

Item No.	Classification: Open	Date: 23 June 2020	Decision Maker: Cabinet Member for Finance, Performance and Brexit
Report title:		Gateway 2 - Contract Award Approval Barrister Framework	
Ward(s) or groups affected:		All	
From:		Strategic Director of Finance and Governance	

RECOMMENDATION(S)

1. That the Cabinet Member for Finance, Performance and Brexit approves the council joining the London Boroughs' Legal Alliance (LBLA) as an associated member to enable use of their barrister framework to provide barrister services to the council for a period of up to three years and six months from July 2020 at an estimated annual value of £900,000 and an estimated total value of £3.2m.
2. That the Cabinet Member for Finance, Performance and Brexit approves the council entering into an access agreement with the City of London Corporation for participation in the LBLA framework and an agreement with Kennedy Cater Limited, who manage the framework at an estimated annual cost of £6,463, making an estimated total fee of £22,620 as further detailed in paragraph 17 of the report.

BACKGROUND INFORMATION

3. Legal services instruct barristers on behalf of client departments for a range of litigation work including housing and general litigation, planning litigation and child care proceedings. 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 a series of joint barrister framework arrangements with Lambeth Council which have been in operation since 2012, with the current arrangement due to expire on 31 August 2020.
4. The Gateway 1 (procurement strategy) report was discussed and agreed with the Cabinet Member for Finance, Performance and Brexit on 12 March 2020 but due to the additional workload on members and officers caused by Covid-19, the formal approval of the Gateway 1 report was delayed until 11 June 2020. The Gateway 1 proposed use of the LBLA barrister framework, and noted that additional investigation of the framework was to be undertaken with a view to confirming access and seeking approval to use the framework (this report).
5. The Gateway 2 (award decision) has been included on the June Forward Plan for decision of the Cabinet Member for Finance, Performance and Brexit.
6. On the basis of spend on barrister services in financial year 2018-19 of £818,029 and spend for the last financial year (2019-20) of £853,369, and to include contingency for ad-hoc advice, it is estimated that spend for the next three years and six months will be in the region of £3.2m.

Procurement project plan (Key Decision)

Activity	Completed by/Complete by:
Forward Plan for Gateway 2 decision	01/04/2020
Briefed relevant cabinet member (over £100k)	12/03/2020
Approval of Gateway 1: Procurement Strategy Report	11/06/2020
Completion of consideration of LBLA framework	22/05/2020
DCRB Review Gateway 2:	04/06/2020
CCRB Review Gateway 2:	11/06/2020
Notification of forthcoming decision – Five clear working days	22/06/2020
Approval of Gateway 2: Contract Award Report	29/06/2020
Scrutiny Call-in period and notification of implementation of Gateway 2 decision	06/07/2020
Contract award	06/07/2020
Add to Contract Register	08/07/2020
Date from which framework can be used	06/07/2020
Initial Framework completion date	31/12/2022
Final framework completion date – if extension(s) exercised	31/12/2023

KEY ISSUES FOR CONSIDERATION

Description of procurement outcomes

7. The overall aim is to use the LBLA framework to procure the services of barristers (when required) and in order to continue with the efficiencies realised as part of the council's existing framework.
8. The LBLA framework is split into eight lots, further details of which are noted in Appendix 1, with the following number of providers. This largely mirrors or is in excess of the council's existing barrister framework with Lambeth:
 - Adult Social services – 6 providers
 - Children's services – 11 providers
 - Governance and Public Law – 5 providers
 - Criminal Litigation and Prosecutions – 6 providers
 - Housing – 6 providers
 - Planning – 5 providers
 - Property – 3 providers
 - Civil Litigation – 5 providers
9. Call off from the LBLA framework can be by a direct award to any provider on the relevant lot without reopening competition, where it is deemed that a participating barrister represents the most economically advantageous solution for such services, or can be instructed following a mini-tender between legal providers on

that lot who are capable of providing the required services. The LBLA framework anticipates that in the majority of instructions direct award will be used.

10. It is anticipated that the new framework arrangements will:
 - Provide a wide range of barristers with the required expertise to choose from.
 - Provide certainty as to the cost of instructing barristers.
 - Secure cost savings through economies of scale, both in terms of shared procurement costs and potentially lower prices due to the increased volume of work.
 - Provide the means for monitoring and controlling expenditure.

Key/Non Key decisions

11. This report deals with a key decision

Policy implications

12. The use of a barristers' framework will ensure that the council fulfils parts of its fairer future promises and values by ensuring that the barristers instructed deliver value for money across the legal function.
13. The requirements of the Fairer Future Procurement Framework (FFPF) will be incorporated into instructions issued through the LBLA framework as detailed in paragraphs 32-35.

Tender process

14. The LBLA framework was procured by the City of London Corporation for use by LBLA members and other public bodies. The tender was undertaken following a fully compliant EU tender process. The deadline for submissions to the framework was 16 August 2019 and 100 bids were received from 37 barrister chambers across all eight lots. 26 chambers were appointed to the framework which is effective from 1 January 2020 for a period of three years with an option to extend for a further year.

Tender evaluation

15. The evaluation criteria for appointment to the LBLA framework were 50:50 price/quality for all lots, with the exception of the governance and public law lot where evaluation criteria were 35:65 price/quality.
16. Due to the confidentiality of pricing information, the council was not able to see all the pricing information relating to individual barrister chambers on the framework, but requested and obtained details of the pricing information and rates for Southwark's high volume and areas where it commonly needs the services of barristers. This has been analysed by officers from Legal Services to determine if use of the framework would represent value for money, and it is considered that this is the case, particularly given that rates were obtained in a competitive environment.
17. There are a number of options for membership of the LBLA, either full membership (which allows use of all frameworks operated by the LBLA), associated membership with access to the barrister framework, or a non-membership option which allows access to the barrister framework, but with limited training options. As the council has its own solicitor framework, the full membership of the LBLA is

not required, and the council is therefore seeking approval to join as an associate member with use of the barrister framework. This would allow the council to benefit from the training provided under the framework. The council will be required to enter into an access agreement with the City of London Corporation to allow participation in the barrister framework, and also to enter into an engagement agreement with Kennedy Cater for support and management of the framework.

Plans for the transition from the old to the new contract

18. The council's current barrister framework expires on 31 August 2020, and there will need to be a transition period to the new framework. For this reason, the council intends joining the LBLA framework in early July to allow a sufficient period for transfer to the new arrangements. Whilst some of the chambers included on the LBLA framework are already part of our existing framework, there are a number of new chambers who have not previously acted for the council. Whilst the new framework is to be fully operational for 1 September 2020, existing instructions may need to be completed under the current arrangements

Plans for monitoring and management of the contract

19. Monitoring and management of the council's use of the framework and work issued under this will be the responsibility of Legal's business manager, supported by administration and legal expertise resources from the legal teams. A steering group (led by the Director of Law and Democracy) will continue to meet six-monthly to analyse use of the framework and any areas for improvement.
20. The council will also continue to have an internal operating protocol which will be reviewed by the steering group on a six monthly basis. The council has in place an electronic system through its VisualFiles case management system which will continue to be used for instructing barristers through the new framework. It includes a prompt for users to provide feedback on the performance of instructed barristers, and allows review of any performance issues at the steering group.
21. In joining the LBLA framework the council is required to pay an annual fee to Kennedy Cater (who manage the framework on the LBLA's behalf). In return the following contract management services are provided:
 - A comprehensive analysis of expenditure by category and barrister chambers for each authority.
 - Spot checking of invoices to ensure adherence to agreed rates.
 - Monthly reports provided on spend, including wider trends.
 - Ensuring database of rates and personnel on the framework remain accurate.
 - Management of the strategic relationship with barrister chambers.
 - Negotiations with barrister chambers to provide further information where required.
22. The management services provided by Kennedy Cater will reduce the resource needed from the council's legal teams in managing this service.
23. Occasionally there will be instructions which cannot be dealt with through the framework, due to complexity or specific nature of the advice required. All off-panel spend must be approved by the head of team for the relevant panel before instructions can be issued, and this will continue to be monitored on a six-monthly basis.

24. Monitoring reports will be presented to DCRB and CCRB as required by contract standing orders.

Identified risks for the new contract

25. The following risks have been identified:

Risk	Level	Mitigation
Rates are higher than under the existing framework leading to difficulties with budgeting	Low	The LBLA's procurement has been undertaken in a competitive environment, and on the basis of use by a large number of LBLA members/other authorities. As noted in paragraph 17 it is considered that VFM has been achieved.
There are a large number of LBLA members and therefore there may be an insufficient number of providers for the capacity required	Medium	The LBLA framework includes a higher number of providers in high volume areas (such as the children's panel which has 11 barrister chambers). If the council were to procure its own framework this would not increase capacity as procurement would be through the same pool of providers.
Market factors cause chambers to close	Medium	One chamber (Ely) has closed since the framework was let, and therefore there is a reduced capacity in 2 lots (Lots 7 and 8). However as noted above the LBLA framework includes a higher number of providers in high volume areas which should mitigate this risk. This will continued to be monitored by the council.
Covid-19 impacts on service performance	Low	Chambers have continued to operate during lock-down, and are able to work remotely/social-distance.

Community impact statement

26. The use of barristers for legal advice is judged to have limited impact on local people and communities. However, bidders were encouraged to provide benefits such as the provision of work experience, volunteering, internship and pupillage opportunities targeted to help improve social mobility as further detailed in paragraphs 30 and 33.

Social Value considerations

27. 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 included in the tender (as outlined in the Gateway 1 report) are set out in the following paragraphs in relation to the tender responses, evaluation and commitments to be delivered under the proposed contract.

Economic considerations

28. Value added benefits and social value were evaluated during the LBLA tender. In relation to value added benefits, bidders were required to confirm that they would provide the following:
- The provision of a minimum of one bespoke legal training session per annum per Lot, as part of the annual LBLA Training Programme, although bespoke sessions for individual LBLA members, webinars and podcasts can be provided in addition.
 - Monthly management information services to enable the participating authorities to monitor the operation of the Framework and to enable strategic decision making by them around encouraging competition and delivering better value for money.
 - Twenty minutes of free advice (telephone or email) per potential new instruction.
29. Bidders were also asked to consider offering additional value added benefits such as newsletters/bulletins to update on changes in law, additional bespoke training, legal surgeries and secondments, and a number of bidders included additional benefits which were evaluated, and for which the council will benefit when using the LBLA framework.

Social considerations

30. In June 2019 the council adopted a new Fairer Future Procurement Framework (FFPF) which sets out how the council will use procurement to support the delivery of the Council Plan and Fairer Future Commitments, and the processes and practices that are needed to do this. The council expects all of its procurement activity to be undertaken to the highest ethical, sustainable and responsible standards and within a robust and transparent governance framework.
31. As this framework was established by the LBLA, the council had no involvement in the procurement of the framework, but it was undertaken in consultation with LBLA members who are also public authorities, and some of whom have similar social value requirements.
32. In relation to social value, bidders were encouraged to provide benefits such as the provision of work experience, volunteering, (paid) internship and pupillage opportunities targeted to help improve social mobility, for example:
- Provision of support to schools by way of mentoring, or talking to groups of pupils about careers in the law.
 - Provision of goods or services for community groups as agreed by members. e.g. pro bono legal advice.
33. The LBLA have confirmed that the majority of bidders offered these additional social value commitments, and these are captured in the framework documents, so the council would have the benefit of these.
34. The LBLA's framework requires all barrister chambers to comply with its legal obligations under UK discrimination and equal opportunity law (including those relating to harassment). In discussions with the LBLA, they have confirmed that at call off stage the council could request barrister chambers to voluntarily sign up to the relevant provisions of the council's FFPF requirements.

35. The council is committed to ensuring London Living Wage (LLW) benefits not only the council's directly employed staff but also those who work for the council through contracts. However, the nature of service being provided on an ad-hoc basis means that those providing advice would not fall within the requirements of 'Relevant Staff' to whom LLW should be paid, although it is expected that barristers and their office staff will already be paid in excess of the LLW.

Environmental/Sustainability considerations

36. The nature of the services to be supplied means that there are no specific environmental or sustainability considerations.

Market considerations

37. The market for barristers in London is very developed, with a healthy response expected for any procurement undertaken. A procured panel will ensure the council receives best value in the purchase of external legal advice. Interest from providers to the current Southwark/Lambeth Framework and the new LBLA procurement was good, so good market coverage is in place via this route.

Staffing implications

38. Use of this framework will be managed within existing resources in Law and Democracy.

Financial implications

39. The annual spend on barrister services for the last two financial years (2018-19 and 2019-20) was £818,029 and £853,369 respectively. As this is a demand-led arrangement it is not possible to estimate future spend over the framework, but based on this previous spend and contingency needed to cover additional advice that may be required as the council meets challenging legal issues over the next few years, the spend for the life of the framework is estimated at £3.2m.
40. The costs for using barrister services are met by the client departments. However, there will be an annual cost for using the framework (as detailed in paragraph 2) and this will need to be met from the budget of Law and Democracy. Legal Services consider that the additional benefits received under the LBLA framework justify payment of any annual fee. The council would also need to deploy significant resource to undertake its own procurement, which is saved by entering into a pre-procured arrangement.

Legal implications

41. Please see the supplementary advice from the Director of Law and Democracy

Consultation

42. As part of the Legal Service's business plan, client consultation on the most effective ways of providing legal services has been and will continue to be undertaken.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance (F&G 20/004)

43. This report is requesting approval from the cabinet member for finance, performance and Brexit for the procurement of the London Boroughs Legal Alliance (LBLA) barrister framework to provide barrister services to the council for a period of three years and six months from July 2020 at an estimated total value of £3.2m. The costs of using barrister services are met by client departments.
44. The strategic director of finance and governance notes the benefits of the LBLA framework, specifically with regard to continued benefits from economies of scale, and a streamlined and efficient process for instructing barristers.
45. The annual cost for using the framework offset by any efficiencies, will be met within the existing budget of Law and Democracy.

Head of Procurement

46. This report seeks the approval of the Cabinet Member for Finance, Performance and Brexit for the council to join the London Boroughs' Legal Alliance (LBLA) as an associated member to enable use of their barrister framework. This would provide barrister services to the council for the remainder of the framework, a period of up to three years and six months from July 2020. The estimated annual value of spend through the framework would be £900,000 and an estimated total value of £3.2m.
47. Paragraph 36 details the arrangements in relation to LLW where barristers are not subject to the requirement to pay LLW as "relevant staff" but in reality will likely paying in excess of this figure. Social Value considerations and elements within the framework are set out in paragraphs 28-34.
48. The contract management arrangements are laid out in paragraphs 20-25 and involves entering a separate arrangement for the delivery of the role of joint management of the framework across all participants.

Director of Law and Democracy

49. This report is requesting approval to join the LBLA's barrister framework to provide barrister services to the council as further detailed in paragraphs 1 and 2. The provision of legal services at this value is subject to the EU tendering requirements (light touch regime) under the Public Contract Regulations 2015 and must be advertised in OJEU. The tendering process undertaken by the City of London Corporation meets those EU tendering requirements, and the council may therefore use the framework without undertaking a tendering process of its own.
50. Contract Standing Order 2.3 requires that no steps are taken to award a contract unless the expenditure involved has been included in approved estimates, or is otherwise approved by the council. Paragraphs 40 and 41 confirm the financial implications of this award.
51. This report is prepared on behalf of the Director of Law and Democracy, and therefore all other legal implications are noted in the report.

BACKGROUND DOCUMENTS

Background documents	Held At	Contact
Gateway 1 – Barrister Framework	Legal Services	Karen Moore 020 7525 7646
Link: http://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=7111		

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APPENDICES

No	Title
Appendix 1	LBLA framework lots

AUDIT TRAIL

Lead Officer	Doreen Forrester-Brown (Director of Law and Democracy)	
Report Author	Karen Moore	
Version	final version	
Dated	22 June 2020	
Key decision?	Yes	
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 Democracy	Yes	Yes
Cabinet Member	Yes	Yes
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
Date final report sent to Constitutional Team		22 June 2020