

To: Mr Akshay Kaul
Partnerships for Schools
Golden Cross House
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30th April 2004

Dear Akshay

RE: CONSULTATION ON LOCAL EDUCATION PARTNERSHIPS (LEP)

Thank you for the opportunity to comment upon the Local Education Partnership Model.

Our response after wide consultation, including John Freeman from Dudley, is enclosed. Generally we are supportive of the proposals to simplify and accelerate the method to transform school buildings to deliver teaching and promote learning effectively into the 21st Century. Perhaps our key general concerns can be summarised as follows:

- LA 10% stake in LEP appears to be unnecessary and confuses risk transfer, muddying what PFI model sought to clarify i.e. placing risk where it was most appropriate.
- LEP structure currently looks unnecessary and expensive, taking resource away from outcome.
- We would most strongly lobby that any LA with a successful BSF bid was given the opportunity to negotiate an effective procurement model based around the LEP concept but utilising any existing appropriate procurement mechanisms, in order to deliver a best value local solution.
- Affordability – operate elements in particular will put extreme pressure on LA and school budgets. We would hope that PfS and DfES would work with LAs and schools to minimise affordability gaps.

We would welcome the opportunity to discuss alternatives with Partnerships for Schools at some future date.

Yours sincerely

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LOCAL EDUCATION PARTNERSHIPS (LEP) CONSULTATION RESPONSE

Question

1. By definition, a strategic business case should encompass the 'whole business', and demonstrate how other school phases, other teaching providers and other local stakeholders are integrated with the BSF vision. Only by such demonstration will the credibility of the BSF proposals be made evident. This does not however imply that LEP's remit should necessarily extend to primary schools. There is time to determine that when the operation of the LEP in respect of secondary phase, has been monitored/evaluated, and alongside that, the monitoring/evaluation of local variants of the LEP model which LEA's may employ in response to government's commitment to local flexibility of process/procedure. If the LEP model is adopted for the Secondary estate, this should be analysed on results before any consideration is given to extending to Primary. It is also important to note that the LA capacity to deliver its strategic vision for nursery and primary phases will be heavily dependant upon the ability of central government to maintain infrastructure resources for these key areas, alongside BSF for secondary phase.

General Comment re: Section 1

Birmingham's level of need, and capacity to deliver through innovative procurement has been demonstrated. We envisage implementation of BSF in three phases within this city, focusing in the first phase on our two EiC areas in the 'inner city'.

- 2a. The best PSP is the one that helps us and our partners deliver our fundamental objective to enhance/transform teaching and learning in this city. The experience and the attitude of the PSP is key. We would expect some sort of consortium involving as a minimum; finance, legal, technical, main contractor, design and facilities management.
- 2b. Don't agree that it is an either/or situation. A PSP already with a fully integrated supply chain, does not give us the opportunity to influence the development of that supply chain. But we are very dubious about the 'integrator' PSP who would market test for each new project. We prefer an involvement with the PSP to develop a long term supply chain relationship, possibly lasting initially for the first phase of the BSF programme with possible extension to the next two phases, subject to hitting agreed benchmarks/key performance indicators. We should not underplay the need for market testing. Within this sort of procurement it is an essential component. It is feasible however to develop a 'market test' for supply chain which relates primarily to benchmarks/KPIs. Given that we are envisioning a timeframe of up to 10 years it would be wise to keep options open. Long term supply chain solutions are likely to offer VFM. This is also in line with the Governments modernising construction agenda.
- 2c. It is accepted that the more schools in a BSF phase, and the more bidders in the ITN shortlist, so more will be the level of abortive costs for private and public sector stakeholders. It is also accepted that a 'sample' of full designs/costs can demonstrate compliance with exemplar designs and affordability constraints. However, we oppose this approach, in the light of our PFI experience, and our knowledge of the market place, primarily for the following reasons:

- 'sample' can lead to PSP adopting a 'one size fits all' approach,
- schools excluded from the sample will feel just that, excluded from the process and decision-making. They will feel disempowered and that would be very negative for the BSF process as a whole.

We instead recommend that the PSP be asked to develop outline designs/costs for all schools within the first phase. We should not underplay the role of costed examples as this sort of procurement depends on getting a true VFM analysis of phase 1 costs as the benchmark for reassuring the public sector of the longer term value for money.

General comment re Section 2

We believe that the procurement process described is too prescriptive and not in keeping with Government's assertions about local flexibility. We also believe that the length of time proposed for the procurement phase is too short unless utilising existing local procurement initiatives. There is no specific reference to the PSP's need to engage with LA/LEA over affordability.

- 3a.** We have reservations that the joint venture will in all circumstances add value to the process. Particularly where there is a more traditional procurement solution e.g. design and build contract forming a cornerstone of a particular project the insertion of the LEP into the project structure unnecessarily adds to the cost, creates unnecessary tax leakage and inhibits demonstration of value for money for that particular project.
- 3b.** In our case representation would be by both Officer and Member and there would need to be the right for the City to choose either. In terms of conflict of interest Members taking part will be bound by a greater responsibility under the Model Code of Conduct for Members. It would be very helpful to see a similarly strong conflict of interest mechanism within the LEP. Handling conflict of interest between the local authority and companies in which it is interested is not necessarily a problem for the local authority. However dependent on the particular circumstances one can envisage there may be conflicts between e.g. failing project SPVs and the LEP and careful thought should be given to this.
- 3c.** Two areas that immediately spring to mind are:-
- i. Capital expenditure over a defined limit.
 - ii. A tightening of the wording in "g" to reflect diversification into any area of business other than delivery of the projects forming part of the business plan.
- 3d.** We are concerned that the introduction of the LEP vehicle represents an additional layer of cost and bureaucracy in the delivery of projects, compared with previous PFI type structures. This could have implications for the speed of decision-making, and we think your paras 3.38 – 3.42 substantially underestimates the costs of running the LEP. The LEP will be a very substantial Company, particularly on the risk-taking models. £100,000 to £200,000 will not fund the calibre of additional top tier management that will be needed or the specialist professional advice, administrative costs and premises overheads. With regard to super profit provisions we are in favour of a less complex structure. We would propose that super profits are divided on a 50/50 basis between the LEP and the local authority. This would allow proper accountability to the public sector in accordance with its fiduciary duties and similarly incentivise the LEP. With regard to the default

scenario set off rights should be allowed to the local authority against termination compensation payable. Also whilst the proposed documentation correctly promotes a partnership ethos a documented structure to dispute resolution is preferable e.g. Birmingham City Council has an Adjudication Scheme for such matters. We are also not sure that exclusivity is appropriate as currently proposed. Liftco documentation currently has non-exclusivity for local authorities. Also on Liftco projects Liftco costs are fully recovered on phase 1 projects. With regard to the LEP we would propose that LEP costs are fully recovered within phase 1 (rather than phases 1 and 2) and with that in mind exclusivity may well be appropriate for phase 1. However thereafter we would propose that non-exclusivity applies for phase 2. This would provide the right competitive edge for market testing exercises and equally sits more comfortably with local authority fiduciary duties and accountability. Exclusivity as currently defined in Liftco would be inappropriate for the LEP as this prevents large authorities such as Birmingham City Council using in-house resources in a VFM way. Exclusivity within the LEP would have to be so defined that it did not include use of in-house resources where appropriate - an example of this would be estate management.

General comment re Sections 3/4

Local Authorities should not be required or expected to take an ordinary shareholding in the LEP, though this should be an option available. PFI has to date encouraged local authorities to transfer to the private sector those risks that are best managed there. Why would authorities want to take back a 10% share in those risks? Authorities are also expected to find the cost of the 10% equity stake from their own capital resources. We think this is likely to be significantly more than the £40k to £500k suggested by your para 3.44.

Our experience of equity involvement is that this works well whilst there is no significant disagreement, but when there is dispute or when finances are going badly, conflicts of interest arise for the Council Directors. Directors will be advised that they must act in the interests of the Company, not the local authority.

4. The notion of 'core' services is accepted. Integration rather than duplication, to achieve best value is the objective here. See response to 3a above. Where good practice exists and can be demonstrated 'in-house' or through existing Public Private Partnerships, these should be utilised within BSF, not duplicated by PSP or LEP. We support the notion of a broad based OJEU notice to facilitate potential broader range of service delivery.
5. We are concerned that again, there is no mention of 'affordability' considerations in the stage 1 work of the LEP. Exclusivity is dependent upon satisfactory compliance with the approval criteria, but the process should include a dispute resolution mechanism to be enacted if required.
6. We would refer you to comments on market testing above. Benchmarking alone will not demonstrate VFM without an ability to market test with the supply chain. VFM will be demonstrated through a robust initial selection process and subsequent benchmarking, looking at quality, cost and affordability. We need to agree a

method of developing long-term relationships – including the supply chain which offers real VFM.

7. We think that initial set up costs should be fully recovered from phase 1 and not phase 1 and 2. Equally as indicated above we would prefer a more documented dispute resolution procedure to accompany the principles proposed. The default on termination provision seems appropriate in the context of this style of procurement.

8a. A template output specification is welcomed provided that:

- Central government financial support is realistically based on that output specification.
- Local BSF schemes can amend the template to reflect locally agreed needs.
- Quality and flexibility are key components.
- We have reservations about added value particularly around e.g. design and build contracting.

8b. This seems a sound approach to PFI.

8c. No. It may be the case in some smaller LAs, where the LEP may provide access to private sector expertise otherwise unavailable to it, but it must be recognised that Birmingham is already a world leader in the use of ICT in its learning community (source: Bertelsmann Foundation report 2003) and has as much to contribute to private sector partners as *vice versa*. In the ICT sphere, the LA already has experience (through PFI projects) of major infrastructure projects and has a range of call-off contracts in place (or in procurement) to provide all aspects of ICT, which will change over time (to reflect changes in technology, changes in the market, emerging companies, etc) in a far more dynamic way than the 10-15 year contractual framework timescale would allow.

Far more important is the integration of BSF schools into the rest of the City. It is vital that the ICT provision reflects the City's strategy, aimed at the integration of all learning centres into a unified "Learning City" culture, providing for schools as a (but by no means the sole) focus of learning as a lifelong, 24/7, activity for all citizens. ICT is fundamentally changing the nature of the learning and teaching processes and their management, and driving built environment changes to exploit its full potential, and Birmingham's exploitation of it is as advanced as anywhere – accountability requires that that vision continues to dominate the development of BSF schools as with others. BSF is an opportunity for these schools to lead the implementation of that vision, but it must in a very real sense also follow it – the creation of a privileged "enclave" would undermine the City's education strategy.

If the role of the LEP is as facilitator rather than provider, then of course there is no reason why the LA cannot be provider of those ICT services it is good at (in particular connectivity and strategic advice), while the LEP contracts with private sector suppliers to provide services they are good at (such as major technology refresh every few years).

Paragraph 5.30 refers again to a joint fund between ALEP and ACC. We do not see that a joint fund is necessary as the funds could be left with the local authority.

This would ease our accountability. Equally joint funds become complicated on e.g. winding up or receivership when the receivers and liquidators have different priorities to those set out in the SPA.

8d. The affordability/payment mechanism issues surrounding 'conventional contracting' are severe. It is essential, for clarity/credibility purposes, that outline designs/costs are provided by PSP for each 'conventionally' contracted project in BSF phase 1 prior to identification of preferred PSP, and that 'whole life maintenance' is similarly modelled and costed, we dispute the assumption that "maintenance arrangements would need to be separately contracted for". The affordability of a commitment to whole life maintenance will be a serious financial obstacle to local authorities, both under PFI and conventional procurement options. Authorities have frequently not achieved sufficient maintenance expenditure on schools and other property in the past. Unless additional revenue resources are provided to authorities to fund higher schools maintenance in the long term, resources will have to be diverted away from the direct education services (teaching staff etc). This issue goes to the heart of the long-term problem of under funding of maintenance and the current inability of authorities to afford to meet 'real' depreciation charges on schools and other property. The Government's wider proposals on the introduction and funding of full depreciation accounting in local authorities will be an important determinant in resolving these issues. This is an area where I am not sure that the LEP actually adds value to the process.

8e. There is no necessary reason why ICT contracts would best be provided by the LEP, although this may be the case. ICT contracts can be more flexible and shorter term than other LEP work and involve different skills and risks. There is no need to be tied into the LEP for ICT during the whole life of the LEP. There therefore needs to be flexibility as to both the provider and the length of ICT contracts.

The proposal in 6.30 (d) for a sinking fund for ICT renewal is one way of financing the capital cost providing the authority can afford at the time to contribute to the cost in advance of need. Discretion needs to be left with authorities to finance ICT in other ways. Again, the outcome of the debate about depreciation accounting is relevant here.

It has not been possible within the timeframe available to produce a detailed analysis of these proposals point-by-point. However, a number of general principles underpinning the service provision can be stated.

In the design / installation phase, a number of services are specified (mainly those involving connectivity to external resources) which are currently, in Birmingham, provided by the LA (through BGfL) (and likely to be so for the foreseeable future), and are thus properly the preserve of neither the school nor the LEP – however they will still need to be funded.

It is not clear from the output specification whether it is anticipated that the managed service provider (whether it be the LEP, a supplier contracted by the LEP, a supplier contracted directly by the school, or whatever) should provide all of the services mentioned. If so, it seems to us to be very far from the case – they are all posited on the provider delivering a service to the school without any reference to any other stakeholders (such as the LEA, local community bodies, parents, other possible clients such as local SMEs). Nor is there any indication of how the specifications over time will fit within the strategic context required by the LEA if the new schools are to play a major role in delivering the City Council's vision of the Learning City. Also, although the LEP proposals do refer at one point to the need

to avoid “re-inventing the wheel”, there is no link to services that are already (and will continue to be) provided by existing groups, e.g. technicians for hardware maintenance who service a local group of schools. There is also an underlying assumption that all the services specified come from one provider. As mentioned above, if the LEP is facilitator not provider, this may not be an issue, but if the LEP is provider then there is a high risk attached to maintaining that position over 10-15 years in such a fast-changing world.

Several services which directly impact on classroom performance, such as choice of software, belong with the school’s professional staff and not a service provider.

In the operate phase, training seems to be perceived as a purely technical function. There is a need for this, but an equally vital need is for training in the exploitation of the technology and the software as it emerges. Much of the necessary training will in fact happen on a self-help-group basis, using the collegiate nature of the school, and making extensive use of BGfL and other networks to produce “virtual self-help-groups”, but it will also need considerable external input, much of which should be driven (but not necessarily provided) by the LEA.

The proposal for “Learner equipment” may well be too prescriptive (a ratio of equipment: learners = 1:4 is far too inflexible). Underpinning this is possibly an out-of-date notion of the equipment used by learners: child (or pair / small group of children) sat in front of a fixed PC screen is not the ultimate ICT-based learning experience. The framework must recognise that technology and its uses are changing fast, moving towards personal portable devices, and there must not be any kind of “lock-in” to any particular pedagogic model. It is even conceivable that, if the model adopted by the eLearning Foundation were to take off, that the school (and LEP) would focus entirely on infrastructure and leave the provision of “personal learning devices” to individual learners / groups: the specification for service providers must be written flexibly enough to recognise these possibilities.

Finally, a crucial point: “integrate with built environment”, and “flexible and able to accommodate future changes” may not be enough. In a major sense, consideration of the new models of learning and teaching should drive the design, not follow it, and ICT is a major enabling factor in many of these. The broad scope of possible change suggests that an attempt to refurbish 19th or mid 20th century buildings may in the long run be illusory: let us not forget that, if these new buildings last as long as the 1950’s buildings have done, then half-a-million kids will pass through their doors – two entire generations of Brummies!

General Comments on Section 6

This section, as most others, appears to reflect a desire to define the manageable areas and to take more grey areas out of the risk matrix of the LEP and place them with the LA e.g. affordability, conventionally contracted projects.

9. Subject to an appropriate contractual framework LEP as Integrated Service Provider appears to deliver what the LEP is potentially being created for - co-ordinated delivery of projects to enhance teaching and learning. Its downside, apart from those issues referred to in relation to question 3 above, appears to be risk to the private sector - but if this risk is appropriate - it strengthens the power of the LEP, not diminishes it - and is keeping with the PFI maxim - risk should lie where it is most appropriate.

10a – d

We have already expressed our reservations about the local authority being expected to make a 10% equity contribution (q 3). We have also expressed our view that the LEP will be more expensive to run than suggested and that higher equity contributions would be needed.

We agree that the LEP would provide a risk buffer to the local authority, but this is due primarily to the benefits of a long-term partnership with contractors rather than the introduction of the LEP vehicle itself. Birmingham has recently introduced its own Contractor Partnering arrangements for building works procurement in order to bring these benefits.

The basic running cost budget for the LEP set out in 7.4 seems light and will in any event depend on model of LEP chosen as to its resource requirement. With regard to paragraph 7.8 legally we will require that all warranties are assignable to the local authority on demand (along with e.g. IPR rights). This is to cover circumstances such as default, termination, winding up etc.

The Birmingham Construction Partnership (BCP) and Consultant Framework Agreement (CFA) can deliver many of the stakeholder requirements listed in the document. Utilisation of BCP and CFA would reduce complex and timely procurement. Early discussion with PfS would be appropriate.

[Comments from Chris Mitton \(EdIT IS\) sent to DfES as an addendum and added here.](#)