



APPENDIX 1 NOT FOR PUBLICATION
Exempt / Confidential under Rule 10.4 (3)

Report of the Deputy Chief Executive

Executive Board

Date: 23rd January 2008

Subject: Leeds Independent Living PFI Project – Submission of the Adult Social Care Final Business Case and Execution of the Contracts

Electoral Wards Affected:
All

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In

EXECUTIVE SUMMARY

1. The report informs Members of the work of the Independent Living PFI Project Board in securing the procurement of a PFI contract to build and maintain 75 properties with 343 bed spaces in the form of new independent living accommodation for adults with learning disability and mental health needs. In addition, the contract will also include the provision and maintenance of residential facilities for disabled children and children with learning and behavioral difficulties. The total capital value of the project, including the children’s services element, amounts to over £50m.

This project forms a major part of the City Council’s Modernisation Programme to transform residential services for adults with learning disability and mental health needs by allowing them to live as independently as possible within their local communities. The Programme aims to meet the accommodation, housing related support and care needs of current services users and provide an infrastructure that is flexible and adaptable to the changing needs of these service user groups over the next 25 years.

2. Members are requested to agree to the recommendations set out in Section 7 to this report relating to the submission of the Final Business Case, which is available from Members Services and to the execution of the contract documentation for the Independent Living Project, which is programmed to be completed on 14th March 2008.
3. For the avoidance of doubt, Members are requested to note that the recommendations (section 7) and financial implications (Appendix 1) of this report refer to the Adult Social Care element of the PFI Project only. A further report will be submitted to Executive Board following completion of the affordability analysis of the Children's element of the PFI Project.

Purpose of This Report

- 1.1 The purpose of this report is to update Members of the Executive Board of the progress of the procurement of the Independent Living Project following Members approval of the Outline Business Case on 6th July 2005
- 1.2 Members are requested to note and agree the final scoping of the Independent Living Project summarized in Section 3.2 to this report.
- 1.3 Members are also requested to approve the financial implications for the Council of entering into the Project as detailed in Appendix 1, and to agree the maximum affordability ceiling for the City Council of £5.113m, as set out in Appendix 1, but to note that the City Council takes the risk/benefit of interest rate changes up to Financial Close and if the recent favorable downward movement in interest rates in this market continues to Financial Close the cost is likely to be less than £5.113m.
- 1.4 Members are further requested to approve the process to enable the Commercial and Financial Close of the Project as set out in this report as addressed in the recommendations as set out in section 7 of this report.

2.0 Background Information

- 2.1 On 6th July 2005 Members of the Executive Board endorsed the submission of an Outline Business Case for the building of new independent living accommodation, for adults with learning difficulties and mental health needs. On 22nd August 2007 the Board approved an extension of the Project to include procurement of the Children and Young People Services PFI Project.

This project is one of four additional social rented (non-HRA) Housing PFI schemes currently in procurement for the Department for Communities and Local Government. Two of these schemes will provide general needs housing, one will provide general needs and extra care housing and the Leeds Independent Living project focuses on a specific client group. The Leeds Independent Living Project (ILP) is the only one of the four to have been awarded PFI credits from three Government Departments (DCLG, DoH and DCSF). Members should be aware that the time taken to procure the Project from approval of the Outline Business Case, through to Financial Close, programmed for 14th March 2008, some 26 months, is the shortest of any additional social rented (non-HRA) Housing PFI scheme to date. Members should also be aware that this has been achieved despite the complexities of having a project with 75 properties, covering a total of 39 sites, with all the associated planning approval requirements.

- 2.2 The City Council submitted an Expression of Interest (EOI) to the Office of the Deputy Prime Minister (ODPM) and the Department for Health (DoH) in December 2004 to build and maintain new independent living accommodation for adults with learning difficulties and mental health needs.
- 2.3 On 6th July 2005, Members gave approval for the submission of the Outline Business Case (OBC) for the PFI Project. This was formally approved by the HM Treasury Project Review Group on 8th December 2005 and PFI credits amounting to £60.1m were reserved for this Project (£45.9m from ODPM and £14.2m from DoH).

- 2.4 At that meeting Members also agreed the management arrangements for the procurement of the Project and Terms of Reference of the Independent Living PFI Project Board. In addition Members also agreed to provide Delegated Powers to the Project Board which included all stages of the procurement through to the selection of the Preferred Bidder for this Project. Authority to enter into a contract with the Preferred Bidder is reserved to Members of Executive Board.
- 2.5 On 15th December 2006 the Department for Children, Schools and Families (DCSF) awarded the City Council PFI credits of £5m for a Children and Young People Services PFI Project to be included as part of the Independent Living Project. Members of the Executive Board formally approved the extension of the Independent Living Project to include the Children's PFI element at their meeting on 22nd August 2007.
- 2.6 The following are the individual stages in the procurement process determined by the Project Board:
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|------|---|-------------------------------|
| i) | OJEU Notice | 16 th January 2006 |
| ii) | Receipt of Pre Qualification Questionnaire and Pre ITN Documents from Bidders | 12 th April 2006 |
| iii) | Invitation to Negotiate Shortlist | 21 st June 2006 |
| iv) | Stage 1 of the ITN process | August 2006 to March 2007 |
| v) | Stage 2 of the ITN process | April to October 2007 |
| vi) | Selection of the Preferred Bidder | 2 nd October 2007 |
- 2.7 The outcome of the procurement process was that on 2nd October 2007, the Leeds Independent Living Accommodation Company (LiLAC) Consortium was selected as the Preferred Bidder for this Project, subject to the agreement of a satisfactory Preferred Bidder letter, which was signed by the City Council and the Lilac parties on 22nd October 2007.
- 2.8 The Project is now at the Final Business Case (FBC) stage. All Government Departments involved in the project (DCLG, DoH, DCSF) must approve the FBC and issue a joint Promissory Note prior to Financial Close and Contract signature. This Promissory Note secures the release of the Notional Credit Approvals. A copy of the FBC (which is Exempt / Confidential under Access to Information Procedure –see paragraph 5.2 below) has been lodged with the Clerk to this Executive Board and is available for inspection by Members of Executive Board.
- 2.9 The LiLAC Consortium comprises:
- | | |
|-------------------------|--|
| Equity Investors | Gleeson PFI Investments Ltd
Progress Care Housing Association Ltd
Jack Lunn (Properties) Ltd |
| Lead Bidder | Gleeson Capital Solutions Ltd |
| Senior Lender | Norddeutsche Landesbank (Nord LB) |
| Construction | Jack Lunn Group |

Housing Management

Progress Care Housing Association Ltd

Facilities Management

Powerminster Ltd

3.0 Main Issues

3.1 This section outlines the main issues covered within the PFI Project Agreement which is the primary contract for this Project.

3.2 **The Scope of the Project.** Members of Executive Board, at their meeting on 6th July 2005, agreed the aims, objectives and outcomes of the Independent Living Project, which was to develop a range of high quality purpose built properties across the City to accommodate those service users with the most intensive housing related care and support needs, by procurement of a contractor to build new accommodation and provide an intensive housing management function. These have not changed during the procurement process, although the scope of the project has changed between OBC and FBC in respect of four areas. One of these changes, the Children's Services bid, is likely to result in 3 Residential Service properties offering 20 bed spaces. This work has yet to be completed however and will form the basis of a further report.

The table below summarises these scope changes.

Scope Change	Summary of Change
Removal of refurbishment	Between OBC and ITN1 The City Council decided to remove the requirement for refurbishment. The 20 bed spaces affected have been replaced by an equivalent number of new build bed spaces.
New Build Accommodation	To achieve an affordable bid some reductions have been made to the output specification, mainly with regard to office accommodation and garages. These have yielded an extra 2 bed spaces for the project.
Children and Young Peoples Services	In December 2006 Children and Young Peoples Services (C&YPS) had a bid for £5m PFI credits approved by DCSF on the proviso that it would sit alongside an existing PFI procurement. The success of the bid has therefore been included within the Independent Living Project.
Care and Support Services	In January 2006 a series of workshops were held to consider how related care and support services should be delivered in the new remodeled services. The Commissioning and Service Deliver Board (C&SD) concluded that all additional capacity generated by the ILP Project should be procured on an open procurement basis with current capacity remaining with the current in-house provider. This procurement, which is outside the scope of the PFI Project, will be in respect of 40 additional bed spaces.

3.3 **The Works Period** (construction period) runs from contract signature, programmed for 14th March 2008, to phased completion of all sites by the end of April 2011.

- 3.4 **The Service Period** for all accommodation procured through the Private Finance Initiative is programmed to have commenced by 3rd May 2011. Service completion for all accommodation will be 2nd May 2036.
- 3.5 **The Services** included within the PFI contract are:
- Housing Management
 - Facilities Management
 - Asset Management Planning
 - Buildings maintenance
 - Installations maintenance (e.g. cabling, alarms, ICT infrastructure)
 - Utilities and Environmental Conditions
 - Lifecycle Maintenance
 - Reinstatement and Change
 - Cleaning and Waste
 - Grounds maintenance
 - Health and Safety and Security
 - Reactive On-Site Services
 - Help Desk and Administration
 - Continuous Improvement
- 3.6 **Employment and TUPE** – The PFI Contract will involve the transfer of 16 Domestic Assistants and 1 Handyperson under TUPE from the City Council to the Service Providers (although it is anticipated that these numbers will reduce prior to service commencement). Drafting within the Contract includes requirements for the Service Providers to comply with the Code of Practice on Workforce Matters set out in the ODPM Circular 03/2003, which is aimed at avoiding a two tier workforce.
- 3.7 **Pensions:** The PFI Contract provides for protection of pensions provision through an admission agreement to the Local Government Pension Scheme (LGPS). It is proposed that transferring employees and new employees of the Facilities Management Service Providers will have continued membership of, or access to the LGPS. If for any reason the employer cannot achieve or retain Admitted Body status for this purpose, then broadly comparable arrangements would have to be provided.
- 3.8 **Communication and Service User Involvement Strategy** - The proposals contained within the Final Business Case are the result of consultation with all key stakeholders and partner organisations including service users and carers. Consultation and the involvement of stakeholders continues to be a major activity within the project team and both a Communications Strategy and a Service User Involvement Strategy have been implemented within the project to ensure that all key stakeholders are engaged.
- 3.9 **Stakeholders** in this project are identified as:
- The City Council's Executive Board
 - The Independent Living PFI Project Board
 - The Independent Living Project Team
 - Ward members (where the new sites are located)
 - Service Users
 - Carers
 - Staff teams
 - Primary Care Trust

- Learning Disability Partnership Board
- Mental Health Modernisation Team
- Leeds Partnerships Trusts
- Voluntary Sector Forums
- ALMO's
- District Partnerships
- Supporting People Team
- Trade Union Representatives
- CSCI
- Department for Communities and Local Government
- Department of Health
- Department for Children, Schools and Families

3.10 Communication and consultation throughout the project to date has included:

- Regular newsletters and briefing documents are made available to Ward Members, MP's, and to Trade Unions
- Members briefings
- Regular update meetings with the Strategic Board and the Commission & Service Delivery Board
- Regular reports to the Independent Living PFI Project Board
- Service User consultation via the User Involvement Project (Asking You!) and the Mental Health Advocacy Group
- Regular meetings with Development Department on planning, highways and site issues

3.11 As the Project moves from contract close towards service commencement the Council will be undertaking further staff consultation with all affected staff, with input from LiLAC as appropriate. The Trade Unions will be included throughout this process.

4.0 Implications For Council Policy And Governance

4.1 At their meetings on 9th March and 13th October 2005, Members of Executive Board agreed the Corporate Governance arrangements for the procurement of PPP / PFI projects, giving appropriate delegations to the PPP / PFI Co-ordination Board and to specific PFI Project Boards. The procurement of this Project has been undertaken in compliance with these arrangements. Authority to enter into a contract with the Preferred Bidder is reserved to Members of Executive Board.

4.2 All stages of the procurement are duly recorded in the reports and minutes of the Independent Living PFI / BSF Project Board and the PPP / PFI Coordination Board.

5.0 Legal and Resource Implications

5.1 The negotiations on Financial and Legal matters are reaching their conclusion. The appendices attached to this report outline the current key issues.

5.2 **Financial Issues:** Attached as Appendix 1 is a detailed report covering the financial issues relating to the project. In summary the main issues are:

- Value for Money.
- Affordability.
- Compliance with Capital Financing Regulations.
- Termination of the contract.

This Appendix, and the Final Business Case, is confidential under Access to Information Rule 10.4.3 because publication could prejudice the City Council's commercial interests as both the Appendix and the Final Business Case include matters where final negotiations on the Contract are not yet complete. In addition both the Appendix and the Final Business Case contain sensitive commercial information supplied to the City Council by the Preferred Bidder. In these circumstances it is considered that the public interest in not disclosing this commercial information outweighs the interests of disclosure.

5.3 **Legal Implications and Powers:** Appendix 2 gives information on the Agreements that will be required and the key legal issues. The following paragraphs identify the principal powers enabling the contracts to be signed. The final report to the Deputy Chief Executive will contain full detail of the Council's powers to enter into the contracts.

5.3.1 Project Agreement and ancillary documentation – Leeds City Council has statutory powers to enter into the Project Agreement to procure the supply and provision of accommodation for persons with mental health needs and learning difficulties. The statutory provisions conferring the power are Parts VI and VII of the Housing Act 1996, Schedule 1 of the Local Authority Social Services Act 1970, sections 46 and 47 of the National Health Service and Community Care Act 1990, sections 2 and 3 of the Chronically Sick and Disabled Persons Act 1970, Part III of the National Assistance Act 1948, sections 17 and 20 of the Children Act 1989, section 117 Mental Health Act 1983, sections 1(1) and 1(2) of the 1997 Act, section 2 of the Local Government Act 2000 (power to do anything considered to be likely to achieve the promotion or improvement of the social, economic or environmental wellbeing of the area, when exercising the powers in the 2000 Act regard must be had to the Council's community strategy contained in the Vision for Leeds) and in support of the above powers so far as necessary section 111 of the Local Government Act 1972.

5.3.2 A number of the sites will be disposed of under the Project Agreement via a 25 year lease, at the end of which the properties will revert back to the City Council. The leases are required to enable the Housing Management sub-contractor of the PFI Contractor, Progress Care, an RSL, to grant tenancies to the service users. Necessary appropriations under s122 Local Government Act 1972 and disposals under s123 Local Government Act 1972, are subject to separate reports to the Director of City Development under delegated powers.

5.4 **Final Report and Authorisation:** Due to the fact that some issues in the detailed contract documents remain to be finalized and final due diligence has not been undertaken, the City Council has not to date received a detailed report from the Council's external legal advisers, DLA Piper (DLA) in relation to this Project.

Once all negotiations and contract preparation is finalised, the City Council will receive a detailed report from DLA in relation to this project. This report is anticipated to

- i. Confirm in detail the Council's statutory powers to enter into the documentation
- ii. Provide advice on the terms of that contract documentation
- iii. Advise on the steps taken to check the terms of the supporting financing documents, sub-contracts, and shareholder and investment documents that they are satisfactory from the Council's point of view, and due diligence undertaken.

It is also anticipated that it will support the proposed certification of the PFI contract and of the direct agreement between the City Council and the contractors and senior lender under the Local Government (Contracts) Act 1997, together with any other certificates deemed necessary. These certificates provide protection to the PFI contractor and senior lender against the consequences of the transactions being outside the Council's statutory powers. Because of the significance of the above it is proposed that the delegations to the Deputy Chief Executive in relation to the approval of the terms of the transaction and the conclusion of the contracts be conditional on the outcome of the report from DLA , as outlined above.

5.5 **The Payment Mechanism** is set out in schedule 4 to the Project Agreement and is based substantially on the following model documentation:

- Housing PFI Procurement Pack;
- Draft Social Services Procurement Pack and
- Standardisation of PFI Contracts Version 4 (SOPC4).

The Payment Mechanism is designed to ensure effective Contractor performance whilst also ensuring that the Project remains bankable. The Payment Mechanism provides for specific deductions to be made from the Unitary Charge (the annual payment) when specified standards for the premises and services are not met. 100% of the unitary charge is at risk for 'unavailability' of the premises and up to 30% of the unitary charge is at risk for 'poor performance' of the services. The payment mechanism regulates the calculation and payment of the invoices and addresses issues such as the impact of inflation.

6. Conclusions

- 6.1 The Leeds Independent Living Project (ILP) forms a major part of a City Council Modernisation Programme which aims to significantly improve accommodation, housing related support and care services to adults with a learning disability and adults with mental health needs.
- 6.2 Leeds has also been successful in obtaining PFI credits for the provision and maintenance of a residential facility for young people with learning difficulties and a short break facility for disabled children. This Children's PFI element has been integrated into the wider Independent Living Project, although it will form a further report in due course The total capital value of the project, including the children's services element, amounts to over £50m.

- 6.3 The affordability implications of this project to the City Council are reported in Appendix 1, which is confidential to this report.
- 6.4 Under the terms of the City Council's Corporate Governance arrangements for PPP / PFI projects, the PPP / PFI Coordination Board have approved the submission of the Final Business Case to these Departments in advance of (and subject to) the decision of Executive Board. This should ensure that the relevant Government agencies have sufficient time to consider and grant final approval for the Project prior to Financial Close, programmed for 14th March 2008. Once the review of the FBC has been completed, and subject to their approval, DCLG, DoH and DCSF will issue a joint Promissory Note to the City Council which will provide the necessary written confirmation regarding credit cover and revenue and capital support the City Council requires before it can sign the Contract with LiLAC. A copy of this report and the resolutions will be submitted to DCLG, DoH and DCSF following the meeting of this Executive Board to support the FBC.
- 6.5 Financial Close and Contract signature will in turn see the commencement of the construction programme in May 2008. The programme will be split into 12 phases and, following successful completion of the final phase in May 2011, will lead to a total of 75 properties with 343 bed spaces being available for beneficial use by the citizens of the City.

7 Recommendations

Members of Executive Board are recommended to note this report, and:

- 7.1 Approve the Final Business Case prior to submission to the Department for Communities and Local Government (DCLG), Department for Health (DoH) and the Department for Children, Schools and Families (DCSF).
- 7.2 Approve the submission of Final Business Case, accompanying report and subsequent minutes to DCLG, DoH and DCSF.
- 7.3 Approve the financial implications for the Council of entering into the Project and to agree the maximum affordability ceiling for the City Council of £5.113m, as set out in Appendix 1.
- 7.4 Approve the arrangements to Financial Close and implementation of the Project to include (but not by way of limitation) the award/entry into a PFI Project Agreement to a special purpose company to be established by the Leeds Independent Living Accommodation Company Consortium (LiLAC);

and, in connection therewith, grant delegated powers to the Deputy Chief Executive (or in his absence the Director of Resources) to give final approval to the completion of the Project, including (but not by way of limitation) the terms of the following:

- i. The Project Agreement
- ii. The Funders Direct Agreement
- iii. The Pensions Admission Agreement
- iv. Arrangements to appoint an independent certifier to assess the quality of the contractors' work and
- v. Appropriate collateral warranties.

Together with any other documentation ancillary or additional to the above necessary for the completion of the Project ('Project Documents')

subject to

- (A) DCLG, DOH and DCSF approval of the Final Business Case
- (B) the Deputy Chief Executive (or in his absence the Director of Resources) being satisfied that the Project remains within the affordability constraint set out in 7.2 above
- (C) Receipt of a report satisfactory to the Deputy Chief Executive (or in his absence the Director of Resources) from the Council's external legal Advisers, as described in paragraph 5.4 of this report and
- (D) The Director of Resources (or in his absence the Chief Officer – Financial Management) assessment on the balance sheet treatment in relation to the PFI contract.

- 7.5 Approve that the Director of Resources, as the statutory officer under section 151 of the Local Government Act 1972, or in his absence the Chief Officer - Financial Management, be authorised to sign any necessary certificates under the Local Government (Contracts) Act 1997 in relation to the Project.
- 7.6 Approve that, in respect of certification under 7.5, and subject to the advice of the Assistant Chief Executive (Corporate Governance), a contractual indemnity be provided to the Director of Resources (or the Chief Officer – Financial Management, as appropriate) in respect of any personal liabilities arising from the certification.
- 7.7 Approve the execution of the Project Documents, by affixing the Council's common seal and / or signature (in accordance with Articles 14.4 and 14.5 of Part 2 of the City Council's Constitution) and to approve that the Assistant Chief Executive (Corporate Governance) (or any other officer of the Council authorised by her) take any necessary further action to complete the Project including any final amendments to the Project Documents and give effect to Members' resolutions and delegated decisions referred to in these recommendations.
- 7.8 Instruct Officers to return to Executive Board with a further report following completion of the affordability analysis of the Children's element of the PFI Project.