

MUNICIPAL YEAR 2018/2019 REPORT NO.

MEETING TITLE AND DATE:

Agenda – Part: 1

Item: KD 4777

**OPERATIONAL
DECISION OF:**

Director of Law and
Governance

**Subject: Procurement of external legal
advisors for the Meridian Water Programme
Key Decision No: 4777**

Wards: Upper Edmonton

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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 & Hamblins 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 Borough 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 if 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