

Brighton & Hove City Council

Cabinet

Agenda Item 82

Subject: Procurement of External Legal Services Framework

Date of meeting: 17 October 2024

Report of: Cabinet Member for Adult Social Care, Public Health & Service Transformation

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Ward(s) affected: All Wards

Key Decision: Yes

Reason(s) Key: Expenditure which is, or the making of savings which are, significant having regard to the expenditure of the City Council's budget, namely above £1,000,000.

For general release

1. Purpose of the report and policy context

- 1.1. This report seeks cabinet approval to re-procure an external Legal Services Framework for a term of four years.
- 1.2. The recommendations support Outcome 4 of the Council Plan 2023-2027 - 'A responsive council with well-run services'. Re-procuring and participating in the framework with other partners reduces administrative resources and makes access to external legal advice swift and simple. The framework will offer fixed rates for the 4-year term, ensuring value for money without requiring any commitment to spend.

2. Recommendations

- 2.1 That Cabinet approves the re-procurement of the external Legal Services Framework as outlined in Section 3.11 of the report and grants delegated authority to the Assistant Director of Legal and Democratic Services to:
 - (i) Take all steps necessary or incidental to undertake the re-procurement process;
 - (ii) Award the framework agreement and any respective call-off contracts;
 - (iii) Authorise any modifications to the framework agreement during the framework term.

3. Context and background information

The Council's Current Contract Arrangements

- 3.1. This report relates to a proposed joint re-procurement of external legal advisors by Brighton & Hove City Council, Surrey County Council, East Sussex County Council and West Sussex County Council.
- 3.2. The current external Legal Framework Agreement commenced on 1 March 2019 and expires on 1 March 2025. The purpose of the framework is to enable members to access high quality, external legal advice at advantageous rates. The potential value of spend across all the authorities with access to the framework (approximately £25m over 4 years) means that the tender offers an attractive opportunity for the market and greater economies of scale.
- 3.3. As well as the four main partner Authorities, the District and Borough Councils within Surrey, East Sussex and West Sussex are named as contracting authorities who can Call-Off from this framework at their discretion throughout the duration of the Framework Agreement. This increases the value of the framework, making it more attractive to bidders.
- 3.4. The framework gives access to external specialised legal advice and support, from solicitors and barristers in the form of both transactional case work and counsel on a wide variety of areas of law including Child Protection, Contracts and Procurement, Property, Environment, Litigation, Adult Social Care, Education, Housing, Information Governance and Democratic Advice. Over 30 service providers have been appointed to the current framework.
- 3.5. There are two routes to call-off from the current framework: direct award and mini competition.
- 3.6. Those that are permitted to use the Framework Agreement are not obliged to do so and do not guarantee the service providers will be successful in being awarded call-off contracts from the framework.

Rationale for continuing to have an external Legal Services Framework

- 3.7. The new framework agreement will enable Brighton & Hove City Council to:
 - Access a wide range of external legal services easily and efficiently at competitive rates;
 - offer opportunities to local SMEs to join a regional framework;
 - provide added value in terms of access to training;
 - achieve savings through efficiencies, fixed pricing and closely monitoring usage.
- 3.8. The transparent price model used in the tender process would provide competitive pricing and set maximum rates. Fixed pricing at the point of awarding suppliers onto the framework for four years can avoid rapid cost increases in an uncertain economic climate.

- 3.9. Being able to directly award a contract to a service provider on the framework is particularly fundamental in emergency situations, such as a child protection cases, to ensure our duties to residents and vulnerable people are met swiftly.
- 3.10. 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.

Re-procurement of the external Legal Services Framework Agreement

- 3.11. The new external Legal Services Framework will operate for four years with a value of up to £25m over the 4-year period and is considered to be a revival of the current Framework Agreement but with expanded Lots, fixed pricing, revised specifications and no limit on number of providers per Lot. The call-off process will remain the same, i.e. direct award or further competition.
- 3.12. Bids will be primarily evaluated based on cost-effectiveness, ensuring competitive pricing without compromising quality. Quality assessment will focus on the bidder's previous project performance, client testimonials, and compliance with legal standards. Breadth of expertise required includes a comprehensive understanding of various legal domains relevant to public and local government law. The bids should also offer free CPD training programs to all in-house specialisms, i.e. access to webinars, seminars or training material.
- 3.13. Bidders will be invited to submit a bid for all or a selection of the Lots and each Lot will be evaluated separately. There will be no commitment to any spend or guarantee of work under the new Framework Agreement.
- 3.14. The partner authorities are extensively involved in the scoping and design of the framework requirements using specialists in each area of law to define their needs. Evaluation of tenders will be undertaken by staff with experience of different specialisms against a quality (50%) and price (50%) assessment.
- 3.15. Performance under the framework will be reviewed by partners, who will meet on a 6 monthly basis to review usage, benefits and performance.

4. Analysis and consideration of alternative options

Alternative Options

- 4.1. **Option 1 – End current Framework Agreement and take no further action.**
- 4.2. Upon expiry, the partners and Framework Customers would be unable to enter into new call-off contracts, but existing call-off contracts would continue until they expire or are terminated according to their terms.

- 4.3. The disadvantages of ending the current Framework Agreement and taking no further action include the loss of the benefits that framework agreement provides. These benefits include labour and time savings, as framework agreement avoids the need for repeat advertising, tendering and negotiation on a case-by-case basis. Additionally, framework agreements can help cement long-term relationships between the parties and drive down costs through volume-related efficiencies.
- 4.4. Option 2 - Procure separate contracts for professional services as and when needed.**
- 4.5. Each such separate procurement would take time and resources and would impact upon the Council's ability to call-off easily and urgently from a framework. Procurement of separate contracts requires more administrative work due to internal governance rules, contract creation and approvals.
- 4.6. Option 3 – Calling off an external framework agreement, such as ‘Legal Services Panel’ offered by Crown Commercial Service (CCS)**
- 4.7. The Legal Services Panel Framework Agreement was developed by CCS in partnership with the Government Legal Department (GLD). It is the default route to market for buying legal services for all central government departments and their executive agencies. There are 17 suppliers on this agreement, which is split across 2 lots:
- Lot 1: general legal advice and services,
 - Lot 2: finance and complex legal services.
- 4.8. However, the framework only offers ‘general legal advice’ and does not reflect the needs and requirements of local authorities.
- 4.9. There are other frameworks used by local authorities to access external legal advice with competitive rates and added value benefits. The largest is EMLawshare, which is based in the Midlands and has ten firms on the Framework and over 130 members who can access it. This framework is currently not accepting new members and so it is not an option for Brighton & Hove City Council to join it. The framework also only covers private solicitors’ firms as opposed to including Barristers’ Chambers and does not benefit from the local connection to the region that the geography of the proposed framework encourages. No other suitable alternative frameworks have been identified.

5. Community engagement and consultation

Market Engagement

- 5.1. In the lead up to this procurement activity, market engagement with legal services providers was carried out by Surrey County Council with assistance from other partners. More than 40 law firms and chambers attended the Market Engagement Event. The presentation covered framework overview, Lots breakdown, procurement timeline, bidding & evaluation criteria, social value, following by Q&A session.

5.2 The proposed procurement approach was presented to the Procurement Lead Member on 11th September 2024, who was satisfied with the recommendations detailed in this report.

6. Financial implications

6.1 The legal spend across the council over the period of the current Framework Agreement is set out below.

	2020/21 – 2023/4 £'000
Counsel Children	1,226
Counsel All Other Departments	1,184
Health & Adult Social Care (under previous structure)	195
Families Children & Learning	160
Corporate Services	100
Economy Environment & Culture	191
Neighbourhood Comms & Housing (under previous structure)	1,302
Total Legal Spend	4,358
80% from Framework	3,486

6.2 It is currently estimated that 80% of legal spend is within the framework agreement which gives a total of £3.486m across four years. This is equivalent to approximately £0.870m per year on average although actual use will vary with demand.

6.3 The framework agreement does not commit the Council to any particular level of expenditure and the council is still free to source legal services outside of the framework if that would be more appropriate or cost effective in particular circumstances.

6.4 Expenditure on legal fees would continue to be charged to the relevant budgets across the council and any significant over or underspends against budget would be reported as part of the TBM process.

Name of finance officer consulted: Jeff Coates Date consulted: 02/09/2024

7. Legal implications

- 7.1 The Council is required to comply with the Public Contracts Regulations 2015 (PCR 2015) in relation to the procurement and award of contracts above the relevant financial thresholds for services, supplies and works. This contract has a value over the PCR 2015 threshold.
- 7.2 The Council's Contract Standing Orders (CSOs) will also apply to this procurement exercise and the Council must comply with CSO 7 to ensure that the chosen Framework is appropriate and meets the criteria set out in CSO 7.2.

Name of lawyer consulted: Sabina Cherevichenko Date consulted: 03/09/2024

8. Equalities implications

- 8.1 There are no equalities implications arising from this report.

9. Sustainability implications

- 9.1 There are no sustainability implications arising from the report.

10. Health and Wellbeing Implications:

- 10.1 There are no health and wellbeing implications arising from this report.

11. Procurement implications

- 11.1 The procurement will be undertaken under the existing Public Contracts Regulations 2015 as the tender will be published prior to 28th October 2024, when the new Regulations under the Procurement Act 2023 will come into effect.
- 11.2 A Social Value Measurement Charter will be completed by bidders as part of their tender submission. Delivery of social value will be measured as a Key Performance Indicator under the Contract and the Bidder will be required to report on its social value performance throughout the Contract term. Delivery of social value measures are not to be included in the cost of delivering the Services.
- 11.3 Delivery of Social Value will be in addition to the services required under the specification, and must be created as a result of winning this Contract rather than social value that would be delivered by the bidder as part of 'Business as Usual'. Social Value will account for 5% of the quality award criteria which will be measured using the Social Value Measurement Charter.

12. Conclusion

- 12.1 The re-procurement of an external Legal Services Framework Agreement is recommended in order to achieve value for money access to external legal advice where this is needed. The procurement achieves competitive and

efficient access to fixed pricing and free training without restricting the Council to only using providers from the Framework.

