

Item No.	Classification: Open	Date: 11 December 2023	Decision Taker Assistant Chief Executive – Governance and Assurance
Report title:		Gateway 2 - Contract Award Approval Barrister framework	
Ward(s) or groups affected:		All	
From:		Deputy Head of Law – Planning and Development	

RECOMMENDATION

1. That the Assistant Chief Executive – Governance and Assurance approves the council's use of the London Borough Legal Alliance (LBLA) newly procured barrister framework, to provide barrister services to the council for a period of three years commencing 1 January 2024, with an option to extend for a further year, with an estimated annual value of £875,000 and an estimated total value (for the full four year period) of £3,500,000.

BACKGROUND INFORMATION

2. 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. Since July 2020, the council has used the LBLA barrister framework for these services which will expire on 31 December 2023. The LBLA (with Ealing Council acting as lead borough) have been re-procuring the framework, to commence 1 January 2024, details of which are noted in paragraphs 14 and 15.
3. The Gateway 1 (procurement strategy) report was agreed by the Cabinet Member for Homes, Communities and Finance on 16 October 2023 and the Gateway 2 decision (this report) was delegated to the Assistant Chief Executive – Governance and Assurance due to the limited timescales for mobilisation of the new framework.
4. The LBLA was formed in 2009 with the aim of being a successful collaborative partnership of local authority legal teams. The alliance is managed by Kennedy Cater who have assisted with previous procurements, and are assisting with the current re-procurement. The LBLA has three frameworks – the barrister framework (which is the subject of this report) the solicitor framework and a legal libraries framework. The council's use of the LBLA solicitor framework was subject to separate gateway approval on 6 March 2023.
5. The membership of the LBLA is made up of full members – Barnet, Bexley, Brent, Bromley, Camden, City of London, Croydon, Ealing, Enfield,

Greenwich, Hackney, Hammersmith and Fulham, Haringey, Harrow, Havering, Hillingdon, Hounslow, Islington, Kensington & Chelsea, Lambeth, London Fire, Newham, Redbridge, Southwark, Tower Hamlets, Waltham Forest and Westminster and Slough. There are also other associated members and non-LBLA members who have access to certain LBLA frameworks.

Procurement project plan (Key Decision)

6.

Activity	Completed by/Complete by:
Forward Plan for Gateway 2 decision	02/10/2023
Briefed relevant cabinet member (over £100k)	03/10/2023
Approval of Gateway 1: Procurement Strategy Report	16/10/2023
Invitation to tender **	18/05/2023
Closing date for return of tenders **	23/06/2023
Completion of evaluation of tenders **	02/10/2023
Debrief Notice and Standstill Period	17/11/2023
DCRB Review Gateway 2:	27/11/2023
CCRB Review Gateway 2:	30/11/2023
Notification of forthcoming decision – Five clear working days	01/12/2023
Approval of Gateway 2: Contract Award Report	11/12/2023
Scrutiny Call-in period and notification of implementation of Gateway 2 decision	19/12/2023
Commencement of framework	01/01/2024
Add to Contract Register	12/01/2024
Publication of award notice in Find a Tender Service **	12/01/2024
Publication of award notice on Contracts Finder **	12/01/2024
Framework completion date	31/12/2026
Contract completion date – if extension(s) exercised	31/12/2027

** Activities undertaken by Ealing Council as lead borough for the LBLA barrister framework procurement

KEY ISSUES FOR CONSIDERATION

Description of procurement outcomes

7. The overall aim is to use the LBLA barrister framework to procure the services of barristers (when required) and in order to continue with the efficiencies realised as part of participation with the LBLA.
8. The LBLA barrister framework is split into eleven lots, further details of which are noted in appendix 1, with the following number of providers.
 - Lot 1 – Adult social services – seven providers
 - Lot 2 – Childrens’ services – eleven providers
 - Lot 3 – Governance and public law – six providers
 - Lot 4 – Criminal Litigation and Prosecutions – five providers
 - Lot 5 – Housing – six providers
 - Lot 6 – Planning – six providers
 - Lot 7 – Property – five providers
 - Lot 8 – Civil Litigation – six providers
 - Lot 9 – Employment – six providers
 - Lot 10 – Education – four providers
 - Lot 11 – Licensing – three providers
9. The LBLA barrister framework arrangements will provide:
 - a wide range of barristers with the required expertise to choose from;
 - certainty as to the cost of instructing barristers;
 - the means of monitoring and controlling expenditure.
10. Call off from the LBLA barrister 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-competition between providers on that lot who are capable of providing the required services. The LBLA barrister framework anticipates that for the majority of instructions direct award will be used.

Key/Non Key decisions

11. This report deals with a key decision.

Policy implications

12. Use of the barrister 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.
13. The requirements of the Fairer Future Procurement Framework (FFPF) as appropriate, will be incorporated into instructions issued through the LBLA framework as detailed in paragraph 35.

Tender process

14. This procurement was advertised by Ealing on behalf of the LBLA through a notice in Find a Tender Service published on 18 May 2023. The provision of legal services is governed by the light touch regime of the Public Contract Regulations 2015, so the service of a notice was required and the open process was followed.
15. The deadline for submissions to the framework was 23 June 2023 and following initial compliance checks 74 bids were taken forward for evaluation across all eleven lots. 24 chambers are to be appointed to the framework which is effective from 1 January 2024 for a period of three years with an option to extend for a further year.

Tender evaluation

16. The evaluation criteria for appointment to the LBLA barrister framework was as follows. These price/quality splits were determined following discussion with LBLA members (including Southwark) and on the basis of the nature of the lot in question. For all lots, bidders were required to pass a selection questionnaire (which was included as part of the tender documents) and evaluated on a pass/fail basis.

Lot	Technical/Quality Weighting	Commercial/Price Weighting
1, 4, 5, 7, 8, 9 and 10	50%	50%
2	55%	45%
3	65%	35%
6 and 11	60%	40%

17. For each lot there was a determined minimum and maximum number of providers who could be appointed. Details of those providers appointed to each lot to meet those minimum/maximum numbers is included at appendix 1.
18. Officers from legal services have reviewed pricing information in relation to the new framework, and whilst overall this is higher than rates under the existing framework (taking account that pricing has been obtained four years later) the pricing has been obtained in a competitive environment, and officers from legal services remain confident that this represents value for money. In the period leading up to start of the framework there will be a more detailed analysis of pricing to provide guidance to legal officers to inform their decisions on particular instructions to achieve value for money.

Plans for the transition from the old to the new contract

19. The current LBLA barrister framework which the council uses, expires on 31 December 2023, and there will need to be a transition period to the new

framework. Any new instructions will be made through the new framework from 1 January 2024, but any instructions/matters that are already in place may continue to be placed under the existing arrangements to ensure continuity of provision. A large number of providers who are being appointed to the new framework are existing providers, but the council will need to ensure that those providers who are new to the framework are set up on the council's systems.

Plans for monitoring and management of the contract

20. 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.

21. A steering group (led by the Deputy Heads of Law and consisting of senior officers in legal services) will continue to meet six-monthly to analyse use of the framework and any areas for improvement. Legal services will also continue to have an internal operating protocol which will be reviewed by the steering group. The council has in place an electronic system (Zylpha) which will continue to be used for instructing barristers through the new framework, which includes a prompt for users to provide feedback on the performance of the instructed barrister, and allows review of any performance issues at the steering group. Guidance will continue to be given to legal officers who instruct barristers to assist them to choose the most appropriate barrister to give advice, and at the best price, taking into account the complexity of the matter.

22. As a member of the LBLA, the following services are provided in relation to this framework:

- A comprehensive analysis of expenditure by lot and barrister chamber 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.
- A full training programme for lawyers (and where appropriate client officers) at no cost, which is updated weekly.
- Ability to advertise any recruitment activity for lawyers posts at no cost.
- Participation in special interest groups for each lot of the framework, which allows lawyers advising in each of those areas to work with other local authority lawyers who are also members of the LBLA to share knowledge/best practice. An example of this is a special interest group to discuss implementation of the new Procurement Act.

- Participation in Heads of Legal meetings which occur quarterly to allow information sharing of relevant areas of law.

23. Monitoring reports will be presented to DCRB and CCRB in line with contract standing orders.

Identified risks for the new contract

Risk	Category	Mitigating action
There are a large number of LBLA members and therefore there are insufficient number of providers for the capacity required	Medium	This risk has been recognised by the LBLA and the number of providers on certain lots (such as childcare) has been increased to provide additional capacity. The outcome of the procurement is that the minimum number of providers has been achieved for every lot.
The framework is being procured by the LBLA on behalf of a number of members and therefore might not address Southwark specific requirements	Low	Southwark is a LBLA member and as noted in paragraph 8 has been involved in specifying requirements for the framework and has been involved in the evaluation for the majority of lots.
Financial instability	Low	As part of the procurement, financial checks were undertaken on all applicants.
Advice become unaffordable	Low	The panel rates are fixed for the contract term.

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

Community impact statement

24. The use of barristers for legal advice is judged to have limited impact on local people and communities. However bidders were asked to respond on value added and social benefits which they can offer, such as work experience, pupillage opportunities as further detailed in paragraphs 30-31.

Equalities (including socio-economic) impact statement

25. The nature of the legal services being provided are such that they have no direct equalities impact on local people or communities, but as part of the tender process, bidders were asked to respond on social benefits which they can offer which may be beneficial to local people/local students. Bidders were required to respond to a question on equality and diversity, which had a weighting of 5%.

Health impact statement

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

Climate change implications

27. The nature of the legal services being provided 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. Bidders were required to respond to a question on value added benefits and social value which they can offer as part of their bid. All bidders were required to, and did offer the following as a minimum:

- 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 member, webinars and podcasts can be provided in addition
- Monthly management information services to enable LBLA members to monitor the operation of the framework and to enable decision making by them, and monitoring to ensure better value for money
- Twenty minutes of free advice per potential new instruction.

30. Bidders were also been asked to provide additional value added and social value benefits under the framework agreement, such as:

- Provision of work experience, volunteering, paid internship and pupillage opportunities targeted to help improve social mobility
- Provision of support to schools by way of mentoring, or talking to groups of pupils about careers in law
- Provision of goods or services for community groups, such as pro-bono legal advice.

31. The details of those additional value added and social value benefits that have been offered by successful bidders will be reviewed as part of the

mobilisation period to ensure that the council takes up the additional benefits when instructing those providers.

Social considerations

32. In June 2019 the council adopted a new FFPF which set 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.
33. Whilst the barrister framework is being established by the LBLA, with Ealing as lead authority, Southwark (as a LBLA member) has been involved in the procurement from an early stage, being included in user groups to agree the specification of services required, the lots to be included (which have been increased following consultation with users such as Southwark) and the number of legal advisers to be included in each lot, so as to ensure sufficient capacity.
34. In relation to social value, bidders have been requested to offer benefits to residents and communities, details of which are included in paragraph 31 above. The weighting for value added benefits and social value was 5%.
35. The LBLA Barrister framework requires all panel barristers to comply with their legal obligations under UK discrimination and equal opportunity law. Whilst not part of the tender requirements (as Southwark specific) the council can request successful bidders 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 the council's directly employed staff, but also those who work for the council through contract. The tender documentation included a requirement for suppliers to comply with the Living Wage policy and Living Wage (and LLW if within the Greater London area) and this formed part of the evaluation.

Environmental/Sustainability considerations

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

Market considerations

Staffing implications

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

Financial implications

39. Since the start of the existing framework in July 2020 until 30 September 2023, the overall spend has been £1,895,280 representing an average annual spend of £617k. The annual spend on barrister services for the last full financial year (2022-23) was £774,179 showing an increase for the last financial year. As this is a demand-led arrangement, it is not possible to estimate future spend over the framework term. However based on this previous spend, it is considered that over the life of the contract (three + one years) and including a contingency needed to cover additional advice that may be required as the council meets challenging legal issues over the next few years, the spend is estimated at £3,500,000.

40. The costs for using barrister services are met by the client departments. However there is an annual cost for being a member of the LBLA and having access to its frameworks, which is met by the budget of Governance and Assurance. This fee is currently £11,404 per annum, and includes for use of the barrister and solicitor frameworks, and the fee is reduced each time a new local authority joins the LBLA. Approval to pay this sum was included in the Gateway 2 for use of the LBLA Solicitor framework, so no further approval of this fee is required. Legal Services consider that the additional benefits received under the LBLA framework justify payment of this additional fee. If the council did not use the LBLA frameworks, it would need to deploy significant resource to undertake its own procurements.

Investment implications

41. Not applicable.

Legal implications

42. Please see concurrent from the Assistant Chief Executive – Governance and Assurance.

Consultation

43. As part of the Legal Services' business plan, client consultation on the most effective ways of providing legal services will continue to be undertaken.

Other implications or issues

44. None

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance (GA23/21)

45. The Strategic Director of Finance notes that the fee of £11,404 per annum, has already been agreed for using the solicitor framework, there is no extra charge for using the framework for barrister services and that this can be met from the existing Governance and Assurance budget.
46. The Strategic Director of Finance notes that the annual spend is based on both cost and demand for barrister services. Overall, the new framework reflects higher prices from those that obtained four years previously, which has been reflected in an estimated higher annual cost. These will be met from existing departmental budgets.

Head of Procurement

47. This report seeks the approval of the Assistant Chief Executive – Governance and Assurance for the council's use of the London Borough Legal Alliance (LBLA) newly procured barrister framework. The framework agreement will provide the council with access to barristers' services for a period of three years commencing 1 January 2024 as well as an option to extend for a further year. The estimated annual value is £875,000 and an estimated total value (for the full four year period) of £3,500,000.
48. The GW2 does not commit the council to any expenditure but rather confirms use of the suppliers on the framework agreement (set out by lot in paragraph 8) if and when the services of barristers are required by areas within the council.
49. The procurement has been lead on my Ealing Council and supported by Southwark and other members of the LBLA.
50. The details on the community, equalities, health and climate change implications are set out in paragraphs 24-27 and social value in paragraphs 28-37.
51. The plans for the management and monitoring of the contract are in paragraphs 20-23 of the report.

Assistant Chief Executive – Governance and Assurance

52. This report seeks the approval of the Assistant Chief Executive – Governance and Assurance to the council's use of the LBLA newly procured barrister framework as further detailed in paragraph 1.
53. The provision of legal services at this value is subject to the tendering requirements (light touch regime) under the Public Contract Regulations 2015 and must be advertised in Find a Tender Service. The tendering process undertaken by Ealing, on behalf of the LBLA, meets those tendering requirements, and the council may therefore use the framework without undertaking a tendering process of its own.
54. This report is prepared on behalf of the Assistant Chief Executive –

Governance and Assurance, and therefore all other legal implications are noted in the 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: Doreen Forrester-Brown Date: 11/12/23

Designation: Assistant Chief Executive – Governance and Assurance

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.

Not applicable

6. DECLARATION ON CONFLICTS OF INTERESTS

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

BACKGROUND DOCUMENTS

Background documents	Held At	Contact
Gateway 1 – Barrister Framework	160 Tooley Street	Karen Moore 07960255746
Link: Decisions for issue Gateway 1 Procurement Strategy Approval - Barrister Framework - Southwark Council		

APPENDICES

No	Title
Appendix 1	Lot details and providers

AUDIT TRAIL

Lead Officer	Nagla Stevens, Deputy Head of Law – Planning and Development	
Report Author	Karen Moore – Specialist Lawyer – Contracts	
Version	Final version	
Dated	01/12/2023	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Finance	Yes	Yes
Head of Procurement	Yes	Yes
Assistant Chief Executive – Governance and Assurance	Yes	Yes
Director of Exchequer (for housing contracts only)	N/A	N/A
Cabinet Member	N/A	N/A
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
Cabinet	N/A	N/A
Date final report sent to Constitutional Team		11 December 2023

