

AGENDA ITEM: 12 Pages 58 – 67

Meeting	Cabinet Resources Committee
Date	2 March 2011
Subject	Award of the One Barnet Legal Partner Contract
Report of	Cabinet Member for Resources and Performance
Summary	This report seeks approval to award, to Trowers and Hamlins Solicitors, the contract for the provision of legal services to the One Barnet Programme for a three year period.

Officer Contributors	Margaret Martinus, Assistant Director – Legal
Status (public or exempt)	Public (with separate exempt report)
Wards affected	All
Enclosures	Appendix – Protocol – Appointment and Liaison with External Legal Advisers
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	Not applicable

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1. RECOMMENDATIONS

- 1.1 That the contract for the provision of legal services to the One Barnet Programme be awarded to Trowers and Hamlins for a period of three years, with effect from the date of authorisation.**
- 1.2 That the Committee note and provide any comments on the draft protocol for the appointment of and liaison with external lawyers.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Cabinet, 6 May 2008 (Decision item 5) – approved the Future Shape of the Council programme and allocation of a budget for the initial phases of the work.
- 2.2 Cabinet, 3 December 2008 (Decision item 5) – approved the overall model, design and delivery of the Future Shape of Council.
- 2.3 Cabinet Resources Committee, 15 June 2009 (Decision item 5) authorised the Head of Legal to enter into Framework Agreements with firms of solicitors on the Outer London Panel Solicitors Framework.
- 2.4 Cabinet, 6 July 2009 (Decision item 5) – approved the aims and approach for the Future Shape of Council.
- 2.5 Cabinet, 21 October 2009 (Decision item 8) – approved the plans for implementing the Future Shape of the Council.
- 2.6 Cabinet, 21 June 2010 (Decision item 5) – considered the medium-term strategic context for the Council and likely very substantial financial challenges. Cabinet endorsed the Future Shape programme as the response to the challenges set out. The report also noted that the full implementation costs of Future Shape were not budgeted at that time and would need to be factored into future financial planning and in reviewing earmarked reserves.
- 2.7 Cabinet, 29 November 2010 (Decision item 6) – approved the One Barnet Framework and funding strategy for the One Barnet implementation costs, including estimated costs of external legal advisers.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The three priority outcomes set out in the 2010/13 Corporate Plan are:
- Better services with less money;
 - Sharing opportunities, sharing responsibilities; and
 - A successful London suburb.

The One Barnet Programme has an overarching aim:

- To become a citizen centred organisation.

To be delivered through the adoption of three key principles:

- A new relationship with citizens;
- A one public sector approach; and
- A relentless drive for efficiency.

4. RISK MANAGEMENT ISSUES

- 4.1 The Council is in the process of implementing an innovative programme, likely to present risks at a number of levels. The Council requires legal advisers from suitably experienced lawyers to be able to advise on these risks, where appropriate. Specialist legal advice will also be required to support a transformation of this magnitude. Legal advice will be required in the areas of procurement (domestic and European), taxation, company law and special purpose vehicles/corporate structures, in the context of potentially new and untested areas. It is essential to seek this advice in order to inform decision making and to ensure that the Council does not fail to meet any of its statutory obligations or to ensure that robust contracts are in place.
- 4.2 The Council's in-house legal team is not resourced at a level to enable it to provide the timely (and sometimes extremely urgent) and comprehensive legal advice and assistance required for a Council-wide project as extensive and involved as the One Barnet Programme. Advice and assistance is required in the different areas of law described above in Paragraph 4.1. Without such timely and comprehensive legal advice and assistance there are very real risks that, in moving forward with the Programme, the Council will contravene legislation; fail to fulfil its statutory duties; and fail to secure the most efficient and the best value arrangement and/or vehicle structure for the performance of its functions and services.
- 4.2 The appointment of external legal advisers, who will work closely with the Council's in-house legal team, will ensure that, at every stage of the One Barnet Programme, timely and comprehensive legal advice and assistance is provided to the Programme.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 The Invitation to Tender issued to the panel solicitors, requires them to carry out their contracted services in accordance with the statutory requirements of the equalities legislation under which the Council has a legal duty to comply.
- 5.2 The successful tenderer, Trowers and Hamlins, have equal opportunities and diversity policies that ensure no individual or group of individuals is discriminated against in the delivery of the service.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 Procurement – The Council is a member of a consortium of local authorities which set up the, Bromley-led, Outer London External Lawyers Framework Panel. This Framework consists of 26 Panel members, a mixture of private firms and in-house local authority legal departments, which were successful in an earlier EU compliant tender that was undertaken between 2008 and 2009. The procurement of the Legal Advisers involved a 'mini competitive tendering exercise' within The Outer London Boroughs Panel Solicitors Framework. By using the Framework, the Council benefits from the reduced tender timescales and associated costs compared to the alternative of undertaking a full EU compliant tender. The Council can be assured that it is appointing from an approved list of tenders.
- 6.2 Finance – The Legal Adviser contract will be established for a three-year period. The pricing schedules submitted in the mini-tender exercise were used for the cost evaluation and will facilitate forecasting of costs for all advice required under this contract.

Individual packages of work and the associated costs will be agreed before they are initiated in order to control budgets and maintain value for money.

- 6.3 Performance & Value for Money – The contract with the Legal partner will be monitored throughout its life, with appropriate action taken if it is identified that the level of performance is below that which is expected or if the council is not receiving a value for money service.
- 6.4 The One Barnet Programme Legal Partner will provide legal advice to the One Barnet Programme through all phases of the Programme and constituent projects, as necessary. The standard stages of the projects include:
- Concept;
 - Options appraisal and business case; and
 - Delivery.

In certain projects, the delivery may include procurement activity. The Council may therefore seek advice and support from its Legal Partner in the following areas:

- Preparation of OJEU notice and other pre procurement preparation;
 - Competitive Dialogue or other procurement route, as agreed;
 - Contract award and mobilisation; and
 - Contract Monitoring and management.
- 6.5 The contract will be a call off-contract to provide ‘as and when’ specialist legal advice to the One Barnet Programme. This will include advice on new, untested areas and areas such as taxation and company law. As such, it is not possible to scope a whole-life cost of the contract, as the exact volumes of work required from the legal partner is not certain.
- 6.6 In order to ensure value for money, high performance and controllable spend under the contract, no work will be initiated under the contract without the creation of defined work packages requiring the approval of those with budgetary responsibility within the One Barnet Programme Team. Work packages will not be signed-off as complete, and invoices will not be paid until the One Barnet Programme team are assured of the quality and value for money of the advice having been delivered. The Tenderers tendered on the basis of hourly rates and, whilst it is assessed that the costs are likely to be a minimum of £500,000, the spend will be closely monitored and, where appropriate, fixed costs agreed for ‘packages’ of legal work in order to control the maximum spend over the three years.
- 6.7 In order to provide transparency and visibility of the performance and cost of this contract, reports will be presented to the Business and Performance Overview and Scrutiny Committee on a six monthly basis to outline the costs incurred against the contract, predicted costs for the next period and performance against a set of performance indicators.
- 6.8 There will also be regular liaison meetings with the external legal partner to discuss and agree any action in respect of issues that may arise concerning quality or value for money issues.

7. LEGAL ISSUES

- 7.1 The appointment of the external legal partner will be on the basis of the terms and conditions set out in the Framework Agreement for the Outer London External Lawyers Panel.

8. CONSTITUTIONAL POWERS

- 8.1 The Council's Constitution in Part 3, Responsibility for Functions, paragraph 3.6 states the functions of the Cabinet Resources Committee including finance responsibilities, acceptance of tenders which are not the lowest and agreeing externalisation contracts.
- 8.2 The Contract Procedure Rules require authorisation of contracts above £500,000 to be by a Cabinet Committee and acceptance by Cabinet Member where the tender is lowest or where it represents value for money and is the best available option for the Council.
- 8.3 Whilst it is considered that this proposed contract represents value for money and is the best available option for the Council, it is not possible to scope the whole-life cost of the contract for the reasons stated in paragraph 6.5 above. It is therefore considered prudent for the contract to be authorised by this Committee.

9. BACKGROUND INFORMATION

- 9.1 Following the decision by Cabinet on 21 October 2009 to approve the plans for implementing the One Barnet Programme, it was identified that external legal advice would be required to support some aspects of the delivery phase of the One Barnet Programme. Cabinet approved the funding strategy for the One Barnet implementation costs on 29 November 2010, which included estimated costs for external legal advisers.
- 9.2 Legal support to the programme has been met to date through a mixture of provision by the in-house legal team and 'as and when required' appointments, through the Outer London Boroughs Panel Solicitors Framework. In September 2010, it was considered that a number of the projects were now at the point where they would require intensive legal support in the project phases identified in paragraph 6.4 above.
- 9.3 There is a requirement for the One Barnet Programme to have available high-quality, specialist, flexible support from a Legal partner who can provide advice as required on any legal aspects of the One Barnet Programme for a three-year period and can work in partnership with the in-house legal team to deliver the project for the Council.
- 9.4 The Outer London Panel Solicitors Framework was chosen as it was the most appropriate and cost-effective route for the Council to procure the services of a Legal Partner for the One Barnet Programme via a 'mini tender competition'.
- 9.5 Out of a total of 26 law firms that comprise the Outer London Panel Solicitors Framework 15 firms were selected due to the particular expertise relevant to the One Barnet Programme. Following a period of clarification, 11 of the 15 firms submitted tenders, in September 2010.
- 9.6 Evaluation
- 9.6.1 A team of four Council Officers comprising senior staff from Commercial Services, Legal Services and Chief Executive's Service evaluated the tender responses.
- 9.6.2 The submissions received have been evaluated in accordance with the criteria within the Invitation to Tender documents as highlighted below:
- Quality (50% total):
 - ❖ Quality and Experience of Staff (30%);
 - ❖ Procedures and Methods for Carrying out the Service (15%); and
 - ❖ Capacity (5%).
 - Price (50% total)

- 9.6.3 Price evaluation was based on the total of the hourly rates tendered for the four different levels of Solicitors, who are likely to work on the contract, namely the following:
- Partner;
 - Senior Solicitor;
 - Solicitor; or
 - Associate.
- 9.6.4 It was noted that tender submissions contained price structure submissions that were not in accordance with quotation templates. Clarification was requested from bidders to ensure that there was transparency and comparability across bid submissions.
- 9.6.5 The evaluation panel reviewed and scored the tender submissions allocating a maximum 50% score for quality and a maximum 50% score for price. The top five bidders scoring highest in these areas were invited to interviews with the evaluation team.
- 9.6.6 Following the interviews the evaluation panel completed its scoring on the quality scores. Their evaluation results are detailed below:

Tender Name	Weighted Price Score	Weighted Quality Score	Overall
Company A	23.77	28.25	52.02
Company B	28.86	33.50	62.36
Company C	20.35	43.00	63.35
Company D	22.56	36.00	58.56
Company E	23.37	32.50	55.87
Company F	23.36	40	63.36
Company G	33.05	26.25	59.30
Company H	24.58	23.75	48.33
Company I	35.64	22.75	58.39
Trowers and Hamblins	19.90	44.50	64.40
Company J	20.55	34.00	54.55

- 9.6.7 The recommendation of the first evaluation panel following the interviews was to award the contract to the highest scoring tenderer, Trowers and Hamblins.
- 9.6.8 However, due to the closeness of the overall scores following the first interview, (for the tenderers which had scored the highest) officers took the view that the evaluation process would be strengthened by a second interview of the shortlisted firms being carried out by a different panel of officers. This was to verify the qualitative assessments of the first evaluation panel at interview.
- 9.6.9 All five firms were invited to a second interview before a different panel of officers. As far as possible, the original interview process remained unchanged. At the conclusion of the second round of interviews, the second panel unanimously agreed that the result which had been arrived at, previously, was the correct result. The second evaluation panel agreed with the recommendation put forward by the first evaluation panel, that the contract be awarded to Trowers and Hamblins.

9.6.10 The second evaluation panel comprised of a team of 3 senior officers from Legal Services, Commercial Services and Finance.

9.7 Alternative Options

9.7.1 The alternative option of recruiting individuals to provide the specialist services was considered. However, this was assessed as not being a realistic option given the temporary and wide nature of the required legal services and the time which it would take to carry out a full recruitment and selection process for such skills.

9.8 Protocol for the appointment and liaison with external lawyers.

9.8.1 As the Council enters into a greater number of arrangements with external lawyers, it is considered in the interests of good governance to have a protocol in place, on how the Council instruct and liaise with its external legal advisers.

9.8.2 A draft document is attached in the appendix to this report for consideration and comment by this Committee. The draft was considered by the Council's Directors' Group on 21 December 2010, with the request that it should also be referred to this Committee for comment.

10. LIST OF BACKGROUND PAPERS

10.1 Mini Invitation to Tender for the Provision of Legal Services to the London Borough of Barnet (ref 50318).

10.2 Anyone wishing to inspect this background paper should contact Martyn Carter on 020 8359 7267.

Legal – MAM

CFO – JH

Protocol – Appointment and Liaison with External Legal Advisers

Introduction

The Council obtains legal advice through the mixed provision of legal services, internally and externally.

The bulk of day to day legal work is currently undertaken internally but, due to the changing nature of volume and type of instructions, external legal advice is being increasingly commissioned.

External legal advice includes the use of both Counsel (Barristers) and external law firms.

Counsel is mainly instructed in child protection, employment or other matters where there are no higher rights of Court audience for solicitors.

External law firms are currently commissioned to provide advice on the large regeneration schemes and large scale litigation. External lawyers will also be commissioned to advise on the One Barnet Programme where capacity and expertise in certain areas are not available in-house.

More recently, due to capacity issues arising from growth of instructions in various areas such as contract and employment work, legal advice/casework has had to be commissioned from external law firms.

The Council has approved entering into a framework agreement, through the Outer London Boroughs consortium, with a panel of external law firms, to provide a range of external legal services to the Council.

For Counsel, although no similar framework exists, a list of counsel with preferred fee rates is maintained by the Assistant Director – Legal.

Constitutional Provisions

Presently, under the Council's Constitution at Article 14, the Assistant Director – Legal is the Authorised Officer for the conduct of all legal proceedings on behalf of the Council or to take any other action that is necessary to protect the Council's interests.

The Assistant Director – Legal is also the Authorised Officer for executing all legal documentation on behalf of the Council. The post also includes the Deputy Monitoring Officer role.

In the interests of good governance, transparency and probity, all legal commissioning should be conducted only through or with the involvement of the Assistant Director – Legal.

Commissioning of Legal Advice

Should a Service need or wish to commission external legal advice, they should contact the Assistant Director-Legal in the first instance.

Depending upon the requirements, an appropriate selection process will be agreed. All meetings and interviews will be organised and led by the Assistant Director – Legal or an officer she has duly authorised.

Appointment of External Legal Adviser

A legal adviser's appointment requires formal authorisation in the normal way. Depending upon the likely value of the contract, authorisation will either be by the Assistant Director – Legal, Cabinet Member or Cabinet Resources Committee.

Any letters of appointment or contracts shall be signed by the Assistant Director – Legal. Original documentation will be held by the Assistant Director – Legal but copies shall be retained by the instructing Service for easy reference. The details of the contract will be placed upon the legal case management system maintained by Legal Services, in order that a report providing details of all externally instructed legal advisers can be produced at any point in time.

Approvals and details of costs incurred will be maintained on an ongoing basis by the instructing Service.

Liaison with the External Legal Adviser

Once external legal advisers are in place, it would not be in the interests of speed and efficient working for all substantive instructions and advice to have to be passed through the Assistant Director – Legal.

It is therefore acceptable for Services to directly instruct and liaise with the external advisers on day to day instructions/requests for advice once the appointment is formally in place.

However, this protocol must be brought to the attention of all staff involved with the day the day instruction of and requests for advice from external legal advisers.

Officers must ensure that they commission the use of external legal advice in the most cost efficient manner. Officers need to be aware of the estimated budgets allocated for the costs of the external legal advisers and commission accordingly.

External legal advisers usually charge at a substantial hourly rate. It is therefore recommended that all requests for advice are channelled through one officer, usually the project manager. This is to ensure that the request for advice is absolutely necessary, has not been requested before by another officer and is within the remit of the project or instruction.

Meetings must be organised with clear objectives and expected outcomes and this must be communicated to the external legal advisers. Consideration must be given to the frequency and length of any meetings. Records must be kept of the time spent in meetings and through other contact with external legal advisers.

The project manager will then be better able to reconcile the level and nature of legal advice commissioned and time incurred when bills are received.

Agreement has to be made with the Assistant Director-Legal at the start of the commission concerning the frequency of quality reviews to be held between herself, the instructing Service and the external legal advisers. This will be the forum where any quality or value for money issues can be discussed with the client care partner of the firm. The client care partner should be separate from the partner leading on the substantive advice, where possible.

Any issues or concerns that the instructing Service has relating to quality or cost should be brought to the immediate attention of the Assistant Director – Legal.

Communication and Sharing of Legal Advice

Legal advice provided to the Council, whether internal or external, is subject to legal professional privilege. This means that the advice must be treated as strictly confidential and not to be further disclosed within or beyond the Council, unless strictly necessary.

If the advice or a substantive part of the advice is disclosed to a person outside the Council or published in Council reports or other documents, the Council is likely to no longer have the ability to resist disclosure on grounds of legal professional privilege in the event of a request for disclosure by another party in legal proceedings. This may have serious ramifications for the project or matter upon which the external legal advisers are advising.

Legal advice that is transmitted electronically may have a greater risk of inadvertently being passed on. For this reason, careful consideration should be given as to how the legal advice is communicated or shared. Sometimes a short summary or paper copy may be the best option in order to mitigate any risks of unintended or unauthorised disclosure. The advice of the Assistant Director – Legal should be sought in the event of any doubt.

Counsel's advice is given to the instructing solicitor and therefore delivery of the substance of that advice should only come through the solicitor. It should never be further transmitted or disclosed in its entirety without first consulting the instructing solicitor and/or the Assistant Director – Legal. It is often the case that the content of counsel's opinion, having been written by one lawyer for another lawyer, comprises a good deal of legal terminology, referencing and case law that will not make it suitable for wider circulation.

Accordingly, for the reasons above and other considerations, Counsel's opinion or advice should not generally be disclosed to Members and other Council Officers in its entirety. Where a 'need to know' basis is established, the appropriate course is for a briefing to be given based upon a summary of counsel's opinion or advice as prepared by the instructing solicitor and/or the Assistant Director – Legal.

Officers must treat legal advice confidentially and only for the appropriate purposes.

Legal advice must be stored securely at all times whether in hard or soft copy.

2 March 2011