



**Executive
11 April 2011**

**Report from the Director of
Legal and Procurement**

For Action

Wards Affected:
ALL

Crest Academies

REASON FOR URGENCY:

The minutes need to be formally corrected to reflect the agreement given at the meeting as there is an urgent need to implement decisions taken.

1.0 Summary

A report was submitted to the Executive on 15 February 2010 updating on progress in establishing the Crest Boys' Academy and The Crest Girls' Academy in new accommodation and seeking approval to proceed with the submission of the Outline Business Case (OBC) for the construction of new buildings to Partnerships for Schools (PfS) and the Department of Children and Families (DCSF). It also informed the Executive of the approach to engaging the Overall Project Manager (OPM) and the Technical Advisors.

The recommendations in the report were split down into a number of sections namely the OBC submission, procurement construction and consultants and the council financial contribution to the development and delivery of the scheme. The Executive agreed all the recommendations but unfortunately only those relating to the OBC were included in the minutes. Members are now asked to record agreement to the previously agreed recommendations, subject to an amendment to allow delegation to the Director of Regeneration and Major Projects in place of the Director of Children and Families to select the preferred bidder for the Design and Build contract.

Recommendations:

- (i) that Members note that the minutes of the meeting of 15th February (attached) do not include all the decisions of the Executive in relation to the report "Crest Academies: the Next Steps including procurement and submission of Outline Business Case)" (attached)
- (ii) That Members formally record their agreement to the following matters as previously agreed (subject to minor amendment to allow delegation to the

Director of Regeneration and Major Projects instead of Director of Children and Families)

- (iii) that approval be given to:

Procurement: Construction

- 2.1 Give approval to the procurement route using the National Framework for the construction of the Crest Academies and the criteria to be used to shortlist tenderers and evaluate tenders as set out in paragraph 6.6 of the report.
- 2.2 Give approval, subject to PfS approving the OBC, invite expressions of interest, selecting a shortlist of two bidders and invite tenders for the construction of the Crest Academies and evaluating them in accordance with the approved evaluation criteria referred to in 2.1 above.
- 2.3 Authorise the Director of **Regeneration and Major Projects**, in consultation with the Borough Solicitor to agree the selection of the preferred bidder for the Design and Build Contract following evaluation of the tenders.

Procurement: Consultants

- 2.4 Agree that for the reasons set out in paragraphs 5.13 to 5.15 in the context of the Not for publication details in Appendix 6 to this report, there are good financial and operational reasons to appoint an Overall Project Manager (OPM) through to FBC of the Academies' newbuild without seeking quotes in accordance with the Council's Standing Orders.
- 2.5 Note that officers will appoint Technical Advisors (TA) to support the Academy Project as noted in paragraph 5.16.
- 2.6 To note the risks of the scheme and the proposals set out for managing the risks (see Appendix 7).

Council Financial Contribution to the Development and Delivery of The Scheme

- 2.7 Agree, against the context set out in paragraphs 8.3 to 8.6 to allocate £1.6M from the existing provision of £5M in the Capital Investment Plan to secure the delivery of the Academies and the corresponding new buildings.



LONDON BOROUGH OF BRENT

MINUTES OF THE EXECUTIVE Monday, 15 February 2010 at 7.00 pm

EXTRACT

PRESENT: Councillor Lorber (Chair), Councillor Blackman (Vice-Chair) and Councillors Allie, Colwill, Detre, Matthews, Sneddon, Van Colle and Wharton

APOLOGIES: Councillors D Brown

ALSO PRESENT: Councillors HB Patel

1. Crest Boys and Girls Academies

The report from the Director of Children and Families updated the Executive on the progress in establishing the Crest Boys' Academy and The Crest Girls' Academy in new accommodation and sought approval to proceed with the submission of the Outline Business Case for the construction of new buildings to Partnerships for Schools and the Department of Children and Families. It also informed Executive of the approach to engaging the overall project manager and the technical advisors.

Councillor Wharton (Lead Member, Children and Families) referred to the meeting of the Executive in July 2009 where, after an extensive debate, the decision was taken to proceed with the scheme to rebuild John Kelly Boys' and Girls' Technology Colleges on the existing site. A feasibility study had showed that the rebuild could take place on the existing site, without the need to purchase adjacent land, leaving more open space than currently available. Moreover, the first phase could be built without the need for demolition, reducing the need for temporary buildings the cost of which it was hoped would be met from government funding.

The Executive also had before them appendices to the report which were not for publication as they contained the following category of exempt information as specified in Schedule 12 of the Local Government (Access to Information Act) 1972:


"Information relating to the financial or business affairs of any particular person (including the authority holding that information)."

RESOLVED:-

- (i) that the Director of Finance and the Director of Children and Families be authorised to submit the Outline Business Case to Partnerships for Schools in the form set out in Appendix 1 to the report from the Director of Children and Families with the detailed content completed by the Director of Children and Families, subject to the FAM allocation being increased to meet the

Council's estimate of costs as set out in Appendix 5 or the Director of Finance being satisfied that any costs over and above the FAM allocation can be met from an existing capital budget and upon approval to commence procurement via the PfS National Framework;

- (ii) that the Section 151 Officer be authorised to complete and issue the letter confirming the affordability of the scheme, subject to the FAM allocation being increased or the Director of Finance being satisfied as set out in paragraph 2.1 template attached as Appendix 4 to the Director's report;
- (iii) that the local authority's commitment to the project as set out in Appendix 2 to the Director's report be confirmed and approved given to the signing of the Memorandum of Understanding in the form set out in Appendix 3 or with such amendments as the Director of Children and Families, in consultation with the Borough Solicitor, considers to be appropriate.

	<p style="text-align: center;">Executive 15 February 2010</p> <p style="text-align: center;">Report from the Director of Children and Families</p>
<p style="text-align: right;">Wards Affected: All</p>	
<p>Crest Academies: the next steps including procurement and submission of Outline Business Case (OBC)</p>	

Forward Plan Ref: C&F-09/10-017

APPENDICES 5 AND 6 ARE NOT FOR PUBLICATION

1.0 Summary

- 1.1 The report updates the Executive on the progress in establishing the Crest Boys' Academy and The Crest Girls' Academy in new accommodation and seeks its approval to proceed with the submission of the Outline Business Case (OBC) for the construction of new buildings to Partnerships for Schools (PfS) and the Department of Children and Families (DCSF). It also informs Executive of the approach to engaging the Overall Project Manager (OPM) and the Technical Advisors.
- 1.2 At its meeting on 14 July 2009 the Executive agreed to proceed with the scheme to rebuild John Kelly Boys' and Girls' Technology Colleges (now known as Crest Boys' Academy and Crest Girls' Academy) on the existing site (the scheme). It also approved the release of some of the £5m Capital Investment Plan funding that had been earmarked for land acquisition and instructed officers to investigate the feasibility of clearing/making level or stepping the underutilised southern part of the site leading into Dollis Hill Lane so as to provide suitable land for the schools expansion, each by one Form of Entry (1FE) and a second access route (pedestrian and vehicular) to the site from the Dollis Hill.
- 1.3 Since July 2009 substantial progress has been made by officers, working in partnership with the key stakeholders: the Sponsor Edutrust Academies

Charitable Trust (EACT) and the two Academies (including pupils as key stakeholders) to develop the Outline Business case (OBC) for the development and construction of new buildings. The attention of the Executive is drawn to the following key strands of work:

- (i) consideration of options for the arrangement of the permanent accommodation on the site as part of the Outline Business Case (OBC);
- (ii) consideration of the options for temporary accommodation required whilst the permanent accommodation is rebuilt
- (iii) consideration of the planning implications of the new accommodation
- (iv) consideration of the affordability of the new proposals
- (v) school organisation, curriculum planning and maintenance/improvement of standards
- (vi) the potential change of location of a Children's Centre from Cricklewood to the Crest site.

The good progress made on each of these strands is set out in the main body of the report. Officers have reviewed lessons from the development and delivery start up of ARK Academy, which has been viewed positively by PfS, and those have informed the approach to developing and delivering Crest Academies and other large projects. Officers and consultants have developed a positive working relationship with PfS who commented to that effect in their approval of the OBC for the Ark Academy which was commended as excellent.

- 1.4 Whilst the new build of the Academies is funded by the DCSF, as set out in Appendix 5, the Executive is being recommended to agree that the Council earmarks a contribution to the scheme from its Capital Investment Plan at the level of £1.6m as set out in Paragraphs 8.3 to 8.7 without which the scheme cannot be delivered in line with the Expression of Interest agreed between the Secretary of State and the Council.

2.0 Recommendations

The Executive are requested to agree to;

OBC Submission

- 2.7 Authorise the Director of Finance and the Director of Children and Families to submit the OBC to PfS in the form set out in Appendix 1 with the detailed content completed by the Director of Children and Families, subject to the FAM allocation being increased to meet the Council's estimate of costs as set out in Appendix 5 or the Director of Finance being satisfied that any costs over and above the FAM allocation can be met from an existing capital budget and upon approval to commence procurement via the PfS National Framework.
- 2.8 Authorise the Section 151 Officer to complete and issue the letter confirming the affordability of the scheme, subject to the FAM allocation being increased or the Director of Finance being satisfied as set out in paragraph 2.1 Template attached as Appendix 4.

- 2.9 Confirm the LA's commitment to the project as set out in Appendix 2 and agree to the signing of the Memorandum of Understanding in the form set out in Appendix 3 or with such amendments as the Director of Children and Families, in consultation with the Borough Solicitor, considers to be appropriate.

Procurement: Construction

- 2.10 Give approval to the procurement route [Using the National Framework] for the construction of the Crest Academies and the criteria to be used to shortlist tenderers and evaluate tenders as set out in paragraph 6.6 of the report.
- 2.11 Give approval, subject to PfS approving the OBC, invite expressions of interest, selecting a shortlist of two bidders and invite tenders for the construction of the Crest Academies and evaluating them in accordance with the approved evaluation criteria referred to in 2.4 above.
- 2.12 Authorise the Director of Children and Families, in consultation with the Borough Solicitor to agree the selection of the preferred bidder for the Design and Build Contract following evaluation of the tenders.

Procurement: Consultants

- 2.13 Agree that for the reasons set out in paragraphs 5.13 to 5.15 in the context of the Not for publication details in Appendix 6 to this report, there are good financial and operational reasons to appoint an Overall Project Manager (OPM) through to FBC of the Academies' newbuild without seeking quotes in accordance with the Council's Standing Orders.
- 2.14 Note that officers will appoint Technical Advisors (TA) to support the Academy Project as noted in paragraph 5.16.
- 2.15 To note the risks of the scheme and the proposals set out for managing the risks (see Appendix 7).

Council Financial Contribution to the Development and Delivery of The Scheme

- 2.10 Agree, against the context set out in paragraphs 8.3 to 8.6 to allocate £1.6M from the existing provision of £5M in the Capital Investment Plan to secure the delivery of the Academies and the corresponding new buildings.

3.0 Background

- 3.1 This scheme is to re-build two Academies: The Crest Girl's Academy (formerly John Kelly Girls Technology College) and The Crest Boy's Academy (formerly John Kelly Boys Technology College). Both schools were established as Academies on 1 September 2009 in their respective former school premises. Both schools share the same site.
- 3.2 The scheme is to demolish both schools and rebuild them on the existing site. Although they will be rebuilt as independent schools they will share the same campus and will co-operate to provide excellent educational opportunities for all pupils. This co-operation will be particularly close at post 16 with shared post 16 opportunities.
- 3.3 It is agreed that the Academies are expanded by one form of entry (1FE), upon delivery of new buildings, with effect from 1 September 2012, to meet the continuing increase in demand for school places in the borough. This expansion would therefore be linked to the availability of new build accommodation subject to the approval of the Outline Business Case by the Secretary of State.
- 3.4 When re-built the Girls' Academy will be 6FE (900 11-16 pupils) entry with 200 post 16 places. The Boys' Academy will be 5FE (750 11-16 pupils) and 200 post 16 places. There will therefore be 400 post 16 places across the two Academies with dedicated post 16 accommodations.
- 3.5 Pending the rebuild, the Authority has secured £320K to improve the learning environment in the predecessor school buildings. This work, including improvements to toilet areas, dining areas, ICT infrastructure and external landscaping was completed in September 2009 and served to enforce the joint stakeholders' commitment to enhance the existing school buildings and raising school standards.
- 3.6 The Girls' Academy has Languages as its first specialism with Technology as a second specialism. The Academy, by using the two specialisms as a driver for academic and personal improvement, will give priority to the development of literacy, closely adapted to meet individual diagnosed need. The Boys' Academy has Mathematics as its first specialism with Technology as its second specialism. The Academy, by using the two specialisms as a driver for academic and personal improvement, will give priority to the development of numeracy and enterprise closely adapted to meet individual diagnosed need.
- 3.7 The Lead Sponsor for both academies is Edutrust Academies Charitable Trust (EACT) with the co-sponsor being Brunel University. Under the EACT umbrella, each Academy is a separate charity, with its own Board of Governors.
- 3.8 A four year lease between the Council and EACT dated 4 September 2009 is in place to enable the operation of the Academies pending redevelopment of the schools.

4.0 Feasibility Study

- 4.1 Following the Executive report in July 2009 MACE (who are on the Brent Framework) were appointed as technical consultants to produce a feasibility report on the rebuilding of the two academies on the existing site. Its' purpose and therefore the brief was to ensure that education delivery could be maintained on the site whilst the new build takes place within the existing site perimeter. MACE have carried out an options appraisal in consultation with the Design User Group (DUG) which includes representation from the key stakeholders: LBB, EACT and the two schools. Students' views have also been harnessed. The DUG's role is as guardian of the sponsor's educational vision for the Academies and has key responsibility for ensuring the design proposals are within the agreed funding envelope. The DUG has signed off its preferred option.
- 4.2 Although it is a tight site, the preferred option demonstrates that the two schools can now be re-built on the existing site without the need for additional land. However to make the scheme work a new vehicular access will need to be created from Dollis Hill. Given the tightness of the site it will be also necessary to make use of Gladstone Park for some sports activities which is currently used by both schools. It is not anticipated that any such arrangements will impede public access to the park.
- 4.3 The preferred option will also enable pupils to remain on site during the build programme. This will require additional temporary accommodation during the proposed 3 phases of build.
- 4.4 In addition to the main scheme there is potential to include a Brent led new Children's Centre. The Children's Centre is a LA wide initiative which cannot be funded from within the FAM funding regime and the costs therefore have to be met from within the LA's resources (see paragraph 8.4 on resources required from the LA).
- 4.5 In developing the preferred option the potential to re-locate the proposed phase 3 Children's Centre from Cricklewood to the Crest site has been explored. Delivering the Centre on the Cricklewood site is proving problematic with site and associated budget difficulties. Whether it can be re-located to the Crest site is still under consideration but its proposed siting has been included in the masterplanning for the site. Officers are exploring with DCSF the potential to join up funding regimes to make this possible. The Children's Centre will be funded from Sure Start grant via the Council.
- 4.6 The existing site accommodates a number of buildings on it such that the space is inefficiently deployed or used. The new proposed massing of the new building, making optimum use of the topography of the site will make better use of the site thus providing improved external, social, formal and informal spacing.

5.0 Outline Business Case (OBC) – Key Issues and Cost Estimates

- 5.1 The OBC is carried out within a predetermined format set out by the DCSF for which the template is attached as Appendix 1. It incorporates the feasibility study for the scheme and outlines the options appraisal, cost estimates, affordability assessment and procurement strategy for the schools in sufficient detail to allow capital funding to be confirmed and gain approval to proceed, from the DCSF, with the delivery of the scheme via the PfS Framework Panel Members. Once the OBC is approved the capital funding is finalised and capped – after which there will be no more funding allocated to the project. At that juncture, if the Academy proposals are implemented, the responsibility for delivering the newly built Academy within the defined resources and time schedule fully transfers to the Council.
- 5.2 The key conclusions of the feasibility study are:
- 5.2.1 The site area is below DCSF guidance for schools of this size, but the proposed schools can be accommodated on the existing site;
 - 5.2.2 It is possible for pupils to remain on site whilst the build takes place. This will require re-location of existing temporary accommodation as well as additional new temporary accommodation.
 - 5.2.3 A new vehicular and pedestrian access will be required from Dollis Hill which can be developed;
 - 5.2.4 Given the tight site, some sports activities will need to be off site in Gladstone Park.
 - 5.2.5 The scheme (this excludes the potential Children's Centre) is affordable within the current funding envelope of £39.35M (plus, to be agreed increase in abnormals to cover temporary accommodation required).
 - 5.2.6 The first Academy(Crest Boys') can be delivered for September 2012 but the timetable is challenging and dependent upon key decisions being made on time;
 - 5.2.7 The site surveys have revealed nothing substantial that would inhibit the development of the proposed Academies on this site.
- 5.3 The procurement of the Academy will be delivered within a National Framework for building contractors set up by PfS. This Framework will deliver high quality, sustainable, design and construction standards and will provide value for money. This is the same Framework as is being used to deliver the Ark Academy.
- 5.4 EACT and the LA must confirm their commitment to working together to procure the design and construction of the new Academies using the PfS National Framework (already set out at the EoI stage) and confirm that they will

follow established PfS procedures and utilise the standard suite of documents for procurement. This includes the use of the National Framework Development Agreement and Design and Build Contracts. It is essential to the lawful use of the framework that the LA does not amend the Design and Build contract other than for specific project reasons and where indicated in the Design and Build Contract. Both parties need to have satisfied themselves with the terms and conditions within these documents.

- 5.5 The draft letter of commitment is attached as Appendix 2. The LA's commitment includes a signed Memorandum of Understanding (MOU) (attached as Appendix 3). Subject to the Executive's agreement to the recommendations set out in this report and, in consultation with the Borough Solicitor, amendments to the MOU will be negotiated with PfS. The MOU is made between PfS and the LA and establishes the parties' respective obligations and commitments to each other. It is not intended to be legally binding except as specified. (See paras 6, 7, 8 and 9 of the MOU)

Pre-Construction Programme of Work

- 5.6 A detailed programme of work has been developed based on the guidance issued by PfS. The key milestones from the programme are detailed in the table below:

<i>Milestone</i>	<i>Date</i>
<i>DCSF/PfS Approval of OBC</i>	<i>March 2010</i>
<i>Issue PITT to Framework Panel Members</i>	<i>March 2010</i>
<i>Receive PITT Submissions</i>	<i>April 2010</i>
<i>Announce short listed bidders</i>	<i>April 2010</i>
<i>Issue ITT to Bidders</i>	<i>May 2010</i>
<i>Receive ITT Submissions</i>	<i>August 2010</i>
<i>Announce Preferred Bidder</i>	<i>October 2010</i>
<i>DCSF/PfS Approval of FBC</i>	<i>February 2011</i>
<i>Award Design and Build for both schools</i>	<i>February 2011</i>

Once the scheme has been given approval to proceed by PfS, the Framework User(Brent LA) writes to all the Panel Members(contractors) inviting them to take part in the Local Competition. Accompanying the invitation the Preliminary Invitation to Tender documents are issued (PITT). The purpose of the PITT is to select a shortlist of two Panel Members.

The Invitation to Tender (ITT) documents are then released and two shortlisted Panel Members are then given an average of three months to develop their bids. The scheme is developed in line with the funding envelope and the Authority's Requirements. This is a critical period in the development of the project and requires intensive support from the LA and sponsor to ensure that the options developed meet the educational vision for the Academies. It is essential that the LA provides adequate educational and technical project management during this phase of the project. The ITT bids are evaluated and the preferred bidder chosen.

Between selection and contract award the Preferred Bidder is expected to finalise the designs and submit contractor's proposals. During this period the LA prepares the Final Business Case (FBC).

The contractors' costs are at their own risk during the whole process.

PfS estimates the process from OBC approval to contract award to take around 44 weeks and the above programme assumes that timetable.

Members should note that the experience on the Ark Academy project was that the time required to develop the ITT and FBC exceeded the illustrative timescale by approximately 4 months. Although in the case of the Ark Academy through tight project management, the project is still on programme to be delivered to the forecast date, members need to be aware that the ITT/FBC stages could take longer than illustrated above.

- 5.7 The Executive will note that the programme is tight and the risk of slippage against timelines is high; the risks can better be monitored if key decisions are made on time. The project management structure and reporting/monitoring mechanisms put in place for the Ark Academy were successful and it is proposed to put in place a similar arrangement for this project. The Council will set up a cross departmental Project Board which will receive regular reports from the Overall Project Manager (Appendix 6).

Design and Construction

- 5.8 A robust and thorough options appraisal has been carried out to determine that both academies can be built on the site which meets the requirements of Building Bulletins 98 and 77. As part of the OBC the LA will need to confirm that they own the land upon which the Academy will be built and that there are no encumbrances, restrictive covenants that would place the development and operation of the Academy at risk.

The whole of the site vested in the Council on 1 September 2009 following the closure of John Kelly Boys' and Girls' schools and the dissolution of the Board of Governors and the reopening of these schools as Academies. Accordingly this point can be met.

- 5.9 Surveys and site investigations have been carried out and the results fed into the costings for the scheme.

Affordability

- 5.10 The table in the confidential Appendix 5 sets out the allocated funding from the DCSF/PfS, including the abnormal funding. It also sets out the estimated construction costs, including abnormals.
- 5.11 The cost of the works to create a new internal road from Dollis Hill are included within the FAM. Any highways works associated with this new road that are external to the site boundary will need to be met by the Council. See paragraph 8.3 below.
- 5.12 The main reason for the cost variance, set out in Appendix 5, is the provision of temporary accommodation for the pupils to enable them to remain on site whilst construction takes place. PfS have yet to agree to fund these additional abnormal costs. Until this is resolved to the satisfaction of the Director of Finance the OBC will not be submitted and the affordability letter signed (attached as Appendix 4). If this matter is not resolved then there will be a further report back to the Executive.

Readiness to Deliver

Development Phase and Construction

- 5.13 As part of the OBC and test of the Council's readiness to deliver, the LA has to confirm it has established and maintained a fully resourced project management regime for the successful development and delivery of the scheme. It is expected that this team includes a range of disciplines including a Project Manager and Technical Advisers (to include different specialisms). Taking account of the One Council programme and the responsibilities for schemes in the construction phase to be taken forward by a corporate team the LA will establish project management governance for the successful delivery of the scheme as it has done for the Ark Academy scheme. This will be for the duration of the project, including development, pre-contract and post contract, to monitor and maintain ongoing relations with the framework panel member (D&B) contractor and to ensure that performance is continually reviewed. The resources required to deliver the Ark Academy scheme which included costs for the project management regime (including Technical Advisers, Project Manager, legal costs and other specialist advice likely to be required from time to time), are estimated to be in the order of £735-920K. For this scheme, given it is for two Academies over a longer programme, the resource required is estimated to be in the order of £1.5M.
- 5.14 It is proposed to appoint the current Overall Project Manager for the duration of the development phase of the project. They have developed substantial knowledge and background around the project, have established effective relationships with various Council Departments, partner agencies including central government departments and will therefore be able to give high quality

progression to the remainder of this project seamlessly and without the need to revisit ground already covered. In addition, the (*per diem*) fee level negotiated with the proposed Project Manager is certainly no higher than the average consultancy rates and is indeed considered to be below the daily average rate for this type of work. The detail is set out in the Not for Publication Appendix 6. In the event that the LA seeks to invite competitive bids, it is likely that delays will be introduced into the timeline and the currently negotiated fee rates (deemed to be favourable to the Council) from the proposed project manager will no longer apply. In the unlikely event that someone else is able to submit a lower fee rate and are able to show the credentials comparable to the current project manager now being proposed for appointment for the duration of this project, it is likely that they will still need time to gather sufficient knowledge about this scheme and establish communication links for the better performance of the project.

- 5.15 There are therefore good financial, operational and efficiency grounds for appointing the project manager currently managing the OBC phase of this proposed Academy through to FBC.
- 5.16 It is proposed to appoint the Technical Advisor for this scheme from the Council's Property Services Framework.

Risk Management

- 5.17 As part of the OBC, a review has been undertaken of high level project-related "Top Ten" risks to the scheme. This is included as Appendix 7. The Appendix also sets out measures identified and that can be put in place to manage and mitigate the impact of those risks.
- 5.18 Notwithstanding the identification of the top ten risks, in Appendix 7, and the transfer of risk to the contractors (note: when the Design and Build contract is signed at RIBA Stage D the contractor will shoulder the risk for inflation, programme, adverse weather, unforeseen ground conditions, protesters, change of law etc.) there are risks associated with maintaining the scheme to budget which fall to the LA. These include :
- The cost plan assumes a start on site in February 2011. If slippage occurs, then there will be an inflationary impact on available resources which may need to be borne by the LA depending on the reason for the delay. It is therefore integral to the risk management process that the LA is able to make decisions on time, convey instructions to the preferred contractor;

Changes to the design brief can also impact on cost. It is therefore critical that at the point at which the PITT is issued (see programme above 5.6) any development of the brief takes place in consultation with both the technical advisers to the LA and the bidders in the competition and eventually the preferred bidder. Once the contract is issued the LA will not change the brief unless the change is cost neutral.

- As the contract is between the LA and the contractor, the LA will control the budget. The LA will therefore be able to take remedial action to bring the scheme in on budget should that be necessary. In hitherto unforeseeable circumstances (“force majeure”) and notwithstanding the good management of the scheme by the LA, the LA can discuss the consequential costs with PfS.

6.0 Procurement Process

6.1 As stated at paragraph 5.4 the LA must confirm its commitment to using the PfS National Framework for the procurement of the Academies when submitting the OBC. The National Framework was retendered by PfS in 2009 and accordingly is different to that used by the council for the Ark Academy. The LA will lead a Local Competition which involves the LA taking the following steps:

- inviting all Panel Members to confirm if it is their intention to bid
- selecting a short list of two bidders;
- working with two bidders to develop proposals for the Academies;
- evaluating the proposals and selecting a Preferred Bidder;
- finalising designs and the agreement to be entered into;
- preparing a Final Business Case (FBC) and securing DCSF approval for funds to be released; and
- reaching Contract Award and starting work on site

6.2 The National Framework is a panel of contractors which has been set up by the PfS specifically to build Academies for local authorities which are not part of the BSF programme. The panel was set up following an EU compliant procurement process and alleviates the need for individual Local Authorities to carry out their own EU procurement process. The National Framework requires that a local competition, involving all panel members, be held by the Local Authority to determine which of the panel members will be awarded the contract for construction of the Academies. This Framework will deliver high quality, sustainable, design and construction standards and will provide value for money.

6.3 Council Standing Orders require the approval of the use of this National Framework Agreement by the Borough Solicitor and the Director of Finance and Corporate Services. Both Chief Officers have confirmed such approval. The Borough Solicitor’s Office is currently undertaking a review of the framework.

6.4 In parallel with the work to complete the OBC, the LA Project Team has been developing the documents required for the local competition process. Once the OBC is signed the contractors on the National Framework will be issued with the following documents:

- Preliminary Invitation to Tender (PITT); and
- Draft Invitation to Tender (ITT)

- 6.5 The LA will be supported through the Local Competition by a Project Director from PfS. The Project Lead from DCSF Academy Division will work with the Sponsor and the LA through the development process.
- 6.6 The detail of the procurement process is set out in the table below.

Ref.	Requirement	Response
(i)	The nature of the contract	Design and Build (works) contract for the construction of the Crest Boys' and Crest Girls' Academies
(ii)	The estimated value of Contract.	£39.35m(plus agreed abnormals) This is subject to certain assumptions that are laid out in the Elemental Cost Plan as submitted to the Authority by its technical advisers
(iii)	The contract term.	Commencement date: January 2011 Construction Starts: February 2011 First Academy built: September 2012 Contract Term: 36 months.
(iv)	The tender procedure to be adopted including whether any part of the procedure will be conducted by electronic means and whether there will be an e-auction.	Call off from the PfS National Framework Agreement via a local competition. The LA will lead the local competition which involves the following steps: <ul style="list-style-type: none"> • Issuing Preliminary invitation to Tender (PITT) inviting all contractors on the National Framework to confirm if it is their intention to bid ; • evaluating PITT submission and selecting a short list of two bidders; • Issuing Invitation to tender (ITT) and working with two bidders to develop proposals for the Academy; • Evaluating tender submissions and selecting a Preferred Bidder; • finalising designs and the agreement to be entered into; • preparing a Final Business Case (FBC) and securing DCSF approval for funds to be released; and • reaching Contract Award and starting work on site
(v)	The procurement timetable.	The indicative procurement timetable is set out in paragraph 5.6.

(vi)	The evaluation criteria and process.	<p>The evaluation criteria and process for the PITT and ITT stages are set by the National Framework documents.</p> <p>The evaluation criteria for evaluating PITT submissions are as follows:</p> <table><tr><td>Category</td><td>Weightings</td></tr><tr><td>• School Design</td><td>40%</td></tr><tr><td>• Delivery</td><td>40%</td></tr><tr><td>• Handover</td><td>10%</td></tr><tr><td>• Pricing</td><td>10%</td></tr></table> <p>(The above criteria will probe the contribution of each of the criteria to raising standards of educational achievements)</p> <p>The evaluation criteria and weighting range for evaluating tender submission are as follows:</p> <table><tr><td>Category</td><td>Weighting</td></tr><tr><td>• Design and Design Management</td><td>60-80%</td></tr><tr><td>• Delivery</td><td>20-30%</td></tr><tr><td>• Handover</td><td>10-20%</td></tr><tr><td>• Pricing</td><td>2-10%</td></tr></table> <p>The specific weighting and detailed evaluation matrices will be developed for the PITT and the ITT using the evaluation criteria set out above. The criteria will be developed and refined as necessary to reflect specific of the Council's project. Weightings will be ascribed to each of the criteria.</p>	Category	Weightings	• School Design	40%	• Delivery	40%	• Handover	10%	• Pricing	10%	Category	Weighting	• Design and Design Management	60-80%	• Delivery	20-30%	• Handover	10-20%	• Pricing	2-10%
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• Pricing	2-10%																					
(vii)	Any business risks associated with entering the contract.	The business risks associated with this project are set out in Appendix 7. This reflects the top 10 risks developed by the Authority and its technical advisors as part of the Outline Business Case. Other risks are set out above in paragraph 5.18.																				
(viii)	The Council's Best Value duties.	<p>The tendering and award of the contract based on the criteria set out above will be that the Council meets its Best Value objectives.</p> <p>Further information on the Council's Best Value is set out in the Council's Contract Procurement and Management Guidelines available on the Council's website.</p>																				

(ix)	Any staffing implications, including TUPE and pensions.	There are no staffing implications arising from the construction contract or setting up the school as there is no predecessor school.
(x)	The relevant financial, legal and other considerations.	See sections [8] and [9] below in this report.

- 6.7 To deliver the programme to enable the first school to be rebuilt by September 2012 is a challenge. To enable delivery to that timetable it is proposed that the Director of Children and Families be authorised, in consultation with the Borough Solicitor, to agree the selection of the preferred bidder for the Design and Build Contract following evaluation of tenders in accordance with the process set out above. Officers will report back to members for the award of the Design and Build Contract, approval to submit the final business case for the Academy and approval to enter into the Development Agreement with EACT in due course.

7.0 Consultation

- 7.1 Consultation about the Council's widest strategy for the development of school places (of which an expansion of the Crest Academies is an integral part) took place through the Area Consultative Forum (ACF) meetings during the summer and Autumn 2007; a collation of residents responses was collated following the distribution, in July 2008 of "A good school place for every child in Brent Have Your Say" The Strategy is kept under review by a Member Level Strategy Board.
- 7.2 The Council has carried out a thorough review of the site and the potential to acquire additional land. At the Executive in July 2009 it was determined not to proceed with a CPO of the adjoining land.
- 7.3 In addition to the ACF meetings, during the spring/summer of 2009 EACT and the LA have consulted specifically on the proposed organisation of the Academies, its ethos, admissions policy and specialisms.
- 7.4 Workshops have been held with students at both schools as part of the school design process.

8.0 Financial Implications

Outline Business Case and Build Cost

- 8.1 The basis for the costs and funding for the build costs are set out in Section 5 above and detailed in the Confidential/Not for Publication Appendix 5. This is

linked to the submission of the OBC and the assessment that the project is affordable. Members are reminded that once the OBC is approved there will be no more funding allocated to the project.

- 8.2 The indicative FAM has been revised downwards by PfS since it was reported to Executive in July 2009. The indicative figure has been adjusted to reflect the lowered September 2009 construction price indices and is as set out in Appendix 5. The contractors on the National Framework price their bids on the rates they originally tendered for build costs for the framework and this is adjusted to reflect the latest price indices. This means that the resources allocated in the FAM should replicate the build costs quoted by the contractors. Our technical consultants have confirmed that the reduction of the indicative funding allocation undertaken by PfS will not impact on the scope or specification for the project as this adjustment was undertaken to align the funding allocation with updated inflation indices and reflects projected market price levels. If the inflation indices increase, during the period from OBC to the contract being let, above that assumed then the contractor is expected to absorb that cost. Any costs above the funding allocation will have to be met by the Council. No specific provision has been made for this within the capital programme but remains as a risk for the project that the council must manage. Details of the significant risks and how they will be managed are set out elsewhere in the report.
- 8.3 PfS have confirmed that off site works e.g. highways improvements, through some form of Section 106 agreement, will not be funded by the DCSF. At this stage it is estimated that costs could be in the order of £100K. As these are likely to be mainly associated with improved access required because of the non expansion of the site it is recommended that these costs are funded from the £5M formerly earmarked for land acquisition. It will only be possible to establish the exact contribution required for highways improvements once the scheme has secured planning approval so it should be noted that potentially there could be a further call on the £5M.
- 8.4 If the Council is to proceed with the re-location of the Children's Centre then these costs will be met from Sure Start grant funding.
- 8.5 Project Development Costs
- 8.5.1 The Council is able to draw down funds from the capital allocation to assist with upfront design work, survey and procurement activities up to the production of the OBC. The Council has been asked by PfS to submit a bid for £300K for project support funding. The allocation could well be less than this and has not currently been accounted for in the available resources for the project. The Council will not have to repay the costs should the project not gain OBC approval.
- 8.5.2 The Council has a major role beyond the OBC as outlined in paragraph 5.13 above i.e. managing the Design Building Group through to completion, running the local competition, monitoring and managing the building contract etc. These costs will need to be met by the Council and

given the financial risks the Council will have to manage as part of the project it is felt that a proactive approach is required. It is estimated that around £1.5M will be needed to resource the project (including OBC) spread over 2009/10, 2010/11 and 2011/12. This is based on experience of the Ark Academy.

- 8.6 It is estimated therefore that the Council will need to set aside £1.6M to resource this project (£1.5M development costs (which includes the cost of the project manager) and £100K for highways improvements) less the project support funding secured from PfS. It is recommended that this funding be met from the existing provision of £5M in the Capital Investment Plan to secure the delivery of the Academies and the corresponding new buildings.

9.0 Legal Implications

- 9.1 The estimated value of the Design and Build Contract for the Academies will be higher than the EU threshold for Works and the contract will therefore be governed by the Public Procurement Regulations 2006. The contract will also be subject to the Council's own Standing Orders in respect of High Value contracts and Financial Regulations.
- 9.2 It is proposed that the Design and Build Contract will be procured using the National Framework Agreement set up by the PfS. The Public Procurement Regulations allow the use of Framework agreements (call-off contracts) and prescribe rules and controls for their procurement. Contracts may then be called off under such framework agreements without the need for them to be separately advertised and procured through a full EU process. A local competition will need to be undertaken with the contractors on the framework as set out in Section 6 of this report.
- 9.3 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 is currently undertaking a review of the framework.
- 9.4 Officers will report back to the Executive to request approval for the award of the Design and Build Contract in due course.
- 9.5 The estimated value of the contract for an Overall Project Manager falls below the EU threshold for advertising and therefore contract is not governed by the full application of the EU Regulations. It is however, subject to the overriding EU principles of equality of treatment, fairness and transparency in the award process. The Council's Standing Orders require that contracts valued above £20,000 and below £156,442 be procured by seeking at least 3 written

quotes. However, Standing Order 84(a) provides that the Executive may decide that a contract need not be procured in accordance with the Council's Standing Orders if there are good financial and/or operational reasons for this.

- 9.6 As part of the OBC submission the Council must confirm that the terms and conditions of the Design and Build Contract and the Development Agreement are acceptable to the Council. Legal Services will undertake a review of these documents prior to the Council confirming to PfS that they are acceptable.

10.0 Diversity Implications

- 10.1 The proposed redevelopment of the academies reflect the fact that the school buildings' current structural condition are not able to meet the current and exacting demands required to respond to transformation aspirations that enable education delivery to be brought into the 21st century which will benefit its pupils and local communities.
- 10.2 The Crest Boys' and Crest Girls' Academies are represented by pupils who are in the highest percentile group in terms of eligibility for free college meals; in addition, there is evidence of considerable social deprivation in all eight of the wards served by the colleges. It is therefore critical that the re-development of the Crest Academies is progressed within the timelines indicated in paras 5.6 and 6.6 above.
- 10.3 As noted in the Expression of Interest, dated 1 July 2008, Crest Girls' Academy is highly diverse [figures in square brackets relate to the equivalent statistics BUT for 2009]: 79% [82.8%] of its students have English as an additional language, which is above the national trend and likely to rise. In addition, students with SEN including statements are 1.4% [1.4%]. Similarly, 80% of Crest Boys' [82.7%] have a first language other than English; 1.8% [1.5%] of its students are SEN including statements.
- 10.4 As reported to Executive in July 2009, the schools have re-opened as Academies with effect from 1 September, which will provide excellence in education for all. The aspiration is that raising standards through innovation and investment in new facilities and accommodation will be achieved. The Academies will act as a learning and development hub for the entire community. The focus will be on young people, creating a learning environment where all students are supported to make sure they realise their personal potential and that no doors are closed to them.
- 10.5 The Academies will share their facilities and expertise with other schools and the wider community. The quality of education provision is monitored, in the same way as for all other community schools by OFSTED.

Background Papers

Executive Report 14 July 2009
Correspondence with PfS

Crest Academies Project Files

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John Christie
Director of Children & Families

APPENDIX LIST

Appendix 1 OBC template

Appendix 2 LA commitment letter

Appendix 3 Memorandum of Understanding

Appendix 4 Section 151 letter

Appendix 5 Affordability – Not for Publication

Appendix 6 Appointment of Project Manager – Not for Publication

Appendix 7 Top Ten Risks

Appendix 8 Glossary of Terms

APPENDIX 1



PfS Contractors Framework

**The Crest Girls' Academy
The Crest Boys' Academy**

Outline Business Case

Template

February 2010

Document Control

PfS and its advisers accept no liability whatsoever for any expense, liability, loss, claim or proceedings arising from reliance placed upon this **Template Document for the Outline Business Case**.

Document Properties	
Document Owner	Academies Director
Organisation	Partnerships for Schools
Title	PfS Contractors Framework Template Document Outline Business Case
Abstract	
<p>This document provides guidance for the development of the Outline Business Case (OBC) for Academy Schemes being procured through the Partnerships for Schools (PfS) Contractors Framework.</p> <p>For Academy Schemes being procured through Building Schools for the Future, the Local Authority (LA) should contact their PfS Project Director for guidance. For local BSF programmes of Primary Capital Programme schemes being delivered through the PfS Contractors Framework, separate OBC guidance is available for use and LAs should contact their PfS Project Director for further information.</p> <p>The document outlines the requirements for submitting the OBC, which should set out the options appraisal, cost estimates, affordability assessment and procurement strategy for the school(s) in sufficient detail to allow capital funding to be confirmed and gain approval to proceed with the delivery of the school(s) via the PfS Contractors Framework.</p>	

Version History				
Date	Editor	Version	Status	Reason for change
11 Dec 09	KN	1.0	Draft	First issue of document

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Notes

1. ***Submission of OBC*** – All appendices should be separated from the main body of the OBC, must be named as indicated below and sent on a CD with the main body of the OBC for formal submission.
 - *[] Academy - Appendix 1C – Letter of Support from LA*

EXECUTIVE SUMMARY

Introduction

The document outlines the options appraisal, cost estimates, affordability assessment and procurement strategy for the school(s) in sufficient detail to allow capital funding to be confirmed and gain approval to proceed with the delivery of the academies/school(s) via the PfS Contractors Framework.

Drafting Note: The summaries from each section within the OBC document should be brought forward and provided under each of the headings below as indicated.

Overview and Commitment

Section 1 and **Appendix 1** of this OBC describe the Scheme and confirm the commitment of all parties to the procurement process.

The Local Authority has confirmed that the Scheme fits with its local priorities.

The Scheme involves * school(s)

The Education Brief, including the curriculum model and accommodation schedule, has been developed and signed off by the Project Steering Group (PSG) and by the Department for Children, Schools and Families (DCSF). The accommodation schedule details a total area that is within the BB98 gross internal floor area stated in the Funding Allocation Model (FAM).

The Sponsor/Academy Trust and LA confirm their commitment to working together to procure the design and construction of the new Academy using the PfS Contractors Framework and confirm that they will follow established PfS procedures and utilise the standard suite of documents for procurement.

The Sponsor/Academy Trust has signed the Funding Agreement OR DCSF has endorsed the project to progress into procurement and engage with the Contractors Framework Panel Members.

Procurement Strategy

Section 2 and **Appendix 2** of this OBC describe the details of the Scheme being put to the market.

Design and Construction

Section 3 and **Appendix 3** of this OBC describe the site options appraisal undertaken for the building design and construction.

ICT

Section 4 and **Appendix 4** of this OBC provide an overview of the ICT Vision and the proposed delivery approach for the ICT provision. It encapsulates the preferred delivery method and validates the rationale for that choice, including how the service is intended to integrate with the wider LA provision.

Facilities Management

Section 5 and **Appendix 5** of this OBC detail the proposals for the provision of Life Cycle and Hard FM, as well as an indication of the costs for Soft FM and Utilities.

Affordability

Section 6 and **Appendix 6** of this OBC describes the affordability position for the whole Scheme.

Readiness to Deliver

Section 7 and Appendix 7 of the OBC sets out the LA's project management structure and identifies the roles and responsibilities of each part of the structure. The key members of the team and the external advisers are named and information is provided on their skills, experience and time commitment to the project. This section also sets out the approved budgets (including consultant advisory fees), risk strategy, market interest and the delegated authorities given to a named senior officer within the key stakeholders.

Moving Forward

Section 8 and **Appendix 8 of this OBC** includes the benchmarking data collected at this OBC stage and confirmation that the documents required for the procurement process have been developed.

APPENDIX 2

Local Authority

[]
Project Director
Partnerships for Schools
33 Greycoat Street
London
SW1P 2QF

Dear Sirs,

[] Academy

[] Local Authority is pleased to submit the Outline Business Case for the [] Academy. We provide this letter as a supporting document to the Outline Business Case.

The Local Authority can confirm its commitment to working with the Academy Trust to procure the design and construction of the new Academy using the PfS Contractors Framework.

We believe that we have fully engaged with the Sponsor/Academy Trust to develop the Outline Business Case and that the concept designs support the education vision developed by the Sponsor/Academy Trust.

The Local Authority has signed the Memorandum of Understanding and Confidentiality Agreement and confirms that it will follow established PfS procedures and utilise the standard suite of documents for procurement. This includes the use of the Contractors Framework Development Agreement and Design and Build Contracts. We have satisfied ourselves with the terms and conditions within these documents.

If you have any further queries or points of clarification, please do not hesitate to contact [Local Authority Project Director] on []. Otherwise we look forward to the approval of the OBC and to moving into the procurement stage of the project.

Yours faithfully

[]

Director of Children's Services

APPENDIX 3

This **MEMORANDUM OF UNDERSTANDING** is made on

BETWEEN:

- (1) **Partnerships for Schools Limited** (company registered number 04650964) of 33 Greycoat Street, London SW1P 2QF ("PfS"); and
- (2) **[Framework User]** of ♦ **(Address of Framework User)** (the "Framework User");

BACKGROUND

- A. Partnerships for Schools (PfS) is the non-departmental body established by the Department for Children, Schools and Families (**DCSF**) to implement the "Building School for the Future" (**BSF**) programme (the **BSF Programme**) which includes the Academy delivery programme.
- B. In 2006, PfS established a national framework for building contractors as part of the BSF Programme, under which local authorities could procure the construction of new educational facilities ("the 2006 Framework"). Although the term of the 2006 Framework expires 31 December 2010 it is likely to hit its capital ceiling at least a year earlier.
- C. On 10 March 2009 PfS procured the publication of a Contract Notice in the Official Journal of the European Union under reference 2009-S47 – 068168 the purpose of which was to procure for the benefit of Framework Users a framework arrangement to be operated across two sectors (North and South) in England ("the Contractors' Framework"). Selected building contractors will be appointed to one or both of these frameworks. 12 Contractors have now been appointed to the Sector North Contractors' Framework and 12 Contractors have been appointed to the Sector South Contractors' Framework. Sector North comprises the North West, North East, Yorkshire and the Humber, East Midlands, West Midlands. Sector South comprises East of England, South East, South West, London. The Contractors' Framework will run for four years from November 2009.
- D. The Contractors' Framework may be used to deliver Academies, non-LEP BSF schemes, wider educational and related community facilities and 0-19 education facilities.
- E. [The Framework User has entered into this Memorandum of Understanding pursuant to its powers contained in section 2 of the Local Government Act 2000, section 14 of the Education Act 1996, section 22 of the Schools Standards and Framework Act 1998 and section 111 of the Local Government Act 1972 in order to enable

investment in certain educational services and facilities for which it is responsible.^{1]}

- F. This Memorandum of Understanding aims to establish the parties' respective obligations and commitments to each other and to the BSF Programme at a national and local level. It is not intended to be legally binding except as specifically set out below.

1. Interpretation

- 1.1. In this Memorandum of Understanding the following expressions have the following meaning:

"[insert name of Academy Company]"	means the company registered in England and Wales under registered number [•] and having its registered office at [•];
"Academy"	means [insert name of Academy to be built] which is to be constructed pursuant to a Design and Build Contract and for which [insert name of Academy Company] is to then be responsible for running;
"Design and Build Contract"	means the Design and Build Contracts as set out in Parts 1 and 2 of Schedule 3 of the Framework Agreement;
"Development Agreement"	means the agreement to be entered into between the Authority and [insert name of Academy Company] in respect of the Design and Build Contract and the Academy;] ²
"DCSF"	means the Department for Children, Schools and Families;
"Framework Agreement"	means the agreements dated [] and entered into between PfS and the Panel Members and procured pursuant to a notice published on 10 March 2009 in the Official Journal of the European Union under reference 2009-S47-068168;
"Future Schools Agreement"	means the agreement set out in template form in Part 3 of Schedule 3

¹ This paragraph will need to be amended as appropriate depending on the status of the Framework User

² This definition will not be required where the Framework User is the Academy itself

	of the Framework Agreement;
“Local Competition”	means the competition process through which a Framework User selects a Panel Member from the appropriate Sector for a Scheme
“Panel Members”	means the following contractors in Sector South (South and London): Apollo Property Services Balfour Beatty Construction Limited BAM Construction Limited Bovis Lend Lease Limited Carillion Construction Limited Interserve Project Services Limited JB Leadbitter & Co Limited Kier Regional Limited Rydon Group Limited Sir Robert McAlpine Limited Wates Construction Limited Willmott Dixon Construction Limited
“Restricted Procedure”	Means the Restricted Procedure as set out in the Public Contracts Regulations 2006.

2. The Contractors’ Framework

2.1. As part of the Building Schools for the Future initiative, Partnerships for Schools Limited (PfS) have set up a Contractors’ Framework (operating in two Sectors: North and South of England) for building contractors under which Framework Users can procure the construction of new educational facilities which are likely to include academies, non-LEP BSF schemes, wider educational and related community facilities and 0-19 education facilities. This initiative, which seeks to augment and support the core Building Schools for the Future programme, will be used to construct specific, targeted, school and other educational and related community projects over the next four years.

2.2. As a result of the ongoing success of the BSF programme, the DCSF has integrated the existing Academy delivery programme within BSF which will enhance its control over capital investment and improve delivery capacity to achieve demanding targets associated with the programme. PfS will assist in the delivery of the capital investment associated with the programme in three key areas:

2.2.1. the procurement of Academies through established partnerships which have been set up under the BSF programme; and

2.2.2. the development of the framework for Academy projects which are required before BSF partnerships have been established in a particular Framework User area;

- 2.2.3. the procurement of non-LEP BSF programmes where the use of the Contractors' Framework has been approved by PfS
- 2.3. The overarching efficiencies required through the Contractors' Framework will be as follows:
 - 2.3.1. meeting high quality, sustainable, design and construction standards which are consistent with the Building Schools for the Future programme (as described by the relevant Building Bulletins published by DCSF).
 - 2.3.2. providing value for money including:
 - 2.3.2.1. optimising the whole life cost of facilities consistent with the costs of BSF projects;
 - 2.3.2.2. contributing towards Gershon targets for efficiency;
 - 2.3.2.3. delivering buildings on time to meet the opening target dates for the individual schools/Academies.
 - 2.3.3. ensuring delivery in accordance with the Office of Government Commerce (OGC) "Common Minimum Standards for the Procurement of Works in the Built Environment by Local Authorities in England".

3. Approach to the Contractors' Framework

- 3.1 PfS has produced the following suite of documentation to enable effective and lawful use of the framework arrangements:
 - 3.1.1. Outline Business Case Guidance
 - 3.1.2. Final Business Case Guidance
 - 3.1.3. Development Agreement
 - 3.1.4. Guidance for Framework Users on Local Competitions
 - 3.1.5. Future Schools Agreement
 - 3.1.6. Design and Build Contracts
 - 3.1.7. Template Preliminary Invitation to Tender for Local Competitions
 - 3.1.8. Template Invitation to Tender for Local Competitions
 - 3.1.9. Confidentiality Agreement

3.2. The procurement of the Framework Agreements was carried out under the OJEU Restricted Procedure. As part of this process, Panel Members were required to accept the terms of the Design and Build contracts and Future Schools Agreement. It is essential to the lawful use of the Contractors' Framework that the Authority does not amend the Design and Build Contracts or Future Schools Agreement other than for project specific reasons and where indicated in the relevant document.

3.3. The Panel Members are only obliged to respond to PfS Approved Schemes under the Contractors' Framework, being those published on the BSF Community website.

4. The Role of the Authority

4.1. The Authority is the principal contracting authority under the Design and Build Contract and will be the primary driver in the successful and timely delivery of the Academy or the non-LEP BSF programme (as the case may be).

4.2. PfS and the Authority acknowledge the Authority's key role set out at paragraph 4.1 and the Authority agrees and commits to the following principles:

4.2.1. to keep all commercially sensitive information relating to the pricing and costs data of any shortlisted Panel Members as well as the provision of the Design and Build Contracts confidential;

4.2.2. to comply with the Guidance for Framework Users on Local Competitions;

4.2.3. to use the Contractors' Framework only in accordance with PfS' instructions and in accordance with guidance documents published by PfS from time to time;

4.2.4. [to enter into the Development Agreement;]³

4.2.5. not to enter into a Design and Build Contract or a Future Schools Agreement with any Panel Member without the consent of PfS;

4.2.6. not to amend the Design and Build Contract or the Future Schools Agreement used for the Academy or non-LEP BSF programme other than as specifically permitted by the Design and Build Contract or the Future Schools Agreement and without the consent of PfS; and

4.2.7. to provide PfS with access to all information relating to the Local Competition in respect of and the design and construction of the Academy or the non-LEP BSF programme where the

³ This will not be required where the Framework User is the Academy itself.

Contractors' Framework is used to deliver the non-LEP BSF programme.

5. The Role of PfS

5.1. PfS is the delivery vehicle to achieve the delivery objectives of the Academy programme, non-LEP BSF programme and other schemes procured under the Contractors' Framework.

5.2. PfS has 4 key roles in relation to the Academy Programme, non-LEP BSF programme and other schemes procured under the Contractors' Framework:

5.2.1. Programme Manager: PfS has a central role as a programme manager allocating funding to projects. Interaction with the Authority in respect of this function includes determining the appropriate allocation of funding based on agreed benchmarks and assisting in determination of value for money solutions and quantification of abnormal costs.

5.2.2. Project Management: PfS will allocate a dedicated project management professional to the Framework User to monitor performance against the agreed project plan, ensure key stakeholders are supported and kept informed and enable effective project governance.

5.2.3. Policeman: A prime rationale for the establishment of BSF is the efficiencies of scale that can be achieved through the development and use where possible of standardised contracts and bidding documents. In order to achieve these efficiencies, PfS will enforce the use of standard documentation and, in relation to the Design and Build Contracts, will require that these are amended for use only so far as is explicitly permitted in those contracts to ensure compliance with the Restricted Procedure.

5.2.4. Benchmarking and Performance Management: A key part of the framework delivery solution is the ability to deliver value for money against nationally prepared benchmarks. PfS' role is to collect, normalise and manage such cost data which will be supplied to Framework Users in respect of future Academy and non-LEP BSF schemes and projects.

5.3. The Authority and PfS acknowledge PfS's key roles set out at paragraphs 5.1 – 5.2 and PfS agrees and commits to the following actions and principles:

5.3.1. where an Academy or non-LEP BSF programme is being procured under the Contractors' Framework, allocate a Project Director to support and oversee the procurement of the Academy of non-LEP BSF programme by the Authority. In the case of PfS Approved Schemes that are published on the BSF Community Website other than Academies or non-LEP BSF programmes, levels of support will be agreed on an individual basis

- 5.3.2. provide guidance as appropriate;
- 5.3.3. provide commercial support and guidance in the use of the Contractors' Framework documentation;
- 5.3.4. share relevant framework information to enable the Authority to make informed decisions; and
- 5.3.5. allocate funding for the Academy and non-LEP BSF programmes including quantifying and agreeing funding for abnormals.

6. Confidentiality

This Memorandum of Understanding is confidential to the parties and their advisers. This paragraph is legally binding.

7. Governing Law and Jurisdiction

This Memorandum of Understanding shall be governed by and construed in all respects in accordance with the laws of England and Wales and the English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this memorandum of understanding. This paragraph is legally binding.

8. Costs and Expenses

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this memorandum of understanding. This paragraph is legally binding.

9. No Partnership or Agency

9.1. This paragraph is legally binding.

9.2. Nothing in this memorandum of understanding shall be construed as creating a partnership.

9.3. No party shall be deemed to be an agent of any other party and no party shall hold itself out as having authority or power to bind any other party in any way.

Signed on behalf of PfS by:

**Signed on behalf of the Authority
by:**

Chief Executive

Chief Executive

APPENDIX 4

[]
Local Authority

[]
Project Director
Partnerships for Schools
33 Greycoat Street
London
SW1P 3QF

Dear Sirs.

Affordability statement concerning [] Academy

As the nominated Section 151 Officer [] Local Authority, I confirm that an affordability position has been established with which the Local Authority is comfortable, as the Contracting Authority for the [] Academy.

I can confirm that all key aspects of the procurement and affordability of the Academy building project have been reported to the Local Authority's Cabinet.

The Local Authority has approved the procurement strategy through the Partnerships for Schools (PfS) Contractors Framework and authority has been delegated to [] to complete the OBC submission to PfS and, upon approval, to commence procurement via the PfS Contractors Framework.

The Local Authority has also agreed that it will manage the project within the funding cap of £***, set by PfS and the Department for Children, Schools and Families (DCSF). The Local Authority has conducted options appraisals for the site to demonstrate that the scheme is affordable within this sum. The Sponsor/Academy Trust has been fully involved in the feasibility study and development of the Outline Business Case. The Local Authority will draw down [] from the above sum for project support funding and this was taken into consideration as part of the options appraisal.

The Local Authority can confirm that it will provide [] towards the capital funding for the Academy and that it expects the remaining balance of [] to be provided by the DCSF.

The Local Authority will use the Design and Build [] Contract. The Design and Build Contract works on the basis of payment for achievement of predefined milestones. The milestones (activities and associated sums) will be agreed before the contract is signed and the Contractor will be paid when the milestones are completed.

The Local Authority will agree with PfS the payments to be made for each financial year over which construction takes place. The Local Authority confirms that it will have sufficient funds to meet its contractual commitment to the Contractor at each of these milestones.

The Local Authority confirms that it will not seek further funding, save for matters pertaining to the contract beyond its control.

Yours faithfully,

[]
Section 151 Officer

Risk Number	Project	Title/Description	Causes	Consequences	Risk Owner	Category	Probability 1 - 5	Impact 1 - 5	Total	Risk Rating	Movement from each meeting	Next Review Date	Action By	Management Strategy / Progress
1	All	Phasing of scheme not deliverable/ impacts on continuity of education	Feasibility option not robust enough	Delays in completion and additional costs	LA		2	5	10	Medium	▶◀			Thoroughly test feasibility option through ITT stage
2	All	2nd school access point off of Dollis Hill Lane	Additional new access off of Dollis Hill Lane may not be popular with local residents so planning risk and also cost risk	Could delay planning approval and jeopardise the school design	Brent/ Mace		3	3	9	Medium	▶◀			Detailed consultation required with local residents and planning authority
3	All	Buildings not opening on time	delays to the construction process and overall programme	Delays / disruption and reputation loss impact on recruitment and raising standards	LA		4	5	20	High	▶◀			Ensure overall programme is consistent and all key milestones are met to ensure successful delivery.
4	All	The project does not fund the aspirations of the sponsor and school and the LA	Reduced PFS rates Additional funding not secured for Children's centre, Brent Refugee Project etc	The reduced PFS rates may result in a reduced build quality and quantum of provision and extended provision	LA/Sponsor		3	2	6	Low	▶◀			Ensure all aspirations are captured in the authority requirements and investigate additional funding streams
5	All	Delays in planning	Not receiving approval to proceed with works	Delays to the overall programme / dilution of the preferred scheme	LA		3	3	9	Medium	▶◀			Ensure planners are engaged from the outset and are kept informed of all activities throughout the entire duration of the process.

Risk Number	Project	Title/Description	Causes	Consequences	Risk Owner	Category	Probability 1 - 5	Impact 1 - 5	Total	Risk Rating	Movement from each meeting	Next Review Date	Action By	Management Strategy / Progress
6	All	Insufficient Internal resources within Brent Council to support the project	Lack of required internal personnel	Results in delays to the programme	LA		2	5	10	Medium	▶◀			Ensure Brent Council have the required resources required for the entire project duration
7	All	Delays in decision making Failure of key decision makers to make decisions on time	Lack of clear decision makers within the Council Failure to identify in advance key decisions to be made	Delays in PfS approval process and overall programme	Brent		3	3	9	Medium	▶◀			Ensure an appropriate governance structure is put in place to manage the project
8	All	ICT interface between infrastructure and hardware procurement	ICT infrastructure package let separately from the hardware package	Infrastructure not being able to adequately support ICT hardware	LA/EACT		3	5	15	Medium	▶◀			Ensure co-ordination between the procurement of the two packages through the strategic ICT group.
9		Planning condition after OBC causes additional costs	Consultation with third parties at planning application stage raises new issues	Additional funding will need to be found	LA		3	4	12	Medium	▶◀			Emerging option fully discussed with Brent Planners
10		ITT not producing enough bidders	project poorly presented/market conditions	bid process doesn't deliver best value	LA		2	3	6	Low	▶◀			Soft market testing. Bidders Day

Risk Number	Project	Title/Description	Causes	Consequences	Risk Owner	Category	Probability 1 - 5	Impact 1 - 5	Total	Risk Rating	Movement from each meeting	Next Review Date	Action By	Management Strategy / Progress
11	All	Lack community consultation	Lack of engagement between project team and local community	Delays to receiving planning approval and impacts on relationship between schools and its community	LA		2	5	10	Medium	▶◀			Ensure thorough consultation with the local residents and parents
12	All	Brief and project scope being incorrect	Time to find a clear understanding of the vision	Delays to ITT process and overall programme / building not fit for purpose	LA /EACT		2	5	10	Medium	▶◀			Ensure LA, sponsors and stakeholders confer, agree and finalise project brief
13	All	Carbon funding - Biomass boiler see as an eco-friendly solution	Biomass boiler perceived to reduce the carbon footprint of the building and required to meet the carbon reduction funding targets	Biomass boiler not used due to difficulties with getting fuel	TA		1	2	2	Low	▶◀			Identify other suitable eco-friendly solutions
14	All	Lack of sports provision off site to enable PE curriculum to be delivered	Space constraints Suitable access to Galdstone Park not achieved	School will have insufficient sports facilities on site and will not be able to deliver the full PE curriculum	LA /EACT		2	5	10	Medium	▶◀			Discuss and confirm option of using the existing Gladstone Park facility to ensure sufficient sports provision is in place.
15	All	Lack of visibility of building to road	Existing parking facility located at the entrance / poor design	Building fails to deliver a welcoming embracing feeling to the local community	Arch		2	5	10	Medium	▶◀			Ensure that the form of the new building and location of the new buildings is thoroughly examined to ensure clear visibility. Entrance will need to be enhanced by removing the car parking area.

Risk Number	Project	Title/Description	Causes	Consequences	Risk Owner	Category	Probability 1 - 5	Impact 1 - 5	Total	Risk Rating	Movement from each meeting	Next Review Date	Action By	Management Strategy / Progress
16	All	Continuity of education provision - standards and attainment	Lack of required area for current academic provision and noise and dust from construction work	Drop in current education standards due to temporary accommodation not being adequate	LA		3	3	9	Medium	▶◀			Ensure temporary accommodation is sufficient and well designed to ensure education is not compromised
17	All	Abnormal costs exceed agreed funding	Rising site and abnormal costs	Funding will not be increased resulting in a compromise to the master plan to ensure total budget is not exceeded	LA		3	3	9	Medium	▶◀			Ensure all abnormalities are identified and reviewed in significant detail to ensure costs can be effectively managed
18	All	Funding shortfall due to inflation indices rising between OBC and financial close	Uncertainty of economy	Reduced scope of works for the project due to inflationary pressure	LA		2	2	4	Low	▶◀			Review with PFS if and when this happens
19	All	Change in government	General election taking place in 2010	Delays to the overall programme / risk to the project if it has not reached financial close	LA		3	3	9	Medium	▶◀			Monitor any changes post election that will impact on the funding of the scheme low risk if OBC signed pre-election
20	All	Underground river	Impact from any future potential flooding	Increased cost to the project of diverting the river	LA		3	3	9	Medium	▶◀			Flood risk assessment to be carried out to quantify the risk

Risk Number	Project	Title/Description	Causes	Consequences	Risk Owner	Category	Probability 1 - 5	Impact 1 - 5	Total	Risk Rating	Movement from each meeting	Next Review Date	Action By	Management Strategy / Progress
21	All	Building not designed to be low carbon	Low carbon initiatives in line with current regulations not being adopted in the design	New buildings not being eco-friendly and having high maintenance costs in the long term.	Design Team		2	4	8	Low	►◄			Ensure low carbon/ eco-friendly initiatives are adopted in the design of the buildings in line with BREAM
22	All	Supplies to the site	Lack of clear access to and from the site	Inability to deliver supplies to and from the site efficiently causing delays and a health and safety risk	Design Team		3	2	6	Low	►◄			To identify clear access routes that will enable the delivery of necessary supplies to and from the site in a safe manner
23	All	BREAM not achieving excellent	BREAM scores not being achieved due to the lack of low energy initiatives not being adopted in the design.	New building failing to meet required energy standards set out by the Government and LA	Design Team		3	3	9	Medium	►◄			To set up regular meetings with the BREAM assessor and review the design options prior to financial close
24	All	Mobile phone masts	Legal contracts in place with organisations	Delays to the construction process	LA		2	5	10	Medium	►◄			Engage the relevant organisations to ensure any removals are arranged and carried out in line with the construction programme.
25	All	Certificate of Title	Property searches not completed on time	Delays to the start of works	LA		1	3	3	Low	►◄			Brent legal to ensure all searches are undertaken and a clear certificate of title available boys land is registered title deeds for girls currently awaited

Risk Number	Project	Title/Description	Causes	Consequences	Risk Owner	Category	Probability 1 - 5	Impact 1 - 5	Total	Risk Rating	Movement from each meeting	Next Review Date	Action By	Management Strategy / Progress
26	All	Right of way	Public right of way across the site	Impact on the design causing delays and dilution of the design	LA		1	3	3	Low	▶◀			Brent legal to check for any rights of way across the site
27	All	Dilution of the FFE budget	FFE Budget being eroded to fund building works	Lack of required funds for necessary FFE	LA/EACT		3	4	12	Medium	▶◀			Ring fence FFE budget from the rest of the building budget
28		Risk of delay due to Judicial review of planning submission	Judicial review	Delay to the start of construction works	LA		1	5	5	Low	▶◀			Make sure LBB details each stage of the planning process to ensure all elements are appropriately addressed.
29		Existing temps not suitable to move	Age and condition of current temporary accommodation	temps not located suitably and on time to ensure continuity of ed/H&S and additional cost	LA		3	4	12	Medium	▶◀			During PB stage undertake a detailed survey of the condition of the temps and allow a contingency for hiring additional temps

Key

Ranking Movement

- ▼ Moved down in risk
- ▶◀ Stayed the same
- ▲ Moved up in risk

Risk Rating

Low	Green
Medium	Amber
High	Red

APPENDIX 8

Glossary of Terms

BB98	Building Bulletin 98 is a DCSF publication that sets out area guidelines for secondary school buildings.
BECTA	Becta is a UK agency which supports the DCSF in its strategic ICT developments. Becta provides strategic leadership in the innovative and effective use of ICT to enable the transformation of learning, teaching and educational organisations for the benefit of every learner.
BREEAM	British Research Establishment Environmental Assessment Method BREEAM assesses the performance of buildings in the following areas; management; energy use; health and well-being; pollution; transport; land use; materials; and water.
CABE	Commission for Architecture and the Built Environment CABE champions well designed buildings and public space, through public campaigns and the provision of expert advice.
D&B	Design and Build The arrangements in which a single contractor will be responsible for both the design and construction of the building project.
DQI	Design Quality Indicator The DQI is a tool to assist with the briefing, development and evaluation stages of a project.
EOI	Expression of Interest The EOI outlines the proposed vision for an Academy, including information on its ethos, specialism, proposed size, age range etc.
FAM	Funding Allocation Model PfS provides the LA a funding envelope for the schools. The envelope is calculated using the FAM.

FBC	<p>Final Business Case</p> <p>The FBC is prepared after a preferred bidder is selected and confirms that the project is affordable, proper management arrangements are in place, and the main contractual terms. On approval, the DCSF will release funds for the building project.</p>
ITT	<p>Invitation to Tender</p> <p>Tender documents are issued to the two Panel Members (contractors) who have been shortlisted following the PITT process.</p>
KPI	<p>Key Performance Indicator</p> <p>The KPIs will measure the ongoing performance of the framework contractors.</p>
OBC	<p>Outline Business Case</p> <p>The OBC is prepared before starting procurement. It sets out the options for a project, cost and affordability estimates, management arrangements and confirms support for the project. Procurement cannot start until the OBC is approved by DCSF.</p>
PITT	<p>Preliminary Invitation to Tender</p> <p>Once OBC has been approved then the LA issues draft tender documents to Panel Members (contractors) with an invitation to take part in the Local Competition.</p>
SfC	<p>Strategy for Change</p> <p>The Strategy for Change (SfC) is designed to capture both the local authority's strategy for secondary education and the requirements that strategy places upon the physical school estate.</p>

