



Building schools for the future

DATED []

(1) PARTNERSHIPS FOR SCHOOLS

(2) [Framework User]

Memorandum of Understanding

Document Status: Issued

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11 July 2007	3.0	Issued	Change from DfES to DCSF.

This **MEMORANDUM OF UNDERSTANDING** is made on

BETWEEN:

- (1) **Partnerships for Schools Limited** (company registered number 04650964) of Fifth Floor, 10 Great George Street, London SW1P 3AE (“PfS”); and
- (2) **[Framework User]** of ♦ (**Address of Framework User**) (the “Framework User”);

BACKGROUND

- A. The Department for Children, Schools and Families (**DCSF**) and Partnerships UK have set up Partnerships for Schools to manage the delivery of the “Building School for the Future” (**BSF**) programme (the **BSF Programme**).
- B. The Academies Programme was introduced in March 2000. The DCSF asked Partnerships for Schools to take on delivery of Academies in March 2006, following the proposal made in June 2005 by the Secretary of State to more closely align investment in Academies with BSF. The DCSF retains responsibility for education matters and sponsor relations. Sponsors themselves will still be responsible for an Academy’s ethos, specialism, management and governance.
- C. On 29 March 2006 PfS procured the publication of a Contract Notice in the Official Journal of the European Union under reference 2006-S-063418 the purpose of which was to procure for the benefit of various parties a framework arrangement whereby selected building contractors would be appointed to a framework. 6 Contractors have now been appointed to the Contractors Framework which will run for four years from 1 January 2007.
- D. [The Framework User has entered into this Memorandum of Understanding pursuant to its powers contained in section 2 of the Local Government Act 2000, section 14 of the Education Act 1996, section 22 of the Schools Standards and Framework Act 1998 and section 111 of the Local Government Act 1972 in order to enable investment in certain educational services and facilities for which it is responsible.¹]
- E. This Memorandum of Understanding aims to establish the parties’ respective obligations and commitments to each other and to the BSF Programme at a national and local level. It is not intended to be legally binding except as specifically set out below.

1. Interpretation

- 1.1. In this Memorandum of Understanding the following expressions have the following meaning:

“[insert name of Academy Company]”	means the company registered in England and Wales under registered number [•] and having its registered
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¹ This paragraph will need to be amended as appropriate depending on the status of the Framework User

	office at [•];
“Academy”	means [insert name of Academy to be built] which is to be constructed pursuant to a Design and Build Contract and for which [insert name of Academy Company] is to then be responsible for running;
“Design and Build Contract”	means the Design and Build Contracts as set out in Schedule 4 of the Framework Agreement;
“Development Agreement”	means the agreement to be entered into between the Authority and [<i>insert name of Academy Company</i>] in respect of the Design and Build Contract and the Academy;] ²
“DCSF”	means the Department for Children, Schools and Families;
“Framework Agreement”	means the agreements entered into between PfS and the Panel Members and procured pursuant to a notice published on 29 March 2006 in the Official Journal of the European Union under reference 2006-S-063418;
“Panel Members”	means the following contractors: Balfour Beatty Carillion Keir Laing O’Rourke Skanska Wilmott Dixon
“Restricted Procedure”	means the Restricted Procedure as set out in the Public Contracts Regulations 2006.

2. The Academies Contractors Framework

2.1. As part of the Building Schools for the Future initiative, Partnerships for Schools Limited (PfS) have set up a national framework for building contractors under which Framework Users can procure the construction of new educational facilities which are likely to include academies, One School Pathfinders and smaller capital value BSF projects. This initiative, which seeks to augment and support the core Building Schools for the Future programme, will be used to construct specific, targeted, school projects over the next four years.

² This definition will not be required where the Framework User is the Academy itself

- 2.2. As a result of the ongoing success of the BSF programme, the DCSF has integrated the existing Academy delivery programme within BSF which will enhance its control over capital investment and improve delivery capacity to achieve demanding targets associated with the programme. PfS will assist in the delivery of the capital investment associated with the programme in two key areas:
- 2.2.1. the procurement of Academies through established partnerships which have been set up under the BSF programme; and
 - 2.2.2. the development of the national framework for Academy projects which are required before BSF partnerships have been established in a particular Framework User area. It is this particular aspect of the procurement of new Academies that will come within the Framework Agreement described in this Memorandum of Understanding.
- 2.3. The overarching efficiencies required through the national framework will be as follows:
- 2.3.1. meeting high quality, sustainable, design and construction standards which are consistent with the Building Schools for the Future programme (as described by the relevant Building Bulletins published by DCSF).
 - 2.3.2. providing value for money including:
 - 2.3.2.1. optimising the whole life cost of facilities consistent with the costs of BSF projects;
 - 2.3.2.2. contributing towards Gershon targets for efficiency;
 - 2.3.2.3. delivering buildings on time to meet the opening target dates for the individual schools/Academies.
 - 2.3.3. ensuring delivery in accordance with the Office of Government Commerce (OGC) "Common Minimum Standards for the Procurement of Works in the Built Environment by Local Authorities in England".

3. Approach to the Framework

PfS has produced the following suite of documentation to enable effective and lawful use of the framework arrangements:

- 3.1.1. Outline Business Case Guidance
- 3.1.2. Development Agreement
- 3.1.3. Guidance for Framework Users on Local Competitions
- 3.1.4. Design and Build Contracts
- 3.1.5. Template Invitation to Tender for Local Competitions

3.1.6. Confidentiality Agreement

- 3.2. The procurement of the Framework Agreements was carried out under the Restricted Procedure. As part of this process, Panel Members were required to accept the terms of the Design and Build contracts. It is essential to the lawful use of the framework that the Authority does not amend the Design and Build Contracts other than for project specific reasons and where indicated in the Design and Build Contracts.

4. The Role of the Authority

- 4.1. The Authority is the principal contracting authority under the Design and Build Contract and will be the primary driver in the successful and timely delivery of the Academy.
- 4.2. PfS and the Authority acknowledge the Authority's key role set out at paragraph 4.1 and the Authority agrees and commits to the following principles:
- 4.2.1. to keep all commercially sensitive information relating to the use of the Framework Agreement and the Design and Build Contracts confidential;
 - 4.2.2. to comply with the Guidance for Framework Users on Local Competitions;
 - 4.2.3. to use the framework only in accordance with the terms of the Framework Agreements including compliance with the restrictions in the Framework Agreement relating to conflicts of interest;
 - 4.2.4. [to enter into the Development Agreement;]³
 - 4.2.5. not to enter into a Design and Build Contract with any Panel Member without the consent of PfS;
 - 4.2.6. not to amend the Design and Build Contract used for the Academy other than as specifically permitted by the Design and Build Contract; and
 - 4.2.7. to provide PfS with access to all information relating to the local competition in respect of and the design and construction of the Academy.

5. The Role of PfS

- 5.1. PfS is the delivery vehicle to achieve the delivery objectives of the national Academy Programme.
- 5.2. PfS has [4] key roles in relation to the Academy Programme:

³ This will not be required where the Framework User is the Academy itself.

- 5.2.1. Programme Manager: PfS has a central role and programme manager allocating funding to projects and at individual academy level. Interaction with the Authority in respect of this function includes determining the appropriate allocation of funding based on agreed benchmarks and assisting in determination of value for money solutions and quantification of abnormal costs.
 - 5.2.2. Project Management: PfS will allocate a dedicated project management professional to the Framework User to monitor performance against the agreed project plan, ensure key stakeholders are supported and kept informed and enable effective project governance.
 - 5.2.3. Policeman: A prime rationale for the establishment of BSF is the efficiencies of scale that can be achieved through the development and use where possible of standardised contracts and bidding documents. In order to achieve these efficiencies, PfS will enforce the use of standard documentation and, in relation to the Design and Build Contracts, will require that these are amended for use only so far as is explicitly permitted in those contracts to ensure compliance with the Restricted Procedure.
 - 5.2.4. Benchmarking and Performance Management: A key part of the framework delivery solution is the ability to deliver value for money against nationally prepared benchmarks. PfS' role is to collect, normalise and manage such cost data which will be supplied to Framework Users in respect of future academy and BSF schemes and projects.
- 5.3. The Authority and PfS acknowledge PfS's key roles set out at paragraphs 5.1 – 5.2 and PfS agrees and commits to the following actions and principles:
- 5.3.1. allocate an Academy Project Director to support and oversee the procurement of the Academy by the Authority, in the case of One School Pathfinder projects levels of procurement support will be agreed on an individual basis;
 - 5.3.2. provide guidance as appropriate;
 - 5.3.3. share framework information to enable the Authority to make informed decisions ; and
 - 5.3.4. allocate funding for the Academy including quantifying and agreeing funding for abnormal.

6. Confidentiality

This Memorandum of Understanding is confidential to the parties and their advisers. This paragraph is legally binding.

7. Governing Law and Jurisdiction

This Memorandum of Understanding shall be governed by and construed in all respects in accordance with the laws of England and Wales and the English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this memorandum of understanding. This paragraph is legally binding.

8. Costs and Expenses

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this memorandum of understanding. This paragraph is legally binding.

9. No Partnership or Agency

9.1. This paragraph is legally binding.

9.2. Nothing in this memorandum of understanding shall be construed as creating a partnership.

9.3. No party shall be deemed to be an agent of any other party and no party shall hold itself out as having authority or power to bind any other party in any way.

Signed on behalf of PfS by:

Signed on behalf of the Authority by:

Chief Executive

Chief Executive