

	Decision of Deputy Leader of the Council
	Report from the Director of Legal, HR, Audit and Investigations
AUTHORITY TO AGREE A WAIVER OF CONTRACT STANDING ORDERS FOR A HIGH VALUE CONTRACT FOR BARRISTERS' SERVICES	

Wards Affected:	All
Key or Non-Key Decision:	Non-key Decision
No. of Appendices:	None
Background Papers:	None
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1.0 Purpose of the Report

1.1 This report concerns the proposal to jointly procure with other local authorities a framework for barristers' services. This report requests individual Cabinet Member approval to waive the normal requirements of Contract Standing Orders and Financial Regulations in accordance with paragraph 13 of Part 3 of the Constitution in order to permit the City of London as lead local authority to use its own contract standing orders to procure the framework.

2.0 Recommendation(s)

That the Deputy Leader of the Council, having consulted with the Leader:

2.1 Agrees to waive the normal requirements of Contract Standing Orders and Financial Regulations in accordance with paragraph 13 of Part 3 of the Constitution for good operational and/or financial reasons in accordance with Contract Standing Order 84(a).

3.0 Detail

- 3.1 The London Boroughs Legal Alliance (“LBLE”) was established in 2009 as a collaborative partnership of legal teams throughout London. The current members who use the LBLE Barristers’ Framework are the City of London Corporation; London Borough of Barnet; London Borough of Harrow; London Borough of Hounslow, Buckinghamshire County Council, Slough Borough Council; London Borough of Brent; London Borough of Camden; London Borough of Ealing; London Borough of Hackney; London Borough of Haringey; London Borough of Hillingdon; London Borough of Islington; London Borough of Redbridge; London Borough of Waltham Forest; London Fire Commissioner; London Borough of Havering; London Borough of Newham; Royal Borough of Greenwich; London Borough of Hammersmith & Fulham; Royal Borough of Kensington & Chelsea; and Westminster City Council (together the “LBLE Members”).
- 3.2 The LBLE Members have in the past let framework agreements for the provision of both solicitors’ and barristers’ services. The existing framework for barristers’ services commenced on 1st January 2016 and expires on 31st December 2019. The LBLE authorities consider that the frameworks have worked well and delivered savings for the authorities. As a result the LBLE Members have agreed to establish a new framework of barristers to enable the procurement of barristers’ services in an organised and consistent way. The framework arrangement will be made up of 9 lots, namely:
- Lot 1: Adult Social Services
 - Lot 2: Children’s Services
 - Lot 3: Governance & Public Law
 - Lot 4: Criminal Litigation & Prosecutions
 - Lot 5: Housing
 - Lot 6: Planning & Property
 - Lot 7: Planning
 - Lot 8: Property
 - Lot 9: Civil Litigation
- 3.3 A number of expert and experienced barristers’ chambers will be appointed to the framework. It is expected that the council’s participation in the framework, to call off specialist legal services, will assist the council in achieving best value, and enhance delivery of services.
- 3.4 It has been agreed that the City of London Corporation will act as a central purchasing body for the purposes of undertaking this procurement exercise and concluding framework agreements with each successful applicant. Each LBLE Member, and any other eligible authority wishing to access the framework, will join the framework by signing an access agreement. The LBLE Members consider that to save costs, as the lead authority is the City of London Corporation, that council’s Standing Orders and Financial Regulations should be used for the procurement process.
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- 3.5 It is proposed that the framework will run for a period of four (4) years from 1st January 2020.
- 3.6 Officers consider that there are good financial and operational reasons to participate in a collaborative procurement. This approach is expected to achieve economies of scale in procuring and operating the framework and to generate more attractive tenders than is the council were to undertake the procurement on its own. Kennedy Cater Legal who are supporting the procurement have estimated that from 1 January 2016 to 31 May 2019, Brent Council saved £302,569 via the current framework compared with the usual hourly charging rates of the barristers on the framework which it has used. In addition, barristers appointed to the panel will provide a range of added value benefits under the framework, in particular training for the in-house LBLA authority legal teams. The Council will reserve the right to seek services of barristers outside the framework should the need arise.
- 3.7 It is anticipated that the City of London Corporation will place advertisements in the Official Journal of the European Union (OJEU) and the London Tender Portal to seek tenders for legal work in mid-July.
- 3.8 The Deputy Leader is asked to give approval to waive standing orders as set out in the Recommendation. In accordance with paragraph 13 of Part 3 of the Constitution, the Deputy Leader is required to consult the Leader in connection with the Recommendation.

4.0 Financial Implications

- 4.1 The estimated value of the services that Brent Council would call off under the framework agreement during the 4 year period of the framework is just under £2M. This is an annual contract cost of approximately £500k.
- 4.2 It is intended that the in-house Legal Service undertake work itself wherever possible and an in house advocate for Children's work has been recruited, with the possible recruitment of an additional advocate being considered. It is anticipated that this will lead to a reduction in spend with barristers. However, it is also intended to operate the framework more stringently so that less spend takes place off the framework than has been the case in recent years. Whilst off panel spend is permitted, and is appropriate in some cases, it is likely to be more expensive.
- 4.3 It is anticipated that the cost of this contract will be funded from Legal Services existing budget although in certain circumstances existing resources within service areas will pay for the services provided by barristers.

5.0 Legal Implications

- 5.1 Contracts for the 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 £615,278), contracting
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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 City of London Corporation 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 just under £2M, it is subject to the requirements of the Council's Contract Standing Orders (CSO) in respect of Medium 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 a Medium or High Value Contract the agreement of the Cabinet or an individual Cabinet Member is obtained under CSO No 84(a). Exemption under CSO 84(a) can be approved by an individual Cabinet Member where there are good operational and / or financial reasons, and these reasons are set out in paragraph 3.6 and as detailed in this report.
- 5.4 Under 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 that framework. As with most framework agreements, the Council will not be obliged to call off barristers under the framework or call off up to the projected spend.

6.0 Equality Implications

- 6.1 The proposals in this report have been subject to screening and officers believe that there are no negative equality 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 Consultation with Ward Members and Stakeholders

- 7.1 Because of the nature of the proposed procurement, there has been no consultation with Ward Members or Stakeholders.

9.0 Public Services (Social Value) Act 2012

- 9.1 The Council is under duty pursuant to the Public Services (Social Value) Act 2012 ("the Social Value Act") to consider how 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.
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9.2 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.

Report sign off:

DEBRA NORMAN

Director of Legal, HR, Audit and Investigations
