

	<p>General Purposes Committee 10th October 2005</p> <p>Report from the Director of Finance and Corporate Resources</p>
For Action	Wards Affected: ALL
<p>Report Title: Authority to invite tenders for the investment management of overseas equities for the Brent Pension Fund Contract</p>	

1.0 Summary

- 1.1 This report requests approval to invite tenders in respect of the investment management of overseas equities for the Brent Pension Fund as required by Contract Standing Orders 88 and 89.

2.0 Recommendations

- 2.1 Members are asked to give approval to officers to invite tenders in respect of the investment management of overseas equities for the Brent Pension Fund.
- 2.2 Members are asked to give approval to the pre-tender considerations and the criteria to be used to evaluate tenders as set out in paragraph 3.5 of the report.
- 2.3 Members are asked to give approval to officers to terminate the existing contract with Bank of Ireland Asset Management (BIAM) in respect of the investment management of overseas equities on conclusion of the tender process.

3.0 Detail

- 3.1 The contract for investment management of overseas equities for the Brent Pension Fund was previously tendered in 1999, resulting in the award to BIAM in 2000. The value of the overseas equity portfolio managed by BIAM is currently £140m, and management fees amount to £425,000 per annum. The contract allows the manager a wide range of discretion in meeting a

performance target of the FTSE World ex UK benchmark plus 2% over rolling three year periods.

- 3.2 Initially BIAM outperformed their investment target, but performance has fallen back over the last two years. Concerns arose as to investment performance and advice has been sought from the Independent Adviser to the Fund and from actuarial consultants, Watson Wyatt, appointed by the Director of Finance and Corporate Resources. They identified various concerns about BIAM, namely poor and volatile returns; high staff turnover (five investment managers (of sixteen) left to join a rival); succession issues; and slow review of underperforming investments. Their view is that the investment management contract for overseas equities should be tendered. The contract with BIAM may be terminated by one month's written notice.
- 3.3 Replacing the manager will be expensive due to the need to buy and sell equities as part of moving to new management given the different investment approaches taken by finance houses. Although it is hoped that a transition manager can be used to reduce the cost of buying and selling equities, it is expected that transaction and other costs in changing to an alternative house may amount to around £420,000 (0.3% of the current value of the overseas equity portfolio). Whilst this is a significant cost, an improvement in investment performance of 1% would be worth £1.4m per annum.
- 3.4 Pension Fund Sub Committee has considered the issues surrounding the contract with BIAM and recommends that the contract for investment management of overseas equities be tendered. Although BIAM has underperformed, the house will be given consideration should they tender for any new contract both because performance may recover given that their long term record is excellent and for comparison purposes. The Pension Fund Sub Committee has also noted that Watson Wyatt will provide consultancy advice and support in any tender process.
- 3.5 In accordance with Contract Standing Orders 88 and 89, pre-tender considerations have been set out below for the approval of the General Purposes Committee.

Ref.	Requirement	Response
(i)	The nature of the service.	Investment management of global equities for the Brent Pension Fund
(ii)	The estimated value.	The current contract costs £425,000 per annum and therefore for the purposes of the EU Services Regulations the estimated value is £1,700,000.
(iii)	The contract term.	Open-ended
(iv)	The tender procedure to be adopted.	Negotiated Procedure
(v)	The procurement timetable.	Indicative dates are:

	OJEU Notice and Adverts placed	October 2005
	Deadline for PQQ submission	December 2005
	Shortlisting of service providers to be invited to negotiate.	December 2005 / January 2006
	Deadline for submission of proposals	January 2006
	Visits to individual managers, Panel evaluation of proposals and shortlisting for interview	January / February 2006
	Negotiation over specification and terms and conditions, and submission of Final Offers	February / March 2006
	Panel evaluation and interviews (with Pension Fund Sub Committee members present) and contract recommendation	March 2006
	Pension Fund Sub Committee award contract	March 2006
	Contract start date	July 2006

(vi)	The evaluation criteria and process.	<p>Tenderers will also be shortlisted to invite to negotiate on the basis that they meet the Council's requirements in relation to business probity and economic and financial standing.</p> <p>The panel will evaluate the tenders on the basis of the most economically advantageous offer using the following criteria:</p> <ol style="list-style-type: none"> 1 Performance record, 2 Investment approach, 3 Research, 4 Processes, 5 Skills of staff, 6 Price
(vii)	Any business risks associated with entering the contract.	None specific
(viii)	The Council's Best Value duties.	The competitive tendering process will assist the Council in achieving Best Value duties by improving investment returns and helping meet pension fund liabilities.
(ix)	Any staffing implications, including TUPE and pensions.	None
(x)	Relevant financial, legal & other considerations.	See paragraph 4 and 6 below.

3.5 The General Purposes Committee is asked to approve 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 General Purposes Committee for approval to invite tenders and in respect of other matters identified in Standing Order 89. The current value of this services contract is £425,000 per annum, which will be funded by the Brent Pension Fund.

5.0 Staffing Implications

5.1 This service is currently provided by an external contractor and there are no implications for Council staff arising from retendering the contract.

6.0 Legal Implications

- 6.1 The estimated value of the investment management contract exceeds the Public Services Contracts Regulations 1993 threshold for Part A Services (of £153,376) and as these services are Part A Services for the purposes of the EU Services Regulations, they are subject to full application of the EU Regulations. The contract is therefore subject to the full tendering requirements of EU Regulations.
- 6.2 The estimated value of this contract is above the Council's Standing Orders threshold for High Value Service Contracts (of £500,000).
- 6.3 The award of a contract for investment management services in respect of overseas investment for the Brent Pension Fund is a non-executive function and so must be considered by the General Purposes Committee rather than the Executive.
- 6.4 The approach favoured by officers would entail the negotiation of the award of this contract with bidders. The EU Regulations only permit a contracting authority to use the negotiated procedure if the circumstances of the tender fit within one of the exceptions listed in EU Regulation 10(2). The two exceptions which the Council will rely on to use the negotiated procedure for this tender are stated in EU Regulation 10(2)(b) and (c) as follows:

“(2) A contracting authority may use the negotiated procedure in the following circumstances: ...

(b) exceptionally, when the nature of the work or works to be carried out under the contract is such, or the risks attaching thereto are such, as not to permit prior overall pricing;

(c) when the nature of the services to be provided, in particular in the case of ... [financial services], is such that specifications cannot be drawn up with sufficient precision to permit the award of the contract using the open or restricted procedure...”

- 6.5 The EU Regulation 10(2)(c) exception applies for the following reasons:

Finance houses have the bargaining power to insist that customers contract with them on the bank's standard terms and conditions. The Council's investment management of overseas equities contract would be a relatively low value contract to a finance house in comparison with other contracts it may hold. Therefore, a finance house is not likely to consider the Council's drafted specification, terms and conditions, and is likely to only enter into the contract on its own standard specification, terms and conditions. In addition, because of the specialist nature of investment management services and the reluctance of finance houses to deviate significantly from their standard specifications, terms and conditions, it would be difficult to define the minimum requirements of the service and state exactly how tenderers may offer variants on these minimum requirements in the specification without first obtaining input from the finance houses. Such input is not possible under the open and restricted procedures.

- 6.6 The EU Regulation 10(2)(b) exception applies because:
- (a) the Council will not know the exact nature of the services to be provided by each tenderer until each tenderer submits its response to the specification, which means that it will be difficult for the Council to draft a pricing document to be sent out with the invitations to tender; and
 - (b) the terms and conditions which affect price (such as liability, insurance, warranties, exit arrangements, payment terms etc) will not be agreed between the parties at the time the tenderer calculates the prices in its tender.
- 6.4 Following evaluation of tenders, the Pension Fund Sub Committee will agree the final appointment as its terms of reference include “to appoint the investment managers for the Brent Pension Fund”.

7.0 Diversity Implications

- 7.1 The proposals in this report have been subject to screening and officers believe that there are no diversity implications.

8.0 Background Information

Report to Pension Fund Sub Committee 22nd September 2005

9.0 Contact Officer

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