

<p>London Borough of Hammersmith & Fulham</p> <p>CABINET</p> <p>4 MARCH 2019</p>		
AWARD OF CONTRACT FOR CONTRACTS AND PROCUREMENT LEGAL ADVICE		
Report of the Cabinet Member for Finance and Commercial Services – Councillor Max Schmid		
<p>Open Report with exempt appendix</p> <p>Appendix A is exempt from disclosure on the grounds that it contains information relating to the financial or business affairs of a particular person (including the authority holding that information) under paragraph 3 of Schedule 12A of the Local Government Act 1972, and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p>		
<p>Classification - For Decision</p> <p>Key Decision: Yes</p>		
<p>Consultation Please state which other services have been consulted when drafting this report.</p>		
Wards Affected: None		
Accountable Director: Hitesh Jolapara, Strategic Director of Finance and Governance		
<p>Report Author: Rhian Davies, Monitoring Officer</p>		<p>Contact Details: Tel: 07827 663794</p> <p>E-mail: rhian.davies@lbhf.gov.uk</p>

1. EXECUTIVE SUMMARY

- 1.1 The Council's Legal Services became a sovereign service on 1st April 2018. At that time the Council did not employ Procurement and Contract lawyers as these lawyers had previously been employed by either Royal Borough of Kensington and Chelsea or Westminster City Council. A contract was therefore awarded to Sharpe Pritchard Solicitor to provide all legal advice to the Council for 12 months as from 1st April 2018. This report seeks to award

a further contract for this area of legal advice to Sharpe Pritchard for 12 months commencing on 1st April 2019.

2. RECOMMENDATIONS

- 2.1 That the Council call off the London Boroughs Legal Alliance (“LBLA”) Framework in order to award a 12 months contract for contract and procurement legal advice from 1st April 2019.
- 2.2 That Cabinet award a contract to Sharpe Pritchard Solicitors for contract and procurement legal advice from 1st April 2019 and that the value of the contract outlined in the exempt appendix A be noted.
- 2.3 That authority be delegated to the Assistant Director of Legal and Democratic Services, in consultation with the Cabinet Member for Finance and Commercial Services, to finalise the terms and conditions of this contract and to take any other necessary steps to implement the decision in 2.2 above.

3 REASONS FOR DECISION

- 3.1 The Council does not employ any contract lawyers. All contract and procurement legal advice has been provided by Sharpe Pritchard Solicitors since 1st April 2018, when the sovereign Legal Services was created. It is proposed that the Council award a further contract for this advice for 12 months to Sharpe Pritchard Solicitors, via the LBLA framework.

4 PROPOSAL AND ISSUES

- 4.1 It is difficult for Local Authorities to recruit and retain contract solicitors as the salaries in local government are substantially lower than those offered within the private sector. Prior to becoming a sovereign service, the Council’s legal advice for contracts and procurement matters was obtained from both external solicitors and the Tri-Borough Legal Services. Although RBKC and WCC have historically paid such lawyers higher wages, the Tri-Borough service still had to rely on agency staff for such advice which can lead to a lack of continuity on cases.
- 4.2 It is proposed that the Council call off the LBLA framework to award a contract for the provision of all of the Council’s contract and procurement legal advice from 1st April 2019.
- 4.3 Sharpe Pritchard Solicitors have been providing all contract and procurement advice to the Council since 1st April 2018. This contract has worked well to date, the Assistant Director has received positive feedback from officers and lawyers from Sharpe Pritchard sit with the in-house team which means they are easily accessible to officers.

5 OPTIONS AND ANALYSIS OF OPTIONS

Option 1

- 5.1 Recruit a team of in-house lawyers to undertake the Council's contract and Procurement legal advice and assistance.
- 5.2 This option would require the Council to rely solely on temporary staff to provide contract legal advice from 1st April 2019 as there is insufficient time to recruit permanent staff. Agency Staff are not only costlier to the Council, but they can also leave at short notice. Although the Service has been sovereign since April 2018 a service review was only completed in December 2018 leaving insufficient time to attempt to recruit permanent staff. It is likely that a salary supplement would be required to attract permanent staff. This option is not recommended at this stage but will be considered during the coming financial year.

Option 2

- 5.3 Spot purchase advice and assistance from external solicitors by calling off from the LBLA panel.
- 5.4 This is not recommended as it does not provide any continuity to the Council as a number of different firms would need to be instructed in order to manage the caseloads. By awarding a contract to one firm that firm can identify a team of lawyers to concentrate on the contract. Additionally, under such an arrangement the solicitors would not sit with the in-house legal team and so would not be available on site.

Option 3

- 5.5 Award a 12-month contract for all contract and procurement advice to Sharpe Pritchard Solicitors by calling off the LBLA framework.
- 5.6 This is the recommended option. There are a number of benefits, as follows, to the Council:
- The Council will have certainty of expenditure on legal advice for contracts and procurement. Only "major projects" (defined as requiring over 100 hours) would be additional to the agreed annual fee and those major projects would be negotiated at preferential rates.
 - A professional and reliable service will continue to be provided as from 1st April 2019
 - Continuity of service for existing work, removes risk of having to cover sick leave, holiday or absences
 - No overheads, administration or management costs for contract legal advice.
 - Opportunities for added value, for example:
 - Free training by external lawyers
 - Set of up to date precedents

6 CONSULTATION

- 6.1 The proposal to purchase all contract and procurement advice from the LBLA panel has been considered by the Strategic Director of Finance and Governance and the Cabinet Member for Finance and Commercial Services.

7 EQUALITY IMPLICATIONS

- 7.1 There will be no negative implications for groups with protected characteristics, under the terms of the Equalities Act 2010, with the calling off of the LBLA Framework and the award of a 12-month block contract to Sharpe Pritchard Solicitors.

Implications completed by: Peter Smith, Head of Policy & Strategy, tel. 020 8753 2206.

8 LEGAL IMPLICATIONS

- 8.1 The Council has statutory powers under its constitution to provide suitable staff and resources to facilitate discharge of its functions including making provision for provision of suitable legal advice.
- 8.2 The proposal to outsource the contract and procurement law related legal services to Sharpe Pritchard by calling off LBLA Solicitor's Framework to award a block contract for a period of 12 months for a fixed price would be in compliance of the Council's obligations under the Public Contracts Regulations 2015.

Implications completed by: Janette Mullins, Chief Solicitor Litigation and Social Care

9 FINANCIAL IMPLICATIONS

- 9.1 The financial implications are contained within exempt appendix A.

Implications completed by: Will Stevens, Principal Accountant - Finance and governance

Implications verified by: Emily Hill, Assistant Director, Corporate Finance, tel. 020 8753 3145.

10 COMMERCIAL IMPLICATIONS

- 10.1 The report seeks approval to directly award the contract for the provision of legal services Sharpe Pritchard Solicitors under the LBLA Framework.
- 10.2 The framework agreement has been procured in compliance with the Public Contracts Regulations 2015 (PCR).

- 10.3 The framework agreement allows for a direct award, but a clear audit trail shall be followed in order to prove that it is appropriate, having regard to the circumstances, to make a direct award.
- 10.4 A Contract Award Notice must be placed in Contracts Finder in accordance with Regulation 112 of PCR2015 and a contract entry created in the Council's contracts register.
- 10.5 The contract should be managed accordingly, based on the key performance indicators set out in the agreement.
- 10.6 The report demonstrated the arrangement presents value for money for the Council and it is the most commercially viable short-term option.
- 10.7 *Implications verified/completed by: Andra Ulianov, Procurement Consultant, tel. 020 8753 2284.*

11 RISK MANAGEMENT

- 11.1 The proposal contributes positively to the Council achieving its priority of being Ruthlessly Financially Efficient through expert legal advice on procurement, contracts and management of commercial risk. The management of continuity risk is also a consideration in accordance with risk number 5 and managing our statutory duties, risk 7 on the Council's corporate risk register.

Implications verified by: Michael Sloniowski, Risk Manager, [tel: 020 8753 2587](tel:02087532587).

12 IT IMPLICATIONS

- 12.1 It is assumed that Sharpe Pritchard will continue to use its own IT systems to hold H&F cases. It would be advisable to review the existing Privacy Impact Assessment to confirm all necessary controls are still in place for the handling of sensitive data.
- 12.2 The new contract will need to include H&F's data protection and processing schedule. This is compliant with the General Data Protection Regulation (GDPR) enacted from 25 May 2018.
- 12.3 Implications verified/Completed by: Veronica Barella, Chief Information Officer, tel. 020 8753 2927.

13 IMPLICATIONS FOR LOCAL BUSINESS

- 13.1 There are no implications for local businesses.
- 13.2 Implications verified by: Albena Karameros, Economic Development Team, tel. 020 7938 8583.

14. BACKGROUND PAPERS USED IN PREPARING THIS REPORT - none

1. LIST OF APPENDICES

Exempt Appendix A