

Item No.	Classification: Open	Date: 11 October 2016	Meeting Name: Strategic Director of Finance and Governance
Report title:		Gateway 3 – External Solicitors Panel	
Ward(s) or groups affected:		All wards	
From:		Director of Law & Democracy	

RECOMMENDATIONS

1. That the strategic director of finance and governance approves the extension of the use of the London Borough Legal Alliance (LBLA) framework for a period of 12 months from 1 November 2016 for the provision of external legal solicitors' advice.
2. That the strategic director of finance and governance notes that there is a yearly fee of £3,300 which will continue to be paid to Kennedy Cater who manage this framework for all LBLA members and framework users. This is a demand led contract with no guarantee of spend but on current spend it is estimated that spend for this extension period will be in the region of £400k.

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. Under 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 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) and the council has now been notified by LBLA that the extension has been effected with solicitors on the panel. The council therefore has an option of using the framework for a further 12 months.
5. 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 & Chelsea, Westminster and the City of London) but can also be used by non LBLA members, such as Southwark.

KEY ISSUES FOR CONSIDERATION

Key Aspects of Proposed Variation

6. Approval of this variation would allow the council to use the LBLA solicitors framework for a further period of 12 months. The framework is split into two parts – Lot 1: the provision of legal advisory services and assistance in relation to complex

regeneration, development, property and planning work. The following solicitor firms have been appointed to this panel:

- Ashfords
- Bevan Brittan
- Freeth Carthwright
- Sharpe Pritchard LLP
- TLT

- Lot 2: the provision of legal advisory services and assistance in relation to a range of mainstream legal services including litigation, contracts, procurement, PPP/PFI, property and employment. The following solicitor firms have been appointed to this panel:

- Ashfords
- Michelmores
- Pinsent Masons
- Sharpe Pritchard LLP
- TLT

7. There is no obligation on the council to use the framework or for any level of spend with the solicitors on the panel. Appointments through the framework can either be made by a direct order to any of the providers in the relevant lot, or, can be made following a mini-competition between providers in that lot as appropriate and determined by the council.
8. The framework includes a number of soft benefits including training, helpline / ad-hoc advice, secondments, use of library and precedents, cost monitoring and pre and post scheme briefings.

Reasons for Variation

9. The LBLA framework was let for a period of 3 years from 1 November 2013 with provision to extend for a further period of 12 months. At the time of seeking approval to use the LBLA framework, the council was only able to seek permission to use the framework until 31 October 2016, as this was the only period available at that time. The LBLA have now utilised the 12 month extension which gives the council an option to continue to use the framework until 31 October 2017.

Future Proposals for this Service

10. 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. These will be presented in a gateway 1 in late 2016.

Alternative Options Considered

11. The use of the LBLA framework has been successful, with additional benefits such as training provided. The fees agreed as part of the framework were procured through a competitive process and remain competitive. The council has therefore not considered any other alternative options for this final 12 month period. If the extension is not effected then either the Legal Services section will retain the work or additional legal services will need to be procured on an ad-hoc basis. Procuring the service on an ad hoc basis will be more expensive for the council.

Identified risks for the extension

12. The LBLA framework was procured following a full EU compliant process and includes provision for a 12 month extension, which means that there are no risks in using the framework for a further 12 months. There is no commitment on the council to use the framework during this period or commit to any level of spend.

Policy implications

13. There are no specific policy implications, but external solicitors may be utilised to provide advice to the council on policy issues.

Contract management and monitoring

14. There is a need for the council to have in place adequate monitoring and management of use of the arrangements and spend, so that it can manage the issue of instructions and monitor the quality of advice and fees paid / spend (ensuring that there are appropriate authorisation levels for whoever in Legal Services can undertake this). Whilst monitoring and management of the external arrangements as a whole will be undertaken by the deputy business manager, as part of this appointment the council will pay a yearly fee to use the LBLA framework and this fee is for Kennedy Cater (who manage the LBLA framework) to report on and manage the strategic relationships with all solicitor firms appointed; to manage the database including expenditure and analysis of use; to track the benefits given by framework; and to arrange a free CPD training programme delivered by panel firms. This will give the council increased visibility of its use of external solicitors, and ability to analyse use and spend. Instructions under the framework can be placed by direct order or following a mini-competition. The decision on whether a direct order can be placed (and to which firm on the framework) or whether a mini-competition will be held will be made following consultation with the relevant head of team in Legal Services and subject to value for money being demonstrated and justification being given (if a direct order is proposed).
15. Clients have been extremely pleased with advice given on current projects through the framework, which has enabled the council to achieve some of its long term objectives and it is considered that this level of service is likely to be continued. Regular client liaison meetings take place with clients and this will provide an opportunity to review the performance of firms in the framework.

Community Impact Statement

16. This decision is judged to have little impact on local people, businesses and communities. Geographically, the solicitor firms on the short-listed panels are spread out all over London and beyond. However, in agreeing award through this framework the decision maker should be aware of the implications of the public sector equality duty as contained within section 149 of the Equality Act 2010, and the duty on the council when making decisions to have due regard to the need to:
 - Eliminate discrimination, harassment, victimisation or other prohibited conduct;
 - Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not;
 - Foster good relations between those who share a relevant characteristic and those who do not share it. The relevant protected characteristics are

age, disability, gender reassignment, pregnancy, race, religion or belief, sex, sexual orientation. The duty also applies to marriage and civil partnership but only in relation to bullet 1.

17. Whilst this variation decision is judged to have little impact on local people, businesses and communities, the advice given by the firms on the framework could be in relation to equality issues supporting the council's equality duty.

Social Value considerations

18. 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 social value considerations for this variation are set out in the following paragraphs.

Economic considerations

19. There are no specific economic considerations relating to the continued use of this framework.

Social considerations

20. By using this framework it is not possible for the council to specify the type of legal firms which can be used, for example whether they should be locally based.
21. Whilst the London Living Wage (LLW) was not considered as part of admission onto the LBLA framework, the stated hourly rates of solicitors and their support staff are in excess of the LLW.

Environmental/Sustainability considerations

22. There are no specific environmental considerations relating to continued use of this framework.

Financial Implications

23. Spend from 1 April 2014 to end of quarter 1 in 2016 is £457k. This is split into £84k in 2014/15, £301k in 2015/16 and £72k for the first quarter of 2016. As this is a demand led contract, it is not possible to confirm actual spend for the 12 month extension but this is expected to at least match current spend and should allow a contingency to cover additional legal advice which might be required as the council meets challenging legal issues over the next 12 months. Spend has increased in this financial year, with monthly spend of over £20k due to a number of complex matters including procurement of the IT contract, FM for rest of the council estate and disputes on two existing contracts.
24. The costs for using external panel services are met by the client departments. However the LBLA panel requires the council to pay an annual fee to manage the framework. Legal Services consider that the additional benefits received under the LBLA framework justify the payment of this sum. In particular, the LBLA offer a significant training programme tailored to the needs of local government lawyers; this will deliver a significant saving for the council. The LBLA framework provisions

for reporting and monitoring legal spend will assist the council to more accurately monitor spend under the panel.

25. Whilst the legal panel arrangements operate as a demand led contract and, therefore fluctuations in use are expected, the council needs to achieve reductions in legal spend whilst continuing to improve service provision. This has led to Legal Services and client departments working together to ensure the most effective use of spend on legal advice. There does however remain a need to have a facility for use of external solicitors, which must remain sufficiently flexible to deal with the peaks and troughs of the council's business

Legal Implications

26. The provision of legal services at this value is now governed by Schedule 3 of the Public Contract Regulations 2015, as a light touch procurement. However, as a minimum it does require advertisement in the OJEU and the running of a transparent and non-discriminatory process that treats providers equally. However, continued use of the LBLA framework would satisfy the procurement requirements having been initially procured competitively.

Consultation

27. As part of Legal Services' business plan, client consultation on the most effective ways of providing legal services has been and will continue to be undertaken. The external solicitors' panel is used only where it is not possible for advice to be given by the in-house team due to capacity or the specialist nature of the advice required.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance (F&G 16/007)

28. The strategic director of finance and governance notes the recommendation in this report for the extension of the use of the London Borough Legal Alliance (LBLA) framework. If used, the costs will arise in the financial years 2016-17 and 2017-18. As noted, any costs for using external panel services are met by the client departments, and these should be managed within existing budget provision for general fund, HRA or capital projects.
29. The additional fee for framework management is to be met from the existing Legal Services budget

Head of Procurement

30. This gateway three report is seeking approval to extend the existing London Borough Legal Alliance framework for the provision of legal solicitors advice over a period of 12 months, commencing from 1 November 2016. Paragraph 4 confirms that the framework has provision for this extension.
31. The report confirms there is an ongoing need for legal solicitors advice services due to the specialist nature of the work and capacity issues.


32. The report confirms that clients across the Council have been satisfied with the advice given on projects put through the framework and that officers are confident that this will continue for the extension period.
33. Paragraph 14 describes the monitoring and management arrangements that have been in place to date and confirms that these will continue including the annual fee paid to Kennedy Cater to provide reports and manage the strategic relationships with all the solicitor firms appointed through the framework.

Director of Law and Democracy

34. This report seeks the strategic director of finance and governance's approval to an extension of the use of the LBLA framework for legal solicitor advice services for a period of 12 months from 1 November 2016.
35. Legal services at this value are subject to the light touch regime of the EU procurement regulations. The estimated value of the additional work for this 12 month period falls below the light touch threshold, and is therefore not subject to the advertising and tendering requirements of the regulations. However, in any event, the LBLA framework does contain provision for a further extension of 12 months, and therefore our continued use would meet the modification/variation requirements of regulation 72.
36. This report is prepared on behalf of the director of law and democracy, and therefore all other legal considerations are included within the body of the report.

FOR DELEGATED APPROVAL

Under the powers delegated to me in accordance with the council's Contract Standing Orders, I authorise action in accordance with the recommendation(s) contained in the above report.

Signature  Date 13-10-16

Designation STRATEGIC DIRECTOR OF FINANCE AND GOVERNANCE

BACKGROUND PAPERS

Background Papers	Held At	Contact
none		

APPENDICES

No	Title

AUDIT TRAIL

Lead Officer	Doreen Forrester-Brown, Director of Law and Democracy	
Report Author	Karen Moore, Specialist Lawyer, Legal Services	
Version	final	
Dated	11 October 2016	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Finance and Governance	Yes	Yes
Head of Procurement	Yes	Yes
Director of Law and Governance	Yes	Yes
Cabinet Member	N/A	N/A
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
Date final report sent to Constitutional/Community Councils/Scrutiny Team		N/A