

	<p style="text-align: center;">Executive 8th October 2007</p> <p style="text-align: center;">Report from the Borough Solicitor</p>
<p style="text-align: right;">Wards Affected: None</p>	
<p style="text-align: center;">Joint Procurement of Legal Counsel (Barristers' Services)</p>	

Forward Plan Ref: L&DS-07/08-1

Not for Publication

Appendix 1 of this Report is not for publication as it contains the following categories of exempt information as specified in the Local Government Act 1972, namely:

Information relating to the financial or business affairs of any particular person (including the authority holding the information).

1.0 Summary

1.1 The purpose of this report is to request authority to award contracts as required by Contract Standing Order No 88. This report summarises the process undertaken in the collaborative procurement of a framework agreement to provide barristers' services in association with London Boroughs of Ealing, Hammersmith and Fulham, Harrow, Hillingdon and Hounslow. Following completion of the evaluation of tenders, this report recommends which tenderers should be appointed to the framework agreement.

2.0 Recommendations

2.1 The Executive to give approval to the award of the framework agreement to provide barristers' services to the tenderers detailed in Appendix 2 for the relevant framework panels.

3.0 Detail

Background

- 3.1 The procurement of a framework agreement to provide barristers' services has been the subject of a previous report to the Executive dated 29 May 2007. The report set out the concerns of the Heads of Legal of the London Boroughs of Ealing, Hammersmith and Fulham, Harrow, Hillingdon and Hounslow ("WLA councils") regarding the current procurement arrangements. In summary these concerns were:
- 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 It was considered that the procurement of a framework agreement to provide barristers' services was the best means of addressing the concerns detailed in paragraph 3.1. A framework agreement sets out the standard terms upon which individual "call off" contracts are made at the price tendered by chambers. Once chambers are appointed to a framework, then participating authorities would "call off" barristers from chambers on the framework to achieve the benefits of agreed rates and service standards. Participating authorities are not obliged to use chambers appointed to the framework in all circumstances and can depart from the use of the framework if, for example, chambers on the framework did not have the specialisation required for a particular matter.
- 3.3 At its meeting on 29 May 2007, the Executive gave approval for Officers to invite expressions of interest for the procurement of a framework agreement to provide barristers' services in a joint procurement exercise with the London Boroughs of Ealing, Hammersmith and Fulham, Harrow and Hounslow. Due to internal issues one of the WLA councils, the London Borough of Hillingdon, was not in a position to join in with the procurement process at an initial stage but has subsequently joined in.
- 3.4 Following discussions between the Heads of Legal of the WLA councils, it was decided that the framework should consist of 14 different categories of work ("framework panels") as detailed below:

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

Tender Process

- 3.5 Advertisements were placed in the June edition of Counsel magazine seeking initial expressions of interest in respect of the framework panels. The advertisement elicited a response from 96 barristers' chambers to which pre-qualification questionnaires were sent. 75 barristers chamber subsequently returned the pre-qualification questionnaires indicating which of the framework panels they wished to be invited to tender for. Most chambers wished to be invited to tender for more than one of the framework panels.
- 3.6 Shortlisting was carried out on the basis of business probity, experience, expertise and equality issues. Having satisfied themselves with regard to business probity and equalities issues, Officers met with the other WLA councils to compare scorings that each had carried out with regard to experience and expertise. A joint scoring of the experience and expertise elements was then agreed by the WLA councils and this score was added to the business probity and equalities score. A benchmark was set and only those chambers whose score exceeded the benchmark were considered eligible to be invited to tender. Due to the large number of chambers passing the benchmark score, it was considered appropriate to invite only the top ranking 20 chambers to tender to ensure that the procurement process remained manageable. For some of the framework panels however, there were a number of chambers which scored the same mark and were jointly ranked 20th. In those cases where more than one chamber was ranked joint 20th, all chambers having this ranking were invited to tender. This resulted in officers inviting over 20 chambers to tender for a number of framework panels.

Evaluation

- 3.7 The tendering instructions stated that the selection for appointment to the framework panels would be on the basis of lowest price, the Executive having approved on 29 May that award on this basis was justified for good operational and / or financial reasons. Chambers were required to provide

rates for various work types and for different levels of seniority of barristers ranging from just qualified to Queens Counsel.

- 3.8 Tenders from 62 different sets of barristers' chambers were subsequently received by the tender closing date of 3 September. Officers devised a methodology for assessing the lowest priced chambers based on the categories of work and seniority of barristers most used by the council. The council's methodology was then applied to the fee rates tendered by barristers' chambers by First Law Limited, a specialised legal consultancy retained by the WLA councils to assist with the procurement process. The results of the evaluation are detailed at Appendix 1 which shows the ranking of chambers for the different framework panels. Officers on behalf of the Heads of Legal of the WLA councils carried out checks as to the application of the methodology and were satisfied that the evaluation methodology had been correctly applied.
- 3.9 The WLA councils were concerned that for each framework panel there should be a sufficient pool of chambers appointed from which all the boroughs can call off barristers' services. Officers initially considered that the maximum number of chambers that should be appointed for each panel should be approximately 15. During the procurement process, the WLA councils were contacted by the London Boroughs of Camden, Barnet and Islington which indicated an interest in joining the framework. As a result of the possibility that a larger number of authorities may be calling off barristers services from each framework panel, it was decided that a maximum of 20 sets of chambers should be appointed to framework panels.
- 3.10 Between the 17th September and 24th September 2007, the Heads of Legal of the WLA councils considered the results of the evaluation of lowest price. It was agreed that officers should recommend the chambers listed in Appendix 2 to be appointed to the framework agreement for the relevant framework panels listed.
- 3.11 The framework agreement will commence on 15 October 2007.

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 award in accordance with Standing Order 88.
- 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 procurement of the framework agreement 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. Brent's own Standing Orders and Financial Regulations have been used for the procurement.
- 6.2 The estimated value of the framework agreement 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.
- 6.3 As the framework agreement 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 award.
- 6.5 Should the Executive approve the award of the framework agreement, this would then set out the terms and conditions under which specific purchases ("call-offs") can be made throughout the term of the agreement. Given that the framework agreement has been procured in accordance with EU Regulations and relevant Standing Orders and Financial Regulations, no formal tendering procedures will apply when contracts are called off under the framework agreement.

7.0 Diversity Implications

- 7.1 The proposals in this report have been subject to screening and an equalities impact assessment has been completed and officers believe that there are no negative diversity implications. It should be noted that diversity and equality perspectives were 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

Report to the Executive from the Borough Solicitor; Joint Procurement of Legal Counsel (Barristers Services) dated 29 May 2007.

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