

**For General Release**

<b>REPORT TO:</b>	<b>Cabinet 18 October 2017</b>
<b>SUBJECT:</b>	<b>Provision of Legal Services – Appointment of Preferred Bidder</b>
<b>LEAD OFFICERS:</b>	<b>Richard Simpson, Executive Director Resources &amp; S151 Officer Jacqueline Harris-Baker, Director of Law and Monitoring Officer</b>
<b>CABINET MEMBER:</b>	Councillor Simon Hall, Cabinet Member for Finance and Treasury
<b>WARDS:</b>	<b>All</b>

**CORPORATE PRIORITY/POLICY CONTEXT/AMBITIOUS FOR CROYDON**

There is a need to ensure that the form of legal services arrangement follows the functions which the Council wishes to support in furtherance of the Ambitious for Croydon agenda. The appointment of a sole strategic supplier of legal services, combined with the phased internalisation of legal services previously outsourced, reflects the Council's refreshed commissioning principles and implementation of arrangements which ensure both flexibility of approach and which will be a driver for successful legal services provision. Success will be measured according to the ability to drive down costs of provision, whilst at the same time retaining robust and appropriate legal support and provision with the associated risk.

The appointment of the preferred bidder recommended in this report will support the Council to deliver across the Corporate Plan priorities and will directly contribute to the following outcomes:

- to be innovative and enterprising in using available resources to change lives for the better
- to have the right people with the right skills in the right jobs

**FINANCIAL IMPACT:**

Implementation of the proposals and recommendations described in this report is anticipated to achieve targeted savings of at least 10% against external legal costs

**KEY DECISION REFERENCE NO:- 1217CAB**

The decision may be implemented from 1300 hours on the expiry of 5 working days after it is made, unless the decision is referred to the Scrutiny & Strategic Overview Committee by the requisite number of Councillors.

**1. RECOMMENDATIONS**

The Cabinet is recommended to:

- 1.1 Agree the appointment of the party named in the Part B report as the Preferred Bidder for the delivery of legal services to the Council for a period of five years from 1<sup>st</sup> January 2018 with options to extend for up to an additional two years and with an estimated maximum value of £17,500,000 over a seven year period;
- 1.2 Agree that subject to 'fine tuning' discussions of the Preferred Bidder's tender being resolved to the satisfaction of the Council, and provided there shall be no material alteration to either the scope of the tender or matters set out in this report, authority to conclude the final contract be delegated to the Director of Law in consultation with the Cabinet Member for Finance and Treasury.

## **2. EXECUTIVE SUMMARY**

- 2.1 There is a corporate need for high quality, cost effective legal services which respond to the financial challenges faced by the Council and align with the Council's evolving needs. This is whilst also ensuring access to skilled, pragmatic and pro-active legal support in an environment where service transformation, innovative projects, evolving laws and an increased appetite to challenge Local Authority decisions maintain upward pressure on demand.
- 2.2 Measures to reduce costs must focus on control of expenditure and be proportionate to the level of risk. The strategy approved for the future provision of legal services in 2016 [03.16/ACE] reflects the refreshed commissioning principles approved by Cabinet (Min. A32/16) particularly the outcomes sought through a 'make or buy' framework of 'expert' commissioning, with the procurement of a strategic partner law firm as the principal supplier of externalised legal work for the Council following expiration of the current panel provision. Other approved measures include:
  - Centralisation of all internal legal support functions and insourcing of certain areas of legal work which are currently externalised;
  - Creation of new internal lawyer roles entailing elements of 'strategic legal functions' and responsibilities for providing pro-active support to services in developing and managing their legal needs
  - Enhanced gatekeeping and review of all external legal instructions
- 2.3 The achievement of savings through implementation of the proposals are targeted to achieve a minimum 10% reduction in external legal fees
- 2.4 This report describes the procurement process undertaken to obtain bids for appointment of a sole strategic partner to a contract for the provision of externalised legal services to the Council from 1<sup>st</sup> January 2018 for a period of five years, with options to extend for up to a further two years. It sets out the background to the procurement, the sourcing approach undertaken, the outcome of that process and appropriate next steps
- 2.5 The content of this report was endorsed by the Contracts and Commissioning Board on 7<sup>th</sup> September 2017.

<b>CCB Approval Date</b>	<b>CCB ref. number</b>
5/10/17	CCB1276/17-18

### 3. DETAIL

#### Background

- 3.1. The Council's internal legal team (CLS) has historically been made up of the Corporate and Social Care and Education Law legal teams. They provide advice across all departments, including governance and constitutional advice, planning, information management, procurement, major projects, ethics, whistleblowing, RIPA, contract management of the current external legal providers framework and adult services and child protection advice and case work, supported by an internal advocacy team. The majority of other solicitors' services required by the Council are currently provided through the Solicitors' Framework which presently comprises seven firms providing services across four lots of work: Commercial; Litigation; Housing Property and Conveyancing and Sundry Debts. After exercising extensions the Solicitors' Framework will expire 31<sup>st</sup> December 2017.
- 3.2. In reviewing options for the future provision of legal services a number of alternatives were considered. These included a detailed exploration of sharing services through the implementation of an alternative business structure (ABS) model in collaboration with another London authority with the twin aims of a) reducing costs to the Councils through consolidation and streamlining of assets, resources and overheads; and b) generating income through a public sector traded legal service offer.
- 3.3. Following financial and commercial analysis it was concluded that the ABS proposal was neither feasible nor warranted and that:
- Spend data shows that by comparison with both the proposed ABS partner authority and other Councils, legal service provision in Croydon is already highly cost efficient and that a 'shared services' arrangement might be at Croydon's 'expense';
  - Other areas of misalignment between the boroughs included working culture and practices, approach to risk and reward, staffing structures and financial controls;
  - The costs involved in establishing and running an ABS are substantial. Local Authorities already benefit from powers under which services can be provided (and charged) to public bodies e.g. The Local Authority (Goods and Services) Act 1970. Croydon can utilise these existing powers to start exploring trading opportunities without becoming tied in to an inflexible, onerous and costly ABS structure in circumstances where the market has not been tested and returns are uncertain;
  - CLS has developed substantial experience of managing external legal services, currently in the 4th generation of external provider arrangements.

- 3.4. In light of the above factors and consultation both with internal stakeholders and external providers through soft market testing, it was considered that the need for a legal service which is embedded within the organisation at both strategic and advisory levels and offers accessibility, transparency and certainty over costs, as well as best value, would be achieved through the insourcing of certain areas of legal work alongside the competitive procurement of a single principal supplier of the remaining externalised legal work on a fixed term contract which embodies the spirit of strategic partnership.
- 3.5. In recent years significant steps have been taken to manage legal expenditure through the Solicitors' Framework. However, the ongoing need to reduce costs means that the above approach was considered to have advantages over existing arrangements, including:
- ease of access, management, monitoring and control
  - greater certainty over costs;
  - bespoke, flexible service;
  - optimal arrangement for supporting CLS in transitioning services to the Council (see para.3.6 below);
  - single strategic partner would be 'invested' in the service - greater opportunities for incentivisation, development of internal legal staff's skills e.g. through reverse secondments, innovation and value added services;
  - Client officers can develop greater familiarity with a single provider, thereby fostering more effective relationships;
  - The provider can support the Council's aspirations and vision (e.g. to develop traded services) under a partnering arrangement
- 3.6. The approved approach retains the current practice of some externalisation of legal service provision, albeit within a more closely aligned and bespoke partnering arrangement. The areas in scope for transition to internal provision, within the context of a re-structured CLS include:
- Debt recovery;
  - Prosecutions;
  - Routine property advice, standard conveyancing; landlord and tenant work, right to buy.
  - Fixed Penalty Notice and Non-school attendance prosecutions;
  - Education welfare/SEN litigation;
  - Housing (some housing litigation already takes place in-house);
  - Standard contracts and routine commercial (as with housing litigation, there is already a proportion of this done in-house);
  - Employment advice and litigation
  - Academies
- 3.7. Since the approval of the strategy CLS has already begun the process of restructuring and internalisation of in-scope work in parallel with undertaking the procurement process for the strategic legal services partner. This has already given rise to financial and other benefits already being achieved. These are described further at paragraph 5.

## **Procurement strategy**

- 3.8. The term of the contract is five years with options to extend for up to a further two years, which provides the optimal balance of certainty, encouraging service provider investment whilst retaining flexibility to respond to market changes. While the contract does not confer exclusivity, it is anticipated that work falling within the specification will be instructed to the appointed provider, subject to the ability to insource.
- 3.9. The contract requirement is divided into four packages of work: Commercial; Civil Litigation, Property (incl planning) and Employment. Based on 2015/16 external fees incurred through the Solicitors' Framework the maximum contract value was estimated at £17,500,000 over the maximum seven year period. Throughout tender documentation and dialogue the Council emphasised its intentions to seek a minimum of 10% savings through implementation of the strategy.
- 3.10. Entering into a medium/long term strategic partnering arrangement with a single provider for the provision of consultative services requires not just technical depth and breadth of expertise but a good 'fit' for the Council in terms of proactivity, responsiveness, and above all a relationship of trust. It was therefore considered essential to take a robust approach to testing bidders on qualitative criteria. Consequently it was determined that a 60% quality/40% price weighting would provide the optimal balance of excellence in service delivery and value for money. The pricing model seeks a mixture of hourly rated pricing for work which is complex or not open to being unitised; and unit pricing for more routine, self-contained and/or high volume work types.
- 3.11. Procurement of the legal services contract is subject to the so called 'light touch' regime under the Public Contracts Regulations 2015 (PCR/Regulations). This allows for flexible approaches to the procurement route and the Council adopted a route to market commensurate with the competitive dialogue procedure described in the Regulations. This was determined as the optimal route given that the Council seeks a partner to offer a strategic, innovative approach rather than the traditionally transactional call-off model, and this required exploration by the Council.
- 3.12. Further to recommendation of the Contracts & Commissioning Board [CCB1173/16-17], the Executive Director Resources, under delegation from the Leader of the Council [35.16LR], approved the procurement route for the appointment of a sole strategic partner provider of legal services as outlined above and further delegated to the Director of Law in consultation with the Executive Director Resources the authority to implement the insourcing of certain areas of work [03.16ACE].

### **Procurement process**

- 3.13. In line with the procurement strategy, on 8<sup>th</sup> December 2016 the Council published a Contract Notice in the Official Journal of the European Union (OJEU) inviting suitably qualified operators to express interest in the sole strategic provider of legal services contract opportunity. Potential operators were required to complete the Council's Selection Questionnaire (SQ) for the purposes of assessing and shortlisting bidders.

- 3.14. Twelve SQ responses were received by the deadline. In line with the published selection criteria, bidders were assessed as below:
- Stage 1: completeness, compliance and eligibility
  - Stage 2: economic and financial standing
  - Stage 3: technical and professional ability

- 3.15. The technical and professional selection criteria applied included specialist expertise and experience of delivering the totality of the requirements, weighted as below:

Relevant experience and contract examples	20%
Organisational structure and resource levels	15%
Service delivery model and subcontracting arrangements	15%
Contract and performance management	10%
Continuous improvement and innovation	10%
Client relationship management and stakeholder satisfaction	10%
ICT and innovation	10%
Business continuity planning	5%
Environmental, economic and social Value	5%

- 3.16. Responses were scored on a scale of 0 (Unacceptable) to 5 (Excellent) in line with the selection scoring methodology outlined in the SQ. A minimum score of 2 (Fair) was required in respect of all selection criteria in order for the submission to meet the minimum threshold.
- 3.17. Following evaluation and moderation of the SQ submissions, six bidders (identified in Part B) met the minimum eligibility threshold and all received an invitation to submit a solution (ISS) on 3 March 2017. The ISS referenced topics for discussion during competitive dialogue, being: Service Delivery, Innovation and ICT, Continuous Improvement and Value-adding elements (including social value).
- 3.18. Prior to the deadline for ISS submissions, one bidder withdrew from the process.
- 3.19. On 3 April 2017, the Council received five ISS submissions which were not scored, but which were reviewed in order to inform dialogue with bidders, within the topics earmarked in the ISS. The five Bidders were invited to competitive dialogue which commenced on 3 May 2017 and comprised of two half day sessions per Bidder. The agendas provided an opportunity for discussion and clarification of any elements of the Council's requirements within the identified dialogue topics and the Bidders' solutions. In this way, although following a uniform approach in terms of broad topic areas, the detailed discussions were tailored to the solution proposed by each Bidder.
- 3.20. On 30 May 2017 the Council concluded that there was a sufficient number of bidders capable of meeting its requirements and formally closed dialogue by issuing an invitation to submit final tenders (ISFT). Final tenders were received

on 4 July 2017 and were checked for compliance before being individually evaluated by the evaluation panel.

- 3.21. The ISFTs were evaluated on the basis of selecting the most economically advantageous tender in the opinion of the Council, taking into account both the quality and price of the solutions being proposed, against criteria weighted as below:

<b>Criterion</b>	<b>Weighting</b>	<b>Weighting</b>
Organisation and Structure	15%	
Service delivery model and subcontracting arrangements	30%	
Contract and performance management	10%	
Continuous Improvement	10%	
ICT and Innovation	10%	
Transition and Mobilisation	5%	
Business Continuity Planning and Disaster Recovery	4%	
Environmental, Economic and Social Value	4%	
Value-adding elements	10%	
Premier Supply Programme	2%	
<b>Quality</b>	<b>100%</b>	<b>60%</b>
Commercial	40%	
Property	30%	
Litigation	15%	
Employment	15%	
<b>Price</b>	<b>100%</b>	<b>40%</b>

- 3.22. Bidders were asked to submit written responses to method statements, aligned to the first nine quality evaluation criteria listed above. As part of their method statement response, bidders were also asked to provide completed KPI templates and resourcing tables which taken into account as part of the

qualitative assessment.

- 3.23. Bidders also completed pricing matrices for each of the Commercial, Litigation, Property and Employment work packages. They provided their hourly rates banded according to seniority and (where applicable) unit rates. The hourly rate bands and unit rates were sub-weighted as follows:

Commercial	Hourly Rates	70%
	Unit Prices	30%
Property	Hourly Rates	40%
	Unit Prices	60%
Litigation	Hourly Rates	100%
Employment	Hourly Rates	40%
	Unit Prices	60%

#### Hourly Rates

Band 1	20%
Band 2	40%
Band 3	30%
Band 4	10%
<b>Price</b>	<b>100%</b>

#### Unit Rates

Commercial	Equal weighting
Property	Various weightings
Litigation	(no unit pricing sought due to nature of work)
Employment	Equal weighting



3.24. The evaluation panel met on 4 August 2017 to moderate the scores and agree the recommendation for the Preferred Bidder. The evaluation panel included Council officers with specialist knowledge of the Council's Social Value objectives and (in relation to business continuity and disaster recovery) corporate resilience. Details as to bidder pricing and the quality/price scores achieved at the ISFT stage are set out in the Part B report.

### **Appointment of the Preferred Bidder**

3.25. Following application of the contract award evaluation criteria, Bidder A (identified in the Part B report) has been identified to meet the objective criteria which comply with the principles set out in the PCR and which ensure that tenders are assessed in conditions of effective competition so as to identify the most economically advantageous tender.

3.26. The Preferred Bidder has demonstrated to a high standard that it has:

- The optimal balance of resources and skills, sector and specialist knowledge and experience to provide the services and deliver value for money.
- Capability and enthusiasm for embedding a true partnering approach and working alongside CLS to achieve the aims of the wider legal services strategy. This includes measures for introducing new efficient ways of working using tailored IT solutions, processes and workflows; assisting with managing demand for legal services; practical, innovative ideas designed to enhance service delivery and produce immediate income for the Council; a commitment to supporting the insourcing of services such as through secondments, knowledge transfer, lawyer-lawyer mentoring programmes, sharing of know-how and precedents and bespoke training programmes.
- A 'value added' offer which, whilst it goes above and beyond the core service delivery, is seen by the Preferred Bidder as an integral part of the partnering agenda and specifically targeted to enhance the totality of the service provided rather than representing a 'bolt on' menu of offers of varying degrees of relevance for the Council.
- Put forward measurable social value commitments which are focussed on supporting routes into employment (both within the area of law and other disciplines e.g. IT, property, facilities) for Croydon residents and developing local enterprise. Compliance with the London Living Wage is a condition of the contract.
- A well-considered plan for effective mobilisation of service delivery from contract award and for supporting the phased internalisation of legal work currently provided externally.
- Commitment to demonstrable continuous improvement and innovation in service delivery and effective measures for managing its performance and ensuring high quality, cost effective legal services are delivered at all times

to the Council. The Bidder has underpinned its key proposals (such as income generation, cost savings and social value measures) with rigorous KPIs strengthened by enforcement measures designed to maintain a real focus on delivering tangible benefits, with year-on-year targeted improvements.

- 3.27. For these reasons it is recommended that Cabinet agree to the appointment of the firm identified in the Part B report as the Preferred Bidder. Although not a legal requirement in respect of 'light touch regime' contracts, the Council intends to adhere to Crown Commercial Services' recommended practice in terms of complying with the requirements of Regulations 86 and 87 of the PCR. It is therefore the intention to send each Bidder a notice communicating the Council's decision to award the contract and the contract will not be entered into before conclusion of a standstill period, ending at midnight at the end of the 10th day after the relevant sending date.
- 3.28. Subject to 'fine tuning' of the Preferred Bidder's tender being resolved to the satisfaction of the Council, Cabinet is recommended to delegate the Director of Law authority to conclude the final contract in consultation with the Cabinet Member for Finance and Treasury.
- 3.29. The contract will constitute a Tier 1 contract and, as such, will be managed in line with Council's emerging contract management framework. The Director of Law will have overall responsibility for the contract, with day to day management undertaken by an appointed CLS Business Practice Manager.

#### **4. CONSULTATION**

- 4.1 The views of client officer recipients of legal services and the Lead Member were sought in developing the wider legal services strategy. In addition two separate periods of soft market testing (in 2015 and 2016) with potential legal services providers informed both the sole strategic partner strategy and the detail of the tender content and process.
- 4.2 The Leader and Lead Member were consulted in May 2016 as part of the delegated decision by the Executive Director, Resources to approve the strategy report.
- 4.3 Relevant senior client officer input was sought in developing the contract specification and regular updates on the tender process have been included in briefings to the Procurement Project Board chaired by the Executive Director, Resources and to Departmental Leadership Teams.
- 4.4 It is proposed to communicate the procurement outcome and detailed mobilisation plans via a series of presentations to senior management.

## **5 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

5.1 The fees and disbursements payable to the sole strategic partner provider of legal services during the term of the Contract will be charged out to the service area who commissioned the work. The volume of work will depend on the level of legal advice required across the council.

5.2 Estimated costs are not to exceed £17,500k over the maximum duration of the contract.

### **5.3 The effect of the decision**

The appointment of the Preferred Bidder will mean that the Council continues to have access to competitive rates in the delivery of legal services within the context of a strategic partnering relationship which will deliver other benefits, many of which are capable of being quantified and reported against as part of calculating the efficiencies expected to be delivered through the contract.

### **5.4 Risks**

- If the recommendations set out in this report are not approved, the Council will have no contractual arrangement for the provision of externalised legal services from 1<sup>st</sup> January 2018.
- Targeted savings are based on a set of assumptions, including as to volume and work profiles. Should there be unexpected significant fluctuations in the demand for services, such as due to large scale litigation, this may affect the ability to achieve the anticipated savings. Any such risk can be mitigated through proposals put forward by the Preferred Bidder, such as the provision of secondments. In addition the contract has been tendered on a non-exclusive basis, enabling the Council to place work elsewhere, through competitive process if appropriate, should circumstances require.

### **5.4 Options**

As mentioned earlier in the report, a number of options were considered and rejected in terms of the strategy for provision of legal services. These included the ABS model described above (a form of shared services) and framework provision. The sole strategic provider in combination with extending internal provision was chosen for the reasons already described. The Preferred Bidder has submitted a compliant proposal which represents the most economically advantageous tender and the option of not proceeding to appointment would put at risk the delivery of the objectives outlined in terms of the legal services strategy and summarised above.

### **5.5 Future savings/efficiencies**

- The Preferred Bidder has proposed a mix of hourly rated and unit prices which are competitive by comparison with other tendered prices.
- The Preferred Bidder has also proposed a series of measures designed to generate efficiencies, savings and income for the Council.

5.6 The Preferred Bidder will support the transitioning of services to internal provision. This will continue a process which has already started and examples of which include:

- The recruitment of a dedicated property lawyer in May 2017 has already resulted in avoided external costs totalling approximately £60k which represents 23% savings to the client department's legal budget.
- Work relating to Academies conversions is in the process of transitioning to internal provision. Once this has been fully implemented, savings in the region of £8,500 per matter will be achieved.
- It is estimated that planned internalisation (to CLS) of other in-scope work areas should give rise to the following percentage of savings in terms of external costs (calculated as an average based on volumes over the last three years):
  - Prosecutions/Litigation: 38%
  - Commercial: 25%
  - Employment: 28%
  - Housing: 29%
  - Property: 49%
- Implementation of demand management measures such as:
  - Selected client officers will be trained to undertake routine prosecutions in the areas of environmental and area enforcement, food safety, anti-social behaviour, trading standards, pollution, housing enforcement. This is estimated to save the Council an additional 23% p/a on external costs. Similar steps to empower client officers are planned for routine debt recovery and Education Welfare/SEN litigation. The work would be supervised by CLS, where more complex matters would also be undertaken.
  - Enhanced gatekeeping of instructions with factors, including cost/benefit analysis, taken into account in determining whether they should be routed internally or externally.
  - A review of the internal recharge rates, which have been in place for several years and which is expected to offer a more demonstrably cost-effective, competitive, flexible and transparent structure.
  - Training and production of FAQ'S, guidance notes, templates and precedents for client officers enabling greater self-reliance and thereby reduction in spend.

5.7 The combination of preferred bidder pricing and proposals for generating (and assisting the Council in generating) efficiencies and income, alongside implementation of the internalisation strategy and improved demand management, are anticipated to enable the CLS to achieve the targeted savings of 10% against external costs of £2.6m as a minimum.

Approved by: –Lisa Taylor Director of Finance, Finance Investment and Risk

## **6. COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER**

- 6.1 The procurement process described in this report meets the requirements of the Council's Tenders and Contract Regulations and its statutory duty to secure best value under the Local Government Act 1999.

Approved by: - Jacqueline Harris-Baker, Director of Law and Monitoring Officer

## **7. HUMAN RESOURCES IMPACT**

- 7.1 The current providers on the Solicitors' Framework have not indicated that TUPE will apply in respect of the services being procured from the sole strategic provider. The contract will contain the Council's standard TUPE provisions, including as refers to any application of TUPE upon expiry/termination.
- 7.2 HR support is being (and will continue to be) sought in relation to the insourcing of certain areas of service to the extent this requires recruitment and/or re-deployment of appropriately qualified staff, or where TUPE may apply.

Approved by: Sue Moorman, Director of Human Resources

## **8. EQUALITIES IMPACT**

- 8.1 An initial Equalities risk assessment has been carried out and indicates that the proposals recommended by this report do not require that a full Equalities Analysis is carried out as they are not expected to have a different or significant impact on persons who share a protected characteristic compared with those who do not. HR support and guidance will continue to be sought to ensure that ongoing proposals for in- housing work which may affect staff is undertaken in compliance with legal requirements including under the Equalities Act 2010. The contract to be entered into with the Preferred Bidder will contain appropriate provision relating to equalities.

## **9. ENVIRONMENTAL IMPACT**

- 9.1 There are no immediate environmental impacts arising from this report.

## **10. CRIME AND DISORDER REDUCTION IMPACT**

- 10.1 There are no immediate Crime and Disorder consequences arising from the recommendations set out in this report.

## **11. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION**

- 11.1 The expiry of the current Solicitors' Framework in December 2017 requires that prompt measures are taken to secure continued access to high quality legal services which offer good value for money in support of the Ambitious for Croydon agenda and the Croydon Challenge.

**12. OPTIONS CONSIDERED AND REJECTED**

12.1 These are detailed earlier in the report

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**BACKGROUND PAPERS - None**