

	Decision for Cabinet Member for Regeneration, Planning & Property
	Report from the Corporate Director, of Neighbourhoods and Regeneration
	Lead Cabinet Member Cllr Teo Benea
APPROVAL TO WAIVE CONTRACT STANDING ORDERS TO PERMIT PROCUREMENT OF CONTRACT FOR LEGAL SERVICES FOR THE SOUTH KILBURN DISTRICT HEAT NETWORK THROUGH A DIRECT AWARD	

Wards Affected:	All
Key or Non-Key Decision:	Non-Key Decision
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	
Background Papers:	N/A
Contact Officer(s): (Name, Title, Contact Details)	Francesca Campagnoli District Energy Network Manager francesca.campagnoli@brent.gov.uk

1. Purpose of the Report

- 1.1 This report concerns the procurement of Womble Bond Dickinson (UK) LLP specialistic legal external advice for the tender and contract for a Design, Build, Operate and Maintain contractor for the district heat network in South Kilburn.
- 1.2 The purpose of this report is to seek member approval to waive Contract Standing Orders to enable a direct award of a contract for legal services for the South Kilburn District Heat Network project. The case for direct award, as opposed to a full tender process, is set out in the detail below.

2.0 Recommendation(s)

That the Cabinet Member for Regeneration, Planning and Property having consulted with the Leader:

- 2.1. Approves an exemption pursuant to Contract Standing Order 84(a) of the requirement to tender a contract for legal services for the South Kilburn District Heat Network for a period of 11 months accordance with paragraph 13 of Part 3 of the Constitution.

3.0 Detail

3.1 Contribution to Borough Plan Priorities & Strategic Context

- 3.1.1 Since 2020, Brent pledged to achieve Net Zero Carbon by 2030 and declared a Climate and Environmental Emergency. The South Kilburn District Heat Network will allow to decarbonise eight existing buildings by 2027 and offers an efficient low carbon heat supply to over twenty additional buildings planned to be built by the Single Delivery Partner for the South Kilburn Estate Regeneration between 2028-2032.

3.2 Background

- 3.2.1 In May 2023, Cabinet approved the procurement of a contractor to design, build, operate and maintain (DBOM) the South Kilburn District Heat Network (SK DHN). In March 2024, the Council commenced the procurement for the DBOM contractor.
- 3.2.2 As part of the above, the Council required external specialist legal advice to draft the tender pack and proposed terms and conditions of the DBOM contract, which would be unique and specialised. Womble Bond Dickinson (UK) LLP (WBD), a legal services firm with specialist district heat network experience, were appointed in June 2022 to support the outline business case, followed by the procurement process and the contract negotiation for the SK DHN. In June 2022, the value of the contract for legal services was £114,052.00 and the services included drafting, negotiating and advising the Council during the pre-tender and tender stage of the DBOM procurement process.
- 3.2.3 Since their appointment, and as the SK DHN project progressed through the detailed feasibility to RIBA 3 design stage and procurement, WBDs scope of services has needed to change in order to meet the revised requirements of the SK DHN as the Council worked through initial market engagement with potential bidders. This involved amending the proposed DBOM contractual approach and meant that the procurement exercise commenced approximately 12 months later than initially planned. Also, the competitive dialogue process has taken longer than initially planned owing to Officers and the appointed consultant team reviewing nuanced and technically complicated bidder submissions to respond accurately to bidder clarifications in order to meet the Council's requirements. This process has taken substantially more time and effort to resolve in order to ensure value for money for the Council and close the dialogue in order to appoint a contractor. As the SK DHN is a complicated

undertaking, there have been many changes to what was originally contemplated, as well as a level of details that require input from the council's legal advisors.

- 3.2.4 In order to complete the procurement, it is required to engage WBD for further services to December 2025. This is important as the Council needs to issue the final tender documents in April 2025 and bring the contract award decision to Cabinet in September 2025. Officers have considered alternative options to awarding a further contract with WBD. The main alternative is to seek to appoint a new external legal firm to provide the required services. This has been discounted as it would add significant time to the SK DHN's progress and a loss of key knowledge and experience on the project. Therefore, the recommended option is to directly award a contract to WBD for £250,000 to December 2025.
- 3.2.5 WBD specialist advice has been very valuable. Amendments to their scope reflect the close involvement with the project evolving needs and challenges. During procurement their additional scope reviewed the procurement pack for consistency and clarity three times instead of once; during dialogue with bidders, the revised scope requires a partner lawyer attending also the technical/social value workstream sessions to aid a holistic approach to be reflected in the final contract with the preferred bidder.

4.0 Consultation with Ward Members and Stakeholders

- 4.1 Ward members are being kept up to date on progress on the South Kilburn Estate Regeneration to which the SK District Heat Network is a significant part of.
- 4.2 Potential off-takers and contractors delivering the new accommodation within South Kilburn have been kept up to date with SK District Heat Network progress.

5.0 Financial Implications

- 5.1 The 22 May 2023 Cabinet report approved the tender contract to design, build operate and maintain the South Kilburn District Heat Network. The report approved a cost of £17,500,000 funded by Government Grants of £4,700,000, S106 contributions of £7,500,000 and prudential borrowing of £5,300,000. Since the approval of the Cabinet report, £102,524 has been spent in 2023/24 on professional fees, which has been financed by S106 contributions; and £341,328 has been spent between 1 April 2024 and 5 February 2025 (professional fees). 2024/25 capital spend is expected to be financed by a Government grant. As of 5 February 2025, total project funding available was £17,056,148.

- 5.2 The previous contract with WBD was £114,052.00 and the proposed new contract value of £250,000 takes it to a revised figure of £364,052 to be spent on legal services for the SK DHN.
- 5.3 The contract is funded by a combination of grant funding and ring fenced s106 funding exclusively for this project. At the time of drafting this report, there is £2,735,498.48 available from the ring-fenced s106 which is sufficient to cover the cost of this variation request.

6.0 Legal Implications

- 6.1 In accordance with paragraph 13 of Part 3 of Brent's Constitution, the Leader has delegated certain functions to Cabinet members to be exercised within their portfolio area in consultation with the Leader. This delegation includes agreement of waivers of Contract Standing Orders for Medium and High Value Contracts.
- 6.2 The services Officers are proposing to procure are valued at £250,000 over the contract term and the proposed contract is thus classified as a Medium Value Contract under Contract Standing Orders. Contract Standing Orders provide that a Medium Value Contract should be procured by way of a tender process but for the reasons detailed in the body of the report, Officers do not consider it is possible to procure the contract by way of a tender process.
- 6.3 Having reviewed the justifications in this report, granting an exemption to the requirement to use a tender process would not be in breach of Procurement Legislation as contracting authorities may award public contracts by a negotiated procedure without prior publication for services consisting of the repetition of similar services entrusted to the economic operator to which the same contracting authority awarded an original contract, provided that such services are in conformity with a basic project for which the original contract was awarded following a procedure in accordance with regulation 26(1) and (2) of the PCR 2015. As the services being procured here can be classified as a repetition of services for which an original contract was procured via a competitive tender pursuant to a Framework in 2022, granting this exemption would not be in breach of Procurement Legislation.
- 6.4 In reaching any decision to waive Contract Standing Orders, the Cabinet Member in consultation with the Leader should have regard to the reasons Officers have set out in Section 3 of the report.

7.0 Equity, Diversity and Inclusion (EDI) Considerations

- 7.1 The Public Sector Equality Duty, as set out in section 149 of the Equality Act 2010, requires the Council, when exercising its functions, to have "due regard" to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, to advance equality of opportunity and foster good relations between those who have a "protected characteristic" and those

who do not share that protected characteristic. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

- 7.2 Having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.
- 7.3 Although the procurement of the contract does not have any direct EDI implications, the EDI considerations for the SK DHN were considered at Cabinet in May 2023.

8.0 Human Resources/Property Implications (if appropriate)

- 8.1 The services are provided by an external provider and so there are no Human Resources implications for Council staff.

9.0 Climate Change and Environmental Considerations

- 9.1 The SK DEN helps to meet the Council's Climate Emergency and Ecological Strategy through supplying low carbon heating to residents in the South Kilburn Regeneration Programme, contributing to the Council's net zero carbon aspirations.

Report sign off:

ALICE LESTER

Corporate Director, Neighbourhoods
and Regeneration