewed and the costs, which will be maintained within the FAM.

4.0 Financial Implications

Meeting the Construction Costs:

- 4.1 The funding for the construction work and associated costs are allocated through the Funding Allocation Model (FAM) by PfS on behalf of the DCSF. This is based on rates agreed between the PfS and a panel of six contractors on a National Framework.
- 4.2 The FAM allocated to Brent for the D&B contract is £31,282,406.
- 4.3 A breakdown of costs is set out in Appendix 1.
- 4.4 The £31.282m construction cost does not allow for a full size third generation football pitch. This has been costed by the contractor at 436k. The Council will be applying to the Football Foundation for this additional funding. If this funding is not secured then the contract sum allows for the junior grass pitch to be

replaced a by an all weather pitch. The application for funding cannot be made until planning permission is secured.

- 4.5 Under the D&B contract cost risk is largely transferred to the contractor. Potential additional costs that may fall to the Council relate largely to matters external to the site which may emerge from the implementation of planning conditions. However a sum of 100k has been earmarked within the contract to deal with such matters. These include the improvement to highways work as follows – implementation of a cycleway along the southern footway of Forty Avenue to connect the site to Brooke Avenue; to resiting of the CCTV camera at the junction of Forty Avenue and Bridge Road; minor amendments to the pelican crossing outside Wembley Park station; minor improvements to the footways surfacing along Forty Avenue.
- 4.6 As noted in paragraph 3.7 above there is a potential cost to Brent of £420k as a contribution towards additional bus capacity. This would be over a 3 year period commencing September 2012 and the cost would be met from Children and Families revenue budget.

Delivering the Project

- 4.7 During the development phase in 2007 / 2008 the Council was awarded £300K within the FAM by PfS towards its costs to develop the Academy proposals.
- 4.8 Within the “Performance and Finance Review – Quarter 2 2008/09 Report”, Executive was advised that the additional costs to the Council of managing, delivering and supporting the project would be £300K based on information from other local authorities. These additional costs are to be met from elsewhere in the Children and Families Capital Programme.
- 4.9 The total project support costs of the development of the scheme to the end of latent defects is estimated as £1m. Committee Expenditure so far is estimated at £500k.
- 4.10 The balance of £400k is to be sourced from C&F’s overall capital budget.

5.0 Legal Implications

- 5.1 The Design and Build Contract has been procured using a national framework agreement set up by Partnerships for Schools (“PfS”). The Public Procurement Regulations 2006 allow public bodies to set up framework agreements and prescribe rules and controls for their procurement.
- 5.2 Contracts can be called off under such framework agreements without the need for them to be separately advertised and procured through a full EU process. However, the call off process is itself quite heavily regulated. Legal Services has been involved in advising officers throughout on adherence to the rules contained in the Regulations and on the rules of the process established by PfS.
- 5.3 The call off contract is also subject to the Council’s own Standing Orders in respect of High Value contracts and Brent’s Financial Regulations. The Council’s Contract Standing Orders state that no formal tendering procedures apply where contracts are called off under a Framework Agreement

established by another contracting authority, where call off under the Framework Agreement is recommended by the relevant Chief Officer. However, this is subject to the Borough Solicitor advising that participation in the Framework Agreement is legally permissible and approval to participate in the Framework being obtained from the Director of Finance and Corporate Resources. The Borough Solicitor's office has confirmed that participation in the PfS national framework is legally permissible.

5.4 On 11 February 2008, the Executive gave its approval to the procurement route for the Wembley Park Academy and to the criteria to be used to shortlist tenderers and evaluate tenders. The same Executive meeting further authorised the Director of Children and Families Services, in consultation with the Borough Solicitor, to agree the selection of the preferred bidder for the Design and Build Contract following evaluation of tenders. Having considered all relevant matters, the Director made the decision to appoint Willmott Dixon as Preferred Bidder on 27 November 2008 and a copy of the Director's decision is appended to this report at Appendix 3.

5.5 The implications of entry into of the Design and Build Contract and the Development Agreement are explained in the body of the report.

6.0 Diversity Implications

6.1 Diversity implications were set out in the July 2007 report and the January 2007 Equality Impact Assessment.

6.2 Children and Families Service has successfully implemented large school projects ensuring that the diverse community is able to engage with the Council, is able to obtain relevant and appropriate information from the Council and has been able to influence both the process and the outcomes.

7.0 Staffing Issues

7.1 As the Academy is its own employer it will be responsible for the pension provision of the Teachers who should have access to the Teachers' Pensions Scheme. The Academy will send its returns directly to Teachers' Pensions with no Brent involvement.

8.0 Background Papers

- i) Executive report of 15 December 2008
- ii) Correspondence with PfS, Ark etc
- iii) Planning Application
- iv) Proposed Design and Build Contract
- v) Proposed Development Agreement

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