

CABINET

5 JULY 2011

GATEWAY 3 CONTRACT AWARD: BROMPTON ACADEMY NEW BUILDINGS

Portfolio Holder: Councillor Les Wicks, Children's Services

Report from: Rose Collinson, Director of Children and Adults

Author: Cathy Arnold, Capital Programme Manager

Summary

This report presents the Final Business Case for Brompton Academy to Cabinet for approval along with the associated contract documents to approve the appointment of BAM Construction Limited as the main contractor.

1. Budget and Policy Framework

- 1.1 The Brompton Academy final business case presents the proposals for the new building at the existing academy site, as planned in the Medway Academy Programme approved by Partnerships for Schools (PfS) in December 2009 following approval by Cabinet (decision 223/2009).
- 1.2 The new academy buildings will be funded by the Department for Education following their confirmation to the council on 6 August 2010 that all 3 of the council's proposed new academy buildings will be funded using the PfS National Framework for contractors.
- 1.3 The final business case is a key stage in the procurement process for the Academy Programme and is presented with the various contractual documents that support the financial close for the Brompton Academy new build project.
- 1.4 This report seeks Cabinet approval for financial close on the new building project for Brompton Academy and the award of the contract to BAM Construction Limited, who were selected as the Preferred Panel Member following the design competition held over summer 2010.

2. RELATED DECISIONS

- 2.1 On 12 May 2009 Cabinet agreed to delegate authority to the Director of Children and Adults, in consultation with the Portfolio Holder for Children's

Services, to pursue the necessary steps to establish a co-educational academy of eight forms of entry on the New Brompton College site admitting students aged 11 - 19 from 1 September 2010. (Cabinet decision 78/2009)

- 2.2 At the Cabinet Meeting on 15 December 2009, the following decision was made: "The Cabinet approved the procurement of the Design and Build Contractor via the Partnerships for Schools (PfS) National Framework and agreed for the Council to enter into related preliminary agreements required by PfS as a condition of use of the National Framework." (Cabinet decision 223/2009)

3. BACKGROUND/INTRODUCTION

- 3.1 Medway's Academy Programme started with the merging of five existing schools into three, each with capacity for 1,500 students, at Strood Academy, Bishop of Rochester Academy and Brompton Academy.
- 3.2 Brompton Academy is part of a batched procurement process for new academy buildings using the PfS National Framework. It is batched with Bishop of Rochester and Strood Academies. The PfS batched procurement process has provided best value in that Medway Council is procuring three new academy buildings, but only had to take Strood Academy through the design competition.
- 3.3 The National Framework identifies 12 Panel Members (sometimes called bidders or contractors) who have been accepted on to the Partnership for Schools framework having competitively proved their ability to carry out work of this nature.
- 3.4 The programme operates by requesting responses to a Preliminary Invitation to Tender (PITT). These responses are evaluated and two preferred bidders are identified. These two preferred bidders develop designs for the first Academy, in this case Strood Academy, in parallel with each other over a 14-week period. This design development was based on the Invitation to Tender (ITT) that was issued to the two preferred panel members and included the approved Outline Business Case (OBC).
- 3.5 The PITT stage was completed in May 2010 and the two shortlisted panel members were invited to submit proposals in response to the ITT on 13 August 2010. BAM Construction Limited were appointed as the council's preferred bidder on 5 October 2010, in accordance with Cabinet decision 223/2009. The Strood Academy building works are now underway and BAM Construction Limited is performing well to a high standard of workmanship and on programme. They have established good communications procedures for keeping key stakeholders informed.
- 3.6 The Final Business Case for Brompton Academy is presented for approval as part of this Gateway 3 Contract Award report.

4 SUMMARY OF THE FINAL BUSINESS CASE

4.1 Strategic Context

4.1.1 The Outline Business Case (OBC) was approved by Cabinet on 9 November 2010 and enabled the Council to secure external funding from PfS for building the new Brompton Academy by using the Partnerships for Schools (PfS) process and National Framework of Contractors to procure a Design and Build Contractor. The funding for the new buildings was confirmed by the government on 6 August 2010, subject to Cabinet reaching agreement with BAM Construction Limited on the contract and associated agreements.

4.1.2 The Final Business Case (FBC) is presented to Cabinet with this report as part of the exempt appendix. **The Final Business Case (exempt) and accompanying exempt appendices have been circulated separately to Cabinet Members and Group Rooms.** There are no significant changes between the FBC and the OBC. The new building will be based on detailed development of the design presented at OBC stage as the control scheme for Brompton Academy. The control scheme was found to be appropriate to meet the vision of the sponsors and so no major changes have been made.

4.1.3 The scheme has been submitted to the Council for full planning approval and this will be a condition of the contract with BAM Construction Limited. The planning decision will be reached on 3 August 2011 and the conditions will be included in the design & build contract.

4.2 Whole Life Costing/Budgets

4.2.1 Indicative Funding Allocation

At OBC stage the cost estimates were prepared in accordance with PfS indicative funding allocation based on the National Framework construction rates. At OBC the design option had a gross floor area of 12,020m². The gross floor area of the scheme in the Contractor's Proposals is 13,165m².

The total estimated construction cost at OBC stage was estimated as £26,966,478 (including Carbon Reduction Funding, Project Support Funding and ICT Hardware) at Quarter 4 - 2010 price levels. During the early part of the design development process, the preferred panel member agreed with Partnership for Schools to reduce their framework rates and as a result the Department for Education reduced the funding available for the project in December 2010 to £23,823,054.

The funding is made up as follows:

- i) £20,756,447 PfS indicative funding allocation for the mainstream academy. (£20,176,050 initial funding allocation and £580,397 Carbon Reduction Funding).
- ii) £3,066,607 for the SEN facility funded directly by Medway Council from the Targeted Capital Fund.

The total estimated construction cost is consistent with the PfS indicative funding allocation together with Carbon Reduction Funding and agreed additional funding from Medway Council. The costings will be subject to approval by PfS as part of the process to approve the FBC.

4.3 **Risk Management**

The risk register for the Brompton Academy building project is maintained and managed by BAM Construction Limited following their approval as preferred panel member. A copy of the register is included in the exempt appendices. Risks are monitored through the Academy Programme Board and highlight reports and issues requiring input from the council are reported on to the Children & Adults Capital Programme Cabinet Advisory Group as required. The capital programme manager monitors risk monthly, as a minimum, for the whole Academy Programme and presents a report and updated risk register for the whole programme to Children & Adults Capital Programme Cabinet Advisory Group each month.

The application to divert the existing footpath on the northern boundary of the site has progressed. No objections were received during the consultation period. The order has been produced and sealed and will be advertised week commencing 13 June 2011.

Lease arrangements for the existing tenants of the Youth House buildings are being finalised and existing tenancies will terminate on or before 31 August 2011.

4.3.1 Residual Risk

Following PfS approval of the Outline Business Case (OBC) in November 2010, the capital allocation was confirmed in December 2010 and the financial risk passed from PfS to Medway Council.

Should any of the residual risk identified below result in additional cost to the project the project team will seek to manage these changes to remain cost neutral overall. Whilst substantial financial risk will pass from Medway Council to BAM Construction Limited at Financial Close, limited residual risks will remain with the local authority and will potentially require remedial action by the project team. Examples of these risks are detailed below:

- Discovery of asbestos within existing buildings in addition to that identified in the Type 2 survey.
- Discovery of archaeological remains given the historical significance of the site
- Discovery of ground obstructions requiring removal or bridging in addition to that identified in surveys (surveys have been undertaken at the contractor's cost to minimise this risk)
- Potential requirement for upgrade of existing utilities infrastructure - electricity, water, gas and telecoms (letters of comfort have been obtained from the relevant statutory undertakers to minimise this risk).

- Discovery of existing services requiring diversion or protection in addition to that identified in surveys (surveys have been undertaken at the contractor's cost to minimise this risk)
- Insolvency of main contractor leading to potential additional costs in re-procuring and completing the construction works over and above the value of the Parent Company Guarantee.

4.3.2 What if the builder goes bankrupt or fails to deliver?

Approving the FBC will commit the Council contractually to BAM Construction Limited for the design and build of Brompton Academy. For the avoidance of doubt there will be three separate design and build contracts for each of the three projects and it is on execution of these individual contracts that Medway Council will be contractually committed to the delivery of each individual project. This report deals with the contract for Brompton Academy only.

Due diligence is carried out by Partnership for Schools on all of the Panel Providers prior to entry on to the framework and this is continually monitored by PfS to identify any changes or potential changes in financial standing.

Prior to the selection of preferred panel member, financial checks on the companies in the design competition were undertaken by the Council's technical advisors to supplement the due diligence being carried out by PfS prior to any financial commitment by the Council.

Further steps are being undertaken to protect the Council's position with the preferred Contractor as part of the process to form a contract. The two main mechanisms are:

- Obtaining a Parent Company Guarantee: This ensures that where the preferred bidder is a subsidiary to a larger organisation (parent company) the parent company is obliged to deliver the project as set out in the contract for example failure to deliver to the agreed specification, programme and costs in the event of a breach of contract by the subsidiary and failure on the part of the subsidiary to rectify the breach.

Or

- Obtaining a Bond: This is an independent insurance policy which means that if the contractor goes bankrupt the Council can claim on this insurance to cover associated costs to the amount agreed in the bond. The cost of this bond would be met from within the total capital allocation from PfS.

A Parent Company Guarantee will apply to this contract.

The contract to be entered into by Medway Council and the contractor will set out the processes and procedures to be followed in the event that the contractor goes into receivership or is declared bankrupt and also the

consequences of any such declaration. The design & build contract is included in the appendices and is the standard form developed by PfS. No alterations or amendments to the contract are permitted and BAM Construction Limited have accepted the terms of the contract as part of their pre-qualification process for the PfS National Framework. The council has received legal support from Bevan Brittan, who are the council's legal advisors from the PfS Framework for Consultant Advisors.

4.4 Market Testing (Lessons Learnt/Bench Marking)

- 4.4.1 The Medway Academies, comprising Strood Academy, Bishop of Rochester Academy and Brompton Academy are to be procured using the Partnership for Schools Framework. This Framework identifies 12 Panel Members (sometimes called bidders or contractors) who have been accepted on to the PfS framework having competitively proved their ability to carry out work of this nature.
- 4.4.2 The programme operates by requesting responses to a Preliminary Invitation to Tender (PITT). These responses are evaluated and two preferred bidders are identified. These two preferred bidders developed designs for the first Academy, in this case Strood Academy, in parallel with each other over a 14-week period. This design development was based on the Invitation to Tender (ITT) that was issued to the two preferred panel members and included the approved Outline Business Case (OBC).
- 4.4.3 The PITT stage was completed in May 2010 and the two shortlisted panel members were invited to submit proposals in response to the ITT on 13 August 2010. BAM Construction Limited were appointed as the council's preferred bidder on 5 October 2010. Following agreement of the Final Business Case BAM will be appointed to deliver the scheme.

4.5 Stakeholder Consultation

The following key stakeholders have been consulted from the early commencement stages and have been consulted during the various meetings that have taken place as outlined below.

Education Programme Board (now replaced by the Children & Adults Capital Programme Cabinet Advisory Group)

The programme board met monthly to oversee the progress of all education capital programmes, including the Academy Programme.

Members of this group were:

- Councillor Wicks (Portfolio Holder for Children's Services)
- Councillor Jarrett (Portfolio Holder for Finance)
- Rose Collinson (Director of Children and Adult Services) - Chair
- Mick Hayward (Chief Finance Officer)
- Deborah Upton (AD with responsibility for Legal services, Procurement and Design and Surveying)
- Chris McKenzie (Head of School Organisation)
- Cathy Arnold (Capital Programme Manager)

- Stephen Gaimster (Assistant Director, Development, Economy & Transport)
- Simon Wakeman (Head of Communications)

The new Cabinet Advisory Group will take over the responsibility for overseeing the Academy Programme from July 2011. Membership of the Children & Adults Capital Programme Cabinet Advisory Group is as follows:

- Councillor Wicks (Portfolio Holder for Children's Services)
- Councillor Jarrett (Portfolio Holder for Finance)
- Councillor Brake (Portfolio Holder for Adult Services)
- Councillor Wildey (Portfolio Holder for Children's Social Care)
- Officer representation (to be confirmed) to reflect the remit of this new group

Academy Programme Board

This group meets monthly to discuss and manage the progress of the academies programme.

Attendees of this group are:

- Chris McKenzie – Head of School Organisation and Student Services
- Cathy Arnold – Capital Programme Manager
- BAM Construction Limited - Programme Director
- Rob Faulkner – Technical Advisor (Mace)

Design Development Group

The design development group has managed the process of finalising a scheme for the FBC. The purpose of this Group is to act:

- As guardian of the Sponsor's Education Vision for the Academy;
- As the key group responsible for ensuring the design proposals are within the agreed funding envelope (with the Framework User accountable for delivery within budget);
- As the main stakeholder body for consultation on all design matters;
- To input to the brief for the design of the Academy;
- To set the Design Quality Indicators (DQIs) for the scheme; and
- To ensure that the views of students, parents and the wider community are taken into account in the final design

In addition, consultation has been undertaken with students at the Academy via a series of student voice workshops and this consultation will continue as the scheme progresses. Staff have been consulted through faculty design workshops and a public consultation process on the planning submission was undertaken during March and April 2010.

4.6 Equalities Issues

The proposals are fully compliant with all equalities legislation and the consultation process has taken into account the requirements of all building users both within the Academy and also the wider community.

4.7 Environmental Issues

The new building will be rated as “very good” under the BREEAM requirements and the planning application includes a biomass system, which will enable the Academy to provide 12% of its own energy needs as well as earning £8,000 per annum from the feed-tariff for supply back to National Grid. The teaching wings are naturally ventilated to keep running costs low and provide a healthier internal environment for teaching and learning.

The students will be able to learn about sustainable living from the way the building has been designed and built and from the way it operates. There will be energy monitors placed in reception to show how the building is performing.

BAM Construction Limited are members of the Waste & Resources Action Programme (WRAP) and are committed to sustainable management of site waste. Materials are all being sustainably and responsibly sourced.

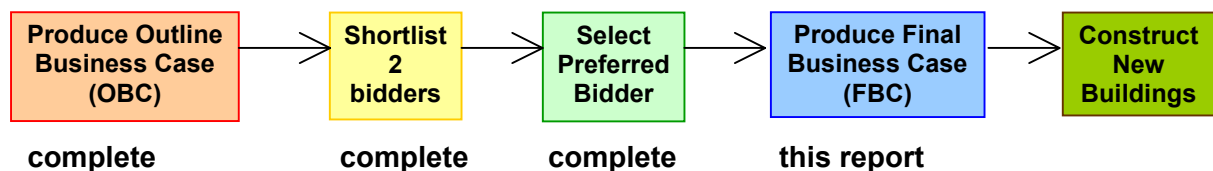
5. PERMISSIONS / CONSENTS

A full planning submission was made in April 2011 and a decision is expected in August 2011. Planning consent is a condition of the contract and the application is made at the contractor’s cost. The contractor has also engaged STG for building control approvals.

6. INVITATION TO TENDER

6.1 Summary of Tender Process

As described earlier in this report, the tender process has followed the PFS National Framework requirements since the inception of the programme in 2009. A summary of the key procurement milestones is shown below:



At key stages in the procurement process, Procurement Board has received update reports to keep them up to date on progress. Each stage has to be signed off by PfS and all stages to date have been approved. The FBC will be issued to PfS for approval following its approval by Cabinet.

6.2 Tender Evaluation

The tender evaluation process followed the PfS evaluation requirements and the evaluation report is included in the appendices as it includes commercially sensitive information.

6.3 Preferred Panel Member

BAM Construction Limited were appointed as preferred panel member in October 2010 following formal approval of the evaluation process by PfS. The submission from BAM is within the required funding envelope and can deliver the vision for the Academy as set out by the sponsors. The contractor's proposals form part of the design & build contract and have been reviewed by the council's technical advisors to ensure that all requirements are covered fully.

A parent company guarantee is a requirement of the contract. The financial management of the project will be supported by the council's cost consultant, who will oversee the monthly cost reporting and valuations prior to the certification of any payment. A full milestone payment schedule has been provided to the council.

Contract management will be undertaken by the School Organisation Capital Programme team.

7. PREPARATION OF THE NEXT STAGE OF PROCUREMENT

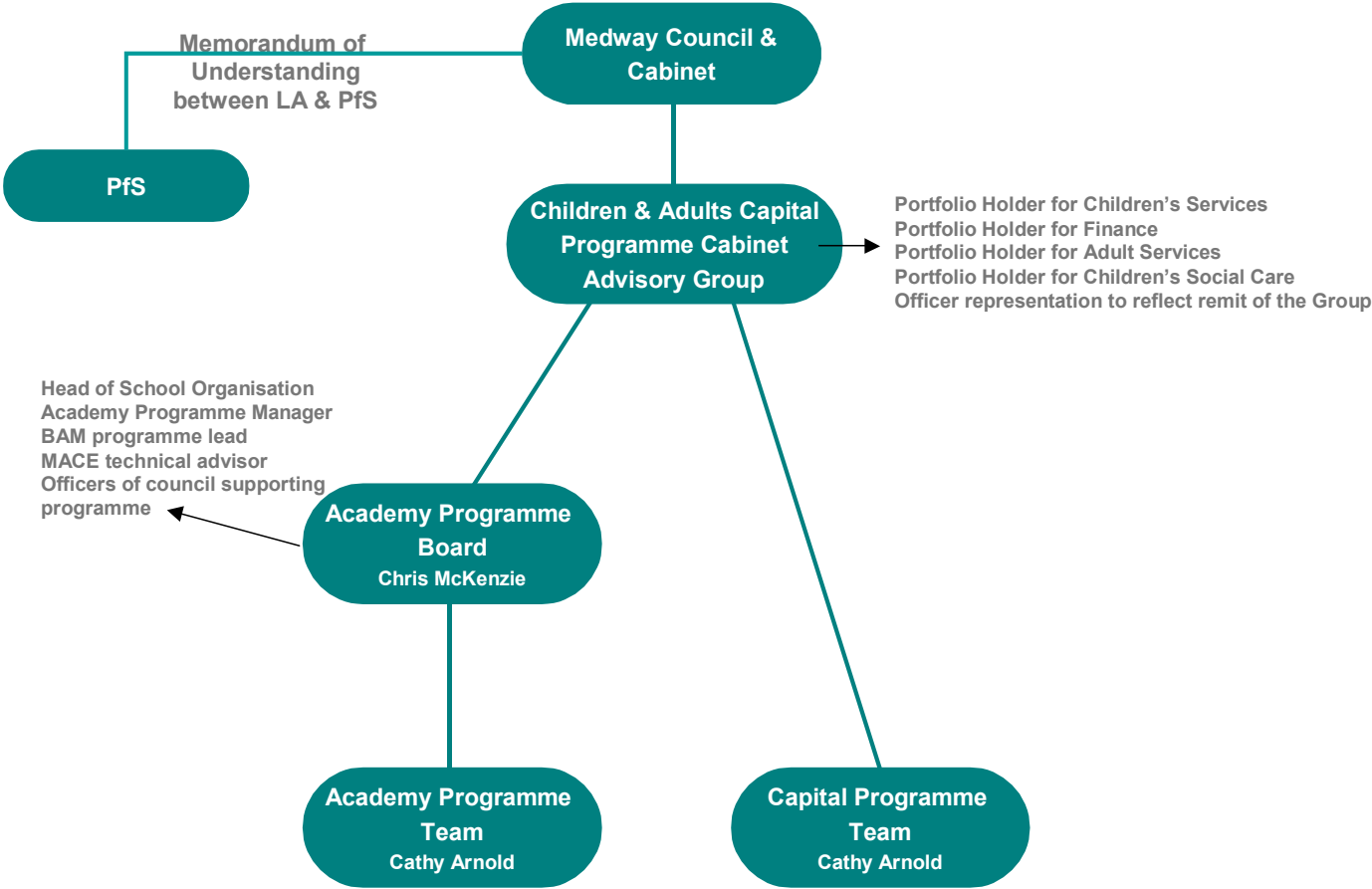
7.1 Resources & Project Management

The school organisation team has the resources in place to act as client for the programme of new buildings and manage the contractor as the projects are delivered. A full governance structure has been implemented and is shown in the diagrams that follow. This provides quality assurance for the management and monitoring process.

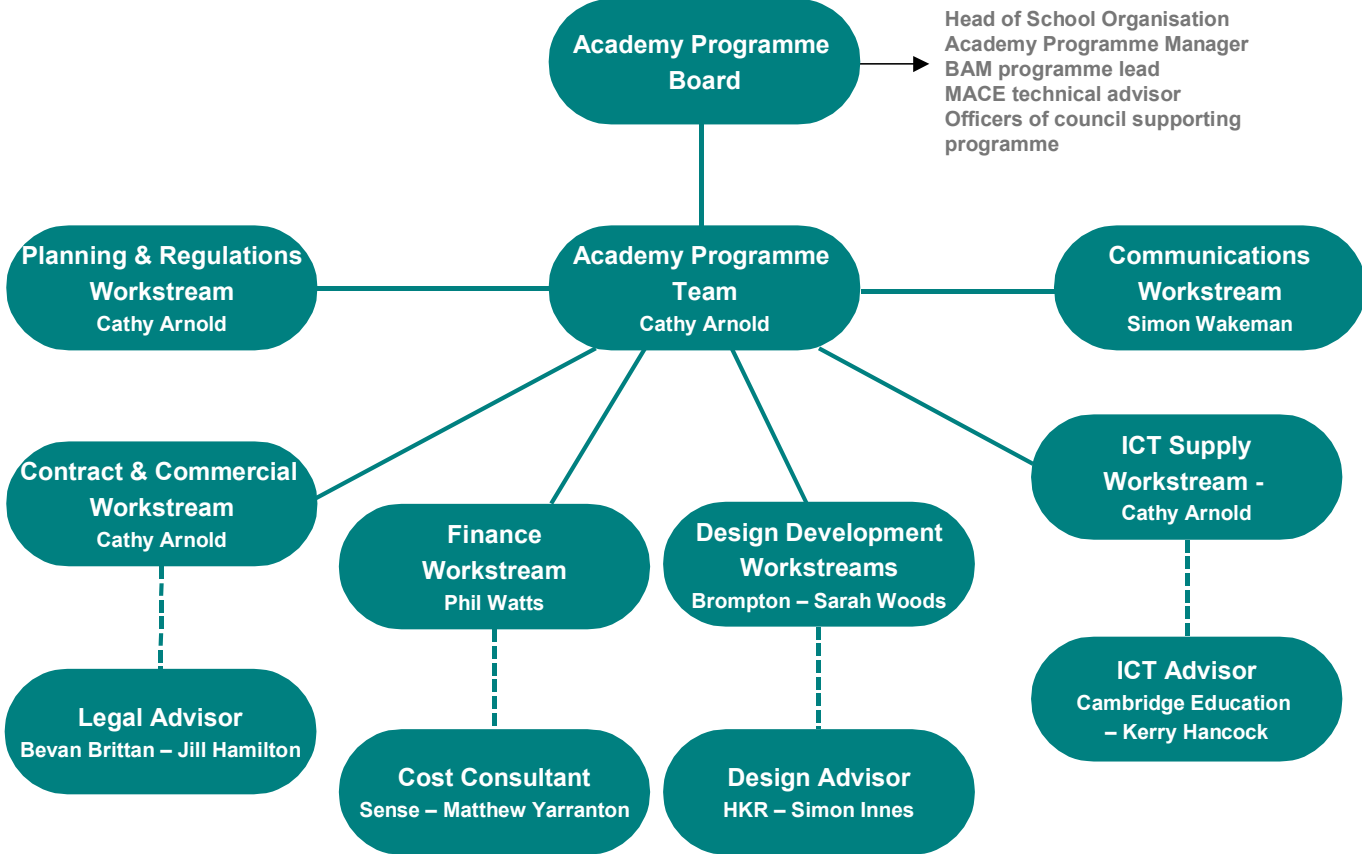
7.2 Contract Management

In addition to the in-house resource for programme management, the council is also retaining the services of its technical advisors to support contract management throughout the delivery stage and for final account and the retention period.

Governance of School Capital Projects



Academy Programme Governance Structure



8. COMMENTS OF THE PORTFOLIO HOLDER FOR CHILDREN'S SERVICES

- 8.1 This report presents the Final Business Case for Brompton Academy for Procurement Board consideration and approval for onward reporting to Cabinet along with the associated contract documents to approve the appointment of BAM Construction Limited as the main contractor. The new buildings will provide 21st century accommodation for the Academy and will enable them to provide high quality teaching and learning for all students in the Academy including additional provision for children with special educational needs including facilities for pupils with language and communication needs and vulnerable pupils.

9 PROCUREMENT BOARD

- 9.1 Procurement Board considered this report on 8 June 2011 and supported the recommendations as set out in 11.1 below.

10. FINANCIAL, PROCUREMENT AND LEGAL COMMENTS

- 10.1 Finance comments - As agreed by Cabinet at Gateway 1, the Council has included funding for the council- funded SEN provision within the current approved capital programme. This accounts for £3,066,607 of the overall cost of the new building at Brompton Academy. The remainder of the funding, £20,756,447, will come in the form of Academies Grant from the Department for Education once the Council confirms that it has entered into a contract with BAM Construction Limited.
- 10.2 Strategic Procurement Comments – Strategic Procurement has provided quality assurance throughout the process thus far and is satisfied that a robust and compliant process has been followed in respect to Medway's contract procedure rules and in accordance with the PFS Framework. It is the client department's responsibility nonetheless to ensure that the protocols of using the PFS Framework have been adhered to in respects to batched procurement requirements. Strategic Procurement supports the recommendations as set out in section 11. In line with new Contract Procedure Rules and rule 3.1.2, all procurement requirements related to Supplies (Goods), Services or Works should be obtained via appropriate existing approved in-house services arrangements such as Building and Design Services, however the complete management of this requirement via the Education Capital Projects team in conjunction with the PFS framework is acknowledged as agreed methodology solely for the purposes of the academies procurement projects. As the PFS Framework has been subjected to a rigorous EU procurement process, Strategic Procurement is satisfied that the resultant tender process from this framework should deliver best value. In line with the Councils Contract Procedure Rules, all procurement contracts above £250,000.00 in value must be signed and sealed by legal services and must be subject to either a parent company guarantee or a bond, which is also a pre-requisite of the PFS Framework. The client department must ensure that all necessary legal formalities are complied with accordingly.

- 10.3 Legal comments – The proposal is part of the batched procurement activity for the Council’s Academies programme following a mini-competition under a framework agreement procured by PfS in compliance with applicable EU Procurement rules, which the Council is legally able to use, subject to compliance with PfS’s requirements. The ‘framework agreement’ signed sets out the terms and conditions under which the Council undertook the mini competition exercise for its preferred panel member. The Contractors on this framework have already been through a formal procurement process to ensure both their professional competence and their ability to carry out works that provide value for money. The mini-competition for the letting of the initial contract for Strood Academy further assisted the Council in being able to demonstrate value for money. The procurement process is in accordance with both the relevant EU Procurement Regulations and the Council’s contract rules.

In view of the value and related risks of this Programme, the Procurement Board and Cabinet have been updated on progress throughout the programme so far.

11. RECOMMENDATIONS

11.1 Cabinet is recommended to:

- a) Approve the Final Business Case for Brompton Academy and authorise the Director of Children and Adults, in consultation with the Portfolio Holder for Children’s Services, to submit it to PfS for approval.
- b) Agree to the award of the contract to construct new buildings for Brompton Academy to BAM Construction Limited using the PfS Design & Build Lump Sum Contract for use with the PfS Contractor Framework along with the PfS Development Agreement.
- c) Note the governance arrangements described in section 7 of the report

12. SUGGESTED REASONS FOR DECISION(S)

12.1 As explained in the body of this report the use of the Partnerships for Schools (PfS) National Framework for the procurement of the Design and Build Contractor is the best option to allow delivery of the new Academy Buildings within the desired timeframes.

12.2 The submission of a completed Final Business Case is required by PfS, before works can commence.

APPENDICES

The exempt appendix gives full details of the Appendices to this report, which are exempt from publication for reasons of commercial confidentiality and sensitivity.

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Background papers

Description of document	Location
Cabinet Report on Academies Procurement 15 th December 2009	W:drive Academies folders
Procurement Board update on Academies Programme 12 th May 2010	Decisions area of Council website
Procurement Board update on Academies Programme 29 th September 2010	
Cabinet Report on Brompton Academy OBC 9 th November 2010	
Procurement Board update on Academy Programme 1 st December 2010	
Cabinet Briefing on Academy Programme 21 st December 2010	
Procurement Board Gateway 3 report 19 th January 2011	