

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 18 July 2016	<b>Meeting Name:</b> Cabinet Member for Finance, Modernisation and Performance
<b>Report title:</b>		Gateway 2 - Contract Award Approval Lambeth and Southwark Barrister Framework	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Strategic Director of Finance and Governance	

## RECOMMENDATION

1. That the cabinet member for finance, modernisation and performance approves the award of the Lambeth and Southwark Barrister framework to the providers listed in Appendix 1 (attached to this report) for a period of four years with service commencement on 15 August 2016 at an estimated spend (for Southwark) of £10m.

## BACKGROUND INFORMATION

2. The planned procurement strategy was the subject of a Gateway 1 report which was approved on 25 November 2015. The approved EU restricted procedure procurement route was followed.
3. The approval of the award of this framework was delegated to the cabinet member for finance, modernisation and performance by the Leader, under his strong leader powers.
4. The framework will provide specialist legal services for those circumstances where a barrister is required, such as advocacy before the courts and tribunals, legal advice and support in the conduct of legal proceedings, including the drafting of documents, advice and generally in relation to the full range of legal work carried out by an in-house legal department. The framework will replace the current joint barrister framework which has been in operation since 2012 and is due to expire in the summer.

## Procurement project plan (Key Decision)

5.

Activity	Completed by/Complete by:
Forward Plan for Gateway 2 decision	11/05/2016
Approval of Gateway 1: Procurement Strategy Report	25/11/2015
Invitation to tender	21/04/2016
Closing date for return of tenders	23/05/2016
Completion of evaluation of tenders	24/06/2016
DCRB Review Gateway 2:	30/06/2016

Activity	Completed by/Complete by:
CCRB Review Gateway 2:	07/07/2016
Notification of forthcoming decision – Five clear working days	18/07/2016
Approval of Gateway 2: Contract Award Report	26/07/2016
Scrutiny Call-in period and notification of implementation of Gateway 2 decision	03/08/2016
Debrief Notice and Standstill Period (if applicable)	13/08/2016
Contract award	15/08/2016
Add to Contract Register	16/08/2016
TUPE Consultation period (if applicable)	N/A
Contract start	15/08/2016
Publication of award notice in Official Journal of European Union (OJEU)	02/09/2016
Publication of award notice on Contracts Finder	03/09/2016
Contract completion date	14/08/2020
Contract completion date – if extension(s) exercised	N/A

## KEY ISSUES FOR CONSIDERATION

### Description of procurement outcomes

6. The overall aim of this exercise is to procure an inter-borough barrister framework with Lambeth council in order to continue with the efficiencies realised as part of the existing framework. Good practice and areas for improvement were captured as part of the monitoring of the current framework, and have been incorporated into the new procurement.
7. Throughout the procurement process, Lambeth and Southwark have sought to align their decision making and approvals processes to achieve the dates set out in the timetable at paragraph 5.
8. The proposed framework with barristers' chambers is divided into separate panels (lots) with a varying number of chambers to be included on each panel, which will allow the council to instruct barristers in the following service areas:
  - (a) Childcare (5 chambers)
  - (b) Housing (8 chambers)
  - (c) Property (5 chambers)
  - (d) Planning and infrastructure (5 chambers)
  - (e) Social care (4 chambers)
  - (f) Licensing (4 chambers)
  - (g) Prosecutions (5 chambers)
  - (h) Employment (5 chambers)
  - (i) Education (5 chambers)
  - (j) General litigation (5 chambers)

9. As noted above, between four and eight chambers will provide services within each of the above panels. This is a reduced number from the existing framework, reflecting the number of instructions and optimum number of barristers required for the new framework.
10. The framework is open to other local authorities wishing to use the barrister services and subject to approval of both Lambeth and Southwark would join via an access agreement, on the basis of a secondary partnership. Discussions are taking place with Lambeth to confirm the appropriate administration charge for other authorities to join the framework, which will seek to recoup the costs incurred in the procurement but to acknowledge the benefits of local authorities working together.

### **Key/Non Key decisions**

11. This report deals with a key decision.

### **Policy implications**

12. The procurement of a joint barrister framework will ensure that the council fulfils parts of its fairer future promises by ensuring that the barristers instructed deliver value for money across the legal function. By procuring a joint framework the council will work closely with its neighbour, Lambeth, which is in line with the council's wish to find innovative ways to find financial efficiencies through joint working.

### **Tender process – stage 1: shortlisting**

13. Following approval of the Gateway 1 report, the framework was advertised in the Official Journal of the European Union (OJEU) and was also advertised on Contracts Finder. As required by the EU regulations, the full tender suite was available on-line through the EU supply system operated by Lambeth. Organisations were able to download the pre-qualification questionnaire (PQQ) and other information relating to the procurement.
14. Forty five chambers expressed interest in the framework by completing and returning a PQQ via the EU supply system. Chambers were permitted to express an interest in more than one panel, so the forty five expressions were over the ten panels. These ranged from nine applications for the planning panel to twenty five for the general litigation panel.
15. In order to progress to stage 2 – invitation to tender, chambers were required to pass an assessment of their technical abilities (which was scored) and finances. The council was required to use the cabinet office standard PQQ; therefore chambers were asked to self-certify their responses on health and safety, equalities and insurance issues,
16. One chamber failed the stage 1 shortlisting assessment. The remaining forty four chambers were ranked (using their score for technical abilities) and thirty five chambers were invited to tender, as further detailed in paragraph 18. Reasons for not being called to tender were communicated to unsuccessful applicants and a small number requested further information, which was provided.

## **Tender process – stage 2: tender evaluation**

17. All applicants were advised in the tender documentation that the council anticipated awarding up to a maximum number of contracts per panel and therefore the number of applicants being invited to tender was limited as follows:

Panel	Number to be invited to tender	Maximum number on the panel
Childcare	10	5
Housing	16	8
Property	10	5
Planning and infrastructure	10	5
Social care	8	4
Licensing	8	4
Prosecutions	10	5
Employment	10	5
Education	10	5
General Litigation	10	5

18. Tenderers were advised that a 60:40 (price/quality) weighted model would be used to evaluate the tenders, as outlined in the Gateway 1 report. Details of the areas of evaluation are noted in Appendix 2 (attached to this report).
19. Once evaluation had been completed, tenderers were ranked according to their combined price and quality score. These scores and places are detailed in the Appendix to the closed report). Those up to the maximum number of chambers to be placed on the framework are recommended for award.

### **Plans for the transition from the old to the new contract**

20. The council has in place an existing framework which operates in a similar way to the new framework. The arrangements for using that framework and operating procedures are already embedded into the legal departments of both councils. Whilst some of the chambers recommended for award are already part of our existing framework, there are a number of new chambers who have not previously acted for either council. Whilst the new framework is to commence on 15 August 2016, it was noted in the tender documents that transition will be gradual, with only new matters being allocated under the new framework and existing instructions being completed under the current arrangements.

### **Plans for monitoring and management of the contract**

21. Monitoring and management of the framework and work issued under this will be the responsibility of the business managers for each of the boroughs, supported by administration and legal expertise resources from both boroughs.
22. The contract management will be overseen by the Lambeth and Southwark Barrister framework steering group. This group will be led by the head of legal services for Lambeth and the director of law and democracy for Southwark and they will be responsible for the successful transition and potential expansion of the framework. The steering group has met quarterly during the current framework to analyse use of the existing framework and areas for improvement.

23. The councils have in place an electronic system (Zylpha) which is used for instructing barristers. All instructions are therefore paperless, which meets the council's digital requirements. This will continue to operate under the new framework and will allow those instructing barristers to determine the relevant barrister to be instructed and the fee to be paid. It also includes a prompt for users to provide feedback on the performance of the instructed barrister. Where concerns are raised this allows issues to be discussed at the contract monitoring meetings held with each chamber annually, or if required, an ad-hoc meeting can be arranged.
24. In Southwark, the legal department is in the process of procuring a new case management system which will take the place of the current electronic system.
25. Whilst it is intended that the majority of instructions will be placed through this framework, there is an expectation that some specialist work may need to be instructed to barristers outside of the framework, for example where specialist QC advice is required. Under the existing framework, this has been kept to a minimum (around 5% of instructions), and the requirement for all off-panel spend to be approved by the head of team before instructions are issued will continue. As part of the procurement process, the steering group attempted to identify the areas where off-panel spend has occurred and as far as possible has built these areas into the new framework (which has different panels to the existing framework).

**Identified risks for the new contract**

26. The following risks have been identified:

Risk	Level	Mitigation
Delay in the award of the new framework before the expiry of the existing framework	Low	The existing framework has been extended to align with the award of this framework. Establishment of strong governance structures between the two councils and escalation of slippage with senior management for key deadlines. Those timescales are being regularly monitored by the steering group.
Rates are higher than under the existing framework leading to difficulties with budgeting	Low	The procurement has been undertaken in a competitive environment, with price being a dominant factor. As noted in paragraph 36 it is considered that VFM has been achieved.

**Community impact statement**

27. The nature of these services is that they are considered to have minimal impact on local people and communities. However as part of the tender process, tenderers were required to respond to a question on social value and the benefits that might be offered to internal staff and the community. All chambers are regulated by the Bar Council Code on Equalities and are therefore actively encouraged and involved in promoting diversity and will be required to comply with equality legislation.

**Sustainability considerations**

28. The Public Services (Social Value) Act 2012 requires the council to consider a number of issues including how what is proposed to be procured may improve the economic, social and environmental well-being of the local area. These issues are considered in the following paragraphs which set out economic, social and environmental considerations.

### **Economic, social and environmental considerations**

29. As noted above, tenderers were evaluated on their responses in respect of additional benefits/social value to meet Lambeth and Southwark's 'Co-operative Council' and 'providing a fairer future for all' commitments respectively. This will include environmental and sustainability issues, offers in respect of pro-bono work to assist residents, community and school activities. A number of chambers who are being recommended for appointment to the framework have offered work placements for Southwark and Lambeth students and to work with schools to give presentations on careers advice.
30. The council is an officially accredited London Living Wage (LLW) Employer and is committed to ensuring that, where appropriate, chambers engaged by the council to provide services within Southwark pay their staff at a minimum rate equivalent to the LLW. These requirements were included in the tender documents and were the basis on which all chambers bid.

### **Market considerations**

31. The successful tenderers:
- Are private organisations
  - Are small organisations with less than 250 staff
  - Have a national area of activity

### **Staffing implications**

32. The proposed framework does not give rise to TUPE or other staffing/pension implications. This is due to the nature of advice given under the existing arrangements and for future arrangements being in response to individual instructions of work, for which TUPE will not apply.

### **Financial implications**

33. The costs for barristers' services are met by service departments. Those costs will need to be agreed and met by the service departments at the time legal advice is required and will therefore need to be contained within departmental legal budgets.
34. Management costs for monitoring the framework will be met from legal services' operational budget and shared by both boroughs.
35. An analysis of the rates received as part of the tender process in comparison to the existing framework has been undertaken. A complete analysis is difficult, as the panels under the new framework are different from the existing framework and the council has developed the pricing framework to require more detailed pricing than that previously required. However on the basis of the comparisons that can be made, and for the high volume spend areas (Housing and childcare),

it is estimated that for housing the prices will reduce by around 16%, and for childcare they will increase by 3-4%. Once the framework is in operation it will be possible to analyse any savings more accurately. However, this will be subject to changes in volume.

36. Framework rates are not index-linked and are fixed for the four year framework period.
37. At Gateway 1 approval the estimated contract value for the framework was noted as £6m. As noted in paragraph 1, the estimated spend for Southwark is now noted to be £10m over the 4 year framework period. Whilst the estimation has increased, this is not because of any change in spend since gateway 1, but is due to the timing of when details of spend are extracted and information is available. Since last November, the panel management system is capturing more critical information to allow a more accurate spend analysis to be given. However all spend is subject to changes in volume of instructions.

### **Legal implications**

38. This report is prepared on behalf of the director of law and democracy but further legal comments are noted in paragraph 43.

### **Consultation**

39. Development of the procurement of the new framework has included consultation with senior legal personnel in other interested boroughs. A questionnaire on the existing framework was developed and circulated to all legal staff in Lambeth and Southwark and responses received help to inform the new procurement process. Comments on the use of the existing framework were sought from existing panel providers.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Finance and Governance (F&G16/001)Reference)**

40. The strategic director of finance and governance notes the recommendation in this report for the award of the Lambeth and Southwark Barrister framework. Costs arising will fall in financial years 2016-17 to 2020-21.
41. As noted above, the costs for barristers' services are met by service departments. Those costs will need to be agreed and met by the service departments at the time legal advice is required and will therefore need to be contained within departmental budgets.

### **Head of Procurement**

42. This report seeks permission from the cabinet member for finance, modernisation and performance to approve the award of the Lambeth and Southwark Barrister framework agreement. The framework agreement is for period of four years, commencing on 15 August 2016. It is divided into ten lots or specialist areas of law that are listed in paragraph 8. The successful providers for each of these specialist areas set out in being listed in Appendix 1 of the report. The value of the spend by Southwark over 4 years is estimated to be £10m.

43. The report details in paragraphs 21-25 the arrangements for the monitoring and management of the Framework Agreement and providers, as well as detailing the social value commitments that have been made by some of the successful providers, including offers in respect of pro-bono work to assist residents, community and school activities. A number of chambers who are being recommended for appointment to the framework have offered work placements for Southwark and Lambeth students and to work with schools to give presentations on careers advice.

**Director of Law and Democracy**

44. As these services are classed as ‘light touch’ services estimated to exceed the relevant EU threshold, they must be tendered in accordance with the ‘light touch’ regime under the new Public Contracts Regulation 2015 (PCR 2015).
45. As a ‘light touch’ procurement, there is some flexibility in the tender process which can be adopted provided that (a) a contract notice is published, (b) the award procedure complies with principles of equal treatment and transparency, (c) the contract is awarded in line with the advertised procedure and (d) time limits are reasonable and proportionate.
46. This procurement has been conducted in accordance with the EU requirements, and following the process noted in the invitation to tender documents.
47. As this report is prepared on behalf of the director of law and democracy, all other comments are included in the body of the report.

**BACKGROUND DOCUMENTS**

Background documents	Held At	Contact
Gateway 1 ‘open’ report – Lambeth and Southwark Barrister framework	160 Tooley Street, London SE1 2QH	Karen Moore x57646

**APPENDICES**

No	Title
Appendix 1	List of chambers recommended to the framework
Appendix 2	Evaluation areas

## AUDIT TRAIL

<b>Lead Officer</b>	Doreen Forrester-Brown – Director of Law and Democracy	
<b>Report Author</b>	Karen Moore – Specialist Lawyer, Corporate Team	
<b>Version</b>	Final	
<b>Dated</b>	15 July 2016	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Finance and Governance	Yes	Yes
Head of Procurement	Yes	Yes
Director of Law and Democracy	Yes	Yes
Cabinet Member	Yes	Yes
<b>Contract Review Boards</b>		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
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