

MUNICIPAL YEAR 2015/2016 REPORT NO.

**ACTION TO BE TAKEN UNDER
DELEGATED AUTHORITY**

OPERATIONAL DECISION OF:
Director – Regeneration
and Environment

Agenda – Part: 1	KD Num: KD 4201
Subject: Novation of Contract for Legal Support Services for Lee Valley Heat Network	
Wards: All	

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1. EXECUTIVE SUMMARY

- 1.1 Following a tender process carried out in accordance with the Public Contracts Regulations 2006, the London Borough of Enfield ('the Authority') entered into a contract for the provision of legal support services for the Lee Valley Heat Network with Temple Bright LLP on 10th December 2014 ('the Contract'). The decision for the award of the contract was taken by the Director of Regeneration & Environment on 7 November 2014 (KD 3992).
- 1.2 Due to their experience and skills, the Contract identified certain key personnel (the 'Key Personnel') as crucial for the delivery of the services. However, the Key Personnel have now left Temple Bright on amicable terms to establish their own law firm, Lux Nova Partners LLP ('Lux Nova').

2. RECOMMENDATIONS

It is recommended that the Authority approves the novation of the Contract from Temple Bright LLP to Lux Nova to ensure the continued engagement of the Key Personnel.

3. BACKGROUND

- 3.1 The Authority entered into the Contract with Temple Bright LLP following a 'Part B' procurement carried out in accordance with the Public Contracts Regulations 2006. The Authority did not need to publish an OJEU Call for Competition Notice for Expressions of Interest, and simply placed an advertisement on the London Tenders Portal seeking expressions of interest from legal firms. Following an evaluation process carried out in compliance with procurement rules, Temple Bright LLP were awarded the Contract and entered into sub-contracts with Browne Jacobson LLP and Mills & Reeve LLP for the provision of the full range of legal services under Contract. The Contract is for an initial contract term of 1 year, and subject to funding and satisfactory performance the Contract may be extended for up to a further 3 years in 12 monthly extensions.
- 3.2 The Authority has set up an arm's length, local authority controlled company to deliver the heat network, 'Lee Valley Heat Network Ltd' (LVHN). Whilst the Authority initially commissioned Temple Bright LLP, LVHN when fully operational will also need to rely on the firm's advice, along with other local authorities who may participate in the scheme at a later date. There are provisions within the Contract to enable the parties to novate the Contract from the Authority to LVHN should they wish to do so in the future.
- 3.3 The Key Personnel have now left Temple Bright LLP on amicable terms to establish their own law firm, Lux Nova. Lux Nova is a law firm authorised by the Solicitors Regulatory Authority, carrying the same levels of insurance as Temple Bright LLP and, by virtue of being joined by the Key Personnel, possessing all the experience, skills and resources to perform the services under the Contract. The terms of the Contract will remain unchanged, and Browne Jacobson LLP and Mills & Reeve LLP will remain as sub-contractors.
- 3.4 All parties, including Temple Bright LLP, Browne Jacobson LLP and Mills & Reeve LLP are content for Contract to be novated to Lux Nova, and willing to assist in giving effect to the novation.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Contract remains with Temple Bright LLP: This would not be practical, as Temple Bright no longer have district heating expertise following the departure of the Key Personnel.
- 4.2 There is a new procurement for the provision of legal support services to LVHN: Due to the project being at a crucial stage, to lose the continuity and experience of the Key Personnel would have a significant impact on the project as a whole. In addition the time that it would take to undertake a new procurement exercise would cause delays in the completion of the project.

5. REASONS FOR RECOMMENDATIONS

- 5.1 The evaluation criteria used during the original procurement for legal advisers placed significant weight on the skills and experience of the personnel put forward by the competing firms. The Key Personnel were therefore instrumental in securing the award of the Contract to Temple Bright.
- 5.2 The LVHN project is now at a crucial stage, and to lose the continuity and experience of the Key Personnel would have a significant impact on the project as a whole. In addition the time that it would take to undertake a new procurement exercise would cause delays in the completion of the project.

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

6.1 Financial Implications

See Part 2

6.2 Legal Implications

- 6.2.1 The Authority 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 Authority has the necessary powers to enter into the novation agreement to engage the legal advisors required for this project.
- 6.2.2 The terms and conditions of the Contract remain unchanged, and the Authority is adequately protected under the terms of the novation agreement, which provide that all rights, liabilities and obligations accrued prior to the date of the novation shall remain unaffected.
- 6.2.3 The novation agreement is in a form approved by the Assistant Director of Legal and Governance.

7. KEY RISKS

- 7.1 The LVHN project is now at a crucial stage, and to lose the continuity and experience of the Key Personnel would have a significant impact on the project as a whole.

- 7.2 Lux Nova is a newly established entity, with no proven track records. However, due diligence carried out by Legal Services on the new entity shows that it has required insurances in place.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

LVHN aims to charge all of its customers a fair price for heat. Importantly for customers, LVHN Ltd is being set up as an 'ethical operator' in what is currently an unregulated heat market. This will help protect local consumers by ensuring fair price & customer service terms.

8.2 Growth and Sustainability

- 8.2.1 LVHN is one of over 50 key large-scale sustainability projects in the Enfield 2020 Action Plan, helping to deliver the Sustainability programme's 'Managing your Energy' and 'Regenerating the Borough' themes. It will also deliver significant carbon reduction, helping to meet Enfield 2020's 40% carbon reduction target for the Borough by 2020, as compared to a 2005 baseline.

- 8.2.2 To find out more and how this project is part of something bigger please visit www.enfield.gov.uk/enfield2020.

8.3 Strong Communities

Based on its ambition to expand to include existing buildings, LVHN has the opportunity to help reduce fuel poverty and improve public health. It is also being used to support local jobs and businesses.

9. EQUALITY IMPACT IMPLICATIONS

- 9.1 Lux Nova has policies in place addressing Equal Opportunities, Diversity and Anti- Discrimination, and is authorised and regulated by the Solicitors Regulation Authority.
- 9.2 Corporate advice has been sought in regard to equalities and an agreement has been reached that an equalities impact assessment is neither relevant nor proportionate for the approval of this report.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

The Contract includes robust performance management controls.

The Authority requires quarterly meetings with the Contractor to review performance against KPIs and costs to date.

KPIs:

- Attendance of key members of team at quarterly meetings
- Availability of key members of team for meetings within a reasonable timeframe (5 days)
- Delivery of Services by dates specified within the Specification
- Provision of estimates of time required to complete each Service output
- Completion of each Service output within estimated time

11. HEALTH AND SAFETY IMPLICATIONS

During the original procurement for legal services, all tenderers were subject to a health and safety assessment during the pre-qualification stage. Lux Nova submitted a response to the pre-qualification questions.

12. PUBLIC HEALTH IMPLICATIONS

12.1 LVHN will deliver significant economic, environmental and social benefits

Climate change is a major threat to public health. The Lee Valley Heat Network will help to reduce its impact. The carbon footprint of a home due to heating will be reduced at least 50% compared to conventional fuel

12.2 LVHN will deliver competitively priced heat to new homes, and possibly, at a later stage of development to existing homes. Well heated homes help to promote the general health of the people that live in them.

Background Papers

None

