



Cabinet
24 July 2017

**Report from Strategic Director
of Resources**

**Authority to Participate in the Joint Procurement of
Solicitors' Services**

1.0 Summary

1.1 This report requests approval to participate in collaborative procurement with the London Borough Legal Alliance ("LBLA") for the establishment of a framework for provision of solicitors services. As the proposed procurement is to be led by the London Borough of Hackney, approval is also sought as required by Contract Standing Order 85 to using that borough's Contract Standing Orders and Financial Regulations.

2.0 Recommendations

2.1 To approve the Council's participation in a collaborative procurement led by the London Borough of Hackney to establish a framework for solicitors' services.

2.2 To agree that the collaborative procurement exercise detailed in 2.1 above be exempt from the normal requirements of Brent Council's Contract Standing Orders and Financial Regulations for good operational and/or financial reasons in accordance with the Contract Standing Order 84(a) and 85(c).

2.3 To note the pre tender considerations set out in paragraph 3.8.1 of this report

3.0 **Detail**

Background

- 3.1 The LBLA was established in 2009 as a collaborative partnership of legal teams throughout London. The current members who use the LBLA Solicitor's Framework are the London Boroughs of Barnet, Harrow and Hounslow, Brent, Camden, Ealing, Hackney, Haringey, Hillingdon, Islington, Redbridge, Waltham Forest, Havering & Newham, Hammersmith & Fulham, Kensington & Chelsea, Westminster and Southwark and the London Fire and Emergency Planning Authority and the City of London Corporation (together the "LBLA Members).
- 3.2 The LBLA Members have in the past let framework agreements for the provision of solicitors' and barristers' services. The existing framework for solicitors' services commenced on 1 November 2013 and expires on 31 October 2017. The LBLA authorities consider that the frameworks have worked well and delivered savings for the authorities. As a result the LBLA Members have agreed to establish a new framework of solicitors' to enable the procurement of solicitors services in an organised and consistent way. The framework arrangement will be made up of the same 2 Lots as the current framework - Lot 1 is Complex Regeneration, Development, Property and Planning and Lot 2 is General Legal Work. A number of expert and experienced solicitors firms 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.
- 3.3 It has been agreed that the London Borough of Hackney will act as a central purchasing body for the purposes of undertaking this procurement exercise and concluding framework agreements with each successful applicant. Each LBLA Member, and any other eligible authority wishing to access the framework, will join the framework by signing an access agreement. The LBLA Members consider that to save costs, as the lead authority is the London Borough of Hackney, that council's Standing Orders should be used for the procurement process. As representatives of this council are now being requested to participate in the evaluation process, Cabinet approval to participate in the procurement exercise is sought.
- 3.4 It is proposed that the framework will run for a period of four (4) years from 1 November 2017.
- 3.5 The Framework Agreement will be managed by Kennedy Cater Legal, a company of legal procurement professionals who have been successfully managing previous LBLA solicitors' and barristers' frameworks. The costs of managing the framework will be recovered via a management fee charged to the solicitors on the framework as a percentage of the work the respective solicitors receive through the framework. The management fee will be set at 4%. That fee will shared

between Kennedy Cater Legal and the LBLA boroughs on a sliding scale.

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 have estimated that for the 16/17 year Brent Council saved approximately £111,410 via the framework compared with the standard hourly charging rates of the firms on the framework which it has used. In addition, solicitors 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 solicitors outside the framework should the need arise.

3.7 The London Borough of Hackney placed advertisements in the Official Journal of the European Union (OJEU) and the London Tender Portal to seek tenders for legal work in the following Lots:

- Lot 1 - Complex Regeneration, Development, Property and Planning
- Lot 2 - General Legal Work

3.8 Pre-tender considerations

3.8.1 Whilst the London Borough of Hackney will be undertaking the procurement, the pre-tender considerations detailed in Contract Standing Order 89 have been set out below for information:

Ref.	Requirement	Response	
(i)	The nature of the service.	Framework of solicitors' services	
(ii)	The estimated value.	£800,000 of Brent Council's spend over the 4 year duration of the framework	
(iii)	The contract term.	4 years	
(iv)	The tender procedure to be adopted.	An open tender process	
v)	The procurement timetable.	Indicative dates are:	
		Adverts placed	19 June 2017

		Deadline for tender submissions	4 August 2017
		Panel evaluation concluded	18 September 2017
		Cabinet Approval of Award	23 October 2017
		Contract start date	1 November 2017
	The evaluation criteria and process.	<p>1. At selection (pre-qualification stage) shortlists are to be drawn up in accordance with the London Borough of Hackney's policies and procedures to identify organisations meeting relevant financial standing requirements, technical capacity and technical expertise.</p> <p>2. At tender evaluation stage, the panel will evaluate the tenders for the following lots:</p> <p>Lot 1 - Complex Regeneration, Development, Property and Planning Lot 2 - General Legal Work</p> <p>The criteria and weightings for both Lots will be:</p> <p>Cost 50% Quality 50%</p>	
(vii)	Any business risks associated with entering the contract.	No specific business risks are considered to be associated with entering into the proposed contract.	
(viii)	The Council's Best Value duties.	The competitive procurement of a framework supports the council's Best Value duties.	
(ix)	Consideration of Public Services (Social Value) Act 2012	See section 8.0 below	
(x)	Any staffing implications, including TUPE and pensions.	None.	

3.8.2 The weightings allocated to the Lots were as a result of discussions between the LBLA Members and they will not necessarily be the

weightings subsequently applied when calling off from the framework.

4.0 Financial Implications

- 4.1 The Council's Contract Standing Orders state that contracts for supplies and services exceeding £500,000 shall be referred to the Cabinet for approval.
- 4.2 The estimated value of the services that Brent Council would call off under the framework agreement during the 4 year period of the contract, based on spend during 2016/17, is £800k. This is an annual contract cost of £200,000.
- 4.3 It is intended that the in-house Legal Service undertake work itself wherever possible and an additional; contract specialist post has been established for this purpose. It is anticipated that this will lead to a reduction in spend with external solicitors. 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. .
- 4.4 It is anticipated that the cost of this contract will be funded from existing resources within service areas who pay directly for the services provided by external solicitors firms or will be included in project costs to be approved by Cabinet where relevant.

5.0 Legal Implications

- 5.1 Under the EU Procurement Regulations contracts for 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 750,000 Euros (£589,148)), contracting 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 London Borough of Hackney 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 in excess of £500,000, it is subject to the requirements of the Council's Contract Standing Orders (CSO) in respect of High 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 High Value Contract the agreement of the Cabinet is obtained under

the CSO No 84(a). Exemption under CSO No 84(a) can be approved by the Cabinet 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 The techniques and instruments for framework agreements are contained in regulation 33 of 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 the PCR 2015. The council will be able to call-off from the framework without the need for publishing the contracts for the service required, as where a framework agreement has been published in the OJEU, individual call-off contracts under that framework do not have to be published. As with most framework agreements the Council will not be obligated to call off solicitors under the framework or call off up to the projected spend.

6.0 Diversity Implications

The proposals in this report have been subject to screening and Officers believe that there are no negative diversity 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 Staffing/Accommodation Implications (if appropriate)

None

8.0 Public Services (Social Value) Act 2012

- 8.1 Since 31st January 2013, the Council, in common with all public authorities subject to the EU Regulations, has been under duty pursuant to the Public Services (Social Value) Act 2012 to consider how the 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. This duty applies to the procurement of the proposed contract as Services over the threshold for application of the EU Regulations are subject to the requirements of the Public Services (Social Value) Act 2012.
- 8.2 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.

9.0 Background Papers

Solicitors' Framework Procurement Timetable

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