

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 17 March 2014	<b>Decision Taker:</b> Cabinet Member for Finance, Resources & Community Safety
<b>Report title:</b>		Gateway 1 & 2: External Solicitors Panel	
<b>Ward(s) or groups affected:</b>		None	
<b>From:</b>		Director of Legal Services	

## RECOMMENDATIONS

1. That the Cabinet Member for Finance, Resources & Community Safety formalises the previous decision for Legal Services to review the procurement strategy and options for replacing the existing external solicitors panel which is due to expire on 31 March 2014.
2. That the Cabinet Member for Finance, Resources & Community Safety approves the decision to join the London Borough Legal Alliance [LBLA] framework for the provision of external legal advice to the council for a period of two years and seven months (from 1 April 2014 – 31 October 2016) with an estimated minimum value of £2 million, as further detailed in this report, which will include entering into an access agreement with the Royal Borough of Kensington & Chelsea/Kennedy Cater who manage this framework.
3. The cabinet member should note that there is a one-off joining fee and an annual fee towards the ongoing panel management of the solicitors' framework, details of which are noted in the closed report.

## 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. Under 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. In April 2006 the council completed a competitive tendering exercise to form a framework contract and orders were placed to a number of firms of solicitors who have since that time provided legal advice to various parts of the council.
6. That framework contract was let in 2006 for a period of three years with provision to extend for an initial one year and thereafter for further periods of one year at the council's discretion. The contract had provision to continue until a decision was made to terminate, and has been extended annually with a current termination date of 31 March 2014.
7. Although the Finance Director approved the procurement strategy in December 2011 to consider options for use of an alternative external legal services framework (to replace the existing arrangements) there was a subsequent cabinet decision in February 2012 (as further detailed in paragraph 9 below) which delayed the

completion of the evaluation of those options. Prior to the February 2012 cabinet decision, four potential legal services frameworks had been identified and evaluated by the Solicitors Panel Project Group (“the SPG”) – a group of officers in Legal Services tasked with identifying options for external legal provision. These were framework arrangements organised by:

- a. Lambeth,
  - b. London Borough Consortium (LBC),
  - c. Croydon
  - d. London Borough Legal Alliance (LBLA)
8. In terms of quality evaluation, this identified Croydon and LBC as being best placed to meet the council’s needs at that time; this is because both the Lambeth and LBLA frameworks were near to the end of their framework terms (both in the final year of the permitted term when orders could be placed). The SPG worked on evaluating the financial information received from those two frameworks with the intention of recommending the most suitable framework to join commencing on 1 April 2012.
9. However on 7 February 2012 the Cabinet approved proposals relating to shared legal services between the council and Lambeth in relation to litigation, prosecution and property work. The Cabinet also instructed officers to continue to explore opportunities to develop shared legal services over the next year and to report back on developments. At that point Lambeth were starting to procure a new framework (to be implemented by September 2013), so officers from Legal Services worked with colleagues in Lambeth to consider potential for the council to use Lambeth’s solicitor panel framework. When advertising this contract Lambeth included Southwark as a possible user of the framework, and officers from Southwark Legal Services formed part of the evaluation panel. Lambeth have now completed their procurement process and awarded their framework agreement.

### **Summary of the business case/justification for the procurement**

10. Whilst Lambeth have undertaken their procurement process entirely in accordance with their contract standing order requirements and EU regulations, the outcome of the process is that Southwark has concerns that the framework might not fully address Southwark’s legal needs. This is because for the majority of legal panels only one provider (and a reserve) is available for provision of legal services. With use by two boroughs, Southwark is concerned that there might be insufficient capacity for its legal needs. Southwark therefore also began to reconsider other frameworks now available since the original review in 2012.
11. The LBC and Croydon frameworks are now part way through their framework period (being over two years into their permitted four years), but since the original review in 2012, the LBLA framework has been re-procured. Southwark therefore sought further detail of the outcome of that new procurement process – which was let in November 2013, as further detailed in paragraph 13.

### **Market Considerations**

12. Most London boroughs use external legal advisers, either through use of a framework or by procuring individually. An analysis has been undertaken of possible procurement routes and particularly of available frameworks, showing that there are a number of options for the council to procure this service.

## KEY ISSUES FOR CONSIDERATION

### Procurement route

13. A full analysis of the Lambeth and LBLA frameworks has been undertaken by officers in Legal Services. Having considered this analysis (details of which are contained in the closed report), the use of the LBLA framework is considered to be the most appropriate procurement route, providing value for money, sufficient capacity and expertise of legal providers and sufficient contract period as further detailed in this report.
14. The framework is used by LBLA members (who are the London Boroughs of Brent, Camden, Ealing, Hackney, Harrow, Hillingdon, Hounslow, Islington, Waltham Forest, Hammersmith & Fulham, Royal Borough of Kensington & Chelsea and the City of London), but can also be used by non LBLA members, of which the London Borough of Haringey has already joined.
15. The framework is split into two parts – Lot 1 and Lot 2, as follows:
16. Lot 1: the provision of legal advisory services and assistance in relation to complex regeneration, development, property and planning work. The following solicitor firms have been appointed to this panel:
  - Ashfords
  - Bevan Brittan
  - Freeth Carthwright
  - Sharpe Pritchard
  - TLT
17. Lot 2: the provision of legal advisory and assistance in relation to a range of mainstream legal services including litigation, contracts, procurement, PPP/PFI, property and employment. The following solicitor firms have been appointed to this panel:
  - Ashfords
  - Michelmores
  - Pinsent Masons
  - Sharpe Pritchard
  - TLT
18. The framework commenced on 1 November 2013 and operates for a period of three years with provision to extend for a further year. Appointments through the framework can either be made by a direct order to any of the providers in the relevant lot, or can be made following a mini-competition between providers in that lot as appropriate and determined by the council.
19. The framework includes a number of soft benefits including training, helpline / ad-hoc advice, secondments, use of library and precedents, cost monitoring and pre and post scheme briefings. Officers from Legal Services met with representatives of LBLA and were very satisfied with the soft benefits secured and how these were managed, which will assist the legal department in achieving efficiencies in its legal provision.

## Options for procurement including procurement approach

20. The following procurement options were considered:

No.	Option	Advantages	Disadvantages	Decision
1.	Do nothing	<ul style="list-style-type: none"> <li>▪ None</li> </ul>	<ul style="list-style-type: none"> <li>▪ The in-house legal department is not able to provide all legal services required.</li> </ul>	Not recommended.
2.	Continue with existing arrangements.	<ul style="list-style-type: none"> <li>▪ Clients are happy with existing arrangements which offer VFM</li> </ul>	<ul style="list-style-type: none"> <li>▪ Whilst the framework was let to allow the contract period to be extended indefinitely, EU regulations require that at an appropriate point the service is reopened to competition. This also allows the service to demonstrate that VFM is being obtained.</li> </ul>	Not recommended.
3.	Undertake a new procurement	<ul style="list-style-type: none"> <li>▪ Wider market test.</li> <li>▪ Potentially more applicants.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Longer procurement timeline.</li> <li>▪ Resource intensive</li> <li>▪ Other London boroughs have undertaken framework arrangements which address the council's needs.</li> </ul>	Not recommended
4.	Join LBLA framework set up by Royal Borough of Kensington and Chelsea	<ul style="list-style-type: none"> <li>▪ Short procurement timeline.</li> <li>▪ EU compliant</li> <li>▪ Market recently tested</li> <li>▪ VFM prices secured (as detailed in closed report)</li> <li>▪ Additional benefits secured</li> </ul>	<ul style="list-style-type: none"> <li>▪ None</li> </ul>	Recommended.
5.	Use Lambeth framework agreement	<ul style="list-style-type: none"> <li>▪ Short procurement timeline.</li> <li>▪ EU compliant.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Insufficient number of providers for majority of panels</li> <li>▪ Framework procured to meet specific Lambeth Corporate objectives.</li> </ul>	Not recommended

21. If a new arrangement is not entered into then either the Legal Services section will retain the work or additional legal services will need to be procured on an ad-hoc basis. Procuring the service on an ad hoc basis will be more expensive for the council.

### Key /Non Key decisions

22. The decision to join the LBLA framework is a key decision.

### 23. Procurement project plan (Non Key decisions)

Activity	Completed by/Complete by:
Completion of Evaluation Methodology	February 2014
DCRB Review	27 February 2014
CCRB Review	6 March 2014
Approval of Combined GW1 & GW 2 Report (this report)	25 March 2014
Scrutiny call in period	31 March 2014
Framework Award	1 April 2014
Framework start	1 April 2014
Add to Contract Register	29 March 2014
Framework completion date	31 October 2016
Possible extension of framework of 1 year at LBLA discretion	31 October 2017

### TUPE implications (if no TUPE implications write 'not applicable')

24. The provision of legal advice on an ad-hoc basis means that TUPE is not applicable on the entering into of this framework agreement.

### Tender process

25. The council will be bound by the contract documentation that forms part of the LBLA framework which has been reviewed by officers in legal services.

### Tender evaluation

26. Officers from legal services have considered the criteria against which the LBLA concluded their solicitors framework. For Lot 1, this was on the basis of service delivery (50%), valued added benefits (10%) and price (40%). For Lot 2, this was on the basis of service delivery (40%), value added benefits (10%) and price (50%). Whilst evaluation for the two Lots was similar there was a slightly higher percentage for service delivery for Lot 1 due to the specialist nature of this Lot .

### Identified risks and how they will be managed

27.

No.	Risk	Risk Level	Mitigating Action
1	LBLA framework doesn't meet Southwark requirements	Low	Officers from Legal Services have reviewed the outcome of the procurement process and are satisfied with the number and experience of those appointed. The framework does not provide exclusivity rights to framework providers so the

			council could use alternative suppliers if necessary.
2	LBLA framework does not deliver the 'soft benefits' for the council	Low	The Business Manager will monitor the delivery of soft benefits to ensure firms comply with the contract requirements.
3	Departments reluctant to use the framework because they are unfamiliar with the firms.	Medium	Legal services will monitor the instruction of firms on the panel. Key clients will be notified of the changes and the V.F.M. available under the framework. Many firms have previously worked for the council.
4	Insufficient capacity to meet the requirements of all councils on the panel.	Low	Each Lot has 5 firms available to deliver the service. In the event that capacity issues arise the firms will be responsible under the contract for increasing resources to meet demand.

#### **Plans for the transition from the old to the new contract**

28. The council's current arrangements expire on 31 March 2014. As part of joining the LBLA framework, there are processes where new joiners meet each of the panel providers to ensure the most effective use of their services (particularly where these are firms which are 'new' to Southwark). To allow this process to happen, it is proposed that the existing panel arrangements which the council has in place are continued for a period of two months to allow smooth transition. For this short period the extension of the framework can be approved by chief officer, and this is being arranged separately. The council has current instructions with existing panel firms which will continue post June 2014 due to the nature and length of advice required. These appointments are permitted to continue post the end of the framework to ensure continuity of advice.

#### **Plans for monitoring and management of the contract**

29. There is a need for the council to have in place adequate monitoring and management of use of the arrangements and spend, so that it can manage the issue of instructions and monitor the quality of advice and fees paid / spend (ensuring that there are appropriate authorisation levels for who in Legal Services can undertake this). Whilst monitoring and management of the external arrangements as a whole will be undertaken by the Business Manager, as part of this appointment the council will pay a yearly fee to use the LBLA framework and this fee is for Kennedy Cater (who manage the LBLA framework) to report on and manage the strategic relationships with all solicitor firms appointed, to manage the database including expenditure and analysis of use, tracking of benefits given by framework, arrange free CPD training programme delivered by panel firms. This will give the council increased visibility of its use of external solicitors, and ability to analyse use and spend. As noted in paragraph 18, instructions under the framework can be placed by direct order or following a mini-competition. The decision on whether a direct order can be placed (and to which firm on the framework) or whether a mini-competition will be held will be made following consultation with the relevant Head of Team in

Legal Services, and subject to value for money being demonstrated and justification being given (if a direct order is proposed).

30. Clients have been extremely pleased with advice given on current projects through the existing framework, which has enabled the council to achieve some of its long term objectives, and it is considered that this level of service is likely to be continued. Several firms on the panel are already working with the council under our current contract arrangements. Regular client liaison meetings take place with clients and this will provide an opportunity to review the performance of firms in the framework.
31. Since 2010/11 there has been a more effective method of monitoring legal spend through the panel. The appointment of an interim Business Manager has assisted the legal department in ensuring full records are maintained. The use of the LBLA framework, which includes (as part of fee to join) full monitoring of use and spend will assist the council to monitor its legal spend in these areas.

### **Performance bond/Parent company guarantee**

32. The LBLA framework arrangements do not provide for a performance bond or PCG, which is standard for a service of this nature.

### **Policy issues**

33. There are no specific policy implications, but external solicitors may be utilised to provide advice to the council on policy issues.

### **Community impact statement**

34. This decision is judged to have little impact on local people, businesses and communities. Geographically, the solicitor firms on the short-listed panels are spread out all over London and beyond. However, in agreeing award through this framework the decision maker should be aware of the implications of the public sector equality duty as contained within section 149 of the Equality Act 2010, and the duty on the council when making decisions to have due regard to the need to:
  - Eliminate discrimination, harassment, victimisation or other prohibited conduct;
  - Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not;
  - Foster good relations between those who share a relevant characteristic and those who do not share it. The relevant protected characteristics are age, disability, gender reassignment, pregnancy, race, religion or belief, sex, sexual orientation. The duty also applies to marriage and civil partnership but only in relation to bullet 1.
35. Whilst this award decision is judged to have little impact on local people, businesses and communities, the advice given by the firms on the framework could be in relation to equality issues supporting the council's equality duty.

### **Economic considerations**

36. There are no specific economic considerations relating to award of this framework.

### **Social considerations**

37. By using an existing framework it is not possible for the council to specify the type of legal firms which can be used, for example whether they should be locally based.
38. Whilst LLW was not considered as part of admission onto the LBLA framework the stated hourly rates of solicitors and their support staff are in excess of the London Living Wage.

### **Environmental considerations**

39. There are no specific environmental considerations relating to award of this framework .

### **Staffing implications**

40. Staffing implications – there are no direct staffing implications. The monitoring and management of the arrangement will be undertaken by the Business Manager, who is provided on a part time basis under a shared service arrangement with Lambeth.

### **Financial implications**

41. The annual spend on external legal advice for 2013/14 is estimated as being £497,000 to December 2013. This covers a number of high profile projects which are currently externalised. For 2012/13 the annual spend was £434,000. As this is a demand led contract it is not possible to estimate future spend over the framework but based on previous spend, and contingency needed to cover additional legal advice that might be required as the council meets challenging legal issues over the next few years, it is possible that over the term of the framework agreement that fees could exceed £2m. The council can make direct awards to providers on the framework, or can arrange for a mini-competition to those solicitors on the framework, as appropriate. If a set fee is not secured by way of this mini-competition then the cost of the service will be based on time spent. An analysis has been undertaken of fees secured under the LBLA framework, compared with our current and alternative arrangements, which (as detailed in the closed report) confirms that value for money is achieved.
42. The costs for using external panel services are met by the client departments. However the LBLA panel requires the council to pay both a joining and annual fee to manage the framework; details of which are noted in the closed report. Whilst such a fee is not paid under our existing arrangements, it is usual for payment to be required when using other party's frameworks. Legal Services consider that the additional benefits received under the LBLA framework justify the payment of this sum. In particular, the LBLA offer a significant training programme tailored to the needs of local government lawyers; this will deliver a significant saving for the council. The LBLA framework provisions for reporting and monitoring legal spend will assist the council to more accurately spend under the panel.
43. Whilst the current legal panel arrangements have always operated as a demand led contract, and therefore fluctuations in use are expected, the council's need to achieve reductions in legal spend whilst continuing to improve service provision has led to Legal Services and client departments working together to ensure the most effective use of spend on legal advice. There does however remain a need to have a facility for use of external solicitors, which must remain sufficiently flexible to deal with the peaks and troughs of the council's business.

## **Legal implications**

44. The provision of legal services is classed as a Part B service under the EU procurement regulations and is therefore not subject to the full application of the EU regulations. It is however necessary for the council to tender the contract in accordance with its own Contract Standing Orders, or seek the relevant exemptions, and to comply with the general EU principles regarding transparency and non-discrimination. The equalities considerations are contained within paragraph 34 of this report.

## **Consultation**

45. As part of Legal Service's business plan, client consultation on the most effective ways of providing legal services has been and will continue to be undertaken.

## **Other implications or issues**

46. None for the purposes of this report.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS (Provided after CCRB)**

### **Head of Procurement**

47. This report is seeking to formalise a prior procurement strategy decision to explore options to replace the existing external solicitors panel. It is also seeking approval to join the LBLA framework arrangement, having determined that this is the most appropriate framework to meet the council's requirements.
48. The background information confirms there is an ongoing need for external solicitor services to support the existing in-house legal team.
49. The table in paragraph 20 outlines the options that were considered for this procurement. Whilst it is possible to procure our own arrangement, it is often more efficient to utilise third party frameworks if available. There appear to be a number of solicitor panels that have been set up to provide flexible solicitor services. All known arrangements were reviewed and officers are of the view that the LBLA framework will best meet the council's requirements at his time.
50. Paragraph 19 highlights the soft benefits that will be available by joining the framework. These include training and secondments which the council has found extremely useful in the past.
51. The LBLA framework has two categories, one covering property and planning and one covering mainstream legal services. Each category has a list of five solicitor firms offering the range of services at varying rates. Ordering through the framework can be done directly or by holding a mini competition. To ensure value for money is achieved through the framework, it is important that orders are placed in the most appropriate way. The report confirms that decisions around ordering will occur after consultation with heads of teams.
52. The monitoring and management arrangements for the framework and orders placed through it are described in paragraph 29 -31. In addition to the council's own

monitoring of external arrangements, this framework will be managed by Kennedy Cater. This service is provided for an annual fee as described in the report.

### **Director of Legal Services**

53. As this report has been prepared by the Director of Legal Services, all legal comments are contained within the body of the report.

### **Strategic Director of Finance & Corporate Services**

54. The Strategic Director of Finance & Corporate Services notes the recommendations in this report for the procurement strategy decision to join the London Borough Legal Alliance [LBLA] framework for the provision of external legal advice to the council for a period of two years and seven months (from 1 April 2014 – 31 October 2016) with an estimated minimum value of £2 million.
55. The financial implications make clear that, as a demand led contract, it is not possible to finalise future spend but that fees could exceed £2m. The fees secured under the LBLA framework, compared with current and alternative arrangements represent value for money.
56. The costs for using external panel services are met by the client departments from within their existing budgets.
57. There will be both a joining fee and annual fee paid to the LBLA panel, which will be met from the Legal Services divisional budget.

## BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
None		

## APPENDICES

No	Title
None	

## AUDIT TRAIL

<b>Cabinet Member</b>	Finance, Resources & Community Safety		
<b>Lead Officer</b>	Director of Legal Services		
<b>Report Author</b>	Karen Moore, Specialist Lawyer		
<b>Version</b>	Final		
<b>Dated</b>	17 March 2014		
<b>Key Decision?</b>	Yes	<b>If yes, date appeared on forward plan</b>	March 2014
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>			
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>	
Director of Legal Services	Yes	Yes	
Strategic Director of Finance & Corporate Services	Yes	Yes	
Head of Procurement	Yes	Yes	
<b>Contract Review Boards</b>			
Departmental Contract Review Board	Yes	Yes	
Corporate Contract Review Board	Yes	yes	
<b>Cabinet Member</b>	Yes	Yes	
<b>Date final report sent to Constitutional Team</b>	17 March 2014		