

Item No.	Classification: Open	Date: 6 March 2023	Meeting Name: Strategic Director of Finance and Governance
Report title:		Gateway 2 - Contract Award Approval Solicitors Framework	
Ward(s) or groups affected:		Electoral ward(s); key groups affected	
From:		Assistant Chief Executive of Governance and Assurance	

RECOMMENDATION(S)

1. That the Strategic Director of Finance and Governance approves the council joining the London Boroughs' Legal Alliance (LBLA) as a full member to enable use of their solicitors framework for the provision of solicitor services to the council for a 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 Strategic Director of Finance and Governance approves the council entering into an access agreement with Westminster City Council for participation in the LBLA framework and an agreement with Kennedy Cater Limited, who manage the framework at an estimated annual cost to Southwark of £11,434.

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 in-house resources within Legal Services, and provision is therefore required to have access to external specialists when the need arises.
4. 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 Gateway (GW) 3 report dated 15 September 2022, approval was given to extend the Southwark Solicitors Framework for six months, until 23 March 2023. By a GW1 dated 6 December 2022, approval was given by the cabinet for the procurement strategy to use the LBLA Solicitors 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. On the basis of spend on solicitors' services in financial years since 2018-19 to estimate of spend for the financial year ending 31 March 2022, it is

estimated that spend for the next three years and three months will be in the region of £9m.

Procurement project plan (Key Decision)

6.

Activity	Completed by/Complete by:
Forward Plan	16/11/2022
Briefed relevant cabinet member (over £100k)	17/11/2022
Approval of Gateway 1: Procurement Strategy Report	06/12/2022
Completion of consideration of LBLA framework	31/01/2023
DCRB Review Gateway 2:	09/02/2023
CCRB Review Gateway 2:	09/02/2023
Notification of forthcoming decision – Five clear working days	03/02/2023
Approval of Gateway 2: Contract Award Report	07/03/2023
Scrutiny Call-in period and notification of implementation of Gateway 2 decision	15/03/2023
Contract award	20/03/2023
Date from which framework can be used	24/03/2023
Framework completion/ Contract completion date	07/07/2026

KEY ISSUES FOR CONSIDERATION

Description of procurement outcomes

7. The overall aim is to use the LBLA Solicitors Framework to procure the services of external solicitors when required. The framework will allow the council to meet its Fairer Future Commitments of achieving value for money through the maintenance of competitive rates and quality assured legal services.
8. The new framework will also offer a number of soft benefits to the community in Southwark as detailed in paragraphs 24, 33 and 34 of this report as well as added value to the in-house legal team as outlined in paragraphs 29 and 30.
9. The firms appointed on the LBLA Solicitors Framework are:

Lot 1

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

Lot 2

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

10. 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.
11. 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.

Key/Non Key decisions

12. This report deals with a key decision.

Policy implications

13. 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 residents.
14. The requirements of the Fairer Future Procurement Framework (FFPF) will be incorporated into instructions issued through the LBLA.

Tender process

15. The LBLA Solicitors Framework was procured by Westminster City Council on 8 July 2022 for use by LBLA members and other public bodies. The tender was undertaken following a fully compliant tender process in accordance with the Public Contracts Regulations 2015. The framework is for a total period of four year period expiring on 7 July 2026.

Tender evaluation

16. The evaluation criteria for appointment to the LBLA framework was 50:50 price/quality for each lot.
17. Due to the confidentiality of pricing information, the council was not able to see all the pricing information relating to individual solicitor firms but received an extract from the pricing information relation to the solicitors' framework. 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.
18. 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.

Plans for the transition from the old to the new contract

19. The Southwark Solicitors Framework expires on 23 March 2023. Any outstanding work that has not been concluded before this date will continue under the council's framework rate. However any new work instructed from 24 March 2023 will be through the LBLA.

Plans for monitoring and management of the contract

20. In 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

21. 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 or deputy head of law for the relevant panel before instructions can be issued, and this will be monitored on a six-monthly basis.

22. Monitoring reports will be presented to Departmental Contracts Review Board and Corporate Contracts Review Board as required by the council's Contract Standing Orders.

Identified risks for the new contract

23. The following risks have been identified:

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 by Westminster City Council 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	Low	Prices have been obtained following a competitive

sufficiently robust or rates are higher than under existing arrangements.		tendering process, and following consultation with LBLA members. Extracts of the pricing information has been supplied by the LBLA which has been 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.

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

Community impact statement

24. The use of solicitors for legal advice is judged to have limited impact on local people and communities. However, during the LBLA 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

25. 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

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

Climate change implications

27. 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

28. 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

29. 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.
30. Tenderers 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

31. 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.
32. 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.
33. 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.
34. 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.
35. 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.
36. The council is committed to ensuring London Living Wage (LLW) benefits not only for its directly employed staff but also for 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

37. The nature of the services to be supplied means that there are no specific environmental or sustainability considerations but working processes are designed to make use of electronic means rather than paper wherever possible within the needs of the legal system.

Market considerations

38. The market for solicitors in London is very well-developed. The procured solicitors' panel will ensure the council receives best value for money in the purchase of external legal advice.

Staffing implications

39. Use of this framework will be managed within existing resources in Governance and Assurance.

Financial implications

40. 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.
41. 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.
42. 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 the Assistant Chief Executive of Governance and Assurance. 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 justifies the payment of any annual fee.

Legal implications

43. Please see concurrent from the Assistant Chief Executive of Governance and Assurance.

Consultation

44. 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&G22/014)

45. This report seeks approval from the Strategic Director of Finance and Governance for the council to join the London Boroughs' Legal Alliance (LBLA) as a full member to enable use of their solicitors' framework to provide solicitor services to the council.
46. The report also seeks approval for the council to enter into an access agreement with Westminster City Council for participation in the LBLA framework and an agreement with Kennedy Cater Limited, who manage the framework.
47. The Strategic Director of Finance and Governance notes the financial implications given in paragraphs 40 to 42.

Head of Procurement

48. This report seeks approval from the Strategic Director of Finance and Governance to enter into an access agreement with Westminster City Council for participation in the LBLA framework and an agreement with Kennedy Cater Limited, who manage the framework at an estimated annual cost to Southwark of £11,434. Also for the council joining LBLA as a full member to access the solicitors framework to provide solicitor services for a period of three years and four months from 24 March 2023 at an estimated total cost of £9.m.
49. The Strategic Director of Finance and Governance notes that the procurement is detailed in paragraphs 7 to 11 and 15 to 18, transition from existing contract to new contract is detailed in paragraph 19, management and monitoring of the contract is detailed in paragraphs 20 to 22, the risks are detailed in paragraph 23, the impact on equalities, health and climate change are detailed in paragraphs 25 to 27, social value commitments are detailed in paragraph 33 and confirmation of the payment of LLW is detailed in paragraph 36.

Assistant Chief Executive of Governance and Assurance

50. This report is requesting the approval of the Strategic Director of Finance and Governance to join the LBLA's Solicitors Framework for the provision of solicitor services to the council as further detailed in paragraphs 1 and 2.
51. The provision of legal services at this value is subject to the Public Contracts Regulations 2015, in particular regulations 74 to 76, (more commonly known as the Light Touch Regime) and must be advertised in the Finder a Tender Service. The tendering process undertaken by Westminster City Council meets those tendering requirements, and the council may therefore use the framework without undertaking a tendering process of its own.
52. 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 42 confirm the financial implications of this award.
53. This report is prepared on behalf of the Assistant Chief Executive of Governance and Assurance, and therefore all other legal implications are noted in this report.

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 ... Date...06/03/2023.....

Designation ...Strategic Director of Finance 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).

1. DECISION(S)
As set out in the recommendations of the report.
2. REASONS FOR DECISION
As set out in the report.
3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED BY THE OFFICER WHEN MAKING THE DECISION
Not applicable.
4. ANY CONFLICT OF INTEREST DECLARED BY ANY CABINET MEMBER WHO IS CONSULTED BY THE OFFICER WHICH RELATES TO THIS DECISION
None.

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.

N/A

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 DOCUMENTS

Background documents		
GW3 – Variation Decision – Southwark Solicitors Framework		
Link:		
15/09/2022 - Gateway 3 - Variation Decision, Southwark Solicitors Framework		
GW1 – Procurement Strategy – Southwark Solicitors Framework		
Link:		
https://modern.gov.southwark.gov.uk/documents/s110565/Report%20Gateway-1-%20LBA%20Solicitors%20Framework.pdf		

AUDIT TRAIL

Lead Officer	Doreen Forrester-Brown, Assistant Chief Executive of Governance and Assurance	
Report Author	Clara Diala, Specialist Contracts Lawyer	
Version	V.3	
Dated	23 February 2023	
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/No	Yes/No
Director of Exchequer (for housing contracts only)	No	No
Cabinet Member	Yes	Yes
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes

Cabinet	No	No
Date final report sent to Constitutional/Community Council/Scrutiny Team	Date/Month/Year e.g. 5 July 2020	