

<b>Item No.</b> 15.	<b>Classification:</b> Open	<b>Date:</b> 18 July 2017	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Gateway 1: Procurement Strategy Approval - Southwark External Solicitors' Framework	
<b>Ward(s) or groups affected:</b>		All wards	
<b>Cabinet Member:</b>		Councillor Peter John, Leader of the Council	

## **FOREWORD – COUNCILLOR PETER JOHN, LEADER OF THE COUNCIL**

This report asks the cabinet to approve the procurement strategy for an external solicitor's framework that will serve Southwark council and other London boroughs, their wholly owned companies as well as CCGs in London. The new framework will allow Southwark council to deliver its fairer future promises of achieving value for money, through the maintenance of competitive fixed rates and quality assured legal services. The council will obtain specialist advice and assistance when needed in order to support and maintain the delivery of the high quality professional services provided by its in-house legal team. The framework will also generate considerable social values in the form of training opportunities for young persons within the borough as well as providing pro bono advice and legal surgeries to local community groups.

## **RECOMMENDATIONS**

That cabinet:

1. Approves the procurement strategy outlined in this report for an external solicitors framework serving Southwark and other London boroughs and their wholly owned companies, London fires and rescue service and Clinical Commissioning Groups (CCGs) in London for a period of 4 years commencing 2 July 2018 at an estimated cost (for Southwark) of £9 million for the 4 year period;
2. Notes that the overall value of the framework agreement is estimated to be in the range of £18 million to £25 million for all participating organisations (including Southwark) for the 4 year period.

## **BACKGROUND INFORMATION**

3. Legal Services has in-house lawyers but from time to time additional support is required from external solicitors, either because of the specialist nature of the work or due to capacity issues. Due to defined current and future resources it is not possible for all legal needs of the council to be met entirely through the work of Legal Services, and provision is therefore required to have access to external specialists for when the need arises.
4. In the last 3 years across council services, Southwark's spend on solicitors is estimated to be around £1.07 million per annum. This spend is not all from the London Boroughs Legal Alliance framework (LBLA) as there has been a need from client departments and the Legal Services team to commission specialist solicitors who are not on the LBLA framework. The commission is in accordance with the

council's contracts standing orders. Legal Services spend through the LBLA framework is estimated around £300,000 per annum.

5. It is proposed that the total cost of the contract over a 4-year period be around £9m to include a contingency for increases in legal spend particularly in view of the change to the council's standard price quality ratio, as set out in paragraphs 14 and 33 of this report.
6. In March 2014, the cabinet member for finance, resources and community safety approved the council's use of the LBLA's solicitors' framework for a period of 2 years and 7 months, up to 31 October 2016, which was the remaining period on the LBLA framework. The LBLA framework included provision for extension for a further period of 12 months from 1 November 2016 to 31 October 2017. The extension provision is currently being utilised.
7. The framework is used by LBLA members (who are the London Boroughs of Barnet, Brent, Camden, Ealing, Hackney, Haringey, Harrow, Hillingdon, Hounslow, Islington, Waltham Forest, Hammersmith & Fulham, Royal Borough of Kensington and Chelsea, Westminster and the City of London) but can also be used by non LBLA members, such as Southwark.
8. The need for external solicitors will continue and therefore the director of law and democracy is considering options for procurement of these services post November 2017.
9. It is proposed that the council procures an external solicitors panel for its legal work to ensure the council achieves best value. The council had previously procured and managed an external solicitors' panel between 2009 and 2012 and in October 2016 the council procured a joint Barristers Framework with Lambeth.
10. The council is therefore experienced in procuring, managing and monitoring an external framework. The Barristers Framework is open to all London boroughs. The proposed solicitors' framework will be open to the organisations set out in paragraph 1 of this report.

#### **Summary of the business case/justification for the procurement**

11. A Southwark council solicitors panel will need to have the scope to shape the legal services over the next 4 years and should take into account new emerging areas of law. The council's legal services is currently in the process of considering what core legal services will be carried out in-house and what needs to put out to external firms. The panel therefore needs to have some flexibility.
12. The council has a requirement for the commissioning of a significant volume of legal work from solicitors, particularly in relation to high value complex property regeneration, planning and contracts work. The council currently uses the LBLA solicitors' framework. As many of the specialist firms with expertise in the areas of Southwark's service requirements are not on this framework, the council commissions regularly outside this, in accordance with the council's contract standing orders.
13. The LBLA framework is coming to an end in October 2017 and LBLA is currently in the process of re-procuring a new framework. The council recently set up a meeting with LBLA to discuss their re-procurement but unfortunately the LBLA framework would not be able to ensure the provision of soft benefits, for example, work

placements to Southwark students and residents. This is an important requirement for Southwark council. Such soft benefits can only be achieved by a Southwark bespoke framework.

14. Discussions and consultation with the clients departments on the scope of the framework is currently taking place and some senior members of the client departments will be part of the project group. The panel areas will be divided into the following 3 lots:

**Lot 1 (complex matters - quality/price split of 60:40)**

- (1) Regeneration and property

Specific services include asset protection agreements and specialist work on railways/TfL, CPOs, section 106 work, acquisitions and disposal, development agreement, sales agreements and VAT advice

- (2) Planning advice

- (2) Commercial contracts and procurement, including:

- a) State aid
- b) Employment, TUPE and pensions
- c) Commercialisation (joint ventures, partnerships, trusts, charities)

- (4) Governance and public law

- (5) Commercial litigation

- a) adjudication

**Lot 2 (general matters – quality/price split of 50:50)**

- (1) Health and social care

- (2) Commercial contracts and procurement

- a) Employment, TUPE and pensions
- b) commercial litigation – e.g. business rate litigation

- (3) General litigation

- a) Housing
- b) other

- (4) Debt recovery

- (5) Employment litigation

**Lot 3 (high volume predictable routine matters - quality/price split of 60:40)**

- (1) Residential conveyancing

15. Bidders may bid for any 'lot of their choice and there will be no restriction on the number of lots each bidder may bid for. Each panel area shall contain no more than five firms.
16. To ensure the council gets the right mix of firms, different evaluation splits will be applied depending on whether it is a complex matter or a routine work. This is briefly described in paragraph 33 of this report. The client departments' input will be crucial in ensuring the procurement of the right services and the effective operational delivery of the framework once this is in place.
17. An important element of the proposed framework is to provide good soft benefits which cannot be obtained via the LBLA framework including but not limited to:
  - work placements for Southwark residents and students and young people in care, not limited to legal work but may include information technology and accounts
  - pro bono work
  - legal surgeries and advice to community organisations
18. Whilst the LBLA framework offers training to in-house lawyers and client departments, it does not extend the training beyond these groups. The proposed Southwark framework will extend the training to students and residents in the Southwark area.

### **Market considerations**

19. The market for solicitors is very developed and the council expects a healthy response to this procurement exercise. A procured panel will ensure the council receives best value in the purchase of external legal advice.

### **KEY ISSUES FOR CONSIDERATION**

#### **Options for procurement route including procurement approach**

20. Several options were considered when identifying a preferred procurement approach. These were:
  - (a) Do nothing – whilst the council does have its own legal team, external legal support is sometimes required to deal with specialist areas of law or to assist with capacity issues. Therefore a do nothing approach is not recommended.
  - (b) Provide in-house – due to the often ad-hoc nature and specialism for which the services of solicitors are required, this approach is not recommended. The proposed solicitors' framework will support the in-house function.
  - (c) Instruct solicitors on an ad-hoc basis in accordance with the council's CSO's – less efficient in terms of management of spend and is more time consuming.
  - (d) Join a pre-existing framework agreement – Whilst the council is an associate member of the LBLA and currently uses its Solicitors framework, the new LBLA solicitors' framework due to commence in November 2017, will not have the required soft benefits. A bespoke Southwark procurement can better ensure the framework meets the council's specific needs (e.g. significant use

of regeneration and development providers) and allows it to secure social value benefits specific to Southwark’s residents.

- (e) Southwark framework procurement – The council procures its own framework which will be bespoke and aligned to Southwark’s requirements (as set out in paragraphs 11 to 18 of this report). This is the preferred option.

**Proposed procurement route**

- 21. The proposed procurement route is the establishment of a Southwark council solicitors panel with the ability for other London local authorities, wholly owned local authority companies, fire and rescue services and CCGs (who will be detailed in the OJEU notice) to join the framework with the consent of Southwark Council. The procurement will take the form of a 2 stage restricted process, which will allow the council to test applicant’s suitability at the prequalification stage and then shortlist applicants who will be invited to tender.

**Identified risks for the procurement**

- 22. The following risks have been identified for this project:

Risk	Likelihood	Mitigating Action
Firms not bidding because process is considered arduous	Low	<p>Documents to be kept succinct. Lessons learnt from previous framework to be built into new process.</p> <p>Firms to be contacted in advance (via Suppliers’ Day event and/or formal meetings with individual suppliers) to ensure they are aware of the opportunity and their feedback on the procurement process is considered.</p>
The pricing document is not sufficiently robust	Low	<p>Consultation with client departments to ensure that documents reflect operational requirement and pricing structures to attract the specialist firms who deal with high complex work as well the more routine general work.</p>
The framework does not cover all areas of the council’s work, or has insufficient expertise	Low	<p>This will be minimised through detailed consultation with client departments and the completion of a tender specification that allows the service flexibility needed for the future.</p>

Risk	Likelihood	Mitigating Action
		Quality/price evaluation to be developed prior to advert to ensure that evaluation of quality is sufficient.
The framework does not offer intended social value	Low	<p>The importance of the provision of social value benefits will be highlighted during market intelligence meetings/supplier briefings.</p> <p>Quality assessment will also assess bidders' response on social benefits.</p>
Southwark's highest spending services do not engage with the framework and continue promoting their own direct arrangements where these exist	Medium	<p>A robust analysis of spend on solicitors across the council has been undertaken. Results will be discussed with departments to support engagement.</p> <p>Client departments will be involved in drafting the service specification, evaluation and during the management of the contract (e.g. receiving progress reports on spend).</p>
LBLE procurement runs in parallel and causes bidder fatigue/disinterest	Low	<p>This is unlikely as the LBLE procurement will commence June 2017 with a view to awarding a framework agreement by the end of this year. Southwark will publish its OJEU Notice in September 2017 and expects to have its framework agreement in place by May 2018.</p> <p>Effective market engagement through supplier/events and meetings to ensure strong market interest.</p>

### Key/non-key decisions

23. This report deals with a key decision based on an estimated contract value of £9m (for Southwark) for the 4 year period.

## Policy implications

24. The procurement of a solicitors' panel framework will ensure that the council fulfils parts of its fairer future promises by ensuring that the solicitors instructed deliver value of money across the legal function.

## Procurement project plan (key decisions)

25. Procurement project plan:

Activity	Complete by:
Enter Gateway 1 decision on the Forward Plan	01/06/2017
DCRB Review Gateway 1	01/06/2017
CCRB Review Gateway 1	15/06/2017
Brief relevant cabinet member (over £100k)	26 June 2017
Notification of forthcoming decision	10/07/2017
Approval of Gateway 1: Procurement strategy report	18/07/2017
Scrutiny Call-in period and notification of implementation of Gateway 1 decision	27/07/2017
Market engagement event	w/c 7 August 2017
Completion of tender documentation	08/09/2017
Publication of OJEU Notice	13/09/2017
Publication of Opportunity on Contracts Finder	15/09/2017
Closing date for receipt of expressions of interest	23/10/2017
Completion of short-listing of applicants	20/11/2017
Invitation to tender	23/11/2017
Closing date for return of tenders	05/01/2018
Completion of any clarification meetings/presentations/evaluation interviews	26/01/2018
Completion of evaluation of tenders	23/02/2018
Forward Plan	01/02/2018
DCRB Review Gateway 2:	08/03/2018
CCRB Review Gateway 2	22/03/2018
Notification of forthcoming decision – despatch of Cabinet agenda papers	25/05/2018
Approval of Gateway 2: Contract Award Report	05/06/2018
End of scrutiny Call-in period and notification of	14/06/2018

<b>Activity</b>	<b>Complete by:</b>
implementation of Gateway 2 decision	
Debrief Notice and Standstill Period (if applicable)	25/06/2018
Contract award	02/07/2018
Add to Contract Register	04/07/2018
Place award notice in Official Journal of European (OJEU)	04/07/2018
Place award notice on Contracts Finder	06/07/2018
Contract start	02/07/2018
Initial contract completion date	01/07/2022

### **TUPE/Pensions implications**

26. There are no TUPE implications on any service as a result of this procurement.

### **Development of the tender documentation**

27. Tender documents will be developed by the council's in-house legal team and the project manager in consultation with the client departments.
28. Tender documentation including the list of proposed panels for commissioning will be agreed and signed-off by the project board led by the Director of Law and Democracy, following consultation with senior users across commissioning departments.
29. The number of panels decided will include the panels listed in paragraph 14 above.
30. The project team will review each panel and their spend to determine the optimum number and specialism for each panel. The final panel arrangement will be approved by the project team before the OJEU process commences.

### **Advertising the contract**

31. The contract falls within the category of services which are subject to a 'light touch' regime under the Public Contracts Regulations 2015. A contract notice will be published in OJEU and Contracts Finder via the council's e-procurement system which will allow firms interested in bidding to express an interest electronically.

### **Evaluation**

32. The tender evaluation team will be structured around the panels to be established to ensure that those who work most closely in that area of law are involved in the evaluation. The evaluation methodology including criteria, weighting and sub-weightings will be agreed by the project steering group, and will include the quality of solicitors' resource, the back office support and soft benefits.



33. The council's standard evaluation criteria are based on a 70:30 price/quality split. However, in order to have a more qualitative evaluation indicators and to achieve the best value elements of efficiency and effectiveness, it is proposed that the council's standard price/quality split is altered for this procurement so that the high level complex matters (lot 1) the quality/price split will be 60:40, to ensure that the required level of expertise/specialism is achieved at costs which are acceptable to the council. For the general legal work (lot 2) the quality/price split will be 50:50 and the predictable high volume routine matters (lot 3) the price/quality split will be 60:40.
34. Once the framework is launched, the council and other interested organisations will be able to commission firms on the panels directly or through the undertaking of mini competitions.

### **Community impact statement**

35. It is expected that soft benefits will be realised as part of the procurement, such as those mentioned in paragraphs 17 to 18 of this report.
36. All the service providers are regulated by the Law Society's code on equalities and are therefore actively encouraged and involved in promoting diversity and will be required to comply with all equalities legislation. Appropriate questions will be developed into the tender documents to test this approach.

### **Social values, economic, economic/sustainability considerations**

37. The Public Services (Social Value) Act 2012 requires that the council considers, before commencing a procurement process, how wider social, economic and environmental benefits that may improve the well being of the local area can be secured. The details of how social value will be incorporated within the tender are set out in the following paragraphs.
38. It is intended that one of the areas for evaluation will be in respect of social values to meet Southwark's fairer future commitment. This will include environmental and sustainability issues, offers in respect of pro-bono work to assist residents in the borough, and possible community activities and placements for Southwark students as outlined in paragraphs 17 to 18 of this report.
39. The council is an officially accredited London Living Wage (LLW) Employer and is committed to ensuring that, where appropriate, providers engaged by the council to provide services within Southwark pay their staff at a minimum rate equivalent to the LLW rate. It is expected that all solicitors and office staff will already be paid in excess of the LLW.

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

40. A framework protocol will be in operation which will govern the operation of calling off services from each of the framework panels. The project steering group will meet quarterly to monitor panel performance. The steering group will be composed of senior legal representatives from Southwark legal services, and be chaired by the director of law and democracy.
41. Day to day management and performance monitoring will be undertaken by the internal business manager and this will be the first point of contact for external solicitors and staff.

42. The council now has in place a new electronic system (Visual Files) and it is anticipated that a case management system will be build in which will allow those instructing external solicitors to determine the relevant solicitor to be instructed and the fee to be paid and the appropriate cost centres. It will also allow departments to monitor their spend by giving them access to billing information under a shared point. There will be prompt for users to provide feedback to the council on the performance of the instructed solicitor. Where concerns are raised this allows issues to be discussed at the contract monitoring meetings held with each firm annually, or if required an ad-hoc meeting can be arranged.
43. Contract performance reviews will be completed every 6 months and will include feedback from users.

### **Staffing/procurement implications**

44. A high level of resource will be required from the legal services team during the tender process to prepare the tender documentation, undertake evaluation and mobilise the new framework. Assistance will also be required of the procurement advice team. Whilst this can be undertaken by the in-house teams, the council is in the process of appointing an external project manager to assist with the tender process.

### **Financial implications**

45. There will be a direct cost for the project manager required to co-ordinate delivery of the framework which is estimated to be approximately £30,000 for the end-end project lifecycle. This payment will be met from the legal service budget. It is expected that this fee will be mitigated from the joining fee required from other authorities who wish to use the framework. Those interested in joining will be asked to pay a flat, fixed fee of £5,000 providing them access to the framework throughout its duration.
46. This contract will be demand led and therefore it is difficult to predict future spend, however information regarding Southwark Council's spend showed that over the last 3 years, the Council spent on solicitors across all services an average of £1.07m per annum, in addition to a spend with LBLA over the 3 years close to £1m.
47. Estimated spend for the framework as a whole (including spend for all interested organisations) will be noted in the OJEU notice.
48. It is anticipated that the expenditure under the new framework will be higher given that high complex work will attract a higher fee given that the price : quality split will change from 70:30 to 40:60. The cost of any instructions given under the new framework will be agreed and met by the service department at the time advice is required.

### **Legal implications**

49. Please see concurrent from the director of law and democracy.

## **Consultation**

50. In delivering this framework for the council, the project team will consult with senior legal personnel within the council as well as senior members of the service departments.
51. Representatives from relevant departments will be requested to join the project team, in particular representatives from Regeneration, Planning and departments undertaking significant amounts of procurement work as these are likely to be the largest spend areas under the framework.

## **Other implications or issues**

52. The current LBLA solicitors' panel framework expires on 31 October 2017. It is not clear at this stage whether LBLA will have a new contract in place by 1 November 2017. In any event, the council wishes to establish a framework agreement that will take into account the matters described in paragraphs 13 to 18 of this report.
53. The timetable for the council's procurement indicates that the earliest award date for the solicitors' framework will be 2 July 2018. A separate approval will therefore be sought to enable the council to award short interim contracts to firms from 1 November 2017 until the new solicitors' framework is in place.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Finance and Governance – Ref FC17/053**

54. The strategic director of finance and governance notes the recommendations in this report for the procurement of a solicitors' framework. The costs of the service will be charged to individual departments based on their use of the framework. This will also include recharges to the Housing Revenue Account.
55. The framework will cover financial years from 2018-19 to 2022-23, a period over which grant to the council will be reducing. It is important that accurate estimates of the cost of any instructions given under the new framework are provided, that these are explicitly agreed by the service department at the time advice is required. The costs will then be charged to the departments, which must be completely promptly and accurately.

## **Head of Procurement**

56. This report seeks the approval of cabinet for the procurement strategy outlined for this report for an external solicitors' framework agreement. The framework will be for period of 4 years, commencing on 4 July 2018. The estimated spend through the framework agreement for Southwark is £9m over the 4 years. The framework agreement will be for primarily for Southwark council, but will also be open to London boroughs and their wholly owned companies, London fires and rescue service and Clinical Commissioning Groups (CCGs) in London.
57. The report notes that the overall value of the framework agreement is estimated to be in the range of £18 million to £25 million for all participating organisations authorities (including Southwark) for the 4 year period as set out.
58. Paragraphs 40 to 43 sets out the plans for the management and monitoring of the framework agreement. This includes the management of the additional social value

benefits aims for from the contract set out in paragraphs 17 to 18 and 38 of the report. It is believed that by its nature this contract will pay above the London Living Wage.

### Director of Law and Democracy

59. As these services are classified as 'light touch' services estimated to exceed the relevant EU threshold, they must be tendered in accordance with the 'light touch' regime under the Public Contracts Regulations 2015.
60. 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 the 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.
61. This procurement will be conducted using a two stage restricted process, where initial expressions of interest are invited following the OJEU contract notice and then those applications shortlisted are invited to tender.
62. 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
GW3 - Extension of the use of the LBLA framework	Legal Services 160 Tooley Street London SE1 2QH	Karen Moore Legal Services 020 7525 7646
<b>Link:</b> <a href="http://modern.gov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=5750&amp;Ver=4">http://modern.gov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=5750&amp;Ver=4</a>		

### APPENDICES

No	Title
None	

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Peter John, Leader of the Council	
<b>Lead Officer</b>	Doreen Forrester-Brown, Director of Law and Democracy	
<b>Report Author</b>	Clara Diala, Specialist Contracts Lawyer	
<b>Version</b>	Final	
<b>Dated</b>	7 July 2017	
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<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
<b>Contract Review Boards</b>		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>		7 July 2017