

# Minutes

Meeting: **Committee of the Cabinet (BSF)**

Date of meeting: **20 December 2007 at 9.30am**

Attendees: **Councillor Sarah Richardson (Chairman)  
Councillor Sir Simon Milton  
Councillor Colin Barrow**

Apologies: **None**

Contact: **Charlotte Dale, Senior Committee and Scrutiny  
Officer**

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**1. MEMBERSHIP**

1.1 It was noted that there were no changes to the membership.

**2. DECLARATIONS OF INTEREST**

2.1 The Director of Finance and Resources declared a non- prejudicial interest in relation to recommendation 2.1.11 of the report (to agree to the provision of an indemnity from the Council to the Director of Finance and Resources for his potential personal liability in connection with certification of the SPA and the ICT Services Contract under the Local Government (Contracts) Act 1997, up to a maximum of £18 million, and to conclude such documentation accordingly) listed as resolution 11 below.

**3. MINUTES**

3.1 **RESOLVED:** That the minutes of the meeting held on 25 October 2007 be signed by the Chairman as a correct record.

**4. EXEMPT REPORT UNDER THE LOCAL GOVERNMENT ACT 1972**

4.1 **RESOLVED:** That, by virtue of paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (as amended) the public and press be excluded from the meeting for the following item of business because it involves the likely disclosure of information on the grounds shown below:

<b>Agenda Item No.</b>	<b>Grounds</b>	<b>Para of Part 1 of Schedule 12A of the Act</b>
5	Information relating to the financial or business affairs of any particular person (including the authority holding that information).	3

**1. BSF PROCUREMENT PROCESS – APPROVAL OF FINAL BUSINESS CASE, ESTABLISHMENT OF THE LOCAL EDUCATION PARTNERSHIP AND DELEGATION OF AUTHORITY TO ENTER CONTRACTS**

1.1 The Director of BSF introduced a report on the progress of the procurement process for the Building Schools for the Future (BSF) programme. A letter from the Chief Executive to BPEC outlining the outcomes of a meeting held between Council Officers and BPEC on 19 December 2007, was tabled. In particular, it was noted that, as a result of negotiations with Partnership for Schools (Pfs) in relation to

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Westminster's funding allocation, a further £1.3m of funding had been secured. It was also noted that the Secretary of State had indicated that Pimlico School might benefit from approximately £565,000 of funding, as part of new Government proposals to reduce carbon emissions in new school buildings, although this was still to be confirmed. Secretary of State had indicated that Pimlico School might benefit from £565,000 of funding, as part of new Government proposals to reduce carbon emissions, although this was still to be confirmed.

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2.1.2 The Committee considered the various risks involved in progressing the procurement programme, as recommended by officers, and discussed the following issues in particular:

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- The procurement completion timetable.
- Capacity issues.
- Underwriting the Early Works Programme and the decant costs for Westminster City School.
- The current design costs of the non-sample schools (and the need to ensure they come in below the financial cap).
- Third party property rights (relating to St Vincent's rooftop playground and the land swap with Brent in relation to the plans for St Augustine's High School).
- Insurance issues.
- Design variations (liability will lay with the schools).

### 1.3 **RESOLVED:**

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- (1) That the report be declared not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (as amended) in that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information).
- (2) That it be noted that BPEC were confirmed as the Preferred Bidder on 24 September 2007 following satisfactory resolution of the issues listed in the previous report to Committee of the Cabinet on 23 July 2007, and the exchange of a letter detailing the commitment of both parties to work together towards financial close.
- (3) That it be noted that, in accordance with delegated authority previously granted by the Committee of the Cabinet, the Chief Executive will liaise with Partnership for Schools (Pfs) and the Department for Children, Schools and Families (DCSF), on their review of the Final Business Case (FBC), and submit any further or revised information required to secure formal approval and the release of funding.
- (4) That, subject to (a) all of the conditions listed in resolution 6 below; (b) finalisation of all of the contract documentation; and (c) receipt of all

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necessary consents, BPEC be appointed as the Council's Private Sector Partner for the purposes of the Westminster BSF Programme, with a wholly owned company of Bouygues UK Limited as the majority shareholder in the Westminster LEP, and the award of the relevant contracts as listed under resolution 8 be approved.

- (5) That the LEP structure as set out in the report and attached at Appendix A to the report be approved.
- (6) That the Chief Executive, in consideration of legal, financial and technical advice, and in consultation with Partnerships for Schools (PfS), and the Cabinet Members for Children's Services and Finance and Support Services, and subject to his being satisfied that the matters listed below as bullet points, have been resolved be authorised to execute the relevant contracts between the Council and the relevant school parties listed beneath the following bullet points:
  - DCSF approval to the FBC and the release of BSF capital funding;
  - the application of conditions associated with planning consent for the Sample School projects;
  - confirmation that general consent under section 77 of the Schools Standards and Framework Act 1998 applies to the changes to Pimlico School to be implemented under the BSF programme for the provision of library and adult education accommodation;
  - Secretary of State's approval to the relaxation of the School Premises Regulations 1999 in relation to the extent of playing fields at Pimlico School;
  - receipt from the relevant VA Trustees of satisfactory property title documents for St Marylebone and Westminster City schools;
  - confirmation from WAES of the ICT services to be provided;
  - confirmation of the financial and economic standing of the key sub-contractors who will form the supply chain for the LEP and be responsible for the delivery of construction and services – Bouygues UK and Ramesys – in relation to any changes that have taken place since the pre-qualification stage of the procurement and the provision of their latest financial accounts;
  - certification of the SPA and the ICT Services Contract under the Local Government (Contracts) Act 1997 by the Council's Director of Finance and Resources;

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- agreement and finalisation of all contracts and associated schedules;
- review by the Council's technical advisers, Gleeds, of BPEC's detailed proposals for the design and build of the Sample School projects (LEP proposals which will form a key schedule to the D&B Contracts), and confirmation that they meet the requirements of the Council and schools, as defined in the Authority's Requirements (which will also form a key schedule to the D&B Contracts), and that they may be considered to represent value for money;
- review by the Council's ICT advisers, Navigant consulting, of BPEC's final proposals for the ICT managed service, to confirm that they meet specified requirements and may be considered to provide value for money;
- review by the Council's financial advisers (PwC) of the final version of the financial models to be provided by BPEC to verify that they are in accordance with the commercial agreement reached between the Council and BPEC and reflected in the various contract documents, and that they are robust and consistent with the LEP Business Plan narrative; and
- the issue of "Alcatel" letters to BPEC and other organisations who expressed an interest in the contracts, and expiry of the required period without challenge.

Contracts:

- (a) for Pimlico School – the Community School Governing Body Agreement with the IEB;
- (b) for St Marylebone School – the VA School Governing Body Agreement with the Governing Body and the VA Trustees, the Procurement Agreement, the Development Agreement and associated Licence with the Governing Body, the VA School Trustees and the Diocesan Authority;
- (c) for Westminster City School – the VA School Governing Body Agreement with the Governing Body and the VA Trustees, the Procurement Agreement and the Development Agreement with the Governing Body, and the VA School Trustees (United Westminster Schools); and
- (d) for the VA Non-Sample schools – the Procurement Agreement with the relevant Governing Bodies, VA School Trustees and Diocesan Authorities.

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- (7) That the Chief Executive, in consideration of legal, financial and technical advice, and in consultation with Partnerships for Schools (PfS), and Cabinet Members for Children's Services and Finance and Support services, subject to his being satisfied on the matters listed as bullet points under resolution 6 above, and subject to the execution of the various contracts between the Council and school parties listed as points (a) to (d) under resolution 6 above, be authorised to:
- (a) subscribe for shares representing 10% of the total initial share capital in the LEP;
  - (b) make the initial investment of £100 in the LEP in the form of shareholder equity, and provide a shareholder loan in the additional sum of £1,131;
  - (c) nominate Councillor Philippa Roe as the WCC appointed director on the LEP Board; and
  - (d) execute the Shareholders' Agreement between the Council, BSFi, BPEC and the LEP.
- (8) That the Chief Executive, in consideration of legal, financial and technical advice, and in consultation with Partnerships for Schools (PfS), and with members of the Committee of the Cabinet, subject to his being satisfied on the matters listed as bullet points under resolution 6 above, and subject to the execution of the various contracts between the Council and school parties listed as points (a) to (d) under resolution 6 above, be authorised to:
- (a) execute the Strategic Partnering Agreement between the Council and the LEP;
  - (b) execute the Design and Build Contracts for the three Sample Schools – Pimlico, St Marylebone and Westminster City, and for the St Vincent's Primary School Foundation Stage Unit;
  - (c) execute the ICT Services Contract for the provision of the ICT managed service to all nine schools in the BSF Programme and the Pupil Referral Unit (PRU);
  - (d) execute the ICT Direct Agreement with Ramesys;
  - (e) execute the Bond relating to the ICT Services Contract;
  - (f) execute the Collateral Warranties in favour of WCC from Bouygues UK Limited and the architect, structural engineer, mechanical engineer, and electrical engineer appointed for each

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Sample School and for St Vincent's Primary School Foundation Stage Unit; and

- (g) execute the Parent Company Guarantee in respect of the Design and Build Contracts with the LEP and Bouygues Construction SA.
- (9) That the Chief Executive, subject to financial close, be authorised to appoint the Independent Certifier for the purposes of the Design and Build Contracts, jointly with the LEP.
- (10) That the Director of Finance and Resources be authorised to certify the SPA and the ICT contract under the Local Government (Contracts) Act 1997.
- (11) That the provision of an indemnity from the Council to the Director of Finance and Resources for his potential personal liability in connection with certification of the SPA and the ICT Services Contract under the Local Government (Contracts) Act 1997, be agreed, up to a maximum of £18 million, and to conclude such documentation accordingly.
- (12) That the provision of an uncapped indemnity from the Council to Councillor Philippa Roe for her personal liability in connection with her nomination as the WCC appointed Director on the LEP Board be agreed, and to conclude such documentation accordingly.
- (13) That it be agreed that the expected additional £1.3 million of DCSF funding for the BSF programme be held as a contingency sum for the BSF programme in order to meet additional costs arising from planning conditions on any of the Sample or Non-Sample Schools or any other unforeseen costs arising during the development or implementation of projects within the Programme.
- (14) That it be agreed that funding from the contingency be used for potential additional costs arising from decisions associated with Planning consent for the Pimlico and Westminster City design and build projects, and any additional costs arising from the final decant and phasing solution of the Westminster City School project.
- (15) That, pending conclusion of the WCC budget process, and formal approval of the capital funding for the library and adult education accommodation at Pimlico School, and the revenue funding for the ongoing ICT services to these facilities, it be agreed that the Council will underwrite the relevant amounts, as listed in the report narrative, and included in Appendix F to the report, together with the amounts referred to above, in order to ensure the overall affordability of the BSF Programme.

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- (16) That it be noted that an Admission Agreement, in the form agreed at financial close, will be entered into between the Council and Ramesys in order to provide for the pensions of staff subject to TUPE transfer from the VA schools' Governing Bodies and WCC to the contractor under the ICT Services Contract (this agreement will be executed when the ICT managed service commences at the first school).
- (17) That the Director of Children's Services be authorised to seek all necessary consents from the DCSF under Section 77 of the School Standards and Framework Act 1998 and School Premises Regulations 1999, to facilitate the implementation of the above resolutions.
- (18) That the proposals for the governance of the LEP as set out in Appendix B to the report be approved and that it be noted that a further report on the proposed staffing structure will be submitted in due course.
- (19) That the Director of Property be authorised to enter into negotiations with the Governing Body of Quintin Kynaston School to secure the future of the Beachcroft School and Key Stage 4 PRU.
- (20) That it be noted that, should there be a change of status of Pimlico School, and any other school in the Westminster BSF Programme, there will arise a need for contractual documentation to protect the Council's interests and to allow the new school to operate.
- (21) That it be noted that the Council is required to commit to an additional loan facility for a total of £100,000 between all shareholders, of which the WCC proportion would be £10,000, to be available to the LEP in the event that additional cash flow funds are required, and authorise the Chief Executive to make these funds available to the LEP if it becomes necessary and payable in accordance with the Shareholders' Agreement.
- (22) That the Chief Executive, the Director of Children's Services, the Director of Schools and Learning and other officers of the Council as required, be authorised to do everything necessary to give effect to the above resolutions.
- (23) That, in order to protect the construction programme and avoid additional costs arising from delay, the extension of the Early Works Contracts for the three Sample Schools up to a maximum value of £3,650,000, be authorised, in accordance with the schedules at Appendix E to the report and that this expenditure be approved under Financial Regulation B8.

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- (24) That, in order to continue progress with Non-Sample Schools' stakeholder consultation and design, it be agreed to underwrite justifiable design fees incurred by BPEC up to a maximum of £1 million.

**Reason for Decision:**

In order to proceed with the BSF procurement as planned delegated authority is required for Officers to execute the relevant contracts at the point of financial close and to do everything necessary to give effect to the above resolutions.

**6. END OF MEETING**

- 6.1 The meeting ended at 10.17am.

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**Chairman**

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**Date**

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