

Item No.	Classification: Open	Date: 16 November 2011	Decision Maker: Cabinet member for Finance, Resources and Community Safety
Report title:		Gateway 2 – Contract Award Approval Southwark and Lambeth Barristers Framework	
Ward(s) or groups affected:		All	
From:		Strategic Director, Communities, Law & Governance	

RECOMMENDATIONS

- 1 That the Cabinet Member for Finance, Resources and Community Safety approves the award of the Southwark Lambeth Barristers Framework contract, at an estimated cost of £6m, to the providers listed in Appendix 1 of this report for a period of 4 years, with service commencement on 1 April 2012.

BACKGROUND INFORMATION

- 2 The Cabinet approved the Gateway 1 procurement strategy approval report for the Southwark and Lambeth Barristers Framework on the 7 July 2010. This report sets out the business case for procuring a joint Barristers Framework with the London Borough of Lambeth to deliver financial efficiencies through joint working with Lambeth.
- 3 The Gateway 1 report also recommended the delegation of decision-making for this contract from the Leader of the Council to the Cabinet Member for Finance, Resources and Community Safety or the Strategic Director for Communities, Law & Governance. The decision to delegate decision-making to the Cabinet Member was communicated to all Councillors through a “notice of variation to executive scheme of delegation” on 17 May 2011.
- 4 The contracts commissioned for this 4-year framework do not contain provision for extension. Contract prices are not index-linked and are fixed initially for two years; after the two year period, it is open to the parties to revisit the rates, but in the absence of any agreement between the parties the rates would continue at the tendered rates.

Timetable of procurement process followed

Activity	Completed by:
Approval of Gateway 1: Procurement Strategy Report	7/07/2010
GW2 decision added to forward plan	April 2011
Invitation to tenders sent to Chambers	06/06/2011
Closing date for return of tenders	15/07/2011
Completion of evaluation of tenders	23/09/2011
DCRB/CCRB Review Gateway 2: Contract award report	By 15/11/2011
Notification of forthcoming decision – five clear working days	16/11/11 – 22/11/11

Activity	Completed by:
Approval of Gateway 2: Contract Award Report	23/11/2011
Scrutiny Call-in period and notification of implementation of Gateway 2 decision	28/11/2011 - 06/12/2011
Contract award	3/12/2011
Contract start	01/04/2012
Contract completion date	31/03/2016

Delays following Gateway 1 approval

- 5 Gateway 1 approval was granted on 7 July 2010 and at that time it was the intention to award contracts in November 2010, however delivery of the Framework has been delayed for the following reasons,:
- Difficulties in identifying sufficient resources in Lambeth and Southwark to project manage the procurement
 - The complexity in procuring a framework across two authorities to adequately deliver reductions in price but maintain quality
 - The difficulty in co-ordinating meetings and evaluation panels across two large authorities
 - Aligning Southwark and Lambeth procurement processes
 - Ensuring that there were adequate systems in place in both authorities to support the procurement and monitor the framework
 - To ensure that Chambers were able to fully utilise the e-procurement EU Supply system

Lambeth Procurement Process

- 6 Throughout the procurement process, Lambeth and Southwark have aligned their decision making and approvals processes. Lambeth are in the process of obtaining their approval to award this framework to achieve the dates set out in the timetable at paragraph 4.'

Description of procurement outcomes

- 7 The overall aim of this exercise is to procure an inter borough barristers framework with Lambeth Council in order to achieve significant reductions in the £1.5 million per annum spend in Southwark associated with the commissioning of Barristers services, while at the same time improving on the already high quality of legal advice provided. It should be noted the £1.5m spend on Barristers, is spent through Legal Services, further unknown expenditure on Barristers will be required, on an annual basis to undertake the services of a specialist chambers or particular QC which are not within the Framework.
- 8 The estimated value of the contract for Southwark over 4 years is approximately £6m. It is difficult however to estimate the overall value of the Framework because it will be demand led and it is difficult to estimate the individual contract values that will be drawn down from the Framework.
- 9 Two outcomes have been identified for this project;

- a) Reduce the cost of procuring barristers services in Southwark with a target reduction in the first year of £100,000 per annum, dependent on volumes and thereafter, by securing more competitive rates and economies of scale.
 - b) Helping to provide career and development opportunities for Southwark's own in-house legal team by including the provision of 'soft-benefits' such as training within the evaluation criteria.
- 10 In addition to the above the Framework will create better visibility of where and how spending takes place in order to improve service planning across Legal Services by introducing robust performance management controls. The implementation of new business processes and the operating manual for the Framework will also deliver further efficiencies.
- 11 The proposed framework contracts with Barristers' Chambers will allow the Council to achieve the objectives outlined above in the following areas of work where Barrister services are commissioned (panels):
- a) Childcare;
 - b) Housing Litigation;
 - c) Property;
 - d) Planning;
 - e) Adult Community Care;
 - f) General Litigation (Civil and Criminal litigation);
 - g) Employment; and
 - h) Corporate (including Education, Procurement and Governance).
- 12 Between 5 and 10 Chambers will provide services within each of the above panels. These services will be available for commissioning to all nominated staff within Lambeth and Southwark Legal Services.
- 13 The Framework will handle the majority of cases where the specialist services of Barristers are required such as advocacy before the courts and tribunals, legal advice and support in the conduct of legal proceedings, including the drafting of documents, advice and generally in relation to the full range of legal work carried out by an in-house legal department.
- 14 In exceptional cases where the service required cannot be provided by a Framework Chambers, instructing officers in the two Local authorities will be able to commission services outside the framework according to strict exception procedures.
- 15 The framework is open to other local authorities wishing to join, through an access agreement on the basis of a secondary partnership. Lambeth and Southwark Councils will act as lead authorities in managing the framework and determining broad policy for future development. Further discussion is currently taking place with Lambeth to identify an appropriate annual administration charge to other authorities for joining the framework that will seek to recoup costs incurred in the procurement, but acknowledge the benefits of Local Authorities working together.

KEY ISSUES FOR CONSIDERATION

Policy implications

- 16 The Southwark Lambeth Barristers Framework enables the Council to work closer with our neighbours and as such is in line with the Council's priority to find innovative ways to find financial efficiencies through joint work with other South London Local authorities.
- 17 The framework's provision which enables other local authorities to participate offers opportunities for further financial efficiencies through a potential revenue stream from administration charges to joining organisations.

Tender process – Stage 1: Shortlisting

- 18 Following approval of the GW1 procurement strategy by the Cabinet on the 7 July 2010 the framework was advertised in July- August 2010 in the relevant trade Journals such as the Law Society Gazette and Counsel Magazine.
- 19 78 organisations expressed their interest in the framework by registering their interest through Lambeth Council's EU supply e-procurement tool. Out of these organisations, 51 completed a pre-qualification business questionnaire.
- 20 This was the first time that Southwark had used an on-line procurement process to procure a contract. Lambeth's EU supply system required interested organisations to download and submit all the documentation electronically, notifications and questions from organisations were also submitted via the EU supply system.
- 21 The Project Board were concerned that due the change in the way this framework was to be procured, the unfamiliarity in using the EU supply system in Southwark and organisations tendering for the framework, there was a risk that organisations would be deterred from tendering for the framework or fail to submit tenders due to uncertainty about the reliability of the system. To mitigate this risk, the Project Board agreed that more time was required to guide organisations through the system and identify any concerns which they had with using EU supply.
- 22 In response to these concerns all organisations who expressed an interest in tendering for the framework were invited to a meeting with the Project Manager for a demonstration of the EU supply system and to answer any questions which they had about the operation of the system. The meetings were attended by 17 organisations, who overall felt that they would have no difficulties in submitting their tenders via the EU supply system.
- 23 In order to proceed to Stage 2 – Invitation to Tender, organisations were required to pass an assessment of Financial, Insurance, Health & Safety, Equalities requirements and assessment of References. Five organisations failed stage 1 assessment and were not invited to tender. Reasons for rejection were communicated to unsuccessful bidders who were offered the opportunity to receive detailed feedback on the reasons for rejection. None of the failed organisations requested further feedback. As a result, 46 invitations to tender were sent to stage 1 shortlisted organisation.

Tender Process - Stage 2: Tender evaluation

- 24 The 46 organisations were advised in the Tender documentation that the Council anticipated awarding up to a maximum number of contracts per panel as below:
 - a) Panel 1, Childcare – 10
 - b) Panel 2, Housing litigation – 10
 - c) Panel 3, Property – 5
 - d) Panel 4, Planning – 5
 - e) Panel 5, Adult Community Care – 5

- f) Panel 6, General Litigation – 8
 - g) Panel 7, Employment - 8
 - h) Panel 8, Corporate – 10
- 25 Tenderers were advised through tender documentation that a 60/40 price/quality weighted model would be used to evaluate the tenders, as outlined in the Gateway 1 report for this project. In addition, bidders were advised that assessment of “Quality of Barrister resources assigned to contract” carried a minimum acceptable threshold. Bidders who failed this part of the quality assessment would fail the overall evaluation process. A timetable outlining key tender and contract award dates was circulated to tenderers.
- 26 By Friday 15 July (tender submission deadline), 37 tenders were received through Lambeth’s e-procurement tool, EU supply. Each tender was assessed against the following areas based on team score sheets which were developed to ensure a consistent and fair scoring approach within each evaluation area:
- 26.1 **Price evaluation: assessment of pricing submissions for each panel.**
 - 26.2 **Quality of Barrister resources assigned to contract:** 8 quality assessment teams (1 for each panel) evaluated the suitability and quality aspects of each bidder’s proposed response against the Councils’ requirement for at least “acceptable” Barrister resources assigned to the contract. A standard evaluation methodology applied across all panels, with each panel area evaluation team considering what constitutes an excellent and what a very poor response. This was essential as quality requirements such as required volume of barristers, availability of senior/junior barristers and ability to meet types of service required differ between panel areas.
 - 26.3 **Equalities evaluation:** LB Southwark’s equalities team evaluated all 37 tender submissions against the Council’s equalities standard. All organisations passed this assessment.
 - 26.4 **Business Management:** Colleagues from both authorities assessed each bidder’s proposals in the following areas.
 - 26.4.1 Quality of support resources assigned to the contract
 - 26.4.2 Mobilisation and ongoing induction of Barristers
 - 26.4.3 Development and support for Junior Barristers
 - 26.4.4 Approach to allocation/re-allocation of caseload
 - 26.4.5 Internal and External communications
 - 26.4.6 Ability to meet reporting requirements in contract
 - 26.4.7 Ability to meet invoicing requirements in contract
 - 26.4.8 Ability to prevent duplication of invoices & payments
 - 26.4.9 Provision of training
 - 26.4.10 Other benefits offered
- 27 Evaluation teams were given the opportunity to ask clarifications where these were deemed as essential for the assessment of a bidder’s proposals. Clarifications were reviewed by the Councils’ legal teams prior to release to ensure that all providers were treated consistently and fairly.
- 28 A number of Chambers failed the “Quality of Barrister resources assigned to contract” assessment in each panel, as described in paragraph 27 above. Listed below against each panel is the number of chambers who were successful in this evaluation area. The number of Chambers who failed the assessment in each panel is presented in brackets.
- a) Panel 1, Childcare: 10 (7)
 - b) Panel 2, Housing Litigation: 9 (8)

- c) Panel 3, Property: 7 (2)
 - d) Panel 4, Planning: 5 (9)
 - e) Panel 5, Adult Community Care: 4 (10)
 - f) Panel 6, General Litigation: 14 (12)
 - g) Panel 7, Employment: 8 (5)
 - h) Panel 8, Corporate: 10 (9)
- 29 Chambers which passed the quality assessment for Barrister Resources were then ranked according to their combined price, barristers' quality and business management evaluation score. In panels where more than the maximum number of chambers allowed in the framework passed the quality of Barrister resources assessment, the chambers that scored highest in the combined quality/price/business management assessment up to the maximum number (see paragraph 25 of this report) per panel were shortlisted for contract award.
- 30 It should be noted that out of the 37 Chambers who submitted a tender, 32 were successful in at least one of the panel areas they provided a response for.
- 31 A list of all successful chambers within each panel area and their corresponding overall evaluation score is attached as Appendix 1 of this report.

Ensuring the Council achieves Value for Money

- 32 The objective of the procurement is for the council to achieve increased value for money when they instruct Barristers and reduce the overall cost of instructing Barristers. The largest area of spend on Barristers within legal services is in the Children and Adults Team. The majority of the work in this team involves instructing Barristers to undertake advocacy and advice in relation to protecting vulnerable children and adults.
- 33 The Child protection team now have approximately 100 cases in care proceedings and although all Lawyers within the team undertake advocacy in court, it is not possible, due to the number of cases for the in-house team to undertake the entire advocacy themselves. There is therefore a requirement that VFM is achieved from the Framework.
- 34 Through the procurement exercise it has been established that one of the Chambers on the Childcare Panel, is potentially up to 40% cheaper, throughout the duration of a case, than the rates being achieved from an existing Chambers.

Meeting with the Bar Council

- 35 Following initial contact with the Bar Council in July 2010 as part of the consultation process, in July 2011 the Bar Council contracted Southwark to discuss the Barristers Framework procurement on behalf of Barristers in England and Wales. Following a review by the Bar Council of the draft terms and conditions of the contract, they were very keen to work with Lambeth and Southwark to develop a standard set of terms and conditions which would more appropriately reflect the complex contractual relationship between Barristers, who are self employed, and their Chambers who provide them with administrative support to and make it easier for Barrister to enter into Framework Contracts.
- 36 The Bar Council were impressed with the draft terms and conditions developed by Southwark and Lambeth, they made some very minor changes to the drafting, which both Lambeth and Southwark have now approved. The Bar Council now wish to promote the terms and conditions developed for this framework as a model of best practice to be adopted by other authorities who are tendering a Framework Contract of this type.

Plans for the transition from the old to the new contract

- 37 The timetable provides for the contract to be awarded in November 2011 with service provision commencing on 1 April 2012, this is to allow sufficient time to:
- Ensure that robust arrangements are in place to monitor the contract across both authorities
 - Finalise the operating manual and ensure that all staff and Chambers are familiar with the processes for instructing counsel
 - Ensure that the required technologies are in place in Southwark and Lambeth to monitor the contract
 - Meet with all Chambers and explain the requirements around the administration processes under the contract, and in particular the requirements for invoicing
 - Agree with our existing providers, transition arrangements for current cases.
- 38 Currently both local authorities commission services from Barristers on the basis of “fixed fee” agreements. From the first day of operation of the framework, the framework will replace existing fixed fee arrangements.
- 39 An operating procedure has been developed to ensure a structured approach to the instruction of legal services under this framework. The operating procedure is based on the broad principle of instructing the most competitive chamber in each panel area. It has been challenging to develop an operating manual to be applied across two authorities which both have different systems and processes in place for instructing Barristers.
- 40 To ensure that there is consistency across both authorities in instructing Barristers and that on instruction both councils are receiving value for money, it is important that the operating manual provides very clear guidance to staff. A draft of the manual is attached at appendix.2 to this report. Further work is required to ensure that the electronic systems and processes (including financial systems and invoicing processes) required to support the instruction of Barristers via the legal case management systems in both authorities are in place and are robust. In particular the system of payment to Barristers chambers needs to reduce the risk of duplicate invoice payments.
- 41 The operating procedure is subject to a final agreement by both local authorities prior to service provision commencing.

Plans for monitoring and management of the contract

- 42 Monitoring and Management of the Lambeth Southwark Barristers Framework and the work issued through this will be the responsibility of the shared Lambeth Southwark Business Manager, supported by administration and legal expertise resources from both authorities. This contract management team will take over responsibility for the framework from the award of the contract until the service provision date on 1 April 2012
- 43 The contract management team will be overseen by the Southwark Lambeth Barristers framework steering group. This group will be led by the authorities’ heads of legal services and will be responsible for the successful implementation and potential expansion of the framework.
- 44 In Southwark, a workflow process will be developed within the Axxia Case Management system to enable the commissioning of Barrister and the reporting of management information through the case management system. In addition work is taking place with FMS to ensure that the invoicing processes used by Chambers comply with the council’s internal financial processes.
- 45 The Business Manager is working with Lambeth IT and ISD in Southwark to develop a shared extranet site where Framework Chambers will be required to upload performance monitoring information and enable the more efficient control of invoices. Barristers’

Chambers will be required to submit invoices and period utilisation reports through the extranet. These reports will be made available to both local authorities through the shared Business Manager to ensure that organisation-specific benefits expected from this contract are monitored. The extranet site will be completed by 1 December 2011.

- 46 Once the monitoring and management processes are embedded, other local authorities will be able to join the framework.

Community Impact Statement

- 47 This decision is judged to have little impact on local people, businesses and communities, particularly since Barristers Chambers are generally based outside the Borough. However, the training and secondment opportunities offer to both local authorities will enable the further development of advocacy skills of in-house legal services staff.

Sustainability considerations (including Economic, Social and Environmental considerations)

- 48 There are no specific sustainability considerations associated with this framework agreement.

Market Considerations

- 49 The successful tenderers:
- Are private organisations
 - Have anything between 5 and more than 50 staff
 - Have a national area of activity

Resource Implications

- 50 The role of on-going monitoring, performance and contract management will be undertaken by current “business as usual” mainstream resources in both local authorities.

Staffing Implications

- 51 The proposed framework agreement does not give rise to TUPE or other staffing/pension implications. This is due to the nature of advice given under the existing arrangements and for future arrangements being in response to individual instructions of work, for which TUPE will not apply.

Financial Implications

- 52 The costs for barristers’ services are met by service departments. The framework agreement seeks to deliver savings of at least £100,000 per annum depending on volumes from the estimated £1.5million spent on Barrister services each year thereafter. Management costs for introducing the framework will be met from within Legal Service’s operations budget. It is not possible to accurately estimate efficiency savings for each department but it is likely that they will be greatest for Children’s Services and Housing who are Legal Services’ two largest clients. Performance management systems which accompany the framework’s development will create much better visibility of where and how spend takes place and it is envisaged that this will help to improve service and budget planning on the part of service departments as well as provide the means for ensuring savings are being delivered. It is proposed that fee rates that make up the structure of the framework will be reviewed after two years.
- 53 Management costs for introducing and monitoring the framework will be met from Legal Services’ operational budget and shared by both local authorities.

Legal Implications

54 Please see legal comments in paragraph 56.

Consultation

55 The development and implementation of Southwark and Lambeth Barristers Framework took into consideration the outcomes from consultation with other London local authorities who operate similar arrangements, Council SMTs, Legal Services staff at both local authorities, procurement staff at both local authorities and the Bar Council.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

56 This report seeks the Cabinet Member for Finance, Resources and Community Safety's approval to the award of the Barristers framework as set out in paragraph 1. At this value the award of this framework is reserved under the constitution for Cabinet decision. However, as noted in paragraph 3, the award decision was delegated by the Leader to the council to the Cabinet Member.

57 The provision of legal services is a part B service under the EU procurement Regulations, and as such, is not subject to the full tendering requirements of the EU regulations. However recent case law and policy guidance from the EU commission has suggested that for all procurements (including Part B services) there should be adequate advertising to enable the service markets to be opened up to competition. There is also a need to comply with the Treaty of Rome requirements, including non-discrimination and transparency of the process. The council is also required to comply with the tendering requirements of its own Contract Standing Orders (CSOs). As noted in paragraphs 18-29, the council has undertaken a tendering process which meets the requirements of its own CSOs and EU Treaty requirements.

58 Contract Standing Order 2.3 requires that no steps may be taken to award a contract unless the expenditure involved has been included in approved estimates, or otherwise approved by the council. Paragraphs 52-53 confirm the resource implications for establishing this framework.

Finance Director

59 This report recommends that the Cabinet Member for Finance, Resources and Community Safety approves the award of the Southwark Lambeth Barristers Framework contract, at an estimated cost of £6m, to the providers listed in Appendix 1 of this report for a period of 4 years, with service commencement on 1 April 2012.

60 The Finance Director notes the financial implications contained within the report, in particular the savings identified in paragraphs 7 to 9. These savings amount to 6% of the indicative council budget for the provision of the Barristers service, the costs of which are ultimately paid for by the service commissioning the work and the indicative savings therefore benefit the wider council (primarily children's and housing services). These savings are over and above the CLG department savings declared in the three year budget proposals approved by cabinet in February 2011.

- 61 The Finance Director further notes that the savings and costs identified in report are Southwark's' alone and are dependant on demand. The savings accrued by LB Lambeth sit outside this report.

Head of Procurement

- 62 This report is seeking approval to appoint a range of Chambers onto a framework that will provide Barrister services. This was an inter borough procurement (Lambeth and Southwark) and whilst this framework will initially be used by Lambeth and ourselves, there is potential for the framework to be used by others boroughs, subject to certain protocols and agreements being in place.
- 63 The procurement process and the approach to evaluation complies with EU regulations and the council's contract standing orders and is in line with the gateway 1 report that was approved in July 2010.
- 64 As an inter borough project, the governance arrangements through out the process have been jointly managed by the lead boroughs (Lewisham and Southwark) and these arrangements will continue for the life of the framework. It is envisaged that an IT system will support the operational running of the framework. The ongoing monitoring of the Barristers/ Chambers will be a matter for each of the borough using the framework. Management information will however be coordinated by the practice manager which is a shared resource. For any other boroughs wishing to join the framework performance information will need to be shared to assist with award decisions and ongoing maintenance of the framework lists.
- 65 A manual outlining the operation of the framework has been developed. This document details how to order through the framework. It also spells out the roles and responsibilities of each borough in using and maintaining the framework.
- 66 Paragraph 34 confirms that there may have been some savings made through the procurement process. It should be recognised however that the real potential for savings will be achieved through demand management and the controls that will be in place through the operating manual.
- 67 This procurement project has been resource intensive. The project team has been meeting regularly and has had membership from both boroughs. In addition to the departmental representatives from Southwark, corporate procurement and other Finance representatives have attended project team meetings and have provided advice through out the process. It is therefore recommended that the benefits of setting up and operating this framework be tracked in terms of both cost and effectiveness to inform any future procurement decisions.
- 68 Paragraph 5 of the report confirms that there was delay on this project following the gateway 1 report being approved. It would appear that there were some additional challenges for the project team created by joint working. With collaborative procurement being promoted as best practice procurement within the public sector it is also recommended that a 'lessons learnt' workshop be undertaken to identify any issues that arose during the process to assist and help inform future procurement projects of a similar nature.

BACKGROUND DOCUMENTS

Background documents	Held At	Contact
Gateway 1 – Procurement Strategy Approval, Southwark and Lambeth Barristers Framework	Southwark Lambeth Barristers Framework project office, 160 Tooley Street	Christos Pishias on 020 7525 7312
Contract Register Update Form		

APPENDICES

Appendix number	Title of appendix
1	List of successful Chambers
2	Southwark Lambeth Operating Manual

AUDIT TRAIL

Lead Officer	Doreen Forrester-Brown, Head of Legal Services		
Report Author	Doreen Forrester-Brown		
Version	Final		
Dated	16 November 2011		
Key Decision?	Yes	If yes, date appeared on forward plan	February 2011
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title	Comments Sought	Comments included	
Strategic Director of Communities, Law & Governance	Yes	Yes	
Finance Director	Yes	Yes	
Head of Procurement	Yes	Yes	
Cabinet Member	Yes	Yes	
Contract Review Boards			
Departmental Contract Review Board	Yes	Yes	
Corporate Contract Review Board	Yes	Yes	
Date final report sent to Constitutional Officer		16 November 2011	