

Public Document Pack



OVERVIEW & SCRUTINY COMMITTEE

Tuesday, 23 April 2019 at 6.00 pm
Council Chamber, Civic Centre, Silver Street,
Enfield, EN1 3XA

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Councillors : Derek Levy (Chair), Huseyin Akpinar, Tolga Aramaz, Susan Erbil,
Gina Needs (Vice-Chair), Lee David-Sanders and Edward Smith

Education Statutory Co-optees: 1 vacancy (Church of England diocese representative), Simon Goulden (other faiths/denominations representative), Tony Murphy (Catholic diocese representative), Alicia Meniru & 1 vacancy (Parent Governor Representative).

Enfield Youth Parliament Co-optees (2)
Support Officer – Susan O’Connell (Governance & Scrutiny Officer)
Elaine Huckell (Governance & Scrutiny Officer)

AGENDA – PART 1

1. WELCOME & APOLOGIES

2. DECLARATIONS OF INTEREST

Members of the Council are invited to identify any disclosable pecuniary, other pecuniary or non-pecuniary interests relevant to the items on the agenda.

3. CALL IN: ESPO FRAMEWORK 664-117 CONTRACT AWARDS (Pages 1 - 26)

To receive and consider a report from the Director of Law and Governance outlining details of a call-in received on the Portfolio Decision taken on ESPO Framework 664-117 Contract Awards (Report No. 222)

The decision that has been called in was a Portfolio Decision taken on 26 March 2019 and included on the Publication of Decision List No: 58/18-19 (List Ref:1/58/18-19) issued on 26 March 2019.

It is proposed that consideration of the call-in be structured as follows:

- Brief outline of the reasons for the call-in by representative (s) of the members who have called in the decision

- Response to the reasons provided for the Call-in by a Cabinet Member responsible for taking the decision
- Debate by Overview and Scrutiny Committee and agreement of action to be taken

Please also see the Part 2 agenda

4. CALL IN: PROCUREMENT OF EXTERNAL LEGAL ADVISERS FOR THE MERIDIAN WATER PROGRAMME (Pages 27 - 50)

To receive and consider a report from the Director of Law and Governance outlining details of a call-in received on the Operational Decision taken on Procurement of External Legal Advisers for the Meridian Water Programme (Report No. 221)

The decision that has been called in was an Operational Decision taken on 27 March 2019 and included on the Publication of Decision List No: 60/18-19 (List Ref: 1/60/18-19) issued on 29 March 2019.

It is proposed that consideration of the call-in be structured as follows:

- Brief outline of the reasons for the call-in by representative (s) of the members who have called in the decision
- Response to the reasons provided for the Call-in by a Cabinet Member responsible for taking the decision
- Debate by Overview and Scrutiny Committee and agreement of action to be taken

Please also see the Part 2 agenda

MUNICIPAL YEAR 2018/2019 REPORT NO. 222**MEETING TITLE AND DATE:**

**Overview & Scrutiny
Committee,
23 April 2019**

REPORT OF:

Director of Law & Governance

Agenda – Part: 1	Item:
Subject: Call in: ESPO Framework 664-17 Contract Awards	
Wards: All	
Key Decision No: KD 4778	
Cabinet Member consulted: N/A	

Contact officers and telephone
numbers:

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Claire Johnson, Head of Governance & Scrutiny

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E mail: claire.johnson@enfield.gov.uk

1. EXECUTIVE SUMMARY

1.1 This report details a call-in submitted in relation to the following decision:

Portfolio Decision (taken on 26/03/19)

1.2 Details of this decision were included on Publication of Decision List No. 58/18-19 (Ref. 1/58/18-19 – issued on 26 March 2019)

1.3 In accordance with the Council's Constitution, Overview and Scrutiny Committee is asked to consider the decision that has been called-in for review.

1.4 The members who have called-in this decision do not believe it falls outside of the Council's Policy Framework.

2. RECOMMENDATIONS

2.1 That Overview and Scrutiny Committee considers the called-in decision and either:

- (a) Refers the decision back to the decision-making person or body for reconsideration setting out in writing the nature of its concerns. The decision-making person or body then has 14 working days in which to reconsider the decision; or
- (b) Refer the matter to full Council; or
- (c) Confirm the original decision.

Once the Committee has considered the called-in decision and makes one of the recommendations listed at (a), (b) or (c) above, the call-in process is completed. A decision cannot be called in more than once.

If a decision is referred back to the decision-making person or body; the implementation of that decision shall be suspended until such time as the decision making person or body reconsiders and either amends or confirms the decision, but the outcome on the decision should be reached within 14 working days of the reference back. The Committee will subsequently be informed of the outcome of any such decision.

3. BACKGROUND/ INTRODUCTION

3.1 Please refer to Section 3 in the Decision Report.

4. ALTERNATIVE OPTIONS CONSIDERED

None – Under the terms of the call-in procedure within the Council's Constitution, Overview & Scrutiny Committee is required to consider any eligible decision called-in for review. The alternative options available to Overview & Scrutiny Committee under the Council's Constitution, when considering any call-in, have been detailed in section 2 above.

5. REASONS FOR RECOMMENDATIONS

To comply with the call-in procedure within the Council's Constitution.

6. COMMENTS OF THE EXECUTIVE DIRECTOR RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

The financial implications relating to the called-in decision have been detailed in Section 6.1 of the Portfolio Decision Report.

6.2 Legal Implications

S 21, S 21A-21C Local Government Act 2000, s.19 Police and Justice Act 2006 and regulations made under s.21E Local Government Act 2000 define the functions of the Overview and Scrutiny committee. The functions of the committee include the ability to consider, under the call-in process, decisions of Cabinet, Cabinet Sub-Committees, individual Cabinet Members or of officers under delegated authority.

Part 4, Section 18 of the Council's Constitution sets out the procedure for call-in. Overview and Scrutiny Committee, having considered the decision may: refer it back to the decision-making person or body for reconsideration; refer to full Council or confirm the original decision.

The Constitution also sets out at section 18.2, decisions that are exceptions to the call-in process.

6.3 Property Implications

The property implications relating to the called-in decision have been detailed in Section 6.3 of the Portfolio Decision Report.

7. KEY RISKS

The key risks identified relating to the called-in decision have been detailed in the Portfolio Decision Report.

8. IMPACT ON COUNCIL PRIORITIES - CREATING A LIFETIME OF OPPORTUNITIES IN ENFIELD

The way in which the called-in decision impacts on the Council priorities relating to good homes in well-connected neighbourhoods, sustain strong and healthy communities and build our local economy to create a thriving place have been detailed in the Portfolio Decision Report.

9. EQUALITIES IMPACT IMPLICATIONS

The equalities impact implications relating to the called-in decision have been detailed in the Portfolio Decision Report.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

The performance management implications identified relating to the called-in decision have been detailed in the Portfolio Decision Report.

11. HEALTH AND SAFETY IMPLICATIONS

The health and safety implications identified relating to the called-in decision have been detailed in the Portfolio Decision Report.

12. PUBLIC HEALTH IMPLICATIONS

The public health implications identified relating to the called-in decision have been detailed in the Portfolio Decision Report.

Background Papers

None

APPENDIX 1

**Call-In: Portfolio Decision: ESPO Framework
664-17 Contract Awards**

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MUNICIPAL YEAR 2018/2019 REPORT NO.**ACTION TO BE TAKEN UNDER
DELEGATED AUTHORITY****PORTFOLIO DECISION OF:**

Cllr Nesil Caliskan
Leader

REPORT OF:

Sarah Cary
Executive Director
Place

Agenda – Part: 1**KD No.: 4778****Subject:****ESPO Framework 664-17 Contract Award****Wards: All**

Contact officer and telephone number: Lisa Woo - 020 8379 2873

Email: lisa.woo@enfield.gov.uk

1. EXECUTIVE SUMMARY

- 1.1 On 7 September 2018, Portfolio Report KD 4739 authorised the procurement approach for appointing a Consultant team to support planning, regeneration, property and housing services across the Place Department. This procurement was undertaken to support the Council's increased ambitions to deliver housing, support our town centres and lead on Meridian Water.
- 1.2 This report recommends awarding a contract for the provision of multi-disciplinary planning and design services to the Place department to 2022. The services will help establish robust designs and plans for the Local Plan as well as key regeneration sites in the borough.
- 1.3 The procurement was conducted via a mini-competition on the London Tenders Portal which was approved by the Council's procurement and Commissioning Hub.
- 1.4 The recommendation is to award the contract to Consultant A, who has scored highly on quality and price.
- 1.5 A Part 2 report sets out additional detail around the selection process and the fees associated with the work.

2. RECOMMENDATIONS

- 2.1 Agree to award the contract to Consultant A.
- 2.2 See part 2 Report

3. BACKGROUND

- 3.1 The joint procurement of planning-led expert multi-disciplinary services across the Place department has been initiated to bring together an expert team of consultants. Report KD 4739 authorised the procurement approach for appointing a consultant team.
- 3.2 The scope of the procurement reflects the Capital Strategy (2019/20) and the Four-Year Capital Programme (2019/20 – 2022/23) approved by the Cabinet (KD4824).
- 3.3 A cross-departmental procurement is efficient as well as providing consistency in design and technical advice.
- 3.4 The provision of multi-disciplinary planning and design services to provide specialist services for the establishment of technical evidence and add capacity to the current Place activities is seen as a cost-effective option that can be drawn on as required.

3.5 Procurement Process

- 3.6 The London Borough of Enfield sought to appoint a consultant via a Mini-competition exercise from the ESPO Framework Agreement for the provision of Consultancy Services – Framework reference: '664-17 Lot 8g Regeneration and Regional Development'.
- 3.7 Alternative service procurement routes explored include;
- 3.8 In-house service: The Council is in the process of building its in-house capacity and it should remain a default option that the Council undertake and manage planning work in-house as default. Where additional capacity or expertise is required, the Council's Planning Service would be able to draw down from the Framework if appropriate
- 3.9 Commission consultants on individual contracts: This would require internal management resources to procure and take several months to achieve, particularly if each element was separately tendered however would also have benefits in terms of being able to retain autonomy to select specific suppliers suited to specific pieces of work. Appointment of a multi-agency team experienced in this type of work has benefits including potential efficiency and economies of scale however the option should remain available to the Council to procure individual consultants if and as required. Co-ordination is important in projects such as this and this role will be discharged by the Council's Planning Service.
- 3.10 Competitively tender: This option was explored but unlikely to achieve a better service outcome than calling off from a third-party framework designed for this type of commission. This option should however remain open in the future,

- 3.11 Framework agreements considered; The Crown Commercial Service (CCS) was discounted as the frameworks available did not match the services required.
- 3.12 The HCA framework was discounted due to an incompatible procurement process with the system, however could potentially be appropriate in the future.
- 3.13 SCAPE was discounted as it is a single provider framework so there is no further opportunity for a mini-competition.
- 3.14 The ESPO Framework is a useful additional option for provision of these services, for the following reasons:
- The Framework services meet all the Council's needs for Planning and design services.
 - The Framework has been through a full EU procurement process; as such, it will have engaged with a wide market.
 - Service providers listed on the framework were assessed during the framework procurement process for their financial stability, track record, experience and technical & professional ability.
 - Using the Framework will mean that a contract will be in place sooner.
- 3.15 The successful Strategic Planning-led multidisciplinary consultant will be available to support 2018 – 2022 support planning, regeneration, property and housing services across the Place Department including Meridian Water as when required, as determined by the relevant Council services.
- 3.16 The technical brief for the tender is set out to provide flexibility and the autonomy to the Council to decide whether and what support is required. There is no obligation to draw down the service.
- 3.17 **Tender process and scoring**
- 3.18 On 21st September 2018 the Council invited tenders from all Service Providers contained within Lot 8g 'Regeneration and Regional Development' to submit a tender, except for those who have requested to be excluded from the tender.

- 3.19 Invitation was sent to nine bidders and it ran for 4 weeks, closing on the 19th October 2018. One bid was received, and this was compliant.
- 3.20 The bid was evaluated on an overall weighted ratio of 70:30 for quality and price respectively. The 70% (quality) was sub-divided into the following;

Quality	Weighting
Relevant ability	10%
Understanding of requirements	10%
Technical Skills/ Staff	10%
Management methodology for implementation and stakeholder management	30%
Approach to sustainability	10%
Sub-Contractors.	For information only, not scored
Quality: Total	70%

The overall scores for the bidder is as follows:

	Total Price Score 30%	Total Quality Score 70%	Summary Quality and Price Score
Bidder A	30.00%	55.50%	85.50%

- 3.21 Based on the above tender evaluation, it is recommended that Bidder A be appointed. The rates provided for are competitive and on average in line the wider framework rates for similar service.

- 3.22 See part 2.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 Do nothing

If the Council did nothing it could cause delays in the plan-making process and further deter and delay regeneration in the borough as well as the delivery of much-needed homes.

4.2 Ad hoc – Commission consultants on individual contracts

4.2.1 This would require significant internal management resources to procure and could potentially take several months to achieve, particularly if each element was separately tendered. The potential lack of consistency could create several issues for the Place department, however there are also benefits to this approach and the Planning Service should retain the choice to appoint consultants ad-hoc if deemed appropriate and required by them

4.2.2 It is prudent to appoint a multi-agency team, experienced in this type of work that can be accessed if and as required, at the discretion of the Planning Service. Co-ordination is important in projects such as this and the Planning Service is building its capacity to be manage the Local Plan and other planning projects, programmes and services.

4.2.3 Please refer to Part 2.

5. REASONS FOR RECOMMENDATIONS

5.1 The recommendation is to enter into a contract with Bidder A who meets the Council's needs for Planning and design services.

5.2 Please refer to part 2

6. COMMENTS FROM OTHER DEPARTMENTS

6.1 Financial Implications

See part 2 of report

6.2 Procurement Implications

6.2.1 The tender was a call-off from the ESPO Framework Agreement for the provision of Consultancy Services – Framework reference: '664-17 Lot 8g Regeneration and Regional Development'. Due diligence was carried out by the Procurement and Commissioning Hub (P&C Hub) on the Council's ability to use the framework. The project was mini-tendered in accordance with the guidelines provided by ESPO who operate the framework. The tender return was evaluated by the team. The P&C Hub

were involved in the procurement and the process was carried out fairly and transparently.

- 6.2.2 It is noted that one tender was returned but the tendered rates were compared with the competitively tendered framework rates for this consultant and compared favourably with them.

6.3 Legal Implications

- 6.3.1 The Council has the general power of competence pursuant to s.1 (1) of the Localism Act 2011 to do anything that individuals generally may do provided it is not prohibited by legislation and subject to Public Law principles. Section 111 of the Local Government Act 1972 permits local authorities to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of their functions. The proposed use of the Framework for the provision of Consultancy Services is incidental to the discharge of the Council's functions.
- 6.3.2 The Council must comply with its Contract Procedure Rules. In doing so, the Council must obtain the minimum number of quotes necessary depending on the estimated total contract value.
- 6.3.3 The Council must also adhere to the Duty of Best Value in accordance with the Local Government Act 1999.
- 6.3.4 All agreements (including all associated documentation) arising as a result of the recommendations contained in this report must be in a form approved by the Director of Law and Governance.

7. KEY RISKS

Risk	Impact	Mitigating actions
Delays in awarding contract	<p>Delay in delivering key aspects of Meridian Water, quality of delivery and developer negotiations.</p> <p>Delays in delivering forthcoming/future developments borough wide aligned with Local Plan preparation and delivery.</p> <p>Current Local Plan policy not reflecting changes in overall growth targets and both National and London policy changes.</p>	The tender received is compliant and presents good value for the Council. Contract should be awarded.

8. IMPACT ON COUNCIL PRIORITIES – CREATING A LIFETIME OF OPPORTUNITIES IN ENFIELD

8.1 Good homes in well-connected neighbourhoods

The appointment of a strong town planning-led multidisciplinary consultant team as described in this report would provide access to support to the Planning Service in its work to enable the development of new high-quality homes across the borough.

8.2 Sustain strong and healthy communities

There is a strong relationship between health and the environment. Town planning and design play a crucial role in managing the determinants of health including employment, transport, housing, education and environment. Appointing an expert multidisciplinary team to provide access to support to the Council's Planning Service in the development of strategic plans and policies such as Local Plan, ELAAP and Meridian Water Masterplan SPD will help align planning and health strategies to sustain strong and healthy communities.

8.3 Build our local economy to create a thriving place

The expert consultant team will be available to provide professional and technical expertise where required to the Council's Planning Service required to support the delivery of Planning and design services in the borough to deliver improved infrastructure, provide jobs and employment opportunities, community facilities, businesses etc.

9. EQUALITIES IMPACT IMPLICATIONS

9.1 Local authorities have a responsibility to meet the Public Sector Duty of the Equality Act 2010. The Act gives people the right not to be treated less favourably because of any of the protected characteristics. It is important to consider the needs of the diverse groups with protected characteristics when designing and delivering services or budgets so people can get fairer opportunities and equal access to services.

9.2 Corporate advice has been sought regarding equalities and an agreement has been reached that an equalities impact assessment is not required at this stage to agree the procurement approach and authorise the use of the ESPO framework. However, it is recommended that a Predictive Equalities Impact Assessment be undertaken following the sign off and before implementation to ensure that the service benefits the community and that it is fully accessible particularly by those in the protected characteristic groups.

10. PERFORMANCE AND DATA IMPLICATIONS

(If you require any advice on completing this section, please contact Sam Buckley on extension 3362)

11. PUBLIC HEALTH IMPLICATIONS

The public health implications of town planning are immense. This has the potential to either build in or exclude health behaviours such as smoking, the consumption of good food, physical activity and alcohol consumption. Some of this may be policy but all behaviours can be either encouraged or discouraged by such as the Healthy Streets concept as outlined by the World Health Organisation (WHO) and in London Mayor in the Mayor's Transport Strategy, the Town and Countryside Planning Association (TCPA) guidance on health promoting environments and healthy cities and examples such as Copenhagen, Vancouver, the NHS Healthy New Towns and the WHO Healthy Cities checklist. No appointment should be made unless applicants can clearly demonstrate they understand and have implemented such concepts.

Background Papers

None.

APPENDIX 2

**Call-in request form submitted by 8 members of
the Council**

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CALL-IN OF DECISION

(please ensure you complete all sections fully)

Please return the completed original signed copy to:

Claire Johnson, Democratic Services Team, 1st Floor, Civic Centre

TITLE OF DECISION: ESPO FRAMEWORK 664-17 CONTRACT AWARD
KD 4778

DECISION OF: COUNCILLOR NESIL CALISKAN (LEADER of the COUNCIL)


DATE OF DECISION LIST PUBLICATION: 26 MARCH 2019

LIST NO: 58/18-19

(* N.B. Remember you must call-in a decision and notify Democratic Services Team within **5 working days** of its publication).

A decision can be called in if it is a corporate or portfolio decision made by either Cabinet or one of its sub-committees, or a key decision made by an officer with delegated authority from the Executive.

(a) COUNCILLORS CALLING-IN (The Council's constitution requires seven signatures or more from Councillors to call a decision in).

(1) Signature:  Print Name: EDWARD SMITH...

(2) Signature:  Print Name: CLARE DE SILVA...

(3) Signature:  Print Name: A MILNE...

(4) Signature:  Print Name: MARIA ALEXANDROU...

(5) Signature:  Print Name: JIM STEVED...

(6) Signature:  Print Name: LINDSAY RAWLE...

(7) Signature:  Print Name: GLYNIS VINCE...

(8) Signature:  Print Name: DAINE HAYWARD...

(b) SCRUTINY PANEL RESOLUTION (copy of minute detailing formal resolution to request call-in to be attached).

NAME OF PANEL:

DATE OF PANEL:

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APPENDIX 3

**Reasons for Call-in by Councillor calling in the
decision**

&

Briefing Note in response to called in decision

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(1) Reason why decision is being called in:

Decision KD4778 is being called in because: -

1. **It is not clear that the report considered by the decision maker fully demonstrates that value for money has been achieved.** Only one bid was received for the provision of multi-disciplinary planning and design services over the next four years at Meridian Water at the cost of approximately £1million per annum. The important principle of securing value for money from contracts that the council awards is placed at risk if there is only one bid. How is value for money demonstrated?
2. **It is not clear from the report that the decision maker was fully appraised of the financial penalties levied against the parent company in the US of c.\$110m since 2000 against the one bidder for the contract.** The successful bidder is reputed to be the largest engineering firm in the world and its subsidiaries have reportedly been in various contractual disputes with the US Government and others. It is reasonable to question whether this tendering process has achieved a desirable outcome on value for money or other grounds.
3. **The timescale for bidders to respond was only four weeks for a multi-disciplinary planning and design service. Given that only one bid was received is the decision maker confident that value for money is likely to be achieved?** The scrutiny process is designed, inter alia, to review decisions made by the Administration. The industry's custom and practice suggests the ideal procurement process results in 3 or 4 suitable firms submitting tenders that provide prices and quality within a realistic range. In this instance, tenderers were only given 4 weeks to respond and the field invited to tender was too large for the firms to have a realistic chance of success. It is unclear from the report whether the use of more refined award criteria, a different Lot selection or the use of a different framework would have attracted more suitable tenderers.

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(1) Reason why decision is being called in:

Decision KD4778 is being called in because: -

- 1. It is not clear that the report considered by the decision maker fully demonstrates that value for money has been achieved.** Only one bid was received for the provision of multi-disciplinary planning and design services over the next four years at Meridian Water at the cost of approximately £1million per annum. The important principle of securing value for money from contracts that the council awards is placed at risk if there is only one bid. How is value for money demonstrated?

RESPONSE

The ESPO framework 664 lot 8g Regeneration and Regional Development has 10 suppliers. Out of 10 suppliers, five of them confirmed their interest. We reached out to the companies who did not submit the bid to confirm their reason. The main reasons were that they were unable to take on further commitments and that they do not have the required resources for the project.

The sole bidder's responses gave us the confidence that they have the aptitude and the capability to deliver the broad range of consultancy services required. The breadth of consultancy services offered, can help reduce the Council's cost of acquiring multiple consultancy services. It alleviates the administrative burden by reducing the requirement to process multiple procurements. Also, significant management resources are required for evaluating tenders and managing multiple contracts, so efficiency is created by improving project and contract management functions. By aggregating demand for services, it makes it possible to get greater leverage from the supplier throughout the lifecycle of the commission. For example, the bidder will be able to create additional value by helping the Council align multiple interdependencies across regeneration and planning activities.

In case the bidder fails to consistently provide the quality of services sought, the Council has the option to opt out from the contract. The contract will be established for 6 months with options to extend. The services are commissioned through a call off arrangement only as when the needs are identified. Break clauses are also included in the contract to undertake performance reviews and to refine the scope. This provides the opportunity to terminate the commission if the services are no longer required or the Council is not satisfied with the bidder's performance.

- 2. It is not clear from the report that the decision maker was fully appraised of the financial penalties levied against the parent**

company in the US of c.\$110m since 2000 against the one bidder for the contract. The successful bidder is reputed to be the largest engineering firm in the world and its subsidiaries have reportedly been in various contractual disputes with the US Government and others. It is reasonable to question whether this tendering process has achieved a desirable outcome on value for money or other grounds.

RESPONSE

The parent company is the ultimate Holding Company and the record shows that the contractual disputes with the subsidiaries were made in the US. The bidding company is an operational company based in the UK and its operation is governed by UK and EU Public Contract Regulations.

Service providers listed in the ESPO framework were assessed through the UK/EU compliant procurement process for their financial stability, track record, experience and technical & professional ability. We believe this tendering process has achieved a desirable outcome based on the security provided by the ESPO framework vetting process as well as the professional indemnity insurance fully covered by the bidding company.

3. **The timescale for bidders to respond was only four weeks for a multi-disciplinary planning and design service. Given that only one bid was received is the decision maker confident that value for money is likely to be achieved?**

The scrutiny process is designed, inter alia, to review decisions made by the Administration. The industry's custom and practice suggests the ideal procurement process results in 3 or 4 suitable firms submitting tenders that provide prices and quality within a realistic range. In this instance, tenderers were only given 4 weeks to respond and the field invited to tender was too large for the firms to have a realistic chance of success. It is unclear from the report whether the use of more refined award criteria, a different Lot selection or the use of a different framework would have attracted more suitable tenderers

RESPONSE

We believe for procurement of consultancy services, it is reasonable to provide four weeks timescale to respond. The suppliers were first notified in March 2018 with enough lead in time to help understand the purpose and logistics of the procurement. The team followed up by sending several reminder emails. The suppliers who did not respond were contacted individually to ask for reasons for not intending to bid. The main reasons were that they were unable to take on further commitments and that they do not have the required resources for the project

Options for different Lot selections had been considered, but it was ruled out as it was deemed to require significant management and administrative effort in processing multiple procurements which

involves seeking, evaluating tenders and managing multiple contracts once the bidders are appointed.

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MUNICIPAL YEAR 2018/2019 REPORT NO. 221**MEETING TITLE AND DATE:**

**Overview & Scrutiny
Committee, 23 April 2019**

REPORT OF:

Director of Law & Governance

Contact officers and telephone
numbers:

Jeremy Chambers, Director Law and Governance

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Email: Jeremy.chambers@enfield.gov.uk

Claire Johnson, Head of Governance & Scrutiny

Tel: 020 8379 4239

E mail: claire.johnson@enfield.gov.uk

Agenda – Part: 1	Item:
Subject: Call in: Procurement of external legal advisers for the Meridian Water Programme	
Wards: Upper Edmonton	
Key Decision No: KD4777	
Cabinet Member consulted: N/A	

1. EXECUTIVE SUMMARY

1.1 This report details a call-in submitted in relation to the following decision:

Operational Decision (taken on 27/03/19):

1.2 Details of this decision were included on Publication of Decision List No. 60/18-19 (Ref. 1/60/18-19 – issued on 29 March 2019):

1.3 In accordance with the Council's Constitution, Overview and Scrutiny Committee is asked to consider the decision that has been called-in for review.

1.4 The members who have called-in this decision do not believe it falls outside of the Council's Policy Framework.

2. RECOMMENDATIONS

2.1 That Overview and Scrutiny Committee considers the called-in decision and either:

- (a) Refers the decision back to the decision-making person or body for reconsideration setting out in writing the nature of its concerns. The decision-making person or body then has 14 working days in which to reconsider the decision; or
- (b) Refer the matter to full Council; or
- (c) Confirm the original decision.

Once the Committee has considered the called-in decision and makes one of the recommendations listed at (a), (b) or (c) above, the call-in process is completed. A decision cannot be called in more than once.

If a decision is referred back to the decision-making person or body; the implementation of that decision shall be suspended until such time as the decision-making person or body reconsiders and either amends or confirms the decision, but the outcome on the decision should be reached within 14 working days of the reference back. The Committee will subsequently be informed of the outcome of any such decision.

3. BACKGROUND/ INTRODUCTION

3.1 Please refer to Section 3 in the Decision Report.

4. ALTERNATIVE OPTIONS CONSIDERED

None – Under the terms of the call-in procedure within the Council's Constitution, Overview & Scrutiny Committee is required to consider any eligible decision called-in for review. The alternative options available to Overview & Scrutiny Committee under the Council's Constitution, when considering any call-in, have been detailed in section 2 above.

5. REASONS FOR RECOMMENDATIONS

To comply with the call-in procedure within the Council's Constitution.

6. COMMENTS OF THE EXECUTIVE DIRECTOR RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

The financial implications relating to the called-in decision have been detailed in Section 6.1 of the Operational Decision Report.

6.2 Legal Implications

S 21, S 21A-21C Local Government Act 2000, s.19 Police and Justice Act 2006 and regulations made under s.21E Local Government Act 2000 define the functions of the Overview and Scrutiny committee. The functions of the committee include the ability to consider, under the call-in process, decisions of Cabinet, Cabinet Sub-Committees, individual Cabinet Members or of officers under delegated authority.

Part 4, Section 18 of the Council's Constitution sets out the procedure for call-in. Overview and Scrutiny Committee, having considered the decision may: refer it back to the decision-making person or body for reconsideration; refer to full Council or confirm the original decision.

The Constitution also sets out at section 18.2, decisions that are exceptions to the call-in process.

6.3 Property Implications

The property implications relating to the called-in decision have been detailed in Section 6.3 of the Operational Decision Report.

7. KEY RISKS

The key risks identified relating to the called-in decision have been detailed in the Operational Decision Report.

8. IMPACT ON COUNCIL PRIORITIES - CREATING A LIFETIME OF OPPORTUNITIES IN ENFIELD

The way in which the called-in decision impacts on the Council priorities relating to good homes in well-connected neighbourhoods, sustain strong and healthy communities and build our local economy to create a thriving place have been detailed in the Operational Decision Report.

9. EQUALITIES IMPACT IMPLICATIONS

The equalities impact implications relating to the called-in decision have been detailed in the Operational Decision Report.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

The performance management implications identified relating to the called-in decision have been detailed in the Operational Decision Report.

11. HEALTH AND SAFETY IMPLICATIONS

The health and safety implications identified relating to the called-in decision have been detailed in the Operational Decision Report.

12. PUBLIC HEALTH IMPLICATIONS

The public health implications identified relating to the called-in decision have been detailed in the Operational Decision Report.

Background Papers

None

APPENDIX 1

Call-In: Operational Decision: Procurement of external legal advisers for the Meridian Water Programme

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MUNICIPAL YEAR 2018/2019 REPORT NO.

MEETING TITLE AND DATE:

**OPERATIONAL
DECISION OF:**
Director of Law and
Governance

Agenda – Part: 1	Item: KD 4777
Subject: Procurement of external legal advisors for the Meridian Water Programme Key Decision No: 4777	
Wards: Upper Edmonton	

Contact officer and telephone number: Melanie Dawson 020 8379 2178

E mail: melanie.dawson@enfield.gov.uk

1. EXECUTIVE SUMMARY

- 1.1. A specialist team of external legal advisers is required to provide the Council with expert advice on delivery of the Meridian Water programme.
- 1.2. The current contract with Trowers & Hamlins LLP for the provision of specialist legal advice in connection with the Meridian Water project is expired on 4th March 2019.
- 1.3. This Report seeks approval to utilise the Crown Commercial Services (CCS) Wider Public Legal Services Framework (RM3788) (Lot 1: Regional Service Provision) and, in accordance with the framework terms, directly award a contract to Trowers & Hamlins LLP for a one-year term to support the Council in providing legal services in relation to the Meridian Water Programme.
- 1.4. In accordance with the Council's Contract Procedure Rules, on 23rd August 2018 the Procurement and Commissioning Review Board approved the procurement and sufficient budget has been allocated for the expenditure.

2. RECOMMENDATIONS

It is recommended that the Director of Law and Governance:

- 2.1 approve the direct award of contract to Trowers & Hamlins LLP (in accordance with the CCS Framework for Wider Public Legal Services) for the provision of legal services in relation to the Meridian Water Programme for a one-year period.

3. BACKGROUND

- 3.1. The current contract with Trowers & Hamlins LLP for the provision of specialist legal advice in connection with the Meridian Water project expired on 4th March 2019. During their engagement, Trowers & Hamlins LLP have advised the Council on a wide scope of legal work in relation to the Meridian Water Project including on procurement, development agreements, overage agreements, project governance, professional team appointments, grant funding, planning and judicial review, land acquisition, leases and estate management.
- 3.2. The Council is now seeking to ensure that a suitably experienced legal firm is able to continue to support the Council's Legal Services department to provide ongoing legal advice for the Meridian Water Project, e.g. in relation to the procurement of developers for further development phases, infrastructure works, acquisitions and disposals of land interests and meanwhile projects as well as providing general advice when the need arises.
- 3.3. Given that Trowers & Hamlins have acquired extensive knowledge of the complexities of the Meridian Water Project during their engagement, it is proposed that the Council uses the Crown Commercial Services (CCS) Framework for Wider Public Legal Services (Lot 1: Regional Service Provision) to directly award the contract to Trowers & Hamlins LLP.
- 3.4. The Procurement and Commissioning Board approved the procurement and the use of the CCS Framework on 23rd August 2018.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1. Option 1: Allow the contract with the current provider to end and continue without external legal advice.

The Council's internal Legal Services team now has much greater involvement in the Meridian Water Project than previously. Work that was traditionally outsourced to external lawyers on the project (e.g. property matters, procurement of works and services) is now being undertaken internally. Furthermore, Legal Services are currently leading on major projects at Meridian Water including the procurement of a delivery partner for the development of the Leaside Road site and in relation to the delivery of HIF works. Going forward, as the internal Legal Services expands and develops its own expertise, it is expected that the internal team will undertake an even greater proportion of the legal work. However, due to the nature and complexity of the project it is anticipated that there will inevitably be some areas on which the in-house team does not have the necessary expertise or capacity to resource this work and therefore it will be necessary to instruct external advisers. However, any new instruction under the contract will

require the approval of either the Director of Law and Governance or the Head of Legal Services.

4.2. Option 2: Undertake a further competition under the CCS Framework to award the contract.

4.2.1 Although direct awards are permissible under the CCS Framework, further competition is the default route to contract award. There are a range of high calibre providers on the panel and running a further competition would permit the Council to seek to negotiate discounted fees from those advertised – such reduction in published fees would not be possible if a direct award is made. However, it is felt that a transition to an alternative provider at this crucial point in the project would be detrimental to overall project delivery and that the best outcome would be obtained by retaining Trowers & Hamlins LLP.

4.2.2 Considerable time and resource would be required to run a further competition and ensuring a smooth handover to the new provider. There will also inevitably be an element of overlap and duplication of work if another firm of solicitors is appointed resulting in additional expense to the Council. Trowers would continue to advise on all matters on which they have been instructed up to the completion of their contract and therefore it is likely that there will be a lengthy period during which possibly two sets of lawyers were acting for the Council in relation to Meridian Water.

4.2.3 Trowers have also accumulated extensive knowledge of the Meridian Water Project during their engagement (e.g. particularly in relation to complex land ownership matters such as overage agreements). Considerable resource would be required to get a new firm up to this level of expertise.

4.2.4 For the reasons stated above, it is felt that any cost benefits that might be obtained by running a further competition would be outweighed by the negative impact on resource, speed of delivery and the project as a whole.

4.3. Option 3: Using an alternative route to procurement.

4.3.1 The Council's Contract Procedure Rules recommend the use of a suitable framework where it demonstrates best value. There are alternative frameworks available, including the London Brough of Southwark Legal Services Panel. This requires the Council to pay an access fee of £7,000. The list of providers on this panel is similar to the CCS Framework, which does not require payment of an access fee.

- 4.3.2 The Council could also choose not to use a framework and conduct its own OJEU compliant procurement. However, the use of an alternative route to procurement would be resource intensive and there are not likely to be any cost savings or other advantages in pursuing this route.

4.4. Option 3: Procure legal advisers using the CCS Framework for Wider Legal Services.

This is the recommended option. See below.

5. REASONS FOR RECOMMENDATIONS

5.1 Directly awarding a contract to Trowers & Hamblins LLP via the CCS Framework is the route to procurement that offers best value. A direct award is permissible under the Framework where a firm on the panel has previously worked on a project and it would be detrimental to project delivery of the same firm does not continue to provide the work and officers are satisfied that the best outcome can be achieved by re-instructing the same firm. Trowers & Hamblins LLP have acquired extensive knowledge of the complexities of the Meridian Water project during the period of their current engagement and officers are satisfied with the level of service provided to date.

5.2 Trowers & Hamblins LLP will be appointed to support the in-house team only where there is insufficient capacity or expertise in-house. The Legal Services team will closely monitor the contract to ensure that all instructions to Trowers & Hamblins LLP under the contract are approved in advance by the Director of Law and Governance or the Head of Legal Services and are appropriately resourced by the Trowers team. Trowers & Hamblins LLP will also be expected to add value to the contract by delivering training and knowledge-sharing opportunities to the in-house team in order to develop existing skills and knowledge to ensure that an even greater amount of work can be undertaken in-house over time.

6. COMMENTS FROM OTHER DEPARTMENTS

6.1. Financial Implications

Please see Part 2 Report.

6.2. Legal Implications

Provided by: CP

Based on draft report circulated on 21.2.19

- 6.2.1. The Council has power under section 1(1) of the Localism Act 2011 to do anything that individuals generally may do provided it is not prohibited by legislation and subject to Public Law principles.

There is no express prohibition, restriction or limitation contained in a statute against use of the power in this way. In addition, section 111 of the Local Government Act 1972 gives a local authority power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. Therefore, the Council has the necessary powers to appoint the legal advisers required for this project.

6.2.2. The procurement of the legal advisers must be carried out in accordance with the Councils Contract Procedure Rules and the Public Contracts Regulation 2015. It has been confirmed that approval from the Procurement and Commissioning Board has been obtained and that budget has been allocated for the service to be procured.

6.2.3. The Contract Procedure Rules and Public Contracts Regulations 2015 permit the Council to call-off from an existing framework if the framework terms permit. The CCS Framework for Wider Public Legal Services permits local authorities to call-off from it and sets out the circumstances in which a direct call-off is permitted. The resulting call-off contract must be based on the Framework terms and the Council must ensure that it follows the rules of the Framework.

6.2.4. The resulting contract must be approved by Legal Services on behalf of the Director of Law and Governance.

6.3. Property Implications

There are no direct property implications arising from the procurement of the legal services contract.

7. KEY RISKS

7.1 If legal services are not procured, the Council may be without expert and readily available legal advice at key stages of the Meridian Water project.

8. IMPACT ON COUNCIL PRIORITIES – CREATING A LIFETIME OF OPPORTUNITIES IN ENFIELD

Procuring external legal advice where necessary will help to deliver Meridian Water and deliver on key Council priorities including providing good homes in well-connected neighbourhoods, sustaining strong and healthy communities, and building a local economy to create a thriving place.

9. EQUALITIES IMPACT IMPLICATIONS

- 9.1 Equality and diversity considerations will continue to be integrated into the development and delivery work for Meridian Water to make sure they are embedded in the decision-making process and to avoid costly design changes.
- 9.2 For this procurement it is not deemed relevant to undertake an EQIA. It is recommended that as part of the review of the Meridian Water Project, the Meridian Water EQIA be reviewed and updated at an appropriate time to embed Equalities and Diversity in the future procurement, design and delivery of the project.

10. PERFORMANCE AND DATA IMPLICATIONS

- 10.1 Delivery of a comprehensive regeneration scheme at Meridian Water is a corporate priority within the Council's Business Plan for 2016-2018. Completion of the Masterplan and the delivery of phased infrastructure improvements including increased rail services, station improvements and new homes will help to meet the strategic priority: "a borough that attracts inward investment and supports sustainable regeneration and growth."
- 10.2 Any contract awarded will include robust performance management controls inclusive of Key Performance Indicators. All instructions under the contract must be approved in advance by the Director of Law and Governance or, in his absence, the Head of Legal Services. Invoices will be received monthly and will be closely scrutinised to ensure the Council continues to achieve best value.

11. PUBLIC HEALTH IMPLICATIONS

A regeneration neighbourhood at Meridian Water will have far reaching public health benefits particularly from the promotion and expansion of public transport, namely a more frequent rail service, an expanded bus network and integrated walk and cycle routes. This together with extensive green space, water fountains and a positive urban environment will continue to well-being at Meridian Water. The development will include all necessary public health and community services from health clinics to nurseries.

Background Papers

None

APPENDIX 2

**Call-in request form submitted by 8 members of
the Council**

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CALL-IN OF DECISION

(please ensure you complete all sections fully)

Please return the completed original signed copy to:
Claire Johnson, Democratic Services Team, 1st Floor, Civic Centre

TITLE OF DECISION: PROCUREMENT OF EXTERNAL LEGAL ADVISORS FOR THE MERIDIAN WATER PROGRAMME.
DECISION OF: DIRECTOR OF LAW & GOVERNANCE KD4777



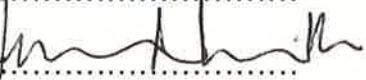





DATE OF DECISION LIST PUBLICATION: 28th March 2019

LIST NO: 116011819

(* N.B. Remember you must call-in a decision and notify Democratic Services Team within **5 working days** of its publication).

A decision can be called in if it is a corporate or portfolio decision made by either Cabinet or one of its sub-committees, or a key decision made by an officer with delegated authority from the Executive.

(a) **COUNCILLORS CALLING-IN** (The Council's constitution requires seven signatures or more from Councillors to call a decision in).

(1) Signature: 	Print Name: <u>TIM STEAD</u>
(2) Signature: 	Print Name: <u>CHRIS DEY</u>
(3) Signature: 	Print Name: <u>TERONA NEVILLE</u>
(4) Signature: 	Print Name: <u>ELAINE HAYWARD</u>
(5) Signature: 	Print Name: <u>MARIA ANTONIOU</u>
(6) Signature: 	Print Name: <u>CLARE DE SILVA</u>
(7) Signature: 	Print Name: <u>CHRIS VINCE</u>
(8) Signature: 	Print Name: <u>JOANNE LABAN</u>

(b) **SCRUTINY PANEL RESOLUTION** (copy of minute detailing formal resolution to request call-in to be attached).

NAME OF PANEL:

DATE OF PANEL:

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APPENDIX 3

**Reasons for Call-in by Councillor calling in the
decision**

&

Briefing Note in response to called in decision

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Reason why decision is being called in:

- The decision fails to explain why the decision was taken so late to continue with Trowers when the original contract expired on 4th March 2019?
- The report states that the Procurement and Commissioning Board approved the procurement and the use of the CCS Framework in August 2018 yet it took 8 months for this decision in the end to be signed off. The report does not offer any explanation as to why it took 8 months to award this contract when using a framework should be quicker than via OJEU.
- The report states that this decision represents best value. How has best value been assessed? Has this been benchmarked against other legal providers?
- Why does the report not explain the reasons why we are paying via an hourly rate system rather than a capped fee for services required?

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Reason why decision is being called in:

- **The decision fails to explain why the decision was taken so late to continue with Trowers when the original contract expired on 4th March 2019?**

RESPONSE:

Please see response to question 2.

- **The report states that the Procurement and Commissioning Board approved the procurement and the use of the CCS Framework in August 2018 yet it took 8 months for this decision in the end to be signed off. The report does not offer any explanation as to why it took 8 months to award this contract when using a framework should be quicker than via OJEU.**

RESPONSE:

There are two main reasons for the apparent delay:

- (1) The CCS Framework for Wider Public Legal Services was originally due to be launched in early October 2018, but the launch was delayed until the end of November 2018. The launch date of the CCS Framework was outside officers' control. Given the delay to the launch of the CCS Framework, alternative frameworks were investigated, but for the reasons stated in the Report were deemed not suitable for the current purposes. Although outline information was available prior to the launch date, detailed information about the CCS framework (e.g. identity of the suppliers, framework rules and processes etc.) was not publicly available until after the framework had become operational. Promptly following launch, the framework was thoroughly reviewed to confirm that it was in fact suitable for the Council's requirements and enquiries were made of suppliers on the panel (see response to question 3 below).
- (2) Officers from the Regeneration Team sought approval for the procurement of legal advisers in relation to the Meridian Water Project at the meeting of the Procurement and Commissioning Board in August 2018. Approval to use the CCS Framework was obtained at that meeting subject to the proviso that Regeneration officers liaise closely with officers from Legal Services and Procurement in relation to (i) establishing the scope of services required and (ii) conducting the procurement. Given the close relationship that would be required between the Council's internal and external advisers and the expertise and knowledge that Legal Services have in relation to the procurement of legal advisers, in accordance with rule 1.29 of the Council's Contract Procedure Rules it was decided that the procurement was best conducted by the Legal Services team. Information

about the anticipated scope of services was received from officers in Regeneration between August and December 2018. As a result of the information received, it was concluded that ensuring continuity of service would be a key priority and that a direct call-off to Trowers & Hamblins LLP would be the preferred course of action to achieve this.

In relation to the comment regarding the use of a framework rather than an open/restricted procurement process under the Public Contracts Regulations 2015, where it demonstrates best value, the Council's Contract procedure Rules require the use of an available framework. As stated in the Report, a full procurement process would be significantly more resource intensive than procurement via a framework and would be unlikely to offer any advantages in respect of cost savings or otherwise, such as ensuring continuity of service.

- **The report states that this decision represents best value. How has best value been assessed? Has this been benchmarked against other legal providers?**

RESPONSE:

The Council is under a statutory obligation to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

Following the launch of the CCS Framework, enquiries were made of other suppliers on the panel to determine the level of their fees and experience. Enquiries were also made of suppliers on other frameworks. Although other suppliers could potentially offer lower fees than Trowers & Hamblins LLP, it is considered that a direct call off would have significant benefits in terms of efficiency and effectiveness, i.e. by ensuring continuity of service. As stated in the Report, Trowers & Hamblins LLP have acquired extensive knowledge of the complexities of the Meridian Water project during the period of their engagement and officers from both Legal and Regeneration teams are satisfied with the quality of service provided to date. This knowledge and experience will be invaluable as the next phase of Meridian Water is brought forward, whereas considerable time and resource would be required to mobilise any alternative supplier to such an extent that it would inevitably be detrimental to overall project delivery.

As set out in the Report, officers will seek to ensure that best value continues to be delivered throughout the engagement of Trowers & Hamblins LLP, e.g. by ensuring robust contract monitoring, and efficient allocation of work within the internal and external team. Furthermore, under the terms of the new contract, Trowers & Hamblins LLP will be expected to deliver additional added value to the Council e.g. by offering trainee solicitors at the Council a period of work experience at Trowers at no additional cost to the Council.

- **Why does the report not explain the reasons why we are paying via an hourly rate system rather than a capped fee for services required?**

RESPONSE:

The framework sets out and restricts the basis on which law firms can charge for their services. Given the uncertain scope of services that will be required over the next 12 months, it would be unrealistic to expect any firm of solicitors to agree to a capped fee at the outset of the contract. However, under the terms of the call-off contract, any legal instruction (including the cost of such instruction) will be required to be approved in advance by the Director of Law and Governance, Trowers will be expected provide estimates of their fees at the outset of any new instruction and report back to officers in the event that these estimates are likely to be exceeded. In addition, and where appropriate in relation to any specific scope of work, officers will seek to agree fixed fees or caps on fees in accordance with the framework terms.

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