

# Finance and Resources Committee

10am, Friday, 6 December 2019

## Award of Legal Services Framework Agreement

Item no  
Executive  
Wards All  
Council Commitments

### 1. Recommendations

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- 1.1 It is recommended that the Finance and Resources Committee:
- 1.1.1 Approves the award of a framework agreement for Legal Services to seven providers over six lots; Anderson Strathern LLP, Brodies LLP, Clyde & Co (Scotland) LLP, CMS Cameron McKenna LLP, Harper Macleod LLP, Morton Fraser LLP and Shepherd and Wedderburn LLP.
  - 1.1.2 Approves the commencement of the framework on 21 December 2019 for an initial period of two years, with two further optional twelve month extensions, at an estimated total value of £12 million.

**Stephen S. Moir**

Executive Director of Resources

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# Finance and Resources Committee

## Award of Legal Services Framework Agreement

### 2. Executive Summary

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- 2.1 This report seeks approval to award a six lot framework agreement for legal services to seven providers: Anderson Strathern LLP, Brodies LLP, Clyde & Co (Scotland) LLP, CMS Cameron McKenna LLP, Harper Macleod LLP, Morton Fraser LLP and Shepherd and Wedderburn LLP to commence on 21 December 2019 for an initial period of two years, with two further optional twelve month extensions, at a total estimated value of £12 million.

### 3. Background

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- 3.1 The City of Edinburgh Council has an in-house legal team which provides advice and support on all legal matters for its ongoing day to day operations and in relation to Council projects. However, external legal advisors are required for specialist advisory support or when the internal team has limited capacity.
- 3.2 The Council currently contracts with a number of legal firms through a five lot framework agreement; Commercial, Property and Planning, Litigation, Employment and Major Projects. This agreement commenced on 21 December 2015 and expires on 20 December 2019.
- 3.3 This model benefitted from access to specialist external advice at a much lower rate than would be paid in the open market and fixed hourly rates for the duration of the framework. The relatively large potential of work and fees from the Council encouraged strong competition, along with the cachet attached to working for Edinburgh as a capital city given the complexity and high profile work undertaken.
- 3.4 The framework was open to other local authorities which resulted in utilisation by Stirling and West Lothian Councils.

### 4. Main report

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- 4.1 The framework has been remodelled and will now consist of six lots, with the inclusion of Debt Recovery as an additional lot. Following an invitation to other local authorities, the Council has established that the framework will be utilised by East Lothian Council, Midlothian Council, West Lothian Council and Stirling Council. Collaboration has increased the estimated spend value of this framework and, in turn, made this opportunity more appealing to the market.

- 4.2 The six lots are detailed below:
- 4.2.1 Lot 1 - Commercial
  - 4.2.2 Lot 2 - Property and Planning
  - 4.2.3 Lot 3 - Litigation
  - 4.2.4 Lot 4 - Employment
  - 4.2.5 Lot 5 - Major Projects
  - 4.2.6 Lot 6 - Debt Recovery
- 4.3 A Prior Information Notice (PIN) was issued on 1 April 2019 on Public Contracts Scotland to provide awareness of this opportunity to the legal market. A total of 31 law firms expressed interest in this framework at that time.
- 4.4 Commercial and Procurement Services (CPS), in conjunction with the service area, undertook a full Official Journal of the European Union (OJEU) tender exercise. On 14 June 2019, 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 15 July 2019.
- 4.5 The procurement procedure allowed the Council to identify suitable tenders in terms of compliance with the procurement regulations and the service specific criteria.
- 4.6 To identify providers 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.
- 4.7 A cost/quality ratio of 40%/60% was applied to encourage competitive hourly rates and to ensure that the quality was of a high standard. To further protect the quality element a minimum quality threshold of 60% was applied, with the Council having discretion to disqualify tenderers who did not achieve this threshold.
- 4.8 A total of 31 providers registered interest in the Contract Notice and tenders were received from 16 providers:
- 4.8.1 Lot 1 received ten submissions;
  - 4.8.2 Lot 2 received eleven submissions;
  - 4.8.3 Lot 3 received six submissions;
  - 4.8.4 Lot 4 received eight submissions;
  - 4.8.5 Lot 5 received twelve submissions; and
  - 4.8.6 Lot 6 received five submissions.
- 4.9 One submission received for Lot 6 was deemed non-compliant and accordingly 51 submissions were evaluated. Based upon historical usage, the service area had identified the maximum number of providers to be awarded to each lot.
- 4.10 A summary of tendering and the tender evaluation process is attached at Appendix 1 and providers recommended for award is attached at Appendix 2.

- 4.11 The framework will be managed by the Head of Legal and Risk and the Senior Legal Manager, Legal Services who will track benefits and monitor Key Performance Indicators.
- 4.12 It is anticipated that the framework will commence on 21 December 2019 for an initial two year period with two further optional twelve month extensions.

## 5. Next Steps

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- 5.1 Subject to approval, the services will commence on 21 December 2019 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 City of Edinburgh Council and in addition, may be used by East Lothian Council, Midlothian Council, West Lothian Council and Stirling Council who expressed their wish to collaborate.
- 5.3 The Contracts and Grants Management team (CAGM) will engage with the Senior Legal Manger, to ensure that effective contract management is delivered throughout the framework lifecycle as detailed and agreed in the Contract Management and Handover Report. All efficiencies identified in the procurement process should be delivered by the service area through proactive supplier engagement, monitoring of management information, application of Key Performance Indicators and tracking of relevant budgets.

## 6. Financial impact

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- 6.1 The framework value is estimated at £12,000,000 over the contract period.
- 6.2 The Council requires all providers to deliver a cost rebate to the Council and all other Participating Authorities in relation to fees rendered which will exclude all third party fees (such as legal fees payable by third parties in relation to planning contribution agreements). Providers will provide a cost rebate in the sum of £2,500 for each increment of £50,000 of fees rendered; this will apply cumulatively over the contract period and extensions. Based upon the current framework spend and excluding third party fees, Legal Services have estimated that the rebate model could generate income of up to £50,000 per annum which will equate to £200,000 over the life of the contract as shown in the table below:

	19/20	20/21	21/28	22/23	23/24	Total
Rebate Model	£12,500	£50,000	£50,000	£50,000	£37,500	£200,000
<b>Total</b>	<b>£12,500</b>	<b>£50,000</b>	<b>£50,000</b>	<b>£50,000</b>	<b>£37,500</b>	<b>£200,000</b>

- 6.3 To encourage competitive hourly rates a cost ratio of 40% was established and hourly rates will be fixed for the duration of the contract.
- 6.4 A benchmarking exercise against Crown Commercial Services framework (which does not have a rebate model) was carried out; a direct comparison of hourly charge rates with a major law firm has established that the Council has achieved competitive rates for this contract.

- 6.5 Providers have committed to the provision of the following benefits, at no additional cost to the Council, which will provide free upskilling and added value to this contract:
- 6.5.1 up to six training seminars per annum to Council staff on agreed topics;
  - 6.5.2 secondment opportunities; and
  - 6.5.3 lessons learned sessions following significant project work.
- 6.6 The costs associated with procuring this framework agreement are estimated to be between £20,000 and £30,000.

## **7. Stakeholder/Community Impact**

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- 7.1 Consultation and engagement has been undertaken in the form of a questionnaire to current framework providers and internal service users.
- 7.2 There are no impacts on carbon, adaption to climate change and sustainable development arising directly from this report.
- 7.3 The Sustainable Procurement Policy was considered and applied through the request of community benefits. The providers will be required to deliver community benefits in line with the value of work awarded by the Council; benefits to be delivered will be agreed at the contract commencement and monitored throughout the life of the contract by the contract manager.
- 7.4 The framework recommended for award is compliant with procurement regulations and the Contract Standing Orders. The risk of legal challenge relating to contractual arrangements for the provisions of this service is thereby reduced.

## **8. Background reading/external references**

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None

## **9. Appendices**

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Appendix 1 – Summary of Tendering and Tender Evaluation Process

Appendix 2 – Providers Recommended for Award

## Appendix 1 – Summary of Tendering and Tender Evaluation Process

<b>Contract</b>	<b>Legal Services Framework – Lot 1 Commercial</b>	
Contract Period	21 December 2019 – 20 December 2021 with two optional twelve month extensions (2 + 1 + 1)	
Estimated Contract Value (including extensions)	£2.3 million	
Procurement Route Chosen	Open Procedure	
Tenders Returned	10	
Name of Recommended Supplier(s)	Morton Fraser LLP Anderson Strathern LLP Brodies LLP Harper Macleod LLP Shepherd and Wedderburn LLP	
Price / Quality Split	<b>60 % Quality</b>	<b>40 % Cost</b>
	<p>To encourage competitive fixed hourly rates a cost ratio of 40% has been established.</p> <p>It is essential that the quality is of a high standard, therefore the driving factor is quality, to further protect this element a minimum quality threshold of 60% was applied.</p> <p>Delivery Team – 30%</p> <p>Service Delivery Methodology – 30%</p> <p>Continuous Improvement - 15%</p> <p>Performance Management – 10%</p> <p>Fair Work Practices - 5%</p> <p>Data Protection – 5%</p> <p>Business Continuity – 5%</p>	
Evaluation Team	Three Council Officers from Legal Services Team	

<b>Contract</b>	<b>Legal Services Framework – Lot 2 Property and Planning</b>	
Contract Period	21 December 2019 – 20 December 2021 with two optional twelve month extensions (2 + 1 + 1)	
Estimated Contract Value (including extensions)	£3 million	
Procurement Route Chosen	Open Procedure	
Tenders Returned	11	
Name of Recommended Supplier(s)	Anderson Strathern LLP Morton Fraser LLP Harper Macleod LLP Brodie LLP	
Price / Quality Split	<b>60 % Quality</b>	<b>40 % Cost</b>
	<p>To encourage competitive fixed hourly rates a cost ratio of 40% has been established.</p> <p>It is essential that the quality is of a high standard, therefore the driving factor is quality, to further protect this element a minimum quality threshold of 60% was applied.</p> <p>Delivery Team – 30%</p> <p>Service Delivery Methodology – 30%</p> <p>Continuous Improvement - 15%</p> <p>Performance Management – 10%</p> <p>Fair Work Practices - 5%</p> <p>Data Protection – 5%</p> <p>Business Continuity – 5%</p>	
Evaluation Team	Two Council Officers from Legal Services Team and one Council Officer from Property and Facilities Management	

<b>Contract</b>	<b>Legal Services Framework – Lot 3 Litigation</b>	
Contract Period	21 December 2019 – 20 December 2021 with two optional twelve month extensions (2 + 1 + 1)	
Estimated Contract Value (including extensions)	£2.4 million	
Procurement Route Chosen	Open Procedure	
Tenders Returned	6	
Name of Recommended Supplier(s)	Anderson Strathern LLP Morton Fraser LLP Harper Macleod LLP	
Price / Quality Split	<b>60 % Quality</b>	<b>40 % Cost</b>
	<p>To encourage competitive fixed hourly rates a cost ratio of 40% has been established.</p> <p>It is essential that the quality is of a high standard, therefore the driving factor is quality, to further protect this element a minimum quality threshold of 60% was applied.</p> <p>Delivery Team – 30%</p> <p>Service Delivery Methodology – 30%</p> <p>Continuous Improvement - 15%</p> <p>Performance Management – 10%</p> <p>Fair Work Practices - 5%</p> <p>Data Protection – 5%</p> <p>Business Continuity – 5%</p>	
Evaluation Team	Three Council Officers from Legal Services Team	



<b>Contract</b>	<b>Legal Services Framework – Lot 4 Employment</b>	
Contract Period	21 December 2019 – 20 December 2021 with two optional twelve month extensions (2 + 1 + 1)	
Estimated Contract Value (including extensions)	£750,000	
Procurement Route Chosen	Open Procedure	
Tenders Returned	8	
Name of Recommended Supplier(s)	Anderson Strathern LLP Clyde & Co (Scotland) LLP Harper Macleod LLP Brodiess LLP	
Price / Quality Split	<b>60 % Quality</b>	<b>40 % Cost</b>
	<p>To encourage competitive fixed hourly rates a cost ratio of 40% has been established.</p> <p>It is essential that the quality is of a high standard, therefore the driving factor is quality, to further protect this element a minimum quality threshold of 60% was applied.</p> <p>Delivery Team – 30%</p> <p>Service Delivery Methodology – 30%</p> <p>Continuous Improvement - 15%</p> <p>Performance Management – 10%</p> <p>Fair Work Practices - 5%</p> <p>Data Protection – 5%</p> <p>Business Continuity – 5%</p>	
Evaluation Team	Two Council Officers from Legal Services Team and one Council Officer from Human Resources	

<b>Contract</b>	<b>Legal Services Framework – Lot 5 Major Projects</b>	
Contract Period	21 December 2019 – 20 December 2021 with two optional twelve month extensions (2 + 1 + 1)	
Estimated Contract Value (including extensions)	£2.85 million	
Procurement Route Chosen	Open Procedure	
Tenders Returned	12	
Name of Recommended Supplier(s)	Anderson Strathern LLP CMS Cameron McKenna LLP Shepherd and Wedderburn LLP	
Price / Quality Split	<b>60 % Quality</b>	<b>40 % Cost</b>
	<p>To encourage competitive fixed hourly rates a cost ratio of 40% has been established.</p> <p>It is essential that the quality is of a high standard, therefore the driving factor is quality, to further protect this element a minimum quality threshold of 60% was applied.</p> <p>Delivery Team – 30%</p> <p>Service Delivery Methodology – 30%</p> <p>Continuous Improvement - 15%</p> <p>Performance Management – 10%</p> <p>Fair Work Practices - 5%</p> <p>Data Protection – 5%</p> <p>Business Continuity – 5%</p>	
Evaluation Team	Two Council Officers from Legal Services Team and one Council Officer from Place Development	

<b>Contract</b>	<b>Legal Services Framework – Lot 6 Debt Recovery</b>	
Contract Period	21 December 2019 – 20 December 2021 with two optional twelve month extensions (2 + 1 + 1)	
Estimated Contract Value (including extensions)	£700,000	
Procurement Route Chosen	Open Procedure	
Tenders Returned	5	
Name of Recommended Supplier(s)	Anderson Strathern LLP	
Price / Quality Split	<b>60 % Quality</b>	<b>40 % Cost</b>
	<p>To encourage competitive fixed hourly rates a cost ratio of 40% has been established.</p> <p>It is essential that the quality is of a high standard, therefore the driving factor is quality, to further protect this element a minimum quality threshold of 60% was applied.</p> <p>Delivery Team – 30%</p> <p>Service Delivery Methodology – 30%</p> <p>Continuous Improvement - 15%</p> <p>Performance Management – 10%</p> <p>Fair Work Practices - 5%</p> <p>Data Protection – 5%</p> <p>Business Continuity – 5%</p>	
Evaluation Team	One Council Officer from Legal Services Team and two Council Officers from Customer and Digital Services	

## **Appendix 2 – Providers Recommended for Award**

### **Lot 1 Commercial (5 Providers appointed to framework)**

<b>Provider</b>	<b>Quality Score 60/100</b>	<b>Cost Score 40/100</b>	<b>100% of Tender to Final Score</b>
Morton Fraser	55.50	33.91	89.41
Anderson Strathern LLP	45.00	40.00	85.00
Brodies LLP	51.00	30.29	81.29
Harper Macleod LLP	42.75	36.81	79.56
Shepherd and Wedderburn LLP	51.00	25.67	76.67
Tenderer 6	40.50	32.92	73.42
Tenderer 7	41.25	31.18	72.43
Tenderers 8 – 10 failed to achieve the minimum 60% quality threshold			

### **Lot 2 Property and Planning (4 Providers appointed to framework)**

<b>Provider</b>	<b>Quality Score 60/100</b>	<b>Cost Score 40/100</b>	<b>100% of Tender to Final Score</b>
Anderson Strathern LLP	58.50	40.00	98.50
Morton Fraser	58.50	32.53	91.03
Harper Macleod LLP	54.00	35.31	89.31
Brodies LLP	59.25	29.05	88.30
Tenderer 5	54.75	29.91	84.66
Tenderer 6	47.25	30.72	77.97
Tenderer 7	51.75	24.62	76.37
Tenderer 8	44.25	31.19	75.44
Tenderer 9	51.75	20.88	72.63
Tenderer 10	47.25	23.65	70.90
Tenderer 11	49.50	19.29	68.79

### **Lot 3 Litigation (3 Providers appointed to framework)**

<b>Provider</b>	<b>Quality Score 60/100</b>	<b>Cost Score 40/100</b>	<b>100% of Tender to Final Score</b>
Anderson Strathern LLP	51.75	40.00	91.75
Morton Fraser	52.50	35.47	87.97
Harper Macleod LLP	46.50	38.50	85.00
Tenderer 4	39.00	31.68	70.68
Tenderers 5 & 6 failed to achieve the 60% minimum quality threshold			

**Lot 4 Employment (4 Provider appointed to framework)**

<b>Provider</b>	<b>Quality Score 60/100</b>	<b>Cost Score 40/100</b>	<b>100% of Tender to Final Score</b>
Anderson Strathern LLP	47.25	40.00	87.25
Clyde & Co	48.00	31.41	79.41
Harper Macleod LLP	42.75	35.56	78.31
Brodies LLP	46.50	29.26	75.76
Tenderer 5	42.75	32.76	75.51
Tenderer 6	44.25	30.21	74.46
Tenderer 7	40.50	31.51	72.01
Tenderer 8	47.25	23.22	70.47

**Lot 5 Major Projects (3 Providers appointed to framework)**

<b>Provider</b>	<b>Quality Score 60/100</b>	<b>Cost Score 40/100</b>	<b>100% of Tender to Final Score</b>
Anderson Strathern LLP	45.00	40.00	85.00
CMS Cameron McKenna LLP	57.75	24.16	81.91
Shepherd and Wedderburn LLP	53.25	27.02	80.27
Tenderer 4	40.50	38.75	79.25
Tenderer 5	46.50	31.89	78.39
Tenderer 6	49.50	22.92	72.42
Tenderer 7	38.25	32.82	71.07
Tenderer 8	36.00	34.23	70.23
Tenderer 9	36.00	14.42	50.42
Tenderers 10 - 12 failed to achieve the minimum quality threshold			

**Lot 6 Debt Recovery (1 Provider appointed to framework)**

<b>Provider</b>	<b>Quality Score 60/100</b>	<b>Cost Score 40/100</b>	<b>100% of Tender to Final Score</b>
Anderson Strathern LLP	46.50	40.00	86.50
Tenderers 2 – 4 failed to achieve the minimum quality threshold			
Tenderer 5 – Non Compliant			