

London Borough of Enfield

Director – Key Decision

Meeting Date: Operational Report

Subject: Authority to access legal frameworks – LBLA and EM LawShare

Cabinet Member: N/a

Executive Director: Jeremy Chambers - Director of Law & Governance

Key Decision: **KD 5299**

Purpose of Report

1. Following the successful pilot/trial undertaken by the Council's legal department ("Legal Services") to access both the London Boroughs' Legal Alliance ("LBLA") and EM LawShare ("EMLS") Frameworks respectively (authorised by the Director – Law & Governance by way of a Record of Decision "RoD" (dated 3rd March 2020), this report now seeks further authority for Legal Services to:

- (i) continue to call-off from these Frameworks, on a more permanent basis and;
- (ii) have access to a higher budget on spend up to the value of £3 million (from 1 April 2021) across both Frameworks.

Proposal(s)

2. That the Director – Law & Governance;

2.1 approves the continuing use of both the EMLS and LBLA Frameworks by Legal Services up to a total potential spend of £3 million (from 1 April 2021) across both Frameworks;

2.2 delegates authority to the Principal Lawyers within Legal Services to agree, finalise and enter into respective call-off contracts as and when required by Legal Services in accordance with the relevant EMLS and LBLA Framework rules;

2.4 delegates authority to the Principal Lawyers within Legal Services to enter into any documentation required in order to access any successor versions of, or extensions to, the current EMLA and LBLA Frameworks to enable Legal Services to continue to place orders under those Frameworks up the £3 million total spend.

Reason for Proposal(s)

3. By continuing to access these services via both Frameworks the Council will largely benefit from reduced competitive rates with non-exclusivity and will avoid the need to separately tender.

4. In addition, both Frameworks offer free training opportunities, which will benefit the teams in Legal Services and their work.

Relevance to the Council's Plan

5. The Council is facing challenges to deliver savings in costs whilst simultaneously maintaining quality and adequate resources in the services it delivers.

Background

6. Legal Services provides legal advice to the Council, companies owned by the Council and maintained schools within Enfield. It covers a range of work, covering Contracts and Commercial, Property and Planning, Regeneration, Corporate and Safeguarding matters.

7. Following a restructure in 2018, Legal Services has been expanded, with additional in-house lawyers recruited, to supplement expertise and build capability, as well as to reduce reliance on external legal services and spend, creating better value for the Council. Legal Services has filled the majority of posts in the new structure, with recruitment ongoing to fill vacancies.

8. In the main, Legal Services resources requests for instructions for legal advice, however there is sometimes a need to seek external legal support. Any decision to externalise is subject to the prior approval of the Director of Law & Governance, with justification to support such requests. This may be due to lack of team capacity, where technical and specialist legal advice and assistance is needed e.g. on major regeneration schemes, in terms of historical projects, where knowledge is held by externals and compliance is needed with existing project documents, or where there is need to instruct Counsel to provide advice and advocacy support for a Hearing, Inquiry, or challenge. The Covid-19 pandemic has put particular strain on internal resources and impacted on the legal team's ability to deal with all cases in house.

9. Upon considering options in procuring external legal support, Legal Services sought and obtained approval (up to a spend of £240,000 via RoD signed on 3rd March 2020) to become a member of two legal frameworks on a pilot/trial basis. The trial/pilot was successful - we have seen reduction in spend as a consequence of the competitive reduced rates - and Legal Services now seeks approval to continue using both frameworks but with an increased spend allowance of potentially up to £3 million.

10. Both frameworks are currently used by other local authorities and are non-exclusive, meaning that there is complete flexibility. Additionally, both offer a free training program for its members, thereby offering added value for upskilling and CPD training for the in-house team.

11. The two legal frameworks are (i) The LBLA, available via Kennedy Cater (a legal broker and cost consultant supporting the framework) and (ii) EMLS (a consortium of public bodies, who procure legal services through a framework contract).

12. The LBLA is a partnership of 20 London local authorities. It offers a competitive Barristers Framework (comprising a total of 26 Chambers covering a broad range of legal services) and Solicitors framework (comprising a total of 12 firms, split into 2 lots covering regeneration and a full range of legal services) which can be accessed by any local authority in London and the South East of England. Both its frameworks were procured under the Public Contracts Regulations (2015) and they offer a discount of approximately 30% from standard fees, for a fee of £7,200 plus VAT. The 4-year Barristers Framework expires in June 2024, but the 4 year Solicitors Panel is currently being re-procured to start in November 2021, so the panel firms and rates may be subject to change.

13. EMLS is a consortium of public bodies with 190 members, including a number of Local Authorities. Its purpose is to procure legal services from specialist firms at discounted rates through a framework contract. It offers discounted rates for its seven “partner” firms: Anthony Collins, Bevan Brittan, Browne Jacobson, Freeths, Geldards, Sharpe Pritchard and Weightmans. There is no joining fee. The current framework runs from 1 April 2018 to 31 March 2022. Again, the framework as re-procured beyond March 2022 may result in a change to the panel firms and rates.

Main Considerations for the Council

14. The Legal Frameworks offer the Council access to additional legal support, which cannot be resourced in house, at competitive rates and on a non-exclusive basis. The Council’s internal Legal Services will also benefit from training opportunities.

Safeguarding Implications

15. It is not considered that there are any safeguarding implications in relation to the content of this Report.

Public Health Implications

16. It is not considered that there are any public health implications in relation to the content of this Report.

Equalities Impact of the Proposal

17. It is not considered that there are any equalities impact implications in relation to the content of this Report.

Environmental and Climate Change Considerations

18. It is not considered that there are any climate change considerations in relation to the content of this Report.

Risks that may arise if the proposed decision and related work is not taken

19. If the proposed decision is not authorized, there will be associated cost implications which could prevent the Council from making adequate savings.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

20. There are no risks associated with the Council continuing to access the Frameworks mentioned in this report.

Financial Implications

21. Levels of work within Legal Services often fluctuate through the course of the year.

Also, given that the arrangements under the respective two Frameworks are non-exclusive in nature and will be engaged on an 'as and when basis' (depending on the requirements of each individual sub-team within Legal Services), any predictions as to cost/potential savings to be realised from the arrangements are difficult to estimate.

22. The LBLA offers a competitive Barristers Framework (comprising a total of 26 Chambers covering a broad range of legal services) and Solicitors framework (comprising a total of 12 firms, split into 2 lots covering regeneration and a full range of legal services) which can be accessed by any local authority in London and the South East of England. Both its current frameworks offer a discount of approximately 30% from standard fees, for a fee of £7,200 plus VAT. This cost has already been authorized under the existing RoD and absorbed by Legal Services.

23. EMLS is a consortium of public bodies with 190 members currently, including a number of Local Authorities. It offers discounted rates for its seven "partner" firms.: Anthony Collins, Bevan Brittan, Browne Jacobson, Freeths, Geldards, Sharpe Pritchard and Weightmans. There is no joining fee.

24. The costs of any call-off contracts requiring entry going forward will be kept within the existing resources of Legal Services (where possible).

25. As flagged above, the LBLA Solicitors Panel is currently being re-procured to start in November 2021, and the EMLS framework will expire March 2022, so the panel firms and rates may be subject to change.

26. Legal Services will ensure continuous monitoring on spend on a case by case basis, with oversight of the cumulative overall up to the sum of £3 million. Also, a general review of use will continue to be audited, by work-type.

Legal Implications

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

28. Under s.111 Local Government Act (1972) local authorities may do anything, including incurring expenditure or borrowing which is calculated to facilitate or is conducive or incidental to the discharge of their functions.

29. The Council shall ensure that any award of contracts under either Framework must be carried out in accordance with the procedures set out therein and the Council must be satisfied that such contract award(s) represent and continue to represent best value for Enfield Council. The best value requirements derive from the Local Government (Best Value Principles) Act (1999).

30. The Council must comply with its Constitution and in particular, the Contract Procedure Rules ("CPRs"). CPR 14.4 encourages use of Framework agreements where such framework demonstrates best value and any use of a framework agreement must be agreed by the Procurement & Commissioning Hub (P&C hub).

31. The Council will continue to follow the specific call-off rules as set out in each framework agreement. In respect of the LBLA, direct call-off is permitted or a mini-tender which Kennedy Cater can help with; and in respect of EMLS, there are two options:

- (i) Direct ordering without further competition (Member can choose between the seven partner firms or operating a rota system is permissible); or
- (ii) Further competition procedure (mini-tender exercise).

32. In accordance with CPR 3.1(iii) the instruction of barristers falls outside the scope of the CPRs and is not subject to the Public Contracts Regulations. However, the Council must be prudent and comply with the requirements mentioned above.

33. In accordance with CPR 7 (and in particular CPR 7.2) and depending on individual call off contract value, the Council should consider whether additional security should be sought from the successful provider. For contract values between £500,000 - £1,000,000 sufficient security **should** be considered. For contracts £1,000,000+ in value, suppliers **must** be required to provide sufficient security in one of the forms outlined in CRP 7.3. If in the later instance, such security is deemed not to be required then the Executive Director of Finance, Resources and Customer Services must approve such a decision, with reasons and risk mitigation measures set out in the relevant authority report for the contract award. Legal Services does not envisage that any call-off under either of the Frameworks mentioned in this report will go over £500,000 but this will be kept under review.

34. As this constitutes a Key Decision the Council must ensure it follows all applicable Key Decision/Governance procedures.

35. Where applicable, all call-off contracts arising as a result of this report must be in a form approved by Legal Services for and on behalf of the Director – Law & Governance.

Procurement Implications

36. Any procurement must be undertaken in accordance with the Councils Contract Procedure Rules (CPR's) and the Public Contracts Regulations (2015).

37. The award of the contract, including evidence of authority to award, promoting to the Councils Contract Register, and the uploading of executed contracts must be undertaken on the London Tenders Portal including future management of the contract.

38. All awarded projects must be promoted to Contracts Finder to comply with the Government's transparency requirements.

39. Where a contract has not been procured via the LTP, then the signed contract, call off agreement and supporting DAR etc, must be sent to procurement.support@enfield.gov.uk who will create a record in the LTP and promote to contract finder to ensure the Council meets its transparency obligations.

40. The CPR's state that contracts over £100,000 must have a nominated contract owner in the LTP, and for contracts over £500,000 there must be evidence of contract management, including, operations, commercial, financial checks (supplier resilience) and regular risk assessment uploaded into the LTP.

Workforce Implications

41. It is not considered that there are any workforce implications in relation to the content of this Report.

Property Implications

42. It is not considered that there are any property implications in relation to the content of this Report.

Other Implications

43. No comments.

Options Considered

44. Previously Legal Services had been in a co-sourced arrangement with an appointed firm. However, more flexibility is needed to enable Legal Services to access both Barristers and Solicitors at a discounted rate and to access a wider pool of legal expertise.

Conclusions

45. Accessing both Frameworks in the manners described in this report will benefit the Council greatly and assist in achieving value for money and savings for the Council.

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Appendices

None

Background Papers

The following documents have been relied on in the preparation of this report: None