Finance and Resources Committee

10am, Thursday, 21 September 2023

Award of Legal Services Framework

Executive/routine: Routine

Wards: Al

Council Commitments: Delivering an economy for all

1. Recommendations

- 1.1 It is recommended that the Finance and Resources Committee:
 - 1.1.1 Approves the award of a framework for Legal Services to eight legal firms, over six lots: Anderson Strathern LLP, Brodies LLP, Clyde & Co LLP, CMS Cameron McKenna Nabarro Olswang LLP, DWF LLP, Harper Macleod LLP, Morton Fraser LLP and Shepherd and Wedderburn LLP.
 - 1.1.2 Approves the commencement of the framework on 21 December 2023 for an initial period of two years, with two further optional 12 month extensions, at an estimated total value of £26.3m (noting that £7m relates to City of Edinburgh Council estimated spend, with the remainder relating to other participant authorities' spend).

Dr Deborah Smart

Executive Director of Corporate Services

Contact: Kevin McKee, Head of Legal Services

E-mail: kevin.mckee@edinburgh.gov.uk | Tel: 0759 061 6424



Report

Award of Legal Services Framework

2. Executive Summary

2.1 This report seeks approval to award a six lot framework agreement for legal services to eight legal firms: Anderson Strathern LLP, Brodies LLP, Clyde & Co LLP, CMS Cameron McKenna Nabarro Olswang LLP, DWF LLP, Harper Macleod LLP, Morton Fraser LLP and Shepherd and Wedderburn LLP, to commence on 21 December 2023 for an initial period of two years, with two further optional 12 month extensions, at a total estimated value of £26.3m.

3. Background

- 3.1 The City of Edinburgh (the "Council") has a requirement for external legal support for matters which are particularly specialised or where the internal team has capacity issues. The Council may also choose to outsource certain legal instructions where particular risks are anticipated or where the work is routine and can be more economically serviced externally (e.g. debt recovery work).
- 3.2 The Council has had legal frameworks in place for over a decade and it has worked well. The Council currently contracts with a number of legal firms through a six lot framework agreement; Commercial, Property and Planning, Litigation, Employment, Major Projects and Debt Recovery. This framework will expire in December 2023.
- 3.3 The new framework is required to be in place by 21 December 2023 and the anticipated Council spend is estimated to be a maximum of £7m (if the full contract duration of 4 years is utilised). Other Participating Local Authorities who opt to utilise the framework will increase the overall estimated spend to £26.3m (again based on full contract duration) and made this opportunity more appealing to the market.
- 3.4 The replacement framework will include an update to Lot 5 Major Projects. This will be renamed Major Projects and Investigations, due to the establishment of the Investigations team within Legal and Assurance.
- 3.5 The current framework operates a rebate model whereby the Council requires all legal firms to provide a cost rebate to the Council and all other Participating Local Authorities in relation to fees rendered which will exclude third party fees. This

model has generated income in the region of £90k to the Council over the life of the current framework.

4. Main report

- 4.1 The Council's new framework agreement for external legal services will consist of six lots. Following an invitation to other local authorities, the Council has established that the framework will be utilised by 18 Participating Local Authorities. Appendix 3 to this report contains details of all Participating Local Authorities, spend per lot and the total estimated framework spend. The six lots are:
 - 4.1.1 Lot 1 Commercial
 - 4.1.2 Lot 2 Property and Planning
 - 4.1.3 Lot 3 Litigation
 - 4.1.4 Lot 4 Employment
 - 4.1.5 Lot 5 Major Projects and Investigations
 - 4.1.6 Lot 6 Debt Recovery
- 4.2 A Prior Information Notice (PIN) was issued on 22 February 2023 on Public Contracts Scotland (PCS) to provide awareness of this opportunity to the legal market. A total of 20 legal firms expressed interest in this framework at that time.
- 4.3 On 25 May 2023, the Council published a Contract Notice under Open Procedure, as set out in the Public Contracts (Scotland) Regulations 2015, with a tender submission deadline of 26 June 2023.
- 4.4 The procurement procedure allowed the Council to identify suitable tenders in terms of compliance with the procurement regulations and the service specific criteria.
- 4.5 To identify legal firms offering Best Value the tender evaluation included an emphasis on quality as well as price and submissions were assessed on the basis of most economically advantageous tender.
- 4.6 A cost/quality ratio of 40%/60% was applied to lots 1, 2, 3, 4 & 6 to encourage competitive hourly rates and to ensure that the quality was of a high standard. For lot 5, Major Projects and Investigations, the driving factor was quality and a cost/quality ratio of 30%/70% was therefore allocated. To further protect the quality element for all lots, a minimum quality threshold of 60 marks out of 100 was applied, with the Council having discretion to disqualify tenderers who did not achieve this threshold.
- 4.7 A total of 20 legal firms registered interest against the Contract Notice and tenders were received from 12 legal firms across all lots:
 - 4.7.1 Lot 1 received seven tender submissions;
 - 4.7.2 Lot 2 received seven tender submissions:
 - 4.7.3 Lot 3 received six tender submissions:

- 4.7.4 Lot 4 received seven tender submissions:
- 4.7.5 Lot 5 received nine tender submissions; and
- 4.7.6 Lot 6 received three tender submissions.
- 4.8 A summary of tendering and the tender evaluation process is attached at Appendix 1 and legal firms recommended for award is attached at Appendix 2.

5. Next Steps

- 5.1 Subject to approval, the services will commence on 21 December 2023 and will allow the Council to meet its obligations in regard to the provision of external legal services.
- 5.2 The framework will be primarily utilised by the Council and in addition, may be used by 18 other Participating Local Authorities detailed in Appendix 3 to this report.
- 5.3 The Contracts and Grants Management team (CAGM) will engage with the Head of Legal Services, to ensure that effective contract management is delivered throughout the framework lifecycle as detailed and agreed in the Contract Management and Handover Report. This will include: proactive supplier engagement, monitoring of management information, application of Key Performance Indicators and tracking of relevant budgets.

6. Financial impact

- 6.1 The framework value is estimated at £26.3m; it should be noted that the maximum estimated spend of this Council is £7m and £19.3m is the estimated spend of other Participating Local Authorities.
- 6.2 The hourly rates quoted by each of the legal firms will be fixed for the duration of the framework and any extension periods, which demonstrates value for money for the Council. A calculation based upon previous and new rates against inflation has indicated a real terms saving.
- 6.3 A rebate model will operate over the life of the framework (inclusive of any extensions) and will provide a cost rebate to the Council and all other Participating Local Authorities. The fees rendered will exclude third party fees. The model may generate income of up to £100k for the Council, based upon rebates from the current framework and will operate as follows:
 - 6.3.1 Legal firms will provide a cost rebate in the sum of £2,500 for each increment of £50,000 of fees rendered. For the avoidance of doubt, a cost rebate will be provided in the sum of £2,500 by a legal firm to the Council once that legal firm has been paid a total of £50,000 fees by the Council. A further invoice in the sum of £2,500 will be rendered by the Council once a total of £100,000 in fees has been paid by the legal firm to the Council. By way of further example, if a legal firm is paid £162,300 in fees by the Council over the term of the contract, the legal firm will be liable to have paid a total of £7,500 as a

- rebate to the Council. This will apply cumulatively over the contract period and any extension periods.
- 6.4 Legal firms have committed to the provision of the following benefits, which will provide free upskilling and added value to this framework:
 - 6.4.1 training seminars will be provided (at no additional cost to the Council) to Council staff on agreed topics on request, up to a maximum of six sessions per annum;
 - 6.4.2 the Council may be able to offer secondment opportunities to fee earners from within the legal firms. Legal firms should be willing to give reasonable consideration to such secondment arrangements at cost and subject to such terms and for such periods as may be agreed between the legal firm and the Council; and
 - 6.4.3 lessons learned sessions following significant project work will be provided by legal firms.
- 6.5 Financial assessments have been carried out for the successful legal firms and it has been deemed that there reduced financial risk to the Council.
- 6.6 The costs associated with procuring this framework agreement are estimated to be between £20,001 £35,000.

7. Equality and Poverty Impact

- 7.1 All legal firms will pay workers (including any agency or sub-contractor staff) the real Living Wage and are all accredited Living Wage employers. All firms have confirmed that they do not make use of zero hours contracts and do not use fire and rehire practices.
- 7.2 The firms also provided detailed responses on how they are closing the gender pay gap, how they look after their staff in terms of wellbeing and how they promote inclusion and diversity in the workplace.

8. Climate and Nature Emergency Implications

8.1 Climate change was identified as relevant to this procurement exercise and all legal firms were required to complete a response within the Single Procurement Document (SPD) to provide evidence that their organisation has taken steps to build the awareness of the climate change emergency. Scope 1, 2 and 3 emissions were addressed in the SPD question as defined in the <u>Greenhouse Gas Protocol</u>.

Environmental Impacts

8.2 Emissions source categories and their scopes were presented and legal firms were requested to indicate sources used by their organisation and steps to reduce carbon emissions during the framework period. Mandatory submissions were received from all legal firms.

9. Risk, policy, compliance, governance and community impact

- 9.1 The framework recommended for award is compliant with procurement regulations and the Contract Standing Orders. The risk of legal challenge relating to contractual arrangements is thereby reduced.
- 9.2 Consultation and engagement was undertaken with all current framework legal firms and internal service users.
- 9.3 The Sustainable Procurement Strategy was considered and applied through the request of community benefits. Legal firms will be required to deliver community benefits in line with the value of the work awarded by the Council; benefits to be delivered will be agreed at the contract commencement and monitored throughout the life of the framework by the contract manager.

10. Background reading/external references

10.1 N/A

11. Appendices

Appendix 1 - Summary of Tendering and Tender Evaluation Process

Appendix 2 - Legal Firms Recommended for Award

Appendix 3 - Participating Local Authorities and Projected Spend

Appendix 1 – Summary of Tendering and Tender Evaluation Process

Contract	Legal Services Framework – Lot 1	Commercial	
Contract Period	21 December 2023 – 20 December 2027 with two optional 12 month extensions (2 + 1 + 1)		
Estimated Contract Value (including extensions)	£4,843,000		
Procurement Route Chosen	Open Procedure		
Tenders Returned	Seven		
	Harper Macleod LLP		
Name of	Brodies LLP		
Recommended Supplier(s) – Five	Morton Fraser LLP		
Places Allocated	Shepherd and Wedderburn		
	Anderson Strathern LLP		
Price / Quality Split	60 % Quality	40 % Cost	
	To encourage competitive fixed hou has been established.	rly rates a cost ratio of 40%	
	It is essential that the quality is of a high standard, therefore the driving factor is quality and to further protect this element a minimum quality threshold of 60% was applied with the Counci having discretion to disqualify legal firms who did not achieve this threshold.		
	Award Criteria		
	Delivery Team – 30%		
	Continuous Improvement – 30%		
	Service Delivery Methodology – 10%	6	
	Community Benefits – 10%		
	Performance Management – 5%		
	Fair Work Practices - 5%		
	Data Protection – 5%		
	Business Continuity – 5%		
Evaluation Team	Council Officers		

Contract	Legal Services Framework – Lot 2	2 Property and Planning		
Contract Period	21 December 2023 – 20 December 2027 with two optional 12 month extensions (2 + 1 + 1)			
Estimated Contract Value (including extensions)	£5,993,000			
Procurement Route Chosen	Open Procedure			
Tenders Returned	Seven			
Name of	Anderson Strathern LLP			
Recommended	Morton Fraser LLP			
Supplier(s) – Four Places Allocated	Harper Macleod LLP			
1 laces / lilocated	Shepherd and Wedderburn			
Price / Quality Split	60 % Quality	40 % Cost		
	To encourage competitive fixed hou has been established.	rly rates a cost ratio of 40%		
	It is essential that the quality is of a high standard, therefore the driving factor is quality and to further protect this element a minimum quality threshold of 60% was applied with the Council having discretion to disqualify legal firms who did not achieve this threshold.			
	Award Criteria			
	Delivery Team – 30%			
	Continuous Improvement – 30%			
	Service Delivery Methodology – 10%	6		
	Community Benefits – 10%			
	Performance Management – 5%			
	Fair Work Practices - 5%			
	Data Protection – 5%	Data Protection – 5%		
	Business Continuity – 5%			
Evaluation Team	Council Officers			

Contract	Legal Services Framework – Lot 3	Litigation	
Contract Period	21 December 2023 – 20 December 2027 with two optional 12 month extensions (2 + 1 + 1)		
Estimated Contract Value (including extensions)	£5,908,000		
Procurement Route Chosen	Open Procedure		
Tenders Returned	Six		
	Anderson Strathern LLP		
Name of	Harper Macleod LLP		
Recommended Supplier(s) – Five	Morton Fraser LLP		
Places Allocated	Brodies LLP		
	DWF Biggart Baillie		
Price / Quality Split	60 % Quality	40 % Cost	
	To encourage competitive fixed hou has been established.	rly rates a cost ratio of 40%	
	It is essential that the quality is of a high standard, therefore the driving factor is quality and to further protect this element a minimum quality threshold of 60% was applied with the Council having discretion to disqualify legal firms who did not achieve this threshold.		
	Award Criteria		
	Delivery Team – 30%		
	Continuous Improvement – 30%		
	Service Delivery Methodology – 10%	6	
	Community Benefits – 10%		
	Performance Management – 5%		
	Fair Work Practices - 5%		
	Data Protection – 5%		
	Business Continuity – 5%		
Evaluation Team	Council Officers		

Contract	Legal Services Framework – Lot	4 Employment	
Contract Period	21 December 2023 – 20 December 2027 with two optional 12 month extensions (2 + 1 + 1)		
Estimated Contract Value (including extensions)	£2,628,000		
Procurement Route Chosen	Open Procedure		
Tenders Returned	Seven		
Name of	Harper Macleod LLP		
Recommended	Anderson Strathern LLP		
Supplier(s) – Four Places Allocated	Brodies LLP		
1 laces / lilectica	Clyde & Co LLP		
Price / Quality Split	60 % Quality	40 % Cost	
	To encourage competitive fixed hou has been established.	rly rates a cost ratio of 40%	
	It is essential that the quality is of a high standard, therefore the driving factor is quality and to further protect this element a minimum quality threshold of 60% was applied with the Council having discretion to disqualify legal firms who did not achieve this threshold.		
	.Award Criteria		
	Delivery Team – 30%		
	Continuous Improvement – 30%		
	Service Delivery Methodology – 109	%	
	Community Benefits – 10%		
	Performance Management – 5%		
	Fair Work Practices - 5%		
	Data Protection – 5%		
	Business Continuity – 5%		
Evaluation Team	Council Officers		

Contract	Legal Services Framework – Lot 5 Investigations	Major Projects and	
Contract Period	21 December 2023 – 20 December month extensions (2 + 1 + 1)	2027 with two optional 12	
Estimated Contract Value (including extensions)	£5,852,000		
Procurement Route Chosen	Open Procedure		
Tenders Returned	Nine		
Name of	Brodies LLP		
Recommended	CMS Cameron McKenna Nabarro C	Diswang LLP	
Supplier(s) – Four Places Allocated	Harper Macleod LLP		
1 laces / tilocated	Anderson Strathern LLP		
Price / Quality Split	70 % Quality	30 % Cost	
	To encourage competitive fixed hou has been established.	rly rates a cost ratio of 30%	
	It is essential that the quality is of a driving factor is quality and to furthe minimum quality threshold of 60% whaving discretion to disqualify legal this threshold.	r protect this element a ras applied with the Council	
	Award Criteria		
	Delivery Team – 30%		
	Continuous Improvement – 30%		
	Service Delivery Methodology – 10%	6	
	Community Benefits – 10%		
	Performance Management – 5%		
	Fair Work Practices - 5%		
	Data Protection – 5%		
	Business Continuity – 5%		
Evaluation Team	Council Officers		

Contract	Legal Services Framework – Lot 6	Debt Recovery	
Contract Period	21 December 2023 – 20 December 2 month extensions (2 + 1 + 1)	2027 with two optional 12	
Estimated Contract Value (including extensions)	£1,090,000		
Procurement Route Chosen	Open Procedure		
Tenders Returned	Three		
Name of Recommended Supplier – One Place Allocated	Harper Macleod LLP		
Price / Quality Split	60 % Quality	40 % Cost	
	To encourage competitive fixed hour has been established.	rly rates a cost ratio of 40%	
	driving factor is quality and to further minimum quality threshold of 60% w	t is essential that the quality is of a high standard, therefore the driving factor is quality and to further protect this element a minimum quality threshold of 60% was applied with the Council having discretion to disqualify legal firms who did not achieve his threshold.	
	Award Criteria		
	Delivery Team – 30%		
	Continuous Improvement – 30%		
	Service Delivery Methodology – 10%	6	
	Community Benefits – 10%		
	Performance Management – 5%		
	Fair Work Practices - 5%		
	Data Protection – 5%		
	Business Continuity – 5%		
Evaluation Team	Council Officers		

Appendix 2 – Legal Firms Recommended for Award

Lot 1 Commercial (5 Legal Firms appointed to framework)

Legal Firm	Quality Score 60/100	Cost Score 40/100	100% of Tender to Final Score
Harper Macleod LLP	57.00	35.79	92.79
Brodies LLP	56.25	32.38	88.63
Morton Fraser LLP	51.75	30.76	82.51
Shepherd and Wedderburn	48.75	26.58	75.33
Anderson Strathern LLP	34.50	40.00	74.50
Tenderer 6	37.50	29.50	67.00
Tenderer 7	36.75	23.53	60.28

Lot 2 Property and Planning (4 Legal Firms appointed to framework)

Legal Firm	Quality Score 60/100	Cost Score 40/100	100% of Tender to Final Score
Anderson Strathern LLP	48.75	40.00	88.75
Morton Fraser LLP	54.75	31.50	86.25
Harper Macleod LLP	47.25	36.12	83.37
Shepherd and Wedderburn	52.50	26.83	79.33
Tenderer 5	45.00	32.68	77.68
Tenderer 6	28.50	34.05	62.55
Tenderer 7	36.75	23.75	60.50

Lot 3 Litigation (5 Legal Firms appointed to framework)

Legal Firm	Quality Score 60/100	Cost Score 40/100	100% of Tender to Final Score
Anderson Strathern LLP	54.00	40.00	94.00
Harper Macleod LLP	55.50	36.79	92.29
Morton Fraser LLP	53.25	32.23	85.48
Brodies LLP	51.75	33.28	85.03
DWF Biggart Baillie	39.00	24.19	63.19
Tenderer 6	31.50	27.33	58.83

Lot 4 Employment (4 Legal Firms appointed to framework)

Legal Firm	Quality Score 60/100	Cost Score 40/100	100% of Tender to Final Score
Harper Macleod LLP	55.50	35.79	91.29
Anderson Strathern LLP	51.00	40.00	91.00
Brodies LLP	54.00	32.38	86.38
Clyde & Co LLP	57.00	25.89	82.89
Tenderer 5	44.25	31.36	75.61
Tenderer 6	42.75	23.53	66.28
Tenderer 7	30.75	33.73	64.48

Lot 5 Major Projects and Investigations (4 Legal Firms appointed to framework)

Legal Firm	Quality Score 70/100	Cost Score 30/100	100% of Tender to Final Score
Brodies LLP	57.75	24.29	82.04
CMS Cameron McKenna Nabarro Olswang LLP	62.13	14.17	76.30
Harper Macleod LLP	48.13	27.14	75.27
Anderson Strathern LLP	44.63	30.00	74.63
Tenderer 5	49.00	23.75	72.75
Tenderer 6	52.50	11.88	64.38
Tenderer 7	39.38	17.55	56.93
Tenderer 8	36.75	19.94	56.69
Tenderer 9	35.88	17.65	53.53

Lot 6 Debt Recovery (1 Legal Firm appointed to framework)

Legal Firm	Quality Score 60/100	Cost Score 40/100	100% of Tender to Final Score
Harper Macleod LLP	57.00	39.41	96.41
Tenderer 2	51.75	29.02	80.77
Tenderer 3	28.50	40.00	68.50

Appendix 3 – Participating Local Authorities and Projected Spend

APPENDIX 3 - PARTICIPATING LOCAL AUTHORITES AND PROJECTED SPEND

Participating Local Authority	Lot 1 Framework Spend	Lot 2 Framework Spend	Lot 3 Framework Spend	Lot 4 Framework Spend	Lot 5 Framework Spend	Lot 6 Framework Spend	Framework Total Spend per Local Authority
City of Edinburgh Council	1,200,000	2,000,000	1,200,000	200,000	2,000,000	400,000	7,000,000
Stirling Council	120,000	160,000	200,000	160,000	240,000	0	880,000
West Lothian Council	400,000	600,000	160,000	200,000	600,000	40,000	2,000,000
East Lothian Council	600,000	320,000	600,000	200,000	800,000	0	2,520,000
Midlothian Council	80,000	80,000	80,000	80,000	80,000	80,000	480,000
Falkirk Council	60,000	120,000	120,000	60,000	200,000	40,000	600,000
Highland Council	120,000	160,000	300,000	320,000	60,000	40,000	1,000,000
East Dunbartonshire Council	200,000	300,000	440,000	200,000	500,000	100,000	1,740,000
Aberdeen City Council	375,000	725,000	1,100,000	0	300,000	0	2,500,000
Aberdeenshire Council	40,000	120,000	160,000	80,000	0	0	400,000
South Ayrshire Council	108,000	108,000	108,000	108,000	108,000	108,000	648,000
Orkney Islands Council	80,000	40,000	40,000	20,000	0	20,000	200,000
Shetland Islands Council	20,000	40,000	120,000	40,000	40,000	10,000	270,000
Inverclyde Council	200,000	80,000	120,000	60,000	200,000	0	660,000
Dumfries and Galloway Council	80,000	400,000	0	180,000	324,000	12,000	996,000
Angus Council	80,000	80,000	40,000	40,000	0	40,000	280,000
North Lanarkshire Council	400,000	400,000	800,000	280,000	0	0	1,880,000
South Lanarkshire Council	480,000	60,000	120,000	200,000	200,000	0	1,060,000
Renfrewshire Council	200,000	200,000	200,000	200,000	200,000	200,000	1,200,000
							26,314,000
Total Spend Per Lot	4,843,000	5,993,000	5,908,000	2,628,000	5,852,000	1,090,000	26,314,000