

Decision Maker: Executive

29 November 2023

Date: For Pre-Decision Scrutiny by the Executive, Resources and Contracts
PDS Committee on 27 November 2023

Decision Type: Non urgent Executive Key

Title: LONDON BOROUGHS LEGAL ALLIANCE FRAMEWORK
AGREEMENT FOR BARRISTERS

Contact Officer: Shupriya Iqbal- Assistant Director, Legal Services
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Chief Officer: Tasnim Shawkat - Director of Corporate Services and Governance

Ward: All

1. Reason for decision/report and options

- 1.1 Seek authority to join the London Boroughs Legal Alliance (LBLA) Framework Agreement for Barristers.

2. **RECOMMENDATIONS**

- 2.1 Agree to join the new LBLA Framework Agreement for barristers for a period of 3 years with the option to extend for a further year.
- 2.2 In the event the LBLA Framework Agreement is extended for a further year, delegate authority to the Director of Corporate Services and Governance to extend access to the LBLA Framework for a further year after the initial 3 year term.

Impact on Vulnerable Adults and Children

1. Summary of Impact: Not applicable
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Transformation Policy

1. Policy Status: Not Applicable
 2. Making Bromley Even Better Priority (*delete as appropriate*):
To manage our resources well, providing value for money, and efficient and effective services for Bromley's residents.
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Financial

1. Cost of proposal: £1.65m over 3yrs
 2. Ongoing costs: £550k per annum
 3. Budget head/performance centre: Legal Services
 4. Total current budget for this head: £: £2.8m
 5. Source of funding: General Fund Revenue Budget
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Personnel

1. Number of staff (*current and additional*): 0
 2. If from existing staff resources, number of staff hours:
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Legal

1. Legal Requirement: None
 2. Call-in: Applicable
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Procurement

1. Summary of Procurement Implications:
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Property

1. Summary of Property Implications: Not Applicable
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Carbon Reduction and Social Value

1. Summary of Carbon Reduction/Sustainability Implications: Not Applicable
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Impact on the Local Economy

1. Summary of Local Economy Implications: Not Applicable
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Impact on Health and Wellbeing

1. Summary of Health and Wellbeing Implications: Not Applicable
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Customer Impact

1. Estimated number of users or customers (*current and projected*): Not applicable
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

3. COMMENTARY

- 3.1 The LBLA is an alliance of London Boroughs including the London Fire Brigade. The LBLA is currently made up of City of London Corporation, the London Boroughs of Barnet, Bexley, Brent, Bromley, Camden, Croydon, Ealing, Enfield, Greenwich, Hackney, Hammersmith & Fulham, Haringey, Harrow, Havering, Hillingdon, Hounslow, Islington, Kensington & Chelsea, Lambeth, Newham, Redbridge, Southwark, Tower Hamlets, Waltham Forest, City of Westminster, Slough and the London Fire Brigade. There are a few other local authorities outside London which are not members but have access to the Framework Agreement.
- 3.2 Bromley became a member of the LBLA in March 2019 with access to the Solicitors and Barristers Framework Agreements. The current barrister's framework expires on 31 December 2023. The Barristers Framework has been re-tendered by the LBLA with London Borough of Ealing acting as the Contracting Authority. Staff from other authorities including Bromley were part of the tender evaluation panel and provided input into the tender process. The new Agreement commences from 1 January 2024 and ends after a term of 3 years with the option to extend for a further 12 months.
- 3.2 The LBLA Barristers Framework was competitively tendered in full compliance with Public Contracts Regulations 2015. The framework appointed a panel of approved chambers and approved barristers who undertake work on the basis of agreed framework prices. Kennedy Cater Ltd manage the framework on behalf of LBLA authorities and monitor invoices and spend by each Authority with chambers on the panel. Kennedy Cater provide regular spend monitoring reports to each Authority to make it easier to track expenditure. They also spot check invoices to ensure charges are in accordance with framework rates and provide a report where there is a variance.
- 3.3 The framework consists of eleven specialist lots with specialist chambers appointed for each of the lots. The lots are:
- Lot 1: Adult Social Services
 - Lot 2: Children Services
 - Lot 3: Governance and Public Law
 - Lot 4: Criminal litigation and Prosecution
 - Lot 5: Housing
 - Lot 6: Planning
 - Lot 7: Property
 - Lot 8: Civil Litigation.
 - Lot 9: Employment
 - Lot 10: Education
 - Lot 11: Licensing
- 3.4 Barristers are instructed by Legal Services to undertake advocacy in court and give advice on complex matters when required. All instructions to barristers are monitored and approved by the team leader for each team and the Assistant Director for Legal services. Legal Service is a demand led service and spend on barristers is linked to the volume of work the service is instructed on. By joining the framework there will be no obligation to any minimum spend or to

commission through the framework at all. It is possible to commission barristers from outside the framework where necessary. Using a framework however allows a procurement compliant route and the advantage of commercially tendered rates.

- 3.5 Benefits of LBLA membership include administration and management of the framework with expenditure data provided to members, a comprehensive training programme delivered free by solicitors and barristers on the framework for our staff and facilitated special interest group meetings.
- 3.6 The majority of the spend on counsel's fee relate to childcare cases. Other spend relates to other departments including planning, enforcement, employment and housing litigation costs.

4. FINANCIAL IMPLICATIONS

- 4.1 The estimated spend on counsel's fee under the framework is £550k per annum, this equates to £1.65m over the life of the contract, rising to a possible £2.2m if the option to extend for a further 12 months is taken up.
- 4.2 The current budget for Counsel fees is £490k, this does not include in year contingencies for exceptional cases where a contingency of £635k has been set aside for future litigation costs and counsel fees. This will be continued in future years to mitigate the pressure from the general fund budget.
- 4.3 The spend against the contract is an estimation based on current usage, as this is a demand led service it is not expected to generate savings against budget but will enable the Council to benefit from competitive prices and standard agreed rates, achieving the best possible value for our money.
- 4.4 The last 3-year average of spend against the framework stands at approx. £514k, with this year projected to come in budget at £490k, this shows the service is mitigating the pressure and the framework is assisting in bringing costs down.
- 4.5 The membership fees of £7,057 per annum, totalling £21,171. for the three year period of the contract, or £28,228 if the option to extend for a further 12 months is taken up. This cost will be met from existing budget within the Legal Operational Services cost centre.

5. LEGAL IMPLICATIONS

- 5.1 This report requests Members agree to join the new LBLA Framework Agreement for barristers for a period of 3 years with the option to extend for a further year. In the event the LBLA Framework Agreement is extended for a further year, Members are asked to delegate authority to the Director of Corporate Services to extend access to the LBLA Framework for a further year after the initial 3-year term.
- 5.2 There is no statutory requirement for the Council to procure barristers' services, but these services are vital to the legal function of the Council as detailed in this report. The Council has the general power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions under section 111 of the Local Government Act 1972.
- 5.3 These legal services are public contracts as defined by Schedule 3 of the Public Contracts Regulations 2015 (the Regulations). They have therefore been procured as above threshold services under the Light Touch Regime.

- 5.4 The LBLA was established in 2009 as a collaborative partnership of local authority legal teams in the London area. The LBLA has facilitated a legally compliant tender led by the London Borough of Ealing to establish a Barristers Framework for local authorities to access more competitive pricing for barristers' services.
- 5.5 Contract Procedure Rule 3.5 permits framework agreements to be used by the Council but this must be done in accordance with CPR 3.5.1, "In seeking to demonstrate Value For Money, the Head of Procurement must be consulted prior to commencing any Procurement process using any Framework Contract, Dynamic Purchasing System arrangement or Catalogue provided by Crown Commercial Services or a similar Central Purchasing Organisation Contract, or Joint Contracts with another Authority. The terms and conditions of contract applicable to any such arrangement, including the requirement to undertake competition between providers, must be fully complied with and agreed by the Assistant Director Governance & Contracts."
- 5.6 If the decision to join is approved by Members, the Council will need to sign an Access Agreement to enable it to use the framework agreement.

6. PROCUREMENT IMPLICATIONS

- 6.1 This report seeks to join the new LBLA Framework Agreement for barristers for a period of 3 years with the option to extend for a further year at an approximate cost of £2.2m.
- 6.2 The Council is able to make use of the Framework and has been properly included on the Contract Notice.
- 6.3 The award will be conducted in line with 7.4 of the Council's Contract Procedure Rules.
- 6.4 As the value of the contract is above the thresholds set out in the PCR 2015, it must be conducted in line with cl. 33 of the same.
- 6.5 For the requirements set out above, the method of direct award can be used under the terms of the framework.
- 6.6 As the contract value is over £30,000 including VAT, an award notice will need to be published on Contracts Finder.
- 6.7 As the contract value is over the thresholds set out in the PCR 2015, a Find A Tender award notice must be published.
- 6.8 In accordance with Clause 3.5 of the Contract Procedure Rules, the Head of Procurement, or their representative, has been consulted regarding the use of the Framework.
- 6.9 The Council's Contract Procedure Rules require the following for authorising an award via a framework for a contract of this value; the Approval of the Executive following Agreement by the Portfolio Holder, Chief Officer, the Assistant Director Governance & Contracts, the Director of Corporate Services and the Director of Finance must be obtained. In accordance with CPR 2.1.2, Officers must take all necessary professional advice.
- 6.10 The actions identified in this report are provided for within the Council's Contract Procedure Rules, and the proposed actions can be completed in compliance with their content.