

	<p style="text-align: center;">Executive 29th May 2007</p> <p style="text-align: center;">Report from the Borough Solicitor</p>
<p>For Action Wards Affected: ALL</p>	
<p style="text-align: center;">Joint Procurement of Legal Counsel (Barristers' Services)</p>	

Forward Plan Ref: L&DS-06/07-1

1.0 Summary

1.1 The purpose of this report is to seek approval from the Executive to invite expressions of interest for a framework agreement to provide barristers' services and for the framework agreement to be procured as required by Standing Orders 88 and 89 and via a joint arrangement with the London Boroughs of Ealing, Hammersmith and Fulham, Harrow and Hounslow.

2.0 Recommendations

2.1 The Executive to give approval to the pre - tender considerations and the criteria to be used to evaluate tenders as set out in paragraph 3.9 of the report.

2.2 The Executive to give approval to officers to invite tenders and evaluate them in accordance with the approved evaluation criteria referred to in paragraph 2.1 above.

2.3 The Executive for good operational and / or financial reasons (as detailed in paragraphs 3.4 and 3.6) to give approval to exemptions from Standing Orders requiring the Council to advertise in the local press and to award on the basis of most economically advantageous offer .

3.0 Detail

3.1 Discussions between the Heads of Legal of the West London Alliance authorities disclosed widespread concern about the Councils' arrangements

with barristers. Barristers are self employed but have traditionally gathered together to form Chambers. Barristers employ Chambers clerks to negotiate fees on their behalf. The concerns expressed by the Heads of Legal primarily related to the following:

- No satisfactory objective data to compare levels of experience and expertise when choosing which barrister to instruct
- Wide variations in service delivery between Chambers
- Inconsistent and frequently inadequate billing information supplied by barrister preventing the use of such data for future benchmarking
- Lack of an adequate identifiable audit trail to demonstrate the achievement of best value
- Substantial and increasing expenditure on barristers fees with some other authorities spending over £500k on barristers' fees per annum

3.2 Consideration was given to the best means of addressing these concerns. The WLA members were aware that there had been some attempts to procure barristers services in a more organised and consistent way, most recently by the London Borough of Hackney which had indicated it expected to make significant savings. Following further investigation of matters, WLA members consulted with First Law Limited, a specialised Legal consultancy, regarding the benefits that might be gained by asking barristers to tender for work. A tender process leading to the establishment of a framework with agreed rates and service standards was seen by all WLA members as the most effective means of addressing the concerns detailed in paragraph 3.1 above. Hillingdon, as a WLA member, is in favour of the tender process but has recently indicated that at the current time it is not in a position to take part in the tender process. It has however indicated a wish to join such framework in the future.

Tender process

3.3 The London Borough of Hounslow is leading on the collaborative procurement project. It is considered that the most straightforward and cost effective means of procuring a framework agreement for the West London Alliance boroughs is for one borough's Standing Orders to be used. Brent is assisting with the procurement process and the procurement will be in accordance with Brent's Standing Orders and Financial Regulations.

3.4 Subject to all necessary approvals being obtained, and in line with the Council's Standing Orders, advertisements are to be placed to seek initial expressions of interest. Given that the work of barristers is so specialised with barristers' Chambers all based in central London or large metropolitan areas, there is considered little point in advertising in local press and therefore an exemption from Standing Orders requiring advertising in the local press is sought for good financial and / or operational reasons

3.5 The Council will seek expressions of interest for a number of different categories of work as not all Chambers specialise in all areas. Officers are currently discussing the categories of work but it is envisaged they will include:

- Planning
- Property
- Procurement
- Employment
- Education
- Corporate Governance
- Child Protection
- Community Care
- Housing
- Licensing
- Litigation (Civil)
- Litigation (Criminal)
- Administrative
- Trusts and Charities

3.6 Those Chambers that respond to the advert will be sent a pre-qualification questionnaire which addresses issues of business probity, experience, expertise and equality (e.g. race, sex, disability). Chambers that satisfy the Council's required standards with regard to such matters will be invited to tender for the framework agreement. Brent generally evaluates and awards on the basis of most economically advantageous offer to the Council but other participating boroughs favour evaluation and award on the basis of lowest price. Given this project is a collaborative procurement and Brent's Officers will already have satisfied themselves through the pre-qualification questionnaire process that all those invited to tender have sufficient experience and expertise, it is proposed to evaluate and award on the basis of lowest price. It is intended to add a number of the lowest priced Chambers to the framework for each of the categories of work to ensure that there is a sufficient pool of Chambers from which all the boroughs can call off barristers' services. Officers are currently discussing the optimum number of Chambers to be added to the framework but it is likely that approximately 15 Chambers will be added for each of the categories of work.

3.7 The Heads of Legal will be represented on the tender evaluation panel in the selection of organisations to be appointed to the framework agreement. Following full consideration of bids, the Heads of Legal will identify a number of Chambers to be appointed to the framework agreement for the various categories of work and will recommend their appointment to their respective Executives.

3.8 The framework will set out the standard terms upon which individual "call off" contracts will be made at the price tendered by Chambers. Once Chambers are appointed to a framework, the participating authorities would expect to "call off" barristers from those Chambers on the framework to achieve the benefits of agreed rates and service standards. The boroughs would not

however be obliged to use the Chambers in all circumstances and could depart from the use of the framework if, for example, the Chambers on the framework did not have the specific specialisation required for a particular matter. In Brent it is intended that Principal Solicitors have authority to authorise the use of Chambers not appointed to the framework where considered appropriate.

3.9 Pre-tender considerations

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

Ref.	Requirement	Response																		
(i)	The nature of the service.	Framework of barristers' Chambers																		
(ii)	The estimated value of services purchased by Brent.	£1.4 million																		
(iii)	The contract term.	4 years																		
(iv)	The tender procedure to be adopted.	A two stage process in accordance with the Council's Standing Orders. As Legal Services are 'Part B Services' for the purpose of the EU regulations, the regulations are of residual application only (forwarding of a contract award notice etc) and do not dictate the procurement process to be followed																		
v)	The procurement timetable.	<table border="0"> <tr> <td>Indicative dates are:</td> <td></td> </tr> <tr> <td>Adverts placed</td> <td>01.06.07</td> </tr> <tr> <td>Expressions of interest returned</td> <td>22.06.07</td> </tr> <tr> <td>Shortlist drawn up</td> <td>22.06.07 to 06.07.07</td> </tr> <tr> <td>Invite to tender</td> <td>06.07.07</td> </tr> <tr> <td>Deadline for tender submissions</td> <td>22.08.07</td> </tr> <tr> <td>Panel evaluation</td> <td>ASAP after 22.08.07</td> </tr> <tr> <td>Contract decision</td> <td>ASAP after 22.08.07</td> </tr> <tr> <td>Report</td> <td></td> </tr> </table>	Indicative dates are:		Adverts placed	01.06.07	Expressions of interest returned	22.06.07	Shortlist drawn up	22.06.07 to 06.07.07	Invite to tender	06.07.07	Deadline for tender submissions	22.08.07	Panel evaluation	ASAP after 22.08.07	Contract decision	ASAP after 22.08.07	Report	
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		recommending Contract award circulated internally for comment	August/September 2007
		Executive approval	September 2007
		Start date	September 2007
(vi)	The evaluation criteria and process.	The panel will evaluate the tenders on the basis of lowest price	
(vii)	Any business risks associated with entering the contract.	No specific business risks are considered to be associated with entering into the proposed framework agreement.	
(viii)	The Council's Best Value duties.	The competitive tendering process will assist the Council in achieving best value.	
(ix)	Any staffing implications, including TUPE and pensions.	See section 5 below	
(x)	The relevant financial, legal and other considerations.	See sections 4, 5 and 6 below	

3.10 The Executive is asked to give its approval to these proposals as set out in the recommendations and in accordance with Standing Order 88.

4.0 Financial Implications

4.1 The Council's Contract Standing Orders state that contracts for supplies and services exceeding £500k or works contracts exceeding £1million shall be referred to the Executive for approval to invite tenders and in respect of other matters identified in Standing Order 89.

4.2 The estimated value of services that Brent Council would call off under the framework agreement during its 4 year duration is £1.4 million.

4.3 It is anticipated that the cost of this contract will be funded from existing resources in the service areas on whose behalf Legal Services procure advice from barristers on each particular occasion.

5.0 Staffing Implications

None

6.0 Legal Implications

- 6.1 The estimated value of the Contract over its lifetime is in excess of £500,000 and therefore the procurement and award of the contract is subject to the Council's Contract Standing Orders and Financial Regulations in respect of High Value Contracts.
- 6.2 As the Contact is for the provision of legal services, it falls within Part B of Schedule 3 of the Public Contracts Regulations 2006 and is not therefore subject to the full application of the EU Procurement Regulations. The Regulations are of residual application only (the need to issue a contract award notice, etc.) and do not determine the procurement process to be followed. However, the overriding principles of EU law (equality of treatment, fairness and transparency in the award process) continue to apply and should be upheld at all times in relation to the award of the Contract.
- 6.4 Under the Council's Standing Orders, as the barristers' framework is a High Value Contract, approval of the Executive is required for authority to tender. Approval of the Executive is also required by Contracts Standing Orders for the award of such framework and once the tendering process is undertaken, Officers will report back to the Executive explaining the process undertaken in tendering the contract and recommending award.
- 6.5 Officers have proposed that the procurement of barristers' services should be under a framework. The framework would set out the terms and conditions under which specific purchases ("call-offs") can be made throughout the term of the agreement.
- 6.6 The procurement of the framework is a collaborative procurement with other WLA authorities. Standing Order 85 details that any collaborative procurement should comply with the Council's Standing Orders and Financial Regulations. It is intended to use Brent's own Standing Orders and Financial Regulations for the procurement of the framework although two exemptions from Standing Orders are sought: the first relates to an exemption from Standing Orders requiring the Council to advertise in the local press for the reasons detailed in paragraph 3.4; the second relates to an exemption from Standing Orders requiring the Council to evaluate and award on the basis of most economically advantageous offer for the reasons detailed in paragraph 3.6. Exemptions from Standing Orders may be granted by the Executive if it considers that there are good operational and / or financial reasons for so doing.

7.0 Diversity Implications

- 7.1 The proposals in this report have been subject to screening and officers believe that there are no negative diversity implications. . However, it should be noted that diversity and equality perspectives will be incorporated into the

assessment process, with a thorough consideration of diversity and equalities issues taking place when assessing pre- qualification questionnaires.

- 7.2 The framework will require Chambers to provide data on equality and diversity issues on a regular basis to enable Officers to adequately monitor such issues.

Background Information

Joint Procurement File

Contact Officer(s)

Jonathan Treherne
Contracts Lawyer
Contracts Team
Commercial
Legal and Democratic Services
Town Hall Annexe
Wembley

Tel – 020 8937 1542

Email - jonathan.treherne@brent.gov.uk

Terry Osborne
Borough Solicitor