

WEST DUNBARTONSHIRE COUNCIL

Report by the Chief Executive

Special Council Meeting: 11 April 2007

**Subject: Appointment of Preferred Bidder for the West
Dunbartonshire Schools' PPP Project**

1. Purpose

1.1 To provide information and make recommendations to Council with particular reference to:

- the Best and Final Offer (BaFO) submissions made by the three short-listed bidders for the project;
- the evaluation of the three bids;
- the submission of a pre-Preferred Bidder Key Stage Review (KSR) to the Scottish Executive;
- the nomination of a Preferred Bidder;
- the project programme following nomination of a Preferred Bidder.

2. Background

2.1 As previously reported, the following 3 bidders were shortlisted for the Invitation to Negotiate (ITN) stage of the project: BAM PPP; Transform Schools (Balfour Beatty); and West Dunbartonshire Schools Partnership (Amey/Carillion) with bids being received on 26th October 2006.

2.2 In addition, an in-house bid was submitted by the Department of Housing, Regeneration and Environmental Services for Cleaning and Grounds Maintenance elements of the Facilities Management (FM) aspect of the project.

2.3 Following separate evaluations by the Council's PPP Project Team and by its three external advisers, a full evaluation was conducted involving the extended Project Team. At the end of this process, there was unanimous agreement that a Preferred Bidder should not be named at this stage but rather that an invitation to submit a BaFO should be issued to all three bidders.

2.4 It was further decided that there would be no decision taken at this stage on the in-house bids, but that these would be assessed against the successful bidder's submission, after announcement of the Preferred Bidder.

2.5 The decision to issue a BaFO was ratified by the PPP Project Board at its meeting on 22 December 2006.

- 2.6** The BaFO invitation was duly issued with a submission deadline of 23 February 2007, as was subsequently reported to Council on 28 February 2007.
- 2.7** All three bidders submitted revised bids on 23 February. These bids were evaluated by the Project Team and by the Council's external advisers. This evaluation process entailed further meetings with each of the three bidders and a further process of clarification on each of the three bids.
- 2.8** The outcome of the evaluation process was reported to the PPP Project Board on 21 March 2007 and the Board approved the following recommendations:
- the submission of the pre-Preferred Bidder Key Stage Review (KSR) document to the Scottish Executive;
 - the preparation of a report for the April meeting of Council recommending (i) the appointment of a Preferred Bidder, pending ratification of the KSR by the Scottish Executive, and (ii) the appointment of a reserve bidder
- 2.9** It should be noted that, for reasons of commercial confidentiality, the three bidders have been anonymised in this report, and in the report to the Project Board, as Bidders A, B and C, with no significance to the letter assigned to each bidder. Due to the scale of the contract, and therefore its potential impact on the finances of all the bidders, it has been determined that the financial appendices (Appendix 2 and Appendix 3) to this report should be excluded from press and public as they include Exempt Information as defined in Paragraphs 6 and 9 of Schedule 7A of the Local Government (Scotland) 1973.

3. Main Issues

Evaluation Methodology

- 3.1** It is a requirement of European Procurement rules that contracts such as this are awarded by reference to an evaluation methodology established in advance of the receipt of Bids. The Evaluation Methodology was approved and issued prior to the return of the bids at ITN stage. A copy of this Evaluation Methodology is appended as Appendix 1 to this report.
- 3.2** The evaluation has been conducted strictly in accordance with this methodology at both the ITN and the BaFO stages.

Financial Evaluation

- 3.3** The project's in-house finance officer and its external financial advisers (Caledonian Economics) are agreed that all three bids are compliant, affordable and represent value for money when assessed against the Public Sector Comparator.

- 3.4** Following BaFO submission, it is clear that one of the revised bids represents better value for money in financial terms than the other two and offers headroom for further clarification and refinement of specifications between the appointment of Preferred Bidder and Financial Close; it also provides an essential buffer against potential increases in interest rates and other unforeseen eventualities.
- 3.5** Further details of the financial evaluation are outlined in the Financial Executive Summary, provided as Appendix 2 to this report. This appendix indicates that Bidder B offers the best value for money, followed in order by Bidder A and Bidder C, although it should be noted that the differential between A and C is marginal.

Legal Evaluation

- 3.6** The project's in-house legal officer and its external legal advisers (Shepherd and Wedderburn) are agreed that all three bids are compliant, and that the BaFO phase has allowed all three bidders to clarify their positions on legal and contractual issues.
- 3.7** As is usual for PPP contracts going to Preferred Bidder, a list of commercial and legal issues has been prepared for negotiation in the run up to financial close.

Technical and Educational Evaluation

- 3.8** As part of the BAFO, all three bidders were required to address specific technical aspects of their bids.
- 3.9** All three bidders have produced revised bids substantially superior to their original bids, adding value for the Council and confirming the view that it was in the best interests of the Council to issue the BaFO.
- 3.10** Notwithstanding the more detailed comments which follow, it should also be emphasised that it is clear that all three bids are not merely compliant financially, legally and technically, they are also very strong bids, any one of which could deliver schools which would enable the Council to realise its vision of schools fit for purpose in the 21st Century.
- 3.11** West Dunbartonshire Council is in the fortunate position of knowing that it can afford to select its Preferred Bidder from a short list of three with the assurance that, in the unlikely event that the Preferred Bidder should withdraw from the project at some point before Financial Close, there are two other bidders with developed proposals which would provide highly satisfactory schools and services.

- 3.12** In the technical, educational, socio/economic and design evaluation, Bidders B and C marginally outscored Bidder A; while Bidder B and Bidder C were within 0.5% of each other. These assessments reflect the high quality of each bid and the closeness of the competition. In effect the two leading bids (B and C) should be considered of equal merit. It should be stressed that all three bidders passed the quality threshold established in the Evaluation Methodology.
- 3.13** The Evaluation Methodology is clear in instructing the Council that where two or more of the evaluated bids pass the affordability and quality thresholds: *“the Project Team will identify the reasons for differences in price and establish any value and benefit to the Authority from adopting a more expensive solution”*. Having undertaken this aspect of the evaluation, the Council confirmed that there was no financial or qualitative merit in selecting Bidder A or C over Bidder B.
- 3.14** However, because of the narrow margins involved in the evaluations outlined in 3.12, the Project Team and the Council’s technical advisers conducted a qualitative evaluation of each individual school and of each campus; the team was asked to place the three bids in rank order for each school and campus based on architecture, design and educational functionality.
- 3.15** While this was not part of the formal evaluation methodology, this process confirmed that Bidder B was the strongest when judged against these criteria by a significant margin, followed in order by Bidder C and Bidder A.
- 3.16** For the reasons outlined above, Bidder B is therefore considered the strongest in terms of education, planning, architecture, design and finance and should therefore be named as Preferred Bidder.

Reserve Bidder

- 3.17** In accordance with best practice, it is considered prudent for the Council to appoint a reserve bidder in the event that the Council cannot reach financial close with the preferred bidder.
- 3.18** Following the process described above, the project team recommends that Bidder C be appointed as Reserve Bidder. Although Bid C is marginally more expensive than Bid A, both can be achieved within the affordability threshold established by the Council and Bidder C presents a better proposal in design, architectural and educational terms.

Key Stage Review

- 3.19** As noted above, the Council requires to obtain the Scottish Executive’s approval to proceed to preferred bidder. This is obtained through approval of the pre-Preferred Bidder Key Stage Review (KSR) documentation. Following approval by the Project Board, this document was submitted to the Scottish Executive on 21 March 2007.

- 3.20** The Review is then conducted by Partnerships UK (PUK), on behalf of the Scottish Executive. Following clarifications, they will produce a report to the Scottish Executive, which should approve our proceeding to Preferred Bidder and will identify issues which we will require to address early in the process, as we progress towards Financial Close.
- 3.21** Because of the timescales involved it will not be possible to circulate the outcome of the Review in advance of the issue of the Council Agenda and accordingly an oral update will be given to Council on the outcome of the KSR.

Trade Union Input

- 3.22** In line with the requirements of *SE/STUC Protocol On Staffing Matters In Public Private Partnerships* ("the Protocol"), trade unions representing potentially transferring employees have met with bidders and have discussed their proposals at the ITN stage.
- 3.23** Whilst the unions have a stated preference not to have services transfer outside the public sector, and indeed will be supporting the In-house bids for the mandatory variants, the Unions have accepted that the Council has covered off the protocol position in the ITN, and were satisfied that the approaches outlined by the bidders in their meetings with them presented no significant problems for the workforce.
- 3.24** The Council was also able to assure the relevant trade unions that employment issues were not to be the subject of negotiation, insofar as they relate to the rights of employees, although the Council may be required to address the commercial implications of such a position. As it stands, there is little to choose between the respective bidders' positions on this matter, and the only significant departures in bidders' positions from the Council's ITN requirements, were withdrawn at BaFO stage.

Programme following Preferred Bidder Nomination

- 3.25** Should Council approve the recommendations contained in 8.1 and 8.2 of this report, the following steps will follow:
- the Project Team will inform the three short-listed bidders of Council's decisions;
 - a Preferred Bidder letter will be prepared by the Project Team, assisted by the Council's advisers; this letter will summarise to the Preferred Bidder the financial, legal, commercial, technical, planning and educational issues which require to be addressed between the appointment of Preferred Bidder and Financial Close;
 - the unsuccessful bidders will be provided with an extensive debriefing;
 - discussion will commence between the Project Team and the Preferred Bidder on the outstanding issues;

- the Project Team will engage in further discussion on design features of the preferred bid with staff, pupils and parents and representatives of interested parties of the schools involved;
- planning permissions and statutory consents and agreements will be sought;
- every effort will be made to arrive at Financial Close by the end of September 2007, and, failing that, by December 2007;
- there will be a phased start to construction, with some work beginning immediately after Financial Close and all sites becoming active within the following three months;
- if the above target dates are achieved, schools will be handed over to the Council at various dates between April 2009 and October 2010.

4. Personnel Issues

- 4.1** Personnel implications of the PPP Project have been reported previously to both the Project Board and Council and these remain unchanged.
- 4.2** It has been agreed with the Scottish Executive that the Council's in-house team will bid against the Preferred Bidder for Cleaning and Grounds Maintenance services. The outcome of this competition will determine whether some of the Council's Cleaning and Grounds Maintenance staff will transfer to the successful bidder or will remain in the employment of the Council.

5. Financial Implications

- 5.1** As indicated in 3.2, 3.3 and 3.4, and in the Executive Summary provided as an appendix to this report, all three bids fall within the affordability limits already agreed by Council.
- 5.2** Bid B represents best value for money in terms of its base bid. Selection of Bidder B as Preferred Bidder would also leave the greatest headroom before Financial Close and provide an essential buffer against potential increases in interest rates and other unforeseen eventualities.

Affordability

- 5.3** Bidders were invited to submit bids on the following basis –
- a) To provide for annual indexation of 50% of the unitary charge plus a further 0.5% fixed indexation (a total of 1.75% if inflation is running at 2.5%).
 - b) To provide for annual indexation of 50% of the unitary charge (a total of 1.25% if inflation is running at 2.5%)

In order to reduce the Council's exposure to inflation it has been assumed that basis (b) will be adopted. This produces a higher unitary charge in the earlier years but a lower charge from the year 2021/22 onwards.

5.4 The Council has a number of sources of funding to go towards paying the unitary charge as follows –

- a) In December 2005 the Scottish Executive offered conditional support of £7.15m pa. over 30 years towards the cost of the project. It has to be noted that this sum is fixed and will not attract any inflationary increases.
- b) The Council has retained the proceeds of the insurance receipt following the fire at the Vale of Leven Academy (£6.5m) and will have the proceeds from the sale of sites following completion of the regeneration project to add to that sum. It is estimated that the sale of surplus sites will realise £10.7m. This will give estimated total receipts of £17.2m. It is recommended that this sum is invested in a sinking fund and released to revenue over the life of the project, thereby reducing the impact on the annual budget.
- c) The Council has also identified savings in property and operational/admin. costs that will be achieved as a result of the closure of the existing schools and amalgamation of certain schools.

The remaining balance will require to be met from the Council's revenue budget.

5.5 As stated above it is recommended that the Council proceeds on the basis of 50% indexation of the unitary charge. The higher unitary charge in the earlier years can be offset by increased contributions from the sinking fund during these years.

The attached funding table (Appendix 3) gives details of the budget implications of the proposals on the basis of:

- A September financial close for the project,
- 50% indexation of the unitary charge
- The establishment of a sinking fund.

It should be noted that the potential impact to the revenue budget would require efficiency savings of around £78k per year to be generated.

6. Risk Analysis

6.1 Financial, legal and other risks are fully covered in the pre-Preferred Bidder Key Stage Review document which was submitted by the Project Team to the Scottish Executive on 21 March.

6.2 The project has been subjected to intense and rigorous risk analyses. This process has included Optimism Bias workshops and other measures designed to assess and minimise risk to the Council. This approach will continue to be applied up to Financial Close and beyond.

6.3 As part of the process in the run up to Financial Close, a full reassessment of the Risk and Optimism Bias positions will be undertaken.

7. Conclusions

7.1 Notwithstanding the high quality of all three original bids, it is clear that the decision to issue a BaFO has elicited a very positive response from all three bidders, resulting in three much improved bids.

7.2 In legal and contractual terms, there is nothing to suggest that an acceptable deal could not be done with any of the bidders.

7.3 In financial terms, all three bids are affordable. However, Bid B is the most affordable, offers the greatest headroom for refinement of specification and negotiation at Preferred Bidder stage and provides a buffer against an increase in interest rates, Bid A has been judged to be marginally less expensive than Bid C.

7.4 Exhaustive technical and educational evaluations have revealed Bid B as the leader with Bid C a clear second and Bid A in third place. However, it should be noted that Bids C and A are both fully compliant and that either bid would be capable of delivering the Council's vision for education in the 21st Century.

7.5 In summary, the following points should be noted:

- the BaFO has produced financial and design improvements on bids which were already strong;
- the Council's external advisers, all of whom have wide experience of other PPP projects, are agreed that the bids for the West Dunbartonshire Council project are more highly developed at this stage than any they have previously seen;
- the Preferred Bidder's proposals will address almost all outstanding issues within the Council's secondary school estate and will replace four of the Council's primary schools and two of its EECCs;
- the Preferred Bidder has produced imaginative, original, stylish and educationally functional designs for all four secondary schools and for the two primary schools and Early Education and Childcare Centres (EECCs);
- these designs will also facilitate the successful implementation of *A Curriculum for Excellence*;
- in line with Council's stated objectives, the schools will have generous space standards, including standard classroom sizes of 65 square metres in primary and 64 square metres in secondary schools;

- the school designs fully incorporate the Council's ambitious vision of improved community access and enhanced sporting provision;
- the Preferred Bid is affordable and allows headroom for refinement of the specifications and for variations in unpredictable factors such as interest rates;
- appointment of Preferred Bidder in April 2007 will allow the project Team to engage the Preferred Bidder in further negotiations throughout the spring and summer and will increase the likelihood of arrival at Financial Close by the end of September 2007, an outcome which will have financial benefits for the Council.

8. Recommendations

8.1 It is recommended that:-

- (a) The Council approve the appointment of Bidder B as Preferred Bidder;
- (b) The Council approve the appointment of Bidder C as the Reserve Bidder;
and
- (c) The Council agree to the establishment of a sinking fund using the remaining insurance receipts from the Vale of Leven fire and receipts from the sale of sites following completion of the construction and that the sinking fund be released to revenue over the life of the project, thereby reducing the impact on the annual budget.

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David McMillan
Chief Executive
Date: 3 April 2007

Person to Contact: Terry Lanagan, Head of Service, Schools Estate Unit,
 Braidfield High School, Queen Mary Avenue, Clydebank
 G81 2LR. Tel: 0141 952 5140.
 E-mail terry.lanagan@west-dunbarton.gov.uk

Appendix 1: Evaluation Methodology
Appendices 2 & 3: Financial Information (Not for publication)

Background Papers: Report to Council on 28 February 2007 providing a PPP
 project update

Wards Affected: All wards