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|------------------------------------|--------------------------------|---|--|
| <b>Item No.</b>                    | <b>Classification:</b><br>Open | <b>Date:</b><br>15 September 2022                                       | <b>Decision Maker:</b><br>Strategic Director of<br>Finance and<br>Governance |
| <b>Report title:</b>               |                                | <b>Gateway 3 – Variation Decision</b><br>Southwark Solicitors Framework |  |
| <b>Ward(s) or groups affected:</b> |                                | All wards   |  |
| <b>From:</b>                       |                                | Director of Law and Governance  |  |

## RECOMMENDATION(S)

1. That the Strategic Director of Finance and Governance approves the extension of the Southwark Solicitors Framework by a period of six months from 24 September 2022 at an estimated maximum cost of £1.4m making a total approved contract sum of £9,974,541.

## BACKGROUND INFORMATION

2. Southwark Council established its own framework for the provision of solicitor's services for a four-year duration commencing on 24 September 2018. This framework provides external solicitors legal services for those circumstances where legal service cannot be provided by the in-house lawyers due to either the complexity of the case, lack of capacity or expertise.
3. The Southwark Solicitors Framework is divided into three lots as follows:

### Lot 1: Complex Matters

Property & Planning, Commercial Contracts & Procurement, Commercial Litigation, Employment and Governance and Public Law.

### Lot 2: General Matters, with the following six sub-lots:

- Commercial Contracts and Procurement
- General Litigation
- Housing
- Health and Social Care/Social Care Litigation
- Employment
- Education

### Lot 3: Routine/Predictable Matters, the following two sub-lots:

- Residential Conveyancing
- Debt Recovery

4. The Southwark Solicitors Framework is also a useful tool for dealing with staff shortage difficulties when attempting to secure suitable permanent or

temporary agency lawyers but without success. It allows the council to quickly instruct an external law firm to cover the capacity issue.

5. Over the last year, senior members of the council's in-house lawyers have been in discussions with key council departmental representatives to ascertain whether they would like to re-procure a new four-year Southwark Solicitors Framework when the current framework expires or whether they would prefer to join an existing third party legal services framework. The outcome of the discussions were that whilst the majority of departments were happy with the high quality legal services that they obtained from firms under the Southwark Solicitor's Framework, they were concerned about the time, costs and resources required to re-procure a new Southwark Solicitors Framework. The departmental representatives were of the view that similar high quality legal services can be obtained from external frameworks such as the South East Consortium framework or the London Boroughs Legal Alliance framework (LBLA). These views were also echoed by senior management of the in-house legal teams, who were concerned about finding staffing capacity to engage in the evaluation of tenders
6. The council has researched a number of frameworks including the new LBLA framework, which went live on 8 July 2022 for duration of four years and is open to all London Boroughs. The new LBLA framework has a number of firms who have the expertise to deliver a high quality value for money legal advice for the council,

## **KEY ISSUES FOR CONSIDERATION**

### **Key Aspects of Proposed Variation**

7. The extension of the Southwark Solicitor Framework will enable the council to continue to receive specialist external legal advice and assistance when needed in order to support and maintain the delivery of a high quality professional service provided by its in-house legal team.

### **Reasons for Variation**

8. The variation is required to give the council sufficient time to finalise a number of ongoing cases before joining the LBLA framework in March 2023.

### **Future Proposals for this Service**

9. The council intends to join the LBLA framework on expiry of the extension sought under this Gateway (GW) 3 report.
10. A GW1 report will be presented to the council's Cabinet in December 2022 for which will set out the council's procurement strategy in more detail.

11. As the LBLA does not cover residential conveyancing services, the council's legal services will assist the residential conveyancing department to procure a separate contract.

### **Alternative Options Considered**

12. The options considered are set out below:

- |  |  |
|--|--|
| a) Do nothing                                      | This is not an option as the current framework is due to expire on 23 September 2022 and the council needs to either extend its existing framework or call off immediately from a third party framework.   |
| 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 variation will support the in-house function.  |
| c) Instruct external Solicitors on an ad-hoc basis | This is less efficient in terms of management of spend and is more time consuming.   |
| d) Call off from a third party framework agreement | Council departments are currently instructing firms who are on the Southwark Solicitors Framework and the council will need a short period of time to finalise the majority of its outstanding instructions. This cannot be achieved by 23 September 2022. |
| e) Conduct a restricted tender process             | This will require expending a high level of limited internal staffing resources for a time-intensive process, which will not necessarily guarantee better value for money or a better outcome.   |

### **Identified risks for the Variation**

13. Procurement risk of extending the framework - the council would seek to rely on one of the grounds for exemption under Regulation 72 of the Public Contract Regulations 2015, thereby eliminating a risk of a procurement challenge.

14. As with all council contracts, there are ongoing risks associated with inflationary pressures.

## **Policy framework implications**

15. The extension of the Southwark Solicitors Framework will ensure that the council continues to deliver the council's values of achieving value for money, through the maintenance of competitive fixed rates and quality assured legal services.

## **Contract management and monitoring**

16. The council's contract register publishes the details of all contracts over £5,000 in value to meet the obligations of the Local Government Transparency Code. The Report Author must ensure that all appropriate details of this procurement are added to the contract register via the eProcurement System.

17. The call off contracts will be continually monitored by officers. Officers will review performance and address any areas of concern. Performance information will be prepared in line with council's Contract Standing Orders

## **Community, equalities (including socio-economic) and health impacts**

### **Community impact statement**

18. The Southwark Solicitors Framework was designed to generate soft benefits for the local community which included but not limited to:

- presentation at schools
- mentoring for Southwark young people
- work experience and placements
- widening access sessions for the local community to provide information about how to pursue a career in law
- the provision of pro bono advice and legal surgeries to local community groups
- support for community groups and local based charities and sessions of professional skills support for new business start-ups.

19. However, due to the Covid-19 pandemic and subsequent lock downs and social distancing measures, the council was unable to secure a number of the soft benefits promised at tender stage.

### **Equalities (including socio-economic) impact statement**

20. The nature of the legal services are such that they have new no equalities (including socio economic) impact on local people or communities other than those referenced in paragraph 18 of this report

### **Health impact statement**

21. The nature of the legal services are such that they have no direct health impact on local people or communities.

### **Climate change implications**

22. The nature of the legal services are such that they have no direct impact on climate change but are delivered in line with the council's declared climate emergency and Climate Change Strategy.

### **Social Value considerations**

23. 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 wellbeing of the local area can be secured. The social value considerations included in the tender (as outlined in the GW1 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**

24. Please refer to the local training opportunities as set out in paragraph 18 of this report.

### **Social considerations**

25. 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. This commitment is highlighted in the framework terms and conditions which stipulate that all relevant staff employed or engaged by the panel firms must be paid an hourly wage which is equal to or exceeds the LLW. In addition, the framework terms and conditions require panel firms to cooperate and provide all reasonable assistance to the council in monitoring the effects of the LLW including without limitation assisting the council in conducting surveys and assembling data in respect of the effect of payment of the LLW to relevant staff.

### **Environmental/Sustainability considerations**

26. There is no specific environmental/sustainability consideration relating to the use of this framework

### **Financial Implications**

27. The costs of solicitors' 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.

28. The total contract value approved under the GW2 report dated 26 June 2018 for the four-year Southwark Solicitors Framework was £9m. The table below illustrates the councils' spend from the financial years 2018/19 to the financial year ending 31 March 2022.

| <b>1 October<br/>2018 to 31<br/>March 2019</b> | <b>2019-2020</b> | <b>2020-21</b> | <b>2021-22</b> | <b>Total</b>       |
|--|------------------|----------------|----------------|--------------------|
| £810,973.                                      | £2,724,966       | £2,339,403     | £2,699,198     | <b>£ 8,574,541</b> |

29. The estimated average annual spend from 2019 to 2022 inclusive is £2,587,856. Whilst this would equate to an estimated average sum of £1,293,928 for a six-month extension period, the nature of legal services is uncertain as it depends on usage, which could vary. In the circumstances, an estimated maximum of £1.4 million would suffice, making a total approved contract sum of £9,974,541.

### **Legal Implications**

30. Please refer to the concurrent of the Director of Law and Governance.

### **Consultation**

31. Senior members of the council's legal services team and other council departmental representatives have been consulted regarding the proposal to extend the Solicitors Framework for a further six months.

### **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

#### **Strategic Director of Finance and Governance (F&G22/004)**

32. This report seeks approval from the Strategic Director of Finance and Governance to extend the Southwark Solicitors Framework by a period of six months from 24 September 2022 at an estimated maximum cost of £1.4m making a total approved contract sum of £9,974,541. The key considerations are to give the council sufficient time to finalise a number of ongoing cases before joining the LBLA framework in March 2023 as noted in paragraphs 7 to 8.

33. The strategic director of finance and governance acknowledges the financial implications that costs need to be contained within departmental legal budgets.

### **Head of Procurement**

34. This report seeks approval from the Strategic Director of Finance and Governance to extend the Southwark Solicitors Framework by a period of six months from 24 September 2022 at an estimated maximum cost of £1.4m making a total approved contract sum of £9,974,541.

35. The Strategic Director of Finance and Governance notes the reason of the reason for variation is detailed in paragraphs 7 and 8, the risks are detailed in paragraphs 13 to 14, the impact on equalities, health and climate change is detailed in paragraphs 20 to 22, confirmation of the payment of LLW is detailed in paragraph 25.

### **Director of Law and Governance**

36. This report seeks the approval of the Strategic Director of Finance and Governance to a variation of the existing Southwark Solicitors Framework agreement. This report sets out the extent of the required variation and the reasons why the variation is necessary.

37. By virtue of Contract Standing Order 6.6.3(c), this decision is reserved to the Strategic Director of Finance and Governance to authorise this proposed contract variation, after consideration by the Corporate Contracts Review Board of the report.

38. As the framework agreement was awarded in accordance with the Public Contracts Regulations 2015 (PCR 2015) and it is therefore necessary to ensure that any variation of that agreement is permitted within those regulations. Regulation 72 of the PCR 2015 permits modifications to be made to contracts during their term, in certain circumstances. This includes at regulation 72(1)(e), where the modification, irrespective of their value, is not substantial within the meaning of regulation 72(8). Having considered the circumstances noted at regulation 72(8) which notes those modification which are considered substantial, it is felt that the agreement can be varied under this provision.

39. The council's Contracts Standing Order 2.3 requires that no steps be taken to vary a contract unless the expenditure involved has been included in approved revenue or capital estimates, or is otherwise approved by the council. Paragraphs 27 to 29 of this report confirm the legal implications.

## **PART A – TO BE COMPLETED FOR ALL DELEGATED DECISIONS**

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 (and as otherwise recorded in Part B below).

Signature: **Duncan Whitfield**

Date...14 September 2022

Designation: **Strategic Director of Law and Governance**

**PART B – TO BE COMPLETED BY THE DECISION TAKER FOR:**

- 1) All key decisions taken by officers
- 2) Any non-key decisions that are sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available (see 'FOR DELEGATED DECISIONS' section of the guidance).

| <b>1. DECISION(S)</b>                            |
|--|
| As set out in the recommendations of the report. |

| <b>2. REASONS FOR DECISION</b> |
|--------------------------------|
| As set out in the report.      |

| <b>3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED BY THE OFFICER WHEN MAKING THE DECISION</b> |
|---|
| None  |

| <b>4. ANY CONFLICT OF INTEREST DECLARED BY ANY CABINET MEMBER WHO IS CONSULTED BY THE OFFICER WHICH RELATES TO THIS DECISION *</b> |
|--|
| No   |

\* Contract standing order 6.6.1 states that for contract Variations with an Estimated Contract Value of £100,000 or more, the lead contract officer (LCO) must consult with the relevant cabinet member before the decision is implemented.



**5. NOTE OF ANY DISPENSATION GRANTED BY THE MONITORING OFFICER, IN RESPECT OF ANY DECLARED CONFLICT OF INTEREST**

*If a decision taker or cabinet member is unsure as to whether there is a conflict of interest they should contact the legal governance team for advice.*

None

**6. DECLARATION ON CONFLICTS OF INTERESTS**

**I declare that I was informed of no conflicts of interests.\***

**or**

**~~I declare that I was informed of the conflicts of interests set out in Part B4.\*~~**

(\* - Please delete as appropriate)

**7. CONSIDERATION GIVEN TO WHETHER, AS A NON-KEY DECISION, THIS SHOULD BE FORWARDED TO THE CONSTITUTIONAL TEAM FOR PUBLICATION IN ACCORDANCE WITH REGULATION 13(4)\***

*The decision taker should consider whether although a non-key decision, the decision is sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available. Where there is any doubt, having considered the importance and/or sensitivity of a decision, it should be deemed that Regulation 13(4) would apply.*

**I consider that the decision be made available for publication under Regulation 13(4).\***

**or**

**~~I do not consider that the decision be made available for publication under Regulation 13(4).\*~~**

(\* - Please delete as appropriate)

\* Under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the council is required to put in place a scheme for recording and publishing some officer executive decisions. This process is sometimes referred to as "Regulation 13(4)".

## BACKGROUND PAPERS

| Background Papers  | Held At                   | Contact                      |
|--|---------------------------|------------------------------|
| GW1 – Procurement strategy dated 18 July 2017  | Southwark council website | Clara Diala<br>020 7525 0672 |
| Link:<br><a href="https://moderngov.southwark.gov.uk/documents/s69828/Report%20Gateway%201%20Procurement%20Strategy%20Approval%20Southwark%20External%20Solicitors%20Framework.pdf">https://moderngov.southwark.gov.uk/documents/s69828/Report%20Gateway%201%20Procurement%20Strategy%20Approval%20Southwark%20External%20Solicitors%20Framework.pdf</a> |                           |                              |
| GW2 – Contract award dated 26 June 2018  | Southwark council website | Clara Diala<br>020 7525 0672 |
| Link:<br><a href="https://moderngov.southwark.gov.uk/documents/s75961/Report%20Gateway%202%20Contract%20Award%20Approval%20-%20Southwark%20Solicitors%20Framework.pdf">https://moderngov.southwark.gov.uk/documents/s75961/Report%20Gateway%202%20Contract%20Award%20Approval%20-%20Southwark%20Solicitors%20Framework.pdf</a>                           |                           |                              |

## AUDIT TRAIL

|   |  |                          |
|---|--|--------------------------|
| <b>Lead Officer</b>   | Doreen Forrester-Brown, Director of Law and Governance   |                          |
| <b>Report Author</b>  | Clara Diala, Specialist Contracts Lawyer, Corporate Team |                          |
| <b>Version</b>  | V.3  |                          |
| <b>Dated</b>  | 5 August 2022  |                          |
| <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 Governance  | Yes  | Yes                      |
| Director of Exchequer (for housing contracts only)                      | No   | No                       |
| Cabinet Member  | Yes  | No                       |
| Departmental Contract Review Board                                      | Yes  | Yes                      |
| Corporate Contract Review Board   | Yes  | Yes                      |
| <b>Cabinet Member</b>   | Yes  | No                       |
| <b>Date final report sent to Constitutional Team</b>                    |  | 14 September 2022        |

