

## Cabient Member Decision Report 20 October 2017

**Report Title:** Contract with Legal Services Firms to Assist with Land Assembly for Estate Regeneration Projects

**Wards:** All

**Report Authorised by:** Sue Foster, Strategic Director, Neighbourhoods and Growth

**Portfolio:** Councillor Paul McGlone, Deputy Leader (Investment and Partnerships)

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### Report summary

This report seeks approval to appoint two legal services firms to work on a rotation basis to assist with land assembly for the estate six regeneration projects. The two legal services firms that have been selected are Bircham Dyson Bell and Trowers & Hamblins. These companies will work alongside the Housing Regeneration team and the development management teams on each estate regeneration project to facilitate achieving vacant possession, where required, to enable estate regeneration projects to proceed. An Official Journal of the European Union (OJEU) compliant procurement process has been carried out using the Crown Commercial Services framework.

The legal services being procured will support the following activities:

- leasehold buybacks;
- residential freehold purchases;
- commercial premises acquisitions;
- compromise and apparatus protection agreements with statutory utilities;
- agreements in relation to settlements for any Rights to Light claims;
- development of legal processes and agreement to support its Key Guarantees to existing leaseholders in terms of arranging for residents to swap into shared ownership properties; and
- other related matters, such as appropriations.

These services were procured outside of the council's legal services framework because of the specialist nature of the work and that the latter framework was established before this scale of land assembly activity, as required for estate regeneration purposes, had been envisaged.

### Finance summary

This procurement was not carried out on a fixed fee basis; rather the price scoring related to hourly rates. Once we have allocated a legal team to an estate project, then we will seek a fee estimate from them for that project. It is anticipated that the legal fees for each estate will average at around £200,000.

### Recommendations

- (1) To approve the appointment of Bircham Dyson Bell and Trowers & Hamblins as legal advisers to support the estate regeneration programme to run from September 2017 for five years. The

estimated fees for each estate will average at around £200,000, making total contract value in the region of £1,200,000 split between the two appointed advisers. The appointment of Bircham Dyson Bell will take place with immediate effect, working on the leading estates.

**Reason for Exemption from Disclosure**

The accompanying part II report is exempt from disclosure by virtue of the following paragraphs of Schedule 12A to the Local Government Act 1972:

Paragraph Three: Information relating to the financial or business affairs of a particular person. (Including the authority holding that information).

## 1. Context

- 1.1 Over the next 10 years, the London Borough of Lambeth is planning to regenerate six housing estates. The Council is anticipating that it will need legal support and advice in relation to the planning and delivery of various land assembly activities, including compulsory purchase orders, and services to support:
- Leasehold buybacks
  - Residential freehold purchases
  - Commercial premises acquisitions
  - Compromise and Apparatus protection agreements with statutory utilities
  - Agreements in relation to settlements for any Rights to Light claims
  - Development of legal processes and agreement to support its Key Guarantees to existing leaseholders in terms of arranging for residents to swap into shared ownership properties
  - Other related matters, such as appropriations
- 1.2 The Council anticipates that it will need to acquire roughly 200 residential leasehold properties and up to 10 commercial properties over the next five years.
- 1.3 The Council will also need to decant around 1,000 tenants and may also need support in progressing possession actions. There will be around 300 leaseholders who will need to be moved into new shared ownership properties.
- 1.4 As a means to deliver this programme, the Council is in the process of establishing a new wholly owned special purpose vehicle, to be called Homes for Lambeth. This new group of companies will be a commercial enterprise with a remit to deliver new homes across a variety of tenures. Further details on Homes for Lambeth can be obtained from the report to Cabinet for the Cabinet Meeting on 12 October 2015.
- 1.5 The Council has consulted extensively with tenants and homeowners on the affected estates over the past two years and developed a proposed set of Key Guarantees for tenants and homeowners. These guarantees were approved by cabinet in March 2017, and new tenancies and leases are due to go out for formal consultation in summer 2017.
- 1.6 To support the activity around land assembly and compulsory purchase, the Council is seeking to complement its internal legal resources by commissioning external legal services to provide the level of dedicated support required. Given the scale of activity and likely fees relating to this work, the council could have considered increasing its own internal resourcing in order to support this work. This approach has not been followed at this time for two reasons:
- a) Compulsory purchase activity is a critical, high risk element in the delivery of estate regeneration projects. Government policy on compulsory purchase is currently evolving from a combination of changes in guidance and decisions on cases. It is therefore important to ensure that the council brings in expertise from those with a proven track record and very knowledgeable in the current state of play around compulsory purchase cases.
  - b) The nature and quantity of the activity required for land assembly on estate regeneration projects fluctuates over the course of such projects with periods of intense peak work and lull periods with very little, if any, activity. It would therefore be difficult to justify continuous employment of dedicated staff to this work

Combining these elements, it was considered preferable to commence this area of work by securing services from legal services firms. But this will be kept under review and if it is found that the level of work becomes continuous, then it may be appropriate to recruit dedicated internal resource.

## **2. Proposal and Reasons**

- 2.1 Two legal services firms secured the highest scores through a competitive procurement exercise using the Crown Commercial Services framework. These companies are (1) Bircham Dyson Bell and (2) Trowers & Hamblins.
- 2.2 These two companies will be appointed on a rota basis and allocated to estate regeneration projects at the appropriate time for each project.
- 2.3 During the procurement process it was stated that the highest scoring tenderer would be immediately allocated to the leading three estates – Knight’s Walk, South Lambeth and Westbury. Bircham Dyson Bell will be allocated to these three estates. Thereafter allocation of projects to these two companies will be done on a rotation basis.
- 2.4 A detailed tender assessment report is attached as a separate Part II report. This report includes commercially sensitive information and is exempt from disclosure in line with Schedule 12A of the Local Government Act 1972.
- 2.5 Bircham Dyson Bell demonstrated that they are well resourced and able to respond to the commission immediately. They showed that they had considerable experience working in this capacity for other public sector organisations. The tender documentation showed, by way of experience, that they fully understood the nature of this work. The tender documentation showed that they had researched Lambeth and the nature of the estate regeneration programme and this was backed up at interview.
- 2.6 Trowers & Hamblins demonstrated considerable experience working for public sector clients in all capacities associated with the scope of services. They provided lots of good examples of projects and lessons learnt and were able to highlight key issues to be addressed in a clear and concise manner.
- 2.7 Tenders were received from at least one legal service firm already on the council’s legal services framework; the two successful tenderers demonstrated a much stronger track record in this area of work.

## **3. Finance**

- 3.1 The total value of these services is estimated to be around £200,000 per estate project. The total cost across all six estates could be up to £1,200,000.
- 3.2 Funding for these commissions has been identified and included within the current Affordable Housing Capital Programme 2014/15 to 2017/18. The costs will be allocated to the relevant projects for which the services relate; these are: Central Hill, Cressingham Gardens, Fenwick, Knight’s Walk, South Lambeth and Wesbury.
- 3.3 In the viability modelling for the six estates, the current cost assumptions have been made for the legal element of CPO work:

	Central Hill	Cressingham Gardens	Fenwick	Knight's Walk	South Lambeth	Westbury
Legal costs for CPO work	£200,000	£250,000	£200,000	£80,000	£200,000	£150,000

3.4 Where these costs fall within the relevant time period (up to end of financial year 17/18), these costs will be met by means of the allocated funding of £25m (see Cabinet Report of December 2014). Where costs fall within future years, they will be part of the strategy to progress each redevelopment project.

#### **4. Legal and Democracy**

4.1 The authority to award the proposed contract is delegated to the Deputy Leader for the Council (Investment and Partnerships), who will consult with the Leader in exercising his authority.

4.2 The Public Contracts Regulations 2015 apply to the proposed award and the Council is obliged to publish a contract notice in the Official Journal of the European Union . Legal services are subject to the light touch regime. However, there is no requirement to publish a notice when awarding a contract through a mini-competition from a properly procured framework which has been procured in compliance with the regulations provided the council is named, or is part of an identifiable group cited, in the OJEU notice published in respect of the framework.

4.3 The services were tendered through a mini-competition accessing the Crown Commercial Services framework. Provided the requirements for accessing this framework set out in 4.2 are met, doing so by properly procured mini-competition will be compliant with the requirements of both the Council's Contract Standing Orders and the Public Contracts Regulations 2015. The evaluation criteria should be the same as that on which the framework was awarded, but weightings may be altered so long as this is not substantial.

4.4 The Council must adhere to the provisions of the framework in awarding contracts accessing the framework, and the contract must be tailored within these bounds. It is stipulated within the framework that when placing an order or awarding a contract the framework agreement OJEU reference number must be quoted. When awarding a contract procured through a mini-competition accessing a framework agreement, the contracting authority accessing it is advised to observe a standstill period and must in any event notify all suppliers of the outcome of the mini-competition.

4.5 Lambeth Council has its own legal services framework. However, it was determined that the nature and value of the work made it desirable to competitively procure these services outside of the framework to ensure that Lambeth accesses high quality legal support for these critical services at good value for money. The Crown Commercial Services framework was deemed to offer an excellent range of potential providers with the required capacity and skills to meet the specific needs of this project.

4.6 This proposed key decision was entered in the Forward Plan on 4 August 2017 and the necessary 28 clear days' notice has been given. In addition, the Council's Constitution requires the report to be published on the website for five clear days before the proposed decision is approved by the Cabinet Member. Any representations received during this period must be considered by the decision-maker before the decision is taken. A further period of five clear days - the call-in period – must then elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

#### **5. Consultation and co-production**

5.1 This represents technical legal support for the estate regeneration programme. No consultation has taken place.

## **6. Risk management**

6.1 Procuring these legal services is intended to reduce risks associated with achieving vacant possession on estate regeneration projects and to provide the council with adequate legal services support to deliver the estate regeneration projects.

6.2 There are significant risks on estate regeneration projects associated with securing vacant possession and in terms of reaching agreement with all land owners (including resident and non-resident leaseholders) in terms of either purchasing their properties or reaching agreement with them to swap the value of their current property into that of a new property (as per the offers in the Key Guarantees).

6.3 Securing the services of competent and experienced legal services companies will significantly reduce those risks.

6.4 There will be specific risks associated with each estate regeneration project.

6.5 To manage the costs associated with these services, given that they are not based on a fixed fee contract, when a company is allocated to a project, then they will be asked to provide a fee estimate for the work on that project and they will be managed against that fee estimate.

6.6 Due diligence has been carried out on the recommended providers to ensure that they have appropriate insurance, that they achieve suitable Dun & Bradstreet scoring and that they have relevant policies and processes in place, including health and safety and safeguarding.

6.7 Declarations of Interest forms have been completed by those carrying out the tender assessment.

## **7. Equalities impact assessment**

7.1 No equalities impact assessment has been carried out specifically for this procurement exercise and this appointment decision. However equalities impact assessments are being and will be carried out for all estate regeneration projects at key stages of the redevelopment process. The strategy for the equalities impact assessments associated with estate regeneration projects was set out in the report to Cabinet in March 2017, at which the Key Guarantees for residents was adopted.

## **8. Community safety**

8.1 Not relevant.

## **9. Organisational implications**

### **9.1 Environmental**

N/A.

### **9.2 Staffing**

This will be managed by the Housing Regeneration team.

### **Procurement**

9.3 This report follows the Gateway 2 Procurement Strategy Board Report (dated 10<sup>th</sup> April 2017) and seeks approval to appoint Bircham Dyson Bell and Trowers & Hamblins as the legal services firms to support project specific land assembly matters on the estate regeneration programme.

- 9.4 The council has a legal framework, but there are only two legal firms on that framework allocated to CPO and related work. At the time that such legal framework was established, it was not envisaged that this level of CPO work would be required. It was therefore proposed at procurement strategy stage to use the Crown Commercial Services (CCS) Framework in order to be able to obtain competitive bids from a wider range of tenderers and to fully consider the expertise and experience of a wider selection of legal services firms in order to ensure a high quality service from those companies that have a proven track record in this area.
- 9.5 Authority was therefore obtained from Head of Legal Services at time of drafting the procurement strategy not to use the council's existing legal services framework for this work.
- 9.6 By creating a rota system of a small number of legal services firms, the council would achieve continuity (i.e. access to lawyers who have knowledge of the council's programme and circumstances) and redundancy (should one of the firms prove unsatisfactory).
- 9.7 A two stage process was followed through the CCS Framework: expressions of interest followed by an invitation to tender. The tenders were evaluated on a 40% price and 60% quality basis. The rationale for assessing tenders on this basis has been two-fold:
- a) The CPO activity is a critical risk area for estate regeneration projects and it is therefore very important to draw on the expertise and experience of those legal services firms with a proven track record in this area of work.
  - b) The price assessment was carried out on hourly rates, rather than total tendered sums. This means that expenditure on this activity becomes as much dependent on strong clienting as it is on direct costs of the services. By selecting the best firms, with strong proven track records, prices can be controlled by using their knowledge on the best and quickest ways to deliver the necessary advice, navigate the administrative challenges and minimise risk on projects.
- 9.8 Failure to achieve the land assembly objectives would ultimately be far more costly than the headline cost of the services. As a consequence, high quality advice is critical and worth a potential premium. In the end, the price bids of the two selected companies was competitive.

9.9 **Health**  
N/A

## 10. **Timetable for implementation**

10.1 Indicative timetable (subject to change):

The timetable for implementation will vary for each estate according to the development and phasing programme for each estate. The selected solicitors will be allocated to projects at an appropriate time for each estate regeneration project.

Bircham Dyson Bell will be appointed to work on the leading estates (Knight's Walk, South Lambeth and Westbury) with immediate effect. This work will progress from now and run over the next two years.

<b>Audit trail</b>				
<b>Consultation</b>				
<b>Name/Position</b>	<b>Lambeth directorate/division or partner</b>	<b>Date Sent</b>	<b>Date Received</b>	<b>Comments in para:</b>
Councillor Paul McGlone	Deputy Leader (Investment and Partnerships)	05.09.17	02.10.17	All
Sue Foster, Strategic Director	Neighbourhoods and Growth	05.09.17	08.09.17	
Rachel Sharpe, Director	Strategic Programmes	29.08.17	31.08.17	All
Hamant Bharadia, Finance	Finance, Corporate Resources	08.08.17	29.08.17	3
David Thomas, Legal Officer	Corporate Resources	06.07.17	07.07.17	4
Maria Burton, Democratic Services	Corporate Services	30.08.17	05.09.17	Throughout
Katy Shaw,	Corporate Resources	06.07.17	07.07.17	All
Natalie Hailwood, Procurement	Procurement	30.06.17	03.07.17	All
<b>Internal Officer Board</b>	<b>Date of meeting</b>			
Procurement Board	01.08.17			
<b>Report history</b>				
<b>Original discussion with Cabinet Member</b>	05.09.17			
<b>Part II Exempt from Disclosure/confidential accompanying report?</b>	Yes			
<b>Key decision report</b>	Yes			
<b>Date first appeared on forward plan</b>	04.08.17			
<b>Key decision reasons</b>	Expenditure, income or savings in excess of £500,000			
<b>Background information</b>	<a href="#">Cabinet 8 December 2014, item 4</a> <a href="#">Cabinet 12 October 2015, item 5</a> <a href="#">Cabinet 21 March 2016, item 3</a> <a href="#">Cabinet report 23 March 2017, item 3</a>			
<b>Appendices</b>	None			

**APPROVAL BY CABINET MEMBER OR OFFICER IN ACCORDANCE WITH SCHEME OF DELEGATION**

**I confirm I have consulted Finance, Legal, Democratic Services and the Procurement Board and taken account of their advice and comments in completing the report for approval:**

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Post** Julian Hart  
Estate Regeneration and Housing Delivery Programme

**I confirm I have consulted the relevant Cabinet Members, including the Leader of the council (if required), and approve the above recommendations:**

**Signature** \_\_\_\_\_ **Date** 20 October 2017

**Post** Councillor Paul McGlone  
Deputy Leader of the Council (Investment and Partnerships)

**Any declarations of interest (or exemptions granted):**

<b>Issue</b>	<b>Interest declared</b>
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