

MUNICIPAL YEAR 2017/2018 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

PORTFOLIO DECISION OF:
Cabinet Member for Economic
Regeneration & Business Development

REPORT OF:
Executive Director – Regeneration &
Environment

Agenda – Part: 1

KD Num: 4644

Subject: Approval of Extension of the
Contract for the provision of Legal Services in
connection with the Meridian Water
Programme

Wards: All

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1. EXECUTIVE SUMMARY

- 1.1 The current contract for the provision of a specialist team of advisors to provide the Council with legal advice and legal services in connection with the Meridian Water project is due to expire on 4th March 2018.
- 1.2 This is a call off contract under the Crown Commercial Services (CCS) Framework RM 919 Lot 8 for Major or Complex Projects. This Framework Agreement has itself been extended so far as Lot 8 is concerned until February 2018.
- 1.3 Any extension of a call off contract under that Framework Agreement had to be effected before the Framework expired on 31st January 2018.
- 1.4 To preserve the Council's position, Legal Services issued a Letter of Extension which was expressed to be strictly subject to governance approval on 16th January 2018.
- 1.5 It is proposed for the reasons stated at paragraph 5 of this Report to confirm the extension of the contract for a period of 1 year up to 4th March 2019. The value of this extension appears in Part 2.

2. RECOMMENDATIONS

It is recommended that the Cabinet Member for Economic Regeneration & Business Development:

- 2.1 confirms the extension of the contract for the provision of legal services in connection with Meridian Water for a period of 1 year beyond its current expiry date, that is up to 4th March 2019.

3. BACKGROUND

- 3.1 The contract was originally put in place after a competitive tender to secure independent legal advice to support and assist the Council deliver its regeneration aspirations for Meridian Water. The contract was signed on 5th March 2015 and since that date the advisors have provided a consistently high quality service to the Council including a wide scope of legal work including procurement, property and development agreements, overage agreements, project governance, professional team appointments, grant funding and state aid, planning and judicial review, CPO and land acquisition, leases and estate management.
- 3.2 The project is now at a critical junction with the master developer procurement process coming to a conclusion and procurement risk, amongst others, being very high on the Council's agenda. The Meridian Water team considers it critical that the same legal advisors are retained during this transition period in order to ensure continuity of advice and historical knowledge as well as continuous professional indemnity insurance.
- 3.3 The Council's Procurement and Legal team have carried out a review of the terms and rates within the contract and are satisfied that they remain competitive in the marketplace.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Allow the contract to end and continue without external, independent legal advice
Risk of lack of continuity and loss of deep and wide-ranging experience with the project at a critical time exacerbated by loss of professional indemnity insurance covering the entire procurement process.
- 3.2 Allow the contract to end and procure new financial advisors.
Risk of lack of continuity and loss of deep and wide-ranging experience with the project at a critical time exacerbated by complex issues over scope and liability for professional indemnity insurance covering the entire procurement process. Further risk of break in external legal advice during procurement process which is likely to be at least 6 months.
- 3.3 Extend contract for 12 months to cover the critical period in the project and allow time for re-procurement exercise to be carried out ensuring new advisors in place at the time the existing contract ends.

Recommended option allowing continuity of advisors when most needed.

5. REASONS FOR RECOMMENDATIONS

- 5.1 The Meridian Water project is at a critical point with the master developer procurement process coming to an end. It is important that legal advice is

continued throughout this period with no loss of the experience and understanding gained by the current advisor as well as continuity of professional indemnity insurance protecting the Council.

- 5.2 The contract terms and rates have been reviewed by the Council 's procurement and legal teams and it has been confirmed that they remain competitive within the market.
- 5.3 A 12 month extension allows good time for the Council to properly re-procure this role and ensure that new advisors are in place before the existing contract expires.

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

6.1 Financial Implications

Please see the Part 2 Report

6.2 Legal Implications

- 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 advisors required for this project.
- 6.2.2 The procurement for the legal advisors was carried out in accordance with the Councils Constitution, in particular Contract Procedure Rules using a compliant Framework
- 6.2.3 The Call Off contract does not define its Term, Services Commencement Date, nor Expiry Date. The contract appears to have commenced on 05.03.2015 being the date the legal advisors countersigned the Letter of Appointment confirming their agreement to provide Legal Services under the terms of the Call Off Contract pursuant to CCS Framework RM 919 .At Appendix 1 The Contract Services to be provided are in accordance with our ITT and the Proposal and our ITT provided for a 36 months contract, with no option to extend.
- 6.2.4 It is nevertheless possible to extend the Call Off contract by mutual agreement provided there is no breach of the Public Contract Regulations 2015, as amended. Arguably the extension of this Call off contract is a permitted variation under either Regulation 72 (1) b) or Regulation 72 (1)

(c), provided that in either case the spend on the extension does not represent more than 50% of the contract value.

6.3 Property Implications

See Part 2 report

7. KEY RISKS

7.1 No significant risks have been identified with the extension of this appointment.

7.2 The key risk of not extending the appointment is that the Council will be without critical legal advice and not have the protection of continuous professional indemnity insurance at a critical time in the project.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

The Meridian Water regeneration scheme aims to tackle inequality and provide excellent services targeted at the needs of the local community. The extension of this legal advisor's appointment will help to facilitate the delivery of the scheme in a fast and efficient manner.

8.2 Growth and Sustainability

The Meridian Water regeneration scheme aims to bring economic growth, support inward investment, create new jobs and build a strong and sustainable future for the local community. The extension of this legal advisor's appointment will help to facilitate the delivery of the scheme in a fast and efficient manner.

8.3 Strong Communities

The Meridian Water regeneration scheme aims to provide opportunities for the local community to work more closely with the Council in setting the agenda for the regeneration of the area. The extension of this legal advisor's appointment will help to facilitate the delivery of the scheme in a fast and efficient manner.

9. EQUALITIES IMPACT IMPLICATIONS

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 to extend existing contracts. However it should be noted that any contracts awarded should include a duty on the successful applicant to assist us with meeting our obligations under the Equalities Act 2010.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

There will continue to be robust contract management to ensure effective service provision

11. PUBLIC HEALTH IMPLICATIONS

Meridian Water will provide energy efficient, sustainable housing, a basic tenet of a healthy life.

