

SURREY COUNTY COUNCIL**CABINET****DATE: 18 DECEMBER 2018****REPORT OF: MS CHARLOTTE MORLEY, CABINET
MEMBER FOR CORPORATE SUPPORT****LEAD OFFICER: SARAH BAKER, LEGAL SERVICES MANAGER****COMMUNITY COUNCIL
VISION
OUTCOME:****SUBJECT: AWARD OF FRAMEWORK AGREEMENTS AND CALL OFF
CONTRACTS FOR THE PROVISION OF LEGAL SERVICES****SUMMARY OF ISSUE:**

Surrey County Council's legal services department forms part of Orbis Public Law (OPL) which also incorporates the legal services of Brighton and Hove City Council, East Sussex County Council and West Sussex County Council. OPL has a vision to create a single, resilient, sustainable, cost effective legal service to the OPL authorities and the wider public sector where appropriate/feasible.

The other OPL authorities are currently using different arrangements to access external legal advice and support. In order to help achieve the vision, a single tender process has been undertaken that standardises and incorporates all OPL's external legal services requirements.

The new framework agreement will give access to external specialised legal advice and support, from solicitors and barristers in the form of both transactional case work and counsel/advocacy on a wide variety of areas of law including Child Protection, Contracts and Procurement, Property, Environment, Litigation, Adult Social Care, Education, Information Governance and Democratic Advice.

The report provides details of the procurement process, including the results of the evaluation process and, (in conjunction with the Part 2 report) demonstrates why the recommended framework and call off contract awards deliver best value for money.

Due to the commercial sensitivity involved in the contract award process, the names of the potential providers and their financial details have been circulated as a Part 2 report.

RECOMMENDATION:

It is recommended that approval is given for Surrey County Council to award the external legal services framework for 3 years plus a 3 year optional extension period (total 6 year term) and any respective call off contracts, in conjunction with the OPL authorities.

REASONS FOR RECOMMENDATION:

The Council currently has a framework agreement in place for the provision of external legal services (Surrey Provision of External Legal Services (SPELS) Framework), which is due to expire on 28 February 2019.

The new framework agreement brings together the requirements of the OPL authorities and Surrey and Sussex District and Borough Councils. The potential value of spend across all the authorities (approximately £60m) means that the tender offered an attractive opportunity for the market and greater economies of scale.

The framework agreement will enable the OPL authorities to:

- a. cover the provision of external legal services advice and support across Surrey, East Sussex, West Sussex and the city of Brighton & Hove;
- b. ensure an up to date specification that meets OPL's requirements;
- c. deliver a cost effective service and enable instructions to be issued to external legal providers much faster than if no framework existed;
- d. obtain up to date competitive rates;
- e. achieve savings through efficiencies and monitoring usage more closely;
- f. offer OPL staff more flexibility and access to a wider range of specialist expertise.

The new framework agreement have been procured through a full tender procedure with a thorough evaluation process, which has identified that awarding framework agreement and call off contracts to a number of providers will provide Surrey County Council with the best value for money.

DETAILS:
Business Case

1. The tender process has helped to bring together requirements of the different authorities. The current contractual positions for the OPL authorities are summarised below:
 - a. Surrey County Council and East Sussex County Council are calling off from the SPELS Framework;
 - b. Brighton and Hove City Council uses the Crown Commercial Service Legal Services Framework or accesses the temporary agency staff contract for specific lawyer appointments;
 - c. West Sussex County Council had a framework in place, which has now lapsed.
2. OPL agreed to jointly procure a new Legal Services Framework (with Surrey County Council as lead partner with whom providers shall enter into framework agreements). Each OPL authority and the Districts and Borough Councils in their areas may call off from the framework at their discretion.

Background and options considered

3. Several options were considered in the Strategic Sourcing Plan and presented and approved by the Sourcing Governance Board on 17 July 2018.
4. An open tender process under the Light Touch Regime of the Public Contracts Regulations 2015 to set up the new framework agreement was deemed most appropriate and selected because:
 - a. Surrey County Council and OPL authorities could develop, refine and harmonise their requirements for a joint integrated OPL specification to ensure broad enough specialisms and consistent access to services across the partnership;
 - b. The open tender has provided the opportunity for advertisement of the OPL partnership and sought to welcome bids from a variety of providers as well as incumbents and local firms;
 - c. A tender would encourage best value and innovative solutions from bidders across the market and ensure any framework agreement awarded is to providers demonstrating a high level of technical ability and value for money;
 - d. Setting up the new framework agreement would allow the Council and OPL authorities quick and efficient access to a greater number of providers with agreed pricing and terms and conditions.
 - e. Under the new framework, call offs can be made via prescribed direct award or mini-competition processes. The former is particularly fundamental in emergency situations such as a child protection cases, to ensure our duties to residents and vulnerable people are met swiftly;
 - f. The transparent price model used in the tender process would provide competitive pricing and maximum rates for mini-competitions;
 - g. Social value considerations and social value evaluation criteria were included in the tender process;
5. A joint procurement and project team was set up to include representatives from each of the OPL authorities and the OPL Business Development Manager.
6. Eighty two providers expressed an interest in the advertised tender opportunity. 36 providers then made a formal bid across 12 lots. The resulting tenders were then evaluated against the criteria and weightings set out in the Invitation to Tender documents.

Key Implications

7. By awarding the OPL framework for the provision of external legal services to commence on 1 March 2019, the Council will be ensuring best value for money as well as meeting its obligations to the public in conjunction with legislation and legal requirements.
8. Performance will be monitored through a series of Key Performance Indicators (KPIs) detailed in the contract and reviewed at quarterly operations meetings. The KPIs set out a framework to monitor and measure key elements of the service to mitigate performance levels going below the quality standard required:
 - a. Timescales on response/acknowledgement of requests for legal support/representation; when the legal support will commence; and progress updates;
 - b. Timescales for case management documentation and finalised orders to be submitted to the courts for hearings;
 - c. Social value delivered in line with the levels offered in the Social Value Charter;
 - d. Monitoring any difference between the price quoted (based on the tendered prices) and the amount billed;
 - e. Meeting of statutory timescales e.g. Land Registry requirements for property transactions.
9. The management responsibility for the contract lies with the OPL authorities and will be managed in line with the contract management process as set out in the framework terms and conditions, which provides for review of performance and costs.
10. The Framework Manager and Key Officers across OPL are extremely knowledgeable in their field and have extensive experience of working with external legal providers. The framework terms and conditions provide processes for performance monitoring and continuous service improvements. If any provider is not meeting the service quality required, the Framework Manager can work with the provider to implement a service improvement plan. If performance does not improve, the supplier can be removed from the framework or simply no call off contracts are granted to them.

CONSULTATION:

11. A request for information was published to the market to seek feedback from suppliers to ensure the tender was structured in a way that aligned with how the market generally operates and to maximise the response rate. Questions included:
 - a. How to format the fee model for best visibility of costs, transparency and value for money;
 - b. Feedback on how well increasing capacity on a multi-provider framework would work in practice;

- c. Level of experience in the market on Court of Protection/Inherent jurisdiction; judicial review; immigration and asylum; complex policy advice.
12. The OPL authorities were extensively involved in the scoping and design of the framework requirements using specialists in each area of law to define their needs.
13. Evaluating tenders has been undertaken by a broad set of OPL staff and moderation meetings have been facilitated by Procurement colleagues.

RISK MANAGEMENT AND IMPLICATIONS:

14. The framework has been prepared jointly by OPL authorities but successful providers will enter into the framework agreement with the Council. The OPL authorities will individually call off from the framework at their discretion for the services as and when required.
15. There is no commitment to any spend or volumes under the framework agreement. Commitment is only made where a call off contract is entered into by an OPL authorities and a provider.
16. The pricing is fixed for an initial period of three years. The pricing will be reviewed as part of the decision making process regarding whether to extend the framework with each provider.
17. The framework terms and conditions set out a cap on the extent to which providers can increase the prices for any potential extension period e.g. no more than the current Index rate (using the most recently available edition)
18. The terms and conditions include a clause allowing the Council to terminate the framework with a provider by giving three months' written notice should priorities change. Additionally, a call off contract may be suspended by an OPL authorities, District or Borough Council by giving written notice.
19. All bidders successfully completed satisfactory financial checks as well as checks on competency in delivery of similar contracts in the Selection Questionnaire.
20. The following key risks associated with the framework and framework award have been identified, along with mitigation activities:

Category	Risk Description	Mitigation Activity
Financial	Not knowing how much work is being done outside of the arrangement.	Central collation of spend data. OPL working with finance leads in each location to track this.
	Not knowing if a provider is taking longer to complete work when being paid a rate per hour in order to charge a higher total cost.	KPIs in place for regular updates on progress of work, particularly for Transactional Casework. Counsel/Advocacy tend to be specific bits of work on a fixed rate.

Reputational	Successful provider does not have necessary skills, experience and technical knowledge to satisfactorily complete the elements of the contract(s)	Tender process included 45% quality and technical element towards overall contract(s) award; Clarification meetings to be held if any officer concerns remain post tender process; Remedies available under the framework terms and conditions.
Reputational	Issuing a framework which is not fit for purpose for internal customers or external providers.	The placement of a new Legal Services Framework through quality, specialist providers following a thorough procurement exercise; Regular contract performance meetings to ensure adherence to works programmes and agree recovery actions if required.

Financial and Value for Money Implications

21. Full details of the contract value and financial implications are set out in the Part 2 report.

Section 151 Officer Commentary

22. The estimated level of legal services expenditure in this report is included in the current Medium Term Financial Plan. Services are expected to have in place appropriate controls to ensure that all legal services purchased through this framework are necessary within the context of the Council's financial situation. The procurement exercise to establish a framework ensures that legal fees are market tested and provide value for money.

Legal Implications – Monitoring Officer

23. External legal services support and complement the Council's in-house offering; enabling better demand management, specialist advice and advocacy services to be sourced quickly and in a cost effective way. External legal services can be sought for any area of work and is often directly linked to the Council's strategic objectives and statutory responsibilities. No value of spend is guaranteed as part of any framework award.
24. The Council is under an obligation in Section 3 of the Local Government Act 1999 to secure best value in all it does, specifically to "...secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness." The new external legal services framework seeks to do this through the benefits highlighted in paragraph 4 of the main report. Failure to put in place a new framework would lead to inefficiency and difficulty in negotiating pricing on individual contract awards.
25. The procurement process was carried out under the light touch regime of the Public Contracts Regulations 2015 (PCRs). Legal services are either exempt from the PCRs (advocacy, litigation advice and statutory functions) or subject to the light touch regime (all others). The process carried out met the legal requirements of the PCRs and the Council's own Procurement Standing

Orders. Successful tenders have been assessed to be the most economically advantageous to the Council.

26. In making its decision, Cabinet will need to satisfy itself that the proposed award is the most appropriate course of action and meets its fiduciary duties to Surrey residents.

Equalities and Diversity

27. There is no requirement for an Equality Impact Assessment (EIA) as there are no implications for any public sector equalities duty due to the nature of the services being procured. However all providers are required to comply with the Equalities Act 2010 and any relevant codes issued by the Equality and Human Rights Commission. In addition, all providers were assessed on the ability they had to address the requirements of the Equalities Act and to deliver services which would help the Councils meet their statutory duties.

WHAT HAPPENS NEXT:

28. The timetable for implementation is as follows:

Action	Date
Cabinet decision to award	18/12/2018
Cabinet 'call in' period	18/12/2018 – 27/12/2018
Standstill Period	07/01/2019 – 17/01/2019
Contract Signature	21/01/2019 – 22/02/2019
Framework Commencement Date	01/03/2019

29. The Council has an obligation to allow unsuccessful bidders the opportunity to challenge the proposed contract award. This period is referred to as the standstill period, during which notification of an intention to award is given but entering into the contract may not take place.

Contact Officer:

Andrea Kilby, Business Development Manager, 07970 458 955

Consulted:

Orbis Public Law – various representatives
 Orbis & WSCC Procurement
 Finance
 Insurance & Risk Teams
 Information Governance
 Information Technology & Digital

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