



**Cabinet
29 June 2015**

**Report from the Chief Operating
Officer**

Wards Affected:
ALL

Authority to Participate in the Joint Procurement of Legal Counsel (Barristers' Services)

1.0 Summary

1.1 This report requests approval to participate in collaborative procurement with the London Borough Legal Alliance ("LBLA") for the establishment of a framework for provision of barristers' services. As the proposed procurement is to be led by the London Borough of Waltham Forest, approval is also sought as required by Contract Standing Order 85 to using that borough's Contract Standing Orders and Financial Regulations.

2.0 Recommendations

- 2.1 That Cabinet give approval to the Council to participate in collaborative procurement led by the London Borough of Waltham Forest to establish a framework for barristers' services.
- 2.2 That Cabinet give approval to the collaborative procurement exercise detailed in 2.1 above being exempt from the normal requirements of Brent Council's Contract Standing Orders and Financial Regulations for good operational and/or financial reasons in accordance with the Contract Standing Order 84(a) and 85(c).
- 2.3 That Cabinet give approval to the pre tender considerations set out in paragraph 3.10.1 of this report

3.0 Detail

Background

- 3.1 The London Borough Legal Alliance (“LBLA”) is a partnership of the London Boroughs of Brent (“the Council”), Camden, Ealing, Hackney, Harrow, Hammersmith & Fulham, London Borough of Hillingdon, Hounslow, Islington, Waltham Forest, Royal Borough of Kensington & Chelsea, The City of London, and West London Waste Authority (together the “LBLA Members”).
- 3.2 The LBLA Members have in the past let framework agreements for the provision of barristers’ services. The existing framework for barristers’ services expires on 31 December 2015. The LBLA authorities consider that the frameworks have worked well and delivered savings for the authorities. As a result the LBLA Members have agreed to establish a framework of barristers to enable the procurement of barristers services in a more organised and consistent way. A number of expert and experienced legal advisors/barristers chambers will be appointed to the framework as preferred providers of specialist advocacy and related legal services. It is expected that the council’s participation in the framework, to call off specialist advocacy and related legal services, will assist the council in achieving best value, and enhance delivery of services.
- 3.3 In 2014-15, 59% of the Council’s spend on Counsel was on public law proceedings involving children. This follows a 20% increase in public law cases involving children in 2013-14, the number of cases having already increased in previous years. In 2014 the local Family Court moved to Hatton Cross from Neasden, so increasing the reliance on external Counsel as opposed to in-house lawyers undertaking advocacy.
- 3.4 The LBLA Members consulted with Kennedy Cater, a specialist legal consultant, to assist with the tender process leading to the establishment of a framework with agreed rates and service standards.
- 3.5 Following discussions with Kennedy Cater, the LBLA Members concluded that whilst all LBLA Members should have full input into the procurement process, one authority should lead on the procurement. As a result, it has been agreed that the London Borough of Waltham Forest will act as a central purchasing body for the purposes of undertaking this procurement exercise and concluding framework agreements with each successful applicant. Each LBLA Member will join the framework by signing an access agreement. The LBLA Members consider that to save costs, as the lead authority is the London Borough of Waltham Forest, that council’s Standing Orders should be used for the procurement process.
- 3.6 It is proposed that the framework will run for a period of four (4) years from 1st January 2016.

- 3.7 Officers consider that there are good financial and operational reasons to participate in a collaborative procurement. Although barristers are self employed, they work within barristers Chambers and employ Chambers clerks to negotiate fees on their behalf instead of direct negotiation with the councils. Under a framework, the Council will, amongst other things, have the benefit of accessing the relevant data which will enable the Council to compare levels of experience and expertise of barristers/chambers before instructing them on matters; accessing a wide range of services from a choice of various barristers chambers as and when require; and have a consistent billing arrangement in line with pre agreed rates and service standards with the chambers. In addition the Council will reserve the right to seek services of barristers outside the framework should the need arise.
- 3.8 It is expected that participating in the framework will benefit the Council particularly to cut legal costs and deliver effective specialist advocacy. On that basis and given the London Borough of Waltham Forest are leading on the procurement, approval is sought for this collaborative procurement to be exempted from the normal requirements of the Council's Contracts Standing Orders.

The tender process

- 3.9 It is proposed by the LBLA Members that subject to relevant approvals, advertisements will be placed in the Official Journal of the European Union (OJEU), the London Tender Portal on 1st July 2015 to seek initial expressions of interest for a number of different areas/categories of work. These will be divided into the following Lots:

- Corporate Governance
- Children's Services
- Adult Services
- Planning
- Criminal Litigation & Prosecutions
- Civil Litigation

3.10 Pre-tender considerations

- 3.10.1 In accordance with the Contract Standing Orders 88 and 89, pre-tender considerations have been set out below for the approval of the Cabinet:

Ref.	Requirement	Response
(i)	The nature of the service.	Framework of barristers' services
(ii)	The estimated value.	£2,317,572.28
(iii)	The contract term.	4 years

Ref.	Requirement	Response	
(iv)	The tender procedure to be adopted.	A two stage tender process	
v)	The procurement timetable.	Indicative dates are:	
		Adverts placed	1 st July 2015
		Expressions of interest returned	5 th August 2015
		Shortlist drawn up in accordance with the Council's approved criteria	10 th August 2015 to 31 st August 2015
		Invite to tender	16 th September 2015
		Deadline for tender submissions	8 th October 2015
		Panel evaluation and shortlist for interview	w/c 23 rd October 2015
		Cabinet Approval of Award	November 2015
		Contract start date	1 st January 2016
(vi)	The evaluation criteria and process.	<ol style="list-style-type: none"> 1. At selection (pre-qualification stage) shortlists are to be drawn up in accordance with the London Borough of Waltham Forest's policies and procedures to identify organisations meeting relevant financial standing requirements, technical capacity and technical expertise. 2. At tender evaluation stage, the panel will evaluate the tenders for the following lots against the following criteria and weightings: <ul style="list-style-type: none"> • Governance & Public Law: Quality Criteria (including Added Value) – 65%; Price -35% • Children's Services: Quality Criteria (including 	

Ref.	Requirement	Response
		<p>Added Value) - 50%; Price – 50%</p> <ul style="list-style-type: none"> • Adult Social Services: Quality Criteria (including Added Value) – 50%; Price – 50% • Planning & Property: Quality Criteria (including Added Value) – 60%; Price 40% • Criminal Litigation & Prosecutions: Quality Criteria (including Added Value) – 50%; Price 50% • Civil Litigation: Quality Criteria (including Added Value) – 50%; Price – 50% • Housing: Quality Criteria (including Added Value) – 50%; Price – 50%
(vii)	Any business risks associated with entering the contract.	No specific business risks are considered to be associated with entering into the proposed contract.
(viii)	The Council's Best Value duties.	The competitive procurement of a framework supports the council's Best Value duties.
(ix)	Consideration of Public Services (Social Value) Act 2012	See section 8.0 below
(x)	Any staffing implications, including TUPE and pensions.	None.
(xi)	The relevant financial, legal and other considerations.	See sections 4 and 5 below.

3.10.2 The weightings allocated to the Lots were as a result of discussions between the LBLA Members and they will not necessarily be the weightings subsequently applied when calling off from the framework. The LBLA Members were minded that it would be sensible to apply a different ratio across the Lots, as quality is more important in some of the very high profile matters.

4.0 Financial Implications

4.1 The Council's Contract Standing Orders state that contracts for

supplies and services exceeding £250,000 shall be referred to the Cabinet for approval.

- 4.2 The estimated value of the services that Brent Council would call off under the framework agreement during the 4 year period of the contract is £2,317,572.28. This works out at an average annual contract value of £579,393.
- 4.3 It is anticipated that the cost of this contract will be funded from existing resources within the Legal Services cash envelope, or in exceptional circumstances from the service areas on whose behalf Legal Services procure advice from barristers on each particular occasion.
- 4.4 The expenditure will be capped within the budget available to legal services and Officers will ensure that commitment to the contract does not commit the Council to expenditure against other budgets.

5.0 Legal Implications

- 5.1 Under the EU Procurement Regulations contracts for provision of legal services fall within Schedule 3 of the Public Contracts Regulations 2015 ('PCR 2015'). In procuring such services, where they are above the EU threshold for services (currently 750,000 Euros (£625,050)), contracting authorities are required to publish a contract notice or PIN as a call for competition in the OJEU in the usual way and a contract award notice once the contract has been awarded. The procurement procedure can be determined by the contracting authority and must comply with the Treaty principles of equal treatment and transparency and provide reasonable and proportionate timescales.
- 5.2 The framework will be established through a collaborative procurement exercise to be undertaken on behalf of the Council and the other LBLA Members by the London Borough of Waltham Forest in accordance with the requirements of the EU procurement regulations as detailed in this report.
- 5.3 As the estimated value of the services which the Council would call off under the framework agreement during its lifetime is in excess of £250,000, it is subject to the requirements of the Council's Contract Standing Orders (CSO) in respect of High Value Contracts. CSO 85 provides that any collaborative procurement shall comply with the Council's Standing Orders and Financial Regulations unless in the case of High Value Contract the agreement of the Cabinet is obtained under the CSO No 84(a). Exemption under CSO No 84(a) can be approved by the Cabinet where there are good operational and / or financial reasons, and these reasons are set out in paragraph 3.8 and as detailed in this report.
- 5.4 The techniques and instruments for framework agreements are contained in regulation 33 of the PCR 2015. The term of a framework

shall not exceed 4 years and contracts based on a framework agreement are required to be awarded in accordance with the procedures laid down in the PCR 2015. The council will be able to call-off from the framework without the need for publishing the contracts for the service required, as where a framework agreement has been published in the OJEU, individual call-off contracts under that framework do not have to be published. As with most framework agreements the Council will not be obligated to solely call off barristers under the framework or call off up to the projected spend.

6.0 Diversity Implications

The proposals in this report have been subject to screening and Officers believe that there are no negative diversity implications. However, it is expected that diversity and equality perspectives will be incorporated into the assessment process, with consideration given to diversity and equality issues during pre-tender stage of the procurement.

7.0 Staffing/Accommodation Implications (if appropriate)

None

8.0 Public Services (Social Value) Act 2012

8.1 Since 31st January 2013, the Council, in common with all public authorities subject to the EU Regulations, has been under duty pursuant to the Public Services (Social Value) Act 2012 to consider how the services being procured might improve the economic, social and environmental well-being of its area; how, in conducting the procurement process, the council might act with a view to securing that improvement and whether the council should undertake consultation. This duty applies to the procurement of the proposed contract as Services over the threshold for application of the EU Regulations are subject to the requirements of the Public Services (Social Value) Act 2012.

8.2 Given the specialist nature of the services being delivered under the proposed framework and the limited market for the delivery of these services, Officers have concluded that it is not appropriate to undertake any consultation and that there are no specific measures that can be taken in procuring the framework to improve the economic, social and environmental well-being of the Brent area.

9.0 Background Papers

- (a) Barrister Framework Engagement Letter (Kennedy Cater)
- (b) Brent Projected Spend
- (c) Project Plan and costs

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