

Item No. 25.	Classification: Open	Date: 6 December 2022	Meeting Name: Cabinet
Report title:		Gateway 1 - Procurement Strategy Approval: Solicitors Framework	
Ward(s) or groups affected:		All	
Cabinet Member:		Councillor Stephanie Cryan, Communities, Equalities and Finance	

FOREWORD – COUNCILLOR STEPHANIE CRYAN, CABINET MEMBER FOR COMMUNITIES, EQUALITIES AND FINANCE

There are occasions when the council has to obtain specialist legal advice and assistance in order to support and maintain the delivery of high quality professional services being provided by the council's in-house legal team.

Our current framework contract ends in March 2023 and this report recommends that the council join the London Boroughs Legal Alliance Solicitors Framework.

The framework will allow the council to deliver its fairer future commitment of achieving value for money, through the maintenance of competitive fixed rate and quality assured solicitors services.

As well as providing added benefits and social value to the council's legal team and departments, the framework will also generate soft benefits for residents and the Southwark community in the form of the provision of work experience and apprenticeships, interview training, volunteering schemes, 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 such as pro bono legal advice and fundraising events.

RECOMMENDATIONS

1. That the cabinet approves the procurement strategy outlined in this report to use the London Boroughs Legal Alliance (LBLA) Solicitors Framework to provide solicitor services to the council for a maximum period of three years and four months from 24 March 2023 at an estimated annual value of £2.7m and an estimated total value of £9.m.
2. That the cabinet notes that the LBLA management fee of £11,434 per annual is for both the Barristers Framework and the Solicitors Framework.
3. That the cabinet delegates the approval of the Gateway (GW) 2 contract award decision to join the LBLA Solicitors Framework to the Strategic Director of Finance and Governance.

BACKGROUND INFORMATION

4. 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.
5. Southwark Council established its own framework for the provision of solicitor's services on 24 September 2018, for a period of four years. By a GW 3 report dated 15 September 2022, approval was given to extend the Southwark Solicitors Framework for 6 months, until 23 March 2023. The Southwark Solicitors Framework allows the council to deliver its fairer future commitment of achieving value for money, through the maintenance of competitive rates and quality assured legal services.

Summary of the business case/justification for the procurement

6. The aim of this exercise is to consider use of an existing framework for solicitor services in order to continue to receive benefits of economies of scale, and a streamlined and efficient process for instructing solicitors.
7. The LBLA was formed in 2009 with the aim of being a successful collaborative partnership of local authority legal teams, and it considers itself to be at the forefront of innovative procurement practice with the intention of delivering best value services to local authority clients and local residents. The alliance is managed by specialist legal consultancy Kennedy Cater, who have assisted with the procurements and manage three frameworks on LBLA's behalf. These are a Solicitors Framework, a Barristers Framework and a Legal Libraries Framework. The council is currently an Associate Member of the LBLA's Barristers Framework. This GW1 report relates to the use of the LBLA Solicitors Framework.
8. The LBLA Solicitors Framework came into effect on 8 July 2022 and will be in place until 7 July 2025, with an option to extend for a further 12 months. The new framework is the fourth such procurement exercise undertaken by the LBLA advised through Kennedy Carter. Westminster City Council acted as the Contracting Authority on the procurement exercise.
9. Alongside Westminster City Council, the participating authorities are the London Boroughs of Bexley, Brent, Bromley, Camden, City of London Corporation, Ealing, Enfield, Royal Borough of Greenwich, Hackney, Hammersmith and Fulham, Haringey, Havering, HB Public Law (Harrow, Barnet and Hounslow, Aylesbury Vale District Council and Slough Borough Council) Hillingdon, Islington, the Royal Borough of Kensington & Chelsea, Newham, Redbridge, Tower Hamlets, Waltham Forest and the London Fire Brigade. The LBLA framework agreement is also be available to other local authorities within Greater London and South-East England (Bedfordshire,

Berkshire, Buckinghamshire, East Sussex, Essex, Hampshire, Hertfordshire, the Isle of Wight, Kent, Oxfordshire, Surrey and West Sussex).

10. The LBLA Solicitors Framework is split into two lots:

Lot 1 - Regeneration

Lot 2 - The full range of legal services, including litigation, commercial, property and miscellaneous local government/public law work

11. Unlike the Southwark Solicitors Framework, the LBLA Solicitors Framework does not cover residential conveyancing, so this area of work will need be procured separately and will be subject to a separate Gateway approval.

12. The firms appointed on the LBLA Solicitors Framework are:

Lot 1

Anthony Collins
Ashfords
Bevan Brittan
Browne Jacobson
DWF
Pinsent Masons
Sharpe Pritchard
Trowers & Hamblins

Lot 2

Anthony Collins
Ashfords
Bevan Brittan
Birketts
Browne Jacobson
Capsticks
Sharpe Pritchard
TLT

13. Call offs from the LBLA Solicitors Framework can be by a direct award to any provider on the relevant lot without reopening competition, where it is deemed that a participating solicitor 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 Solicitors Framework anticipates that in the majority of instructions direct award will be used.

14. The LBLA Solicitors Framework arrangements provides:

- a wide range of solicitors with the required expertise to choose from;
- certainty as to the cost of instructing solicitors;
- the means for monitoring and controlling expenditure.

Market considerations

15. The market for solicitors in London is very developed, with a good number of firms on the framework panel. 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

16. Several options were considered when identifying a preferred procurement approach. These were:
 - Do nothing – this is not a viable option as the council’s current framework expires on 23 March 2023 and it needs access to additional legal support.
 - Provide in-house – the council requires legal expertise to provide advice to council departments where its in-house lawyers are unable to do so for the reasons outlined in paragraph 3 of this report. The LBLA Solicitors Framework will support the in-house function.
 - Instruct solicitors on an ad-hoc basis – this route was considered less efficient in terms of management of spend and efficiency of service. The provision of legal services is subject to the procurement requirements of the Public Contract Regulations 2015, so the anticipated spend would need to be advertised through the Find a Tender Service. This approach is therefore not recommended.
 - Undertake a restricted tender process to establish the council’s own framework – this was the route followed in 2018, and has been successful in providing these services. However this requires a high level of limited internal staging resources for a time intensive process which will not necessarily guarantee better value for money or a better outcome. The LBLA’s Solicitors Framework has recently been procured and provides services to more than 20 local authorities, and therefore it is unlikely that a separate procurement undertaken by Southwark would achieve better value for money. It would also involve extensive resource by Southwark to procure. Solicitors might also be reluctant to enter into a new procurement so soon after taking part in the LBLA procurement due to the resource needed on their part.
 - Join a pre-existing framework agreement – the LBLA framework is available to other local authorities in London and the South East of England to use. Kennedy Cater (who manage the framework) have provided Southwark with information relating to the framework, including the benefits and how it will be managed and monitored, and this appears to be an effective way of securing solicitor services. The council has considered the Crown Commercial Services Legal Services Framework (CCS) but found that the level of benefits, monitoring and management

under the LBLA Solicitors Framework is more suitable for the council's needs.

Proposed procurement route

17. The proposed procurement route is to use the LBLA Solicitors Framework, subject to further analysis of the outcome of that procurement, as noted in paragraphs 26 and 27.

Identified risks for the procurement

18. The following risks have been identified for this project:

Risk	Category	Mitigating action
The framework has been procured by a third party and therefore might not address Southwark specific requirements	Low	The LBLA framework has been procured in consultation with LBLA members, who are London Boroughs and who have similar needs in respect of legal advice.
There are a large number of LBLA members and therefore there are insufficient number of providers for the capacity required	Medium	The LBLA framework includes a higher number of providers in high volume areas If the council were to procure its own framework this would not increase capacity as procurement would be through the same pool of providers.
The pricing document is not sufficiently robust or rates are higher than under existing arrangements.	Low	Prices have been obtained following a competitive tendering process, and following consultation with LBLA members. Extracts of the pricing information has been supplied by the LBLA which are in the process of being analysed.
Procurement risk	Low	The LBLA framework was procured in accordance with the Public Contracts Regulations 2015 and allows local authorities and other public bodies to join the framework by entering into an access agreement with Westminster City Council and an Engagement Letter with Kennedy Carter.
Inflationary increase	Low	The panel rates are fixed for the initial three year term and any one year extension.

Key / Non Key decisions

19. This report deals with a key decision.

Policy Framework Implications

20. The use of a solicitors framework will ensure that the council fulfils parts of its fairer future commitments and values by ensuring that the solicitors instructed deliver value for money across the legal function and also to provide soft benefits to the local area, economy and resident.
21. The requirements of the Fairer Future Procurement Framework (FFPF) will be incorporated into instructions issued through the LBLA.

Procurement Project Plan (Key Decisions)

Activity	Complete by:
Enter Gateway 1 decision on the Forward Plan	07/10/2022
DCRB Review Gateway 1	03/11/2022
CCRB Review Gateway 1	10/11/2022
Brief relevant cabinet member (over £100k)	17/11/2022
Notification of forthcoming decision - Cabinet	25/11/2022
Approval of Gateway 1: Procurement strategy report	06/12/2022
Scrutiny Call-in period and notification of implementation of Gateway 1 decision	16/12/2022
Final review of LBLA framework	30/12/2022
Forward Plan if GW2 (if GW2 is key decision)	18/11/2022
DCRB Review Gateway 2: Contract award report	26/01/2023
CCRB Review Gateway 2: Contract award report	02/02/2023
Approval of Gateway 2: Contract Award Report	14/02/2023
End of scrutiny Call-in period and notification of implementation of Gateway 2 decision	23/02/2023
Enter into framework agreement	24/03/2023
Add to Contract Register	27/03/2023
Date from which orders may be placed under framework	24/03/2023
Initial framework completion	07/07/2025
Framework completion date – if extension is exercised by	07/07/2026

TUPE/Pensions implications

22. The nature of services and how solicitors are instructed means that there are no TUPE implications as a result of this procurement.

Development of the tender documentation

23. The LBLA developed all tender documentation as part of their procurement, including documents which the council will use to call off from the framework.

Advertising the contract

24. Advertising the contract is not required, as the procurement has already been undertaken by Westminster City Council on behalf of the LBLA during the initial procurement of the framework.

Evaluation

25. The evaluation criteria for appointment to the LBLA framework were 50:50 price/quality for each lot.
26. The LBLA have provided an extract from the pricing information relation to the solicitors framework and this is currently being analysed by Legal Services.
27. 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 barristers framework or the solicitors framework, or a non-membership option which allows access to the framework but with limited training options. As the council is currently an Associate Member by virtue of having access to the LBLA Barrister Framework, if the council includes the solicitors' element, the council will be entitled to Full Membership. This would allow the council to continue to benefit from the training provided under the framework. A discount is also applied to the member's annual fee at the beginning of the following year, each time a new borough joins. Non-member income is also split between the members and off-set against the next annual member's fee. The council will be required to enter into an access agreement with Westminster City Council to allow participation in the solicitors framework, and also to enter into an engagement agreement with Kennedy Cater for support and management of the framework. Further details of these arrangements and permission to enter into these will be included in the GW 2 report.

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

Community impact statement

28. The use of solicitors for legal advice is judged to have limited impact on local people and communities. However, during the tender stage bidders were encouraged to provide benefits such as the provision of work experience, volunteering, legal surgeries etc, as further detailed in paragraphs 34 and 35 of this report.

Equalities (including socio-economic) impact statement

29. The nature of the legal services are such that they have no direct equalities (including socio-economic) impact on local people or communities.

Health impact statement

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

Climate change implications

31. 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

32. 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 details of how social value will be incorporated within the tender are set out in the following paragraphs.

Economic considerations

33. 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, and
 - Twenty minutes of free advice (telephone or email) per potential new instruction.
34. 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.

Social considerations

35. In June 2019 the council adopted a new FFPF which sets out how the council will use procurement to support the delivery of the Borough 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.

36. 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.
37. In relation to social value, bidders were encouraged to provide benefits to Southwark residents and communities. Each firm's offering is different but includes initiatives such as:
 - the provision of work experience and apprenticeships;
 - interview training;
 - volunteering schemes, 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 such as pro bono legal advice and fundraising events.
38. The LBLA have confirmed that the majority of bidders offered these additional social value commitments, and these are captured in the framework documents, so if the council were to use the LBLA framework it would have the benefit of these.
39. The LBLA's Solicitors Framework requires all panel solicitors 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 solicitors to voluntarily sign up to the relevant provisions of the council's FFPF requirements.
40. 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 solicitors and their office staff will already be paid in excess of the LLW.

Environmental/Sustainability considerations

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

Plans for the monitoring and management of the contract

42. 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.
43. When joining the LBLA framework the council is required to pay an annual fee to Kennedy Cater who will have overall responsibility for managing the framework on the LBLA) and the fee will depend on the membership option chosen. In return the following services are provided:
 - monitoring use of panel firms and billing levels and providing monthly updates
 - ensuring delivery of value-added and social commitments such as training and legal updates
 - co-ordinating joint training schedule / networking events / legal updates
 - arranging /chairing working group meetings between the members on a regular basis
 - capturing opportunities to save costs across the LBLA by providing additional support for large-scale matters, e.g. project managing mini-tenders and larger instructions
 - collating feedback.
44. Occasionally there will be instructions which cannot be dealt with through the framework, due to the 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 be monitored on a six-monthly basis.
45. Monitoring reports will be presented to Departmental Contracts Review Board and Corporate Contracts Review Board as required by the council's Contract Standing Orders.

Staffing/procurement implications

46. Use of this framework will be managed within existing resources in Law and Governance.

Financial implications

47. The LBLA framework is a demand-led arrangement it is therefore not possible to estimate future spend over the life of the framework, but based on previous spend under the Southwark Solicitors Framework and contingency need to cover increase in the rates, the spend for the life of the LBLA solicitors Framework is estimated to be £9m.
48. 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.

49. There will be an annual cost for using the LBLA framework (which will depend on the membership required) and this will need to be met by the budget of Law and Governance. The fee is currently £11,434 per annum and it will be reduced each time a new local authority joins the framework. Legal Services consider that the additional benefits received under the LBLA framework justify payment of any annual fee, but this will be fully detailed in the GW 2 report. 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

50. Please see concurrent from the Director of Law and Governance.

Consultation

51. As part of the Legal Service's business plan, client consultation on the most effective ways of providing legal services has been undertaken.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance (F&G22/008)

52. The report seeks approval from cabinet for the procurement strategy outlined in this report to use the London Boroughs Legal Alliance (LBLA) Solicitors Framework to provide solicitor services to the council for a maximum period of three years and four months from 24 March 2023 at an estimated annual value of £2.7m and an estimated total value of £9m.
53. The Framework allows the council to deliver its fairer future commitments of achieving value for money, through the maintenance of competitive rates and quality assured legal services. Cabinet notes the financial implications as set out in paragraphs 48 to 50.

Head of Procurement

54. This report seeks approval from cabinet for the procurement strategy outlined in this report to use the London Boroughs Legal Alliance (LBLA) Solicitors Framework to provide solicitor services to the council for a maximum period of three years and four months from 24 March 2023 at an estimated annual value of £2.7m and an estimated total value of £9m.
55. Cabinet notes that the LBLA management fee of £11,434 per annual is for both the Barristers Framework and the Solicitors Framework. Cabinet also notes the procurement is detailed in paragraphs 16 to 17 and 24 to 28 the risks are detailed in paragraph 18, the impact on equalities, health and climate change are detailed in paragraphs 30 to 32, social value commitments are

detailed in paragraphs 38 to 39, confirmation of the payment of LLW is detailed in paragraph 41, management and monitoring of the contract is detailed in paragraphs 43 to 46.

Director of Law and Governance

56. This report is requesting approval to the use of the LBLA's Solicitors Framework to provide solicitor services to the council as further detailed in paragraph 1. The provision of legal services at this value is subject to the light touch regime under the Public Contracts Regulations 2015. The tendering process undertaken by the Westminster City Council meets the tendering requirements, and the council may therefore use the framework without undertaking a tendering process of its own.
57. This report is prepared on behalf of the Director of Law and Governance, and therefore all other legal implications are noted in the report.

BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
Gateway 3 report – Extension of the Solicitors Framework	Title of department / unit Address	Name Phone number
Link: 15/09/2022 - Gateway 3 - Variation Decision, Southwark Solicitors Framework		

AUDIT TRAIL

Cabinet Member	Councillor Stephanie Cryan, Communities, Equalities and Finance	
Lead Officer	Doreen Forrester-Brown, Director of Law & Governance	
Report Author	Clara Diala, Specialist Contracts Lawyer	
Version	Final	
Dated	17 November 2022	
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 Governance	Yes	Yes
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		17 November 2022